

**BRIEFING TO THE INCOMING
ATTORNEY-GENERAL**

November 2020

INTRODUCTION

1. Recent events brought about by the COVID-19 pandemic have clearly demonstrated the importance of the constitutional role of the Attorney-General — the senior Law Officer of the Crown, responsible for ensuring that government is conducted according to law.
2. You are supported in performing this unique task by the junior Law Officer, the Solicitor-General, Una Jagose QC. She leads Te Tari Ture o te Karauna/Crown Law and the network of more than 800 lawyers employed by departments across the public service.
 - 2.1 This *Briefing to the Incoming Minister* (BIM) provides core information to help you fulfil your role, taking into account your familiarity with it. In our briefing we have focussed on pertinent and updated information.
3. The briefing includes:
 - 3.1 Part One describes the position of the Attorney-General, and its constitutional importance in New Zealand’s system of government.
 - 3.2 Part Two describes how Crown Law supports the Law Officers.
 - 3.3 Part Three sets out Crown Law’s strategic direction and impact.
 - 3.4 Attachments including the *Justice Sector Briefing to Incoming Ministers*.
4. We have also provided you with additional papers, subject to legal professional privilege:
 - 4.1 A briefing on legal issues that are likely to need your engagement in the next three months, into 2021, and a discussion of the longer-term legal themes and trends.
 - 4.2 A copy of the latest quarterly Crown legal risk report.
5. We can also provide any further information as required.

PART ONE

THE CONSTITUTIONAL ROLES OF THE LAW OFFICERS

6. The Attorney-General has two primary roles in the New Zealand Government:
 - 6.1 as a Minister of the Crown with ministerial responsibility for Crown Law and the Parliamentary Counsel Office; and
 - 6.2 as the senior Law Officer of the Crown, with principal responsibility for the Government's lawful conduct and administration of the criminal law. This function is exercised in conjunction with the junior Law Officer, the Solicitor-General.
7. The Attorney-General has a different role to that of all other Ministers of the Crown. The fundamental responsibility of the Attorney-General, when acting as Law Officer, is to act in the public interest. In exercising the powers, functions and duties of a Law Officer, the Attorney-General disregards any political interest or partisan considerations.
8. Naturally, the public interest on any given issue cannot be determined in isolation from practical realities, and that may require that political factors be considered along with others. The point is Law Officers do not advise or make decisions with the aim of securing political or similar advantage.
9. As a public service chief executive, the Solicitor-General acts in a politically neutral manner. Most of the Law Officer functions, duties and powers can be, and are, exercised or performed by the Solicitor-General, thereby isolating Law Officer decision-making from any suggestion of political influence.
10. Subject only to the Attorney-General's view, the Solicitor-General has responsibility for determining the Crown's view of the law and its position in the Courts.
11. In exercising their constitutional roles, the Attorney-General and Solicitor-General seek to ensure that:
 - 11.1 the operations of Executive Government are conducted lawfully and constitutionally; and
 - 11.2 the Government is not prevented through use of the legal process from lawfully implementing its chosen policies.
12. These constitutional responsibilities, which support New Zealand's commitment to democratic government according to law, are reflected in the functions of Crown Law.
13. As you know, the Senior Law Officer undertakes functions including recommending appointments, representing the public interest in litigation and in relation to charitable trusts, and with the Solicitor-General, in relation to the administration of criminal justice. Given your experience in the role we have not described these in detail.
14. As Attorney-General you are one of the Justice Sector Ministers supported by the Justice Sector collaboration of agencies. We have attached a briefing to incoming Ministers from the six agencies represented on the Justice Sector Leadership Board. In addition to Crown Law, these agencies are the Ministry of Justice, Ara Poutama

Aotearoa/Department of Corrections, New Zealand Police, Serious Fraud Office and Oranga Tamariki. The briefing highlights the benefits of Justice Sector collaboration and outlines the ways the Sector can help progress the incoming Government's goals. A regular forum for Justice Sector Ministers is proposed to oversee and accelerate opportunities for cross agency action.

PART TWO

HOW CROWN LAW SUPPORTS THE LAW OFFICERS

15. Crown Law supports the Attorney-General and the Solicitor-General to fulfil their constitutional responsibilities, as the Law Officers of the Crown.
16. Crown Law provides legal advice and representation services to the Government in matters affecting the Executive, particularly in the areas of criminal, public and administrative law. Crown Law's focus is on core Crown legal work as that term is defined in the Cabinet Directions for the Conduct of Crown Legal Business — essentially, the core legal work for which the Attorney-General and Solicitor-General are constitutionally responsible.
17. Crown Law supports you as a Minister of the Crown, including with commitments and obligations under the Public Finance Act 1989. We work with your office to ensure you have access to the information you need, for example a weekly report on current legal issues, Statements of Intent, answers to Parliamentary and Select Committee questions, the Budget Estimates process, and an Annual Report.
18. Crown Law undertakes two system leadership roles. First, the Solicitor-General is the professional head of more than 800 government lawyers, comprising the Government Legal Network (GLN) and supported by the System Leadership Group. The GLN is a collaborative initiative by departmental Chief Legal Advisors and the Solicitor-General to promote across-government collaboration in the delivery of quality legal services to the Crown. As outlined in the next section a networked approach enhances the Crown's legal capability and facilitates the Law Officers' constitutional functions, most recently demonstrated by the response to COVID-19.
19. Second, the Solicitor-General maintains oversight of public prosecutions and administers the Crown Solicitors through the Public Prosecutions Unit (PPU). Crown Solicitors are funded through a capped bulk-funding model. For non-Crown prosecutions, the PPU has recently completed a review of the In-House Public Prosecutors classification framework, in effect since 2018, and implemented a revised framework. The next stage will be to introduce annual survey reviews for prosecuting agencies for quality assurance. The survey reviews will complement the in depth reviews currently taking place and allow for more prosecuting agencies to be reviewed over a shorter time.
20. Crown Law has 228 staff (208.29 full-time equivalent) who deliver legal services and organisational enablement functions, structured into five groups:
 - 20.1 Attorney-General's Group — comprising constitutional, human rights and te Tiriti o Waitangi functions
 - 20.2 Criminal Group — comprising criminal appeals, mutual assistance and extradition matters and oversight of the Crown Solicitor Network and public prosecutions
 - 20.3 Crown Legal Risk group — comprising COVID-19, public inquiries, general public law and revenue functions
 - 20.4 Strategy and Corporate Group — comprising the accountability and organisational enablement functions

- 20.5 System Leadership Group — comprising the Government Legal Network Programmes and Capability function, and System Advice functions.
21. An organisational chart for Crown Law is attached.
22. The majority of staff are based in Wellington, at the Justice Centre on Aitken Street, Thorndon. Thirteen staff (10.8 full-time equivalent) are based in Auckland Central, co-located with the Serious Fraud Office.

Funding

23. Crown Law is funded by Vote Attorney-General. Funding for 2020/21 is \$79.360m covering the following:
- 23.1 a total of \$78.561m to provide for the discharge of the Law Officers' constitutional, criminal law, and system leadership responsibilities including legal advice and representation; and
- 23.2 a total of \$0.799m for capital expenditure that relates to the renewal and replacement of assets in support of our service delivery.
24. The amount of \$78.561m is provided through a Multi-Category Appropriation (MCA) for the Law Officer Functions, which includes the following categories:
- 24.1 leading and developing the collective strength of government lawyers and providing legal advice and representation services to State Sector entities (\$24.179m);
- 24.2 conducting appeals arising from Crown prosecutions (\$3.994m);
- 24.3 providing assistance to the Law Officers in the exercise of their functions, and providing advice on constitutional, criminal law, mutual assistance and extradition matters (\$5.702m); and
- 24.4 the provision and supervision of a national Crown prosecution service and oversight of public prosecutions (\$44.686m).
25. Other legal advice and representation is generally funded on a cost-recovery basis. Other functions within the MCA are mainly funded by Crown revenue. Crown Law has a Permanent Legislative Authority (PLA) for capital expenditure.
26. Crown Law has recently completed a review of the fees it charges government departments in order to recover the costs of legal advice and representation services. The new fees were implemented on 1 July 2020. They reflect an increase in the fees previously charged, but remain well below the rates of All-of-Government legal panel members. Prior to implementing this new fee structure fees had been held since 1 October 2017.

PART THREE

CROWN LAW'S STRATEGIC IMPACT

Our vision

28. Te Tari Ture o te Karauna/Crown Law's vision is to deliver collaborative, indispensable legal service. We provide value to the Crown and people of Aotearoa New Zealand as:

Ngā kaitiaki o te ture — Legal experts

Kaitiaki whakatau i te ture — Kaitiaki of the Rule of Law

Nga kaihautū — System Leaders

Strategic outcomes

29. Three outcomes sit at the heart of our strategic direction, as set out in our strategy (attached). It is by achieving these outcomes that we will deliver our vision and provide value for New Zealanders.

Demonstrably better government decisions

We aspire for government lawyers to be sought out by decision-makers as partners who add real value. We will help develop policy options, identify risk and strategies to manage it, and provide advice in policy and business areas in which lawyers have expertise.

Achieving this outcome will mean successive governments are supported to implement their policy objectives lawfully, with better identification and management of risk and opportunity. Over time, governments' conduct should be less susceptible to successful legal challenges, citizens should see governments making decisions in a more transparent and accountable manner, and our system of representative and responsible government should be more robust.

Strengthened influence of the rule of law

We support New Zealand's legal and constitutional framework. New Zealanders are entitled to expect that the Governments they elect will pursue their lawful policy initiatives without undue impediment. However Governments have legitimacy not only because they are elected, but also because they are subject to law and can be held accountable for the lawfulness of their actions. Strengthened influence of the rule of law within the Executive should result in greater public confidence in our system of government.

New Zealanders are entitled to fair and just processes for resolving their disputes, including with the government. We ensure the Crown's civil and criminal legal business is properly conducted, and in accordance with values that reflect well upon the Crown.

Improved criminal justice

This refers to Crown Law's role in the Justice Sector, including by enhancing the quality of Crown prosecutions (through the network of Crown Solicitors

who prosecute the most serious offences); improving the quality, consistency and decision-making of the approximately 140,000 public (i.e. departmental) prosecutions every year; contributing leadership to a streamlined and efficient mutual assistance and extradition regime; and ensuring the quality of the conduct of criminal appeals.

Evolving how we work

30. In early 2017, an external Performance Improvement Framework assessment noted Government required Crown Law to have ‘an integrated operating model supporting the increasing complexity of the system and the demands from contemporary legal practice’. In reviewing our approach to delivering legal services, we identified the need to change the way we work to support a more strategic approach to, and oversight of, government legal work. We also needed to improve collaboration and capability across the network of government lawyers.
31. To strengthen our leadership of the Government’s legal interests and lawyers, in November 2019 we established a System Leadership Group for a two-year pilot. The Group is headed by a Deputy Chief Executive, who is part of Crown Law’s leadership team. Recognising the value Crown Law can offer in providing strategic advice to agencies on a proactive, ‘one-to-many’ basis (rather than a reactive, bilateral, model), the Group incorporates a new System Advice Team. This complements the new GLN Programmes and Capability team, which is building on the work of the previous GLN team (formed in 2011) by supporting development and collaboration among government lawyers.
32. The evolution in the way we work is not confined to structural change — we are embedding our integrated working approach in everything we do. Four examples illustrate this.

COVID-19

33. Crown Law has played, and continues to play, a significant role in coordinating legal work to support the Government’s response to COVID-19. This includes:
 - 33.1 establishing the Solicitor-General’s oversight of the exercise of significant and constitutionally-novel powers;
 - 33.2 supporting the Attorney-General to develop, and have enacted by Parliament, a bespoke legislative framework tailored to support the response, while reinforcing democratic norms of governance;
 - 33.3 seconding legal resource into the All of Government Group to ensure key decision-makers had access to timely legal advice;
 - 33.4 co-ordinating lawyers across government to ensure Ministers and senior officials receive joined-up legal advice to support a multi-faceted response; and
 - 33.5 taking part in Justice Sector working groups to support continued court operations in the COVID-19 environment.
34. A highlight of this period has been the close working relationship between Crown Law and the Parliamentary Counsel Office, the other department for which the

Attorney-General is responsible. Together we have deployed, and subsequently improved, the quality of key regulatory tools supporting the Government's response, i.e. Health Act and COVID-19 Public Health Response Act Orders. These instruments either didn't exist or had never been used on such a wide-scale prior to March 2020; they now form the backbone of the regulatory response to the pandemic. Together with PCO we worked alongside policy, operational and legal colleagues as the system developed and matured its policy development, legislative drafting, Ministerial engagement and parliamentary oversight processes, co-ordinating officials across almost every department of government.

35. We were able to step-up and play these roles as the country transitioned rapidly to Alert Level 4 with our staff working remotely, due to a continuing programme of investment in our information technology and communications infrastructure. In particular our legal support staff adapted quickly to new ways of working, to ensure our lawyers could lead in this new context, as well as meet business-as-usual commitments.

Public inquiries

36. In addition to providing advice on the establishment of inquiries and draft terms of reference, Crown Law has taken a leading role co-ordinating Crown agencies' engagement with Royal Commissions (into Abuse in Care and the Attack on Christchurch Mosques) and Government Inquiries (e.g. into Operation Burnham, Havelock North Drinking Water, and the Appointment Process for the Deputy Police Commissioner). This work has demonstrated our:
 - 36.1 commitment and ability to work across government in a co-operative way to respond to system priorities;
 - 36.2 All-of-Crown perspective, whilst ensuring this is always consistent with and supports the independence of the inquiries;
 - 36.3 value in providing 'one-to-many' advice to agencies — where this is appropriate to efficiently and authoritatively express a Crown position on legal issues facing multiple agencies; and
 - 36.4 ability to provide legal representation in flexible ways.

Increased participation in Justice Sector fora

37. We have stepped-up our participation in Justice Sector governance. The Solicitor-General sits on the sector Leadership Board, the Deputy Solicitor-General Criminal is a member of the Operational Committee of second-tier leaders, and the Deputy Chief Executive System Leadership is a member of the Strategy Committee of second-tier leaders. We contribute on key areas of sector policy (such as criminal justice reform and counter-terrorism), to ensure policy development is informed by the perspective of litigators and prosecutors, and our view of system legal risk.
38. Attached to this briefing is the *Justice Sector Briefing to Incoming Ministers*, which highlights the areas of collective focus for sector agencies. The priorities include criminal justice transformation, relationships with Māori and system performance.

Refreshed risk system

39. We are building maturity in understanding and managing government legal risk, refreshing the Significant Crown Legal Risk System and the Risk Report (provided quarterly to the Attorney-General). By gaining greater insight of the legal risks across government (rather than solely with an agency-by-agency focus), you can have richer conversations with Ministers and senior officials as to how these can be managed.

The future

40. There are clear signs that our new ways of working are having a positive impact. In our most recent annual survey of the agency Chief Legal Advisors with whom we work the most, overall satisfaction (rating Crown Law as excellent or very good) was 96%. Significant improvements were also recorded in our responsiveness, timeliness and communication about work in progress.
41. The challenge is to consolidate this work and leverage it for the benefit of the Crown and people of Aotearoa New Zealand. To do this we have an ambitious work programme to execute over the next term.
42. We are engaging with stakeholders on the development of an overarching Government Legal Strategy, with a view to shaping how lawyers across the Crown prioritise resources, to ensure we provide legal services that are responsive to the Government's strategic priorities.
43. We are refreshing our own organisational vision and strategic direction, to reflect the changing public service environment, incorporate what we've learned from working in different ways during the COVID-19 response, and ensure we have the right capability, systems and resources to deliver on government's expectations.
44. We will develop a Workforce Strategy for our organisation. This will articulate our people capability requirements, ideal workforce structure with appropriate role and organisational design, and detailed plans to support us to move to that future state.
45. Across Crown Law we are focusing on delivery excellence and understanding customer needs. We are also introducing a continuous improvement framework which will help us to understand what good looks like and how we can achieve it.
46. We continue to embed our behaviours — taking pride in all we do, valuing our differences, looking after the mana of other people, recognising our impact on others, and caring about each other — contributing to a positive shift in culture. These behaviours encourage all our people to understand the importance of not just what we do but how we do it, both internally and with our public service colleagues.
47. We look forward to continuing to support you in your significant constitutional role as Attorney-General and supporting wider government priorities.

CROWN LAW OFFICE

SG

Una Jagose

Chief Executive / Solicitor-General

STRATEGY &
CORPORATE

DCE

Sophie Mexsom
Deputy Chief Executive

ATTORNEY-GENERAL

DSG

Virginia Hardy
Deputy Solicitor-General

CROWN LEGAL RISK

DSG

Aaron Martin
Deputy Solicitor-General

CRIMINAL

DSG

Madeleine Laracy
(from January 2021)
Charlotte Brook
(acting)
Deputy Solicitor-General

SYSTEM LEADERSHIP

DCE

Katie Elkin
Deputy Chief Executive

Nicola Gallacher
Information & Research

Anthea South
Human Resources

Aaron Crookston
Finance & Performance

Steve Maslin
Operational Services

Suzanne Sherris
*Engagement &
Communications*

Peter Gunn
*Constitutional &
Human Rights 1*

Daniel Perkins
*Constitutional &
Human Rights 2*

Geoffrey Melvin
Treaty 1

Liesle Theron
Treaty 2

Maria Deligiannis
Revenue

Jeremy Prebble
Public Law 1

Nicola Wills
Public Law 2

Jenny Catran
Public Law 3

Mark Bryant
Public Law 4

Peter Marshall *(acting)*
Criminal 1

Mark Lillico
Criminal 2

Briar Charmley
Criminal 3

Phil Coffey
Public Prosecution Unit

Justine Falconer
System Advice

Monique Esplin
Programmes & Capability

CROWN LAW STRATEGY

VISION

COLLABORATIVE, INDISPENSABLE LEGAL SERVICE

OUTCOMES

Demonstrably
better government
decisions

Strengthened
influence of the
rule of law

Improved
criminal justice

GOALS

1 Enable Government to pursue its policy choices lawfully by providing quality legal services at the right time which are sought after, and relied on, by decision-makers

2 Better serve the Crown by leveraging the collective strength of the Government's Legal Network

3 Increase New Zealanders' confidence in our legal system and lawfulness of decisions

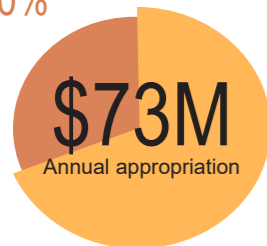
4 Improve the quality, consistency and decision-making of public prosecutions

5 Ensure the quality of Crown prosecutions and the conduct of criminal appeals

WHO WE ARE

Legal advice and representation

30%

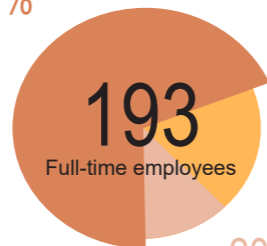


70%

Criminal appeals
Constitutional and criminal duties
GLN and public prosecutions

Legal staff

57%



23%

Legal support

20%

Corporate staff

AREAS OF EXPERTISE

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

SYSTEM OVERSIGHT

System Leadership Group

Includes the Government Legal Network



Public Prosecution Unit

Oversees the Crown Solicitor Network and Public Prosecution Services



MISSION

LEGAL EXPERTS
Ngā kaitiaki o te ture

KAITIAKI OF THE RULE OF LAW
Kaitiaki whakatau i te ture

SYSTEM LEADERS
Ngā kaihautū