

## OPTION 2: INDEPENDENT COMMISSION OR BOARD

### Proposed approach to option 2 in Cabinet paper

- briefly discuss the role and structure of an independent body (describe the commission and board as only slight variations of same option);
- indicate financial implications of setting up and running the body (including the potential effect on the workload of courts; and the workload of the body may be affected by applicants treating the process as simply a further right of appeal) and conclude that financial implications would be disproportionate to the nature and number of applications the body would consider;
- distinguish current New Zealand situation from the situation in the UK prior to the establishment of the CCRC (e.g. Home Secretary processes and constitutional concerns);
- suggest that a body is unlikely to eliminate criticism of the criminal justice system: final result of applications are still in the hands of the courts.

### What we need in order to draft Cabinet paper

- agreement on the general structure of the body
- a general idea of the financial implications of setting up and running a body (once we have a settled structure and description of the body, the Crown Entities Adviser should be able to give us general financial implications based on existing CEs)
- further research into UK Home Secretary procedures and problems prior to establishment of CCRC

### Proposed structure and description of independent body

#### Functions of commission

- to receive and investigate complaints of miscarriage of justice;
- refer a case back to the courts for reconsideration where it considers that a miscarriage of justice has or might have occurred;
- refer a case and the commission's recommendations to the Minister where the commission considers that the prerogative of mercy might be exercised in a way other than a referral to the courts (e.g. a pardon);
- to refer a question to the Court of Appeal for an opinion.

#### Commission structure:

- Crown entity
- 3 commissioners (with one commissioner being chair)
- chair to be senior lawyer or retired judge, and responsible for overall strategic direction and performance of body;
- remaining commissioners to be senior lawyers/investigators/criminal justice experts
- decisions on complaints would be made by board of commissioners
- commissioners would work .5 time; with chair being full time
- 6 full time legal/investigatory staff (the extent of investigation role will influence the nature and number of staff required. The SCRC has 8 case workers plus one senior lawyer. The Canadian Conviction Review Group has 6 full time lawyers)
- 1 full time administrator

Question: why is there a board of commissioners etc when the JCC doesn't have that?

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