
PILON: New Zealand Country Report

October 2017



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STRUCTURE AND GOVERNANCE OF LAW AND JUSTICE AGENCIES

Crown Law Office

1. Crown Law is a Government department that provides legal advice and representation to the Government (in particular, departments and Ministers) in matters affecting the Crown. In common with many other departments there is no statutory basis for the establishment of Crown Law.
2. Crown Law's purpose is to serve the Crown and uphold the rule of law. Its vision is to be the Crown's trusted legal advisor and for clients to value its services.
3. Crown Law's work programme and priorities are developed to reflect the overall priorities of the Government and Attorney-General. Its current strategic objectives are to:
 - 3.1 manage public resources responsibly;
 - 3.2 provide valued services;
 - 3.3 provide technical expertise and leadership;
 - 3.4 build a high performance culture; and
 - 3.5 develop its reputation.
4. Broadly, it is the function of Crown Law to support the Attorney-General and the Solicitor-General in performing their roles. In particular, Crown Law is responsible for:
 - 4.1 the provision of legal advice and representation services to Ministers of the Crown and Government departments;
 - 4.2 supporting and assisting the Attorney-General and the Solicitor-General in the performance of their statutory and other functions as Law Officers of the Crown;
 - 4.3 assisting the Solicitor-General with the conduct of criminal appeals; and
 - 4.4 assisting the Solicitor-General in the supervision and oversight of public prosecutions.

Solicitor-General – Una Jagose QC

5. Una Jagose QC has been New Zealand's Solicitor-General since February 2016. From February 2015 until she was appointed Solicitor-General, Una was the Acting Director of the Government Communications Security Bureau. Prior to this, she held legal and policy roles with the Ministry of Consumer Affairs and was the Chief Legal Advisor at the Ministry of Fisheries. Una had also worked for many years at Crown Law, representing the Crown in courts at all levels and was Deputy Solicitor-General, Crown Legal Risk from 2013–2015.

Crown Law's structure

6. Reflecting the core functions of the Office, Crown Law's structure is organised into four groups:

- 6.1 Attorney-General's Group, comprising the Constitutional and Human Rights Team and Treaty Teams;
- 6.2 Criminal Group, comprising the Criminal Teams and Public Prosecutions Unit;
- 6.3 Crown Legal Risk Group, comprising the Public Law Teams and Revenue Team; and
- 6.4 Strategy and Corporate Group, comprising the Policy, Human Resources, Finance and Performance, Information and Research and Legal and Support Services Teams.

Attorney-General's Group

- 7. As the senior and junior Law Officers in New Zealand, the Offices of the Attorney-General and Solicitor-General both have unique legal and administrative support requirements. The Constitutional and Human Rights Team provides this support and oversees the application of New Zealand human rights legislative provisions and case law. The Team also provides advice and support on constitutional issues, including judicial matters, electoral and parliamentary law.
- 8. The Treaty Teams provide advice and representation to the Government when legal issues arise about the Crown's relationships with iwi, hapū and whānau Māori under the Treaty of Waitangi. The Teams represent the Crown in the Waitangi Tribunal in relation to historical claims and contemporary issues. The Teams also represent the Crown in the Courts – tackling public law issues that have a bearing on Crown-Māori relationships. When giving advice to Government departments about these issues, the Teams address the increasing presence of contemporary statutory and commercial obligations which have emerged from New Zealand's Treaty settlement process and the articulation of Treaty principles in legislation.

Criminal Group

- 9. The Criminal Teams discharge the statutory responsibility of the Solicitor-General in representing the Crown in the Court of Appeal and Supreme Court on all criminal appeals. More than 500 appeals were heard in the Court of Appeal in the year July 2016–June 2017 and more than 70 applications for leave to appeal were filed in the Supreme Court in the same period. Only a small percentage of Supreme Court applications proceed to a substantive hearing.
- 10. The second broad area of core work arises from the criminal Law Officer functions. Providing advice to the Solicitor-General is an integral part of the Teams' work programme, with the spectrum of advice covering requests for Crown appeals and judicial reviews, stays of prosecution, consents to prosecute, witness immunities and a range of other criminal trial matters. International criminal law functions also fall within this Law Officer category. On behalf of the Attorney-General, the Criminal Teams perform the functions of New Zealand's Central Authority for mutual assistance requests in relation to criminal matters. The Teams receive and assess all requests made to New Zealand from foreign countries and manage all outgoing requests from New Zealand. The Teams also prepare documentation in support of incoming and outgoing extradition requests and provide oversight to ensure the requirements of the Extradition Act 1999 are met.

11. The Public Prosecution Unit is a small team within the Criminal Group. Its role is addressed later in this report at paragraph [34].

Crown Legal Risk Group

12. The Public Law Teams work across a wide variety of subject areas including citizenship and immigration, health, gambling, resource management (including specific areas such as fisheries and Crown minerals), biosecurity, food safety, education, land law (including issues relating to the conservation estate, other land of the Crown and public works), earthquake recovery, employment, privacy, transport, social security and family law. The Teams also provide expertise in relation to the powers and functions of Government, judicial review of executive action, legislative and parliamentary processes, conduct of large-scale civil litigation, statutory appeals, common law claims against the Crown and Government-led inquiries.
13. The Revenue Team advises and represents the Crown on matters concerning the protection of revenue. The Team provides advice on powers and functions, both statutory and non-statutory, and is involved in a wide range of litigation including tax challenge proceedings, judicial review and appeals against the Crown.

Ministry of Justice

14. The Ministry of Justice is the lead agency in the justice sector. The Ministry:
 - 14.1 administers the court system, the legal aid system and the Public Defence Service;
 - 14.2 collects and enforces fines and civil debts;
 - 14.3 provides policy advice on matters related to justice and the administration of the law; and
 - 14.4 negotiates and helps ensure the durability of Treaty of Waitangi settlements for the Crown.
15. The Ministry employs over 3,400 full-time equivalent staff, with most working in the operational areas of courts, tribunals, fines collection and legal aid administration. Staff work from more than 100 locations across New Zealand.

Ministry of Foreign Affairs & Trade (MFAT)

16. The Legal Division of MFAT provides advice to Government on all international law issues. MFAT is responsible for the New Zealand Aid Programme.

Aid and Development focus

17. The mission of the New Zealand Aid Programme is to support sustainable development in developing countries in order to reduce poverty and to contribute to a more secure, equitable and prosperous world. The primary geographic focus of the New Zealand Aid Programme is the Pacific region. One of its investment priorities is strengthening law and justice systems in the Pacific. Sustainable economic development requires the primacy of the rule of law, maintained through an impartial and effective legal system. New Zealand is committed to supporting law and justice systems in the Pacific through a focus on community safety, democratic and national integrity systems and improved access to justice. Through the Aid Programme,

New Zealand works with both Government and non-Government stakeholders and draws from our experience in community policing, peace building, and democratic governance to assist our partner countries in the Pacific.

Parliamentary Counsel Office (PCO)

18. PCO is New Zealand's law drafting office. It is responsible for drafting most New Zealand Acts of Parliament and legislative instruments, and for publishing them both in hard copy and online.
19. PCO is an instrument of the Crown and a separate statutory office under the Attorney-General's control. It is established by, and operates in accordance with, the Legislation Act 2012.

Police Prosecution Service (PPS)

20. The PPS plays a key role in New Zealand's criminal justice system, prosecuting most Category 1-3 offences that proceed to judge-alone trial in the District Court.
21. The PPS:
 - 21.1 prosecutes all Category 1, 2 and 3 offences in the District Court and Youth Court (excluding Crown Prosecutions);
 - 21.2 advocates for Police at coroners' inquests as required;
 - 21.3 supports Police at miscellaneous hearings as required; and
 - 21.4 administers the Police Adult Diversion Scheme.
22. In 2016/2017, PPS handled 102,541 prosecutions, and 4,589 diversions (where offending is addressed outside of the court system and the charges are withdrawn). This compares to the 2015/2016 year where PPS handled 100,743 prosecutions, and 4,011 diversions. PPS has over 310 staff (including 212 prosecutors), a national office in Wellington and 41 Service Delivery Offices spread from Kaitia to Invercargill servicing New Zealand's 60 District Courts.

Public Defence Service (PDS)

23. PDS began operating as a pilot in Auckland and Manukau District Courts in May 2004. The establishment of PDS was a significant legal aid development in New Zealand based on the internationally proven model of mixed public/private legal aid provision. Following the success of the pilot programme in Auckland and Manukau from 2004, Cabinet decided to make PDS permanent and expanded PDS in a series of decisions since 2008.
24. Since 2008, PDS has been reviewed by independent entities. These reviews concluded that PDS provided value for money and had a number of positive effects on the legal aid and criminal justice systems. PDS also provided a useful benchmark against which to measure criminal legal aid services delivered by the private bar.
25. It is now the largest national criminal legal practice in New Zealand providing criminal defence and duty lawyer services, assistance in parole hearings and Police Detention Legal Assistance services in 10 offices throughout New Zealand. PDS

services 15 District Courts, as well as the High Court, the Court of Appeal and Supreme Court.

Law Commission

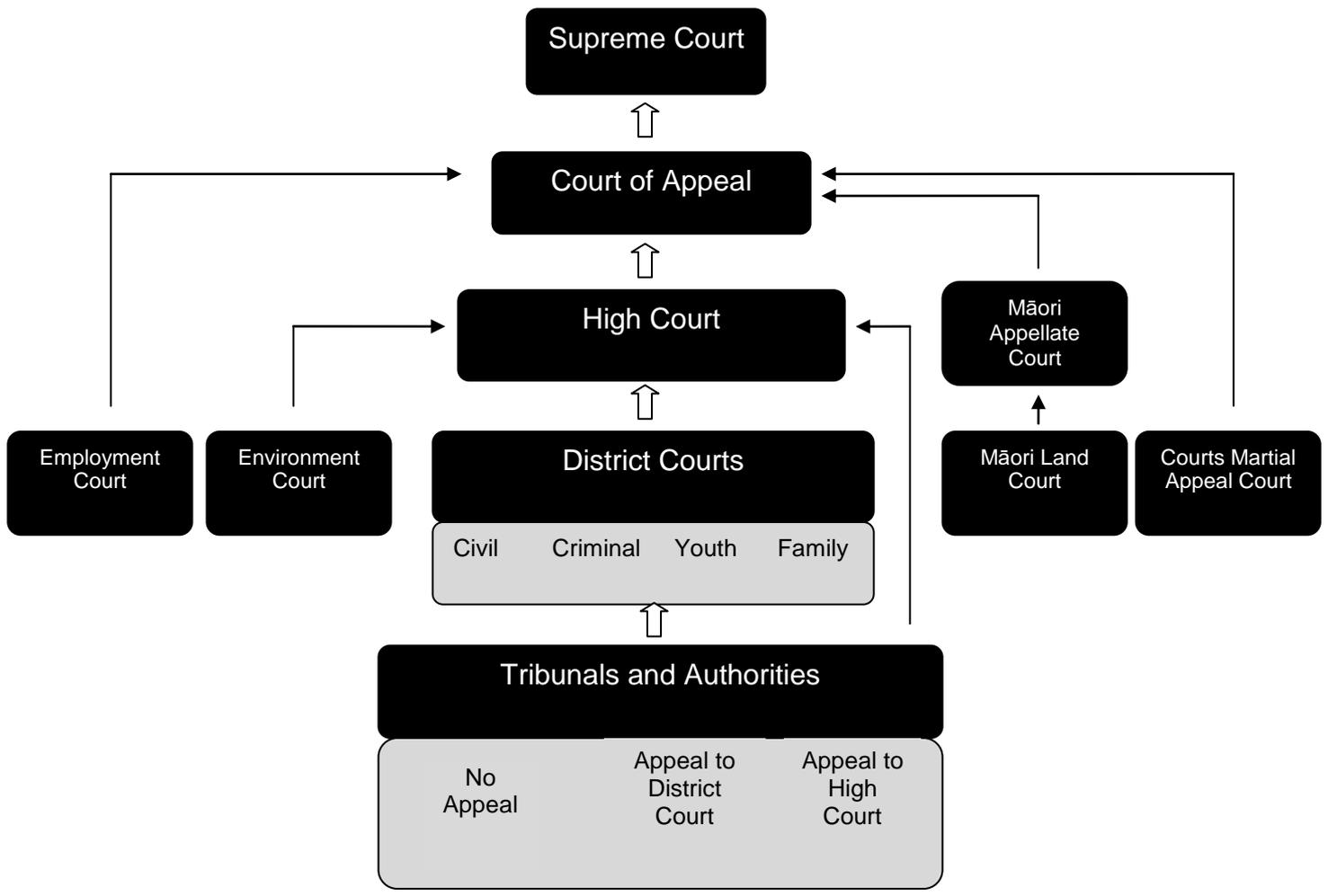
26. The Law Commission is an independent Crown entity funded by the Government to make recommendations that will improve the quality, relevance and effectiveness of New Zealand law. Its reports, tabled in Parliament, present proposals for law reform including legislative amendment. The Commission also undertakes research, provides information and advice, and supports discussion on law reform issues, as is consistent with its statutory purpose – “to promote the systematic review, reform, and development of the law of New Zealand”.¹

Courts

27. New Zealand’s court structure is depicted below. New Zealand’s highest appellate court is the Supreme Court. Leave is required to appeal to that Court. The other courts in the court hierarchy, in descending order, are the Court of Appeal, High Court and District Court.
28. Most court business takes place in the District Court. The bulk of criminal cases are heard in the District Court, as well as a large number of civil cases. Cases where the amount in issue is more than \$350,000,² and specified serious criminal cases (such as murder) are heard by the High Court.
29. The High Court has broad general jurisdiction. In practice, it tends to hear the more serious jury trials, the more complex civil cases, administrative law cases and appeals from the decisions of courts and tribunals below it.
30. In a year, New Zealand’s court system disposes of approximately:
- 30.1 2,200 civil and criminal appeals to the Supreme Court, Court of Appeal and High Court;
 - 30.2 137,200 criminal cases and 15,400 civil cases in the High Court and District Courts (including the Youth Court);
 - 30.3 57,300 substantive applications in the Family Court;
 - 30.4 12,000 cases in the specialist courts, including the Environment Court, Employment Court, Māori Land Court and through coronial services; and
 - 30.5 42,400 cases and applications in the Tribunals jurisdiction, such as the Disputes Tribunal and Tenancy Tribunal.

¹ Law Commission Act 1985, s 3.

² The monetary threshold increased from \$200,000 to \$350,000 in the District Court from 1 March 2017.



NOTE:

The District Court’s Criminal jurisdiction includes Specialist and Therapeutic Courts, including:

- Court of New Beginnings
- Alcohol and Other Drug Treatment Court
- Matariki Court

The District Court’s Youth jurisdiction includes:

- Rangatahi Court
- Pasifika Court

MAJOR LAW AND JUSTICE SECTOR ACHIEVEMENTS

Government Legal Network (GLN)

31. GLN is a collaborative initiative by departmental Chief Legal Advisors and the Solicitor-General to promote across-Government collaboration in the delivery of quality legal services by the network's more than 800 Government lawyers. The key objectives of the GLN are to drive efficiency and effectiveness gains in the management and delivery of legal services, and to improve the identification and management of Crown legal risk. Delivery of the GLN work programme is coordinated by a team of five within Crown Law.
32. Over the last five years the GLN has made impressive advances in supporting a more collaborative approach to legal services across Government, and providing better assurance to the Solicitor-General and Attorney-General around legal risk management. Recent initiatives have included:
 - 32.1 a rotational secondment system, which provides opportunities for temporary secondments for Government lawyers between agencies without the need to backfill positions.
 - 32.2 a broadening of the focus of the Crown legal risk reporting system to include across-Government risks, which may not be "owned" by any particular agency (for example, big data/privacy risks). The reporting system encourages a collaborative and proactive approach by Chief Legal Advisors to the identification and management of significant legal risks.
 - 32.3 an increase in the number of GLN practice groups to 16. Practice groups provide opportunities for Government lawyers working in related fields to share their knowledge and expertise.
33. To support these and other initiatives, the GLN People Project was recently launched. This project aims to better understand and organise the diversity of skills and experience across the network. Opportunities will be identified for creating a more capable and agile workforce and facilitating better collaboration, clearer career pathways and smarter use of technology.

Public Prosecutions Unit (PPU)

34. PPU is a small team within the Criminal Group at Crown Law. It was established in October 2012 in response to the 2011 *Review of Public Prosecution Services*³ and 2012 *Review of the Role and Functions of the Solicitor-General and the Crown Law Office*.⁴ These reviews found that Crown Law held insufficient information to understand the costs of public prosecutions and were critical of inconsistencies in the quality of those prosecutions. It was recommended the PPU be established within Crown Law to give better effect to the Solicitor-General's role in the conduct and oversight of public prosecutions.
35. Initiatives put in place by PPU to date have provided the Solicitor-General with oversight of the Crown Solicitor network (which conducts the most serious criminal prosecutions) and other public prosecutions conducted by 37 departments and

³ John Spencer "Review of Public Prosecution Services" (September 2011).

⁴ Miriam Dean QC and David Cochrane "A Review of the Role and Functions of the Solicitor-General and the Crown Law Office" (24 February 2012).

entities (which have the ability to prosecute) to a level not previously available. Information collected to date is being used to:

- 35.1 monitor the value of the service being provided by 16 Crown Solicitors and their firms and ensure fair distribution of available funding to manage delivery of national Crown prosecution services.
 - 35.2 ensure the exceptional quality of Crown prosecution services is retained through the management of more regular and structured performance reviews, which have increased from one per year to five per year.
 - 35.3 provide business intelligence back to Crown Solicitor firms from which they may benchmark performance with other firms and compare resources applied to the provision of the service, allowing for more efficient and effective business decisions.
 - 35.4 ensure a robust and effective appointment process is in place for Crown Solicitors, where emphasis can be placed on the individual as well as the resources required to effectively provide Crown prosecution services to the region;
 - 35.5 create Prosecutors' classification, where prosecutors will be designated as junior, intermediate, senior, or principal counsel using flexible criteria which is independently assessed by Crown Law. This allows career progression and recognition of experience for individuals, but also enhances the firm's ability to advertise and seek prosecutors at a level suitable for the role;
 - 35.6 make assessments of the prosecution function of individual agencies, including governance of the prosecution function, outcomes, the decision to prosecute and its subsequent management; and
 - 35.7 provide regular "dashboard" reporting back to the 37 Government agencies with a prosecution function with information to allow them to benchmark outcomes and resources applied to agencies of similar size and/or with similar functions.
36. In the next year Crown Law intends to increase the oversight function of the PPU through the following measures:
- 36.1 introduction of in-depth performance reviews of two departments per annum initially;
 - 36.2 extending the Prosecutor Online Platform to departments providing a common Prosecutor-focused information sharing platform;
 - 36.3 extending further departmental reporting to enable greater trend analysis of Prosecution functions and achievements;
 - 36.4 conducting a review of the current Crown Solicitor funding model to ensure it is fair and equitable in its distribution methodology; and
 - 36.5 appointment of an additional Business Analyst to enable increased trend analysis that will inform process improvements and recommendations to Crown Solicitor and departmental prosecutions.

Better Public Services (BPS)/Justice Sector Collaboration

37. BPS is a Government-wide programme under which the Government set targets for the public sector to meet by June 2017. The justice sector is responsible for meeting several of these targets. The first set of targets, set in April 2012, included reducing by June 2017 violent crime by 20 per cent, youth crime by 25 per cent, re-offending by 25 per cent and overall crime by 20 per cent by June 2018.⁵
38. Progress against these targets for the year ended March 2017 (compared to June 2011) was:
 - 38.1 Recorded crime rate decreased by 13 per cent.
 - 38.2 Violent crime rate increased by 3 per cent.
 - 38.3 Youth crime rate decreased 31 per cent.
 - 38.4 Re-offending rate decreased 4.3 per cent; the number of re-offenders each year has decreased 29 per cent since June 2011.
39. In 2017 the Government refreshed the 'Reducing Crime' target. The new target is 10,000 fewer serious crimes in 2021 than in the year ended June 2017.
40. The work towards these targets is supported by greater coordination and collaboration amongst justice sector agencies in respect of the financial management and governance of the sector and day-to-day activities on the ground. In particular:
 - 40.1 the BPS targets provide the sector with collective priorities which can only be achieved if all agencies work together;
 - 40.2 justice sector Ministers and a Leadership Board of justice sector chief executives provide collective oversight of performance across the sector; and
 - 40.3 the sector shares and reallocates savings through the Justice Sector Fund, which allows savings to be transferred between justice sector agencies and across years, and invested towards the sector's highest priorities.

⁵ This target was increased at the end of 2014 because the original target of a 15% reduction by June 2017 had already been exceeded.

SIGNIFICANT COURT DECISIONS

Criminal Law

*New Zealand Police v Filippo*⁶

41. One night in October 2015, Mr Filippo was out with his older brother in Wellington. He was 17 years old and still at secondary school. He was also a talented and promising rugby player. The two brothers committed a violent, unprovoked and prolonged assault on two young couples heading home after a night out. Mr Filippo pleaded guilty to one charge of injuring with intent to injure, one charge of assault with intent to injure and two charges of male assaults female.
42. By the time of sentencing, Mr Filippo was contracted to the Wellington Rugby Union. The sentencing Judge granted Mr Filippo a discharge without conviction, finding that although the offending was “relatively serious”, a conviction would present a “significant barrier” to his pursuing a professional sporting career.
43. The Police successfully appealed to the High Court, which found the sentencing Judge had erred by taking into account an irrelevant factor (namely his concern about the prospects of Mr Filippo being able to pursue his ambition to become a professional rugby player if he were convicted) but more importantly by understating the gravity of Mr Filippo’s offending. The direct and indirect consequences of a conviction were therefore not so significant as to have been out of all proportion to the gravity of his offending. Mr Filippo was convicted and sentenced to nine months’ supervision.

*Patel v the Queen*⁷

44. This case marked the first convictions under the Films, Videos, and Publications Classification Act 1993 for making, possessing and distributing objectionable material relating to publications which depict “acts of torture or the infliction of extreme violence or extreme cruelty”.
45. Mr Patel had downloaded material from the internet including still and moving images of torture, executions and other extreme violence, some of which promoted the activities of a designated terrorist entity. He also downloaded an online magazine which is used by that terrorist entity for propaganda and recruitment. He sent text messages containing links to some of the same material to 52 of his contacts and also transferred a range of the downloaded material onto USB devices, a DVD and an iPod.
46. Mr Patel pleaded guilty and was sentenced to three years and nine months’ imprisonment. He unsuccessfully appealed his sentence to the High Court. He was granted leave to appeal to the Court of Appeal on the basis the appeal involved issues of some general or public importance.
47. The Court confirmed that, in principle, possession of violent material is no less serious a category of offending than possession of child sexual exploitation material. Here the material was at the most serious end of the spectrum in terms of its depiction of torture, violence and cruelty. In the circumstances, the sentence imposed was not manifestly excessive.

⁶ *New Zealand Police v Filippo* [2016] NZHC 2573.

⁷ *Patel v R* [2017] NZCA 234.

*The Queen v Alsford*⁸

48. Mr Alsford faced trial on a range of cannabis charges, including cultivation and knowingly permitting premises to be used for cultivation. The Crown successfully appealed decisions in both the District Court and Court of Appeal that applications for a production order and associated search warrants were invalid and the evidence obtained inadmissible at trial.
49. The majority of the Supreme Court confirmed that Police are entitled to obtain power consumption data from power companies on a voluntary basis (although Police should be mindful whether information sought may be subject to a reasonable expectation of privacy, in which case the data would be obtained as a result of a search, thereby raising a question as to whether that search is reasonable). Here the power companies had obtained and held the consumption data for business purposes and it did not reveal personal details about Mr Alsford's lifestyle. Police were therefore entitled to use the power consumption data and any inferences that could be drawn from it in applications for production orders and search warrants.
50. Police are also entitled, when applying for a search warrant, to rely on evidence that has been excluded in an earlier proceeding (except where it was obtained through torture or similarly egregious means), although the warrant application should briefly indicate why the evidence was previously ruled inadmissible.
51. Even if the warrants in this case had been invalid and the resulting evidence improperly obtained, the majority found the evidence would have been admissible under s 30 of the Evidence Act 2006 in any event. Relevant factors in the s 30 balancing exercise were: the police had disclosed the earlier (in)admissibility ruling; the Crown was not attempting to rely on the earlier evidence in the prosecution; the evidence obtained was highly probative; the offending was moderately serious; and Mr Alsford had received a remedy for the earlier infringement of his rights by way of exclusion of the evidence and withdrawal of the prosecution.

*Ortmann v United States of America*⁹ – *Kim Dotcom extradition*

52. In February 2017, the High Court rejected an appeal by Mr Dotcom and three other appellants against the District Court's December 2015 decision finding them eligible to be extradited from New Zealand to the United States to face trial on criminal copyright and related charges.
53. The Court of Appeal has scheduled a further appeal for February 2018 (to consider the appeal under the Extradition Act 1999 as well as applications for judicial review).

Public Law

*Osborne v WorkSafe New Zealand and Another*¹⁰

54. The appellants are relatives of the coal miners who died in the Pike River Coal Mine tragedy in November 2010. Both the Department of Labour and Police commenced investigations into the disaster and shortly after a Royal Commission of Inquiry was announced.

⁸ *R v Alsford* [2017] NZSC 42, [2017] 1 NZLR 710.

⁹ *Ortmann v United States of America* [2017] NZHC 189.

¹⁰ *Osborne and Rockhouse v WorkSafe New Zealand* [2017] NZCA 11 and *Osborne and Rockhouse v WorkSafe New Zealand* [2015] NZHC 2991. Currently before the Supreme Court.

55. The Department of Labour (now WorkSafe New Zealand in this respect) commenced proceedings against VLI Drilling, Pike River Coal Limited (PRCL) and Peter Whittall (the chief executive officer of PRCL) for breaches of the Health and Safety in Employment Act 1992 (now the Health and Safety at Work Act 2015). VLI Drilling and PRCL were both convicted and fined. PRCL (then in liquidation) was sentenced to pay \$3.41 million in reparation to victims (\$110,000 for each of the 29 men who died and the two survivors).
56. Mr Whittall pleaded not guilty and in the course of plea negotiations offered to make a voluntary payment of \$3.41 million in the event the prosecution was terminated. These funds would be paid by the insurer and would otherwise be expended in the course of the defended trial.
57. The prosecutor was also in the process of reviewing the charges against Mr Whittall. After receiving advice from the Crown Solicitor, and weighing up all matters, the prosecutor decided not to proceed with the prosecution of Mr Whittall.
58. The applicants sought a judicial review of the prosecution decision, alleging that the decision not to offer evidence against Mr Whittall was an unlawful agreement to stifle the prosecution by the payment of money. They otherwise alleged the prosecutor failed to have regard to mandatory relevant considerations and took into account irrelevant considerations.
59. They were unsuccessful before the High Court and Court of Appeal. It was not disputed that where a prosecutor binds himself to discontinue a prosecution in exchange for the payment of money, the bargain would be unlawful and constitute a ground for judicial review. Neither Court found that any such bargain existed.
60. However, the Court of Appeal disagreed with the High Court in one respect, finding there was no jurisdictional bar to reviewing prosecutorial decisions and that the issue of justiciability – relating to whether the Courts are prepared to intervene at all – was not to be confused with intensity of review and availability or scope of relief (the High Court considered the real basis for complaint was that factors were improperly weighed in the balance). Ultimately, both Courts found that questions of weighting were not for the court on judicial review.
61. The High Court found there was no material to support a claim of legitimate expectation of prior consultation with the victims’ families about the decision. The Court of Appeal considered had any arrangement been made with the victims, that itself would have been unlawful.
62. The Supreme Court granted leave for a second appeal which will be heard on Thursday 5 October 2017.¹¹

Chatfield & Co Limited v Commissioner of Inland Revenue¹²

63. This line of cases has generated decisions from the High Court, Court of Appeal and finally the Supreme Court (declining leave to appeal). First up was a judicial review of the Commissioner of Inland Revenue’s decision involving the collection and exchange of information under one of the Double Tax Treaties to which New

¹¹ *Osborne and Rockbouse v WorkSafe New Zealand* [2017] NZSC 90.

¹² *Chatfield & Co Limited v Commissioner of Inland Revenue* [2015] NZHC 2099, *Chatfield & Co Limited v Commissioner of Inland Revenue* [2016] NZHC 2289, *Chatfield & Co Limited v Commissioner of Inland Revenue* [2017] NZCA 148, *Chatfield & Co Limited v Commissioner of Inland Revenue* [2017] NZSC 118.

Zealand is a party. Broadly the treaties seek to avoid double taxation of income and prevent fiscal evasion. As sovereign states and their law are involved, special processes have been negotiated. For tax matters, states can designate “competent authorities”, who are senior officials who manage and make decisions involving the interactions. Participating states are regularly reviewed and reported on to evaluate their compliance with the international standard through the Global Forum on Transparency and Exchange of Information for Tax Purposes.

64. The treaties negotiated recognise both the need for states to obtain and exchange information in a timely way without prejudicing a tax investigation, and also the need to provide adequate protection of taxpayer rights. If courts become involved, further delay results, which can be contrary to the short limitation periods that apply in tax matters designed to bring disputes to a conclusion expeditiously and give taxpayers certainty about their tax affairs. Underlying the cases are the questions: should New Zealand courts inquire into the lawfulness of decisions made by the competent authorities (i.e., are they justiciable?); and, even if they are, what should be the intensity of review given the subject matter involved, and the extra-judicial checks and balances that have been negotiated to ensure the system functions effectively?
65. Cases in this area of law arise irregularly (including internationally), so the courts’ judgments are precedential, and provide useful guidance both in New Zealand and to other states. Effective defence of the proceedings is considered important to maintain the efficacy of the information exchange regime. Crown Law has worked closely with the competent authority to understand the domestic and international regimes and how they interact; to develop the legal framework within which we consider the courts should analyse the issues in the public interest; and to convey that persuasively through written and oral arguments. The courts at all levels have declined to order disclosure of the information exchanged in support of an ongoing and incomplete tax investigation by an overseas revenue authority.

DB Breweries Limited v Chief Executive of the New Zealand Customs Service¹³

66. The Court of Appeal allowed the New Zealand Customs Service’s (Customs) appeal setting aside the decisions of the High Court and Customs Appeal Authority (the Authority). The Customs and Excise Act 1996 allows a refund of duty for goods that have deteriorated while under “the control of the Customs”; and s 20(2) states that goods that are removed from a Customs Controlled Area (CCA) to another CCA are not removed for home consumption. DB Breweries Limited (DB) had chosen to continue storing imported alcoholic beverages in CCAs after Customs had notified it had no further interest in the goods (having satisfied itself that all due revenue had been paid and they were not prohibited items). The Court of Appeal accepted that Customs’ control of the goods ended when DB uplifted the goods from the CCA into which they were placed upon importation. DB has applied for leave to appeal to the Supreme Court. (It is noted that, in response to the lower court decisions, the Customs and Excise Bill currently before Parliament does not retain the equivalent of s 20(2).)

Chief Executive of the New Zealand Customs Service v Jury¹⁴

67. Customs had seized tobacco grown by Mr Jury as forfeited to the Crown on the grounds a Customs Officer had reasonable cause to suspect the tobacco was

¹³ *DB Breweries Limited v Chief Executive of the New Zealand Customs Service* [2017] NZCA 307.

¹⁴ *Chief Executive of the New Zealand Customs Service v Jury* [2017] NZCA 356.

intended for unlawful manufacture. The seizure was made in reliance upon s 225(1)(o) of the Customs and Excise Act 1996. Mr Jury was unsuccessful in an application for review of the seizure of his tobacco in the Authority but was successful on appeal to the High Court. Customs appealed the High Court decision.

68. A significant issue considered by the Court of Appeal was the nature of the onus an appellant bears in appeals to the Authority against forfeiture. The High Court had held that the Authority erred in proceeding on the basis that Mr Jury bore the onus of proof on his appeal to the standard of ‘the balance of probabilities’. The Court of Appeal considered s 267 of the Act and could not reconcile the High Court’s interpretation of that section with the concept of a de novo appeal. The Court of Appeal, in relation to this issue, held that the provision of the de novo appeal process and the inclusion of s 267 explicitly placed the burden upon the appellant to show that the grounds for seizure were not made out. The Court of Appeal also clarified that the standard of proof required to be met was the civil standard: on the balance of probabilities. Ultimately, the Court of Appeal allowed the appeal and reinstated the decision of the Authority. Mr Jury has applied for leave to appeal to the Supreme Court.

Treaty of Waitangi

Waitangi Tribunal—urgent inquiries

69. Crown Law responded to 38 applications for urgent inquiries in the year ended 30 June 2017. These applications largely concerned proposed Treaty settlements but some raised broader policy issues such as the marine and coastal area and the implementation of the Marine and Coastal Area (Takutai Moana) Act 2011.
70. The Tribunal held an urgent inquiry into the Department of Corrections and Reoffending Prisoners (Wai 2540) Claim in July 2016. The claim concerned the Crown’s alleged failure to meet its Treaty of Waitangi obligations to reduce the number of Māori who reoffend. In April 2017, the Tribunal released its report. The Tribunal found that, although the Crown is currently making good faith attempts to engage with Māori, by failing to make an appropriately resourced, long-term strategic commitment to reducing the rate of Māori reoffending the Crown has not sufficiently prioritised the protection of Māori interests.

Mangatū and Ngāti Kahu Remedies Reports—judicial review

71. On 20 December 2016, the Court of Appeal issued its judgment in judicial review proceedings concerning the findings of the Waitangi Tribunal in the Mangatū Remedies Report and the Ngāti Kahu Remedies Report respectively. The judicial review proceedings followed from the Tribunal’s findings in those two reports that, despite certain Treaty claims to Crown forest and State-Owned Enterprise land having been determined as well-founded and that the action to be taken to compensate or remove the prejudice caused by the Crown’s Treaty breaches should include the return of land, the Tribunal would not make a recommendation for the land to be returned under s 8 of the Treaty of Waitangi Act 1975. The Court of Appeal held that, in both cases, in coming to that decision the Tribunal had erred in law. It therefore quashed the reports, returning the matter to the Tribunal. In light of the decision of the Court of Appeal, the Tribunal has reconvened both the Ngāti Kahu and Mangatū inquiries to reconsider the applications for binding recommendations.

Waitangi Tribunal—kaupapa inquiry programme

72. The Waitangi Tribunal has started a programme of inquiries into remaining claims on its register that can be grouped by subject matter or kaupapa. These kaupapa inquiries are scheduled to occur over 10 years to 2025. An inquiry into the claims of Māori military veterans is the first kaupapa inquiry. A series of hearings have been held to receive evidence from veterans and research is under way.
73. The next kaupapa inquiry is Wai 2575 - the Health Services and Outcomes Inquiry. This inquiry commenced on 30 November 2016 and is in the planning stage. The inquiry will hear all claims concerning grievances relating to health services and outcomes and which are of national significance. There are currently over 100 claims seeking to participate in the inquiry. On 21 December 2016 the Presiding officer asked the Crown, claimants and counsel for submissions in relation to priority issues, research available and needed and what inquiry process should be followed. The scope, priorities and inquiry plan for the inquiry have been discussed at a series of conferences. Parties are due to report back to the Tribunal on these discussions in September 2017.

Constitutional and Human Rights

*B v Waitematā District Health Board*¹⁵

74. The appellant, B, was a former psychiatric patient who had been lawfully detained in one of the Waitematā District Health Board (WDHB) hospitals on the basis of potential harm to himself or others. The WDHB has a smoke-free policy, which meant that B was unable to smoke. (Other hospital patients, with less acute illness such that they were not detained and otherwise physically able, were free to walk to the hospital boundary if they wished to smoke.)
75. In the Court of Appeal,¹⁶ Mr B failed to establish his claim that the smoking ban breached his rights to be free from torture and discrimination and to be treated with dignity and humanity (ss 9, 19 and 23(5) of the New Zealand Bill of Rights Act 1990 (NZBORA)). He also invoked a claim to the rights of “home life” and “private life” (argued to be common law rights in New Zealand that were analogous to those rights as affirmed in article 8 of the European Convention on Human Rights).
76. The Supreme Court, in a judgment delivered 14 June 2017, dismissed B’s further appeal. It held that the WDHB policy did not breach any of the asserted rights and freedoms. The smoke-free policy had been implemented through a careful process, and the provision of nicotine replacement therapy for those in need meant that the policy was not inconsistent with humanity and dignity, nor disproportionate in its effect. Further, the appellant was treated in the same way as all others who were required, for any reason, to be in the ICU. Hence there was no discrimination. Nor was there any existing right to home life or private life in New Zealand law that encompassed the right of persons to smoke when detained for a short period in a mental health institution.

¹⁵ *B(SC 60/2016) v Waitematā District Health Board* [2017] NZSC 88.

¹⁶ *B v Waitemata District Health Board* [2016] NZCA 215.

New Health New Zealand Inc v South Taranaki District Council¹⁷

77. The Supreme Court has granted an application for leave to appeal the Court of Appeal's 2016 decision dismissing three appeals by New Health in relation to the fluoridation of drinking water.¹⁸
78. The Court of Appeal had upheld the High Court's findings that the Council was authorised to fluoridate public drinking water supplies in accordance with the drinking water standards under the Local Government Act 2002 and the Health Act 1956, and that it does not infringe s 11 of NZBORA (which guarantees the right to refuse to undergo "medical treatment") because that right does not extend to public health measures such as fluoridation of drinking water that are intended to benefit the public at large.
79. The other two appeals were from two separate proceedings: a judicial review proceeding challenged the validity of the regulations passed expressly to exempt compounds used to fluoridate water from the definition of medicine in the Medicines Act 1981; and another seeking declarations that the compounds were medicines for the purposes of the Medicines Act. The Court concluded the regulations were validly made and, as such, the related appeal was moot.

Taylor v Attorney General¹⁹

80. The plaintiffs were prisoners, each claiming to have been denied the right to vote by virtue of legislation enacted in 2010. That legislation, the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 (the 2010 Act), amended the Electoral Act 1993 so as to prohibit any person in prison on polling day from being registered as an elector. The 2010 Act replaced the previous law under which prisoners could vote if in prison under a sentence of three years or less.
81. Before the 2010 Act was enacted the Attorney-General tabled a report to the House of Representatives, pursuant to s 7 of NZBORA, advising that the Act was inconsistent with the right to vote enshrined in s 12(a) of NZBORA. The 2010 Act was enacted by Parliament nonetheless.
82. In this proceeding the plaintiffs sought only a "declaration of inconsistency" – a formal declaration that the 2010 Act was inconsistent with NZBORA. It was acknowledged that such a declaration would have no impact on the validity or effectiveness of the 2010 Act. That is made clear by s 4 of NZBORA which says that enactments prevail despite NZBORA if inconsistent.
83. There had been, since inception of NZBORA, academic speculation that it permits judicial "declarations" that enactments are inconsistent with NZBORA. Initial judicial dicta was cautious, noting that such declarations would be tantamount to advisory opinions. But the idea of declarations of inconsistency appeared to be taken up by the judiciary in obiter dicta in a 2000 case.²⁰ Even so, there had never in fact been a formal declaration until one was made by Heath J in the High Court in this case.

¹⁷ *New Health New Zealand Inc v South Taranaki District Council* [2017] NZSC 13.

¹⁸ *New Health New Zealand Inc v South Taranaki District Council* (CA159/14); *New Health New Zealand Inc v Attorney-General* (CA615/14; CA529/15) [2016] NZCA 462, [2017] 2 NZLR 13.

¹⁹ *Taylor v Attorney General* [2017] NZCA 215.

²⁰ *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9, (1999) 5 HRNZ 224 (CA).

84. The Crown appealed to the Court of Appeal against the making of that declaration, arguing that such declarations are not the exercise of “judicial power”: they do not address matters concerning the legal rights or status of the litigating parties. Such declarations, argued the Crown, are essentially advisory and not a true judicial remedy – a proposition supported by the lack of any precedent.
85. The Court of Appeal rejected the Crown’s argument and held that it had inherent power to make “declarations of inconsistency” whenever it concluded that an enactment was inconsistent with a right in NZBORA. It held that such declarations could be conceived as a “remedy” because a declaration would, or could, assist the plaintiff in seeking to have the other branches of Government change the law.
86. The Crown has been granted leave to appeal to the Supreme Court.²¹ The appeal will be heard in late November 2017.

Ngaronoa and Ors v Attorney-General²²

87. This case also concerned the 2010 Act (see *Taylor v Attorney General* above at paragraph [80]). The challenge in this case was to the validity of the 2010 Act itself. The plaintiffs’ claim was that the 2010 Act amended a so-called “reserved provision” in the Electoral Act 1993 (s 74, which sets out the qualifications of voters) and that being so, it could be amended only by a law passed by a 75 per cent majority in Parliament. (It was common ground that the 2010 Act did not have a 75 per cent majority.)
88. As in *Taylor*, the plaintiffs also sought “declarations of inconsistency” – this time that the prohibition on prisoners’ voting offended the rights against discrimination, torture, disproportionate treatment and punishment and the right of detained persons to be treated with humanity and dignity (ss 19, 9 and 23(5) of NZBORA).
89. The High Court dismissed all these claims and the Court of Appeal did likewise. The “reserved provision” claim involved an intricate statutory interpretation argument – it was a contest between the Crown view that voter qualification in s 74 was “reserved” only insofar as the age of voting (18 years) was concerned, and the plaintiffs’ view that all aspects of voter qualification (effectively universal adult suffrage) were reserved and needed a 75 per cent majority to amend in any way. The text, context, grammar, and legislative history all favoured the Crown view, as the Court of Appeal affirmed.
90. The plaintiffs’ discrimination claim centred on the admitted and unfortunate fact that Māori are over-represented in prisons (at around 50 per cent of prison population) and so a ban on prisoners voting affected Māori disproportionately (if one looks to the proportion of prisoners affected according to their race). However, the Court of Appeal accepted (as had the High Court) that the 2010 Act was not, on this score, discriminatory on the basis of race. The Act applied to all prisoners equally; it was in no sense directly discriminatory, nor was it truly discriminatory in its effect. If such a complaint – of adverse effects discrimination – were possible, it could equally be made of every prison policy with an impact on prisoners’ lives on the basis that around 50 per cent were Māori.
91. The Court also considered the impact of the 2010 Act in terms of the difference in the way it applied to the Māori “voting community” and the non-Māori voting

²¹ *Attorney-General v Taylor* [2017] NZSC 131.

²² *Ngaronoa and Ors v Attorney-General* [2017] NZCA 351.

community (that is, not to prisoners themselves but to voters). The Court recognised that a greater proportion of Māori voters are in prison than non-Māori voters. But, it said, the overall numbers were very small – less than 1 per cent of each group were in prison. On this basis it found no differential impact of the law as between Māori and other races.

92. The claim of “disproportionately severe treatment” and denial of “dignity” were also dismissed. The unsuccessful plaintiffs have sought leave to appeal to the Supreme Court.

Wall v Fairfax NZ Ltd²³

93. This is the first major case under s 61 of the Human Rights Act 1993 which makes it unlawful to publish “words which are threatening abusive or insulting” and which are:

... likely to excite hostility against or bring into contempt any group of persons in ... New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons.

94. The defendant publisher had published two cartoons in 2013, referencing a then-current controversy over the funding of a “school lunch programme” proposed for dealing with the effects of child poverty in New Zealand. The cartoons depicted people of Māori or Pasifika ethnicity, each suggesting (through the pictures and captions) that the people represented in the cartoons were using their money for such things as cigarettes, alcohol and gambling rather than for food for their children.
95. The plaintiff, Ms Wall, a Labour Member of Parliament, brought the case against the newspapers’ publisher after her complaint to the Human Rights Commission had failed to result in a conciliated settlement and admission of liability. The publisher defended on the basis that the cartoons represented legitimate expression of opinion in terms of s 14 of NZBORA.
96. The hearing took place over 4 days in July 2014 before the Human Rights Review Tribunal which issued its decision in May 2017 (the delay attributable to that Tribunal’s very heavy workload).
97. The Tribunal dismissed the claim. It held that the cartoons were not “unlawful” and s 61 was not breached. It held the relevant test was an objective one – would a reasonable person, aware of the context surrounding the use of the words, conclude that such words were likely to excite hostility? The cartoons, though “insulting”, were not likely to excite hostility against or bring into contempt Māori and Pakeha (i.e., non- Māori).
98. The judgment is a careful explanation of the reach of the Human Rights Act 1993 against the background of international human rights obligations as well as comparative cases in other jurisdictions.

²³ *Wall v Fairfax NZ Ltd* [2017] NZHRRT 17.

SIGNIFICANT LEGAL REFORM

Bills

Customs and Excise Bill

99. The Customs and Excise Bill was introduced on 23 November 2016 and has been referred, after its first reading on 6 December 2016, to the Foreign Affairs, Defence and Trade Select Committee.
100. The Bill re-enacts provisions of the Customs and Excise Act 1996, generally in a rewritten or restructured form, and gives effect to a number of new policy initiatives. It will support the movement of legitimate travellers and goods across the border and provide the legal tools needed to protect New Zealand from people or goods that may cause harm. The Bill also supports the collection of Crown revenue. The objectives behind this legislation include the following:
- 100.1 balancing the protection of the nation with individuals' rights;
 - 100.2 providing transparent and easy-to-use legislation;
 - 100.3 enabling business and Customs to quickly adopt future changes in technology and business practice;
 - 100.4 improving assurance over the collection of revenue;
 - 100.5 supporting economic growth by making it easier for traders to do business; and
 - 100.6 facilitating greater information sharing with other agencies.

Family and Whānau Violence Legislation Bill

101. On 15 March 2017 the Government introduced the Family and Whānau Violence Legislation Bill following a review of family violence laws. The changes will improve how New Zealand responds to family violence to keep victims safe and to stop perpetrators using violence. The key changes in the Bill include:
- 101.1 providing better guidance about what family violence is, and new principles to guide decisions;
 - 101.2 making protection orders easier to apply for by:
 - 101.2.1 allowing non-Government organisations (NGOs) to apply on behalf of victims who are unable to apply themselves due to fear or incapacity; and
 - 101.2.2 allowing protection orders to be better tailored to vulnerable victims, for example older people and people with disabilities;
 - 101.3 introducing more effective ways of helping perpetrators change their behaviour, such as an independent risk and needs assessment pathway created for self and Police Safety Order referrals, and courts being able to direct perpetrators to further programmes and a wider range of services under protection orders;

- 101.4 better protecting the safety of adult and child victims following separation by:
 - 101.4.1 requiring the court to consider extra family violence factors when assessing a child's safety in Care of Children Act 2004 (CoCA) proceedings, for example whether a temporary protection order has been made and any breaches;
 - 101.4.2 enabling the court to make temporary protection orders when considering proceedings under CoCA; and
 - 101.4.3 facilitating more information sharing between CoCA and criminal cases to identify any history of family violence;
 - 101.5 flagging family violence offences to ensure additional information is available to judges and Police, that perpetrators who use family violence can be treated differently at bail and sentencing, and that there will be better information about family violence volume and trends;
 - 101.6 ensuring family violence is effectively prosecuted by introducing new family violence offences of strangulation or suffocation, coerced marriage or civil union, abduction for the purposes of marriage or civil union or sexual connection, and assault on a person in family relationship; and
 - 101.7 supporting the Ministerial Group to develop an integrated family violence system by facilitating better information sharing across agencies and professionals to inform risk assessment and management, and introducing codes of practice to support consistent delivery of services.
102. The reforms span the civil and criminal law and are designed to ensure the law is forward looking. The Bill has been reported back from the Justice and Electoral Committee and is awaiting its second reading.

Legislation Bill

103. The Legislation Bill was introduced on 20 June 2017. The Bill rewrites and replaces the Legislation Act 2012 to achieve the following objectives:
- 103.1 enable easy access to legislation in New Zealand, and improve the overview and enforcement of regulatory regimes, by expanding the content of the New Zealand Legislation website. The website is the authoritative source of official legislation and will now include all secondary legislation, whether made by central Government or other Government agencies (other than secondary legislation made by local authorities);
 - 103.2 improve the accessibility of the law by incorporating the Interpretation Act 1999 into the Legislation Bill;
 - 103.3 improve the relocated interpretation rules for the courts and the public by addressing a small number of technical and operational issues identified since 1999;
 - 103.4 further encourage the production of good legislation by increasing the availability of information about the development and content of new

Government-initiated legislation. This is designed to inform the parliamentary and public scrutiny of that legislation; and

- 103.5 clarify, update, and recast some of the provisions in the Legislation Act 2012 that are being carried forward.

Criminal Records (Expungement of Convictions for Historical Homosexual Offences)

Bill

104. The Criminal Records (Expungement of Convictions for Historical Homosexual Offences) Bill had its first reading on 6 July 2017.
105. The Bill introduces a scheme to address historical convictions for homosexual offences. People with convictions for specific offences relating to consensual sexual activity between men 16 years and over will be eligible to apply to the Secretary for Justice to have the conviction expunged.
106. Under the scheme, the Secretary for Justice will examine court records to make an informed decision about an application. If a person's application is approved, court records will be amended so the relevant convictions are marked as "expunged" and they do not appear in criminal history checks.

Trusts Bill

107. The Trusts Bill was introduced to Parliament on 1 August 2017. It will update and improve the general law governing trusts for the first time in more than 60 years. The Bill will provide better guidance for trustees and beneficiaries and make it easier to resolve disputes.
108. Generally, the proposed reforms seek to clarify core trust concepts, make trust legislation more useful, fix practical problems and reduce costs. The aim is also to modernise outdated language and concepts.
109. Some of the changes include:
- 109.1 a description of the key features of a trust to help people understand their rights and obligations;
 - 109.2 mandatory and default trustee duties (based on established legal principles) to help trustees understand their obligations;
 - 109.3 requirements for managing trust information and disclosing it to beneficiaries (where appropriate) so they are aware of their position;
 - 109.4 flexible trustee powers, allowing trustees to manage and invest trust property in the most appropriate way;
 - 109.5 provisions to support cost-effective establishment and administration of trusts (such as clear rules on the variation and termination of trusts); and
 - 109.6 options for removing and appointing trustees without having to go to court to do so.

Courts Matters Bill and Tribunals Powers and Procedures Legislation Bill

110. These two Bills are part of a programme of legislative reform to improve and modernise the legal framework for courts and tribunals and to improve efficiency, effectiveness and timeliness. Earlier reforms have included the Judicature Modernisation legislation (see below at paragraph [115]).
111. These two Bills will:
- 111.1 reduce the time it takes to hear and resolve matters and improve users' experience of the courts and tribunals system;
 - 111.2 enable greater use of modern technology to further improve efficiency, effectiveness and timeliness;
 - 111.3 simplify and standardise statutory powers and procedures to improve productivity and efficiency; and
 - 111.4 provide better consumer protection and redress and greater access to justice.
112. The Bills had their first reading in August 2017 and have been referred to a Select Committee.

Treaty Settlement Bills

113. New Zealand continues to enact a large number of Treaty settlement Bills each year to settle the Crown's historic breaches of the Treaty of Waitangi with various iwi.

Other Bills

114. Other recent Bills include:
- 114.1 Autonomous Sanctions Bill 259-1, introduced 10 May 2017;
 - 114.2 Birth, Deaths, and Marriages Relationships Registration Bill 296-1, introduced 10 August 2017;
 - 114.3 Brokering (Weapons And Related Items) Controls Bill 280-1, First Reading 15 August 2017;
 - 114.4 Maritime Transport Amendment Bill 200-2, Second Reading 16 August 2017;
 - 114.5 Military Justice Legislation Amendment Bill 299-1, introduced 15 August 2017; and
 - 114.6 Telecommunications (New Regulatory Framework) Amendment Bill 293-1, First Reading 16 August 2017.

Acts

Judicature Modernisation

115. The Judicature Modernisation Bill was divided into 22 different Acts, which received Royal assent in October 2016. The main Acts include:
 - 115.1 Senior Courts Act 2016;
 - 115.2 District Court Act 2016;
 - 115.3 Judicial Review Procedure Act 2016;
 - 115.4 Interest on Money Claims Act 2016; and
 - 115.5 Electronic Courts and Tribunals Act 2016.
116. The new legislation reformed the 108-year-old legislation underpinning the court system. The legislation retains much of the existing provisions of the court statutes, but is expressed in more modern language and in a different format. It also introduces important new provisions. Key features include:
 - 116.1 making courts more transparent (for example, by requiring judges to publish information about reserved judgments and by requiring the Attorney-General to publish information about how judges are appointed);
 - 116.2 giving courts greater powers to deal with meritless litigants, who waste time and resources;
 - 116.3 unifying the 60 District Courts into a unitary District Court of New Zealand, which will be Australasia's largest court, hearing more than 200,000 matters every year;
 - 116.4 allowing the District Court to hear disputes with a monetary value of up to \$350,000 (previously \$200,000);
 - 116.5 enabling courts and tribunals to use modern technology, such as digital documents and electronic case files;
 - 116.6 allowing interest on monetary claims to be calculated using an Internet calculator, which will be published by the Ministry of Justice;
 - 116.7 improving the accessibility of the High Court Rules; and
 - 116.8 allowing easier sharing of information from the courts to improve public services.
117. Most of the new legislation came into force on 1 March 2017. The remaining provisions relating to interest on monetary claims will come into effect on 1 January 2018.

Child Protection (Child Sex Offender Government Agency Registration) Act 2016

118. The Child Protection (Child Sex Offender Government Agency Registration) Act came into force on 14 October 2016 and allows the Police to establish a register for

convicted child sex offenders aged 18 or over at the time of committing their offence and who are:

- 118.1 convicted of a qualifying offence and sentenced to prison;
 - 118.2 convicted of a qualifying offence and sentenced to a non-custodial sentence, and directed to be registered by the sentencing Judge; or
 - 118.3 convicted of an equivalent offence and sentenced overseas, or have been on an overseas register, if they intend to reside in New Zealand.
119. Offenders who are convicted of a qualifying offence will remain on the register for a period of life, 15 years or eight years, depending upon the offence committed and sentence received (custodial or non-custodial). Prior to enactment, Attorney-General Christopher Finlayson found parts of the original Bill to be inconsistent with ss 9 and 26(2) of NZBORA and that this could not be justified under s 5 as it was disproportionate to impose lifetime registration and reporting obligations without providing some opportunity for a registered offender to review the ongoing necessity for registration. The Bill was consequently amended to allow offenders subject to life registration to seek a review by the District Court after 15 years on the register.
120. After the Act came into force, issues arose around the eligibility for retrospective registration of two groups of child sex offenders – those released from prison and still subject to release conditions prior to the Act coming into force; and those convicted of a qualifying offence before the Act came into force and who were not yet sentenced. When the Act was passed it was intended that the retrospective provisions would apply to both these groups of child sex offenders.
121. The Child Protection (Child Sex Offender Government Agency Registration) Amendment Act 2017 was passed in March 2017, amending Part 1 of Schedule 1 and other associated sections of the principal Act to reflect the original retrospective policy intent of the legislation.

Policing (Cost Recovery) Amendment Act 2016

122. The Policing (Cost Recovery) Amendment Act 2016 came into force on 8 November 2016. It amends the Policing Act 2008 to enable regulations to be made that allow Police to recover costs for certain policing services that fall within the definition of a “demand service”. A demand service is a policing service requested by an individual or organisation that is of direct benefit to that individual or organisation (even though there may also be some indirect benefit to the public). It does not include responding to emergency calls, conducting criminal investigations or prosecuting criminal offences. The Act lists the provision of vetting services by Police as an example of a demand service. The Act also enables regulations to be made that provide for fee exemptions and waivers.
123. Cost recovery for the Police Vetting Service commenced on 1 July 2017, when the Policing (Cost Recovery) Regulations 2017 made under the Act came into force. The Regulations set a fee of \$8.50 (excluding GST) per vetting request, and provide for fee exemptions and waivers. No other policing services are currently being considered for cost recovery.

Harmful Digital Communications Act 2015

124. The Harmful Digital Communications Act 2015 (civil regime) came into force on 21 November 2016.²⁴
125. The civil redress regime establishes an Approved Agency to resolve complaints, providing a quick and efficient way for victims to seek help from an independent body. It also empowers the District Court to issue orders such as take-down notices and impose penalties on people who don't comply with court orders (punishable by up to six months in prison or a \$5,000 fine for individuals, and fines of up to \$20,000 for companies).

Drug and Alcohol Testing of Community-based Offenders , Bailees and Other Persons Legislation

126. This Bill was divided into the following five Acts, which all received Royal assent in November 2016:
- 126.1 Bail (Drug and Alcohol Testing) Amendment Act 2016;
 - 126.2 Parole (Drug and Alcohol Testing) Amendment Act 2016;
 - 126.3 Sentencing (Drug and Alcohol Testing) Amendment Act 2016;
 - 126.4 Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016; and
 - 126.5 Returning Offenders (Management and Information (Drug and Alcohol Testing)) Amendment Act 2016
127. The legislation came into force on 16 May 2017 amending the Bail Act 2000, Parole Act 2002, Sentencing Act 2002, Public Safety (Public Protection Orders) Act 2014 and Returning Offenders Act 2015. The amendments give new powers to the Department of Corrections and New Zealand Police enabling them to test or monitor any person (on bail, on parole or subject to a non-custodial sentence or order) with a drug or alcohol condition. The court can impose a drug or alcohol condition as part of a person's sentence or order.

Intelligence and Security Act 2017

128. The Intelligence and Security Act 2017 received the Royal assent on 28 March 2017. The Act implements recommendations from the Report of the First Independent Review of Intelligence and Security in New Zealand: *Intelligence and Security in a Free Society*. In particular, the review recommended that the Government Communications Security Bureau (GCSB) and the New Zealand Security Intelligence Service (NZSIS) and their oversight bodies be covered by a single, comprehensive piece of legislation. The review also emphasised the need to remove barriers to effective co-operation between GCSB and NZSIS and the need to improve transparency and oversight arrangements to give the public greater confidence that the agencies are acting lawfully and appropriately. The Intelligence and Security Act 2017:

²⁴ New criminal offences and safe harbour measures under the Act took effect on 3 July 2015 (see PILON: New Zealand Country Report 2016).

- 128.1 creates a single Act to cover the agencies, replacing the previous four separate Acts;
- 128.2 provides for the issuing of warrants for intelligence collection, with special features for any warrant involving a New Zealander (including criteria that must be satisfied before such a warrant may be issued);
- 128.3 provides for how NZSIS and GCSB relate to each other;
- 128.4 strengthens the role of the Inspector-General of Intelligence and Security in relation to NZSIS and GCSB;
- 128.5 provides greater parliamentary oversight of NZSIS and GCSB;
- 128.6 imposes greater accountability and transparency requirements on NZSIS and GCSB;
- 128.7 provides a new framework for the intelligence and security agencies to access business records held by telecommunications network operators and financial service providers; and
- 128.8 provides for each intelligence and security agency to keep a register of assumed identities and legal entities.

Land Transfer Act 2017

- 129. The Land Transfer Act 2017 received the Royal assent on 10 July 2017. The Act implements the Government’s response to the recommendations from the Law Commission’s 2010 report “A New Land Transfer Act”. The Land Transfer Act 1952 is based on the Torrens system of registration of title, which was introduced over 100 years ago to simplify and minimise the costs of transferring interests in land and to provide security of title. That Act is outdated and was based on paper-based registration. The present system of land registration is now almost all electronic.
- 130. The new Act aims to modernise, simplify and consolidate the land transfer legislation to improve its clarity and accessibility. It continues to use the core principles of the Torrens system of registration of title to provide people with security in their land dealings. The new Act makes changes in relation to a number of areas of land law, including the following:
 - 130.1 compensation;
 - 130.2 indefeasibility of title;
 - 130.3 identity verification;
 - 130.4 covenants in gross;
 - 130.5 withholding information for a person’s safety;
 - 130.6 liability of estate administrators for certain costs;
 - 130.7 adverse possession process; and
 - 130.8 Registrar’s power to correct the register.

Outer Space and High-altitude Activities Act 2017

131. The Outer Space and High-altitude Activities Act 2017 received the Royal assent on 10 July 2017. The Act establishes a regulatory regime to govern space launches, including both launch vehicles and payloads (e.g., satellites) from New Zealand and by New Zealand nationals operating overseas. It also provides a legal framework for high-altitude activities that originate from New Zealand. The objectives of the Act are to:
- 131.1 facilitate the development of a space industry and its safe and secure operation;
 - 131.2 manage New Zealand's liability arising from its obligations as a launching state;
 - 131.3 establish a system to control certain high-altitude activities that take place in New Zealand; and
 - 131.4 preserve New Zealand's national security and national interest.

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017

132. The Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 received the Royal assent on 13 July 2017. The Act amends the Children, Young Persons, and Their Families Act 1989 (renamed the Oranga Tamariki Act 1989) and four other related Acts. The new Act, among other things:
- 132.1 seeks to strengthen the participation of children and young people in decisions that affect them;
 - 132.2 imposes duties on the chief executive about improving outcomes for Māori, and requires regular reporting about outcomes;
 - 132.3 makes family group conferences available for those who need support but not formal care and protection;
 - 132.4 extends the youth justice jurisdiction to include 17-year-olds, except for those charged with certain serious offences; and
 - 132.5 enables young adults to live with a caregiver up to age 21, and to receive transition advice and assistance up to age 25.

Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2017

133. The Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2017 received the Royal assent on 10 August 2017. The Act amends the principal Act, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which imposes core obligations on banks, financial institutions, and casinos. The core obligations include:
- 133.1 developing a risk assessment and compliance programme;
 - 133.2 undertaking customer due diligence (customer identification and verification);

- 133.3 monitoring accounts; and
 - 133.4 submitting suspicious transaction reports to the Financial Intelligence Unit of New Zealand Police.
134. The Act extends those core obligations to apply to real estate agents, lawyers, accountants, conveyancers, the New Zealand Racing Board and some high-value dealers.
135. When undertaking certain activities that pose a high risk for money laundering and terrorism financing, these sectors will be required to know who their customers are and on whose behalf they act. The sectors will be required to report large cash transactions, and (other than high-value dealers) will also be required to report suspicious activity, and develop and maintain a risk assessment and compliance programme. High-value dealers will be able, but not required, to report suspicious activities that come to their attention.

Commerce (Cartels and Other Matters) Amendment Act 2017

136. The Commerce (Cartels and Other Matters) Amendment Act 2017 received the Royal assent on 14 August 2017. This Act amends the Commerce Act 1996 for the principal purpose of regulating cartels. The amendments are aimed at allowing pro-competitive collaboration between firms, while also deterring anti-competitive hard-core cartel conduct.
137. Cartels are formed when rival firms agree to not compete with each other. Cartels allow firms to raise their prices above the competitive level without fear of losing customers to rivals. This increases the profits of cartel participants but does not benefit consumers.
138. The Act redefines the prohibition against cartels to refer to the three ways in which firms may lessen competition between each other. That is, by fixing prices, restricting output or allocating markets.
139. At the same time, the new provisions recognise that collaboration between firms can also increase productivity and growth. Consequently, the Act introduces two new exceptions: a collaborative activity exception (which replaces the previous joint venture exemption) and an exception for vertical supply contracts.

Enhancing Identity Verification and Border Processes Legislation Act 2017

140. This Act was passed on 16 August 2017. It amends 11 separate Acts; the Privacy Act 1993, Births, Deaths, Marriages, and Relationships Registration Act 1995, Corrections Act 2004, Customs and Excise Act 1996, Immigration Act 2009, Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, Land Transport Act 1998, Mental Health (Compulsory Assessment and Treatment) Act 1992, Victims' Rights Act 2002, Parole Act 2002 and the Sentencing Act 2002.
141. The Act responds to weaknesses in legislation regarding offender and patient management that were identified by the Inquiry into the escape of serving prisoner Phillip Smith (aka Phillip Traynor) in November 2014.²⁵

²⁵ While a serving prisoner, Phillip Smith obtained a passport under his birth name and absconded while on a three-day release to work programme, ending up in Brazil.

142. The amendments strengthen the ability of agencies to collect and share biometric information from offenders subject to the justice system. For example, the amendments to the Sentencing Act authorise the Department of Corrections to collect unalterable biometric information (such as fingerprints and iris scans) from offenders on intensive supervision and home detention and who are subject to post-detention conditions. This information can then be shared with certain agencies at key touch-points in the criminal justice system to ensure that offenders' identities are properly established and their sentences properly carried out.
143. The amendments brought into effect by the Act also apply to certain mental health patients who are subject to the criminal justice system. The Smith/Traynor Inquiry found that these individuals should be able to be identified more effectively at the border as it is in their interest, as well as the interest of the wider public, that they do not leave the country.

Resource Legislation Amendment Act 2017

144. The Resource Legislation Amendment Act 2017 received the Royal assent on 18 April 2017. Its overarching purpose is to create a resource management system that achieves the sustainable management of natural and physical resources in an efficient and equitable way. The Act makes significant reforms in resource management law in order to achieve the following policy objectives:
- 144.1 better alignment and integration across the resource management system;
 - 144.2 proportional and adaptable resource management processes that allow for increased flexibility and adaptability of processes and decision makers, and for processes and costs to be scaled; and
 - 144.3 robust and durable resource management decisions.

Other legislation

145. Other recent legislation includes:
- 145.1 Evidence Amendment Act 2016 (see below at paragraph [166]);
 - 145.2 Substance Addiction (Compulsory Assessment And Treatment) Act 2017 (date of assent 21 February 2017);
 - 145.3 Contract and Commercial Law Act 2017 (date of assent 1 March 2017); and
 - 145.4 Fire And Emergency New Zealand Act 2017 (date of assent 11 May 2017).

Regulations

Fisheries (Geospatial Position Reporting) Regulations 2017

146. These new regulations require a new digital system for tracking, monitoring and reporting commercial fishing. The new system is made up of geospatial position reporting, electronic reporting through e-logbooks, and electronic monitoring (cameras on vessels), so reporting can be verified.
147. Permit holders will be required to install cameras for the purposes of recording all fishing and transportation activities on commercial fishing vessels. The recorded

video and associated information must then be provided to the Ministry for Primary Industries (MPI), and can be used for verification and compliance purposes. The requirement to install and operate cameras will be rolled out from 1 October 2018.

PILON STRATEGIC PRIORITIES

(a) Cybercrime

The nature of the problem

148. Cybercrime is a criminal act that is committed through the use of Information and Communication Technologies (ICT) or the Internet where the computer network is the target of the offence, and is often used for political and financial purposes. There are a number of different cybercrimes, ranging from unauthorised access through to the production of malicious software. Cyber-enabled crime, by comparison, involves any criminal act that could be committed without ICT or the Internet, but is assisted, facilitated or escalated in scale by the use of technology. This includes a wide range of offending from cyberbullying and fraud through to organised crime groups and the distribution of child exploitation material.
149. Physical and conceptual boundaries between states are being eroded by a complex and rapidly developing cyber environment, and there is still a strong presumption that the law, and particularly the criminal law, applies within jurisdictions. The Government estimates that 20 per cent of New Zealanders have been affected by a cybercrime such as malware or virus damage, social media or bank account hacking, phishing, or ransomware. This figure rises to 70 per cent when spam and suspicious emails are included.

New Zealand's approach

150. Crimes targeting computers are covered by ss 248-252 of the Crimes Act 1961. The most serious offence is found under s 250(1) which is applicable to computer damage or alteration causing danger to life, and carries a maximum penalty of 10 years' imprisonment. However, this provision is unlikely to be of use in several cases of serious cyber-attacks, such as attacks on computer systems relating to defence, communications, banking and law enforcement, due to the absence of danger to life. Cyber-enabled crime reflects the crime type itself – e.g. fraud.
151. Elements of the Harmful Digital Communications Act 2015 came into force in November 2016, with the appointment of an Approved Agency to receive, assess and investigate complaints made under the Act (see paragraph [124] above). Netsafe as the Approved Agency works in conjunction with Police for the most serious cases.

Cyber Security Strategy

152. In this context, in late 2015 the Government developed a Cyber Security Strategy, which has four goals:
- 152.1 cyber resilience;
 - 152.2 cyber capability;
 - 152.3 addressing cybercrime; and
 - 152.4 international cooperation.
153. The Police Prevention First National Cybercrime Operating Strategy 2014-2017 is now due for a refresh. Cybercrime in particular is to be addressed via capability building and enhancement of New Zealand's operational response, adaptation of

New Zealand's policy and legislative settings for the digital age, and use of New Zealand's international connections, including Police Liaison Officers (PLOs), to help fight cybercrime.

154. New Zealand's National Computer Emergency Response Team (CERT NZ) was established in March 2017 and provides individuals and businesses with an online portal for reporting cyber security incidents. CERT NZ operates as a trusted 'clearing house' for cyber security incidents and can refer incidents to New Zealand Police, the National Cyber Security Centre, or the domestic institution legally authorised to process incidents of cyber harassment and bullying. Throughout this process CERT NZ will gather more information about the cyber security threats facing New Zealand businesses and individuals.

Police

155. The Police Cybercrime Unit is part of the National Criminal Investigations Group. The Unit provides investigative support to Police in relation to pure cybercrime and cyber-enabled crime. Due to the transnational nature of cybercrime, the Unit frequently liaises with international law enforcement partners. However, there are ongoing issues as each jurisdiction has different legislative frameworks in place. New Zealand is also not yet a signatory to the Budapest Convention on Cybercrime. Successful investigations require timely data capture and preservation, but legal processes can delay obtaining or providing this information.
156. The Unit is developing two streams of cybercrime training – one each for investigators and online practitioners. The investigators' training will consist of five incremental tiers, which involve assisting staff through a range of steps from capturing evidence to basic investigations through to specialised technical investigations. The online practitioner training will also have five incremental tiers, starting with improving basic knowledge and risk awareness of staff online and moving into targeted inquiries whilst mitigating risk to Police and staff.

(b) Environmental Crime and Corruption

The nature of the problem

157. Internationally, environmental crime is an expanding and increasingly profitable area of criminal activity. Environmental crime encompasses the illegal trade of environmentally sensitive items, including endangered species, marine resources, timber, ozone-depleting substances, toxic chemicals and hazardous waste. International law enforcement agencies are increasingly aware of the significance of transnational environmental crime.
158. Global trafficking of e-waste is a particular concern. E-Waste is any refuse created by discarded electronic devices and components such as cell phones, computers and televisions. Internationally, e-waste is emerging as an illicit commodity because it can yield significant profits. The quantity of e-waste is expected to increase substantially over the next decade and organised crime and organised crime groups will increasingly seek to exploit this resource. New Zealand Customs believes that the threat from domestic organised crime involved in e-waste exports is minimal at present, since the bulk of e-waste exports occur from licensed dealers and industry recyclers. However this could change if the profitability of exporting e-waste increases significantly in the near future.

159. As with other illicit markets, the illicit nature of environmental crime (including the way in which those involved in the market endeavour to coningle legal and illegal commodities and trade) makes it more difficult to measure both the extent and scope of organised criminal involvement in New Zealand. The Internet is a key enabler of the global illegal trade in wildlife, providing an unregulated and anonymous marketplace that has the potential to introduce suppliers and collectors from around the world.

New Zealand's approach

160. With this in mind, the Government has broadened its scope to investigate wider environmental crime issues including wildlife crime, hazardous substances and the smuggling of ozone depleting substances. Customs, MPI and the Department of Conservation are the primary agencies that deal with environmental crime. They continue to collaborate in their investigations and engage with other Government agencies and NGOs.
161. Most environmental statutes include a provision making it an offence to breach the duties imposed by the statute. Examples include the Resource Management Act 1991, the Fisheries Act 1996, the Wildlife Act 1953, the Marine Reserves Act 1971 and the Ozone Layer Protection Act 1996.
162. New Zealand's most important environmental statute is the Resource Management Act, which deals with a large number of discrete environmental issues. Criminal offences under the Act fall into three categories, the most serious of which are offences under s 338(1). These offences involve breaches of the duties and restrictions set out in the Act concerning coastal marine areas, discharge of contaminants and the use and development of land, and carry a penalty of up to \$300,000 or two years' imprisonment for a natural person. Section 341 also imposes strict liability for several specified offences, meaning it is not necessary for the prosecution to prove the defendant intended to commit the offence. The focus of the enforcement is therefore on ensuring compliance rather than seeking to punish and is reflective of "the importance attached to protection of the nation's natural and physical resources".²⁶

(c) Sexual and Gender Based Violence (SGBV)

Educational and support initiatives

163. The Ministry of Justice funds a number of victim support initiatives for victims of sexual or gender-based violence. These include:
- 163.1 specialist sexual violence victim advisors, who provide information and support during the court process to victims of sexual violence. This includes advising victims about their rights and helping them tell the court how the crime has affected them;
 - 163.2 grants to support victims, for example to fund costs associated with court, such as travel expenses or childcare;
 - 163.3 Victim Support, which provides a crisis and support service for victims of serious crime and an 0800 helpline for victims;

²⁶ *McKnight v NZ Biogas Industries Ltd* [1994] 2 NZLR 664 (CA) at 672.

- 163.4 a National Home Safety service that provides support and resources for women and children to live free from violence, and to do so in their own homes;
 - 163.5 restorative justice services involving victims of sexual offending and family violence; and
 - 163.6 safety planning and support programmes for victims of family violence.
164. The Ministry of Social Development funds crisis response and support (e.g., Women’s Refuge and Safe Houses) and services for children who witness or experience family violence.
165. The Government (Ministry of Social Development, New Zealand Police, Ministry of Health, and the Accident Compensation Corporation (ACC)) also funds a range of primary prevention and education initiatives. These include:
- 165.1 the Campaign for Action on Family Violence – “It’s Not OK” (led by the Ministry of Social Development), which seeks to change attitudes and behaviour that tolerate any kind of family violence. It involves television advertising, support for community-led projects to prevent family violence, media advocacy work, the development of written resources, an 0800 information line, website and social media information;
 - 165.2 sexual violence prevention education in schools such as the “Loves Me Not” programme (a one day workshop to educate young people to reject unhealthy, controlling and abusive relationships), “Keeping Ourselves Safe” programme (helps provide children and young people with the skills to cope with situations that might involve abuse) and ACC’s “Mates and Dates” pilot programme (run in secondary schools to encourage healthy relationships based on respect and consent);
 - 165.3 the National Network for Ending Sexual Violence Together is a national bi-cultural organisation that works with Government and community agencies to advocate for improvements to intervention and prevention services;
 - 165.4 the National Sexual Violence Survivor Advocate Service, which is currently operated by Louise Nicholas and another advocate in the Bay of Plenty region, provides information, referrals and sometimes one-on-one support to people affected by sexual violence;
 - 165.5 funding to local communities to prevent crime, including family violence; and
 - 165.6 Police Districts have local-level agreements with service providers in order to provide victim support services. Local-level agreements ensure that services are able to cater to local needs.

New initiatives

166. New Zealand’s Government and Parliament are currently progressing work to address SGBV, including through the following:

- 166.1 the Evidence Amendment Act 2016, which came into force on 8 January 2017, which introduced new protections for sexual violence complainants during trial processes, including further procedural safeguards for sexual history evidence and restrictions on defence access to video-recorded evidence;
 - 166.2 an additional \$46 million provided in Budget 2016 to deliver specialist sexual violence services to better support victims and prevent sexual violence. This was part of the Government's response to a Select Committee Inquiry into the funding of specialist sexual violence social services;
 - 166.1 supporting the office of the independent Chief Victims Advisor, Dr Kim McGregor, who is responsible for providing independent advice to the Minister of Justice on legislative, policy and other issues relating to victims of crime and the criminal justice system;
 - 166.2 ACC's coordination of the Government's response to sexual violence prevention through the establishment of a Sexual Violence Prevention Advisory Board;
 - 166.3 ACC's Integrated Services for Sensitive Claims which provides immediate support, treatment and assessment for sexual violence survivors to support care and recovery in the longer term; and
 - 166.4 enactment of the Family and Whānau Violence Legislation Bill to enhance current protection for children and adult victims, to hold perpetrators to account and create a new offence of coerced marriage or civil union (see above at paragraph [101]).
167. In addition, two Member's Bills²⁷ have been introduced relating to family violence work leave and requiring the court's consent when 16 to 17 year olds wish to marry. They are the Domestic Violence – Victims' Protection Bill and the Marriage (Court Consent to Marriage of Minors) Amendment Bill.

Cross-Government Ministerial Group on Family Violence and Sexual Violence

- 168. The cross-Government Ministerial Group on Family Violence and Sexual Violence, co-led by the Minister of Justice and the Minister of Social Development has established a Multi-Agency Team (MAT). This team is hosted by the Ministry of Justice and will oversee and deliver parts of the Ministerial Group's work programme, including making recommendations for a future family violence system.
- 169. Agencies contributing to the MAT are Justice, Police, Te Puni Kōkiri, Corrections, and the Ministry of Social Development. The 2017 work programme, delivered by multiple agencies, has included:
 - 169.1 piloting an Integrated Safety Response (ISR) for Police and Corrections-referred family violence victims and their families. Pilots began in Christchurch in July 2016 and Waikato in October 2016. ISR aims to deliver coordinated cross-agency services to families referred to it via Police call out to a family violence episode or Corrections where there is imminent

²⁷ Member's bills are legislation introduced by a Member of Parliament from any political Party and not by the Government.

prison release of a high-risk perpetrator. Safety plans are developed at collaborative daily meetings, and cases are closed once safety has reasonably been assured. Since the pilots began, 10,000 families have been supported. An average of 183 episodes of family violence are handled each week at Christchurch ISR and 209 at Waikato. The pilots were evaluated in 2017 and the Social Policy Research and Evaluation Unit's report is available online.

- 169.2 creating a common Risk Assessment and Management Framework (RAMF) that people who work in the family violence sector can use to determine and manage the risks victims face and the threats perpetrators pose. The RAMF was developed with input from the NGO sector, and published for consideration by the sector in June 2017. Work is progressing to create supporting practice guidelines and training materials.
- 169.3 developing a Workforce Capability Framework (WCF) to identify consistent core competencies that members of the family violence and sexual violence workforce need to effectively deliver services. The WCF was published for consideration by the sector in June 2017, and work is under way to establish a baseline for current workforce capability.
- 169.4 developing specialist services to better support victims and prevent sexual violence. A new sexual violence 24/7 helpline, accessible by phone, email and text/SMS is due to go live in December 2017. The service has been contracted through the Ministry of Social Development, and will offer information, crisis counselling and support, as well as referral to local service providers. From March 2018, the service will be expanded to include online chat and a social media presence.
- 169.5 launching a new Elder Abuse Response Service. A free and confidential 24/7 helpline was established in July 2017.
- 169.6 commissioning research to identify and quantify the service needs of families and whānau experiencing family violence, and to identify ways to improve the responsiveness of the system.
- 169.7 trialling allowing victims to give evidence at the scene via Police cell phones, rather than being required to go to stations to make written statements. A trial in Counties Manukau was launched in June 2017 to speed the process and reduce stress on victims. The Evidence Regulations were amended to include provisions for mobile video records in criminal proceedings relating to family violence, and these came into effect in January 2017.

Improving the Justice Response to Victims of Sexual Violence

- 170. The 2015 Law Commission report *The Justice Response to Victims of Sexual Violence* identified that the justice system can fail to respond appropriately to victims of sexual violence. Addressing sexual violence is a major priority for the Minister of Justice.
- 171. The Government Response to the Law Commission's Report was presented to the House in June 2016. The Government recently announced \$1.24 million for a package of initiatives to make sexual violence victims' experience of the justice system less traumatic. Wider regulatory and legislative changes are being planned but final decisions have yet to be made by Cabinet.

172. Key operational changes being made within the courts area include:
- 172.1 training for Ministry of Justice court staff to better understand the impacts of sexual violence on victims;
 - 172.2 a new comprehensive on-line digital resource explaining how sexual violence cases journey through the criminal justice system along with other advice; and
 - 172.3 training and education programmes for the judiciary and Crown and Police Prosecutors to enable them to better address the needs of sexual violence complainants in the trial process.
173. The Government is continuing to consider the Commission's recommendations for legislative change.

The Sexual Violence Court pilot

174. The Chief District Court Judge, in association with other District Court Judges, is currently leading the piloting of specialist sexual violence courts. The objective of the pilot courts is to improve case management and trial management of eligible sexual violence cases.
175. The pilot began on 1 December 2016 in Auckland and Whangarei.
176. The pilot courts are based on other judge-led specialist courts that already operate within the District Courts, whereby like cases are brought together to assist in the cohesive and consistent application of applicable legal principles.
177. The pilot courts operate within the existing legislative framework and focus on category three jury trials prosecuted by the Crown. Dedicated judges intensively manage the cases by making maximal use of their existing powers under the Criminal Procedure Act 2011 and the Evidence Act 2006.
178. The first trials occurred in Auckland on 1 May 2017 and Whangarei on 28 August 2017.

SIGNIFICANT ISSUES AFFECTING THE LAW AND JUSTICE SECTOR AND OPTIONS TO ADDRESS THESE ISSUES

Responding to Crime

179. In common with many other countries, New Zealand continues to face particular crime challenges. There is a high rate of repeat victimisation (6 per cent of adults experience 52 per cent of all crime). Victims of crime tend to be younger, Māori and living in rented and social accommodation in the most deprived areas. Likewise, certain groups are over-represented in the population of offenders including Māori, young men, those suffering poor mental health and/or alcohol or other drug dependencies and those living in the most deprived areas.
180. The Government's refreshed BPS/'Reducing Crime' target (see above at paragraph [37]) is supported by three measures:
 - 180.1 the rate of reoffending;
 - 180.2 the rate of family violence; and
 - 180.3 the rate of sexual violence.
181. The reoffending measure has been redeveloped to measure the number of reoffenders as a rate relative to the New Zealand population. Specifically, it is measured by the number of release prisoners returning to prison within 12 months of release and the number of people reconvicted within 12 months of starting a community-managed sentence per 10,000 people.
182. The family and sexual violence rates have been excluded from the main target as the number of reported offences for these crimes is expected to increase as rates of reporting and detection increase. They are included as supporting measures as they involve serious crime and are of significant interest. The family violence rate is the rate of violent offences where the identified offender had a familial relationship with the victim, and the sexual violence rate is the number of sexual offences. Both rates are reported as a proportion of the New Zealand population.
183. There are seven priority areas which contribute to achieving the target of reducing serious crime; these priority areas target areas of greatest risk. As offending is highly correlated with outcome across the social sector, these priorities include work areas across the wider social system to meet the target of reducing serious crime. The seven priority areas and supporting actions are:
 - 183.1 reduce family violence:
 - 183.1.1 the Ministerial Group on Family and Sexual Violence;
 - 183.1.2 the Family and Whānau Violence Legislation Bill (see above at paragraph [101]); and
 - 183.1.3 Whāngaia Ngā Pā Harakeke;
 - 183.2 reduce sexual violence:
 - 183.2.1 the Ministerial Group on Family and Sexual violence; and

- 183.2.2 development of sexual violence services (Sexual Violence Crisis Support Services; Harmful Sexual Behaviour Services; Services for Male Survivors of Sexual Abuse);
- 183.3 reduce serious crime caused by adult gangs:
 - 183.3.1 the Whole of Government Action Plan on Gangs;
 - 183.3.2 the New Zealand Gang Strategy (2017-2022); and
 - 183.3.3 the Department of Corrections Gang Strategy (2017-2021);
- 183.4 improve outcomes for people with alcohol and other drug, and mental health needs:
 - 183.4.1 the Drug and Alcohol Testing of Community-Based Offenders, Bailees and Other Persons Legislation Bill (see above at paragraph [126]) and additional services to support this Bill: enhanced mental health support, wrap-around family support, counsellors and social workers in women's prisons and supported accommodation;
- 183.5 Mental Health Gap Analysis:
 - 183.5.1 more investment in alcohol and other drug treatment and support, aftercare workers, community residential treatment, intensive outpatient programmes and Offender Digital Health Services; and
 - 183.5.2 better mental health for offenders: more therapeutic environments focused on supporting people at risk to make them well enough to leave residential care, stay safe and engage in further treatment.
- 183.6 improve justice outcomes for Māori:
 - 183.6.1 the Māori justice outcomes strategy and action plan;
 - 183.6.2 the Turning of the Tide strategy;
 - 183.6.3 Policing Excellence: the Future (PEtF) – Safer Whānau; and
 - 183.6.4 Rangatahi Courts;
- 183.7 reduce reoffending:
 - 183.7.1 prisoner education and access to interventions in prison;
 - 183.7.2 better community reintegration support;
 - 183.7.3 the Mauri Tu, Mauri Ora programme;
 - 183.7.4 wrap-around services to support ex-prisoners to find and sustain employment;
 - 183.7.5 the Integrated Safety Response pilot;
 - 183.7.6 community justice/iwi panels; and

183.7.7 Therapeutic courts.

184. Other supporting work that is under way across the justice and social sectors to address these issues includes:
- 184.1 the development of a Māori Justice Outcomes Strategy to improve Māori justice outcomes. This will be delivered by better aligning and integrating work across the criminal justice system and, where appropriate, initiating new activity working in partnership with Māori;
 - 184.2 the Youth Crime Action Plan, which is a 10 year plan (launched in 2013) to reduce crime committed by children and young people and help those who offend to turn their lives around;
 - 184.3 the Investment Approach to Justice, which uses rigorous and evidence-based investment practices to better understand the people who need social services and what works to reduce crime and adjust services accordingly; and
 - 184.4 the cross-Government Ministerial Group on Family Violence and Sexual Violence Work Programme (discussed above at paragraph [168]).
185. The Justice Sector Fund (JSF) was created in April 2012. It was designed as a way for the justice sector to share savings and also to provide financial flexibility to invest in areas that deliver better results to New Zealanders. By May 2017, 66 initiatives had received funding through the JSF. A total of \$273 million of savings from the justice sector has been reallocated for these initiatives, including the review of family violence law, expanding the use of restorative justice, reintegration programmes for people released from prison, and installing audio-visual links between courts and prisons to improve public and prisoner safety.

The Safest Country - Policing 2021

186. The Safest Country - Policing 2021 (P21) is Police's transformation programme. Through P21, Police are undertaking a range of initiatives during the next four years to modernise and transform their business; and support a future of evidence-based, technologically-enabled policing.
187. That is a future where there are fewer crimes and victims, less reoffending, fewer crashes, and stronger partnerships with iwi, the community, partner agencies and NGOs. It is also a future where members of the public can more readily access Police services, contact Police more effectively to report non-emergencies, and where criminals can expect there to be more Police on the street and in the air to assist in the detection and prevention of crime.
188. P21 draws together and drives forward key elements from PEtF and the Police High Performance Framework (PHPF).
189. Through P21, and as part of the Government's \$388 million four-year Safer Communities investment in Police, Police have set the following targets:
- 189.1 10,000 fewer serious crime victimisations;
 - 189.2 25 per cent reduction in reoffending by Māori by 2025; and

- 189.3 90 per cent high or very high trust and confidence and citizen satisfaction by 2021.
190. Sitting underneath these targets are more specific deliverables across nine key target areas. Five of these are specific to Police, and four will involve Police contributing to them. The five P21 work streams, delivering specific initiatives and projects, are as follows:
- 190.1 Safer Whānau;
 - 190.2 Iwi and community partnerships;
 - 190.3 Evidence-based policing;
 - 190.4 Service delivery and modernising Police business; and
 - 190.5 PHPF.

Iwi/Community Panels

191. Iwi/Community Panels (Panels) are a type of ‘alternative resolution’ that aims to develop better outcomes for people who have committed low-level offences, instead of being charged and prosecuted.
192. Police contract Whānau Ora providers and other NGOs to run Panels, which are made up of vetted and trained community/iwi representatives. The Panel hearings and conditions set aim to provide the opportunity for offenders to redress the harm and damage caused by their offending and address contributing and/or underlying factors.
193. Two more years’ funding is allowing the piloting of Panels to continue, with expansion into six new locations from early 2018. This will allow for further assessing of the Panels’ effectiveness. The projected volumes across the 10 panel locations is 1,235 people in 2017/18 and 1,415 in 2018/19.

Modernising the Justice System – technology

194. Audio-visual links (AVL) between courts and custodial facilities is now available in 20 District Courts (called AVL Courtrooms) and 15 custodial facilities as well as a number of forensic/psychiatric hospitals across New Zealand. The technology enables persons in custody to appear remotely from prison and is cost-effective, while improving public safety for both court users and those in custody. The Ministry is also upgrading AVL (or video conferencing) capability in other courts and tribunals which enables a variety of use such as having experts or vulnerable witnesses appear from remote locations within New Zealand and overseas.
195. The reforms included in the Judicature Modernisation legislation (see above at paragraph [115]) provide greater flexibility and opportunities for the civil jurisdiction to also take advantage of developing technology. The Courts Matters Bill and the ‘Tribunals’ Powers and Procedures Legislation Bill (see above at paragraph [110]) propose further changes to improve and modernise courts and tribunals.

SIGNIFICANT INITIATIVES/PROJECTS INVOLVING NEW ZEALAND AND ITS LAW AND JUSTICE SECTOR

Regional Initiatives

Police Pacific Island initiatives

196. New Zealand Police's Māori, Pacific and Ethnic Services established the Commissioner's National Pacific Advisory Forum in September 2015. It comprises selected subject-matter experts in fields that align with Police prevention strategies and includes influential political and cultural leaders, senior Government leaders and academics. The Forum offers advice to the Commissioner and the Senior Police Leadership Group on matters that may affect and involve Pacific Island communities and promotes Police strategies and initiatives within their immediate communities and sphere of influence.
197. Pacific Advisory Boards have been established in areas that have large Pacific populations. The Boards advise Police senior management groups on matters and strategies concerning Pacific communities, and also promote Police within these communities.
198. Police have PLOs in areas with large Pacific populations. PLOs liaise with Police and Pacific communities and act as subject-matter experts for Police officers that require specific cultural and community information. They promote Pacific Police capacity building via the recruitment process, and have been instrumental in establishing volunteer Pacific Island Patrollers and Wardens, who promote community safety.
199. Police now also have a Letter of Agreement with the Pacific Media Network Company formalising the relationship between the organisations. The Pacific Media Network delivers Pacific Island Radio programmes nationwide in New Zealand and into some Pacific Island countries.

PILON Litigation Skills Training Programme

200. MFAT's New Zealand Aid Programme provides funding for the PILON Litigation Skills Training Programme. The activity is implemented by the New Zealand Crown Law Office and covers both Basic and Advanced levels of training. Funding totals \$1.6 million over five years (2015-2019). The overall objective of the activity is to improve the practical advocacy and litigation skills of Pacific island lawyers. The activity plays an important part in improving the standard of advocacy in Pacific courts.

Judicial Pacific Participation Fund

201. New Zealand supports the professional development of Pacific judicial and court officers by funding Pacific judiciary to attend judicial conferences (in New Zealand and overseas), funding study visits to New Zealand and providing mentoring of Pacific judicial and court officers by members of the New Zealand judiciary (either within New Zealand or through in-country visits to Pacific Island countries). This activity covers the following 14 countries: Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu. The activity is implemented by the Ministry of Justice.

Pacific Judicial Strengthening Initiative (PJSI)

202. New Zealand provided technical assistance to Pacific forum judiciaries through the Pacific Judicial Development Programme (PJDP) (\$12.5 million July 2010–December 2015) to strengthen the professional competence of up to 400 Pacific judicial and court officers, and also provided technical assistance to strengthen the court systems and processes (such as case management). This initiative ended in December 2015.
203. The PJSI builds on the PJDP to help to embed these gains at the institutional level. The five-year PJSI aims to strengthen the capacity of Pacific Island courts to provide more accessible, just and efficient services. Assistance will be provided to the Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu. The initiative is being implemented by the Federal Court of Australia. New Zealand judges will be involved in the delivery of activities.

Pacific Prevention of Domestic Violence Programme (PPDVP)

204. The Pacific Islands Chiefs of Police (PICP) mandated regional PPDVP, implemented by New Zealand Police, is funded through the New Zealand Aid Programme managed by MFAT.
205. PPDVP started in 2005 providing training and assistance to Pacific Police Services (Cook Islands, Kiribati, Samoa, Tonga and Vanuatu are the five Tier 1 countries) around domestic violence prevention and response. It has since enabled the creation of legislative powers with regards to combatting and investigating family violence in Pacific Island countries; as well as provided training and support to police staff within those countries.
206. There is still the opportunity to better embed the capability being taught within Pacific Police Services, especially in relation to how the victims of family harm are treated and responded to by Police. Due to this, the final phase of PPDVP (2017-2021) is seeking to focus on the actual actions of police staff with a view to ensuring an improvement in the experiences of people who are dealing with family harm.
207. PPDVP has a long term vision of achieving a “Safer Pacific free from Domestic Violence”. With the refocusing of the 3P Programme to identify and target the drivers of demand for each country over the next four years, there is the opportunity to align PPDVP’s work targeting family harm as a primary driver of demand in Pacific Island countries. PPDVP will still do the same work, for the same people and with the same objectives and accountabilities. However, it will be enveloped into a broader programme of work so that resources and staff can be aligned. Strategically, this increases productivity to make the most efficient and effective use of funding by merging the resources of PPDVP and 3P.

PCO: Legislative Drafting Assistance

208. PCO’s Pacific Island Desk (the Pacific Desk) was established on 1 July 2011 with funding from the New Zealand Aid Programme. The current phase of support to the Pacific runs to 2021, funded through the New Zealand Aid Programme.
209. The Pacific Desk provides legislative drafting assistance to Pacific Island nations. It drafts on instruction from the Solicitor-General or Attorney-General of the relevant Pacific Island nation. One experienced senior drafter is assigned to work on the

Desk. Assistance is provided with priority given to the Cook Islands, Niue and Tokelau, but is extended to other countries on request and as resources allow.

210. The assistance offered includes the drafting of legislation, training of on-island drafters and the creation of legislative drafting templates and drafting guidelines. The drafter is based in Wellington but is funded to travel to Pacific Islands to provide training, receive instructions, draft legislation, review draft legislation, consult with stakeholders and present draft legislation to Cabinet and Ministers.
211. PCO has prepared, in collaboration with the Crown Law Offices for the Cook Islands and Niue, the following templates and guides, each of which is tailored for the specific requirements of the relevant nation:
 - 211.1 guides entitled “Crown Law Office’s Legislative Drafting Directives”;
 - 211.2 guides entitled “Preparing Instructions for the Drafting of Legislation”;
 - 211.3 an electronic template for drafting Bills; and
 - 211.4 an electronic template for drafting regulations.
212. The Cook Islands Solicitor-General has issued the documents for use in the Cook Islands. All legislation prepared for the Cook Islands must now comply with these documents. The documents have not been officially released in Niue. However, they are being used and all legislation prepared for Niue must now comply with these documents.

Significant legislation

213. The Pacific Desk has been involved in the drafting of two significant pieces of legislation, both of which were recently enacted by the Cook Islands Government. The first relates to the reform of family law in the Cook Islands, which resulted in the enactment of the Cook Islands Family Protection and Support Act 2017. That Act was originally drafted in Australia, but was peer reviewed by the Pacific Desk, who then drafted subsequent amendments to enable the Bill to complete its parliamentary passage.
214. The second piece of significant legislation is the Marae Moana Act 2017. That Act aims to protect and conserve the ecological, biodiversity, and heritage values of the Cook Islands marine environment. This includes provision of an integrated decision-making and management framework to coordinate the work of relevant agencies so as to effectively balance marine conservation with ecologically sustainable use of the marine environment and resources, while allowing for sustainable use of the marine environment. This legislation will assist in meeting the Cook Islands’ international responsibilities, in particular its responsibilities under the Convention Concerning the Protection of the World Cultural and Natural Heritage, the Convention on the Conservation of Biological Diversity, and the United Nations Convention on the Law of the Sea.

Increased training

215. The Pacific Desk has, more recently, increased its focus on mentoring and training to better support Pacific Island nations building and maintaining their own drafting capacity. In 2017, the Pacific Desk undertook legislative drafting training for the Cook Island Crown Law Office and training for the Niue Crown Law Office on the

drafting of regulations. In addition, a full day workshop was conducted for public and private sector lawyers in the Cook Islands on drafting, particularly in the context of regulations.

Collaboration with other agencies and networks across the Pacific

216. The Pacific Desk also continues to work to establish regular communications between agencies who provide legislative drafting assistance to the Pacific in order to coordinate the assistance provided and avoid duplication. The 'Technical Legal Assistance' page was added to the PILON website to assist with this. This page contains a list of country-specific projects (including legislative drafting projects). Email contact is made with agencies three times a year to request an update on current projects and new proposals.
217. PCO also works with other drafting offices and agencies across the Pacific to enhance the profile of legislative drafting in the Pacific and provide training for this purpose, primarily through the ongoing series of Legislative Drafters' Forums that have been held since 2006. The purpose of the forum is to support legislative drafting in the Pacific and facilitate the exchange of drafting experience and expertise.
218. The most recent Pacific Legislative Drafters' Forum meeting was hosted in Nuku'alofa (23-25 August 2017) by the Attorney General's Office of the Kingdom of Tonga, with support from the Australian Attorney-General's Department and the Pacific Islands Forum Secretariat. One of the outcomes of the Forum was the establishment of a steering group to guide, support and oversee progress of activities of the Drafters' Forum. New Zealand is a member of the steering group of the Legislative Drafters' Forum (other members include Tonga, Samoa, Nauru, Australia, and the Pitcairns).

Partnership for Pacific Policing (3P Programme)

219. The previous phase of the 3P Programme (2013-2016) focused on management and organisation, partnerships and communication, and policing capability in Kiribati, Niue, Samoa, Tokelau, Tuvalu, Vanuatu and the Cook Islands. Following a programme evaluation in 2016, which identified barriers to sustainable policing assistance, the current phase of the 3P Programme (2017-2021) has been re-shaped to ensure the assistance provided by NZ Police to the seven Pacific Police Services is relevant, targeted and effective. The five year implementation phase will commence in early 2018.
220. The first year of the new phase of 3P supports each of the seven countries to create a Prevention Operating Model, which will identify and target the drivers of demand for each country. Once identified these will assist to determine where, and how, 3P provides support to these countries moving forward.
221. This will also enable an opportunity to align the PPDVP with 3P targeting family harm, as a primary driver of demand in Pacific Island countries.

PICP Secretariat

222. PICP is a regional organisation that was founded in 1970 (as the South Pacific Chiefs of Police Conference) and formally changed its name to the Pacific Islands Chiefs of

- Police in 2005. There are currently 21 member countries, including New Zealand and Australia.
223. The PICP Secretariat, an independent body, is hosted by New Zealand Police in Wellington. The Secretariat is permanently staffed by four staff from New Zealand Police and one from Australian Federal Police. MFAT, through the New Zealand Aid Programme, is the primary funder of the PICP Secretariat's work in the Pacific.
224. Key activities of the PICP Secretariat include:
- 224.1 representation of PICP members at regional law enforcement meetings and forums;
 - 224.2 delivery of the annual PICP conference – the primary forum through which major regional law enforcement issues and strategic direction of the PICP are discussed;
 - 224.3 facilitation of capacity development activities for Pacific policing, including Pacific officer exchanges and secondment programmes;
 - 224.4 coordination and support for PICP's eight mandated programmes on transnational crime, training, cyber safety, forensics, domestic violence, crime prevention, IT and the PICP Women's Advisory Network; and
 - 224.5 support for the PICP Chair and executive leadership team in the delivery of the PICP Strategic Plan.
225. Under the PICP Strategic Plan 2015-2019, the purpose of the PICP is "to build Pacific police leadership and collectively navigate regional policing challenges through discovery, knowledge, influence and partnerships". Its strategic goals are to:
- 225.1 build and develop current and future police leaders to strengthen policing organisations for a safer Pacific;
 - 225.2 be professional and uphold high standards of integrity in policing;
 - 225.3 build and strengthen inter-agency, community-focused and research partnerships to create influence and add value to crime prevention strategies;
 - 225.4 enhance operational policing capability in community policing; intelligence; investigations; command, control and coordination; and forensics in the Pacific region;
 - 225.5 strengthen cross-jurisdictional relationships and regional co-operation to fight crime and respond to emergencies; and
 - 225.6 maximise the contribution women bring to Pacific policing to best serve their communities.
226. Transnational and international crime issues are a core focus for the PICP member countries. Current and emerging trends include:
- 226.1 methamphetamine and the transshipment zones throughout the Pacific;

- 226.2 criminal deportees returning to Pacific nations, and the criminal networks and connections they can bring; and
 - 226.3 organised Motorcycle Gangs and the importance of monitoring the movements of such organisations within the Pacific.
227. Members acknowledge that in order to combat organised crime regionally, ongoing coordination and collaboration is required from PICP members and with partner law enforcement agencies.
228. The 46th PICP Conference was held on Guam in August 2017. The theme for the 2017 conference, “Mandana Islas Pacifico” (Pacific Islands Together), was selected to encourage members to share ideas and best practice from their own jurisdictions, with a particular focus on community-oriented policing.

Illegal Fishing

229. The growing incidence of Illegal Unreported and Unregistered (IUI) fishing globally has heightened New Zealand’s interest in law enforcement at sea. MPI and the Royal New Zealand Navy undertook high seas patrolling regarding the Albacore tuna fleet to the northwest of the Kermadecs in July 2017 which detected unacceptable levels of non-compliance among many vessels.
230. Current New Zealand initiatives to improve fisheries-related law enforcement in the Pacific include funding for the training of fisheries compliance staff and Police and building the capability of requesting countries to design their own frameworks for fisheries management and enforcement (such as through processing any illegal, unreported and unregulated fishing cases).

Sanctions implementation

231. As a result of its nuclear weapons and missile programmes, North Korea is now the subject of nine Security Council resolutions, which impose a range of sanctions and prohibit further testing. The first sanctions were imposed under Resolution 1718 (2006), following North Korea’s first nuclear test in October 2006. The sanctions against North Korea have increased in intensity following each nuclear or ballistic missile test. The most recent is Resolution 2375, adopted following North Korea’s 3 September 2017 nuclear test.
232. New Zealand takes seriously its obligation to implement the sanctions against North Korea. The United Nations Act 1946 gives the Government the power to make regulations to implement Security Council resolutions, including sanctions measures. Previous Security Council resolutions imposing sanctions on North Korea have been implemented by the United Nations Sanctions (Democratic People’s Republic of Korea) Regulations 2017. These regulations need to be amended in order to implement Resolutions 2371 and 2375. The Ministry of Foreign Affairs and Trade is working to implement the latest sanctions as swiftly as possible.
233. New Zealand has also committed to working with Pacific countries to ensure sanctions are fully and effectively enforced in the region by supporting them to identify and de-register any North Korean fishing and trading vessels currently flagged on Pacific states’ shipping registers.

Bilateral Initiatives

Solomon Islands

234. An Advisor who is a solicitor and ex-fisheries investigator from the MPI Pacific Fisheries Compliance Liaison & Coordination branch has provided capacity development to Monitoring, Control and Surveillance (MCS) Compliance staff from the Ministry of Fisheries and Marine Resources based in Honiara. This is part of the Memorandum of Understanding between MFAT and MPI.
235. The Advisor has provided training in the areas of general courtroom procedures, giving evidence in chief and under cross examination. Further capacity development has been provided in interviewing offenders, preparing written reports and case file development for prosecution purposes. A 12 month modular based training program will be starting in November 2017 covering Solomon Island Fisheries Legislation and MCS training - inspections, gathering evidence, interviewing, case file preparation, judicial procedures and giving evidence in a mock court situation.

Regional Assistance Mission to Solomon Islands (RAMSI)

236. RAMSI was established in 2003 at the request of the Solomon Islands Government and in response to the Tensions (1998-2003). It was a partnership between the people and Government of Solomon Islands and 15 other Pacific Island nations, all of whom contributed personnel. At the time, Solomon Islands was experiencing a break down in law and order, extreme violence and intimidation, corruption and a Government unable to provide even basic public services such as health and education.
237. The multilateral mission focused on capacity development of the Royal Solomon Islands Police Force (RSIPF). Over 800 of New Zealand's approximate 2,000 deployments were New Zealand Police personnel, who were part of RAMSI's Participating Police Force for the entirety of the 14 year mission.
238. The mission concluded on 30 June 2017 and the RSIPF has developed its capability with RAMSI's support to the point where it is now widely regarded as the highest quality police force amongst Pacific Island countries. The security environment is markedly improved since RAMSI's arrival, but it is vital that these gains are not eroded with the mission's withdrawal.
239. New Zealand's post-RAMSI support is in the form of a four year \$12.5 million package. New Zealand Police have developed a bilateral assistance programme with the RSIPF, the Solomon Island Policing Support Programme (SIPSP). The SIPSP is made up of eight New Zealand Police advisors including a team leader, three senior advisors and four advisors. The purpose of the SIPSP is to assist the RSIPF with the ongoing development and implementation of the RSIPF Crime Prevention Strategy (CPS), assist the RSIPF to work with donors and stakeholders to ensure that the CPS is embedded within the RSIPF and supported across all Solomon Islands institutions, and to develop systems and policies to assist with the implementation of the CPS.

Papua New Guinea

240. The New Zealand Police have a longstanding programme of assistance in the Autonomous Region of Bougainville, Papua New Guinea (PNG). New Zealand has provided assistance to community in policing in Bougainville since 1998. The

Bougainville Community Policing Programme commenced in 1999 to assist with building the capacity of the law and order component of the newly formed Autonomous Government, through the establishment of Community Auxiliary Policing (CAP). Recent phases of support have given increasing focus to building capacity within the formal Bougainville Police Service. A five-year phase of assistance (2014–2019) is currently under way with 11 New Zealand Police personnel deployed in Bougainville, and one additional team member seconded from the Vanuatu Police Force. The current phase aims to assist the Bougainville Police Service, both Regulars and Auxiliaries (formerly known as the CAP), to integrate and operate as one service to reduce crime, promote good governance and increase public confidence in the Bougainville Police Service, so that Bougainville communities are safe and secure.

241. Maintaining law and order continues to be a crucial issue for Bougainville in the lead-up to the planned referendum on independence. Improving knowledge, attitude and practice of the Bougainville Police Service-Regular and the Bougainville Police Service-Auxiliaries is important for a peaceful referendum in 2019 and for managing the post referendum period.

Royal Papua New Guinea Constabulary (RPNGC) support programme

242. NZ Police have positively responded to a request from the RPNGC to support them to prepare for PNG's hosting of the Asia-Pacific Economic Cooperation (APEC) Summit 2018. The PNG Government have requested support from New Zealand Police who have agreed to deliver a 14 month policing support programme (August 2017-November 2018) focused on core policing areas.
243. The programme will be split into two stages: a Foundation stage (training) and Implementation stage (advising and mentoring). The deployment model is for 12 staff to be deployed for the entirety of the programme to ensure consistency in embedding the training in Stage II. The provisional budget for the programme is \$5.4 million. The activity will support other countries who are providing assistance in the security preparations for APEC 2018, including Australia and the United States.

Vanuatu

244. The New Zealand Aid Programme provides support for a New Zealand District Court judge to sit on the Vanuatu Supreme Court. New Zealand also provides assistance to strengthen the capacity of the Vanuatu corrections services.

Tonga

245. MFAT, through the Aid Programme (in conjunction with the Australian Government) funds the Tonga Police Development Programme, which provides two full-time New Zealand Police advisors to assist with Tongan Police's goal of becoming a trusted and respected policing service that reduces crime and builds safe communities. It also funds short-term inputs from New Zealand Police advisors and mentors in specific areas of focus. The Programme has also approved, and New Zealand Police will provide, a third adviser to Tonga Police from 1 November 2017 who will focus on corporate areas such as the development and implementation of the government mandated Performance Management System, annual reporting, strategic planning and Human Resource processes.

246. Separate to this programme, the Aid Programme supplements the salary of the Tongan Police Commissioner while Tonga strengthens its leadership capacity to fill this role locally.
247. The New Zealand Aid Programme provides salary support for one full-time and one part-time Judge of the Supreme Court of Tonga. The Aid Programme makes this contribution to the Tongan Ministry of Justice, as well as a separate contribution to the Director of Public Prosecutions to support quality judicial decision-making and improved justice for Tongan people. MFAT has agreed a new Activity with the Ministry of Justice that will focus on three key areas: strengthening the Magistrates, establishing systems and programmes for youth, and promoting public awareness of services available within the Justice system. This Activity will replace the current salary supplementation support provided.

Projects funded by the Pacific Security Fund (PSF)

248. The PSF, coordinated by MFAT, is a contestable fund which can be drawn on by Government agencies and has a interdepartmental Pacific Security Coordinating Committee which makes recommendations on the activities. Activities undertaken with support from the PSF complement the Ministry's and agencies' routine engagement with Pacific partners in security related matters. The PSF works alongside, and complements, the work of the New Zealand Development Programme in the Pacific.

New Zealand Police secondment to the Pacific Transnational Crime Coordination Centre (PTCCC)

249. This project provides funding for the secondment of a New Zealand Police Intelligence Adviser to the Apia-based PTCCC (2017-2020). The position involves providing assistance with building intelligence capacity, undertaking intelligence analysis, mentoring and providing leadership to staff at the PTCCC.

Pacific Police Dog Programme

250. This project facilitates in-country training and mentoring of Samoan, Tongan and Cook Islands dog handlers by New Zealand Police advisors. The programme provides ongoing in-country training and mentoring to support and build on existing capabilities, provision of training to new and existing dog handlers, and providing new dogs when replacement is required.

Fiji Detector Dog Project

251. This is a new project to build a police detector dog programme in Fiji, in conjunction with Fiji Police, Fiji Revenue and Customs and New Zealand Police and Customs authorities. The aim of the project is to implement a joint Fiji Police and Customs Detector Dog unit based at Nadi and Suva that will:
- 251.1 strengthen Fiji's border security relating to the illicit movement of narcotics, currency and firearms through air and sea ports;
 - 251.2 enhance Fiji's domestic security relating to the manufacture and possession of illicit narcotics, possession of currency as proceeds of crime, and illegal possession of firearms; and
 - 251.3 strengthen border security for New Zealand, other Pacific Island countries, and countries that trade with and travel to/from Fiji.

252. The detection capability of dogs includes narcotics, precursors, currency and firearms. The project will also explore broader training, mentoring and oversight to deliver the infrastructure and organisational operating systems, to ensure they can support dog operations as part of effective border enforcement.
253. The Nadi teams became operational in November 2016 and the Suva teams in September 2017. Regular interceptions of narcotics, currency and firearms have been made since the teams became operational.

Arms Trade Treaty Implementation – National Control Lists

254. New Zealand enabled a study that provides information and analysis of national arms control lists. This will assist Pacific Island countries to develop and implement national control lists that meet the requirements of the Arms Trade Treaty and the needs and interests of the Pacific region.

Niue Anti-money Laundering and Countering Terrorist Financing

255. The PSF supported the provision of a Reserve Bank of New Zealand anti-money laundering/counter financing of terrorism (AML/CFT) expert to assist the Government of Niue to develop and maintain a banking sector supervisory capability to assist in the detection and deterrence of money laundering and terrorist financing. The project also assisted Niue to comply with the AML/CFT Recommendations established by the Financial Action Task Force.

Aviation Security Co-Ordinator

256. This project supports the employment of an Aviation Security Co-ordinator to manage, prioritise and deliver New Zealand funded aviation security capacity building initiatives across the Pacific, including advising on, and supporting states to meet, obligations under the Chicago Convention.

Aviation Regulatory Adviser – Pacific Islands

257. The PSF provided funding for the appointment of a Senior Adviser within the Civil Aviation Authority to provide aviation regulatory assistance to a variety of Pacific Island countries.

Forum Fisheries Agency (FFA) Secondment

258. The PSF funds the secondment of a New Zealand Defence Force Officer to the FFA, based in Honiara, to provide professional support to regional and national operations and activities of the FFA and its member countries to combat illegal, unreported and unregulated fishing.

People Smuggling Investigation Training

259. The PSF supported a people smuggling investigation training workshop for Pacific Island countries under the Bali Process, involving Fiji, Kiribati, Nauru, New Caledonia, Palau, PNG, Samoa, Solomon Islands, Tonga and Vanuatu. The training workshop assisted law enforcement officials (Police, Customs, and Immigration) on the ground to be equipped with a range of skills to help them identify and handle instances of people smuggling.

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<http://www.police.govt.nz/>

<http://www.pco.parliament.govt.nz/>

Useful websites

Human Rights Committee Decisions

<http://www.worldlii.org/int/cases/UNHRC/>

Law Commission Reports

<http://www.lawcom.govt.nz/>

New Zealand Law Database

<http://www.nzlii.org/>

New Zealand Legislation

<http://www.legislation.govt.nz/>

New Zealand Judicial Decisions

<http://jdo.justice.govt.nz/jdo/Search.jsp>

<http://www.justice.govt.nz/>

New Zealand Parliament

<http://www.parliament.nz>

Office of the Ombudsman

<http://www.ombudsmen.parliament.nz/>

Pacific Law Database

<http://www.paclii.org/databases.html>

Seminar, Conferences, and Booklets available from the New Zealand Law Society Continuing Legal Education Department

http://www.lawsociety.org.nz/home/for_lawyers/legal_education

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