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## PERFORMANCE IMPROVEMENT FRAMEWORK

# **Follow Up Review of the Crown Law Office (Crown Law)**

**MARCH 2013**

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State Services Commission, the Treasury and the Department of the Prime Minister and Cabinet

## **Lead Reviewer's Acknowledgement**

The assistance and cooperation extended by the Solicitor-General and his team, and those stakeholders who made themselves available to participate in this Review was greatly appreciated. I would also like to acknowledge invaluable assistance provided by Peter Doolin as my expert advisor.

**Performance Improvement Framework  
Follow Up review: Crown Law**

**State Services Commission, the Treasury, and the Department of the Prime Minister and Cabinet  
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## PIF FOLLOW UP REVIEW

It is important to understand the context within which the Performance Improvement Framework (PIF) is being delivered. There are two developments driving change across the public sector. The first one is that everywhere across the world people are under some fiscal constraint of one sort or another, some more severe than others. What that means is that there isn't a lot of money around to fund services, so people have to look really hard at how they get the best value from the dollar they've got. The second big development is that people's expectations, citizens' expectations, are rising. People want to interact with government in a different way. People's expectations of the sorts of services they can get from government are changing. It's partially a generational thing, there is a huge change coming in terms of the way individuals want to access services. But, more critically, people expect more from their tax dollar. These two things in particular are driving the need for the State Services to do things differently. The changes we made in the late 80s and early 90s were world leading. They had lots of strengths but they had lots of weaknesses. While PIF builds on the strengths of those early reforms the stated aspiration is to take New Zealand from having a good public service, which it has today, to a great public service in the future.

The New Zealand public service is already number one in the world for the absence of corruption. Senior leaders in the State Services want to lift performance in a number of other areas to make sure we have the best public service in the world. PIF is a key tool to enable public servants to do just that. At its heart a PIF is a review of agencies' fitness-for-purpose as they prepare for the challenges in the future. It looks at the current state of an agency, then how well placed the agency is to deal with the issues that confront it in the near future. It looks at the areas where the agency needs to do the most work to make them fit-for-the-future. And, because change does not happen overnight, the PIF is evolving to assist chief executives and Chairs beyond their first report. The PIF Follow Up review is a stock take of the progress the agency has made since its initial review. It is another example of the public service taking ownership of its own continuous improvement and using the PIF to do its job better. As with the first reports, these reports are published. That way the public can have confidence that the public sector is continuing to improve its performance year in and year out.

# CONTENTS

PIF Follow Up Review .....	1
Introduction.....	3
Agency’s Response .....	4
Context .....	5
The Performance Challenge .....	6
Key Findings of Follow Up Review .....	7
Desired Future State – Four-year Excellence Horizon .....	10
What Success Looks Like .....	10
Appendix A .....	12
Interviewees .....	12

## INTRODUCTION

A PIF review of the Crown Law Office (Crown Law) was conducted in 2010. The key findings were that:

- Crown Law had demonstrated a high level of performance in supporting the Principal Law Officer functions and the conduct of appeals.
- Crown Law's 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.

The review noted that 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 information technology (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.

This Follow Up review was undertaken in December 2012. I was assisted in the review by Peter Doolin who had undertaken the original review with me in 2010.

The focus of the Follow Up review was on the role and purpose of Crown Law as a provider of legal services to the Crown. This has included consideration of:

- the operating model
- governance and leadership
- the capability of human and support systems and processes
- culture, and
- client relationship management.

The Follow Up review, to the extent possible in the time available, has considered the work undertaken by Crown Law since the original PIF Review with respect to the redesign of its corporate support infrastructure, its role as the manager of the Crown Solicitor Network, its focus on core and non-core work and its current project to realign its legal workforce. In addition, the Follow Up review has considered Crown Law's performance challenge and painted a Four-Year Excellence Horizon.

### **Paula Rebstock**

Lead Reviewer

## **AGENCY'S RESPONSE**

Crown Law is committed to improving its performance and has valued the insights offered by both the Formal and Follow Up PIF reviews. Following the Formal review, Crown Law established a significant change programme to lift its performance. Many of the recommendations from the Formal review have been implemented, or are currently being progressed, through Crown Law's change programme.

While Crown Law is in a stronger position now compared to when the Formal review was conducted, I acknowledge that there is still more that could be done and the benefits of our new way of working are yet to be fully realised. The Follow Up review has identified a number of opportunities, issues and risks that require ongoing focus and resolution.

With our clarified focus on core Crown legal work and greater expectations from our clients and the Government, it is timely to consider how we are organised, how we do our work and how our culture impacts the way we work. By the end of the year, we will have a greater focus on core Crown legal work, which will be supported by better client services. We will deliver high quality, responsive, and fit-for-purpose services, in a more efficient way. We will be in a new Crown Law structure, with new surroundings and new technology. These changes will ensure that we deliver greater value for money.

I am confident that our current change programme will address the opportunities, risks and issues that have been identified through the Follow Up review. The changes we are implementing will result in a stronger, more efficient organisation that delivers better legal services and reduces legal risk across government.

I am grateful to the reviewers for their efforts and professionalism in conducting both reviews, particularly given the changes that were underway at the time. I also appreciate the engagement and openness of staff and stakeholders during the process. Without their input the findings may not have proven to be as informative.

**Michael Heron**

Solicitor-General and Chief Executive

## CONTEXT

Crown Law was the subject of three external reviews in 2011/12:

- the Review of Public Prosecution Services
- the PIF Review
- the Review of the Role and Functions of the Solicitor-General and the Crown Law Office.

Currently Crown Law has a change programme underway that incorporates its response to the majority of the recommendations from each of these reviews.

## THE PERFORMANCE CHALLENGE

The environment in which Crown Law operates has changed substantially over the last decade due to:

- the increased use of the Crown entity model
- greater contestability of legal services from within government agencies and the private sector
- improving case management by the Courts
- increased complexity of legislation
- enhanced client and public expectations of service and value for money
- greater scrutiny and accountability within the public sector, particularly of government departments such as Crown Law.

The public sector is increasingly being challenged to work together to achieve government outcomes, such as economic growth and to reduce the likelihood of reoffending. These developments have been given urgency due to the fiscal constraints on the Government as a result of the international financial crisis. Crown Law, as with other departments and Crown entities, is expected to operate within fixed and/or reducing budgets.

As a result of these pressures, three separate reviews were undertaken of Crown Law to support improvements in its performance. The area of greatest performance challenge and fiscal pressure related to the Crown Solicitor Network and its prosecution services. Crown Law has been tasked with identifying a sustainable long-term funding model, enhancing its overall financial management and managing cost, while maintaining quality during the transition.

Against this backdrop, Crown Law's performance challenge is to:

- support a trusted Justice system by enabling the Attorney-General and Solicitor-General to perform their constitutional functions and other duties
- hold offenders to account through effective and efficient criminal proceedings, undertaken in the public interest
- manage legal risks of the Crown and protect its interests, to enable the Government to achieve its objectives and act lawfully.

To respond to its performance challenge, Crown Law has identified six strategic focus areas:

- confirming its purpose
- enhanced client and stakeholder relationships
- supporting Justice Sector leadership
- developing its strategic leadership function
- being efficient and sustainable
- having fully engaged staff.



## KEY FINDINGS OF FOLLOW UP REVIEW

Crown Law has made commendable progress since the original PIF Review. Notably it has:

- reviewed and refreshed its purpose, impacts, vision and strategic focus
- strengthened its leadership by creating a new Deputy Chief Executive role responsible for Crown Law's strategic and financial management and external stakeholder relationships. As a consequence, there is a better understanding of the Crown Law business model and cost pressures, the nature of its appropriations and funding arrangements. Furthermore, Crown Law has improved its contribution to the Justice Sector
- streamlined functions and developed a new performance framework that brings greater transparency and accountability to what Crown Law is seeking to achieve and how its performance is to be measured
- undertaken the Legal Issues Project which resulted in a definition of Crown Law's core business and the implementation of the new Cabinet Directions for the Conduct of Crown Legal Business 2012
- reorganised Crown Law's Strategy and Corporate functions to reflect Crown Law's purpose, direction and future operating model. A Chief Information Officer role has been established, accommodation requirements (to support collaborative working) have been addressed and human resource and organisational development capability has been strengthened
- established a Public Prosecutions Unit to provide financial and management oversight of the Crown Solicitor Network and public prosecutions
- led strong engagement on the development of Prosecution Guidelines
- instigated a Legal Capability and Structure Project, which has set out for consultation what legal resources are required and how they should be organised to deliver on the Crown Law vision and strategic direction and to give effect to the core and non-core work categorisations
- developed a Four-Year Budget Plan to address Crown Law cost pressures
- scheduled a workforce strategy and roadmap for development in 2013 to ensure Crown Law has sufficient capacity and capability to deliver its purpose
- overseen the ongoing development of the Government Legal Services Network which has resulted in the following: reaching agreement with Brookers and Lexis Nexis on legal databases; established a legal database for government lawyers; set up an annual conference; developed induction packages; and advertised for new lawyers through the Government Legal Services Network.

There has been substantial progress on organisational development since the original PIF, and high standards of legal service have been maintained.

The external stakeholders remain confident in the ability of Crown Law to deliver legal services whilst addressing the challenges of being a part of a rapidly changing public sector. High-level strategies and operating models have been developed and Crown Law now faces the critical implementation period.

Looking ahead, there are a number of opportunities, issues and risks that need ongoing focus and resolution. These are discussed below.

## Opportunities for Continual Improvement

While a strong platform has been set for the future, there are a number of areas that will require thoughtful implementation in order to deliver the emerging Crown Law Office strategy and operating model, including:

- 1 A need to fully specify and clearly articulate the Crown Law operating model; to define the required behaviours and competencies to give effect to the operating model and then use them to inform leadership roles in the new structure and appoint against them. It is vital there are sufficient Crown Counsel and staff at each level with the appropriate competency to deliver on the Crown Law Office purpose.
- 2 Key transition risks need to be managed through:
  - a considered strategy to avoid the loss of key people, and therefore institutional knowledge, during the change process
  - clear communication with stakeholders and major clients to address any concerns or reputational risk over the change process
  - securing sufficient internal change management and government management experience, particularly given the recent departure of the Acting Deputy Chief Executive
  - ensuring there is a critical mass of support across the leadership team to lead and drive change. The future operating model is still contested and therefore a significant challenge for the senior leadership team is to motivate Crown Law staff as to the merits of the restructure.
- 3 The values, behaviours and operating principles to underpin Crown Law practice should be specified. The remuneration, workforce and performance management strategies all need to reflect these principles. Those in senior leadership roles must model the required behaviours whilst the culture to support the future strategy is embedded. Appointment of suitable candidates to roles, confronting poor performance and rewarding good performance are all important features of the future operating model.
- 4 There continues to be a disconnect between lawyers and non-lawyers across some parts of Crown Law. Developing an organisational culture that breaks this down should be a focus for the senior leadership team.
- 5 A client-focused culture is vital to the future operating model. While at a constitutional level the client is the Crown, Crown Law needs to have a consistently held view of the nature of the relationship it has with the departments/Ministers it is working for and it must communicate that view to Departments, its day-to-day clients. Client relationship management is still fragile and there is inconsistent practice. Crown Counsel need not only to understand relevant law but also the business context the client is operating in. Clients should have certainty they have someone who understands their business. Where the tension between the Crown, as overall client, and the business interests of the day-to-day client are genuinely conflicted, Crown Counsel need to have the skills and diplomacy to manage that tension in a client-centred way. It would be useful to paint a picture of what it means to be an excellent Crown Counsel. Clients will work with junior staff if they are well supervised and the culture and legal work processes support it. Access to the right people at the right time is vital.

- 6 Collective bargaining processes are running at the same time as the change process, which presents unique challenges and will need to be carefully managed.
- 7 The funding model for the Crown Solicitor Network is still to be specified and therefore there is still uncertainty alongside the expectations upon Crown Law to find a workable solution. There is some risk around Auckland being the largest warrant and facing the largest cuts. Better information based on full lifecycle costs is needed to inform longer term strategic decision making about the funding model.
- 8 Whilst significant progress has been made, the Government Legal Services Network has yet to realise its full potential. Its short-term funding arrangements are a constraint on the ability to develop the programme to its full potential. Value to departments (not just lawyers) needs to be real and demonstrable. Only then can financing of network initiatives be advanced. Given execution risk, there is a need to prioritise areas for focus.
- 9 There may be benefit in explicitly clarifying the principles that Crown Law, and its agents, operate by that are consistent with the role of the Crown, the Bill of Rights and Human Rights.
- 10 Crown Law has a supervisory role of legal work across government, but there is no structure for it to occur in (other than the Cabinet Directions). As a consequence, there are a lot of fiefdoms and it is hard to achieve principled outcomes. There is a need for an over-arching philosophy of the provision of Crown legal services – with some legal work highly supervised by Crown Law, while other legal work is not (along a continuum). It would be ideal if a formal understanding, written for the whole Crown ‘team’, specified how Crown Law and in-house public sector legal teams interact and work together to conduct the Crown’s legal work. This is currently in progress in the form of the “Working with Crown Law” publication.
- 11 While Crown Law is working better, there is still a need to better understand and demonstrate value for money (qualitative and quantitative). The next challenge is to determine the impact Crown Law is having. There is also a need to measure progress in implementing the new purpose, strategy and vision. Again, it is understood that Crown Law is working on the appropriate measurements.
- 12 Information Management and Technology: there is a need for faster, simpler and more cost-effective technology to make the transition easier. Understanding the profile of the user and choosing technology for them – flexible solutions for different users – is critical to success. Content management systems with excellent search capability and filing systems will ease legal work processes. The Management Board and senior leadership team must lead by example by being early adopters.

## DESIRED FUTURE STATE – FOUR-YEAR EXCELLENCE HORIZON

This section describes what Crown Law will look like in a future state if it has successfully transformed itself to capitalise on the opportunities identified in the original PIF Review and updated in this Follow Up review. The purpose of this section is to provide management with a yardstick for judging the extent to which Crown Law's response to this Follow Up review is likely to be sufficient to deliver the future desired state.

Crown Law's future state is based on it continuing to implement the strategies it identified following the original PIF Review.

### What Success Looks Like

In four years' time, Crown Law would have transformed its strategy and operating model to underpin its success in meeting its core purpose to support the rule of law, through:

- supporting a trusted Justice system by enabling the Attorney-General and Solicitor-General to perform their constitutional functions and other duties
- holding offenders to account through effective and efficient criminal proceedings, undertaken in the public interest
- managing legal risks to the Crown and protecting its interests, to enable the Government to achieve its objectives and act lawfully.

This will be the result of:

- clarity around purpose and vision, with close staff and stakeholder alignment
- a well executed implementation of the Cabinet Directions and as a consequence the strategic direction is focused on delivery of core work. Crown entities know when to seek Crown Law advice because of the wider whole of government risks to the Crown
- culture, values and behaviours that reflect the new purpose, vision and operating model of Crown Law. Crown Law (and its agents) is highly regarded for the principles that guide its work. As a consequence, Crown Counsel are widely recognised as a model litigants and Officers of the Court
- corporate functions that support the vision and operating model. The Solicitor-General is supported by an experienced Deputy who is respected within Crown Law and is highly regarded for government management capability, freeing up other Deputy Solicitors-General to focus on client relationships and core legal work
- collaborative structures and legal work processes across Crown Law and with its clients. The role and expectations of Crown Law are clear
- the right people doing the right thing, at the right time, with the right culture. Crown Law is customer centric. It has maintained its depth of experience and high standard of work while undergoing change. It is working in tandem with departmental legal advisors, on budget and on time

- people wanting to work at Crown Law because of its cutting edge work; combining technical legal expertise with practical solutions to resolve legal risk and pressure. The resources of Crown Law are better utilised, as an office it is connected-up and job satisfaction is high. Staff feel part of a community at Crown Law and there are more opportunities to take up senior secondments across the public service. While people are promoted in response to business needs, good performance is recognised and rewarded
- a high degree of connectedness established throughout the Government Legal Services Network. Government departments have realised the benefit from investing in the Government Legal Services Network and are prepared to contribute to sustain and develop it. The Government Legal Services Network has lifted overall capability, facilitated collaboration and leveraged information across government legal services. As a consequence, an element of Crown Law leadership of the Government Legal Services Network has been accepted
- Crown Law being responsive and joined up with rest of the Justice Sector – able to provide senior advice to clients; playing its part – it is powerful and influential. While working to the same broad ends in the Justice Sector, it is doing so mindful of its specific role and certain guiding principles. The Solicitor-General’s obligations of independence are always met. Crown Law is recognised as the guardian of infringements against legal values
- its leadership position and record of delivery may allow it to take a greater lead in a number of contentious areas, including (where appropriate): public response to criticism of the courts; contempt of court and vexatious claims; judicial reviews of the Judicial Conduct Commissioner; and to support the proper working of courts.

Ultimately, Crown Law will be highly respected as the leading administrative and public law expert. The Crown will have confidence that its legal advisors are focused on matters of significance across public, criminal, constitutional, human rights and Treaty of Waitangi legal issues. Crown Law will demonstrate it is on top of the Government’s business and the Government will know it is meeting its legal obligations and can make decisions to advance its programme.

# APPENDIX A

## Interviewees

In addition to input provided by Ministers, Crown Law staff and representatives of Central Agencies, this Follow Up review was informed by representatives from the bench, senior counsel, crown solicitors and departmental clients. I am grateful for their time and insight.