

TAB 1

**CROWN SOLICITORS:
TERMS OF OFFICE**

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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 – means a Crown prosecution as defined in the Criminal Procedure Act 2011 and the Crown Prosecution Regulations 2013.

Crown prosecutor – means any Crown prosecutor, as defined in the Criminal Procedure Act 2011, who is a lawyer from the Crown Solicitor firm representing a Crown Solicitor.

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 Crown prosecution;

16.2 act against the Crown in any prosecution initiated by a department;

16.3 act against the Police on any legal work;

16.4 act against the Crown in respect of any legal work where the substantive issue is a decision of the Attorney-General or Solicitor-General;

16.5 act for the prosecutor in any private prosecution;

16.6 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.

17. Crown Solicitors and lawyers in the Crown Solicitor firm may accept instructions for the defence in any other public prosecution but must cease to act immediately if the matter becomes a Crown prosecution.

EXECUTION OF DUTIES

18. 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:

18.1 Prosecution Guidelines;

- 18.2 Victims of Crime – Guidelines for Prosecutors;
 - 18.3 Media Protocol for Prosecutors; and
 - 18.4 The Memorandum of Understanding between the Solicitor-General and the Commissioner of Police.
19. The Solicitor-General expects to be consulted on any significant or potentially controversial media inquiries. Crown Solicitors need not consult on routine media inquiries.
20. 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

21. 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.
22. The Crown Solicitor will take all reasonable steps to ensure that all Crown prosecutors acting under his or her direction:
- 22.1 have the requisite skills, expertise, qualifications and experience; and
 - 22.2 carry out their respective duties with due care, skill and diligence.

Absence from duties

23. Where the Crown Solicitor wishes to take leave from his or 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.
24. 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

25. Crown Solicitors and members of their firms will be classified by the Solicitor-General as senior, intermediate or junior prosecutors.
26. The Crown Solicitor may make a recommendation to the Solicitor-General for the classification or reclassification of a Crown prosecutor.
27. 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.

Crown Panel

28. 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.

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.

Information and file maintenance

32. 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.
33. Crown Solicitors must take all reasonable steps to protect the security of information they hold.
34. 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.
35. Crown Solicitors must, upon request, make any files relating to Crown Solicitor duties available to the Solicitor-General for inspection.

FEES

36. The Solicitor-General will set an annual fee for the provision of services under paragraphs 11.1 - 11.3 and 11.7 in each warrant, based on the available government funding. Refer to the Appendix One for the detail of the annual fees determined by the Solicitor-General.
37. 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 paragraph 11.4. Refer to Appendix Two for the detail of the fees framework determined by the Solicitor-General.
38. For all other work the fees will be set by the Solicitor-General in consultation with Crown Solicitors.

CROWN SOLICITOR REVIEWS

39. 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.

40. 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.

REVOCATION OR TERMINATION OF WARRANT

41. A Crown Solicitor’s warrant is held at pleasure.
42. 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.

[signature}

APPENDIX ONE: FEES AND BILLING FOR CROWN PROSECUTION SERVICES

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 indictable matters following committal for trial, and Crown prosecutions¹ from the time the Crown assumes responsibility for the prosecution,² excluding appeals other than as expressly provided for in this appendix;
 - 2.2 The conduct of appeals to the High Court from decisions made in indictable matters prior to committal, such as bail and name suppression;
 - 2.3 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;³
 - 2.4 The conduct of pre- and post-conviction appeals to the High Court from other public prosecutions (ie summary or non-Crown prosecutions);
 - 2.5 The conduct of matters in the Youth Court as specified in the Memorandum of Understanding between the Solicitor-General and the Commissioner of Police;

¹ 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).

² 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 (eg plea entry, election of jury trial etc) not the date the notice is filed, which will inevitably be a later date.

³ 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.

- 2.6 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;⁴
 - 5.2 A contingency fund to allow for unforeseen circumstances;⁵
 - 5.3 The volume and case mix of disposals in each warrant;
 - 5.4 A 20 per cent weighting for trial length using data from 2011/2012, this being a short term component only; and

⁴ Fixed at approximately \$33m in 2013/2014.

- 5.5 A transitional year in 2013/2014.
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. After the fourth, eighth and twelfth months of the year the 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. At the end of the year, residual differences between the final annual fee and the amount paid to Crown Solicitors during the year will be reflected in the annual fee for the following year.

Management of the contingency fund

10. Crown Law will hold and manage a contingency fund, being 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.⁶
11. The purpose of the contingency 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

⁵ Set at five per cent of the total funding available for 2013/2014.

⁶ The Solicitor-General has determined that Crown Law will hold five per cent of total available funding as the contingency fund for 2013/2014.

exceptionally high cost cases, or external factors unrelated to work volumes such as natural disasters. These examples are illustrative only.

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

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

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.

Crown Solicitor Regulations 1994 –transitional arrangements

3. The Crown Solicitor Regulations 1994 are revoked from 1 July 2013 and only apply to work done prior to 1 July 2013. In respect of work done after 1 July 2013 on summary cases which were commenced prior to 1 July 2013 there are specific provisions below.

Scope and application of this framework

4. These fees apply to work done from 1 July 2013 by Crown Solicitors on instructions from departments⁷ for:
 - 4.1 summary prosecutions initiated prior to 1 July 2013 ;
 - 4.2 criminal prosecutions under the Criminal Procedure Act 2011 which are not Crown prosecutions⁸;
 - 4.3 work on Crown prosecutions prior to the time when the Solicitor-General has assumed responsibility under s 187 of the Criminal Procedure Act;
 - 4.4 High Court criminal appeals by departments (excluding the Police)⁹ from the prosecutions in 4.1 and 4.2.
 - 4.5 Any bail or name suppression or similar proceedings related to a matter outlined in 4.1-4.3.¹⁰

⁷ “Departments” as defined in the Cabinet Directions for the Conduct of Crown Legal Business, which includes the Police.

⁸ As defined in the Crown Prosecution Regulations 2013.

⁹ Departments (excluding the Police) pay for appeals where they are the appellants. 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.

5. Departments are referred to the Cabinet Directions for the Conduct of Crown Legal Business for information on when Crown Solicitors may be directly instructed. For the avoidance of doubt, 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.
6. For the purposes of 4.3 above the Crown Prosecution Regulations 2013 provide that the Solicitor-General will assume responsibility for:
 - 6.1 All category 4 offences from the time the proceeding is transferred to the High Court after the defendant's first appearance.
 - 6.2 All offences that are listed in the Schedule to the Regulations from the time the proceeding is adjourned following the entry of a plea.
 - 6.3 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.
 - 6.4 A proceeding that is transferred to the High Court in any other case, from the time the proceeding is transferred to the High Court.
 - 6.5 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

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

Hourly rate of remuneration

8. The hourly rates are:
 - 8.1 Senior prosecutor \$240;

¹⁰ This does not cover appeals to the High Court on these issues as they are funded by Crown Law.

8.2 Intermediate prosecutor \$192;

8.3 Junior prosecutor \$140.

Time allowed for activities

9. Unless otherwise stated time may be charged in units no larger than 15 minutes and, subject to the maxima, fees are based on actual time spent.

Summary prosecutions commenced prior to 1 July 2013 (work done after that date)

10. A maximum of seven hours preparation may be billed for each Court appearance, including defended hearings and sentencing hearings. Appearance time should be billed on the basis of actual time spent, in units no larger than 15 minutes, with the exception of defended hearings which should be billed by the half day or part thereof. A half day is four hours.
11. Where an appearance relates to more than one matter, the appearance time should be apportioned between those matters.

Appeals to the High Court filed prior to 1 July 2013

12. A maximum of five hours preparation may be billed for appeals by the informant to the High Court or for case stated appeals by the Police until the case is stated.¹¹ Appearance time should be billed on the basis of actual time spent, in units no larger than 15 minutes. Where an appearance relates to more than one matter, the appearance time should be apportioned between those matters.
13. The maxima in this section include time spent preparing for interlocutory appearances in respect of appeals.

Other matters commenced prior to 1 July 2013

14. A maximum of ten hours preparation may be billed for any matter in the High Court where not provided for above. Appearance time should be billed on the basis of actual time spent, in units no larger than 15 minutes, with the exception of defended

¹¹ This covers only appeals by departments (but not the Police) against decisions of the District Court. Crown Law funds all criminal appeals to the High Court in respect of summary cases where the appeal is by the offender or by the Police and this work is covered by the annual fee set for that work. The exception is for case stated appeals by the Police where the Police fund until the case is stated. This approach, in terms of who pays, also applies to appeals under the Criminal Procedure Act 2011.

hearings which 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.

15. A maximum of seven hours preparation may be billed for any other matter not provided for above. Appearance time should be billed on the basis of actual time spent, in units no larger than 15 minutes, with the exception of defended hearings which 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.

Cases initiated from 1 July 2013 under the Criminal Procedure Act 2011

16. This section and the attached appendix sets out the maximum time and therefore fees payable for cases initiated from 1 July 2013 under the Criminal Procedure Act 2011. These prosecutions have been divided into stages as follows:
 - 16.1 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 is allowed for this stage.
 - 16.2 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, and liaising with the defence to complete the case management memorandum and dealing with issues such as bail, name suppression and media coverage. There will be at least three court appearances during this period, namely first appearance, plea entry and case review. Up to ten hours preparation is allowed for this stage. Appearance time should be billed on the basis of actual time spent, in units no larger than 15 minutes.
 - 16.3 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 10 hours preparation per application is allowed. 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.

- 16.4 A trial phase. Up to ten hours preparation time for trial (whether prior to or during trial), which will include the preparation of briefs of evidence if required,¹² may be claimed. 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.
- 16.5 A sentencing phase. Up to seven hours is allowed 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.
- 16.6 In addition to the above, a further two hours may be claimed for attending to disclosure (if required).
- 16.7 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' preparation from the date the appeal is filed may be claimed. Appearances should be billed on the basis of actual time spent, in units no larger than 15 minutes.
17. All correspondence with, or reporting to, the instructing department is included in and covered by the above allowances.

¹² This paragraph is drafted with the expectation that briefs of evidence will have been prepared by the instructing department. The reference to preparing briefs of evidence refers to the finalisation of those briefs by 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 in accordance with paragraph 18.

Additional activities

18. Any additional matters not covered above, for example pre-charge advice, the preparation of briefs of evidence where briefs have not been prepared by the instructing department, or 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), 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.

Complex proceedings

19. In exceptional cases, Crown Solicitors may seek the prior approval of the instructing department to carry out additional work and incur fees for particularly complex cases. The following factors may indicate that the case is exceptional and complex:
- 19.1 Multiple defendants;
 - 19.2 Expert or highly technical evidence called by the prosecution;
 - 19.3 A very large volume of evidence;
 - 19.4 An indication of a large number of pre-trial applications by the defence, impacting on the conduct of the prosecution;
 - 19.5 High profile or sensitive prosecution where that significantly increases the work required.
20. In these circumstances, the Crown Solicitor must provide the department with an estimate setting out the additional costs by stage and seek approval for the additional time which will be needed to be spent. This approval should be sought before any work is undertaken.
21. 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.

Instructing agents

22. 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.
23. The Crown Solicitor may claim a maximum of one hour for instructing the agent.

Disbursements

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

Travelling expenses

25. 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

26. For each hour of travel an allowance shall be payable at the following rates:
- 26.1 In the case of a Crown Solicitor or senior lawyer 66 per cent of the senior hourly rate of remuneration;
- 26.2 In the case of an intermediate lawyer, 53 per cent of the senior hourly rate of remuneration; and
- 26.3 In the case of a junior lawyer 43 per cent of the senior hourly rate of remuneration.
27. 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

28. 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

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

Airfares etc

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

Accommodation and meals for overnight travel

31. Where it is agreed with the department that overnight travel is required, the following costs may be claimed:
- 31.1 Up to \$200 per night for accommodation;
 - 31.2 Up to \$40 per meal per night away.

Expert witnesses

32. Expert witnesses are to be engaged in consultation with the department. The Crown Solicitor's firm is responsible for initially meeting the fees of the expert and may then be reimbursed by the department.

Office related disbursements

33. Photocopying at 0.12c per page for black and 0.25c per page for colour copying;
34. Actual and reasonable costs may be claimed for cell phone and tolls calls, postage, courier and fax costs.

Alternative fee arrangements

35. Departments may enter into alternative fee arrangements with Crown Solicitors, subject to the approval of the Solicitor-General. Examples which may be considered include:
- 35.1 Fixed price or capped fee:

35.2 Retainer arrangements;

35.3 Volume based discount.

36. These will mainly work where a department provides a lot of work to a particular Crown Solicitor's office or where a department has a number of cases that are very similar.
37. Alternatively a department may wish to enter into an alternative fee arrangement due to the special expertise or level of service required.

Crown Solicitors working with departments

38. Crown Solicitors must comply with any requirements of departments in relation to invoicing, reporting and providing estimates.

Review

39. Crown Law will review the fees framework in time for any changes to be implemented on 1 July 2015. The review will include consultation with departments and Crown Solicitors.