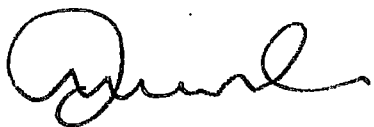


REGULATORY IMPACT STATEMENT

Revoking the Crown Solicitors Regulations 1994

Agency disclosure statement

1. This regulatory impact statement has been prepared by Crown Law. It provides an analysis of the options for the legal form of the terms of office for Crown Solicitors which are presently set out in the Crown Solicitors Regulations 1994. The analysis draws on the findings and recommendations of the *Review of Public Prosecution Services* and other policy work.
2. The fees regime and other terms of office are presently included in the Crown Solicitors Regulations 1994. Three interlocking pieces of work have lead Crown Law to review the Crown Solicitors Regulations 1994:
 - 2.1 Work to identify the long-term solution for funding and pricing Crown prosecution services;
 - 2.2 Work arising out of the *Review of Public Prosecution Services* to enhance the Solicitor-General's oversight of departmental prosecutions;
 - 2.3 The forthcoming implementation of the Criminal Procedure Act 2011, which would have required a rewrite of the Regulations.
3. When reviewing the Regulations Crown Law has taken account of the Government statement on "Better Regulation, Less Regulation". Crown Law has concluded that the Regulations may be revoked as they are unnecessary and a hamper to the Solicitor-General's functions in the oversight of prosecutions. To achieve enhanced fiscal management of Crown prosecutions costs and maintain oversight of and consistency in the pricing arrangements for departmental prosecutions I recommend that the Solicitor-General is authorised, on behalf of the Crown, to set the terms of office for Crown Solicitors and the fee arrangements for Crown and departmental prosecutions,.



Cameron Mander
Deputy Solicitor-General

Status Quo and Problem Definition

1. The essential problem is to determine the best legal form for the terms and conditions, including fee arrangements, under which Crown Solicitors carry out their role, to support the Solicitor-General's oversight of public prosecutions and the need for fiscal management.
2. The problem has the following elements:
 - 2.1 Pricing is presently set by the Crown Solicitor Regulations 1994 on a (partially capped) time and materials basis. The Regulations put the price risk with the Crown, give no cost certainty on overall cost and have inhibited management and control of expenditure;
 - 2.2 It is proposed to reform the fee arrangements for Crown Solicitors' work on Crown prosecutions and departmental prosecutions;
 - 2.3 Pursuant to the Cabinet Directions on the Conduct of Crown Legal Business departments who do not wish to conduct a departmental prosecution in-house are required to instruct a Crown Solicitor;
 - 2.4 The Regulations are currently structured to reflect the existing criminal procedure regime which will be replaced by the Criminal Procedure Act 2011; and
 - 2.5 Parts of the existing Regulations are redundant and do not reflect the current role of Crown Solicitors.
3. The status quo does not address the need for better management of expenditure on Crown Solicitors' services and does not align well with the Solicitor-General's responsibility for oversight of public prosecutions.

Objectives

4. The criteria are that the preferred legal form for the terms under which Crown Solicitors carry out their office will:
 - 4.1 Support the effective conduct of prosecutions;
 - 4.2 Support fiscal management;
 - 4.3 Support consistency and cost-effectiveness of pricing for departmental prosecutions;
 - 4.4 Be simple and low cost to administer;
 - 4.5 Be transparent and fair;
 - 4.6 Be implemented by 1 July 2013; and
 - 4.7 Take into account the Criminal Procedure Act 2011.

Regulatory impact analysis

5. Crown Law's preferred option is to revoke the Crown Solicitor Regulations 1994. Instead the Solicitor-General will:
 - 5.1 Set the terms of office for Crown Solicitors and a new pricing regime for Crown prosecutions and related cases, which sets an annual fee based on projected volumes and workload. The fee will be reviewed each year; and

- 5.2 Set the fees for Crown Solicitors conducting departmental prosecutions.
6. The Solicitor-General shares the Attorney-General's responsibility for oversight of the prosecution system. In day to day practice these responsibilities are carried out by the Solicitor-General. The Criminal Procedure Act 2011 has now codified the Solicitor-General's long-standing responsibilities. Through the Attorney-General the Solicitor-General is accountable for expenditure on the Crown prosecution services from Vote Attorney-General.
 7. The Crown Solicitors Regulations 1994 weaken the Solicitor-General's fiscal management of Crown prosecutions, in particular. Crown Solicitors' fees for Crown prosecutions are funded by Vote Attorney-General, administered by the Crown Law Office. However, under the current arrangement the costs of prosecutions are largely determined by the Regulations, subject only to approval by the Solicitor-General with limited means to reduce or manage costs on a case by case basis. This hampers managing within set funding.
 8. In addition, it is not necessary to set the fees or other terms of office by regulations. If authorised by Cabinet and subject to the necessary appropriations to provide legal authority, the fee arrangements and other terms and conditions may be set by the Solicitor-General, on behalf of the Crown.

Options considered

9. Two alternative options were considered. The first was to amend the Regulations to provide for the new fee arrangements for Crown prosecutions and departmental prosecutions. This option was rejected because it hampers the Solicitor-General's fiscal management of Crown prosecution costs. It is also unnecessary to set the fees by regulations because there are alternatives. The Crown has the powers of a natural person and various appropriations (in Vote Attorney-General and other departmental Votes) provide authority for the Crown to incur expenses and spend public money in respect of criminal prosecutions.
10. The second alternative, for departmental prosecutions, was to allow departments to enter into fee arrangements directly with Crown Solicitors. This is possible because those departments already have authority under their appropriations to incur this expenditure and may enter into agreements with Crown Solicitors for the provision of those services. There would not be an overarching fees framework for this work or oversight by the Solicitor-General of the fees arrangements. This alternative does not meet the objectives of consistency and cost-effectiveness.

Consultation

11. Crown Law has consulted with departments and certain Crown entities on this proposal and their views have been incorporated. The Department of the Prime Minister and Cabinet has been informed.
12. Crown Solicitors were also consulted on the proposals in this paper.

Conclusions and recommendations

13. We recommend the Crown Solicitors Regulations 1994 are revoked. We recommend that the Solicitor-General is authorised to set the terms of office for Crown Solicitors and the annual capped fee for each Crown Solicitor taking into account projected volume and case complexity. We also recommend that the Solicitor-General is authorised to set the fees payable to Crown Solicitors for departmental prosecutions. The fees for departmental prosecutions will set the

fees by case stage. As part of that arrangement it is proposed to enable departments to seek the Solicitor-General's approval to enter into alternative fee arrangements with Crown Solicitors.

14. The preferred option is the only option which satisfies the objectives. It removes unnecessary regulation and supports the Solicitor-General's oversight of public prosecutions, particularly fiscal management. It also ensures a consistent and cost-effective approach to departmental prosecutions.

Implementation

15. The preferred option will be implemented by means of terms of office set by the Solicitor-General. The Solicitor-General will also set the fee arrangements. The preferred option must be implemented by 1 July 2013, the start of the next financial year and the expected date for the full implementation of the Criminal Procedure Act 2011. Departments and Crown Solicitors will be consulted before the documents are finalised and take effect on 1 July 2013.

Monitoring, Evaluation and Review

16. Crown Law will monitor the effectiveness of the annual fee for Crown prosecutions throughout the financial year. Each year the annual cap will be reviewed. A formal review of the fee arrangements for Crown prosecutions will be carried out after three years.
17. Under the arrangements for departmental prosecutions departments will be required to provide information about the fees paid each year. This will contribute to a formal review of the fee arrangements for departmental prosecutions after two years.