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Briefing to the Incoming Attorney-General

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Introduction

Attorney-General, congratulations on your appointment.

As Senior Law Officer of the Crown, you have a significantly different role from that of other Ministers of the Crown.

You have responsibility for determining the Crown's view of what the law is, and for ensuring that the Crown's litigation is properly conducted. These responsibilities span the Government's activities and departments. You also have responsibility in the administration of the criminal law. As the Junior Law Officer, I support you in this important constitutional role.

You also hold Ministerial responsibility for Crown Law and the Parliamentary Counsel Office.

Along with the network of more than 900 lawyers in departments across the public service, Crown Law supports you and your Government to implement your policies and priorities lawfully and by ensuring you are not prevented from doing so by legal process.

In this briefing we set out core information about the Law Officers' roles and how they fit into our system of government. I hope it is a helpful basis for our early discussions as to your priorities and how we can assist you best in the discharge of your functions as Senior Law Officer.

We have processes in place to provide regular information to the Attorney-General; a weekly, short report on current matters of significance, a 6-monthly report analysing legal risk and implications across the work of Government, and weekly meetings with the Solicitor-General. I will work with your Office to establish processes that will work for you.

I look forward to working with you.

A handwritten signature in black ink, appearing to read 'A. Martin', written in a cursive style.

Aaron Martin

Acting Solicitor-General | Te Rōia Mātāmua o te Karauna

Part One

The Law Officers of the Crown

The Attorney-General has two roles in Government:

- The senior Law Officer of the Crown: the Attorney is the principal legal advisor to the government, with particular responsibility for maintaining the rule of law. This function is exercised in conjunction with the Solicitor-General, who is the junior Law Officer.
- A Minister of the Crown with ministerial responsibility for Crown Law and the Parliamentary Counsel Office.

The Attorney-General has a different role to that of all other Ministers of the Crown. The Attorney does not have a policy portfolio, but may become involved in other ministers' portfolios, especially when policy proposals engage rule of law issues. The Attorney-General, when acting as the senior Law Officer of the Crown, must act independently. In exercising the powers, functions and duties of a Law Officer, the Attorney-General disregards any party political interest or partisan considerations, although they may take into account public policy considerations. Some of the Attorney's functions also require them to act in the public interest, but most of these (especially those involving the criminal justice system, such as decisions to appeal sentences) are delegated to the Solicitor-General to avoid any appearance that such decisions are politically-motivated.

Principal Law Officer of the Crown

As the Law Officers, the Attorney-General and the Solicitor-General exercise powers, functions and duties related to the proper administration of justice and the public interest. The Attorney-General's functions with respect to the criminal justice system are discussed separately below.

Independence

By convention many Attorney-General functions, duties and powers are exercised or performed by the Solicitor-General so that Law Officer decision-making can be isolated from any appearance of political influence. This applies only to Law Officer and not to Ministerial functions. The power of the Solicitor General is set out at s9A Constitution Act. It is not a delegation of power by the Attorney General.

However, the public interest on any given issue cannot be determined in isolation from practical realities, and that may require the Attorney as member of Cabinet to consider political considerations, along with others. The crucial point is that, in advising on the law and making Law Officer decisions, both Law Officers act independently.

The Attorney-General

Role and functions

The Attorney-General is the principal legal adviser to the Government. The Attorney-General is also a member of the Government and is usually a member of the Cabinet. In Cabinet and Cabinet Committee meetings, the Attorney-General's role includes giving legal advice, encouraging Ministerial colleagues to seek appropriate legal advice in the course of government decision-making and advising their colleagues of matters in Courts and Tribunals.

In exercising this constitutional role, the Attorney-General seeks to ensure:

- the operations of Executive Government are conducted lawfully and in accordance with constitutional principle
- the Government is not prevented through use of the legal process from lawfully implementing its chosen policies.

These constitutional responsibilities, which support New Zealand's commitment to democratic government according to law, are reflected in the functions of Crown Law.

In practice it is most often the Solicitor-General (either directly, through Crown Counsel or by legal advisers in or for departments) who gives legal advice to the Government. That advice is always subject to the opinion of the Attorney-General, whose opinion prevails in the event of conflict. The Attorney's position as a minister and member of Cabinet means that they are in a unique position to provide legal advice to ministers.

They may be asked to provide legal advice in Cabinet, directly to individual ministers, or officials may recommend that the Attorney provide advice on policy proposals that raise issues about the rule of law, the New Zealand Bill of Rights Act 1990, or the coherency of the general law.

In addition, the Attorney-General has overall responsibility for the conduct of legal proceedings involving the Crown. The Attorney is kept updated by the Solicitor-General of significant legal proceedings.

These roles have been expressed in Cabinet Directions for the Conduct of Crown Legal Business since 1958. The Directions 2016 outline how the Law Officers exercise their constitutional functions over legal matters.

The Attorney-General is, in constitutional terms, the client for all legal advice provided to the Crown (from whatever source). It is for the Attorney-General to determine whether to release legal advice that has been provided to the Government, or to refer to the content of that advice and waive (or potentially waive) legal privilege. The process for seeking the Attorney-General's consent to release advice is detailed in the Cabinet Manual 2023 at [4.62]-[4.72] and, in respect of draft legislation, in Cabinet Office Circular CO (19) 2.

In exercising Law Officer functions neither the Attorney-General nor the Solicitor-General are subject to the Official Information Act 1982.

The Attorney-General meets regularly with the Solicitor-General, either each sitting week or every fortnight across the calendar year. The Attorney also meets with the Chief Parliamentary Counsel monthly.

Representation in Courts and Tribunals

The Attorney-General may be named as the principal plaintiff or defendant on behalf of the Government in the courts, although judicial review proceedings usually name the relevant Minister of the Crown or other decision-maker involved. Generally, proceedings involving Ministers and departments will be handled by Crown Law for the Attorney-General and governmental interests directly affected (although the Solicitor-General will brief particular matters to outside counsel in appropriate circumstances). In addition, the Attorney-General has a separate responsibility to represent the public interest on behalf of the general community. In doing so, the Attorney-General may intervene in proceedings which affect the public interest.

Proceedings brought against the Crown are to be served on Crown Law, and the Solicitor-General (or allocated Crown Counsel) acts as counsel. The Attorney-General has in the past occasionally appeared personally as counsel for the Crown, including before the International Court of Justice.

Protector of charities

The Attorney-General's responsibilities in relation to charities, outlined in the Charitable Trusts Act 1957, are routinely exercised by the Solicitor-General or by a Deputy Solicitor-General under a delegation. There are two main aspects to these protective responsibilities:

- The notion that charitable purposes need protection by an officer acting in the public interest as there may be no beneficiaries to enforce them; and
- The need for charitable bodies to be scrutinised in the public interest.

The Solicitor-General, on behalf of the Attorney-General, reports on or approves schemes to vary charitable trusts; may appear as a party to charity proceedings and act for the beneficial interest to enforce charitable purposes; monitors and, on request, may advise persons and select committees on legislation involving charitable trusts; and in the public interest investigates the management and administration of charitable trusts.

Miscellaneous statutory functions

There are many powers, duties and functions conferred or imposed on the Attorney-General under particular statutes. A list of these powers can be provided and elaborated on if you wish.

Representation on bodies

The Attorney-General is a member of the Rules Committee, a judicially led body charged with responsibility for developing the Rules of Courts, and the Council for Law Reporting, which has responsibility for the publishing of the New Zealand Law Reports.

The Solicitor-General is also a member and can undertake the task of representation in the Attorney-General's absence, either personally or by delegation. In practice a Crown Counsel represents the Solicitor-General on the Committee and lets the Attorney-General's office know if there is anything they should be aware of.

Relationship with the judiciary

The Attorney-General is the link between the Executive Government and the judiciary (see the Cabinet Manual at 4.8). That means that if other ministers wish to meet with members of the judiciary they must ask you to initiate this.

Also by convention, and in recognition of the importance of the independent judiciary to government according to law, the Attorney-General has a particular responsibility for protecting the judiciary from improper and unfair public criticism; for example, by answering attacks on their decisions and by actively discouraging people from engaging in improper attacks or criticism (see the Cabinet Manual at 4.12-4.14). Criticism by ministers of criminal decisions, in particular, risk politicising the criminal justice system. Ministers must avoid commenting on the gravity of offending where sentencing is still to take place, or on the appropriateness of a sentence if that could be seen to influence the Solicitor-General's decision to appeal. The Attorney may be asked for advice on what ministers are able to comment on.

It is also important to the effective functioning of the judiciary that people who act in a manner that interferes with the administration of justice in particular cases are made accountable. The Law Officers have powers (in practice undertaken by the Solicitor-General) to bring proceedings for contempt of court in appropriate cases. The most common instance is pre-trial media publicity of a kind that tends to prejudice a specific criminal trial before a jury. This is separate from the power of the Police to charge any person with an offence under s 211 of the Criminal Procedure Act 2011 who publishes information in breach of a suppression order, or which is automatically suppressed by operation of law.

The Attorney meets with the Chief Justice monthly.

Judicial Appointments

The Attorney-General recommends to the Governor-General on the appointment of all judges (except the Chief Justice, who is appointed on the recommendation of the Prime Minister).

Crown Law is responsible for administration of the process by which the Attorney-General recommends appointments to the senior courts (the High Court, Court of Appeal and Supreme Court). Other appointments are administered through the Ministry of Justice to the Attorney-General direct.

The details of the process for the appointment to the senior courts are set out in a protocol republished in April 2025. The key features of the process for High Court judges are as follows:

- The periodic publication of advertisements calling for expressions of interest for those interested in appointment to the High Court.
- A requirement that all prospective candidates for appointment complete a formal expression of interest.
- Consultation by the Solicitor-General on the suitability of particular candidates with the judiciary, represented by the Chief Justice, President of the Court of Appeal and Chief High Court Judge, and the profession, represented by the Presidents of the New Zealand Law Society and the New Zealand Bar Association.

The appointment of appellate court judges relies principally on consultation by the Attorney-General with the Chief Justice and interested persons and bodies about suitable candidates, usually from the serving judiciary.

In practice, upcoming vacancies and potential candidates are discussed between the Attorney and the Chief Justice at the monthly meeting (without the political staff present).

The Attorney-General and Parliament

The Attorney-General as Minister is answerable to Parliament for the actions of the agencies under the Attorney's ministerial control (Crown Law and Parliamentary Counsel Office) and for the exercise of Law Officer powers (although, by convention, matters such as decisions to prosecute are kept free of political influence).

The Attorney-General also has special responsibilities to Parliament in relation to legislation. These underscore the independence with which the duties of the Attorney-General must be exercised.

- Under s 7 of the New Zealand Bill of Rights Act 1990, the Attorney-General reports to the House of Representatives any provision in a bill introduced to Parliament that they consider to be inconsistent with the Bill of Rights.
- For all bills apart from those for which the Minister of Justice has responsibility, the Attorney is advised by the Ministry of Justice, reflecting the view that in its preliminary stages the Bill of Rights vetting process raises policy matters. To avoid any perception of a conflict of interest, bills promoted by the Minister of Justice are vetted by Crown Law which then advises the Attorney-General. Crown Law will also advise in any case where an adverse report to the Attorney is contemplated.

- Under s 7A of the New Zealand Bill of Rights Act 1990 the Attorney-General must bring to the attention of the House of Representatives any final declaration by a Court that an enactment is inconsistent with the Bill of Rights.
- The Attorney must also approve the giving of, or sharing of, Government legal advice to Parliamentary select committees if they seek legal assistance. The main role of Crown Law is to advise the Government, and the provision of advice to select committees accordingly is rare.

Attorney-General's functions in relation to the criminal justice system

The Attorney-General has constitutional responsibility for the Government's role in the administration of the criminal law. Section 185 of the Criminal Procedure Act 2011 (CPA) codifies the Solicitor-General's responsibility for maintaining general oversight of the conduct of all public prosecutions and for the conduct of Crown prosecutions. The codification in the CPA of the Solicitor-General's responsibility for the oversight of public prosecutions does not affect the Attorney-General's constitutional responsibility for such matters (s 186).

A number of enactments, including the CPA, confer functions and powers on the Attorney-General in criminal justice matters. As a matter of practice, these functions and powers are exercised by the Solicitor-General to avoid actual or perceived political interference in the performance or exercise of such functions and powers. For example, the Solicitor-General usually exercises the statutory powers in the criminal justice process to approve those prosecutions which require the consent of the Attorney-

General, to decide whether to stay prosecutions, to grant any witness or other person immunity from prosecution and to deal with requests from other countries for mutual criminal assistance.

There are some powers that only the Attorney-General can exercise. These include the powers under the Criminal Procedure (Mentally Impaired Persons) Act 2003 regarding the classification of special patients. Equally there are some functions which are specially vested by statute in the Solicitor-General. For example, only the Solicitor-General can consent to a Crown appeal against sentence.

The Solicitor-General

Role and functions

The Solicitor-General is:

- the Chief Executive of the Crown Law Office
- chief legal adviser to the Government, subject to any views expressed by the Attorney-General
- the Government's chief advocate in the courts
- responsible for maintaining general oversight of the conduct of public prosecutions, and for conducting Crown prosecutions
- responsible for the provision of constitutional advice to the Government and to the Governor-General
- responsible for system leadership and oversight of the Government Legal Network: the cohort of lawyers employed in the public service.

In addition, the Solicitor-General has statutory duties and functions, particularly in relation to the administration of criminal justice.

Unlike most other chief executives, the Solicitor-General is not appointed under the Public Service Act. That Act recognises the Solicitor-General's independent role as Law Officer. Since 2013, the Solicitor-General's performance as Chief Executive of Crown Law has been reviewable by the Public Service Commissioner. However, the Act explicitly excludes the Solicitor-General's performance of their independent and constitutional functions from the scope of that review.

Chief legal adviser and advocate

Subject only to the Attorney-General, the Solicitor-General is the Government's chief legal adviser and its chief advocate in the courts.

The Solicitor-General appears in court as counsel for the Crown. Such appearances are in cases considered to be of particular significance and are usually at appellate level. The role also involves the Solicitor-General personally giving legal advice to Ministers, departments and agencies of government covering the full spectrum of government functions. Subject to a contrary view by the Attorney-General, the Solicitor-General's advice is authoritative on matters of law as within executive Government. The Solicitor-General also exercises a number of specific functions within the Crown's prosecution process.

The Solicitor-General has a responsibility to give legal and constitutional advice to the Governor-General, a function which emphasises the Solicitor-General's non-political and constitutional role in government, and ultimate responsibility to the Crown

Decision making

Sometimes questions arise as to who should exercise responsibilities which generally might fall to the Solicitor-General but which, due to the special circumstances of the particular case, might more appropriately be referred to the Attorney-General. For some years the practice has been for the Solicitor-General to exercise all Attorney-General functions (other than, as noted, under s 7 of the NZBORA) unless there is a matter of public importance raising broader considerations beyond the administration of justice. Such matters are referred to the Attorney-General for consideration of whether the Attorney wishes to act personally.

The termination of prosecutions in the Rainbow Warrior case in November 1991 (following a decision not to seek extradition from Switzerland of a person to face charges in New Zealand) is an example of the exercise of power to terminate prosecutions taken by the Attorney-General. That course was followed as the reasons for the decision involved questions of international politics and trade rather than criminal law administration. The historic date of this decision is an indication of its rare exercise by the senior Law Officer.

In any case of difference as to who should exercise powers, the view of the Attorney-General prevails as the senior Law Officer. On many issues the two Law Officers of the Crown will work together and the Attorney-General always has available to them the advice of the Solicitor-General and Crown Law. Even when acting independently the Solicitor-General keeps the Attorney-General informed of significant decisions as appropriate.

Part Two

How Crown Law supports the Law Officers

The Crown Law Office

Crown Law supports the Attorney-General and the Solicitor-General to fulfil their constitutional responsibilities, as the Law Officers of the Crown.

Crown Law provides legal advice and representation services to the Government in matters affecting the Executive, particularly in the areas of criminal, public and administrative law. Crown Law's focus is on core Crown legal work as that term is defined in the Cabinet Directions for the Conduct of Crown Legal Business 2016 — essentially, the core legal work for which the Attorney-General and Solicitor-General are constitutionally responsible and how that work is to be conducted.

Crown Law supports you as a Minister of the Crown, including with commitments and obligations under the Public Finance Act 1989. We work with your office to ensure you have access to the information you need, for example a weekly report on current legal issues, strategic intentions, answers to Parliamentary and Select Committee questions, and the annual Budget Estimates process.

Beyond legal services, Crown Law undertakes two distinct system leadership roles. First, the Solicitor-General is the professional head of more than 900 government lawyers, comprising the Government Legal Network (GLN) and supported by the System Leadership Team. The GLN is a collaborative initiative by departmental Chief Legal Advisors and the Solicitor-General to promote across-government collaboration in the delivery of quality legal services to the Crown. A networked approach enhances the Crown's legal capability and facilitates the Law Officers' constitutional functions.

Second, the Solicitor-General maintains oversight of public prosecutions and administers the network of Crown Solicitors through the Public Prosecutions Unit (PPU). Crown Solicitors are funded through a capped bulk-funding model. For non-Crown prosecutions the PPU maintains the In-House Public Prosecutors classification framework which determines the level of experience needed to conduct prosecutions. The PPU carries out quality assurance reviews of Crown Solicitors and for prosecuting agencies.

Crown Law has 239 staff (231.6 full-time equivalent)¹ who deliver legal services and organisational enablement functions, structured into four groups:

- Attorney-General's Group – comprising constitutional, human rights, te Tiriti o Waitangi/Treaty of Waitangi and the System Leadership Teams.
- Criminal Group – comprising criminal appeals, mutual assistance and extradition matters and oversight of the Crown Solicitor Network and public prosecutions.
- Crown Legal Risk Group – comprising public inquiries, general public law and revenue teams.
- Strategy and Corporate Group – comprising Finance and Performance, People and Capability, Information Technology, Government and Executive Services, Legal Operations, and Organisational Change and Improvement.

Most staff are based in Wellington, at the Justice Centre, and 20 staff are based in Auckland, co-located with the Serious Fraud Office.

- 180 (75.3%) Crown Law staff work in frontline/operational support roles (legal roles and those who directly support their work).
- 59 (24.7%) work in back-office/organisational support roles.

Crown Law Leadership Team

- Anna Adams – Solicitor-General (from 11 May 2026).
- Aaron Martin – Acting Solicitor-General and Chief Executive (until 10 May 2026), Deputy Solicitor General, Crown Legal Risk Group (from 11 May 2026).
- Rob Glennie – Acting Deputy Chief Executive, Strategy and Corporate (from 3 April 2026)
- Anthea Williams – Deputy Solicitor-General, Attorney-General's Group.
- Madeleine Laracy – Deputy Solicitor-General, Criminal Group.
- Mark Bryant – Acting Deputy Solicitor-General, Crown Legal Risk Group (until 10 May 2026).

¹ As at 31 December 2025

Crown Law funding

Crown Law is funded by Vote Attorney-General. Funding for 2025/26 is \$135.893m covering the following:

- \$134.807m is provided through a Multi-Category Appropriation (MCA) for the Law Officer Functions, which includes the following categories:
 - Strategic and Operational Legal Advice and Representation (\$33.609m)
 - Conduct of Criminal Appeals from Crown Prosecutions (\$11.177m)
 - Law Officer Constitutional and Criminal Law Duties (\$12.448m)
 - Public Prosecution Services (\$77.573m).
- \$1.086m for capital expenditure that mainly relates to renewal and replacement of assets in support of our service delivery.

The legal advice and representation services are funded on a cost-recovery basis. Other functions within the MCA are mainly funded by Crown revenue. Crown Law has a Permanent Legislative Authority (PLA) for capital expenditure.

\$74.310m (approximately 71%) of our Crown funding relates to the Crown Solicitor Network which is funded from the Public Prosecution Services category. Crown Solicitor Network funding is distributed to Crown Solicitors via the bulk- and flexi-funding model.

Crown Solicitor Network

Crown Law administers the network of Crown Solicitors, who are responsible for prosecuting the most serious crimes on behalf of the Crown². These matters generally require a greater level of complexity, responsibility, and capability to prosecute than other criminal or public prosecutions.³

The Solicitor-General pays Crown Solicitors to conduct Crown prosecutions through a fixed bulk funding model. Due to bulk funding, we use effective hourly rates as a tool to help inform costs and assess the financial sustainability of Crown prosecutions. These theoretical rates are benchmarked primarily against the departmental rates for non-Crown criminal prosecutions.

As part of the Solicitor General's oversight of Crown prosecutions, all Crown Solicitors are reviewed on a triennial cycle using a combination of in-depth reviews (primarily interview-based) and written survey-based reviews.

² The Crown Solicitor network currently consists of 17 Crown Solicitor warrants held by 16 partners in private legal firms throughout New Zealand.

³ Within the Criminal Procedure Act 2011 these would be considered category 3 and 4 (of 4)

offences. These are offences that are punishable by imprisonment for life or by imprisonment for 2 years or more, or offences listed in Schedule 1 to the Act (for example, murder and manslaughter).

Our Strategic Intentions

Strategic Intentions 2024-29



OUR PURPOSE

We serve New Zealand by supporting government to operate lawfully

OUR FUNCTIONS

- Supporting the Law Officers of the Crown
- Leading the government legal profession
- Overseeing public prosecutions
- Providing legal services to government

OUR PRIORITIES

Leading with a **system view**

Delivering right sized, timely services that meet government needs

Sustaining core services and capabilities

OUR VALUES

We look after the **mana** of other people

We value our **differences**

We **care** about each other

We recognise our **impact** on others

We take **pride** in all we do

Crown Law has three strategic priorities:

- Leading with a system view
- Delivering right-sized timely services that meet Government needs
- Sustaining core services and capabilities.

Our strategic priorities are the areas where we are focusing our resources and investment in the short to medium term so that we can continue to deliver our functions to a very high standard and achieve our purpose.

Our priorities have significant overlap and dependency in both delivery and timing of objectives.

Participation in Justice Sector

Crown Law plays an important role in cross-justice sector work. The Solicitor-General sits on the Justice Sector Leadership Board (JSLB) alongside other the heads of the other justice sector agencies (Ministry of Justice, New Zealand Police, Department of Corrections, Oranga Tamariki and Serious Fraud Office). The JSLB works to deliver change in the criminal justice practices system; collaborate on issues impacting the whole criminal justice system; and govern significant cross-agency work programmes. The JSLB does not cut across the line accountabilities of the board members to their ministers, nor make decisions that would override their authority over their respective agencies.

Our DCE and DSG Criminal sit on the second tier Justice Sector Executive Committees which has oversight over the JSLB's collective areas of focus.

Crown legal risk system

Twice a year we report to you on the Crown's Significant and Systemic Legal Risks. The register of risks is updated by Crown Law and Chief Legal Advisors from departments to ensure visibility of trends and connections. Insight into the legal risks across government (rather than solely with an agency-by-agency focus), also enables conversations with the Solicitor-General, Ministers or senior officials about risk tolerance and how legal implications are best managed.



**Te Kāwanatanga
o Aotearoa**
New Zealand Government

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