



Report from the High Court 2018

The Year in Review

I am pleased to present a short report on events of note during 2018 in the High Court of New Zealand - Te Kōti Matua o Aotearoa.

Hon Justice Geoffrey Venning
Chief High Court Judge
Te Kaiwhakawā Matua

12 June 2019

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Overview

2018 marked 150 years since the first hearings were held in the Auckland High Court building on 5 February 1868. A special sitting took place on 2 March and an open day occurred on 10 March to mark the occasion. The open day featured a re-enactment of aspects of one of the first trials to use forensic evidence in a murder trial in the 1930s.

Elsewhere in the country, the historic Dunedin courthouse re-opened after earthquake strengthening in January 2018 and a ceremonial sitting took place on 26 January 2018. The new Christchurch courthouse has been in operation since November 2017 and a ceremonial sitting to mark the move to the new building was held on 31 January 2018.

Features of High Court work in 2018 were that the Court heard more criminal trials and a higher proportion of civil cases went to trial.

The aftermath of the Christchurch earthquakes continues to impact the overall work of the Court. At the end of 2018, insurance cases and defective repair cases arising from the earthquakes make up over a quarter of all general proceedings on hand nationwide.

Administratively 2018 was a year of consolidation following the introduction of changes required by the Senior Courts Act 2016.

The Court began to publish summaries on its Judgments of Public Interest page on the Courts of New Zealand website from May.

- [High Court judgments of public interest landing page](#)

The judicial complement and their responsibilities

As at 31 December 2018 the complement was 47, made up of 40 judges and seven associate judges. However that was temporary as movements in the three senior courts following Winkelmann J's appointment as a Supreme Court judge had not been concluded as at 31 December 2018.

During the year:

- Six judges left the Court. Justice Joe Williams was appointed to the Court of Appeal in February. Judges retired in January (Associate Judge Doogue), April (Heath J and Associate Judge Christiansen), August (Woodhouse J) and December (Davidson J).
- Eight judges were sworn in: Grice J and Associate Judge Johnston in February, Powell J and Associate Judge Andrew in March, Cooke J in May, and Osborne J, Gault J and Associate Judge Lester in December. Osborne J was previously an associate judge.

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 2018 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 2018 were:

- Christchurch earthquake list: Gendall J and Associate Judge Osborne.
- Auckland leaky buildings list: Lang and Downs 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 Committee¹ has a number of statutory and appointed members from the High Court. Courtney J chaired the committee in 2018. Venning J, as Chief Judge, is an *ex officio* member. The second appointed member from the High Court was Dobson JJ.

The commercial panel as at 31 December 2018 comprised Venning, Courtney, Lang, Mallon, Dobson, Wylie, Katz and Muir JJ.

Workload

A representation of the Court, its complement and business as at 31 December 2018 is attached as [Appendix 1](#). For selected statistics and commentary on work before the Court see [Appendix 2](#) to this report.

Judgment timeliness

In 2018 the Court delivered 3457 judgments. The Court has set a standard of 90% of civil judgments delivered within three months of the hearing or last submissions. In 2018 the actual result was 91.4%.

The High Court reports twice yearly on “judgments outstanding beyond a reasonable time” as required by section 170 of the Senior Courts Act 2016.² In the absence of extenuating circumstances, the Court considers judgments over six months old to be delayed beyond a

¹ 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

² [Section 170 Senior Courts Act 2016](#)

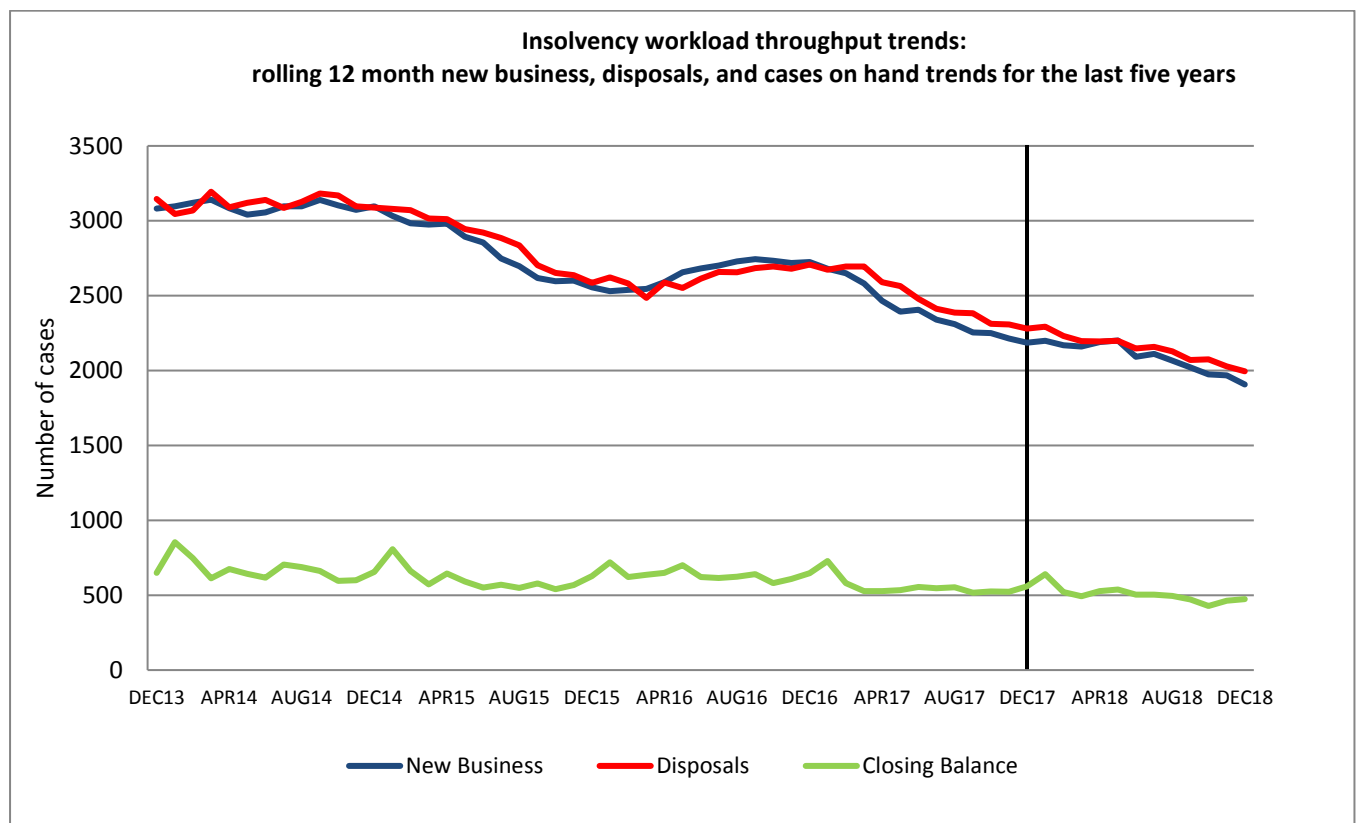
reasonable time. The 31 March 2018 figures showed eight judgments then outstanding beyond a reasonable time. A further nine had become outstanding beyond a reasonable time but had been delivered by 31 March. The 30 September 2018 figures showed four judgments then outstanding beyond a reasonable time. A further ten had become outstanding beyond a reasonable time but had been delivered by 30 September.

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

Civil

Insolvency proceedings

Insolvency work reflects the state of the economy (with a slight lag). When the economy is buoyant, insolvency filings drop. Insolvency filings have been dropping consistently since the high in early 2009 during the GFC.



General proceedings - general

One hundred and twenty seven general proceedings were concluded by trial during the calendar year. This was up 7 cases on 2017. The proportion of general proceedings adjudicated by trial has been following a rising trend for some years. At the end of 2018 it stood at 10% of general proceedings disposals.

The general proceedings clearance rate has returned to 100% (that is disposals keep up with new filings).

Criminal

There were 139 cases on hand at 31 December 2018 compared to 130 at the same time in 2017. These numbers include cases awaiting sentence.

There were 177 new cases, one less than 2017. A feature of these cases is there was a greater proportion of category four cases. Fewer protocol cases have been ordered to be heard in the High Court as a consequence.³

Three cases begun prior to the commencement of the Criminal Procedure Act on 1 July 2013 were disposed last year following a decision of the Supreme Court in a related case in late 2017. Absent any cases which are reactivated, either by way of appeal or a defendant regaining fitness to stand trial, all cases initiated under the Summary Proceedings Act 1957 have been completed.

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 2018 Court of Trial Protocol. That revision added two Crimes Act 1961 offences to the Protocol regarding the corrupt use of official information and related matters.

- [Court of Trial Protocol 2018 Gazette Notice](#)

Last year I reported that some protocol cases have not been identified and/or processed correctly.⁴ During the year efforts to improve this situation were undertaken by the courts, the Ministry of Justice and Crown Law Office.

³ The term “protocol case” encompasses all non-Category 4 matters heard in the High Court which are protocol cases directed to be heard in the High Court, other category 2 and 3 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 (3rd strike cases) and any remaining middle-band cases retained in the High Court (which are now re-trials).

⁴ 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.

Practice and procedure of the Court

Principal case management lists

Earthquake list

Earthquake claims are generally highly complex cases requiring expert evidence and are almost invariably concluded by settlement. The earthquake list processes provide a framework for parties to reach a determination of matters in dispute. In the past, cases have been selected for early hearing to provide legal precedent to assist with settlement discussions. As all the relevant information and expert reporting is complete before a case is set down, the parties can have meaningful settlement discussions at the point a hearing date is allocated. Despite the desirability of avoiding the costs of final trial preparation, it is apparent that a large number of cases do not settle until the last month before trial.

In 2018 some 18% of new general proceedings claims nationwide (222 claims) related to Natural Disasters – Christchurch Earthquakes, which is a slight drop from 2017 when 20% of new filings (231 claims) were in that category.

There were 505 active general proceedings arising from the Christchurch earthquakes sequence as at 31 December 2018. This accounted for 27% of all active general proceedings nationwide (comprising 381 natural disaster insurance matters and 124 building defects claims (claims of faulty repairs)).

During the year the Ministry of Justice confirmed it would meet the costs of independent engineering experts at judicial settlement conferences to help bridge the gap between parties' expectations.

- [Earthquake list landing page](#)

Marine and Coastal Area (Takutai Moana) Act list originating applications – applications for recognition orders

Another potentially significant area of civil work are applications for a High Court order to recognise protected customary rights and customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011. These applications were required to be filed by 3 April 2017. Many applicants filed to protect their position and neither the Crown nor the applicants are ready to proceed. Most applicants are expected to pursue negotiation with the Crown and only return to the High Court if dissatisfied with that outcome.

As reported last year there has been a considerable amount of judge and registry time put into identifying all applicants who claim an interest in various zones and clarifying the extent of those zones. A number of applicants have claimed rights in more than one area.

During 2018 the list judge, Collins J, held 10 case management conferences around New Zealand and issued a comprehensive minute on the state of each set of proceedings.

- [First case management conference minute 18 July 2018](#)

Weathertight buildings list

The Court runs a Weathertight Buildings List in the Auckland registry. The types of buildings on the weathertight buildings list include commercial premises, apartment blocks and single dwelling homes.

Weathertight buildings cases are complex. The evidence of experts is often required to identify the cause of, and responsibility for the leaks. Experts also advise on the nature of damage and what needs to be done to remedy it. There are often several defendants, including the local authority which certified the building, the building contractor, architect and sub-contractors. The cases typically require several weeks to be heard. Fixtures are allocated on that basis, and on the basis that experience shows most cases on the list are settled rather than determined by trial.

- [Weathertight buildings landing page](#)

Auckland Unitary Plan appeals list

In late 2016, 41 appeals on question of law and eight judicial reviews were filed against the first Unitary Plan for Auckland. Most of these proceedings were heard or settled in 2017. The last of the proceedings were concluded in the High Court in 2018.

Rules Committee activity

No new rules were promulgated in 2018. The Rules Committee carried out a consultation late in the year on a draft of the High Court Rules 2016 (Representative Proceedings) Amendment Rules which deal with procedural issues associated with representative proceedings and group-based litigation funding.

Looking outside the court

Access to justice

Publication of judgment synopses

In May the Court began to publish judgment synopses for any judgment of public interest posted on the Courts of New Zealand website.

- [High Court judgments of public interest landing page](#)

Auckland bankruptcy pro bono pilot

The Auckland Community Law Centre developed and ran a pilot service in the Auckland High Court for litigants in person for insolvency matters which was well received by litigants and judges. The service will continue in 2019. The Community Law Centre is seeking a more consistent funding model.

Using the courts website to host large scale litigation materials

For the purposes of the Marine and Coastal Area (Takutai Moana) Act list, the Court has used the Courts of New Zealand website to provide easy access to the list and text of applications for recognition orders, minutes issued by the list judge and transcripts of all case management conferences.

- [Applications](#)
- [Minutes](#)
- [Case management conference transcripts](#)

Tikanga and te reo

Many judges continue to undertake Institute of Judicial Studies⁵ 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 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 various professional association annual conferences. The Chief Judge and list judges meet annually with practitioners about the Earthquake List. A meeting with practitioners who deal with weathertight buildings matters took place during the year. No significant matters of concern were raised at any of these meetings during 2018.

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

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.

Users can also receive alerts about judgments of public interest.

- [Subscribe to judicial decisions](#)

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](#).

⁵ 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

Property and security

The Ministry of Justice began two refurbishments of the Whangārei and Wellington courthouses during the year. A key element of the Wellington work is the provision of a single public entrance to enable the commencement of fulltime security screening.

The Auckland High Court criminal registry team, previously located on the lower ground floor of the Court, moved to the ground floor registry to join with the civil team in a refreshed registry space.

The Courts Matters Act 2018 was passed late in the year. It strengthened and clarified powers of court security officers to enable them to deal with low-level offending and disruptive behaviour in courts. Most of the enhanced powers will come into effect on 8 April 2019.

- [Courts Security Act 1999](#)

Looking ahead to 2019

In April, the commercial panel will have been in effect for 18 months. A review of its operation and the addition of further judges to the panel is planned.

The Senior Courts Civil Electronic Document Protocol will be refreshed to take account of comments from the profession and judges to make casebooks simpler to construct and use. Judges will take part in education sessions with professional bodies to raise understanding

Various property projects will be undertaken. In the Auckland High Court works will begin on a staged project to enable the Court of Appeal to have hearings in that building. The Court of Appeal will be located in the historic part of the building and a new civil courtroom will be created in the lower ground area in the area previously occupied by the criminal registry team.

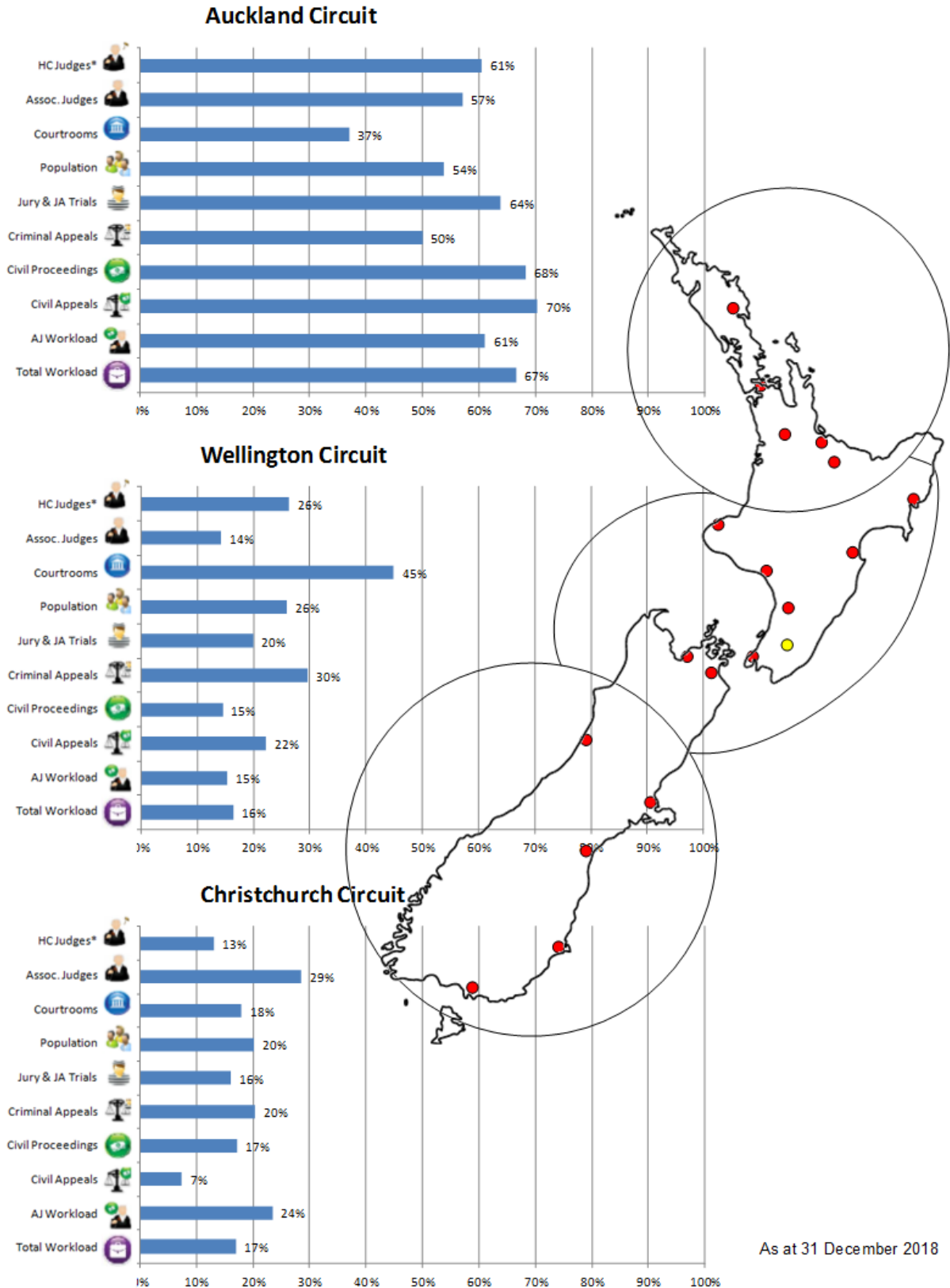
Courtroom facilities in the Bay of Plenty remain stretched. Planning to provide for an extra courtroom in the Rotorua courthouse will progress. High Court criminal trials from Tauranga are also heard there.

The ground floor refurbishment of the Wellington High Court building and Molesworth St frontage will be completed allowing full time security scanning to begin.

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



Appendix 2 – Selected workload figures for the year ended 31 December 2018

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 2018

	Criminal trials ⁶	Civil proceedings ⁷	Criminal appeals	Civil appeals
New work				
2018	177	2346	1075	268
2017	178	2653	1123	279
Disposals				
2018	148	2308	1039	282
2017	155	2352	1142	323
Disposals by trial adjudication				
2018		338		
2017		338		
Disposals by non-trial adjudication				
2018		624		
2017		657		

Criminal disposals by trial rose from 77 to 92 trials.

2018 was the sixth 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.

⁶ Includes New Trials plus Retrials directed (New Business definition from the Courts of NZ website).

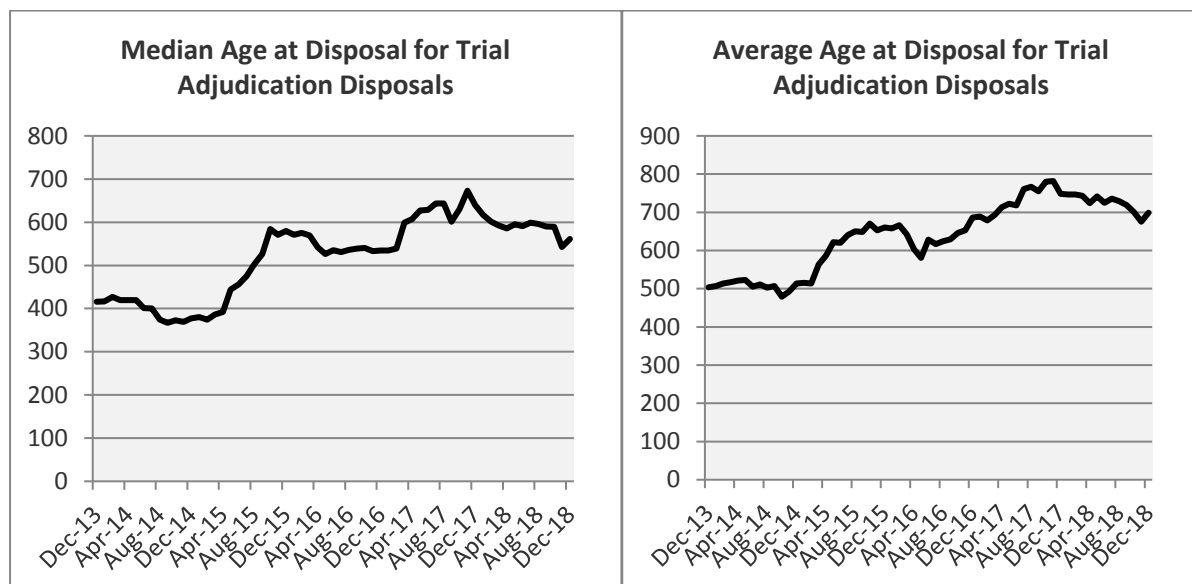
⁷ ‘Civil proceedings’ includes general proceedings, originating applications and judicial reviews.

Top seven “nature of claim” categories for matters filed between 1 January 2013 and 31 December 2018

Nature of Claim type	Number of claims	% of total
Natural disasters (Chch EQ)	1222	15%
Contractual disputes	1042	13%
Debt recovery	986	12%
Estate litigation	535	7%
Other trust litigation	497	6%
Other	397	5%
Building defects – weathertight claims	333	4%

The median time to trial for general proceedings trial adjudications has increased from 321 days for the 2017 calendar year end to 350 days as at 31 December 2018.

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



The median age at disposal for trial adjudication disposals was 561 days compared to the previous year where the median age at disposal was 649 days.

The average age at disposal for trial adjudication disposals was 699 days compared to the previous year where the average age at disposal was 759 days.

Performance standards

The court delivered 181 more civil judgments than in 2017 and delivered them more quickly.

Judgment timeliness statistics for the 12 months ending 31 December 2018

	Time from hearing to judgment delivery	Number of Cases	Percentage
Civil	≤1 Month	1570	77.1%
	≤3 Months	1860	91.4%
	≤6 Months	2000	98.2%
Criminal	Time from hearing to judgment delivery	Number of Cases	Percentage
	≤1 Month	1346	95.9%
	≤3 Months	1411	99.3%
	≤6 Months	1420	99.9%

Civil clearance rate (target of 100% or higher)

	General proceedings	Originating applications	Judicial review	Civil appeals	Insolvency proceedings
2018	100%	97%	92%	105%	105%
2017	94%	79%	105%	116%	105%

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 rise in clearance rate for originating applications is off a low base. 2017 was an unusual year as an influx of new business affected the clearance rate. Applications under the Marine and Coastal Area (Takutai Moana) Act were required to be filed by 3 April 2017.

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
2018	76%	88%	69%	59%	75%
2017	83%	86%	78%	68%	90%

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.

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

Topic	Date
2018 Statutory prohibitions on publication for media – update	5 February 2018
Closed court statement by Chief Judge (Passports Act case)	1 March 2018
2017 High Court Annual report	11 June 2018
Annual statistics 1 January 2017 – 31 December 2017	12 July 2018
Aged judgment report for 1 October 2017 – 28 February 2018	18 May 2018
Aged judgment report for 1 March – 30 September 2018	15 October 2018
Annual statistics 1 July 2017 – 30 June 2018	14 November 2018
Procedure for second appearance of Category 4 offences, Christmas 2018	20 November 2018
Earthquake list annual report for the year end 30 September 2018	30 November 2018