

# ANNUAL REPORT

2018/19

Te Tari Ture o te Karauna

# Crown Law

The coat of arms of New Zealand, featuring a shield supported by a Māori woman on the left and a European woman on the right. The shield is divided into four quadrants: top-left (blue with three white stars), top-right (red with a white anchor), bottom-left (white with a red sunburst), and bottom-right (blue with a white hammer and pickaxe). A crown sits atop the shield. A banner at the bottom reads "NEW ZEALAND".

*Presented to the House of Representatives pursuant to section 44(1) of the Public Finance Act 1989*

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*This year at a glance*

**92%**

of feedback from other agencies overall

**GOOD TO EXCELLENT**



**1%**

**6**

Crown Solicitor

**REVIEWS COMPLETED**



**no change**

**62%**

of appeals brought by the Crown concluded

**IN FAVOUR OF THE CROWN**



**11%**

**31%**

of appeals brought by the defendant concluded

**IN FAVOUR OF THE DEFENDANT**



**9%**

**5,155**

**PROSECUTIONS COMPLETED**

by the Crown Solicitor Network



**1%**

**166**

new claims for the

**WAITANGI TRIBUNAL**



**144%**

**76%**

**LITIGATION MANAGEMENT PLANS**

completed by the due date



**9%**

**229,125**

**HOURS OF SERVICE PROVIDED**

by the Crown Solicitor Network



**6%**

# OVERVIEW FROM THE SOLICITOR-GENERAL

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This has been another successful year for the Crown Law Office. We have continued to provide legal support to all areas of the Crown, which this year has also included supporting the establishment of several significant public inquiries. Some highlights of our legal work are summarised in this report and demonstrate how central this Office is to both New Zealand's constitution and to the delivery of the government's priorities.

Once again, we have carried out a survey to test how other agencies value our work and rate our performance. I am pleased to see that the results continue to be positive, with 92% of feedback from other agencies rating our performance as good to excellent.

We have continued to strengthen our commitment to collaboration across our broader networks, including identifying opportunities to leverage wider benefits from our work wherever possible. Within Crown Law, this year we have carried out a successful pilot of a new model for providing strategic legal advice on issues of Crown-wide importance. We now plan to implement this model on a 2-year fixed term basis as part of a new System Leadership Group within Crown Law. This is an encouraging step towards the system-leadership approach that we see as central to Crown Law's vision of providing collaborative, indispensable legal service.

This legal work must of course be supported by the right technology and information resources. In the last year, we have further enhanced IT infrastructure. Notably, we have improved our resilience by moving key systems to off-site servers, which supports our business continuity capabilities.

Another milestone this year has been the conclusion of our legal support project. At the end of this reporting year, we concluded that our people and the work they do will be best served by a new model for what we will now call operational services. This will be implemented over the rest of 2019.

We have also continued to focus on our shared values. We have embedded our new ways of working framework. We have had opportunities to reflect on the benefits to all of us of valuing diversity and the differences of perspective and approach that we can gain if we become truly inclusive. We have taken steps to ensure that we provide a welcoming environment for all. In particular, we have established a group of

safety net contact officers who will support staff, in confidence, with addressing any unacceptable conduct they may experience at work.

Looking at how we conduct our legal business and how we work with others, I am pleased that we have significantly exceeded the Law Society's equitable briefing target – 44% of our externally briefed legal files in 2018/19 went to female counsel. Crown Law's overall gender pay gap has reduced from 31.5% last year to 25.3% as at 30 June 2019. The wider context for this is important – detailed data shows that there are no significant gaps between the pay of men and women in the same role. Nonetheless, we will continue to focus on how we can improve in this area and have identified specific actions we will take. Further information on our work to remove our gender pay gap is included in this annual report on page 11.

I am pleased that our work on the gender pay gap reflects wider priorities for supporting equality and the benefits of diversity in the public service workforce.

This year marked the completion of our work on the new Solicitor-General's Guidelines for Prosecuting Sexual Violence, which took effect from 1 July 2019. These best-practice guidelines apply to all prosecutions for sexual violence offences and we hope will help to improve, in particular, the experience of victims and witnesses involved in such cases.

We have worked with other agencies to ensure that we have the right funding in place for Crown prosecutions and that the impact of changes made elsewhere in government is taken into account. Specifically this year, we have secured funding as part of a number of policy proposals that will increase the work required by prosecutors. We continue to work closely with all public prosecutors to ensure they are both sustainably funded and properly supported in the essential work that they do.

I continue to be proud of this office, the work we do and how we do it. I am grateful, as always, for the dedication and efforts of all our people over the past year.

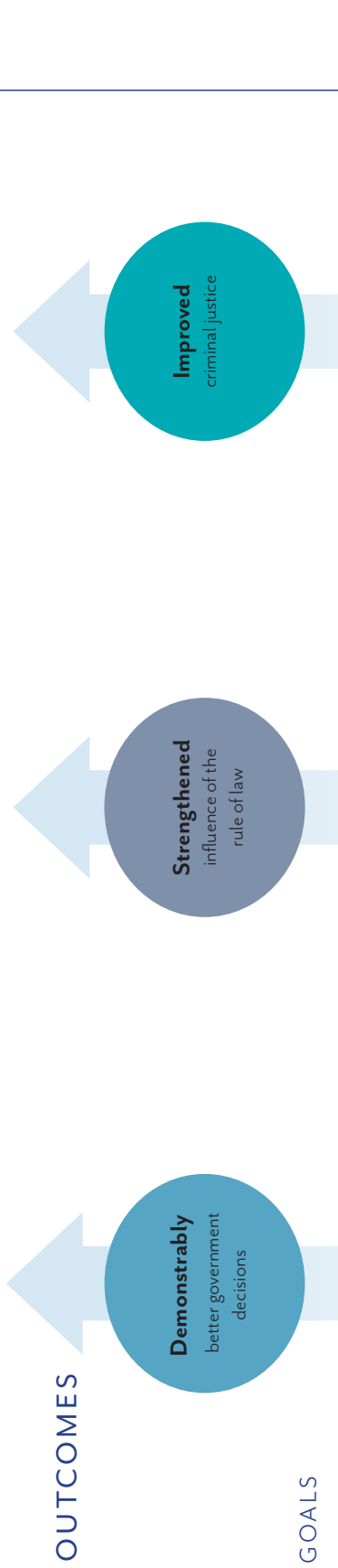


Una Jagose QC  
Solicitor-General and Chief Executive

# CROWN LAW STRATEGY 2017 – 2021

## VISION

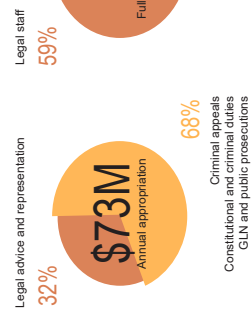
### COLLABORATIVE, INDISPENSABLE LEGAL SERVICE



## GOALS

- 1 Enable government to pursue its policy choices lawfully by providing quality legal services
- 2 Better serve the Crown by leveraging the collective strength of the Government Legal Network
- 3 Increase New Zealanders' confidence in our legal system and lawfulness of decisions
- 4 Improve the quality, consistency and decision making of public prosecutions
- 5 Ensure the quality of Crown prosecutions
- 6 Contribute leadership to a streamlined, efficient mutual assistance and extradition regime
- 7 Ensure the quality of the conduct of criminal appeals

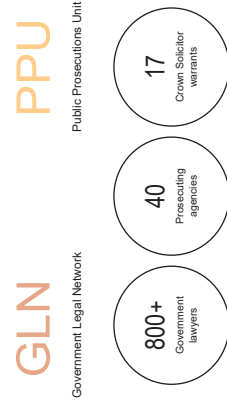
## WHO WE ARE - figures, as at 30 June 2019



## AREAS OF EXPERTISE

- TREATY OF WAITANGI
- CRIMINAL LAW
- HUMAN RIGHTS
- CONSTITUTIONAL LAW
- PUBLIC LAW
- REVENUE LAW

## SYSTEM OVERSIGHT



## MISSION

**LEGAL EXPERTS**  
Ngā kaitiaki o te ture

**KAITIAKI OF THE RULE OF LAW**  
Kaitiaki whakatau i te ture

**SYSTEM LEADERS**  
Ngā kaihautū

# THE DIFFERENCE WE MAKE

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## *Who we are and what we do*

Crown Law's function is to support the Law Officers (the Attorney-General and the Solicitor-General) in performing their roles. The Attorney-General is the senior Law Officer of the Crown with principal responsibility for the government's lawful conduct and administration of criminal law. The Attorney-General is also a Minister of the Crown, with ministerial responsibility for Crown Law and the Parliamentary Counsel Office. The Solicitor-General is the junior Law Officer and is the government's chief legal advisor and advocate in the courts. The Solicitor-General holds office as an official of government and is the Chief Executive of Crown Law and the professional head of lawyers in government.

Crown Law has been providing services for more than 140 years, although in common with many other departments, there is no statutory basis for the establishment of Crown Law.

In particular, Crown Law is responsible for:

- supporting and assisting the Attorney-General and the Solicitor-General in the performance of their statutory and other functions as Law Officers of the Crown;
- the provision of legal advice and representation services to Ministers of the Crown and government departments;
- assisting the Solicitor-General with the conduct of criminal appeals; and
- assisting the Solicitor-General in the supervision and oversight of public prosecutions.

Crown Law provides legal advice and representation services to the government in matters affecting the Executive government, particularly in the areas of criminal, public and administrative law. Crown Law's focus is on core Crown legal work as that term is defined in the Cabinet Directions for the Conduct of Crown Legal Business – essentially, the core legal work for which the Attorney-General and Solicitor-General are constitutionally responsible.

Crown Law has no general responsibility for policy formulation or legislation. However, its

role includes providing advice to Ministers and departments on the legal implications of legislative policy proposals, and Crown Law is represented on the Legislation Design and Advisory Committee. Crown Law also retains a small policy capacity to support the Attorney-General and to contribute to policy work undertaken by other agencies that is relevant to the functions of the Law Officers and Crown Law.

Crown Law contributes to all sectors of government through the legal advice and services provided to the Law Officers and government departments and agencies. Crown Law is also part of the justice sector. The justice sector's vision is a criminal justice system that the public trusts, and a safe, fair and prosperous society. Crown Law contributes to this vision by ensuring that those who cause harm are held to account by facilitating high-quality prosecutions and criminal appeals arising from Crown prosecutions. Crown Law also contributes to enhancing increased public trust in supporting the performance of the Law Officers in their constitutional and other duties.

## *How Crown Law is changing to meet contemporary needs*

Crown Law's vision of collaborative, indispensable legal service is a vision for both Crown Law and the wider networks of lawyers we are part of and oversee. In terms of Crown Law, what makes us unique and the value that we provide (i.e. our mission) is threefold:

**Legal experts:** We are experts in public, criminal, constitutional and Treaty of Waitangi law, enabling government to pursue its policy objectives according to law.

**Kaitiaki of the rule of law:** We support the Law Officers (the Attorney-General and Solicitor-General) to determine the Crown's view of the law.

**System leaders:** We provide leadership for the networks of Crown Solicitors, public prosecuting agencies and in-house government lawyers.

Our strategic direction (see the diagram on page 5) puts the following core outcomes at the heart of what we do:

**Demonstrably better government decisions** refers to our ambition for government lawyers right throughout the State sector to be sought out by decision makers as partners who add real value. They help with identifying lawful options, spot opportunities and solutions to problems, identify legal risk and management options and provide advice in policy and business areas in which those lawyers are expert.

This will mean successive governments are best placed to implement their policy choices lawfully and with better identification and management of risk and opportunity. It should, over time, result in Crown conduct that is less susceptible to successful challenge, increased transparency of process and compliance with the rule of law and, therefore, a more robust democracy.

**Strengthened influence of the rule of law** refers to our role in upholding respect for New Zealand's legal and constitutional framework, including the Treaty of Waitangi and the New Zealand Bill of Rights Act 1990. Governments have legitimacy in our democracy because they are subject to the law of the land like everyone else. New Zealand's reputation on a world stage is also largely dependent on how its domestic governance is seen to respect and protect the rule of law and democratic institutions.

New Zealanders have access to fair and impartial resolution processes, including the courts, through which they can access the checks and balances on the use of executive power. Strengthening the influence of the rule of law will be demonstrated by greater public confidence in the systems that ensure governments act according to law.

**Improved criminal justice** refers to Crown Law's vital role in the justice sector, including: enhancing the quality of Crown prosecutions (through the network of Crown Solicitors who prosecute the most serious offences); improving the quality, consistency and decision making of the approximately 140,000 public (i.e. departmental) prosecutions every year; contributing leadership to a streamlined and efficient mutual assistance and extradition regime; and ensuring the quality of the conduct of criminal appeals.

## **Contribution to the wellbeing domains**

By continuing to focus on the provision of legal advice to decision makers across government, Crown Law, and the wider legal networks it oversees, has an impact on the delivery of policy and operational programmes across the sector that indirectly affect all of the wellbeing domains.<sup>1</sup>

However, Crown Law's primary contribution is through the civic engagement and governance domain, which is defined as "*People's engagement in the governance of their country, how "good" New Zealand's governance is perceived to be and the procedural fairness of our society*". By providing our core legal and constitutional services and functions to a high quality including enhancing the quality of Crown and departmental prosecutions, strengthening and promoting the rule of law and better supporting decision makers across the sector, Crown Law aims to increase trust in government through its decisions and actions.

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<sup>1</sup> Refer to the Treasury's Living Standards Framework for a list of the wellbeing domains.



# OUR ORGANISATION

## Leadership and governance

Crown Law is governed by a Leadership Team that is responsible for the overall direction and strategy of the department. Management of the day-to-day operation of Crown Law's business is delegated to line managers, also known collectively with the Leadership Team as the Combined Management Group. The Leadership Team recognises that success requires enhanced collective leadership and management capability and is committed to improving the strategic focus and management of Crown Law.

As at 30 June 2019, the Leadership Team comprised five members: Una Jagose QC (Solicitor-General and Chief Executive), Oliver Valins (Deputy Chief Executive), Virginia Hardy (Deputy Solicitor-General Attorney-General Group), Brendan Horsley (Deputy Solicitor-General Criminal Group) and Aaron Martin (Deputy Solicitor-General Crown Legal Risk Group).

The Leadership Team has established a Governance Framework. The framework distinguishes between strategic leadership and operational management and helps to ensure Crown Law's resources are optimised without jeopardising the appropriate level of oversight, management and monitoring.

The Leadership Team is supported by several other committees including the Operational Management Committee (OMC), the Professional Standards Committee (PSC), the Health and Safety Panel and the Assurance and Risk Committee (ARC). The OMC supports the Leadership Team and line managers in the management of the day-to-day

operations of Crown Law through operational decision making and monitoring of compliance with processes and procedures. The PSC is dedicated to ensuring standards of best practice are used within Crown Law. The Health and Safety Panel monitors health and safety risks and work programmes and makes recommendations to Crown Law's Leadership Team. Further details on the ARC and Health and Safety Panel are noted below.

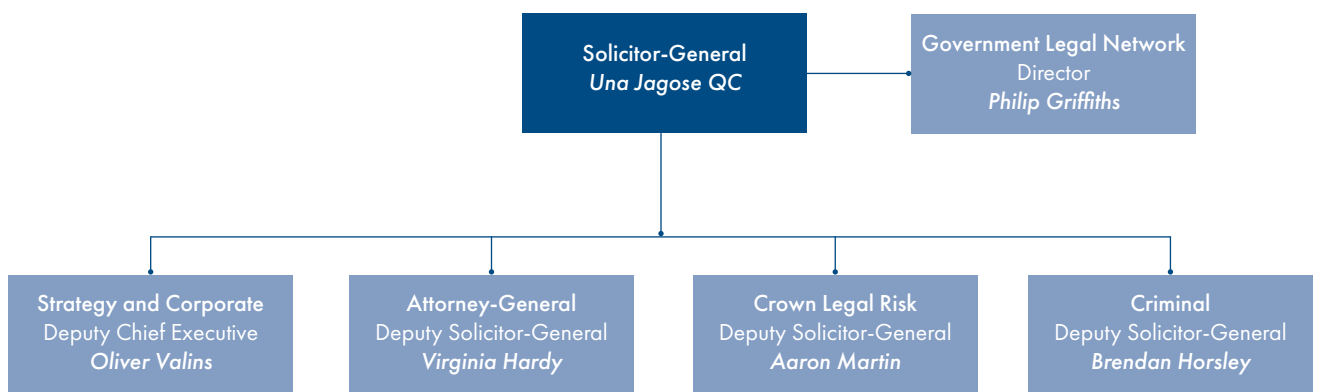
## Managing risk

The Leadership Team is responsible for ensuring that key business, legal and operational risks are identified and appropriate controls and procedures are in place to mitigate or effectively manage those risks. Crown Law operates a Risk Assessment Framework that helps us to assess both legal and operational risk (including technology, privacy, fraud and corruption, and business risk). Risk is assessed by determining the likelihood of an event occurring and considering the impact of the event's consequences.

The Leadership Team has identified six strategic risks (health and safety, sustainability of Crown prosecutions, culture and behaviours, workforce capacity and capability, information security and delivery), which are monitored and reviewed on a regular basis.

The ARC is in place to advise the Solicitor-General and Leadership Team on various topics such as governance, risk management, internal controls, compliance and external reporting. A primary benefit of the ARC is its independence. As at 30 June 2019, the independent committee members

Figure 1: Crown Law organisational structure





appointed were John Whitehead (previously Secretary to The Treasury) as ARC Chair and Becky MacNeill (Deputy Chief Executive Organisational Performance – Ministry for Culture and Heritage). The Deputy Chief Executive of Crown Law is the third ARC member.

## Structure

Crown Law's organisational structure is based on its core service lines and is spread across five groups that encompass one or more teams. Figure 1 notes the structure as at 30 June 2019.

The Crown Legal Risk Group provides legal advice and representation services on public law issues excluding specific Treaty of Waitangi claims and issues addressed by the Attorney-General Group.

The Attorney-General Group provides advice on constitutional and human rights issues and Treaty of Waitangi claims and issues.

The Criminal Group conducts criminal appeals from Crown prosecutions, provides oversight of public prosecution services and provides advice on criminal law issues including criminal mutual assistance and extradition matters.

The Government Legal Network (GLN) team assists the Principal Law Officers in leading the government legal profession. For further information on the GLN team, refer to pages 16–17.

The Strategy and Corporate Group provides support services to the rest of Crown Law including finance, information technology, human resources, historical research, policy, information management, library services and legal administrative support.

## Funding

Crown Law is funded by Vote Attorney-General. Funding for 2018/19 was \$71.2 million, as outlined in the Supplementary Estimates 2018/19, which covered the following:

- \$22.3 million (31% of the Vote) for the provision of legal advice and representation services to government departments and Crown agencies on a full cost-recovery basis; and
- \$48.1 million (68% of the Vote) for the Law Officer Functions (multi-category appropriation), which covered:

- conducting criminal appeals arising from Crown prosecutions (\$3.3 million);
- developing the collective capability, effectiveness and efficiency of government lawyers (the GLN) (\$1.0 million);
- providing assistance to the Principal Law Officers in the exercise of their functions and providing advice on constitutional, criminal law, mutual assistance and extradition matters (\$4.9 million); and
- providing supervision of national Crown prosecution services and oversight of public prosecutions (\$38.9 million).

Crown Law also has a permanent legislative authority for forecast capital expenditure, which was \$0.8 million in 2018/19.

## Performance Improvement Framework progress

In 2017, an external Performance Improvement Framework assessment was undertaken. This assessment endorsed Crown Law's strategic direction. It identified five performance challenges that need to be tackled to ensure we achieve our outcomes:

- Ensuring the way government legal services are delivered (our integrated operating model) supports the increasing complexity of the system and the demands from contemporary practice.
- Upholding and ensuring the embedding of conventions that support a strong, enduring, independent legal framework for New Zealand.
- Developing a culture that will enable the success of the integrated operating model.
- Implementing a People Plan that ensures Crown Law has the right people in all roles (now and in the future) at all levels of the organisation including a network plan and approach.
- Investing in systems, processes and decision frameworks that will drive effectiveness, efficiency, quality and consistency in all of the work that Crown Law does.

In the past 2 years, Crown Law has made good progress in meeting these challenges.

### *Integrated operating model review*

In July 2017, Crown Law initiated a review of how government legal services are delivered (also referred to as the integrated operating model review). The review encompassed Crown Law and the networks it leads, oversees or operates within, including the Government Legal Network (GLN).

The main findings from the review noted there are further opportunities to:

- improve the prioritisation of legal resources across government and to encourage earlier engagement of government lawyers to enable the provision of proactive legal advice;
- enhance system-wide leadership such as enhancing the Solicitor-General's standards and expectations;
- build further capability across the system such as career pathways; and
- remove barriers and manage demand such as by reviewing Crown Law's charging model.

The review also noted that a framework in the form of a Crown legal strategy is needed to document and provide clarity on what matters most, the role of lawyers in the system and how resources are to be directed to government priorities and/or areas of significant legal risk.

To help implement the above initiatives, Crown Law is establishing a new group (the System Leadership Group) to build on the success of the GLN and to provide dedicated resources to take advantage of the above opportunities. As well as continuing the focus of the current GLN team on system risk identification, network development and system capability and capacity issues, the new System Leadership Group will produce strategic one-to-many legal advice and resources.

The new group is expected to be established in October 2019 for a 2-year trial period and will build on a smaller pilot project that was initiated in 2018 to test an alternative and complementary approach to the delivery of government legal services.

The pilot tested the development and delivery of proactive and strategic advice on cross-cutting and emerging issues for government departments and other agencies. One of the project deliverables was successfully completing an update of and modernising the *Judge Over Your Shoulder* publication, which was published and launched in August 2019. The pilot project identified that a

dedicated legal resource operating from Crown Law could enhance and make a positive contribution to legal advice and services delivered across the system.

### *Culture and behaviours*

Following Crown Law's strategic refresh and the importance placed by the Leadership Team on all Crown Law staff working together to deliver our new strategic direction, the Solicitor-General agreed to lead a project in 2017/18 to refresh and implement a new set of behaviours to guide Crown Law's culture.

The specific aims of the project were to:

- articulate what behaviours are acceptable and unacceptable;
- support improvements to Crown Law's operating model;
- ensure the behaviours align with the new strategic direction; and
- ensure the behaviours are reinforced by the whole organisation.

The new behaviours (ways of working) are expected to facilitate a shift to a culture that embraces the professional value of all of the work and all of the people in the organisation with the aim to enhance engagement levels, improve Crown Law's employment brand and enhance our efficiency, effectiveness and customer service levels.

These are the new ways of working:

- We take **pride** in all we do.
- We value our **differences**.
- We look after the **mana** of other people.
- We recognise our **impact** on others.
- We **care** about each other.

To support the ways of working, leadership training was implemented in 2018/19. The ways of working are continuing to be embedded throughout the organisation and are now discussed as part of Crown Law's staff induction and referenced in Crown Law's job descriptions.

### *Government Legal Network People Plan*

The growth of the GLN has seen a rise in collaboration amongst government legal leaders to manage issues and also a rise in system-focused lifting of capability across the GLN – with greater collaboration around information sharing, professional development, risk management and early-in-career programmes providing

significant benefits to the Crown. However, there is still significant room to make better use of the GLN's capability and resources and enhance the opportunities for government lawyers to progress and build their careers.

The GLN developed and launched a People Plan in 2017/18.

The People Plan contains 16 projects that will be prioritised and implemented over the next 4 years. Several of these projects have been progressed in 2018/19. Refer to page 17 for further details.

### *Systems and software*

To drive efficiency, effectiveness, improve customer services and deliver better information for decision making, Crown Law needs to continue to invest in and enhance its systems and software applications and supporting processes.

A systems and software programme was established in 2017/18 with the following objectives:

- To evaluate, prioritise and identify the sequence of system and software changes to improve the tools, processes and information to enable management and staff to deliver our new strategy.
- To identify the level of operating and capital investment, up front and ongoing, required to improve and sustain systems at fit-for-purpose levels.

Progress to date includes:

- replacing the remaining on premises infrastructure with the all-of-government Infrastructure as a Service approach;
- replacing the network and related security services with the all-of-government Telecommunications as a Service offering;
- migrating the remaining PCs to a Desktop as a Service approach;
- refreshing our laptop and mobile phone devices;
- approving a strategy for the implementation of Office 365 and a unified communication approach;
- installing new meeting room technology; and
- upgrading core business applications.

### *People and capability*

To achieve our strategic outcomes and goals, we need our people to be engaged, work collaboratively, have a diverse range of views and

feel comfortable communicating and considering different perspectives. This will help us continue to deliver excellent legal advice and services that are relevant and valued by our customers and New Zealand. We are committed to building and investing in such a workforce.

We also have a strong commitment to the health and safety of staff (including contractors and other service providers), offering equal opportunities to staff and making sure all staff feel safe and well.

### *Equality, diversity and inclusion*

Crown Law has good representation of women in all levels of the organisation, and 50% of our legal managers are female. However, a gender pay gap exists. As at 30 June 2019, our gender pay gap was 25.3% compared with 31.5% as at 30 June 2018. That gap is determined by adding all of the salaries and comparing the men's total against the women's total.

The primary driver of this gender pay gap is the dual workforce: legal and administrative. Administration roles are generally lower paid than legal roles and are predominantly undertaken by women. Our legal roles are undertaken by a more even mix of men and women. When we compare the pay of men and women undertaking the same roles, the gender pay gap for each role is minimal, and for some roles, the average pay for women is higher than the average pay for men.

Overall, we are committed to improving our gender pay gap and making sure we remove any gender bias from appointment, performance, promotion and remuneration decisions. This year, we reviewed our internal HR policies to ensure they are gender neutral and continued to review gender pay gap information when making remuneration decisions. These initiatives supplement existing practices to address the gender pay gap such as Crown Law's flexible working policy, implementing flexible working arrangements and unconscious bias training for managers.

In addition, Crown Law has signed up to the Gender Equitable Engagement and Instruction Policy promoted by the New Zealand Law Society and New Zealand Bar Association. A key objective of the policy is that by 1 December 2018, policy adopters will use reasonable endeavours to have women lawyers with relevant expertise take a lead on at least 30% of court proceedings, arbitral proceedings and major regulator investigations. For the year ended 30 June 2018, Crown Law had

engaged and instructed women barristers 44% of the time compared with their male counterparts and on a dollar value this equated to 52% of matters briefed externally.<sup>2</sup>

Crown Law is less ethnically diverse compared to other government agencies and the general population. Crown Law continues to implement te reo Māori training for staff and support other initiatives such as a waiata group and tikanga support for the Solicitor-General. We appreciate that broadening these initiatives is a necessary focus as we execute our People Plan and implement our workforce strategy.

While we still have further to go, the quality and capability of our leaders and staff – and our commitment to a diverse and inclusive workforce – augurs well for the successful delivery of the strategy.

### *Engagement of staff*

Overall, Crown Law has an engaged workforce. A pulse survey (abbreviated engagement survey) taken in November 2017 indicates overall engagement is 74%, which is above the State sector average and is consistent with previous results in 2016 (75%). No staff engagement survey took place in 2018. However, another staff engagement survey is expected to be undertaken in 2019.

The Leadership Team is committed to further improving staff engagement and the culture of Crown Law, and this is highlighted through the work completed on the launch of the new ways of working discussed above.

### *Workplace health and safety*

This year, we have continued to focus on our organisation's health and safety maturity. Our health and safety approach is guided by a Health and Safety Panel consisting of a cross-section of Crown Law staff and chaired by Crown Law's Deputy Chief Executive. The panel met three times during 2018/19.

The panel's role is outlined in a worker participation agreement, which sits alongside Crown Law's Health and Safety Policy and clarifies how Crown Law staff can:

- raise health and safety concerns;
- be part of making decisions that affect work health and safety; and

- offer suggestions for improving health and safety.

The two main health and safety risks that Crown Law faces are mental wellbeing and physical threats. Initiatives in place to address these risks are:

- providing resilience training to managers and staff;
- access to an online programme called Tracksuit, where tools, information and resources are available to help improve and manage individual wellbeing;
- practical action plans to support and protect staff who identified a potential for increased risk to their safety when dealing with members of the public who are angry or upset about a matter in litigation; and
- an Employee Assistance Programme (EAP).

The number of reported accidents and lost-time injuries in 2018/19 was nil (2017/18: nil), and the number of staff attending EAP services in 2018/19 was 22 (2017/18: 18).

### *Information gathering at Crown Law*

During 2018/19 Crown Law implemented a policy that sets out the principles for gathering information and complies with the State Services Commission's Code of Conduct and model standards for information gathering.

For the purposes of Crown Law, information gathering includes:

- information provided by clients when instructing Crown Law or obtained in the course of civil litigation or passed to Crown Law by the Crown or public prosecutors;
- court processes for information gathering/sharing between each party to a litigation such as discovery;
- information provided voluntarily by the person who is the subject of the information (or their counsel);
- information provided by third parties such as witnesses; and
- information gathered by any other means.

A copy of the policy is available on Crown Law's website.

<sup>2</sup> These matters exclude work undertaken by Crown Solicitors that is funded by the annual fees paid by Crown Law under their Terms of Office and criminal appeals that are briefed out to Crown Solicitors where Crown Solicitors undertake and have existing knowledge of the initial prosecution.

# OUR APPROACH TO QUALITY

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Crown Law is committed to providing high-quality legal services that are also solutions-focused, practical and good value for money. We have systems, guidance, knowledge and capability to ensure quality in our work. Quality is a critical aspect of our reputation.

We have a holistic approach to quality and support it by an organisational culture of high performance. We strive to provide timely, practical, cost-effective legal expertise at all times.

We do not leave the delivery of high-quality legal service to chance. We are fortunate to attract and retain some of the best legal practitioners in the country. However, we also have a range of formal mechanisms that make sure we provide high-quality, fit-for-purpose legal services that meet agencies' varying needs and expectations.

## ***Continuous professional development***

Legal staff must maintain a programme of continuous professional development, as monitored by the New Zealand Law Society.

All staff at Crown Law must participate in the performance management framework, which establishes goals that directly align to the overarching strategy of the organisation.

We also expect this framework to provide opportunities for feedback to be given and received about opportunities to improve.

We provide in-house opportunities for all staff to receive professional development and education. Committees such as the Education Committee facilitate a range of seminar series and programmes including the:

- Crown Law Seminar Series;
- Crown Law Practice Series;
- Support Staff Education and Development Series; and
- In-House Litigation Skills programme.

Where practicable, we encourage staff to attend relevant external training.

## ***Professional standards***

We have developed professional standards to assist our pursuit of quality. The Professional Standards Committee is the internal body responsible for reviewing our professional practices and for making sure policies, guidelines, templates and resources are up to date and represent best practice.

As we provide all advice to clients on behalf of the Solicitor-General, whether written or oral, it must be provided within the framework of principles set out in policies and guidelines. Providing timely, relevant and robust advice includes a peer review process.

Similarly, in legal representation, we require strong litigation management planning.

These policies are monitored and maintained through the Professional Standards Committee. Further detail about peer review and litigation management planning is provided below.

## ***Peer review and consultation***

We maintain an internal policy that all written Crown Law advice must be peer reviewed. This process allows our lawyers who are drafting advice to consult with other staff with the relevant and specific legal expertise. In practice, this process means fresh expert eyes give thorough consideration to an issue's complexity.

The peer reviewer is responsible for checking that the advice has been prepared in accordance with our Advice Policy and to then concur with or comment on its substance (with a view to reaching professional consensus).

This peer review mechanism contributes to ensuring we deliver the highest-quality legal advice.

## ***Litigation management planning***

Litigation management planning (LMP) enables us to effectively and efficiently commission and run a case while also increasing our prospects of success.



The LMP framework involves robust strategic planning by assigned lead counsel and strong communication with our clients and stakeholders. As with all our work, we are conscious that the outcome should be consistent with wider Crown interests. Therefore, the LMP framework's primary principles focus on being proactive, effective and efficient.

At the conclusion of each case, we debrief to discuss and cement the lessons from the experience. Debriefing also helps to frame how future litigation is handled.

### ***High-quality internal support***

Crown Law would not be able to deliver quality, cost-effective legal services without highly experienced support staff, including:

- historical researchers;
- law librarians;
- litigation and legal support staff;
- human resources professionals;
- information and technology experts; and
- finance staff.

It is because of the high-quality capability across the breadth of our organisation that we are able to effectively deliver on our mission.

At Crown Law, we believe the strongest service will be delivered through our collaborative effort and

expertise. This belief is the reason we place great significance on the principle of collaboration in our performance management framework.

### ***Feedback from other agencies***

Feedback greatly assists us in providing quality legal services, which is why we survey other agencies annually.

The survey offers an opportunity for other agencies to rate and comment on each factor of our service, such as timeliness and value for money. We collect both quantitative and qualitative information and ask a series of open-ended questions to help us understand what we can do to improve our legal advice and services.

Timeliness continues to be an area that we need to strengthen. That said, our overall survey rating this year was 92% (2018: 93%).

The survey 5-point scale of responses (from lowest to highest) is: poor; did not meet expectations; good; very good; excellent. For further information about the results of our annual survey, please refer to page 42.

**Progress against our  
strategic goals**



## Outcome One

# DEMONSTRABLY BETTER GOVERNMENT DECISIONS

### **Goal 1: Enable government to pursue its policy choices lawfully by providing quality legal service**

#### *What we are aiming to achieve*

This goal relates to improving the quality of the services Crown Law provides, particularly in terms of advice that is provided at the right time, is high quality and is sought after by decision makers (not just because it is Cabinet mandated).

This includes Crown Law's support to the Solicitor-General's roles of authoritatively determining the Crown's view of the law and how the Crown conducts itself before the courts.

Crown Law will be respected for the way in which it predicts and influences the development of the law so as to help manage risk and to take opportunities.

#### *What we have achieved this year*

Crown Law continues to receive positive feedback from other agencies and stakeholders on our provision of legal advice and services. This is demonstrated by the results of our annual satisfaction survey with 92% of feedback from other agencies rating our performance as good to excellent. This includes an increase in the percentage of responses rating our responsiveness, relevancy, accuracy and clarity of advice as good to excellent and an increasing recognition of the value for money of our legal advice and services.

Despite the positive feedback, we continue to review how our services, and government legal services more generally, are delivered. This included the establishment of a small pilot project to test an alternative and complementary approach to the delivery of government legal services. The pilot tested the development and delivery of proactive strategic advice on cross-cutting and emerging issues for government departments and other agencies.

One of the project deliverables was successfully completing an update and modernising of the *Judge Over Your Shoulder* publication which was

subsequently published in August 2019. This publication is a web-based resource and provides a guide to good decision making and the law in New Zealand. Its purpose is to inform and improve the quality of decision making in government and is intended for use by public decision makers and their advisors.

Overall, the pilot project identified that a dedicated legal resource operating within Crown Law can make a positive difference by identifying strategic issues with stakeholders and working proactively to reduce legal risk. The pilot programme recommended implementing an expanded resource housed in Crown Law, the aim being to fill a system need by delivering advice and guidance on which the GLN notes guidance from the Solicitor-General is desirable but on which no one agency has sought specific advice.

These recommendations were accepted, and in July 2019, the Solicitor-General announced the establishment of a new System Leadership Group, which includes dedicated resource to provide system advice on a one-to-many basis.

In addition to these changes, we have continued to support the Law Officers and other decision makers by providing legal advice and representation and ensuring the Crown's legal risks are well managed and its interests are protected. We have provided a range of advice and representation to:

- protect Crown infrastructure;
- protect the Crown's commercial interests;
- regulate those interests; and
- protect Crown revenue.

### **Goal 2: Better serve the Crown by leveraging the collective strength of the GLN**

#### *What we are aiming to achieve*

This goal relates to maximising the value of the 800+ lawyers and using the strength of the overall Government Legal Network (GLN) to increase the effectiveness of the government's legal resources.

Decision makers will be better served when the GLN can make increasing use of its shared resources and decision makers better understand the value of a high-quality legal perspective (where appropriate) at the right time (often early, but not necessarily so).

The strength of the GLN will be enhanced through the Solicitor-General's leadership of the network of government lawyers, including support for the GLN and encouragement for decision makers to make better use of their lawyers and legal resources.

### *What we have achieved*

Since its inception in 2011, the GLN has developed a significant annual programme of work. The idea of a cross-agency collaboration of government legal teams has now been realised. The core of the GLN programme includes:

- the Legal Risk Reporting System now in its fifth year;
- He Waka Eke Noa: An Introduction To Being a Government Lawyer course;
- the GLN Summer Clerk Programme and the GLN Graduate Programme;
- legal practice group seminars and workshops;
- delivery of over 4,000 individual continuing professional development hours; and
- the GLN Online shared workspace.

We also facilitated the annual GLN Advisory Board and Chief Legal Advisors legal risk and planning workshops – this year exploring the legal/policy interface and opportunities for collaboration.

In addition to delivery of the core work programme, the 2018/19 year has seen the following highlights: the progression of four GLN People Plan projects,

being the New to Government Buddy initiative, Flexible Working Arrangements, Legal Leaders pipeline and Workforce Mobility; an external review of the Legal Risk Reporting System; the GLN team leading co-ordination of the annual Lawyers in Government Conference (held in August with 520 registrants); continued demand for GLN graduate (228 applicants) and summer clerk (330 applicants) opportunities; refresh of the Legal Leaders practice group; and a wide variety of professional development activities across the GLN practice groups.

### *Looking ahead*

During the next financial year, the GLN team will be incorporated into the new System Leadership Group at Crown Law. However, the core GLN work programme will continue, and there will be an emphasis on implementation of the GLN People Plan projects and scoping and commencement of People Plan projects relating to growing capability in te ao Māori and enhancing our recruitment processes to be more inclusive.

We will continue to take advantage of joint purchasing opportunities to streamline legal research. We will prioritise increased engagement with lawyers in regions outside Wellington, recognising the significant expertise the GLN has nationwide in commercial, regulatory and public law practice.

### *Funding*

Goals 1 and 2 are funded through the appropriation for Legal Advice and Representation and the Government Legal Network output in the Law Officer Functions MCA. Refer to the statement of service performance on pages 37 and 41–42 for more detail.

# SIGNIFICANT AND ILLUSTRATIVE LEGAL ADVICE AND REPRESENTATION MATTERS

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## ***H v Refugee and Protection Officer* [2019] NZSC 13**

H made a claim for recognition as a refugee in 2017. A Pakistani national, he claimed to be at risk of being killed by the Taliban if returned to Pakistan. A refugee and protection officer (RPO) scheduled an interview with H as part of his claim. H was unable to attend the interview and provided medical information explaining his absence. The RPO determined H's claim without conducting an interview, declining to recognise him as a refugee or protected person. H sought judicial review of that decision.

The High Court held it had no jurisdiction to hear the review proceedings until H's appeal to the Immigration and Protection Tribunal had been heard and determined. The Court of Appeal upheld that decision. Leave to appeal to the Supreme Court was granted.

The issue on appeal was whether, given the circumstances in which H's claim was determined by the RPO, section 249 of the Immigration Act 2009 restricted H's ability to commence review proceedings until after the appeal to the Tribunal.

In the circumstances of this case, the Supreme Court determined section 249 did not preclude H from commencing review proceedings. This was on the basis the RPO's decision had been made without any consideration of the substantive matters required when considering a refugee claim and because the Act provided for a two-tier decision on the merits (firstly by the RPO and secondly by the Tribunal) and H had not had the benefit of the first-stage decision. The Supreme Court remitted the matter to the High Court for hearing.

## **Operation Burnham inquiry and related judicial review**

Crown Law is providing advice and representation to Crown agencies participating in the Government Inquiry into Operation Burnham and Related Matters. The Inquiry covers a range of allegations made concerning the actions of the NZSAS in Afghanistan during Operation Wātea from 2010 to 2012 contained in a book titled *Hit and Run*, written by Nicky Hager and Jon Stevenson and published in 2017. The Inquiry raises a number of

important issues of international law, particularly in the areas of international humanitarian law and international human rights law. The Inquiry is due to report in December 2019.

Crown Law also represented the Attorney-General in a judicial review brought by a number of Afghan citizens who claimed to be the family of people killed or injured during Operation Burnham against both the Attorney-General and the Inquiry itself. The plaintiffs challenged the procedure adopted by the Inquiry and the terms of reference set by the Attorney-General. In particular, the plaintiffs claimed that the Inquiry failed to meet the obligation of the New Zealand Government to investigate the allegations of unlawful deprivation of civilian lives in Operation Burnham, said to arise under the International Covenant on Civil and Political Rights and New Zealand Bill of Rights Act 1990. Accordingly, this case raised important issues concerning the extraterritorial application of those instruments. The proceedings have now been discontinued following a decision by the plaintiffs to withdraw from participation in the Inquiry.

Crown Law may be involved in advising the Attorney-General on issues arising out of the Inquiry's eventual report. Accordingly, care has been taken to ensure that counsel involved with providing advice and representation to the Crown agencies participating in and the subject of the Inquiry are separate from those advising and representing the Attorney-General.

## ***Hayley Young v New Zealand Defence Force and MOD(UK)* 2019 NZSC 23**

This case related to whether the courts of New Zealand were the appropriate jurisdiction for claims against the UK Ministry of Defence (MOD(UK)), brought in conjunction with claims against the New Zealand Defence Force (NZDF). All claims related to the appellant's former employment with NZDF, in the course of which she was placed for training in the UK Royal Navy. The claim related to her experience of sexual harassment in New Zealand and sexual assault by colleagues in facilities managed by the UK Royal Navy. The claims against both MOD(UK) and NZDF related to their duty of care as her employers.

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The claims against MOD(UK) had been dismissed by the New Zealand High Court for lack of jurisdiction, and this was upheld by the Court of Appeal. The applicant sought leave to appeal to the Supreme Court.

The appeal grounds related to:

- an issue of sovereign immunity, in which the applicant sought to establish a new exception such that the New Zealand courts should provide a domestic forum whereby an effective remedy could be sought by an individual for a breach of their human rights by a foreign state; and
- an issue of jurisdiction, arguing that the High Court had incorrectly applied international human rights instruments in determining that the New Zealand courts were not the appropriate forum for the case.

The Supreme Court declined leave to appeal, noting that both grounds of appeal were novel. While it did not exclude the possibility of those grounds forming the basis for an appeal in an appropriate case, it held that this was not that case. It was not clear that consideration of those novel grounds would make any difference to the outcome on the facts of this particular case.

In the end result, Ms Young’s case against MOD(UK) remained struck out. Ms Young’s case for sexual harassment against NZDF has been settled.

***New Zealand Steel Ltd v Minister of Commerce and Consumer Affairs [2018] NZHC 2454***

*New Zealand Steel Ltd* (the applicant) had asked the Ministry of Business, Innovation and Employment (MBIE) to investigate whether or not the Chinese Government was subsidising the manufacture of galvanised steel coil and, if so, whether the subsidisation was causing material injury to the applicant (as the sole domestic manufacturer). At international law, subsidisation occurs where a government or public body provides a financial contribution that is specific to a particular industry.

On the basis of MBIE’s advice, the Minister of Commerce and Consumer Affairs determined that galvanised steel coil from China was subsidised only to *de minimis* levels and therefore was not causing

material injury to the domestic steel industry. As a consequence, countervailing duties were not imposed on Chinese imports of galvanised steel coil. The applicant challenged the Minister’s decision.

On review, the High Court held that there were two material errors in MBIE’s advice to the Minister, which meant that the Minister’s decision was unlawful. The first error was MBIE’s advice on whether an entity was a “public body” (relevant to whether subject goods receive subsidies in China). The High Court held that MBIE did not apply the right test. The second error was MBIE’s treatment of various investigations by regulators in other countries. The High Court found that MBIE’s advice differed from the findings of the other overseas regulators and that MBIE did not properly inform the Minister about the reliability of conclusions reached by overseas investigations. The High Court’s findings have been appealed to the Court of Appeal and will be heard later this year.

***Commercial Fishers Whanau Inc v Attorney-General [2019] NZHC 1204***

A society representing small-scale commercial fishers sought judicial review of regulations and technical circulars setting new reporting requirements for catch sizes and location and requiring video recording of commercial fishing activities. It was claimed that the requirements unlawfully interfered with privacy and intellectual property rights of commercial fishers and went beyond what was authorised by the Fisheries Act 1996. In relation to video recording, it was argued the requirements were inconsistent with the right in section 21 of the New Zealand Bill of Rights Act 1990 (NZBORA) to be secure against unreasonable searches.

The Crown argued the regulations fell squarely within the scope of the relevant empowering provisions.

The Crown also argued that the regulations were consistent with the purpose of the Fisheries Act, being intended to improve the quality of the information available to fisheries managers and the fisheries industry, giving effect to the Act’s purpose of providing for the utilisation of fisheries resources while ensuring sustainability.



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The High Court dismissed the application for judicial review. It was recognised that the regulations and circulars impose requirements on the fishers that could prejudice the value of fishers' intellectual property rights but that any such impact on property rights was not inconsistent with the purpose of the Act. The Court held that video recording requirements did not give rise to a search inconsistent with section 21 of NZBORA, although the possibility of an unreasonable search occurring in certain circumstances was recognised.

***J v Attorney-General [2018] NZHC 1331***

A group of individuals claiming historical physical and sexual abuse while in State care as children brought claims against the Crown specifically relating to relevant agencies, the Ministry for Social Development (MSD), Oranga Tamariki and Ministry of Education (MOE). The Crown wished to disclose some of the information in the claims to various individuals and agencies (including Police and Oranga Tamariki) where it considered such disclosure was necessary to ensure the safety of children today and to enable Police to consider whether to investigate and prosecute alleged criminal offending. The claimants sought orders restricting the disclosure without their prior consent.

The Court held that orders to maintain privacy and confidentiality of vulnerable litigants, such as those in this case, were within the inherent powers of the Court and were related to the proper administration of justice. In particular, those powers could be used to prohibit disclosure of information, despite the statutory provisions enabling such disclosure in the Privacy Act 1993 and the Oranga Tamariki Act 1989. The Court made a non-disclosure order preventing disclosure of the information except in specified situations (including where disclosure is between MSD, Oranga Tamariki or MOE for the purposes of ensuring the safety of children).

The Crown has appealed the decision, contending the non-disclosure order was an inappropriate and (in some respects) unavailable exercise of the Court's inherent powers, taking account of the statutory framework for information disclosure and the public and private interests engaged. A decision is awaited.

***The Church of Jesus Christ of Latter-Day Saints Trust Board and Coward v Commissioner of Inland Revenue [2019] NZHC 52***

The issue before the High Court in this case was whether certain donations made by a missionary or persons connected with a missionary to a church trust were charitable gifts for the purposes of section LD 1 of the Income Tax Act 2007. The donations in question were payments to the trust by young members of the church, their parents or extended family and/or other members of their local stake. The amounts were paid as a result of the young persons' call to missionary service.

The missionary in question, Mr Coward, and the trust considered that the payments were gifts because they were gratuitous payments made to support charitable work. The Commissioner's position was that the payments were not gratuitous because they were made to meet a particular missionary's personal expenses.

The Court held that payments made by missionaries, or the parents or grandparents of a missionary, were not gifts and could not incur a tax credit under section LD 1. However, the Court found that payments made by other relatives of a missionary or by other church members towards a missionary's application were gifts for the purposes of section LD 1. In coming to this conclusion, the Court reviewed the meaning of the term "gift" (which is not defined in the Income Tax Act). The Court considered there should be no material personal benefit associated with a "gift". The Court considered payments by the missionary or by parents and grandparents to support a missionary provided a benefit to the payer.

The case is important given the wide range of organisations that claim that payments are gifts where a benefit is returned either directly or indirectly to the payer. The taxpayer has appealed to the Court of Appeal.

***Commissioner of Inland Revenue v Chatfield & Co Ltd [2019] NZCA 73***

The Commissioner appealed the High Court's judgment declaring invalid the Commissioner's decision to issue notices to the respondents pursuant to section 17 of the Tax Administration

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Act 1994. The notices required the production of documents and records of New Zealand taxpayer companies associated with Korean taxpayers whose tax affairs are under investigation by the Korean National Tax Service (NTS). The decision to issue the notices followed a request by the NTS that specified information be obtained and exchanged under Article 25 of the New Zealand-Korea Double Tax Agreement.

The Court of Appeal dismissed the appeal. The Court rejected the Commissioner's argument that the decision to issue section 17 notices was not justiciable, holding that, when seeking information at the request of a foreign state, the Commissioner's decisions are reviewable just as they are when the Commissioner uses her powers for domestic information-gathering purposes. The Court noted that interpreting a domestic statute that gives effect to an international treaty does not create a separation of powers issue and the impact on the response time if double-tax agreement requests are reviewable does not justify immunity from review.

The Court upheld the High Court's finding that it was contrary to natural justice for the High Court Judge to review a document that was not provided to the applicant (the confidential request from the NTS requesting the information). The Court considered that a redacted copy of the NTS request could be made available to both a court and the recipient of a notice to confirm that the Commissioner's actions complied with the information-gathering powers under the treaty.

The Court also held that the New Zealand Competent Authority, who is responsible for exchanging information with treaty partners, had wrongly applied the tests for obtaining and exchanging information provided for under Article 25 and section 17.

The Commissioner has sought leave to appeal to the Supreme Court as the Court of Appeal is considered to have applied domestic interpretation principles rather than principles of treaty interpretation.

**Cullen Group Limited v Commissioner of Inland Revenue [2019] NZHC 404**

This matter concerned a challenge by Cullen Group Limited (CGL) to the Commissioner of Inland

Revenue's assessment that CGL avoided \$51.5 million of non-resident withholding tax (NRWT).

Eric Watson restructured his ownership of Cullen Investments Limited (CIL) in 2002, effectively exchanging his shares in CIL for loans for the same value to CGL through two conduit companies. CGL paid approved issuer levy of 2% on the interest it paid to the conduit companies.

In 2010, the Commissioner assessed CGL for NRWT at 15% on the interest it paid to the conduit companies, with a resulting tax liability of around \$51.5 million.

The High Court upheld the Commissioner's assessment, finding that the specific tax provisions relied on by CGL were being used in a way that cannot have been within Parliament's contemplation. The Court found that Parliament enacted the approved issuer levy regime with the objective of encouraging investment in New Zealand by reducing the cost of New Zealand residents borrowing from non-residents. That was pursued by exempting from NRWT the interest paid by some New Zealand borrowers to non-residents, a cost that was typically borne by the borrowers due to international market pressures. As no new funds were introduced into New Zealand by CGL's arrangement, the Court found that, objectively, viewed in light of the arrangement as a whole, CGL used the specific provisions in a way that cannot have been within the contemplation and purpose of Parliament when enacting the provisions.

The High Court further found that CGL failed to demonstrate that altering the incidence of \$51.5 million of tax was a purpose or effect of the arrangement that was merely incidental.

Accordingly, the High Court found that the test for tax avoidance (from *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue* [2008] NZSC 115) was satisfied and that the Commissioner was entitled to make her assessment to counteract the resulting tax advantage.

The taxpayer has appealed to the Court of Appeal.

## Outcome Two

# STRENGTHENED INFLUENCE OF THE RULE OF LAW

### **Goal 3: Increase New Zealanders' confidence in our legal system and lawfulness of decisions**

#### *What we are aiming to achieve*

At a time of increasing (international) questioning of the system of law and the quality, fairness and impartiality of the legal system, we see a need for greater emphasis on New Zealanders appreciating how the democratic system maintains credibility. This goal relates to Crown Law speaking for the rule of law. This may range from advising Ministers of the meaning of the law and constitutional boundaries and defending the judicial system and legal process to leading and contributing to policy development and public debate.

#### *What we have achieved this year*

##### *International rankings*

Crown Law contributes to increased trust in the justice system through the performance of the Law Officers' constitutional duties. To gauge the impact of Crown Law's legal work, we look at international indexes rating New Zealand's standing in matters related to justice. New Zealand is very well regarded overall.

The World Justice Project Rule of Law Index 2019 is based on a range of factors focused on the operation of democracy and the enforcement of freedoms and rights, security and justice.

In the overall Rule of Law Index, New Zealand is ranked first of the 15 regional East Asia and Pacific countries and scores above average for countries of similar incomes. Globally, New Zealand is ranked 8/126 (2017: 7/113) when all index factors are considered. In the index's criminal justice focus overall, New Zealand is ranked 13/126 (2017: 14/113).

According to the index, New Zealand's criminal investigations system had no significant problems. The system shows confidence in both prosecutorial independence and integrity. Further details and

indicators of New Zealanders' confidence in our legal system are provided on pages 24 and 25.

##### *Policy work programme*

We have continued to contribute effectively to policy work led by government agencies (mainly the justice sector) where that work has implications for the Law Officers, Crown Law and/or the Crown Solicitors.

In 2018/19, the policy function within Crown Law has contributed to a number of significant justice sector reforms.

Crown Law has continued to work closely with other justice agencies on improving the justice sector response to victims of sexual violence and has contributed to specific resources for this purpose including leading work to develop new Solicitor-General's guidelines for prosecuting sexual violence offences, which took effect on 1 July 2019. Crown Law has also provided input to the Law Commission on recent reviews including the Search and Surveillance Act, the Criminal Investigations (Bodily Samples) Act and the Evidence Act.

##### *Pacific Islands Law Officers' Network*

Crown Law supports the maintenance of good governance and the rule of law in the Pacific by being a member of the Pacific Islands Law Officers' Network (PILON).

We are committed to assisting legal systems in the Pacific, as shown by our significant contributions to PILON's activities and our continuing legal education of practitioners (through the Litigation Skills Programmes).

Our involvement in PILON generates goodwill and enhances New Zealand's relationships with Pacific nations. New Zealand is a longstanding member of the PILON Executive Committee and is due to host the PILON annual general meeting in 2019.

Members of the Pacific judiciary have noted the distinct improvement in the litigation and advocacy skills of Pacific lawyers who have completed the Litigation Skills Programmes.



The expected rising standard of the legal profession in the Pacific states will help to demonstrate internationally that those states have fair, efficient and modern legal systems. This will help the states to strengthen their international trade and development.

### *Crown Law's education role in the Pacific legal community*

The Litigation Skills Programmes are part of wider continuing legal education. In particular, they provide more training opportunities for lawyers to develop expertise in court work. In turn, this contributes to the function of justice systems in the Pacific and the rule of law internationally.

Designed in New Zealand, the Litigation Skills Programmes are adapted from programmes developed by the US National Institute for Trial Advocacy. There are two programme levels:

- Basic level for lawyers 2–5 years in practice (running since 1996).
- Advanced level for lawyers 6–10 years in practice (first run in 2012).

### *Programmes to 2019*

In January 2015, a memorandum of understanding was signed with the Ministry of Foreign Affairs and Trade (MFAT) to provide three basic-level

programmes and two advanced-level programmes over 5 years (2015–2019). The first basic-level programme was completed in Samoa at the end of 2015. The budget for the 5 years is about \$1.7 million, to be funded by MFAT. Crown Law provides the coordination, labour and experience to produce the programmes. The New Zealand Law Society owns the programme materials.

### *Victims' Rights Act 2002*

The Victims' Rights Act 2002 ensures that the experience of victims of crime within the criminal justice system is what New Zealanders would expect of high-quality justice sector services.

During the financial year, Crown Law received no victim complaints under section 49 of the Victims' Rights Act 2002.

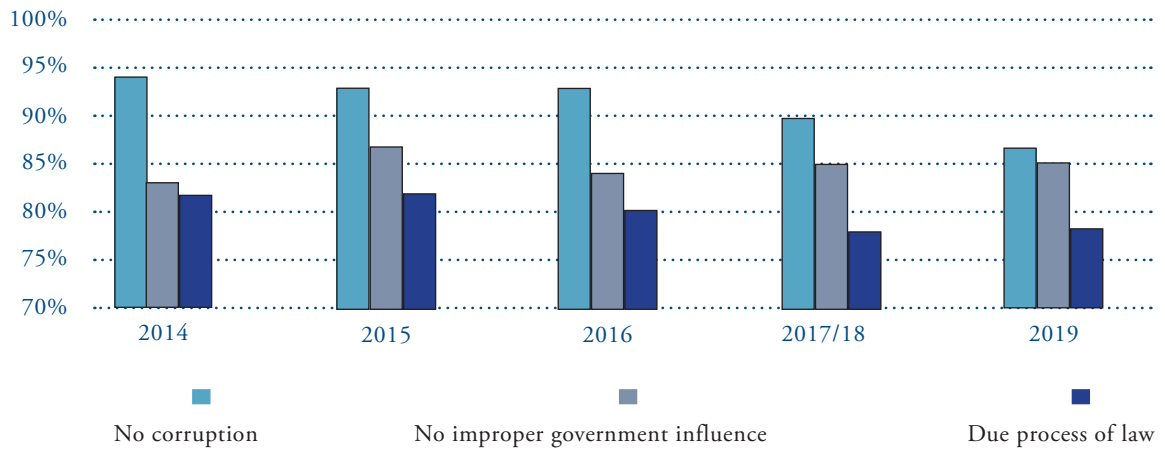
### *Funding*

Goal 3 is primarily funded through the Law Officer Constitutional and Criminal Law Duties output in the Law Officer Functions MCA.

Refer to the statement of service performance on pages 38–40 for more detail.

The diagram below shows our country results across three key factors of the Rule of Law Index.

*World Justice Project Rule of Law Index 2019: NZ*

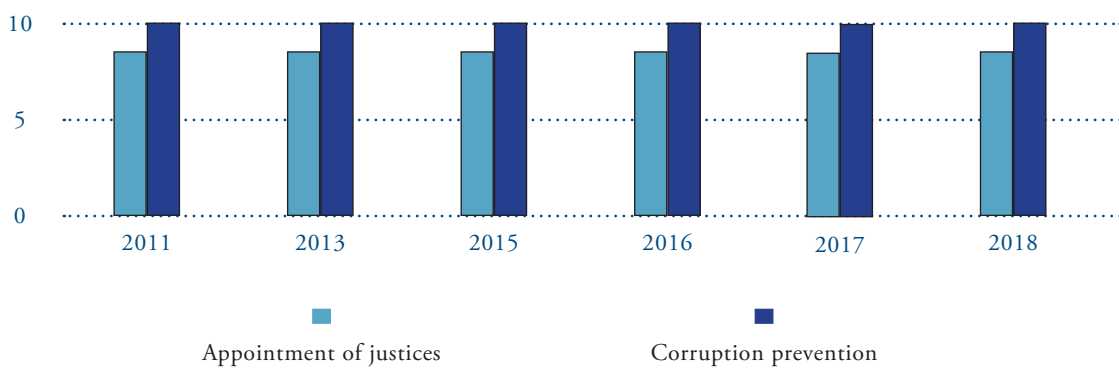


New Zealand's international ratings for the Rule of Law Index (above) and Sustainable Governance Index (below) are detailed on page 40. New Zealand's global ranking is 8/126, and New Zealand has maintained its 1/15 ranking in the East Asia and Pacific region. The index notes there is increasing corruption globally. However, we have maintained our high ratings over the years.

The high rating for freedom from corruption in the World Justice Project Rule of Law Index is similarly reflected in the Bertelsmann Foundation Sustainable Governance Index.

The Bertelsmann index maximum score is 10. New Zealand has returned a perfect score for corruption prevention in the past five reports, as shown in the diagram below.

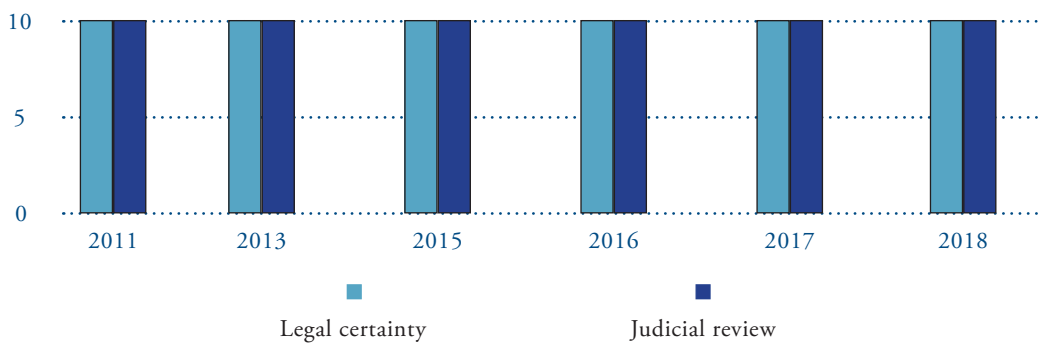
*Bertelsmann Foundation Sustainable Governance Index 2018: NZ*



The 8/10 rating for appointment of justices is related to the potential for strengthening formal reporting on this area of governance. Otherwise, no issues were stated, reflecting the strength of New Zealand’s institutions.

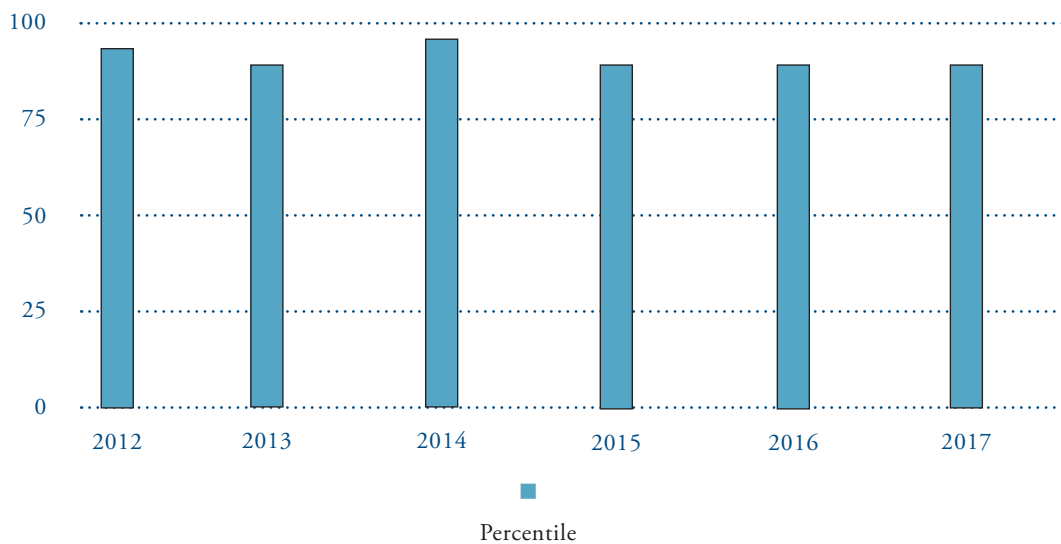
We also contribute to reducing legal risks to the Crown by protecting the Crown’s interests and ensuring any risks are managed well. The reduction of risk is related to the following index measures, in which New Zealand scored a perfect 10 in the past five reports.

*Bertelsmann Foundation Sustainable Governance Index 2018: NZ*



The World Bank Governance Indicators<sup>3</sup> continue to rank New Zealand well for rule of law, placing New Zealand in the 98th percentile in the latest survey (for 2017) of 214 countries.

*World Bank 2017 Governance Indicators Rule of Law*



The Worldwide Governance Indicators project reports the perceptions of governance of a large number of survey respondents and expert assessments worldwide. Likewise, Transparency International’s Corruption Perceptions Index 2018 placed New Zealand second of 180 countries/territories in 2018, scoring 87 of 100 around the world.

While Crown Law contributes indirectly to these results, that contribution is made through the constitutional duties of the Law Officers. These duties include reducing risk to the Crown’s interests, ensuring legal certainty and prosecuting serious crime. This in turn helps New Zealand to achieve these rankings and supports the justice sector in making this a safe and just country.

3 World Bank Governance Indicators, [www.worldbank.org/governance/wgi](http://www.worldbank.org/governance/wgi).

# SIGNIFICANT AND ILLUSTRATIVE LEGAL AND CONSTITUTIONAL MATTERS

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## ***Kim v Minister of Justice* [2019] NZCA 209**

In 2015, the Minister of Justice decided to surrender Mr Kim to the People's Republic of China to stand trial for intentional homicide. The Minister had relied on substantive assurances and a monitoring regime agreed to by China and was satisfied Mr Kim would not face a real risk of torture, would receive a trial that complied to a reasonable extent with Article 14 of the International Covenant on Civil and Political Rights and would not be sentenced to death if he were to be convicted. The Minister's first decision was set aside by the High Court on judicial review, and following reconsideration, the Minister decided again to surrender Mr Kim. Although the High Court upheld the Minister's second decision on judicial review, Mr Kim successfully appealed to the Court of Appeal.

In a decision issued in June 2017, the Court of Appeal held the conclusions the Minister reached on the risks of torture and fair trial were not reasonably open to her on the evidence. The Court also held that the legal test the Minister applied in assessing assurances was incorrect and that she ought to have considered as a separate and preliminary question whether the general human rights situation in China precluded accepting any assurances. The Court also held the Minister erred in asking whether the trial would comply "to a reasonable extent" with Article 14 of the International Covenant on Civil and Political Rights, as she ought to have asked whether there was a real risk of a departure from the standard such as to deprive the defendant of a key benefit of the right in question. As a result, the Court quashed the Minister's decision and directed reconsideration. The Crown has applied for leave to appeal to the Supreme Court.

## ***Kiwi Party of New Zealand Inc. v Attorney General* [2019] NZHC 1163**

This case was the first and so far only legal challenge to the steps implemented after the tragic events of 15 March 2019 to restrict and then prohibit semi-automatic firearms.

While the government prepared a Bill to amend the Arms Act 1983 on 21 March 2019, an Order in Council was made to declare all semi-automatic weapons capable of use with a detachable magazine to be military-style semi-automatic weapons and therefore subject to the strictest approval regime under the Act. The Arms Amendment Act 2019,

which came into force on 12 April 2019, then changed the definitions in the Act to make all such weapons prohibited items, subject only to very limited exceptions. Parliament was not required to sit under urgency, but the parliamentary timetable was shortened to enable the Bill to pass quickly to its third reading while still allowing a short time for public submissions.

The plaintiff sought to challenge the validity of both the Order in Council and the Arms Amendment Act. The Attorney-General successfully struck out the proceedings so far as they concerned the Act, relying on the constitutional argument that the proceedings of Parliament and the validity of an Act cannot be called into question in Court. The challenge to the Order in Council has been allowed to proceed to a High Court hearing, even though it was repealed by the Arms Amendment Act. The plaintiff has appealed the strike out decision to the Court of Appeal, which is likely to hear the appeal next year.

## ***Wai 2870 – The Māori Prisoners' Voting Rights Inquiry: He Aha i Pērā Ai?***

Section 80(1)(d) of the Electoral Act 1993 disqualifies all sentenced prisoners from voting for the duration of their imprisonment. A number of ex-prisoners and other interested parties sought an urgent hearing in the Waitangi Tribunal on the question of whether the ban on prisoners voting was inconsistent with the Treaty of Waitangi and its principles and whether it caused prejudice to Māori.

In late 2018, the Crown withdrew its opposition to the claim being heard urgently. During the course of a 3 day hearing in May 2019, the Crown made a number of concessions, including that it has a duty to actively protect Māori citizenship and political representation.

On 12 August 2019, the Waitangi Tribunal released *He Aha i Pērā Ai?*, its report on the urgent inquiry. The Tribunal found the blanket ban on prisoners voting to be inconsistent with the Treaty principles of partnership, *kāwanatanga*, *tino rangatiratanga*, active protection and equity and found as a matter of fact that the blanket ban disproportionately and prejudicially affected Māori. The Tribunal recommended that the Crown remove the disqualification of prisoners from voting and immediately take steps to enable and encourage all prisoners to be enrolled in time for the 2020 general election. The Tribunal also recommended that the Crown implement a process for ensuring

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that officials provide informed advice on the likely impact that any Bill will have on the Crown's Treaty of Waitangi obligations.

In its report, the Tribunal formally thanked the Crown for its "measured and constructive" approach to the inquiry from withdrawing opposition to urgency through to the Crown's closing submissions. The Tribunal commented that those actions reflected "the honour of the Crown, which needs demonstration in [the Waitangi Tribunal] if Māori/Crown relations are to be strengthened into the future".

***Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation [2018] NZSC 122***

In these judicial review proceedings, Ngāi Tai ki Tāmaki challenged the Minister of Conservation's decisions to grant two commercial concessions for tourism on Rangitoto and Motutapu public reserves in the Hauraki Gulf. Although the case turned on its facts, the Supreme Court's decision provides some useful clarification and commentary as to the scope and effect of Treaty principles (relevant here through section 4 of the Conservation Act 1987) in relation to the allocation of commercial opportunities on public conservation lands and waters.

Ngāi Tai ki Tāmaki held a commercial concession for tourism but opposed the granting of concessions to two other parties on the basis that concessions should only be granted to iwi exercising mana whenua over the islands in accordance with Treaty principles (given effect through section 4 of the Conservation Act 1987) and customary law/tikanga.

Both the High Court and the Court of Appeal found that the decision maker had made errors in her decision but Ngāi Tai's underlying claim to exclusive concession rights could not succeed and the application for review was therefore dismissed.

Unlike the courts below, the Supreme Court concluded that the errors by the decision maker were sufficiently material to require the decisions to be remade. In doing so, the Supreme Court confirmed that the decision maker was wrong to dismiss the possibility of iwi having a degree of preference exercised in their favour for concession opportunities on the islands and further that the group's economic interests were relevant to this consideration. The decision maker was ordered to reconsider the concession applications on that basis.

However, the Supreme Court also confirmed that section 4 of the Conservation Act did not create a

power of veto by iwi or hapū over concessions in an area where they held mana whenua nor give iwi or hapū the authority to require exclusive grants of concessions.

The concession decisions are now under reconsideration.

***Ngāti Whātua Ōrākei Trust v Attorney-General and Ors [2018] NZSC 84***

Ngāti Whātua Ōrākei Trust challenged – by way of judicial review – the decisions of the Minister for Treaty of Waitangi Negotiations to transfer land in central Auckland to Ngāti Paoa and Marutūāhu in partial settlement of claims for historical breaches of the Treaty of Waitangi.

Ngāti Paoa had initialled a deed of settlement with the Crown (which included the proposal to transfer the land), and Marutūāhu were also in the process of agreeing a deed of settlement with the Crown (which would include a similar proposal). Ngāti Whātua Ōrākei Trust argued that the transfer of properties would breach obligations owed to it by the Crown (agreed as part of their settlement) and that it would unjustifiably erode its mana whenua status in central Auckland.

Ngāti Whātua Ōrākei Trust sought a range of declaratory relief including, amongst other things, a declaration that Ngāti Whātua Ōrākei has ahi kā and mana whenua in relation to the land in dispute and that, when the Crown applied its overlapping claims policy to that land, it must act in accordance with tikanga and in particular Ngāti Whātua Ōrākei tikanga.

Ngāti Whātua Ōrākei Trust's claim was struck out in the High Court on the basis that the relief sought directly related to the development of legislative proposals and granting the declarations sought would breach the principle of non-interference by courts in parliamentary proceedings. The Court of Appeal upheld the decision to strike out the claim. The Court of Appeal's decision turned on the fact both settlement agreements were conditional on legislation coming into force.

The Supreme Court allowed the appeal on the basis that there were rights in issue and Ngāti Whātua Ōrākei should be permitted to seek clarification of its status over the area claimed, to challenge the application in future cases of the Crown's overlapping claims policy and to raise issues about the approach to be taken to the giving of a notice under section 120 of the Collective Redress Act 2014.

## Outcome Three

# IMPROVED CRIMINAL JUSTICE

### **Goal 4: Improve the quality, consistency and decision making of public prosecutions**

#### *What we are aiming to achieve*

Crown Law provides Ministers and the public with confidence that the 140,000 public prosecutions undertaken annually are consistent across prosecuting authorities and there is increasing quality of these prosecutions.

#### *What we have achieved this year*

The Public Prosecutions Unit (PPU) within Crown Law has continued to provide oversight of all public (i.e. non-Crown) prosecutions for the Solicitor-General and advice to the justice sector on prosecution-related activities and initiatives.

We have also continued to embed the classification system of public prosecutors to help ensure that the right level of prosecutor is assigned to cases. Non-Crown prosecuting agencies include New Zealand Police, government departments and Crown entities. As part of increasing oversight of non-Crown prosecutions, the PPU continues to work and liaise with the Public Prosecutions Advisory Board. The Board comprises of up to 12 Board members, representing a selection of departments and Crown entities.

The Board represents a wide range of agencies, including:

- agencies with high and low volumes of prosecutions;
- agencies that regulate a specific sector; and
- agencies that engage with the general public.

The Board helps to identify and manage inconsistencies in the prosecution decision-making process. The PPU continues to provide secretariat support to ensure the board is actively supported in its function.

### **Goal 5: Ensure the quality of Crown prosecutions**

#### *What we are aiming to achieve*

The Crown Solicitor Network continues to provide high-quality prosecutions, and Crown Law is able to give Ministers and the public confidence in the Crown Solicitor Network.

The Crown Solicitor Network comprises Crown Solicitors appointed by the Governor-General by warrant on the recommendation of the Attorney-General.

Crown Solicitors are guided by the Terms of Office, which set out the Solicitor-General's expectations of Crown Solicitors and funding arrangements.

The Terms of Office and the Solicitor-General's Prosecution Guidelines are periodically reviewed to ensure high standards of prosecutions are achieved and maintained. The guidelines are intended to ensure the principles and practices regarding prosecutions in New Zealand are underpinned by core prosecution values.

Assessing the quality of complex technical services requires professionals to apply judgement to a range of quantitative and qualitative factors to form an expert opinion about standards of quality. To achieve this, the Public Prosecutions Reporting Framework uses a three-tiered system of data gathering and analysis:

#### *Tier 3 – Environmental feedback on Crown Solicitors*

The third tier is based on environmental feedback. Crown Solicitors carry out prosecutions in public within the framework of the justice system and as officers of the court. Within this environment, professionals and interested parties may volunteer feedback about the performance of Crown Solicitors.



To assess the validity of comments, the PPU in conjunction with the Criminal team at Crown Law engages with members of the judiciary and prosecuting agencies to gain insight into how other professionals and interested parties view the performance of Crown Solicitors.

### *Tier 2 – Annual questionnaires for Crown Solicitors*

At the second tier, Crown Solicitors complete an annual questionnaire in which they provide information about their warrant. This ensures that the firms supporting Crown Solicitors have the resources necessary to carry out the requirements of the warrant. This information also allows the PPU to compare different structures and identify opportunities for efficiencies within the Crown Solicitor Network.

### *Tier 1 – In-depth and survey-based reviews of Crown Solicitors*

The first tier generally involves undertaking a single in-depth interview-based review and four or five survey-based reviews each year. The in-depth review is designed to support Crown Solicitors in identifying areas for improvement and development. Environmental feedback, previous reviews and information identified in the analysis of monthly prosecution data may also help guide this review.

The survey-based reviews target key stakeholders and provide us with high-level feedback on a range of topics. The survey-based reviews are designed to confirm that there are no areas of serious concern as well as reveal any issues that may require further investigation. The total number of reviews undertaken each year ensures every Crown Solicitor is reviewed at least once every 3–4 years.

### *High-level statement on the quality of the Crown Solicitor Network*

The following high-level statement provides a four-step scale allowing us to describe how we

regard the overall quality of the Crown Solicitor Network using the information above. The high-level statement is based on finding and verifying emerging and actual issues to identify areas of increased risk, accountability and potential for improvement.

<p><b>1</b></p>	<p><b>No serious issues identified</b></p> <p>Our current view is that the Crown Solicitor Network as a whole is operating sustainably<sup>4</sup> and the conduct of Crown Solicitors (and their employees representing them) is consistent with expectations and standards applicable to them as Crown Solicitors and lawyers.<sup>5</sup></p>
<p><b>2</b></p>	<p><b>No serious issues identified; areas for improvement verified</b></p> <p>Our current view is that the Crown Solicitor Network as a whole is operating sustainably and the conduct of Crown Solicitors (and the employees representing them) is consistent with expectations and standards applicable to them as Crown Solicitors and lawyers. We identified and verified areas needing improvement. The Crown Solicitors are managing these areas appropriately.</p>
<p><b>3</b></p>	<p><b>Serious isolated issues identified</b></p> <p>Our current view is that the Crown Solicitor Network as a whole is operating sustainably. Overall, the wider conduct of Crown Solicitors (and the employees representing them) is consistent with expectations and standards applicable to them as Crown Solicitors and lawyers. We identified and verified serious isolated issues. The Crown Solicitors are managing these issues appropriately.</p>
<p><b>4</b></p>	<p><b>Serious issues affecting the wider Crown Solicitor Network identified</b></p> <p>We identified and verified serious issues that are impacting or potentially could impact the sustainability or service performance of the Crown Solicitor Network. The Crown Solicitors are managing these issues appropriately. They are acting to reduce the possible impact of serious risks that have emerged.</p>

<sup>4</sup> ‘Sustainably’ means applying appropriate resources and doing so within the bulk funding model in the given year. This is a retrospective view and is not a financial forecast for the next financial year and out-years.

<sup>5</sup> ‘Consistent’ means no serious departure from the expected conduct and service performance was indicated and verified (which would then be managed through a review process or appropriate channels).



### *What we have achieved this year*

During 2018/19, we undertook five survey reviews and one in-depth review. The in-depth review consisted of a single Crown Solicitor who has responsibility for two warrants – Napier and Gisborne. For 2018/19, the Deputy Solicitor-General (Criminal) with the Public Prosecutions Unit determined that no serious issues were identified.

To support our oversight function of Crown prosecutions, the PPU continued to collect data about individual cases on a monthly basis and high-level statistical information on an annual basis. This information is used to provide relevant information to the Law Officers and is used to allocate funding to each Crown Solicitor firm and the Serious Fraud Office.

We have also published guidelines for prosecutors on prosecuting sexual violence crimes and conducted training nationally on the new guidelines.

## **Goal 6: Contribute leadership to a streamlined efficient mutual assistance and extradition regime**

### *What we are aiming to achieve*

Crown Law provides an (appropriate) leadership role in streamlining New Zealand's mutual assistance and extradition regime. The goal is to improve the quality and increase the efficiency and timeliness of the regime.

### *What we have achieved this year*

Crown Law has continued to assist in international criminal investigations, proceedings and extradition requests.

## **Goal 7: Ensure the quality of the conduct of criminal appeals**

### *What we are aiming to achieve*

Crown Law continues to ensure criminal appeals are conducted in accordance with the Solicitor-Generals statutory responsibilities and meet the highest standards.

### *What we have achieved this year*

We have continued to conduct criminal appeals in the High Court, Court of Appeal and Supreme Court. Appeals include those brought by the Crown or in response to appeals brought by the accused. We have also:

- provided advice on requests for Crown appeals, judicial reviews, stays of prosecution and consent to prosecute;
- made decisions on granting appeal requests from prosecuting agencies; and
- conducted Crown appeals against court-imposed sentences that are considered inadequate.

The percentage of Crown appeals concluded in favour of the Crown was 62% (2017/18: 73%). The percentage of appeals brought by the accused/defendant was 31% (2017/18: 21%). Our forecast success rate for the percentage of Crown appeals concluded in favour of the Crown is 60%, which balances the tension between the taking of an appeal because the decision is considered to be wrong and the need to take an appeal to clarify a point of law in the public interest.

### *Funding*

Goals 4–7 are funded through multiple categories in the Law Officer Functions MCA.

Refer to the statement of service performance, pages 35–39 for more detail.

# SIGNIFICANT AND ILLUSTRATIVE CRIMINAL MATTERS

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## ***NZME Publishing Ltd v R & Mitchell* [2018] NZCA 363**

This is the first Court of Appeal decision to consider the new power to review permanent name suppression orders under section 208 of the Criminal Procedure Act 2011.

Media organisations applied under section 208 for review of a permanent name suppression order granted in 1973. Mr Mitchell was, at the time of the order, a 15-year-old convicted of rape. He was also convicted in the 1980s and again in early 2019 for further serious sexual offences. There was no name suppression order in relation to the later convictions.

The Court considered that there would be a high threshold for revoking an order for permanent name suppression. There is a need for an exceptional or material change of circumstances, series of circumstances or something otherwise out of the ordinary to have taken place to shift the balance of the public interest to weigh in favour of revocation of a permanent suppression order.

The Court considered the public interest of open justice on the basis of full public information about an offender's circumstances, including past convictions. It noted that one purpose of the original order for name suppression, given Mr Mitchell's young age, had been the hope of rehabilitation. The Court could find nothing in his present circumstances that justified continuing the suppression, as there had been no name suppression in respect of his subsequent offending and he was a serving prisoner (for similar offences) at the time of the application. There was no public interest in upholding the suppression, and it was accordingly revoked.

## ***Kupec v R* [2018] NZCA 377**

This was an appeal against conviction and appeal against sentence for importation of a controlled class A drug.

The appellant was a Czech citizen who was convicted of importing methamphetamine concealed in compartments inside suitcases.

The appellant travelled from Prague to New Zealand after being offered payment to do so by a person he met in a bar. He had been instructed to purchase two suitcases of a particular appearance. On a layover in Thailand, the suitcases brought from Prague were swapped by a third party for two of a similar appearance. On arrival in New Zealand, the concealed drugs were discovered within the cases.

The appellant denied knowledge of the content of the suitcases. He was convicted and sought appeal against conviction and sentence. The appeal grounds included whether the trial judge had followed the correct approach to the mental element required to establish criminal liability in relation to controlled drugs offences.

The Crown submitted that the Supreme Court decision in *Cameron*, while relating to class C drugs, was not restricted to that factual context. The test established in *Cameron* is that 'recklessness' rather than 'actual knowledge' of the presence of controlled drugs is the required mental element for all classes of drug offence.

The Court of Appeal agreed that the *Cameron* approach should be applied. Recklessness as to whether the suitcases contained controlled drugs, as demonstrated by the appellant in this case, was sufficient for a conviction. The appeals were dismissed.

## ***Solicitor-General v Heta* [2018] NZHC 2453**

The Crown appealed the sentence imposed following conviction for two charges of violent offending. The sentence included a 30% discount for circumstances described in a report pursuant to section 27 of the Sentencing Act 2002. Section 27 provides that, in sentencing, an offender may request the court to hear evidence on personal, family and cultural background and the relevance of this to the commission of the offence or to future rehabilitation.

The Crown submitted that the 30% discount was excessive and was inconsistent with authority (*Keil v R*) that violent conduct cannot be excused for

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certain groups over others or be justified by cultural norms.

The Crown's appeal was dismissed. The Court found that *Keil* did not preclude the discount that was applied in this case, nor was there a clear 'range' of acceptable discounts discernible from other relevant cases. Each sentencing judge must weigh the facts of each particular case. While generous, the discounts applied in this case were not manifestly inadequate so as to require adjustment.

**Statement of  
service performance  
and financial statements**

## *Our performance management*

We understand the need for monitoring what we deliver and how well we deliver it, as this contributes to our understanding of how we can strengthen our value. As a provider of specialised publicly funded services and a manager of such services provided by others, we have an ongoing responsibility to ensure public money is being used responsibly to achieve effective and timely results.

Crown Law is accountable to Ministers and Parliament and is responsible for demonstrating its value for money through the effectiveness of its management and transparency in its performance. The achievement of this kind of value supports the government's priorities, justice sector outcomes and its wellbeing approach. It is dependent on a range of factors, including:

- alignment of outputs with strategic priorities;
- quantity and quality of outputs;
- outcomes/impacts;
- efficiencies and effectiveness in the use of resources and processes implemented;
- assessment and management of risk;
- protection of public assets;
- compliance with authorities, legislation and Parliament; and
- planning to meet future demand within forecast baseline funding.

Taking the report as an integrated overview of these factors, we are confident Crown Law provides a high level of public value for New Zealand in providing the efficient and effective high-quality legal advice and services that are expected of Crown Law.

Our service performance for the year ended 30 June 2019 is presented on pages 35–43.

## Appropriations

### Multi-category appropriation (MCA) – Law Officer Functions

The overarching purpose of this appropriation is to provide for the discharge of the Law Officers' constitutional and criminal law responsibilities.

Within the MCA are appropriations for:

- Conduct of Criminal Appeals arising from Crown Prosecutions
- Government Legal Network
- Law Officer Constitutional and Criminal Law Duties
- Public Prosecution Services.

### Audited service performance

Performance measure	Actual 2017/18	Forecast 2018/19	Actual 2018/19	Comment
<i>Quality measure (%)</i>				
Attorney-General's responses to a questionnaire about service provided by Crown Law are good or excellent	-	-	-	<p><i>The Attorney-General no longer partakes in service quality surveys.</i></p> <p><i>As part of our year-end reporting to the Attorney-General, we sought his feedback on the performance of Crown Law and he has confirmed that we are meeting his expectations.</i></p> <p><i>Other indicators of our service quality include feedback from our clients.</i></p> <p><i>Refer to pages 41–42 for our client satisfaction survey results.</i></p>

Performance for this appropriation will be assessed in more detail against the service delivery measures for each individual category within the appropriation.

### Audited financial performance (MCA summary) (GST exclusive)

Actual 2018 \$000		Actual 2019 \$000	Main Estimates 2019 \$000	Supplementary Estimates 2019 \$000
<b>Revenue</b>				
47,949	Crown	47,656	47,356	47,656
414	Other	319	460	480
<b>48,363</b>	<b>Total revenue</b>	<b>47,975</b>	<b>47,816</b>	<b>48,136</b>
<b>Expenditure</b>				
<b>48,052</b>	<b>Expenditure</b>	<b>47,765</b>	<b>47,816</b>	<b>48,136</b>
<b>311</b>	<b>Net surplus/(deficit)</b>	<b>210</b>	-	-



## MCA output – Conduct of Criminal Appeals arising from Crown Prosecutions

**Scope** – This category is limited to conducting appeals arising from Crown prosecutions.

### Audited service performance

Performance measure	Actual 2017/18	Forecast 2018/19	Actual 2018/19	Comment
<b>Quantity</b>				
<i>New matters</i>				
Crown appeals	22	15–30	31	-
Accused appeals	624	550–600	638	-
<b>Timeliness</b>				
<i>Average hours worked per disposed case</i>				
Crown appeals	49	≤ 90	72	-
Accused appeals	28	≤ 90	31	-
<b>Quality</b>				
<i>Effectiveness</i>				
Percentage of Crown appeals concluded in favour of the Crown	73%	60% <sup>6</sup>	62%	62% = 164 allowed; 38% = 8 dismissed and 2 abandoned.
Percentage of appeals brought by the accused/defendant concluded in favour of the accused/defendant	21%	30%	31%	Of appeals brought by the accused/defendant: 288 dismissed; 14 refused; 83 abandoned; 1 abandoned in part; 119 allowed; 42 allowed in part; and 12 granted.

### Audited financial performance (GST exclusive)

Actual 2018		Actual 2019	Main Estimates 2019	Supplementary Estimates 2019
\$000		\$000	\$000	\$000
<b>Revenue</b>				
3,278	Crown	3,278	3,278	3,278
10	Other	-	-	50
<b>3,288</b>	<b>Total revenue</b>	<b>3,278</b>	<b>3,278</b>	<b>3,328</b>
<b>Expenditure</b>				
<b>3,126</b>	<b>Expenditure</b>	<b>3,235</b>	<b>3,278</b>	<b>3,328</b>
<b>162</b>	<b>Net surplus/(deficit)</b>	<b>43</b>	<b>-</b>	<b>-</b>

<sup>6</sup> Crown Law's forecast success rate (60%) balances the tension between the taking of an appeal because the decision is considered to be wrong and the need to take an appeal to clarify a point of law in the public interest.

## MCA output – Government Legal Network

**Scope** – This category is limited to developing the collective capability, effectiveness and efficiency of government lawyers.

### Audited service performance

Performance measure	Actual 2017/18	Forecast 2018/19	Actual 2018/19	Comment
<b>Quantity</b>				
<i>New matters</i>				
Number of individual CPD-compliant hours delivered annually to the GLN lawyers	4,191	3,500–4,000	4,101	-
Number of reports submitted to the Attorney-General under the GLN Legal Risk Reporting System	4	4	4	-
<b>Quality</b>				
<i>Client perceptions and service performance (%)</i>				
Chief Legal Advisors consider GLN team engagement and communications is good to excellent	90%	80%	86%	<i>Of the 48 survey recipients, 42 responded, resulting in a 88% response rate.</i>
Lawyers registered on GLN Online consider GLN activities and opportunities for participation are good to excellent	88%	70%	84%	<i>Of the 1,221 survey recipients, 169 responded, resulting in a 14% response rate.</i>
The Attorney-General is satisfied with the GLN Legal Risk Reporting System	Yes	Yes	Yes	-

### Audited financial performance (GST exclusive)

Actual 2018		Actual 2019	Main Estimates 2019	Supplementary Estimates 2019
\$000		\$000	\$000	\$000
<b>Revenue</b>				
885	Crown	885	885	885
69	Other	85	100	120
<b>954</b>	<b>Total revenue</b>	<b>970</b>	<b>985</b>	<b>1,005</b>
<b>Expenditure</b>				
<b>743</b>	<b>Expenditure</b>	<b>709</b>	<b>985</b>	<b>1,005</b>
<b>211</b>	<b>Net surplus/(deficit)</b>	<b>261</b>	<b>-</b>	<b>-</b>

## MCA output – Law Officer Constitutional and Criminal Law Duties

**Scope** – This category is limited to providing assistance to the Principal Law Officers in the exercise of their functions and providing advice on constitutional, criminal law, mutual assistance and extradition matters.

### Audited service performance

Performance measure	Actual 2017/18	Forecast 2018/19	Actual 2018/19	Comment
<b>Quantity</b>				
<i>New matters</i>				
Applications <sup>7</sup> processed on behalf of the Attorney-General	48	30–60	39	<i>From year to year, the inflow of new matters may vary significantly. New matters mostly arise from circumstances external to Crown Law but in which Crown Law must subsequently become involved. In each year, as we prepare Budget documents, we consider whether there are any factors that could help us anticipate the numbers of new matters in the upcoming financial year. Such factors can include policy changes and recent events.</i>
Advice on behalf of the Attorney-General	140	100–150	122	
Litigation on behalf of the Law Officers (Attorney-General and/or Solicitor-General)	19	5–10	9	
Criminal advice	5	10–35	1	
Judicial reviews	8	2–5	1	
Mutual assistance and extraditions	111	60–100	137	
Criminal cases (other types)	24	40–60	32	
Requests for prosecution appeals and judicial reviews	72	40–90	76	
<b>Timeliness</b>				
<i>Ministerial services – proportion of responses on time</i>				
Ministerial correspondence on time	97%	100%	96%	<i>84 of 87 responses completed on time.</i>
Responses to Parliamentary questions on time	100%	100%	100%	<i>8 of 8 responses submitted to the Attorney-General's office on time.</i>
Official Information Act 1982 and Privacy Act 1993 responses on time	96%	100%	97%	<i>137 of 140 responses completed on time.</i>
<i>Average hours worked per disposed case</i>				
Criminal advice	285	≤ 50	195	-
Judicial reviews	-	≤ 150	6	-
Mutual assistance and extraditions	28	≤ 50	38	-
Criminal cases (other types)	15	≤ 50	11	-
Requests for prosecution appeals	23	≤ 50	18	-
Applications processed on behalf of the Attorney-General	63	≤ 50	43	-
Advice on behalf of the Attorney-General	20	≤ 50	25	-
Litigation on behalf of the Law Officers	15	≤ 75	32	-

<sup>7</sup> These include applications for second coronial inquiries, special patient reclassification, discharge of adoption orders, trust variations, interventions in respect of alleged contempt and breach of name suppression.

### Audited financial performance (GST exclusive)

Actual 2018 \$000		Actual 2019 \$000	Main Estimates 2019 \$000	Supplementary Estimates 2019 \$000
<b>Revenue</b>				
4,864	Crown	4,571	4,271	4,571
330	Other	231	290	290
<b>5,194</b>	<b>Total revenue</b>	<b>4,802</b>	<b>4,561</b>	<b>4,861</b>
<b>Expenditure</b>				
<b>5,065</b>	<b>Expenditure</b>	<b>4,831</b>	<b>4,561</b>	<b>4,861</b>
<b>129</b>	<b>Net surplus/(deficit)</b>	<b>(29)</b>	-	-

### MCA output – Public Prosecution Services

**Scope** – This category is limited to the provision and supervision of a national Crown prosecution service and oversight of public prosecutions.

### Audited service performance

Performance measure	Actual 2017/18	Forecast 2018/19	Actual 2018/19	Comment
<b>Quantity</b>				
<i>New matters</i>				
New Crown prosecutions including appeals to the High Court from non-Crown prosecutions	6,596	4,500–5,500	6,807	<i>Based on data collected by the Ministry of Justice, not Crown Law.</i>
Crown prosecutions including appeals to the High Court from non-Crown prosecutions disposed of	5,209	4,500–5,000	5,155	-
Hours of service provided	216,999	207,000–212,000	229,125	-
Number of quality assurance reviews (full network is reviewed on rotation every 3 years)	6	5 <sup>8</sup>	6	<i>There were five survey reviews and one in-depth review. The in-depth review consisted of a single Crown Solicitor who has responsibility for two warrants – Napier and Gisborne.</i>
<b>Quality</b>				
Reviews quality assessed as exceeding or meeting expected standards	6	5 <sup>8</sup>	6	-
Improvement recommendations implemented within timeframes set greater than	-	90%	-	<i>No significant issues were identified. Warrants were provided with minor suggestions that will be considered as part of the next review cycle.</i>

### Audited financial performance (GST exclusive)

Actual 2018 \$000		Actual 2019 \$000	Main Estimates 2019 \$000	Supplementary Estimates 2019 \$000
<b>Revenue</b>				
<b>38,922</b>	<b>Crown</b>	<b>38,922</b>	<b>38,922</b>	<b>38,922</b>
5	Other	3	20	20
<b>38,927</b>	<b>Total revenue</b>	<b>38,925</b>	<b>38,942</b>	<b>38,942</b>
<b>Expenditure</b>				
<b>39,118</b>	<b>Expenditure</b>	<b>38,990</b>	<b>38,942</b>	<b>38,942</b>
<b>(191)</b>	<b>Net surplus/(deficit)</b>	<b>(65)</b>	-	-

8 The five reviews consist of four survey-based reviews and an interview-based review.

## Performance overview – international rankings

Indicators	Actual 2016	Actual 2017	Actual 2018	Comment
<b>OUTCOMES: Rule of law and governance</b>				
<b>Focus: Increased trust in the justice system through the performance of the Law Officer Constitutional and Criminal Law Duties</b>				
World Justice Project Rule of Law Index: New Zealand's:				
Criminal system is free of corruption	score 0.93	score 0.90	score 0.87	<i>The World Justice Project Rule of Law Index provides an overview of the rule of law in a country. The index uses ratings organised around eight factors. The effectiveness of the criminal justice system is one of the factors. Within the factors are sub-components, three of which are reported here. The index is based on household and expert surveys. These results reflect the rule of law as experienced by New Zealanders.</i>
Criminal system is free of improper government influence	score 0.84	score 0.85	score 0.85	
Due process of law and the rights of the accused	score 0.80	score 0.78	score 0.78	
<b>Focus: Reduced legal risks to the Crown through protecting the Crown's interests and ensuring any risks are managed well</b>				
Bertelsmann Foundation Sustainable Governance Indicators Status Index: New Zealand's effectiveness in:				
Corruption prevention	score 10/10	score 10/10	score 10/10	<i>The Sustainable Governance Indicators (SGI) 2018 report looks at 41 OECD and EU states. The focus on democracy relates to institutional and organisational democracy and participation in the political and justice systems. Within the broader theme of democracy is the focus on the rule of law. The SGI report's key indicators for rule of law are shown in this table.</i>
Legal certainty	score 10/10	score 10/10	score 10/10	
Judicial review	score 10/10	score 10/10	score 10/10	<i>New Zealand was rated amongst the top (10/10) for three of the indicators. For appointment of justices, the SGI report reflected on the opportunity to strengthen regulation process in the appointment of justices (noting here that no issues were otherwise raised).</i>
Appointment of justices	score 8/10	score 8/10	score 8/10	
<b>OUTCOMES: Justice sector</b>				

The Ministry of Justice reports performance and progress with regard to the relevant targets and justice sector indicators. Such outcome measures can include the results of international indexes such as those reported above.

## Output expense: Legal Advice and Representation

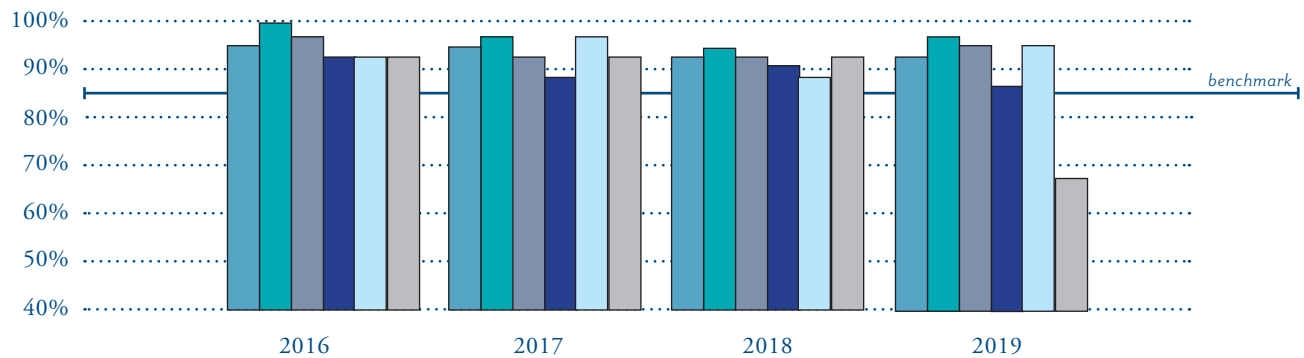
**Scope** – This appropriation is limited to providing legal advice and representation services to central government departments and Crown agencies.

### Audited service performance (no change in measures to previous year)

Performance measure	Actual 2017/18	Forecast 2018/19	Actual 2018/19	Comment
<b>Quantity</b>				
<i>New matters</i>				
Advice	443	380–425	376	-
Litigation	362	350–400	308	-
Judicial review	123	90–125	82	-
Claims before Waitangi Tribunal	68	25–50	166	<i>The actual result reflects the Inquiry into the Marine and Coastal Area Act and the commencement of kaupapa inquiries.</i>
<b>Timeliness</b>				
<i>Average hours worked per disposed case</i>				
Advice	42	≤ 50	41	-
Litigation	110	≤ 200	135	-
Judicial review	169	≤ 100	122	-
Claims before Waitangi Tribunal	306	≤ 500	277	-
<i>Other timeliness indicators</i>				
Responses to the client survey that consider timeliness in responding to requests is good to excellent	91%	85%	86%	-
Written opinions/advice (final or draft) completed by the due date	82%	85%	82%	-
Litigation Management Plans completed by the due date	67%	80%	76%	-
<b>Quality measures (%)</b>				
Responses to the client survey that consider the advice and service received overall are good to excellent	96%	90%	95%	-
Responses to the client survey that consider the responsiveness, relevancy, accuracy and clarity of advice are good to excellent	93%	85%	94%	-
Written opinions and advice that are peer reviewed	81%	80%	79%	-
<b>Value for money</b>				
Percentage of responses to the client survey that consider the service received represents value for money is good to excellent	87%	95%	95%	-
Cost per hour of client services (i.e. the average cost per hour of providing legal advice and representation services)	\$182	≤ FY17/18 cost per hour	\$186	-



## Client survey – quality service indicators



### Percentage rated GOOD to EXCELLENT:

- Percentage of responses rated as good to excellent
- Percentage of responses to the client survey that consider the advice and service received overall are good to excellent
- Percentage of responses rating Crown Law’s responsiveness, relevancy, accuracy and clarity of advice as good to excellent
- Percentage of responses rating Crown Law’s timeliness in responding to requests as good to excellent
- Percentage of responses rating the value for money of Crown Law’s legal services as good to excellent
- Percentage of responses rating how meaningful and up to date Crown Law’s communications are about work in progress as good to excellent

### Service indicators charted over time

Respondents to our survey are usually Chief and Senior Legal Advisors of government departments we worked with during the period of time to which the survey applies (the period surveyed was July 2018 to June 2019).

The survey consists of approximately 18 to 20 questions. The first 11 questions asks for a rating (excellent; very good; good; did not meet expectations; poor; unable to rate yet).

The benchmark is 85% of responses being good to excellent. In 2018/19, we saw a reduction in our rating in how meaningful and up to date Crown Law’s communications are about work in progress. For 2019/20, we have agreed to make this a focus and are encouraging staff to proactively update our stakeholders and those who have engaged us.

### Audited financial performance (GST exclusive)

Actual 2018 \$000		Actual 2019 \$000	Main Estimates 2019 \$000	Supplementary Estimates 2019 \$000
<b>Revenue</b>				
20,020	Other	21,403	22,337	22,337
<b>Expenditure</b>				
20,177	Expenditure	20,305	22,337	22,337
(157)	Net surplus/(deficit)	1,098	-	-

## Other non-financial measures: Organisational health and capability

Performance measure	Est. actual 2017/18	Forecast 2018/19	Act. YTD 2018/19	Comment
<b>Capability</b>				
Gender equitable briefing	New	30%	44% <sup>9</sup>	<i>The New Zealand Law Society and New Zealand Bar Association have targeted 30% of external briefing to women lawyers.</i>
Secondments of counsel into or from Crown Law and the wider Government Legal Network	New	3	17	<i>This measure represents the number of new secondment agreements entered into since 1 July 2018.</i>

## Crown Law Office – Capital Expenditure appropriation

This appropriation is intended to achieve the renewal and replacement of life-expired assets in support of the delivery of Crown Law’s services.

### Output performance measures and standards

The expenditure was in accordance with Crown Law’s capital asset management intentions in order to maintain service levels.

### Output statement for the year ended 30 June 2019

Actual 2018 \$000	Actual 2019 \$000	Main Estimates 2019 \$000	Supplementary Estimates 2019 \$000
221 Total capital expenditure	692	783	783

<sup>9</sup> These matters exclude work undertaken by Crown Solicitors that is funded by the annual fees paid by Crown Law under their Terms of Office and criminal appeals that are briefed out to Crown Solicitors where Crown Solicitors undertake and have existing knowledge of the initial prosecution.

# STATEMENT OF RESPONSIBILITY

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I am responsible, as Chief Executive of Crown Law, for:

- the preparation of Crown Law's financial statements and statements of expenses and capital expenditure and for the judgements expressed in them;
- having in place a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting;
- ensuring that end-of-year performance information on each appropriation administered by Crown Law is provided in accordance with sections 19A to 19C of the Public Finance Act 1989, whether or not that information is included in this annual report; and
- the accuracy of any end-of-year performance information prepared by Crown Law, whether or not that information is included in the annual report.

In my opinion:

- the financial statements fairly reflect the financial position of Crown Law as at 30 June 2019 and its operations for the year ended on that date; and
- the forecast financial statements fairly reflect the forecast financial position of Crown Law as at 30 June 2019 and its operations for the year ending on that date.



Una Jagose QC  
Solicitor-General and Chief Executive  
30 September 2019

## **Independent Auditor's Report**

### **To the readers of the Crown Law Office's annual report for the year ended 30 June 2019**

The Auditor General is the auditor of the Crown Law Office (the Department). The Auditor General has appointed me, Jacques Coetzee, using the staff and resources of Audit New Zealand, to carry out, on his behalf, the audit of:

- the financial statements of the Department on pages 49 to 74, that comprise the statement of financial position, statement of commitments, statement of contingent liabilities and contingent assets as at 30 June 2019, the statement of comprehensive revenue and expense, statement of changes in equity, and statement of cash flows for the year ended on that date and the notes to the financial statements that include accounting policies and other explanatory information;
- the performance information prepared by the Department for the year ended 30 June 2019 on pages 16 to 17, 22 to 25, 28 to 30 and 35 to 43;
- the statements of expenses and capital expenditure of the Department for the year ended 30 June 2019 on pages 75 to 77; and
- the schedules of non departmental activities which are managed by the Department on behalf of the Crown on page 75 that comprise the schedule of trust monies for the year ended 30 June 2019.

### **Opinion**

In our opinion:

- the financial statements of the Department on pages 49 to 74:
  - present fairly, in all material respects:
    - its financial position as at 30 June 2019; and
    - its financial performance and cash flows for the year ended on that date; and
  - comply with generally accepted accounting practice in New Zealand in accordance with the Public Benefit Entity Reporting Standards.
- the performance information of the Department on pages 16 to 17, 22 to 25, 28 to 30 and 35 to 43:
  - presents fairly, in all material respects, for the year ended 30 June 2019:
    - what has been achieved with the appropriation; and
    - the actual expenses or capital expenditure incurred compared with the appropriated or forecast expenses or capital expenditure; and
  - complies with generally accepted accounting practice in New Zealand.

- the statements of expenses and capital expenditure of the Department on pages 75 to 77 are presented fairly, in all material respects, in accordance with the requirements of section 45A of the Public Finance Act 1989.
- The schedules of trust monies which are managed by the Department on behalf of the Crown on page 75 present fairly, in all material respects, in accordance with the Treasury Instructions.

Our audit was completed on 30 September 2019. This is the date at which our opinion is expressed.

The basis for our opinion is explained below. In addition, we outline the responsibilities of the Solicitor-General and our responsibilities relating to the information to be audited, we comment on other information, and we explain our independence.

## **Basis for our opinion**

We carried out our audit in accordance with the Auditor General's Auditing Standards, which incorporate the Professional and Ethical Standards and the International Standards on Auditing (New Zealand) issued by the New Zealand Auditing and Assurance Standards Board. Our responsibilities under those standards are further described in the Responsibilities of the auditor section of our report.

We have fulfilled our responsibilities in accordance with the Auditor General's Auditing Standards.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## **Responsibilities of the Solicitor-General for the information to be audited**

The Solicitor-General is responsible on behalf of the Department for preparing:

- Financial statements that present fairly the Department's financial position, financial performance, and its cash flows, and that comply with generally accepted accounting practice in New Zealand.
- Performance information that presents fairly what has been achieved with each appropriation, the expenditure incurred as compared with expenditure expected to be incurred, and that complies with generally accepted accounting practice in New Zealand.
- Statements of expenses and capital expenditure of the Department that are presented fairly, in accordance with the requirements of the Public Finance Act 1989.
- Schedules of non departmental activities, in accordance with the Treasury Instructions, that present fairly those activities managed by the Department on behalf of the Crown.

The Solicitor-General is responsible for such internal control as is determined is necessary to enable the preparation of the information to be audited that is free from material misstatement, whether due to fraud or error.

In preparing the information to be audited, the Solicitor-General is responsible on behalf of the Department for assessing the Department's ability to continue as a going concern. The Solicitor-General is also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting, unless there is an intention to merge or to terminate the activities of the Department, or there is no realistic alternative but to do so.

The Solicitor-General's responsibilities arise from the Public Finance Act 1989.

## **Responsibilities of the auditor for the information to be audited**

Our objectives are to obtain reasonable assurance about whether the information we audited, as a whole, is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit carried out in accordance with the Auditor General's Auditing Standards will always detect a material misstatement when it exists. Misstatements are differences or omissions of amounts or disclosures, and can arise from fraud or error. Misstatements are considered material if, individually or in the aggregate, they could reasonably be expected to influence the decisions of readers, taken on the basis of the information we audited.

For the budget information reported in the information we audited, our procedures were limited to checking that the information agreed to the relevant Estimates of Appropriation 2018/19 and Supplementary Estimates of Appropriation 2018/19 for Vote Attorney-General.

We did not evaluate the security and controls over the electronic publication of the information we audited.

As part of an audit in accordance with the Auditor General's Auditing Standards, we exercise professional judgement and maintain professional scepticism throughout the audit. Also:

- We identify and assess the risks of material misstatement of the information we audited, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- We obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Department's internal control.
- We evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Solicitor-General.
- We evaluate the appropriateness of the reported performance information within the Department's framework for reporting its performance.
- We conclude on the appropriateness of the use of the going concern basis of accounting by the Solicitor-General and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Department's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the information we audited or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Department to cease to continue as a going concern.



- We evaluate the overall presentation, structure and content of the information we audited, including the disclosures, and whether the information we audited represents the underlying transactions and events in a manner that achieves fair presentation.

We communicate with the Solicitor-General regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Our responsibilities arise from the Public Audit Act 2001.

## **Other information**

The Solicitor-General is responsible for the other information. The other information comprises the information included on pages 3 to 77, but does not include the information we audited, and our auditor's report thereon.

Our opinion on the information we audited does not cover the other information and we do not express any form of audit opinion or assurance conclusion thereon.

Our responsibility is to read the other information. In doing so, we consider whether the other information is materially inconsistent with the information we audited or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on our work, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

## **Independence**

We are independent of the Department in accordance with the independence requirements of the Auditor General's Auditing Standards, which incorporate the independence requirements of Professional and Ethical Standard 1 (Revised): Code of Ethics for Assurance Practitioners issued by the New Zealand Auditing and Assurance Standards Board.

Other than in our capacity as auditor, we have no relationship with, or interests, in the Department.



Jacques Coetzee  
Audit New Zealand  
On behalf of the Auditor General  
Wellington, New Zealand

# FINANCIAL STATEMENTS

## Statement of comprehensive revenue and expense

For the year ended 30 June 2019

Actual 2018 \$000		Notes	Actual 2019 \$000	Unaudited Budget 2019 \$000	Unaudited Forecast 2020 \$000
<b>Revenue</b>					
47,949	Revenue Crown	2	47,656	47,356	49,734
20,434	Other revenue	2	21,722	19,597	21,121
<b>68,383</b>	<b>Total income</b>		<b>69,378</b>	<b>66,953</b>	<b>70,855</b>
<b>Expenses</b>					
20,427	Personnel costs	3	20,411	20,427	20,954
857	Depreciation and amortisation expense	7,8	524	654	606
124	Capital charge	4	124	124	124
37,890	Crown Solicitors' fees		38,004	38,082	39,224
8,931	Other expenses	5	9,007	7,666	9,947
<b>68,229</b>	<b>Total expenses</b>		<b>68,070</b>	<b>66,953</b>	<b>70,855</b>
154	Surplus/(deficit)		1,308	-	-
<b>154</b>	<b>Total comprehensive revenue and expense</b>		<b>1,308</b>	<b>-</b>	<b>-</b>

Explanations for major variances against the original 2018/19 budget are provided in Note 17.

The accompanying notes form part of these financial statements.

## Statement of changes in equity

For the year ended 30 June 2019

Actual 2018 \$000		Notes	Actual 2019 \$000	Unaudited Budget 2019 \$000	Unaudited Forecast 2020 \$000
3,023	Balance at 1 July		2,866	2,221	2,866
154	Total comprehensive revenue and expense		1,308	-	-
(311)	Return of operating surplus to the Crown	11	(186)	-	-
<b>(157)</b>	<b>Movements for the year</b>		<b>1,122</b>	<b>-</b>	<b>-</b>
<b>2,866</b>	<b>Balance at 30 June</b>	12	<b>3,988</b>	<b>2,221</b>	<b>2,866</b>

The accompanying notes form part of these financial statements.

## Statement of financial position

As at 30 June 2019

Actual 2018 \$000		Notes	Actual 2019 \$000	Unaudited Budget 2019 \$000	Unaudited Forecast 2020 \$000
<b>Current assets</b>					
6,579	Cash and cash equivalents		8,575	3,989	3,827
352	Prepayments		361	350	350
4,726	Receivables	6	4,155	3,000	4,000
<b>11,657</b>	<b>Total current assets</b>		<b>13,091</b>	<b>7,339</b>	<b>8,177</b>
<b>Non-current assets</b>					
929	Property, plant and equipment	7	970	1,144	907
18	Intangible assets	8	145	249	293
<b>947</b>	<b>Total non-current assets</b>		<b>1,115</b>	<b>1,393</b>	<b>1,200</b>
<b>12,604</b>	<b>Total assets</b>		<b>14,206</b>	<b>8,732</b>	<b>9,377</b>
<b>Current liabilities</b>					
7,777	Payables and deferred revenue	9	8,357	5,151	5,151
1,485	Employee entitlements	10	1,478	1,160	1,160
311	Return of operating surplus	11	186	-	-
<b>9,573</b>	<b>Total current liabilities</b>		<b>10,021</b>	<b>6,311</b>	<b>6,311</b>
<b>Non-current liabilities</b>					
165	Employee entitlements	10	197	200	200
<b>165</b>	<b>Total non-current liabilities</b>		<b>197</b>	<b>200</b>	<b>200</b>
<b>9,738</b>	<b>Total liabilities</b>		<b>10,218</b>	<b>6,511</b>	<b>6,511</b>
<b>2,866</b>	<b>Net assets</b>		<b>3,988</b>	<b>2,221</b>	<b>2,866</b>
<b>Equity</b>					
2,062	Taxpayers' funds	12	2,063	2,062	2,062
804	Memorandum accounts	12	1,925	159	804
<b>2,866</b>	<b>Total equity</b>	<b>12</b>	<b>3,988</b>	<b>2,221</b>	<b>2,866</b>

Explanations for major variances against the original 2018/19 budget are provided in Note 17.

The accompanying notes form part of these financial statements.

## Statement of cash flows

For the year ended 30 June 2019

Actual 2018 \$000	Notes	Actual 2019 \$000	Unaudited Budget 2019 \$000	Unaudited Forecast 2020 \$000
<b>Cash flows from operating activities</b>				
<b>Cash was provided from:</b>				
47,656	Receipts from Revenue Crown	47,356	47,356	49,734
18,999	Receipts from other revenue	22,293	19,597	21,121
66,655		69,649	66,953	70,855
<b>Cash was applied to:</b>				
20,619	Payments to employees	20,386	20,477	21,004
45,970	Payments to suppliers	46,697	45,748	49,171
(48)	Goods and services tax (net)	(257)	-	-
124	Payment for capital charge	124	124	124
66,665		66,950	66,349	70,299
<b>(10)</b>	<b>Net cash flow from operating activities</b>	<b>2,699</b>	<b>604</b>	<b>556</b>
<b>Cash flows from investing activities</b>				
<b>Cash was disbursed for:</b>				
206	Purchase of property, plant and equipment	555	533	368
15	Purchase of intangible assets	137	250	246
221		692	783	614
<b>(221)</b>	<b>Net cash flow from investing activities</b>	<b>(692)</b>	<b>(783)</b>	<b>(614)</b>
<b>Cash flows from financing activities</b>				
<b>Cash was disbursed for:</b>				
-	Repayment of operating surplus	11	-	543
-	<b>Net cash flow from financing activities</b>	<b>(11)</b>	<b>-</b>	<b>(543)</b>
<b>(231)</b>	<b>Net (decrease)/increase in cash</b>	<b>1,996</b>	<b>(179)</b>	<b>(601)</b>
6,810	Cash at the beginning of the year	6,579	4,168	4,428
<b>6,579</b>	<b>Cash at the end of the year</b>	<b>8,575</b>	<b>3,989</b>	<b>3,827</b>

Explanations for major variances against the original 2018/19 budget are provided in Note 17.

The accompanying notes form part of these financial statements.

## Statement of cash flows (continued)

For the year ended 30 June 2019

### Reconciliation of net surplus/deficit to net cash flow from operating activities

Actual 2018 \$000		Actual 2019 \$000
<b>154</b>	<b>Net surplus/(deficit)</b>	<b>1,308</b>
857	Depreciation and amortisation expense	524
<b>857</b>	<b>Total non-cash items</b>	<b>524</b>
	<b>Add/(less) items classified as investing or financing activities</b>	
-	Net (gain)/loss on disposal of property, plant and equipment	-
-	<b>Add/(less) movements in statement of financial position items</b>	-
(1,434)	(Increase)/decrease in receivables	571
23	(Increase)/decrease in prepayments	(9)
583	Increase/(decrease) in payables and deferred revenue	280
-	Increase/(decrease) in provision	-
(193)	Increase/(decrease) in employee entitlements	25
<b>(1,021)</b>	<b>Total net movement in working capital items</b>	<b>867</b>
<b>(10)</b>	<b>Net cash flow from operating activities</b>	<b>2,699</b>

The accompanying notes form part of these financial statements.

## Statement of commitments

As at 30 June 2019

Commitments are future expenses and liabilities to be incurred on contracts that have been entered into as at balance date. Information on non-cancellable capital and lease commitments are reported in the statement of commitments.

Crown Law has no cancellable commitments.

### Non-cancellable operating lease commitments

Crown Law's office lease at 19 Aitken Street, Wellington, is a sub-lease from the Ministry of Justice. The lease started from 1 July 2013, and the minimum term of the lease is for a period of 6 and a half years expiring on 31 December 2019. This lease will become open from 1 January 2020, with 12 months' notice on both parties.

Crown Law also leases an office with the Serious Fraud Office (SFO) in Auckland. The lease term is from 9 November 2017 to 3 March 2023. The SFO may terminate the lease by giving Crown Law 12 months' prior written notice provided that no such notice can be given before 30 October 2018 and therefore cannot take effect before 1 November 2019. However, Crown Law may terminate the lease at any time by giving not less than 12 months' prior written notice to the SFO. Crown Law may be required to contribute up to \$15,000 should the SFO be required by the landlord to make good the premises at the time of termination of the lease as Crown Law is co-locating with the SFO. Should the lease be terminated by Crown Law before 3 March 2021, Crown Law will not be responsible for any make-good provision.

There are no restrictions placed on Crown Law by any of its leasing arrangements.

The amounts disclosed below as future commitments are based on the current rental rates.

Actual 2018 \$000		Actual 2019 \$000
	<b>Capital commitments</b>	
-	<b>There were no capital commitments as at 30 June</b>	-
	<b>Operating leases as lessee (inter-entity)</b>	
	The future aggregate minimum lease payments to be paid under non-cancellable operating leases are as follows:	
1,172	Not later than 1 year	613
759	Later than 1 year and not later than 5 years	147
-	Later than 5 years	-
<b>1,931</b>	<b>Total non-cancellable operating lease commitments (inter-entity)</b>	<b>760</b>
<b>1,931</b>	<b>Total commitments</b>	<b>760</b>

The accompanying notes form part of these financial statements.



## ***Statement of contingent liabilities and contingent assets***

*As at 30 June 2019*

### **Quantified contingent liabilities**

A contingent liability between \$10,000 and \$45,000 has arisen as a result of a review of Crown Law's compliance with the Holiday's Act (30 June 2018: \$114,950).

### **Unquantified contingent liabilities**

Crown Law has no unquantified contingent liabilities as at 30 June 2019 (30 June 2018: nil).

### **Contingent assets**

There are no contingent assets as at 30 June 2019 (30 June 2018: nil).

The accompanying notes form part of these financial statements.

# NOTES TO THE FINANCIAL STATEMENTS

*for the year ended 30 June 2019*

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## **Note 1: Statement of accounting policies**

### ***Reporting entity***

Crown Law is a government department as defined by section 2 of the Public Finance Act 1989 (PFA) and is domiciled and operates in New Zealand. The relevant legislation governing Crown Law's operations includes the PFA. Crown Law's ultimate parent is the New Zealand Crown.

In addition, Crown Law has reported on trust monies that it administers on page 75.

The primary objective of Crown Law is to provide services to the Government of New Zealand. Crown Law does not operate to make a financial return.

Crown Law has designated itself as a public benefit entity (PBE) for the purpose of complying with generally accepted accounting practice.

The financial statements of Crown Law are for the year ended 30 June 2019 and were approved for issue by the Chief Executive of Crown Law on 30 September 2019.

### ***Basis of preparation***

The financial statements of Crown Law have been prepared on a going-concern basis, and the accounting policies have been applied consistently throughout the period.

### ***Statement of compliance***

The financial statements of Crown Law have been prepared in accordance with the requirements of the PFA, which include the requirement to comply with New Zealand generally accepted accounting practice (NZ GAAP) and Treasury Instructions.

These financial statements have been prepared in accordance with Tier 1 PBE accounting standards.

### ***Presentation currency and rounding***

The financial statements are presented in New Zealand dollars, and all values are rounded to the nearest thousand dollars (\$000).

### ***Changes in accounting policies***

There have been no changes in Crown Law's accounting policies since the date of the last audited financial statements.

### ***Standard early adopted***

In line with the Financial Statement of the Government, Crown Law has elected to early adopt PBE IFRS 9 Financial Instruments. PBE IFRS 9 replaces PBE IPSAS 29 Financial Instruments: Recognition and Measurement. Information about the adoption of PBE IFRS 9 is provided in Note 6.

### ***Standards issued and not yet effective and not early adopted***

Standards and amendments issued but not yet effective that have not been early adopted:

#### *Amendments to PBE IPSAS 2 Statement of Cash Flows*

An amendment to PBE IPSAS 2 Statement of Cash Flows requires entities to provide disclosures that enable users of financial statements to evaluate changes in liabilities arising from financial activities, including both changes arising from cash flows and non-cash changes. This amendment is effective for annual periods beginning on or after 1 January 2021, with early application permitted. Crown Law does not intend to adopt the amendment.

#### *PBE IPSAS 41 Financial Instruments*

The XRB issued PBE IPSAS 41 Financial Instruments in March 2019. This standard supersedes PBE IFRS 9 Financial Instruments, which was issued as an interim standard. It is effective for reporting periods beginning on or after 1 January 2022. Although Crown Law has not assessed the effect of the new standard, it does not expect any significant changes as the requirements are similar to PBE IFRS 9.

#### *PBE FRS 48 Service Performance Reporting*

PBE FRS 48 replaces the service performance reporting requirements of PBE IPSAS 1 and is effective for periods beginning on or after 1 January 2021. Crown Law has not yet determined how application of PBE FRS 48 will affect its statement of service performance.

### **Summary of significant accounting policies**

Significant accounting policies are included in the notes to which they relate.

Significant accounting policies that do not relate to a specific note are outlined below.

#### *Cash and cash equivalents*

Cash and cash equivalents includes cash on hand, deposits held at call with banks and other short-term highly liquid investments with original maturities of 3 months or less.

#### *Provisions*

A provision is recognised for future expenditure of uncertain amount or timing when there is a present obligation (either legal or constructive) as a result of a past event, it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation. Provisions are not recognised for net deficits from future operating activities.

Provisions are measured at the present value of the expenditure and are disclosed using market yields on government bonds at balance date with terms to maturity that match, as closely as possible, the estimated timing of the future cash outflows. The increase in the provision due to the passage of time is recognised as an interest expense and is included in finance costs.

#### *Goods and services tax (GST)*

All items in the financial statements and appropriation statements are stated exclusive of GST, except for receivables and payables, which are stated on a GST-inclusive basis. Where GST is not recoverable as input tax, it is recognised as part of the related asset or expense.

The net amount of GST recoverable from or payable to the Inland Revenue Department (IRD) is included as part of receivables or payables in the statement of financial position.

The net GST paid to or received from the IRD, including the GST relating to investing and financing activities, is classified as an operating cash flow in the statement of cash flows.

Commitments and contingencies are disclosed exclusive of GST.

### *Income tax*

Crown Law is a public authority and consequently is exempt from the payment of income tax. Accordingly, no provision has been made for income tax.

### *Critical accounting estimates and assumptions*

In preparing these financial statements, Crown Law has made estimates and assumptions concerning the future. These estimates and assumptions may differ from the subsequent actual results. Estimates and assumptions are continually evaluated and are based on historical experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial year are discussed below.

#### *Measuring retirement and long-service leave*

An analysis of the exposure in relation to estimates and uncertainties surrounding retirement and long-service leave liabilities is disclosed in Note 10.

### *Budget and forecast figures*

#### *Basis of the budget and forecast figures*

The 2019 budget figures are for the year ended 30 June 2019 and were published in the 2017/18 annual report. They are consistent with Crown Law's best estimate financial forecast information submitted to Treasury for the Budget Economic and Fiscal Update (BEFU) for the year ended 2018/19.

The 2020 forecast figures are for the year ending 30 June 2020, which are consistent with the best estimate financial forecast information submitted to Treasury for the BEFU for the year ending 2019/20.

The forecast financial statements have been prepared as required by the PFA to communicate forecast financial information for accountability purposes.

The budget and forecast figures are unaudited and have been prepared using the accounting policies adopted in preparing these financial statements.

The 30 June 2020 forecast figures have been prepared in accordance with PBE FRS 42 Prospective Financial Statements and comply with PBE FRS 42.

The forecast financial statements were approved for issue by the Chief Executive on 16 April 2019. The Chief Executive is responsible for the forecast financial statements, including the appropriateness of the assumptions underlying them and all other required disclosures.

While Crown Law regularly updates its forecasts, updated forecast financial statements for the year ending 30 June 2020 will not be published.

#### *Significant assumptions used in preparing the forecast financials*

The forecast figures contained in these financial statements reflect Crown Law's purpose and activities and are based on a number of assumptions on what may occur during the 2019/20 year. The forecast figures

have been compiled on the basis of existing government policies and ministerial expectations at the time the Main Estimates were finalised.

The main assumptions, which were adopted as at 16 April 2019, were as follows:

- Crown Law's activities and output expectations will remain substantially the same as the previous year focusing on the government's priorities.
- Personnel costs were based on 194 full-time equivalent staff positions as at 28 February 2019, which takes into account staff turnover.
- Operating costs were based on historical experience and other factors that are believed to be reasonable in the circumstances and are Crown Law's best estimate of future costs that will be incurred. Remuneration rates are based on current wages and salary costs, adjusted for anticipated remuneration changes.
- Estimated year-end information for 2018/19 was used as the opening position for the 2019/20 forecasts.

The actual financial results achieved for 30 June 2020 are likely to vary from the forecast information presented, and the variations may be material.

Since the approval of the forecasts, there has been no significant change or event that would have a material impact on the forecast figures.

## ***Note 2: Revenue***

### ***Accounting policy***

The specific accounting policies for significant revenue items are explained below.

#### ***Revenue Crown***

Revenue from the Crown is measured based on Crown Law's funding entitlement for the reporting period.

The funding entitlement is established by Parliament when it passes the Appropriation Acts for the financial year. The amount of revenue recognised takes into account any amendments to appropriations approved in the Appropriation (Supplementary Estimates) Act for the year and certain other unconditional funding adjustments formally approved prior to balance date.

There are no conditions attached to the funding from the Crown. However, Crown Law can incur expenses only within the scope and limits of its appropriations.

The fair value of Revenue Crown has been determined to be equivalent to the funding entitlement.

#### ***Revenue department and other revenue***

Crown Law derives revenue through the provision of legal services to third parties, mainly government agencies. Such revenue is recognised when earned and is reported in the financial period to which it relates.

### *Breakdown of other revenue and further information*

<b>Actual 2018 \$000</b>		<b>Actual 2019 \$000</b>
	Revenue received from:	
20,405	Government departments/other government entities	21,673
10	Other	45
19	Court-awarded costs	4
<b>20,434</b>	<b>Total other revenue</b>	<b>21,722</b>

## **Note 3: Personnel costs**

### *Accounting policy*

#### *Salaries and wages*

Salaries and wages are recognised as an expense as employees provide services.

#### *Superannuation schemes*

Employer contributions to the State Sector Retirement Savings Scheme, KiwiSaver and the Government Superannuation Fund are accounted for as defined contribution superannuation schemes and are expensed in the surplus or deficit as incurred.

### *Breakdown of personnel costs*

<b>Actual 2018 \$000</b>		<b>Actual 2019 \$000</b>
19,687	Salaries and wages	19,436
87	Other personnel costs	89
846	Employer contributions to defined contribution plans	861
(193)	Increase/(decrease) in employee entitlements	25
<b>20,427</b>	<b>Total personnel costs</b>	<b>20,411</b>

## **Note 4: Capital charge**

### *Accounting policy*

The capital charge is recognised as an expense in the financial year to which the charge relates.

#### *Further information*

Crown Law pays a capital charge to the Crown on its equity (adjusted for memorandum accounts) as at 30 June and 31 December each year. The capital charge rate for the year ended 30 June 2019 was 6.0% (30 June 2018: 6.0%).



## Note 5: Other expenses

### Accounting policy

#### Operating leases

An operating lease is a lease that does not transfer substantially all the risks and rewards incidental to ownership of an asset.

Lease payments under an operating lease are recognised as an expense on a straight-line basis over the lease term.

Lease incentives received are recognised in the surplus or deficit as a reduction of rental expense over the lease term.

The amounts disclosed in the statement of commitments as future commitments are based on the current rental rates.

#### Other expenses

Other expenses are recognised as goods and services are received.

### Breakdown of other expenses and further information

Actual 2018 \$000		Actual 2019 \$000
60	Fees to Audit New Zealand for audit of the financial statements	73
577	Consultancy	764
1,266	Operating lease expenses (rent for office accommodation)	1,306
7,028	Other expenses	6,864
<b>8,931</b>	<b>Total other operating expenses</b>	<b>9,007</b>

## Note 6: Receivables

### Accounting policy

Short-term receivables are recorded at the amount due, less an allowance for credit losses. Crown Law applies the simplified expected credit loss model of recognising lifetime expected credit losses for receivables.

In measuring expected credit losses, short-term receivables have been assessed on a collective basis as they possess shared credit risk characteristics. They have been grouped based on the days past due.

Short-term receivables are written off when there is no reasonable expectation of recovery.

#### Work in progress

Work in progress is determined as unbilled time and disbursements that can be recovered from clients and is measured at the lower of cost or net realisable value. Work in progress is generally invoiced in the following month.

### Breakdown of receivables and further information

Actual 2018 \$000		Actual 2019 \$000
2,498	Debtors (gross)	2,400
(11)	Less: allowance for credit losses	(86)
<b>2,487</b>	<b>Net debtors</b>	<b>2,314</b>
2,218	Work in progress (gross)	1,791
-	Less: allowance for credit losses	-
<b>2,218</b>	<b>Net work in progress</b>	<b>1,791</b>
21	Sundry debtors	50
<b>4,726</b>	<b>Total receivables</b>	<b>4,155</b>
	Total receivables comprise:	
4,705	Receivables from the sale of legal advice and representation services to other government agencies at cost recovery (exchange transactions)	4,105
21	Receivables from miscellaneous expense recoveries	50

The ageing profile of receivables at year end is detailed as follows:

	2018			2019		
	Gross \$000	Expected credit loss \$000	Net \$000	Gross \$000	Expected credit loss \$000	Net \$000
Current	2,014	-	2,014	2,164	(85)	2,079
1–2 months	129	-	129	140	-	140
2–3 months	249	-	249	56	-	56
3–4 months	72	-	72	9	-	9
4–6 months	13	(4)	9	16	-	16
6–12 months	20	(7)	13	9	-	9
1–2 years	1	-	1	6	(1)	5
> 2 years	-	-	-	-	-	-
<b>Total</b>	<b>2,498</b>	<b>(11)</b>	<b>2,487</b>	<b>2,400</b>	<b>(86)</b>	<b>2,314</b>

The expected credit loss rates for receivables at 30 June 2019 are based on the payment profile of revenue on credit over the prior 12 months at the measurement date and the corresponding historical credit losses experienced for that period. The historical loss rates are adjusted for current and forward-looking macroeconomic factors that might affect the recoverability of receivables. Given the short period of credit risk exposure, the impact of macroeconomic factors is not considered significant.

There have been no changes during the reporting period in the estimation techniques or significant assumptions used in measuring the loss allowance.

The allowance for credit losses at 30 June 2019 was determined as follows:

30 June 2019	Receivables past due								Total
	Current	1–2 months	2–3 months	3–4 months	4–6 months	6–12 months	1–2 years	> 2 years	
Expected credit loss rate	0.13%	0.02%	0.10%	0.54%	0.57%	3.00%	22.16%	-	-
Gross carrying amount (\$'000)	2,164	140	56	9	16	9	6	-	2,400
Expected credit loss (\$'000)	(3)	-	-	-	-	-	(1)	-	(4)
Impaired credit loss	(82)	-	-	-	-	-	-	-	(82)

The movement in the allowance for credit losses is as follows:

Actual 2018 \$'000	Actual 2019 \$'000
7 Allowance for credit losses as at 1 July calculated under PBE IPSAS 29	11
- PBE IFRS 9 expected credit loss adjustment through opening accumulated surplus/deficit	-
<b>7 Opening allowance for credit losses as at 1 July</b>	<b>11</b>
11 Increase in loss allowance made during the year	86
(7) Receivables written off during the year	(11)
<b>11 Net work in progress</b>	<b>86</b>

## Note 7: Property, plant and equipment

### Accounting policy

Property, plant and equipment consist of the following asset classes: leasehold improvements, computer hardware, furniture and fittings, office equipment.

Property, plant and equipment are measured at cost, less accumulated depreciation and impairment losses.

Individual assets or group of assets are capitalised if their cost is greater than \$1,000. The value of an individual asset that is less than \$1,000 and is part of a group of similar assets is capitalised.

### Additions

The cost of an item of property, plant and equipment is recognised as an asset if it is probable that future economic benefits or service potential associated with the item will flow to Crown Law and the cost of the item can be measured reliably.

Work in progress is recognised at cost less impairment and is not depreciated.

In most instances, an item of property, plant and equipment is recognised at its cost. Where an asset is acquired through a non-exchange transaction or for a nominal cost, it is recognised at fair value as at the date of acquisition.

### Disposals

Gains and losses on disposals are determined by comparing the proceeds with the carrying amount of the asset. Gains and losses on disposals are included in the statement of comprehensive income. When a

revalued asset is sold, the amount included in the property, plant and equipment revaluation reserve in respect of the disposed asset is transferred to taxpayers' funds.

### *Subsequent costs*

Costs incurred subsequent to initial acquisition are capitalised only when it is probable that future economic benefits or service potential associated with the item will flow to Crown Law and the cost of the item can be measured reliably.

The costs of day-to-day servicing of property, plant and equipment are recognised in the surplus or deficit as they are incurred.

### *Depreciation*

Depreciation is provided on a straight-line basis on all property, plant and equipment at rates that will write off the cost (or valuation) of the assets to their estimated residual values over their useful lives. The useful lives and associated depreciation rates of major classes of assets have been estimated as follows:

- Leasehold improvements – up to 6.5 years/up to 15.4%.
- Computer hardware – 2–5 years/20–50%.
- Furniture and fittings – 5 years/20%.
- Office equipment – 5 years/20%.

Leasehold improvements are depreciated over the unexpired period of the lease or the estimated remaining useful lives of the improvements, whichever is the shorter.

The residual value and useful life of an asset is reviewed and adjusted if applicable at each financial year end.

### *Impairment*

Crown Law does not hold any cash-generating assets. Assets are considered cash-generating where their primary objective is to generate a commercial return.

#### *Non-cash-generating assets*

Property, plant and equipment held at cost that have a finite useful life are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable.

An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable service amount. The recoverable service amount is the higher of an asset's fair value less costs to sell and value in use.

Value in use is the present value of the asset's remaining service potential. Value in use is determined using an approach based on either a depreciated replacement cost approach, restoration cost approach or service units approach. The most appropriate approach used to measure value in use depends on the nature of the impairment and availability of information.

If an asset's carrying amount exceeds its recoverable service amount, the asset is regarded as impaired and the carrying amount is written down to the recoverable service amount. The total impairment loss is recognised in the surplus or deficit.

The reversal of an impairment loss is recognised in the surplus or deficit.

## *Breakdown of property, plant and equipment and further information*

	Leasehold improvements \$000	Office equipment \$000	Furniture and fittings \$000	Computer equipment \$000	Total \$000
<b>Cost</b>					
Balance at 1 July 2017	1,606	586	1,584	1,898	5,674
Additions	-	-	7	199	205
Disposals	-	-	-	(695)	(695)
<b>Balance at 30 June 2018</b>	<b>1,606</b>	<b>585</b>	<b>1,591</b>	<b>1,402</b>	<b>5,184</b>
Balance at 1 July 2018	1,606	585	1,591	1,402	5,184
Additions	35	101	90	329	555
Disposals	-	(54)	-	(51)	(105)
<b>Balance at 30 June 2019</b>	<b>1,641</b>	<b>632</b>	<b>1,681</b>	<b>1,680</b>	<b>5,634</b>
<b>Accumulated depreciation and impairment losses</b>					
Balance at 1 July 2017	984	453	1,230	1,437	4,104
Depreciation expense	249	92	273	232	846
Elimination on disposal	-	-	-	(695)	(695)
<b>Balance at 30 June 2018</b>	<b>1,233</b>	<b>545</b>	<b>1,503</b>	<b>974</b>	<b>4,255</b>
Balance at 1 July 2018	1,233	545	1,503	974	4,255
Depreciation expense	249	8	40	217	514
Elimination on disposal	-	(54)	-	(51)	(105)
<b>Balance at 30 June 2019</b>	<b>1,482</b>	<b>499</b>	<b>1,543</b>	<b>1,140</b>	<b>4,664</b>
<b>Carrying amount</b>					
At 30 June and 1 July 2017	622	133	354	461	1,570
At 30 June 2018	373	40	88	428	929
<b>At 30 June 2019</b>	<b>159</b>	<b>133</b>	<b>138</b>	<b>540</b>	<b>970</b>

There are no restrictions over the title of Crown Law's property, plant and equipment. No property, plant and equipment assets are pledged as security for liabilities.

## *Note 8: Intangible assets*

### *Accounting policy*

#### *Software acquisition and development*

Acquired computer software licences are capitalised on the basis of the costs incurred to acquire and bring to use the specific software.

Costs that are directly associated with the development of software for internal use are recognised as an intangible asset. Direct costs include the costs of services, software development employee costs and an appropriate portion of relevant overheads.

Staff training costs are recognised as an expense when incurred.

Costs associated with maintaining computer software are recognised as an expense when incurred.

Costs of software updates or upgrades are capitalised only when they increase the usefulness or value of the software.

Costs associated with development and maintenance of Crown Law's website are recognised as an expense when incurred.

### *Amortisation*

The carrying value of an intangible asset with a finite life is amortised on a straight-line basis over its useful life. Amortisation begins when the asset is available for use and ceases at the date that the asset is derecognised. The amortisation charge for each financial year is recognised in the surplus or deficit.

The useful lives and associated amortisation rates of major classes of intangible assets have been estimated as follows:

- Acquired computer software – 3 years/33%.
- Developed computer software – 3 years/33%.

### *Impairment*

Intangible assets subsequently measured at cost that have an indefinite useful life or are not yet available for use are not subject to amortisation and are tested annually for impairment.

For further details, refer to the policy for impairment of property, plant and equipment in Note 7.

## ***Critical accounting estimates and assumptions***

### *Useful life of software*

The useful life of software is determined at the time the software is acquired and brought into use and is reviewed at each reporting date for appropriateness. For computer software licences, the useful life represents management's view of the expected period over which Crown Law will receive benefits from the software but not exceeding the licence term. For internally generated software developed by Crown Law, the useful life is based on historical experience with similar systems as well as anticipation of future events that may impact the useful life, such as changes in technology.

### ***Breakdown of intangible assets and further information***

Movements in the carrying value for intangible assets are as follows:

	Acquired software \$000
<b>Cost</b>	
Balance at 1 July 2017	1,919
Additions	15
Disposals	-
<b>Balance at 30 June 2018</b>	<b>1,934</b>
Balance at 1 July 2018	1,934
Additions	137
Disposals	(108)
<b>Balance at 30 June 2019</b>	<b>1,963</b>
<b>Accumulated amortisation and impairment losses</b>	
Balance at 1 July 2017	1,905
Amortisation expense	11
Elimination on disposal	-
Impairment losses	-
<b>Balance at 30 June 2018</b>	<b>1,916</b>
Balance at 1 July 2018	1,916
Amortisation expense	10
Elimination on disposal	(108)
Impairment losses	-
<b>Balance at 30 June 2019</b>	<b>1,818</b>
<b>Net carrying amount</b>	
At 30 June and 1 July 2017	14
At 30 June 2018	18
<b>At 30 June 2019</b>	<b>145</b>

There are no restrictions over the title of Crown Law's intangible assets. No intangible assets are pledged as security for liabilities.

## Note 9: Payables and deferred revenue

### Accounting policy

Short-term payables are recorded at the amount payable.

### Breakdown of payables and further information

Actual 2018 \$000		Actual 2019 \$000
<b>Payables and deferred revenue under exchange transactions</b>		
28	Creditors – Crown Solicitors’ fees	21
737	Creditors – other	435
6,411	Other accrued expenses – unbilled Crown Solicitors’ fees	6,852
264	Other accrued expenses	455
-	Income in advance for cost recovered services	-
<b>7,440</b>	<b>Total payables and deferred revenue under exchange transactions</b>	<b>7,763</b>
<b>Payables and deferred revenue under non-exchange transactions</b>		
337	GST payable	594
<b>337</b>	<b>Total payables and deferred revenue under non-exchange transactions</b>	<b>594</b>
<b>7,777</b>	<b>Total payables and deferred revenue</b>	<b>8,357</b>

## Note 10: Employee entitlements

### Accounting policy

#### Short-term employee entitlements

Employee entitlements that are due to be settled within 12 months after the end of the reporting period in which the employee renders the related service are measured based on accrued entitlements at current rates of remuneration. These include salaries and wages accrued up to balance date, annual leave earned but not yet taken at balance date, retirement leave and long-service leave entitlements expected to be settled within 12 months.

#### Long-term employee entitlements

Employee entitlements that are due to be settled beyond 12 months after the end of the reporting period in which the employee renders the related service, such as long-service leave and retirement leave, are calculated on an actuarial basis. The calculations are based on:

- likely future entitlements accruing to staff, based on years of service, years to entitlement, the likelihood that staff will reach the point of entitlement and contractual entitlement information; and
- the present value of the estimated future cash flows.

Expected future payments are discounted using market yields on government bonds at balance date with terms to maturity that match, as closely as possible, the estimated future cash outflows for entitlements. The inflation factor is based on the expected long-term increase in remuneration for employees.



### *Presentation of employee entitlements*

Annual leave, vested long-service leave and non-vested long-service leave and retirement leave expected to be settled within 12 months of balance date are classified as a current liability. All other employee entitlements are classified as a non-current liability.

### *Critical accounting estimates and assumptions*

Annual leave is calculated using the number of days owing as at 30 June 2019.

The Collective Employment Agreement came into effect from 22 April 2010. The Collective Employment Agreement and individual employment contracts provide for 1 week's long-service leave after completing 10 years' service with Crown Law. A small number of employees have grandparented long-service leave arrangements prior to the above agreement.

The retirement and long-service leave from an old expired contract is maintained for three staff as at June 2019 (2018: three).

### *Long-service leave and retirement gratuities*

The measurement of the long-service leave and retirement gratuities obligations depend on a number of factors that are determined on an actuarial basis using a number of assumptions. Two key assumptions used in calculating this liability include the discount rate and the salary inflation factor.

Any changes in these assumptions will affect the carrying amount of the liability.

Expected future payments are discounted using discount rates derived from the yield curve of New Zealand government bonds. The discount rates used have maturities that match, as closely as possible, the estimated future cash outflows. Discount rates in year 1 of 1.26% (2018: 1.78%), year 2 of 1.03% (2018: 1.90%) and year 3 and beyond of 2.23% (2018: 3.55%) and a long-term salary inflation factor of 2.92% (2018: 3.10%) were used. The discount rates and salary inflation factor used are those advised by the Treasury.

### *Breakdown of employee entitlements*

<b>Actual 2018 \$000</b>		<b>Actual 2019 \$000</b>
<b>Current liabilities</b>		
202	Personnel accruals	176
1,238	Annual leave	1,252
45	Retirement leave and long-service leave	50
<b>1,485</b>	<b>Total current portion</b>	<b>1,478</b>
<b>Non-current liabilities</b>		
165	Retirement leave and long-service leave	197
<b>165</b>	<b>Total non-current portion</b>	<b>197</b>
<b>1,650</b>	<b>Total employee entitlements</b>	<b>1,675</b>

## Note 11: Return of operating surplus

Actual 2018 \$000	Actual 2019 \$000
154 Net surplus/(deficit)	1,308
156 Add (surplus)/deficit of memorandum account: legal advice and representation	(1,099)
1 Add (surplus)/deficit of memorandum account: processing of Queen's Counsel applications	(23)
<b>311 Provision for repayment of surplus to the Crown</b>	<b>186</b>

The repayment of surplus to the Crown is required to be paid by 31 October of each year.

## Note 12: Equity

### Accounting policy

Equity is the Crown's investment in Crown Law and is measured as the difference between total assets and total liabilities. Equity is disaggregated and classified as taxpayers' funds and memorandum accounts.

### Memorandum accounts

Memorandum accounts reflect the cumulative surplus/(deficit) on those departmental services provided that are intended to be fully cost recovered from third parties through fees, levies or charges. The balance of each memorandum account is expected to trend towards zero over time.

### Breakdown of equity and further information

Actual 2018 \$000	Actual 2019 \$000
<b>Taxpayers' funds</b>	
2,061 <b>Balance at 1 July</b>	2,062
154 Net surplus/(deficit)	1,308
158 Transfer of memorandum accounts net (surplus)/deficit for the year	(1,121)
- Capital injections	-
(311) Return of operating surplus to the Crown	(186)
<b>2,062 Balance at 30 June</b>	<b>2,063</b>
<b>Memorandum accounts</b>	
962 Opening balance at 1 July	804
20,020 Revenue	21,440
(20,178) Less expenses	(20,319)
(158) Surplus/(deficit) for the year	1,121
<b>804 Closing balance at 30 June</b>	<b>1,925</b>
<b>2,866 Total equity as at 30 June</b>	<b>3,988</b>

## Breakdown of memorandum accounts

Actual 2018 \$000		Actual 2019 \$000
<b>Legal advice and representation</b>		
911	Opening balance at 1 July	754
20,020	Revenue	21,403
(20,177)	Less expenses	(20,305)
(157)	Surplus/(deficit) for the year	1,098
<b>754</b>	<b>Closing balance at 30 June</b>	<b>1,852</b>
<b>Processing of Queen's Counsel applications</b>		
51	Opening balance at 1 July	50
-	Revenue	37
(1)	Less expenses	(14)
(1)	Surplus/(deficit) for the year	23
<b>50</b>	<b>Closing balance at 30 June</b>	<b>73</b>
<b>Total memorandum accounts</b>		
962	Opening balance at 1 July	804
20,020	Revenue	21,440
(20,178)	Less expenses	(20,319)
(158)	Surplus/(deficit) for the year	1,121
<b>804</b>	<b>Closing balance at 30 June</b>	<b>1,925</b>

These accounts summarise financial information relating to the accumulated surpluses and deficits incurred in the provision of legal advice and representation services and processing of Queen's Counsel applications by Crown Law to third parties on a full cost recovery basis.

The balance of each memorandum account is expected to trend towards zero over a reasonable period of time, with any interim deficit being met from cash from Crown Law's statement of financial position or by seeking approval for a capital injection from the Crown. Capital injections will be repaid to the Crown by way of cash payments throughout the memorandum account cycle.

The transactions are included as part of Crown Law's operating income and expenses in the net surplus/(deficit). However, effective from 1 July 2011, these transactions have been excluded from the calculation of Crown Law's return of operating surplus (refer Note 11). The cumulative balance of the surplus/(deficit) of the memorandum accounts is recognised as a component of equity.

### Action taken to address surpluses and deficits

The fee strategy has been developed and will be regularly reviewed to ensure that the fee structure and associated revenues are in line with the forecast activities.

## Note 13: Capital management

Crown Law's capital is its equity, which comprises taxpayers' funds and memorandum accounts. Equity is represented by net assets.

Crown Law manages its revenues, expenses, assets, liabilities and general financial dealings prudently. Crown Law's equity is largely managed as a by-product of managing revenue, expenses, assets and liabilities, and compliance with the government budget processes, Treasury Instructions and the Public Finance Act.

The objective of managing Crown Law's equity is to ensure that the office effectively achieves its goals and objectives for which it has been established while remaining a going concern.

## **Note 14: Related-party information**

Crown Law is a wholly owned entity of the Crown.

Related-party disclosures have not been made for transactions with related parties that are within a normal supplier or client/recipient relationship on terms and conditions no more or less favourable than those that it is reasonable to expect Crown Law would have adopted in dealing with the party at arm's length in the same circumstances. Further, transactions with other government agencies (for example, government departments and Crown entities) are not disclosed as related-party transactions when they are consistent with the normal operating arrangements between government agencies and undertaken on the normal terms and conditions for such transactions.

### *Collectively but not individually significant transactions with government-related entities*

The Cabinet Directions for the Conduct of Crown Legal Business 2016 (Cabinet Manual Appendix C) set out the requirements for chief executives of departments to refer specified legal work to Crown Law. During the year ended 30 June 2019, Crown Law has provided legal services to departments and government entities in the amount of \$21.395 million (2018: \$20.010 million).

### *Transactions with key management personnel*

#### **Key management personnel compensation**

<b>Actual 2018 \$000</b>	<b>Actual 2019 \$000</b>
<i>Leadership Team, including the Chief Executive</i>	
1,940 Remuneration	1,962
5 Full-time equivalent staff	5

Key management personnel include the Solicitor-General and the four members of the senior management team.

The Remuneration Authority determines the Solicitor-General's remuneration annually.

Post-employment benefits are employer contributions for the State Sector Retirement Savings Scheme, KiwiSaver and the Government Superannuation Fund.

There are no related-party transactions involving key management personnel (or their close family members).

No provision has been required nor any expense recognised for impairment of receivables from related parties.

## Note 15: Financial instruments

### Note 15A: Financial instrument categories

The carrying amounts of financial assets and financial liabilities in each of the financial instrument categories are as follows:

<b>Actual 2018 \$000</b>		<b>Actual 2019 \$000</b>
<b>Cash and receivables</b>		
6,579	Cash and cash equivalents	8,575
4,726	Receivables	4,155
<b>11,305</b>	<b>Total cash and receivables</b>	<b>12,730</b>
<b>Financial liabilities measured at amortised cost</b>		
7,777	Payables	8,357
<b>7,777</b>	<b>Total payables</b>	<b>8,357</b>

### Note 15B: Financial instrument risks

Crown Law's activities expose it to a variety of financial instrument risks, including market risk, credit risk and liquidity risk. Crown Law has a series of policies to manage the risks associated with financial instruments and seeks to minimise exposure from financial instruments. These policies do not allow any transactions that are speculative in nature to be entered into.

#### Market risk

##### Currency risk

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates.

Crown Law occasionally purchases goods and services from overseas, such as Australia, but contracts are always signed in New Zealand currency. Therefore, Crown Law has no exposure to currency risk.

##### Interest rate risk

Interest rate risk is the risk that the fair value of a financial instrument will fluctuate or the cash flow from a financial instrument will fluctuate due to changes in market interest rates.

Crown Law has no interest-bearing financial instruments and, accordingly, has no exposure to interest rate risk.

##### Credit risk

Credit risk is the risk that a third party will default on its obligation to Crown Law, causing Crown Law to incur a loss.

In the normal course of its business, credit risk arises from receivables, deposits with banks and derivative financial instrument assets.

Crown Law is permitted to deposit funds only with Westpac (Standard & Poor's credit rating of AA-), a registered bank with high credit rating.

Crown Law does not enter into foreign exchange forward contracts.

Crown Law's maximum credit exposure for each class of financial instrument is represented by the total carrying amount of cash and cash equivalents and receivables (refer Note 6). There is no collateral held as security against these financial instruments, including those instruments that are overdue or impaired.

### **Liquidity risk**

Liquidity risk is the risk that Crown Law will encounter difficulty raising liquid funds to meet commitments as they fall due.

In meeting its liquidity requirements, Crown Law closely monitors its forecast cash requirements with expected cash drawdowns from the New Zealand Debt Management Office. Crown Law maintains a target level of available cash to meet liquidity requirements.

The table below analyses Crown Law's financial liabilities into relevant maturity groupings based on the remaining period at balance sheet date to the contractual maturity date. The amounts disclosed are the contractual undiscounted cash flows.

	Notes	Carrying amount \$000	Contractual cash flows \$000	Less than 6 months \$000	6 months to 1 year \$000	1–5 years \$000	Over 5 years \$000
<b>2018</b>							
Payables	9	7,777	7,777	7,777	-	-	-
<b>2019</b>							
Payables	9	8,357	8,357	8,357	-	-	-

Crown Law has no finance leases and derivative financial instrument liabilities.

### **Note 16: Events after balance date**

There have been no significant events after the balance date.

### **Note 17: Explanation of major variances against budget**

#### **Statement of comprehensive income**

##### *Income from other revenue*

Income from other revenue was greater than budgeted by \$2.125 million because of an increase in legal advice and representation work, which was not included in the original budget.

##### *Other expenses*

Other expenses were greater than budgeted by \$1.341 million mainly due to increased IT maintenance costs, consultancy fees, rent and other office operating costs.

## ***Statement of financial position***

### ***Cash and cash equivalents***

Cash and cash equivalents were more than budgeted by \$4.586 million, mainly due to the 2018/19 flexi-fund payment of \$4.015 million (GST inclusive amount of \$4.610 million) to Crown Solicitors accrued in June and paid in July and August 2019.

## ***Note 18: Adoption of PBE IFRS 9 financial instruments***

In accordance with the transitional provisions of PBE IFRS 9, Crown Law has elected not to restate the information for previous years to comply with PBE IFRS 9. Adjustments arising from the adoption of PBE IFRS 9 are recognised in opening equity at 1 July 2018.

Accounting policies for Note 6 Receivables have been updated to comply with PBE IFRS 9 to reflect that the impairment of short-term receivables is now determined by applying an expected credit loss model.

## Schedule of trust monies

For the year ended 30 June 2019

Actual 2018 \$000	Actual 2019 \$000
<b>Crown Law Office Legal Claims Trust Account</b>	
<b>54 Balance at 1 July</b>	<b>62</b>
189 Contributions	1,199
(175) Distributions	(1,256)
1 Revenue	1
(7) Expenditure	(1)
<b>62 Balance at 30 June</b>	<b>5</b>

This interest-bearing account is operated to receive and pay legal claims and settlements on behalf of clients of Crown Law. In accordance with the Public Finance Act, the interest income is payable to the Crown.

## Statement of departmental unappropriated expenses and capital expenditure

For the year ended 30 June 2019

Crown Law did not incur any unappropriated expenditure in 2018/19 (2017/18: nil).

## Appropriation statements

### Statement of cost accounting policies

Crown Law has determined the cost of outputs using the cost allocation system outlined below.

Direct costs are those costs directly attributed to an output. Indirect costs are those costs that cannot be identified in an economically feasible manner with a specific output.

Direct costs are charged directly to output expenses. Personnel costs are charged on the basis of actual time incurred. Depreciation, capital charge and other indirect costs are assigned to outputs based on the proportion of direct staff costs for each output.

There have been no changes in cost accounting policies since the date of the last audited financial statements.



## Statement of budgeted and actual expenses and capital expenditure incurred against appropriations

For the year ended 30 June 2019

Actual 2018 \$000		Actual 2019 \$000	Main Estimates 2019 \$000	Supp Estimates 2019 \$000	Appropriation Voted 2019* \$000
<b>Vote Attorney-General</b>					
<b>Appropriations for output expenses</b>					
20,177	Legal Advice and Representation	20,305	22,337	22,337	22,337
<b>48,052</b>	<b>Law Officer Functions MCA</b>	<b>47,765</b>	<b>47,816</b>	<b>48,136</b>	<b>48,136</b>
3,126	<i>Conduct of Criminal Appeals arising from Crown Prosecutions</i>	3,235	3,328	3,328	3,328
743	<i>Government Legal Network</i>	709	985	1,005	1,005
5,065	<i>Law Officer Constitutional and Criminal Law Duties</i>	4,831	4,561	4,861	4,861
39,118	<i>Public Prosecution Services</i>	38,990	38,942	38,942	38,942
<b>68,229</b>	<b>Total appropriations for output expenses</b>	<b>68,070</b>	<b>70,153</b>	<b>70,473</b>	<b>70,473</b>
<b>Appropriations for capital expenditure</b>					
221	Capital investment	692	783	783	783
<b>68,450</b>	<b>Total annual and permanent appropriations</b>	<b>68,762</b>	<b>70,936</b>	<b>71,256</b>	<b>71,256</b>

\* This includes adjustments made in the Supplementary Estimates and the additional expenditures incurred under section 26 of the Public Finance Act. Crown Law did not incur any unappropriated expenditure in 2018/19.

As per section 2 and section 4 of the Public Finance Act, expenditure reported should exclude remeasurements from appropriation.

There have been no remeasurements identified during the 2018/19 financial year, which implies that the actual expenditure incurred was equal to the expenditure after remeasurement.

See pages 35–43 for performance information of these appropriations.

## ***Statement of departmental capital injections***

*For the year ended 30 June 2019*

<b>Actual capital injections 2018 \$000</b>	<b>Actual capital injections 2019 \$000</b>	<b>Approved appropriation 2019 \$000</b>
<b>Vote Attorney-General</b>		
- Crown Law – capital injection	-	-

## ***Statement of departmental capital injections without or in excess of authority***

*For the year ended 30 June 2019*

Crown Law did not receive any capital injections during the year without or in excess of authority (2017/18: nil).

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