

Criminal Process Improvement Programme

Legal Profession Factsheet

Version 2

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MINISTRY OF
JUSTICE
Tabu o te Tiora

New Zealand Government

What is CPIP?

CPIP is a judicially led initiative that the justice cross sector agencies are supporting.

The overarching objective to the programme is to establish best practice in order to increase meaningful events in the Criminal Justice System to improve the timeliness of cases and to:

Reduce the average time (days) to disposal

Reduce the number of events that do not proceed on the day

Reduce the average number of events for a case from start to end

Reduce the number of days in custody spent waiting for an outcome

Achievement of these objectives, and the corresponding reduction of the criminal case backlog, is an important part of the wider Te Ao Mārama Programme. The outcomes will enhance the capacity of the District Court to implement transformational change as part of the Te Mārama Programme.

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Arrest Courts

What's new?

With the support of the NZ Police and Ara Poutama Aotearoa (Department of Corrections) the CPIP bail process should allow for timely and well-informed bail decisions to be made.

Why is this happening?

When defendants who eventually achieve bail, are not granted bail at their first appearance it takes on average 3.6 court events before bail is granted and those defendants spend an average of 43 days in custody. This means time spent in custody and more resources for all those involved. The bail protocol provides a means to provide dates sooner for defendants that face this problem.

What does this mean for me?

- Shorter adjournments to avoid lengthy remands in custody
- Arrest/list courts scheduled to ensure enough time is available to hear bail applications
- Bail Support Services are to be implemented across Aotearoa as resourcing becomes available
- Prosecutorial liaison will be available in select courts to assist defence counsel through discussing and providing relevant information for bail opposition, reviewing bail oppositions from a prosecution perspective, bail requirements, and proposed address suitability
- For custodial arrest matters and where bail address condition may be required, Police to begin checking suitability of all address early

Admin Stage

What's new?

The changes here, supported by the judicial protocols, focus on making appearances in the admin stage more effective and reducing the need for matters to be adjourned. With the support of the NZ Police and Ara Poutama Aotearoa (Department of Corrections), where appropriate and possible, the information necessary to progress and, or resolve matters by way of same day sentencing, in the admin stage will be available to the court, defendants, and their counsel.

Why is this happening?

It takes too many court events before a plea is entered on Category 3 matters. Too many cases are resolved by guilty plea after leaving the Administration stage. Too many cases progress to a future sentencing date that could have been sentenced on the day plea was entered.

What does this mean for me?

- Counsel should consider same day sentencing if appropriate
- PPS to support same day plea and sentencing, by providing information which will facilitate early resolution and disposal of cases
- Prosecutorial liaison will be available in select courts to assist defence counsel through discussing and providing relevant information for case progress and early resolution, enabling same day sentencing to progress.
- Same day stand down reports from Ara Poutama Aotearoa (Department of Corrections) will be available to assist with same day sentencing
- Restorative Justice providers or court victim advisors will be available to canvass views to support same day sentencing where appropriate
- Time will be made available in the list courts to hear same day sentencing matters

Duty Lawyer Policy Pilot

What's new?

The changes here, supported by the NZ Police and Ara Poutama Aotearoa (Department of Corrections), focus on making appearances in the admin stage more effective and reducing the need for matters to be adjourned. Where appropriate and possible the duty lawyer policy will allow for the urgent assignment of legal aid on the day to a duty lawyer or another available lawyer:

- where the case can be progressed to plea or disposal on the day or
- to apply for bail that is opposed.

The Duty lawyer policy will run as a pilot for a minimum of 6 months from September 2023 at Hamilton, Christchurch and Hutt Valley District Courts

Why is this happening?

There are often delays associated with an adjournment for legal aid that may be unnecessary or can be reduced in some cases.

What does this mean for me?

- Where a matter that has a maximum penalty of from six months to ten years (and is not a Crown prosecution) the duty lawyer assesses whether the matter may be progressed to plea, disposal, or an application for opposed bail, and if so, assist a defendant who may qualify to apply for urgent legal aid.
- Urgent legal aid assignments will be made to either a lawyer who has notified Legal Aid on the day that they are available to receive an urgent assignment or a duty lawyer who the duty lawyer supervisor has advised can be released.
- Lawyers notify Legal Aid Services daily if they are available to accept an urgent assignment using subject line 'Available for CPIP Urgent Assignment - Court' eg. 'Available for CPIP Urgent Assignment – Hamilton DC'
- Lawyers arrange to be at court within 20 minutes if they accept an urgent assignment.
- Urgent assignments of these matters will not count for purposes of Legal Aid Services' rotating assignments allocation model. This means they won't reduce the assigned lawyer's priority for receiving another assignment, unlike normal rotational assignments would.
- Where a case is assigned and the cases progresses to sentencing on the day, the lawyer may claim the fee for sentencing preparation. A remand is not required to make this fee available.

Case Review Hearings

What's new?

The CPIP Judicial Protocol outlines expectations on how case review hearings will be conducted. The protocol creates clear expectations for prosecution and defence of what preparation is required for the review stage. It is designed to filter out cases that are going to be resolved, prior to proceeding to trial.

The development of national standards for the management of Case Management Memorandum's (CMM's), have been created to provide basic principles and guidance to ensure consistent practices of CMM management are delivered across all courts. This will include:

- Criteria for identifying when a CMM can be considered incomplete (based on the legislation and results)
- How to manage late or not filed CMMs

Improvements to the type and way CMM compliance data is captured and reported, have been made to provide better visibility for court managers and will support discussions between sector partners at a local level. The data in the reporting will help to identify local pressures or issues that are causing and/or contributing to the delay in cases progressing through the review stage. It will also help court managers to identify potential registry CMM processing and/or data entry inconsistencies causing or contributing to inaccurate reporting.

Why is this happening?

The review stage has a high number cases proceeding through to the trial stage unnecessarily. Nationally 70% of judge-alone trials, and 35.2% of jury trials are disposed without a 'Heard' outcome. These figures strongly suggest the review stage is not adequately meeting its intended purpose of exploring alternatives to trial, or of ensuring readiness for trial.

CMM compliance is low, with most CMM's, missing information, filed late and not filed at all. Nationally on average 36% of CMM's are filed on time per month. Courts are managing CMM non-compliance differently, creating unclear expectations of defence counsel and prosecution.

What does this mean for me?

- Consistency in how judiciary will conduct Case Review Hearings.
- Accountability at case review events and with CMM filing
- Where directed, all departmental and police prosecuted case reviews that meet s57(4) will no longer be adjourned on the papers to trial by a registrar.
- Case Review Hearing attendance required for all cases that meet the above.
- All incoming/filed CMM's will be acknowledged by the court.
- If a CMM has not been filed a reminder email will be sent to defence counsel and prosecution
- A CMM will be noted as Not filed if it is not filed by the time the file is prepared for case review hearing
- A CMM will be noted Filed Late if filed after the file has been prepared for case review hearing
- If a CMM is received and considered incomplete, an email will be sent to defence counsel and prosecution advising them of what information (as required by the legislation and rules) is missing
- Non-compliant CMMs will be flagged for the judge to address in the case review hearing.

Judge alone Trials

What's new?

To help increase certainty in relation to Judge Alone Trial cases proceeding to have evidence heard by a Judge, there are a few changes to how we roster and schedule JAT days. We are also changing how we actively case manage JAT files.

Why is this happening?

There is an expectation that every case that enters the JAT stage and has a scheduled hearing is to have evidence heard by a Judge. Despite this, nationally only 17% of JAT events have evidence heard at the JAT. This means that further JAT events may need to be scheduled which lengthens the time taken to resolve cases and is not effective use of resources and judicial time. These changes aim to address the inefficiencies in scheduling of JATs and improving case management of JAT files to increase the percentage of JAT events heard by evidence.

What does this mean for me?

- **Block JATs:** JAT days where possible will be scheduled in blocks with the same judicial officer.
- Hearings can rollover into the next day
- **JAT Callovers** will begin at 9am
- The first hearing will begin at 10am
- **Registrar's Teleconference:** when scheduling a JAT a Registrar's teleconference will also be scheduled within the two weeks prior to hearing
- A JAT case manager will conduct the Registrars teleconference between Prosecutor and Defence counsel to monitor readiness for hearing
- **Judicial case management:** JAT cases that may require judicial case management will be identified no later than the case review and referred to the non-jury liaison judge for determination as to whether judicial case management is required. The following is a non-exhaustive list of trials that may require judicial case management:
 - Multiple defendants
 - Multiple complainants and/or complainants
 - Vulnerable defendants
 - Vulnerable complainants
 - The complexity and number of charges
 - Multiplicity of trials for one defendant
 - High profile trials
 - Trials of 1 day or more
 - Communications Assistant directed for either defendant or witness

Jury Trials

What's new?

To help increase certainty in relation to jury trials being heard there are new national standards for the scheduling and case management of jury trials.

The changes here are supported by the judicial protocols for jury trials and national jury scheduling standards.

Why is this happening?

Jury trials are the most complicated matters in the criminal jurisdiction. These make up 3.1% of District Court criminal cases yet receive one third of judicial time rostered. Of these cases in the jury trial stage, only 39% have a jury trial hearing heard with evidence, with an average delay of 244 days between the first callover and the first trial hearing. This indicates that 61% are resolved without the need for a trial within the jury trial stage.

These changes aim to optimise the number of resolutions/disposals relative to judicial time for jury trials. If this could be achieved, it would create meaningful events in the jury stage and lead to less adjournments.

What does this mean for me?

- Clear expectations for each call-over event on the type of questions or discussions that may occur during the event.
- Early prosecution file preparation and engagement in call-over case readiness discussions
- **Trial dates will be set early**, pre-trials will be scheduled, and jury trial weeks will, where possible, be scheduled in fortnightly to four weekly blocks.
- **Scheduling**: for every week of judge rostered jury time there will be a minimum of 5 days of firm trials and 10 days of standby or reserve trials (or pre trials)
- **Judicial case management**: either at Crown case review or when not guilty pleas and jury trial election is made, trials that require judicial case management should be identified and referred to the jury liaison judge for determination as to whether judicial case management is required. The following is a non-exhaustive list of trials that may require judicial case management:
 - More than 2 defendants
 - More than 2 complainants
 - Vulnerable defendants
 - Vulnerable complainants
 - Large number of charges
 - Complexity of charges
 - Multiplicity of trials for one defendant
 - High profile trials
 - Lengthy trials more than 5 days
 - Communications Assistant directed

Sentencing

What's new?

The changes in the sentencing stage focus on working with counsel, Community Probation and the registry to improve the ability to provide quality Provisional Advice to the Courts (PAC) reports in a timely manner to reduce the number of sentencings being adjourned. There is also a focus on Corrections offering a Hōkai Tapuwae cultural report, which can be requested and provided to the Court under Section 27.

Why is this happening?

Once a person has been convicted, on average there are 2-3 hearings before sentencing proceeds. Preparation for these events is not well aligned, the events proceed without meaningful progress being made towards an outcome. Nationally 35.7% of all scheduled sentencing events do not proceed due to adjournments and non-appearances. This means further events are needed, which use more time and resources for all stakeholders and impacts on the victims of crime, defendants' and their whānau.

What does this mean for me?

- Increase in communication from the Registry prior to sentencing dates.
- Counsel are asked to be pro-active with Registry engagement if sentencing can't proceed
- Counsel will need to contact and engage with their client to advise of new sentencing dates and times
- **Whānau or other supporters** may be heard in Court if this is something the person appearing for sentencing wishes. Counsel may suggest this to a client if appropriate. Counsel must notify the Registry in advance if supporters are to be present
- Counsel may be asked to support with providing information to Probation to assist with completing PAC reports in a timely manner
- **Same Day/Same Week stand down reports** should be considered and may include electronic monitoring sentences in some circumstances
- **Hōkai Tapuwae** (cultural reports), information on obtaining these reports can be found here: https://www.corrections.govt.nz/our_work/courts_and_pre-sentencing/hokai_tapuwaie
- **Sentencing Ready Team**; are available for counsel to contact if you have not received all documentation you require to prepare for your client's sentencing hearing; or if your client provides alternative address options for electronic monitoring, they will ensure the address is assessed prior to the sentencing date.

0800 665 789

sentencingready@corrections.govt.nz

Non-Appearances

What's new?

To help increase the use of the court text message reminder service, the process to sign people up has been simplified. Defendants now only need to give verbal consent, instead of written consent. This change applies to sign-ups through both the contact centre and courts.

Posters and appointment cards promoting the service will also be distributed in courts implementing CPIP solutions. We are also piloting a process to sign people up to text message reminders when they apply for Legal Aid and consent to receiving reminders in their application.

The court text message reminder service:

The text message reminder service aims to make it more likely that a defendant appears at their scheduled court event. If someone is signed up to the service, they will be sent a free reminder via SMS message the day before their appointment.

People can sign up to the service online on the 'Get a text message reminder' page on the MOJ website. The QR codes on posters and appointment cards will direct them to this page.

People can also ask staff to help sign them up directly. When given verbal consent, staff members can add the person's phone number and consent to receive reminders on their profile in CMS.

Why sign people up?

We know that failure to appear at court events leads to unnecessary adjournments and wasted time (and cost) for participants, victims, whānau, court staff, and the judiciary.

People who are signed up to receive text message reminders are 1.8 times more likely to attend their court events than those who aren't. The more people we can sign up, the more we'll be able to reduce failure to appear. This means cases will flow more smoothly and we'll reduce wasted time and effort for all parties involved.

What does this mean for me?

If you speak with defendants while they're at court (or through the contact centre), please check to see if they are signed up for the reminder service. If not, ask them if they'd like to be.

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Tāhū o te Ture

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