

**BRIEFING TO THE INCOMING  
ATTORNEY-GENERAL**

October 2017

## INTRODUCTION

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1. In these times of uncertainty, where the rule of law is being debated and challenged globally,<sup>1</sup> where there are increasing pressures on the criminal justice system, and where governments are faced with social, economic and other policy issues that are more difficult and complex than ever before, the constitutional role of the Attorney-General – the senior Law Officer of the Crown – has never been more important to our system of democratic government according to law.
2. You are supported in this unique role by the junior Law Officer, the Solicitor-General, along with her Crown Law Office and the network of more than 800 Government lawyers employed by departments across the public sector.
3. This *Briefing to the Incoming Minister* (BIM) provides core information to help you fulfil your role. Part One briefly describes the roles and functions of the Attorney-General and the constitutional importance of this position. Part Two describes how we see the Law Officers' roles in the context of the major legal issues that will face the Government in the coming years. Part Three describes how Crown Law is changing to deliver more effective support to Government.
4. We have attached, as an Annexure, further information on the role and function of the Attorney-General, Solicitor-General and Crown Law, as well as an organisational chart of Crown Law's managers and teams.
5. We have also provided you with a series of additional papers, subject to legal professional privilege, which detail:
  - contextual issues and trends that will require your attention as Attorney-General;
  - key legal cases and advice requiring your attention before the end of 2017;
  - a copy of the latest cross-sector quarterly legal risk report;
  - an expanded version of our regular weekly report to you, which provides a snapshot of current litigation and advice or issues you should be aware of.
6. We can also provide any further information as required, including our recent *Performance Improvement Framework* report, which provides a helpful, recent external assessment of Crown Law's capability and our future performance challenges.

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<sup>1</sup> For example, the labelling by some parts of the UK media of Supreme Court judges as “enemies of the people” when they ruled that the UK government would require the consent of Parliament to give notice of Brexit (Daily Mail, 4 November 2016).

## PART ONE

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### THE CONSTITUTIONAL ROLES OF THE ATTORNEY-GENERAL (SENIOR LAW OFFICER) AND SOLICITOR-GENERAL (JUNIOR LAW OFFICER)

7. The Attorney-General has two primary roles in the New Zealand Government:
  - 7.1 as a Minister of the Crown with ministerial responsibility for the Crown Law Office and the Parliamentary Counsel Office; and
  - 7.2 as the senior Law Officer of the Crown with principal responsibility for the Government's lawful conduct and administration of the criminal law. This function is exercised in conjunction with the Solicitor-General, who is the junior Law Officer.
8. As Minister of the Crown, Crown Law supports you in similar ways to other portfolios, including with commitments and obligations under the Public Finance Act 1989. We work with your office to ensure that you have access to the information you need, for example a weekly report on current cases, Statements of Intent, Select Committee questions, the Estimates process and the Annual Report.
9. The senior Law Officer of the Crown has a different role to that of all other Ministers of the Crown.
10. The fundamental responsibility of the Attorney-General, when acting as Law Officer, is to act in the public interest. In exercising the powers, functions and duties of the senior Law Officer, the Attorney-General is expected to disregard any political interest or partisan advantage/disadvantage to the Government or opposition parties. The same applies to the Solicitor-General. However the public interest on any given issue cannot be determined in isolation from practical realities, and that may require that political factors be considered along with others. The crucial point is that in advising and making decisions, both Law Officers must not make decisions with the aim of securing any political or similar advantage.
11. Most of the Attorney-General's Law Officer functions, duties and powers can be, and are, exercised or performed by the Solicitor-General. This thereby clearly isolates, when that is considered desirable, Law Officer decision-making from any suggestion of political influence.
12. Crown Law supports both the Attorney-General and the Solicitor-General to fulfil their constitutional responsibilities, as the Law Officers of the Crown, to determine the Crown's view of what the law is, and ensure that the Crown's litigation is properly conducted.

13. In exercising this constitutional role the Attorney-General seeks to ensure that:
  - 13.1 the operations of Executive Government are conducted lawfully and constitutionally; and
  - 13.2 the Government is not prevented through use of the legal process from lawfully implementing its chosen policies.
14. These constitutional responsibilities, which support New Zealand's commitment to democratic government according to law, are reflected in the functions of Crown Law.

## PART TWO

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### THE LAW OFFICERS SUPPORT GOVERNMENTS TO ACHIEVE THEIR POLICY CHOICES AND DELIVER ON THEIR OBLIGATIONS, LAWFULLY

15. Unlike other departments, Crown Law does not have any particular policy responsibility. Rather, our function is to assist governments to achieve their policy choices and fulfil their obligations lawfully and unimpeded by successful legal challenge. The Solicitor-General is both the Chief Executive of Crown Law and professional head of the more than 800 government department lawyers. Through this network, the Solicitor-General and her office work with departments, decision makers and Ministers on issues involving significant legal risk and wider rule of law implications or where there is a need for a clear Crown legal view.
16. Subject only to the Attorney-General's view, the Solicitor-General has responsibility for determining the Crown's view of the law and its position in the Courts.
17. The Crown prosecutes all crime in New Zealand, for which you are accountable to Parliament. Given the risk that the administration of criminal justice will be seen as being influenced by political interests the Solicitor-General takes general oversight responsibility for public prosecutions. Serious crime is prosecuted by 16 Crown Solicitors, who hold 17 warrants. Crown Solicitors are private sector lawyers in firms who prosecute crime under warrant from the Crown. Prosecutions by the 40 agencies of the Crown who conduct public prosecutions (the mainly regulatory prosecutions conducted within departments) is also overseen by the Solicitor-General.
18. Pressure on the criminal justice system pipeline is currently the sector's most significant challenge, with Crown Law impacted by these increased pressures. In 2015/16 the number of cases disposed by Crown Solicitors increased, on average, by 6%. This trend is projected to continue into the 2017/18 financial year, with a forecast increase of 358 cases on the previous financial year (an estimated 5,318 total disposed cases). This figure does not include additional cases that may occur as a result of the new police officers agreed to by the previous Government in early 2017 (estimated to lead to 50 more cases per year) or the impact of additional officers that may be approved by your Government.
19. Crown Solicitors are currently funded through a capped bulk-funding model. While there was an increase in funding in Budget 2016, increased workload puts additional financial pressure on the Crown Solicitor network.
20. Through the constitutional role of the Solicitor-General, and the increasingly collaborative approach government lawyers are taking under the Government Legal Network (GLN), Crown Law has unparalleled insight into where lawyers and legal teams can add the most value to assist government. Along with our expertise in litigation for the Crown, we are uniquely placed to assist decision makers with an assessment of where the law is developing and to make connections from one specific policy area to more general trends.
21. A networked approach means that the Crown's legal capability is enhanced, overall, through collective legal effort being deployed by the right people and at the right time. This helps the

Government avoid or minimise legal risk, take advantage of opportunity, fulfil its obligations and thus deliver its agenda consistent with the rule of law.

22. Notwithstanding the criminal justice system pressures, there are several overarching areas where we see legal pressure on Government increasing. First, the policy issues being dealt with by the Government are more complicated and multi-disciplinary. Second, the contemporary Crown and Māori relationship is evolving in a post-settlement environment. While less focus will be in the resolution of historical treaty claims, the role and place of Māori in relation to contemporary policy issues – whether health, the environment or the justice system – will become increasingly important. Third, there is greater scrutiny of the Executive’s policy and operational decisions, particularly through a New Zealand Bill of Rights Act lens, by the Courts and other oversight bodies.
23. Understanding the implications of these trends will help your Government deliver its policies lawfully and with less risk of successful challenge. We have prepared a separate, legally privileged, briefing on the detail of these themes.

## PART THREE

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### HOW CROWN LAW IS CHANGING TO MEET CONTEMPORARY NEEDS

24. Crown Law’s newly established vision is “collaborative, indispensable legal service”. *Collaborative* refers to how the networks of government lawyers need to work together for the good of the Crown; *indispensable* refers to the practical, timely and quality advice and services that need to be provided. This is a vision for both Crown Law and the wider networks of lawyers. In terms of Crown Law, what makes us unique, and the value that we provide (i.e. our mission), is threefold:
- 24.1 **Legal experts:** We are experts in public, criminal, constitutional and Treaty of Waitangi law; enabling Government to pursue its policy objectives according to law.
  - 24.2 **Kaitiaki of the rule of law:** We support the Law Officers (the Attorney-General and Solicitor-General) to determine the Crown’s view of the law.
  - 24.3 **System leaders:** We provide leadership for the networks of Crown Solicitors, public prosecuting agencies and in-house Government lawyers.
25. Last year we worked on refreshing our strategic direction. Given the growing importance, complexity and need for timely legal advice and quality representation, it is vital that Crown Law and the network of Government lawyers continue to adapt and evolve how we provide our services. The question we asked ourselves and our stakeholders is: “what is the Crown Law that New Zealand needs?”
26. We have developed a new strategic direction (see diagram on final page) that puts the following three core outcomes at the heart of what we do:
- 26.1 **Demonstrably better government decisions** refers to our ambition for Government lawyers right throughout the state sector to be sought out by decision-makers as partners who add real value. They help with identifying lawful options, spot opportunities and solutions to problems, identify legal risk and management options and provide advice in policy and business areas in which those lawyers are expert.  
  
This will mean governments are best placed to implement their policy choices lawfully, and with better identification and management of risk and opportunity. It should, over time, result in Crown conduct that is less susceptible to successful challenge, increased transparency of process and compliance with the rule of law and, therefore, a more robust democracy.
  - 26.2 **Strengthened influence of the rule of law** refers to our role in upholding respect for New Zealand’s constitutional framework, including the Treaty of Waitangi and the New Zealand Bill of Rights Act 1990. Governments have legitimacy in our democracy because they are subject to the law of the land like everyone else.

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

- 26.3 **Improved criminal justice** refers to Crown Law's vital role in the justice sector, including: ensuring the quality of Crown prosecutions (through the network of Crown solicitors who prosecute the most serious offences); improving the quality, consistency and decision-making of the approximately 140,000 public (i.e. departmental) prosecutions every year; contributing leadership to a streamlined and efficient mutual assistance and extradition regime; and ensuring the quality of the conduct of criminal appeals.
27. This new strategic direction was strongly endorsed in the 2017 external Performance Improvement Framework review. To help us deliver on this new strategy, the reviewers identified five performance challenges:
- 27.1 Upholding and ensuring the **embedding of conventions** that support a strong, enduring, independent legal framework for New Zealand.
- 27.2 An **integrated operating model** supporting the increasing complexity of the system and the demands from contemporary legal practice (i.e. who in the networks of lawyers does what work and is Crown Law adding the most value with where it spends its time?).
- 27.3 Developing a **culture** which will enable the success of the integrated operating model.
- 27.4 A **people plan** ensuring that Crown Law has the right people in all roles (now and in the future) at all levels of the organisation, including a network plan and approach.
- 27.5 **Investment in systems, processes and decision frameworks** that will drive effectiveness, efficiency, quality and consistency in all of the work that Crown Law does.
28. As the report makes clear, Crown Law has recently made significant advances in enhancing the capabilities of our networks. We have established the Public Prosecutions Unit, which provides oversight of Crown and non-Crown prosecutions. The GLN is now a well-embedded part of the public sector legal landscape (permanently funded since Budget 2016) with our lawyers working collectively to serve Government well.
29. We are well underway into a comprehensive programme of work to help us meet these five challenges. We can provide you with information on this work, as required.



30. The Performance Improvement Framework report recognised that we are delivering valued, sound and high quality legal services. We are proud of our 140 year history as an Office providing legal services to the Crown and serving the rule of law. Our plan is about the opportunity to continue that tradition in a modern, system-focused and collaborative way. This is ultimately about helping Government navigate the complex legal issues it faces so as to deliver your priorities consistent with the rule of law.
31. Crown Law staff are highly motivated and engaged with a strong commitment to the rule of law. Over recent years we have been shifting our role from being (just) the Government's law firm (i.e. the provision of advice and litigation services on instruction) to an agency concerned with improving outcomes – including through the quality of our litigation services and expertise – and utilising the network of more than 800 Government lawyers.
32. We very much look forward to working with you in your fulfilling your significant constitutional role as Attorney-General.

# CROWN LAW STRATEGY 2017 - 2021

VISION

**COLLABORATIVE, INDISPENSABLE LEGAL SERVICE**

OUTCOMES

**Demonstrably**  
better Govt  
decisions

**Strengthened**  
influence of the  
rule of law

**Improved**  
criminal justice

GOALS

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

## WHO WE ARE



## AREAS OF EXPERTISE

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

## SYSTEM OVERSIGHT



## MISSION

**LEGAL EXPERTS**  
Ngā Kaitiaki o te ture

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

**SYSTEM LEADERS**  
Ngā Kaihautū

# ANNEXURE: THE ATTORNEY-GENERAL, SOLICITOR-GENERAL AND CROWN LAW

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1. This Annexure covers the role and functions of the Law Officers and Crown Law's role in providing support to them.

## THE ATTORNEY-GENERAL

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2. As detailed in our main Briefing, the Attorney-General has two roles in Government – as a Minister of the Crown and as the senior Law Officer of the Crown. It is the responsibility of the Attorney-General, when acting as Law Officer, to act in the public interest. The Solicitor-General, as the non-political Law Officer, is available to advise and assist on and, where appropriate, to discharge Law Officer functions where conflicts arise. Due to the constitutional function of their roles, both Law Officers, must not make decisions with the aim of securing any political or similar advantage.
3. In exercising the powers, functions and duties of the senior Law Officer, the Attorney-General is expected to disregard any political interest or partisan advantage/disadvantage to the Government or opposition parties. The same applies to the Solicitor-General. However the public interest on any given issue cannot be determined in isolation from practical realities, and that may require that political factors be considered along with others. The crucial point is that in advising and making decisions, both Law Officers must not make decisions with the aim of securing any political or similar advantage.
4. Most of the Attorney-General's functions, duties and powers can be exercised or performed by the Solicitor-General. This applies only to Law Officer and not to Ministerial functions. The exercise of power is an original exercise, not a delegation by the Attorney-General.
5. When the Attorney-General is overseas, unwell, or temporarily unavailable:
  - 5.1 Another Minister may exercise the Attorney-General's ministerial functions (but not Law Officer functions) under section 7 of the Constitution Act 1986; and
  - 5.2 The Solicitor-General may exercise the Attorney-General's Law Officer functions under section 9A of the Constitution Act 1986.
6. If necessary, an Acting Attorney-General may be appointed by warrant to exercise either the ministerial or the law officer functions of the Attorney-General, or both.

### **Role and functions**

#### ***Principal legal adviser***

7. The Attorney-General is the principal legal adviser to the Government. In that capacity the Attorney has similar responsibilities to those of any legal adviser towards a client. The Attorney-General is also a member of the Government and is usually a member of

Cabinet. In Cabinet and Cabinet Committee meetings, the Attorney-General's role includes giving legal advice and encouraging Ministerial colleagues to seek appropriate legal advice in the course of Government decision-making.

8. In practice it is the Solicitor-General (either directly or through Crown Counsel) who gives legal advice to the Government. But that advice is always subject to the opinion of the Attorney-General, whose opinion prevails in the event of conflict.
9. In addition, the Attorney-General has overall responsibility for the conduct of all legal proceedings involving the Crown, and can be expected to keep his or her fellow Ministers generally informed of the initiation, progress and outcome of such proceedings against or by the Government.
10. The Attorney-General is, in constitutional terms, the client for all legal advice provided to the Crown (from whatever source). It is for the Attorney-General to determine whether to release legal advice that has been provided to the government, or refer to the content of that advice, and waive (or potentially waive) legal privilege. The process for seeking the Attorney-General's consent to release of advice is detailed in the Cabinet Manual 2017 at [4.69]-[4.73] and, in respect of draft legislation, in Cabinet Office Circular CO (14) 4.
11. In exercising Law Officer functions neither the Attorney-General nor Solicitor-General is subject to the Official Information Act 1982.

### ***Representation in the courts***

12. The Attorney-General is the principal plaintiff or defendant on behalf of the Government in the courts although judicial review proceedings usually name the relevant Minister of the Crown or other decision-maker involved. Generally proceedings involving Ministers and departments will be handled by Crown Law for the Attorney-General and Governmental interests directly affected (although the Solicitor-General will brief particular matters to outside counsel in appropriate circumstances).
13. All proceedings brought against the Crown are served on Crown Law and the Solicitor-General (or allocated Crown Counsel) acts as counsel. The Attorney-General has occasionally appeared personally as counsel for the Crown in the past, including appearances before the Court of Appeal and the Privy Council. There are, however, some risks in doing so, particularly in criminal proceedings. The Attorney-General has also appeared before the International Court of Justice.

### ***Principal Law Officer of the Crown***

14. As the Law Officers, the Attorney-General and the Solicitor-General exercise powers, functions and duties related to the proper administration of justice and the public interest. The Attorney-General's functions with respect to the criminal justice system are discussed separately below (at paragraphs 30 – 32).

### *Protector of charities*

15. The Attorney-General's responsibilities in relation to charities, outlined in the Charitable Trusts Act 1957, are routinely exercised by the Solicitor-General or by a Deputy Solicitor-General under a delegation. There are two main aspects to these protective responsibilities:
  - 15.1 The notion that charitable purposes need protection by an officer acting in the public interest as there may be no beneficiaries to enforce them;
  - 15.2 The need for charitable bodies to be scrutinised in the public interest.
16. The Solicitor-General, on behalf of the Attorney-General, reports on, or approves schemes to vary, charitable trusts; may appear as a party to charity proceedings and act for the beneficial interest to enforce charitable purposes; monitors and, on request, may advise persons and select committees on legislation involving charitable trusts; and in the public interest investigates the management and administration of charitable trusts.

### *Litigation involving the public interest*

17. The Attorney-General has a responsibility to ensure that lawful avenues of redress are not abused by vexatious litigants. Those who are declared to be vexatious litigants are limited in their ability to pursue court actions. In addition, there are various types of proceeding that can be taken only with the Attorney's consent.
18. The Attorney-General can also seek leave to intervene in the public interest in proceedings to which the Attorney-General is not already a party.
19. The Attorney-General can represent the public interest in the administration of justice and, where appropriate, take legal action to see that the law is observed and justice is done in both criminal and civil proceedings.

### *Miscellaneous statutory functions*

20. There are many powers, duties and functions conferred or imposed on the Attorney-General under particular statutes. A list of these powers can be provided and elaborated on if you wish.

### *Representation on bodies*

21. The Attorney-General is a member of various bodies, such as the Rules Committee, which is charged with responsibility for developing the District Courts, High Court and Court of Appeal Rules, and the Council for Law Reporting, which has responsibility for the publishing of the New Zealand Law Reports. The Solicitor-General can undertake the task of representation in the Attorney-General's absence, either personally or by delegation for any of these bodies.

### ***Relationship with the judiciary***

22. The Attorney-General carries the principal responsibility in Government for the relationship of the Executive Government with the judiciary. The Attorney-General also has responsibility for the appointment of the judiciary.
23. In addition, by convention in New Zealand, the Attorney-General has a particular responsibility for protecting the judiciary from improper and unfair criticism, for example, by answering attacks on their decisions and by actively discouraging other Ministers from engaging in improper attacks or criticism. This role may also be undertaken by the Solicitor-General, depending on the circumstances.
24. It is also important to the effective functioning of the judiciary that people who act in a manner that interferes with the administration of justice in particular cases are made accountable. It is the Law Officers' responsibility (in practice undertaken by the Solicitor-General) to bring proceedings for contempt of court in such cases.

### ***Appointments to the Senior Courts***

25. The Solicitor-General is responsible for administering the process by which the Attorney-General makes appointments to the senior courts (the High Court, Court of Appeal and Supreme Court).
26. The details of the process for the appointment of senior judges are set out in a booklet republished in April 2014. The key features of the process for High Court judges are as follows:
  - 26.1 The periodic publication of advertisements calling for expressions of interest for those interested in appointment to the High Court;
  - 26.2 A requirement that all prospective candidates for appointment complete a formal expression of interest;
  - 26.3 Consultation by the Solicitor-General with the judiciary, represented by the Chief Justice, President of the Court of Appeal and Chief High Court Judge and the profession, represented by the Presidents of the New Zealand Law Society and the New Zealand Bar Association, concerning the suitability of particular candidates.
27. The appointment of appellate court judges relies principally on consultation by the Attorney-General with the Chief Justice and interested persons and bodies about suitable candidates from the serving judiciary.

### ***The Attorney-General and Parliament***

28. The Attorney-General is answerable to Parliament for the actions of the agencies under the Attorney's ministerial control (Crown Law and Parliamentary Counsel Office) and for the exercise of Law Officer powers (although, by convention, matters such as decisions to prosecute are kept free of political influence).

29. The Attorney-General also has special responsibilities to Parliament in relation to legislation. These underscore the independence with which the duties of the Attorney-General must be exercised.
- 29.1 In terms of s 7 of the New Zealand Bill of Rights Act 1990, the Attorney-General reports to the House of Representatives any provision in a bill introduced to Parliament that is inconsistent with the Bill of Rights.<sup>1</sup> This process is more fully explained in the briefing the Ministry of Justice will provide you;
- 29.2 The Attorney may also approve the giving of legal advice by Crown Law to Parliamentary select committees if they seek legal assistance. The main role of Crown Law is to advise the Government, and the provision of advice to select committees accordingly should be in limited circumstances.

### ***Attorney-General's functions in relation to the criminal justice system***

30. The Attorney-General has constitutional responsibility for the government's role in administration of the criminal law. Section 185 of the Criminal Procedure Act 2011 (CPA) also codifies the Solicitor-General's responsibility for maintaining general oversight of the conduct of all public prosecutions and for the conduct of Crown prosecutions. The codification in the CPA of the Solicitor-General's responsibility for the oversight of public prosecutions does not affect the Attorney-General's constitutional responsibility for such matters (s 186).
31. A number of enactments, including the CPA, confer functions and powers on the Attorney-General in criminal justice matters. As a matter of practice, these functions and powers are exercised by the Solicitor-General to avoid actual or perceived political interference in the performance or exercise of such functions and powers. For example, the Solicitor-General usually exercises the statutory powers in the criminal justice process to approve those prosecutions which require the consent of the Attorney-General, to decide whether the stay prosecutions, to grant any witness or other person immunity from prosecution and to deal with requests from other countries for mutual criminal assistance.
32. There are some powers which can be exercised only by the Attorney-General, such as powers under the Criminal Procedure (Mentally Impaired Persons) Act 2003 regarding the classification of special patients. Equally there are some functions which are specially vested by statute in the Solicitor-General. For example, only the Solicitor-General can consent to a Crown appeal against sentence.

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<sup>1</sup> For all bills apart from those for which the Minister of Justice has responsibility, the Attorney is advised by the Ministry of Justice, reflecting the view that in its preliminary stages the Bill of Rights vetting process raises policy matters. To avoid any perception of a conflict of interest, bills promoted by the Minister of Justice are vetted by Crown Law which then advises the Attorney-General. Crown Law will also advise in any case where an adverse report to the Attorney is contemplated.

## THE SOLICITOR-GENERAL

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### Introduction

33. The Solicitor-General is:
- 33.1 Chief Executive of Crown Law;
  - 33.2 Chief legal adviser to the Government, subject to any views expressed by the Attorney-General;
  - 33.3 The Government's chief advocate in the courts;
  - 33.4 Responsible for maintaining general oversight of the conduct of public prosecutions, and conducting Crown prosecutions;
  - 33.5 Responsible for the provision of constitutional advice to the Government and to the Governor-General;
  - 33.6 Professional head of lawyers in government.
34. In addition, the Solicitor-General has a number of statutory duties and functions, particularly in relation to the administration of criminal justice.

### Roles and functions

35. Importantly, the office of the Solicitor-General is a non-political one.

### *Chief executive*

36. As the head of an office which is a department of Government, the Solicitor-General has the responsibilities of a chief executive under the State Sector Act 1988. The Deputy Chief Executive assists the Solicitor-General with departmental strategic and management functions. This reflects the reality that the Solicitor-General's responsibilities as the Government's chief legal adviser and advocate take up substantial time.
37. Unlike most other chief executives, the Solicitor-General is not appointed under the State Sector Act 1988. That Act recognises the Solicitor-General's independent status in Government as a Law Officer. Since 2013, the Solicitor-General's performance as chief executive of Crown Law has been reviewable by the State Services Commissioner. The Act explicitly excludes the Solicitor-General's performance of his or her independent and constitutional functions from the scope of that review.

### *Chief legal adviser and advocate*

38. Subject only to the prior position of the Attorney-General, the Solicitor-General is the Government's chief legal adviser and its chief advocate in the courts. The Solicitor-General appears in court as counsel for the Government. Such appearances are in cases considered to be of particular significance and are usually at appellate level.



39. The role also involves the Solicitor-General personally giving legal advice to Ministers, departments and agencies of Government covering the full spectrum of government functions. The Solicitor-General's advice is generally treated as definitive on legal questions coming before the Government. If a court later concludes the Solicitor-General's advice was wrong it is the Solicitor-General, rather than the Government, who is then open to criticism. The Solicitor-General also exercises a number of specific functions within the Crown's prosecution process.
40. The Solicitor-General has a responsibility to give legal and constitutional advice to the Governor-General, a function which emphasises the Solicitor-General's non-political and constitutional role in Government, and ultimate responsibility to the Crown.

## **CROWN LAW**

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### **Role and functions**

41. Crown Law is a government department that provides legal advice and representation to the Government (in particular, departments and Ministers) in matters affecting the Crown. In common with many other departments there is no statutory basis for the establishment of Crown Law.
42. Broadly, it is the function of Crown Law to support the Attorney-General and the Solicitor-General in performing their roles. In particular, Crown Law is responsible for:
- 42.1 The provision of legal advice and representation services to Ministers of the Crown and Government departments;
  - 42.2 Supporting and assisting the Attorney-General and the Solicitor-General in the performance of their statutory and other functions as Law Officers of the Crown;
  - 42.3 Assisting the Solicitor-General with the conduct of criminal appeals;
  - 42.4 Assisting the Solicitor-General in the supervision and oversight of public and prosecutions.
43. In essence, Crown Law provides legal advice and representation services to the government in matters affecting the executive government, particularly in the areas of criminal, public and administrative law. Crown Law's focus is on core Crown legal work as that term is defined in the Cabinet Directions for the Conduct of Crown Legal Business – essentially, the core legal work for which the Attorney-General and Solicitor-General are constitutionally responsible.
44. Crown Law has no general responsibility for policy formulation or legislation. However, its role includes to provide advice to Ministers and departments on the legal implications of legislative policy proposals and Crown Law is represented on the Legislation Design and Advisory Committee. Crown Law also retains a small policy capacity to support the Attorney-General and to contribute to policy work undertaken by other agencies that is relevant to the functions of the Law Officers and Crown Law.

## **Supervision and oversight of public prosecutions**

45. The Public Prosecution Unit (PPU) was established in October 2012 in response to the 2011 Review of Public Prosecution Services and 2012 Review of the Role and Functions of the Solicitor-General and the Crown Law Office. These reviews found that Crown Law held insufficient information to understand the costs of public prosecutions and were critical of inconsistencies in the quality of those prosecutions.
46. PPU manages the funding of all Crown prosecutions (approximately 5000 cases every year). Crown prosecutions are conducted by a nationwide network of 17 Crown Solicitors, who are private sector lawyers in firms who prosecute crime under warrant from the Crown. PPU facilitates payments to Crown Solicitors in a bulk funding model and assists with the ongoing management of the Crown Solicitor Network. PPU also facilitates the Solicitor-General's oversight of approximately 140,000 non-Crown (i.e. departmental) prosecutions each year.
47. A reporting framework has been established for both Crown Solicitors and prosecution agencies, which enables quantitative and qualitative analysis with a view to enhancing the Solicitor-General's oversight through comparative analysis and the development of best practice guidance. PPU's key objective is to improve the consistency and efficiency of the prosecutorial process.

## **Government Legal Network**

48. The Government Legal Network (GLN) is a collaborative initiative by departmental Chief Legal Advisors and the Solicitor-General to promote across-government collaboration in the delivery of quality legal services to the Crown. The key objectives of the GLN are to drive efficiency and effectiveness gains in the management and delivery of those legal services, and to improve the identification and management of Crown legal risk.
49. The GLN manages the Crown legal risk reporting system, which encourages a collaborative and proactive approach by Chief Legal Advisors to the identification and management of legal risks. The Solicitor General, with the assistance of the GLN advisory board, reports significant risks to the Attorney General. The GLN is developing processes to enable Chief Legal Advisors to better recognise and manage across-government risks, such as those arising from the Crown's Treaty partnership with Māori.
50. A GLN People Project has been initiated and will produce data to help us better understand our workforce and how it is currently used. This information will help us consider what tools and technology the Network needs in order to continue to deliver agile and trusted legal services to government over the next 10 to 20 years.

## **Management and administration of Crown Law**

### ***Organisational structure***

51. The Solicitor-General and Chief Executive Officer of Crown Law is Una Jagose QC.
52. An organisational chart of Crown Law's structure is included on the following page.

### ***Funding***

53. Crown Law is funded by Vote Attorney-General. Funding for 2017/18 is \$70.282m covering the following:
  - 53.1 \$22.337 million (31.5% of the Vote) for the provision of legal advice and representation services to central government departments and Crown agencies on a full cost-recovery basis;
  - 53.2 \$47.945 million (67.6% of the Vote) for the Law Officer Functions (MCA). This covers:
    - 53.2.1 conducting appeals arising from Crown prosecutions(\$3.281m);
    - 53.2.2 developing the collective capability, effectiveness and efficiency of government lawyers(\$0.985m);
    - 53.2.3 providing assistance to the Principal Law Officers in the exercise of their functions, and providing advice on constitutional, criminal law, mutual assistance and extradition matters(\$4.553m); and
    - 53.2.4 the provision and supervision of a national Crown prosecution service and oversight of public prosecutions (\$38.922m).
54. Crown Law has a Permanent Legislative Authority (PLA) for capital expenditure, and is forecast a total of \$627,000 (0.9% of the Vote) for the 2017/18 financial year.
55. Crown Law has recently completed a review of the fees it charges government departments in order to recover the costs of legal advice and representation services. The new fees were implemented on 1 October 2017. They reflect an increase in the fees previously charged but remain well below the rates of All-of-Government legal panel members. The fees have been held since 1 October 2014.
56. Crown Law will soon receive \$300,000 from the Justice Sector Fund to deliver Solicitor-General guidelines on the prosecution of sexual violence cases and training for Crown prosecutors based on these guidelines.

# CROWN LAW OFFICE

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