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## PERFORMANCE IMPROVEMENT FRAMEWORK

# Follow-up Review of the Ministry of Justice

**JULY 2014**

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State Services Commission, the Treasury and the Department of the  
Prime Minister and Cabinet

**Performance Improvement Framework  
Follow-up Review: The Ministry of Justice**

**State Services Commission, the Treasury, and the Department of the Prime Minister and Cabinet  
Wellington, New Zealand**

**Published: July 2014**

**ISBN: 978-0-478-43415-6**

**Web address: [www.justice.govt.nz](http://www.justice.govt.nz) and also available at [www.ssc.govt.nz/pif](http://www.ssc.govt.nz/pif)**

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## AGENCY RESPONSE

The 2012 PIF Review laid down a significant challenge to the Ministry of Justice (the Ministry). In essence, the Review said that change was required right across the business – including to the organisation’s strategy and focus – if we were to deliver real value to New Zealanders.

Since then we have been reshaping the Ministry’s structures, systems and culture around delivering better services to the public. Driven by a new strategy that puts the customer at the heart of our business, we are making the huge shift from simply operating and administering parts of the justice system, to focusing on performance and results.

This is paying dividends. Last year, for the first time in four years, the average age of court cases reduced. At a sector level, we are on track to meet ambitious targets for reducing crime and reoffending, which means that even long-term problems, such as violent crime, are being addressed. The scale and speed of Treaty settlements has increased substantially with 70% of New Zealand’s land area now settled. We have begun to modernise services for the public, our customers, and stakeholders. And we have supported and implemented significant policy change, including legal aid, alcohol, criminal procedure and family justice reforms.

Earlier this year, I welcomed the opportunity for Dr Murray Horn and Paula Rebstock to return to assess our progress and again provide their insight and advice. Two years into our plan to achieve the Four-year Excellence Horizon, it was important to get an informed appraisal of our progress and challenges.

We are pleased with the Lead Reviewers’ assessment that we are on track to deliver on two of our critical tasks: to improve public safety with our sector partners; and to improve the Crown-lwi relationship. We also agree that while we have made progress, more needs to be done on our third major task, improving the quality of the justice services we deliver. Our key focus in this area is modernising administration of the courts. This is a key institution of government and we have to get it right. As this Review notes, a systematic approach to re-engineering the courts operating model is required, along with stronger staff engagement and a more productive partnership with judges. We are working on these areas, which will be major areas of focus over the next two years.

The process itself was also valuable. It was an opportunity for the Ministry to reflect on progress and lessons learned. I also want to acknowledge and thank the staff, judiciary and stakeholders who made themselves available to be interviewed. Their input has helped the Lead Reviewers produce this accurate summary of what has been achieved over the last two years and their honest assessment about what the Ministry needs to do next.

We have an extensive and broad change and improvement programme ahead of us. The Review has helped identify the key areas of focus and sequencing of change that will strengthen the results that are starting to be achieved and drive further performance improvements.

By the end of the Four-year Excellence Horizon the Ministry of Justice aims to deliver a stronger, more customer-focused justice system. We want New Zealanders benefitting from further improved public safety and reduced crime and harm and experiencing modern services that will further build trust in the justice and court systems.

**Andrew Bridgman**

Chief Executive and Secretary of Justice

## EXECUTIVE SUMMARY

In undertaking this Follow-up Review the Lead Reviewers considered “is the Ministry on track to meet its performance challenge and fulfill its Four-year Excellence Horizon given anticipated course and speed”.

The PIF Review published in July 2012 identified the Ministry’s performance challenge as leading the justice sector, and managing its own operations, to turn the opportunity created by falling criminal volumes into improved justice services to the public within a given four-year expenditure baseline. The Review focused on three dimensions of this improved service: improving public safety; improving the quality of justice services; and improving the Crown-Iwi relationship.

At this point, our assessment of the extent to which the Ministry is ‘on track’ in each area is that:

- it seems probable that the Better Public Service (BPS) targets Government set the sector for reductions in overall crime, youth crime and reoffending will be met, although the targeted reduction in the most violent crime is proving challenging and, while the trend is ‘on track’, a more focused effort is required on the most serious offences (eg, sexual offences)
- the Ministry has set its own initial quality target: to reduce the time to deliver services by half over the five years to 2017. Considerable progress has been made on some elements of this task and the Ministry’s initial target of a 10% reduction in the average age of cases in the first year was substantially delivered. Achieving the 50% target will require a fundamental and more systematic approach to re-engineering the courts operating model, along with significantly stronger staff engagement and a more productive partnership with judges
- the Ministry has made good progress in its management of the settlement of historical Treaty claims. While the Government’s desire to have Deeds of Settlement signed with all Iwi that are willing and able to settle in the next three years is achievable, success will require a number of critical elements to align to meet the 2017 date
- while there is scope to meet likely cost pressures and generate the savings necessary for reinvestment within existing baselines, that will require the sector to successfully tackle a number of issues that have proved the most difficult to address to date.

The Ministry is making the transition towards a more customer-centric organisation focused less on administration and more on results. The issue is now less about orientation than it is about execution; especially better operational service design, stronger staff engagement and more productive partnerships. While improvements have been made in various aspects of the Ministry’s operating model, a more systematic approach to mapping and then improving the end-to-end operation of courts is required, one that better reflects the different levels of complexity associated with different cases and types of court user. That will identify where more centralisation, automation and electronic processes are likely to add most value and how the potential benefits of better service design can be fully realised.

The different assessments we have made about the Ministry’s ability to meet its performance challenge and deliver the transformation implied in the Four-year Excellence Horizon reflects our assessment of progress against the six critical success factors identified in the 2012 PIF Review. In particular, much more progress needs to be made in staff engagement, in partnering with the judiciary and in the design and operation of the operating model for courts and tribunals. In the other areas, some changes in emphasis or deepening of progress already under way are required. There are no new factors likely to be important.

Looking forward, we would support the movement already under way in the sector to improve public safety by placing more emphasis on reducing the harms that crime cause – rather than simply reducing the incidence of crime. And while the current focus on reducing the time to resolve a case is the right one, across criminal and civil jurisdictions, timeliness needs to be seen as part of a balanced focus on all of the elements of quality justice: equality and cost of access, timeliness, predictability and the accuracy of judgement. Justice delayed, is justice denied and timely resolution can be important to reducing ongoing harm. However, at some stage these other quality factors will need to be given more weight. We were struck, for example, by the variability in performance across different courts and tribunals in different parts of the country.

## PERFORMANCE CHALLENGE

The PIF Review defined the performance challenge the Ministry needed to meet in leading the sector – and strengthening its own operations – to improve public safety, the quality of justice and the Crown-Iwi relationship within a given four-year expenditure baseline. The challenge is to create a virtuous cycle: to reduce cost in line with expected reductions in crime to release resources to reinvest in improved service and further reduce demand and cost. This section of the Review assesses progress on each dimension.

### A Improving Public Safety

The aim is to work with the Ministry's partners, especially Police and the Department of Corrections (Corrections), to deliver a substantial reduction in crime and the harm that it causes.

The Government has established some clear targets for improving public safety: a 15% reduction in overall crime, a 20% reduction in violent crime, a 25% reduction in youth crime and a 25% reduction in reoffending – all by 2017. The sector is making good progress against these targets, with overall crime, violent crime, youth crime and reoffending down by 12%, 8%, 19% and 10.6% respectively at June 2013 (ie, with four years to go).

On current trends all of the targets will be met, although violent crime is the most difficult to shift and may take a little longer to hit the target. Indeed, serious crimes against the person, like threats and assaults, have hardly shifted and sexual offences are increasing. A significant volume of this violent crime is concentrated on repeat victims and addressing these complex cases will require a more targeted and intensive approach that is likely to involve a wider group of social sector agencies, as well as justice.

### B Improving the Quality of Justice Services

The aim is to help people resolve issues where they are better to do so without using courts and where a court or tribunal judgement is desirable, then ensure these are accessible, timely, predictable and deliver correct outcomes according to law.

The Ministry has adopted its own target: to reduce the time to deliver services by half over the five years to 2017. The first step was to set a target of a 10% reduction in the average age of cases by 31 December 2013 for all District Courts and Special Jurisdictions, with an additional 10% reduction targeted for calendar 2014.

For the first time in four years the average age of court cases is reducing rather than increasing. From 30 April to the end of December 2013, the average age fell 8.9%, with remarkable reductions in specific locations, jurisdictions and case types.

This improvement has been the result of deliberate action that will support further and lasting contributions to the 50% goal. These include substantive changes to legislation (eg, Criminal Procedure Act 2011); introduction of fixed fees for legal aid lawyers; and administrative and management changes that support improved performance and timeliness, eg, the Regional Service Delivery Programme, greater use of larger courts and centralising some processes.

While the changes implemented, eg, improving the Family Court, will support further reductions in the average age of court cases, more fundamental change is required to reach the 50% goal. While criminal case prosecution inflow into courts has reduced by nearly a third since the peak in 2009,

case disposals have also fallen by a similar volume, despite the resources available to support disposals remaining largely unchanged. The reduction in average age of cases is largely the result of reducing the number of relatively aged cases in the mix of outstanding cases. While that focus will continue to yield benefits, it is unlikely to be sufficient to deliver the Ministry's goal.

We could not be confident that the 50% goal will be met without greater progress on the critical success factors identified in the PIF Review. Improving staff engagement, more effective partnerships and stronger operational performance are all critical and discussed in more detail below. What is required is a more systematic end-to-end approach that reduces the number of events involved in disposing of cases and reduces the time between these events, as well as reducing unnecessary variation between jurisdictions, locations and within similar case types. That is, in turn, likely to require a differentiated approach based on case complexity; one that identifies the best end-to-end process for each case type, enlists the support of staff and external partners necessary to manage that process well and then supports that process with modern technology. The current Courts Modernisation Project is likely to be more successful if it were part of this more systematic approach.

## **C Improving the Crown-Iwi Relationship**

The aim is durable resolution of historical Treaty grievances in a timely way, which government defines as 'Deed of Settlements signed for all willing and able Iwi by 2017'.

The Ministry has made real progress in addressing the issues identified in the PIF Review: especially in the governance and management of the overall Treaty strategy (versus individual claims) and in engaging other departments more constructively in the settlement process. Operational funding has also been increased. Key parties, including the Chief Crown Negotiators, the Treasury, Department of Conservation (DoC) and the Parliamentary Counsel Office (PCO), are involved in the governance of the whole portfolio of outstanding claims, resulting in better use of resources across that portfolio. The process has been increasingly streamlined and standardised, more negotiations and settlements can proceed in parallel and settlement options have been broadened.

As at February 2014, 68 deeds of settlement have been signed, with another 55-65 remaining (depending on the final configuration of negotiating groups) assuming all are willing and able to sign by 2017. The pace of settlements is now running at about 12 per annum, although it is possible that 12 deeds of settlement might be concluded in a single settlement. If this can be done and if the configuration of negotiating groups is favourable and if the remaining cases prove no more difficult or take no longer to resolve than recent settlements, then it is possible to agree deeds of settlement with all those who are likely to be willing and able by 2017, ie, given current progress with mandates, terms and agreements in principle and the existing lags between each of these steps in the process. However, much depends on all of these assumptions holding and on the willingness of Iwi claimants.

In short, while the Government's goal is achievable, it will require a number of critical elements to align to meet the 2017 date. Given the time taken to get to this point, however, the bigger prize of a durable resolution of historical Treaty grievances should be firmly in sight by then.

## D Delivering within the Four-year Expenditure Baseline

The aim at sector level was to create a virtuous cycle where falling criminal volumes allowed savings to be reinvested in prevention, reduced recidivism and improving the quality of justice delivered by courts and tribunals.

At the Ministry level, justice has been able to make significant progress in some areas, eg, legal aid and collections. Most dramatically, as a result of comprehensive reform, the large increase in legal aid costs (eg, 50% between 2007/08 and 2009/10) has been arrested and reversed so these costs are now about 30% lower than at the 2009/10 peak. Overall, there has been nearly a 13% drop in the total cost budgeted for Vote Justice Output Expenses between 2012/13 and 2013/14.

At this point the Ministry still has a substantial gap to fill to meet expected cost pressures, let alone to fund planned investments, over the coming four-year planning horizon. The former could be filled by carrying forward current underspends and by expected savings as expenditure reviews are completed and existing projects. However, even then the Ministry will need to free up additional resources to reinvest in new initiatives, eg, courts modernisation.

At the sector level, efficiencies have been made and used to absorb cost pressures and make modest re-investments. The Justice Sector Fund established in May 2012 and recently expanded and extended, has allowed for savings to be reprioritised across the sector, rather than within individual Votes. Further expenditure reviews are under way for the major departments and need to yield significant savings. Wage pressures are likely to become more intense as the economy recovers and employment demand strengthens. This will make the fiscal challenge more difficult.

More significantly, we have not seen the full benefit of reduced crime and prosecutions flow through into re-investable savings. Government has been committed to maintaining Police numbers. There have been some building closures, but these have been relatively limited in scope. Prosecutions are down significantly, however, this has largely occurred at the less serious end so has not translated into a proportionate reduction in court time or prison musters. New initiatives to reduce violent crime, including sexual violence, will be necessary to deliver a bigger impact across the justice sector pipeline. And, as noted above, court discharges have tended to track reduced prosecutions with a lag rather than being held at previous levels, which would see a more significant drop in volume of outstanding cases.

The Ministry and sector have had some notable successes over the last two years and there is scope to further reduce cost to reinvest and meet future cost pressures within existing baselines. However, success will require the sector working with its partners to address all of these challenges – challenges that have, to date, been the most difficult to address.

## PROGRESS ON SIX CRITICAL AREAS

The Lead Reviewers considered whether the Ministry has made enough progress and if the anticipated course and speed on the PIF review six critical areas is sufficient to meet the performance challenge.

### 1 Strengthening the Ministry's Sector Leadership Position

While the PIF recognised the relatively advanced state of interagency cooperation amongst the criminal justice agencies (the justice sector), it noted this was still in its formative stages and had not been tested.

Real progress has been made since. The sector has more strategic clarity; its four-year plan is no longer just a collation of the plans of the constituent agencies; it is much better at setting priorities and monitoring performance of those initiatives that require a high level of cooperation for collective impact; and the Justice Sector Fund has reallocated \$84 million to meet the sector's highest priority initiatives or pressures, which implies some testing of the relationships, albeit cross-agency trade-offs are likely to become sharper in future. There has been more investment in improving collective information and analysis, eg, to better understand what influences the probability of reoffending in different situations, and more support for addressing local operating frictions and encouraging local collaboration and the spread of successful local initiatives, like the Hutt Valley Innovation Project). Many of these factors were recognised when the sector won the IPANZ award for 'Working Together for Better Public Services' in 2013.

Looking forward, the development of the sector is likely to require two types of changes.

First, at some stage the ability to optimise across the five agencies in the sector is likely to be constrained by the needs of individual agencies with individual responsibilities. As fiscal constraints really start to bite, the need for individual sacrifice to increase collective impact is likely to become more pressing. The PIF Review pointed to the need to better define collective responsibilities of the chief executives and to reconcile those with their individual departmental responsibilities.

Second, there are three areas we identified in this Follow-up Review where a more systematic approach would strengthen the collective impact of sector collaboration:

- a The focus on harm would be aided by the sector adopting a forward lifetime liability model similar to that used by the Accident Compensation Corporation (ACC). This would encourage a better understanding of those drivers of crime that created the most harm, including repeat violent offending and victimisation. This would, in turn, help to prioritise effort, learning and investment on the relatively small population that creates the greatest harm over their lifetimes.
- b That focus on addressing the drivers of the most harmful criminal behaviour is likely to highlight the need for stronger linkages between the Justice and Social Sector agencies focused on at least two specific areas where the returns to collaboration are likely to be greatest:
  - The interface between these agencies and those individuals and households most likely to be at risk.
  - Engaging non-government organisations (NGOs) in helping to deliver the outcomes the sector wants to deliver, rather than just delivering capacity or activity that may contribute to those outcomes.

The latter is likely to require a substantial change in contracting and commissioning, with NGOs across both Justice and Social Sectors, something that will also change the structure, conduct and performance of the NGO sector, eg, fewer, larger groupings that are capable of delivering the suite of services required to deliver an outcome and manage the financial risk associated with outcome contracting.

- c Delegating more to those with operational responsibility across the big three agencies to realise operational opportunities, as well as address operational frictions. A more proactive and systematic approach is required, one that is based on a solid understanding of the end-to-end 'pathway' that different classes of offender travel; where the opportunities for operational improvements are in the hand-off between agencies along that pathway; and locations where these hand-offs might already be executed well. We were surprised by the number of sensible suggestions people had for these very practical improvements.

## 2 Better Defining the Ministry Purpose, and Refreshing the Strategy

The PIF Review suggested the Ministry needed to be clearer about its strategy, which at the time was, "... seen to be largely about cost rather than value, is unclear about who the Ministry serves and is not well connected to the motivations of the people that need to be engaged".

The Ministry has responded with a much clearer statement of its vision, "a safe and just society", and mission "to deliver modern, accessible, people-centered justice services" and is focused on halving the time it takes to deliver justice services, ie, a measure of a dimension of value. The priority is improving District Court performance because, "this is where the Ministry has the most opportunity to positively impact the lives of New Zealanders and where we can most readily improve our performance" (Secretary of Justice). This clearly establishes the public as the Ministry's customer.

The clear focus in the strategy is supported by clear priorities to implement the strategy, with governance and reporting metrics that work to help align resource allocation and performance management for delivery of the strategy.

It makes tactical sense to start with a focus on timeliness and to set a target that is both demanding enough to signal the need for transformational change and can be sequenced into annual targets that build confidence in the Ministry's ability to deliver that change. However, while people see the value of reducing the time it takes for judgements to be made, this specification of the mission has come at a cost in terms of alignment with some staff and partners who either:

- cannot see themselves and what they do in the way the purpose of the organisation is expressed, and/or
- see the focus on timeliness as too narrow or potentially conflicting with other elements of value (not expressed that clearly but largely reflecting concerns about the need for procedural fairness, which may take time in complex cases).

There is a real need for more sophisticated communications that set the clear need for more timely justice within the broader framework of a 'safe and just society', ie, a society governed by the rule of law. The current priority has to be seen as part of a bigger game plan and other elements of the quality of justice given more weight in terms of the expression of that overall plan. It is the bigger game plan that motivates and connects staff across the Ministry and that helps enlist its partners and stakeholders.

While the focus on delivering for the public ‘as customer’ has been fundamental, going forward there will be a need to segment the public into groups with different needs that the Ministry and the court system need to meet, eg, the wider public, taxpayers and the different types of court user. The wider public wants confidence in the judicial system and predictability in how the laws will be applied; the taxpayer wants value for money; and users are seeking a quality judicial decision, ie, access to the courts, equality of access, procedural fairness, timeliness and an accurate judgement according to law. These components are not at odds with each other.

### 3 Enlisting External Support

In the 2012 PIF Review we noted that the Ministry can only deliver in its priority areas if it is able to enlist active external support over the four other government agencies in the criminal justice sector. It was noted that relationships needed to be improved in a number of areas, including with the legal profession, the judiciary, non-justice sector government agencies (particularly in the Treaty area, as well as those that can influence the drivers of crime), NGOs and the wider public.

- a Collaborating and co-creating with key stakeholders, such as the legal profession, was seen at the time of the last review as a critical area for success. Over the intervening period the relationship with the legal profession has improved markedly. In particular:
- in the law reform area while the volume of activity, timeframes, staff turnover and lack of subject matter expertise created challenges, enormous effort was made to engage, and good relationships with key people were forged. The Ministry listened and engaged in a dialogue resulting in genuine two-way consultation and brought in competent project managers
  - Criminal Procedure Act Implementation represented a fundamental shift and a difficult area of law reform but it is now seen as bedding down as implementation management has improved
  - the implementation of the Auckland service delivery project has been negatively impacted by high turnover but there is increasingly a view that things are starting to improve
  - it has been an effort for the profession to engage with the Ministry on e-bench and e- courts, as the Ministry’s focus has been on other parties. Furthermore, the people who developed the original business case have subsequently left. Since abandoning the Electronic Operating Model roll-out, however, the Ministry has changed the nature of its interaction – running workshops, listening and following through, taking a modular, evolutionary approach
  - in the family law reform area there has been some positive early experience with Fairway. In addition, there is evidence of lessons learnt from previous large scale changes being taken on board, and
  - finally, legal aid is increasingly seen as heading in the right direction.

Overall, the relationship with the legal profession is on a much stronger footing. The Ministry needs to maintain the momentum this has gained and ensure it collaborates in a consistent and transparent manner. Looking ahead, there is a number of macro issues that will require joint problem-solving, including:

- the business model that underpins some aspects of the industry, such as legal aid
- contracting for outcomes

- reducing monitoring, administration and compliance costs, and
- some differentiation of institutions, models and responses across locations, where appropriate.

There are also a number of practical steps the Ministry needs to be continually aware of to support collaboration and co-creation with the profession in the future, including:

- ensuring timely and accurate communication with professional bodies so they can credibly inform and represent the profession
  - ensuring early focus on implementation so that the profession is ready for changes
  - seeking a balance of institutional knowledge of the justice system alongside new people who bring new ways of operating
  - maintaining a degree of staff stability in senior roles to allow relationships to build
  - carefully time communications, especially on practical implementation matters, and
  - ensuring the Ministry website and browser is consistently user friendly.
- b Relationships and cooperation between the Ministry and non-justice sector agencies have improved significantly. In the Treaty area, the Office of Treaty Settlements (OTS) has formalised new governance structures and forged stronger cooperation amongst key partners to accelerate the resolution of outstanding Treaty claims. The justice sector and the social sector have begun to focus more clearly on prevention strategies that address the drivers of harm. There has been greater collaboration on issues of sexual abuse, family violence, self-harm and injury prevention. Looking ahead, it is important that these agencies co-create responses to improve impact and outcomes. Pace matters and other partners are ready to move from planning to execution.
- c The relationship and level of cooperation between the Ministry and the judiciary has not seen the improvement envisaged at the time of the 2012 PIF Review. Nevertheless, there is a platform to move ahead based on shared goals and a commitment to safeguarding the rule of law and the role of the Courts and judiciary in our system of government. Many registry and court staff partner daily with the judiciary to improve court administration and this gives us confidence there is a firm basis to extend the relationship.

Principles could be usefully agreed to underpin the relationship going forward, covering matters such as:

- acting with mutual respect for each other's roles and responsibilities – working together across two pillars – constitutional independence of the Judiciary and the Ministry's accountability for use of public funds
- adopting a partnership approach that recognises the need to work together to achieve shared goals
- interacting on a 'no surprises' basis
- ensuring adequate professional resource is available to allow parties to effectively participate
- ensuring institutional arrangements, language and priorities are sensitive to the roles and responsibilities of parties
- engaging in a formal and institutionalised manner with commensurate reporting and accountability mechanisms, and

- valuing institutional experience and knowledge, innovation and business intelligence.

Improved partnership and cooperation could take a number of paths but the following are some options that could be considered:

- the Chief Justice and Secretary of Justice cooperate and take joint responsibility for setting the context, tone and direction
- arrangements and accountability mechanisms within the Ministry that take further account of the role of courts administration, in light of the independence of the Judiciary and the need for the Ministry to be accountable for the use of public funds
- acknowledging that the Ministry will agree its SOI and accountability arrangements with the Executive, there is scope at an operational level to consider how a joint governance committee might be utilised in the future. It will be important for the primary relationship to be owned by the Secretary and Chief Justice and for there to be a degree of flexibility in how engagement occurs. Nevertheless, it may also be useful to have an external independent party (as utilised in the past) involved in a governance committee to help facilitate progress on identified work programmes, priorities and service performance standards
- the provision of professional support resources
- use of reference groups, with engagement from the Ministry and the Judiciary, to work on components of an agreed work programme, and
- other possible initiatives, such as a 'Super Registrar' and deeper collaboration on business intelligence, utilisation rates, including where rates are influenced by Corrections and Police conduct and procedures, and rostering and scheduling.

In addition, careful regard to a number of micro issues would assist effective cooperation and collaboration on the administration of the court system, where appropriate, including:

- ensuring the Ministry and Heads of Bench have access to a consistent set of data and business intelligence to inform resourcing decisions
- understanding the impact of Judge only hearings and the increasing number of self-represented court users on court resources and Judge time, and
- resolving long-standing issues, such as electronic filing, e-court and some property matters.

In conclusion, a concrete plan on how the Ministry and the Judiciary are going to work together and engage is required. Any future arrangement requires discipline and structure to get over past planning and delivery issues. A realistic plan must be set and executed well.

- d At the time of the 2012 PIF Review the relationship with some NGOs and the wider community was still emerging. While progress has been made there is still ample room to improve. Some noteworthy improvements were mentioned, such as in victim support. The issue of the wider community is discussed further below but it is notable that public trust and confidence in the Ministry has improved significantly since the 2012 PIF Review.

Overall, there are a number of important areas where the Ministry has built strong collaboration since the 2012 PIF Review. Some key partners and stakeholders acknowledge the real effort that has been made and the difference it has made to outcomes. There is scope to build on this further but a firm platform has been established. In addition, there are a number of areas where

relationships are still emerging, though progress has been made. Finally, significant improvement is still required between the Ministry and the judiciary in order for both parties to achieve shared goals. There is a strong appetite to reset the relationship to ensure that shared objectives are achieved, while preserving judicial independence and strengthening accountability for the use of public funds.

#### **4 Proactive Policy Function with Stronger Linkages to Operations**

The PIF Review identified the need for:

- a more proactive policy function, with a Ministry view of how it can best contribute to New Zealand (including outside the criminal justice area), with
- stronger linkages to operations and much earlier engagement with both operations and external partners, eg, the legal profession and judiciary, in policy development.

The Ministry has made some significant progress in aspects of both areas, although there is still some way to go.

The new strategy requires a much more meaningful and earlier engagement between policy and operations and between policy and the Ministry's external partners. These expectations have been established, there is a genuine effort to advance this agenda and some instances of better policy as a result; although it is fair to say that in most cases people are still working out how best to make this work.

In terms of stronger linkages with operations, the Ministry's Self-review is that, "we have made a good start in moving along the continuum from co-location and coordination to collaboration and integration". While that is an accurate summation of the relationships at National Office, operational staff outside National Office do not feel they are listened to or that the operational consequences of new initiatives are well enough developed before implementation is begun. In terms of the quality of collaboration, with some exceptions, there is still too much focus on policy consulting with operations rather than co-creating solutions with operations even at National Office. Consultation is still limited to trying to address the operational consequences of policy initiatives, as opposed to using deep understanding of operations to inform the development of policy options.

The relationship between policy and the judiciary and the legal profession are at very different stages (see 'Enlisting External Support'). Tremendous progress has been made in terms of early and effective engagement with the legal profession, with a sense from the profession that the Ministry is interested in genuine engagement and is actively listening. For its part, the Ministry sees the value of this engagement and believes it is reflected in better policy formulation and advice.

While there have been a number of helpful and deliberate moves to create the expectation of, and capacity to deliver, a more proactive policy function, this was always going to take time to develop and progress here has been slower. Again, the Ministry's Self-review seems accurate, "The Ministry has made some inroads into a more proactive policy function ...". The same could be said for the development of a more proactive civil work programme. Having said that, the expectation is that the upcoming Briefing for Incoming Ministers will be less focused on describing the current work programme and starting to reflect a more proactive and outward-looking orientation.

## 5 Stronger Operational Performance with a Real Focus on the Public as the Customer

In the 2012 PIF Review it was noted that the desired operating model for courts and tribunals, and to a lesser degree collections, is not well developed. The focus had been on where we are and where we need to go next, rather than where we want to be or how we get there. There was not a strong sense of whether planned initiatives aimed at modernising the courts were collectively sufficient, how they should be sequenced or prioritised or what real difference they would make to court users.

Since the Review, the Ministry has significantly improved its focus on the public as customer across all aspects of the organisation. Increasingly, staff understand the customer operating model and see themselves in it. Going forward, the Ministry needs to understand the dimensions of customer that matter – the wider public, taxpayers and court users. The wider public wants confidence in the judicial system, the taxpayer wants value for money and users want access, timeliness, fairness, etc. Fundamentally, users of the court are seeking a judicial decision. These components are not at odds with each other and any one component cannot be pursued at the expense of partners and stakeholders.

The Ministry has made gains in terms of operational performance across a range of areas. Collections, for example, has continued to lift its performance and capability and has demonstrated a willingness to innovate to make further improvements. It also utilises business intelligence to help reveal opportunities for further improvement and to inform investment decisions. The Ministry needs to ensure collections staff have a line of sight from their work to the priorities and purpose of the Ministry.

The expansion of the Public Defence Service (PDS) was well implemented and feedback is positive about its performance and the impact it is having on court hearings. Communication has been good with stakeholders, and the service has routinely surveyed key partners for feedback. The Ministry will need to do more to engage the staff of the PDS in a manner that recognises the particular role of the service and the contribution it makes to enable access to justice.

While the changes to legal aid were controversial, there is increasing evidence that this area is beginning to bed down. Fixed fees and the incentives created by the criminal procedures and family reforms are yielding dividends in terms of cost, timeliness and behaviours that impact the performance of the justice system. Looking forward, fees will need to be periodically assessed on their ongoing appropriateness; the operating model will need to be less administratively burdensome, including through automated processes and online court applications; and new procurement models will need to be trialled.

In terms of the courts and tribunals, the focus of the Ministry has been on modernising courts to provide better services for court users and to allow different options for investment. Since the 2012 PIF Review, the key improvement the Ministry has focused on has been speed of service and therefore on achieving a 20% improvement in court times by the end of this year. The progress towards achieving this target can be attributed to a number of factors, including the contribution made by Ministry staff and changes driven by others, particularly the judiciary. In the case of the Ministry, the focus thus far has been on improving current processes. Good progress has been made in areas such as the focus in every court on the top 10 longest files, the increasing use of AVL (mobile) technology, Family Court changes and better workforce modelling tools; etc. Despite some impressive results, staff and some key partners are largely not engaged with the Ministry's business strategy. A number of factors have contributed to this, including:

- the third part of EOM, the 'e-bench', was not delivered and there has been some negative stakeholder reaction to elements of other technology changes/upgrades
- management tools and supports were underdeveloped when major legislative change was implemented. Line managers were left to figure out how to manage in the new environment. New management phrases, such as 'managing from the balcony' and the 'franchise model' have not resonated with line managers and staff. Some frontline staff felt that the impact of changes on frontline operations had not been given enough consideration and, therefore, staff were not getting the guidance and support needed to do the job well from the start. The Staff Engagement Survey reflects this
- there was a perception that national office was not good at listening to people with an end-to-end view of operations during the design phase of changes, particularly in earlier roll-outs. Specifically, some staff indicated that fallback positions were not developed in case things went wrong; trial sites were sometimes inappropriate; trainers were not trained and bad habits were replicated; and operational guidelines were not developed to support staff to work confidently and safely in the new environment. Overall, staff felt results were achieved the hard way, particularly during earlier phases. More recent changes have begun to ensure frontline staff are better prepared to play their roles from the start. For example, through the use of change champions, systematic offsite training and more frontline engagement in design, etc. It is important these improvements continue to be developed
- the new operating model did not adequately reflect the fact that the administration of the courts is a partnership; the registry has a small but significant influence, the judiciary a greater influence, while the parties have the greatest influence. There is greater interdependency in the justice system than accounted for. The focus of courts modernisation has been largely on the front end (case management and scheduling); but if the other parts are not right, then they may only get a fraction of the gains. Fundamental process re-engineering to get rostering and scheduling right is necessary. The Ministry needs to be clear about what the modernisation currently planned will do and will not do. It will address parts of system but will not address the whole system and some critical blockages, and
- business intelligence and modelling capability was not developed adequately to support the emergent operating model.

The Ministry acknowledges that further progress will require an integrated work programme based around end-to-end process 're-engineering', better data and business intelligence, policy change, greater stakeholder buy-in and a full e-court capability. Importantly, a new partnership with the judiciary is critical to success. The operating model to support this next phase is not yet developed and it is not clear that the current business case under development will fully address the requirements. This business case will ask Ministers to endorse the high-level direction and technology plan; it will not set out a new end-to-end system and explain how to get there.

Looking forward, the Ministry needs:

- more systematic approach based on end-to-end service redesign deeply rooted in operational requirements with better segmentation of operation based on case complexity, a clearer view of how benefits will be realised and carefully sequenced automation. While more centralisation and digitisation is needed, this should come after mapping and optimising the end-to-end process for

different levels of complexity. At the more complex end, there is scope for greater customisation and responsiveness

- to build confidence in its execution – the biggest issue is delivery. The Ministry must deliver a paperless court. To gain confidence that the Ministry can land information technology (IT) projects it may be desirable to establish a Chief Information Officer (CIO) role at the second tier for a period of time
- at national level the Ministry needs to cooperate effectively with the judiciary in terms of roles and responsibility. If the Heads of Bench and the senior leadership team (SLT) work effectively together, then it should work well at a local level. A shared protocol could be agreed whereby the Chief Judge rosters Judges and the Ministry has responsibility for scheduling and servicing courts, supported by a joint rostering and scheduling working group that builds a business intelligence capability and workload model, and
- a picture of the desired end state and clarity about what it will take to get there and the sequence of activity necessary to achieve it is required. This is a large transformation project, not a technology play. The SLT might find a governance board with external operational and change expertise could assist it for a period to challenge, shape and monitor progress.

## **6 Stronger People Leadership and Management**

The 2012 PIF Review noted that the May 2011 Staff Engagement Survey pointed to some deep-seated weaknesses in the Ministry's leadership and people management that must be addressed as a priority. It went on to note that strengthening operational performance and enlisting external support is impossible without substantially stronger people management, especially in the support of frontline managers and staff.

The Review noted the need for management to respond effectively to the issues raised in the Staff Engagement Survey. To meet the Ministry performance challenge would require better articulation of the Ministry's purpose and mission, clearer definition of goals and performance targets, a more supportive culture and more effective delegation of authority in pursuit of those targets, stronger performance targets and stronger performance incentives. It was noted that strong leadership from senior executives acting as a team was necessary to meet the performance challenge.

The previous findings remain relevant, though we note the Ministry has recently brought in new capability to lead this area. During this Follow-Up Review the Ministry received its recent Engagement Survey results. In light of the effort made to develop and communicate the Ministry's purpose and business strategy, the lack of improvement in engagement clearly was unexpected. The results at the third tier and other management tiers were particularly concerning. While the engagement results suggest that Ministry staff know and understand the purpose and strategy, staff do not know what court modernisation really means in practice for them. The Ministry must not only set clear targets and goals but it must also establish how to achieve those goals in real terms every day on the job.

A number of further observations can be made:

- a while staff have concerns, there is a strong underlying commitment to the purpose of the Ministry and the importance of the rule of law and access to justice. Culture is fundamentally about alignment – it needs to be aligned to strategy. Leadership capability and style needs to demonstrate desired behaviours and values. The dominant culture and values of the Ministry revolve around the principles of justice but the Ministry's current focus is seen by many to be

process focused, particularly on timeliness. This misalignment is unfortunate since timeliness is an important aspect of effective justice. SLT needs to address this in the next refinement of the Ministry's purpose (see discussion above)

- b commitments made in response to the Engagement Survey need to be met. This will require close monitoring and accountability for delivery
- c tier 2 performance targets need to be set for the whole of the Ministry, as well as for individual business units. Senior leaders' first responsibility must be for the collective leadership of the Ministry, and
- d at the third tier a number of matters have been highlighted:
  - the SLT needs to lead in a manner that allows the third tier to lead. In particular, the capability and institutional knowledge of the third tier could be utilised to develop and lead the business strategy and to practically implement a changed operating model. 90- day cycles and break-through groups, which were previously proposed but not landed, could be trialled
  - high turnover at the second tier has created uncertainty, and better communication is required
  - while key relationships must be owned by the executive, there is an opportunity to better align the Ministry's engagement strategy at an operational level with critical partners through established relationships at the third tier, and
  - a sense of team at tier three needs to be reestablished, otherwise individuals will slot back into transacting in individual lines.

The Ministry's draft workforce strategy identifies that in most areas of people management and performance it is at a low level of maturity in comparison to the desired state. Looking forward, while it is important to ensure managers do not game Engagement Surveys, they need to be incentivised and trained to improve engagement. The planned people and performance scorecard should assist focus. Remuneration, recruitment, performance management, health and safety, learning and development, retention and attrition need further development. Workforce planning, leadership, diversity, talent management, career planning and succession planning are currently underdeveloped and need considerable improvement. Given the scale and importance of the improvement required, it is important for SLT to prioritise people strategy in the Ministry and hold the business to account for performance. Aligning values, culture and behaviours to the business strategy and purpose is critical to success.

## WHAT MIGHT THE NEXT PERFORMANCE CHALLENGE BE?

The PIF Follow-up Reviews have been asked to consider what New Zealand needs from the agency in future and, therefore, what its next performance challenge might be. Given the initial performance challenge was derived from an understanding of the best contribution the Ministry can make to New Zealanders, it is likely that the next performance challenge will be an evolution of the current specification. Some of the elements of that challenge are already taking shape.

The most obvious evolution is from an emphasis on reducing the incidence of crime to reducing the harms that crime causes. This shift is already underway and we have discussed some of the implications of this shift in this Follow-up Review.

We have also suggested that the Ministry's current focus on improving the timeliness of judicial decisions should be cast in a border framework and that the definition of the customer needs to be refined. This is likely to result in a more segmented approach to the Ministry's operations and more differentiation based on complexity, with reduced variation and less tension between speed and other elements that define the quality of justice services.

In addition, the sector is likely to face more cost pressure in future and, therefore, needs to address those issues that we have identified as fundamental to turning reduced crime and prosecutions into reduced demand for justice sector services across the board.

All of these challenges will require a much greater emphasis on analytics: to understand the drivers of demand, as well as to develop the best policy and operational responses to that demand, including a much better understanding of the existing business. They are also likely to require greater collaboration between the justice and social sectors: especially in the two areas identified above.

Finally, in the Treaty Settlement area, it is now clear that as we move into a post-settlement world, new challenges are likely to emerge for the Crown, the Ministry and other Treaty partners. In particular, there is a need to ensure that the Crown and its agencies meet the commitments made in the settlements reached.

## CONCLUSION

The changes in the external environment have created real opportunities to improve public safety; improve the quality of justice services; and improve the Crown-Iwi relationship within a relatively constrained fiscal environment. The Ministry, with its justice sector partners, has made real progress since the 2012 PIF Review. However, some of the critical success factors identified at that time remain to be addressed and will need to be addressed to have confidence the goals that Government and the Ministry have set will be met. The Ministry is capable of addressing these weaknesses and, on the basis of all the interviews we conducted for this Follow-Up Review, we believe the Ministry, its staff and its judicial partners are ready for more active and productive engagement.

