

Attorney- General

**2017 Briefing for the Incoming Minister
Ministry of Justice**



New Zealand Government

Contents

- The Attorney-General’s role and responsibilities2**
 - Key responsibilities 3
 - New Zealand Bill of Rights Act 1990..... 3
 - Appointments4
- Additional Information 6**
- Appendix A: Further information about the Ministry 8**

The Attorney-General's role and responsibilities

The Attorney-General is the Crown's Senior Law Officer and plays a key role in maintaining New Zealand's constitutional and justice institutions. The Attorney-General has principal responsibility for the government's administration of the law (this function is exercised in conjunction with the Solicitor-General, who is the Junior Law Officer).

As the Attorney-General you are the link between the judiciary and the executive government. You will recommend the appointment of judges and have an important role in defending the judiciary by answering improper or unfair public criticism, and discouraging ministerial colleagues from criticising judges and their decisions.

The Attorney-General maintains an overview of key aspects of the rule of law, including the quality, accessibility and effectiveness of the law. Particular points of focus in this context are the New Zealand Bill of Rights Act 1990 and key legislation affecting the courts. You will be responsible for reporting on consistency of Bills with the New Zealand Bill of Rights Act 1990.

You will also be responsible for a number of appointments including to the Parole Board and the Legislation Design and Advisory Committee, which is focused on improving the quality of legislation. As Attorney-General you are a member of the Rules Committee, which sets the rules regulating practice and procedure in the courts.

For all the matters discussed in this briefing, officials in the Ministry of Justice work closely with the Crown Law Office.

Key responsibilities

New Zealand Bill of Rights Act 1990

Provision of advice on consistency of legislation with the New Zealand Bill of Rights Act 1990

The New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act') affirms, protects and promotes human rights and fundamental freedoms in New Zealand.

Section 7 of the Bill of Rights Act requires the Attorney-General to advise the House of Representatives if any provision in a Bill appears to be inconsistent with any of the rights and freedoms affirmed in the Bill of Rights Act.

The Ministry of Justice is responsible for scrutinising almost all proposed legislation to provide legal advice to the Attorney-General on whether Bills appear to be consistent with the Bill of Rights Act. Appropriation Bills are not vetted, and Bills developed by the Ministry of Justice are vetted by the Crown Law Office.

For Government Bills, a section 7 report must be presented to the House on introduction of the Bill if the Bill is inconsistent with the Bill of Rights Act. The CabGuide requires that all final versions of Government Bills must be with the Ministry of Justice/Crown Law Office at least two weeks in advance of the relevant Cabinet committee meeting (usually Cabinet Legislation Committee) on that Bill.

The two week deadline allows the Ministry of Justice/Crown Law Office sufficient time to check the Bill for consistency with the Act and to provide advice accordingly. The deadline also allows the Attorney-General to receive the advice (and draft section 7 report if required) at least a week in advance of the Cabinet Legislation Committee meeting where approval to introduce the Bill is sought.

For members', local and private Bills, advice must be provided as soon as reasonably practicable after introduction.

Following changes to the Standing Orders in 2014, section 7 reports stand automatically referred to a select committee for consideration. Select committees now generally request a briefing by the Attorney-General or officials on the section 7 report, and the committee's report to the House about the Bill will note the issues raised in the section 7 report.

Further, the Review of Standing Orders 2017 noted that, as a Minister, the Attorney-General can also present papers under Standing Order 372(1). The Standing Orders Committee encouraged the Attorney-General to consider using this mechanism in future where significant Government Supplementary Order Papers and amendments made at select committee appear to be inconsistent with the Bill of Rights Act.

Privilege and publication of Bill of Rights Act advice since 2003

Since 2003, officials' legal advice on Bill of Rights Act consistency has been published on the Ministry of Justice website as soon as practicable following a Bill's introduction.

Specific approval for publication is sought on each piece of advice and the Attorney-General has the right to maintain legal professional privilege in respect of any Bill of Rights Act advice.

The Attorney-General retains legal professional privilege in respect of:

- unpublished advice written before January 2003; and
- unpublished advice written after January 2003 on Bills on which the Attorney-General has tabled a section 7 report in the House of Representatives. In those cases, the section 7 report is published rather than the advice.

Vetting advice is not subject to the Official Information Act 1982; however, Attorneys-General have considered requests for the release of such advice on a case-by-case basis.

Appointments

You are responsible for the following appointments:

Coroners – Coroners are appointed under the Coroners Act 2006 after consultation with the Minister of Justice.

District Court – District Court judges, including the Chief District Court Judge, are appointed under the District Court Act 2016. District Court judges may be appointed as Family Court or Youth Court judges under the Family Court Act 1980 and the Children, Young Persons and Their Families Act 1989 respectively. District Court judges may also be appointed to hold jury warrants under the Criminal Procedure Act 2011.

Employment Court – Employment Court judges are appointed under section 200 of the Employment Relations Act 2000.

Environment Court – The Environment Court considers applications and appeals made under the Resource Management Act 1991. The Court consists of a mix of judges and Commissioners and appointments are made after consultation with the Minister for the Environment and the Minister of Māori Affairs.

Immigration and Protection Tribunal (IPT) – The Chair of the IPT must be a District Court judge and is appointed by the Governor-General on the recommendation of the Attorney-General given after consultation with the Minister of Justice and the Minister of Immigration.

Issuing Officers – Issuing Officers are authorised by the Attorney-General to consider applications for search warrants and production orders under the Search and Surveillance Act 2012.

Judges of the Court Martial – The Court Martial has jurisdiction under the Court Martial Act 2007 to exercise criminal jurisdiction within the Armed Forces equivalent to that of the High Court. Appointments are made by the Governor-General on the advice of the Attorney-General.

Judicial Complaints Lay Observer – This is a non-statutory position that allows for the independent review of the handling of complaints about the conduct of members of the judiciary.

Judicial Conduct Commissioner – The Commissioner and Deputy Commissioner are appointed under the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004. The appointments are made by the Governor-General on the recommendation of the House of Representatives, following consultation by the Attorney-General with the Chief Justice. The Commissioner's role is to examine complaints about judges and either dismiss the complaint, take no further action, refer to the relevant Head of Bench or if serious enough recommend referral to a Judicial Conduct Panel.

Legislation Design and Advisory Committee – The Committee's primary role is to help improve the quality of law-making which it does by developing guidelines; providing advice to departments, select committees and to the Attorney General on compliance with those guidelines; and by reporting to the Attorney General on public law issues referred to it.

New Zealand Parole Board – Established under the Parole Act 2002, the principal function of the Board is to undertake an assessment of the risk that long-term sentenced offenders might pose to the safety of the community if they were to be released before the end of their sentence. The Board consists of a Chairperson (a judge or retired judge), panel convenors (often District Court judges or retired judges) and a number of lay members.

The Appointments and Specialist Functions Unit, which is part of the Ministry's Office of Legal Counsel, provides the Attorney-General, the Minister of Justice and the Secretary for Justice with administrative support to undertake the timely review of statutory appointments (including Crown Entities, tribunals, and other statutory roles) within the Justice Portfolio.

The Solicitor-General is responsible for administering the process by which the Attorney-General makes appointments to the senior courts.

Additional Information

About the Ministry of Justice

The Ministry of Justice supports the Minister of Justice, Minister for Courts, the Attorney-General and the Minister for Treaty of Waitangi Negotiations to carry out their responsibilities, and delivers a range of courts and justice services to New Zealanders.

The Ministry's mission and vision is to deliver people-centred justice services that contribute to a safe and just New Zealand. We have ambitious goals that focus our collective effort on achieving the things that matter to New Zealanders:

- modernise courts and tribunals to get people through quicker;
- deliver improved justice outcomes for Māori;
- reduce crime, victimisation and harm; and
- provide great service to the public every day.

Figure 1: Our Strategy



We have over 3,500 people in 107 sites around New Zealand. We work collaboratively within the Ministry and across the public sector to deliver critical services to our customers and improve the lives of New Zealanders. We aim to make communities safer, strengthen the public's trust in the justice system and maintain the integrity of our constitutional arrangements.

These are the services we provide:

MINISTRY OF JUSTICE
Te Kaitiaki Take Kōwhiri

- We deliver court and tribunal services**
We work with the judiciary to deliver court services for the Supreme Court, Court of Appeal, High Court, District Court, the Environment Court, Employment Court, Māori Land Court and Waitangi Tribunal. We support other tribunals, authorities and committees (including the Disputes Tribunal and Tenancy Tribunal) that help New Zealanders resolve disputes, review administrative decisions that affect their rights and entitlements, or licence and discipline people who work in a regulated occupation.
- We negotiate and safeguard durable Treaty of Waitangi settlements** - building positive relationships between the Crown and Māori
- We lead the justice sector** to collectively reduce total crime and reoffending
- We develop justice policy** - advising on legislation and supporting our ministers
- We administer Legal Aid** - helping people who can't afford a lawyer to get legal advice and representation
- The **Public Defence Service** is New Zealand's largest criminal law practice
- Our **Collections** unit is one of New Zealand's largest debt-collection agencies. We collect unpaid infringements, court fines and reparations ensuring monetary penalties are a credible sanction
- We carry out **criminal conviction history checks**
- We contract with community-based and non-governmental providers** to help people going through the justice system

We administer over \$1 billion in government expenditure from Vote Justice, Vote Courts and Vote Treaty Negotiations, and more than 200 pieces of legislation including Treaty Settlement legislation

Appendix A: Further information about the Ministry

Ministry of Justice structure



Key contacts

PERSON	POSITION	PHONE	EMAIL
Strategic Leadership Team			
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