

Interim Regulatory Impact Statement: Jury trial timeliness

Coversheet

Purpose of Document	
Decision sought:	This interim RIS will support the Ministry of Justice consultation document <i>'Improving Jury Trial Timeliness, September 2024'</i>
Advising agencies:	Ministry of Justice
Proposing Ministers:	Minister of Justice
Date finalised:	31 July 2024
Problem Definition	
<p>Recent trends show that more defendants in criminal cases are electing to be tried by jury. Jury trials take up more resource than judge-alone trials (JATs) from the courts, prosecutors and defence lawyers. With higher numbers of jury trials in the system, they are significantly contributing to delays in the criminal jurisdiction of the District Court.</p> <p>There is an opportunity to better ensure that our most time and resource-intensive trial jurisdiction is used for appropriately serious cases of criminal offending. This will thereby improve jury trial timeliness and the court system more broadly.</p>	
Executive Summary	
<p>There have been increased delays in the courts in recent years, particularly in the criminal jurisdiction of the District Court. A significant contributor has been the increase in the number of jury trials. Jury trials are resource-intensive for the courts, and more defendants are electing jury trial when they are eligible to do so (for category 3 offences¹ – offences which are punishable by two or more years' imprisonment). The delays have been exacerbated by COVID-19 Alert Level restrictions which significantly limited the courts' ability to conduct jury trials.</p> <p>There has since been an increased focus from justice sector agencies, Ministers and the judiciary on improving timeliness in the courts. The Justice Sector Leadership Board, in consultation with the Chief District Court Judge, and Justice Sector Ministers have established the Timely Justice Action Plan, which monitors and reports on key initiatives from across the justice sector aimed at reducing unnecessary delays in the District Court criminal jurisdiction, including the joint Ministry of Justice / judiciary District Court Timeliness Programme and Police's Prosecutions Uplift Programme. Measurable timeliness targets have been agreed and are being regularly reported on to Ministers. It also forms part of the Reduced Violent Crime Delivery Plan. While it is expected these</p>	

¹ Criminal Procedure Act 2011, s 6

initiatives will go a long way to achieving agreed targets, it is likely they will need to be supported by further changes.

The Minister of Justice is considering two legislative options to improve jury trial timeliness:

- Increasing the jury trial threshold; and
- Enabling more flexibility in the timing of jury election.

This RIS contains interim analysis of options to address the problem of increased numbers of jury trials and the subsequent delays in the courts, by considering how to ensure jury trials can be used in cases of appropriately serious offending. Options considered include increasing the jury trial threshold and a sentence-capped charges regime. The RIS then considers further options for increasing the jury trial threshold to different maximum penalty levels: three, five and seven years or more imprisonment.

The Ministry for Regulation has determined that the option to enable flexibility in the timing of jury election is exempt from RIA requirements on the grounds that it has no or only minor impacts on businesses, individuals and not-for-profit entities.

The RIS supports a discussion document publicly released by the Ministry of Justice on the above two options. To support final policy decisions taken by Cabinet, a final RIS will be prepared once submissions on the options have been received and further policy work completed.

Population implications

Initiatives that are aimed at improving timeliness in District Court jury trials will contribute to improving access to justice for all New Zealanders. Further analysis will be undertaken to determine how the options addressed in this RIS will impact on different population groups. Māori and Pasifika are disproportionately represented in the criminal justice system as both victims and defendants. Targeted consultation with Māori will be undertaken in parallel with public consultation on the jury trial threshold, to better understand the impacts of the options.

Resourcing implications

A reduction in cases progressing along the jury trial pathway will necessarily result in a corresponding increase in those progressing along the JAT pathway. Police (specifically the Police Prosecution Service) is responsible for prosecuting the majority of JATs. Initial assessment indicates that all options would increase the number of cases that Police have responsibility for prosecuting, with flow-on resource impacts.

The Solicitor-General is responsible for prosecuting jury trials. A reduction in jury trials will also likely have an impact on the Crown Solicitor Bulk Fund, administered by the Public Prosecutions Unit that operates within the Crown Law Office.

We will continue to work closely with Police and Crown Law on the exact impacts of the options on their prosecution models, and on current funding arrangements. An assessment of financial implications of the options will be addressed in the final RIS.

Limitations and Constraints on Analysis

The options discussed in this RIS have been limited by Ministerial direction

This RIS only assesses options that have been included in advice to the Minister of Justice regarding legislative options to improve the timeliness of jury trials. Other options that have been otherwise considered, but not progressed are discussed briefly in this section, or in Section 2.

The options discussed in this RIS are part of a wider long-term work programme to improve court timeliness

This RIS only covers options relating to jury trials. Other legislative changes to improve court timeliness generally will be considered in subsequent RISs separately. Operational initiatives are being progressed separately and are not addressed as options in this RIS.

Options are focused on ensuring jury trials are being used in the most appropriate cases

This RIS assesses options to ensure jury trials are being used to determine cases of appropriately serious criminal offending, and improve jury trial timeliness. It does not consider how the overall jury system is operating, and its effectiveness in terms of public participation and satisfaction with the system. For example, it does not address if juries are representative of the community, whether members of the public want to participate on juries as a civic duty, or assess the level of juror fees.

This RIS assumes the jury trial threshold continues to be set by a maximum penalty

Using a maximum penalty is an imperfect proxy for seriousness, as it may not effectively address discrepancies between maximum penalty and the actual sentence handed down to a defendant. Penalty levels are to some degree an arbitrary measure for the seriousness of an offence – particularly as any one offence may cover a range of offending behaviour. However, the penalty level for an offence reflects the seriousness with which Parliament has regarded it, and provides certainty of criminal procedure and a protected right for certain types of offences.

Analysis so far has assumed continuing to use a maximum penalty as a threshold, in the New Zealand Bill of Rights Act 1990 (NZBORA) to determine eligibility for a jury trial, and mirroring this in the Criminal Procedure Act 2011. However, we are consulting in the accompanying discussion document on the idea of expressing the right to a jury trial in NZBORA in a more general way, such as for 'serious offences'. Initial assessment shows this may include setting a principles-based minimum standard in NZBORA, while a maximum penalty threshold is retained in the Criminal Procedure Act. The Criminal Procedure Act threshold would then need to be consistent with, or a justified limitation on, the NZBORA right.

It is difficult to directly compare our jury trial system with those of other countries

The use of international jurisdictions and experiences regarding jury trials as comparisons for analysis has been limited. We have considered the approach of similar international jurisdictions for differing approaches to providing a right to a jury trial, and these are set out in Appendix One.

While most common law jurisdictions, such as Australia, the United Kingdom and Canada, do have jury trials available as part of their criminal (and civil) justice systems, their legal and constitutional systems are not directly comparable with New Zealand. For example, Australia, the United States and Canada's federal systems are not comparable with New Zealand's constitutional arrangement. Additionally, many states and jurisdictions use a system of 'summary / indictable' offences that determine availability of a jury trial, which New Zealand moved away from with the enactment of the Criminal Procedure Act 2011.

There are some constraints on data

Many aspects of a criminal case are particular to that case and can depend on individual human behaviour that influences decisions made during the course of proceedings, such as the decision to elect a jury trial. Similarly, judicial discretion allows for variation in outcome depending on the facts of an individual case, and how an individual judge will apply the law.

The Ministry of Justice Case Management System (CMS) does not record all information related to a case, particularly behavioural information. Officials are therefore limited in the data available to inform evidence-based analysis, and rely largely on stakeholder feedback about their experiences 'on the ground' of what initiatives would or would not achieve the desired outcomes. The Ministry is, therefore, unable to reliably predict or model the outcome of options that may change or depend on human behaviour.

This RIS relies on preliminary modelling

The Ministry does not yet have – but is building – capability to comprehensively model the impacts arising from the full range of initiatives in the District Court Timeliness Programme and / or reported on via the Timely Justice Action Plan, including how the different initiatives interact with each other. Therefore, we are not currently able to confidently predict how other initiatives will impact and be impacted by options addressed in this RIS. As this capability further develops, the Ministry will be better able to assess the relative impacts of the initiatives.

Assessment of the options thus far has been limited to the impact they will have on the District Court. The District Court is the busiest court in New Zealand, and is where delays in progressing cases is most prominent. Jury trial elections affect category 3 cases, most of which are heard in the District Court. If the number of jury trials in the system is reduced, resulting in an increase in the number of JATs, we expect there will be an increase in appeals heard by the High Court (appeal court for JATs), but a lower number of appeals being heard in the Court of Appeal and Supreme Court (appeal courts for jury trials). The impact of the options in this paper on the senior courts (High Court, Court of Appeal and Supreme Court) – will be analysed in the final RIS and will inform advice to Cabinet.

Public engagement will inform final policy decisions

This RIS is intended to accompany a discussion document, published on the Ministry of Justice website, for the purposes of undertaking public consultation on the options as agreed by Cabinet. Affected agencies will also be consulted further on the options during this period. It therefore does not incorporate feedback received from public consultation (but initial consultation with affected agencies, i.e. Police, Crown Law, Public Defence Service has greatly assisted in developing policy options), and does not cover detailed

financial or operational impacts of the options. These are indicated at a high-level in this RIS and will be confirmed in more detail in the final RIS and will inform final policy decisions sought through Cabinet.

Responsible Manager

Kathy Brightwell
Acting Deputy Secretary
Policy Group
Ministry of Justice



31 July 2024

Quality Assurance

Reviewing Agency:	Ministry of Justice
Panel Assessment & Comment:	<p>The Ministry of Justice’s RIA QA panel has reviewed the Interim Regulatory Impact Statement: Jury trial timeliness prepared by the Ministry of Justice and considers that the information and analysis contained in the Statement meets the Quality Assurance criteria.</p> <p>The purpose of the Interim RIS (IRIS) is to supplement and address any gaps in the discussion document and to support public consultation on reform. Accordingly, the panel has based its assessment having regard to whether there is adequate description in both documents of the issues relating to defendants electing jury trials and the resulting delays in the criminal jurisdiction of the District Court, the objectives of reform, and identification of the options.</p> <p>As an interim analysis, the panel considers that it clearly articulates the problem to be addressed, uses appropriate supporting information and data, with the limitations and constraints on the analysis clearly identified. The IRIS identifies that the discussion document is to allow public engagement on the options outlined in that document and notes that further consultation with relevant agencies will take place which will indicate financial or operational impacts of the options which will inform final policy decisions.</p> <p>The panel would expect a future complete RIS to include relevant feedback from the proposed consultation process, and to indicate the costs, operational impacts, and implementation arrangements once a preferred option or options are identified.</p>

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the counterfactual expected to develop?

The criminal jurisdiction of the District Court is under pressure

1. Over the past five years, the overall number of new criminal cases entering the District Court has decreased by 17 percent. However, there has been a significant increase in the number of events² and, consequently, resource for the court and lawyers required to dispose of a case.
2. The increasing number of jury trials is significantly contributing to delays in the District Court, exacerbated by the length of time they take and court resource to resolve.
3. Between 2022 and 2023, the number of events required to dispose of a jury trial case was on average 13.5 events (largely due to adjournments), compared to 8.6 events required for a JAT. Jury trials also require more events in the trial stage, using more judge time. This has, in turn, led to an increase in:
 - a. the time taken to dispose of jury trial cases in the District Court: the average number of days has increased from 349 days to 498 days over the past five years.
 - b. the number of active jury trial cases in the District Court: the number of active cases has increased from approximately 1,750 in January 2016 to approximately 3,500 in January 2024.³
4. Timeliness has also been affected by external factors, such as COVID-19 and severe weather events, which paused court operations for significant periods of time. Court capacity impacts on how quickly cases can progress through the courts.

Delays in the courts affect all court participants and affect public confidence in the criminal justice system

5. Timely justice is critical to public confidence in the integrity of the criminal justice system. Delays take a personal toll on victims, complainants, witnesses, defendants, and whānau, and can increase the time before people can be linked to services they need, such as drug and alcohol treatment, stopping violence programmes and restorative justice initiatives. The impacts of delays include:
 - additional stress or trauma for complainants, victims, witnesses, and whānau, as their lives are put on hold awaiting the outcome of a case;
 - limiting defendants’ right to a trial “without undue delay” under NZBORA;

² An ‘event’ refers to when a judicial officer hears from the parties to the case, and decides what should be done, such as when the defendant first appears in court, administrative matters, or a trial.

³ Active jury trial cases are counted in the trial stage.

- the risk of incentivising defendants' behaviour and choices as to their plea and election – for example, to avoid delays, a defendant may plead guilty, or proceed with a JAT when they may have otherwise preferred a jury trial; alternatively, if a defendant anticipates their proceeding may be stayed due to delays, they may plead not guilty or elect a jury trial where they may otherwise not have; and
- the risk of complainants and witnesses withdrawing due to long wait times, and their memory of key events fading, which increases the risk of cases being withdrawn or dismissed.

The Government and justice sector has committed to reducing court delays

6. A range of initiatives across the justice sector are expected to help improve court timeliness, including policy and legislative, technology and operational changes that are planned, scheduled for delivery, and already underway.
7. The Chief District Court Judge issued the Timely Access to Justice Protocol on 17 June 2024, consisting of a timely access to justice standard and category-based timeliness thresholds. The court performance standard for criminal cases is that 90% of all District Court criminal cases are disposed of within the category-based timeliness threshold by June 2027. Justice Sector Ministers have committed to the same timely justice standard.
8. The Timely Justice Action Plan has been established to support cross-sector work towards the timely access to justice standard (for the District Court criminal jurisdiction) The Action Plan maintains a view of all justice sector work with the potential to (positively or negatively) impact achievement of the standard, including operational initiatives, system performance, and policy and technology improvements. The Action Plan also monitors and reports on a specific group of justice sector initiatives expected to positively impact timeliness. The Action Plan is governed by the Justice Sector Leadership Board and regularly reports to Justice Sector Ministers. It also forms part of the Reduced Violent Crime Action Plan.
9. Operational initiatives led by the Ministry of Justice and the judiciary, and included under the Action Plan are described below. Some of these initiatives are already underway, with initial impacts on timeliness being observed, soon to be rolled out – either nationwide or trialled as pilot programmes:
 - a. *Te Au Reka (Caseflow Management)* – a joint initiative between the Ministry and the judiciary, implementing a new digital case management system that will move courts and tribunals away from paper-based processes to a modern digital case management system, thereby creating efficiencies in case management.
 - b. *Same day sentencing* – this aims to enable more sentencings to proceed on the day guilt is established (i.e. conviction or guilty plea), where appropriate.
 - c. *Duty Lawyer Operational Policy* – this helps to reduce unnecessary adjournments and deliver more meaningful outcomes at first appearance, and provides for duty lawyers to identify cases suitable for urgent assignment to progress to plea/sentence or resolution of opposed bail.

- d. *Judge-alone trial readiness protocol* (designed by the judiciary) – introducing more active case management by the court (a registrar) to monitor readiness for a JAT, or the possibility of resolution where a trial may not be required.
 - e. *Case Review Best Practice Guidelines* (designed by the judiciary) – establishing a practice in which the judge starts a case review hearing by asking the Police prosecutor how they will prove the case to avoid the large proportion of cases (76%) that are withdrawn, dismissed or have a guilty plea entered at trial, therefore rendering a trial unnecessary.
 - f. *Bail Application Scheduling Protocol* (designed by the judiciary) – the Ministry are supporting this judiciary-led initiative to ensure bail and electronic monitoring cases are only heard by the court when defendants and their counsel indicate matters are ready and can be progressed.
10. New Zealand Police and the Department of Corrections are also progressing initiatives that are monitored and reported on as part of the Timely Justice Action Plan, such as improvements to disclosure⁴ and prosecution models, and custodial access arrangements.⁵ Recent data suggests some of this work is having an impact on timeliness.
11. The Timely Justice Action Plan also maintains visibility of key legislative changes, led by the Ministry of Justice with the intention of creating capacity in the system to be able to progress more cases, more quickly. Some of those legislative initiatives are listed below:
- a. **s9(2)(f)(iv)**
 - b. *Implementation of Family Court Associates* – a new role established to improve timeliness in the Family Court jurisdiction, by dealing with more administrative matters in a case, conducting mediation and issuing pre-hearing decisions, freeing up judges to focus on substantive hearings.
 - c. *Increasing remote participation in court proceedings* – the Ministry is undertaking a first-principles review of the Courts (Remote Participation) Act 2010 to ensure it is fit-for-purpose and can enable the courts to make better use of remote technology to conduct hearings.

⁴ See Criminal Disclosure Act 2008. Disclosure refers to information that is sufficient to fairly inform the defendant of the facts of the case against them.

⁵ Court cases involving defendants in custody are at times underprepared and have to be adjourned to a later date because meetings with their lawyer, or other professionals required to provide information to the Court, such as psychologists, are not able to be arranged. The initiatives are aimed at improving access to legal services for people in prison, including by improving availability of remote technology.

12. While current operational and legislative initiatives will go a long way to improving timeliness in the courts overall, they are not specifically directed towards the jury trial jurisdiction (more than encouraging or facilitating earlier resolution which is applicable to all cases, and may reduce jury trial inflows). To improve timeliness for jury trials, more change will be needed.
13. The Ministry of Justice has modelled that under the counterfactual over the next six years the number of jury trials is expected to increase from around 3,500 cases in January 2024, to 4,700 cases by January 2030, worsening delays.

What is the policy problem or opportunity?

The right to a jury trial

14. Section 24(e) of NZBORA provides that every person charged with an offence that carries a maximum penalty of two years or more imprisonment has the right to elect to be tried by a jury.

The jury trial threshold imposes a limit and differentiates what kinds of cases are suitable for a jury trial

15. However, the right to a jury trial is not absolute. Rather, Parliament has imposed a limit, or threshold, in NZBORA to distinguish between those cases considered suitable for a jury trial and those that are not.
16. Currently a person who is charged with an offence and may be in jeopardy of receiving a sentence of two years or more in prison, can choose, or 'elect' to have their case heard by a jury. The types of offences that can be tried by a jury are split into two 'categories' in the Criminal Procedure Act 2011:
 - category 3 offences – these are subject to a sentence of imprisonment of two years or more. The default mode of trial is by a judge alone, but the defendant may elect to have a jury trial;
 - category 4 offences – these are the most serious of offences, such as murder and manslaughter, that are always tried by a jury unless an exception applies and the judge orders that the case be tried by a judge alone (for example if the case is particularly long or complex, or there is or may be intimidation of jurors).

More defendants are electing to be tried by jury

17. Recent trends show that more defendants charged with a category 3 offence are electing to be tried by a jury. The rate at which defendants are electing a jury trial has increased from 26 percent in June 2018 to 32 percent in June 2023.
18. Reasons that defendants are electing a jury trial are not recorded, but anecdotal evidence and submissions received from prosecuting agencies and some legal professional bodies suggests that some defendants are electing jury trial to preserve their options.
19. Where the defence lawyer either has insufficient information to advise a defendant about whether a jury trial or JAT would be best in their case, or the lawyer has insufficient instructions from the defendant, it can be considered the prudent course of

action for the lawyer to advise the defendant to elect a jury trial to preserve their position. It is much easier for a defendant to meet the legal requirements for switching from a jury trial to a JAT, than making a late election for jury trial.⁶

Jury trials require significant time and resource

20. Jury trials, particularly in the trial stage, take up more resource than JATs from the courts, prosecutors, and defence lawyers. With higher numbers of jury trials in the system, they are significantly contributing to delays in the criminal jurisdiction of the District Court. Defendants, victims and whānau are waiting long periods of time between charge and resolution, negatively impacting a defendant's right to be tried without undue delay, and access to justice for both defendants and victims.
21. Factors specific to jury trials that contribute to this greater draw on resources can include:
 - a. *Trial callover* –both parties and a judge attend a hearing to ensure the case is ready for trial, and indicate to the court what will be involved in the trial, such as any expert witnesses or young or vulnerable witnesses that will be called, whether any pre-trial applications will be made, or special arrangements required for the trial such as an interpreter, CCTV or video links.
 - b. *Pre-trial applications* – (these can also be part of a JAT but tend to be more complex and occur more often in jury trials) applications might include admissibility of evidence, and sometimes require a separate hearing to determine.
 - c. *Jurors* – the involvement of jurors increases the resource required and length of a trial itself. The juror empanelling process can take half a day in busy courts and juries retire to deliberate at the end of a case, the time for which can vary greatly, sometimes for days or weeks, adding a lot of time to individual cases.
 - d. *Courtroom availability* – jury trials have specific physical requirements, particularly a jury box in the courtroom, safe access to and from the courtroom for jurors, a deliberation room outside the courtroom, and other facilities available to jurors. Scheduling a trial in these courtrooms is difficult because there are fewer of them available, pushing out available trial dates.
 - e. *Staff requirements* – jury trials often take longer than JATs, which requires more time from court staff and presiding judges. Jury panels also require a court staff member to support them in accessing the courtroom, and supervising while they are in court.

What is the appropriate maximum penalty as a proxy for seriousness?

22. Assessment of whether jury trials are being used to determine appropriately serious cases of offending will require consideration of what constitutes a 'serious' offence.

⁶ Simon France J (ed). 2023. Adams on Criminal Law. Thomson Reuters. The defendant's ability to elect a jury trial at a later time is more restricted than the ability to withdraw an election decision already made, since the former is more disruptive and costly than the latter.

What qualifies as a 'serious' offence is not defined consistently across legislation. Ultimately, what types of offending are suitable to be tried by jury is tied to a decision about the seriousness of an offence.

23. Conceptions of seriousness can change over time. In 2004 the Law Commission recommended⁷ that the threshold for an accused's right to elect a jury trial should be limited to offences regarded as 'serious' by today's standards, and therefore a threshold of five years or more imprisonment⁸. The Law Commission considered that the critical factor was proportionality within the justice system. A jury trial is the largest direct investment the community makes in our system of justice. The Law Commission also noted that it is in the public interest that the community participates in the hearing of serious cases to ensure a range of perspectives is incorporated into the decision-making process. However, it argued jury trials should only be reserved for more serious cases.
24. The Law Commission also noted⁹ that juries fulfil important functions:
 - a. To determine the relevant facts of a case and apply the law to decide a defendant's guilt;
 - b. To act as a community conscience in deciding criminal cases, and bring current community values to the courtroom, balancing what can be a sometimes dispassionate and strictly legal approach to a case;
 - c. To safeguard against arbitrary or oppressive government, and to legitimise and maintain public confidence in the criminal justice system;
 - d. To educate the public about the workings of the criminal justice system: jury trials are often the only insight or opportunity the general public will have to participate in the system.
25. Jury trials are a notable and practical interaction between the law and community values. They provide a defendant accused of serious criminal offending the right to present their case before a cross-section of their community – a jury of their peers. The seriousness of the jeopardy, or punishment, a defendant is facing can also be considered to warrant the need for a jury to decide the case against them. Jury trials ask jurors, as members of the community, to determine a defendant's guilt or otherwise, of a wrong committed against their community. Given the input and responsibility placed on members of the public in these circumstances, it is arguable that jury trials should be used to determine those more serious cases of criminal offending.
26. The primary focus of criminal proceedings should be on society's interest in a fair trial, and ensuring public resources and time are used appropriately. The Law Commission

⁷ *Delivering Justice for All*, New Zealand Law Commission, Report 85, 2004.

⁸ The threshold at the time was three months or more imprisonment. With criminal procedure reforms in 2011, enacted in 2013, the threshold in NZBORA for which eligibility for a jury trial was available was increased to two years or more imprisonment.

⁹ *Juries in Criminal Trials*, New Zealand Law Commission, Report 69, 2001.

has noted¹⁰ that up to a point, efficiency gains will benefit justice and the quality of justice. Therefore, the assessment of how jury trials are currently operating and what can be done to improving timeliness in the system, is a careful balance between protecting fair trial rights, and ensuring timely justice for defendants, victims, and reducing pressure on the court system itself.

Population implications

27. Initiatives that are aimed at improving timeliness in District Court jury trials will contribute to improving access to justice for all New Zealanders. When delays occur in progressing trials, lives are put on hold awaiting an outcome, for defendants, victims and whānau. For a defendant this could also mean lengthy waits in prison, on remand, or being subjected to restrictive bail conditions.
28. We will undertake further analysis of election data for various population groups, including how options will impact defendants. Māori and Pasifika are disproportionately represented, as both defendants and victims, at every stage of the criminal justice system for a range of complex factors. Initiatives to improve timeliness in jury trials will, therefore, contribute to improving access to justice for these groups. During public consultation of the options, we will be undertaking targeted consultation with Māori to understand implications more fully.

What objectives are sought in relation to the policy problem?

To ensure jury trials are reserved for appropriately serious cases of offending, given the significant resource required

29. Given the additional public resource required for jury trials, these should be used to determine appropriately serious cases of alleged offending, where the consequences of the offending are more serious, including the potential impact on the defendant if convicted.
30. This aims to strike a better balance between maintaining a right to a jury trial and the constitutional protections that come with it, and the extra time and resource required to conduct those proceedings for the courts, prosecutors, lawyers and the public.

To improve court performance, efficiency and access to justice

31. Timely access to the court helps to maintain the fairness and integrity of the justice system, protects the NZBORA right to be tried without undue delay, and ensures access to justice for all court participants.

¹⁰ *Criminal Pre-trial Processes: Justice through Efficiency*, New Zealand Law Commission, Report 89, 2005.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the counterfactual?

32. We have used the following criteria to assess and compare options to the counterfactual:
- a. Maintaining fair trial rights
 - b. Improving court performance and timeliness
 - c. Implementation and impacts on prosecution agencies (Police, Crown Law)
 - d. Minimising impacts on complainants, victims and witnesses
 - e. Maintaining public trust and confidence in the criminal justice system

Maintaining fair trial rights

33. This criterion will consider whether the option maintains the right to a fair trial. This is a fundamental tenet of our criminal justice system. It is protected by NZBORA under sections 24 and 25, that set out rights of persons charged with a criminal offence, and minimum standards of criminal procedure. Rights relevant to this criterion include:
- a. Section 24(a) – the right to be informed promptly and in detail of the nature and cause of the charge;
 - b. Section 24(d) – the right to adequate time and facilities to prepare a defence;
 - c. Section 24(e) – the right to the benefit of a trial by jury when the penalty for the offence is or includes imprisonment for two years or more;
 - d. Section 25(b) – the right to be tried without undue delay.

Improving court performance and timeliness

34. This criterion assesses whether the option is likely to result in more timely progression of cases, enabling victims, defendants and whānau to move on with their lives more quickly.

Implementation and impacts on prosecution agencies

35. This criterion will consider how much work and time is required to implement the change, and likely resourcing and funding implications.

Minimising impacts on complainants, victims and witnesses

36. This criterion will consider whether the option presents minimal impacts on complainants, victims and witnesses.

Maintaining public trust and confidence in the criminal justice system

37. This criterion will consider the extent to which the option maintains public trust and confidence in the criminal justice system. This confidence is critical to the maintenance of a well-functioning democracy.
38. Jury trials specifically are an important way for the public to participate in the criminal justice process. Being part of the process aids in 'demystifying' and legitimising the courts, criminal justice system, and the decisions made.

Weighting criteria

39. Some of the criteria must be balanced against each other – for example, there is a natural tension between maintaining a fair trial right (the right to a jury trial) and the timeliness of these jury trials, and improving efficiencies in the courts overall.
40. We consider that of the above criteria, protection of fair trial rights should be given the greatest weight, particularly as it engages rights that are constitutionally protected. For example, limiting the availability of jury trials to murder or manslaughter would deliver the greatest timeliness benefits, but would not outweigh the significant limitation on the right to a jury trial (as currently protected by NZBORA). On the other hand, we note that fair trial rights are broader than the right to a jury trial alone: other factors being equal (such as the rights to legal advice and representation, to examine witnesses and to present a defence), a fair trial can be equally achieved if heard by a judge sitting alone.
41. The balance, or trade-off was a concern when the threshold was last increased under the Criminal Procedure (Reform and Modernisation) Bill from three months to two years. The then Attorney-General's Section 7 Report to the House of Representatives¹¹ found although an increase to the threshold to three years or more imprisonment, as was proposed at the time, was necessarily inconsistent with NZBORA, it still maintained the right to a fair trial when balanced against the delays the system was experiencing and impacts on access to timely justice.

What scope will options be considered within?

42. This RIS analyses options for ensuring jury trials are used for appropriately serious offences.

Operational options

43. This RIS does not analyse operational options for improving the timeliness of jury trials, or for improving court timeliness more generally. These options are being considered separately and are discussed in the counterfactual section of this RIS (paragraphs 6-10).

¹¹ Report of the Attorney General, under the New Zealand Bill of Rights Act 1990 on proposed amendment to s 24(e) of the New Zealand Bill of Rights Act 1990 in the Criminal Procedure (Reform and Modernisation) Bill, presented to the House of Representatives pursuant to section 7 of the New Zealand Bill of Rights Act 1990 and Standing Order 261 of the Standing Orders of the House of Representatives

Expressing the right to a jury trial in NZBORA in alternative ways, such as for 'serious offences'

44. As noted in the Limitations section, analysis so far has assumed continuing to use a maximum penalty as a threshold in NZBORA to determine eligibility for a jury trial, and mirroring this in the Criminal Procedure Act 2011. However, we are consulting in the accompanying discussion document on the idea of expressing the right to a jury trial in NZBORA in a more general way, such as for 'serious offences'.
45. Initial assessment shows this may include setting a principles-based minimum standard in NZBORA, while a maximum penalty threshold is retained in the Criminal Procedure Act. The Criminal Procedure Act threshold would then need to be consistent with, or a justified limitation on, the NZBORA right. If a standard of 'serious offences' is adopted in the NZBORA right, definition of 'serious offences' would likely be required elsewhere in statute, and offences could qualify through maximum penalty, to mitigate risk of legal challenges for consistency of the threshold set in the Criminal Procedure Act with NZBORA.
46. This would be a departure from current practice. Using a maximum penalty is an imperfect proxy for seriousness, as it may not effectively address discrepancies between maximum penalty and the actual sentence handed down to a defendant. Penalty levels are to some degree a rough measure for the seriousness of an offence as any one offence may cover a range of offending behaviour. However, the penalty level for an offence reflects the seriousness with which Parliament has applied to it, and provides certainty of criminal procedure and a protected right for certain types of offences.

Increasing judicial capacity

47. Increasing the statutory judicial cap (number of judges) to increase the capacity of the system is not within scope of this options analysis. Apart from funding for judicial salaries, there would be significant property and staffing implications, with additional registry and security staff, and courtroom, chambers and registry staff space required to be built or acquired.

What options are being considered?

Option One – Counterfactual

48. Currently, the criminal jurisdiction of the District Court is under pressure. The time taken and effort required to dispose of cases has been increasing over the last five years. Jury trials are contributing to these delays significantly, because of the additional time and resource they require, and we are seeing higher than normal election rates.
49. While initiatives under the Timely Justice Action Plan are intended to improve timeliness in the courts overall, most are not specifically directed towards the jury trial jurisdiction. Modelling indicates that without legislative change, the numbers of jury trials, and time taken to dispose of them, will only increase. Additionally, jury trials would continue to be used for cases involving offending that might be considered less serious.
50. The counterfactual is explained further in Section 1.

Option Two – Increasing the jury trial threshold

Option description

51. Initial modelling indicates that, based on the current election rate, an increase to the jury trial threshold would result in a direct reduction in the number of jury trials, while preserving the right to a jury trial.
52. Options for the levels of increase to the threshold under consideration are:
 - three years or more imprisonment;
 - five years or more imprisonment; and
 - seven years or more imprisonment¹²
53. The threshold would be increased by using maximum penalty as a proxy for seriousness. The option would require an amendment to section 24(e) of NZBORA, and a consequential amendment to section 6(1) of the Criminal Procedure Act 2011.

Analysis

54. Regardless of the increase to the threshold, it will remain the case that a proportion of defendants who are able to elect a jury trial based on the offence they are charged with, receive a prison sentence of significantly less than that maximum penalty, because their offending may not fall into the most serious level of offending within that offence type.
55. The option to increase the jury trial threshold will result in an increase in JATs. While JATs are generally less resource-intensive and are resolved in a more timely manner than jury trials, they present their own challenges (discussed further in the Implementation section).
56. Police and Crown Law generally agree this option will reduce the number of jury trials and improve timeliness. However, they noted that the increased numbers of JATs would increase the workload of Police and Police Prosecution Service, and affect the administration of the Crown Solicitor bulk fund.
57. The criminal justice system disproportionately impacts Māori. Further analysis will be required to determine the impact of the option on Māori, for example, the proportion of defendants who are Māori that are charged at different maximum penalty levels, who are electing a jury trial. However, the objective of more timely access to justice should benefit defendants and victims, who are disproportionately Māori. We will be able to test this further during targeted consultation with Māori, and impacts will be more fully analysed as part of the final RIS.
58. The option should also benefit some complainants, victims and witnesses in that some cases which are currently eligible for jury trial would be then progressing as a JAT,

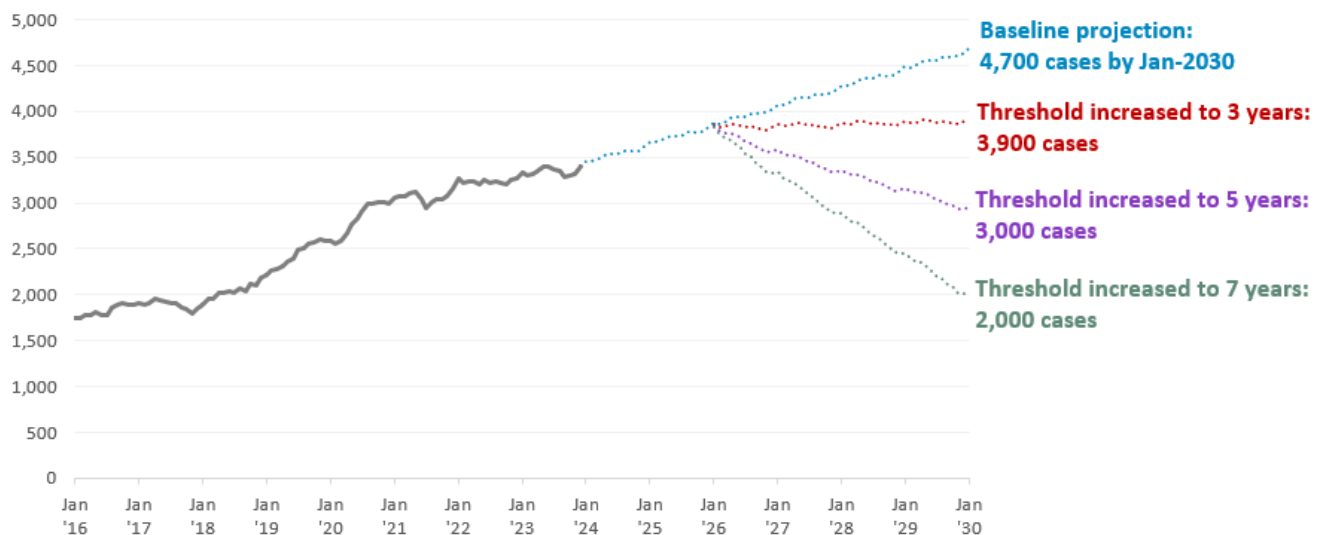
¹² There are very few offences that carry a four-year or six-year maximum penalty.

which is generally resolved more quickly, is more straightforward and less stressful for victims than a jury trial.

What are the sub-options for increasing the jury trial threshold?

59. An additional consideration for Option 2 – increasing the jury trial threshold – is what level the increase should be. This RIS analyses the impacts of raising the threshold to:
 - a. three years or more imprisonment;
 - b. five years or more imprisonment; and
 - c. seven years or more imprisonment.
60. Each incremental increase will impact different offences, and reduce the number of jury trials in the court system by differing amounts. Ministry of Justice projections are set out in Figure 1.¹³

Figure 1: Estimated impact of increased jury trial election threshold (Jan 2024 – Jan 2030)



Option 2a: increase the jury trial threshold to three years or more imprisonment

61. Initial modelling shows that an increase to the jury trial threshold to **three years or more** would reduce the inflow of jury trial cases **by an estimated seven percent**, and the number of predicted active jury trial cases **by 17 percent by January 2030**.
62. This would present a relatively small shift from the current law of a two-year threshold. The three-year threshold would exclude some offences that might be considered less serious. Equally, there are some offences that would be excluded that may still be considered serious.

¹³ Data counts active cases in the trial stage. Based on current election rates.

63. Types of offences that would no longer be captured within the eligibility to elect a jury trial (in other words, offences that carry a maximum penalty of two years) include:
- unlawfully carry an imitation firearm (Arms Act 1983)
 - render false accounts (Real Estate Agents Act 2008)
 - male assaults female (Crimes Act 1961)
 - unauthorised access or improper use of customs entry processing system (Customs and Excise Act 2018)
 - mistreat patient (Mental Health (Compulsory Assessment and Treatment) Act 1992)

Option 2b: increase the jury trial threshold to five years or more imprisonment

64. Initial modelling shows that an increase to the jury trial threshold to **five years or more** would reduce the inflow of jury trial cases **by an estimated 16 percent**, and the number of predicted active jury trial cases **by 36 percent by January 2030**.
65. This would present a more significant shift from the current law of a two-year threshold. A five-year threshold would exclude more offences that might be considered less serious. Equally, there are some offences that would be excluded that may still generally considered to be of a serious nature.
66. As well as the offences listed above, types of offences that would no longer be captured within the eligibility to elect a jury trial (in other words, offences that carry a maximum penalty of two, three or four years) include:
- unlawfully possess a pistol or restricted weapon (Arms Act 1993)
 - aggravated assault (Crimes Act 1961)
 - make, possess, publish, import, export or sell an intimate visual recording (Crimes Act 1961)
 - dishonestly take or use a document (Crimes Act 1961)
 - impaired or aggravated careless driving causing death or injury (Land Transport Act 1998)
 - produce a counterfeit chip or is in possession of equipment for counterfeit chips (Gambling Act 2003)

Option 2c: increase the jury trial threshold to seven years or more imprisonment

67. Initial modelling shows that an increase to the jury trial threshold to **seven years or more** would reduce the inflow of jury trial cases **by an estimated 23 percent**, and the number of predicted active jury trial cases **by 57 percent by January 2030**.
68. This would present a very significant shift from the current law of a two-year threshold. A seven-year threshold would exclude offences that might be considered less serious. Equally, there are a wide range of offences that would be excluded that could still generally considered to be of a serious nature.

69. As well as the offences listed above, types of offences that would no longer be captured within the eligibility to elect a jury trial (in other words, offences that carry a maximum penalty of two, three, four or five years) include:

- take a dangerous weapon on aircraft (Aviation Crimes 1972)
- falsify records (Companies Act 1993)
- assault with a weapon (Crimes Act 1961)
- set traps likely to injure any person (Crimes 1961)
- arson with reckless disregard for safety of property (Crimes Act 1961)
- tax evasion (Tax Administration Act 1994)

Option Three – Sentence-capped charges

Option description

70. With maximum penalties specified, offences in New Zealand legislation cover a wide range of seriousness, and most offending in New Zealand does not constitute the most serious level of offending for that offence. Therefore, in most cases, a convicted person will receive a penalty that is less than the maximum specified. This can be because offending is at a lower level of seriousness within the relevant offence type and mitigating factors may also be taken into account at sentencing.
71. An analysis of cases resolved in the two years ending August 2023 indicates that of the defendants who elect to be tried by jury and who are convicted of a category 3 offence, a minority – approximately 22 percent – actually receive a sentence of imprisonment of two years or more.
72. A sentence-capped charging system is an alternative charging and sentencing regime designed to address the discrepancy between maximum penalties for offences that a defendant is charged with, and the sentence they ultimately receive, thereby reducing the number of jury trials in the system.
73. A defendant could be charged on a ‘sentence-capped’ basis in cases where the prosecutor (a frontline Police officer) considers it very likely that, if convicted, the defendant would not receive a sentence of imprisonment of two years or more, even though the relevant offence has a higher maximum penalty. The defendant in this case would not have the right to elect a jury trial, and, if convicted, the sentencing judge would not be able to impose a sentence of imprisonment of two years or more. If appropriate, the court would be able to remove the cap on a charge at any time up until trial (for example if further evidence came to light that rendered the offending more serious), and the defendant would be able to re-enter a plea to the charge, and if pleading not-guilty would be entitled to elect a jury trial.

Analysis

74. There is considerable uncertainty about whether the benefits of the system would be realised. The regime would require significant behavioural and practice change from various court participants, including Police, prosecutors and judges. Benefits would

depend on Police filing sentence-capped charges at a high rate, with a low rate of amendment by the court. Police officers would be required to decide an appropriate sentence for an offender at a very early stage in proceedings when their investigation is likely to be ongoing. Therefore, we consider there is a risk of high rates of amendment of charges, which would worsen court delays.

75. The assessment also presented several other issues with the regime, such as significant impact on a defendant's fair trial rights, and has the potential to create incentives to plead guilty early without receiving full disclosure for a significantly reduced sentence, or holding off on a guilty plea in the hopes of an amended charge later, unnecessarily prolonging a case. Placing sentencing decisions in the hands of individual prosecutors encroaches on the sentencing role of the court with the potential to create inconsistency in sentencing practice, undermining public confidence in the criminal justice system. A sentence-capped charges regime may create uncertainty and complexity in the system that could negatively impact victims, diminish the role of a victim impact statement in sentencing, and risk undermining the benefits of other timeliness initiatives.
76. Prosecuting agencies also identified significant complexity with this option, and considered it would worsen delays through cases switching between the JAT and jury trial track.
77. Sentence-capped charges could also magnify any unconscious bias of individual prosecutors. Under that system, they would have discretion as to whether to lay a sentence-capped charge, and therefore to determine whether the defendant can elect a jury trial, as well as what level of imprisonment is available.
78. The Minister of Justice has agreed to not progress further work or public consultation on this option.

How do the options compare to the counterfactual?

Part 1 of this section analyses the options of increasing the jury trial threshold and sentence-capped charges against the counterfactual. **Part 2** of this section analyses different options for an increase to the jury trial threshold, recognising that a preferred increase has not been identified, either through Ministerial direction or public consultation.

We note that for the purposes of this analysis, we will not be including ‘the right to be tried without undue delay’ as part of the ‘*Maintaining fair trial rights*’ criterion (notwithstanding its importance as part of fair trial rights). This right is instead considered as part of the ‘*Improving court performance and timeliness*’ criterion.

Part 1: Options

	Option One – Counterfactual	Option Two – Increasing the jury trial threshold	Option Three – Sentence-capped charges
Maintaining fair trial rights	0 Fair trial rights are maintained.	0 While increasing the jury trial threshold will necessarily impact the right to a jury trial under section 24(e) of NZBORA, other fair trial rights under sections 24 and 25 of NZBORA are maintained. These other fair trial rights are equally maintained if heard by a judge sitting alone.	-- A sentence-capped charges regime will have significant NZBORA implications, as it effectively allows a Police officer or prosecutor to rule out the option of a jury trial for defendant that would ordinarily have the right to elect a jury trial if charged with an offence carrying a maximum penalty of two years or more. The ability to amend a sentence-capped charge later in proceedings – even if in the interests of justice – could impact the defendant’s right to know the nature of the charge against them (s 24(a) of NZBORA).
Improving court performance and timeliness	0 Delays in jury trials are expected to worsen, as case numbers continue to increase and jury trials remain available for offences that may be considered to be less serious. Some initiatives under the Timely Justice Action Plan are expected to reduce delays and efficiencies are expected to improve in the courts more broadly.	++ Increasing the threshold will benefit timeliness in jury trials, as there are fewer jury trials in the system so those that remain may be progressed more quickly. Fewer jury trials in the system will free up judicial and court resource to focus on clearing backlog in other jurisdictions. This option will result in an increase in JATs, but over time should improve timeliness across the court system more broadly.	- The regime is intended to reduce the number of jury trials in the criminal jurisdiction of the District Court. However, those outcomes are uncertain as they rely on the behaviour of Police, prosecutors and judges. Furthermore, the risk of amendment to capped charges and switching between jury and judge-alone tracks will create churn in the system, worsening delays.
Implementation and impact on prosecution agencies	0 The courts and New Zealand Police are in a period of change managing rollout of initiatives, including those under the Timely Justice Action Plan. Over time this is expected to lessen workload for prosecution agencies. However, over time if the number of jury trials continues to increase, this will likely impact the workload for Crown solicitors and increase pressure on the court’s workload.	+ A reduced number of jury trials will ease workload pressures for Crown prosecutions and the courts. An increase in JATs will mean a greater workload for Police and the Police Prosecution Service, with a corresponding decrease in Crown prosecutions, likely requiring a shift of resources and funding to reflect the change in workload. An increase in JATs will present initial implementation and scheduling changes for the courts. There will likely be an increase in appeal workload for the High Court (the appeal avenue for JATs), but a decrease in appeal workload to the Court of Appeal and Supreme Court (the appeal avenue for jury trials). A reduction in jury trials should ease workload pressures across the system.	-- The sentence-capped charges regime would require frontline Police officers to undertake a complex sentencing assessment at very early stages of a proceeding, with limited information, that is usually performed by a sentencing judge at the end of a case, with the benefit of all relevant information available to them. This would present significant training and resourcing implications for Police. The regime would present significant implementation challenges for the courts, introducing new case management systems and managing cases that may often switch between jury and JAT jurisdictions. It would likely also undermine the effectiveness of, or detract resource from, initiatives underway that are under the Timely Justice Action Plan.

	Option One – Counterfactual	Option Two – Increasing the jury trial threshold	Option Three – Sentence-capped charges
Minimising impact on victims and witnesses	0 The counterfactual is not expected to impact victims and witnesses differently or further. However, complainants and victims will continue to wait long periods of time for their cases to be resolved, potentially longer if jury trial case numbers and delays are expected to increase.	++ Trials – both JAT and jury – that are progressed more quickly will benefit victims as resolution of a case will be more timely. Moreover, victims have expressed preference for a JAT over jury trials, particularly if they are required to give evidence. ¹⁴	-- The sentence-capped regime would create more complexity for victims, who already find the criminal justice system overwhelming and hard to understand. It could be seen as downgrading the experience of victims when an assessment of likely sentence is made very early on in criminal proceedings, before victims have given evidence. It would also diminish the role of a victim impact statement in advance of sentencing.
Maintaining public confidence in the criminal justice system	0 Continuing with a low threshold and delays in progressing jury trials will likely negatively impact the public's confidence in the justice system, to administer justice fairly and efficiently.	+ Ensuring that jury trials are reserved for the more serious cases of offending should reflect to the public that the resources and time that jury trials require are justified. If delays are reduced and cases are resolved in a more timely way, this will also increase public confidence in the integrity of the criminal justice system.	-- There is a risk of public perception that restricting sentences at the beginning of a case, and decreasing a sentence without testing evidence in court, is 'soft on crime'. The regime risks inconsistency of sentencing practices across the country, placing those decisions in the hands of individual prosecutors, risking 'postcode justice'.
Overall assessment	0	++	--

¹⁴ Strengthening the Criminal Justice System for Victims: Te Tangi o te Manawanui Recommendations for Reform, Chief Victims Advisor to Government, 2019.

Part 2: Options for increasing the jury trial threshold

	Option 2a – Three years or more imprisonment	Option 2b – Five years or more imprisonment	Option 2c – Seven years or more imprisonment
Maintaining fair trial rights	0 An increase to a three-year threshold impacts on the right to a jury trial as it is currently by excluding some offences from eligibility for a jury trial, but other fair trial rights under section 24 and 25 of NZBORA are maintained.	0 An increase to a five-year threshold impacts on the right to a jury trial as it is currently to a greater extent by excluding a greater number of offences from eligibility for a jury trial, but other fair trial rights under section 24 and 25 of NZBORA are maintained.	- An increase to a seven-year threshold impacts on the right to a jury trial as it is currently to a significant extent by excluding a substantial number of offences from eligibility for a jury trial, but other fair trial rights under section 24 and 25 of NZBORA are maintained.
Improving court performance and timeliness	+ Initial modelling shows that an increase to the jury trial threshold to three years or more would reduce the annual inflow of jury trial cases by an estimated seven percent, and predicted number of active jury trial cases by 17 percent by January 2030, with some timeliness benefits. The right to be tried without undue delay would be enhanced for those trials being heard by a judge alone rather than a jury, as on average JATs are resolved more quickly.	++ Initial modelling shows that an increase to the jury trial threshold to five years or more would reduce the number of jury trial cases by an estimated 16 percent, and predicted number of active jury trial cases by 36 percent by January 2030, with greater timeliness benefits. The right to be tried without undue delay would be enhanced for those trials being heard by a judge alone rather than a jury, as on average JATs are resolved more quickly.	++ Initial modelling shows that an increase to the jury trial threshold to seven years or more would reduce the number of jury trial cases by an estimated 23 percent and predicted number of active jury trial cases by 57 percent by January 2030. The right to be tried without undue delay would be enhanced for those trials being heard by a judge alone rather than a jury, as on average JATs are resolved more quickly.
Implementation and impact on prosecution agencies	0 An increase to the threshold of three years would have some workload pressures on the Police Prosecution Service as they will be required to prosecute an increased number of JATs, which will be of increased complexity. Workload could decrease for Crown prosecutions so funding could shift to reflect this shift in workload.	0 An increase to the threshold of five years would have greater workload pressures on Police Prosecution Service as they will be required to prosecute higher numbers of JATs, which will be of increased complexity. Workload could decrease for Crown prosecutions so funding could shift to reflect this shift in workload.	- An increase to the threshold of seven years would have significant workload pressures on Police Prosecution Service as they will be required to prosecute higher numbers of JATs, which will be of increased complexity. Workload could decrease for Crown prosecutions, but Police prosecutions may be outsourced to Crown solicitors due to capacity pressures at an hourly rate, which requires more funding than rates under the Crown Solicitor Bulk Fund.
Minimising impact on victims and witnesses	+ Trials – both JAT and jury – that are progressed more quickly will benefit victims as resolution of a case will be more timely, insofar as an increase to the threshold of three years has timeliness benefits. Moreover, victims have expressed preference for a JAT over jury trials, particularly if they are required to give evidence, so fewer jury trials in the system may benefit victims.	++ Trials – both JAT and jury – that are progressed more quickly will benefit victims as resolution of a case will be more timely, insofar as an increase to the threshold of five years has timeliness benefits. Moreover, victims have expressed preference for a JAT over jury trials, particularly if they are required to give evidence, so fewer jury trials in the system may benefit victims.	++ Trials – both JAT and jury – that are progressed more quickly will benefit victims as resolution of a case will be more timely, insofar as an increase to the threshold of seven years has timeliness benefits. Moreover, victims have expressed preference for a JAT over jury trials, particularly if they are required to give evidence, so fewer jury trials in the system may benefit victims.
Maintaining public confidence in the criminal justice system	0 An increase to the threshold to three years would limit the right to a jury trial to slightly fewer offences than it is currently available for, so the higher level of transparency and public participation associated with jury trials is largely retained. However, fewer timeliness benefits may reduce public confidence in the system in its ability to administer justice in a timely manner.	+ An increase to the threshold to five years would limit the right to a jury trial to moderately fewer offences than it is currently available for, so the higher level of transparency and public participation associated with jury trials is retained, albeit to a lesser extent. Greater timeliness benefits from a larger decrease in the number of jury trials in the system may increase public confidence in the system in its ability to administer justice in a timely manner.	- An increase to the threshold to seven years would limit the right to a jury trial to significantly fewer offences than it is currently available for. While the greatest timeliness benefits may increase public confidence in the system's ability to administer timely justice, confidence may be negatively impacted if the public see this as severely reducing their participation in the criminal justice system and its transparency.
Overall assessment	+	++	-

Section 3: Delivering an option

How will the new arrangements be implemented?

79. Implementation arrangements will be confirmed when a preferred option is identified following public consultation, and final policy decisions sought from Cabinet.
80. We have identified a range of issues that will require consideration when determining implementation arrangements. Initial assessment has indicated that the most significant operational change for the courts will be strengthening capacity of smaller courts to accommodate an increase in JATs. Some of the operational considerations include:
- a. staffing increases, including registry and security staffing;
 - b. judicial rostering;
 - c. increased security requirements, including holding cells, with potential for more cases involving gang activity and multiple defendants;
 - d. travel for victims, witnesses, expert witnesses from main centres to smaller courts, which is reimbursed by the Ministry of Justice;
 - e. audio-visual capabilities;
 - f. increased workload for JAT witness summons processing; and
 - g. increased transport of defendants in custody (if custodial facilities are further away from smaller courts used for JATs).
81. A reduction in the number of jury trials and corresponding increase in JATs will result in an increased workload for Police and the Police Prosecution Service. Police has advised this will present workload pressures and require additional funding.
82. The Solicitor-General has responsibility for prosecuting jury trials (and offences that are listed in the Schedule of the Crown Prosecution Regulations 2013). A decrease in jury trials will also likely have an impact on the Crown Solicitor Bulk Fund, administered by the Public Prosecutions Unit that operates within the Crown Law Office.
83. Officials will continue to work with Police and Crown Law on the exact impacts of the options on their prosecution models, and on current funding arrangements.

How will the new arrangements be monitored, evaluated, and reviewed?

84. The Ministry of Justice is regularly reporting to Justice Sector Ministers and the judiciary on case numbers and timeliness across all jurisdictions, which will continue as this work progresses. Monitoring, evaluation and review plans will be confirmed when a preferred option is identified, and a proposal is taken to Cabinet.

Appendix One: International comparisons

In comparable jurisdictions (such as England and Wales, Australia and Canada), the jury trial threshold is effectively between six months and two years or more imprisonment so raising our threshold would put us out of step with some other jurisdictions. Direct comparisons, however, are difficult as most of these jurisdictions use a complex system of summary and indictable offences rather than the simpler, transparent and more efficient maximum penalty system that New Zealand applies.¹⁵

Country	Jury trial availability
Australia	In all Australian states and territories, juries are only used in indictable or serious criminal cases, while less serious or summary criminal proceedings are heard by a magistrate or judge alone. Though there are variations from state to state, the jury trial threshold is typically for offences which carry a sentence of one to two years or more imprisonment.
England and Wales	In England and Wales there is no constitutional right to be tried by a jury, but it is available only for indictable offences (such as murder, manslaughter, grievous bodily harm with intent, and robbery) and is tried in the Crown Court. Defendants facing 'either-way' offences can be tried in the Magistrates Court or the Crown Court. An 'either-way' offence is tried in the Crown Court if the offence carries a penalty of more than six months' imprisonment (or more than 12 months if for two or more offences), or if the defendant elects a trial by jury.
Canada	Section 11(f) of the Canadian Charter of Rights states that anyone charged with an offence which carries a prison sentence of five years or more guarantees the right to a trial by jury. However, for most indictable offences (those with a maximum penalty of two years or more), the defendant can elect a jury trial.
United States of America	In the United States of America, all offences punishable by a sentence of six months or more imprisonment has a constitutional right to trial by jury.

¹⁵ In New Zealand, the Criminal Procedure Act 2011 replaced the Summary Proceedings Act 1957 and created a system of offence categorisation that sets the pathway of a case through the court system. It made a deliberate move away from what was a system of "summary" offences (generally less serious offences that are tried by a judge or other judicial officer) and "indictable" offences (more serious offences that are tried by jury). This included removing the ability for the prosecutor to lay specified indictable charges summarily and, by doing so, determine whether or not the defendant would be able to exercise their right to a jury trial.