
PILON: New Zealand Country Report

October 2020



TABLE OF CONTENTS

Major Law and Justice Sector Achievements	1
Significant Court Decisions.....	5
PILON Strategic Priorities	9
Significant Issues (including Covid-19) impacting the Law and Justice Sector, and Options to Address these Issues.....	10
Significant Initiatives/Projects Involving New Zealand and its Law and Justice Sector.....	13
Overseas Development Assistance (ODA) Programmes.....	15
Pacific Security Fund (PSF) Projects	16
TECHNICAL LEGAL ASSISTANCE.....	16
Key Contact Information for Law and Justice Agencies.....	17

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 Act 2020

3. Parliament passed the Abortion Legislation Act on 18 March 2020. The Act shifts abortion law from the criminal context to a health context and in so doing aligns abortion services with other health services. Key changes made to the regulation of abortion include:
 - for pregnancies up to 20 weeks' gestation, allowing the decision to have an abortion to be made by the woman in consultation with a qualified health practitioner;
 - providing a statutory test for abortion at more than 20 weeks' gestation;
 - ensuring that women know that counselling is available, if needed, both before and after an abortion; and
 - requiring the Minister of Health to take reasonable steps to ensure the availability of abortion, counselling, contraception and other reproductive health services in New Zealand.

Cannabis Legalisation and Control Bill

4. The possible legalisation of cannabis was subject to a referendum at the New Zealand general election on 17 October. Voters could choose whether to support the proposed Cannabis Legalisation and Control Bill. The Bill provided a regulatory framework for the use of cannabis in New Zealand, and would have allowed people aged 20 or over to:
 - buy up to 14 grams of dried cannabis (or its equivalent) per day only from licensed outlets;
 - enter licensed premises where cannabis is sold or consumed;
 - consume cannabis on private property or at licensed premises;
 - grow up to two plants, with a maximum of four plants per household; and
 - share up to 14 grams of dried cannabis (or its equivalent) with another person aged 20 or over.
5. Preliminary results of the referendum, released on 30 October, indicate that the Bill has not passed, with 53.1% of voters voting against introducing the Bill. The official final numbers (including special votes) will be released on 6 November.

End of Life Choice Act 2019

6. Preliminary results show that a majority of voters voted in favour of passing the End of Life Choice Act in the referendum which took place with the general election on 17 October. The Act will come into force 12 months after the final results are announced on 6 November, and will give people who have a terminal illness and who meet certain criteria the option of requesting medical assistance to end their lives. The Act also sets up a process for assisting people who exercise that option.

7. To be eligible for assisted dying, a person must meet all the following criteria:
- be aged 18 years or over;
 - be a citizen or permanent resident of New Zealand;
 - suffer from a terminal illness that is likely to end their life within six months;
 - have significant and ongoing decline in physical capability;
 - experience unbearable suffering that cannot be eased; and
 - be able to make an informed decision about assisted dying.

Criminal Cases Review Commission Act 2019

8. The Criminal Cases Review Commission Act was passed in November 2019. The Act establishes an independent Criminal Cases Review Commission which can review potential miscarriages of justice and refer appropriate cases back to an appeal court. This replaces the function previously exercised as part of the Royal prerogative of mercy, on application to the Governor-General. The Commission opened and began accepting applications from 1 July 2020.

New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill

9. This Bill was introduced to Parliament on 18 March 2020. The Bill helps to provide a mechanism for the Executive and the House of Representatives to consider and, if they think fit, respond to, a declaration of inconsistency made under the New Zealand Bill of Rights Act 1990 (NZBORA).¹ The Bill passed its first reading and has been referred to the Privileges Committee for consideration. A declaration does not affect the validity of an Act, or anything done lawfully under that Act. However, it does signal that the court or tribunal considers that an Act infringes upon fundamental human rights in a way that cannot be justified in a free and democratic society.

Electoral (Registration of Sentenced Prisoners) Amendment Act 2020

10. The Electoral (Registration of Sentenced Prisoners) Amendment Act amended the Electoral Act 1993 to enfranchise people who are serving a sentence of imprisonment for a term of less than three years, and better facilitate the electoral participation of prisoners who are to be released from prison following a sentence of imprisonment for a term of three years or more. Prisoners to whom the Act applied were able to vote in the 2020 election.
11. The Act follows *Taylor v Attorney-General*,² which found that the disqualification of all prisoners from being able to vote was inconsistent with electoral rights affirmed in s 12 of NZBORA and could not be justified.³

Electoral Amendment Act 2020

12. This Act passed on 10 March 2020, amending the Electoral Act 1993 to improve the enrolment and voting processes, uphold the integrity of the electoral system, and support the effective conduct of future elections. The Act allows New Zealand-based

¹ A declaration of inconsistency is a formal statement by a court or tribunal that an Act is inconsistent with a plaintiff's fundamental human rights protected by the New Zealand Bill of Rights Act 1990. In 2018, the Supreme Court in *Attorney-General v Taylor* [2018] NZSC 104; [2019] 1 NZLR 213 confirmed that senior courts have the power to issue a declaration of inconsistency under the Bill of Rights Act.

² *Taylor v Attorney General* [2015] NZHC 1706.

³ In 2019 the Waitangi Tribunal similarly found that the law was inconsistent with the principles of the Treaty of Waitangi and had a disproportionate effect on Maori.

electors to apply to enrol, and update enrolment details, on election day, and removed the prohibition on designating licensed premises, such as supermarkets, conference centres, community clubs and sports facilities, as voting places. The Act also updated provisions, empowering the Electoral Commission to respond broadly to a wide range of polling disruptions.

Inquiry into Operation Burnham and related matters

13. The Government Inquiry into Operation Burnham and Related Matters covered a range of allegations concerning the actions of the NZSAS during operations by New Zealand special forces in Afghanistan from 2010 to 2012, contained in a book titled *Hit and Run*. The Inquiry raised a number of important issues of international law, particularly in the areas of International Humanitarian Law and International Human Rights Law.
14. The Inquiry reported in July 2020. The Inquiry found that the conduct of the New Zealand forces during Operation Burnham itself was lawful and professional. However, the Inquiry found there were deficiencies in the way that the New Zealand Defence Force responded to allegations of civilian casualties after the event. The Inquiry also identified problems with the policy applied by the New Zealand Government in respect of detention of suspected insurgents in operations where New Zealand forces partnered with Afghan security forces.

Royal Commission of Inquiry (RCOI): Christchurch Shootings

15. 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 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. The RCOI is due to report in November 2020.

Royal Commission of Inquiry into Abuse in Care

16. The New Zealand Government established the Royal Commission of Inquiry into Abuse in Care in February 2018. The Inquiry is to investigate and examine historical abuse and neglect of individuals in State care or in the care of faith-based institutions so as to understand, acknowledge and respond to harm caused and ensure lessons are learned for the future. The first of eight investigations to be announced examined the redress processes for people who suffered abuse and neglect as children, young persons or vulnerable adults while in the care of the State and faith-based institutions. The public hearing relating to the redress investigation is to be held in three phases commencing in September 2020. An interim report is expected in December 2020.

Transnational Organised Crime Strategy

17. The Government's transnational organised crime strategy sets out a framework for greater coordination and prioritisation of Government responses to transnational organised crime across a wide range of crime types. The Strategy focuses on the sophisticated global network of organised criminal groups which target New Zealand, driving the supply of drugs and other illicit commodities.
18. The Strategy seeks to strengthen capability, improve understanding, and raise awareness across relevant Government agencies and other partners (including the

private sector and local communities), in order to unify, prevent, detect and dismantle organised crime.

19. An action plan will be developed to prioritise Government responses and direct how we will work together with individuals, businesses and communities, to ensure that New Zealand is the hardest place in the world for organised criminal groups to do business.
20. While the Strategy is focused on system resilience, legislative settings and ensuring that prevention remains at the forefront of our response, Government agencies are also focused on building community resilience to the harms associated with organised crime. The Resilience to Organised Crime in Communities work programme includes work by multiple Government agencies, who are partnering with iwi and local providers in some of our most vulnerable communities, to develop responses to the social and economic harms and drivers associated with organised crime. These local responses, combined with targeted enforcement of organised crime groups by agencies, will help improve whānau wellbeing and build whānau and community resilience to organised crime.

Joint Taskforce combating organised crime in the Pacific

21. At the Pacific Islands Chiefs of Police meeting in 2018, Police Commissioners from Tonga, New Zealand, Fiji and Australia agreed to establish a Joint Taskforce combating transnational organised crime in the Pacific, enhancing existing arrangements through coordinated efforts. This Taskforce enables enhanced intelligence and law enforcement activities to create a hostile environment for transnational crime groups in the region.
22. The objectives of the Joint Taskforce are to:
 - enhance information sharing between participants through the Pacific Transnational Crime Network, the Pacific Transnational Crime Coordination Centre and respective Transnational Crime Units;
 - investigate and disrupt transnational serious and organised crime operating from or through, or impacting on, the participant countries;
 - target organised crime entities or syndicates utilising small crafts for the movement of illicit drugs and other organised criminal activity;
 - demonstrate participant countries' commitment towards effective multi-national cooperation and effectiveness combating transnational organised crime; and
 - strengthen participant cooperation to conduct expanded investigations on transnational organised crime groups operating within and between multiple countries.
23. The Joint Taskforce activity commenced with the deployment of an Intelligence Analyst and Detective Sergeant to both Fiji and Tonga, to work alongside their respective police forces to undertake an environmental scan. The scan provided a comprehensive intelligence picture of relevant, enduring and emerging transnational organised crime threats. This scan will inform the Joint Taskforce governance group and enable prioritisation and coordination of investigations and disruption activity against organised crime entities and syndicates.

Arms Legislation Act 2020

24. The Arms Legislation Act amends the Arms Act 1983 to strengthen the regulatory controls to prevent illegal possession and use of firearms. The first provisions in the Act came into force on 25 June 2020. The rest of the amendments will come into force over the next three years.
25. The Act emphasises for the first time that the possession and use of firearms is a privilege, and persons authorised to have firearms have a responsibility to act in the interests of personal and public safety. Other amendments to the Arms Act now in force include:
- reduced length of firearms licence from 10 to 5 years for first time licence holders;
 - offences and penalties that better reflect the seriousness of offending;
 - more high-risk firearms either prohibited or restricted (and an amnesty and buyback for these items);
 - requiring import permits for blank-firing guns;
 - those holding visitor licences are unable to purchase and take possession of the firearm while in New Zealand; and
 - establishment of a Ministerial Arms Advisory Group.
26. Further amendments to the Arms Act coming into force by 25 June 2021 will include:
- clarifying what is considered when determining whether a person is ‘fit and proper’ to possess firearms, and who will be disqualified from holding or applying for a firearms licence;
 - notifications to health practitioners when their patients are issued with a firearms licence;
 - restrictions on the sale, import and possession of ammunition;
 - changes to the range of activities requiring dealers’ licences to recognise the risks involved in the business of selling, hiring, lending or supplying firearms;
 - increased ability for Police to inspect licence holders’ firearms and their storage; and
 - strengthening the regulatory tools available to Police to enable a more graduated compliance approach, including notices that temporarily suspend a licence.
27. Over the next three years amendments will include a new regulatory framework for shooting clubs and ranges; and establishment of a firearms registry to track how many firearms are in legal circulation.

SIGNIFICANT COURT DECISIONS

Borrowdale v Director-General of Health & Attorney-General [2020] NZHC 2090⁴

28. The applicant filed judicial review proceedings to challenge the legality of the measures implemented by the New Zealand Government to enforce a “lockdown” to combat COVID-19. First, he argued that public announcements made by the Prime Minister and other Government officials during the first nine days of the

⁴ https://www.courtsofnz.govt.nz/assets/cases/Borrowdale-v-D-G-of-Health-V_1.pdf

lockdown were not prescribed by law because they were not supported by an Order issued by the Director-General of Health, and were therefore unlawful. The applicant's second challenge related to three orders made under the Health Act 1956 by the Director-General to prescribe and enforce aspects of the lockdown. His third challenge related to the definition of "essential services" (which were permitted to remain open during the lockdown).

29. A Full Court of the High Court held that all the Health Act orders made during the lockdown period were lawful; that is, the order closing premises and preventing congregating outdoors and the order requiring everyone to stay home and stay in their "bubbles" during Alert Level 4 and then Alert Level 3. The Director-General of Health did not exceed his powers in making those orders.
30. The Court dismissed the claim that the Ministry of Business, Innovation and Employment's work in advising as to what constituted an "essential service" involved an unlawful delegation. Rather, MBIE was advising businesses whether they met the definition set out in the order.
31. However, the Court found that there was a breach of the NZBORA during the first nine days of the Alert Level 4 lockdown, on the basis that various announcements made by members of the Executive "stated or implied that, for that nine day period, subject to limited exceptions, all New Zealanders were required by law to stay at home and in their "bubbles"" when there was no such requirement because there was no Order in place at the time.
32. The decision is currently under appeal.

***Peter Ellis v R* [2020] NZSC 89**

33. Before his death in September 2019, the Supreme Court granted Mr Ellis leave to appeal against his historic convictions for sexual offending against several children who attended the Christchurch Civic Childcare Centre in the late 1980s and early 1990s. The Supreme Court recently determined that the appeal could continue, notwithstanding Mr Ellis' death. The reasons for the decision, and the relevance of tikanga to the question of continuance, will be released with the substantive judgment relating to the appeal. An appeal date for the substantive conviction appeal is still to be determined.

***Ruru v R* [2020] NZCA 64**

34. This judgment dealt with the lawfulness of a search warrant and the way it was executed. The primary question was whether the search warrant permitted the police to search and seize communications on a cellphone, when some of those communications were likely to have been downloaded from an internet server located outside New Zealand. The Court of Appeal held that search warrants authorising the search of a home for cellphones and correspondence permitted the police to search and seize communications on those cellphones, even though doing so would involve downloading those communications from overseas internet servers (via Facebook Messenger). Remote access authorisations were not required.

***Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648**

35. The Full Court of Appeal issued revised sentencing guidelines for methamphetamine offending, making three significant changes to the previous methamphetamine

guidelines in *R v Fatu*.⁵ (i) The new sentencing bands no longer differentiate between supply, importation and manufacturing; (ii) The “entry points” for *Fatu* bands one to four are reduced. The Court’s goal in doing so was to make available lower sentences for offenders at the bottom of the band – those whose role is lesser in degree, and where quantities are at the lower end of the relevant range. An offender may move between the bands if they participated minimally in the offending; and (iii) The Court split *Fatu* band four into two bands, creating a new band five.

36. The new bands, compared with the *Fatu* bands, are as follows:

Bands	Former: <i>Fatu</i>	New: <i>Zhang</i>
Band one: <5 grams	2-4.5 years	Community-based to 4 years
Band two: <250 grams	3-11 years	2-9 years
Band three: <500 grams	8-15 years	6-12 years
Band four: <2 kilograms	10 years – life	8 – 16 years
Band five: >2 kilograms	10 years – life	10 years – life

37. The Full Court said that, in determining an offender’s position within a particular band in order to set the starting point, both quantity and role are important considerations. There are three broad role categories: “lesser”, “significant” and “leading”. At stage two of the sentencing exercise, the Full Court highlighted several mitigating factors that may be particularly relevant to methamphetamine offending: addiction, mental health, duress or undue influence, and social, cultural and economic deprivation. The Full Court held that, where there is persuasive evidence of addiction, a discount of up to 30% may be warranted (or even higher where its impact is akin to a serious mental health disorder). The Full Court also held that minimum periods of imprisonment are not to be imposed as a matter of routine or in a mechanistic way. As a general rule, they should be reserved for cases involving significant commercial dealing.

***Taylor v Roper* [2020] NZCA 268**

38. Ms Taylor was former member of the Royal New Zealand Air Force (RNZAF) in the late 1980s. In 2016, she brought proceedings against a former sergeant Mr Roper; for assault (and battery), intentional infliction of emotional harm and false imprisonment. Ms Taylor also claimed the RNZAF was directly and vicariously liable for Mr Roper’s conduct, and additionally, liable in negligence. The High Court found that Mr Roper had committed acts amounting to assault and battery and false imprisonment against Ms Taylor, but not to the extent alleged. The Court considered Ms Taylor’s symptoms of PTSD were caused by these acts (although her anxiety and depression were not). The Court also considered there was insufficient evidence Ms Taylor complained about Mr Roper’s conduct to her superiors. However, Ms Taylor’s claim was barred by both the Limitation Act 1950 and the Accident Compensation (ACC) scheme.

39. The Court of Appeal agreed with the High Court’s factual findings. The majority however, considered Ms Taylor had been suffering under a disability preventing her from bringing proceedings before 2014. While the panel found that Ms Taylor had cover under the ACC scheme for her claims in assault and battery, the majority held she did not have cover for false imprisonment and was accordingly able to seek compensatory damages for false imprisonment.

⁵ *R v Fatu* [2006] 2 NZLR 72 (CA).

40. The Crown has applied for leave to appeal to the Supreme Court.

***Church of Jesus Christ of Latter-Day Saints Trust Board v Commissioner of Inland Revenue* [2020] NZCA 143**

41. The issue before the High Court and the Court of Appeal 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. 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 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 funds were required so that the Church could meet the basic costs of the missionary during their mission, including accommodation, food and other necessities.
42. The Court of Appeal overturned the High Court judgment and found that all the payments were gifts. The Commissioner applied to the Supreme Court for leave to appeal. The issue raised on appeal is whether a purposive interpretation should be fettered by the Duke of Westminster doctrine. That is whether there should be a presumption that the form of the legal transaction is taxed, as opposed to the substance, or whether the nature of the statutory test should be determined by an unfettered purposive interpretation. The Supreme Court denied leave to appeal because they felt that, despite the public importance of the issue, the matter turned on its facts in this particular case.

***Commissioner of Inland Revenue v Frucor Suntory New Zealand Ltd* [2020] NZCA 383**

43. The issue before the Court of Appeal was whether \$55m interest deductions claimed by Frucor (a New Zealand subsidiary of an international group of companies) under a convertible note arrangement was tax avoidance. Under the arrangement, Frucor issued a convertible note with a face value of \$204m to Deutsche Bank repayable (at Deutsche Bank's option) by shares in five years' time. At the same time, Deutsche Bank forward sold the shares to Frucor's parent company in Singapore (DAP) for \$149m. Deutsche Bank used the \$149m forward purchase price and \$55m from its usual market sources to fund the purchase of the Note.
44. The arrangement, as found by the Court, involved DAP (in effect) paying \$149m to Frucor for the shares on day one but with the payment being structured to enable Frucor to claim interest deductions on it over a five-year term. DAP's subscription for equity was effectively repackaged as a loan from Deutsche Bank to achieve the intended tax benefits for Frucor. DAP's equity subscription was bundled with an amortising loan from Deutsche Bank in an artificial and contrived manner to enable Frucor to claim interest deductions on the loan which were, in substance, repayments of principal and interest payable to Deutsche Bank in respect of the \$55m it had introduced to facilitate the arrangement. The Court considered it was reasonably plain that the funding arrangement had New Zealand tax avoidance as one of its purposes or effects and this was not merely incidental to some other purpose. Accordingly, under New Zealand tax law the Court of Appeal found the arrangement was a tax avoidance arrangement. Frucor has sought leave to appeal to the Supreme Court.

PILON STRATEGIC PRIORITIES

(a) Cybercrime

Privacy Act 2020

45. A new Privacy Act 2020 will take effect from 1 December 2020, repealing and replacing the Privacy Act 1993. The Act strengthens privacy protections, promotes early intervention and risk management by agencies, and enhances the role of the Privacy Commissioner. Privacy protections will be strengthened through mandatory data breach reporting, restrictions on offshore transfers of personal information, and the introduction of new criminal offences. New powers for the Privacy Commissioner include the ability to issue compliance notices to agencies and make binding decisions on complaints about access to information.

Budapest Convention on Cybercrime

46. In June 2020 New Zealand formally expressed interest to the Council of Europe in acceding to the Budapest Convention on Cybercrime. On 1 October the Council of Europe responded with a formal invitation to New Zealand to join the Convention. The invitation is valid for five years, during which time New Zealand has “invited party” status and needs to complete all the necessary steps necessary to accede, including legislative changes.
47. New Zealand already has the majority of the legislative powers and protections required by the Budapest Convention in place. The Government is currently consulting on the legislative changes required to accede,⁶ the most significant of which is the development of a data preservation scheme. Changes to the Search and Surveillance Act and Mutual Assistance in Criminal Matters Act are also required.

(b) Corruption

Protected Disclosures (Protection of Whistleblowers) Bill

48. This Bill was introduced on 24 June 2020 and is currently before a select committee. The purpose of the Bill is to promote the public interest by facilitating the disclosure and investigation of serious wrongdoing in the workplace, and by providing protection for employees and other workers who report concerns. All workplaces are covered, although some provisions apply specifically to public sector organisations and to public funds and functions. The Bill extends the definition of serious wrongdoing to include unlawful, corrupt or irregular use of public funds whether it occurs in a public or private organisation.

Electoral Amendment Act 2019

49. The Electoral Amendment Act passed its final reading on 4 March 2020. This Act amended the Electoral Act 1993 to restrict donations from overseas persons to political parties and candidates, to reduce the risk of foreign money influencing the election process and to send a clear signal that foreign interference in New Zealand’s democratic processes is not welcome.

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

Sixth report of the Family Violence Death Review Committee

50. In April 2020, the Family Violence Death Review Committee released its sixth report: *Men who use violence | Te Pūrongo tuaono: Ngā tāne ka whakamahi i te whakarekerekere*.

⁶ Details of the consultation are available here: <https://consultations.justice.govt.nz/policy/budapest-convention/>

It provides an overview of the lives of 97 men who used violence against their intimate partners between 2009 and 2017.

Improving the Justice Response to Victims of Family and Sexual Violence

51. Following changes to family violence legislation, the Ministry of Justice has developed an operational work programme which aims to improve the experience of victims of family violence and sexual violence involved in court proceedings. This work is informed by the wider work programme of the Joint Venture on Family Violence and Sexual Violence, a cross-Government initiative that aims to improve services, ensure victims are safer and change long-standing behaviours and attitudes.
52. The Sexual Violence Legislation Bill was introduced to Parliament on 11 November 2019 and is awaiting its second reading. It aims to reduce the re-traumatisation that sexual violence victims may experience when they attend court and give evidence. Key changes include:
- entitling sexual violence complainants to give all their evidence, including cross-examination, 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;
 - encouraging judges to intervene in inappropriate questioning of witnesses and to address, where relevant, common myths and misconceptions about sexual violence; and
 - expanding entitlements to specialist communication assistance in court (in all cases, not just sexual violence cases) to any witnesses who need help with understanding or answering questions, not just those with insufficient English proficiency or a 'communication disability'.
53. The Ministry of Justice is designing a quality framework to support the delivery of communication assistance in the courts, in light of the already existing growth in uptake of the service and the expanded entitlements under the Bill.
54. Best practice training and education programmes for defence lawyers who appear in sexual violence trials are being delivered during 2020 and 2021 by New Zealand Law Society and Council of Legal Education with funding from the Ministry of Justice. This is designed to equip lawyers with both the understanding and tools to more effectively communicate with vulnerable witnesses.

Crimes (Definition of Female Genital Mutilation) Amendment Act 2020

55. The Crimes (Definition of Female Genital Mutilation) Amendment Act came into force on 6 August 2020. The Act amends the Crimes Act 1961 to update the definition of female genital mutilation (FGM) to ensure all types of FGM are illegal in New Zealand, and all women and girls are adequately protected from the practice.

SIGNIFICANT ISSUES (INCLUDING COVID-19) IMPACTING THE LAW AND JUSTICE SECTOR, AND OPTIONS TO ADDRESS THESE ISSUES

COVID-19

56. The COVID-19 pandemic has required primary and secondary legislation to be made frequently and quickly in response to rapidly unfolding events.

57. On 16 March 2020 the Director-General of Health made the first order under the Public Health Act 1956 in relation to COVID-19. This required persons arriving in New Zealand to be isolated or quarantined for 14 days.
58. On 24 March, the Prime Minister issued an epidemic notice under the Epidemic Preparedness Act 2006, which enables the use of a number of specific legislative powers. The notice must be renewed every three months to stop it expiring. The most recent renewal took effect on 23 September 2020.
59. On 25 March, a state of national emergency was declared under the Civil Defence Emergency Act 2002 and the Director-General of Health issued a further order under the Public Health Act 1956 effectively putting the country into lockdown. The borders were also closed except to New Zealand citizens and their partners. The Director-General made a further order on 3 April in a different manner but to the same effect.
60. New Zealand stayed in the most restrictive level of lockdown (level 4) until 27 April and then progressive orders gradually eased the restrictions.
61. New primary legislation, the COVID-19 Public Health Response Act 2020, was passed on 13 May. This Act provided a specific framework for making orders in response to COVID-19. Under that Act, orders are now made by the Minister.
62. On 9 June an order took effect moving the country to alert level 1, which meant there were no restrictions on the population although the borders remained largely closed to persons who were not New Zealand citizens. In response to an outbreak of cases in the community in August, new orders were required. In contrast to the earlier orders, Auckland was placed on different restrictions from the rest of the country. Since 8 October 2020, all of New Zealand has been at alert level 1.
63. In addition to the COVID-19 Public Health Response Act, a raft of other primary legislation has been required to cover specific matters arising out the response to COVID-19. For example, Acts were passed implementing tax relief and fast-track consenting of infrastructure projects, and extending entry and work visas.

Epidemic Preparedness (Oaths and Declarations Act 1957) Immediate Modification Order 2020

64. In light of the COVID-19 pandemic, the Government made a temporary law change to modify the requirements for signing and witnessing oaths, affirmations and declarations under the Oaths and Declarations Act 1957. The change makes it clear that there is no requirement for a person taking oaths, affirmations or declarations to be in the physical presence of those making them. The person witnessing the oath, declaration or affirmation is also not required to physically sign the same document as the person making it, allowing social distancing to take place.

Arms Act 1983 amendment

65. During the level 4 lockdown period, NZ Police was unable to process applications for firearms and dealer licences because applicants and referees could not be interviewed in person. This is an essential part of assessing whether a person is fit and proper to possess firearms. In May 2020, the Arms Act 1983 was amended to temporarily extend the duration of firearms and dealers' licences that had expired, or would do so, during the period up to 25 September 2020. This would apply where the licence-holder had applied for a new licence and Police had been unable to process the application prior to the licence's original expiry date.

New Zealand courts' response to COVID-19 Alert Levels

66. At the start of the level 4 lockdown, only proceedings affecting the liberty of an individual and their personal safety and wellbeing, or matters that were time critical, were heard in courts and tribunals. As operational capacity increased, proceedings were then expanded to include matters such as those that could be heard on the papers.
67. As Government restrictions reduced, courts and tribunals conducted as much of their usual business as they were safely able to. Over this period, courts took steps to:
- avoid unnecessary appearances;
 - schedule in-person attendance to assist safe distancing;
 - limit in-person attendances to those that would substantively advance proceedings;
 - continue to use remote participation where practicable and appropriate;
 - limit access to those who had business with the court. Family and supporters were required to get permission from the presiding judge to attend;
 - allow for regional variations to resolve local challenges;
 - install thermal imaging cameras to record temperature. Access was denied to anyone with a temperature over 38 degrees; and
 - alternative filing options were available at most sites.
68. Courts have resumed business-as-usual now that Government restrictions are reduced. They maintain a high standard of cleaning protocol and encourage the use of face masks and physical distancing.

Jury trials

69. From 23 March, the judiciary directed that jury trials would be put on hold due to COVID-19. Jury trials resumed on 3 August, with safety precautions such as the use of face masks, Perspex screens on jury boxes and physical distancing. When Auckland returned to alert level 3 later in August, jury trials in Auckland were temporarily put on hold again while the city remained at alert level 3.
70. The Jury Amendment Rules 2020 were passed on 27 July 2020 to enable compliance with any future physical distancing requirements. The changes enable some jurors to listen to balloting from another part of the court and authorise preliminary ballots to be undertaken in the presence of some jurors only where rooms are not large enough to accommodate physical distancing requirements. The Rules also include new definitions of physical distancing requirements and quarantinable disease.

Family Court orders and shared parenting arrangements

71. The restrictions on movement under alert levels raised questions about the management of children from families who have shared care or contact arrangements, either pursuant to Family Court orders, or arranged between parents and/or guardians. In relation to those governed by Family Court Orders, the Principal Family Court Judge published guidance setting out the expectations of the Family Court.⁷ The Ministry of Justice also published guidance for all shared parenting arrangements at each alert level. This guidance reflected the requirements

7

<https://www.districtcourts.govt.nz/assets/Uploads/Media-Releases/24-March-2020-Children-in-shared-care.pdf>

of the relevant COVID-19 Order in force at the time and included public health messaging from the Ministry of Health.⁸

Courts Backlog

72. On 24 July, the Minister of Justice announced a \$50 million investment to address the backlog of cases across the court system following the COVID-19 lockdown period, providing for five District Court judges, four acting High Court judges, one acting Associate judge and around 40 fulltime support staff.⁹
73. On 5 August, the Ministry of Justice also announced an additional \$3.5m funding for the next three financial years to Community Law Centres to help mitigate the effects of COVID-19.¹⁰
74. *Caring for Communities (C4C)* is a Government response to COVID-19, to ensure an effective system-wide response to key issues as they arise, such as distribution and access to food, housing, mental health and wellbeing and access to other social services. Part of the C4C programme is establishing Regional Leadership Groups to develop local solutions to regional issues in terms of resurgence and recovery plans.
75. NZ Police has provided support in terms of insights and data on the priority communities that require support and assistance when responding to COVID-19.
76. The Crown Law Office has been called upon regularly – and often under circumstances of urgency – to advise Government on the compliance of measures related to the COVID-19 response with NZBORA and broader human rights values. Such advice has involved considering matters such as arbitrary detention, border restrictions and compulsory medical testing.

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

Hāpaitia te Oranga Tangata: Safe and Effective Justice

77. In December 2019, the Minister of Justice released two recommendation reports: *Turuki! Turuki!*, the final report of the Government appointed advisory group, Te Uepū Hāpai i te Ora, which was appointed to facilitate a public conversation and advise on reform; and *Te Tangi o te Manawanui: Recommendations for Reform*, a report from the Chief Victims Advisor to Government.
78. These reports, together with the Hui Māori report, *Ināia Tonu Nei*, published earlier in 2019, recommend the criminal justice system in Aotearoa New Zealand be rebalanced to place less focus on punitive responses to crime and more focus on reducing harm. The Government has responded to the reports by committing to a range of initiatives. These include work to build and strengthen partnership relationships between Māori and the Crown across the criminal justice sector, work to expand the use of therapeutic approaches in the courts and work to strengthen services for victims.

⁸ <https://www.justice.govt.nz/about/news-and-media/covid-19-news/guidance-for-managing-shared-custody/>

⁹ <https://www.beehive.govt.nz/release/support-clear-covid-19-affected-court-cases>

¹⁰ <https://www.beehive.govt.nz/release/funding-boost-community-law-centres-0>

Family Justice reforms

79. The Government appointed an Independent Panel to review the family justice system and to look specifically at the effect reforms made in 2014 had on that system. The Panel released its report, *Te Korowai Ture ā-Whānau*,¹¹ in 2019 with 69 recommendations for changes in the family justice system. These services will ensure children, parents and their whānau are treated with dignity and respect and feel safe and supported to make the best decisions for their children.
80. In May 2020 the Government announced the first phase of a long-term programme of work to strengthen the family justice system with funding of \$62.086 million over four years. This package includes:
- the Family Court (Supporting Families in Court) Legislation Act 2020, which reinstates legal representation in the early stages of Care of Children Act 2004 proceedings, with legal aid for eligible parties;
 - establishing the role of Family Justice Liaison Officer to help parents and whānau navigate the family justice system, provide information on process and engage with family justice providers;
 - developing quality, accessible information for children, parents and whānau; and
 - increasing remuneration for lawyers for children to incentivise the recruitment and retention of skilled practitioners.
81. In August 2020, the Family Court (Supporting Families in Court) Legislation was introduced. This Bill continues this theme of strengthening the Family Court by giving priority to a child-focused approach.

Assistance to Pacific justice sector

82. The Ministry of Foreign Affairs and Trade is currently undertaking an evaluation of New Zealand's assistance to the Pacific justice sector from 2010 to 2020. Pacific and other stakeholders are being consulted as part of this. The findings of the evaluation will be used to help inform the shape of New Zealand's assistance to the justice sector from mid-2021 onwards.

Organised Crime Disruption Conference

83. New Zealand Police will host an Organised Crime Disruption Conference in Wellington from 27-29 October 2020. The conference is designed to bring together senior level representatives working in the organised crime area across a broad spectrum of Government, private sector, academia and international partner organisations. The conference theme is to: 'Improve system resilience to make New Zealand the hardest place in the world for organised criminal groups and networks to do business'. The agenda aims to provide the most current information about the organised crime environment and how it impacts on New Zealand; identify opportunities and develop levers to disrupt organised crime, and help participants work in a more connected way across Government agencies, non-government and the private sector.

¹¹ The report can be found at <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/family-court-rewrite>

Overseas Development Assistance (ODA) Programmes

84. NZ Police delivers six ODA programmes to eleven policing services in the Pacific. The programmes focus on prevention and strengthening policing capability to respond to regional security issues.
85. The global COVID-19 pandemic shifted the focus for participating Police services to pandemic preparedness and prevention, and state of emergency enforcement activities. The restrictions placed on international travel resulted in NZ Police revising the form of support and assistance it provides to these programmes. All non-essential staff were repatriated and the revised support is reviewed on a regular basis to ensure it remains relevant.
86. The *Bougainville Community Policing Programme* is a longstanding programme of assistance to the Autonomous Region of Bougainville, Papua New Guinea. NZ Police currently deploy four personnel with rotations carried out on a six-monthly basis for respite. Activities focus on strengthening 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.
87. The *Solomon Islands Policing Support Programme (SIPSP)* has been scaled down to three NZ Police advisors due to COVID-19. 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.
88. 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 identifies and targets 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. All assistance is currently being provided remotely by three NZ Police Advisors.
89. The *Pacific Detector Dog Programme* is a regional support programme that provides support to detector dog units in the Cook Islands, Fiji, Samoa and Tonga. Support is provided in the key areas of: communication, tasking and deployment, policies and procedures, training (of both detector dogs and handlers) and leadership.
90. On 30 June 2020, the trilateral *Tonga Police Development Programme (TPDP)* with Tonga Police and the Australian Federal Police came to an end and a new bilateral programme, the *Tonga New Zealand Policing Programme (TNZPP)*, between NZ Police and Tonga Police came into effect. Due to COVID-19, the development and implementation of bilateral programme functions and arrangements was significantly impacted. Consequently, the programme will focus on completing activities from TPDP and implementing the new bilateral functions and arrangements for the remainder of this financial year. The TNZPP will operate with three Advisors.
91. The *Vanuatu Policing Programme* is the first bilateral policing programme between NZ Police and the Vanuatu Police Force (VPF) and is currently in its first phase (2019-2023). The programme comprises three NZ Police advisors – two based in Port Vila and one in Santo – who work to assist the VPF to deliver its Community Policing

Programme, and the decentralisation of its services to the provinces as part of the Government of Vanuatu's Decentralisation Plan.

Pacific Security Fund (PSF) Projects

92. In 2019/20, the PSF funded a multi-agency law enforcement delegation of six people from Fiji to attend the *NZ Financial Intelligence Unit Annual Conference* in October 2019. The conference shared knowledge, skills and experience from national and international experts presenting on current trends and best practice for preventing and combating financial and organised crime. The working relationships built through the Fiji and New Zealand 'practitioner to practitioner' workshop allowed for the attendees to discuss actual cases of financial crime in Fiji and operationalise their learning.
93. The PSF is currently funding the continued operating costs of the *NZ Transnational Crime Unit (NZTCU)* in providing dedicated support to the Transnational Crime Units of the Cook Islands, Niue and Tonga and supporting the Pacific Transnational Crime Coordination Centre in Samoa. The agencies that contribute to the NZTCU (Customs, Immigration and Police) are exploring options to increase the role of the NZTCU in the Pacific region and secure a long-term funding source for the initiative.
94. NZ Police received funding from the PSF in order to contribute to an *ICT package to enhance the Fiji Police Force's (FPF) ongoing response to COVID-19*. The purchase of this equipment allowed for FPF to upgrade its technical capability by improving the critical command information available to the FPF Executive. This encouraged better leadership of frontline Police operations through improved connectivity and situational awareness, and strengthened the FPF's ability to coordinate its response to quarantine enforcement activities.

TECHNICAL LEGAL ASSISTANCE

Te Pātuitanga Ahumoana a Kiwi programme

95. 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 (MCSE) assistance to Pacific Island fisheries compliance teams.
96. The programme includes capacity development training in preparing prosecution case files, understanding the courtroom process, supporting the prosecutor in a trial and giving evidence in court. Technical legal assistance is also provided in interpreting and applying the powers and offence provisions of fisheries legislation applicable to each Pacific Island country.
97. Since COVID-19, assistance has been limited to providing remote assistance when requested. MPI Compliance Advisers-Pacific recently offered Kiribati advice around a compliance approach to roadside fish stalls where shark fins were being sold to the public.

KEY CONTACT INFORMATION FOR LAW AND JUSTICE AGENCIES

Agency	Contact person and position	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 Briar Charmley – Team Manager	Mark.Lillico@crownlaw.govt.nz Charlotte.Brook@crownlaw.govt.nz Briar.Charmley@crownlaw.govt.nz
Crown Law – Public Law	Nicola Wills – Team Manager Jenny Catran – Team Manager Jeremy Prebble – Team Manager Mark Bryant – Team Manager	Nicola.Wills@crownlaw.govt.nz Jenny.Catran@crownlaw.govt.nz Jeremy.Prebble@crownlaw.govt.nz Mark.Bryant@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	Sean Rangiwhehu, Director, Office of the Chief Operating Officer Operations and Service Delivery	COOOffice@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

<http://www.lawcom.govt.nz/home/welcome-law-commission>

New Zealand Law Database

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

New Zealand Legislation

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

New Zealand Judicial Decisions

<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.lawyerseducation.co.nz/>