

2022/2023  
**Pūrongo ā-tau**  
**Annual Report**



**Te Tari Ture  
o te Karauna**  
Crown Law



**Te Tari Ture  
o te Karauna**  
Crown Law

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# Ngā ihirangi

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# Te Kupu Whakataki a te Rōia Mātāmua

## Solicitor-General's foreword

This has been a year of embedding our foundations and preparing for our sustainable future.

The approval of the sector's multi-year budget bid in Budget 2022 provided the additional funding required to strengthen and fill critical capability gaps at Crown Law, and provided the security needed to continue to plan confidently for the longer-term.

Work on addressing gaps in Crown Law's workforce is well progressed. Those gaps are, in part, responding to the increased call on our services – and related very high levels of customer satisfaction and the increasing complexity and connectivity of legal issues across the Crown's work. But gaps have also

been identified in our core ability to perform as an efficient public service department delivering on the Government's increased focus on cyber security, inclusive workplaces, equitable pay systems, among other focuses. Improving our capacity in these areas is critical to ensuring our success as a trusted advisor to Government.

Our continued commitment to fostering an inclusive and diverse culture was shown this year by our programmes addressing bias during recruitment processes, building overall cultural competence, and continuing to build an inclusive leadership culture. Our commitment to the centrally run public service programmes Papa Pounamu and Whāinga Amorangi help us achieve progress in these important areas. We have continued to build our workforce capability in te reo and understanding of te ao Māori. Crown Law staff are provided with access to te reo classes and Te Tiriti/Treaty of Waitangi sessions, which have had high levels of uptake in recent years. Increasing our cultural competence continued as a priority in order to maintain a workforce that gives quality legal services to the Crown in an evolving legal environment where tikanga Māori is a part of the law.

Attracting and retaining talent was a challenge for us, as for much of the public sector, in a highly competitive recruitment market. We worked constructively with the Public Service Association (PSA), concluding bargaining for



the collective agreement in February 2023, including implementing the public sector pay adjustment (PSPA). The new collective agreement remains in effect until December 2024.

Key themes observed in earlier reports have continued; Government decision-making and climate change considerations, greater scrutiny by courts of legislation, the Waitangi Tribunal's extensive kaupapa inquiries work programme and enactment of requirements arising from Te Tiriti/The Treaty of Waitangi. The legal and policy issues that arise here are complex and solutions – and even approaches – are contested. That means we have to keep honing our more collaborative and networked ways of providing legal services. As this Report highlights in the later pages, working closely with our colleagues in the Government Legal Network is critical to our success in dealing with complex, intersectional and thematic legal issues.

The new remedy that a Court may declare an enactment inconsistent with the New Zealand Bill of Rights Act (NZBORA) also developed during the year, both in the Courts and through executive and Parliamentary action. In August 2022, Parliament passed the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill, providing a process for the Government and House of Representatives to respond to a declaration of inconsistency made under the NZBORA. The amendment created a requirement for the Attorney-General to notify Parliament of the court's declaration of inconsistency following the finalisation of such a declaration. It further requires the Minister responsible to present the Government response to the declaration within six months of the initial notification.

The greater use of this remedy, along with the new requirements for the Government to formally respond to such declarations, represents an important progression in New Zealand's philosophy of the law.

We began the implementation of the Government Legal Network (GLN) Strategy

2022-26 which was finalised in 2022. Through the strategy we continue leveraging the collective legal expertise of the Crown to support the government in the lawful delivery of services to New Zealanders. In the past year, implementation of the GLN Strategy has included the provision of training and capability lifting opportunities, including running the Summer Clerk and Graduate programme for lawyers in the Network and provision of resources on cross-Network issues such as on the Crown's role under te Tiriti o Waitangi/ the Treaty of Waitangi. The web-based platform GLNOnline has also been upgraded, enabling government lawyers to share legal knowledge and resources more easily. This has included the provision of legal advice across the network on issues relevant to multiple agencies, such as decision-making on ex gratia payments.

The Crown Solicitor Network experienced a significant increase in workload and in the complexity of Crown prosecutions. Demand for Crown prosecution services remains high, which has been reflected in the increased funding in Budget 2022 and shown in the results at a glance on page seven. In 2022/23, Crown Law reviewed six Crown Solicitors, including an in-depth review of the Tasman Crown Solicitor, which found the Tasman office has a strong and effective partnership supported by a hard-working team. This was an excellent result for the office.

There are two areas in our prosecutions work which have required external review to give confidence that prosecutions in New Zealand continue to be high quality and carried out appropriately. The complex and lengthy nature of serious fraud and cartel prosecutions required a review of the funding model to ensure it remains fit for purpose for all prosecutions. That review has been completed and recommendations will be implemented by the end of the 23/24 financial year. More significantly, and as outlined on pages 40-41, the uncontested finding by the Supreme Court that quashed Mr Alan Hall's convictions for murder required that we look closely at the

prosecution practice (of the 1980s) and our own more contemporary actions in responding to claims that a miscarriage had occurred, but not recognised. A senior King's Counsel, Ms Nicolette Levy, has completed a comprehensive review.

In other examples of external review – but on a different scale – we continued to assist agencies on Government Inquiries, including on the establishment of the Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand's Response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic. Crown Law continues to cooperate with the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions, mainly through responding to information requests when asked to do so. We are also working with other agencies on the policy work for government to consider implementation of the Royal Commission's Redress Report recommendations.

We strengthened and continued moving towards providing legal services to the Crown on these and other matters in a more thematic way, using our network levers and unique position as the government's lawyers to build

and provide consistency of the Crown's view on current and emerging legal issues.

To keep doing this well, we must have the right capability, systems and resources to provide government with high quality legal services. I am proud of the progress we have made in the year, ensuring that we have the right people in the right roles at the right time, something that is reflected in our very high satisfaction results from surveying those for whom we work. I am confident that Crown Law has built the right foundations to maintain our high reputation as trusted advisors to government and to achieve our strategic vision of a better Aotearoa through responsible, lawful Government. Details of the work we have done across the three outcomes of this vision and the indicators we use to measure our progress are outlined in this report.



**Una Jagose KC**

Rōia Mātāmua o te Karauna me te Tumu Whakarae  
Solicitor-General and Chief Executive

Nō te tau nei i kitea te whakatakotoranga o tō mātou tūāpapa me te whakariterite mō te anamata toitū ake.

Nā te whakaaetanga o te tono mahere pūtea tau-maha a te rāngai i te Tahua 2022 i whakarato i ētahi pūtea tāpiri e hiahiatia ana ki te whakapakari me te whakakī i ngā āputa āheinga waiwai ki Te Tari Ture, me te whakarato i te haumarutanga e tika ana ki te kawē tonu i ngā whakamaheretanga tauroa.

Kua mārō te haere o ngā mahi whakatau i ngā āputa kaimahi i Te Tari Ture o te Karauna. Ko ētahi o aua āputa, nā te urupare ki te pikinga o te popono ki ā mātou ratonga – otirā nā

te tino nui o te kaingākau o ngā kiritaki ki ā mātou mahi, me te pikinga o te tuatini me te tūhonotanga o ngā take ā-ture puta noa i ngā mahi a te Karauna. Engari kua tautohua hoki ngā āputa i tā mātou āhei pū hei ratonga tūmatanui whāomo e whakarato nei i te aronga piki ake a te Kāwanatanga ki te haumaruru ipurangi, ngā wāhi mahi kauawhi, ngā pūnaha utu mana ōrite, me ētahi atu aronga. He waiwai te whakapai ake i tō mātou raukaha i ēnei wāhi hei whakarite i tō mātou angitu hei kaitohutohu whakaponu ki te Kāwanatanga.

I whakaaturia tō mātou manawa-ū tonu i tēnei tau ki te akiaki i tētahi ahurea kauawhi, kanorau

hoki, e ā mātou hōtaka e whakatau ana i te haukume i te wā o ngā tukanga kimi kaimahi hou, te whakapiki i te mātau ahurea whānui me te whakapiki tonu i te ahurea hautūtanga kauawhi. Ka āwhina tō mātou manawa-ū ki ngā hōtaka ratonga tūmatanui a Papa Pounamu me Whāinga Amorangi i a mātou ki te koke whakamua i ēnei mahi whaitake. I whai tonu mātou ki te whakapiki i te āheinga o ā mātou kaimahi ki te reo me te māramatanga hoki ki te ao Māori. I āhei hoki ngā kaimahi a Te Tari Ture o te Karauna ki ngā akoranga reo me ngā awheawhe mō Te Tiriti, otirā he tokomaha te hunga i whakauru ki ēnei kaupapa i ēnei tau tata nei. I noho tonu te whakapiki i te mātau ahurea hei aronga matua hei whakarato i tētahi rāngai kaimahi e tuku ana i ngā ratonga ā-ture kounga ki te Karauna i tētahi taiao whanake e whakamanahia ai te tikanga Māori hei wāhanga o te ture.

He wero ki a mātou te whakamanea me te pupuri i ngā kaimahi whai pūkenga, otirā he pērā katoa te rāngai tūmatanui, i roto i tētahi māketete kimi kaimahi tauwhāinga rawa. I mahi whaitake mātou me Te Pūkenga Here Tikanga Mahi (PSA), ā, i oti te whiriwhiri i te whakaaetanga whakatōpū i te Pēpuere 2023, tae atu ki te whakatinana i te public sector pay adjustment (PSPA). Ka mana tonu te whakaaetanga whakatōpū hou tae noa ki te Tihema 2024.

E kawea tonu ana ngā ariā matua i kitea i roto i ngā pūrongo o mua; ngā whakataunga take Kāwanatanga me ngā whai whakaarotanga hurihanga āhuarangi, kia nui ake te whakatātare a ngā Kōti ki te ture, te hōtaka mahi kaupapa pakirehua ahuwānui a Te Rōpū Whakamana i te Tiriti, me te whakatinanatanga o ngā herenga ka ara ake i Te Tiriti o Waitangi. He tuatini ngā take ā-ture me ngā kaupapahere ka ara ake otirā he wā anō ka tohea ngā otinga - tatū noa i ngā huarahi. Ko te tikanga o tēnei, me whakakoiki tonu mātou i ngā huarahi mahi ngātahi, mahi kōtuia hoki o te tuku i ngā ratonga ā-ture. Pērā ki ngā miramiratanga a te Pūrongo nei i ngā whārangi o muri, he waiwai te mahi tūtata ki ō

mātou hoa i te Whatunga ā-Ture Kāwanatanga, e angitu ai te whakahaere i ngā take ture ā-ariā tuatini, pūtahi hoki.

Ko te rongoā hou, tērā pea ka whakapuaki tētahi Kōti i tētahi ture hārakiraki ki te Bill of Rights Act (NZBORA) i waihangatia i te tau nei, i roto i ngā Kōti, ā, mā ngā mahi hoki a te kāwanatanga, te Pāremata hoki. I te Ākuhata 2022, i whakamanatia e te Pāremata te New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill, e whakarato ana i tētahi tukanga hei whai mā te Kāwanatanga me te Pāremata ki te urupare ki tētahi whakapuakitanga hārakiraki i raro i te NZBORA. I puta i te whakahoutanga nei te herenga ki runga i te Rōia Matua o te Āpiha Matua o te Ture ki te whakamōhio i te Pāremata ki te whakapuakitanga o tētahi take hārakiraki a te kōti i muri i te whakatutukitanga o taua whakapuakitanga. Ko tētahi atu herenga, kia whakaatu te Minita haepapa i te urupare a te Kāwanatanga ki taua whakapuakitanga i roto i te ono marama o te whakamōhio tangata tuatahi.

Ka noho hei kokenga whaitake i te tautake ture o Aotearoa te whakamahinga nui ake o tēnei rongoā, me ngā herenga hou ki runga i te Kāwanatanga ki te urupare ōkawa ki aua whakapuakitanga.

I tīmataria te whakatinanatanga o te Rautaki Whatunga Ture Kāwanatanga (GLN) 2022-26 i whakatūturutia i te 2022. Mā roto i te rautaki ka haere tonu ngā mahi whakakake ake i ngā mōhio tangata ā-ture whakatōpū o te Karauna ki te tautoko i te kāwanatanga i te tukanga whakature o ngā ratonga ki te iwi o Aotearoa. I te tau kua mahue ake nei, i uru ki te whakatinanatanga o te Rautaki GLN te whakararonga o ngā arawātea whakangungu, whakapiki āheinga hoki, tae atu ki te whakahaere i tētahi hōtaka Karaka Raumati me te Tāura mā ngā rōia i te Whatunga, me te whakararonga o ngā rauemi e pā ana ki ngā take whiti-Whatunga pēnei i te mahi a te Karauna i raro i Te Tiriti o Waitangi. I whakahoutia hoki

te pae ipurangi o GLNOnline, e āhei ai ngā rōia kāwanatanga ki te whakawhiti whakaaro mō te ture me ngā rauemi hoki. Kua whakaurua e tēnei te whakarato tohutohu ā-ture puta noa i te whatunga mō ngā take e hāngai ana ki ngā kaupapa maha, pēnei i te whakarite whakatau mō ngā utu *matatika*.

He nui te pikinga o ngā mahi a te Whatunga Rōia Karauna me te tuatini hoki o ngā hāmenetanga Karauna. He nui tonu te popono ki ngā ratonga hāmene a te Karauna, otirā i whakaatatia tēnei i roto i te pikinga pūtea i te Tahua 2022, ā, i kitea ngā hua i te whārangī tuawhiti. I te tau 2022/23, i arotakea e Te Tari Ture o te Karauna ngā Rōia a te Karauna tokoono, tae atu ki tētahi arotake hōhonu o te Rōia Karauna o Te Tai o Aorere, otirā ko te kitenga ake, he pakari te tari o Te Tai o Aorere, ā, he rangapūtanga whaihua e tautokona ana e tētahi tira pukumahi. He hua tino pai tēnei mō te tari.

E rua ngā wāhanga o ā mātou mahi hāmene i tukuna kia arotakea ā-wahotia, e manawanui ai kia kounga nui tonu ngā hāmenetanga i Aotearoa, ā, kia tika hoki te kawenga. Nā te tuatini me te roa o te āhua o ngā hāmenetanga hara tāware nui me ngā tohanga pūroi, i hiahiatia tētahi arotake o te anga tuku pūtea, kia noho whaitake tonu ki ngā hāmenetanga katoa. Kua tutuki taua arotakenga, ā, ka whakatinanahia ngā tūtohu hei te mutunga o te tau pūtea 23/24. Mātua rā, pērā i ngā kōrero kei ngā whārangī 40-41, ko te herenga i puta ake i te whakataunga tohe-kore a te Kōti Mana Nui i whakakore i ngā hāmene kōhuru a Mr Alan Hall, kia āta titiro mātou ki ngā mahi whiu hāmene (o ngā tau 1980), me ngā mahi ā-moroki nei ki te urupare ki ngā kerēme kua pā mai he hāmene hē, engari kāore i whakamanahia. Kua oti i te Roia a te Kīngi e Ms Nicolette Levy, tētahi arotakenga whānui.

I ētahi atu tauira o ngā arotakenga ā-waho - engari he rerekē anō te nui - i haere tonu ngā mahi āwhina i ngā tari ki ngā Pakirehua

Kāwanatanga, tae atu ki te whakatūtanga o te *Tira Ārai Urutā*. Kei te mahi ngātahi tonu Te Tari Ture o te Karauna ki te *Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions*, inārā mā te urupare ki ngā tono mōhihio. E mahitahi ana hoki ki ētahi atu tari, ki ngā mahi kaupapahere mā te kāwanatanga, ki te whai whakaaro ki te whakatinanatanga o ngā tūtohu a te Pūrongo Puretumu a te Kōmihana.

I whakapakaritia, i koke tonu hoki ngā mahi ki te whakarato ratonga ā-ture ki te Karauna mō ēnei take, ā, me ētahi atu take mā te tikanga ā-ariā, mā te whakamahi i ngā huarahi whatunga me te tūnga ahurei hei rōia kāwanatanga ki te whakapiki me te whakarato reretahitanga ki te tirohanga o te Karauna ki ngā take ā-ture ā-mohoa nei.

E pēnei ai me whai mātou i te āheinga tika, i ngā pūnaha tika, i ngā rawa tika kia tuku i te ratonga ā-ture kounga ki te kāwanatanga. E whakahī ana ahau ki ngā kokenga i tēnei tau, arā, te whakarite kei ā mātou ngā kaimahi tika i ngā tūranga tika i te wā tika, tētahi āhuatanga hoki i whakaatatia i roto i ā mātou hua rarata i hua ake i te uiui ki ā mātou kiritaki. E manawanui ana ahau kua whakaritea e Te Tari Ture o te Karauna te tūāpapa tika e hau tonu ai te rongō hei kaitohutohu e whakaponotia ana ki te kāwanatanga, me te whakatutuki i tō mātou matawhānui ā-rautaki o tētahi Aotearoa pai ake, mā roto i tētahi Kāwanatanga takohanga, whakature hoki. Ko ngā āhuatanga o ngā mahi kua oti i ā mātou puta noa i ngā whakaputanga e toru o tēnei matawhānui me ngā tūtohu mahi ka whakamahia e mātou ki te ine i ā mātou kokenga, kua whakatakotoria ki tēnei pūrongo.



**Una Jagose KC**

Rōia Mātāmua o te Karauna me te Tumu Whakarae



# 2023 he tiro wawe

## 2023 at a glance

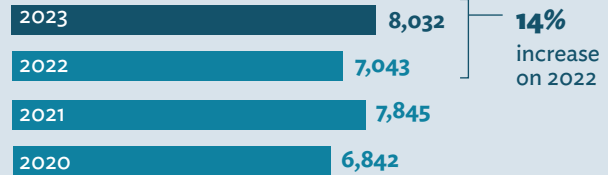


### Feedback

from other agencies rating Crown Law service as good to excellent



### New Crown prosecutions



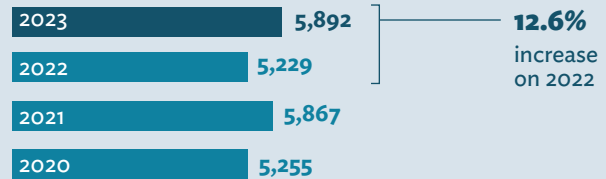
### Crown criminal appeals

concluded in favour of the Crown



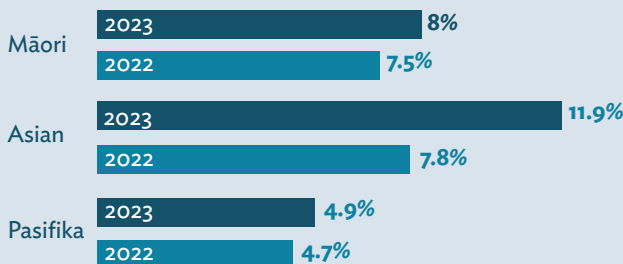
### Crown prosecutions

completed by the Crown Solicitor network



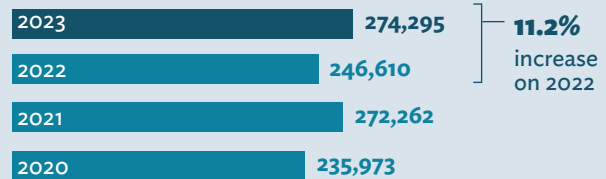
### Ethnic profile

of Crown Law staff



### Hours of service

provided by the Crown Solicitor network



# Tō mātou rōpū whakahaere

## Our organisation

### Our role

Te Tari Ture o te Karauna Crown Law plays an important role in increasing public trust and confidence that decisions made by government are allowed by law.

We do this through providing legal advice and representation services to government departments and ministers.

Our work is focused in the areas of criminal, public and administrative law. We are responsible for assisting the Solicitor-General with the conduct of criminal appeals and the supervision and oversight of public prosecutions.

We provide strategic leadership across the wider government legal system and support the Government Legal Network (GLN) and the Solicitor-General's leadership of the legal profession across the Crown.

With our partners in the justice sector, we work together to make New Zealand safer and to deliver accessible justice services and better outcomes for all New Zealanders.

Crown Law administers appropriations under Vote Attorney-General. The Attorney-General is accountable to Parliament to ensure we carry out our functions properly and efficiently. The Solicitor-General is accountable for the leadership and overall performance of the organisation.

### Our leadership

Crown Law's Leadership Team is ultimately accountable for the overall performance of the organisation, that is, making sure Crown Law delivers the right services to government, and that we do it properly and effectively.

The Leadership Team ensures strategic direction is clear and that our collective efforts move us in that direction. To do this, focus is placed on strategic leadership and oversight, organisational performance and organisational health.

The Leadership Team comprises (left to right):

**Aaron Martin** – Deputy Solicitor-General  
Crown Legal Risk Group

**Virginia Hardy** – Deputy Solicitor-General  
Attorney-General Group

**Sophie Mexsom** – Deputy Chief Executive  
Strategy and Corporate

**Una Jagose KC** – Solicitor-General and Chief  
Executive

**Madeleine Laracy** – Deputy Solicitor-General  
Criminal Group

**Justine Falconer** – Deputy Solicitor-General  
System Leadership Group



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**Ngā whakatutukitanga  
ki ō mātou takune  
rautaki**

Performance against our  
strategic intentions

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# Crown Law's strategic direction and outcomes

We refreshed our Crown Law strategy and outcome framework in 2021 to reflect the changing public service environment, incorporate what we've learned from working differently during the COVID-19 response and ensure we have the right capability, systems and resources to deliver on government's expectations. This strategy is set out in the Statement of Intent 2021-2025.

Our vision is to **build a better Aotearoa through responsible, lawful government.**

This framework has three outcomes, four work goals and four capability development priorities to focus how we invest our resources (and invest in our resources), shape our performance framework and demonstrate the value we are providing to New Zealanders through our work. We have identified outcome indicators to help us understand whether, over time, there is a trend that represents progress towards our outcomes.

Minor changes from one year to another are less significant than the trend of the results over the medium and long term.

## Contribution to the wellbeing domains

The Treasury's Living Standards Framework defines 12 wellbeing domains.

Crown Law makes specific contributions to the wellbeing of New Zealanders through improving outcomes linked to civic engagement, governance in accordance with law and public trust in central government institutions and decisions.

The leadership and legal services provided by Crown Law also support the range of government priorities, including all initiatives and reforms designed to raise broader wellbeing outcomes.

Our Crown Law strategy aligns to He Ara Waiora approach adopted by government (as set out in the Statement of Intent 2021-2025).



**Build a better Aotearoa** through responsible, lawful government

### Who we are

*Ngā kaitiaki o te ture*

Legal experts

*Ngā kaihautū*

System leaders

*Kaitiaki whakataua i te ture*

Kaitiaki of the Rule of Law

### How we work

We take *pride* in all we do

We *value* our *differences*

We *care* about each other

We *look after* the *mana* of other people

We *recognise* our *impact* on others

**Te Ao Māori**  
and **Te Tiriti** sit at the heart of everything we do at Crown Law

# 1

## OUTCOME ONE

# Democracy that serves all New Zealanders

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### **The impacts we are working towards:**

- Governments protect and observe the rule of law
- Our system of government is transparent and accountable
- The Crown legal stance considers te ao Māori and enhances the Māori Crown relationship
- New Zealanders are confident in the legal system and the lawfulness of government decisions
- New Zealanders consider engagement with government and its processes worthwhile

## How we will know we are succeeding

This outcome is focused on our democratic system of government based on the rule of law.

Crown Law contributes to increased trust through the performance of the Law Officers' constitutional duties. It speaks to Crown Law's role in safeguarding the rule of law, which includes advising ministers of the meaning of the law and constitutional boundaries. Crown Law's role also includes defending the judicial system and legal process, ensuring the Crown legal stance considers tikanga and te ao Māori and respects the Māori Crown relationship and contributing to policy development and public debate.

Impact indicator	Performance trend				Comment
	2019/20	2020/21	2021/22	2022/23	
<b>Experience and perception of the rule of law</b>					
World Justice Project <sup>1</sup> (New Zealand score and global rank)	Score: 0.82	Score: 0.83	Score: 0.83	Score: 0.83	Overall measure that takes into account the following factors: constraints on government powers; absence of corruption; open government; fundamental rights; order and security; regulatory enforcement; civil justice and criminal justice.
• Rule of Law Index	Rank: 8/126	Rank: 7/128	Rank: 7/139	Rank: 7/140	
• Government powers are effectively limited by the judiciary	Score: 0.86 Rank: 4/126	Score: 0.87 Rank: 4/128	Score: 0.88 Rank: 3/139	Score: 0.87 Rank: 4/140	
• Due process of the law and rights of the accused	Score: 0.76 Rank: 15/126	Score: 0.77 Rank: 15/128	Score: 0.79 Rank: 14/139	Score: 0.78 Rank: 15/140	Indicates whether the basic rights of criminal suspects are respected, including the presumption of innocence and freedom from arbitrary arrest and unreasonable pre-trial detention, and if the basic rights of prisoners are respected once convicted.

The World Justice Project Rule of Law Index 2022 indicates the rule of law continued to lose ground in many areas worldwide, marking the fifth year in a row where the rule of law has declined globally. This decline has been less widespread and extreme than in 2021, though the most dramatic falls have been in index factors associated with rising authoritarianism. These areas include respect for fundamental human rights and freedoms and constraints on government powers.

In 2022, New Zealand placed 7th worldwide and 1st out of 15 countries in the East Asia and Pacific region followed by Australia and Japan. New Zealand held its Rule of Law Index score and slightly dropped in the elements of 'due process of the law and rights of the accused' and 'government

<sup>1</sup> 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 primary rule of law factors and 44 sub-factors. The index is based on household and expert surveys, which reflect the rule of law as experienced and perceived by New Zealanders. Due to the timing of the index release date the indicators shown are reported one year in arrears.

powers are effectively limited by the judiciary.<sup>2</sup> These elements are fundamental aspects of New Zealand’s democracy and impacted by Crown Law in our work advising ministers on the meaning of the law and constitutional boundaries, defending the judicial system and legal process and ensuring the Crown legal stance considers tikanga and te ao Māori and supports the Māori Crown relationship.

However, there are several rankings for New Zealand that are cause for concern. We are ranked below our overall ranking (7th) for the broad factors of fundamental rights (12th), criminal justice (11th), civil justice (10th) and order and security (21st), so there is a need for improvement in these areas. As the World Justice Project acknowledges, there are inherent limitations in the methodology underpinning the Rule of Law Index, but there is nevertheless value in assessing the areas in which New Zealand performs relatively well and those where it does not.

New Zealand’s overall ranking in the Rule of Law Index is corroborated by Transparency International’s Corruption Perceptions Index, which currently ranks New Zealand second equal in the world (i.e. among the least corrupt) alongside Finland and behind Denmark at number one. Lack of corruption is an integral component of strong adherence to the rule of law.

Impact indicator	Performance trend			Comment
	2020	2021	2022	
<b>Experience and perception of democracy</b>				
Bertelsmann Sustainable Governance Indicators (SGI)	NZ score: 9.5	NZ score: 9 <sup>4</sup>	NZ score: 9.5	Indicates the quality of democracy. The process of appointing justices guarantees the independence of the judiciary. Independent courts control whether government and administration act in conformity with the law. Government and administration act on the basis of, and in accordance with, legal provisions to provide legal certainty.
• Rule of law <sup>3</sup>				
• Civil rights	NZ score: 8	NZ score: 10 <sup>5</sup>	NZ score: 8.7	Indicates the quality of democracy, measuring equal access to the law and equal treatment by the law. The state respects and protects civil rights and citizens are protected by courts against infringements of their rights.

Bertelsmann identifies two of the core areas of a ‘robust democracy’ as ‘rule of law’ and ‘civil rights and political liberties’. “Guaranteeing opportunities for democratic participation as well respect for the rule of law and civil rights cultivate citizens’ confidence in the legitimacy of actions taken

<sup>2</sup> It should be noted that the number of countries in the index increased by one from 139 to 140, which impacts New Zealand’s placement in the rankings.

<sup>3</sup> The elements identified as most relevant to Crown Law’s impact, and therefore calculated in this indicator, are appointment of justices, judicial review and legal certainty.

<sup>4</sup> Bertelsmann released an SGI Special Study in 2021 covering sustainable governance in the context of the COVID-19 crisis. This result represents New Zealand’s rating for ‘judicial review’.

<sup>5</sup> Bertelsmann released an SGI Special Study in 2021 covering sustainable governance in the context of the COVID-19 crisis. This result represents New Zealand’s rating for ‘civil rights and political liberties’.



by political leaders. Without strong public support for government actions, even the best ideas in policymaking will lack the traction needed to take hold. Confidence in the mechanisms and institutions of governance also enable societies to respond more quickly to necessary changes.”<sup>6</sup>

Crown Law can impact this area through oversight of the application of New Zealand human rights legislative provisions and case law and ensuring that legal advice to government encapsulates human rights implications and obligations. Crown Law also provides advice and support on constitutional issues, including judicial matters and electoral and parliamentary law.

The Civil Rights and Political Liberties Report from Bertelsmann Sustainable Governance Indicators 2022 notes that “New Zealand has a well-institutionalized liberal democracy with fully implemented and protected civil rights”<sup>7</sup> and that the 2021 Freedom in the World Report<sup>8</sup> awards New Zealand an almost perfect score of 59/60 on the ‘civil liberties’ dimension.

Impact indicator	Performance trend <sup>9</sup>					Comment
	2018/19	2019/20	2020/21	2021/22	2022/23	
<b>Trust in government institutions</b>						
Treasury Living Standards Framework  • Level of trust in the public service (% of adults overall that trust the public service)	49%	69%	63%	60%	58% <sup>10</sup>	Indicates the trust and confidence that New Zealanders have in the public service through service experience and perception.
Public Sector Reputation Index <sup>11</sup>  • Crown Law Office reputation score	N/A	N/A	N/A	62	62	Indicates public perceptions of the legitimacy of Crown Law’s purpose and reputation across the pillars of trust, social responsibility, leadership and fairness.

The level of trust in the public sector is a core element of Treasury Living Standards Framework around civic engagement and governance that aims to measure people’s engagement in the governance of their country, how good New Zealand’s governance is perceived to be and the procedural fairness of our society. Crown Law can have an impact on civic engagement and governance through advice and support on constitutional issues and electoral and parliamentary law. As part of the public sector, Crown Law can also have a meaningful impact by upholding the public sector’s reputation for trust, fairness, social responsibility and leadership.

<sup>6</sup> [https://www.sgi-network.org/2020/Mission\\_Statement](https://www.sgi-network.org/2020/Mission_Statement).

<sup>7</sup> [https://www.sgi-network.org/docs/2022/thematic/SGI2022\\_Civil\\_Rights\\_and\\_Political\\_Liberties.pdf](https://www.sgi-network.org/docs/2022/thematic/SGI2022_Civil_Rights_and_Political_Liberties.pdf).

<sup>8</sup> Published by the US-based think tank Freedom House; <https://freedomhouse.org/country/new-zealand/freedom-world/2021#CL>.

<sup>9</sup> Results as of March 2019, December 2020 and March 2021. Timing of 2020 survey impacted by COVID-19 lockdown.

<sup>10</sup> Treasury Living Standards Framework uses data from the Kiwis Count survey run by Te Kawa Mataaho. The result for 2022/23 represents the result for the quarter ending June 2023. <https://www.publicservice.govt.nz/research-and-data/kiwis-count/>.

<sup>11</sup> Scoring system has been changed to a score out of a possible 100 points. 2023 average across all agencies in the index was 63, meaning Crown Law ranked in the middle (33rd out of 56 agencies ranked).

Results in the Treasury analysis for 2020 identified a spike in trust and confidence in government. This is likely to be related to COVID-19, as the public service was central to the national pandemic response in 2020. The expected normalisation of the results as New Zealand's COVID-19 situation evolves is likely to be behind the reduction in the trust and confidence scores since, although they remain higher (60%) than the highest pre-COVID-19 rating (50%).

In 2022, Crown Law participated in the Kantar Public Sector Reputation Index for the first time, where the reputation of 58 government agencies was measured across the pillars of trust, social responsibility, leadership and fairness. Crown Law's 2023 result is 62 out of a possible score of 100. This is no better or worse than 2022's result (although the scoring system has changed to being a score out of 100). The 2023 average of all agencies in the index was also 63 out of 100.

## What we achieved this year

We provided legal advice and other assistance to the Law Officers and departments, including:

- legal services involving questions of the lawful exercise of government power
- constitutional questions including in relation to te Tiriti o Waitangi/Treaty of Waitangi and the New Zealand Bill of Rights Act
- advice on the legal and constitutional implications of policy proposals.

### Te Tiriti and Māori Crown relationship/tikanga

Crown Law has continued to represent the Crown in the Waitangi Tribunal's remaining district inquiries and in a number of kaupapa inquiries – thematic inquiries that deal with nationally significant issues affecting Māori as a whole. During 2022/23, there were ongoing hearings in the Tribunal's district inquiries such as Taihape and Porirua ki Manawatū. For the Tribunal's kaupapa inquiries, work commenced for the Justice System kaupapa inquiry and the inquiry into constitutional issues. The Health Services and Outcomes inquiry continued.

There were also more accelerated inquiries, for example into kura kaupapa. During 2022/23, the Crown has continued to be involved in significant High Court and Supreme Court litigation in relation to the Waitangi Tribunal's binding powers to order return of certain land and forests and payment of compensation for historical Tiriti claims and in concluding related Treaty settlements. Litigation ongoing includes the testing of the relationship between final Treaty settlements and the courts' jurisdiction to make Bill of Rights Act declarations of inconsistency.

The courts continue to consider and describe the place of tikanga in New Zealand law. Crown Law had been involved in the key cases: Trans- Tasman Resources Ltd, the impact of tikanga on RMA decisions about mining in the Exclusive Economic Zone (EEZ); Ngāti Whātua, the role of the courts in declaring mana whenua rights; and *R v Ellis* where the Supreme Court considered tikanga in the context of criminal appeal rights, and explained that the relationship between tikanga and the common law will continue to evolve on a case-by-case basis. There has also been development of the consideration of tikanga in employment law.

## Administration of appointments

Crown Law provides administrative support for the Attorney-General's role in appointing judges to the Supreme Court, Court of Appeal and High Court. During 2022/2023, Crown Law administered the following judicial appointments:

- Judge of the Court of Appeal: Justice Jillian Mallon.
- Judges of the High Court: Justice Peter Andrew, Justice David Johnstone, Justice Paul Radich, Justice Andrew Becroft and Justice Jane Anderson.
- Associate Judges of the High Court: Associate Judge Grant Brittain and Associate Judge Andrew Skelton.

Crown Law has also administered the appointment of three judges of the Court Martial Appeal Court (appointed under the Court Martial Appeals Act 1953) and eight acting judicial warrants (six in the High Court and two in the Court of Appeal) for judges who have either reached retirement age during 2022/23 or to take effect from the date of their retirement later in 2023.

Crown Law provides administrative support for the Attorney-General in relation to

the appointment of King's Counsel and administered King's Counsel appointments during 2022/23. The appointments made were: Northland – Catherine Cull; Auckland – Bronwyn Carruthers, Nicholas Chisnall, David Cooper, Tiffany Cooper, Jason Goodall, Simon Mitchell; Wellington – Andrew Butler; Christchurch – Stephanie Grieve, Lisa Preston.

Crown Law also provides administrative support for the appointment of members of the New Zealand Council of Legal Education, an independent statutory body constituted under the Lawyers and Conveyancers Act 2006, responsible for the quality and provision of education and practical legal training required to be undertaken by any person either within New Zealand or from overseas wishing to be admitted as a barrister and solicitor of the High Court of New Zealand.

## Memberships

The Solicitor-General is a participating member of the High Court Rules Committee, and Crown Law is a member of the Legislation Design and Advisory Committee.

## Illustrative legal advice and representation matters: an increasingly complex web of law and policy



### Overview

A broad observation is that the courts are explicitly considering the interplay of the roles of Parliament, the Executive and the courts, informed by the context of developing rights jurisprudence. The courts are reflecting on the role of the New Zealand Bill of Rights Act and te Tiriti and on international rights/constitutional judgments. The courts' approach informs the way statutes are interpreted and the ongoing shaping of an indigenous New Zealand law, nevertheless facing complex and universal policy issues such as climate change.

These are some examples in addition to the cases noted elsewhere.

and Information) Act 2015 and subject to various release conditions.

Mr G applied to judicially review the decision to classify him as a returning prisoner.

In December 2022, the High Court upheld the judicial review and quashed the decision for the following reasons:

- Parliament did not intend for the Act to apply retrospectively and therefore, as Mr G's offences were committed prior to the Act coming into force, it should not have been applied to him.
- The application of the Act to Mr G amounted to the imposition of a higher sentence and the application of a retrospective penalty. This breached his rights:
  - to the benefit of a lesser penalty, where the penalty for offending has been varied between the commission of the offence and being sentenced for that offence (as found in section 25(g) of the New Zealand Bill of Rights Act 1990 and section 6 of the Sentencing Act 2002)
  - not to be punished twice for the same offending (as found in section 26(2) of the Bill of Rights Act)
  - to natural justice, as he was not given the opportunity to be heard before he was classified as a returning prisoner (as found in section 27 of the Bill of Rights Act).



### Parliament and human rights

#### **G v Commissioner of Police [2022] NZHC 3514; Commissioner of Police and Department of Corrections v G [2023] NZCA 93**

Mr G was convicted of offending in Australia and sentenced to imprisonment. Upon release from prison, he was deported to New Zealand, where he was classified as a returning prisoner under the Returning Offenders (Management

The Commissioner of Police and Department of Corrections appealed this decision to the Court of Appeal. The Court of Appeal allowed the appeal and set aside the High Court's decision on the basis that:

- the classification of Mr G as a returning prisoner did not amount to the imposition of a sentence, let alone an increased sentence, therefore section 25(g) of the Bill of Rights Act and section 6 of the Sentencing Act had not been breached
- the application of the Act to Mr G did impose a further penalty, therefore the right against double jeopardy in section 26(2) of the Bill of Rights Act had been breached
- the text, statutory scheme, purpose and context in which the Act was passed confirmed Parliament's clear intent that the Act apply retrospectively, therefore the application of the Act to Mr G was lawful
- Mr G had no right to be heard before being classified as a returning prisoner, therefore his right to natural justice under section 27 of the Bill of Rights Act had not been breached.

Mr G is seeking leave to appeal this decision to the Supreme Court.

### ***Make It 16 Incorporated v Attorney-General [2022] NZSC 134***

The Supreme Court issued a declaration that the provisions of the Electoral Act 1993 and the Local Electoral Act 2001, which provide for a minimum voting age of 18 years, are inconsistent with the right in section 19 of the

New Zealand Bill of Rights Act 1990 to be free from discrimination on the basis of age and that these inconsistencies have not been justified under section 5 of the Act.

This was on the following basis:

- The right in section 19 of the Bill of Rights Act for those 16 years and older to be free from discrimination on the basis of age is limited by the voting age provisions, notwithstanding that section 12 of the Act guarantees the right to vote to New Zealand citizens over the age of 18. Sections 12 and 19 do not conflict with one another; it would be a breach of section 12 for the voting age to be raised above 18 years old but not for it to be lowered below 18.
- Parliament had never considered lowering the voting age to 16 years old and therefore the Attorney-General had not sought to justify why 18 had been chosen over 16. There was therefore insufficient evidence that the limit on the rights of 16 and 17-year-olds to be free from discrimination was justified under section 5 of the Bill of Rights Act.
- There was no basis in this case for a declaration of inconsistency not to be issued, notwithstanding the political nature of the issue.

The Attorney-General notified Parliament of this declaration of inconsistency as required under section 7A of the Bill of Rights Act.

# 2

OUTCOME TWO

## Government decisions that inspire confidence

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### **The impacts we are working towards:**

- Governments are best placed to implement their policy choices lawfully
- Government decision making is well evidenced and considers core constitutional values
- Government decision making is future focused, balancing risk and opportunity
- Te ao Māori and te Tiriti principles are reflected in decision making
- Government decisions are defensible and withstand scrutiny
- Government lawyers are sought by decision makers as partners who add value

## How we will know we are succeeding

This outcome is focused on responsible Executive Government decision making.

This includes the Solicitor-General's role of authoritatively determining the Crown's view of the law. It speaks to Crown Law providing advice at the right time, in the right way, and that is sought after by decision makers (not just because it is Cabinet mandated). It includes predicting and influencing the development of the law to help governments manage risk and make the most of opportunities and supporting government decisions that will stand the test of time by considering future implications and impacts. It also includes building the capability of the Government Legal Network to do the same so that successive governments are supported to implement their policy objectives lawfully with better identification and management of risk and opportunity.

Impact indicator	Performance trend				Comment
	2020	2021	2022	2023	
<b>Stakeholder satisfaction</b>					
Attorney-General satisfaction with the quality of advice and representation provided by Crown Law <sup>12</sup>	Satisfied	Satisfied	Satisfied	Satisfied	Indicates Attorney-General satisfaction that defined standards of quality and timeliness have been achieved.
Partner satisfaction with the quality of advice and representation provided by Crown Law	87%	89%	100%	100%	Indicates partner (client/stakeholder) satisfaction that standards of quality and timeliness have been achieved.
<b>Government Legal Network capability<sup>13</sup></b>					
Number of secondments of lawyers between departments in the Government Legal Network	N/A	N/A	47 <sup>14</sup>	34	Indicates level of Government Legal Network competence, as secondments contribute to increased knowledge and consistency across the public sector.
Satisfaction of Chief Legal Advisors with System Leadership Group (SLG) engagement and communication	100%	100%	100%	100%	Indicates the information provided by the System Leadership Group is useful and required.

<sup>12</sup> Impact indicator previously defined as 'The Attorney-General is satisfied with the services provided by Crown Law'.

<sup>13</sup> Note that the two measures in this category were incorrectly stated in the Statement of Intent 2021-2025 (replicated from SOI Outcome 1 into Outcome 2). The two measures provided above are correct for this outcome.

<sup>14</sup> As reported by departments.

## What we achieved this year

Implementation of the Government Legal Services Strategy 2022-2026 continues. The goal through the Strategy is to ensure government has access to timely, focused legal services. This is achieved by better connections to people and information and a focus on capability, including capability in te ao Māori. Māori lawyers will feel valued and supported, and cultural diversity will increase. By sharing more information and knowledge across the Government Legal Network (GLN), we will be more effective together.

The Strategy work programme in the past year has included:

- developing support and training for government lawyers advising on the Crown's role under te Tiriti
- upgrading GLN Online, the platform for government lawyers to share legal knowledge and resources
- developing a competency framework for government lawyers to support capability development and consistency.

### Strategic legal advice

During 2022/23, we provided a broad range of legal advice to government agencies and ministers, much of which has been strategic, system-wide advice. Key areas of work have included advice on government decision making, especially in the context of severe weather recovery, outcomes of inquiries and steps to implement their recommendations, assisting the government at an operational level, climate change decision making and advice on

numerous aspects of criminal justice process and proposed policy changes.

We also delivered a range of strategic and system-wide legal advice products on a one-to-many basis. These are subject to privilege but cover legal topics relevant to all departments and include quick reference legal guides.

### Crown legal risk management

Crown Law reports twice a year to the Attorney-General on significant and systemic legal risks. Working with departments, we identify the emerging and existing legal risks that may affect government. Management approaches are developed to address emerging risks. Crown Law also provides the Attorney-General and other ministers with regular reports on specific themes of relevance to government priorities and ministerial portfolios.

### Climate change

Climate change is a dynamic and rapidly developing area of law. There continues to be an increase in litigation against government decision makers based on concerns about the sufficiency of the government's climate change mitigation efforts. This increase reflects wider global trends,<sup>15</sup> which show an increasing number of cases across more jurisdictions. Similar patterns have also emerged in litigation against private sector entities.

Climate litigation is growing, with litigants challenging government action (or alleged inaction) on climate change using diverse strategies. Ongoing proceedings that illustrate the breadth of challenges to government action on climate change include:

<sup>15</sup> United Nations Environment Programme (2023). Global Climate Litigation Report: 2023 Status Review: [www.unep.org/resources/report/global-climate-litigation-report-2023-status-review](http://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review).



- a proceeding seeking to establish a novel duty of care to protect current and future generations of Māori from the effects of climate change (*Smith v Attorney-General*)
- a judicial review of the Climate Change Commission's advice on the first emissions budgets and advice on New Zealand's nationally determined contribution (NDC) and the government's subsequent NDC decision (brought by Lawyers for Climate Action NZ Inc, which was unsuccessful in the High Court but has appealed the decision)
- a judicial review of the Minister of Energy and Resources' decision to grant onshore oil exploration permits (brought by Students for Climate Solutions who were unsuccessful in the High Court but have appealed the decision)
- a judicial review of the Minister of Climate Change's recent decision regarding limits and price control settings for units in the Emissions Trading Scheme (Lawyers for Climate Action NZ Inc).

Developments in the law relevant to climate change raise complex and intersecting issues across different areas, such as the Treaty of Waitangi, human rights, regulatory compliance and governance. Both the *Smith* and *Lawyers for Climate Action* proceedings, for example, have required the Crown to engage with issues relating to human rights and te Tiriti, alongside international legal instruments and jurisprudence. In the *Smith* proceedings, the Court of Appeal has granted leave for the Human Rights Commission to intervene.

Decision makers increasingly need to be alert to climate change considerations. Decisions that might be categorised as 'climate relevant' are likely to attract legal challenge due to public interest in the subject matter. This includes where the purpose of the relevant statute supports emissions being taken into account

or where a particular decision may have a significant impact on New Zealand's emissions.

Litigation is also growing against private sector entities. In August 2022, the Supreme Court heard an appeal in the *Smith v Fonterra* litigation involving a private law claim in tort against a set of private companies who cause climate emissions. Lawyers for Climate Action NZ Inc, the Human Rights Commission and Te Hunga Rōia Māori o Aotearoa | Māori Law Society were all granted leave to intervene in the proceedings.

### Severe weather emergency recovery

In early 2023, severe weather events in the North Island, including Cyclones Hale and Gabrielle, and the heavy rain events over the upper North Island caused widespread damage to the natural and built environment, including land, waterways, biodiversity, fisheries, infrastructure, businesses and homes. There was a risk that the pace of the recovery from the severe weather events could be constrained or prohibited by the regulatory environment in place at the time. Accordingly, it was decided there was a need for legislation to enable urgent measures to support recovery.

To assist with the recovery, the Severe Weather Emergency Recovery Legislation Act 2023 (SWERL Act) was enacted. This created a mechanism permitting the Governor-General to make Orders in Council on the recommendation of the relevant minister to exempt, modify or extend existing legislation to support recovery.

The Order in Council process is being completed in tranches to enable the efficient processing of proposals. Crown Law is working closely with agencies as proposals are developed to ensure proposed Orders in Council fit within the SWERL Act's empowering provision.

## Russia sanctions

Crown Law has been involved with other agencies in supporting the work of the Ministry of Foreign Affairs and Trade (MFAT)'s Russia Sanctions Taskforce through enactment of the Russia Sanctions Act 2022, regulations made under the Act and consideration of specific cases.

## Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand's Response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic

A Royal Commission has been established to prepare New Zealand for future pandemics through lessons learned from COVID-19.

The purpose of the Royal Commission is to strengthen New Zealand's preparedness for, and response to, any future pandemic by identifying those lessons learned from New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic. The Royal Commission is intended to be a holistic, future-oriented review of New Zealand's experience of the pandemic. The inquiry will make recommendations on measures to best prepare New Zealand to respond to any future pandemics.

Crown Law provided advice to Te Tari Taiwhenua | Department of Internal Affairs (DIA) in relation to the establishment of the inquiry and will provide information to the inquiry in relation to its role in the COVID-19 response.

## Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

The Royal Commission has now concluded its public hearings with the final public hearing

relating to the Crown (the State Institutional Response public hearing) held in August 2022. The Royal Commission must deliver its final report and recommendations by 28 March 2024 (an extension from the previous deadline of 30 June 2023).

Crown Law continues to cooperate with the Royal Commission by responding to information requests when asked to do so. In addition, Crown Law continues to support agencies' work on the implementation of the recommendations made in the Royal Commission's Redress Report issued in December 2021, including in relation to recommendations about the reform of limitation legislation and the Accident Compensation Scheme.

## Programmes and capability

During 2022/23, we continued to deliver a capability-building programme to increase the effectiveness of government legal services. This included the following:

- Approximately 77.5 hours of professional development offerings through 48 practice group seminars, workshops and events.
- The GLN Summer Clerk Programme, which placed 26 clerks in 21 agencies.
- The 2022/23 GLN Graduate Programme, which continued with six graduates and nine agencies (over the course of the 2-year programme).<sup>16</sup>
- He Waka Eke Noa Introduction to Government course, provided five times over the year.
- The annual GLN Conference was held in person in March 2023, with 525 government lawyers attending. The programme included

<sup>16</sup> One graduate departed the programme ahead of the third rotation, and we filled the remaining rotation with an applicant for the 2023/24 GLN Graduate Programme.

te Tiriti o Waitangi in executive decision making, recent developments in the law, talanoa on Pasifika in the legal profession and ethical issues facing government lawyers.

- A programme of regular engagements with Chief Legal Advisors across government aimed at developing capability, connection and collaboration.

To further support our government lawyers, the System Leadership Group is developing a

Legal Capability Framework. Similar in concept to other functional leadership capability frameworks, this framework will support career development for lawyers and managers, consistency in language enabling more effective practices for sharing legal expertise and future recruitment.

## Illustrative legal and constitutional matters



### **Wallace v Attorney-General**

Mrs Wallace argued there was a breach of the New Zealand Bill of Rights Act, section 8 (right not to be deprived of life except on lawful grounds) when her son was shot by Police in April 2000. Mrs Wallace said that Mr Wallace lost his life unlawfully because the constable who shot him did not act in self defence. The Crown argued self defence and that there had been no breach of the Bill of Rights Act. There was a focus in the case on whether Mr Wallace's death had been adequately investigated by the state.

The Court of Appeal in its 2022 judgment concluded Constable Abbott had shot Mr Wallace in self defence and doing so was reasonable in the circumstances. The Court of Appeal confirmed that there was a state obligation to investigate such deaths and found that here the state had met that obligation through a range of inquiries, including Police and Coroner inquiries and a private criminal prosecution.



### **The Gama Foundation v MSD and Ors**

The Gama Foundation challenged decisions purported to have been made by the Ministry of Social Development (MSD) not to prosecute those who received the wage subsidy when they

were not entitled to do so during the COVID-19 pandemic. The Gama Foundation alleged MSD had adopted a "practice" not to prosecute certain classes of wage subsidy recipient.

In support of its case, MSD relied on evidence setting out its processes and procedures for investigating (and enforcing) wage subsidy fraud and evidence outlining developments in its investigation/enforcement procedures. This formed the basis of MSD's position that it had not adopted any unlawful "practice". MSD also argued it was not open to the Court to infer a "practice" on the information before it.

The substantive judicial review application was heard on 8 May 2023.



### **Legal challenge to plantation forestry settings**

Early this year, the Environmental Defence Society (EDS) filed legal proceedings in the Environment Court challenging the lawfulness of the National Environmental Standards for Plantation Forestry (NES-PF).

The environmental consequences of forest harvesting activities have been brought into the spotlight by Cyclone Gabrielle. The Ministerial Inquiry into land uses associated with the mobilisation of woody debris (including forestry slash) and sediment in Tairāwhiti/Gisborne District and Wairoa District has recently released its report.

The EDS's legal challenge is based on the NES-PF permitting harvesting and associated earthworks on land with an orange rating for erosion risk. The EDS alleges that such activities cause a large amount of sedimentation, which affects nearby marine environments in a "significantly adverse" way.

The EDS is focusing on the Marlborough Sounds due to its large proportion of orange-rated land and amount of sedimentation detected in local marine environments.

More broadly, this case comes against the backdrop of Cyclone Gabrielle. A number of parties have joined the proceedings, including Mana Taiao Tairāwhiti (a community network from Tairāwhiti concerned with land use practices in the region).

The Crown parties to the proceedings are the Minister for the Environment and the Minister of Forestry.

# 3

## OUTCOME THREE

# Justice that strengthens communities

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### **The impacts we are working towards:**

- Increased access to justice and civil redress
- The justice system is solutions-focused
- The justice system is open, transparent and impartial
- Barriers to civil justice are removed
- Victims are supported, have a voice and experience justice
- Crown prosecutions and criminal appeals are high quality and progressed in the public interest

## How we will know we are succeeding

This outcome is focused on the justice system and individuals within it. It includes ensuring that the Crown takes a socially responsible, holistic position on legal issues that takes the ‘whole of person’ into account. Applying a consistent approach to prosecutions is key to supporting justice system transformation.

To gauge the impact of Crown Law’s legal work, we look at trust in the courts, perceptions of the justice system and the quality of prosecutions and appeals.

In July 2020, the Ministry of Justice released a topical report on the NZ Crime & Victims Survey focused on social wellbeing and perceptions of the criminal justice system.<sup>17</sup>

Some of the key findings from this report were that:

- adults who identify as bisexual (27%) and Māori (39%) are less likely to be confident in the criminal justice system than New Zealand adults overall (53%)
- the public tend to think groups that provide services for victims (such as Women’s Refuge, Rape Crisis and Victim Support) and Police are doing a better job than other parts of the criminal justice system – the Parole Board, probation officers, criminal lawyers, the prison service, judges and juries
- not all New Zealanders agree their values are usually reflected in the criminal justice system – 51% of New Zealand adults said their feelings about what is right and wrong usually agree with the criminal justice system, 41% said they sometimes agree and 38% of Māori said their feelings about what is right and wrong usually agree with the criminal justice system.

In May 2021, the Ministry of Justice released another topical report, this time focused on victims’ trust and confidence in the criminal justice system. Key findings in this report were that:

- victims of interpersonal violence, offences by family members or sexual assault are less likely to have confidence the criminal justice system as a whole is effective and have comparatively lower trust in Police, juries, criminal lawyers and groups that support victims
- victims of all offence types tend to have positive perceptions of Police and groups that provide services for victims – however, their perceptions of judges, juries, criminal lawyers and the Parole Board are relatively poorer.

Public trust and confidence in the criminal justice system is essential to its performance. The criminal justice system can only operate effectively if society trusts and has confidence in it. Victims, in particular, will only come forward to report crime if they trust the system will keep them safe, provide justice and treat them fairly.

<sup>17</sup> <https://www.justice.govt.nz/justice-sector-policy/research-data/nzcvs/nzcvs-cycle-2-resources-and-results/>.

Impact indicator	Performance trend				Comment
	2019/20	2020/21	2021/22	2022/23	
<b>Access to justice</b>					
World Justice Project Rule of Law Index	NZ score: 0.59	NZ score: 0.55	NZ score: 0.59	NZ score: 0.59	Indicates whether Police and criminal judges are impartial and whether they discriminate in practice based on socio-economic status, gender, ethnicity, religion, national origin, sexual orientation or gender identity.
• The criminal justice system is impartial	Rank: 39/126	Rank: 39/128	Rank: 32/139	Rank: 31/140	
• The criminal investigative system is effective	NZ score: 0.59	NZ score: 0.60	NZ score: 0.61	NZ score: 0.61	Indicates whether perpetrators of crimes are effectively apprehended and charged and whether Police, investigators, and prosecutors have adequate resources, are free of corruption and perform their duties competently.
	Global rank: 18/126	Global rank: 15/128	Global rank: 19/139	Global rank: 19/140	
• People can access and afford civil justice	NZ score: 0.72	NZ score: 0.72	NZ score: 0.73	NZ score: 0.74	Indicates the accessibility and affordability of civil courts, including whether people are aware of available remedies, can access and afford legal advice and representation and can access the court system without incurring unreasonable fees, encountering unreasonable procedural hurdles or experiencing physical or linguistic barriers.
	Global rank: 15/126	Global rank: 11/128	Global rank: 11/139	Global rank: 9/140	

Overall, the trends around access to civil and criminal justice in New Zealand are positive, although it is worth noting that New Zealand's score and global rank for criminal system impartiality is comparatively low. Through the quality of Crown assistance to the Court as counsel and in the many discretionary decisions made by lawyers representing the Crown, Crown Law has a significant and influential role in the cases that come before the court and how they are dealt with. Therefore, ensuring that Crown Law is a diverse, culturally competent organisation with a strong culture of working within the justice sector to ensure it is solutions-focused, transparent and impartial will have an overall positive impact on the criminal justice system in the long term.

Impact indicator	Performance trend					Comment
	2019	2020	2021	2022	2023	
<b>Institutional trust</b>						
Statistics NZ General Social Survey <sup>18</sup>						
• Level of trust in the courts (population)	64%	N/A	N/A	64%	N/A	A measure of trust in public institutions, specifically in the courts.
• Level of trust in the courts by Māori	44%	N/A	N/A	44%	N/A	

<sup>18</sup> <https://www.stats.govt.nz/information-releases/wellbeing-statistics-2021/>.



Wellbeing statistics from the 2021 General Social Survey give a picture of social wellbeing in the New Zealand population. They're based on people's assessments of their own lives such as how satisfied they are and objective information such as their labour force status.

The trust held for courts remained consistent to 2019, with 64% of the population rating their trust in courts 7 or above on the 10-point scale.

Impact indicator	Performance trend				Comment
	2020	2021	2022	2023	
<b>Quality of prosecutions and appeals</b>					
• Crown criminal appeals concluded in favour of the Crown	62%	70%	79%	67%	The level of appeals concluded in favour of the Crown is an indication about the merits of the prosecutions and the decision to appeal.
• Defendant criminal appeals concluded in favour of the defendant	27%	30%	27%	28%	

Crown Law conducts criminal appeals in the High Court, Court of Appeal and Supreme Court. In some, the Crown is the appellant, but in most, we are responding to appeals brought by the accused. We also make decisions on requests for Crown and prosecuting agency appeals, judicial reviews, stays of prosecution and consent to prosecute. We bring Crown appeals against court-imposed sentences that appear manifestly inadequate, where an error will have a significant impact on a trial and in cases involving an important point of law or principle.

When bringing a Crown appeal, we assess the likelihood of success, but that is only one factor. This reflects the fact that the decision to take a Crown appeal will often be finely balanced. The aim is to elevate the right cases for appellate attention rather than succeeding in all appeals. Our approach recognises the public interest may favour appeal in order to test a point of law, even if there is a reasonable chance the appeal will not succeed. On the other hand, it is generally not enough to justify a Crown criminal appeal to point to an error in the process of the court below. Greater concern either in the particular case or for the law more generally will usually be at stake before the Crown will appeal. Further, the appeal court is more reluctant to interfere with a sentence on a Crown sentence appeal than on a defendant appeal, and the merits of the Crown sentence appeal must be much clearer. These considerations, along with the public interest and victims' interests, are all weighed.

## What we achieved this year

### Review of the Solicitor-General's Prosecution Guidelines

The Solicitor-General and Ināia Tonu Nei (the mana ōrite partner for the Justice Sector Leadership Board) are jointly conducting a review of the Solicitor-General's Prosecution Guidelines in order to update them where appropriate. The Solicitor-General has responsibility for oversight of all public prosecutions pursuant to section 185 of the Criminal Procedure Act 2011. The Solicitor-General's Prosecution Guidelines are a key mechanism to support the oversight of prosecutors and ensure accountability and consistency of approach. These guidelines set out the core values and high-level guidance that all public prosecuting agencies are expected to follow in deciding whether to bring a prosecution and in their conduct of any prosecution. There is a high degree of discretion in a decision to charge a person or to pursue a prosecution through the court system. It is hoped the review will result in clearer guidance for how prosecutorial discretion can be used to ensure better outcomes for individuals in the criminal justice system while at the same time better supporting the long-term safety of the community. The Guidelines were last updated in 2013 but core features such as the test for prosecution have not been reviewed since 1992.

Crown Law and Ināia Tonu Nei have jointly hosted two wānanga at Pipitea Marae with key stakeholders (Police and other prosecuting agencies, justice sector agencies, Crown Solicitors, the legal profession, representatives from academia, victim advocates, and various community representatives/NGOs). Wānanga Tuatahi took place in November 2021 and set the direction of travel for the review. Wānanga Tuarua took place in March 2023 and was focused on the test for prosecution. It is

expected that new Guidelines will come into force in July 2024 at the earliest following a drafting process that will include consultation with stakeholders.

### Victims of crime

The Solicitor-General provides guidance to prosecutors on their interactions with and support for victims as part of her general oversight and supervisory role for all public prosecutions. Further, a major focus for the justice sector is on improving the experience for victims in the criminal justice system, particularly in sexual violence cases. To that end, key provisions in the Sexual Violence Legislation Act 2021 came into force in December 2022, including regarding the ability to pre-record the entirety of a sexual violence victim's evidence at a pretrial hearing. Pre-recording benefits victims in several ways:

- It supports them to give the best evidence they can. The environment of a pre-recording hearing is less intimidating because the jury is not present, and the victim gives evidence earlier in time when their memories are fresher. This is of particular benefit to child victims.
- The giving of evidence at a pre-trial hearing means that victims do not wait as long to give their evidence in court, which reduces the stress they might otherwise experience.
- The risk of mistrials is reduced. If a victim inadvertently gives inadmissible evidence, this can simply be edited out of the video recording played at trial.
- If a retrial is necessary because of a mistrial, hung jury or successful appeal against conviction, the victim's pre-recorded evidence may be able to be used again so they are not required to attend the retrial.

- In some cases, a defendant may plead guilty based on pre-recorded evidence so a trial is unnecessary. This provides victims with an outcome without having to wait for a trial with the attendant delays and uncertainty over the verdict.

Crown Law has taken a lead role in implementing this new legislation to ensure victims are well supported and the benefits of the legislation are realised:

- We updated the Solicitor-General's Guidelines for Prosecuting Sexual Violence Offending to take account of the new provisions and ensure all prosecutors are fully informed as to both the merits of and processes involved in pre-recording. The Guidelines are published on our website where they are available to victims and the general public as well.
- We provided training to all Crown and Police prosecutors who deal with sexual violence offending as well as the Police investigators involved in that work.
- We also gave presentations to Court victim advisers and took part in training for the Public Defence Service to ensure all parts of the sector were aware of the changes.

## Oversight of the Crown Solicitor network

### Crown Solicitor appointments

New appointments for the Auckland and Christchurch Crown Solicitor warrants have been completed during the 2022/23 financial year. A new competitive appointment process has also led to the re-appointment of the incumbent Rotorua Crown Solicitor. This is the first time Crown Law has undertaken a competitive process to address a reappointment situation. This arises because the 10-year appointment term was introduced

in 2013, and the Rotorua warrant is the first 10-year appointment to expire.

### Crown Solicitor reviews

As part of the Solicitor-General's oversight of Crown prosecutions, all Crown Solicitors are reviewed on a triennial cycle using a combination of in-depth reviews (primarily interview based) and written survey-based reviews. In 2022/23, six Crown Solicitors were reviewed. The Tasman Crown Solicitor was identified to participate in the in-depth review. The Deputy Solicitor-General and other members of the Crown Law Criminal Group interviewed stakeholders, including Police, defence counsel and prosecuting agencies. The review process identified that the Tasman Crown Solicitor's office has a strong and effective partnership supported by a hard-working team. No systemic or significant issues were raised.

The five reviews of other Crown Solicitors were conducted using the survey-based approach. Survey reviews are less detailed, and their value is dependent on the quality and volume of feedback received. The survey results provided assurance the Crown Solicitors and prosecutors in their offices continue to provide quality services and are well regarded by stakeholders. The in-depth and survey reviews both found that te reo Māori and tikanga Māori capability amongst prosecutors continues to develop, and efforts are being made to incorporate te ao Māori into ways of working, both in the office and in court.

Survey-based reviews use online surveys to seek feedback from stakeholders that engage with Crown Solicitors. This approach increases the number of Crown Solicitors that can be reviewed at any one time. The review process seeks input from representatives of Police CIB, prosecuting agencies (including the Police Prosecution Service), defence counsel and

Victim Support. Feedback from Crown Law's Criminal Group is also incorporated into the reviews. As surveys only target stakeholders, Crown Solicitors subject to survey reviews are also required to provide additional information in their annual questionnaire as part of the review process. The survey reviews paint a broad and contemporary picture of a Crown Solicitor's performance. Within the confines of the data collected, any significant issues can be identified and followed up.

Annual questionnaires are sent by the Public Prosecution Unit to all Crown Solicitors. These are designed to collect information on resourcing, other types of work undertaken by their offices and processes for allocation and supervision of work as well as key relationships required to support the Crown prosecution work.

Monthly reporting, in-depth and survey reviews, annual questionnaires, the prosecutor classification framework and Terms of Office all form part of a quality assurance framework used to provide assurance about the performance of the Crown Solicitors and their offices.

### **Crown Solicitor funding model review**

The majority of Crown Solicitor funding is based on a bulk funding model. The model uses an adjusting annual fee which is distributed in monthly instalments. Annual fees are based on the proportion of prosecutions completed each financial year and covers all Crown prosecution services each Crown Solicitor needs to provide in their respective regions. A review of the Crown Solicitor funding model was completed by KPMG in 2021/22. It was the first large-scale review of the funding model, which was first introduced in 2013/14.

The funding model consists of a bulk-funding mechanism responsible for distributing most of the funding to the Crown Solicitor network (~95%) and a smaller flexi-funding mechanism

(~5%) that is used to manage exceptional cases and other network risks.

The review found the bulk-funding mechanism was well administered by Crown Law and remains fit for purpose given the characteristics of the Crown Solicitor network. Some simple improvements were suggested for both the bulk and flexi-funding mechanisms.

Recommendations in relation to flexi-funding were implemented at the end of the 2022/23 financial year. After consultation with the Crown Solicitor network, changes to bulk funding are on schedule to be implemented for the start of the 2023/24 financial year.

### **Serious Fraud Office and Commerce Commission Crown prosecution funding model review**

The introduction of legislation that enables the Commerce Commission to prosecute for cartel conduct along with recommendations made in the Crown Solicitor funding model review (above) resulted in a review of the funding model for criminal prosecutions carried out by the Serious Fraud Office and the Commerce Commission if or when they become Crown prosecutions. The aim was to ensure that funding arrangements for these agencies, which conduct complex and often lengthy prosecutions, remain fit for purpose. KPMG was engaged to conduct the review, given its connection with the earlier Crown Solicitor network review. The review has been completed, and the report's recommendations will be considered with any changes scheduled to be implemented by the end of the 2023/24 financial year.

### **Prosecutor wellbeing guidelines**

Prosecuting is a demanding task and can load great pressures and responsibilities on individuals. Researchers from Victoria

University of Wellington were engaged to develop guidance for the Crown Solicitor network to ensure the ongoing support for Crown prosecutor wellbeing. The guidance is being developed in two phases.

Phase 1 of the wellbeing guidance has been completed. It consists of a summary of findings from New Zealand research conducted by Tinsley, Tyler and colleagues and from international studies. Phase one of the guidance is to be distributed to the Crown Solicitor network in early 2023/24.

Phase 2 of the guidance will be developed during the 2023/24 financial year and will focus on the practical options available to ensure supportive pathways for Crown prosecutors to maintain their personal wellbeing.

## Oversight of prosecuting agencies

### Prosecuting agency reviews

As part of the Solicitor-General's general oversight of public prosecutions, the Department of Corrections was previously invited to participate in an in-depth review of its prosecution function. The final stage of the review was completed in the 2022/23 financial year, and the report has been finalised.

In October 2022, WorkSafe was also invited to participate in an in-depth review. This review has now commenced and is progressing well, with a scheduled completion date towards the end of the 2023/24 financial year.

Three survey-based reviews of prosecuting agencies were also conducted in 2022/23. The reviews involved surveying stakeholders to assess how each agency was performing. While the reviews are survey based, a small number of stakeholders from each agency were also interviewed. The value and conclusions from

the reviews is largely dependent on the volume and quality of stakeholder responses we receive.

Stakeholders surveyed included the heads of investigations for each agency and a few external prosecutors (such as Crown Solicitors) and defence counsel. Feedback on each agency's engagement and reporting to Crown Law's Public Prosecution Unit is incorporated into the reviews. The agencies reviewed were the Ministry of Social Development (MSD), Civil Aviation Authority (CAA) and Ministry for Culture and Heritage (MCH) No significant concerns were raised during the reviews.

MCH, unlike the other agencies reviewed, has only undertaken a limited number of prosecutions, with the most recent being in 2007. As a result, no recent external stakeholders were identified for participation in the survey part of the review. The review was therefore limited to interviews with internal staff members but was useful in gaining a better understanding of MCH's prosecution function and the agency's regulatory priorities.

The review of CAA identified that the agency has an increased focus on building in-house capacity when it comes to conducting criminal prosecution work. Some fairly generic opportunities for improvement were identified, and the overall review outcome was satisfactory.

The review of MSD was largely positive. Some limited concerns were raised about the timeliness of full disclosure. However, these appeared to be the type of issues that can be addressed by improving communication with defence counsel.

The feedback suggested there was sound leadership within each of the agency's legal teams.

Crown Law also gathers statistical information from prosecuting agencies. In total, 39

prosecuting agencies reported on their prosecutions. Overall, agencies (excluding Police and Corrections) reported a reduction in the number of prosecutions since 2018/19 but with a general trend of increasing prosecution hours. However, since 2021/22, total reported prosecution hours have dropped by 34%. The biggest change has been in briefed out prosecution hours, which reduced by 50%, whilst in-house prosecution hours reduced by 21%. This is in contrast to prosecution volumes increasing by 4% over the same period.

## Mutual assistance and extradition regime

Crown Law performs a central role in facilitating international cooperation for law enforcement purposes. In 2022/23, Crown Law provided and requested assistance in relation to a wide range of transnational criminal matters. Requests to the United States for electronic

evidence, particularly in relation to homicide investigations and organised crime, continue to represent a high proportion of outgoing requests. We continue to make requests to various countries for evidence relating to the importation and attempted importation of drugs into New Zealand, particularly methamphetamine.

Crown Law has a significant role in incoming extradition requests, providing advice to the Ministry of Justice on the adequacy of incoming requests and appearing in eligibility hearings and any resulting appeals. If eligibility is made out, Crown Law may as a separate process contribute advice to the Minister of Justice on surrender. Crown Law also works with prosecuting agencies and the Crown Solicitors to facilitate outgoing extradition requests under Parts 3 and 5 of the Extradition Act 1999 (Part 4 requests being facilitated primarily by Crown Solicitors).

## Modernising investment in the criminal justice sector

New Zealand's public finance system has a high level of transparency and accountability by international standards, but the New Zealand Treasury sees opportunities to create a more modern, agile, flexible, innovative and joined-up public sector through its reform.

The government has responded accordingly, establishing two cluster pilots in the lead-up to Budget 2022 as part of the work programme to modernise New Zealand's public finance system. Objectives of the cluster pilots include:

- ongoing collaboration around agreed priorities through joined-up working to achieve better spending and outcomes

- managing within the Budget 2022 multi-year spending package
- improved performance reporting.

We are participating in the Justice Cluster pilot, along with four other justice sector agencies (Te Tāhū o te Ture | Ministry of Justice, Ara Poutama Aotearoa | Department of Corrections, Ngā Pirihimana o Aotearoa | New Zealand Police and Te Tari Hara Tāware | Serious Fraud Office). The Justice Cluster pilot's four key priority areas identified by cluster ministers are:

- better outcomes for victims

- addressing issues with remand
- improved access to justice
- better enabled organisations and workforce.

It is accepted across the five justice sector agencies that operating as a sector increases the ability to make significant changes to aspects of the criminal justice system and increases consistency. It is hoped that coherent justice sector approaches will achieve better criminal justice outcomes for all and particularly for Māori.

Crown Law, even though a small department, participates fully in the sector approach to transformation of the criminal justice system.

This year, the Criminal Group has provided advice on a range of criminal justice policy initiatives. This has included proposals to

strengthen responses to serious offending behaviour in children and young people and improve court and system performance.

We participate in steering committees for the District Court Timeliness Programme, the Remand Action Plan, and the Waitangi Tribunal's kaupapa inquiry into the justice system (Te Rau o te Tika – Wai 3060).

Together with other justice sector partners, we contribute to the Better Outcomes for Victims work programme, including through the Victims Action Group, Victims Operating Model and victims pilots (in Whangārei and Manukau). We were also consulted on several projects, including the High Impact Innovation Programme's Unlocking Timely Case Resolution Through Behaviour Change project and Ministry of Justice's Primary Caregivers in Custody with Dependent Children project.

## Illustrative legal and constitutional matters



### Extradition from Korea

In August 2022, the bodies of two young children were discovered in suitcases that had been placed in a storage locker in South Auckland. The Police investigation led to the children's mother, Hakyung Lee, who was in South Korea. Two charges of murder were filed, and an arrest warrant was issued. At Police's request, Crown Law made an extradition request to South Korea. The South Korean authorities granted the request, and Ms Lee was returned to New Zealand for trial. The prosecution has a trial date of 29 April 2024. In addition to the extradition, Crown Law has made mutual assistance requests to South Korea and the United States on behalf of New Zealand Police to obtain information and evidence from those jurisdictions.

Supreme Court provided further clarification as to offender roles, particularly in relation to the significant players, clarifying that managers are more culpable than those performing operational tasks. The Court also extensively reviewed the principles applicable to the consideration of personal mitigating factors, particularly addiction and cultural factors. The Court held that "where an offender's background was an operative or proximate cause of the offending it is likely to be a potent sentencing factor". Where such factors are not so proximate but "do help explain how an offender came to offend, they will amount to causative contribution and so will be relevant for the purpose of sentencing".

A week later, the Supreme Court released its decision in *Philip v R* [2022] NZSC 149. Mr Philip had pleaded guilty to offending involving methamphetamine and cannabis and was sentenced to 1 year home detention. The Solicitor-General appealed, and the Court of Appeal substituted a sentence of 2 years 11 months. Mr Philip appealed with leave to the Supreme Court who allowed his appeal and substituted a sentence of 1 year 7 months imprisonment. The Supreme Court found the Court of Appeal treated his offending as more serious than was warranted and that insufficient discount was given for the effect of sentencing on Mr Philip's young child and his rehabilitative prospects.

In *Dickey, Brown & Epiha v R* [2023] NZCA 2, the Court of Appeal considered sentencing principles for young offenders convicted of murder. All three appellants were teenagers when they committed murder and were



### Sentencing

There have been a number of notable sentencing decisions in the last year.

In late 2022, the Supreme Court released its decision in *Berkland and Harding v R* [2022] NZSC 143. Both appellants appealed sentences of imprisonment for methamphetamine offending. The Supreme Court was broadly in agreement with the recalibration of sentencing levels for methamphetamine offending that had been outlined by the Court of Appeal in *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648. The



sentenced to life imprisonment with a minimum period of imprisonment (MPI) of 10 years. They contended those sentences were manifestly unjust as a result of their age, social deprivation and psychological conditions. While sentencing policy regarding young offenders is discussed in the judgment, the Court explained it was not a guideline judgment and “we do not attempt to prescribe when it may be appropriate to find life imprisonment manifestly unjust for young people”.

It was not open to the Court to create an exception to life imprisonment for all youth murderers, as that was inconsistent with the statutory scheme, but it did consider whether youth was a factor that could result in a sentence other than life imprisonment. The Court concluded that, generally speaking, youth alone will not be enough to establish that a life sentence is manifestly unjust, but “a life sentence may be manifestly unjust for some young offenders through a combination of the indeterminacy of the sentence, the length of the MPI and lifetime parole and where a determinate sentence of imprisonment is capable of responding to such injustice”. For all three offenders before the Court of Appeal, the sentence of life imprisonment was found to be manifestly unjust. Determinate sentences were substituted.

In *R v M* (CA385/2022) [2023] NZCA 219, the Court of Appeal considered whether it is abduction (section 210 of the Crimes Act) if a parent forcibly takes a child from the care of the other parent. M was alleged to have forcibly uplifted his children from their mother’s vehicle in the context of an acrimonious separation. Charges of abduction were filed, but subsequently dismissed in the District Court on the basis that M’s taking of the children could not constitute an “unlawful taking” under section 210 because no parenting

orders from the Family Court were in place at the relevant time. Dismissing a Crown appeal against that decision, the Court of Appeal held that, because M had the same parental rights as the children’s mother, the taking was not unlawful. The Court did not accept the Crown submission that the taking was unlawful because M either intended to deprive his co-parent of her rights to possession and custody of the children or because the physically forceful manner in which he took the children made it unlawful. The Court was careful to note that breach of a parenting order was not the only way in which a parental abduction may fall within the scope of section 210. Other circumstances (such as the breach of a parenting agreement) could theoretically meet the unlawfulness requirement.

The case contains a comprehensive analysis of the legislative history of section 210 and of the approach taken in overseas jurisdictions. The Court suggested the application of section 210 to disputes about the care of children is a matter that would benefit from Parliament’s attention, observing the current law “appears to be inadequate and in need of modernisation” (at [56]).



## Solicitor-General reference appeals

There are three Solicitor-General’s references before the courts. This mechanism, first provided for in the Criminal Procedure Act 2011, is rarely used, and these appeals concern three very different legal contexts. The Solicitor-General’s aim on a reference appeal is to clarify important points of law where there is

currently uncertainty without seeking to change the result of the original proceeding in which the relevant question of law arose (generally because there is no right of appeal available).

1. **Co-offender's acquittal:** The Solicitor-General's reference for Darling [Solicitor-General's Reference (No 1 of 2023) from CA636/2021] was heard by the Supreme Court, sitting in Auckland, on 16 August 2023. The question of law concerns whether a co-offender's acquittal after trial meant that Mr Darling could not in law have been convicted of aggravated robbery despite having pleaded guilty to that charge.
2. **Building regulation:** The Court of Appeal will hear Solicitor-General's Reference (No 1 of 2022) from CRI 2021-463-55 on 10 October 2023. This arose out of a prosecution by Tauranga City Council of an engineer involved in the failed Bella Vista development in Tauranga. The engineer was convicted under section 40 of the Building Act 2004 of having carried out building work except in accordance with a building consent but had the convictions overturned on appeal to the High Court. The approved question of law to be determined is: Was the Court correct to find that the issue of producer statements in relation to non-compliant building work does not give rise to liability under s 40 of the Building Act 2004? The purpose is to obtain certainty and clarity regarding the potential liability of engineers under the Act.
3. **Dog control:** The High Court has been divided (5:4) on the issue of whether there is a power to destroy a dog where the owner has been charged with (but not convicted of) an offence. We sought leave to bring a Solicitor-General's reference to clarify the proper construction of the legislation. The Court of Appeal granted leave to determine the following question of law: Was the High

Court correct to conclude that conviction of the dog's owner is a precondition to an order for destruction being made under s 57(3) of the Dog Control Act 1996. The matter has been set down for hearing in the Permanent Court on 30 April 2024.



## Alan Hall case

Mr Hall was convicted after a jury trial in 1986 of murder and aggravated wounding. He unsuccessfully appealed to the Court of Appeal against conviction in 1987 and also made three unsuccessful applications for the Royal Prerogative of Mercy (1987, 1988 and 1992). On 8 June 2022, the Supreme Court unanimously allowed his appeal, quashed Mr Hall's convictions and directed that verdicts of acquittal be entered.

After the Supreme Court's decision Mr Hall made an application for compensation under the Compensation Guidelines for Wrongful Conviction and Detention. Rodney Hansen KC was appointed to advise the Ministry of Justice as to whether compensation should be paid. We made submissions as part of that process. The government announced in August 2023 that Mr Hall had proved his innocence on the balance of probabilities, apologised for the serious miscarriage of justice and awarded him approximately \$5 million in compensation – the greatest sum paid for wrongful conviction in New Zealand's history.

Also in June 2022, the Solicitor-General commissioned Nicolette Levy KC to inquire into and report on the role of any Crown lawyers in Mr Hall's miscarriage, or their role in any processes that could have identified the miscarriage earlier. Ms Levy's inquiry

spanned from Mr Hall's arrest to the time of her inquiry. Ms Levy reported promptly. She found that Crown Law was not involved in the miscarriage of justice and that, in the particular circumstances, Crown Law did not fail to meet any obligations it had. The Solicitor-General subsequently referred aspects of the Levy report to Police in December 2022. To protect any possible fair trial interests that might arise in future, we have not published the full Levy report to date. This allows Police to go through their own processes unimpeded. We have released a redacted version of the report (published on our website on 26 May 2023).

The portion of the report relating to Crown Law's own role is unredacted.



### **Ellis v R [2022] NZSC 115**

This decision is the final judicial word about the safety of Peter Ellis' convictions from 1993 for sexual offending against seven pre-school children. The ordinary appeal path would have been to the Privy Council in London, but the Crown agreed that an application for leave

could be made to the Supreme Court of New Zealand instead. The Court considered the role of tikanga in the common law (see p 16 above) and decided that application of tikanga meant that the conviction appeal in this case should be allowed to continue despite the fact that Mr Ellis had died after filing his appeal and before it was heard.

The judgment reverses the jury verdict, two Court of Appeal decisions and a Ministerial inquiry. It finds a miscarriage of justice and sets aside Mr Ellis' convictions. Central to the Court's decision is section 23G of the Evidence Act 1908 which permitted expert witnesses to give evidence about the behaviour of children the subject of alleged sexual abuse. The scope of such expert evidence had to be closely confined to avoid an unfair trial. The Court found that the Crown's expert had gone beyond the scope of what the section permitted. Section 23G is now repealed and not a feature of contemporary law or trials.

The risk of contamination of the complainants' evidence also features in the judgment. The Supreme Court concluded that although contamination was traversed extensively at trial, the jury was not fairly informed of the level of risk.

# Te āheitanga o tō mātou whakahaerenga

## Our organisational capability

### Governance framework

Crown Law's Leadership Team is supported by the following:

- The **Performance and Capability Governance Committee** (PCGC) reviews Crown Law's management at an operational level, focusing on ensuring we are able to perform and function effectively. This includes governance of strategic initiatives designed to improve organisational performance and governance of cross-functional work to enable organisational effectiveness (including security, information and records, people capability, finance and health and safety, amongst others).
- The **Professional Standards Governance Group** (PSGG) reviews the professional performance of our legal services and of Crown Law's system leadership role across government.
- The **Assurance and Risk Committee** (ARC) provides an independent perspective on Crown Law's strategic risk management. In broad terms, its job is to support Crown Law to identify any obstacles or threats to the organisation's success at a strategic level. It seeks to understand the strategic risks and opportunities facing Crown Law through an awareness of the current and future environment in which it operates. A primary benefit of the ARC is its independence. As at 30 June 2023, the independent committee

members are Colin McDonald (previously CEO of the Department of Internal Affairs and Government Chief Information Officer) as Chair and Victoria Werohia (Deputy Chief Executive Monitoring at Te Aka Whai Ora | Māori Health Authority).

- The **GLN Governance Board** is responsible for the governance of the Government Legal Network and its activities. The Board may give direction to Crown Law's System Leadership Group, including commissioning work from the group as required. The Board supports the Solicitor-General in her consideration of and response to legal risk matters.

### Managing risk

Crown Law operates a risk assessment framework that helps to assess legal and operational risk (including technology, security, privacy, fraud and corruption, procurement 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 identifies, monitors and reviews strategic risks on a regular basis through ARC while operational risks are overseen by the PCGC.

The System Leadership Group maintains the Crown's Significant Legal Risk Register. This register captures significant legal risks for individual departments and systemic legal risks

that affect multiple departments or the whole Crown. A report on key legal risks identified is provided twice a year to the GLN Governance Board and the Attorney-General.

## People and capability

To achieve our strategic outcomes and goals, we need our people to be engaged and working collaboratively with a diverse range of views and be comfortable communicating and considering different perspectives. This will help us continue to deliver excellent legal advice and services that are relevant and valued both by our customers and New Zealand. We are committed to building and investing in such a workforce.

Success at Crown Law is not just about what we do but how we do it. Our ways of working support a shift in culture that embraces the value of all work carried out across Crown Law. Specifically, as an organisation, we:

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

## Inclusion and diversity

Crown Law's Leadership Team is committed to fostering an inclusive and diverse culture. Over time, it is our focus to ensure our workforce and the wider Government Legal Network are more representative of Aotearoa. Our people are our top priority, and their wellbeing is essential for the successful delivery of our strategy.

### Papa Pounamu

Crown Law continues to be committed to Papa Pounamu and the five priority areas that support our levels of representation and inclusion across all areas.

### Impact of our Papa Pounamu efforts

According to Te Taunaki findings, Crown Law supports and promotes an inclusive workplace and ensures our people feel accepted and valued. Our Te Taunaki results exceeded the public service average. We exceeded it by 11% in our ratings for *people feeling accepted as a valued member of the team* and by 12% for *people perceiving that the agency I work for supports and actively promotes an inclusive workplace*. Despite these positive findings, Crown Law recognises we need to take a more structured approach to achieving the desirable Papa Pounamu impact.

We now have a dedicated culture and capability resource in place to ensure the delivery of initiatives that support Papa Pounamu across Crown Law. This is supported by our Inclusion and Diversity Executive Sponsor – Sophie Mexsom, Deputy Chief Executive, Strategy and Corporate.

### Te Urupare i te Mariu | Addressing bias

During 2022/23, we partnered with Te Pūkenga Here Tikanga Mahi | Public Service Association (PSA) to help address potential bias during recruitment by introducing starting salary guidelines aimed at ensuring transparent and objective remuneration setting. We have also made improvements to our recruitment processes to make it more inclusive. This includes reviewing set criteria and requirements, better understanding the demographic of applicants and introducing more inclusive recruitment practices following feedback from Māori and Pasifika about their experiences through traditional recruitment processes. As we progress work to introduce a new payroll system and supporting policies and processes in 2023, consideration is being given as part of the design and implementation to support inclusion and diversity and eliminate any potential bias.

Crown Law offers unconscious bias training, and while we do not have 100% uptake, we are seeing progress in the delivery of this training and supporting resources across Crown Law.

### ***Te āheinga ā-ahurea | Cultural competence***

Building our cultural competence is a key priority in Crown Law's Strategy 2021–2025. Our future success in providing quality legal services to the Crown will require significant cultural competency, upskilling in te ao Māori, tikanga Māori and te reo Māori. We aim to be more adaptable and flexible in our response to others' diversity, especially in potentially ambiguous contexts.

Implementing He Rautaki Māori and the Inclusion and Diversity Strategic Plan will be central to building greater cultural competency.

During 2022/23, we continued to implement our Whāinga Amorangi Plan by providing access to a range of cultural competence training. Training included te reo Māori and tikanga Māori (60% of staff have undertaken) and cultural competence foundations, including te Tiriti /New Zealand history.

Additional assistance is being introduced in 2023/24 to support us to build capability internally and to develop and begin to implement an approach to providing government lawyers with the context they need to provide legal services to the Crown effectively.

### ***Hautūtanga Ngākau Tuwhera | Inclusive leadership***

Crown Law is exploring options for a leadership programme during 2023/24 that incorporates an ao Māori approach to leadership to support the development of an inclusive and safe workplace culture.

In the meantime, we have supported managers to attend the Leadership Development Centre's New Leader of Leaders programme.

### ***Te whakawhanaungatanga | Building relationships***

Effective and meaningful internal and external relationship building is strongly encouraged at Crown Law. These are some examples:

- Our System Leadership Group supports the Solicitor-General in her role as leader of the Government Legal Network (GLN). The GLN is the network for government lawyers. Among other work, the GLN fosters relationships among government lawyers to enable support and collaboration. This collegiality benefits government lawyers and those they advise.
- Counsel staff attend He Waka Eke Noa, a cross-agency induction that starts to build relationships across the Government Legal Network.
- Our Criminal Group has a network of 16 Crown Solicitors around New Zealand holding 17 warrants to prosecute serious criminal offending in their respective districts. In addition, various agencies – such as government departments and Crown entities – employ prosecutors who undertake non-Crown prosecutions on behalf of their agencies. All Crown and agency prosecutors are subject to the Solicitor-General's oversight, primarily through the leadership of the Deputy Solicitor-General (Criminal) with support from Crown Law's Criminal Group.
- Internal staff relationship-building efforts include managers appointing a buddy to new starters and supporting employee-led networks.

Our Human Resources Team connects across the sector as active members of the Justice Sector Cross-Agency Confidence Group, Leadership Development Centre hui, Diversity and Inclusion Community of Practice and Lead Toolkit and Disability hui.

### **Ngā tūhononga e kōkiritia ana e ngā kaimahi | Employee-led networks**

We continue to encourage and support employee-led networks to thrive at Crown Law. Currently, we have the following employee-led network groups operating:

- Crown Law Social Committee
- Te Rōpū Māori
- LGBTea and Coffee Group
- Asian Coffee Group
- Pasifika Group
- Te Awheawhe Reo Māori
- Whānau Group
- Menopause and the Workplace Network
- Assistant Crown Counsel Group.

These employee networks provide the opportunity for staff to safely share their ideas,

doubts and apprehensions and know these will be received with empathy and consideration. Celebrating diversity and sharing knowledge is central to our ways of working.

In 2022/23, we appointed a formal Employee-Led Network Lead within Crown Law and assigned a small budget to support our employee networks to build on their success to date.

### **Our demographic profile**

We continue to improve our ability to report on our demographic profile through our recruitment process and internally. Our new payroll system, scheduled to go live later in 2023, will be a key enabler to this. This will enable us to better understand our existing workforce, identify our target audiences and reach a more diverse applicant base.

Workforce	226 people 70.4% of our workforce are women 29.2% of our workforce are men 0.4% of our workforce are non-binary/other gender	69.9% European 8% NZ Māori 4.9% Pacific people 11.9% Asian 0.9 MELAA 17.3% Other ethnicity Note – total percentage exceeds 100% as employees can declare more than one ethnicity.
Our locations	92.5% based in Te Whanganui-a-Tara Wellington 7.5% based in Tāmaki Makaurau Auckland	
Leadership cohort	24 people (includes Solicitor-General) 62.5% of our Tier 1–3 leaders are women 37.5% of our Tier 1–3 leaders are men 0% of our Tier 1–3 leaders are non-binary/other gender	75% European 4% Asian 21% Other ethnicity
Lawyer cohort	65% are women 35% are men	
Gender pay gap	18.24% (mean)	21.96% (median)
Māori pay gap	24.16% (mean)	30.8% (median)
Pacific people pay gap	33.97% (mean)	34.72% (median)
Asian pay gap	-8.12% (mean)	-4.35% (median)
Other ethnicity pay gap	1.7% (mean)	24.95% (median)

Notes: Solicitor-General (Tier 1) is excluded. Negative figures indicate a pay gap in favour of that group (an inverse pay gap).

### **Kia Toipoto (Pay Gap Action Plan)**

The gender pay gaps compare the average salary for all men and women at Crown Law. Crown Law has a high proportion of support staff roles, which are predominantly filled by women, lowering the average pay for women overall.

When we compare the pay of female and male employees undertaking the same roles, the gender pay gap is much smaller.

Crown Law has a strong culture of supporting female staff and has seen the largest reduction in overall pay gap since 2018, down from 32%.

Over half of Crown Law's managers are female, and the majority of Crown Law's workforce are female. Crown Law's Leadership Team (including the Solicitor-General) consists of one male and five female members.

Our focus has evolved this year as Kia Toipoto has been developed.

Our 2022/23 Kia Toipoto Plan sets out our plan to identify and address pay gaps and is published on the Crown Law website. Initiatives under way in 22/23 included:

- completing individual pay gap reviews to identify and address pay gaps
- updating the flexible working policy to implement and promote flexible working approaches for all staff
- creating higher levels of transparency on remuneration, supported by starting salary guidelines
- working with the PSA and with our employee-led networks to identify and overcome potential bias in our processes
- developing diversity and inclusion initiatives that enable a truly inclusive environment where all staff can participate and be recognised for their contributions.

We are currently engaging with our people and the PSA on the development of our 2023/24 Kia Toipoto Pay Gap Action Plan, due to be released in November 2023. Key focus areas for this work include the following:

#### **Transparency**

- Having a Kia Toipoto plan in place and published.
- Ensuring HR and remuneration information is transparent and accessible.

#### **Equitable pay outcomes**

- Ensuring starting salaries are not influenced by bias.
- Reviewing and monitoring pay gaps in like-for-like roles.
- Taking part in pay equity claims (for example, for clerical and administration staff).

#### **Leadership and overall representation**

- Improving gender and ethnic representation at all levels of the organisation.

#### **Effective career and leadership development**

- Having equitable career and leadership development opportunities in place.

#### **HR systems, policies and processes that are free from bias and discrimination**

- Identifying and addressing bias and discrimination within our systems, policies and processes.
- Building cultural competence across organisations.

#### **Flexible by default**

- Ensuring flexible work does not impact pay and progression opportunities.



## Māori Crown relations capability

As advisors to and representatives of the Crown, we need to be capable of readily engaging with Māori. To achieve this, we must adopt a considered and holistic approach to te ao Māori and tikanga Māori across all aspects of our work. By building this capability, we will ensure we have the skills needed to support government in meeting its Tiriti rights and obligations.

We continue to implement our Whāinga Amorangi Phase One plan. Additional capability to be introduced in 2023/24 will support us to build on the work already under way.

### • Te reo Māori training

During 2022/23, Crown Law provided access to interactive reo Māori training for all staff, with weekly classes available that range from support for beginners through to full immersion. Approximately 60% of Crown Law staff have accessed these on-site and online classes. Staff can also access a number of te reo Māori resources on Crown Law's intranet, and our te reo Māori network Te Awheawhe continues to support kōrero Māori at Crown Law.

### • Te Tiriti/New Zealand history training

We have started once again offering workshops on cultural competence, cultural safety and intelligence, addressing institutional racism and te Tiriti. Although interest waned during the height of the pandemic, by 30 June, approximately one-third of our staff had attended at least one cultural competence course. This level is lower than our 50% target, but we remain committed to providing this training and remain focused on encouraging staff to participate.

### • Tikanga/kawa Māori training

Training in tikanga/kawa continues to be an aspiration that will be implemented as part of our He Rautaki Māori strategy. Staff have access to a range of tikanga Māori resources through the Crown Law library.

### • Develop our internal te ao Māori expertise

In addition to providing the above te ao Māori and te reo Māori training, we have recognised we need to employ dedicated Māori capability to help develop our internal te ao Māori expertise. As part of our 2021–2025 Budget bid, we requested and had approved funding to establish a Māori Capability Team in 2021/22.

Progress has been slower than we would have liked, but we have been engaging with our people and across the system to shape the capability we need. Recruitment for these new roles – a Kaihautū to sit on our Leadership Team and a Senior Advisor, Culture and Capability – will commence in 2023/24.

We are working actively to incorporate more te ao Māori into our ways of working. We make greater use of te reo Māori in position descriptions and recruitment advertising, all of our job titles have been translated with pronunciation support and we encourage use of karakia and waiata.

In 2022/23, we have been planning a refit of the Wellington office. Our Te Rōpū Māori network have been partnering with us to ensure te ao Māori is at the heart of our new space.

### • Māori Engagement Plan development

Our Māori Engagement Plan was not developed as intended during 2022/23

due to a lack of expertise to lead this work. However, this is a key deliverable of the new Māori Capability Team. Despite not having a specific engagement plan in place, Crown Law continues to engage with our staff Māori network group Te Rōpū Māori.

In 2020/21, we developed and launched He Rautaki Māori, which provides a more holistic approach to te ao Māori across all aspects of Crown Law's work and provides the foundation for our ongoing commitment to Whāinga Amorangi. He Rautaki Māori considers the capability requirements needed to support what we do (our professional capabilities) and how we do it (our culture). It sets out specific kaupapa and actions across a range of capability elements, including knowledge and skills, environment, people and projects, and relationships.

### **Māori language planning**

Crown Law continues to be committed to developing te reo Māori capability of our people alongside embedding te reo Māori within our organisation. Crown Law provided access to te reo Māori weekly classes for our staff ranging from beginners to full immersion.

The Te Taunaki – Public Service Census results indicated that Crown Law was above the public service average across all Māori Crown relationship metrics including our support and use of te reo Māori at work and tikanga capability and usage. Te Taunaki findings also indicated our Māori Language Plan goals need to be clearer. This will be achievable with the establishment of the new Māori Capability Team.

### **Matariki**

Matariki celebrations provide an opportunity for Crown Law staff to learn more about te ao Māori and tikanga related to Matariki. An awareness session was held to educate our staff

on the origins and tikanga of Matariki.

For Matariki, our Te Rōpū Māori network also led several initiatives, including the hosting of our inaugural Matariki Staff Awards, inviting our people to place a star on our Te Rākau Whakamahara – Remembrance Tree in honour of loved ones, a hāngī lunch sharing kai and kōrero with colleagues and making available Matariki resources such as a Matariki background to use during Microsoft Teams calls.

## **Stakeholders**

We work with a wide range of stakeholders to help deliver our outcomes. These stakeholders include:

- the Law Officers (Attorney-General and Solicitor-General)
- Parliamentary Counsel Office
- state sector agencies that we represent and provide legal advice to
- Government Legal Network
- the network of Crown Solicitors
- the Justice Cluster.

Crown Law is one of the six core justice sector agencies along with Te Tāhū o te Ture | Ministry of Justice, Ara Poutama Aotearoa | Department of Corrections, Ngā Pirihimana o Aotearoa | New Zealand Police, Oranga Tamariki and Te Tari Hara Tāware | Serious Fraud Office.

We work with Ināia Tonu Nei, who have set out their priorities for working with the justice sector.

For more information on how we work with our fellow agencies and networks, refer to *Performance against our strategic intentions*.

## Workplace wellbeing, health and safety

Crown Law has a strong commitment to the wellbeing, health and safety of staff (including contractors and other service providers). We have identified wellbeing, health and safety as a strategic risk, and this year has seen a range of foundational work to start progressing our organisational maturity in this area.

Work is under way to understand our current state and plan accordingly. Wellbeing, health and safety have been a regular item for discussion at the Assurance and Risk Committee as well as being a core focus of our Leadership Team and people leaders. The Government Health and Safety Lead and PSA have attended a number of operational meetings to provide an external lens. Recognising the importance of understanding the views of our people, seeking feedback has been prioritised. Activities in this regard have included:

- running wellbeing, health and safety perceptions surveys using WorkSafe's SafePlus tool
- carrying out wellbeing, health and safety focus groups across Crown Law with several employee groups to better understand the experience of our staff and inform ongoing work
- increasing activities with our wellbeing, health and safety committee (HSW Team) to empower this group and increase participation and engagement on wellbeing, health and safety matters
- developing a wellbeing, health and safety work programme to support planning and direct efforts in ways that matter to our people.

Psychosocial injury has been identified as being a critical risk for Crown Law. This has had

substantial focus this year, with the Leadership Team including it as part of the strategic risk management process. The range of work undertaken to understand and mitigate risks that can lead to psychosocial harm is complex and has included the following actions:

- Engaging with external specialists to determine good practice in psychosocial injury risk management, including investigating a potential supporting framework.
- Promoting attendance at professional supervision, noting it is a protective process that offers the opportunity for staff to reflect on work with a skilled supervisor.
- Providing access to a confidential employee assistance programme, which provides counselling, trauma management and employee development services. A range of online resources and learning modules are also available.
- Supporting Safety Net – a working group of Crown Law volunteers with the purpose of “proactively keeping our people safe through policy, education, support and growing cultural awareness” in relation to sexual misconduct and harassment in the workplace. Our Safety Net Contact Officers have been trained by the Sexual Abuse Prevention Network (now RespectEd).
- Establishing practical action plans to support and protect staff who have been identified as having a potential increased risk to their wellbeing.

In addition, this year, the HSW Team has undergone training to increase capability and improve the empowerment of its members. Approval has been sought to employ a dedicated wellbeing, health and safety resource (0.6 FTE) within the Human Resources Team. Wellbeing, health and safety reporting is

included in a quarterly People Dashboard to ensure appropriate elements of risk, legislative obligations and performance are considered by the relevant bodies.

Performance indicators	Actual 2021/22	Actual 2022/23
Workplace injuries (minor)	2	2
Workplace lost-time injuries	-	1
Number of employees accessing employee assistance services	26	35
Number of employees accessing professional supervision	-	23
Early report pain or discomfort/ workplace support provided for personal injuries	5	12

## Systems, software and processes

We continue to invest in and enhance systems and infrastructure to ensure efficient and secure functioning of Crown Law. During 2022/23, we continued to implement a replacement Discovery software-as-a-service solution, selected a supplier for a replacement payroll system and completed documenting business requirements. We continued to upgrade our document management system and have redesigned the Crown Law taxonomy to support this change.

We started the implementation phase of the Legal Matter Management and Financial Management System project (a project to replace our existing Legal Practice Management System) although this has been delayed by the impacts of COVID-19, staff changes and the need to review our requirements and realign these with the supplier. Currently, the project is being replanned.

### Cyber security

As the cyber security landscape evolves, Crown

Law continues to review and revise our Cyber Security Work Programme. In 2022/23, Crown Law went through several technical activities to ‘harden’ our environment. This was as a result of completed certification and accreditation activities that continue against other business-critical systems.

Crown Law takes a multi-layered approach to providing digital security for Crown Law information. Crown Law uses all-of-government and common capability ICT contracts to access suppliers procured through DIA-led processes. We continue to educate, raise awareness and remind staff regularly about their obligations to keep Crown Law information safe. Crown Law responds to and follows the guidance of the Government Chief Information Security Officer, Te Tira Tiaki | Government Communications Security Bureau, National Cyber Security Centre, Government Chief Digital Officer and the national Computer Emergency Response Team (CERT NZ), among others.

## Accommodation

### Wellington accommodation project

Crown Law is mid-flight through our accommodation review project for our Wellington office space that is expected to run through to mid-2024. The project is designed to ensure Crown Law’s Wellington office accommodation needs keep pace with our changing organisation to ensure a sustainable Crown Law with the infrastructure required to deliver on Crown Law’s core role and objectives and support our workforce over the long term (9-12 years).

Phase 1 of the project (Discovery phase) gathered information from Crown Law teams, developed an understanding of how we use our current office space, our current

accommodation needs and what we require moving forward and investigated potential co-location and real-estate opportunities.

Phase 2 of the project implemented an interim desk plan to support Crown Law to manage our changing accommodation needs in the interim, until the completion of the full project in 2024.

Currently, the project is in Phase 3, which sees us working through the insights and options gathered in Phase 1 and learnings from Phase 2 to design our accommodation to meet the current and future needs of Crown Law.

Phase 3 is about designing the new accommodation, answering the question of how we get the most from our new environment while delivering on the project objectives. Concept plans were finalised in July, and the project is now in the detailed design phase.

The final phase of the project (Phase 4) will see the implementation of the design, which commenced with pre-construction activity in September 2023 and construction activity from October 2023. Our current timeline will see Crown Law in our updated accommodation by mid-2024.

## Quality framework

Crown Law is committed to providing high-quality legal services, and we have a range of systems, guidance, knowledge and capability to ensure the quality of our work, enabling us to be confident we are delivering value for New Zealanders. The following are a range of formal mechanisms that make sure we provide high-quality, fit-for-purpose legal services that meet 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. We provide regular and continuous in-house opportunities for all staff to receive professional development and education. Our Education Committee facilitates a seminar series and a range of programmes. We also encourage staff to attend external training relevant to their role.

All staff at Crown Law must participate in the performance management framework, which establishes goals that directly align to our strategy. We also expect this framework to provide opportunities for feedback to be given and received about opportunities to improve.

### Professional standards

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.

All advice provided to clients on behalf of the Solicitor-General, whether written or oral, must be provided consistent with the principles set out in these policies and guidelines.

### Peer review and consultation

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 consider an issue's complexity. This peer-review mechanism contributes to ensuring we deliver high-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 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. The LMP discipline requires, at the conclusion of each case, a debrief to discuss and cement the lessons learned for application in how future litigation is handled.

### **Feedback from other agencies**

Our annual satisfaction survey offers an opportunity for other agencies to rate and comment on various quality factors of our service. 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.

For further information about the results of our annual survey, please refer to page 62.

### **Our sustainability reporting**

We are committed to meeting the requirements of the Carbon Neutral Government Programme (CNGP) and operating in an emissions and energy-efficient environment. We have chosen financial year 2019/2020 as our base year. Our emissions have been reported and independently verified by Toitū Envirocare. We are proudly a Toitū carbonreduce organisation, which means we are measuring, managing and reducing our emissions according to ISO 14064-1:2018 and Toitū requirements. Toitū carbonreduce certification is accredited by the

Joint Accreditation System of Australia and New Zealand (JAS ANZ) and under ISO 14065.

A copy of our Toitū carbonreduce certification disclosure can be viewed on the Toitū website.

### **Total annual emissions and their source**

In 2022/23, we emitted 118 tCO<sub>2</sub>-e (tonnes of carbon dioxide equivalent), a 52% reduction on our base year (247 tCO<sub>2</sub>-e). Across our two offices, the majority of our emissions came from business travel, wastewater, paper, electricity and working from home.

We have seen a reduction in our emissions compared to our base year, largely due to a drop in domestic travel COVID-19 has prompted us to reconsider the need for us to travel and instead utilise online meetings whenever practicable. However, compared to the prior year we have seen a 21% increase in travel emissions due to the removal of travel and event restrictions. While we do expect this trend to continue we are comfortably under our reduction targets and have established a sustainability working group to help identify and implement options to minimise these increases.

We have seen a 43.9% decrease (from 10.88 to 6.11) in working from home emissions compared to the prior year. This is mainly due to a return to more normal working patterns following extended lockdowns during 2021/22.

Emissions profile broken down by scope and total annual emissions (tCO <sub>2</sub> -e)	2019/20 base year	2021/22	2022/23
Category 1: Direct emissions	0.33	0.13	0.40
Category 2: Indirect emissions from imported energy	9.19	9.00	5.59
Category 3: Indirect emissions from transportation	194.76	81.46	91.70
Category 4: Indirect emissions from products used by organisation	42.45	31.39	20.15
Category 5: Indirect emissions associated with the use of products from the organisation	0.00	0.00	0.00
Category 6: Indirect emissions from other sources	0.00	0.00	0.00
<b>Total direct emissions</b>	<b>0.33</b>	<b>0.13</b>	<b>0.40</b>
<b>Total indirect emissions</b>	<b>246.41</b>	<b>121.86</b>	<b>117.43</b>
<b>Total gross emissions in tCO<sub>2</sub>-e</b>	<b>246.74</b>	<b>121.99</b>	<b>117.83</b>
<b>Change in gross emissions since base year</b>		<b>-51%</b>	<b>-52%</b>

Total emissions breakdown by source 2022/23	2022/23	Percentage
Travel – flights	76.09	65%
Wastewater services	10.29	9%
Paper	6.45	5%
Electricity transmission and distribution losses	6.39	5%
Travel – accommodation	6.22	5%
Working from home	6.11	5%
Taxi, petrol and mileage	3.06	3%
Waste	1.69	1%
Water supply	0.91	1%
Freight	0.62	1%
<b>Total gross emissions in tCO<sub>2</sub>-e</b>	<b>117.83</b>	<b>100%</b>

### Emissions intensity by FTE

Since our base year, Crown Law has experienced a slight growth in full-time equivalent employees (FTEs) and our expenditure. Despite this, we have seen a

reduction in emissions per FTE and per million dollars of expenditure.

Emissions intensity by FTE and expenditure	2019/20	2021/22	2022/23
<b>KPI</b>			
FTEs	199	215	212
Expenditure (\$m)	72.64	81.75	120.05
<b>Emissions intensity</b>			
Total gross emissions per FTE in tCO <sub>2</sub> -e	1.24	0.57	0.56
Total gross emissions per million dollars of expenditure in tCO <sub>2</sub> -e	3.40	1.49	1.02

### Our reduction targets

Crown Law is committed to reducing carbon emissions and has reduction targets aligned to keep global warming to less than 1.5 degrees of warming as required under the Carbon Neutral Government Programme.

Our target also aligns to the requirements of the Toitū carbonreduce programme.

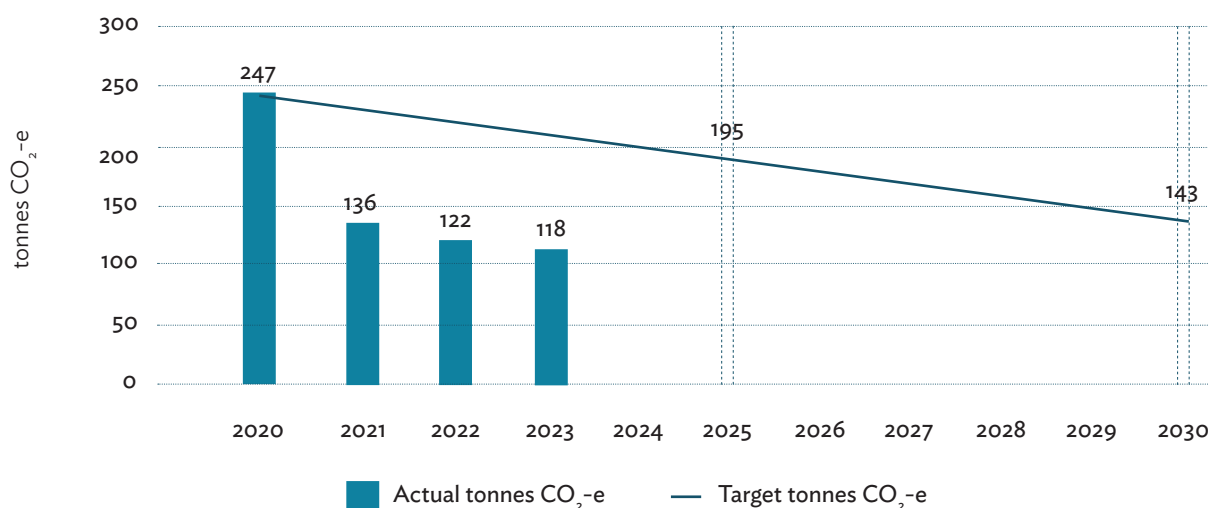
We have set the following emission reduction targets:

- **2025 target:** Gross emissions (all categories) to be no more than 195 tCO<sub>2</sub>-e or a 21% reduction in gross emissions (all categories) compared to base year FY19/20.
- **2030 target:** Gross emissions (all categories) to be no more than 143 tCO<sub>2</sub>-e, or a 42% reduction in gross emissions (all categories) compared to base year FY19/20.

### Progress towards our targets

Our emissions for 2022/23 have reduced by 52% compared to our base year of 2019/20. This would mean that, if we can maintain this current level of emissions, we would meet our emissions targets.

Our projected emissions are expected to increase over the upcoming financial year driven by a rise in both domestic and international travel as well as the planned FTE uplift. Nevertheless, we have taken significant steps by forming a sustainability working group to help drive emissions reduction initiatives and behavioural change and minimise the likelihood of travel emissions reverting to pre-COVID levels.





## Our reduction plan and future reporting

### Future reduction plans

We are currently on track to meet our reduction targets. In order to ensure our emissions remain on track, we have established a sustainability working group to help identify and support specific projects to decarbonise our emissions-generating activity.

- **Energy efficiency** – The Wellington office accommodation project provides us the opportunity to investigate sustainable design options for a more energy efficient office environment. In order to support this, sustainability has been included in our selection and decision-making criteria.
- **Paper** – Paper use has continued to drop, and our Business Improvement Team will continue this focus on supporting the reduction of paper usage across our organisation. The sustainability working group will promote behavioural change to support this initiative.
- **Travel** – We are investigating options to implement a travel emissions budget. To support this, we will work with our travel

provider to include visibility of emissions at point of booking and conduct a detailed review of our travel policy to ensure we are consistent with agency best practices.

As part of our commitment to ongoing improvement, our plans for the 2023/24 financial year include:

- the sustainability working group is working closely with the Wellington accommodation team to ensure sustainability is considered throughout the project.
- increasing awareness and driving behavioural change to promote staff decarbonising in their everyday lives.

### Improving our data

Crown Law is looking to process map and document our current procedures for emissions reporting with a view to identify possible improvements. We are also investigating ways to tag and record emissions in our financial management system to help ensure our reporting is as efficient and complete as possible.

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# **Ō mātou pūrongo pūtea**

Our statements of  
service performance

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## Appropriations – audited service performance and financial performance

Te Tari Ture o te Karauna Crown Law’s vision is to build a better Aotearoa through responsible, lawful government. Crown Law sets about achieving this vision by supporting the Attorney-General and the Solicitor-General to fulfil their constitutional responsibilities as Law Officers of the Crown as well as providing legal advice and representation services to the Government in matters affecting the Executive (particularly in the areas of criminal, public and administrative law). Crown Law has been moving to a more strategic approach to, and oversight of, government legal work. This is underpinned by the Crown Law Strategy which describes Crown Law’s contribution to supporting and improving the wellbeing of New Zealanders. This approach is focused around the three outcomes at the heart of the strategy:

- Democracy that serves all New Zealanders
- Government decisions that inspire confidence
- Justice that strengthens communities.

More information on how Crown Law’s work contributes to the above outcomes can be found on pages 9–41 of this Annual Report, in the section entitled Crown Law’s strategic direction and outcomes.

### Identification of service performance information

Service Performance Information for Crown Law is contained in the following sections of the Annual Report:

- Ngā whakatutukitanga ki ō mātou takune rautaki | Performance against our strategic intentions (pages 9–41); and
- Ō mātou pūrongo pūtea | Our statements of service performance (pages 56–67).

### Statement of Compliance

The Statement of Service Performance has been prepared in accordance with the requirements of the Public Finance Act 1989, which includes the requirement to comply with New Zealand generally accepted accounting principles (NZ GAAP).

The Statement of Service Performance has been prepared in accordance with Tier 1 Public Benefit Entity (PBE) financial reporting standards, which have been applied consistently throughout the period, and complies with PBE financial reporting standards.

## Service performance judgements and assumptions

In the preparation of the service performance information contained in Crown Law's Annual Report, Crown Law has made the following judgements in the selection of our service performance measures.

- We have reflected on how best to capture our service performance by reporting on appropriate performance measures that are consistently measurable and provide the public with a good understanding of how Crown Law operates.
- We have ensured that the performance measures adequately inform progress towards delivering the outcomes in Crown Law's Strategic Intentions.

Under the Public Finance Act 1989 we are mandated to provide standard performance measures so the public can compare the level of service provided in relation to the discharge of the Law Officers' constitutional, criminal law and system leadership responsibilities, including legal advice and representation. We are also required to demonstrate compliance with statutory measures (such as the percentage of responses to Official Information Act and Privacy Act requests on time).

Further to the above judgements in the selection of performance measures, we also apply judgements in the measurement, compilation and presentation of performance information.

Material judgements have been applied as follows:

### Surveys

To measure the quality of our outputs, we use surveys to measure how well we provide legal advice and representation services to our clients as well as the quality of our system leadership initiatives delivered through the Government Legal Network.

Crown Law uses Survey Monkey when surveying clients and stakeholders. Surveys are designed to capture a snapshot of performance on a yearly basis and are designed to elicit truthful responses from the groups surveyed (i.e., surveys do not contain leading questions and use a neutral tone).

### External implications for statements about performance

There are conditions that affect the service performance results and may result in variation from forecasted or targeted results. These are ones outside Crown Law's control, such as where demand forces are the primary driving force behind a performance measure's result. Examples include the number of judicial reviews and claims before the Waitangi Tribunal in a reporting year.

### Assumptions

Crown Law uses forecasting to determine future performance against our non-financial performance measures. Target ranges shown for each measure are based on forecast data.

## Law Officer Functions - multi-category appropriation (MCA)

The overarching purpose of this appropriation is to provide for the discharge of the Law Officers' constitutional, criminal law and system leadership responsibilities including legal advice and representation. This appropriation is intended to achieve improvement in the management of Crown legal risk and improved criminal justice, maintain strong legal institutions and strengthen the influence of the rule of law.

Performance measure	Actual 2021/22	Target 2022/23	Actual 2022/23	Comment
The Attorney-General is satisfied with the services provided by Crown Law	Yes	Yes	Yes	-

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

Actual 2022 \$'000		Actual 2023 \$'000	Main Estimates 2023 \$'000	Supplementary Estimates 2023 \$'000
<b>Revenue</b>				
56,405	Crown	97,330	96,780	97,330
25,182	Other	22,724	25,790	28,290
<b>81,587</b>	<b>Total revenue</b>	<b>120,054</b>	<b>122,570</b>	<b>125,620</b>
<b>Expenditure</b>				
<b>81,748</b>	<b>Expenditure</b>	<b>111,258</b>	<b>122,570</b>	<b>125,620</b>
<b>(161)</b>	<b>Total annual and permanent appropriations</b>	<b>8,796</b>	<b>-</b>	<b>-</b>

## Law Officer Functions (MCA) - Strategic and Operational Legal Advice and Representation

Performance measure	Actual 2021/22	Target 2022/23	Actual 2022/23	Comment
<b>Quantity - new matters</b>				
Advice	286	380-425	308	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.
Litigation	213	250-300	242	
Judicial review	107	80-100	75	

Performance measure	Actual 2021/22	Target 2022/23	Actual 2022/23	Comment
<b>Quantity - new matters (continued)</b>				
Claims before Waitangi Tribunal	113	50-70	56	-
Number of continuous professional development compatible hours delivered annually to the Government Legal Network	72.5	60-70	77.5	-
Number of reports submitted to the Attorney-General under the GLN Legal Risk Reporting System	2	2	2	-
<b>Quality</b>				
Responses to the client survey that consider the advice and services received overall are good to excellent	100%	90%	100%	-
Responses to the client survey that consider the responsiveness, relevance, accuracy and clarity of advice are good to excellent	99%	90%	100%	-
Written opinions and advice that are peer reviewed	73%	80%	84%	-
Chief Legal Advisors consider SLG team engagement and communications are good to excellent	100%	90%	100%	-
Departmental lawyers consider Government Legal Network activities and opportunities for participation are good to excellent	93%	85%	93%	-
The Attorney-General is satisfied with the GLN Legal Risk Reporting System	Yes	Yes	Yes	-
<b>Timeliness</b>				
Responses to the client survey that consider timeliness in responding to requests is good to excellent	100%	85%	100%	-

Performance measure	Actual 2021/22	Target 2022/23	Actual 2022/23	Comment
<b>Timeliness (continued)</b>				
Written opinions/advice (final or draft) completed by the due date	79%	85%	80%	80% of matters (154 out of 193) were recorded as having advice provided to clients by the due date for the year. Administrative oversights in updating the records system on time have on occasion reduced the proportion of advice recorded as having met deadlines.
Litigation management plans completed by due date	68%	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	96%	95%	100%	-

### Audited financial performance (GST exclusive)

Actual 2022 \$000		Actual 2023 \$000	Main Estimates 2023 \$000	Supplementary Estimates 2023 \$000
<b>Revenue</b>				
1,331	Crown	1,531	1,448	1,531
25,179	Other	22,681	25,650	28,150
<b>26,510</b>	<b>Total revenue</b>	<b>24,212</b>	<b>27,098</b>	<b>29,681</b>
<b>Expenditure</b>				
<b>26,918</b>	<b>Expenditure</b>	<b>27,068</b>	<b>27,098</b>	<b>29,681</b>
<b>(408)</b>	<b>Total annual and permanent appropriations</b>	<b>(2,856)</b>	<b>-</b>	<b>-</b>

The end of year deficit of \$2.856 million in this MCA has included the legal advice and representation (LAR) memorandum account deficit of \$1.513 million. The LAR memorandum account has a closing balance of \$563,000 as at 30 June 2023.

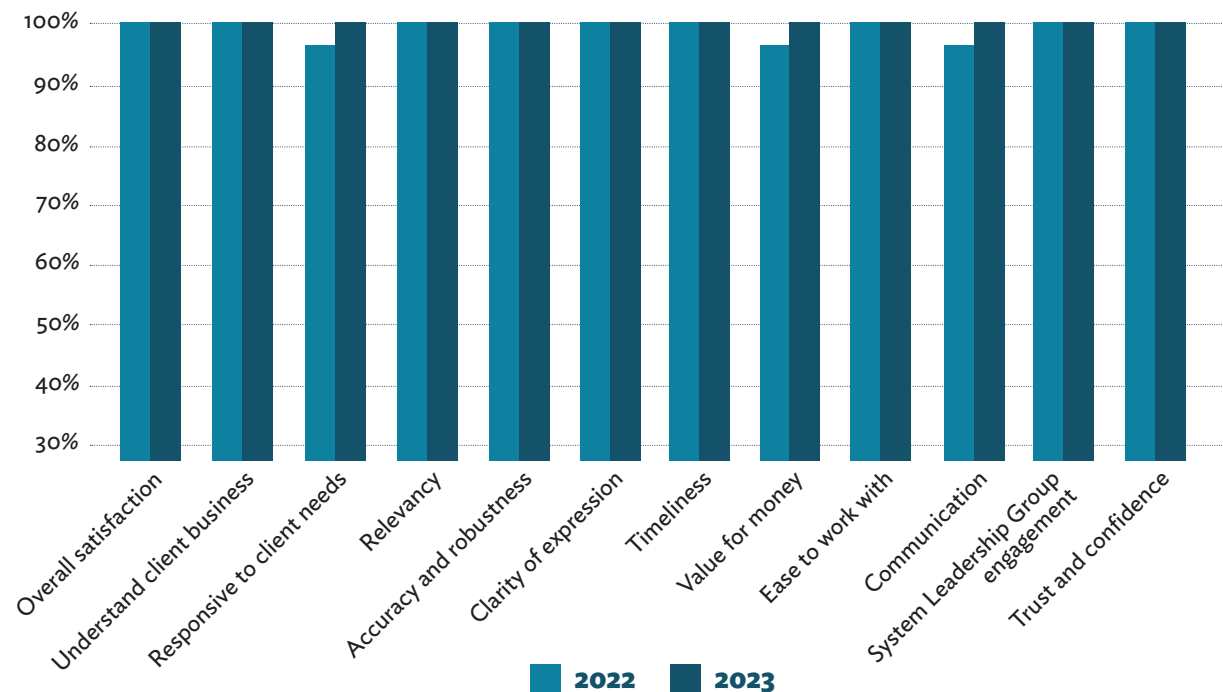
## Quality service indicators – annual client satisfaction survey

Chief Legal Advisors (CLAs) from 39 organisations and business units that Crown Law provided legal advice and services to during 2022/23 were approached to participate in Crown Law’s annual client satisfaction survey. Of those CLAs invited, 24 participated – a response rate of 61.5%. The respondents represent \$22.5 million of revenue earned during 2022/23.

Overall, respondents rated Crown Law’s legal advice and services highly. 100% of responses in the survey rated Crown Law as good to excellent.<sup>19</sup> 100% of respondents rated Crown Law’s legal advice and services as good to excellent, and 100% of respondents rated the System Leadership Group’s engagement and communication as good to excellent.

The main findings from this year’s survey were some small improvements in ratings from last year’s survey, which already contained high ratings. The most significant improvements were in the areas of value for money of Crown Law’s legal services and rating how meaningful and up-to-date Crown Law’s communications on work in progress are. Both metrics increased from 96% to 100%. There were no ratings that decreased from last year’s to this year’s survey.

### Client survey results: 2022 and 2023



<sup>19</sup> This excludes two individual responses to two different questions where the respondent answered “unable to rate yet”.



## Law Officer Functions (MCA) - Law Officer Constitutional and Criminal Law Duties

Performance measure	Actual 2021/22	Target 2022/23	Actual 2022/23	Comment
<b>Quantity - new matters</b>				
Applications processed on behalf of the Attorney-General	36	35-55	35	<p>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.</p>
Advice on behalf of the Attorney-General	98	120-160	164	
Litigation on behalf of the Law Officers (Attorney-General and/or Solicitor-General)	20	10-25	17	
Criminal advice	5	5-15	6	
Judicial reviews	13	5-10	3	
Mutual assistance and extraditions	112	100-120	124	
Criminal cases (other types)	73	25-40	87	
Requests for prosecution appeals and judicial reviews	93	70-110	76	
<b>Timeliness</b>				
Ministerial correspondence on time	85%	100%	96%	Due to administrative oversights, 3 responses were delayed in being sent back to the Attorney-General's office but were not late to the requestor.
Responses to parliamentary questions on time	100%	100%	100%	
Official Information Act and Privacy Act responses on time	95%	100%	98%	Statutory deadlines were not met in two cases involving partial transfers of requests to other agencies. In one instance it was not immediately clear that a transfer was required, and in another case, officials didn't realise that the request was a partial transfer and a Crown Law response was also required.

### Audited financial performance (GST exclusive)

Actual 2022 \$000		Actual 2023 \$000	Main Estimates 2023 \$000	Supplementary Estimates 2023 \$000
<b>Revenue</b>				
5,700	Crown	7,752	7,559	7,752
3	Other	41	70	70
<b>5,703</b>	<b>Total revenue</b>	<b>7,793</b>	<b>7,629</b>	<b>7,822</b>
<b>Expenditure</b>				
<b>5,033</b>	<b>Expenditure</b>	<b>7,168</b>	<b>7,629</b>	<b>7,822</b>
<b>670</b>	<b>Total annual and permanent appropriations</b>	<b>625</b>	<b>-</b>	<b>-</b>

The joint Ministers have approved an in-principle expense transfer of up to \$0.600 million from 2022/23 to 2023/24, which will be confirmed as part of the 2023 October Baseline Update.

### Law Officer Functions (MCA) - Conduct of Criminal Appeals from Crown Prosecutions

Performance measure	Actual 2021/22	Target 2022/23	Actual 2022/23	Comment
<b>Quantity - new matters</b>				
Crown appeals	29	15-30	9	The number of Crown appeals depends on the inflow of appeal requests received each year. In this financial year, fewer requests were received than previously.
Accused appeals	606	600-650	636	-
<b>Quality</b>				
Percentage of Crown appeals concluded in favour of the Crown	79%	60%	67%	-
Defendant criminal appeals concluded in favour of the defendant*	30%	27%	28%	

\* This measure is not a Vote measure under this appropriation but has been included for context.

### Audited financial performance (GST exclusive)

Actual 2022 \$000		Actual 2023 \$000	Main Estimates 2023 \$000	Supplementary Estimates 2023 \$000
<b>Revenue</b>				
4,484	Crown	8,357	6,221	8,357
-	Other	-	50	50
<b>4,484</b>	<b>Total revenue</b>	<b>8,357</b>	<b>6,271</b>	<b>8,407</b>
<b>Expenditure</b>				
<b>4,506</b>	<b>Expenditure</b>	<b>5,079</b>	<b>6,271</b>	<b>8,407</b>
<b>(22)</b>	<b>Total annual and permanent appropriations</b>	<b>3,278</b>	<b>-</b>	<b>-</b>

The underspend against the updated budget was mainly due to court backlogs such as delays in appeals waiting to be heard following COVID-19 lockdowns, which pushed some activities into the 2023/24 year.

The joint Ministers have approved an in-principle expense transfer of up to \$3.500 million from 2022/23 to 2023/24, which will be confirmed as part of the 2023 October Baseline Update.

## Law Officer Functions (MCA) – Public Prosecution Services

Performance measure	Actual 2021/22	Target 2022/23	Actual 2022/23	Comment
<b>Quantity</b>				
New Crown prosecutions, including appeals to the High Court from non-Crown prosecutions	7,043	5,200–6,200	8,032	Based on data collected by the Ministry of Justice.
Crown prosecutions, including appeals to the High Court from non-Crown prosecutions disposed of	5,229	5,500–6,500	5,892	-
Hours of service provided	246,610	250,000–260,000	274,295	The higher numbers compared to the previous financial year are primarily the result of the COVID-19 lockdowns in 2021/22, which resulted in lower hours being reported in that year. The 2022/23 figures indicate a return to the expected ongoing increase in reported prosecution hours across the network.
Number of quality assurance reviews (full network is reviewed on rotation every 3 years)	6	6	6	The six reviews consist of five survey-based reviews and one in-depth review.
<b>Quality</b>				
Reviews quality assessed as exceeding or meeting expected standards	6	6	6	All six reviews referred to above met or exceeded acceptable standards.
Improvement recommendations implemented within timeframes set greater than:	N/A	90%	N/A	Although no significant issues were identified, where necessary, warrants were provided with minor suggestions on how to strengthen areas of practice that will be considered as part of their next review.

**Audited financial performance (GST exclusive)**

Actual 2022 \$000		Actual 2023 \$000	Main Estimates 2023 \$000	Supplementary Estimates 2023 \$000
<b>Revenue</b>				
44,890	Crown	79,690	81,552	79,690
-	Other	2	20	20
<b>44,890</b>	<b>Total revenue</b>	<b>79,692</b>	<b>81,572</b>	<b>79,710</b>
<b>Expenditure</b>				
<b>45,290</b>	<b>Expenditure</b>	<b>71,943</b>	<b>81,572</b>	<b>79,710</b>
<b>(400)</b>	<b>Total annual and permanent appropriations</b>	<b>7,749</b>	<b>-</b>	<b>-</b>

The underspend against the updated budget was mainly due to the work associated with the sexual violence legislative change that would predominantly begin to take effect in the 2023/24 financial year and then continue in outyears.

The joint Ministers have approved an in-principle expense transfer of up to \$8.000 million from 2022/23 to 2023/24, which will be confirmed as part of the 2023 October Baseline Update.

## Crown Law Office – capital expenditure appropriation

Scope: This appropriation is limited to the purchase or development of assets by and for the use of the Crown Law Office, as authorised by section 24(1) of the Public Finance Act 1989.

### 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 ending 30 June 2023

#### Audited financial performance (GST exclusive)

Actual 2022 \$000		Actual 2023 \$000	Main Estimates 2023 \$000	Supplementary Estimates 2023 \$000
404	Total capital expenditure	314	7,006	1,673

The actual capital spend reflects the revised expenditure phasing of Crown Law’s Wellington office accommodation project. The majority of work is now scheduled to take place in 2023/24.

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# **Ngā tauākī pūtea**

## Financial statements

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# Statement of responsibility

## **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
- 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 Annual Report fairly reflects the operations, progress and the organisational health and capability of Crown Law
- the financial statements fairly reflect the financial position of Crown Law as at 30 June 2023 and its operations for the year ended on that date
- the forecast financial statements fairly reflect the forecast financial position of Crown Law as at 30 June 2023 and its operations for the year ended on that date.



### **Una Jagose KC**

Solicitor-General and Chief Executive

29 September 2023

**Independent auditor's report**  
**To the readers of the Crown Law Office's annual report**  
**for the year ended 30 June 2023**

The Auditor-General is the auditor of the Crown Law Office (the Department). The Auditor-General has appointed me, Jacques Du Toit, 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 74 to 104, that comprise the statement of financial position, statement of commitments, statement of contingent liabilities and contingent assets as at 30 June 2023, 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 for the appropriations administered by the Department for the year ended 30 June 2023 on pages 10 to 17, 20 to 25, 28 to 37 and 57 to 67;
- the statements of expenses and capital expenditure of the Department for the year ended 30 June 2023 on pages 106 to 108; and
- the schedules of non-departmental activities which are managed by the Department on behalf of the Crown on page 105 that comprise the schedule of trust monies for the year ended 30 June 2023.

**Opinion**

In our opinion:

- the financial statements of the Department:
  - o present fairly, in all material respects:
    - its financial position as at 30 June 2023; and
    - its financial performance and cash flows for the year ended on that date; and
  - o comply with generally accepted accounting practice in New Zealand in accordance with Public Benefit Entity Reporting Standards;
- the performance information for the appropriations administered by the Department for the year ended 30 June 2023:
  - o presents fairly, in all material respects, for the year ended 30 June 2023:
    - 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
  - o complies with generally accepted accounting practice in New Zealand;
- the statements of expenses and capital expenditure of the Department are presented, in all material respects, in accordance with the requirements of section 45A of the Public Finance Act 1989; and
- the schedules of trust monies, which are managed by the Department on behalf of the Crown, present fairly, in all material respects, in accordance with the Treasury Instructions.

Our audit was completed on 29 September 2023. 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; and
- 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 Department's Statement of Intent, Estimates of Appropriation 2022/23 for Vote Attorney-General, and the 2022/23 forecast financial figures included in the Department's annual report.

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 2 to 109, 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: International Code of Ethics for Assurance Practitioners (including International Independence Standards) (New Zealand) (PES 1) 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 Du Toit  
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 2023

Actual 2022 \$000		Notes	Actual 2023 \$000	Unaudited Budget 2023 \$000	Unaudited Forecast 2024 \$000
<b>Revenue</b>					
56,405	Revenue Crown	2	97,330	96,780	101,712
25,182	Other revenue	2	22,724	25,790	29,790
<b>81,587</b>	<b>Total income</b>		<b>120,054</b>	<b>122,570</b>	<b>131,502</b>
<b>Expenses</b>					
26,988	Personnel costs	3	29,380	26,718	30,195
551	Depreciation and amortisation	7,8	455	1,497	565
103	Capital charge	4	103	308	214
43,844	Crown Solicitors' fees		69,541	77,290	75,772
10,261	Other expenses	5	11,781	16,757	24,756
<b>81,748</b>	<b>Total expenses</b>		<b>111,260</b>	<b>122,570</b>	<b>131,502</b>
(161)	Surplus/(deficit)		8,794	-	-
<b>(161)</b>	<b>Total comprehensive revenue and expense</b>		<b>8,794</b>	<b>-</b>	<b>-</b>

Explanations for major variances against the original 2022/23 budget are provided in Note 17.

The accompanying notes form part of these financial statements.

## Statement of financial position

AS AT 30 JUNE 2023

Actual 2022 \$'000		Notes	Actual 2023 \$'000	Unaudited Budget 2023 \$'000	Unaudited Forecast 2024 \$'000
<b>Current assets</b>					
10,630	Cash and cash equivalents		11,997	8,866	7,949
587	Prepayments		644	400	500
-	Debtor Crown		10,000	-	-
3,931	Receivables	6	5,019	6,000	3,000
<b>15,148</b>	<b>Total current assets</b>		<b>27,660</b>	<b>15,266</b>	<b>11,449</b>
<b>Non-current assets</b>					
828	Property, plant and equipment	7	656	7,079	7,863
127	Intangible assets	8	158	578	184
<b>956</b>	<b>Total non-current assets</b>		<b>814</b>	<b>7,657</b>	<b>8,047</b>
<b>16,104</b>	<b>Total assets</b>		<b>28,474</b>	<b>22,923</b>	<b>19,496</b>
<b>Current liabilities</b>					
8,607	Payables and deferred revenue	9	12,150	9,617	8,450
2,806	Employee entitlements	10	3,028	2,300	2,300
199	Return of operating surplus	11	10,337	-	-
<b>11,612</b>	<b>Total current liabilities</b>		<b>25,515</b>	<b>11,917</b>	<b>10,750</b>
<b>Non-current liabilities</b>					
244	Employee entitlements	10	254	200	200
<b>244</b>	<b>Total non-current liabilities</b>		<b>254</b>	<b>200</b>	<b>200</b>
<b>11,856</b>	<b>Total liabilities</b>		<b>25,769</b>	<b>12,117</b>	<b>10,950</b>
<b>4,248</b>	<b>Net assets</b>		<b>2,705</b>	<b>10,806</b>	<b>8,546</b>
<b>Equity</b>					
2,064	Taxpayers' funds	12	2,061	10,806	8,546
2,184	Memorandum accounts	12	644	-	-
<b>4,248</b>	<b>Total equity</b>	<b>12</b>	<b>2,705</b>	<b>10,806</b>	<b>8,546</b>

Explanations for major variances against the original 2022/23 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 2023

Actual 2022 \$000	Notes	Actual 2023 \$000	Unaudited Budget 2023 \$000	Unaudited Forecast 2024 \$000
<b>4,608</b>	<b>Balance at 1 July</b>	<b>4,248</b>	<b>4,606</b>	<b>2,046</b>
(161)	Total comprehensive revenue and expense	8,794	-	-
	<b>Owner transactions</b>			
-	Capital injections	-	6,200	6,500
-	Capital withdrawals	-	-	-
(199)	Return of operating surplus to the Crown	(10,337)	-	-
<b>4,248</b>	<b>Balance as at 30 June</b>	<b>2,705</b>	<b>10,806</b>	<b>8,546</b>

Explanations for major variances against the original 2022/23 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 2023

Actual 2022 \$000	Notes	Actual 2023 \$000	Unaudited Budget 2023 \$000	Unaudited Forecast 2024 \$000
<b>Cash flows from operating activities</b>				
<b>Cash was provided from:</b>				
56,405	Receipts from revenue Crown	87,330	96,780	101,712
24,384	Receipts from other revenue	21,636	25,790	29,790
80,789		108,966	122,570	131,502
<b>Cash was applied to:</b>				
26,448	Payments to employees	29,141	26,507	30,195
54,085	Payments to suppliers	78,197	96,358	100,528
221	Goods and services tax (net)	(355)	-	-
103	Payment for capital charge	103	308	214
80,857		107,086	123,173	130,937
<b>(69)</b>	<b>Net cash flows from operating activities</b>	<b>1,880</b>	<b>(603)</b>	<b>565</b>
<b>Cash flows from investing activities</b>				
<b>Cash was disbursed for:</b>				
327	Purchase of property, plant and equipment	261	6,446	6,440
77	Purchase of intangible assets	53	560	50
404		314	7,006	6,490
<b>(404)</b>	<b>Net cash flows from investing activities</b>	<b>(314)</b>	<b>(7,006)</b>	<b>(6,490)</b>
<b>Cash flows from financing activities</b>				
<b>Cash was disbursed for:</b>				
-	Capital injections	-	6,200	6,500
(27)	Repayment of operating surplus	(199)	-	-
<b>(27)</b>	<b>Net cash flows from financing activities</b>	<b>(199)</b>	<b>6,200</b>	<b>6,500</b>
<b>(500)</b>	<b>Net (decrease)/increase in cash</b>	<b>1,367</b>	<b>(1,409)</b>	<b>575</b>
11,130	Cash and cash equivalents at the beginning of the year	10,630	10,275	7,374
<b>10,630</b>	<b>Cash and cash equivalents at the end of the year</b>	<b>11,997</b>	<b>8,866</b>	<b>7,949</b>

Explanations for major variances against the original 2022/23 budget are provided in Note 17.

The accompanying notes form part of these financial statements.

## Statement of cash flows (continued)

FOR THE YEAR ENDED 30 JUNE 2023

Actual 2022 \$000		Actual 2023 \$000
(161)	<b>Net surplus/(deficit)</b>	<b>8,796</b>
	<b>Add/(less) non-cash items</b>	-
551	Depreciation and amortisation expense	455
<b>551</b>	<b>Total non-cash items</b>	<b>455</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>	
(799)	(Increase)/decrease in receivables	(11,088)
(182)	(Increase)/decrease in prepayments	(57)
(18)	Increase/(decrease) in payables and deferred revenue	3,540
-	Increase/(decrease) in provision	-
540	Increase/(decrease) in employee entitlements	234
<b>(459)</b>	<b>Total net movement in statement of financial position items</b>	<b>(7,371)</b>
<b>(69)</b>	<b>Net cash flows from operating activities</b>	<b>1,880</b>

The accompanying notes form part of these financial statements.

## Statement of commitments

AS AT 30 JUNE 2023

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 leases property, plant and equipment in the normal course of its business. The majority of these leases are for premises and photocopiers, which have a non-cancellable lease period ranging from 5 to 11 years.

Crown Law's office lease at 19 Aitken Street, Wellington, is a sub-lease from the Ministry of Justice. The lease started from 1 July 2013, and the minimum term of the lease is for a period of 6 and a half years expiring on 31 December 2019. This lease has become open from 1 January 2020, with 18 months' notice on both parties. Crown Law is currently working with the Ministry of Justice with the intention to extend the sub-lease with a long-term arrangement.



Crown Law also leases an office with the Serious Fraud Office (SFO) in Auckland. The lease term is from 24 February 2022 to 24 February 2033. The SFO may terminate the lease by giving Crown Law 18 months' prior written notice provided that no such notice can be given before 24 February 2023 and therefore cannot take effect before 24 August 2024. 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 24 February 2031, 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 2022 \$000		Actual 2023 \$000
-	Capital commitments	-
<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:		
1,223	Not later than 1 year	1,285
582	Later than 1 year and not later than 5 years	956
-	Later than 5 years	761
<b>1,805</b>	<b>Total non-cancellable operating lease commitments (inter-entity)</b>	<b>3,002</b>
<b>1,805</b>	<b>Total commitments</b>	<b>3,002</b>

## Statement of contingent liabilities and contingent assets

AS AT 30 JUNE 2023

### Quantified contingent liabilities

Crown Law has no quantifiable contingent liabilities at 30 June 2023 (30 June 2022: nil).

### Unquantified contingent liabilities

Crown Law has no unquantifiable contingent liabilities at 30 June 2023 (30 June 2022: nil).

### Contingent assets

Crown Law has no contingent assets as at 30 June 2023 (30 June 2022: nil).

*The accompanying notes form part of these financial statements.*

# Notes to the financial statements

FOR THE YEAR ENDED 30 JUNE 2023

## **NOTE 1:**

### **Statement of accounting policies**

#### **Reporting entity**

Crown Law is a government department as defined by section 5 of the Public Service Act 2020 and is domiciled and operates in New Zealand. The relevant legislation governing Crown Law's operations include the Public Finance Act 1989 and the Public Service Act 2020. Crown Law's ultimate parent is the New Zealand Crown.

In addition, Crown Law has reported on trust monies that it administers on page 105.

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 (GAAP).

The financial statements of Crown Law are for the year ended 30 June 2023 and were approved for issue by the Solicitor-General and Chief Executive of Crown Law on 29 September 2023.

#### **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 Public Finance Act, which include the requirement to comply with GAAP and Treasury instructions.

These financial statements have been prepared in accordance with and comply 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).

## **New or amended standards adopted**

### ***PBE IPSAS 41 Financial Instruments***

In March 2019, the External Reporting Board (XRB) issued PBE IPSAS 41 *Financial Instruments*, which supersedes both PBE IFRS 9 *Financial Instruments* and PBE IPSAS 29 *Financial Instruments: Recognition and Measurement*. Crown Law has adopted PBE IPSAS 41 for the first time this year. There has been little change as a result of adopting the new standard because the requirements are similar to those contained in PBE IFRS 9.

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

This standard establishes new requirements for the selection and presentation of service performance information. Crown Law has adopted PBE FRS 48. The main change between PBE FRS 48 and PBE IPSAS 1 *Presentation of Financial Statements* is that PBE FRS 48 requires additional information to be disclosed on the judgements that have the most significant effect on the selection, measurement, aggregation and presentation of service performance information. This is disclosed on page 58 of the service performance information.

## **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 that are relevant to Crown Law:

### ***2022 Omnibus Amendment to PBE Standards***

This standard has been issued to amend the relevant Tier 1 and Tier 2 PBE standards as a result of the following:

- PBE IPSAS 16 *Investment Property*: The amendments clarify that fair value measurement of self-constructed investment property could begin before the construction is completed.
- PBE IPSAS 17 *Property, Plant and Equipment*: The amendments change the accounting for any net proceeds earned while bringing an asset into use by requiring the proceeds and relevant costs to be recognised in surplus or deficit rather than being deducted from the asset cost recognised.
- PBE IPSAS 30 *Financial Instruments: Disclosures*: The amendment specifically refers to disclosing the circumstances that result in fair value of financial guarantee contracts not being determinable.
- PBE IPSAS 19 *Provisions, Contingent Liabilities and Contingent Assets*: The amendments clarify the costs of fulfilling a contract that an entity includes when assessing whether a contract will be loss making or onerous (and therefore whether a provision needs to be recognised).

The changes are for financial statements covering periods beginning on or after 1 January 2023.

## 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.

### Foreign currency transactions

Foreign currency transactions (including those that forward foreign exchange contracts are held for) are translated into NZ\$ (the functional currency) using the spot exchange rate at the date of the transaction. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation at year-end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognised in surplus or deficit.

### 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.

Crown Law is permitted to expend its cash and cash equivalents only within the scope and limits of its appropriations.

### 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 to be required to settle the obligation using a pre-tax discount rate based on 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)

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 Inland Revenue (IR) is included as part of receivables or payables in the statement of financial position.

The net GST paid to or received from IR, 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 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 2023 budget figures are for the year ended 30 June 2023 and were published in the 2021/22 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 ending 2022/23.

The 2024 forecast figures are for the year ending 30 June 2024, which are consistent with the best estimate financial forecast information submitted to Treasury for the BEFU for the year ending 2023/24.

The forecast financial statements have been prepared as required by the Public Finance Act 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 2024 forecast figures have been prepared in accordance with and comply with PBE FRS 42 *Prospective Financial Statements*.

The forecast financial statements were approved for issue by the Chief Executive on 12 April 2023. The Solicitor-General, as Chief Executive of Crown Law, is responsible for the forecast financial statements, including the appropriateness of the assumptions underlying them and all other required disclosures.

Although Crown Law regularly updates its forecasts, it will not publish updated forecast financial statements for the year ending 30 June 2024.

### ***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 2023/24 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 12 April 2023, 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 226 full-time equivalent staff positions, which takes into account staff turnover. Remuneration rates are based on current wages and salary costs, adjusted for anticipated remuneration changes.
- 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.
- Estimated year-end information for 2022/23 was used as the opening position for the 2023/24 forecasts.

The actual financial results achieved for 30 June 2024 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 Crown revenue 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

Actual 2022 \$000		Actual 2023 \$000
	Revenue received from:	
25,130	Government departments/other government entities	22,574
50	Other	144
2	Court-awarded costs	6
<b>25,182</b>	<b>Total other revenue</b>	<b>22,724</b>

**NOTE 3:****Personnel costs****Accounting policy****Salaries and wages**

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

**Superannuation schemes****Defined contribution 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**

Actual 2022 \$000		Actual 2023 \$000
25,201	Salaries and wages	27,730
141	Other personnel costs	200
1,106	Employer contribution to defined contribution plans	1,217
540	Increase/(decrease) in employee entitlements	233
<b>26,988</b>	<b>Total personnel costs</b>	<b>29,380</b>

**NOTE 4:****Capital charge****Accounting policy**

The capital charge is recognised as an expense in the financial year that 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 2023 was 5.0% (30 June 2022: 5.0%).



## 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 when they are received.

### Breakdown of other expenses and further information

Actual 2022 \$000		Actual 2023 \$000
90	Fees to Audit New Zealand for audit of financial statements	93
928	Consultancy	1,259
1,339	Operating lease expenses (rent for office accommodation)	1,424
2,341	IT and library costs	2,319
3,046	External barrister/solicitor fees	2,996
978	Other matter related costs	1,836
1,539	Other expenses	1,854
<b>10,261</b>	<b>Total other operating expenses</b>	<b>11,781</b>

## NOTE 6: Receivables

### Accounting policy

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

In measuring ECLs, short-term receivables have been assessed on a collective basis because they possess shared credit risk characteristics. They have then been grouped based on the days past due. A provision matrix is then established based on historical credit loss experience, adjusted for forward-looking factors specific to the debtors and the economic environment.

Short-term receivables are written off when there are no reasonable expectations of recovery. Indicators that there are no reasonable expectations of recovery include the debtor being in liquidation or the receivable being more than 1 year overdue.

### 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 2022 \$000		Actual 2023 \$000
1,870	Debtors (gross)	1,909
(14)	Less: allowance for credit losses	(1)
<b>1,856</b>	<b>Net debtors</b>	<b>1,908</b>
2,006	Work in progress (gross)	3,094
-	Less: allowance for credit losses	-
<b>2,006</b>	<b>Net work in progress</b>	<b>3,094</b>
69	Sundry debtors	16
<b>3,931</b>	<b>Total receivables</b>	<b>5,019</b>
	Receivables consist of:	
3,931	<b>Receivables from the provision of legal advice and representation services to other government agencies at cost recovery (exchange transactions)</b>	5,003
-	Receivables from miscellaneous expense recoveries	16



30 June 2022	Current	1-2 months	2-3 months	3-4 months	4-6 months	6-12 months	1-2 years	>2 years	Total
Expected credit loss rate	0.88%	0.19%	0.06%	-	0.40%	-	-	-	
Gross carrying amount (\$'000)	1,824	42	2	1	-	-	-	-	1,869
Expected credit loss (\$'000)	(14)	-	-	-	-	-	-	-	(14)
Impaired credit loss	-	-	-	-	-	-	-	-	-

The movement in allowance for credit losses is as follows:

Actual 2022 \$'000		Actual 2023 \$'000
(5)	Opening allowance for credit losses as at 1 July	14
64	Reduction in loss allowance made during the year	-
(45)	Receivables written off during the year	(13)
14	Closing allowance for credit losses as at 1 July	1

## NOTE 7:

# Property, plant and equipment

## Accounting policy

Property, plant and equipment consists 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 groups 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 to 5 years	20% to 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

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

Movements for each class of property, plant, and equipment are as follows:

	Leasehold improvements \$000	Office equipment \$000	Furniture and fittings \$000	Computer equipment \$000	Total \$000
<b>Cost</b>					
Balance as at 01 July 2021	1,815	632	1,795	2,015	6,257
Additions	125	4	30	168	327
Disposals	-	(92)	(95)	-	(187)
<b>Balance as at 30 June 2022</b>	<b>1,940</b>	<b>544</b>	<b>1,730</b>	<b>2,183</b>	<b>6,397</b>
Balance as at 1 July 2022	1,940	544	1,730	2,183	6,397
Additions	-	6	5	250	261
Disposals	(4)	(373)	(7)	(874)	(1,258)
<b>Balance as at 30 June 2023</b>	<b>1,936</b>	<b>177</b>	<b>1,728</b>	<b>1,559</b>	<b>5,400</b>
<b>Accumulated depreciation and impairment losses</b>					
Balance as at 1 July 2021	1,708	542	1,596	1,474	5,320
Depreciation expense	96	21	69	250	436
Elimination on disposal	-	(92)	(95)	-	(187)
<b>Balance as at 30 June 2022</b>	<b>1,804</b>	<b>471</b>	<b>1,570</b>	<b>1,724</b>	<b>5,569</b>
Balance as at 1 July 2022	1,804	471	1,570	1,724	5,569
Depreciation expense	62	22	72	278	434
Elimination on disposal	(4)	(373)	(8)	(874)	(1,259)
<b>Balance as at 30 June 2023</b>	<b>1,862</b>	<b>120</b>	<b>1,634</b>	<b>1,128</b>	<b>4,744</b>
<b>Carrying amount</b>					
At 30 June and 1 July 2021	107	90	199	541	937
At 30 June 2022	136	73	160	459	828
<b>At 30 June 2023</b>	<b>74</b>	<b>57</b>	<b>94</b>	<b>431</b>	<b>656</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 the specific software and bring it to use.

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%
Internally 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. The same approach applies to the impairment of intangible assets.

### Critical accounting estimates and assumptions

#### Useful lives 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 as at 01 July 2021	2,126
Additions	77
Disposals	-
<b>Balance as at 30 June 2022</b>	<b>2,203</b>
Balance as at 01 July 2022	2,203
Additions	53
Disposals	(200)
<b>Balance as at 30 June 2023</b>	<b>2,056</b>
<b>Accumulated amortisation and impairment losses</b>	
Balance as at 1 July 2021	1,960
Amortisation expense	116
Elimination on disposal	-
Impairment losses	-
<b>Balance as at 30 June 2022</b>	<b>2,076</b>
Balance as at 1 July 2022	2,076
Amortisation expense	21
Elimination on disposal	(199)
Impairment losses	-
<b>Balance as at 30 June 2023</b>	<b>1,898</b>
<b>Carrying amount</b>	
At 30 June and 01 July 2021	166
At 30 June 2022	127
<b>At 30 June 2023</b>	<b>158</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 2022 \$000		Actual 2023 \$000
	<b>Payables and deferred revenue under exchange transactions</b>	
29	Creditors – Crown Solicitors’ fees	106
548	Creditors – other	669
7,065	Accrued expenses – unbilled Crown Solicitors’ fees	10,242
578	Other accrued expenses	391
-	Income in advance for cost recovered services	-
<b>8,219</b>	<b>Total payables and deferred revenue under exchange transactions</b>	<b>11,407</b>
388	GST payable	743
<b>388</b>	<b>Payables and deferred revenue under non-exchange transactions</b>	<b>743</b>
<b>8,607</b>	<b>Total payables and deferred revenue</b>	<b>12,150</b>

## NOTE 10: Employee entitlements

### Accounting policy

#### *Short-term employee entitlements*

Employee entitlements that are expected to be settled wholly within 12 months after the end of the reporting period in which the employees provide 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 not expected to be settled wholly before 12 months after the end of the reporting period in which employees provide 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
- the present value of the estimated future cash flows.

### ***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.

Annual leave is calculated using the number of days owing as at 30 June 2023.

The collective employment agreement and individual employment contracts provide 1 week's long-service leave after completing 10 years' service with Crown Law. A number of employees have grandparented long-service arrangements prior to the above agreement.

The retirement and long-service leave from an old expired contract are maintained for three staff as at June 2023 (2022: three).

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

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

The measurement of the long-service leave and retirement leave obligations depends 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 the 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. The discount rates in year 1 of 5.43% (2022: 3.34%), year 2 of 4.85% (2022: 3.70%) and year 3 and beyond of 4.84% (2022: 4.29%) and a long-term salary inflation factor of 3.35% (2022: 3.01%) were used. The discount rates and the salary inflation factor are those advised by Treasury.

If the discount rates and the inflation rate were to differ by 1% from Crown Law's estimates, with all other factors held constant, the carrying amount of the liability and the surplus or deficit would be an estimated \$1,827 higher/lower.

## Breakdown of employee entitlements

Actual 2022 \$000		Actual 2023 \$000
	<b>Current accruals</b>	
578	Personnel accruals	847
2,148	Annual leave	2,104
79	Retirement and long-service leave	77
<b>2,806</b>	<b>Total current portion</b>	<b>3,028</b>
	<b>Non-current liabilities</b>	
244	Retirement and long-service leave	254
<b>244</b>	<b>Total non-current portion</b>	<b>254</b>
<b>3,049</b>	<b>Total employee entitlements</b>	<b>3,282</b>

### NOTE 11:

## Return of operating surplus

Actual 2022 \$000		Actual 2023 \$000
(161)	Net surplus/(deficit)	8,796
360	Add (surplus)/deficit of memorandum account: legal advice and representation	1,513
-	Add (surplus)/deficit of memorandum account: processing of King's Counsel applications	28
<b>199</b>	<b>Total return of operating surplus</b>	<b>10,337</b>

The return of operating surplus to the Crown is required to be paid by 31 October of each year. The actual amount to be returned may change subject to the final approval of the in-principle expense transfer, which will be confirmed as part of the 2023 October Baseline Update.

## 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 2022 \$000		Actual 2023 \$000
	<b>Taxpayers' funds</b>	
2,064	<b>Balance at 1 July</b>	2,064
(161)	Net surplus/(deficit)	8,794
360	Transfer of memorandum accounts net (surplus)/deficit for the year	1,541
-	- Capital injections	-
-	- Other	(1)
(199)	Return of operating surplus to the Crown	(10,337)
2,064	<b>Balance at 30 June</b>	2,061
	<b>Memorandum accounts</b>	
2,544	Opening balance at 1 July	2,184
25,112	Revenue	22,609
(25,472)	Less expenses	(24,150)
(360)	Surplus/(deficit) for the year	(1,541)
-	- Other	1
2,184	<b>Closing balance at 30 June</b>	644
4,248	<b>Total equity at 30 June</b>	2,705

## Breakdown of memorandum accounts and further information

Actual 2022 \$000		Actual 2023 \$000
<b>Legal advice and representation</b>		
2,436	Opening balance at 1 July	2,076
25,112	Revenue	22,573
(25,472)	Less expenses	(24,086)
(360)	Surplus/(deficit) for the year	(1,513)
-	Other	1
<b>2,076</b>	<b>Closing balance at 30 June</b>	<b>564</b>
<b>Processing of King's Counsel applications</b>		
108	Opening balance at 1 July	108
-	Revenue	36
-	Less expenses	(64)
-	Surplus/(deficit) for the year	(28)
<b>108</b>	<b>Closing balance at 30 June</b>	<b>80</b>
<b>Total memorandum accounts</b>		
2,544	Opening balance at 1 July	2,184
25,112	Revenue	22,609
(25,472)	Less expenses	(24,150)
(360)	Surplus/(deficit) for the year	(1,541)
-	Other	1
<b>2,184</b>	<b>Closing balance at 30 June</b>	<b>644</b>

These memorandum accounts summarise financial information relating to the accumulated surpluses and deficits incurred in the provision of legal advice and representation services and processing of King'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 whether 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 1989.

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.

**Collective 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 2023, Crown Law has provided legal services to departments and government entities in the amount of \$22.573 million (2022: \$25.130 million).

## Transactions with key management personnel

### Key management personnel compensation

Actual 2022 \$000		Actual 2023 \$000
<b>Leadership Team, including the Chief Executive</b>		
2,147	Remuneration	2,350
6	Full-time equivalent staff	6

The key management personnel remuneration disclosure includes the Solicitor-General/Chief Executive and five other members of the Leadership Team and those formally acting in these positions during the financial year on a full-time equivalent basis.

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

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

The above key management personnel disclosure excludes the Attorney-General. The Minister's remuneration and other benefits are not received only for his role as a member of key management personnel of Crown Law. The Remuneration Authority sets the Minister's remuneration and other benefits under the Members of Parliament (Remuneration and Services) Act 2013, and they are paid under permanent legislative authority on behalf of the Crown by the Department of Internal Affairs, not by Crown Law.

### NOTE 15:

## Financial instruments

### NOTE 15A:

## Financial instrument categories

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

Actual 2022 \$000		Actual 2023 \$000
<b>Financial assets measured at amortised cost</b>		
10,630	Cash and cash equivalents	11,997
3,931	Receivables	5,019
<b>14,561</b>	<b>Total financial assets measured at amortised cost</b>	<b>17,016</b>
<b>Financial liabilities measured at amortised cost</b>		
8,607	Payables	12,150
<b>8,607</b>	<b>Total financial liabilities measured at amortised cost</b>	<b>12,150</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 and Poor's credit rating of AA-), a registered bank with a 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	6 months to 1 year	1-5 years	Over 5 years
<b>2023</b>							
Payables	9	12,150	12,150	12,150	-	-	-
<b>2022</b>							
Payables	9	8,607	8,607	8,607	-	-	-

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 revenue and expense

##### Other revenue

Income from other revenue was \$3.066 million lower than budgeted mainly due to a decrease in legal advice and representation work.

##### Personnel costs

Personnel costs were \$2.662 million greater than budgeted mainly due to a small increase in the staff numbers and the increase in remuneration costs following the collective bargaining and the Public Sector Pay Adjustment.

##### Crown Solicitors' fees

Crown Solicitors' fees were \$7.749 million lower than budgeted. This was mainly due to the work associated with the sexual violence legislative change, which will predominantly begin to take effect in the 2023/24 financial year and then continue in outyears. The joint Ministers have approved

an in-principle expense transfer of up to \$8.000 million from 2022/23 to 2023/24, which will be confirmed as part of the 2023 October Baseline Update.

## Statement of financial position

### Cash and cash equivalents

Cash and cash equivalents were \$3.131 million higher than budgeted. This is largely attributable to an increase in payables and also reflects the surplus on operating costs.

### Debtor Crown

Debtor Crown was \$10 million more than budgeted. This was due to timing, as the \$10 million Crown funding drawdown was not required in 2022/23.

### Property, plant and equipment

Property, plant and equipment were \$6.423 million lower than budgeted. This was mainly due to our deferred Wellington office accommodation project as the majority of the planned project spend has been pushed from 2022/23 into 2023/24.

### Payables and deferred revenue

Payables and deferred revenue was \$2.533 million more than budgeted. This was mainly due to higher than expected/budgeted accounts payable balance at year end due to timing of invoices being received for payments. This is in line with the higher than budgeted cash balances as at 30 June 2023.

### Return of operating surplus

Return of operating surplus was \$10.377 million higher than budget. This is in line with the underspend explained above in the Crown Solicitors' fees and the other expenses.

### Capital contribution

Capital contribution was \$6.200 million lower than budgeted. This was mainly due to our deferred Wellington office accommodation project as the majority of the spend would incur in 2023/24, hence the capital funding was being transferred from 2022/23 to 2023/24.

## Statement of cash flows

Statement of cash flows variances are in line with variances in the statement of comprehensive revenue and expense and statement of financial position as explained above.

## Schedule of trust monies

FOR THE YEAR ENDED 30 JUNE 2023

Actual 2022 \$000		Actual 2023 \$000
	<b>Crown Law Office Legal Claims Trust Account</b>	
<b>8</b>	<b>Balance at 1 July</b>	<b>1</b>
1,189	Contributions	460
(1,197)	Distributions	(458)
-	Revenue	1
-	Expenditure	(1)
<b>1</b>	<b>Balance 30 June</b>	<b>3</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 1989, the interest income is payable to the Crown.

## **Appropriation statements**

The following statements report information about the expenses and capital expenditure incurred against each appropriation administered by Crown Law for the year ended 30 June 2023. They are prepared on a GST-exclusive basis.

### **Statement of cost accounting policies**

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

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

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

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

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

FOR THE YEAR ENDED 30 JUNE 2023

Actual 2022 \$000		Actual 2023 \$000	Main Estimates 2023 \$000	Supp. Estimates 2023 \$000	Approved approp. 2023* \$000	Location of end-of- year perf. info.
	<b>Vote Attorney-General</b>					
	<b>Law Officer Functions MCA</b>					
26,919	Strategic and Operational Legal Advice and Representation	27,068	27,098	29,681	29,681	**
4,506	Conduct of Criminal Appeals arising from Crown Prosecutions	5,079	6,271	8,407	8,407	**
5,033	Law Officer Constitutional and Criminal Law Duties	7,168	7,629	7,822	7,822	**
45,290	Public Prosecution Services	71,943	81,572	79,710	79,710	**
<b>81,748</b>	<b>Total appropriations for output expenses</b>	<b>111,258</b>	<b>122,570</b>	<b>125,620</b>	<b>125,620</b>	
	<b>Appropriations for capital expenditure</b>					
404	Capital investment	314	7,006	1,673	1,673	**
<b>82,152</b>	<b>Total annual and permanent appropriations</b>	<b>111,572</b>	<b>129,576</b>	<b>127,293</b>	<b>127,293</b>	

\* The approved appropriation includes adjustments made in the Supplementary Estimates and the additional expenditures incurred under section 26 (nil for 2022/23) of the Public Finance Act 1989.

\*\* The 'Our statements of service performance' section of the Crown Law Annual Report.

As per section 2 and section 4 of the Public Finance Act 1989, expenditure reported should exclude remeasurements from appropriation.

There have been no remeasurements identified during the 2022/23 financial year, which implies that the actual expenditure incurred was equal to the expenditure after remeasurement.

## Statement of expenses and capital expenditure incurred without or in excess of appropriation or other authority

FOR THE YEAR ENDED 30 JUNE 2023

Crown Law has no expenses and capital expenditure incurred without or in excess of appropriation or other authority for the year ended 30 June 2023.

### Expenses and capital expenditure incurred in excess of appropriation

Nil.

### Statement of capital expenditure incurred without or outside scope or period of appropriation

Nil.

## Statement of departmental capital injections

FOR THE YEAR ENDED 30 JUNE 2023

Actual capital injections 2022 \$000	Actual capital injections 2023 \$000	Approved appropriation 2023 \$000
<b>Vote Attorney-General</b>		
- Crown Law – capital injection	-	-

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

FOR THE YEAR ENDED 30 JUNE 2023

Crown Law has not received any capital injections during the year without or in excess of authority (2022: nil).

## Our funding

The Crown Law Office administers Vote Attorney-General. The total annual and permanent appropriations sought for Vote Attorney-General in 2022/23 are \$129.576 million. This is 53.9% more than the estimated actual expenditure of \$84.206 million in 2021/22. The increased budget for Strategic and Operational Legal Advice and Representation and Law Officer Constitutional and Criminal Law Duties services accounts for 48.2% of the increase.

The Vote for the 2022/23 financial year consists of two appropriations: Crown Law Office – Capital Expenditure (\$7.006 million) for renewal and replacement of assets in support of our service delivery) and the multi-category appropriation Law Officer Functions (\$122.570 million) to provide for the discharge of the Law Officers’ constitutional, criminal law and system leadership responsibilities including legal advice and representation (a combination of the remaining previous appropriations).

The amount of \$122.570 million is provided through a multi-category appropriation (MCA) for the Law Officer Functions, which includes the following categories:

- Leading and developing the collective strength of government lawyers and providing legal advice and representation services to state sector entities (\$27.098 million).
- Conducting appeals arising from Crown prosecutions (\$6.271 million).
- Providing assistance to the Law Officers in the exercise of their functions and providing advice on constitutional, criminal law, mutual assistance and extradition matters (\$7.629 million).
- The provision and supervision of a national Crown prosecution service and oversight of public prosecutions (\$81.572 million).

Other legal advice and representation is generally funded on a cost-recovery basis. Other functions within the MCA are mainly funded by Crown revenue. Crown Law has a permanent legislative authority for capital expenditure.

Crown Law completed a review of the fees it charges government departments in order to recover the costs of legal advice and representation services. The new fee structure was implemented on 1 July 2023 and included a fee increase for 2023/24. This reflects an increase in the fees previously charged but remains well below the rates of all-of-government legal panel members. Prior to implementing this new fee structure, fees had been held since 1 July 2021.



**Te Kāwanatanga  
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