

Vote: Attorney-General

Baseline Alignment Proposal

Version 1

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Submitted by:

Hon Christopher Finlayson

Section 1: Alignment to Government priorities

Ministerial objectives

My objectives for Vote: Attorney-General during the remainder of the 2009/10 financial period and budget 2010 are linked to the Government's:

- Social priorities in Law and Order: Treaty and Constitutional Issues, and
- economic priorities in driving a better performance across the public sector

This Baseline Alignment Proposal is in relation to Vote: Attorney-General

- Review of the Foreshore and Seabed Act 2004
- Ngati Porou Foreshore and Seabed Deed of Settlement
- Prosecution of Crime
- Review of Crown Prosecution Service
- Adequate funding of the Crown Prosecution Service
- Review of Government Legal Services
- Review of the Law of Contempt

Review of the Foreshore and Seabed Act 2004

Required: Legislation introduced and passed.

The independent review and background policy work have now been completed and preliminary meetings held with stakeholders and groups previously in negotiations. An iwi leaders group and a technical advisory group have been established. *[deleted – confidentiality of advice]* A ministerial group has also been formed.

[information deleted in order to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]

Ngati Porou Foreshore and Seabed Deed of Settlement

Required: Legislation passed.

Our 2008 election policy made a commitment to honour this deed. In my 2009 priorities, I said the settlement was to be complied with and legislation passed by the end of the year. Ngati Porou and the Crown have agreed to defer the legislation until the content of the Foreshore and Seabed review is largely decided. Ngati Porou has signalled they would like to enter into discussions about possible amendments to their settlement early next year. I remain in regular contact with Ngati Porou about this matter. They are happy with progress to date.

Prosecution of Crime

Required: Urgent funding.

I am working in conjunction with the Justice Sector Ministers to achieve the law and order objective to make families feel safer in their homes and their communities. We are also exploring ways in which legal services can be more efficient and cost effective.

Some reforms in the criminal justice system will take time and additional cost to implement. Following the passing of the Criminal Procedure Bill and Court Practice Notes, changes implemented by the Judiciary and Ministerial actions to reduce the court waiting times have led to a significant increase in the cost of Crown Prosecutions. Ministry of Justice officials believe that in time these changes will result in a more cost effective criminal Justice System. However, in the mean time, there has been a significant cost increase which has required urgent funding to maintain the expected level of service.

Review of Crown Prosecution Service

Required: Resourcing

The prosecution system in New Zealand differs from most similar jurisdictions in that trials on indictment are conducted by Crown Solicitors - private practitioners appointed to prosecute under a warrant issued by the Governor-General. New Zealand is also one of the few jurisdictions remaining where summary prosecutions are conducted by specially trained members of the Police who need not be legally qualified.

Subject to funding being available, in conjunction with the Hon. Simon Power, I propose to undertake a review of the Crown Prosecution Service, similar to the review of the Legal Aid System. *[information deleted in order to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]*

The aim of the review will be to improve efficiency and savings across the prosecution services.

Adequate Funding of the Crown Prosecution Service

Required: Urgent and ongoing funding.

A review of prior year's budget initiatives shows that Crown Law is underfunded for the trials on indictment conducted by Crown Solicitors.

The external cost pressure, arises in three main areas:

- Policy changes (including Court Practice Notes), and
- Demand issues, court waiting lists, and
- Crown Solicitor fee rates

Recent policy changes and court practice notes have been implemented to improve the efficiency and effectiveness of the courts. These changes have increased the capacity of the courts to dispose of criminal matters and reduce the court waiting time in criminal courts in

Auckland. The new committal process has increased the workload of the Crown Solicitors. The significant impacts on the Crown prosecution service are as follows:

- An additional criminal court in Auckland has been in operation since October 2009. Further increases in jury-capable court capacity is planned, with new courts scheduled to open in mid-March 2010 and October 2010.
- Crown Solicitors are now required to take responsibility for the disclosure of evidence to the accused. This has previously been undertaken by the Police.
- The revised committal process has resulted in an average increase of 41% in the number of criminal cases committed for trial and a corresponding decrease in the number of cases awaiting committal. This is an increase of 41% in the number of cases for which Crown Solicitors are now responsible and must prepare for trial.

These changes were implemented with the understanding that there would likely be fiscal pressure on Crown Law in the medium to short term.

[information deleted in order to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]

To maintain a trusted Justice system that is effective and efficient, requires that funding be provided to address the current service delivery problems.

Review of Government Legal Services

Required: Yet to be determined, through report back to Cabinet.

In late 2007 Cabinet asked the Solicitor-General to lead a review of government legal services with assistance from the State Services Commission and the Treasury.

The review was tasked with ascertaining expenditure levels and making recommendations to government by answering three questions:

- Do internal and external legal service providers to government most effectively serve government's overall interests;
- Can expenditure be better managed consistent with obtaining high quality advice; and
- Can expenditure be better managed while enhancing legal risk management?

There are two broad objectives for this programme:

- To consider and propose governance arrangements for increasing cooperation and collaboration amongst government lawyers.
 - It is expected that proposals will be agreed by agencies and form part of a report by the Solicitor-General to me.

- To commence a series of projects that, over time, will deliver increased:
 - effectiveness of government legal services – consistency, standards, quality legal advice and representation; and
 - efficiency of government legal services – value for money and any associated resourcing arrangements.

It is expected that these projects may continue independently of any proposals relating to governance arrangements.

Review of the Law of Contempt

Required: Report back and legislation.

I have initiated a review of the law of contempt, with an emphasis on addressing the current issues and changes in the law of contempt.

In recent years there have been instances where court name suppression orders have been ignored, or details published by some individuals that have enabled identification of the individual to whom the courts have granted name suppression orders. In many cases the breach of the court order has been facilitated by the use of the “internet” and offshore service providers. This new initiative is being funded from existing baseline.

Current Priorities and Other Opportunities

Crown Law’s work programme is responsive and reactive and it is not feasible to discontinue any of its current services, all of which are aligned with current government priorities.

Section 2: Reprioritisation

Justice Sector Overview

The justice sector's reports for Budget 2010 Phase 1 and Phase 2² highlighted that the justice sector cannot cope with ongoing volume pressures in a fiscally sustainable way. In Budget 2010, the immediate service delivery risks and Vote Ministers' priorities that the justice sector cannot absorb or defer currently amount to \$189.688m operating (excluding operating expenses relating to the Prison Capacity Business Case and the Courts and Criminal Matters Bill).³ Aside from these pressures, in Budget 2010 the justice sector proposes to absorb \$624m pressures within baselines⁴ and has identified fiscal risks for future Budgets of \$614m.⁵

Over the past decade the demand for justice sector services has substantially increased and is reflected in higher volumes of prosecutions, court cases, prisoners, and offenders managed in the community. The current business model is underpinned by an extensive legislative and policy framework (often built on legislation that is over 50 years old). This model cannot cope with continued increases in demand.

The justice sector has considered a range of strategic options that will help to transform its business model to be more fiscally sustainable. The key strategic choices are the Police, Courts and Corrections' Performance Improvement Actions (PIAs) that aim to reduce volumes through the courts and prisons, and improve the efficiency and effectiveness of the criminal justice system – thus contributing to the Government's drive for 'better, smarter public services for less'.⁶ Sector Ministers have agreed that these PIAs are an important priority for the justice sector.

The sector is proposing to allocate operating funding in Budget 2010⁷ for criminal justice PIAs – Criminal Procedure Simplification (CPS), Electronic Operating Model (EOM) and

² The justice sector's reports for Phase 1 and Phase 2 were:

- Phase 1: Justice Sector: Budget 2010 Baseline Examination (7 December 2009)
- Phase 2: Justice Sector Budget 2010 Capital Proposals and Preliminary Strategic Choices: Sector Overview (5 February 2010).

³ Appendix 5 of the Phase 1 report identified residual pressures of \$435.901m operating expenses. Based on further work since Phase 1 the sector proposes in Phase 3 to allocate funding to \$189.688m of these pressures. (The changes include: scaling back the PIAs, and clarifying the service delivery risks and Vote Ministers' priorities for Budget 2010 funding). Note: the Prison Capacity proposals will be considered by Cabinet in the capital bids process, outside the justice sector Budget 2010 process.

⁴ See Appendix 3 of the Phase 1 report.

⁵ See table 2 in this briefing. Table 2 outlines the currently known and quantified (\$614m) operating risks for future Budgets (this updates the \$548m risks for future Budgets identified in Phase 1: refer Appendix 6 of the Phase 1 report).

⁶ CAB Min (09) 17/10 – *Improving the Business of Government: Delivering Better, Smarter Public Services for Less*.

⁷ Capital costs will be self-funded.

Audio-Visual Links (AVL) – these initiatives will improve efficiency in the courts and provide other benefits, at a lower level, for Police and Corrections. These PIAs also complement and support important aspects of other sector PIAs – the Police Comprehensive Approach to Policing Excellence (CAPE), such as the alternative resolutions and case management initiatives, and Corrections’ The Way Forward, in particular the Community Probation Service change programme and the focus Corrections is taking in relation to rehabilitation and reintegration.

The sector has developed scaled-back options for funding CPS, EOM and AVL in Budget 2010 and out-years, and will sequence implementation in a coordinated way. Funding for CAPE is not sought in Budget 2010 and Corrections proposes to self-fund the initial implementation of The Way Forward in 2010 from efficiency savings, however funding for these PIAs may be required in Budget 2011 and future Budgets

Vote: Attorney-General priorities

The Government requires high quality legal services to ensure its operations are conducted constitutionally and its chosen policies are implemented lawfully. As the Crown's legal advisor, Crown Law plays an important role across Government. Its whole of government focus provides clarity and guidance for all ministries and departments.

Crown Law operates as a legal practice providing legal advice to the Government and representation in the courts. Crown Law gives advice to and supports the Attorney-General and the Solicitor-General in the exercise of their statutory duties and other functions.

Crown Law focuses on three objectives:

- The Government of the day is supported to fulfil its democratic duties under law and in the public interest
- Leadership of high quality, effective government legal services is provided
- The principal Law Officers’ perform their constitutional duties to a high standard.

Crown Law works with the Justice sector agencies to support the Government’s priorities. The prosecution of indictable crime is one Crown Law function that has a significant impact on the Justice Sector and its overall outcome of ‘A Safe and Just Society’.

The services provided by Crown Law do not allow scope for the substitution of one service for another. The services provided are critical to maintaining a whole of government focus that provides clarity and guidance for all ministries and departments. My priorities require legislative change or increased funding and will not be achieved without an increase to baseline.

Crown Prosecutions and Appeals

The Crown Prosecution Service is critical to the Criminal Justice system. Any refocus or reduction of delivery would be completely counter to the Ministerial and Justice Sector initiatives which are currently being implemented to reform the criminal justice system while improving its efficiency and effectiveness.

An efficient and effective criminal justice system contributes to the Government’s priorities of driving better performance across the public sector and Law and order which addresses the

drivers of crime and making neighbourhoods safer for Kiwi families. It holds the offender to account, while improving the response for the victims of crime.

To date these Ministerial and Justice Sector initiatives have delivered:

- One additional jury capable court in Auckland (additional courts are scheduled to be implemented from mid March 2010 and October 2010)
- Crown Solicitors are now required to take responsibility for the disclosure of evidence to the accused. This has previously been undertaken by the Police.
- The revised committal process has resulted in an average increase of 41% in the number of criminal cases committed for trial and a corresponding decrease in the number of cases awaiting committal. This represents a 41% increase in the number of cases for which Crown Solicitors are now responsible and must prepare for trial.

However, these 3 initiatives have increased the work load and cost of the Crown Prosecution service.

Crown Law has recently issued revised Prosecution Guidelines with the aim of further streamlining the work of the prosecutors.

Legal Advice and Representation

These services relate to the provision of advice and representation services upon receipt of instructions from government departments and agencies.

This service is not directly funded by the Crown, therefore no savings would be achieved from a reduction of this service as the funding is provided by charging fees and disbursements to government departments and agencies for the services provided. The option of more work going to the private sector would ultimately generate greater cost and dilute the legal leadership of Crown Law.

The Exercise of the Principal Law Officer Functions

These services relate to protecting the Crown's interests and to ensuring that the Crown's responsibilities are lawfully carried out. A reduction in these services would impact on the Government's need to ensure its operations are conducted constitutionally.

New Activities

There are no new activities proposed to be started or discontinued.

Other than the review of the Crown Prosecution Services and its related funding, all of my other objectives are underway, and continue to align with Government priorities.

Section 3: Summary of Financial Movements

Baseline Alignment Proposal - Financial Summary Report					
Vote:	2009/10	2010/11	2011/12	2012/13	2013/14
General	(\$'000)	(\$'000)	(\$'000)	(\$'000)	(\$'000)
Baseline (2009/10 FBU)	65,014	65,219	65,509	65,109	65,109
Share Allocation	4,300	700	0	0	0
Centralised Saving	0	0	0	0	0
Reprioritisation					
Total Reconciliation	0	0	0	0	0
Transfers: Outside Vote					
Common Prosecution Service	0	0	0	457	0
Total Transfers Outside Vote	0	0	0	457	0
Total Changes	4,300	700	0	457	0
Total Proposed Baseline	69,314	65,919	65,509	65,566	65,109

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