

# ANNUAL REPORT

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CROWN LAW  
For the Year Ended 30 June 2012

*Presented to the House of Representatives  
Pursuant to s 41(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 2012.

This past financial year has been challenging and yet Crown Law has continued to respond on behalf of the Crown to a demanding and diverse range of litigation and advice work.

Crown Law has been the subject of three recent external reviews, all of which have made constructive recommendations for how we can improve what we do. Many have already been implemented and others will be an important focus in 2012/13.

As a result of our changing operating environment and in response to the reviews, Crown Law has renewed its strategic focus and identified six strategic priorities, which are:

- Confirm our role
- Enhance client and stakeholder relationships
- Support justice sector leadership
- Develop our strategic focus
- Be efficient and sustainable
- Fully engage staff.

There is a series of initiatives under each of these strategic focus areas to drive change throughout the organisation. In addition, we have put in place a new Performance Framework. This framework is intended to show, in one place, what Crown Law is seeking to achieve through the services we provide and, most importantly, how we measure our performance and our contribution to the outcomes the Government requires.

Three significant projects were initiated before I commenced this role. The three projects are the *Structural and Operational Project*, the *Legal Issues Project* and the *Crown Solicitors Funding Project* and they are all well underway.

The *Structural and Operational Project* is focused on implementing structural and operating changes to the corporate area and identifying accommodation options that support the plan to manage Crown

Law's cost pressures over the next four years. The *Legal Issues Project* is defining Crown Law's core work and supporting legal processes to address the related recommendations in the three reviews. The *Crown Solicitors Funding Project* is improving Crown Law's management of Crown prosecutions and developing long-term funding options to ensure costs remain within baseline.

These projects have already led to significant change to the structure of the corporate area and the establishment of a dedicated Public Prosecutions Unit to ensure prosecutions are delivered in the most cost-effective way while still maintaining the current high-quality service. All three projects will continue in 2012/13, with the priorities being confirmation of the legal work the office will focus on, introducing a modern working environment that also reduces our accommodation costs and agreeing to a sustainable long-term funding model for Crown Solicitor services.

A fourth project is just commencing, which flows from the others, which involves the reorganisation of our legal resource to best deliver the Crown Law impacts we have committed to.

I acknowledge the contribution of the former Solicitor-General, Dr David Collins QC, who was appointed to the High Court in February this year. Also the work of Cheryl Gwyn and Cameron Mander as Acting Solicitor-General during the appointment process has been invaluable.

I am grateful to the management group and all staff for their professionalism, commitment and continued efforts throughout the year. The change to date would not have been possible without that, and without the continued support and commitment from the Attorney-General.



Michael Heron  
Solicitor-General & Chief Executive

30 September 2012

# WHO WE ARE

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Crown Law’s purpose is:

**“To provide authoritative legal representation and advice to Government to enable it to achieve its objectives, act lawfully and discharge its constitutional duties, including supervision and conduct of Crown prosecutions and appeals, while being financially sustainable.”**

Aligned with this purpose, Crown Law has two broad functions:

- to support the principal Law Officers, the Attorney-General and the Solicitor-General, to undertake their constitutional duties, including responsibility for the prosecution of indictable crime; and
- to provide legal advice to and legal representation for the Crown.

Crown Law seeks to achieve the following impacts through the services it provides:

- offenders are held to account through high-quality Crown prosecutions and appeals, delivered in the public interest and cost effectively;
- a trusted justice system supported through the performance of the Principal Law Officers’ constitutional and other duties; and
- the Crown’s legal risks are well managed and its interests are protected, including its commercial and revenue interests.

## Supporting the Principal Law Officers

Crown Law supports 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. Some specific responsibilities include the supervision of charitable trusts, representation of the public interest, vexatious litigant proceedings, consideration of Bills for Bill of Rights Act 1990 consistency (vetting), extraditions, conduct of criminal appeals and the supervision and conduct of Crown Prosecutions.

The Crown is subject to the rule of law and has an obligation to ascertain what the law is and to comply with and enforce it. Crown Law supports the dual roles of the Attorney-General, who is both a Minister within Government and the senior Law Officer. Crown Law assists the Attorney-General

to act as an independent legal advisor to the Crown free from political influence. This independence is critical in maintaining the integrity of the rule of law and is instrumental in minimising the risk of the Government acting unlawfully.

Crown Solicitors are appointed under warrant of the Governor-General and undertake work for the Solicitor-General who has responsibility for prosecuting indictable crime. Crown Law administers the Crown Solicitor network including managing the funding, guiding and sharing of prosecution practice and knowledge, and reviewing practices to ensure high-quality, value for money services are provided. Crown Law conducts all criminal appeals heard by the Court of Appeal and the Supreme Court and oversees the prosecution work of the Serious Fraud Office.

## Legal advice and representation

Crown Law provides legal advice and representation to the Crown, government departments and government agencies in accordance with the Cabinet Directions for the Conduct of Crown Legal Business 1993.<sup>1</sup> The Cabinet Directions provide for two categories of legal work:

- **Category 1:** Must be referred to the Solicitor-General; and
- **Category 2:** Departments and Government agencies may choose other legal advisors to assist them to resolve Category 2 matters.

Category 1 work includes:

- representation or advice in relation to actual or imminent litigation to which the government or agency is or may become a party;
- legal services involving questions of the lawfulness of the exercise of government power;
- constitutional questions including Treaty of Waitangi issues;
- issues relating to the enforcement of the criminal law; and
- legal issues relating to the protection of the revenue.

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<sup>1</sup> “Cabinet Directions for the Conduct of Crown Legal Business 1993”, Appendix C, Cabinet Office Manual, 2008.

The Dean/Cochrane Review<sup>2</sup> has suggested some changes to the drafting of the Cabinet Directions, but not their substance. This is being progressed by Crown Law through the *Legal Issues Project* currently underway.

When providing legal services in either Category 1 or Category 2, Crown Law charges clients for the services. The Cabinet Directions provide guidelines on who is responsible for paying for services when more than one department is involved or when the Attorney-General or Solicitor-General has directed the service be provided because of whole-of-government and/or public interest factors.

When providing advice and representation, Crown Law takes a whole-of-government view and acts in the public interest while aiming to act as a model litigant.

Crown Law has no specific responsibility for policy formation or for the development of legislation. However, when requested, Crown Law provides legal input and advice on policy issues, including advice on the operational impacts of policy or legislative change on Crown Law.

### Appropriations<sup>3</sup>

Crown Law administered four appropriations in 2011/12:

- Conducting appeals arising from criminal trials on indictment, and from Crown appeals (**\$3.575 million**).
- Providing legal advice and representation services to central government departments and Crown agencies (**\$22.900 million**).
- The provision of a national Crown prosecution service that undertakes criminal trials on indictment and appeals to the High Court; the supervision of the network of Crown Solicitors who deliver the prosecution service; and the provision of advice on criminal law matters to other government agencies and Crown Solicitors (**\$48.196 million**).
- Providing legal advice, representation services and administrative services to the Attorney-General and Solicitor-General to assist them in the exercise of their Principal Law Officer functions and the provision of legal and constitutional advice to the Government, Ministers and the judiciary (**\$2.692 million**).

<sup>2</sup> “A Review of the Role and Functions of the Solicitor-General and the Crown Law Office” (2012) Miriam Dean CNZM QC, David Cochrane.

<sup>3</sup> These figures for each appropriation were included in Budget 2011. See page 50 for changes during the year.

## WE ARE PART OF THE JUSTICE SECTOR

The justice sector is comprised of Crown Law, the New Zealand Police, the Ministry of Justice (including courts), the Department of Corrections, the Serious Fraud Office and the Ministry of Social Development (youth justice). Collectively the justice sector aims to provide accessible justice and encourage a safe and just society where people enjoy civil and democratic rights.

As part of the Better Public Services Programme, the justice sector is required to report through the Result Action Plan process on two result areas agreed by Cabinet. The two result areas are to reduce crime (total crime, violent crime and youth crime) and reoffending. Crown Law supports progress in these two result areas through Crown prosecutions and appeals work.

For the justice system to work well it needs to be accessible, modern, effective and sustainable. The key goal of the justice sector is to reduce flow into the criminal justice pipeline – prevent crime, reduce its impact on people and to enhance public safety. To achieve this, the justice sector is focused on results,

the users of the system, quality of services and minimising its costs.

Justice sector Ministers recognise that achieving the best outcomes for people participating in justice sector processes requires all relevant agencies to be working towards the same goals. An outcomes framework is in place (below) to drive an enduring focus for work across the justice sector. Agencies have identified contributing outcomes at various points in the system, and work is underway to ensure these contributing outcomes are consistent across the system. Once complete, these outcomes will be included in justice sector agencies' Statements of Intent from 2014.

Justice sector agencies will also report annually, and more frequently as required, on their progress to achieve the justice sector's priorities through the over-arching justice sector performance report. This report will include information on the effectiveness, efficiency and productivity, quality of service and organisational performance of the core justice sector agencies.

### A safe and just society

#### Justice Sector Outcomes

##### Safer communities

##### Civil and democratic rights and obligations enjoyed

#### Justice Sector Agency Outcomes

Impact of crime reduced	Offenders held to account	Crime reduced	Trusted justice system	Accessible justice services	Internationally connected	Durable settlement of Treaty claims	Effective constitutional arrangements
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The outcomes that Crown Law has a direct impact on are coloured green. Those we have an indirect impact on are coloured red and those we have very little or no impact on are coloured blue.



## HOW WE ARE ORGANISED

Crown Law is led by the Solicitor-General, who is also the Chief Executive. Dr David Collins QC left in February 2012 to take up his position as High Court Judge. Cheryl Gwyn (Deputy Solicitor-General, Constitutional) has been Acting Solicitor-General from February until the arrival of Michael Heron on 3 September to take up his role as Solicitor-General.

In response to the three recent external reviews, a new Deputy Chief Executive role was created to provide greater focus on public sector management. The role is responsible for Crown Law's overall strategic and financial management and external stakeholder relationships including leading Crown Law's increased involvement in the justice sector.

Crown Law is organised into three practice groups, comprising seven client service legal teams, a Corporate Services group and a recently established Strategy, Policy and Performance team.

The practice groups are focused on the delivery of specialist legal services to government covering the following core areas:

- 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 effective coordination of work, sharing of resources across teams and service to 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 several 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	Social Services and Employment Tax and Commercial
Criminal Law & Human Rights	Criminal Law and Crown Solicitors Human Rights
Constitutional Law	Law Officer Natural Resources Treaty Issues and International Law

The Practice Manager is responsible for the leadership and management of Corporate Services. Corporate Services consists of Finance, Human Resources, Information Technology, Knowledge Management, Litigation Services, Support Services, including Facilities Management and Central Business Support.

The Strategy, Policy and Performance team is led by the Deputy Chief Executive and is made up of both corporate and legal staff. It provides policy advice, strategy and organisational development advice and strategic financial advice. It has had a particular focus in 2011/12 on improving the financial management and oversight of the Crown Solicitor network.

### Management structure

#### *Management Board:*

Dr David Collins QC – Solicitor-General (left 03/12)

Cheryl Gwyn – Acting Solicitor-General (from 03/12 to 08/12)

Mike Heron – Solicitor-General (from 09/12)

Andrew Hampton – Deputy Chief Executive

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

Dr Matthew Palmer – Deputy Solicitor-General (Public Law Group) (to 7/12)

Virginia Hardy – Acting Deputy Solicitor-General (Constitutional Group) (from 03/12 to 05/12)

Peter Gunn – Acting Deputy Solicitor-General (Constitutional Group) (from 05/12 to 08/12)

Diana Pryde – Practice Manager (to 7/12)



### **Legal Team Leaders:**

Bronwyn Arthur – Natural Resources (to 01/12)  
Peter McCarthy – Natural Resources (from 01/12)  
Maria Deligiannis – Tax and Commercial  
Peter Gunn – Law Officer  
Virginia Hardy – Treaty Issues and International Law  
Madeleine Laracy – Criminal Law  
Una Jagose – Social Services and Employment  
Austin Powell – 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 (moved to Strategy, Policy and Performance Team 11/11)  
Steve O’Hagan – Knowledge Services Manager  
Daphne Rowland – Litigation Services Manager  
Chris Walker – Chief Financial Officer  
Bruce Wall – Human Resources Manager

### **Staff numbers to June 2012<sup>4</sup>**

	30 June 2012	30 June 2011
Acting Solicitor-General, Deputy Solicitors-General, Deputy Chief Executive and Practice Manager	5	5
Counsel (including Legal Advisors)	106	103
Legal Support	19	22
Secretarial and Word Processing	32	32
Corporate Services Group	39	41
Strategy, Policy and Performance	4	N/A
<b>Total number of employees</b>	<b>205</b>	<b>203</b>

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

<sup>4</sup> These numbers represent the headcount as at June 30 2012.

### **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.

# HOW WE ARE IMPROVING OUR EFFICIENCY AND EFFECTIVENESS

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## Three recent reviews

Crown Law was the subject of three external reviews in 2011/12, each of which confirmed the high quality of Crown Law's work but also made important recommendations for improvement to the way we work and the services we provide.

The *Review of Public Prosecution Services*, undertaken by John Spencer and completed in September 2011, found that while the quality of the prosecution services provided by Crown Solicitors was high, Crown Law needed to enhance its financial management and data collection systems. The review also recommended that the Solicitor-General should have a greater role in supervising prosecutions undertaken by other government agencies. One option recommended by the review was the establishment of the Public Prosecution Unit to support overall management of public prosecutions and appeals.

A *Performance Improvement Framework Review* (PIF) of Crown Law was completed by Paula Rebstock and Peter Doolin in October 2011 on behalf of the State Services Commission, the Treasury and the Department of Prime Minister and Cabinet. It made a series of recommendations on how Crown Law could improve its strategic leadership and public sector management capability including the establishment of a Deputy Chief Executive role.

In February 2012 *A Review of the Role and Functions of the Solicitor-General and the Crown Law Office* was completed by Miriam Dean QC and David Cochrane, on behalf of the Attorney-General. This was a comprehensive review which in broad terms confirmed the current role of the Solicitor-General and Crown Law. However, it also made a series of recommendations on how Crown Law can improve how it operates and endorsed the earlier recommendations of the *Review of Public Prosecution Services* and PIF reviews.

## Crown Law's response

Crown Law's Management Board recognises the value of the recommendations made in these reviews and implementation is well underway. The recommendations have had a significant influence on both our new strategic direction and our work programme for 2012/13.

Crown Law is adapting the way it works in response to the reviews and the financial constraints of the current operating environment. We have:

- put in place an action plan in response to the PIF review and have provided an update to central agencies on progress against the plan. This update can be found on the Crown Law website at the following address [www.crownlaw.govt.nz](http://www.crownlaw.govt.nz);
- appointed a Deputy Chief Executive to drive an improved public sector management approach.
- refreshed our purpose, vision and strategic focus areas and related strategies;
- developed a Crown Law Performance Framework to incorporate the new purpose, vision and strategic focus areas. The framework has been incorporated into accountability documents to provide greater clarity of how well we are performing;
- increased our business analysis and policy capability to support better financial management and improved participation in justice sector reforms; and
- following on from the three reviews and because of the unresolved cost pressures that Crown Law is facing, three significant change projects have been established. These projects are overseen by a Steering Committee comprising the Management Board, a Treasury representative and one of the PIF lead reviewers, and are each discussed below.

## Three significant change projects

The *Structural and Operational Project* (SOP) was set up to respond to the structural and operational recommendations made in all three reviews and to the cost pressures facing Crown Law. Following staff consultation, a new corporate and support structure has been agreed by the Management Board and will be implemented by 1 October 2012. The Management Board has also made a commitment to reduce Crown Law's space requirements to support better alignment with the Government's Better Administrative and Support Services targets. The new corporate structure and the proposed accommodation changes together will generate significant cost savings over the next four years.

The *Legal Issues Project* (LIP) was set up to respond to the recommendations of the recent reviews with legal issues implications and to consider whether there are legal issues not identified by the recent reviews that merit consideration at the same time. Consultation on the proposals developed as part of this project has commenced and a paper will be prepared for Cabinet's consideration in November 2012. This is likely to have implications for the

nature of the legal work undertaken by the Office, which may in turn have implications for how our legal resources are organised.

The *Crown Solicitors Funding Project* was set up in response to the *Review of Public Prosecutions* and has a particular focus of addressing issues with Crown Solicitor Network costs and administration. This project has developed an interim funding model to ensure that Crown Solicitor services can

be delivered within a reduced level of funding in 2012/13. A “billing cap” has been set for each Crown Solicitor based on their previous level of billing and relative efficiency, effective from 1 July. Also from 1 July, the project is collecting better case and cost data to inform the development of a sustainable long-term Crown Solicitors funding model. The project is due to report to Cabinet on the long-term funding model in February 2013.

## OUR PERFORMANCE FRAMEWORK

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During 2011/12 Crown Law developed and implemented a new Performance Framework, set out on the following two pages. The Performance Framework is intended to describe in one place Crown Law’s strategic direction, what it is seeking to achieve, how this relates to the outcomes the Government requires and how Crown Law will measure its performance.

At the centre of the new Performance Framework are the following three impacts, which are the benefits Crown Law’s services create for the community:

- Offenders are held to account through high-quality Crown prosecutions and appeals, delivered in the public interest and cost effectively.
- A trusted justice system supported through the performance of the principal Law Officers’ constitutional and other duties.
- The Crown’s legal risks are well managed and its interests are protected, including its commercial and revenue interests.

These impacts are driven by the Government’s priorities and contribute to the outcomes of the justice sector and other sectors of government. They also replace the following objectives and impacts that were included in the Statement of Intent for the year ended 30 June 2012:

### **Objectives**

- The Government is supported to fulfil its democratic duties under law and in the public interest.
- The Principal Law Officers are enabled to perform their constitutional duties.

### **Impacts**

- The Crown’s responsibilities are lawfully carried out.
- The Crown’s interests are protected.

- The Crown’s risks arising from the operation of government departments and legal policy development are well managed.
- Leadership of high-quality, effective government legal services is provided.

This Annual Report assesses Crown Law’s performance towards achieving the impacts in the new Performance Framework, not the objectives and impacts from the 2011/12 Statement of Intent. While both sets cover similar areas, the new impacts are more targeted and measurable, and align more directly to the services Crown Law provides.

As well as the impacts Crown Law is seeking to achieve, the Performance Framework includes:

- our purpose and vision, which have been revised and incorporated into accountability documents;
- environmental factors: the environment in which we work;
- ministerial priorities: what the Government wants Crown Law to focus on;
- our strategic focus: in response to the environmental factors and government priorities as well as the three reviews, this provides direction for what we need to do now to achieve our impacts into the future;
- outputs: the services we are funded to deliver to the Attorney-General and Solicitor-General, government departments and agencies;
- justice sector outcomes and other government sectors’ outcomes: the benefits created by the justice sector and other agencies for the community that are supported by Crown Law;
- the overall government outcome for the justice sector: A safe and just society; and
- performance measures for all areas of the Performance Framework have been identified and incorporated into the accountability documents for 2012/13. Work continues on the development of organisational cost-effectiveness measures.

# CROWN LAW PERFORMANCE FRAMEWORK

## Environmental Factors

- Fiscal constraints
- Expectation of better smarter public services
- Shift from individual department to a sector focus with a lead agency
- Changes in the risk profile of government activities
- Increased costs in the Justice system
- Changes in volumes entering the court system
- Impact of major disasters - earthquakes, Pike River, Rena

**CROWN LAW PURPOSE**  
Provide authoritative legal representation and advice to Government to enable it to achieve its objectives, act lawfully and discharge its constitutional duties, including supervision and conduct of Crown prosecutions and appeals, while being financially sustainable

**CROWN LAW VISION**  
To be the Government's trusted provider of legal representation and advice

**Ministerial Priorities**

- A justice system that is sustainable at current funding levels
- Act on recommendations of recent reviews to ensure Crown Law is as effective as it can be
- Oversight of public prosecutions including ensuring Crown Solicitor services are financially sustainable and quality is maintained
- Develop the Government Legal Service to contribute to better management of Crown legal risk
- Working with the Minister of Justice to improve the courts
- Progress the settlement of historical Treaty of Waitangi claims by 2014
- Recognise and advance human rights and international obligations
- Build a more competitive and productive economy

**Crown Law Strategic Focus**

- Confirm our role**  
Develop and communicate a shared understanding of our role, including our whole of government responsibilities
- Enhance client and stakeholder relationships**  
Develop a greater understanding of client and stakeholder needs and keep abreast with the changing landscape
- Support Justice Sector leadership**  
Participate fully in leadership of the overall Justice Sector
- Develop our strategic leadership focus**  
Increase the focus of the Solicitor-General and Management Board on organisational strategy and governance
- Be efficient and sustainable**  
Be able to demonstrate we provide value for money services and stay within appropriation
- Fully engage staff**  
A stronger collective leadership focus to support staff engagement with our strategic direction

Performance measures

**Crown Law Outputs**

**FUNDED BY THE CROWN**  
**Supervision and Conduct of Crown Prosecutions and Appeals (Multiclass Appropriation)**

- Conduct of Criminal Appeals  
Conducting appeals in the High Court, the Court of Appeal and the Supreme Court arising from criminal trials on indictment including Crown appeals
- Conduct of Crown Prosecutions  
Provision of a national Crown prosecution service that undertakes criminal trials on indictment
- Supervision of the Crown Solicitor Network  
Supervision of the network of Crown Solicitors who deliver prosecution services
- Criminal Law Advice and Services  
Provision of advice on criminal law, mutual assistance and extradition matters to other government agencies and to Crown Solicitors

**The Exercise of Principal Law Officer Functions**  
Providing legal advice, representation services and administrative services to the Attorney-General and Solicitor-General to assist them in the exercise of their Principal Law Officer functions and the provision of legal and constitutional advice to the Government, Ministers, and the judiciary

**FUNDED BY DEPARTMENTS**  
**Legal Advice & Representation**  
Providing legal advice and representation services to central government departments and Crown agencies

Service performance measures

**Crown Law Impacts**

Offenders are held to account through high quality Crown prosecutions and appeals, delivered in the public interest and cost effectively

Trusted justice system supported through the performance of the principal Law Officers' constitutional and other duties

The Crown's legal risks are well managed and its interests are protected, including its commercial and revenue interests

Impact measures

**Justice Sector Outcomes**

**Safer Communities**

- Impact of crime reduced
- Offenders held to account
- Crime reduced
- Justice system is trusted

**New Zealand's civil and democratic rights maintained**

- Justice services are accessible
- The justice system is internationally connected
- Durable settlement to Treaty claims
- Constitutional arrangements are effective

**Other Government Sectors' Outcomes**

**Crown Law supports agencies in these sectors to achieve their outcomes:**

- Environment
- Education & Science
- External
- Economic Development & Infrastructure
- Finance & Government Administration
- Health
- Justice
- Maori, Other Populations & Cultural
- Primary
- Social Development & Housing

Sector performance indicators

Cost-effectiveness measures

Safe and just society



## OUR PERFORMANCE IN 2011/12

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Crown Law provides services on behalf of government in order to achieve particular impacts, or benefits for the community. Crown Law's performance can therefore be assessed based on how the services it provides contribute to the impacts it is seeking to achieve. Crown Law's contribution to the three impacts identified in our Performance Framework is discussed below.

### **Offenders are held to account through high-quality Crown prosecutions and appeals, delivered in the public interest and cost effectively**

#### ***Supervision and Conduct of Crown Prosecutions***

Ensuring high-quality Crown prosecution services are delivered in the public interest and cost effectively has been a priority area for Crown Law throughout 2011/12. The *Crown Solicitors Funding Project*, discussed earlier in this report, was established specifically to identify sustainable funding options for 2012/13 and outyears. Significant progress has been made with a clear plan in place for the short term. Funding caps for Crown Solicitors were put in place on 1 July 2012. Work will continue over the next year to develop a long-term funding plan.

In terms of caseload, there has been a continuation of the downward trend in the number of District Court and High Court indictable trials (1,631 in 2012 compared with 1,804 in 2011), and in particular in high-cost trials. However, the number of bail applications has appeared to increase significantly from 2,589 in 2011 to 3,047 in 2012.

In 2011/12 the Crown Solicitor Network contributed to the disposal of 5,004 cases (excluding cases which were "disposed" by being joined to another case) at an average cost per case of \$8,487.77. This compares to 5,420 disposals in 2010/11 at an average cost per case of \$7,927.31. There also continued to be significant variation in average case cost among the different warrant holders. Understanding the reasons for the increase in average case costs and for the variation between warrant holders is a key focus of the Crown Solicitor Funding Project now underway.

Crown Law ensures high-quality prosecution services are provided through regular independent

reviews of the individual Crown Solicitors. No reviews were undertaken in 2011/12 because of the focus on the *Review of Public Prosecution Services* and the *Crown Solicitors Funding Project*. However, these reviews have been resumed in 2012/13 with the first of three for the year already undertaken.

Added pressure has been put on the Supervision and Conduct of Crown Prosecutions appropriation by the increase in mutual assistance and extradition matters, which can often extend over several years and may be very resource intensive. The establishment for 2012/13 of a multi-class appropriation which includes a separate output class for Law Officer requests on criminal matters will support improved monitoring of the cost of extraditions and mutual assistance matters.

In July 2012, Cabinet approved the response to the *Review of Public Prosecution Services*. That response accepted the recommendation that the Solicitor-General, supported by Crown Law, should exercise greater oversight of the public prosecution system. This oversight will be provided by the new Public Prosecution Unit (PPU), to be incorporated in the existing Criminal Law team and comprising additional financial management and administration resource. Establishment of the PPU will take place in the first quarter of the 2012/13 year.

#### ***Supervision and Conduct of Crown Appeals***

During 2011/12 the focus regarding criminal appeals has been on the maintenance of the high-quality and effective service provided to the Court of Appeal, while ensuring costs were effectively managed. The quality and effectiveness of criminal appeals undertaken by Crown Law was acknowledged as high in both the *Performance Improvement Framework Review* and the *Review of Public Prosecution Services*.

The number of new Crown appeals has remained consistent over the last five years at between 24 and 29 appeals with the exception of 2010 when there were 47 Crown appeals. The number of accused appeals, however, has increased steadily over the last five years from 353 in 2007/08 to 508 in 2011/12.

A decrease in the number of accused appeals is expected from 1 July 2013 with the implementation of the Criminal Procedures Act 2011.

Crown Law has set a success rate target of 60% for Crown appeals conducted by Crown Law. This target is intended to set an appropriate tension between the taking of an appeal because the decision is considered to be wrong and the need to take an appeal to clarify a point of law in the public interest. The actual success rate for Crown Appeals was 74% in 2011/12.

To ensure costs remain within appropriation, approval was granted by the Minister of Finance to transfer money from the Exercise of Principal Law Officer Functions appropriation to the Conduct of Criminal Appeals appropriation. For 2012/13, the Criminal Appeals appropriation has been combined into a new multi-class appropriation to provide more flexibility to manage fluctuations in appeal numbers.

It has also been agreed with the President of the Court of Appeal that there would be more consultation regarding court scheduling and more use of videolinks where appropriate to save on counsel time and travel expenses.

Crown Law has provided leadership to Crown Solicitors and other prosecuting agencies by keeping them informed of significant legal impacts of judgments received in the appeals area. *Fenemor v R*, *Down v R* and *KSB v ACC* are particular examples of high precedent value in criminal cases. By clarifying and developing the law, these serve the public interest.

For further information on significant criminal cases undertaken or overseen by Crown Law that contributed to offenders being held to account please refer to pages 17 to 18.

### **Trusted justice system supported through the performance of the Principal Law Officers' constitutional and other duties**

A trusted justice system, where the rule of law is upheld and rights are protected, is crucial to the proper functioning of our democracy. This includes ensuring that office holders who undertake statutory and constitutional functions are able to act independently and free from political influence. By supporting the Law Officers – the Attorney-General and Solicitor-General – to perform their statutory and constitutional functions, Crown Law makes a vital contribution to New Zealand having a trusted justice system. The Dean/Cochrane review reaffirmed Crown Law's unique role in maintaining the impartiality of the dual role of the Solicitor-General.

In 2011/12, Crown Law provided legal advice and other assistance to the Law Officers in the following areas:

- ensuring that government is conducted according to the law;
- the relationship of the executive government with the judiciary;
- the appointment of members of the higher judiciary;
- protecting the judiciary from improper and unfair public criticism;
- the Government's role in the administration of criminal justice, including responsibility for prosecution of serious crime, the power to terminate prosecution and the power to give any witness at a trial immunity from prosecution;
- acting on behalf of the Government in civil litigation;
- informing the House whether any provision in a Bill introduced to the House is inconsistent with the Bill of Rights Act 1990;
- ensuring the criminal law is enforced in a just and fair manner. The Law Officers have ultimate control of all prosecutions undertaken by the Crown. The Crown Solicitor network acts on behalf of the Solicitor-General to undertake this work;
- Crown representation in criminal appeals including appeals against sentence after conviction on indictment;
- giving consent to:
  - appeal against sentence and on questions of law arising out of summary proceedings;
  - stay of prosecutions; and
  - prosecutions in certain instances defined in the relevant statute; and
- bringing proceedings on behalf of the community to enforce the law.

The constitutional duties of the Solicitor-General also require lawyers from Crown Law to maintain composure in Court and to provide support for efficient and effective court processes where appropriate. This supports public trust in the justice system.

Significant legal issues in 2011/12 that demonstrate the support Crown Law has provided to the Attorney-General in performing his constitutional and statutory functions are outlined on pages 18 to 20.

With the election in November 2011, work on law officer matters was expected to increase. However, workload remained at the same level as non-election years. This allowed for funding in this appropriation to be moved, with the approval of the Treasury, to

the Conduct of Criminal Appeals Appropriation which was facing significant cost pressures.

International surveys and indicators that assess the robustness of governmental institutions and perceptions of corruption provide a basis for comparing the level of trust in New Zealand's justice system compared to other countries. In 2011/12, New Zealand achieved the following ratings:

- In the World Justice Project Rule of Law Index Survey for 2011, New Zealand was ranked first in 6 of the 8 factors measured, out of the 13 countries in the East Asia and Pacific Region. This is the first year New Zealand's results have been reported in the survey.
- In the 2011 Corruption Perception Index Survey, New Zealand received the rating of 9.5 out of 10 and ranked first in the world out of 182 countries compared to 9.3 in 2010 and first equal with Denmark and Singapore.
- In the World Bank Institute Worldwide Governance Report, New Zealand's average percentile ranking for the Rule of Law indicator was 98.35 over four years from 2008-2011, compared to 97.88 for 2007-2010. The average percentile ranking for the Control of Corruption indicator was 99.75 compared to 99.5 for the previous four year period.

A range of factors has contributed to these very positive results for New Zealand, of which Crown Law's support to the Law Officers is an important one. If the Law Officers were not supported in a way that enabled them to act independently, the rule of law in New Zealand and the robustness of our institutions would not be so well regarded internationally.

### **The Crown's legal risks are well managed and its interests are protected, including its commercial and revenue interests**

The work undertaken by Crown Law in supporting the Law Officers and providing legal advice and representation ensures the Crown's legal risks are well managed and its interests protected.

As chief legal advisors to the Government and chief advocate for the Government in the courts, the Attorney-General and Solicitor-General, with Crown Law's support, ensure that the Government is not unduly prevented through legal process from lawfully implementing its chosen policies and discharging its governmental responsibilities. While supporting the Government, Crown Law is required to act in the public interest, not simply promote the

interests of the Crown or individual agencies it is acting for. There are times when the Law Officers do intervene in a matter or bring proceedings in the public interest to enforce the law.

One of Crown Law's strengths identified in the Performance Improvement Framework Report was "the whole-of-government approach it brings to its work, in particular Category One. This is important in managing legal risk and providing value-for-money solutions to the Crown rather than ad hoc responses". The whole-of-government approach taken by Crown Law throughout 2011/12 has provided assurance to the Attorney-General and Solicitor-General that the Crown's legal risk is being identified early and well managed.

In 2011/12, Crown Law supported the Crown in many unique and varied legal matters in areas such as taxation, financial markets, judicial reviews, defective buildings, historical claims from former psychiatric patients, employment, Treaty of Waitangi and natural resources. In addition, 2011/12 saw Crown Law playing a crucial all-of-government role in the Royal Commission for the Pike Mining Disaster, the *MV Rena* maritime disaster and ongoing work regarding Christchurch earthquake recovery. Further detail on significant legal issues where Crown Law effectively managed legal risk to the Crown is provided in pages 20 to 23.

Overall, the number of new advice matters in 2011/12 was 548,<sup>5</sup> which is lower than 2010/11. The trend over the last five years is for the number of advice matters to fluctuate between 548 in 2011/12 and a high of 992 in 2008/09. The trend in the number of litigation matters over the last five years, however, has seen a drop each year from 654 in 2008/09 to 504 in 2011/12. It is likely that the tight fiscal environment for government departments has led to a more conservative approach to litigation.

Crown Law effectively managing the Crown's legal risks also contributes to New Zealand's positive ratings in the international surveys and indicators referred to above. If the Crown's legal risks were not being effectively managed the Government would be inhibited from lawfully implementing its chosen policies and discharging its responsibilities. This could increase the risk of the Government acting in a way that was inconsistent with the law, which in turn would reflect negatively on New Zealand's democratic system.

<sup>5</sup> Includes instructions for legal advice from central government departments and agencies, legal advice in relation to criminal law issues and advice for action on behalf of the Attorney-General and Solicitor-General.



## SIGNIFICANT LEGAL MATTERS

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Over the last 12 months each of the three practice groups in the office has undertaken a wide variety of complex, high-profile and often urgent legal work for the Law Officers, government departments and agencies. The following are some examples that illustrate the work Crown Law does and the contribution this work has made to holding offenders to account, supporting a trusted justice system and managing the Crown's legal risk. It should be noted that many of the cases discussed below contribute to more than one impact; for example, both supporting a trusted justice system and managing Crown legal risk.

### **Offenders are held to account through high-quality Crown prosecutions and appeals, delivered in the public interest and cost effectively**

Significant criminal cases in which Crown Law represented the Crown during the period covered by the report include the following:

#### ***Hamed v R, Supreme Court***

This was an appeal against a decision of the Court of Appeal brought by the persons accused of organised criminal conduct and firearms offences following the "Operation 8" police inquiry into apparent quasi-military training in the Ureweras. The issue was whether the extensive covert surveillance footage obtained by the police on Tuhoe-owned land was lawfully obtained, and if not, whether it was admissible evidence at trial. The Court was required to consider the authority of Police to deploy motion activated video surveillance cameras in connection with the execution of search warrants.

In a series of cases since 1997, the Court of Appeal had admitted evidence obtained by video camera surveillance. In this case the Court of Appeal concluded that the Police were not acting outside the law and there was nothing wrong with the use of video camera surveillance as a means of gathering evidence.

The Supreme Court reversed that decision and ruled that the use of covert static video camera surveillance was unlawful. The immediate response to the significant implications of the decision for law enforcement agencies was the enactment of the Video Camera Surveillance (Temporary Measures) Act 2011. The Supreme Court judgment also

contains extensive discussion of the principles governing police search powers (including the New Zealand Bill of Rights Act 1990) and the application of s 30 of the Evidence Act 2006.

#### ***Fenemor v R, Supreme Court***

The issue in this case was whether relevant propensity evidence may be led by the Crown in spite of the evidence having previously been led at a trial which resulted in an acquittal.

The Court of Appeal had followed its approach in the pre-Evidence Act 2006 case of *R v Degnan* [2001] 1 NZLR 280 in ruling that prior acquittal evidence was admissible, subject to the trial Judge's discretion to exclude it if its admission would be unfair to the accused in the particular circumstances of the case.

The Supreme Court rejected the appellant's contention that, despite the decision in *Degnan*, an exclusionary rule should be established rendering prior acquittal evidence inadmissible. In dismissing the appeal, the Court held that when enacting the Evidence Act, Parliament was content with the approach in *Degnan* and there was no reason to revisit that approach.

#### ***Down v R, Supreme Court***

This Supreme Court decision concerned the prosecution of infringement offences under the Resource Management Act 1990 and whether leave was required under the Summary Proceedings Act 1957 to prosecute these offences. This case affected hundreds of prosecutions nationally, including some indictable prosecutions brought by the Crown. The Court held leave was not required and the appeal was dismissed.

#### ***KSB v Accident Compensation Corporation, Court of Appeal***

A permanent bench of the Court of Appeal considered the law of consent in this case, which concerned the availability of cover under the accident compensation regime for mental injury caused by certain criminal acts. Cover turned on whether the claimant's mental injury (suffered after discovering her sexual partner was HIV-positive) was caused by an act "within the description of" the offence of sexual violation.

The Court held that non-disclosure of HIV-positive status does vitiate consent, because unprotected sexual intercourse with a person who has not disclosed his or her HIV status changes the nature and quality of the act because of the associated risk of serious harm. In the alternative, the Court held that non-disclosure of HIV-positive status would qualify as a particular circumstance (under s 128A(8) of the Crimes Act 1961) whereby the person has not consented, despite allowing sexual activity to occur (and not being mistaken as to its nature and quality). The Court saw this approach as “consistent with the focus on the need for consent to be informed”.

#### ***A (A firm of Solicitors) v The District Court at Auckland, Court of Appeal***

The Court of Appeal here upheld the decision of the High Court dismissing an application for judicial review brought by a firm of solicitors. The firm was challenging the validity of a search warrant executed at its premises, following a request from the UK Serious Fraud Office under the Mutual Assistance in Criminal Matters Act 1992. The Court emphasised that judicial review is not the appropriate forum in which to adjudicate upon the strength of a possible criminal case. The Court held it was significant that the Attorney-General had authorised the application for the search warrant, as this provided a valuable screening or checking process. The Court was satisfied that legal professional privilege was sufficiently protected by the terms of the warrant; and the warrant was sufficiently specific in terms of identifying what material fell within its parameters.

#### ***R v E & M, Court of Appeal***

Crown Law’s role in supervising Crown prosecutions was demonstrated by *R v E & M*, where the Solicitor-General was granted leave to bring two test appeals in relation to the jurisdiction to pre-record evidence prior to trial. The decision of the Court of Appeal resulted in Cabinet approval for proposed legislative amendments enabling pre-recording to occur in future prosecutions. As with criminal appeals, by clarifying and developing the law these cases serve the public interest.

#### **Trusted justice system supported through the performance of the Principal Law Officers’ constitutional and other duties**

Significant cases in which Crown Law appeared, to support the Principal Law Officers’ constitutional and other duties, in 2011/12 include the following:

#### **Public Law**

##### ***Criminal Bar Association of New Zealand v Attorney-General, High Court***

In March 2012, as part of significant reforms to the legal aid system, the Government introduced a fixed fees regime for the provision of criminal legal aid. Prior to the regime’s commencement, the Criminal Bar Association applied for judicial review and interim relief to prevent the regime coming into force. The High Court refused interim relief.

The substantial judicial review was heard over three days in May 2012. The plaintiff’s grounds for review included that Cabinet directed the Secretary for Justice to reduce the average price per legal aid grant by 10%; that the regime was inconsistent with the Secretary’s obligation to provide high-quality legal services; and that the Ministry’s consultation process was flawed. A decision is awaited.

##### ***Attorney-General v Leigh, Supreme Court***

A contracted employee in the Ministry for the Environment claimed the Ministry defamed her in a report it had prepared to enable the Minister to answer a question in Parliament.

Counsel for the Ministry argued the proceeding tended to impeach what was said in Parliament and Article 9 of the Bill of Rights. The High Court and Court of Appeal barred that part of the proceeding going forward, but not the Ministry report prepared for the purposes of responding to the parliamentary question.

The matter was appealed to the Supreme Court and Crown Counsel acting on behalf of the Speaker sought and were granted leave to make submissions on his behalf.

The Supreme Court upheld the Court of Appeal’s decision, finding that it was not necessary for the proper functioning of the House for a public servant to enjoy absolute privilege when communicating information to a Minister to enable the Minister to respond to questions in Parliament.

The Supreme Court concluded that officials briefing Ministers were protected by the defence of qualified privilege, which applies unless officials were predominantly motivated by ill will or otherwise took improper advantage of the occasion of publication.

The Supreme Court rejected the argument that the lack of absolute privilege may have a chilling effect on what public servants choose to communicate to Ministers. The Court considered it would not be conducive to the proper and efficient functioning of the House to give those communicating with a Minister a licence to speak with impunity when predominantly motivated by ill will nor a licence to take improper advantage of the occasion by using it for an improper purpose.

The case is the first time the Supreme Court has been asked to consider such matters, and is an important statement of the Court's views on the parameters of the constitutional relationship between Parliament and the courts. The submissions and appearance made by Crown Counsel on behalf of the Speaker are also a notable example of counsel acting in support of the Principal Law Officers' constitutional and other duties.

### ***Human Rights***

#### ***Child Poverty Action Group v Attorney-General, High Court***

The High Court dismissed an appeal from the decision of the Human Rights Review Tribunal finding that the eligibility criterion for receiving the in-work tax credit was a justified limit on the right to freedom from discrimination on the basis of employment status affirmed in s 19 of the New Zealand Bill of Rights Act 1990. Child Poverty Action Group is pursuing an appeal to the Court of Appeal.

#### ***Forrest v Attorney-General, Court of Appeal***

The Court of Appeal upheld this appeal, finding that the strip search of Mr Forrest in Christchurch Prison after he was forcibly moved to the high security unit was unlawful and breached s 21 of the New Zealand Bill of Rights Act 1990. The Court found "departmental officers were mistaken in their appreciation as to when strip searches were permitted" and also noted evidence suggesting unlawful strip search practices existed. A declaration was made and \$600 compensation awarded, which will be subject to the Prisoner's and Victim's Claims Act 2005.

#### ***Ministry of Health v Atkinson and others, Court of Appeal***

In February 2012 the Court of Appeal heard the Crown appeal in *Ministry of Health v Atkinson*. *Atkinson* concerned a challenge to a Ministry of Health policy under which the Ministry would not fund the employment of parents, spouses and

resident family members to provide disability support services on the grounds the prohibition constituted discrimination on grounds of family status. It was the first time the Court had heard an appeal of a case involving recourse to s 5 of the New Zealand Bill of Rights Act 1990 where substantial amounts of justificatory evidence had been adduced. The Court was required to decide what constitutes discrimination for the purposes of s 19 of the Bill of Rights Act 1990 and whether, in applying the s 5 test, the High Court had applied the right standard of proof. The Court delivered its decision in May, declining the Crown appeal.

#### ***Attorney General v Leason, Land and Murnane, High Court***

In an act of protest on 30 April 2008 the three defendants damaged one of the two inflated domes that protected the antennae at the Waihopai installation run by the Government Communication Security Bureau in Marlborough. The dome was damaged beyond repair and had to be replaced at a cost of approximately \$1 million. The Attorney-General sued the three defendants in the High Court for trespass to goods, seeking summary judgment as to liability only. The defendants opposed the application suggesting that they had arguable defences including a defence of necessity, and that the Crown was barred from suing because information obtained from the Waihopai base was being made available to countries involved in the Iraq war, which the plaintiffs alleged was illegal. The High Court rejected all of the proposed defences and granted summary judgment as to liability. The defendants have appealed to the Court of Appeal.

#### ***Attorney-General v Chapman, Supreme Court***

Mr Chapman sought \$450,000 from the Attorney-General for breaches of his rights to an effective appeal and natural justice (ss 25(h) and 27 of the New Zealand Bill of Rights Act 1990) committed by Judges of the Court of Appeal and a Deputy Registrar, 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*. The Supreme Court, in its judgment of 16 September 2011, upheld the Attorney-General's appeal, confining the Crown's liability to pay damages for breaches of the Bill of Rights to those committed by the Executive. Accordingly, the Crown is not liable for breaches committed by the judiciary and there is no jurisdiction to bring such a claim. The Supreme Court affirmed the absolute nature of judicial immunity and the constitutional importance of preserving judicial independence.

## ***Treaty of Waitangi***

### ***Paki v Attorney-General, Supreme Court***

This decision clarified the definition of “navigable rivers”. Ownership of the bed of navigable rivers has implications for public access to rivers, infrastructure development and Treaty settlements, as s 14 of the Coal Mines Amendment Act 1903 vested title to navigable rivers in the Crown.

The appellants claimed that the Crown owned a section of the bed of the Waikato River on trust for their benefit, because the Crown had allegedly failed to explain to their ancestors (who willingly alienated the land to the Crown) that the title included the riverbed to the mid-point of the river. The High Court and Court of Appeal had rejected the appellants’ argument, but the Supreme Court accepted it.

The Supreme Court found that navigability may apply to one part of a river and not to others. The section of the river here was non-navigable, so the Crown could not rely on the 1903 Act. The Court’s decision dealt only with the question of navigability; issues of fiduciary duty and trust will be heard in a further hearing.

### ***Proprietors of Wakatu Incorporated and Others v Attorney-General and Others, High Court***

Wakatu Inc and others claimed that, in creating the Nelson settlement in the period 1840 to 1845, the Crown became bound to give effect to commitments made by the NZ Company to create and hold 15,100 acres of land as reserve land (one “tenth” of the settlement) on trust for local Māori and their descendants.

The plaintiffs were unsuccessful. The Court held they failed to establish that in creating the Nelson settlement there was an intention on the part of the Crown to create a private law trust. The Court also dismissed the other equitable claims, including a relational duty of good faith and fiduciary duty. The Court found the Crown was not exercising its role of “pre-emption” for itself, but rather to “balance” the interests of Māori and the population more generally. Finally, the Court held that Wakatu Inc did not have standing to pursue the claims alleged above.

The decision is significant for a number of reasons. The complexity of the case highlights not only the evidential problems associated with bringing private law claims some 170 years after the events

complained of, but further supports the consideration of such historical issues through the existing mechanisms within the Waitangi Tribunal and the Government’s Treaty settlement process. The case confirms that it is relevant to ask, as the Crown did, whether the person bringing the claim has standing to bring historical Treaty-based claims through the courts.

## **The Crown’s legal risks are well managed and its interests are protected, including its commercial and revenue interests**

### ***Taxation***

Crown Law represents the Commissioner of Inland Revenue in litigation in the courts. In this capacity it acts to protect the Crown’s revenue interests. Cases dealt with by Crown Law this year include:

### ***Penny and Hooper v Commissioner of Inland Revenue, Supreme Court***

This case concerned income splitting by two surgeons of their practice income between their company, family trust and themselves to avoid the highest marginal rate of tax. The Supreme Court held that there was a tax avoidance arrangement. The judgment is significant on a number of levels. The judgment affirmed that the economics underpinning the arrangement are significant for determining whether there is tax avoidance. Second, even if there is an ordinary business structure, the manner in which that structure is used can result in a tax avoidance arrangement. Third, even if most of the arrangement is commercial, contrivance or artificiality in a single part of an arrangement can result in a tax avoidance arrangement. Such arrangements are widespread and the potential fiscal impact is significant.

### ***Tannadyce Investments Ltd v Commissioner of Inland Revenue, Supreme Court***

Tannadyce Investments Ltd (TIL) is a company related to the Christchurch property developer, David Henderson. The Supreme Court upheld the Court of Appeal’s order striking out Tannadyce’s application for judicial review of tax assessments made by the Commissioner. TIL had sought judicial review of the assessments because it could not challenge them through the statutory regime. That was because it contended the Commissioner had documents in his possession that TIL needed to challenge its assessments and he had refused to hand them over. The Court did not accept, on the facts, that TIL had shown that to be so. The judgment



upholds the primacy of the statutory regime in cases involving tax assessments because it enables both correctness and process issues to be decided in one proceeding within the statutory timeframes. The Court determined that conscious maladministration is not a basis for review in New Zealand (although it is in Australia) and preferred the approach New Zealand courts have adopted of interpreting the legislation in a way that does not impair the courts' ability to hold public officials to account if necessary.

### ***Commissioner of Inland Revenue v Stiassny, Court of Appeal***

The principal issue in this case was whether \$127 million paid to the Commissioner by a partnership for its GST liability can be recovered and paid to the secured creditors. While the partnership was not in receivership, the two partner companies were in receivership. The secured assets included the partnership assets and the receivers controlled the partnership by appointing themselves to the partnership board. On the sale of the partnership assets there were insufficient funds to pay both the GST and the secured creditors.

The Commissioner successfully struck out the claim by the partnership, receivers and the secured creditors for the \$127 million to be repaid. Even though the secured creditors would have had a prior claim to the funds, once the funds were paid by the debtor (ie the partnership) to a creditor (ie the Commissioner), s 95 of the Personal Property Securities Act 1999 meant that the creditor who was paid (the Commissioner) had a prior claim in the funds paid. Consequently the funds could not be reclaimed. A separate cause of action of monies had and received was dismissed as the payment discharged a debt owed. Therefore there was no unjustified enrichment.

### ***Financial Markets***

Crown Law advises the Financial Markets Authority (FMA) on a range of issues, including the viability of civil proceedings for breaches of the Securities Act 1978 and Securities Markets Act 1988. It also represents FMA in associated litigation. In the period of this report this included:

### ***Hotchin v Financial Markets Authority, Court of Appeal***

This was an appeal in respect of the High Court judgment concerning the first use by FMA of the asset preservation powers under the Securities Act 1978.

FMA has filed civil proceedings for potential breaches of the Securities Act 1978 by Mark Hotchin and other directors and promoters of the failed Hanover Group finance companies. In December 2010, FMA obtained without notice preservation and disclosure orders over New Zealand assets of Mr Hotchin and several closely associated trusts. The proceeding is a test case of FMA's ability to ensure that the rights of investors who have lost funds through investing in various Hanover-related companies are not frustrated by Mr Hotchin dissipating assets so they are unavailable to meet claims investors might have.

The High Court had rejected Mr Hotchin's application to vary or discharge the orders against him. The Court of Appeal dismissed the appeal holding that the High Court was correct not to rescind the orders and to accept undertakings from Mr Hotchin in their place. (The Court of Appeal has separately heard and reserved its judgment on an application by the trusts to vary or discharge the orders against them.)

### ***Judicial Reviews***

Crown Law defends Ministers and other administrative law decision-makers when they are challenged by way of judicial review in the High Court. Cases in the period of this report include:

### ***Greenpeace and Te Runanga o te Whanau-a-Apanui v Minister of Energy and Resources, High Court***

In this judicial review challenge against the granting of an exploration permit to oil company Petrobras allowing it to explore for petroleum in the Raukumara Basin, the High Court upheld the decision as lawful, finding there was no process failure, nor error of law as alleged by the applicants.

The case was significant because of the allegations that the Minister of Energy should have taken account of international obligations relating to environmental protection in the Exclusive Economic Zone before deciding whether to issue the permit.

The Court dismissed that claim, finding that the Crown Minerals Act 1991 did not admit the wide considerations of environmental protection alleged, nor was the Minister of Energy required to plug any perceived gaps in the legislative regime in respect of the Exclusive Economic Zone. The unsuccessful applicants have filed an appeal.

### ***Wellington International Airport Limited & Others v Commerce Commission, High Court***

This was a judicial review brought by several parties appealing the Input Methodology Determinations made by the Commerce Commission in 2010. The challenge was to the process by which the Commission had made those determinations. In dismissing the applications, the High Court considered that the Commission transparently and consistently took a cross-sectoral approach to the development of the methodologies and it was therefore not inappropriate to have regard to the material from those sectors. The decision also adds to the common law understanding of the new Part 4 of the Commerce Act 1986.

### ***Defective buildings litigation***

The scope of liability for defective building work continues to be considered by the courts. Crown Law has been involved in litigation on this issue, including the following:

#### ***The Grange, Supreme Court***

The Supreme Court recently gave judgment for the Attorney-General, represented by Crown Law in a leaky building case that could have had significant implications for central government. An apartment block (The Grange) suffered from leaky building syndrome. The body corporate and unit holders sued the North Shore City Council for failing to take reasonable steps to ensure that the development complied with the Building Code. The Council sought to join the Attorney-General as a third party alleging that the Crown, as statutory successor to the liabilities of the Building Industry Authority (BIA), was negligent in failing to warn the Council of leaky building syndrome – particularly following a BIA report in 1995.

The Supreme Court held that BIA did not owe the Council any duty of care as part of its statutory monitoring function. The case is significant both because a finding of a duty could have potentially led to significant Crown liability in leaky building cases and because the issues raised are crucial to the law relating to public authority liability more generally.

#### ***Defective Schools, High Court***

More than 40 High Court proceedings have been filed on behalf of the Crown in respect of defective building work in schools. A further nine proceedings are expected to be filed shortly. Many of the proceedings have been filed to protect against the

expiry of the relevant limitation periods, and then stayed by agreement to allow the parties to explore settlement.

In *Minister of Education v Econicorp Holdings Limited*, the Court of Appeal heard an appeal against the decision of the High Court striking out the Crown's claim in negligence against Econicorp Holdings Limited (Ahead Buildings). The High Court has found there was no relevant duty of care owed to the Crown. The order of the High Court was quashed by the Court of Appeal on 12 September 2011.

Econicorp's application for leave to appeal to the Supreme Court was declined on 5 December 2011.

### ***Historic claims from former psychiatric patients***

A global settlement offer was made to about 340 former psychiatric patients who had made compensation claims with respect to their time in psychiatric institutions, at the beginning of 2012. The offer was made on the basis that the Crown did not accept liability, but rather sought to bring an end to people's claims in a way that allowed them to exit the litigation process with dignity, with an acknowledgement of their suffering in psychiatric institutions and without any debt on account of their legal aid or other legal costs. More than 90% of the offers were accepted, which represents a large reduction of the Crown's contingent liability.

The Ministry of Social Development continues to conduct a successful and well regarded informal settlements process for compensation claims in respect of child welfare care.

### ***Pike River Royal Commission***

Crown Law has represented government departments at the Royal Commission into the Pike River coal mine tragedy since the Commission's call for expressions of interest in January 2011. The Commission is tasked with examining a wide range of factual, legal and policy issues including: the cause of the explosions; the mine's compliance with health and safety standards; the search, rescue and recovery operations; the legislative requirements for underground coal mines, how these are implemented and their interaction with environmental requirements; resourcing for the regulators; and international comparators. In considering these issues, the Commission has heavily scrutinised the actions of the former Department of Labour (regulator of health and safety in mines), the

former Ministry of Economic Development (which permitted the mining activity) and the Department of Conservation (which administered the conservation land on which the mine was based). The Commission is due to report its findings to the Governor-General by 28 September 2012.

### ***Employment advice and representation***

Crown Law provides advice to departments and other State sector agencies on their employment obligations and represents them at all levels of litigation from the Employment Relations Authority through to the Supreme Court. Advice and representation this year has included issues in relation to employment relationship problems, organisational restructuring and the statutory obligations of employers under the State Sector Act 1988, the Holidays Act 2003 and the Employment Relations Act 2000. One notable case from this year was:

#### ***Zhou v Chief Executive of Department of Labour, Employment Court***

This case was a personal grievance claim for unjustifiable dismissal. Mr Zhou had been dismissed following receipt by the Chief Executive of an adverse recommendation from the New Zealand Security Intelligence Service.

The case involved the inter-relationship between the employment obligations of fair process and security and confidentiality interests. There were interlocutory decisions, in particular in relation to disclosure of information, in which the Employment Court deferred to the Director of Security in relation to the assessment of the security risk of disclosure. However, the substantive case resolved before hearing.

### ***Natural Resources***

#### ***New Zealand Pork Industry Board v Director-General of Ministry of Agriculture and Forestry, High Court***

The Board sought judicial review of decisions by the Director-General under the Biosecurity Act 1993 resulting in the issue of new import health standards for pig meat in April 2011. The standards allow the importation of raw pig meat from the

EU, North America and Sonora State of Mexico, jurisdictions where (unlike New Zealand) the Porcine Reproductive and Respiratory Syndrome virus (PRRS) is present in pig populations. The provisions relating to import health standards implement New Zealand's obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures within the World Trade Organisation. The case was therefore of interest to some of New Zealand's major trading partners, as well as the local pig industry and consumers of pig meat.

Grounds of challenge included the Director-General's alleged misinterpretation of, and failure to comply with, the Biosecurity Act 1993 when responding to the findings and recommendations of an independent scientific review panel convened at the Board's request; bias by Ministry staff; and inadequate consultation by the Ministry (now the Ministry for Primary Industries). The High Court dismissed the application for judicial review. The Board has appealed.

#### ***Minister for Land Information v Seaton, Court of Appeal***

This was a successful appeal by the Minister against a decision of the High Court. The proceeding relates to the issuing of a notice of intention to take land under the Public Works Act 1981. The land to be taken are three easements. These will be used to relocate electricity towers which need to be moved to allow a portion of State Highway 1 to be widened. The easements will be transferred by the Minister to the electricity companies who own the electricity towers being moved.

The Court of Appeal held that the Minister required the easements for the public question (the road widening). This was an indirect requirement, but the definition of public work includes indirect requirements and therefore the Minister is empowered to acquire land indirectly required. Being able to require land for the indirect requirements of road building avoids delays in roading projects.

The Supreme Court has granted leave to Mrs Seaton for the matter to be appealed to the Supreme Court.



## INFORMING AND EDUCATING

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### 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:

#### **Gregor Allan**

“Anti-Money Laundering and Counter Terrorist Financing: Mutual Evaluation Report on Nepal”, report and presentation to Plenary Meeting of Asia-Pacific Group on Money Laundering, Kochi, India, 18 July 2011.

“International Drivers of Anti-Money Laundering Regulation”, presentation to Association of Certified Fraud Examiners, Deloitte, Wellington, 16 August 2011.

“Under the knife: Proposed reforms carve up director liability”, article, *NZ Lawyer* Issue 173, 18 November 2011.

“Time for corporate New Zealand to learn its ABC”, article, *NZ Lawyer* Issue 183, 4 May 2012.

“Asset restraint under the Securities Act 1978: Evading evisceration by enabling enlivenment”, article, *The Prosecution Brief*, Autumn 2011.

#### **Ian Carter**

“The right to refuse to undergo medical treatment under s 11, New Zealand Bill of Rights Act 1990”, presentation to Ministry of Social Development lawyers as part of a Human Rights workshop, 18 October 2011.

“Current discrimination case law within the social welfare context”, presentation to Ministry of Social Development lawyers as part of a Human Rights workshop, 18 October 2011.

#### **Edrick Child**

“Crown Liability Intensive”, Crown Law Conference, one of several presenters, November 2011.

#### **Edrick Child and Sally McKechnie**

“Managing Legal Risk in Reviews”, a series of seminars to Education Review Office, July-October 2011.

#### **Martha Coleman**

“Issues from a Crown Perspective”, presentation to Bill of Rights 21st birthday party symposium, NZ Centre for Public Law, 30 August 2011.

#### **Maria Deligiannis**

“Recent Crown Litigation”, Lawyers in Government Conference, 26 April 2012.

“Cases before the Courts”, Senior Technical Conference, Inland Revenue, 29 June 2012.

#### **Mathew Downs**

“Propensity Evidence and the Search for Principle: Reflections on *Mahomed v R* [2011] NZSC 52 & *Hudson v R* [2011] NZSC 51”, University of Otago staff address, 12 July 2011.

“Murder and the Practice of Criminal Litigation: *Mahomed v R* [2011] NZSC 52 & *Hudson v R* [2011] NZSC 51”, University of Otago student lecture, 13 July 2011.

“Propensity Evidence: Where are we Now? A Practical Guide for Those in the Trenches Following *Mahomed v R* [2011] NZSC 52 & *Hudson v R* [2011] NZSC 51”, Criminal Bar Association Conference, 6 August 2011.

#### **Harry Ebersohn**

“Tax avoidance and the rule of law” [2012], *NZ Law Review* 243.

#### **Justine Falconer**

Selected as a Fellow for the National Attorney-General Training and Research Institute (US) International Fellowship Programme 2012. The Fellowship Programme brought together lawyers from around the world for 10 days in Washington and New York to discuss a common issue. In 2012 the focus was on strategies for battling public corruption and strengthening public integrity.

#### **Jessica Gorman**

One of the authors of McGechan on Procedure.

#### **Charlotte Griffin**

“Judicial Review”, presentation to Visiting Justices, 22 November 2011.

**Peter Gunn**

“2012 Government Lawyers Conference”, presentation, 26 April 2012.

**Joanna Holden and Antoinette Russell**

“Social Media and Employment”, presentation to NZ Police, 6 October 2011, 28 October 2011 and 4 November 2011.

**Una Jagose**

“Update on Legal Privilege”, presentation to the Department of Corrections, 29 September 2011 and to the Ministry of Social Development, 25 November 2011.

**Una Jagose and Matthew Palmer**

“Law and the Public Sector”, lecturing Masters in Public Policy course, Victoria University of Wellington, 20 October 2011.

**Sarah Jerebine**

“Legal Issues when Contracting with the Crown”, presentation to the Ministry of Health Legal Team.

**Madeleine Laracy**

“Perspectives from the New Zealand Central Authority for Mutual Assistance”, presentation to the Proceeds of Crime Conference, Melbourne, 5-7 October 2011.

**David Lemmon**

“Pleadings and Statements of Defence”, IRD Seniors Workshop, Auckland, 22 November 2011.

Teaching on Tax Avoidance and Tax Administration at University of Canterbury (LAWS 352 *Selected Issues in Taxation*), 27 September 2011 and 4 October 2011.

**Peter Marshall**

“A comparative analysis of the right to appeal” (2011), 22 *Duke Journal of Comparative & International Law* 1.

“Sentence reductions as a BORA remedy” [2012] *New Zealand Law Journal* 24.

**Matthew Palmer**

“The Law Officers and departmental lawyers” [2011], *New Zealand Law Journal* 333.

“Open the Doors and Where are the People?: Constitutional Dialogue in the Shadow of the People”, in Claire Charters and Dean R Knight (eds), *We, The People(s): Participation in Governance* (Wellington, Victoria University Press, 2011) at 50-74.

Book Review of *Counter-Terrorism and Beyond: The Culture of Law and Justice after 9/11* by Nicola McGarrity, Andrew Lynch and George Williams, in [2011] *Public Law* 663.

“Constitution”, *Te Ara – the Encyclopedia of New Zealand* (updated 18 May 2012 URL: <http://www.TeAra.govt.nz/en/constitution>)

**John Pike**

“The Necessary Supervision of Civil Asset Recovery Programmes”, presentation to the International Association of Prosecutors Conference, Taipei, 20 April 2012.

**Austin Powell**

“Judicial Review”, presentation to the Visiting Justices, 20 January 2012.

“Strategic Litigation Management”, presentation to the Ministry of Primary Industry Legal Advisors, 1 May 2012.

**Anne Toohey and Megan Inwood**

“Mutual Assistance in Criminal Matters Act 1992 and Proceeds of Crime”, presentation to Police College, 22 November 2011.

# HOW WE SUPPORT OUR CORE BUSINESS

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## People capability

As with previous years, a significant focus of the Human Resources team at Crown Law has been on the recruitment and retention of highly qualified and skilled staff.

Crown Law undertook the JRA Best Places to Work survey in March 2012. Our employee engagement index of 70.8 is higher than the justice sector index of 67.8 and is just below the public sector engagement index of 72. Specific initiatives to improve employee engagement will be rolled out in 2012/13.

While facing difficult financial times, we continue to attract good numbers of high-quality applicants for roles that become available.

Crown Law also continues to instill a healthy work/life balance across the organisation to ensure that our staff know they are valued and have the flexibility to meet family and other commitments.

The high quality and variety of work as well as opportunities for secondments within government and internationally ensures Crown Law is a rewarding place to work.

## Electronic litigation support in Crown Law

The electronic litigation in Crown Law has been expanded in 2011/12 to include iPads for matters with extensive document banks.

The introduction of iPads produced savings in photocopying and freighting documents to various courts for hearings.

The estimated costs in photocopying, binding and freight would have been \$78,900 even when the matter has not yet gone to hearing. The cost of iPads and accessories was approximately \$6,000. iPads also allow easier and quicker access to the documents when in court.

## Information systems management

The focus for ICT for 2011/12 has been on continuous improvement to systems, hardware and involvement in all-of-government ICT initiatives. There has been an emphasis on maximising the use of technology through integration of hardware with the mobile nature of the workforce to improve the working environment. Trusted systems have been maintained with continued efforts on leveraging existing capabilities through enhancements to core business systems.

The Government's Cyber Security Strategy has required dedicated resource to implement Stage One of the strategy. This has resulted in improved processes to monitor the security of the overall ICT system.

## Organisational development

The focus for 2011/12 has been supporting a coordinated approach to the implementation of the recommendations of the three external reviews, the *Performance Improvement Framework Review*, the *Review of Public Prosecution Services* and the *Review of the Role and Functions of the Solicitor-General and the Crown Law Office*. The Deputy Chief Executive role has led the response and set up three project teams which have been working on different aspects of the recommendations from the reviews. For details on the three project teams, refer page 10.

## Facilities management

Maintaining a healthy, safe working environment is fundamental for high performance. Crown Law is 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.

The Management Board is committed to reducing the space Crown Law occupies in order to make savings and introduce more modern ways of working. Work has commenced on identifying and reviewing future office accommodation and property requirements in line with the Property Management Centre of Expertise. A project team is working with external expertise on reviewing/understanding Crown Law's accommodation style and formulating high-level concept plans for consideration.

Crown Law will continue the uptake of all-of-government procurement contracts for air travel, desktops and laptops, single and multifunction print devices, stationery and office consumables and mobile voice and data and future contracts as they are released.

## Research and library

The Research and Library team provides high-level research support to the legal teams by using a comprehensive range of information tools. Crown Law is a member of the Government Legal Resources Cluster along with six other core agencies. The cluster has been negotiating syndicated supply agreements with two of the major suppliers of legal information. By combining the total legal spend on hardcopy and online resources of the seven agencies, a higher overall discount can be achieved. The contracts are expected to be in place for the 2012/13 financial year and will replace Crown Law's individual agreements with these publishers. It is expected the model will be made available to other agencies in the future to improve access to legal information for the justice sector.

# STATEMENT OF RESPONSIBILITY

## for the year ended 30 June 2012

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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.



Michael Heron  
Solicitor-General and Chief Executive  
30 September 2012

Countersigned by:



Chris Walker  
Chief Financial Officer  
30 September 2012



Andrew Hampton  
Deputy Chief Executive  
30 September 2012

In my opinion, these financial statements, statement of objectives and service performance fairly reflect the financial position and operations of Crown Law for the financial year ended 30 June 2012.

## Independent Auditor's Report

### To the readers of Crown Law Office's financial statements and non-financial performance information for the year ended 30 June 2012

The Auditor-General is the auditor of Crown Law Office (the Office). The Auditor-General has appointed me, John O'Connell using the staff and resources of Audit New Zealand, to carry out the audit of the financial statements, and the non-financial performance information of the Office on her behalf.

We have audited:

- the financial statements of the Office on pages 43 to 69, that comprise the statement of financial position, statement of commitments, statement of contingent liabilities and contingent assets as at 30 June 2012, the statement of comprehensive income, statement of changes in equity, statement of departmental expenses and capital expenditure against appropriations, statement of unappropriated expenditure and capital expenditure and statement of cash flows for the year ended on that date and the notes to the financial statements that include accounting policies and other explanatory information; and
- the non-financial performance information of the Office that comprises the statement of objectives and service performance on pages 32 to 42 and the report about impacts on pages 14 to 16.

## Opinion

In our opinion:

- the financial statements of the Office on pages 43 to 69:
  - comply with generally accepted accounting practice in New Zealand; and
  - fairly reflect the Office's:
    - financial position as at 30 June 2012;
    - financial performance and cash flows for the year ended on that date;

- 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 2012; and
  - unappropriated expenses and capital expenditure for the year ended 30 June 2012; and
- the non-financial performance information of the Office on pages 32 to 42 and 14 to 16:
  - complies with generally accepted accounting practice in New Zealand; and
  - fairly reflects the Office's service performance and outcomes for the year ended 30 June 2012, including for each class of outputs:
    - its service performance compared with the forecasts in the statement of forecast service performance at the start of the financial year; and
    - its actual revenue and output expenses compared with the forecasts in the statement of forecast service performance at the start of the financial year.

Our audit was completed on 28 September 2012. This 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 our responsibilities, and we explain our independence.

## **Basis of opinion**

We carried out our audit in accordance with the Auditor-General's Auditing Standards, which incorporate the International Standards on Auditing (New Zealand). Those standards require that we comply with ethical requirements and plan and carry out our audit to obtain reasonable assurance about whether the financial statements, and the non-financial performance information are free from material misstatement.

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

An audit involves carrying out procedures to obtain audit evidence about the amounts and disclosures in the financial statements, and the non-financial performance information. The procedures selected depend on our judgement, including our assessment of risks of material misstatement of the financial statements, and the non-financial performance information, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Office's preparation of the financial statements, and the non-financial performance information that fairly reflect the matters to which they relate. We consider

internal control in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the Office's internal control.

An audit also involves evaluating:

- *the appropriateness of accounting policies used and whether they have been consistently applied;*
- the reasonableness of the significant accounting estimates and judgements made by the Solicitor General;
- the appropriateness of the reported non-financial performance information within the Office's framework for reporting performance;
- the adequacy of all disclosures in the financial statements, and the non-financial performance information; and
- the overall presentation of the financial statements, and the non-financial performance information.

We did not examine every transaction, nor do we guarantee complete accuracy of the financial statements, and the non-financial performance information. We have obtained all the information and explanations we have required and we believe we have obtained sufficient and appropriate audit evidence to provide a basis for our audit opinion.

## **Responsibilities of the Solicitor General**

The Solicitor General is responsible for preparing:

- financial statements and non-financial performance information that:
  - comply with generally accepted accounting practice in New Zealand;
  - fairly reflect the Office's financial position, financial performance, cash flows, expenses and capital expenditure incurred against each appropriation and its unappropriated expenses and capital expenditure; and
  - fairly reflect its service performance and outcomes

The Solicitor General is also responsible for such internal control as is determined is necessary to enable the preparation of financial statements, and non-financial performance information that are free from material misstatement, whether due to fraud or error.

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



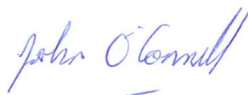
## Responsibilities of the Auditor

We are responsible for expressing an independent opinion on the financial statements, and the non-financial performance information and reporting that opinion to you based on our audit. Our responsibility arises from section 15 of the Public Audit Act 2001 and 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 New Zealand Institute of Chartered Accountants.

Crown Law have provided legal services to the office of the Auditor-General. Other than the audit and this work, 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 and statement of service performance**

This audit report relates to the financial statements and statement of service performance of Crown Law Office (Crown Law) for the year ended 30 June 2012 included on Crown Law's website. The Solicitor-General is responsible for the maintenance and integrity of Crown Law's website. We have not been engaged to report on the integrity of Crown Law's website. We accept no responsibility for any changes that may have occurred to the financial statements and statement of service performance since they were initially presented on the website.

The audit report refers only to the financial statements and statement of service performance named above. It does not provide an opinion on any other information which may have been hyperlinked to or from the financial statements and statement of service performance. 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 statement of service performance as well as the related audit report dated 28 September 2012 to confirm the information included in the audited financial statements and statement of service performance presented on this website.

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

# STATEMENT OF OBJECTIVES AND SERVICE PERFORMANCE

## for the year ended 30 June 2012

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### Output Expense: Conduct of Criminal Appeals

#### Objective

Conducting appeals arising from criminal trials on indictment and from Crown appeals.

#### 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)

		2012 Actual \$000	2012 Main Estimates \$000	2012 Supp Estimates \$000
3,329	Revenue – Crown	3,075	3,329	3,575
3,715	Expenditure	2,855	3,329	3,575
(386)	Net surplus/(deficit)	220	-	-

#### *Explanation of major variations:*

Approval was obtained in June for an in-principle expense transfer of up to \$500,000 from 2011/12 to 2012/13 in this output expense. As a result Crown Law did not draw down the \$500,000 from the Treasury in 2011/12 and this is reflected in the lower Revenue – Crown figure.

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

### Service performance

#### Quantity

2011 Actual	Measures	2012 Actual	2012 Forecast
	Number of appeals disposed by the Court of Appeal/Supreme Court/Privy Council arising out of criminal trials on indictment, brought by:		
29	• The Crown	23	30-35
495	• Accused	508	500-550

#### *Explanation of major variations:*

New appeals are 20% lower than forecast which aligns with the falling justice sector forecast for criminal appeals.

#### Quality and timeliness

Measures	Performance
Success rate for sentence appeals brought by the Solicitor-General to be not less than 60%.	The success rate of Crown appeals was 74%.
Key stakeholders are kept informed of significant legal impacts of judgments received to be not less than 100%.	Crown Law has continued to provide timely notification to Crown Solicitors of significant legal developments with prosecutions or in the justice sector, including providing notification of important judgments and guidance on legal issues.

## 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)

2011 Actual \$000		2012 Actual \$000	2012 Main Estimates \$000	2012 Supp Estimates \$000
20,154	Revenue – Department	22,629	21,984	22,900
18,980	Expenditure	21,091	22,900	22,900
1,174	Net surplus/(deficit)	1,538	(916)	-

#### *Explanation of major variations:*

Revenue and expenditure are influenced by the number and complexity of the instructions received and progressed throughout the year. A surplus of \$1.538 million resulted from a number of complex cases which required more senior counsel involvement than anticipated when budgets were set. A number of these matters, including the Royal Commission for the Pike River mining disaster and the *MV Rena* maritime disaster, are highlighted in the Significant Legal Matters section on pages 20 to 23.

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

### Service performance

#### Quantity

2011 Actual	Measures	2012 Actual	2012 Forecast
494	Number of new instructions for legal advice	392	400-450
593	Average number of requests for legal advice in progress during the year	575	550-600
372	Number of new instructions in respect of litigation matters	504	520-570
922	Average number of litigation matters in progress during the year	656	1,400-1,500

#### *Explanation of major variations:*

In order to maximise Crown Law's use of office space there has been a drive to close completed matters in the practice management system and transfer closed physical files to offsite storage. This initiative reduced the number of matters that were classified as still in progress. A review of targets will be undertaken for 2012/13 to reflect this reduction in litigation matters in progress.

#### Quality and timeliness

Measures	Performance
Percentage of written opinions/advice are peer reviewed in accordance with professional standards to be not less than 90%.	Quality standards for written opinions/advice were met.
Percentage of litigation management plans (LMPs) are completed for litigation matters in accordance with professional standards to be not less than 90%.	Quality standards for LMPs were met.
Percentage of all responses from government lawyers surveyed about Crown Law legal seminars and conferences that rate as "meets expectations" or better to be not less than 100%.	97% of evaluations were rated as "meets expectations" or better.
All advice and litigation matters are completed within appropriate timeframes or justified reason is recorded.	72% of advice was provided on time. Work to improve data collection in the practice management system for timeliness of advice matters is underway. This work will be completed in time to meet 2012/13 reporting requirements.

## 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)

2011 Actual \$000		2012 Actual \$000	2012 Main Estimates \$000	2012 Supp Estimates \$000
47,441	Revenue			
-	• Crown	45,634	48,196	48,196
	• Other	14	-	-
47,441		45,648	48,196	48,196
45,377	Expenditure	45,648	48,196	48,196
2,064	Net surplus/(deficit)	-	-	-

### Explanation of major variations:

Approval was obtained in April for an in-principle expense transfer of up to \$3 million from 2011/12 to 2012/13 in this output expense. The amount which will be carried over to 2012/13 is \$2.562 million. As a result Crown Law did not draw down this amount from the Treasury in 2011/12 and this is reflected in the lower Revenue – Crown figure.

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

### Service performance – Output: Crown Prosecution Services

#### Quantity

2011 Actual	Measures	2012 Actual	2012 Forecast
1,671	Number of trials for indictable crime:		
	• District Court	1,531	1,700-1,900
133	• High Court	100	200-240
	Number of trials for indictable crime, where the complexity of the case requires a significant amount of preparation and court appearance time*:		
42	• District Court	36	130-160
53	• High Court	49	80-120
	Number of other criminal matters conducted by the Crown Solicitors:		
2,589	• Bail applications and appeals	3,047	1,900-2,100
3,552	• Guilty pleas/lower band and middle band sentencing	3,626	3,900-4,200
594	• Appeals relating to summary prosecutions	711	700-800

\* Cost greater than \$20,000.

#### *Explanation of major variations:*

The number of trials for indictable crime in both the District Court and High Court was below forecast, however, they were in line with 2011 results. The forecasts for 2012 were based on prior year forecasts. The number of expected complex cases was also impacted by the difference between actual and forecast trials as well as a lower number of Serious Fraud Office cases than were expected when forecasts were set.

The increase in bail applications and appeals is considered to be a result of a change in billing practices by Crown Solicitors. The interim billing cap arrangements for Crown Solicitors in 2012/13 and any longer term funding model will resolve this issue in the future.



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

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

#### Quantity

2011 Actual	Measures	2012 Actual	2012 Forecast
0	Number of Crown Solicitors' practices to be reviewed	0	1-2
709	Number of new applications from Crown Solicitors for special fees, classification of counsel and approval of additional counsel	582	400-500

#### *Explanation of major variations:*

No Crown Solicitor practices were reviewed due to the reprioritisation of resources to work on Crown Law's response to the Prosecutions Review and the Crown Solicitors Funding Project. However, these reviews have been resumed in 2012/13 with the first of three for the year already undertaken.

The number of new applications for special fees, classification of counsel and approval of additional counsel is below both the 2012 forecast as a result of the lower number of trials for indictable crime and the reduced number of complex cases.

#### Quality and timeliness

Measure	Performance
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.	Crown Solicitors' applications and requests 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 were formally advised to Crown Solicitors.

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

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

#### Quantity

2011 Actual	Measures	2012 Actual	2012 Forecast
246	Number of new requests for legal advice or determination of applications received in relation to criminal law issues	55	300-350
485	Average number of requests for legal advice and determination of applications in relation to criminal law in process during the year	181	700-800
55*	Number of new ministerial and parliamentary questions received	53*	30-40

\* 2012, 51 ministerial correspondence and 2 parliamentary questions. 2011, 53 ministerial correspondence and 2 parliamentary questions.

#### *Explanation of major variations:*

The number of new requests and the average number of requests for legal advice or determination are lower than forecast, in part due to some Prosecuting Agencies no longer requiring Crown Law consent to prosecute.

#### Quality and timeliness

Measure	Performance
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.	Quality assurance review processes have been implemented to ensure compliance with the standards established for legal advice and representation services.

**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>94% of replies to ministerial correspondence were provided within the required timeframe.</li> <li>All responses to parliamentary questions were provided within the required time deadlines.</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 the Pacific Islands Law Officers' Network.

### 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)

2011 Actual		2012 Actual	2012 Main Estimates	2012 Supp Estimates
\$000		\$000	\$000	\$000
2,952	Revenue:	2,432	2,928	2,682
7	• Crown	82	10	10
	• Other			
2,959		2,514	2,938	2,692
2,933	• Expenditure	2,264	2,938	2,692
26	• Net surplus/(deficit)	250	-	-

#### *Explanation of major variations:*

Approval was obtained in June for the 50% retention of the underspend in this output class. In accordance with this approval Crown Law did not draw down \$250,000 from the Treasury in 2011/12 and this is reflected in the lower Revenue – Crown figure.

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

### Service performance

#### Quantity

2011 Actual	Measures	2012 Actual	2012 Forecast
214	Number of new applications or requests for advice received for action on behalf of the Attorney-General and Solicitor-General	170	170-190
210	Average number of applications or requests for legal advice in progress during the year	211	350-400
231	Number of new ministerial and parliamentary questions	170	240-260

#### *Explanation of major variations:*

In order to maximise Crown Law's use of office space there has been a drive to close completed matters in the practice management system and transfer closed physical files to offsite storage. This initiative reduced the number of matters that were classified as still in progress. A review of targets will be undertaken for 2012/13 to reflect this reduction in litigation matters in progress.

There is no single factor that has resulted in the reduced number of ministerial and parliamentary questions. A review of the targets will be undertaken for 2012/13 to reflect this decrease in ministerial and parliamentary questions.

#### Quality and timeliness

Measures	Performance
<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>Weekly written briefings are provided to the Attorney-General regarding significant legal matters affecting the Crown.</li> </ul>	<p>49 weekly reports were provided to the Attorney-General advising on significant matters involving the Crown. No reports are provided over the Christmas/New Year period.</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>95% of replies to ministerial correspondence were provided within the required time deadlines.</li> <li>All responses to parliamentary questions were provided within the required time deadlines.</li> </ul>
<p>Percentages of written opinions/advice are peer reviewed in accordance with professional standards to be not less than 90%.</p>	<p>All written opinions/advice are signed off by Senior Counsel once adherence to professional standards has been checked.</p>

## STATEMENT OF COMPREHENSIVE INCOME

### for the year ended 30 June 2012

2011 Actual		Note	2012 Actual	2012 Main Estimates	2012 Supp Estimates
\$000			\$000	\$000	\$000
	<b>Income</b>				
53,722	Crown		51,141	54,453	54,453
20,161	Other revenue	2	22,725	21,994	22,910
73,883	<b>Total income</b>		73,866	76,447	77,363
	<b>Expenditure</b>				
19,787	Personnel costs	3	19,789	19,637	21,201
1,113	Depreciation and amortisation expense	4	1,004	1,155	1,068
115	Capital charge	5	165	381	165
-	Restructuring costs		599	-	-
49,990	Other operating expenses	6	50,301	56,190	54,929
71,005	<b>Total expenditure</b>		71,858	77,363	77,363
2,878	Net operating surplus/(deficit)		2,008	(916)	-
2,878	<b>Total comprehensive income</b>		2,008	(916)	-

Explanations of major variances against budget are provided in Note 22.

The accompanying notes form part of these financial statements.

# STATEMENT OF FINANCIAL POSITION

## as at 30 June 2012

2011 Actual		Note	2012 Actual	2012 Main Estimates	2012 Supp Estimates
\$000			\$000	\$000	\$000
	<b>ASSETS</b>				
	<b>Current assets</b>				
13,395	Cash and cash equivalents		13,997	7,753	9,673
372	Prepayments		714	200	350
3,816	Debtors and other receivables	7	3,760	3,800	3,800
-	Debtor Crown		1,213	-	1,174
17,583	<b>Total current assets</b>		19,684	11,753	14,997
	<b>Non-current assets</b>				
1,145	Property, plant and equipment	8	630	1,076	1,108
770	Intangible assets	9	334	687	740
1,915	<b>Total non-current assets</b>		964	1,763	1,848
19,498	<b>Total assets</b>		20,648	13,516	16,845
	<b>LIABILITIES</b>				
	<b>Current liabilities</b>				
9,933	Creditors and other payables	10	10,006	8,215	9,414
1,806	Employee entitlements	11	2,108	1,080	1,300
-	Provisions	12	446	-	-
2,878	Return of operating surplus	13	470	-	-
14,617	<b>Total current liabilities</b>		13,030	9,295	10,714
	<b>Non-current liabilities</b>				
124	Employee entitlements	11	149	380	200
124	<b>Total non-current liabilities</b>		149	380	200
14,741	<b>Total liabilities</b>		13,179	9,675	10,914
	<b>EQUITY</b>				
1,767	Taxpayers' funds	14	1,767	1,767	1,767
2,694	Memorandum account: Legal Advice and Representation	14	5,406	1,778	3,868
296	Revaluation reserve	14	296	296	296
4,757	<b>Total equity</b>		7,469	3,841	5,931

The accompanying notes form part of these financial statements.

## STATEMENT OF CHANGES IN EQUITY

### for the year ended 30 June 2012

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2011 Actual		Notes	2012 Actual \$000	2012 Main Estimates \$000	2012 Supp Estimates \$000
1,530	<b>Balance at 1 July</b>		4,757	4,757	4,757
2,878	Surplus/(deficit) for the year		2,008	(916)	-
-	- Capital injection for memorandum account opening balance		1,174	-	1,174
3,227	Other capital injection		-	-	-
-	- Movements in revaluation reserve		-	-	-
(2,878)	Return of operating surplus to the Crown	13	(470)	-	-
3,227	<b>Movements for the year</b>		2,712	(916)	1,174
4,757	<b>Balance at 30 June</b>	14	7,469	3,841	5,931

The accompanying notes form part of these financial statements.



# STATEMENT OF CASH FLOWS

## for the year ended 30 June 2012

2011 Actual		2012 Actual	2012 Main Estimates	2012 Supp Estimates
\$000	Note	\$000	\$000	\$000
	<b>Cash flows from operating activities</b>			
	<i>Cash was provided from:</i>			
53,722	Receipts from Crown	51,102	54,453	54,453
19,411	Receipts from clients	22,781	21,994	22,926
73,133		73,883	76,447	77,379
	<i>Cash was applied to:</i>			
19,471	Payments to employees	19,615	19,585	20,997
46,348	Payments to suppliers	46,363	53,253	51,853
3,195	Net Goods and Services Tax paid/(received)	4,207	4,207	4,207
115	Payment for capital charge	165	381	165
69,129		70,350	77,426	77,222
4,004	<b>Net cash inflow from operating activities</b>	3,533	(979)	157
	<b>Cash flows from investing activities</b>			
	<i>Cash was provided from:</i>			
-	Sale of property, plant and equipment	-	-	-
	<i>Cash was disbursed for:</i>			
123	Purchase of property, plant and equipment	29	581	555
104	Purchase of intangible assets	24	260	446
227		53	841	1,001
(227)	<b>Net cash outflow from investing activities</b>	(53)	(841)	(1,001)
	<b>Cash flows from financing activities</b>			
	<i>Cash was provided from:</i>			
3,227	Capital injection			
	<i>Cash was disbursed for:</i>			
-	Repayment of operating surplus	2,878	-	2,878
3,227	<b>Net cash outflow from financing activities</b>	(2,878)	-	(2,878)
7,004	<b>Net (decrease)/increase in cash</b>			
6,391	Cash at the beginning of the year	13,395	9,573	13,395
13,395	<b>Cash at the end of the year</b>	13,997	7,753	9,673

The accompanying notes form part of these financial statements.

# STATEMENT OF COMMITMENTS

## as at 30 June 2012

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### Non-cancellable operating lease commitments

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.

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. The lease expired on 10 August 2012.

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

### Other non-cancellable commitments

Crown Law did not enter into any other non-cancellable commitments.

2011 Actual \$000		2012 Actual \$000
	<b>Capital commitments</b>	
-	There were no capital commitments as at 30 June	-
	<b>Non-cancellable operating lease commitments</b>	
1,795	Not later than one year	1,257
1,295	Later than one year and not later than five years	-
-	Later than five years	-
3,090	Total non-cancellable operating lease commitments	1,257
3,090	<b>Total commitments</b>	1,257

The accompanying notes form part of these financial statements.

# STATEMENT OF DEPARTMENTAL CONTINGENT LIABILITIES AND ASSETS

as at 30 June 2012

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Crown Law has no unquantifiable contingent liabilities (2011: \$Nil).

## Quantifiable contingent liabilities

2011 Actual \$000		2012 Actual \$000
400	Legal proceedings and disputes	-
30	Personal grievances	-
430	<b>Total quantifiable contingent liabilities</b>	-

## Contingent assets

Crown Law has no contingent assets (2011: \$Nil).

The accompanying notes form part of these financial statements.

# STATEMENT OF UNAPPROPRIATED EXPENDITURE AND CAPITAL EXPENDITURE

## for the year ended 30 June 2012

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2011 Unappropriated Expenditure \$000	2012 Actual \$000	2012 Appropriation Voted \$000	2012 Unappropriated Expenditure \$000
	<b>Vote Attorney-General</b>		
220	-	-	-
220	-	-	-
	<b>Total</b>		

There was no unappropriated expenditure.

### Breaches of projected departmental net asset schedules

- A net asset breach occurred because Crown Law forecasted a deficit of \$0.916 million in its submission for net asset authority included in the Estimates of Appropriation 2011/12. The actual result for the three-month period ended 30 September 2011 was a surplus and as a result the net asset increased and exceeded authority. The amount of net asset in excess of authority as at 30 September 2011 was therefore \$0.916 million. Crown Law further reduced its net asset holding by \$0.663 million in the 2011 October Baseline Update.

Authority to increase the net asset by \$1.579 million was approved by Joint Ministers on 22 February 2012.

- A net asset breach of \$1.174 million has occurred for the period from February 2012 to April 2012. Crown Law recorded a surplus of \$1.174 million with its memorandum account: Legal Advice and Representation for 2010/11 and returned this surplus to the Crown as was ordinarily required. In accordance with the Treasury Circular 2011/10 (Guidance for the Operation of Departmental Memorandum Accounts), Crown Law requested a repatriation of the 2010/11 surplus of \$1.174 million. The amount was returned in February 2012 and it had been accounted for in Crown Law's monthly CFIS return as a Debtor Crown of \$1.174 million and therefore increased the net asset balance.

Authority to increase the net asset by \$1.174 million was obtained in the 2012 March Baseline Update.

The accompanying notes form part of these financial statements.

# STATEMENT OF DEPARTMENTAL EXPENDITURE AND APPROPRIATIONS

## for the year ended 30 June 2012

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2011 Actual Expend \$000		2012 Actual Expend \$000	2012 Main Estimate \$000	2012 Supp Estimate \$000	2012 Section 26A \$000	2012 Section 26C \$000	2012 Total \$000	In Principle Transfer to 2013
	<b>Vote Attorney-General Appropriation for outputs/expenses</b>							
3,715	Conduct of Criminal Appeals	2,855	3,329	3,575	-	-	3,575	500
18,980	Legal Advice and Representation	21,091	22,900	22,900	-	-	22,900	-
45,377	Supervision and Conduct of Crown Prosecutions	45,648	48,196	48,196	-	-	48,196	2,562
2,933	The Exercise of Principal Law Officer Functions	2,264	2,938	2,692	-	-	2,692	250
71,005	<b>Total appropriations for output expenses</b>	71,858	77,363	77,363	-	-	77,363	3,312
	<b>Appropriations for capital expenditure</b>							
227	Capital investment	53	841	1,001	-	-	1,001	-
71,232	<b>Total appropriations</b>	71,911	78,204	78,364	-	-	78,364	3,312

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 2011/12 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 2012

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2011 Actual \$000		2012 Actual \$000
	<b>Crown Law Office Legal Claims Trust Account</b>	
67	<b>Balance at 1 July</b>	310
1,298	Contributions	1,347
(1,058)	Distributions	(1,397)
3	Revenue	16
-	Expenditure	-
310	<b>Balance at 30 June</b>	276

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 2012

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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 2012. The financial statements were authorised for issue by the Chief Executive of Crown Law on 30 September 2012.

#### **Basis of preparation**

##### **Statement of compliance**

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

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

##### **Measurement base**

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.

##### **Functional and presentation currency**

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 accounting standards during the financial year, which have had only a presentational or disclosure effect:

- Amendments to NZ IAS 1 *Presentation of Financial Statements*. The amendments introduce a requirement to present, either in the statement of changes in equity or the notes, for each component of equity, an analysis of other comprehensive income by item. Crown Law has decided to present this analysis in Note 14.
- FRS-44 *New Zealand Additional Disclosures and Amendments to NZ IFRS to harmonise with IFRS and Australian Accounting Standards (Harmonisation Amendments)*. The purpose of the new standard and amendments is to harmonise Australian and New Zealand accounting standards with source IFRS and to eliminate many of the differences between the accounting standards in each jurisdiction. The main effect of the amendments to Crown Law is that certain information about property valuations is no longer required to be disclosed.
- Amendments to NZ IFRS 7 *Financial Instruments: Disclosures*. The amendment reduces the disclosure requirements relating to credit risk. Note 7 has been updated for the amendments.

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

- NZ IFRS 9 *Financial Instruments* will eventually replace NZ IAS 39 *Financial Instruments: Recognition and Measurement*. NZ IAS 39 is being replaced through the following three main phases: Phase 1 Classification and Measurement; Phase 2 Impairment Methodology; and Phase 3 Hedge Accounting. Phase 1 has been completed and has been published in the new financial instrument standard NZ IFRS 9. NZ IFRS 9 uses a single approach to determine whether a financial asset is measured at amortised cost or fair value, replacing the many different rules in NZ IAS 39. The approach in NZ IFRS 9 is based on how an entity manages its financial assets (its business model) and the contractual cash flow characteristics of the financial assets.

## Note 1: Statement of accounting policies (continued)

The financial liability requirements are the same as those of NZ IAS 39, except for when an entity elects to designate a financial liability at fair value through the surplus or deficit. The new standard is required to be adopted for the year ended 30 June 2016. However, as a new Accounting Standards Framework will apply before this date, there is no certainty when an equivalent standard to NZ IFRS 9 will be applied by public benefit entities.

The Minister of Commerce has approved a new Accounting Standards Framework (incorporating a Tier Strategy) developed by the External Reporting Board (XRB). Under this Accounting Standards Framework, Crown Law is classified as a Tier 1 reporting entity and it will be required to apply full Public Benefit Entity Accounting Standards (PAS). These standards are being developed by XRB based on current International Public Sector Accounting Standards. The effective date for the new standards for public sector entities is expected to be for reporting periods beginning on or after 1 July 2014. This means Crown Law expects to transition to the new standards in preparing its 30 June 2015 financial statements. As the PAS are still under development, Crown Law is unable to assess the implications of the new Accounting Standards Framework at this time.

Due to the change in the Accounting Standards Framework for public benefit entities, it is expected that all new NZ IFRS and amendments to existing NZ IFRS will not be applicable to public benefit entities. Therefore, XRB has effectively frozen the financial reporting requirements for public benefit entities up until the new Accounting Standards Framework is effective. Accordingly, no disclosure has been made about new or amended NZ IFRS that exclude public entities from their scope.

### **Significant accounting policies**

#### **Revenue**

Revenue is measured at the fair value of consideration received or receivable.

#### *Revenue Crown and other revenue*

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 surplus or deficit in which case the transaction costs are recognised in the statement of comprehensive income.

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

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

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

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

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. Significant financial difficulties of the debtor, probability that the debtor will enter into bankruptcy, receivership or liquidation, and default in payments are considered indicators that the debtor is impaired. The amount of the impairment is the difference between the

## Note 1: Statement of accounting policies (continued)

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 a provision for impairment account, and the amount of the loss is recognised in the surplus or deficit. Overdue receivables that are renegotiated are reclassified as current (that is, not past due).

### *Work in progress*

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

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 fittings, office equipment and library.

Property, plant and equipment is measured 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 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 a revalued asset is sold, the amount included in the property, plant and equipment revaluation reserve in respect of the disposed asset is transferred to taxpayers' funds.

### *Subsequent costs*

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

### *Depreciation*

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

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

## Note 1: Statement of accounting policies (continued)

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%)

### ***Impairment of property, plant and equipment and intangible 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.

### ***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 benefits expected 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 14 staff.

#### *Long-term employee entitlements*

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

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

- the present value of the estimated future cash flows.

Expected future payments are discounted using market yields on government bonds at balance date with terms to maturity that match, as closely as possible, the estimated future cash outflows for entitlements. The inflation factor is based on the expected long-term increase in remuneration for employees.

#### *Presentation of employee entitlements*

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

### ***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***

A provision is recognised for future expenditure of uncertain amount or timing when there is a present obligation (either legal or constructive) as a result of a past event, it is probable that an outflow of 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.

## Note 1: Statement of accounting policies (continued)

### **Equity**

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

### **Memorandum accounts**

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

### **Revaluation reserves**

These reserves relate to the revaluation of library to fair value.

### **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, IRD, including the GST relating to investing and financing activities, is classified as an operating cash flow in the statement of cash flows.

Commitments and contingencies are disclosed exclusive of GST.

### **Income tax**

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 2012, 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. The budget figures have been prepared in accordance with NZ GAAP, using accounting policies that are consistent with those adopted in preparing these financial statements.

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

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

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

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

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

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

In preparing these financial statements Crown Law has made estimates and assumptions concerning the future. These estimates and assumptions may differ from the subsequent actual results. Estimates and 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:

#### **Retirement and long service leave**

An analysis of the exposure in relation to estimates and uncertainties surrounding retirement and long service leave liabilities is disclosed in Note 11.



## Note 2: Other revenue

2011 Actual \$000		2012 Actual \$000
	Legal fees and disbursements received from:	
20,149	• Government departments/other government entities	22,627
12	• Other clients	2
-	Court awarded costs	96
20,161	<b>Total other revenue</b>	22,725

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

## Note 3: Personnel costs

2011 Actual \$000		2012 Actual \$000
19,436	Salaries and wages	19,077
551	Employer contributions to subsidised superannuation scheme	666
(200)	Movement in retirement and long service leave	46
19,787	<b>Total personnel costs</b>	19,789

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

## Note 4: Depreciation and amortisation expense

2011 Actual \$000		2012 Actual \$000
	<b>Depreciation of property, plant and equipment:</b>	
21	• Office equipment	17
240	• Computer equipment	127
360	• Leasehold improvements	359
29	• Furniture and fittings	28
83	• Library	13
	<b>Amortisation of intangibles:</b>	
380	• Computer software	460
1,113	<b>Total depreciation and amortisation expenses</b>	1,004



### Note 5: Capital charge

Crown Law pays a capital charge to the Crown on its taxpayers' funds, exclusive of the balance of the Memorandum Account: Legal Advice and Representation, as at 30 June and 31 December each year. The capital charge rate for the year ended 30 June 2012 was 8% (2011: 7.5%).

### Note 6: Other operating expenses

2011 Actual \$000		2012 Actual \$000
47	Audit fees for audit of the financial statements	49
-	Bad debts written off	-
-	Increase/(decrease) provision for doubtful debts	-
39	Increase/(decrease) impairment for doubtful work in progress	(14)
411	Consultancy	766
43,403	Crown Solicitors' fees	42,473
1,841	Operating lease expenses	1,844
4,249	Other operating expenses	5,183
49,990	<b>Total other operating expenses</b>	50,301

### Note 7: Debtors and other receivables

2011 Actual \$000		2012 Actual \$000
1,703	Trade debtors	1,911
-	Less provision for doubtful debts	-
1,703	<b>Net trade debtors</b>	1,911
2,194	Work in progress	1,903
(81)	Less impairment for doubtful work in progress	(67)
2,113	<b>Net work in progress</b>	1,836
-	Sundry debtors	13
3,816	<b>Total debtors and other receivables</b>	3,760

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

The ageing profile of receivables at year end is detailed on page 59.

**Note 7: Debtors and other receivables (continued)**

	2011			2012		
	Gross \$000	Impairment \$000	Net \$000	Gross \$000	Impairment \$000	Net \$000
Not past due	1,206	-	1,206	1,657	-	1,657
Past due 1-30 days	324	-	324	138	-	138
Past due 31-60 days	101	-	101	30	-	30
Past due 61-90 days	24	-	24	5	-	5
Past due > 90 days	48	-	48	81	-	81
<b>Total</b>	<b>1,703</b>	<b>-</b>	<b>1,703</b>	<b>1,911</b>	<b>-</b>	<b>1,911</b>

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

Work in progress comprises mainly unbilled June 2012 fees and disbursements.

Movement in the provision for impairment of work in progress is as follows:

2011 Actual \$000		2012 Actual \$000
42	Balance at 1 July	81
39	Additional provisions made (Note 4)	(14)
-	Work in progress written off	-
81	<b>Balance at 30 June</b>	<b>67</b>

## 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 2010	2,938	608	815	1,167	1,517	7,045
Additions	-	-	-	28	95	123
Disposals	-	-	-	-	(173)	(173)
<b>Balance at 30 June 2011</b>	<b>2,938</b>	<b>608</b>	<b>815</b>	<b>1,195</b>	<b>1,439</b>	<b>6,995</b>
Balance at 1 July 2011	2,938	608	815	1,195	1,439	6,995
Additions	-	-	-	2	27	29
Disposals	-	-	-	-	-	-
<b>Balance at 30 June 2012</b>	<b>2,938</b>	<b>608</b>	<b>815</b>	<b>1,197</b>	<b>1,466</b>	<b>7,024</b>
<b>Accumulated depreciation and impairment losses</b>						
Balance at 1 July 2010	1,840	520	686	1,094	1,150	5,290
Depreciation expense	360	21	83	29	240	733
Elimination on disposal	-	-	-	-	(173)	(173)
<b>Balance at 30 June 2011</b>	<b>2,200</b>	<b>541</b>	<b>769</b>	<b>1,123</b>	<b>1,217</b>	<b>5,850</b>
Balance at 1 July 2011	2,200	541	769	1,123	1,217	5,850
Depreciation expense	359	17	13	28	127	544
Elimination on disposal	-	-	-	-	-	-
<b>Balance at 30 June 2012</b>	<b>2,559</b>	<b>558</b>	<b>782</b>	<b>1,151</b>	<b>1,344</b>	<b>6,394</b>
<b>Net carrying amount</b>						
At 30 June and 1 July 2010	1,098	88	129	73	367	1,755
At 30 June 2011	738	67	46	72	222	1,145
<b>At 30 June 2012</b>	<b>379</b>	<b>50</b>	<b>33</b>	<b>46</b>	<b>122</b>	<b>630</b>

## Note 9: Intangible assets

	Acquired Software \$000
<b>Cost</b>	
Balance at 1 July 2010	2,189
Additions	104
Disposals	-
<b>Balance at 30 June 2011</b>	<b>2,293</b>
Balance at 1 July 2011	2,293
Additions	24
Disposals	-
<b>Balance at 30 June 2012</b>	<b>2,317</b>
<b>Accumulated depreciation and impairment losses</b>	
Balance at 1 July 2010	1,143
Amortisation expense	380
Elimination on disposal	-
<b>Balance at 30 June 2011</b>	<b>1,523</b>
Balance at 1 July 2011	1,523
Amortisation expense	460
Elimination on disposal	-
<b>Balance at 30 June 2012</b>	<b>1,983</b>
<b>Net carrying amount</b>	
At 30 June and 1 July 2010	1,046
At 30 June 2011	770
<b>At 30 June 2012</b>	<b>334</b>

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

### Note 10: Creditors and other payables

2011 Actual \$000		2012 Actual \$000
4,534	Trade creditors – Crown Solicitors’ fees	5,403
698	Trade creditors – Other	902
3,517	Accrued – Unbilled Crown Solicitors’ fees	3,372
519	Other accrued expenses – Crown Solicitors’ fees	481
249	Other accrued expenses	187
416	GST payable/(receivable)	(339)
9,933	<b>Total creditors and other payables</b>	10,006

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

2011 Actual \$000		2012 Actual \$000
	<b>Current liabilities</b>	
459	Personnel accruals	643
1,204	Annual leave	1,301
143	Retirement and long service leave	164
1,806	<b>Total current portion</b>	2,108
	<b>Non-current liabilities</b>	
124	Retirement and long service leave	149
124	<b>Total non-current portion</b>	149
1,930	<b>Total employee entitlements</b>	2,257

Annual leave and vested long service leave are calculated using the number of days owing as at 30 June 2012.

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 2012.

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

The measurement 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.

The Treasury advised that the discount rates in year 1 of 2.43%, year 2 of 2.47% 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 affect the carrying amount of the liability.

## Note 12: Provisions

2011 Actual \$000		2012 Actual \$000
	<b>Current portion</b>	
-	Restructuring	446
-	Total provision	446

	Restructuring \$000
Balance at 1 July 2011	-
Additional provisions made	446
Amounts used	-
Unused amounts reversed	-
Balance at 30 June 2012	446

### Restructuring

The restructuring provision arises from the office restructuring project and relates to the cost of expected redundancies. Management anticipate the restructuring will be completed within six months of balance date and the amount of the liability is considered reasonably certain.

## Note 13: Return of operating surplus

2011 Actual \$000		2012 Actual \$000
2,878	Surplus from statement of comprehensive income	2,008
-	Transfer to taxpayer funds memorandum account: legal advice and representation	(1,538)
2,878	Provision for repayment of surplus to the Crown	470

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



## Note 14: Equity

2011 Actual \$000		2012 Actual \$000
	<b>Taxpayers' funds</b>	
1,234	<b>Balance at 1 July</b>	4,461
2,878	Net surplus/(deficit)	2,008
3,227	Capital contribution	-
-	- Retained surplus	-
-	- Transfer to memorandum account	(2,694)
-	- Transfer of memorandum account net (surplus)/deficit for the year	(1,538)
(2,878)	Return of operating surplus to the Crown	(470)
4,461	<b>Balance at 30 June</b>	1,767
	<b>Memorandum account: Legal Advice and Representation</b>	
-	<b>Balance at 1 July</b>	-
-	- Transfer from taxpayers' funds	2,694
-	- Capital injection for memorandum account surpluses previously repaid to the Crown	1,174
-	<b>Opening balance of memorandum account</b>	3,868
-	- Net memorandum account surpluses/(deficits) for the year	1,538
-	- Return of surplus to the Crown	-
-	<b>Balance at 30 June</b>	5,406
	<b>Revaluation reserves</b>	
296	<b>Balance at 1 July</b>	296
296	<b>Balance at 30 June</b>	296
<b>4,757</b>	<b>Total equity as at 30 June</b>	<b>7,469</b>

## Note 15: Financial instrument risks

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

### *Market risk*

#### *Currency risk*

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

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

#### *Interest rate risk*

Interest rate risk is the risk that the fair value 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.

## Note 15: Financial instrument risks (continued)

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.

2011	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)	9,933	Nil	Nil	Nil
Derivative financial instrument liabilities	Nil	Nil	Nil	Nil
Finance leases	Nil	Nil	Nil	Nil

2012	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)	10,006	Nil	Nil	Nil
Derivative financial instrument liabilities	Nil	Nil	Nil	Nil
Finance leases	Nil	Nil	Nil	Nil

## Note 16: Financial instruments

The carrying amounts of financial assets and financial liabilities in each of the NZ IAS 39 categories are as follows:

2011 Actual \$000		2012 Actual \$000
	<b>Loans and receivables</b>	
13,395	Cash and cash equivalents	13,997
3,816	Debtors and other receivables	3,760
17,211	<b>Total loans and receivables</b>	17,757
	<i>Financial liabilities measured at amortised cost</i>	
9,933	Creditors and other payables	10,006
9,933	<b>Total creditors and other payables</b>	10,006

## Note 17: Related party information

All related party transactions have been entered into on an arm's-length basis.

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.

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.

### **Significant transactions with government-related entities**

Crown Law has received funding from the Crown of \$51,141 million (2011: \$53,722 million) to provide legal services to the Crown for the year ended 30 June 2012.

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

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. During the year ended 30 June 2012 Crown Law has provided legal services to departments and government entities in the amount of \$22.627 million (2011: \$20.161 million).

In conducting its activities, Crown Law is required to pay various taxes and levies (such as GST, FBT, PAYE and ACC levies) to the Crown and entities related to the Crown. The payment of these taxes and levies, other than income tax, is based on the standard terms and conditions that apply to all tax and levy payers. Crown Law is exempt from paying income tax.

Crown Law also purchases goods and services from entities controlled, significantly influenced or jointly controlled by the Crown. Purchases from these government-related entities for the year ended 30 June 2012 totalled \$0.417 million (2011: \$0.765 million). These purchases included the purchase of electricity from Genesis, air travel from Air New Zealand, court filing fees from Ministry of Justice and postal and courier services from New Zealand Post.

Crown Law provided legal services to the Office of the Auditor-General totalling \$4,392 for the year ended 30 June 2012 (2011: \$7,840).

### **Transactions with Crown Solicitors**

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 \$42.473 million (2011: \$43.403 million). There is a balance of \$3.853 million (2011: \$4.036 million) outstanding at year end.

## Note 17: Related party information (continued)

### Transactions with key management personnel

#### Key management personnel compensation

2011 Actual \$000		2012 Actual \$000
1,833	Salaries and other short-term employee benefits	1,906
38	Post-employment benefits	121
-	Other long-term benefits	-
-	Termination benefits	-
1,871	<b>Total salaries and other short-term employee benefits</b>	<b>2,027</b>

Key management personnel include the Solicitor-General and the five 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).

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

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

## Note 18: 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.

**Note 19: Reconciliation of net surplus/deficit to net cash flow from operating activities for the year ended 30 June 2012**

2011 Actual \$000		2012 Actual \$000
2,878	<b>Net operating surplus/(deficit)</b>	2,008
1,113	Depreciation and amortisation expense	1,004
1,113	<b>Total non-cash items</b>	1,004
	<b>Working capital movements</b>	
(753)	(Increase)/decrease in debtors and receivables	17
(27)	(Increase)/decrease in prepayments	(342)
995	Increase/(decrease) in creditors and payables	73
(104)	Increase/(decrease) in employee entitlements	302
-	Increase/(decrease) in provision	446
111	<b>Working capital movements – net</b>	496
	<b>Movements in non-current liabilities</b>	
(98)	Increase/(decrease) in employee entitlements	25
(98)	<b>Movements in non-current liabilities</b>	25
	<b>Add/(less) investing activity items</b>	
-	Net (gain)/loss on disposal of property, plant and equipment	-
-	<b>Total investing activity items</b>	-
4,004	<b>Net cash flow from operating activities</b>	3,533

**Note 20: Memorandum Account: Legal Advice and Representation**

2011 Actual \$000		2012 Actual \$000
2,694	<b>Opening balance at 1 July</b>	3,868
20,154	Revenue	22,629
(18,980)	Less expenses	(21,091)
1,174	Surplus/(deficit) for the year	1,538
3,868	<b>Closing balance at 30 June</b>	5,406

## Note 20: Memorandum Account: Legal Advice and Representation (continued)

The opening balance of \$3.868 million is the retention of 2007/08 surplus (\$870,000), 2008/09 surplus (\$946,000), 2009/10 surplus (\$878,000) and the 2010/11 surplus (\$1.174 million), arising from legal advice and representation services.

The 2011/12 surplus of \$1.538 million comprises:

- legal fees for services \$1.526 million;
- net contributions received for the funding of the Government Legal Services Project \$7,631; and
- surplus arising from the 2012 Lawyers in Government Conference \$3,851 (2011: \$4,000).

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 by Crown Law.

Previously, memorandum accounts were “notional” accounts included for transparency around outputs that are fully cost recovered from third parties through the fees charged for services. Effective 1 July 2011, all government department memorandum accounts were required to change from being “notional” accounts requiring note disclosure to being “real” accounts requiring separate recognition within the financial statements.

These transactions are included as part of Crown Law’s operating income and expenses in the surplus/deficit, however, effective 1 July 2011, these transactions will be excluded from the calculation of Crown Law’s return of operating surplus (refer Note 13). The cumulative balance of the surplus/(deficit) of the memorandum accounts is recognised as a component of equity (refer Note 19).

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

### *Action taken to address surpluses and deficits*

A revised fee strategy is currently being developed to ensure that fee structure and associated revenues are in line with the forecast activities.

## Note 21: Events after balance date

There have been no events after balance date.

## Note 22: Explanation of major variances against budget

Explanations for major variances from Crown Law’s budgeted figures in the Information Supporting the Estimates are as follows:

### *Statement of comprehensive income*

#### *Income from the Crown*

Income from the Crown was less than budgeted by \$3.312 million because approvals were obtained to transfer surplus funds to 2012/13, and Crown Law did not drawdown the cash from the Treasury in 2011/12. See page 50 Statement of Departmental Expenditure and Appropriations for detail.

#### *Other operating expenses*

Other operating expenses were less than budgeted by \$5.889 million due to reduced Crown Solicitor fees.

### *Statement of financial position*

#### *Cash and cash equivalents*

Cash and cash equivalents is above budget by \$6.244 million because of a capital injection received for the memorandum account opening balance and reduced Crown Solicitor fees.

#### *Statement of cash flows*

Receipts from the Crown were less than budgeted by \$3.351 million because of in principle transfers approved. Payment to suppliers was less than budget by \$6.890 million due to reduced Crown Solicitor expenditure compared to the original budget.

# 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



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