

# PERFORMANCE IMPROVEMENT FRAMEWORK

## Review for the Crown Law Office (Crown Law)

June 2017

STATE SERVICES COMMISSION  
Te Komihana O Ngā Tari Kāwanatanga



New Zealand Government

## Lead Reviewers' Acknowledgement

As Lead Reviewers for this Performance Improvement Framework (PIF) Review we thank the Solicitor-General and her senior team, together with the staff of Crown Law for their open and thoughtful input to the Review. We also thank them for the excellent management of the Review process. Crown Law has a key role to play in the New Zealand public management system and we appreciate the opportunity to assist the agency as it thinks about how it can add the most value and how it organises itself to deliver this.

We appreciate the time a cross section of Crown Law's external partners, stakeholders and other government agencies gave us. Their insights were invaluable in assisting us to reach our conclusions. We also thank officials from the central agencies who provided well-considered advice and support.

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## Agency's Response

Kua takoto te mānuka. Ko ngā taurira me ngā tapuwae o te hunga ki mua hei whāinga, hei whakakīkītanga mā te hunga ki muri.

*The challenge has been laid down. The precedents and steps taken by those before will be pursued and fulfilled by those who follow.*

We are grateful to Sue Suckling and Paul Reynolds for their thoughtful Review and wise counsel about how we can succeed in our ambitious vision. We are pleased that they strongly support our new strategic direction. Like them, we are optimistic for the future of our organisation. We welcome their acknowledgement of our hard-earned reputation for the quality of the work we produce.

We thank also all those who contributed to the Review, including our colleagues in the sector, our stakeholders and, most of all, our staff. Our staff have been centrally involved in developing our vision, identifying our strengths and weaknesses and helping us work out what it will take to get there.

### ***We will further develop our collaborative model of lawyering....***

This report is not the start of our thinking about our future. We have not waited for its completion to begin implementing our strategy. Throughout 2016 and into 2017 we have worked on refreshing our future vision, asking ourselves “what is the Crown Law that New Zealand needs?” The three strategic outcomes this report strongly endorses are the result of those discussions.

Achieving our strategy requires a significant shift in how we deliver legal services for the Crown. We agree with the Review that we need to develop a more collaborative way of working with other agencies (what the Lead Reviewers call “an integrated operating model”) so that the Crown gets the best value from the more than 800 lawyers it employs. Working in active collaboration will position the Crown better to recognise and manage legal risk, to take advantage of opportunity and to meet its legal obligations. We need to assess what elements of our current practices need to change so we succeed in our strategy and what behaviours, culture and systems we need to support us. Our systems – both core corporate systems such as in the human resources and finance areas, and how we manage workflow into and within the organisation – need improvement. For example, our funding model places an unhelpful constraint on departments seeking our advice early, which is when Crown Law – and lawyers in general – can typically be most helpfully used to identify and help manage risk. It is hard to encourage that kind of early engagement when departments know that the ‘meter’ has started ticking. Also, the cost recovery model creates artificial barriers as to how we allocate resources or how deeply we become involved in matters. We need better systems for determining our priority effort.

### ***...supported by the right behaviours, values and systems...***

Our PIF Self-review in September 2016 raised some of the same challenging messages about our culture and behaviours as the report does. We don't shy away from these challenges. Crown Law undoubtedly has highly motivated and engaged staff as shown by our highest ever annual engagement scores and the very positive client feedback we receive. We have a lively social environment and Crown Law is, overall, a great place to work. But, we also have some weak areas that will hold us back if we do not change. For example, there is an unacceptable

divide between the corporate and legal parts of the business. There are also some silos: we don't yet fully connect the experience and expertise we hold within the Office, nor do we connect as well as we could with our colleagues across the system. The sort of behaviours we want and expect need refreshing and embedding more explicitly into our performance systems. Those behaviours include: that we are respectful of each other and recognise the value that everyone in the office brings to our work, that we work collaboratively both within the office and outside it, and that we recognise that none of us can deliver our strategy alone.

We know culture change is hard to achieve and it takes time. But the leadership team is greatly encouraged by the start we have made, strongly led by our staff, and we are committed to embedding into our culture the behaviours and values that will take us to being the internally-inclusive, outwardly-focused and client-centric organisation we need to be.

***...to deliver our outcomes.***

The work we do here is critical to New Zealand and its commitment to government according to the rule of law. Our new strategic direction puts three core outcomes at the heart of what we do:

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

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

**Strengthened influence of the rule of law** refers to our role in upholding respect for New Zealand's constitutional framework, including the Treaty of Waitangi and the New Zealand Bill of Rights Act 1993. 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.

**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 150,000 public (ie, departmental) prosecutions every year; contributing leadership to a stream-lined and efficient mutual assistance and extradition regime; and ensuring the quality of the conduct of criminal appeals.

### ***Our five performance challenges are system wide...***

We welcome the Lead Reviewers' advice about the five performance challenges we have ahead to ensure our strategy is successful:

- ▶ Upholding and ensuring the embedding of conventions that support a strong, enduring, independent legal framework for New Zealand.
- ▶ An integrated operating model supporting the increasing complexity of the system and the demands from contemporary legal practice.
- ▶ Developing a culture which will enable the success of the integrated operating model.
- ▶ 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.
- ▶ Investment in systems, processes and decision frameworks that will drive effectiveness, efficiency, quality and consistency in all of the work that Crown Law does.

We agree. We will meet these performance challenges by incorporating them into our overarching strategic plan. For this to be successful and sustainable we will sequence the changes according to their priority over the next four years.

### ***...and we cannot do this alone.***

Solving these challenges starts with us at Crown Law but we cannot (and should not) do this on our own. We will require the active support of the wider system, including Central Agencies. We will look at the whole system of legal capability and identify what part Crown Law must play and what part other departments' legal teams play. Our vision is not about Crown Law 'taking over' the system of government lawyers – far from it. Instead, it is about the Solicitor-General exercising her constitutional responsibilities as junior Law Officer (and supporting the Attorney-General as senior Law Officer) and providing, through Crown Law, a more confident form of leadership to benefit the Government legal profession as a whole.

The challenge, in the language of the Lead Reviewers, is to 'step up' our leadership in a way that genuinely unleashes the power and capability of the networks we oversee, work in and support. We will build into our systems ways to leverage the collective strength of the more than 800 lawyers in departments across government, as well as the network of Crown Solicitors across New Zealand and the 37 departmental prosecuting agencies. Together, we will lift the Crown's overall legal capability to address the legal challenges New Zealand will face. We won't be successful simply by providing high-quality legal advice and representation, although that is a necessary bottom line. We will also change how we communicate and engage with our colleagues across government, stakeholders, policy-makers, decision-makers and members of the public. We will be clear on what people should expect from government lawyers, with transparent, quality and fair legal systems that New Zealanders rely on and respect. We will also be clear on the critical importance of the rule of law even, indeed especially, when this involves courageous advice, difficult decisions or holding individuals to account.

### ***We are building from a strong base of past performance...***

As the report makes clear, Crown Law has recently made significant advances in leveraging and enhancing the capabilities of our networks. We have established the Public Prosecutions Unit, which provides oversight of Crown and non-Crown prosecutions. The Government Legal

Network 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.

As this report, and our client base, also recognises, 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 strategy is about the exciting opportunity we see to continue that tradition in a modern, system-focused and collaborative Office.

Our “call to action” is all about that opportunity: to understand and leverage the collective strength of the Crown’s legal networks, to be clear about who does what legal work and why and to build a collaborative, Crown-wide legal capability. This opportunity is only possible because of the firm foundations that have been laid through the work of our Office over many years and, more recently, through the progress made since our last PIF Review in 2011.

***...so we are confident about our future.***

We welcome this PIF report and we are grateful for its advice. In these times of global uncertainty, where the importance of the rule of law is being increasingly debated, where there are increasing pressures on the criminal justice system, and departments are daily faced with difficult legal and complex policy issues, the need for an influential and effective Crown Law has never been greater. We are confident in our plan and, most importantly, in the quality and capability of our people within the Office and across the networks we work in. We are well set for the future.

Ehara taku noa i te toa takitahi, engari he toa takitini.

*My strength is not mine alone but the strength of many.*

**Una Jagose QC, Brendan Horsley, Virginia Hardy, Oliver Valins, Aaron Martin**

Solicitor-General and leadership team

# Four-year Excellence Horizon

*In undertaking this Review the Lead Reviewers considered: “What is the contribution that New Zealand needs from Crown Law and, therefore, what is the performance challenge? If the agency is successful at meeting the future performance challenge, what would success look like in four years?”*

## Environment

The environment in which the Crown Law Office operates, which drives this Four-year Excellence Horizon, is one of increasing complexity. Problems are more often ‘wicked’, demanding the concerted actions of multiple actors across the system of public management and beyond. This means that solutions have to come from multiple parts of the system. Crown Law’s aspiration is to define and own its contribution to:

- ▶ demonstrably better government decisions
- ▶ strengthened influence of the rule of law
- ▶ improved criminal justice.

In this context Crown Law has a central role to ensure respect for New Zealand’s constitution and to embody the model litigant in all of its approaches to law. It plays a critical role for all New Zealanders in its oversight of the criminal justice system, work in the appellate courts and as primary legal advisor to government. This means that it is critical that the organisation’s mana is protected and held in the highest regard.

Crown Law will, therefore, find itself managing the tension between a departmental priority and the wider interests of the Crown; and, in the extreme, it may even find itself to be the last bastion of upholding the rule of law.

The organisation, sitting as it does with the responsibility to uphold the integrity of both the senior and junior law officers, operates in a high trust environment that is matched by equally high expectations.

## Performance Challenge

We are optimistic for the future of this organisation. It has a well-deserved reputation for the quality of the work it produces, which sets the standard for others to aspire to. It is currently rethinking how it moves forward and the suggestions we set out here will help focus that programme. They are important to sustain and improve the quality of the services Crown Law delivers. We have high confidence Crown Law will meet this performance challenge.

The performance challenge ahead for Crown Law sits in five key areas:

- ▶ upholding and ensuring the embedding of conventions that support a strong, enduring, independent legal framework for New Zealand
- ▶ an integrated operating model supporting the increasing complexity of the system and the demands from contemporary legal practice
- ▶ developing a culture that will enable the success of the integrated operating model



- ▶ 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
- ▶ investment in systems, processes and decision frameworks that will drive effectiveness, efficiency, quality and consistency in all of the work that Crown Law does.

These challenges need to be embraced in a whole-of-government sense, because the organisation has to think as much about how it operates in the whole system as it does about how it operates internally.

***Upholding and ensuring the embedding of conventions that support a strong, enduring, independent legal framework for New Zealand.***

Attention will need to be given to maintaining the strong constitutional and public law competence of Crown Law. These are important skills that are peculiar to the Crown and which the private Bar cannot be expected to put a priority on maintaining.

Crown Law has an important constitutional role, advising the Governor-General and working alongside the Ministry of Justice and the Department of Prime Minister and Cabinet (DPMC) to ensure that conventions are adhered to leading up to, during and after a general election. A strong relationship between these departments is vital so that the interests of New Zealanders are always best served.

An important role of the Solicitor-General is to front the big cases in the appellate courts and to have a sense of the implications for the Crown. This is an important aspect of exercising the role of model litigant. This means that constant attention will need to be given to balancing the role of legal advisor and principal advocate against the role as a leader in the system of public administration. This visibility and participation extends to the three legal Deputy Solicitors-General. The Crown Law organisational arrangement needs to be deliberate to enable this.

If any actors have their fingers on the pulse of the effectiveness of our rule of law, it must be the appellate judiciary. They see the advocacy, adjudicate based on the strength of the arguments and therefore have a sense of the robustness of the rule of law. Gaining some of these insights, while respecting the separation of powers, could do much to provide additional insights into how the legal system is working and the potential actions that Crown Law and/or the Law Officers could take to improve it.

***An integrated operating model supporting the increasing complexity of the system and the demands from contemporary legal practice.***

To move to an operating model with such a strong outward-facing, customer-centric, system focus will require changes in culture and practice inside the organisation as well as development of the influencing skills that are pivotal to true system leadership.

The operating model must reflect the complex and diverse system in which Crown Law conducts its business, rather than simply the work it does.

The operating model, from an internal perspective, will reflect contemporary legal practice where the contributions from all, and the supporting systems within the organisation, are understood and relied upon to deliver high-quality, timely and efficient service.

Externally, the operating model must harness the collective strength of the networks and release capacity to Crown Law to do the things that it only can do. This demands that the

Crown Solicitor Network (CSN) is run in a more strategic manner. To achieve this may require changes to the way the funding model is used to incentivise system learning and continuous improvement.

Crown Law also needs to provide its government clients with clarity on the charging mechanism. At times this gets in the way of relationships and does not support Crown Law's on-the-job training. The organisation must ensure its operating model facilitates it being the 'safety net' for the Crown. Departmental lawyers should never hesitate to 'get a steer' from Crown Law.

***Developing a culture that will enable the success of the integrated operating model***

The current Crown Law culture supports a siloed and strongly hierarchical construct derived from a traditional legal firm model. This culture controls the *modus operandus* within the organisation and varies between the internal structural silos.

Taking positive elements from the existing culture, but moving away from rigid hierarchies, will be essential in unlocking the future potential for Crown Law. It will be critical for talent recruitment and retention and to support efficiency and effectiveness.

Embedding this new culture will require clarity about, and communication of, behaviours that are acceptable and rejection of those that are not.

***A people plan ensuring that Crown Law has the right people in all roles at all levels of the organisation, including a Network plan and approach.***

Crown Law needs to develop, and implement, an organisation-wide workforce strategy supported by fit-for-purpose job descriptions and active performance management. The strategy must be truly organisation-wide, and not just limited to the non-legal side of the business while the legal side is left to run within individual siloes.

This also means that there must be active management at all levels to ensure that the right balance of capability is maintained both in speciality and seniority.

To be effective, this approach will require networking with the other legal practices across government using a far more open approach to career development and recruitment at both senior and junior levels.

***Investment in systems, processes and decision frameworks that will drive effectiveness, efficiency, quality and consistency in all of the work that Crown Law does.***

Crown Law presently relies on the skills, abilities and preparedness of individual employees without strong frameworks or systems to back them up. Indeed, if we were only allowed to say one word to the organisation to drive the change it needs to make to support its value-add aspirations that word would be "systems".

Getting systemised inside the organisation makes sense as it helps to mitigate key person risk, provides efficiency, increases effectiveness, drives consistency of response and ensures future capability. But if the organisation is to step up to its leadership opportunity then these same systems also need to be applied across the whole legal ecosystem.

Such an approach needs to be applied to the various funding models that are in place. Even if there is no appetite to change a model, there is certainly room to adjust practices within it to more usefully incentivise system-focused, proactive methods of engagement.

Moving practice to modern frame, IT-based rather than paper-based, systems is essential. There is an opportunity here for Crown Law to provide Public Service leadership.

## **What will success look like?**

The journey that we are challenging Crown Law to embark on will not be an easy one, but we think it has already partly internalised the need for it and is at the mid-point of a strategy process that seems to be positioning the organisation well.

We have high ambition for Crown Law. New Zealanders need to be confident that government governs according to law, that offenders are held to account and that the system of government has sufficient checks and balances to mean our country remains a non-corrupt and fair place to live. This means that Crown Law must be influential, providing well regarded and high-quality advice

Success in the journey will see, at the four-year excellence horizon, an organisation that is the Crown's acknowledged expert in all aspects of constitutional/public law, as well as providing the leadership that drives the performance and accountability of the legal functions across the public sector.

Crown Law will have done this by unleashing the potential value in the networks (CSN, the Government Legal Network [GLN], and Public Prosecutions Unit [PPU]) to create the space and capacity for it to do the work that only it can do; that is being influential, credible, relationship-driven lawyers for the Crown on the issues that really matter.

Success also depends on departments playing their roles. They must be linked into Crown Law in a fundamental way that sees them involving Crown Law at the right stage of a process, not waiting until the end or until something has gone awry.

Crown Law will have a transparent, integrated operating model supporting a strong, externally facing organisation that is providing strategic leadership to the GLN. For example, it will be using the PPU to significantly lift the performance of Crown and public prosecutions for the benefit of all New Zealanders.

The networked approach of the Crown legal profession will be recognised for its role in lifting public service legal capability and in increasing the robustness of Crown legal risk management.

This external focus will extend to the proactive, customer-centric engagement Crown Law has with its government colleagues, to the influence it exerts in the Justice sector and to the leadership it demonstrates in the work of GLN.

Crown Law will have developed the ability and created the space to be proactively scanning the external horizon (with appropriate system colleagues), recognising where future priority system-related issues may arise and taking appropriate action.

The system (Crown Law, other agencies, GLN and CSN) will be characterised by proactive, timely, focused authoritative legal advice and by a court system served at all levels by leading advocacy supporting the standards expected of the model litigant.

Internally, Crown Law will have facilitated a shift away from hierarchical and divisive behaviours to a culture that embraces the professional value of all of the work of all of the people in the organisation. It will be implementing a workforce strategy that will be significantly reducing key person risk, driving efficiency and reflecting the diversity required to be properly responsive to the requirements of the New Zealand legal system. This will be characterised by active management at all layers of the organisation to ensure that capability is fit for purpose.

The GLN team will be driving the system recruitment and talent development of young graduates, introducing them to the practice of law in the Public Service as a whole. This will have been achieved in part through the leadership demonstrated by the Solicitor-General with her departmental colleagues.

The organisation will have in place the necessary internal systems in human resources (HR), finance and information technology systems to inform the decisions it needs to take and to support external customer needs with active, meaningful budget estimation and project progress reporting.

Crown Law will be known for its systematic approach to its processes and for the frameworks underpinning its decisions. For example, it will be overseeing funding models that provide incentives that support proactive engagement, collaboration and excellence, strongly focussed on upholding the rule of law.

Departments engaging with Crown Law will understand the rationale behind decisions that see Crown Law asserting the interests of the Crown over the interests of an individual department. Indeed, the whole system will be embracing the need for coherence of the Crown's legal position across the Public Service.

**Sue Suckling**  
Lead Reviewer

**Dr Paul Reynolds**  
Lead Reviewer

## Central Agencies' Overview

We welcome the findings of the PIF review. It supports Crown Law in setting a clear strategic direction and provides valuable insights about where to focus its efforts. We share the optimism the reviewers have for the future of Crown Law. Crown Law should push forward and be ambitious in the way it fulfils its role.

We will back Crown Law to further develop its leadership role in public sector legal practice with a particular focus on the performance and accountability of legal functions. The GLN is a vital part of the public sector legal practice. The reviewers have recognised the important role of the GLN and the opportunities that exist to expand it further. For example, the GLN internship programme is a valuable stewardship initiative for the public sector legal profession. We will work with Crown Law and the GLN to identify where our assistance could assist GLN to realise its potential.

Working more strategically with agencies to mitigate Crown risk is another opportunity recognised by Crown Law and highlighted in the PIF. The PIF review discusses the impact that the cost-recovery model can have on when and how agencies choose to engage with Crown Law, especially in the somewhat grey area between departmental and Crown work, for example where Crown Law contributes to policy work across government. Considering the cost-recovery and funding models is an opportunity to ensure that Crown Law continues to meet the needs of the Crown and departments, and we will support Crown Law as it considers relevant changes.

Additionally, we will be encouraging Crown Law to address a number of other issues that the PIF review raised, including:

- ▶ lifting management disciplines and systems, particularly around government risk
- ▶ leading cultural change within the agency
- ▶ developing targets for a diverse and inclusive workforce that reflect the refreshed direction for the Better Public Services agenda, and ensure that diversity and inclusion features in its people plan
- ▶ analysing what tools, frameworks and processes are most needed, and where appropriate, support Crown Law to develop or acquire them.

Throughout we will be providing support to the Solicitor-General to manage a multiplicity of roles, including stronger system leadership, and to ensure the Chief Operating Officer and leadership team are adequately supported for the challenge ahead.

The Central Agencies would like to thank the Lead Reviewers for their thought-provoking Review and we support their findings. We would also like to thank Crown Law for its high quality PIF Self-review undertaken in preparation for the review, and its constructive engagement throughout the process.

### **Peter Hughes**

State Services Commissioner

on behalf of the Chief Executives of the Central Agencies

## Summary of Ratings

These ratings reflect the agency's current capability to deliver on the Performance Challenge described in the Four-year Excellence Horizon.

### Results

Government Priorities
N/A






Core Business	Rating (Value to Customers and New Zealanders)	Rating (Increased Value Over Time)
Legal Advice and Representation		
Government Legal Network		
Supervision and conduct of Crown prosecutions and appeals		
Principal Law Officer Functions		

### Organisational Management

Leadership and Direction	Rating
Purpose, Vision and Strategy	
Leadership and Governance	
Values, Behaviour and Culture	
Review	
Delivery for Customers and New Zealanders	Rating
Customers	
Operating Model	
Collaboration and Partnership	
Experiences of the Public	

Relationships	Rating
Engagement with Ministers	
Sector Contribution	
People Development	Rating
Leadership and Workforce Development	
Management of People Performance	
Engagement with Staff	
Financial and Resource Management	Rating
Asset Management	
Information Management	
Financial Management	
Risk Management	

## Rating System

Rating	Judgement	What it means
	<b>Strong (Excellent)</b>	<b>Best practice/excellent</b> <ul style="list-style-type: none"> <li>▶ High level of capability and sustained and consistently high levels of performance</li> <li>▶ Systems in place to monitor and build capability to meet future demands</li> <li>▶ Organisational learning and external benchmarking used to continuously evaluate and improve performance.</li> </ul>
	<b>Well placed</b>	<b>Capable</b> <ul style="list-style-type: none"> <li>▶ Delivering to expectations with examples of high levels of performance</li> <li>▶ Evidence of attention given to assessing future demands and capability needs</li> <li>▶ Comprehensive and consistently good organisational practices and systems in place to support effective management.</li> </ul>
	<b>Needing development</b>	<b>Developing</b> <ul style="list-style-type: none"> <li>▶ Adequate current performance – concerns about future performance</li> <li>▶ Beginning to focus on processes, repeatability, evaluation and improvement and management beyond and across units</li> <li>▶ Areas of underperformance or lack of capability are recognised by the agency</li> <li>▶ Strategies or action plans to lift performance or capability, or remedy deficiencies are in place and being implemented.</li> </ul>
	<b>Weak</b>	<b>Unaware or limited capability</b> <ul style="list-style-type: none"> <li>▶ Significant area(s) of critical weakness or concern in terms of delivery and/or capability</li> <li>▶ Management focuses on tasks and actions rather than results and impacts</li> <li>▶ Agency has limited or no awareness of critical weaknesses or concerns</li> <li>▶ Strategies or plans to respond to areas of weakness are either not in place or not likely to have sufficient impact.</li> </ul>
	<b>Unable to rate/not rated</b>	<b>There is either:</b> <ul style="list-style-type: none"> <li>▶ no evidence upon which a judgement can be made; or</li> <li>▶ the evidence available does not allow a credible judgement to be made.</li> </ul>

Note: There have been four significant upgrades to the PIF Agency Model since it was implemented in 2009. The first was the inclusion of the Four-year Excellence Horizon in October 2011. The second was the Strategic Financial Management upgrade in December 2012. The third was the Better Public Services upgrade in January 2014. The most recent is the Customer refresh. These upgrades affect comparability with previous PIF reports.

## Agency Context

Crown Law is a government department that provides legal advice to and represents the Government in the Courts and supports the Attorney-General and Solicitor-General in the exercise of their statutory and other functions as the principal law officers of the Crown. It takes a whole-of-government view, while also working in the public interest.

Crown Law provides a range of services to fulfil two key purposes to ensure that the:

- ▶ operations and responsibilities of the executive government are conducted lawfully
- ▶ Government is not prevented, through legal process, from lawfully implementing its chosen policies and discharging its governmental responsibilities.

The scope of Crown Law's legal work is influenced by the Cabinet Directions for the Conduct of Crown Legal Business 2016, which directs Ministers and departments in the use of Crown Law's legal services.

Crown Law is a relatively small government department based principally in Wellington but with some staff in Auckland.

Its 2016/17 baseline funding is \$71.104 million. Criminal Appeals, the Criminal Prosecution System and the Law Officer functions are Crown funded. The costs of the advice and representation functions are recovered from clients on a fee-for-service basis. Crown Law employs 169 staff. Approximately 36% of staff are employed under a collective agreement.

Crown Law is led by the Solicitor-General, supported by a Leadership Team comprising three Deputy Solicitors-General and a Deputy Chief Executive/Chief Operating Officer.

Crown Law provides support for the Law Officers (the Attorney-General and Solicitor-General), including in the exercise of their independent statutory functions. In doing so it is required to act in the public interest, not simply promote the interests of the Crown or individual agencies it is acting for.

### The Performance Journey so far

Crown Law undertook a PIF Review in 2011 and a Follow-up Review in 2013. At about the same time Reviews were undertaken of the Public Prosecution Service (John Spencer, 2011) and the Role and Functions of the Solicitor-General and the Crown Law Office (Miriam Dean and David Cochrane, 2013).

The overall theme of the PIF Review was that Crown Law provided some exceptionally high-quality services while needing to lift some aspects of organisational management and client focus. The key findings were:

- ▶ a high level of performance in relation to supporting the Principal Law Officer functions and the conduct of appeals
- ▶ performance in relation to legal advice and representation was 'well placed' and the whole-of-government approach Crown Law brought to its work was important in managing legal risk and providing value for money solutions for the Crown



- ▶ the cumulative impact of changes to Crown Law's operating environment had resulted in a number of challenges the organisation needed to address, notably to lift performance in relation to supervision and conduct of Crown prosecutions, organisational leadership, financial management, sector contribution and staff engagement
- ▶ in lifting its performance Crown Law could lever off significant strengths, including its critical mass of highly-qualified, skilled and motivated legal advisors, a substantially upgraded IT system and very good legal support structures.

The Review also recommended the appointment of a Deputy Chief Executive to enhance organisational leadership and management capability and to supplement the management capacity of a Senior Leadership Team that also carried heavy legal workloads.

The PIF Follow-up Review noted that Crown Law had made commendable progress. Changes implemented included the revision of Crown Law's purpose and vision, the appointment of a Deputy Chief Executive, restructuring of the strategy and corporate functions, the revision of the Cabinet Directions for the Conduct of Crown Legal Business, the restructuring of the legal and legal support functions, and work being undertaken to address departmental and Crown Solicitor cost pressures. The Review also noted that external stakeholders remained confident in the ability of Crown Law to deliver legal services, while addressing the challenges it faced.

Since that time the:

- ▶ Government Legal Network has been established (with funding confirmed in Budget 2016)
- ▶ Crown Solicitor funding and oversight models have been Reviewed, including the establishment of the Public Prosecution Unit
- ▶ Cabinet Rules have been Reviewed and re-issued in 2016.

# Results Section

## Part One: Delivery of Government Priorities



*This section Reviews the agency’s ability to deliver on its strategic priorities agreed with the Government. While the questions guide the Lead Reviewers to retrospective and current performance, the final judgements and ratings are necessarily informed by scope and scale of the performance challenge.*

Government priority
Performance Rating: Not applicable

We considered whether there are specific priorities the Government wants to achieve through Crown Law but concluded the Government’s priority for Crown Law is that it excels at its core business.

## Part Two: Delivery of Core Business

*This section Reviews how well the agency delivers value to customers and New Zealanders and how well it demonstrates increased value over time. While the questions guide the Lead Reviewers to retrospective and current performance, the final judgements and ratings are necessarily informed by scope and scale of the performance challenge.*

Core Business 1: Legal Advice and Representation
Performance Rating (Value to Customers and New Zealanders): Well placed 
Performance Rating (Increased Value Over Time): Needing development 

Because of the Law Officer’s role (by convention) in providing authoritative legal advice to the Crown and representing the Crown in Courts, Crown Law provides legal advice and representation to government departments and agencies on core Crown legal matters. The scope of core Crown legal matters is outlined in the Cabinet Directions for the Conduct of Crown Legal Business 2016.

Legal advice and representation covers a wide variety of subject areas including the protection of revenue and the exercise or scope of constitutional powers or duties of the Crown including the Treaty of Waitangi and the Crown/Māori relationship, citizenship and immigration, health, gambling, resource management (including specific areas such as fisheries and Crown minerals), biosecurity, food safety, education, land law (including issues relating to the conservation estate, other land of the Crown, and public works), earthquake recovery, employment, privacy, transport, social security, family law, and the application of Treaty principles in administering legislation.

Crown Law also provides expertise in relation to the powers and functions of government, judicial Review of executive action, legislative and parliamentary processes, conduct of large-

scale civil litigation, statutory appeals, common law claims against the Crown and government-led inquiries.

In this area of its core business Crown Law faces an environment of increasing complexity coupled with increasing urgency of demands. In this testing set of circumstances Crown Law is seen to be responsive when instructed. The quality of its work is generally high, with a reputation of 'best in class'. In the past there have been questions raised about the appropriateness of advice tendered (long and fulsome analysis, rather than targeted advice meeting the needs of the client). Crown Law is meeting this challenge with some success, but will need to continue to pay it attention.

For example, when tendering advice to departments there is often confusion about the role that Crown Law is playing – is it meeting the explicit need of the 'client' or is it serving a wider need to the Crown as a whole? This can leave the department frustrated with both the timeliness and utility of advice given. To manage this confusion Crown Law needs to communicate openly with its 'clients' and explicit about the master it is serving (the client or the wider Crown interest). There is a particular leadership role for the Solicitor-General here in balancing the interests of government as a whole against those of individual departments.

There is a strong commitment to deliver the best arms-length advice possible. In some circumstances this can compromise the timeliness and quality (and inflate the cost) of advice being given as the Office 'gets up to speed' in an area where it might not have specialist expertise.

Giving legal advice and representation is a cost recovered part of Crown Law's business. This drives a number of behaviours. Firstly, Crown Law often acts on instruction. This means that advice can be reactive and, given the increasing complexity of issues being faced, may mean that sub-optimal paths are followed as the wider context may not have been thoroughly analysed.

Secondly, the model drives 'contractual relationships', rather than 'relational contracts'. By this we mean that opportunities for Crown Law to work proactively with a client in complex areas of law prior to immediate need may be lost.

Thirdly, as the Office is dependent on the cohort of lawyers and its embodied expertise and specialisation at any given time, it carries key-person risk. Mitigating this requires development on the job, which in turn drives up costs.

The issues in this part of the business are understood by the organisation, but it is early in the improvement journey. To give increased value over time and become well placed in, Crown Law will need to develop specific approaches to stewarding capability and matching it to the changing needs of the Public Service. This may require a different approach to the way in which costs are recovered.

## Core Business 2: Government Legal Network

Performance Rating (Value to Customers and New Zealanders): Well placed



Performance Rating (Increased Value Over Time): Needing development



As part of Crown Law's role in promoting a 'one Crown' approach to the management of legal risk, Crown Law actively leads and participates in the Government Legal Network (GLN). The GLN is a collaboration of the 800+ in-house government department lawyers. Its main objectives are to provide high-quality legal advice, services and value to the Crown, to enable the delivery of better public services to New Zealanders.

The GLN is a well-established institution in the New Zealand Public Service. It has moved through its initial establishment phase, has increasing visibility in the New Zealand Public Service and is now supported by a specific appropriation. It has a robust governance structure and is strongly supported by the lawyers that comprise it. It has already improved the efficiency of the Crown's legal services, through collective procurement of legal databases.

We believe the GLN is at a critical point in its development and that it now needs to step up. A process has been developed to manage Crown legal risk. There is some suggestion that this may not be as comprehensive as is needed. Firstly, the process is dependent on the individual views of departments as they formulate their contributions. Secondly, it does not canvas wider views, which could increase the robustness of risk assessment. It might also be useful if a mechanism could be found, without compromising the separation of powers, to incorporate perspectives from the judiciary.

While there is no doubt that the information gathered has put the Attorney-General and the Crown in a much better position to understand the risks, there is little evidence of a systemic approach to mitigation. This is a real development opportunity for the GLN.

The GLN has piloted a programme to recruit new graduates into the Public Service. This has seen four graduates spend time in four departments over two years. We believe this approach is meeting a core need of the Public Service where, in any given year, there is turnover of 90 - 120 in the legal cohort of about 840 persons. The fact that these new recruits are exposed to the business of four different departments over this period also meets the need for wider perspectives and deeper personal networks for Public Service lawyers who may work for a number of different departments. We believe there is opportunity here for a significant step-up in the numbers recruited into this programme.

Our expectations of the GLN are high and we believe the expectations of the lawyers which comprise it should be too. A step-up in ambition from all involved will see the GLN 'well placed' to deliver significant and enduring value.

Through leadership of the GLN, and a highly collaborative relationship-based practice of law for the Crown, two things are achieved: Crown Law carves out capacity for itself to deliver on its highly-constitutional and special function and the overall legal capability of the Crown is enhanced

There is a leadership opportunity here for the Solicitor-General to articulate her expectations of, and the opportunities for, the GLN and use her relationships with fellow Chief Executives to drive it forward.

### **Core Business 3: Supervision and conduct of Crown prosecutions and appeals**

Performance Rating (Value to Customers and New Zealanders): Well placed



Performance Rating (Increased Value Over Time): Needing development



#### *Criminal Appeals arising from Crown Prosecutions*

The Criminal Group discharges the statutory responsibility of the Solicitor-General in representing the Crown in the Court of Appeal and Supreme Court on all criminal appeals. Over 450 oral appeals are heard in the Court of Appeal each year and approximately 60 applications for leave to appeal are filed in the Supreme Court. A small percentage proceed to a substantive hearing. In 2015/16 approximately 25% proceeded to substantive hearings in the Supreme Court.

#### *Crown prosecution services*

Crown Law has responsibility for the supervision and funding of Crown prosecution services provided by the CSN. Sixteen Crown Solicitors hold warrants to prosecute the most serious crime in New Zealand, including prosecutions initiated by the Serious Fraud Office (the Serious Fraud Office Panel is constituted with Crown Solicitors and Barristers). Crown Law's main objective is to ensure that the CSN continues to provide effective and efficient high-quality prosecution services and is sustainable in the medium and long term.

Crown Solicitors are currently funded through a capped bulk-funding model established in 2013. This model was introduced to replace the previous invoice-based regime to ensure Crown Law operated within appropriation. However, there had been growing concern that the medium to long-term sustainability of the service was at risk. In Budget 2016, new funding of \$4.922 million per annum was approved to address this risk.

Crown Solicitors continue to provide excellent service to a very high standard. Feedback is consistently positive from Police, the judiciary and other stakeholders.

#### *Crown Solicitor standards of service*

Crown Solicitors are bound by the Terms of Office for Crown Solicitors. These set out the Solicitor-General's requirements of Crown Solicitors and outline the funding arrangements and requirements for periodic Reviews. They clearly state that Crown Solicitors and Crown Prosecutors are expected to uphold the highest standards of personal and professional conduct and are subject to the Lawyers (Conduct and Client Care) Rules.

Crown Solicitors must also comply with all directions and instructions and observe guidelines issued by the Solicitor-General. These guidelines include, for example, the Solicitor-General's Prosecution Guidelines, which came into effect on 1 July 2013. These guidelines are intended to ensure that core prosecution values underpin the principles and practices of prosecutions in New Zealand. These values aim to achieve consistency and common standards in key decisions and trial practices, supporting open and fair processes.

#### *Oversight and supervision of Crown and public prosecutions*

Oversight and supervision of Crown prosecutions and public prosecutions more generally is undertaken by the PPU within Crown Law. The PPU was formed in November 2012 in response to the 2011 Review of Public Prosecutions Services and the 2012 Review of the Role and Functions of the Solicitor-General and the Crown Law Office.

Both reviews found that Crown Law lacked mechanisms required to effectively manage or understand the costs of Crown prosecutions and there was even less understanding of the costs and quality of public prosecutions conducted by any of the 37 government agencies with a prosecution function. It was noted that the lack of systems and resource within Crown Law meant the Solicitor-General could not fulfil obligations to have oversight of public prosecutions.

Since inception the PPU has addressed issues raised in the Prosecution Review through a number of significant initiatives designed to increase oversight for the Solicitor-General and provide value to the sector.

In its conduct of appeals in both the Court of Appeal and the Supreme Court, Crown Law is highly regarded and regarded as strong. The Solicitor-General is seen to have a strong understanding of the rule of law and is meeting the testing standard of the 'model litigant'.

With criminal appeals in particular, Crown Law sets the standard with improved readiness and the superb quality of its internal advocates. That readiness and quality though, is a little patchy when external advocates are used. Crown Law needs to continue to work with external advocates to ensure they meet the standard of the model litigant and enhance the reputation of the Solicitor-General in Court.

The senior advocates of Crown Law are all highly regarded. Because of this, there is a desire to see them appearing more often, particularly for cases that are testing critical points of law. The Solicitor-General (together with her Deputies) has a role as principal legal advisor and advocate in the courts. In this regard she must be seen working in the profession to maintain credibility.

Frustration with the funding arrangements for Crown solicitors was widespread. This is not surprising given the significant shift in arrangements. A capped model means that when resources are reallocated to meet demand there are winners and losers. This can get in the way of a collegial operating environment.

There is the potential to get greater leverage of the network through Reviews, training and the like. New Crown Solicitors in Auckland, Manukau, Whanganui and Christchurch mean that Crown Law has closer contact with these warrant-holders and thus an opportunity to knit relationships.

We think that Crown Law could step up its interaction with the CSN through regular conferences and by using technology. Ongoing attention to the funding model is needed as well to improve and change the way the fund is distributed. The current arrangements do not encourage proactivity or system learning.

We observed that the CSN does not reflect the diversity of the people it serves and that, despite some areas of improving practice, understanding of the need to encourage diversity seems weak.

All-in-all we saw a highly-gearred environment with punishing workloads and high demand on Crown Counsel and their briefs. Becoming 'strong' in the value created for customers and New Zealanders needs a focus on people sustainability in the system. This is at all levels, from Senior Crown Counsel to the most junior lawyers and support staff. It also needs equal attention paid to capability outside the organisation, in the CSN and in briefing external advocates.

#### Core Business 4: Principal Law Officer Functions

Performance Rating (Value to Customers and New Zealanders): Well placed



Performance Rating (Increased Value Over Time): Well placed



This function covers the provision of legal advice, representation and administrative services to the Principal Law Officers (the Attorney-General and the Solicitor-General), rather than to a specific department or agency, to assist them in the exercise of their functions, and the provision of legal and constitutional advice to the Government, Ministers and the Judiciary.

This is an area where New Zealand needs the performance of Crown Law to be strong. It sits at the core of what it must do. Crown Law's objective is to ensure the Law Officers are supported with high-quality independent legal advice and representation in the execution of their constitutional responsibilities and in the administration of the law. Here the leadership of the Solicitor-General is critical with an unshakable commitment to upholding the rule of law.

Crown Law is particularly reliant on key people because briefing out would be inappropriate. To be rated as 'strong' in this area the organisation must pay particular attention to its stewardship of capability. It needs to build the appropriate relationships with the Cabinet Office and with the Ministry of Justice to ensure that our (unwritten) constitution and the conventions that support it are maintained.

We are going through a period internationally where the rule of law and other key elements of our social and legal infrastructure are under threat and there is considerable public disquiet about the so-called 'establishment' (witness Trump and Brexit).

This creates an opportunity for Crown Law to get out in front of public disillusionment, as it might manifest itself in terms of the operation of the legal and constitutional system and help create and channel any debate into more constructive directions. It has a responsibility to inform and serve the public as well as Ministers. This has to be done with care and discretion and of course with political neutrality.

# Organisational Management Section

*This section Reviews the agency’s organisational management. While the questions guide the Lead Reviewers to retrospective and current performance, the final judgements and ratings are necessarily informed by the scope and scale of the performance challenge.*


## Part One: Leadership and Direction

**Purpose, Vision and Strategy**

How well do the staff and stakeholders understand the agency’s purpose, vision and strategy?

How well does the agency consider and plan for possible changes in its purpose or role in the foreseeable future?

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Performance Rating: Needing development 

**Leadership and Governance**

How well does the senior team provide collective leadership and direction to the agency and how well does it implement change?

How effectively does the board lead the Crown entity? (For Crown entities only)


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Performance Rating: Well placed 

**Values, Behaviour and Culture**

How well does the agency develop and promote the organisational values, behaviours and culture it needs to support its strategic direction and ensure customer value?


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Performance Rating: Weak 

**Review**

How well does the agency encourage and use evaluative activity?

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Performance Rating: Needing development 

### *Purpose, Vision and Strategy*

Over the past four years Crown Law has undergone a significant change process. The organisation has been restructured to focus on efficient management of Crown legal risk and has developed or contributed significantly to enhanced, integrated and effective government legal services’ systems through the GLN and the PPU.



During this PIF process the new Leadership Team has invested in making its own *modus operandus* effective as well as driving the refresh of Crown Law's strategy, culture and values. Staff are generally optimistic about the Leadership Team and are positive about the changes that have occurred and that are planned. As part of that process the organisation has developed three statements which, taken together, we believe make a compelling purpose statement.

The three statements are: demonstrably better government decisions; strengthened influence of the rule of law; and improved criminal justice. They have the potential to drive real clarity and provide a focus to the performance challenges in which the organisation needs to respond and lift performance. We have described these areas in the Four-year Excellence Horizon.

The intent of the strategic refresh is to develop a refined direction for the organisation and implement a new Four-year Plan that supports that direction and is collaboratively generated and collectively owned. It will fill a significant void as there is not currently a Four-year Excellence Horizon supported by a measureable medium term strategy.

Ensuring the strategic direction is collectively 'owned' will help staff to drive it into the future. This will remove any potential disconnect between what is viewed as 'corporate documentation' and the day-to-day purpose and culture of Crown Law. It is important also that Crown Law takes the time to bring key external clients and stakeholders on the strategic refresh journey with it.

Crown Law prides itself on delivering high-quality legal services. If staff were to currently articulate a collective purpose, we suspect it would be "being the best public lawyers in New Zealand". The current thinking appears to be 'lawyer-centric' (eg, lawyers for government) where a 'purpose-driven' strategic direction (eg, increasing trust in New Zealand) might achieve broader ownership from all staff. Understanding of the value proposition from the public, government, the sector and clients might help drive some of the cultural, behavioural and skill changes necessary to take Crown Law to the next level.

### *Leadership and Governance*

Crown Law has a new Solicitor-General just one year into her term, with a new Leadership Team. They are well regarded both inside and outside Crown Law. Una's communication and visibility is great. She is leading culture from the front and making people feel valued.

There is strong emergent leadership, which has started on the strategy work the organisation desperately needs. To be effective, this leadership will need to be backed by frameworks for peer review, prioritisation, policy, quality assurance and risk management to systematically drive performance improvement. To be 'well placed' in this area attention will need to be paid to driving systematic processes that are not as reliant on individuals for effectiveness.

It will be important for leadership to focus Crown Law on the core things that matter to lift performance. There is a danger that these projects will become bogged down in process causing 'strategy fatigue' and cynicism as a consequence.

Getting the balance right is also necessary. There are competing demands in being both Solicitor-General and Chief Executive. This requires the support of a strong Chief Operating Officer (COO) and the joint commitment of the Leadership Team to deliver on organisational priorities. If the 'organisational stuff' is left to the COO only, then the organisation will not lift performance.

The support provided by the COO to the Solicitor-General will need to embody a strong change management mind-set and the capability to drive that change over a sustained period.

### *Values, Behaviour and Culture*

Notwithstanding the strong leadership of the Solicitor-General and her modelling of the culture she values, the organisation is a long way from being there. There are multiple cultures in the organisation that are underpinned by hierarchical behaviours and tribalism.

There are deep divides between corporate staff and legal staff. There are still strong views about the restructure of more than four years ago, which stops people unhooking from the past. Various people in the organisation do not feel that their work, and hence their contribution to the success of Crown Law, is valued by others.

These cultures are supported by an operating model split three ways between old law firm (hierarchical), modern law firm (more egalitarian) and government department (administrative). This limits efficiency and effectiveness, confuses clients and hinders talent development.

That is not to say that it is all bad in the organisation! Crown Law's existing culture involves a strong degree of commitment, expertise and dedication. The current values of Crown Law (leadership, professionalism, valuing people and public service) are not well known and not widely referred to or used in establishing and reinforcing performance expectations. Staff value working with Crown Law and share a subconscious sense of the need for integrity, high professional standards and of exercising some leadership across the government legal sector.

Crown Law does not currently integrate desired cultural and value-based skills and behaviours into workforce structure or performance measures or other forms of recognition. The organisation is not generally explicit about the behaviours it expects of staff when they interact with clients or internally. It relies on a process of mentoring and osmosis and a high-trust model.

The underlying commitment to public service and to delivering quality product on issues that matter is strong but improvement is needed to ensure consistency, collaboration and connectedness and to maximise the potential of the organisation. Values do not currently align to the (developing) strategy, nor are they integrated into performance cycles, but the strong sense of mission provides a powerful foundation.

We cannot emphasise enough how demanding a shift to a more inclusive culture setting, with the attendant behaviour and values changes, is going to be. To shift the culture of any organisation is a hard ask but it is even more demanding in an organisation containing strong professionally-motivated staff. Other examples, by way of comparison, include scientists in research organisations, academics in universities and nurses and doctors in hospitals.

Work on culture links strongly to the shifts that are needed in the operating model. These two areas are highly connected. For Crown Law the shift to a more inclusive and strongly customer focussed culture is imperative if changes in the operating model are to be effectively embedded and be sustainable.

## *Review*

Crown Law is committed to evaluative activity and a culture of learning and continuous improvement. However, other than the specific examples of GLN, PPU and CSN, this is not well engineered into the architecture of the operational model or the performance system.

The PPU has been developed specifically to undertake an evaluative and improvement function across the conduct of Crown and public prosecutions. A good start has been made. There has been significant improvement with standardising and capturing relevant data and encouraging improvements in analysing that data to inform operational and structural improvements. Significant reporting on case disposals, prosecution numbers, make up of offices, and the disbursement of the bulk fund now exists. An audit system of Crown Solicitor warrants has also been put in place. PPU and the Crown Solicitor oversight function aim to enhance the value of this evaluative activity still further, including through working with agencies on capability and maturity checks.

There are established systems for peer Review that work as a part of the way the organisation practises law. We are not sure these are necessarily systemically embedded and, as with many practices in the organisation, rely much on individual best practice.

There is an annual client survey that is augmented with relatively regular conversations with client agencies, Ministers, and through networks such as GLN. This unsolicited feedback is being used anecdotally but is not captured in a manner that contributes effectively to systems improvement.

Review of the performance of the organisation seems weak. We would expect a lift in this capability to follow the implementation of the strategic plan.

To move to 'well placed', Crown Law needs to systematically embed review and evaluative activity. This should drive a consistent culture of continuous improvement, which, currently, is driven by the practice of individuals.

## Part Two: Delivery for Customers and New Zealanders

### Customers

How well does the agency understand who its customers are and their short and longer term needs and impact?

How clear is the agency's value proposition (the 'what')?

Performance Rating: Needing development



### Operating Model

How well does the agency's operating model (the 'how') support delivery of Government Priorities and Core Business?

How well does the agency evaluate service delivery options?

Performance Rating: Needing development



### Collaboration and Partnerships

How well does the agency generate common ownership and genuine collaboration on strategy and service delivery with partners and providers?

How well do the agency and its strategic partners integrate services to deliver value to customers?

Performance Rating: Well placed



### Experiences of the Public

How well does the agency employ service design, continuous improvement and innovation to ensure outstanding customer experiences?

How well does the agency continuously seek to understand customers' and New Zealanders' satisfaction and take action accordingly?

Performance Rating: Well placed



### Customers

At this time, Crown Law is operating largely as a group of lawyers passionate about the rule of law and committed to work that supports it. The organisation doesn't have a sophisticated understanding of customer need and does not walk well in the shoes of others.

Crown Law's staff do not reflect the diversity of the New Zealand population, although they probably reflect the cohort of lawyers with whom they interact! The organisation could be 'well

placed' if it were to, for example, use recruiting programmes to target Māori, Pasifika and Asian ethnicities into Crown Law.

We received feedback from a number of clients and stakeholders that capability is not systemically meeting customer need. For example, litigation/project plans are done well by various individuals but not across the board. This means that the customer experience of Crown Law is very much person-dependent.

Client focus is very much on the Crown rather than a wider systems view that would consider New Zealand's needs more broadly. The question 'what does New Zealand need from Crown Law?' is a relatively new concept. The Junior Law Officer's function across more constitutional roles is well understood by experienced Counsel but less so by junior and non-legal staff and is not currently well articulated in strategy that centres around 'being the Government's lawyer'. New Zealand and New Zealanders are not currently focussed on as 'clients'.

### *Operating Model*

As stated earlier in this report there are several operating models within Crown Law. This limits efficiency and effectiveness, confuses clients and hinders talent development and retention.

The biggest issue we have found is the lack of systems. These system deficiencies are across all functions and work areas. Of course an organisation of this size needs to prioritise where it invests in systemisation and must focus where it will drive quality and effectiveness and efficiency. A number of employees fear systemisation, hiding behind the risk of it making them bureaucratic, rather than recognising the value it will unlock. Opportunities exist internally (such as approaches to 'briefing out'), as well as externally (such as the appointment and ongoing audit of Crown Solicitor warrants).

Crown Law is siloed and collaboration across the office is not a feature of its operation. Aggressively developing more cross-team, cross-agency, cross-disciplinary working practices and skills is essential. The funding model does not incentivise this.

Crown Law's appropriation system is complex and can produce some perverse outcomes. Under the current model, Law Officer functions are capped by the Crown funded appropriation, whereas there is headroom for legal advice and representation services. This can be up to \$22.365 million against a spend of \$18,235 million (2015/16). Legal advice and representation services are funded and cost recovered through departments and the only restriction (up to the appropriation limit) on spend is that agencies are willing to pay the costs. This means adopting a consistent Crown-funded approach across all services may create even more perverse incentives as agencies would have no limit on seeking advice of Crown Law and Crown Law's time could become consumed on immaterial matters. The fees approach should be considered as part of developing the strategic plan and reviewing the future operating model. This will also be helpful in considering better sharing and rationing of legal resource across the network and facilitating secondments. The current funding model seems to a certain extent cuts across the anticipated role of the GLN and the goal of collaboration and partnership

While we are not suggesting further restructuring, it is noticeable to us that the way in which the organisation manages itself reflects the work it does rather than the increasingly complex and diverse system in which it conducts its business.

Until Crown Law settles on a single, unified method of operation, many of the deeply embedded historically based cultural issues (discussed earlier in this report) will not be able to be addressed. This is understood in the organisation but is yet to be implemented.

The appointment of a Deputy Chief Executive Strategy and Corporate/Chief Operating Officer, in response to the last PIF Review, was a positive step but there is still much to be done

### *Collaboration and Partnerships*

We consider the organisation to be well placed largely because of the existence of the GLN, which is now supported by a separate appropriation, and the fact that Crown Law is beginning to see the opportunities the GLN provides. See the Results section above for the opportunities we see here for the Solicitor-General and for Crown Law.

We have already stated and repeat here for emphasis that Crown Law could do much to leverage the CSN and thereby lift the overall performance of the Prosecutions Service. Again, there are funding model complexities that will have to be considered to achieve this.

To be 'strong' in this area will require a shift to a much more strategic relationships-based model in the work Crown Law does for its clients. This will be aided by the continued development of the GLN, joined up approaches to recruitment, career development and the like. But, more than this, the way in which the Office runs its relationships with key, large government clients such as the Police, Inland Revenue Department, Ministry for Primary Industries and Corrections Department needs to be looked at afresh. There needs to be a more proactive approach taken, rather than remaining locked into a single client-by-client response model. Many issues that create significant legal risk to the Crown occur in parallel in different portfolios, eg, the issue of historic claims relating to abuse.



### *Experiences of the Public*

Crown Law is generally a Crown focussed organisation. To a large extent, this is entirely appropriate for the function it serves within New Zealand. It achieves its impact through the work it does through and for other agencies. Interfaces with the public or clients beyond the Crown are inconsistent although some significant national and international contributions are made. It is doing what it needs to do.

There is no communications strategy and limited external communications expertise. Careful thought is required to develop a communications plan given the multiple and carefully calibrated constitutional roles and considerations involved (eg, separation of powers, independence of Solicitor-General as Law Officer and the focus to increase trust in the rule of law).

Crown Law does not currently initiate or engage in public discourse in areas where it has considerable experience and insight. For example, broader access to justice matters, transparency and integrity indexes. It is important that New Zealanders understand the importance of Crown Law's (constitutional) work and what its absence would feel like.

## Part Three: Relationships

<b>Engagement with Ministers</b> How well does the agency provide advice and services to Ministers?
Performance Rating: Strong 
<b>Sector Contribution</b> How effectively does the agency work across the sector?
Performance Rating: Well placed 

### *Engagement with Ministers*

The Attorney-General sees Crown Law as a responsive agency providing him with high-quality, timely advice. He sees the agency as clear in its understanding of its role in upholding the rule of law. Anecdotally engagement is strong with other Ministers.

The Office has stood strong on occasion giving free, frank and fearless advice and been prepared to talk truth to power.

The Solicitor-General is widely respected and there is a high level of trust in her personally. The advice of Crown Law carries weight and is often asked for by Ministers, although some still attach importance to the Queens Counsel title and brief out matters or seek external advice on work that could be undertaken by Crown Law.

### *Sector Contribution*

See the Results section above where we have discussed aspects of Crown Law’s sector contribution.

Crown Law finds itself in a variety of sector contexts ranging from its place as a member of the Justice sector, as a leader in the GLN, to being part of the Public Service as a whole.

Overall the relationships the organisation has are ‘well placed’ but the time has come to leverage them. For example, in its role in the Justice sector, Crown Law may be underplaying its hand. In a sector that is probably dominated by operational pipeline issues (which are incredibly important) it may be missing the opportunity to drive more proactive and strategic considerations. Crown Law needs to create an impact that is inversely proportional to its size.

To exercise a leadership role that takes the GLN forward, the relationship of the Solicitor-General with other key Public Service Chief Executives is important. Only when the issues the Office wishes to progress are recognised and driven by fellow Chief Executives, will new opportunities be realised.

Regardless of which sector Crown Law is located within, its exercise of its constitutional role supporting the Law Officers responsible for the maintenance of the rule of law, is currently focused within issues-based management rather than systems approaches. There are further opportunities for Crown Law to add broader value to the overall system by sharing and capitalising on its expertise and experience.

To be ‘strong’ as an organisation in this area Crown Law needs to be challenging, proactive and using frameworks to address system issues.


## Part Four: People Development

**Leadership and Workforce Development**

How well does the agency develop its workforce (including its leadership)?

How well does the agency anticipate and respond to future capacity and capability requirements?

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Performance Rating: Needing development 

**Management of People Performance**

How well does the agency encourage high performance and continuous improvement amongst its workforce?

How well does the agency deal with poor or inadequate performance?

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Performance Rating: Needing development 

**Engagement with Staff**

How well does the agency manage its employee relations?

How well does the agency develop and maintain a diverse, highly committed and engaged workforce?

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Performance Rating: Well placed 

### *Leadership and Workforce Development*

Generally speaking management frameworks are not mature. The approach to talent management needs to be more proactive so that Crown Law can get ‘ahead of the curve’ rather than scrambling to catch up. There are a number of areas where there is high staff turnover, and in others there is dependence on key longstanding individuals, with no deliberate approach to robust succession planning. Further, Crown Law should see its place in the wider community of government lawyers as an opportunity to leverage better career planning and opportunities for the whole system, as well as for itself.

Crown Law’s people strategy was developed in 2013 but no plan was implemented to give effect to the strategy. A new workforce strategy and plan is currently being developed to support and align with Crown Law’s strategic direction refresh.

In the absence of a medium term workforce plan and a learning and development framework, training and development is not systematic and is largely reactive. Hence the ability of the agency to anticipate and respond to future capacity and capability requirements is compromised. This also has consequences for Crown Law’s ability to reflect demographic changes in those it serves. It has no clarity or plan on how it can increase diversity in its workforce, although a number within Crown Law recognise it is essential to address this.



Without the implementation of a workforce strategy the organisation is carrying significant key person risk. Plans are needed to manage this situation. External stakeholders worry about this and in some instances we found they are recruiting to make up for Crown Law's lack of focus in areas of capability they consider are critical to maintain at a senior level.

There are training programmes at the organisational and team levels that support general leadership skill development as well as professional development. GLN practice groups offer sector-informed professional training opportunities.

Most training tends to be focused on junior staff; professional development of senior staff is largely dependent on individual conversations with managers and, as already stated, is not informed by a workforce strategy.

The organisation has a culture of professional learning and development as evidenced by well-attended cross Crown Law subject matter seminars. This culture needs to be leveraged by a more systematic approach.

We have not rated Crown Law as 'weak' in this area because we have seen, supported by the organisation's PIF Self-review, that the issues are recognised and work is underway alongside the strategic refresh to rectify the situation. However attention and momentum is critical in this area.

### *Management of People Performance*

Crown Law's performance management system was introduced in 2014 and is set up to focus on continuous coaching and communication between managers and staff.

There are the usual formal processes under the system with moderation across the organisational structure to ensure organisation-wide consistency.

Overall practice under the system is variable and manager dependent, particularly with respect to managing poor performance. In this regard Crown Law is no different to many other public sector organisations.

Accurate job descriptions underpin a good performance management system. We saw some evidence of variability here, particularly in support roles. For example, the significant training work carried out by legal secretaries is not explicitly acknowledged. Legal assistants experience strong variation in expectations depending on the team an individual may be working in.

### *Engagement with Staff*

Overall, there is good engagement across Crown Law. The nature of the work, the people and the new Solicitor-General are commonly mentioned as things that staff value. Crown Law's recent engagement results show engagement is higher than other Justice Sector agencies and above the State Sector average. The 2016 results are also an improvement on prior years with overall engagement at 75% compared with 70% in 2015. In addition, there is nearly a 3:1 ratio of the workforce who are highly engaged compared to those who are disengaged (compared to a ratio of 1:1 in the 2015 survey).

Legal staff are more engaged than non-legal staff. This is consistent with the conversations we had with staff and with observations of external stakeholders. Most Strategy and Corporate staff (excluding Secretaries) see a divide between members of the Legal Groups and the Strategy and Corporate Group and that their professional expertise and contribution were not


valued. Embedding a purpose that all staff relate to and refreshing the values of Crown Law, removing status symbols such as different equipment, partitions, and desk sizes, changing physical seating layouts and providing more opportunities to integrate the office may be required to move the culture to one team. Similarly, unacceptable behaviours that work against the desired future state need to be addressed head on, irrespective of the seniority of the person involved. This will send strong positive signals to the rest of the organisation.

The increased visibility of the Solicitor-General is highly valued by all staff (legal and support staff alike). Given that strong communication is critical to shifting the culture of an organisation, it will be important that the Solicitor-General and the Leadership Team increase their visibility and unified communication further, as the new strategy and Four-year Excellence Horizon is developed and implemented.


We have awarded the 'well placed' rating for engagement with staff largely on the back of the obvious commitment of staff at all levels to the success of the organisation. However, to continue to be 'well placed', Crown Law will need to pay attention to its diversity issues.

# Part Five: Financial and Resource Management


**Asset Management**  
How well does the agency manage agency and Crown assets, and the agency's balance sheet, to support service delivery and drive performance improvement?

Performance Rating: Needing development 


**Information Management**  
How well does the agency manage and use information as a strategic asset?

Performance Rating: Needing development 

**Financial Management**  
How well does the agency plan, direct and control financial resources to drive efficient and effective output delivery?

Performance Rating: Needing development 

**Risk Management**  
How well does the agency identify and manage agency and Crown risk?

Performance Rating: Needing development 

## *Asset Management*

Crown Law has a small asset base (historical cost value of approximately \$7 million). These are largely comprised of ICT (47%) and accommodation (44%) assets. An annual capital plan is approved by the Leadership Team in the context of a four year rolling plan. The main capital expenditure forecasted for the medium term is accommodation and ICT.

The co-location of the head office with the Ministry of Justice in 2013 and the co-location of the Auckland office with the Serious Fraud Office in 2015 has reduced Crown Law's accommodation footprint and aligned its approach with the Government's property strategy.

We found evidence that the hierarchical culture in the organisation is compromising the effective use of space and creates unnecessary complexity to providing (for example) ICT services when staff are moved around the office. In some areas when a person leaves or moves, a complex pattern of moves emerges reflecting the 'pecking order' so that the most senior people are accommodated in the most 'valued' locations. This behaviour creates inefficiencies.

In recent years Crown Law's investment in information technology has focused on maintaining its infrastructure and hardware to ensure that the IT environment is stable, secure and aligned to all-of-government requirements

The IT function has also supported a mobile and digital approach with mobile devices (primarily iPads and iPhones) increasing three fold since 2012.

Limitations on the usefulness of the iPad devices have been identified and a project (Desktop-as-a-service) has been initiated to develop an alternative solution. ICT infrastructure is outsourced and this has helped to ensure appropriate back up of server infrastructure and remote access to core systems is in place to ensure business continuity.

We found widespread frustration with the telephony system but we understand there is a plan to address this in the implementation of telephony-as-a-service and refining Crown Law's mobility approach.

Asset information is held in a separate spreadsheet outside the financial management information system and stock takes occur annually. A capital asset management plan exists but is limited to the medium term (four out years to 2019/20). Further investigation in this area will be required to meet the Treasury's expectations for asset management.

### *Information Management*

We observed an organisation that is still highly paper based, as part of existing legal practice and not preparing for change. The overall maturity of IT seems relatively low. There is no Information System Strategic Plan.

The increase in demand for better and faster technology and the adoption of the 'as-a-service' models for infrastructure, desktops and telephony is presenting challenges for the current IT service model. A Review of the function is under way focusing on the alignment of ICT skills and resources to support better supplier management, better security and handling of information and ensuring appropriate training and support is available for the business to keep up-to-date and use the new technology.

Systems on their own (eg, the library) can be strong but generally systems are not focussed on user needs and efficiency. There are no Financial or Human Resource Management Information Systems. The 3E legal system seems underleveraged, with no module to assist in fee estimations. This exacerbates the already widespread dissatisfaction with the funding model and its operation.

The intranet site has not been upgraded in several years and it is difficult for staff to find content. The look and feel of the external website was updated in 2015 but the content and functionality were not. This will need updating if Crown Law is to provide better services and information to the public and core agencies, better leverage the GLN and give better effect to its refreshed strategy.

In all of the improvements that Crown Law seeks to make in its IT systems it is important to focus on 'vanilla' solutions, rather than building expensive bespoke applications that will be hard to maintain.

## *Financial Management*

Crown Law uses a law practice management system (3E) as its financial system. This function is relatively immature and is not valued culturally in the organisation. It is inefficient and demands a high level of direct intervention (through a spreadsheet system) to manage the control environment. The current limitations of the system (and lack of ongoing data analytics) impact Crown Law's ability to provide robust cost estimates, and expenditure to date has to be manually calculated if asked for by the client.

That said, the controls themselves are satisfactory. Crown Law receives 'good' and 'very good' ratings from Audit NZ for its internal control environment. Recent results from the Treasury's annual internal control evaluation using the internal control assessment tool, also indicate Crown Law has a sound internal control environment.

No significant investment has been made in 3E's functionality or supporting processes since implementation and 3E doesn't support or provide rich reporting and forecasting functionality. Financial budgeting forecasting and reporting processes are very manual and so too are the processes for entering and approving invoices for payment and creating invoices for clients.

Time recording and other information is captured in 3E and is used for cost allocations to report against appropriations, the Reviewing and setting of fees, and performance reporting on quantities of work and monitoring the adherence to quality processes (eg, peer Reviews). However, there is a lot more that can be done to understand efficiency of the various legal services provided.

## *Risk Management*

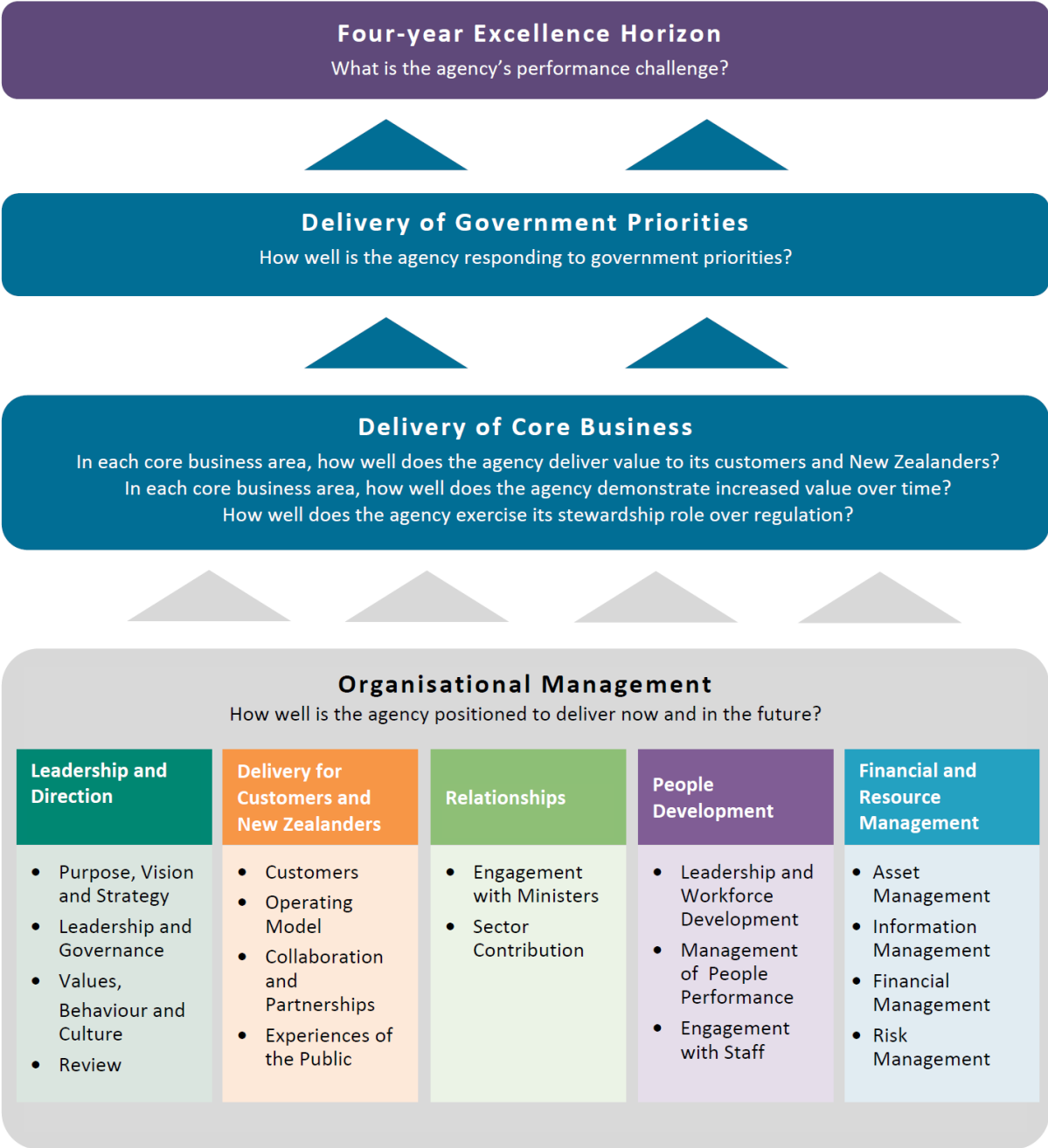
Crown Law is doing as well in terms of management of its organisational risks as would be expected of an agency of its size, given the largely manual assurance systems it operates.

There is an external Audit and Risk Committee.

With respect to broader Crown legal risk and the role that Crown Law plays, we found that while the GLN now has a reasonably robust methodology to identify Crown risk from the perspective of its members, this must expand to include wider perspectives. Additionally, there does not appear to be any GLN mitigation strategy and the system does not connect risk across the system, eg, historic claims relating to abuse. Significant opportunity for improvement exists.

# Appendix A

## The Performance Improvement Framework



## Lead Questions

### Four-year Excellence Horizon

What is the agency's performance challenge?

#### Results

Critical area	Lead Questions
Government Priorities	1. How well is the agency responding to government priorities?
Core Business	2. In each core business area, how well does the agency deliver value to its customers and New Zealanders?
	3. In each core business area, how well does the agency demonstrate increased value over time?
	4. How well does the agency exercise its stewardship role over regulation?

#### Organisational Management

Critical area	Element	Lead Questions
Leadership and Direction	Purpose, Vision and Strategy	5. How well do the staff and stakeholders understand the agency's purpose, vision and strategy? 6. How well does the agency consider and plan for possible changes in its purpose or role in the foreseeable future?
	Leadership and Governance	7. How well does the senior team provide collective leadership and direction to the agency and how well does it implement change? 8. How effectively does the board lead the Crown entity? (For Crown entities only)
	Values, Behaviour and Culture	9. How well does the agency develop and promote the organisational values, behaviours and culture it needs to support its strategic direction and ensure customer value?
	Review	10. How well does the agency encourage and use evaluative activity?
Delivery for Customers and New Zealanders	Customers	11. How well does the agency understand who its customers are and their short and longer term needs and impact? 12. How clear is the agency's value proposition (the 'what')?
	Operating Model	13. How well does the agency's operating model (the 'how') support delivery of government priorities and core business? 14. How well does the agency evaluate service delivery options?
	Collaboration and Partnerships	15. How well does the agency generate common ownership and genuine collaboration on strategy and service delivery with partners and providers? 16. How well do the agency and its strategic partners integrate services to deliver value to customers?
	Experiences of the Public	17. How well does the agency employ service design, continuous improvement and innovation to ensure outstanding customer experiences? 18. How well does the agency continuously seek to understand customers' and New Zealanders' satisfaction and take action accordingly?
Relationships	Engagement with Ministers	19. How well does the agency provide advice and services to Ministers?
	Sector Contribution	20. How effectively does the agency work across the sector?
People Development	Leadership and Workforce Development	21. How well does the agency develop its workforce (including its leadership)? 22. How well does the agency anticipate and respond to future capacity and capability requirements?
	Management of People Performance	23. How well does the agency encourage high performance and continuous improvement amongst its workforce? 24. How well does the agency deal with poor or inadequate performance?
	Engagement with Staff	25. How well does the agency manage its employee relations? 26. How well does the agency develop and maintain a diverse, highly committed and engaged workforce?
Financial and Resource Management	Asset Management	27. How well does the agency manage agency and Crown assets, and the agency's balance sheet, to support service delivery and drive performance improvement?
	Information Management	28. How well does the agency manage and use information as a strategic asset?
	Financial Management	29. How well does the agency plan, direct and control financial resources to drive efficient and effective output delivery?
	Risk Management	30. How well does the agency identify and manage agency and Crown risk?

# Appendix B

## List of Interviews

This PIF Review was informed by input provided by Ministers, Crown Law staff, members of the judiciary, Crown Solicitors, departmental lawyers including office holders of the Government Legal Network, other members of the Bar, and departmental officials including from the Justice Sector and central agencies.