

# **CROWN SOLICITORS: TERMS OF OFFICE**

Last Reviewed: May 2021

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## PREAMBLE

1. These provisions set out the terms of office for all Crown Solicitors from 1 July 2013. The terms of office may be revised from time to time by the Solicitor-General in consultation with Crown Solicitors.
2. The terms of office and any amendments are available on the Crown Law website: <http://www.crownlaw.govt.nz>.

## DEFINITIONS

**Crown prosecution** – includes a Crown prosecution as defined in the Criminal Procedure Act 2011 and the Crown Prosecution Regulations 2013, as well as indictable matters following committal for trial in respect of matters commenced prior to 1 July 2013.

**Crown prosecutor** – means any Crown prosecutor, as defined in the Criminal Procedure Act 2011.

**Crown Solicitor** – means a lawyer holding a warrant of appointment as a Crown Solicitor from the Governor-General.

**Crown Solicitor firm** – means the firm of which the Crown Solicitor is a principal.

**Department** - means departments of the public service as specified in the First Schedule to the State Sector Act 1988, the New Zealand Police (referred to in this document as “the Police”), the New Zealand Defence Force, and the New Zealand Security Intelligence Service and includes bodies, decision-makers, office holders or employees within those departments.

**Legal work** – has the meaning set out in section 6 of the Lawyers and Conveyancers Act 2006.

**Private prosecution** – has the meaning set out in section 5 of the Criminal Procedure Act 2011.

## THE LAW OFFICERS AND CROWN SOLICITORS

3. These terms of office regulate the relationship between the Solicitor-General and the Crown Solicitor. The Crown Solicitor must observe the requirements of the terms of office and follow all guidelines and instructions issued by the Solicitor-General.

### The Attorney-General and Solicitor-General

4. The Attorney-General and Solicitor-General are responsible for the prosecution of crime. This responsibility has now been affirmed by the Criminal Procedure Act 2011.
5. The Solicitor-General is responsible for the general oversight of public prosecutions and has specific responsibilities for the conduct of Crown prosecutions. The Government,

through Cabinet requires the Solicitor-General, on behalf of the Crown, to set the terms of office for Crown Solicitors.

### **Crown Solicitors**

6. Crown Solicitors are appointed by the Governor-General, on the recommendation of the Attorney-General, by warrant under the Letters Patent.

#### *Crown Solicitor firms*

7. When a lawyer seeks appointment to the office of Crown Solicitor the applicant is offering not only his or her services but also the services of the Crown Solicitor firm to the extent necessary to provide services in the region covered by the warrant.
8. The Crown Solicitor must notify the Solicitor-General if the Crown Solicitor firm has a change in composition which could affect the provision of services required by the terms of office.
9. The Crown Solicitor must notify the Solicitor-General if he or she proposes to leave the Crown Solicitor firm and join another firm.
10. The Crown Solicitor must keep the Solicitor-General advised of the Crown prosecutors representing the Crown Solicitor.

## **DUTIES OF CROWN SOLICITORS**

### **Provision of services**

11. The Crown Solicitor must, in respect of the region covered by the warrant of appointment:
  - 11.1 Conduct Crown prosecutions for which the Solicitor-General has assumed responsibility in the High Court, District Courts and Youth Court and the related proceedings, including sentencing and bail hearings;
  - 11.2 Conduct other appearances in the Youth Court as specified in the Memorandum of Understanding between the Solicitor-General and the Commissioner of Police;

- 11.3 Conduct High Court criminal appeals from departmental and Police prosecutions in the District Court;
  - 11.4 Accept instructions from government departments and the Police, to conduct prosecutions in the District Court;
  - 11.5 Accept instructions from the Solicitor-General to conduct any litigation related to the matters in 11.1 to 11.3;
  - 11.6 Accept instructions on matters related to the Criminal Proceeds (Recovery) Act, mutual assistance or extradition matters; and
  - 11.7 All activities ancillary to the above or which may be necessary to support and assist the Solicitor-General to discharge the responsibilities of that office relating to the administration of criminal justice.
12. Each Crown Solicitor is expected to co-operate with and assist other Crown Solicitors as necessary to ensure the effective provision of Crown prosecution services throughout New Zealand.

### **Independence and integrity**

13. Crown Solicitors and Crown prosecutors are expected to uphold the highest standards of personal and professional conduct and are subject to the Lawyers (Conduct and Client Care) Rules.
14. The Crown Solicitor must, as soon as practicable, notify the Solicitor-General of any matter which may reflect upon the office of Crown Solicitor, in particular if the Crown Solicitor or any Crown prosecutor within the Crown Solicitor firm is subject to:
- 14.1 any criminal inquiry or prosecution;
  - 14.2 any complaint or disciplinary proceedings before the Law Society; or
  - 14.3 a costs order or other sanction under the Criminal Procedure Act 2011.

### **Conflicts of interest**

15. As prosecutors, Crown Solicitors are ministers of justice and serve the public interest. Crown Solicitors must be independent and free from compromising influences or loyalties when providing services as Crown Solicitor.
16. Unless granted dispensation by the Solicitor-General, for a specific case or class of cases, Crown Solicitors and lawyers in the Crown Solicitor firm may not:
  - 16.1 act against the Crown in any prosecution;
  - 16.2 act against the Police on any legal work;
  - 16.3 act against the Crown in respect of any legal work where the substantive issue is a decision of the Attorney-General or Solicitor-General;
  - 16.4 act for the prosecutor in any private prosecution;
  - 16.5 act against the Crown in any legal work related to extradition, mutual assistance, criminal proceeds (recovery) or any judicial review related to a Crown prosecution or a prosecution initiated by a department.

### **EXECUTION OF DUTIES**

17. The Crown Solicitor must comply with all directions and instructions and observe guidelines issued by the Solicitor-General from time to time including, without limitation, the following:
  - 17.1 Prosecution Guidelines;
  - 17.2 Victims of Crime – Guidelines for Prosecutors;
  - 17.3 Media Protocol for Prosecutors; and
  - 17.4 The Memorandum of Understanding between the Solicitor-General and the Commissioner of Police.
18. The Solicitor-General expects to be consulted on any significant or potentially controversial media inquiries. Crown Solicitors need not consult on routine media inquiries.

19. The Crown Solicitor must supervise the provision of services by the Crown Solicitor firm and take all reasonable steps to ensure every person assisting with these services complies with the terms of office.

#### **Maintenance of the Crown Solicitor firm**

20. Crown Solicitors are responsible for ensuring that they are able to discharge the duties of the office and must maintain an office sufficient to discharge those responsibilities. Crown Solicitors may enter into arrangements to manage the provision of services between their firms.
21. The Crown Solicitor will take all reasonable steps to ensure that all Crown prosecutors acting under his or her direction:
  - 21.1 have the requisite skills, expertise, qualifications and experience; and
  - 21.2 carry out their respective duties with due care, skill and diligence.

#### **Absence from duties**

22. Where the Crown Solicitor wishes to take leave from his or her duties for more than one month, the leave of the Solicitor-General is required. Where practicable one month's notice of such absences is required.
23. Subject to the Solicitor-General's approval, the Crown Solicitor may nominate a person from within the Crown Solicitor firm to carry out the obligations of his or her office while the Crown Solicitor is on leave.

#### **Classification of counsel**

24. Crown Solicitors and members of their firms will be classified by the Solicitor-General as principal, senior, intermediate or junior prosecutors.
25. The Crown Solicitor may make a recommendation to the Solicitor-General for the classification or reclassification of a Crown prosecutor.
26. The Solicitor-General may from time to time issue guidelines about the criteria for classification and the classification necessary to conduct particular types of prosecution. Refer Appendix Three of this document.

**Crown Panel**

27. The Solicitor-General may, on the recommendation of the relevant Crown Solicitor, appoint members of the local bar to a Crown Panel to supplement the services provided by the Crown Solicitor and the Crown Solicitor's firm.
28. Members of Crown Panels will be classified by the Solicitor-General as principal, senior, intermediate or junior panel members.

**Maintaining relationships with Justice Sector partners and other related parties**

29. Crown Solicitors must endeavour to maintain professional and positive relationships with the judiciary, the courts, the Police, departments, the Public Defence Service and the criminal defence bar.

**Professional Indemnity Insurance**

30. The Crown Solicitor or the Crown Solicitor firm must maintain and keep current, for the period of the appointment and for the period of two years commencing with the expiry of the appointment at his or her own expense, professional indemnity insurance which adequately covers any liability which might arise.
31. The Crown Solicitor must supply to the Solicitor-General, on request, such details of its current insurance cover that the Solicitor-General considers sufficient to assess the appropriateness of the cover.

**Te Tiriti o Waitangi**

32. Crown Solicitors are committed to the values and principles of Te Tiriti o Waitangi and this will be reflected in the delivery of Crown prosecution services and the management and operations of their respective Crown Solicitor's offices.

**Commitment to diversity**

33. Crown Solicitors are committed to the Crown's equal employment opportunity principles, particularly when acting for the Crown. Where practicable Crown Solicitors will endeavour, through the recruitment and development of their staff, to reflect the diversity of the community which the warrant serves.

**Information and file maintenance**

34. In consultation with Crown Solicitors, the Solicitor-General will develop and issue policies outlining any reporting or information requirements. Crown Solicitors must respond expeditiously to any reporting or information requirements.
35. Crown Solicitors must take all reasonable steps to protect the security of information they hold.
36. Crown Solicitors are subject to the Public Records Act 2005 and should comply with any policy and guidelines issued by the Solicitor-General, after consultation with the Crown Solicitors, on the requirements of that Act.
37. All Crown prosecution files held by Crown Solicitors remain the property of the Crown. Crown Solicitors must, upon request, make any files relating to Crown Solicitor duties available to the Solicitor-General for inspection.

**FEES**

38. The Solicitor-General will set an annual fee for the provision of services under clauses 11.1 - 11.3 and 11.7 in each warrant, based on the available government funding. Refer to Appendix One for the detail of the annual fees determined by the Solicitor-General.
39. The Solicitor-General will from time to time, in consultation with Crown Solicitors, departments and the Police, set the fees payable by departments and the Police for the provision of services under clause 11.4. Refer to Appendix Two for the detail of the fees framework determined by the Solicitor-General.
40. For all other work the fees will be set by the Solicitor-General in consultation with Crown Solicitors.

**CROWN SOLICITOR REVIEWS**

41. Crown Solicitors will be subject to periodic reviews by the Solicitor-General. Reviews are designed to ensure high standards are achieved and maintained. Reviews may examine the legal acumen and performance of Crown prosecutors, the management of the work, and how the relationship with others is conducted in the criminal justice sector. In consultation with Crown Solicitors, the Solicitor-General will prepare and

review from time to time a policy on the conduct of reviews which will detail the review processes.

42. Crown Solicitors are expected to cooperate fully in a review and provide any relevant information requested in a timely fashion. Crown Solicitors will be advised of the preliminary outcome of their reviews and given the opportunity to address any concerns that are raised before a review is completed.

**REVOCAION OR TERMINATION OF WARRANT**

43. A Crown Solicitor’s warrant is held at pleasure.
44. A Crown Solicitor may resign the warrant by letter to the Solicitor-General. Crown Solicitors are required to give 90 days’ notice of resignation, unless exceptional circumstances apply, such as appointment to the Bench.

**ACKNOWLEDGMENT**

I, [insert name] hold the office of Crown Solicitor at [insert warrant area] and acknowledge that I am obliged to carry out the office of Crown Solicitor in accordance with these terms of office.

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[Signature]

**APPENDIX ONE:  
FEES AND BILLING FOR CROWN PROSECUTION SERVICES**

**Last Reviewed: May 2017**

1. This appendix sets out the arrangements for the fees and billing of services provided under clauses 11.1, 11.2, 11.3 and 11.7 of these Terms of Office. It gives effect to the requirement for the Solicitor-General to set a fee for these services each year.

**Services covered by the annual fee**

2. The following services provided on or after 1 July 2013, within the area covered by a particular Crown Solicitor's warrant, are provided pursuant to the annual fee:
  - 2.1 The conduct of Crown prosecutions<sup>1</sup> from the time the Crown assumes responsibility for the prosecution,<sup>2</sup> excluding appeals other than as expressly provided for in this appendix;
  - 2.2 The conduct of pre-trial appeals to the High Court from decisions made in relation to Crown prosecutions, regardless of whether the Crown has assumed responsibility, excluding appeals filed pursuant to ss 215 through 228 of the Criminal Procedure Act 2011 or s 379A of the Crimes Act 1961;<sup>3</sup>
  - 2.3 The conduct of pre- and post-conviction appeals to the High Court from other public prosecutions (i.e. non-Crown prosecutions);
  - 2.4 The conduct of matters in the Youth Court as specified in the Memorandum of Understanding between the Solicitor-General and the Commissioner of Police;

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<sup>1</sup> Whether in the Youth, District or High Courts, and regardless of whether the prosecution was commenced in a particular Crown Solicitor's district or was transferred from another district at a later date (including cases transferred after the Crown has assumed responsibility for the matter).

<sup>2</sup> Section 189 of the Criminal Procedure Act 2011 requires the Crown Solicitor to file a notice in Court when he or she assumes responsibility for the prosecution. The date on which responsibility is assumed differs depending on the type of prosecution and is specified in the Crown Prosecution Regulations 2013. Responsibility is assumed at the time of the qualifying event (e.g. plea entry, election of jury trial etc) not the date the notice is filed, which will inevitably be a later date.

<sup>3</sup> Sections 215-228 of the Criminal Procedure Act 2011 provide for appeals against certain pre-trial decisions which were previously heard in the Court of Appeal. Those appeals are funded by Crown Law's appropriation for appeals and will continue to be conducted by Crown Law. The appeals that will be captured by para 2.3 will generally relate to bail, name suppression, disclosure and other non-evidential decisions.

- 2.5 The conduct of matters under the Costs in Criminal Cases Act 1967 and of applications under the Sentencing Act 2002 (e.g. review or cancellation of a sentence, resentencing).
  - 2.6 Ancillary appearances relating to Crown prosecutions conducted by other Crown Solicitors, such as bail hearings where a defendant has been arrested in a district other than that in which his or her prosecution is being conducted;
  - 2.7 All assistance provided to Crown Law, whether by the Crown Solicitor or their staff, including non-legal staff, for the purposes of administration of these arrangements or to support Crown Law in the completion of any criminal appeals;
  - 2.8 The costs of briefing panel counsel or other Crown Solicitors to conduct the work listed above; and
  - 2.9 All travel and/or administrative support necessary to complete the work listed above.
3. The annual fee also covers the costs of conducting the work listed above in districts other than a particular Crown Solicitor's district, following the transfer of a matter from their district to that of another Crown Solicitor, where the Crown Solicitor in the originating district elects to follow the trial.
  4. For the avoidance of doubt, all disbursements are included in the annual fee unless otherwise agreed with the Solicitor-General.

#### **Setting the annual fee**

5. The Solicitor-General will set the annual fee for each Crown Solicitor by way of a calculation with the following components:
  - 5.1 The total funding available;
  - 5.2 A flexi fund to allow for exceptional circumstances;<sup>4</sup> and
  - 5.3 The volume and case mix of disposals reported in each warrant;

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<sup>4</sup> Set at five per cent of the total funding available for the financial year.

6. The model, or any part of it, may be reviewed by the Solicitor-General at any time. Crown Solicitors will be consulted before material changes to the model are made.

#### **Payment of the annual fee**

7. Prior to the commencement of the financial year the Solicitor-General will advise each Crown Solicitor of their forecast fee, based on forecasts of the likely volume and case mix of disposals for that warrant.
8. The fee will be divided into 12 instalments to be paid to Crown Solicitors each month. Each month the annual fee will be reviewed to take account of the actual volumes and case mix of disposals in each warrant for the year to date. As a result of those reviews, the Solicitor-General may adjust the monthly instalments for the remainder of the year to ensure that the total fee paid for the year reflects the actual volumes and case mix for each warrant compared to the rest of the network. The timing and method of any adjustments (whether made in one month or spread across several months) will be determined individually for each Crown Solicitor, by the Solicitor-General in consultation with that Crown Solicitor.
9. Crown Solicitors are expected to have adequate systems in place to ensure the accuracy of their disposals reporting, as these reports will be relied on by the Solicitor-General in determining the annual fees and finalising the monthly disposal reports.
10. After the monthly disposal reports have been finalised, the Solicitor-General will be under no obligation to consider requests from Crown Solicitors to make retroactive payments, due to the consequential effect on fees available and allocated to other Crown Solicitors.

#### **Management of the flexi fund**

11. Crown Law will hold and manage a fund (known as the flexi fund), being comprised of a percentage of the total available funding for the year. The percentage to be held will be determined by the Solicitor-General and reviewed annually.
12. The purpose of the flexi fund is to support warrants which have experienced unforeseen and exceptional events which affect their ability to provide their services within the annual fee. These events may relate to work volumes overall, individual exceptionally high cost cases, or external factors unrelated to work volumes such as natural disasters. These examples are illustrative only.

13. Crown Solicitors may make applications to the Solicitor-General for flexi funding, or the Solicitor-General may determine that a warrant should receive flexi funding despite no application having been made. There are no set criteria for eligibility for flexi funding and all decisions relating to distribution of the flexi fund will be made at the sole discretion of the Solicitor-General.

**Payment for Crown prosecutions involving absconding defendants**

14. Where a disposal cannot otherwise be claimed due to a defendant absconding, Crown Solicitors may make applications to the Solicitor-General for payment from the flexi fund, as if the prosecution had reached a disposal point.

## **APPENDIX TWO: FEES PAYABLE TO CROWN SOLICITORS FOR WORK ON CRIMINAL PROSECUTIONS ON INSTRUCTIONS FROM DEPARTMENTS**

**Last Reviewed: May 2021**

1. On 20 May 2013 Cabinet authorised the Solicitor-General to set fees for Crown Solicitors work taking into account principles of consistency, transparency and sustainability.
2. Cabinet also directed departments to apply this fees framework when instructing Crown Solicitors.

### **Scope and application of this framework**

3. These fees apply to work done from 1 July 2021 by Crown Solicitors on instructions from departments<sup>5</sup> for:
  - 3.1 Criminal prosecutions under the Criminal Procedure Act 2011 which are not Crown prosecutions.<sup>6</sup>
  - 3.2 Work on Crown prosecutions prior to the time when the Solicitor-General has assumed responsibility under s 187 of the Criminal Procedure Act.
  - 3.3 High Court criminal appeals by departments (excluding the Police)<sup>7</sup> from the prosecutions in 3.1 and 3.2.
  - 3.4 Any bail or name suppression or similar proceedings related to a matter outlined in 3.1-3.3.<sup>8</sup>
  - 3.5 Pre-CPA summary prosecutions initiated prior to 1 July 2013.
4. Departments are referred to the Cabinet Directions for the Conduct of Crown Legal Business for information on when Crown Solicitors may be directly instructed. Crown Solicitors may be instructed for a single appearance on a case or for any part of a case covered by the Cabinet Directions and these fee arrangements.

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<sup>5</sup> “Departments” as defined in the Cabinet Directions for the Conduct of Crown Legal Business, which includes the Police.

<sup>6</sup> As defined in the Crown Prosecution Regulations 2013.

<sup>7</sup> Departments (excluding the Police) pay for appeals where they are the appellant. All other appeals whether by offender or department in the High Court are funded by Crown Law and come within the annual fee arrangements between the Solicitor-General and Crown Solicitors.

<sup>8</sup> This does not cover appeals to the High Court on these issues as they are funded by Crown Law.

5. For the purposes of 3.2 above the Crown Prosecution Regulations 2013 provide that the Solicitor-General will assume responsibility for:
  - 5.1 All category 4 offences from the time the proceeding is transferred to the High Court after the defendant's first appearance.
  - 5.2 All offences that are listed in the Schedule to the Regulations from the time the proceeding is adjourned following the entry of a plea.
  - 5.3 All jury trials for any remaining category 3 offences that are not listed in the Schedule to the Regulations from the time the proceeding is adjourned for trial callover following case review.
  - 5.4 A proceeding that is transferred to the High Court in any other case, from the time the proceeding is transferred to the High Court.
  - 5.5 A proceeding for any other offence if the Solicitor-General directs that the proceeding be conducted as a Crown prosecution from the time the direction is given.

#### **Classification of counsel**

6. References in this appendix to principal, senior, intermediate and junior prosecutors are to the classification of prosecutors by the Solicitor-General pursuant to the Terms of Office for Crown Solicitors.

#### **Hourly rate of remuneration**

7. The hourly rates are:
  - 7.1 Principal prosecutor: \$309;
  - 7.2 Senior prosecutor: \$260;
  - 7.3 Intermediate prosecutor: \$208;
  - 7.4 Junior prosecutor: \$151.

#### **Time allowed for activities**

8. Unless otherwise stated time may be charged in units no larger than 15 minutes and, subject to the pre-approved caps, fees are based on actual time spent.

## Pre-approved caps

9. This section sets out the maximum pre-approved time and therefore maximum pre-approved fees payable that apply when a department instructs a Crown Solicitor in criminal matters. Additional fees will require the prior and separate approval of the instructing department and are dealt with in paragraphs 12-17 below.
10. Pre-approved caps apply by reference to the following stages of the prosecution:
  - 10.1 A pre-prosecution stage covering the work involved up to and including the filing of charging documents, such as reviewing the evidence, directing further enquiries, providing advice as to whether a prosecution should be commenced and drafting charges. Up to ten hours are pre-approved for this stage.
  - 10.2 The administrative/review stage incorporating the period from first appearance to completion of case review. During this stage the prosecutor will be attending to outstanding investigative matters, liaising with the defence to complete the case management memorandum and dealing with issues such as bail, name suppression and media coverage. There may be at least three court appearances during this period, namely first appearance, plea entry and case review. Up to ten hours of preparation are pre-approved for this stage. Appearance time should be billed on the basis of actual time spent, in units no larger than 15 minutes.
  - 10.3 A pre-trial stage (excluding appeals from pre-trial decisions). This stage will encompass any pre-trial applications including for orders as to admissibility or orders dealing with severance or a change of venue. Up to ten hours of preparation per application are pre-approved. This limit reflects the fact that written submissions will almost certainly be required. Appearance time should be billed on the basis of actual time spent, in units no larger than 15 minutes.
  - 10.4 A trial phase. Up to ten hours of preparation time for trial (whether prior to or during trial), which includes the finalisation of briefs of evidence if required,<sup>9</sup> are pre-approved.

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<sup>9</sup> This paragraph is drafted with the expectation that briefs of evidence will be prepared by the instructing department. The reference to finalisation of those briefs includes making amendments where required, for example by removing inadmissible evidence. Where the instructing department wishes the Crown Solicitor to attend to the initial preparation of briefs of evidence, this must be agreed as additional work in accordance with paragraphs 12-17.

Appearance time for trials of four hours' duration or less should be billed on the basis of actual time spent, in units no larger than 15 minutes. For trials of more than four hours' duration appearance time should be billed by the half day or part thereof. A half day is four hours. Where an appearance relates to more than one matter, the appearance time should be apportioned between those matters.

- 10.5 A sentencing phase. Up to seven hours are pre-approved for preparation for sentencing. Appearances should be billed on the basis of actual time spent, in units no larger than 15 minutes. Not all cases will have a separate sentencing hearing and therefore the appearance time will either be rolled up in the trial time or charged separately. The preparation time is available under either scenario.
  - 10.6 In addition to the above, up to five hours are pre-approved for attending to disclosure (if required).
  - 10.7 Appeals filed by offenders, or by the Police in relation to Police prosecutions, are funded by Crown Law and come within the annual fee arrangements for Crown Solicitors. In respect of appeals brought by Departments, up to ten hours of preparation from the date the appeal is filed are pre-approved. Appearances should be billed on the basis of actual time spent, in units no larger than 15 minutes.
11. All correspondence with, or reporting to, the instructing department is included in and covered by the above pre-approved caps.

**Additional work over and above pre-approved caps**

12. Where the Crown Solicitor considers that a matter referred by a department requires work that exceeds the pre-approved caps, the Crown Solicitor must inform the instructing department and seek its prior approval to carry out additional work and incur fees at the set hourly rates over and above the pre-approved caps. The Crown Solicitor must provide the department with an estimate setting out the additional costs by stage at the set hourly rates.
13. Approval to exceed the pre-approved caps should be sought before the additional work is undertaken.

14. The following factors are examples that may indicate that the case is appropriate for additional work:
  - 14.1 Multiple defendants;
  - 14.2 Expert or highly technical evidence called by the prosecution;
  - 14.3 A large volume of evidence;
  - 14.4 An indication of a large number of pre-trial applications by the defence, impacting on the conduct of the prosecution;
  - 14.5 High profile or sensitive prosecution where that significantly increases the work required.
  
15. Any matters not covered in the pre-approved caps will be undertaken by Crown Solicitors on the specific instructions of the department, subject to an agreed estimate of hours and at the set hourly rates. Examples of such matters that are not covered in the pre-approved caps are:
  - 15.1 Advice during investigation stages;
  - 15.2 Preparation of briefs of evidence where briefs have not been prepared by the instructing department;
  - 15.3 Work done in relation to appeals before the appeal is filed (such as advice as to whether an appeal should be pursued, and drafting appeal documentation).
  
16. The Crown Solicitor may also seek to have second counsel assigned. That is subject to the prior approval of the instructing department. The fees claimable for second counsel, whether or not from the Crown Solicitor firm, for preparation and appearance shall be determined as if the second counsel were employed at the Crown Solicitor firm and acting as sole counsel.
  
17. All additional fees charged under paragraphs 12-16 must be invoiced separately and marked "Additional fees – as previously agreed with [the Department]". Crown Solicitors and Departments are expected to keep records of all approvals to incur fees over the pre-approved caps. Under the Public Prosecutions Reporting Framework, Crown Solicitors and Departments will be required to report all approvals to the Public Prosecutions Unit, on an annual basis.

### **Instructing agents**

18. With the approval of the instructing department, a Crown Solicitor may instruct an agent. The agent's fees will be charged to the Crown Solicitor, who may then claim reimbursement from the department.
19. The Crown Solicitor may claim a maximum of one hour for instructing the agent.

### **Charging for waiting time**

20. Crown Solicitors may charge for waiting time in Court, measured from the time a hearing was scheduled to start and the time it actually started, unless the prosecutor is reasonably expected to be working on a different matter.
21. If appearing for more than one departmental client, charging for waiting time should be split and apportioned between clients.

### **Disbursements**

22. Disbursements may be reimbursed as set out in this section. Where a Crown Solicitor incurs expenses as a result of work for two or more departments those costs should be split equally. This will most frequently arise with travel time and travel expenses.

#### *Travelling expenses*

23. Travel expenses including an allowance for travel time may be reimbursed where the Crown Solicitor is required to travel more than 5km from his or her usual place of business.

#### *Allowance for travel time*

24. For each hour of travel an allowance shall be payable at the following rates:
  - 24.1 In the case of a principal prosecutor or senior prosecutor 66 per cent of the senior hourly rate of remuneration;
  - 24.2 In the case of an intermediate prosecutor, 53 per cent of the senior hourly rate of remuneration; and
  - 24.3 In the case of a junior prosecutor 43 per cent of the senior hourly rate of remuneration.

25. This allowance will not be payable in addition to any other payment for preparation or other fee in respect of the same time.

*Use of a private car*

26. When using a private car, mileage at the applicable IRD rate may be claimed as a reimbursement. Evidence of travel distance is not required but should be recorded on the invoice. Costs such as petrol, insurance excess and fines are not claimable in addition to the IRD rate.

*Taxi or rental car*

27. Actual and reasonable costs may be claimed where it is more cost effective than travel by private car.

*Airfares etc.*

28. Actual and reasonable costs may be claimed, subject to agreement with the department.

*Accommodation and meals for overnight travel*

29. Where it is agreed with the department that overnight travel is required, the following costs may be claimed:

29.1 Up to \$200 per night for accommodation;

29.2 Up to \$120 per night away, daily total for meals.

*Office related disbursements*

30. Photocopying at 0.12c per page for black and 0.25c per page for colour copying;
31. Actual and reasonable costs may be claimed for cell phone and toll calls, postage, courier and fax costs.
32. As an alternative to charging for actual disbursements, and with the approval of the instructing department, Crown Solicitors may charge an administrative fee of up to 2.5% of their professional fees, to cover their costs of printing, photocopying, telephony, postage, courier, fax and general office administration.

### **Alternative fee arrangements**

33. Departments may enter into alternative fee arrangements with Crown Solicitors, subject to the approval of the Solicitor-General. Examples which may be considered include:
- 33.1 Fixed price or capped fee:
  - 33.2 Retainer arrangements;
  - 33.3 Volume based discount.
34. These will mainly work where a department provides a significant volume of work to a particular Crown Solicitor's office or where a department has a number of cases that are very similar.
35. Alternatively a department may wish to enter into an alternative fee arrangement due to the special expertise or level of service required.
36. Applications to approve alternative fee arrangements should be addressed to the Solicitor-General and sent to the Public Prosecutions Unit.

### **Invoicing and reporting to departments**

37. Invoices sent by Crown Solicitors to departments must be accurate and include a sufficient level of details to assist the department with understanding and keeping track of its spending.
38. Invoices to departments should include the following (where applicable): Defendant's name, charges, description of work done, name of counsel, number of hours and relevant hourly rate, fees charged, GST, disbursements/admin fee (including GST), total outstanding, and a running total billed for the prosecution from point of initial instructions.
39. Crown Solicitors must comply with any requirements of departments in relation to invoicing, reporting and providing estimates.

### **Review**

40. Crown Law will review the fees framework as needed. Reviews will include consultation with departments and Crown Solicitors.

## APPENDIX THREE: CLASSIFICATION CRITERIA FOR CROWN PROSECUTORS

**Last reviewed: May 2021**

1. Classification of all Crown prosecutors is mandated by the Crown Solicitors' Terms of Office. With the move to an annual fee regime ('bulk funding'), classification no longer affects the ongoing fee revenue in Crown prosecutions but it remains as a tool to assist Crown Solicitors with allocating prosecution files to counsel with appropriate level of experience. In non-Crown prosecutions, classification of counsel continues to be the basis for the hourly rate charged to the departmental client.
2. Although usually related, Crown Law approaches the classification process as separate from matters of promotion, remuneration and staff management which are properly regarded as matters for the Crown Solicitors and their firms' partners, as employers.
3. It is important that the classification process be carried out in a consistent and principled way, based upon criteria that apply to Crown Solicitors across the country. This guidance is provided to assist Crown Solicitors and prosecutors to work towards a smooth progression through the various classification levels, while understanding how applications will be assessed by the Crown Law Office.

### *Key principles*

4. **Flexibility and discretion:** This document outlines the ordinary criteria for classification as a general guidance against which classification applications will be measured. It is by no means a prescriptive or exclusive code. Variations of or departures from the guidance criteria will be looked at on a case-by-case basis and accommodated in appropriate cases where the candidate presents alternative forms of experience akin to the criteria described below.
5. **Jury trial experience:** The main focus of the classification assessment for Crown prosecutors is their level of experience in jury trials as sole or lead counsel. Experience in other areas of litigation – e.g. Judge alone criminal trials, appeals, civil litigation – will be taken into consideration and compared, to the extent it is practicable, to the appropriate equivalent level of jury trial experience.
6. **Information:** It is important that the Deputy Solicitor-General (Criminal), who is the decision maker, have all the relevant information upon which to determine the classification level.
7. **Crown Solicitor's endorsement:** Classification applications should be submitted by the Crown Solicitor, thus reflecting the Crown Solicitor's own professional assessment of the prosecutor and recommendation that the prosecutor be classified or reclassified. Crown Law will be guided by the Crown Solicitor's own professional assessment of the prosecutor.
8. Subject to the above principles, general guidelines for classification of Crown prosecutors are set out below.

### **Junior Prosecutor**

9. Criterion:

Prosecutor having been admitted as a Solicitor and Barrister of the High Court of New Zealand and holds a practising certificate.

10. Supporting documentation:

Curriculum vitae. University records are not required, but prosecutors are invited to provide basic information about previous legal experience.

### **Intermediate Prosecutor**

11. Criteria:

11.1 A minimum of three years' continuous experience as a junior Crown prosecutor; and

11.2 Prosecutor has conducted approximately five jury trials as sole or lead counsel.

12. Equivalent relevant experience will be considered on a case-by-case basis.

13. Supporting documentation:

Applications should include lists of trials and other significant litigation conducted with a brief description of what those trials entailed in terms of prosecutorial experience. In particular: the type of charges (e.g. drugs, violence); the role played by the prosecutor (e.g. sole/lead or second/junior counsel, in the latter case with an indication as to their role in Court e.g. opened/closed/cross examined); particular areas of expertise; significant features and scope of cases (e.g. number of witnesses, number of days, whether defendant gave evidence etc.).

### **Senior Prosecutor**

14. Criteria:

14.1 A minimum of seven years' continuous experience as a Crown prosecutor;

14.2 Prosecutor has conducted approximately 50 District Court trials as sole prosecuting counsel;

14.3 Prosecutor regularly conducts serious trials in the District Court as sole counsel;

14.4 Prosecutor has some background appearing in High Court trials as sole counsel, as well as junioring on complex or more serious matters.

15. Equivalent relevant experience will be considered on a case-by-case basis.

## 16. Supporting documentation:

Similar to Intermediate Prosecutor but focusing on the more significant work and cases conducted as a prosecutor, rather than a case-by-case run down.

**Principal Prosecutor**

## 17. Criteria:

17.1 Appointment as Crown Solicitor;

17.2 Appointment as Queen's Counsel; or

17.3 Having at least 10 years of continuous and senior prosecutorial experience during which time the prosecutor was classified by Crown Law as Senior Prosecutor.

18. Equivalent relevant experience will be considered on a case-by-case basis.

## 19. Supporting documentation:

A letter of application from the Crown Solicitor for prosecutors covered under 17.3. No application required for prosecutors covered under 17.1 and 17.2.

**Panel members**

20. As panel members conduct their work without direct supervision of other Crown prosecutors, the classification criteria for them are stricter than for Crown prosecutors. In general terms, a panel candidate will be required to establish they fit the higher end of the corresponding criteria for Crown prosecutor. For example, a fresh graduate will be considered unsuitable to be a junior panel member and a prosecutor who marginally meets the above criteria will be considered unsuitable to serve as a panel member of the corresponding category.

**Limited Classification**

21. Where appropriate, counsel classification may be limited to a particular type of prosecutions. For example, an intermediate prosecutor specialising in departmental prosecutions may be classified as senior for non-Crown prosecutions only.