

# ANNUAL REPORT

2016/17

Te Tari Ture o te Karauna

# Crown Law

The New Zealand Coat of Arms is centered below the title. It features a shield with four quarters: top-left is blue with a white star, top-right is red with a white anchor, bottom-left is white with a red sunburst, and bottom-right is blue with a white anchor. The shield is supported by a Māori woman on the left and a European woman on the right. A crown sits atop the shield, and a ribbon at the bottom reads 'NEW ZEALAND'.

*Presented to the House of Representatives pursuant to section 44(1) of the Public Finance Act 1989*

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## *This Year at a Glance*

# 100%

of feedback from the Attorney-General  
**GOOD TO EXCELLENT**

# 97%

of feedback from the clients overall  
**GOOD TO EXCELLENT**

# 800+

lawyers in the  
**GOVERNMENT LEGAL NETWORK**

# 7

Crown Solicitor  
**REVIEWS COMPLETED**

# 63%

of appeals brought by the Crown concluded  
**IN FAVOUR OF THE CROWN**

# 23%

of appeals brought by the defendant concluded  
**IN FAVOUR OF THE DEFENDANT**

# 4960

**PROSECUTIONS COMPLETED**  
by the Crown Solicitor Network

# 101

new claims for the  
**WAITANGI TRIBUNAL**

# 72%

of written advice and opinions  
**PEER REVIEWED**

# 203,014

**HOURS OF SERVICE PROVIDED**  
by the Crown Solicitor Network

# OVERVIEW FROM THE SOLICITOR-GENERAL

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My first full year as Solicitor-General has been challenging and rewarding, and the Office has enjoyed another successful year.

Four years ago Crown Law set goals focused on sustaining high-quality delivery of our legal services to the Crown. We have achieved these goals through the collaborative effort and hard work of every individual in the Office, aided by our strong relationships with our colleagues in other agencies.

We have considerably advanced the capability of our networks; we have high engagement scores; and we enjoy excellent client feedback. All of this is echoed in our recently completed Performance Improvement Framework report.

During 2016/17 we have recalibrated, refocused, and set a new ambitious excellence horizon for the Office and the cohort of lawyers across government.

Our Leadership Team led the conversation to refresh our mission and vision, and assessed what it will take to get there. The Performance Improvement Framework review helped us to take a critical view of ourselves: to see ourselves through others' eyes and to see how to cement the future path.

We have asked ourselves, "What is the Crown Law that New Zealand needs?" Our answer to this question forms the Office's newly sharpened strategy for 2017/18 onwards. We aim to deliver three outcomes: demonstrably better government decisions; strengthened influence of the rule of law; and improved criminal justice.

This will be no small feat, but we are well placed, as an agency and within the networks of government lawyers, to deliver the services required to achieve those outcomes. I am excited about the challenge ahead.

This year, our collaborative networks have continued to provide significant benefits. We used the additional funding secured last year by the Public Prosecution Unit for Crown prosecutions to stabilise the Crown Solicitor Network and continue to monitor its financial sustainability.

Such sustainability is a crucial element in delivering quality prosecution services now and into the future.

We also secured permanent funding for the Government Legal Network. We created a unit within our Office that is dedicated to helping the network of 800+ government lawyers to extract its collective value.

Both teams' achievements and successes are detailed in this report.

Quality and specialist legal services continue to be front and centre of what we do. We have delivered strong services to our client colleagues over the past year, and have received feedback from them that illustrates the extent to which our work is valued.

Our people have been involved in some of the most important and complex Crown legal work, whether in advising Crown agencies, representing the Crown in Courts and Tribunals, or in providing the critical support services needed to fulfil our functions.

This year we tested the Office's mood with another engagement survey. It is great to see increased levels of engagement and our people working hard to continue that positive trajectory. I am a strong believer that how we undertake our work is as important as the substance of the work we do. We have embarked on visioning our desired office culture, along with the necessary behaviours and values to support it.

I am enormously proud of this organisation, its critical place in New Zealand's constitutional framework, and what we have accomplished to date. I thank everyone in the office for their dedication, hard work, and commitment to collaborative, indispensable legal service.



Una Jagose QC  
Solicitor-General and Chief Executive

# PERFORMANCE FRAMEWORK<sup>1</sup>



<sup>1</sup> Our Performance Framework will be updated during FY2017/18 to reflect our refreshed strategy, vision, outcomes and goals.

# ORGANISATION AND STRATEGY

*The Attorney-General is the senior Law Officer of the Crown. The Solicitor-General is the junior Law Officer as well as Crown Law's Chief Executive. Their principal responsibility is for the government's administration of the law.*

*The Attorney-General is also a Minister of the Crown with ministerial responsibility for Crown Law. The Solicitor-General is the government's chief legal advisor and advocate in court.*

## **Mission:** *providing legal advice and representation to the Crown*

Crown Law is a government department that supports the Law Officers in their constitutional responsibilities of determining the Crown's view of the law and its position in Courts and Tribunals, and overseeing prosecutions.

We do this by providing legal advice and representation to executive government. We focus on core Crown legal work, and support the Attorney-General and the Solicitor-General to execute their constitutional responsibilities.

We are expert in public, criminal, constitutional and Treaty of Waitangi law, and seek to enable government to pursue its policy objectives according to law.

We are system leaders and provide leadership for the Crown Solicitor Network, public prosecuting agencies and in-house government lawyers.

We are the guardians - *kaitiaki* - of the rule of law and we support the Law Officers to determine the Crown's view of the law.

## **Vision:** *the government's trusted legal advisor*

We are the Crown's trusted legal advisor and our vision is to deliver collaborative, indispensable legal service.

Our role is to assist governments to lawfully achieve their policy and operational outcomes. We are the first choice for core Crown legal advice and litigation for Ministers, Chief Executives and Chief Legal Advisors. We are highly respected as the leading administrative and public law experts.

We deliver on our vision by being:

- clear about our focus
- passionate about what we do
- rigorous in enforcing high standards of technical ability and service
- focused on providing excellent client service.

We are dedicated to working collaboratively to meet client needs in a professional, cost-effective and practical manner, while also managing legal risk across government.

## **Expertise:** *varied and extensive*

Our expertise in public, criminal, constitutional and Treaty of Waitangi law has enabled us to support the Crown across many varied and unique legal issues and areas including:

- human rights
- land and environment interests
- social services
- citizenship
- cultural issues
- protection of revenue
- international obligations
- the Treaty of Waitangi

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## ***Strategic direction for 2016/17***

To support Crown Law's strategic priorities for 2016/17, we focused on the following:

- strengthening our leadership role and the management of Crown legal risk
- providing increased leadership and oversight of public prosecutions
- making sure our operating model supports efficiency, effectiveness and sustainability
- permanently implementing the Government Legal Network
- maintaining and growing our Auckland presence
- collaborating with justice sector agencies to contribute to Better Public Services (BPS), and maintaining high standards of institutional integrity and public confidence in the justice sector.

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# OPERATING ENVIRONMENT

## Leadership and governance

Crown Law recognises that success requires enhanced collective leadership and management capability. The Leadership Team, as a group and as individuals, is committed to improving the leadership, strategic focus and management of Crown Law. They have spent significant time this year refreshing the organisation's strategy and developing work plans to support its implementation.

Our leadership and governance is supported by a governance framework. This framework distinguishes between strategic leadership and operational management. The categorisation means we can be sure we correctly match need and purpose, capability and governance. This approach helps us to maximise the use of our resources without jeopardising the appropriate level of oversight, management and monitoring.

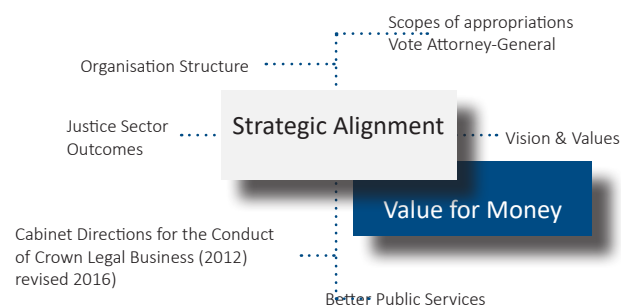
The Leadership Team and Operational Management Committee, our main governance bodies, are supported by the efforts of committees such as the Professional Standards Committee: a committee dedicated to ensuring standards of best practice are used within Crown Law.

## Strategic requirements

Crown Law's strategy and operations align with various external influences, including government's priorities, justice sector outcomes and Better Public Services. We work within the framework of the Cabinet Directions for the Conduct for Crown Legal Business 2016,<sup>2</sup> the scope of our appropriations, and various requirements of the Solicitor-General.

The Performance Improvement Framework Review has identified important areas where our organisation can improve its focus. It has helped us to clarify the strategic focus we believe will strengthen our ability to deliver greater value to

the justice sector, government, and ultimately New Zealand. The diagram below is a high-level view of strategic factors that help to strengthen how we deliver value for money.



## Managing risk

Crown Law operates under an all-encompassing Risk Assessment Framework that helps us to assess both legal and operational risk (including technology, privacy, fraud and corruption, and business risk). We view risk from two key perspectives: the likelihood of an event paired with the impact of that event's consequences.

Events with a negative impact represent risks that can prevent or disrupt delivery of legal or corporate services, or both, or that can damage the agency's reputation. We work to understand the types of risks that agencies face, and how to deal with them appropriately in order to deliver value to our stakeholders.

We also have an Assurance and Risk Committee, which advises the Solicitor-General on various topics such as governance, risk management, internal controls, compliance, financial and other external reporting.

A primary benefit of the Assurance and Risk Committee (ARC) is its independence. At the time of this report the independent committee members appointed are John Whitehead (previously Secretary to The Treasury) as ARC Chair, and Commodore Ross Smith (Chief of Staff at NZ Defence Force Headquarters). The Deputy Chief Executive of Crown Law is the third committee member.

<sup>2</sup> <https://www.dpmc.govt.nz/publications/co-16-2-cabinet-directions-conduct-crown-legal-business-2016>



## ***Financial sustainability***

Crown Law is committed to living within baseline, while achieving priorities and delivering Better Public Services. This is why we put considerable effort into better understanding our cost pressures and implementing measures to handle these pressures.

Our largest areas of expenditure and financial pressure are personnel, Crown prosecution services, and information and technology. We review these areas regularly to make sure our organisational structure and working arrangements are effective, efficient and sustainable. We participate in All-of-Government contracts when and as appropriate.

### ***Crown prosecution services***

Crown Law manages Crown prosecutions undertaken by our Crown Solicitor Network. Four years ago our Public Prosecutions Unit implemented a new funding model. This, together with a range of other initiatives, ensures costs remain within baseline.

The monitoring and subsequent reviews of the Crown Solicitor Network by the Public Prosecutions Unit highlighted a growing concern that the medium to long-term sustainability of the service was at risk, and as a result, new funding of \$4.922 million a year was approved in Budget 2016.

## ***Information and technology***

Crown Law's ICT goal, and responsibility as a government agency, is to provide ICT services that enable and underpin Crown Law's strategic direction. We are also working to align our ICT with the New Zealand Government's Destination 2017 (the government ICT Strategy and Action Plan) initiatives.

This year we have continued to introduce technologies and tools that enable our workforce to fulfil their roles more flexibly, without being restricted to where they can work or having to carry around vast volumes of printed documents.

We work closely with users, and provide training and support to make sure they understand how to get the most from their ICT.

Our ICT priorities continue to focus on enabling mobility and ensuring security. Plans are in place and are continuing to mature.

## ***People and capability***

We need our people to be engaged, work collaboratively, have a diverse range of views, and feel comfortable communicating and considering different perspectives. This will help us continue to deliver excellent legal advice and services that are relevant and valued by our customers and New Zealand. We are committed to building and investing in such a workforce.

We also have a strong commitment to the health and safety of staff (including contractors and other service providers); offering equal opportunities to staff; and making sure all staff feel safe and well.

### ***Equality, diversity and inclusiveness***

The Office has good representation of women in all levels of the organisation. However, a gender pay gap does exist. This year we have sought to better understand the drivers for the gap so we can better manage the gap and address any issues.

As at 30 June 2017, our gender pay gap was 30%. That gap is determined by adding all of the salaries and comparing the men's total against the women's total.

The primary driver of this gender pay gap is the dual workforce: legal and administrative. Administration roles are generally lower paid than legal roles and are predominantly undertaken by women. Our legal roles are undertaken by a reasonable mix of men and women.

When we compare the pay of men and women undertaking the same roles, the gender pay gap is significantly reduced.

Overall, we are committed to improving our gender pay gap and making sure we remove any gender bias from appointment, performance, promotion and

remuneration decisions. This year we developed an action plan to support this goal and will work to execute this work over the next 12 months.

The action plan includes better monitoring of information when making appointment and remuneration decisions, as well as training for managers on unconscious bias. These initiatives supplement current practices to address the gender pay gap, such as Crown Law's flexible working policy.

When it comes to diversity, Crown Law is underrepresented compared to other government agencies and the general population.

Crown Law piloted a Māori and culture training programme for staff in 2016/17 and supported other initiatives, such as a waiata group and tikanga support for the Solicitor-General. Broadening these initiatives will be a focus when we refresh our people strategy and workforce plan in 2017/18.

### *Engagement of staff*

Overall, staff show good engagement across Crown Law. Engagement results in October 2016 highlighted that engagement is above the state sector average.

The 2016 results are also an improvement on previous years, with overall engagement at 75% compared with 70% in 2015. In addition, nearly a 3:1 ratio of the workforce is highly engaged compared to those who are disengaged (compared to 1:1 in the 2015 survey).

Nonetheless, we are committed to further improving engagement and the culture of Crown Law. As part of Crown Law's new strategic direction, the Leadership Team has committed, in 2017/18, to review and refresh Crown Law's behaviours and values. The Solicitor-General is personally leading this work stream.

### *Workplace health and safety*

This year we have seen significant improvement in our organisation's maturity regarding health and safety. We established a Health and Safety panel made up of representatives from both management and staff, and they met seven times during 2016/17.

The Panel monitors health and safety risks and work programmes, and makes recommendations to Crown Law's Leadership Team.

During 2016/17 we updated our health and safety policies and procedures. We have refined our methodology and adopted a risk-based approach to all health and safety concerns.

The two main health and safety risks that Crown Law faces are mental wellbeing and physical threats. During the year, we rolled out various tools to assist in mitigating these two risks. For example, we have implemented the following initiatives:

- providing resilience training to managers and staff
- access to an online programme called Tracksuit, where tools, information and resources are available to help improve and manage individual wellbeing
- practical action plans to support and protect staff who identified a potential for increased risk to their safety, when dealing with members of the public who are angry or upset about a matter in litigation.

The above initiatives complement existing measures already in place, such as the Employee Assistance Programme and workstation assessments.

The Office-wide health and safety culture has shifted so that employees are more engaged and are willing to proactively raise potential risks. This leads to more open conversations, enabling us to put measures in place to mitigate risks.

The table on page 48 sets out our non-financial measures related to people and capability.

# THE DIFFERENCE WE MAKE

## *Crown Law impacts*

- Reduced legal risk to the Crown
- Offenders held to account
- Increased trust in the justice system

The most visible impact we have is through the supervision, oversight and management of Crown prosecutions and the Crown Solicitor Network. The Crown Solicitor Network provides high-quality prosecution services across New Zealand. In delivering such services, we focus on bringing the best prosecution possible, so that every finding is founded on high-quality legal arguments, and offenders are held to account.

Less visible, but as significant, are the effects of our high-quality legal advice and representation. Through this legal service we ensure governments are able to implement their chosen policies, lawfully and unimpeded by legal process.

This legal service aids in reducing and managing legal risks to the Crown, and the confidence this provides is vital to allow government's dealings with other countries, businesses and private citizens to run smoothly.

## *Contribution to government goals*

### *Wider government outcomes*

- A more productive and competitive economy
- Better public services
- Christchurch rebuild
- Responsibility to manage the government's finances

Crown Law's work contributes to all sectors of government. Embedded within the justice sector, we support agencies in other government sectors to manage their legal risks and obligations. Our legal expertise assists agencies to deliver on their responsibilities and achieve their outcomes.

### *Justice sector outcomes*

- A safe, fair and prosperous society

The Ministry of Justice is the lead agency in the justice sector, which comprises Crown Law, New Zealand Police, Department of Corrections, Serious Fraud Office, and Oranga Tamariki.

Justice sector Ministers recognise that all agencies must work towards the same goals in order to achieve the best outcomes for people participating

in justice sector processes. The ultimate justice sector outcome is a 'safe and just society', which the sector seeks to achieve through the shared priorities noted below.

Policy, legislative and operational changes across the sector will continue to be substantial. We need to respond to the government's ambitious Better Public Services targets to reduce serious crime as well as three supporting measures (family violence rate, sexual violence rate, and reoffending rate). The Criminal Justice Sector Strategic Intent sets out the following strategic priorities and focus areas for the next 4 years:

- Better meet the needs of those most affected by crime
- Reduce pressure across the justice pipeline
- Achieve our Better Public Service targets
- Improve how we work together to achieve our shared goals

We support the justice sector by ensuring offenders are held to account through high-quality prosecutions and criminal appeals.

# OUR APPROACH TO QUALITY

## Quality of our legal advice and services

Crown Law is committed to providing high-quality legal services that are also solutions-focused, practical and good value for money. We have systems, guidance, knowledge and capability to ensure quality in our work. Quality is a critical aspect of our reputation.

We have a holistic approach to quality, and support it by an organisational culture of high performance. We strive to provide timely, practical, cost-effective legal expertise at all times.

We do not leave the delivery of high-quality legal service to chance. We are fortunate to attract and retain some of the best legal practitioners in the country. However, we also have a range of formal, credible mechanisms that make sure we provide high-quality, fit-for-purpose legal services that meet our clients' varying needs and expectations.

### **Continuous professional development**

Legal staff must maintain a programme of continuous professional development, as monitored by the New Zealand Law Society.

All staff at Crown Law must participate in the performance management framework, which establishes goals that directly align to the overarching strategy of the organisation.

We also expect this framework to provide opportunities for feedback to be given and received about opportunities to improve.

We provide in-house opportunities for all staff to receive professional development and education. Committees such as the Education Committee facilitate a range of seminar series and programmes including:

- the Crown Law Seminar Series
- the Crown Law Practice Series

- the Support Staff Education and Development Series
- the In-House Litigation Skills programme.

Where practicable, we encourage staff to attend relevant external training.

### **Professional standards**

We have developed professional standards to assist our pursuit of quality. The Professional Standards Committee is the internal body responsible for reviewing our professional practices, and for making sure policies, guidelines, templates and resources are up to date and represent best practice.

As we provide all advice to clients on behalf of the Solicitor-General, whether written or oral, it must be provided within the framework of principles set out in policies and guidelines. Providing timely, relevant and robust advice includes a peer review process.

Similarly, in legal representation we require strong litigation management planning.

These policies are monitored and maintained through the Professional Standards Committee. Further detail about peer review and litigation management planning is below.

### **Peer review and consultation**

We maintain an internal policy that all Crown Law advice must be peer reviewed. This process allows our lawyers who are drafting advice to consult with other staff with the relevant and specific legal expertise. In practice, this process means 'fresh expert eyes' give thorough consideration to an issue's complexity.

The peer reviewer is responsible for checking that the advice has been prepared in accordance with our Advice Policy, and to then concur with or

comment on its substance (with a view to reaching professional consensus).

This peer review mechanism contributes to ensuring we deliver the highest-quality legal advice.

## ***Litigation management planning***

Litigation management planning (LMP) enables us to effectively and efficiently commission and run a case, while also increasing our prospects of success.

The LMP framework involves robust strategic planning by assigned lead counsel, and strong communication with our clients and stakeholders. As with all our work, we are conscious that the outcome should be consistent with wider Crown interests. Therefore, the LMP framework's primary principles focus on being proactive, effective and efficient.

At the conclusion of each case, we debrief to discuss and cement the lessons from the experience. Debriefing also helps to frame how future litigation is handled.

## ***High-quality internal support***

Crown Law would not be able to deliver quality, cost-effective legal services without highly experienced support staff, including:

- historical researchers
- law librarians
- litigation and legal support staff
- human resource professionals
- information and technology experts
- finance staff.

It is because of the high-quality capability across the breadth of our organisation that we are able to effectively deliver on our mission.

At Crown Law, we believe the strongest service will be delivered through our collaborative effort and expertise. This belief is the reason we place great significance on the principle of collaboration in our performance management framework.

## ***Feedback from our clients***

Feedback greatly assists us in providing quality legal services, which is why we survey our clients annually.

The survey offers an opportunity for our clients to rate and comment on each factor of our service, such as timeliness and value for money. We collect both quantitative and qualitative information, and ask a series of open-ended questions to help us understand what we can do to improve our legal advice and services.

Timeliness continues to be an area that we need to strengthen. That said, our overall survey rating this year was 95%. Of our clients that participated in the survey, 95% rated our services as good to excellent (which far exceeds our target of 85%).

The survey 5-point scale of responses (from lowest to highest) is: poor; did not meet expectations; good; very good; excellent. For further information about the results of our client survey, please refer to page 47.

We also receive feedback from the Attorney-General about our legal services. More information on that can be found on page 40.



# OUR APPROACH TO QUALITY

## Oversight of public prosecutions

### **Public Prosecutions Unit**

The Solicitor-General is responsible for maintaining general oversight of the conduct of public prosecutions.

Public prosecutions include both Crown prosecutions, which are conducted through our Crown Solicitor Network (the Network), and non-Crown prosecutions, which are conducted through government agencies with prosecution powers. In total, we have 17 Crown Solicitors and 40 prosecuting agencies within New Zealand.

The Public Prosecutions Unit (PPU) is headed by the Public Prosecutions Manager, who is responsible to the Deputy Solicitor-General (Criminal). The initial focus of the PPU was on managing Crown Solicitor funding within the appropriation.

The PPU's current focus is on the longer-term goal of providing the Solicitor-General with greater oversight of all public prosecutions. A significant aspect of that work is improving the methodology for reviewing the performance of the Network and the prosecuting agencies.

On 1 July 2016, PPU introduced an online platform for prosecutors called 'POP'. This platform promotes a collaborative and electronic approach to information and knowledge sharing across the Network. It allows prosecutors to share their expertise and request information through discussion boards. It helps to ensure consistency of approach. It has been widely adopted throughout the Network, and the PPU will continue to develop the platform over the coming year to maximise its value.

### **Public Prosecutions Reporting Framework**

The Public Prosecutions Reporting Framework (the Reporting Framework) is the principal mechanism

through which greater oversight of public prosecutions is achieved. Data is collected about individual cases every month. High-level statistical information about the structure and resource required to administer the prosecution function is collected annually.

Each Crown Solicitor firm and prosecuting agency participates in the Reporting Framework.

The Reporting Framework provides a greater understanding of both the current and future sustainability of the Network. It is a crucial element in ensuring delivery of quality Crown prosecution services, both now and in the future.

### **Crown Solicitor Network oversight**

The Crown Solicitor Network (the Network) delivers prosecution services. It comprises Crown Solicitors appointed by the Governor-General by warrant, on the recommendation of the Attorney-General.

### **Crown Solicitor standards of service**

Crown Solicitors are guided by the Terms of Office which set out the Solicitor-General's expectations of Crown Solicitors. It also outlines the funding arrangements. The Terms of Office and the Solicitor-General's Prosecution Guidelines are periodically reviewed to ensure high standards are achieved and maintained.

The guidelines are intended to ensure the principles and practices regarding prosecutions in New Zealand are underpinned by core prosecution values. These values aim to achieve consistency and common standards in key decisions and trial practices. Our standards and practices support open and fair processes that are reflected in results of the international indexes such as the World Justice Project Rule of Law Index (see pages 26-27).

The Terms of Office was reviewed and updated this year to include commitments to diversity and Te Tiriti o Waitangi.

### *Oversight of quality of the Network*

The oversight functions, including the Reporting Framework, are designed to provide information about the Network's workloads, and to gauge the value for money provided by the Network. The regular surveys and reviews may examine:

- the legal acumen and performance of Crown Solicitors and their staff
- the management of the work
- how the relationship with others is conducted in the justice sector.

Assessing the quality of complex technical services requires professionals to apply judgement to a range of relevant factors to form an expert opinion about standards of quality. This gives us a level of assurance about the quality of legal services provided by the Network by answering the question: Is the legal service provided of the standard expected?

To answer this question the PPU uses a three-tiered system: environmental feedback at the highest level; an annual questionnaire for Crown Solicitors at the next level; and reviews of individual Crown Solicitors at the next level.

### *Environmental feedback on Crown Solicitors*

At the highest level of the system is environmental feedback. Crown Solicitors carry out prosecutions in public within the framework of the justice system and as officers of the court. Within this environment, professionals and interested parties may volunteer feedback about the performance of Crown Solicitors.

To assess the validity of comments, Crown Law, in particular the PPU, talks with members of the judiciary and prosecuting agencies to gain insight into how other professionals and interested parties view the performance of Crown Solicitors.

Our representatives also visit Crown Solicitors, Judges and Heads of Bench.<sup>3</sup>

### *Annual questionnaire for Crown Solicitors*

At the next level, Crown Solicitors complete an annual questionnaire in which they provide information about the resources being applied to support the warrant. This ensures that firms supporting Crown Solicitors have the resources necessary to carry out the requirements of the warrant.

This information also allows the PPU to compare different structures and identify opportunities for efficiencies within the Network.

### *Survey and interviews of Crown Solicitors*

The final level involves reviews of individual Crown Solicitors. The reviews consist of a survey and interviews. The purpose of the interview-based review is to support the Crown Solicitor in identifying areas to improve and develop.

For the survey-based review, key stakeholders provide us with high-level feedback on a range of topics. This review is designed to confirm there are no areas of serious concern and to reveal any issues for further investigation. The interview-based reviews are in-depth and resource-intensive. Environmental feedback and survey-based reviews may guide these reviews.

Five reviews are scheduled to be completed each year. This ensures every Crown Solicitor is reviewed at least once every 3 - 4 years.

For the first time this year, feedback from Victim Support Officers was included, improving the ability to collect a well-rounded view on performance by Crown prosecutors.

The 2016/17 interview-based reviews assessed the changes made to Crown Solicitor coverage of the greater Auckland region, culminating in the creation of the two new warrants of Auckland and Manukau in 2015. Feedback received from relevant stakeholders reflected the overwhelming support for that decision.

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<sup>3</sup> Each court is headed by a senior Judge, usually described as the Chief Judge or Principal Judge of that court. Such positions are often referred to as Heads of Bench.

## High-level statement on the quality of the Crown Solicitor Network

The following high-level statements provide a four-step scale allowing us to describe how we regard the overall quality of the Crown Solicitor Network using the information above. The high-level statement is based on finding and verifying emerging and actual issues to identify areas of increased risk, accountability and potential for improvement.

### Assessment for 2016/17

- For 2016/17 the Deputy Solicitor General (Criminal Group) with the Public Prosecutions Unit determined that there are *no serious issues* (Statement 1 in the scale below).
- This represents the maintenance of Statement 1 achieved in 2014/15 and 2015/16.

#### **1 No serious issues identified**

Our current view is that the Network as a whole is operating sustainably<sup>4</sup> and the conduct of Crown Solicitors (and their employees representing them) is consistent with expectations and standards applicable to them as Crown Solicitors and lawyers.<sup>5</sup>

#### **2 No serious issues identified; areas for improvement verified**

Our current view is that the Network as a whole is operating sustainably, and the conduct of Crown Solicitors (and the employees representing them) is consistent with expectations and standards applicable to them as Crown Solicitors and lawyers. We identified and verified areas needing improvement. The Crown Solicitors are managing these areas appropriately.

#### **3 Serious isolated issues identified**

Our current view is that the Network as a whole is operating sustainably. Overall, the wider conduct of Crown Solicitors (and the employees representing them) is consistent with expectations and standards applicable to them as Crown Solicitors and lawyers. We identified and verified serious isolated issues. The Crown Solicitors are managing these issues appropriately.

#### **4 Serious issues affecting the wider Network identified**

We identified and verified serious issues that are impacting or potentially could impact the sustainability or service performance of the Network. The Crown Solicitors are managing these issues appropriately. They are acting to reduce the possible impact of serious risks that have emerged.

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<sup>4</sup> 'Sustainably' means applying appropriate resources and doing so within the bulk funding model in the given year. This is a retrospective view and is not a financial forecast for the next financial year and out-years.

<sup>5</sup> 'Consistent' means no serious departure from the expected conduct and service performance was indicated and verified (which would then be managed through a review process or appropriate channels).



## ***Non-Crown prosecutions (Crown Agencies) oversight***

Non-Crown prosecuting agencies include New Zealand Police, Departments and Crown Entities. Where private practice lawyers or government department lawyers are instructed on a core Crown legal matter,<sup>6</sup> the Solicitor-General retains oversight and may direct how those lawyers provide their legal services. As part of increasing oversight of non-Crown prosecutions, the PPU established the Public Prosecutions Advisory Board. The Board comprises twelve Board members, representing a selection of departments and Crown entities.

The Board represents a wide range of agencies, including:

- agencies with high and low volumes of prosecutions
- agencies that regulate a specific sector
- agencies that engage with the general public.

The Board helps to identify and manage inconsistencies in the prosecution decision-making process.

Over time, the PPU will consult with agencies responsible for prosecutions, to increase its management of those agencies. This development is in line with the review processes now in place for the Network.

## ***Victims' Rights Act 2002***

The Victims' Rights Act 2002 ensures that the experience of victims of crime within the criminal justice system is what New Zealanders would expect of high-quality justice sector services.

During the financial year, Crown Law received no victim complaints under section 49 of the Victims' Rights Act 2002.

In the Crown Solicitor Network:

- One victim complaint against prosecutorial conduct was received directly by a Crown Solicitor's office. The complaint was subsequently made to the New Zealand Law Society and investigated by the Law Society Standards Committee. The complaint was not upheld, and a formal decision setting out the reasons was issued by the Law Society Lawyers Complaints Service.
- In another case, a victim complaint was made directly to the Law Society against a Crown Solicitor. The complaint was not upheld by the Standards Committee, which issued a formal decision and decided to take no further action. While technically not a complaint under section 49 of the Victims' Rights Act 2002, this matter is reported for completeness.

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<sup>6</sup> <https://www.dPMC.govt.nz/publications/co-16-2-cabinet-directions-conduct-crown-legal-business-2016>

# COLLABORATION THROUGH OUR NETWORKS

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## Government Legal Network

### Background

The Government Legal Network Team (GLN Team) was formed in 2011 to:

- promote across-government collaboration in the management of Crown legal risk
- assist the Attorney-General and Solicitor-General in their leadership of the government legal profession.

The government legal network comprises over 800 lawyers in central government and a further 300+ in Crown entities, State-owned enterprises, Crown research institutes, District Health Boards and tertiary institutions.

The GLN Team is a small, dedicated team within Crown Law who oversee a programme to leverage collective expertise by:

- managing Crown legal risk: working with Chief Legal Advisors in departments and agencies to identify and respond to legal risk, and to brief the Attorney-General on mitigation strategies for the most pressing legal issues confronting the Crown
- strengthening legal capability: providing access to ongoing professional development seminars, and taking a collaborative approach to developing and moving talented lawyers across the Network
- supporting maximum opportunities for sharing of expertise: supporting practice groups to allow lawyers with common interests to share knowledge and develop best practice in collegial settings.

The GLN Team was permanently established by Cabinet in 2016 and operates to an annual budget of \$0.985 million. The GLN Team run a programme that is operationally accountable to the Solicitor-General, the GLN Advisory Board and the Chief Legal Advisors' forum

### Achievements

The GLN Team introduced a Legal Risk Reporting System in 2014. This provides an opportunity for Chief Legal Advisors to report significant legal risks to the GLN Advisory Board and the Principal Law Officers. On an operational level, it also provides a practical basis for collaboration across departments in identifying, managing, and preventing legal risk.

The Reporting System has a high threshold and the GLN Advisory Board regularly considers wider aggregated or environmental risk that could have an impact on the way government, and/or the government legal network, operates.

The GLN Team has established a government-wide approach to legal training activities, facilitating a variety of seminars, workshops and roundtable discussions.

These opportunities allow lawyers to broaden their expertise and connect with colleagues from across the Crown. Over the last financial year, the GLN Team has supported the government legal network to deliver over 3,300 individual continuing professional development hours.

The GLN Team administers an online shared workspace for government lawyers, enabling them to share (subject to legal privilege restrictions) training materials, precedents, legal opinions and other information. This collection of resources helps lawyers to stay up to date on recent advice, reduce duplication, and to promote consistency in training and development. It also offers efficient access to legal research tools and sector-wide expertise through a searchable Lawyers' Directory.

Over the last 3 years, the GLN Team has introduced early-in-career programmes to attract the next generation of legal leaders to government practice.

There is strong interest from senior students and graduates, generating an average of 200 applications per programme.

The GLN Graduate Programme has a 2-year structure and rotates talented young lawyers across government legal teams. It has become a flagship programme for government-wide collaboration at the early-in-career level, and was permanently established by the GLN Advisory Board in 2016. The GLN Team will continue to recruit for the graduate programme every second year. The GLN Summer Clerk Programme operates annually, providing c. 20 students in each intake, with a unique insight into the inner workings of government legal teams.

Lawyers within the government legal network, supported by the GLN Team, have established 12 legal practice groups around sector, subject matter and functional areas. These groups provide safe environments for colleagues to share expertise, identify trends and risks, and strengthen professional leadership.

The Introduction to Being a Government Lawyer course is now in its fourth year. It has provided over 250 lawyers new to government with a practical, collegial grounding of the technical and ethical considerations they need to balance in public sector practice.

## ***Pacific Islands Law Officers' Network (PILON)***

Crown Law supports the maintenance of good governance and the rule of law in the Pacific by being a member of the Pacific Islands Law Officers' Network.

We are committed to assisting legal systems in the Pacific, as shown by our significant contributions to PILON's activities and our continuing legal education of practitioners (through the Litigation Skills Programmes).

Our involvement in PILON generates immense goodwill and greatly enhances New Zealand's relationships with Pacific nations. New Zealand is a longstanding member of the PILON Executive Committee and is due to host the PILON annual general meeting in 2019.

Members of the Pacific judiciary have noted the distinct improvement in the litigation and advocacy skills of Pacific lawyers who have completed the Litigation Skills Programme(s).

The expected rising standard of the legal profession in the Pacific states will help to demonstrate internationally that those states have fair, efficient and modern legal systems. This will help the states to strengthen their international trade and development.

### ***Crown Law's education role in the Pacific legal community***

The Litigation Skills Programmes are part of wider continuing legal education. In particular, they provide more training opportunities for lawyers to develop expertise in court work. In turn, this contributes to the function of justice systems in the Pacific and the rule of law internationally.

Designed in New Zealand, the Litigation Skills Programmes are adapted from programmes developed by the US National Institute for Trial Advocacy. There are two programme levels:

- basic level for lawyers 2–5 years in practice (running since 1996)
- advanced level for lawyers 6–10 years in practice (first run in 2012).

### ***Programmes over the next 5 years***

In January 2015, a memorandum of understanding was signed with the Ministry of Foreign Affairs and Trade (MFAT) to provide three basic-level programmes and two advanced-level programmes over 5 years (2015–2019). The first basic-level programme was completed in Samoa at the end of 2015. The budget for the 5 years is about \$1.7 million, to be funded by MFAT. Crown Law provides the coordination, labour and experience to produce the programmes. The New Zealand Law Society owns the programme materials.

# Crown Law Outputs

# OFFENDERS ARE HELD TO ACCOUNT

## Appropriation

This work links to the following outputs in the Law Officer Functions Multi-Category Appropriation (MCA).

- Conduct of Criminal appeals from Crown Prosecutions
- Public Prosecution Services
- Law Officer Constitutional and Criminal Law Duties

## Purpose and intention

The Solicitor-General is responsible for oversight of public prosecutions, Crown representation in criminal appeals, and a number of specific statutory duties in how the criminal justice system is run.

Crown prosecutions are mainly conducted by Crown Solicitors. They are appointed under warrant of the Governor-General and undertake work under the supervision of the Solicitor-General. Crown Law supports the Solicitor-General to perform this supervisory function.

The primary activities include:

- overseeing delivery of high-quality prosecutions, cost-effectively and free from political interference
- managing Crown Solicitor warrants and funding
- conducting reviews of prosecution practices to make sure services are high-quality and offer value for money
- sharing knowledge among prosecutors
- conducting criminal appeals in the High Court, Court of Appeal and Supreme Court/ Privy Council (that is, appeals brought by the Crown, or in response to appeals brought by the accused)—appeals to the Privy Council are now in very limited cases
- providing advice on requests for Crown appeals, judicial reviews, stays of prosecution and consent to prosecute
- making decisions on granting appeal requests from prosecuting agencies

- conducting Crown appeals against court-imposed sentences that are considered inadequate.

### Public Prosecutions Unit

The Public Prosecutions Unit (PPU) manages the funding for Crown prosecutions, which includes those conducted by Crown Solicitors and the Serious Fraud Office.

The PPU also provides oversight of all public prosecutions for the Solicitor-General, and advice to the justice sector on prosecution-related activities and initiatives.

### Criminal Law

Crown Law also provides legal advice and responds to applications on criminal law issues. We provide legal advice and representation on interventions for both alleged contempt of court and breaches of name suppression.

We also assist in international criminal investigations, proceedings and extradition requests. We envisage that international work will continue to be an area of strong focus.

## Performance overview

We report service delivery for criminal law advice and services and criminal appeals on pages 40–45. See pages 14–17 for the work that the PPU does to strengthen oversight across public prosecutions.

# SIGNIFICANT AND ILLUSTRATIVE

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## **Shailer v R [2017] 2 NZLR 629**

Crown Law’s role includes appearing on behalf of the Crown in significant criminal appeals, for example appeals against sentence. When heard in the Court of Appeal, these cases can be used to set a precedent for future cases, which promotes a consistent approach to sentencing throughout the country.

One such high-profile case in 2016 was that of Ms Shailer and Mr Haerewa, who pleaded guilty to the manslaughter of a 3-year-old boy, Moko Rangitoheriri, and to ill-treatment by failing to obtain medical treatment for him. Moko had been seriously assaulted by both caregivers, over the course of several weeks. He suffered internal injuries as a result, and died of infection when those internal injuries were not treated.

Manslaughter, like murder, carries a maximum penalty of life imprisonment. But unlike murder, life imprisonment is imposed very rarely—because it is the maximum penalty, it is reserved for only the ‘most serious’ cases imaginable. In the case of Ms Shailer and Mr Haerewa, the sentencing Judge took the view that their offending was among the most serious cases of manslaughter. She would have sentenced them to life imprisonment. However, because they pleaded guilty, she imposed a 17-year sentence with a 9-year minimum period of imprisonment. This was the longest sentence ever imposed in New Zealand for the manslaughter of a child.

When Ms Shailer and Mr Haerewa appealed their sentences, Crown Law researched sentences imposed in similar cases of manslaughter, and prepared written submissions explaining why the sentence was appropriate. The Deputy Solicitor-General (Criminal) appeared in the Court of Appeal, when Ms Shailer and Mr Haerewa’s appeal against sentence was heard in public.

The Court of Appeal dismissed the appeal, finding the sentence imposed was appropriate for the seriousness of the offending. The Court’s decision will have significance for sentencing in future cases,

and confirms that fatal violence against children will be treated very seriously.

## **Re Solicitor-General’s Reference (No 1 of 2016) [2017] NZSC 58**

A driver who has accrued 100 or more demerit points in a 2-year period is liable for mandatory demerit point suspension under s 90 Land Transport Act 1998. Police officers are authorised to serve demerit point suspension notices, and have done so routinely based on electronic notification from the New Zealand Transport Agency (NZTA) that the drivers were eligible for suspension.

In 2015 two defendants charged with driving while subject to demerit point suspension challenged the validity of the suspension notices, contending notice was not validly ‘given’ to them. The High Court upheld their challenge (*Police v Haunui; Miller v Police* [2015] NZHC 2455). As this judgment had the potential to affect many thousands of suspension notices served in this manner between 2011 and 2015, the Solicitor-General brought a reference appeal to the Court of Appeal.

The reference appeal procedure was introduced under the Criminal Procedure Act 2011, and this case was the first time the procedure has been used. It enables the Court of Appeal to determine a question of law without affecting the individual drivers concerned.

The Court of Appeal held the process used did not comply with the Act, and held the demerit point suspension notices were nullities. This ruling had the potential to affect many thousands of cases of driving while suspended. The Solicitor-General obtained leave to appeal to the Supreme Court.

In a unanimous decision the Supreme Court allowed the Solicitor-General’s appeal. The Supreme Court held the NZTA was not required to physically ‘compose’ the notice in order for them to ‘give notice’ under the Act. There was no policy reason to require a distinction between the functions of composing or generating notices and serving them, as had been suggested by the Court of Appeal.

# CRIMINAL MATTERS

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## **Cameron v R [2017] NZSC 89**

The appellants were convicted after an 18-week-long jury trial on numerous charges related to importing, selling and possessing 4-methylethcathinone (known as '4-MEC'). 4-MEC is not listed by name as a controlled drug under the Misuse of Drugs Act 1975.

The appellants were convicted on the basis 4-MEC is a controlled drug analogue: that is, it has a chemical structure that is 'substantially similar' to a controlled drug, methcathinone. The jury were directed that the appellants had to know either the identity of the substance they were dealing in or that it was a controlled drug. On this approach, the jury could find the appellants guilty if satisfied they knew the name of the substance at issue, but not that it was a controlled drug analogue.

The primary issue in the Supreme Court was the extent of knowledge required to prove offences under the controlled drug analogue regime. The Court held that knowledge of the name of the substance alone was insufficient to constitute a guilty mind. Applying first principles, however, the Court considered that the Crown could prove guilty knowledge by proving the appellants had acted recklessly. This could be shown by presenting evidence that the appellants recognised the risk that the substance at issue was illicit, but disregarded that risk in circumstances where it was unreasonable to do so.

Significantly, the Court rejected the 'working assumption' that had been adopted in a number of drug importation cases, requiring actual knowledge that the substance being imported is illicit (the Court of Appeal having previously rejected the view that importers could be liable if they appreciated the risk that they were bringing drugs into New Zealand). In the case at hand, the Court considered the jury had been wrongly directed.

With one exception, the appellants' conviction appeals were dismissed because the Court was satisfied that the appellant knew the structure of 4-MEC was substantially similar to methcathinone, or was, at least, reckless in that regard.

## **Ortmann v United States of America [2017] NZHC 189**

During a 1-month hearing in August–September 2016, the High Court heard appeals from the eligibility decision of Judge Dawson in the District Court. Under the case-stated appeal procedure, the appellants had the District Court pose more than 300 questions of law for the High Court.

They also overlaid the statutory appeal with a judicial review application, based on more than 300 pages of pleadings. Once again, many hundreds of pages of written submissions were filed. The High Court released its decision in February 2017, and upheld the decision that all four appellants were eligible for surrender on all counts in the United States indictment.



## *Impact Two*

# INCREASED TRUST IN THE JUSTICE SYSTEM

### *Appropriation*

This work links to the appropriation for Legal Advice and Representation and the Law Officer Constitutional and Criminal Law Duties output in the Law Officer Functions Multi-Category Appropriation (MCA).

### *Purpose and intention*

The Attorney-General and the Solicitor-General (the Law Officers) are responsible for providing independent legal advice to the Crown, free from political influence. This independence is critical in maintaining the integrity of the rule of law, and is instrumental in minimising the risk of the government acting unlawfully.

Crown Law is responsible for supporting the Law Officers in performing their roles.

We are responsible for providing advice (to the Crown and government agencies) on legal issues, and on the legal and constitutional implications of policy proposals. The Cabinet Directions for the Conduct of Crown Legal Business 2016 set out particular legal matters that must be referred to the Solicitor-General.

The primary activities to support the Law Officers include:

- representation or advice about actual or imminent litigation to which the government or an agency is (or may become) a party
- legal services involving matters of the lawfulness of an exercise of government power
- constitutional questions, including Treaty of Waitangi issues
- legal issues about the protection of revenue.

We also assist the Law Officers in the following areas: We:

- ensure that government actions are conducted according to the law
- represent the public interest
- manage the relationship of the Executive Government with the judiciary
- administer the appointments of Judges to the higher courts and of Queen's Counsel
- act on behalf of the government in civil litigation
- tell the House whether any provision in a Bill introduced to the House is inconsistent with the Bill of Rights Act 1990
- support the supervision of charitable trusts
- manage vexatious litigant proceedings
- process applications for the discharge of adoption orders
- process requests for second coronial inquiries
- manage special patient reclassifications
- defend judicial reviews
- provide legal advice and representation on intervention regarding alleged contempt of court and breach of name suppression
- provide advice on mutual assistance and extradition matters
- manage Attorney-General consent to criminal prosecutions.



## ***Policy work programme***

Crown Law contributes effectively to policy work led by government agencies (mainly the justice sector), where that work has implications for the Law Officers, Crown Law, and/or the Crown Solicitors.

Our policy work programme is mostly focused on criminal justice proposals, constitutional proposals and those relating to functions such as the Solicitor-General's role in coronial inquests or the role of the Attorney-General as protector of charities, or providing consent before an extraterritorial prosecution can be started.

In the past year (2016/17), the policy role has contributed significantly to the Law Commission and justice sector reviews of the use of classified/security information in Court and improving the justice response to victims of sexual violence.

In addition, Crown Law has been represented by the policy team on the General Managers' Steering Group for the justice sector 4-Year Plan and the justice sector Briefing to the Incoming Government Steering Group. This level of representation helps to ensure we work with the justice sector as a whole to safeguard the integrity of the justice system.

## ***Performance overview***

See pages 40-47 for our service delivery regarding the Law Officer Functions and Legal Advice and Representation.

### ***Performance overview - international rankings***

Crown Law contributes to increased trust in the justice system through the performance of the Law Officers' constitutional duties.

To gauge the impact of Crown Law's legal work, we look at international indexes rating New Zealand's standing in matters related to justice. New Zealand is very well regarded overall.

The World Justice Project Rule of Law Index 2016 is based on a range of factors focused on the operation of democracy and the enforcement of freedoms and rights, security and justice.

In the overall Rule of Law Index, New Zealand is ranked first of the 15 regional East Asia and Pacific countries, and scores above average for countries of similar incomes. Globally, New Zealand is ranked 8/113<sup>7</sup> when all Index factors are considered. In the Index's criminal justice focus overall, New Zealand is ranked 13/113.<sup>8</sup>

According to the Index, New Zealand's criminal investigations system had no significant problems. The system shows confidence in both prosecutorial independence and integrity.

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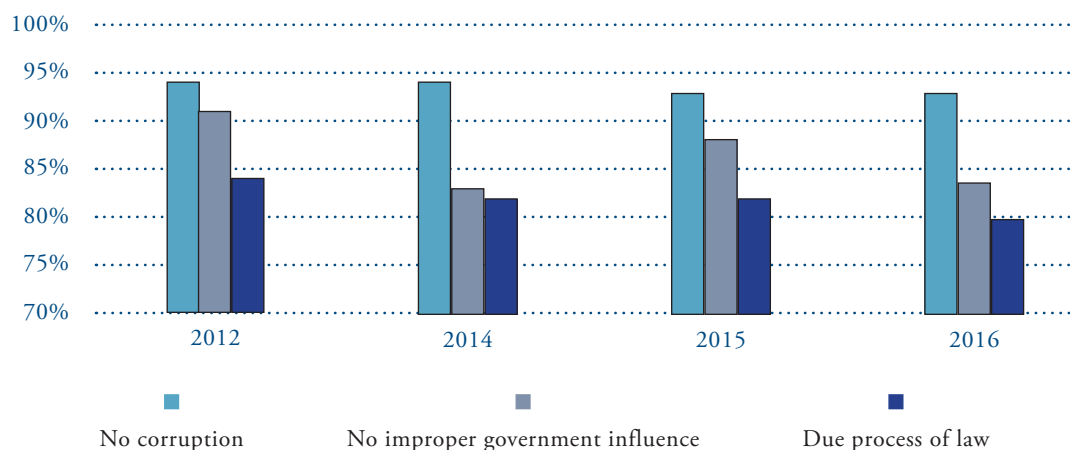
7 2015: 6/102

8 2015: 8/102

## Performance overview continued...

The diagram below shows our country results across three key factors of the Rule of Law Index.

*World Justice Project Rule of Law Index 2016: NZ*

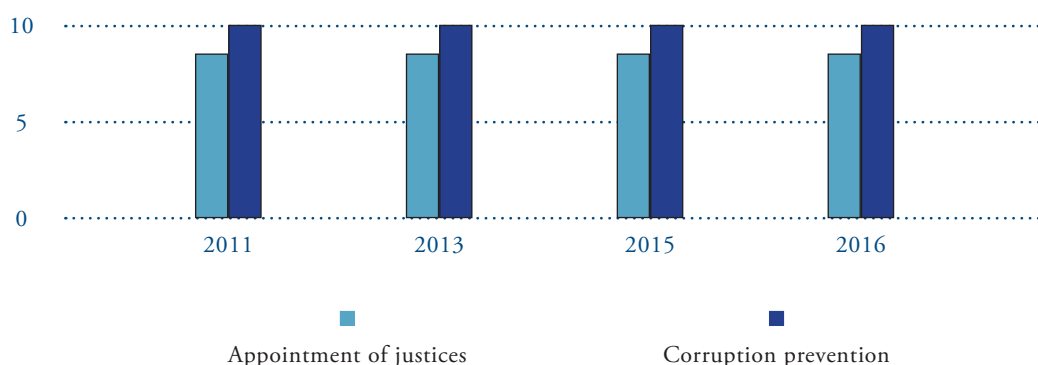


New Zealand's international ratings for the Rule of Law Index (above) and Sustainable Governance Index (below) are detailed on page 45.

The high rating for freedom from corruption in the World Justice Project Rule of Law Index is similarly reflected in the Bertelsmann Sustainable Governance Index. The 2016 Bertelsmann report<sup>9</sup> stated: "Despite the lack of a written constitution, strong courts and a culture of respect for the law afford legal certainty. Corruption is very rare."

The Bertelsmann index maximum score is 10. New Zealand has returned a perfect score for corruption prevention in the past five reports, as shown in the diagram below.

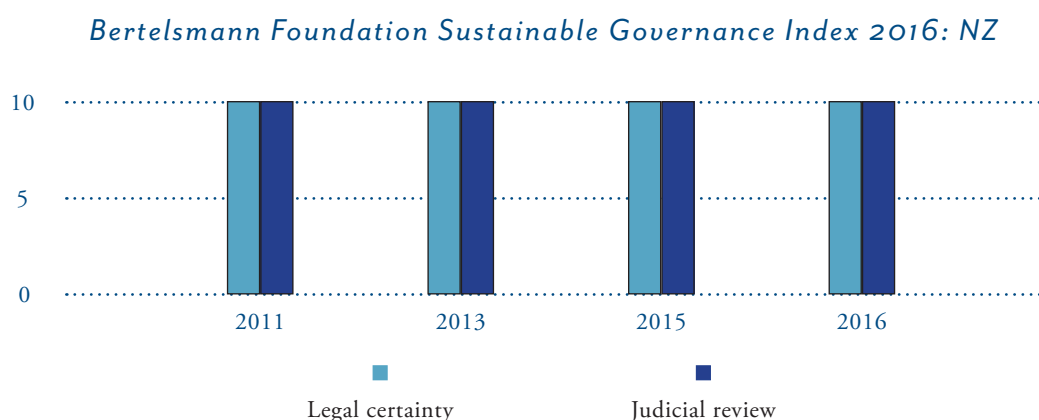
*Bertelsmann Foundation Sustainable Governance Index 2016: NZ*



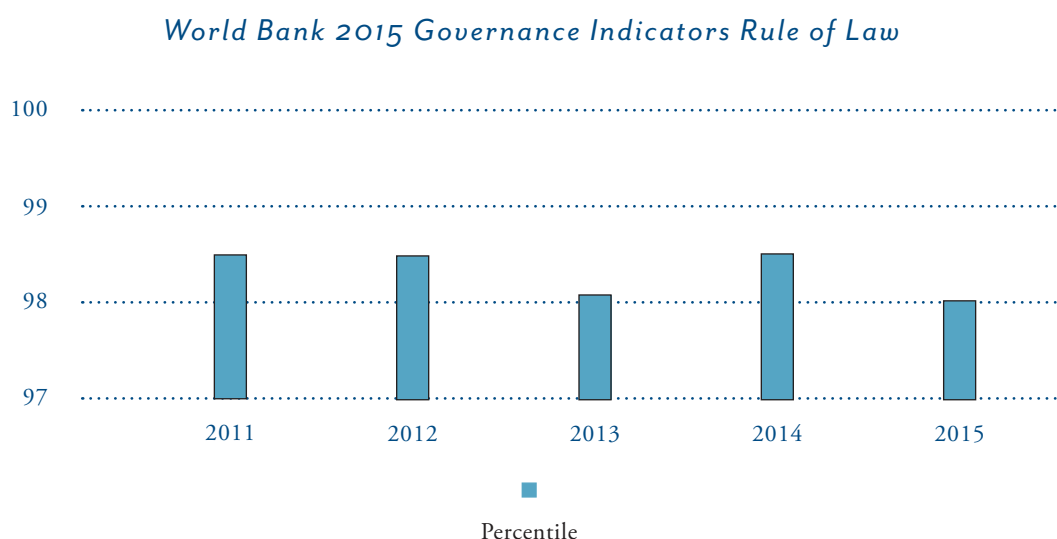
<sup>9</sup> Sustainable Governance Indicators report for New Zealand, covering the period November 2014 to November 2015  
<http://www.sgi-network.org/2016>

The 8/10 rating for appointment of Justices is related to the potential for strengthening formal reporting on this area of governance. Otherwise no issues were stated, reflecting the strength of New Zealand's institutions.

We also contribute to reducing legal risks to the Crown by protecting the Crown's interests and ensuring any risks are managed well. The reduction of risk is related to the following index measures, in which New Zealand scored a perfect 10 in the past five reports.



The World Bank Governance Indicators<sup>10</sup> continue to rank New Zealand well for rule of law, placing New Zealand in the 98th percentile in the latest survey (for 2015) of more than 200 countries.



The Worldwide Governance Indicators project reports the perceptions of governance of a large number of survey respondents and expert assessments worldwide. Likewise, Transparency International's Corruption Perceptions Index placed New Zealand fourth of 168 states in 2015, scoring 88 of 100 (Denmark ranked first on 91).

While Crown Law contributes indirectly to these results, that contribution is made through the constitutional duties of the Law Officers. This reduces risk to the Crown's interests, ensures legal certainty and prosecutes serious crime. This in turn helps New Zealand to achieve these rankings and supports the justice sector in making this a safe and just country.

<sup>10</sup> World Bank Governance Indicators 2015 Update, Aggregate Indicators of Governance 1996-2014 data, <http://www.worldbank.org/governance/wgi>

# SIGNIFICANT AND ILLUSTRATIVE

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## **Osborne v WorkSafe New Zealand [2017] NACA 11**

Mrs Osborne and Mrs Rockhouse, whose husband and son respectively were killed in the Pike River coal mine disaster, sought judicial review of the decision by WorkSafe New Zealand not to offer evidence regarding charges brought against Mr Whittall, the former Chief Executive of Pike River Coal Limited, under the Health and Safety in Employment Act, and the decision of the District Court to dismiss the charges.

Crown Law acted for WorkSafe to defend its decision.

The argument focused on whether it was legitimate for WorkSafe to take into account, when considering whether it was in the public interest to continue with the prosecution, a proposal made by Mr Whittall to arrange payment of reparation if the prosecution was discontinued. There was also argument on the justiciability of a decision not to prosecute, and the role of the District Court when dismissing charges where the prosecution has not offered evidence.

The High Court dismissed the application for judicial review, and Mrs Osborne and Mrs Rockhouse appealed to the Court of Appeal.

The Court of Appeal found the decisions were lawfully made. It found there was no unlawful agreement to stifle the prosecution by payment of money. It also found WorkSafe was entitled to consider and give weight to the conditional reparation undertaking as one factor in deciding whether or not to pursue the prosecution, and that WorkSafe acted properly and independently considered Mr Whittall's reparation undertaking, among other factors, in concluding that it was not in the public interest to continue with the prosecution.

Mrs Osborne and Mrs Rockhouse have appealed to the Supreme Court and their appeal will be heard in October 2017.

## **Attorney-General v Taylor [2017] 3 NZLR 24**

Mr Taylor and six other former and current prisoners (the respondents) challenged the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010, which disqualified all sentenced prisoners from registering to vote. Prior to the 2010 Act, only those serving a sentence of 3 or more years' imprisonment were disqualified. The respondents sought a formal declaration that the law was inconsistent with the right to vote in the New Zealand Bill of Rights Act 1990. This is known as a 'declaration of inconsistency'.

The High Court granted the declaration and the Attorney-General appealed to the Court of Appeal. The appeal was important as this was the first time a New Zealand court has granted a declaration of inconsistency in respect of a piece of legislation passed by Parliament.

If the declaration were to stand, it would set an important precedent, and would increase the Crown's legal risk in defending future proceedings seeking declarations of inconsistency in respect of other legislation. The case also raised important issues about the scope of the judicial function under New Zealand's constitution, and whether courts can grant relief that does not resolve a dispute between the parties or affect a person's rights and duties under the law.

On appeal, the Court of Appeal confirmed that courts have jurisdiction to make declarations of inconsistency, and upheld the declaration made in this case. The Court of Appeal held that the judicial function included answering questions of law, including questions of consistency between legislation and human rights.

In the Court's view, a declaration of inconsistency conveys the Court's opinion that legislation should be reconsidered, with a reasonable expectation that Parliament or Government would respond.

The Attorney-General has sought leave to appeal this decision.

# LEGAL & CONSTITUTIONAL MATTERS

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## **Proprietors of Wakatu v Attorney-General [2017] 1 NZLR 423**

The case relates to the process of pākehā settlement of the Nelson area (known to Māori as Wakatu) in the 19th century, by way of land purchases from Māori by the New Zealand Company. The appeal concerned the failure of the colonial government to ensure land that was, or should have been, reserved for the future benefit of the Māori vendors was set aside from the purchased land as consideration for the extinguishment of customary title. The purchase was confirmed by the government post-Treaty and granted by the Crown to the Company. The Supreme Court considered whether the Crown undertook trust or fiduciary duties in relation to those reserves, known as the tenths.

The appellants succeeded on their principal point, with a majority deciding the Crown owed fiduciary duties to reserve 15,100 acres for the benefit of the customary owners and, additionally, to exclude their pa, urupa and cultivations from the land obtained by the Crown. It granted declarations as such. The majority also found those claims were not barred by the Limitation Act 1950 or the legislation settling the Treaty claims of the area, and that Mr Stafford had standing to pursue the claims. The proceeding was remitted back to the High Court for determining the remaining issues of liability, defences and relief.

The majority Judges rejected the Crown's submissions (and the conclusions of the High Court and Court of Appeal) that the Crown was acting at the relevant times in a governmental capacity inconsistent with fiduciary duties, and that any contemporary references to obligations were unenforceable political compacts.

Previously, there has been no recognition in New Zealand of fiduciary or trust duties relating to

historic dealings in land between the Crown and Māori. Wakatu moves explicitly towards precedents from the Canadian Supreme Court, rejecting comments in previous New Zealand cases that they were distinguishable, and recognising a duty owed by the Crown to the collective title-holders of customary land and their descendants.

In two of the judgments, the duty owed is found to be trust-like. The duty found is based on the particular dealings between the Company and Māori and between the Crown and the Company, rather than arising out of the Treaty. It was relevant that the Māori interest in land was pre existing, not created by the Crown, and could not be taken away except by lawful procedure. In such a context, a relationship of power and dependence may exist, leading to the Crown taking on fiduciary obligations. The judgment does not recognise a general duty owed by the Crown to Māori.

The Court found that the proceedings are not barred by limitation or equitable defences to the extent that the claims sought to recover trust property either in the possession of the Crown or converted by the Crown to its use.

The judgments unanimously found that Mr Stafford had standing to bring the claim on behalf of himself, with a majority accepting he could do so on behalf of the customary owners as a kaumatua and the descendant of those owners.

A majority of the Court also indicated there is scope for a more flexible approach to standing relating to collective groups of indigenous owners, though only a minority considered that appropriate in this case. In the result, the majority of the Supreme Court agreed with the High Court and the Court of Appeal that the Proprietors of Wakatu and Te Kahui Ngahuru Trust lacked standing to bring the claims on behalf of the customary owners.

# SIGNIFICANT AND ILLUSTRATIVE

## Kim v Minister of Justice [2016] NZHV 3086

Kim v Minister of Justice exemplifies the rule of law in action. The Minister of Justice had decided to extradite Mr Kim, a South Korean national, to the People’s Republic of China to face a charge of intentional homicide.

The Minister had relied heavily on substantive assurances and a monitoring regime agreed to by the People’s Republic of China, and was satisfied Mr Kim did not face a real risk of torture; would receive a fair trial that complied to a reasonable extent with the requirements of Art 14 of the International Convention on Civil and Political Rights; and would not be subject to a death sentence if he were to be convicted. This decision was challenged by Mr Kim by an application for judicial review, and the High Court quashed the Minister’s decision.

The High Court acknowledged the process was thorough and considerable care was taken to ensure Mr Kim’s rights would be protected, but Her Honour decided that the circumstances required her to take a hard look at the decision and, in particular, at the sufficiency of the assurances.

The Judge decided that, in three respects, further clarification was required. The Minister was directed to reconsider her decision, with reference to the following points: whether the monitoring of Mr Kim’s treatment and trial would be undertaken by New Zealand consular officials proactively and promptly; the significance of the fact Mr Kim will not have a lawyer present during pre-trial interrogation; and the ability of New Zealand to disclose any issues or breaches of the assurances to third parties.

The Minister duly reconsidered her decision, and decided to extradite Mr Kim. His application to judicially review that second decision was heard in April 2017, and judgment is awaited.

## Smith v Attorney-General [2017] NZHC 1647

Phillip Smith escaped from lawful custody and fled to Brazil in November 2014. Prior to his escape, he was in the ‘reintegrative’ phase of his sentence, and was permitted out of prison on temporary releases in the community. A further aspect of that phase of his sentence was that he was permitted to wear a custom-made hairpiece while in prison.

Following his escape, Mr Smith was charged with further offences; his security classification was raised; and he was no longer considered to be in the reintegrative phase of his sentence. His custom-made hairpiece was removed.

Mr Smith filed a judicial review proceeding, claiming that the decision to remove his hairpiece was made in breach of his right to freedom of expression, as affirmed by s 14 of the Bill of Rights Act. He also claimed that the decision was unlawful in that the prison director had failed to take into account a mandatory consideration, namely his rights under the Bill of Rights Act, in making the decision to remove the hairpiece.

The Crown argued that s 14 of the Bill of Rights Act did not protect the wearing of a hairpiece as it was not expressive conduct, and that a relatively low-level managerial decision-maker like a prison director need not take into account the Bill of Rights Act as a procedural matter, so long as the decision ultimately reached did not infringe the right in question.

The High Court held that the wearing of a hairpiece was an act of expression in Mr Smith’s case, and that the prison director erred in failing to take the Bill of Rights Act into account in the decision-making process. The latter finding has the potential to give rise to a number of challenges to governmental and administrative decisions on the basis that human rights considerations were not taken into account in the process of reaching a decision.

The case has been appealed to the Court of Appeal.



# LEGAL & CONSTITUTIONAL MATTERS

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## **Marine and Coastal Area (Takutai Moana) Act 2011**

The Marine and Coastal Area (Takutai Moana) Act 2011 repealed the Foreshore and Seabed Act 2004, restored customary interests in the common marine and coastal area, and established how those customary interests may be recognised under the Act. The Act enables Māori to apply for the recognition of protected customary rights or customary marine title in the foreshore and seabed, either by way of a recognition order from the High Court, or a recognition agreement with the Minister responsible for the Act (currently the Minister for Treaty of Waitangi Negotiations). The Act imposed a 6-year deadline by which Māori had to file their applications. The statutory deadline expired on 3 April 2017.

As a result of that deadline, there are now 201 applications to the High Court seeking recognition orders for protected customary rights or customary marine title, and 378 applications to engage with the Minister for recognition agreements. Some applicant groups have lodged applications under both pathways and will need to choose which they wish to pursue in the first instance. Many of the applications overlap with other applications.

The large influx of applications has caused administrative challenges. To assist the High Court's case management process, the Crown has mapped most of the High Court applications, proposed groupings of applications, and provided other relevant information to the Court. Applicants and interested parties now have the opportunity to respond to the Crown's proposals before the Court takes the next case management steps. The Ministry of Justice is also planning how to manage the large number of engagement applications.

There is little judicial precedent yet in terms of recognition orders by the High Court. To date, the Court has made an order in one case only, granting customary marine title in relation to a small area, 200 m in radius, on one of the Titi (Muttonbird) Islands to the southwest of Stewart Island.

Similarly, the Minister has, to date, made only one engagement determination. In that determination, the Minister has, on behalf of the Crown, offered to enter into a recognition agreement with Ngāti Pāhauwera, recognising customary marine title in part of the application area off the Hawke's Bay coastline. The Minister was not satisfied, on the basis of the evidence, that the test for protected customary rights was met.

The Act sets out the tests for the recognition of protected customary rights and customary marine title. Customary marine title exists in the common marine and coastal area if the applicant group holds the area in accordance with tikanga and has exclusively used and occupied it from 1840 to the present day without substantial interruption, or received it, at any time after 1840, through a customary transfer.

A protected customary right is a right that has been exercised since 1840 and continues to be exercised in a particular part of the common marine and coastal area in accordance with tikanga by the applicant group and is not extinguished as a matter of law. The common marine and coastal area begins at the high water mark that is daily wet by the sea when the tide comes in and ends at the outer limits of the territorial sea, but excludes certain freehold land in that area and certain Crown land.

## SIGNIFICANT AND ILLUSTRATIVE

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### **Marino v Chief Executive, Department of Corrections [2016] NZSC 52**

Mr Marino and Mr Booth challenged the way in which the Department of Corrections calculates time spent in pre-sentence detention (often referred to as time spent ‘on remand’) pursuant to the provisions of the Parole Act 2002. From 2003 to 2016, the Department calculated the time a prisoner had spent on pre-sentence detention on a charge-by-charge basis, applying a line of Court of Appeal authority. This meant that, if a prisoner was charged with two separate offences at different times, the calculation of time spent in detention before sentence on each charge would be considered separately.

In September 2016, the Supreme Court overruled this line of authority, holding that pre-sentence detention should be calculated in the aggregate—all pre-sentence detention counts, from the time of the first arrest and remand in custody until a person starts a sentence as a convicted prisoner.

The decision made a significant change to the way in which Corrections calculates pre-sentence detention and, accordingly, the date on which prisoners who have been sentenced for multiple charges must be released from prison. In some cases, the result of the application of the Supreme Court’s decision will require prisoners to spend significantly less time in prison than would have been the case under the previous line of authority.

The case also raises important questions about the application of judgments that change previously settled law, particularly where those judgments potentially apply to a large number of people.

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## *Impact Three*

# **REDUCED LEGAL RISK TO THE CROWN**

### ***Appropriation***

This work links to the appropriation for Legal Advice and Representation and the Government Legal Network output in the Law Officer Functions MCA.

### ***Purpose and intention***

Principal Law Officers are the chief legal advisors to the Government and the chief advocates for the Government in the courts. They are responsible for making sure legal process does not prevent the government from lawfully implementing its chosen policies and discharging its governmental responsibilities.

Crown Law supports the Law Officers by providing legal advice and representation to ensure the Crown's legal risks are managed well and its interests are protected. We advise and provide representation on services to:

- protect Crown infrastructure
- protect the Crown's commercial interests
- regulate those interests
- protect Crown revenue.

### ***Performance Overview***

We take a 'one Crown' approach to protecting the Crown's legal interests. In looking after the Crown's legal interests, we must look beyond the interests of individual departments, even when a department is the client initiating the work. This approach assures the Attorney-General and Solicitor-General that the Crown's legal risk is being identified early and managed well. See pages 40-47 for how service delivery is reported for legal advice and representation and the Government Legal Network.

One way that we provide leadership and work with other departments is through the Government Legal Network (GLN). The GLN is a collaboration led by the Principal Law Officers and Chief Legal Advisors.

Its purpose is to improve the effective and efficient delivery of legal advice and services to the Crown, and facilitate the systemic oversight of Crown legal risk. See pages 18-19 for further information about GLN activities.

## SIGNIFICANT AND ILLUSTRATIVE

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### **Commissioner of Inland Revenue v Wilson (2017) 28 NZTC 23-009**

The bankruptcy regime is supposed to be an expeditious way of ascertaining what is in a bankrupt's estate; collecting that for the benefit of creditors; and allowing a bankrupt to move on with their life. If court action needs to be defended, cost is incurred by the Commissioner, who is a significant creditor through being involved in most bankruptcy action.

Most bankruptcy cases are undertaken by departmental solicitors, but Crown Law is retained on cases that are novel, complex, and/or of precedential value.

This appeal was taken to challenge a developing line of High Court authority where, when served with a bankruptcy notice, insolvent taxpayers were seeking to delay them being adjudicated bankrupt by making a payment proposal to the High Court. Relying on its inherent jurisdiction, the High Court had allowed a payment proposal the Commissioner had already declined. That cut across two statutory regimes that were specifically provided to deal with payment proposals, and the tests Parliament required for those to apply.

Because of the doctrine of precedent in our legal system, lower courts are bound by a decision of a senior court given on the same issue. Accordingly, a decision of the Court of Appeal was required to determine the issue, so that courts would know how to deal with it. The Court of Appeal held that, when the Commissioner is the creditor, the instalment arrangement regime in the Tax Administration Act 1994 applies. It allowed the Commissioner's appeal.

### **Attorney-General v Problem Gambling Foundation of New Zealand [2017] 2 NZLR 470**

In 2013, the Ministry of Health, for the first time, undertook a contestable procurement process to obtain problem gambling services. The procurement decisions resulted in the incumbent provider, the Problem Gambling Foundation, being contracted by the Ministry on a significantly more limited basis.

The Foundation's application for judicial review against the procurement decisions was successful in the High Court.

On 23 July 2015, the Court allowed judicial review of the procurement decision and found that the Ministry had breached the Foundation's legitimate procedural expectations. It had made a decision that was tainted by apparent bias and based on a mistake of fact or lack of probative evidence. Accordingly, the procurement decision was set aside.

On 16 December 2016, the Court of Appeal allowed the Ministry's appeal against the High Court decision. The Court of Appeal confirmed that, where a public body is acting commercially, such as when making procurement decisions, the scope of judicial review is limited to fraud, corruption, bad faith or analogous circumstances unless the context requires otherwise. There were no compelling circumstances in this procurement process that required the availability of broader judicial review grounds.

Even if broader judicial review were available, the Ministry neither breached the Foundation's legitimate expectations nor based its decision on a lack of probative evidence or mistake of fact. The Court of Appeal also held that decision-makers were not to be held to the standard of impartiality required by the judiciary so the decision was not tainted by apparent bias.

The High Court decision brought about a lot of uncertainty about when procurement decisions of a public body would be subject to judicial review. However, the Court of Appeal decision re-established that judicial review of procurement decisions would only be available in limited and clearly defined circumstances.

The Court of Appeal decision was not appealed.

# LEGAL ADVICE & REPRESENTATION MATTERS

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## **Northland Environmental Protection Society Inc v Chief Executive of the Ministry of Primary Industries [2017] NZHC 308**

This case concerns the export of ancient swamp kauri.

Ancient swamp kauri are relics of fallen trees that have lain buried in swamp land for centuries. The unique swamp conditions have preserved the timber intact. This timber is highly prized and located almost exclusively in Northland. Over the past few years, a sizeable industry has emerged in excavating, milling and exporting ancient swamp kauri and its products.

The legislation governing the export of ancient swamp kauri products is the Forests Act 1949. The Act prohibits the export of indigenous timber products—which includes ancient swamp kauri products—unless the export falls into one of the specified exceptions, which includes, importantly for this litigation, a ‘finished or manufactured indigenous timber product’ (FMITP).

If an export is an FMITP, then it is exempted from the mandatory process by which other indigenous timber products must be inspected and approved by a forestry officer before export.

Notwithstanding the exemption, MPI has offered a voluntary inspection and approval process for FMITP exports of ancient swamp kauri. The purpose of the voluntary regime is to increase both public and exporter confidence in the legality of the ancient swamp kauri products being exported.

The plaintiff, a local environmental group, challenged the integrity of the voluntary process, claiming MPI had wrongly interpreted what constitutes a FMITP and acted unreasonably in undertaking the voluntary process. Other claims were also made against Customs and the Ministry of Culture and Heritage (MCH), regarding their roles in the export process.

In the result, the Court dismissed all of the plaintiff’s challenges. The Court emphasised that a common-sense and practical approach has to be applied when interpreting what constitutes an FMITP, and it did not find that MPI had erred in this respect. As well, the Court held that the evidence falls well short of that which would support a finding that MPI had acted unreasonably in the voluntary process and in approving any exports in breach of the Forests Act.

The plaintiff has appealed the High Court decision. A hearing in the Court of Appeal will take place in due course.

## **Te Ohu Kai Moana Trustee Ltd v Attorney-General [2016] NZAP 1169**

In a number of High Court challenges, based on allegations of the breach of Treaty of Waitangi principles, to the Kermadec Ocean Sanctuary Bill, plaintiffs have tested the scope of the Parliamentary Privilege Act 2014. The Crown successfully argued for a stay of the proceedings, so that the claims cannot be heard while the Bill is in the process of being considered by Parliament.

The High Court found that a Court inquiry while the Bill was before Parliament would breach the principle of comity, a long-standing constitutional principle now reflected in the 2014 Act. The broad principle is that the Courts and Parliament should respect each other’s areas of operation and the Courts not interfere in the conduct of Parliament.

## SIGNIFICANT AND ILLUSTRATIVE

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### **Hawke's Bay Regional Investment Company Ltd v Royal Forest and Bird Protection Society of New Zealand Incorporated & Anor [2017] NZSC 106**

Crown Law acted for the Minister of Conservation in the recent Ruataniwha decision. The Hawke's Bay Regional Investment Company (HBRIC) made an application to exchange land to obtain conservation land needed for the Ruataniwha Scheme. This involved a series of decisions by the Director-General (as delegate for the Minister of Conservation), including decisions to:

- revoke the conservation park status of 22 ha of land (part of the Ruahine Forest Park) so it would revert to stewardship land
- authorise the 22 ha to be exchanged under the Conservation Act 1987 for a larger block of land with higher conservation values overall, known as the 'Smedley block'.

Forest and Bird applied for judicial review of the decision.

After the application was unsuccessful in the High Court, it was appealed to the Court of Appeal in February 2016. On 30 August 2016, the Court of Appeal found, by majority decision, that the Director-General unlawfully made decisions to revoke the conservation park status attached to the piece of land in order to enable a land exchange, in circumstances where the land still held conservation value.

On 6 July 2017, a majority of the Supreme Court upheld the Court of Appeal's decision. The Court found the intrinsic conservation values of the 22 ha should have been the focus of any decision to revoke the protected status of the block, not the broader consideration of whether the exchange would result in a net gain to the conservation land administered by DOC.

The decision to revoke the special protection designation of a defined part of the Ruahine Forest Park was set aside, with a direction that the Director-General remakes the decision on HBRIC's application.

# LEGAL ADVICE & REPRESENTATION MATTERS

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## **X v Attorney-General of New Zealand [2017] 3 NZLR 115**

Counsel in the Crown Legal Risk Group are acting for the New Zealand Defence Force in X v Attorney-General and Ministry of Defence (United Kingdom).

The plaintiff served in the Royal New Zealand Navy (RNZN) and received specialist training from the Royal Navy in the United Kingdom. She brought proceedings claiming she was sexually assaulted and sexually harassed on a Royal Navy warship and at Royal Navy bases, and sexually harassed when she returned to New Zealand.

Justice Simon France has issued two significant judgments in respect of the proceedings. The first addressed jurisdictional issues and the second struck out the plaintiff's reputational claims.

### *Jurisdictional issues*

On 24 April 2017 Simon France J issued his decision on jurisdictional issues.

His Honour upheld the Ministry of Defence (United Kingdom) protest to jurisdiction on the basis of sovereign immunity in New Zealand Courts and dismissed all claims against it. The plaintiff has filed an appeal in relation to this part of the decision.

His Honour did not uphold the Attorney-General's protest to jurisdiction, which was on the basis the Courts of England and Wales are the appropriate forum for the claims. This part of the decision has not been appealed.

### *Reputational claims*

On 29 May 2017 Simon France J issued his decision striking out the plaintiff's reputational claims.

The reputational claims relate to the use of the plaintiff's image in RNZN promotional materials, including a promotional poster, brochures and a Facebook promotion. The photographs were used after the plaintiff had made allegations of sexual assault and harassment and left the RNZN.

The plaintiff claimed she was defamed by innuendo. She said those with specific knowledge of her complaints would think she was hypocritical, callous towards other women, willing to trade her principles for commercial benefit, and likely to have been fabricating or exaggerating her experiences.

Justice Simon France struck out the defamation claim on the basis of the Jameel principle (from the English Court of Appeal decision *Jameel v Dow Jones & Co Inc* [2005] EWCA Civ 75, [2005] QB 946). This is the second time the Jameel principle, which allows for strike out on the basis a proceeding is "de minimus" or an abuse of process, has been accepted by the High Court in New Zealand (*Opai v Culpan* [2017] NZHC 1036, per Katz J). His Honour considered the plaintiff's reputational claim did not merit defamation proceedings. The group of potential publishees was already small and would be reduced further to those who actually saw the materials. Furthermore, it was unlikely they would view the material from the alleged innuendo viewpoint. There was no prospect of any further publication and the pleaded damage, if established, would not be significant.

The Court found the plaintiff's claims for breaches of the North American torts of misappropriation of personality and false light invasion of privacy were untenable, as was a claim for breach of the Fair Trading Act 1986.

The plaintiff has not appealed the decision.

**Statement of  
Service Performance  
and Financial Statements**

## ***Performance management***

We understand the need for monitoring what we deliver and how well we deliver it, as this contributes to our understanding of how we can strengthen our value. As a provider of specialised publicly-funded services, and a manager of such services provided by others, we have an ongoing responsibility to ensure public money is being used responsibly to achieve effective and timely results.

Crown Law is accountable to Ministers and Parliament, and is responsible for demonstrating its value for money through the effectiveness of its management and transparency in its performance. The achievement of this kind of value supports the Government's priorities for economic growth, justice sector outcomes and Better Public Services. It is dependent on a range of factors, including:

- Alignment of outputs with strategic priorities
- Quantity and quality of outputs
- Outcomes/impacts
- Efficiencies and effectiveness in the use of

resources and processes implemented

- Assessment and management of risk
- Protection of public assets
- Compliance with authorities, legislation and Parliament
- Planning to meet future demand within forecast baseline funding.

Taking the report as an integrated overview of these factors we are confident Crown Law provides a high level of value for money for New Zealand, in providing the efficient and effective high quality legal advice and services that are expected of Crown Law.

Our service performance for the year ended 30 June 2017 is presented on pages 39-48.

## ***Appropriations***

### ***Multi-Category Appropriation (MCA) – Law Officer Functions***

The overarching purpose of this appropriation is to provide for the discharge of the Law Officers' constitutional and criminal law responsibilities.

Within the MCA are appropriations for:

- Conduct of Criminal Appeals from Crown Prosecutions
- Government Legal Network
- Law Officer Constitutional and Criminal Law Duties
- Public Prosecution Services

### ***Legal Advice and Representation***

The purpose of this appropriation is to provide legal advice and representation services to central government departments and Crown Agencies.

### ***Crown Law Office - Capital Expenditure***

This appropriation is intended to achieve the renewal and replacement of life-expired assets in support of the delivery of the Crown Law's services.

## Multi-category appropriation (MCA) - Law Officer Functions<sup>11</sup>

The overarching purpose of this appropriation is to provide for the discharge of the Law Officers' constitutional and criminal law responsibilities.

Within the MCA are appropriations for:

- Conduct of Criminal Appeals from Crown Prosecutions
- Government Legal Network
- Law Officer Constitutional and Criminal Law Duties
- Public Prosecution Services

Performance measure	Actual 2015/16	Forecast 2016/17	Actual 2016/17	Comment
<i>Quality measure (%)</i>				
Attorney-General's responses to a questionnaire about service provided by Crown Law are good or excellent.	100%	90%	100%	

### Audited financial performance (MCA Summary) (GST exclusive)

Actual 2016 \$000		Actual 2017 \$000	Main Estimates 2017 \$000	Supplementary Estimates 2017 \$000
<b>Revenue</b>				
42,459	Crown	47,359	47,369	47,359
368	Other	282	382	382
<b>42,827</b>	<b>Total revenue</b>	<b>47,641</b>	<b>47,751</b>	<b>47,741</b>
<b>Expenditure</b>				
<b>42,639</b>	<b>Expenditure</b>	<b>47,338</b>	<b>47,751</b>	<b>47,741</b>
<b>188</b>	<b>Net surplus/(deficit)</b>	<b>303</b>	<b>-</b>	<b>-</b>

<sup>11</sup> This is a newly established appropriation effective from 1 July 2016 as the result of an appropriation structure change. The new appropriation combines two 2015/16 appropriations (Supervision and Conduct of Crown Prosecutions and Appeals MCA and The Exercise of Principal Law Officer Functions), and the newly established Government Legal Network (GLN) category, and is funded by transfers of \$46.766 million from the two disestablished appropriations, and \$985,000 approved for the new GLN category.



## MCA Output - Conduct of Criminal Appeals from Crown Prosecutions

**Scope** - This category is limited to conducting appeals arising from Crown prosecutions.

### Audited service performance

Performance measure	Actual 2015/16	Forecast 2016/17	Actual 2016/17	Comment
<b>Quantity</b>				
<i>New matters</i>				
Crown appeals	29	15 – 30	31	-
Accused appeals	584	550 – 600	652	-
<b>Timeliness</b>				
<i>Average hours worked per disposed case</i>				
Crown appeals	63	≤ 90	92	-
Accused appeals	28	≤ 90	32	-
<b>Quality</b>				
<i>Effectiveness</i>				
Percentage of Crown appeals concluded in favour of the Crown	70% <sup>12</sup>	60% <sup>13</sup>	63%	63% = 15 allowed; 4 allowed in part; 1 granted; the other 37% is 7 dismissed; 1 refused and 4 abandoned. One of the Appeals lost resulted in the abandonment of two other appeals of the same type. The other appeals abandoned were as result of changed circumstances after the appeals were filed.
Percentage of appeals brought by the accused/defendant, concluded in favour of the accused/defendant.	21% <sup>14</sup>	30%	23%	Of appeals brought by the accused/defendant: 296 dismissed; 9 refused; 70 abandoned; 1 abandoned in part; 91 allowed; and 24 allowed in part.

### Audited financial performance (GST exclusive)

Actual 2016 \$000		Actual 2017 \$000	Main Estimates 2017 \$000	Supplementary Estimates 2017 \$000
<b>Revenue</b>				
3,285	Crown	3,281	3,285	3,281
-	Other	-	-	-
<b>3,285</b>	<b>Total revenue</b>	<b>3,281</b>	<b>3,285</b>	<b>3,281</b>
<b>Expenditure</b>				
<b>2933</b>	<b>Expenditure</b>	<b>3,496</b>	<b>3,285</b>	<b>3,281</b>
<b>352</b>	<b>Net surplus/(deficit)</b>	<b>(215)</b>	<b>-</b>	<b>-</b>

<sup>12</sup> The 2015/16 actual has been recalculated from 88% to 70%. The previously reported figure had not been calculated on the full dataset. The 70% = 15 allowed; 2 allowed in part; 2 granted. The other 30% = 4 abandoned and 7 dismissed.

<sup>13</sup> Crown Law's forecast success rate (60%) balances the tension between the taking of an appeal because the decision is considered to be wrong and the need to take an appeal to clarify a point of law in the public interest.

<sup>14</sup> The 2015/16 actual has been recalculated from 25% to 21%. The previously reported figure had not been calculated on the full dataset. The 21% = 366 dismissed; 16 refused; 94 abandoned; 1 abandoned in part; 103 allowed; 4 granted and 23 allowed in part.

## MCA Output - Government Legal Network<sup>15</sup>

**Scope** - This category is limited to developing the collective capability, effectiveness and efficiency of government lawyers.

### Audited service performance

Performance measure	Actual 2015/16	Forecast 2016/17	Actual 2016/17	Comment
<b>Quantity</b>				
<i>New matters</i>				
Number of individual CPD-compliant hours delivered annually to the GLN lawyers	New	2,650	3,348	<i>The forecasted targeted hours excluded the Lawyers in Government Conference. Higher participation rate than anticipated.</i>
Numbers of reports submitted to the Attorney-General under the GLN Legal Risk Reporting System	New	4	4	-
<b>Quality</b>				
<i>Client perceptions and service performance (%)</i>				
Chief Legal Advisors considers GLN team engagement and communications is good to excellent.	New	80%	100%	<i>Of the 33 survey recipients, 19 responded resulting in a 57.58% response rate.</i>
Lawyers registered on GLN Online considers GLN activities and opportunities for participation is good to excellent.	New	70%	88%	-
The Attorney-General is satisfied with the GLN Legal Risk Reporting System.	New	Yes	Yes	-

### Audited financial performance (GST exclusive) New for 2016/17

Actual 2016 \$000	Actual 2017 \$000	Main Estimates 2017 \$000	Supplementary Estimates 2017 \$000
<b>Revenue</b>			
- Crown	885	885	885
- Other	57	100	100
- <b>Total revenue</b>	<b>942</b>	<b>985</b>	<b>985</b>
<b>Expenditure</b>			
- <b>Expenditure</b>	<b>979</b>	<b>985</b>	<b>985</b>
- <b>Net surplus/(deficit)</b>	<b>(37)</b>	-	-

15 The Government Legal Network is a newly established MCA effective from 1 July 2016.

## MCA Output - Law Officer Constitutional and Criminal Law Duties

**Scope** - This category is limited to providing assistance to the Principal Law Officers in the exercise of their functions, and providing advice on constitutional, criminal law, mutual assistance and extradition matters.

### Audited service performance

Performance measure	Actual 2015/16	Forecast 2016/17	Actual 2016/17	Comment
Quantity				
New matters				
Applications <sup>16</sup> processed on behalf of the Attorney-General	35	30 – 60	31	From year to year the inflow of new matters may vary significantly. New matters mostly arise from circumstances external to Crown Law, but in which Crown Law must subsequently become involved. In each year, as we prepare Budget documents, we consider whether there are any factors that could help us anticipate the numbers of new matters in the upcoming financial year. Such factors can include policy changes and recent events.
Advice on behalf of the Attorney-General	179	100 – 150	167	
Litigation on behalf of the Law Officers (Attorney- General and/or Solicitor-General)	5	5 – 10	14	
Criminal Advice	10	10 – 35	1	
Judicial Reviews	2	2 – 5	2	
Mutual assistance and extraditions	86	60 – 100	79	
Criminal cases (other types)	19	40 – 60	21	
Requests for prosecution appeals and judicial reviews	111	40 – 90	84	
Timeliness				
Ministerial services – proportion of responses on time				
Ministerial correspondence on time	100%	100%	88%	114 of 129 letters completed on time.
Responses to Parliamentary questions on time	100%	100%	100%	-
Official Information Act 1982 and Privacy Act 1993 responses on time	99%	100%	94%	90 of 96 letters completed on time.
Average hours worked per disposed case				
Criminal Advice	63	≤ 50	32	In the prior year 2 cases increased the overall average.
Judicial Reviews	24	≤ 150	138	Only one case disposed of in reporting period. In prior year one disposed of 24hrs.
Mutual assistance and extraditions	56	≤ 50	80	One case increased overall average from 35 to 80.
Criminal cases (other types)	17	≤ 50	8	-
Requests for prosecution appeals	20	≤ 50	22	-
Applications processed on behalf of the Attorney-General	82	≤ 50	59	-
Advice on behalf of the Attorney-General	61	≤ 50	33	-
Litigation on behalf of the Law Officers	80	≤ 75	187	Two cases, one being a vexation litigant matter, increased overall average from 64 to 187.

<sup>16</sup> These include applications for second coronial inquiries, special patient reclassification, discharge of adoption orders, trust variations, interventions in respect of alleged contempt and breach of name suppression.

### Audited financial performance (GST exclusive)

Actual 2016 <sup>17</sup>		Actual 2017	Main Estimates 2017	Supplementary Estimates 2017
\$000		\$000	\$000	\$000
<b>Revenue</b>				
4,277	Crown	4,271	4,277	4,271
368	Other	225	282	282
<b>4,645</b>	<b>Total revenue</b>	<b>4,496</b>	<b>4,559</b>	<b>4,553</b>
<b>Expenditure</b>				
<b>5,099</b>	<b>Expenditure</b>	<b>4,678</b>	<b>4,559</b>	<b>4,553</b>
<b>(454)</b>	<b>Net surplus/(deficit)</b>	<b>(182)</b>	-	-

### MCA Output - Public Prosecution Service

**Scope** - This category is limited to the provision and supervision of a national Crown prosecution service and oversight of public prosecutions.

### Audited service performance

Performance measure	Actual 2015/16	Forecast 2016/17	Actual 2016/17	Comment
<b>Quantity</b>				
<i>New matters</i>				
New Crown Prosecutions including appeals to the High Court from non-Crown prosecutions	5,849	4,500 – 5,500	6,148	Based on data collected by the Ministry of Justice.
Crown Prosecutions, including appeals to the High Court from non-Crown prosecutions, disposed of	4,703	4,500 – 5,000	4,960	-
Hours of service provided	195,707	207,000 - 212,000	203,014	-
Number of quality assurance reviews (full network is reviewed on rotation every three years)	7	5 <sup>18</sup>	7	-
<b>Quality</b>				
Reviews, quality assessed as exceeding or meeting expected standards	7	5 <sup>18</sup>	6	-
Improvement recommendations implemented within timeframes set greater than	0	>90%	80%	No improvements were required during 2015/16.

### Audited financial performance (GST exclusive)

Actual 2016 <sup>19</sup>		Actual 2017	Main Estimates 2017	Supplementary Estimates 2017
\$000		\$000	\$000	\$000
<b>Revenue</b>				
<b>34,897</b>	<b>Crown</b>	<b>38,922</b>	<b>38,922</b>	<b>38,922</b>
<b>Expenditure</b>				
<b>34,607</b>	<b>Expenditure</b>	<b>38,185</b>	<b>38,922</b>	<b>38,922</b>
<b>290</b>	<b>Net surplus/(deficit)</b>	<b>737</b>	-	-

17 2016 Data is the consolidation of two former appropriations: The Exercise of Principal Law Officer Functions and the Criminal Law Advice and Services

18 The five reviews consist of four survey-based reviews and an interview-based review.

19 2016 data is the consolidation of two former appropriations: Oversight and Supervision of Public Prosecutions and the Crown Solicitor Network with the Provision of a National Crown Prosecution Service.

## Performance overview – International rankings

Indicators	Actual 2014	Actual 2015	Actual 2016	Comment
OUTCOMES: Rule of Law and Governance				
Focus: Increased trust in the justice system, through the performance of the Law Officer Constitutional and Criminal Law Duties				
World Justice Project Rule of Law Index: New Zealand's:				
Criminal system is free of corruption	score 0.94	score 0.93	score 0.93	The World Justice Project Rule of Law Index provides an overview of the rule of law in a country. The index uses ratings organised around eight factors. The effectiveness of the criminal justice system is one of the factors. Within the factors are sub-components, three of which are reported here. The Index is based on household and expert surveys. These results reflect the rule of law as experienced by New Zealanders.
Criminal system is free of improper government influence	score 0.83	score 0.87	score 0.84	
Due process of law and the rights of the accused	score 0.82	score 0.82	score 0.80	
The 2017 World Justice Project Rule of Law Index report will be due for release late 2017.				
Focus: Reduced legal risks to the Crown, through protecting the Crown's interests and ensuring any risks are managed well				
Bertelsmann Foundation Sustainable Governance Indicators Status Index: New Zealand's effectiveness in:				
Corruption Prevention	score 10/10	score 10/10	score 10/10	The sustainable governance indicators (SGI) 2016 report looks at 41 OECD and EU states. The focus on democracy relates to institutional and organisational democracy and participation in the political and justice systems. Within the broader theme of democracy is the focus on the rule of law. The SGI report's key indicators for rule of law are shown in this table.
Legal Certainty	score 10/10	score 10/10	score 10/10	
Judicial Review	score 10/10	score 10/10	score 10/10	New Zealand was rated amongst the top (10/10) for three of the indicators. For appointment of Justices the SGI report reflected on the opportunity to strengthen transparency in the appointment of Justices (noting here that no issues were otherwise raised).
Appointment of Justices	score 8/10	score 8/10	score 8/10	
OUTCOMES: Justice Sector				
The Ministry of Justice reports performance and progress with regard to the relevant Better Public Services targets and justice sector indicators. Such outcome measures can include the results of international indexes such as those reported above.				

## Legal Advice and Representation

The purpose of this appropriation is limited to providing legal advice and representation services to central government departments and Crown agencies.

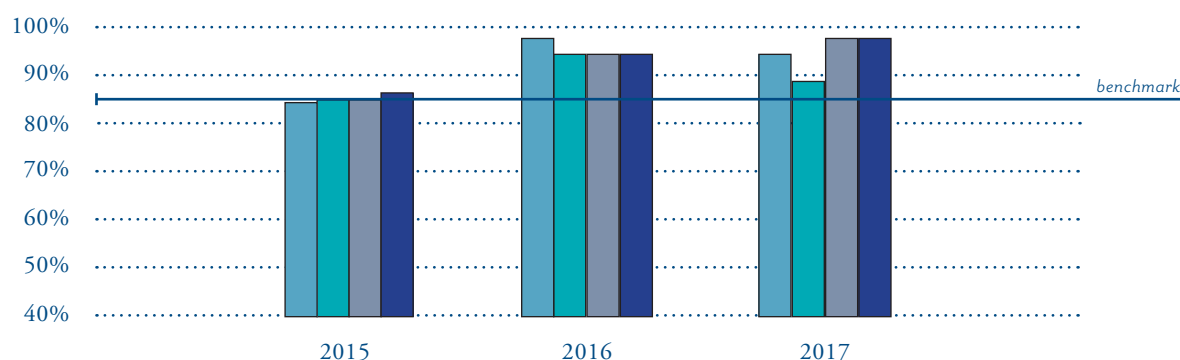
### Audited service performance (no change in measures to previous year)

Performance measure	Actual 2015/16	Forecast 2016/17	Actual 2016/17	Comment
<b>Quantity</b>				
<i>New matters</i>				
Advice	357	380 – 425	441	-
Litigation	346	350 – 400	488	Increase includes MACA <sup>20</sup> claims due April 2017.
Judicial review	108	90 – 125	78	-
Claims before Waitangi Tribunal	48	25 – 50	101	MACA and commencement of Health Kaupapa inquiry.
<b>Timeliness</b>				
<i>Average hours worked per disposed case</i>				
Advice	32	≤ 50	33	-
Litigation	197	≤ 200	82	112 cases with less than 10 hours decrease the average from 132 to 82 (historic abuse claims combined into one matter)
Judicial review	148	≤ 100	166	-
Claims before Waitangi Tribunal	945	≤ 500	61	The matters closed in FY16/17 were minor in nature and did not involve a regional hearing.
<i>Client perceptions and service performance (%)</i>				
Responses to the client survey that consider timeliness in responding to requests is good to excellent	94%	85%	89%	-
Written opinions/advice (final or draft) completed by the due date.	79%	85%	78%	-
Litigation Management Plans completed by the due date.	65%	80%	70%	-
<b>Quality measures (%)</b>				
Responses to the client survey that consider the advice and service received overall is good to excellent	100%	85%	97%	-
Responses to the client survey that consider the responsiveness, relevancy, accuracy, and clarity of advice are good to excellent	97%	85%	94%	-
Written opinions and advice that are peer reviewed	75% <sup>21</sup>	80%	72%	-
<b>Value for Money</b>				
Percentage of responses to the client survey that consider the service received represents value for money is good to excellent	94%	85%	97%	-
Cost per hour of client services (i.e. the average cost per hour of providing legal advice and representation services.)	\$168	≤ FY15/16 cost per hour	\$169	-

20 Marine and Coastal Area (Takutai Moana) Act 2011

21 The 2015/16 actual was recalculated from 96% to 72% due to the addition of 'timeliness of review' parameter measured in 2016/17.

## Client survey - quality service indicators



### Percentage rated GOOD to EXCELLENT:

- Responsiveness, relevancy, accuracy, and clarity of advice
- Timeliness in responding to requests
- Value-for-money of legal services
- Overall satisfaction

### Service indicators charted over time

Respondents to our survey are usually Chief and Senior Legal Advisors of government departments we worked with during the period of time to which the survey applies (this survey is July 2016 to June 2017).

The survey consists of approximately 12-14 questions. Each question asks for a rating (excellent; very good; good; did not meet expectations; poor; unable to rate yet). The rating system has been modified in 2016 with an additional category of “very good”, replacing “satisfactory” with “did not meet expectations” and removing the “very poor” category.

The benchmark is 85% of responses being good to excellent.

### Audited financial performance (GST exclusive)

Actual 2016 \$000		Actual 2017 \$000	Main Estimates 2017 \$000	Supplementary Estimates 2017 \$000
<b>Revenue</b>				
17,609	Other	18,918	22,365	22,344
<b>Expenditure</b>				
18,235	Expenditure	19,045	22,365	22,344
(626)	Net surplus/(deficit)	(127)	-	-



### Other non-financial measures: People & Capability

Indicators	Baseline benchmark	Previous Actual	Actual 2016/17	Comment
<b>ORGANISATION: People and capability</b>				
Staff engagement (Level of Agreement method)	2011/12 71%	2014/15 70%	2015/16 75%	The survey is held on an 18-month cycle. The justice sector engagement index (Level of Agreement method) is 68%.
Average hours per employee spent on training and education	2014/15 54.99hrs per legal employee	2015/16 54.99hrs per legal employee	2016/17 57.76hrs per legal employee	-

## Crown Law Office - Capital Expenditure Appropriation

This appropriation is intended to achieve the renewal and replacement of life-expired assets in support of the delivery of the Crown Law's services.

### Output performance measures and standards

The expenditure was in accordance with Crown Law's capital asset management intentions in order to maintain service levels.

### Output statement for the year ended 30 June 2017

Actual 2016	Actual 2017	Main Estimates 2017	Supplementary Estimates 2017
\$000	\$000	\$000	\$000
276 Total capital expenditure	407	988	843

# STATEMENT OF RESPONSIBILITY

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I am responsible, as Chief Executive of Crown Law, for:

- the preparation of Crown Law's financial statements, and statements of expenses and capital expenditure, and for the judgements expressed in them;
- having in place a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting;
- ensuring that end-of-year performance information on each appropriation administered by Crown Law is provided in accordance with sections 19A to 19C of the Public Finance Act 1989, whether or not that information is included in this annual report; and
- the accuracy of any end-of-year performance information prepared by Crown Law, whether or not that information is included in the annual report.

In my opinion:

- the financial statements fairly reflect the financial position of Crown Law as at 30 June 2017 and its operations for the year ended on that date; and
- the forecast financial statements fairly reflect the forecast financial position of Crown Law as at 30 June 2018 and its operations for the year ending on that date.



Una Jagose QC  
Solicitor-General and Chief Executive  
29 September 2017

## **Independent Auditor's Report**

### **To the readers of the Crown Law Office's annual report for the year ended 30 June 2017**

The Auditor-General is the auditor of the Crown Law Office (the Department). The Auditor-General has appointed me, Stephen Lucy, using the staff and resources of Audit New Zealand, to carry out, on his behalf, the audit of:

- the financial statements of the Department on pages 54 to 77, that comprise the statement of financial position, statement of commitments, statement of contingent liabilities and contingent assets as at 30 June 2017, the statement of comprehensive revenue and expense, statement of changes in equity, and statement of cash flows for the year ended on that date and the notes to the financial statements that include accounting policies and other explanatory information;
- the performance information prepared by the Department for the year ended 30 June 2017 on pages 11 to 21, 24 to 27, 33 and 39 to 48;
- the statements of expenses and capital expenditure of the Department for the year ended 30 June 2017 on pages 78 to 80; and
- the schedules of non departmental activities which are managed by the Department on behalf of the Crown on page 78, that comprises the schedule of trust monies for the year ended 30 June 2017.

## **Opinion**

In our opinion:

- the financial statements of the Department on pages 54 to 77:
  - present fairly, in all material respects:
    - its financial position as at 30 June 2017; and
    - its financial performance and cash flows for the year ended on that date; and
  - comply with generally accepted accounting practice in New Zealand in accordance with Public Benefit Entity Standards.
- the performance information of the Department on pages 11 to 21, 24 to 27, 33 and 39 to 48:
  - presents fairly, in all material respects, for the year ended 30 June 2017:
    - what has been achieved with the appropriation; and

- the actual expenses or capital expenditure incurred compared with the appropriated or forecast expenses or capital expenditure; and
- complies with generally accepted accounting practice in New Zealand.
- the statements of expenses and capital expenditure of the Department on pages 78 to 80 are presented fairly, in all material respects, in accordance with the requirements of section 45A of the Public Finance Act 1989.
- the schedule of trust monies which are managed by the Department on behalf of the Crown on page 78 is presented fairly, in all material respects, in accordance with the Treasury Instructions.

Our audit was completed on 29 September 2017. This is the date at which our opinion is expressed.

The basis for our opinion is explained below. In addition, we outline the responsibilities of the Solicitor-General and our responsibilities relating to the information to be audited, we comment on other information, and we explain our independence.

## **Basis for our opinion**

We carried out our audit in accordance with the Auditor-General's Auditing Standards, which incorporate the Professional and Ethical Standards and the International Standards on Auditing (New Zealand) issued by the New Zealand Auditing and Assurance Standards Board. Our responsibilities under those standards are further described in the Responsibilities of the auditor section of our report.

We have fulfilled our responsibilities in accordance with the Auditor-General's Auditing Standards.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## **Responsibilities of the Solicitor-General for the information to be audited**

The Solicitor-General is responsible on behalf of the Department for preparing:

- financial statements that present fairly the Department's financial position, financial performance, and its cash flows, and that comply with generally accepted accounting practice in New Zealand.
- performance information that presents fairly what has been achieved with each appropriation, the expenditure incurred as compared with expenditure expected to be incurred, and that complies with generally accepted accounting practice in New Zealand.
- statements of expenses and capital expenditure of the Department, that are presented fairly, in accordance with the requirements of the Public Finance Act 1989.
- schedules of non departmental activities, in accordance with the Treasury Instructions, that present fairly those activities managed by the Department on behalf of the Crown.

The Solicitor-General is responsible for such internal control as is determined is necessary to enable the preparation of the information to be audited that is free from material misstatement, whether due to fraud or error.

In preparing the information to be audited, the Solicitor-General is responsible on behalf of the Department for assessing the Department's ability to continue as a going concern. The Solicitor-General is also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting, unless there is an intention to merge or to terminate the activities of the Department, or there is no realistic alternative but to do so.

The Solicitor-General's responsibilities arise from the Public Finance Act 1989.

## **Responsibilities of the auditor for the information to be audited**

Our objectives are to obtain reasonable assurance about whether the information we audited, as a whole, is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit carried out in accordance with the Auditor-General's Auditing Standards will always detect a material misstatement when it exists. Misstatements are differences or omissions of amounts or disclosures, and can arise from fraud or error. Misstatements are considered material if, individually or in the aggregate, they could reasonably be expected to influence the decisions of readers, taken on the basis of the information we audited.

For the budget information reported in the information we audited, our procedures were limited to checking that the information agreed to the relevant Estimates and Supplementary Estimates of Appropriations 2016/17, and the 2016/17 forecast financial figures included in the Department's 2015/16 Annual Report.

We did not evaluate the security and controls over the electronic publication of the information we audited.

As part of an audit in accordance with the Auditor-General's Auditing Standards, we exercise professional judgement and maintain professional scepticism throughout the audit. Also:

- We identify and assess the risks of material misstatement of the information we audited, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- We obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Department's internal control.
- We evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Solicitor-General.
- We evaluate the appropriateness of the reported performance information within the Department's framework for reporting its performance.

- We conclude on the appropriateness of the use of the going concern basis of accounting by the Solicitor-General and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Department's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the information we audited or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Department to cease to continue as a going concern.
- We evaluate the overall presentation, structure and content of the information we audited, including the disclosures, and whether the information we audited represents the underlying transactions and events in a manner that achieves fair presentation.

We communicate with the Solicitor-General regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Our responsibilities arise from the Public Audit Act 2001.

## Other information

The Solicitor-General is responsible for the other information. The other information comprises the information included on pages 2 to 10, 22, 23, 28 to 32, 34 to 37 and 49, but does not include the information we audited, and our auditor's report thereon.

Our opinion on the information we audited does not cover the other information and we do not express any form of audit opinion or assurance conclusion thereon.

Our responsibility is to read the other information. In doing so, we consider whether the other information is materially inconsistent with the information we audited or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on our work, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

## Independence

We are independent of the Department in accordance with the independence requirements of the Auditor-General's Auditing Standards, which incorporate the independence requirements of Professional and Ethical Standard 1 (Revised): Code of Ethics for Assurance Practitioners issued by the New Zealand Auditing and Assurance Standards Board.

Other than in our capacity as auditor, we have no relationship with, or interests, in the Department.



S B Lucy  
Audit New Zealand  
On behalf of the Auditor-General  
Wellington, New Zealand

# FINANCIAL STATEMENTS

## Statement of Comprehensive Revenue and Expense

For the year ended 30 June 2017

Actual 2016 \$000	Notes	Actual 2017 \$000	Unaudited Budget 2017 \$000	Unaudited Forecast 2018 \$000
<b>Revenue</b>				
42,459	Revenue Crown 2	47,359	47,369	47,356
17,977	Other revenue 2	19,200	17,747	19,089
<b>60,436</b>	<b>Total income</b>	<b>66,559</b>	<b>65,116</b>	<b>66,445</b>
<b>Expenses</b>				
18,456	Personnel costs 3	19,893	18,030	20,457
740	Depreciation and amortisation expense 7,8	806	987	1,080
165	Capital charge 4	134	165	124
33,854	Crown Solicitors' fees	37,357	38,082	38,082
7,659	Other expenses 5	8,193	7,852	6,702
<b>60,874</b>	<b>Total expenses</b>	<b>66,383</b>	<b>65,116</b>	<b>66,445</b>
(438)	Surplus/(deficit)	176	-	-
<b>(438)</b>	<b>Total comprehensive revenue and expense</b>	<b>176</b>	<b>-</b>	<b>-</b>

Explanations for major variances against the original 2016/17 budget are provided in Note 17.

The accompanying notes form part of these financial statements.

## Statement of Changes in Equity

For the year ended 30 June 2017

Actual 2016 \$000	Notes	Actual 2017 \$000	Unaudited Budget 2017 \$000	Unaudited Forecast 2018 \$000
3,760	<b>Balance at 1 July</b>	3,140	2,880	3,140
(438)	Total comprehensive revenue and expense	176	-	-
(182)	Return of operating surplus to the Crown 11	(293)	-	-
<b>(620)</b>	<b>Movements for the year</b>	<b>(117)</b>	<b>-</b>	<b>-</b>
<b>3,140</b>	<b>Balance at 30 June</b>	<b>3,023</b>	<b>2,880</b>	<b>3,140</b>

The accompanying notes form part of these financial statements.



## Statement of Financial Position

As at 30 June 2017

Actual 2016 \$000	Notes	Actual 2017 \$000	Unaudited Budget 2017 \$000	Unaudited Forecast 2018 \$000
<b>Current assets</b>				
5,589	Cash and cash equivalents	6,810	3,856	4,824
384	Prepayments	375	350	350
3,495	Receivables	3,291	3,000	3,000
-	- Debtor Crown	-	-	-
<b>9,468</b>	<b>Total current assets</b>	<b>10,476</b>	<b>7,206</b>	<b>8,174</b>
<b>Non-current assets</b>				
1,948	Property, plant and equipment	1,570	1,925	1,260
35	Intangible assets	14	260	217
<b>1,983</b>	<b>Total non-current assets</b>	<b>1,584</b>	<b>2,185</b>	<b>1,477</b>
<b>11,451</b>	<b>Total assets</b>	<b>12,060</b>	<b>9,391</b>	<b>9,651</b>
<b>Current liabilities</b>				
6,663	Payables and deferred revenue	6,901	5,151	5,151
1,282	Employee entitlements	1,664	1,160	1,160
182	Return of operating surplus	293	-	-
<b>8,127</b>	<b>Total current liabilities</b>	<b>8,858</b>	<b>6,311</b>	<b>6,311</b>
<b>Non-current liabilities</b>				
184	Employee entitlements	179	200	200
<b>184</b>	<b>Total non-current liabilities</b>	<b>179</b>	<b>200</b>	<b>200</b>
<b>8,311</b>	<b>Total liabilities</b>	<b>9,037</b>	<b>6,511</b>	<b>6,511</b>
<b>3,140</b>	<b>Net assets</b>	<b>3,023</b>	<b>2,880</b>	<b>3,140</b>
<b>Equity</b>				
2,062	Taxpayers' funds	2,061	2,062	2,062
1,078	Memorandum accounts	962	818	1,078
-	- Revaluation reserve	-	-	-
<b>3,140</b>	<b>Total equity</b>	<b>3,023</b>	<b>2,880</b>	<b>3,140</b>

Explanations for major variances against the original 2016/17 budget are provided in Note 17.

The accompanying notes form part of these financial statements.

## Statement of Cash Flows

For the year ended 30 June 2017

Actual 2016 \$000	Notes	Actual 2017 \$000	Unaudited Budget 2017 \$000	Unaudited Forecast 2018 \$000
<b>Cash flows from operating activities</b>				
<b>Cash was provided from:</b>				
41,562	Receipts from Revenue Crown	47,359	47,369	47,256
17,544	Receipts from other revenue	19,404	17,747	19,089
59,106		66,763	65,116	66,445
<b>Cash was applied to:</b>				
18,205	Payments to employees	19,518	17,970	20,507
40,046	Payments to suppliers	45,292	45,934	44,784
24	Goods and services tax (net)	9	-	-
165	Payment for capital charge	134	165	124
58,440		64,953	64,069	65,415
<b>666</b>	<b>Net cash flow from operating activities</b>	<b>1,810</b>	<b>1,047</b>	<b>1,030</b>
<b>Cash flows from investing activities</b>				
<b>Cash was disbursed for:</b>				
263	Purchase of property, plant and equipment	407	748	487
13	Purchase of intangible assets	-	240	140
276		407	988	627
<b>(276)</b>	<b>Net cash flow from investing activities</b>	<b>(407)</b>	<b>(988)</b>	<b>(627)</b>
<b>Cash flows from financing activities</b>				
<b>Cash was disbursed for:</b>				
114	Repayment of operating surplus	182	-	-
<b>(114)</b>	<b>Net cash flow from financing activities</b>	<b>(182)</b>	<b>-</b>	<b>-</b>
<b>276</b>	<b>Net (decrease)/increase in cash</b>	<b>1,221</b>	<b>59</b>	<b>403</b>
5,313	Cash at the beginning of the year	5,589	3,797	4,421
<b>5,589</b>	<b>Cash at the end of the year</b>	<b>6,810</b>	<b>3,856</b>	<b>4,824</b>

Explanations for major variances against the original 2016/17 budget are provided in Note 17.

The accompanying notes form part of these financial statements.

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## Statement of Cash Flows (Continued)

For the year ended 30 June 2017

### Reconciliation of net surplus/deficit to new cash flow from operating activities

Actual 2016 \$000		Actual 2017 \$000
(438)	<b>Net surplus/(deficit)</b>	<b>176</b>
740	Depreciation and amortisation expense	806
<b>740</b>	<b>Total non-cash items</b>	<b>806</b>
	<b>Add/(less) items classified as investing or financing activities</b>	
-	Net (gain)/loss on disposal of property, plant and equipment	-
-	<b>Add/(less) movements in statements of financial position items</b>	-
(433)	(Increase)/decrease in receivables	204
177	(Increase)/decrease in prepayments	9
369	Increase/(decrease) in payables and deferred revenue	238
-	Increase/(decrease) in provision	-
251	Increase/(decrease) in employee entitlements	377
<b>364</b>	<b>Total net movement in working capital items</b>	<b>828</b>
<b>666</b>	<b>Net cash flow from operating activities</b>	<b>1,810</b>

The accompanying notes form part of these financial statements.

## Statement of Commitments

As at 30 June 2017

Commitments are future expenses and liabilities to be incurred on contracts that have been entered into as at balance date. Information on non-cancellable capital and lease commitments are reported in the statement of commitments.

Crown Law has no cancellable commitments.

### Non-cancellable operating lease commitments

Crown Law's office lease at 19 Aitken Street, Wellington, is a sub-lease from the Ministry of Justice. The lease started from 1 July 2013, and the minimum term of the lease is for a period of six and a half years expiring on 31 December 2019.

Crown Law also leases an office with the Serious Fraud Office (SFO) in Auckland. The lease term is from 9 November 2016 to 3 March 2023. The SFO may terminate the lease by giving Crown Law 12 months' prior written notice provided that no such notice can be given before 30 October 2018 and therefore cannot take effect before 1 November 2019. However, Crown Law may terminate the lease at any time by giving not less than 12 months' prior written notice to the SFO. Crown Law may be required to contribute up to \$15,000 should the SFO be required by the landlord to make good the premises at the time of termination of the lease as Crown Law is co-locating with the SFO. Should the lease be terminated by Crown Law before 3 March 2021, Crown law will not be responsible for any make good provision.

There are no restrictions placed on Crown Law by any of its leasing arrangements.

The amounts disclosed below as future commitments are based on the current rental rates.

Actual 2016 \$000		Actual 2017 \$000
<b>Capital commitments</b>		
-	There were no capital commitments as at 30 June	-
<b>Operating leases as lessee (Inter-Entity)</b>		
The future aggregate minimum lease payments to be paid under non-cancellable operating lease are as follows:		
1,172	Not later than one year	1,172
3,010	Later than one year and not later than five years	1,892
93	Later than five years	39
<b>4,275</b>	<b>Total non-cancellable operating lease commitments (Inter-Entity)</b>	<b>3,103</b>
<b>4,275</b>	<b>Total commitments</b>	<b>3,103</b>

The accompanying notes form part of these financial statements.

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## ***Statement of Contingent Liabilities and Contingent Assets***

*As at 30 June 2017*

### **Unquantifiable contingent liabilities**

Crown Law has no unquantifiable contingent liabilities (2016: Nil).

### **Quantifiable contingent liabilities**

Crown Law has no quantifiable contingent liabilities (2016: Nil).

### **Contingent assets**

Crown Law has no contingent assets (2016: Nil).

The accompanying notes form part of these financial statements.

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# NOTES TO THE FINANCIAL STATEMENTS

for the year ended 30 June 2017

## Note 1: Statement of accounting policies

### Reporting entity

Crown Law is a government department as defined by section 2 of the Public Finance Act 1989 (PFA) and is domiciled and operates in New Zealand. The relevant legislation governing Crown Law's operations includes the PFA. Crown Law's ultimate parent is the New Zealand Crown.

In addition, Crown Law has reported on Crown activities and trust monies that it administers.

The primary objective of Crown Law is to provide services to the Government of New Zealand. Crown Law does not operate to make a financial return.

Crown Law has designated itself as a public benefit entity (PBE) for financial reporting purposes.

The financial statements of Crown Law are for the year ended 30 June 2017 and were approved for issue by the Chief Executive of Crown Law on 29 September 2017.

### Basis of preparation

The financial statements of Crown Law have been prepared on a going concern basis, and the accounting policies have been applied consistently throughout the period.

### Statement of compliance

The financial statements of Crown Law have been prepared in accordance with the requirements of the PFA, which include the requirement to comply with New Zealand generally accepted accounting practices (NZ GAAP) and Treasury instructions.

These financial statements have been prepared in accordance with Tier 1 PBE accounting standards.

### Presentation currency and rounding

The financial statements are presented in New Zealand dollars and all values are rounded to the nearest thousand dollars (\$000).

### Changes in accounting policies

There have been no changes in Crown Law's accounting policies since the date of the last audited financial statements.

### Standards issued and not yet effective and not early adopted

Standards and amendments, issued but not yet effective that have not been early adopted, and which are relevant to Crown Law are:

#### Financial instruments

In January 2017, the External Reporting Board issued PBE IFRS 9 Financial Instruments. This replaces PBE IPSAS 29 Financial Instruments: Recognition and Measurement. PBE IFRS 9 is effective for annual periods beginning on or after 1 January 2021, with earlier application permitted. The main changes under the standard are:

- New financial asset classification requirements for determining whether an asset is measured at fair value or amortised cost.
- A new impairment model for financial assets based on expected losses, which may result in the earlier recognition of impairment losses.
- Revised hedge accounting requirements to better reflect the management of risks.

The timing of Crown Law adopting PBE IFRS 9 will be guided by the Treasury's decision on when the Financial Statements of Government will adopt PBE IFRS 9. Crown Law has not yet assessed the effects of the new standard.

#### PBE IPSAS 3.35.36 Impairment of Revalued Assets

In April 2017, the XRB issued Impairment of Revalued Assets, which now clearly scopes in revalued property, plant, and equipment into the impairment accounting standards.

Previously, only property, plant, and equipment measured at cost were scoped into the impairment accounting standards.

Under the amendment, a revalued asset can be impaired without having to revalue the entire class-of-asset to which the asset belongs. The timing of Crown Law adopting this amendment will be guided by the Treasury's decision on when the Financial Statements of Government will adopt the amendment.

### ***Summary of Significant accounting policies***

#### ***Cash and cash equivalents***

Cash and cash equivalents includes cash on hand, deposits held at call with banks, and other short-term highly liquid investments with original maturities of three months or less.

#### ***Provisions***

A provision is recognised for future expenditure of uncertain amount or timing when there is a present obligation (either legal or constructive) as a result of a past event, it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation, and a reliable estimate can be made of the amount of the obligation. Provisions are not recognised for net deficits from future operating activities.

Provisions are measured at the present value of the expenditure and are disclosed using market yields on government bonds at balance date with terms to maturity that match, as closely as possible, the estimated timing of the future cash outflows. The increase in the provision due to the passage of time is recognised as an interest expense and is included in "finance costs".

#### ***Goods and Services Tax (GST)***

All items in the financial statements and appropriation statements are stated exclusive of GST, except for receivables and payables, which are stated on a GST inclusive basis. Where GST is not recoverable as input tax, then it is recognised as part of the related asset or expense.

The net amount of GST recoverable from, or payable to, the Inland Revenue Department (IRD) is included as part of receivables or payables in the statement of financial position.

The net GST paid to, or received from the IRD, including the GST relating to investing and financing activities, is classified as an operating cash flow in the statement of cash flows.

Commitments and contingencies are disclosed exclusive of GST.

#### ***Income tax***

Crown Law is a public authority and consequently is exempt from the payment of income tax. Accordingly, no provision has been made for income tax.

#### ***Statement of cost accounting policies***

Crown Law has determined the cost of outputs using the cost allocation system outlined below.

Direct costs are those costs directly attributed to an output. Indirect costs are those costs that cannot be identified in an economically feasible manner with a specific output.

Direct costs are charged directly to output expenses. Indirect costs are charged to outputs based on cost drivers and related activity or usage information. Personnel costs are charged on the basis of actual time incurred. Depreciation, capital charge and other indirect costs are assigned to outputs based on the proportion of direct staff costs for each output.

There have been no changes in cost accounting policies since the date of the last audited financial statements.

#### ***Critical accounting estimates and assumptions***

In preparing these financial statements Crown Law has made estimates and assumptions concerning the future. These estimates and assumptions may differ from the subsequent actual results. Estimates and assumptions are continually evaluated and are based on historical experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances.



The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial year are discussed below:

#### *Retirement and long service leave*

An analysis of the exposure in relation to estimates and uncertainties surrounding retirement and long service leave liabilities is disclosed in Note 10.

### **Budget and forecast figures**

#### *Basis of the budget and forecast figures*

The 2017 budget figures are for the year ended 30 June 2017 and were published in the 2015/16 annual report. They are consistent with Crown Law's best estimate financial forecast information submitted to Treasury for the Budget Economic and Fiscal Update (BEFU) for the year ending 2016/17.

The 2018 forecast figures are for the year ending 30 June 2018, which are consistent with the best estimate financial forecast information submitted to Treasury for the BEFU for the year ending 2017/18.

The forecast financial statements have been prepared as required by the PFA to communicate forecast financial information for accountability purposes.

The budget and forecast figures are unaudited and have been prepared using the accounting policies adopted in preparing these financial statements.

The 30 June 2018 forecast figures have been prepared in accordance with PBE FRS 42 *Prospective Financial Statements* and comply with PBE FRS 42.

The forecast financial statements were approved for issue by the Chief Executive on 31 March 2017. The Chief Executive is responsible for the forecast financial statements, including the appropriateness of the assumptions underlying them and all other required disclosures.

While Crown Law regularly updates its forecasts, updated forecast financial statements for the year ending 30 June 2018 will not be published.

#### *Significant assumptions used in preparing the forecast financials*

The forecast figures contained in these financial statements reflect Crown Law's purpose and activities and are based on a number of assumptions on what may occur during the 2017/18 year. The forecast figures have been compiled on the basis of existing government policies and Ministerial expectations at the time the Main Estimates were finalised.

The main assumptions, which were adopted as at 31 March 2017, were as follows:

- Crown Law's activities and output expectations will remain substantially the same as the previous year focusing on the Government's priorities.
- Personnel costs were based on 186 full-time equivalent staff, which takes into account staff turnover.
- Operating costs were based on historical experience and other factors that are believed to be reasonable in the circumstances and are Crown Law's best estimate of future costs that will be incurred. Remuneration rates are based on current wages and salary costs, adjusted for anticipated remuneration changes.
- Estimated year-end information for 2016/17 was used as the opening position for the 2017/18 forecasts.

The actual financial results achieved for 30 June 2018 are likely to vary from the forecast information presented, and the variations may be material.

Since the approval of the forecasts, there has been no significant change or event that would have a material impact on the forecasts figures.

## Note 2: Revenue

### Accounting Policy

The specific accounting policies for significant revenue items are explained below:

#### Revenue Crown

Revenue from the Crown is measured based on Crown Law's funding entitlement for the reporting period.

The funding entitlement is established by Parliament when it passes the Appropriation Acts for the financial year. The amount of revenue recognised takes into account any amendments to appropriations approved in the Appropriation (Supplementary Estimates) Act for the year and certain other unconditional funding adjustments formally approved prior to balance date.

There are no conditions attached to the funding from the Crown. However, Crown Law can incur expenses only within the scope and limits of its appropriations.

The fair value of Revenue Crown has been determined to be equivalent to the funding entitlement.

#### Revenue department and other revenue

Crown Law derives revenue through the provision of legal services to third parties, mainly government agencies. Such revenue is recognised when earned and is reported in the financial period to which it relates.

### Breakdown of other revenue and further information

Actual 2016 \$000		Actual 2017 \$000
Revenue received from:		
17,919	Government departments / other government entities	19,156
44	Other	36
14	Court awarded costs	8
<b>17,977</b>	<b>Total other revenue</b>	<b>19,200</b>

## Note 3: Personnel costs

### Accounting Policy

#### Salaries and wages

Salaries and wages are recognised as an expense as employees provide services.

#### Superannuation schemes - defined contribution schemes

Employer contributions to the State Sector Retirement Savings Scheme, KiwiSaver, and the Government Superannuation Fund are accounted for as defined contribution superannuation schemes and are expensed in the surplus or deficit as incurred.

### Breakdown of personnel costs

Actual 2016 \$000	Actual 2017 \$000
17,361 Salaries and wages	18,664
179 Other personnel costs	81
665 Employer contributions to defined contribution plans	769
251 Increase/(decrease) in employee entitlements	379
<b>18,456 Total personnel costs</b>	<b>19,893</b>

## Note 4: Capital charge

### Accounting Policy

The capital charge is recognised as an expense in the financial year to which the charge relates.

#### Further Information

Crown Law pays a capital charge to the Crown on its equity (adjusted for memorandum accounts) as at 30 June and 31 December each year. The capital charge rate for the year ended 30 June 2017 was 7.0% from 1 July 2016 to 31 December 2016, and then 6% from 1 January 2017 (2016: 8.0%).

## Note 5: Other expenses

### Accounting Policy

#### Operating leases

An operating lease is a lease that does not transfer substantially all the risks and rewards incidental to ownership of an asset.

Lease payments under an operating lease are recognised as an expense on a straight line basis over the lease term. Lease incentives received are recognised in the surplus or deficit as a reduction of rental expense over the lease term.

The amounts disclosed in the Statement of Commitments as future commitments are based on the current rental rates.

#### Other expenses

Other expenses are recognised as goods and services are received.

### Breakdown of other expenses and further information

Actual 2016 \$000	Actual 2017 \$000
57 Fees to Audit New Zealand for audit of the financial statements	58
431 Consultancy	437
1,184 Operating lease expenses (rent for office accommodation)	1,236
5,987 Other expenses	6,462
<b>7,659 Total other operating expenses</b>	<b>8,193</b>

## Note 6: Receivables

### Accounting Policy

Short-term receivables are recorded at their face value, less any provision for impairment.

A receivable is considered impaired when there is evidence that Crown Law will not be able to collect the amount due. The amount of the impairment is the difference between the carrying amounts of the receivable and the present value of the amounts expected to be collected.

#### Work in progress

Work in progress is determined as unbilled time and disbursements that can be recovered from clients, and is measured at the lower of cost or net realisable value. Work in progress is generally invoiced in the following month.

### *Breakdown of receivables and further information*

Actual 2016 \$000		Actual 2017 \$000
1,590	Debtors (gross)	1,452
(13)	Less provision for impairment	(7)
<b>1,577</b>	<b>Net debtors</b>	<b>1,445</b>
1,918	Work in progress (gross)	1,846
-	Less provision for impairment	-
<b>1,918</b>	<b>Net work in progress</b>	<b>1,846</b>
-	Sundry debtors	-
<b>3,495</b>	<b>Total receivables</b>	<b>3,291</b>
Total receivables comprise:		
3,489	Receivables from the sale of legal advice and representation services to other government agencies at cost recovery (exchange transactions)	3,286
6	Receivables from miscellaneous expense recoveries	5

The carrying value of receivables approximates their fair value.

### *The ageing profile of receivables at year end is detailed as follows:*

	2016			2017		
	Gross \$000	Impairment \$000	Net \$000	Gross \$000	Impairment \$000	Net \$000
Not past due	1,382	(13)	1,369	1,139	-	1,139
Past due 1-30 days	57	-	57	94	-	94
Past due 31-60 days	57	-	57	127	-	127
Past due 61-90 days	25	-	25	32	-	32
Past due >90 days	69	-	69	60	(7)	53
<b>Total</b>	<b>1,590</b>	<b>(13)</b>	<b>1,577</b>	<b>1,452</b>	<b>(7)</b>	<b>1,445</b>

The provision for impairment has been calculated based on expected losses following an analysis of the past due accounts.

Work in progress comprises mainly unbilled June 2017 fees and disbursements.

## **Note 7: Property, plant and equipment**

### **Accounting Policy**

Property, plant and equipment consist of the following asset classes: leasehold improvements, computer hardware, furniture and fittings, office equipment.

Property, plant and equipment are measured at cost, less accumulated depreciation and impairment losses.

Individual assets, or group of assets, are capitalised if their cost is greater than \$1,000. The value of an individual asset that is less than \$1,000 and is part of a group of similar assets is capitalised.

### **Additions**

The cost of an item of property, plant and equipment is recognised as an asset if it is probable that future economic benefits or service potential associated with the item will flow to Crown Law and the cost of the item can be measured reliably.

Work in progress is recognised at cost less impairment and is not depreciated.

In most instances, an item of property, plant and equipment is recognised at its cost. Where an asset is acquired through a non-exchange transaction, or for a nominal cost, it is recognised at fair value as at the date of acquisition.

### **Disposals**

Gains and losses on disposals are determined by comparing the proceeds with the carrying amount of the asset. Gains and losses on disposals are included in the Statement of Comprehensive Income. When a revalued asset is sold, the amount included in the property, plant and equipment revaluation reserve in respect of the disposed asset is transferred to taxpayers' funds.

### **Subsequent costs**

Costs incurred subsequent to initial acquisition are capitalised only when it is probable that future

economic benefits or service potential associated with the item will flow to Crown Law and the cost of the item can be measured reliably.

The costs of day-to-day servicing of property, plant, and equipment are recognised in the surplus or deficit as they are incurred.

### **Depreciation**

Depreciation is provided on a straight-line basis on all property, plant and equipment, at rates that will write off the cost (or valuation) of the assets to their estimated residual values over their useful lives. The useful lives and associated depreciation rates of major classes of assets have been estimated as follows:

Leasehold improvements

- up to 6.5 years / up to 15.4%

Computer hardware

- 2 to 5 years / 20% - 50%

Furniture and fittings

- 5 years / 20%

Office equipment

- 5 years / 20%

Leasehold improvements are depreciated over the unexpired period of the lease or the estimated remaining useful lives of the improvements, whichever is the shorter.

The residual value and useful life of an asset is reviewed, and adjusted if applicable, at each financial year end.

### **Impairment**

Crown Law does not hold any cash-generating assets. Assets are considered cash-generating where their primary objective is to generate a commercial return.

### Non-cash-generating assets

Property, plant, and equipment held at cost that have a finite useful life are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable.

An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable service amount. The recoverable service amount is the higher of an asset's fair value less costs to sell and value in use.

Value in use is the present value of the asset's remaining service potential. Value in use is

determined using an approach based on either a depreciated replacement cost approach, restoration cost approach, or a service units approach. The most appropriate approach used to measure value in use depends on the nature of the impairment and availability of information.

If an asset's carrying amount exceeds its recoverable service amount, the asset is regarded as impaired and the carrying amount is written down to the recoverable service amount. The total impairment loss is recognised in the surplus or deficit.

The reversal of an impairment loss is recognised in the surplus or deficit.

### Breakdown of property, plant, and equipment and further information

	Leasehold improvements \$000	Office equipment \$000	Furniture and fittings \$000	Computer equipment \$000	Total \$000
<b>Cost</b>					
Balance at 1 July 2015	1,606	583	1,461	1,371	5,021
Additions	-	-	51	212	263
Disposals	-	-	-	-	-
<b>Balance at 30 June 2016</b>	<b>1,606</b>	<b>583</b>	<b>1,512</b>	<b>1,583</b>	<b>5,284</b>
Balance at 1 July 2016	1,606	583	1,512	1,583	5,284
Additions	-	5	72	330	407
Disposals	-	(2)	-	(15)	(17)
<b>Balance at 30 June 2017</b>	<b>1,606</b>	<b>586</b>	<b>1,584</b>	<b>1,898</b>	<b>5,674</b>
<b>Accumulated depreciation and impairment losses</b>					
Balance at 1 July 2015	486	273	713	1,142	2,614
Depreciation expense	249	91	255	127	722
Elimination on disposal	-	-	-	-	-
<b>Balance at 30 June 2016</b>	<b>735</b>	<b>364</b>	<b>968</b>	<b>1,269</b>	<b>3,336</b>
Balance at 1 July 2016	735	364	968	1,269	3,336
Depreciation expense	249	91	262	183	785
Elimination on disposal	-	(2)	-	(15)	(17)
<b>Balance at 30 June 2017</b>	<b>984</b>	<b>453</b>	<b>1,230</b>	<b>1,437</b>	<b>4,104</b>
<b>Carrying amount</b>					
At 30 June & 1 July 2015	1,120	310	748	229	2,407
At 30 June 2016	871	219	544	314	1,948
<b>At 30 June 2017</b>	<b>622</b>	<b>133</b>	<b>354</b>	<b>461</b>	<b>1,570</b>

There are no restrictions over the title of Crown Law's property, plant and equipment. No property, plant and equipment assets are pledged as security for liabilities.



## **Note 8: Intangible assets**

### **Accounting Policy**

#### **Software acquisition and development**

Acquired computer software licenses are capitalised on the basis of the costs incurred to acquire and bring to use the specific software.

Costs that are directly associated with the development of software for internal use are recognised as an intangible asset. Direct costs include the costs of services, software development employee costs, and an appropriate portion of relevant overheads.

Staff training costs are recognised as an expense when incurred.

Costs associated with maintaining computer software are recognised as an expense when incurred.

Costs of software updates or upgrades are capitalised only when they increase the usefulness or value of the software.

Costs associated with development and maintenance of the Ministry's website are recognised as an expense when incurred.

#### **Amortisation**

The carrying value of an intangible asset with a finite life is amortised on a straight-line basis over its useful life. Amortisation begins when the asset is available for use and ceases at the date that the asset is derecognised. The amortisation charge for each financial year is recognised in the surplus or deficit.

The useful lives and associated amortisation rates of major classes of intangible assets have been estimated as follows:

- Acquired computer software 3 years 33%
- Developed computer software 3 years 33%

#### **Impairment**

Intangible assets subsequently measured at cost that have an indefinite useful life, or are not yet available for use, are not subject to amortisation and are tested annually for impairment.

For further details, refer to the policy for impairment of property, plant, and equipment in Note 7.

### **Critical accounting estimates and assumptions**

#### **Useful lives of software**

The useful life of software is determined at the time the software is acquired and brought into use and is reviewed at each reporting date for appropriateness. For computer software licences, the useful life represents management's view of the expected period over which Crown Law will receive benefits from the software, but not exceeding the licence term. For internally generated software developed by Crown Law, the useful life is based on historical experience with similar systems as well as anticipation of future events that may impact the useful life, such as changes in technology.

### ***Breakdown of intangible assets and further information***

Movements in the carrying value for intangible assets are as follows:

	Acquired software \$000
<b>Cost</b>	
Balance at 1 July 2015	1,906
Additions	13
Disposals	-
<b>Balance at 30 June 2016</b>	<b>1,919</b>
Balance at 1 July 2016	1,919
Additions	-
Disposals	-
<b>Balance at 30 June 2017</b>	<b>1,919</b>
<b>Accumulated amortisation and impairment losses</b>	
Balance at 1 July 2015	1,866
Amortisation expense	18
Elimination on disposal	-
Impairment losses	-
<b>Balance at 30 June 2016</b>	<b>1,884</b>
Balance at 1 July 2016	1,884
Amortisation expense	21
Elimination on disposal	-
Impairment losses	-
<b>Balance at 30 June 2017</b>	<b>1,905</b>
<b>Net carrying amount</b>	
At 30 June and 1 July 2015	40
At 30 June 2016	35
<b>At 30 June 2017</b>	<b>14</b>

There are no restrictions over the title of Crown Law's intangible assets. No intangible assets are pledged as security for liabilities.

## Note 9: Payables and deferred revenue

### Accounting Policy

Short-term payables are recorded at the amount payable.

### Breakdown of payables and further information

Actual 2016 \$000	Actual 2017 \$000
<b>Payables and deferred revenue under exchange transactions</b>	
91 Creditors – Crown Solicitors' fees	22
913 Creditors – Other	851
5,001 Other accrued expenses – Unbilled Crown Solicitors' fees	5,301
359 Other accrued expenses	438
- Income in advance for cost recovered services	-
<b>6,365 Total Payables and deferred revenue under exchange transactions</b>	<b>6,612</b>
<b>Payables and deferred revenue under non-exchange transactions</b>	
298 GST payable	289
<b>298 Total Payables and deferred revenue under non-exchange transactions</b>	<b>289</b>
<b>6,663 Total payables and deferred revenue</b>	<b>6,901</b>

## Note 10: Employee entitlements

### Accounting Policy

#### Short-term employee entitlements

Employee entitlements that are due to be settled within 12 months after the end of the reporting period in which the employee renders the related service are measured based on accrued entitlements at current rates of remuneration. These include salaries and wages accrued up to balance date, annual leave earned but not yet taken at balance date, retirement leave and long service leave entitlements expected to be settled within 12 months.

#### Long-term employee entitlements

Employee entitlements that are due to be settled beyond 12 months after the end of the reporting period in which the employee renders the related service, such as long service leave and retirement leave, are calculated on an actuarial basis. The calculations are based on:

- likely future entitlements accruing to staff, based on years of service, years to entitlement, the likelihood that staff will reach the point of entitlement and contractual entitlement information; and
- the present value of the estimated future cash flows.

Expected future payments are discounted using market yields on government bonds at balance date with

terms to maturity that match, as closely as possible, the estimated future cash outflows for entitlements. The inflation factor is based on the expected long-term increase in remuneration for employees.

### *Presentation of employee entitlements*

Annual leave, vested long service leave and non-vested long service leave and retirement leave expected to be settled within 12 months of balance date are classified as a current liability. All other employee entitlements are classified as a non-current liability.

### *Critical accounting estimates and assumptions*

Annual leave is calculated using the number of days owing as at 30 June 2017.

The Collective Employment Agreement came into effect from 22 April 2010. The Collective Employment Agreement and individual employment contracts provide for one week's long service leave after completing 10 years' service with Crown Law. A small number of employees have grand-parented long service leave arrangements prior to the above agreement.

The retirement and long service leave from an old expired contract are maintained for five staff as at June 2017 (2016: six).

### *Long service leave and retirement gratuities*

The measurement of the long service leave and retirement gratuities obligations depend on a number of factors that are determined on an actuarial basis using a number of assumptions.

Two key assumptions used in calculating this liability include the discount rate and the salary inflation factor. Any changes in these assumptions will affect the carrying amount of the liability.

Expected future payments are discounted using discount rates derived from the yield curve of New Zealand government bonds. The discount rates used have maturities that match, as closely as possible, the estimated future cash outflows. The discounts rates in year 1 of 1.97% (2016: 2.12%), year 2 of 2.36% (2016: 1.95%), and year 3 and beyond of 3.92% (2016: 3.13%), and a long-term salary inflation factor of 3.10% (2016: 3.00%) were used. The discount rates and the salary inflation factor used are those advised by the Treasury.

### *Breakdown of employee entitlements*

Actual 2016 \$000		Actual 2017 \$000
<b>Current liabilities</b>		
161	Personnel accruals	351
1,057	Annual leave	1,257
64	Retirement leave and long service leave	56
<b>1,282</b>	<b>Total current portion</b>	<b>1,664</b>
<b>Non-current liabilities</b>		
184	Retirement leave and long service leave	179
<b>184</b>	<b>Total non-current portion</b>	<b>179</b>
<b>1,466</b>	<b>Total employee entitlements</b>	<b>1,843</b>

## Note 11: Return of operating surplus

Actual 2016 \$000	Actual 2017 \$000
(438) Net surplus/(deficit)	176
(247) Add (surplus)/deficit of memorandum account: legal advice and representation	127
873 Add (surplus)/deficit of memorandum account: government legal network	-
(6) Add (surplus)/deficit of memorandum account: processing of Queen's Counsel applications	(10)
<b>182 Provision for repayment of surplus to the Crown</b>	<b>293</b>

The repayment of surplus to the Crown is required to be paid by 31 October of each year.

## Note 12: Equity

### Accounting Policy

Equity is the Crown's investment in Crown Law and is measured as the difference between total assets and total liabilities. Equity is disaggregated and classified as taxpayers' funds, and memorandum accounts.

### Memorandum accounts

Memorandum accounts reflect the cumulative surplus/(deficit) on those departmental services provided that are intended to be fully cost recovered from third parties through fees, levies, or charges. The balance of each memorandum account is expected to trend toward zero over time.

### Breakdown of equity and further information

Actual 2016 \$000	Actual 2017 \$000
<b>Taxpayers' funds</b>	
2,062 <b>Balance at 1 July</b>	2,062
- Transfer from Revaluation Reserve	-
(438) Net surplus/(deficit)	176
620 Transfer of memorandum accounts net (surplus) /deficit for the year	116
- Capital injections	-
(182) Return of operating surplus to the Crown	(293)
<b>2,062 Balance at 30 June</b>	<b>2,061</b>
<b>Memorandum accounts</b>	
1,698 Opening balance at 1 July	1,078
17,638 Revenue	18,949
(18,258) Less expenses	(19,065)
(620) Surplus/(deficit) for the year	(116)
<b>1,078 Closing balance at 30 June</b>	<b>962</b>
<b>3,140 Total equity as at 30 June</b>	<b>3,023</b>

## Breakdown of Memorandum accounts

Actual 2016 \$000		Actual 2017 \$000
<b>Legal advice and representation</b>		
1,623	Opening balance at 1 July	970
(900)	Transfer to Memorandum Account: Government Legal Network	-
-	Close Memorandum Account: Government Legal Network	68
17,535	Revenue	18,918
(17,288)	Less expenses	(19,045)
247	Surplus/(deficit) for the year	(127)
<b>970</b>	<b>Closing balance at 30 June</b>	<b>911</b>
<b>Government Legal Network</b>		
41	Opening balance at 1 July	68
900	Transfer from Memorandum Account: Legal advice and representation	-
-	Close Memorandum Account: Government Legal Network	(68)
73	Revenue	-
(946)	Less expenses	-
(873)	Surplus/(deficit) for the year	-
<b>68</b>	<b>Closing balance at 30 June</b>	<b>-</b>
<b>Processing of Queen's Counsel applications</b>		
34	Opening balance at 1 July	40
30	Revenue	31
(24)	Less expenses	(21)
6	Surplus/(deficit) for the year	10
<b>40</b>	<b>Closing balance at 30 June</b>	<b>51</b>
<b>Total memorandum accounts</b>		
1,698	Opening balance at 1 July	1,078
17,638	Revenue	18,949
(18,258)	Less expenses	(19,065)
(620)	Surplus/(deficit) for the year	(116)
<b>1,078</b>	<b>Closing balance at 30 June</b>	<b>962</b>

These accounts summarise financial information relating to the accumulated surpluses and deficits incurred in the provision of legal advice and representation services, government legal network, and processing of Queen's Counsel applications by Crown Law to third parties on a full cost recovery basis.

The memorandum account: Government Legal Network has been closed since the permanent establishment of the MCA - Government Legal Network effective from 1 July 2016.

The balance of each memorandum account is expected to trend toward zero over a reasonable period of time, with interim deficit being met whether from cash from Crown Law's statement of financial position or by seeking approval for a capital injection from the Crown. Capital injections will be repaid to the Crown by way of cash payments throughout the memorandum account cycle.

The transactions are included as part of Crown Law's operating income and expenses in the net surplus/(deficit), however, effective from 1 July 2011, these transactions have been excluded from the calculation of Crown Law's return of operating surplus (refer Note 11). The cumulative balance of the surplus/(deficit) of the memorandum accounts is recognised as a component of equity.

### Action taken to address surpluses and deficits

The fee strategy has been developed and will be regularly reviewed to ensure that the fee structure and associated revenues are in line with the forecast activities.

## Note 13: Capital Management

Crown Law's capital is its equity, which comprise taxpayers' funds, memorandum accounts. Equity is represented by net assets.

Crown Law manages its revenues, expenses, assets, liabilities, and general financial dealings prudently. Crown Law's equity is largely managed as a by-product of managing revenue, expenses, assets, liabilities, and compliance with the government budget processes, Treasury Instructions and the Public Finance Act 1989.

The objective of managing Crown Law's equity is to ensure that the office effectively achieves its goals and objectives for which it has been established while remaining a going concern.

## Note 14: Related party information

Crown Law is a wholly-owned entity of the Crown.

Related party disclosures have not been made for transactions with related parties that are within a normal supplier or client/recipient relationship on terms and condition no more or less favourable than those that it is reasonable to expect Crown Law would have adopted in dealing with the party at arm's length in the same circumstances. Further, transactions with other government agencies (for example, government departments and Crown entities) are not disclosed as related party transactions when they are consistent with the normal operating arrangements between government agencies and undertaken on the normal terms and conditions for such transactions.

### *Collectively, but not individually significant, transactions with government-related entities*

The Cabinet Directions for the Conduct of Crown Legal Business 2016 (Cabinet Manual Appendix C) set out the requirements for chief executives of departments to refer specified legal work to Crown Law. During the year ended 30 June 2017, Crown Law has provided legal services to departments and government entities in the amount of \$18.915 million (2016: \$17.608 million).

### *Transactions with key management personnel*

#### **Key management personnel compensation**

Actual 2016 \$000	Actual 2017 \$000
<i>Leadership Team, including the Chief Executive</i>	
1,879 Remuneration	1,916
5 Full-time equivalent staff	5

Key management personnel include the Solicitor-General and the four members of the senior management team.

The Remuneration Authority determines the Solicitor-General's remuneration annually.

Post-employment benefits are employer contributions for State Sector Retirement Savings Scheme, Kiwi Saver, and the Government Superannuation Fund.

There are no related party transactions involving key management personnel (or their close family members).

No provision has been required, nor any expense recognised, for impairment of receivables from related parties.

## Note 15: Financial instrument

### Note 15A: Financial instrument categories

The carrying amounts of financial assets and financial liabilities in each of the financial instrument categories are as follows:

<b>Actual 2016 \$000</b>	<b>Actual 2017 \$000</b>
<b>Cash and receivables</b>	
5,589 Cash and cash equivalents	6,810
3,495 Receivables	3,291
<b>9,084 Total cash and receivables</b>	<b>10,101</b>
<b>Financial liabilities measured at amortised cost</b>	
6,663 Payables	6,901
<b>6,663 Total payables</b>	<b>6,901</b>

### Note 15B: Financial instrument risks

Crown Law's activities expose it to a variety of financial instrument risks, including market risk, credit risk and liquidity risk. Crown Law has a series of policies to manage the risks associated with financial instruments and seeks to minimise exposure from financial instruments. These policies do not allow any transactions that are speculative in nature to be entered into.

#### Market risk

##### Currency risk

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates.

Crown Law occasionally purchases goods and services from overseas, such as Australia, but contracts are always signed in New Zealand currency. Therefore, Crown Law has no exposure to currency risk.

##### Interest rate risk

Interest rate risk is the risk that the fair value of a financial instrument will fluctuate, or the cash flow from a financial instrument will fluctuate, due to changes in market interest rates.

Crown Law has no interest bearing financial instruments and, accordingly, has no exposure to interest rate risk.

#### Credit risk

Credit risk is the risk that a third party will default on its obligation to Crown Law, causing Crown Law to incur a loss.

In the normal course of its business, credit risk arises from receivables, deposits with banks and derivative financial instrument assets.

Crown Law is permitted to deposit funds only with Westpac (Standard & Poor's credit rating of AA-), a registered bank with high credit rating.

Crown Law does not enter into foreign exchange forward contracts.

Crown Law's maximum credit exposure for each class of financial instrument is represented by the total carrying amount of cash and cash equivalents, and receivables (refer Note 6). There is no collateral held as security against these financial instruments, including those instruments that are overdue or impaired.



## Liquidity risk

Liquidity risk is the risk that Crown Law will encounter difficulty raising liquid funds to meet commitments as they fall due.

In meeting its liquidity requirements, Crown Law closely monitors its forecast cash requirements with expected cash drawdowns from the New Zealand Debt Management Office. Crown Law maintains a target level of available cash to meet liquidity requirements.

The table below analyses Crown Law's financial liabilities into relevant maturity groupings based on the remaining period at balance sheet date to the contractual maturity date. The amounts disclosed are the contractual undiscounted cash flows.

	Notes	Carrying Amount \$000	Contractual cash flows \$000	Less than 6 months \$000	6 months-1 year \$000	1-5 years \$000	Over 5 years \$000
<b>2016</b>							
Payables	11	6,663	6,663	6,663	-	-	-
<b>2017</b>							
Payables	11	6,901	6,901	6,901	-	-	-

Crown Law has no finance leases and derivative financial instrument liabilities.

## Note 16: Events after balance date

There have been no significant events after the balance date.

## Note 17: Explanation of major variances against budget

Explanations for major variances from Crown Law's 2016/17 budgeted figures are as follows:

### Statement of Comprehensive Income

#### Income from other revenue

Income from other revenue was greater than budgeted by \$1.453 million because of increase in legal advice and representation work, which was not included in the original budget.

#### Personnel costs

Personnel costs were greater than budgeted by \$1.863 million because of higher staff numbers. The increase in staff numbers was a result of increase in legal advice and representation work, which was not included in the original budget.

### Statement of Financial Position

#### Cash and cash equivalents

Cash and cash equivalents were greater than budgeted by \$2.954 million, mainly due to

- the 2016/17 flexi fund payment of \$2.488 million to Crown Solicitors were accrued in June and paid in August 2017; and
- \$581,000 of underspend in capital assets mainly due to deferred IT structure review.

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## Schedule of Trust Monies

*For the year ended 30 June 2017*

Actual 2016 \$000	Actual 2017 \$000
<b>Crown Law Office Legal Claims Trust Account</b>	
<b>253 Balance at 1 July</b>	<b>545</b>
656 Contributions	616
(370) Distributions	(1,107)
8 Revenue	9
(2) Expenditure	(9)
<b>545 Balance at 30 June</b>	<b>54</b>

This interest bearing account is operated to receive and pay legal claims and settlements on behalf of clients of Crown Law. In accordance with the Public Finance Act 1989, the interest income is payable to the Crown.

## Statement of Departmental Unappropriated Expenses and Capital Expenditure

*For the year ended 30 June 2017*

Crown Law did not incur any unappropriated expenditure in 2016/17 (2015/16: NIL).

## Statement of Budgeted and Actual Expenses and Capital Expenditure incurred against Appropriations

For the year ended 30 June 2017

Actual 2016 \$000		Actual 2017 \$000	Main Estimates 2017 \$000	Supp Estimates 2017 \$000	Appropriation Voted 2017* \$000	In principal transfer 2017 \$000
<b>Vote Attorney-General</b>						
<b>Appropriations for output expenses</b>						
18,235	Legal Advice and Representation	19,045	22,365	22,344	22,344	-
<b>40,639</b>	<b>Law Officer Functions MCA</b>	<b>47,338</b>	<b>47,751</b>	<b>47,741</b>	<b>47,741</b>	<b>293</b>
2,933	Conduct of Criminal Appeals from Crown Prosecutions	3,496	3,285	3,281	3,281	-
-	Government Legal Network	979	985	985	985	-
5,099	Law Officer Constitutional and Criminal Law Duties	4,678	4,559	4,553	4,553	-
34,607	Public Prosecution Services	38,185	38,922	38,922	38,922	293
<b>60,874</b>	<b>Total appropriations for output expenses</b>					
<b>Appropriations for capital expenditure</b>						
276	Capital investment	407	988	843	843	-
<b>61,150</b>	<b>Total appropriations</b>	<b>66,790</b>	<b>71,104</b>	<b>70,928</b>	<b>70,928</b>	<b>293</b>

\* This includes adjustments made in the Supplementary Estimates and the additional expenditures incurred under section 26 of the Public Finance Act 1989. Crown Law did not incur any unappropriated expenditure in 2016/17.

As per section 2 and section 4 of the Public Finance Act 1989, expenditure reported should exclude re-measurements from appropriation.

There have been no re-measurements identified during the 2016/17 financial year, which implies that the actual expenditure incurred was equal to the expenditure after re-measurement.

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## ***Statement of Departmental Capital Injections***

*For the year ended 30 June 2017*

<b>Actual capital Injections 2016 \$000</b>	<b>Actual capital injections 2017 \$000</b>	<b>Approved appropriation 2017 \$000</b>
<b>Vote Attorney-General</b>		
- Crown Law - Capital Injection	-	-

## ***Statement of Departmental Capital Injections without, or in excess of, Authority***

*For the year ended 30 June 2017*

Crown Law did not receive any capital injections during the year without, or in excess of, authority.

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