PILON: New Zealand Country Report

October 2019

Te Tari Ture o te Karauna
Crown Law

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STRUCTURE AND GOVERNANCE OF LAW AND JUSTICE AGENCIES

1. In New Zealand, the Crown Law Office provides legal advice and representation to the Government in matters affecting the Crown, particularly in the areas of criminal, public and administrative law.

2. Crown Law's purpose is to serve the Crown and uphold the rule of law.

MAJOR LAW AND JUSTICE SECTOR ACHIEVEMENTS

Abortion Legislation Bill

3. Performing an unlawful abortion is a criminal offence in New Zealand. An abortion is unlawful unless certain legal grounds are met. Two specially appointed doctors must be satisfied that one of the grounds applies before an abortion can occur. It is also an offence for a woman to unlawfully procure her own miscarriage or obtain an unlawful abortion.

4. The Abortion Legislation Bill, introduced in August 2019, decriminalises abortion by removing relevant provisions in the Crimes Act 1961. Through amendments to the Contraception, Sterilisation and Abortion Act 1977, the Bill permits abortion services to be provided without any limitation or need for legal justification until the end of the 20th week of gestation. Beyond 20 weeks, an abortion may be provided if a qualified health practitioner considers it appropriate in the circumstances. The Bill regulates referral and employment requirements for health care professionals with conscientious objection to abortion, and provides for "safe areas" to be designated around abortion service providers' premises to prevent intimidation and emotional distress. The Attorney-General concluded that although aspects of the Bill infringe certain rights in the New Zealand Bill of Rights Act 1990 (Bill of Rights Act), all are justified limitations under s 5 of that Act.

Arms (Prohibited Firearms, Magazines and Parts) Amendment Act 2019

5. The Arms (Prohibited Firearms, Magazines and Parts) Amendment Act 2019 was introduced on 1 April and passed on 11 April 2019, less than four weeks after the 15 March terror attack in Christchurch. This was enabled by cross-party and public support for the prohibition of certain types of firearms and a condensed consultation process. The Amendment Act:

   5.1 abolished military style semi-automatic weapons and certain types of ammunition;

   5.2 established a general prohibition on possessing semi-automatic firearms, some shot guns and any magazine or parts that would enable the conversion of a firearm into a prohibited firearm; and

   5.3 established an exemption regime for limited categories of licensed firearms owners (eg those undertaking wild animal pest control).

6. The Arms (Prohibited Firearms, Magazines and Parts) Regulations 2019 set out a compensation (buy-back) scheme for prohibited firearms, parts and magazines, and an accompanying six month amnesty period that commenced 20 June 2019.

Arms (Purpose, Licensing, Registry and Trading) Amendment Bill

7. A second amendment Bill was introduced in August 2019 and referred to Select Committee. The aim of the Bill is to strengthen key regulatory settings to ensure the

safe use and control of firearms, and as a result, personal and public safety. The proposals in the Bill include:

7.1 establishment of an online registry with the capability to record and track the transfer of firearms throughout their lifecycle;

7.2 strengthening the firearms licensing processes for individuals and those in the business of handling firearms (eg dealers) to ensure only those who are genuinely fit and proper can get a licence to possess firearms;

7.3 introducing a licensing regime for shooting clubs and ranges;

7.4 introducing a stakeholder advisory group;

7.5 strengthening the import regime around ammunition and blank firing firearms; and

7.6 strengthening monitoring, compliance and enforcement approaches by implementing a graduated intervention and penalty system.

Climate Change Response (Zero Carbon) Amendment Bill

8. This Bill had its first reading on 21 May 2019 and is currently before the Environment Select Committee, which is due to report back on 21 October 2019. The overarching purpose of this Bill represents a balance of the guiding principles agreed by Cabinet to frame the development of climate change policy: leadership at home and abroad; a productive, sustainable, and climate-resilient economy; and a just and inclusive society. This Bill provides a framework by which New Zealand can develop and implement clear and stable climate change policies that contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5°C above pre-industrial levels.

9. The Bill will:

9.1 establish an independent Climate Change Commission to provide independent expert advice and monitoring to help keep successive governments on track to the long-term mitigation and adaptation goals;

9.2 set a new greenhouse gas emissions reduction target to reduce gross emissions of biogenic methane within the range of 24% to 47% below 2017 levels by 2050, with an interim requirement to reduce emissions to 10% below 2017 levels by 2030, and reduce net emissions of all other greenhouse gases to zero by 2050; and

9.3 provide a framework for enhanced action on adaptation, consisting of a national climate change risk assessment, a national adaptation plan with regular progress reporting on implementation, and an adaptation information-gathering power.

Oranga Tamariki Legislation Act 2019

10. Amendments to the Oranga Tamariki Act in 2017 raised the youth justice age to include 17-year-olds in the youth justice system (except for 17-year-olds charged with serious offences carrying a maximum sentence of 14 years or more imprisonment, who remain in the adult courts). The Oranga Tamariki Legislation Act 2019 came into force on 1 July, at the same time as the 2017 amendments to the youth justice age. The 2019 Act established new processes to deal with proceedings against 17-year-olds charged with serious offences, including enabling both serious and less serious charges to be heard together, prescribing the process for proceedings where a

17-year-old is jointly charged with a young person or child, and dealing with proceedings against 17-year-olds that started before 1 July.

Royal Commission of Inquiry (RCOI): Christchurch Shootings

11. The New Zealand Government established the RCOI in April 2019, chaired by Sir William Young and Jacqui Caine. The RCOI is to examine the state sector agencies who knew of the alleged perpetrator's activities and what actions were taken in response to this knowledge. The RCOI is also looking into whether there were any additional measures these agencies could have taken to prevent the attack and what measures should be taken in future.

Inquiry into Operation Burnham and related matters

12. The Government Inquiry into Operation Burnham and Related Matters covers a range of allegations concerning the actions of the NZSAS during an operation by New Zealand special forces in Afghanistan from 2010 to 2012, contained in a book titled *Hit and Run*, written by Nicky Hager and Jon Stevenson. The Inquiry raises a number of important issues of international law, particularly in the areas of International Humanitarian Law and International Human Rights Law. The Inquiry is due to report in December 2019.

13. A number of Afghan citizens who claimed to be the family of people killed or injured during Operation Burnham brought a judicial review against both the Attorney-General and the Inquiry itself. The plaintiffs claimed that the Inquiry failed to meet the obligation of the New Zealand Government to investigate the allegations of unlawful deprivation of civilian lives in Operation Burnham, said to arise under the International Covenant on Civil and Political Rights and the Bill of Rights Act. The proceedings have now been discontinued, following a decision by the plaintiffs to withdraw from participation in the Inquiry.

SIGNIFICANT COURT DECISIONS

NZME v Mitchell [2018] NZCA 363

14. Media organisations applied under s 208 of the Criminal Procedure Act 2011 for review of a permanent name suppression order granted in 1973. Mr Mitchell was, at the time of the order, a 15-year-old convicted of rape. He was also convicted in the 1980s, and again in early 2019, for further serious sexual offences. There was no name suppression order in relation to the later convictions.

15. The Court considered that there would be a high threshold for revoking an order for permanent name suppression. There must be an exceptional or material change of circumstances, series of circumstances, or something otherwise out of the ordinary to have taken place to shift the balance of the public interest to weigh in favour of revocation. The Court considered the public interest of open justice on the basis of full public information about an offender's circumstances, including past convictions. It noted that one purpose of the original order for name suppression, given Mr Mitchell's young age, had been the hope of rehabilitation. The Court could find nothing in his present circumstances that justified continuing the suppression, as there had been no name suppression in respect of his subsequent offending, and he was a serving prisoner (for similar offences) at the time of the application. There was no public interest in upholding the suppression and it was accordingly revoked.

Kupec v R [2018] NZCA 377

16. This was an appeal against conviction and sentence for importation of a controlled class A drug. The appellant was a Czech citizen who was convicted of importing methamphetamine concealed in compartments inside suitcases. He travelled from Prague to New Zealand after being offered payment to do so by a person he met in a bar. He had been instructed to purchase two suitcases of a particular appearance. On a layover in Thailand the suitcases brought from Prague were swapped, by a third party, for two of a similar appearance. On arrival in New Zealand the concealed drugs were discovered within the cases.

17. The appellant denied knowledge of the content of the suitcases. He appealed following conviction at trial on grounds including whether the trial judge had followed the correct approach to the mental element required to establish criminal liability in relation to controlled drugs offences.

18. The Crown submitted that the test established by the Supreme Court in *Cameron* in relation to class C drugs also applied here: 'recklessness' rather than 'actual knowledge' of the presence of controlled drugs is the required mental element for all classes of drug offence.

19. The Court of Appeal agreed that the *Cameron* approach should be applied. Recklessness as to whether the suitcases contained controlled drugs, as demonstrated by the appellant in this case, was sufficient for a conviction. The appeals were dismissed.[1]

Solicitor-General v Heta [2018] NZHC 2453

20. The Crown appealed the sentence imposed following conviction for two charges of violent offending. The sentence included a 30% discount for circumstances described in a report pursuant to s 27 of the Sentencing Act 2002. Section 27 provides that, in sentencing, an offender may request the court to hear evidence on personal, family and cultural background and the relevance of this to the commission of the offence or to future rehabilitation.

21. The Crown submitted that the discount was excessive and inconsistent with authority (*Keil v R* [2017] NZCA 563) that violent conduct cannot be excused for certain groups over others or be justified by cultural norms.

22. The Crown's appeal was dismissed. The Court found that *Keil* did not preclude the discount that was applied in this case. Nor was there a clear 'range' of acceptable discounts discernible from other relevant cases. Each sentencing judge must weigh the facts of each particular case. While generous, the discounts applied in this case were not manifestly excessive so as to require adjustment.

Coward v Commissioner of Inland Revenue [2019] NZHC 52[2]

23. The issue before the High Court was whether certain donations made by a missionary or persons connected with a missionary to a Church Trust were charitable gifts for the purposes of s LD 1 of the Income Tax Act 2007 (ITA). Section LD 1 permits a tax credit equal to one third of the total charitable gifts donated within a tax year. The donations were payments to the Trust by young members of the

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1 The Supreme Court declined leave for a second appeal in November 2018: *Kupec v R* [2018] NZSC 113.

2 Also cited as *The Church of Jesus Christ of Latter-Day Saints Trust Board v Commissioner of Inland Revenue* [2019] NZHC 52, (2019) 29 NZTC 24-000.

Church, their parents or extended family, and/or other members of their local stake, paid as a result of the young person's call to missionary service. The Church would meet the other basic costs of supporting the missionary during their mission, including accommodation, food and other necessities.

24. The Court held that payments made by missionaries, or the parents or grandparents of a missionary, were not gifts and could not receive a tax credit under s LD 1; however, payments made by other relatives of a missionary or by other Church members towards a missionary's application were gifts under s LD 1. The Court reviewed the meaning of the term "gift" (not defined in the ITA), finding there should be no material personal benefit associated with a "gift" and that payments by the missionary or by parents and grandparents to support a missionary provided a benefit to the payer. The plaintiffs have appealed and the Commissioner has cross-appealed the finding that payments by other Church members *do* constitute "gifts".

CIR v Chatfield & Co Ltd **[2019] NZCA 73, (2019) 29 NZTC 24-007**

25. The Commissioner appealed the High Court's judgment declaring invalid the Commissioner's decision to issue notices to the respondents pursuant to s 17 of the Tax Administration Act 1994 (TAA). The notices required the production of documents and records of New Zealand taxpayer companies associated with Korean taxpayers whose tax affairs are under investigation by the Korean National Tax Service (NTS). The decision to issue the notices followed a request by the NTS that specified information be obtained and exchanged under article 25 of the New Zealand-Korea Double Tax Agreement.

26. The Court of Appeal dismissed the appeal. The Court rejected the Commissioner's argument that the decision to issue s 17 notices was not justiciable, holding that when seeking information at the request of a foreign state, the Commissioner's decisions are reviewable just as they are when the Commissioner uses her powers for domestic information-gathering purposes. The Court upheld the High Court's finding that it was contrary to natural justice for the High Court Judge to review a document that was not provided to the applicant (the confidential request from the NTS requesting the information). The Commissioner sought leave to appeal to the Supreme Court as she considered the Court of Appeal had applied domestic interpretation principles rather than principles of treaty interpretation. The application for leave was dismissed.[3]

Commissioner of Inland Revenue v T **[2019] NZHC 1577**

27. The Commissioner applied without notice to the High Court under s 246 of the Companies Act 1993 for interim appointment of liquidators of T Ltd (T). The basis for the application was the substantial unpaid debts owed to the Commissioner, the failure of T's directors to comply with director's duties and T's non-compliance with the Companies Act in failing to keep accounting records as required by s 194. The Court noted that T had entered into the statutory disputes procedure in respect of certain tax assessments that formed part of the unpaid debt. However, the Court accepted that the dispute did not appear genuine but rather a delaying tactic. The Court also accepted granting the application did not prejudice T's ability to pursue its dispute and the application sought to preserve T's ability to exercise its dispute and/or challenge rights under the TAA.

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3 *Commissioner of Inland Revenue v Chatfield & Co Limited* [2019] NZSC 84.

28. The Court granted the application as it was satisfied the pre-conditions for appointing interim liquidators were established and that "special circumstances" existed as required for without notice applications. The Court also factored in the sustained efforts of the Commissioner to discharge her statutory functions under the TAA prior to filing the application. While the proceeding arose from T's failure to pay income tax, goods and services tax and evasion shortfall penalties for taxable periods between 2014 and 2016, the evidence of non-compliance with the Companies Act helped to persuade the Court that the circumstances were such as to justify the appointment of interim liquidators without notice to T.

H v Refugee and Protection Officer [2019] NZSC 13

29. H, a Pakistani citizen, claimed refugee status in New Zealand. He said he was at risk of being killed by the Taliban if he returned home. A Refugee and Protection Officer (RPO) had to assess H's claim, and organised an interview with H as part of his claim. However, H could not go to the interview for medical reasons. The RPO declined H's refugee claim because he did not go to the interview. H immediately sought a judicial review of that decision, even though he had a right of appeal to the Immigration and Protection Tribunal (IPT). The High Court held (and on appeal the Court of Appeal agreed) there was no jurisdiction to hear the review yet, because the Immigration Act 2009 says a person has to exercise any appeal right first. H successfully appealed to the Supreme Court, which decided that this law did not in this case prevent H bringing his review without having brought an appeal first. This was because the RPO's decision had been made without actually considering if H was actually a refugee, and because the legislation provided for two separate decisions on that question (first by the RPO and secondly by the IPT). Here, H had not had the proper benefit of the first-stage decision because the RPO did not properly look at whether or not H was a refugee.

30. Recently the High Court had to consider whether or not to apply *H* in another case.[4] The High Court's decision indicates that the Supreme Court's reasoning is confined to the most serious and egregious factual situations. The refugee claimants in the later case had to appeal to the IPT first before being allowed to bring their judicial review.

Hayley Young v New Zealand Defence Force and Ministry of Defence (UK) [2019] NZSC 23

31. Ms Young, a former Royal New Zealand Navy (RNZN) officer, brought proceedings in the High Court for breach of contract, constructive dismissal, negligence, battery, defamation and other reputational torts. Ms Young also lodged complaints with international treaty bodies for breach of various United Nations conventions. Ms Young's main allegations were sexual harassment, sexual assault and rape by subordinates at UK Royal Navy Bases and on UK Royal Navy war ships while she was on attachment to the UK Royal Navy between January 2009 and April 2010, as well as sexual harassment by subordinates on RNZN war ships from August 2010 until her departure from the RNZN in September 2012.

32. The claims against the UK Ministry of Defence (on behalf of the UK Royal Navy) were struck out by the High Court on sovereign immunity grounds. Ms Young's appeal to the Court of Appeal against strike-out was unsuccessful. The Supreme Court refused leave to appeal but left open the possibility that in the right case the issues could form the basis for an appeal. Since the Supreme Court's decision, the

4 *AA (Zimbabwe) v Immigration and Protection Tribunal* [2019] NZHC 1890.

New Zealand Defence Force has settled Ms Young's legal claims on behalf of the RNZN and the UK Ministry of Defence.

Kim v Minister of Justice [2019] NZCA 209

33. Kim Kyung Yup is a South Korean citizen currently living in New Zealand where he has permanent residence. The Peoples Republic of China (PRC) have submitted an extradition request to New Zealand for the surrender of Mr Kim to face a charge of intentional homicide in respect of the death of a woman in Shanghai in 2009.

34. Under the Extradition Act 1999, if the District Court determines a person to be eligible for surrender, the Minister of Justice must then decide whether the person should be surrendered or discharged from the extradition. The Minister of Justice must consider whether there is a risk of torture in the extraditing country and whether there is a risk of an unfair trial. In this case, Mr Kim was found eligible. The former Minister of Justice saw both risks arising but considered they were satisfactorily reduced by diplomatic assurances obtained from the PRC.

35. In 2017 the High Court upheld the Minister's decision. Mr Kim appealed successfully to the Court of Appeal which made significant rulings as to the tests to be applied by the Minister when considering surrender and directed the new Minister of Justice to reconsider the decision.

36. The Attorney General and the Minister of Justice have been granted leave to appeal to the Supreme Court.[5] The appeal, which raises issues of general or public importance about our extradition law, will be heard on 4 December 2019.

Attorney-General v Taylor [2018] NZSC 104

37. In this December 2018 decision, a majority of the Supreme Court supported the High Court's finding in *Taylor v Attorney-General*[6] that senior courts can declare legislation inconsistent with the Bill of Rights Act.

38. A declaration of inconsistency is a formal statement, granted by a court as a remedy, that an enactment is inconsistent with fundamental rights protected by the Bill of Rights Act. Such declarations do not affect either the validity of the enactment or anything done lawfully under that enactment. In February 2018, Cabinet approved, in principle, a move to amend the Bill of Rights Act to provide a statutory confirmation of the senior courts' jurisdiction to make declarations of inconsistency under the Bill of Rights Act, and to require Parliament to respond to any such declaration. Policy work on this issue is still ongoing.

Wai 2870 – The Māori Prisoners' Voting Rights Inquiry: He Aha i Pēra Ai?

39. Section 80(1)(d) of the Electoral Act 1993 disqualifies all sentenced prisoners from voting for the duration of their imprisonment. A number of ex-prisoners and other interested parties sought an urgent hearing in the Waitangi Tribunal on the question of whether the ban on prisoner voting was inconsistent with the Treaty of Waitangi and its principles, and whether it caused prejudice to Māori.

40. On 12 August 2019, the Waitangi Tribunal released *He Aha i Pēra Ai?*, its report on the urgent inquiry. The Tribunal found the blanket ban on prisoner voting to be inconsistent with the Treaty principles of partnership, kāwanatanga, tino

5 *Minister of Justice v Kyung Yup Kim* [2019] NZSC 100.

6 *Taylor v Attorney-General* [2015] NZHC 1706.

rangatiratanga, and active protection and equity, and found as a matter of fact that the ban disproportionately and prejudicially affected Māori. The Tribunal recommended that the Crown remove the disqualification of prisoners from voting and immediately take steps to enable and encourage all prisoners to be enrolled in time for the 2020 general election. The Tribunal also recommended that the Crown implement a process for ensuring that officials provide informed advice on the likely impact that any Bill will have on the Crown's Treaty obligations.

PILON STRATEGIC PRIORITIES

(a) Cybercrime

Cyber Security Strategy 2019

41. The Cyber Security Strategy has been refreshed, with a key priority to proactively tackle cybercrime while also encouraging New Zealanders to make the most of the opportunities provided by an increasingly connected world without suffering harm or loss. The National Plan to Address Cybercrime 2019 includes five priority actions:

- build and maintain trust;
- be people-centric, respectful, and inclusive;
- balance risk with being agile and adaptive;
- use our collective strengths to deliver better results and outcomes; and
- be open and accountable.

Police

42. The Police Cybercrime Unit provides investigative support 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. Accession to the Council of Europe Convention on Cybercrime (the Budapest Convention) continues to be a consideration as part of implementing the National Strategy.[7]

Privacy Bill

43. Effective and up-to-date privacy law is an essential part of the legislative framework in combatting cybercrime. The Privacy Bill was introduced in March 2018 and had its second reading in August 2019. The Bill repeals and replaces the Privacy Act 1993, as recommended by the Law Commission's 2011 review. The Bill will modernise New Zealand's privacy laws to better protect personal information in a digital age and strengthen privacy protections. The Bill regulates the collection, use and disclosure of information about individuals. It includes a new information privacy principle, which sets out the requirements for disclosure of personal information outside New Zealand. The Bill also enhances the role of the Privacy Commissioner by giving the Commissioner the power to issue compliance notices and access directions.

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7 At the Quintet of Attorneys-General held in London in July/August 2019, Attorneys General for England and Wales, the United States and New Zealand, and representative ministers for Australia and Canada, signed a Statement on International Cooperation on Cybercrime. In this joint statement, the Quintet countries confirmed their strong support for the Budapest Convention and the work currently being done by the United Nations Open-Ended Intergovernmental Expert Group on Cybercrime.

(b) Corruption

Electoral Amendment Bill

44. This Bill was introduced on 29 July 2019. It is currently awaiting its first reading. This Bill amends the Electoral Act 1993 and the Electoral Regulations 1996 to improve the enrolment and voting processes, uphold the integrity of the electoral system, and support the effective conduct of future elections. The Bill will allow New Zealand-based electors to apply to enrol, and update enrolment details, on election day. This will enfranchise more eligible voters as their vote will be counted if their enrolment application is received on election day. Additionally, the Bill removes the prohibition on designating any licensed premises, such as supermarkets, conference centres, community clubs and sports facilities, as voting places.

Commerce (Criminalisation of Cartels) Amendment Act 2019

45. Cartels are formed when rival firms agree not to compete with each other. A cartel is an anticompetitive arrangement by competitors to fix prices, establish output restrictions or divide markets by allocating customers. Cartels reduce consumer welfare through higher prices for, or lower quality of, goods or services; have the potential to impede new entrants or "mavericks" from participating in markets; and stifle innovation and productivity improvements in the economy. This Act criminalises cartel conduct, and aims to promote detection and deterrence of cartels and improve enforcement by the Commerce Commission.

Criminal Cases Review Commission Bill

46. This Bill had its first reading on 25 October 2018, and is currently before the Justice Select Committee, which is due to report back on 17 October 2019. Currently, if a person who has been convicted of an offence believes they have suffered a miscarriage of justice, they may apply to the Governor-General for the exercise of the Royal prerogative of mercy. The Royal prerogative of mercy can, among other things, be exercised to grant a free pardon or refer a person's conviction or sentence to the relevant appeal court for a fresh appeal under s 406(1) of the Crimes Act 1961. The Bill establishes the Criminal Cases Review Commission, whose purpose is to review convictions and sentences and decide whether to refer them to the appeal court, replacing the power currently exercised by the Governor-General under s 406. Establishing the Commission is an opportunity to enhance this system by having an independent body focused on the mandate to identify and respond to possible miscarriages of justice. This should, in turn, help to ensure the timeliness, quality and fairness of investigations into miscarriages of justice.

Protected Disclosures Act 2000

47. The State Services Commission is currently reviewing the Protected Disclosures Act 2000 with the aim to create a clear legal framework for speaking up in the workplace.

48. The State Services Commissioner updated the 'Speaking Up' model standards for the State services this year, which outline minimum expectations for organisations to support staff on speaking up in relation to wrongdoing concerns that could damage the integrity of the State services.

(c) Sexual and Gender-Based Violence (SGBV)

Family Violence (Amendments) Act 2018

49. On 3 December 2018 the Family Violence (Amendments) Act 2018 came into effect. Changes included:

    49.1 Amendments to the Crimes Act 1961 introducing new offences of strangulation, assault on a person in a family relationship, and coerced marriage or civil union;

    49.2 Changes to the Evidence Act 2006 that enable victims of family violence to give evidence via their Victim Video Statement (see para 55 below); and

    49.3 Amendments to the Bail Act 2000 that enable a judicial officer to impose any conditions they consider reasonably necessary to protect the victim and family in relation to a family violence offence.

Family Violence Act 2018

50. The Family Violence Act 2018 came into effect on 1 July 2019. The Act supports a more integrated family violence sector by promoting best practice through greater information sharing provisions, improving Protection Orders and improving Police Safety Orders to reduce family violence.

Monitoring and evaluation

51. The Family Harm Quality Assurance Improvement Framework will continue to monitor and evaluate the embedding phase of the Family Violence Act 2018 to reinforce the intent of the legislation to keep people safe from family violence.

Solicitor-General's Guidelines for Prosecuting Sexual Violence[8]

52. The Solicitor-General's Guidelines for Prosecuting Sexual Violence came into effect on 1 July 2019. These guidelines are designed for prosecutors and provide guidance on best practice at all stages of such prosecutions. It is hoped the guidelines will help to improve, in particular, the experience of victims and witnesses involved in such cases. In addition, Crown Law also provided detailed training to all prosecutors involved in sexual violence cases. This will help prosecutors to ensure the guidelines are applied consistently, and pragmatically, to the range of individual circumstances and needs arising in sexual violence prosecutions.

53. The Guidelines will be kept under review as they are implemented.

Educational and support initiatives

54. The Ministry of Justice funds a number of victim support initiatives for victims of SGBV. These include:

    54.1 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.

    54.2 Victim Support, which provides a crisis and support service for victims of serious crime, grants to support victims to fund costs associated with court such as travel expenses or childcare, and a free helpline for victims.

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8 Accessible online at: https://www.crownlaw.govt.nz/assets/Uploads/Solicitor-Generals-Guidelines-for-Prosecuting-Sexual-Violence.PDF.

54.3 A National Home Safety service that provides support and resources for women and children to live free from further violence in their own homes.

54.4 Restorative justice services involving victims of sexual offending and family violence; and

54.5 Safety planning and support programmes for victims of family violence.

New initiatives

Family Violence Law Changes – Use of Victim Video Statements

55. The recent changes in Family Violence laws mean that Police can make an evidential video statement with the complainant when they attend a family violence related callout. In July 2019 a Cross-Agency Working Group was established to provide guidance and advice in relation to the national rollout and take a collaborative approach to solving challenges where they arise. The law changes will reduce the stress on victims, save Police time and create richer evidence for the courts.

The Joint Venture on Family Violence and Sexual Violence

56. The Joint Venture Business Unit for Family Violence and Sexual Violence was established in September 2018. It brings 10 government agencies together to work in new, integrated ways to reduce family and sexual violence. The Unit provides leadership and accountability for improved processes and results. It coordinates action across government, with communities, and in partnership with Māori.

57. The Unit is currently developing a National Strategy and Action Plan to reduce family violence and sexual violence, as well as promoting a Workforce Capability Framework identifying consistent core competencies that members of the family violence and sexual violence workforce need to effectively deliver services.

Wellbeing Budget 2019: Breaking the cycle of family and sexual violence

58. In 2019, the Government invested $20 million in the Joint Venture Business Unit over four years to continue its work, as well as another $300.9 million of new funding for:

58.1 increasing prevention of family violence and sexual violence;

58.2 developing safe, consistent and effective responses to family violence in every community;

58.3 expanding essential specialist sexual violence services;

58.4 reforming the criminal justice system to better respond to victims of sexual violence; and

58.5 strengthening system leadership and supporting new ways of working.

Improving the Justice Response to Victims of Sexual Violence

59. 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.

60. In 2017, the Government invested $1.24 million in a package of operational initiatives in response to some of the Law Commission's recommendations, including:

60.1 training for Ministry of Justice court staff to better understand the impacts of sexual violence on victims;

60.2 a new comprehensive online digital resource explaining how sexual violence cases journey through the criminal justice system along with other advice; and

60.3 education and guidance for the judiciary and Crown and Police Prosecutors to enable them to better address the needs of sexual violence complainants in the trial process.

61. In 2019, the Government announced planned legislative changes to further improve sexual violence victims' experiences of court processes. A Bill will be introduced to Parliament before the end of the year, and its implementation will be supported by $38 million of the Government's family and sexual violence budget package. Key changes include entitling sexual violence complainants to give all their evidence in alternative ways (eg, via audio-visual link from outside the courtroom or by pre-recorded video); clarifying and expanding restrictions on evidence about a sexual violence complainant's sexual history and reputation; and encouraging judges to intervene in inappropriate questioning of witnesses and to address common myths and misconceptions about sexual violence.

The Sexual Violence Court pilot

62. The Sexual Violence Court pilot started on 1 December 2016, with the first trial heard in May 2017. The pilot is conducted at the Auckland and Whāngārei District Courts for all serious (Category 3) sexual violence cases to be heard by a jury. It is a judicial-led initiative that aims to improve case and trial management processes, and in turn improve timeliness and minimise secondary traumatisation for victims.

63. The Ministry has conducted a comprehensive and independent evaluation to assess the extent to which the changes implemented achieve the outcomes intended; and to identify any unintended consequences of the pilot on the timeliness and processes of non-pilot cases; and any challenges, requirements and opportunities for extension of a Sexual Violence Court.

64. The evaluation, completed in July 2019, confirmed that the intensive case and trial management approach reduces the time that cases take to reach trial. Pilot cases are proceeding to jury trial about a third faster on average than prior to the pilot. The evaluation also found that most complainants feel the trials are managed in a way that does not cause them to feel retraumatised by the process. Overall the pilot is considered successful by stakeholders, and given the pilot's beneficial outcomes, there is support from the judiciary for it to become permanent in Auckland and Whāngārei.

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

Modernising Justice system – technology

65. The enactment of the Courts Matters Act 2018 and the Tribunals Powers and Procedures Legislation Act 2018 has helped courts and tribunals to operate more effectively, by allowing better use of 21st century technology. These Acts have enabled the issuing of attachment orders (mandatory deductions from wages or benefits to pay overdue fines) to be fully automated and authorised the electronic

service of tribunal documents and greater use of audio-visual link technology in tribunal proceedings.

66. The Tribunals Powers and Procedures Legislation Act has also enabled the appointment of Deputy Chairs to the Human Rights Review Tribunal and additional Deputy Legal Complaints Review Officers to reduce the case backlogs in these tribunals.

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

Hāpaitia te Oranga Tangata: Safe and Effective Justice

67. In early 2018, the Government launched Hāpaitia te Oranga Tangata: Safe and Effective Justice, a programme of work to reform the criminal justice system. An advisory group, Te Uepū Hāpai i te Ora (Te Uepū), was appointed to facilitate a public conversation and to advise on reform. Around 3,500 people have been directly engaged in the conversation to date, including through a Pasifika Fono, a Hui Māori, a website and digital engagement strategy, a victims' workshop hosted by the Chief Victims Advisor to Government, and many targeted stakeholder engagements and hui around the country (led by Te Uepū).

68. A series of reports from Te Uepū, the Hui Māori and the Chief Victims Advisor have been published, capturing what New Zealanders have said about their criminal justice system and making recommendations for transformative change.

Tonga

69. New Zealand has agreed a new Activity with the Tonga Ministry of Justice to build capability of the Tonga judicial system in three key areas: strengthening the Magistrates, establishing systems and programmes for youth, and promoting public awareness of services available within the justice system. Support for the salary of the Supreme Court Judge has continued under the new Activity while a separate request was received from Government of Tonga for continuation of support for the Director of Public Prosecutions.

70. New Zealand support to Tonga Police builds on previous activities delivered by New Zealand Police and Australian Federal Police. It will deepen leadership capability across the ranks of Tongan Police and supports Tonga to implement its illicit drugs strategy, support officer safety, enhance corporate services, support community policing practices, and improve infrastructure management. New Zealand also supplements the salary of the Tongan Police Commissioner while Tonga strengthens its leadership capacity to fill this role locally.

Arms Trade Treaty Implementation

71. New Zealand supported a conference hosted by Australia, the "Arms Trade Treaty: Pacific Conference". New Zealand has been an active supporter and proponent of the Arms Trade Treaty with a particular focus on controlling the spread of small arms in the Pacific. The Conference focused on the Arms Trade Treaty and provided opportunities for Pacific Island countries to share challenges in ratification and implementation of the Treaty and to identify solutions and supportive partners.

Aviation Security Co-ordinator

72. An MoU with Civil Aviation Authority NZ funds an aviation security adviser and supports technical staff 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. The MoU also assists with the implementation of an aviation security screening equipment programme in eight states at 11 airports.

Hakili Matagi : Immigration Support in the Pacific

73. Hakili Matagi commenced in January 2019 and provides immigration capacity development in Niue, the Cook Islands, Tokelau, Tonga, Samoa, Fiji and Kiribati. Delivered by Immigration NZ, the programme supports Pacific Immigration agencies to strengthen their organisations through policy development, intelligence, compliance management, profiling and risk assessments, joint border activities with other agencies, and professional development.

Overseas Development Assistance Programmes

74. New Zealand Police deliver six overseas development assistance programmes to 11 policing services in the Pacific. The programmes focus on prevention and strengthening policing capability to respond to regional security issues.

75. The *Bougainville Community Policing Programme (BCPP)* is a longstanding programme of assistance to the Autonomous Region of Bougainville, Papua New Guinea. NZ Police deploy 11 personnel to strengthen the capability of the Bougainville Police Service in the areas of core policing, leadership and management, and integration of the community auxiliary police into the Bougainville Police Service. NZ Police are providing three additional advisors as part of the Regional Policing Support Mission for the Bougainville independence referendum in late 2019.

76. The *Solomon Islands Policing Support Programme (SIPSP)* is made up of eight NZ Police advisors. The purpose of the SIPSP is to assist the Royal Solomon Islands Police Force (RSIPF) with the ongoing development and implementation of the RSIPF Crime Prevention Strategy (CPS), 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 help implement the CPS.

77. The *Pacific Island Prevention Programme* is a regional support programme providing assistance to the Cook Islands, Kiribati, Niue, Samoa, Tokelau and Tuvalu. The programme focuses on developing individual Prevention Operating Models which identify and target the drivers of demand for each country. Once complete, NZ Police supports the operationalisation of the Prevention Operating Models and provides assistance to identified drivers of demand as requested by each country. Three NZ Police Advisors will support this programme full time.

78. The *Pacific Detector Dog Programme (PDDP)* is a regional support programme established in October 2018 combining two projects – the Pacific Dog Programme and the Fiji Detector Dog Project –previously funded through MFAT's Pacific Security Fund. The PDDP provides support to detector dog units in the Cook Islands, Fiji, Samoa and Tonga in the key areas of communication, tasking and deployment, policies and procedures, training (of both detector dogs and handlers) and leadership.

79. The *Tonga Police Development Programme* (see para 70 above) has been operating since 2006. NZ Police has three advisors providing assistance in the key areas of infrastructure management, leadership and organisational development, community policing, and national security.

80. The *Vanuatu Policing Programme* is a new bilateral programme established at the request of the Vanuatu government. A programme design is still being finalised; however, it will consist of three NZ Police Advisors providing support to the Vanuatu Police Force in Port Vila and the provinces to embed community policing and crime prevention models.

Pacific Security Fund (PSF) projects

81. The PSF funds the secondment of a NZ Police Intelligence Adviser to the Pacific Transnational Crime Coordination Centre (PTCCC) from 2017-2020. The position, based in Apia, provides assistance with building intelligence capacity, undertaking intelligence analysis, mentoring and providing leadership to staff at the PTCCC.

82. In 2018/19, NZ Police's Financial Intelligence Unit (FIU) co-sponsored Papua New Guinea's EGMONT membership application. NZ Police, alongside the Australian Federal Police, completed an Onsite Assessment Report on Papua New Guinea's FIU including its functions, systems and processes. The Report also assessed Papua New Guinea's anti-money laundering and Countering Financing of Terrorism legislation against the EGMONT criteria. As a result Papua New Guinea's FIU was accepted into the EGMONT group in July 2019.

TECHNICAL LEGAL ASSISTANCE

Te Pātuitanga Ahumoana a Kiwi programme

83. New Zealand's Te Pātuitanga Ahumoana a Kiwi (Partnerships in Pacific Fisheries) programme led by the Ministry for Primary Industries (MPI) provides Monitoring, Control, Surveillance and Enforcement assistance to Pacific Island fisheries compliance teams.

84. As part of the programme, in 2019 MPI provided technical legal assistance to legal officers in Fiji relating to fixed penalty notices for Bêche-de-mer offending, and also to the Ministry of Fisheries and Marine Resources in the Solomon Islands on breaching licence conditions, obstruction and bribery allegations.

KEY CONTACT INFORMATION FOR LAW AND JUSTICE AGENCIES

Agency	Contact person and position	Phone number and email
Crown Law – Constitutional and Human Rights	Peter Gunn – Team Manager Daniel Perkins – Team Manager	Peter.Gunn@crownlaw.govt.nz Daniel.Perkins@crownlaw.govt.nz
Crown Law – Criminal	Mark Lillico – Team Manager Charlotte Brook – Team Manager	Mark.Lillico@crownlaw.govt.nz Charlotte.Brook@crownlaw.govt.nz
Crown Law – Public Law	Nicola Wills – Team Manager Jenny Catran – Team Manager Jeremy Prebble – Team Manager	Nicola.Wills@crownlaw.govt.nz Jenny.Catran@crownlaw.govt.nz Jeremy.Prebble@crownlaw.govt.nz
Crown Law – Public Prosecution Unit	Philip Coffey – Manager	Philip.Coffey@crownlaw.govt.nz
Crown Law – Revenue	Maria Deligiannis – Team Manager	Maria.Deligiannis@crownlaw.govt.nz
Crown Law – Treaty Issues	Geoff Melvin –Team Manager Liesle Theron – Team Manager	geoff.melvin@crownlaw.govt.nz liesle.theron@crownlaw.govt.nz
MFAT	Anne Melkiau – Legal Adviser, International Treaties	anne.melkiau@mfat.govt.nz
Ministry of Justice	Brendan Gage, General Manager, Criminal Justice Policy	Brendan.gage@justice.govt.nz
Ministry of Justice	Sam Kunowski, General Manager, Courts and Justice Services Policy	Sam.kunowski@justice.govt.nz
Ministry of Justice	Caroline Greaney, General Manager, Civil and Constitutional Policy	caroline.greaney@justice.govt.nz
Ministry of Justice	Rebecca Todd, Manager, Operations Support	Rebecca.todd@justice.govt.nz
Ministry for Primary Industries	Morgan Dunn – Senior Solicitor, Northern Prosecutions Team, Legal Services Directorate	Morgan.Dunn@mpi.govt.nz
NZ Police	Wallace Haumaha – Deputy Chief Executive Māori (Pacific and Ethnic)	Wallace.Haumaha@police.govt.nz
Parliamentary Counsel Office	Fiona Leonard – Chief Parliamentary Counsel	Fiona.Leonard@pco.govt.nz
Parliamentary Counsel Office	Cassie Nicholson – Deputy Chief Parliamentary Counsel	Cassie.Nicholson@pco.govt.nz

Crown Law
+64 4 472 1719
http://www.crownlaw.govt.nz/

MFAT
+64 4 439 8000
https://www.mfat.govt.nz/

Ministry of Justice
+64 4 918 8800
http://www.justice.govt.nz/

Ministry for Primary Industries
+64 4 894 0100
https://www.mpi.govt.nz/

NZ Police
+64 4 474 9499 (Police National Headquarters)
http://www.police.govt.nz/

PCO
+64 4 472 9639
http://www.pco.parliament.govt.nz/

Useful websites

Human Rights Committee Decisions
http://www.worldlii.org/int/cases/UNHRC/

Law Commission Reports
https://www.lawcom.govt.nz/

New Zealand Law Database
http://www.nzlii.org/

New Zealand Legislation
http://www.legislation.govt.nz/

New Zealand Judicial Decisions
https://forms.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
https://www.lawsociety.org.nz/for-lawyers/legal-education
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