

# ANNUAL REPORT

2017/18

Te Tari Ture o te Karauna

# Crown Law

The coat of arms of New Zealand, featuring a shield supported by a Māori woman and a European woman, with a crown above and a banner below reading '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*

**93%**

of feedback from clients overall  
**GOOD TO EXCELLENT**



**2%**

**6**

Crown Solicitor  
**REVIEWS COMPLETED**



**14%**

**73%**

of appeals brought by the Crown concluded  
**IN FAVOUR OF THE CROWN**



**10%**

**22%**

of appeals brought by the defendant concluded  
**IN FAVOUR OF THE DEFENDANT**



**1%**

**5,209**

**PROSECUTIONS COMPLETED**

by the Crown Solicitor Network



**5%**

**68**

new claims for the  
**WAITANGI TRIBUNAL**



**33%**

**81%**

of written advice and opinions  
**PEER REVIEWED**



**9%**

**216,999**

**HOURS OF SERVICE PROVIDED**

by the Crown Solicitor Network



**7%**

# OVERVIEW FROM THE SOLICITOR-GENERAL

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Once again, the annual report allows me to reflect on a busy but satisfying year, in which we have begun to position Crown Law and the wider network of government lawyers for continued success in the future.

Much of this year has involved further work on our response to our external Performance Improvement Framework (PIF) review, published in June 2017. A particularly significant development is that our new strategic direction is firmly established and now provides a strong grounding for prioritising our efforts. We have heeded the call to action provided by the PIF review as we work to achieve our new vision of providing collaborative, indispensable legal service.

One of the most exciting projects to have developed from the PIF review is our integrated operating model review. This has involved a significant amount of work and provided an excellent opportunity to shape the future of Crown Law and the provision of government legal services across the system.

Work on enhancing two key parts of our business has been completed in the form of comprehensive reviews of our information and technology and human resources functions. With these foundations in place, we are in a stronger position to deliver our new strategy. We are currently carrying out a similar project to review our legal support. The importance of this review is reflected in its status as one of our key priorities for the coming year.

I recognise that the strong connection our staff feel to Crown Law is key to achieving our vision. As part of implementing our new strategy, we have carried out work across the office to build on this. In particular, we have developed new ways of working to define how we work together and support one another. The collaborative way in which these have been designed – with contributions from staff at all levels across the office – will ensure our behaviours always reflect our values. I recognise the effort that has gone into this and the value of this new resource. Above all, I am pleased we have taken steps to ensure Crown Law continues to be an excellent place to work.

The importance of the positive culture that we have in place at Crown Law is highlighted by recent reports into the wider legal profession. The establishment of a new staff committee in

early 2018 has helped us to focus on how we can continue to provide a safe and inclusive environment for all.

Our new ways of working have also informed our interactions with others. As a reflection of this, early in 2018, we committed to an equitable approach to briefing out legal work. We will be monitoring our progress against this commitment in 2018/19.

Closer to home, we have continued to make progress on our gender pay gap. While we do understand where there is room to improve, we also note that, based on a direct comparison of roles, where any gender gap does exist, it is minimal. Our people leaders have also participated in unconscious bias awareness workshops. I am positive about both the overall position and our direction of travel on these issues.

We have seen the benefits of closer, integrated working in various areas of the network. Along with others, we provided excellent support to the incoming government in its delivery of the first 100 days programme. I particularly noted the ability of Crown Law to work closely with the wider Government Legal Network during this time to ensure that appropriate and skilled legal input was provided at the right times.

The Public Prosecutors Advisory Board has completed its first full year operating under its new charter, and the prosecutors' classification system has been fully implemented. Integrated legal work has been a feature of one of this year's most significant cases – *Strathboss Kiwifruit Ltd v Attorney General*. Crown Law also provided a seconded senior legal resource to a cross-agency team to consider the strategic response to litigation arising from the Christchurch earthquakes.

The lessons and examples of these innovative ways of working show some of what we hope to achieve in pursuing our new vision. My thanks goes to all those in the Crown Law Office and the wider networks of government lawyers and Crown prosecutors for their efforts, achievements and enthusiasm in the past year.



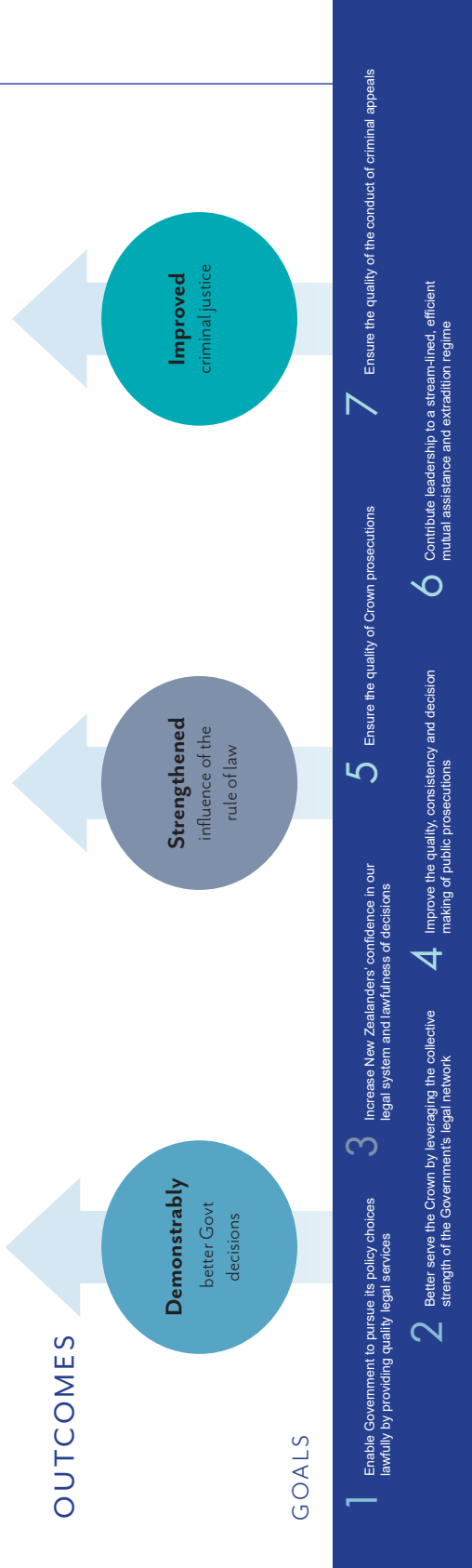
Una Jagose QC  
Solicitor-General and Chief Executive

# PERFORMANCE FRAMEWORK

## CROWN LAW STRATEGY 2017 - 2021

### VISION

#### COLLABORATIVE, INDISPENSABLE LEGAL SERVICE



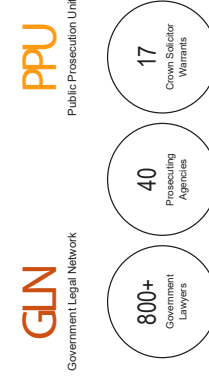
#### WHO WE ARE



#### AREAS OF EXPERTISE

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

#### SYSTEM OVERSIGHT



#### MISSION

LEGAL EXPERTS  
Nga Kaiiaki o te ture

KAITIAKI OF THE RULE OF LAW  
Kaitiaki whakatau i te ture

SYSTEM LEADERS  
Nga Kaihautu

# THE DIFFERENCE WE MAKE

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## *Who we are and what we do*

Crown Law's function is to support 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 Principal 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 Principal 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.

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Last year, we worked on refreshing our strategic direction. Given the growing importance, complexity and need for timely legal advice and quality representation, it is vital that Crown Law and the network of Government lawyers continue to adapt and evolve how we provide our services. The question we asked ourselves and our stakeholders is what is the Crown Law that New Zealand needs?

We have developed a new strategic direction (see the diagram on page 5) that puts three 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 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 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.

# 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 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 2018, 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).

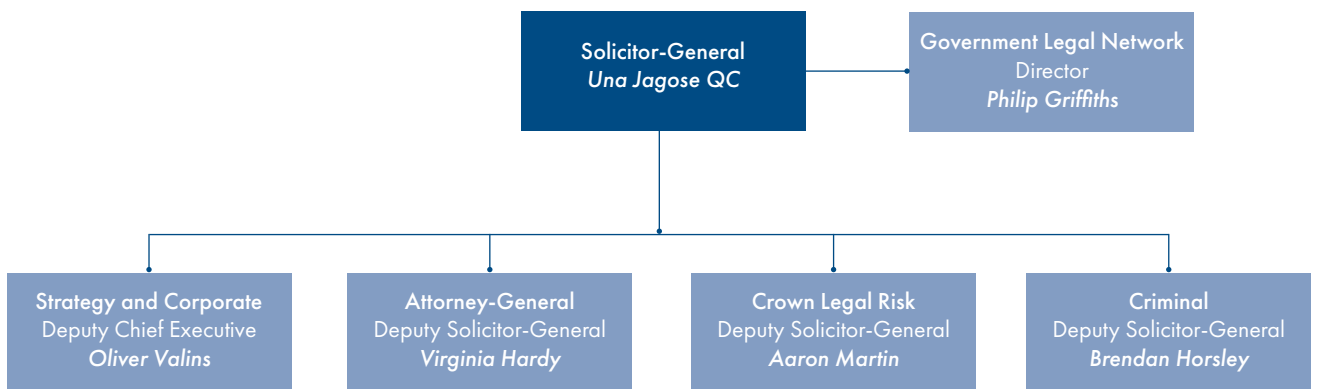
The OMC supports the Leadership Team and line managers in the management of the day-to-day operations of Crown Law through operational decision making and monitoring of compliance with processes and procedures. The PSC is dedicated to ensuring standards of best practice are used within Crown Law. The 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, financial sustainability, culture and behaviours, workforce capacity and capability, information security and fit-for-purpose systems), which are monitored and reviewed on a regular basis.

Figure 1: Crown Law organisational structure





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 2018, the independent committee members appointed were John Whitehead (previously Secretary to The Treasury) as ARC Chair and Commodore Ross Smith (Chief of Staff at NZ Defence Force Headquarters). 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 2018.

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 18–19.

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 2017/18 was \$71.5 million, as outlined in the Supplementary Estimates 2017/18, which covered the following:

- \$22.3 million (32% 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
- \$48.6 million (67% of the Vote) for the Law Officer Functions (multi-class 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 (\$5.4 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 \$0.6 million in 2017/18.

## 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.

During 2017/18, 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. The review encompassed Crown Law and the networks it leads, oversees or operates within, including the GLN.

The main finding from the review was that there are significant 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. The following three broad challenges were identified:

- Enhancing system-wide leadership.
- Building capability across the system.
- Removing barriers and managing demand.

Options to address these challenges are currently being considered with implementation of improvements expected to occur in 2018/19 and in the medium term.

### *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 will be implemented in 2018/19.

### *Government Legal Network People Plan*

The growth of the GLN has seen a rise in collaboration amongst 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.

In 2017/18, the GLN developed and launched a People Plan.

The People Plan contains 16 projects that will be prioritised and implemented over the next 4 years. Refer to page 18 for further details.

## *Systems and software*

To drive efficiency, effectiveness, improved customer services and 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 project was established in 2017/18 with the following objectives:

- To evaluate, prioritise and identify the sequence of potential 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.

The systems and software improvement programme is the first stage in implementing systems and system changes to enable staff and management to deliver on Crown Law's new strategy through:

- accurate and easily accessible information;
- forward planning to predict and manage future workloads and any potential resource issues;
- operating in a manner that supports early engagement from clients;
- efficient processes that enable greater focus on providing services and managing relationships with clients and stakeholders; and
- building, maintaining and executing an informed long-term and sustainable set of information technology roadmaps.

## *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 2018, our gender pay gap was 32% compared with 30% as at 30 June 2017. 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 provided training for managers on unconscious bias 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 and implementing flexible working arrangements.

Crown Law is less ethnically diverse compared to other government agencies and the general population. Crown Law has implemented te reo Māori training for staff in 2017/18 and supported 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%).

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 behaviours discussed above.

### *Workplace health and safety*

This year, we have continued to focus on our organisation's health and safety maturity. In 2017/18, we have refreshed our membership of the Health and Safety Panel, which is made up of representatives from both management and staff. The panel met five times during 2017/18.

The panel reviewed and updated our 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.

To supplement the above initiatives, in 2017/18 we also piloted a supervision programme for staff that supports and promotes good behaviours and habits in dealing with mental wellbeing. The results of this pilot programme are currently being analysed and assessed.

# OUR APPROACH TO QUALITY

## Quality of our legal advice and services

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 our clients' 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 our clients***

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

The survey offers an opportunity for our clients 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 93% (2017: 95%). Of our clients that participated in the survey, 96% (2017: 97%) rated our services as good to excellent (which far exceeds our target of 90%).

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 client survey, please refer to page 44.

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## Oversight of public prosecutions

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### **Public Prosecutions Unit**

The Solicitor-General is responsible for maintaining general oversight of the conduct of public prosecutions.

Public prosecutions include both Crown prosecutions, which are conducted through our Crown Solicitor Network, and non-Crown prosecutions, which are conducted through government agencies with prosecution powers. In total, there are 17 Crown Solicitors and 40 prosecuting agencies within New Zealand.

The Public Prosecutions Unit (PPU) is headed by the Public Prosecutions Manager, who is responsible to the Deputy Solicitor-General Criminal Group. The initial focus of the PPU was on managing Crown Solicitor funding within the appropriation.

The PPU's current focus is on the longer-term goal of providing the Solicitor-General with greater oversight of all public prosecutions. A significant aspect of that work is improving the methodology for reviewing the performance of the Crown Solicitor Network and the prosecuting agencies.

The PPU has established an online platform for prosecutors called POP. This platform promotes a collaborative and electronic approach to information and knowledge sharing across the Crown Solicitor Network. It allows prosecutors to share their expertise and request information through discussion boards. It helps to ensure consistency of approach. It has been widely adopted throughout the Crown Solicitor Network, and the PPU will continue to develop the platform in the medium term to maximise its value.

### **Public Prosecutions Reporting Framework**

The Public Prosecutions Reporting Framework is the principal mechanism through which greater oversight of public prosecutions is achieved. Data is

collected about individual cases every month. High-level statistical information about the structure and resources required to administer the prosecution function is collected annually.

Each Crown Solicitor firm and prosecuting agency participates in the reporting framework.

The reporting framework provides a greater understanding of both the current and future sustainability of the Crown Solicitor Network. It is a crucial element in ensuring delivery of quality Crown prosecution services, both now and in the future.

### **Crown Solicitor Network oversight**

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

#### *Crown Solicitor standards of service*

Crown Solicitors are guided by the Terms of Office, which set out the Solicitor-General's expectations of Crown Solicitors. It also outlines the funding arrangements. The Terms of Office and the Solicitor-General's Prosecution Guidelines are periodically reviewed to ensure high standards 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. These values aim to achieve consistency and common standards in key decisions and trial practices. Our standards and practices support open and fair processes that are reflected in results of the international indexes such as the World Justice Project Rule of Law Index (see pages 28–29).

#### *Oversight of quality of the Crown Solicitor Network*

The oversight functions, including the reporting

framework, are designed to provide information about the Crown Solicitor Network's workloads and to gauge the value for money provided. The regular surveys and reviews may examine:

- the legal acumen and performance of Crown Solicitors and their staff;
- the management of the work; and
- how the relationship with others is conducted in the justice sector.

Assessing the quality of complex technical services requires professionals to apply judgement to a range of relevant factors to form an expert opinion about standards of quality. This gives us a level of assurance about the quality of legal services provided by the Crown Solicitor Network by answering this question: Is the legal service provided of the standard expected?

To answer this question, the PPU uses a three-tiered system: environmental feedback at the highest level; an annual questionnaire for Crown Solicitors at the next level; and reviews of individual Crown Solicitors at the next level.

### *Environmental feedback on Crown Solicitors*

At the highest level of the system is 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, Crown Law, in particular the PPU, talks with members of the judiciary and prosecuting agencies to gain insight into how other professionals and interested parties view the performance of Crown Solicitors.

Our representatives also visit Crown Solicitors, judges and Heads of Bench.<sup>1</sup>

### *Annual questionnaire for Crown Solicitors*

At the next level, Crown Solicitors complete an annual questionnaire in which they provide information about the resources being applied

to support the warrant. This ensures that 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.

### *Survey and interviews of Crown Solicitors*

The final level involves reviews of individual Crown Solicitors. The reviews consist of a survey and interviews. The purpose of the interview-based review is to support the Crown Solicitor in identifying areas to improve and develop.

For the survey-based review, key stakeholders provide us with high-level feedback on a range of topics. This review is designed to confirm there are no areas of serious concern and to reveal any issues for further investigation. The interview-based reviews are in-depth and resource-intensive. Environmental feedback and survey-based reviews may guide these reviews.

Five reviews are scheduled to be completed each year. This 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.

### *Assessment for 2017/18*

- For 2017/18, the Deputy Solicitor-General Criminal Group with the Public Prosecutions Unit determined that there are *no serious issues* (statement 1 in the scale on page 17).
- This represents the maintenance of statement 1 achieved in the past 3 financial years.

<sup>1</sup> Each court is headed by a senior judge, usually described as the Chief Judge or Principal Judge of that court. Such positions are often referred to as Heads of Bench.



## 1 No serious issues identified

Our current view is that the Crown Solicitor Network as a whole is operating sustainably<sup>2</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>3</sup>

## 2 No serious issues identified; areas for improvement verified

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.

## 3 Serious isolated issues identified

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.

## 4 Serious issues affecting the wider Crown Solicitor Network identified

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.

## Non-Crown prosecutions (Crown agencies) oversight

Non-Crown prosecuting agencies include New Zealand Police, departments and Crown entities. As part of increasing oversight of non-Crown prosecutions, the PPU established 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.

Over time, the PPU will consult with agencies responsible for prosecutions to increase its management of those agencies. This development is in line with the review processes now in place for the Crown Solicitor Network.

## 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.

2 '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.

3 '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).

# COLLABORATION THROUGH OUR NETWORKS

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## Government Legal Network

### Background

The Government Legal Network (GLN) is a well-established collaboration between Chief Legal Advisors and the Principal Law Officers in the management of Crown legal risk and in the leadership of the government legal profession.

The GLN was established by Cabinet on a pilot basis in 2011 and has been funded on a permanent basis since 2016. It comprises over 850 lawyers in central government and a further 300+ in Crown entities, State-owned enterprises, Crown research institutes, district health boards and tertiary institutions.

The GLN operates to an annual budget of \$1.0 million and is supported by a small resource (the GLN Team) within Crown Law. The GLN Team administers a variety of activities to strengthen cross-government legal capability, risk management and knowledge sharing. Led by a GLN Director, the GLN Team is operationally accountable to the Solicitor-General with governance and advisory input from the GLN Advisory Board and the Chief Legal Advisors' Forum.

### 2017/18 activity

A Legal Risk Reporting System is now in its fourth year. The system has a high reporting threshold and captures the Crown's most significant legal risks. It provides an important flow of information from Chief Legal Advisors to the GLN Advisory Board and Principal Law Officers. It also supports operational collaboration across departments in the management of existing risk and the identification of opportunities to prevent new risk.

The GLN Advisory Board regularly considers wider aggregated or environmental risks that could impinge upon the way the Government operates. On an annual basis, the GLN Advisory Board and Chief Legal Advisors gather for a workshop to examine a risk or opportunity closely aligned to the Government's priorities.

The GLN Team has established a government-wide approach to legal training activities, facilitating 17 legal practice groups centred around sector, subject matter and functional areas. These groups convene a variety of seminars, workshops and roundtable discussions in which colleagues can share expertise, identify trends and strengthen professional leadership. Over the last financial year, the GLN Team has supported the Network to deliver over 4,100 individual continuing professional development hours.

The GLN Team's focus on professional stewardship is reflected in a key achievement of the 2017/18 year: the development of the Government Legal Network People Plan (<http://gln.govt.nz/gln-people-plan/>). The People Plan contains 16 projects targeted at five priority areas: developing a workforce for the future; understanding our network; Crown-Māori relationship and capability; developing legal leadership and technology; and practice management. Threaded through all the work streams will be a focus on enhancing diversity and inclusion across the network.

Other activities facilitated by the GLN Team include two early-in-career programmes and He Waka Eke Noa: An Introduction To Being a Government Lawyer course. The introductory course is now in its fifth year and has provided over 390 lawyers new to government with a practical grounding in technical and ethical considerations they need to balance in public sector practice.

The GLN Summer Clerk Programme is in its fourth year and places around 20 senior law students per annum into legal teams across central and wider government. The GLN Graduate Programme is now in its second intake. This programme has a 2-year fixed-term structure involving four 6-month placements in legal teams across the Crown. Both programmes have emerged as flagship opportunities to experience rewarding technical work in a supportive learning environment. Placements are highly sought after, with each programme attracting approximately 240 applications per intake.

### *Looking ahead*

Over the next financial year, the GLN will remain focused on leveraging the Crown's collective legal resources and expertise to better meet the needs of the Government. A Legal Leaders Group, comprising legal team managers across the Crown, will work with the GLN Advisory Board and the Solicitor-General to prioritise and start at least four of the People Plan projects. Project delivery for the remaining projects will be phased across 4 years and will draw upon existing resources, including the GLN Team and practice groups, for support.

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

For more information, refer to the GLN website: <http://www.gln.govt.nz>.

### ***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 immense goodwill and greatly 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 Programme.

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.

**Crown Law's outputs  
by outcome**

## Outcome One

# DEMONSTRABLY BETTER GOVERNMENT DECISIONS

### *Appropriation*

This work links to the appropriation for Legal Advice and Representation and the Government Legal Network output in the Law Officer Functions MCA.

The GLN's purpose is to improve the effective and efficient delivery of legal advice and services to the Crown and facilitate the systemic oversight of Crown legal risk. See pages 18–19 for further information about GLN activities.

### *Purpose and intention*

Principal Law Officers are the chief legal advisors to the Government and the chief advocates for the Government in the courts. They are responsible for making sure legal process does not prevent the Government from lawfully implementing its chosen policies and discharging its governmental responsibilities.

Crown Law supports the Law Officers by providing legal advice and representation to ensure the Crown's legal risks are managed well and its interests are protected. We advise and provide representation on services to:

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

### *Performance overview*

We take a 'one Crown' approach to protecting the Crown's legal interests. In looking after the Crown's legal interests, we must look beyond the interests of individual departments, even when a department is the client initiating the work. This approach assures the Attorney-General and Solicitor-General that the Crown's legal risk is being identified early and managed well. See pages 39 and pages 43–44 for how service delivery is reported for legal advice and representation and the GLN.

One way that we provide leadership and work with other departments is through the GLN. The GLN is a collaboration led by the Principal Law Officers and Chief Legal Advisors.

# SIGNIFICANT AND ILLUSTRATIVE LEGAL ADVICE AND REPRESENTATION MATTERS

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## ***Re Lee* [2017] NZHC 3263**

In this case, the High Court considered the novel and complex legal position in respect of the collection of sperm from a recently deceased man. The judgment clarified, among other things, that this could be authorised within the inherent jurisdiction of the High Court.

In this case, the Court had granted urgent interim relief authorising the removal of sperm from Mr Lee's body after his death. The removal of sperm was requested by Mr Lee's partner, Ms Long (all names are pseudonyms). Ms Long sought to use the sperm to conceive a second child as both she and Mr Long had intended prior to his unexpected death. There was no indication that Mr Lee had consented to, or contemplated, posthumous extraction of his sperm.

The issue for the Court was encapsulated as: in the absence of specific statutory authority or provision, what (if any) jurisdiction can the High Court exercise to facilitate the process of harvesting sperm from a dead body and preserving it pending a decision as to whether, and if so in what circumstances, it may be used?

The Attorney-General, as guardian of the public interest, intervened in the case. While the application was not opposed by the Attorney-General, the submissions for the Attorney-General addressed the limits on the Court's inherent jurisdiction and the considerations that should be taken into account in exercising that jurisdiction. The Attorney-General submitted that any order allowing the harvesting and retention of sperm should not permit export of that sperm without further consideration by the Court.

The Human Assisted Reproductive Technology Act 2004 provides that consent from an ethics committee is required for certain assisted reproductive procedures. Such consent would be required for Ms Long to undergo any procedure using the sperm in question. The Court was therefore limited to considering the authority for extracting the sperm so that it would be available for any such procedure in due course.

In summary, the Court found the following:

- There are no statutory or regulatory provisions that deal explicitly with the ability or otherwise for a person in the position of Ms Long to collect and use sperm from a deceased person or partner.
- The Human Assisted Reproductive Technology Act 2004 does not exclude the possibility that the ethics committee could grant permission for use of sperm from a deceased male.
- In the law of New Zealand, there is no property in a body (*Takamore v Clark*) nor in a body part to which someone has applied skill or work. Accordingly, Ms Long has no proprietary interest in the sperm extracted from her late partner.
- The inherent jurisdiction of the High Court may authorise collection and storage of sperm from a dead male.
- A wife or partner in the position of Ms Long is entitled to apply for an order authorising extraction of the sperm. The Court did not rule out the possibility of some other person with sufficient interest making an application.
- The Court should retain control of the sperm to determine how to implement the eventual decision of the ethics committee on any assisted reproductive procedure involving the sperm.
- The lack of express consent by Mr Lee will be a factor for the ethics committee to consider.

## ***Strathboss Kiwifruit Ltd v Attorney-General* [2018] NZHC 1559**

This case was about a pathogenic bacterium (called Psa3) that was first identified in New Zealand in late 2010. Psa3 causes damage to kiwifruit vines. The plaintiffs said Psa3 arrived in a consignment of kiwifruit pollen from China and that Ministry of Agriculture and Forestry (MAF) officials had been negligent in granting an import permit for the consignment and clearing it at the border.

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The first plaintiff is Strathboss Kiwifruit Ltd. Strathboss represents approximately 200 other people or entities that have interests in kiwifruit orchards. The second plaintiff is Seeka Ltd, which is a post-harvest operator (processing and packing kiwifruit). The plaintiffs were granted approval to bring a representative action, funded by a litigation funder, in 2015.

The High Court directed that the case would be heard in two stages. The first stage would be about whether a private duty of care was owed to the plaintiffs, whether that duty had been breached and whether that breach had caused Psa3 to arrive in New Zealand. The second stage would be about what loss, if any, had been suffered as a result of any breaches of duty. The loss claimed has not yet been quantified. It is understood the plaintiffs say the loss is in the hundreds of millions of dollars.

The first stage was heard over 3 months in 2017, and the judgment was issued on 27 June 2018. The High Court held that the MAF officials did owe a private duty of care in exercising their functions under the Biosecurity Act 1993. This was a novel duty of care not previously recognised in New Zealand.

The Court held that this duty was owed to Strathboss and those within the represented class who had property interests in kiwifruit vines. However, it was held that the same duty of care was not owed to Seeka, as Seeka's losses were one step removed.

The High Court also held that MAF officials had been negligent in the processes undertaken prior to granting the import permit for the kiwifruit pollen, and this had caused the Psa3 incursion in New Zealand. The High Court did not find any causative breaches at the border clearance stage.

The High Court also held that a statutory immunity contained in the Biosecurity Act 1993 did not apply to the relevant MAF officials involved, meaning it was not available to the Crown. Even if the immunity had been available to the officials, the Court said that the Crown Proceedings Act 1950 did not operate to allow the Crown to rely on such an immunity when the

Crown was otherwise vicariously liable for the officials involved.

The Crown has appealed the decision.

### ***McKay v The Commissioner of Inland Revenue*** **[2018] NZCA 138**

This Court of Appeal decision upheld the Commissioner's decision to rely on a mediated agreement on access to a child as evidence of paternity for the purpose of a child support assessment.

Mr McKay argued that it was unlawful for the Commissioner to rely on the agreement as it was either privileged under section 12 of the Family Dispute Resolution Act 2013 (the FDRA) or confidential.

The Court upheld the earlier High Court decision and found that the agreement was not privileged. The statutory privilege under section 14(1) of the FDRA only protected statements made in the course of mediation, and in any event, the Commissioner was not acting judicially in making her child support assessment so as to prevent the agreement from being disclosed to her by section 14(2) of the FDRA. Likewise, the confidentiality agreement applied only to the mediation process and not the agreement itself.

The Commissioner was under a duty to exercise her functions to achieve the legislative objectives and therefore had no choice but to make the assessment upon evidence of paternity. The existence of the mediated agreement provided such evidence.

It was recognised in the judgment that Mr McKay had not appreciated that the agreement would have this effect and may have received contrary advice at the time of the mediation. As such, the appeal costs were not awarded against him.

The Court also noted the element of public interest in highlighting the evidentiary value of the information contained in a mediated agreement of this sort. The Court noted that family dispute resolution providers may modify the advice they provide in light of this decision.

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***Horsfall v Potter* [2017] NZSC 196**

This case related to the division of property, on divorce, under the Property (Relationships) Act 1976.

During the parties' marriage, a jointly owned property in Wellington had been sold and the proceeds transferred to a limited company. The parties disagreed as to whether those proceeds were relationship property. In particular, the wife, Ms Potter, claimed that the property had been jointly owned as an intended matrimonial home. The husband, Mr Horsfall, contended that the property had been beneficially owned by the limited company and that the purchase was made in the couple's joint names in order to reduce/avoid tax liability on the eventual sale.

The Attorney-General intervened in support of application of the line of legal authority to the effect that ownership cannot be treated or viewed differently for different purposes – such as tax purposes as against relationship property purchases. This case affirmed the application of this legal policy set out in case law including *Potter v Potter*.

The Supreme Court upheld the Court of Appeal decision by majority, holding that the position on beneficial ownership had to be determined based on the common intentions of the parties. If there was an intention or understanding that joint ownership would lead to a tax advantage, it had to follow that the joint ownership was genuine. It was held that the property was therefore relationship property.

***Emborion International Ltd v Commissioner of Inland Revenue* [2018] NZHC 178**

This High Court decision confirmed that a company has no right to be represented in court other than by a barrister or solicitor and no-one may appear in court as an advocate unless admitted as a barrister or solicitor or unless the court gives leave. That is, a director or company officer not so admitted may not represent a company in court without the leave of the court.

This particular case related to a matter that had been transferred from the Taxation Review Authority to the High Court. Applications in connection with the proceedings were lodged by the company's sole director. The Commissioner opposed these on grounds including a question as to the standing of the director to file the applications on behalf of the company, Emborion. The director argued that, essentially, she was the company. She argued that she was not seeking to represent Emborion (which would be contrary to the requirements of the Lawyers and Conveyancers Act 2006). Rather, it was argued that the appearance by the sole director amounted to self-representation by the company.

The Court held that the decision in *Re G J Mannix* applied to these circumstances and reiterated that companies cannot turn into natural persons. The judgment clarified that the provisions of the New Zealand Bill of Rights Act 1990 and Interpretation Act 1999 (which post-date the *Mannix* decision) do not alter this.

***Ngāi Tai ki Tāmaki Tribal Trust v Minister for Conservation* [2017] NZCA 613**

Ngāi Tai ki Tāmaki challenged the Minister of Conservation's decisions to grant commercial concessions for tourism on Rangitoto and Motutapu public reserves in the Hauraki Gulf. The concessions were granted to Fullers Group Ltd and the Motutapu Island Restoration Trust. Ngāi Tai ki Tāmaki also have a commercial concession for tourism but argued they should have exclusive concession rights for at least a 5 year period.

Ngāi Tai ki Tāmaki argued that sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 meant their objections to the granting of concessions to Fullers Group Ltd and the Motutapu Island Restoration Trust should have resulted in the Minister declining to grant the concessions. The High Court disagreed, as did the Court of Appeal.

In making its decision, the Court of Appeal recognised that Ngāi Tai ki Tāmaki have deep



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historical and spiritual connections with the reserves and observed that they were the tangata whenua who held mana whenua over the reserves. Although Ngāi Tai ki Tāmaki asserted rangatiratanga over the reserves, the Court of Appeal did not see a need to address that part of their claim, saying that, while that might be a relevant consideration, the legitimacy of the Minister’s decisions before them did not rely on it – it was not part of the statutory function of the Minister of Conservation or their delegate to determine rangatiratanga.

The Court of Appeal distinguished *Ngāi Tahu Māori Trust Board v Director General of Conservation* [1995] 3 NZLR 553 (CA) (also known as the *Whales* case). The *Whales* case depended on the application of section 4 of the Conservation Act 1987, whereas sections 7 and 8 of the Hauraki Gulf Marine Park Act were the focus of this case. The facts were also distinguishable. The Court of Appeal held that neither the provisions of the Hauraki Gulf Marine Park Act nor those of the Conservation Act (alone or in combination) required Fullers Group Ltd and the Motutapu Island Restoration Trust’s applications for concessions to be declined in the face of objections by Ngāi Tai ki Tāmaki.

Following the Court of Appeal’s decision, Ngāi Tai ki Tāmaki sought and were given leave to appeal to the Supreme Court.

***Ngāti Whātua Ōrakei Trust v Attorney-General & Ors* [2017] NZCA 554**

Ngāti Whātua Ōrakei Trust challenged 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 Ōrakei 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 Ōrakei Trust sought a range of declaratory relief including, amongst other things, a declaration that Ngāti Whātua Ōrakei 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 Ōrakei tikanga.

The Court of Appeal’s decision to dismiss the appeal turned on the fact both settlement agreements with Ngāti Paoa and Marutūāhu were conditional on legislation coming into force. The Court of Appeal referred to a number of authorities affirming the legal proposition that the courts will not grant relief that interferes or impact on actions of the Executive preparatory to the introduction of a Bill to Parliament because to do so would intrude into the domain of Parliament. These authorities were described by the Court of Appeal as presenting a fatal obstacle to Ngāti Whātua Ōrakei Trust’s arguments.

Following the Court of Appeal’s decision, Ngāti Whātua Ōrakei Trust sought and was given leave to appeal to the Supreme Court. The Supreme Court heard arguments in May 2018 on whether the Court of Appeal should have allowed the applicant’s appeal to that Court.

## Outcome Two

# STRENGTHENED INFLUENCE OF THE RULE OF LAW

### **Appropriation**

This work links to the appropriation for Legal Advice and Representation and the Law Officer Constitutional and Criminal Law Duties output in the Law Officer Functions MCA.

### **Purpose and intention**

The Attorney-General and the Solicitor-General (the Law Officers) are responsible for providing independent legal advice to the Crown, free from political influence. This independence is critical in maintaining the integrity of the rule of law and is instrumental in minimising the risk of the government acting unlawfully.

Crown Law is responsible for supporting the Law Officers in performing their roles.

We are responsible for providing advice (to the Crown and government agencies) on legal issues and on the legal and constitutional implications of policy proposals. The Cabinet Directions for the Conduct of Crown Legal Business 2016 set out particular legal matters that must be referred to the Solicitor-General.

The primary activities to support the Law Officers include:

- representation or advice about actual or imminent litigation to which the government or an agency is (or may become) a party;
- legal services involving matters of the lawfulness of an exercise of government power;
- constitutional questions, including Treaty of Waitangi issues; and
- legal issues about the protection of revenue.

We also assist the Law Officers by:

- ensuring that government actions are conducted according to the law;
- representing the public interest;
- managing the relationship of the Executive Government with the judiciary;

- administering the appointments of judges to the higher courts and of Queen's Counsel;
- acting on behalf of the government in civil litigation;
- telling the House whether any provision in a Bill introduced to the House is inconsistent with the New Zealand Bill of Rights Act;
- supporting the supervision of charitable trusts;
- managing vexatious litigant proceedings;
- processing applications for the discharge of adoption orders;
- processing requests for second coronial inquiries;
- managing special patient reclassifications;
- defending judicial reviews;
- providing legal advice and representation on intervention regarding alleged contempt of court and breach of name suppression;
- providing advice on mutual assistance and extradition matters; and
- managing Attorney-General consent to criminal prosecutions.

### **Policy work programme**

Crown Law contributes 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.

Our policy work programme is mostly focused on criminal justice proposals, constitutional proposals and those relating to functions such as the Solicitor-General's role in coronial inquests or the role of the Attorney-General as protector of charities or providing consent before an extraterritorial prosecution can be started.

In 2017/18, the policy role has contributed to a number of significant justice sector reforms. Crown Law has been a member of criminal justice

sector strategic working groups on the rule of law and on criminal justice. Crown Law has been represented by the policy team on a working group to modernise the Domestic Violence Act.

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. Crown Law has also worked closely with the Law Commission on recent reviews including the Search and Surveillance Act, the Criminal Investigations (Bodily Samples) Act and the Evidence Act.

## ***Performance overview***

See pages 37–45 for our service delivery regarding the Law Officer Functions and Legal Advice and Representation.

### ***Performance overview – 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 2017 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 7/113<sup>4</sup> when all index factors are considered. In the

index's criminal justice focus overall, New Zealand is ranked 14/113.<sup>5</sup>

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

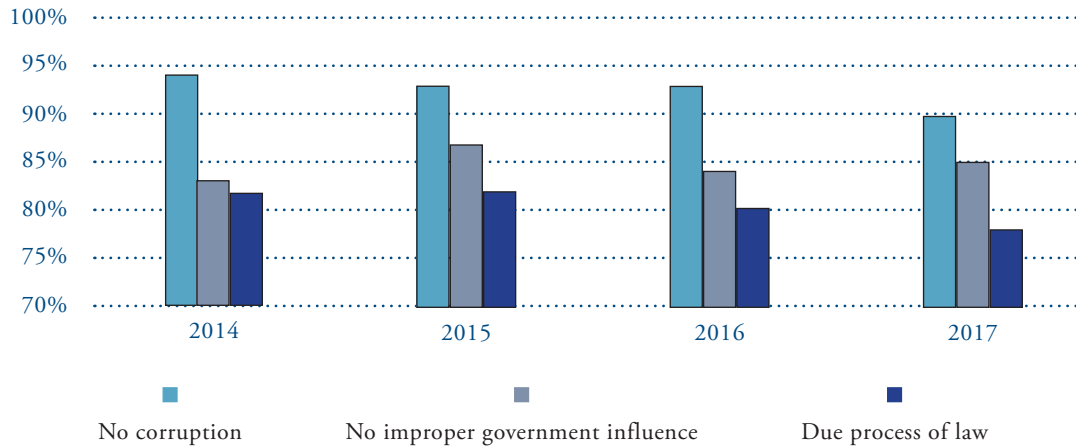
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4 2016: 8/113

5 2016: 13/113

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

*World Justice Project Rule of Law Index 2017-2018: NZ*

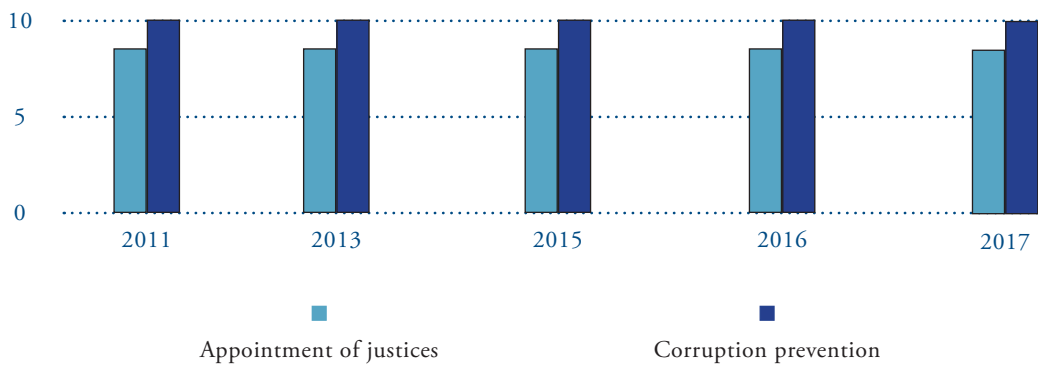


New Zealand’s international ratings for the Rule of Law Index (above) and Sustainable Governance Index (below) are detailed on page 42. New Zealand’s global ranking has improved to 7/113 and maintains 1/15 ranking in the East Asia and Pacific region.

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

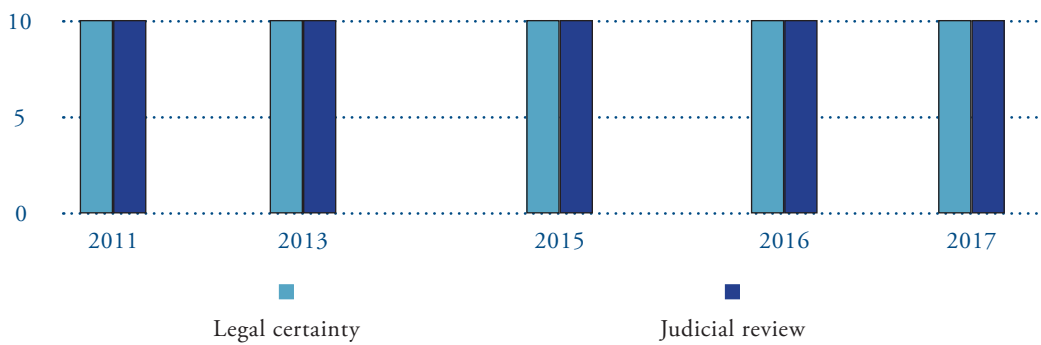
*Bertelsmann Foundation Sustainable Governance Index 2017: NZ*



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.

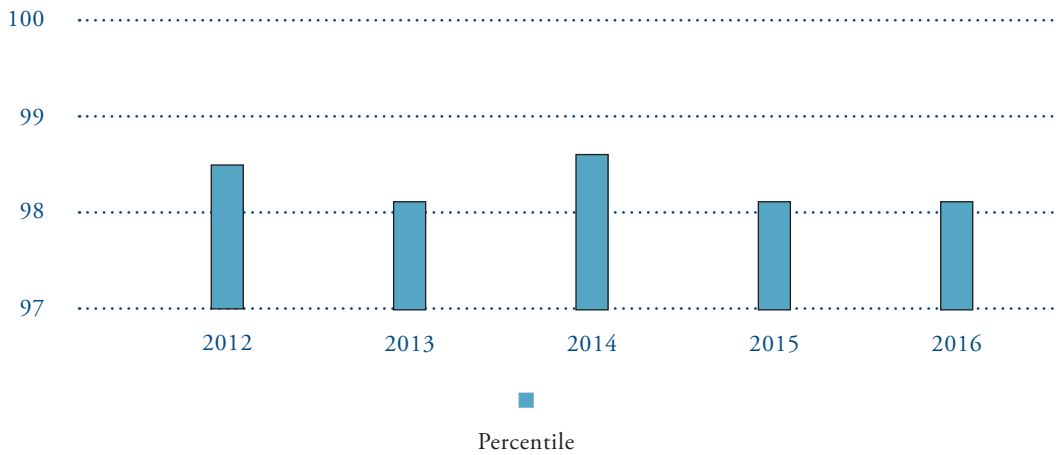
We also contribute to reducing legal risks to the Crown by protecting the Crown’s interests and ensuring any risks are managed well. The reduction of risk is related to the following index measures, in which New Zealand scored a perfect 10 in the past five reports.

*Bertelsmann Foundation Sustainable Governance Index 2016: NZ*



The World Bank Governance Indicators<sup>6</sup> continue to rank New Zealand well for rule of law, placing New Zealand in the 98th percentile in the latest survey (for 2016) of 214 countries.

*World Bank 2016 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 placed New Zealand first of 10 countries/territories in 2017, scoring 89 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. This reduces risk to the Crown’s interests, ensures legal certainty and prosecutes 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.

6 World Bank Governance Indicators 2015 Update, Aggregate Indicators of Governance 1996-2014 data, <http://www.worldbank.org/governance/wgi>.

# SIGNIFICANT AND ILLUSTRATIVE LEGAL AND CONSTITUTIONAL MATTERS

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## ***New Health New Zealand Inc v South Taranaki District Council [2018] NZSC 59***

On 27 June 2018, the Supreme Court released its decision on the lawfulness of fluoridating public drinking water supplies. The defendant was the South Taranaki District Council who had resolved to add fluoride to the water supplied to Patea and Waverley.

The Crown involvement in this appeal was as an intervener on the significant Bill of Rights issue it raised: does adding fluoride to water amount to medical treatment for the purpose of section 11 of the New Zealand Bill of Rights Act, which guarantees the right to refuse medical treatment? A majority of the Court answered yes, but a differently constituted majority of the Court found it was a demonstrably justified limitation on that right.

The case had wider implications for the interpretation of the Local Government Act 2002. Water fluoridation has been carried out in New Zealand for more than 60 years, but until the Local Government Act, there was a prescribed power to adulterate water. The Local Government Act opted for less prescription, replacing it with a general power of competence for local authorities (section 12). The Supreme Court (Elias CJ dissenting) found that, in doing so, Parliament did not intend any substantive change to the lawfulness of the longstanding practice of adding fluoride to drinking water.

At the same time, the Court heard and dismissed an appeal in respect of the challenge by New Health New Zealand Inc to the lawfulness of the Medicines Amendment Regulations 2015, by which fluoride was declared not to be a medicine.

## ***Attorney-General v Smith [2018] NZCA 24***

This appeal decision clarifies the scope of an individual's right of freedom of expression.

Phillip Smith escaped from lawful custody and fled to Brazil in November 2014. Prior to his escape, he was in the reintegrative phase of his sentence,

which included temporary release and being permitted to wear a custom-made hairpiece while in prison. Following his escape, Mr Smith was no longer considered to be in the reintegrative phase of his sentence and his custom-made hairpiece was removed.

Mr Smith filed a judicial review proceeding, claiming that the decision to remove his hairpiece was made in breach of his right to freedom of expression, as affirmed by section 14 of the Bill of Rights Act. He also claimed that the decision was unlawful in that the prison director had failed to take into account a mandatory consideration, namely his rights under the Bill of Rights Act, in making the decision to remove the hairpiece.

The Crown argued that section 14 of the Bill of Rights Act did not protect the wearing of a hairpiece as it was not expressive conduct and that a relatively low-level managerial decision maker like a prison director need not take into account the Bill of Rights Act as a procedural matter as long as the decision ultimately reached did not infringe the right in question.

The High Court found in favour of Mr Smith. The Attorney-General appealed to the Court of Appeal on both findings. A significant concern for the Crown was the possibility that relatively low-level administrative decision makers might be required to undertake a full Bill of Rights Act analysis when making decisions that could potentially affect protected rights.

The Court of Appeal found the appeal was moot, given Mr Smith had his hairpiece restored to him following the outcome of the High Court proceeding. On that basis, the Court declined to deal with the second of the High Court's findings, namely that the prison director had an obligation to take Mr Smith's rights into account in making his decision (and failing to do so made the decision unlawful). However, the Court exercised its discretion to determine the question of whether wearing a hairpiece, in the circumstances of this case, engaged Mr Smith's right to freedom of expression. The Court of Appeal found that it

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did not, as it did not involve sufficient expressive content. Mr Smith's desire to wear the hairpiece did not convey meaning to other people – he wore it because it made him feel better.

**Advice on Operation Burnham Inquiry establishment**

The Crown Law Office has provided advice and assistance to the Government on the establishment of a number of inquiries. The Crown Law Office supported the Attorney-General in the process of decision making prior to the establishment of the Government Inquiry into Operation Burnham and Related Matters in April 2018. The inquiry covers a range of allegations made about New Zealand Defence Force actions in Afghanistan, largely focused on actions in the northern provinces in 2010 by the NZSAS who were there in coalition with partners the Afghan Crisis Response Unit and the US Defence Force. The allegations were set out in a book titled *Hit and Run*, written by Nicky Hager and Jon Stevenson and published in 2017.

The terms of reference have been made public and reach into issues such as the conduct of the NZDF forces, treatment of reports of civilian casualties, the scope of applicable rules of engagement, the advice provided to Ministers and the transfer of insurgents to the Afghan authorities.

In setting up the inquiry, the current Government explained that the public concern about the allegations justified an independent inquiry to seek to establish the facts and make any recommendations considered appropriate. It is structured under the Inquiries Act 2013, which provides broad inquiry powers but specifically precludes inquiry into civil or criminal liability.

Two eminent lawyers have been appointed to lead the inquiry – Sir Terence Arnold, former Supreme Court judge and a previous Solicitor-General, and Sir Geoffrey Palmer, former Prime Minister. The inquiry functions entirely independently of the Crown and will ultimately report to the Attorney-General.

Other inquiries that have been set up in the past year (under the Inquiries Act and otherwise) with support from Crown Law include the Royal Commission into Historical Abuse in State Care, the Government Inquiry into Mental Health and Addiction, the State Services Commission's inquiry into the use of external security consultants and the Government Inquiry into the Appointment Process for a Deputy Commissioner of Police.

## Outcome Three

# IMPROVED CRIMINAL JUSTICE

### **Appropriation**

This work links to the following outputs in the Law Officer Functions MCA:

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

### **Purpose and intention**

The Solicitor-General is responsible for oversight of public prosecutions, Crown representation in criminal appeals and a number of specific statutory duties in how the criminal justice system is run.

Crown prosecutions are mainly conducted by Crown Solicitors. They are appointed under warrant of the Governor-General and undertake work under the supervision of the Solicitor-General. Crown Law supports the Solicitor-General to perform this supervisory function.

The primary activities include:

- overseeing delivery of high-quality prosecutions, cost-effectively and free from political interference;
- managing Crown Solicitor warrants and funding;
- conducting reviews of prosecution practices to make sure services are high quality and offer value for money;
- sharing knowledge among prosecutors;
- conducting criminal appeals in the High Court, Court of Appeal and Supreme Court/ Privy Council (that is, appeals brought by the Crown or in response to appeals brought by the accused) – appeals to the Privy Council are now in very limited cases;
- providing advice on requests for Crown appeals, judicial reviews, stays of prosecution and consent to prosecute;

- making decisions on granting appeal requests from prosecuting agencies; and
- conducting Crown appeals against court-imposed sentences that are considered inadequate.

### **Public Prosecutions Unit**

The Public Prosecutions Unit (PPU) manages the funding for Crown prosecutions, which includes those conducted by Crown Solicitors and the Serious Fraud Office.

The PPU also provides oversight of all public prosecutions for the Solicitor-General and advice to the justice sector on prosecution-related activities and initiatives.

### **Criminal law**

Crown Law also provides legal advice and responds to applications on criminal law issues. We provide legal advice and representation on interventions for alleged contempt of court and breaches of name suppression.

We also assist in international criminal investigations, proceedings and extradition requests. We envisage that international work will continue to be an area of strong focus.

### **Performance overview**

We report service delivery for criminal law advice and services and criminal appeals on pages 38–40. See pages 15–17 for the work that the PPU does to strengthen oversight across public prosecutions.



# SIGNIFICANT AND ILLUSTRATIVE CRIMINAL MATTERS

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## **Rowe v R [2017] NZSC 86**

Mr Rowe was found by an off-duty Police officer taking photographs of three bikini-clad teenage girls on Kaiteriteri beach. He did not have the permission of either the girls or their parents to take photographs. To avoid detection, he took the photographs from a nearby car park by means of a zoom lens.

Mr Rowe was convicted after a jury trial of doing an indecent act with intent to insult contrary to section 126 of the Crimes Act 1961. Relying on its previous decision in *R v Annas*, the Court of Appeal upheld his conviction.

The Supreme Court allowed Mr Rowe’s further appeal and quashed his conviction. The Court held that section 126 is primarily directed at exhibitionism, as understood broadly, or display by a person to someone else. The focus is the quality of the act. Surrounding circumstances such as motive or prurient purpose cannot make an act that would not otherwise be indecent into an indecent act under section 126 (or section 125). Here, the Court held there was insufficient evidence to establish Mr Rowe’s act comprised an indecent act. Neither the subject matter nor the photographs were indecent in themselves, and Mr Rowe had not engaged in “any exhibitionistic type behaviour” nor, given the images themselves were not indecent, was there sufficient evidence to prove an intention to insult.

## **Christian v R [2017] NZSC 145**

This was an appeal against conviction for three charges of sexual violation by rape, in circumstances where a 13 to 14 year old girl was sent to live with a much older church leader. Her account was of regular unwanted intercourse. She did not protest but equally did not give any indication of consent. The defence at trial was that the intercourse did not take place at all.

The appeal to the Supreme Court focused on the lack of jury directions by the trial judge about the need to be satisfied, beyond reasonable doubt, as to absence of consent (and absence of reasonable belief in consent) before reaching a guilty verdict.

The Supreme Court retreated from the suggestion in an earlier judgment (*Ab-Chong v R* [2015] NZSC 83) that consent is something that must be given in a positive way. The Court said that it may be reasonable to infer consent from silence or inactivity in the circumstances, for example, in the context of a relationship where “expectations” had developed over time.

The appeal was allowed in part, in relation to the later counts of rape. The Court held that the complainant may have consented “as a consequence of grooming”. Accordingly, despite this not being advanced as a defence at trial, a lack of jury directions as to consent resulted in a miscarriage of justice. A retrial on two of the three charges was ordered.

In this case, therefore, the Court has created an exception to the usual rule that a trial judge need not direct on every element of the offence if there is no evidential foundation for it. From now on, in sexual cases, the judge must direct on every element and, specifically, must direct on consent even where there is no evidential foundation for it and where consent is not put in issue by the defendant.

## **Fahey v R [2017] NZCA 596**

This judgment examined the proper role of an amicus curiae in criminal trials.

The question arose in the context of an appeal against conviction on grounds that (broadly) the appointment of counsel to assist the court prejudiced the self-represented appellant’s defence and constituted a miscarriage of justice. The Court of Appeal held that, while there was some uncertainty as to the role of court-appointed counsel in this case, the appointment had not compromised the appellant’s right to self-represent or the defence advanced by him, and the appeal was dismissed.

In responding to the appeal, the position of the Crown was that there was a requirement for clarification of the role(s) of court-appointed counsel. The Crown also took the view that the

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opportunity of a defendant to self-represent should not be undermined by routine appointment of counsel by the court. Interventions on similar submissions and seeking the same clarification were made by the New Zealand Law Society and New Zealand Bar Association. The New Zealand Criminal Bar Association also intervened.

The permanent Court of Appeal provided this clarification. The Court drew a firm distinction between amicus in the traditional sense of an independent advisor to assist the Court and the role of “standby counsel” who stands by ready to assist the defendant, if and to the extent the defendant is willing to accept it, and to assume conduct of the defence should the defendant decide they no longer wish to represent themselves.

The Court emphasised that appointment of an amicus curiae should be rare, and while not a requirement, appointment is most likely to occur where the defendant exhibits mental illness or disability or because of a defendant’s actual or anticipated misconduct. Appointments of former defence counsel as amicus were discouraged.

***Solicitor General v Hutchison* [2018] NZCA 162**

In this appeal, the Crown successfully appealed against a sentence imposed for domestic violence offending. A sentence of 6 years and 9 months’ imprisonment (with a 50% minimum period of imprisonment) was increased to 8 and a half years’ imprisonment (also with a 50% MPI).

The Crown’s submissions were based on the manifest inadequacy of the original sentence. It was submitted that the original starting point was too low and that various reasons for discounting from that starting point had been misapplied.

The decision is particularly noteworthy for the guidance provided on sentencing, which also applies to less-serious domestic violence offending.

The Court commented on the impact of family violence offending, describing it as “one of the scourges of New Zealand society”. It clarified that,

where violence takes place in the complainant’s home, this can normally be treated as an aggravating factor, justifying a weightier sentence compared to offending in a different location or context. The Court held this was applicable to this case.

Additionally, the Court commented on the “alternative aggravating factor of vulnerability”, which is likely to be triggered in cases where the defendant is a family member or resides with the complainant, due to the ties of support and dependence that generally exist in such relationships.

The defendant’s submissions on remorse and mental health issues were held not to support the original lower sentence. The remorse expressed was held to be superficial and as such not to justify a sentence discount, and the presence of mental health issues that risk further offending would not mitigate the sentence where a longer sentence is necessary for community protection.

**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 for economic growth, justice sector outcomes and Better Public Services. 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 value for money 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 2018 is presented on pages 37–45.

## 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 2016/17	Forecast 2017/18	Actual 2017/18	Comment
<i>Quality measure (%)</i>				
Attorney-General's responses to a questionnaire about service provided by Crown Law are good or excellent	100%	90%	-	<i>The Attorney-General no longer partakes in service quality surveys. In the absence of formal written feedback from the Attorney-General, the Solicitor-General holds informal conversations with him to ensure we meet his expectations and we provide the desired level of service. Other indicators of our service quality include feedback from our clients. Refer to pages 43–44 for our client satisfaction survey results.</i>

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

Actual 2017 \$000		Actual 2018 \$000	Main Estimates 2018 \$000	Supplementary Estimates 2018 \$000
<b>Revenue</b>				
47,359	Crown	47,949	47,356	47,949
282	Other	414	589	659
<b>47,641</b>	<b>Total revenue</b>	<b>48,363</b>	<b>47,945</b>	<b>48,608</b>
<b>Expenditure</b>				
<b>47,338</b>	<b>Expenditure</b>	<b>48,052</b>	<b>47,945</b>	<b>48,608</b>
<b>303</b>	<b>Net surplus/(deficit)</b>	<b>311</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 2016/17	Forecast 2017/18	Actual 2017/18	Comment
<b>Quantity</b>				
<i>New matters</i>				
Crown appeals	31	15–30	22	-
Accused appeals	652	550–600	624	-
<b>Timeliness</b>				
<i>Average hours worked per disposed case</i>				
Crown appeals	92	≤ 90	49	Five Crown appeals disposed of in 2016/17 had greater than 130 hours, which increased the average hours worked from 60 to 92.
Accused appeals	32	≤ 90	28	-
<b>Quality</b>				
<i>Effectiveness</i>				
Percentage of Crown appeals concluded in favour of the Crown	63%	60% <sup>7</sup>	73%	73% = 14 allowed; two allowed in part; the other 27% are five dismissed and one abandoned.
Percentage of appeals brought by the accused/defendant concluded in favour of the accused/defendant	23%	30%	22%	Of appeals brought by the accused/defendant: 285 dismissed; nine refused; 106 abandoned; one abandoned in part; 94 allowed; and 20 allowed in part.

### Audited financial performance (GST exclusive)

Actual 2017 \$000		Actual 2018 \$000	Main Estimates 2018 \$000	Supplementary Estimates 2018 \$000
<b>Revenue</b>				
3,281	Crown	3,278	3,278	3,278
-	Other	10	-	50
<b>3,281</b>	<b>Total revenue</b>	<b>3,288</b>	<b>3,278</b>	<b>3,328</b>
<b>Expenditure</b>				
<b>3,496</b>	<b>Expenditure</b>	<b>3,126</b>	<b>3,278</b>	<b>3,328</b>
<b>(215)</b>	<b>Net surplus/(deficit)</b>	<b>162</b>	<b>-</b>	<b>-</b>

<sup>7</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 2016/17	Forecast 2017/18	Actual 2017/18	Comment
<b>Quantity</b>				
<i>New matters</i>				
Number of individual CPD-compliant hours delivered annually to the GLN lawyers	3,348	3,500	4,191	<i>The forecasted targeted hours excluded the Lawyers in Government Conference. The actual result reflects a higher participation rate than forecast.</i>
Numbers 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	100%	80%	90%	<i>Of the 31 survey recipients, 21 responded, resulting in a 67.74% response rate.</i>
Lawyers registered on GLN Online consider GLN activities and opportunities for participation are good to excellent	88%	70%	88%	-
The Attorney-General is satisfied with the GLN Legal Risk Reporting System	Yes	Yes	Yes	-

### Audited financial performance (GST exclusive)

Actual 2017		Actual 2018	Main Estimates 2018	Supplementary Estimates 2018
\$000		\$000	\$000	\$000
<b>Revenue</b>				
885	Crown	885	885	885
57	Other	69	100	100
<b>942</b>	<b>Total revenue</b>	<b>954</b>	<b>985</b>	<b>985</b>
<b>Expenditure</b>				
<b>979</b>	<b>Expenditure</b>	<b>743</b>	<b>985</b>	<b>985</b>
<b>(37)</b>	<b>Net surplus/(deficit)</b>	<b>211</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 2016/17	Forecast 2017/18	Actual 2017/18	Comment
<b>Quantity</b>				
<i>New matters</i>				
Applications <sup>8</sup> processed on behalf of the Attorney-General	31	30–60	48	<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	167	100–150	140	
Litigation on behalf of the Law Officers (Attorney-General and/or Solicitor-General)	14	5–10	19	
Criminal advice	1	10–35	5	
Judicial reviews	2	2–5	8	
Mutual assistance and extraditions	79	60–100	111	
Criminal cases (other types)	21	40–60	24	
Requests for prosecution appeals and judicial reviews	84	40–90	72	
<b>Timeliness</b>				
<i>Ministerial services – proportion of responses on time</i>				
Ministerial correspondence on time	88%	100%	97%	<i>91 of 94 responses completed on time.</i>
Responses to Parliamentary questions on time	100%	100%	100%	<i>4 of 4 responses completed on time.</i>
Official Information Act 1982 and Privacy Act 1993 responses on time	94%	100%	96%	<i>123 of 128 responses completed on time.</i>
<i>Average hours worked per disposed case</i>				
Criminal advice	32	≤ 50	285	<i>Only one case disposed of in the reporting period.</i>
Judicial reviews	138	≤ 150	-	<i>No cases disposed of in the reporting period.</i>
Mutual assistance and extraditions	80	≤ 50	28	-
Criminal cases (other types)	8	≤ 50	15	-
Requests for prosecution appeals	22	≤ 50	23	-
Applications processed on behalf of the Attorney-General	59	≤ 50	63	-
Advice on behalf of the Attorney-General	33	≤ 50	20	-
Litigation on behalf of the Law Officers	187	≤ 75	15	<i>Two cases in 2016/17, one being a vexatious litigant matter, increased the overall average hours from 64 to 187.</i>

<sup>8</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 2017		Actual 2018	Main Estimates 2018	Supplementary Estimates 2018
\$000		\$000	\$000	\$000
<b>Revenue</b>				
4,271	Crown	4,864	4,271	4,864
225	Other	330	489	489
<b>4,496</b>	<b>Total revenue</b>	<b>5,194</b>	<b>4,760</b>	<b>5,353</b>
<b>Expenditure</b>				
<b>4,678</b>	<b>Expenditure</b>	<b>5,065</b>	<b>4,760</b>	<b>5,353</b>
<b>(182)</b>	<b>Net surplus/(deficit)</b>	<b>129</b>	<b>-</b>	<b>-</b>

### MCA output – Public Prosecution Service

**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 2016/17	Forecast 2017/18	Actual 2017/18	Comment
<b>Quantity</b>				
<i>New matters</i>				
New Crown prosecutions including appeals to the High Court from non-Crown prosecutions	6,148	4,500–5,500	6,596	<i>Based on data collected by the Ministry of Justice.</i>
Crown prosecutions including appeals to the High Court from non-Crown prosecutions disposed of	4,960	4,500–5,000	5,209	-
Hours of service provided	203,014	207,000–212,000	216,999	-
Number of quality assurance reviews (full network is reviewed on rotation every 3 years)	7	5 <sup>9</sup>	6	-
<b>Quality</b>				
Reviews, quality assessed as exceeding or meeting expected standards	6	5 <sup>9</sup>	6	-
Improvement recommendations implemented within timeframes set greater than	80%	90%	-	<i>No improvements were required during 2017/18.</i>

### Audited financial performance (GST exclusive)

Actual 2017		Actual 2018	Main Estimates 2018	Supplementary Estimates 2018
\$000		\$000	\$000	\$000
<b>Revenue</b>				
<b>38,922</b>	<b>Crown</b>	<b>38,922</b>	<b>38,922</b>	<b>38,922</b>
-	Other	5	-	20
<b>38,922</b>	<b>Total revenue</b>	<b>38,927</b>	<b>38,922</b>	<b>38,942</b>
<b>Expenditure</b>				
<b>38,185</b>	<b>Expenditure</b>	<b>39,118</b>	<b>38,922</b>	<b>38,942</b>
<b>737</b>	<b>Net surplus/(deficit)</b>	<b>(191)</b>	<b>-</b>	<b>-</b>

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

## Performance overview – international rankings

Indicators	Actual 2015	Actual 2016	Actual 2017	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 0.93	score 0.90	<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 0.87	score 0.84	score 0.85	
Due process of law and the rights of the accused	score 0.82	score 0.80	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) 2017 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

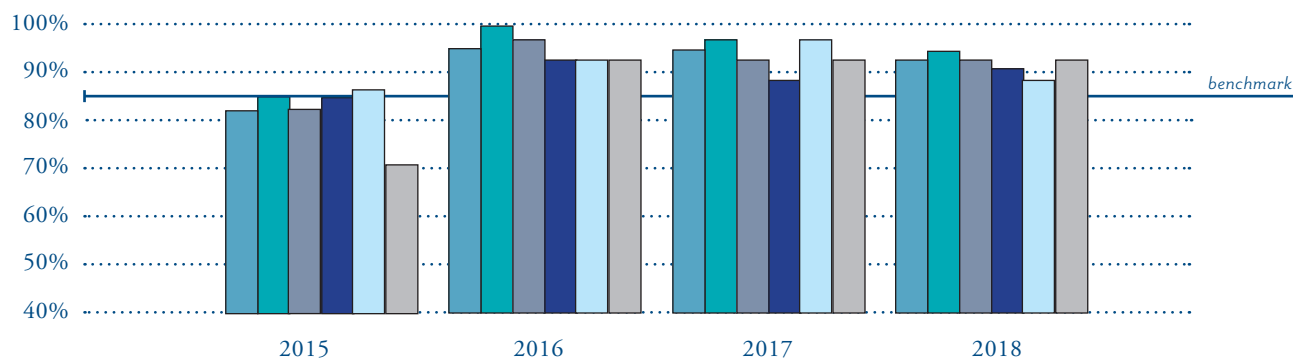
**Scope** – This appropriation is limited to providing legal advice and representation services to central government departments and Crown agencies.

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

Performance measure	Actual 2016/17	Forecast 2017/18	Actual 2017/18	Comment
<b>Quantity</b>				
<i>New matters</i>				
Advice	441	380–425	443	-
Litigation	488	350–400	362	-
Judicial review	78	90–125	123	-
Claims before Waitangi Tribunal	101	25–50	68	<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	33	≤ 50	42	-
Litigation	82	≤ 200	110	<i>112 cases with less than 10 hours in 2016/17 decreased the average from 132 to 82 (historical abuse claims combined into one matter).</i>
Judicial review	166	≤ 100	169	-
Claims before Waitangi Tribunal	61	≤ 500	306	<i>The matters closed in FY16/17 were minor in nature and did not involve a regional hearing.</i>
<i>Client perceptions and service performance (%)</i>				
Responses to the client survey that consider timeliness in responding to requests is good to excellent	89%	85%	91%	-
Written opinions/advice (final or draft) completed by the due date	78%	85%	82%	-
Responses to the client survey rating Crown Law's responsiveness, relevancy, accuracy and clarity of advice as good to excellent	94%	85%	93%	<i>New measure established in 2017/18.</i>
Litigation Management Plans completed by the due date	76% <sup>10</sup>	80%	67%	-
<b>Quality measures (%)</b>				
Responses to the client survey that consider the advice and service received overall are good to excellent	97%	90%	96%	-
Responses to the client survey that consider the responsiveness, relevancy, accuracy and clarity of advice are good to excellent	94%	90%	99%	-
Written opinions and advice that are peer reviewed	72%	80%	81%	-
<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	97%	95%	87%	-
Cost per hour of client services (i.e. the average cost per hour of providing legal advice and representation services)	\$169	≤ FY16/17 cost per hour	\$182	-

10 The 2016/17 actual was recalculated from 70% to 76% due to a revision of the timeliness parameters.

## 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 2017 to June 2018).

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.

### Audited financial performance (GST exclusive)

Actual 2017 \$000		Actual 2018 \$000	Main Estimates 2018 \$000	Supplementary Estimates 2018 \$000
<b>Revenue</b>				
18,918	Other	20,020	22,337	22,337
<b>Expenditure</b>				
19,045	Expenditure	20,177	22,337	22,337
(127)	Net surplus/(deficit)	(157)	-	-

### Other non-financial measures: People and capability

Indicators	Baseline benchmark	Previous actual	Actual 2017/18	Comment
<b>ORGANISATION: People and capability</b>				
Staff engagement (level of agreement method)	2011/12 71%	2015/16 75%	2017/18 74%	<i>The justice sector engagement index (Level of Agreement method) is 68%.</i>
Average hours per employee spent on training and education	2014/15 54.99 hrs per legal employee	2016/17 57.76 hrs per legal employee	2017/18 69.75 hrs per legal employee	-

### 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 2018

Actual 2017 \$000	Actual 2018 \$000	Main Estimates 2018 \$000	Supplementary Estimates 2018 \$000
<b>407 Total capital expenditure</b>	<b>221</b>	<b>783</b>	<b>566</b>

# 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 2018 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  
28 September 2018

## Independent Auditor's Report

### To the readers of the Crown Law Office's annual report for the year ended 30 June 2018

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 51 to 75, that comprise the statement of financial position, statement of commitments, statement of contingent liabilities and contingent assets as at 30 June 2018, 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 2018 on pages 21, 26 to 29, 32 and 36 to 45;
- the statements of expenses and capital expenditure of the Department for the year ended 30 June 2018 on pages 76 to 78; and
- the schedules of non-departmental activities which are managed by the Department on behalf of the Crown on page 76, that comprises the schedule of trust monies for the year ended 30 June 2018.

## Opinion

In our opinion:

- the financial statements of the Department on pages 51 to 75:
  - present fairly, in all material respects:
    - its financial position as at 30 June 2018; 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 Public Benefit Entity Standards.
- the performance information of the Department on pages 21, 26 to 29, 32 and 36 to 45:
  - presents fairly, in all material respects, for the year ended 30 June 2018:
    - 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 76 to 78 are presented fairly, in all material respects, in accordance with the requirements of section 45A of the Public Finance Act 1989.
- the schedule of trust monies which are managed by the Department on behalf of the Crown on page 76 is presented fairly, in all material respects, in accordance with the Treasury Instructions.

Our audit was completed on 28 September 2018. 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 2017/18 and Supplementary Estimates of Appropriation 2017/18 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 19, 22 to 25, 30 to 31, 33 to 34 and 46, 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 2018

Actual 2017 \$000		Notes	Actual 2018 \$000	Unaudited Budget 2018 \$000	Unaudited Forecast 2019 \$000
<b>Revenue</b>					
47,359	Revenue Crown	2	47,949	47,356	47,356
19,200	Other revenue	2	20,434	19,089	19,597
<b>66,559</b>	<b>Total income</b>		<b>68,383</b>	<b>66,445</b>	<b>66,953</b>
<b>Expenses</b>					
19,893	Personnel costs	3	20,427	20,457	20,427
806	Depreciation and amortisation expense	7,8	857	1,080	654
134	Capital charge	4	124	124	124
37,357	Crown Solicitors' fees		37,890	38,082	38,082
8,193	Other expenses	5	8,931	6,702	7,666
<b>66,383</b>	<b>Total expenses</b>		<b>68,229</b>	<b>66,445</b>	<b>66,953</b>
176	Surplus/(deficit)		154	-	-
<b>176</b>	<b>Total comprehensive revenue and expense</b>		<b>154</b>	<b>-</b>	<b>-</b>

Explanations for major variances against the original 2017/18 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 2018

Actual 2017 \$000		Notes	Actual 2018 \$000	Unaudited Budget 2018 \$000	Unaudited Forecast 2019 \$000
3,140	Balance at 1 July		3,023	3,140	2,221
176	Total comprehensive revenue and expense		154	-	-
(293)	Return of operating surplus to the Crown	11	(311)	-	-
<b>(117)</b>	<b>Movements for the year</b>		<b>(157)</b>	<b>-</b>	<b>-</b>
<b>3,023</b>	<b>Balance at 30 June</b>	12	<b>2,866</b>	<b>3,140</b>	<b>2,221</b>

The accompanying notes form part of these financial statements.

## Statement of financial position

As at 30 June 2018

Actual 2017 \$000	Notes	Actual 2018 \$000	Unaudited Budget 2018 \$000	Unaudited Forecast 2019 \$000
<b>Current assets</b>				
6,810	Cash and cash equivalents	6,579	4,824	3,989
375	Prepayments	352	350	350
3,291	Receivables	4,726	3,000	3,000
<b>10,476</b>	<b>Total current assets</b>	<b>11,657</b>	<b>8,174</b>	<b>7,339</b>
<b>Non-current assets</b>				
1,570	Property, plant and equipment	929	1,260	1,144
14	Intangible assets	18	217	249
<b>1,584</b>	<b>Total non-current assets</b>	<b>947</b>	<b>1,477</b>	<b>1,393</b>
<b>12,060</b>	<b>Total assets</b>	<b>12,604</b>	<b>9,651</b>	<b>8,732</b>
<b>Current liabilities</b>				
6,901	Payables and deferred revenue	7,777	5,151	5,151
1,664	Employee entitlements	1,485	1,160	1,160
293	Return of operating surplus	311	-	-
<b>8,858</b>	<b>Total current liabilities</b>	<b>9,573</b>	<b>6,311</b>	<b>6,311</b>
<b>Non-current liabilities</b>				
179	Employee entitlements	165	200	200
<b>179</b>	<b>Total non-current liabilities</b>	<b>165</b>	<b>200</b>	<b>200</b>
<b>9,037</b>	<b>Total liabilities</b>	<b>9,738</b>	<b>6,511</b>	<b>6,511</b>
<b>3,023</b>	<b>Net assets</b>	<b>2,866</b>	<b>3,140</b>	<b>2,221</b>
<b>Equity</b>				
2,061	Taxpayers' funds	2,062	2,062	2,062
962	Memorandum accounts	804	1,078	159
<b>3,023</b>	<b>Total equity</b>	<b>2,866</b>	<b>3,140</b>	<b>2,221</b>

Explanations for major variances against the original 2017/18 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 2018

Actual 2017 \$000	Notes	Actual 2018 \$000	Unaudited Budget 2018 \$000	Unaudited Forecast 2019 \$000
<b>Cash flows from operating activities</b>				
<b>Cash was provided from:</b>				
47,359	Receipts from Revenue Crown	47,656	47,356	47,356
19,404	Receipts from other revenue	18,999	19,089	19,597
66,763		66,655	66,445	66,953
<b>Cash was applied to:</b>				
19,518	Payments to employees	20,619	20,507	20,477
45,292	Payments to suppliers	45,970	44,784	45,748
9	Goods and services tax (net)	(48)	-	-
134	Payment for capital charge	124	124	124
64,953		66,665	65,415	66,349
<b>1,810</b>	<b>Net cash flow from operating activities</b>	<b>(10)</b>	<b>1,030</b>	<b>604</b>
<b>Cash flows from investing activities</b>				
<b>Cash was disbursed for:</b>				
407	Purchase of property, plant and equipment	206	487	533
-	Purchase of intangible assets	15	140	250
407		221	627	783
<b>(407)</b>	<b>Net cash flow from investing activities</b>	<b>(221)</b>	<b>(627)</b>	<b>(783)</b>
<b>Cash flows from financing activities</b>				
<b>Cash was disbursed for:</b>				
182	Repayment of operating surplus	-	-	-
<b>(182)</b>	<b>Net cash flow from financing activities</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>1,221</b>	<b>Net (decrease)/increase in cash</b>	<b>(231)</b>	<b>403</b>	<b>(179)</b>
5,589	Cash at the beginning of the year	6,810	4,421	4,168
<b>6,810</b>	<b>Cash at the end of the year</b>	<b>6,579</b>	<b>4,824</b>	<b>3,989</b>

Explanations for major variances against the original 2017/18 budget are provided in Note 17.

The accompanying notes form part of these financial statements.

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## Statement of cash flows (continued)

For the year ended 30 June 2018

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

Actual 2017 \$000		Actual 2018 \$000
176	<b>Net surplus/(deficit)</b>	154
806	Depreciation and amortisation expense	857
<b>806</b>	<b>Total non-cash items</b>	<b>857</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>	-
204	(Increase)/decrease in receivables	(1,434)
9	(Increase)/decrease in prepayments	23
238	Increase/(decrease) in payables and deferred revenue	583
-	Increase/(decrease) in provision	-
377	Increase/(decrease) in employee entitlements	(193)
<b>828</b>	<b>Total net movement in working capital items</b>	<b>(1,021)</b>
<b>1,810</b>	<b>Net cash flow from operating activities</b>	<b>(10)</b>

The accompanying notes form part of these financial statements.

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## Statement of commitments

As at 30 June 2018

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.

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 2017 \$000		Actual 2018 \$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	1,172
1,892	Later than 1 year and not later than 5 years	759
39	Later than 5 years	-
<b>3,103</b>	<b>Total non-cancellable operating lease commitments (inter-entity)</b>	<b>1,931</b>
<b>3,103</b>	<b>Total commitments</b>	<b>1,931</b>

The accompanying notes form part of these financial statements.

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

*As at 30 June 2018*

### **Unquantifiable contingent liabilities**

Crown Law has no unquantifiable contingent liabilities (2017: nil).

### **Quantifiable contingent liabilities**

A contingent liability of \$114,950 has arisen as a result of a legal claim against Crown Law (2017: nil).

### **Contingent assets**

Crown Law has no contingent assets (2017: nil).

The accompanying notes form part of these financial statements.



# NOTES TO THE FINANCIAL STATEMENTS

*for the year ended 30 June 2018*

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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 76.

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 2018 and were approved for issue by the Chief Executive of Crown Law on 28 September 2018.

### ***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.

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

Standards and amendments issued but not yet effective that have not been early adopted and that are relevant to Crown Law:

#### ***Financial instruments***

In January 2017, the External Reporting Board (XRB) issued PBE IFRS 9 Financial Instruments. This replaces PBE IPSAS 29 Financial Instruments: Recognition and Measurement. PBE IFRS 9 is effective for financial years beginning on or after 1 January 2021, with earlier application permitted. The main changes under the standard relevant to Crown Law are:

- new financial asset classification requirements for determining whether an asset is measured at fair value or amortised cost; and
- a new impairment model for financial assets based on expected losses, which may result in the earlier recognition of impairment losses.

The Treasury has decided that the Financial Statements of the Government will early adopt PBE IFRS 9 for the 30 June 2019 financial year. Crown Law will also early adopt PBE IFRS 9 for the 30 June 2019 financial year to be consistent with Crown's accounting policy for financial instruments. Crown Law has not yet assessed in detail the impact of the new standard. Based on an initial assessment, Crown Law anticipates that the standard will not have a material effect on Crown Law's financial statements.

#### *Impairment of revalued assets*

In April 2017, the XRB issued Impairment of Revalued Assets, which now clearly scopes revalued property, plant and equipment into the impairment accounting standards. Previously, only property, plant and equipment measured at cost were scoped into the impairment accounting standards.

Under the amendment, a revalued asset can be impaired without having to revalue the entire class of asset to which the asset belongs. This amendment is effective for the 30 June 2020 financial statements, with early adoption permitted. The timing of Crown Law adopting this amendment will be guided by the Treasury's decision on when the Financial Statements of Government will adopt the amendment.

### **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 2018 budget figures are for the year ended 30 June 2018 and were published in the 2016/17 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 2017/18.

The 2019 forecast figures are for the year ending 30 June 2019, which are consistent with the best estimate financial forecast information submitted to Treasury for the BEFU for the year ending 2018/19.

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 2019 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 4 April 2018. 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 2019 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 2018/19 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 4 April 2018, 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 189 full-time equivalent staff, 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 2017/18 was used as the opening position for the 2018/19 forecasts.

The actual financial results achieved for 30 June 2019 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 2017 \$000</b>		<b>Actual 2018 \$000</b>
	Revenue received from:	
19,156	Government departments/other government entities	20,405
36	Other	10
8	Court-awarded costs	19
<b>19,200</b>	<b>Total other revenue</b>	<b>20,434</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 2017 \$000</b>		<b>Actual 2018 \$000</b>
18,664	Salaries and wages	19,687
81	Other personnel costs	87
769	Employer contributions to defined contribution plans	846
379	Increase/(decrease) in employee entitlements	(193)
<b>19,893</b>	<b>Total personnel costs</b>	<b>20,427</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 2018 was 6.0% (30 June 2017: 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 2017 \$000		Actual 2018 \$000
58	Fees to Audit New Zealand for audit of the financial statements	60
437	Consultancy	577
1,236	Operating lease expenses (rent for office accommodation)	1,266
6,462	Other expenses	7,028
<b>8,193</b>	<b>Total other operating expenses</b>	<b>8,931</b>

## Note 6: Receivables

### Accounting policy

Short-term receivables are recorded at their face value, less any provision for impairment.

A receivable is considered impaired when there is evidence that Crown Law will not be able to collect the amount due. The amount of the impairment is the difference between the carrying amounts of the receivable and the present value of the amounts expected to be collected.

#### 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 2017 \$000		Actual 2018 \$000
1,452	Debtors (gross)	2,498
(7)	Less provision for impairment	(11)
<b>1,445</b>	<b>Net debtors</b>	<b>2,487</b>
1,846	Work in progress (gross)	2,218
-	Less provision for impairment	-
<b>1,846</b>	<b>Net work in progress</b>	<b>2,218</b>
-	Sundry debtors	21
<b>3,291</b>	<b>Total receivables</b>	<b>4,726</b>
	Total receivables comprise:	
3,286	Receivables from the sale of legal advice and representation services to other government agencies at cost recovery (exchange transactions)	4,705
5	Receivables from miscellaneous expense recoveries	21

The carrying value of receivables approximates their fair value.

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

	2017			2018		
	Gross \$000	Impairment \$000	Net \$000	Gross \$000	Impairment \$000	Net \$000
Not past due	1,139	-	1,139	2,014	-	2,014
Past due 1–30 days	94	-	94	129	-	129
Past due 31–60 days	127	-	127	249	-	249
Past due 61–90 days	32	-	32	72	-	72
Past due > 90 days	60	(7)	53	34	(11)	23
<b>Total</b>	<b>1,452</b>	<b>(7)</b>	<b>1,445</b>	<b>2,498</b>	<b>(11)</b>	<b>2,487</b>

The provision for impairment has been calculated based on expected losses following an analysis of the past due accounts.

Work in progress comprises mainly unbilled June 2018 fees and disbursements.

## 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 2016	1,606	583	1,512	1,583	5,284
Additions	-	5	72	330	407
Disposals	-	(2)	-	(15)	(17)
<b>Balance at 30 June 2017</b>	<b>1,606</b>	<b>586</b>	<b>1,584</b>	<b>1,898</b>	<b>5,674</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>
<b>Accumulated depreciation and impairment losses</b>					
Balance at 1 July 2016	735	364	968	1,269	3,336
Depreciation expense	249	91	262	183	785
Elimination on disposal	-	(2)	-	(15)	(17)
<b>Balance at 30 June 2017</b>	<b>984</b>	<b>453</b>	<b>1,230</b>	<b>1,437</b>	<b>4,104</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>
<b>Carrying amount</b>					
At 30 June and 1 July 2016	871	219	544	314	1,948
At 30 June 2017	622	133	354	461	1,570
<b>At 30 June 2018</b>	<b>373</b>	<b>40</b>	<b>88</b>	<b>428</b>	<b>929</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 2016	1,919
Additions	-
Disposals	-
<b>Balance at 30 June 2017</b>	<b>1,919</b>
Balance at 1 July 2017	1,919
Additions	15
Disposals	-
<b>Balance at 30 June 2018</b>	<b>1,934</b>
<b>Accumulated amortisation and impairment losses</b>	
Balance at 1 July 2016	1,884
Amortisation expense	21
Elimination on disposal	-
Impairment losses	-
<b>Balance at 30 June 2017</b>	<b>1,905</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>
<b>Net carrying amount</b>	
At 30 June and 1 July 2016	35
At 30 June 2017	14
<b>At 30 June 2018</b>	<b>18</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 2017 \$000		Actual 2018 \$000
<b>Payables and deferred revenue under exchange transactions</b>		
22	Creditors – Crown Solicitors’ fees	28
851	Creditors – other	737
5,301	Other accrued expenses – unbilled Crown Solicitors’ fees	6,411
438	Other accrued expenses	264
-	Income in advance for cost recovered services	-
<b>6,612</b>	<b>Total payables and deferred revenue under exchange transactions</b>	<b>7,440</b>
<b>Payables and deferred revenue under non-exchange transactions</b>		
289	GST payable	337
<b>289</b>	<b>Total payables and deferred revenue under non-exchange transactions</b>	<b>337</b>
<b>6,901</b>	<b>Total payables and deferred revenue</b>	<b>7,777</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 2018.

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 2018 (2017: five).

### *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 1.78% (2017: 1.97%), year 2 of 1.90% (2017: 2.36%) and year 3 and beyond of 3.55% (2017: 3.92%) and a long-term salary inflation factor of 3.10% (2017: 3.10%) were used. The discount rates and salary inflation factor used are those advised by the Treasury.

### *Breakdown of employee entitlements*

<b>Actual 2017 \$000</b>		<b>Actual 2018 \$000</b>
	<b>Current liabilities</b>	
351	Personnel accruals	202
1,257	Annual leave	1,238
56	Retirement leave and long-service leave	45
<b>1,664</b>	<b>Total current portion</b>	<b>1,485</b>
	<b>Non-current liabilities</b>	
179	Retirement leave and long-service leave	165
<b>179</b>	<b>Total non-current portion</b>	<b>165</b>
<b>1,843</b>	<b>Total employee entitlements</b>	<b>1,650</b>

## Note 11: Return of operating surplus

Actual 2017 \$000		Actual 2018 \$000
176	Net surplus/(deficit)	154
127	Add (surplus)/deficit of memorandum account: legal advice and representation	156
(10)	Add (surplus)/deficit of memorandum account: processing of Queen's Counsel applications	1
<b>293</b>	<b>Provision for repayment of surplus to the Crown</b>	<b>311</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 2017 \$000		Actual 2018 \$000
<b>Taxpayers' funds</b>		
2,062	<b>Balance at 1 July</b>	2,061
176	Net surplus/(deficit)	154
116	Transfer of memorandum accounts net (surplus)/deficit for the year	158
-	- Capital injections	-
(293)	Return of operating surplus to the Crown	(311)
<b>2,061</b>	<b>Balance at 30 June</b>	<b>2,062</b>
<b>Memorandum accounts</b>		
1,078	Opening balance at 1 July	962
18,949	Revenue	20,020
(19,065)	Less expenses	(20,178)
(116)	Surplus/(deficit) for the year	(158)
<b>962</b>	<b>Closing balance at 30 June</b>	<b>804</b>
<b>3,023</b>	<b>Total equity as at 30 June</b>	<b>2,866</b>

## Breakdown of memorandum accounts

Actual 2017 \$000		Actual 2018 \$000
<b>Legal advice and representation</b>		
970	Opening balance at 1 July	911
68	Close memorandum account: Government Legal Network	-
18,918	Revenue	20,020
(19,045)	Less expenses	(20,177)
(127)	Surplus/(deficit) for the year	(157)
<b>911</b>	<b>Closing balance at 30 June</b>	<b>754</b>
<b>Processing of Queen's Counsel applications</b>		
40	Opening balance at 1 July	51
31	Revenue	-
(21)	Less expenses	(1)
10	Surplus/(deficit) for the year	(1)
<b>51</b>	<b>Closing balance at 30 June</b>	<b>50</b>
<b>Total memorandum accounts</b>		
1,078	Opening balance at 1 July	962
18,949	Revenue	20,020
(19,065)	Less expenses	(20,178)
(116)	Surplus/(deficit) for the year	(158)
<b>962</b>	<b>Closing balance at 30 June</b>	<b>804</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 2018, Crown Law has provided legal services to departments and government entities in the amount of \$20.010 million (2017: \$18.915 million).

### *Transactions with key management personnel*

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

Actual 2017 \$000		Actual 2018 \$000
<i>Leadership Team, including the Chief Executive</i>		
1,916	Remuneration	1,940
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 instrument

### Note 15A: Financial instrument categories

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

Actual 2017 \$000		Actual 2018 \$000
<b>Cash and receivables</b>		
6,810	Cash and cash equivalents	6,579
3,291	Receivables	4,726
<b>10,101</b>	<b>Total cash and receivables</b>	<b>11,305</b>
<b>Financial liabilities measured at amortised cost</b>		
6,901	Payables	7,777
<b>6,901</b>	<b>Total payables</b>	<b>7,777</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>2017</b>							
Payables	9	6,901	6,901	6,901	-	-	-
<b>2018</b>							
Payables	9	7,777	7,777	7,777	-	-	-

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 \$1.345 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 \$2.229 million mainly due to increased matter-related costs, rent and other operating costs.

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

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

Cash and cash equivalents were more than budgeted by \$1.755 million, mainly due to the 2017/18 flexi-fund payment of \$3.546 million to Crown Solicitors accrued in June and paid in August 2018 and offset by increased receivables of \$1.726 million.

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## Schedule of trust monies

For the year ended 30 June 2018

Actual 2017 \$000		Actual 2018 \$000
<b>Crown Law Office Legal Claims Trust Account</b>		
<b>545</b>	<b>Balance at 1 July</b>	<b>54</b>
616	Contributions	189
(1,107)	Distributions	(179)
9	Revenue	1
(9)	Expenditure	(7)
<b>54</b>	<b>Balance at 30 June</b>	<b>58</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 2018

Crown Law did not incur any unappropriated expenditure in 2017/18 (2016/17: 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.

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

For the year ended 30 June 2018

Actual 2017 \$000		Actual 2018 \$000	Main Estimates 2018 \$000	Supp Estimates 2018 \$000	Appropriation Voted 2018* \$000	In-principle transfer 2018 \$000
<b>Vote Attorney-General</b>						
<b>Appropriations for output expenses</b>						
19,045	Legal Advice and Representation	20,177	22,337	22,337	22,337	-
<b>47,338</b>	<b>Law Officer Functions MCA</b>	<b>48,052</b>	<b>47,945</b>	<b>48,608</b>	<b>48,608</b>	<b>300</b>
3,496	<i>Conduct of Criminal Appeals arising from Crown Prosecutions</i>	3,126	3,278	3,328	3,328	-
979	<i>Government Legal Network</i>	743	985	985	985	-
4,678	<i>Law Officer Constitutional and Criminal Law Duties</i>	5,065	4,760	5,353	5,353	300
38,185	<i>Public Prosecution Services</i>	39,118	38,922	38,942	38,942	-
<b>66,383</b>	<b>Total appropriations for output expenses</b>	<b>68,229</b>	<b>70,282</b>	<b>70,945</b>	<b>70,945</b>	<b>300</b>
<b>Appropriations for capital expenditure</b>						
407	Capital investment	221	627	566	566	-
<b>66,790</b>	<b>Total annual and permanent appropriations</b>	<b>68,450</b>	<b>70,909</b>	<b>71,511</b>	<b>71,511</b>	<b>300</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 2017/18.

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 2017/18 financial year, which implies that the actual expenditure incurred was equal to the expenditure after remeasurement.

See pages 37–45 for performance information of these appropriations.

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## **Statement of departmental capital injections**

*For the year ended 30 June 2018*

<b>Actual capital Injections 2017 \$000</b>	<b>Actual capital injections 2018 \$000</b>	<b>Approved appropriation 2018 \$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 2018*

Crown Law did not receive any capital injections during the year without or in excess of authority (2016/17: nil).

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