

# ANNUAL REPORT

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CROWN LAW  
For the Year Ended 30 June 2010

*Presented to the House of Representatives  
Pursuant to s 44(1) of the Public Finance Act 1989*



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## SOLICITOR-GENERAL'S INTRODUCTION

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It is with pleasure that I present Crown Law's annual report and its audited financial statements for the year ended 30 June 2010.

During the past financial year Crown Law continued to demonstrate its value as the Crown's "independent law firm". Over the past 12 months Crown Law has had to manage a challenging and diverse range of litigation and advice work.

An indication of Crown Law's expanded workload can be gauged from the following statistics.

Crown Law appeared in 50 applications for leave to appeal to the Supreme Court and in eight substantive appeals heard by the Supreme Court.

In comparison, in its busiest year the Privy Council heard four New Zealand cases in which the Crown was a party.

In addition to a heavy litigation workload, lawyers in Crown Law are involved every day in providing advice and guidance to Ministers and departments to assist the Government of the day in implementing its policies lawfully.

Crown Law has continued to benefit from a very targeted recruitment programme which has ensured that Crown Law attracts and retains staff of the very highest calibre.

During the last financial year there has been little change in the management group, with the Solicitor-General, Practice Manager, three Deputy Solicitors-General and Corporate Managers all remaining the same. Two of the seven Team Leaders have changed due to both outgoing Team Leaders being appointed to the judiciary. Rebecca Ellis was appointed to the High Court in Auckland and Christina Inglis was appointed to the District Court in Manukau. Minimal change in the management structure has provided a very stable platform for staff to deliver maximum benefit to our clients and stakeholders.

As always, I am grateful to all staff for their professionalism and commitment throughout the year.



Dr David Collins QC  
Solicitor-General & Chief Executive

30 September 2010

# THE WORK OF CROWN LAW

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During this year, Crown Law has provided legal services to the Crown thus contributing to the effective and lawful functioning of New Zealand's Government. The work of Crown Law included legal advice to, and legal representation of, public sector clients. Crown Law also supported the Law Officers, the Attorney-General and the Solicitor-General.

Legal services were provided to the Government and government departments by in-house legal advisors, private sector legal advisors and Crown Law. In-house legal advisors typically instruct Crown Law. The engagement of external legal advisors, for example, Queen's Counsel, was undertaken where particular specialist knowledge was required, where work pressures within Crown Law created capacity problems and when independence needed to be preserved.

Crown Law charges for services to its public sector clients. Crown Law has sought to service client departments and agencies efficiently and effectively.

## Legal advice and representation

The Crown is subject to the rule of law and has an obligation to ascertain what the law is, comply with it and enforce it. This means that when advising individual departments Crown Law had and always will have an overarching duty to take a whole of government approach with emphasis upon consideration of the public interest.

Thus Crown Law's clients had two needs: high quality advice that addressed the immediate legal problem and advice that took into account the Crown's overriding obligations and interests.

The Cabinet Directions for the Conduct of Crown Legal Business 1993 direct departments in the use of Crown Law's legal services. The Cabinet Directions provide for two categories of legal work:

- › Category 1, which must be referred to the Solicitor-General, includes cases concerning actual or imminent litigation where the Government or a government agency is a party, situations involving the lawfulness of the exercise of government powers, constitutional questions (including Treaty of Waitangi issues)

and issues relating to the enforcement of the criminal law and the protection of the revenue.

- › Category 2 is essentially all other work, for example employment matters, and is contestable. Departments may choose other legal advisors to assist them to resolve Category 2 matters.

Crown Law had no specific responsibility for policy formation or for the development of legislation. However, when requested, Crown Law has provided legal input on policy issues. For example, for the Criminal Procedure (Simplification) project, Crown Law, as a key stakeholder, has participated in the steering group to try to ensure that the implications for criminal prosecutions and appeals are fully understood and practical expertise about criminal procedure in operation is considered.

In providing legal services Crown Law has sought to protect the Crown's legal interests and ensure its responsibilities were lawfully carried out. Two examples of this are:

- › Crown Law regularly provided legal advice on the current state of the law and the likely effect of proposed amendments to legislation.
- › Vetting of Justice portfolio Bills for consistency with the New Zealand Bill of Rights Act 1990. Advice on any inconsistencies was provided to the Attorney-General for over 28 Bills. The Attorney-General drew the attention of the House to any inconsistencies when the Bill was introduced.

This work has assisted the management of legal risk arising from the operations of government agencies and policy development. The Chief Executive's overview on page 13 provides specific examples of cases that demonstrate how Crown Law has achieved these outcomes.

To further promote these outcomes across government, Crown Law has provided leadership for legal services within government. Crown Law convened the Chief Legal Advisors' forum until administration of the meetings passed over to Chief Legal Advisors. Crown Law has supported PS Law, an opinion database and workspace for government lawyers, by sitting on the steering committee and contributing opinions.

Crown Law has hosted six Crown Entity legal network fora, added a specific Criminal Law newsletter to its regular newsletters on legal developments, hosted more than 25 in-house client seminars and nine client-specific seminars. Crown Law and the Chief Legal Advisors organised a very successful Lawyers in Government conference that was attended by 254 participants from 50 different organisations. This has contributed to an increased awareness of current legal issues and trends for those providing legal services across government.

### Supporting the Law Officers

Crown Law has supported the Law Officers of the Crown, the Attorney-General and the Solicitor-General, by providing legal advice and assisting them in the performance of their statutory and constitutional functions. Specific activities undertaken include advice and representation to support the following functions:

- › supervision of charities;
- › representation of the public interest;
- › vexatious litigant proceedings;
- › extraditions;
- › participation in Pacific Island Law Officers' Meeting (PILON); and
- › the exercise of a variety of other powers, duties and authorities arising from statutory powers and constitutional conventions.

Crown Law has made key contributions to the criminal justice system and the Law Officers' responsibilities through the supervision and conduct of the Crown prosecution function. This is to support the responsibility of the Solicitor-General to prosecute all indictable crime in New Zealand. Crown Solicitors are appointed throughout the country under warrant of the Governor-General. They undertake indictable prosecution work for the Crown and appeals to the High Court from the summary jurisdiction. Crown Law has provided a co-ordination role within the network to guide and share prosecution practice and knowledge. Crown Law also oversaw the prosecution work of the Serious Fraud Office, and conducted criminal appeals to the Court of Appeal, the Supreme Court and the Privy Council.

### *Statistics for decisions given for criminal appeals*

Supreme Court (criminal appeals)	Numbers
Application for leave to appeal	50
Refused	42
Granted	8
Application for leave to appeal granted, substantive hearing held	7 <sup>1</sup>
Allowed	4 <sup>2</sup>
Dismissed	2

Court of Appeal (criminal appeals)	Numbers
Solicitor-General appeals filed	39
Pre-trial	14
Sentence	18
Case stated	7
Solicitor-General appeals heard	47
Allowed	30
Dismissed	10
Abandoned	7
Criminal appeals filed (includes Solicitor-General appeals)	530
Heard orally	448
Abandoned	55
Total of appeals disposed of	503

Crown Law's activities have an impact on the lawful conduct of Executive Government and the ability of government to lawfully implement its chosen policies. Ultimately, Crown Law contributes to New Zealand's system of democratic government under law and in the public interest.

<sup>1</sup> One decision reserved

<sup>2</sup> Includes one Solicitor-General Appeal

## **Appropriations** \*

To achieve Crown Law's outcomes Vote: Attorney-General provided for the purchase of four appropriations:

- › the conduct of appeals from criminal trials on indictment and in Crown appeals against sentence or seeking to clarify points of law (\$3.329 million);
- › legal advice and representation services to the Crown via central government departments (\$22.900 million);
- › a national Crown prosecution service that undertakes trials on indictment and related appeals (\$35.542); and
- › legal and administrative services for the Attorney-General and Solicitor-General to assist them in the exercise of their statutory functions and responsibilities (\$2.978 million).

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\* These amount of the appropriations were approved in budget 2009. See page 52 for changes during the year

# STRATEGIC DIRECTION

## Overview

At the heart of our strategic direction is our vision, “being the first choice public sector lawyer”. As part of our budget comes from providing legal services to departments in competition with private sector law firms, this vision is important. We will achieve this by maximising the value for money our clients receive from our legal services.

We have worked towards this vision by ensuring we provide quality legal services or outputs to our clients. We have internal processes to monitor and assess the quality of our services, such as peer review and litigation management planning. We participate in an annual independent commercial survey which compares Crown Law with 12 major law firms. This gives us an external view of both our quality and cost effectiveness compared across New Zealand’s legal sector. Results for this year’s survey will not be available until after the Annual Report goes to print. Results from the last survey are as follows:

To ensure that our delivery of high quality legal services is sustainable as we move towards the vision, “being the first choice public sector lawyer”, we maintain an organisation that is recognised as an engaging and responsive place to work for legal and support staff. For this reason, our two important initiatives have continued to be:





- › ensuring that high quality legal services are provided to government; and
- › ensuring Crown Law is the most engaging and responsive workplace for all of its staff.

Our two important initiatives have supported work towards our three goals (outcomes):

- › the Crown’s legal interests are protected;
- › the Crown’s responsibilities are lawfully carried out; and
- › the Crown’s legal risks from the operations of government agencies and policy development are well managed.

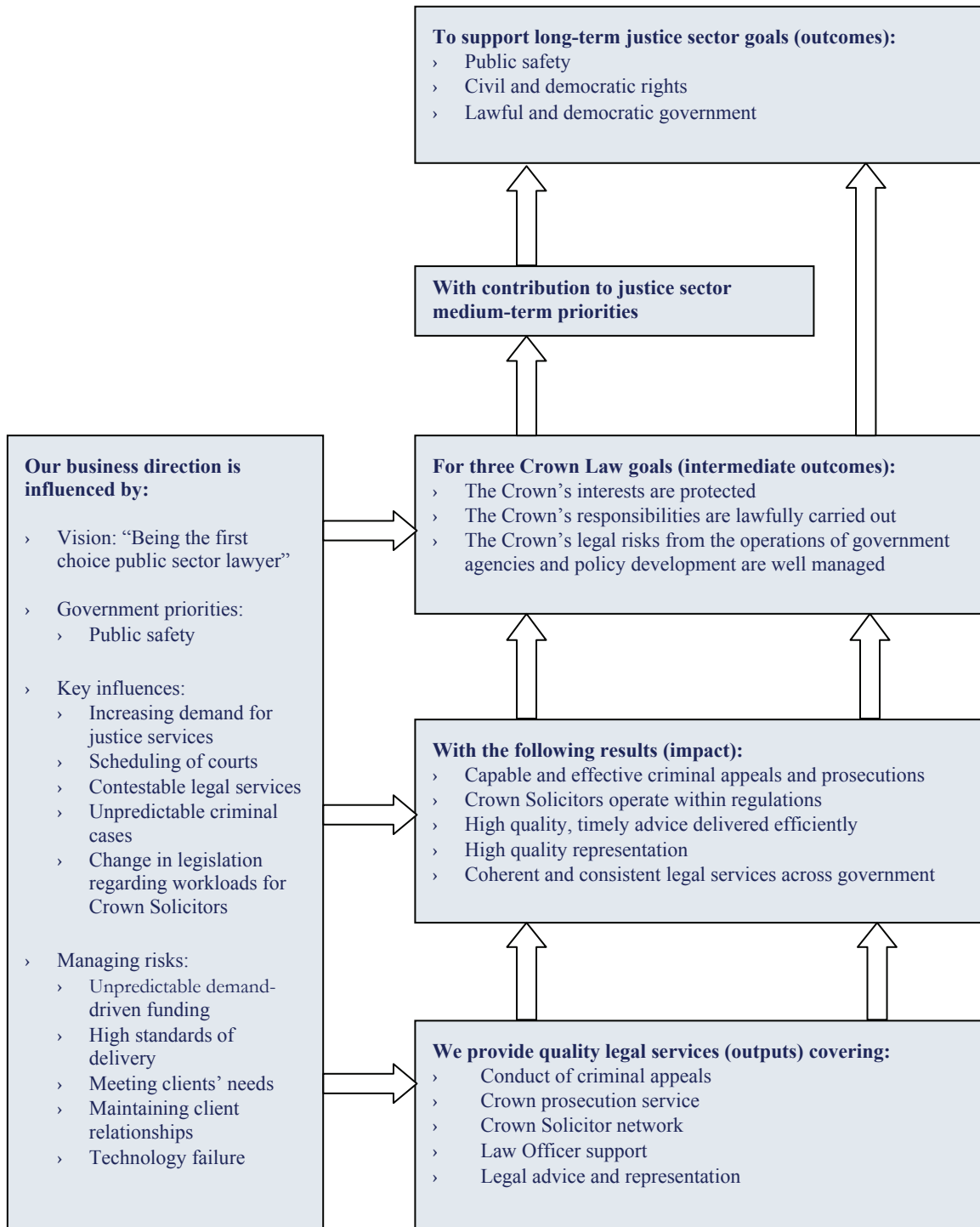
For specific detail on the relationship between our outputs and goals see page 11.

### *Extract from the Team Factors’ “Market & Lead Firm Client Perceptions” Report*

	2008	2007
Professional	1 <sup>st</sup> equal 	2 <sup>nd</sup> equal
Quality	2 <sup>nd</sup> equal 	3 <sup>rd</sup> equal
Trustworthy	1 <sup>st</sup>	1 <sup>st</sup>
Reliable	1 <sup>st</sup> yet all low; highest 48%	1 <sup>st</sup> yet all low; highest 40%
Conservative	1 <sup>st</sup> by a long margin	1 <sup>st</sup> by a long margin
Easy to work with	2 <sup>nd</sup> yet all low; highest 46%	2 <sup>nd</sup> yet all low; highest 42%
Value for money	1 <sup>st</sup> yet all low; highest 39%	1 <sup>st</sup> yet all low; highest 35%
Efficient	6 <sup>th</sup> of 12 places; all low; highest 48%	8 <sup>th</sup> yet all low; highest 29%
Solves my problems	1 <sup>st</sup> yet all low; highest 34%	2 <sup>nd</sup> yet all low; highest 29%
Expensive	Last 	11 <sup>th</sup>
Innovative	7 <sup>th</sup> equal of 9 places; all low; highest 14% 	Last equal yet all low; highest 12%
Aggressive	Last; wide range; 1-52%	Last; wide range; 0-70%



*Summary of our strategic direction*



## CONTRIBUTION TO THE JUSTICE SECTOR

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Along with other justice sector agencies Crown Law contributes to the long-term justice sector goals of public safety, lawful democratic government and the exercise of civil and democratic rights and obligations. For 2009/10, public safety was the overriding priority for justice sector agencies. Crown Law's contribution to this priority, as well as to the sector's other goals, was achieved through the appropriate conduct of criminal appeals and Crown prosecutions and the provision of high quality legal services.

The justice sector medium-term priorities that Crown Law has contributed to are stepping stones to the three long-term justice sector goals mentioned in the above paragraph. We provided services that contributed to the priorities both directly and indirectly. For example, holding offenders to account is directly related to the effective conduct of Crown prosecutions and conducting efficient and effective criminal appeals. Crown Law is a contributor to the justice sector goals but has no influence over the direction reflected in the goals.

### **Medium-term priorities for the justice sector**

The following justice sector priorities are most relevant to our work:

- › We contribute directly to:
  - › holding offenders to account – in particular, resolving criminal cases and seeking the imposition of appropriate sanctions. The number of appeals heard in the different jurisdictions can be seen on page 6.
- › We contribute indirectly to:
  - › a trusted justice system – by ensuring justice sector agencies meet the needs of users, work within the law when delivering on objectives and are accountable; also through the supervision of the Crown Solicitors' network, the provision of prosecution guidelines and review of Crown Solicitors' practices. Interventions by the Attorney-General in the public interest to clarify a point of law is another service that supports this priority;

- › durable settlements of Treaty of Waitangi claims by providing legal advice and representation for the Treaty settlement process. A specific example of this advice is the office's work on the Waikato River Settlement;
- › effective constitutional arrangements by the exercise of Law Officer functions and effective legal advice and representation to government; and
- › an accessible justice system – in particular, by providing efficient and effective services in the prosecution of indictable crime.

*Relationship between services and strategic goals*

Service (output)	Results of our services	Contributes to
<b>Appropriation: Conduct of Criminal Appeals</b>		
Conduct criminal appeals	<ul style="list-style-type: none"> <li>› Efficient and effective appeals</li> <li>› Clarification of points of criminal law</li> </ul>	<ul style="list-style-type: none"> <li>› justice sector goals: Offenders are held to account, Public safety, Trusted justice system</li> <li>› Crown Law goal 2: The Crown's responsibilities are lawfully carried out</li> </ul>
<b>Appropriation: Supervision and Conduct of Crown Prosecutions</b>		
Delivery of Crown prosecution service	<ul style="list-style-type: none"> <li>› Capable and effective Crown prosecutions</li> </ul>	<ul style="list-style-type: none"> <li>› justice sector goals: Offenders are held to account, Public safety, Trusted justice system</li> <li>› Crown Law goal 2: The Crown's responsibilities are lawfully carried out</li> </ul>
Administration of Crown Solicitor (CS) Network and review of CS practices	<ul style="list-style-type: none"> <li>› Crown Solicitors operate efficiently within regulations</li> </ul>	<ul style="list-style-type: none"> <li>› justice sector goal: Trusted justice system</li> <li>› Crown Law goal 2: The Crown's responsibilities are lawfully carried out</li> </ul>
Delivery of criminal law advice and services including extradition and mutual assistance	<ul style="list-style-type: none"> <li>› Users receive high quality criminal advice and services</li> <li>› The integrity of the rule of law is maintained</li> </ul>	<ul style="list-style-type: none"> <li>› justice sector goals: Offenders are held to account, Public safety, Trusted justice system</li> <li>› Crown Law goal 2: The Crown's responsibilities are lawfully carried out</li> </ul>
<b>Appropriation: The Exercise of Principal Law Officer Functions</b>		
Provision of legal and administrative services to Law Officers	<ul style="list-style-type: none"> <li>› Law Officers provide consistently high quality advice and representation</li> <li>› The Attorney-General is kept informed of legal development and issues regarding the Government's legal business</li> <li>› The Attorney-General and Solicitor-General are supported in their duty to ensure the Government acts lawfully</li> </ul>	<ul style="list-style-type: none"> <li>› justice sector goals: Trusted justice system, Effective constitutional arrangements</li> <li>› all Crown Law goals</li> </ul>
Interventions by the Attorney-General in the public interest	<ul style="list-style-type: none"> <li>› Interventions clarify a point of law to ensure government interests are not in conflict with the public interest</li> </ul>	<ul style="list-style-type: none"> <li>› justice sector goal: Trusted justice system</li> <li>› all Crown Law goals</li> </ul>
Charitable Trust investigations	<ul style="list-style-type: none"> <li>› Charitable Trusts work within the Charitable Trusts Act 1957.</li> </ul>	<ul style="list-style-type: none"> <li>› justice sector goal: Effective constitutional arrangements</li> <li>› all Crown Law goals</li> </ul>
<b>Appropriation: Legal Advice and Representation</b>		
Provision of legal advice and representation	<ul style="list-style-type: none"> <li>› Government agencies are efficiently and effectively advised and legally represented</li> <li>› Coherent, strategic and consistent legal services provided with a whole of government view and in the public interest</li> <li>› Crown agencies are supported to meet their legal responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>› justice sector goals: Offenders are held to account, Public safety</li> <li>› all Crown Law goals</li> </ul>
Development of legal capability of government lawyers	<ul style="list-style-type: none"> <li>› High quality, effective legal services are provided to government agencies</li> </ul>	<ul style="list-style-type: none"> <li>› justice sector goals: Offenders are held to account, Public safety</li> <li>› all Crown Law goals</li> </ul>
Conduct of all judicial reviews involving three branches of government	<ul style="list-style-type: none"> <li>› Government agencies operate within the law</li> </ul>	<ul style="list-style-type: none"> <li>› justice sector goals: Trusted justice system, Public safety</li> <li>› all Crown Law goals</li> </ul>

## CROWN LAW'S TWO IMPORTANT INITIATIVES

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Crown Law has identified two important initiatives that have and will continue to support the achievement of our outcomes and vision, “being the first choice public sector lawyer”.

### **Initiative 1: Ensuring the highest possible quality of legal services are provided to Government**

This initiative recognises that high quality legal services to government are crucial to the Government's long-term priorities as well as to Crown Law's outcomes. Crown Law has well-established processes to ensure high standards of advice and litigation. These include peer review of advice, and litigation management planning processes. Crown Law recognises that continuous improvement is necessary to ensure that, as well as being trustworthy and professional, the services offered are solution-focused, innovative and efficient.

#### ***Client relationship management***

To achieve this initiative, Crown Law needs quality working relationships with the client's internal legal advisors, and strong organisational links with the client's operational and policy functions. The introduction of our revamped Client Relationship Management protocol and programme in 2008 was to ensure that we focused on the delivery of outstanding client service at all levels, and in all matters. Following on from a training programme to facilitate staff understanding and commitment to our client service standards there has been an ongoing programme to develop and support Client Relationship Managers in their role and develop client relationship systems that meet the needs of our clients.

#### ***Value-added services for clients – promoting legal leadership***

To assist our clients to manage risk effectively, we have focused on raising their awareness of relevant legal issues and developments. This involved hosting fora, seminars and presentations, which were well attended by our clients. We held two fora for Chief Legal Advisors, six fora for Crown Entities Legal Network and seven seminars for our wider client base. The fora addressed the Bill of Rights,

Complaints and the Querulent Litigant, Collective Agreement negotiations, Information Law, an update on developments in Tort Law, Discovery and Employment Law. Crown Law organised the very successful inaugural Lawyers in Government conference this year. We continued to provide a number of specific in-house seminars for individual clients on an ad hoc basis.

Over the past year we have produced four Employment Updates that were distributed electronically to 170 clients. A new publication, the Prosecution Brief, was distributed to the Crown Solicitors' Network and other criminal law stakeholders twice this year.

#### ***Government legal services***

Crown Law was directed by Cabinet (EXG Min (07)7/1) in late 2007 to lead a project for the review of government expenditure on legal services. Crown Law completed this project. This year, in conjunction with departmental Chief Legal Advisors and Chief Executives, a programme to establish a Government Legal Service has been undertaken. A proposal for a GLS Programme is currently with the Attorney-General.

### **Initiative 2: Ensuring Crown Law is the most engaging and responsive workplace for legal and support staff**

Crown Law has continued to attract and retain staff of the highest quality. Crown Law aims to ensure that all staff know they are truly valued and have opportunities to continue their career development. Crown Law has focused on:

- › continuing to build leadership and management capability through training and mentoring opportunities for Team Leaders and Senior Managers;
- › trialling a performance management structure with a focus on ongoing communication between staff and their manager;
- › a broad range of in-house legal seminars; and
- › encouraging staff to participate in development opportunities such as secondment opportunities for legal staff both internally and outside of Crown Law.

## CHIEF EXECUTIVE'S OVERVIEW

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Crown Law supports New Zealand's system of democratic government, in accordance with the law, by providing legal advice and representation to Executive Government and supporting the Attorney-General and Solicitor-General in the performance of their statutory and other functions as Law Officers. Crown Law has continued to perform this role by providing legal advice to government departments and agencies, often on complex and urgent matters, and conducting litigation on behalf of the Crown generally, in the name of the Attorney-General.

Crown Law was involved in matters during the year that covered a wide range of issues and areas of the law. Some of these matters, which demonstrate the nature of work undertaken by Crown Law, are summarised below.

### Public Law Group

#### *Avowal Administrative Attorneys Ltd v Commissioner of Inland Revenue – Court of Appeal*

The case is significant because it considers issues relating to search and seizure of large volumes of electronically-stored information. It is important because most business information is now stored electronically and that raises different issues from hard copy information. It considers what constitutes a reasonable search process under s 16 of the Tax Administration Act 1994 and s 21 of the New Zealand Bill of Rights Act 1990. There are conflicting rights between accessing relevant information and protecting privilege validly claimed, and the powers of law enforcement agencies to obtain information in an efficient and timely way for the purposes of maintenance of the law. It also upholds New Zealand's mutual assistance obligations and is considered significant internationally as it is one of the rare cases where courts have had to consider obligations under OECD tax treaties.

#### *Commissioner of Inland Revenue v Ian David Penny and Gary John Hooper – Court of Appeal*

The first point of significance is that the case examines when the failure of an associated company to pay a commercially realistic salary can amount to

tax avoidance. In these types of cases a professional or business person sets up his or her practice or business through a company he controls and owns through a family trust. Sometimes the business is run through the family trust (ie a trading trust). He or she is paid a small salary. The remaining income is paid as a dividend to the family trust. The trust then loans the funds to the person. As he or she controls the trust, no demand for repayment of the loans is ever made, with the consequence of an ever increasing loan balance. The loan can be remitted later as a distribution to a beneficiary. The effect of the arrangement is to reduce the tax rate from 39 percent to 33 percent. The Court held that such arrangements can be tax avoidance where they are contrived and artificial.

The second reason why the case is significant is that it affected thousands of taxpayers.

The third reason why these cases are important is because such arrangements are used to raid welfare payments in the form of tax credits (ie Working for Families). The credits are calculated on the basis of income. Although there are "look through provisions" for companies, there are no such provisions for trusts (such provisions with trusts are problematic given the discretionary nature of most beneficiaries). Many farmers (and other small businesses) have set up their business through trading trusts and paid themselves low income while "loaning" large amounts to supplement their income. They then claim tax credits based on their low income. Although dressed up as tax credit, at the lower income levels tax credits take the form simply of payments made to the person (ie it is not a refund of tax that was previously paid). An example of such abuse is found in *Case Y 1* and *Case Y 5* in the Taxation Review Authority where approximately \$10,000 per year of welfare payments were made. The decision in *Penny and Hooper* provides a clear mechanism to deal with such arrangements.

#### *Commissioner of Inland Revenue v Contract Pacific Limited – Court of Appeal*

Contract Pacific had sought a GST refund for the supply of services made to overseas wholesalers. The Commissioner had issued a letter pursuant to s 46 of the Goods and Services Tax Act 1985 (GSTA) advising that the refund would be withheld pending an investigation. As a consequence of an

administrative error, a refund cheque was later issued by the Commissioner and subsequently stopped. Contract Pacific made a demand for the amount of the cheque plus interest on the basis that the Commissioner had breached s 46 resulting in a statutory debt that had been paid by virtue of the stopped cheque for the purposes of the Bills of Exchange Act 1908 (BOE).

Contract Pacific was successful in the High Court. Duffy J held that despite the fact that notice of an investigation was issued within the time limit set out in s 46(5) GSTA, the Commissioner in requesting information pursuant to that investigation should have also satisfied the time limits in s 46(4). Her Honour held further that Contract Pacific was entitled to payment of the refund amount (despite the fact the refund was ultimately denied as a result of the investigation) under the BOE due to the “payment” by the Commissioner in the form of the stopped cheque.

The Court of Appeal allowed the appeal, considering that once the Commissioner has satisfied the notice requirements in s 46(5) that investigation is not subject to any limitation and any request for information made in the course of that investigation will not engage the time limits in s 46(4). The Court recognised the difference between investigations and those situations that only involve the provision of additional information that had been merely overlooked.

This decision was significant as it involved an important question of statutory interpretation and is the first time this particular issue has been before the courts. The consequence of the High Court decision was an impractical operation of s 46. The Commissioner’s investigation powers under the Tax Administration Act 1994 would effectively be limited by a mechanical notice provision in the GSTA. Further, a breach of this nature would result in the Commissioner having to issue a refund while still carrying out an investigation into the validity of such a refund. Accordingly, the case has protected the Crown’s interests and ensured the Crown’s responsibilities are lawfully carried out.

### ***BNZ Investments Limited v Commissioner of Inland Revenue – High Court***

This decision (July 2009) was the first in the cases relating to certain structured finance transactions entered into by the Australian-owned trading banks which the Commissioner of Inland Revenue had

assessed as being tax avoidance arrangements subject to the general anti-avoidance provision.

BNZ had entered into six transactions between 1988 and 2005 involving the sale and repurchase of an equity investment in an overseas group of companies. On each occasion, BNZ invested \$500 million into a special purpose entity and through the use of foreign tax and conduit relief, deducted the costs of the investment while earning income free from tax. All six transactions made a predetermined loss before tax, which was able to be used against other income in the bank group so as to reduce tax liabilities overall.

The High Court found, applying the Supreme Court’s approach in *Ben Nevis Forestry Ventures Ltd v CIR* [2009] 2 NZLR 289 considered the commercial and economic reality of the transactions and concluded that the manner in which the transactions deployed the provisions of the Income Tax Act 1994 were not within Parliament’s contemplation. The Court also considered that there was no commercial logic, rationale or purpose outside the tax advantages, the guarantee procurement fees paid as part of the transaction were a contrivance, certain aspects of the swaps used in the transaction were artificially priced, and both parties were interested to increase the costs of the transaction and thereby share in the tax benefits. Accordingly, the challenges to the Commissioner’s assessments (for approximately \$650 million) failed.

### ***Westpac Banking Corporation v Commissioner of Inland Revenue – High Court***

This decision (October 2009) was the second of the trading bank structured finance cases. Between 1999 and 2005 Westpac had entered into nine transactions similar to those undertaken by BNZ, the design of which was also to generate losses that could be used against other income so as to reduce the bank’s tax liability.

The High Court found that these were tax avoidance arrangements and that the guarantee procurement fee was not a deductible expense. The Court also confirmed that the Supreme Court’s guidance in *Ben Nevis Forestry Ventures Ltd v CIR* [2009] 2 NZLR 289 settled the approach to tax avoidance in New Zealand, examined the commercial and economic reality of the arrangements at issue, concluded that the guarantee procurement fee was a contrivance and overall, as in BNZ, the use of the provisions to gain the tax advantage was outside Parliament’s

contemplation. Accordingly, the challenges to the Commissioner's assessments (for approximately \$915 million) failed.

These cases were appealed to the Court of Appeal. Before those appeals were heard, these cases, and the other cases involving trading banks and similar transactions yet to be heard in the High Court, were settled in late December 2009 and March 2010, in what is the largest New Zealand commercial settlement (\$2.23 billion).

### ***Accent Management Ltd & Ors v CIR – High Court; Redcliffe Forestry Venture Ltd & Ors v CIR – High Court***

Following the Supreme Court's landmark tax avoidance decision in *Ben Nevis Forestry Ventures Ltd v CIR* [2009] 2 NZLR 289, two related proceedings by the investors in the "Trinity scheme" have failed at the first hurdle in the High Court.

In *Accent Management*, the investors sought judicial review of the validity of the assessments that were disrupted in the Trinity challenge litigation, claiming that the Commissioner of Inland Revenue had knowingly made those assessments under the wrong statutory provision, and that the courts (including the Supreme Court in *Ben Nevis*) had therefore lacked jurisdiction to confirm the assessments as correct. Applying the Court of Appeal's decision in *Westpac Banking Corporation v CIR* [2009] 2 NZLR 99, Keane J struck out the *Accent Management* claim as an abuse of process. The Judge held that the serious allegations now made against the Commissioner had no basis in the indisputable record; had always been available to the investors; were only being made now because of, and as a collateral attack upon, *Ben Nevis*; and could not in any event assist the plaintiffs unless they were also somehow able to overcome the Supreme Court's core finding of tax avoidance. The decision affirms the presumptive validity of tax assessments and the limited scope for judicial review in tax cases (as confirmed in *Westpac*), and provides a clear precedent for protecting significant judgments in the Commissioner's favour from abusive collateral attack.

In *Redcliffe*, filed after the hearing in *Accent Management*, the investors made similar factual arguments by a different procedural route. The *Redcliffe* plaintiffs sought to set aside the original High Court decision in the Trinity litigation (and, by implication, the Court of Appeal and Supreme Court decisions too) as a "nullity", on the basis that the Commissioner had presented a "false case" to the

High Court in defending the disputed assessments, and had therefore obtained judgment by fraud on the Court. In dismissing the proceeding for want of jurisdiction, Venning J confirmed the validity of the Trinity challenge decisions and the assessments themselves, and held that any residual complaints about those assessments could only be directed to the Supreme Court. The decision (released several weeks before *Accent Management*) is significant for its explanations of the high threshold for impeaching a final civil judgment for fraud, the presumptive validity of administrative decisions, and the lack of jurisdiction in the High Court to set aside a decision that has been unsuccessfully appealed. Like *Accent Management*, the decision in *Redcliffe* may be of substantial importance to the Crown in future as a signal that collateral attempts to undermine reasoned judicial decisions will not be tolerated by the courts.

### ***Historic claims against the Crown***

Historic claims against the Crown alleging abuses and mistreatment brought by former psychiatric patients and/or former Social Welfare wards of the State continue to be filed, and heard or settled.

Two unsuccessful plaintiffs in Social Welfare claims had their appeal against the High Court judgment dismissed, and a further application to appeal to the Supreme Court was also dismissed: *White v Attorney-General*.

The Supreme Court delivered its judgment on the scope of the Mental Health enactments leave and immunity provisions. As a result of that judgment, and the Court of Appeal judgment, the plaintiffs are reviewing their claims to remove matters confirmed as beyond challenge and we expect that some claims will be heard in the High Court in 2011.

All of these cases protect the Crown's interest in that they are reducing the contingent liability against the Crown of the (approximately) 800 claims filed in the High Court from former children in State care and former psychiatric patients.

### ***Crown entity members***

Crown Law has given advice to Ministers and departmental officials on matters relating to appointments and dismissals from Boards of Crown entities. This stream of advice is significant in ensuring the Crown's responsibilities in respect of Crown entity bodies are lawfully conducted.

### ***Spam prosecution (name suppression, High Court)***

Proceedings were issued against three defendants in the High Court in 2008, in the name of the Chief Executive of Internal Affairs, seeking payment of pecuniary penalties under s 45 of the Unsolicited Electronic Messages Act 2007. The proceeding followed an investigation by the Department of Internal Affairs into the sending of more than two million unsolicited electronic messages to computers connected to the internet, and located in New Zealand, between 5 September and 31 December 2007. This proceeding was settled by the Department entering a cooperation agreement with each of the defendants; the terms of which included payment by each defendant of an agreed sum by way of pecuniary penalty and signed undertakings by each of them in relation to future compliance with the Act.

This case was significant as it was the first of its kind, under the Unsolicited Electronic Messages Act 2007. The proceeding protected the Crown's interest in the Act being enforceable and, therefore, providing the necessary deterrent effect against its breach.

### ***Family matters (name suppression, High Court)***

Crown Law has represented the Ministry of Social Development in a number of matters concerning the care and protection of children, including the novel and sad case of a five-year-old boy who was shortly expected to die. The child's family disagreed about the arrangements for his body and funeral after he died. The High Court made orders requiring Counsel for the Child to consult with all family members after the child's death, with further application to the Court to be made in the event that agreement was not reached.

In this case the Crown's interests were represented by the Crown's intervention and assistance to the Court.

### ***Employment matters***

Crown Law continues to provide advice and representation to a range of client departments on employment issues, from interpretation of agreement provisions through advising on restructuring of departments to representing departments in the employment institutions, and on appeal to the Court of Appeal. The advice and representation services

provided are significant because they ensure the Crown's legal risk is managed in terms of the operations (in the employment area) of agencies.

### ***GXL v Ministry of Energy – Court of Appeal***

Crown Law represented the Minister of Energy in both the High Court and the Court of Appeal in this unsuccessful judicial review challenge to the Minister's agreement to consent to the transfer of an exploration permit, under the Crown Minerals Act 1991. The decisions are notable for the finding that a legitimate expectation as to process was breached, but that no remedy was given because the outcome would be the same, on the right analysis of the statute, if the matter was reconsidered. It is also notable that the courts found that there is nothing in the statutory regime that imposes any duty to consult over steps proposed to be taken with the holder of a royalty interest.

The Crown's interests in ensuring that Crown minerals exploitation is done efficiently and with a fair return to the Crown were met in the successful defence of this case.

### ***Criminal & Human Rights Group***

#### ***Couch v Attorney-General (SC49/2006) – Supreme Court***

Ms Couch had originally appealed against the Court of Appeal's decision striking out her claim seeking exemplary damages for negligence on the basis that no duty of care could be made out. In *Couch v Attorney-General* [2008] 3 NZLR 725 (SC), the Supreme Court had held that, while there was no basis for finding that the duty of care asserted in the statement of claim could be made out, if the statement of claim was amended there was a tenable basis on the facts of this case for asserting the existence of such a duty at trial. This raised a further issue as to whether exemplary damages are available in negligence. The Court adjourned to allow the parties to prepare argument on this point. In summary, Ms Couch asserted exemplary damages were available and relied on Privy Council authority which suggested that exemplary damages should be awarded where the conduct at issue was sufficiently outrageous. The Attorney-General's primary submission was that they were not available. In the alternative, if they were available, the Attorney-General argued that the Supreme Court should not follow the Privy Council authority relied on by Ms Couch and should instead adopt a test that, in addition to outrageous conduct, required subjective



recklessness by the defendant. The Supreme Court allowed the appeal but adopted the Attorney-General's alternative position as to the proper test for exemplary damages. The case is important because it sets out the test in New Zealand for determining whether exemplary damages are available for negligence.

### ***Attorney-General v X & Ors (SC 107/2009) – Supreme Court***

The Attorney-General appealed against the Court of Appeal's decision that the Refugee Status Appeals Authority erred in finding that X, a Sri Lankan Tamil who worked as chief engineer on a smuggling vessel owned by the Liberation Tigers of Tamil Eelam, was excluded from the provisions of the Refugee Convention because there were serious reasons for considering that X was complicit in that organisation's international crimes. The Court of Appeal based its decision on a recent English Court of Appeal decision on the scope of joint criminal enterprise liability which required identification of a person's contribution to specific crimes. The United Kingdom Supreme Court subsequently reversed the English Court of Appeal's decision on this point. According to the United Kingdom Supreme Court, a person will be complicit in an organisation's international crimes for the purposes of the Convention if that person has knowledge of an organisation's plan to commit international crimes, voluntarily makes a significant contribution in terms of advancing the organisation's ability to further that plan and intends to contribute to the organisation's ability to further that plan. The Attorney-General submitted that this approach should be adopted in New Zealand. The case is important because it requires consideration of whether a person can be complicit in an organisation's international crimes even if there is no evidence linking that person to a specific crime. The Supreme Court has reserved its decision.

### ***Commerce Commission v Air New Zealand & Ors (CA 714/2009) – Court of Appeal***

The Commerce Commission had appealed a decision of the High Court that confidentiality orders it imposed on various Air New Zealand employees under s 100 of the Commerce Act 1986 were unlawful. The orders prevented Air New Zealand executives who attended compulsory interviews during the Commission's investigation of alleged cartel activity by the company from discussing the contents of those interviews. The High Court held that both prohibiting disclosure of information

provided by the Commission during those interviews and continuation of those orders once proceedings had been issued against the company, were unlawful. However, the High Court said that orders prohibiting disclosure of information provided to the Commission during the course of such interviews were not lawful. Air New Zealand has cross-appealed. The Attorney-General has intervened on the basis that s 100 orders limit freedom of expression and the case therefore raises issues concerning the proper approach to interpretation of broadly expressed statutory powers in light of the New Zealand Bill of Rights Act 1990.

### ***SG v Siemer [2010] NZSC 54 – Supreme Court***

Mr Siemer was committed to prison for contempt of court after a "summary" hearing for refusing to edit his websites so as to remove material he published in breach of an injunction. The Solicitor-General asked the Court to imprison Mr Siemer until he complied with the injunction. The appeal to the Supreme Court, as with the earlier appeal to the Court of Appeal, concerned whether Mr Siemer was due the benefit of the right to elect trial by jury in s 24(e) of the New Zealand Bill of Rights Act 1990. The Court of Appeal held that the contempt proceeding was civil in nature, given that the purpose of the remedy was to coerce compliance and not to punish for past actions. In the Supreme Court the Solicitor-General accepted that leave to appeal should be granted, but submitted that the appeal should be dismissed.

The Supreme Court analysed the matter differently from the court below. The Court unanimously considered that the proceeding was fundamentally criminal given the possibility of imprisonment, and that s 24(e) of the Bill of Rights Act 1990 therefore prima facie applied. The majority of the Court held that, for historical reasons, it is nonetheless not possible to have a jury trial in New Zealand for contempt and so the Court's power to impose imprisonment for contempt is limited to the summary maximum of no more than three months imprisonment and/or a fine. The minority (Elias CJ and McGrath J) by contrast considered that the summary procedure for dealing with contempt was a justified limitation on the right to jury trial in contempt cases. Consistent with the extent of the summary jurisdiction Mr Siemer's sentence was reduced to three months, with the proviso that he should be released as soon as he complied with the injunction.

The decision is a significant one in terms of developing New Zealand's common law of contempt, but raises more questions than it answers. For instance, whether there is any distinction in this country between civil and criminal contempt; whether all contempt proceedings, regardless of the remedy sought, are essentially criminal; and whether criminal rules of procedure, evidence and sentencing apply to contempt.

### ***R v Gwaze [2010] NZSC 52 – Supreme Court***

This Crown appeal to the Supreme Court followed the dismissal of a Solicitor-General appeal to the Court of Appeal on a question of law pursuant to s 380 of the Crimes Act 1961. Mr Gwaze had been acquitted by a jury of sexual violation and murder of the 10-year-old victim, his niece, who was HIV positive. At trial, the Judge had admitted in evidence, over objection from the prosecution, comments by a South African medical expert, Professor Rode, who learned about the trial during casual discussions at an overseas conference. Dr Rode had no prior involvement with the case, and was not familiar with the detail of the evidence. It was conveyed to the Court via a hearsay process that Dr Rode said he had seen HIV children with symptoms, similar to those of the victim on her admission to hospital, who had deteriorated suddenly and died. Professor Rode was not called at trial. However, his reported hearsay comments were put to Crown witnesses in cross-examination, were relied on by the defence and were treated as important by the Judge in his summing up. The Crown appealed to the Court of Appeal on the question of whether the evidence had been properly admitted.

The Court of Appeal held that the comments were inadmissible as they failed to satisfy the tests for the admission of hearsay and opinion evidence. By a majority, the Court nonetheless dismissed the appeal on the grounds that the error was not one of law but of fact. The Supreme Court agreed with the Court of Appeal that the evidence was wrongly admitted, but unanimously held that admitting the evidence had been an error of law. The Supreme Court held that the wrongful admission of the evidence led to a mistrial which occasioned a substantial miscarriage of justice as the error was highly material to the verdict. The Court exercised its discretion to order a new trial. To Crown Law's knowledge, this is the first case in New Zealand where a new trial has been ordered after a deliberated verdict of acquittal in a murder case.

### ***R v Wi [2009] NZSC 121 – Supreme Court***

This appeal concerned whether a defendant in a criminal case can adduce evidence that he or she has no, or no relevant, previous convictions. The Court of Appeal had ruled that whereas this kind of evidence was traditionally admissible at common law, it was no longer admissible under the Evidence Act 2006.

The Supreme Court by contrast ruled that the evidence in question may be adduced under the Evidence Act 2006 as permissible evidence of a lack of propensity to commit the offences with which the defendant is charged. Although the tendency of this kind of evidence to show that propensity may be slight, it cannot be said that the evidence has no tendency at all to do so and it is therefore relevant to the guilt or innocence of the accused.

In the particular case before the Court, the appellant had not been allowed at trial to lead evidence of his lack of previous convictions for violence. The Supreme Court held that no miscarriage of justice occurred as a result because the absence of that evidence could not possibly have affected the jury's conclusions that he was guilty of the offences charged.

### ***R v Rongonui [2009] NZSC 92* *R v Hart [2010] NZSC 91 – Supreme Court***

Judgments for these cases were delivered on the same day. Both concern s 35 of the Evidence Act 2006 (previous consistent statements) and should be read together.

The issue in *Hart* was whether the complainant's veracity had been challenged on the basis of recent invention such that her previous consistent statement was admissible under s 35(2). It had been put to the complainant in cross-examination that she knew of her mother's successful claim for ACC compensation for sexual abuse as a child. The Crown led evidence of the complainant's prior consistent statement to a family friend after the mother was said to have received ACC compensation. The appellant challenged the admissibility of the prior statement on the basis that it did not satisfy the criteria in s 35(2). In particular, it was argued that the timing of the statement, being after the date of the alleged invention, prevented its admission.

The majority found that a general attack on a witness's veracity or accuracy will not be enough to trigger the operation of subs (2). The attack must be based either on a previous inconsistent statement or on a claim of recent invention. As to the latter, in determining whether invention has been suggested it is the effect overall of the challenge to the witness's evidence that matters, not the language in which the challenge is made. The Supreme Court held that, in interpreting s 35(2), the Courts should not follow the common law approach to timing. Instead, "[t]hey should anchor themselves firmly in the statutory concept of the previous consistent statement being necessary to "respond" to the claim of recent invention. Whether the requirements of necessity and response are satisfied do not depend rigidly on timing issues" (at [53]). Furthermore, once the prior statement is admitted it can be used as evidence of the matters referred to in it. The Supreme Court held unanimously that the complainant's statement was admissible.

In *Rongonui* the focus was on whether s 35(1) applied to evidence of the complainant speaking to her friends immediately after the claimed sexual violation and "telling them what happened".

The majority of the Supreme Court (Elias CJ dissenting) held that while evidence of the complainant simply having spoken to someone can be regarded as amounting only to evidence of conduct, rather than evidence of an assertion of some matter, the position changes when reference is made to the content of what is being said. Such evidence will amount to a previous consistent statement and will be caught by s 35(1) and be inadmissible unless it either comes within the exceptions in subs (2) and (3), or it can be viewed as "part of the events in issue" (similar to the old common law concept of "res gestae"). As to the latter, words uttered by the complainant during the course of offending against them should not be regarded as coming within the rule set out in s 35. The Supreme Court noted that the rationale for excluding previous consistent statements did not apply to evidence of that kind. Such words are not an account of the event; they are part of it. The majority held that the complainant's statement could not be regarded as being part of the events in issue. Her evidence of speaking to her friends "about what happened" reported a past, albeit very recent, event, rather than accompanying and being an explanatory part of that event. Thus, it was caught by s 35(1) and, as it did not come within the exceptions in subs (2) or (3), it was inadmissible. The majority did, however, conclude that the wrongful admission of the evidence was not capable of affecting the result

given that the jury would have inevitably inferred the same information from admissible evidence of what occurred after the assault.

### ***Morgan v R [2010] NZSC 23 – Supreme Court***

The Supreme Court dismissed an appeal brought by Morgan against his conviction for aggravated robbery. Morgan argued that a statement to police of a hostile witness should not have been admitted in evidence as an exhibit. The witness gave evidence of a confession by Morgan, who was his cell-mate, at both a depositions hearing and a previous trial but was declared hostile under s 94 of the Evidence Act 2006 at the second trial. In a change introduced by that Act, previous statements of a hostile witness are admissible as proof of their contents without adoption. The Court held by majority (Elias CJ dissenting) that the evidence in Morgan's case did not require exclusion under s 8 as being unfairly prejudicial. The decision is of great practical significance to trial prosecutors, given the general discussion on hostile witnesses, hearsay and previous statements under the Evidence Act 2006.

### ***R v Harpur [2010] NZCA 319 – Court of Appeal***

The Crown successfully appealed against the decision of the District Court to discharge the respondent under s 347 of the Crimes Act 1961 on two counts of attempted sexual violation. In issue was whether the respondent's acts were, in law, too remote to constitute criminal attempts. A full court was convened to hear the Crown's challenge to the Court's earlier decision in *R v Wilcox* [1982] 1 NZLR 191. The Court held that the respondent should not have been discharged on one of the counts. The Court accepted most of the Crown's criticisms of *Wilcox* and held that it was wrongly decided. In the course of doing so, the Court clarified a number of features of the analytical framework for assessing whether conduct may amount to an attempt. The Court stopped short, however, of formulating a new test, explaining that "[t]here is no magic formula which avoids the need for judicial evaluation".

### ***R v Hessel [2010] 2 NZLR 298 – Court of Appeal***

This is a guideline case on the credit to be given for guilty pleas. The case was an unsuccessful appeal by Mr Hessel against a sentence imposed for offences of sexual conduct with two girls. The Court recognised the need to resolve conflict

between earlier Court of Appeal authorities, and took the opportunity to issue a guideline judgment on the consequences of guilty pleas for sentencing. The appropriate percentage sentencing discounts are to be based on a sliding scale, largely dependent on the stage in the proceedings at which a guilty plea is entered. The reduction is to be made as the final step in the sentencing process, after the appropriate sentence is determined with reference to aggravating and mitigating factors. The guideline has been applied to sentencing from 3 October 2009. It is intended to achieve greater consistency in sentencing where a guilty plea is a factor, as required by s 8(e) of the Sentencing Act 2002. The Court of Appeal's judgment, however, will not be the last word on the subject. The Supreme Court has heard argument on various issues arising out of the Court of Appeal's judgment including the definition of "first reasonable opportunity"; the room for flexibility in applying the guidelines; the lack of guidelines for guilty plea discounts for murder; and remorse as a discrete mitigating factor. The Supreme Court has reserved its decision.

#### ***R v AM [2010] NZCA 114 – Court of Appeal***

This is the Court of Appeal's guideline judgment for sentencing for rape and other forms of sexual violation. The Solicitor-General appeared for the Crown, given the importance of the case to the exercise of his prosecutorial and law officer responsibilities. It is particularly significant because appellate guidance in this area had developed in an ad hoc way over recent years. The Court of Appeal's stated intention in delivering a guideline judgment was to ensure properly graduated sentencing and reduce the cluster around the eight-year starting point created by *R v A* [1994] 2 NZLR 129 (CA). There was a wide consultation within the Crown prosecution network with respect to the Crown approach.

#### ***R v McKay [2009] NZCA 378, R v Dalley [2009] NZCA 419 and R v Te Moni [2009] NZCA 560 – Court of Appeal***

Towards the end of 2009, the Criminal Team dealt with at least three appeals concerning non-compliance with Part 2 of the Criminal Procedure (Mentally Impaired Persons) Act 2003, concerning unfitness to stand trial. In *R v McKay*, *R v Dalley* and *R v Te Moni* the Court of Appeal emphasised that once a question as to a defendant's fitness to stand trial is raised, it is mandatory that judges then follow the proper process outlined in Part 2 of the Act. The Court provided guidance as to what each

stage of that process requires. In summary, once a question as to a defendant's fitness to stand trial is raised, judges must make determinations that the defendant caused an act or omission, and must record this finding on the court file. Judges must then follow the proper process of inquiry to determine fitness outlined in s 14. These cases emphasised the necessity of close adherence to the Criminal Procedure (Mentally Impaired Persons) Act 2003, and served as a helpful reminder to prosecutors to ensure that, where the unfitness to stand trial process is triggered, the mandatory determinations are made and properly recorded by judges on the court file.

#### ***R v Morse [2010] 2 NZLR 625***

Ms Morse was convicted of offensive behaviour contrary to s 4(1)(a) Summary Offences Act 1981 for her conduct in burning a flag as part of a disruptive protest at the 2007 Anzac Day Dawn Service at the Cenotaph in Wellington. In this decision, the Court of Appeal (by majority) affirmed that conviction as a justified limitation on Ms Morse's right to freedom of expression in s 14 of the New Zealand Bill of Rights Act 1990. Ms Morse's conduct was considered to disrupt the expressive activity of the Dawn Service attendees, and to be particularly disrespectful to those who had died on active service. The decision is an important one in the area of political expression and competing rights. Ms Morse has been granted leave to appeal to the Supreme Court. This clarified, for the public and the police, the extent of the right to undertake protest activities that are offensive to members of the public.

#### ***X v Refugee Status Appeal Authority & Ors [2010] 2 NZLR 73 – Court of Appeal***

The Attorney-General was party to this appeal from a decision of the High Court declining judicial review of a decision of the Refugee Status Appeals Authority. The Authority found that X, a Sri Lankan Tamil who worked as chief engineer on a smuggling vessel owned by the Liberation Tigers of Tamil Eelam, was excluded from the provisions of the Refugee Convention because there were serious reasons for considering that X was complicit in that organisation's international crimes. The Court of Appeal upheld the appeal, basing its decision on a recent English Court of Appeal decision on the scope of joint criminal enterprise liability which required identification of a person's contribution to specific crimes.

The United Kingdom Supreme Court subsequently reversed the English Court of Appeal's decision on this point. The Attorney-General appealed to the Supreme Court submitting that the approach of the United Kingdom Supreme Court should be adopted in New Zealand. The Supreme Court has reserved its decision. Importantly, this case clarifies the Crown's obligations in respect of applicants for refugee status.

***Chapman v Attorney-General [2009] NZCA 552 – Court of Appeal***

Mr Chapman brought claims against the Attorney-General for alleged breaches of his fair trial and natural justice rights by the Deputy Registrar and judges of the Court of Appeal, who had determined his criminal legal aid application and appeal against conviction according to the ex parte appeal process held unlawful by the Privy Council in *R v Taito*. In this decision, the Court of Appeal issued judgment on four preliminary questions of law removed to that Court prior to trial. The Court determined that the Attorney-General is the proper defendant in proceedings alleging breaches of rights committed by judicial officers and, further, that the Attorney-General is not entitled to the benefit of the immunities enjoyed by those judicial officers. The Court also refused to rule out Bill of Rights Act 1990 damages as an available remedy for breaches of natural justice/fair trial rights, but acknowledged that awards of such damages for breaches of natural justice are likely to be rare. The Crown has been granted leave to appeal the decision to the Supreme Court. This decision illuminates the scope of Crown liability for breaches of rights committed by the judicial branch of the Crown.

***Wilson v New Zealand Parole Board – Court of Appeal***

On 15 March 1996, the appellant was sentenced to an effective term of 21 years imprisonment comprising cumulative terms of eight years and 10 years imprisonment for serious sexual offending. On 16 December 2008 an order was made under s 107 of the Parole Act 2002 that he serve his whole sentence. Mr Wilson exercised his appeal right under s 68 of the Parole Act 2002. The appeal was dismissed in a reserved judgment dated 21 May 2009. He appealed to the Court of Appeal which held that although an appeal to the Court of Appeal was not expressly excluded, the statutory scheme of the Parole Act 2002 did not allow for one and the appeal was dismissed for lack of jurisdiction. This case is significant in that it limits the ability to take

appeals from Parole Board decisions beyond those specifically allowed for in the Act.

***Falwasser v Attorney-General [2010] NZAR 445 – High Court, Rotorua***

Mr Falwasser brought an action against the Attorney-General in tort and under the New Zealand Bill of Rights Act 1990 in respect of his treatment at the Whakatane police station whilst in police custody in October 2006. Mr Falwasser suffered baton blows and was repeatedly pepper sprayed after he failed to comply with instructions designed to facilitate his routine fingerprinting and photographing. The police subsequently apologised for the incident, and took steps to discipline and prosecute the officers responsible (though the officers were acquitted following a jury trial). The Attorney-General accepted that there had been a breach of s 23(5) of the Bill of Rights Act 1990, but successfully resisted the plaintiff's allegation that a breach of s 9 had occurred. Mr Falwasser was awarded \$30,000 in respect of the serious breach of s 23(5). Stevens J commented that the figure would have been higher but for the remedial steps already taken by police in respect of the incident. His Honour would have held that any claim to exemplary damages would not have lay against the Attorney-General whose liability was vicarious only and would have held any claims to compensatory damages to be prevented by the ACC bar.

The defence of the proceedings limited the exposure to damages where breaches of s 23(5) are established and ensured that the Crown's legal risks from the policy development and operations of other agencies are well managed (by reinforcing the value of the risk minimising steps the police had taken after the incident).

***Bujak v Minister of Justice [2009] NZCA 570 [2010] NZSC 8, Bujak v Dept of Internal Affairs [2009] NZCA 522 – High Court, Court of Appeal and Supreme Court***

Mr Bujak was the subject of an extradition request to return him to Poland to face various fraud charges. The Supreme Court declined leave to appeal against the finding that Mr Bujak was eligible for extradition in September 2009, which then required the Minister of Justice to decide whether he should be surrendered to Polish authorities. In a string of urgent applications Mr Bujak attempted to first prevent the Minister making that decision, and then, once the decision was made, from implementing it.

We successfully defended the following applications:

- › 3 November 2009: application for interim orders preventing a decision by the Minister of Justice on surrender pending a challenge to the Department of Internal Affairs' failure to grant Bujak citizenship. *Bujak v Dept of Internal Affairs* (High Court Wellington, Dobson J, CIV2009-485-1884, 3/11/2009).
- › 6 November 2009: application to the Court of Appeal for a "stay pending appeal" to prevent the Minister proceeding with a decision that day (*Bujak v Dept of Internal Affairs* CA695/2009).
- › 12 November 2009: application for judicial review challenging the Minister's decision on 6 November 2009 (*Bujak v Minister of Justice* (High Court, Wellington Gendall J, CIV2009-485-2266, 18/11/2009).
- › 19 November 2009: application to the Court of Appeal for an "emergency stay" (Minute 20 November 2009).
- › 30 November 2009: appeal against the dismissal of the judicial review application (*Bujak v Minister of Justice* (CA719/2009, 4 December 2009).

Mr Bujak applied for leave to appeal to the Supreme Court and the Court granted an interim stay of removal pending resolution of the application on 11 December 2009. Mr Bujak's application for leave to appeal was dismissed on 11 February 2009, and Mr Bujak was then surrendered to Polish authorities and left the country.

The defence of the proceedings was relevant to the goals of protecting the Crown's performance of its international obligations under the Extradition Act 1999 and established a clear precedent for determining the factors that are to be taken into account by the Minister in exercising his discretion to order surrender for extradition.

### ***Re AMM and KJO, CIV-2010-485-328, 24 June 2010 – High Court***

On 3 April 2010 the High Court granted leave for the Attorney-General to intervene in an appeal by way of case stated from the Family Court. The case concerned whether the term "spouses" in the Adoption Act 1955 could be read wider than "married couples". The Act did not restrict unmarried couples from adoption but, if interpreted

narrowly, prevented them from making a joint application to adopt (as opposed to a single application by one of the partners). The submissions on behalf of the Attorney-General conceded that the narrow definition of who was eligible to make a joint application was discriminatory against de facto and civil union couples (opposite or same sex), but that the intention of Parliament was clearly contrary to a wider interpretation. A Full Bench of the High Court decided that it was open to them to read "spouses" as allowing joint applications by de facto partners of the opposite sex, and that extension to de facto partners of the same sex was arguable. However, extension to civil union partners (opposite or same sex) was not.

The case will impact on the future operation of the Adoption Act 1955. The intervention ensured that the Court was fully apprised of the Crown's approach to the test for discrimination, and had before it the full legislative and policy history of the provisions at issue.

## **Constitutional Group**

### ***Alliance Party v Electoral Commission – Court of Appeal***

The Alliance Party argued that the Broadcasting Act 1989 required the Electoral Commission to give it broadcasting time for a closing election address, and that the Commission had wrongly assessed the broadcasting funds allocated to the party by basing that decision on the cost of a radio campaign, rather than the cost of a television campaign.

The Court of Appeal concluded that the party should have been given time for a closing address, rejecting arguments that a nil allocation was acceptable. On the costs decision the Court concluded on the evidence that it was at least possible that the Commission had turned its mind to the cost of a television campaign.

The Court did not award costs against the Commission, noting that this could operate as a disincentive to the Commission's active assistance on appeals from its decisions.

The Court of Appeal decision confirms that appellate courts are likely to interpret electoral legislation in a way that wherever possible facilitates the important democratic feature of dissemination of election messages. Recent US authority, *Citizens United v Federal Election Commission* 558 US 1 (2010) reinforces this point, holding that laws

burdening political speech are subject to strict scrutiny requiring Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.

The decision also confirms that while the courts do not normally expect decision-making bodies whose decisions are reviewed to defend their decisions, in appropriate cases courts will be assisted by decision-makers appearing, and making submissions on the points at issue.

### ***Mark and Ors v Attorney-General & Ors***

These High Court proceedings concerned a number of parcels of land in Kapiti held by the Crown for public works, namely the “Western Link Road”. The plaintiffs’ proceedings were brought on the basis that they are the successors of the persons from whom the Crown acquired the land. The plaintiffs claimed that the land was (at various alternative dates) not required for any public work and, therefore, should have been offered back to them to purchase. The Court rejected the plaintiffs’ claims. The Court held that all of the land continued to be required at all times for a public work (roading). The judgment has been appealed. The appeal will be heard before the Court of Appeal on 22 and 23 March 2011.

The judgment is significant for the Court’s findings as to the threshold that must be passed before land held for large-scale long-term public works may be held to be surplus to Crown requirements and, therefore, required to be offered back to the former owner. The judgment is also important in terms of the amount of the land in question, the land’s monetary value (some \$25 million) and its importance to the New Zealand Transport Agency and (at time of judgment) Kapiti Coast District Council for roading purposes. The judgment has become more important following the announcement in late 2009 by the New Zealand Transport Agency of its preferred corridor for the upgrade of State Highway 1 along the Kapiti Coast. That corridor passes through the relevant land.

The judgment makes important clarifications to the law governing the acquisition and holding of land by the Crown for public works. The judgment also reinforces the need for careful and considered application of that law to any acquisition, retention or disposal of land acquired for public works. The case supports the Crown’s interests by providing clear and workable requirements governing the holding of land for large-scale long-term public

works. Equally, the case helps to ensure the Crown’s responsibilities are carried out lawfully, both in relation to the land at issue in the case and more generally in relation to all land held for public works.

### ***P v Attorney-General***

The plaintiff claimed damages for an alleged sexual assault on him in February 1984 on board a Royal New Zealand Navy ship. He also claimed damages for alleged threats and intimidation, from other navy personnel, for reporting the sexual assault. The claim is one of a number of civil claims that have been brought in recent times for alleged abuse (of one kind or another) occurring many years ago suffered by someone who is alleged to be under the responsibility of, or in the care of, the State or private institutions.

The High Court held the compensatory claims were barred by the accident compensation legislation. The circumstances were not such as to meet the test for exemplary damages. The human rights claims were not made out. The plaintiff’s claim failed in its entirety. An application to appeal directly to the Supreme Court was subsequently withdrawn by the plaintiff.

The case supports the Crown’s interest in ensuring that the Crown’s responsibilities are lawfully carried out.

### ***W P Jeffries v Overseas Investment Office (OIO)***

Former Minister of Justice Hon W P Jeffries brought judicial review proceedings against the OIO and its predecessor the Overseas Investment Commission. He claimed the OIO had failed to consistently monitor conditions of approval for consent to purchase a large farm on D’Urville Island by a wealthy US family. He also complained of the OIO’s intention to release to the US family’s lawyer a 50-page accusatory letter he had sent to the Minister of Finance concerning these overseas investors. Mr Jeffries lost in the High Court, Court of Appeal and his application for leave to appeal to the Supreme Court was denied. Costs were awarded (and paid) to the OIO at each stage.

The case supports the Crown’s interest in ensuring that the Crown’s responsibilities are lawfully carried out.

### ***Keith & Margaret Berryman v NZDF***

The plaintiffs sued the New Zealand Army over the fatal collapse of a bridge they had asked the army to build free of cost on their remote King Country farm. Added to the claim were allegations of failure to make available at a Coroner's inquest evidence (including an engineer's report) for which the army claimed confidentiality pursuant to the Armed Forces Disciplinary Procedure Rules. The litigation went on over some years taking various forms including several judicial reviews and a multi-million damages claim for economic loss.

This litigation was successfully concluded with the striking out of the plaintiffs' claim against the army in 2009. Prior to that, the plaintiffs' second judicial review claim against the army failed and the earlier claim was abandoned. An early claim to make public the evidence of the Army Court of Inquiry also failed but the plaintiffs' barrister nonetheless published the evidence on the internet. He was subsequently found by the High Court to be in contempt of court, disqualified from practising for a short period and fined. At the conclusion of this litigation the Attorney-General authorised an ex-gratia payment of \$150,000 to the plaintiffs which was in fact the same offer first made to them in 2001 and kept on foot between 2001-2010.

The case supports the Crown's interest by ensuring that the Crown's responsibilities are lawfully carried out.

### ***New Zealand Federation of Commercial Fishermen v Minister of Fisheries***

This High Court proceeding concerned the validity of regulations banning commercial set-netting in a number of areas in order to prevent the entanglement of Hector and Maui dolphins. The Court upheld challenges to the regulations in two areas but rejected challenges in respect of a further four areas. The judgment explains the "information principles" in the Fisheries Act 1996 in a way that facilitates decision-making in this area, where uncertainty and lack of information are always a problem. It also means that the Government will likely be able to prevent a feared decline in the number of Hector dolphins, which are an endangered species.

### ***Sanford Limited v Eastern Sea Farms Limited and Chief Executive of the Ministry of Fisheries***

This proceeding in the High Court concerned New Zealand's largest marine farm, a 3,500 ha farm to be built off Opotiki. Sanford unsuccessfully challenged the Chief Executive's decision to issue a permit for the farm on grounds related to matters taken into account and the terms of the permit. The legal significance of the judgment is that it confirmed that the Chief Executive could transfer responsibility for regulation of a "staged" development to a regional council in accordance with the 2004 aquaculture reform legislation. The practical significance is that the marine farm is expected to have a substantial economic benefit for the Opotiki area.

### ***Paki v Attorney-General – Court of Appeal***

This is a claim brought by individuals said to represent the descendants of certain Native Land Court title holders who once held land alongside the Waikato River. The Crown purchased the land in the 19<sup>th</sup> century. The appellants seek a declaration from the courts that the Crown now holds a half strip of a part of the Waikato Riverbed in trust for the descendants of the former Native Land Court title holders. This is a case which has implications for ownership of riverbeds. The Crown was successful in both the High Court and Court of Appeal. The appellants have recently secured an appeal hearing before the Supreme Court.

### ***Haronga v Waitangi Tribunal and Attorney-General – Court of Appeal***

The Crown has been negotiating with Turanga iwi/hāpu to reach settlement of their historical Treaty of Waitangi grievances. The negotiations reflect the Crown's policy of negotiating with large natural groups to secure settlement of historical wrongs. The Mangatu Incorporation applied to the Waitangi Tribunal for an urgent hearing to address their particular claims to Crown Forest Licenced Land in the Gisborne area. The Tribunal declined. The Incorporation then sought judicial review of the Tribunal's decision. The issues are highly relevant to the Crown's ongoing policy approach to settlements. The Crown was successful in the High Court and Court of Appeal. There is a leave application pending before the Supreme Court.



***Mair v Attorney-General and Waitangi Tribunal – Court of Appeal***

A challenge was made by iwi/hāpu in the Waitangi Tribunal to the Crown’s approach to the Ngāti Apa (North Island) settlement of historical Treaty claims. The Waitangi Tribunal had declined to grant an urgent hearing that related to claims over certain Crown forest land redress which was to be included in the Ngāti Apa (North Island) Deed of Settlement.

The claimants were unsuccessful before the Waitangi Tribunal and sought judicial review of the Tribunal’s approach. The Crown successfully defended the Tribunal’s decision in the High Court and Court of Appeal. This was an important case about the Tribunal’s approach to applications for urgent enquiry and is also of significance to the Crown in its development of Treaty settlement processes associated with Crown forest land.

***Declaration on the Rights of Indigenous People***

Crown Law worked with a range of government agencies preparing advice to Ministers on the issues surrounding the Government’s decision to express its support for the Declaration on the Rights of Indigenous People. Crown Law’s role was to provide legal advice in the context of a significant domestic and international policy issue for government.



**Dr David Collins QC**  
Solicitor-General and Chief Executive

## ORGANISATIONAL INFORMATION

Crown Law is organised into three practice groups, comprising seven client service legal teams and a Corporate Services group. The legal teams are focused on the delivery of specialist legal services to government covering the following core areas of business:

- › public law issues which, for example, arise out of the exercise and control of governmental power and public sector governance;
- › the conduct of Crown prosecutions and criminal appeals; and
- › constitutional advice and litigation including Treaty of Waitangi work, advice on international human rights obligations, bill of rights and constitutional conventions.

The practice group structure is designed to enable better coordination of work, to enable improved sharing of resources across teams and to improve the capacity to serve Ministers and clients. A Deputy Solicitor-General is responsible for the professional leadership and management of each practice group. Within each practice group, there are a number of specialist client service teams. A Team Leader, who is a Crown Counsel, has responsibility for the development and management of staff in each team and is also the principal contact point for clients of the team. Each team is staffed with further Crown Counsel, Associate Crown Counsel, Assistant Crown Counsel and Litigation and Secretarial Support staff.

The current group/team structure comprises:

Practice Group	Legal Teams
Public Law Group	Social Services and Employment Team Tax and Commercial Team
Criminal Law and Human Rights Group	Criminal Law Team and Crown Solicitors Human Rights Team
Constitutional Law Group	Law Officer Team Natural Resources Team Treaty Issues and International Law Team

The Practice Manager is responsible for the leadership and management of Corporate Services. Corporate Services consists of Finance, Human

Resources, Organisational Development, Information Technology, Knowledge Management, Litigation Services, Support Services, including Facilities Management and Central Business Support.

### Management structure

#### *Management Board:*

Dr David Collins QC – Solicitor General

Cheryl Gwyn – Deputy Solicitor-General (Constitutional Law Group)

Cameron Mander – Deputy Solicitor-General (Criminal Law and Human Rights Group)

Dr Matthew Palmer – Deputy Solicitor-General (Public Law Group)

Diana Pryde – Practice Manager

#### *Legal Team Leaders:*

Bronwyn Arthur – Team Leader, Natural Resources

Maria Deligiannis – Team Leader, Tax and Commercial

Peter Gunn – Team Leader, Law Officer

Virginia Hardy – Team Leader, Treaty Issues and International Law

Brendan Horsley – Team Leader, Criminal Law

Una Jagose – Team Leader, Social Services and Employment

Austin Powell – Team Leader, Human Rights

#### *Corporate Managers:*

Donna Cassidy – Support Services Manager

Nud Davidson – Information Technology Manager

Amelia De Lorenzo – Library Services Manager

Judyne Howell – Senior Advisor Organisational Development

Steve O’Hagan – Knowledge Services Manager

Daphne Rowland – Litigation Services Manager

Chris Walker – Chief Financial Officer

Bruce Wall – HR Manager

## Crown Solicitor network

There are 15 private law practitioners holding 16 warrants as Crown Solicitors. Together with their partners and staff solicitors, Crown Solicitors prosecute indictable offences in those centres where District Court and High Court jury trials are conducted.

## Legislative responsibilities

Crown Law administers the Crown Solicitors Regulations 1994 that set out the basis upon which the scale of fees is calculated and the process by which fees are claimed and paid to Crown Solicitors for undertaking Crown prosecution work.

The Cabinet Directions for the Conduct of Crown Legal Business 1993 govern the conduct of legal business between the Law Officers of the Crown, Crown Law and government departments and agencies.

## Our people capability

### *Update on staff numbers to June 2010*

	<b>30 June 2010</b>	<b>30 June 2009</b>
Solicitor-General, Deputy Solicitors-General and Practice Manager	5	5
Counsel (including Legal Advisors)	100	97
Legal Support	24	28
Secretarial and Word Processing	32	34
Corporate Services Group	37	37
<b>Total number of employees</b>	<b>198</b>	<b>201</b>

(Part-time arrangements are included in these numbers.)

Crown Law's Human Resources capability has focused on the recruitment of high calibre staff, when roles become available.

As part of this process we ensure that the benefits of working at Crown Law are highlighted and that our

terms and conditions of employment are the best they can be.

To ensure we understand the reasons why people leave Crown Law we conduct exit interviews to identify any trends that might be developing in this regard.

The ongoing attraction of Crown Law as a place to work is further enhanced by the regular secondments to Crown Law in addition to numerous requests from other agencies for Crown Law to place our own staff with them in secondment arrangements.

We have recently commenced a trans Tasman secondment with one of our Counsel placed in the Victoria Government Solicitor's Office.

## Electronic litigation support in Crown Law

Crown Law has recently upgraded the electronic litigation system Signature Cannae to Signature Delium. The enhanced functionality in Delium will assist Counsel with discovery matters. This system was initially introduced to support the Govt3 initiative by a reduction in the amount of paper used during a trial.

The 5<sup>th</sup> electronic court (e-Court) is to take place in August 2010 in the Employment Court. e-Court reduces court time by at least 25 percent and so reduces cost of large-scale litigation.

## Knowledge services

The current key knowledge management initiative is the implementation of an Electronic Data and Records Management System. While there are always business as usual Information Technology projects with systems requiring updating, upgrading and replacing, this project is viewed as a priority, and a foundation to implementing effective document and records management in the medium to longer term.

The business objectives for this project, centred on improved access to and management of information and support Crown Law's two important initiatives of ensuring that:

- › the highest possible quality legal services are provided to government; and

- › Crown Law is the most engaging and responsive workplace for legal and support staff.

## **Information systems management**

During 2009/10, Crown Law continued to upgrade the ICT platform to support business improvement initiatives such as client relationship management and improve the core foundation for future ICT initiatives. We have participated in shared Government IT initiatives such as shared licensing and hardware procurement throughout this year.

## **Organisational development**

Learning and development opportunities have three streams: that of general competencies, technical/legal expertise and management and leadership competencies.

Development of management and leadership capability at the senior level supports both important initiatives. 360 reviews have been undertaken by all tiers one, two and three managers to establish development priorities for individuals and to provide benchmarks for evaluation of development programmes.

To support the development of junior staff, all Crown Counsel and Associate Crown Counsel have taken part in a Delegation and Feedback course. This course is ongoing.

The Future Leaders programme is now in its third year. This programme provides individual coaching to senior Crown Counsel who are interested in developing their management and leadership capability.

The new performance management process, As and When, is now in its second trial year and feedback from staff and managers indicates it is contributing to the second initiative of developing an engaging and responsive workplace by enhancing the manager-staff relationships through more consistent communication. A decision on whether to adopt this process will be made at the end of 2010.

To support the first initiative of quality of service, a programme of efficient work practices, Workwise, continues to be made available to all staff.

## **Facilities management**

Maintaining a healthy, safe working environment is fundamental for high performance. Crown Law is predominantly located in Unisys House, The Terrace and occupies four floors of office accommodation. The premises are under lease until 31 March 2013, with a right of renewal available until 31 March 2019.

A smaller team of staff are located in an adjacent building, 50 The Terrace. These premises were leased on 11 August 2008 for an initial 12-month period with a further one-year right of renewal. An extension to the lease has recently been granted for an additional 12-month term to expire on 10 August 2011.

Security systems and processes have been updated. New facilities that enable secure storage of all levels of sensitive matter have been created.

## **Staff publications and presentations during the year**

Numerous presentations were given and seminars conducted by staff for clients and stakeholders at training courses and conferences. A sample of papers presented are listed below:

### ***Cheryl Gwyn***

“The Changes, the Trends and the Challenges” in *Litigating against the Crown* (New Zealand Law Society, Wellington, 2010).

“Recent Developments in Judicial Review” (paper presented to Lawyers in Government Conference, Wellington, 15 April 2010).

### ***Matthew Palmer***

“Open the Doors and Where are the People?” (paper presented to New Zealand Centre for Public Law We the People(s): Engagement and Participation in Government, Wellington, 11-12 February 2010).

“The Law Officers of the Crown and Departmental Lawyers” (paper presented to Lawyers in Government Conference, Wellington, 15 April 2010).

“The Treaty of Waitangi in New Zealand’s Law and Constitution” (paper presented to U3A, Wellington, 7 August 2009).

“A Shrinking World – Some Reflections on the Influence of US Law and Practice on New Zealand” (panel presentation to Inaugural Law Seminar of the Fulbright Alumni Association, Wellington, 21 August 2009).

**Matthew Palmer and Tania Warburton**

“Information Law” (paper presented to Crown Law Client Seminar, Wellington, 14 July 2009).

**Mark Hickford**

“Law and Politics in the Constitutional Delineation of Indigenous Property Rights in 1840s New Zealand” in Shaunnagh Dorsett and Ian Hunter (eds) *Law and Politics in British Colonial Thought: Transpositions of Empire* (Palgrave Houndmills, United Kingdom, 2010).

“‘Vague Native Rights to Land’: British Imperial Policy on Native Title and Custom in New Zealand, 1837-1853” (2010) 38 *Journal of Imperial and Commonwealth History* at 175.

“Strands from the Afterlife of Confiscation: Property rights, constitutional histories and the political incorporation of Māori, 1920s” in Richard Hill and Richard Boast (eds) *Raupatu: The Confiscation of Māori Land* (Victoria University Press, Wellington, 2009).

“Strands from the Afterlife of Confiscation: Property rights, constitutional histories and the political incorporation of Māori, 1910s-1940s” in P.G. McHugh, Richard Boast and Mark Hickford (eds) *Law and Confiscation: Essays on Raupatu in New Zealand History* (Treaty of Waitangi Research Unit, Stout Research Centre for New Zealand Studies, Occasional Paper OP14, Wellington, 2010).

“The Law of the Foreshore and Seabed” *New Zealanders and the Sea: Te Ara – The Encyclopedia of New Zealand* (David Bateman, Auckland, 2009).

“Framing and Reframing the *Agōn*: Contesting Narratives and Counter-Narratives on Māori Property Rights and Political Constitutionalism, 1840-1861” (Oxford University Press, New York, 2010).

“Treaty of Waitangi” (lecture presented at University of Canterbury Law School, Christchurch, September 2009).

“Framing and Reframing the *Agōn*: Contesting Narratives and Counter-Narratives on Māori Property Rights and Political Constitutionalism, 1840-1861” (paper presented to the Indigenous versus European Property Claims workshop, University of Sydney, 20-21 August 2009).

**Jessica Gorman**

Contributing author to Andrew McGechan (ed) *McGechan on Procedure* (Brookers).

Assistant author of *Judicial Review* (2<sup>nd</sup> ed, LexisNexis, Wellington, 2010) G Taylor.

**Jessica Gorman and Nick Crang**

“Judicial Review of Decision in Commercial Contexts” (paper presented to LexisNexis Public and Administrative Conference, Wellington, 18-19 February 2010).

**Joanna Holden**

“Employment Law” (paper presented to Crown Law Client Seminar, Wellington, 6 October 2009).

**Bronwyn Arthur**

“The Incorporation of RMA Instruments in Treaty Settlements” (paper presented to Resource Management Law Association, Taranaki, Canterbury, Hawke’s Bay and Nelson, July-August 2010).

“The Art and Science of Instructing – How to get the Most Benefit from External Counsel” (paper presented to Corporate Lawyers Association of New Zealand Annual Conference, Rotorua, 14 May 2010).

**Ben Keith**

“International Law in the New Zealand Courts: The state of play” (paper presented to public seminar, Ministry of Foreign Affairs and Trade, Wellington, September 2009).

“Business as Usual: Dialogue or disaggregation in the implementation of international law” (paper presented to Australia and New Zealand Society of International Law Conference, Canberra, June 2010).

### ***Damen Ward***

“Courts, Settler Politics and the Franchise in New Zealand, c. 1846-1858” (paper presented to Australian and New Zealand Law and History Conference, Wellington, December 2009).

“Legislation, Repugnancy and the Disallowance of Colonial Laws” (paper presented to Leading Cases Conference, Wellington, July 2010) (forthcoming in *Victoria University of Wellington Law Review*).

“Imperial Policy, Colonial Government and Indigenous Testimony in South Australia and New Zealand in the 1840s” in S Dorsett and I Hunter (eds) *Law and Politics in British Colonial Thought: Transportations of Empire* (Palgrave Macmillan, London, 2010) (forthcoming).

### ***Cameron Mander and Jo Murdoch***

“Ongoing Litigation as to the Independence and Accountability of Prosecution Agencies” (paper presented to Heads of Prosecuting Agencies Conference, Cape Town, 10 November 2009).

### ***Brendan Horsley***

“The Supreme Court Gets its Hands on Prosecutorial Misconduct and Undue Delay” (paper presented to Criminal Bar Association, Queenstown, August 2009).

### ***Gregor Allan***

“Community Building Within the Profession” (paper presented to Pacific Prosecutors’ Association, Brisbane, July 2009).

### ***Madeleine Laracy***

“Recent Legal Developments and Cases with Respect to Expert Evidence” (paper presented to Doctors for Sexual Abuses Care: National Medical Forensic Update Conference, Wellington, November 2009).

### ***Fiona Guy Kidd***

“Prosecution Guidelines” in *Practical Criminal Law – Raising the Bar* (New Zealand Law Society, Wellington, 2009).

### ***Mathew Downs***

“The Decision to Prosecute” (LexisNexis, Wellington, October 2009).

“Evidence Act Update” (Legal Research Foundation, Auckland, March 2010).

### ***Chris Curran***

“Administrative Law Damages and non-NZBORA Rights: Current trends in human rights liability” (Lawyers in Government Conference, Wellington, April 2010).

“Bill of Rights Act” (paper presented to Crown Law Client Seminar, Wellington, 24 November 2009).

### ***Robert Kirkness***

“Recent Developments in Judicial Review” (LexisNexis Public and Administrative Law Conference, Wellington, February 2010)

### ***Monica Silverwood***

“Open Courts and Closed Files: The use of classified information in terrorism-related litigation” (Presentation to the Australia and New Zealand Society of International Law Conference, Canberra, June 2010).

### ***Ian Carter***

“Principal Changes to New Zealand’s Refugee Statutory Scheme Under the 2009 Act” (Refugee Law Workshop with the Department of Labour, Wellington, February 2010).

### ***Victoria Casey***

“Extra-territorial Effect of BORA Rights” (Refugee Law Workshop with the Department of Labour, Wellington, February 2010).

### ***Victoria Casey and Rachael Schmidt***

“Discovery” (paper presented to Crown Law Client Seminar, Wellington, 11 August 2009).

***Andra Mobberley***

“The Intersection between Extradition, Refugee and International Criminal Law Proceedings” (Refugee Law Workshop with the Department of Labour, Wellington, February 2010).

***Christina Inglis and Victoria Casey***

“Presentation on Judicial Review” (Department of Corrections Hearing Adjudicators, Wellington, December 2009).

***Austin Powell***

“Drink-driving Law in New Zealand” [2009] NZLJ 437.

***Peter McCarthy***

“Lawful Decision-making” (paper presented to National Judicial Seminar of the Royal Federation of New Zealand Justices Associations, Wellington, May 2010).

# STATEMENT OF RESPONSIBILITY

## for the year ended 30 June 2010

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Pursuant to s 45 and s 45c of the Public Finance Act 1989, I am responsible, as the Chief Executive of Crown Law, for the preparation of the financial statements, statement of objectives and service performance and the judgements made in the process of producing these financial statements.

I have responsibility of establishing and maintaining Crown Law's internal control procedures designed to provide reasonable assurance as to the integrity and reliability of the financial reporting.



**Dr David Collins QC**  
Solicitor-General and Chief Executive  
30 September 2010

Countersigned by:



**Chris Walker**  
Chief Financial Officer

30 September 2010



**Diana Pryde**  
Practice Manager

30 September 2010

In my opinion, these financial statements, statement of objectives and service performance fairly reflect its financial position and operations of Crown Law for the financial year ended 30 June 2010.



# AUDIT REPORT TO THE READERS OF CROWN LAW'S FINANCIAL STATEMENTS AND STATEMENT OF SERVICE PERFORMANCE for the year ended 30 June 2010

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The Auditor-General is the auditor of Crown Law Office (Crown Law). The Auditor-General has appointed my, John O'Connell, using the staff and resources of Audit New Zealand, to carry out the audit on her behalf. The audit covers the financial statements, the schedules of non-departmental activities and statement of service performance included in the annual report of Crown Law, for the year ended 30 June 2010.

## Unqualified Opinion

In our opinion:

- The financial statements of Crown Law on pages 48 to 74:
  - comply with generally accepted accounting practice in New Zealand; and
  - fairly reflect:
    - Crown Law's financial position as at 30 June 2010;
    - the results of its operations and cash flows for the year ended on that date;
    - its expenses and capital expenditure incurred against each appropriation administered by the Office and each class of outputs included in each output expense appropriation for the year ended 30 June 2010; and
    - its unappropriated expenses and capital expenditure for the year ended 30 June 2010.
- The schedules of non-departmental activities on pages 75 to 76 fairly reflect the expenses managed by Crown Law on behalf of the Crown for the year ended 30 June 2010.
- The statement of service performance of Crown Law on pages 36 to 47:
  - complies with generally accepted accounting practice in New Zealand; and
  - fairly reflects for each class of outputs:
    - its standards of delivery performance achieved, as compared with the forecast standards included in the statement of forecast service performance adopted at the start of the financial year; and
    - its actual revenue earned and output expenses incurred, as compared with the forecast revenues and output expenses included in the statement of forecast service performance adopted at the start of the financial year.

The audit was completed on 30 September 2010, and is the date at which our opinion is expressed.

The basis of our opinion is explained below. In addition, we outline the responsibilities of the Solicitor-General and the Auditor, and explain our independence.

## **Basis of Opinion**

We carried out the audit in accordance with the Auditor-General's Auditing Standards, which incorporate the New Zealand Auditing Standards.

We planned and performed the audit to obtain all the information and explanations we considered necessary in order to obtain reasonable assurance that the financial statements and statement of service performance did not have material misstatements, whether caused by fraud or error.

Material misstatements are differences or omissions of amounts and disclosures that would affect a reader's overall understanding of the financial statements and statement of service performance. If we had found material misstatements that were not corrected, we would have referred to them in our opinion.

The audit involved performing procedures to test the information presented in the financial statements and statement of service performance. We assessed the results of those procedures in forming our opinion.

Audit procedures generally include:

- determining whether significant financial and management controls are working and can be relied on to produce complete and accurate data;
- verifying samples of transactions and account balances;
- performing analyses to identify anomalies in the reported data;
- reviewing significant estimates and judgements made by the Solicitor-General;
- confirming year-end balances;
- determining whether accounting policies are appropriate and consistently applied; and
- determining whether all financial statement and statement of service performance disclosures are adequate.

We did not examine every transaction, nor do we guarantee complete accuracy of the financial statements and statement of service performance.

We evaluated the overall adequacy of the presentation of information in the financial statements and statement of service performance. We obtained all the information and explanations we required to support our opinion above.

## **Responsibilities of the Solicitor-General and the Auditor**

The Solicitor-General is responsible for preparing the financial statements and statement of service performance in accordance with generally accepted accounting practice in New Zealand. The financial statements must fairly reflect the financial position of Crown Law as at 30 June 2010 and the results of its operations and cash flows for the year ended on that date.

The financial statements must also fairly reflect the expenses and capital expenditure incurred against each appropriation administered by Crown Law and each class of outputs included in each output expense appropriation for the year ended 30 June 2010. The financial statements must also fairly reflect Crown Law's unappropriated expenses and capital expenditure for the year ended on that date.

The statement of service performance must fairly reflect, for each class of outputs, the Office's standards of delivery performance achieved and revenue earned and expenses incurred, as compared with the forecast standards, revenue and expenses adopted at the start of the financial year.

In addition, the Solicitor-General is responsible for preparing schedules of non-departmental activities, in accordance with the Treasury Instructions 2009 that must fairly reflect the expenses managed by Crown Law on behalf of the Crown for the year ended 30 June 2010.

The statement of service performance must fairly reflect, for each class of outputs, Crown Law's standards of delivery performance achieved and revenue earned and expenses incurred, as compared with the forecast standards, revenue and expenses adopted at the start of the financial year.

The Solicitor-General's responsibilities arise from sections 45A and 45B of the Public Finance Act 1989.

We are responsible for expressing an independent opinion on the financial statements and statement of service performance and reporting that opinion to you. This responsibility arises from section 15 of the Public Audit Act 2001 and section 45D(2) of the Public Finance Act 1989.

## Independence

When carrying out the audit we followed the independence requirements of the Auditor-General, which incorporate the independence requirements of the Institute of Chartered Accountants.

Other than the audit, we have no relationship with or interests in the Office.



John O'Connell  
Audit New Zealand  
On behalf of the Auditor-General  
Wellington, New Zealand

### **Matters relating to the electronic presentation of the audited financial statements**

This audit report relates to the financial statements of Crown Law Office for the year ended 30 June 2010 included on Crown Law Office's web site. The Crown Law Office's Solicitor-General is responsible for the maintenance and integrity of the Crown Law Office's web site. We have not been engaged to report on the integrity of the Crown Law Office's web site. We accept no responsibility for any changes that may have occurred to the financial statements since they were initially presented on the web site.

The audit report refers only to the financial statements named above. It does not provide an opinion on any other information which may have been hyperlinked to/from these financial statements. If readers of this report are concerned with the inherent risks arising from electronic data communication they should refer to the published hard copy of the audited financial statements and related audit report dated 30 September 2010 to confirm the information included in the audited financial statements presented on this web site.

Legislation in New Zealand governing the preparation and dissemination of financial statements may differ from legislation in other jurisdictions.

# Statement of Objectives and Service Performance FOR THE YEAR ENDED 30 JUNE 2010

## Output Expense: Conduct of Criminal Appeals

### Objective

To determine whether the Crown should take pre-trial and case stated appeals in the appeals against sentence are lodged and to appear or arrange representation at the hearing of appeals whether brought by the Crown or by offenders following trials on indictment.

### Outcome

By conducting criminal appeals Crown Law contributes to the justice sector outcome for safer communities that requires that offenders be held to account. By its conduct in criminal appeals Crown Law also contributes to the outcome of a trusted justice system in which civil and democratic rights and obligations are enjoyed.

### Financial performance (figures are GST exclusive)

2009 Actual \$000		2010 Actual \$000	2010 Main Estimates \$000	2010 Supp Estimates \$000
3,444	Revenue – Crown	3,329	3,329	3,329
3,367	Expenditure	3,286	3,329	3,329
77	Net surplus / (deficit)	43	-	-

### *Explanation of major variations:*

The number of appeals filed by the accused and the courts' scheduling and disposal are beyond Crown Law's control.

Some of the significant appeals to the Court of Appeal or Supreme Court are discussed in the Chief Executive's Criminal and Human Rights Group overview on pages 16 to 22.

## Output Expense: Conduct of Criminal Appeals (continued)

### Service performance

#### Quantity

2009 Actual	Measures	2010 Actual	2010 Forecast
	Number of appeals disposed by the Court of Appeal / Supreme Court / arising out of criminal trials on indictment, brought by:		
24	> the Crown	47	30-35
426	> offenders	491	550-600
	Decisions made on requests for the Solicitor-General to take Crown appeals in relation to:		
26	> sentence	18	15-30
23	> case stated or other appeals	21	25-30

#### Quality and timeliness

Measures	Performance
Success rate for sentence appeals brought by the Solicitor-General to be not less than 60%	47 appeals brought by the Solicitor-General have been heard. 30 appeals (64%) have been decided in favour of the Solicitor-General (2009: 87.5%)
No complaints to be received by Crown Law for non-compliance with court procedures and requirements of the judiciary as specified in the Court of Appeal and Supreme Court Practice Notes	No complaints have been received by Crown Law for non-compliance with court procedures and practice notes
The hearing of sentence appeals to be undertaken in accordance with the schedule of sitting days which are agreed by the court one month in advance. The Crown seeks no requests for adjournment	The hearing of appeals was undertaken in accordance with the timetable set by the court
Decisions to appeal by the Crown are taken in accordance with the statutory deadlines. Written submissions are filed by the Crown within the timeframe stipulated in the practice notes prepared for the guidance of counsel in the Court of Appeal and Supreme Court, or within three days of receipt of the applicants submissions	The Crown filed written submissions within the timeframe stipulated in the <i>Court of Appeal Practice Note – Criminal Appeals</i>

## Output Expense: Legal Advice and Representation

### Objective

To provide legal advice and representation services to central government departments and agencies with special emphasis on matters of public and administrative law, including Treaty of Waitangi and revenue issues.

The legal advice and representation services provided are to take into account the responsibility of the Government to conduct its affairs in accordance with the law and the underlying obligation (to discharge their responsibilities) of the Attorney-General and Solicitor-General by acting in the public interest.

### Outcome

Crown Law contributes to the outcomes of its clients and the wider public sector by protecting the Crown's legal interests and supporting the responsibilities of the Crown, so that the Government is able to lawfully implement its chosen policies and Executive Government is conducted lawfully. This, in turn, contributes to the outcome of democratic government under law and in the public interest.

By meeting the Crown's objectives as a model litigant Crown Law contributes to the justice sector outcome of a trusted justice system by upholding public interest factors in the application of the law, including trial by process and fair results.

### Financial performance (figures are GST exclusive)

2009 Actual		2010 Actual	2010 Main Estimates	2010 Supp Estimates
\$000		\$000	\$000	\$000
21,368	Revenue – Department	18,262	22,900	22,000
20,409	Expenditure	17,384	22,900	22,900
959	Net surplus / (deficit)	878	-	(900)

#### *Explanation of major variations:*

Revenue and expenditure are influenced by the number and complexity of the instructions received, and worked on during the year.

Crown Law takes a long-run perspective to fee setting and cost recovery (see financial note 20 Memorandum Account – Legal Advice and Representation). Saving in administration costs resulted in the surplus of \$0.878 million.

Some of the significant matters are discussed in the Chief Executive's overview on pages 13 to 16 and pages 22 to 25.

## Output Expense: Legal Advice and Representation (continued)

### Service performance

#### Quantity

2009 Actual	Measures	2010 Actual	2010 Forecast
468	Number of new instructions for legal advice	378	450-500
793	Average number of requests for legal advice in progress during the year	630	750-800
654	Number of new instructions in respect of litigation matters	530	600-620
2,773	Average number of litigation matters in progress during the year	1,169	2,500-2,700

#### *Explanation of major variations:*

There has been a decrease in the number of new instructions. There is no single factor that has brought about this decrease.

The reduction in the average number of matters in progress is due to a project on closing matter files.

#### Quality and timeliness

Measures	Performance
<p>Legal advice, including opinions and representation services, will be provided in accordance with Crown Law's Professional Standards and quality assurance review processes: Crown Law Advice and Conduct of Litigation, respectively</p> <p>Conformity with the guidelines set down in the standards as determined by the quality assurance review processes that have been developed to support the application of the standards.</p>	<p>Quality assurance review processes have been implemented to ensure compliance with the standards established for legal advice and representation services</p>

## Output Expense: Supervision and Conduct of Crown Prosecutions

### Objective

To provide a national Crown prosecution service to undertake criminal trials on indictment, and related appeals, the supervision of the network of Crown Solicitors who deliver the prosecution services and the provision of advice on criminal law matters.

This output class comprises three outputs:

- › *Crown Prosecution Services* – The provision of a national Crown prosecution service to undertake criminal trials on indictment, including appeals against conviction and sentence arising from summary prosecutions, for all regions in New Zealand.
- › *Supervision of the Crown Solicitor Network* – Includes administering the Crown Solicitors Regulations 1994, and in particular the classification of counsel, approval of special fees and approval of additional counsel for lengthy or complex trials.
- › *Criminal Law Advice and Services* – The provision of advice in relation to criminal law and undertaking work in the following areas: proceeds of crime; mutual assistance; blood sampling for DNA; requests for Crown appeals; consents to prosecute; applications for stays and immunity from prosecution; and ministerials in relation to criminal matters.

### Outcome

Crown Law is responsible for prosecuting indictable crime throughout New Zealand, and contributes to effective Crown prosecution services and the justice sector outcome for safer communities that require that offenders be held to account. By its conduct of Crown prosecutions Crown Law also contributes to the outcome of a trusted Justice system in which civil and democratic rights and obligations are enjoyed.

### Financial performance (figures are GST exclusive)

2009 Actual \$000		2010 Actual \$000	2010 Main Estimates \$000	2010 Supp Estimates \$000
36,492	Revenue – Crown	39,542	35,542	39,542
37,048	Expenditure	42,378	35,542	39,542
(556)	Net surplus / (deficit)	(2,836)	-	-

#### *Explanation of major variations:*

Criminal prosecution costs continue to increase. Although the number of criminal trials is similar, complexity issues together with defence strategies are adding to the costs.

These initiatives, which were outside Crown Law's control, have impacted on the demand for criminal services provided by the Crown Solicitor network. The overall level of demand was significantly greater than was envisaged at the time of preparing the Supplementary Estimates.

There is an increase in the number of guilty pleas, sentencing, bail and appeal matters.



## Output Expense: Supervision and Conduct of Crown Prosecutions (continued)

### Service performance – Output: Crown Prosecution Services

#### Quantity

2009 Actual	Measures	2010 Actual	2010 Forecast
	Number of trials for indictable crime:		
1,567	> District Court	1,785	1,700-1,900
202	> High Court	158	200-240
	Number of high cost trials for indictable crime*		
47	> District Court	42	150-180
60	> High Court	48	80-120
	Number of other criminal matters conducted by the Crown Solicitors:		
1,568	> Bail applications and appeals	2,081**	1,400-1,500
3,327	> Guilty pleas/lower band and middle band sentencing	3,811**	2,700-2,800
588	> Appeals relating to summary prosecutions	691	700-800

#### Quality and timeliness

Measures	Performance
<p>Prosecution services to be provided in accordance with prosecution guidelines and case management practices developed by the Solicitor-General and judiciary, respectively</p> <p>Review of each Crown Solicitor practice on a cyclical basis to determine conformity to guidelines and practices as described in: Supervision of Crown Solicitor Network</p>	<p>There have been no complaints received where the Solicitor-General thought they had any merit or warranted further action. The Solicitor-General was satisfied that the Crown Solicitor staff in question had acted entirely properly</p> <p>Crown Solicitor practices in Dunedin, Invercargill, Rotorua, Tasman and Tauranga were reviewed</p>

\* Cost greater than \$20,000.

\*\* Impact of the new criminal justice sector process.

**Output Expense: Supervision and Conduct of Crown Prosecutions (continued)**

**Service performance – Output: Supervision of Crown Solicitor Network**

**Quantity**

2009 Actual	Measures	2010 Actual	2010 Forecast
-	Number of Crown Solicitors' practices to be reviewed	5	1-2
417	Number of new applications from Crown Solicitors for special fees, classification of counsel and approval of additional counsel	496	300-400

**Quality and timeliness**

Measures	Performance
<p>Applications by Crown Solicitors for special fees, classification of counsel and approval of additional counsel to be considered in accordance with the Crown Solicitors Regulations 1994 and Crown Law's protocols which support the application of the Regulations. The protocols describe the processes to be followed, the quality standards relating to the process and the content and justification required for the applications</p> <p>Conformity of applications with the Crown Solicitors Regulations 1994, and Crown Law's protocols, which support the application of the regulations, will be assessed at the time the applications are considered. Feedback will be formally communicated to Crown Solicitors as appropriate.</p>	<p>All applications made by Crown Solicitors were considered in accordance with the Crown Solicitors Regulations 1994, and Crown Law's protocols, which support the application of the Regulations. Notification of approval and feedback on the applications was formally advised to the Crown Solicitor within the agreed timeframe</p>

**Output Expense: Supervision and Conduct of Crown Prosecutions (continued)**

**Service performance – Output: Supervision of Crown Solicitor Network**

**Quality and timeliness (continued)**

Measures	Performance
<p>The provision of prosecution services by Crown Solicitors is to be reviewed by an independent review panel with reference to a range of quality standards which include:</p> <ul style="list-style-type: none"> <li>› compliance with professional standards of conduct;</li> <li>› application of the Solicitor-General’s prosecution guidelines;</li> <li>› compliance with the Crown Solicitors Regulations 1994 and, in particular, the charging for services rendered; and</li> <li>› compliance with the protocols and financial guidelines developed by Crown Law to support the application of the Regulations</li> </ul> <p>A review of the performance of the Crown Solicitors will be undertaken on a cyclical basis by a review panel. The panel will address two main issues,</p> <ul style="list-style-type: none"> <li>› case processing efficiency using a questionnaire and interview approach with the judiciary, clients and profession</li> <li>› practice management case allocation, “good employee” responsibilities, financial reporting on cases and compliance with the Regulations and the supporting protocols</li> </ul> <p>A report is to be prepared for the Solicitor-General by each review panel containing documentary evidence of the review process, including the use of checklists and questionnaires with assessments and conclusions</p>	<p>Crown Solicitor practice reviews were undertaken in accordance with the quality standards, case processing efficiency and practice management case allocation. A report was provided to the Solicitor-General.</p> <p>Crown Solicitor practice reviews were undertaken in:</p> <ul style="list-style-type: none"> <li>› Dunedin,</li> <li>› Invercargill,</li> <li>› Rotorua,</li> <li>› Tasman, and</li> <li>› Tauranga</li> </ul>

## Output Expense: Supervision and Conduct of Crown Prosecutions (continued)

### Crown Solicitor Practice Review process

The Crown Solicitor Practice Review process has been established to ensure that Crown Solicitors meet certain quality standards in undertaking Crown prosecutions. These standards are described in the above table. It is aimed to review all Crown Solicitor practices at least once in each four- to five-year period. The number of reviews undertaken in any year will depend upon the size of the practice to be reviewed, the resources available to undertake the reviews and the operational efficiencies derived from reviewing practices in close geographic proximity.

### Crown Solicitor Appointment process

The Solicitor-General is responsible for the process of appointment of Crown Solicitors. The process, which includes extensive consultation and inquiry to determine the suitability of candidates to undertake the role of Crown Solicitor, results in a recommendation to the Attorney-General and, in turn, to the Governor-General for the issuing of the Crown Solicitor warrant.

### Service performance – Output: Criminal Law Advice and Services

#### Quantity

2009 Actual	Measures	2010 Actual	2010 Forecast
288	Number of new requests for legal advice or determination of applications received in relation to criminal law issues	242	300-350
645	Average number of requests for legal advice or determination of applications in relation to criminal law in process during the year	785	450-500
40	Number of new ministerial and parliamentary questions received	41	25-35

#### Quality and timeliness

Measures	Performance
<p>Legal advice, including opinions, and representation services to be provided in accordance with Crown Law's Professional Standards: Crown Law Advice and Conduct of Litigation, respectively</p> <p>Conformity with the guidelines set down in the standards as determined by the quality assurance review processes that have been developed to support the application of the standards</p>	<p>Quality assurance review processes have been implemented to ensure compliance with the standards established for legal advice and representation services</p>

**Output Expense: Supervision and Conduct of Crown Prosecutions (continued)**

**Service performance – Output: Criminal Law Advice and Services (continued)**

**Quality and timeliness**

Measures	Performance
<p>Ministerial correspondence and parliamentary questions to be responded to within the following timeframes:</p> <ul style="list-style-type: none"><li>› Replies to ministerial correspondence will be completed within 20 working days of receipt in 90% of cases</li><li>› All responses to parliamentary questions will be provided within the required deadlines</li></ul>	<ul style="list-style-type: none"><li>› Replies to ministerial correspondence were provided within the required timeframe in 90% of cases (2009: 79%)</li><li>› Responses to parliamentary questions were provided within the required time deadlines (2009: 100%)</li></ul>

## Output Expense: The Exercise of Principal Law Officer Functions

### Objective

This output class covers the provision of legal and administrative services to the Attorney-General and Solicitor-General to assist them in the exercise of their Principal Law Officer functions, the provision of legal advice to government and Ministers of the Crown including advice on constitutional and governance-related issues and advice to the judiciary regarding legal processes.

The particular services provided include monitoring the enforcement and application of the law, supervision of charities, representation of the public interest, relator proceedings, vexatious litigant proceedings and the exercise of a variety of powers, duties and authorities arising from statutory requirements and constitutional conventions. This output class also involves the review of legislation for compliance with the New Zealand Bill of Rights Act 1990 and advice on the appointment processes for Judges and Queen's Counsel and participation in PILON.

### Outcome

By supporting the Law Officers, who have a constitutional role in the lawful conduct of Executive Government, Crown Law contributes to democratic government under the law and in the public interest, and to the justice sector outcome of effective constitutional arrangements.

### Financial performance (figures are GST exclusive)

2009 Actual  \$000		2010 Actual  \$000	2010 Main Estimates \$000	2010 Supp Estimates \$000
2,928	Revenue:	3,228	2,928	3,228
54	> Crown	192	50	184
	> Other			
2,982				
2,516	> Expenditure	3,854	2,978	3,412
466	> Net surplus / (deficit)	(434)	-	-

### Explanation of major variations:

The increased expenditure is mainly in extradition work, the Government legal services programme<sup>3</sup> and an ongoing review of the laws of contempt.

Some of the significant matters are discussed in the Chief Executive's overview on pages 22 to 25.

<sup>3</sup> Page 12, Crown Law's initiatives.

## Output Expense: The Exercise of Principal Law Officer Functions (continued)

### Service performance

#### Quantity

2009 Actual	Measures	2010 Actual	2010 Forecast
236	Number of new applications or requests for advice received for action on behalf of the Attorney-General and Solicitor-General	256	170-190
527	Average number of applications or requests for legal advice in progress during the year	284	350-400
175	Number of new ministerial and parliamentary questions received	269	240-260

#### Quality and timeliness

Measures	Performance
<p>Legal advice, including opinions, and representation services to be provided in accordance with Crown Law's Professional Standards: Crown Law Advice and Conduct of Litigation, respectively:</p> <ul style="list-style-type: none"> <li>› Conformity with the guidelines set down in the standards as determined by the quality assurance review processes that have been developed to support the application of the standards</li> <li>› Quality, timeliness and effectiveness of services assessed in accordance with the standards agreed with the Attorney-General.</li> </ul>	<p>Quality assurance review processes have been implemented to ensure compliance with the standards established for legal advice and representation services</p>
<p>Brief the Attorney-General in a timely and relevant way on significant legal matters affecting the Crown:</p> <ul style="list-style-type: none"> <li>› A weekly report will be provided to the Attorney-General advising on significant legal matters involving the Crown.</li> </ul>	<p>A weekly report is provided to the Attorney-General advising on significant legal matters involving the Crown</p>
<p>Ministerial correspondence and parliamentary questions to be responded to within the following timeframes:</p> <ul style="list-style-type: none"> <li>› Replies to ministerial correspondence will be completed within 20 working days of receipt in 90% of cases</li> <li>› All responses to parliamentary questions will be provided within the required deadlines</li> </ul>	<ul style="list-style-type: none"> <li>› Replies to ministerial correspondence were provided within the required timeframe in 87% of cases (2009: 83%)</li> <li>› Responses to parliamentary questions were provided within the required time deadlines (2009: 100%)</li> </ul>

## STATEMENT OF COMPREHENSIVE INCOME

### for the year ended 30 June 2010

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2009 Actual		Note	2010 Actual \$000	2010 Main Estimates \$000	2010 Supp Estimates \$000
\$000					
	<b>Income</b>				
42,864	Crown		46,099	41,799	46,099
21,422	Other	2	18,454	22,950	22,184
64,286	<b>Total income</b>		64,553	64,749	68,283
	<b>Expenditure</b>				
18,623	Personnel costs	3	18,623	19,000	19,270
43,522	Operating costs	4	47,011	44,306	48,529
1,009	Depreciation and amortisation expense	5	1,071	1,288	1,187
186	Capital charge	6	197	155	197
63,340	<b>Total expenses</b>		66,902	64,749	69,183
946	Net operating surplus / (deficit)		(2,349)	-	(900)
946	<b>Total comprehensive income</b>		(2,349)	-	(900)

The accompanying notes form part of these financial statements.



## STATEMENT OF MOVEMENTS IN TAXPAYERS' FUNDS for the year ended 30 June 2010

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2009 Actual  \$000		2010 Actual  \$000	2010 Main Estimates \$000	2010 Supp Estimates \$000
2,063	<b>Taxpayers' funds as at 1 July</b>	2,933	2,933	2,933
946	Net surplus / (deficit) for the year	(2,349)	(870)	(900)
-	Capital contribution	-	-	-
870	Retained surplus	946	-	946
-	Movements in revaluation reserve	-	-	-
(946)	Provision for repayment of surplus	-	-	-
870	<b>Movements in equity for the year</b>	(1,403)	(870)	46
2,933	<b>Taxpayers' funds as at 30 June</b>	1,530	2,063	2,979

The accompanying notes form part of these financial statements.

## BALANCE SHEET

as at 30 June 2010

2009 Actual \$000		Note	2010 Actual \$000	2010 Main Estimates \$000	2010 Supp Estimates \$000
2,933	<b>Taxpayers' funds</b>	13	1,530	2,063	2,979
	Represented by:				
	<b>Current assets</b>				
6,476	Cash and cash equivalents		6,391	2,999	5,156
275	Prepayments		345	200	216
4,286	Debtors and receivables	7	3,063	3,800	3,600
11,037	<b>Total current assets</b>		9,799	6,999	8,972
	<b>Non-current assets</b>				
2,281	Property, plant and equipment	8	1,755	2,150	1,984
919	Intangible assets	9	1,046	1,594	1,341
3,200	<b>Total non-current assets</b>		2,801	3,744	3,325
14,237	<b>Total assets</b>		12,600	10,743	12,297
	<b>Current liabilities</b>				
8,830	Creditors and payables	10	9,532	7,333	7,631
1,344	Employee entitlements	11	1,316	980	1,200
946	Repayment of surplus	12	-	-	-
11,120	<b>Total current liabilities</b>		10,848	8,313	8,831
	<b>Non-current liabilities</b>				
184	Employee entitlements	11	222	367	487
184	<b>Total non-current liabilities</b>		222	367	487
11,304	<b>Total liabilities</b>		11,070	8,680	9,318
2,933	<b>Net assets</b>		1,530	2,063	2,979

The accompanying notes form part of these financial statements.

## STATEMENT OF CASH FLOWS

### for the year ended 30 June 2010

2009 Actual \$000		Note	2010 Actual \$000	2010 Main Estimates \$000	2010 Supp Estimates \$000
	<b>Cash flows from operating activities</b>				
	<i>Cash was provided from: Supply of outputs to</i>				
42,864	Crown		46,099	41,799	46,099
21,486	Other		19,677	22,950	22,870
64,350			65,776	64,749	68,969
	<i>Cash was applied to: Produce outputs</i>				
18,223	Personnel		18,259	18,560	19,220
40,596	Operating		44,457	43,874	47,284
2,716	Net GST paid/(received)		2,276	2,276	2,276
186	Capital charge		197	155	197
-	Other		-	-	-
61,721			65,189	64,865	68,977
2,629	<b>Net cash inflow from operating activities</b>	18	587	(116)	(8)
	<b>Cash flows from investing activities</b>				
	<i>Cash was provided from:</i>				
-	Sale of fixed assets		-	-	-
	<i>Cash was disbursed for:</i>				
535	Purchase of fixed assets		200	429	472
972	Purchase of intangible assets		472	514	840
1,507			672	943	1,312
(1,507)	<b>Net cash outflow from investing activities</b>		(672)	(943)	(1,312)
	<b>Cash flows from financing activities</b>				
	<i>Cash was provided from:</i>				
-	Capital contributions		-	-	-
	<i>Cash was disbursed for:</i>				
1,906	Repayment of surplus		-	-	-
(1,906)	<b>Net cash outflow from financing activities</b>		-	-	-
(784)	<b>Net increase in cash</b>		(85)	(1,059)	(1,320)
7,260	Cash at the beginning of the year		6,476	4,058	6,476
6,476	<b>Cash at the end of the year</b>		6,391	2,999	5,156

The accompanying notes form part of these financial statements.

## STATEMENT OF COMMITMENTS

### as at 30 June 2010

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Crown Law leased office premises in Wellington as from 1 April 2004. The term of the lease is for an initial period of nine years expiring on 31 March 2013. Annual lease payments are subject to three-yearly reviews. The rent review as of 1 April 2010 has not yet been completed.

On 11 August 2008 additional office premises at 50 The Terrace were leased for an initial 12-month period with a further one-year right of renewal to 10 August 2010. Crown Law has renewed the lease for a further 12 months to 10 August 2011.

Other leases are subject to a range of review periods. The amounts disclosed below as future commitments are based on the current rental rates.

2009 Actual \$000		2010 Actual \$000
-	<b>Capital commitments</b> There were no capital commitments as at 30 June 2010	-
	<b>Non-cancellable operating lease commitments</b>	
1,776	Not later than one year	1,774
4,654	Later than one year and not later than five years	2,947
-	Later than five years	-
6,430	Total non-cancellable operating lease commitments	4,721
6,430	<b>Total commitments</b>	4,721

The accompanying notes form part of these financial statements.

# STATEMENT OF DEPARTMENTAL CONTINGENT LIABILITIES

## as at 30 June 2010

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Crown Law has no unquantifiable contingent liabilities (2009: Nil).

### Quantifiable contingent liabilities

2009 Actual \$000		2010 Actual \$000
-	Legal proceedings and disputes	650
-	<b>Total quantifiable contingent liabilities</b>	<b>650</b>

### Legal proceedings and disputes

Legal proceedings and disputes represent the amount claimed by a plaintiff in relation to Counsel raising their concerns regarding the client's staff in certain litigation matters. Crown Law disputes this claim.

### Contingent assets

Crown Law has no contingent assets (2009: Nil).

The accompanying notes form part of these financial statements

## STATEMENT OF UNAPPROPRIATED EXPENDITURE AND CAPITAL EXPENDITURE for the year ended 30 June 2010

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2009 Unappropriated Expenditure \$000		2010 Actual \$000	2010 Appropriation Voted \$000	2010 Unappropriated Expenditure \$000
556	<b>Vote Attorney-General</b> Supervision and Conduct of Crown Prosecutions	42,378	40,687	1,691
-	The Exercise of Principal Law Officer Functions	3,854	3,412	442
556	<b>Total</b>	46,232	44,099	2,133

### **Expenses to be approved under s 26C of the Public Finance Act 1989**

Crown Law incurs costs in relation to the national Crown prosecution service to undertake criminal trials, on indictment, including appeals against convictions and sentence arising from summary prosecutions.

These initiatives, which were outside Crown Law's control, have impacted on the demand for criminal services provided by the Crown Solicitor network. The overall level of demand was significantly greater than was envisaged at the time of preparing the Supplementary Estimates.

The increased expenditure in The Exercise of Principal Law Officer Functions is mainly due to the extradition work, the Government legal services programme and an ongoing review of the laws of contempt.

### **Expenses approved under s 26A of the Public Finance Act 1989**

The Supplementary Estimates for Supervision and Conduct of Crown Prosecutions amounts to \$39,542,000 and a s 26A approval has been obtained for the \$1,145,000 transfer from Legal Advice and Representation to this output class within the vote.

The accompanying notes form part of these financial statements.

# STATEMENT OF DEPARTMENTAL EXPENDITURE AND APPROPRIATIONS

## for the year ended 30 June 2010

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2009 Actual Expend \$000		2010 Actual Expend \$000	2010 Main Estimates \$000	2010 Supp Estimate \$000	2010 Section 26A \$000	2010 Section 26C \$000	2010 Total \$000
	<b>Vote Attorney-General Appropriation for classes of outputs</b>						
3,367	Conduct of Criminal Appeals	3,286	3,329	3,329	-	-	3,329
20,409	Legal Advice and Representation	17,384	22,900	22,900	(1,145)	-	21,755
37,048	Supervision and Conduct of Crown Prosecutions	42,378	35,542	39,542	1,145	1,691	42,378
2,516	The Exercise of Principal Law Officer Functions	3,854	2,978	3,412	-	442	3,854
63,340	<b>Total appropriations for classes of outputs</b>	66,902	64,749	69,183	-	2,133	71,316
	<b>Appropriations for capital contribution</b>						
1,507	Capital investment	672	943	1,312	-	-	1,312
64,847	<b>Total appropriations</b>	67,574	65,692	70,495	-	-	72,628

As per requirement of s 2 and s 4 of the Public Finance Act 1989, expenditure reported should exclude remeasurements from appropriation. There have been no remeasurements identified during the 2009/10 financial year, which implies that the actual expenditures incurred are equal to the expenditures after remeasurement.

The accompanying notes form part of these financial statements.

## SCHEDULE OF TRUST MONIES

### for the year ended 30 June 2010

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2009 Actual \$000		2010 Actual \$000
	<b>Crown Law Office Legal Claims Trust Account</b>	
120	<b>Balance at 1 July</b>	499
1,096	Contributions	989
(710)	Distributions	(1,424)
3	Revenue	3
(11)	Expenditure	-
498	<b>Balance at 30 June</b>	67

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

The accompanying notes form part of these financial statements.



# NOTES TO THE FINANCIAL STATEMENTS

## for the year ended 30 June 2010

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### **Note 1: Statement of accounting policies**

#### ***Reporting entity***

Crown Law is a government department as defined by s 2 of the Public Finance Act 1989 and is domiciled in New Zealand.

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

The primary objective of Crown Law is to provide services to the public rather than making a financial return. Accordingly, Crown Law has designated itself as a public benefit entity for the purposes of New Zealand equivalents to International Financial Reporting Standards (NZ IFRS).

The financial statements of Crown Law are for the year ended 30 June 2010. The financial statements were authorised for issue by the Chief Executive of Crown Law on 30 September 2010.

#### ***Basis of preparation***

The financial statements of Crown Law have been prepared in accordance with the requirements of the Public Finance Act 1989, which includes the requirement to comply with New Zealand generally accepted accounting practices (NZ GAAP) and Treasury instructions.

These financial statements have been prepared in accordance with, and comply with, NZ IFRS as appropriate for public benefit entities.

The accounting policies set out below have been applied consistently to all periods presented in these financial statements. The financial statements have been prepared on a historical cost basis.

The financial statements are presented in New Zealand dollars and all values are rounded to the nearest thousand dollars (\$000). The functional currency of Crown Law is New Zealand dollars.

#### ***Changes in accounting policies***

There have been no changes in accounting policies during the financial year.

Crown Law has adopted the following revisions to account standards during the financial year, which have had only a presentational or disclosure effect:

- › NZ IAS 1 *Presentation of Financial Statements (revised 2007)* replaces NZ IAS 1 *Presentation of Financial Statements (issued 2004)*. The revised standard requires information in financial statements to be aggregated on the basis of shared characteristics and introduces a statement of comprehensive income. The statement of comprehensive income will enable readers to analyse changes in equity resulting from non-owner changes separately from transactions with owners. Crown Law has decided to prepare a single statement of comprehensive income for the year ended 30 June 2010 under the revised standard. Financial statement information for the year ended 30 June 2009 has been restated accordingly. Items of other comprehensive income presented in the statement of comprehensive income were previously recognised directly in the statement of changes in equity.

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

## Notes to the Financial Statements – continued

- › NZ IAS 24 *Related Party Disclosures (Revised 2009)* replaces NZ IAS 24 *Related Party Disclosures (Issued 2004)* and is effective for reporting periods commencing on or after 1 January 2011. The revised standard:
  - i) Removes the previous disclosure concessions applied by Crown Law for arms-length transactions between Crown Law and entities controlled or significantly influenced by the Crown. The effect of the revised standard is that more information is required to be disclosed about transactions between Crown Law and entities controlled or significantly influenced by the Crown.
  - ii) Provides clarity on the disclosure of related party transactions with Ministers of the Crown. Further, with the exception of the Minister of Accountability, Crown Law will be provided with an exemption from certain disclosure requirements relating to transactions with other Ministers of the Crown. The clarification could result in additional disclosures should there be any related party transactions with Ministers of the Crown.
  - iii) Clarifies that related party transactions include commitments with related parties.

Crown Law expects it will early adopt the revised standard for the year ended 30 June 2011.

### **Revenue**

Revenue is measured at the fair value of consideration received.

#### **Revenue Crown and Revenue Other**

Crown Law derives revenue through the provision of outputs to the Crown and for services to third parties. Such revenue is recognised when earned and is reported in the financial period to which it relates.

### **Capital charge**

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

### **Leases**

#### **Operating leases**

An operating lease is a lease that does not transfer substantially all the risks and rewards incidental to ownership of an asset. Lease payments under an operating lease are recognised as an expense on a straight-line basis over the lease term.

Crown Law leased office premises in Wellington as from 1 April 2004. The term of the lease is for an initial period of nine years expiring on 31 March 2013. Annual lease payments are subject to three-yearly reviews.

Other leases are subject to a range of review periods. The amounts disclosed in the statement of commitments as future commitments are based on the current rental rates.

### **Financial instruments**

Financial assets and financial liabilities are initially measured at the fair value plus transaction costs unless they are carried at fair value through profit or loss in which case the transaction costs are recognised in the statement of comprehensive income.

## **Notes to the Financial Statements – continued**

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

Cash includes cash on hand and funds on deposit with maturities of less than three months with the Government Branch, Westpac Banking Corporation.

### ***Debtors and other receivables***

Debtors and other receivables are initially measured at fair value and subsequently measured at amortised cost using the effective interest rate, less impairment charges. The carrying value of debtors and other receivables approximate their fair value.

Impairment of a receivable is established when there is objective evidence that Crown Law will not be able to collect amounts due according to the original terms of the receivable. The amount of the impairment is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted using the original effective interest rate. The carrying amount of the asset is reduced through the use of an allowance account, and the amount of the loss is recognised in the statement of comprehensive income. Overdue receivables that are renegotiated are reclassified as current (ie not past due).

### ***Debtors work in progress***

Work in progress is determined as unbilled time and disbursement that can be recovered from clients, and are measured at the lower of cost or net realisable value.

The write-down from cost to current net realisable value is recognised in the statement of comprehensive income in the period when the write-down occurs.

### ***Property, plant and equipment***

Property, plant and equipment consists of leasehold improvements, computer hardware, furniture and office equipment.

Property, plant and equipment is shown at cost or valuation, less accumulated depreciation and impairment losses.

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

### ***Additions***

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

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

In most instances, an item of property, plant and equipment is recognised at its cost. Where an asset is acquired at no cost, or for a nominal cost, it is recognised at fair value as at the date of acquisition.

### ***Disposals***

Gains and losses on disposals are determined by comparing the proceeds with the carrying amount of the asset. Gains and losses on disposals are included in the statement of comprehensive income. When revalued assets are sold, the amounts included in the property, plant and equipment revaluation reserves in respect of those assets are transferred to general funds.

## Notes to the Financial Statements – continued

### *Subsequent costs*

Costs incurred subsequent to initial acquisition are capitalised only when it is probable that future economic benefits or service potential associated with the item will flow to Crown Law and the cost of the item can be measured reliably.

### *Depreciation*

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

Leasehold improvements	9 years	(11.1%)
Computer hardware	3 years	(33.3%)
Furniture and fittings	5 years	(20%)
Office equipment	5 years	(20%)
Library	10 years	(10%)

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

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

### *Intangible assets*

#### *Software acquisition and development*

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

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

Staff training costs are recognised as an expense when incurred.

#### *Amortisation*

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

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

Acquired computer software	3 years	(33.3%)
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#### *Impairment of non-financial assets*

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

## Notes to the Financial Statements – continued

### *Creditors and other payables*

Creditors and other payables are initially measured at fair value and subsequently measured at amortised cost using the effective interest method.

### *Employee entitlements*

#### *Short-term employee entitlements*

Employee entitlements Crown Law expects to be settled within 12 months of balance date are measured at nominal values based on accrued entitlements at current rates of remuneration.

These include salaries and wages accrued up to balance date, annual leave earned but not yet taken at balance date, retiring and long service leave entitlements expected to be settled within 12 months.

Note that retirement and long service leave from an old expired contract are maintained for 15 staff.

#### *Long-term employee entitlements*

Entitlements that are payable beyond 12 months, such as long service leave and retirement leave, have been calculated on an actuarial basis. The calculations are based on:

- › likely future entitlements based on years of service, years to entitlement and the likelihood that staff will reach the point of entitlement and contractual entitlements information; and
- › the present value of the estimated future cash flows. See note 11 for details of discount rate and salary inflation factor.

### *Superannuation schemes*

#### *Defined contribution schemes*

Obligations for contributions to the State Sector Retirement Savings Scheme, KiwiSaver and the Government Superannuation Fund are accounted for as defined contribution schemes and are recognised as an expense in the statement of comprehensive income as incurred.

Crown Law recovers the contribution costs for the State Sector Retirement Savings Scheme and KiwiSaver from the State Services Commission. This recovery is accrued and recognised as departmental revenue in the statement of comprehensive income.

### *Provisions*

Crown Law recognises a provision for future expenditure of uncertain amount or timing when there is a present obligation (either legal or constructive) as a result of a past event, it is probable that an outflow of future economic benefits will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation. Provisions are not recognised for future operating losses.

Provisions are measured at the present value of the expenditures expected to be required to settle the obligation using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the obligation. The increase in the provision due to the passage of time is recognised as a finance cost.

## **Notes to the Financial Statements – continued**

### ***Taxpayers' funds***

Taxpayers' funds is the Crown's investment in Crown Law and is measured as the difference between total assets and total liabilities. Taxpayers' funds is disaggregated and classified as general funds and property, plant and equipment revaluation reserves.

### ***Commitments***

Expenses yet to be incurred on non-cancellable contracts that have been entered into on or before balance date are disclosed as commitments to the extent that there are equally unperformed obligations.

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

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

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

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

Commitments and contingencies are disclosed exclusive of GST.

The GST (net) component has been presented on a net basis, as the gross amounts do not provide meaningful information for financial statement purposes.

### ***Income taxation***

Government departments are exempt from income tax as public authorities. Accordingly, no charge for income tax has been provided for.

### ***Budget figures***

The budget figures are those included in Crown Law's Information Supporting the Estimates for the year ending 30 June 2010, which are consistent with the financial information in the Main Estimates. In addition, the financial statements also present the updated budget information from the Supplementary Estimates.

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

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

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

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

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

## Notes to the Financial Statements – continued

### *Critical accounting estimates and assumptions*

In preparing these financial statements Crown Law has made estimates and assumptions concerning the future. These estimates and assumptions may differ from the subsequent actual results. Estimates and judgements are continually evaluated and are based on historical experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial year are discussed below:

### Note 2: Other revenue

2009 Actual \$000		2010 Actual \$000
21,368	<b>Legal fees and disbursements received from:</b>	18,429
54	› Government departments / other government agencies	25
21,422	› Other clients	18,454
	<b>Total other revenue</b>	

Fees recovered from government departments include the recovery of subsidised superannuation costs from the State Services Commission. See note 3.

### Note 3: Personnel costs

2009 Actual \$000		2010 Actual \$000
18,033	Salaries and wages	17,952
555	Employer contributions to subsidised superannuation scheme	556
35	Movement in retirement and long service leave	115
18,623	<b>Total personnel costs</b>	18,623

Employer contributions to the subsidised superannuation schemes, State Sector Retirement Savings Scheme and KiwiSaver, are recovered from the State Services Commission.

One employee retired during the year and in accordance with their employment contract received a retirement payment.

## Notes to the Financial Statements – continued

### Note 4: Operating costs

2009 Actual \$000		2010 Actual \$000
45	Audit fees for audit of the financial statements	50
-	Bad debts written off	-
(1)	Increase (decrease) provision for doubtful debts	-
(42)	Increase (decrease) impairment for doubtful work in progress	42
426	Consultancy costs	267
35,510	Crown Solicitors' fees	40,760
1,789	Operating lease costs	1,785
5,795	Other operating costs	4,107
43,522	<b>Total operating costs</b>	47,011

### Note 5: Depreciation / Amortisation

2009 Actual \$000		2010 Actual \$000
	<b>Depreciation of property, plant and equipment:</b>	
43	› Office equipment	22
240	› Computer equipment	231
331	› Leasehold improvements	358
211	› Furniture and fittings	31
83	› Library	84
	<b>Amortisation of intangibles:</b>	
101	› Computer software	345
1,009	<b>Total depreciation and amortisation expenses</b>	1,071

### Note 6: Capital charge

Crown Law pays a capital charge to the Crown on its taxpayers' funds as at 30 June and 31 December each year. The capital charge rate for the year ended 30 June 2010 was 7.5% (2009: 7.5%).



## Notes to the Financial Statements – continued

### Note 7: Debtors and receivables

2009 Actual \$000		2010 Actual \$000
2,227	Trade debtors	1,315
(1)	Less provision for doubtful debts	-
1,964	Work in progress	1,790
(42)	Less impairment for doubtful work in progress	(42)
138	Sundry debtors	-
4,286	<b>Total debtors and receivables</b>	3,063

The carrying value of debtors and other receivables approximate their fair value.

As at 30 June 2010 and 2009, all overdue trade debtors have been assessed for impairment and the appropriate provision applied, as detailed below:

\$000	2009			2010		
	Gross \$000	Impairment \$000	Net \$000	Gross \$000	Impairment \$000	Net \$000
Not past due	1,859	-	1,859	1,046	-	1,046
Past due 1 – 30 days	150	-	150	138	-	138
Past due 31 – 60 days	71	-	71	51	-	51
Past due 61 – 90 days	63	-	63	43	-	43
Past due > 90 days	84	(1)	83	37	-	37
<b>Total</b>	2,227	(1)	2,226	1,315	-	1,315

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

## Notes to the Financial Statements – continued

### Note 8: Property, plant and equipment

	Leasehold Improve- ments \$000	Office Equipment \$000	Library \$000	Furniture & Fittings \$000	Computer Equipment \$000	Total \$000
<b>Cost</b>						
Balance at 1 July 2008	2,704	573	815	1,096	1,332	6,520
Additions	211	27	-	65	232	535
Disposals	-	-	-	-	(144)	(144)
<b>Balance at 30 June 2009</b>	<b>2,915</b>	<b>600</b>	<b>815</b>	<b>1,161</b>	<b>1,420</b>	<b>6,911</b>
Balance at 1 July 2009	2,915	600	815	1,161	1,420	6,911
Additions	23	10	-	6	161	200
Disposals	-	(2)	-	-	(64)	(66)
<b>Balance at 30 June 2010</b>	<b>2,938</b>	<b>608</b>	<b>815</b>	<b>1,167</b>	<b>1,517</b>	<b>7,045</b>
<b>Accumulated depreciation and impairment losses</b>						
Balance at 1 July 2008	1,151	457	519	852	887	3,866
Additions	331	43	83	211	240	908
Disposals	-	-	-	-	(144)	(144)
<b>Balance at 30 June 2009</b>	<b>1,482</b>	<b>500</b>	<b>602</b>	<b>1,063</b>	<b>983</b>	<b>4,630</b>
Balance at 1 July 2009	1,482	500	602	1,063	983	4,630
Additions	358	22	84	31	231	726
Disposals	-	(2)	-	-	(64)	(66)
<b>Balance at 30 June 2010</b>	<b>1,840</b>	<b>520</b>	<b>686</b>	<b>1,094</b>	<b>1,150</b>	<b>5,290</b>
<b>Carrying amount</b>						
At 1 July 2008	1,553	116	296	244	445	2,654
At 30 June and 1 July 2009	1,433	100	213	98	437	2,281
<b>At 30 June 2010</b>	<b>1,098</b>	<b>88</b>	<b>129</b>	<b>73</b>	<b>367</b>	<b>1,755</b>

## Notes to the Financial Statements – continued

### Note 9: Intangible assets

	Acquired Software \$000
<b>Cost</b>	
Balance at 1 July 2008	746
Additions	971
Disposals	-
<b>Balance at 30 June 2009</b>	<b>1,717</b>
Balance at 1 July 2009	1,717
Additions*	472
Disposals	-
<b>Balance at 30 June 2010</b>	<b>2,189</b>
<b>Accumulated depreciation and impairment losses</b>	
Balance at 1 July 2008	697
Additions	101
Disposals	-
<b>Balance at 30 June 2009</b>	<b>798</b>
Balance at 1 July 2009	798
Additions	345
Disposals	-
<b>Balance at 30 June 2010</b>	<b>1,143</b>
<b>Carrying amount</b>	
At 1 July 2008	49
At 30 June and 1 July 2009	919
<b>At 30 June 2010</b>	<b>1,046</b>

There are no restrictions over the title of Crown Law's intangible assets, nor are any intangible assets pledged as security for liabilities.

\* The \$472,000 new addition includes work in progress to the value of \$345,000 for the electronic data and records management system project. There is no amortisation costs incurred for the year ended 30 June 2010.

## Notes to the Financial Statements – continued

### Note 10: Creditors and payables

2009 Actual \$000		2010 Actual \$000
4,896	Trade creditors	4,917
2,925	Accrued work in progress – Crown Solicitors' fees	3,352
806	Other accrued expenses	1,129
203	GST payable	134
8,830	<b>Total creditors and payables</b>	9,532

Trade creditors and other payables are non-interest bearing and are normally settled on 30-day terms. Therefore, the carrying value of creditors and other payables approximates their fair value.

### Note 11: Employee entitlements

2009 Actual \$000		2010 Actual \$000
	<b>Current liabilities</b>	
-	Personnel accruals	
1,177	Annual leave	1,071
167	Retirement and long service leave	245
1,344	<b>Total current portion</b>	1,316
	<b>Non-current liabilities</b>	
184	Retirement and long service leave	222
184	<b>Total non-current portion</b>	222
1,528	<b>Total employee entitlements</b>	1,538

Annual leave and vested long service leave are calculated using the number of days owing as at 30 June 2010.

Retirement leave and long service leave that are due or expected to be paid within the next 12 months are based on the days owing as at 30 June 2010.

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

The present value of the unvested long service leave and retirement obligation depends on a number of factors that are determined on an actuarial basis using a number of assumptions. Two key assumptions used in calculating this liability are the discount rate and salary inflation factor.

## Notes to the Financial Statements – continued

A discount rate in year 1 of 3.48%, year 2 of 4.45% and year 3 and beyond of 6%, and a long-term salary inflation factor of 3.5% were used. The inflation factor is based on the expected long-term increase in remuneration for employees. Any changes in these assumptions will impact on the carrying amount.

### Note 12: Repayment of surplus

2009 Actual \$000		2010 Actual \$000
946	Provision for repayment of surplus to the Crown	-

The repayment of surplus is required to be paid by 31 October of each year. Crown Law is seeking approval to retain the surplus in output expense legal advice and representation.

### Note 13: Taxpayers' funds

2009 Actual \$000		2010 Actual \$000
2,063	General fund Balance at 1 July 2009	2,933
946	Net surplus/(deficit)	(2,349)
-	Capital contribution	-
870	Retained surplus	946
(946)	Provision from repayment of surplus to the Crown	-
2,933	<b>General funds at 30 June</b>	1,530

### Note 14: Financial instruments

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

#### *Market risk*

#### *Currency risk*

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

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

## Notes to the Financial Statements – continued

### *Interest rate risk*

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

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

### *Credit risk*

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

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

Crown Law is only permitted to deposit funds with Westpac, a registered bank with a high credit rating. Crown Law does not enter into foreign exchange forward contracts.

Crown Law’s maximum credit exposure for each class of financial instrument is represented by the total carrying amount of cash and cash equivalents, net debtors (note 7). There is no collateral held as security against these financial instruments, including those instruments that are overdue or impaired.

### *Liquidity risk*

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

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

The table below analyses Crown Law’s financial liabilities that will be settled based on the remaining period at the balance sheet date to the contractual maturity date. The amounts disclosed are the contractual undiscounted cash flows.

2009	Less than 6 months \$000	Between 6 months and 1 year \$000	Between 1 and 5 years \$000	Over 5 years \$000
Creditors and other payables (note 10)	8,830	Nil	Nil	Nil
Derivative financial instrument liabilities	Nil	Nil	Nil	Nil
Finance leases	Nil	Nil	Nil	Nil
2010	Less than 6 months \$000	Between 6 months and 1 year \$000	Between 1 and 5 years \$000	Over 5 years \$000
Creditors and other payables (note 10)	9,532	Nil	Nil	Nil
Derivative financial instrument liabilities	Nil	Nil	Nil	Nil
Finance leases	Nil	Nil	Nil	Nil

## Notes to the Financial Statements – continued

### Note 15: Related party information

#### *Related party transactions*

Crown Law is a wholly owned entity of the Crown. The Government significantly influences the roles of Crown Law as well as being its major source of revenue.

Cabinet Directions for the Conduct of Crown Legal Business 1993 (Cabinet Manual Appendix C) sets out the requirements for chief executives of departments to refer specified legal work to Crown Law.

Crown Law enters into transactions with the Crown, other departments and ministries, Crown entities and state-owned enterprises on an arm's length basis. Those transactions that occur are within the normal legal provider client relationship on terms and conditions no more or less favourable than those reasonably expected that Crown Law would have adopted if dealing with other clients.

The following transactions were carried out with related parties:

During the year Crown Law purchased legal services from 15 Crown Solicitors across the country, mainly in relation to the conduct of criminal prosecutions and criminal appeals. Crown Law has no financial relationship with the Crown Solicitors, but is involved in their appointment and the periodic review of their practices. The value of the services provided was \$40.760 million (2009: \$35.510 million). There is a balance of \$3.728 million (2009: \$3.282 million) outstanding at year-end.

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

#### *Key management personnel compensation*

2009 Actual \$000		2010 Actual \$000
1,692	Salaries and other short-term employee benefits	1,792
53	Post-employment benefits	99
-	Other long-term benefits	-
-	Termination benefits	-
1,745	<b>Total salaries and other short-term employee benefits</b>	1,861

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

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

Post-employment benefits being employer subsidised superannuation in either State Sector Retirement Savings Scheme or KiwiSaver are reimbursed for all employees by the State Services Commission. The recovery is classified as other revenue. See note 2.

## Notes to the Financial Statements – continued

### Note 16: Categories of financial instruments

2009 Actual \$000		2010 Actual \$000
6,476	Cash and cash equivalents	6,391
4,286	Debtors and other receivables	3,063
10,762	<b>Total loans and receivables</b>	9,454
	<i>Financial liabilities measured at amortised cost</i>	
8,830	Creditors and other payables	9,532
8,830	<b>Total creditors and other payables</b>	9,532

### Note 17: Capital management

Crown Law's capital is its equity (or taxpayers' funds), which comprise general funds and revaluation reserves. Equity is represented by net assets.

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

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



## Notes to the Financial Statements – continued

### Note 18: Reconciliation of net surplus/deficit to net cash flow from operating activities for the year ended 30 June 2010

2009 Actual \$000		2010 Actual \$000
946	<b>Net operating surplus/(deficit)</b>	(2,349)
1,009	Depreciation and amortisation expense	1,071
1,009	<b>Total non-cash items</b>	1,071
	<b>Working capital movements</b>	
64	(Increase)/decrease in debtors and receivables	1,223
(70)	(Increase)/decrease in prepayments	(70)
493	Increase/(decrease) in creditors and payables	702
265	Increase/(decrease) in employee entitlements	(28)
752	<b>Working capital movements – net</b>	1,827
	<b>Movements in non-current liabilities</b>	
-	Provision for premises make good	-
(78)	Increase/(decrease) in employee entitlements	38
(78)	<b>Movements in non-current liabilities</b>	38
	<b>Add/(less) investing activity items</b>	
-	Net (gain)/loss on disposal of property, plant and equipment	-
-	<b>Total investing activity items</b>	-
2,629	<b>Net cash flow from operating activities</b>	587

### Note 19: Memorandum account – senior counsel applications

2009 Actual \$000		2010 Actual \$000
-	<b>Opening balance at 1 July</b>	17
42	Revenue	-
(25)	Less expenses	-
17	<b>Closing balance at 30 June</b>	17

This account summarises financial information relating to the accumulated surpluses and deficits incurred in processing Senior Counsel applications on a full cost recovery basis. These transactions are included as part of Crown Law's operating income and expenses in the statement of comprehensive income.

## Notes to the Financial Statements – continued

This account enabled Crown Law to recover the cost of administering and evaluating the applications for Senior Counsel. The Senior Counsel process has been closed.

### Note 20: Memorandum account – legal advice and representation

2009 Actual \$000		2010 Actual \$000
870	<b>Opening balance at 1 July</b>	1,816
21,368	Revenue	18,262
(20,409)	Less expenses	(17,384)
1,829	<b>Closing balance at 30 June</b>	2,694

This account summarises financial information relating to the accumulated surpluses and deficits incurred in the provision of legal advice and representation services to central government departments and Crown agencies on a full cost recovery basis. These transactions are included as part of Crown Law's operating income and expenses in the statement of comprehensive income.

The opening balance of \$1.816 million is the retention of 2007/08 surplus (\$870,000) and 2008/09 surplus (\$946,000) arising from legal advice and representation services. The 2008/09 surplus was approved by the Attorney-General and Minister of Finance on 29 October 2009. The surplus for 2009/10 of \$878,000, which is contained in the closing balance, is subject to approval by Joint Ministers.

The account enables Crown Law to take a long-run perspective to fee setting and cost recovery.

The opening balance differs from the closing balance by \$13,000. The approval for retention of the 2009/10 surplus was \$959,000 but the actual net surplus was \$946,000.

### Note 21: Events after balance date

There have been no events after balance date.

# NON-DEPARTMENTAL STATEMENTS AND SCHEDULES for the year ended 30 June 2010

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A non-departmental appropriation was set up by Crown Law to make a one-off ex gratia payment to Mr and Mrs Berryman on behalf of the Crown.

## STATEMENT OF NON-DEPARTMENTAL EXPENDITURE AGAINST APPROPRIATIONS for the year ended 30 June 2010

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This appropriation was set up by Crown Law to make a one-off ex gratia payment to Mr and Mrs Berryman on behalf of the Crown.

2009 Actual  \$000		2010 Actual  \$000	2010 Main Estimates \$000	2010 Supp Estimates \$000	2010 Total  \$000
-	<b>Vote Attorney-General Appropriation for non- departmental output expenses</b>				
	Ex gratia payment to Berrymans	150	-	150	150
-	<b>Total non-departmental expenditure</b>	150	-	150	150

## SCHEDULE OF NON-DEPARTMENTAL EXPENSES for the year ended 30 June 2010

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2009 Actual  \$000		2010 Actual  \$000	2010 Main estimates \$000	2010 Total  \$000
-	Ex gratia payment to Berrymans	150	-	150
-	<b>Total non-departmental expenditure</b>	150	-	150

The accompanying notes form part of these financial statements.

For a full understanding of the Crown's financial position and the results of its operations for the year, refer to the consolidated Financial Statements of the Government for the year ended 30 June 2010.

# DIRECTORY

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## Auditor

Audit New Zealand (on behalf of the Controller and Auditor-General)  
Wellington

## Bankers

Westpac Banking Corporation  
Government Branch  
Wellington

FURTHER INFORMATION about CROWN LAW can be found  
by visiting our website at [www.crownlaw.govt.nz](http://www.crownlaw.govt.nz) or by contacting our  
Human Resources Team by e-mail at [hr@crownlaw.govt.nz](mailto:hr@crownlaw.govt.nz)

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