



**Te Tari Ture
o te Karauna**
Crown Law

DRAFT FOR PUBLIC CONSULTATION

The future operation of the Courts and Justice Services

Potential implications for the
prosecution of serious crime

We want your views

Alongside the Ministry of Justice, between 12 December 2024 and 31 January 2025 Crown Law consulted on the topic proposed for our long-term insights briefing: *The future of courts and justice services*. Following consultation, we slightly revised our topic to: *The future operation of the courts and justice services – potential implications for the prosecution of serious crime*.

We seek your views on this draft briefing. In particular, we are interested in your views on the trends (including the likely pace of change), risks, and opportunities we have identified for courtroom technology and artificial intelligence. Please tell us if there is anything we've missed or that is not quite right.

You can provide your feedback by emailing us at LTIB@crownlaw.govt.nz.

Submissions close on 28 September 2025.

Following this submission process, a final version of the briefing will be published.

Acknowledgments

We would like to acknowledge everyone who contributed time, experiences, and insights to support the development of this draft long-term insights briefing. We thank you for your involvement.

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INTRODUCTION

This briefing shares ideas about possible future operation of the courts and justice services from the perspective of Crown prosecutions and Crown prosecutors. It will sit alongside the long-term insights briefing prepared by the Ministry of Justice which considers the future operation of the courts and justice services more broadly.

Our companion briefing considers what Crown prosecutions may look like in 20 years and how this might impact the role of Crown prosecutors.

Our insights focus on two trends:

- Courtroom technology: the adoption and development of digital tools inside our courtrooms.
- Artificial intelligence (AI): the growth and increasing use of AI in legal work, and the risks associated with fake evidence.

We share insights about how these trends may impact Crown prosecutions and Crown prosecutors in the next 20 years. We also highlight the key implications of these changes and identify some strategic choices that arise for Governments, the judiciary and the legal profession.

We have identified strategic choices that impact the criminal justice system more broadly. This reflects the fact that Crown prosecutors are embedded within the criminal justice system and a comprehensive consideration of risks, opportunities, and strategic choices needs to reflect the system in which they operate.

We developed these insights through research and analysis of global drivers and megatrends, national and criminal justice data, internal Crown Law workshops and peer review, meeting with Crown prosecutors, obtaining feedback from the Māori Crown prosecutors Rōpū, speaking to academics, and using futures thinking tools (including the horizon scanning tool). In conjunction with the Ministry of Justice, we received public submissions and held workshops with stakeholders on our proposed briefing topic. These submissions and workshops provided valuable information to inform this draft briefing.

What is a long-term insights briefing?

Long-term insights briefings are strategic explorations of long-term issues facing New Zealand.

They are developed independently of Ministers and separate from immediate policy priorities. The briefings encourage public debate and thinking about significant future challenges and opportunities.

They are future focused think pieces that can help inform long-term decision-making.

Under the Public Service Act 2020, Departmental Chief Executives must produce these briefings at least once every three years to identify medium- and long-term trends, risks, and opportunities relevant to their department's responsibilities.

Aotearoa New Zealand's prosecution system

New Zealand's criminal justice system involves a range of prosecutors who prosecute on behalf of the State. The Solicitor-General (who is also the Chief Executive of the Crown Law Office) has general oversight over all public prosecutions.¹ There are over 40 agencies and organisations that can conduct public prosecutions.

We have two main types of public prosecutions in New Zealand:

- **Crown prosecutions:** These generally relate to more serious offences. These are conducted by Crown prosecutors.
- **Non-Crown prosecutions:** These involve a range of offences, including regulatory offences. They are conducted by Police and in-house departmental prosecutors. The relevant department or agency is responsible for these prosecutions.

The Solicitor-General has direct responsibility for Crown prosecutions. Our long-term insights briefing therefore focuses on Crown prosecutors and Crown prosecutions.

Crown prosecutions

Crown prosecutions are public prosecutions for serious offences. These include murder and manslaughter, as well as serious instances of sexual, violent, drug and dishonesty offending. They also include all prosecutions in the High Court and all jury trials. Whether a prosecution is a Crown prosecution or a non-Crown prosecution is determined by the Crown Prosecution Regulations 2013. Crown prosecutors conduct Crown prosecutions.

Crown prosecutors

A Crown prosecutor is someone who is conducting a Crown prosecution on behalf of the Solicitor-General. Crown prosecutors are often Crown Solicitors or lawyers working for Crown Solicitors but also include prosecutors on the Serious Fraud Office Prosecution Panel. A Crown Solicitor is a lawyer in private practice who has a warrant of appointment from the Governor-General to prosecute on behalf of the Solicitor-General within a particular geographic area. Crown Solicitors are appointed for a particular district, usually in a centre with a High Court.

There are currently 17 Crown Solicitor warrants in New Zealand. These comprise Auckland, Christchurch, Dunedin, Gisborne, Hamilton, Invercargill, Manukau, Napier, New Plymouth,

¹ As codified in section 185 of the Criminal Procedure Act 2011. In practice, this oversight is exercised by the Deputy Solicitor-General (Criminal).

Palmerston North, Rotorua, Tasman, Tauranga, Timaru, Wellington, Whanganui and Whangārei.

Crown Solicitor warrant areas can be changed to reflect population shifts when needed. For instance, in 2015, the Auckland region was split into two new Crown Solicitor warrants – Auckland and Manukau.

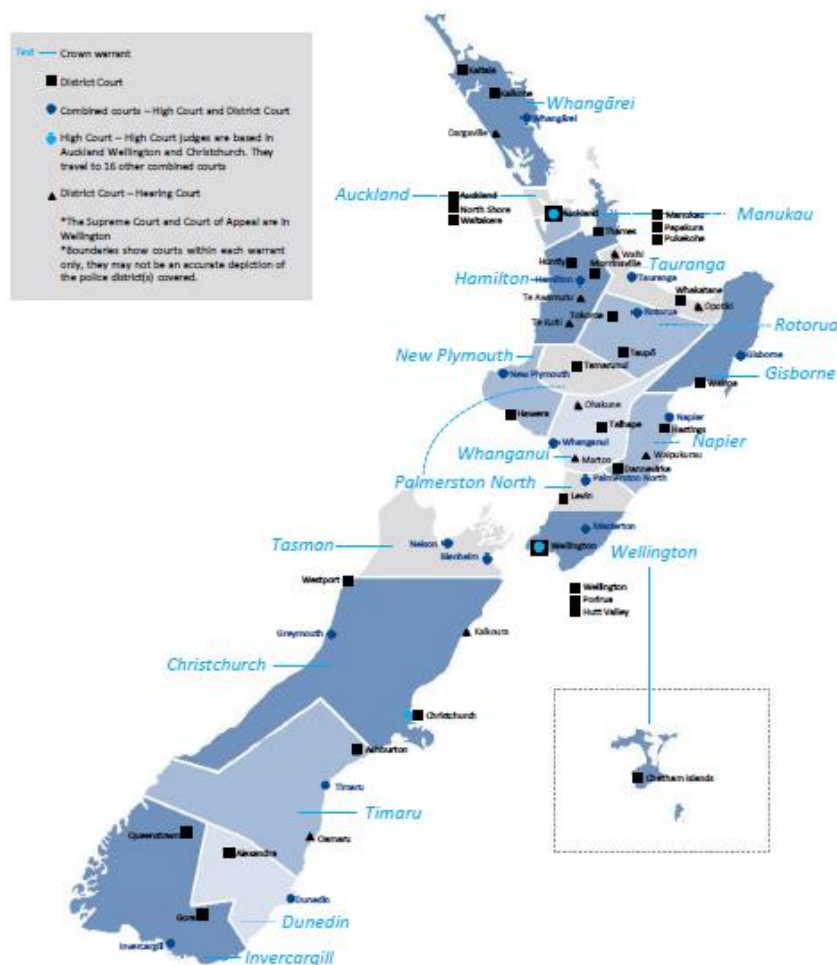


Fig 1: Crown Solicitor warrants by courts serviced

NAVIGATING GLOBAL MEGATRENDS AND NATIONAL SHIFTS

This section identifies trends that have more specific implications for Crown prosecutors and Crown prosecutions and our long-term briefing topics.

Demographics are changing



The global population is ageing with the median age increasing across the world.² This is mirrored in New Zealand. Statistics New Zealand data shows that the median age of New Zealanders increased from 31.5 in 1991 to 38.1 in 2024.³ New Zealand is also becoming more multicultural with the percentage of people identifying with a non-European ethnicity increasing in the five years from 2018 to 2023. This includes people identifying as Māori (16.7% to 17.5%), Pacific (8.3% to 8.9%), Asian (15.7% to 18.7%) and Middle-Eastern, Latin American and African (1.6% to 2.0%).⁴ The Ministry for Ethnic Communities note that New Zealanders speak more than 160 languages and are associated with 45 faiths.⁵

Concurrently, the divide between how generations understand and use technology is increasing. Generation Z (those born in the late 1990s and early 2010s)⁷ have lived their entire lives with widespread internet use and modern technology. During our consultations, we heard concerns about how the digital divide was creating or exacerbating inequitable access to goods and services.

“The impact of this generational shift will likely be profound. Compared with their predecessors, [Gen Z] will likely bring very different assumptions and expectations related to society, technology and ethics, and the role of private companies in providing public goods.”⁶

The increasing ethnic diversity in New Zealand will likely drive demand for more accessible justice services – including for Crown prosecutions – such as multilingual options, and translation and interpretation services. The rise of generations that have grown up immersed in technology will also impact how readily new tools will be adopted, including by investigators and Crown prosecutors.

² PwC *Megatrends: Five global shifts reshaping the world we live in* (September 2024) at 13.

³ Stats NZ “Summary figures for the NZ population: 1991-2024” (updated 1 March 2024) <www.stats.govt.nz>.

⁴ Stats NZ “Estimated resident population (2023-base): At 30 June 2023” (16 April 2025) <www.stats.govt.nz>.

⁵ Ministry for Ethnic Communities *Ethnic Evidence: Increasing the visibility and value of New Zealand’s diversity* (December 2024) at 9.

⁶ EY *Are you reframing your future or is the future reframing you? Understanding megatrends will help you see opportunities when others don’t* (2020) at 19.

⁷ Oxford English Dictionary “Generation Z: meaning and use” <www.oed.com>.

Accelerating innovation and use of technology

Technology is changing our lives in profound and rapidly accelerating ways. This is unfolding in two dimensions: technology is simultaneously being integrated into more areas of our live; and in increasingly deep and immersive ways.



This means there are significant amounts of digital information being created. The volume of this data is outstripping human ability to synthesise and respond.⁸ New technologies are being developed in diverse sectors with PwC estimating that we may reach a tipping point in the next five to ten years as decreasing costs drive more widespread use and even greater innovation.⁹ A recent Sense Partners report noted that “strong global connectivity means techno-social tipping points, once reached, tip quickly” such as ChatGPT reaching 100 million users in just two months.¹⁰

This will impact how Crown prosecutors work and conduct Crown prosecutions. The exact impacts and their extent are not clear: given the pace of change, future technologies are impossible to predict. What is clear is that new technologies will continue to develop and emerge quickly. Crown prosecutors will need to be nimble and adapt to this rapidly changing environment including adopting technology to improve productivity and outputs, as well as adapting to new technologies that are used by investigators and defence counsel.

Social cohesion and polarisation



Polarisation is intensifying globally, eroding social cohesion, and resulting in an increasingly fractured political landscape.¹¹ This is linked to declining trust in governments and institutions.¹² The OECD partially attributes this polarisation to disinformation and misinformation.¹³

New Zealand is not immune to the global rise in social polarisation. According to NZ Stat’s General Social Survey, public trust in key institutions – including Parliament, the Police, and

⁸ Deloitte New Zealand *State of the State 2023. Into the wind: capabilities to navigate uncertainty* (2023) at 13.

⁹ PwC, above n 2, at 10.

¹⁰ Sense Partners *We’re all in this together: How can business and government collaborate to address shared challenges out to 2050?* (August 2023) at 12.

¹¹ Economist Group “EIU’s 2023 Democracy Index: conflict and polarization drive a new low for global democracy” (15 February 2024) <www.economistgroup.com>. See also Deloitte New Zealand, above n 8, at 12.

¹² PwC, above n 2, at 22 and *OECD Survey on Drivers of Trust in Public Institutions – 2024 Results: building trust in a complex policy environment* (July 2024) [OECD] at 19-33.

¹³ OECD, above n 12, at 21.

the courts – has declined.¹⁴ Research from Koi Tū Centre for Informed Futures highlights the role of misinformation and disinformation in deepening these divisions.¹⁵

This polarisation could negatively impact Crown prosecutors and courts, particularly if it causes people to actively challenge the legitimacy of Crown prosecutors or the jurisdiction of the courts. Distrust in institutions may also impact jury trials if jurors are less likely to trust Crown prosecutors, including the authenticity of the evidence that they present in court.

Additionally, Deloitte points to persistent social and economic inequities as a significant driver of division,¹⁶ noting that broad measures such as average life expectancy can mask disparities in social outcomes for Māori and Pacific communities.¹⁷

The data shows Māori, among other groups, are over-represented in the criminal justice system as both defendants and victims.¹⁸ This is important to our later discussion on the risks arising from the use of new technology; it will be important to ensure policies or processes adopted by Crown prosecutors relating to use of technology in courtrooms or use of AI do not unintentionally deepen divides or exacerbate existing disparities.

Trends in criminal justice system and Crown prosecutions

Our consultation confirmed that these megatrends are – and will continue to – impact the criminal justice system in New Zealand. In submissions on our long-term insights briefing topic, there were strong calls to modernise the justice system with user-friendly digital tools. Technology, including the use of AI, was seen as an opportunity to make the justice system more comprehensible by allowing better and faster translation and increasing integrated use of assistive technologies.

Sitting against this, participants at the workshops we jointly held with the Ministry of Justice sounded a note of caution about the digital divide. There was concern that modernisation and the uptake of technology in the justice sector risks leaving people behind. Workshop participants were also concerned that current digital justice offerings are too complex or inaccessible for those unfamiliar with legal or technological systems. One workshop

¹⁴ Stats NZ “New Zealanders’ trust in key institutions declines” (25 September 2024) <www.stats.govt.nz>.

¹⁵ Koi Tū: The Centre for Informed Futures *Social cohesion and societal polarisation* (October 2023) at 3.

¹⁶ Deloitte New Zealand, above n 8, at 12.

¹⁷ At 13.

¹⁸ See, for example: He mihi tēnei nā mātou te Paewhiri Tūtahi: Understanding Policing Delivery *Independent Panel Report 1* (Understanding Policing Delivery, 2024); Ministry of Justice *New Zealand Crime and Victims Survey, Key Results – Cycle 6* (Ministry of Justice, 2024); Professor Sir Peter Gluckman *Using Evidence to Build a Better Justice System: The Challenge of Rising Prison Costs* (Office of the Prime Minister’s Chief Science Advisor, 2018); Moana Jackson *Māori and the Criminal Justice System: A New Perspective, He Whaipāanga Hou: Part 2* (Department of Justice, Policy and Research Division, Study Series 18, 1988).

participant was concerned that technology could result in inequitable access to justice, with in-person systems being reserved only for those with the means to pay. Another participant noted that already the impact of AI is being felt with clients questioning defence counsel about case strategy based on (incorrect) ‘advice’ from Generative AI such as ChatGPT.

Submitters on our long-term insights briefing topic discussion document likewise said the criminal justice system does not reflect our diverse population, and was designed around a narrow, often urban and Pākehā user. Submitters said this included lack of inclusive practices and communication supports for people with cognitive or neurological conditions.

Trends in Crown prosecutions

In general, the average lifespan of a Crown prosecution is increasing, while the proportion of Crown prosecutions as a percentage of all public prosecutions is also increasing. This is demonstrated in figure 2 below.

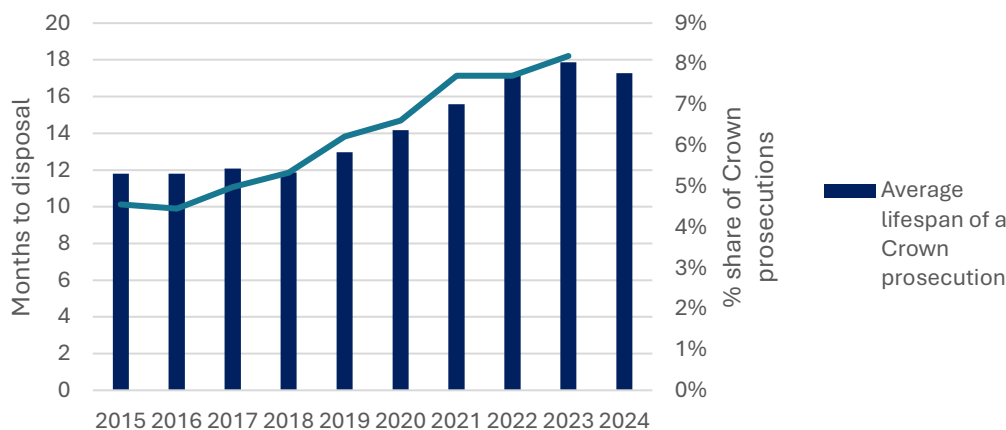


Fig 2. Average disposal times for Crown Prosecutions and percentage (%) share of public prosecutions

The increase in the proportion of Crown prosecutions as a percentage share of all public prosecutions is driven by two matters:

- A numerical increase in the number of Crown prosecutions from 4469 disposals in 2015 to 6794 disposals in 2024. This represents a 52% increase over ten years. This appears to be due, at least in part, to more people electing jury trials (which are Crown prosecutions).¹⁹
- A general decrease in non-Crown prosecutions from 93,710 disposals in 2015 to 72,950 disposals in 2023. This represents a 22% decrease over nine years. This is

¹⁹ Ministry of Justice *Improving Jury Trial Timeliness Discussion Document* (September 2024) at 8.

consistent with the trend in Ministry of Justice data indicating a general reduction in in the number of people charged (from 72,243 in 2019 to 67,399 in 2024) and convicted (58,924 in 2019 to 50,689 in 2024).²⁰

The significant increase in the average lifespan of a Crown prosecution post 2020 is partly explained by the COVID19 pandemic lockdowns (nationwide as well as those focused on Auckland and the Far North) that resulted in court delays and backlogs.

Other factors that may contribute to this increase include:

- increased complexity of Crown prosecutions (eg with multiple defendants or extensive electronic evidence);
- more people pleading later in the process which results in more hearings with attendant resource implications;
- system limitations, with delays to hearings caused by the lack of resources;
- an increasing length of time between conviction and sentencing; and
- an increased number of jury trials due to more people electing jury trials.

²⁰ Ministry of Justice *Trends for people with finalised charges in court* (March 2025) at fig 1.

TREND ONE: TECHNOLOGY IN COURTROOMS

Emerging trends in courtroom technology

Courts around the world are evolving as digital tools become more sophisticated and widely adopted. This shift is increasingly evident in New Zealand. Over the next 20 years, there are likely to be significant changes in the criminal justice system due to the expanded use of technology, including in jury trials; and a growing separation of legal processes from physical courtrooms.

In New Zealand, the judiciary's responsibilities in relation to conducting the business of courts and tribunals include the control and supervision of the use of technology for court business. Ministry of Justice responsibilities include the provision, maintenance and operation of that technology.²¹ The judiciary and the Ministry work together to make decisions about technology for use in the court system, consistent with their respective responsibilities. The Chief Justice has developed the Digital Strategy for Courts and Tribunals which sets out the judiciary's objectives and guiding principles for use of technology in the courts.²²

The signs of change are already apparent. The Ministry of Justice's *Te Au Reka* case flow management system aims to replace paper-based systems with fully digital case management.²³ At the same time, the use of audio-visual link (AVL) technology overseen by the judiciary is increasing, particularly for procedural matters. This growing reliance on remote and hybrid hearings signals a broader, long-term transition.

Other jurisdictions are experiencing similar shifts. In England and Wales, digital hearings expanded rapidly during the COVID-19 pandemic, with some courts now exploring whether aspects of jury trials can occur remotely.²⁴ In the United States, courts and prosecutors are adopting virtual platforms for evidence presentation and early-stage hearings. These developments raise important questions about fairness, access, and public confidence – issues that continue to be debated internationally.²⁵

²¹ "Principles observed by Judiciary and Ministry of Justice in the Administration of the Courts" (29 November 2018) <www.courtsofnz.govt.nz> at [3.1(g)], [4.2(c)].

²² Te Tari Toko i te Tumu Whakawā | The Office of the Chief Justice *Digital Strategy for Courts and Tribunals* (March 2023) [Digital Strategy for Courts and Tribunals].

²³ Ministry of Justice *Te Au Reka capability model* (October 2022) [Te Au Reka]. Te Au Reka is the Ministry of Justice's digital case flow management system that has been developed and is currently being rolled out in courts across the country.

²⁴ Richard Susskind "The Future of Courts" *The Practice* (online ed, Harvard Law School, May 2025).

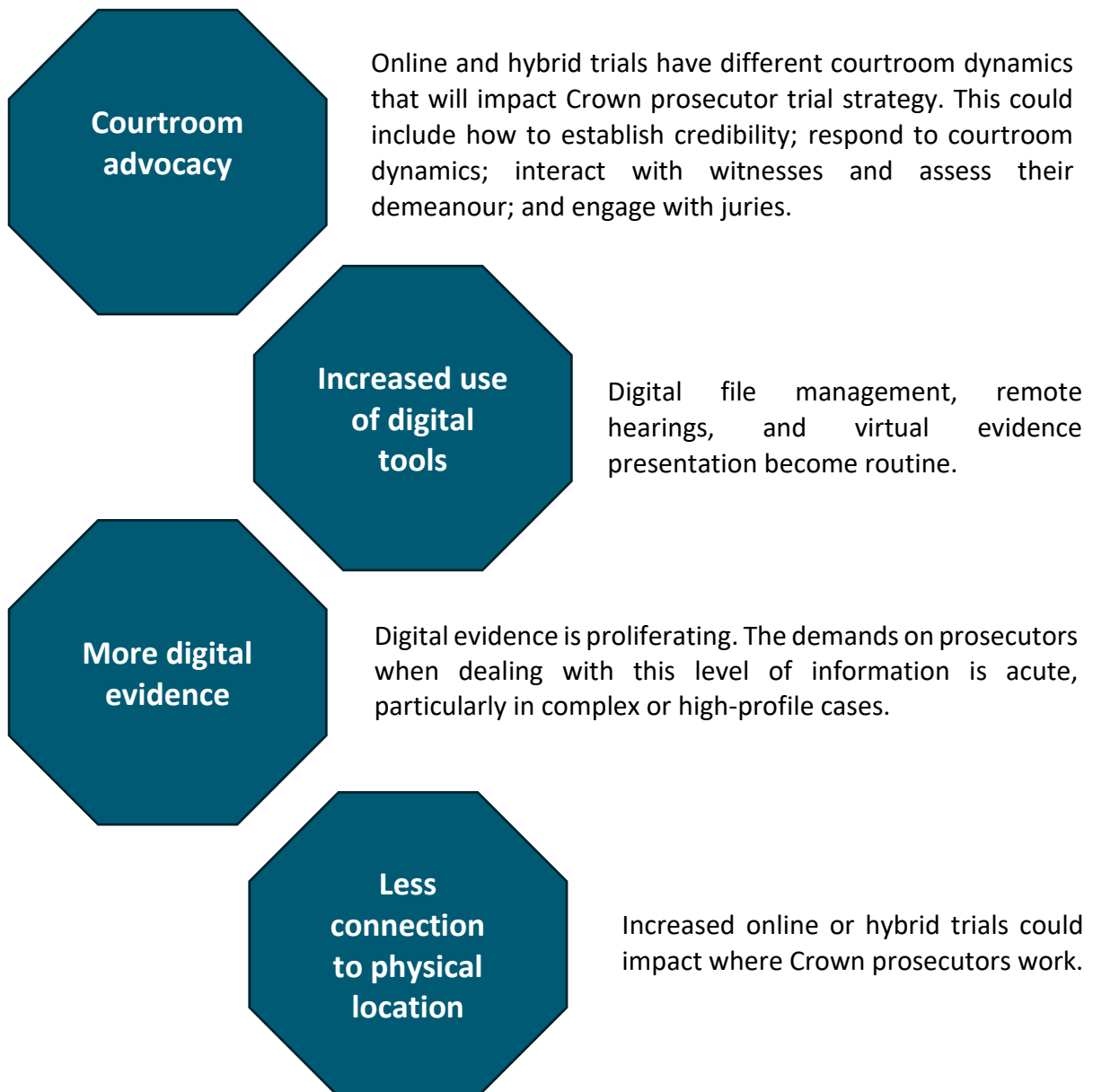
²⁵ Prosecutors' Center for Excellence *Technology and Prosecution: The Evolving Courtroom* (March 2024).

Long-term Insight

Technological solutions are becoming more advanced and increasingly embedded in court processes. By 2045, trials in New Zealand will depend less on paper-based processes and physical courtrooms and more on digital systems and distributed participation.

Implications for Crown Solicitors and Crown Prosecutions

These developments will have wide-ranging impacts on Crown prosecutors. We capture some key impacts below.



Physical presence in court has value. As noted by Chief Justice Dame Helen Winkelmann, in-person attendance can reinforce the gravity of the process and help defendants remain grounded in the trial.²⁶ For prosecutors, this raises important questions about how to preserve the impact of advocacy in a digital environment. Some Crown prosecutors we spoke to confirmed, that from their experience, defendants do not seem to take the trial or pre-trial event as seriously when they are not in the same room as the judge. Different court events will give rise to these risks to different degrees. Some administrative court events do not give rise to these risks, or not to the same extent.

The ritual of entering a courtroom can also have a catalytic effect on participants' engagement with the process. Crown Solicitors' anecdotal experience is that a high percentage of decisions to plead guilty are made shortly before a defendant is due to appear in court, including on the morning of a trial. This may suggest that a physical appearance in court is a factor prompting reflection and engagement with the reality of a criminal charge.

Opportunities and risks

While we consider that the trend towards more online and hybrid trials is likely to continue, we note that there are cultural and legal anchors that favour physical court processes. Further integrating technology into trials presents real risks if not carefully managed. We consider both the opportunities and risks below.

Te Ao Mārama, the District Court-led kaupapa for a more timely, inclusive, and accessible justice system, emphasises kanohi ki te kanohi (face-to-face) engagement as a foundation for meaningful outcomes. A widespread shift away from in-person processes may therefore sit uneasily with the goals of Te Ao Mārama.

Opportunities arising from increased use of courtroom technology

There are clear potential benefits of courtroom technology. Remote appearances can improve access to justice – especially for vulnerable or geographically isolated witnesses – and reduce the time and cost of routine matters. Pre-trial hearings can be scheduled more flexibly, and prosecutors can spend less time travelling. This may be especially useful in rural areas.

Remote appearances can also help reduce logistical burdens, particularly for defendants and witnesses in custody. Minimising transfers between facilities reduces cost, disruption, and security risks—particularly in large, multi-defendant cases. This may help ease pressure on the system, including when there are difficulties securing a courtroom of sufficient size, or for a sufficient length of time.

²⁶ Rt Hon Dame Helen Winkelmann, Chief Justice of New Zealand “Bringing the Defendant Back into the Room” (Keynote Speech, Annual Criminal Bar Association Conference, University of Auckland, 3-4 August 2019).

Technology can support the management of complex evidence. Technological advances, including digital exhibits and real-time transcripts, can improve clarity, reduce delays, and streamline presentation. These tools may be especially valuable in information and data-heavy prosecutions.

These benefits could be better realised as technology rapidly advances. For example, advancements in holographic communication now allow remote witnesses to appear in court as three-dimensional projections. This technology enables cross-examination in a way that closely resembles in-person testimony. Holographic witnesses can even hold and display exhibits in 3D.²⁷ While still experimental, such innovations could help address concerns about the limitations of remote appearances.

Remote participation also creates opportunities to improve accessibility. For example, simultaneous interpretation and use of real-time subtitles could improve accessibility for non-English speakers or those with disabilities including hearing impairments. This is likely to become more important given the trend to a more diverse and multicultural society in New Zealand. At our workshops, the ability for technology to improve access to justice for our diverse communities was identified as a key benefit.

There are also potential opportunities for increasing jury participation rates by making it easy for jurors to participate. This could occur on a spectrum, from a system that allows jurors to complete parts of the selection process online, to jurors attending court online. This would save time and reduce costs for jurors, including childcare and transport, and could therefore increase juror participation rates.²⁸

Risks of increased use of courtroom technology

As future governments consider the increased use of courtroom technology, they need to be aware of the potential risks.

We consider that a major risk arising from greater use of technology is trial fairness and perceived legitimacy. Remote hearings could influence how participants perceive the process; diminish the formality of proceedings; and impair a Crown prosecutor's ability to read or influence the room. Tone, body language, cadence and delivery – key advocacy tools – may lose their impact. These risks grow when participants are in different places, using varied devices and internet connections.

There is also a risk of unequal access if the digital divide persists. Currently, not everyone has the same level of internet connectivity, digital literacy, or equipment. Data shows that those

²⁷ Prosecutors' Centre for Excellence, above n 25, at 8.

²⁸ National Center for State Courts *Preserving the Future of Juries and Jury Trials* (December 2024).

most at risk of digital exclusion are Māori, disabled people, Pacific peoples, people in social housing, seniors, unemployed and underemployed, and those in remote communities.²⁹

There are also potential fair trial concerns associated with the digital divide. If participants struggle to see or hear what is happening, or if poor technology undermines a Crown prosecutor's presentation, the fairness of a trial could be compromised. Variation in training and experience may also result in inconsistent standards of digital advocacy.

We heard from some Crown prosecutors that not having judges in the same room as defendants can diminish the level of engagement by defendants. Having trial participants including Crown prosecutors in different locations connected by AVL or other remote access technologies may also lead to challenges in incorporating tikanga Māori or other cultural practices (where appropriate), as imagined in Te Ao Mārama.³⁰

Chief Justice Winkelmann's concerns underscore these risks. She notes that remote appearances can reduce engagement and make justice seem more distant.³¹ For Crown prosecutors, whose work depends on visible fairness and public trust, this could weaken confidence in the system.

Research by the American Psychological Association (APA) has shown that online trials can influence perceptions of credibility. Participants may respond differently to witnesses or lawyers depending on camera angles, sound quality, or visual settings—all factors unrelated to the substance of the case.³² This adds a layer of complexity and risk for Crown prosecutors, particularly in serious criminal matters.

Ensuring security and transparency in remote settings is another challenge. Processes may need to be developed to verify who is present with a witness during their testimony, or whether evidence is being influenced in unseen ways. These concerns raise questions about procedural integrity, open justice, and defendants' rights.

Simultaneous interpretation has risks, including the quality and cultural appropriateness of AI-powered translation services for te reo Māori. AI could misrepresent cultural concepts or terminology that do not have a direct English equivalent, in te reo Māori as well as in other languages.

²⁹ Digital Government "Report: Digital inclusion user insights – Māori" (updated 20 May 2021) <digital.govt.nz>.

³⁰ District Court of New Zealand | Te Kōti-ā-Rohe o Aotearoa *Te Ao Mārama: Best practice framework* (December 2023).

³¹ Dame Helen Winkelmann, above n 26, at 8-9.

³² Zara Abrams, "Can justice be served online?" *Monitor on Psychology* (online, American Psychological Association, May 2025).

Finally, there is also a deeper tension in how proceedings are experienced. For some, being physically present in court provides a necessary sense of closure or catharsis. For others – especially victims – court attendance can be retraumatising. A shift to remote participation could alleviate harm for some, while diminishing the emotional and symbolic weight of the justice system for others.

Strategic choices

As Professor Richard Susskind has observed, “we are at the foothills of the transformation in court services”³³—the leap from physical courts to remote hearings is just the beginning.

This section identifies some strategic choices for governments, the judiciary, and the legal profession that will influence the success of integrating technology into the courtroom through to 2045. We consider a strategic, considered and consultative approach – rather than one that is ad hoc and reactive – will drive the success or otherwise of this endeavour.

We suggest three elements to underpin strategic decision-making.

Maintain public trust in Crown prosecutions

Courtroom technology will need to be incorporated in a way that preserves public trust and confidence. How choices impact public trust and confidence in Crown prosecutions and the criminal justice system more broadly is an important guiding principle for decisions.

Preserve open justice

The principle of open justice must be upheld. As more hearings take place online, the justice system will need to ensure that proceedings remain accessible to the public and media. Virtual courtrooms must not become invisible courtrooms. The design of digital platforms will therefore need to enable appropriate public viewing, with safeguards to prevent misuse or disruption.

Preserve human rights

As with all developments in criminal procedure, compliance with the New Zealand Bill of Rights Act 1990 must be assured. Defendants must be able to fully participate in their trial and receive a fair hearing—whether in person or remotely.

³³ Susskind, above n 24. Professor Susskind is the president of the Society for Computers and Law, technology adviser to the Lord Chief Justice of England and Wales, and Chair of the advisory board at the Oxford Internet Institute.

Strategic choices developed by governments and the judiciary – in collaboration with the profession – will impact how Crown prosecutors are able to respond to the realities of a digital future. We have identified the following factors that will impact Crown prosecutors and may inform strategic choices.

- **Extent to which in-person elements are maintained:** To what extent should courts go digital? Decision-makers will need to decide which parts of the justice process should remain in person, and which can be safely and fairly handled online. Some core elements such as examination and cross-examination may not be sufficiently effective or rights-protecting when conducted online. Other aspects may not be readily transferable to remote formats. For instance, collaboration, confidentiality, and collective decision-making in jury deliberations rely heavily on in-person interaction.

Chief Justice Winkelmann has called for careful consideration of which hearings should remain in person—particularly those involving credibility assessments or direct participant engagement. A balanced approach will protect the integrity of trials while allowing the justice system to modernise.

- **National standards:** The judiciary, governments, and the legal profession could all have a role to play in determining whether further national standards are required to guide the use of courtroom technology, and to develop such standards, particularly as new or better technologies emerge. We consider that any standards should emphasise fairness, admissibility, rights protection, and the need to respond to the special features of individual cases. International experience shows that digital justice must be actively managed to avoid bias, distortion, or misuse.
- **Investment in technology:** Sustained investment in justice infrastructure will be important. Decisions will be required about the type of equipment needed to support both in-person and remote proceedings. This includes reliable audiovisual systems, secure evidence platforms, and robust cybersecurity. Courts will likely need to be integrated so that they are not just physical spaces but also connected digital environments. Considerable investment to build digital court services that are scalable, stable, and accessible for both legal professionals and the public will be important, to realise the opportunities from the use of technology in courtrooms.³⁴ This is reflected in the Digital Strategy for Courts and Tribunals of Aotearoa New Zealand,³⁵ and in current work by the Ministry of Justice,³⁶ to better understand

³⁴ Susskind, above n 24.

³⁵ Digital Strategy for Courts and Tribunals, above n 22.

³⁶ Te Au Reka, above n 23.

the tools, challenges, and requirements related to presenting digital content and evidence during court proceedings.

- **Physical infrastructure:** Long-term planning for the justice estate is important. If more court proceedings move online, over time, fewer courtrooms may be needed, or the role of a physical courtroom may evolve. Decisions about the physical infrastructure of courts will have an impact on Crown prosecutors and the technology they will need to adopt to perform their roles.
- **Training:** As tools in the courtroom are adopted or become more prevalent, we will need to consider how to equip and train Crown prosecutors to use them. Digital advocacy, remote communication, and the management of digital evidence should become standard competencies. Crown Law, the New Zealand Law Society, Law schools and the wider legal profession could all have a role to play in building – and resourcing – this capability.

TREND TWO: ARTIFICIAL INTELLIGENCE

Artificial Intelligence (AI) is developing rapidly, both in its abilities and accessibility. This section considers two aspects of the use of AI:

- the growth and increasing use of AI in legal work; and
- the problem and increasing risks of fake evidence or “deep fakes”.

What is Artificial Intelligence (AI) and Generative Artificial Intelligence (GenAI)?

We adopt the definitions from the Responsible AI Guidance for the Public Service: GenAI,³⁷ which are themselves based on OECD definitions.

AI system: A machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.

GenAI: A type of AI system that can create or generate new content such as text, images, video and music based off models and patterns detected in existing datasets.

We use the term GenAI when referring to that more specific form of AI system. We use the shorter and more commonly used term ‘AI’ in lieu of the defined term ‘AI system’ when we refer to both GenAI and other AI systems.

Given the rapid advancements being made in AI technology and the increasing uptake of AI, the use of AI could far exceed “routine tasks” over the next 20 years. By 2045, it is highly likely that AI will be deployed to assist Crown prosecutors with higher level work (such as risk analysis for bail submissions, which is currently being used in the United States,³⁸ and charging decisions in the People’s Republic of China).³⁹

³⁷ Digital Government “Glossary of AI terms” (3 February 2025) <www.digital.govt.nz>.

³⁸ The Bail Project “Are Risk Assessment Tools setting the Stage for AI Judges?” (28 June 2024) <www.bailproject.org>.

³⁹ Wanqiang Wu and Xifen Lin “Access to technology, access to justice: China’s artificial intelligence application in criminal proceedings” (online, *International Journal of Law, Crime and Justice*, 2025).

Growth and increasing use of AI in legal work

Internationally and domestically lawyers are increasingly using AI in their legal work and to assist in the running of their practices. According to the professionals surveyed in *Thomson Reuters' 2024 Future of Professionals Report*, AI is being employed by lawyers for routine tasks such as “contract analysis”.⁴⁰ The Criminal Bar Association has also recently emphasised the potential of legal AI to improve efficiency and has indicated that some of its members are experimenting with AI applications. At the same time, they sound a note of caution about risks.⁴¹

AI use will extend to the next generation of lawyers with approximately half of law students agreeing or strongly agreeing that they are comfortable incorporating AI tools into their future career.⁴²

Current frameworks for use of AI and GenAI in New Zealand relating to Crown prosecutions

The New Zealand Government has developed an AI strategy that seeks to accelerate private sector uptake of AI by reducing barriers to adoption.⁴³ The strategy confirms the current Government’s approach to use existing mechanisms (such as privacy, consumer protection, and human rights legislation) to manage risks rather than creating standalone AI legislation or regulations.⁴⁴

Current guidance on the use of AI and GenAI includes:

- *For the private sector: Responsible AI Guidance for Businesses: Investing with Confidence* provides general guidance for businesses to help develop AI use in a trustworthy way and accelerate its uptake and use.⁴⁵
- *For the public service: the Public Service AI Framework* supports the public service to explore and use AI in a safe, transparent and responsible way.⁴⁶ The Privacy Commissioner has also issued guidance on AI and the Information Privacy Principles.⁴⁷

⁴⁰ Thomson Reuters “How AI is transforming the legal profession” (2025) <www.legal.thomsonreuters.com>.

⁴¹ Bennett Richardson “New leaders seek to modernise Criminal Bar Association one podcast and tech fix at a time” (online, NZ Lawyer, May 2025).

⁴² New Zealand Law Students’ Association *Education & Wellbeing Survey 2025* (2025).

⁴³ New Zealand Government *New Zealand’s Strategy for Artificial Intelligence: Investing with Confidence* (July 2025) at 13.

⁴⁴ At 10.

⁴⁵ New Zealand Government *Responsible AI Guidance for Businesses Investing with Confidence: Accelerating Private Sector AI Adoption and Innovation* (July 2025).

⁴⁶ Hon Judith Collins KC “Guidance for safe use of AI in the public sector” (press release, 3 February 2025); see also Digital.govt.nz “Public Service AI Framework” <www.digital.govt.nz>.

⁴⁷ Privacy Commissioner *Artificial intelligence and the Information Privacy Principles* (September 2023) <www.privacy.org>.

- *For use in courts and tribunals:* The judiciary has provided guidance on the use of GenAI in courts and tribunals.⁴⁸
- *For the legal profession:* The New Zealand Law Society Te Kāhui Ture o Aotearoa has released guidance for lawyers on the opportunities and risks presented by GenAI with a checklist of matters to consider when using GenAI.⁴⁹

Te Mana Raraunga (Māori Data Sovereignty Network) has also developed general principles for Māori data sovereignty relevant to the adoption and use of AI in relation to Māori data.⁵⁰ The likely increase in volume and use of data in Crown prosecutions raises questions about who owns and controls data involving Māori as individuals or communities. There will be tikanga considerations regarding how data is stored, accessed, or shared. New Zealand's strategy for artificial intelligence considers the risks of misappropriation and loss of Māori data sovereignty and notes work by Te Puni Kōkiri to support the appropriate use of Māori cultural intellectual property.⁵¹

Legal resource providers are also using AI to enhance their offerings to the legal market. This includes providing conversational search tools, drafting of routine documents including communications with clients, summarising large volumes of documents, and the use of AI reports to identify gaps in legal arguments.⁵²

Long-term insight

Uptake of AI in the criminal justice sector is largely being driven by the private sector, including legal resource providers. Over time, AI could reshape how Crown prosecutors prepare for trials and hearings, conduct research, and manage evidence.

⁴⁸ Courts of New Zealand "Guidelines for use of generative artificial intelligence in courts and tribunals" (December 2023) <courtsfnz.govt.nz>. Three guidelines have been developed – for lawyers; non-lawyers; and judges, judicial officers, tribunal members and judicial support staff.

⁴⁹ New Zealand Law Society *Lawyers and Generative AI* (14 March 2024).

⁵⁰ Te Mana Raraunga is a network of Māori researchers and data practitioners who advocate for Māori Data Sovereignty at a national and international level. See <www.temanaararaunga.maori.nz>.

⁵¹ New Zealand Government *New Zealand's Strategy for Artificial Intelligence: Investing with Confidence* (July 2025) at 13.

⁵² See for example LexisNexis <www.lexis.com> and Thomson Reuters <legal.thomsonreuters.com>. The New Zealand Law Society, in partnership with LexisNexis, has announced a major AI research project to understand the current state of use of AI in the legal profession to identify how it can best meaningfully support the profession. See LexisNexis "New Zealand Law Society launches major AI research project" (April 2025) <www.lexisnexis.com>.

Implications for Crown Solicitors and Crown Prosecutions

The pace of change in AI makes it difficult to predict impacts on Crown prosecutions and Crown prosecutors with any degree of certainty. However, we identify some general matters below that are likely to apply to all new technologies.

Productivity

AI has the potential to improve productivity for Crown prosecutors and Crown prosecutions, particularly for time-consuming tasks or prosecutions which involve extensive data capture.

Skills and experience

AI will require Crown prosecutors to develop new skills. Crown prosecutors may need additional training to be able to successfully adopt and leverage the benefits of AI in Crown prosecutions, as well as adapting to defence counsel's use of AI.

Management of risks

Crown prosecutors will need to actively manage risks associated with the use of AI in Crown prosecutions. This will include their own use of AI as well as any risks associated with the investigation stage (prior to prosecution) or related to the defence's use of AI.

Opportunities and risks

The development of AI is occurring rapidly and in unpredictable ways. The opportunities and risks associated with AI tools that are currently in use (such as GenAI) may not be the same issues in 20 years' time. However, we identify the current risks of GenAI to extrapolate what could be the opportunities and risks from AI in the future.

Opportunities arising from increased use of AI in legal work

AI can increase Crown prosecutor productivity, including by streamlining labour-intensive processes, such as document review, disclosure, legal research, summarising information, analysing data and predicting outcomes. It can also be used as a tool to improve the quality of outputs, including draft documents, trial strategies, oral arguments, or lines of questioning in court. The ability of AI to summarise significant amounts of data may also enable it to more easily identify inconsistencies in evidence or witness testimony.

AI could positively impact the Crown prosecution workforce by reducing workloads and allowing for better work-life balance. Reducing the time Crown prosecutors spend on time-consuming but low-level tasks may free them up for more cognitively demanding work, or where human judgement is particularly important. It could also increase timeliness and efficiency in Crown prosecutions.

Using AI and predictive analysis could reduce the level of human bias in important prosecutorial decisions and improve assessments of risk. Arguments presented by prosecutors about bail and, eventually, sentencing could be buttressed by AI.

Risks of increased use of AI in legal work

The pace of change and uptake of GenAI has been rapid within the legal profession, as elsewhere. We canvass some current known risks that will need to be considered:

- **Accuracy:** The OECD has identified the risks of GenAI “hallucinating” or creating incorrect or inaccurate outputs.⁵³ The New Zealand Law Society has noted that the Law Society Libraries have received research requests for legal cases which have been found to be fictitious: the cases had been generated by GenAI.⁵⁴ Other than hallucinations, GenAI can provide incorrect factual information, including information based on other jurisdictions’ laws, or provide outputs that miss important nuances within the New Zealand legal context.⁵⁵ More recent models seek to reduce hallucinations but have not eliminated it completely.⁵⁶
- **Privacy and security:** Crown prosecutors hold large volumes of information that is highly sensitive. If useful and accurate predictive analysis is going to be deployed, then it will need to draw on private information that is lawfully used and retained.⁵⁷ If AI companies subsequently use data entered into an AI system, this also raises challenges for sensitive, legally privileged, confidential, or suppressed information.
- **Bias:** GenAI driven recommendations and decisions can reflect inherent racial and gender biases within the data sets they rely upon.⁵⁸ The OECD identified that GenAI may inadvertently produce biased outputs that perpetuate or amplify existing social

⁵³ OECD, above n 12.

⁵⁴ New Zealand Law Society “Beware of legal citations from ChatGPT” (30 March 2023) <www.lawsociety.org.nz>.

⁵⁵ OECD, above n 12.

⁵⁶ See, for instance, Inside Telecom “Anthropic says AI hallucinates less but still not human perfect” (23 May 2025) <www.insidetelecom.com>.

⁵⁷ Privacy Commissioner *Artificial intelligence and the Information Privacy Principles* (September 2023).

⁵⁸ Molly Callahan “Algorithms Were Supposed to Reduce Bias in Criminal Justice – Do They?” (online, *The Brink*, Boston University, 23 February 2023) and OECD, above n 12.

inequalities and discrimination.⁵⁹ As the data sets relied on contain limited New Zealand data, this limits the extent to which outputs reflect our specific context. It also increases the risk that outputs could exacerbate existing issues in our criminal justice system, such as the issue of Māori overrepresentation.

- **Transparency:** Linked to the above, it is not always clear how GenAI models have been trained and on what data they have been trained.⁶⁰ This can cause difficulties for Crown prosecutors as they will ultimately remain accountable for the accuracy of information they develop that is derived from GenAI outputs.
- **Human lens:** Crown prosecutors need to make nuanced decisions, considering a wide range of factors. For instance, the Solicitor General’s Prosecution Guidelines variously refer to the “public interest” and “interests of justice” at different points. This involves a complex balancing of factors that may not be amenable to analysis by data driven models. The New Zealand Law Society has also identified the use of automated decision-making models as a risk to the rule of law, including lack of transparency in how such evaluative decisions may be reached.⁶¹

The GenAI risks are not necessarily the risks that will arise from emerging or new AI systems over the next 20 years. However, they do provide an indication of the types of risks and interests that will likely need to be managed in the immediate future.

As to risks of AI in the future more generally:

- Crown prosecutors could be left behind if they do not adapt to new technologies at – or close to – the pace at which they develop. Crown prosecutions could be disadvantaged if prosecutorial obligations drive a more risk adverse approach which leads prosecutors to adopt AI more cautiously than other parts of the criminal justice system. We canvassed Crown prosecutors’ use of AI during development of this draft long-term insights briefing. Respondents confirmed they were adopting a conservative approach to using AI for legal purposes. They also emphasised the importance of ensuring stakeholders, including investigating and prosecution agencies, keep pace with developments, so no part of the prosecution system falls behind in its adoption of AI tools.

⁵⁹ OECD, above n 12.

⁶⁰ MIT News “Study: Transparency is often lacking in datasets used to train large language models” (30 August 2024) <www.news.mit.edu>.

⁶¹ New Zealand Law Society *Strengthening the Rule of Law in Aotearoa New Zealand* (June 2025) at [9.16]-[9.22].

- AI could misinterpret or otherwise inappropriately manage evidence relating to Māori cultural practices, spiritual beliefs, or traditional knowledge.⁶² AI systems may have difficulties in recognising and appropriately incorporating Mātauranga Māori (Māori knowledge) and alternative justice paradigms.
- AI could impact the Crown prosecutor workforce if AI is able to replace current skills (such as writing, analysis and legal research). Not developing such skills could impact career progression and the desirability of these roles for the next generation of lawyers.

Strategic choices

Strategic choices will impact Crown prosecutors use of AI in Crown prosecutions and how risks are managed. Government policy agencies will need to keep abreast of AI developments and consider the impacts on Crown prosecutions when making choices about how to respond to the rapidly changing technological environment.

We have identified potential choices for governments to address the risks identified. We recognise that the judiciary, the profession, and law schools are already playing a critical role in decision making and that this should continue:

- **Government regulation:** Whether there should be any legislative or other regulatory frameworks that specifically address the use of AI, or particular types of AI, in Crown prosecutions. Any regulation will need to carefully consider the responsibilities and equities of others in the criminal justice sector, including the judiciary and the legal profession. It will also need to consider the pace of change in AI.
- **Guidelines:** Whether guidelines (such as the Solicitor General's Prosecution Guidelines or specific advice to Crown prosecutors) could supplement existing – and future – guidelines produced by the judiciary and the profession relating to AI technologies as they develop. These could be tailored to the specific role of Crown prosecutors or apply more broadly to public prosecutors, acknowledging their particular obligations and specific role within the criminal justice system.
- **Training:** What training could be provided to Crown prosecutors (or public prosecutors more broadly) about the opportunities and risks of AI, including practical guidance on how to mitigate risks. Such training should also focus on cultural competency including how different AI systems could impact Māori defendants differently and how to recognise when AI recommendations might conflict with tikanga Māori principles.

⁶² The risk of 'digital colonisation' is explored further by the Ministry for Culture and Heritage (Manatū Taonga | Ministry for Culture and Heritage He Whakamāramatanga mō Ngā Tirohanga Wā Roa | *Long-term Insights Briefing 2025: Te Ahurea i te Ao Matihiko | Culture in the Digital Age* (June 2025) at 21).

In pursuing any strategic choices regarding the use of AI, the requirement for Crown prosecutors to meet their obligations as prosecutors, lawyers, and officers of the court will need to be carefully considered.

Problems and increasing risks of fake evidence or “deep fakes”

The judiciary in both the United States and Canada have expressed concern about the production of false images or “deep fakes” in Court.⁶³ GenAI can be used effectively with little skill or experience. For example, a person involved in a criminal prosecution – whether a defendant, victim or witness – may be able to feed a GenAI tool an image of a person and manipulate it to show a convincing injury,⁶⁴ or create a deep fake video from an image and audio file.

As GenAI advances, fake evidence will be increasingly undetectable to the human eye. Dr Andrew Chen was consulted during the development of this briefing.⁶⁵ He provided information on the current “race” between AI which creates deep fakes, and AI which aims to detect them. Both use the other to improve their performance in a cyclical manner. We anticipate that expert evidence will need to be called in criminal prosecutions on the authenticity of evidence, particularly images, videos and audio.⁶⁶

Long-term insight

The ability of GenAI to facilitate the production of fake evidence is a problem that is likely to increase. This will impact the criminal justice system – primarily through evidential and admissibility issues – but could also impact public trust.

⁶³ *People v. Beckley*, 110 Cal. Rptr. 3d 362 (U.S. Cal. Ct. App. 2 Dist. 2010) at 515 (quoting Parry, Digital Manipulation and Photographic Evidence: Defrauding the Courts One Thousand Words at a Time” (2009), 2009 J.L. Tech. & Pol’y 175, 183); the Court’s comment was referred to by a Canadian Court in *R v Andalib-Goortani* 2014 ONSC 4690 at 33.

⁶⁴ This is not anticipated to pose much of an issue where a complainant in a criminal prosecution has disclosed abuse immediately and, for example, the photographs to be produced have been taken by Police. However, commonly, disclosure of abuse (in particular sexual or domestic violence) is not immediate; a report to Police may be made well after the injuries occurred, if not years after the alleged violence.

⁶⁵ Chief Advisor, Technology Assurance – New Zealand Police.

⁶⁶ The admissibility of expert opinion evidence is subject to the Evidence Act 2006, s 25. Where the authenticity of evidence is in question, it is anticipated that expert evidence on that subject will meet the test of substantial helpfulness (s 25(1)).

Impacts on Crown prosecutors and Crown prosecutions

Advances in GenAI technology enabling the manipulation of evidence pose unique challenges for Crown prosecutors and other investigating and prosecuting bodies including the New Zealand Police (Police). This is particularly the case because the prosecution carries the burden of proof in a criminal prosecution. We identify the following impacts on Crown prosecutors and Crown prosecutions:

- Crown prosecutors may contend with increased scepticism from juries (and judges, in judge alone trials) that evidence in a prosecution case, such as images and videos, is authentic. Juries may come to expect expert verification of Crown evidence, and without it, be unwilling to accept such evidence on face value.
- Where the defence relies on evidence, the Crown and Police may need to verify that evidence on an urgent basis. Where evidence is believed to be fake, Crown prosecutors will need to lead expert evidence on the subject.
- Crown prosecutors will need to be alert to the risks of fake evidence. They may need to become more adept at recognising when the authenticity of evidence needs to be interrogated further and be able to make arguments to the court regarding the need for verification.

We emphasise that we are not suggesting that prosecutors or defence counsel will seek to admit evidence that they know or suspect to be false. Rather, there may be questions about the authenticity of evidence which has been submitted in good faith by the prosecutor or defence, about which genuine questions are raised in the course of proceedings.

Strategic choices

Over the next 20 years, the New Zealand justice system will need to examine in more detail how to respond to the issue of fake evidence.

During our research, we asked Crown prosecutors whether they had experienced problems with fake evidence in practice. They were not aware of any issues where fake evidence had been admitted as evidence. However, Crown prosecutors did report increased awareness and scepticism of AI. In one case there was an allegation that Crown evidence was doctored in some way during cross-examination of a Crown witness. In another, a Crown prosecutor was questioned (without basis) about using GenAI to write submissions. Media reports also

indicate a self-represented defendant in a murder trial claimed that CCTV footage relied on by the Crown was fake.⁶⁷

These examples demonstrate that even if fake evidence does not become a widespread issue in Crown prosecutions, there may still be demand for processes and technologies to verify that evidence is indeed authentic.

While GenAI presents a fake evidence challenge, other technologies will have a role in providing the solution. Technology is developing alongside GenAI that can assess whether images, video, and audio are authentic or have been generated or manipulated by GenAI. Digital forensic tools can already detect anomalies or mismatches, and cryptographic watermarking can track origin. These tools will continue to develop and will be useful to experts when they are called on to verify the authenticity of evidence.

Governments will have strategic choices about whether current methods to assess the authenticity of evidence in the criminal justice context is sufficient to deal with GenAI created evidence (e.g., the adversarial system, the use of experts, and admissibility rules under the Evidence Act 2006) or if other intervention is necessary.

- **Addressing challenges to the authenticity of prosecution evidence:** An important aspect of this, is who should verify the authenticity of prosecution evidence in a Crown prosecution.⁶⁸ We have identified two high-level strategic choices:
 - Crown prosecutors could instruct experts to provide evidence of the authenticity of evidence, such as a private computer forensics analyst. This would have the general benefits associated with private sector provision, including resourcing being driven by demand.
 - A new unit or organisation could be established within the public service with specialist capabilities and responsibilities to verify the authenticity of certain types of evidence. Such a group could be formed or incorporated into an existing organisation, such as a public research organisation, or within a prosecuting agency such as Police. This would ensure expertise is contained within the public service with expectations that this unit or organisation would remain up to date

⁶⁷ Sam Sherwood “Murder accused’s evidence ‘false, fake’, Crown alleges” (2 December 2024) <www.stuff.co.nz>. The Crown challenged the evidence given by the accused and he in turn alleged the Crown had produced false CCTV and other evidence.

⁶⁸ If a Crown prosecutor or the Police seek to validate an image or video to be produced by a Crown witness, this could be carried out at an early stage of a prosecution (or before charges are laid, during the Police investigation stage). Notably, if the problem of fake evidence becomes widespread, it could become standard Police procedure to analyse any evidence that will be relied on by a Crown witness, to enable assurances to be made to a future jury of its authenticity. Defendants themselves may seek to inspect images and videos relied on in the Crown’s evidence. The Criminal Disclosure Act 2008 enables the inspection of original files.

with rapid developments in AI. This approach may also ensure there is greater availability of these services to the prosecution in Crown prosecutions.

- **Addressing challenges to the authenticity of defence evidence:** There are different issues relating to the verification of evidence produced by defence counsel. While the Crown has disclosure obligations,⁶⁹ defendants' disclosure obligations are much more limited in scope.⁷⁰ Typically, a Crown prosecutor only learns of defence images or videos to be relied on by the defence *during* trial – at the same time as the Judge and jury, and during a witness or defendant's evidence. This leaves little or no time to have questionable evidence analysed. Verification procedures could delay trials which would not be desirable. If verification of defence evidence becomes a regular occurrence, we have identified two high-level strategic choices for governments:
 - Consider whether legislative change is needed to require defendants to disclose any images, videos or audio files which they intend to rely on in evidence, prior to the commencement of trial. This disclosure would need to allow sufficient time for experts to undertake appropriate analysis. We noted that this would be significant change to criminal prosecutions as it has implications for the burden of proof and defendants' rights.⁷¹ Careful and detailed policy work would be required prior to changes being made.
 - Consider introducing an admissibility threshold for digital evidence – for instance, requiring any digital evidence to be accompanied by a certificate of authenticity from a duly authorised expert.⁷² If this threshold were to apply to all digital evidence, it would impose a significant additional burden on both prosecution and defence in a criminal proceeding.

⁶⁹ Criminal Disclosure Act 2008.

⁷⁰ Generally, a defendant has no disclosure obligations to the Crown, with some exceptions – for example, a defendant must give notice of the intention to adduce alibi evidence and must disclose an expert witness' brief of evidence 10 working days prior to trial (Criminal Disclosure Act 2008, ss 22 and 23).

⁷¹ There are more significant defence disclosure obligations in other common law countries. Notably, in the United Kingdom, "defence statements" are disclosed to the prosecution prior to trial: "A defence statement is submitted to the prosecution in Crown Court cases and in some Magistrates' Court cases, which sets out the defence to the allegations and can point the prosecution to other lines of inquiry. The disclosure officer will then review all of the material held by the investigator and decide whether in the light of the defence statement, additional material is now relevant or meets the test for disclosure because it supports the case for the accused". <www.cps.gov.uk>.

⁷² In Canada, if there is a question about the authenticity regarding digital evidence, the court must hold a "voir dire" to determine its admissibility before it can be considered by the judge or jury. "The admissibility test has two branches, both of which must be satisfied: authenticating the record itself; and authenticating the integrity of the device on which the record is stored". Daniel Brown and Lindsay Board "Catch me if you can: Using and challenging digital evidence" (2021) 40(2) Adv J 13 [Brown and Board] at 3.

- **Prosecutor training:** Training could be provided to Crown prosecutors, so they are able to recognise the basic hallmarks of altered or fake evidence and know when to challenge defence evidence or proactively seek verification of proposed prosecution evidence. Basic training (perhaps in conjunction with other investigating and prosecuting agencies such as Police) could be provided or required for all Crown prosecutors.⁷³ This could include training on recognising signs of digital evidence tampering, such as it being stripped of its meta data (the details about file size or the date the document was created).⁷⁴

CONCLUSION

Technology is already reshaping the criminal justice system, and this transformation will continue to accelerate. For Crown prosecutors, it will change how they work, how they prepare and present prosecutions, and how prosecutions are experienced by everyone involved.

If proceedings become less reliant on physical courtrooms, the justice system's footprint may shrink. Jury trials will likely still require dedicated, solemn spaces, but many other hearings may eventually be conducted remotely. This shift brings potential benefits, including flexibility and efficiency, but also a risk of losing the meaning and formality that physical spaces convey.

Similarly, AI has the potential to benefit Crown prosecutors by increasing productivity and efficiency in a world with ever increasing amounts of digital data.

The challenge for the Crown is to embrace innovation while preserving fairness and ensuring public trust. With thoughtful planning, clear rules, and sustained investment, Crown prosecutors can help lead this transition—ensuring justice remains open, robust, and future-ready.

This long-term insights briefing has provided Crown Law with an opportunity to thoughtfully identify the trends, risks, and opportunities to determine what support we may need to provide to Crown prosecutors as they navigate the rapidly changing technology landscape. It has also enabled us to identify matters that impact Crown prosecutors and Crown prosecutions so that we stand ready to input into any future policy proposals that eventuate.

⁷³ John Swinson “Judge, Jury, Client and Algorithm: Are Lawyers Ready for AI?” (2024) 8 CTLR 203. In Swinson’s view, lawyers are not well equipped to deal with technology change as, unlike those in engineering and business, lawyers do not take a systematic approach to considering emerging technologies and how they will affect people, society, and the legal system.

⁷⁴ Brown and Board, above n 72, at 15.