

OIA 20203009

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TE TAI ŌHANGA
THE TREASURY

Treasury Report: Justice baseline review final report

Date:	22 December 2020	Report No:	T2020/3411
		File Number:	BM-2-7-2020-1

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Note the contents of this report.	29 January 2021
Hon Kris Faafoi Minister of Justice	Refer this report to the Minister for the Prevention of Family and Sexual Violence and/or Minister of Corrections and/or Minister of Police.	
Hon Aupito William Sio Minister for Courts	Agree that MoJ report back prior to Budget 2022 on options for supporting work led by the Chief District Court Judge, Te Ao Mārama, outlining trade-offs of time, cost and benefits.	
	Agree that further investment in legal services include consideration of the share of cases covered by the Public Defence Service, taking into account value for money and its broader role and the potential impact on the private market.	
	Agree that MoJ prioritise investment and evaluation strategies as part of their review of the operating model for Provider Community Services.	

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Igor Dupor	Senior Analyst, System Design and Strategy	s9(2)(k)	n/a (mob) ✓
Oliver Parsons	Team Leader, System Design and Strategy		n/a (mob)

Minister's Office actions (if required)

Return the signed report to Treasury.

Refer this report to the Minister for the Prevention of Family and Sexual Violence and/or Minister of Corrections and/or Minister of Police if agreed.

Note any feedback on the quality of the report

Enclosure: No

BUDGET-SENSITIVE**Treasury Report: Justice baseline review final report**

Executive Summary

In April 2020, the then Ministers of Finance, Justice and Courts agreed the terms of reference for a baseline review of the Ministry of Justice (MoJ), specifically Votes Justice and Courts, including how they interact with the broader justice sector. This final report presents the review team's findings, makes recommendations for further work, and outlines the likely impacts of investment or reprioritisation across the baseline.

MoJ is unique in that it is the only agency working across all three branches of government. A key operational role for MoJ is supporting the judiciary, courts and tribunals, placing it in a delicate position of delivering justice through the courts with a judiciary that is independent of the executive.

Across the justice sector, the largest appropriations and increases in cost have been associated with policing and custodial sentences, which are outside of the review scope. However, the main drivers of cost within MoJ are associated with appropriations for courts and legal aid assistance, which are linked to the actions of other actors in the broader justice sector through the courts.

A key observation of the review is the declining timeliness of courts disposing of serious criminal cases. Although new business has not fluctuated significantly across jurisdictions, it is taking longer to resolve cases, which is leading to growing backlogs. MoJ has various hypotheses about why court timeliness is deteriorating but has limited levers to address them, particularly those that implicate the broader justice sector. As such, MoJ has placed significant effort into optimising frontline service delivery. Court processes are now under active review in a project led jointly by the Chief District Court Judge and MoJ, but also involving other sector agencies and the profession. This includes looking at aspects of practice that could improve quality and efficiency, as well as mainstreaming therapeutic approaches aimed at improving outcomes (Te Ao Mārama).

The responsibilities of MoJ's Policy and Sector Groups have grown significantly over time, which has required trade-offs. Some of these trade-offs have meant missed opportunities to address system performance issues with potential fiscal implications (e.g. research and evaluation), including not being able to support work suggested by Courts and Tribunals operations that could potentially improve system performance.

MoJ also manages a large and complex portfolio of properties and ICT products and services. Past investment may not have been enough to adequately maintain the portfolio, which has led to some properties being in poor condition and poor ICT functionality.

MoJ faces a fundamental tension between running the current system, managing constitutional risks and investing in transformation of the justice system, including through facilitating co-ordinated approaches between justice sector agencies. The current court system processes are driving significant fiscal pressures. Getting these under control needs to be a priority for various reasons, including:

- a for investment in transformation to be effective and affordable
- b to ensure that introducing therapeutic court processes (which may be more time-intensive for the courts) does not reinforce the trends that are causing time spent on remand to increase, offsetting their longer-term benefits, and
- c to improve trust in and legitimacy of the system, by ensuring justice issues are resolved in a fair and timely way.

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A theme of the review has been MoJ's relatively reactive planning and resourcing. The struggle to prioritise projects within the annual budget cycle has been exacerbated by frequent use of time-limited funding, which has had a negative effect on efficiency. One of the original objectives of the baseline review was to put in place a medium-term funding path. Providing MoJ with medium-term funding certainty would help to align resourcing with strategy, in order to improve the sustainability and affordability of the justice sector.

The prioritisation of longer-term initiatives and stewardship will likely provide sustained benefits, requiring sector-wide research and collaboration to address court system performance. Improving coordination across the justice sector is also likely to yield near-term benefits by better linking outputs and outcomes. It will be particularly beneficial where costs and benefits are split across portfolios or accountability is distributed.

Digitising the court process would improve performance. The flagship project that MoJ has been proposing to deliver on this is a new Caseload management system. Legislative reform could also improve court process and shape judicial decisions on sentencing and remand.

Due to its unique constitutional position, MoJ has limited ability to reprioritise parts of its baseline, particularly in the short-term. A 4.2 percent decline in the baseline is forecast for the next financial year, which means that decisions are required about the delivery of current outputs and any additional Government priorities. This is particularly acute for the Policy and Sector Groups, which will not be able to continue current levels of output without additional funding. We have also noted that ongoing rather than time-limited funding is likely to provide better value for money by reducing reliance on contractors.

Budget initiatives are due to the Minister of Finance and the Treasury by 29 January 2021. These initiatives will be limited to critical cost pressures and the priority manifesto commitments. All other initiatives are out of scope and will not be considered through Budget 2021. Initiatives will need to demonstrate that they represent high value for money and are implementation ready.

This report is intended to inform priorities for investment and reprioritisation. Recommendation q notes suggested priorities for investment, and Appendix A shows the impacts of reprioritisation across the baseline.

Ministry of Justice comment

The justice system is complex. Overall performance is the product of the interaction between behaviours and decisions of multiple players, often exercising their independent authorities. We agree system performance has been deteriorating for some time and in some important respects. This can be seen most obviously in the increase in the number of court events before cases are resolved, delays, and (until recently) a long-term increase in the remand prison population.

Complex systems are not typically amenable to quick-fix solutions and this truth has certainly been evident in the justice system. Aligned action does make a difference, however, and over the past two and a half years the collective effort of all agencies in the sector has seen the overall prison population reduce by over 2,000 people. There is much more to do and without continued effort and investment these gains are not expected to be maintained. Digitising the court process will build transparency and trust and support better court performance. Court processes are under active review in a project led jointly by the Chief District Court Judge and the Ministry of Justice, involving other sector agencies and the profession. And legislative reform could both improve court process and shape judicial decisions on sentencing and remand.

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Notwithstanding the recent gains, the Ministry of Justice has been hamstrung by an under-investment in both policy capacity and court systems (particularly in digitising the court). We believe the key findings of this baseline review are that the Ministry has not had enough policy bandwidth to complete both Ministerial priorities and court reform work, and that investing in a digitised court information system will underpin better performance in the future.

This baseline review has confirmed the Ministry of Justice is under-resourced in some important areas – and that the impact of this under-resourcing has meant longer run stewardship work has often not been able to be done. Work on the baseline review did not identify any low priority work that could be discontinued to solve this dilemma.

Finally, the report recommends that the Ministry should undertake research and conduct reviews of different pieces of legislation and operating models. While we agree that this work would add significant value as part of our stewardship role, we also note the irony of this recommendation given the overall findings of the baseline review.

BUDGET-SENSITIVE**Recommended Action**

We recommend that you:

a **note** that in April 2020, the then Ministers of Finance, Justice and Courts agreed the terms of reference for a baseline review of Votes Justice and Courts

b **refer** this report to the Minister for the Prevention of Family and Sexual Violence

<i>Agree/disagree</i>	<i>Agree/disagree</i>	<i>Agree/disagree</i>
Minister of Finance	Minister of Justice	Minister for Courts

c **refer** this report to the Minister of Corrections

<i>Agree/disagree</i>	<i>Agree/disagree</i>	<i>Agree/disagree</i>
Minister of Finance	Minister of Justice	Minister for Courts

d **refer** this report to the Minister of Police

<i>Agree/disagree</i>	<i>Agree/disagree</i>	<i>Agree/disagree</i>
Minister of Finance	Minister of Justice	Minister for Courts

Courts

e **note** that the main driver of increasing cost for MoJ is the increased number of court events it is taking to resolve cases, particularly serious criminal cases, and MoJ has influence rather than control over these trends

f **note** that MoJ will support work led by the Chief District Court Judge to improve criminal processes in 2021 that may deliver efficiency gains

g s9(2)(f)(iv)

h **agree** that MoJ report back prior to Budget 2022 on options for supporting work led by the Chief District Court Judge, Te Ao Mārama, outlining trade-offs of time, cost and benefits

<i>Agree/disagree</i>	<i>Agree/disagree</i>	<i>Agree/disagree</i>
Minister of Finance	Minister of Justice	Minister for Courts

Policy

i **note** that due to the expiry of time-limited funding, the policy group will not likely have capacity to support new business without additional funding, and that ongoing rather than time-limited funding would support better value for money

Sector group

j **note** that greater prioritisation of research and evaluation is likely to be high value

k **note** that the sector group will not likely have capacity to support new business without additional funding, and that ongoing rather than time-limited funding would support better value for money

l **note** that time-limited funding associated with Hāpaitia Te Oranga Tangata – Safe and Effective Justice and Behavioural Sciences Aotearoa will expire in 2021, and decisions are required about whether to continue this work

Joint venture

m **note** the upcoming reviews that will be considered by Cabinet on the long-term organisational form of the Government's response to family violence and sexual violence

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Service providers

n **note** that analysis undertaken for this baseline review showed potential for improved efficiency and effectiveness

o **agree** that MoJ prioritise investment and evaluation strategies as part of their revised operating model for Provider Community Services

Agree/disagree
Minister of Finance

Agree/disagree
Minister of Justice

Agree/disagree
Minister for Courts

Budget 2021 and beyond

p s9(2)(f)(iv)

q

r

s



Oliver Parsons
Team Leader, System Design and Strategy

Hon Grant Robertson
Minister of Finance

Hon Kris Faafoi
Minister of Justice

Hon Aupito William Sio
Minister for Courts

BUDGET-SENSITIVE**Treasury Report: Justice baseline review final report**

Purpose of Report

1. The purpose of this report is to provide you with key findings of the baseline review of Votes Justice and Courts, in order to inform discussions about priorities and resourcing ahead of Budget 2021.
2. On 23 April 2020, the then Ministers of Finance, Justice, and Courts agreed the Terms of Reference for a baseline review of the Ministry of Justice [T2020/261 refers]. An interim report was provided on 16 July 2020 that included preliminary findings and proposed areas for further investigation [T2020/2357 refers].
3. Further advice was provided on 3 September 2020 [T2020/2872 refers], noting that the Minister of Finance had requested information on:
 - a past Budget and internal reprioritisation decisions taken and what MoJ has been able to deliver as a result
 - b how MoJ has influenced court performance in the past (e.g. addressing backlogs without further funding) and potential options that have not yet been pursued
 - c levers for MoJ and Ministers to address system performance (from a whole-of-sector perspective), the relative value of different decisions and likely impacts on future cost profiles
 - d options for reprioritisation and/or new investment to fund high-value areas, and
 - e supplementary data and analysis to support confidence in spending decisions.
4. This report is organised into the following sections:
 - a **Overview:** describing the roles of MoJ, its key baseline services and how it contributes to wellbeing.
 - b **Areas of focus:** analysis structured around eight key baseline splits.
 - c **Opportunities and priorities:** outlining key opportunities and our view of investment priorities over the forecast period. A breakdown of baseline services and the potential impact on value for money of dialling services up and down is included as Appendix A.

Overview

MoJ has three core roles***MoJ supports the independent judiciary in the courts and tribunals***

5. MoJ is unique in New Zealand in that it is the only agency working across all three branches of government – as well as working for the Legislature and Executive, a key operational role for MoJ is supporting the independent judiciary, courts and tribunals.
6. This unique role places MoJ in a very delicate position: the Secretary of Justice, as the Chief Executive of MoJ, is accountable to Parliament (through the Minister for Courts) for the expenditure of the public funds needed to administer justice in the courts and tribunals. Yet MoJ shares responsibility for delivering justice through the courts with the judiciary, which is independent of the Executive.

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7. In practice, this means that MoJ has influence rather than control over the drivers of a large portion of its baseline. Substantial change often requires legislation, which then has uncertain impacts on the system and behaviour of other parties.

MoJ leads the integrated justice sector

8. The second key role of MoJ is justice sector leadership. The justice sector includes the following key agencies and relationships to MoJ's stewardship and leadership role:
- a **Ministry of Justice:** Justice policy, legislation, regulatory settings, performance monitoring, engagement and co-ordination impacts administration of the courts.
 - b **NZ Police:** Policing and prosecutions are a key driver of criminal court inflow, and resourcing levels and the quality of their work can affect overall court performance. Police also have broader impacts such as the setting of bail conditions.
 - c **Department of Corrections:** In addition to criminal law settings, Corrections is increasingly affected by the timeliness of court proceedings and the impact this has on remand populations. Corrections also plays a key role in some criminal proceedings (for example, preparing pre-sentencing reports).
 - d **Oranga Tamariki:** Leading youth justice, care and protection.
 - e **Crown Law:** The Crown Law Office provides legal advice and representation services to the government and prosecutes the most serious crimes. All prosecutions are affected by the Solicitor-General's guidelines.
 - f **Serious Fraud Office (SFO):** SFO is the lead law enforcement agency for investigating and prosecuting serious or complex financial crime, including bribery and corruption.
 - g **Crown entities:** MoJ monitors the Electoral Commission, Human Rights Commission, Independent Police Conduct Authority, Law Commission, Privacy Commissioner, Real Estate Authority and the Criminal Cases Review Commission.

MoJ plays a cross-government role in constitutional stewardship

9. MoJ has an important cross-government role in stewardship of core constitutional principles of the rule of law, open justice, separation of powers, judicial independence, procedural fairness, safe and effective criminal justice, and legitimacy. It plays a review role ensuring the constitutional consistency of legislation developed by other government departments. MoJ is also responsible for maintaining international commitments and ensuring compliance with various international standards.
10. MoJ administers 150 Acts spanning civil law, human rights, electoral and constitutional, criminal justice and procedure, family law matters, and the statues establishing courts and tribunals and governing their procedure.

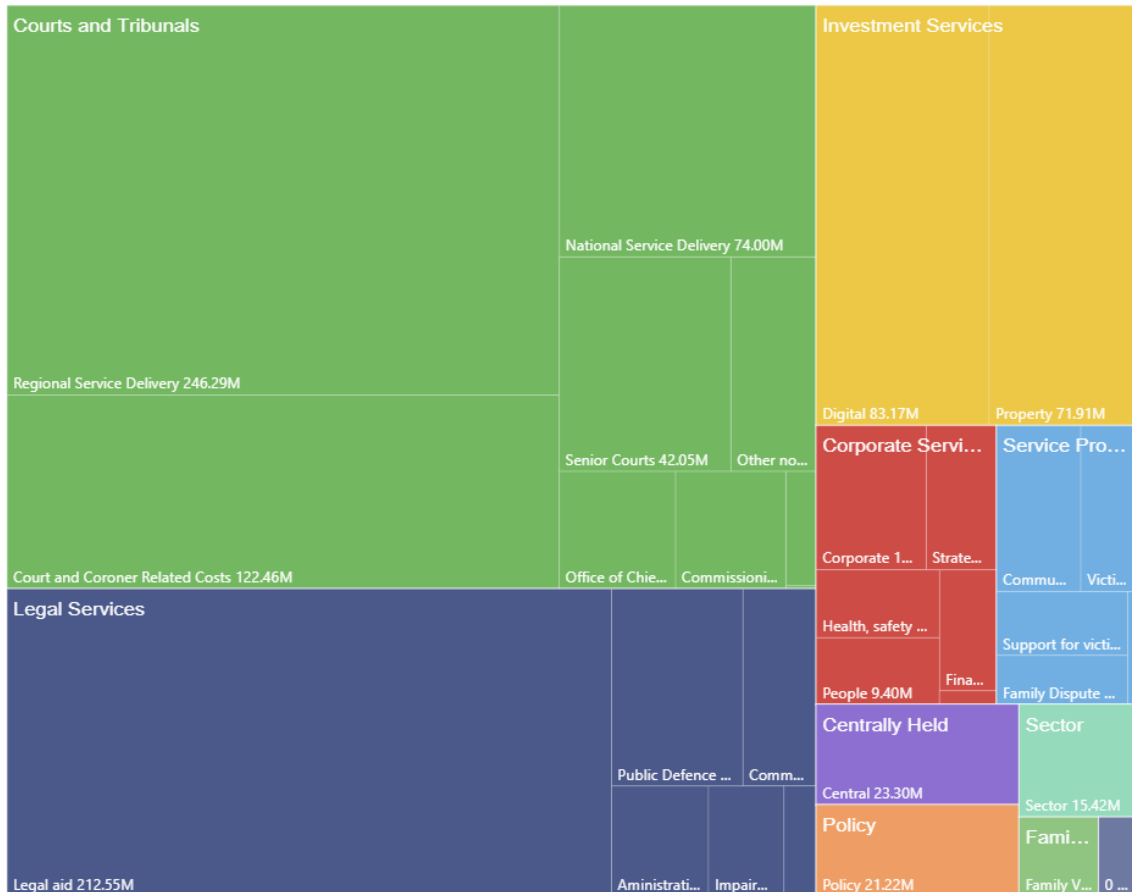
MoJ baseline services and impacts on wellbeing

11. This review has been structured around eight core baseline services (Figure 1):
- a Courts and tribunals
 - b Policy
 - c Sector Group
 - d Family Violence and Sexual Violence Joint Venture Business Unit (JVBU)

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- e Legal services
- f Service providers
- g Investment services (ICT and property), and
- h Corporate services (people, performance and finance).

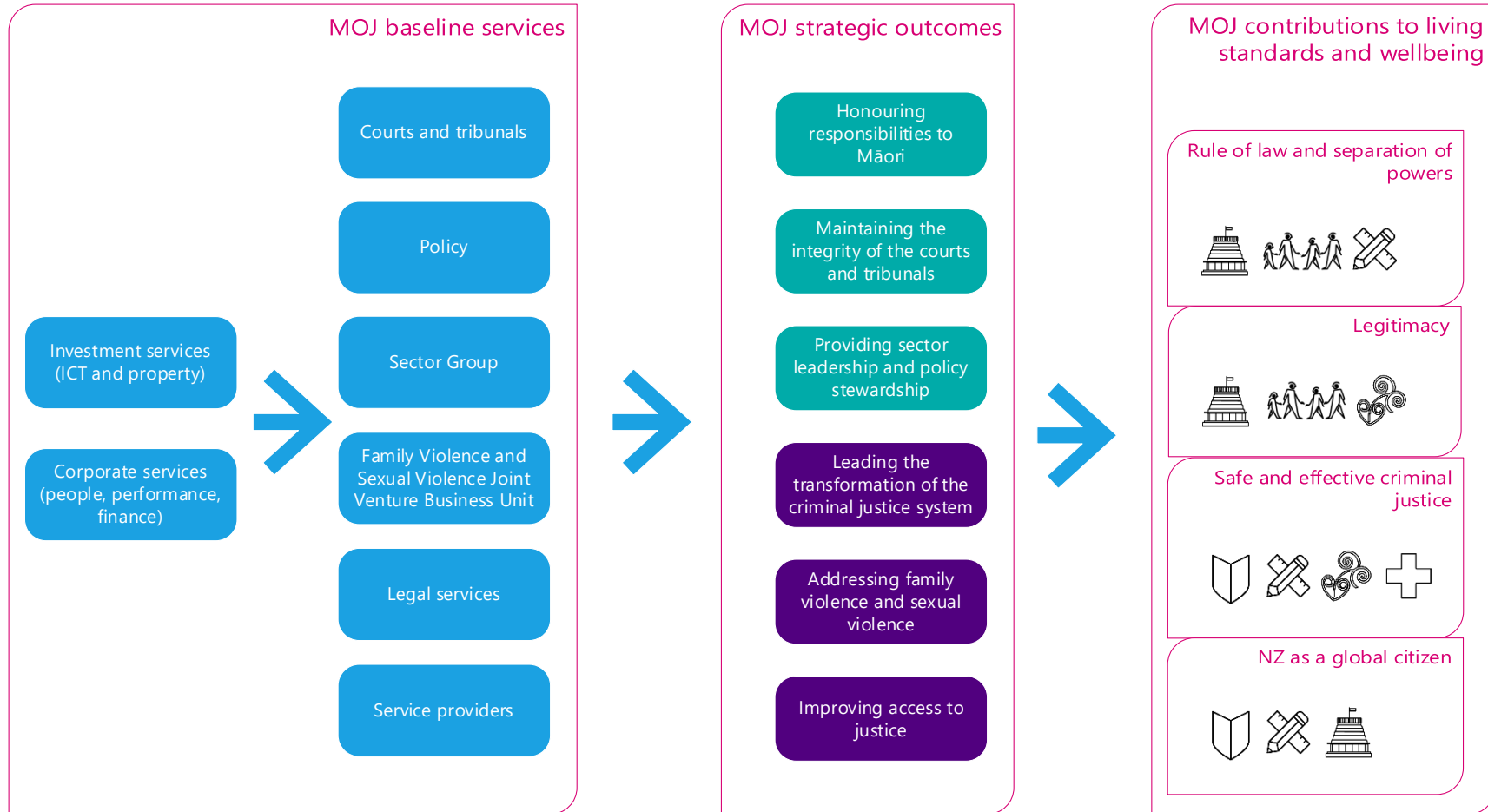
Figure 1: Financial map of areas of focus (as at OBU 2020, including time-limited funding)



12. The input/output chains for each area of focus (Figure 2) link to MoJ's strategic outcomes (Enduring Priorities and Transformational Opportunities), which in turn drive contributions to wellbeing in four key groups defined by MoJ:
 - a **Rule of law and separation of powers:** Rule of law, open justice, separation of powers, judicial independence, and procedural fairness are key contributors to civic engagement and governance, social connections, and jobs and earnings.
 - b **Legitimacy:** A just, fair, and prosperous society supports civic engagement and governance, social connections and cultural identity.
 - c **Safe and effective criminal justice:** Supports safety and security, jobs and earnings, cultural identity and health.
 - d **New Zealand as a global citizen:** Promoting New Zealand's interests through the maintenance of a global rules-based system supports safety and security, jobs and earnings and civic engagement and governance.
13. MoJ's policy and operational roles in the justice sector (particularly criminal justice) can have direct, near-term fiscal impacts. What happens in the courts is the main driver of cost for MoJ (via courts and tribunals, and legal services) and is a significant driver of cost for Corrections (particularly, but not exclusively via the remand population).

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Figure 2: Ministry of Justice value chain

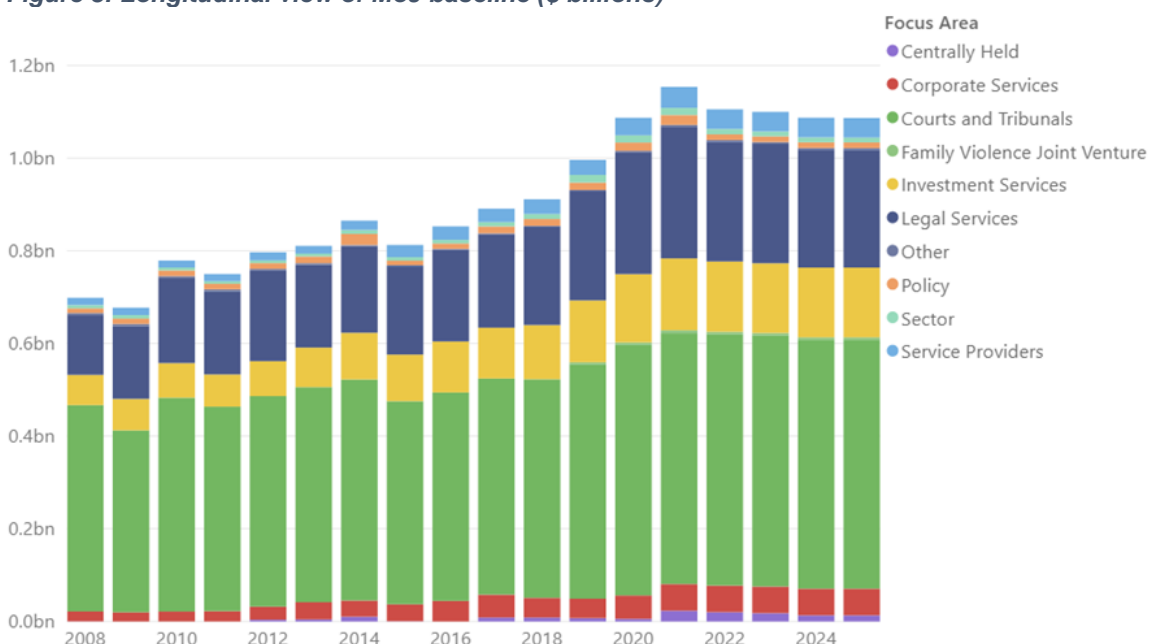


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14. By contrast, the impact and contribution to wellbeing of the constitutional role is far more difficult to measure but is likely significant. For example, judicial failure (e.g. widespread corruption in a justice institution such as police or courts) is a very high impact event with far-reaching social and economic consequences. By international comparison, New Zealanders have high levels of trust in institutions and low levels of perceived corruption. This contributes to the quality of the investment environment, though it is not possible to know the impact without a counterfactual of New Zealand with a lower-trust environment.
15. MoJ faces a fundamental tension between managing constitutional risks, running the current system, and investing in transformation of the justice system, including through facilitating co-ordinated approaches between justice sector agencies. The performance of the current justice system is what is driving fiscal pressures. Getting these under control needs to be a priority for various reasons:
 - a For investment in transformation to be affordable.
 - b To ensure that introducing therapeutic court processes (which may be more time-intensive for the courts) does not reinforce the trends that are causing time spent on remand to increase, offsetting the benefits of a more therapeutic approach.
 - c To improve trust in and legitimacy of the system, by ensuring justice issues are resolved in a timely and fair way.
16. In running the current system, improving coordination across the justice sector is also likely to yield near-term benefits by better linking outputs and outcomes, particularly where costs and benefits are split across portfolios or accountability is distributed.

Figure 3: Longitudinal view of MoJ baseline (\$ billions)



17. MoJ’s baseline has been steadily increasing since 2015 (Figure 3), with departmental expenses primarily driven by remuneration and depreciation costs due to upward revaluations of property, and non-departmental costs driven by increases in Legal Aid and Court and Coroner Related Costs. A substantial decrease in the baseline is forecast, due to time-limited funding coming to an end for family justice reforms, the cannabis referendum, Hāpaitia te Oranga Tangata – Safe and Effective Justice and pilots such as Behavioural Sciences Aotearoa.

BUDGET-SENSITIVE**Summarising MoJ's efficiency, effectiveness, sustainability and resilience**

Efficiency

18. The courts have become significantly less efficient since 2014, particularly in disposing serious categories of criminal cases in larger courts, creating substantial baseline pressures. This is due to cases taking longer to resolve, with more court events required to deal with them. This declining efficiency correlates with the Criminal Procedures Act 2011 coming into effect in 2014. Further evaluation is required to understand the extent of this correlation and the levers available to address any issues.
19. Within MoJ, corporate services have improved and remain low-cost, but have a low service-level model that in some cases means additional time pressure on other parts of the business (e.g. manager time). Process improvements could likely improve efficiency.

Effectiveness

20. There is limited knowledge of the effectiveness of some expenditure. As court data does not easily distinguish between legal aid, PDS or privately funded lawyers, assessing relative effectiveness or impact of investment decisions on behaviour is difficult. Some point-in-time evaluations are available (i.e., Family Dispute Resolution or Restorative Justice), but there is not a system for ongoing evaluation of outcomes to drive continuous improvement or understand trends.
21. Sector Group and the JVBU have a focus on cross-sector work. In both cases, public sector management and finance settings focused on agency silos make their work more challenging. It is unclear whether these are the right models to deliver on Government priorities and outcomes and there is potential for alternative institutional settings to increase impact.

Sustainability

22. Recent investment has significantly improved the sustainability of the property and ICT portfolio, but further investment is likely to be required.
23. Remanded and sentenced offenders are increasingly affected by the court timeliness. Approximately one third of the increase in the remand population since 2014 is attributable to reduced court timeliness. Left unaddressed, these trends will continue to limit access to rehabilitation programmes and 'access to justice' for defendants who would not otherwise have been imprisoned or spend longer on remand than their eventual sentence may have been.

Resilience and Risk

24. MoJ states it has successfully managed constitutional risks with minimal resources but is overextended and has needed to rely on assistance from other agencies. There are also contested views about the success of constitutional risk management, particularly in the extent to which pressures on the remand system are disproportionality impacting Māori and Pacific populations.
25. There are multiple issues likely to emerge over the near to medium-term that would require MoJ to build capacity, including (in no particular order):
 - a un-insurability and vulnerability of land to climate change and earthquake risks – and consequential legal action, dispute resolution, local authority and Crown liability issues
 - b strengthened calls for a New Zealand head of state

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- c artificial intelligence in decision-making and dispute resolution systems
 - d cross-border family movements in a post-COVID-19 world
 - e access to and prescription of COVID-19 vaccines for some populations
 - f maintaining levels of public trust and confidence in democratically elected government and legislature, including social cohesion and the legitimacy of law – with Royal Commissions highlighting public trust as a key issue, and
 - g the Waitangi Tribunal’s kaupapa inquiries, which will traverse significant policy areas and require considered and coordinated government responses.
26. Each of these issues are complex and each requires MoJ to play a role, whether as policy lead, a broker or as a provider of second opinion advice.
27. Depreciation pressures from revaluations from 2020 will also require reprioritisation of baseline funding or Budget funding, and the construction market’s ability to support the proposed property work programme may also be a risk.

Courts and tribunals

28. The review team has focussed on identifying the contributors to pressures faced by MoJ and the broader justice sector. Alongside the criminal and family courts, MoJ supports and administers specialist courts and tribunals, including the Employment Court, Environment Court, Māori Land Court, the Waitangi Tribunal, Coroners Court and over 20 other tribunals and authorities. The following analysis has limited focus on these jurisdictions, not as a reflection of their importance to the justice sector, but because they are not the main contributors to pressures on the sector.

It is taking more work to resolve court cases, while civil claims are falling

29. Courts and tribunals are under increasing pressure to dispose of new cases entering the system, particularly in more serious criminal cases. Although new case volumes have remained stable across jurisdictions, it is taking longer to resolve these, either because more events are being required to deal with them, and/or because more time is needed between each event.
30. The steady increase in average events has been driven in part by defendants pleading guilty later in the process. This change in behaviour is having a significant impact on the workload the courts must administer. The reason for this change in defendant behaviour is unclear. As cases take longer, the number of active cases increases, which is leading to growing backlogs.
31. Since 2017, disposal times for some case types have levelled off while others have continued to rise and are expected to continue rising under existing policy, legislative and operational settings.
32. Over the past five years, District Courts weighted workloads¹ have increased by almost one quarter. Figure 4 shows that this increase was driven by criminal workload, which has increased by 37.4 percent since 2015. Figure 5 shows that within the criminal jurisdiction, the largest contribution to workload has been from Category 3², while

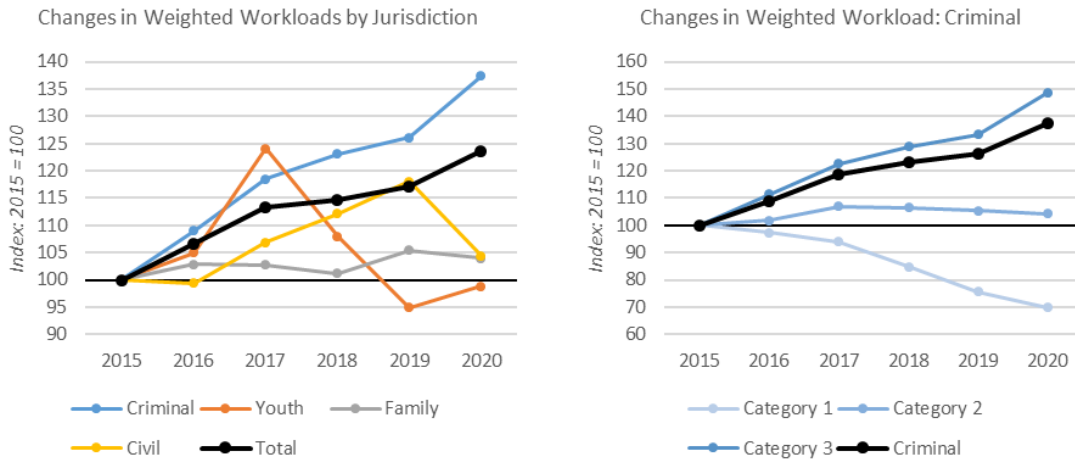
¹ Workload is defined as total court events, weighted by estimates employed within MoJ’s *Sector Resource Model*, including criminal, youth, family and civil case workloads.

² The CPA 2011 distinguishes between four offence categories, the most serious being category 3 and 4. Category 3 (Serious Harm) offences include rape, aggravated assault, robbery, threatening to kill, and kidnapping. These offences can be punishable by imprisonment for life or by imprisonment for two years or more. The defendant may elect a jury trial, in which

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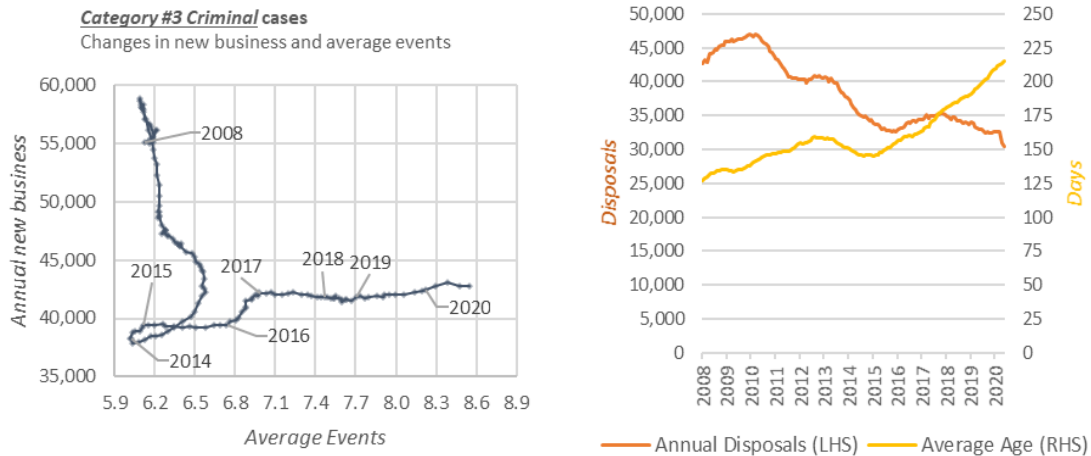
Categories 1 and 2 were flat or falling. Category 3 criminal workloads account for 54.2 percent of total District Court incoming workloads compared to only 45.0 percent in 2015.

Figures 4 and 5: Changes in weighted workloads of District Courts



- 33. Since 2015, over three quarters of the increased Criminal Category 3 workload has been driven by increased average events to disposal, rather than increased case volumes. This steady increase in average events has been driven predominantly by judge-alone trials, while average events for jury trials have been relatively more stable.

Figures 6 and 7: Criminal Category 3 cases, Average Events and Age of Disposals



- 34. Figure 6 shows that between 2008 and 2014, trends in Criminal Category 3 cases were marked by declining new business and stable average events per case. This shifted in early 2014 with new business stabilising while average events began to increase. This sudden shift correlates with the implementation of the CPA 2011. It is possible the CPA 2011 has changed incentives within the courts, having a subsequent impact on the behaviour of participants in the process. However, additional research and evaluation are required to understand the impact and/or contribution of the legislation to these trends and the underlying changes in behaviour.
- 35. Figure 7 shows the impacts of the trend in increasing events per disposal. Since mid-decade, the average time taken to disposal has increased by over one third and disposals relative to new business have decreased.

case the type of trial will be a jury trial in the District Court. Category 2 offences are an offence punishable by a term of imprisonment of less than two years. Category 1 offences are an offence punishable with a maximum penalty of a fine only.
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36. The average age of disposals for Criminal Category 3 cases is a significant factor in driving the increase in average time spent on remand, contributing to approximately one third of the growth in remand population between 2014 and March 2020. Since March 2020, there has been a significant decrease in the remand population. This decrease illustrates the impact that changes in the behaviour of players across the broader justice sector can have. Solutions that focus on addressing these issues are likely to yield significant benefits for both MoJ and the broader justice sector.
37. Family Court policy settings and an increased propensity for parties to defend their cases have caused stagnation in disposal timeframes, despite the average events per case decreasing over the past 5 years. New changes introduced in 2020 are aimed at reducing Family Court congestion. Urgent Care of Children Act applications have reduced by 14 percent since legal representation for initial proceedings was reinstated on 1 July.
38. Civil case volumes are trending downwards in both the District Court jurisdiction and the Disputes Tribunals. However, backlogs and disposal times are also increasing in the two specialist courts we considered (Māori Land Court and the Coroners Court). A significant work programme is underway to improve the performance of the Māori Land Court that includes changes to legislative and policy settings and a new automated case management system and legislative changes that extend the decision making of registrars (reducing the reliance on judges).

Observed trends are having various negative impacts on value for money

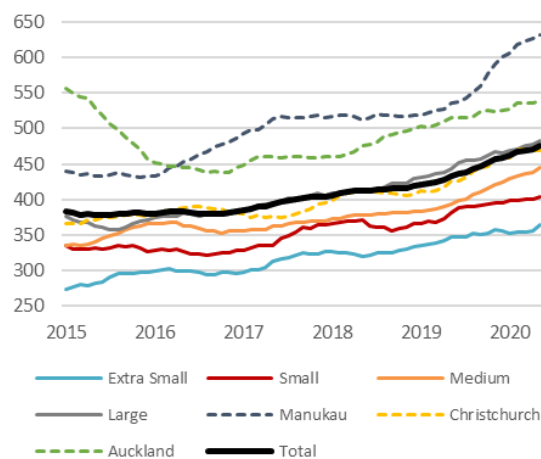
39. The decreasing timeliness of criminal courts is creating pressure throughout the broader justice sector. Both the remand population and average time on remand have been increasing, with many sentences commuted to time already served – indicating that many are on remand for longer than otherwise would have been had court cases been disposed in a timelier manner. This is compounded by the ineligibility of remand prisoners to access rehabilitative services while on remand, which potentially worsens outcomes for those on remand, relative to sentenced prisoners.
40. The longer court delays in serious criminal cases are contributing to the growing prison remand population, which is creating wider sector fiscal pressure on Corrections. The recent fall in prison populations is not projected to continue, as underlying drivers have not been addressed. Prolonged court proceedings are also negatively impacting victims of crime. These same trends are increasing the expenditure on legal aid, as private lawyers charge the Crown for their prolonged time in court. Figure 11 in the legal services section of this report shows that legal aid providers of serious criminal cases in Auckland have average costs that are increasing faster than PDS.
41. The timeliness of Family Court cases is not falling commensurately with the decline in average events per disposal. It is difficult to isolate the specific cause of increased timelines. However, there has been a shift in defended versus undefended Guardianship cases. Typically, defended Guardianship cases require twice as many events as undefended cases to dispose.

There are several possible explanations but no definitive conclusions as to the best levers to reverse worsening timeliness in the courts

42. MoJ has extensive evidence showing trends of defendants entering guilty pleas later in proceedings. There are various hypotheses about why these trends are occurring, but research or modelling has not yet been completed to test these, including:
- a a lack of Police prosecutor resourcing
 - b defence lawyers' behaviours delaying proceedings
 - c congestion in various courthouses, due to property constraints, and

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- d changing judicial expectations/legislation.
43. It is likely that the main underlying reason varies by court, due to different local environments and constraints driving different behaviours in each court.
44. People working in the system cite a lack of Police prosecutors, especially in high work demand areas such as Auckland and Manukau, as a serious resource issue. Insufficient prosecutor resources may be affecting the timeliness of disclosure, which may be a factor in the delay in defendants' pleas. ^{s9(2)(f)(iv)}
s9(2)(f)(iv)
45. Property constraints in courthouses in main centres where demand for courts services is at its highest mean that MoJ cannot accommodate additional judges and staff at those locations. In 2018, MoJ established a national team that centralised the scheduling process. Preliminary evidence suggests that property congestion is contributing to delays in case disposals, however, additional research is required to confirm the extent. Courtroom utilisation data have only recently begun to be collected so the impact on trends is unclear. However, this points to a correlation between high utilisation and decreased timeliness.
46. There is a growing approach by the judiciary for more solution-focussed (or therapeutic) approaches. These require additional information and specialist reports and are a factor in increased case age. Such approaches are intended to improve longer-term outcomes in the justice sector but it is difficult to assess effectiveness – with limited evaluations completed to date. Upfront cost can be justified if offenders receive assistance that addresses underlying issues and reduces recidivism. MoJ is currently working with the judiciary on Te Ao Mārama with the objective of mainstreaming these more solution-focussed approaches in the general jurisdictions.
47. There is a clear correlation between the size of courts and the average length of time required to dispose of Criminal Category 3 cases, as seen in Figure 8. While the types of cases heard in the different courts drive part of this, discussions with MoJ suggest that, anecdotally, smaller courts are more easily able to navigate the complexity of serious criminal cases. This ease is due to tighter relationships between court participants (resulting in greater personal accountability) and less congested courtroom scheduling.
48. Within these more serious Criminal category 3 cases, judge-alone trials (as opposed to jury trials) make up the vast majority of the workload and are responsible for the broader trends in congestion through the District Courts system. Regardless, the diseconomies-of-scale are observed in both judge-alone and jury trials.

BUDGET-SENSITIVE**Figure 8: Average age of disposals for all Criminal Category 3 cases, by court size**

49. Other explanations for the observed diseconomies of scale include the absence of a modernised case management system (e.g. Caseflow), which may disproportionately impact the larger courts more than small courts.

Previous efforts to improve efficiency

50. MoJ has undertaken numerous initiatives to change the way it supports the courts in order to address emerging issues and improve efficiency within baseline expenditure, primarily through changes to how justice services are structured and delivered.

Streamlining management layers

51. In 2012/13, the regional management structure in the District Court was disestablished and management layers streamlined. The key point of this change was to centralise management for all jurisdictions in one location (excluding specialist courts and tribunals). Since the restructure, reports from the District Courts note that there had been significant loss of local and technical expertise resulting in lower capability for direction of staff or detailed engagement with the judiciary.

Consolidation of business units and reinstating regional structures

52. In 2017, all frontline and support operations units were combined into the newly created Operations and Service Delivery Group (OSD), to ensure all operations teams were in the same group. The change reinstated a regional structure, with the specialist courts and tribunals joining the District Court in the new Courts and Tribunals, Regional Service Delivery (RSD) business unit.

Improving utilisation

53. MoJ has a role to ensure it is effectively utilising court rooms and available judicial capacity. MoJ received time-limited funding to establish a national scheduling team two years ago to improve scheduling effectiveness and consistency. Dedicated scheduling roles influence decision making about court schedules – through data and analytics – to improve scheduling performance.
54. MoJ notes improvements in the utilisation, with scheduled judge sitting days in non-jury criminal jurisdictions increasing by 5 percent in the months prior to the COVID-19 outbreak.

BUDGET-SENSITIVE***Improving functions and processes***

55. MoJ has made significant progress to standardise processes to improve consistency in service delivery and in timeframes, and improve staff allocation. Several functions have been centralised (either nationally or regionally), aiming in part to enable court and tribunal staff to focus on core tasks such as hearings and case management, including:
- a processing a range of functions and activities that support the courts to the central registry, and
 - b all in-bound phone calls to the District Court being forwarded directly to the registry contact centre.
56. There remain opportunities to improve processes and further MoJ's modernisation efforts. Ideally, courthouse attendance should only be required for events where a judge (or judicial officer or registrar) and courtroom are required – and optional for the paper filing of applications at the courthouse or to pay filing fees for example.

Current levers to effect change***MoJ is working with the sector and judiciary within existing settings, but it is not clear this will be enough***

57. Efforts since 2013 to improve performance by focussing on reducing the average age of active cases across all jurisdictions were not sustained. Legislative changes in the criminal and family system implemented in 2014 resulted in some initial performance gains but these were subsequently lost over the subsequent six years. It is possible that MoJ's operations units achieved as much success as they could under then-existing settings. The Government's decision to review settings in the Family Court, which resulted in a first tranche of changes in 2020, confirmed that changes were needed.
58. s9(2)(f)(iv) [REDACTED]
s9(2)(f)(iv) [REDACTED] There is no current plan to review the CPA 2011 or investigate changes to the incentives driving current practice.
59. Te Ao Mārama is aiming to implement more solution-focussed (therapeutic) principles in the general criminal and youth jurisdictions. s9(2)(f)(iv) [REDACTED]
s9(2)(f)(iv) [REDACTED]
60. The new Chief District Court Judge has initiated work to help address operational issues and MoJ is aiming to support this. However, it will not be clear what action is required until late 2021. Other potential solutions may require legislative changes, but this work is not currently resourced.

Digitisation and Caseflow has been a focus

61. Progress has been made in developing electronic case management, but even under optimistic implementation scenarios, it will likely be several years before Caseflow generates levers to meaningfully impact current pressures.

BUDGET-SENSITIVE

62. The case for digitising the courts system is bolstered by the diseconomies of scale observed in courthouses. The larger the courthouses, the more time required to dispose of cases, with paper-based systems seemingly more prone to greater inefficiency as the size of the courthouse increases. Anecdotally, much of this diseconomy is caused by absence of close personal relationships between parties in large courts that would typically smooth over the process in smaller courts.

Other options

63. Other options include:
- a reducing case input to the system (via policing and prosecution policies, reducing crime and reoffending, for example by focusing on Hāpaitia te Oranga Tangata – Safe and Effective Justice or legislative changes that aim to reduce inflow)
 - b changing court system settings (policy or legislation) to improve timeliness of cases, improve effectiveness of outcomes for victims and reduce reoffending, and
 - c increasing capacity (judges, courtrooms, prosecutors, lawyers, registry staff, Corrections officers etc.), to reduce congestion and speed up the courts process.
64. Given the system has been more efficient in the past, our view is that initiatives to improve efficiency should be the priority. Attempting to address the current issues primarily through increases in capacity is likely to have worse long-run outcomes for value for money due to the risk of creating excess capacity and stranded assets.

Legal services

65. Legal services are provided to the public through the provision of loans for lawyers (legal aid). PDS operates within MoJ as employed staff, providing similar legal services as private lawyers. The public also has access to free legal services, for example, Community Law Centres. Legal aid covers criminal and family/civil legal aid, amongst other categories. PDS provides criminal legal aid services only.
66. Legal aid assists those that cannot afford a lawyer, where a person is charged with a crime or is party to a family or civil dispute. The intention is to ensure equal access to justice, regardless of financial position, although overall Crown expenditure is controlled and balanced with this principle via eligibility thresholds and set fee rates.

Legal services are currently the largest cost pressure on the MoJ baseline

67. Figure 9 shows expenditure on legal services, particularly legal aid, which is one of the biggest cost drivers for MoJ since 2013. There have been significant increases driven by volume pressures and policy changes, such as expanding eligibility. This is currently the single largest funding demand across MoJ over the forecast period. On average, MoJ considers between 80,000 – 90,000 applications for legal aid across all jurisdictions.
68. Between 2013/14 and 2019/20, legal aid increased 61.4 percent, or an average 8 percent annualised. PDS expenditure at the appropriation level increased from \$2.897 million (the initial pilot of two offices) in 2008/09 to \$38.47 million in 2019/20 (10 offices). Since PDS expansion in 2011/12, total appropriation expenses have increased by 8 percent annualised. The appropriation includes MoJ-allocated overhead costs.

BUDGET-SENSITIVE

- 69. Total appropriation expenditure in Community Law Centres increased from \$10.94 million in 2011/12 to \$13.26 million in 2019/20, representing a 21 percent increase (3 percent annualised); much lower than private legal aid and PDS. Expenditure is forecast to increase next financial year as a result of Budget 2020 funding decisions (a further 15 percent for 2020/21 to \$15.31 million).

Figure 9: Legal services expenditure (\$m)



- 70. In 2010/11, the Legal Services Agency was incorporated into MoJ. Expenditure within the appropriation that is attributable to legal aid administration has decreased over the past four years. The decrease appears to be a result of cost savings found from merging regional centres, which happened between 2016/17 and 2017/18.
- 71. Cabinet took a decision in 2011 to expand PDS to additional courts and agreed to “expand provision of legal services so that 50 percent of criminal cases are delivered by Public Defence Services offices...” (CAB Min (11) 3/6). While volumes have not decreased recently, PDS is currently providing services for less than 50 percent of all cases. One of the non-financial barriers to PDS expansion may be the allocation of more serious cases, which provides senior lawyers with experience. While PDS has invested and seen improvements in retention, its model still relies on more junior lawyers and it may continue to struggle with recruitment.

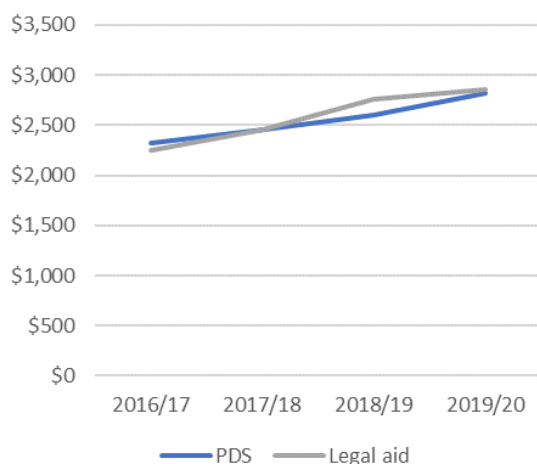
Eligibility increases and time charged are driving increased legal services costs

- 72. The volume of cases disposed of in the criminal courts has remained stable since mid-2016. However, the share of cases funded by criminal legal aid for Category 3 to 4 cases has increased – suggesting that more people are eligible for legal aid.
- 73. There has been negligible difference in average cost per case for criminal legal aid and PDS, including administration and overhead costs, since 2016/17 (see Figure 10 on the following page). On average, PDS is more expensive for Category 2 cases but slightly cheaper for Category 3 cases.³
- 74. In aggregate, this lack of diverging trends suggests that there are few gains in prioritising resources between PDS and legal aid. However, there is regional evidence that implies worsening court timeliness is impacting average cost growth in legal aid relative to PDS – particularly in congested courts and in more serious criminal cases.

³ In 2019/20, legal aid PAL 4 cost 57 percent more than PDS PAL 4.
T2020/3411 Justice baseline review final report

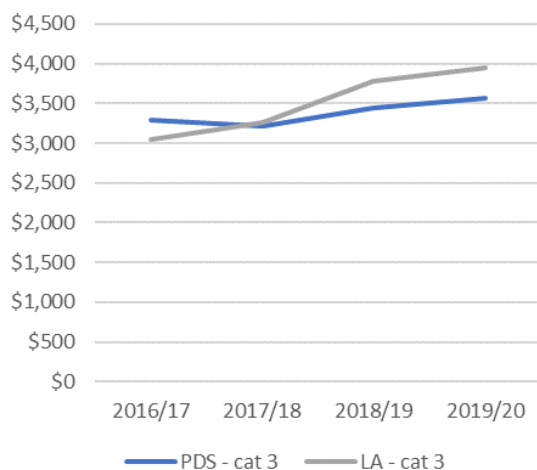
BUDGET-SENSITIVE

Figure 10: Average cost per case across all legal aid and PDS cases (\$)



75. Since 2016/17, the average cost (including administration) for legal aid Category 3 cases in Auckland has increased by 29.3 percent, but only by 8.5 percent for PDS. This divergence (as Figure 11 shows) implies that legal aid is more sensitive to worsening court timeliness, which has been most acutely felt in Auckland.

Figure 11: Average cost per case across Category 3 legal aid and PDS cases: Auckland (\$)



Some information required for value trade-offs is missing

- 76. A strategic view is needed across the full suite of legal service interventions to determine the most appropriate role for government in supporting access to legal services. The system does not appear to be operating strategically with a view to overall value for several reasons.
- 77. First, performance information is not available to support direct comparison. For example, client satisfaction data would help to compare quality of outputs. To understand outcomes and impacts, legal aid and PDS data need to be linked to court data, which would require changes in the way that data is collected in current systems (or could be addressed through court digitisation). This would also help in determining if funding settings for the different legal services are having an impact on court system performance.

BUDGET-SENSITIVE

78. Second, PDS plays a role in hiring and training less-experienced lawyers, essentially increasing skill in the profession as a secondary output. PDS cites having taken on this role following changes to the legal aid fee system that made the private market less able or willing to take on this function. It also allocates its services based on gaps in the market. These broader functions have a cost for the Crown. Ministers may wish to reconsider expectations based on these wider considerations and value for money.
79. Third, relative costs are opaque. As the Crown does not directly fund private lawyer overhead costs, the data does not provide an indication of whether there are issues for private firms to meet costs from the payments received by the Crown, even though there is a public sector comparator.
80. Unlike criminal legal aid, family legal aid cost per case has not been increasing at the same rate and has recently decreased. While family legal aid costs are on average higher than criminal legal aid (excluding administration costs), we do not have enough information to consider comparable complexity to determine if there are inefficiencies, or whether PDS should expand its role to take on family cases as well.

Improvements in court system performance could help reduce costs

81. The main remaining lever is to reduce time spent by lawyers in courts, where time is unnecessary for the benefit of clients. Changes to the drivers of increased costs (e.g. saving court time) could have benefits across both appropriations. The rate of increasing cost per case is high for both legal services, suggesting broader systemic issues are contributing to costs.
82. MoJ has recently made improvements in the management of legal aid services through its administration function. This has resulted in cost savings for the appropriation, which has decreased since 2016/17, despite legal aid volumes increasing 3 percent per annum over the same period.

Policy

The broad spread of policy demands has limited the focus on regulatory stewardship, driving risks across the system

83. Policy support the delivery of MoJ's three core roles by: developing effective legislation to support the courts and tribunals; informing effective policy settings to lead an integrated justice sector; and, providing cross-government stewardship of civil law, human rights, electoral, and constitutional matters. Policy responsibilities cover 53 regulatory systems, including Government priorities, mandatory commitments (including international commitments), core services, and stewardship projects.
84. Policy Group report that in servicing this broad span of issues they have been required to make significant trade-offs. Since 2013/14, Ministers have needed to prioritise across an over-committed work programme, and this has required deferrals to accommodate various other projects. Deferral carries opportunity costs for work that is not taken forward or is not carried out to the extent required.

BUDGET-SENSITIVE

85. Prioritisation has often meant stewardship projects have been deferred, which creates long-term risk across the system. Policy Group play a key role across government in advising on constitutional settings and human rights issues (including vetting the work of other departments). The role is currently not played by any other agency across the public service. Stewardship of core constitutional legislation is important to maintaining ongoing legitimacy. Currently, MoJ stewardship functions do not sufficiently cover their regulatory regimes to anticipate risks, advise ministers when issues arise, proactively manage regimes, and make amendments as needed. Stewardship is also a statutory responsibility imposed on MoJ's chief executive.

An additional focus on court system performance from a policy perspective would deliver benefits

86. Legislative settings have significant impacts on court system performance. However, Policy Group report that the current level of baseline funding means that they cannot be as helpful to other parts of MoJ as would be ideal. For example, they have not been able to support OSD's proposed amendments to the courts and tribunals statutes and had trouble keeping Courts and Tribunals Enhanced Services reforms moving while delivering ministerial priority projects. It means they have not been able to monitor the impact of the CPA 2011 implementation, which was put into effect prior to changing trends in the court system and may have ongoing implications for court system performance.

Time-limited funding is driving increased costs

87. Since a restructure and baseline reduction in 2012, there has been an increased reliance on time-limited funding, which has driven the use of contractors and has caused an increase in the total cost per output. Policy Group total cost per output is now at its highest point since the restructure. Time-limited funding of the policy appropriation has been steadily increasing since 2015 (e.g. for anti money-laundering, family justice reforms, and the cannabis referendum) and is now approaching levels seen prior to the restructure, which saw a reduction in the number of FTE from 147 to 85 FTE plus funding for 16 specialist contractor FTE.
88. The total cost per hour of producing outputs has increased from \$142 in 2014/15 to \$169 in 2018/19. The increase between 2017/18 and 2018/19 can be largely attributed to:
- a an overall 2 percent increase in total operational costs (total labour, direct, overhead and support) of \$0.44 million, and
 - b a 7 percent decrease in permanent FTE (down to 74 FTE) requiring backfill with contractors.
89. Funding is forecast to fall 42 percent from \$21.2 million in 2020/21 to \$12.3 million in 2021/22 and it is unlikely additional policy priorities can be met from baselines.

Sector Group

A focus on strategy has had opportunity costs for operational issues

90. Sector Group's current work programme is focussed on achieving shared planning, alignment, and oversight across the sector and supporting operations with specific change initiatives through the delivery of strategic secretariat functions and performance data monitoring and analytics. To date, their mandate has driven a focus on developing a shared strategy, which means fewer dedicated resources to support justice sector agencies in implementing operational changes required to deliver on this strategy. This presents a risk to delivery across the sector.

BUDGET-SENSITIVE***Sector Group are not currently leading a sector-wide investment strategy***

91. Sector Group have deprioritised the development of a cross-justice sector investment strategy, choosing instead to support work on joined-up budget initiatives and short-term alignment. Having a long-term investment strategy would provide overall direction for justice sector agencies in developing budget initiatives and implementing changes needed to achieve long-term outcomes, looking beyond annual cycles.

Greater use could be made of existing insights, and there are high-value opportunities for more research and evaluation

92. In order to continue delivery of the New Zealand Crime and Victims Survey (NZCVS), Sector Group have deprioritised other research and evaluation work. This has significant impacts on its ability to uncover the drivers of issues seen across the justice system, particularly in court system performance. Research and evaluation into court system performance has the potential to create significant savings across MoJ that could then be saved or reinvested. At present only four FTE have been able to be allocated to supporting improvements in court processes, half of which are funded through time-limited funding that expires this financial year.
93. This would require Sector Group to prioritise resources away from other areas of their current work programme, including focus on the justice sector strategy and coordinating MoJ input to the sector. This would come at a cost to joined-up advice and strategy, which could result in other inefficiencies (e.g. duplication or misalignment).

A change in the funding model and mandate of the Sector Group could improve prioritisation

94. Sector Group has historically relied on time-limited funding in several areas. This funding has made up a significant proportion of Sector Group's total funding since 2017/18. Forecast funding is due to fall significantly in the next financial year, from \$15.428 million in 2020/21 to \$9.264 million in 2021/22.
95. There is an opportunity for the Justice Sector Leadership Board (JSLB) to formalise cross-sector work within a new model (e.g. an inter-departmental board) and for Sector Group funding to be administered across the sector. This is likely to improve:
- a prioritisation among justice sector leaders
 - b the mandate of justice sector strategy, and
 - c probability that operational initiatives are appropriately scaled up, even when costs and benefits are split across portfolios.

96. s9(2)(f)(iv)
- 

BUDGET-SENSITIVE***Time limited funding is due to end, requiring decisions on the future of work programmes***

97. Several current projects rely on time limited funding, which is due to end in 2020/21, including Hāpaitia Te Oranga Tangata – Safe and Effective Justice and Behavioural Sciences Aotearoa (also the High Impact Innovation Programme at Corrections). The Justice Sector Leadership Board (JSLB) have identified progressing the Hāpaitia te Oranga Tangata work programme's key items as a priority project. This includes transitioning the work programme to other parts of the justice sector, for example, merging outcomes reporting into the justice sector strategic plan and reporting framework. Decisions are now required about whether to continue this work.

Family Violence and Sexual Violence Joint Venture Business Unit (JVBU)***The JVBU model is still within the early stages***

98. Hosted by MoJ, the JVBU is designed as a small, agile and connected team supported by partners, including Joint Venture (JV) Agencies and Māori advisory group, Te Rōpū, with a strong focus on the organisational capabilities of partnerships and Te Ao Māori. This design is reliant on critical enablers including support from the JVBU.
99. This model came into effect in February 2020, with COVID-19 significantly disrupting full implementation. Despite this, the JVBU have begun working with JV agencies on work streams such as Budget oversight (Budgets 2019 and 2020 were across multiple agencies and preparation for Budget 2021 is underway), COVID-19 support to stop or reduce harm during lockdown and as a consequence of economic impacts, data and insights, workforce development and integrated community responses. Each requires considerable lead-in time due to the need to collaborate and negotiate resourcing from across the wider JV. While the JVBU has made progress in implementing its intended operating model, the success of this relies on JV agencies reflecting changes in their own operating models to embed the desired ways of working.

100. s9(2)(f)(iv)

Performance of the JVBU is difficult to measure as the unit does not play a direct role in delivery or implementation

101. Performance of support is formally measured by the satisfaction of the Joint Venture of the Social Wellbeing Board (Family Violence and Sexual Violence) with the leadership, advice and support provided by MoJ. Support provided by MoJ to the Joint Venture achieved a 6.1/10 against a standard of 8/10 in 2018/19, up to 7.3 in 2019/20. This performance measure, taken in 2018/19, may reflect the performance of the interim business unit in these early stages of establishing its role.
102. Performance feedback from a JV agency Chief Executive shows the JVBU to be effective based on: timeliness and quality of engagement; materials provided and decisions including coherency; relevance of issues addressed; succinctness; clarity of outcome sought; and openness and ability to assimilate views. The roles and functions assessed as the most valuable were support of the Board (governance support); issues awareness; ministerial and Chief Executive relationships; production of agreed outputs (delivery) and demonstration of operating as a collaborative system.

BUDGET-SENSITIVE

103. MoJ management and operating structures may not fully support the flexible approach required by the JVBU as a small team operating across a wide remit. Current suggestions for ways that performance of the JVBU could be improved are: adoption of a formal governance/collaboration arrangement under the new Public Service Act; using the trust built with agencies to further objectives; and taking a more tactical/practical approach rather than an academic one.

Alternative funding models could drive efficiencies

104. As a result of scaled funding, the JVBU currently relies on additional funding from agencies to support discrete work streams. This often leads to a reliance on contractors, which increases the cost per output. This also requires resource on an ongoing basis to negotiate and agree funding between agencies. Alternative funding models, for example administering a shared pool of funding, could provide greater levers to the JVBU and offer increased value for money across the JV.

The long-term organisational form of the JV, including the JVBU, will be considered following upcoming reviews

105. The JV, as an entity approved by Cabinet and distinct from other entity forms in the former State Sector Act, has been learning to use its policy and operational capabilities, which are harnessed from the 10 agencies rather than the JVBU. This has meant that the JVBU's main lever, up until the recent appointment of a new Minister with the mandate to coordinate Budget, has been relationship-based.
106. The JV performance, including the JVBU performance, is also being considered as part of two upcoming reviews. The first of these will be a performance audit by the Office of the Auditor-General, which will seek to answer the question, 'How effectively has the Family Violence and Sexual Violence Joint Venture been set up to support the delivery of significant reductions in family and sexual violence?' A draft of this report is expected in the first quarter of 2021.
107. The second will be a continuous improvement review which will support a Cabinet-required report on the effectiveness of the JV approach by December 2020 (this is being extended by the Minister for the Prevention of Family and Sexual Violence to later in 2021). This report also seeks a decision on the long-term organisational form for government's response to family violence and sexual violence.

Service providers

108. This review ^{s9(2)(f)(iv)} analysis of three categories of community-based service contracts (^{s9(2)(f)(iv)}, Restorative Justice, and Family Dispute Resolution). These were selected for several reasons:

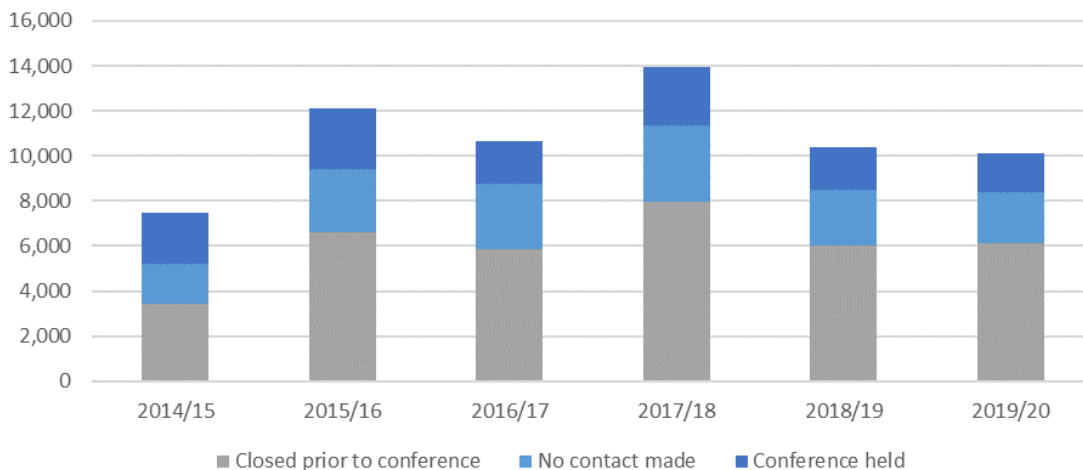
- a ^{s9(2)(f)(iv)}
- b **Restorative Justice (RJ):** Underspends against projected expenditure suggest Restorative Justice may not be delivered at the intended rate. There may be opportunities for efficiencies in the referral process.
- c **Family Dispute Resolution (FDR):** FDR is a potential substitution for in-court processes and can improve outcomes in the family justice system, if value for money is realised.

BUDGET-SENSITIVE

The policy settings for some services may not be balancing value for money

109. Past policy changes, such as a 2014 legislative change requiring adjournments to consider RJ under section 24A of the Sentencing Act, have not had the expected positive effect on rates of RJ. The change is likely negatively impacting court and corrections (remand) costs without resulting in more conferences. The relatively stable volumes of conferences held since 2014 demonstrates this (see Figure 12).

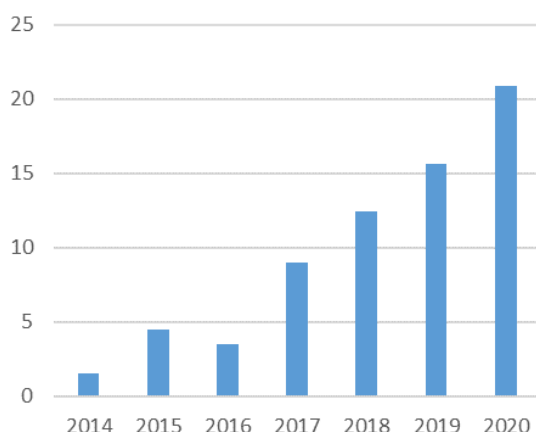
Figure 12: Total volume of cases referred by whether a conference was held



110. Following the 2014 reforms of the Family Court, which introduced FDR along with other out-of-court services, reviews have identified that these policy changes have had both positive and negative impacts. While the introduction of out-of-court services provided a faster pathway through the system for people that require only out-of-court services (an average of 39 days), for those that require both in-court and out-of-court services the time taken is long (312 days) and lasting outcomes are less likely.

111. The review team’s analysis of FDR and RJ Services suggest increased emphasis and improvements to administration timeliness could have positive flow-on savings in the court and the wider justice system. For example, recent large increases in the average days before cases are either withdrawn or exempted from FDR could be improved to ensure those that should return to court do so more quickly (Figure 13).

Figure 13: Average days before case withdrawn or exempted FDR



112. While taking longer to resolve disputes may be beneficial from an enduring outcomes perspective, a key objective should be minimising administrative delays where the likely outcome is cases withdrawn or exempt. MoJ has suggested delays may be the result of increasing complexity of cases involving multiple parties.

BUDGET-SENSITIVE

BUDGET-SENSITIVE

Provider performance is variable and improving quality is challenging

113. s9(2)(f)(iv) [Redacted]

114. The review found varied performance across FDR providers and a trend of outputs taking longer to deliver for FDR and RJ. While there may be overarching policy settings driving low performance, variation across providers for similar services suggests individual provider performance issues that could be managed.

115. While some variance should be expected when ensuring national coverage, some services have operated outside expected levels of performance and there are likely opportunities for improving effectiveness. For example, the percentage of FDR participants reaching an agreement on completion of mediation is consistently below the target level of 85 percent. s9(2)(j) [Redacted]

116. s9(2)(j) [Redacted]

117. MoJ is currently working on improving its internal processes and systems. It is generally accepted that growth is needed across the public sector in working with providers. Within MoJ, the team is implementing a new target operating model that should see improvements in provider management and performance reporting, aiming to follow the Future of Social Sector Commissioning principles:

- a Individuals, families, whānau and communities exercise choice.
- b Māori-Crown partnerships are at the heart of effective commissioning.
- c The sector works together locally, regionally and nationally.
- d The sector is sustainable.
- e Decisions and actions are taken transparently.
- f The sector is always learning and improving.

s9(2)(j) [Redacted]

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120. MoJ have raised juror fees as an issue. Rates paid to jurors have not been changed for some time and resemble a nominal recognition of civic contribution rather than compensation for services. The fee paid to jurors is currently \$31 per half day, and rates have been below the minimum wage since 2002. Compared to Australian jurisdictions, this rate is lower than some (e.g. \$106 in NSW), but higher than others (e.g. \$20 in WA and SA). The review suggests that MoJ consider further analysis into how the current fees affect participation and composition of juries, but is not convinced that fees paid to jurors be increased with urgency.

121. s9(2)(j)

Better understanding the outcomes achieved for different people could improve targeting and value-for-money

122. More active contract management and/or some form of investment and evaluation strategy is required to drive improvements in effectiveness over time and ensure value for money from these services.

123. Beyond victim satisfaction, there is little information available to help assess whether the harm caused by offending is repaired through Restorative Justice. For example, MoJ does not collect aggregate information on the elements that make up outcome plans, or the rate of completion. There is evidence that RJ reduces reoffending, but this assumes a conference is held and as noted above, this is often not the case.

124. The data collected about these services is predominantly volume-focused. Collecting more information about timeliness and delivery of outcomes for participants would help inform evaluation, done regularly ahead of contract negotiations. This would also be an opportunity to interrogate volume and demand, and determine whether funding is prohibiting the delivery of expected performance and outcomes.

125. s9(2)(f)(iv)

Investment services: Property and Digital

126. MoJ's 2019 strategy provides a good framework for strategic planning. However, business groups across MoJ tend to focus on immediate issues at the expense of developing medium-term plans. Resourcing decisions are often driven by annual budget cycles, driving increasing use of contractors and planning paralysis.

127. Part of this is due to the use of time-limited funding (e.g. within the Policy and Sector Groups) but internal allocation processes are also having an impact. Where medium-term certainty over the work that will be required can be created (e.g. property and ICT), then ring-fenced project resources could be allocated to business groups that enable them to hire permanent FTE and build momentum.

128. Prioritising more strategic planning and providing funding certainty would enable MoJ to make fewer, longer-term resourcing decisions, with various benefits including:

- a clarity about what is achievable with available resources and is being prioritised

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- b certainty for managers to support efficient delivery, and
- c clear trade-offs for Ministers in setting their priorities.

Property planning is maturing

129. Increased baseline funding and recent Budget decisions provide the property team with a significant increase in available funding for the next four years. MoJ intend seek Cabinet agreement to draw down funding currently held within a tagged contingency.

130. Budget 2020 provided \$163.5 million for critical cost pressures to fix seismic and weather-tightness issues. ^{s9(2)(f)(iv)}

^{s9(2)(f)(iv)}



131.

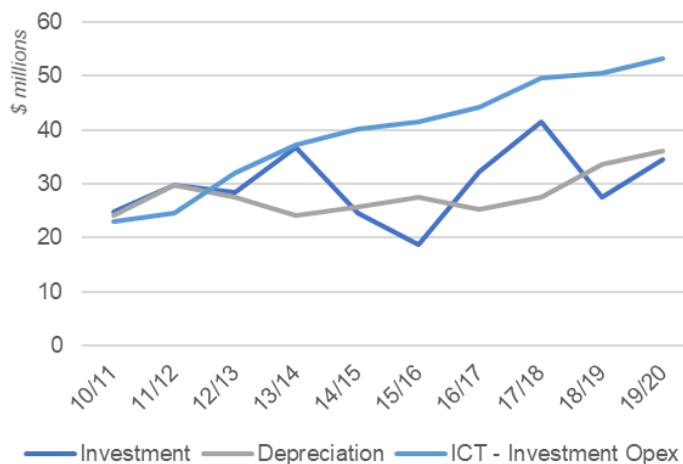
ICT appears to be operating with a short-term focus, with cost increases mainly due to outsourcing services

132. MoJ manages a complex portfolio of legacy systems, sweated assets, and more modern products and services. MoJ also faces challenges with some data being required to be stored in New Zealand only. The review has not been provided with an up-to-date comprehensive list of products, services and assets that are managed by the ICT team, although a draft strategic plan indicates that this is being worked on.

133. As depicted in Figure 14, over the 10-year period investment in ICT assets (\$298 million) has been similar to funding provided from depreciation generated from ICT assets (\$281 million). In line with past all-of-government ICT strategy, MoJ has moved some assets to outsourced services, which has seen a significant increase in outsourced costs from \$23 million in 2010/11 to \$53 million in 2019/20, or 9.8 percent annualised growth. It appears that the depreciation funding available from assets moved to outsourced services has been reprioritised to invest in new assets and that outsourced services are creating significant cost pressures.

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Figure 14: Ministry of Justice ICT investment profile (\$m)



134. The ICT team have prioritised immediate pressures at the expense of strategic planning. MoJ cites past funding pressures as the reason why strategic planning has been deprioritised. s9(2)(f)(iv)

s9(2)(f)(iv)

135. Current investment in ICT is being prioritised towards key foundational platforms as key precursors for Caseflow. These investments are expected to enable an easier move to a digital court system.

Corporate services

Corporate services are low cost, but deliver a low level of service

136. MoJ corporate services were assessed and benchmarked by KPMG in 2014, and several recommendations were made. At the time, services were assessed as low cost, but low effectiveness.

137. Recommendations made by KPMG for increased FTE for Human Resources and Finance appear to have been implemented. KPMG also recommended improved performance reporting and identified savings opportunities within the ICT area. While some savings were initially made within ICT, these have now been reinvested and are outweighed by the increasing ICT outsourced service costs.

138. Corporate Services have had FTE and expenditure increases over the review period generally in line, or slightly higher, than the rest of the MoJ. MoJ reports that these increases have not been high enough to mitigate the actual costs of onboarding new services and staff.

139. Corporate services performance information is not readily available, so it is difficult to determine if the current level of service is adequate (and accordingly, whether MoJ is receiving value for money from its corporate services functions despite minimal relative changes to cost). Anecdotally, improvements in systems and processes have occurred that have improved the service level within this baseline, but there are opportunities for further improvements, for example, Human Resources services that centralise recruitment processes. These opportunities could improve the service level and efficiency in terms of time required from other parts of the business utilising corporate services.

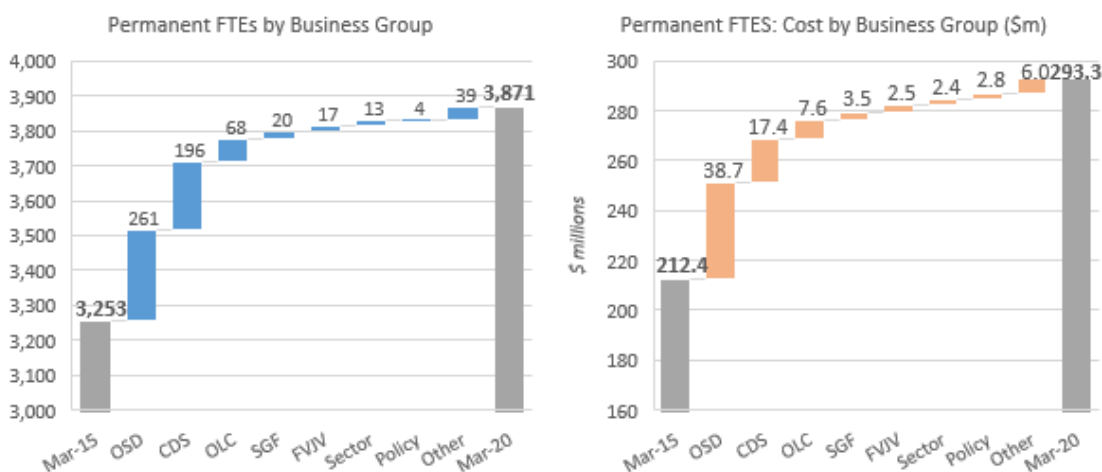
BUDGET-SENSITIVE

Personnel

Recent growth in FTEs follows years of flat numbers

- 140. The number of FTE across MoJ has grown by 16.8 percent since early 2017/18, following negligible growth between 2011 and 2017. Adjusted for inflation, personnel expenditure begun increasing in 2017/18 following six years of no growth and is tracking to be approximately 25 percent higher than in 2016/17. This is primarily driven by growth in FTEs rather than salaries. Since early 2017/18, median salaries have grown by 8.8 percent, or 3.4 percent annualised.
- 141. Over the same period, permanent FTEs across MoJ have grown by 16.3 percent, while fixed-term FTEs have grown by 25 percent. In March 2020, fixed-term FTEs accounted for 6.5 percent of personnel, which is equal to their long-term average share of personnel.
- 142. Figures 15 and 16 show the composition of change in permanent FTEs and expenditure on those personnel by business group between March 2015 and 2020.

Figures 15 and 16: Permanent FTEs and personnel cost by Business Group⁴



Large wage increases see MoJ's average wage return to its longer-term average, relative to the public sector average

- 143. According to the Public Service Commission (PSC), MoJ is the third-lowest paid agency in the public sector after the Ministry of Social Development and Corrections, driven by OSD. Recent pay increases bring MoJ in line with its long-term average compared to benchmarks – with the latest data showing that MoJ's average wage in 2020 is estimated to be 89.5 percent of the PSC public sector benchmark.

⁴ MoJ Business Groups:

CDS: Corporate and Digital Services OSD: Operations and Service Delivery
 FVJV: Family Violence Joint Venture SGF: Strategy, Governance and Finance
 OLC: Office of Legal Counsel

BUDGET-SENSITIVE

High attrition, but internal engagement surveys are largely positive

144. Attrition has remained persistently high over the past decade and is consistently above the PSC benchmark by about 3 percentage points, ranging between 16-20 percent annually over the past decade. This contrasts with other service delivery agencies, particularly Corrections and Social Development, which typically record below average attrition. Recent wage increases since 2018 now see MoJ's average wages broadly consistent with their historical share of the PSC public sector average.

145. s9(2)(f)(iv)

146.



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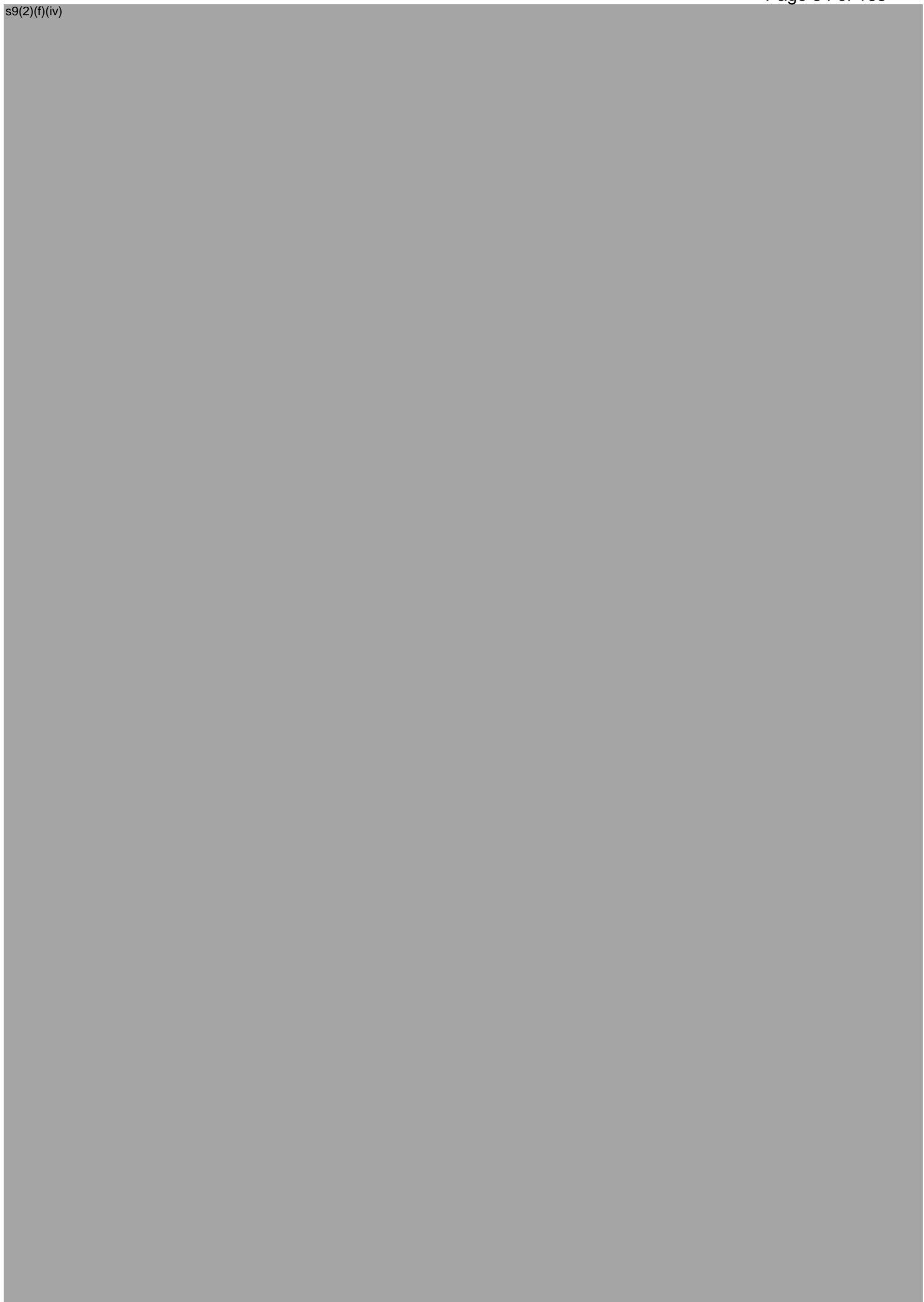


147. s9(2)(f)(iv)

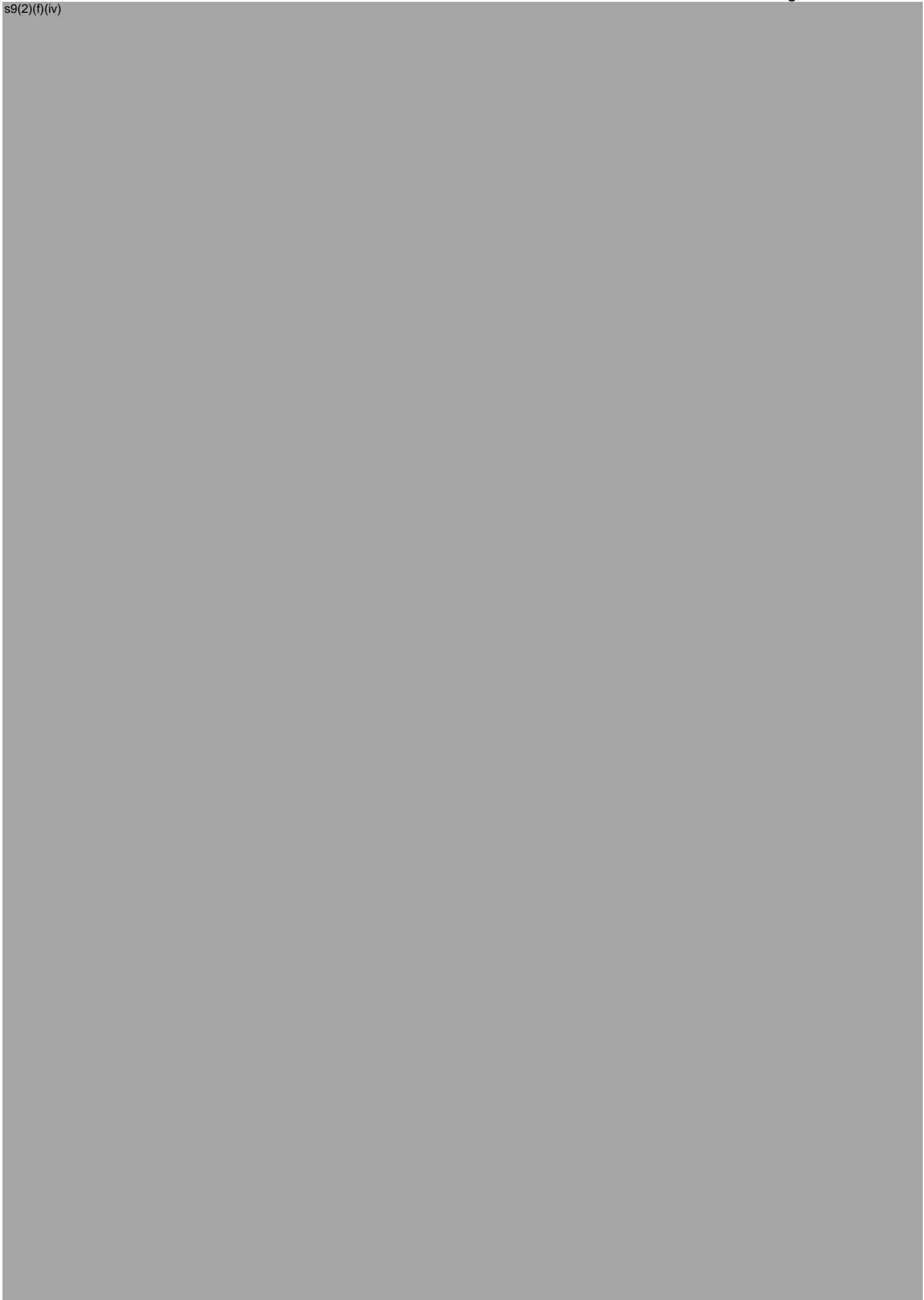
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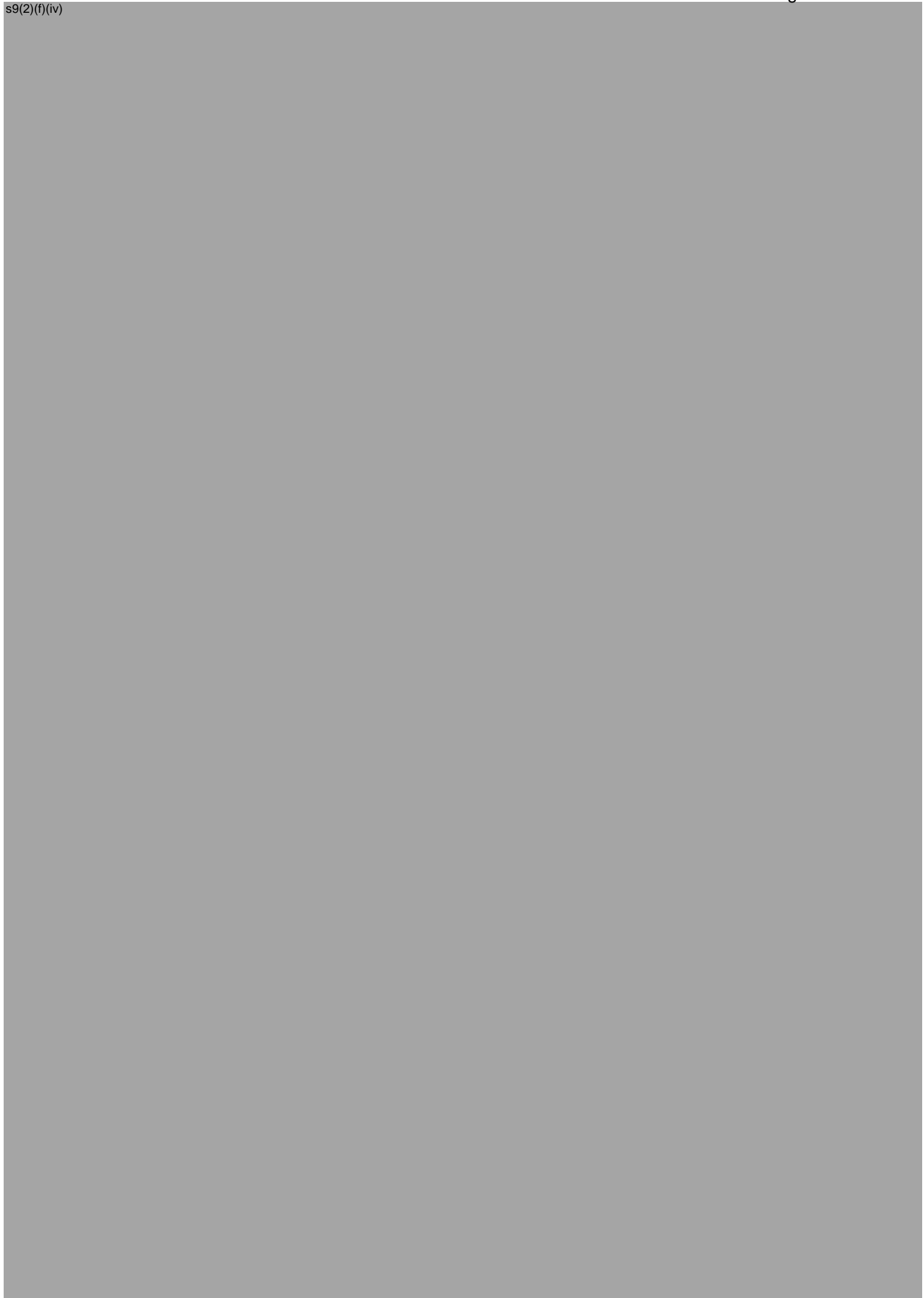
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Next steps

178. Budget initiatives are due to the Minister of Finance and the Treasury by 29 January 2021. These initiatives will be limited to critical cost pressures and the priority manifesto commitments. All other initiatives are out of scope and will not be considered through Budget 2021. Initiatives will need to demonstrate that they represent high value for money and are implementation ready.


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Justice Baseline Review Analytical Report 2020

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Section 5 is released in part. The other parts of the report are withheld as they are out of scope of the request

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Section 5: Legal services

Part A: Overview

Key Insights

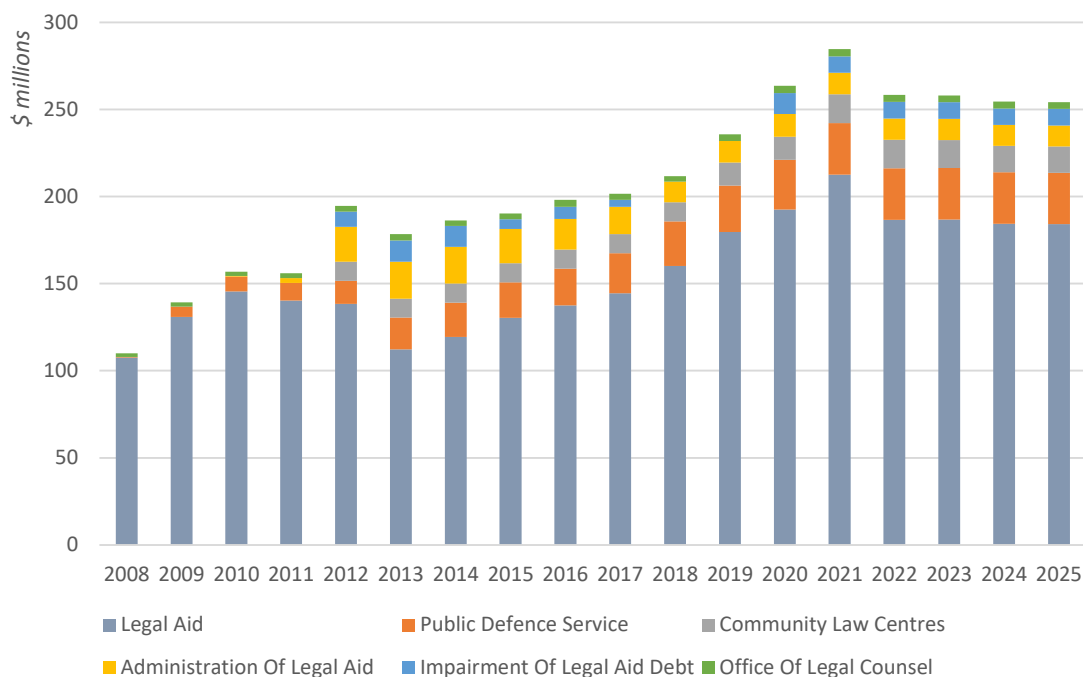
- Legal services are currently the largest cost pressure on the MoJ baseline.
- Volumes of legal aid cases and average costs for both legal aid and PDS have been increasing. Eligibility increases and time charged are driving increased costs.
- Legal aid appears to be more sensitive to the impact on timeliness, ^{s9(2)(f)(iv)}
_{s9(2)(f)(iv)}
- Costs may be reduced by improvements made in the timeliness of the court process, although court data currently does not provide information on legally aided cases to analyse these factors.
- ^{s9(2)(f)(iv)}
_{s9(2)(f)(iv)}

Key Contacts

Lead	Shereen Capper
Support	Kiriama Stevens
Key Ministry contributors	Steve Owen, Elaine Hines, Jonathan Day, Eddie Binns

Baseline funding within scope

Figure 56: Historic and forecast funding for Legal Services



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Part B: Detailed Analysis

Introduction

Legal services are provided to the public through the provision of loans for lawyers (legal aid), which in some circumstances are required to be paid back or are funded by the Crown. The Public Defence Service (PDS) operates within MoJ as employed staff, providing similar legal services as private lawyers. Legal aid covers criminal and family/civil legal aid, amongst other categories. PDS provides criminal legal aid services only.

Legal aid assists those that cannot afford a lawyer, where a person is charged with a crime or is party to a family or civil dispute. The intention is to ensure equal access to justice, regardless of financial position, although overall Crown expenditure is controlled and balanced with this principle via eligibility thresholds and set fee rates.

Criminal legal aid has fee rates, which correlate to the seriousness of the case and the experience of the lawyer. The rates are categorised under “Provider Approval Levels (PALs)”. PAL 1 cases are the lowest seriousness and include for example, judge-alone trials. The PALs are not the same as the criminal offence categories. The below table demonstrates the overlap.

PAL	PAL 1	PAL 2	PAL 3	PAL 4
Category	1, 2 and 3	3	3	3 and 4

The public also has access to free legal services, for example, Community Law Centres, which is part funded by MoJ and the Lawyers' and Conveyancers' Special Fund. Community Law Centres funding is allocated to 24 centres, who provide direct support to the public.

The Administration of Legal Services appropriation funds the MoJ team that deals with legal aid claims and allocates workload between private legal aid providers and PDS. Community Law Centres funding is managed through the Provider Community Services team (discussed in the Community-based service contracts section).

Key trends

Legal services expenditure has been increasing and is currently the largest cost pressure on the MoJ baseline

Figure 57 shows expenditure on legal services, particularly legal aid, which has been one of the biggest cost drivers for MoJ since 2013. There have been significant increases driven by volume pressures and policy changes, such as expanding eligibility. This is currently the single largest funding demand across MoJ over the forecast period. On average, MoJ considers between 80,000 – 90,000 applications for legal aid across all jurisdictions.

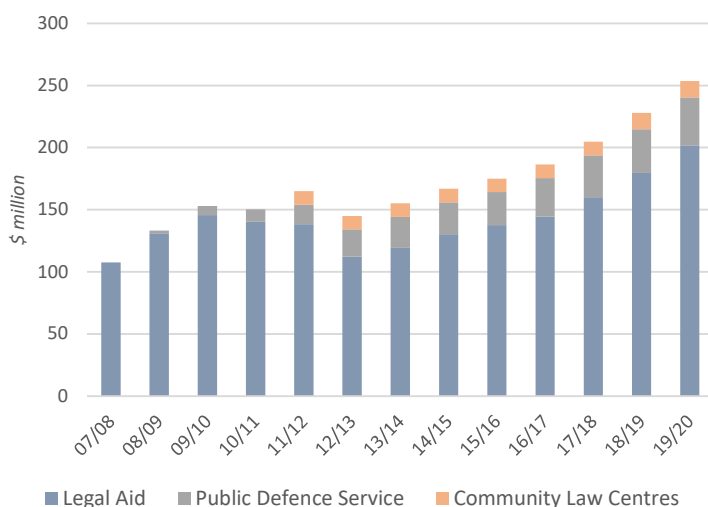
Between 2013/14 and 2019/20, legal aid increased 61.4 percent, or an average 8 percent annualised. PDS expenditure at the appropriation level increased from \$2.897 million (the initial pilot of two offices) in 2008/09 to \$38.47 million in 2019/20 (10 offices). Since PDS expansion in 2011/12, total appropriation expenses have increased by 8 percent annualised. The appropriation includes MoJ-allocated overhead costs.

Total appropriation expenditure in Community Law Centres increased from \$10.94 million in 2011/12 to \$13.26 million in 2019/20, representing a 21 percent increase (3 percent annualised); much lower than private legal aid and PDS. Expenditure is forecast to increase next financial year as a result of Budget 2020 funding decisions (a further 15 percent for 2020/21 to \$15.31 million).

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Figure 57: Legal Aid, PDS and Community Law Centres (June Actuals)



Legal aid funding has increased over time to cover demand pressures and policies

Funding decisions have been required over time to cover the increase in expenditure described above. Figure 58 provides an overview of changes to the legal aid appropriation. Policy decisions made by Cabinet to expand eligibility and pay rates between Budgets 2005 and 2008 increased the legal aid appropriation, which was followed by three years of rising volume and wage cost pressures.

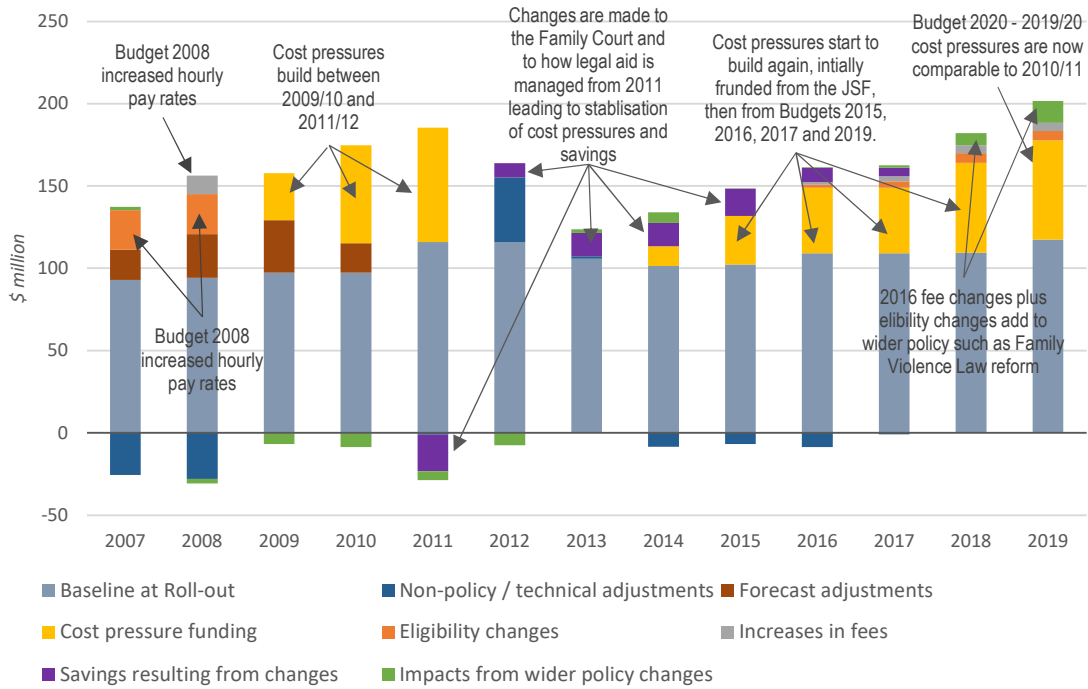
Beginning in 2011, changes were made to the Family Court, alongside additional investment to improve legal aid debt management, which had the effect of stabilising demand pressures, particularly for the Family jurisdiction (though this may have had a corresponding negative impact on court throughput).

Once the pressures stabilised, further Cabinet policy decisions added funding to the appropriation. This included increasing criminal legal aid fees and a gradual process of expanding eligibility from 2016.

Demand-based cost pressures drove funding increases from 2014 through to the current financial year. In 2016, Cabinet decided to expand eligibility, increase fees and made changes through Family Violence Law reform, which combined with increasing demand pressures. This resulted in the largest appropriation to date of \$201.698 million for 2019/20, which was underspent as a result of COVID-19.

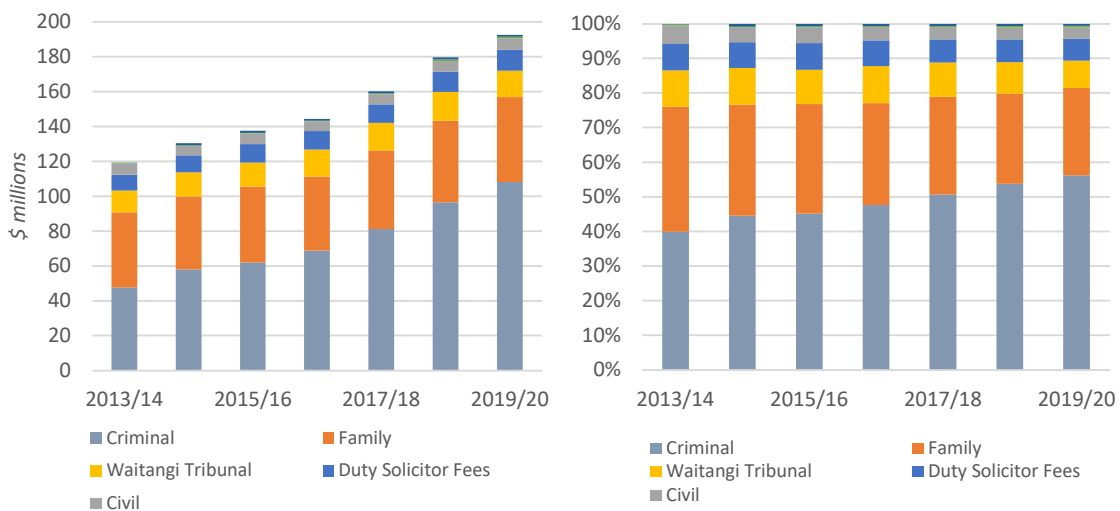
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Figure 58: Legal Aid Appropriation – Changes Between Baseline Roll-out and Final Supplementary Estimates (\$m)



Figures 59 and 60: Total Expenditure and Percentage of Legal Aid Expenses by Jurisdiction show overall legal aid expenditure changes by jurisdiction. Increases in legal aid costs since 2013/14 have been driven by the criminal jurisdiction, while family legal aid costs increased at a much slower rate. The result is the share of overall costs is increasingly criminal, as the second chart below demonstrates (making up 56 percent by 2019/20), while the family jurisdiction has decreased as a share of the total, to 25 percent.

Figures 59 and 60: Total Expenditure and Percentage of Legal Aid Expenses by Jurisdiction



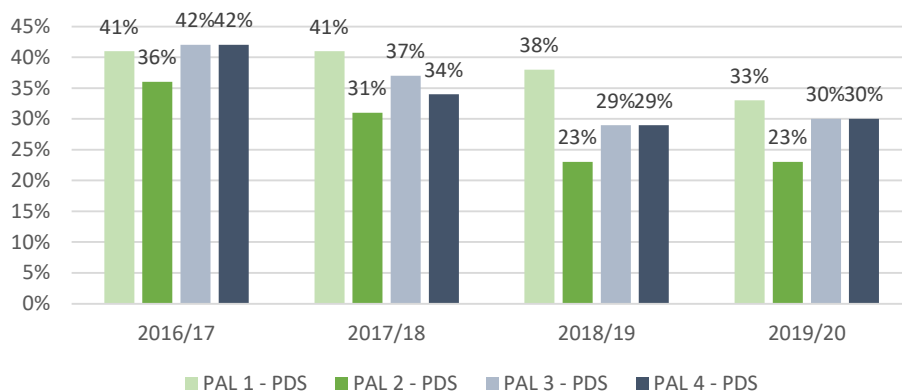
PDS funding has increased over time to address workload pressure and remuneration
Cabinet took a decision in 2011 to expand PDS to additional courts and agreed to “expand provision of legal services so that 50 percent of criminal cases are delivered by Public

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Defence Services offices...” (CAB Min (11) 3/6). While volumes have not decreased recently, PDS is currently providing services for less than 50 percent of all cases.

The share of cases that PDS takes as a percentage of total legal aid cases in courts it operates has decreased over time (Figure 61). The percentage share across all PALs has gone from 41 percent in 2016/17 to 32 percent in 2019/20²⁷. This is a result of comparatively larger increases in volumes in private legal aid cases, rather than a decrease in volumes of PDS cases.

Figure 61: Public Defence Service share of legal aid work by Provider Approval Level



Although expenditure overall has been increasing, the PDS appropriation has been reasonably stable over time and most expenditure changes have been funded internally. However, two significant funding decisions occurred in recent years – Budget 2016 funding and new funding for Ministry-wide remuneration increases.

Budget 2016 agreed approximately \$3.5 million per year for PDS to meet demand pressures. This funding was intended to enable PDS to recruit and retain more lawyers and take on an increased share of cases to meet the Cabinet-mandated target of 50 percent of legal aid cases in the courts in which it operates.

PDS had difficulty recruiting experienced lawyers, and in response developed a new strategy, named ‘grow our own’. The strategy introduced a significant number of new ‘supervised provider’ lawyers (less experienced lawyers), increasing to 43.8 FTE by 2017/18. It focused on attracting and developing graduate and junior lawyers.

The funding also enabled PDS to address issues of recruitment and retention by reducing workload pressure. The additional funding agreed for the 2018 collective wage negotiations (along with baseline funding) applied to PDS and had a combined positive impact. Figures 62 and 63: *Annual attrition rate and wage growth of the Public Defence Service* demonstrate changes to wages and attrition since the early 2010s.

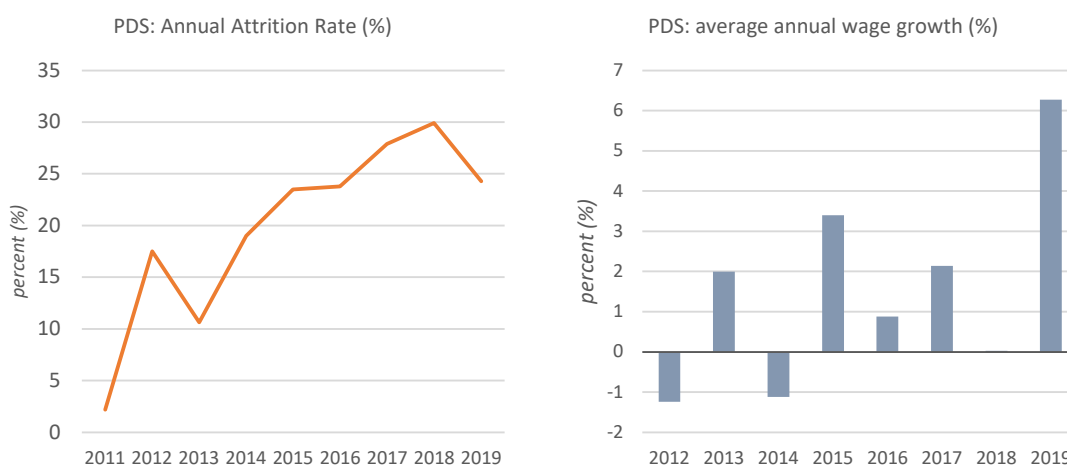
One of the non-financial barriers to PDS expansion may be the allocation of more serious cases, which provides senior lawyers with experience. While PDS has invested and seen improvements in retention, its model still relies on more junior lawyers and it may continue to struggle with recruitment. This appears to be an internal Ministry of Justice decision – there

²⁷ During the COVID-19 Alert Level 3 and 4 periods, there was an agreement between PDS and Legal Aid to ensure that private lawyers could still receive some income during that period when the number of cases available was low. The Ministry estimates PDS would likely have taken a 35% share in 2019/20 in the courts they operate, had this arrangement not been in place.

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is no requirement for defendants to choose their own lawyer and so it is possible more serious cases could be allocated to PDS from MoJ.

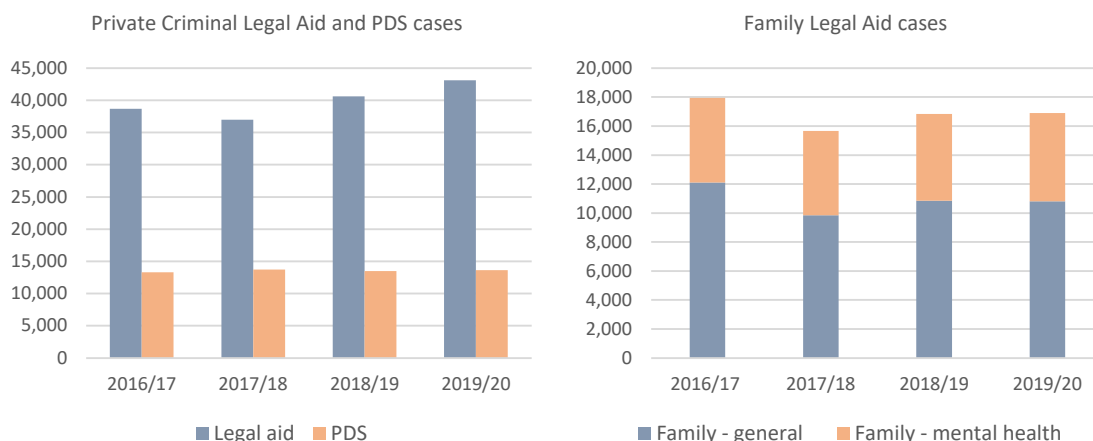
Figures 62 and 63: Annual attrition rate and wage growth of the Public Defence Service



Case volumes of private criminal legal aid have been increasing

The volume of cases disposed of in the criminal courts has remained stable since mid-2016. However, the share of cases funded by criminal legal aid for Category 3 to 4 cases has increased, offset by a decrease in self-representation/non-Crown funded cases. This suggests more people are eligible for legal aid. Figures 66 and 67: Criminal Cases share of disposals by defence type (%) demonstrate volume trends for legal services between disposals of criminal cases.²⁸

Figures 64 and 65: Number of cases through Criminal and Family Legal Aid/PDS



As well as an increase in the share of total cases, the total number of criminal legal aid cases has increased since 2017/18. The total number of family legal aid cases has fluctuated

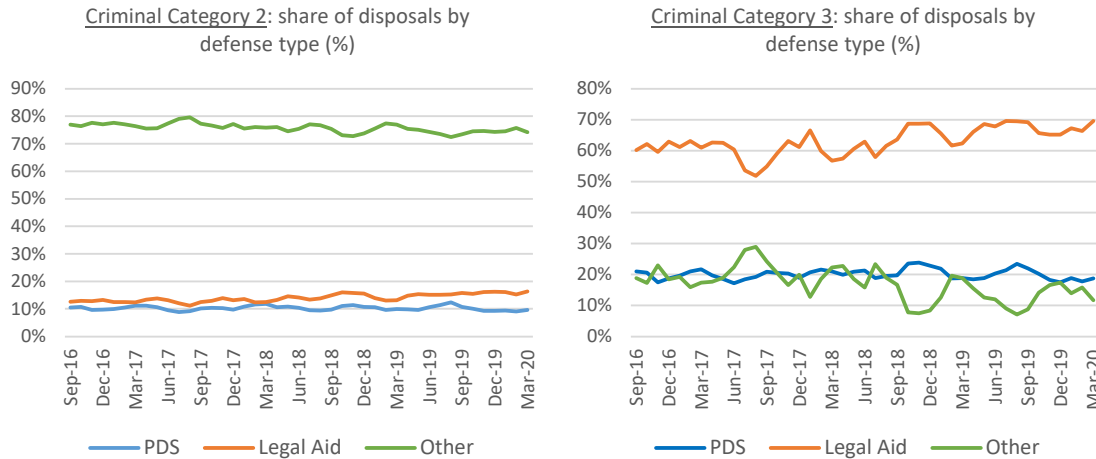
²⁸ Criminal cases can be categorised into those funded by private criminal legal aid, public defence, and other (which may be self-represented or legal advice not paid by the Crown).

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but has been steady the past two years. The below charts show number of criminal legal aid and PDS cases, and number of family legal aid cases (general and mental health).

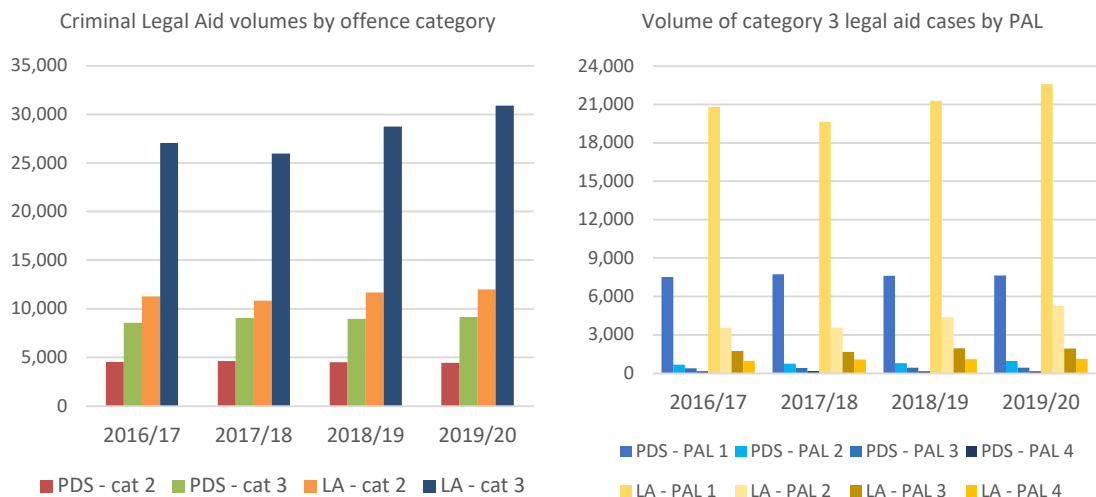
Within the criminal jurisdiction, the largest volume of cases by category of offence is for category 3 private legal aid cases (54 percent of all legally aided cases). Volumes of these cases have been increasing over the past three years – 11 percent increase between 2017/18 and 2018/19, and 7 percent increase between 2018/19 and 2019/20 (Figures 66 and 67: Criminal Cases share of disposals by defence type (%)).

Figures 66 and 67: Criminal Cases share of disposals by defence type (%)



Figures 68 and 69: Volume of Criminal Legal Aid by offence category demonstrates volume by offence category in PDS and legal aid (category 1 and 4 are excluded in the charts as they are negligible). Of the category 3 cases, PAL 1 makes up the largest proportion as demonstrated below (84 percent of PDS cases and 73 percent of legal aid cases in 2019/20). This group encompasses cases prosecuted by Police, judge-alone trials, where the maximum sentence is between 2 and 10 years imprisonment.

Figures 68 and 69: Volume of Criminal Legal Aid by offence category



Eligibility increases and time charged are driving increased legal services costs

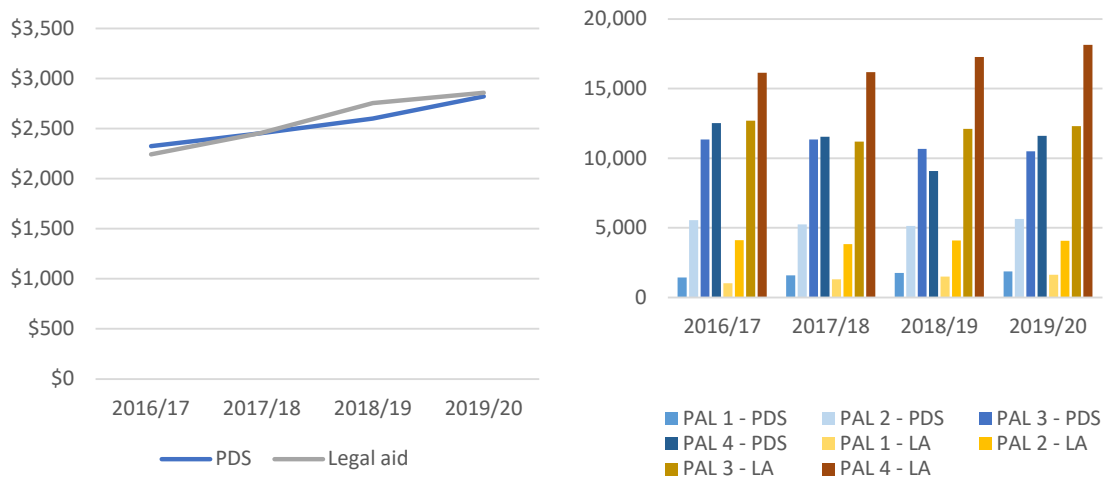
Including administration and overhead costs, legal aid criminal and PDS average cost per case have been increasing since 2016/17. The cost per case by Category is also increasing for legal aid and PDS Category 2 and 3 cases. There has been negligible difference in

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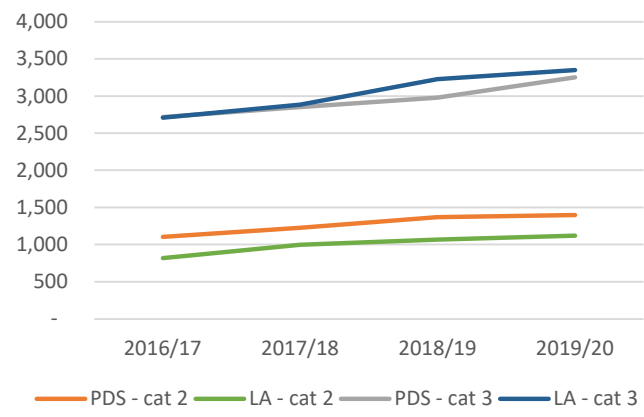
average cost per case for criminal legal aid and PDS, including administration and overhead costs, since 2016/17 (see Figures 70 and 71 and 72: *Average cost per case PDS and criminal legal aid (\$)*). On average, PDS is more expensive for Category 2 cases but slightly cheaper for Category 3 cases.²⁹

While the volume increases in Category 3 noted above are a result of additional cases qualifying for legal aid, the average cost increases may be a result of broader timeliness issues in the courts. Fee changes introduced in 2016/17, noted above, may also be a contributing factor.³⁰

Figures 70 and 71 and 72: Average cost per case PDS and criminal legal aid (\$)



Cost per case of legal aid cases by offence category including administration/overheads



As noted in the courts section of the report, the increase in Criminal Category 3 workloads has been driven by increased average events to disposal. The data collected by MoJ does not currently track which cases are legally aided. Therefore, we are not able to say for certain that the increase in events or time to disposal is having an impact on legal aid and PDS costs, although this is assumed since fees are paid on the basis of time spent and are standard within each PAL. If MoJ were able to match legal aid and courts data, it would

²⁹ In 2019/20, legal aid PAL 4 cost 57 percent more than PDS PAL 4.

³⁰ Funding was agreed by Cabinet in 2015 to provide increases in criminal fees: \$1.624 million in 2016/17, rising to \$4.92 million per year by 2018/19.

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provide deeper insights into the contribution to recent changes in the courts system by legal aid and PDS cases.

As the legal aid data analysed above does not cover pre-2014, it is also not obvious whether the weighted workload issue in the courts, which began in 2014, are driving legal aid cost increases (see Figures 15 and 16: Changes in weighted workloads of District Courts in courts section). Again, some assumptions can be made since the appropriation data suggests cost pressures began to build from around 2014.

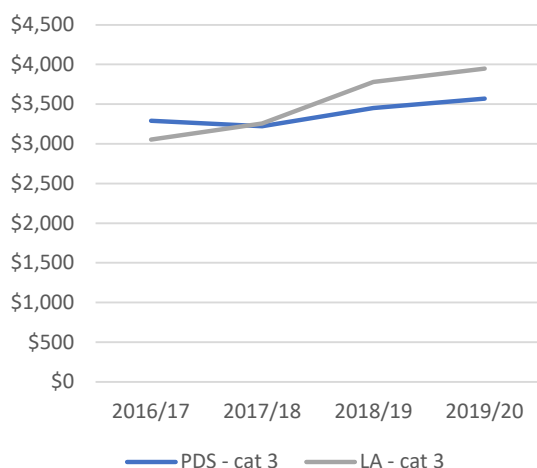
In aggregate, the lack of diverging trends suggests that there are few gains in prioritising resources between PDS and legal aid. However, there is regional evidence that implies worsening court timeliness is impacting average cost growth in legal aid relative to PDS – particularly in congested courts and in more serious criminal cases.

The Auckland example implies legal aid is more sensitive to court timeliness issues

Volumes of legal aid and PDS cases are largest in Auckland, making up 39 percent of all PDS cases and 22 percent of all criminal legal aid cases in 2019/20. Similarly, the average cost per legal aid case is highest in Auckland.

Since 2016/17, the average cost (including administration) for legal aid Category 3 cases in Auckland has increased by 29.3 percent, but only by 8.5 percent for PDS. This divergence (as Figure 73 shows) implies that legal aid is more sensitive to worsening court timeliness, which has been most acutely felt in Auckland.

Figure 73: Average cost per case across Category 3 legal aid and PDS cases: Auckland (\$)

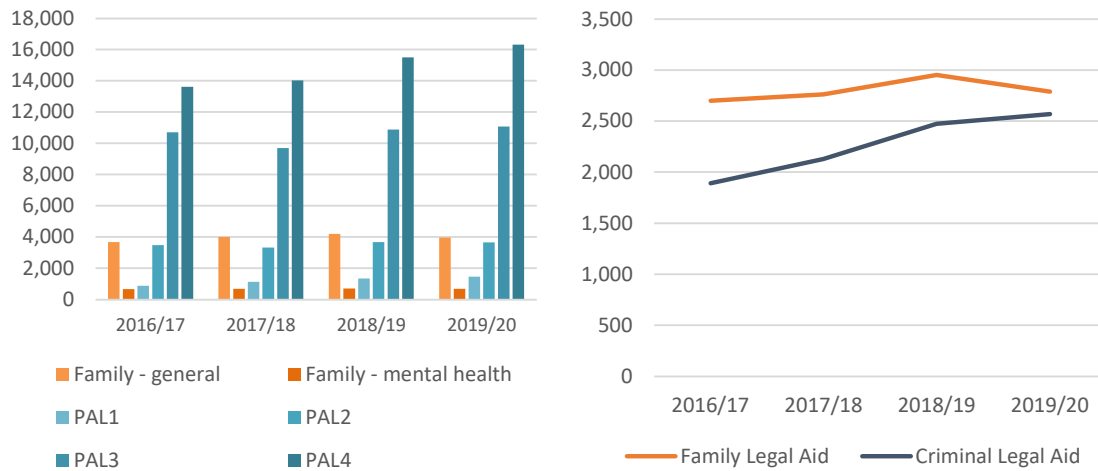


Average family legal aid costs are not increasing significantly

Expenditure on family legal aid has varied slightly, but overall is not increasing. While there is no obvious comparison (such as PDS) to consider cost per case for family legal aid, the data suggests the average costs are higher than criminal legal aid. The chart below shows the average cost for family legal aid was \$2,701 in 2016/17 (excluding administration costs), increasing to \$2,790 in 2019/20 (3 percent), which is not significant. Unlike criminal legal aid, family legal aid cost per case has not been increasing at the same rate and has recently decreased.

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Figures 74 and 75: Average cost per case of Family and Criminal Legal Aid (\$)



While family legal aid costs are on average higher than criminal legal aid (excluding administration costs), we do not have enough information to consider comparable complexity to determine if there are inefficiencies, s9(2)(f)(iv)

Administration of legal aid has remained relatively low-cost and savings have been found

Between 2016/17 and 2019/20, legal aid volumes increased 3 percent per annum. This suggests, as a share of the non-departmental expenditure that the legal aid administration function manages, its cost per output has been decreasing.

Figure 76: June actuals - Legal aid compared with administration of legal services (\$m)

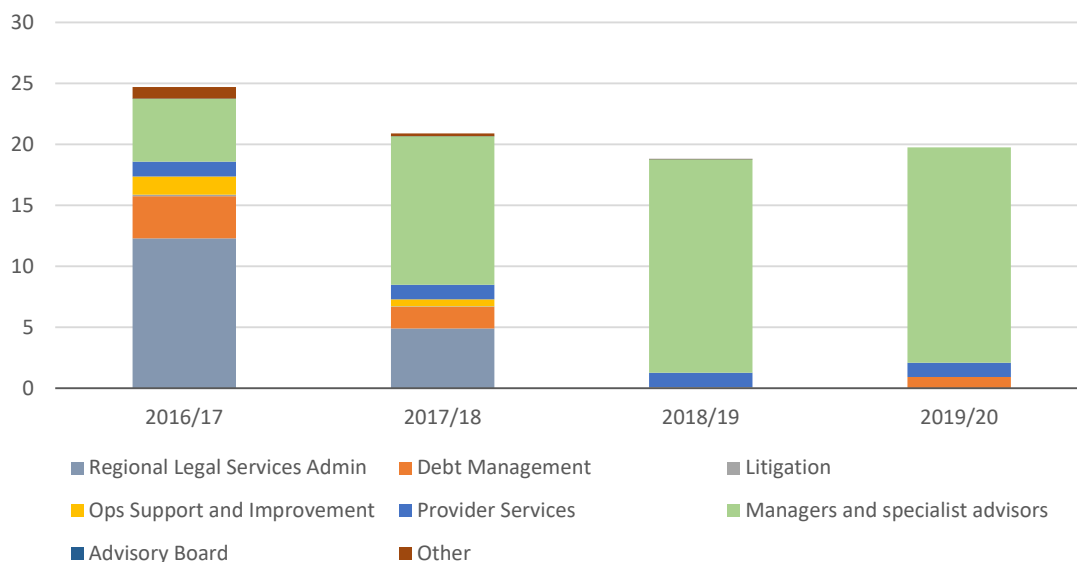


In 2010/11, the Legal Services Agency was incorporated into MoJ, under the appropriation, *Administration of Legal Services*. Of this appropriation, approximately 71 percent of expenditure is attributable to legal aid costs, while the rest is associated with legal-aid related expenditure such as policy projects.

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Expenditure within the appropriation that is attributable to legal aid administration has decreased over the past four years. Figure 77 demonstrates recent changes to expenditure in the legal aid portion of the administration appropriation. The decrease appears to be a result of cost savings found from merging regional centres, which happened between 2016/17 and 2017/18.

Figure 77: Breakdown of legal aid administration costs (\$m)



Community Law Centre (CLC) funding has recently increased

The CLC appropriation remained \$10.970 million from the time it was transferred to MoJ in 2011/12 until 2018/19. Budget 2018 agreed a funding increase of \$2.18 million for 2018/19 only, based on an inflation-calculated adjustment. Budget 2019 agreed to the same amount (\$2.18 million) on an ongoing basis.

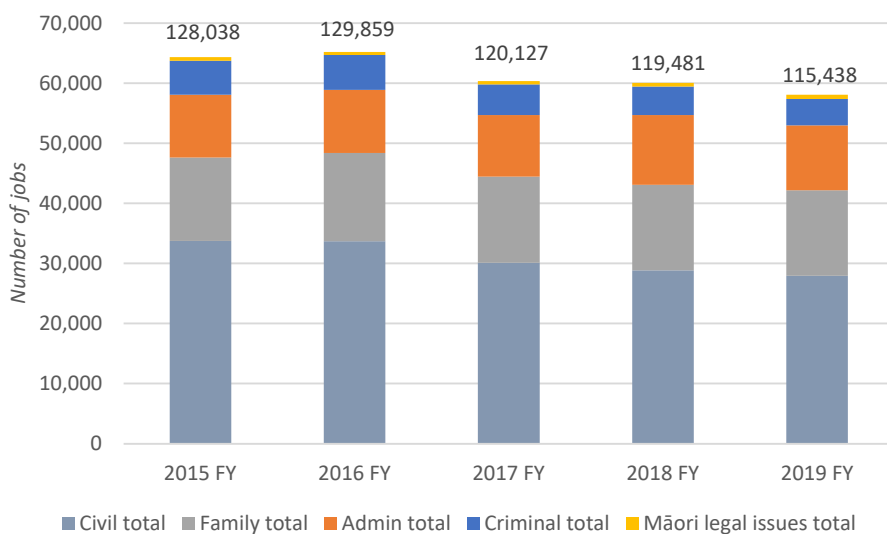
Further funding was agreed in Budget 2020 for CLCs to implement a case management system and pro-bono clearinghouse (approximately \$0.444 million per year), and for remuneration increases (\$1.487 million per year). Time-limited funding was agreed from the COVID-19 Response and Recovery Fund following Budget 2020 for volume pressures expected to result from COVID-19 (approximately \$1.115 million per year for three years).

As part of the Budget 2020 initiative, CLCs reported staff turnover averaged almost 50 percent in the past 2 years. Funding was requested to move salaries to comparable levels with small and medium-sized private firms and represented an average 18 percent increase. Scaled funding was provided on the basis that this would progress staff halfway to the average medium-sized firm salaries. Attrition rates are therefore expected to improve, although it is too early to know the extent.

Reported “jobs” or case workload for CLCs appears to be decreasing over time. However, this does not capture requests for support declined and may suggest that it is costing more for the level of service delivered, rather than reduced demand. Figure 78 demonstrates the volume of jobs measured by CLCs. Overall, declining volumes, combined with recent funding increases, suggests that volume pressures should be manageable for now.

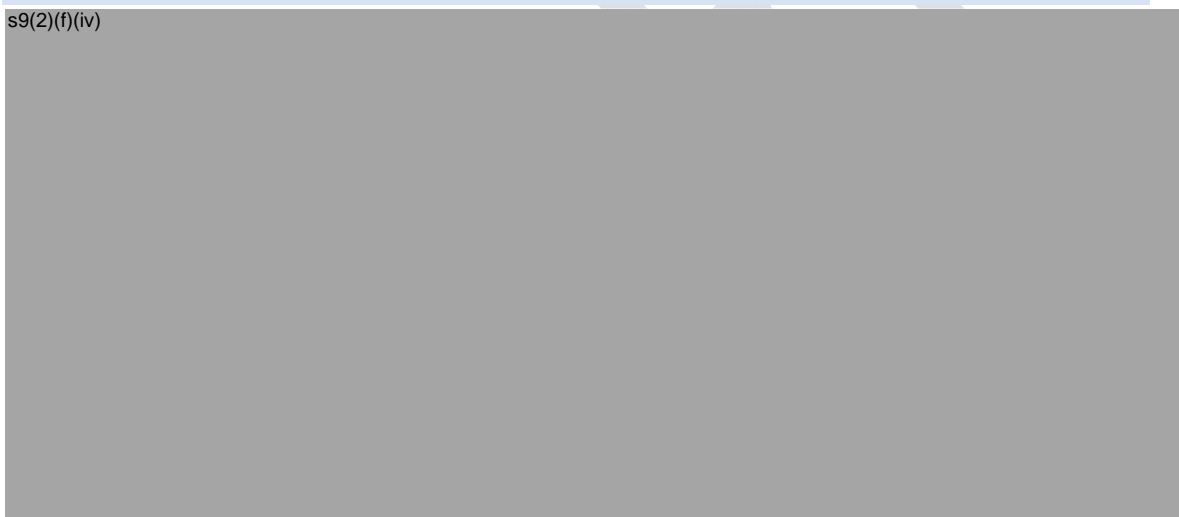
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Figure 78: Community Law Centres workload – number of jobs



Where is MoJ now?

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Options for reducing legal aid pressures

A strategic view is needed across the full suite of legal service interventions to determine the most appropriate role for government in supporting access to legal services. The system does not appear to be operating strategically with a view to overall value for several reasons.

First, performance information is not available to support direct comparison. For example, client satisfaction data would help to compare quality of outputs. To understand outcomes and impacts, legal aid and PDS data need to be linked to court data, which would require changes in the way that data is collected in current systems (or could be addressed through court digitisation). This would also help in determining if funding settings for the different legal services are having an impact on court system performance.


Second, PDS plays a role in hiring and training less-experienced lawyers, essentially increasing skill in the profession as a secondary output. PDS cites having taken on this role following changes to the legal aid fee system that made the private market less able or willing to take on this function. It also allocates its services based on gaps in the market. These broader functions have a cost for the Crown. Ministers may wish to reconsider

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expectations based on these wider considerations and value for money. This may be difficult to address, as the labour market is small and limited.

Third, relative costs are opaque. As the Crown does not directly fund private lawyer overhead costs, the data does not provide an indication of whether there are issues for private firms to meet costs from the payments received by the Crown, even though there is a public sector comparator.

s9(2)(f)(iv)



There is also an opportunity to expand PDS to cover family cases, although this would be quite a significant shift in operating model for PDS and not enough information exists to consider relative value. Introducing PDS into the market may provide competition to the private market to the benefit of the Crown, given the cost per case is higher for family legal aid than criminal.


When Cabinet took the decision to expand PDS in 2011, it noted that further expansion must be considered against the risk that a smaller private market for legal aid may lead to the exit of more experienced lawyers, potentially reducing future purchase options. We understand there was resistance to the establishment of PDS from the private bar when it was first introduced. It is possible that expanding PDS will be met with resistance again or could lead to labour market disruption.

The main remaining lever is to reduce time spent by lawyers in courts, where time is unnecessary for the benefit of clients. Changes to the drivers of increased costs (e.g. saving court time) could have benefits across both appropriations. The rate of increasing cost per case is high for both legal services, suggesting broader systemic issues are contributing to costs.

Options for administration of legal aid

MoJ has recently made improvements in the management of legal aid services through its administration function. This has resulted in cost savings for the appropriation, which has decreased since 2016/17, despite legal aid volumes increasing 3 percent per annum over the same period.

s9(2)(f)(iv)




Community Law Centres

The appropriation does not appear to be under pressure and has recently had relatively substantial funding increases. There is a choice for Ministers to invest more with the intention that this reduces the amount of legal advice sought (and the pressure on legal aid). However, given the recent increases, it may be better to allow improvements to be made with the additional funding before exploring further expansion. It would be useful to monitor this increased expenditure over the next few years.

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s9(2)(g)(i)



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Treasury Report: Justice Cluster Spending Review Final Report

Date:	17 February 2022	Report No:	T2021/3094
		File Number:	BM-2-7-2021-1

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	<p>Note the contents of this report</p> <p>Agree to recommendations for further work</p> <p>Discuss preferred funding envelope and package for Budget 2022 for the Justice Cluster</p>	3 March 2022
Minister of Corrections (Hon Kelvin Davis)	<p>Note the contents of this report</p> <p>Agree to recommendations for further work</p> <p>Discuss preferred funding envelope and package for Budget 2022 for the Justice Cluster</p>	3 March 2022
The Attorney-General (Hon David Parker)	<p>Note the contents of this report</p> <p>Agree to recommendations for further work</p> <p>Discuss preferred funding envelope and package for Budget 2022 for the Justice Cluster</p>	3 March 2022
Minister of Police (Hon Poto Williams)	<p>Note the contents of this report</p> <p>Agree to recommendations for further work</p> <p>Discuss preferred funding envelope and package for Budget 2022 for the Justice Cluster</p>	3 March 2022
Minister of Justice (Hon Kris Faafoi)	<p>Note the contents of this report</p> <p>Agree to recommendations for further work</p> <p>Discuss preferred funding envelope and package for Budget 2022 for the Justice Cluster</p>	3 March 2022
Associate Minister of Justice (Hon Aupito William Sio)	<p>Note the contents of this report</p> <p>Agree to recommendations for further work</p> <p>Discuss preferred funding envelope and package for Budget 2022 for the Justice Cluster</p>	3 March 2022

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Igor Dupor	Senior Analyst, System Design and Strategy	N/A (mob)	✓
Oliver Parsons	Team Leader, System Design and Strategy	s9(2)(g)(ii)	

Minister of Finance’s Office Actions (if required)

Return the signed report to Treasury.

Refer the report and appendix to Ministers (Hon Kelvin Davies, Hon David Parker, Hon Poto Williams, Hon Kris Faafoi, Hon Aupito William Sio)

Minister’s Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (Appendix 1 spreadsheet attached)

BUDGET SENSITIVE**Treasury Report: Justice Cluster Spending Review Final Report**

Executive Summary

In December 2020, the Minister of Finance agreed to establish the Justice Cluster (comprising the New Zealand Police, Ministry of Justice (MoJ), Department of Corrections, Crown Law Office and Serious Fraud Office (SFO)) including Treasury to undertake a spending review of the Cluster agencies. This is the final report including findings from the spending review and assessment of the Justice Cluster proposed budget packages against the predefined envelopes.

Key Themes from the Spending Review

This review focused primarily on the criminal justice system which represents the most significant portion of the Justice Cluster's baseline and is currently the focus of significant reforms. Criminal justice is where the Cluster agencies converge, so is the area with highest benefits from collaboration. The following key themes were identified during this review:

- Increased complexity of cases and of needs across the criminal justice sector has led to rising demand and costs of services, with knock-on impacts on system performance.
- Investments across the criminal justice system are directed mostly to those already in the system, but the Justice Cluster is beginning to explore alternative pathways with better outcomes and lower costs.
- Overrepresentation of Māori in the criminal justice system is a major focus for the whole sector but remains an area of significant concern.
- Safety for frontline workers, victims and offenders is an increasing focus.
- COVID-19 has had a marked and ongoing impact on some baseline activities and will continue to create some uncertainty.
- s9(2)(f)(iv)

There have been significant demand-driven pressures on the justice sector over the last few years, resulting in growing court backlogs and time on remand. Managing these pressures has generally driven economy and efficiency of existing spending, though the review noted that:

- there has been significant growth of non-sworn police staff above the planned track [CAB-19-MIN-0158-220 refers]
- the paper-based nature of court systems means they are generally inefficient compared to other jurisdictions and vulnerable to congestion problems (where increasing pressure decreases efficiency)
- the generalised approach of managing remand populations as high security likely drives unnecessary additional cost, and
- a decreasing proportion of prisoners attend rehabilitation programmes, which ultimately has impacts on system efficiency.

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Budget 2022 Funding Options

The Justice Cluster spending proposals for Budgets 2022-24 focus on addressing cost pressures and improving system performance. We support this approach, and we have assessed the proposed packages as generally good value for money, though with some phasing and scaling options for Ministers.

The low package is dominated by largely non-discretionary cost pressures, is generally high value-for-money and has few delivery concerns. ^{s9(2)(g)(i)}

s9(2)(g)(i)

The medium package provides coverage for critical cost pressures, and some key priority initiatives. In general, this has been well-prioritised and presents good value-for-money. The medium package is likely better value for money overall than the low package, as it creates potential to deal with pressures to a point that system performance issues can begin to be addressed. Unless demand pressures eventuate that are well-outside forecasts, it is more likely the Cluster can manage costs within the medium package, however the lack of general contingency remains a risk.

The Cluster has submitted a high package slightly above the medium package, but below the indicative high envelope that was set. ^{s9(2)(g)(i) and s9(2)(f)(iv)}

s9(2)(g)(i) and s9(2)(f)(iv)

s9(2)(g)(i) and s9(2)(f)(iv) The high package would provide the Cluster with the most sustainable funding path, and greater capacity to absorb some unexpected cost pressures through reprioritisation. However, no contingency has been recommended by the Cluster even in the high package.

Ministers have several options to create headroom for high-value initiatives currently only within the high package, add provision for contingency, or to reduce the overall fiscal cost, particularly by rephasing initiatives over the three-Budget cycle funding period:

s9(2)(f)(iv)

A large number of FTE are sought, but a substantial proportion are entry-level positions and/or regionally based, which makes recruitment more feasible. Areas where labour market constraints may be an issue primarily relate to discrete bids with IT, policy and social sector components.

The Cluster has prioritised a single capital investment bid for Budget 2022 – Te Au Reka:


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Caseflow. We are generally supportive of prioritising this initiative, and it is consistent with the focus on system performance in the Justice Cluster spending proposal.

The Cluster contains three investment intensive agencies and has indicated a substantial 10-year capital pipeline that will be considered through future Budgets and business case processes, including accompanying operating expenditure that may be significant for some initiatives. While this is heavily focused on renewal and replacement across courts, Corrections facilities, IT/communications and Police equipment there are also some significant initiatives for progressing Cluster priorities.

Reprioritisation

s9(2)(f)(iv)

**Next steps**

A meeting is scheduled for the Minister of Finance and Cluster Ministers on 3 March to discuss the spending proposal submitted by the Cluster, the findings of the spending review and Budget 2022 advice.

Following this meeting and any subsequent direction from you, the Justice Cluster will submit a final package to progress through the Budget on 10 March.

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Recommended Action

We recommend that you:

Commissioning

a **note** that in August 2021, you agreed the terms of reference for a spending review of the Justice Cluster agencies (New Zealand Police, Ministry of Justice, Department of Corrections, Crown Law Office and Serious Fraud Office)

b **refer** this report to the Minister for the Prevention of Family and Sexual Violence

Agree/disagree.

c **discuss** a preferred funding envelope and package for the Cluster agencies to be progressed through the Budget process for Cabinet approval

Review Themes

d **note** this review focused primarily on the criminal justice sector, identifying six key themes:

- Increased complexity of cases and of needs across the criminal justice sector has led to rising demand and costs of services, with knock-on impacts on system performance.
- Investments across the criminal justice system are directed mostly to those already in the system, but the Justice Cluster is beginning to explore alternative pathways with better outcomes and lower costs.
- Overrepresentation of Māori in the criminal justice system is a major focus for the whole sector but remains an area of significant concern.
- Safety for frontline workers, victims and offenders is an increasing focus.
- COVID-19 has had a marked and ongoing impact on some baseline activities and will continue to create some uncertainty.

s9(2)(f)(iv)

Budget 2022-24 Spending Proposals

e **note** that the Justice Cluster has developed proposed packages that cover the upcoming three budget cycles, with a strong focus on addressing cost pressures and improving system performance

f s9(2)(f)(iv)

g

h

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i s9(2)(f)(iv) [Redacted]

Reprioritisation

j s9(2)(f)(iv) [Redacted]

k [Redacted]

Further Action Over the Three-Year Spending Plan Period

l s9(2)(f)(iv) [Redacted]

m [Redacted]

n [Redacted]

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o

s9(2)(f)(iv)

Agree/disagree.

Oliver Parsons
Team Leader, System Design and Strategy

Hon Grant Robertson
Minister of Finance

Hon Kelvin Davis
Minister of Corrections

Hon David Parker
The Attorney-General

Hon Poto Williams
Minister of Police

Hon Kris Faafoi
Minister of Justice

Hon Aupito William Sio
Associate Minister of Justice

BUDGET SENSITIVE**Treasury Report: Justice Cluster Final Report**

Purpose of Report

1. In December 2020, the Minister of Finance agreed to establish the Justice Cluster and undertake a spending review of the Justice Cluster agencies (New Zealand Police (Police), Ministry of Justice (MoJ), Department of Corrections (Corrections), Crown Law Office (Crown Law) and Serious Fraud Office (SFO)) [T2020/3726 refers].
2. The purpose of this report is to provide you with the key findings arising from the Spending Review in order to inform discussions about priorities and multi-year funding options, including assessments of proposed packages developed by the Cluster agencies covering Budgets 2022, 2023 and 2024.
3. On 29 July 2021 the Review Team submitted Terms of Reference which were agreed to by you [T2021/1765 refers]. This report is based on the objectives as set out in the Terms of Reference.
4. This report is divided into the following sections:
 - Section A sets out an overview of the Justice Cluster Spending Review.
 - Section B summarises the key findings of the Spending Review.
 - Section C provides advice on Budget 2022 funding options.
 - Appendix 1 (attached) sets out the individual assessments of Budget 2022 initiatives submitted by Cluster agencies.
 - Appendix 2 sets out relevant supporting evidence from the Spending Review.

Section A: Justice Cluster Spending Review

Spending Review Approach

5. A team of Treasury officials and agency secondees has undertaken a spending review of the Justice Cluster agencies, covering value-for-money of key areas of agency baselines. Spending reviews are designed to provide Ministers with a degree of assurance about where departmental baseline funding is spent and how it contributes to achieving outcomes and priorities, as well as identifying cost pressures and opportunities for reprioritisation and new investment.

Cluster Agencies and Ministerial Priorities

6. The Justice Cluster includes Police, MoJ, Corrections, Crown Law and SFO. How Justice cluster agencies interact and collaborate has significant implications for sector performance and demands on the criminal justice system in particular. The Justice Sector Leadership Board (JSLB) and individual agencies are strongly engaged a reform programme in order to address structural pressures in the system by reducing crime, keeping people safe and modernising the justice system.
7. The purpose of the criminal justice system is to improve New Zealand society by:
 - supporting the healing and safety of people who have been affected by criminal offending

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- providing processes that ensure accountability and support the rehabilitation of people who have offended
 - upholding human rights and working to enable the restoration of mana of all individuals, whānau and communities affected by crime, and
 - working with communities and government agencies to help build resilience among families, whānau and communities to prevent crime.
8. Policies and approaches applied by one agency at any point in the system will have knock-on effects, as do legislative settings. Ensuring that agencies are working together effectively allows agencies to identify how their outputs have wider effects and implement changes that promote better outcomes for pathway participants and those affected by crime.
9. The Justice Cluster priorities as agreed by the Cluster Ministers are:
- Better outcomes for victims
 - Improving access to justice
 - Addressing issues with remand
 - Better enabled organisations and workforce

Focus of this Review

10. The criminal justice system represents the most significant portion of the Justice Cluster's baseline and is currently the focus of significant reforms. Criminal justice is where the MoJ, Corrections, Crown Law, the SFO and Police converge, so is the area with highest benefits from collaboration. Accordingly, this was the primary focus of this spending review.
11. The spending review covered matters of interest within the following areas of focus:
- Prevention, response and enforcement.
 - Court system performance.
 - Custody and community.
 - Rehabilitation, reintegration and reducing reoffending.
 - Infrastructure and capital investment.
12. SFO and Crown Law were also covered as separate areas of focus, to ensure key issues were not obscured by the relative scale of the larger agencies.
13. In order to develop an overarching financial view of the criminal justice system, we mapped the Cluster's expenditure against six outcome themes as laid out in the Interim Report dated 29 July 2021 [T2021/1765 refers], which correspond to the pathways people take through the justice system (Figure 1 and Figure 2 on the following A3). This illustrates how resources are mostly directed towards people already in the system, and that the costs of intervention increase significantly as people progress through the system.

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Figure 1: Overview of population flows in criminal justice systems

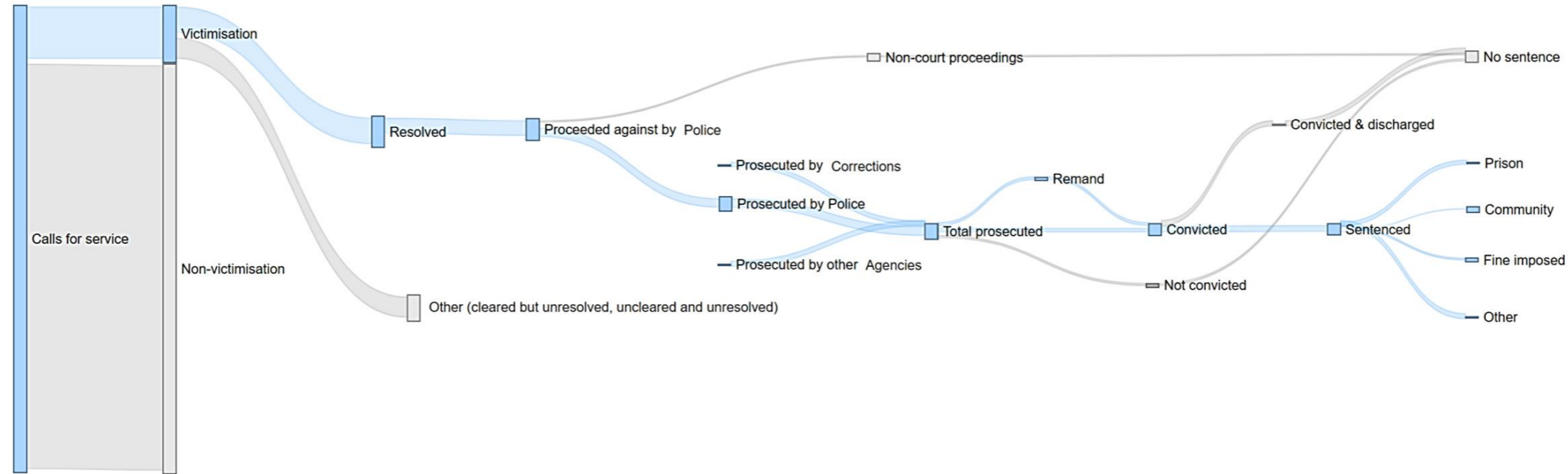
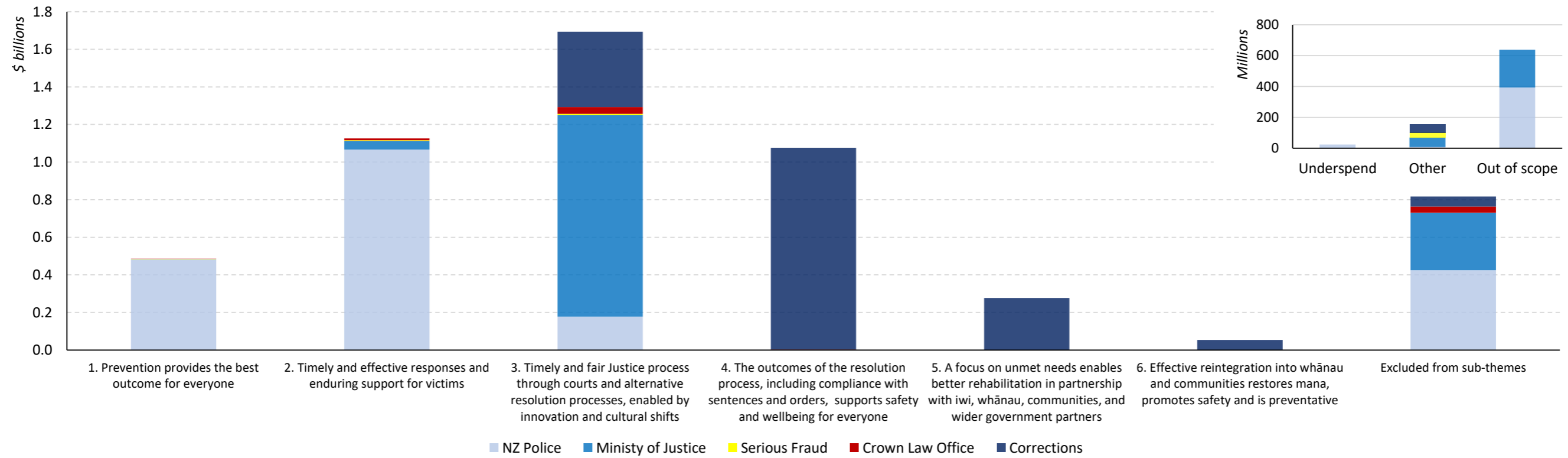


Figure 2: Financial mapping to criminal justice subthemes across the Justice Cluster (\$ billions)



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BUDGET SENSITIVE**IN-CONFIDENCE****Key Themes from this Review*****Increased complexity of needs across the criminal justice sector, and a high number of complex cases, have led to rising demand and costs of services***

14. The criminal justice sector has experienced increased complexity across several elements and areas:
- Police has seen a significant increase in mental health and attempted suicide calls since 2011 (38% and 47% respectively). Alongside broader Police services, demand pressures have increased due to more sophisticated organised crime and new crime areas such as cyber and technology-enabled offending.
 - SFO has seen an increase in complexity of the cases requiring investigation while overall volume of investigations is declining. However, the average time for investigations has increased from 12 months to 20 months on average, reflecting workload pressures on specialist expertise.
 - Increasing complexity in interactions within the court system have contributed to structural congestion, manifesting as higher average events to dispose cases.
 - This increase, driven by the increased average events to case disposal, also has a significant impact on Crown Solicitors' workloads and wellbeing where Category 3 cases include jury trials, alongside driving increased Legal Aid costs.
 - In Corrections, analysis of the custodial population indicates a shift towards an older population with more complex, and often unmet, basic health needs and more complex unmet needs, such as mental health and addiction. This is especially acute for women who are more likely to experience mental health and substance disorders and be victims of family violence, requiring specialised trauma-based interventions. The increasing complexity of the prison population presents operational and logistical challenges and risks, including the increased need for segregation.

Investments Across the Criminal Justice System are Directed Mostly to Those Already in the System

15. Financial mapping of Justice Cluster shows that resources are mostly directed to those already in the criminal justice system, not to the prevention of their getting there. There is strong scientific evidence and fiscal benefits for investing relatively more resources into early intervention to identify and mitigate risk, and adequate rehabilitation and subsequent social inclusion for those already in the criminal justice system. In New Zealand approximately 80% of all sentenced prisoners were classified low-medium risk or below.

Overrepresentation of Māori in the Criminal Justice System Remains an area of Significant Concern

16. While there are some overall improvements and a decline in prison population, Māori continue to be overrepresented in the Criminal Justice system. The need for strategic responses focused on Māori was emphasised in Tū Mai Te Rangi, a Waitangi Tribunal report from 2017. This calls for responses that improve outcomes for Māori at all points of the criminal justice system, developed with Māori partners. This poses a challenge for the entire Justice Sector:
- Justice sector agencies are working together to shift their approach and there is strong strategic alignment to achieve more equitable outcomes for Māori through key initiatives and strategies developed with Māori partners, such as Te Pae Oranga, Te Ao Mārama, Hōkai Rangi and Māori Pathways.

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- Police's strategy, Te Huringa o Te Tai recognises that staff may hold unconscious biases which can affect their decision-making. Police has implemented success measures through Te Huringa o Te Tai to mitigate these. Programmes such as Te Pae Oranga and supported resolution methods to reduce entry and/or escalation into the criminal justice to improve social outcomes, and to improve alignment with whanau-based approaches have shown early positive impacts.
- In the court system, the flow-on impact of increased case complexity and court congestion affects the amount of time spent on remand, and which is disproportionately made up of Māori. The percentage of the remand population that identifies as Māori is currently 57.3% for men and 65.7% for women.
- Across the total custodial population, 52% of men, and 65% of women are Māori. This is despite Māori only making up 16.7% of the total population. Māori represent 63.1% of those managed at high or maximum security. Corrections' approach is shifting under Hōkai Rangī to recognise the importance of wellbeing and incorporating Te Ao Māori approaches, to better support the needs of people on sentences and orders administered by Corrections and begin to address Māori overrepresentation. Hōkai Rangī recognises that Corrections cannot address Māori overrepresentation alone, and that this requires work across government in partnership with Māori.

Safety for Frontline Workers, Victims and Offenders is an Increasing Focus

17. Both Corrections' frontline staff and Courts security staff are required to work closely with people who have committed offences, including people who actively use manipulation and violence. This is a psychologically and physically challenging work environment. Hōkai Rangī is driving a cultural shift to strengthen and build workforce capability in a complex and challenging environment. Improving outcomes relies on Corrections prioritising the oranga of people in prison, addressing their often-complex needs, while also ensuring workforce safety. This requires a greater focus on supporting and developing frontline staff with key areas of Corrections workforce safety bid having been developed in partnership with the frontline workforce and union partners in response. Together with the remuneration component, this seeks to address the pay and working condition requirements that are evidenced as needed through the ongoing union bargaining and engagement.
18. Improving the safety of Police staff remains a priority given the increase in the propensity of some to use violence against Police. Over the past 12 months, the Frontline Safety Improvement Programme has identified opportunities to improve the frontline's capability and capacity to enable safety solutions that are right for New Zealanders and the style of policing that the public expect.

COVID-19 has had a Marked and Ongoing Impact on Some Baseline Activities

19. Considering the nature of justice services, the system has coped remarkably well with disruptions caused by the pandemic, adapting and innovating to manage pressures even with large proportions of services dependent on fixed assets that are not designed for varying operating models. Impacts have included the following:
 - Police is responding to breaches to COVID-19 legislation, managing and enforcing checkpoints, assisting with Managed Isolation and Quarantine facilities (MIQ), and having an increased presence in the community.
 - SFO received time limited funding from the COVID-19 Relief and Recovery Fund (CRRF) to lead activities aimed at reducing fraud against COVID-19 recovery funds and to respond to the anticipated increase in serious financial crime during an economic downturn.

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- Funding from the CRRF was provided to MoJ, Police, Corrections, Oranga Tamariki, and Crown Law to support the work of a number of new District Court Judges, High Court Judges, and one acting Associate High Court Judge including associated registry staff, accommodation, and other support services across the justice sector to address court backlogs.
- Corrections rapidly changed operational procedures to ensure staff and people in its care were kept safe and protected by keeping COVID-19 out of prisons. CRRF funding was also applied against technology to maintain connectivity between people in prison and their whānau and lawyers (e.g. by increased access to Audio-Visual Links). Note that operational response to Delta (such as quarantine) have been baseline and not CRRF funded.
- A key focus for 2020, given the COVID-19 pandemic, was on workforce wellbeing and support. Agencies are experiencing recruitment pressures of highly specialised skill sets with the ongoing border closure, particularly in IT.

Progress is Being Made on Collaboration for Criminal Justice System Reform

20. The JSLB was created in 2011 to provide leadership and governance over major programmes in the justice sector by joining up and integrating parts of strategy and policy across agencies and the sector. Specific programmes and initiatives which highlight the benefits of collaboration across the Cluster and strategic alignment include supported resolution pathways, electronic monitoring as a more effective alternative to remand or imprisonment, the Criminal Process Improvement Programme and stronger community engagement by Police. s9(2)(f)(iv)

s9(2)(f)(iv)

Section B: Spending Review Key Findings for Each Outcome Theme**(1) Prevention Provides the Best Outcome for Everyone*****Key Findings***

21. Policing provides the initial point of contact with individuals entering the justice pathway and determining what criminal justice response is required. How Police responds to criminal justice demands has flow on effects for the rest of the criminal justice system.
22. Police continues to face ongoing challenges with increasing service demands and growing complexity of service delivery. Some of the key drivers of this complexity and demand include responding to unforeseen events (e.g. COVID-19), and emerging areas of crime or harm (such as organised crime and cyber-crime) and working more collaboratively with partners across the justice and social sector.

23. s9(2)(f)(iv)

Addressing Key Findings

24. s9(2)(g)(i)

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25. s9(2)(g)(i)

(2) Timely and Effective Responses and Enduring Support for Victims**Key Findings**

26. Frontline safety is currently of concern, as Police are encountering a relatively higher proportion of violent offences (further detail in Appendix 2 regarding Prevention, response and enforcement).
27. There has been historically little investment in improving outcomes for victims, and this is currently a priority for Justice Ministers.
28. Using alternative resolution models and specialist courts has resulted in diverting cases from the mainstream courts, with an indirect impact on improving outcomes for victims.
29. The movement towards a person-centric oranga approach to Corrections considers the impact of crime on the offender's whanau, iwi and communities.

Addressing Key Findings

30. Additional training and uplifting capability of front-line staff to address needs of victims. For example, Police's Frontline Safety Improvement Programme to enhance frontline training and improve frontline access to specialist capability that support victims.
31. Increased use of alternative resolution pathways (e.g. Te Pae Oranga and Reframe) is a key contributor to reforming the criminal justice system, improving outcomes for victims and people in the system and reducing demand pressures elsewhere in the system.
32. Continued investment into shifting the justice pathway to focus on a more person centric approach which includes the needs of victims, whanau, iwi and communities.

(3) Timely and Fair Justice Process Through Courts and Alternative Resolution Processes, Enabled by Innovation and Cultural Shifts**Key Findings***Court Performance*

33. Timeliness of the court system has deteriorated, particularly since 2014, primarily driven by an increased number of events to disposal for criminal Category 3 cases. The underlying causes of increased congestion in the Courts are likely to be behavioural responses to legislative and procedural settings, with justice sector interactions becoming increasingly complex – manifesting as additional court events per disposal. Recent research into later guilty pleas found that the main drivers were:
 - late disclosure of evidence making pleading early problematic
 - the Case review stage not driving early engagement as intended (i.e. engagement is not happening)
 - a lack of system incentives to plead early (perception that people get large sentence discounts late in the process), and

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- people are rarely being held to account for not engaging or being unprepared.
34. The 2020 spending review of MOJ noted that the case for digitising the courts system is bolstered by the diseconomies of scale observed in courthouses. The larger the courthouses, the more time required to dispose of cases, with paper-based systems seemingly more prone to greater inefficiency as the size of the courthouse increases.
35. s9(2)(g)(i)
36. Crown Solicitor, Legal Aid and/or Public Defence Service resourcing is under pressure due to trends in court processes causing large increases in workload.
37. Further detail is provided in Appendix 2 under Court System Performance.

Remand

38. Court congestion is a major contributor to increasing time spent on remand. The proportion of prison sentences served in remand has roughly doubled since 2014 and suggests that addressing court performance will have significant positive flow-on impacts on Corrections.
39. The proportion of a person's sentence spent on remand may mean that the remainder of a sentence is too short for the person to engage in any meaningful rehabilitation. A greater proportion of time spent on remand limits the ability of people in remand to access rehabilitation programmes, which could otherwise be available if sentenced in a timely manner. Corrections is now revising their approach to providing rehabilitation to respond to the high and increasing proportion of the custodial population in remand.
40. The high remand population is also causing greater management complexity for Corrections, partly due to higher gang affiliation of people on remand.

Addressing Key Findings*Court Performance*

41. Addressing the absence of a modernised case management system (i.e. Caseflow) is necessary and urgent. In addition to the more immediately apparent increases in efficiency that could be generated by moving away from a paper-based system, court modernisation is likely necessary to address any gaming of current procedural settings, and to better enable effective evaluation of those settings.
42. The judiciary-led Criminal Process Improvement Programme (CPIP) that was established in immediate response to the system pressures caused by COVID-19, with support from Behavioural Science Aotearoa. Insights from this programme may contribute to the understanding of why defendants are delaying guilty pleas and unnecessarily extending the time required to dispose of cases.
43. The judiciary-led programme Te Ao Mārama is intended to improve effectiveness by expanding therapeutic approaches. Improved effectiveness may ultimately reduce pressure driven by 'failure demand' if it is successful in achieving enduring, improved outcomes for individuals in the system, but is likely to require additional resourcing for courts and associated services in the short-term (e.g. NGOs).
44. People working in the system report increased unnecessary procedural complexity and gaming behaviour and this is consistent with patterns in court data. Court modernisation and CPIP may help to address these issues, but our view is that review

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of the legislative settings may ultimately be required to achieve the desired changes in behaviour from people in the court system.

45. Current resourcing pressures for Police Prosecutors, Crown Solicitors, Legal Aid and/or the Public Defence Service are likely to need addressing, as the high workloads driven by trends in the courts may undermine effectiveness (ultimately reducing efficiency).

Remand

46. An integrated planning review is currently under way by Corrections to better enable access to the rehabilitation and reintegration interventions required to meet the needs of those in prison, including access to interventions for people on remand. This could make a substantial impact on meeting unmet needs in the custodial environment.
47. Continuing to invest in alternatives to remand in custody has potential to improve outcomes, including expanding use of Electronic Monitoring (EM) if carefully balanced and managed with public risk / perception.

(4) The Outcomes of the Resolution Process, Including Compliance with Sentences and Orders, Supports Safety and Wellbeing for Everyone

Key Findings

48. The increasing complexity of the prison population (including due to gang affiliation, responding to violence and aggression and an increase to the number of people on segregation) presents operational and logistical risk, driving costs and posing challenges for lifting wellbeing outcomes, with impacts on workforce requirements and safety.
49. Despite a decrease in the total prison population, Māori continue to be overrepresented, especially amongst the women's population.
50. Workforce is a key issue for Corrections for safety, meeting the needs of people in custody and operational efficiency. In 2020/21, Corrections expended \$26.4 million on overtime payments – equivalent to 305 FTEs of work. While the use of overtime can be an effective resource management tool to accommodate fluctuating workloads, the current high reliance on the practice needs to be considered.
51. EM has proven to be a cost-effective tool (relative to imprisonment) which supports the wellbeing of people, whether used for remand on bail or for community-based sentences and orders. The limitations to wider roll-out of EM should be explored, s9(2)(f)(iv)
52. Further detail is provided in Appendix 2 under Custody and Communities.

Addressing Key Findings

53. s9(2)(g)(i)
- s9(2)(g)(i) Extending the rollout would mean reduced overtime, improved staff wellbeing, and people in prison benefitting from improved meal and medication times, and more whānau-friendly visiting times. Initial assessments of the Making Shifts Work programme indicate marked improvements across focus areas.

54. s9(2)(f)(iv)

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55. Reviewing the appropriateness of security classification for people on remand could improve overall efficiency and better enable service provision.

(5) A Focus on Unmet Needs Enables Better Rehabilitation in Partnership with Iwi, Whānau, Communities, and Wider Government Partners

Key Findings

56. People in Corrections' care and management have increasingly complex needs. Corrections provides primary health, rehabilitation, education, employment and reintegration services to help increase oranga and reduce the likelihood of reoffending
57. The system providing rehabilitation services spans several departments within Corrections. This presents challenges evaluating the system as whole, assessing whether there are any gaps or duplication in the services provided, and the balance between services provided in prisons and the community. Services are being changed to better meet the needs of people in the system but much of this is currently small-scale, limited by capability and capacity (for both agencies and Treaty partners) or as part of the approach of starting small and testing and evaluating before rolling out wider where successful. These models have different resourcing demands and pressures.
58. Corrections' focus has shifted to a therapeutic, whānau-centric oranga focus to meet needs. This includes (but is not limited to) actions under a new Alcohol and Drugs Strategy, Hikitia (the Waikeria Prison Development mental health and addiction service) and Māori Pathways. Co-design of kaupapa Māori health services proposed, the framework is intended to include rongoā Māori practitioners to provide improved health services for Māori.
59. Māori Pathways is exploring and trying different ways to define and operationalise kaupapa Māori and whānau-centred approaches, and successfully incorporate change into Corrections' practices. The primary aim is to lower the proportion of Māori in the corrections system and support whānau wellbeing. The development of the Te Mana Wāhine Pathway for women in Christchurch commenced in 2019.
60. The proportion of people in prison attending programmes and interventions has decreased over the last five years. A review of a sample of programmes shows that decrease has disproportionately impacted Māori, Women and people under 34 years of age.
61. Further detail is provided in Appendix 2 under Rehabilitation, Reintegration and Reducing Reoffending.

Addressing Key Findings

62. s9(2)(f)(iv)

(6) Effective Reintegration into Whānau and Communities Restores Mana, Promotes Safety and is Preventative

Key Findings

63. Housing prisoners in their preferred region can have a positive impact on reintegration, and it maintains connection to whānau, and/or employment, education and rehabilitation programmes that meet the person's needs.

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64. The use of alternatives to custodial prison such as EM and community sentences minimises the impact of taking a person away from their community and improves social connections with whānau and other positive supports.
65. The availability of housing and employment are essential wrap around services allowing reintegration. Wraparound services are used to support prisoners' reintegration into the community upon release, reducing the risk of re-offending. While wraparound services are provided to some people as part of the initial reintegration, ongoing support is often beyond the scope and control of the justice system (e.g. access to ongoing healthcare, education and suitable and safe housing).
66. Further detail is provided in Appendix 2 under Rehabilitation, Reintegration and Reducing Reoffending.

Addressing Fey findings

67. Corrections' Electronic Monitoring Strategy 2020-2023 involves a shift towards a people-centred approach, to prioritise wellbeing and deliver better outcomes. This involves supporting the wellbeing of the people Corrections manages and monitors, and their whānau. The strategy is underpinned by technology, staff and culture, and Corrections' values.
68. One focus of Hōkai Rangi is accommodating people in prison close to home and maintaining connections to whānau. Changes are being made to systems that enable case managers to enter more information about an individual's preferred location, whilst noting that preference is dynamic, and circumstances can change.
69. Continued investment in increasing access to housing made available by the social sector to people with more complex needs is important. Research shows people who have recently been in prison have higher wellbeing benefits from access to safe and stable housing than any other cohort.

(7) Enabling Infrastructure – Cross Cutting Themes in Capital and ICT***Key Findings***

70. Assets associated with offender employment may require reconfiguration in line with changing needs (to match labour market demand) and constraints (e.g. Zero Carbon).
71. Courts capital utilisation could be improved alongside asset renewal plans (considering changing needs of court processes).
72. Asset management strategy and planning is maturing, but there are still significant gaps that impede good investment prioritisation within agencies and across the Cluster.
73. IT presents significant challenges (e.g. integration) and pressures (e.g. transition to aaS) across the Cluster.
74. The Justice Cluster is capital intensive, and parts of the portfolio have become significantly run down due to investment deferrals and/or insufficient operating expenditure, requiring a scale-up in renewals.
75. Further detail is provided in Appendix 2 under Infrastructure and Capital Investment.

Addressing Key Findings

76. Aging infrastructure assets and assets not fit for purpose in each of the agencies will require careful prioritisation and investment decisions to ensure critical assets are maintained and are available to enable organisation and Justice Cluster strategies to be implemented. This includes optimisation of prison networks and better utilisation of

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court assets. This may require investment to get fit for purpose assets and future benefits and divestment of underutilised assets across all agencies.

- 77. Continued investment in the transition to aaS to address aging technology risk and harness technology multipliers.
- 78. Continue to improve the level of collaboration across the justice cluster in refining the investment pipeline to schedule projects to enable sharing of experience and resources particularly in IT such as Cyber Security.

Section C: Budget 2022 Funding Options

Indicative Envelopes

79.

s9(2)(f)(iv)

80.

Multi-Year Funding and Exceptions

81.

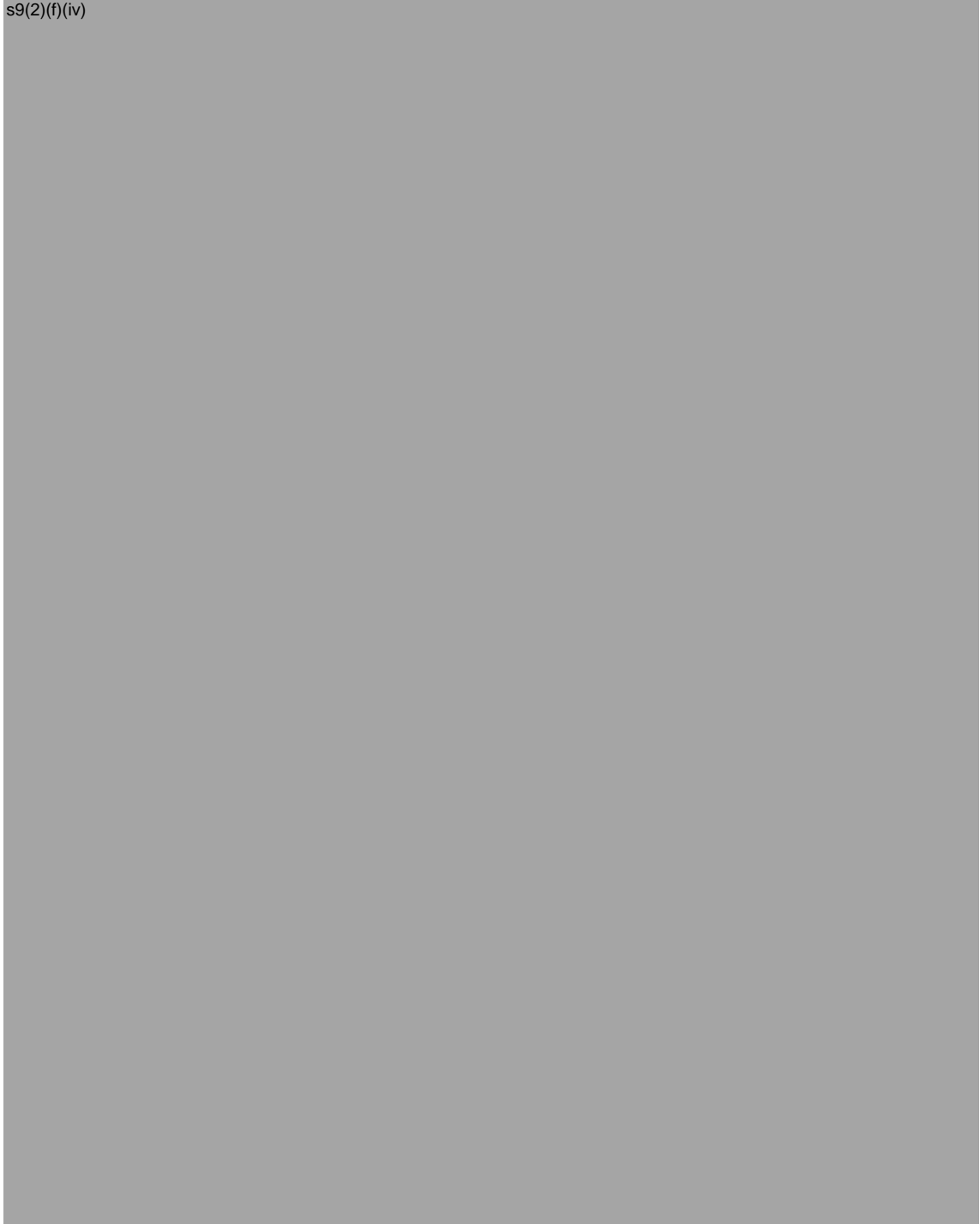
s9(2)(f)(iv)

82.

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83.

Assessment of Spending Proposals

Process

84. The Justice Cluster itself has run a process of strategic alignment, assessment of cost pressures and prioritisation, including phasing and scaling of bids that were deemed of sufficient quality to proceed. The Treasury-led Spending Review team has completed independent assessments of all bids submitted (comments included as Appendix 1), including assessing value for money, alignment and deliverability, and interrogating the basis of costings as for the normal Budget process. This has been undertaken in the context of the findings of the spending review where relevant, to ensure a good


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information base for recommendations to Budget Ministers. Comments on individual initiatives are included as Appendix 1.

Focus on Cost Pressures and System Performance

85. The Justice Cluster has developed proposed packages with a strong focus on addressing cost pressures and improving system performance. We are supportive of this approach. Improving system performance is necessary to get the large demand-driven cost pressures under control, which is important to:
- improve fiscal sustainability, for investment in transformation to be affordable
 - ensure that introducing measures to improve effectiveness, which may be more time-intensive, don't reinforce the trends that are causing slowdowns in the system (e.g. causing time spent on remand to increase), offsetting the benefits, and
 - improve trust in and legitimacy of the system, by ensuring justice issues are resolved in a timely way.
86. This is proposed to be undertaken in a way that is consistent with longer-term objectives for transformation of the criminal justice system. However, it will be important to continue monitoring outcomes (including for Māori in particular) to determine whether benefits are being seen from key strategic initiatives (e.g. Reframe, Te Pae Oranga, Te Ao Mārama, Hikitia and Māori Pathways) and to whom they are accruing.

87. s9(2)(f)(iv)


Workforce and Remuneration

88. While the total FTE sought is considerable s9(2)(f)(iv) a large proportion is made up of entry-level positions that should be manageable with more progressive phasing. There does not appear to be a great degree of competition for the same key skillsets within the Cluster, which is positive for deliverability, but we do note agencies may find it challenging to recruit and retain the numbers of new staff proposed.

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s9(2)(f)(iv)

89.

s9(2)(j)

90.

91.

s9(2)(f)(iv)

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Options for Use of Tagged Contingencies

92. s9(2)(f)(iv)

93.

Low Package: s9(2)(f)(iv)

Overall value-for-money, alignment and deliverability

94. The low package is dominated by largely non-discretionary cost pressures, and because of this is generally high value-for-money and has mostly minimal delivery concerns. s9(2)(f)(iv)

s9(2)(f)(iv)

95. In general, the focus on cost pressures limits the overall alignment of the low package to the Cluster priorities and would challenge the agencies' ability to deliver any meaningful transformation or deliver on Government or Cluster priorities.

Risk/resilience and sustainability

96. s9(2)(f)(iv)

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s9(2)(f)(iv)

97. s9(2)(f)(iv)

s9(2)(f)(iv) There is risk that funding at this level is likely to result in agencies needing to absorb excess cost pressures over the three-Budget cycle period, resulting in erosion of capability and performance, potentially exacerbating demand-driven cost pressures.

Medium Package: s9(2)(f)(iv)

Overall value-for-money, alignment and deliverability

98. The medium package, which uses the entire medium envelope, provides coverage for critical cost pressures, as well as some key priority initiatives. In general, this has been well-prioritised and appropriately scaled and presents good value-for-money. The medium package is likely better value for money overall than the low package, as it creates potential to deal with pressures to a point that performance issues can begin to be addressed.

99. s9(2)(g)(i) and s9(2)(f)(iv)

Risk/resilience and sustainability

100. At nearly twice the cost of the low package, the medium package presents a fair balance of cost pressures and new initiatives and is likely to put the Cluster on a more sustainable path than the low package. Unless demand pressures eventuate that are well-outside forecasts, it is more likely the Cluster can manage costs within the medium package, however the lack of general contingency remains a risk.

BUDGET SENSITIVE**IN-CONFIDENCE****High Package:** s9(2)(f)(iv)*Overall value-for-money, alignment and deliverability*

101. The Cluster has submitted a high package slightly above the medium package, but below the indicative high envelope that was set. The original instruction from the Minister of Finance was that the purpose of the high envelope is to draw out the full range of possible investment opportunities and to signal the maximum possible level of spending available, and that Clusters would need to present reprioritisation savings to make up the number.
102. In addition to the medium package initiatives, the high package includes larger remuneration bids and four key additional initiatives, including:

s9(2)(g)(i) and s9(2)(f)(iv)

103. All four have been assessed as representing fair value for money, and we are supportive of the Cluster's proposed 'test and learn' approach to implementation s9(2)(g)(i)

s9(2)(g)(i)

104. The high package provides the best balance of investment across Cluster priorities of the packages put forward by the Cluster. As with the medium package, Ministers have options to reduce the overall fiscal costs or to create headroom for unexpected cost pressures across the forecast period, particularly by rephasing initiatives or by employing contingencies.

Risk/resilience and sustainability

105. The high package would provide the Cluster with the most sustainable funding path, and greater capacity to absorb some unexpected cost pressures through reprioritisation. However, we note that no contingency has been recommended by the Cluster even in the high package. The risk remains that should significant cost pressures arise, and Cluster funding has already been allocated to high-profile or announced initiatives, there would be limited ability of agencies to reprioritise to absorb cost pressures.

Reprioritisation

106. The Justice Cluster baselines are characterised by large demand-driven costs from services and associated assets which are largely non-discretionary, for example:

- frontline policing
- prosecution
- administering the courts and supporting the judiciary
- administering legislation
- legal services, and

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- delivering sentences in the community and in custody.

107. Strictly speaking, more discretionary activities in the Cluster tend to be associated with research, evaluation, policy, strategy and reform work, and discrete services such as support to victims. In terms of driving overall value for money from the Justice Cluster, reductions in this activity are of relatively small magnitude relative to the large demand-driven costs. In addition, this can have the perverse outcome of worsening system performance, which drives cost pressures in excess of any savings.

108. Accordingly, in order to drive value for money the Cluster needs to ensure that these discretionary investments are prioritised towards actions which will improve system performance and get demand-driven pressures under control. The spending proposal submitted by the Justice Cluster includes several investments which are likely to produce some level of fiscal savings in the medium to longer-term relative to a counterfactual of business-as-usual.

109. s9(2)(f)(iv)



Expanding Alternative Resolutions

110. s9(2)(f)(iv)



111.

Improving Court System Performance

112. s9(2)(f)(iv)



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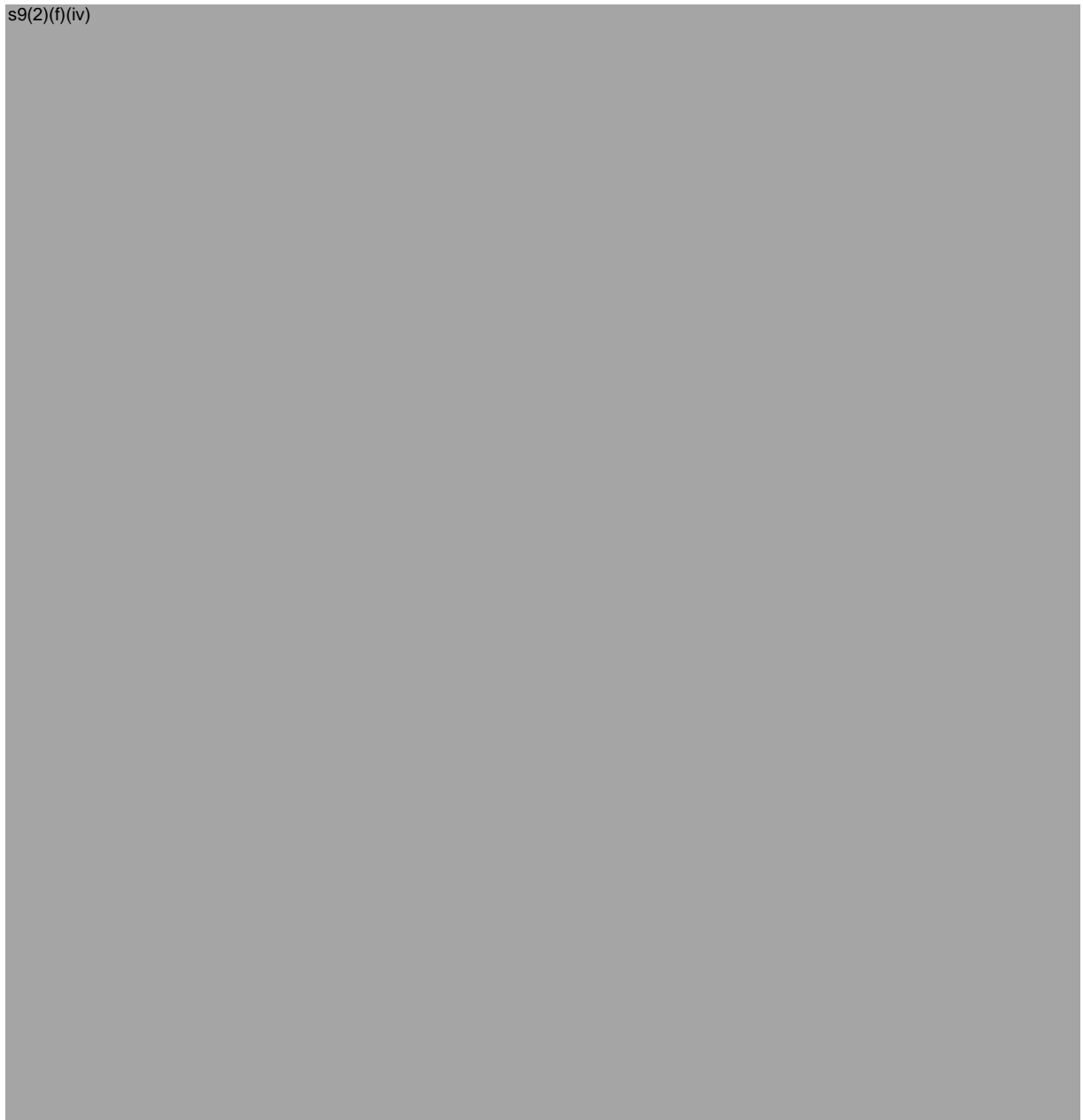
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s9(2)(f)(iv)



113.


s9(2)(f)(iv)



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s9(2)(f)(iv)



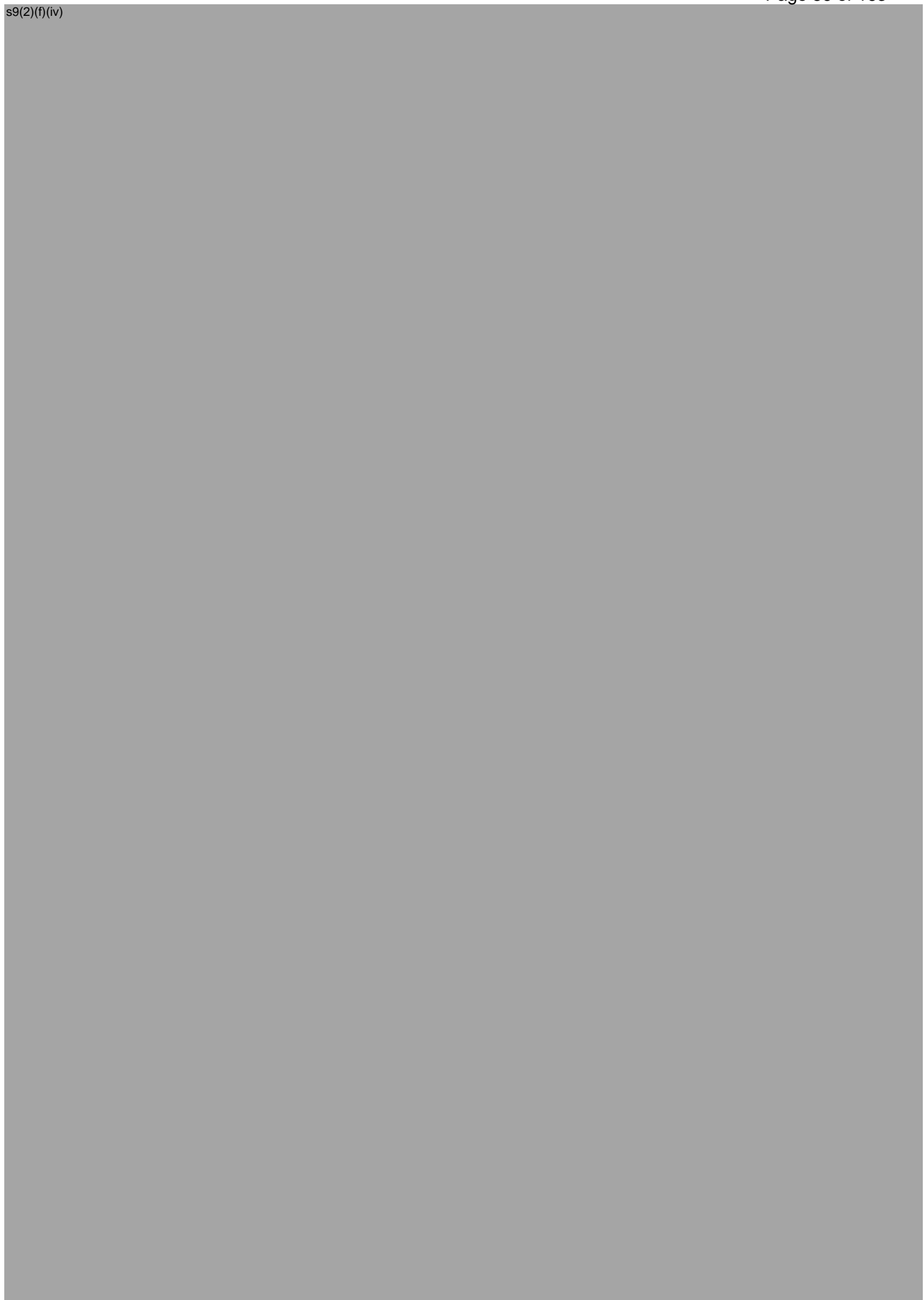
Addressing Unmet Needs in the Custodial Environment

118. s9(2)(f)(iv)



119.

s9(2)(f)(iv)



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Funding Outside the Cluster Envelopes

Capital

- 122. The Cluster has prioritised a single capital investment bid for Budget 2022 – Te Au Reka: Caseflow. We are generally supportive of prioritising this initiative, and it is consistent with the focus on system performance in the Justice Cluster spending proposal.
- 123. The Cluster contains three investment intensive agencies and has indicated a substantial 10-year capital pipeline that will be considered through future Budgets and business case processes, including accompanying operating expenditure that may be significant for some initiatives. While this is heavily focused on renewal and replacement across courts, Corrections facilities, IT/communications and Police equipment there are also some significant initiatives for progressing Cluster priorities. There are risks to achieving Cluster priorities and obtaining longer-term savings if some of these capital initiatives are not able to be funded outside the Cluster.

Joint Venture for the Prevention of Family Violence and Sexual Violence

124. s9(2)(f)(iv)




Crown Entities

125. s9(2)(f)(iv)



Changes to the Charities Act

126. The Minister for the Community and Voluntary Sector has submitted an initiative for implementing changes to the Charities Act. s9(2)(f)(iv)




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Pre-Commitments


s9(2)(f)(iv)




Next Steps

- 128. The Minister of Finance and Cluster Ministers are meeting on 3rd March to discuss the Cluster spending proposal and findings of this report.
- 129. Following this meeting and any subsequent direction from you, the Justice Cluster will submit a final package to progress through the Budget on 10th March.


s9(2)(f)(iv)



s9(2)(f)(iv)



s9(2)(f)(iv)



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Appendix 2: Relevant supporting evidence

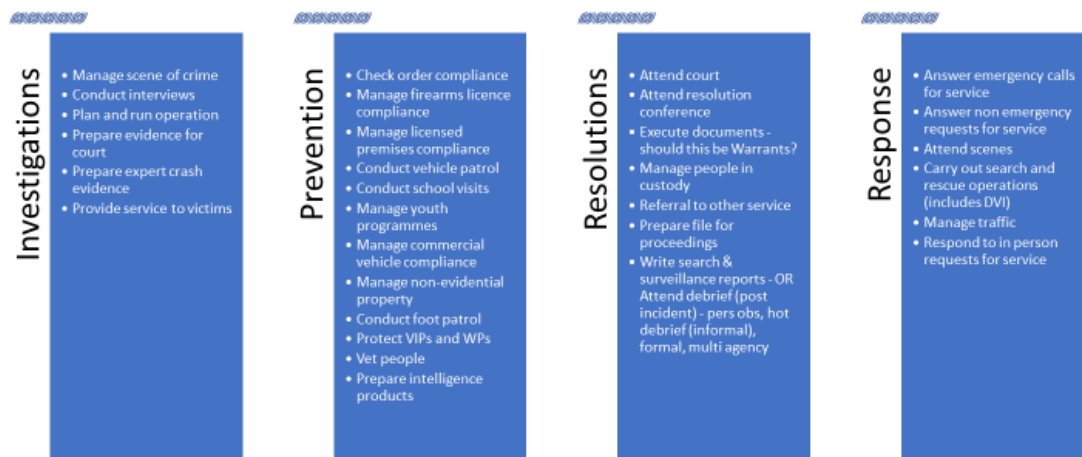
Prevention, Response and Enforcement

130. Police spending is aggregated across four ‘pillars’ of prevention, response, investigation and resolutions. For the financial year 30 June 2021, the four pillars and their contribution to total spend of \$1.760 billion including:

- Prevention (includes General and Specific Crime) 27.4%
- Response 31.7%
- Investigation 30.4%
- Resolutions (includes Policy Advice) 10.6%

131. Between 2012 and 2017, Police expenditure towards these four output areas steadily increased by 9%. However, from 2017 to 2021, there has been an increase of 34% in total output expenditure. The most significant increases have been in Prevention, Response and Investigations. As at 30 June 2021, \$1.4 Billion (69%) of Police’s budget is spent on personnel.

Figure 13: Police Services



Additional Investment in Personnel Since 2018

132. s9(2)(f)(iv)

s9(2)(g)(i) and s9(2)(f)(iv)

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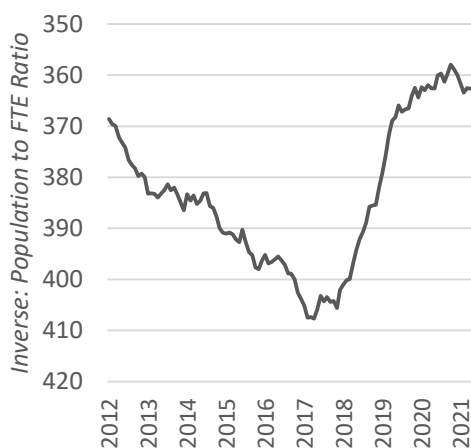
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s9(2)(g)(i) and s9(2)(f)(iv)



133. Prior to 2018, resourcing of Police did not keep pace with changing crime trends and increased demand. Over the last four years, the number of constabulary staff has steadily increased from 8,898 in 2017 to 10,165 in 2021. Budget 2018 funded this to increase to 10,707 by 2023, with the ratio of constabulary staff to population decreasing from 1:541 in 2017 to 1:509 in 2021. This included an additional 1,800 Police officers and 485 support staff over and above attrition over six years to 2022/23 [CAB-19-MIN-0158-220 refers]. This ratio is expected to reduce to 1:481 once the additional 1,800 staff are in place by 2023. With New Zealand’s population forecast to increase around 11% by 2033, to maintain the current ratio of staff to population would require growth in FTEs of 0.9% per year.²

Figure 16: ratio of population to total NZ Police FTEs (inversed)



Source: NZ Police and StatsNZ

² StatsNZ subnational population projections, 2018(base) to 2048

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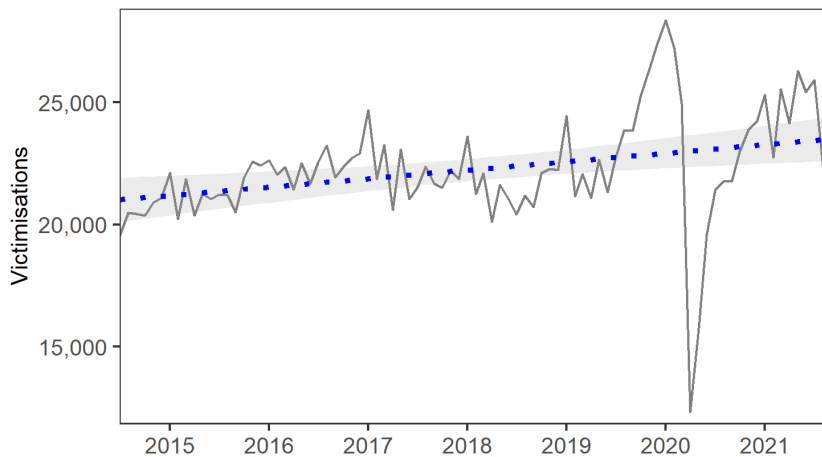
Demand

134. The level of crime victimisation in New Zealand has been on an upward trend since 2014, with a large part of this increase is concentrated across 6 of the Districts: *Bay of Plenty, Canterbury, Central, Eastern, Waikato, and Wellington.*

135. This trend increase has been driven by four of the six crime types, including:

- Theft and Related Offences,
- Acts Intended to Cause Injury,
- Sexual Assault and Related Offences, and
- Abduction, Harassment and Other Related Offences Against a Person

Figure 17: crime victimisations in New Zealand (2014-2021)



Source: New Zealand Police

Police Services

136. Overall calls for service in 2015/16 were recorded at 2.49 million, increasing to 2.79 million in 2020/21 – a 12% increase. s9(2)(f)(iv)



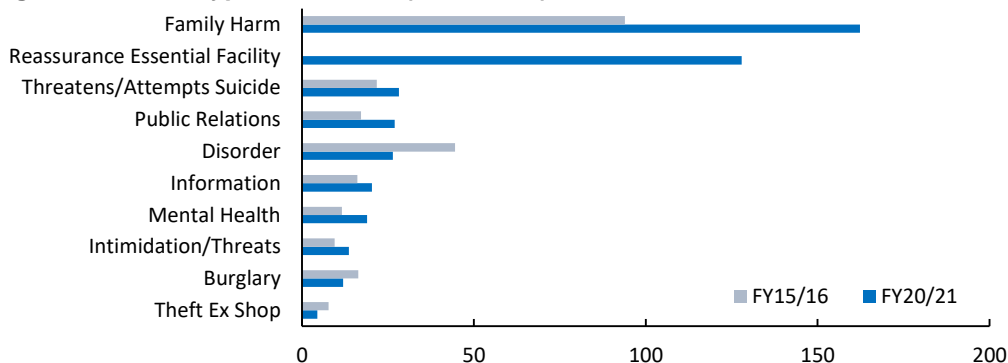
137. Police has been able to utilise technology to continue improving its frontline response. However, improved accessibility has also resulted in increased reporting. Following

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the introduction of new online reporting channels in 2019 and 2020 an additional 175,000 incidents were reported. Event types have also changed, with significant increases in unit attendance times at family harm events and COVID-19 related reassurance checks. COVID-19 represents a growing and evolving demand on Police, with online breach reports recording 69,000 calls between March 2020 and June 2021.

Figure 19: Event Type Breakdown (thousands)



Source: NZ Police

138. The increase in calls for service such as family harm, means Police needs to continue prioritising its response to these events. The increase in events which require a more comprehensive response, such as mental health and attempted suicide, also means Police needs to continue prioritising future investment in these areas.

Increasing Use of Different Resolution Pathways is a Key Contributor to Reforming the Criminal Justice System

139. Police’s Reframe programme is an important lever to effect change by strengthening the basics of policing, modernising current processes and developing new capabilities. Through the introduction of an end-to-end supportive resolution model, Police aims to increase the use of supported resolutions to respond to low level crime. Police will work to improve evidence collection to improve resolution decisions, that there are appropriate tools and support, to support increased resolution decision making, and improved resolution management and monitoring to ensure that the supported resolutions produce the outcomes Police seeks. Initiatives, such as Te Pae Oranga, AWHI and the decision and support services pilot in Waikato, are good examples of the progress being made in this space.

Court System Performance

140. Timeliness of the court system has deteriorated, particularly since 2014, primarily driven by an increased number of events to disposal for criminal category 3 cases. The Justice sector’s response to COVID-19 saw a sharp decline in court backlogs, particularly in judge-alone trials, resulting in an unexpected and significant reduction in the remand population. However, difficulties in disposing of jury trials have seen a significant increase in backlogs, which has mostly offset the gains from improved efficiency in judge-alone trials.

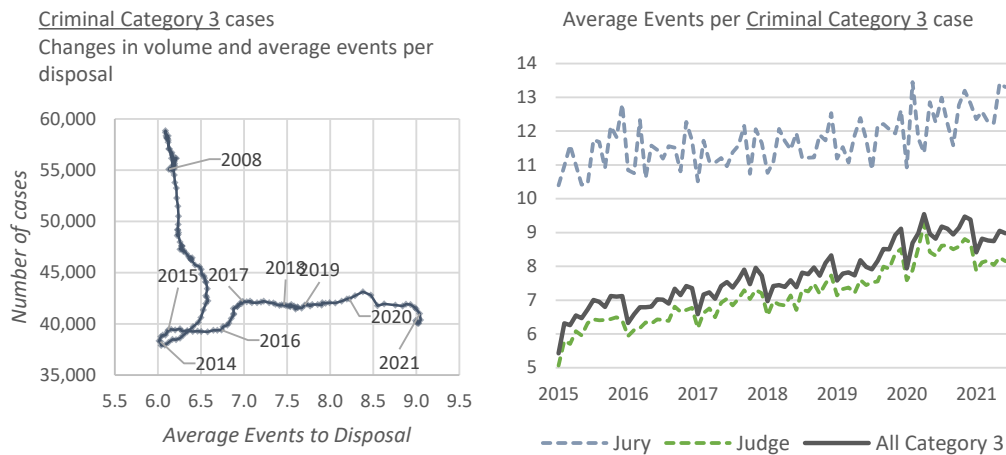
141. Combining new business with average events per case shows that in the five years prior to COVID-19, weighted workloads increased by almost one-quarter, driven by Criminal workloads, which has increased by 37.4%. The largest contribution to the criminal jurisdiction workload over this time was from Category 3 criminal cases, with Categories 1 and 2 being either flat or falling. Category 3 criminal cases now account for approximately 54.2% of total District Court workloads, compared to only 45.0% in 2015.

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142. The increase in Criminal Category 3 has been driven by increased average events to disposal, rather than increased case volumes. As seen in Figures 20 and 21: Criminal Category 3 cases and average events, there was negligible change in average events between 2008 and 2014, while the number of cases decreased markedly. However, since 2014 volumes have stabilised, while average events have steadily increased (Figures 20 and 21: Criminal Category 3 cases and average events).

Figures 20 and 21: Criminal Category 3 cases and average events



Source:

MoJ Hotspot data

143. Although we understand that the increased time to dispose criminal cases is due to cases requiring more court events before resolving as defendants are increasingly delaying their guilty pleas, identifying the causal drivers of such trend, and subsequent levers for change, is difficult.

Criminal Category 3, by Size of Court

144. As seen in Figures 22 and 23: **Average age of Criminal Category 3 disposals and Court size correlation**, there is a clear positive correlation between the size of courts and the average length of time required to dispose of Criminal Category 3 cases. Not only has there been clear diseconomies of scale apparent, but they are seemingly worsening – particularly at the trial stage. Breaking down the aggregate data requires careful interpretation, as it is difficult to discern correlation from causation. Anecdotally, smaller courts can better navigate complex criminal cases, due to closer personal relationships between judges, lawyers and prosecutors and less congested courtroom scheduling.

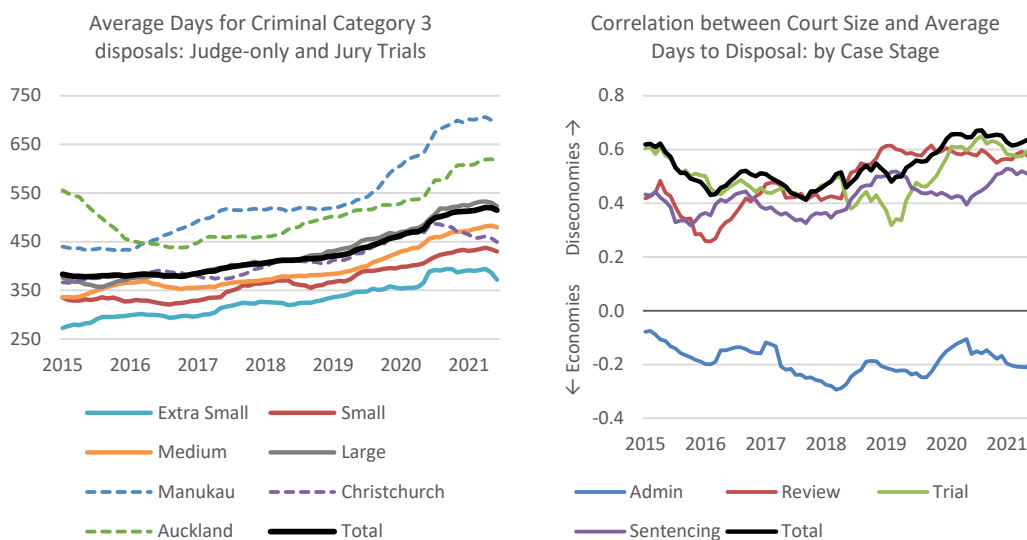
145. Other explanations for the observed diseconomies of scale include:

- the absence of a modernised case management system (i.e. Caseflow), which may be impacting the larger courts more than small courts
- capital constraints causing congestion within high-demand regions, particularly Auckland and Manukau, and
- Police Prosecutor resource allocation.

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Figures 22 and 23: Average age of Criminal Category 3 disposals and Court size correlation



Source: MoJ Hotspot data

Quantifying the Impact of Court Congestion on Remand

- 146. There is strong correlation between increased court congestion since 2014 and the prevalence of cases where people are commuted to time served on remand. Figures 24 and 25: **Measuring remand caused by court congestion** show the extent of sentences served in remand, and the impact on the number of average days served on remand for short sentences³.
- 147. The proportion of prison sentences served in remand has more than doubled since 2014, as have the average days of short sentences served in remand.
- 148. It is likely that the trends observed in Figures 24 and 25: **Measuring remand caused by court congestion** are materially due to decreased court timeliness, as the increase in proportion of sentences served in remand and average days in remand has increased lockstep with congestion in the courts. The validity of this correlation is heightened by the decrease in the proportion of prison sentences served in remand since the focused response of the sector on reducing backlogs of Judge-alone trials during COVID-19. However, the shifting composition of cases towards Jury-trials is seeing a continued increase in average days spent on remand, suggesting that gains from addressing Judge-alone trial backlogs may be short lived.
- 149. Access to justice for both victims and offenders has been compromised by the increased inability for the courts system to dispose of cases in a timely manner since 2014. Had the trends in Figures 24 and 25: **Measuring remand caused by court congestion** remained at their pre-2014 levels, expenditure on remand could have been up to \$43.5 million lower than otherwise (see Figure 26, below), including \$15.9 million in 2020/21 alone⁴.

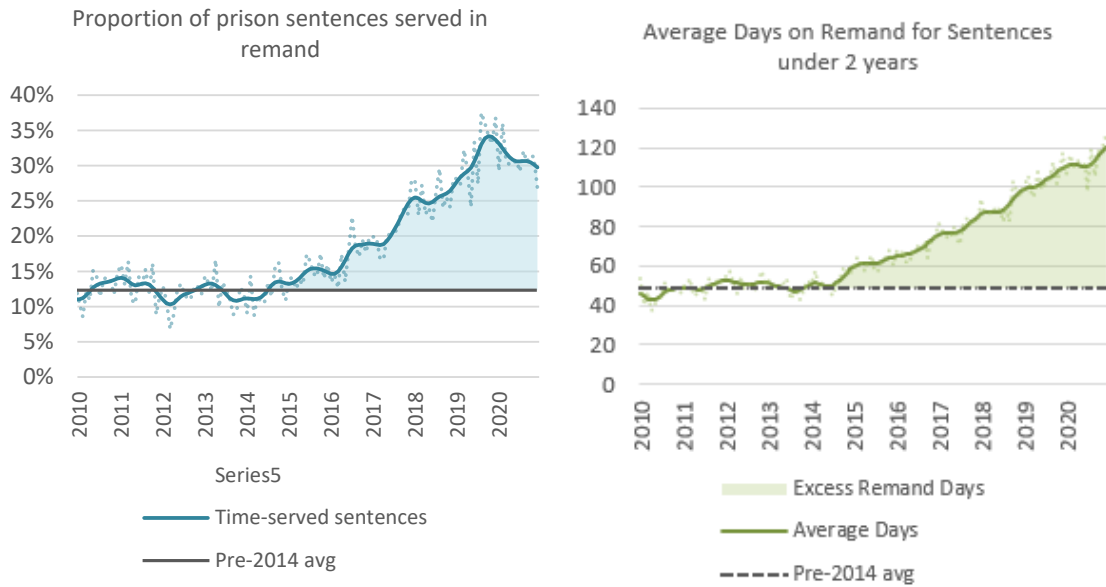
³ Data is provisional, with insights based on preliminary data and need to be confirmed to ensure consistency between MoJ and Corrections data. While it is likely that the overall trends are likely to hold true, final figures may include revisions.

⁴ These indicative estimates are an upper bound, as they multiply excess days in remand by the average daily cost of remand per person per day – from Corrections annual reports. A more accurate measure would be to multiply excess remand by the marginal cost per additional person, which is likely to be lower than the average cost but has been unavailable for the purposes of this review. Nonetheless, this counterfactual excludes the costs associated with offenders being placed in effective rehabilitative programmes – or forgone productive income from time spent in prison that would otherwise be spent outside the prison system.

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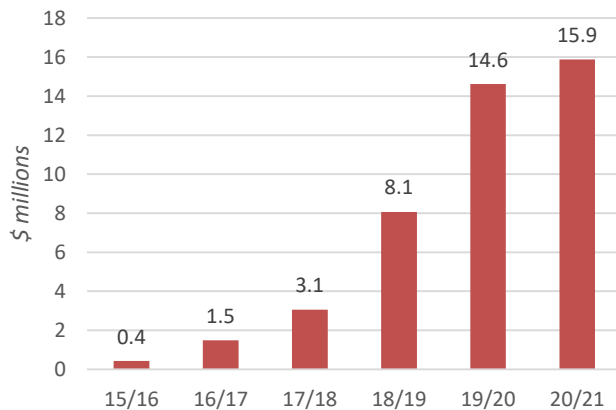
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Figures 24 and 25: Measuring remand caused by court congestion



Source: Ministry of Justice

Figure 26: Counterfactual cost of remand above pre-2014 rates (\$m): Upper bound



Source: Review Team calculations using MoJ Hotspot data

The Role of Police Prosecutors

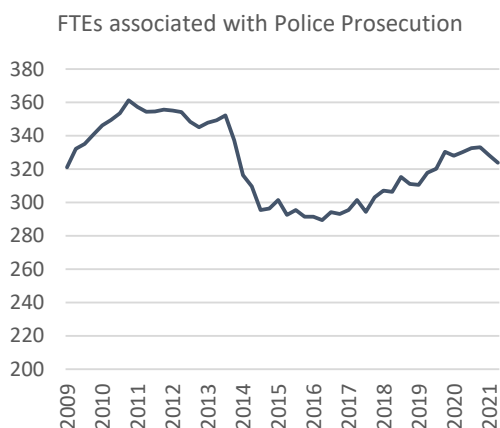
150. The number of FTEs⁵ associated with Police prosecution teams has remained broadly stable over the past 12 years. In particular, it is unlikely that the number of FTEs has remained commensurate with the increasing workloads – particularly since 2014 (see Figure 27). FTEs have grown by only 11.1% between 2014/15 and 2020/21, while workloads have increased by 33%.

⁵ Police Prosecutor FTEs are defined as those that are explicitly assigned cost centres titled 'Prosecutions', plus those with other identify markers – such as Job Types or Business Units that are designated 'Prosecutions'.

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Figure 27: Police Prosecutor FTEs

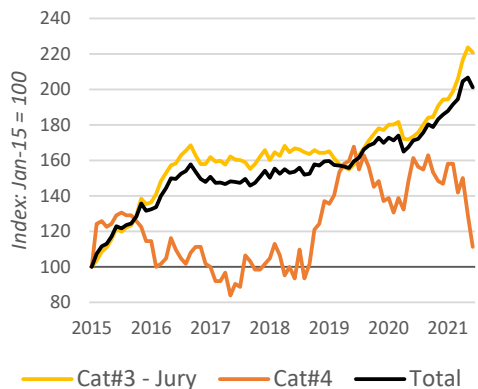


Source: NZ Police

The Role of Crown Solicitors

- 151. The Crown Solicitors network is a collection of private sector lawyers holding Crown warrants around New Zealand to prosecute criminal offences and who are funded directly by the Crown for this service. This is managed by Crown Law. Crown Solicitors cover serious Category 3 and Category 4 cases, particularly jury trials.
- 152. Prior to 2020/21, congestion was driven by an increase in the number of events per case, and/or because more time is needed between each event. This was particularly acute for criminal Category 3 jury cases. However, since the initial lockdowns of 2020, Category 3 jury trials have faced significantly increased backlogs (see Figure 28), which is placing strain on the existing resources of Crown prosecutors.

Figure 28: New business: category 3 jury trials and category 4 cases



Source: MoJ Hotspot data and Review Team calculations

Custody and Communities

- 153. The increasing complexity of the prison population (including due to gang affiliation, responding to violence and aggression and a corresponding increase to the number of people on segregation) presents operational and logistical risk, driving costs and posing challenges for lifting wellbeing outcomes, which impacts workforce requirements.
- 154. Overall volumes of community-based sentences and orders have remained broadly level in recent years, whilst costs increase. This is likely attributable to a shift to higher intensity sentences and orders, including extended supervision orders, intensive supervision and parole. A new risk-based operating model for EM is expected to reduce inefficiency by directing resources where they are most needed, as opposed to

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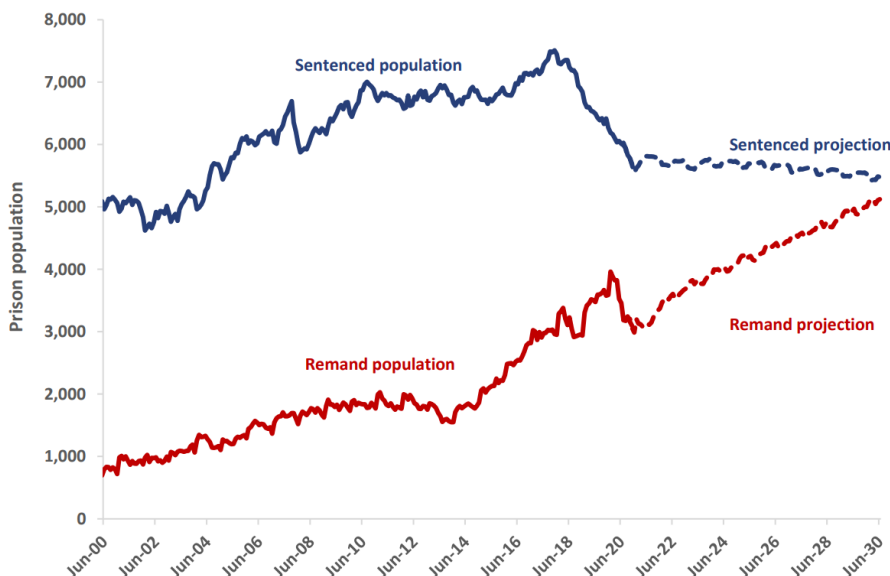
the previous one-size-fits-all approach; however, it is not expected that this will reduce costs overall.

- 155. Despite some reprieve during 2020, court system delays continue to apply upward pressure on the remand population, which can lead to greater complexity, partly due to higher gang affiliation.
- 156. EM has proven to be a cost-effective tool which supports the wellbeing of people, whether used for remand on bail or for community-based sentences and orders where it provides an alternative to imprisonment. Demand for EM will likely increase, given judicial preferences, particularly considering ongoing court system performance issues, and the expansion of initiatives such as Bail Support Services.

The Population

- 157. During the mid-2010s, appropriations increased broadly in line with the growth in the total prison population, which had increased sharply from 2013 onwards, however from 2018 the total population began to decline, whilst costs continued to rise.
- 158. After peaking in 2018, the sentenced prison population has steadily decreased. Across the same period, the remand population sharply increased, before dropping further during COVID-19. The Ministry of Justice projects that without intervention under current system settings, the remand population will resume its long-term growth and by June 2030 and will make up 48% of the total prison population. The projection report cites increased time on custodial remand as the main driver for the rising remand population.

Figure 29: Prison population broken down into sentenced and remand populations, actual and projected 2020-2030



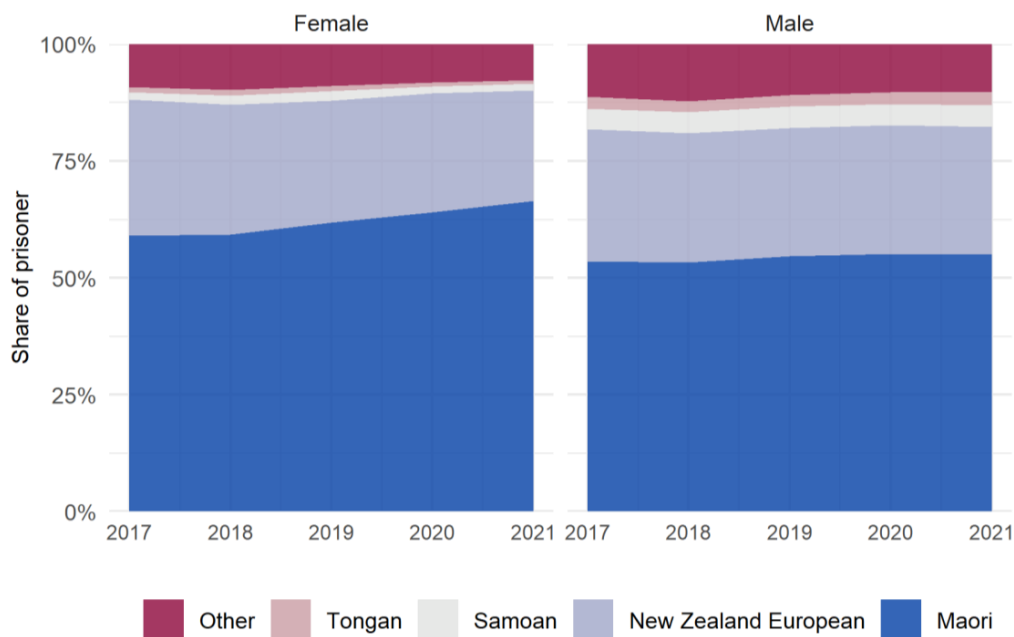
Source: Justice Sector Projection Report 2020-2030

- 159. Over recent years, the male population ethnic composition has remained broadly level. However, Figure 30 shows that in the share of Māori women has increased whereas the share of New Zealand European women has decreased.

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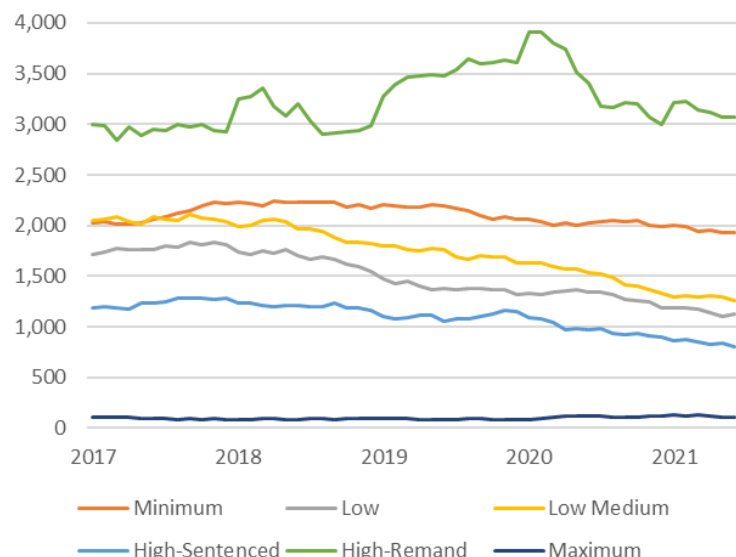
Figure 30: General trend of people in prison by ethnicity: 2017-2021



Source: Corrections Integrated Prison Population Dataset

160. People being held on custodial remand have not had a security classification assessment; instead, they are automatically managed as “high security” by Corrections. People on custodial remand (both those who are accused, and those who are convicted but awaiting sentencing) are separated out as “High-Remand” to distinguish them from those people who have been sentenced and assessed as high security, which are expressed in these charts as “High-Sentenced”. They are separated out here for two primary reasons: practically, because the remand population must generally be kept separate from the sentenced population, and to demonstrate the impact of the longer time on remand on the overall makeup of the prison population.

Figure 31: Security classification of people in prison: 2017-2021




Source: Corrections

161. Gang affiliation is another driver of operational complexity for Corrections. Since 2017, this has been increasing in both the sentenced and remand populations, to 35% and 45% respectively at June 2021. Corrections states that some of this increase may be attributable to improved information gathering practices.

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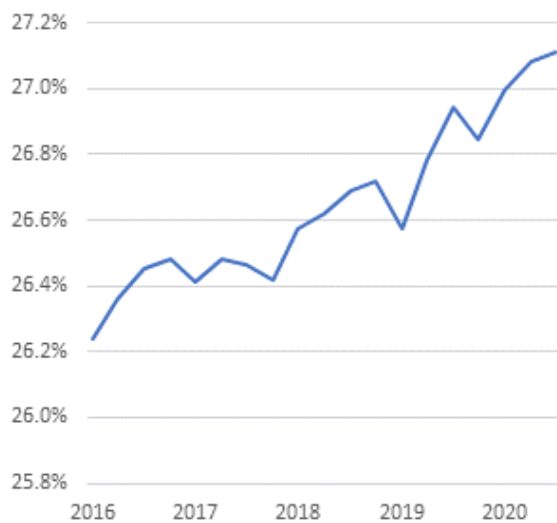
s9(2)(f)(iv)



Expenditure and Reliance on Overtime

166. In 2020/21, Corrections expended \$26.4 million on overtime payments – equivalent to 305 FTEs of work. Since 2016, there is a slight increasing trend in the time-multiple paid for overtime, up almost 1 percentage point over the past 4 years, implying that Corrections is increasingly relying on overtime that attracts higher wage multiples.

Figure 36: Average wage-multiple paid on Overtime (rolling annual average)



⁶ Corrections Annual Report 2020/21

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Source: Corrections and Review Team calculations

167. s9(2)(f)(iv)

168.

Rehabilitation, Reintegration and Reducing Re-Offending

169. Corrections provides primary health, mental health, addiction, rehabilitation, education, employment and reintegration services to help increase oranga and reduce the likelihood of reoffending. Corrections' focus has shifted to a therapeutic oranga focus under Hōkai Rangi to meet needs. This includes the action plan under Corrections' Alcohol and Drugs Strategy 2021, Hikitia (the Waikeria Prison Development mental health and addiction service) and the Māori Pathways.
170. The system providing services spans several departments within Corrections. This presents challenges evaluating the system as whole, assessing whether there are any gaps or duplication in the services provided, and the balance between services provided in prisons and the community. One system evaluation of rehabilitation and reintegration programmes was completed in 2017, which led to minor adjustments being made. The Review Team has not been able to obtain a complete list of programmes and interventions offered by Corrections for rehabilitation and reintegration to make the assessment.
171. An integrated planning review is under way to better enable access to the rehabilitation and reintegration interventions required to meet the needs of those in prison, including access to interventions for people on remand. Corrections advised the review intends to focus on ensuring that rehabilitation services are evidence-based, culturally responsive, integrated with broader services, and promote healing while building the foundations for participation in society.
172. The proportion of a person's sentence spent on remand has increased over the last 10 years, with longer time spent on remand often meaning that the remainder of a sentence is too short for persons to engage in any meaningful rehabilitation.
173. The proportion of people in prison attending programmes and interventions has decreased over the last five years by approximately 8 percentage points from 87% to 79%. Completion rates for programmes are also generally on the decline in both prisons and the community. A review of a sample of programmes shows that decrease has disproportionately impacted Māori, women and people under 34 years of age.
174. The tools used to evaluate the effectiveness of the programmes and interventions include annual Rehabilitation Quotient (RQ) assessment, internal reviews, quality assurance and routine monitoring. Kaupapa Māori evaluations were implemented for Māori Pathways. The RQ results generally do not meet statistical significance, and a review of the measure is recommended.

Participation Rates in Programmes and Interventions – Prison Data Only

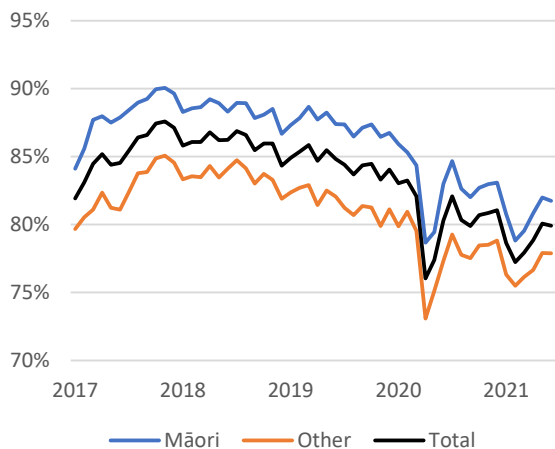
175. Figure 37 shows the overall proportion of people in prison attending programmes and interventions has decreased over the last five years, even after considering temporary

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declines due to COVID-19 lockdowns. The proportion of Māori attending programmes is higher than the Total as Māori make-up more than 50% of total prison population.

Figure 37: Share of Prison Population Attending Programmes and Interventions



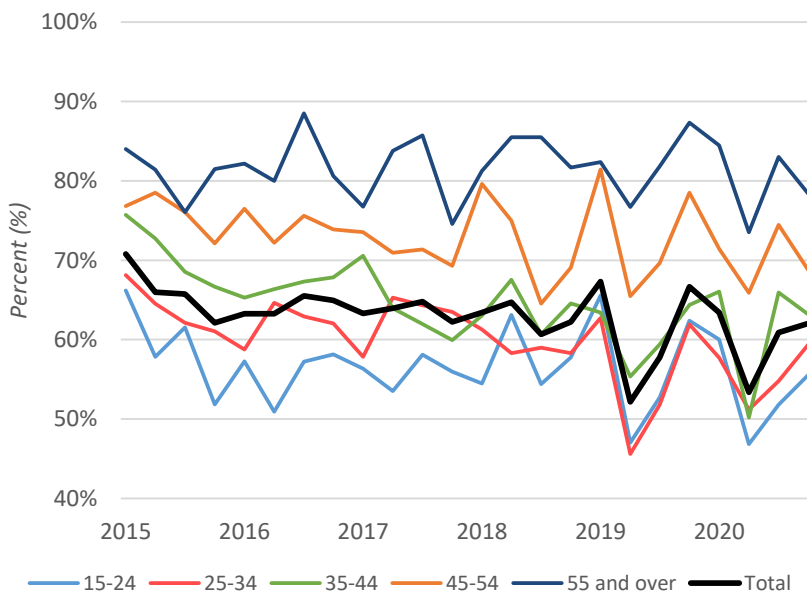
Source: Corrections data and Review Team calculations

Completion Rates – Sample Programmes

Community alcohol and drug programmes

176. The Community Alcohol and Drug Programme accounts for 38% of the data (or 21,279 individuals). The completion rate is generally on a decline by roughly 5% over the last 5 years. Completion rates are highest for over 55 and the lowest for under 34.

Figure 38: Completion rates by age group: community alcohol and drug programme (%)



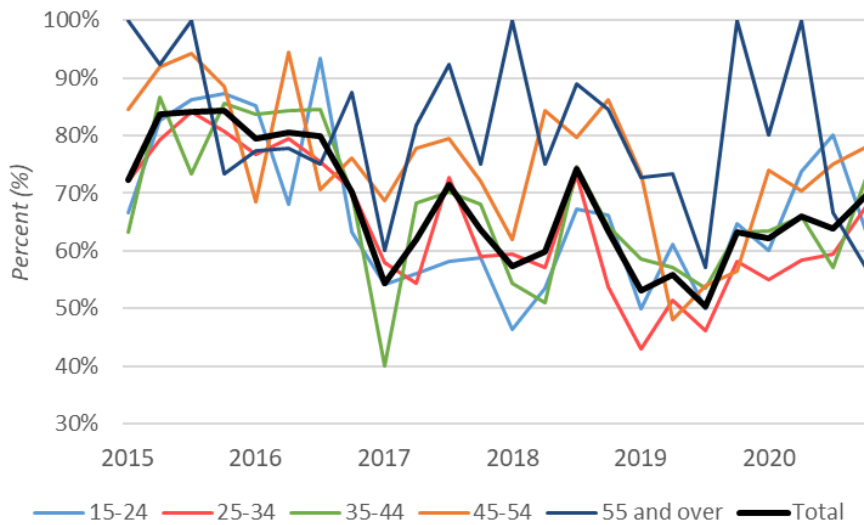
Prison addiction programmes and medium intensity programmes

177. There is a sharp decline in completion rates for Addiction Programmes, with a trend of 20% decline over the last 5 years. Again, the completion rates for over 55 is much higher than the completion rates for under 34.

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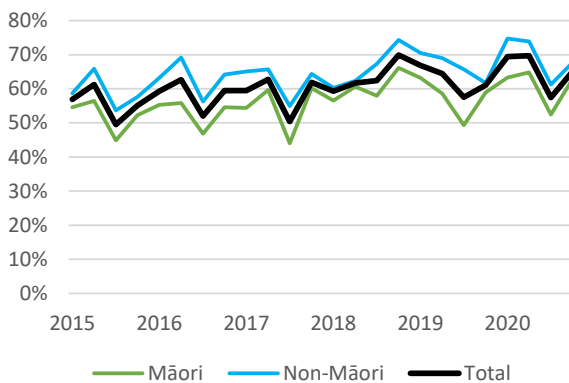
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Figure 39: completion rates by age group: Mental Health & Addiction Programmes



178. Figure 40, below, shows that Medium Intensity Programmes have a strong seasonal pattern – with the rate of completions dropping during March quarters. This might be an artefact of how data is collected and the timing of individual programmes. However, this seems unlikely as Starts and Exits for this programme do not exhibit any seasonal pattern. It seems that people are more likely to quit during the early part of the year. If this can be confirmed, the programme would be made more successful by shifting activity away from the early part of the calendar year.

Figure 40: completion rates by ethnicity: medium intensity programmes (%)



Rehabilitation Quotient

179. The ‘Rehabilitation Quotient’ (RQ) method is one mechanism used to assess programme performance and measure success. A selection of programmes and interventions are formally evaluated annually using the RQ and the results are published in the Annual Reports. Whether a programme is measured depends on the type of intervention and whether Corrections thinks it would have a bearing on reoffending. It also depends on whether the numbers of “Completes” provides sufficient numbers to run an RQ analysis. Based on this, programmes that have larger incompletes may not be captured within the RQ. Approximately 30% of total programmes are measured each year.

180. The RQ is intended to be a measure of the impact of the department’s rehabilitative programmes, through comparing the rates of re-sentencing and reimprisonment among ‘treated’ offenders (those who have completed a rehabilitative intervention) with the rates observed among ‘untreated’ offenders (those who are matched based on a range of risk-related factors, but were not involved in that specific programme).

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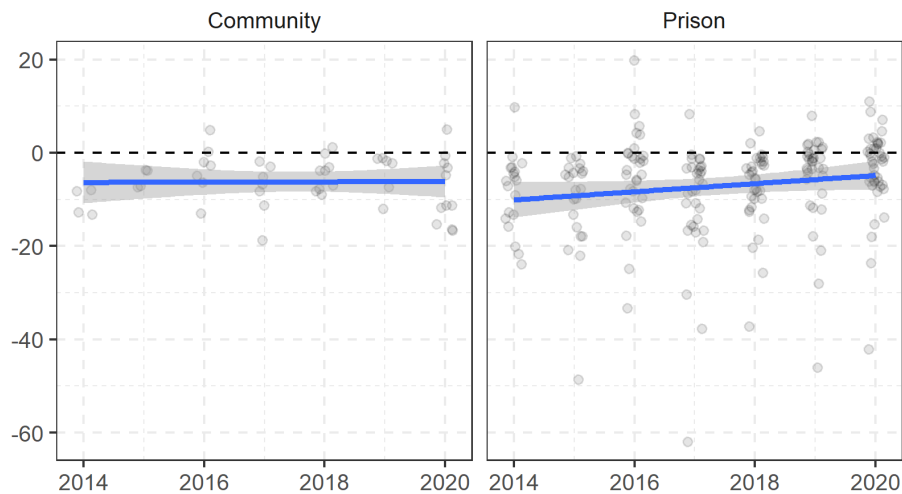
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181. The negative rates represented below shows the level of success – the more negative, the better. For example, a reimprisonment score of -10.0% indicates that the rate of reimprisonment for ‘treated’ offenders was 10% lower than for the comparable ‘untreated’ offenders (i.e. 12% compared to 22%).

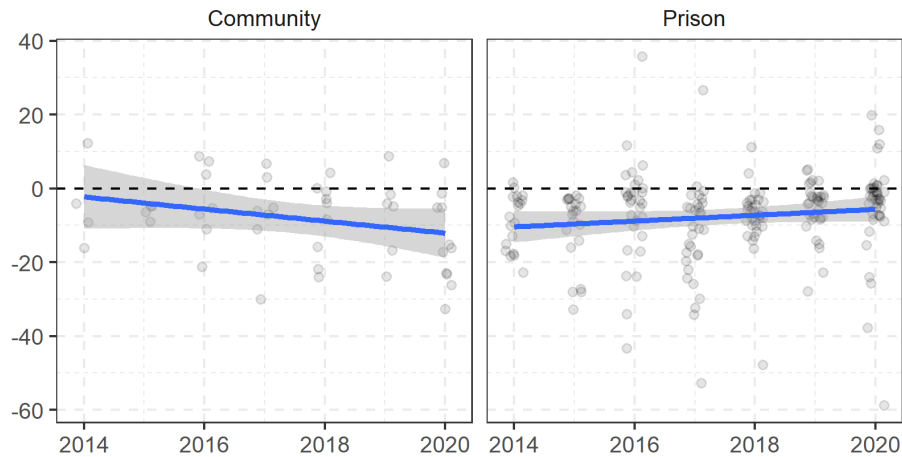
182. The trendlines in the figures below show that programmes and interventions accessed by an offender in the community are generally more effective at reducing the likelihood of resentencing than the programmes and interventions received in prison. A similar trend is evident for re-imprisonment, where the trendline supports that the impact on reducing re-imprisonment rates between people who attended a programme or intervention is reasonably stable for the community test group but has been reducing in effectiveness for the prison population.

Figures 41 and 42: trends of treated population re-imprisoned and resentenced by location

Re-imprisoned:



Resentenced:



Source: Corrections Programmes and Interventions Model; Sample Sizes Data

Infrastructure and Capital Investment

183. s9(2)(f)(iv)



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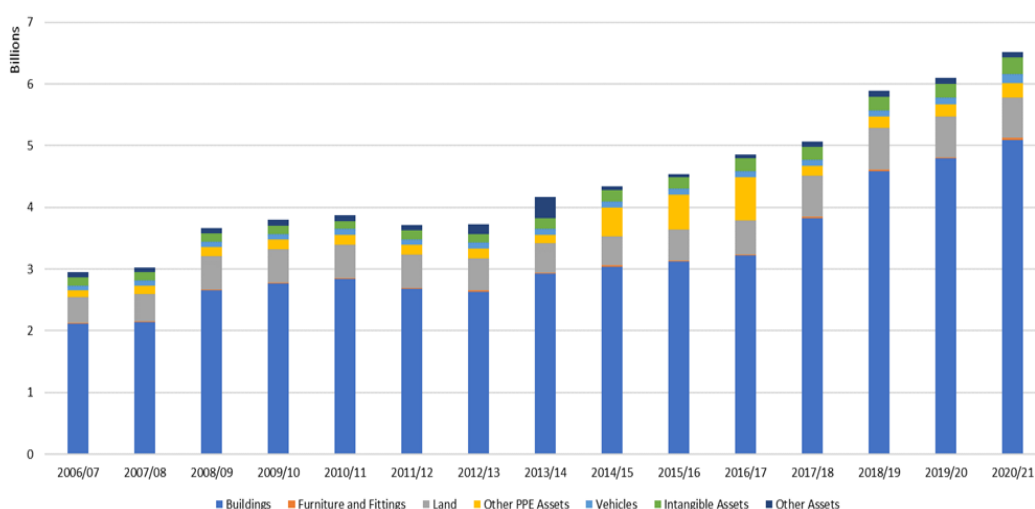


- 184. Some external Business Cases have required a number of iterations to clearly articulate the case for investment and asking and answering the key questions such as impacts across the programme of work (this includes those developed by contractors / consultants) suggesting increased capability is required in the work programme planning and the associated development of external Business Cases.
- 185. There may be opportunities for better use of technology to improve effectiveness of processes and efficiency of resources. COVID-19 drove rapid adaptation of processes and technology to enable remote working (both through IT infrastructure changes and devices for staff), improved communication via Audio Visual technology for people in care for court and Parole Board appearances, contact with support agencies and with whanau, and for broader court processes to address court backlogs. These changes now need to be implemented for the longer-term post COVID-19. Other opportunities to harness technology should continue to be investigated such as extension of EM options to more remote areas which is being addressed by the new EM contract which will include expanded coverage.
- 186. Changes required to meet Government Environmental targets and timelines will need either additional investment or reprioritisation of existing baselines, including any carbon offset costs where targets are not achieved.
- 187. There will be ongoing cost pressures as agencies continue to transition to as a Service (aaS) due to cost premiums, and other flow-on costs such as network bandwidth and capacity and increased data storage and capital to operating expenditure swaps not providing sufficient mitigation for IT assets transferring.

Asset Values

- 188. The justice sector has significant property and IT asset portfolios, with Corrections and Police have two of the largest vehicle fleets within government.

Figure 43: Justice Cluster Asset Values by Category (\$ billions)



Capital Sustainability

- 189. The sustainability of capital investment to maintain and replace existing assets is a challenge faced by all the Justice Cluster agencies. Existing investment funding

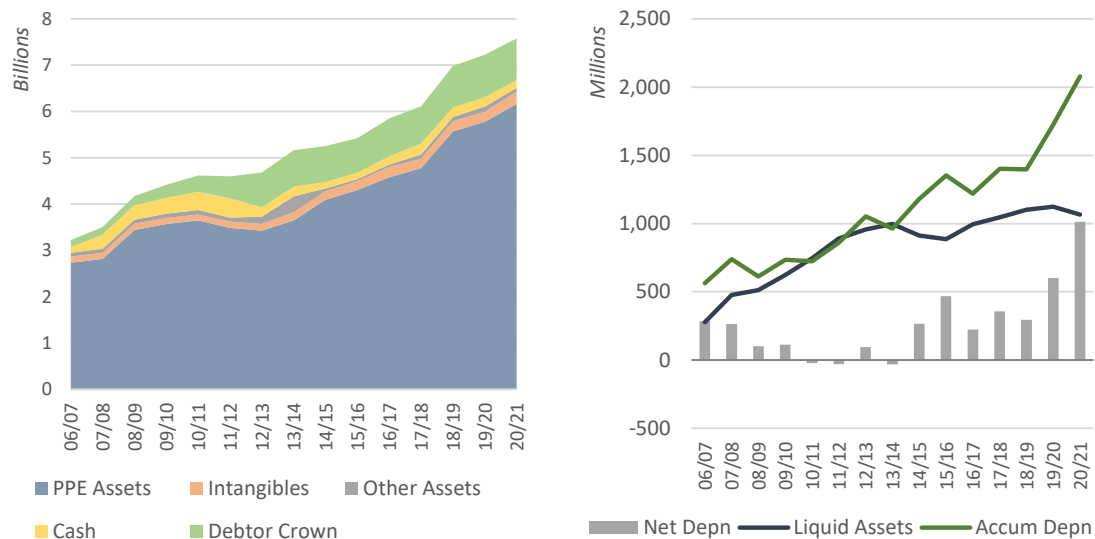
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through accumulated depreciation will normally still leave a shortfall in replacing assets and that is larger in some asset categories such as property assets. Recent years have seen an increasing gap between the cost of replacing existing assets across the sector and the funds available on the balance sheet.

190. Figures 44 and 45: **Total Net Asset by Composition (LHS) and Liquid Assets, Accumulated Depreciation and the Net Position (RHS): Justice Cluster** demonstrate the gap between the future liability to replace assets ('accumulated depreciation') and the funding available on the balance sheet to meet this liability ('liquid assets'). Recent years show increasing gaps between accumulated depreciation and liquid assets across each agency ('net depreciation').

Figures 44 and 45: Total Net Asset by Composition (LHS) and Liquid Assets, Accumulated Depreciation and the Net Position (RHS): Justice Cluster



Source: CFISnet

Age and Fitness for Purpose of Existing Infrastructure

191. All the Justice Cluster investment intensive agencies face challenges of aging infrastructure and assets that are no longer fit for purpose. Insufficient capital, and the associated operating, for investment programmes has resulted in prioritisation of which assets are replaced and 'sweating' of some assets.

192. Figure 46 shows that Intangible Assets have moved from 63% depreciated in 2010/11 to 74% depreciated in 2020/21 indicating that they are getting older prior to replacement.

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Figure 46: Justice Cluster Intangible Assets NBV Breakdown (NBV = ACC + GROSS)

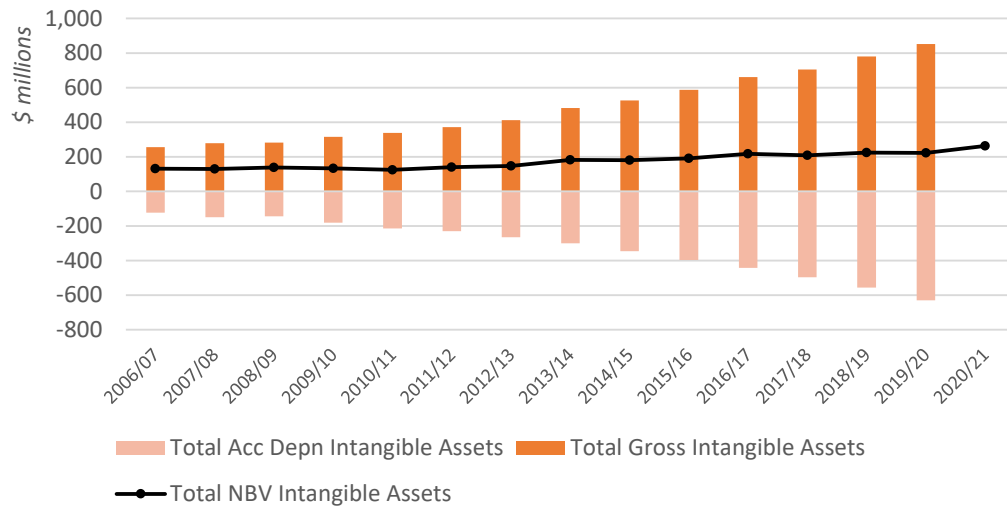
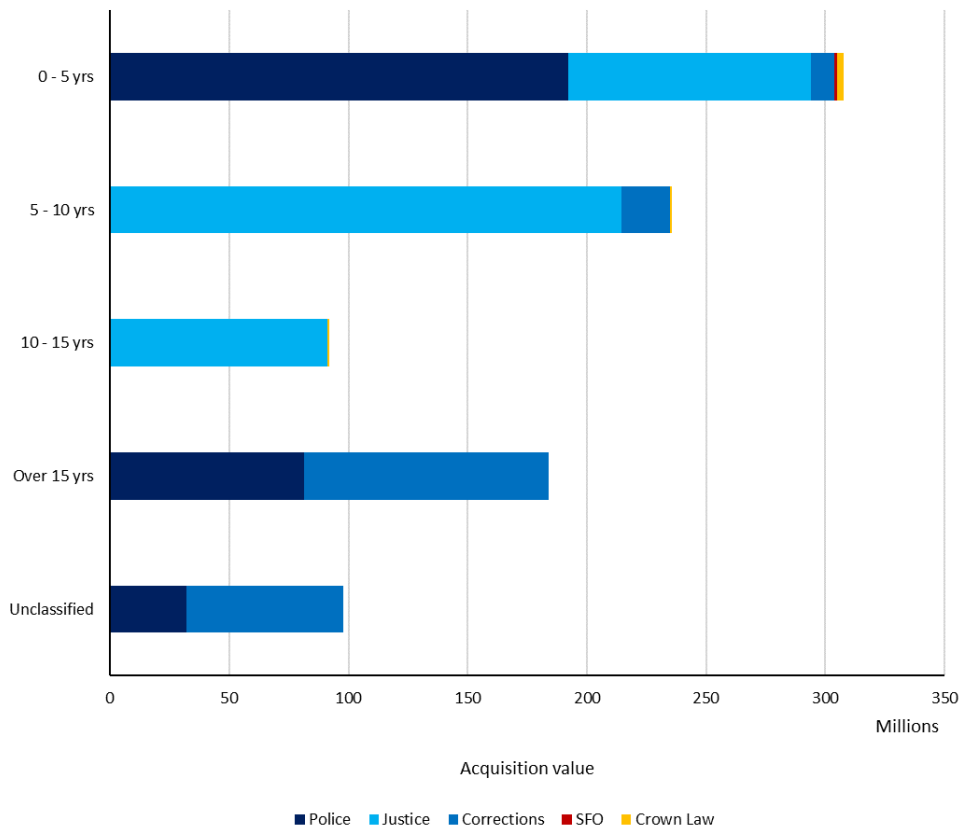


Figure 47: Justice Cluster Age of Core IT Platforms GCDO return October 2021

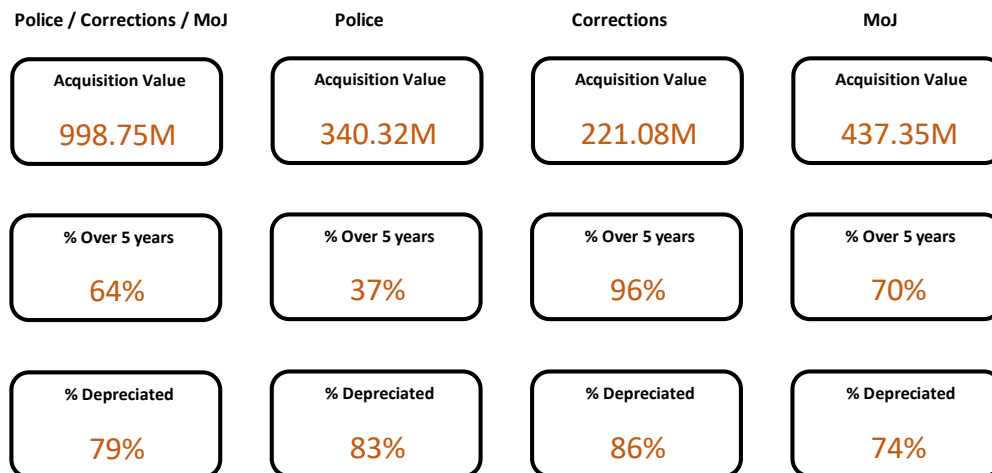
Age of Core Platform, Justice Cluster



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Figure 48: Justice Cluster Key Data on Age of Core IT Platforms as at 30 June 2021



193. Figure 47 and Figure 48 are showing that based on the latest GCDO Digital and Data Investments return from agencies there are large percentages of assets over 5 years old in Corrections and MoJ, and high levels of depreciated assets in Police and Corrections. This indicates substantial investments are likely to be required soon. Police appear to be the best positioned with a larger percentage of assets under 5 years however these may be assets with short lives given that overall, their assets are 83% depreciated.

194. Police refreshed its strategy soon after the new Commissioner was appointed in April 2020. The new strategy is themed on stewardship and governance of assets. The change in strategy has triggered ownership and investment prioritisation in both Property and ICT infrastructure. s9(2)(f)(iv)



195.

196.

197. Analysis of the MoJ Facilities Management SPM data as part of the Baseline Review showed that 8%, or \$35 million, of the property portfolio was currently in either poor (C4) or very poor (C5) condition. There has been subsequent increased baseline funding for property investments in the short to medium term to deliver a work programme to resolve deferred investment.

Crown Law Office


Key Findings

198. Trends in the courts, the sizeable shift towards jury trials and longer times to case disposal, are likely to continue to increase pressure on Crown Law, given they are responsible for many of the more serious criminal cases entering the courts. This presents challenges for sustainability of the funding model (refer to Court System Performance section for analysis).

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199. The key 'planning' documents of Workforce Strategy and Information Systems Strategic Plan (ISSP) are not due to be completed until June 2022 which will provide a better foundation for outyear investment decisions. Non urgent pressures may be 'tagged' / contingent in the interim.

200. s9(2)(f)(iv)

**Serious Fraud Office****Key Findings**

201. The volume of new investigations and prosecutions has decreased over the last seven years, however the time to dispose of the cases has increased. The number of weeks in trial (which reflects complexity) has doubled. Additional funding was provided in Budget 2020 to address cost pressures and increase investigation and prosecution capacity. The impact of the newly created capacity will be evident in Financial Year 2022.
202. The increase in the time to dispose is disproportionately impacting on non-complex investigations (50% increase compared to 25% increase in complex cases). This is due to deprioritising non-complex cases which could lead to reputational risks.
203. There is evidence the size and complexity of the evidence base collected for complex cases has increased over the last 5 years. This creates corresponding ICT cost pressures.
204. Attraction and retention of staff has been challenging due to shortage in specialised skills, salary pressures and time limited funding requiring fixed term contracts.
205. As a small agency, the SFO has limited capacity to absorb overhead cost pressures. For example, accommodation has increased by 67%, and cyber security capability is expensive at small scales. There is likely considerable benefit if SFO can join with Justice sector partners to address cyber security capability.
206. The SFO received time-limited funding to establish its Counter Fraud Centre, using international best practice to prevent and reduce financial crime, primarily in the public sector, with potential to save costs across the system. Further funding would be required to extend this capability beyond 2023.



Justice Cluster Spending Review

Analytical Report

August 2022

Parts that are in scope are released in part



Executive summary

This analytical report is designed to provide an account of the in-depth analysis undertaken as part of the Justice Cluster Spending Review for the purpose of informing the multi-year investment across the Justice Cluster in Budget 2022. Spending reviews such as this are an important part of the wider public finance modernisation reforms.

This section summarises the key findings and common themes of the spending review for the Justice Cluster, which is made up of the following agencies:

- New Zealand Police (Police)
- Ministry of Justice (MoJ)
- Department of Corrections (Corrections)
- Crown Law Office (Crown Law)
- Serious Fraud Office (SFO)

Common Themes

The Analytical Report contains discussions and deep-dive analysis of matters of interest within areas of focus. This review has focused primarily on the criminal justice system, as the area where the cluster agencies are most interconnected. The areas of focus are not mutually exclusive, and the findings have highlighted several crosscutting common themes that impact on the Justice Cluster as a whole.

Increased complexity of needs across the criminal justice sector has led to increasing demand, and costs of services

The criminal justice sector has experienced increased complexity across several elements and areas. Population increases and mental health pressures continue to lead to increased demand in various police services around prevention, response, and enforcement. For example, Police has seen a significant increase in mental health and attempted suicide calls since 2011 (38% and 47% respectively). Alongside broader Police services, demand pressures have increased due to more sophisticated organised crime and new crime areas such as cyber and technology-enabled offending (refer to Area of Focus 1).

Increasing complexity in justice sector interactions within the court system have contributed to structural congestion, manifesting as higher average events to dispose cases. The underlying causes of increased congestion in the Courts are likely to be behavioural responses to legislative and procedural settings, with justice sector interactions becoming increasingly complex – manifesting as additional court events per disposal. Recent research into later guilty pleas found that the main drivers were:

- late disclosure of evidence making pleading early problematic
- the Case review stage not driving early engagement as intended (i.e., engagement is not happening)
- a lack of system incentives to plead early (perception that people get large sentence discounts late in the process), and
- people are rarely being held to account for not engaging or being unprepared.

This increased congestion also has a significant impact on Crown Solicitors' workloads and wellbeing, alongside driving increased Legal Aid costs (refer to Area of Focus 2, and the Crown Law chapter).

In Corrections, initial analysis of the custodial population indicates a shift towards an older population with more complex, and often unmet, health needs, including mental health and addiction. This is especially acute for women who are more likely to experience mental health and substance disorders and be victims of family violence, requiring specialised trauma-based interventions. The increasing complexity of the prison population presents operational and logistical challenges and risks, including the increased need for segregation, both directed for different groupings such as people with gang affiliations, and people on remand versus sentenced prison populations, and people requesting voluntary segregation. The increased need for segregation requires more resources and drives increased costs as well as posing challenges for lifting wellbeing outcomes (refer to Area of Focus 3).

This increased complexity of unmet health needs, combined with a shift to an ora/anga/wellbeing approach has required further capital investment in health treatment and appropriate facilities, for example the 100-bed Waikeria Mental Health and Addiction Service. It has also meant increased workload and changes to workforce planning to better support the ora/anga of those in Corrections' care and management, and frontline staff.

The increase in criminal cases of complex nature has effects across the Criminal Justice System. The SFO has seen an increase of complexity of the cases requiring investigation while overall volume of investigations is declining. However, the average time for investigations has increased from 12 months to 20 months on average reflecting workload pressures on specialist expertise (refer to the SFO chapter).

Investments across the Criminal Justice Sector are directed mostly to those already in the system

Financial mapping of Justice Cluster shows that resources are mostly directed to those already in the criminal justice system, not to the prevention of their getting there. There is strong scientific evidence and fiscal benefits for investing relatively more resources into early intervention to identify and mitigate risk, and adequate rehabilitation and subsequent social inclusion for those already in the criminal justice system. Prisons are cost-effective only for the most serious and violent offenders. In New Zealand approximately 80% of all sentenced prisoners were classified low-medium or below.

Consistent, regular and systematic evaluations of interventions and programmes across the spectrum of the Criminal Justice Sector, such as Police's Alternative Ways of Help programme or its Prevention First strategy, as well as Correction's Rehabilitation and Reintegration System are critical to inform investment decisions and address pressure points across the system.

The establishment of an interdepartmental executive board is intended to further strengthen the collective ownership of the whole-of-sector response and enable chief executives to prioritise cross-cutting sector work and resourcing and provide a legal foundation for chief executives to balance their agency and Board responsibilities.

Overrepresentation of Māori in the criminal justice system remains an area of significant concern

While there are some overall improvements and a decline in prison population, Māori continue to be overrepresented in the Criminal Justice system. This poses a challenge for the entire Justice Sector.

Reducing Māori overrepresentation is a key priority across the justice sector. The need for strategic responses focused on Māori was emphasised in Tū Mai Te Rangi, a Waitangi Tribunal report from 2017. This calls for responses that improve outcomes for Māori at all points of the criminal justice system, developed with Māori partners.

For example, Police's strategy, Te Huringa o Te Tai recognises that staff may hold unconscious biases which can affect their decision-making. Police has implemented success measures through Te Huringa o Te Tai to mitigate these biases (refer to Area of Focus 1). Programmes such as Te Pae Oranga and supported resolution methods to reduce entry and/or escalation into the criminal justice to improve social outcomes, and to improve alignment with whanau- based approaches have shown early positive impacts.

In the court system, the flow-on impact of increased case complexity and court congestion affects the amount of time spent on remand, and which is disproportionately made up of Māori. The percentage of the remand population that identifies as Māori is currently 57.3% for men and 65.7% for women. Increased time on remand limits Corrections' ability to support the rehabilitation and reintegration needs of those in its care, although work is underway to mitigate this (refer to Area of Focus 2 and Area of Focus 4).

Across the total custodial population, 52% of men, and 65% of women are Māori. This is despite Māori only making up 16.7% of the total population. Māori represent 63.1% of those managed at high or maximum security (refer to Area of Focus 3).

Corrections' approach to rehabilitation and reintegration is shifting to recognise the importance of incorporating te ao Māori approaches to rehabilitation and reintegration and shifting to kaupapa Māori and braided rivers¹ approaches to service design and delivery to better support the needs of people on sentences and orders administered by Corrections (refer to Area of Focus 4)

Safety for frontline workers, victims and offenders is an increasing focus

Both Corrections' frontline staff and Courts security staff are required to work closely with people who have committed offences, including people who actively use manipulation and violence. This is a psychologically and physically challenging work environment. Hōkai Rangi is driving a cultural shift to strengthen and build workforce capability in a complex and challenging environment. Improving outcomes relies on Corrections prioritising the oranga of people in prison, addressing their often-complex needs, while also ensuring workforce safety. This requires a greater focus on supporting and developing frontline staff with key areas of Corrections workforce safety bid having been developed in partnership with the frontline workforce and union partners in response. Together with the remuneration component, this seeks to address the pay and working condition requirements that are evidenced as needed through the ongoing union bargaining and engagement.

Improving the safety of Police staff remains a priority given the increase in the propensity of some to use violence against Police. Over the past 12 months, the Frontline Safety Improvement Programme has identified opportunities to improve the

¹ *Braided rivers* is a term used to describe the process of combining the strengths of ao Māori world view with non-Māori research systems.

frontline's capability and capacity to enable safety solutions that are right for New Zealanders and the style of policing that the public expect.

Impacts of COVID-19

Police is involved in responding to breaches to COVID-19 legislation, managing and enforcing checkpoints, assisting with Managed Isolation and Quarantine facilities (MIQ), and having an increased presence in the community (e.g. as essential services). SFO received time limited funding from the COVID-19 Relief and Recovery Fund (CRRF) to lead activities aimed at reducing fraud against COVID-19 recovery funds within the public sector and some increased investigative capacity to respond to the anticipated increase in serious financial crime during the COVID-19 related economic downturn.

A backlog of court cases (in addition to the sizeable pre-existing backlog) accumulated while courts were not fully operational due to COVID-19. Funding from the CRRF was provided to MoJ, Police, Corrections, Oranga Tamariki, and Crown Law to support the work of several new District Court Judges, High Court Judges, and one acting Associate High Court Judge including associated registry staff, accommodation, and other support services across the justice sector to address this backlog.

Corrections has experienced a range of impacts as a result of COVID-19. It rapidly changed operational procedures to ensure staff and people in its care were kept safe and protected by keeping COVID-19 out of prisons. This included separate management of new prisoners until confirmed as COVID-19 free, use of enhanced PPE, and the implementation of thermal imaging cameras to detect high temperatures amongst staff and visitors.

CRRF funding was also applied against technology to maintain connectivity between people in prison and their whānau and lawyers (e.g. by increased access to Audio-Visual Links), and for technology to allow staff to operate remotely and to offset the impact of increased staff Annual Leave liability. Funding was also required for construction delays to the modular and Waikeria projects due to lockdowns.

A key focus for 2020, given the COVID-19 pandemic, was on workforce wellbeing and support. Agencies are experiencing recruitment pressures of highly specialised skill sets with the ongoing border closure, particularly in IT.

Considering the nature of justice services, the system has coped remarkably well with disruptions caused by the pandemic, adapting, and innovating to manage pressures even with large proportions of services dependent on fixed assets that are not designed for varying operating models. There is significant uncertainty around further challenges that may arise associated with managing the pandemic which could include:

- increased or decreased pressure on resources maintaining border settings, depending on vaccination rates and efficacy against new variants
- further court delays or backlogs (particularly for jury trials) associated with public health measures and lockdowns
- pressure on Corrections' operational procedures in managing outbreaks, and
- workforce wellbeing (including the potential for significant numbers of staff being unavailable during outbreaks).

Collaboration for Justice Sector Reform

How Justice cluster agencies interact and collaborate has significant implications for the sector and the demands on the criminal justice system. The Justice Sector Leadership Board (“JSLB”) and individual agencies are strongly engaged in the Justice Sector Reform programme to address structural pressures in the system by reducing crime, keeping people safe and modernising the justice system. Specific programmes and initiatives which highlight the benefits of collaboration across the cluster include supported resolution pathways, electronic monitoring as a more effective alternative to remand or imprisonment, and stronger community engagement by Police.

The JSLB was created in 2011 to provide leadership and governance over major programmes in the justice sector by joining up and integrating parts of strategy and policy across agencies and the sector. The JSLB is now proposing to formalise the collaborative model by applying to be established as an interdepartmental executive board, with the intention that this will provide the sector with a sustainable model of collaboration with the power, tools and mandate to underpin and enable a collaborative culture, policy, practice and investment decisions across the justice sector.

He Ara Waiora

As part of incorporating te ao Māori within broader public finance system reform, He Ara Waiora has been applied within the spending reviews. This means using some of the key concepts to frame analysis of effectiveness, for example:

- *Manaakitanga*: does the mix of outputs show a focus on improving outcomes for Māori and Pacific people?
- *Kotahitanga*: have outputs been developed in collaboration with iwi, Māori and other agencies (within the cluster as well as outside of it)?
- *Tikanga*: are decisions about outputs and processes made in accordance with the Treaty?

While Māori continue to be disproportionately impacted by the criminal justice system, the Spending Review team recognises that cluster agencies are undertaking significant shifts to work with and for Māori, and ultimately to improve outcomes. Although it is not possible to capture every instance, several examples demonstrating these principles are described below.

Overview of cluster agencies’ approach

In 2020/21, justice sector chief executives committed to a mana ōrite agreement with Ināia Tonu Nei to work together on criminal justice system reform. The agreement requires and enables all parties to acknowledge and accept each other’s unique perspectives, knowledge systems and world views as being equally valid contributors to decision-making.

Although the SFO has a relatively smaller role in the Māori-Crown relationship regarding the Treaty when compared to the larger agencies, it is a signatory to the mana ōrite agreement, and has contributed resource to the justice sector Long Term Insights Briefing project, which will have a focus on improving the experiences for Māori within Justice sector pathways. It is also looking to strengthen its relationship with Māori in relation to the impacts of financial crime, as part of the National Financial Crime and Corruption Strategy.

Crown Law, also a signatory to the mana ōrite agreement, is currently working with Te Roro, a team working for Ināia Tonu Nei, and with Police on the review of the Solicitor-General Prosecution Guidelines to ensure they continue to be fit for purpose and align with the objectives of the criminal justice system, in the context of the system reform underway. Crown Law also supports the Māori-Crown relationship through provision of legal advice and representation around the exercise or scope of constitutional powers or duties of the Crown including the Te Tiriti and the Māori-Crown relationship

Te Haerenga is MoJ's plan for achieving its priorities of building capability to engage and partner with Māori and honouring its responsibilities to Māori. This includes building meaningful relationships at different levels to progress significant pieces of mahi, for example, with National Iwi Chairs on national justice priorities, Ināia Tonu Nei on criminal justice reform, and Tauranga-Moana iwi and Whanganui iwi on new court builds and renovations.

Corrections' strategic approach, Hōkai Rangī, was developed with Māori to improve outcomes for Māori across six outcome areas: partnership and leadership; whānau; incorporating a Te Ao Māori worldview; whakapapa; and setting the foundations for participation. Authentic partnership with Māori is a priority. Corrections is deepening its relationships with Te Tiriti o Waitangi partners, Māori organisations and post-treaty settlement entities. New ways of partnering with Māori are being tested at key pilot sites, including Māori Pathways, Te Mauri Paihere ki Mangakootukutuku accommodation for women and children, and Hikitia – the Waikeria Mental Health and Addiction Service. The lessons from these pilots will inform changes to how Corrections works elsewhere.

Uplifting cultural capability is a priority across the cluster agencies. Examples include:

- Police actively encourage staff to learn mātauranga Māori
- Crown Law has a new strategy underpinned by a more holistic approach to te ao Māori
- SFO offers cultural intelligence training for all staff
- Corrections introduced a new organisational structure to help uplift cultural capability, and
- MoJ has introduced a multi-year cultural capability programme, and specific training on cultural awareness and understanding when working or interacting with Māori for Court Security Officers.

Te Pae Oranga (TPO)

TPO is an iwi/Māori-led, restorative principled approach to practice as an alternative to prosecution that holds offenders to account and enables them to put right the harm caused by their offending. Delivered by Māori community organisations in partnership with Police, TPO enables a prevention-first approach to certain offences. It is open to participation for people of all ages, genders, and ethnicities, to reduce harm from re-offending and support victims and whānau.

TPO adopts a Cultural Resilience Model that includes kaupapa Māori, tikanga Māori, and Whānau Ora centric approach. There are currently 16 existing iwi panels set up across New Zealand. From October 2017 to March 2021, Police and service providers have worked to refer 8,858 participants to TPO, as opposed to prosecuting at court. The model:

- leverages existing iwi/Māori community infrastructure to provide an alternative to prosecution for low-level offending
- uses a panel of respected iwi and community leaders to hold people to account for low-level offending, assist to put right the harm, and create pathways to support, training, and employment
- is not a “soft option” – the participant must accept responsibility for offending and agree to attend. An offence is recorded, and there are consequences if people do not follow through, and
- encourages victims to attend and participate.

Whāngaia Ngā Pā Harakeke (WNPH)

WNPH involves partnering with local iwi to address harm caused by offending in a way which honours te ao Māori. WNPH is a Police-sponsored initiative where Police and local iwi work in partnership to reduce family harm across pilot locations that experience disproportionate levels of family violence and sexual violence.

Te Ao Mārama

Te Ao Mārama is a judicially led initiative that seeks to implement solution-focused processes of specialist courts into its mainstream criminal jurisdiction. Although the Justice sector will collaborate with the judiciary in design and implementation, it being judicially led will require the sector to be relatively more reactive to the needs of the judiciary than internally led initiatives.

Kiingitanga, Mauri Paihere ki Mangakootukutuku Development (weaving life principles)

This development has been a collaboration between the Kiingitanga, Kāinga Ora, Waikato Tainui and Corrections. It reflects the safe and caring kaupapa Māori-led support and environment that will be provided for all living in the village-like community. A unique aspect of the development is that the long-term lease will not include Ara Poutama Aotearoa. The development has direct whakapapa to all the Hōkai Rangi focus areas of Partnership and Leadership, Humanising and Healing, Whānau, Incorporating an Ao Māori worldview, Whakapapa, and Foundations for participation.

Māori Pathways

Māori Pathways intends to provide whānau-centred, kaupapa Māori approaches for Māori in the corrections system in partnership with Māori. This is a fundamental shift in Corrections’ approach to improve outcomes for Māori that will inform future system-level changes. Corrections, Te Puni Kōkiri and the Ministry of Social Development have worked together closely during the co-design of Māori Pathways, and co-lead Paiheretia Te Muka Tangata, a key aspect of Māori Pathways that provides whānau ora approaches.

The Māori Pathways pilots have been designed with iwi, hapū, Māori providers and people with lived experience of the corrections system. Key aspects of these pathways in the three pilot sites, Christchurch, Hawke’s Bay and Tai Tokerau will be tested and refined will be rolled out in 2021 and 2022.

Corrections is working with Māori providers to trial, refine and prepare refreshed and new programmes for a roll-out. This kaupapa supports reintegration and rehabilitation pathways into the community for Māori. In Hawke’s Bay, Ngāti Kahungunu Iwi Inc and Corrections worked in partnership to co-design three initiatives collectively referred to

as Tēnei Au, Tēnei Au, to be delivered within Te Ara (a high security unit at Hawkes Bay Regional Prison). These approaches will be a key aspect of Māori Pathways at this site. Reflecting the strength of the partnership, the co-design process was largely led by Ngāti Kahungunu. The approach includes:

- Tikanga a Iwi – a new approach to lift the use of tikanga Māori throughout the unit in a way that is healing. It will help connect men to their whānau and local iwi; reflects tikanga ā iwi and will be delivered by local experts.
- Ngākau Ora is a kaupapa Māori approach to trauma informed care underpinned by mātauranga Māori, which creates a Māori culturally safe environment to explore difficult kōrero associated with trauma.
- Kaupapa Māori Wānanga - a customised approach to respond to the priorities that matter to men and their whānau and support men to move towards orange.

Next Steps

Following the completion of the Analytical Report, the Spending Review team is shifting its focus on assessing the multi-year budget packages submitted by the Justice Cluster in December 2021. The package assessment, informed by the findings of the Spending Review, will form the basis of Budget 2022 advice to Ministers in February 2022, including common themes and insights across multiple areas of focus.

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Role	Name	Signoff date
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Area of focus 2: Court System Performance

Key insights

- Timeliness of the court system has deteriorated, particularly since 2014, primarily driven by an increased number of events to disposal for criminal category 3 cases. This has led to considerable pressures throughout the justice sector pathway, most visibly in the remand population.
- The structural causes of increased congestion are likely to be legislative and procedural, with the justice sector interactions becoming increasingly complex – manifesting as additional court events per disposal – due to the incentives created by the Criminal Procedures Act 2011 (CPA2011).
- It is increasingly likely that without a wholesale and substantive review of the CPA2011, increases to agency baselines will provide only temporary relief to the congestion driven by persistent underlying structures and incentives. However, for justice sector outcomes to sustainably improve, transitory funding is likely required to enable agencies to address short-term pressures alongside directives and support in addressing the underlying cause of congestion.
- The justice sector’s response to COVID-19 saw a sharp decline in court backlogs, resulting in an unexpected and significant reduction in the remand population. It is not clear what actions were undertaken to achieve such outcomes and what the lessons were from the sector’s response to COVID-19 – particularly in what can be done to further decrease backlogs.

Key contacts

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Introduction

This section builds on the findings of the Courts and Tribunals focus area from the MoJ Baseline Review in 2020, focusing on the efficiency of courts. The focus will be on criminal courts, particularly serious Category 3 cases, and impacts on the remand population. This narrowed focus does not proclaim any absence of growing congestion in other jurisdictions, particularly domestic violence cases in the family courts or coronial cases, but rather identifies that serious criminal cases are the largest contributor to the growing pressures on courts.

Despite the significant efforts over the last decade to improve and modernise, courts and tribunals are under increasing pressure to dispose of new cases entering the system. Although the aggregate number of new cases each year has not fluctuated significantly in the past 5 years, it is taking increasingly longer to dispose of cases. As cases take longer, the number of active cases increases which is leading to backlogs. The total number of new Criminal Category 3 cases has declined 5.7% in the year to June 2021 compared to March 2020 – just prior to the onset of COVID-19. This has been driven by a 6% decline in Judge-alone trials, but partly offset by a sizable increase in Jury trials, which have recorded a 21.6% increase over the period.

Even though jury trials represent a small minority of new business into the District Courts, they require significantly more effort for the justice sector to dispose. This shifting composition of cases towards Jury trials will have significant implications for the sector – as Jury trials are a factor more resource intensive than judge-alone trials. In particular, the Crown Law is likely to face disproportionate impact from this shift towards jury-trials considering they are responsible for many of the more serious criminal cases entering the courts.

Prior to 2020/21, congestion was driven by an increase in the number of events per case, and/or because more time is needed between each event, particularly for Judge-alone trials. However, this relationship seems to have changed in the past 12 months, with fewer events required to dispose of a typical Judge-alone trial while Jury trials continue to exhibit increased signs of congestion. In aggregate, these two trends have broadly cancelled each other out with judges' workloads remaining broadly unchanged in the year to 2020/21.

s9(2)(g)(i) and s9(2)(f)(iv)

The response of the broader justice sector to COVID-19 has shown that the sector is resilient and adaptive to rapidly changing circumstances. Although the number of new Category 3 cases entering courts decreased during 2020/21, the number of disposals increased 5.8% resulting in a substantial decline in the remand population of approximately 20%. This outcome shows that the sector can quickly tackle and address substantial problems. s9(2)(g)(i)

s9(2)(g)(i)

The justice sector has many independent decision makers whose actions have significant impacts on other players, despite those players having limited ability to influence or plan for such actions. For example, enforcement decisions by Police and judges' decisions have a significant impact on the Ministry of Justice's management of district courts, and Corrections' remand populations. The cumulative effect of independent small decisions can be significant, especially in serious criminal cases.

Similarly, there is correlation between policy development, legislative enactment, and implementation such that the financial implications of policy development within the Ministry of Justice and the Police frequently falls heavily on both other sector agencies and the courts and tribunals system.

Funding within scope

The total annual and permanent appropriations in Vote Courts in 2021/22 are \$886 million, with nearly \$513 million (58% of the Vote) for servicing courts and tribunals and \$165 million (19% of the Vote) to cover salaries and allowances of judges, coroners, and community magistrates, which are out of scope. Over \$126 million (14% of the Vote) is for professional and administrative services for courts and coroners.

Trends in the courts

The onset of COVID-19 saw the courts system place significant focus on the efficiency of getting through its significant backlog of Judge-alone cases. Along with a slight decrease in new cases entering the courts, this has had profound impacts on the remand population, which dropped by 20% during the period.

The impacts of COVID-19 on criminal proceedings seemed temporary, but underlying trends of increasing congestion are showing tentative signs of continuing in Auckland and Manukau. During the time of the initial lockdown in April 2020, the administrative and review stage of trials saw the most prominent increases in average time, due to judicial protocols requiring that these cases could only be dealt with if the person was in custody. In contrast, trial and sentencing stages saw sharp declines in time required, with the judiciary prioritising those cases in the absence of throughput from new business, but quickly reverted to their underlying trends.

Positive signs emerging about the ability of the Christchurch District Court to address backlogs, which may hold lessons for the larger courts in Auckland and Manukau.

Previous analysis undertaken as part of the Ministry of Justice Spending Review

The 2020 MoJ Baseline Review showed that changes to court performance in the 2010s were driven by the criminal jurisdiction, particularly more serious Category 3 cases. Other jurisdictions, including less serious criminal cases, family and civil cases, contributed much less to the overall congestion of district courts. Later guilty pleas within Judge-alone trials have been the main driver of congestion, followed by the increased likelihood of cases being heard before a jury.

Average active days of serious criminal cases is persistently increasing. The challenge has been to identify the causal drivers for why defendants are choosing to plead guilty at later stages of the judicial process, and the levers for change. This has proved difficult, considering the number of independent decision makers throughout the justice sector. MoJ research into the incidence of later guilty pleas has found the following reasons for changed behaviours, including:

- the lack of system incentives for defendants to plead early
- late disclosure of evidence, making early guilty pleas problematic,
- the Review stage of cases have not driven early engagement, as was intended during the drafting of the CPA2011, and
- court participants are rarely being held to account for not engaging or being underprepared.

Workforce and remuneration issues were considered as part of the Ministry of Justice baseline review of 2020 and have not been updated for 2021 as the insights yielded relatively little for the effort required.

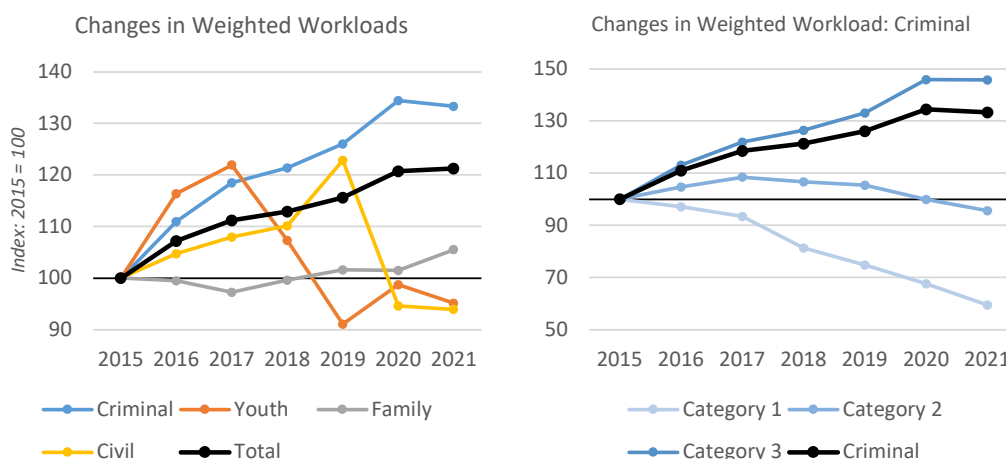
Congestion in courts – stable inflow but disposals are taking longer

Congestion has worsened significantly since 2014 which is a major contributor to increasing time spent on remand. The proportion of prison sentences served in remand has roughly double since 2014 and suggests that addressing court performance will have significant positive flow-on impacts on Corrections.

Every person charged with a criminal offence will make their first appearance in the District Court, even if their charge will ultimately be heard in the High Court. Most defendants will go through the entire justice process in the District Court. The District Court has a broad criminal jurisdiction and hears very serious offences such as rape and aggravated robbery, plus minor offences such as disorderly behaviour. The procedure for criminal cases is governed by the Criminal Procedure Act 2011 (CPA 2011). The Youth Court deals with criminal offending by children and young people that is too serious to be dealt with by the Police in the community.

In aggregate, new business for both Civil and Youth jurisdictions have declined since 2015. This was driven by less serious Category 1 and 2 offences, while more complex Category 3 offences have increased by 9.4% in Criminal and 4.3% in Youth. Within the District Courts, new business for Criminal cases has declined between 2015 and 2020, driven by less serious Category 1 and 2 offences, while more complex Category 3 offences have increased by 9.4% (Figures 35 and 36: Changes in weighted workloads of District Courts).

Figures 35 and 36: Changes in weighted workloads of District Courts



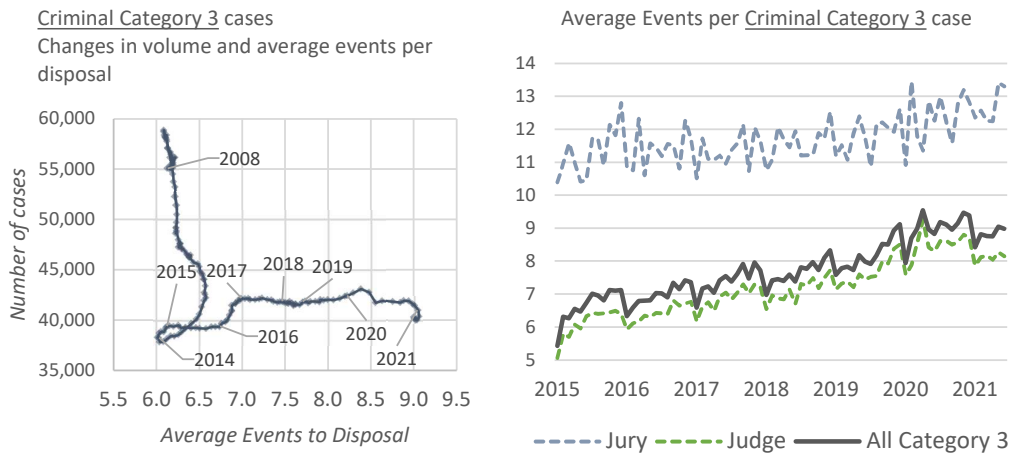
Source: MoJ Hotspot data

Since the onset of COVID-19 pressure on processing criminal cases has stabilised, with a decrease in the weighted workloads for Judge-alone trials being partly offset by increased pressure from Jury trials.

Combining new business with average events per case shows that in the five years prior to COVID-19, weighted workloads increased by almost one-quarter, driven by Criminal workloads, which has increased by 37.4%. The largest contribution to the criminal jurisdiction workload over this time was from Category 3 criminal cases, with Categories 1 and 2 being either flat or falling. Category 3 criminal cases now account for approximately 54.2% of total District Court workloads, compared to only 45.0% in 2015.

The increase in Criminal Category 3 has been driven by increased average events to disposal, rather than increased case volumes. As seen in Figures 37, there was negligible change in average events between 2008 and 2014, while the number of cases decreased markedly. However, since 2014 volumes have stabilised, while average events have steadily increased (Figures 37 and 38: Criminal Category 3 cases and average events).

Figures 37 and 38: Criminal Category 3 cases and average events



Source: MoJ Hotspot data

Although we understand that the increased time to dispose criminal cases is due to cases requiring more court events before resolving as defendants are increasingly delaying their guilty pleas, identifying the causal drivers of such trend, and subsequent levers for change, is difficult. Multiple hypotheses are being considered by the Review Team and MoJ, particularly in understanding why defendants are pleading guilty later in the process than historically. ^{s9(2)(f)(iv)}



Nationally, workloads for Criminal Category 3 have grown by 51% (averaging 6.6% annually) over the past 6 years. Although every justice service area in the country recorded increased workloads since 2015, the regions with the largest increase in workload include the East Coast and Taranaki/Wanganui justice service areas. In fact, the East Coast now has a similar workload in Criminal Category 3 cases as the Auckland justice service area.

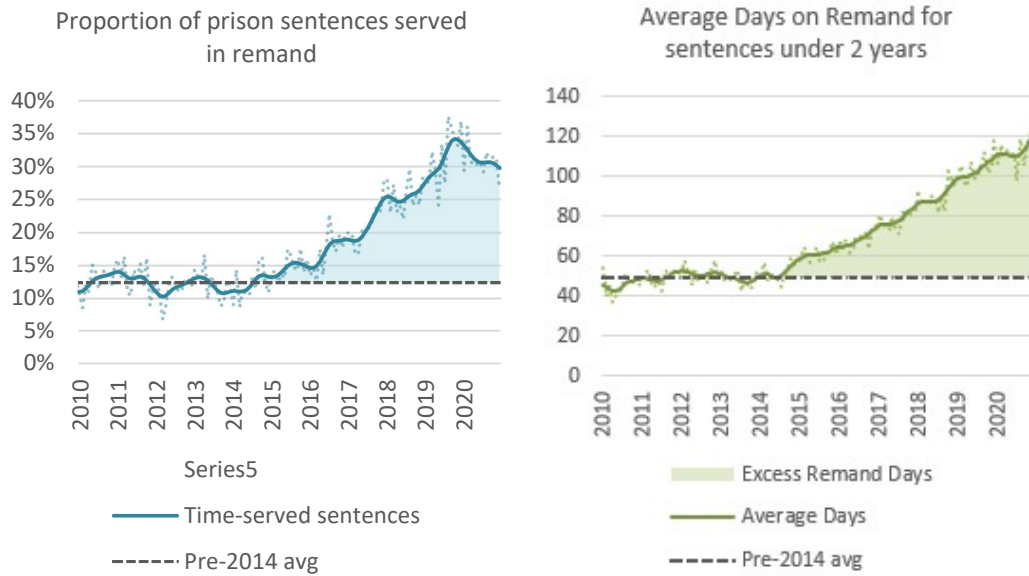
Quantifying the impact of court congestion on remand

There is strong correlation between increased court congestion since 2014 and the prevalence of cases where people are commuted to time served on remand. Figures 39 and 40: Measuring remand caused by court congestion show the extent of sentences served in remand, and the impact on the number of average days served on remand for short sentences¹¹.

The proportion of prison sentences served in remand has more than doubled since 2014, as have the average days of short sentences served in remand.

¹¹ Data is provisional, with insights based on preliminary data and need to be confirmed to ensure consistency between MoJ and Corrections data. While it is likely that the overall trends are likely to hold true, final figures may include revisions.

Figures 39 and 40: Measuring remand caused by court congestion




Source: Ministry of Justice

It is likely that the trends observed in Figures 39 and 40: Measuring remand caused by court congestion are materially due to decreased court timeliness, as the increase in proportion of sentences served in remand and average days in remand has increased lockstep with congestion in the courts. The validity of this correlation is heightened by the decrease in the proportion of prison sentences served in remand since the focused response of the sector on reducing backlogs of Judge-alone trials during COVID-19. However, the shifting composition of cases towards Jury-trials is seeing a continued increase in average days spent on remand, suggesting that gains from addressing Judge-alone trial backlogs may be short lived.


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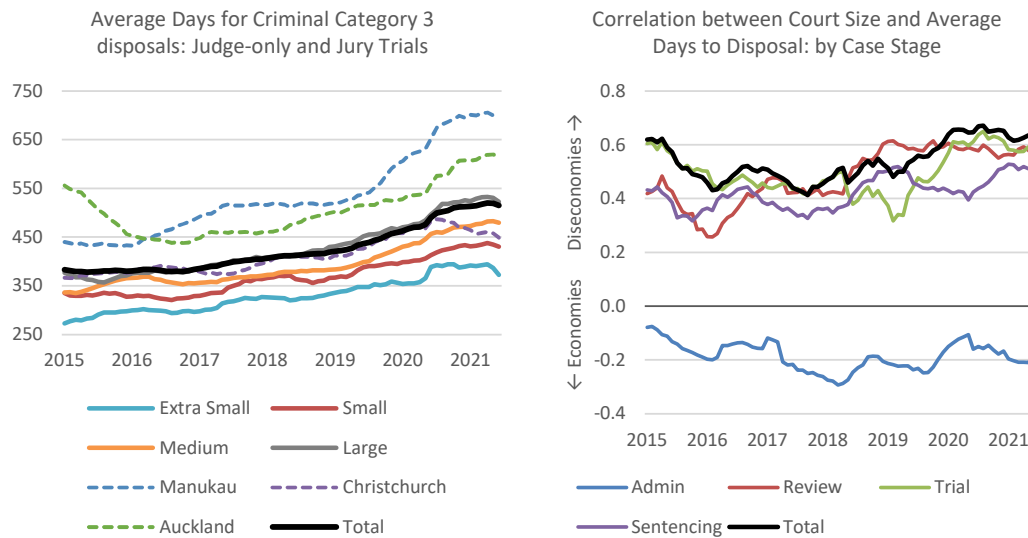
s9(2)(f)(iv)



Criminal Category 3, by size of court

As seen in Figures 42 and 43: Average age of Criminal Category 3 disposals and Court size correlation there is a clear correlation between the size of Courts (as per MoJ’s definitions) and the average length of time required to dispose of Criminal Category 3 cases, which has held true for the entire period that data is available. Not only has there been clear diseconomies of scale apparent, but they are seemingly worsening – particularly at the trial stage.

Figures 42 and 43: Average age of Criminal Category 3 disposals and Court size correlation



Source: MoJ Hotspot data

There is a clear positive correlation between the size of courts and the average length of time required to dispose of Criminal Category 3 cases. Not only has there been clear diseconomies of scale apparent, but they are seemingly worsening – particularly at the trial stage. Breaking down the aggregate data requires careful interpretation, as it is difficult to discern correlation from causation. Anecdotally, smaller courts can better navigate complex criminal cases, due to closer personal relationships between judges, lawyers and prosecutors and less congested courtroom scheduling.

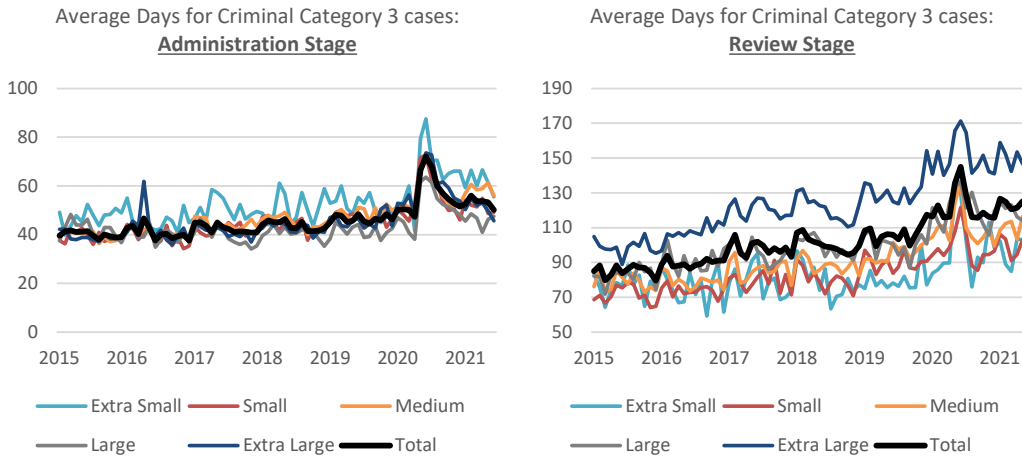
Other explanations for the observed diseconomies of scale include:

- the absence of a modernised case management system (i.e., Caseflow), which may be impacting the larger courts more than small courts
- capital constraints causing congestion within high-demand regions, particularly Auckland and Manukau, and
- Police Prosecutor resource allocation

Although the review team has discussed each of these explanations with MoJ, the absence of sufficient behavioural insights has made it difficult to determine their extent or contribution to observed court congestion.

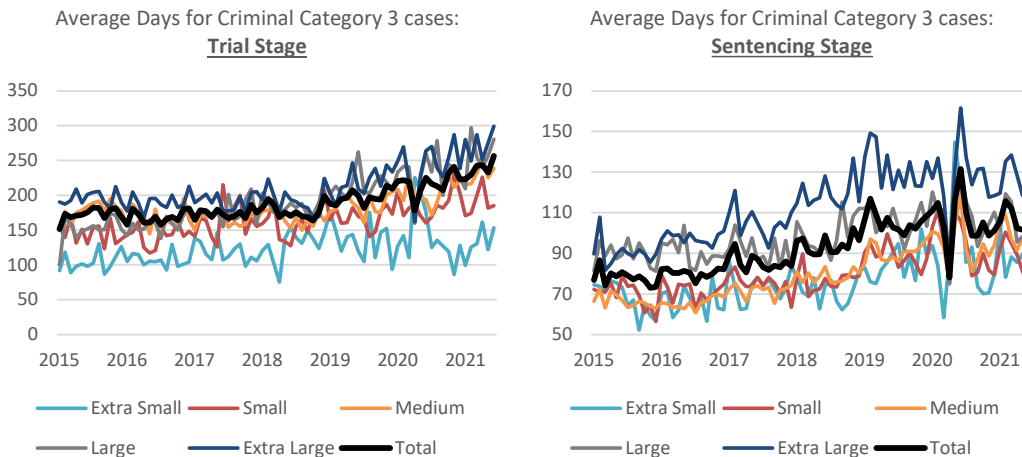
Criminal Category 3, by case stage¹³

Figures 44 and 45: Average Age in Days for Criminal Category 3



Source: MoJ Hotspot data

Figures 46 and 47: Average Age in Days for Criminal Category 3



Source: MoJ Hotspot data

Economies of scale for administrative stage, but diseconomies for review, trial and sentencing stage.

The CPA2011 seemingly drove procedural efficiencies and economies of scale in larger courts, particularly in the administrative stage of cases, but may be responsible for shifting congestion into other stages of cases.

The Criminal Process Improvement Process (CPIP) may provide additional insight – however, the scope of the review may focus too narrowly on the immediate impact of COVID-19, as opposed to the underlying structural pressures that have amassed in the years prior and since.

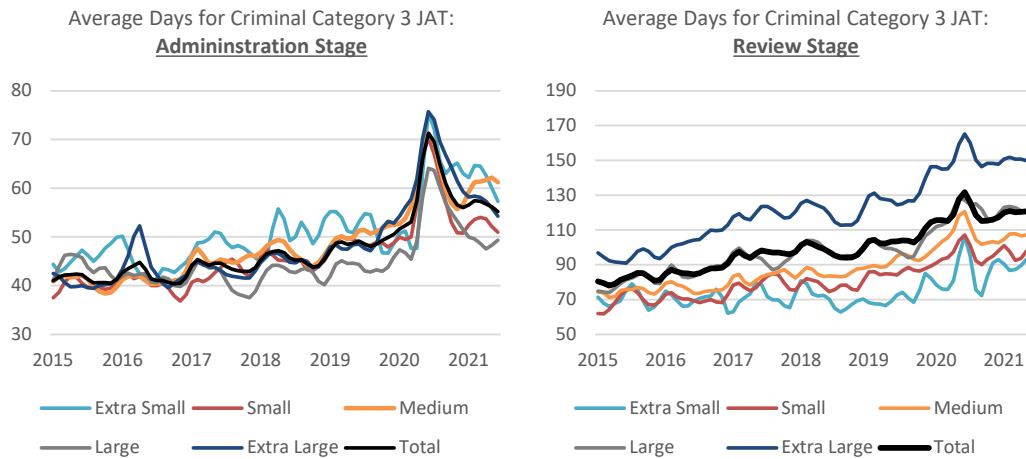
¹³ Figures presented in this section are shown as monthly totals rather than rolling 12-month averages. Although the monthly data presents more variation and noise, it is critical to present data in such a way to understand and visualise the short-term impacts of COVID-19.

Criminal Category 3: Judge-alone trials¹⁴

Judge alone trials account for approximately 98% of criminal category 3 proceeding and are by far the largest contributor to increased congestion since 2014.

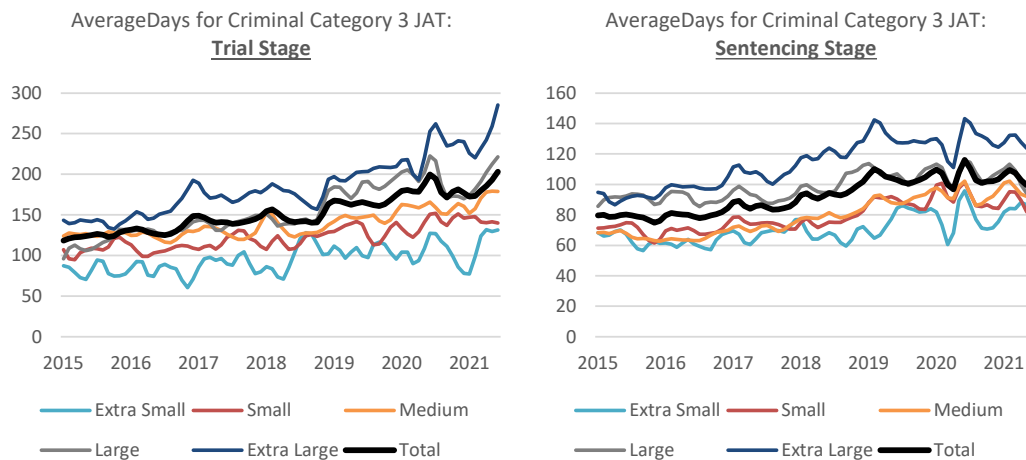
The average number of events per Category 3 judge-alone case has increased by 50.6% since January 2015 to 8.4 events in the year to June 2021.

Figures 48 and 49: Average Age in Days for Criminal Category 3 Judge-alone trials (JAT)



Source: MoJ Hotspot data and Review Team calculations

Figures 50 and 51: Average Age in Days for Criminal Category 3 Judge-alone trials (JAT)



Source: MoJ Hotspot data and Review Team calculations

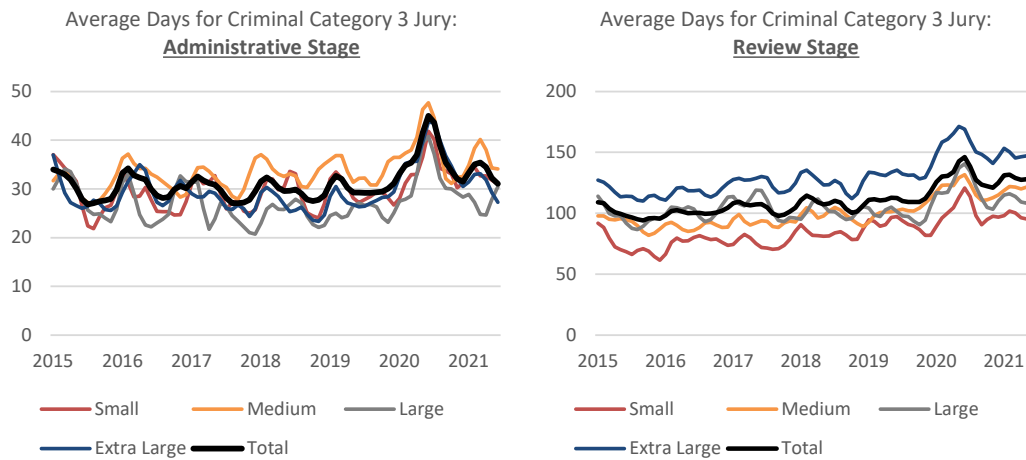
¹⁴ All eight charts depicting *Average Age in Days for Criminal Category 3* trials, both JAT and Jury, use monthly data, for the same reasons discussed on the previous page. However, being a subset of total activity, variations and noise in the JAT and Jury is heightened – particularly in the low volume Jury data. To account for this, the monthly data has been smoothed using a technique known as exponentially weighted centred moving average, which gives us a smooth line that looks like a trend estimate. The weighting reflects the fact that the current observation likely contains the most information about the current trend, but neighbouring observations provide diminishing marginal information about the trend.

Criminal Category 3: Jury Trials

Relative stability, compared to Judge-alone proceedings, with the number of average events per case increasing by only 10.6% since January 2015 to 12.7 events in the year to June 2021.

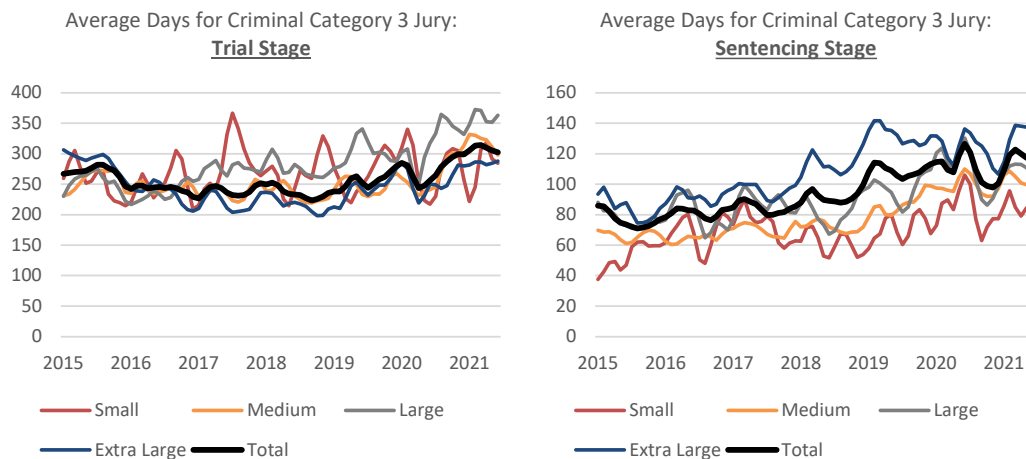
Jury trials represented 13.2% of disposals in the year to May 2020 for Criminal Category 3 cases, increasing from 9.3% in early 2015. Typically, far more burdensome on the courts system, trends in jury trials have been far more stable than judge-alone trials and are not responsible the aggregate changes in congestion seen in District Courts.

Figures 52 and 53: Average Age in Days for Criminal Category 3 Jury trials



Source: MoJ Hotspot data and Review Team calculations

Figures 54 and 55: Average Age in Days for Criminal Category 3 Jury trials



Source: MoJ Hotspot data and Review Team calculations

Utilisation of court rooms and judicial capacity

MoJ has a role to ensure it is effectively utilising court rooms as well as available judicial capacity. MoJ received time-limited funding to establish a national scheduling team two years ago to improve scheduling effectiveness and consistency. Dedicated scheduling roles influence decision making about court schedules (through data and analytics) to improve scheduling performance. MoJ advises that it has supported the improved utilisation (compared with maximum workload capacity restrictions) of all allocated judge sitting days in the court schedule.

A 100% utilisation rate of courtrooms is not achievable, nor desirably, with the rate depending on the number of judges allocated to each court in the judicial roster. For example, if a court is allocated less judges than the number of courtrooms then utilisation will be lower given that some rooms will not be used/used less.

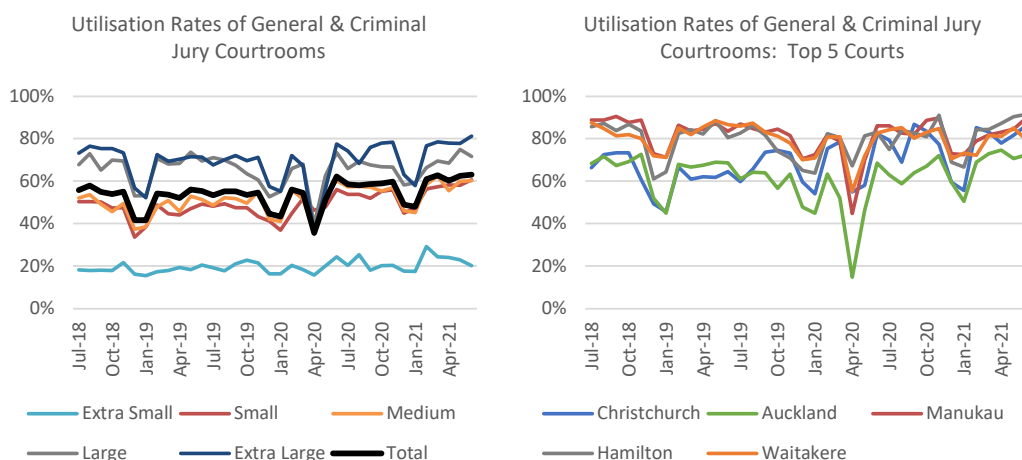
The 2020/21 saw the highest recorded utilisation rate to date, at 58.4%. As Figures 56 and 57 shows, utilisation quickly recovered from the initial lockdowns of April 2020 and are now sustained at higher levels than previous.

It is unlikely that over-utilisation of court rooms is contributing materially to the declining timeliness of the judicial process. In aggregate, there is little to no correlation between high utilisation of courtrooms and delayed disposals of criminal cases – particularly in the Extra-Large courts.

The Christchurch justice precinct is likely an exemplar. Figures 56 and 57: courtroom monthly utilisation rates (%) shows that utilisation has increased significantly since 2019 – currently operating near 80% capacity (or as high as is reasonably feasible considering other constraints) – yet is not experiencing the pressures faced by other courts operating at similar levels of utilisation, such as Manukau. The Review team understands that the increase in utilisation of Christchurch comes from increased judicial resourcing provided in the COVID-19 budget package.

On the contrary, Auckland is facing significant pressures on timeliness, yet its utilisation of courtrooms is structurally lower than other large courts.

Figures 56 and 57: courtroom monthly utilisation rates (%)



Source: MoJ scheduling team

Utilisation of other spaces in court precincts

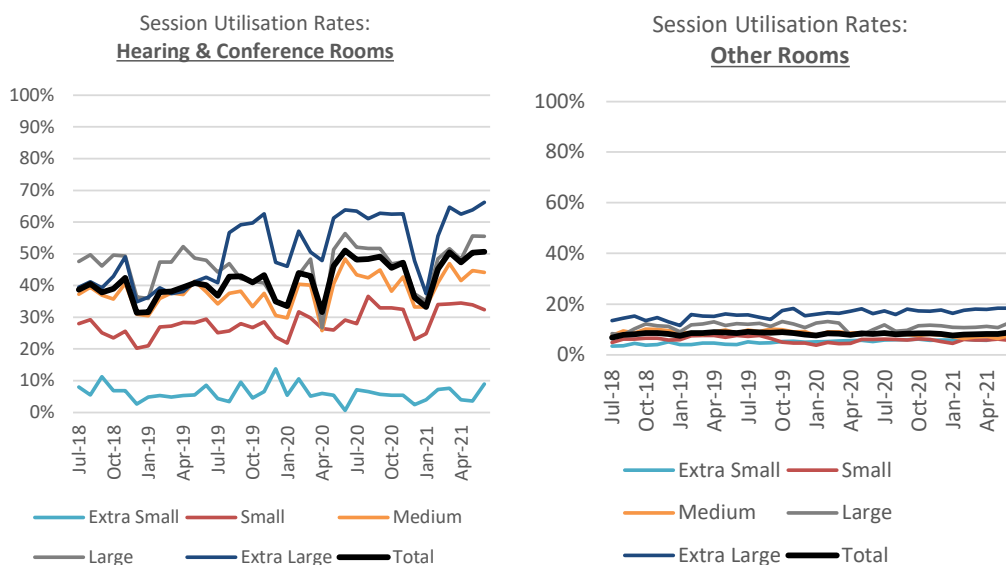
The underutilisation of non-courtroom spaces within justice precincts indicates that there are options to increase capacity beyond building entirely new precincts.



Utilisation of Hearing and Conference increased since the April 2020 lockdown but are only utilised to 46.1% in 2020/21. Despite this structurally lower level of utilisation, compared to general and criminal jury rooms, the positive correlation holds between court size and utilisation rates.

During April 2020, the extra-large courts shifted their activity disproportionately towards Hearing and Conference Rooms – which recorded only a slight decrease in utilisation, and in the case of Manukau and Christchurch, increased utilisation.

Figures 58 and 59: Session utilisation rates for other spaces – hearing, conference, and other rooms



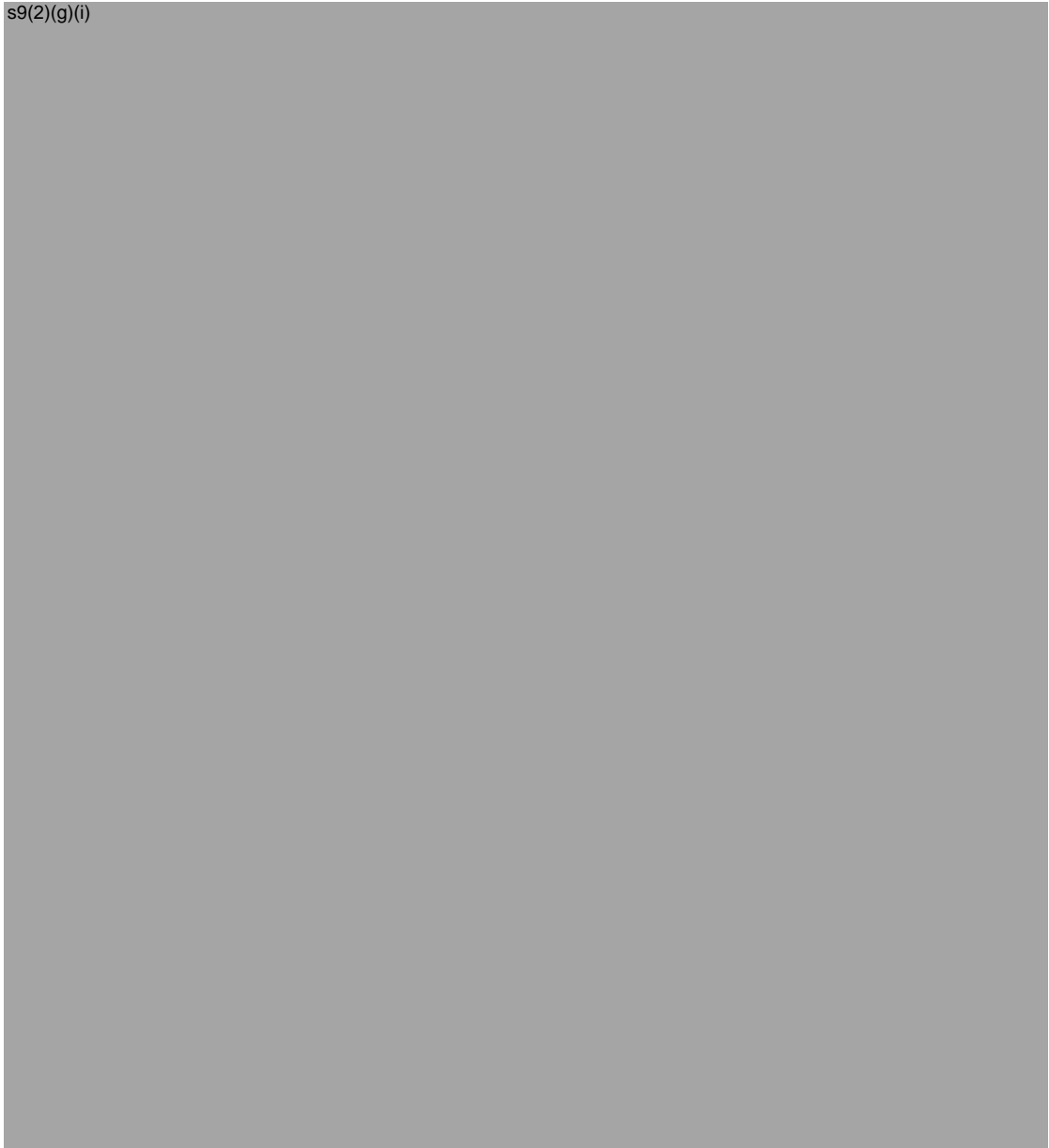
Source: MoJ scheduling team

MoJ has advised that the scheduling to the allocated judge sitting days in the non-jury criminal jurisdiction increased by 5% between September 2019 and February 2020 from baseline, as per the Chief District Court Judge workload caps. Scheduling more effectively has meant that the court registry better utilised available Judge and courtroom resources to approximately 120 sitting days per quarter, providing the judge with a greater certainty as to the amount of work they can expect to be scheduled before them. MoJ does not have accurate historical data, prior to 2017, on courtroom utilisation ^{s9(2)(f)(iv)}

The role of Police prosecutors


Analysis of police prosecutor resource modelling has provided limited insight into the contribution of prosecutors to decreased timeliness in courts – instead reflecting the existing congestion within courts as increased resourcing needs.

s9(2)(g)(i)

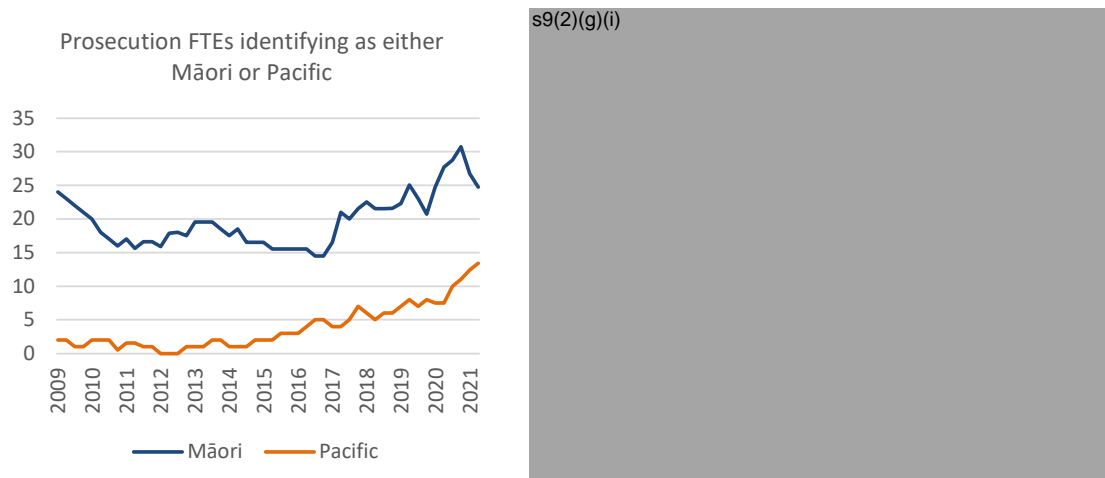


Figures 62 and 63: ethnicity of police prosecutors, below, show that NZ Police have made a concerted effort, particularly since the mid-2010s, in increasing the representation of Māori and Pacific in their prosecutions workforce. Median wages of Māori and Pacific prosecutors have also kept broad pace with the remainder of the workforce – except for 2019/20, due to the relatively small numbers of the workforce creating volatility in the numbers.

s9(2)(g)(i)



Figures 62 and 63: ethnicity of police prosecutors



Source: NZ Police personnel HR database

The role of Crown Solicitors

The Crown Solicitors network is a collection of private sector lawyers holding Crown warrants around New Zealand to prosecute criminal offences and who are funded directly by the Crown for this service. This is managed by Crown Law.

Warrant holders are appointed following an expression of interest process,



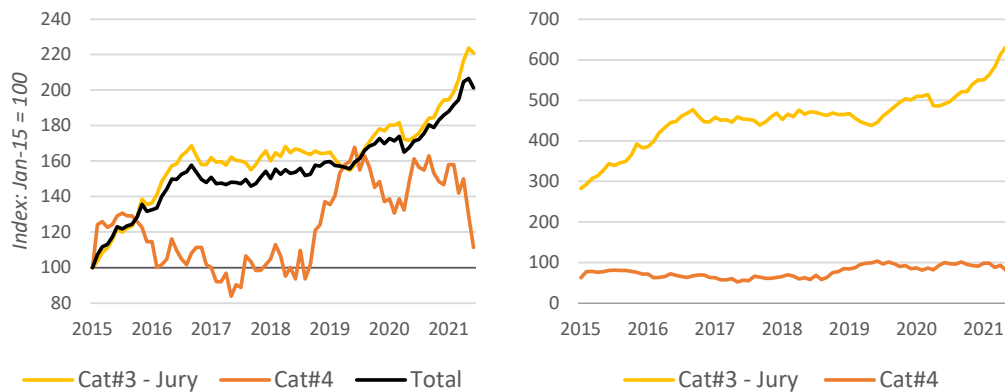
The entire Crown Solicitor network of 17 warrants is reviewed over a 3-year cycle. To achieve this a combination of in-depth and survey-based reviews are used. On average 4-6 survey-based reviews are conducted annually; these involve asking the warrant holders themselves and external stakeholders to provide feedback through a survey, Key external stakeholders asked to participate include:

- The officer in charge of the Criminal Investigation Branch in the district;
- District Prosecution Manager within the Police Prosecution Service in the district;
- A Victim Support manager; and
- The Chief Legal Advisor (or equivalent) of any other department or Crown entity the warrant has engaged with.

Impact of court system performance

As noted above, across the 2010s there was an increase in court congestion, primarily driven by greater numbers of more serious criminal Category 3 cases. Prior to 2020/21, congestion was driven by an increase in the number of events per case, and/or because more time is needed between each event. This is particularly acute for criminal Category 3 jury cases.

Figures 64 and 65: New business: category 3 jury trials and category 4 cases (left) and New business volumes: rolling annual totals (right)



Source: MoJ Hotspot data and Review Team calculations

In addition, as every Crown prosecution gives rise to the possibility of an appeal (this is conducted and funded by Crown Law and sits outside of the Crown Solicitor funding model), an increased number of cases may lead to an increase in the number of appeals, and subsequent increase in costs for the department.

Workforce wellbeing



The Crown Solicitors funding model

Before 2012, Crown Solicitors were funded via an invoice-based funding model. The 2011 Review of Public Prosecution Services (the Spencer Review)¹⁹ found that the current model was not financially sustainable. It noted that in the prior years, substantial changes to the justice sector materially impacted on the costs of both Crown Solicitors and the Police Prosecution Service. Further:

Even more substantial changes are expected from the forthcoming Criminal Procedure (Reform and Modernisation) legislation. In the past the fiscal impacts of policy and practice changes have not been properly costed. Policy proposals that are likely to have financial impacts for the justice sector should include a comprehensive analysis of these impacts on each part of the sector. [...] All too often such changes lead to a saving in one part of the justice sector but increased costs in another part.²⁰

Amongst other conclusions, the Spencer Review found that the invoice-based system provided little incentive for warrant holders to manage costs per case. It recommended a more transparent and realistic billing system for Crown Solicitors be introduced in combination with more proactive financial management by Crown Law. Following this recommendation, Crown Law considered bulk funding the best way to distribute a set amount of funding where there is variable demand and an unknown volume of work, and the model was adopted in 2012/13.

Allocation of funding is based on the proportion of work done by individual warrants in the network, rather than the numbers of cases themselves. Crown Law considers that this is a strength of the model because it remains a reliable distributor of funding, even if national case volumes are significantly lower or higher than anticipated. There is no volumes cap, and as warrant holders must accept all work, any continued increasing case volumes with no additional funding could pose a risk to the model sustainability.

A review of the current funding model, led by external consultants KPMG, began in August 2021. This was the first significant review since the bulk funding system replaced the previous invoice-based system. This review is focused on the distribution of the fixed funding, though not the quantum. It is expected that the review will be completed in late October 2021.

The KPMG review team was tasked with:

- Recommending whether the current Crown Solicitor Funding Model remains fit for purpose;
- Recommending any changes to the current funding model that would improve the sustainability of the model over the near to mid-term (3 to 5 years); and
- Advising if there are other potential funding models more suited to the current operating environment and what these are.

¹⁹ John Spencer, September 2011, <https://www.crownlaw.govt.nz/assets/Uploads/Reports/prosecution-review-2011.pdf>

²⁰ Spencer Review, 2011, preface.

High-level findings were:

- The model itself is robust and there is no alternate model nationally/overseas that can be said to be more superior to the current one. The CS network is generally satisfied with the model and prefer this over the invoice method of old. The model can also effectively handle distribution of an increased quantum of funding.
- KPMG highlight areas and make good recommendations that would improve the model, related processes and communications. KPMG point out that overall increasing case volumes/workloads and quantum of funding need to be reviewed outside of the model, and addressed (e.g., by The Treasury), or they will pose a risk to the model’s sustainability.

Levers to effect change and potential trade-offs

Criminal Process Improvement Project

The judiciary-led Criminal Process Improvement Programme was established in immediate response to the system pressures caused by COVID-19, with support from Behavioural Science Aotearoa.

Insights from this programme may contribute to the understanding of why defendants are delaying guilty pleas and unnecessarily extending the time required to dispose of cases.

Te Ao Mārama

Te Ao Mārama is a judicially led initiative that seeks to implement solution focussed processes of specialist courts into its mainstream criminal jurisdiction.

s9(2)(g)(i)


s9(2)(f)(iv)

s9(2)(f)(iv)

Partnerships between the judiciary and iwi for further design and potentially co implementation between MoJ and Iwi.


s9(2)(f)(iv)

s9(2)(f)(iv)




Caseflow

s9(2)(g)(i)



s9(2)(f)(iv)




Police prosecutor resourcing

Additional data from the police prosecutor team will allow for an assessment of this temporal relationship between police prosecutors and court performance.



Capital utilisation

s9(2)(f)(iv)



Crown Law Office

Key insights

- Trends in the courts, in particular the sizeable shift towards jury trials and longer times to case disposal, are likely to continue to increase pressure on Crown Law, given they are responsible for many of the more serious criminal cases entering the courts. This presents challenges for sustainability of the funding model (refer to Court System Performance section for analysis).
- s9(2)(f)(iv) 
- 

Key contacts

Lead	Bruce Grant
Support	Katie Neate
Key agency contributors	Li Ling Ho, Finance and Performance Business Partner Finola Dunn, Principal Advisor, Finance & Performance Charlotte Brook, Criminal Law Team Manager Philip Coffey, Public Prosecutions Unit Manager Rob Glennie, CFO, Crown Law

Introduction

The Crown Law Office – Te Tari Ture o te Karauna supports the Attorney-General and Solicitor-General to perform their roles and provides system leadership to the network of all government lawyers. Crown Law provides advice and representation services in matters affecting the executive government, including judicial review of government actions, constitutional questions including Treaty of Waitangi issues, the enforcement of criminal law and the protection of revenue. Crown Law supports the Solicitor-General in her statutory obligation in relation to the general oversight of all public prosecutions which includes government prosecuting agencies (including entities), administers the prosecution process in the criminal justice system, in particular Crown prosecutions, and is responsible for prosecuting the most serious crimes and criminal appeals.

Crown Law has undertaken a strategic refresh for its new Statement of Intent 2021-25 (tabled in October 2021). The strategy covers Crown Law’s broader role, but the below priorities come under the outcome of ‘Justice that strengthens communities’ and are therefore most relevant for the criminal justice sector and for this spending review:

s9(2)(f)(iv)

- **Staying abreast of attitudinal shifts across the justice sector:** This includes Te Ao Mārama, Corrections' Hōkai Rangi strategy, and the Police Te Pae Oranga strategy, and identifying the implications of these shifts on Crown Law roles and how they can support implementation.

s9(2)(f)(iv)

- **Actively and meaningfully embracing Te Ao Māori:** Including building the necessary organisational capability to better support the Crown in its relationships with Māori under te Tiriti. This includes building competency to respectfully engage with ao Māori framing across all aspects of their work and bring te ao Māori and tikanga to work in, and on, the criminal justice system. Core to this is Crown Law's He Rautaki Māori (Te Ao Māori Strategy) and action plan.

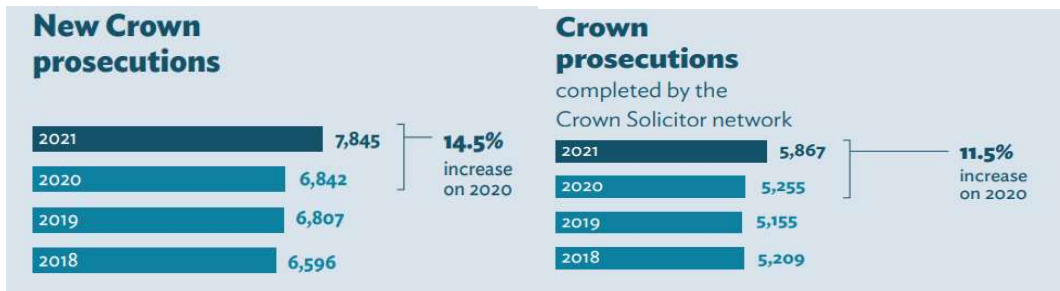
The focus of this review will be on understanding the key drivers of cost pressures, the impacts of current work and emerging opportunities to do things differently.

Funding within scope

The Crown Law baseline has increased over the last five years, from \$60 million to \$70 million⁴⁶. There are two primary drivers for baseline cost pressures:

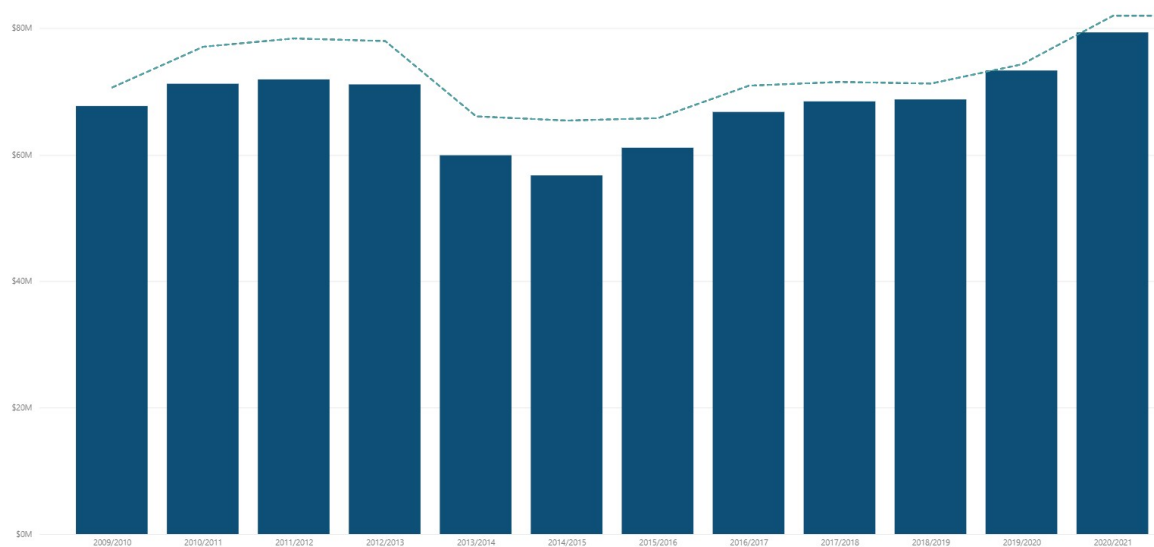
- **Volume of prosecutions:** There has been a steady increase in the number of prosecutions year on year. The funding for Crown prosecutions currently makes up approximately 55% of total annual spending. Payments to Crown prosecutors are based on the disposal and complexity of a case, described in greater detail in the Court System Performance chapter above.

⁴⁶ Annual Reports 2016-2020, Financial Statements



- **Remuneration:** Employee remuneration accounts for approximately 25% of total annual spending.

Figure 153: Crown Law annual appropriations (\$ millions)



Source: Treasury – CFISnet

Workforce

s9(2)(f)(iv)

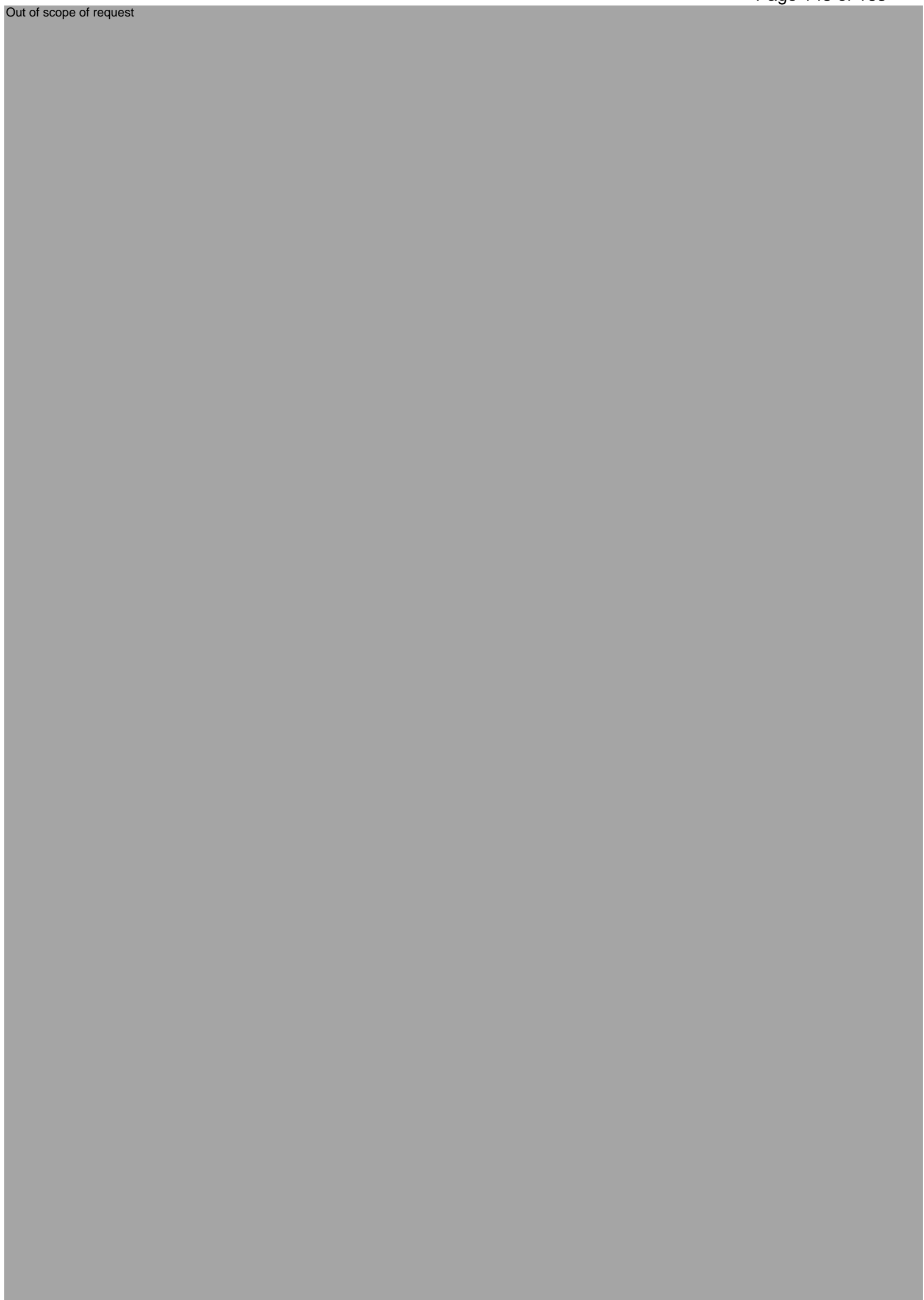
Table 11: Permanent staff headcount by business area

	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
Leadership Team	4	5	5	5	3	4	4	4	4	5
Counsel	102	90	78	83	89	94	100	98	106	125
Operational services	47	27	31	30	33	46	42	41	55	48
Strategy & Corporate Staff	37	36	27	28	26	30	30	29	27	44
Total permanent staff	190	158	141	146	151	174	176	172	192	222

Source: Crown Law

Whilst operational services staff FTE is broadly level with that of a decade ago, counsel and strategy and corporate staff have both seen increases, of 23% and 19% respectively across the period.

Out of scope of request



Out of scope of request

Levers to effect change and potential trade-offs

Changes in the courts

Whilst the long-term impacts of the Criminal Process Improvement Programme (CPIP) and Te Ao Mārama are still relatively uncertain, it is anticipated that the combined effect of these programs will only have a limited impact on Crown Prosecutions in terms of an overall reduction in work required by Crown Prosecutors.

However more importantly, these programmes will not address the current volume of Crown Prosecutions in the Judicial system, with any potential impact only becoming evident after 2-3 years as Crown Prosecutions are more complex in nature and take longer to resolve.

Proactive cross-government work

Further analysis to assess the value of increased investment in this area, including impacts on risks to the Crown, could prove useful.

Shared services

Look at the feasibility of opportunities for shared services (noting that this would take some time to implement but could ultimately help manage some pressures in the medium-term).

Capital Planning

Assess Capital Planning processes, current state of agency assets and sustainability of funding replacements. Consider as a Service 'assets as well for a complete picture. Review in conjunction with shared services feasibility.

Serious Fraud Office

Key insights

- The volume of new investigations, prosecutions and trials have decreased over the last seven years, however the time to dispose of the cases has increased. Additional funding was provided in B20 to increase investigation and prosecution capacity by 26.5 FTE (~38% increase in FTE). The impact of the newly created capacity will be evident in FY22.
- The increase in the time to dispose is disproportionately impacting on non-complex investigations (50% increase compared to 25% increase in complex cases). This is due to deprioritising non-complex cases which could lead to reputational risks.
- There is evidence the size and complexity of the evidence base collected for complex cases has increased over the last 5 years.
- Attraction and retention of staff has been challenging due to shortage in specialised skills, salary pressures and time limited funding requiring fixed term contracts.

Key contacts

Lead	Shahlaa Al-Tiay
Support	N/A
Key agency contributors	Graham Gill, Deputy Chief Executive Corporate and Strategy Shane Smith, Finance Business Partner; Mark Mitchell Manager Business Services and Chief Security Officer

Introduction

The Serious Fraud Office (SFO) is the lead law enforcement agency for investigating and prosecuting serious or complex financial crime, including bribery and corruption. The agency's mandate is to detect, prevent, investigate and prosecute serious financial crime, a highly specialised and niche area.

SFO's stated purpose is protecting New Zealanders' financial and economic wellbeing. It seeks to achieve this through three outcomes: that financial crime and corruption are addressed through prevention, investigation and prosecution, that New Zealand's reputation in the fight against financial crime and corruption is maintained, and that a high level of trust in New Zealand's public institutions and financial system is maintained.

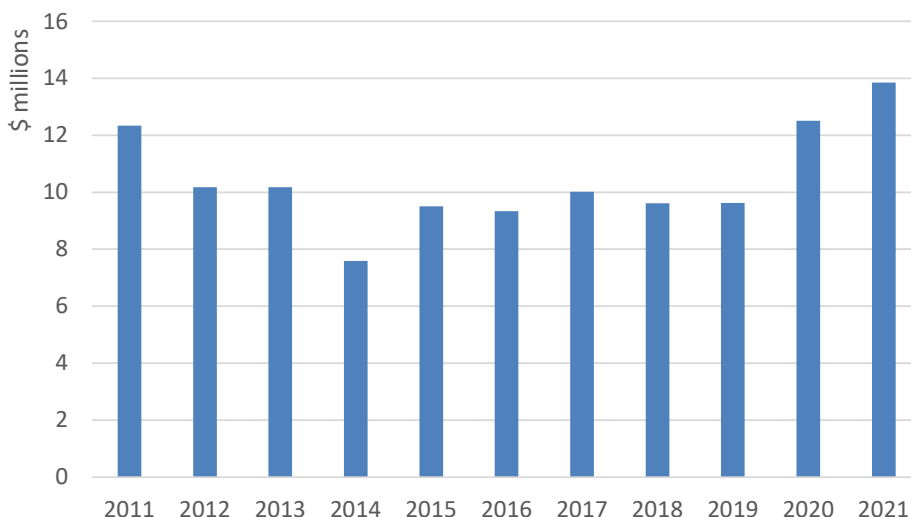
A strategic shift from being solely focused on investigations and prosecutions, towards a greater focus on prevention currently underway and is reflected in SFO's Statement of Strategic Intentions 2020-24. This shift is because of the Performance Improvement Framework (PIF) recommendation in 2020 aimed at making the SFO and the system stronger.

The PIF reviewers found three inter-related system challenges: retaining New Zealand's reputation as a safe and corruption free country; unifying behind a national financial crime and corruption strategy; and everyone knowing the risks (and that New Zealand cannot rely on holding to prosecution as the only deterrent and control in our system). The SFO is working with Justice and Police to develop a national financial crime and corruption strategy.

Funding within scope

The presence of an independent agency dedicated to combatting serious financial crime is integral to New Zealand’s reputation for transparency, integrity and low levels of corruption. The SFO administers the Vote: Serious Fraud appropriation with the core purpose of detecting, investigating and prosecuting cases of serious financial crime. This includes activities directed at making the commission of financial crimes more difficult, and its detection and prosecution more effective.

Figure 154: Total BEFU Vote Serious Fraud (\$ millions)



In Budget 2020, SFO was granted additional baseline funding of \$9.653 million over a four-year period in Budget 2020 and then ongoing. We understand this represented 50% of the total amount (\$19.307 million) sought to cover cost pressures at that time.

From 2020 the SFO received funding of \$3.9 million over the three years from the COVID-19 Relief and Recovery Fund (CRRF) to lead activities aimed at reducing fraud against COVID-19 recovery funds within the public sector and some increased investigative capacity to respond to the anticipated increase in serious financial crime during the COVID-19 related economic downturn. SFO also received \$1.2 million over 2.5 years from the Proceeds of Crime Fund for the Anti-Corruption Work Programme (ACWP). These two funding sources (with a subsidy from baseline) have been used for the prevention activities.

SFO has established a new team focused on the prevention of financial crime and corruption and launched a Counter Fraud Centre as the branding/front door for the prevention activities under both CRRF and ACWP. This team has worked with Treasury and other government agencies to prevent the loss of government funds to fraud and corruption.

FY18/19

Appropriation increased by \$1.128 million to \$10.742 million for 2018/19 due to:

- Additional revenue from the Crown (\$490,000 to fund a national ACWP. This includes \$100,000 transferred from 2017/18)
- \$91,000 transferred from 2017/18 due to a delay in the New Zealand contribution to the International Anti-Corruption Co-Ordination Centre.
- Revenue from the Crown mainly relates to funding for the Anti-Corruption Work, \$250,000 for assistance to the Vanuatu Office of Public Prosecutions, funded by the Ministry of Foreign Affairs and Trade and \$133,000 to host the SFO International Fraud and Corruption Conference and the Economic Crime Agency Network meeting, funded by sponsorships and attendance fee income.
- Also \$116,000 for the SFO to employ an Electronic Forensic Investigator to provide services to multiple agencies. This position is funded by Immigration New Zealand, Financial Markets Authority and the Commerce Commission, \$48,000 for an employee seconded to another government agency, funded by the Financial Markets Authority.

FY19/20

Appropriation increased by \$545,000 to \$10.164 million for 2019/20 due to:

- an increase of \$285,000 to fund a national ACWP, of which \$100,000 was transferred from 2018/19.
- an increase of \$138k to fund the provision of electronic forensic services by the Serious Fraud Office to be utilised by other Government agencies. This is funded by Immigration New Zealand, the Financial Markets Authority and the Commerce Commission
- an increase of \$122,000 for assistance to the Vanuatu Office of Public Prosecutors, funded by the Ministry of Foreign Affairs and Trade.

FY 20/21

Appropriation increased by \$1.341 million to \$13.850 million due to:

- an increase of \$940,000 to strengthen the response to COVID-19 related serious financial crime
- an increase of \$185,000 to fund a national ACWP (phase 2) from 2019/20
- an increase of \$138,000 to fund the provision of electronic forensic services by the Serious Fraud Office to be utilised by other Government agencies. This is funded by Immigration New Zealand, the Financial Markets Authority and the Commerce Commission
- an increase of \$91,000 for assistance to the Vanuatu Office of Public Prosecutors, funded by the Ministry of Foreign Affairs and Trade, and
- a decrease of \$13,000 to reflect a Treasury capital charge reduction from 6% to 5%.

Demand on services – Investigation and Prosecution

The SFO has four stages to its investigative service performance; Complaints, Part 1 Enquiries, Part 2 Investigations (“investigations”) and Prosecutions. The Part 1 and Part 2 refer to sections of the SFO Act. Collectively, enquiries, investigations and prosecutions are often referred to as “cases”.

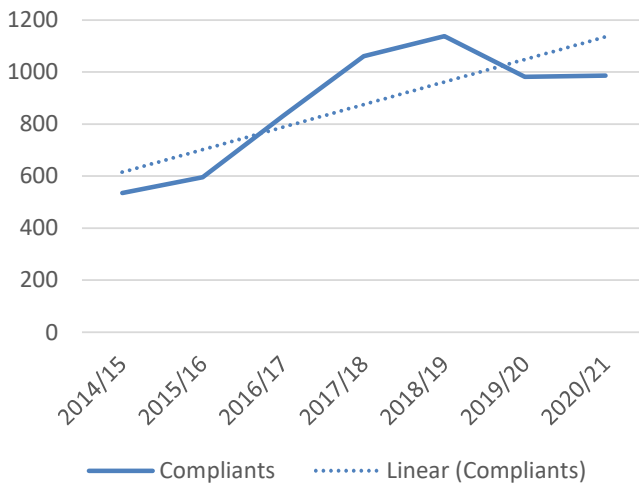
The SFO focuses on a relatively small number of cases that have a disproportionately high impact on the economy and the financial wellbeing of New Zealanders. They generally have about 30-40 investigations and prosecutions (cases) open at any one time.

Volume

Complaints

Complaints volumes are generally increasing year on year, with a slight decline in 2019-2021 due to COVID-19. Some complaints are taken on as cases, many are referred to others including Police, Commerce Commission.

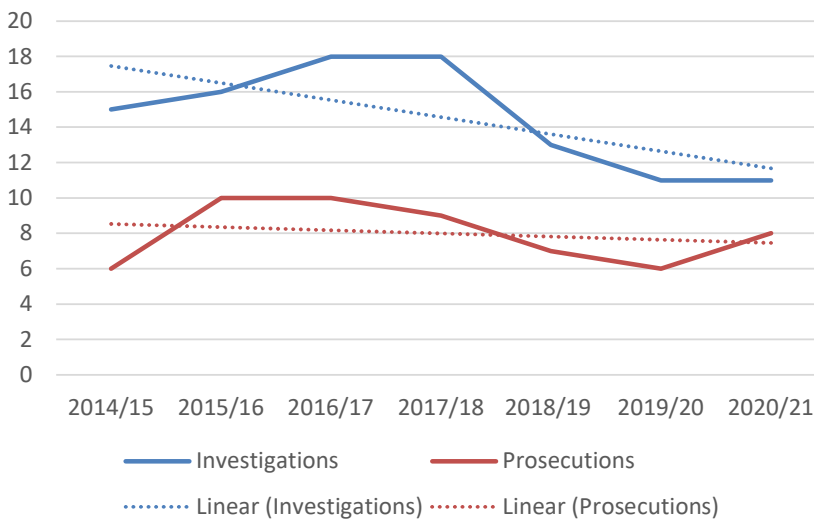
Figure 155: Volume of Complaints



Prosecutions and Investigations

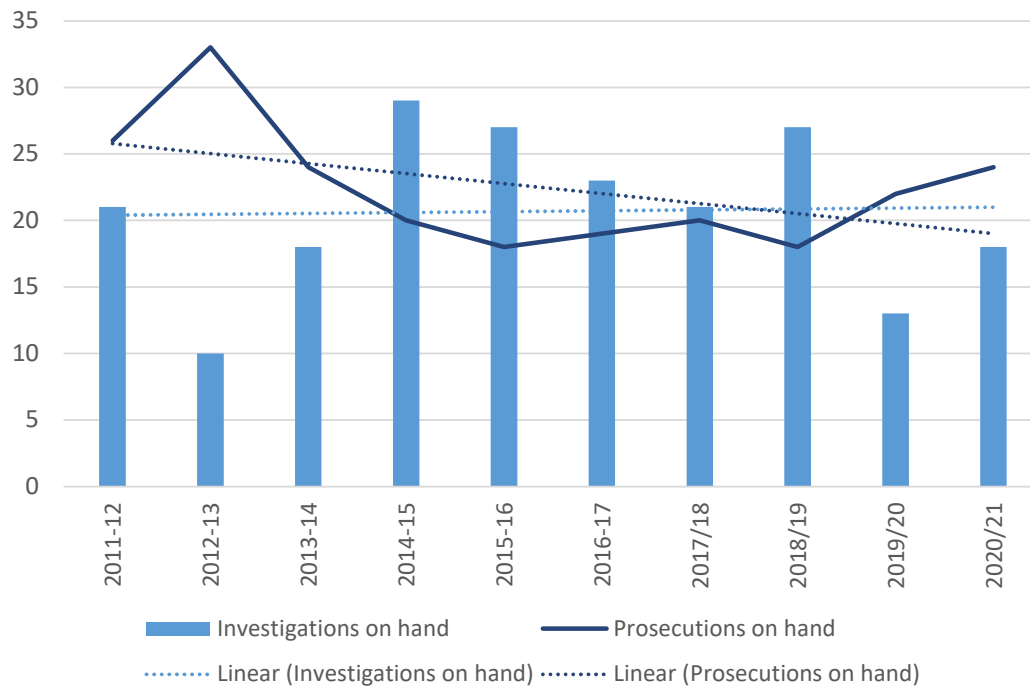
Total new investigations are generally decreasing, and total new prosecutions have been largely constant year on year.

Figure 156: New Investigations and Prosecutions



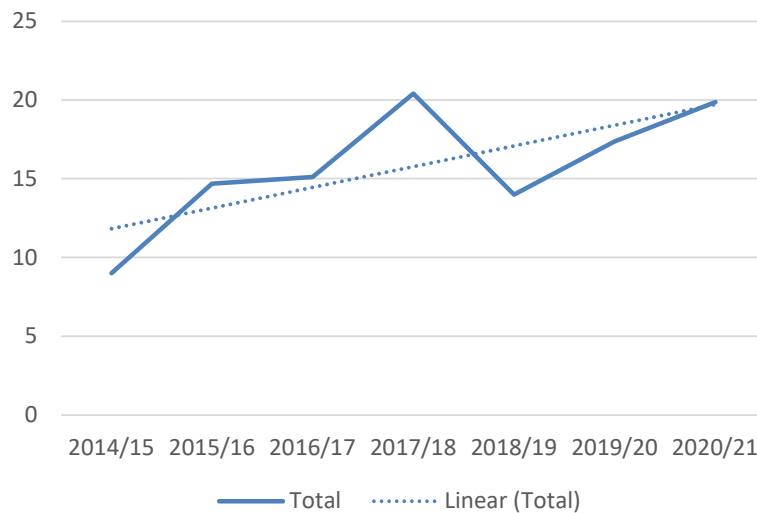
Total prosecutions on hand at the end of the period have been steadily decreasing over the last 10 years, and total investigations have been largely steady – this is likely due to the large number of finance company prosecutions following the Global Financial Crisis. SFO advised that the number of new prosecutions have generally been consistent over the last five years.

Figure 157: Investigations and prosecutions on hand at 30 June



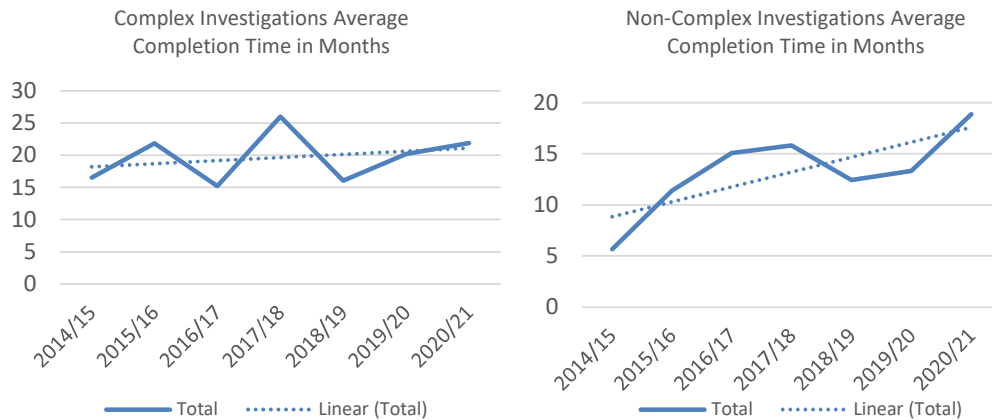
The average time for investigations has increased over the last 7 years, despite the number of total investigations decreasing sharply for that same period.

Figure 158: Investigations Average Completion Time in Months



However, the two graphs below show the average investigation time for complex cases has increased by 25% from 2014 to 2021, while non-complex investigations have almost doubled from 9 to 17 months. We understand this is due to reprioritising of complex cases (which are generally higher priority) over non-complex cases.

Figures 159 and 160: Average completion time in months of investigations, complex and non-complex



Case Volumes and Disposal Over Time

Figure 161: Days open for cases on hand (LHS) and total cases on hand (RHS)

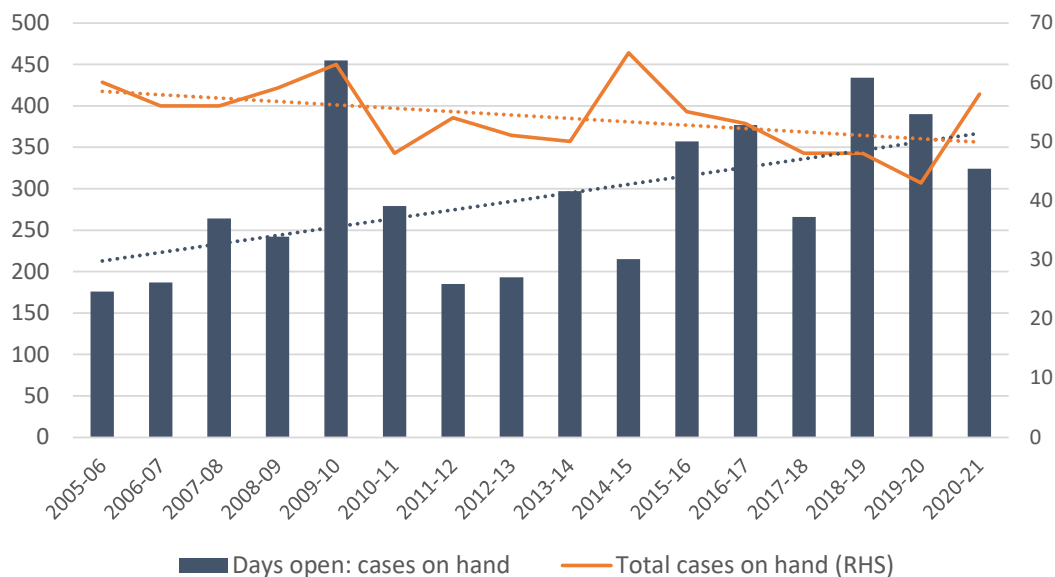
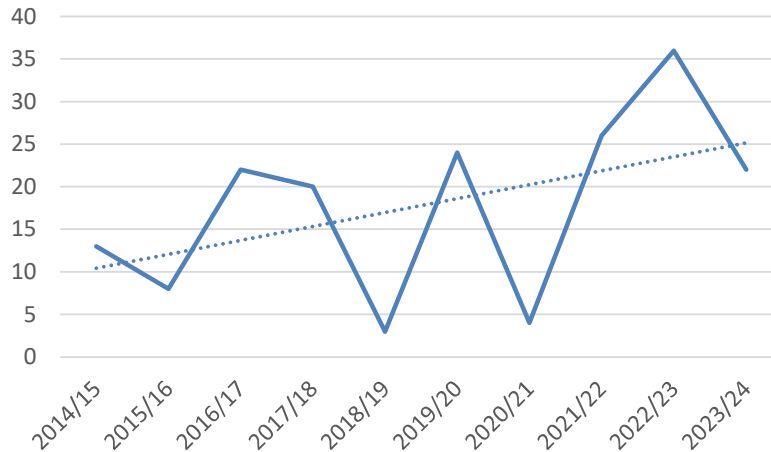


Figure 161, above, shows the total number of cases on hand at end of each financial year (i.e., 30 June). The trendline shows that the average Total Cases on Hand have been slightly decreasing over the last 10 years by an average of 5 cases (from 55 to 50). However, we understand that the inconsistent peaks and declines year on year can put pressure on planning for everyday resourcing in a relatively small team. Additionally, as explained below, not all cases are of equal size or importance. We understand the decrease from FY14/15 is due to a disposal of several long running cases, and the increase from 2019/20 is COVID-19 related.

The Days Open for Cases on Hand has been steadily increasing and have almost doubled over the last 10 years. We understand that the decrease in Days Open of Cases on Hand in 2020/21 was due to the prosecution decisions for several long running investigations and the increased management focus resulting from the new Operations team structure.

The number of cases that go to trial can vary from year to year, noting that the number of cases does not reflect the complexity of the cases and the work involved in preparing for trials. The data includes cases that resolve pre-trial through guilty pleas, and we can see the number of cases choosing to enter a no guilty plea has been increasing. We understand that late guilty pleas still require ~80% of the work for a full trial and early guilty pleas require ~10%. As noted in the Courts Performance section of the report, there is a trend of delayed guilty pleas evident in the court system, which impacts on SFO's work programme as it still requires preparation for cases.

Figure 162: Weeks on Trial



The number of trial weeks in court has increased and is predicted to increase for the 2021/24 period. This may be due to inefficiencies of court performance or complexity of cases. This is also due to the notable decrease in “no guilty” pleas and the defendants exercising their right to defend a prosecution.

Pressure points

The data shows that there is an increase in overall complaints volume. The total number of cases, new investigations and prosecutions and trials have a declining trend line over the last 10 years. Despite the downward trend, the volume year on year is irregular which presents resource challenges for a small team. An increase of a few prosecutions in any single year will result in significant pressures on resources. To manage resources, cases are prioritised using criteria that address the scale of the crime and its impact on victims, the complexity of the offending and the degree of public interest as prescribed by legislation. The priority of a case may change depending on competing pressures, which can cause further delays due to the “start/stop” cycle of work programme.

The time spent to dispose cases (i.e., enquiries, investigations and prosecutions) and time spent on trial are generally on an upward trend. This may be due to an increase in the complexity and type of cases (including corruption and complex corporate financial cases) and the complexity of the evidence collected, managed and analysed (in respect of volume and data sizes). The increase in the time on disposal can also be due to the turnover of staff which impacts on business continuity in a project-based work programme. The data volumes and FTEs are explored further in the section below.

A snapshot of 14 month’s data from SFO’s new case management system showing that 59% of the Operations team’s time is spent on prosecution activities. This is almost double the earlier estimate for resource management of 30% for prosecutions. We have

discussed this with SFO to advise that we will need more data to establish trend, however this data is not available due to change in recording system. However, this supports the narrative of complexity, so while prosecution numbers are generally on a downtrend the resources spent investigations and preparing for prosecutions could be significant.

Addressing pressure points

B20 funding, CRRF and ACWP funding provided was used to implement a new organisational structure with up to 26.5 new positions made up of leadership, investigations and prevention positions. When complete the SFO will have 75 positions (around 72 FTEs) across the organisation. We understand that this was to meet increased demand for service, build resilience within the organisation and deliver on the PIF report published in March 2020.

SFO have invested the B20 funding into increasing the FTE in investigations. Overall, the SFO created 19 new investigative positions during the 2021 financial year, including a Wellington investigation team, two new manager roles, enhanced its Electronic Forensics capability and including a Principal Electronic Forensics Investigator role and recruiting two new Electronic Forensics Technicians. The impact of the increase in FTE and newly created management role on total average completion time on investigations will be noted from FY2022 onwards.

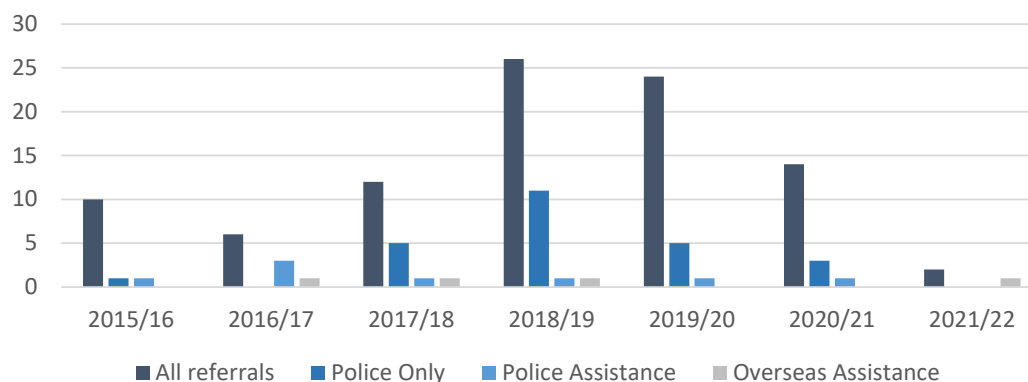
Other government

We understand that there is an increase in the gap between SFO's mandate and the remaining 'financial crime' system. Pressure partly arises from an increase in requests from other government agencies for SFO's specialist expertise, and work transfer in mid-tier financial crime (which sometimes is below the threshold of cases that the SFO should take on) where other agencies lack expertise.

There is also an uplift in demand for support to meet New Zealand's global anti-corruption obligations.

This chart shows all Referrals from Government Agencies together with Police only matters. There may be some minor duplication between requests for assistance and referrals as they can be recorded as a referral in the complaint management system. The latter part of 2019/20 and large parts of 2020/21 saw a drop off in complaints due to COVID-19, which is also likely reflect in the reduced referrals.

The referrals are generally non-complex, however SFO helps with referrals on an informal basis and absorbs the cost of the assistance. If the referrals are taken on as cases, then they are funded through the baseline.

Figure 163: Referrals and Assistance Requests from Government Agencies

SFO also refers cases to other agencies. SFO prosecution become Crown Prosecutions. In this case, SFO continues to conduct the prosecutions and Crown Law is responsible for the cost of those prosecutions. We understand that Crown Law puts aside \$1.8 million from the total Crown Prosecution funding to manage the cost of those prosecutions.

The SFO has a fee arrangement with Crown Law, whereby in accordance with the Crown Law Regulations 2002, Crown Law is responsible for the payment of the fees of SFO's Panel Members following plea entry from a pool of funds reserved by Cabinet for this purpose and managed by SFO and Crown Law in partnership. The SFO is responsible for panel prosecution costs up to plea entry.

Accordingly, the following roles and responsibilities apply:

- SFO lawyers- assist with the prosecution, including all preparation and appearing as instructing lawyers during the trial. The SFO funds its lawyers out of its usual employee appropriation.
- Crown Law- take over the fee arrangement of the SFO's Panel Counsel on plea. Crown Law pay all invoices of Panel once the plea is entered.

Like other prosecutions, if the matter proceeds to an appeal, either a Crown Law lawyer from their Criminal Law Team will appear at the appeal or Crown Law will instruct SFO Panel Counsel to appear on their behalf. This is funded from the Crown Law appropriation.

International Assistance

SFO currently has a role in supporting or largely meeting the following New Zealand international obligations relating to corruption. This includes:

- OECD Working Group on Bribery (WGB)
- International Public Sector Fraud Forum (IPSFF)
- United Nations Convention Against Corruption (UNCAC)
- APEC Anti-Corruption and Transparency Working Group (ACTWG) – Equivalent of 1.0 FTE in B20 only
- International Anti-Corruption Coordination Centre – 0.6 FTE and Board member

These commitments are largely unfunded, SFO estimates annual costs to be approximately \$200,000, being around 1.0 FTE and travel costs (not including the IACCC). This is challenging due to the relative size of the appropriation.

Consistently rated by Transparency International as having a public service with one of the lowest levels of corruption in the world, New Zealand is viewed as a country with a well-functioning democratic system including strong public institutions and low levels of fraud and public sector corruption. New Zealanders value this reputation which brings tangible benefits. Most importantly, it delivers the economy a competitive advantage as it supports investor confidence in the integrity of the country's financial system and helps keep business costs down. Therefore, being internationally connected is important to New Zealand's interests.

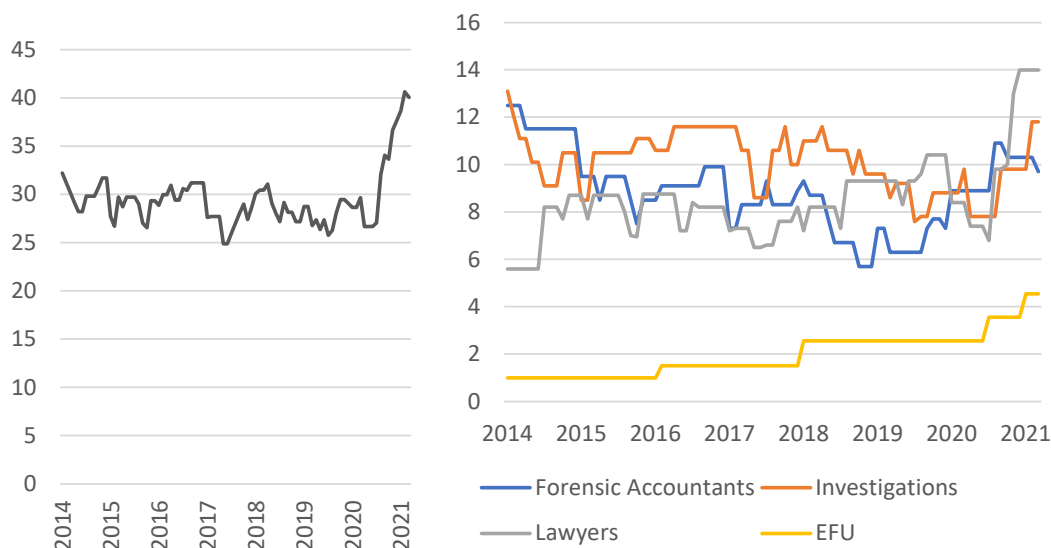
Workforce analysis

Total FTE

The SFO investigation teams are made up of investigating lawyers, forensic accountants, investigators, electronic forensic investigators and document management specialists. The team structure is based on the 'Roskill Model', which is also used by the UK Serious Fraud Office and is considered international best practice for the type of complex investigations the SFO undertakes. The SFO has developed strong technical competence related to forensic accounting, electronic forensics and financial investigations and prosecutions.

As noted above, SFO have a target growth by 26.5 FTE. We understand the growth target for FTE's has been challenging, both from attracting new talent and a retention perspective.

Figures 164 and 165: Total investigative FTEs (LHS) split by discipline (RHS) – to Sep 2021



Retention

The SFO is continuing to experience employee retention issues. The average annualised employee turnover for FY20 is 16.9% (compared to 15.1% for public sector agencies of similar size⁴⁸) and 11.6% for FY21. Turnover has a significant impact on small agency through loss of skills, business disruptions (i.e., putting cases on hold

⁴⁸ <https://www.publicservice.govt.nz/our-work/workforce-data/drill-down-data-cubes/>

and/or redeploying existing resources which can lead to loss of institutional knowledge and further delays in a project-based environment).

A reason put forward is inability to meet market pay rates for financial crime skills and experience and competition with other agencies, regulators (such as the FMA and Commerce Commission), and the private sector. Exit interview results from June 2020 shows that 20% have gone to other public service agencies and 50% have gone to roles in private sector for higher salaries.

The average salary at SFO in 2020 is \$113,000 for the 42 FTE⁴⁹. Salary is difficult to compare SFO to other public sector agencies due to the FTE size and specialised skills. A rough comparison can be made with FMA and the Commerce Commission by dividing salaries and wages by total FTE. This shows average salaries for the Commerce Commission was \$136,000⁵⁰ and for the FMA as \$121,000⁵¹ in FY20. This is limited by the fact that support functions for FMA (at 213 FTE) and the Commerce Commission (at 244 FTE) may be larger.

The SFO did receive some additional funding in Budget 2020 for market salary adjustments. However, the data that informed this exercise used 2019 salary data (due to COVID-19 public sector wage restraint) which SFO asserts did not bring the remuneration level in line with market rates in 2020.

We understand that engagement results for SFO for 2021 is 85% (2020: 79%) - almost 20% above Public Service averages. Therefore, it is less likely to be an engagement issue.

Attracting talent

SFO are carrying 7 operational vacancies at the moment. Two are CRRF fixed term roles that they have been carrying for the last year and unable to fill.

In addition to the remuneration challenges, the nature of time limited funding for CRRF has resulted in challenges for attracting talent.


Recruiting for what are considered highly specialised roles and typically for fixed periods of time is challenging. The positions funded by the CRRF and ACWP are for a fixed term and tied to the funding. This comes with accompanying challenges to recruit employees for a fixed term in specialist areas. SFO advised that the pool of talent seeking fixed term contracts are often internationals on temporary work visas who have now returned home. In a candidate short market and high job availability most candidates will opt for permanent jobs for longevity or independent contractor work for earning potential. SFO has been offering fixed term contracts in this environment and they are not attractive when there are other options.

⁴⁹ <https://www.publicservice.govt.nz/our-work/workforce-data/drill-down-data-cubes/>

⁵⁰ Commerce-Commission-Annual-Report-2020 (calculated as Salaries and wages/FTE)

⁵¹ FMA-Annual-Report-2020

Out of scope of request



Out of scope of request

Levers to effect change and potential trade-offs

Addressing the Gap - Prevention of Financial Crime and Corruption

Following best practice from the UK and Australia, the SFO has developed a Counter Fraud Centre to deliver:

- The second phase of an AVWP which is focussed on prevention corruption within local government. This work is funded to 30 June 2022. A key project under the ACWP is the Fraud and Corruption Measurement project. This project will seek to attach a financial measurement to fraud and corruption prevented in the public sector and provide validation of this by an assurance panel. This project has been deferred until the next financial year, when the UK Cabinet Office will be available to provide advice on internationally proven models. This will be a multi-phase project commencing with a pilot programme to validate the model within the New Zealand setting. As it progresses, the ACWP activities could eventually form part of the National Financial Crime and Corruption Strategy, subject to Ministerial decisions.
- In July 2021, the SFO launched a new Counter Fraud Centre, Tauārai Hara Tāware. The purpose is to increase counter fraud capability within the public sector, by giving agencies the ability to design and implement more effective fraud and corruption prevention programmes and To shift thinking within the public sector towards a viewpoint that finding fraud is a good thing: 'You can't fight fraud if you can't find it.'
- Strategy and Prevention team to develop and deliver a COVID-19 financial crime prevention work programme relating to COVID-19 relief packages, but also more widely across the public sector. The SFO has published guidance on fraud prevention, established a cross-agency community of practice and engaged with key agencies on promoting the counter-fraud narrative. For example, the SFO has joined up with the Treasury, MBIE and the OAG to address fraud and corruption in government procurement (through the Government Finance Profession/CFO forums). This work is funded through to June 2023 from the CRRF.

A pilot programme is being undertaken with Corrections to demonstrate the potential benefits of a broader fraud prevention programme. The SFO is working closely with partners from the International Public Sector Fraud Forum in delivering this and other fraud prevention activities.

The SFO has a small Strategy team which is working with Justice and Police to develop and implement a national financial crime and corruption strategy. This was one of the PIF recommendations. Phase 1 is largely complete with Phase 2 planned to result in an options paper for Ministers in around April 2023.

The PIF identified several issues stemming from the lack of an over-arching financial crime strategy in New Zealand. It highlighted the ad hoc nature of the response to financial crime and the need for the SFO to take a more strategic approach. The report stated that a "...key component of [the national] strategy needs to be the design of an end-to-end anti-corruption and financial crime education, prevention, detection and prosecution system". The Justice Sector Leadership Board subsequently agreed to

progress a national financial crime and corruption strategy in June 2020, as one of its priorities.

Shared services

A full back office shared service approach was explored in 2014 and was decided as impractical. The SFO uses the MBIE call centres to act as its contact centre for telephone complaints. This has reduced the employee cost of having an employee/s available to respond to calls from members of the public. It provides a more efficient service.

SFO has previously used “club-funded” approaches where possible. For example, a full-time electronic forensic investigator was hired in 2018 supported by the SFO and New Zealand Customs Service, and funded by Immigration New Zealand, the Financial Markets Authority, the Commerce Commission and the SFO. The investigator will be based at the Customs forensic lab in Auckland works the agencies to provide electronic forensics services to investigations conducted by the club-funding agencies.

SFO is in initial discussions with several agencies (including ACC, Commerce Commission) to investigate the establishment of a club funded forensic accounting ‘centre of excellence’ to which government agencies would contribute (to meet costs) to access Forensic Accounting Services.

This will enable access for support for investigations, prosecutions or other actions, together with expert witness testimony. The SFO would be the host agency employing the Forensic Accountants and managing demand (like electronic forensics club-funded approach). This is intended to improve standardisation and quality of forensic accounting across the agencies and reduce cost of requiring external contracts (e.g., Big 4 consulting firms). The proposal is still at initial discovery stage.