

28 April 2023

Section (9)(2)(a)

Our ref: OIA 101731

Tēnā koe **Section (9)(2)(a)**

Official Information Act request: Criminal Process Improvement Plan

Thank you for your email of 13 October 2022, requesting, under the Official Information Act 1982 (the Act), information relating to the Criminal Process Improvement Plan (CPIP). I apologise for the lengthy delay in responding to your request.

As you know, due to an administrative error, there was a delay in getting your request logged when it was first received in October. Your request has also proved to be a complex one in that it relates to a large and ongoing cross-agency project. That does not, however, justify the time it has taken to respond and we are reviewing our processes.

Your requests and my responses are set out below.

1. *Could I please request all submissions/emails in response to the CPIP working groups?*

I have interpreted CPIP working groups to mean CPIP work streams, and for this part of your request, emails/submissions to be for feedback from the legal associations on proposed CPIP solutions. I am withholding these in full under section 9(2)(ba)(i) of the Act, to protect information subject to an obligation of confidence, where the making available of the information would be likely to prejudice the supply of similar information.

In accordance with section 9(1) of the Act, I have considered the public interest in making available the information being withheld and determined that it does not outweigh the need to withhold the information at this time.

2. *My understanding is that Hamilton has been championed as a success in these working groups, what's evidence of this?*

In response to this part of your request, please find the documents in scope in the document table below, with their decisions on release.

3. *When is CPIP expected to be rolled throughout the country?*

I can advise that the rollout of some CPIP initiatives began 3 October 2022. The rollout is currently scheduled for completion in October 2024.

4. I'm interested in the legal aid rates in relation to guilty pleas - could I please get all information around this policy, who was involved, and what was the rationale behind it?

On 15 December 2022, the Ministry contacted you to clarify this part of your request in accordance with section 15 of the Act. Based on your clarification, received 16 December 2022, I have interpreted "legal aid rates in relation to guilty pleas" as higher duties for legal aid lawyers.

In response to this part of your request, it is worth noting that the higher duties were payable when a duty lawyer assisted their client to enter any plea, whether guilty or not guilty, or there was a withdraw of charges. The payments recognised the additional complexity of the work performed by the duty lawyer when it was appropriate to progress the case rather than seek an adjournment for another lawyer to be assigned under legal aid.

The policy, and further supporting information for lawyers, can be found on the Ministry's website through this link: justice.govt.nz/about/lawyers-and-service-providers/cpip/ Please note that the higher duties payment referred to in the Duty Lawyer Operational policy has been suspended since 18 October 2022.

Please also see the document table below. I can advise that the Ministry authored the policy and sought feedback from the judiciary, representatives of the legal profession and the Public Defence Service.

If you require any further information, please contact Media & Social Media Manager Joe Locke at media@justice.govt.nz.

Please note that this response, with your personal details removed, may be published on the Ministry website at: justice.govt.nz/about/official-information-act-requests/oia-responses/.

If you are not satisfied with this response, you have the right to make a complaint to the Office of the Ombudsman under section 28(3) of the Act. The Ombudsman may be contacted by phone on 0800 802 602 or by email to info@ombudsman.parliament.nz.

Nāku noa, nā



Carl Crafar
Chief Operating Officer

Documents for release

No.	Date	Document Type	Title	Notes
1	Unspecified	Design document	Detailed Design - Workstream One: Bail - Workstream Two: Admin Stage & Duty Lawyer Scope	Released in full
2	Unspecified	Report	Interim Report: Early-Stage Evaluation - Workstreams 1 and 2, - Hamilton Test Site	Released in part, with some information withheld under sections 9(2)(ba)(i) and 9(2)(f)(iv)
3	Unspecified	Report	Early-Stage Evaluation – of Workstreams 1 and 2, - Hamilton Test Site	Released in full
4	6 May 2022	Memorandum	Interim evaluation – Hamilton DC Pilot	Released in full with out of scope information removed
5	5 September 2022	Memorandum	CPIP Pilot – Extending to Christchurch District Court	Released in full with out of scope information removed

Criminal Process Improvement Programme

Make every event meaningful

Detailed Design

Workstream One: Bail

Workstream Two: Admin Stage & Duty Lawyer Scope

Prepared by:	Steve Owen
Prepared for:	Harsahiba Kaur
Date:	
Version:	
Status:	

Contents

Contents..... 2

1. Design..... 4

 1.1 Group Two: Duty Lawyer Operational Policy 4

 1.1.1 Problem statement 4

 1.1.2 Current state 5

 1.1.3 Future State 5

 1.1.4 Success Measures 9

 1.1.5 Implementation Approach 9

 1.1.6 Deliverables 9

Appendix One: Duty Lawyer Service Operational Policy for Hamilton DC Pilot.....11

Message from the Legal Services Commissioner.....14

Duty lawyer service 5

 Introduction 5

Appointment as a duty lawyer..... 5

Contract for the Provision of Specified Legal Services 6

Authority for the service 6

Glossary 6

 Responsibilities of duty lawyers 6

Taking instructions 7

Applications for criminal legal aid 8

Attendance requirements 9

 Supervision of the duty lawyer service 10

 Payment 11

 Travel time and mileage 12

Accommodation..... 12

 Duty Lawyer Roster 13

 Removal from the duty lawyer roster 13

 Appendix 1 – Instructions on bail matters for duty lawyers in all district courts 14

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Appendix 2 – Payment rates	16
Appendix 3: Duty Lawyer Instructions.....	17
Appendix 4: Performance Monitoring Process	19
2. Appendix Two: Duty Lawyer Claim Form.....	21
3. Appendix Three: Concerns Raised By Design Partners.....	23
3.1 Remuneration.....	23
3.1.1 Proposals.....	23
3.1.2 Concerns and Mitigation.....	23
3.2 Duty Lawyer Responsibilities.....	26
3.2.1 Proposals.....	26
3.2.2 Concerns and Mitigation.....	26
3.3 Bail.....	28
3.3.1 Proposals.....	28
3.3.2 Concerns and Mitigation.....	28

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1. Design

1.1 Group Two: Duty Lawyer Operational Policy

WS106 Revise the duty lawyer operational policy to encourage duty lawyers to make bail applications where the reverse onus applies, or on category three offences where bail is opposed.

WS 210 Subject to their availability in the locality, more duty lawyers, more experienced duty lawyers and further support for duty lawyers on the policy changes to allow entering of pleas and same-day sentencing. Including a supporting remuneration adjustment.

1.1.1 Problem statement

This grouping of solutions is focussed on three key problems:

1. Too many defendants who might achieve bail at their first appearance do not.

In the time period 1 March 2019 to 29 February 2020¹, 89% of defendants who eventually achieved bail were bailed at their first appearance. In 2014, the percentage was 94% and it has trended consistently lower since. When defendants are not granted bail at their first appearance/arrest they spend time in custody and attend additional court appearances before bail is granted. Time in custody has obvious financial costs but also social costs for the defendant and his/her whānau. Additional court appearances consume judicial and court time, contribute to longer case disposal times and the building backlog of cases.

2. Once new charges are laid it takes too many events on average before a plea is entered.

In the time period 1 March 2019 to 29 February 2020³, there were an average 3.8 events per offence category 3 case before a plea was entered². The average was lower in 2014 (3.2) but still more than the two events anticipated by the scheme of Criminal Procedure Act 2011.

3. When a guilty plea is entered in the admin stage, too many cases that could have been sentenced on the day the plea was entered progress to a future sentencing date.

In the time period 1 March 2019 to 29 February 2020¹, 28²% of all cases with a 2 – 7 year imprisonment maximum penalty sentenced during the time period were sentenced on the day of conviction. In 2014, the percentage was 39²%.

Additional court events before a plea is entered or sentencing occurs impacts the flow of all cases through the court. Longer delays between events, longer overall disposal times and a building backlog of cases result. The longer the disposal time of cases is the longer

¹ The time period was selected at the commencement of CPIP to exclude the effects of the COVID-19 lockdowns.

² Measured for cases disposed in the period.

the stress of the crime continues for all parties, the victim, any witnesses and the defendant and their whānau.

1.1.2 Current state

The duty lawyer operational policy prevents duty lawyers from making bail applications where the reverse onus applies, or for category 3 or 4 matters. Duty lawyers may assist with such bail applications for category 2 matters, but our research and enquiries show they do so in only a small proportion of those cases.

Duty lawyers do not typically progress matters to the entering of a plea or give advice to defendants on same day sentencing. These responsibilities are not currently part of the duty lawyer role for anything other than minor matters, even though they are provided for in the duty lawyer operational policy. Duty lawyers do not see these responsibilities as part of their role and other processes substantially impede duty lawyers from undertaking them.

For example, issues with delays in receiving written opposition to bail, the shortcomings of initial disclosure for the purpose of entering plea, the difficulty of accessing the prosecution on the day for charge discussions and the lack of access to stand-down probation reports all make it impractical for duty lawyers to productively assist and represent defendants with many types of matters.

Duty lawyers also have concerns about endangering the best interests of defendants if a fully informed plea is not possible and their own liability or exposure to complaints.

1.1.3 Future State

Solution: WS106 Revise the duty lawyer operational policy to encourage duty lawyers to make bail applications where the reverse onus applies, or on category three offences where bail is opposed.

Substantial issues that impede duty lawyers from assisting with opposed/reverse onus bail applications that are external to the duty lawyer policy are addressed in other solution groupings.

To facilitate and encourage duty lawyers to assist defendants with opposed/reverse onus bail applications this solution proposes:

1. Duty lawyers may run bail applications for category 3 matters, up to 10 years maximum penalty, where bail is opposed, or the reverse onus applies.
2. Subject to the defendant and the duty lawyer's wishes, a case may be assigned to the duty lawyer if they assisted the defendant to apply for bail where bail is opposed/reverse onus applies.
3. A remuneration adjustment that provides:
 - a. a small increase in hourly rate and
 - b. a flat fee payable where a duty lawyers assist a defendant with an opposed/reverse onus bail application.
4. Strengthened supervision of the duty lawyer service.

Assistance with Bail

The duty lawyer policy would be updated to authorise duty lawyers to assist defendants to apply for bail in category 2 and 3 matters (for charges where the maximum penalty is up to 10 years imprisonment and the offence is not a Crown prosecution) where bail is opposed, including where the reverse onus provisions of the Bail Act 2000 apply. However, before deciding to apply for bail the duty lawyer is required to consider:

- a. The time required and the demands of the day.
- b. If the defendant is under an order made pursuant to the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 whether they can provide appropriate representation.
- c. If the defendant is appearing on a warrant to arrest, whether the assigned lawyer is available.
- d. All necessary enquiries and evidence is available so that a bail application can proceed on the day.

Further, if the duty lawyer assists a defendant to apply for bail the duty lawyer should obtain the written instructions of the defendant to the making of the bail application and retain them for their record. A form available for the purpose includes confirmations and declarations by the defendant and duty lawyer which will support effective and transparent decision-making to protect both the defendant and the lawyer.

Case may be assigned to the duty lawyer

An exception to the current rotational assignment of legal aid cases is proposed so that the duty lawyer may be assigned the case where:

- the defendant is charged with a category 2 or 3 matter(s)
- the maximum penalty is 10 years imprisonment or less
- he/she is in custody
- bail is opposed/reverse onus applies
- the duty lawyer has assisted him/her with bail matters
- he/she wants the duty lawyer to continue to represent him/her
- the duty lawyer is on the assignment list for the court and
- has the appropriate approval.

The aim of the proposal is to improve the likelihood of bail being granted, if appropriate, on the defendant's first appearance. It will do so by allowing any preparation for a bail application to begin early in the day when the duty lawyer first interviews the defendant. It will also provide continuity of representation for the defendant on their matter from their first engagement with counsel.

If the case is assigned to a duty lawyer, it will not be an increase to his/her legal aid caseload because it will be included in the lawyer's count of rotational assignments.

Remuneration adjustment

A small uplift in the duty lawyer hourly rate from \$88 to \$98 per hour on weekdays and from \$108 to \$120 on weekends/holidays is proposed. Where a duty lawyer assists a defendant to

apply for bail, where bail is opposed/reverse onus applies, the duty lawyer may claim the hourly rate for their ordinary time as a duty lawyer and also a fee of \$90 for each defendant they assist in this way. There is no new funding for either of these remuneration adjustments. However, they are possible if the duty lawyer's expanded scope of responsibilities avoids equivalent legal aid costs.

Strengthened supervision of the duty lawyer service

Where a duty lawyer supervisor is appointed, they oversee the day-to-day operation of the service. Clarifying the existing authority of supervisors and new procedures that strengthen supervision will provide for a robust but also transparent response where a duty lawyer's activities are not aligned with or supportive of the duty lawyer service.

It will be clarified that where bail is opposed/reverse onus applies, applications for legal aid to be granted urgently must be discussed with the supervisor before they are submitted to ensure that the potential for the duty lawyer service to run a bail application has been properly considered.

New procedures for monitoring the performance of duty lawyers and responding to poor performance are also proposed. The procedures aim to ensure that duty lawyers give due consideration to the intent and requirements of the duty lawyer operational policy. They involve feedback and discussion between the duty lawyer supervisor and the duty lawyer and establish a process that will be fair and transparent. Any escalation would involve an independent decisionmaker but may as a final step include removing a duty lawyer from the roster.

The performance monitoring procedures are necessary for the ongoing management of the duty lawyer service. They are not solely to support implementation of the current proposals. They will operate at courts where a PDS duty lawyer supervisor is appointed.

Solution WS202: Subject to their availability in the locality, more duty lawyers, more experienced duty lawyers and further support for duty lawyers on the policy changes to allow entering of pleas and same-day sentencing. Including a supporting remuneration adjustment.

Duty lawyer responsibilities include representing and giving advice to unrepresented defendants on plea and sentencing. The duty lawyer policy will be strengthened to assist duty lawyers with making decisions on whether it is appropriate for the duty lawyer service to progress a defendant's matter.

A remuneration adjustment is also proposed to acknowledge and encourage acceptance of these greater responsibilities. A 'higher duties' flat fee will be payable, in addition to the duty lawyer hourly rate, for each matter where a duty lawyer accepts instructions to progress a defendant's matter to plea, sentencing, charges are withdrawn or bail. A small uplift in the hourly rate from \$88 to \$98 per hour on weekdays and from \$108 to \$120 on weekends/holidays is also proposed.

It is estimated that between 11% and 22% additional duty lawyer hours will be needed depending on uptake of the greater responsibilities.

Duty Lawyer Responsibilities

For moderate level offending, where the maximum penalty is 10 years or less and it is a Police prosecution, the duty lawyer will be asked to consider assisting the defendant with bail, plea and/or sentencing, if:

- a. the defendant wants the duty lawyer to represent them
- b. disclosure is available
- c. the case is not complex
- d. a sentence of imprisonment is unlikely
- e. the demands of the day allow.

If instructions are accepted, they should be in writing and retained by the duty lawyer. A form available for the purpose includes confirmations and declarations by the defendant and duty lawyer which will support effective and transparent decision-making to protect both the defendant and the lawyer and to ensure any plea is fully informed.

Remuneration Adjustment

An allowance in addition to the hourly rate is proposed as a flat fee to undertake specified 'higher duties'. The allowance may be claimed once per case for each activity. The fee for a bail matter or assistance with plea and or sentencing may be claimed if instructions are accepted to assist the defendant. The fee for charge negotiations could be claimed where charge(s) are withdrawn and could not be claimed in addition to a fee for assisting with a plea and or sentencing. A fee could not be claimed in relation to plea/sentencing where a case is remanded without plea for a legal aid application.

The 'higher duties' will include:

- a. assisting a defendant in a category 3 matter to apply for bail, where bail is opposed, and any legal aid application is submitted after the bail hearing
- b. assisting a defendant to apply for bail where the reverse onus applies
- c. assisting a defendant to enter a plea and/or at sentencing, where the maximum penalty is 6 months or more.
- d. successfully negotiating with a prosecutor for a charge(s) to be withdrawn.

The proposed remuneration rates and 'higher duties' fee amounts are:

Activity	Coverage	Rates
Attendance at court	Weekday	\$98/hour
Attendance at court	Saturday, Sunday or public holiday	\$120/hour
Higher Duties	Bail application	\$90/case
	Plea	\$50/case
	Plea and sentencing on the same day/charges withdrawn	\$90/case
	Sentencing	\$50/case

It should be noted that the proposed hourly rate increase is an amount that is estimated to be affordable if corresponding legal aid costs are avoided. It is not an assessment of a fair increase based on inflation since rates were last adjusted or any other type of rate setting approach.

Design Partners

The New Zealand Law Society, Criminal Bar Association, Auckland District Law Society and the South Auckland Bar Association have been involved in some or all components of the solution designs. They have raised some concerns about the solution designs. These are included as Appendix 4 where mitigations to their concerns are also explained.

Appendices

1. Changes to the duty lawyer operational policy.
2. Duty lawyer claim form.
3. Concerns raised by design partners and mitigations.

1.1.4 Success Measures

The success of revisions to the duty lawyer policy will be measured by the number/percentage of:

- Defendants assisted by duty lawyers with category 3 opposed/reverse onus bail applications.
- Pleas entered by duty lawyers in category 3 cases.
- Category 3 cases resolved by duty lawyers.

The information on duty lawyer activities will be gathered manually from duty lawyer claim forms.

The workstream will also ask duty lawyers for their views on the policy revisions, if they helped them to progress matters, any gaps or suggestions.

1.1.5 Implementation Approach

Duty lawyer policy revisions will require:

- Legal Services Commissioner sign-off of the draft policy for the test sites
- Engagement/training sessions for duty lawyers
- Roster review to increase duty lawyer hours
- Communications for duty lawyers and Ministry staff notifying the changes
- Training for clerical support officers who process duty lawyer invoices
- Training for grants officers on changes to rotational assignment policies.
- On-site monitoring during the pilot tests.

1.1.6 Deliverables

- Publication of:

- the revised policy for test sites
- a revised duty lawyer claim form for the test sites
- revised duty lawyer instructions form, including defendant confirmations/duty lawyer disclaimer
- a revised legal aid application form
- Duty lawyer training plan
- Knowledge Base updates about lawyer assignment
- Grants Handbook updates about lawyer assignment

**Appendix One: Duty Lawyer Service
Operational Policy for Hamilton DC Pilot**

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MINISTRY OF
JUSTICE
Tāhā o te Ture

Duty Lawyer Service

Hamilton District Court

Operational policy for pilot of new policies

October 2021

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DRAFT

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Message from the Legal Services Commissioner

The Criminal Process Improvement Project (CPIP) is a cross sector programme working to make every court appearance meaningful and reduce the time cases take to reach a resolution. It was initiated to work on reducing backlog and work pressure in the criminal district court. Legal Aid Services is committed to supporting this important initiative.

The Discovery Phase of CPIP found that appearances that don't result in meaningful progress for bail matters or in the admin stage result in increased average events per case, matters proceeding to the review stage that could have been resolved in the admin stage and matters progressing to a further sentencing date when they could have been sentenced on the day a plea was entered.

Expanding the scope of the duty lawyer service has been identified as one potential solution that can reduce unnecessary events and delays.

The present duty lawyer operational policy provides that duty lawyers advise unrepresented defendants at their first court appearance. The policy prevents duty lawyers from advancing bail applications in many cases where bail is opposed. Where appropriate, it does provide for duty lawyers to assist defendants to enter a plea and potentially resolve their matter on the same day.

However, there are many reasons why, for other than minor matters, duty lawyers do not typically progress matters to the entering of a plea or give advice to defendants on same day sentencing.

This policy for the pilot at Hamilton District Court:

1. enables duty lawyers to advance bail applications
2. encourages duty lawyers to progress or advance matters where appropriate to entering a plea and/or for sentencing.

The success of these proposals is also dependent on other CPIP proposals that will support duty lawyers to advance matters. For example, for the Police to provide more disclosure at an earlier stage and a second prosecutor who can be available to discuss matters before a hearing, and the availability from Corrections staff of stand-down (same day) probation reports.

Contents

Contents	2
1. Design	4
1.1 Group Two: Duty Lawyer Operational Policy	4
1.1.1 Problem statement	4
1.1.2 Current state	5
1.1.3 Future State	5
1.1.4 Success Measures	9
1.1.5 Implementation Approach	9
1.1.6 Deliverables	9
Appendix One: Duty Lawyer Service Operational Policy for Hamilton DC Pilot	11
Message from the Legal Services Commissioner	14
Duty lawyer service	5
Introduction	5
Appointment as a duty lawyer	5
Contract for the Provision of Specified Legal Services	6
Authority for the service	6
Glossary	6
Responsibilities of duty lawyers	6
Taking instructions	7
Applications for criminal legal aid	8
Attendance requirements	9
Supervision of the duty lawyer service	10
Payment	11
Travel time and mileage	12
Accommodation	12

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Duty Lawyer Roster	13
Removal from the duty lawyer roster	13
Appendix 1 – Instructions on bail matters for duty lawyers in all district courts	14
Appendix 2 – Payment rates	16
Appendix 3: Duty Lawyer Instructions	17
Appendix 4: Performance Monitoring Process	20
2. Appendix Two: Duty Lawyer Claim Form.	21
3. Appendix Three: Concerns Raised By Design Partners.	23
3.1 Remuneration	23
3.1.1 Proposals	23
3.1.2 Concerns and Mitigation	23
3.2 Duty Lawyer Responsibilities	26
3.2.1 Proposals	26
3.2.2 Concerns and Mitigation	26
3.3 Bail	28
3.3.1 Proposals	28
3.3.2 Concerns and Mitigation	28

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Duty lawyer service

Introduction

1. This policy describes the operation of the duty lawyer service.
2. The object of the duty lawyer service is to ensure that a sufficient number of lawyers are available at each District Court for the purpose of assisting, advising, and representing unrepresented defendants charged with a criminal offence and where appropriate, resolving or progressing their matter.
3. The Secretary for Justice is responsible for the duty lawyer service and specifying the requirements of the role. The Legal Services Commissioner is responsible for the administration of the service.
4. Administration of the duty lawyer service at Hamilton District Court is delegated to the Initial Criminal Legal Services (ICLS) Unit at the Manukau PDS.
5. This administration is undertaken with the aim of helping to ensure the criminal district courts run efficiently and effectively.
6. Court-specific duty lawyer instructions cover administrative aspects of the duty lawyer service. The instructions include matters such as:
 - the role of the PDS duty lawyer supervisor
 - specific hours of work
 - arrangements when duty lawyers are unable to attend as rostered
 - Saturday and public holiday roster arrangements
 - the wearing of duty lawyer badges.
7. The duty lawyer instructions can be found on the Ministry's website in [information for duty lawyers](#). If there is any conflict between the duty lawyer instructions and this policy, this policy prevails.
8. Information on the duty lawyer approval criteria can be found in the schedule to the Legal Services (Quality Assurance) Regulations 2011. Lawyers seeking duty lawyer approval to provide duty lawyer services should contact the Legal Aid Provider Services team by email at legalaidthelper@justice.govt.nz.

Appointment as a duty lawyer

9. Approval as a duty lawyer does not guarantee a place on a court roster. Duty lawyers seeking admission to a roster must register their interest with ICLS who will provide information on roster admission. ICLS is based at the Manukau PDS, email duty.lawyer@justice.govt.nz.

Contract for the Provision of Specified Legal Services

10. A duty lawyer may only be appointed to a roster if they have a current contract to provide Specified Legal Services.

Authority for the service

The duty lawyer service operates under the authority of the Secretary for Justice as a specified legal service pursuant to s68(2)(b) of the Legal Services Act 2011.

Glossary

11. In this document, unless the context requires otherwise:
- 'Duty lawyer service' means the specified legal service to provide lawyers to unrepresented defendants established under s68(2)(b) of the 2011 Act
 - 'ICLS Unit' means the Initial Criminal Legal Services Unit
 - 'PDS' means the Public Defence Service
 - 'Roster' means a list, maintained by the Secretary, of duty lawyers approved to provide the duty lawyer service in a particular location and who have applied for and been granted a place on the list for the purpose of scheduling and allocating the duty lawyer service
 - 'Rostered duty' means the period on a specified date that the duty lawyer is scheduled to be available to provide duty lawyer services and in respect of which the duty lawyer has not notified the PDS duty lawyer supervisor that he or she is unavailable or arranged a replacement
 - 'Secretary' means the Secretary for Justice
 - 'PDS duty lawyer supervisor', means a duty lawyer who has been designated with additional responsibilities to ensure effective operation of the duty lawyer service in that court.

Responsibilities of duty lawyers

12. Duty lawyers are required to provide services to unrepresented defendants in accordance with the following broad guidance. They deal with:
- matters where the defendant wishes to be represented by the duty lawyer, intends to enter a guilty plea and it can be entered on the day and/or a legal aid application is not required
 - matters where the defendant wishes to be represented by the duty lawyer at their sentencing and it can be dealt with or remanded to the next court event on the day and a legal aid application is not required
 - matters where the defendant wishes to be represented by the duty lawyer, intends to enter a not guilty plea and the matter can be dealt with or remanded to the next court event on the day and/or a legal aid application is not required
 - matters where the defendant wishes to seek a remand without plea to make a legal aid application
 - interim name and case detail suppression orders
 - bail matters in accordance with the instructions in Appendix 1.
13. The responsibilities of duty lawyers dealing with the above matters include:
- obtaining information from the Court and the prosecution

- explaining the nature and seriousness of a charge
- advising the defendant whether they may have a defence to a charge
- providing information about the range of sentences that the court may impose for a charge
- advising unrepresented defendants about plea, the possibility of a remand without plea, and the right to elect to be tried by a jury
- explaining what happens after a defendant pleads guilty/not guilty to a charge
- presenting sentencing submissions on behalf of a defendant
- advising defendants on how to apply for legal aid and if required, assisting defendants to complete a legal aid application (see also 'Applications for criminal legal aid' below)
- assisting defendants to complete a legal aid application for reconsideration (form 11) if required
- advising unrepresented defendants about bail and applying for bail on behalf of the defendant (see Appendix 1)
- applying for a remand on behalf of a defendant
- carrying out any other duties specified by the Secretary.

14. If a judge directs the duty lawyer to undertake duties beyond their usual role, the duty lawyer should do what they can to comply while still being able to fulfil the normal scope of their work. Any concerns will need to be discussed with the PDS duty lawyer supervisor and managed appropriately on a case by case basis.

Taking instructions

15. It is the intention of the policy that duty lawyers progress appropriate proceedings as far as possible on the day. However, it may not be appropriate for a duty lawyer to progress proceedings where the charges are serious, the case is complex, or it would impact the court's ability to deal with the business of the day. Where a matter has a maximum term of imprisonment over 10 years and for any matter the Crown will prosecute, duty lawyers will assist unrepresented defendants, who may qualify, to complete a legal aid application.
16. When determining whether it would be appropriate to progress applicable proceedings, or whether a legal aid application is required, the duty lawyer must consider:
- the defendant's informed instructions
 - the likelihood that the defendant will go to prison if convicted
 - whether there are complex factual, legal or evidential matters that will require further enquiries that can't be made on the day
 - the time required and the demands of the day
 - the prospects of the matter being progressed on the day
 - their own knowledge and experience in relation to the type of matter.
17. Where duty lawyers accept instructions to progress proceedings, they should record the defendant's instructions (including defendant confirmation/duty lawyer disclaimer) in writing in all category 3 matters and in any other matter when it is appropriate. A revised form 21 'Duty Lawyer Instructions' may be used for this purpose. It is the responsibility of the individual duty lawyer to retain the written instructions.

18. If a duty lawyer accepts instructions to progress proceedings, for example to enter a guilty plea but sentencing cannot be completed on the same day, the duty lawyer instructions form should be updated and if a legal aid application is not required, a handover note provided to the PDS duty lawyer supervisor for the next scheduled appearance when sentencing will occur. If practical, an arrangement may be made for the same duty lawyer to assist the defendant at the next appearance. If not, the PDS duty lawyer supervisor will make arrangements for another duty lawyer to appear.

Applications for criminal legal aid

19. Duty lawyers are reminded of their obligations under rule 9.5 of the Lawyers and Conveyancers Act (Lawyer: Conduct and Client Care) Rules 2008 to inform a defendant about the availability of legal aid.

20. When assisting a defendant to complete an application for legal aid, duty lawyers must:

- check that all sections of the application form are complete and accurate
- check that the financial details section is completed for all applicants
- advise defendants that an application form in which they have given false information cannot be submitted
- provide information that the Legal Aid office may need to consider in making the decision to grant aid where there are special circumstances (eg relevant history, the need for an interpreter, serious mental health/intellectual disability problems, the financial circumstances of a partner or other relevant financial information)
- provide the reasons for an interests of justice based application
- acknowledge on the form the name of the duty lawyer who has completed or helped complete the form
- print legibly.

21. Duty lawyers assisting with the completion of legal aid application forms must advise defendants that if legal aid is granted:

- for a Provider Approval Level 1 or 2 case³, a lawyer will be assigned to the case by the Legal Aid office on a rotational basis and they cannot choose their own lawyer, unless it is a category 3 offence and bail is opposed/reverse onus applies. For more information on rotational assignments, please refer to the provider assignments section in the Grants Handbook
- for a Provider Approval Level 3 or 4 case¹, the defendant is able to choose their own lawyer. If the defendant does not have a preferred lawyer one will be assigned by the Legal Aid office. The preferred lawyer must have:
 - been directly approached by the aided person or
 - represented the person on other matters within the last 5 years or
 - been specifically recommended to the person by someone they trust or
 - provided advice to the client as a PDLA lawyer with the appropriate listing.

³ Provider Approval Level refers to the experience and competence requirements for criminal matters in the schedule of the Legal Services (Quality Assurance) Regulations 2011.

- been appointed as a Youth Advocate in the Youth Court
22. The duty lawyer shall discuss with the PDS duty lawyer supervisor before submitting any legal aid application where:
- the duty lawyer is nominated as preferred counsel or
 - the duty lawyer considers that it is appropriate that the defendant applies for urgent legal aid in accordance with the instructions in Appendix 1.
23. Legal aid applications completed on a paper form must be forwarded to the PDS duty lawyer supervisor. The PDS duty lawyer supervisor will send the applications to the Legal Aid office, respond to any queries there may be and liaise with Legal Aid when needed to ensure assignments are made promptly.
24. Legal aid applications submitted electronically must be copied to the PDS duty lawyer supervisor when they are submitted, subject to 22 above.
25. Duty lawyers are not permitted to ask a person if they can be that person's preferred lawyer. Similarly, they are not permitted to nominate or recommend any other lawyer (or firm/chambers) as the preferred lawyer.
26. If a defendant specifically requests the duty lawyer to act for them, they may be nominated as their preferred provider for Provider Approval Level 3 or 4 cases. In such circumstances, the duty lawyer must provide details as to why they have been nominated as preferred lawyer (eg previous representation by the lawyer or recommendation by family/whanau or friends) on the legal aid application form. In courts where there is a PDS duty lawyer supervisor, they must also confirm that nomination. The provider must also hold an approval for the appropriate Provider Approval Level. The final decision on assignments is with Legal Aid.

Attendance requirements

27. Duty lawyers are required to:
- sign in at the designated time prior to court commencing
 - be available and at court to attend until notified they are no longer required, either by the PDS duty lawyer supervisor, the Judge or the Registrar
 - give priority to unrepresented defendants. In limited circumstances, (eg seeking a remand) duty lawyers may represent their own client, or act as an agent, where this does not interfere with their duty lawyer responsibilities. Duty lawyers must first discuss any attendance for their own matter or as an agent with the PDS duty lawyer supervisor as soon as practicable, who will decide if it is suitable to do so
 - record any time spent with their own clients as a deduction on the duty lawyer invoice/claim form.
28. If duty lawyers are not able to attend for their rostered duty, the following requirements apply:
- a. For weekdays, the PDS duty lawyer supervisor is responsible for finding a replacement when a rostered duty lawyer is unable to attend. Other than in exceptional circumstances, replacements must come from the list of duty lawyers appointed to that court's roster.
 - b. A separate policy applies for Saturdays and Public Holidays and the Duty Lawyer Instructions for the Court should be referred to (on the Ministry's website).

Supervision of the duty lawyer service

29. In courts with a PDS presence, PDS duty lawyer supervisors are in place to provide direction to duty lawyers.
30. In accordance with the terms of Provider Contract for the Provision of Legal Aid Services and Specified Legal Services, duty lawyers report to and must follow the direction of the PDS duty lawyer supervisor and should address any queries or correspondence relating to a Rostered Duty to the duty lawyer supervisor.
31. PDS duty lawyer supervisors' responsibilities include but are not limited to:
- managing the day to day operation of the service
 - organising the flow of work to ensure that both the cells and courtrooms are adequately covered and that at least one duty lawyer remains inside the court
 - ensuring that any complex matters are allocated to a duty lawyer with appropriate experience
 - ensuring that coverage by the senior or junior lawyers attending on the day is appropriate
 - providing supervision to junior duty lawyers as required
 - receiving, reviewing and forwarding legal aid applications
 - liaising with the court, prosecution and other stakeholders as required
 - liaising with the Legal Aid office, ICLS and Provider Services as needed
32. PDS duty lawyer supervisors' responsibilities also include monitoring the performance of duty lawyers and responding to poor performance. The aim is to ensure that duty lawyers give due consideration to the intent and requirements of the duty lawyer operational policy. The process will involve feedback and discussion between the PDS duty lawyer supervisor and the duty lawyer and will be fair and transparent. A report may be made to Provider Services which may result in removal from the roster subject to approval of the Legal Services Commissioner.
33. Steps in the process are explained in Appendix 4.
34. PDS duty lawyer supervisors report to and follow the directions of the relevant PDS manager.
35. In all cases, removal from a roster remains the responsibility of the Legal Services Commissioner.
36. PDS duty lawyer supervisors are also responsible for:
- arranging replacement duty lawyers
 - when they are unable to attend, delegating the PDS duty lawyer supervisor role to another PDS duty lawyer or a non-PDS duty lawyer
 - working to support the delivery of a quality service at the court and taking overall responsibility for the service at the court, including contributing to roster composition, assessing and inducting new applicants and contributing to the longer-term development of the duty lawyer service.

Payment

37. When they provide duty lawyer services, duty lawyers should complete the *Duty Lawyer Attendance and Invoice* form by entering their start and finish times, including the lunch break
38. They must record on the invoice form their name, GST number and the hours they worked, ie start and finish times, lunch break, any higher duties and any time taken on non-duty lawyer matters and any applicable travel time and mileage claims.
39. Higher duties include:
 - a. assisting a defendant in a category 3 matter to apply for bail, where bail is opposed, and any legal aid application is submitted after the bail hearing
 - b. assisting a defendant to apply for bail where the reverse onus applies
 - c. assisting a defendant to enter a plea and/or at sentencing, where the maximum penalty is 6 months or more.
 - d. successfully negotiating with a prosecutor for a charge(s) to be withdrawn.
40. An allowance in addition to the hourly rate (see Appendix 2) is payable as a flat fee to undertake the specified higher duties. The allowance may be claimed once per case for each activity. The fee for a bail matter or assistance with plea and or sentencing may be claimed if instructions are accepted to assist the defendant. The fee for charge negotiations can be claimed where charge(s) are withdrawn and may not be claimed in addition to a fee for assisting with a plea and or sentencing. A fee should never be claimed in relation to plea/sentencing where a case is remanded without plea for a legal aid application.
41. In the event that a duty lawyer is unavoidably required to attend to other commitments during a rostered duty, and has received agreement to attend to those other commitments by the PDS duty lawyer supervisor, they should notify the PDS duty lawyer supervisor of all the time spent on those other commitments and ensure that the time is recorded as a deduction under the "Private work/Lunch" column of the *Duty Lawyer Attendance and Invoice* form.
42. Rostered and replacement duty lawyers must:
 - ensure the *Duty Lawyer Attendance and Invoice* form is completed and that the PDS duty lawyer supervisor is aware of their start and finish times, including their lunch break, any time taken to attend to their own clients or as an agent for another lawyer and
 - ensure the correct GST number is recorded on the form and
 - certify the hours and amounts recorded by signing the form.
43. Payment will not be made to duty lawyers unless the form is completed in full including the signatures of both the duty lawyer and PDS duty lawyer supervisor or designated court staff member.
44. Duty lawyer attendance and invoice forms are submitted to the Auckland Legal Aid office each day by email to dutylawyer@justice.govt.nz for payment or as soon as possible. For work undertaken on Mondays to Fridays, claims will be paid in quarter hourly units. For work undertaken on weekends and public holidays, the minimum claim is for one hour irrespective of the time spent in court. See Appendix 2 for duty lawyer payment rates.

Travel time and mileage

45. When travel is non-local, duty lawyers can usually claim travel time and mileage to attend their rostered duty.
46. In determining when a duty lawyer may claim for travel time and mileage, the following criteria will be considered:
- the travel is non-local, and
 - the travel is to attend the lawyer's rostered appearance, or
 - the travel is to attend as a replacement for another rostered duty lawyer.
47. *Non-local travel* is defined as travel involving a return trip from the lawyer's normal place of work to the travel destination where:
- the return distance is greater than 50 kilometres OR
 - the return travel time is greater than one hour.
48. Note that:
- lawyers may claim travel time, mileage at approved rates, and where prior approval is obtained, actual and reasonable accommodation disbursements
 - the cost of petrol cannot be claimed
 - insurance excess and fines will not be reimbursed
 - evidence of travel distance or a GST receipt for disbursements are not required but can be requested to support a claim for reimbursement
 - travel distance and any GST receipt amounts should be recorded on the invoice/attendance form.
49. When using a personal car, reimbursements for travel and mileage will be at the applicable rates, currently at:
- \$63.00 (excl GST) per hour for travel time
 - \$0.82 (excl GST) per kilometre for private car mileage.

Accommodation

- Reimbursement will be on an actual and reasonable basis.
 - GST receipts are required for accommodation expenses.
 - The number of days for which accommodation and meals are claimed must be recorded on the invoice. We will not reimburse Koha.
 - Expenses that will not be reimbursed include alcohol, minibar and snack-bar costs and hotel room video or movie charges.
50. Where an overnight stay is considered necessary, the duty lawyer is to contact dutylawyer@justice.govt.nz to obtain prior approval for accommodation expenses.
51. Duty lawyer invoices are submitted to dutylawyer@justice.govt.nz each day, or as soon as possible. See Appendix 2 for duty lawyer payment rates.

Duty Lawyer Roster

52. Arrangements have been put in place alongside the establishment of the PDS:

- the roster has been restructured using selection criteria to determine duty lawyer suitability for initial appointment to the roster, with specific appointment to the Saturday and public holiday roster
- subsequent admissions to the roster are subject to suitable vacancies and selection criteria being met. (See Policy for admission to duty lawyer rosters at specific district courts in [information for duty lawyers](#))
- Generally, the roster has a regular pattern, with duty lawyers rostered fortnightly, weekly or monthly on the same day of the week
- roster composition takes into account duty lawyers' experience and skills as well as lawyers' preferences and availability
- the PDS contributes up to 33% of the week-day duty lawyer service, including PDS duty lawyer supervisors.

Removal from the duty lawyer roster

53. The ICLS Unit designated with preparing a court's roster has the authority to reduce a duty lawyer's rostered duties, or suspend a duty lawyer from the roster according to operational needs and/or based on the performance and conduct of the duty lawyer.

54. Removal from the duty lawyer roster based on the performance or conduct of the duty lawyer, may follow from a performance monitoring decision or a Ministry of Justice or New Zealand Law Society complaint investigation. See appendix 4 for more information on the performance monitoring process.

Appendix 1 – Instructions on bail matters for duty lawyers in all district courts

THE FUNCTION OF A DUTY LAWYER IS TO ASSIST UNREPRESENTED DEFENDANTS APPEARING ON CRIMINAL MATTERS IN A DISTRICT COURT, INCLUDING APPLICATIONS FOR BAIL WHERE AN UNREPRESENTED DEFENDANT IS NOT BAILABLE AS OF RIGHT

1. These instructions apply to all duty lawyers providing services in the Hamilton District Court.
 2. The Public Defence Service is responsible for the duty lawyer service at Hamilton District Court and PDS duty lawyer supervisors are in place.
- A. Assistance with Bail Matters**
3. Duty lawyers may assist unrepresented defendants where the defendant is bailable as of right or when bail is not opposed.
 4. Duty lawyers may assist defendants to apply for bail in category 2 and 3 matters (for charges where the maximum penalty is up to 10 years imprisonment and the offence is not a Crown prosecution) where bail is opposed, including where the reverse onus provisions of the Bail Act 2000 apply, but in these cases before proceeding to apply for bail, a duty lawyer should consider:
 - a. The time required and the demands of the day.
 - b. If the defendant is under an order made pursuant to the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 whether they can provide appropriate representation.
 - c. If the defendant is appearing on a warrant to arrest, whether the assigned lawyer is available.
 - d. All necessary enquiries and evidence is available so that a bail application can proceed on the day.
 5. If the duty lawyer assists a defendant to apply for bail the duty lawyer should obtain the written instructions of the defendant (including the defendant confirmation/duty lawyer disclaimer) to the making of the bail application and retain them for their record.
 6. In cases where the duty lawyer has taken instructions from a defendant in a category 3 or reverse onus case and the duty lawyer considers that it is appropriate that the defendant applies for urgent legal aid, they shall discuss this with the PDS duty lawyer supervisor who must agree that the opposition to bail cannot be appropriately progressed by the duty lawyer.
 7. The duty lawyer shall then:
 - a. assist the unrepresented defendant to complete an urgent legal aid application and
 - b. note "Opposed bail" on the front of the application form
 - c. provide the legal aid application form to the duty lawyer supervisor for submission to Legal Aid (if a paper form is used).
- B. Imprisonment more than 10 years, Crown prosecutions and Category 4 Matters**
8. Duty lawyers will assist unrepresented defendants on a category 3 matter with a maximum term of imprisonment over 10 years, Crown prosecutions and any category 4 matter to complete an urgent legal aid application and note 'Opposed Bail' on the application form. Where a paper

form is used, all legal aid applications must be forwarded to the PDS duty lawyer supervisor for submission to Legal Aid.

C. Assignment to a duty lawyer

9. Where the defendant instructs the duty lawyer to assist them in a category 3 or reverse onus matter, where bail is opposed the duty lawyer attends the bail hearing as a duty lawyer. If a legal aid application form is completed, it may note that the defendant wishes the duty lawyer to be their assigned lawyer, if they do.

Appendix 2 – Payment rates

Activity	Coverage	Rates (GST exclusive)	Documentation
Attendance at court	Weekday	\$98/hour	Duty lawyer attendance and invoice form, completed with all applicable details.
Attendance at court	Saturday, Sunday or public holiday	\$120/hour	
Higher Duties ¹	Bail application	\$90/case	
	Plea	\$50/case	
	Plea and sentencing on the same day/charges withdrawn	\$90/case	
	Sentencing	\$50/case	
Travel time	Monday-Sunday or public holiday	\$63/hour	
Mileage	Monday-Sunday or public holiday	\$0.82/kilometre	

1. Higher duties include accepting instructions to:

- assist a defendant in a category 3 matter to apply for bail, where bail is opposed, and any legal aid application was submitted after the bail hearing
- assist a defendant apply for bail where the reverse onus applies
- assist a defendant to enter a plea and/or at sentencing, where the maximum penalty is 6 months or more
- successfully negotiating with a prosecutor for a charge(s) to be withdrawn.

Appendix 3: Duty Lawyer Instructions

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Legal Aid

10/21 form 21

SURNAME

Form fields for SURNAME and COURT, each with two lines for text entry.

COURT

READY TO CALL

STAND DOWN

REINTERVIEW

Duty Lawyer Instructions

Key: YES = ✓ NO = ✗

Forenames: [text box] Age [text box] In custody [input type="checkbox"/>

Address [text box]

Charges [text box] Offence category 1 | 2 | 3 | 4

Active [text box] DOB [text box] / /

Previous [text box] Checked [input type="checkbox"/>

PLEA SoF accepted: [input type="checkbox"/> No Plea: [input type="checkbox"/> Guilty: [input type="checkbox"/> Not Guilty: [input type="checkbox"/> Elects Jury: [input type="checkbox"/> Diversion: [input type="checkbox"/>

BAIL At large: [input type="checkbox"/> Terms agreed by def.: [input type="checkbox"/> Bailsheet attached: [input type="checkbox"/> BTC: [input type="checkbox"/> Opposed: [input type="checkbox"/> (s8 | 10 | 12 | 13 | 15 / 17A)

PERSONAL Working [text box] (Part time / Full time) Benefit [text box]

Fines: [text box] Single: [input type="checkbox"/> Married/Pattner: [input type="checkbox"/> Dependants: [input type="checkbox"/>

LEGAL Legal Aid Application Completed: [input type="checkbox"/> s. 129 Sentencing Act: [input type="checkbox"/> s. 65 Land Transport Act: [input type="checkbox"/>

s. 65A Interlock: [input type="checkbox"/> s. 65B Zero licence: [input type="checkbox"/> s. 30 Sentencing Act advice given: [input type="checkbox"/>

Def. had initial disclosure: [input type="checkbox"/> Name Suppression: [input type="checkbox"/> Recall: [input type="checkbox"/>

SUGGESTED OUTCOME

Three horizontal lines for suggested outcome text entry.

INSTRUCTIONS

Multiple horizontal lines for instructions text entry.

Duty Lawyer (Print Name)

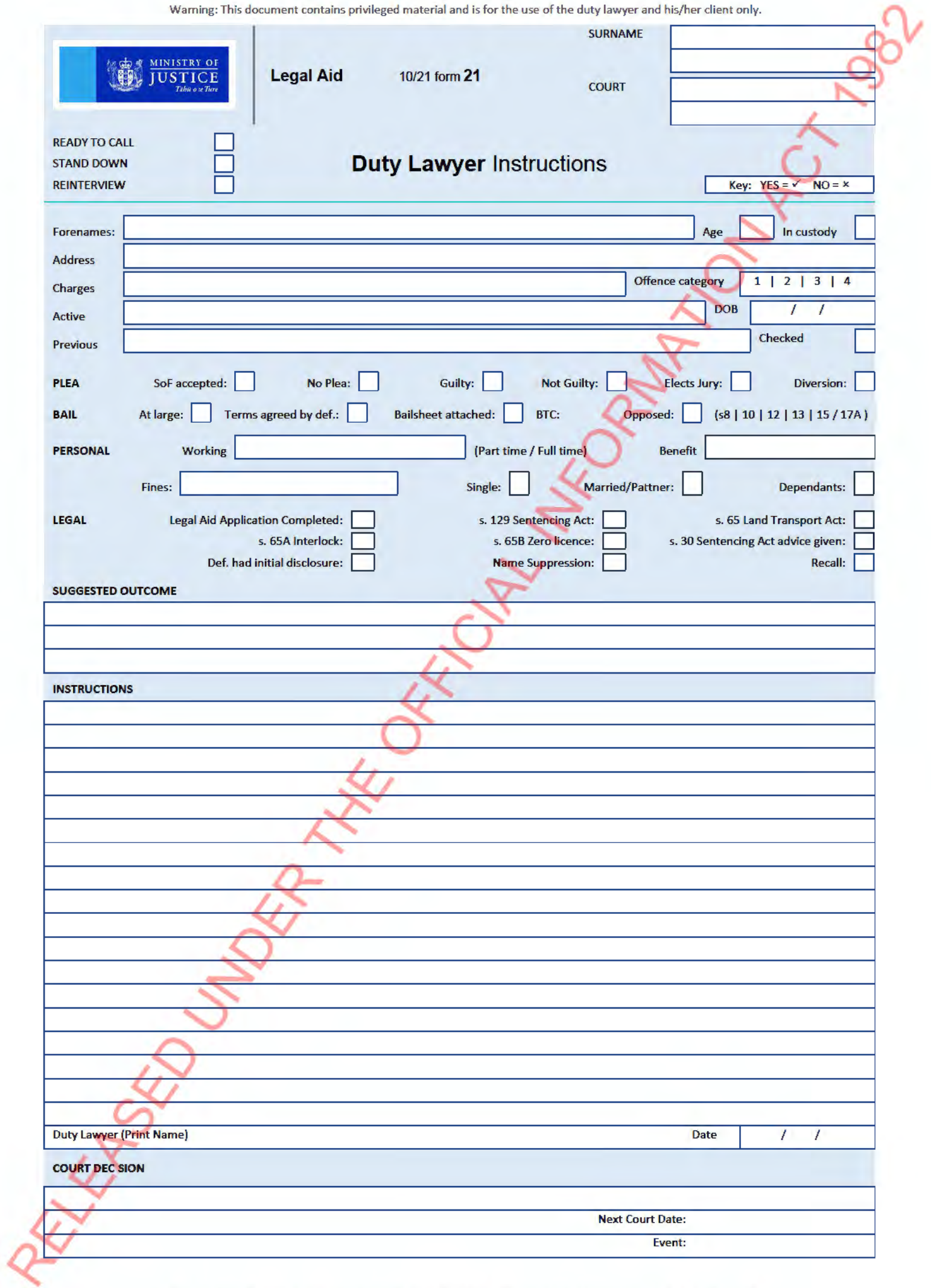
Date

[text box] / [text box] / [text box]

COURT DECISION

Next Court Date:

Event:



Defendant confirmation

I _____
[Name]

Understand that I can apply for my own lawyer to help me in court to apply for bail. The lawyer would be paid for by the Government if I can't afford it.

Or;

I _____
[Name]

understand that I can put my case off for 2 or 3 weeks without pleading guilty to apply for my own lawyer who would be paid for by the Government, if I can't afford it.

Even though I understand this, I want the lawyer I met at court today,

[Duty Lawyer's Name]

to be my lawyer today. I understand it is free.

The lawyer I met at Court today has also talked with me about:

- The information the police must give me about my charges and the evidence they have collected.
- My criminal history and what it will mean for me if I tell the court I am guilty of the charges I am here for today.
- What my penalty could be if my case is decided today.
- What my penalty could be if I put my case off for another day.
- Whether I should ask the Judge to tell me what my penalty could be, before telling the court I am guilty or not guilty.

Signed: _____

Date: _____

Interpreter _____
[Name]

Signed _____

Date _____

Duty Lawyer Disclaimer

I confirm that I met with

today and accepted instructions to help him/her with matters noted on the first page of this form.

- I am satisfied I have no conflict or potential conflict of interest.
- I have considered the appropriateness and timing of any application for bail or name suppression.
- I have advised the prosecutor that I am acting as duty lawyer

If a plea is to be entered, I have:

- Obtained relevant disclosure and discussed it with the defendant.
- Advised the defendant on prosecution disclosure obligations.
- Reviewed the defendant's previous convictions and advised of the consequences of conviction, including where relevant whether an application for discharge without conviction should be made and if applicable the additional consequences for serious repeated violent offending (3-strikes).
- Where required, discussed the matter with the prosecution.
- Where relevant, considered the availability of a stand down report to assist with sentencing.
- Considered the seriousness of the charge.
- I have provided advice on sentencing discounts for any plea of guilty.
- If appropriate, I have discussed the availability of a sentencing indication hearing.
- If the defendant is charged with a qualifying offence, advised him/her about the requirements of the sex offenders register.
- Where applicable advised the defendant about his/her right to elect jury trial and relevant factors in making that decision.

I have considered and appropriately addressed any issues that arise where:

- The defendant appears to have an intellectual disability or mental health issues.
- The defendant doesn't speak English and an interpreter is required.
- The defendant has addiction, alcohol or drug issues.
- The matter may be suitable for restorative justice.
- Family harm is involved.
- The matter may be suitable for diversion.

Signed: _____

Date: _____

Appendix 4: Performance Monitoring Process

Process Steps

1. The process steps ensure a fair and transparent process is followed. However, failure to complete any step in the process does not prevent the Legal Services Commissioner from responding appropriately to poor performance by a duty lawyer.
2. New appointments to a duty lawyer roster will be subject to an acknowledgement that the duty lawyer understands the duty lawyer operational policy and if they are appointed to a roster that they are required to follow it subject to their professional obligations and any obligations under applicable laws or statutes. Duty lawyers currently on a roster when this performance monitoring process is implemented will be offered training on the duty lawyer policy and at the conclusion of the training will be asked to acknowledge that they understand it and are required to follow it subject to their professional obligations and any obligations under applicable statutes or laws .
3. The supervisor monitors whether duty lawyers are following the duty lawyer operational policy. The aim is to ensure that duty lawyers give due consideration to the intent and requirements of the duty lawyer operational policy. It is recognized that ahead of the duty lawyer operational policy, lawyers have professional obligations as well as obligations under applicable statutes and regulations.
4. Where a concern with a duty lawyer's performance arises, the supervisor will raise it in a face-to-face discussion with the duty lawyer. The supervisor will listen to the duty lawyer's responses and if appropriate invite them to take specified actions.
5. The duty lawyer may have a support person present at any step in the process and will be given an appropriate time period to respond to any feedback.
6. The outcome of the discussion will be noted and provided in writing to the duty lawyer.
7. If the concern continues, the supervisor may require the duty lawyer to consult with them regarding such concerns. This will allow the supervisor to provide the duty lawyer with timely feedback on their performance.
8. If the concern continues, the supervisor may prepare a report for the Manager Provider Services. Depending on the Manager's assessment, they may write to the duty lawyer about the concern raised and seek a response. The letter may include a reminder that appointment to the duty lawyer roster requires the duty lawyer to follow the duty lawyer operational policy and if they do not, they may be removed from the roster.
9. The supervisor will continue to monitor the duty lawyer's performance and if the concern continues, a second report will be prepared for the Manager Provider Services seeking the duty lawyer's removal from the roster.
10. If the Manager agrees, they can recommend to the Legal Services Commissioner the duty lawyer's removal from the roster. If the Legal Service Commissioner agrees the duty lawyer is immediately removed from the roster and informed why.
11. Removal from a roster does not prevent an application being made for re-appointment to a roster.

2. Appendix Two: Duty Lawyer Claim Form.

To provide for claiming the 'higher duties' payments, a 'higher duties appendix' will be submitted with the duty lawyer attendance sheet. The duty lawyer will record their name, hours of attendance and GST number on the attendance sheet and any higher duties claimed on the 'higher duties appendix'. It will be attached with the attendance sheet when submitted for payment. The appendix is inserted below.:



HIGHER DUTIES APPENDIX

SCAN THIS FORM AND EMAIL WITH THE DUTY LAWYER
ATTENDANCE SHEET TO LEGAL AID: payments@justice.govt.nz

APPENDIX to the DUTY LAWYER ATTENDANCE SHEET
for attendance in the District Court at: Hamilton on (date) _____

PLEASE ENSURE YOU COMPLETE THIS FORM FULLY AND PRINT CLEARLY
INCOMPLETE INFORMATION OR INFORMATION THAT CANNOT BE READ WILL NOT BE PROCESSED AND PAYMENT WILL NOT BE MADE

Duty Lawyer:	Adam Baker								
Defendant/Offender	Criminal Record Identification Number	Maximum Sentence	Bail Application Cat 3 (opposed)	Bail Application (reverse onus)	Plea & Sentencing (same day) or Charges withdrawn	Plea only	Sentencing only		
Name Defendant One	CRI -2021-085-000007	7 yrs	\$90	\$	\$	\$	\$		
Name Defendant Two	CRI -2021-110-000012	3 yrs	\$	\$	\$90	\$	\$		
	CRI - - -		\$	\$	\$	\$	\$		
	CRI - - -		\$	\$	\$	\$	\$		
	CRI - - -		\$	\$	\$	\$	\$		
	CRI - - -		\$	\$	\$	\$	\$		
	CRI - - -		\$	\$	\$	\$	\$		
	CRI - - -		\$	\$	\$	\$	\$		
	CRI - - -		\$	\$	\$	\$	\$		
	CRI - - -		\$	\$	\$	\$	\$		
	CRI - - -		\$	\$	\$	\$	\$		
	CRI - - -		\$	\$	\$	\$	\$		
	CRI - - -		\$	\$	\$	\$	\$		
Total								\$180	
			Total	\$90	\$	\$90	\$	\$	\$180

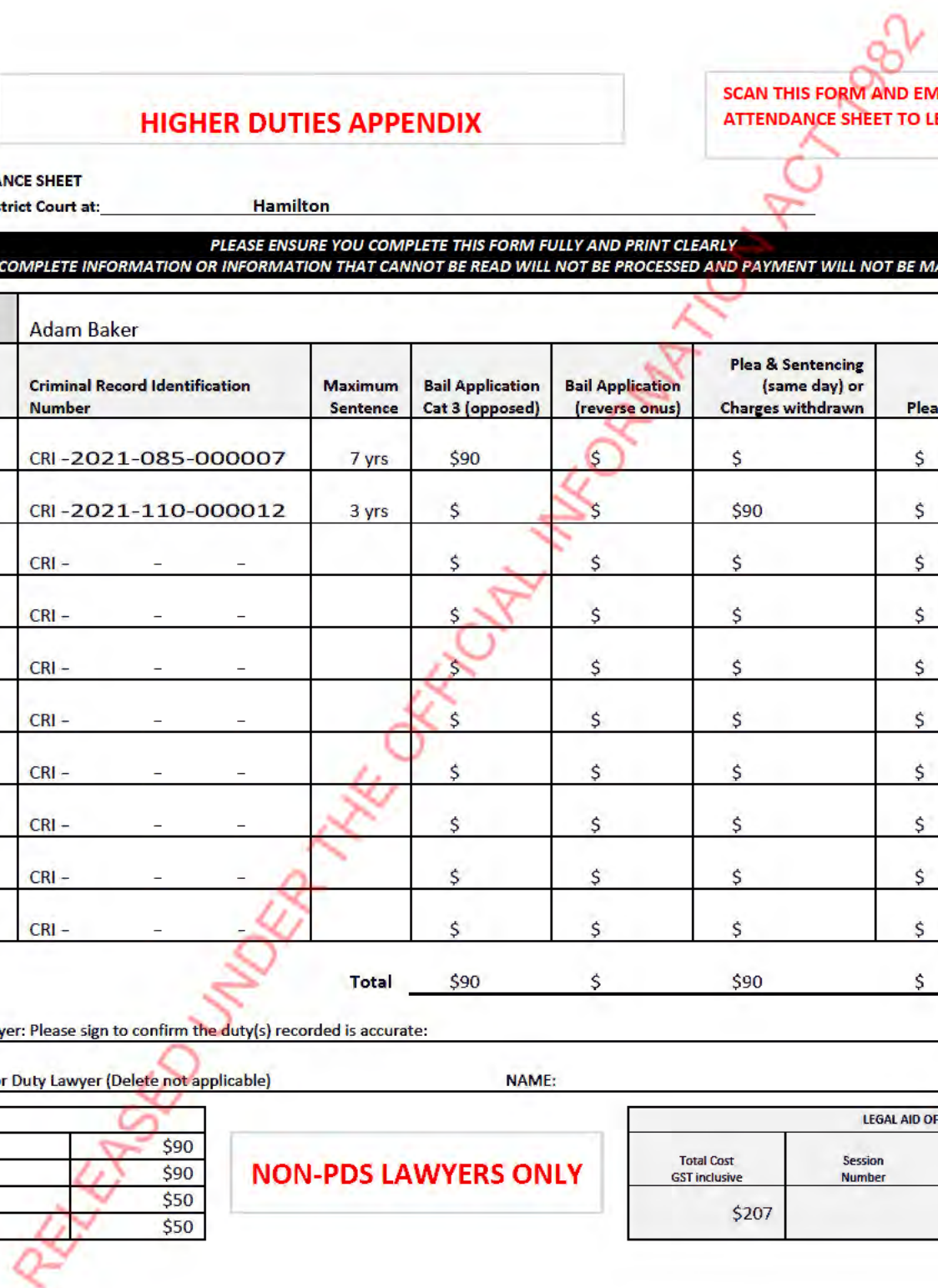
PDS Duty Lawyer Supervisor or Duty Lawyer: Please sign to confirm the duty(s) recorded is accurate:

POSITION: PDS Duty Lawyer Supervisor or Duty Lawyer (Delete not applicable) **NAME:** _____ **SIGNATURE** _____

Higher Duties Fees	
Bail application	\$90
Plea and same day sentencing	\$90
Plea only	\$50
Sentencing only	\$50

NON-PDS LAWYERS ONLY

LEGAL AID OFFICE USE ONLY			
Total Cost GST inclusive	Session Number	Entered by	Date Processed
\$207			



3. Appendix Three: Concerns Raised By Design Partners.

Development of the WS106 and WS210 solution designs involved consultation with:

- New Zealand Law Society
- Criminal Bar Association
- Auckland District Law Society
- South Auckland Bar Association.

These design partners expressed concerns in written feedback about some aspects of the solution designs. The proposals their concerns and mitigating factors are described below.

3.1 Remuneration

3.1.1 Proposals

1. A 'higher duties' flat fee is payable, in addition to the duty lawyer hourly rate, for each matter where a duty lawyer accepts instructions to progress a defendant's matter to plea, sentencing, charges are withdrawn or to make a bail application.

3.1.2 Concerns and Mitigation

Concern	Mitigating Factors
<p>a. The additional fees:</p> <ul style="list-style-type: none">• may influence decision-making which could result in outcomes that are not in the defendant's best interest• have the appearance of incentivising guilty pleas, damaging duty lawyers' reputations and the credibility of the justice system• provide scope for unscrupulous lawyers to 'game the system' by advancing multiple matters on a rostered day to substantially increase their income• are likely to lead to an increase in appeals when defendants regret the early entry of a plea, or sentencing when only initial	<ol style="list-style-type: none">i. The fees are not to encourage guilty pleas. Where a plea is entered an additional fee is payable for a guilty, or a not guilty plea. It is true that a duty lawyer is unlikely to enter a not guilty plea for category 3 offences where an election for jury trial is required at plea. However, they may assist a defendant to enter a not guilty plea to a category 2 offence. Category 2 offences are around 40% of the target moderate level offending.ii. The duty lawyers' fundamental professional obligation to protect the interests of their client will ensure they

Concern	Mitigating Factors
<p>disclosure was available, increasing the load on the justice system and undermining the purpose of the policy.</p>	<p>advise defendants according to the defendant's best interests and keep client care at the forefront of all decisions.</p> <p>iii. Recent changes to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 have increased the obligations lawyers have to report unprofessional behaviour of colleagues.</p> <p>iv. The duty lawyer instructions/waiver form will document the instructions given and confirmation that necessary considerations have been addressed. It will help to ensure that any plea is fully informed.</p> <p>v. The strengthened procedures for performance monitoring aim to ensure that duty lawyers give due consideration to the intent and requirements of the duty lawyer operational policy.</p> <p>vi. Additional monitoring will also be in place at the pilot sites to assess the risks of inappropriate guilty pleas. A PDS duty lawyer supervisor will:</p> <ul style="list-style-type: none"> • Ensure each day that the duty lawyer team is made aware of their responsibilities and obligations under the new policy and that this will be monitored by the supervisor. • Sit in the Registrar's and list courts from time to time and monitor the instructions taken by duty lawyers and where appropriate discuss those instructions with the duty lawyer. • Review the legal aid applications that have been submitted to Legal Aid Services and raise any concerns with specific duty lawyers.

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Concern	Mitigating Factors
<p>b. The additional fees under value the work involved when compared to the legal aid fixed fee schedules.</p>	<p>i. The additional fees are generally equivalent to the legal aid fixed fee schedules for bail/same day sentencing, when the duty lawyer's hourly rate and the time they may take is also included.</p> <p>ii. It is correct that average legal aid case costs for equivalent cases are higher than the fees proposed. However, that is because legal aid lawyers do not often proceed to sentencing on the day of plea.</p>
<p>c. A general rate increase or a two-tier rate with a higher rate payable for more experienced duty lawyers or based on lawyers opting-in to undertake the additional activities would be better than the proposed fees for specific activities. The additional fees are an unnecessary, increased expenditure of public funds.</p>	<p>i. A general rate increase has too much fiscal risk because there is no funding for an increase in duty lawyer remuneration. The additional payments are possible because they are linked to early resolution of matters.</p> <p>ii. A two-tier rate is not strongly linked to early resolution of matters. It therefore also has substantial fiscal risk. However, there are also administrative and practical difficulties. A duty lawyer eligible for the higher rate should be allocated to assist defendants whose matters are suitable for early resolution. However, that suitability cannot be determined without interviewing the defendant.</p> <p>iii. In addition to the additional payments, a small increase in the duty lawyer hourly rate is now proposed. It has low fiscal risk when applied in combination with the additional payments that are linked to early resolution of matters.</p>
<p>d. The additional fees and assignments that may ensue from assisting a defendant with an opposed bail matter create a need for a method of fairly allocating these cases.</p>	<p>The PDS duty lawyer supervisor will record and allocate opposed bail cases to ensure a reasonable distribution of these cases according to the skills and experience of the duty lawyers.</p>

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3.2 Duty Lawyer Responsibilities

3.2.1 Proposals

2. For moderate level offending, where the maximum penalty is 10 years or less and it is a Police prosecution, the duty lawyer should consider assisting the defendant with bail, plea and/or sentencing, if:
 - i. disclosure is available
 - ii. the case is not complex
 - iii. a sentence of imprisonment is unlikely
 - iv. the demands of the day allow.
3. If instructions are accepted, they should be in writing and retained by the duty lawyer.

3.2.2 Concerns and Mitigation

Risk	Mitigation
a. Duty lawyers have an obligation to advance minor matters where appropriate. If this is not occurring, education, training and performance management should be the response. The current policy re write is not the appropriate response.	<ol style="list-style-type: none">i. Effective training in the duty lawyer role is provided by the NZLS. Satisfactory completion is a prerequisite of approval to provide duty lawyer services.ii. The current policy does not restrict the duty lawyer service to 'minor matters'.iii. The proposals include strengthened performance management procedures. These will be implemented at courts where a PDS duty lawyer supervisor has been appointed. The procedures will be fair and transparent. Any escalation will involve an independent decisionmaker but would as a final step include removing a duty lawyer from the roster.
b. A remand for legal aid, then subsequently a remand from plea to sentencing can be beneficial for the defendant. A remand for legal aid allows time to consider options explained to them by the duty lawyer, to advise	<ol style="list-style-type: none">i. The proposal provides flexibility for a duty lawyer to provide appropriate advice to advance appropriate matters. If additional time would benefit a defendant, we wouldn't expect duty lawyers to

Risk	Mitigation
<p>employers/whanau, to come to terms with being charged with a criminal offence, to understand the potential consequences of a plea and to communicate their story to their lawyer. A remand for sentencing can provide time to undertake restorative justice, complete current sentences, show steps toward rehabilitation, no reoffending and compliance with bail conditions, to obtain evidence to support name suppression.</p>	<p>encourage defendants to deal with their matter on the day.</p> <p>ii. A revised duty lawyer instructions/waiver form (attached) will be required for category 3 cases and for other cases where appropriate. It will document the instructions given and confirmation that necessary considerations have been addressed so that</p> <ul style="list-style-type: none"> • Any plea entered is fully informed and made without duress. • Safeguards are in place for both the defendant and the duty lawyer to ensure that the duty lawyer complies with their legal and ethical obligations. • Due consideration has been given to a defendant's rights and interests.
<p>c. The proposals may encourage duty lawyers to take on work which they are not experienced in and specifically (Crown) matters.</p>	<p>i. The proposal now expressly clarifies that duty lawyers are not expected to progress any matter the Crown is required to prosecute.</p> <p>ii. Duty lawyers' awareness of their professional obligations combined with oversight by the duty lawyer supervisor in allocating tasks, according to skill and experience, will mitigate the risk of duty lawyers taking on matters for which they are not experienced.</p>
<p>d. Duty lawyers should not be burdened with the additional obligation to retain written instructions. Under the proposals, duty lawyers will incur an increased level of liability and a more developed waiver of liability form will be needed. However, it would be more practical for the Ministry to retain those records.</p>	<p>i. A more developed duty lawyer instructions/waiver form will be provided.</p> <p>ii. Some level of liability risk is normal for lawyers and duty lawyers. It can be mitigated in part by taking instructions in writing.</p> <p>iii. The records of instructions are for the duty lawyers' purposes and the Ministry has no interest in retaining them.</p>

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Risk	Mitigation
<p>e. Duty lawyers are tasked with representing unrepresented defendants appearing at courts and will not be able to satisfactorily assist all defendants if they are taking on these additional responsibilities.</p>	<p>Additional duty lawyer hours will be rostered to allow duty lawyers to more frequently advance appropriate matters.</p>

3.3 Bail

3.3.1 Proposals

4. Duty lawyers may run bail applications for category 3 matters, up to 10 years maximum penalty, where bail is opposed, or the reverse onus applies.
5. Subject to the defendant and the duty lawyer's wishes, a case may be assigned to the duty lawyer if they assisted the defendant where bail is opposed.

3.3.2 Concerns and Mitigation

Risk	Mitigation
<p>a. The duty lawyer may be able to double claim the additional duty lawyer fee and the legal aid fees for making a bail application where:</p> <ul style="list-style-type: none"> • the duty lawyer makes a bail application, a legal aid application is completed, and the case is assigned to the duty lawyer. • the bail application is started but not heard on the day, a legal aid application is completed and the case is assigned to the duty lawyer 	<ol style="list-style-type: none"> i. The proposal specifies that any legal application is to be submitted at the end of the day, after the defendant's hearing. If bail is granted, the duty lawyer will not have a grant of aid at the time of making the bail application. It would still be open to the provider to double claim once the grant is approved. However, that would be wrong, and their action would be subject to audit. ii. As is a common scenario, if bail is not granted, or the application is not heard on the day, a legal aid application may be made at the end of the day. If the case is assigned to the duty lawyer, there is no mitigation to stop the additional duty lawyer fee and the legal aid fee being claimed. If (any) further preparation is required for the defendant's next bail hearing, claiming both fees may be

Risk	Mitigation
	justified but will result in an effective overpayment.
b. Allowing defendants who apply for legal aid and need assistance with a bail application to be assigned to duty lawyers as an exception to rotational assignment will reduce the equitable distribution of assignments particularly for those providers who are not duty lawyers.	iii. Bail is opposed in around 30% of legal aid cases. However, some applicants will have an existing provider for other active charges, including where the defendant appears on warrant to arrest. In many other cases, it will not be appropriate to run a bail application at the first appearance because further enquiries will be needed or because of the strength of the opposition. Overall, the impact will be small.

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MINISTRY OF
JUSTICE
Tāhū o te Ture



ARA POUTAMA AOTEAROA
DEPARTMENT OF CORRECTIONS



NEW ZEALAND
POLICE
Ngā Pirihimiona o Aotearoa

HIGH
IMPACT
INNOVATION
PROGRAMME

Criminal Process Improvement Programme

Interim Report:
Early-Stage Evaluation
Workstreams 1 and 2,
Hamilton Test Site



CRIMINAL PROCESS
IMPROVEMENT PROGRAMME

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Contents	
Executive Summary.....	1
Background	1
Key Messages.....	1
Methodology and Report.....	2
Overarching findings	2
Key Measures (CMS)	3
Findings by party.....	4
Police.....	4
Duty Lawyers.....	5
s9(2)(f)(iv)	
Ministry of Justice	6
Next steps recommended.....	6
Criminal Process Improvement Programme (CPIP) background	7
Workstreams, Implementation timeline and test sites	7
Problem, Objectives and Benefits.....	8
CPIP Early-Stage Evaluation	10
CPIP evaluation approach/methodology.....	10
Overarching Findings	13
Background and Context of CPIP	13
Crime and churn.....	13
Hamilton context	13
Workload in Hamilton during test phase.....	14
Personnel	15
Facilities.....	16
COVID impacts on workload	16
Overarching qualitative and quantitative findings	17
Positive overall impressions of CPIP	17
Negative overall impressions of CPIP.....	18
Impressions about progressing bail	18
Impressions about progressing cases and sentencing.....	21
Suggestions/improvements, tweaking solutions.....	23
Interdependencies between solutions	24
Conclusion.....	24
Key measures (CMS)	26
Limitations of CMS data affecting workstream results.....	26

Workstream 1 Bail.....	26
Workstream 2 Admin stage	28
Findings for Police Solutions	32
Arrest disclosure	32
Time defendants are available for interview:.....	33
Availability of additional disclosure and case progression	33
Bail address suitability check	34
Victim Impact Statements and reparation schedules earlier	35
Duty Prosecutor/ Second Prosecutor	36
Findings for Duty Lawyer Solutions	39
Duty Lawyer role and changes.....	39
Doing more bail applications and more complex bail applications.....	40
Higher duties payment as fair compensation:.....	41
Recruitment of Duty Lawyers	43
Policy changes and additional resources - entering pleas and same day sentencing	45
Offering Lawyer of Choice.....	45
s9(2)(f)(iv), s9(2)(ba)(i)	
More judicial resource and time slots for hearings	48
Findings for Ministry of Justice Solutions	50
Victim Advisors.....	50
Victim views on Restorative Justice (RJ) obtained earlier	50
Registry	51
Setting bail dates, vacating bail hearings, court lists availability.....	51
Availability of bail transcripts.....	53
Next Steps	54
Appendices.....	55
Appendix 1 Workstreams 1 and 2 solution list and relative priority	55
Appendix 2 Solutions not implemented/dropped	57
Appendix 3 Test Plan Methodology	60
Appendix 4 Interview guide	67
Appendix 5 Offering Lawyer of Choice - data check	68
s9(2)(f)(iv)	

Executive Summary

Background

Some of the current processes in the criminal jurisdiction of the District Court are leading to later resolution or fewer meaningful case events occurring. This is contributing to workload pressures on court resources, which is causing delays. The delay factors include the reduction in available judicial resource, and the impact of the COVID-19 lockdown periods have exacerbated this.

The Criminal Process Improvement Programme (CPIP) has been established to address these issues.

The overarching objective of 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 specifically, to:

- a. reduce the average time (days) to disposal
- b. reduce the number of events that do not proceed on the day
- c. reduce the average number of events for a case from start to end
- d. reduce the number of days in custody spent waiting for an outcome

CPIP is being delivered through nine workstreams, each aligned to a stage in the end-to-end criminal jurisdiction of the District Court or to specific court business needs. Not all solutions delivered by the programme have required testing and evaluation. In accordance with the Programme's test strategy, workstreams 1, 2, 3, 6 and 8 have developed solutions that are subject to a test and evaluation phase.

This Interim Report presents findings only from the Hamilton test site for Workstreams 1 and 2. It does not contain recommendations about the relative merits of the solutions because there has not yet been a systematic consideration of insights arising from the findings. s9(2)(f)(iv)

Key Messages

The Hamilton District Court is unique due to the range of initiatives operating and other contextual factors. However, this early-stage evaluation presents preliminary and limited evidence which indicates that some solutions are likely to be equally successful in other courts as they are in Hamilton. These solutions are the Duty Prosecutor function, the Bail Support Services function, more complex bail work being done by Duty Lawyers, and the right resources, facilities and opportunities for communication between these parties.

The success of these solutions appears to be dependent on factors such as:

- accurate information being provided early in the process – such as arrest disclosure and Victim Impact Statements and
- having the right personnel in these roles and good working relationships.

Due partly to the different impacts of COVID across the country and the difficulty in attributing the key measure results to any specific CPIP solution, more data is required which are identified at the end of this section of the report.

Methodology and Report

Test Plans for Workstream 1,2, 6 and 8 were developed for each of the solutions being tested, with between two and five separate measures for each solution and using both quantitative and qualitative data. This was intended to allow each solution to be assessed on its own over time and to show how these measures complement the key measures that were developed in the design phase, prior to testing (see Benefit Logic Map on page 10).

The Test Plan required much of the data to be manually collated specifically for CPIP¹, as well as reports extracted from the Ministry's Case Management System (CMS) for courts. The manual records are considered reliable as they were collated regularly and checked by the Workstream Lead and data from CMS is considered reliable, within the limits stated at the end of this Executive Summary and throughout the report.

The presentation of the qualitative results is intended to reflect the voices of those involved in the Workstreams as clearly as possible, without identifying individuals or roles². However, court participants were not interviewed - their views would add more understanding of the solutions.

Approximately 35 quantitative measures³ were used and 24 interviews were conducted⁴. The findings are a mix of qualitative and quantitative data, selected on the basis of reliability and usefulness.

Appendices 1 and 2 list the solutions implemented and tested; **Appendices 3, 4 and 5** relate to the testing process. s9(2)(f)(iv)

Later versions of this report will include data collected since 31 May 2022 as well as incorporating findings for other CPIP workstreams and other test locations.

Overarching findings

The qualitative data showed that interviewees were generally in support of the CPIP objectives, with most interviewees mentioning their positive impressions such as perceiving fewer adjournments, reduced churn and more matters resolved in the admin stage. CPIP solutions for Duty Lawyers enable them to progress a case at the earliest opportunity and to be better prepared for a meaningful hearing, and the morning meetings between the Duty Lawyer Supervisor and the Duty Prosecutor contributes significantly to this preparation.

The majority of interviewees thought CPIP was particularly helpful in progressing bail, especially for bail address checks. Some saw the Duty Prosecutor role as more important for this, others prioritised the work of Bail Support Service for address check availability, but progressing bail requires both roles.

Results look promising in the quantitative data when narrowing down the scope to matters with opposed bail that were assisted by a Duty Lawyer: the number of events to plea is noticeably lower than the national average for category 3 cases (which can be used as an indicator). A bail application

¹ Where graphs show data from December 2021, it is because manual records were only kept from the time the solution was launched. Where comparison data is provided pre-December 2021, this data is available in the courts database, CMS.

² In some cases, roles are identified in the wording where there has been interviewee consent to do so.

³ These quantitative measures are provided in the body of the report.

⁴ Qualitative results sometimes reflect interviewees' wording.

has been run on the day for half of all arrests where bail is opposed (all counsel types). Duty Lawyers have even run around 80% of bail applications on the day out of cases they have dealt with achieving comparable outcomes (remanded on bail versus remanded in custody) than other counsel types. This data appears fairly reliable but collecting more quantitative data is recommended.

For case progression—entering pleas and sentencing on the day—the role of the Duty Prosecutor was identified as critical and highly valuable. Stand down reports are also appreciated as a CPIP solution by most interviewees, although the uptake of this solution was not very visible and more quantitative and qualitative data are required.

Positive effects in workstream two can also be seen in quantitative data when looking at percentages of first appearances disposed - a gradual increase with more events being disposed in later months. Further, case progression for cases in scope has improved from December to May overall, with more cases entering pleas and being sentenced on the day on average.

Some negative impressions of CPIP were expressed by some but not all. The new Duty Lawyer policy for progressing bail was identified as possibly unfair if some are missing out on work because more lawyers are on the roster. Another view is that the new policy puts pressure on Duty Lawyers to do more earlier, and has led to bail applications and guilty pleas that may not be in the best interest of the defendant, especially for serious matters.

Concerns were expressed about negative effects for victims where they are contacted before first appearance to canvass their interest in taking up restorative justice. It was assumed victims may find it confronting to have to consider this while the offence was still fresh, however, no interviews were done with court participants to clarify effects.

Interviewees had mixed views about the physical court space and facilities and it is clear that where people are located and the technology available, can have a considerable influence on processes and case progression.

Key Measures (CMS)

Limitations of the CMS key measures are affecting the workstream results (for more detail see section 'Key Measures (CMS)'). When looking at the percentage of cases where the defendant was released from custody at first custodial event, no consistent improvement can be observed. The number of days that defendants are remanded in custody has increased since CPIP started, and the number of events where defendants are remanded in custody before achieving bail has only reached the target in February and March.

In Workstream 2 the target for number of events to plea has been reached from January to March but has not been reached in April and May. The percentage of cases resolved by a guilty plea after the admin stage shows the best values are pre-CPIP (counted from case disposal). The percentage of cases with same day sentencing as plea is generally above target, confirming that cases are being progressed quickly. However, baseline data trends indicate that this is not necessarily attributable to a CPIP change.

Findings by party

Police

Overall **arrest disclosure** has been provided earlier and more information is available. Particularly, written statements for bail opposition are included more regularly. This is facilitated by the **Duty Prosecutor** who goes through the arrest list at 6am at the Police Prosecution Service (PPS) office and flags cases where written opposition to bail is missing or charges appear incorrect. More data is needed to clarify if this solution is meeting expectations.

In terms of **defendants being available for interview earlier**, interviewees gave mixed feedback but there seems to have been a general improvement. No quantitative data was received from Police to evaluate the timing of defendants being in court cells. While there are no issues about this solution for morning arrests, the 'fresh arrests' in the afternoon are perceived as slower to be available. This would contribute to different pathways for defendants who appear in the morning compared to the afternoon. Pathways of arrests for morning and afternoon could be tracked to clarify the findings.

Additional disclosure was not observed as a big issue or change by interviewees. It was also mentioned that additional disclosure is not needed for case progression and pressure would be put on Police resources to provide it. However, quantitative data show an improvement from December to February followed by a decline from March onwards suggesting that additional disclosure was provided less often for cases when expected. A reassessment of the merit of this solution is needed, as it was suggested as a key solution.

The quantitative data of the work of the **Duty Prosecutor** shows a trend of increased hours worked and cases dealt with per month. More than half of the cases assisted with require bail address suitability checks, around 35% of matters seek case resolution (plea, sentencing). 'Case result' data are incomplete for the latter months, restricting interpretation of the data. However, December to February shows that more than half of bail applications assisted with are remanded on bail and around half of matters assisted with that seek resolution can be resolved (). Qualitative data also shows very positive feedback; the **Duty Prosecutor** helps with case progression and resolution and does many bail address suitability checks. It was acknowledged that the high number of address checks required by the **Duty Prosecutor** was surprising. Attributing factors to success for bail progression are the combination of bail address availability checks done by Bail Support Services and good relationships with **Duty Lawyers**. Dependent factors are morning meetings with the **Duty Lawyer Supervisor** and the number of hours the **Duty Prosecutor** is available. Data is considered to be reliable, and no negative effects of this solution have been observed. However, resource concerns have been voiced from Police which need to be clarified to advance solution changes.

The number of address suitability checks performed when the charge is filed by Police was not available for this report, however, the **Duty Prosecutor** performed around 40 **address suitability checks** per month. Qualitative data confirms that address suitability checks timing has generally improved, and that accurate information is more often available to the court. In the context of CPIP in Hamilton, address checks done by the **Duty Prosecutor** have advanced bail applications, however, in a wider view bail address checks may not be the best use of the **Duty Prosecutor's** time.

Regarding earlier availability of **Victim Impact Statements (VIS) and Reparation Schedules**, no change in timing or completeness was noticed by interviewees. No quantitative data was sought from Police for this report. Additional data would be helpful to understand implementation issues for this solution better.

Duty Lawyers

The range of views expressed about the Duty Lawyer function include issues related to the exercise of legal professional judgment, oversight by the supervisor, and the types of cases and hearings

The changes to the operational policy for **bail applications for Category 3 cases with opposition to bail or reverse onus** have been accepted and followed generally by Duty Lawyers. Most Duty Lawyers are running a bail application on the day for the majority of cases they deal with (more than other types of counsel) if written Opposition to Bail (OTB) are available. At the same time, outcomes for the defendant shows minimal difference between the counsel types (appear as 2/3 remanded on bail and 1/3 remanded in custody).

Attributing factors identified are increased Duty Lawyer resources, such as an appropriate fee structure and encouraging lawyer of choice. Dependent factors are written OTB received, Duty Lawyer Supervisor indicating cases in scope and suited to Duty Lawyer skills, workflow and communication (morning meeting) between Duty Lawyer Supervisor and Duty Prosecutor, and Bail Support Services bail address checks.

The policy changes for **pleas and sentencing** were generally appreciated but feedback was mixed for complex and serious cases. Less experienced Duty Lawyers are hesitant to progress such cases and others are concerned that Duty Lawyers pushing through cases on the day might not be in their client's best interests. Attributing factors to success include lawyer specialisation and experience. Dependent factors in CPIP are the Duty Prosecutor ability to discuss all types of cases. Case outcomes will need to be tracked to further understand the mentioned risks of negative effects of defendants.

According to qualitative findings about Duty Lawyer resources, more Duty Lawyers are on the roster, but quantitative data (head count, hours, level of experience) do not show a continuous upwards trend. However, quantitative data is impacted by COVID (court closed) and public holidays and thus is less stable. At the same time, the number of arrests has increased from December 2021 to May 2022 and the cases in scope for plea and sentencing have peaked in February and April indicating an increase in workload for Duty Lawyers.

The **higher duties fee** is appreciated but not all Duty Lawyers claim it. More context is needed about the percentage of Duty Lawyers claiming it and for what types of cases.

The **lawyer of choice** was offered in all cases by most Duty Lawyers, but not all. The quantitative data for this solution is deemed unreliable in terms of chosen assignment reasons in the form (see Appendix 4). This solution needs more time to yield definite results.

s9(2)(f)(iv)

Ministry of Justice

Some evidence suggests that **victim views on Restorative Justice (RJ)** are provided earlier, as intended (shown in both quantitative and qualitative data). Possible negative impacts of this process are noted for victims (traumatising, confusing by being too close to the event), and for defendants (a victim might change their mind subsequently). Duty Lawyers do not see it as a benefit to have victim views earlier; Victim Advisors (VA) preferred acting on a judge-directed RJ process and therefore see this solution as not appropriate. However, earlier contact by victim advisors is possible, without canvassing victims' views about RJ.

Some of the **Registry** solutions were already business as usual in Hamilton, quantitative and qualitative data confirms that the following are working as intended: sending out court lists early, bail transcripts typed within 3 days, prompt turnaround for bail dates and vacating bail hearings when withdrawn. No additional evaluation is needed for these solutions.

Solutions affecting the Judiciary directly conclude that not many Electronically Monitored (EM) bail applications are being done by **Community Magistrates (CMs)**. The number of EM bail applications that are eligible to be heard by a CM is limited. The usefulness of this solution is doubtful.

Qualitative data provided mixed messages if **extra judicial time** and other changes and resource for same day case progression and same day bail are leading to more bail applications heard on the day. An increase in same day bail applications that proceed was not observed in quantitative data. The earliest available date for bail has improved according to quantitative data collected.

Next steps recommended

This Interim Report provides qualitative and quantitative evidence gathered about solutions for Workstreams 1 and 2 that were approved to be implemented in Hamilton. This is primarily about processes and case outcomes, noting that some solutions are more limited in scope in terms of maximum penalty. Therefore, the following steps are recommended before completing the final report:

- Thoroughly consider and discuss between and among the parties, what insights are possible from the findings presented.
- Continue testing the solutions in Hamilton for a further few months and gain a more complete understanding of the importance of local factors (especially more data is required which is a) Bail applications represented by Duty Lawyers (percentage of cases actioned with opposed bail) and b) number of cases and case outcomes with same day sentencing as plea).
- Gather interim data for the Hutt Valley test site and compare with Hamilton data.
- Identify where the current measures cannot provide reliable data and adjust if appropriate.
- Incorporate additional data from Hamilton with findings from Workstreams 6 and 8.
- Attempt to identify which solutions appear to contribute to the CPIP objectives and which solutions are interdependent.

Criminal Process Improvement Programme (CPIP) background

Workstreams, Implementation timeline and test sites

Each workstream works with a set of nominated Judges to ensure there is judicial leadership and endorsement of solutions. The outcomes delivered by CPIP will enable the District Court to have the capacity to embed transformational changes to be delivered by the Te Ao Mārama Programme.

In accordance with the Programme's test strategy workstreams 1, 2, 3, 6 and 8 have developed solutions that are subject to a test and evaluation phase. Because of the range of changes experienced at the Hamilton District Court, and the factors identified in the context section below, the findings in this report are unlikely to apply completely to another District Court.

The focus of this early-stage evaluation are the Bail Application stage (Workstream 1) and the Duty Lawyer and Admin Stage (Workstream 2) solutions. Together, those workstreams have developed 18 distinct solutions that have been tested in the programme's primary test location, Hamilton District Court, since 6 December 2021 and this report includes testing data collected up to 31 May 2022.

Table 1 Timeline and Test Sites

		Hamilton	Hutt Valley	Christchurch	Gisborne	other
1 Bail Applications		6 Dec 21	13 June 22	-	-	-
2 Duty Lawyer Admin Stage		6 Dec 21	13 June 22	-	-	-
3 Review Stage Best Practice	Registry and Judiciary solutions	No testing, national roll-out				
	Police case management model	28 Oct 22	-	4 Nov 19*	21 March 22	-
4 Judge Alone Trial Best Practice		No testing, national roll-out				
5 Jury Trial Stage Best Practice		No testing, judicial protocols will be issued nationally May 2022, changes come into effect nationally in tranches from October 22 onwards				
6 Sentencing Stage Best Practice		14 Feb 22	-	-	22 Nov 21	Hawera 13 Dec New Plymouth 8 Nov 21
7 Outstanding Workload		No testing				
8 Reducing Non-Appearances	Court Summons	23 May 22	-	17 Dec 21	23 May 22	-
	Court Notice of Bail	20 June 22	-	8 June 22	4 July 22	18 July 22
	SMS Reminders	20 June 22	-	17 Dec 21	4 July 22	-
9 Remote Courts		From February 22, workstream 9 is being fast tracked to support Business Continuity Planning/COVID Impacts. CPIP testing plan no longer applies				

*Targeted Case Progression (TCP) paused on 26 March 2020 due to COVID. It re-commenced in those locations on 14 September 2020 and continues through to July 2021

The solutions comprising Workstreams 1 and 2 and their relative importance (priority) are shown in **Appendix 1**. Some of the solutions that were designed did not proceed or continue with implementation. Reasons for this are set out in **Appendix 2**. The scope of the solutions in Workstreams 1 and 2 were limited as follows:

- Workstream 1: opposed bail matters where maximum penalty is up to 10 years and is not a Crown prosecution matter
- Workstream 2: maximum penalty is 6 months to 7 years⁵

Problem, Objectives and Benefits

Problem for CPIP to address

- Increased number of events required to dispose a case on average
- Increasing workload pressures on court resources
- The time it takes to resolve cases is lengthening
- Reduced availability of judicial resource, and the impact of the COVID-19 global pandemic
- Key Statistics (Year July 2020 to June 2021):
 - 4.0 average number of events for Category 3 cases to enter a plea
 - 93% of cases that enter the review phase do not require a hearing to be resolved
 - 84% of Judge Alone Trial hearings were not heard on the day of their scheduled hearing
 - 42% of all sentencing events are not dealt with on the day of their scheduled hearing
 - 39% increase in the number of active Jury cases from 2,400 in June 2019 to 3,331 in June 2021
 - 9.0 appearances on average for Category 3 cases (increased from 6.6 in 2013/14)

CPIP Objectives

The overarching objective of the programme is to establish best practice in order to increase meaningful events in the criminal justice system, to improve the timeliness of cases in scope 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

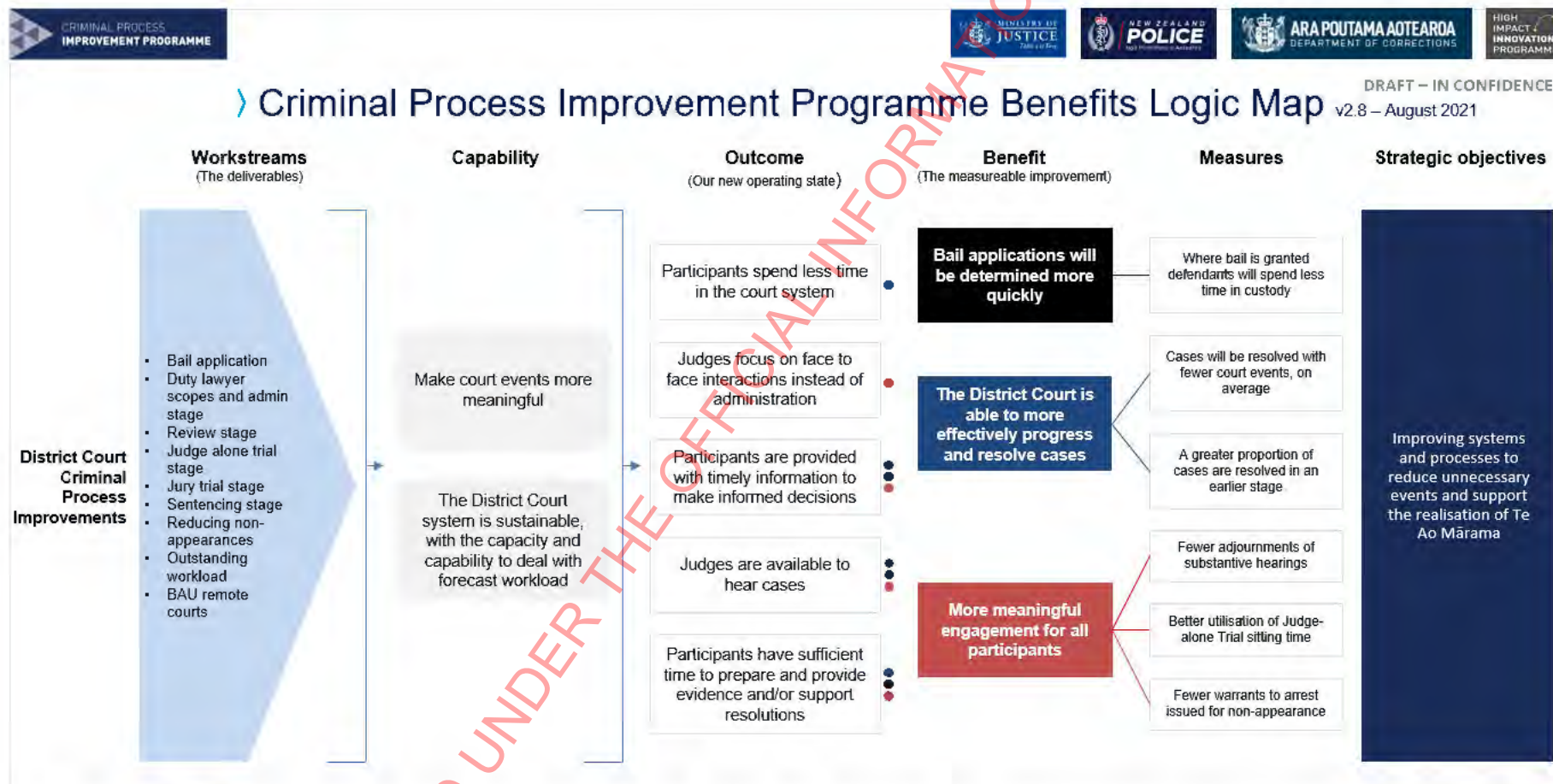
CPIP is a critical prerequisite to Te Ao Mārama

- Achievement of these objectives, and the corresponding reduction of the criminal case backlog, is a critical prerequisite to the Te Ao Mārama Programme.
- The outcomes delivered by CPIP will ensure the District Court has the capacity to embed the transformational changes to be provided by the Te Ao Mārama Programme.

The following original benefits logic map was the base for the evaluation in terms of the key measures and supplementary measures used in the Test Plan.

⁵ This is the scope within which Police have agreed to provide additional disclosure, but duty lawyers can progress matters outside this scope, where appropriate

Benefits identified at design phase:



CPIP Early-Stage Evaluation

The evaluation of the testing phase of CPIP was intended to provide some objective information about the solutions being tested that could be useful for decisions about rolling out the solutions to other areas. The information was to be captured from administration data, manually collected and collated quantitative data targeted to specific solutions, and qualitative data from people working at the test sites.

This early-stage evaluation was only intended to look at the measures suggested in the benefits logic map above. Outcomes would need to be evaluated later, for a better understanding of the overall quantitative and qualitative data, and the findings reported by party.

The final report for this evaluation will include additional data from June and July 2022 (Hamilton), and data for Workstream 6 (New Plymouth).

CPIP evaluation approach/methodology

This report summarises the data collected about Workstreams 1 and 2 from the test site of the Hamilton District Court over the period 6 December 2021 to 31 May 2022. Hamilton District Court was chosen as the test site for Workstreams 1 and 2 because it is one of the larger volume courts, yielding sufficient testing information to consider implementation issues.

A Test Plan was developed for each of the solutions being tested, with between two and five separate measures for each solution, providing both quantitative and qualitative data. This multiple-measures approach was intended to allow the results of each solution to be assessed on its own and to show how these measures complement the key measures developed prior to testing. The methodology for developing Test Plans is attached as **Appendix 3**.

The Test Plan required much of the data to be collected and analysed in-house, with dedicated resources as follows:

- Workstream lead and support – collecting manual data from the site
- Data and Analytics, National Office – extracting CMS data
- Research and Evaluation, National Office – collecting qualitative data
- Legal Aid Services – collecting Legal Aid data

Approximately 35 quantitative measures were used for this report⁶ and were collated monthly. Some test measures were trialled but discontinued due to the difficulty of collecting continuous data.

⁶ Quantitative measures were counts of: COVID affected days

WS1: total arrests, arrests where bail is opposed + those available to DL, written opposition to bail statements included in arrest disclosure, arrest disclosure turnaround time, bail applications where bail is opposed actioned on the day + by counsel type, bail applications where bail is opposed represented by DL vs urgent LA, bail application outcome (RIC, ROB) by counsel type, Duty Prosecutor availability days/hours and bail cases discussed, same day address availability checks, days remanded in custody, events remanded in custody

Qualitative data was collected through 24 in-depth, one-to-one interviews. Court observations were considered important for the methodology but the impacts of COVID precluded this. However, the number of interviews for each party provided sufficient insight for this interim report.

The intention therefore was to interview as many people working on the solutions at the test site as possible: Police, Duty Lawyers, Registry, Court Victim Advisors, Judiciary, and Corrections. If some quantitative data was available, not all roles have been included in interviews to date, and due to the workload pressures being experienced in these roles.

Appendix 4 shows the general interview guide used in collecting qualitative data.

Qualitative data was analysed through thematic analysis, based on the structure of the interview questions, which was similar for all interviewees.

This report shows results of testing for each month and may allow identification of possible connections between data, such as available working days and numbers of bail applications processed in a month. However, the following limitations and possibility of further data collection should be noted.

High level limitations of the data collected (to be considered further after peer review)

- Because of the number of solutions being run at the same time, no direct correlations between quantitative data nor standalone success of solutions can be determined
- Manual records have been deemed as more reliable than CMS data and thus findings are based on manual records to a large degree. However, for most manual records no baseline data pre-December 2021 was collected
- Some solutions have more complete data than others; for instance, there was no reliable data for adjournments and overnight custody; and confirmation of arrest numbers
- Key measures are reported with means but could potentially be reported with medians (in order to deal with outliers)
- In general, the following caveats apply to CMS data:
- The data collected is based solely on data entered into CMS by users. There are no data reconciliation checks made between CMS and the physical court document. There could be instances where the data entered does not truly reflect what occurred on the day, due to inaccurate data entry and/or understanding. There are instances where more than one outcome occurs leaving open to question which outcome supersedes the other

before achieving bail, cases released from custody at first custodial event, bail applications withdrawn on paper, bail applications note/decision transcription and release turnaround time + reasons for delay, DL urgent roste , number of LA applications, earliest available date for bail applications, number of events to plea for opposed bail matters where defendant is assisted by duty lawyer, number of bail applications heard by CMs vs. judges, Bail applications that proceed on the day when an urgent legal aid application is made.

WS2: number of cases in scope (workload) and available to DL, additional disclosure required/received, stand down PAC reports produced, DL count, DL hours, DL experience, higher duties fee claimed, event outcome (plea, sentencing, RWOP), first appearances disposed, events to plea, cases resolved by guilty plea after admin, cases with same day sentencing as plea, first appearances disposed, victims' views on RJ

Further data recommended to be collected (to be considered further after peer review)

- Arrest and additional disclosure – quantitative and qualitative data (Police)
- Victim Impact Statements (VIS) and Reparation Schedules – quantitative and qualitative data (Police, Registry)
- PAC reports – quantitative and qualitative data (Corrections)
- Duty Lawyer and Legal Aid solutions – qualitative data (Legal Aid Services)
- Canvassing views on RJ – further qualitative data including from Court participants
- Several test measure data (manual records), such as the percentage of bail applications run on the same day (all counsel, all arrests) where bail is opposed.

The findings in this report are structured by the overarching measures that apply to Workstreams 1 and 2, and then the findings that apply to the parties involved in the solutions. This ‘parties’ section is structured approximately by order of the criminal justice process: Police (six solutions), Duty Lawyers (three solutions) Victim Advisors (one solution), Corrections (two solutions), Judiciary (three solutions), Registry (three solutions tested). Only findings relating to the 18 solutions implemented are presented in this report⁷.

⁷ A list of solutions not implemented is provided at the end of Appendix 1.

Overarching Findings

The following findings are a selected combination of the qualitative and quantitative data that was analysed.

Background and Context of CPIP

Interviewees were asked about their knowledge of the Hamilton context.

Crime and churn

Interviewees noticed a number of factors contributing to churn, including more sophisticated crime, many serious charges, many pleading not guilty and electing Jury Trial causing churn. In particular they noted:

- A high volume of Electronically Monitored bail applications, Police generally opposing bail, frequent bail breaches partly due to unsuitable bail conditions
- More events to disposal occur even at the end of the criminal process, often not meaningful events, churn still seen in Case Review Hearings
- A different pathway exists for morning and late arrests: more complex cases and fresh arrests appearing in the afternoon are less quickly resolved due to seriousness; where Police may verbally oppose bail, arrest disclosure may be unavailable to Duty Lawyers and defendants are more likely to end up in custody
- Time taken to check bail addresses is a key reason for churn, takes time to find a suitable address, previous contact details used from previous charges as if they are current details
- It is a time-based and defendant-focused system; victims' input is minor still and some practices (e.g. Duty Lawyer contacting victim) have adverse impact on victims

Hamilton context

As previously mentioned, Hamilton is a high-volume court. The list court can have 30 arrests, with regular resourcing challenges and many changes affecting the criminal justice process, such as:

- Young Adult List Court is starting from 20 June 2022 and 40% are young defendants so interviewees acknowledged it will "have to be run as a mainstream court"
- Protected Persons Court started June 2022
- Alcohol and Other Drug Treatment Court started June 2021
- Family Violence Bail Report started February 2021
- PPS management model started in October 2020
- Sentencing Ready team for stand down PAC reports
- Now there are two DHB screeners in court, "this reduces what forensic nurses need to do, and is used better now by defence counsel"
- Remote courts work has been in place, "now it has been taken under the CPIP umbrella."

Based on early understanding of the Young Adults List, there is potential for increased court events per case. Low level charges which would have in the past been dealt with on the first appearance could now be put off for subsequent appearances where the defendant is appearing in the Young Adult's List.

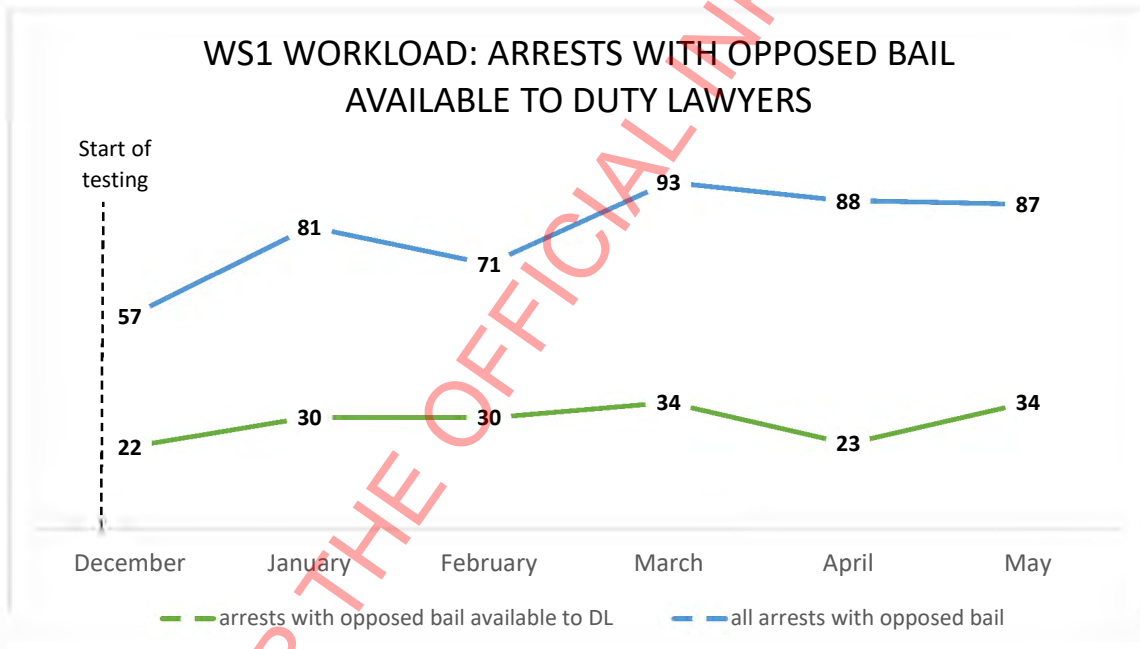
Because of the range of changes experienced at the Hamilton District Court, and the factors identified above, the findings in this report are unlikely to apply fully to another District Court.

Workload in Hamilton during test phase

The workload for Hamilton may be seen from data about arrests. This manual record obtained from daily Police notification to the court shows the number of arrests has increased linearly from December 2021 (166 arrests) to May 2022 (289 arrests), putting increased pressure on the sector.

The workload for Duty Lawyers, particularly where bail is opposed, is gradually increasing with a drop in April (aligning with COVID and public holidays), as seen in the following figure.

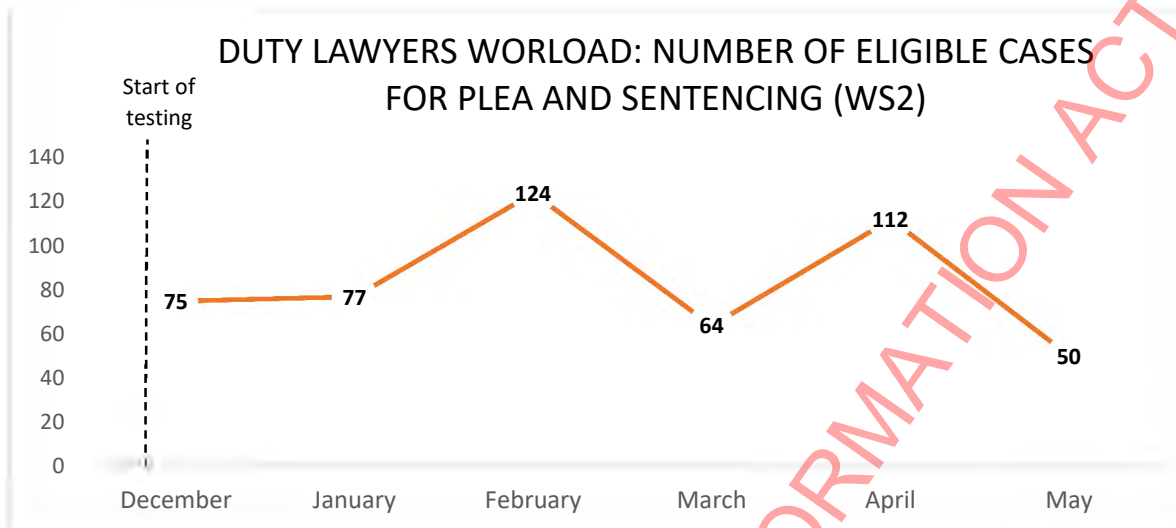
Figure 1: Workload WS1 arrests where bail is opposed & those available to Duty Lawyers, manual record



Note: available to Duty Lawyers when not assigned to previous counsel (e.g. Breach of Bail)

Quantitative data about workload pressures relating to Workstream 2 looked at matters in scope (6 months to 7 years) for pleas and sentencing. The data shows peaks in February and April - see Figure 2. In addition, April was the month with fewest unaffected working days available (COVID, public holidays, leave of key personnel - Figure 3 overleaf).

Figure 2: Workload for WS2, matters in scope for plea and sentencing (6 months to 7 years), manual record



Personnel

There is both a positive approach overall to the efforts of various parties and a recognition of challenges, as seen in the following themes arising from interviewees:

- There is a good criminal bar –a mix of seniors and juniors; other lawyers are now trying to get on duty team; good Duty Lawyer Supervisor, Lawyers and prosecution; young prosecutors are good; probation officers speak up for victims; lucky to have Victim Advisors who are all Māori or Pasifika, suited to community; it is easier to work in with people when you know each other; “we cover for each other.”
- A high turnover is experienced in Hamilton staff - Lawyers, Registry and prosecutors; also inexperienced prosecutors; “[CPIP] jumped into a system that was broken” - previous system was “alienating” experienced lawyers, Duty Lawyer Supervisor needs to know the staff capabilities
- Judges want to get cases in mid-range and moderate offending, happy to get them dealt with on a same day basis, are available for resolution (via joint memos); experienced judges get through paperwork quickly, judges are reasonable - on board with changes; diversity in judges is better; magistrates delays affect hearings.
- “We don’t have the full support of prosecutions here” - need a governance group to make sure changes and behavioural shifts needed, are made; [idea of all organisations] working together has not made its way down from the top
- Hamilton can be resistant to change, or people are tired of change because of a “tsunami of changes” in the last few years, feels like being a guinea pig, questioning “who’s putting their hand up to say we’ll do it?” “this is only April/May and we’re already exhausted”, ideas of what worked well somewhere but didn’t suit Hamilton
- Technical coaches around the country but not in Hamilton - applies unfair pressure on court registry officers but they are never recognised; overall there is a really experienced team in Hamilton; changes are dependent on experience of judiciary, bar and prosecution team
- “Stakeholders will continue to roll things over”, registry staff may not be confident in their registry powers, which can allow adjournments to carry on.

Facilities

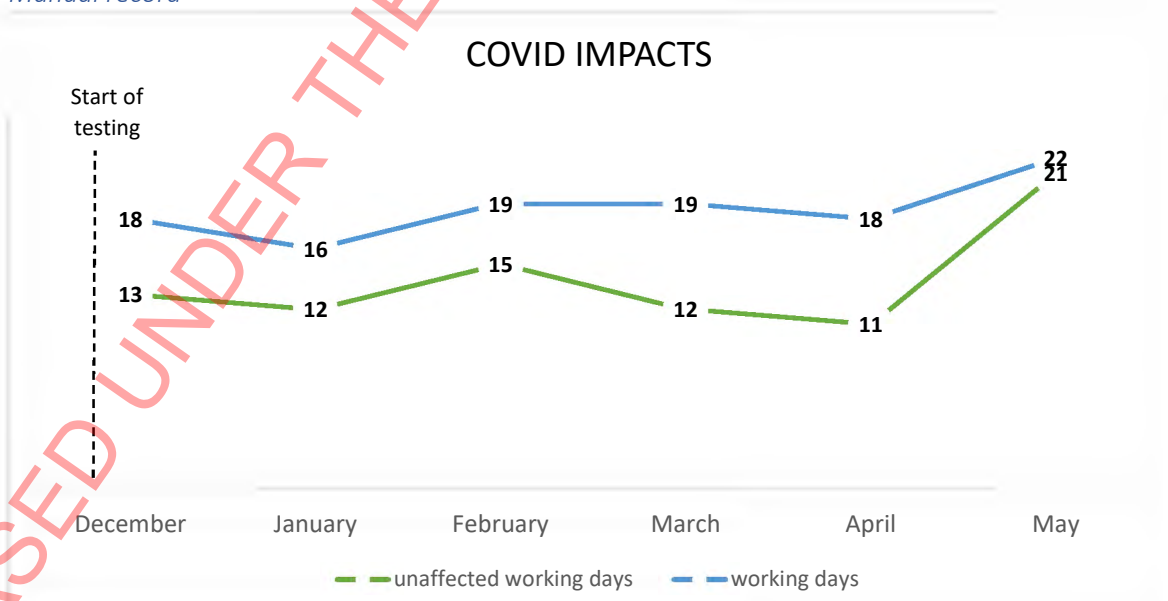
A range of perceptions about the physical space in Hamilton were expressed, and while it was acknowledged that this is a test phase, the themes identified were:

- Improved processes need a Court building that reflects the volume and type of business. The number of interview rooms and courtrooms is seen as sufficient, and the opportunity for Bail Support Services and Duty Prosecutor to work together in separate room is said to be working well. However, specific challenges were noted about physical spaces:
 - interviewees noted that the Registrar's court was difficult – unsafe, cramped, and a barrier for the key solution of Bail Support Services and Duty Prosecutor discussing bail addresses. The most significant perception was that a better Registrar's court space would probably facilitate better case resolutions.
 - The room where Bail Support Services and Duty Prosecutor work together can apparently get noisy, with a privacy risk and is a barrier for lawyers approaching the Duty Prosecutor.
 - The move for Victim Advisors (VAs) to level one means that victims are safer without going through public areas, but VAs feel out of the loop and the duress alarm may not be adequate. However, locating VAs and Probation Officers nearby helps with communications about sentencing issues.
- Technological facilities were noted as challenging: AVL or VMR links are still limited, and improvements could help workflow; also Wi-Fi access is needed.

COVID impacts on workload

Data on COVID impacts has been used for interpretation of case progression. It appears that case progression (sentencing and pleas) could have been impacted most in April; the most available working days were in the months May and February.

Figure 3: Number of working days that were not affected by COVID (resources, court closed), public holidays and annual leave of key personnel (Duty Lawyer Supervisor, Duty Prosecutor) Manual record



Note: Working days were: calendar working days, public holidays and court closed days excluded. Unaffected working days were: calendar working days, public holidays, court closed days and annual leave/isolation periods of key personnel (Duty Lawyer Supervisor, Duty Prosecutor) excluded.

Comments about the COVID impacts included:

- It was the worst time to start CPIP – the massive impact of COVID
- Many restrictions and Video Communication Links issues exist; makes it increasingly difficult and stressful, such as not being able to have face-to-face interviews with victims
- Staff are tired, extra hard with constantly changing COVID rules/environment.

Overarching qualitative and quantitative findings

Positive overall impressions of CPIP

Interviewees generally support the CPIP objectives; and most effects can be seen in Workstream 1. Most interviewees thought there were fewer adjournments, people are getting through the system quicker, stopping churn and resolving matters.

The Duty Prosecutor role is critical for getting things resolved and getting more information for Duty Lawyers; the Duty Prosecutor can access the Police Database and officer in charge for more information on the day.

“A lot can happen in one day – a bail application is made, then it is declined, then they ask for sentence indication and then sentenced on the day. Prior to CPIP that would have taken 3-4 months.”

The key seems to be having the right personnel. For instance, some said that judges seem to be fitting more work in and extra resources are good (Duty Prosecutor, Bail Support Services). Interviewees are impressed with how case files are being managed; there seems to be less workload for registry and fewer Legal Aid applications.

Some said they think Duty Lawyers have the time they need to prepare a case and get the right result.

“CPIP forces us to make ourselves [Duty Lawyers] more available”; “more freedom to assist and be proactive”; “lawyers seem more organised”

CPIP is seen as suitable for low level offending/less complex cases and early stage; some felt that progress is better for early stage events (before plea).

Better communication and working relationships were noticed between professions. An example is the morning meetings between the Duty Lawyer Supervisor, Duty Prosecutor and Bail Support Services. The Duty Lawyer Supervisor identifies matters that need additional disclosure, summons matters, before first appearances and tells the Duty Prosecutor and Duty Lawyer about those. Support for the morning meeting included:

“A really good tool”; “you can front-foot a lot for the day”; “can see the nuances, have discussions about arrest and opposed bail”

Victim Advisors were able to contact most victims before the defendant’s first appearance.

Negative overall impressions of CPIP

Some negative impressions were identified about CPIP solutions and context: Duty Lawyers progressing serious cases on the day, canvassing victims' views of restorative justice before first appearance and facilities/technology that did not support CPIP objectives and implementation concerns.

The new policy for Duty Lawyers was perceived by some as unfair: Some are missing out on work, Lawyers are not working as well together; it needs to be clearer who is on the Duty Lawyer roster; it was perceived that fewer Duty Lawyers are on the roster than before CPIP. Other comments included:

- Duty Lawyers tend to agree that not everyone should do serious charges, some do not have time while on duty; it is "not appropriate" more serious cases seem to take longer; "always elect trial by jury to preserve [defendants'] position"; "should not do same day sentencing and pleas on most of the charges"
- Policy changes have led to bail applications that are not in the best interest of the defendant; "defendants have a right to see full disclosure, not just charging documents"

Several were concerned that the Duty Prosecutor and Bail Support Services are not available in the afternoons. Some indicated that filling the Duty Prosecutor role has been difficult; they felt a consistent face is needed in this role. Other work – discussing disclosure, summary of facts, charges – was considered more important than address checks.

Pre canvassing victim views on RJ is seen by some as inappropriate; with possible negative effects on victims - confusion because of 'wrong timing' and 'retraumatising' with every contact from the court. "Even though it might be a stolen handbag it can be traumatising to consider RJ" at this stage. Other effects were an increased but not meaningful workload for VAs; and CPIP is still defendant-focused. Many cases were out of scope for this solution, so the impacts are similarly limited.

Some impressions of the implementation revealed other concerns: it seems like an information vacuum after launch; "have been told this is what it is, you have to make it work" 'sometimes they walk away too quickly, don't oversee and tweak things'; there hasn't been time for everyone to have input to solutions, or give credit to the newer staff members' views.

Impressions about progressing bail

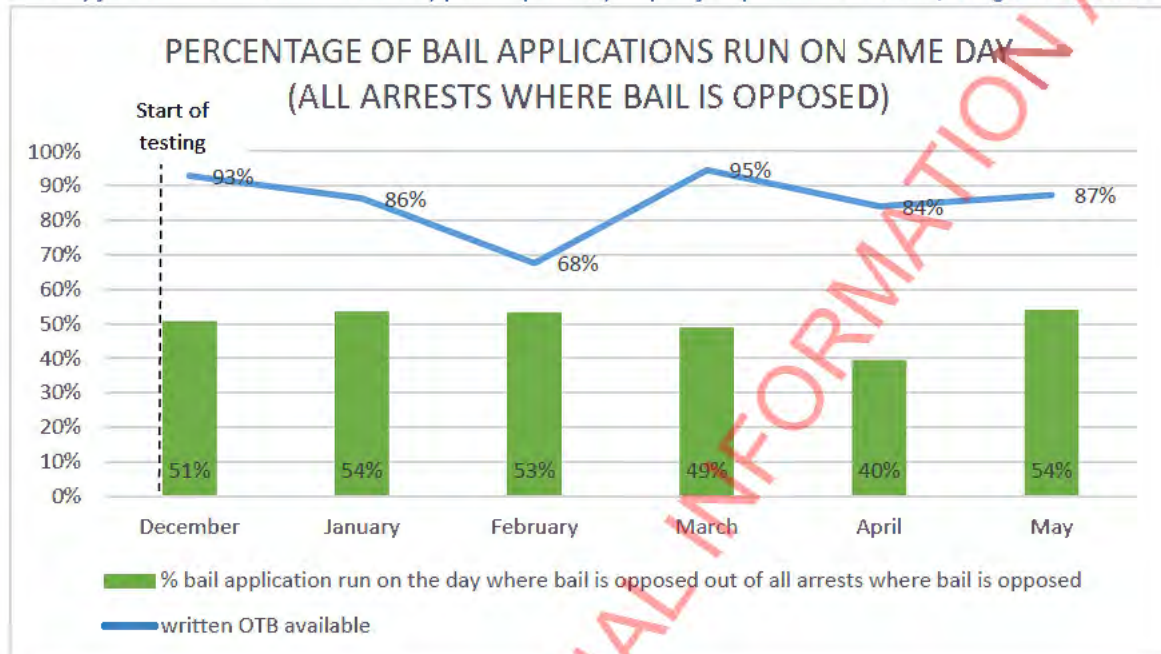
Almost all said CPIP was helpful in progressing bail – some saw the Duty Prosecutor role as more important, others saw the Bail Support Services role as more important. Early arrest court events have more time for preparation than afternoon arrests, and are therefore more likely to get bail rather than remanded in custody, and perhaps because Police and Bail Support Services are checking bail addresses in the morning but not the afternoon. Other views were:

- There are still issues with disclosure; Duty Lawyers are trying to work with prosecution to solve this; first appearances that are not arrest should not be forgotten
- Cases with many complainants are too complex to be resolved quickly
- Address suitability check is not necessarily a victim safety check; this is complex to achieve with extended whānau or connection to gangs
- "A focus on bail allows court to deal with low hanging fruit quickly."

Figure 4 shows that for roughly half of all arrests where bail is opposed, a bail application is run on the day. Numbers dropped in April, this is likely due to the absence of Duty Lawyer Supervisor

and Duty Prosecutor (a week each). Availability of written opposition to bail statements do not seem to affect the overall number of applications run. No baseline data for pre-December was available but baseline is assumed to be not zero.

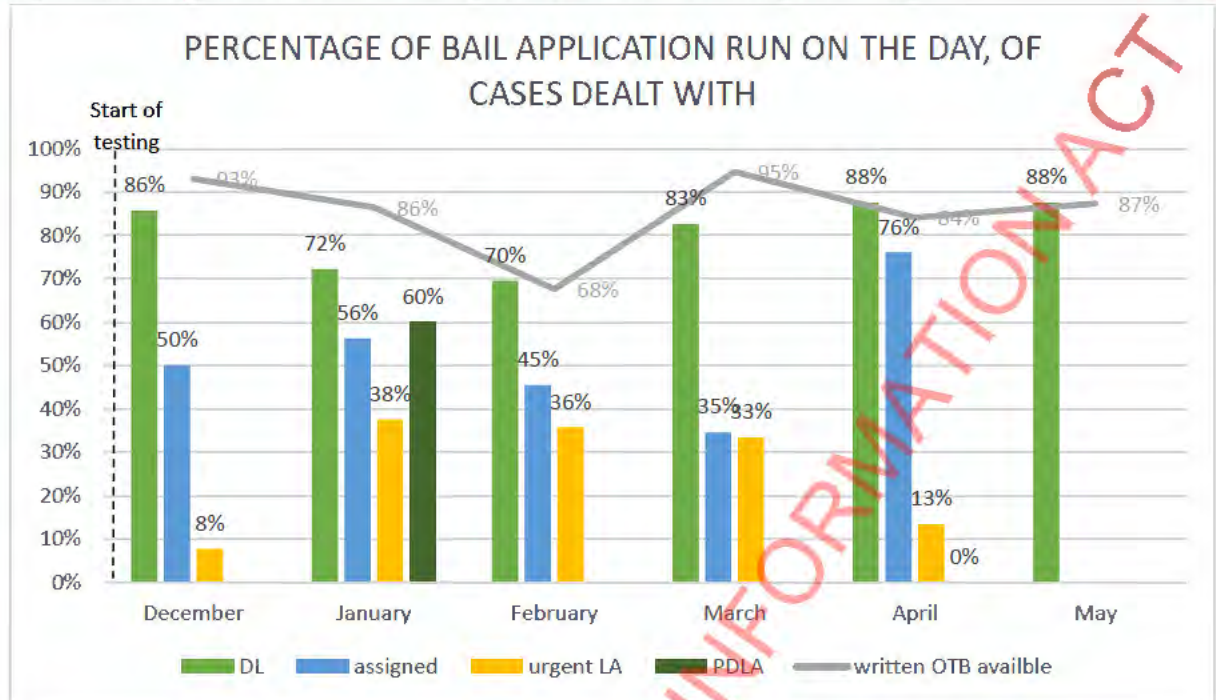
Figure 4: Percentage of bail applications that were run on the same day (by Duty Lawyer and others) for all arrests where bail is opposed (no scope specified). Manual record, Target: Increase



Note: Written opposition to bail only includes records where police have supplied written opposition. It excludes any written opposition that may be filed by a different prosecuting agency. Bail application run on the day data collected is based solely on data entered into CMS or TSM by users.

When breaking bail applications run on the same day down into type of counsel (Figure 5), Duty Lawyers run around 80% bail applications on the day with the largest decrease in February, the month in which written opposition to bail were provided least regularly.

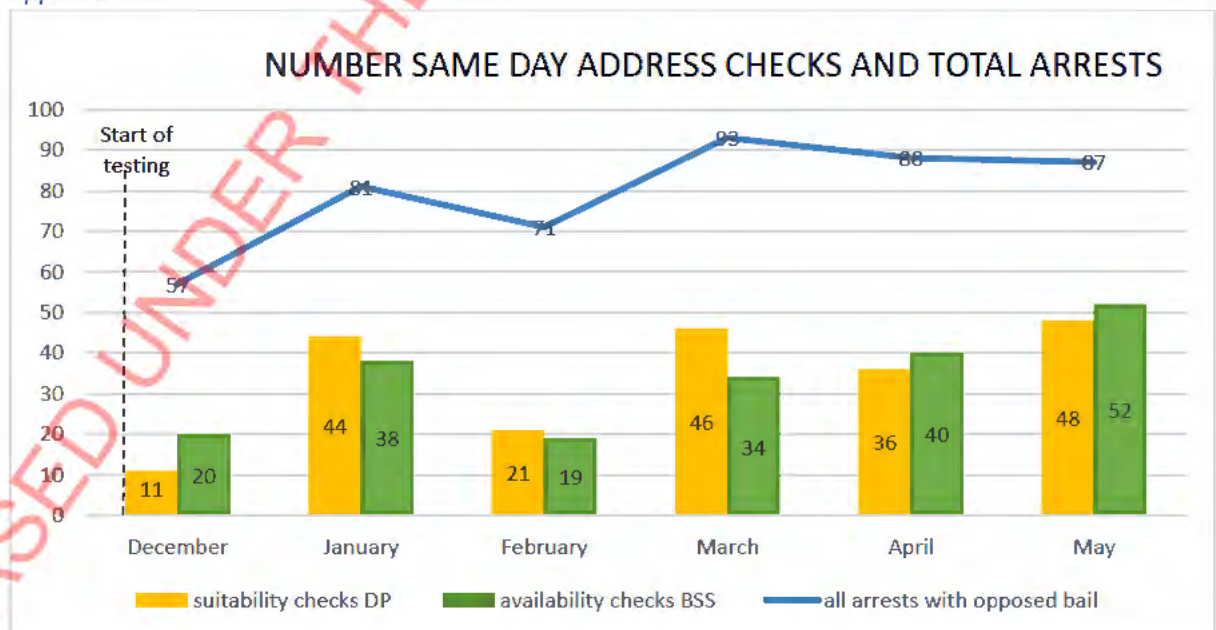
Figure 5: Bail applications run on the day out of cases dealt with by counsel type



Note: Bail application run on the day - data collected is based solely on data entered into CMS or TSM by users. Data on who actioned applications relies in part on duty lawyers claiming the higher duties fee.

Around 40 address suitability checks were performed by the Duty Prosecutor per month (Figure 6, see section 'Overarching quantitative measures' for more detail), which was used as a proxy for total number of address suitability checks done by Police. The number of address suitability checks does not fully align with number of address availability checks done by Bail Support Service. However, generally, an impact on total number of arrests with opposed bail can be observed.

Figure 6: same day address suitability and availability checks and number of total arrests with opposed bail.



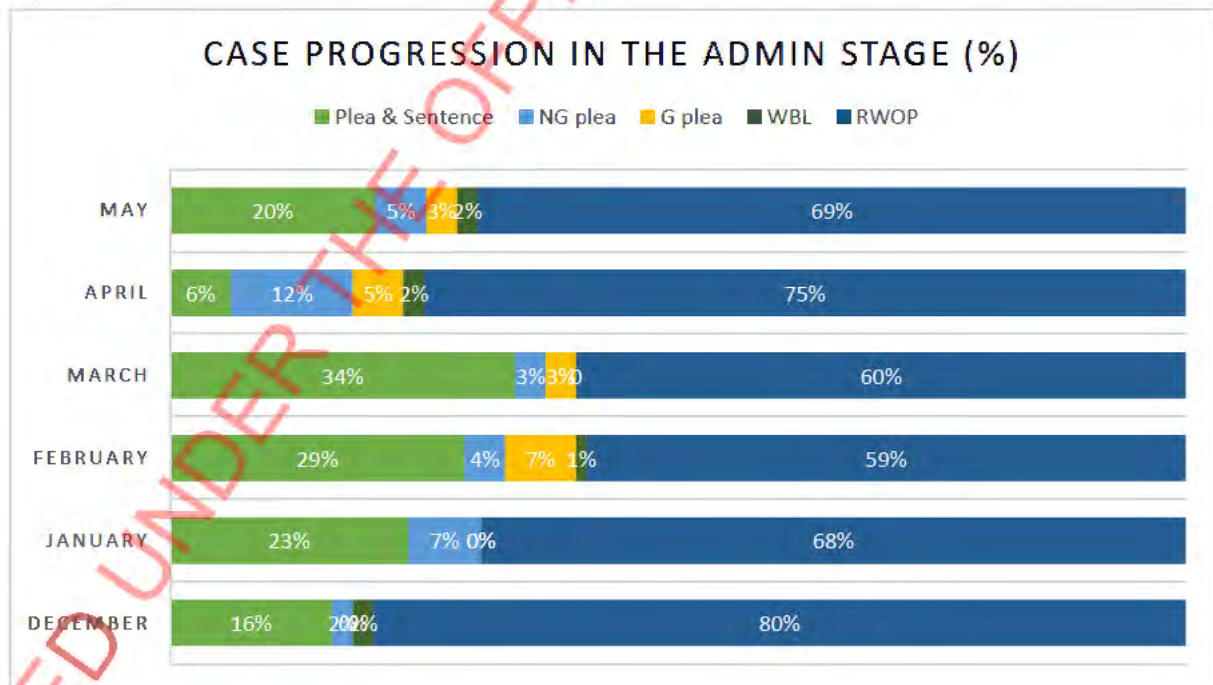
Impressions about progressing cases and sentencing

Interviewees were less certain about the changes in progressing cases and sentencing than about the changes in progressing bail. Comments included:

- Stand down reports are good, but uptake is not good so far.
- “Communication about it may be the issue, could be the legal aid payment system” (get paid more if they put it off).
- WS 1 and 2 do not seem to follow through to the rest of the court process
- “CPIP means progressing matter without being the assigned lawyer;” some Duty Lawyers were doing sentencing anyway without payment and CPIP had no influence.
- Police seem more proactive, and the Duty Prosecutor sorting it out quietly in another room helps to move things along.
- For victims “the new process makes it a lot quicker, but some may not be happy with that, they may think it is not the right outcome, even if it is a quicker resolution.”

Case progression for cases in scope (Figure 7) has improved from December to May overall with more cases entering pleas and being sentenced on the day on average. Case progression was slowed down in April, likely due to absences of Duty Prosecutor and Duty Lawyer Supervisor as well as a high workload in that month.

Figure 7: Case Progression in admin stage of matters in scope (6 months to 7 years), Manual record



Note: The data collected is based solely on data entered into CMS by users. There are no data reconciliation checks made between CMS and the physical court document. There could be instances where the data entered does not truly reflect what occurred on the day, due to inaccurate data entry and/or

understanding. There are instances where more than one outcome occurs -example: charge WBL and other charges RWOP etc, Instances where matters are scheduled for CRH or sentencing and no plea is recorded

When looking at percentages of first appearances disposed (Figure 8), a gradual increase can be seen with more events being disposed over time. The decrease in April is potentially due to high workload and few available unaffected working days in that month.

Figure 8: Percentage of first appearances disposed for cases within scope (6 months to 7 years), CMS with context of unaffected working days and workload for Duty Lawyer (Manual record)

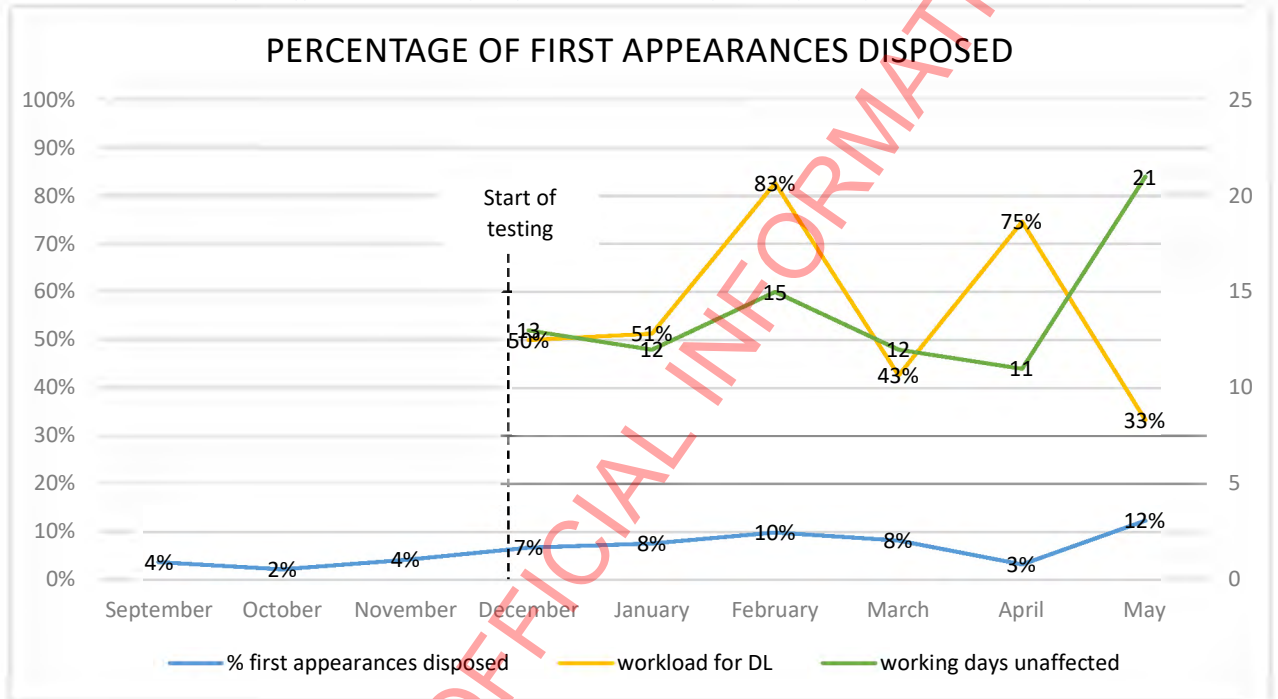
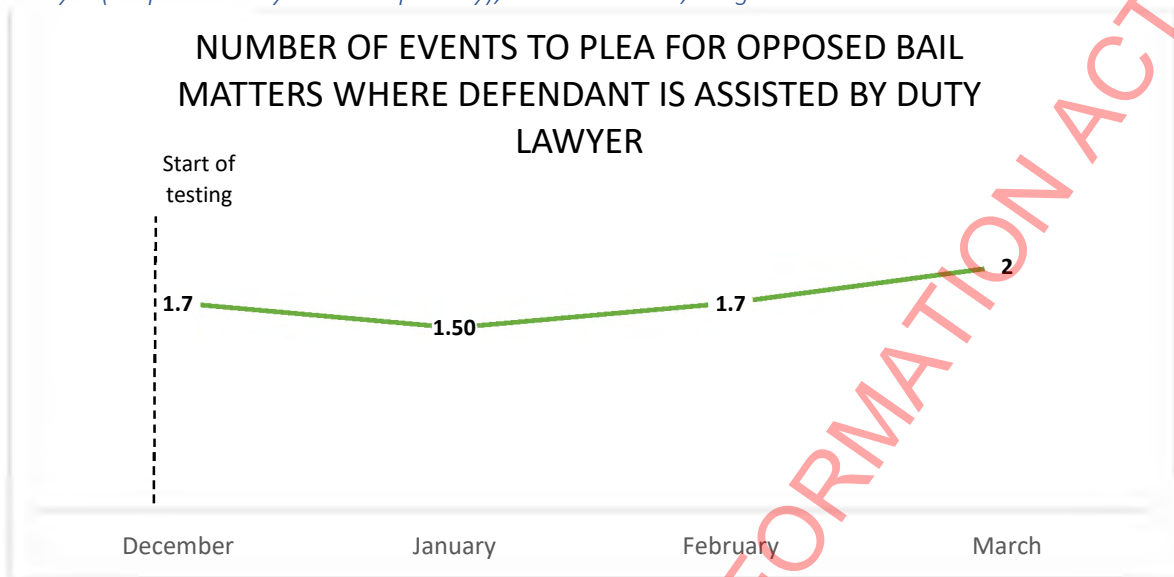


Figure 9 shows the number of events to plea for matters where bail is opposed (assisted by Duty Lawyer). No pre-CPIP data is available (manually collected since the start of CPIP); the national average number of events for Category 3 was 3.8 in December. It should be noted that Category 3 cases take longer on average and thus data cannot be used as a direct comparison. Nonetheless, data for December to March show good values for Hamilton.

Figure 9: Number of events to plea for opposed bail matters where defendant assisted by Duty Lawyer (scope 2 to 10 years max penalty), Manual record, Target: Reduce



Note: Data relies partially on the Duty Lawyers claiming the higher duties fee.

Suggestions/improvements, tweaking solutions

Given the opportunity to suggest improvements, since this was a test site, many ideas came through. Some ideas suggested were already in place, and these have been excluded. The following were thought to make an improvement to the existing CPIP solutions:

Expanding scope

- Include Category 2 cases
- Lower-level charges could be included in Duty Lawyer extra remuneration
- Smaller courts work very differently so CPIP would work better in Rotorua for example.

Processes

A general comment was that CPIP has to be one step at a time, has to involve the staff, and recognise the timeframes required. Everyone needs to be on board to resolve matters efficiently. Specific suggestions were:

- Put more resources in at the beginning, 99% cases are resolvable at the early stage
- Police CCTV footage could be ready for first appearance
- Pre-sentence reports could be more concise to be done on the same day
- Initial disclosure could be available in the Registrar's list for counsel to grab
- Adding Summary of Facts to the Warrant to Arrest documentation
- Improve the Victim Advisors database
- Pay Duty Lawyers a single payment for both bail application and guilty plea/sentencing
- "Look at disclosure thinking about a plea instead of thinking about bail"
- Have a lessons learned session
- "CPIP is only going to be successful if the lawyers take the opportunity to have those conversations about resolutions
- Have the judiciary rostered over 2 weeks period

- Maybe defence does not need to get the full disclosure: first see the charges, what's possible to resolve, then look at getting the full disclosure.
- When Police are doing Victim Impact Statements, they could canvass views on Restorative Justice
- Improve parking situation for Bail Support Services, have a work vehicle for address checks.

Interdependencies between solutions

The following solutions appear to be inter-dependent based on qualitative data and the following comments:

- Bail Support Services and Duty Prosecutor have to work together
- Cohesion needed with Corrections
- Duty Lawyer work depends on Police work before hearing – disclosure, defendant brought over in time, victim impact statements and reparation schedules prepared
- Getting the custody list earlier is good for Duty Lawyers' preparation
- The Duty Lawyer Supervisor can check if lawyer is assigned previously; more efficient for Duty Lawyers before seeing client
- Stakeholders need to improve technology as well - Corrections and Police, especially remote technology from Police
- Service manager setting up the Duty Prosecutor space

The morning meetings between Duty Prosecutor, Bail Support Services, Duty Lawyer Supervisor, discovered that:

- The trial period included all Duty Lawyers, but this is not necessary; some say Bail Support Services do not need to attend, others see it as necessary
- Duty Prosecutor brings paperwork especially for cases with opposed bail to discuss the issues, improving efficiency

Apparent impacts of communication between the Duty Prosecutor and Bail Support Services for checking bail addresses:

- Fewer adjournments and overnight custody
- All lawyers not only Duty Lawyers use it
- Address checks are regularly checked on the day – “it has improved since CPIP” - they check several addresses to see if they are suitable and get phone numbers
- Gives Duty Lawyers a heads up, “so the defendant can't give you the same wrong address again”.

Conclusion

The qualitative data showed that interviewees were generally in support of the CPIP objectives, with most interviewees mentioning their positive impressions such as perceiving fewer adjournments, reduced churn and more matters resolved in the admin stage. CPIP solutions for Duty Lawyers enable them to progress a case at the earliest opportunity and to be better prepared for a meaningful hearing, and the morning meetings between the Duty Lawyer Supervisor and the Duty Prosecutor contributes significantly to this preparation.

The majority of interviewees thought CPIP was particularly helpful in progressing bail, especially for bail address checks. Some saw the Duty Prosecutor role as more important for this, others prioritised the work of Bail Support Service for address check availability, but progressing bail requires both roles.

Results look promising in the quantitative data when narrowing down the scope to matters with opposed bail that were assisted by a Duty Lawyer: the number of events to plea is noticeably lower than the national average for category 3 cases (which can be used as an indicator). A bail application has been run on the day for half of all arrests where bail is opposed (all counsel types). Duty Lawyers have even run around 80% of bail applications on the day out of cases they have dealt with achieving comparable outcomes (remanded on bail versus remanded in custody) than other counsel types. This data appears fairly reliable but collecting more quantitative data is recommended.

For case progression—entering pleas and sentencing on the day—the role of the Duty Prosecutor was identified as critical and highly valuable. Stand down reports are also appreciated as a CPIP solution by most interviewees, although the uptake of this solution was not very visible and more quantitative and qualitative data are required.

Positive effects in workstream two can also be seen in quantitative data when looking at percentages of first appearances disposed - a gradual increase with more events being disposed in later months. Further, case progression for cases in scope has improved from December to May overall, with more cases entering pleas and being sentenced on the day on average.

Some negative impressions of CPIP were expressed by some but not all. The new Duty Lawyer policy for progressing bail was identified as possibly unfair if some are missing out on work because more lawyers are on the roster. Another view is that the new policy puts pressure on Duty Lawyers to do more earlier, and has led to bail applications and guilty pleas that may not be in the best interest of the defendant, especially for serious matters.

Concerns were expressed about negative effects for victims, where they are contacted before first appearance to canvass their interest in taking up restorative justice. It was assumed victims may find it confronting to have to consider this while the offence was still fresh, however, no interviews were done with court participants to clarify effects.

Interviewees had mixed views about the physical court space and facilities and it is clear that where people are located and the technology available, can have a considerable influence on processes and case progression

Key measures (CMS)

The following results include the key measures agreed in the CPIP design phase

Limitations of CMS data affecting workstream results

Assessment of the CMS key measures has revealed that the measures are suffering from high level limitations that are restricting the interpretation of overarching workstream results. First, the measures only include cases that have already been disposed in a month, leaving out cases that were in scope but have not been disposed yet – the number of cases affected is unknown. Second, most of the measures include a lag, as it is counted backwards from the date of a certain event (such as bail application outcome or entering a plea) to the filing date. As the lag is not specified, we cannot track when we were doing well or poorly – we cannot attribute success or failure to time. Third, the measures include cases and events from weekends and public holidays, days where CPIP initiatives have not been in place, which is in contrast to manual records (only collected for weekdays) and makes it difficult to compare the results. Additionally, measures are reported with means (and not medians) so that they are likely to be affected by outliers (such as very complex but rare cases that have been in the system for a long time).

Workstream 1 Bail

Intended Benefit: Better Bail; Bail takes less time to be determined

Intended Targets for the key measures

The intended targets in the benefits logic map reflect the December 2023 targets on a national level, excluding the impacts of COVID. In the graphs below, monthly updated national targets (including covid impacts) are compared to monthly actual values in Hamilton for each key measure.

WS1 M1: Reduce average number of days remanded in custody before bail is granted, from 42 to 36

WS1 M2: Reduce average number of events while remanded in custody before bail is granted, from 3.6 to 3.4

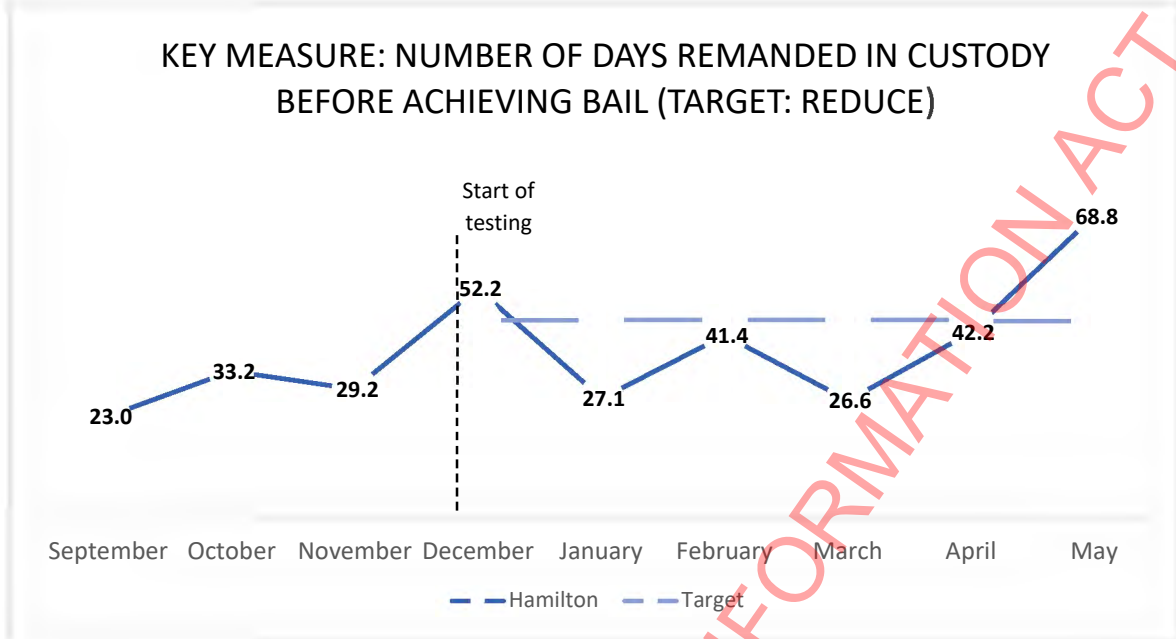
WS1 M3: Increase proportion of cases where eligible defendants achieve bail at their first event, from 89.6% to 90.8%

Assumptions for WS1 M1 -M3:

- Measures are not weighted by seasonal changes, COVID impacts or current workload, the target takes COVID impacts into account
- Scope of cases included in the measures are:
 - bail applications run on the day, warrant to arrest, breach of bail, first appearance

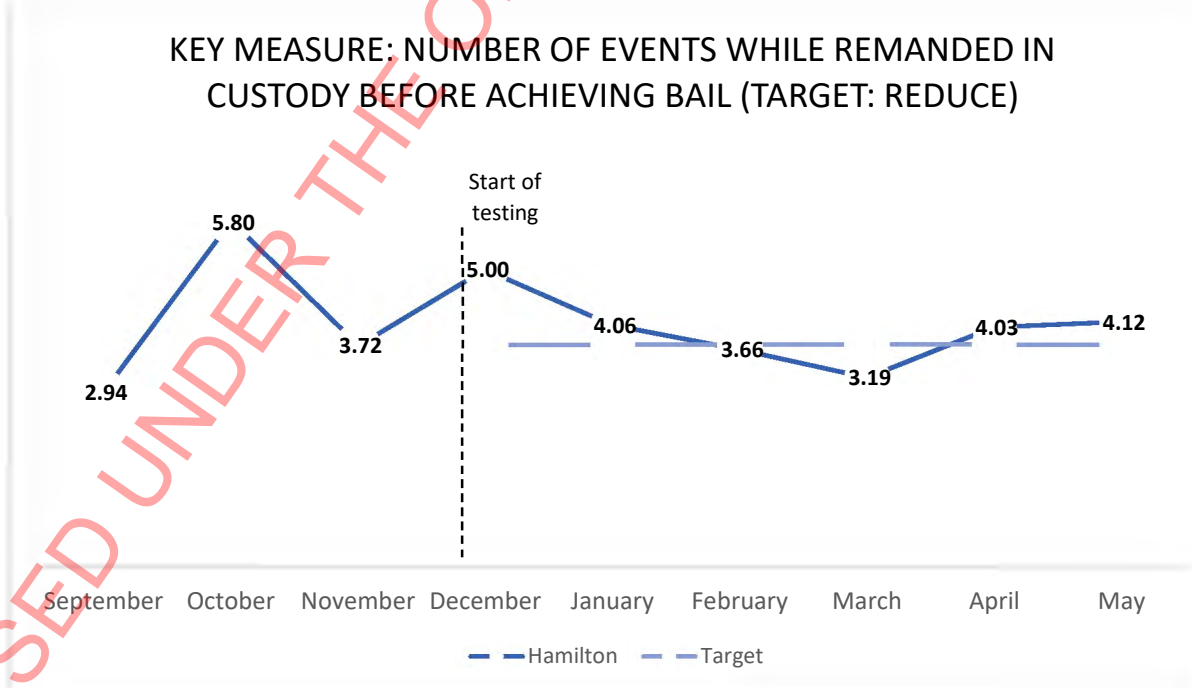
Key Measure WS1 M1, Reduce the average number of days remanded in custody before achieving bail. The data (Figure 10) does not provide reliable trends yet and we do not expect to see a shift for some time because the measurement is taken once a case is disposed.

Figure 10: WS1 M1 Average number of days remanded in custody before achieving bail (all cases)



Key Measure WS1 M2: Reduce the number of events while remanded in custody before achieving bail; from 3.6 to 3.4. The data (Figure 11) show a decrease in average number of events from December to March and an increase again in April and May. The target has only been reached in February and March. No contextual factors could be clearly identified to explain the fluctuations as the length of the lag in the data is unknown. Best values have been pre CPIP in September.

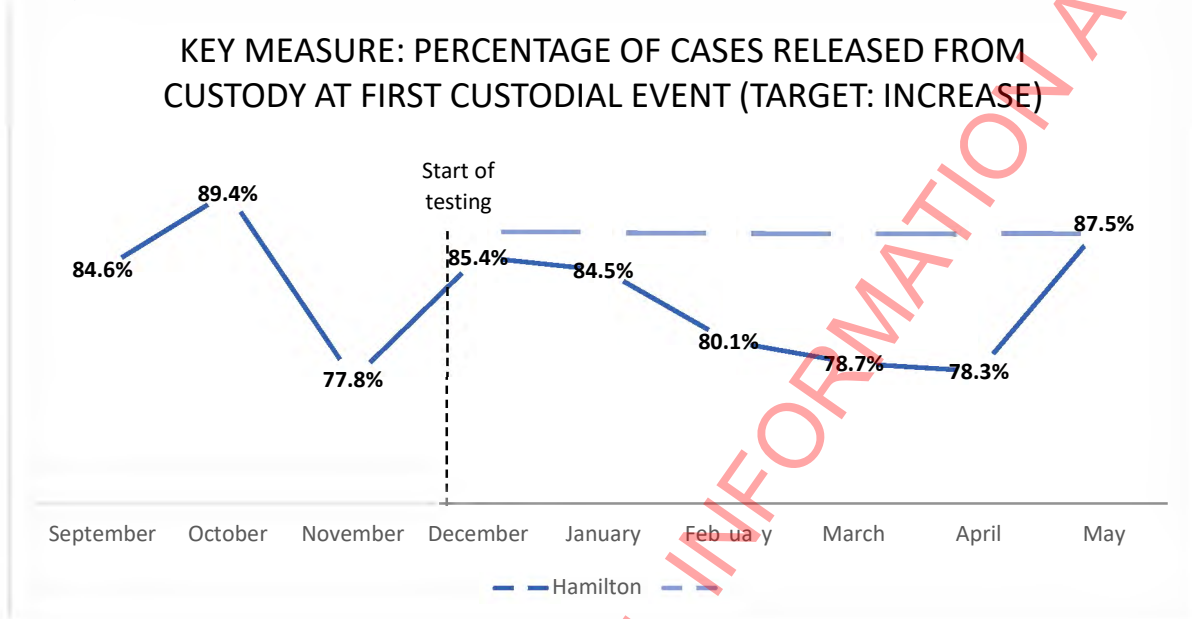
Figure 11: WS1 M2 Average number of events remanded in custody before achieving bail (all cases),



Key Measure WS1 M3: Increase the percentage of cases released from custody at first custodial event from 89.6% to 90.8%. No consistent improvement can be observed with the current scope

(Figure 12). Since the CPIP implementation in December, the target has been reached in May only.

Figure 12: WS1 M3 Percentage of cases released from custody at their first custodial event (all cases)



Workstream 2 Admin stage

Intended Benefit: Effective progression - cases require fewer events in stage

Intended Targets

The intended targets in the benefits logic map reflect the December 2023 targets on a national level, excluding the impacts of covid. In the graphs below, monthly updated national targets (including covid impacts) are compared to monthly actual values in Hamilton for each key measure.

WS2 M1: Reduce average number of events for Category 3 cases to enter an initial plea, from 3.8 to 3.2

WS 2 M2: Increase percentage of guilty pleas occurring in the Admin stage instead after Admin stage, such that 70% of cases are resolved by guilty plea after Admin, compared to the current 74.1%

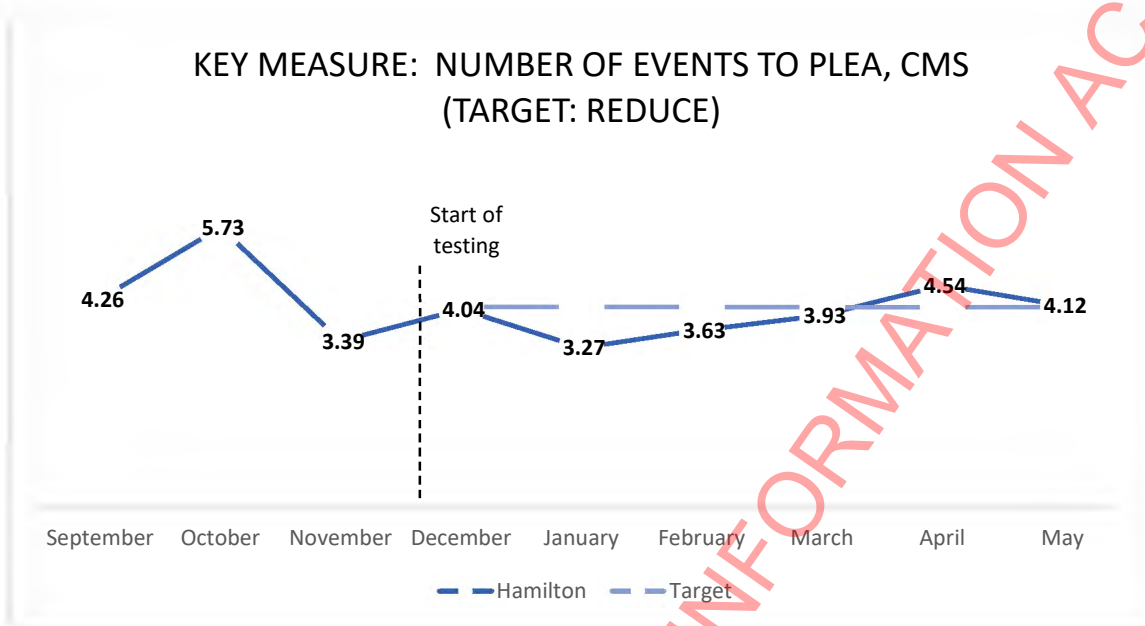
WS 2 M3: Increase percentage of cases (with a maximum penalty of 2 – 7-year imprisonment) sentenced on the day, from 28.0% to 31.0%

Assumptions WS2 M1-M3

- Measures don't take into account cases that are not able to be resolved (without tracking cases backwards from resolution and seeing which make a late guilty plea)
- Plea entered event is included in the count

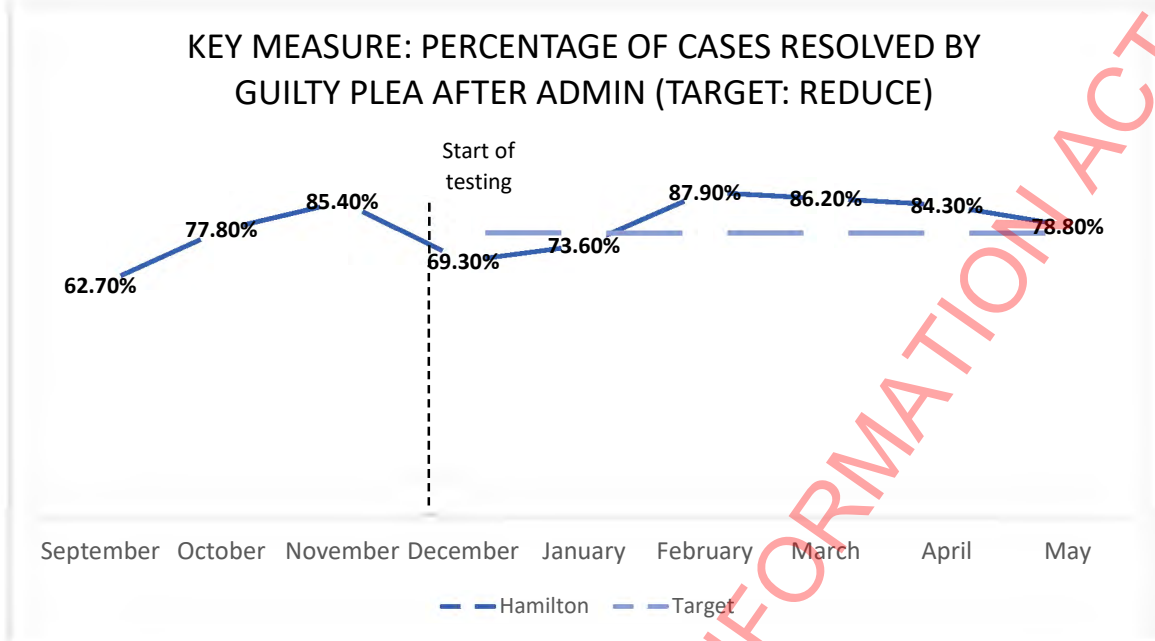
Key Measure WS2 M1: Reduce the average number of events for Category 3 cases to enter an initial plea, from 3.8 to 3.2. Figure 13 shows that the target of 3.7 has not been reached in most months and the lowest number of events on average are in November and January and can thus not be attributed to CPIP effects.

Figure 13: WS2 M1 Average number of events for cases in scope (6 months – 7 years) to enter an initial plea, CMS



Key Measure WS2 M2: Increase the percentage of guilty pleas occurring in the Admin stage, such that 70% of cases are resolved by guilty plea after Admin, compared to the current 74.1%. There is no clear trend in the data - Figure 14. No specific CPIP effects can be observed as the lowest numbers are observed for September (pre-CPIP). As workload peaked in February for WS2, this could be linked to the increase in this measure. In addition, fewer unaffected working days were available in months March and April to progress cases which was impacted by COVID. If there are an elevated number of cases it will be hard to impact this measure until the backlog is cleared. Also, there would have been an increase in warrants because of defendants not appearing during periods of lockdowns.

Figure 14: WS2 M2 Percentage of cases resolved by guilty plea after Admin (6 months – 7 years)

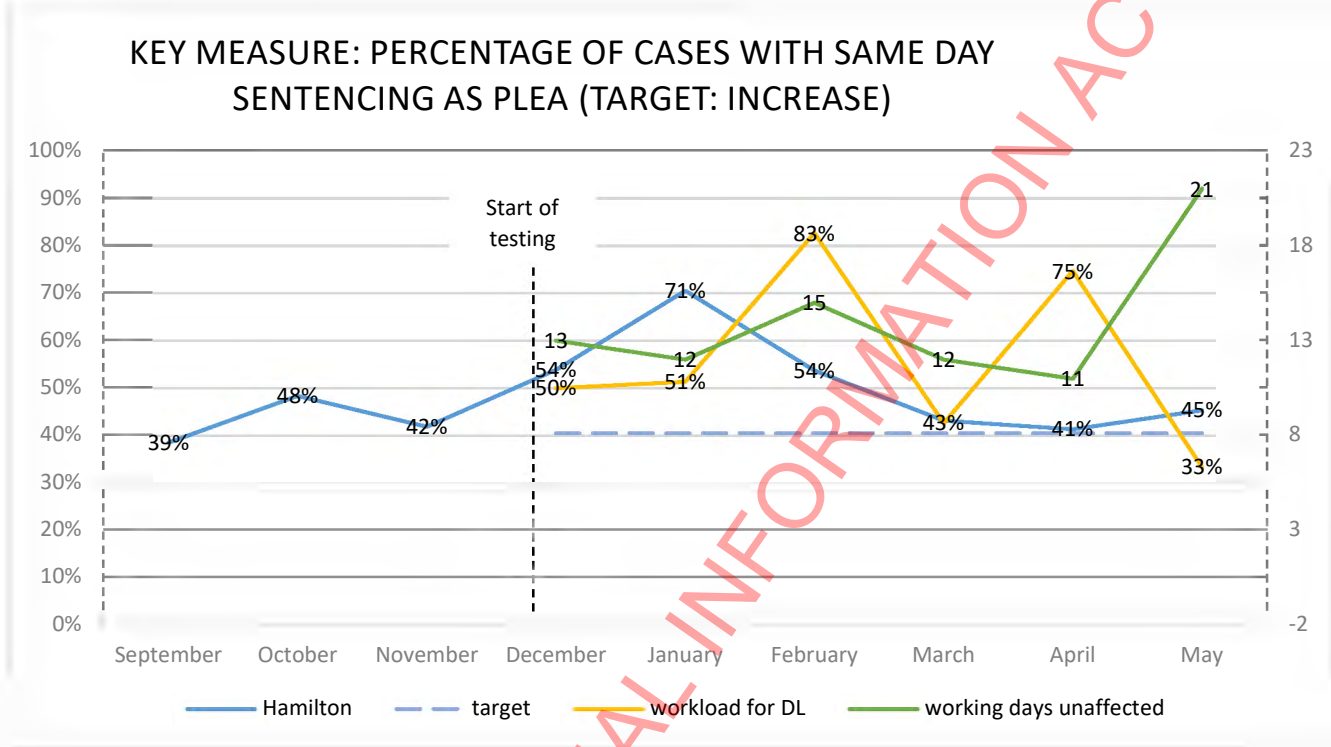


Key Measure WS2 M3: Increase the percentage of cases (with a maximum penalty of 2 – 7-year imprisonment) sentenced on the day, from 28.0% to 31.0% . Figure 15 below illustrates the measure (blue line). Values for Hamilton are far above target, confirming that cases are being progressed quickly. However, two things need to be noted. First, the high in January seems to be an exceptionally good month and was not maintained in the later months; second, numbers from March to May do not differ much from pre-CPIP values (September to November).

January could be high because the Duty lawyer service is maintained without interruption during January but assigned lawyers often take a break. Similar to WS2 M2, COVID may have an impact – as progress is made on clearing the backlog of cases in review on not guilty pleas, the percentage of cases sentenced on the day will reduce.

While WS2 workload does not appear to have an impact on case progression (yellow line), the number of available unaffected working days (green line) shows some similarities in the overall trend. Thus, it might have affected the case progression to some extent.

Figure 15: WS2 M3 Percentage of cases with a maximum penalty of 6 months - 7 years imprisonment, sentenced on the day, with context of unaffected working days and workload for DL: CMS (Target: Increase)



Findings for Police Solutions

Arrest disclosure

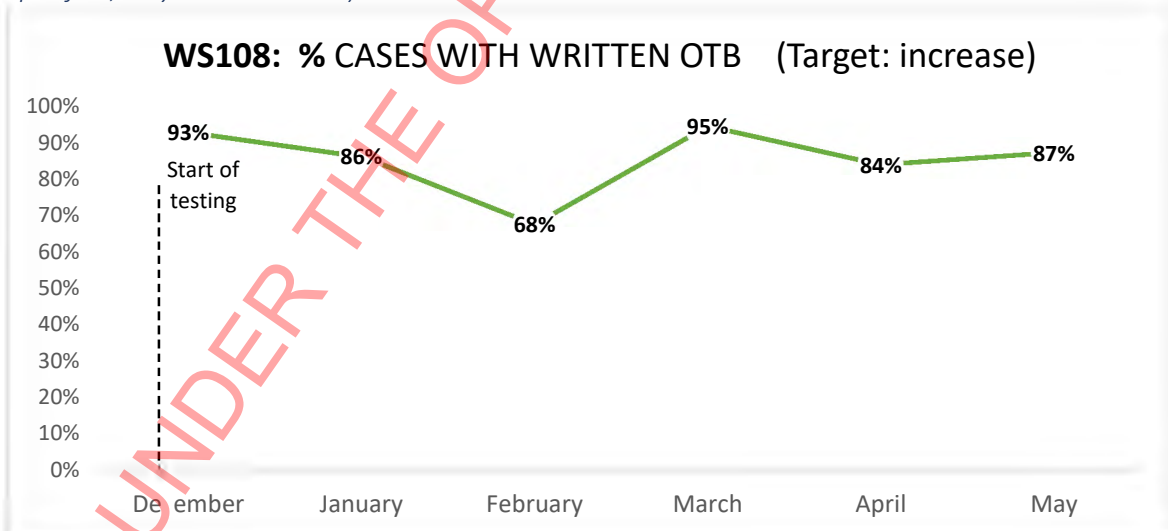
108 Arrest disclosure and access to defendant (high priority):

- a) Duty Lawyer is notified of all oppositions to bail and reverse onus applications by 8.15am and receive arrest disclosure, initial disclosure including victim views and written bail oppositions before 8.15am.
- b) Cell transfers by 8:15am – meaning participants will be available to counsel by 8:30am

Arrest disclosure only for opposition to bail (OTB) and reverse onus applications has been measured from manual spot checks of email times. The data shows that this information has been sent electronically since CPIP started and has been received around 8.30 mostly (range 8am to 9.30am). Further data from Police would help to check the accuracy of this manual record.

Figure 16 below shows the percentage of cases where written OTB was included in the arrest disclosure. Written OTB is available with arrest disclosure since CPIP in about 85% of the cases, although this was less reliably the case in February. This low number in February cannot be explained by context factors such as a higher workload. No pre-CPIP baseline data is available for availability of written opposition to bail. Feedback from Duty Lawyers indicates that Police have provided OTB pre-CPIP; however, it could be late and was deemed unreliable.

Figure 16: Percentage of cases where OTB included out of total # cases, (Manual record, no scope specified, only Police matters)



Note: Written opposition to bail does only includes records where police have supplied written opposition. It excludes any written opposition that may be filed by a different prosecuting agency.

Provision of full arrest disclosure

Qualitative data gave a range of perspectives on the output from this solution. Comments included:

- Improvements were noticed in written bail opposition, and a noticeable difference in timing and frequency in mornings when the Duty Prosecutor identifies relevant cases; more and earlier paperwork is available before defendant interviews, but not so much difference in the afternoons.
- Duty Prosecutor reviews case files from 6.30am to 8am at PPS office, including opposed bail matters, family violence bail, checks arrest disclosure.
- Some noticed no change, still getting just Summary of Facts and charge sheet; reporting that they “still don’t get everything, especially on Mondays” but in general charging information is always/usually available before the bail hearing.
- It is dependent on lawyer’s skill level; experienced/senior ones do not need it

Some saw the benefit of more complete arrest disclosure for Duty Lawyers as being that:

- The process is more streamlined by knowing about opposition and address issues
- Duty Lawyers can take proper instructions in the first interview rather than going back again
- It is an opportunity for Duty Lawyers to share disclosure with Duty Prosecutor too

Quantitative data is not provided for this solution because of the difficulties of measuring in a comparable way, what arrest disclosure is needed (dependent on the case and history) and what is provided.

Time defendants are available for interview:

No quantitative data is available for the average time defendants are available for interview, but interviewees reported that:

- “There’s no change, fresh arrests are still slow, which is frustrating”
- “It is hard to say, Hamilton had COVID impacts but could be better now.”

Experienced Duty Lawyers felt that information and their competency is more important than the time defendants are available; there is an inaccurate perception that there was a problem.

Availability of additional disclosure and case progression

223 Additional Disclosure (key priority)

Additional specific disclosure provided at first appearance. Police to proactively release disclosure electronically to assigned counsel following notification from legal services.

The qualitative data showed a range of perspectives about additional disclosure as follows:

- There is no difference in completeness of additional disclosure
- Additional disclosure does not help progressing cases especially if they are complex
- PPS management team input helps
- The Duty Lawyer Supervisor gets additional disclosure before first appearance
- Get the charges sorted first then request full disclosure –is more efficient especially if Police are still printing it out before coming to court.

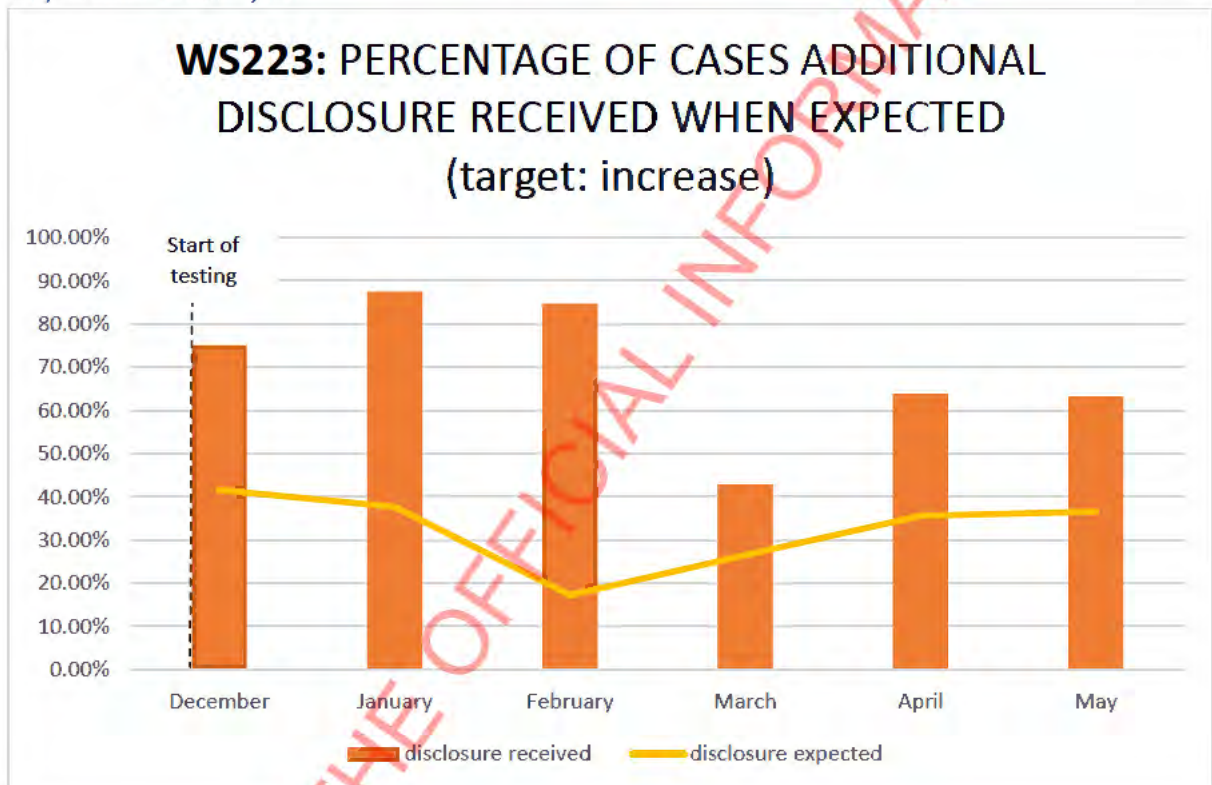
If the Officer in Charge doesn’t provide it, the [Police coordination system] can’t find what’s been disclosed in [the Police database], it’s meant to be saved in a certain folder, but junior staff don’t know why it’s needed.”

The quantitative data collected for this solution (Figure 17) was manually combined as a list of all cases where additional disclosure was expected and whether it was received. Caveats include:

- The data captured for disclosure received is based solely on whether Police send the additional disclosure through to the designated inbox. There might be instances where additional disclosure is provided on the day, without it being sent to the inbox.
- This data is based on manual inbox searches – there might be instances where the search functions used to identify additional disclosure for cases fall short.

Quantitative data show an improvement from December to February followed by a decline from March onwards suggesting that additional disclosure was provided less often for cases when expected (Figure 17).

Figure 17 Percentage of cases that where additional disclosure expected (out of all cases), percentage of cases where additional disclosure received (out of cases expected) Manual record, scope 6 months to 7 years



Note: The data captured for disclosure received is based solely on whether police send the additional disclosure through to the designated inbox. There might be instances where additional disclosure is provided on the day, without it being sent to the inbox.

113 Police address suitability check (medium priority)

When a charge is filed and an address condition is being considered by Police, Police to begin checking suitability of any proposed bail addresses.

s9(2)(f)(iv)

s9(2)(f)(iv)

s9(2)(f)(iv)

Victim Impact Statements and reparation schedules earlier

226 Reparation schedules & Victim Impact Statements (VIS) (low priority)

Earlier preparation by Police of reparation schedules & VIS

No quantitative data are available for this solution, but interviewees noted the following:

- It is not happening it could be fault of officer on the case
- VIS availability is still poor on day one
- Irregular and case by case availability of reparation schedules
- One said it has improved, you can enquire from Duty Prosecutor
- Missing VIS is a common cause of adjournments

There are other issues about Victim Impact Statements than what documentation is available for the disclosure that were mentioned, such as:

- Victims often don't see it/haven't signed it off, police wording is used instead of victim wording, and victims may disagree with the wording later in the process

- Issues with information flow, victim’s details not passed on to court taker (victim unaware), then not passed on to Victim Advisors (VAs)
- The VIS is a fluid document for 28 days and can be changed/updated but often is not.
- The following example was given about reparation effectiveness and impact:

“On sentence review, there was no reparation schedule, no victim details handed to the court taker, so that information hasn’t been entered. If they don’t enter details on the day of sentence a letter is not generated overnight, so the victim doesn’t get a letter - don’t have PPN sentence number, VAs still dealing with victims for reparation 6-10 months later because those details were not included.”

Duty Prosecutor/ Second Prosecutor

112 Duty/ Second Prosecutor to discuss bail and disclosure (key priority)

Second prosecutor available to the Duty Lawyer Service to discuss bail (arrest disclosure) and to discuss case progress with counsel in list courts (additional disclosure)

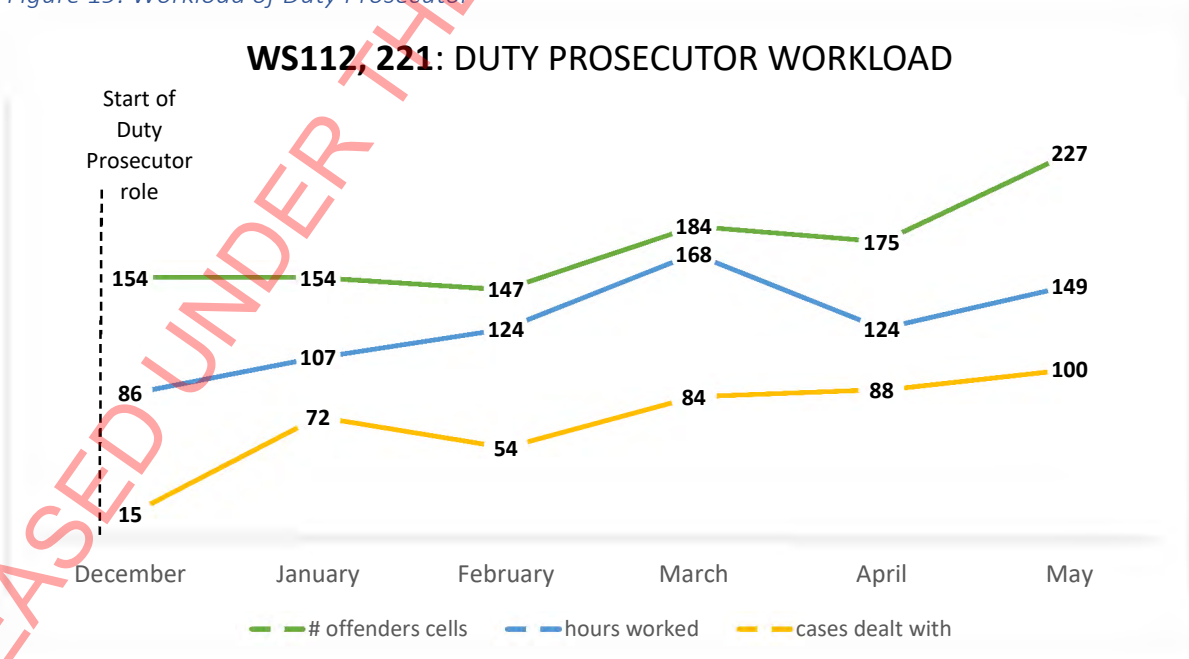
221 Second prosecutor to discuss case progress (key priority)

Second prosecutor available to the Duty Lawyer Service to discuss case progress with counsel in list courts (additional disclosure)

The findings about these solutions are presented together, as the work of the Duty Prosecutor is an inseparable and unpredictable mix of checking disclosure, charges and bail addresses, as well as discussions about case progression.

The quantitative data of the work of the Duty Prosecutor shows linear upward trends in hours worked and cases dealt with per month (Figure 19). Recorded are all cases the Duty Prosecutor assisted with, irrespective of CPIP scope. The Duty Prosecutor role was implemented in December 2021 and data was collected from this time (the baseline would be zero).

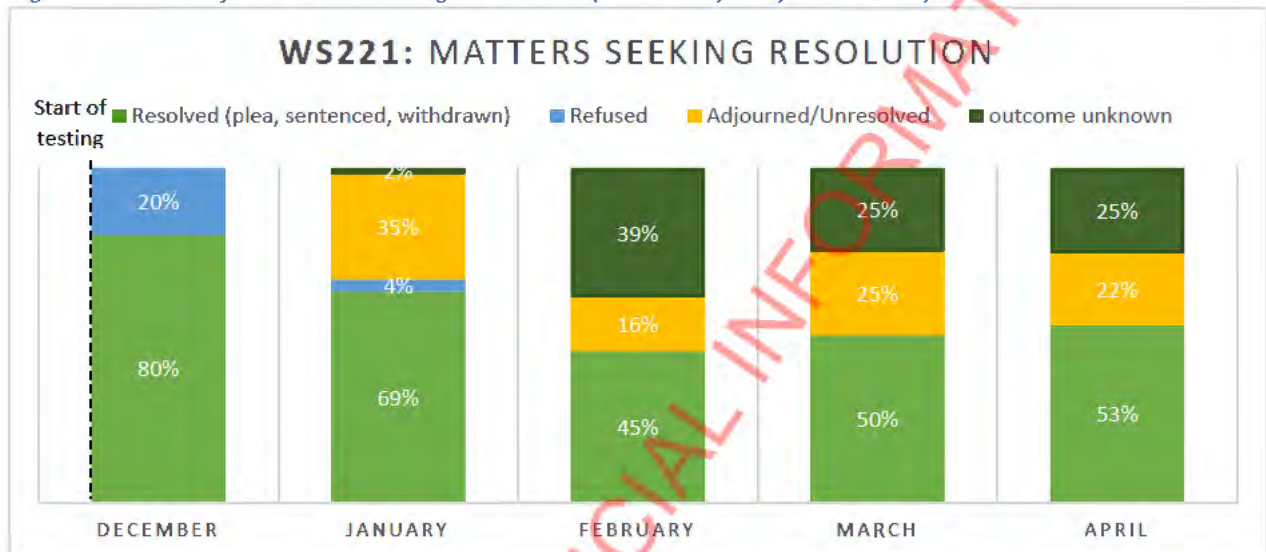
Figure 19: Workload of Duty Prosecutor



Qualitative data also shows very positive feedback; the Duty Prosecutor helps with case progression and resolution and does many bail address suitability checks. Attributing factors to success for bail progression are the combination of bail address availability checks done by Bail Support Services and good relationships to Duty Lawyers. Dependent factors are meetings with the Duty Lawyer Supervisor and the number of hours the Duty Prosecutor is available. Further detail from the qualitative data is supplied below.

Quantitative data (Figure 22) indicates that on average, around half of matters seeking resolution can be resolved.

Figure 20: Results for matters seeking resolutions (assisted by Duty Prosecutor)



Duty Prosecutor role

The following themes were noticed about the new Duty Prosecutor role.

Interviewees noted some essential characteristics for the role:

- Experienced as a prosecutor with good relationships and communication skills
 - Knowledge and opportunity to contact the Officer in Charge and talk to people at all levels of Police; a local person is a benefit because they understand the culture
 - Seeing the bigger picture, having the time to think things through carefully
 - Working to achieve consensus with other prosecutors; know when to step in, not treading on toes
 - Ability to clearly set out reasons for the Duty Prosecutor advice and calculate the risks of it.
- “Duty Prosecutors are really suited for the role, approachable, easy to interact with, have heart and soul in it, want it to work, proactive, practical, willing to negotiate, offering realistic outcomes, reasons why people offend”

It was possible to identify the functions undertaken as perceived by interviewees:

- Reviewing case files from 6.30 to 8am at Police Prosecution Services office, especially opposed bail matters and family violence bail applications; Police workflow coordinators scan the files to see if everything is there for disclosure
- The Duty Lawyer Supervisor identifies matters and informs Duty Prosecutor if cases need additional disclosure, summons, etc before court

- The Duty Prosecutor checks if charges are suitable/overcharging/[possibly] should be withdrawn, if Summary of Facts is correct, section 94 applications, considering possibilities such as diversion, Te Pae Oranga, reparation, and/or Restorative Justice
- The Duty Prosecutor looks at anything from Registrar's court to the cells and focusing on attempting to resolve matters on the day, including entering pleas and sentencing

Most perceived the impacts of Duty Prosecutor role as positive, with few limitations

- Cases seem to be progressed more efficiently now; reduced adjournments; cases resolved; an experienced Duty Prosecutor knows all the offence codes - saves time in discussions
- Most interviewees would like the Duty Prosecutor role to continue
- It is easier when lawyers bring the work to the Duty Prosecutor, being proactive
- Working with junior prosecutors in court is actually mentoring, which has benefits for Police
- Possibly better results can be achieved for victims as well as defendants
- The Duty Prosecutor job is too much for one person - Duty Prosecutor is not seeing late arrests in the same way as the morning arrests due to time constraints
- Duty Prosecutors have different approaches and views, which could be difficult for Duty Lawyers
- The high number of address checks required by the Duty Prosecutor was surprising.

Findings for Duty Lawyer Solutions

Duty Lawyer Supervisor role

The function of the Duty Lawyer Supervisor was seen as critical to CPIP, both in the work they do and in the way they do it. As with the Duty Prosecutor, the Duty Lawyer Supervisor needs to have certain characteristics, such as good communication and organisation skills. The critical aspects of their role for CPIP include:

- indicating cases that meet the CPIP scope
- regularly encouraging Duty Lawyers to do more bail applications instead of applying for urgent legal aid
- finding out if there is an assigned lawyer before distributing the case
- connecting the Duty Lawyer and Duty Prosecutor on cases, being good with Police staff

Interviewees had various comments about the role of the Duty Lawyer Supervisor:

- The Duty Lawyer Supervisor role is more important for juniors - makes sure the lawyer is capable; the Duty Lawyer team is very experienced and do the difficult matters including sentencing, juniors-medium experienced lawyers also do bail mostly (not so much sentencing).

"It's someone to bounce ideas off".

- Officially there is no choice in cases but in reality, the Duty Lawyer Supervisor matches the Duty Lawyer experience and the complexity of cases after assessment of the severity and history of charges.

"The Duty Lawyer Supervisor can see if one lawyer hoards all the cases and can redistribute"

Duty Lawyers

Duty Lawyers are expected to do everything given to them. They thought they were going to be able to choose, but they are split into two teams and do all kinds of work. Perspectives varied, such as:

Attitudes are different among the bar - some lawyers just take cases on; other lawyers complain that they didn't get given a particular case

There is hesitancy by some in doing bail applications as it could be criticised later

There are two styles: pragmatic and streetwise, understand high recidivism and what is in their client's best interests, or very risk averse and don't want made complaints against them

"If it is complicated you just let someone else do it."

Duty Lawyer role and changes

CPIP changed several aspects of the Duty Lawyer role. All interviewees indicated, to some degree, that they can see why CPIP is needed and that all Duty Lawyers need to be on board for it to work.

Some noted the context before CPIP, that may have led to the need for the CPIP solutions:

- The Duty Lawyer group was more skilled/experienced in the past
- The Duty Lawyer income had dropped – a fixed fee per day in the past for any amount of work

- The system had alienated experienced lawyers, then PDS took half the work and were replaced with more juniors
- Junior Duty Lawyers were too focused on bail, should have always been doing more
- There are training issues when private lawyers come onto roster, compared with PDS which provides good training
- Previously they were not meant to do bail unless the judge agreed.

Doing more bail applications and more complex bail applications

106 Operational policy change (key priority)

Implement the duty lawyer operational policy to encourage duty lawyers to make bail applications where the reverse onus applies, or on category three offences where bail is opposed.

This solution included a payment for higher duties (\$90) when doing bail applications. Interviewees were asked about doing more bail applications and more complex bail applications.

Most did not refer specifically to reverse onus applications or Category three offences where there is opposition to bail (OTB), just complex bail applications. However, this question was considered in some of the quantitative data below.

The majority of interviewees want to continue the policy for low level offending to remove them from the list, but a minority said it should not be for serious cases.

"The changes are wonderful for the uncomplicated stuff."

Many of the interviewees said Duty Lawyers are doing more bail applications others said there was no change because it is still case assessment dependent, not about the complexity. There was apparently no influence of CPIP on very experienced lawyers (always do complex ones); but inexperienced ones are more hesitant still. There is more encouragement to do the more complex bail applications.

A range of perspectives about this solution were that:

- It provides more freedom to assist and be proactive
- It could lead to bail applications not in the interest of the defendant
- Case notes are now not passed onto other Duty Lawyers, in order to claim higher duty fees
- Bail Support Services doing bail address checks takes work away from the Duty Lawyers
- It is still difficult to find out which defendants are ready in the cells
- It was surprising how open and accepting (Duty Lawyers) were about the policy - expected more push back and reluctance
- The policy seems like a green light for people to make more money
- Case assignment levels may go down after CPIP
- Smaller incremental increase in Duty Lawyer remuneration might be safer
- It's about being in the right place at the right time to get the right cases.
- If a Duty Lawyer gets a case, they have to do a bail application
- Duty Prosecutor offers resolution options to the Duty Lawyer instead of running the bail application; although probably mostly for cases likely to be successful.

Most found the new claim form easy and straightforward, although it is an extra step if [Police identifier number] is not available. A few said it was unclear what applies and therefore confusing while some have not used it.

Higher duties payment as fair compensation:

A range of perspectives was provided when this question was asked, but a further adjustment to the payment was made since the following data was collected. Therefore, further investigation on this topic could be warranted:

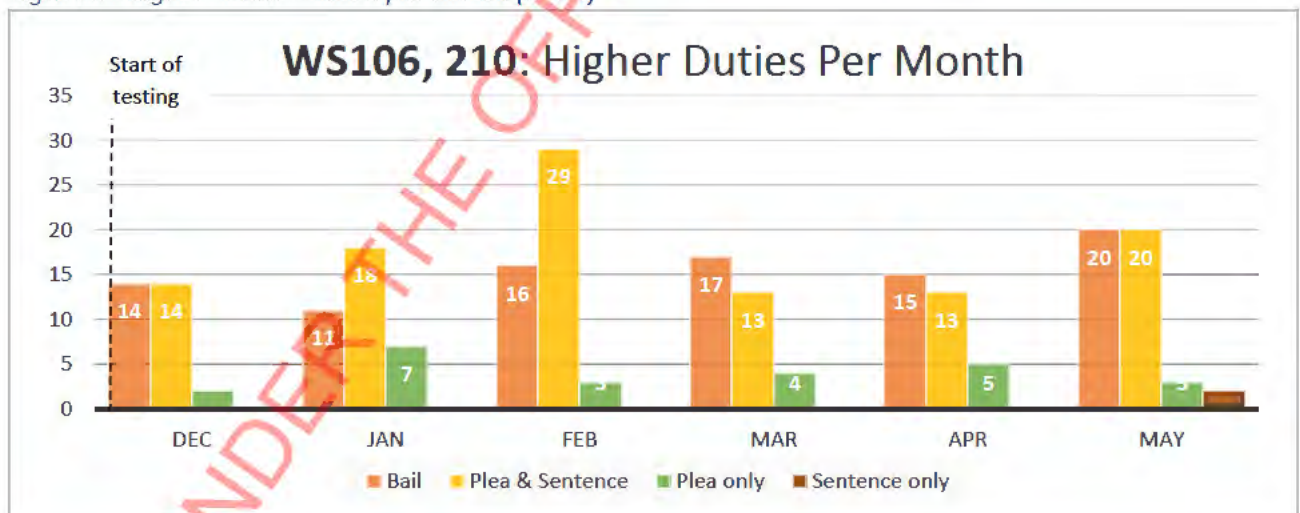
- It is probably not seen as adequate for the amount of involvement in the case
- Yes, pretty fair, a good incentive, can see cost-benefits for MoJ
- "It's a duty, I don't claim it"
- Some prefer no incentive, thinking that it brings out perverse behaviour in Duty Lawyers behaviour that may not be in defendant's interest.

Interviewees were asked if it would be more competitive if the fee was increased?

- Some say yes/probably
- Some say no, they are worried about effect on the bar, even though it is 'not massive money'
- Legal Aid fees for different types of work needs more consistency across jurisdictions
- The policy does not seem to work because they get rotated around between cells or court.

Quantitative data showed no consistent trends (Figure 21).

Figure 21 Higher duties claimed per month (LSMS)



Duty Lawyers are running more bail applications on the day (for 80% of cases on average see section 'Overarching qualitative and quantitative findings')

It appears a high proportion of bail applications are done by Duty Lawyers now and the number of urgent legal aid applications has dropped (LSMS)

The number of higher duties claimed per month does not reflect the number of cases dealt with, as some Duty Lawyers are not claiming higher duties therefore this data is not presented here.

Attempting to find out what work Duty Lawyers were taking on since CPIP, for cases that were OTB and had written OTB provided, the number of those cases that resulted in being either Remanded on Bail (ROB) or Remanded in Custody (RIC) was measured manually from the start of testing (see Table 3).

- Duty Lawyers achieved comparable outcomes with other counsel types (Duty Lawyer ROB 62.70%, RIC 37.30%, other counsel types ROB 66.20%, RIC 33.80%).
- Note that whether or not there is written OTB available does not affect the number of applications filed on the day. The scope for this solution is not based on whether written OTB is available it is based on arrests and opposed bail.

Table 3 Remanded on bail vs. remanded in custody by Duty Lawyer and other, Manual record, scope bail opposed and run on the day

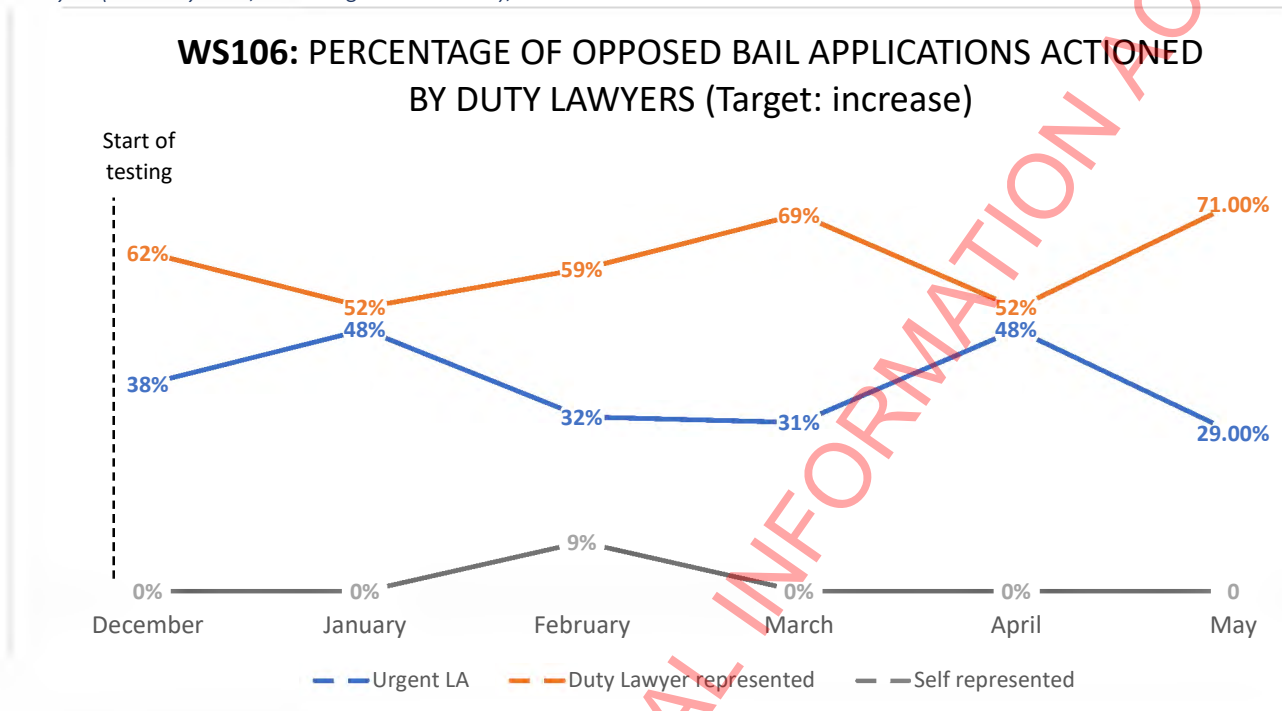
	Duty Lawyers			Other		
	Apps run on the day	ROB	RIC	Apps run on the day	ROB	RIC
DEC	15	8	7	19	15	4
JAN	15	12	3	30	17	13
FEB	19	12	7	21	12	9
MAR	20	14	6	24	21	3
APR	12	7	5	22	11	11
MAY	21	11	10	26	18	8
Total	102	64	38	142	94	48
		62.70%	37.30%		66.20%	33.80%

Note: *Other = All other includes - assigned, urgent LA, PDLA, self-represented. Breaches are included, might be more assigned lawyers for those. Data relies in part on the duty lawyer claiming the higher duties fee. Bail application run on the day - data collected is based solely on data entered into CMS or TSM by users.

Overall, more than half of all bail applications with opposed bail are actioned by Duty Lawyers (Figure 22). Fluctuations between the months cannot fully be explained by workload and available working days. January and April had relatively few unaffected working days (n=13, n=11, see section 'Overarching Findings', Figure 4) and a high number of arrests with opposed bail (n=81, n=88, see section 'Overarching Findings' Figure 2) potentially leading to an increase in urgent LA applications. At the same time, the highest number of arrests was in March (n=93, Figure 2) and few days were unaffected in that month (n=12) but only 31% of urgent LA were made.

A contributing factor for positive results in April could be the written opposition to bail statements (available for 95% of arrests where bail was opposed, around 85% for January and April). Pre-CPIP data is not available as the manual record started with implementation. It should be noted that the Duty Lawyer policy for bail applications has changed through CPIP.

Figure 22 Percentage of bail applications actioned for matters with opposed bail within scope for Duty Lawyer (2 – 10 years, no assigned counsel), Manual record



Note: Data relies in part on the Duty Lawyer claiming the higher duties fee.

Recruitment of Duty Lawyers

210 Duty Lawyer Resources (high priority)

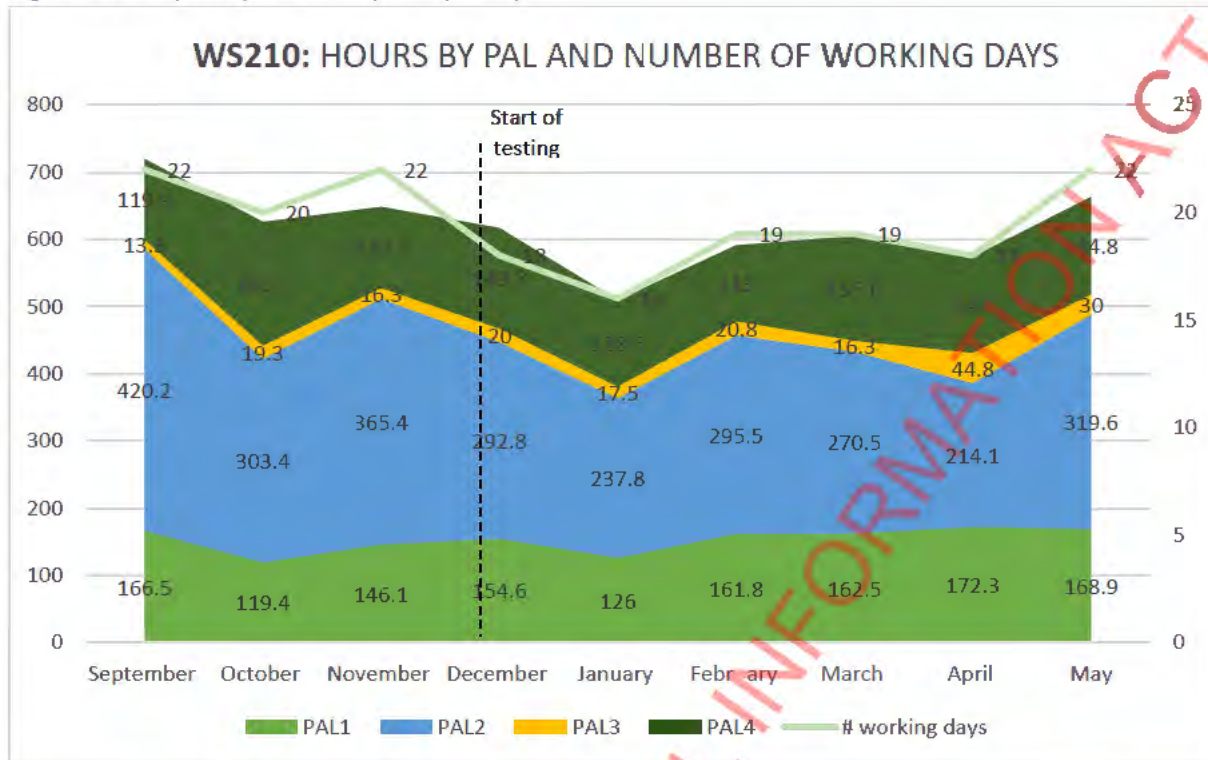
Subject to their availability in the locality, more duty lawyers, more experienced duty lawyers and further support for duty lawyers on the policy changes to allow entering of pleas and same-day sentencing. Including a supporting remuneration adjustment.

Six more Duty Lawyers have been recruited - four permanent and two temporary. Interview comments included that there is an adequate number of Duty Lawyers now, which is helpful.

However, no clear trend can be seen in the count of Duty Lawyers, nor in experience level of Duty Lawyers - for which their Provider Approval Level (PAL) is used as a proxy - has been observed in quantitative data since CPIP implementation (Figure 23).

The PAL attained by a lawyer under the Legal Services (Quality Assurance) Regulations indicates their experience and competence in criminal matters. Approval to provide services under the Duty Lawyer scheme requires only 'Duty Lawyer Approval'. However, a Duty Lawyer who is also approved for levels 1 to 4 criminal proceedings has demonstrated more experience and higher levels of competence in criminal matters.

Figure 23: Duty Lawyer hours by PAL (LSMS)

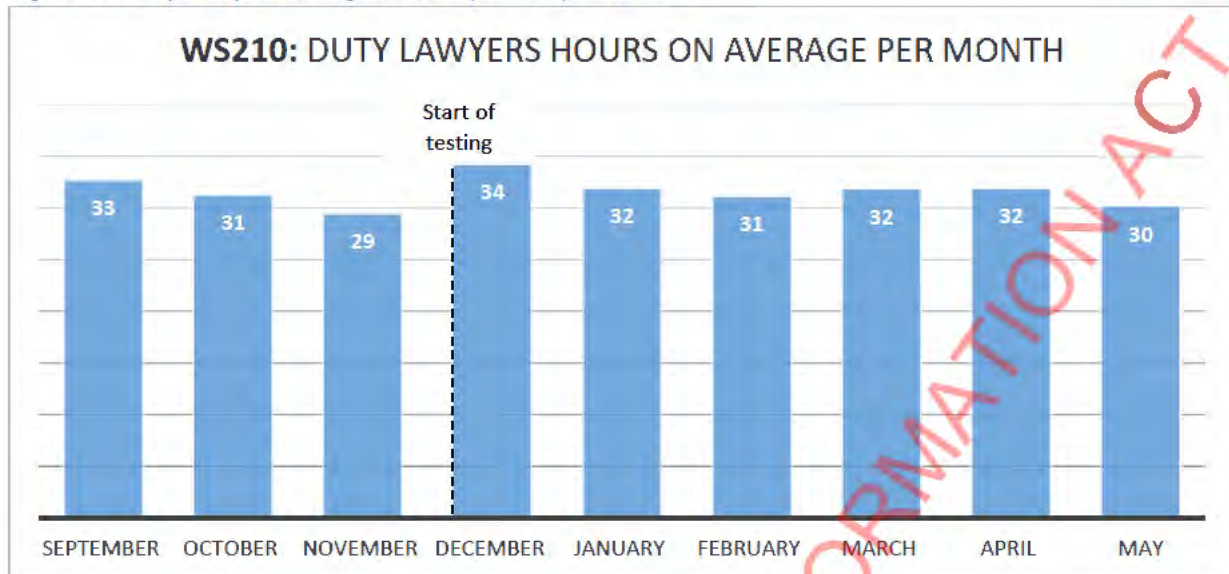


Note: not weighted by number of working days in the month, Data relies on the Duty Lawyers claiming the higher duties fee.

One person commented that if the pilot continues and the Young Adult List starts, then more Duty Lawyers will be needed on the day and other recruitments will be necessary.

From the number of Duty Lawyers on the roster and the count of hours invoiced it seems that not all Duty Lawyers are doing Duty Lawyer work (i.e., fewer lawyers are invoicing than are on the roster). The total number of hours for Duty Lawyers are impacted by number of working days, thus a continuous increase in overall hours is not expected. However, when dividing the total hours worked on weekdays by number of workdays available that month, no difference can be seen since CPIP implementation (Figure 24).

Figure 24 Duty Lawyer average weekday hours per month



Note: Data relies on the Duty Lawyers claiming the higher duties fee.

Policy changes and additional resources - entering pleas and same day sentencing

- Some say it's a good system, it's nice to have monetary recognition
- Two say have always done it, it's duty, backlog is getting too heavy - tick a box and get extra \$50 but would have done it anyway
- Two say brings out negative behaviours in lawyers
- May discourage experienced lawyers to do the cases with charges over 12 months
- "For the responsibility and involvement, it is a wee bit light" [although the fee has since changed].

Offering Lawyer of Choice

202 Lawyer of choice (low priority)

More consideration of lawyer for choice - where there is an established relationship and/or where a defendant appears on a warrant to arrest, assigning the first assigned lawyer.

Most Duty Lawyers offer clients their lawyer of choice when doing a Legal Aid application. A couple said they occasionally mention the opportunity of lawyer of choice. Others say they discuss it only if the client brings it up and some say clients often do not remember the name of the previous lawyer. Problems could arise when it is relying on the defendant liking the lawyer, when sometimes defendants ask their lawyer of choice to do things that are unethical.

Duty Lawyers identified some benefits they could see from this change:

- "Clients are coming back because of it"
- "It's good for the lawyer and client relationship if they are familiar with case"

Quantitative data for Lawyer of choice was deemed unreliable because of data entry. An explanation of a check of the data and this conclusion is provided in Appendix 5.

s9(2)(f)(iv)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

s9(2)(f)(iv)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

s9(2)(ba)(i)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

s9(2)(ba)(i)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Findings for Ministry of Justice Solutions

Victim Advisors

Victim views on Restorative Justice (RJ) obtained earlier

225 Victim Advisors canvassing victim views on Restorative Justice (RJ)

Earlier canvassing of victim views on RJ and victim contact details are available by first appearance.

The scope of this solution is narrower than that of other solutions in Workstreams 1 and 2: This solution is limited to the following conditions:

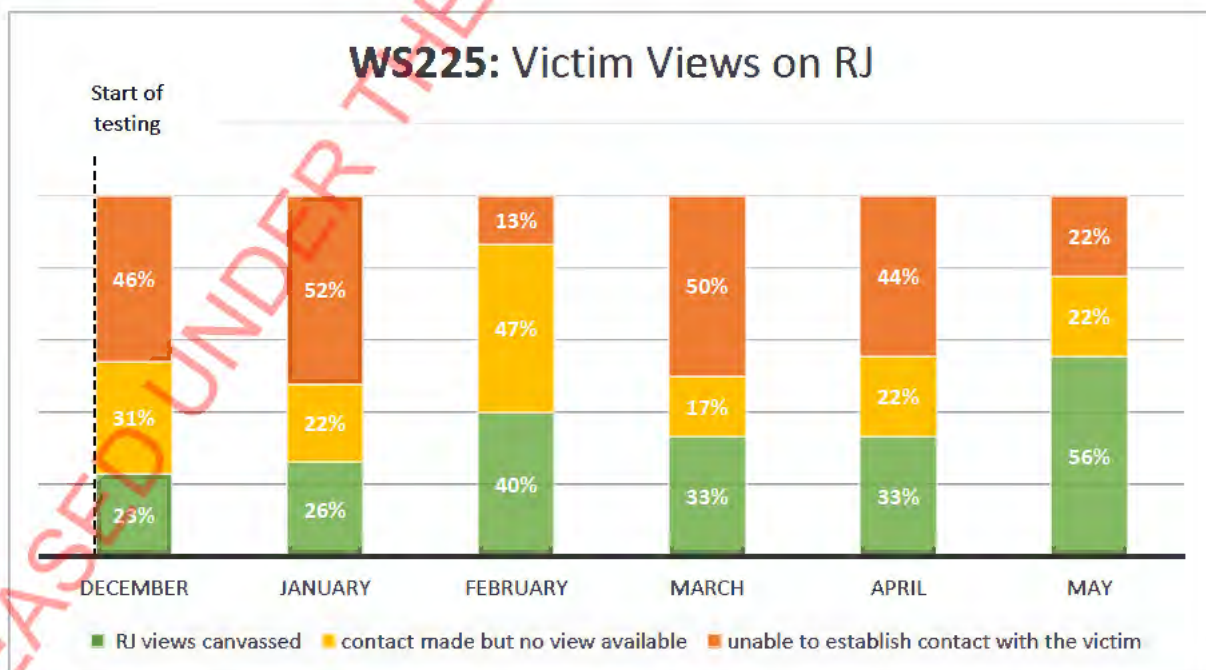
- For charges which are laid via summons and police bail.
- Maximum penalty of the offence is between 6 months and 7 years
- Cases involving family violence, sexual offending and child victim(s) cases will be excluded from this process
- Victim Advisors (VAs) have the opportunity to apply professional discretion during their contact with the victim to gauge whether it would be appropriate to discuss restorative justice with the victim or not.

The legislation requires that when an identifiable victim is involved, the court must adjourn the matter for RJ to be considered. CPIP directs VAs to do this in a specific timeframe. The general response to questions about this solution could be summarised in the statement:

- "It's better when cases run their own course, then sentencing can take place"

According to quantitative data, victim views on RJ have been canvassed earlier than pre CPIP (Figure 29), as intended. Only a fifth of all victims could not be reached.

Figure 29 % victim views available on RJ that have a first appearance (case scope see above) Manual record



Although they are attempting to get in contact with victims earlier, VAs sometimes:

- Have not received information from Police CSV1 [form with victim details] or have received incorrect contact details (Police use previous victim details if earlier charges are in the database but it is likely outdated), or
- Receive information from Police comes on the day of appearance, or
- Receive information that is incomplete
- Cannot contact victims because they do not answer the phone (no pickup), or
- Do not get time to capture all of the victims within the timeframe.

Despite these difficulties, VAs still send out the RJ brochure on day one. One benefit of directly canvassing victims about RJ earlier, they might be more ready for it later in the process.

Other general impressions of the solution included:

- This early contact is potentially traumatising/victimising and putting pressure on victims – it is too early, Victim Advisors cannot give victim any information about outcomes, and it seems contradictory to the previous understanding about the legislation
- Victims get upset at this discussion, and no rapport can be built at that stage, which makes the process more difficult
- It is an ‘upside-down approach’ to talk about outcomes before a plea is entered
- Victims’ views on RJ gained through early contact is sometimes not passed on to the judge
- There appears to be additional workload on VAs but little apparent benefit to the victims.

Registry

Setting bail dates, vacating bail hearings, court lists availability

121 setting bail dates, vacating bail hearings, court list for arrest (high priority)

Quicker turnaround for setting bail dates and vacating bail hearings when application is withdrawn.

Duty Lawyers and PPS to receive court event lists by 7.30am for arrests

Interviewees reported no problems with achieving the Registry solution targets. This was possibly because it was BAU in Hamilton, so the following comments were not surprising:

- Court event lists are sent out every day without fail, there was no change through CPIP, although for some recipients it arrives at 9.30 rather than 8.30am
- A weekly roster is sent on Fridays for the next week
- Setting bail dates have seen no delays, and there are always time slots available
- Withdrawn applications are often done at the last minute when waiting for counsel
- Decisions are typed up, authenticated, and released in 72h in 99% of cases.

At the same time, some challenges within the Registry included:

- Staff are feeling overloaded
- “Newbies” are training “newbies” or being taught shortcuts only.

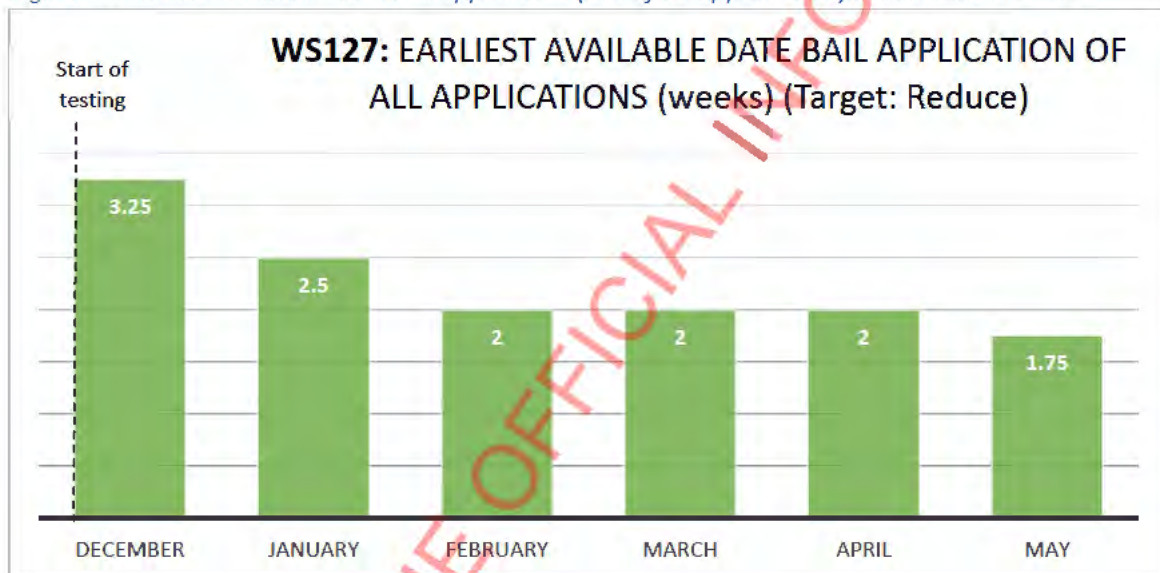
The average time between bail application and setting bail dates in days is consistently around a day since CPIP implementation in December (Table 4). Note that the data collected is based solely on data entered CMS by users. There are no data reconciliation checks made between CMS and the court file.

Table 4 Average time between application and setting bail dates (days)

December	January	February	March	April	May
1	1.4	1	1	1.2	1

The earliest available date (EAD) for bail applications has been gradually reduced to 1.75 weeks in May (Figure 30) – this is from the next available date showing in CMS, but this is not necessarily indicative of when an application will actually be scheduled in. No baseline data was available for pre-CPIP. Feedback from Duty Lawyers in regard to EAD was mixed, and this may be an issue requiring further investigation.

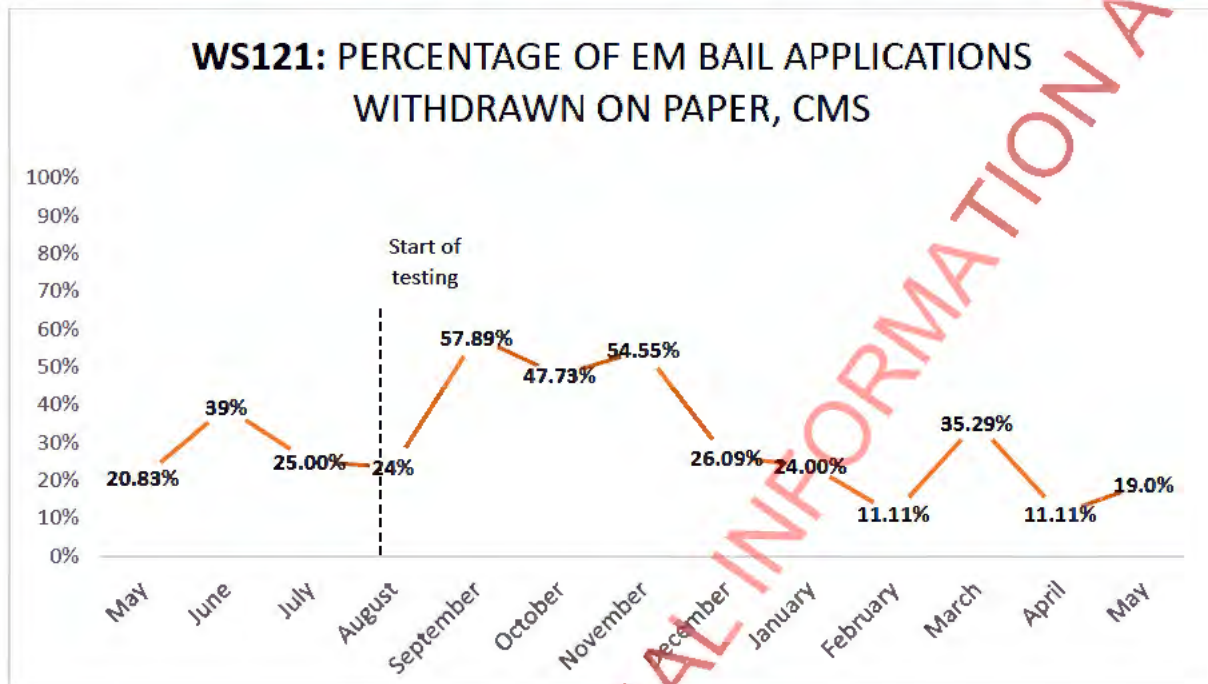
Figure 30 earliest available date bail application (out of all applications) EAD states in weeks



Note: Report is based solely on data entered CMS by users. Might not be a true reflection of what dates are offered in court.

Figure 31 shows the percentage of bail applications that were withdrawn on paper (without a court event). This solution was implemented in August 2021. More EM bail applications were withdrawn on paper after the implementation in August, however, data fluctuates a lot from December and more court events were wasted. Reasons for this downtrend are unknown.

Figure 31 Percentage of bail applications of cases in scope (2 – 10 years) withdrawn, CMS



Note: scope will be removed for this graph in next version.

Availability of bail transcripts

125 Bail Transcripts (high priority)

All decisions where bail is declined and all decisions where bail is opposed (whether bail is granted or declined, including EM bail) to be:

- a. Typed up within 24 hours,
- b. Authenticated within 24 hours
- c. Released to prosecution and defence within 24 hours

Bail application decisions are typed up and released to prosecution and defence in 72 hours for most cases (Figure 32). This process was BAU in Hamilton before CPIP implementation. Common reasons for delay were the non-availability of court reporters, technology issues, insufficient or incorrect information and that an alternative date was agreed with the registry (Table 5). However, there appears to be no problem in achieving the targets set.

Figure 32: Bail application transcript typed up (NTS), released to prosecution and defence (spot checks from December)

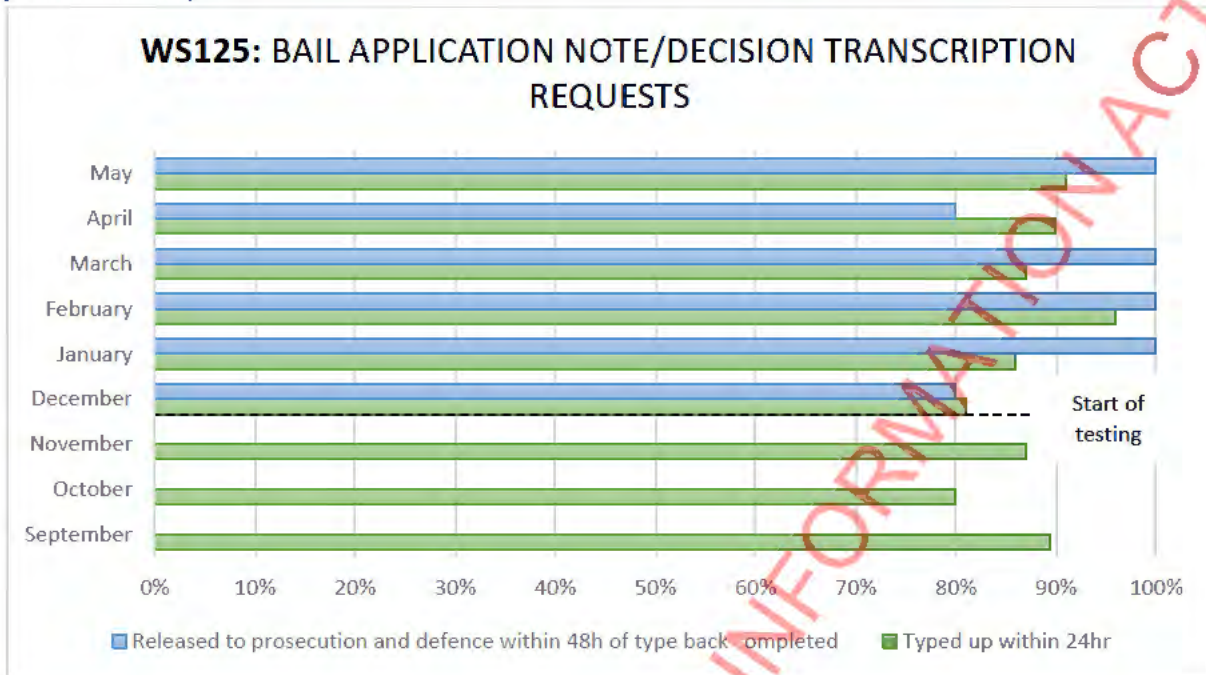


Table 5 reports the reasons for delay in typing up bail application decisions within 24 hours. The number of applications affected, however, is minimal.

Table 5 Reasons for delay, NTS

reasons for delay	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
Non-availability of court reporters	2%	0%	1%	4%	1%	0%	0%	0%	1%
Technology issues	2%	0%	0%	0%	0%	2%	0%	0%	0%
Alternative date agreed with registry	0%	0%	0%	0%	3%	0%	0%	0%	0%
Insufficient or incorrect information	0%	0%	0%	0%	0%	0%	0%	0%	0%

Next Steps

This Interim Report provides qualitative and quantitative evidence gathered about solutions for Workstreams 1 and 2 approved for implementation in Hamilton. This is primarily about processes and case outcomes. Therefore, the following steps would be useful for completing the final report:

- Thoroughly consider and discuss between and among the parties, what insights are possible from the findings presented.
- s9(2)(f)(iv)
- Gather interim data for the Hutt Valley test site and compare with Hamilton data.
- Identify where the current measures cannot provide reliable data and adjust if appropriate.
- Incorporate additional data from Hamilton with findings from Workstreams 6 and 8.
- Attempt to identify which solutions appear to contribute to the CPIP objectives and which solutions are interdependent.

Appendices

Appendix 1 Workstreams 1 and 2 solution list and relative priority

Solution Number	Solution narrative	Relative importance (priority)
WS114	Where Community Magistrates have jurisdiction, they are to hear bail applications for electronically monitored bail or applications for a variation or continuation of bail where there has been a breach of electronically monitored bail	medium
WS121	Quicker turnaround for setting bail dates and vacating bail hearings when application is withdrawn. Duty Lawyers and PPS to receive court event lists by 7.30am for arrests	high
WS124	Ensure that the judicial officer has all information and relevant files by afternoon prior to appearance	Not implemented
WS125	All decisions where bail is declined and all decisions where bail is opposed (whether bail is granted or declined, including EM bail) to be typed back within an agreed timeframe and released, added to court file, and sent to prosecution and defence as soon as possible	high
WS108	Duty Lawyer is notified of all oppositions to bail and reverse onus applications by 8.15am and receive arrest disclosure, initial disclosure including victim views and written bail oppositions before 8.15am. Cell transfers by 8:15am – meaning participants will be available to counsel by 8:30am	high
WS112	Second prosecutor available to the Duty Lawyer Service to discuss bail.	key
WS113	When a charge is filed and an address condition is being considered by Police, Police to begin checking suitability of any proposed bail addresses.	medium
WS101	National roll-out of Bail Support Services by the Department of Corrections. It will contribute to a best practice end to end bail process	high
WS120	Quicker turn around for electronically monitored (EM) bail hearing dates. Reduce current 10 days from application filing date to 7 days. Revise and simplify the language in the electronically monitored bail application form to ensure all required information is included in applications and when appropriate more than one address may be proposed in an application.	Not implemented
WS127	Schedule court lists to ensure enough judicial resource and time allocated to hear bail applications.	high
WS106	Revise the duty lawyer operational policy to encourage duty lawyers to make bail applications where the reverse onus applies, or on category three offences where bail is opposed.	key
WS105	A new weekly roster of lawyers who undertake for the relevant week that they are available to accept urgent assignments and will respond urgently	dropped

WS110	All duty lawyers have access to the register of current legal aid assignments, including at non-Public Defence Service courts. Legal aid to notify duty lawyers of assigned counsel for urgent assignments. Bail Support Services access to legal aid assignments register	Not implemented
WS111	Encourage duty lawyer use of tablets or devices for the provision of information, namely development of an online legal aid application form, electronic submission of legal aid applications and access to disclosure and other information from police.	Not implemented
Admin stage solutions		
WS221	Second prosecutor available to review and discuss the file with counsel in list courts.	key
WS223	Additional specific disclosure provided at first appearance. Police to proactively release disclosure electronically to assigned counsel following notification from legal services.	key
WS225	Earlier canvassing of victim views on restorative justice and victim contact details are available by first appearance.	low
WS226	Earlier preparation by Police of reparation schedules & Victim impact statements	low
WS224	Probation Officers available in court to provide stand-down sentencing reports for same day sentencing.	key
WS218	Judicial time allocated so that sentencing can take place in a list court	high
WS202	More consideration of lawyer for choice - where there is an established relationship and/or where a defendant appears on a warrant to arrest, assigning the first assigned lawyer	low
WS208	Legal Aid to notify assigned lawyer of type of remand and future event	Not implemented
WS210	Subject to their availability in the locality, more duty lawyers, more experienced duty lawyers and further support for duty lawyers on the policy changes to allow entering of pleas and same-day sentencing. Including a supporting remuneration adjustment.	high
WS227	Increase use of oral sentencing submissions	Not implemented
WS201	Redesign communications with defendants about legal aid, to motivate the defendant to seek legal advice before coming to court and contact their lawyer if legal aid is granted.	Not implemented

Appendix 2 Solutions not implemented/dropped

The following notes are included for visibility of decisions about addressing issues with implementation.

105 Urgent Legal Aid Roster (low/medium priority)

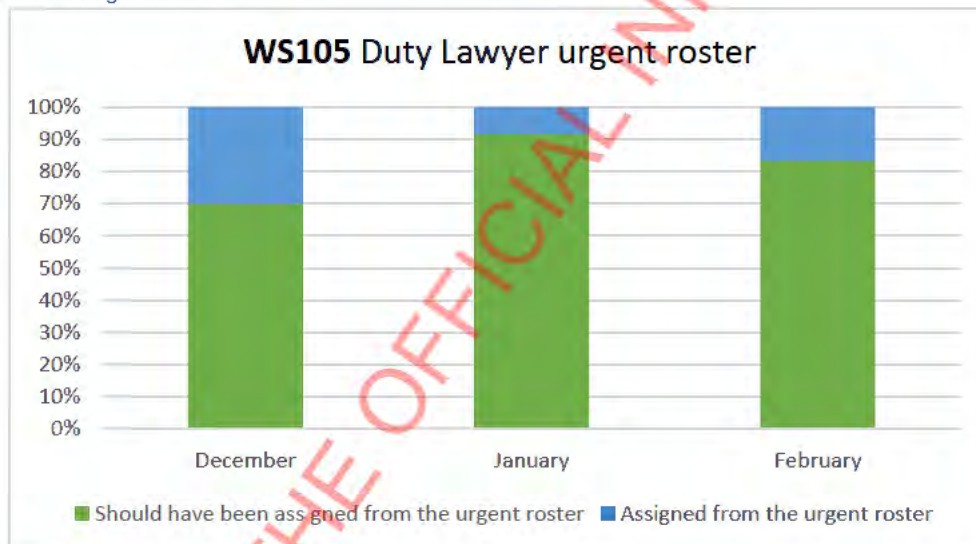
A new weekly roster of lawyers who undertake for the relevant week that they are available to accept urgent assignments and will respond urgently

(From Interim evaluation report, CPIP Programme Manager)

During the pilot, most urgent Legal Aid applications were not assigned through the urgent assignments roster. Most urgent applications are assigned to providers who were:

- Representing the defendant on other active matters
- Selected on rotation by the Legal Services Management System and available to accept the assignment
- Nominated by the defendant in matters where counsel of choice applied.

Urgent roster assignments



110 Legal Aid assignment register (low)

All duty lawyers have access to the register of current Legal Aid assignments, including at non-Public Defence Service courts.

Tablets were supplied to the Duty Lawyer Supervisor on 29 April, but access to the register has not been provided to Duty Lawyers because the tablets have not been accepted. The Duty Lawyers were also concerned about logging into their own email accounts on a Ministry device, they weren't convinced that their information would remain private and secure.

Internet connectivity is spotty in the cells.

Legal Aid application form is hard to find – have to go through a few steps on the Ministry website before they can find the right one. This needs to be repeated each time for a new form to be filled out so they got frustrated by it. The preferred option for them was if the form can be 'locked' on the home screen so when the data is 'wiped' after it goes on sleep mode the legal aid form still remains on the home screen.

Bail Support Services access to legal aid assignments register

The BSS team leader receives a daily email with the Legal Aid assignments. She has not had to use it specifically for Bail Support Services, but she has used it to support the morning meetings, when they want to check who is counsel is for any of the arrests. But it's not something she uses with any regularity as Hamilton is not operating the full BSS model and it is intended for BSS officers working directly with defendants who have been remanded in custody.

Legal Aid Services were to text duty lawyers of assigned counsel for urgent assignments.

Notification of urgent assignments is occurring by email to the Duty Lawyer supervisor but not all the time. Text messaging doesn't seem to have worked.

111 Tablets, Devices (low priority)

Encourage Duty Lawyer use of tablets or devices for the provision of information, namely development of an online Legal Aid application form, electronic submission of Legal Aid applications and access to disclosure and other information from police.

Tablets have not been accepted by Duty Lawyers – this was a delayed start, with some improvements made. However, PDS lawyers are using their Ministry laptops in court.

Online legal aid application was not advanced because of lack of funding. It may be advanced in the future but only if we can establish that Duty Lawyers would use it if acceptable tablets are supplied.

208 Type of remand and future event (low priority)

Legal Aid to notify assigned lawyer of type of remand and future event

Legal Aid Services is progressing Minor Works Request 1854 that will automatically insert this information into the letter to the lawyer. Legal Aid Services considered that implementing this manually was too high risk for the quality of letters.

201 Communications with defendant (high priority)

Redesign communications with defendants about Legal Aid, to motivate the defendant to seek legal advice before coming to court and contact their lawyer if Legal Aid is granted.

Nationally implemented via Legal Aid Services. Behavioural Science Aotearoa provided some advice on this solution – not aware of specific feedback

124 Files to judicial officer afternoon prior

Ensure that the judicial officer has all information and relevant files by afternoon prior to appearance

BAU in Hamilton.

120 Improve Electronically Monitored bail reports timeframes

Quicker turn around for electronically monitored bail reports from 10 days to 5 days.

Revise and simplify the language in the electronically monitored bail application form to ensure all required information is included in applications and when appropriate, more than one address may be proposed in an application.

Not implemented/not to be tested in Hamilton.

118 Increase oral submissions

Greater use of oral submissions by defence counsel where reverse onus applies and all category 3 cases.

BAU in Hamilton, not tested.

227 Increase use of oral sentencing submissions

Not implemented yet, potentially over the next 2 months.

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Appendix 3 Test Plan Methodology

Test Plan Methodology

The Research and Evaluation (R&E) team (Sector Insights, Ministry of Justice) is leading the coordination of a developmental evaluation of CPIP. A developmental evaluation is suitable where there is complexity and innovation, and where early-stage, robust evidence is required to show whether objectives are being achieved before further changes are made in the system.⁸

Test Plans are a vital part of building robust evidence and help keep track of changes that might be required in some solutions based on findings from regular data collection. The Workstream Leads will be responsible for development of their Test Plan and will share this Test Plan with R&E for review and oversight. R&E will assist if questions arise.

The general steps of how to approach the development and implementation of a Test Plan are outlined below. Attached are a template for a Test Plan and a template for monthly testing activities and additional [useful resources](#).

Purpose and Scope of a Test Plan

As most Workstreams have different leads, test sites, and start times, the overall evaluation needs a Test Plan for each workstream to collect data as the workstream solutions are put in place in the test sites. The scope of each Test Plan will be determined between each Workstream Lead and R&E, and will suit the relevant test sites.

The Workstream Leads will also coordinate data collection, with support from Sector Insights. R&E will be responsible for collecting the qualitative data. All raw data collected for the evaluation will be stored securely and all other ethical requirements will be advised by R&E to Workstream Leads.⁹

R&E will finalise the Test Plan and do data spot checks to secure evaluation quality standards are met and will do (or arrange) the quantitative and qualitative analysis. This will enable R&E to identify overlaps between the different workstreams and lead the evaluation of CPIP.

Test Plan Development and Design

The general approach to developing a Test Plan for a CPIP Workstream (or combination of Workstreams) is:

- **Involving key stakeholders** (frontline as well as national staff for relevant agencies)
- **Identifying and assessing the success measures** from design documents for use as process and outcome measures¹⁰
- **Designing a Test Plan** with process and outcome measures and data sources for each solution
- **Trialling the Test Plan** for long enough to find out data limitations and assumptions
- **Refining** the measures and perhaps the solutions according to the feedback from the Test Plan trial.

⁸ See <https://whatworks.org.nz/developmental-evaluation/> and <https://www.nzcer.org.nz/nzcerpress/evaluation-matters/articles/developmental-evaluation-tool-support-innovation>

⁹ See [Appendix c for guidelines on ethical requirements of evaluation](#).

¹⁰ See next [section about process and outcome measures](#).

Involve key stakeholders

It is critical to involve key stakeholders early in an evaluation, especially where some stakeholders will be asked to collect or provide data. They will keep an eye on the benefits sought and can help with understanding data limitations and interdependencies as well as the assumptions that the solutions are built on. Each test site will have different groupings of key stakeholders. The Workstream Leads are the main communication channel between stakeholders and R&E in the development and use of the Test Plan.

Assess feasibility of measuring benefits and success

The first step in developing a Test Plan for a CPIP workstream is to assess whether the success measures and benefit statements in the design documents and any additions or changes to these measures that have been discussed, are measurable in the form they are written. Key stakeholders need to be involved from this first step onwards.

The benefit statements will require several types of data to determine if the benefit is achieved. They provide the logic for creating individual workstream measures. For example:

- Bail applications will be determined more quickly
- The District Court is able to more effectively progress and resolve cases
- More meaningful engagement for all participants

Some of the success measures can be used directly for an individual solution and others indirectly. For example, some of success measures for Police in Workstream 1, are:

- The timing of written opposition and arrest disclosure
- The number of bail applications that proceed on the day
- Feedback on whether there are less challenges to bail conditions in court from lawyers

These are a mix of quantitative and qualitative measures and some need to be re-written slightly. For example, there can be several measures for the first benefit (which can all give quantitative results):

- Number of cases where additional disclosure is complete at first appearance
- Disclosure turnaround (number, received (Y/N) and appeared (Y/N) (standard is 24 hrs))
- Average number of cases that need additional disclosure
- Correct additional disclosure is coming through

The “feedback” measures from the design documents are usually appropriate and will likely be combined into a single set of questions for use in surveys, interviews, or case file reviews.

Good measures meet the following criteria¹¹:

- Valid: measure the result, not something else.
- Reliable: consistently measure the result over time.
- Sensitive: able to pick up on changes in the result, including the size and rate of change.
- Simple: relatively easy to collect and analyse.
- Affordable: data collection cost is not a disproportionate drain on resources.

¹¹ Insights, Monitoring & Evaluation Unit, Pacific Development Group (2019). [Activity Monitoring, Evaluation, Research & Learning \(MERL\) Framework: Key Standards and Guidelines](#).

Design the Test Plan

Each Workstream Lead will ensure that the following aspects are covered in the design and documented in their Test Plan (see the comments below):

- **Overarching** measures for the workstream (measures that several solutions contribute to addressing the key problems, from the design documents)
- **Process** measures for each solution (what happened, how did it happen?)
- **Outcome** measures for each solution (what are the outcomes? What were the short-term impacts of what happened?)
- **Qualitative and quantitative** measures for each solution (ideally)
- **Data type and source** (if it is a database, someone needs to collect the specific data; if it is a manual record, someone needs to complete and collect these records)
- **Frequency of data collection** (e.g. some data needs to be collected daily/weekly, others 3 monthly)

Including a distinct process and outcome measure for each solution will help show the specific effects of each solution. While many solutions will contribute an overarching success measure, it may be possible to distinguish individual solution effects and potentially understand interactions and interdependencies between solutions.

Including qualitative data (e.g., survey, interview, observation in court) and quantitative (e.g., data extraction from data bases such as CMS (criminal court database), LSMS (legal aid services database)) a set of measurements for each solution will help in assessing whether the data collected is reliable.

Check with people who might be able to provide the data if they think these measures are feasible (i.e. the data can be collected within the timeframe of the programme, and is likely to provide data for all cases being tested for a particular solution) or not.

Please note that each test site brings its own characteristics that need to be considered in the Test Plan. If test sites differ immensely (such as exclusion of significant solutions or solutions that have been in place for some time), separate Test Plans for each test site are likely to be required.

Trial the Test Plan

The next step is to see if the Test Plan will work as intended. R&E can advise on the time required for the trial based on how long it will take to see if the required data can be obtained. Two weeks is likely to be sufficient for most Test Plans.

R&E will review the data collected over the trial phase and provide feedback to the Workstream Leads about whether any review seems to be required in the Test Plan. Key stakeholders need to be looped in before the formal start of the Test Plan.

In addition to evaluating the reliability and validity of the data produced, the trial will also indicate whether numeric results and qualitative evidence align. This will help us to conclude how useful the measures are in identifying the success of each solution.

Planning the data collection

Once the measures of the Test Plan have been determined, each workstream will need to identify who, how, from whom or where, when, and how often the process and outcome measures will be collected and where it will be stored. The template for the Test Plan by month has columns for:

- Recorder (who will collect the data)

- Collection method (e.g., manual record, data extraction, interview, observation, survey)
- Data source (e.g., data basis/data sets, the person interviewed)
- Start and end time of data collection
- Frequency of data collection
- The location the data will be stored (e.g., password protected folder on a shared drive)

To ensure that the method of data collection is acknowledged and supported by all parties involved, the Test Plan will be shared amongst the recorders. A second round of feedback from the recipients will be considered and the Test Plan refined before the beginning of the data collection. The Test Plan will be submitted to R&E to be finalised.

Guidelines for planning the data collection

Qualitative data collection: Interviews, surveys, focus groups and observations

R&E is available to help with qualitative data collections such as interviews, surveys, focus groups or observations. This means R&E can be either involved in data collection in person or deliver a training to teach others how to do so. Surveys can be done online or on paper; interviews can be done either online via MS teams or face-to face depending on the budget and current Covid-19 restrictions.

Who should be interviewed/surveyed?

- Individuals whose work is closely related to solution processes or who are likely to be impacted by solution outcomes
- People involved in data gathering/monitoring of changes as a result of the solutions
- People in roles of influence and/or decision making at relevant agencies (e.g. MoJ, Police, Corrections, HIIP)

Trial Test Plan

After agreement has been sought and R&E has finalised the Test Plan, there will be a **trial phase** (e.g., 2 weeks) to confirm data limitations and assumptions. This trial will help to polish any solutions and refine the Test Plan if required (e.g. is it manageable, is it too little or much data, can we analyse it?)

This will enable the Test Plan to meet the standards and expectations for the overall evaluation, before moving to the data collection that will be analysed and reported.

Data collection and collation

The formal data collection will be done according to the Test Plan. Data will be kept secure and de-identified. Raw data (documents including the defendants names) can be kept in password protected folders only. R&E will manage this process, for instance through discussion with workstream leads and agencies' privacy advisors.

The expectation will be that the data collation will be organised by the working stream lead so that all data except interviews and surveys will be in kept in one document. For the ministry Workstream leads, R&E will manage the data collation from external data bases. Where possible, data will be de-identified before being received by the ministry.

Analysis

Another component that needs to be defined in the evaluation methodology is the analysis method planned for each process and outcome measure. We recommend including baseline measures for qualitative and quantitative measure for pre- and post-comparison of the solution effects.

R&E will organise the data analysis. Thus, R&E will seek agreement with each workstream about the planned method of sampling and analysis, and the planned timeframe for the analysis in line with proposed measures and methods of data collection. Analysis results will be reviewed and discussed in an external advisory group. Results will then be communicated to the stakeholders and joined insights will feed into a final report of all benefits and outcomes. This report will be peer reviewed.

Qualitative data will be analysed using a combination of content analysis (common themes, critical patterns and important examples which exist across them all) and inductive analysis (further insights arising from the analysis itself). Quantitative data will be analysed descriptively and statistically.

Ethical considerations

Ethical considerations will need to take place in terms of collection and analysis, especially when handling raw data such as defendants' names and qualitative data such as interview results. Participation in interviews, surveys, focus groups and observations will be voluntary and before any commencement of activities, participants will need to receive information about the study and will be asked for informed consent. It is expected that the recorders adhere to the five standards (related to care, respect, inclusion, protection, and reciprocity) set out in the Aotearoa New Zealand Evaluation Association (ANZEA) Evaluation Standards¹². Individual Privacy will be protected as required by the Privacy Act 1993.

Risk Management and Quality Assurance

To manage risk and assure quality of the evaluation, the workstreams will need to track and manage change, limitations, and assumptions. Specifically, changes in:

- solutions
- data sources
- methods of data collection
- recorder and
- frequency of data collection

will need to be monitored and documented. Changes or limitations observed in the field and considering the assumptions made will advise us in decisions about exclusion of evidence due to data unreliability. It will also inform us about the links between the different workstreams and will add to the overall evaluation of CPIP. Below are some limitations and assumptions listed, however, this is not a comprehensive list.

Limitations – what we know that we don't know or can't rely on:

- CMS data is not always complete for every case, especially pre-test
- Manual records are subject to human error or may prove too time consuming to continue to collect
- Seasonal differences in court processes may affect the amount of data available (quant and qual)
- Small sample sizes for qualitative data may mean the results can't be reported without identifying individuals.
- Observation itself can lead to differences in performance such as higher accuracy, see [Hawthorne effect](#)

¹² ANZEA and Superu (2015). Evaluation standards for Aotearoa New Zealand. Retrieved from: <https://www.anzea.org.nz/evaluation-standards/>

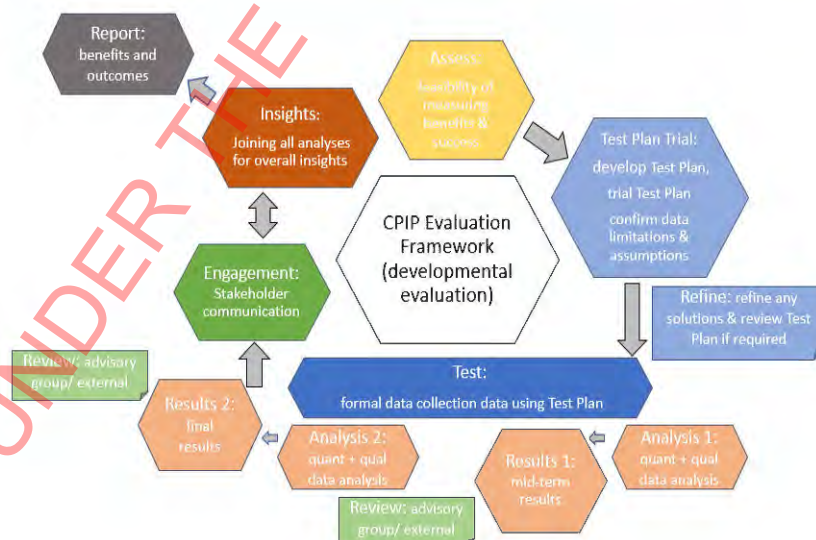
- Interviews and surveys might be limited by unwillingness to participate due to high workload or professional reasons
- Solution implementation and data collection could be affected by changes in Covid-19 restrictions

Assumptions - What we assume will happen and will be relevant to the results: (Important conditions for the success of the project that are not within its control, and which are worded as positive conditions.)

- People will behave rationally and do everything they're asked to do (such as collecting and storing data) in the time requested
- Workstream Leads will have time to coordinate the data collection
- The currently implemented solutions will continue in the test site until the test is completed unless otherwise formally agreed on. The test needs to be systematic, i.e. solutions shouldn't be changed while the Test Plan is in use so that we can attribute effects to the solutions. Solutions can be rewritten and refined after the trial and a new Test Plan can take place.
- Solution changes won't happen without agreement of the Workstream Lead and without notifying R&E in case the Test Plan needs to be revised

Appendices

- Evaluation framework
- Working with whānau Māori and Diverse Communities
- Useful resources



Working with Whānau Māori and Diverse Communities

Considering and acknowledging inter-cultural difference and taking actions resulting from those considerations, should be the standard in a scientific investigation. It is anchored in the conduct of research and limit the capacity of research to improve human development¹³¹⁴.

As tangata whenua, all justice sector research conducted in New Zealand is of relevance to Māori. Te Ara Tika provides a guide for how evaluation can acknowledge te ao Māori and be responsive to the information needs of whānau Māori. Te Mana Raraunga¹⁵ sets out principles of Māori data sovereignty which should also be considered.

Diverse communities include ethnic and culturally diverse, age-diverse, gender and sexuality diverse, as well as geographically and socioeconomically diverse communities.

Useful resources

[Determine collection method](#)

[Activity Monitoring, Evaluation, Research & Learning \(MERL\) Framework: Key Standards and Guidelines.](#)

[Making sense of evaluation: A handbook for the social sector everyone](#)

[Evaluation checklists](#)

¹³ Te Ara Tika (2010). Guidelines for Maori Research Ethics.

¹⁴ <https://communityresearch.org.nz/code-of-practice/>

¹⁵ Te Mana Raraunga (2018). Principles of Māori Data Sovereignty.

Appendix 4 Interview guide

Interview questions guide (Blank Role)

Note: This is a combination of questions from all roles, but most interviews had only 22 questions.

Consent questions (see Information Sheet and Consent Form)

Did you get a chance to read the information sheet and the consent form?

What did you think? Do you have any questions?

Are you happy to sign it?

Demographics

1. How long have you been a in this court, how long overall? Always in Hamilton?
2. Do you have any specific functions for CPIP overall?

Overarching questions

3. What changes have you noticed in the Hamilton Criminal Court in the last 2 -3 years before CPIP?
4. Are there any interdependencies between CPIP and these other changes in Hamilton?
5. What do you think is the most important change that's happened in Hamilton since due to CPIP?
6. Who (or which role) plays the most important part in these change(s)?

Specific solutions

7. What do you think of the idea of
8. What's crucial for this role?
9. Do you find the policy changes sufficient for what's involved in bail applications or other work?
10. Are you doing things differently as a result of CPIP?
11. What is your impression of how are working?
12. What do you think the most important parts of the work you do to progress cases in the day?
13. How do you decide what cases to work on?
14. Do you have a preference of what case you'd want to discuss with ...?
15. How much of your time do you spend on discussing cases with?
16. What are these discussions about (resolution, charges, diversion etc)?
17. How do you provide guidance (memo or just verbally)?
18. Is there anyone else you engage with in your role as ?
19. Would you like this sort of engagement to be ongoing? Do you find these meetings helpful? What could be improved?
20. How often is the disclosure complete? Why is disclosure not complete?
21. Do you think that morning arrests are likely to have a different outcome to arrests that happen later in the day?
22. How useful are the morning meetings in terms of bail applications or other events?
23. Do you see any difference in progressing different types of charges (cat. 2, 3)?
24. Do you think that overall, the availability of has made a difference/had an impact in the bail applications process or case outcomes?
25. Can you think of any negative consequences because of this new arrangement?
26. Do you have any suggestions of how the situation in Hamilton could be improved?
27. Is there anything about the Hamilton court that might make CPIP changes easier/more difficult at other courts such as the size or the atmosphere?
28. What key things would make the DP role successful in other courts?
29. What impacts were you expecting to see from CPIP?
30. Have you noticed any differences in the use of facilities since CPIP was implemented?

Appendix 5 Offering Lawyer of Choice - data check

The following is the result of a check of assignment reasons for:

- PAL1 assignments
- at Hamilton Court
- 1 September 2021 to 30 April 2022
- Focussing on:
 - Nominated by client
 - Established Relationship
 - Opposed Bail

The focus of this check was data quality – to assess how reliable the assignment reasons are for analysing the circumstances of applications/assignments. It is not an evaluation of the assignment *decision*.

Criteria

Nominated by Client - should not be used for PAL1 assignments because it means the assignment doesn't count for rotational assignment purposes.

Established Relationship – applicant named a lawyer on the CPIP legal aid application form that they had been assigned in the last 2 years and they want that lawyer to represent them.

Opposed Bail – Duty Lawyer assisted the applicant with opposed bail, and they want that lawyer to represent them.

Overall Conclusion

The grants officers do not understand the purpose of the reason codes. They are selecting reason codes based on the reason code name – not the policy that defines how the reasons are to be used or the intention for which the reason code was created. For example:

- 'Established Relationship' selected where a duty lawyer has assisted an applicant with opposed bail, and they want the duty lawyer to represent them (should be 'Opposed Bail'). But yes – there is an established relationship.
- 'Established Relationship' selected where an applicant had instructed a provider privately but could no longer afford it (should be 'Exceptional Circumstances'). But yes – there is an established relationship.
- 'Nominated by client' selected when an application indicated 'Established Relationship'. But yes – the applicant has nominated a provider.
- 'Private Provider Not Available' selected when making an urgent assignment and the 1st/2nd provider was not available (should be 'Urgent'). But yes – the 1st/2nd provider was not available.
- 'Opposed Bail' selected where the duty lawyer had not assisted with opposed bail but bail was opposed.

Results

- 53 errors from 86 selections (62% cannot be relied on for data analysis purposes)

Table 4

Reason Code Selected	Count	Errors	Comment
Nominated by client	20	20	<ul style="list-style-type: none"> • 8 should have been 'Established Relationship' • 4 should have been 'Opposed Bail' • 4 should have been 'Exceptional Circumstances' • 1 should have been 'PDLA' • 1 did not nominate any preferred provider • 1 disclosed no reason for nominating preferred provider • 1 application was not filed – still an error because the assignment did not count.
Established Relationship	35	23	<ul style="list-style-type: none"> • 10 should have been 'Opposed Bail' • 6 should have been 'Exceptional Circumstances' • 4 indicated 'Established Relationship' where the provider had not previously been assigned (3)/not assigned within 2 years (1) • 1 should have been 'PDLA' • 1 should have been 'Rotational Assignment' • 1 should have been 'Warrant to Arrest'
Opposed Bail	31	10	<ul style="list-style-type: none"> • 9 should have been assigned as urgent legal aid applications – bail was opposed but the duty lawyer did not assist with opposed bail • 1 should have been PDLA'
Total	86	53	

Pages 70 - 83 withheld in full under section 9(2)(f)(iv)



MINISTRY OF
JUSTICE
Tāhū o te Ture



ARA POUTAMA AOTEAROA
DEPARTMENT OF CORRECTIONS



NEW ZEALAND
POLICE
Ngā Pirihimiona o Aotearoa

HIGH
IMPACT
INNOVATION
PROGRAMME

Criminal Process Improvement Programme

Early-Stage Evaluation
of

Workstreams 1 and 2,
Hamilton Test Site

Workstream 6,
Hamilton, New Plymouth, Hawera and
Gisborne Test Sites

Final Report



CRIMINAL PROCESS
IMPROVEMENT PROGRAMME

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Contents	
Executive Summary.....	1
Background	1
Findings and recommendations.....	1
Evaluation Approach.....	3
Criminal Process Improvement Programme background.....	7
Scope - workstreams, implementation timeline and test sites	7
Problem, Objectives and Benefits.....	8
CPIP Early-Stage Evaluation	9
Evaluation approach/methodology	9
High level limitations of the data collected	10
Further data to be collected	10
Workstreams 1 and 2 – Bail and Admin Stages	11
Overarching findings	11
Key measures for Workstreams 1 and 2.....	19
Workstream 1 Bail.....	19
Workstream 2 Admin stage	22
Future steps for Key Measures	25
Workstream 1 and 2 detailed findings.....	26
Findings for Police solutions	26
Arrest disclosure	26
Time defendants are available for interview:.....	28
Availability of additional disclosure and case progression	28
Bail address suitability check.....	29
Victim Impact Statements and reparation schedules earlier	29
Duty Prosecutor/ Second Prosecutor	30
Findings for Duty Lawyer solutions.....	32
Doing more bail applications and more complex bail applications	32
Increased remuneration	33
Duty Lawyer Policy.....	35
Policy changes and additional resources - entering pleas and same-day sentencing.....	36
Offering Lawyer of Choice.....	37
Duty Lawyer Supervisor role	37
Duty Lawyers.....	37
Impacts on Legal Aid Services	38
Findings for Ara Poutama Aotearoa solutions (Workstreams 1 & 2)	39

Same-day address checks	39
Probation Officers available in Court.....	40
Findings for Judiciary solutions.....	41
More judicial resource and time slots for hearings	41
Court time available to pursue bail applications on the same day.....	42
Findings for Ministry of Justice solutions.....	43
Victim views on Restorative Justice (RJ) obtained earlier	43
Setting bail dates, vacating bail hearings, court lists availability.....	44
Availability of bail transcripts.....	46
Workstream 6 – Sentencing Stage.....	47
Findings for Ara Poutama Aotearoa.....	47
Expected benefits from Workstream 6 solutions	48
Pilot courts and tested solutions	48
Demand and supply of PACs baseline.....	49
Key measure for Workstream 6.....	49
Evaluation	50
Data collection period and evaluation limitations.....	50
Same-Day /Same-Week Sentencing PAC Report	50
Improve PAC Processes.....	52
Evaluation Conclusions Workstream 6	57
Appendices.....	58
Appendix 1 – Workstreams 1 and 2.....	58
Appendix 2 – Workstream 6	59
Data availability.....	59
Provision of Advice to Court requests and supply	59
Court Hearing Demographics.....	60

Executive Summary

Background

The Criminal Process Improvement Programme (CPIP) is a judicially led, cross-agency programme of work. It was assembled to reduce pressure and outstanding workload in the criminal jurisdiction of the District Court. The programme is focussed on establishing new processes to make better use of court time and resources so that cases can be resolved earlier and with fewer court events.

The programme requires justice sector partners working together to optimise opportunities to make every court appearance meaningful for defendants, complainants, victims and their whānau. Three of the nine CPIP workstreams are the focus of this early-stage evaluation: Workstream 1: Bail stage, Workstream 2: Admin stage and Workstream 6: Sentencing stage. The solutions implemented are intended to ensure the District Court has the capacity to embed the transformational changes to be provided by the Te Ao Mārama Programme.

The intended benefits from CPIP which are considered in this report¹ are that:

- Where bail is granted defendants will spend less time in custody.
- Cases will be resolved with fewer court events, on average.
- A greater proportion of cases are resolved in an earlier stage.
- Fewer adjournments will occur for substantive hearings.

This report presents findings from a review of administrative data, manually collected data and interviews with some stakeholders about their initial experiences and perceptions of the solutions. Findings should be considered preliminary and exploratory, with the intention of identifying whether the solutions might meet expectations based on the CPIP objectives. A list of the solutions tested, and an assessment based on this preliminary data is provided at the end of the Executive Summary.

Findings and recommendations

Based on the solutions tested in the pilot courts, this evaluation finds the changes being instituted under CPIP are promoting positive change in line with the CPIP objectives. The only exception is contacting victims to canvass their views on restorative justice before the defendant's first appearance. It is clear that all parties need to be "on board" to resolve matters efficiently.

Despite the unique characteristics of the pilot courts, the data suggest that these findings could be seen in similar courts if the same set of solutions were implemented. It is important to note that different practices between and within regions, localised programmes, resourcing or other constraints and disparities in organisational culture, all suggest caution in expecting that these findings will be replicated elsewhere with additional solutions, such as in Tranche 1.

The key measures are showing some positive results, except cases released from custody at their first custodial event and cases resolved by guilty plea after Admin. Testing of individual solutions has generally produced results that were expected, although some interviewees expressed a few

¹ Alignment of the benefits with the key measures is set out on page 8.

concerns which could be further investigated. Ongoing simplified monitoring will be necessary to assess whether the objectives are being met, and to what extent, as a result of CPIP activities.

In general terms, the success of the solutions appears dependent on the following factors:

- Reliable provision of accurate information early in the process.
- Personnel with suitable experience are maintained in key roles.
- The right resources, facilities and opportunities for communication between key personnel.

Interviewees were generally in support of the CPIP objectives. Stakeholders appeared actively engaged with the pilot and most noted fewer adjournments, reduced churn and more matters resolved in the administrative stage. Specific findings by workstream are summarised below.

Workstream 1: Bail application

The majority of those interviewed thought CPIP was helpful in progressing bail in Hamilton, with fewer adjournments and overnight custody, and address checks are regularly done on the day. Results are positive for opposed bail matters that were assisted by a Duty Lawyer: for instance, the number of events to plea is lower in Hamilton than the national average for such cases. Duty Lawyers have run 80% of opposed bail applications on the day, while achieving outcomes for 'remanded on bail' and 'remanded in custody' at similar levels to other defence counsel. Probation Officers have been available to provide stand-down sentencing reports, but Community Magistrates have had minimal impact on electronically monitored bail applications due to low case numbers.

Workstream 2: Duty lawyer scope and Admin stage

Positive effects in Workstream 2 can be seen in the gradual increase of percentages of first appearances disposed. Case progression for cases in scope has improved, with more cases entering pleas and being sentenced on the day. The Duty Prosecutor role was identified as significant – and not only Duty Lawyers use this - and availability of stand-down sentencing reports was appreciated.

A concern was expressed that Duty Lawyers may miss out on work if more are on the roster; but legal aid assignments have increased along with an increase in new cases. Another concern expressed is that pressure to progress cases earlier could lead to guilty pleas that may not be in the best interest of the defendant. Contacting victims before first appearance to canvass their interest in taking up restorative justice was considered to produce risks when doing this before having judicial direction. Interviewees expressed mixed views about physical court spaces and facilities, but so far these factors have not hindered the implementation of the solutions.

Workstream 6: Sentencing stage best practice

Exploratory data about adjournments shows that, with the exception of New Plymouth, sentencing hearings adjournments are trending upwards. The effects of Covid-19 and difficulties in matching PAC completion dates with sentencing hearings have limited analysis of this data. Probation Service resources for same-day/ same-week Provision of Advice to Court (PAC) reports to court have increased although they have not been well utilised. The pilot has identified PAC report improvements include canvassing of multiple addresses for electronically monitored sentences, and more often including information about fines or alternative sentencing options and cultural and domestic background. Interviewees noted that processes for preparing PACs at most courts have been followed as designed, but not all stakeholders support same-day/ same-week sentencing. The number of 'Unable to Complete' PAC memos have reduced as an apparent consequence of engaging

defendants following PAC requests. Improved communication with counsel and judges has been noticed when barriers to community-based sentences are identified.

Evaluation Approach

Workstreams were evaluated using a set of key measures for each workstream and several specific measures for each solution, producing a mixture of qualitative and quantitative data. Four District Court sites piloted these solutions, starting at different times: Hamilton, New Plymouth, Gisborne and Hawera. The data was collected between November 2021 and July 2022. This evaluation was overseen by the Research and Evaluation team of the Ministry of Justice².

Strengths and limitations of the approach

The Test Plans enabled each tested solution to be observed closely in the pilot courts and to draw a preliminary conclusion about the results they have produced to date. This approach also identified the different contexts in which the solutions were implemented. If some of the test measures continue to be used in the initial pilot courts, the effect of adding any further workstreams as part of a rollout will become visible. This would provide a comparison to the rollout courts which have not been part of any CPIP pilot.

This is not an outcomes or a process evaluation, or a benefit realisation or workforce impact assessment. The primary limitation of this early-stage evaluation is being able to identify which specific solutions were responsible for changes in any of the key measures. The following limitations are mainly due to the nature of CPIP and the test strategy.

Conclusions cannot be based solely on the key measures because some were narrower in scope than others which restricted some comparisons. The short time frame of the pilot and likely impacts of Covid-19 in early 2022 mean that not all cases entering the pilot in 2021 have been disposed yet. Individual solutions were designed to address specific issues in the criminal justice process, but there may be non-CPIP activities that were not tested which contribute to the CPIP objectives being achieved. Finally, baseline data was not collected for most solutions (either because data didn't exist before the change or could not be obtained) and data was not collected on non-CPIP activities.

Addressing limitations of the findings

Additional work is advised to identify any causality between the solutions and the CPIP objectives, such as to:

- Identify which key measures require individual solution measures to be monitored (either the existing measures used in the test phase or new measures, or specific localised measures) and collect administrative data that was not available for this report.
- Continue data aggregation between Ara Poutama Aotearoa and Ministry of Justice to develop a more complete understanding of sentencing hearing adjournments.
- The engagement of all parties should be measured alongside other key measures as it is a critical success factor.
- Evaluate the effect of any guidelines and judicial communication produced in terms of uptake of same-day/same-week PACs where appropriate.
- Make visible a critical success factor for CPIP which is the active engagement of all stakeholders to enable the intended benefits to be achieved.

² Test Plans were agreed with the Programme Director and Workstream Leads.

Table 1: Workstream solutions and overall evaluative findings

Solution Number	Solution narrative	Relative importance (priority)	Preliminary assessment
Bail stage solutions			
WS101	National roll-out of Bail Support Services by Ara Poutama Aotearoa Corrections. It will contribute to a best practice end to end bail process	high	Meeting expectations
WS105	A new weekly roster of lawyers who undertake for the relevant week that they are available to accept urgent assignments and will respond urgently		Meeting expectations
WS106	Revise the Duty Lawyer operational policy to encourage Duty Lawyers to make bail applications where the reverse onus applies, or on Category 3 offences where bail is opposed.	key	Meeting expectations
WS108	Duty Lawyer is notified of all oppositions to bail and reverse onus applications by 8.15am and receive arrest disclosure, initial disclosure including victim views and written bail oppositions before 8.15am. Cell transfers by 8:15am and participants will be available to counsel by 8:30am	high	Meeting some expectations
WS110	All Duty Lawyers have access to the register of current legal aid assignments, including at non-Public Defence Service courts. Legal aid to notify Duty Lawyers of assigned counsel for urgent assignments. Bail Support Services access to legal aid assignments register		Meeting expectations
WS111	Encourage Duty Lawyer use of tablets or devices for the provision of information, namely development of an online legal aid application form, electronic submission of legal aid applications and access to disclosure and other information from Police.		Not meeting expectations
WS112	Second prosecutor available to the Duty Lawyer Service to discuss bail.	key	Meeting expectations
WS113	When a charge is filed and an address condition is being considered by Police, Police to begin checking suitability of any proposed bail addresses.	medium	Meeting expectations
WS114	Where Community Magistrates have jurisdiction, they are to hear bail applications for electronically monitored bail or applications for a variation or continuation of bail where there has been a breach of electronically monitored bail	medium	Meeting some expectations
WS120	Quicker turn around for electronically monitored bail hearing dates. Reduce current 10 days from application filing date to 7 days. Revise and simplify the language in the electronically monitored bail application form to ensure all required information is included in applications and when appropriate, more than one address may be proposed in an application.	Not tested at Hamilton	
WS121	Quicker turnaround for setting bail dates and vacating bail hearings when application is withdrawn. Duty Lawyers and Police Prosecution Service to receive court event lists by 7.30am for arrests	high	Meeting expectations
WS124	Ensure that the judicial officer has all information and relevant files by afternoon prior to appearance	Not tested - BAU in Hamilton	

WS125	All decisions where bail is declined and all decisions where bail is opposed (whether bail is granted or declined, including EM bail) to be typed back within an agreed timeframe and released, added to court file, and sent to prosecution and defence as soon as possible	high	Meeting expectations
WS127	Schedule court lists to ensure enough judicial resource and time allocated to hear bail applications.	high	Meeting expectations
Admin stage solutions			
WS221	Second prosecutor available to review and discuss the file with counsel in list courts.	key	Meeting expectations
WS201	Redesign communications with defendants about legal aid, to motivate the defendant to seek legal advice before coming to court and contact their lawyer if legal aid is granted.	Implemented nationally, not tested	
WS202	More consideration of lawyer for choice - where there is an established relationship and/or where a defendant appears on a warrant to a rest, assigning the first assigned lawyer.	low	Meeting expectations
WS208	Legal Aid to notify assigned lawyer of type of remand and future event	Yet to be implemented nationally	
WS210	Subject to their availability in the locality, more Duty Lawyers, more experienced Duty Lawyers and further support for Duty Lawyers on the policy changes to allow entering of pleas and same-day sentencing. Including a supporting remuneration adjustment.	high	Meeting expectations
WS218	Judicial time allocated so that sentencing can take place in a list court	high	Meeting expectations
WS223	Additional specific disclosure provided at first appearance. Police to proactively release disclosure electronically to assigned counsel following notification from legal services.	key	Meeting expectations
WS224	Probation Officers available in court to provide stand-down sentencing reports for same-day sentencing.	key	Meeting expectations
WS225	Earlier canvassing of victim views on restorative justice and victim contact details are available by first appearance.	low	Contains risks
WS226	Earlier preparation by Police of reparation schedules & Victim impact statements	low	Meeting some expectations
WS227	Increase use of oral sentencing submissions	Not tested - BAU in Hamilton	
Sentencing stage solutions			
WS602	Improved PAC Processes: Engagement with participant prior to them leaving Court (obtain consent and confirm contact details), Engagement with counsel at point of PAC allocation and when any barriers to community-based sentences are identified., multiple addresses canvassed in one PAC request. Including fines information/sentencing conversion options in PAC.	Not stated	Meeting expectations
WS610	Same-day/same-week PAC Report: Develop agreed solutions between Judiciary, MOJ and Corrections on further PAC directions when an unable to complete memo has been submitted.	Not stated	Meeting expectations

Update on Workstream 6 solutions not tested

	Solution	Update
WS601 WS607 WS608	<p>Aligned timeframes: Ara Poutama Aotearoa Corrections, Police and Ministry of Justice Memorandum of Understanding will be amended to reduce the timeframe for provision of advice to court</p> <p>Timeframes for improving active case management practices, including sentencing indications, will also be aligned.</p> <p>Align CPA rules on filing of submissions to match new MOU timeframes.</p>	<p>Court Registry Officers at pilot courts were encouraged to follow a 4:2:1 approach:</p> <ol style="list-style-type: none"> 1. 4 weeks prior to a hearing: emailing everyone involved (counsel, report writers, probation officers) advising the due date of submissions 2. 2 weeks prior to a hearing: email reminding that the hearing is coming up 3. 1 week prior to a hearing: checking that everything is on file and ready for sentencing
WS603	Practice development for Probation Officers: participation in short discussion sessions about linkages between Hōkai Rangī, Te Ao Mārama and CPIP sentencing stage practices.	Videos have not yet been produced and these sessions are yet to take place.
WS604	Cultural information to the court: Four-tiered approach: Tier 1: PAC reports to include cultural and domestic considerations, Tier 2: Whānau to speak on behalf of the defendant, Tier 3: Local Kaumatua to speak on behalf of the defendant and Tier 4: "SMTA" writers to provide written report	Tier 1 was the inclusion of cultural and domestic considerations which was evaluated above. Tiers 2-4 have not been piloted.
WS605	Use of the HIIP Sentencing Ready Team to undertake intensive case management	The HIIP Sentencing Ready Team has continued to undertake case management for three cohorts of defendants in custodial remand. Work focus has been national
WS606	Improved relationships: Run frequent local and national sessions with the judiciary to provide information on available rehabilitative programmes, post-sentencing support and to facilitate feedback on court servicing	The HIIP Sentencing Ready Team assisted with training (which was done remotely because of Covid-19). Unclear if these processes have been followed due to Covid-19 and short-staffing at court
WS609 WS611	<p>Process to schedule into sentencing courts that allows for an adjournment buffer to better utilise judicial time (files that are incomplete are rescheduled prior to the day of hearing).</p> <p>Schedule in the sentencing stage: Early identification and rescheduling of court sentencing events unlikely to proceed and use of a sentencing ready pool to bring forward sentencing dates.</p>	Early identification and rescheduling of court sentencing events unlikely to proceed and use of a sentencing ready pool to bring forward sentencing dates was recommended but Covid-19 has pushed a lot of sentencing hearings out. If guilt was established in mid-August the earliest sentencing hearing at all courts is early – mid October.

Criminal Process Improvement Programme background

Scope - workstreams, implementation timeline and test sites

Each workstream works with a set of nominated judges to ensure there is judicial leadership and endorsement of solutions. The outcomes delivered by CPIP will enable the District Court to have the capacity to embed transformational changes to be delivered by the Te Ao Mārama Programme. In accordance with the Programme's test strategy workstreams 1, 2, 3, 6 and 8 have developed solutions that are subject to a test and evaluation phase.

The focus of this early-stage evaluation shown in the shaded rows in Table 2: Workstream 1: Bail stage, Workstream 2: Admin stage and Workstream 6: Sentencing stage

Workstreams 1 and 2 have been tested in Hamilton District Court, since 6 December 2021 and Workstream 6 has been tested in four sites (below), since 4 November 2021.

Table 2 Test sites and start dates

		Hamilton	Hutt Valley	Christchurch	Gisborne	other
1 Bail Applications		6 Dec 21	13 June 22	-	-	-
2 Duty Lawyer Admin Stage		6 Dec 21	13 June 22	-	-	-
3 Review Stage Best Practice	Registry and Judiciary solutions	No testing, national roll-out				
	Police case management model	28 Oct 22	-	4 Nov 19*	21 March 22	-
4 Judge Alone Trial Best Practice		No testing, national roll-out				
5 Jury Trial Stage Best Practice		No testing, judicial protocols were issued nationally May 2022, changes come into effect nationally in tranches from October 22 onwards				
6 Sentencing Stage Best Practice		14 Feb 22	-	-	22 Nov 21	Hawera 13 Dec New Plymouth 8 Nov 21
7 Outstanding Workload		No testing				
8 Reducing Non-Appearances	Court Summons	23 May 22	-	17 Dec 21	23 May 22	-
	Court Notice of Bail	20 June 22	-	8 June 22	4 July 22	18 July 22
	SMS Reminders	20 June 22	-	17 Dec 21	4 July 22	-
9 Remote Courts		From February 22, workstream 9 was tracked to support Business Continuity Planning/ Covid-19 impacts. CPIP testing and evaluation plan does not apply				

*Targeted Case Progression (TCP) paused on 26 March 2020 due to Covid-19. It re-commenced in those locations on 14 September 2020 and continued through to July 2021

Problem, Objectives and Benefits

Problems identified for CPIP to address

- Increased number of events required to dispose a case on average
- Increasing workload pressures on court resources
- The time it takes to resolve cases is lengthening
- Reduced availability of judicial resource, and the impact of Covid-19

CCIP Objectives

The overarching objective of CPIP is to establish best practice in order to increase meaningful events in the criminal justice system and improve the timeliness of cases in scope; specifically to:

- reduce the average time (days) to case 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 sentencing hearing adjournments due to files being submitted incomplete or late
- increase efficient use of Judicial, Prosecution, Corrections and Court time
- increase relevant information in sentencing reports
- reduce the number of days defendants spend in custody waiting for an outcome
- fewer people being sentenced on time served
- Increase engagement with iwi for early recognition and support of an individual's rehabilitation and reintegration needs.

Benefit measures aligned with the key measures presented in this report

Where bail is granted defendants will spend less time in custody	<u>Key Measure WS1 M1</u> : Average number of days remanded in custody before achieving bail <u>Key Measure WS1 M3</u> : Percentage of cases released from custody at their first custodial event
Cases will be resolved with fewer court events, on average	<u>Key Measure WS1 M12</u> : Average number of events remanded in custody before achieving bail
A greater proportion of cases are resolved in an earlier stage	<u>Key Measure WS2 M1</u> : Average number of events for cases in scope (6 months – 7 years) to enter an initial plea. <u>Key Measure WS2 M2</u> : Percentage of cases resolved by guilty plea after Admin (6 months – 7 years)
Fewer adjournments occur for substantive hearings	<u>Key Measure WS2 M3</u> : Percentage of cases with a maximum penalty of 6 months - 7 years imprisonment sentenced on the day <u>Key Measure WS6 M1</u> Percentage of sentencing hearing events being adjourned

CCIP is a critical prerequisite to Te Ao Mārama

Achieving the CPIP objectives and intended benefits are critical prerequisites to Te Ao Mārama.

CPIP Early-Stage Evaluation

The evaluation of the testing phase of CPIP was intended to provide some initial information about the solutions being tested that could be useful for decisions about rolling out the solutions to other areas. The information was to be captured from administration data, manually collected quantitative data targeted to specific solutions, and qualitative data from people working with the solutions at the test sites.

This early-stage evaluation was not intended to consider outcomes or wider impacts such as on court participants or on agencies. These would need to be evaluated later, for a better understanding of the effectiveness of the solutions and interdependencies between CPIP and non-CPIP activities.

Evaluation approach/methodology

This report summarises the data collected about Workstreams 1 and 2 from the test site of the Hamilton District Court over the period 6 December 2021 to 31 July 2022 and data collected about Workstream 6 from the test sites of New Plymouth, Hawera, Gisborne and Hamilton.

A Test Plan was developed for each of the solutions being tested, with between two and five separate measures for each solution, providing both quantitative and qualitative data. This multiple-measures approach was intended to allow the results of each solution to be assessed on its own and to show how these measures complement the key measures developed prior to testing. The Test Plan required the data to be collected and analysed in-house.³

For Workstreams 1 and 2, approximately 35 quantitative measures were used⁴ and collated monthly. Qualitative data was collected through 24 in-depth, one-to-one interviews and two online surveys. The intention was to interview people working with the solutions: Police, Duty Lawyers, Registry, Court Victim Advisors, Judiciary, and Ara Poutama Aotearoa.⁵ Court observations were considered important for the methodology, but the impacts of Covid-19 precluded this.

For Workstream 6, data was drawn from interviews with Probation Service staff, analysis of sentence hearing outcome adjournment rates and dip sampling of PACs prepared for sentencing hearings throughout the pilot.

This report shows results of testing for each month and may allow identification of possible connections between data, such as available working days and numbers of bail applications processed in a month. However, the following limitations and possibility of further data collection should be noted.

³ The methodology for developing Test Plans is available on request.

Quantitative measures are set out in Appendix 1. Some test measures were trialled but discontinued due to the difficulty of collecting continuous data

⁵ A generalised interview guide used in the interviews is available on request.

High level limitations of the data collected

- Because of the number of solutions being run at the same time, the results of the key measures cannot be attributed to any specific solution.
- Known caveats apply to CMS data:
 - The data collected is based solely on data entered into CMS by users, with human error factors.
 - There are no data reconciliation checks made between CMS and the physical court document. There could be instances where the data entered does not truly reflect what occurred on the day, due to inaccurate data entry and/or understanding.
 - There are instances where more than one outcome occurs leaving open to question which outcome supersedes the other.
- Manual records have been deemed as more reliable than CMS data because errors are more easily traceable, however not all data was available for every measure and could not be included in the final analysis. For instance, there was no reliable data for adjournment reasons overnight custody, and arrest numbers.
- Insufficient data was available to provide insight to solutions such as arrest and additional disclosure, Victim Impact Statements and Reparation Schedules.
- For most of the manual records no pre-CPIP comparison can be made because the manual records can only be collected once the solution is implemented.
- Key measures are reported with means but could potentially be reported with medians also (in order to deal with outliers).
- Covid-19 impacts were seen on many measures and have not been fully analysed.

Further data to be collected

This report is based on the data that was able to be collected, from administration data and manually collected data. Collecting data specifically for CPIP placed additional workload on staff and therefore not all data was collected as intended.

The evaluation revealed that it would be advisable to continue to capture some or all of the following data:

- PAC reports – quantitative and qualitative data (Ara Poutama Aotearoa Corrections)
- Duty Lawyer and Legal Aid solutions – qualitative data (Legal Aid Services)
- Test measure data (manual records), such as the percentage of bail applications run on the same day (all counsel, all arrests) where bail is opposed
- Key measures that take active and disposed cases into account.

Workstreams 1 and 2 – Bail and Admin Stages

Overarching findings

The following findings are a combination of the qualitative and quantitative data collected.

Context of Workstream 1 and 2: Hamilton

Crime and churn

Interviewees noticed a number of factors contributing to churn, including more sophisticated crime, serious charges, many defendants pleading not guilty and electing Jury Trial causing churn. In particular they noted:

- A high volume of electronically monitored bail applications, Police generally opposing bail, and frequent bail breaches partly due to unsuitable bail conditions
- More 'events before disposal' occur even at the end of the criminal process, events are often not meaningful, and churn is still seen in Case Review Hearings
- Different pathways exist for morning and late arrests: more complex cases and fresh arrests appearing in the afternoon are less quickly resolved due to seriousness; where Police may verbally oppose bail, arrest disclosure may be unavailable to Duty Lawyers and defendants are more likely to end up in custody
- Time taken to check bail addresses and find a suitable address is a key reason for churn
- Issues arise using contact details from previous charges as if they are current details
- It is a time-based and defendant-focused system; victims' input is still minor, and some practices (e.g. Duty Lawyer contacting victim) have adverse impact on victims.
- Based on an early understanding of the Young Adults List, Hamilton is expected to experience increased court events per case. Low level charges which would have in the past been dealt with at a first appearance could now be put off for subsequent appearances.

Because of the range of changes experienced at the Hamilton District Court and the factors identified above, the findings in this report are unlikely to apply fully to another District Court.

Workload in Hamilton during test phase

The Police workload for Hamilton can be seen in arrests data. This manual record obtained from daily Police notification to the court shows the number of arrests has increased linearly from December 2021 (166 arrests) to July 2022 (262 arrests) putting increased pressure on the sector.

The workload for Duty Lawyers, particularly where bail is opposed, is gradually increasing with a drop in April (aligning with Covid-19 impacts and public holidays).

Personnel

There is an overall positive attitude towards the efforts of various parties, alongside recognition of the challenges, as represented in the following themes from interviewees:

Experience and skills: There is a good criminal bar – a mix of seniors and juniors – and experience in the Registry and Judiciary.

Turnover: A high turnover is experienced in Registry and prosecutors; for Duty Lawyers there is a perception that “[CPIP] jumped into a system that was broken”.

Judicial approach: Judges may be happy to get cases dealt with on a same-day basis and seem to be on board with changes.

Prosecution: Governance oversight was suggested as a way to make sure changes and behavioural shifts are made.

Change: Hamilton can be resistant to change/ people are tired of change because of a “tsunami of changes in the last few years”.

Registry pressures: Technical coaches are not present in Hamilton – applies unfair pressure on court registry officers.

Facilities

A range of perceptions about the physical space in Hamilton were expressed:

Duty Prosecutor: The room where Bail Support Services and Duty Prosecutor work together can apparently get noisy, with a privacy risk and is a barrier for lawyers approaching the Duty Prosecutor.

Registrars Court: This was identified as unsafe, cramped, and a barrier for the key solution of Bail Support Services and Duty Prosecutor discussing bail addresses. Improvements in the Registrar’s court space could facilitate case resolution.

Victim Advisors: The move for Victim Advisors to level one means that victims are safer by avoiding public areas, however Victims Advisors feel out of the loop and the duress alarm may not be adequate.

Technology: AVL or VMR links are still limited, and technology improvements would help workflow.

Covid-19 impacts on workload

Data on Covid-19 impacts provided useful context for interpretation of case progression (Figure 1).

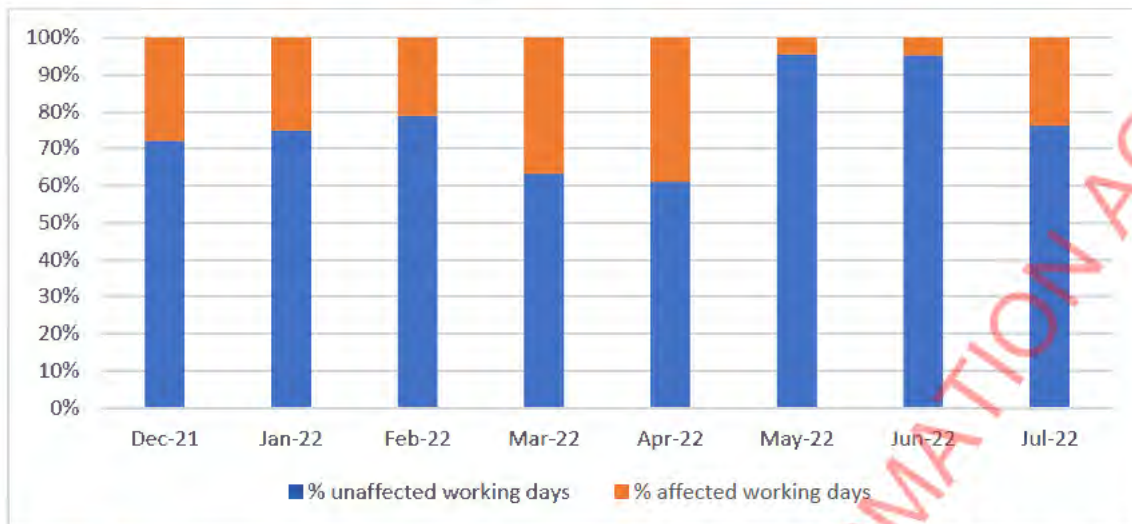


Figure 1: Number of working days that were not affected by Covid-19 public holidays and annual leave of key personnel (Duty Lawyer Supervisor, Duty Prosecutor)

Comments about the impact of Covid-19 included:

- “It was the worst time to start CPIP” – massive impacts from Covid-19
- Many restrictions and Video Communication Links issues exist; makes it increasingly difficult and stressful, such as not being able to have face-to-face interviews with victims
- Staff are tired, it is extra hard with constantly changing Covid-19 rules/environment.

Overarching qualitative and quantitative findings Workstream 1 and 2

The following perceptions were shared and can be considered as generally positive or negative, however there has been no follow-up assessment of the accuracy of these perceptions.

Positive overall perceptions about CPIP

Interviewees generally support the CPIP objectives, noting fewer adjournments, people getting through the system quicker, stopping churn and resolving matters as key observations.

The Duty Prosecutor role is critical for getting things resolved and getting more information for Duty Lawyers - “defendants have a right to see full disclosure, not just charging documents”.

“A lot can happen in one day – a bail application is made, then it is declined, then they ask for sentence indication and then sentenced on the day. Prior to CPIP that would have taken 3-4 months.”

Some said they think Duty Lawyers have the time they need to prepare a case and get the right result.

“CPIP forces us to make ourselves more available”

CPIP is seen as suitable for low level offending/less complex cases and early stages - some felt that progress is better for early stage events (before plea). More serious cases seem to take longer, which may be a better or worse effect, depending on perspective.

Negative overall impressions of CPIP

The new policy for Duty Lawyers was perceived by some as unfair if some are missing out on work, whereas others felt that fewer Duty Lawyers are on the roster than before CPIP. There was a perception that lawyers are not working as well together and some agreement that not all Duty Lawyers should do serious charges. A concern was expressed that changes have led to bail applications that may not be in the best interest of the defendant and a statement was made that:

“We should not do same-day sentencing and pleas on most of the charges ”

Several were concerned that the Duty Prosecutor and Bail Support Services are not available in the afternoons. Other work – discussing disclosure, summary of facts and charges were considered more important than address checks for the Duty Prosecutor.

Pre canvassing victim views on restorative justice (RJ) is seen by some as inappropriate; with possible negative effects on victims – such as ‘retraumatising’ with every contact from the court. Another comment was that CPIP is still defendant focused.

Impressions about progressing bail

Almost all said CPIP was helpful in progressing bail. In Hamilton, for roughly half of all arrests where bail is opposed, a bail application is run on the day.

Early arrest court events have more time for preparation than afternoon arrests, and are therefore more likely to get bail rather than being remanded in custody, perhaps because Police and Bail Support Services are checking bail addresses in the morning but not the afternoon.

Other views were:

- There are still issues with disclosure; Duty Lawyers are trying to work with prosecution to solve this; also first appearances that are not arrest should not be forgotten
- Cases with many complainants are too complex to be resolved quickly
- Address suitability check is not necessarily a victim safety check; this is complex to achieve with extended whānau or connection to gangs

When breaking bail applications run on the same day down into type of counsel (Figure 2 below), Duty Lawyers run around 80% bail applications on the day. A decrease in February may be related to written opposition to bail being provided less regularly than usual in that month.

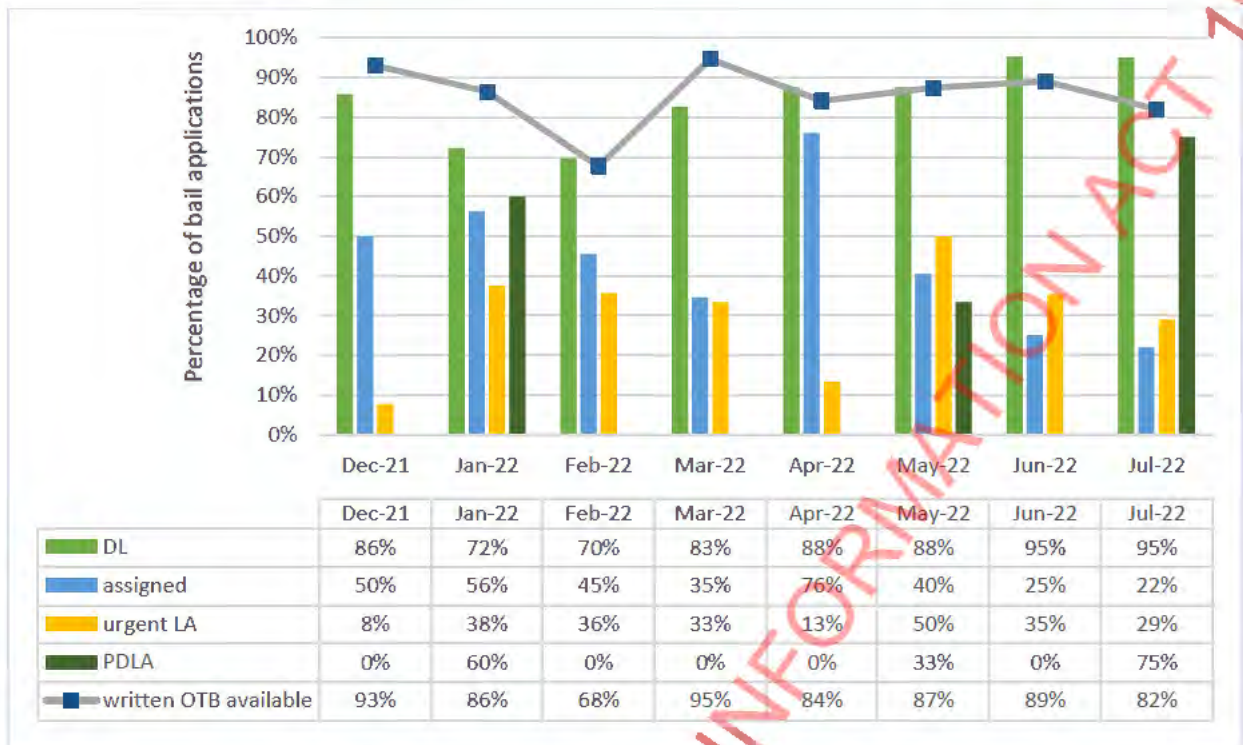


Figure 2: Percentage of bail applications run on the day of cases dealt with, by counsel type

Note: This data is based solely on data entered into CMS or TSM by users. Data on who actioned the applications relies in part on Duty Lawyers claiming the higher duties fee, so is not a complete record of all cases completed by duty lawyers. Written opposition to bail only includes records where Police have supplied written opposition.

The number of bail address suitability checks by the Duty Prosecutor and bail address availability checks done by Bail Support Service per month, show that this solution continues to be worthwhile (Figure 3).

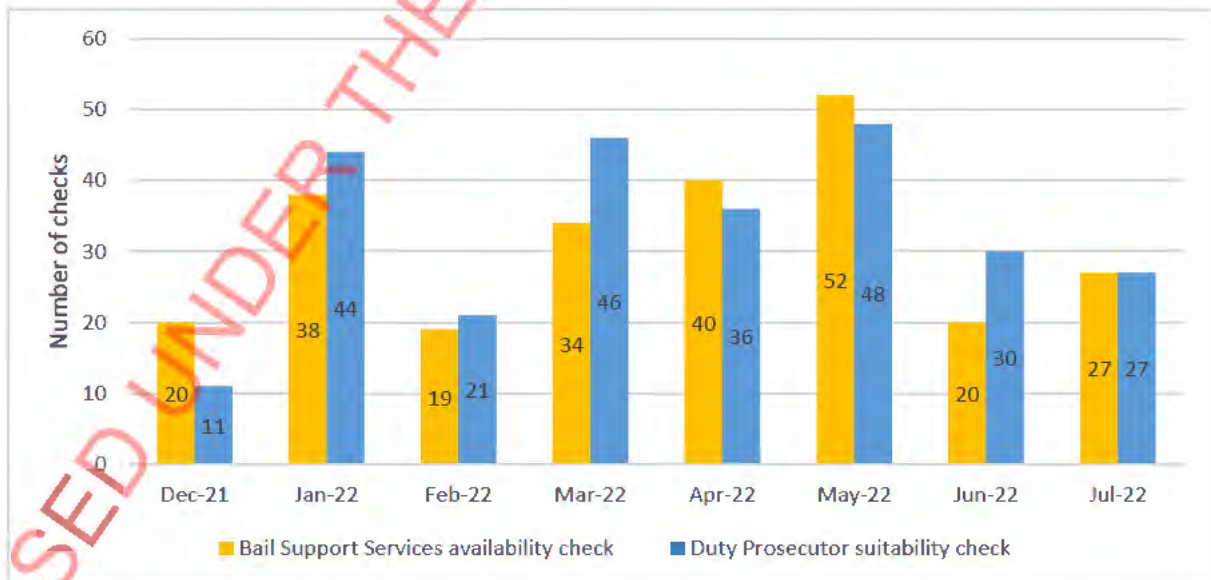


Figure 3: Number of same-day address checks by duty prosecutor by suitability and availability checks between December 2021 and July 2022 (WS101)

The number of bail address checks required is affected by the number of cases where bail address information is needed on the day, rather than on officer availability.

Impressions about progressing cases and sentencing

Interviewees were less certain about the changes in progressing cases and sentencing than about the changes in progressing bail. Comments included:

- Stand-down reports are good, but uptake is not good so far.
- “Communication about it may be the issue, could be the legal aid payment system” (get paid more if they put it off).
- WS 1 and 2 do not seem to follow through to the rest of the court process.
- “CPIP means progressing matters without being the assigned lawyer;” some Duty Lawyers were doing sentencing anyway without payment and CPIP had no influence.
- Police seem more proactive, and the Duty Prosecutor sorting it out quietly in another room helps to move things along.
- For victims “the new process makes it a lot quicker, but some may not be happy with that, they may think it is not the right outcome, even if it is a quicker resolution.”

Case progression for cases in scope (Figure 4 below) has improved overall from December 2021 to July 2022, with more cases entering pleas and being sentenced on the day on average and fewer cases remanded without plea (RWOP). Case progression was slowed down in April, likely due to a high workload in that month. June and July shows increases in the percentage of cases remanded without plea.

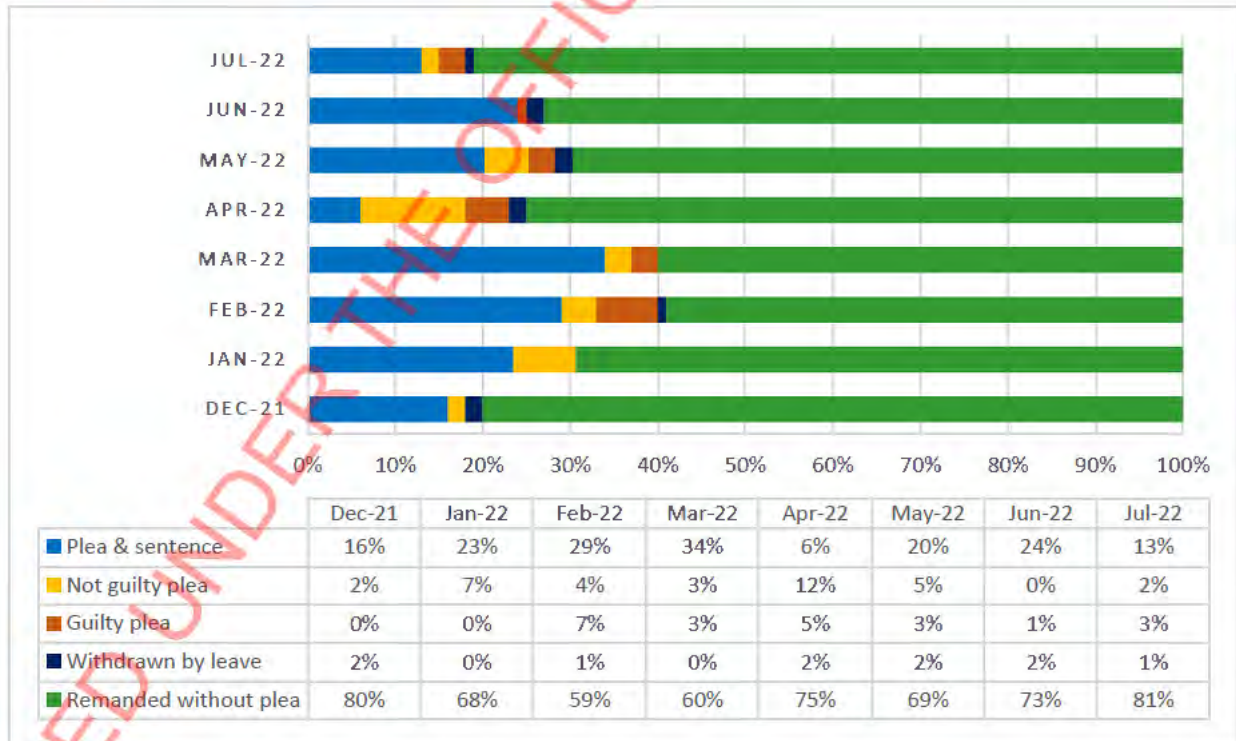


Figure 4: Case Progression in admin stage by matters in scope (6 months to 7 years), Manual record December 2021 to July 2022 Note: There are no data reconciliation checks made between CMS and the physical court document.

When looking at percentages of first appearances disposed (Figure 5), a gradual increase can be seen with more cases being disposed over time.

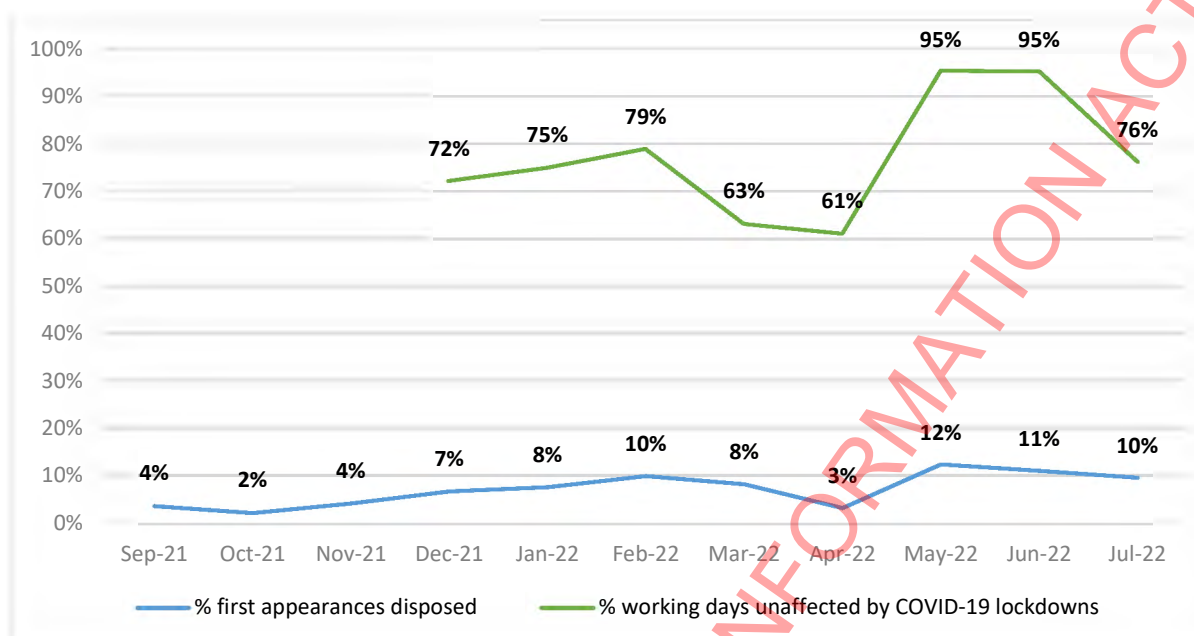


Figure 5: Percentage of first appearances disposed for cases within scope (CMS) with context of unaffected working days and workload for Duty Lawyer (Manual record)

Before CPIP, Duty Lawyers did not take opposed bail matters, but now they frequently run bail applications. Where Duty Lawyers run opposed bail applications, there appear to be a lower average number of events to plea than for all Category 3 cases. Since CPIP the average number of events to plea for opposed bail during December 2021 to May 2022⁶ was 1.8 (manual record).

Suggestions/improvements, tweaking solutions

Interviewees suggested some improvements that could be made to the existing CPIP solutions:

Expanding scope

- Lower-level charges could be included in Duty Lawyer extra remuneration
- Smaller courts work very differently so CPIP could work better in Rotorua for example.

Processes

A general comment was that CPIP has to be one step at a time; everyone needs to be on board to resolve matters efficiently. Specific suggestions were:

- Put more resources in at the beginning, 99% of cases are resolvable at the early stage
- Police CCTV footage could be ready for first appearance
- Pre-sentence reports could be more concise to be done on the same day
- Initial disclosure could be available in the Registrar's list for counsel to grab
- Adding Summary of Facts to the Warrant to Arrest documentation would help
- Pay Duty Lawyers a single payment for both bail application and guilty plea/sentencing
- "Look at disclosure thinking about a plea instead of thinking about bail"

⁶ This data was manually collected for CPIP and is not available for June and July.

- Have the judiciary rostered over a two-week period.

Apparent interdependencies between solutions, possible connections between Workstreams

Some priority solutions appear to be interdependent based on qualitative data. Examples provided in the data include:

- Efficient Duty Lawyer work depends on Police work before the first appearance – such as providing appropriate disclosure and the defendant being brought to court in time.
- Bail Support Services and Duty Prosecutor work more effectively together to check bail addresses, where this is required on the day of the bail hearing
- Duty Prosecutor is prepared for meeting the Duty Lawyer Supervisor – especially in cases with opposed bail - and the Duty Lawyer Supervisor checks if a lawyer was assigned previously, these preparations assist Duty Lawyers when talking with a defendant.
- Further efficiencies are likely when all stakeholders have better technology, especially remote technology.

Workstream 8 may have some interdependencies with Workstreams 1 and 2, affecting event numbers. For cases in scope for Workstreams 1 and 2, where events are adjourned due to Failure to Appear (FTA) - which increases the number of events to plea – this might overlap with cases where someone gets a redesigned court summons or notice of bail (due to Workstream 8), possibly a reduction in the number of events to plea would still occur. Or if any days in custody are due to unavailability of court dates (such as adjournments because of failure to appear), if we successfully reduce the FTA rate, there could be a flow on effect of earlier court dates available.

Key measures for Workstreams 1 and 2

The following results include the key measures agreed in the CPIP design phase for Hamilton compared to other very large and large courts⁷ in New Zealand and the monthly target.

The Hamilton and large court values are compared to monthly target values. This projection has been created for each key measure to indicate the values that need to be achieved to reach the final target in December 2023. The difference between the intended targets in the benefits logic map and the targets used in this report, is that this report reflects the December 2023 targets including the impacts of Covid-19.⁸

It is important to note some expected Covid-19 impacts on achieving the set targets, such as an increase in warrants because of defendants not appearing during lockdowns and cases taking longer to move through the stages because of unavailability of court time. Note also that as the sample size for Hamilton is smaller than the data for the aggregated comparison courts, Hamilton data tends to fluctuate a bit more, and if there are an elevated number of cases it will be hard to impact some measures until the backlog is cleared.

Limitations of CMS data affecting workstream results

Assessment of the CPIP key measures has revealed that the measures have some high-level limitations which restrict the interpretation of overarching workstream results.

- The measures only include cases that have already been disposed in a month, leaving out cases that were in scope but have not been disposed yet and the number of cases affected is unknown. An alternative measure is proposed at the end of this section.
- Most of the measures include a lag, as it is counted backwards from the date of a certain event (such as bail application outcome or entering a plea) to the filing date. As the lag is not specified, we cannot track when we were doing well or poorly – we cannot attribute success or failure to time.
- Measures are reported with means (and not medians) so that they are likely to be affected by outliers (such as cases that have been in the system for a long time).
- Hamilton and large court values are not weighted by seasonal changes, Covid-19 impacts or current workload, but the target takes Covid-19 impacts into account.

Workstream 1 Bail

Testing for Workstreams 1 is limited to the following scope: opposed bail matters where maximum penalty is up to 10 years and is not a Crown prosecution matter.

Targets for the key measures

In the graphs below, monthly estimates (including Covid-19 impacts) are compared to monthly actual values in Hamilton for each key measure (all cases) and show how the targets are tracking on a monthly basis to reach the intended targets by December 2023.

⁷ Other very large and large courts included are Manukau, Christchurch, Auckland, Waitakere, Tauranga, Rotorua, Hutt Valley, North Shore

⁸ The December 2023 target takes into account a COVID-19 inclusive forecast. This forecast projects the relevant data during the 2020/2021 financial year to account for all the impacts of COVID-19. Therefore, the monthly targets follow the COVID-19 inclusive forecast and workload needed to achieve the final December 2023 target.

- Target WS1 M1: Reduce average number of days remanded in custody before bail is granted, to 39.87. As at July 2022, the target is 44.9.
- Target WS1 M2: Reduce average number of events while remanded in custody before bail is granted, to 3.52. As at July 2022, the target is 3.7.
- Target WS1 M3: Increase proportion of cases where eligible defendants achieve bail at their first event, to 87.5%. As at July 2022, the target is 86.8%.

Assumption for WS1 M1 -M3:

Scope of cases included in the measures are: bail applications run on the day, warrant to arrest, breach of bail, first appearance.

Key Measure WS1 M1: Average number of days remanded in custody before achieving bail.

Finding: The data (Figure 6) does not provide reliable trends yet and we do not expect to see a shift for some time because the case is counted once a case is disposed. Hamilton shows better values pre- and post-CPIP than other large courts (except in May and June) and is meeting the target (except December and May).



Figure 6: Average number of days remanded in custody before achieving bail (all cases) Target: reduce (WS1 M1)

Key Measure WS1 M2: Average number of events remanded in custody before achieving bail.

Finding: The data (Figure 7 below) show that Hamilton needed more events than other large courts before CPIP, but this has been reduced since February. During the test period Hamilton has shown fewer events remanded in custody than other large courts in some months, and has stabilised around the target figure, similar to other large courts.



Figure 7: Average number of events remanded in custody before achieving bail (all cases) (WS1 M2) (Target: reduce)

The decrease in average number of events from December to March, increase again in April and May and plateau in June and July could be due to the impacts of Covid-19. But no other contextual factors could be clearly identified to explain the fluctuations as the length of the lag in the data is unknown.

Key Measure WS1 M3: Percentage of cases released from custody at their first custodial event

Finding: No consistent improvement can be observed with the current scope (Figure 8). Compared to other large courts, Hamilton performs worse in most months.

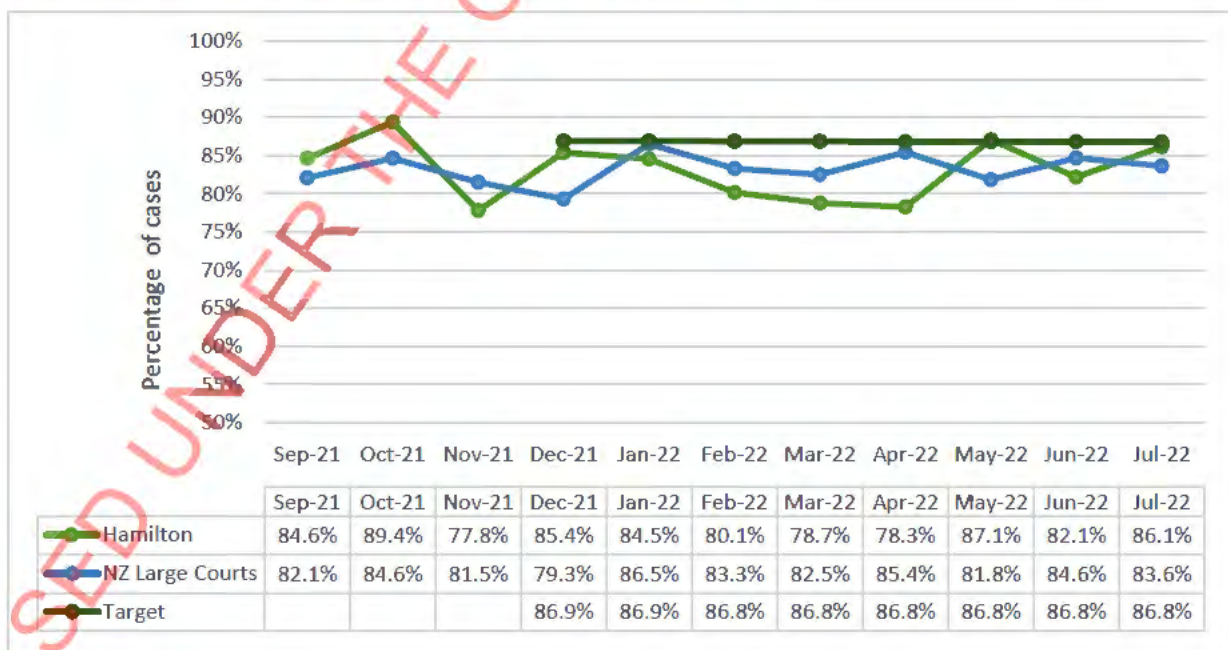


Figure 8: WS1 M3 Percentage of cases released from custody at their first custodial event (all cases) (Target: increase)

Workstream 2 Admin stage

Testing for Workstreams 2 is limited to the following scope: - matters where the maximum penalty is 6 months to 7 years imprisonment.⁹

Targets for the key measures

The intended targets in the benefits logic map reflect the December 2023 targets on a national level, excluding the impacts of Covid-19 but have been amended to only include cases in scope (maximum penalty of 6 months to 7 years imprisonment).

In the graphs below, monthly estimates (including Covid-19 impacts) are compared to monthly actual values in Hamilton for each key measure.

- Target: WS2 M1: Reduce average number of events for Category 3 cases to enter an initial plea, to 3.71. As at July 2022, the target is 3.98.
- Target: WS2 M2: Increase percentage of guilty pleas occurring in the Admin stage instead after Admin stage, such that 75.3% of cases are resolved by guilty plea after Admin stage. As at July 2022, the target is 77%.
- Target: WS2 M3: Increase percentage of cases (with a maximum penalty of 2 – 7-year imprisonment) sentenced on the day, to 38.5%. As at July 2022, the target is 38.1%.

Assumptions WS2 M1-M3

- Measures do not take into account cases that are not able to be resolved (without tracking cases backwards from resolution and seeing which make a late guilty plea)
- Plea entered event is included in the count.

Note that alternative measures would include all cases that were in the Admin stage during the test period, for which the results are shown on page 25.

Key Measure WS2 M1: Average number of events for cases in scope (6 months – 7 years) to enter an initial plea.

Finding: Figure 9 shows that the monthly target of 3.97 has not generally been reached for the average number of events that disposed cases took to enter an initial plea, especially since April 2022. No clear trend can be observed when comparing to other large courts. Hamilton needs a similar number of events in most months (December, February, March, May) but more events in October, April, June and July and fewer events in November 2021 and January 2022.

⁹ This is the scope within which Police have agreed to provide additional disclosure, but Duty Lawyers can progress matters outside this scope, where appropriate



Figure 9: WS2 M1 Average number of events for cases in scope (6 months – 7 years) to enter an initial plea, CMS (Target: reduce)

Note that an alternative measure would include all cases that were in the Admins stage.

Key Measure WS2 M2: Percentage of cases resolved by guilty plea after Admin (6 months – 7 years)

Finding: There is no clear trend in the data -Figure 10 below. No specific CPIP effects can be observed as the lowest numbers are observed for September (pre-CPIP). Workload peaked in February, June and July (see Figure 13), but this does not appear to influence this key measure but the fewer unaffected working days in months March and April (impacted by Covid-19) may have influenced it. Compared to other large courts, Hamilton values are higher in most months (except June) after CPIP implementation in December.

If there are an elevated number of cases it will be hard to impact this measure until the backlog is cleared. Also, there would have been an increase in warrants because of defendants not appearing during periods of lockdowns.

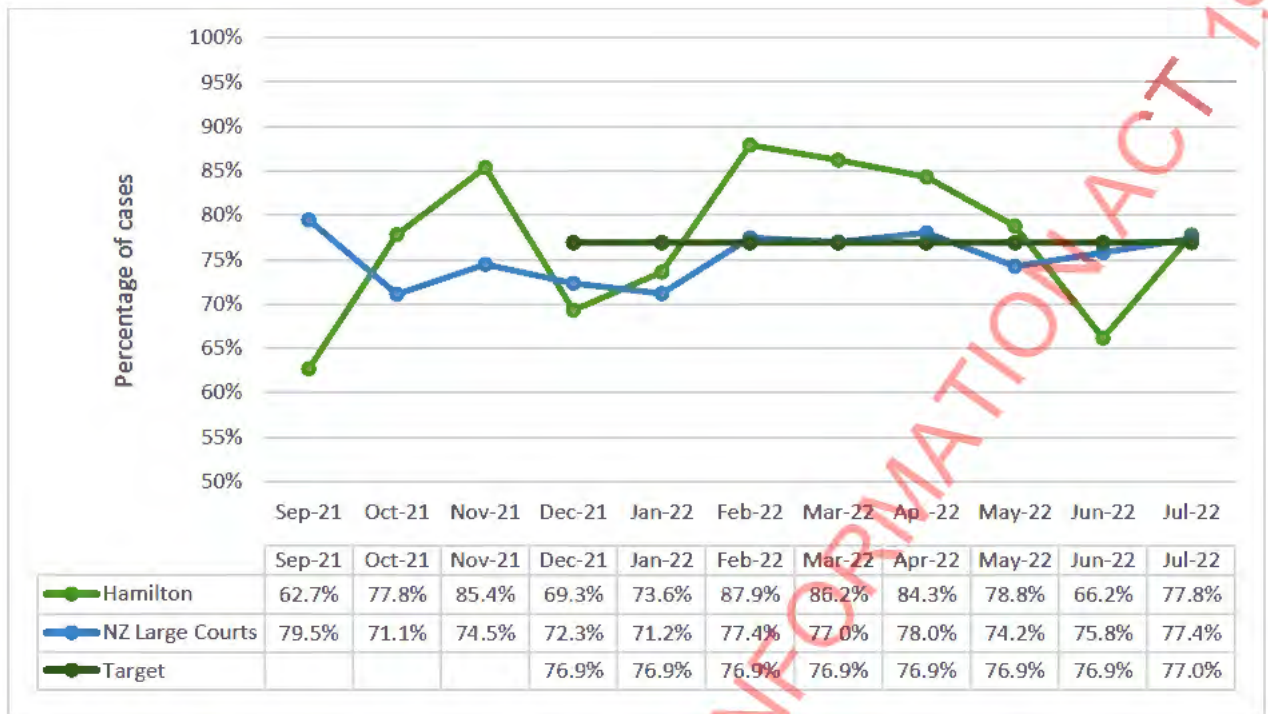


Figure 10: WS2 M2 Percentage of cases resolved by guilty plea after Admin (6 months – 7 years) (Target: reduce)

Key Measure WS2 M3: Percentage of cases with a maximum penalty of 6 months - 7 years imprisonment, sentenced on the day

Finding: Figure 11 below illustrates that the values for Hamilton are far above target and above values of other large courts, confirming that cases are being progressed quickly. However, two things need to be noted. First, the high value in January seems to be an exceptionally good month and was not maintained in the later months; second, numbers from March to July do not differ much from pre-CPIP values (September to November).

January could be high because the Duty Lawyer service is maintained without interruption during January but assigned lawyers often take a break. Similar to WS2 M2, Covid-19 may have an impact – as progress is made on clearing the backlog of cases in review on not guilty pleas, the percentage of cases sentenced on the day will reduce.

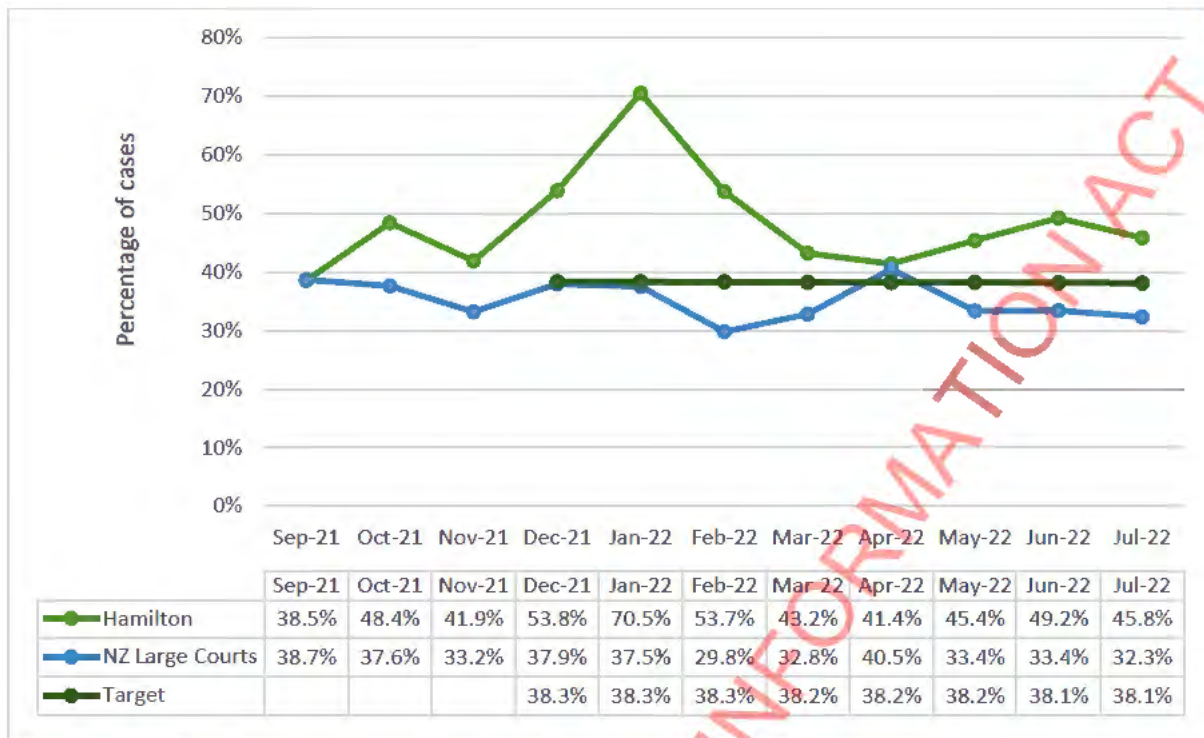


Figure 11: WS2 M3 Percentage of cases with a maximum penalty of 6 months - 7 years imprisonment, sentenced on the day: CMS (Target: Increase)

Future steps for Key Measures

The key measures in this report are counting cases once they have been disposed which is noted as a limitation of these key measures because active cases are not included. Therefore, alternative measures would include active cases in each stage so that we are able to monitor the immediate effects of the CPIP initiatives on any efficiencies being gained in these stages.

Table 3 below gives us an indication of how we are tracking, when looking at both active and disposed cases with a maximum penalty of 6 months to 7 years imprisonment which entered and exited the Admin stage between 6 December 2021 and 31 July 2022. This is an alternative to WS2M1 above, where the initial plea is expected to be entered in the Admin stage, and measures exceptions to this.

The average number of events in the Admin stage for Hamilton is 3 events. This is the same as the Other large courts, but lower than the Rest of NZ with 3.1 events.

The average number of active days in the Admin stage is 30.5 days for Hamilton. This figure is lower than the Other Large Courts and the Rest of NZ with 42.30 days and 41.20 days respectively.

CPIP Objectives	Hamilton	Other large courts	Rest of NZ
Average number of events in the Admin stage	3.0	3.0	3.1
Average active days in the Admin stage	30.5	42.3	41.2

Workstream 1 and 2 detailed findings

Findings for Police solutions

Summary

- Qualitative data shows:
 - Positive feedback was provided about the work of the **Duty Prosecutor** in case progression, resolution and bail address suitability checks.
 - The timing of **address suitability checks** has generally improved.
 - **Arrest disclosure** has often been provided earlier and accurate information is more often available to the court.
 - There were mixed experiences of **defendants being available for interview earlier**, but there seems to have been a general improvement.
 - 'Fresh arrests' in the afternoon are perceived as still slower to be available.
 - **Additional disclosure** was not observed as a big issue or change.
 - No change in timing or completeness was noticed in **Victim Impact Statements and Reparation Schedules**.
- Quantitative data shows:
 - **Written OTB is available with arrest disclosure** since CPIP in about 85% of the cases, but this data fluctuates.
 - **Same-day bail applications** have not increased overall.
 - The Duty Prosecutor has gradually increased the number of cases dealt with, including with non-Duty Lawyers.

Arrest disclosure

108 Arrest disclosure and access to defendant (high priority):

- a) Duty Lawyer is notified of all oppositions to bail and reverse onus applications by 8.15am and receive arrest disclosure, initial disclosure including victim views and written bail oppositions before 8.15am.*
- b) Cell transfers by 8:15am – meaning participants will be available to counsel by 8:30am.*

Arrest disclosure only for opposition to bail (OTB) and reverse onus applications has been measured from manual spot checks of email times. The data shows that this information has been sent electronically since CPIP started and has been received around 8.30 mostly (range 8am to 9.30am). Further data from Police would help to check the accuracy of this manual record.

Figure 12 below shows how written OTB included in the arrest disclosure may influence the bail applications being run on the same day. Written OTB is available with arrest disclosure during CPIP in about 85% of the cases. In line with the trend of percentage of cases with written OTB, the percentage of same-day bail applications that proceed showed a decrease in February with

a subsequent small rise to an average of 30% in the following months to July. This low number in February cannot be explained by context factors such as a higher workload.

No pre-CPIP baseline data is available for availability of written opposition to bail. Feedback from Duty Lawyers indicates that Police have provided OTB pre-CPIP; however, it could still be late and was deemed unreliable.

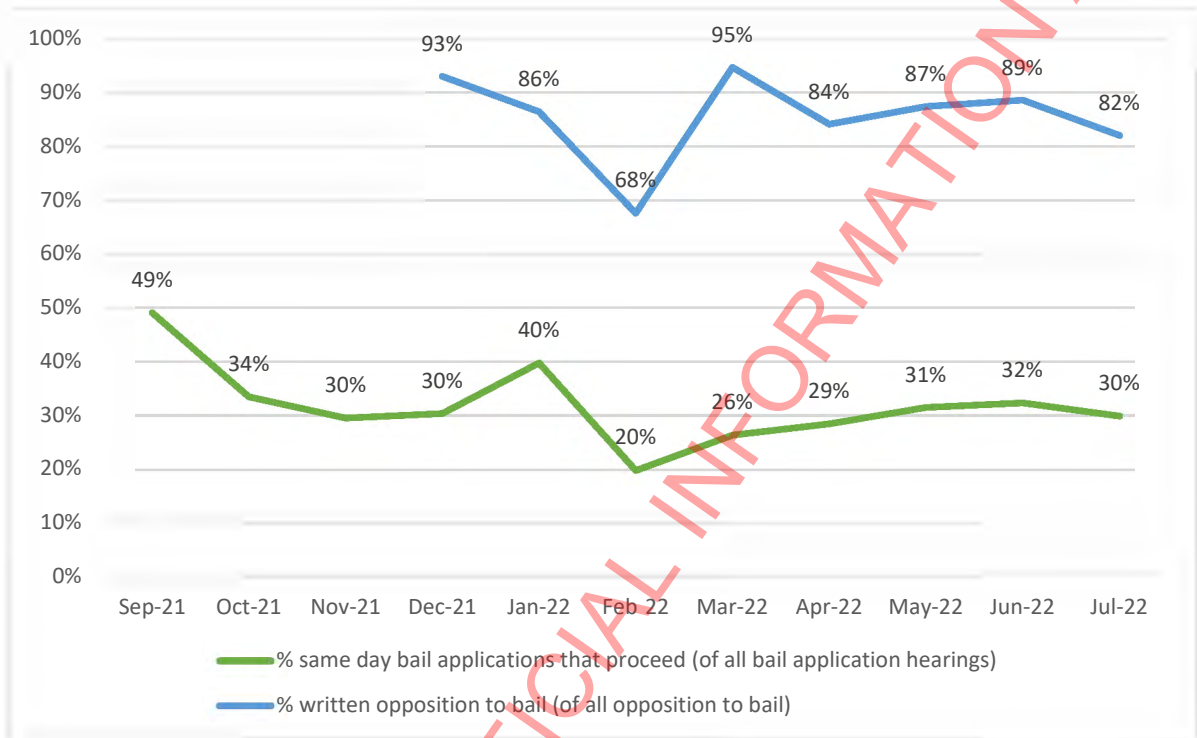


Figure 12 Percentage of same-day bail applications that proceed and percentage of cases with written OTB (Target: Increase) Note: WS108 is a manual record, cases with no scope specified, only Police matters. Written opposition to bail only includes Police written opposition; not from another prosecuting agency. Note: S127 is from CMS, cases with no scope specified.

Provision of full arrest disclosure

Qualitative data gave a range of perspectives on the output from this solution. Comments included:

- Improvements were noticed in written bail opposition, and a noticeable difference in timing and frequency in mornings when the Duty Prosecutor identifies relevant cases; more and earlier paperwork is available before defendant interviews, but not so much difference in the afternoons.
- Duty Prosecutor reviews case files from 6.30am to 8am at PPS office, including opposed bail matters, family violence bail, checks arrest disclosure.
- Some noticed no change, still getting just Summary of Facts and charge sheet; reporting that they “still don’t get everything, especially on Mondays” but in general charging information is always/usually available before the bail hearing.
- It is dependent on lawyer’s skill level; experienced/senior ones do not need it.

Some saw the benefit of more complete arrest disclosure for Duty Lawyers as being that:

- The process is more streamlined by knowing about opposition and address issues.
- Duty Lawyers can take proper instructions in the first interview.

- It is an opportunity for Duty Lawyers to discuss disclosure with the Duty Prosecutor.

Quantitative data is not provided for this solution because of the difficulties of measuring in a comparable way, what arrest disclosure is needed (dependent on the case and history) and what is provided.

Time defendants are available for interview:

No quantitative data is available for the average time defendants are available for interview, but interviewees reported that:

- “There’s no change, fresh arrests are still slow, which is frustrating.”
- “It is hard to say, Hamilton had Covid-19 impacts but could be better now.”

Some said it is still difficult to find out which defendants are ready in the cells

Some interviewees felt that information and professional competence is more important than the time defendants are available; there is an inaccurate perception that there was a problem.

Availability of additional disclosure and case progression

223 Additional Disclosure (key priority)

Additional specific disclosure provided at first appearance. Police to proactively release disclosure electronically to assigned counsel following notification from legal services.

The qualitative data showed a range of perspectives about additional disclosure as follows:

- There is no difference in completeness of additional disclosure
- Additional disclosure does not help progressing cases especially if they are complex
- PPS management team input helps
- The Duty Lawyer Supervisor gets additional disclosure before first appearance
- Get the charges sorted first then request full disclosure –is more efficient especially if Police are still printing it out before coming to court.

“If the Officer in Charge doesn’t provide it, the [Police coordination system] can’t find what’s been disclosed in [the Police database], it’s meant to be saved in a certain folder, but junior staff don’t know why it’s needed.”

The quantitative data collected for this solution was manually combined as a list of all cases where additional disclosure was expected and whether it was received. An analysis is not provided because of the following caveats:

- The data captured for disclosure received is based solely on whether Police send the additional disclosure through to the designated inbox. There might be instances where additional disclosure is provided on the day, without it being sent to the inbox.
- This data is based on manual inbox searches – there might be instances where the search functions used to identify additional disclosure for cases fall short.

Bail address suitability check

113 Police address suitability check (medium priority)

When a charge is filed and an address condition is being considered by Police, Police to begin checking suitability of any proposed bail addresses.

Quantitative data shows that the Duty Prosecutor performed on average 33 address suitability checks per month since the start of CPIP (Figure 3). However, this data does not include the checks by the Officer in charge of the case, or any other Police personnel.

Comments about Police checking address suitability when a charge is filed showed that this function has generally improved, and some are noticing fewer adjournments. Specific comments included:

- It is still Police Officer and case-dependent
- The Duty Prosecutor needs [Police intelligence database] and case officer information.

“With Bail Support Services and the Duty Prosecutor in one room it takes about two hours to get a memo [to the judge].”

Victim Impact Statements and reparation schedules earlier

226 Reparation schedules & Victim Impact Statements (VIS) (low priority)

Earlier preparation by Police of reparation schedules & VIS.

No quantitative data are available for this solution, but interviewees noted the following:

- [The information] is not happening; it could be fault of officer on the case
- VIS availability is still poor on day one
- Irregular and case by case availability of reparation schedules
- One said it has improved “you can enquire from Duty Prosecutor”
- Missing VIS is a common cause of adjournments.

There are other issues about VISs than what documentation is available for the disclosure that were mentioned, such as:

- Victims often don't see it/haven't signed it off, Police wording is used instead of victim wording, and victims may disagree with the wording later in the process.
- Issues with information flow, victim's details not passed on to court taker (victim unaware), then not passed on to Victim Advisors.
- The VIS is a fluid document for 28 days and can be changed/updated but often is not.
- The following example was given about the need to address reparation information:

“On sentence review, there was no reparation schedule, no victim details handed to the court taker, so that information hasn't been entered. If they don't enter details on the day of sentence a letter is not generated overnight, so the victim doesn't get a letter - don't have 'PPN' sentence number the Victim Advisor is still dealing with victims for reparation 6-10 months later because those details were not included.”

Duty Prosecutor/ Second Prosecutor

112 Duty/ Second Prosecutor to discuss bail and disclosure (key priority)

Second prosecutor available to the Duty Lawyer Service to discuss bail (arrest disclosure) and to discuss case progress with counsel in list courts (additional disclosure).

221 Second prosecutor to discuss case progress (key priority)

Second prosecutor available to the Duty Lawyer Service to discuss case progress with counsel in list courts (additional disclosure).

The findings about the above solutions are presented together, as the work of the Duty Prosecutor is an inseparable and unpredictable mix of checking disclosure, charges and bail addresses, as well as discussions about case progression.

The quantitative data of the work of the Duty Prosecutor shows an upward trend in hours worked and cases dealt with per month (Figure 13), with an average of 120 hours per month. Recorded are all cases the Duty Prosecutor assisted with, irrespective of CPIP scope. The Duty Prosecutor role was implemented in December 2021 and data was collected from this time.

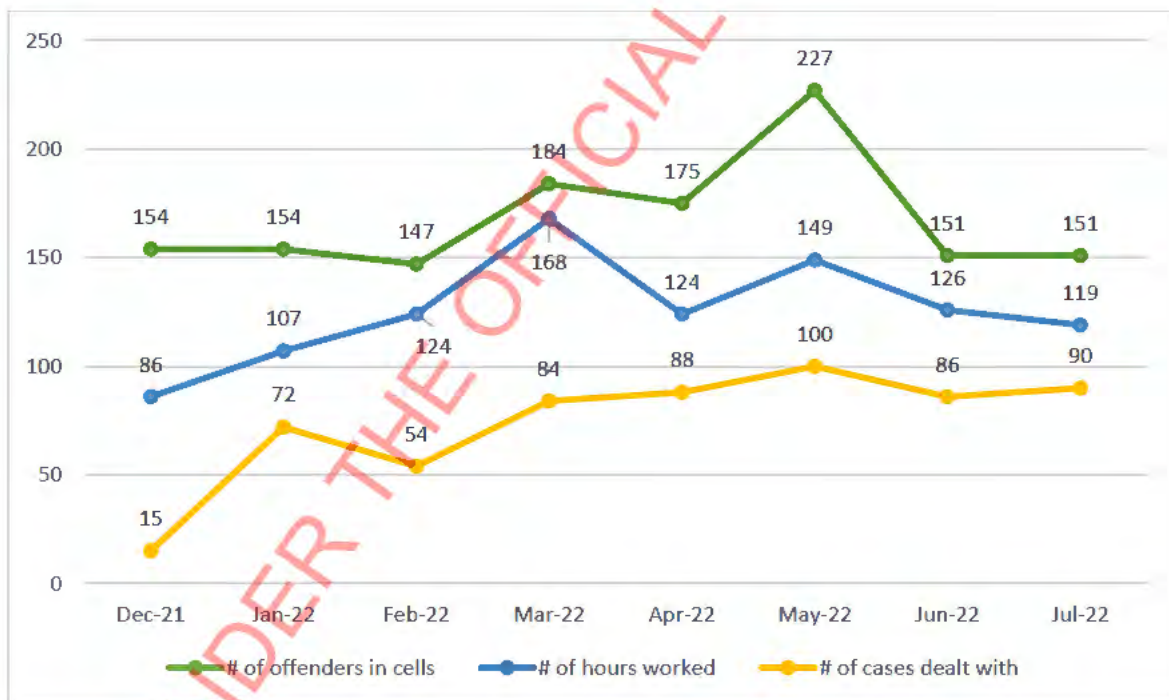


Figure 13: Workload of duty prosecutor by hours worked and cases Note number of offenders in cells serves as context for workload pressure.

Qualitative data also shows very positive feedback; the Duty Prosecutor helps with case progression and resolution and does many bail address suitability checks. However, the work of the Duty Prosecutor is noticed by everyone at court. Attributing factors to success for bail progression are the combination of bail address availability checks done by Bail Support Services and good relationships to Duty Lawyers. Dependent factors are meetings with the Duty Lawyer Supervisor

and the number of hours the Duty Prosecutor is available. Further detail from the qualitative data is supplied below.

Duty Prosecutor role

Interviewees noted some essential characteristics for the role:

- Experienced as a prosecutor with good relationships and communication skills
- Knowledge and opportunity to contact the Officer in Charge and talk to people at all levels of Police; a local person is a benefit because they understand the culture
- Seeing the bigger picture, having the time to think things through carefully
- Working to achieve consensus with other prosecutors; know when to step in, not treading on toes
- Ability to clearly set out reasons for the Duty Prosecutor advice and calculate the risks of it.
“Duty Prosecutors are really suited for the role, approachable, easy to interact with, have heart and soul in it, want it to work, proactive, practical, willing to negotiate, offering realistic outcomes, reasons why people offend.”

It was possible to identify the functions undertaken as perceived by interviewees:

- Reviewing case files from 6.30 to 8am at Police Prosecution Services office, especially opposed bail matters and family violence bail applications; Police workflow coordinators scan the files to see if everything is there for disclosure
- The Duty Lawyer Supervisor identifies matters and informs Duty Prosecutor if cases need additional disclosure, summons, etc before court
- The Duty Prosecutor checks if charges are suitable or if there is “overcharging”, if Summary of Facts is correct, considering section 94 applications, possibilities such as diversion, Te Pae Oranga, reparation, and/or Restorative Justice
- The Duty Prosecutor looks at anything from Registrar’s court to the cells and focusing on attempting to resolve matters on the day, including entering pleas and sentencing.

Most perceived the impacts of Duty Prosecutor role as positive, with few limitations:

- Cases seem to be progressed more efficiently now; reduced adjournments; cases resolved; an experienced Duty Prosecutor knows all the offence codes - saves time in discussions
- Most interviewees would like the Duty Prosecutor role to continue
- It is easier when lawyers bring the work to the Duty Prosecutor, being proactive
- Working with junior prosecutors in court is actually mentoring, which has benefits for Police
- Possibly better results can be achieved for victims as well as defendants
- The Duty Prosecutor job is too much for one person - Duty Prosecutor is not seeing late arrests in the same way as the morning arrests due to time constraints
- Duty Prosecutors have different approaches and views, which could be difficult for Duty Lawyers
- The high number of address checks required by the Duty Prosecutor was surprising.

Findings for Duty Lawyer solutions

Summary

- Qualitative data shows:
 - Encouraging Duty Lawyers to do **more complex bail applications** is effective, but some have always done all types of bail applications.
 - Policy changes for **pleas and sentencing** were appreciated but feedback emphasised not applying the changes to complex and serious cases.
 - More Duty Lawyers and **more experienced** Duty Lawyers were noticed. A range of experience in Duty Lawyers is considered important.
 - There were different views about the **higher duties fee** – monetary recognition is appreciated but not all Duty Lawyers claim it . Potentially competitive effects were not considered to be beneficial.
 - Most Duty Lawyers offered the **lawyer of choice** to their clients.
 - The function of the **Duty Lawyer Supervisor** was seen as critical to CPIP.
 - Use of **provided iPads** by Duty Lawyers is minimal, restricting testing of solutions relying on electronic access to information forms
 - Duty Lawyers and Bail Support Services access the **register of current legal aid assignments**; via the Duty Lawyer Supervisor.
- Quantitative data shows:
 - Changes to the operational policy for **bail applications for Category 3 cases with opposition to bail (OTB) or reverse onus application** has resulted in many Duty Lawyers running a bail application on the day for most cases if written OTB is available.
 - Since the beginning of the pilot, duty lawyers have advanced 63% of all available opposed bail applications meaning that only a third of them now require **urgent legal aid applications**.
 - Since the beginning of the pilot, 30% of all in scope appearances have progressed by either a plea or a plea & sentence or disposal.
 - Claims data for Legal Aid Services shows no increase of Duty Lawyer claimants.
 - Not all codes for **assigning lawyers for established relationship** were used correctly in the Legal Services database.
 - The impact on processing in Legal Aid Services is small, but a ‘workaround’ for payment processing may be difficult to continue for roll-out.

Doing more bail applications and more complex bail applications

106 Operational policy change (key priority)

Implement the Duty Lawyer operational policy to encourage Duty Lawyers to make bail applications where the reverse onus applies, or on Category 3 offences where bail is opposed.

Interviewees were asked about doing more bail applications and more complex bail applications. Most did not refer specifically to reverse onus applications or Category 3 offences where there is opposition to bail (OTB), just complex bail applications.

The majority of interviewees want to continue the policy for low level offending to remove these cases from the list, and some said it should not be for serious cases:

“The changes are wonderful for the uncomplicated stuff.”

Many of the interviewees said Duty Lawyers are doing more bail applications, others said there was no change because it is still case assessment dependent. There was apparently no influence of CPIP on very experienced lawyers, but inexperienced ones are more hesitant still. There is more encouragement to do the more complex bail applications, which is the most effective aspect of this solution.

A range of perspectives about this solution (which have not been further investigated) were that:

- It provides more freedom to assist and be proactive
- It could lead to bail applications not in the interest of the defendant
- Case notes are now not passed onto other Duty Lawyers, in order for the initial Duty Lawyer to claim higher duty fees
- Bail Support Services doing bail address checks takes work away from the Duty Lawyers
- It was surprising how open and accepting (Duty Lawyers) were about the policy - expected more push back and reluctance
- The policy seems like a green light for people to make more money
- A smaller incremental increase in Duty Lawyer remuneration might be better
- It's about being in the right place at the right time to get the right cases
- If a Duty Lawyer gets a case, they have to do a bail application [although this is not correct]
- Duty Prosecutor function provides resolution options to the Duty Lawyer (instead of running a bail application mostly for cases likely to be successful).

Increased remuneration

This solution included a payment a higher hourly rate and a fee for higher duties when doing more complex bail applications.

A range of perspectives were provided about whether the higher duties fee was fair compensation, but a further adjustment to the payment was made since the following data was collected.

Therefore, further investigation on this topic could be warranted:

- It is probably not seen as adequate for the amount of involvement in the case
- Some feel it's a duty to do whatever is required and don't claim it
- Some prefer no incentive because they believe it brings out perverse behaviour in Duty Lawyers that may not be in a defendant's best interest.

“Yes, it's pretty fair, a good incentive, you can see cost-benefits for the Ministry.”

Interviewees were asked if it would be more competitive if the fee was increased, with the following responses:

- Some say yes or probably it would be more competitive
- Some are worried about effect on the criminal bar even though “it is not massive money”

- Legal Aid fees for different types of work needs more consistency across jurisdictions
- For some the policy does not seem to make a difference because Duty Lawyers get moved to either the cells or the court.

Figure 14 below shows the number of higher duties claimed per month but this may not reflect the number of cases dealt with, as some Duty Lawyers report not claiming higher duties.

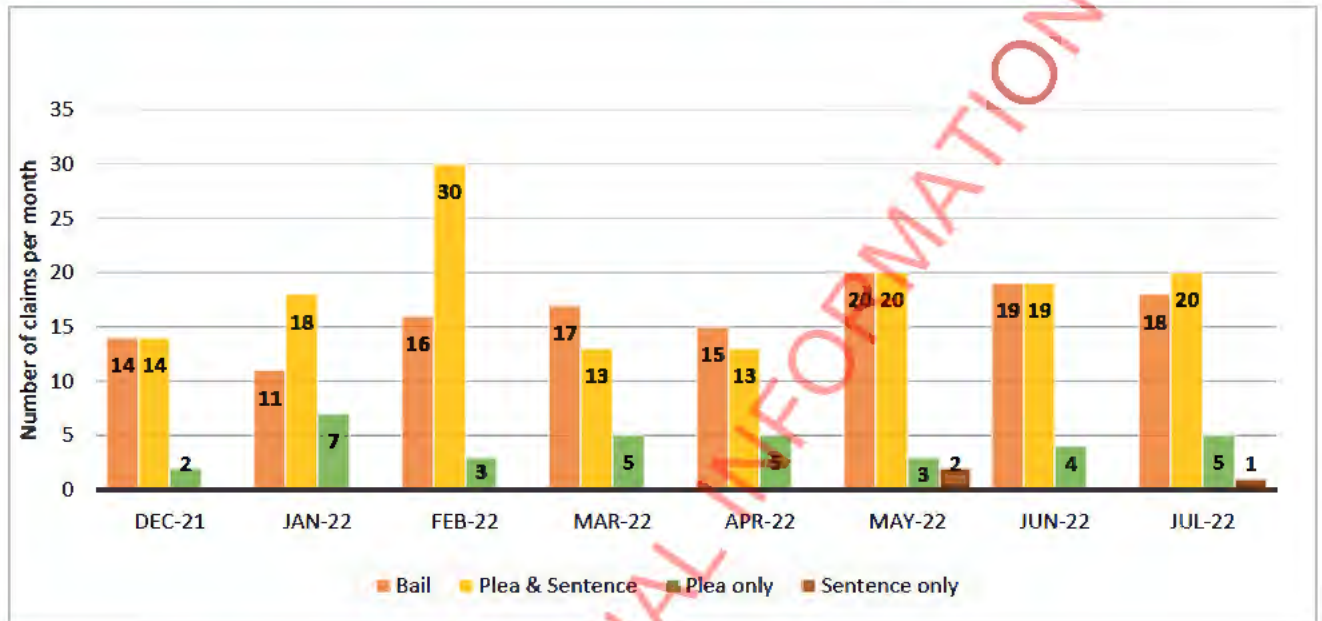


Figure 14: Higher duties claimed per month (LSMS)

Most found the new claim form easy and straightforward, although it is an extra step if the identifier number [CRN] is not available. A few said it was unclear what applies and therefore confusing, while some have not used it.

Attempting to find out what work Duty Lawyers were taking on since CPIP, for cases that were OTB and had written OTB provided, the number of those cases that resulted in being either Remanded on Bail (ROB) or Remanded in Custody (RIC) was measured manually from the start of testing (see Table 3). The testing showed that Duty Lawyers achieved comparable outcomes with other counsel types.

Table 3: Remanded on bail (ROB) vs. remanded in custody (RIC) by Duty Lawyer and other, Manual record, scope bail opposed and run on the day

	Duty Lawyers			Other Counsel		
	Apps run on the day	ROB	RIC	Apps run on the day	ROB	RIC
Tota	135	85	50	171	111	60
% apps run on day		63%	37%		65%	35%

Note: *Other = All other includes - assigned, urgent LA, PDLA, self-represented. Breaches are included, might be more assigned lawyers for those, Data relies in part on the Duty Lawyer claiming the higher duties fee. Bail application run on the day - data collected is based solely on data entered into CMS or TSM by users. Whether

or not there is written OTB available does not affect the number of applications filed on the day. The scope for this solution is not based on whether written OTB is available - it is based on arrests and opposed bail.

Overall, more than half of all bail applications with opposed bail are actioned by Duty Lawyers (Figure 15). Fluctuations between the months cannot fully be explained by workload and available working days. January and April had relatively few unaffected working days and a high number of arrests with opposed bail potentially leading to an increase in urgent Legal aid (LA) applications. At the same time, the highest number of arrests was in March and few days were unaffected in that month but only 31% of cases where bail was opposed.

A contributing factor for positive results in April could be the written opposition to bail statements (available for 95% of arrests where bail was opposed, around 85% for January and April). Pre-CPIP data is not available as the manual record started with implementation.

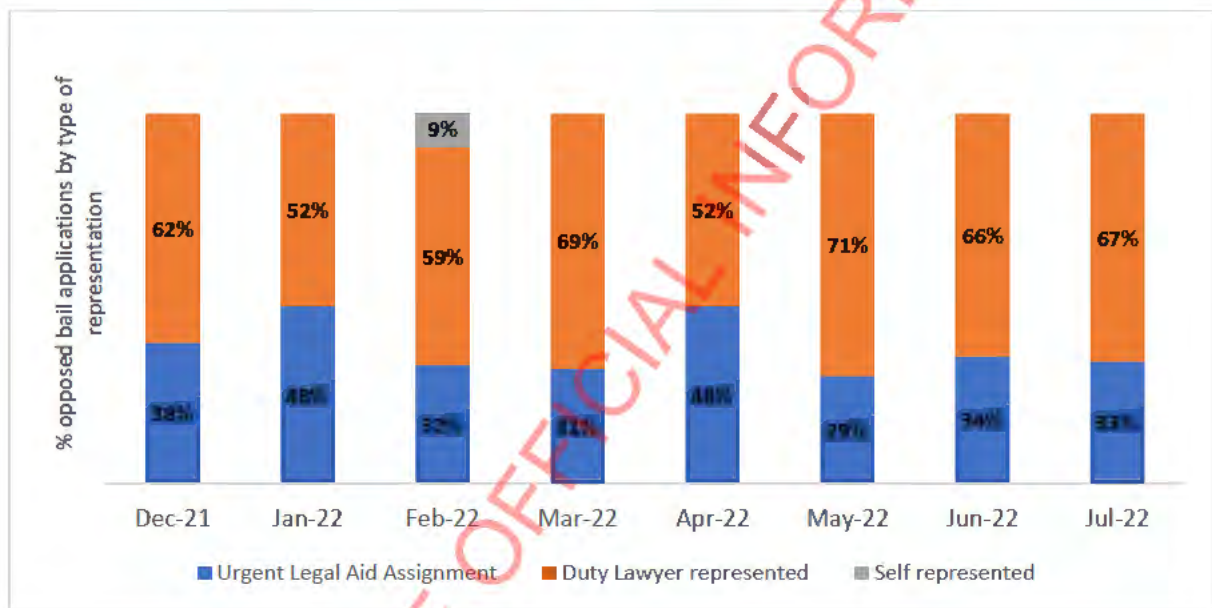


Figure 15 Percentage of bail applications actioned for matters with opposed bail within scope for Duty Lawyer (2 – 10 years, no assigned counsel), Manual record (Target: increase) Note: Data relies in part on the Duty Lawyer claiming the higher duties fee.

Duty Lawyer Policy

210 Duty Lawyer Resources (high priority)

Subject to their availability in the locality, more Duty Lawyers, more experienced Duty Lawyers, and further support for Duty Lawyers on the policy changes to allow entering of pleas and same-day sentencing. Includes a supporting remuneration adjustment.

Six more Duty Lawyers have been recruited. Interview comments included that there is an adequate number of Duty Lawyers now, which is helpful.

However, no clear trend can be seen from the qualitative data or in the count of Duty Lawyers, nor in experience level of Duty Lawyers has been observed in quantitative data since CPIP implementation. Figure 16 uses the Provider Approval Level (PAL) as a proxy to show this.

The PAL attained by a lawyer under the Legal Services (Quality Assurance) Regulations indicates their experience and competence in criminal matters. Approval to provide services under the Duty Lawyer scheme requires only 'Duty Lawyer Approval'. However, a Duty Lawyer who is also approved for PAL levels 1 to 4 has demonstrated more experience and higher levels of competence in criminal matters.

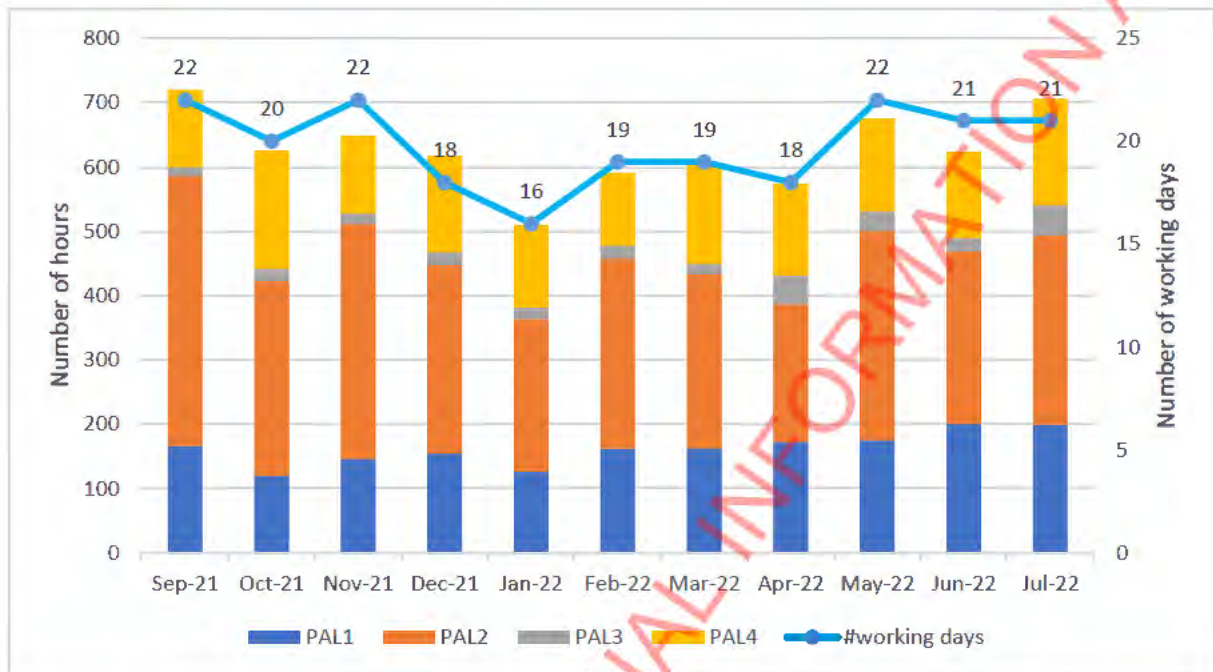


Figure 16: Duty Lawyer hours by Provider Approval Level where one is the lowest and four is the highest (LSMS) Note: not weighted by number of working days in the month.

A concern was expressed that if the pilot continues and the Young Adult List starts, then more Duty Lawyers will be needed on the day and other recruitments will be necessary.

From the number of Duty Lawyers on the roster and the count of invoices received from individual Duty Lawyers it seems that not all Duty Lawyers are doing Duty Lawyer work (i.e., fewer lawyers are invoicing than are on the roster). The total number of hours for Duty Lawyers are impacted by number of working days, thus a continuous increase in overall hours is not expected. However, when dividing the total hours worked on weekdays by number of workdays available that month, no difference can be seen since CPIP implementation.

Policy changes and additional resources - entering pleas and same-day sentencing

- Some say they have always done more complex work, because the backlog is getting too heavy
- Some also say additional remuneration brings out negative behaviours in lawyers
- The policy may discourage experienced lawyers to do the cases with charges over 12 months
- Some feel case assignment levels may go down after CPIP
- Some say it's a good system, it's nice to have monetary recognition
- "For the responsibility and involvement, it is a wee bit light" [although the fee has since changed].

Offering Lawyer of Choice

202 Lawyer of choice (low priority)

More consideration of lawyer for choice - where there is an established relationship and/or where a defendant appears on a warrant to arrest, assigning the first assigned lawyer.

Most Duty Lawyers offer clients their lawyer of choice when doing a Legal Aid application. A couple said they occasionally mention the opportunity of lawyer of choice. Others say they discuss it only if the client brings it up and some say clients often do not remember the name of the previous lawyer. Problems could arise when it is relying on the defendant liking the lawyer, when sometimes defendants ask their lawyer of choice to do things that are unethical.

Duty Lawyers identified some benefits they could see from this change:

- "Clients are coming back because of it"
- "It's good for the lawyer and client relationship if they are familiar with the case."

Quantitative data for Lawyer of choice was deemed unreliable because of data entry and further collection and analysis of this data is required.

Duty Lawyer Supervisor role

The function of the Duty Lawyer Supervisor was seen as critical to CPIP, both in the work they do and in the way they do it. As with the Duty Prosecutor, the Duty Lawyer Supervisor needs to have certain characteristics, such as good communication and organisation skills. The critical aspects of their role for CPIP include:

- indicating cases that meet the CPIP scope
- regularly encouraging Duty Lawyers to do more bail applications instead of applying for urgent legal aid
- finding out if there is an assigned lawyer before distributing the case
- connecting the Duty Lawyer and Duty Prosecutor on cases, being good with Police staff.

Interviewees had various comments about the role of the Duty Lawyer Supervisor:

- The Duty Lawyer Supervisor role is more important for juniors - makes sure the lawyer is capable; the Duty Lawyer team is very experienced and do the difficult matters including sentencing, juniors-medium experienced lawyers also do bail mostly (not so much sentencing).
- Officially there is no choice in cases but in reality, the Duty Lawyer Supervisor matches the Duty Lawyer experience and the complexity of cases after assessment of the severity and *history of charges*.

"The Duty Lawyer Supervisor can see if one lawyer hoards all the cases and can redistribute."

Duty Lawyers

Duty Lawyers are expected to do everything given to them. They thought they were going to be able to choose, but they are split into two teams and do all kinds of work. Perspectives varied, such as:

- Attitudes are different among the bar - some lawyers just take cases on; other lawyers complain that they didn't get given a particular case

- There are two styles: pragmatic and streetwise - understand high recidivism and what is in their client's best interests, or very risk averse and don't want made complaints against them.

"If it is complicated you just let someone else do it."

CPIP changed several aspects of the Duty Lawyer role. All interviewees indicated, to some degree, that they can see why CPIP is needed and that all Duty Lawyers need to be on board for it to work.

Some noted the context before CPIP, but these comments have not been independently verified:

- The Duty Lawyer group was more skilled/experienced in the past
- The Duty Lawyer income had dropped – a fixed fee per day in the past for any amount of work
- The system had alienated experienced lawyers, then PDS took half the work and were replaced with more juniors
- Junior Duty Lawyers were too focused on bail, should have always been doing more
- There are training issues when private lawyers come onto roster, compared with PDS which provides good training.

Impacts on Legal Aid Services

The impact of the changes for Duty Lawyers was assessed through a survey, with the following findings:

- Texting Duty Lawyers the name of assigned counsel for urgent cases – most do this always
- Extra time required to web-text the Duty Lawyer or email the Duty Lawyer Supervisor after making an urgent assignment – a few minutes
- Time required for assigning counsel for urgent assignments - some said it is better for appointing counsel and tracking who is assigned, but worse for getting correct assignment straightaway
- Using assignment codes – some use the codes correctly, but not all
- Payment processing for increased Duty Lawyer payments – no problems for Hamilton, and Hutt Valley has improved.
- The impact of rolling out these increased payments at other courts while still relying on the workaround in the system – would be more time consuming and have a minor impact on resourcing.
- A new weekly roster of lawyers who that they are available to accept urgent assignments was dropped after a few weeks as it created an unintended expectation of assignments for lawyers on the urgent roster. It was found that urgently assigned lawyers were coming to court within 30 minutes of assignments, therefore there was no need for this solution.
- All Duty Lawyers have access to the register of current legal aid assignments – was originally tied to the availability of iPads for Duty Lawyers for which uptake was low, but access if provided by the duty Lawyer Supervisor
- Encourage Duty Lawyer use of tablets or devices for the provision of information – implementation was delayed, then uptake by Duty Lawyers was minimal.

Findings for Ara Poutama Aotearoa solutions (Workstreams 1 & 2)

Summary

- Qualitative data shows:
 - **Bail address availability checks** by Bail Support Services are considered to have had a huge impact on bail application progression
 - The focus of bail address checks should be on quality not quantity of checks to ensure the security of victim(s).
 - **Probation Officers were available** to do stand-down reports, but the output of stand-down PAC reports has not been very visible.
- Quantitative data shows:
 - A higher **number of bail address checks** by Bail Support Services were done in May than other months.

Note: The Ara Poutama Aotearoa solutions included in Workstreams 1 and 2 and tested at Hamilton - results provided below - are complementary to the solutions that were tested in Workstream 6, which is covered in the following chapter.

Same-day address checks

101 Bail Support Services (BSS) same-day address checks (high priority)

National roll-out of Bail Support Services by Ara Poutama Aotearoa (Corrections). It will contribute to a best practice end to end bail process.

The component of WS101 tested at Hamilton was the checking of bail address availability by the Bail Support Services team. The team maintained a manual record and interviews were conducted.

Interviewees generally said this solution saves lots of time, avoids delays and adjournments, and gave the following perspectives about the benefits of this solution on bail processes:

- Previously many bail applications would have been adjourned overnight
- Bail appearances are down from four to one to two on average
- There are still cases put off because of address checks (family violence)
- It is a good solution when there is an urgent application
- Making calls and visiting the family/whānau helps things
- There is the potential to explain bail conditions - fits in well with Te Ao Mārama
- BSS can be a neutral party in the case proceedings
- Two say not sure if the process is considering whether address is safe for victims.

While the wider BSS service was not measured, some noted that the potential is there to talk to the defendant about what BSS can do for them while they are on bail, offer them the opt in service. "A lot of arrests we see are breaches of bail - clearly a need for support."

Quantitative data for the number of same-day address availability checks performed by BSS highlights an increase in bail checks since the solution was implemented in December (Figure 17). The number of bail address availability checks done reflects trends in total number of arrests with opposed bail to some degree.



Figure 17: Numbers of same-day address checks (no scope specified), compared against numbers of arrests with opposed bail by month. BSS data sheet

Probation Officers available in Court

224 Stand-down reports (key priority)

Probation Officers available in court to provide stand-down sentencing reports for same-day sentencing.

This solution was assessed through interviews. While not all stakeholders involved with this solution were interviewed, initial feedback included:

- They have used it only once so far, do not know whether it is working
- Most said it is a good idea, but it is not utilised at capacity yet and has long waiting times
- One person said they can do 6 or 7 reports a day
- Lawyers will identify if someone wants to plead guilty, that then starts up the PAC report, not just referred by the judge
- A few said it is good for lower-level charges
- One said it takes longer than expected, and it's a bit of a battle to get it
- Contradictory results can arise between PAC and stand-down report.

The main success measure for this solution is the number of stand-down PAC reports produced when requested. This is covered in the following chapter.

Findings for Judiciary solutions

Summary

- Qualitative data shows:
 - There were mixed messages about whether extra judicial time and other changes and resource for same-day case progression and same-day bail are leading to more bail applications heard on the day.
 - **Community Magistrates** have limited jurisdiction in electronically monitored bail applications, suggesting there would be little impact from this solution
- Quantitative data shows:
 - Not many electronically monitored bail applications are being done by **Community Magistrates**.

More judicial resource and time slots for hearings

114 Community Magistrates (medium priority)

Where Community Magistrates have jurisdiction, they are to hear bail applications for electronically monitored bail or applications for a variation or continuation of bail where there has been a breach of electronically monitored bail.

The number of Electronically Monitored (EM) bail applications that are eligible to be heard by a Community Magistrate (CM) is limited. Most EM bail applications are outside of the jurisdiction of CMs. For example, where reverse onus applies or where Crown are prosecuting, CMs do not have jurisdiction. Table 4 below shows that CMs have only heard EM bail applications occasionally since CPIP started, suggesting there is little impact of this solution.

A range of perspectives were shared about this solution:

- Hamilton has a high volume of EM bail, and it is increasing
- Community Magistrates are good but there have been limited resources in Hamilton
- Community Magistrates are hesitant to hear matters by AVL
- Community Magistrates don't seem to be in court until 5pm; often a client is remanded in custody to be dealt with on the next day
- "Now Community Magistrates do any section 12, that is the default position. Pre-CPIP, this was only done if a judge was next door."

Table 4: Number of EM bail applications (including breach of bail and variations of bail, cases dealt with by Registrars and events dealt with on paper excluded) heard by CMs (CMS)

Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22
0	0	0	2	1	4	1	0

Measuring additional reserve slots for EM bail before Community Magistrates and proportion of EM bail hearings/week, one slot of 15 minutes was available between December 2021 and May 2022. Two slots of 15 minutes were available in June and three slots of 15 minutes were available in July.

Court time available to pursue bail applications on the same day

127 judicial resource and time allocated to hear bail applications (high priority)

Schedule court lists to ensure enough judicial resource and time allocated to hear bail applications.

Interviewees had different views on whether this solution has an impact or not. Perceptions included that:

- Court time seems to have improved because more bail applications are heard
- No changes have been noticed
- There is still never enough time in the day
- Event outcomes are day-dependent and judge-dependent
- Other comments were:
 - Scheduling has never been a problem
 - If things are put off it is for a good reason
 - The focus [of CPIP] currently might be more quantity than quality [in case outcomes].

Covid-19 impacts cloud the results which meant some could not comment.

218 Judicial time sentencing (high priority)

Judicial time allocated so that sentencing can take place in a list court

The manual record kept for this solutions shows the average number of hours per day on the judges list for same-day case progression and same-day bail applications was increased by 1.75 hours in December and January and increased to 2 hours from February to May.

Findings for Ministry of Justice solutions

Summary

- Qualitative data shows:
 - **Canvassing victims** views on restorative justice before the first appearance was attempted and partially completed, but concerns were raised about the potential risks to victims.
 - Some of the **Registry** solutions were already business as usual in Hamilton.
- Quantitative data shows:
 - Only a fifth of all victims could not be reached by **Victims' Advisors**.
 - The Registry is sending out **court lists** early.
 - **Bail transcripts** are typed and available within 3 days/
 - There is a prompt turnaround for **bail dates** and **vacating** bail hearings when withdrawn.
 - The **earliest available date** for bail applications has been gradually reduced to 1.75.
 - The average time between bail application and **setting bail dates** is consistently around one day since CPIP implementation.
 - More electronically monitored bail applications were **withdrawn or discontinued on paper** after implementation however, some court events continue to be wasted.

Court Victim Advisors

Victim views on Restorative Justice (RJ) obtained earlier

225 Victim Advisors canvass victim views on Restorative Justice (RJ)

Earlier canvassing of victim views on RJ and victim contact details are available by first appearance.

The scope of this solution is narrower than that of other solutions in Workstreams 1 and 2: This solution is limited to the following conditions:

- For charges which are laid via summons and Police bail
- Maximum penalty of the offence is between 6 months and 7 years
- Cases involving family violence, sexual offending and child victim(s) will be excluded from this process
- Victim Advisors have the opportunity to apply professional discretion during their contact with the victim to gauge whether it would be appropriate to discuss restorative justice with the victim or not.

The legislation requires that when an identifiable victim is involved, the court must adjourn the matter for RJ to be considered. CPIP directs Victims Advisors to do this at the start of the process, rather than after the judicial response to a finding of guilt. The general response to questions about this solution could be summarised in the statement:

- “It’s better when cases run their own course, then sentencing can take place.”

According to quantitative data, victim views on RJ have been canvassed earlier than pre-CPIP, as intended. Only a fifth of all victims could not be reached. As a result of early feedback this solution is being redesigned and testing stopped in May.

Although they are attempting to get in contact with victims earlier, Victims Advisors sometimes:

- Have not received information from Police CSV1 [form with victim details] or have received incorrect contact details (Police use previous victim details if earlier charges are in the database but it is likely outdated), or
- Receive information from Police comes on the day of appearance, or
- Receive information that is incomplete
- Cannot contact victims because they do not answer the phone (no pickup), or
- Do not get time to capture all of the victims within the timeframe.

Despite these difficulties, Victims Advisors still send out the RJ brochure on day one. One benefit of directly canvassing victims about RJ earlier, they might be more ready for it later in the process.

Other general impressions of the solution included:

- This early contact is potentially traumatising/victimising and putting pressure on victims – it is too early, Victim Advisors cannot give victim any information about outcomes, and it seems contradictory to the previous understanding about the legislation
- Victims get upset at this discussion, and no rapport can be built at that stage, which makes the later process more difficult
- It is an ‘upside-down approach’ to talk about outcomes before a plea is entered
- Victims’ views on RJ gained through early contact is sometimes not passed on to the judge
- There appears to be additional workload on Victims Advisors but little apparent benefit to the victims.

Registry

Setting bail dates, vacating bail hearings, court lists availability

121 setting bail dates, vacating bail hearings, court list for arrest (high priority)

Quicker turnaround for setting bail dates and vacating bail hearings when application is withdrawn.

Duty Lawyers and PPS to receive court event lists by 7.30am for arrests.

Interviewees reported no problems with achieving the Registry solution targets. This was possibly because WS 121 was BAU in Hamilton, so the following comments were not surprising:

- Court event lists are sent out every day without fail, there was no change through CPIP, although for some recipients it arrives at 9.30 rather than 8.30am
- A weekly roster is sent on Fridays for the next week
- Setting bail dates have seen no delays, and there are always time slots available
- Withdrawn applications are often done at the last minute when waiting for counsel
- Decisions are typed up, authenticated, and released in 72h in 99% of cases.

At the same time, some challenges within the Registry included:

- Staff are feeling overloaded
- “Newbies” are training “newbies” or being taught shortcuts only.

The average time between bail application and setting bail dates in days is consistently around one day since CPIP implementation in December). Note that the data collected is based solely on data entered into CMS by users, and no data reconciliation checks are made between CMS and the court file.

The earliest available date (EAD) for bail applications has been gradually reduced to 1.75 weeks in May (after which data collection ceased). This is from the next available date showing in CMS, but this is not necessarily indicative of when an application will actually be scheduled in. No baseline data was available for pre-CPIP. Feedback from Duty Lawyers in regard to EAD was mixed, and this may be an issue requiring further investigation for this solution.

Figure 18 shows the number of bail applications that were withdrawn or discontinued on paper (without a court event). More EM bail applications were withdrawn on paper after the implementation in August, however, data fluctuates a lot from December and more court events were wasted. Reasons for this downtrend are unknown.



Figure 18 Number of EM bail applications withdrawn or discontinued on paper, CMS (Target: Increase) Note: This counts all applications filed in any court and linked to a court event in the Hamilton DC. The month is based on the event date.

Availability of bail transcripts

125 Bail Transcripts (high priority)

All decisions where bail is declined and all decisions where bail is opposed (whether bail is granted or declined, including EM bail) to be:

- a. Typed up within 24 hours,*
- b. Authenticated within 24 hours*
- c. Released to prosecution and defence within 24 hours.*

Bail application decisions are typed up and released to prosecution and defence in 72 hours for most cases. This process was business as usual in Hamilton before CPIP implementation, although there were times early in the test period that the standard wasn't met. Common reasons for delay were the non-availability of court reporters, technology issues, insufficient or incorrect information and that an alternative date was agreed with the Registry. However, there appears to be no problem in achieving the targets set, the number of applications affected was minimal, therefore data collection was discontinued in May.

Workstream 6 – Sentencing Stage

Findings for Ara Poutama Aotearoa

Summary

- **Improvements in processes for PAC reports** have been noticed but more data collection and analysis is required to see if these improvements are sustainable.
- Engagement has occurred with the defendant following a PAC request but space at court may not be available, in which case interviews may occur at Probation Services offices.
- When barriers to community-based sentences are identified, a collaborative approach with counsel and judges has been very useful.
- Multiple addresses have been canvassed for an electronically monitored sentence, but addresses may not be available at the last minute and some flexibility is needed when this occurs.
- Further improvements could occur:
 - PAC reports still need to show potential links between the offending, the identified related factors, as well as culture, and domestic circumstances.
 - Applying lessons from different approaches tried at Gisborne and Hamilton for the roles of Probation Service staff.
 - Impact of sentencing hearings time: in Hamilton same-day PACs are more likely to occur with morning sentencing hearings and afternoon hearings are more likely to result in a same-week PAC request.
- **Requests for stand-down PACs** did not increase as expected. COVID-19 may have impacted this. Guidelines and change management for the judiciary and counsel are important so case participants understand the value and purpose of same-day PACs.
- **Related work and other Workstream 6 solutions** need further consideration:
 - Use the aggregation of Ministry of Justice and Ara Poutama Aotearoa datasets, to describe defendant sentencing stage journeys and understand how remand setting and adjournment reasons impact the time to sentence and number of hearings.
 - Use the Sentencing Ready team active case management results: of the 408 cases where Sentencing Ready provided assistance, 323 were sentenced at the next hearing (79%), a further 54 cases then reached disposal at the second event (13%).
 - Assess the impact of repeated PAC reports: defendants and whānau may engage less each time, and information which may become less reliable in later reports.
 - Assess the impact of PAC improvements on adjournment rates could be addressed using 'the proportion of cases sentenced at the first opportunity'. Across all pilot courts this is approximately 50%.

Background

CPIP Workstream 6 (WS6) has focused on the sentencing stage. It targets a reduction in the time and number of hearing events for those on remand, and a reduction in the overall proportion of hearing adjournments due to sentencing files being incomplete, case parties being unavailable or not ready to proceed.

The Provision of Advice to Court (PAC) report¹⁰, written by a Probation Service Officer, is the main report of interest to WS6. Preparing a PAC requires an interview with the defendant, their whānau and other relevant third parties. The report writer assesses sentencing options and makes recommendations. The report is provided to the Judge and Case Party and the defendant also receives a copy.

Expected benefits from Workstream 6 solutions

The WS6 Design Phase identified the following benefits to be accrued from procedural changes in the sentencing phase:

- Quicker sentencing and fewer hearing events, resulting in faster resolution for crime victims, less stress and cost for case participants and whānau.
- Less time in custody on remand and fewer people being sentenced on time served, so that the rehabilitative needs of an offender can be addressed.
- Fewer sentencing hearing adjournments attributed to files being submitted incomplete or late so that time is not wasted by the judiciary, prosecution and defence counsel preparing for hearings that do not progress sentencing.
- Increased engagement with local iwi for early recognition and support of an individual's rehabilitation and reintegration needs.
- Increased availability of electronically monitored sentencing options in PAC reports (including canvassing of multiple addresses if available).
- Inclusion of fines and restorative justice options in PAC reports.
- More efficient use of judicial, Court and prosecution time, with gaps in a day able to be filled at short notice and less rework time for the registry and Ara Poutama Aotearoa.
- Increased whanau engagement and understanding of judicial process.
- Increased staff understanding and buy-in to pending changes.

To achieve the above benefits, the WS6 Design Phase identified eight groups of solutions, encompassing case management, probation practice development, provision of cultural information to the court, improvements to the timeliness and scope of PAC reports, rescheduling of hearings unlikely to progress sentencing, and improved relationships to facilitate court sentencing matters. Individually, each proposed solution accounts for a "quick win". Collectively the solutions account for transformational change, but not until all WS 6 solutions are in place in a court, or in all courts.

Pilot courts and tested solutions

WS 6 has been piloted in Gisborne, Hamilton, Hawera and New Plymouth District Courts. These courts started piloting procedural changes over a four-month period (November 2021 to February 2022) and this has required a staggered approach to analysing data for the evaluation.

Each District Court has a different workload and demographic; for instance, Hamilton is a large volume court compared with Hawera; New Plymouth and Hawera Probation Service and Judiciary work closely across a regional boundary; and Gisborne serves a widespread rural community with a high Māori population.

Not all WS 6 solutions were tested (updates are provided at the end of the Executive Summary). The two solutions tested in these four courts were:

¹⁰ Also known as a Pre-sentence Report

1. Same-day /same-week sentencing PAC Report (WS 610): the CPIP objective for cases where a same-day/same-week PAC is requested is to have more PACs produced on the day. This requires the case to be stood down, the defendant interviewed and a PAC written; the case resumes later in the day or week depending on the type of sentence recommended.
2. Improved PAC processes (WS 602): alongside the same-day/ same-week PAC are improvements in the process of producing any PAC. The improvements sought across all PACs produced include more consistent engagement with the defendant and defence counsel to gather details earlier, and for all PAC to provide relevant fines information, sentencing conversion options and cultural and domestic considerations.

Demand and supply of PACs baseline

Baseline information about the demand and supply of PAC reports over the period 1 July 2021 to 31 July 2022 for the four pilot District Courts shows there is a high demand for PAC reports in the sentencing phase, but only occasionally is a PAC report requested on the same day as a sentencing hearing.

Findings about the demand for same-day PAC reports at the four pilot courts over the 12 months test period showed that 50-70% of PACs are requested at the guilt established hearing. The remainder are requested at sentencing hearings, due to cases having a mix of guilty and not guilty pleas, other charges pending, the judge requiring the defendant to complete programmes prior to sentencing, or for other discussions.

Results for the timeframes for supply of PACs, indicate that 1-3% of PACs are finalised the day before sentencing, 20-30% are completed 2-10 days prior, but most PACs (70-80%) are completed more than 11 days prior to the sentencing date

Key measure for Workstream 6

There was a single key measure for Workstream 6.

WS6 M1: Percentage of sentence hearing events being adjourned. The following values show the expected changes as a result of all of the solutions being in place. The February 2020 and July 2022 values are an aggregate of all four pilot court actual values.

Feb-2020 Value	36.5%
Jul-2022 Value	33.5%
Jul-2022 Estimate	35.3%
Dec-2023 Target	34.0%

Limitations of CMS data affecting workstream results

As noted in Workstreams 1 and 2, the assessment of the CMS key measures has revealed that the measures are suffering from high level limitations that are restricting the interpretation of overarching workstream results.

The following results include the key measure agreed in the CPIP design phase for the four pilot sites, compared to national figures.

Key Measure WS6 M1: The data does not provide a clear trend yet. However, the pilot courts have better values before and since CPIP, compared to the national values (except November, December, June) and are meeting the target from January onwards (except for March and June).

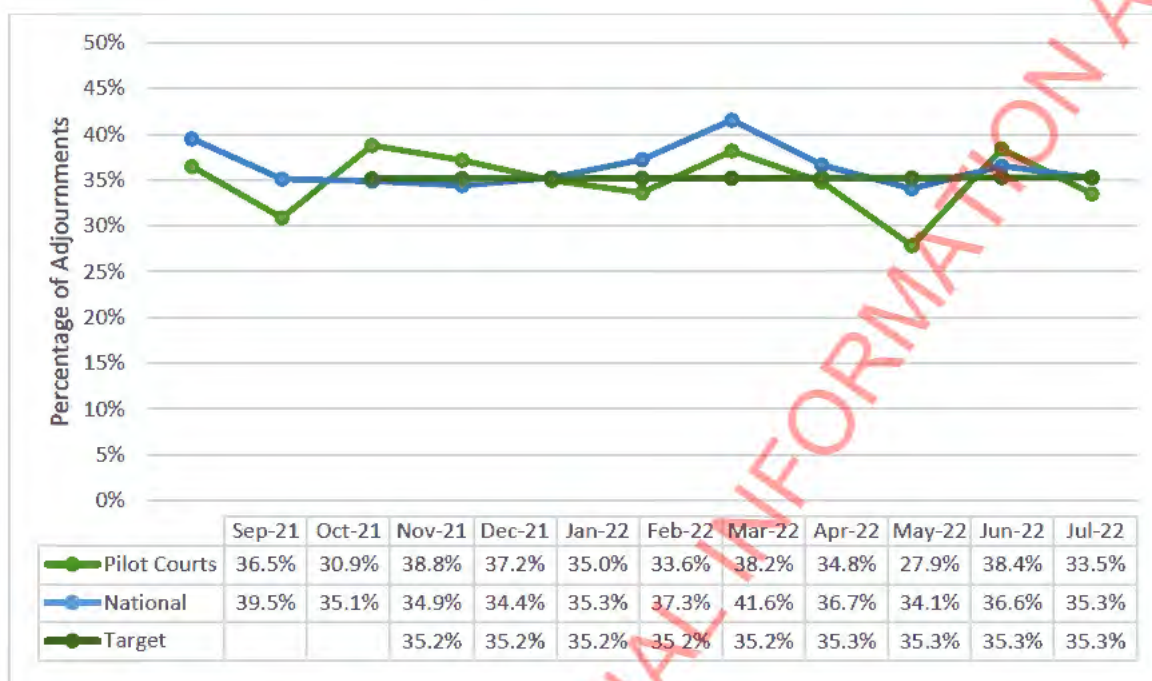


Figure 19: WS6 M1 Percentage of Sentence hearing events being adjourned (reduce)

Evaluation

The following data collection was carried out by Ara Poutama Aotearoa.

Data collection period and evaluation limitations

The appendix summarises the date the pilot started at the court, and the median days in the sentencing stage¹¹. The median days (for 50% of sentencings) has been used to provide a marker for the point in time from which cases that have received the WS6 piloted solutions are considered visible. Prior to the earliest date of focus, most hearings are for cases that are being heard before the pilot began.

A caveat on the findings and recommendations in this paper is that it will take several years of data collection before the benefits can be fully evaluated. The evaluation findings and recommendations described in this paper should be regarded as exploratory and provisional.

Same-Day /Same-Week Sentencing PAC Report

Some sentencing can be dealt with on the same day of a hearing (either the day guilt is established or at a sentencing hearing (for example if an "Unable to complete PAC" memo has been filed but the defendant appears at court for sentencing). If sentencing needs to be fast-tracked, then a same week PAC report can be requested. Sentences up to and including Community Detention are

¹¹ Median sentencing days has been calculated for cases where guilt was established on or after the implementation date but excludes some outliers (who were found guilty in November but are not yet sentenced).

suitable for same-day PAC reports whilst all sentencing options can be canvassed in a same-week PAC report. However if there are complexities identified when undertaking a same-day PAC, then the recommendation may be the sentencing occurs later in the week to allow for these to be worked through.

Solutions that aim to increase the demand and supply of same-day/same-week PAC reports have been piloted, including:

- Rostering of Probation Officers to attend Court to interview defendants and produce a stand-down PAC report on the same-day (or in the same-week).
- Promoting same-day/same-week-PAC availability to lawyers and the Judiciary. This was limited to Probation Service communication as guidelines for lawyers and Judicial officers were intended to be produced but were unavailable.
- The use of a prototype same-day PAC report template (Hamilton District Court only).

Findings

It has been difficult to ascertain the frequency of same-day PAC provision because Ministry of Justice data on same-day sentencing does not detail whether a stand-down PAC was supplied. Hamilton Probation office maintained a spreadsheet of the provision of written same-day PACs and oral submissions, showing both of these had fluctuated during the test phase (Table 5). The collection of data has depended on Probation Officers advising of same-day PAC provision and a few may have been missed. However, according to Ministry of Justice supplied data on same-day sentencings, there were 1572 same-day sentencings between 1 December 2021 and 31 July 2022, and the number of same-day PACs requests is not significant, meaning the solution had limited impact in Hamilton.

Table 5 Hamilton same-day PAC supply and oral sentencing submissions

	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Same-day PAC supply	6	4	9	6	7	1	1	2
Oral Submission				11	3	24	8	6

Interviews have been the main source of information for the evaluation of the impact of the piloted solutions/procedural changes on same-day PAC report provision.

Interviewees have confirmed that, except for Gisborne District Court, Probation Officers have been rostered to attend court and write same-day stand-down PAC reports throughout the pilot. The Probation Service have communicated the availability of a Probation Officer to write a same-day PAC report if required. The designed solution requires two probation resources: the Court Probation Officer remains in court and available for other hearings and the second Probation Officer interviews the defendant and write the stand-down PAC.

Requests for stand-down PACs did not increase as expected. Covid-19 may have impacted some of the demand for stand-down PACs. Specific feedback is set out below.

- Probation Service:
 - Managers said they and their staff had been very positive about the opportunity to provide more same-day (stand-down) PAC reports at the start of the pilot.
 - Defendants indicated they were positive about the experience of a same-day PAC
 - Hamilton Service Managers report the same-day PAC template is easy to use and fit for purpose.
- Judiciary:
 - Some judges do not aim to sentence on the same day.
 - Judges who were requesting stand-down PAC reports before the pilot have continued to request them throughout the pilot.
 - Judges were not always aware that a restrictive electronically monitored sentence PAC cannot be completed in an hour.
- Court space and timing:
 - If there is no dedicated court space for interviewing and writing (as at three pilot courts), then the Probation office needs to be close to court so that defendants can be interviewed there.
 - Same-day sentencing works for morning hearings but there is insufficient time to interview, write the PAC and complete sentencing for afternoon hearings.

The pilot identified some changes that could assist the implementation of this solution:

- Identifying cases where stand-down PAC reports are likely to be requested in advance will increase uptake of this solution.
- Counsel needs to advise and obtain consent from the defendant about waiving the right to a PAC to hasten sentencing.
- Judiciary hesitancy about a defendant's complex needs can be mitigated by inclusion of two standard conditions in a sentence (attending counselling and a programme). The Probation Service will identify complex needs once the sentence starts and can seek additional conditions from court if required.

Conclusions and Recommendations Same-day /same-week sentencing PAC Report WS 610

Despite Probation Service staff optimism and motivation to prepare same-day PACs, there has not been an increase in their use in sentencing. The main lessons learned from the pilot are around the need for guidelines for the judiciary and counsel. Once guidelines are agreed and communicated, it is recommended that there be further testing of uptake, of how to match demand and supply, and evaluation of benefits. Applying behavioural science to the embedding of this solution may be an option to explore.

Another important learning from the pilot is that the time of a sentencing hearing influences whether same-day sentencing is an option. There is a risk of inequitable sentencing if same-day PACs are not available consistently to cases that are suitable for same-day sentencing.

Improve PAC Processes

Through work undertaken in the WS6 discovery stage, combined with information from the work undertaken by the Sentencing Ready team since mid-2019, it is clear that a lack of communication between parties in the pre-sentencing stage has an impact on adjournments in the sentencing stage. Issues such as counsel not being aware of address issues until receiving the PAC, leading to new addresses being proposed on the sentencing day, results in unnecessary delays and adjournments. A lack of early contact between the Probation Officer allocated the PAC and the offender can result in disengagement, and an inability to contact them in the community. This can

result in incomplete or late PAC reports, or Unable to Complete memos, often resulting in further adjournments.

The following solutions have been piloted to improve PAC processes and report quality:

- Probation Officer to liaise with defendant to establish initial contact, confirm contact details, available dates and times for interview and obtain consent for electronic monitoring addresses to be canvassed
- PAC writer Probation Officer to engage with defence counsel when PAC is allocated and if any barriers to community-based sentences are identified
- Probation Officer to canvas multiple addresses in one PAC request
- PAC report to include fines information, sentencing conversion options and cultural and domestic considerations.

Findings

Evaluation findings on PAC process improvements are drawn from interviews with Probation Service staff, analysis of sentence hearing outcome adjournment rates and dip sampling of PACs prepared for sentencing hearings throughout the pilot.

Engagement has occurred with the defendant following a PAC request, but court space is not always available; in this case Probation Service offices are used.

- Probation Officers are assigned as PAC writers, which generally works better without having other duties such as managing sentences. Hawera aim to have the PAC writer manage any community sentence. Other centres have dedicated PAC writers. Allocation of PAC writer to a case can be based on Probation Officer availability or human factors. Gisborne has not piloted this component.
- Hawera found having a dedicated Probation Officer, who does not manage a community caseload, has provided a consistent face to Court staff and relationships have improved as a result.
- Flexibility in resourcing of Probation Service at court may be needed. Probation Officers may not need to be based there or need to spending large amounts of time at court.
- Court setup (availability of space for interviews and pace of hearings) can make it difficult to liaise with the defendant prior to them leaving court.
- Most people provide contact details immediately after a hearing.
- Form completion is a challenge and often takes place at Probation Service Offices. Defence counsel can help with ensuring a defendant receives the electronic monitoring form.
- During Covid-19 lockdown, New Plymouth had a Probation Officer sitting in the court cell area, to liaise with a defendant after a hearing because the probation offices were closed. Whilst this solution is not sustainable in the long-term, it is important to have an engagement contingency plan.

When barriers to community-based sentences are identified, a collaborative approach with counsel and judges has been very useful.

- Service Managers had good communication with counsel prior to the pilot but an increase in emails and phone calls with counsel prior to sentencing – especially if there are difficulties contacting defendants – had reduced the number of unable to complete PAC memos. Except for Hamilton, all pilot courts have seen a reduction in the average number of unable to complete memos. Records about emails and phone calls with counsel during

the pilot were not kept, so it is unclear whether the reduction is directly related to increased communication.

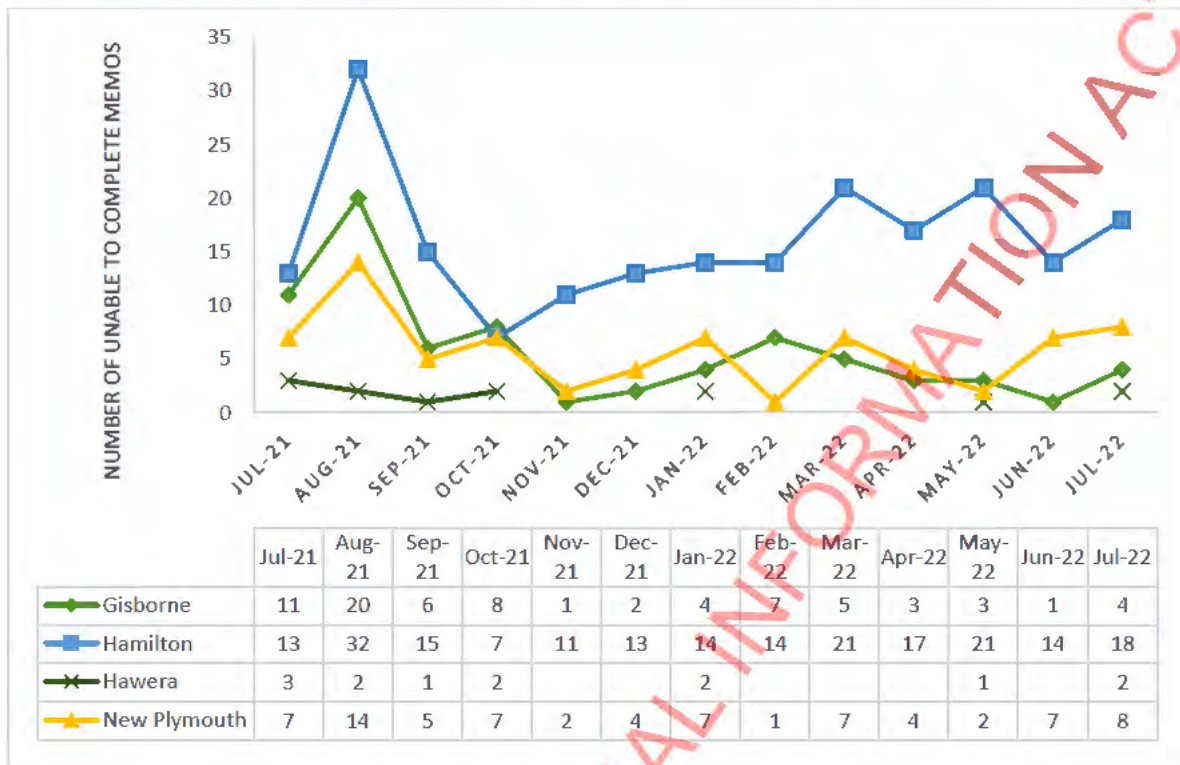


Figure 19 Numbers of 'Unable to Complete' memos by District Court and month 2021-22

The canvassing of multiple addresses for an electronically monitored sentence has occurred but multiple addresses are not always available and other factors may make this difficult.

- Due to housing shortages, a person can generally offer only one address as a suitable environment for an electronically monitored sentence.
- Address occupants, rather than the physical and technology environment, are the greatest determinant of suitability. Assessing risk and safety factors for occupants needs to be thorough and is time-consuming.
- A scatter-gun approach to canvassing multiple addresses is not favoured by some Probation Officers because of the time it takes to canvass an address as suitable. Ranking multiple addresses in terms of preference or conditional assessing is seen as a better approach
- Covid-19 has prevented home visits, which has made it harder to get occupant's agreements.
- Flexibility in the canvassing of addresses is needed. If it has not been possible to obtain an occupant's consent (written or verbal), then a PAC writer can weigh up the likelihood of a Judge imposing a home detention sentence and if the address and people are known to probation, indicate the address as being suitable in a PAC.
- Addresses that have been canvassed and approved can fall over at the last minute. In these circumstances it would be helpful to have an exception for PAC timeliness standards so that any alternative addresses can be canvassed at short notice.

There has been an increase in the inclusion of fines and alternative sentencing options in PAC reports.

- Including fines and restorative justice options has been relatively easy to do and has not increased PAC preparation time.
- At one court, there is difficulty with obtaining information about outstanding fines, since the interface between Ministry of Justice and IOMS (Corrections database) shows the fine at time of sentencing and not the outstanding amount. It was suggested it would be helpful to access current fines outstanding in IOMS.

There has been a significant uplift in the inclusion of cultural and domestic background in PACs.

- At two courts, the inclusion of cultural information in a PAC has decreased S27 requests, at another court there has been an increase in requests.
- Some concerns were raised about getting the right balance of factual evidence, Probation Officer perspectives and third-party input. It is not possible to verify third party information provided in a PAC.
- Care needs to be observed when reading and discussing cultural and domestic background information in court, because PAC and S27 reports may include histories of intergenerational trauma and perpetrators may be present at court. Where a person is coming up for repeat sentencing, after one or two interviews about cultural and domestic background, the motivation for the defendant and whānau to engage decreases (because information has previously been provided).
- Probation Service staff observed that defence counsel enthusiasm about the inclusion of cultural and background information in a PAC is because it may provide extra mitigation that can be used at the sentence hearing.
- Judges have been transparent that a discount in sentence is given for adverse cultural circumstances. There is a risk that word will get around that the better the story told to a Probation Officer, the greater the discount in sentence.

Another benefit of PAC improvement process includes court staff having better understanding of PAC preparation. Covid-19 has been an opportunity to learn to manage sentencing hearings differently and the use of remote court access has been positively received.

Analysis of adjournment rates and PAC dip sampling

As mentioned at the start of this section, issues with PAC completeness and agreement on suitable electronic monitoring addresses can lead to further sentencing adjournments. There are difficulties assessing the impact of the CPIP WS6 PAC improvement changes on adjournment rates for the following reasons:

- The impact of the Covid-19 pandemic community outbreak and lockdown in August 2021 can be seen in the table in the Appendix. A sharp increase in the proportion of all adjournments due to party unavailability was immediately observed at Hamilton (51%), Gisborne (40%), New Plymouth (15%)¹². Hamilton has been most affected by adjournments due to party unavailability, but the impact has continued. In June and July winter months, adjournments for this reason have been high due to Covid-19 and seasonal flu.
- PAC reports are written for a specified sentencing hearing which may be rescheduled to another date or court. Sentencing may also be delayed for other reasons (not known when

¹² Hawera had no sentencing hearing adjournments in August 2021.

a PAC was written, which may require a PAC to be updated later). It is challenging to match PAC completion dates with sentencing hearings

- It takes 2-3 months from the guilt established hearing to the first sentencing hearing, so evidence of improvement in adjournment rates may not be seen until February (2022) at the earliest for New Plymouth and May (2022) for Hamilton. PACs may have been requested early in the pilot but there is a complex mixture of pre-pilot, cases in transition and fully piloted PAC reports.

The proportion of cases disposed, adjourned and with warrants to arrest for each District Court since July 2021, show except for New Plymouth District Court, the trend over time has been for sentencing hearings adjournments to increase.

When the proportion of all adjournments in the months January to July 2021 and in 2022 are compared, except for Hamilton and adjournments due to addresses canvassed for electronic monitoring, there has been no significant change in adjournments due to PACs being incomplete or address issues. The exception is Hamilton adjournments due to addresses canvassed for electronic monitoring: Hamilton showed an increase from 1% in 2021 to 9% in 2022, the most likely reason for adjournments is the impact of Covid-19 on housing availability and the occupant's willingness to support a community or home detention sentence.

PAC dip sampling involved a review of PACs written during the pilot by the Sentencing Ready Team to assess whether there had been an uplift in the inclusion of the expected PAC detail during the pilot. More work and time is required for a comprehensive review (and it is hoped that a comprehensive review will support the writing of personas that describe sentencing journeys). In general, there is evidence of an uplift in the inclusion of evidence of domestic and cultural information. A PAC report, by necessity is a short history of an individual's information and Probation Service perception of an individual's willingness to engage in the collection of narrative has not been analysed. A S27 report (see next section) is intended to cover a long history, including generational factors.

The result of the review has also highlighted some areas of PAC writing where further focus could be given. The focus of the inclusion of information about an individual's circumstances, their culture and their whānau is that judges want to sentence appropriately, with knowledge of how a sentence will affect whānau. Judges said they wanted to be able to see potential links between the offending, the identified offending related factors, culture, and domestic circumstances.

Input by Behavioural Science Aotearoa may be beneficial in future reviews of PACs and help to identify exemplars and characteristics of writing that provide helpful information on an individual's circumstances. Examples of improvement in practice within this focus area could be demonstrated by analysing and then articulating the discussions from PAC interviews.

The inclusion of fines information was less evidenced, possibly because of history of inability to pay fines.

Conclusions and Recommendations for WS 602

Interviews have been a rich source of information to support evaluation of the implementation of PAC process improvement. More analysis and time is needed to evaluate the outcome of PAC process improvements on sentencing. Feedback from judges, counsel and defendants is also needed to understand this change.

The main recommendations of the evaluation are that the pilot has focused on Probation Service inclusion of information. More evaluation of the outcomes of information inclusion is required, particularly as interviewees cautioned that repeat defendants engage less with input to their short history and the risk that judges may discount sentencing for self-reported and unverified information, which may have unintended outcomes for whānau and victims.

The planned Judicial engagement sessions may see in same day PAC reports, an increased understanding of programme availability and reduced concern around the impact of unverified information. These sessions are designed to ensure local issues, trends and programme availability are discussed frequently between Community Corrections, the Judiciary and a representative of the legal profession.

Not all solutions identified in the WS6 Design Phase have been evaluated in this report, however the table in the Executive Summary provides context for the solutions tested.

Note: The appendix details the proportion of scheduled hearings in a given month that are for the coming month rather than the future. This ratio has the potential to provide a sense of the sentencing lag and, if correlated with the actual adjournment rate of a month, may give sense to the role that a pool of ready to be sentenced cases might play

Evaluation Conclusions Workstream 6

The goal of WS6 is to reduce the time and number of hearings on remand and to reduce the number of hearings that do not contribute to a sentencing outcome.

To date the main learnings for the High Impact Innovation Programme (HIIP) team have on how to aggregate Ministry of Justice and Ara Poutama Aotearoa datasets and to evaluate the impact of piloted process changes. The aggregated dataset has provided a partial picture of sentencing timeliness (partial because data has not been provided for cases that have not yet been scheduled or disposed).

Evaluation has been a highly iterative process and is now at the point where personas can be developed to describe different defendant sentencing journeys. These personas can then be used to analyse the impact of factors such as remand setting, District Court demographics, and adjournment reasons on time to sentence and number of sentencing hearings.

As one interviewee observed, some courts aim to slow down sentencing so that defendants can complete rehabilitative programmes (pre-sentence judicial monitoring). In such cases, rehabilitation is the priority, rather than a reduction in time to sentencing. Recognition that pre-sentence judicial monitoring is occurring when evaluating what CPIP has achieved will be important.

It will take several years before any reduction in time to sentence or number of hearings because of CPIP changes can be assessed. The HIIP Team is exploring measures that can be used to assess sentencing timeliness such as, the proportion of monthly cases that are sentenced at the first opportunity (where there has only been one sentencing hearing since guilt was established). This proportion has fluctuated over the months July 2021 to July 2022 but at all pilot courts is approximately 50%. Without a complete picture of sentencing backlog and sentencing completeness, this proportion is approximate.

Appendices

Appendix 1 – Workstreams 1 and 2

The following quantitative measures were used for testing Workstreams 1 and 2.

Context: Covid-19 affected days.

WS1: total arrests,

- arrests where bail is opposed + those available to Duty Lawyer,
- written opposition to bail statements included in arrest disclosure, arrest disclosure turnaround time,
- bail applications where bail is opposed actioned on the day + by counsel type,
- bail applications where bail is opposed represented by Duty Lawyer vs urgent Legal Aid,
- bail application outcome by counsel type,
- Duty Prosecutor availability days/hours and bail cases discussed,
- same-day address availability checks,
- cases released from custody at first custodial event,
- bail applications withdrawn on paper,
- bail applications note/decision transcription and release turnaround time + reasons for delay,
- Duty Lawyer urgent roster,
- number of Legal Aid applications,
- earliest available date for bail applications,
- number of events to plea for opposed bail matters where defendant is assisted by Duty Lawyer, number of bail applications heard by Community Magistrates vs. judges,
- Bail applications that proceed on the day when an urgent legal aid application is made.

WS2:

- number of cases in scope (workload) and available to Duty Lawyer,
- additional disclosure required/received,
- stand-down PAC reports produced,
- Duty Lawyer count, Duty Lawyer hours, Duty Lawyer experience,
- higher duties fee claimed,
- event outcome (plea, sentencing, remanded without plea),
- first appearances disposed,
- cases with the same day sentencing as plea,
- first appearances disposed,
- victims' views on Restorative Justice.

Appendix 2 – Workstream 6

Data availability

District Court	Implementation Date of solutions	Pilot Median Sentencing Days	Earliest date of focus	Sentencing Hearing Month Date Focus
Gisborne	22 nd November 2021	50	12 January 2022	From 1 February 2022
New Plymouth	8 th November 2021	78	25 January 2022	From 1 February 2022
Hawera	13 December 2021	69	20 February 2022	From 1 March 2022
Hamilton	14 th February 2022	57	12 April 2022	From 1 May 2022

Table 1: CPIP Workstream 6 pilot: Pilot implementation dates and focus of data analysis (Source Ministry of Justice Sentencing Hearing Outcome Data (1 July 2021 to 30 June 2022))

Provision of Advice to Court requests and supply

	Gisborne DC	Hamilton DC	Hawera DC	New Plymouth DC
Proportion of sentencings where PAC is requested	82%	74%	81%	86%
Proportion of sentencings where PAC request < 11 days from Guilt Established	52%	60%	72%	64%
Proportion of sentencings where PAC completed day before sentencing	3%	1%		1%
Proportion of sentencings where PAC completed 2-10 days before sentencing	30%	23%	19%	17%
Proportion of sentencings where PAC completed >10 days before sentencing	67%	76%	81%	81%

Based on Ministry of Justice and Ara Poutama sentence hearing and provision of information data (1 July 2021 – 31 July 2022)

Court Hearing Demographics

Gisborne

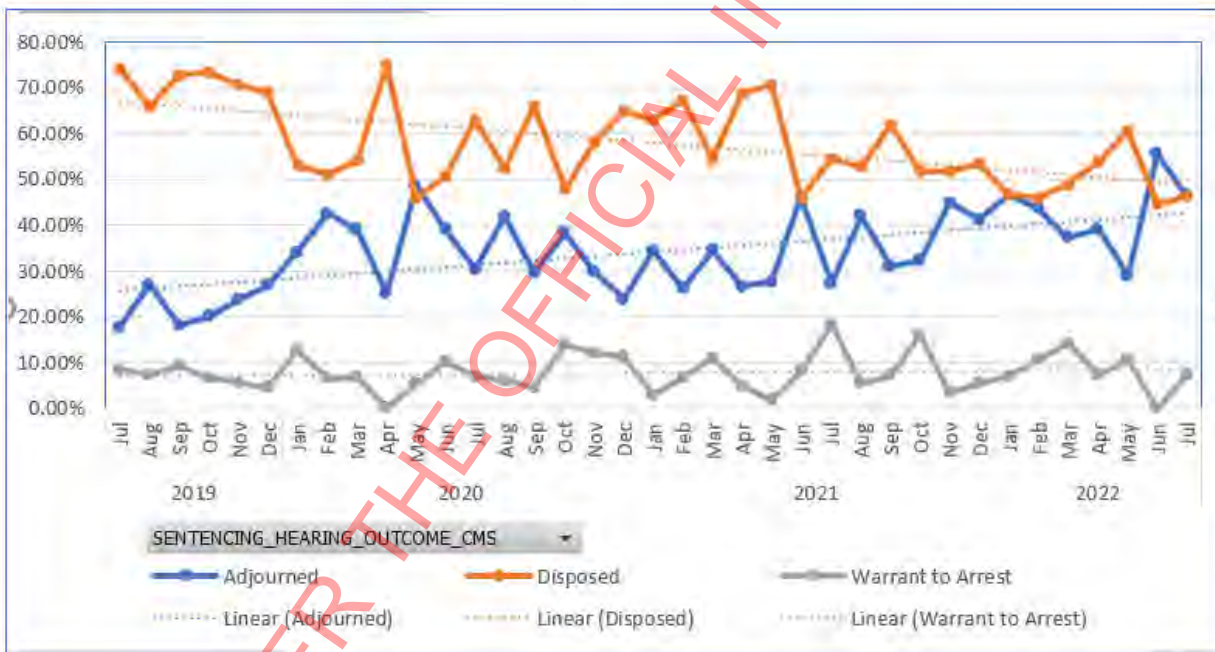
Gisborne District Court Sentencing Hearing Days (Month): July 2019-July 2022

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019							9	10	7	6	10	6
2020	7	11	9	7	11	12	11	9	10	11	7	6
2021	5	8	6	10	8	8	8	14	10	9	12	8
2022	6	6	12	6	12	13	8					

Gisborne District Court: Sentencing Hearing Cases (Month): July 2019-July 2022 (Workload)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019							73	41	55	45	72	45
2020	47	47	59	12	111	118	86	67	44	94	67	63
2021	35	46	55	83	58	37	44	112	84	56	118	73
2022	43	48	86	41	76	45	28					

Gisborne District Court: Case Adjudgments, Disposals, Warrants to Arrest Trends: July 2019-July 2022



Current Month/Future Month Sentencing Hearing List Ratio

Gisborne	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Total hearings scheduled at start of month	131	134	121	114	109	128	95	93	83	97
Hearings scheduled in month	58	108	82	43	36	107	43	65	32	17
Proportion of Current Month in Daily Case List	44%	81%	68%	38%	33%	84%	45%	70%	39%	18%

Hamilton

Hamilton District Court Number of Sentencing Hearing Days (Month): July 2019-July 2022

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019							23	22	21	21	21	16
2020	19	19	21	17	21	21	23	21	22	21	21	17
2021	17	17	23	18	20	20	22	20	22	16	22	16
2022	16	18	22	17	22	20	20					

Hamilton District Court: Sentencing Hearing Cases: July 2019-July 2022 (Workload)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019							319	296	290	240	262	288
2020	244	252	258	148	288	286	347	267	285	297	271	231
2021	216	221	288	231	236	302	220	273	244	78	179	205
2022	127	182	208	198	233	195	233					

Hamilton District Court: Case Adjudgments, Disposals, Warrants to Arrest Trends : July 2019-July 2022



Current Month/Future Month Sentencing Hearing List Ratio

Hamilton	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Total hearings scheduled at start of month	436	443	440	432	450	477	454	470	450	460
Hearings scheduled in month	166	245	198	149	183	215	190	245	182	230
Proportion of Current Month in Daily Case List	38%	55%	45%	34%	41%	45%	42%	52%	40%	50%

Hawera

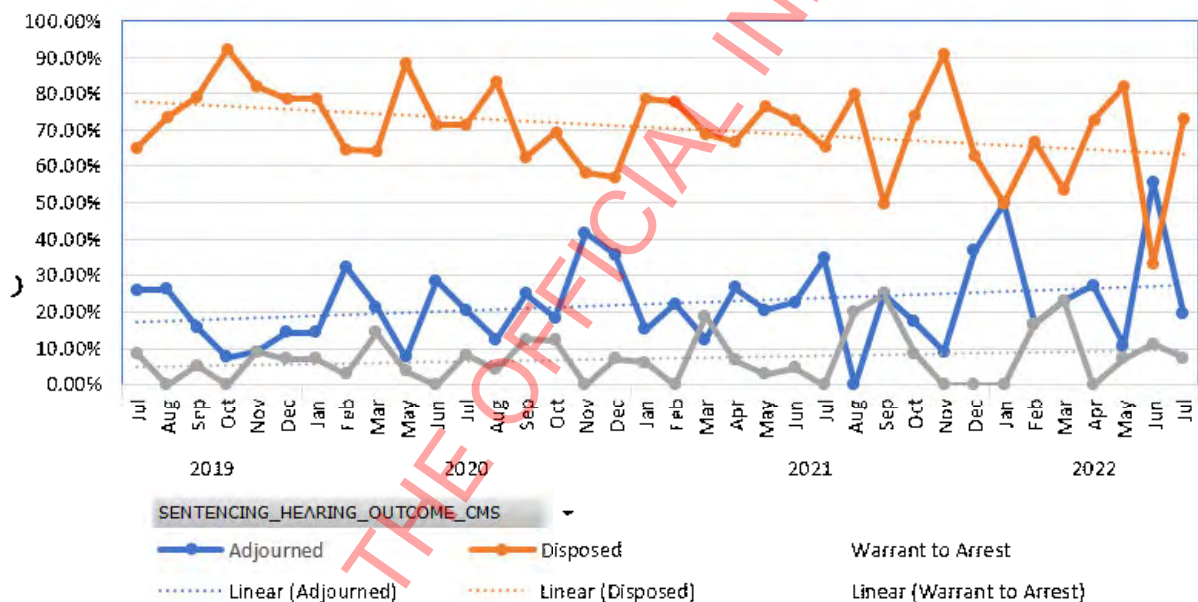
Hawera District Court Sentencing Hearing Days (Month): July 2019-July 2022

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019							4	2	2	1	1	1
2020	1	4	4		3	2	5	2	3	5	1	3
2021	4	3	5	5	4	4	5	1	1	3	3	3
2022	2	2	3	4	4	3	5					

Hawera District Court Sentencing Hearing Events (Month): July 2019-July 2022 (Workload)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019							23	19	19	13	11	14
2020	14	34	28	0	26	7	49	24	8	49	12	14
2021	33	9	32	30	34	22	26	5	4	23	22	19
2022	12	12	13	11	28	18	41					

Hawera District Court: Case Adjudgments, Disposals, Warrants to Arrest Trends : July 2019-July 2022



Current Month/Future Month Sentencing Hearing List Ratio

Hawera	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Total hearings scheduled at start of month	46	38	46	39	44	53	69	81	82	83
Hearings scheduled in month	27	21	20	15	15	14	14	28	13	45
Proportion of Current Month in Daily Case List	59%	55%	43%	38%	34%	26%	20%	35%	16%	54%

New Plymouth

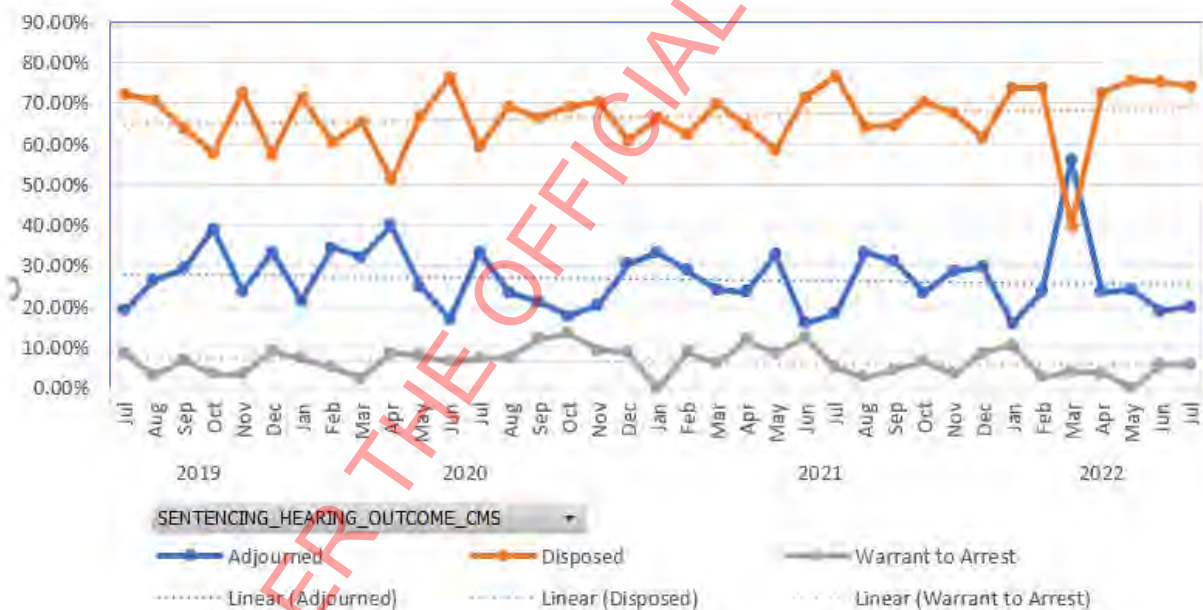
District Court Sentencing Hearing Days (Month): July 2019-July 2022

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019							12	12	11	14	15	14
2020	8	13	15	9	10	13	13	13	9	10	13	10
2021	7	12	14	15	12	12	12	15	17	11	13	13
2022	7	11	17	9	14	16	11					

New Plymouth District Court Sentencing Hearing Events: July 2019-July 2022 (Workload)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019							58	68	58	59	88	87
2020	28	61	84	35	76	77	96	94	33	68	54	46
2021	27	69	83	68	58	56	60	39	93	47	59	47
2022	38	38	75	55	66	53	85					

New Plymouth District Court: Case Adjudgments, Disposals, Warrants to Arrest Trends: July 2019-July 2022



Current Month/Future Month Sentencing Hearing List Ratio

New Plymouth	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Total hearings scheduled at start of month	151	158	157	165	149	170	186	185	169	178
Hearings scheduled in month	50	75	59	50	43	79	64	79	51	102
Proportion of Current Month in Daily Case List	33%	47%	38%	30%	29%	46%	34%	43%	30%	57%

Pilot District Courts: Adjournments due to Judge, Counsel or Defendant Unavailability

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	
Gisborne	2	1	2	1				19	2	3	3	5	1	3	9	1	2			54
Hamilton	11	10	13	3	10	11	1	74	50	27	56	19	58	17	24	19	15	14	24	456
Hawera										1			6	1	1	1		9	2	21
New Plymouth		1		1	1		1	2	4		3			1	16	2	5	1	2	40

Source: Ministry of Justice Sentencing Hearing Outcome data (CMS and Data Warehouse)

Pilot District Courts: Proportion of all sentencing hearing adjournments due to Judge, Counsel or Defendant Unavailability

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Gisborne	17%	8%	11%	5%	0%	0%	0%	40%	8%	17%	6%	17%	5%	14%	28%	6%	9%	0%	0%
Hamilton	14%	13%	13%	3%	11%	11%	2%	51%	40%	61%	61%	26%	77%	24%	33%	25%	21%	20%	24%
Hawera	0%	0%	0%	0%	0%	0%	0%	0%	25%	0%	0%	10%	50%	33%	33%	0%	90%	25%	
New Plymouth	0%	5%	0%	6%	5%	0%	9%	15%	14%	0%	18%	0%	0%	11%	38%	15%	31%	10%	12%

Source: Ministry of Justice Sentencing Hearing Outcome data (CMS and Data Warehouse)

The impact of the Covid-19 pandemic community outbreak and lockdown in August 2021 can be immediately seen at Hamilton (51%) and Gisborne (40%), New Plymouth (15%) and Hawera (no hearings held). Hamilton has been most affected by adjournments due to party unavailability, but the impact has continued. In June and July winter months, adjournments for this reason have been high due to Covid-19 and seasonal flu.

Adjournment Reason Further Analysis January to July adjournment proportions for 2021 and 2022.

	Case not ready		EM Issues		PAC Incomplete		Filed Late	
	2021	2022	2021	2022	2021	2022	2021	2022
Gisborne	22%	32%	0%	2%	2%	1%		
Hamilton	11%	10%	1%	9%	1%	3%	0.70%	0.60%
Hawera	3%	0%	5%		3%	0%		
New Plymouth	3%	4%	3%	0%	2%	6%		

Memorandum

To Tracey Baguley, Legal Services Commissioner
Robert Ives, Manager Legal Aid Services

From Harsahiba Kaur, Principal Advisor – Criminal Process Improvement Programme

CC Raymond James, Program Director – Criminal Process Improvement Programme

Date 6 May 2022

Subject Interim evaluation - Hamilton DC Pilot

Out of scope

For Approval Review Comment Action Noting

Purpose

1. The purpose of this memorandum is to provide an update on the progress of workstreams 1 and 2 as part of the Criminal Process Improvement Programme (CPIP) pilot at the Hamilton District Court.
2. The workstream is also seeking approval to increase the higher duties payment amounts, based on the evaluation of interim results.

Background

3. CPIP - workstreams 1 and 2 comprise of solutions to address key problems in the bail applications process and admin stage appearances. The primary objective of the workstreams is to reduce the number of events to plea in the admin stage and to reduce delays in bail applications proceeding.
4. A pilot of these solutions commenced at the Hamilton District Court (HDC) on the 6th of December 2021. Out of scope
5. CPIP intends to carry out extensive & robust evaluation at the end of the pilot to provide a comprehensive overview of all the various solutions tested. Evaluation is currently scheduled for June - July 2022. Results from the evaluation will help inform decision making towards next steps of implementation.
6. The purpose of this document is to provide an interim evaluation of some of the key success measures since pilot commencement.
7. It should be noted that the implementation of the pilot in HDC has been impacted by the effects of the COVID-19 pandemic and consequent disruption to court sittings.
8. Notwithstanding the reduction in defendant numbers caused by COVID-19 shutdowns the pilot has been successful in achieving its aims of reducing unnecessary events, progressing matters more efficiently and reducing both the number of events to plea and progressing bail applications on the day of arrest.

9. The changes made to legal aid by the implementation of the revised duty lawyer policy have been significant in influencing change. This includes the higher duties payment, assignment of cases to duty lawyers where they appear on opposed bail matters in cat 3 and reverse onus matters and lawyer of choice in certain circumstances.

Workstream 1 Bail applications

10. Objectives of work stream 1 are to reduce the number of events to achieve bail and reduce the time spent in custody before bail is considered. Solutions to achieve these objectives have required support from key stakeholders.
11. Solutions relevant to Workstream 1 interim evaluation:
- WS101 Department of Corrections Bail Support Services are available during testing to provide remote same day address checks at HDC.
 - WS105 Urgent roster A weekly roster of lawyers available to accept urgent assignments has been trialled at HDC.
 - WS106 The role of duty lawyers has been extended to opposed bail matters in respect of Cat 3 charges and where the reverse onus in the Bail Act applies. The new policy also provides that duty lawyers who appear in these opposed bail matters can, in appropriate cases take the legal aid assignment. This is so that more bail applications may progress on the day and to acknowledge the relationship between the duty lawyer and defendant on the day and provide continuity for defendants
 - WS108 NZ Police are providing more information about opposed bail matters earlier in the day. This is so that lawyers are aware of bail issues as soon as possible and best efforts can be made to make the bail application on the day.
 - WS112 NZ Police have also provided a duty prosecutor available at court. Having the duty prosecutor available at court also allows for discussions and negotiations about bail issues throughout the day.
 - WS127 Time has been made available in the list courts for bail applications to progress on the day.
12. The evaluation expected later this year will provide full details of each solution and its impact. In the interim we have been able to track progress of how these solutions together have impacted the end-to-end bail applications process. Findings for workstream 1 cover results from the number of opposed bail matters actioned by duty lawyers, reduced need for urgent legal aid applications because of matters progressed by a duty lawyer, the impact on events to plea where a duty lawyer assists with an opposed bail matter and the urgent roster initiative.

Workstream 1 - Results and findings

13. Matters where bail was opposed bail and a duty lawyer progressed the matter

- 13.1 Changes in the duty lawyer operational policy ('the policy') that allow duty lawyers to progress opposed bail applications for most category 3 matters were significant and have been embraced by the duty lawyers on the HDC roster. Table 1 shows that 59% of all in scope

matters, where bail was opposed and that were available to the duty lawyer were progressed by duty lawyers.

Table 1: Opposed bail matters progressed by a duty lawyer

From	To	In scope and available to duty lawyer	Actioned by duty lawyer	Percentage
6/12/2021	23/12/2021	26	16	62%
10/01/2022	28/01/2022	33	17	52%
1/02/2022	28/02/2022	34	20	59%
1/03/2022	31/03/2022	35	24	69%
		128	7	59%

Source Documents: arrest disclosure, duty lawyer invoices, court transcripts and log notes.

- **In scope** – opposed bail matters where max penalty is 2 – 10 years. Oppositions include both verbal and written opposition.
 - **Available to duty lawyer** – matters where defendant does not have counsel or defendant has counsel, but that counsel is unable to attend the hearing.
 - **Actioned by duty lawyer** - is for the same cases, the number where a duty lawyer assisted the defendant to apply for bail, enter a plea and/or assisting at sentencing.
 - Data was collected for the dates shown only.
- 13.2 This is a significant variance from current practice at non-CPIP sites where the duty lawyer policy requires duty lawyers to file an urgent legal aid application for category 3 matters where bail is opposed or for any matter where the reverse onus applies.
- 13.3 Duty lawyers in HDC now assess and progress in scope opposed bail applications. Urgent legal aid applications are only made for complex matters to ensure the best outcome for defendant.
- 14 **Reduced need for urgent legal aid applications**
- 14.1 Now that duty lawyers can progress opposed bail applications for category 3 and reverse onus matters, fewer urgent legal aid applications are needed. Where the duty lawyer actions the opposed bail application, instead of an urgent legal aid application they will send a regular, non-urgent legal aid application. Where the duty lawyer disposes of the case on the day, no legal aid application will be filed at all. Table 2 sets out these results for the period 6/12/2021 to 31/3/2022.

Table 2: Assistance provided where bail was opposed

Assistance	Count
Duty lawyer acted	77
Urgent legal aid application	48
Self-represented	3
Total	128

- 14.2 Table 3 shows the number of legal aid applications made when the duty lawyer progressed the matter. During the period 6 December 2021 to 31 March 2022 duty lawyers progressed 77 matters where bail was opposed. Of those cases, 62 avoided urgent legal aid applications. Prior to the pilot an urgent application would have been sent.

Table 3: Legal aid applications where bail was opposed, and duty lawyer acted 06/12/2021 – 31/03/2022

Legal aid application decision	
Non-urgent legal aid application after bail hearing (urgent application avoided)	55
Legal aid application (marked urgent in error)	5
No legal aid application – counsel already assigned	10
No legal aid application – disposed on the day (urgent application avoided)	7
Total actioned by duty lawyer	77

Source documents: Legal aid applications, duty lawyer invoices, court transcripts and log-notes.

- **Sent as urgent legal aid application** – an urgent legal aid application was sent, and the duty lawyer was assigned. This is not the process that should be followed. reminders have been given where this has occurred.
 - **No legal aid application – counsel already assigned** – a legal aid application was not required because the defendant already had an existing lawyer for the charges, but that lawyer was not able to attend court on the day.
 - **No legal aid application – disposed on the day** – number where matter was disposed on the day by withdrawal of charges or sentence by duty lawyer.
 - **Sent as regular legal aid application** – Number where regular legal aid application was sent at the end of the day after the duty lawyer had dealt with the bail application.
- 14.3 The reduction in the number of urgent legal aid applications to be processed will also have a positive flow on impact for Legal Aid Services in the form of a reduction in time required to allocate urgent assignments. Additional time is usually needed for urgent assignments because contact must be made with a lawyer who is available to accept the assignment.
- 14.4 Legal Aid Services Manager has estimated that urgent legal aid applications take up to an hour for grants officers to process and 15 minutes to process a non-urgent application.
- 14.5 Data for the HDC pilot indicates 23% of legal aid applications are urgent because bail is opposed. That proportion may be higher than normal because of COVID-19 disruptions but if applied nationally, fewer urgent applications would result in a substantial decrease in legal aid administration.
14. **Bail application changes impact on events to plea:**
- 15.1 A reduction in average events to plea has been observed for cases where duty lawyers represent the defendant for the bail application hearing and further take the assignment as per changes introduced in the policy.
- 15.2 The national average for events to plea for all category 3 cases was 3.8 for the period 1 March 2019 to 29 February 2020. The duty lawyer scope for opposed bail applications during the pilot includes most category 3 cases. It excludes category 3 cases with a maximum penalty more than 10 years. Accordingly, any comparison is indicative only. However, during the pilot at HDC, there was an average of 1.6 events to plea for opposed bail matters where a duty lawyer assisted at the bail hearing following arrest and also represented the defendant to enter a plea.

Table 4: Impact on events to plea when duty lawyer progresses opposed bail matters

From	To	In scope opposed bail and: - duty lawyer assigned the case or - resolves on the day	A plea has been entered	Average events to plea
6/12/2021	23/12/2021	13	13	1.7
10/01/2022	28/01/2022	6	6	1.5
1/2/2022	28/2/2022	5	4	1.7
1/3/2022	31/3/2022	11	10	2
6/12/2021 – 31/3/2022		24	23	1.6

- **In scope opposed bail and duty lawyer assigned the case or resolves on the day:** This includes where a plea is entered on the day or where the duty lawyer is assigned the legal aid case and a plea is entered on another day.

15. Urgent roster initiative results

16.1 The urgent assignments roster was piloted for the period beginning 6 December 2021 through to 7 March 2022 and was then discontinued. Lawyers on the urgent assignments roster had undertaken to be available to attend court at short notice. However, during the pilot, we learned that most urgent legal applications will not be assigned through the urgent assignments roster. Most urgent applications were assigned to providers who were:

- Representing the defendant on other active matters
- Selected on rotation by the Legal Services Management System (LSMS) and available to accept the assignment
- Nominated by the defendant in matters where counsel of choice applied.

16.2 For this reason, we are not continuing with this initiative.

Workstream 2 - Admin stage and duty lawyer scope

16. Objectives of work stream 2 are to reduce the number of unnecessary events from first appearance to when a plea is entered, reduce the number of cases moving to the next stage unnecessarily and increase the number of same day sentencings with a stand-down/verbal report. The wrap around CPIP measures including the duty lawyer policy changes support early case progression and duty lawyers progressing matters at first appearance.

17. Solutions relevant to Workstream 2 interim evaluation:

- WS202 Where there is an established relationship and/or where a defendant appears on a warrant to arrest, assigning the first assigned lawyer.
- WS210 Further support for duty lawyers on the policy changes to allow entering of pleas and same-day sentencing. including a supporting remuneration adjustment.
- WS218 Judicial time allocated so that sentencing can take place in a list court

- WS221 Duty prosecutor has been available at HDC who can review and discuss the file with counsel in list courts.
 - WS223 Police have supplied additional specific disclosure at first appearance for charges with 6 month – 7-year maximum penalty. Police to proactively release disclosure electronically to assigned counsel following notification from legal services.
 - WS224 Probation Officers available at HDC to provide stand-down sentencing reports for same day sentencing.
 - WS225 Court Victim Advisors at HDC canvassing victim views on restorative justice before first appearance where appropriate.
18. Results in this interim evaluation show how these solutions together have impacted admin stage and duty lawyer scope. Findings for workstream 2 cover results from the established relationship change, number of matters where defendant assisted by duty lawyer in the admin stage, outcomes for those cases where duty lawyer acted and impact on legal aid applications.

Workstream 2 – Results and findings

19. Established relationship

- 20.1 More consideration of lawyer of choice is occurring. During the period 6/12/2021 to 31/3/2022, 31 or 4% of PAL1 assignments were made to a lawyer the defendant knows and selected (Established Relationship) where previously no choice was available unless there were exceptional circumstances.
- 20.2 ‘Warrant to arrest’ applies when a defendant failed to appear, the legal aid grant was finalised, and the defendant is appearing on a warrant to arrest within 12 months of the warrant to arrest being issued. One assignment was made where this applied. It is likely that in most instances where a defendant appears on a warrant to arrest, the grant has remained open, and a new legal aid application is therefore not required.

20. Duty lawyers and admin stage appearances

- 21.1 Based on enquiries during the discovery stage of Workstream 2, it was accepted that prior to the CPIP pilot, duty lawyers did not typically advance cases where the maximum term of imprisonment was 6 months or over and would in most cases assist defendants to apply for legal aid and seek a remand without plea for legal aid to be assessed.
- 21.2 The revised duty lawyer policy and accompanying changes to process, particularly the provision of additional disclosure from the police and the active support of the PDS duty lawyer supervisor have encouraged duty lawyers to consider whether matters can be progressed to plea at first appearance.
- 21.3 Whilst there have been improvements and a reduction in the number of events to plea, shown in the data below, this measure has been hampered by the covid pandemic and disruption to court sittings. Disruption has meant that more matters have been administratively adjourned which has meant that on second or third appearance cases are out of scope for the provision of additional police disclosure. This prevents early consideration of plea.

- 21.4 Additionally, significant numbers of defendants with charges within scope have failed to appear which has meant that their cases cannot progress.
- 21.5 We would expect to see significant increases in provision of additional disclosure once the covid disruptions are no longer a factor, potentially resulting in more progression of cases
- 21.6 Table 5 shows the outcomes for in-scope matters where the duty lawyer assisted defendants in the admin stage.

Table 5: Outcomes for files within scope dealt with by duty lawyer 6/12/2021 – 31/03/2022

Outcome	Count	Percentage
Remand Without Plea	130	66%
Plea & Sentence	49	25%
Not Guilty plea	8	4%
Guilty Plea	6	3%
Charges Withdrawn	2	1%
Diversion	1	1%
Grand Total	196	

Source Documents: CMS, duty lawyer invoices, court transcripts and log notes.

- 21.7 Since the beginning of the pilot, 34% of all in scope appearances have been progressed by duty lawyers by either a plea, plea & sentence, or disposal.
- 22 Impact on legal aid applications Now that duty lawyers are encouraged to progress appropriate cases, fewer legal aid applications are needed. When a duty lawyer progresses a matter to plea and sentence or negotiates for all charges to be withdrawn by leave, no legal aid application is required.

Table 6: Number of matters where legal aid application avoided due to case disposal by duty lawyer 6/12/2021 – 31/03/2022

Outcome	Count
Plea & Sentence	49
Charges withdrawn	2
Diversion	1
Grand Total	52

- Does not include cases where the defendant came to court on arrest or where bail was opposed.

Legal aid expenditure Results and findings

- 23 The current higher duties payment schedule was set with the intention of causing no significant change to legal aid expenditure.
- 24 The 'higher duties' payment amounts are set at rates generally equivalent to available fees in the legal aid fee schedules. However, in practice, where cases are assigned to legal aid counsel, it's likely that additional fees/appearances are claimed.
- 25 The data presented in Table 7 shows that the increasing use of duty lawyers to progress matters has led to a reduction in legal aid expenditure which was neither anticipated nor sought.

Table 7: Duty Lawyer Expenditure 6 Dec 2021 to 10 March 2022

Activity	Basis	Legal Aid Costs Avoided	Count	Total Legal Aid Costs Avoided	Duty Lawyer 'Higher Duties'	Duty Lawyer Added Costs	Costs (Added)/ Avoided
Bail	Opposed bail preparation + hearing time	\$302	69	\$20,824	\$90	\$6,210	
Plea & Sentence	Average cost PAL1 case < 2 Years resolved before trial	\$790	34	\$26,860	\$90	\$3,060	
Plea & Sentence	Average cost PAL1 case 2 - 7 Years resolved before trial	\$1,030	44	\$45,320	\$90	\$3,960	
Plea & Sentence	Average cost PAL1 case > 7 Years resolved before trial	\$1,575	3	\$4,725	\$90	\$270	
Plea	Preliminary work fee + charge discussion fee (part) + hearing time	\$312	22	\$6,868	\$50	\$1,100	
Sentence	Sentencing Preparation + hearing time	\$277	0	\$-	\$50	\$-	
Hourly Rate Increase	Uplift by \$10 (weekdays) and \$12 (weekends/holidays)					\$23,920	
Additional Hours ¹	Standard (non-CPIP) rates					\$-	
Total				\$104,598		\$38,520	\$66,078
Annualised Costs (Added)/Avoided							\$209,725
Legal Aid Expenditure PAL1 Hamilton DC + Duty Lawyer Service							\$3,156,206
Percentage Legal Aid Appropriation (Added)/Avoided							7%

1. COVID disruptions to court sittings and forced adjournments of many matters makes a valid comparison of time periods very difficult, however, as at 31/3/2022, there is no evident trend of additional hours.

26 The current figures estimate an annualised cost avoidance of \$207,725 for HDC. This represents 7% of the legal aid appropriation for combined PAL1 and duty lawyer budgets at HDC.

27 Whilst legal aid costs avoided is not an appropriate basis for setting higher duties amounts it demonstrates there is scope for an increase. A reasonable increase is justified based on the increased workload and complexity of activities undertaken by duty lawyers under the new policies.

28 Based on the above results and analysis applied the workstream is seeking Legal Aid approval for an uplift to the higher duties payment as shown in Table 8 below:

Table 8: Proposed amendment to CPIP higher duties payment schedule

Activity	Coverage	Current CPIP Rates (GST exclusive)	Proposed CPIP Rates (GST exclusive)
Attendance at court	Weekday	\$98/hour	\$98/hour
Attendance at court	Saturday, Sunday or public holiday	\$120/hour	\$120/hour
Higher Duties ¹	Bail application	\$90/case	\$120/case
	Plea	\$50/case	\$70/case
	Plea and sentencing on the same day/charges withdrawn	\$90/case	\$120/case
	Sentencing	\$50/case	\$70/case

29 These adjustments would cause no increase in legal aid expenditure.

Pilot

- 30 The pilot for workstreams 1 and 2 will continue at HDC with evaluation scheduled for June - July 2022.
- 31 Qualitative feedback sessions are underway with the duty lawyers at the Hamilton DC as part of ongoing and interim evaluation. Results from these sessions will be made available for your visibility.
- 32 The next court site for the pilot is the Hutt Valley District Court, to begin on the 13th of June 2022.

Next Steps

- 33 If the changes to the higher duties' payment schedule is approved, the workstream will undertake communication and change activities to inform all affected parties.
- 34 The workstream will also work with the relevant teams within Legal Aid to support the changes for the clerical support officers at Auckland where duty lawyer invoices are processed.

Recommendations

35 It is recommended that you:

Yes / No

- 1. **Approve** the
 - 1.1. proposed change to the higher duties' payment schedule

- 2. **Note**
 - 2.1. The interim evaluation results

Out of scope

Recipient/s to complete

Comments:

Signature:

Name:

Date:

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Memorandum

To Tracey Baguley, Legal Services Commissioner

From Harsahiba Kaur, Principal Advisor – Criminal Process Improvement Programme

CC Robert Ives, Manager Legal Aid Services
Raymond James, Program Director – Criminal Process Improvement Programme

Date 5 September 2022

Subject CPIP Pilot – Extending to Christchurch District Court

Out of scope

For Approval Review Comment Action Noting

Purpose

1. To provide an update on the progress of workstreams 1 and 2 as part of the Criminal Process Improvement Programme (CPIP) pilot at the Hamilton District Court
2. To seek approval of the pilot extension of the Duty Lawyer Operational policy to the next group of sites identified as CPIP Tranche 1 – roll out group.

High level results from Hamilton District Court

3. **63%** of all in scope matters, where bail was opposed and that were available to the duty lawyer were progressed by duty lawyers.
4. Average of **1.75** events to plea for opposed bail matters where a duty lawyer assisted at the bail hearing following arrest and accepted the assignment compared to an average of 3.8 events for any category 3 case.
5. **29%** of all in scope appearances in the admin stage have been progressed by duty lawyers by either a plea, plea & sentence, or disposal.
6. **\$155,717** of legal aid at Hamilton District Court released for other legal aid purposes.
7. Reduced urgent legal aid applications saves **4** grants officer FTEs if implemented nationally.
8. Case disposals by duty lawyers saves **0.4** clerical support officer FTEs and **2.0** grants officer FTEs if implemented nationally.

Background

9. CPIP - workstreams 1 and 2 comprise of solutions to address key problems in the bail applications process and admin stage appearances. The primary objective of the

workstreams is to reduce the number of events to plea in the admin stage and to reduce delays in bail applications proceeding.

10. A pilot of these solutions commenced at the Hamilton District Court (HDC) on the 6th of December 2021, and subsequently the pilot was extended to the Hutt Valley District Court on the 13th of June 2022. **Out of scope**
11. **Out of scope** a more comprehensive report from the evaluation team is expected in September 2022.
12. The purpose of this document is to provide an update on the ongoing results obtained from the key success measures since pilot commencement with a focus on the impacts on Legal Aid Services.
13. Notwithstanding the reduction in defendant numbers caused by COVID-19 shutdowns the pilot has been successful in achieving its aims of reducing unnecessary events, progressing matters more efficiently and reducing both the number of events to plea and progressing bail applications on the day of arrest.
14. The changes made to legal aid by the implementation of the revised duty lawyer policy have been significant in achieving this success. This includes the duty lawyers advancing matters to plea and/or sentencing, assignment of cases to duty lawyers where they appear on opposed bail matters in category 3 and reverse onus matters and lawyer of choice in expanded circumstances.

WORKSTREAM 1 – BAIL APPLICATIONS

15. Objectives of work stream 1 are to reduce the number of events to achieve bail and reduce the time spent in custody before bail is considered. Solutions to achieve these objectives have required support from key stakeholders.
16. Solutions relevant to Workstream 1:
 - WS101 Department of Corrections Bail Support Services are available during testing to provide remote same day address checks at HDC.
 - WS106 The role of duty lawyers has been extended to opposed bail matters in respect of Cat 3 charges and where the reverse onus in the Bail Act applies. The new policy also provides that duty lawyers who appear in these opposed bail matters can, in appropriate cases accept the legal aid assignment. This is so that more bail applications may progress on the day and to acknowledge the relationship between the duty lawyer and defendant on the day and provide continuity of representation for defendants
 - WS108 NZ Police are providing more information about opposed bail matters earlier in the day. This is so that lawyers are aware of bail issues as soon as possible and best efforts can be made to make the bail application on the day.
 - WS112 NZ Police have also provided a duty prosecutor. The duty prosecutor is available at court to provide for discussions and negotiations about bail issues throughout the day.

- WS127 Time has been made available in the list courts for bail applications to progress on the day.
17. The evaluation expected later this year will provide full details of each solution and its impact. In the interim we have been able to track progress of how these solutions together have impacted the end-to-end bail applications process. Findings for workstream 1 cover results from the number of opposed bail matters actioned by duty lawyers, reduced need for urgent legal aid applications because of matters progressed by a duty lawyer, the impact on events to plea where a duty lawyer assists with an opposed bail matter

Workstream 1 - Results and findings

18. Matters where bail was opposed and a duty lawyer progressed the matter

- 18.1. Changes in the duty lawyer operational policy ('the policy') that allow duty lawyers to progress opposed bail applications for most category 3 matters were significant and have been embraced by the duty lawyers on the HDC roster.
- 18.2. Table 1 shows that 63% of all in scope matters, where bail was opposed and that were available to the duty lawyer were progressed by duty lawyers.

Table 1: Opposed bail matters progressed by a duty lawyer at Hamilton District Court

From	To	In scope and available to duty lawyer	Actioned by duty lawyer	Percentage
6/12/2021	23/12/2021	26	16	62%
10/01/2022	28/01/2022	34	18	53%
1/02/2022	28/02/2022	34	20	59%
1/03/2022	31/03/2022	35	24	69%
01/04/2022	30/04/2022	25	13	52%
01/05/2022	31/05/2022	35	25	71%
01/06/2022	30/06/2022	32	21	66%
01/07/2022	31/07/2022	30	21	67%
Total		251	157	63%

Source Documents: arrest disclosure, duty lawyer invoices, court transcripts and log notes.

- **In scope** – opposed bail matters where max penalty is 2 – 10 years. Oppositions include both verbal and written opposition.
 - **Available to duty lawyer** – matters where defendant does not have counsel or defendant has counsel, but that counsel is unable to attend the hearing.
 - **Actioned by duty lawyer** - is for the same cases, the number where a duty lawyer assisted the defendant to apply for bail, enter a plea and/or assisting at sentencing.
 - Data was collected for the dates shown only.
- 18.3. This is a significant variance from current practice at non-CPIP sites where the duty lawyer policy requires duty lawyers to file an urgent legal aid application for category 3 matters where bail is opposed or for any matter where the reverse onus applies.

18.4. Duty lawyers in HDC now assess and progress in scope opposed bail applications. Urgent legal aid applications are only made for complex matters to ensure the best outcome for defendant.

19. Reduced need for urgent legal aid applications

19.1. Now that duty lawyers can progress opposed bail applications for category 3 and reverse onus matters, fewer urgent legal aid applications are needed. Where the duty lawyer actions the opposed bail application, instead of an urgent legal aid application they will send a regular, non-urgent legal aid application. Where the duty lawyer disposes of the case on the day, no legal aid application will be filed at all.

19.2. Table 2 presents the reduction in urgent legal aid applications from Hamilton District Court because of matters progressed by a duty lawyer.

Table 2: Urgent Legal Aid Applications

	Applications ^a	Urgent	Percentage
1-Nov-2021 to 5-Dec-2021 ^b	187	92	49%
6-Dec-2021 to 31-Jul-2022	1,419	351	25%

- a. Applications where:
- i. the maximum penalty is 6 months to 10 years (a higher duties claim is possible)
 - ii. the application was received from the duty lawyer service at Hamilton District Court
 - iii. the next appearance was Hamilton District Court
 - iv. the matter may have been in, or out of scope (existing counsel/PDLA notification) for the duty lawyer service.
- b. The limited period from 1 November 2021 to 5 December 2021 is used as the baseline for comparison because urgent applications cannot be reported electronically and can only be identified by manually examining legal aid applications. Urgent assignments are most frequently recorded as 'Assigned by rotating allocation' (27%), 'Open Case' (26%), 'Private Provider Unavailable' (11%), Nominated by Client (9%), and 'Urgent Request' (8%). Most of these descriptions include assignments that were urgent and non-urgent.

19.3. The reduction is substantial. In the period before the pilot, 49% of legal aid applications in PAL1 matters were urgent. During the pilot, that has reduced to 25%.

19.4. The Legal Aid Services Manager has estimated that urgent legal aid applications take up to an hour for grants officers to process compared to 15 minutes to process a non-urgent application.

19.5. If other courts have the same frequency of urgent legal aid applications as Hamilton DC, and if the policy was rolled out nationally, a grants officer saving is estimated of between 4 FTE (30 minutes per urgent application avoided)¹.

20. Bail application changes impact on events to plea:

20.1. A reduction in average events to plea has been observed for cases where duty lawyers represent the defendant for the bail application hearing and further accept the assignment as per changes introduced in the policy.

¹ Based on LAS cost model 2/9/2022.

- 20.2. The national average for events to plea for all category 3 cases was 3.8 for the period 1 March 2019 to 29 February 2020. The duty lawyer scope for opposed bail applications during the pilot includes most category 3 cases. It excludes category 3 cases with a maximum penalty more than 10 years. Accordingly, any comparison is indicative only.
- 20.3. However, during the pilot at HDC, there was an average of 1.75 events to plea for opposed bail matters where a duty lawyer assisted at the bail hearing following arrest and accepted the assignment.

Table 3: Impact on events to plea when duty lawyer progresses opposed bail matters

From	To	Average events to plea
6/12/2021	23/12/2021	1.7
10/01/2022	28/01/2022	1.5
1/2/2022	28/2/2022	1.7
1/3/2022	31/3/2022	2
01/04/2022	30/04/2022	1.6
01/05/2022	31/05/2022	2
	Avg.	1.75

- **In scope opposed bail and duty lawyer assigned the case or resolves on the day:** This includes where a plea is entered on the day or where the duty lawyer is assigned the legal aid case and a plea is entered on another day.
- **Data** was collected for the dates shown only.

WORKSTREAM 2 – ADMIN & DUTY LAWYER

21. Objectives of workstream 2 are to reduce the number of unnecessary events from first appearance to when a plea is entered, reduce the number of cases moving to the next stage unnecessarily and increase the number of same day sentencings with a stand-down/verbal report. The wraparound CPIP measures including the duty lawyer policy changes support early case progression and duty lawyers progressing matters at first appearance.
22. Solutions relevant to Workstream 2:
- WS202 More opportunity for lawyer of choice where there is an established relationship and/or where a defendant appears on a warrant to arrest, assigning the first assigned lawyer.
 - WS210 Further support for duty lawyers on the policy changes to allow entering of pleas and same-day sentencing, including a supporting remuneration adjustment.
 - WS218 Judicial time allocated so that sentencing can take place in a list court
 - WS221 Duty prosecutor has been available at HDC who can review and discuss the file with counsel in list courts.

- WS223 Police have supplied additional specific disclosure at first appearance for charges with 6 month – 7-year maximum penalty. Police to proactively release disclosure electronically to assigned counsel following notification from legal services
 - WS224 Probation Officers available at HDC to provide stand-down sentencing reports for same day sentencing.
 - WS225 Court Victim Advisors at HDC canvass victim views on restorative justice before first appearance where appropriate.
23. Results in this interim evaluation show how these solutions together have impacted admin stage and duty lawyer scope. Findings for workstream 2 cover results from the established relationship change, number of matters where defendant assisted by duty lawyer in the admin stage, outcomes for those cases where duty lawyer acted and impact on legal aid applications.

Workstream 2 – Results and findings

24. Established relationships

- 24.1. More consideration of lawyer of choice is occurring. During the period 6/12/2021 to 30/4/2022, 25 or 3% of PAL1 assignments were made to a lawyer the defendant knows and selected (Established Relationship) where previously no choice was available unless there were exceptional circumstances².
- 24.2. 'Warrant to arrest' applies when a defendant failed to appear, the legal aid grant was finalised, and the defendant is appearing on a warrant to arrest within 12 months of the warrant to arrest being issued. One assignment was made where this applied. It is likely that in most instances where a defendant appears on a warrant to arrest, the grant has remained open, and a new legal aid application is therefore not required.

25. Duty lawyers and admin stage appearances

- 25.1. Based on enquiries during the discovery stage of Workstream 2, it was accepted that prior to the CPIP pilot, duty lawyers did not typically advance cases where the maximum term of imprisonment was 6 months or over and would in most cases assist defendants to apply for legal aid and seek a remand without plea for legal aid to be assessed.
- 25.2. The revised duty lawyer policy and accompanying changes to process, particularly the provision of additional disclosure from the Police and the active support of the PDS duty lawyer supervisor have encouraged duty lawyers to consider whether matters can be progressed to plea at first appearance

² Data is for a limited period because it was determined by manual review. Assignment reason codes reported from LSMS could not be used to report electronically because a high percentage of errors was found in the assignment reasons.

- 25.3. Table 4 shows the outcomes for in-scope matters where the duty lawyer assisted defendants in the admin stage.

Table 4: Outcomes for files within scope dealt with by duty lawyer 6/12/2021 – 31/07/2022

Outcome	Count	Percentage
Remand Without Plea	336	71%
Plea & Sentence	94	20%
Not Guilty plea	21	4%
Guilty Plea	15	3%
Charges Withdrawn	7	2%
Diversion	1	0%
Grand Total	474	

Source Documents: CMS, duty lawyer invoices, court transcripts and log notes.

In scope

- Matters where max penalty is 6 months – 10 years, appearing on summons.
- Defendant does not have counsel or defendant has counsel, but that counsel is unable to attend the hearing.
- **Count** - for the same cases, the number where a duty lawyer assisted the defendant to enter a plea and/or assisted at sentencing

- 25.4. Since the beginning of the pilot, 29% of all in scope appearances have been progressed by duty lawyers by either a plea, plea & sentence, or disposal.

26. Impact on legal aid applications

- 26.1. Now that duty lawyers are encouraged to progress appropriate cases, fewer legal aid applications are needed. When a duty lawyer progresses a matter to plea and sentence or negotiates for all charges to be withdrawn by leave, no legal aid application is required.
- 26.2. Legal aid has paid 147 plea and sentence higher duties for the matters between 6 months to 7 years since the beginning of the pilot. If this number represents a reduction in PAL1 applications (of which 92% are granted), and if the same reduction is applied nationally, a grants officer saving of 1.8 FTE and a clerical support officer saving of 0.4 FTE would be achieved.³
- 26.3. The payment of duty lawyer higher duties amounts and hourly rate uplift requires manual workarounds that increase clerical support officer processing time for duty lawyer payments and require grants officer/manager involvement when credit notes are required. We have not been able to quantify this time, but it is an extra demand on the payments team in Auckland until a permanent streamlined solution is adopted.

Legal aid expenditure - Results and findings

27. The data presented in Table 5 shows that the increasing use of duty lawyers to progress matters releases a proportion of the legal aid appropriation to be available for other legal aid services.

³ Based on LAS cost model 2/9/2022.

28. There is no target reduction in legal aid expenditure. We estimated the amount of additional duty lawyer fees that could be offered without increasing overall legal aid expenditure. We subsequently increased the amounts on offer after 6 months, when we were confident we could do so without increasing overall legal aid expenditure.

Table 5: Duty Lawyer Expenditure 6 December 2021 to 31 July 2022 at Hamilton District Court

Activity	Basis	Legal Aid Costs	Count	Legal Aid Costs Released	Higher Duties Fees ¹	Duty Lawyer Costs Added	Costs (Added)/ Released
Bail	Opposed bail preparation + hearing time	\$302	130	\$39,234	\$120	\$15,600	
Plea & Sentence	Average cost PAL1 case < 2 Years resolved before trial	\$790	75	\$59,250	\$120	\$9,000	
Plea & Sentence	Average cost PAL1 case 2 - 7 Years resolved before trial	\$1,030	72	\$74,160	\$120	\$8,640	
Plea & Sentence	Average cost PAL1 case > 7 Years resolved before trial	\$1,575	4	\$6,300	\$120	\$480	
Plea	Preliminary work fee + charge discussion fee (part) + hearing time	\$312	39	\$12,176	\$70	\$2,730	
Sentence	Sentencing Preparation + hearing time	\$277	3	\$830	\$70	\$210	
Hourly Rate Increase	Uplift by \$10 (weekdays) and \$12 (weekends/holidays)					\$51,479	
Additional Hours ²						\$-	
Total				\$191,950		\$88,139	\$103,811
	Annualised Costs (Added)/Released						\$155,717
	Legal Aid Expenditure PAL1 Hamilton DC + Duty Lawyer Service						\$3,156,206
	Percentage Legal Aid Appropriation (Added)/Released						5%

- The higher duties fees that are available from 13 June 2022.
- COVID disruptions to court sittings and forced adjournments of many matters makes a valid comparison of time periods very difficult, however, as at 31/7/2022, there is no evident trend of additional hours.

29. The current figures estimate an annualised amount of legal aid released of \$155,717 for Hamilton District Court. This represents 5% of the legal aid appropriation for combined PAL1 and duty lawyer budgets at Hamilton District Court.

PDS Assignments Maintained

30. As already mentioned, COVID disruptions makes comparison of time periods difficult. However, LSMS assignment records, during the 12 months from 1 August 2021 to 31 July 2022 do not show any negative impact on either the volume of PDS assignments at Hamilton DC or the PDS/private share. During the period from 1 August 2021 to 30 November 2021, the PDS received an average 88 PAL1 assignments per month. During the period from 1 December 2021 to 31 July 2022, the PDS received an average 102 PAL1 assignments per

month. Discussions with PDS at the level of the Office of Public Defender for Hamilton indicated the PDS has no concerns about impacts on PDS assignments from CPIP.

Table 6: LSMS records of PAL1 Assignments at Hamilton District Court 1 August 2021 to 31 July 2022

Month	PDS	Private	Total	PDS Share
Aug	102	117	219	47%
Sep	94	80	174	54%
Oct	65	59	124	52%
Nov	90	78	168	54%
Average: Aug - Nov	88	84	172	51%
Dec	107	109	216	53%
Jan	89	83	172	52%
Feb	73	65	138	53%
Mar	88	80	168	52%
Apr	123	91	214	57%
May	112	108	220	51%
Jun	118	92	210	56%
Jul	108	101	209	52%
Average: Dec - Jul	102	91	193	53%

31. The PDS/private share of LSMS PAL1 assignments across the 12 months from 1 August 2021 to 31 July 2022 is charted in Figure 1 below.

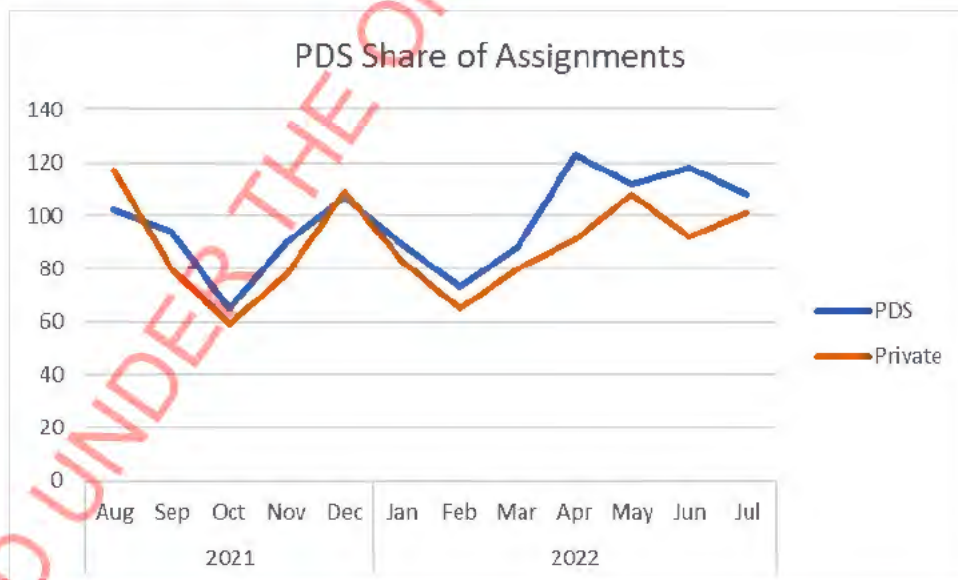


Figure 1: PDS/Private Share of Assignment 1 August 2021 to 31 July 2022

Risks raised

32. During the course design & approval of 'the policy', some of the stakeholder groups had raised potential risks. A memo from the steering group approval process has been attached as appendix C.
33. The following table lists the risks raised and if they have materialised during the course of the pilot.

RISK	OUTCOME
<p>The additional fees:</p> <ul style="list-style-type: none"> • may influence decision-making which could result in outcomes that are not in the defendant's best interest • have the appearance of incentivising guilty pleas, damaging duty lawyers' reputations and the credibility of the justice system • provide scope for unscrupulous lawyers to 'game the system' by advancing multiple matters on a rostered day to substantially increase their income • Are likely to lead to an increase in appeals when defendants regret the early entry of a plea, or sentencing when only initial disclosure was available, increasing the load on the justice system and undermining the purpose of the policy. 	<ul style="list-style-type: none"> • There is no evidence from Judicial Officers, duty lawyers or defendants that these risks eventuated. If anything, duty lawyers have remained cautious about pursuing matters at first appearance. The major influence on matters proceeding has been the ability to negotiate and resolve issues with the duty prosecutor and additional disclosure. • No complaints or appeals filed • An analysis of the data shows an avg. of 4 higher duties payments are made per week at Hamilton for case progression. Indicating that the lawyers are taking a measured approach to progress cases where they are deemed suitable and in the best interest of the defendant. • An analysis of the higher duties claims show that this has not happened. The oversight from the duty supervisors has assisted in ensuring that duty lawyers act within their ethical obligations and in accordance with the intent of the policy. • We are not aware of any appeals against sentence or applications to vacate plea as a direct result of the DL policy. It is early days but this has not been raised as an issue by duty lawyers spoken to for the evaluation.
<ul style="list-style-type: none"> • The additional fees under value the work involved when compared to the legal aid fixed fee schedules. 	<ul style="list-style-type: none"> • The fees roughly equate to fixed fee claims for same day matters. Of duty lawyers interviewed for the evaluation there were no complaints that the higher duties fees were too low. The

RISK	OUTCOME
	<p>main issue raised about fees is that hourly rate for duty lawyers is too low and should be increased, rather than the higher duties' fees.</p>
<ul style="list-style-type: none"> The additional fees and assignments that may ensue from assisting a defendant with an opposed bail matter create a need for a method of fairly allocating these cases. 	<ul style="list-style-type: none"> At Hamilton DC, the duty lawyer supervisor has had an important role to play in ensuring that those qualified and wanting to deal with opposed bail matters get to do so with as fair an allocation as possible. The duty lawyer supervisor has responded quickly to any questions around this issue and sought to ensure fairness.
<ul style="list-style-type: none"> Duty lawyers have an obligation to advance minor matters where appropriate. If this is not occurring, education, training and performance management should be the response. The current policy re write is not the appropriate response. 	<ul style="list-style-type: none"> The revised policy has not changed the way duty lawyers deal with minor matters. It is expected that they will progress matters in accordance with a defendant's instructions in as efficient a way as possible. Having a duty prosecutor available to discuss progression of all matters has assisted rather than hindered duty lawyers in this bread-and-butter work. This has not replaced ongoing training which is part of the duty lawyer model to improve the duty lawyer service.
<ul style="list-style-type: none"> A remand for legal aid, then subsequently a remand from plea to sentencing can be beneficial for the defendant. A remand for legal aid allows time to consider options explained to them by the duty lawyer, to advise employers/whanau, to come to terms with being charged with a criminal offence, to understand the potential consequences of a plea and to communicate their story to their lawyer. A remand for sentencing can provide time to undertake restorative justice, complete current sentences, show steps toward rehabilitation, no reoffending and compliance with bail conditions, to obtain evidence to support name suppression. 	<ul style="list-style-type: none"> It is accepted and part of the revised duty lawyer policy that many factors need to be considered by a duty lawyer before advancing a matter on the day of first appearance. The factors referred to are some of the factors that may make it inappropriate to proceed on the day. The revised policy encourages duty lawyers to consider all factors and gives them the tools to progress a matter on the day when that is the right thing to do and in accordance with the defendant's instructions. This flexibility has been reported as being an advantage to defendants who can have continuity of representation.
<ul style="list-style-type: none"> The proposals may encourage duty lawyers to take on work which they are not experienced in and specifically (Crown) matters. 	<ul style="list-style-type: none"> The duty lawyer supervisor has a role along with the individual duty lawyers in ensuring that, on the whole only those duty lawyers sufficiently qualified have undertaken more serious matters. The policy specifically

RISK	OUTCOME
	excludes duty lawyers acting in crown matters.
<ul style="list-style-type: none"> Duty lawyers are tasked with representing unrepresented defendants appearing at courts and will not be able to satisfactorily assist all defendants if they are taking on these additional responsibilities. 	<ul style="list-style-type: none"> CPIP envisaged and legal aid supported putting additional duty lawyers on the roster if required. They were not required, despite duty lawyers taking additional responsibilities. No indication that those facing more minor changes were disadvantaged because of the revised policy.
<ul style="list-style-type: none"> Allowing defendants who apply for legal aid and need assistance with a bail application to be assigned to duty lawyers as an exception to rotational assignment will reduce the equitable distribution of assignments particularly for those providers who are not duty lawyers. 	<ul style="list-style-type: none"> The data shows that this has not been the case. Those duty lawyers that take assignments on duty have those assignments counted as part of their rotational assignments. We will continue to monitor any impact to rotational assignments.
<ul style="list-style-type: none"> Duty lawyers may not have enough disclosure or experience to advise on election. May lead to an increase in jury election rates as a default 	<ul style="list-style-type: none"> The evidence from the data collected shows that since the beginning of the pilot Duty Lawyers have entered NG pleas in only 21 cases. A spike in NG pleas or elections has not been observed.

Tranche 1 CPIP

34. CPIP is currently working towards national roll out, this has been divided into a phased 'Tranche' roll out of the various initiatives. Tranche 1 of the national roll-out commences in October 2022 and includes the Waikato, Wellington and Canterbury regions. All non-PDS sites in this grouping are small - extra small courts.
35. Any extension of the Duty Lawyer Operational Policy would be an extension of the pilot until a model can be tested and evaluated at a suitably sized non PDS location. We are seeking your approval to extend the Duty Lawyer Operational Policy pilot to Christchurch DC.
36. A CPIP roll-out team will be dedicated to each region to support the change process across all CPIP solutions. Start dates are staggered to ensure members of the roll-out team can be on-site during the first week. A full list of courts in tranche 1 and start dates is below, the dates are reflective of the start of all various workstreams in those locations.
37. Subject to obtaining approval to extend the pilot to Christchurch DC, options will be developed for how the Duty Lawyer Operational Policy may be revised to suitably address the supervision aspect at non PDS courts in the Hamilton and Wellington clusters and in Ashburton/Timaru.

Recommendations

38. It is recommended that you:
1. **Approve the**
 - 1.1. proposed extension of the pilot to the 'Christchurch DC' in the table below
 2. **Note**
 - 2.1. The results observed from the Hamilton pilot

TRANCHE 1		
WAIKATO		Supervision
Hamilton District Court	Underway (6 December 2021)	PDS
Huntly District Court	17 October 2022	Supervision model to be confirmed
Morrinsville District Court		
Te Awamutu District Court		
Te Kuiti District Court		
Taumarunui District Court		
WELLINGTON		Supervision
Hutt Valley District Court	Underway (13 June 2022)	PDS
Wellington District Court	24 October 2022	Supervision model to be confirmed
Porirua District Court		
Masterton District Court	17 October 2022	Supervision model to be confirmed

CANTERBURY		Supervision
Christchurch District Court	3 October 2022	PDS
Timaru District Court	31 October 2022	Supervision model to be confirmed
Ashburton District Court	10 October 2022	

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Out of scope

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982