



Performance audit report

Ministry of Justice: Supporting the management of court workloads





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Ministry of Justice: Supporting the management of court workloads

This is an independent assurance report about a performance audit carried out under section 16 of the Public Audit Act 2001.

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Auditor-General's overview

Court workloads have increased significantly in recent years, and forecasts show that the number of cases brought before the courts will continue to grow.

The majority of cases before the courts are in the criminal summary jurisdiction handled by the District Courts. In the year to 30 June 2009, 207,623 new criminal summary cases (that is, less serious criminal cases not requiring jury trials) came before the District Courts – an increase of 29% since 2005.

If increasing court workloads are not managed well, there can be a delay in the time it takes to decide cases. That delay, and its associated uncertainty, can significantly and adversely affect people's lives.

We have audited the effectiveness and efficiency of the Ministry of Justice (the Ministry) in its work to help District Courts and the High Court deal with their increasing workloads.

It is important to understand at the outset that the work of the Ministry is bound by three main constraints.

First, the court system is not controlled by the Ministry. That is because the Ministry is part of a constitutionally separate part of government – the executive. The Ministry can provide advice on the court system as a whole, and it is responsible for the quality of administrative support provided to the judiciary. But it has very little control over individual cases. How a case is dealt with is the constitutionally prescribed role of the judicial branch of government.

Secondly, judges and court staff have only limited ability to manage the flow of cases through the courts:

- the progress of criminal and civil cases is controlled largely by the parties (such as defendants/the accused and, for civil cases, plaintiffs); and
- a case is unlikely to go ahead until all the court participants are ready to proceed, and can come together in the right order at the right time (a reasonably complex case could involve judges, lawyers, the parties, any number of experts and witnesses, and government agencies, as well as court officials).

Thirdly, efficiency is not the primary focus of the court system. In criminal cases, the focus is on the right of the accused to a fair trial. In civil cases, the focus is on the court as an impartial forum for resolving disputes.

For all those reasons and more, the Ministry's task in helping to manage court workloads is complex. It needs to balance a range of competing aims, and it needs to work collaboratively with others in the justice sector, particularly the judiciary and the legal profession. And it needs to do this in a way that does not impinge on the constitutional separation of the three branches of government.

Overall, I am pleased by what my staff found in our audit of the Ministry. The Ministry is well positioned to further develop and provide support for measures designed to deal with increasing court workloads. The Ministry's plans for helping to manage increasing court workloads involve a series of projects expected to improve the efficiency of the courts. The Ministry is also aware that more judges, courtrooms, and registry staff will probably be needed.

The Ministry works closely and well with the rest of the justice sector. All the initiatives the Ministry has under way to address court workloads involve multiple members of the sector. All the members of the justice sector with whom we spoke said that they worked regularly and closely with the Ministry on relevant projects. The Ministry cannot carry out these projects on its own, so working collaboratively with other members of the sector is critical for the projects to proceed.

Our audit reviewed the information the Ministry shares with other members of the justice sector, select committees, and Ministers, and my staff found that it aligns well with the Ministry's internal information. My staff also found that the Ministry collects an appropriate range of performance information about the courts.

Individual courts are reviewed every 24 to 30 months by the Ministry's court review team. These reviews measure and monitor the performance of individual courts, providing the Ministry and judiciary with valuable information about the performance of these courts.

There are small differences in how courts function. These differences reflect differences in judicial procedure, workloads, the physical layouts of courts, and pilot projects that are often carried out locally. I do not have any concerns about these differences, but my staff consider that there is an opportunity to improve the way that information about better practice is identified then shared with all courts.

There are no simple solutions to make the courts run more efficiently. Ultimately, the progress of any particular case is driven by the parties and the other court participants. And, as Dame Margaret Bazely noted in her recent review of Legal Aid,¹ the parties – and sometimes their lawyers – can deliberately prolong the court proceedings.

Although I am pleased with what our audit found at the Ministry, the courts are likely to remain under considerable pressure for the foreseeable future. Managing future court workloads will require the Ministry's continuing leadership of the justice sector along with significant contributions and support from all of the other court participants. Improving court efficiency, and therefore the timeliness with which people get justice, is a challenge and is the responsibility of the wider justice sector.

1 Ministry of Justice (2009) *Transforming the Legal Aid System: Final Report and Recommendations*, Wellington.

It is worth noting that work is under way in the sector that has the potential to help ease pressure on the courts. Major work is being done to understand the “drivers” of crime, because understanding the root causes of crime enables actions to be taken that could reduce the number of people entering the court system. Also, the justice sector pipeline model allows the financial and other consequences of specific initiatives to be measured at each stage of the justice process. This could make it possible to generate a more informed and co-ordinated justice sector response to proposed changes in the court system; for example, after the introduction of a new policy or operational strategy. In my view, work in these areas could reduce pressure on the courts and the complexity of the court system.

Our audit has shown that the Ministry is responding well to challenges. It is important that the Ministry continues to do so, while recognising that it alone cannot resolve the issue of court workloads or the efficiency of the courts.

I thank the staff of the Ministry and the many other people who provided my Office with assistance and co-operation during this audit. Although the audit was carried out before I took up the role of Controller and Auditor-General, I agree with and endorse its findings.



Lyn Provost
Controller and Auditor-General

15 December 2009

Our recommendation

We recommend that the Ministry of Justice place greater emphasis on collecting and sharing information about better practice in managing court workloads – throughout all courts – as part of its court review process and as part of its wider court-related activities.

Part 1

Introduction

- 1.1 One of the critical issues currently facing the courts is increased workloads caused by an increasing number of court cases. As noted in the 2008 briefing by the Ministry of Justice (the Ministry) to the incoming Minister for Courts:

The most challenging and urgent issue facing the court system is the significant and continuing growth in the volumes of new business coming before the courts. The capacity of the courts to deal with these growing volumes is increasingly constrained leading to an increase in waiting times.²

- 1.2 A function of the Ministry is to provide support to the courts in managing workloads. However, it cannot control the workload that any court is experiencing. As the Ministry further notes in its 2008 briefing:

The court system has inputs (in the form of charges laid or cases brought before the court) and outputs (cases disposed) across all jurisdictions. External factors drive the workload of the courts. In the criminal jurisdictions, decisions on who to prosecute, and on what charges, are made by the various prosecuting authorities (Police, Fisheries, Labour, Immigration, Councils, etc). In civil areas, caseload is driven by parties bringing matters before the courts. ... The Ministry of Justice cannot turn off or slow down the rate of new growth into the court system; but the courts must respond to each and every charge, including providing courtrooms, supporting judges and judicial officers and delivering appropriate registry services.³

- 1.3 In our performance audit, we chose to focus on the work the Ministry does to support the District Courts and the High Court in managing criminal and civil workloads. In particular, we looked at work the Ministry was carrying out to help the courts deal with continuing growth in the number of new court cases.
- 1.4 For 2008/09, the appropriation for “District Court Services” within Vote Courts was \$186.5 million. The appropriation for “Higher Courts Services”, which includes the High Court, Court of Appeal, and Supreme Court, was \$57.4 million.

The role of the Ministry of Justice

- 1.5 The Ministry straddles two branches of government.⁴ As part of the executive branch of government, the Ministry provides advice and support to Ministers. The Ministry also provides the administrative services and employs the staff that enable the judicial branch of government to function. The Ministry is further responsible for maintaining the infrastructure of the courts, such as buildings and information systems.

² Ministry of Justice (2008) *Briefing to Incoming Minister: Vote Courts*, page 10.

³ Ministry of Justice (2008) *Briefing to Incoming Minister: Vote Courts*, page 11.

⁴ The judiciary, executive, and legislature are the three branches of government. The constitutional doctrine of separation of powers requires independence between the three branches as a check on government power.

- 1.6 Ministry staff who work in the courts have a number of different roles and functions. Employees who are court officers (such as registrars) exercise specific functions under statutes and court rules. Some Ministry staff who are not court officers are responsible for carrying out case management directions and orders from judges (and sometimes, from registrars). Whenever staff are managing individual cases, their work is, in effect, within the judicial branch of government.
- 1.7 The role of the Auditor-General is to audit the performance of agencies in the executive branch of government, not the performance of the judicial branch. Therefore, our audit focused on how well the Ministry, as part of the executive, supports the effective functioning of the courts.
- 1.8 In practice, the management of court workloads requires a high level of partnership between the two branches of government. The executive cannot interfere in the progress of individual cases, but it is responsible for policy and legislative development that shapes the court process. The courts, as part of the judicial branch of government, can to some extent control the progress of individual cases or the allocated workloads. However, courts have no formal role in the policy and legislative processes that prescribe the court system. Also, courts cannot control what resources are allocated to them. In practice, if workload problems arise, solutions need to be devised collaboratively.
- 1.9 As well as its administrative role, the Ministry has a role in leading the justice sector. The Ministry describes its role as follows:
- The Ministry is a key member of the Justice sector and charged with leadership responsibility in ensuring sector agencies work together to achieve government outcomes from the justice system. ... Apart from the sector leadership role, the Ministry in its merged form now has responsibilities at various stages of the end to end justice process. At the beginning, in developing the policy parameters and legislation, in the middle in administering the courts, and to continue the cycle of development, in researching and evaluating the effectiveness of various approaches and their impacts on the community.⁵*
- 1.10 The leadership role is important when it comes to putting in place solutions to issues facing the justice sector – especially as dealing with issues such as court workloads requires collaboration throughout the justice sector.

Court workloads

- 1.11 Court workloads are growing because there are increasing numbers of cases being brought before the courts. Although the courts generally are disposing⁶ of a greater number of cases, in many courts the number of new cases has also

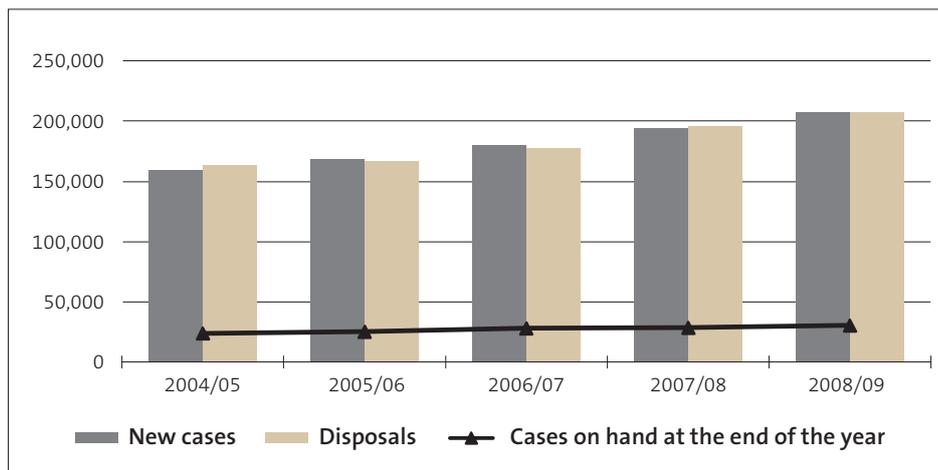
⁵ Ministry of Justice (2004) *Report of the Ministry of Justice Baseline Review*, page 12.

⁶ Courts “dispose” of cases in a variety of ways. For example, by reaching a verdict or when a charge is withdrawn.

increased. Based on information from the New Zealand Police (the Police), the Ministry is expecting a continuing increase in the number of people charged with criminal offences, further increasing court workloads.

- 1.12 Certain jurisdictions are bearing the brunt of the increased workloads. Figure 1 shows the nationwide numbers of new cases to come before the District Courts' criminal summary jurisdiction during the past five years (this is the jurisdiction that deals with less serious criminal offences that do not require jury trials). This is the jurisdiction that, by far, deals with the largest number of cases.

Figure 1
Number of District Court criminal summary cases, 2004/05 to 2008/09



- 1.13 In the year to 30 June 2005, 160,396 new criminal summary cases came before the District Courts. In the year to 30 June 2009, 207,623 new criminal summary cases came before the District Courts – up 29% since 2005 (by comparison, the general population increased 5.6% in the same period).⁷
- 1.14 Figure 1 also shows the number of cases on hand (these are cases in the court system). The number of cases on hand is an indicator of how well courts are keeping up with the number of cases entering the court system. If the number of cases on hand is increasing, the courts are not keeping up with new business. As Figure 1 shows, the number of cases on hand has remained fairly static during the past five years.
- 1.15 Other jurisdictions show very different trends. For example, the number of jury trials in the District Courts has been fairly steady since 2005. The number

⁷ The number of cases coming before Associate judges showed a significant increase as well. This is discussed in more detail in the Appendix because the overall numbers involved were lower than those of the criminal summary jurisdiction.

of civil trials in the District Courts have decreased (see the Appendix for more information on jury and civil trials).

- 1.16 Court workload issues have a geographical component as well. The Auckland region has experienced a large increase in cases overall, particularly in the criminal summary jurisdiction of District Courts. The number of civil cases in the High Court at Auckland has also increased.
- 1.17 As well as an increase in the volume of cases, the Ministry notes that cases are becoming increasingly complex – taking longer to get to trial and to hear (see Figure 2). A case can be complex because the subject matter may require a greater amount of expert evidence to be considered, or it may involve multiple defendants or multiple charges.
- 1.18 We discuss in the Appendix changes in the numbers of cases, from 2005 to 2009, in the District Courts and the High Court.

Why and how we carried out our audit

- 1.19 Because of the continuing pressures from increases in court workloads, we carried out a performance audit to provide assurance to Parliament that the Ministry was effectively and efficiently planning for and supporting the management of court workloads. Our audit examined whether the Ministry was working effectively and efficiently with other court participants to:
- manage court workloads (Part 2); and
 - plan for the management of future court workloads (Part 3).

How we carried out our audit

- 1.20 To test how the Ministry helps support the courts in managing workload pressures (see Part 2), we needed to understand how the Ministry works with the courts, and also needed to gain an understanding of how the court system works day-to-day. To do the former, the Ministry briefed us on how the courts function. For the latter, we observed criminal and civil proceedings in the High Court and District Court in Wellington, before visiting six courts in the Auckland and Christchurch regions.

Figure 2 Causes of delay in the courts

For criminal trials, the court must ensure that a defendant gets a fair trial. This means it must allow the defendant full opportunity to get legal representation, to have prosecution information and evidence disclosed in advance, and to exercise other procedural rights. Many of these procedural rights are fundamental rights protected by the New Zealand Bill of Rights Act 1990 and by international human rights treaties. The prosecution also needs to be ready. These factors often lead to delay, while one party or another seeks time to better prepare their case.

There are limits, however. Defendants also have a right to have criminal charges determined promptly, and too much delay can lead to a court dismissing a case.

Generally, the courts have taken measures, over the years, to improve case management and to encourage the parties to complete the preliminary steps so that cases are heard promptly. However, the courts can never take too strong a controlling hand, or they risk undermining the rights of the parties to a fair hearing. This is particularly important for defendants in criminal cases.

For a court case to proceed, the relevant court participants* need to be present and prepared. If a required court participant is not present or prepared, a case may need to be adjourned and a new date set for the hearing.

The Ministry told us that common reasons for adjournments include:

- the defendant has not yet been assigned a legal aid lawyer;
- the lawyer is not present or available;
- no disclosure (or incomplete disclosure) of information before trial;
- a witness is not available;
- a party is not available; or
- further reports are required.

During the time we spent observing the operations of the courts, we saw these factors result in cases being adjourned.

It is also possible that one or other court participants may not want a case to proceed quickly. A criminal defendant might want to delay their sentencing for as long as possible (or for a specific time). For example, when a drink driver is sentenced they immediately lose their driver's licence. If they can delay sentencing, they delay the loss of their licence.

* As well as the parties to the proceedings (such as defendants/the accused, and, for civil cases, plaintiffs), many other entities or individuals are involved with each case coming before the court. We refer to these entities and individuals as "court participants". These participants include witnesses, the judiciary, lawyers, the Police, Crown prosecutors, the Legal Services Agency, the Department of Corrections, and court staff. Not all types of court participant are actively involved in each case.

- 1.21 We interviewed staff at the Ministry's national office and court staff in the Auckland, Christchurch, and Wellington regions. This enabled us to hear staff experiences and understand their roles. We spoke separately with representatives from the judiciary, the Police Prosecution Service, the Police, Department of Corrections, Legal Services Agency, the Law Commission, Crown Law Office, and the Auckland branch of the New Zealand Law Society. These interviews enabled us to look at the consistency of what the Ministry told us, what we saw, and what court participants told us.

- 1.22 We then acquired information on, and observed, systems and processes the Ministry uses to support the courts in managing workload pressures.
- 1.23 In assessing how well the Ministry was planning to manage future court workloads (see Part 3), we first sought to understand current and expected court workloads. We did this by reviewing statistical information on court workloads and performance, and by talking to court participants. We then examined the Ministry's plans for supporting court workload planning, before discussing these plans with other members of the justice sector (to test their awareness of the plans and to hear their views about the plans).
- 1.24 To test how the Ministry interacts with the justice sector, we reviewed minutes from meetings held by the Ministry with court participants and other members of the sector. We then spoke with people from groups involved with the justice sector and courts to hear what they had to say about their working relationship with the Ministry.
- 1.25 For our findings about how well the Ministry communicates the level of court workloads, we assessed the consistency of information that is reported in internal and external documents. We also considered how the reported information aligned with the information we reviewed during the course of our audit.
- 1.26 We checked whether the information aligned with our expectations, set out at the start of Parts 2 and 3. Our analysis of whether the Ministry met our audit expectations is the basis for our judgement on how effectively and efficiently the Ministry is supporting the management of court workloads.

What we did not audit

- 1.27 We did not review the performance of the judiciary or any other participant in the justice sector other than the Ministry. We did not assess courts or tribunals other than the civil and criminal jurisdictions in the High Court and District Courts. We did not audit activities carried out by Ministry staff acting on the directions of the judiciary.

Part 2

Helping to manage court workloads

- 2.1 In this Part, we set out our findings about the Ministry's:
- systems and processes to support the management of court workloads;
 - interactions with court participants;
 - court performance indicators;
 - court reviews;
 - training and support materials; and
 - monitoring of courtroom use.
- 2.2 We expected the Ministry to:
- have systems, processes, and facilities to help manage court workloads;
 - have clear and appropriate performance standards and to monitor progress against these;
 - devise and put in place systems and processes to continuously improve support for the management of court workloads; and
 - train and support the workforce required to help manage court workloads.

Our overall findings

- 2.3 Ministry staff have a standard system and processes to help manage court cases. There was frequent communication between court staff and court participants in the courts we visited. Frequent communication is important because it helps keep court participants informed of changes or events that could have an effect on court workloads.
- 2.4 The Ministry collects a wide range of information to monitor court workloads and it makes appropriate use of the information it collects. Collecting information on court performance is important because it helps the Ministry to understand what has been happening in the courts. This understanding supports planning for the future. The Ministry conducts reviews of individual courts every 24 to 30 months. These reviews provide valuable information for the Ministry and the judiciary. In our view, there is an opportunity for the Ministry to use these court reviews to improve the way information about better practice is identified then shared with all the courts.
- 2.5 Following on from recommendations made in a 2004 Baseline Review, the Ministry has put increased effort into its training (including customer service skills) and support materials (including reference material and guidelines for court staff). This work is ongoing; the Ministry continues to develop and refine these training and support materials, and we would expect this work to continue.

Systems and processes to support the management of court workloads

The Ministry has suitable systems and processes in place to support the management of court workloads. There are small differences in how staff in each court operate, which recognise local circumstances and challenges. The Ministry could make sure that local innovations were shared with other courts.

- 2.6 The New Zealand court system operates within legal frameworks that provide a foundation upon which the courts function. The Ministry also has training and support materials (see paragraphs 2.29–2.36). These provide a general framework for staff to work within.
- 2.7 The main computing system used by court staff to help manage court cases is called the Case Management System (the CMS). The CMS tracks details of a case and its progress through the court system. The Ministry also uses the CMS to get information used in monitoring the performance of the courts.
- 2.8 The Ministry can change some types of information that can be collected from the CMS, and it can also update existing reports or create new reports using information from the CMS.
- 2.9 Court staff manage the paper documents associated with a case separately from the CMS. Paper records serve as the official court record. There are processes in place to ensure that information in the CMS and paper files is accurate.
- 2.10 Ministry-distributed circulars enable staff to keep track of any law changes and changes that may affect their work practice. This allows the Ministry to control the timing of any process changes.
- 2.11 There are some small differences in how court staff in each court operate. These differences reflect differences in judicial procedure, workloads, the physical layout of courts, and pilot projects that are often carried out locally. In our view, these differences are appropriate; they create an environment conducive to innovation and help courts respond more effectively to local challenges. However, it is important that the Ministry records and uses this local innovation as a tool for continuous improvement by sharing it with all the courts. (We discuss sharing of better practice further in paragraphs 2.23–2.27.)
- 2.12 Overall, the Ministry has suitable systems and processes in place to support the management of court workloads. Ministry staff have a standardised training and support framework, they use a standardised system to manage court cases, and the Ministry has a process in place to provide assurance that computer and paper records are accurate.

Interacting with court participants

The Ministry frequently interacts with court participants, which supports efficient court operations.

- 2.13 Good communication between court participants encourages co-operation, which helps the court process work better. For example, while visiting a court, we were told about a Police plan to serve a large number of warrants that night. Because the court had been informed of this, court staff were able to better prepare for the influx of cases the next day.
- 2.14 Court staff we interviewed noted the importance of good communication with court participants and told us that they regularly meet with them. There is also considerable informal contact in the course of day-to-day duties between court staff, the Police Prosecution Service, Crown prosecutors, the Department of Corrections, and lawyers.
- 2.15 We did not speak to local representatives of all court participants, but we did talk to senior members of the judiciary, the Department of Corrections, Crown Law, the Legal Services Agency, the Law Society, the Police, and the Police Prosecution Service. Those discussions, and our own observations and discussions with court staff, satisfied us that there is frequent communication between court staff and other court participants in the courts we visited.
- 2.16 The Ministry is well aware of the importance of good ongoing communication with court participants. Effective communication between the Ministry and other court participants leads to better workload management.
- 2.17 More formally, the Ministry's court reviews (see paragraphs 2.23–2.27) include the relationship between its staff and other court participants.

Court performance indicators

The Ministry regularly monitors how well courts are functioning, using a good range of performance indicators.

- 2.18 The Ministry's national office produces regular management reports that provide it with an overview of how the courts are functioning nationally and regionally. The reports summarise the number of new cases, the number of cases disposed of (by the type of court and type of proceeding), and provide a series of indicators about the age of cases. The Ministry calculates clearance rates at a national and individual court level. Clearance rates show whether cases are coming in faster than they are being cleared. Performance statistics for individual courts are also available on the Ministry's intranet, which court staff can access.

- 2.19 The Ministry records court performance indicators in regular management reports, and it also provides this information to other members of the justice sector. Court performance indicators are used during inter-agency discussions about the performance of the courts. Court performance information is used in discussions about managing court workloads that the Ministry has with the justice sector, Ministers, and select committees.
- 2.20 When performance indicators show a court is under pressure, there are few short-term options available for addressing that pressure, short of rostering more judges in that court. Although rostering may alleviate pressure in one court or jurisdiction, removing a judge from another area may create additional pressure in that court or jurisdiction.
- 2.21 Because there are very few short-term options available for alleviating workload pressure, court performance information is important in the Ministry's planning process. Performance information gives the Ministry valuable insight into what has been happening in the courts, and helps the Ministry to determine what other options might be effective.
- 2.22 Overall, our view is that the Ministry collects a wide range of information that supports the monitoring of court workloads. Also, the Ministry makes appropriate use of the information it collects.

Court reviews

The Ministry's court reviews provide valuable information about the performance of individual courts. There is an opportunity for using court reviews to improve the way information about better practice is identified then shared with all courts.

- 2.23 District Court reviews were first piloted in 2005 in response to the 2004 Baseline Review recommendation "that the Ministry establish a small team of people who will become both assessors and coaches of performance improvement at a local level."⁸
- 2.24 The court review team from the Ministry's national office reviews individual courts every 24 to 30 months. Court reviews look at four main areas: staffing, communication with court participants, business processes, and an additional "other" category that might be used for issues such as security or facilities. The reviews enable the Ministry and courts to assess how a court is performing, and also identify areas where improvements can be made.
- 2.25 Court managers we interviewed told us they found the reviews useful. We, too, consider them useful, because they provide an opportunity to bring a different perspective about how a court is operating. They can also help the Ministry get a clearer view of what is occurring throughout all the courts in the country.

⁸ See paragraph 2.29 for more information about the 2004 Baseline Review.

- 2.26 The Ministry's court review team has a follow-up process to monitor how courts adopt recommendations made by the review team. The Ministry's regional managers are also involved in monitoring and following up the review recommendations.
- 2.27 We have already highlighted the importance of learning from regional innovation and sharing this innovation throughout all the courts. Regional and national forums provide an opportunity for some court staff to share better practice. However, there is an opportunity for the Ministry to do more to identify and, particularly, to share, information about better practice. For example, some staff we spoke with told us they had created their own solutions to areas that court reviews identified for improvement, rather than having had solutions suggested to them by the court review team. Additionally, the local differences we noted in paragraph 2.11 could be better recorded and disseminated.

Recommendation

We recommend that the Ministry of Justice place greater emphasis on collecting and sharing information about better practice in managing court workloads – throughout all courts – as part of its court review process and as part of its wider court-related activities.

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- 2.28 The Ministry has told us it supports this recommendation and is working through the actions it can take to address the recommendation.

Training and support materials

Since the 2004 Baseline Review, the Ministry has been actively producing training and support materials for staff. The materials are proving useful for staff. We expect the Ministry to continue developing resources, while also developing its programme for assessing the effectiveness of the training and support materials.

- 2.29 A Baseline Review of the Ministry was conducted in 2004 after the merger of the Department of Courts and the Ministry. This resulted in increased government funding and provided guidance to the Ministry about areas it could improve. Specific to court workloads, the Baseline Review identified a lack of training and development for court staff, and a lack of performance support tools for staff.
- 2.30 The Ministry responded to these concerns by creating a professional development team and by producing training and performance support resources. Performance support tools included process guidelines and reference materials for court staff to help them do their job.

- 2.31 The professional development team used findings from a series of court visits to identify training needs. The team then produced, and continues to create, new training and support tools for court staff.
- 2.32 Training and support materials have focused on: induction, on-the-job support tools, registrars' skills, and customer service skills. Training is usually internal and on the job, with some training done online. Managers in individual courts are responsible for ensuring that their staff are provided with any necessary training.
- 2.33 The Ministry has two approaches to monitoring the effectiveness of its training:
- instructor-led training workshops that include evaluation sheets to gauge the usefulness of training; and
 - a newly introduced system that enables managers to confirm that staff can show skills learned in training.
- 2.34 In general, staff we spoke with said they found training materials helpful. They gave positive comments about their training and the performance support tools they use. We endorse the Ministry's continuing efforts to create training and support materials, as well as to devise approaches to monitoring the effectiveness of its training.
- 2.35 Training and support are important, as well-trained staff help the Ministry support court operations in an effective and efficient way. In the future, there may be significant changes to how court staff operate (see the initiatives described in Figure 3). So, it is important that the Ministry has a high-quality training and support programme in place to enable Ministry staff to quickly adopt changes.
- 2.36 Based on what staff told us, we consider that the materials for staff training and support the Ministry has so far produced in response to the Baseline Review are useful. We expect the Ministry to continue to improve its training and support materials, while also completing its work to monitor the effectiveness of the training its staff get.

Monitoring how courtrooms are used

The Ministry is doing more monitoring of how courtrooms are used.

- 2.37 Courtroom use has been monitored in the Ministry's northern (Auckland) region since July 2008 as part of the Ministry's Auckland Service Delivery Programme. In May 2009, an internal Ministry memorandum recommended that large courts nationwide should measure actual courtroom use and record the reasons courtrooms were not being used in a systematic way. The Ministry has adopted the memorandum's recommendations, and planned to collect information about the use of large courtrooms from September 2009.

- 2.38 Given the cost of building new courts, it is important that the Ministry understands how existing courtrooms are used. This will help the Ministry to provide assurance that courtrooms are being used effectively and efficiently. Having good information about courtroom use will also allow the Ministry to create a compelling business case when additional courtrooms are required.

Part 3

Helping to plan for the management of future court workloads

- 3.1 In this Part, we set out our findings about the Ministry's:
- plans for supporting the management of increasing court workloads;
 - forecasting of court workloads;
 - interactions with other members of the justice sector; and
 - communication about the level of court workloads.
- 3.2 We expected the Ministry to:
- produce soundly based plans for supporting the management of increasing court workloads, which take into account forecast court workloads and important factors influencing workloads;
 - use information from monitoring the courts to enhance planning and make improvements; and
 - provide timely and relevant advice to the Government about policies and resources needed to address workloads for civil and criminal cases in the High Court and District Courts.

Our overall findings

- 3.3 The Ministry's plans for supporting the management of increasing court workloads involve a series of initiatives expected to improve the efficiency of the courts. Overall, the initiatives the Ministry has under way align well with our understanding of the pressures the courts are facing. The Ministry has a high level of interaction with other members of the justice sector. All the other members of the justice sector whom we interviewed told us they work regularly and closely with the Ministry on relevant projects. This is important, because the Ministry cannot carry out these projects on its own, and working collaboratively with multiple members of the justice sector is critical for these projects to proceed.
- 3.4 The Ministry makes appropriate use of the forecasts it produces. It acknowledges the limitations of its forecasts and does not rely too heavily on them for its planning. We reviewed the information the Ministry shares with the justice sector, select committees, and Ministers, and found that it aligns well with the Ministry's internal information. The Ministry clearly and consistently communicates the current level of court workloads and plans for the future. Good reporting by the Ministry helps the sector understand the current state of the courts, and supports a co-ordinated response to managing court workloads.

Plans for supporting how increasing court workloads are managed

The Ministry has a series of initiatives under way to support how increasing court workloads are managed. These initiatives align well with our understanding of the pressures the courts are facing.

- 3.5 Figure 3 shows some of the Ministry initiatives designed to help to manage increasing court workloads by creating and using more efficient processes.

Figure 3

Ministry of Justice initiatives to address court workloads

Auckland Service Delivery Programme

The Auckland Service Delivery Programme is a long-term plan designed to deal with the growth of court workloads, while also helping the courts run more efficiently. The plan includes:

- extending the operating hours of courthouses;
- building new and expanded facilities, with priority on increasing jury trial capacity;
- moving specialist courts and tribunals to a dedicated facility;
- making space available in the Auckland District Court; and
- increasing courthouse capacity by moving registry processes to a less expensive centralised facility. This will make space available in frontline locations and deliver services more efficiently.

The Auckland Service Delivery Programme links closely with work on technology and criminal procedure simplification.

Criminal Procedure Simplification Project

The Criminal Procedure Simplification Project is a major operational and policy project to reform, streamline, and simplify criminal court processes. It aims to reduce court delays within the District Courts by improving case procedures and simplifying the legislation governing the procedures. The project involves changes to legislation that will enable changing the operational model of the courts.

Technology initiatives

An Electronic Operating Model has been proposed for the criminal summary courts, as a more efficient replacement for the current manual, paper-based process. The criminal summary jurisdiction deals with more than 200,000 cases each year. An Electronic Operating Model could deliver great efficiencies for courts and other agencies involved in summary court processes.

The introduction of Audio Visual Links (AVL) technology, particularly links between courts and prisons, is expected to lower costs and improve security by reducing the need to transport prisoners for all hearings.

Community Magistrates

Community Magistrates can hear less serious criminal summary cases at a lower cost than a District Court judge. The introduction of Community Magistrates will also provide judges with more time to hear more serious cases.

- 3.6 The initiatives summarised in Figure 3 are cited by the Ministry in discussions of its plans for supporting the management of increasing court workloads. These initiatives have emerged from the Ministry's own efforts and from the efforts of other members of the justice sector. The Criminal Procedure Simplification Project originated from a 2005 Law Commission report, *Criminal Pre-Trial Processes: Justice Through Efficiency*. It is now a joint project of the Law Commission and the Ministry. All of the projects involve multiple members of the justice sector.
- 3.7 The 2009/10 Budget provided funding to increase the number of Community Magistrates. Getting the Auckland Service Delivery Programme, Audio Visual Links (AVL), Criminal Procedure Simplification, and the Electronic Operating Model work under way will depend on the availability of funding and how fast the relevant legislation passes into law. The Ministry expects these projects to be completed within the next five years, with the exception of the Auckland Service Delivery Programme, which is a longer-term strategy with property-related components. If legislation is passed in early 2010 to enable the more widespread use of AVL in court proceedings, an AVL pilot is planned in the Auckland District Court for March 2010.
- 3.8 The initiatives the Ministry has under way align well with our understanding of the pressures the courts are facing. The courts under the most pressure are those in the Auckland region, and the Ministry has specific plans to respond to these pressures.
- 3.9 The Ministry expects the Criminal Procedure Simplification Project to provide a more efficient framework to manage criminal cases through the trial process. Because this project is based on legislation that has not been passed yet, we do not have a view on how effective or efficient it could be.
- 3.10 We consider it likely that a strong business case (with potential savings) for the AVL technology project can be made by the Ministry, the Department of Corrections, and the Police. The Government and Parliament would need to evaluate this business case and the consequences of the associated legislative change required for the AVL project to be carried out. Similarly, a strong business case should be able to be made for the Electronic Operating Model, which also requires legislative change.
- 3.11 The initiative to use community magistrates to handle matters that would otherwise need to be heard by a judge is, in our view, a reasonable and cost-effective approach to managing increasing court workloads.
- 3.12 Although we would expect these initiatives to improve court efficiencies, they are unlikely to be enough to fully address the issues arising from the growth in court workloads. As the Ministry is aware, there will still be a need for more courtrooms, judges, and registry staff. Planning to support future court workloads will be a

continuing process and will require co-ordinated actions from the justice sector and all three branches of government.

- 3.13 The success of these initiatives relies on the close co-operation of members of the justice sector. Without such co-operation, the Ministry could act only on its own, and isolated Ministry actions would have, as one member of the justice sector describes it, “a miniscule effect overall”.

Forecasting court workloads

The Ministry makes appropriate use of the court performance data it collects to monitor current court workloads and forecast future workloads.

- 3.14 The Ministry collects performance data for District Courts and for the High Court. The Ministry uses the data it collects to monitor and manage court workloads (see paragraphs 2.18–2.21).
- 3.15 The Ministry produces forecasts of court workloads to help with its own planning and to inform the justice sector about projected workloads. Ministry forecasts focus on overall volumes of cases likely to occur. Volume forecasts are also created for subsets of overall cases (for example, criminal summary trials, depositions, jury trials, and civil cases).
- 3.16 The Ministry will sometimes adjust its forecasts or produce an alternative forecast when it knows there is (or may be) a change likely to cause a deviation in historical trends, such as changes to criminal procedure or to Police numbers.
- 3.17 Each month, the Ministry monitors the variance between its forecasts and what actually occurs. The Ministry expects its forecasts to be accurate within a certain statistical margin of error. We noted that forecasts aggregating large numbers of cases (such as criminal summary trials) had less variability than forecasts looking at a subset of criminal cases (such as jury trials). Most forecasts stayed within the expected margins of error.
- 3.18 With any forecast, there is a level of uncertainty between what is forecast and what actually occurs. The Ministry is aware of the limitations of its forecasts and the level of uncertainty associated with forecasts. It understands that forecasts are subject to a margin of error and that, because of this, some flexibility needs to be built into plans. In 2010, the Ministry will begin to publicly report the accuracy of some of its forecasts – such as the number of cases managed and court sitting hours.
- 3.19 In our view, the Ministry makes appropriate use of its forecasts. It acknowledges the limitations of those forecasts, and its planning does not rely on them too much. We are pleased the Ministry intends to release public information about the accuracy of its forecasts.

Working with the justice sector

The Ministry works regularly and closely with other members of the justice sector. Inter-agency processes are seen as an integral part of how the Ministry designs and implements its own support for the management of court workloads. This in turn helps enable a co-ordinated response from the sector – which is needed when managing court workloads.

3.20 Figure 4 describes some of the Ministry's regular meetings with other members of the justice sector.

Figure 4
Regular justice sector meetings

Meeting	Who attends	Purpose
Justice Sector Chief Executives – meets monthly. Established after a 1994 Cabinet minute.	Chief Executive of the Ministry of Justice and counterparts in the Department of Corrections, the Police, Crown Law, the Ministry of Social Development, and the Serious Fraud Office.	Initially, to co-ordinate justice sector responses to the Government's strategic result areas. More recently, to provide a forum for discussing strategic policy, budget co-ordination, and a justice sector information strategy.
National Senior Operations Manager Forum – meets quarterly. Established by the Ministry.	Deputy Secretary of Operations from the Ministry of Justice and counterparts in the Department of Corrections, the Police, Crown Law, and the Legal Services Agency.	To provide a forum where strategic, national-level operations and management issues are discussed, with particular focus on the criminal justice sector.
Interagency Court Improvement Group – meets quarterly. Established by the Ministry's Operations Group.	Representatives from the Ministry Operations and Policy, District Courts judiciary, Crown Law, Law Commission, Legal Services Agency, the Police Prosecution Service, the Department of Corrections (Policy and Operations), and the New Zealand Law Society.	A formal meeting to discuss and progress issues of relevance to improving the courts, primarily focused on District Courts.
Criminal Practice Committee – meets bi-monthly. Established by the Ministry and the judiciary.	Representatives from the Ministry Operations and Policy, judiciary (all benches), Crown Law, the Law Commission, the Police Prosecution Service, and the legal profession.	Formal meeting to discuss issues related to criminal justice practice and policy.

- 3.21 The Ministry also works closely with relevant organisations on specific projects such as the Auckland Service Delivery Programme and the Criminal Procedure Simplification Project, and to produce sector-wide reports.
- 3.22 The Ministry uses the information it collects and its discussions with the justice sector to understand the current performance of the courts, and to help set the direction it will take to support management of future court workloads. The meetings are a forum for those involved with the courts to share information about plans for managing court workloads.
- 3.23 During our interviews, members of the justice sector told us they work regularly and closely with the Ministry on relevant projects. Many of these same people also told us their relationship with the Ministry had improved in recent years and that they can see benefits from that relationship.
- 3.24 The Ministry's view is that sector-wide meetings enable regular information sharing within the sector, and that inter-agency processes are an integral part of designing and putting in place important changes such as the expansion of AVL, the Electronic Operating Model, and the Criminal Procedure Simplification Project.
- 3.25 We agree with the Ministry's view. The Ministry cannot carry out these projects on its own, so working collaboratively with the sector is critical.
- 3.26 The Ministry's high level of justice sector involvement and interaction is appropriate, and makes it more likely such projects will succeed. Working collaboratively with the sector supports a co-ordinated sector response to dealing with issues in managing court workloads.

Communication about the level of court workloads

The Ministry is regularly and clearly communicating the current level of court workloads and its plans to help manage court workloads.

- 3.27 Good reporting by the Ministry helps the sector to understand the current level of court workloads, and supports a co-ordinated response to managing court workloads. A co-ordinated response is needed to plan for increasing court workloads.
- 3.28 The Ministry regularly communicates with the justice sector, Ministers, and select committees about the current level of court workloads, the progress of projects already under way, and plans for the future. The Ministry also provides information on projected court workloads to the rest of the justice sector, which can be used when planning for future workloads.

- 3.29 The Ministry communicates information about court workloads to the justice sector through mechanisms such as meetings, briefings, and reports. The Ministry also produces financial forecasts and budgets in support of its plans for helping to manage court workloads. Current and projected court workloads are factored into the Ministry's budget planning, as part of determining resource requirements (including those for the judiciary).
- 3.30 We have reviewed the information the Ministry shares with other members of the justice sector, select committees, and Ministers. It aligns well with the Ministry's internal information. In our view, the Ministry clearly and consistently communicates the current level of court workloads and plans appropriately for the future.

Appendix 1

High Court and District Court workloads since 2004/05

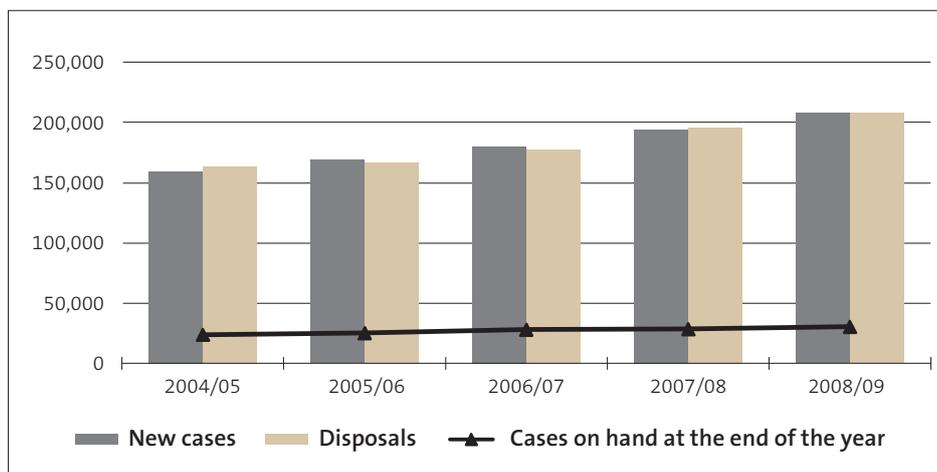
The challenges facing the District Courts and High Court in civil and criminal jurisdictions are similar, and relate primarily to the growing number of cases before the courts. There are some notable regional differences in the number of new cases coming before the courts. The current and future demands in the greater Auckland region are a particular concern, given its rapid growth in population.

Workloads in District Courts

In the last five years, the overall numbers of cases before the criminal summary jurisdiction has increased markedly. In the year to 30 June 2005, 160,396 new criminal summary cases came before the District Courts. In the year to 30 June 2009, 207,623 new criminal summary cases came before the District Courts.

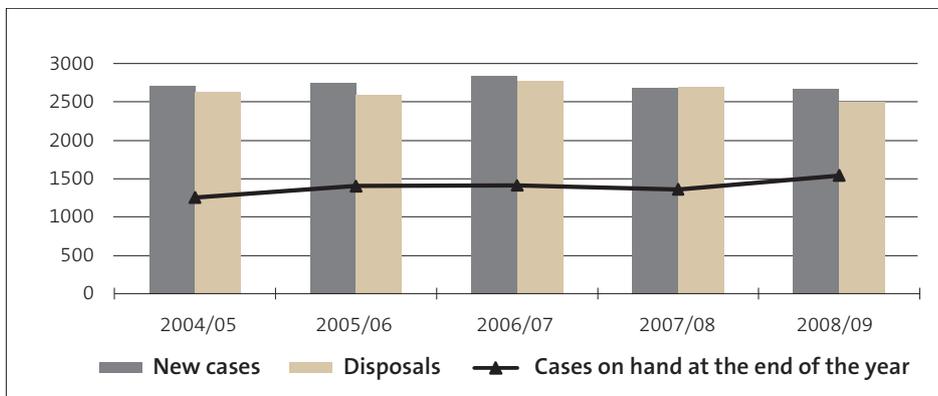
District Courts

Number of criminal summary cases, 2004/05 to 2008/09



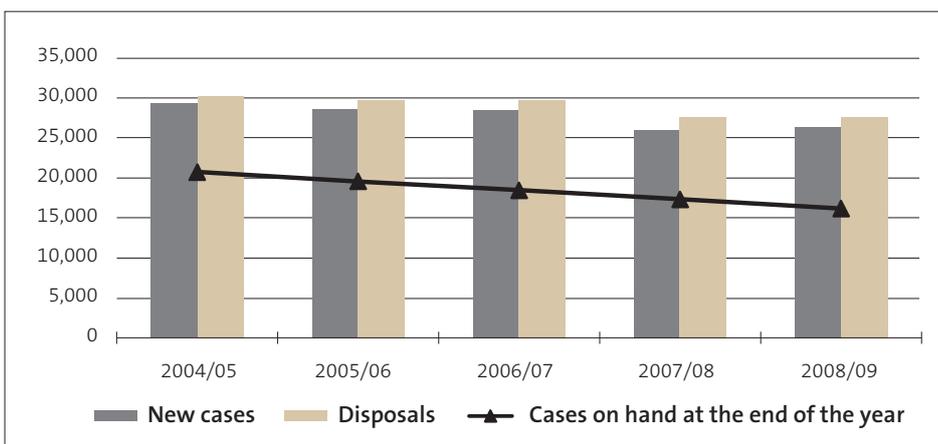
The numbers of new jury cases to come before the District Courts has remained fairly static during the last five years.

District Courts
 Number of jury cases, 2004/05 to 2008/09



There has been a downward trend in the number of new civil cases coming before the District Courts in the last five years.

District Courts
 Number of civil cases, 2004/05 to 2008/09



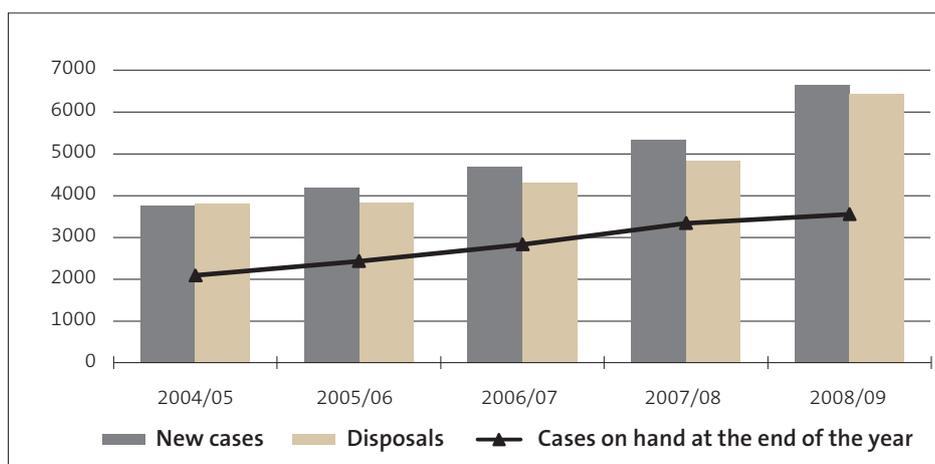
Workloads in the High Court

The following graphs show the number of new cases for Associate judges⁹, jury trials, and civil cases heard in the High Court in the past five years. Highlights from the graphs include:

- the total workload handled by Associate judges has increased by 77% between 2005 and 2009;
- the number of new jury trials in the High Court peaked in 2006, then declined (there was a large drop in 2008 because some drug cases were moved to the District Courts); and
- apart from a rise in new cases in 2008, the number of new civil trials in the High Court has remained fairly consistent during this period.

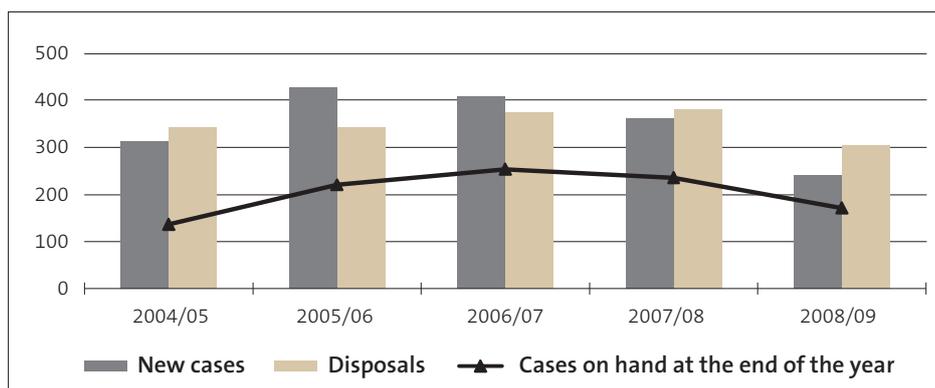
High Court

Number of Associate judge cases, 2004/05 to 2008/09



High Court

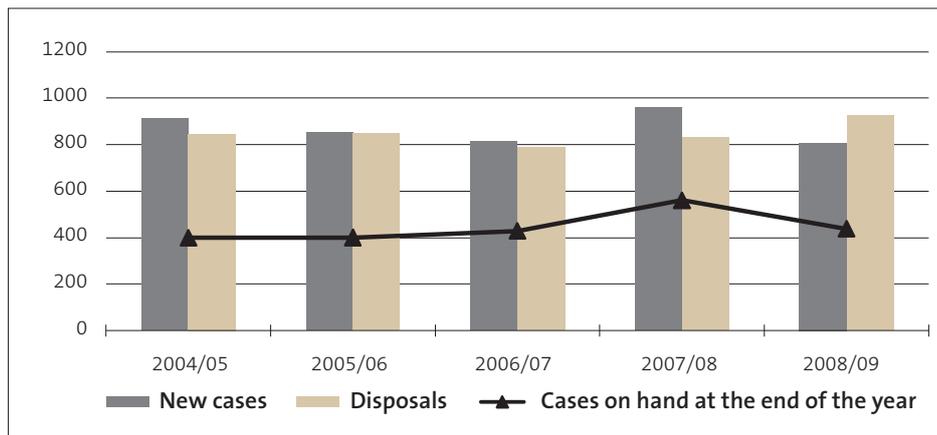
Number of jury cases, 2004/05 to 2008/09



⁹ Associate judges carry out a range of civil case work, including insolvency matters.

High Court

Number of civil cases, 2004/05 to 2008/09



Cases on hand

Each of these graphs show the number of cases on hand (these are cases still in the court system at the end of the year). The number of cases on hand is an indicator of how well courts are keeping up with the number of cases entering the court system. If the number of cases on hand is increasing, the courts are not keeping up with new business. The graph showing the number of Associate judge cases heard by the High Court clearly shows that the number of cases in hand is increasing. The graph for jury cases in the High Court shows the effect of moving some drug cases to the District Courts in 2008.

Case disposals

The graphs also show the number of case disposals.¹⁰ Case disposals have increased along with growth in the criminal summary jurisdiction of the District Courts and the Associate judge jurisdiction of the High Court – the two jurisdictions that have seen the largest growth in new cases. Additional judges have been appointed to each jurisdiction during the past five years, which has helped the courts keep up with the increase in cases. However, despite improvements in disposals, the number of cases on hand is growing in the criminal summary and Associate judge jurisdictions.

High Court case disposals exceeded new cases in both jury and civil jurisdictions at the end of the 2009 financial year.

¹⁰ Courts “dispose” of cases in a variety of ways. For example, by reaching a verdict or when a charge is withdrawn.

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Other publications issued by the Auditor-General recently have been:

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