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Our ref: OIA 98728

Tēnā koe I Brown

Official Information Act request: Criminal Procedure (Reform and Modernisation) Bill

Thank you for your email of 27 August 2022, requesting information relating to the Departmental Report for the Justice and Electoral Committee on the Criminal Procedure (Reform and Modernisation) Bill (the Bill), 16 May 2011 (the Report). Specifically, you requested:

- 1. What was the timeframe used for the above [Departmental Report for the Justice and Electoral Committee on the Criminal Procedure (Reform and Modernisation) Bill] predictions; and*
- 2. How close were these predictions to reality, notwithstanding the changes between the bill and the act; and*
- 3. Were there fewer or more court events in the above time period after the start of the CPA 2011 and, if so, how many more or fewer;*
- 4. What were the actual numbers for points 2 and 3 above over the same time period; and*
- 5. Any reports, aide memoires, memoranda, minutes, or any other recording that reviews, analyses, assesses, or comments, upon of the Criminal Procedure Act 2011 between the date of implementation and today.*

On 22 September 2022, we sent you decision letter advising that we would grant parts 1 to 4 of your request but required more time to finalise our response. We also advised you of our decision to refuse part 5 your request under section under section 18(f) of the Act, on the basis that the information cannot be made available without substantial collation or research.

The responses to part 1 to 4 of your request are set out below.

1. What was the time frame used for the above [Departmental Report for the Justice and Electoral Committee on the Criminal Procedure (Reform and Modernisation) Bill, 16 May 2011] predictions?

Modelling for the impact of the Bill was based on the number of court events in previous years' data, namely 2007 and 2008. It is important to note that the numbers used in the Report are intended to be read per year, i.e. it was expected that after the implementation of the Criminal Procedure Act 2011 (the Act), there would be 43,000 fewer court events per year, than in previous years.

- 2. How close were these predictions to reality, notwithstanding the changes between the bill and the act?**
- 3. Were there fewer or more court events in the above time period after the start of the CPA 2011 and, if so, how many more or fewer?**
- 4. What were the actual numbers for points 2 and 3 above over the same time period?**

In response to Parts 2 to 4 of your request, see Table 1 attached for the number of criminal jurisdiction court events by trial track (Judge-alone or Jury) by calendar year, from 2010 to 2021.

The following notes provide context on the data provided in Table 1:

- At Third Reading of the Bill, the threshold for which a defendant can elect a jury trial was reduced from a sentence of three years' imprisonment, to two years' imprisonment. This means more cases would be eligible for a jury trial than first predicted in the Report.
- A defendant can elect a jury trial at the time of entering a plea of not guilty to a Category 3 offence (an offence carrying an imprisonment sentence of two or more years). In Table 1, a case is counted in either category at the time of final disposal i.e. a case may have begun its life as a Judge-alone Trial, but will be counted in the Jury Trial data if the defendant was acquitted or convicted by a jury.
- Section 26 of the New Zealand Bills of Rights Act 1990 is a provision relating to retroactive penalties and provides:

(1) No one shall be liable to conviction of any offence on account of any act or omission which did not constitute an offence by such person under the law of New Zealand at the time it occurred.

For the purposes of the Act, if a charge was laid prior to the enactment of the Act, it would be dealt with through the courts according to the rules as they were when the charge was laid. In other words, if a charge was laid in 2010 and the case was still before the courts in 2011 when the Act came into force, that case would be subject to the law and rules that were in place before the enactment of the Act. This means the impact of changes to the criminal procedure laws would not have been immediate, which can be inferred from Table 1 below (case event numbers appear to decrease more significantly from 2012/13).

We note that the number of court events for the Jury Trial Track has been increasing from 2015. This reflects increased numbers of defendants electing a jury trial, defendants pleading guilty later in the court process and an increased number of adjourned events which need to be held again at a future date.

We also note that the number of court events in total decreased during 2020-21. This is largely due to affected operations under COVID-19 Alert Level settings. Under these circumstances only priority court proceedings could be heard, and many court events were adjourned or rescheduled. However, under the COVID-19 Protection Framework, more court events were completed and more court cases resolved.

You may find the following documents helpful as to the intention and predictions of the Criminal Procedure (Reform and Modernisation) Bill:

- Criminal Procedure (Simplification) Regulatory Impact Statement:
<https://www.justice.govt.nz/assets/Documents/Publications/Regulatory-Impact-Statement-Criminal-Procedure-Simplification.pdf>
- Criminal Procedure Act 2011: Caseload performance for first 12 months:
<https://www.justice.govt.nz/assets/Documents/Publications/criminal-procedure-act-2011-12-month-report.pdf>.

5. Any reports, aide memoires, memoranda, minutes, or any other recording that reviews, analyses, assesses, or comments, upon of the Criminal Procedure Act 2011 between the date of implementation and today.

We are refusing this part of your request under section 18(f) of the Act, on the basis that substantial research and collation would be required to find documentation analysing, assessing and otherwise commenting on the Criminal Procedure Act between implementation and the present day.

Please note that this response, with your personal details removed, may be published on the Ministry of Justice website at: justice.govt.nz/about/official-information-act-requests/oia-responses/. If you require any further information, please contact Joe Locke, Media & Social Media Manager, at media@justice.govt.nz

If you are not satisfied with my response, you have the right to complain to the Ombudsman under section 28(3) of the Act. The Ombudsman may be contacted by email at info@ombudsman.parliament.nz

Nāku noa, nā



Sam Kunowski
General Manager, Courts and Justice Services Policy

Table 1: The number of Criminal jurisdiction court events by Trial Track (Judge-alone Trial or Jury Trial), by calendar year, 2010 to 2021

Trial Track	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Judge-alone Trial Track	585,165	540,271	497,342	452,672	429,605	433,732	458,432	460,977	452,956	460,736	427,574	362,357
Jury Trial Track	62,343	58,332	56,881	46,375	38,980	40,999	48,076	50,077	52,707	60,487	65,738	66,179
Total	647,508	598,603	554,223	499,047	468,585	474,731	506,508	511,054	505,663	521,223	493,312	428,536

Notes on Table 1:

- This data counts occurring courtroom case events. The data includes complete and adjourned courtroom events, and does not count events that occurred on the papers.
- Data includes events in the Youth Court, District Court and High Court.
- Court events are categorised by the calendar year in which they began.
- Court events are categorised by Trial Track of the case at final disposal (for events on disposed cases) or current track of the case for events on currently active (or on hold) cases.
- On hold cases are those where a defendant has absconded and a warrant to arrest has been issued.
- Statistics are based on the Ministry of Justice's Case Management System 2. This report contains data drawn from an operational, live database that is subject to change, as data is continually recorded and/or recoded.

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