



## **Report from the High Court 2017**

### **The Year in Review**

I am pleased to present a short report on events of note during 2017 in the High Court of New Zealand - Te Kōti Matua o Aotearoa.

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

**11 June 2018**

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## Overview

Significant legislation underpinning the jurisdiction and operation of the High Court came into effect during 2017. The Senior Courts Act 2016, which replaced the Judicature Act 1908, came into force in stages: on assent (17 October 2016), 1 March 2017 and 1 January 2018. The March changes required the publication of various protocols, recusal guidelines, extra-judicial employment and offices, and reports about the number of judgments that are outstanding beyond a reasonable time. These can be found on the Courts of New Zealand website.

- [High Court recusal guidelines](#)
- [Protocol relating to extra-judicial activities of judges](#)
- [High Court delayed judgments report](#)
- [Senior Courts Act 2016](#)

The Senior Courts Act established a commercial panel of the High Court from which judges may be selected to hear and determine complex commercial proceedings. This panel began to operate from 1 September 2017 when the Senior Courts (High Court Commercial Panel) Order 2017 came into force.

- [Senior Courts \(High Court Commercial Panel\) Order 2017](#)

The Senior Courts (Access to Court Documents) Rules 2017 which revised the search of court records came into force on 1 September 2017.

- [Senior Courts \(Access to Court Documents\) Rules 2017](#)

The High Court began to sit in the new Christchurch court in Lichfield Street on 20 November 2017.

The aftermath of the Christchurch earthquake continues to have a significant impact on the overall work of the Court. At the end of 2017, insurance cases and defective repair cases arising from the earthquakes made up over a quarter of all general proceedings on hand nationwide.

## The judicial complement and their responsibilities

As at 31 December 2017 the complement remained unchanged at 46 judges made up of 39 judges and seven associate judges.

During the year:

- Three judges left the Court. Fogarty J retired in August and Clifford J and Gilbert J were appointed to the Court of Appeal in March and June respectively.

- Three new judges were sworn in: Churchman J in June, Jagose J in July and van Bohemen J in August. Churchman J is based in Wellington and the other two new judges are based in Auckland.
- The complement based in Wellington returned to 10 judges and one associate judge.
- Faire J held a three-month acting commission from 24 April 2017.

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 2017 were:

- Wylie J (Auckland civil).
- Moore J (Auckland criminal).
- Katz J (Waikato/Bay of Plenty liaison).
- Toogood J (Whangārei liaison).
- Mallon J (Wellington circuit civil).
- Simon France J (Wellington circuit criminal).
- Mander J (Christchurch circuit civil).
- Nation J (Christchurch circuit criminal).
- Associate Judge Osborne (liaison judge for associate judge work).

The case management list judges in 2017 were:

- Christchurch earthquake list: Gendall J and Associate Judge Osborne.
- Auckland leaky buildings list: Fogarty and Lang JJ and Associate Judge Bell.
- Auckland judicial review list: Fitzgerald J.
- Auckland appeals lists: Hinton J (civil) and Lang J (criminal).
- Auckland summary judgments and caveats: Edwards J.
- Probate lists: Whata J (Auckland), Dunningham J (Christchurch) and Cull J (Wellington).
- Marine and Coastal Area (Takutai Moana) Act matters: Collins J.

The Rules Committee<sup>1</sup> has a number of statutory and appointed members from the High Court. Gilbert J chaired the committee until his appointment to the Court of Appeal. Venning J, as Chief Judge, is an *ex officio* member and there are two appointed members from the High Court: Courtney and Dobson JJ. Courtney J now chairs the committee.

## Workload

A representation of the Court, its complement and business as at 31 December 2017 is attached as [Appendix 1](#). For selected statistics and commentary on work before the Court see [Appendix 2](#) to this report.

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<sup>1</sup> A statutory committee set up under s 51B Judicature Act 1908 and continued by s 155 Senior Courts Act 2016 which is charged with regulating the practice and procedure of the senior courts. See [http://www.courtsofnz.govt.nz/about-the-judiciary/rules\\_committee](http://www.courtsofnz.govt.nz/about-the-judiciary/rules_committee)

## ***Judgment timeliness***

The Court has set a standard of 90% of civil judgments delivered within three months of the hearing or last submissions. In 2017 the actual result was 88.9%.

The first report on judgments the Chief High Court Judge considers are outstanding beyond a reasonable time was made as at 30 September 2017. On that date there were 13 judgments which were older than six months and which had not yet been delivered. In the seven months leading up to 30 September, a further 16 judgments were delivered that, upon delivery, were aged more than six months since the last day of hearing or receipt of final submissions.

- [Judgment delivery expectations and related material](#)

## ***Civil***

During the year most of the civil appeals arising from the proposed Auckland Unitary Plan issued in 2016 were either heard or discontinued.

Nationwide, at year end 26% of active general proceedings arose from the Christchurch earthquake sequence. This 26% comprises 21% natural disaster insurance matters and 5% building defects claims (claims of faulty repairs). The on-hand balance of Christchurch earthquake-related proceedings remains high following the rise in new filings in late 2016 and early 2017 to avoid potential Limitation Act bars to commencing proceedings. That increase in new filings continues to affect clearance rates. The general proceedings clearance rate remains below 100% although it has increased from 91% in 2016 to 94% in 2017. In the Christchurch registry, at 31 December 2017, the proportion of earthquake related general proceedings was 78%, which was made up of 64% insurance claims and 14% building defect claims.

Under the Marine and Coastal Area (Takutai Moana) Act 2011, applications for a High Court order for recognition of protected customary rights and customary marine title were required to be filed by 3 April 2017. Prior to 2017, the Court had received 9 applications. In 2017 a further 193 applications were filed. At present all applications are being managed by the Wellington registry of the Court. The Court is reviewing these applications to ensure all applicants who claim an interest in the various zones are accurately identified and the extent of those zones is clarified. A number of applicants have claimed rights in more than one area.

The judges running the above and other specific case management lists focus on identifying cases with precedential effect for early hearing to assist other litigants with cases involving similar issues.

The significant increase in new filings for customary recognition orders has affected the clearance rate for originating applications which has dropped from 98% to 79%. There were 113 general proceedings trials heard in 2017, up from 106 in 2016.

## ***Criminal***

There were 130 cases on hand at 31 December 2017 compared to 124 at the same time in 2016. These numbers include cases awaiting sentence. Only four cases begun prior to the commencement of the Criminal Procedure Act on 1 July 2013 remain to be heard. Three have had to await appeals being heard in the Supreme Court and one was delayed due to fitness to stand trial issues. They all have trial dates in the first half of 2018.

### ***The statutory protocol regime***

The Chief Judges of the High and District Courts established the Protocol in accordance with s 66 of the Criminal Procedure Act 2011. The Protocol 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 general catch-all class (Class 3). Protocol offences include serious sexual, violence and drug offending. The full list of offences can be found in the 2017 Court of Trial Protocol.

- [2017 Court of Trial Protocol](#)

The provisions in the Criminal Procedure Act replaced a paper-heavy process in the Summary Proceedings Act 1957 for determining the court of trial. The number of offences which must be considered for direction as to court of trial by the High Court is reduced. An inefficient aspect of the old process was that the whole file was transferred between the District Court and High Court. The amount of paper which is transferred to the High Court for protocol decisions has been reduced. Counsel now prepare a Protocol Annex which identifies their submissions on appropriate court of trial and District Court judges also make recommendations on appropriate court of trial.

In practice, the initial identification of these cases by the Crown Solicitor and the identification and later processing of protocol cases in the District Court in accordance with the procedures of the Criminal Procedure Act can be problematic from time to time. Audits have revealed that some protocol cases have not been identified and/or processed correctly. Efforts have been taken by the courts, the Ministry of Justice and Crown Law Office to address the issue.<sup>2</sup>

The percentage of protocol determinations directing a protocol case be heard in the High Court was 16% for the year ending 31 December 2017, compared to 20% for the year ending 31 December 2016. At any one time, approximately 60% of the High Court criminal caseload is made up of protocol cases.<sup>3</sup>

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<sup>2</sup> 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.

<sup>3</sup> As well as protocol cases directed to be heard in the High Court, included are cases transferred to the High Court under s 70 of the Criminal Procedure Act 2011, cases transferred to the High Court under s 86D of the Sentencing Act 2002 (3<sup>rd</sup> strike cases) and the remaining middle-band cases retained in the High Court.

## Practice and procedure of the Court

### **Senior Courts Act 2016**

The substantive provisions of the Senior Courts Act 2016 came into effect on 1 March 2017. They required publication of certain materials. This led to a revision of existing guidelines on recusal and extra-judicial conduct and offices as well as the provision of additional information about judgment timeliness. These revised materials continue to be published on the Courts of New Zealand website.

- [Various conduct guidelines on Courts of NZ website](#)
- [Judgment delivery expectations and related material](#)

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

On 1 September 2017, the commercial panel of the High Court began operation pursuant to an Order in Council and rules change. Either the plaintiff or defendant may nominate a complex commercial case be heard by a panel judge. Justices Venning, Heath, Courtney, Mallon, Dobson, Wylie, Katz and Muir were appointed as panel judges for a 3 year term. These judges continue to carry out the full range of High Court work (other civil work, criminal work and appeals).

- [Section 19 Senior Courts Act 2016](#)
- [Senior Courts \(High Court Commercial Panel\) Order 2017](#)
- [Part 29 High Court Rules 2016](#)
- [More on the operation of the commercial panel](#)

### **Rules changes**

After consideration by the Rules Committee, three significant rules or sets of rules were promulgated during the year.

High Court statements of claim or counterclaim must now record the registry name in both te Reo Māori and English. The Court now adds both forms of the registry name to its judgments.

A registrar may now refer plainly abusive proceeding to a judge before service and, if satisfied the proceeding is an abuse of the process of the court, the judge may strike it out.

The access to court documents rules now apply to all the senior courts. The previously separate rules for access to civil and criminal court documents have been combined. The rules also simplify which documents may be accessed, by whom and when they may be accessed. Generally requests for access to documents by a member of the public will be determined by a judge. The rules provide more specific guidance about how to balance different policy

considerations such as fair trial rights, open justice and the protection of confidentiality and privacy interests when assessing requests.

- [High Court Rules 2016, registry names in te Reo](#)
- [High Court Rules 2016, striking out proceedings before service](#)
- [Senior Courts \(Access to Court Documents\) Rules 2017](#)

### ***Electronic Capabilities in Court***

The Court continues to take steps towards electronic ways of working. The senior courts operate a Civil Electronic Document Protocol. Where a common electronic bundle is used in a High Court civil matter, in the event of appeals, that bundle will form the basis of the case on appeal in the Court of Appeal or Supreme Court. The protocol and practice note are intended to ensure that electronic common bundles and casebooks provided by parties can be easily read and searched.

Electronic bundles and casebooks are most often used in cases where the documentation is likely to exceed 500 pages. The High Court practice note also applies to criminal matters.

- [Senior Courts Civil electronic document protocol](#)
- [High Court Practice Note on the use of electronic common bundles and electronic casebooks](#)

### ***Hardware, software and applications***

Audio-visual links (AV links) with circuit courts and prisons are now routinely available. AV links are used to link judges with parties and counsel in the circuit courts for procedural appearances of defendants' cases and for associate judge lists. AV links are also used for overseas witness evidence where appropriate. The Court and judges continue to consider how extensively AV should be used in order to ensure open justice and fair trial rights are maintained.

Judges of the High Court are provided with desk top computers in chambers and on the bench, a laptop for work at home and on circuit and, if they use them, an iPad. In Christchurch judges and staff are now allocated a single tablet to use as a chambers computer, on the bench and for mobile working at home and on circuit. Judges can access all their files as if sitting at a court desktop computer.

Judges and their associates can now access digital audio files to replay parts of the evidence and opening and closing statements.

### ***Projects leading to electronic filing and access to case papers on line***

The Ministry of Justice is undertaking two projects which are essential building blocks for electronic filing of documents and access to case papers online. They are the Te Kete document management system project and the Customer Case Portal pilot in the Court of Appeal.



## Looking outside the court

### *Tikanga and Te Reo*

Many judges continue to undertake Institute of Judicial Studies<sup>4</sup> and common room-delivered programmes developing te reo Māori and tikanga knowledge. Some of these courses include Te Reo Wānanga for proficient speakers, a Noho Marae covering aspects of language and tikanga as well as a standalone tikanga course covering formal protocols and an awareness of Tikanga.

### *Working with the profession*

The Chief Judge continues 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 various professional association annual conferences. No significant matters of concern were raised at these meetings during 2017.

In October 2017 the Chief Judge, Gendall J and Associate Judge Osborne again met with Christchurch practitioners to discuss the operation of the earthquake list.

Judges continue to present at profession-led education events such as Litigation Skills intensives, the Criminal Law Symposium and subject matter updates.

### *Research – The Wheels of Justice: Understanding the Pace of Civil High Court Cases*

The University of Otago Legal Issues Centre undertook research into the pace of High Court civil cases. The research involved quantitative analysis of Ministry of Justice data, an analysis of physical court files and interviews with lawyers, judges, court staff and litigants.

The study published in late 2017 concluded that average case length does not reveal how effectively the court functions. It found, despite perceptions of a slow system, the wheels of justice were turning smoothly in most of the court cases reviewed. When delay did occur, the study found it was caused by a range of complex issues including lawyers not being thoroughly prepared, a lack of judicial time to promptly hear fixtures and deliver judgments, the difficulty in getting all the participants (lawyers, experts, litigants) to coordinate their schedules and litigants engaging in strategic delay.

- [Wheels of Justice: Understanding the Pace of Civil High Court Cases](#)

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<sup>4</sup> 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](http://www.ijs.govt.nz/home.asp)

## ***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.

- [In-court media coverage guidelines](#)
- [Reporting the courts.](#)

## ***Web posts and tweets this year***

The High Court tweets about its daily lists, judgments of public interest, reports such as this one and ceremonial proceedings.

The Court also posts materials about the High 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](#).

- [High Court landing page](#)

## **Property and security**

The Christchurch High Court commenced business in the new courthouse in Lichfield Street on 20 November. A final sitting in the old courthouse took place on 15 November.

The operation of several courthouses has been affected as a result of earthquakes since 2010. For the High Court, and apart from Christchurch, the most significantly affected was the Dunedin Law Courts building. In late 2011, parts of the historic Dunedin courthouse were closed due to earthquake risk. After further engineering and technical reports, all court services were moved offsite in mid-2015 to temporary facilities in High Street and John Wickliffe House. Work to significantly strengthen and refurbish the building and its technology infrastructure occurred from late 2016 and during 2017. The building reopened in February 2018.

The Wellington courthouse re-opened on 1 February 2017 after 2½ months of remediation work following the November 2016 Kaikōura earthquake. The damage was mainly water-related arising from broken pipes and sprinklers. Courtroom 1 remained out of action until early May 2017 when new light fixtures were installed.

By 2017, the Wellington courthouse was the only home High Court where security screening of all persons entering the courthouse did not occur. Screening is provided for all criminal trials but is only available for civil matters where security concerns have been raised. Property changes to create a single public entrance to the Wellington building are planned for 2018. The changes will facilitate full time screening.

## Looking ahead to 2018

The ground floor of the 25 year old Wellington High Court building is to be refurbished. Some property changes will be made to enable a single public access and further staff will be appointed to set up permanent security screening. This will improve comfort and safety in courtrooms and public areas.

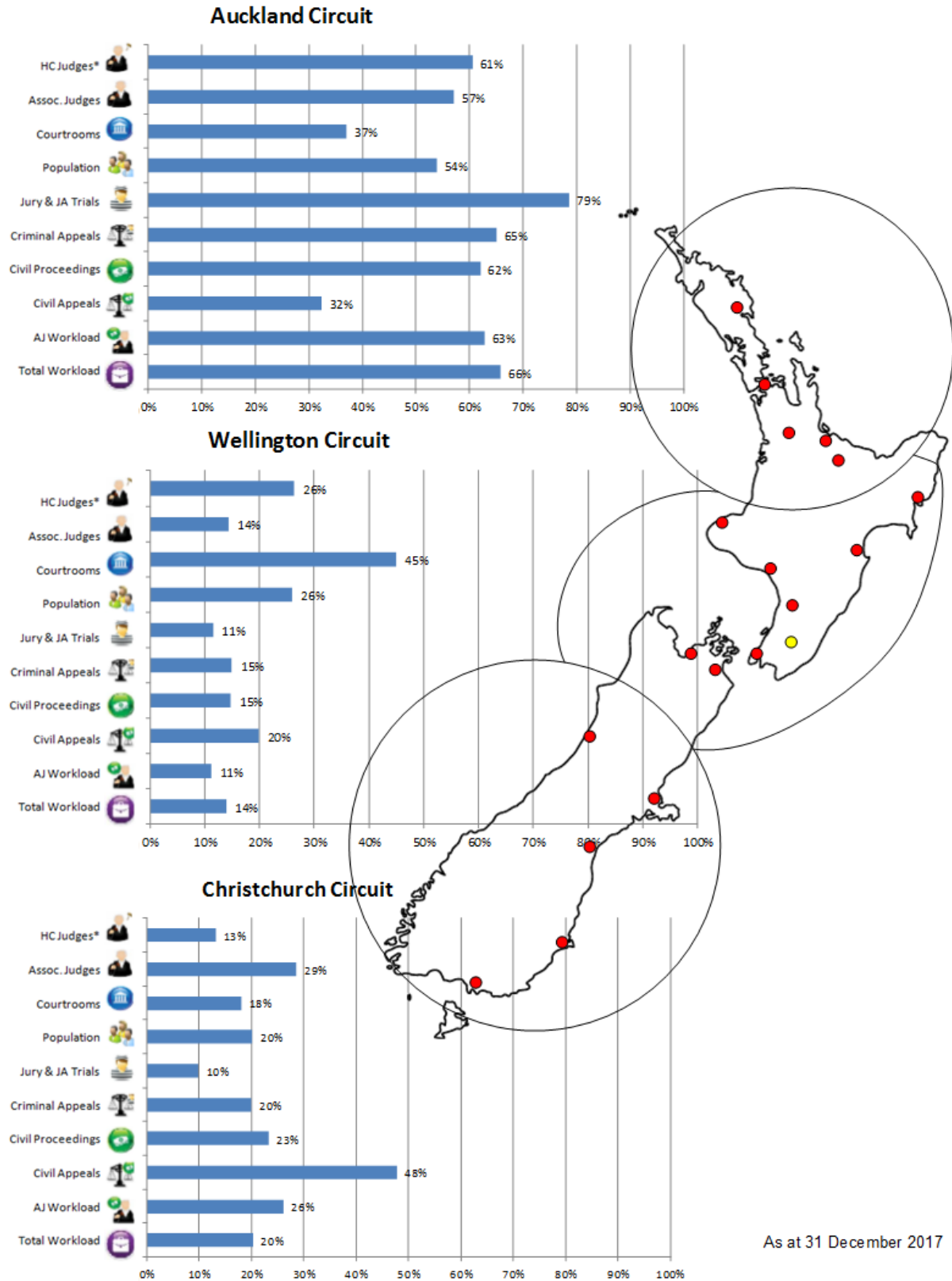
The Court will begin to provide short summaries to accompany its judgments of public interest on Courts of New Zealand website.

The Court will continue to apply lessons learnt from the Christchurch earthquake list to other lists such as the weathertight buildings list in Auckland. Case management of the large number of Marine and Coastal Area (Takutai Moana) Act 2011 applications for recognition will continue. Collins J is to hold call overs in local registries in mid-2018 to consider matters such as cross claims.

## Appendix 1 – High Court at a glance

This diagram differs from those published prior to 2016 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 2017

## Appendix 2 – Selected workload figures for the year ended 31 December 2017

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

- [High Court annual statistics landing page](#)

### Summary of new business and disposals for the year ended 31 December 2017

	Criminal trials <sup>5</sup>	Civil proceedings <sup>6</sup>	Criminal appeals	Civil appeals
<b>New work</b>				
2017	178	2653	1123	279
2016 <sup>7</sup>	162	2602	1134	362
<b>Disposals</b>				
2017	155	2352	1142	323
2016	171	2360	1160	278
<b>Disposals by trial adjudication</b>				
2017		338		
2016		299		
<b>Disposals by non-trial adjudication</b>				
2017		657		
2016		692		

Nationwide, new general proceedings filings dropped in both Auckland and Christchurch, disposals dropped in Auckland and Wellington and cases on hand rose in all three circuits.

Of note, general proceedings new business continued to be dominated by filings arising from the Christchurch earthquake sequence. In 2017 there were 231 new filings for Natural Disasters – Christchurch Earthquake which was 20% of all new filings nationwide. The next most prevalent nature of claim categories were contractual disputes ((154 claims – 14%) and debt recovery (106 claims – 9%)).

<sup>5</sup> Includes New Trials plus Retrials directed (New Business definition from the Courts of NZ website).

<sup>6</sup> ‘Civil proceedings’ includes general proceedings, originating applications and judicial reviews.

<sup>7</sup> The 2016 figures presented here may 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.

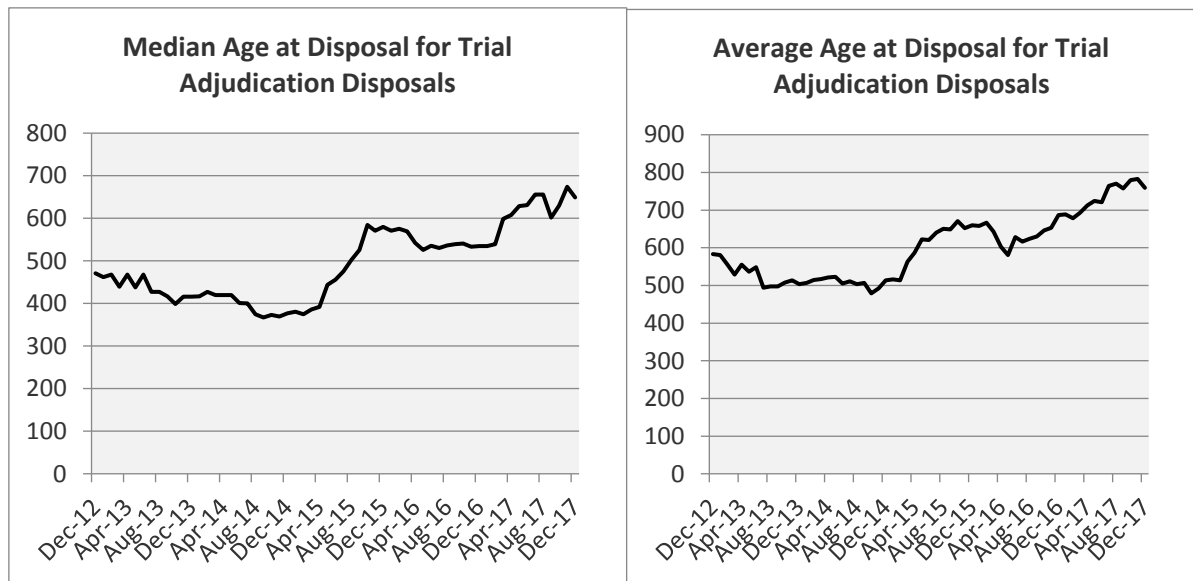
2017 was the fifth year “nature of claim” data has been collected for new general proceedings. There are some 30 categories. The aim is to analyse whether different claim types behave differently. Once sufficient information is available, this analysis will form the basis of decisions about whether different 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 2017**

Nature of Claim type	Number of claims	% of total
Natural disasters (Chch EQ)	993	15%
Debt recovery	901	13%
Contractual disputes	851	12%
Estate litigation	425	6%
Other trust litigation	389	6%
Other	351	5%
Building defects – weathertight claims	304	4%

The median time to trial for general proceedings trial adjudications has increased from 285 days for the 2016 calendar year end to 321 days as at 31 December 2017.

The graphs below show the median and average ages of cases at disposal have increased.



The median age at disposal for trial adjudication disposals was 649 days compared to the previous year where the median age at disposal was 535 days.

The average age at disposal for trial adjudication disposals was 759 days compared to the previous year where the average age at disposal was 686 days.

## Performance standards

### Judgment timeliness statistics for the 12 months ending 31 December 2017

	Time from hearing to judgment delivery	Number of Cases	Percentage
Civil	≤1 Month	1378	74.1%
	≤3 Months	1653	88.9%
	≤6 Months	1798	96.7%
Criminal	Time from hearing to judgment delivery	Number of Cases	Percentage
	≤1 Month	1358	94.9%
	≤3 Months	1423	99.4%
	≤6 Months	1431	100.0%

The Court's civil judgment timeliness statistics dropped below the standard of 90% of judgments delivered within three months of hearing or last submissions for the first time this year.

### *Civil clearance rate*

#### Clearance rate (target of 100% or higher)

	General proceedings	Originating applications	Judicial review	Civil appeals	Insolvency proceedings
2017	94%	79%	105%	116%	105%
2016	91%	98%	100%	81%	99%

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 drop in clearance rate for originating applications is due to the Marine and Coastal Area (Takutai Moana) Act applications which were required to be filed by 3 April 2017. The general proceedings clearance rate has improved as the number of new Christchurch EQ natural disaster cases have fallen. The high civil appeals clearance rate is the result of the disposal of the Auckland Unitary Plan appeals filed in 2016.

## ***Waiting time to trial***

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

	<b>General proceedings – Short Cause</b>	<b>General proceedings – Long Cause</b>	<b>Originating applications</b>	<b>Judicial review</b>	<b>Civil appeals</b>
<b>Performance Standard</b>	<b>12 Months</b>	<b>18 Months</b>	<b>6 Months</b>	<b>6 Months</b>	<b>6 Months</b>
<b>2017</b>	83%	86%	78%	68%	90%
<b>2016</b>	89%	92%	82%	66%	86%

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 remains under consideration.



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

Topic	Date
Wellington High Court re-opening	25 January 2017
Revocation of Practice Note - Pre-trial applications in criminal jury cases	21 April 2017
2017 Court of Trial protocol	11 May 2017
2016 High Court Annual report	29 May 2017
Enforcement of the provisions of rule 7.39 High Court Rules 2016	Sent to professional press directly
Commencement and operation of the Commercial Panel of the High Court	10 Aug 2017
Commencement and operation of the Commercial Panel of the High Court	1 Sept 2017
New arrangements for sentence indications in protocol hearings - Joint with CDCJ	5 October 2017
Delayed judgment report for 1 March – 30 September 2017	9 November 2017
Procedure for second appearance of Category 4 offences Christmas 2017	30 November 2017
Earthquake list for the year end 30 September 2017	11 December 2017