

# High Court of New Zealand

## Te Kōti Matua o Aotearoa



# Annual Report 2023



## Foreword

### Tēnā koutou katoa

Having had the privilege of being appointed Chief Judge of the High Court of New Zealand | Te Kōti Matua o Aotearoa in late December 2023, it falls to me to present the High Court annual report for 2023. After emerging from 2022 and the disruptions of the COVID-19 pandemic, 2023 was a relatively settled year for the

High Court, at least workwise. Over the 2023 calendar year, the Court:

disposed of **190** criminal trials and **1,715** criminal appeals;  
disposed of **2,015** civil proceedings and **237** civil appeals; and  
delivered **3,882** judgments (**2,057** civil and **1,825** criminal).

In the High Court's criminal jurisdiction, the last of the jury trials rescheduled as a result of the COVID-19 pandemic were completed in 2023. Jury trial numbers are now similar to what they were pre-COVID; however, the average time required for a trial is increasing. There also continued to be an increase in category four trials (murder, manslaughter, and attempted murder, which must be tried in the High Court), which now make up the large majority of the High Court's criminal workload.

Following the report of the High Court Criminal Disclosure Group (which included representatives from the New Zealand Police, Crown prosecutors and the defence bar), the Chief High Court Judge issued the [High Court Criminal Disclosure Practice Note](#) in March 2023. The Practice Note requires the Crown and defence to actively address disclosure issues at an early stage, to avoid late disclosure. Late disclosure can put enormous pressure on counsel and can result in jury trials being adjourned. Indications

so far are that the Practice Note is having a positive impact.

Turning to the High Court's civil jurisdiction, a number of initiatives were implemented in 2023 which will see more cases assigned to Judges for case management. These steps will continue to address workload challenges exacerbated by the three years of disruption from COVID-19.

Applications under the Criminal Proceeds (Recovery) Act 2009 can be complex and lengthy. The documentation is voluminous, and the cases often take considerable time to reach finality (often awaiting the conclusion of associated criminal charges). To assist in better case management, as of 2023, these cases are now managed in separate criminal proceeds lists in Auckland and Wellington.

Hearings under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA) continued to absorb significant High Court judicial and operational resources in 2023. A separate report on the MACA work can be found later in this report. It is relevant to note, however, that as at the time of publication of this report, funding issues have arisen in relation to MACA cases, which has been the subject of some publicity. This may mean that a number of MACA hearings scheduled for 2024/2025 (and beyond) cannot now proceed. The High Court will continue to monitor this closely with the parties to affected hearings.

During 2023, the High Court also continued to progress workstreams associated with the [Courts Digital Strategy](#). This included High Court judges working with judges from other courts on the use of remote participation technology in criminal and civil hearings. High Court judges also participated in projects associated with Te Au Reka, a digital system being developed for case management, and for creating and maintaining the court record and files.

I say above that 2023 was a relatively settled year for the High Court, at least workwise. 2023 was, however, a time of change for the High Court Bench. Details of retirements,

appointments to the Court of Appeal and new appointments to the High Court can be found later in this report (see page 5). In short however, during 2023 and the first few months of 2024, eight judges retired from the High Court, four High Court judges were appointed to the Court of Appeal, and 10 new judges were appointed to the High Court.

I thank all High Court judges, including those who retired during 2023 or were appointed to the Court of Appeal, for their service to the High Court, and thus to the communities which come before the Court to have their disputes resolved. I also welcome and thank those new judges who joined the High Court in 2023, and who are already making a significant contribution to the Court's work.

Finally, I thank all those whose work enables the operation of the High Court, including the Ministry of Justice employees who support the day-to-day operations of the Court, in particular in its registries. I also acknowledge and thank the profession and counsel who appear before the Court on a daily basis, to ensure access to justice for their clients across the whole spectrum of our community.

## **Ngā mihi**

### **Hon Justice Sally Fitzgerald**

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

# About the High Court of New Zealand | 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 13.

The High Court deals with the most serious criminal charges, including murder, manslaughter, attempted murder, and 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 commercial disputes.

Senior High Court Judges sit on divisions of the Court of Appeal. In 2023, 24 High Court Judges sat on the Court of Appeal for a total of 76 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 a range of 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.

Specialist list judges oversee specific categories of proceedings, such as Criminal List Judges (who oversee criminal jury trials), Proceeds of Crime List Judges; and list judges for types of cases such as judicial review and civil appeals.

Judges also 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.

High Court Judges are regularly part of the faculty for programmes offered by the Institute of Judicial Studies | Te Kura Kaiwhakawā, which provides educational programmes to Judges of all jurisdictions. Justice van Bohemen from the High Court 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.

# Judicial appointments and retirements

A new Chief High Court Judge, Justice Sally Fitzgerald, was appointed on 19 December 2023. This followed the appointment of Justice Susan Thomas to the Court of Appeal. There were also a number of judicial elevations, appointments and retirements across the year:

## New appointments to the High Court in 2023

**Justice Johnstone** 22 February

**Justice Radich** 17 April

**Justice Becroft** 2 May

**Justice Anderson** 20 May

**Justice Preston** 16 October

**Justice O’Gorman** 23 October

**Justice La Hood** 24 October

**Justice Grau** 19 December (taking effect in January 2024).

## Appointments to the Court of Appeal in 2023

**Justice Mallon** 20 March

**Justice Thomas** 19 December

**Justice Ellis** 19 December (taking effect in January 2024)

**Justice Cooke** 19 December (taking effect in March 2024).

## Associate Judge appointments in 2023

**Associate Judge Skelton** 17 April

## Judicial retirements in 2023

**Justice Gordon** in February,

**Justice Duffy** in April,

**Justice Wylie** in May,

**Justice Doogue** in June,

**Justice Hinton** in July, and

**Justices Osborne, Moore, and Cull** in October.

Some of the retiring Judges were appointed acting Judges, pursuant to COVID-19 funding for such warrants.

Associate Judge Johnston was appointed Chairperson of the Independent Police Conduct Authority as of 1 May 2023 for a five year term.

As at 31 December 2023 there were 39\* High Court Judges, five Judges with acting warrants and seven Associate Judges.

\* The full complement is ordinarily 40 judges (including the Chief High Court Judge), but as at 31 December, there was one appointment to be made, which was announced in January 2024, taking effect in February 2024.

# 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 for 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 s 66 of the Criminal Procedure Act 2011, identifies cases and classes of category two and three offences which may be considered for transfer to the High Court.

In 2023, 346 cases required a protocol determination by the High Court, 5% less than in 2022 (364 cases). Of these cases, 24 were directed to be heard in the High Court, up from 16 in 2022.

The Court of Trial Protocol was reviewed in 2022, and it was agreed by the Chief High Court and Chief District Court Judge that a review was not required in 2023. It will be reviewed again in 2024.

## 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 that prosecution and defence lawyers usually require a minimum of 12 months to be ready for trial.

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## 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, such as 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.

When allocating hearing dates, priority is given to applications for injunctions and freezing orders, appeals from decisions of the Family Court, and certain judicial reviews, particularly when interim orders are sought.

Civil trials can be complex, and can require considerable hearing time. Civil decisions are often reserved, with reserved decisions 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 ss 100 and 111 of

Marine and Coastal Area (Takutai Moana) Act 2011 are commenced by originating application.

## 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 2023, the commercial panel comprised: Justices Fitzgerald, Venning, Lang, Ellis, Peters, Dunningham, Muir, Edwards, Palmer, Jagose, Cooke, Gault, Campbell and Osborne.



# Auckland

Auckland is the largest of the three home registries. The Auckland circuit is made up of five registries being Auckland, Hamilton, Rotorua, Tauranga and Whangārei. Given the size of the Hamilton-Rotorua-Tauranga circuit, the work of that circuit is the subject of a separate report. This report covers Auckland and Whangārei.

In 2023, the Auckland High Court comprised 25 permanent Judges, two acting High Court Judges, and four Associate Judges.

In last year's report, reference was made to the effect COVID-19, and the Government's response, had on the Auckland civil caseload. It was noted then that Auckland was the last to emerge from the lockdowns with the consequence that 16 jury trials were vacated and approximately 50 civil trials were adjourned.

## Whangārei

In 2023, three criminal trials were conducted in Whangārei, with 13 cases waiting for trial. Of the 93 criminal appeals filed in 2023, 89 were disposed of in the year. Active general proceedings sat at 43, with four being disposed of during the year. All originating applications were disposed of with none now left in the pipeline. A limiting factor in clearing more cases in Whangārei is that there is just one court room available for High Court work.

Since then, every vacated trial, criminal or civil, has now been disposed of either through pleas of guilty, verdicts, or civil hearings. As was the case last year, through careful case management, more criminal trials have been disposed of than new cases entering the work pipeline.

However, the trend towards increasing numbers of category four offences continues. The proportion of category four cases represents the overwhelming majority of new criminal work in Auckland, most of which is homicide (i.e., murder, attempted murder and manslaughter). An unfortunate consequence of this continuing trend means that there is a reduced capacity in all circuit registries to accept protocol cases from the District Court. The table below shows how over the last five years the proportion of category four cases has increased and continues to do so.

## Category four cases in the Auckland High Court

	<b>Trials on hand</b>	<b>Category four cases</b>	<b>% of trials that are category four cases</b>
<b>31 December 2018</b>	72	24	<b>33%</b>
<b>31 December 2022</b>	74	56	<b>76%</b>
<b>31 December 2023</b>	68	53	<b>78%</b>

The number of new civil filings in Auckland continue to grow. At present, there are 183 civil general proceedings ready for hearing, requiring an estimated 1618 hearing days. As with all courts in the civil jurisdiction, reliance is placed on a significant proportion of civil cases settling. Anecdotally at least, settlement rates appear to be declining. The reasons for this decline are unclear. Liquidations and insolvency matters are steadily increasing.



In order to identify those cases amenable to early settlement or those complex matters which would benefit from close judicial case management, a new early identification system was introduced in 2023. Associate Judges now undertake an intensive front-end triaging of all general proceedings. Those which are recommended for judicial assignment are identified and referred to the Civil List Judge for review and where appropriate, are assigned to a nominated Judge.

The number of cases where one or more parties are not legally represented also continues to grow. Self-represented litigants are particularly common in judicial review and civil appeals. They are also an increasing feature of civil general proceedings. Many are unfamiliar with court processes which can add significantly to the judicial resources required for pre-trial management and presiding over hearings when those cases come to Court.

Finally, lengthy civil proceedings continue, although none as involved as the 25-week Gore Street weathertightness trial discussed in last year's report. There are a number of multi-month civil trials scheduled to proceed in Auckland in 2024.

**Moore J**  
Auckland Executive and Civil List Judge



# Hamilton-Rotorua-Tauranga

The Hamilton-Rotorua-Tauranga circuit comprises three registries in which Judges from (mostly) Auckland sit regularly. From 2023, Judges from Wellington have also been included in the roster.

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

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.

Many of the criminal trials in the Hamilton-Rotorua-Tauranga circuit are murder trials. There are also complex drug trials, usually with multiple defendants. Many of the murder and drug trials last six weeks or more. But in 2023 the most significant proceeding was the trial of the persons charged following the Waikeria prison riot.

One of the principal constraints on 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, often 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 there.

Plans are currently underway for the construction of new courthouses in both Tauranga

and Rotorua. Significant progress was made on the developments for Tauranga in 2023, and an agreement was reached to purchase a new site for a courthouse in Rotorua. Nonetheless, these developments will still not come to fruition for several years.

## Campbell J

Hamilton-Rotorua-Tauranga List Judge

### Operation Emery

The Operation Emery proceeding, arising from the Waikeria prison riot, began with 11 defendants. Charges included riotous damage, arson, and setting traps. Guilty pleas during the trial, and a decision that one defendant should be tried separately, reduced the number of defendants to three. The trial ran from February to May 2023.

The three remaining defendants were found guilty of the majority of the charges against them. Sentencing of the various defendants took place in the second half of the year.

As is usual in trials of this sort, special security arrangements were required for the trial, and additional support from the Registry.

# Wellington

The Wellington circuit serves Wellington, Gisborne, Napier, Palmerston North, New Plymouth, Whanganui, Nelson, and Blenheim.

In 2023, the Wellington High Court comprised ten permanent Judges, one acting High Court Judge and one Associate Judge.

A significant part of the High Court's work in Wellington comprises judicial reviews that challenge decisions to exercise public power. In 2023, the Wellington circuit reviewed, for example:

- the consistency of mental health legislation, and a tax decision by the Commissioner of Inland Revenue, with the New Zealand Bill of Rights Act 1990;
- decisions by the Minister for COVID-19 regarding remaining COVID-19 mask mandates; the Department of Conservation regarding whale jawbones; the Department of Corrections regarding transfer of women prisoners out of Arohata Prison;
- the unlawfulness of regulations governing climate change and duties on gaming machine venue operators;
- regulatory decisions relating to: nicotine strength and vaping products; fluoride in drinking water; the operation of pharmacies in Countdown stores; the terms of a gold-mining licence; and disciplinary decisions regarding an engineer; and
- the Waitangi Tribunal's recommendations to return land in the Mangatū Crown Forest to Māori claimants, various challenges to settlements of breaches of the Treaty of Waitangi, and the Māori Land Court's jurisdiction over customary title in freshwater.

The High Court's work in the Wellington circuit also includes the full usual range of

serious crime and significant civil trials:

- Criminal jury trials for serious alleged offending, including for murder, manslaughter, serious violence, and Class A drugs.
- Significant civil trials, including: whether the Tasman District Council was liable in negligence to a home-owner for pool inspections; whether BNZ should be enjoined from terminating Gloriavale's bank accounts; the principles underlying calculation of financial penalties under the Financial Markets Conduct Act 2013; and a commercial dispute between the Department of Corrections and Fujitsu NZ Ltd.
- Insolvency-related work, including various proceedings concerning the liquidation of the cryptocurrency exchange Cryptopia Ltd.
- Appeals from the District Court and other bodies, including the first decision on whether an artificial intelligence could be an "inventor" under the Patents Act 2013, and an appeal from the Land Valuation Tribunal in relation to the Kāpiti expressway.

The High Court's work under the Marine and Coastal Area (Takutai Moana) Act 2011 is managed from Wellington, as explained later in this report.

The Wellington registry has 422 active cases involving allegations of historic abuse in state institutions. The majority of these cases do not currently require management, but a number of test cases are being managed to trials.

## Palmer J

Wellington Executive and Civil List Judge (to June 2024)

# Christchurch

The Christchurch Registry of the High Court is the smallest of the three High Court Registries. However, its circuit covers most of the South Island, extending west to Greymouth and south right down to Invercargill.

In 2023, the Court was comprised of six permanent Judges, one acting High Court Judge, and two Associate Judges.

2023 was notable for concluding three high profile murder trials in Christchurch which attracted considerable media attention. The first was the trial of Lauren Dickason for the murder of her three children. The case raised complex issues which have, and will continue to, prompt debate about when the law should allow mental health issues, including postpartum depression, to be available as a defence to a charge of murder. The trial of David Benbow for the murder of Michael McGrath was notable for the fact the body of the victim has never been found. It put considerable pressure on the Court's schedule to hold the trial twice in the same year, as the first trial resulted in a hung jury. Finally, the trial of Rebecca Wright-Meldrum and David Hawken involved a "cold case" murder and was the culmination of a 28 year investigation into the killing of Angela Blackmoore.

While civil cases in Christchurch have been dominated in recent years by earthquake claims, those are now largely resolved. However, issues continue to arise and, in late 2023, leave was granted allowing a class action to be brought against EQC on behalf of approximately 13,000 landowners. This is possibly New Zealand's largest ever class action and will be of significant public interest.

Another challenge faced by the Christchurch High Court in 2023 was working around the Christchurch Masjidain Attack Coronial Inquiry into the deaths of 51 people following the shootings at two Christchurch mosques in 2019. The inquest occupied the largest of the High Court's courtrooms for three months, resulting in the High Court Annual Report 2023

accommodating its usual business in the remaining three courtrooms.

## Christchurch Earthquake Litigation List

The Earthquake List was established in May 2012, to manage litigation arising from the Canterbury earthquakes. The purpose of the Earthquake List is to deal with earthquake related cases as swiftly as the Court's resources permit. Since being established, over 1370 earthquake related proceedings have been filed and placed on the List. More recently there has been a reduction in filing, with less than 20 matters filed each year since 2022.

Given the significant decrease in cases filed, after 2023 separate reporting on the List will cease, although the List itself will continue to operate.

A key event for the Christchurch High Court in 2023 was hosting the first sitting of the Supreme Court in Christchurch in March. The cases the Court heard included *Cloud Ocean Water Ltd v Aotearoa Water Action Incorporated* which concerned the question of whether consent to use water for a new purpose, water bottling, could be granted relying on an existing water take consent rather than making a fresh application to take the water. The fact this decision reached the Supreme Court emphasised the legal, economic and social importance of how Canterbury manages its valuable water resource.

## Dunningham J

Christchurch Executive and Civil List Judge

# Associate Judges

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

Approximately two-thirds of hearings determined by Associate Judges involve:

- where summary judgment is sought;
- applications to sustain caveats;
- applications to strike out claims or stay proceedings on jurisdictional grounds;
- opposed liquidations and bankruptcies; and
- challenges to statutory demands.

The remaining one-third of hearings arise from Associate Judges' case management jurisdiction and include 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. Case management seeks to strike a balance between ensuring cases progress while allowing parties to control their own litigation. However, proceedings being unnecessarily before the Court takes up resources otherwise available to other litigants. Associate Judges also deal with without notice applications such as directions as to service and for substituted service, and have been involved in the proposed reforms to the rules of civil procedure being considered by the Rules Committee.\*

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.

\*[Improving Access to Civil Justice, the Rules Committee Annual Report 2023](#)

## 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 2006 and Companies Act 1993.

## Looking ahead

The present tight economic conditions have led to a continuing increase in company liquidations and bankruptcies in 2023. The Department of Inland Revenue is actively pursuing recovery action. More detailed statistics are provided later in this report.

## Associate Judge Lester

Associate Judge National List Judge

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

The Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) replaced the Foreshore and Seabed Act 2004. It provides a mechanism for claimant groups to advance claims for recognition orders (seeking Customary Marine Title and/or Protected Customary Rights) in respect of areas of the foreshore and seabed where they could meet the tests of use and occupation set out in the Act. The Act gives applicants the option of either commencing proceedings in the High Court seeking recognition orders or entering into direct engagement with the Crown. Some 382 applicants entered into direct engagement, 204 issued proceedings, and 175 did both. A separate case management list was established to ensure that all of the 200 plus High Court claims are progressed in an orderly manner. Six similar claims under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 are also included on the list.

The foreshore and seabed around the entire country is subject to claims under the Act and most of those claims involve cross-applications by over-lapping claimant groups. The most efficient way of hearing the claims has been found to be by grouping together blocks of claims in a defined geographic area. In areas where there are a large number of overlapping claimants, this can produce lengthy hearings. By way of example, the claims involving the South Wairarapa coast were split into two, with an eight week hearing of the first part taking place in September and October of 2023 and a 10 week hearing for the second part commencing in February 2024.

All cases on the list have a case management conference at least once a year and those cases nearing hearing can require intensive management. The area with the greatest number and highest density of claims is Te Tai Tokerau/Tāmaki Makaurau. With the significant co-operation of the applicant groups, substantial progress has been made in identifying appropriate groups of claims to be heard together and making timetable orders towards hearing. Several major hearings for this area have been timetabled to

commence in 2024 and 2025. Other major hearings set to commence in 2024 involve areas around the south and west of the North Island.

The first of the appeals against a substantive decision of the High Court was the subject of a decision by the Court of Appeal in 2023, in *Re Whakatōhea Kotahitanga Waka (Edwards) and ors* [2023] NZCA 504. That decision also provides helpful guidance as to the correct interpretation of a number of important provisions in the Act.

MACA has presented many technical challenges and the Court was assisted with the publication in July 2023 by the Surveyor General of a [practice note](#) on mapping guidelines. This will ensure consistent mapping of those areas for which recognition orders are granted.

The Chief High Court Judge and the Chief Māori Land Court Judge agreed a [protocol](#) in October 2023, by which a case can be stated to the Māori Appellate Court, seeking an opinion when an application under the Act raises a question of tikanga Māori. The referral is to be made in accordance with s 61 of Te Ture Whenua Māori Act 1993. The opinion of the Māori Appellate Court will be binding on the High Court. It is hoped that the referral process under the protocol will reduce the length of some MACA hearings.

Finally, as noted in the Chief High Court Judge's introduction, recent funding issues of MACA claims may impact on how many pending claims can proceed to hearing. These developments are being kept under active review.

## Churchman J

Marine and Coastal Area (Takutai Moana) Act List Judge

# 2023 High Court Judgments

High Court decisions are available from the [Judicial Decisions Online](#) website. Decisions of high public interest from the Court are available on the [Judgments of Public Interest page](#) of the Courts of New Zealand website, where they remain available for 90 days.

Some cases heard by the High Court in 2023 have been noted in the circuit reports earlier in this report. Below is a cross-section of other 2023 cases.

## Important judicial review, other civil and commercial cases

[Tuna v Te Urewera Board and others \[2023\] NZHC 3680](#) Mr Tuna argued Te Urewera Board, the Crown, and the Trustees of Tūhoe – Te Uru Taumatua, acted unlawfully in relation to decision-making concerning the demolition of huts in Te Urewera. The Court upheld the claim, holding the defendants breached provisions of Te Urewera Act 2004. The question of relief remains ongoing.

[Hata v Attorney-General \[2023\] NZHC 1255](#), [\[2023\] NZHC 2919](#) Unsuccessful application by Ngāti Ira to prevent Treaty Settlement between Whakatōhea and the Crown.

[Raukawa Charitable Trust v South Waikato District Council \[2023\] NZHC 2534](#) Local authorities' national practice of issuing certificates of compliance for pre-existing lawful uses of land contravening subsequent district plan rules held unlawful.

[Re Estates of Glue \[2023\] NZHC 464](#) Trustee authorised to distribute parents' estates as if their son did not exist.

[Validus FZCO v Financial Markets Authority \[2023\] NZHC 1701](#) Upholding first exercise of FMA's 'stop order' jurisdiction under the Financial Markets Conduct Act 2013 to prevent unregistered offerings of financial services.

[Inquran, LLC v CRV Limited \[2023\] NZHC 3692](#) Interlocutory injunction against foreign entities for duration of patent, prohibiting arguable infringement of patent for provision of sex-sorted animal sperm.

[Maginness v Tiny Town Projects Ltd \[2023\] NZHC 494](#) Application by liquidator for directions under s 53 of the Personal Property Securities Act 1999 concerning the liquidation of a company manufacturing and selling "tiny homes". Purchasers entitled to an equitable lien over the tiny homes to the extent of the moneys paid by them.

## Below is a snapshot of some criminal cases heard by the High Court in 2023

**R v Benbow** - Trial of David Benbow for the murder of his childhood friend Michael McGrath whose body has never been recovered. A seven week trial in February - March 2023 resulted in a hung jury, with an eight week retrial in September – October 2023 resulting in a guilty verdict. Sentence of life imprisonment with 17 year minimum period of imprisonment (MPI).

**R v Valent** The trial of Xavier Valent on significant drugs related charges, concerning what the Crown submitted to be one of the biggest drug importation rings in New Zealand. Guilty verdicts on dozens of charges, and sentenced to life imprisonment with a 10 year MPI.

**R v Sweeney** Two week manslaughter trial in Hamilton. Offending captured on CCTV, in daylight, on main street. High profile given gang-related nature of offending and other features identified.

**R v Simpson and M** Mr Simpson and M were charged with the murder of two victims, an attempted armed robbery and a burglary. M was found guilty on the first murder, the attempted robbery and burglary. He was found not guilty of the second murder. Mr

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Simpson was found guilty of the second murder and not guilty of the other charges.

**Waikeria riots trial** The trial of a number of defendants on charges including rioting, riotous damage and arson, arising out of the unrest at Waikeria prison over the 2020 new year period. The trial commenced in the Hamilton High Court on 13 February 2023 and proceeded over a period of twelve weeks.

**R v Martin** Ms Martin was found guilty of murder by arson after a three-week jury trial in Gisborne in November 2023. She burned down her father’s house at night when he was asleep. The day following the verdict, Ms Martin was found dead in the police cell where she was being held overnight.

### Judgment delivery

The following table shows the total number of judgments delivered in 2023, by jurisdiction, and by comparison to 2022.

#### Judgments delivered 2023

	Total judgments	Civil	Criminal
<b>2023</b>	3,882	2,057	1,825
<b>2022</b>	3,583	1,888	1,695

### Judgment timeliness

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

**In 2023, the High Court delivered 76.3% of civil judgments within one month of hearing, and 91.4% of civil judgments within three months of hearing.** In 2022, these results were 73% and 91% respectively.

For criminal jury trials, verdicts are given at trial. Criminal judgments are issued for matters including judge alone trials, pre-trial applications and criminal appeals.

**In 2023, 94% of criminal judgments were delivered within one month of hearing, and 98.7% within three months.** In 2022, these results were 95.3% and 99% respectively.

The High Court reports twice yearly on decisions 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 decisions over six months to be delayed beyond a reasonable time. Of the nearly 4,000 judgments delivered in 2023, there were six decisions outstanding beyond six months as at 31 March 2023, and 11 as at 30 September 2023.



## Workload at a glance

2023	New Work	2022
2,097	Civil proceedings	2,000
274	Civil appeals	228
167	Criminal trials	185
1,688	Criminal appeals	1,366

2023	Disposals	2022
2,015	Civil proceedings	1,851
237	Civil appeals	217
190	Criminal trials	225
1,715	Criminal appeals	1,346

2023	Active cases	2022
2,797	Civil proceedings	2,786
189	Civil appeals	152
182	Criminal trials	207
207	Criminal appeals	194

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

For the year ending 31 December 2023, 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
- Criminal appeals workload 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
- Civil appeals workload by registry
- Insolvency 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, correction of errors or changes in data collection or recording methodology.

Median waiting time to trial - general proceedings

**575 days (289 cases)**

Up 14 days (2%) from 2022 (294 cases)

Median waiting time to criminal trial

**491 days (117 cases)**

Down 26 days (-5%) from 2022 (123 cases)

# Civil jurisdiction

## General proceedings

Cases on hand is a function of new business and disposals. The increasing length and complexity of civil cases contributes to an ongoing slight decrease in disposals, which can be seen over the past six years.

The Court schedules fixtures for the earliest available date depending on the nature and expected duration of the trial, and counsel availability. The 2% increase in median time to scheduled hearing (561 to 575 days) was largely due to factors outside the Court’s control. (This is in marked contrast to the 26% increase in median time to scheduled hearing seen in 2022.)

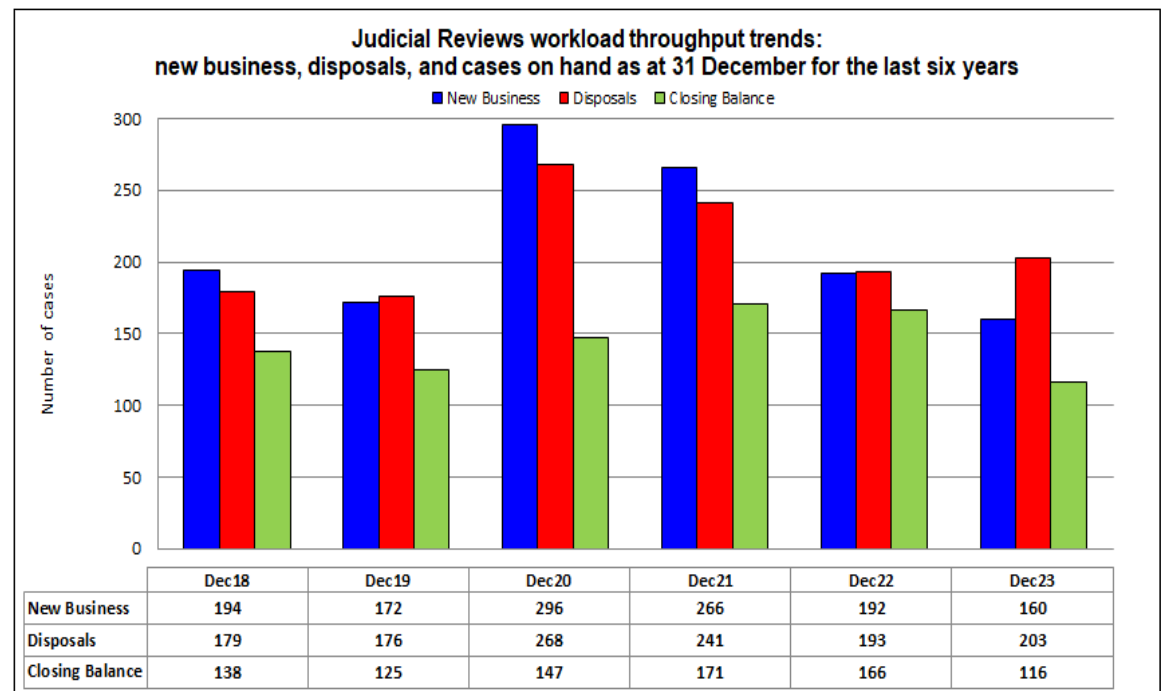
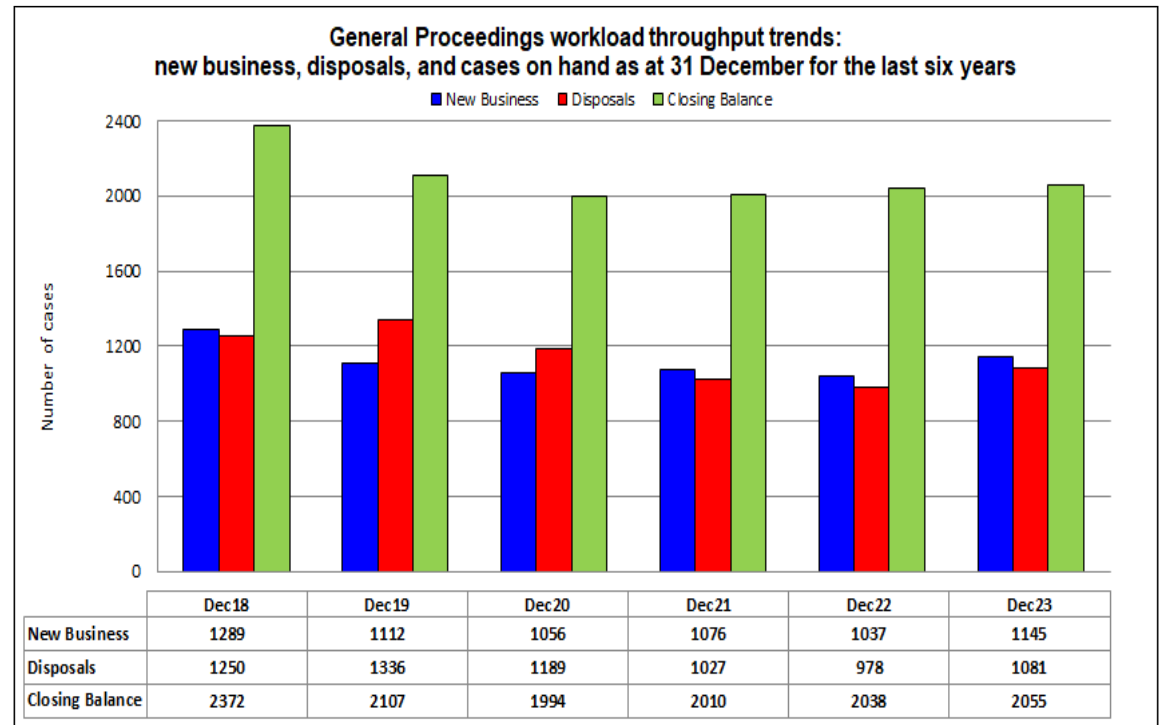
Nationally, general proceedings awaiting hearing or judgment increased by 1% (17 cases) compared to 2022. New business increased by 10% (108 cases), and disposals increased by 11% (103 cases).

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

## Judicial reviews

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

Nationally, judicial reviews awaiting hearing or judgment decreased by 30% (50 cases) compared to 2022. New business reduced by 17% (32 cases) and disposals increased by 5% (10 cases). This is the lowest number of judicial reviews that have been before the Court in a number of years. The spike in applications for judicial review in 2020 and 2021 can be seen in the accompanying chart.



# Civil jurisdiction contd.

## Originating applications

Nationally, originating applications awaiting hearing or judgment increased by 8% (44 cases) compared to 2022. New business increased by 3% (21 cases), while disposals increased by 8% (51 cases).

As discussed on page 6, originating applications are determined by statute. There was a marked increase in new applications in 2017 (1045 applications) as a result of the requirements of the Marine and Coastal Area (Tukutai Moana) Act 2011 (see page 14). There are still around 200 applications being progressed through the MACA List, which are included in these figures.

Proceeds of Crime (Recovery) Act 2009 applications are also included in these figures, and are often not heard until any associated criminal proceedings are determined by the courts.

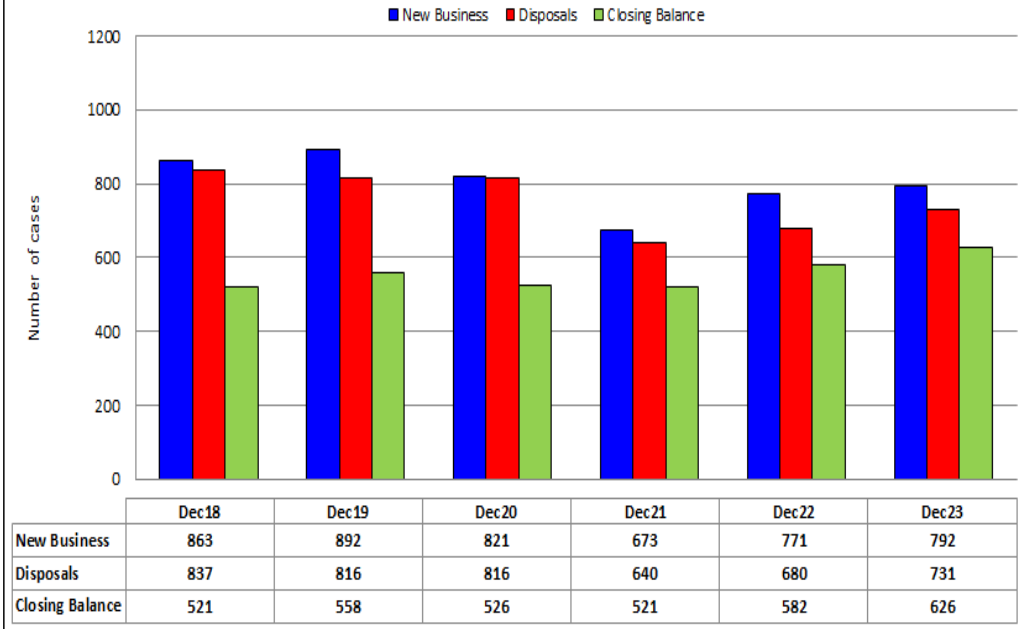
## Civil appeals

Nationally, civil appeals awaiting hearing or judgment increased by 24% (37 cases) compared to 2022. New filings increased by 20% (46 cases) and disposals increased by 9% (20 cases). These figures are in contrast to 2022, particularly the increase in new filings, resulting in a higher closing balance than has been seen over the past five years.

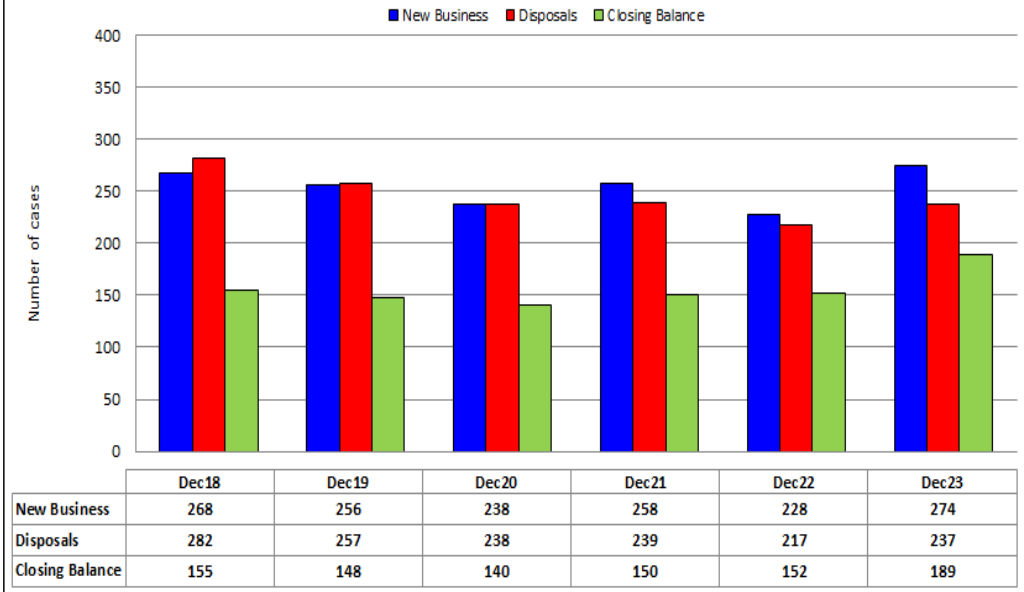
Civil appeals cover a range of matters; appeals arising from decisions in the Family Court are prioritised.

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

**Originating Applications workload throughput trends: new business, disposals, and cases on hand as at 31 December for the last six years**



**Civil Appeals workload throughput trends: new business, disposals, and cases on hand as at 31 December for the last six years**

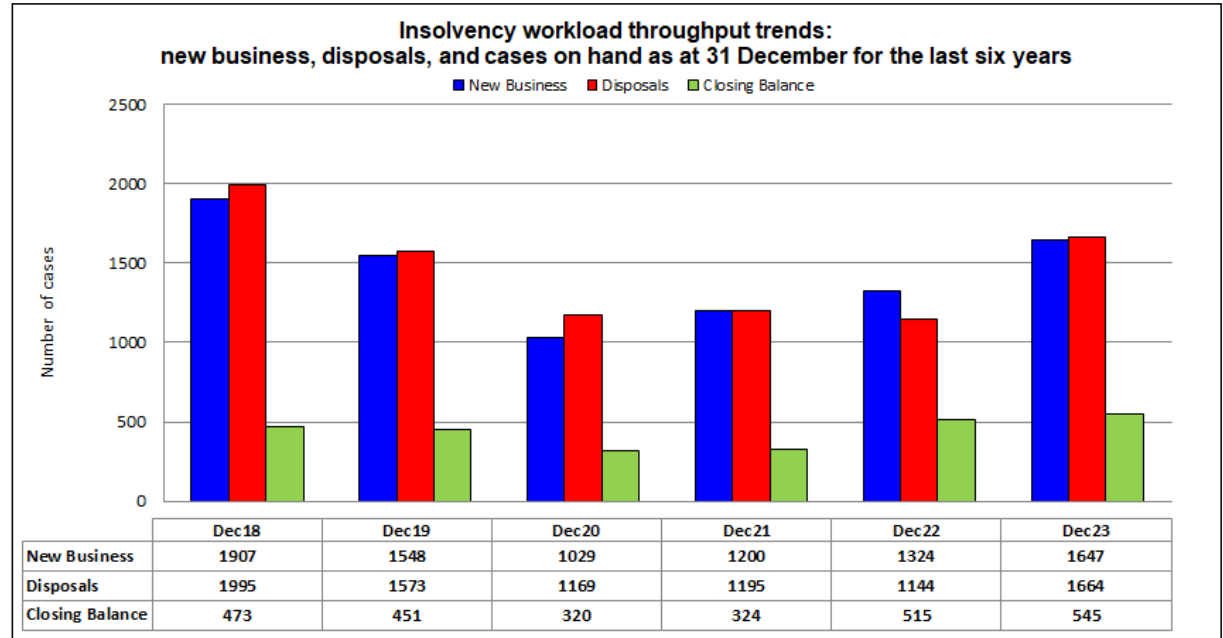


# Civil jurisdiction contd.

## Insolvency proceedings

Insolvency proceedings awaiting hearing or judgment increased 6% (30 cases) compared to 2022. Of note, new filings increased 24% (323 cases) and disposals increased by 45% (520 cases).

Insolvency work reflects the state of the economy, with a slight lag. As noted in the 2022 Annual Report, 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. This trend continued in 2023.

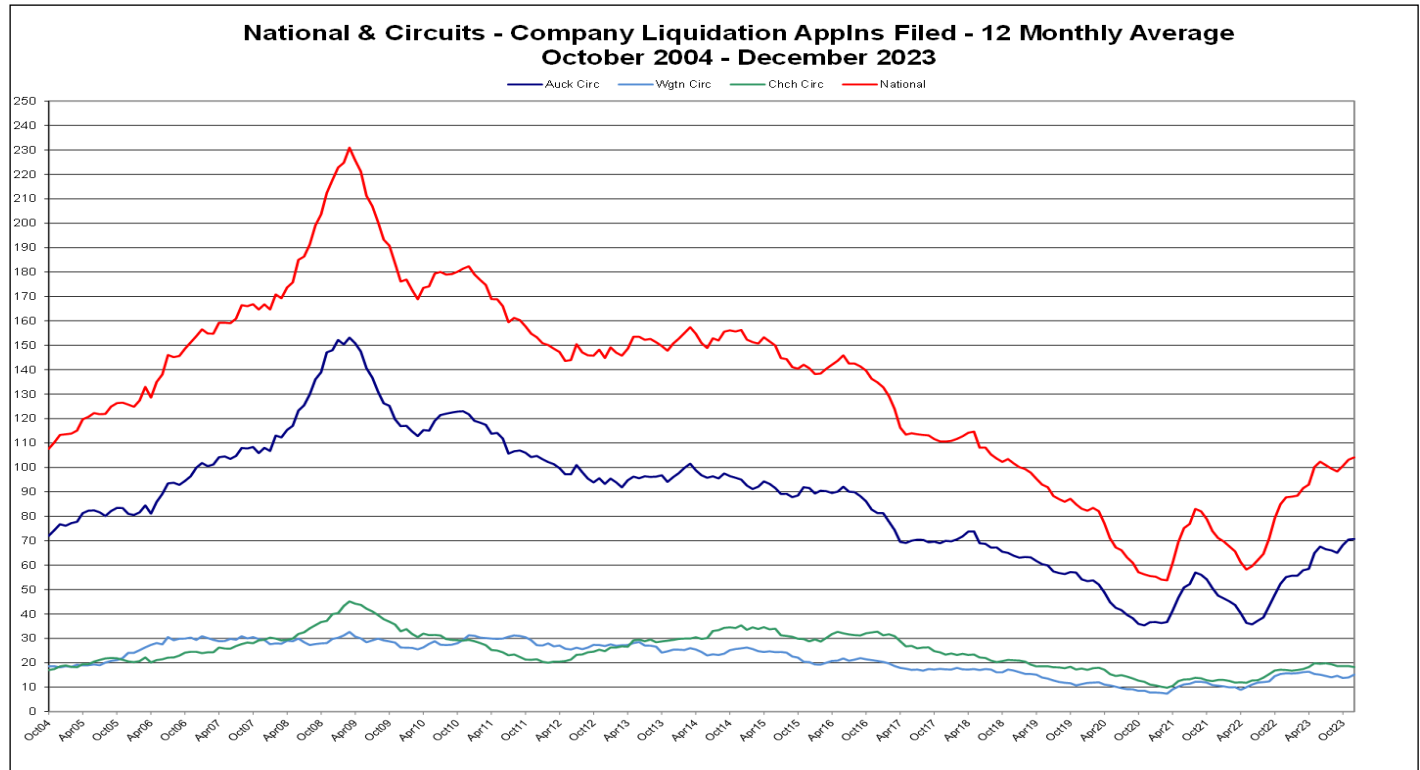


## Company liquidation applications filed

The graph opposite shows the 12 monthly average company liquidation application filings from October 2004 to December 2023.

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

Whilst monthly new filings remain substantially lower than during the Global Financial Crisis, it can be seen that they have been steadily increasing since about May 2022.



# Criminal jurisdiction

## Criminal trials

From 1 January 2023, the way criminal trials are counted by the Ministry of Justice changed, so that all cases are now counted once first received in the High Court. (Previously they were only counted once a case had reached the trial stage.) As a consequence, the number of criminal trials on hand has increased.\*

Nationally, criminal trials on hand decreased by 12% (25 cases), compared to 2022. Trials awaiting a hearing decreased (151 as compared to 168 cases) and trials awaiting sentencing decreased (31 compared to 39 cases). As discussed below, however, criminal trials are getting longer and thus need more hearing days than in prior years.

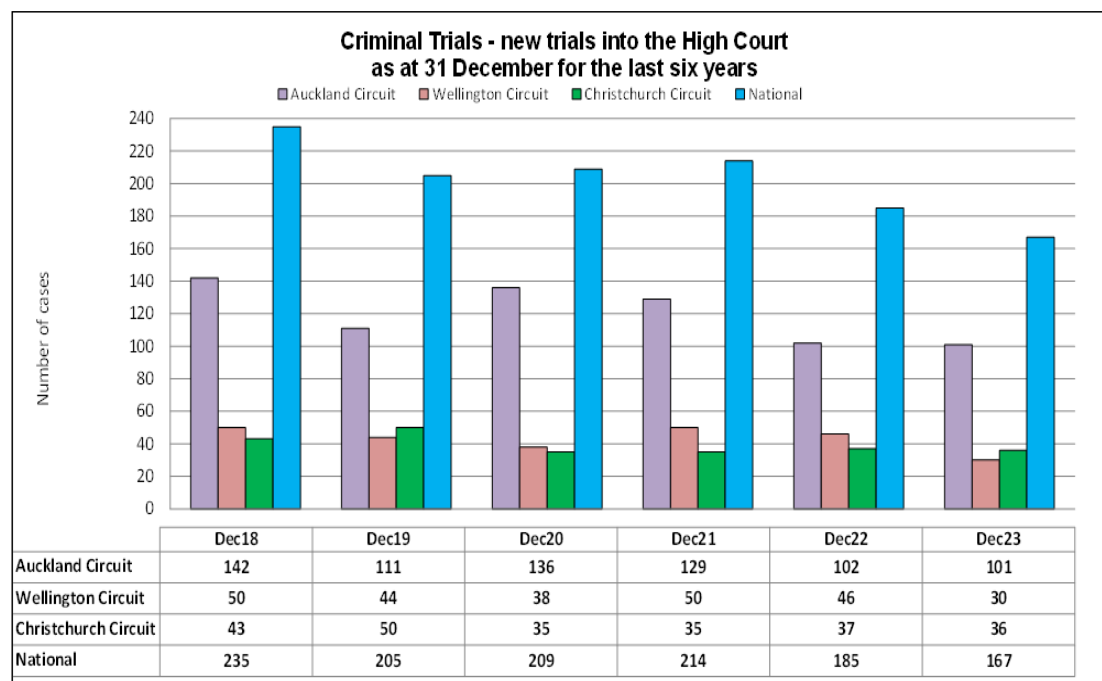
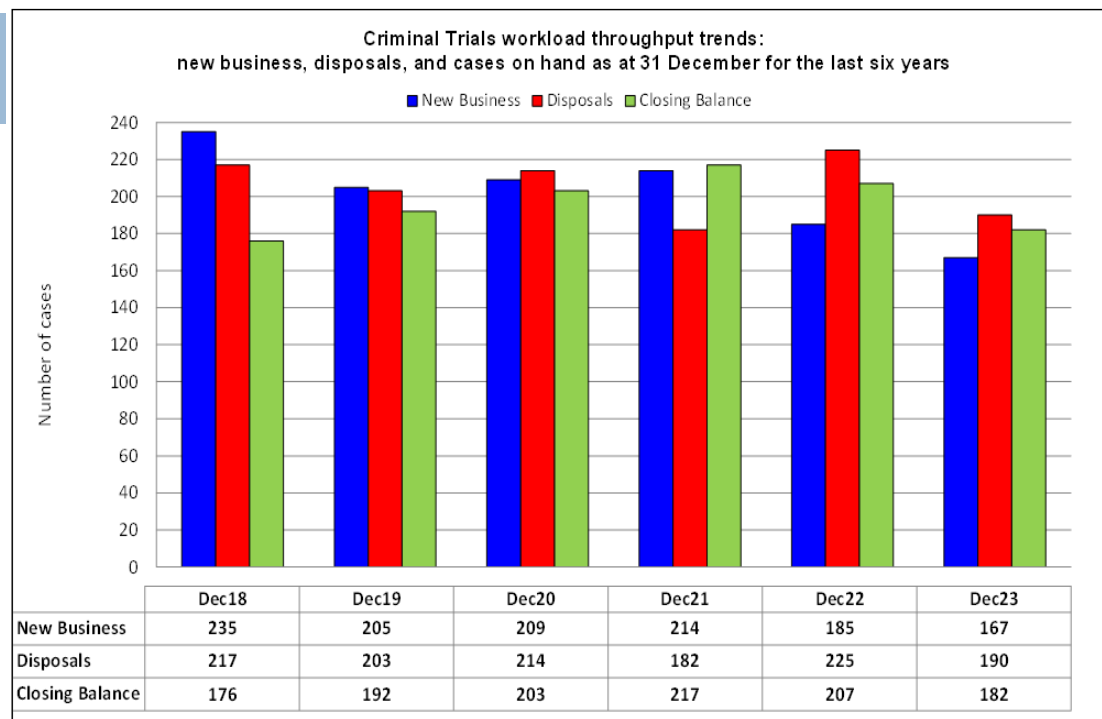
New criminal trials decreased by 10% (18 cases). Disposals also decreased nationally by 16% (35 cases). More category four cases were received in 2023 compared to 2022 (109 compared to 105). Category four cases were also a higher percentage of all new criminal trials (65%) in the High Court than in 2022 (57%).

## Disposals

Criminal trials can be disposed of in several ways: through trials held (verdicts, guilty pleas) or other disposals (such as s 147 discharges). Criminal trials held is a subset of all criminal trial disposals.

More criminal trials were held in 2023 (78 compared to 73 cases) than in 2022. Cases disposed of by guilty plea before trial decreased by half (45 compared to 90 cases), and cases disposed of by other disposal before trial increased (15 compared to 12 cases). Cases disposed of by guilty plea on the on the first day of the trial (or during the trial before the verdict is to be considered) decreased (4 compared to 6 cases).

\*A consequence of the change in approach to counting trial numbers is that the information presented here is based on a different methodology than that previously used, and so is not easily compared to earlier published reports.



# Criminal jurisdiction continued

At a circuit level, new criminal trials have fluctuated over the past six years. Of note, the Wellington circuit has seen a decrease in new trials in the past two years. Numbers in the Christchurch circuit have remained steady over the past four years, as well as in Auckland over the past two years, after a decrease from 2021 numbers.

## Criminal trials are getting longer

The number of criminal trials in the High Court has now returned to pre-COVID-19 levels, but, as noted earlier, the time required to hear criminal trials continues to increase.

## Estimated hearing days and average days per trial

	Cases	Estimated hearing days	Average days per trial
<b>31 Dec 2022</b>	168	2655	15.8
<b>31 Dec 2023</b>	151	2704	17.9

## Criminal appeals

Criminal appeals awaiting hearing or judgment increased by 7% (13 cases) compared to 2022.

New filings increased by 24% (322 cases) and disposals increased by 27% (369 cases). Criminal appeals filed are now at record highs.

New business and disposal rates are closely linked for criminal appeals, as bail and name suppression appeals are heard as a priority.

The table opposite (top) shows the volume of new criminal appeals by case type for the past three years. There were large increases in sentence appeals (44%, or 143 cases) and bail appeals (26%, or 192 cases) but a decrease in conviction appeals (-23% or -45 cases).

