



**Effectiveness and Renewal Group  
for the Department of Justice & Equality**  
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29<sup>th</sup> June 2018

Charlie Flanagan, T.D.,  
Minister for Justice and Equality

Dear Minister,

As you are aware, the Effectiveness and Renewal Group for the Department of Justice and Equality, established by Government in January of this year, was asked to provide a report to the Government by 30<sup>th</sup> June 2018 with quarterly reports thereafter.

Our first report is attached and details our view on where the Department of Justice and Equality is in its evolution. It also sets out the significant changes which we believe are necessary to complete the renewal of the Department and enable it to meet the changed demands of the environment in which it now operates.

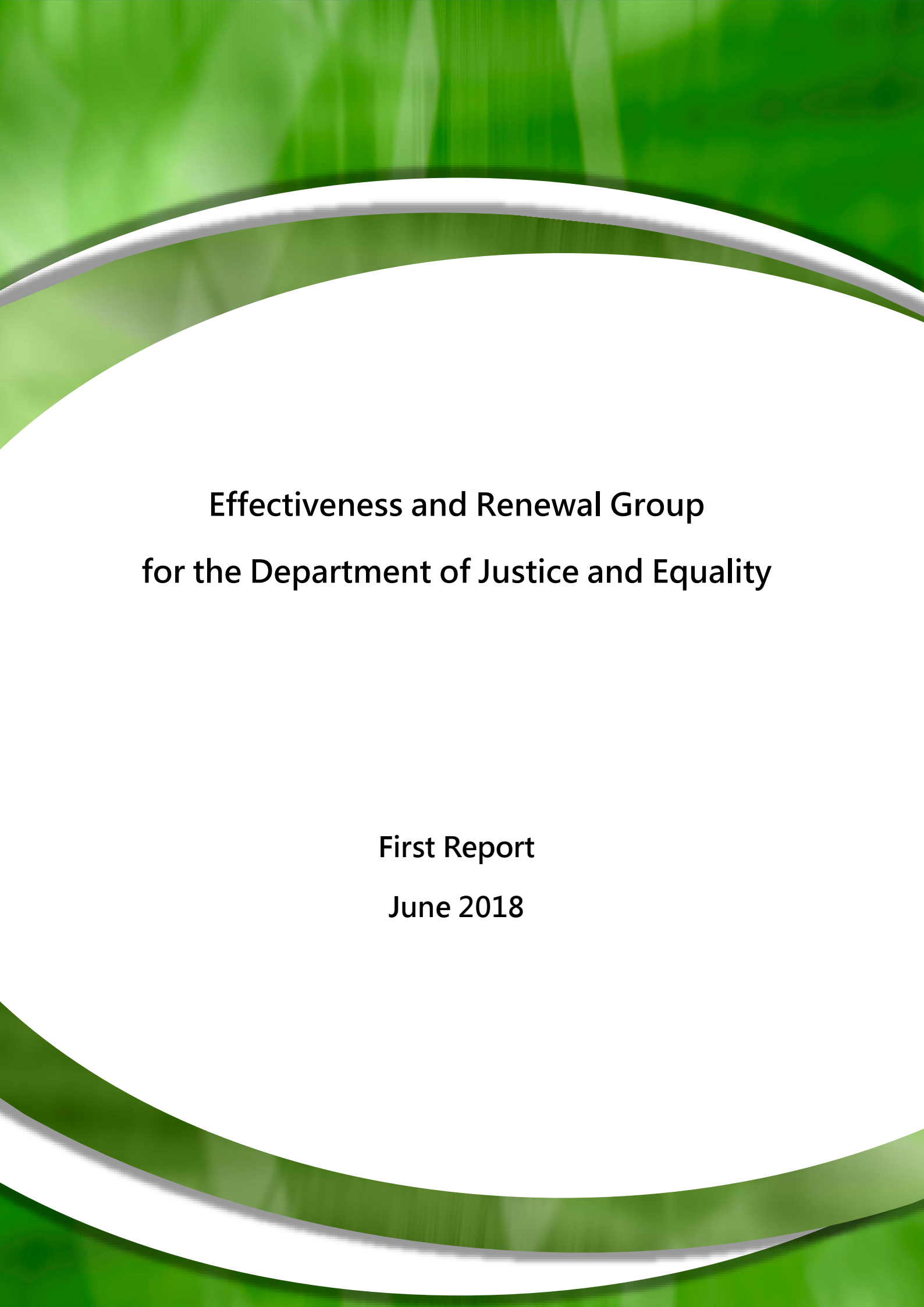
We would also like to take this opportunity to acknowledge, with thanks, the dedication and professionalism of the staff in the Department of Justice and Equality as well as their unwavering commitment to the Department and to you as Minister.

Our next report will be submitted by 30<sup>th</sup> September.

Yours sincerely,

Pádraig Ó Ríordáin  
Chairman

[Leo Varadkar, T.D., Taoiseach]

The background is a vibrant green with a subtle, blurred pattern of vertical lines. Two thick, white, curved lines sweep across the page, one near the top and one near the bottom, framing the central text.

**Effectiveness and Renewal Group  
for the Department of Justice and Equality**

**First Report**

**June 2018**

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## Purpose and Function of the Group

On 30 January 2018 the Government approved the establishment of an independent Change Implementation Group for the Department of Justice and Equality to:

- a) assess progress in implementing the recommendations of the Toland Report;
- b) review the culture of the Department, make recommendations for change, particularly in respect of its decision-making and management, prioritisation and communication of information including how and when information is conveyed to the Minister's office and if the Minister's office is appropriately resourced in this context;
- c) examine in particular, the relationship between the Department and the Gardaí, to ensure that the relationship is appropriately structured, is understood in both organisations and operates in such a way as to ensure accountability and better performance;
- d) provide continued external oversight of the implementation of the Toland Report;
- e) draw on the expertise of the Commission on the Future of Policing in Ireland and the Policing Authority in conducting its work; and
- f) provide progress reports to the Government and to the Oireachtas, and to make recommendations with regard to any aspect of its terms of reference.

The membership of the Group is as follows:

- Mr. Pádraig Ó Ríordáin, Chairman  
*Chairman of the National Lottery, former Chairman of the DAA and former Managing Partner of Arthur Cox .*
- Mr. Andrew Algeo  
*Expert in organisational management and development of business models, and former Managing Director of Commercial and Risk for Paddy Power PLC.*
- Ms. Theresa Daly  
*Expert in strategy and leading and delivering organisational transformation, and former General Manager with Microsoft Ireland.*
- Mr. Dermot McCarthy  
*Former Secretary General to the Government and of the Department of the Taoiseach.*

The Group would also like to acknowledge and thank Mr. Kieran Coughlan, former Clerk of the Dáil, for the contributions he made during his time as a member of the Group.

As part of our research, the Group met with and interviewed key stakeholders to the Department as well as members of staff in the Department (see appendix and bibliography) and we would like to thank all those interviewed for their honest and open engagement.

We would also like to thank the acting Secretary General of the Department and the Management Board for their energetic participation and cooperation, and acknowledge with thanks the prompt and comprehensive provision of all assistance which was requested by the Group.

We would also like to thank the members of our Secretariat, Tanya Ganly and Catherine Rogan, for their exceptional work in assisting us.

The Group was asked to provide its initial report to the Government by 30 June 2018 with quarterly reports thereafter. This is the first of those reports to be submitted to the Government.

## Executive Summary

The Department of Justice and Equality is a body of deep integrity, which is rightfully proud of the contribution it has made to the development and protection of our society. It is replete with able, dedicated people who strive to deliver on the strongest traditions of the Department but who now need a new blueprint to enable them to do so.

In recent years, the Department has come up against a glass ceiling caused by its own traditional structure and organisation and which has been exposed by the demands of a rapidly changing, highly-politicised world in which the speed of transmission, absorption and deployment of information can be head-spinning.

Although the Department differs little in design from most other departments, it is inherently prone to criticism due to the direct impact of its work on the daily lives of people and because of its role in assisting the Minister oversee the coercive powers of the State. This vulnerability is aggravated by the complexity and breadth of its portfolio and its association with its operational bodies, notably An Garda Síochána.

### Renewal

We have considered in some depth what needs to be done to regenerate the Department in a manner which makes it permanently more resilient and better aligned with the demands of the environment and society in which it now operates. We believe that this requires a fundamental restructuring in which the Department is divided into two distinct Divisions and a functional organisational model is adopted, where the roles of the officials in both Divisions are comprehensively redefined by what they *do* rather than by what they *know*.

#### *Divide the Department into two Divisions*

The first aspect of this process is familiar. While remaining one Department, it is divided into two distinct Divisions, each headed by a Deputy Secretary General. These are, indicatively:



This helps manage the span of control more effectively while also allowing each Division to develop a distinct culture and operational model to suit their distinct societal roles. The Department also has one Shared Services Unit serving both Divisions.

### Convert both Divisions into Functional Organisational Models

Each Division is organised into five newly constituted Units, each of which is responsible for the delivery of one of the functions of the organisation, for example policy. This differs from the traditional and current model where many Units are responsible for all of the functions of the organisation as they relate to a single portion of the Justice sector, for example policing. The five new Units, under which the entire Division will be aligned, are:



Every official in each Unit is dedicated entirely to the function of that Unit, thereby allowing space to focus on their core outputs, without compromising other priorities.

### Examine converting the operational elements of INIS and the Irish Prison Service into separate agencies

The Irish Naturalisation and Immigration Service (INIS) and the Irish Prison Service are very substantial public-facing services operating largely autonomously, but still as part of the Department. We question whether the Department should be undertaking the operational aspects of this work and will therefore examine whether these operations should be converted into separate agencies, while retaining the policy function relating to them within Home Affairs.

The implementation of these steps, along with the other recommendations in this Report will enable and expedite the Department in achieving the objectives of the Toland Report. We expect the restructuring steps to take less than nine months in total, with the first three months in preparation.

### **Management and Investment**

The restructured Department is led by a small leadership team consisting of the Secretary General, the two Deputy Secretaries General heading the Divisions and the Head of Shared Services. This Management Board decides on the priorities for the sector as a whole, the operating model and talent management of the Department, and owns the Department's

budgetary process and carefully monitors both the Department's and the sector's performance.

The two Divisions, Justice & Equality and Home Affairs, are in turn led by two decision-focussed Executive Boards each comprising its Deputy Secretary General, five Unit heads and a representative from shared services.

Of essential importance to this restructuring is the early appointment of a Secretary General to the Department and the two Deputy Secretaries General to lead and own this change.

The change to this new model needs significant investment in the change process itself (primarily in the form of external change management resources and training) and in the badly needed redesign of the Department's I.T. platform. It also requires the active support of the Civil Service Management Board to make this transformation a success.

### **The Department's Relationship with the Gardaí**

The design of the remodelled Department allows it to manage its relationship with the Gardaí in a far more structured and impartial manner. Central to this is the Governance Unit of the Home Affairs Division whose only role in respect of An Garda Síochána is to exert robust governance, including policy direction. Its ability to do so is materially enhanced by the introduction of a detailed budgetary process with the Gardaí, linked with a costed Policing Plan, which is a critical missing part of the governance infrastructure.

In contrast to the role of the Governance Unit, the Transparency Unit deals with all of the daily information flows with the Gardaí, from event-based information to Parliamentary Questions. The Policy Unit interacts with the Gardaí on the development of its policing and overarching sectoral models for the country while the Operations Unit liaises with them on matters such as specific policing plans for national events. This clear organisational separation of the distinct roles that the Department plays is key to a more structured and productive relationship with the Gardaí.

We await the report of the Commission on the Future of Policing, chaired by Kathleen O'Toole, in respect of the optimal governance framework for the Gardaí and will address its recommendations from a Department perspective in our quarterly report in December of this year.



## **Next Steps**

The immediate next steps in the implementation of this plan are: a communications programme with Department staff and external stakeholders, the procurement of an external resource to assist in designing the Department's new operating model and to provide the management capacity required to build the new organisation, and development of the Department's governance and team structures for the change management process.

The purpose of this work is to liberate the undoubted abilities and energy of the Department, equip it to respond proactively to the new and ever-changing external environment, and enable it to become a role model in the Programme of Civil Service Renewal.

We will report on progress on 30 September 2018.

## Background and Context

The world is changing rapidly. The arrival of the digital age and the speed at which it is changing democratic societies internationally has organisations of every kind, public and private, struggling to keep up. Changing demographics, a globally integrated world, a more complex international political and security context, and a markedly more demanding and sceptical climate of public scrutiny and accountability add to the challenges.

At the core of these changes is a fundamental asymmetry in information flow where unfiltered information is produced and widely consumed long before it can be properly verified or responded to effectively. Fact and analysis routinely lose out to entertainment, outrage and allegation in an endless cycle of instant stories and commentary. This has contributed to a broad-based erosion of the basic trust that democratic institutions have traditionally relied upon. Although this international trend is currently more marked in other democracies, it is also evident in Ireland's political and public environments and is unlikely to abate.

The Department exists at the heart of this new world. It plays a central role in assisting the Minister maintain a fair and safe society, balancing advancing individual rights, equality and the courts system with policing, national security, immigration and prisons. Its brief touches every aspect of society, daily, in ways that are fundamental to our personal safety and freedoms.

Each of these areas is marked by a high degree of sensitivity, public interest and media scrutiny. The legitimacy with which these functions are experienced by the public is in turn a function of confidence in the democratic oversight provided by the Minister, supported by the Department, while providing full accountability to the Oireachtas. The scale, intensity and complexity of these pressures, within a heavily politicised environment, produces conditions that are relentlessly challenging for administrations in all developed countries. In these respects, Ireland is no exception.

Although the Department has embraced change against this backdrop, particularly since the Toland Report in 2014, it still retains the same fundamental structure and approach to doing its business that it has had since the establishment of the State. In this respect it differs little from most other Government departments. The strengths of the Irish civil service – in particular its ethos and values and its ability to respond to situations as they arise – and the weaknesses of the service – including a variable pace of delivery, inconsistent performance

management and a focus on process rather than solutions – are similarly to be found within the Department.

However, due to its prominent role on the front lines of Irish society, and because of necessity, it holds a degree of knowledge and awareness of significant operational matters that differs significantly from other departments,<sup>1</sup> and as such perceived or actual problems in the Minister’s or Department’s performance have a heightened propensity to become a lightning rod of widespread concern and criticism. This is exacerbated by the pure breadth, complexity and societal implications of most of the matters within the Department's brief.

Against this testing background it is therefore not surprising that the Department has, unusually for it, begun facing upheaval. It is useful to recap briefly the scale of what the Department has been going through, which is illustrated in Figure A.

**Figure A**



**Legend: External; Report; Reform**

<sup>1</sup> The security and intelligence functions necessary for the proper discharge of this function are the most obvious, but not the only example of this distinctive requirement.

This has been a very difficult period for the Department and it has taken a heavy toll on its people. Despite this, it continues to perform admirably in its ongoing tasks while simultaneously absorbing the crises it has been through and managing the consequent investigations, reports and change.

This is a Department which avidly wants to perform to the best of its traditions and clearly has the talent and energy to do so successfully. But in attempting to do so it is constrained by the limitations of its legacy organisational structure and operational model.

There is a broad recognition in the Civil Service that real institutional change is required across Departments to meet the demands of this new environment. This is the purpose of the Civil Service Renewal Plan, which aims to bring systematic change to the Civil Service as a whole. However, while sharing the challenges faced by the Civil Service as a whole and participating fully in the service-wide renewal process, as outlined above there are significant aspects of the Development's mission which are distinctive and require particular responses.<sup>2</sup>

It is the role of this Group to support the Department by identifying those responses. Our aim is to help the Department get to the end of this period of upheaval, restore confidence and make the changes required to move back into a steady state, retooled to respond to the challenges of this quickly evolving new environment with renewed purpose, vigour and skill. In doing so, we believe that the Department can once more be restored to the place it traditionally held as one of the leading lights in the Civil Service.

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<sup>2</sup> Of particular relevance to the work of this Group, a Corporate Governance Standard for the civil service has been introduced. This sets out a framework of structures, policies and processes to be applied by government departments to enable them to deliver better their statutory and policy obligations, while facilitating objective assessment of performance. This has provided the framework within which the Department has developed the renewal of its structures, procedures and corporate performance management.

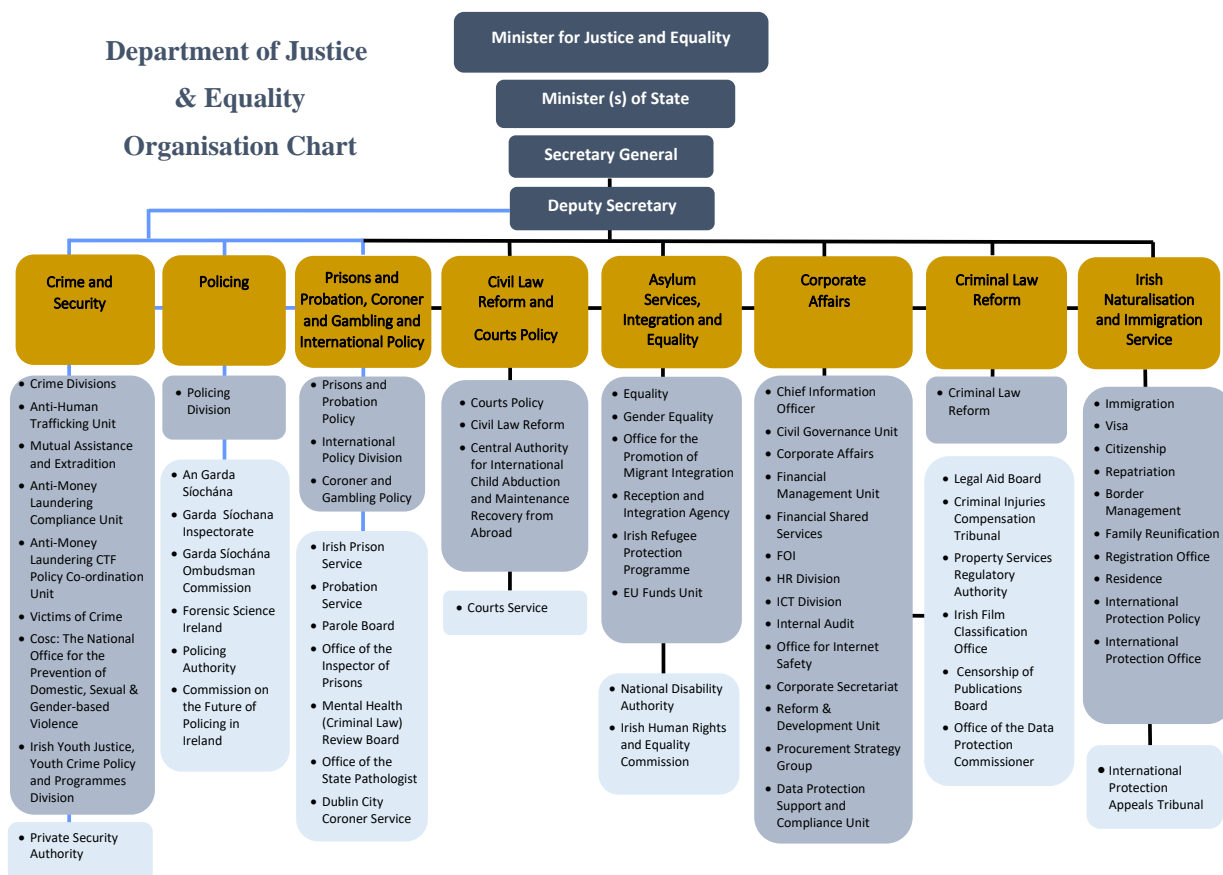
# PART I: Organisational Structure

## Current Organisational approach

The Department is currently organised in the traditional manner of Irish government departments. Its primary divisions are predominantly<sup>3</sup> organised in accordance with subject matter areas such as Policing, Prisons and Immigration for which the Department is responsible. Within each of these divisions there are many subdivisions of specialist teams, each with deep expertise and experience in the workings of their respective areas. These teams and individuals are responsible for performing a full range of departmental functions relevant to their subject areas, from policy development and agency oversight to preparing responses to Parliamentary Questions and situation management. In this Report we refer to this structure as the “Traditional Model”.

The Secretary General chairs the Management Board, which comprises divisional and other heads, along with various corporate function heads and representatives of the Principal Officers’ Forum. The current Department structure is illustrated in Figure B.

Figure B



<sup>3</sup> There are exceptions to the traditional model in the current structure of the Department, and in particular there are examples of a functional organisational model in the Civil and Criminal Law Reform Divisions and in Corporate Affairs.

In the Traditional Model, teams and individuals throughout the organisation must continually prioritise competing tasks that are of varied natures, importance and urgency.

In this model, the triumph of the immediate over the structurally important is inevitable<sup>4</sup>, or as Dr Whitaker put it in 1961<sup>5</sup> - *"I am not sure if the biggest problem after all will not be one of organisation – how Secretaries and other senior officers can organise their time and work so as to get away from their desks and the harassing experiences of everyday sufficiently to read, consider and consult with others in order to be able to give sound and comprehensive advice on future development policy"*.

The culture of the Department inevitably aligns with this structure, placing its faith predominantly in the expertise and experience of senior personnel and their networks more than in the ability of structure, delegation, training, technology, and process to demonstrably get the job done without disruption to future development.

### **Implementation of the Toland Report**

In 2014, the Toland Report provided a framework for a broad range of leadership, cultural, procedural, organisational, and system changes that together would equip the Department to deliver on a newly-defined purpose, both in its own right and through the agencies for which it is responsible. Notwithstanding that this level of change was challenging, the Department embraced and implemented many of the recommendations of the report. These include:

- the creation or enhancement of the Corporate Secretariat, Internal Audit and Reform & Development Units and Chief Information Office within the greatly enhanced Corporate Affairs Division;
- growing acceptance of Human Resources and Communications as strategic priorities;
- significant changes introduced in the systems supporting communication between the Department and the Minister, including the on-line tracking of documents and submissions;

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<sup>4</sup> For example, responding to the often pressing and manual nature of responding to Parliamentary Questions (PQs) routinely cuts across all of the other priorities an official may have in their area. See Figure E on page 21.

<sup>5</sup> As referenced in the Devlin Report, quoting from *The Civil Service and Development: Administration IX*, (1961), No. 2.

- the introduction of governance frameworks for agencies;
- a review and redefinition of the Department’s culture;
- the development of three-yearly and annual strategic plans;
- the introduction of risk management practices;
- commencement of work on technology enabled information management; and
- collaboration among senior management on priorities through a newly constituted Management Board

These changes, implemented incrementally over the last four years, have been useful in moving towards the sea change that the Toland review group intended. Yet in themselves they have not been sufficient to bring about the objectives of that change or deliver the “high performance organisation...provid[ing] strategic oversight and added value to its agencies” which Toland intended.<sup>6</sup>

There are a few reasons for this:

- (a) the reforms implemented to date represent only a part of the recommendations made<sup>7</sup>;
- (b) they are not aligned to a “clear definition of remit and purpose of the Department” as Toland had suggested they should be; and
- (c) the Toland reforms are powerful, but remain incremental improvements built on the foundations of the Traditional Model, whilst we go a step further and find that the problem for the Department is more fundamental and lies in the Traditional Model itself.

We believe that the vision identified by Toland for the Department can be achieved through implementation of the recommendations in this Report. As implementation progresses, we will keep the specific Toland recommendations under review to ensure that their objectives are incorporated into the change plan.

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<sup>6</sup> Toland Report, Page 12

<sup>7</sup> Department of Justice & Equality, Review of Change Programme, January 2018, Ernst & Young

## **Why the need for change?**

The remit and purpose of the Department breaks down, broadly, into the following categories of deliverables:

- i) the development and deep understanding of policy to inform the Government, the agencies under the Department's remit, and the decision-making of the Department itself;
- ii) the direction and oversight of the agencies for which it is responsible so as to deliver services to the public effectively, ensure Government policy is comprehensively implemented, and provide democratic accountability in governance;
- iii) enabling the Minister to provide timely and accurate transparency to the Oireachtas and the public in respect of the activities, performance and priorities of the Justice sector;
- iv) the support of legislative change through the Oireachtas in order to implement Government policy and comply with our EU and international obligations; and
- v) the support of the Minister and the Government in managing all other matters which arise through his or her remit.

Despite its best efforts, the Department currently is not meeting its entire functional remit. It is burdened by its historical way of working and a view of its role that has become constricted by years of being on the defensive and being battered by a world that it is no longer organised or equipped to navigate safely.

The limitations of the Traditional Model are evident in the problems that the Department faces. These are also to be found in other areas of the public service, a point that again reinforces for us the view that these deficiencies are rooted in an outdated structure and poor adaptation to the challenges of a fast changing world. Indicatively, they include:

- struggling to keep up with the pace now required of the Minister, and providing his or her team with required information in insufficient time for due consideration;
- an absence of holistic, developed, research-based policy thinking or priority definition consistently across the Justice remit;
- despite marked improvements since Toland, relationships between the Department and its many agencies remain too passive and reactive;



- occasional severe failure to deliver sufficient transparency for the Minister, the Oireachtas and the public;
- limited meaningful performance measurement or performance management of the Department or the Justice sector as a whole; and
- unclear allocation of responsibilities and accountability across the Justice sector.

While many answers lie in the organisational structure of the Department, not all do. The broader operating model of the Department is similarly not well orientated to meet the Department's functional purposes. Traces of this are found in, for example:

- the Management Board, which operates largely as an information and knowledge sharing forum, sometimes making tactical decisions but not focussed on an overall strategy for the Justice sector or choices about sectoral and Departmental priorities, resource allocation, organisational development, or performance;<sup>8</sup>
- the capability range of senior management who are very skilled in their subject-matter areas, responding to the priority needs of the Minister, dealing with crises, and progressing legislation, but are less focussed on other equally important areas of their current roles such as information management and communications, direction and oversight of agencies, or policy development;
- under-developed skills and infrastructure required for the Department to exert its strategic and oversight authority over the agencies for which the Minister has responsibility;
- a lack of technology and business processes to make the functional performance of the Department speedier and more efficient; and
- a deficit in the structure and technology required to comprehensively source, manage, assess and deploy the information that flows through the Department.

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<sup>8</sup> The Department is unified in how significant an improvement the current Management Board, introduced as one of the reforms recommended by the Toland Report, is over the previous Management Advisory Committee. We are certain this is true, particularly in respect of sharing information across the Department and inclusiveness, but to achieve the purpose of the Department it still needs to evolve materially. It currently has 18 members, an unmanageable number for any meaningful decision making and is largely led by representatives of subject matter areas rather than senior officials each responsible for one of the functional outputs of the Department.

These operating issues, like the Department's Traditional Model, are emblematic of approaches which have at one time undoubtedly served Ireland well, but now require redevelopment.

It cannot be expected that the Department would have the capacity or space to redesign itself in a manner that would address the totality of these organisational and operational challenges, even with guidance such as the Toland Report. It needs active outside assistance to help it liberate the undoubted energies and abilities it already has.

### **The Structural Change the Department Requires**

In summary, the Effectiveness and Renewal Group recommends that the Department should:

- 1) divide into separate Justice & Equality and Home Affairs Divisions;
- 2) reorganise from the Traditional Model to a Functional Model;
- 3) adopt an operating model which supports the reorganised Department; and
- 4) examine converting the Irish Naturalisation and Immigration Service (INIS) and the Irish Prison Service into separate agencies.

We will now address each of these recommendations in turn.

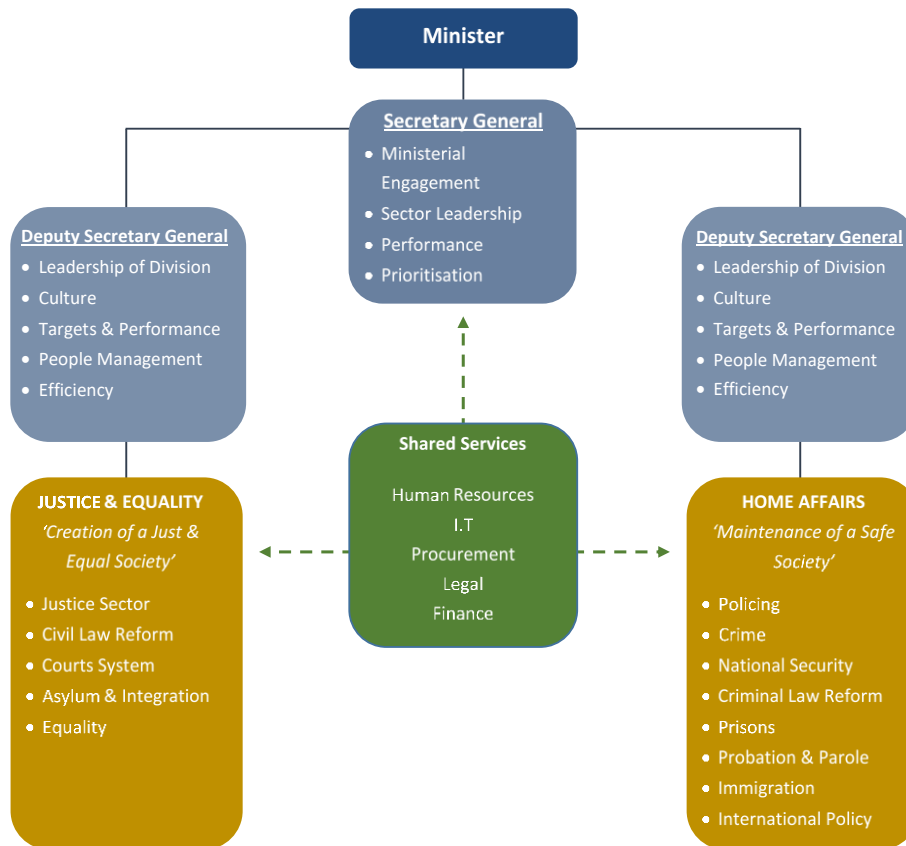
#### **1) Divide the Department into separate Divisions: Justice & Equality and Home Affairs**

One of the most commonly quoted challenges facing the Department is the pure breadth of its responsibilities, which reach from national security to equality, touching nearly every aspect of Irish society. The Toland Report recommended addressing this span of control issue by dividing the Department into two separate Divisions: Justice & Equality and Home Affairs. The separation of Justice from Home Affairs is a well-established approach in a number of other jurisdictions including Canada, New Zealand and the United Kingdom, which use separate Departments. We support this recommendation<sup>9</sup> and provide an indicative structure chart in Figure C.

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<sup>9</sup> Our recommendation at this time does not extend to dividing the Department into two separate Departments. This is a separate question and one primarily for the political process.

**Figure C: Justice & Equality and Home Affairs Divisions**



Creating two separate Divisions in this manner has a number of advantages:

- it allows the Justice & Equality and the Home Affairs Divisions to develop different cultures and operating models as appropriate to suit the differing roles they play;
- it gives a more manageable span of control to each of the two leadership teams;
- it permits division of regulatory and operational reporting lines, as appropriate; and
- it frees up the Secretary General to oversee and direct the Justice sector as a whole and on longer timescales.

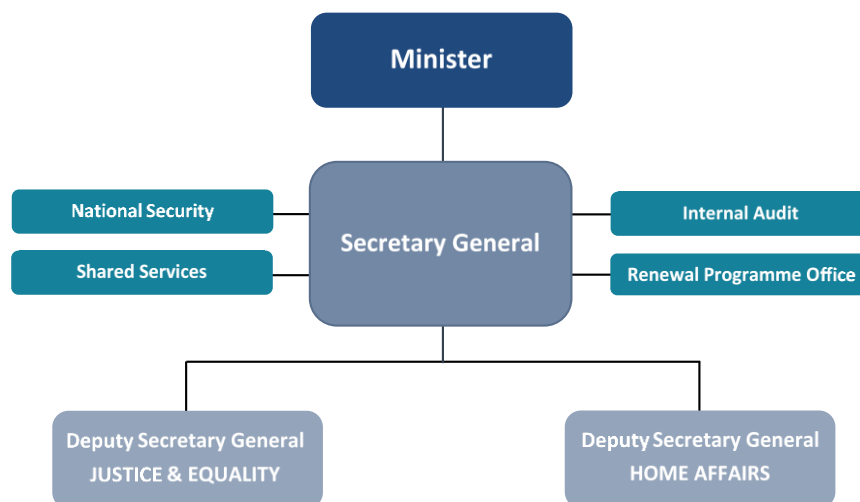
We recommend maintaining a single Shared Services Unit serving both Divisions.

### Role of the Secretary General and Management Board

The Department will be governed by a Management Board chaired by the Secretary General and comprising the Deputy Secretary General of Justice & Equality, the Deputy Secretary General of Home Affairs, and the Head of Shared Services.

The Secretary General is responsible, in the name of the Minister, for leading the Department and by extension the Justice & Equality and Home Affairs sectors. The Secretary General is responsible for the provision of service, prioritisation in the sector consistent with the Programme for Government, security, relations with other departments, culture, organisational change, audit, budgetary control and managing the performance of both the Justice & Equality and the Home Affairs Deputy Secretaries General. The function of the Secretary General is illustrated in Figure D.

**Figure D**



The two Deputy Secretaries General (Justice & Equality and Home Affairs) are accountable to the Secretary General for the alignment of their respective Divisions and the agencies within their remit to sectoral priorities, as well as the efficient and robust execution of the functions of their Division including the management of matters that arise, remaining within budget and meeting targets, talent management, optimising operating models and performance management.

## **2) Convert the Department from the Traditional Model to a Functional Model**

The more fundamental restructuring of the Department which we recommend is the conversion of the Traditional Model to a Functional Model in which the entire organisation becomes aligned with the functions of the Department.

In this Functional Model, each of the Justice & Equality and Home Affairs Divisions are divided into five Units, each responsible for delivering one of the Division's functions:

(a) Policy Unit

The Policy Unit is the think-tank. It owns the analysis and understanding of policy effects in a changing Ireland across the substantive areas for which its Division is responsible. This enables it to create and develop policy options for consideration by the Minister, as well as a rigorous basis for informing the day-to-day decisions of other elements of the Department and the focus of agencies. It also handles law reform and should play a role in helping to improve public understanding of issues in its area.

This Unit's core competence will be in analysis and design that leans heavily on research, data, expertise and information from its own agencies, international best practice, Law Reform Commission reports and demographic inputs, and forecasts.

(b) Governance Unit

The Governance Unit is the director of agencies. Its purpose is to direct and oversee all of the many agencies and other bodies in its Division's sector to ensure that they have a clear strategy, meet appropriate performance, transparency and governance standards, conform to budgetary processes and limits, implement the Programme for Government, and have due consideration to their own development. Training in oversight will also be a priority.

This Unit needs to be supplemented, at least initially, by individuals from outside the Department who have a depth of experience in exercising organisational governance.

(c) Legislation Unit

The Legislation Unit is the law maker. The Department is the largest generator of legislation in the Government system and the purpose of the Unit is to support the Minister in creating and moving Bills through the Attorney General's Office and the Oireachtas in a timely and efficient manner. This Unit is also responsible for the primary and secondary legislation required in its area to comply with EU and other international law.

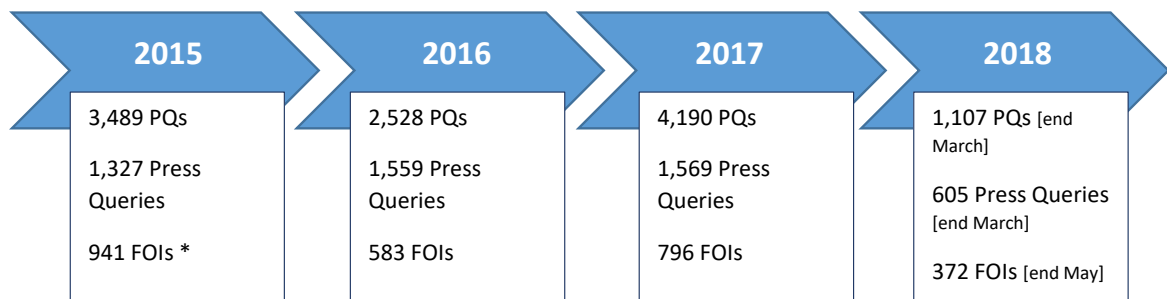
This Unit should interface more directly with the Attorney General's Office, most beneficially through secondments.

(d) Transparency Unit

The Transparency Unit is the Division's information management and communications service. It is responsible for sourcing, assessing, distributing and deploying all the information flows required by the Minister. Its core purpose is to rigorously assist the Minister fulfil his or her obligation of democratic accountability by ensuring that the public, the Oireachtas, the Government and the Department itself are informed on a timely and accurate basis of all information they require. It also acts as an early warning system for developments of importance to the Department, the Minister and the Government.

All PQ's, Leader's Questions, Freedom of Information requests and press queries are now undertaken in the Transparency Unit, as are proactive communications - internal and external, improving the speed and consistency of those processes, reducing duplication and alleviating the daily distraction of these tasks from the rest of the Department. It should also supervise record keeping and be responsible for building and managing the Division's archives. The Transparency Unit provides a single point of accountability for information management across the Division. An indicative list of information processed annually is set out in Figure E.

**Figure E**



\* Includes the Irish Prison Service FOI requests to July, at which point IPS began processing their own FOI requests

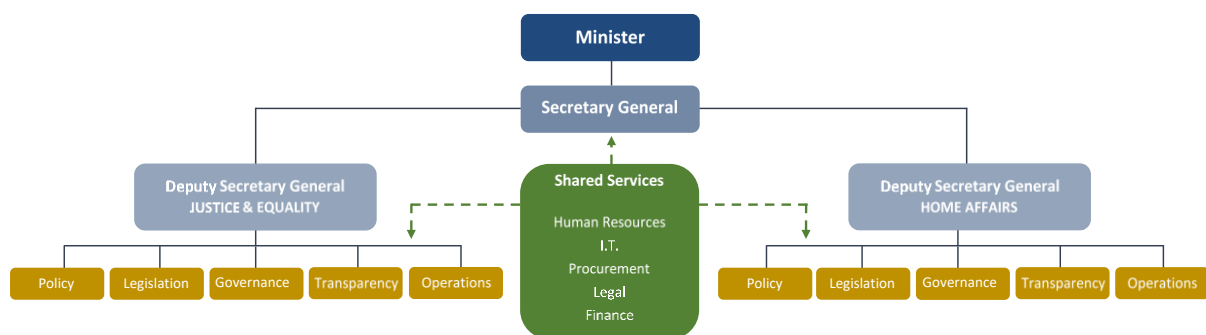
The Transparency Unit plays a central role in identifying the processes and information management requirements that the Division and its agencies have to ensure that the duty of democratic accountability is met. Where these relate to an agency, the Transparency Unit would inform the Governance Unit of the identified processes and requirements, which would in turn ensure they are implemented.

(e) Operations Unit

The Operations Unit is the Executive Board’s implementing, co-ordinating and planning service. This undertakes projects, situation-management and crisis management work<sup>10</sup> of a cross-divisional nature. It also supports Ministerial engagement through a secretariat, and the executive leadership team directly in their work in identifying and developing Departmental priorities and goals, tracking milestones, designing and implementing change in operating models.

In implementing this model, the structure of the Department is as set out in Figure F.

Figure F



The advantages for the Department of deploying a Functional Model at this time over the Traditional Model are substantial:

**Operational clarity & accountability**

- individuals and teams within each function have one clear purpose defined by their function
- there is a very clear chain of command in this structure so everyone knows what decisions they are allowed to make and to whom they report to
- responsibility and accountability are aligned, and the Minister is provided with clear accountability at a senior level for the performance of the Department in any matter
- measurement of functional outcomes is easier and more transparent, as are metrics by which to define performance

<sup>10</sup> It is essential that robust crisis management routines are in place based on clarity of roles, timely data gathering and interrogation, and embedded norms about discovery and disclosure. These will include appropriate document handling protocols, which also apply to more routine and structured communication and reporting by the Department to the Minister. These routines need to be appraised and accepted by the Minister and ministerial advisors, taking account also of the needs of the Taoiseach and the Government as a collective authority.

### **Operational efficiency**

- each Unit gets on with progressing its own work in a dedicated manner, undistracted by the priorities of other functions in the Division
- Unit heads are better placed to optimise their operating models to robustly and effectively perform their function
  - staff can achieve significant efficiencies in terms of process
  - avoids duplication of work that wastes time and effort

### **Better informed decision making**

- answers and solutions are generated by combinations of specialised people and not just by the people in whose divisional subject-matter area the problem arose
- risk is better identified by exposure to more pairs of eyes and different lenses
- it is far more difficult for problems to be concealed

### **Increased level of competency**

- the continuous focus on performing one function rather than myriad tasks in respect of a subject area
  - ensures a dependable level of Departmental competence
  - builds skills, efficiency, networks and expertise
  - allows the development of technology which will assist the Department's performance to be more effective and robust
  - provides clear training requirements and focus

### **Clear career path**

- generalists become specialists
- it is easier to set career paths and programmes for staff and monitor their progress toward the goals outlined for their functional areas
- there is increased mobility and career opportunity by focussing more on what people can do, rather than what they know



### Allows the Executive Board to focus on strategy

- the Executive Board becomes far smaller, more focussed and more effective at leading

### The need for cross-functional work groups/teams

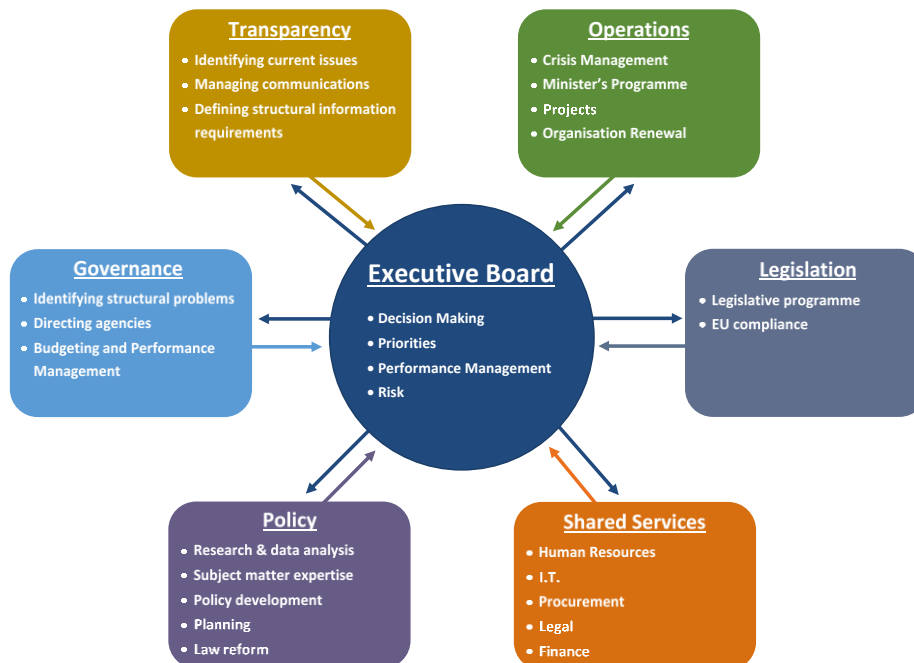
To avoid the pitfall of functional-silos replacing subject-matter silos at the expense of corporate goals, the Department needs to set-up cross-functional workgroups/teams for projects. The benefits are as follows:

- bringing people together from different functional disciplines improves problem solving and leads to more thorough decision making; and
- cross-functional workgroups foster a spirit of cooperation and collaboration making it easier to achieve customer satisfaction and corporate goals at the same time.

### Executive Board

The Executive Boards in this structure become nimble, effective and decision-focused. They each comprise seven people in total, the Deputy Secretary General, the five Unit heads and the Head of Shared Services. The Unit heads bring pan-functional perspectives to the management of issues, reducing the potential for gaps to arise and enriching the analysis. This is illustrated in Figure G.

**Figure G: Executive Board Role and Inputs**



The purpose of the Executive Board is to take responsibility for the development and the performance of the Division and the bodies for which it is responsible. The Executive Board will take leadership in, and make all decisions necessary to bring about, clear prioritisation of resources and developmental direction, appropriate operating models, performance management, and ensure control, accountability and transparency are appropriate.

In addition to fulfilling the strategic role above, the Executive Board will itself perform, or instead delegate to the Operations Unit, responsibility for delivery of work of the Department that does not neatly fit into the other functional Units, for instance governmental programmes which have a strong inter-divisional coordination aspect.

### Minister's Office

The restructuring we describe in this Report is designed specifically to reinforce the ability of the Department to support the Minister in his or her democratic oversight and direction of the Justice & Equality sector.<sup>11</sup> The sheer volume and complexity of material to be considered by the Minister in this Department, the daily urgency and sensitivity of issues in the sector and the rapidly changing media and political environments make the burdens of his or her role unenviable.

To meet their purpose, the new strengths of the restructured Department must be channelled seamlessly through to the work of the Minister. The Department must function to enable him or her to better consider the policy issues arising for decision and direction, to receive and understand the information necessary for political oversight, and to discharge his or her accountability to the Oireachtas and the public, all in a timely, accurate and transparent manner. Due to the intensity and breadth of issues to be dealt with in the Department this is very challenging for any Minister. In addition to the support of the Secretary General and officials across the Department, this requires the Minister's immediate team to be robust and well-resourced, and there must be no gaps.

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<sup>11</sup> It is also intended to be responsive to the Corporate Governance Code for the Civil Service, which recognises that "a Department's relationship and communication with the Minister and his/her advisors is a key governance process". The Code requires departments to provide clarity on the ministerial /senior civil service relationship, including management board processes, other formal and direct interaction, and routine and informal engagement. The Code stresses the need for regular interaction with the Minister to agree priorities and ensure political/management oversight of progress, performance and current issues. It calls for formal processes and mechanisms for documenting decisions made, including ministerial consideration.

The direct infrastructure around the Minister is not sufficiently resourced to perform at the level that the environment now demands. The Minister's current team comprises: the Minister's Political Advisor, Press Advisor, Legal Advisor, Private Secretary and Private Office. This team needs to be reinforced and better integrated with the Department.

The Group recommends that two Programme Manager positions be established in the Minister's Office, one in respect of Justice & Equality and one in respect of Home Affairs. These would be experienced civil servants, assigned in consultation with the Minister, to assist the Minister and his team to assess and interrogate the material communicated by the Department. They would also provide a practical daily link into all levels of the organisation.

They would ensure that the Minister's briefing on issues is systematically updated, that clarification is provided to officials as necessary, and that there is systematic and centralised co-ordination of the work of the Department to meet the Minister's needs and timelines. Their role is to complement the specific roles and responsibilities of the Secretary General and the Political Adviser in their specific relationships with the Minister, not to displace them.

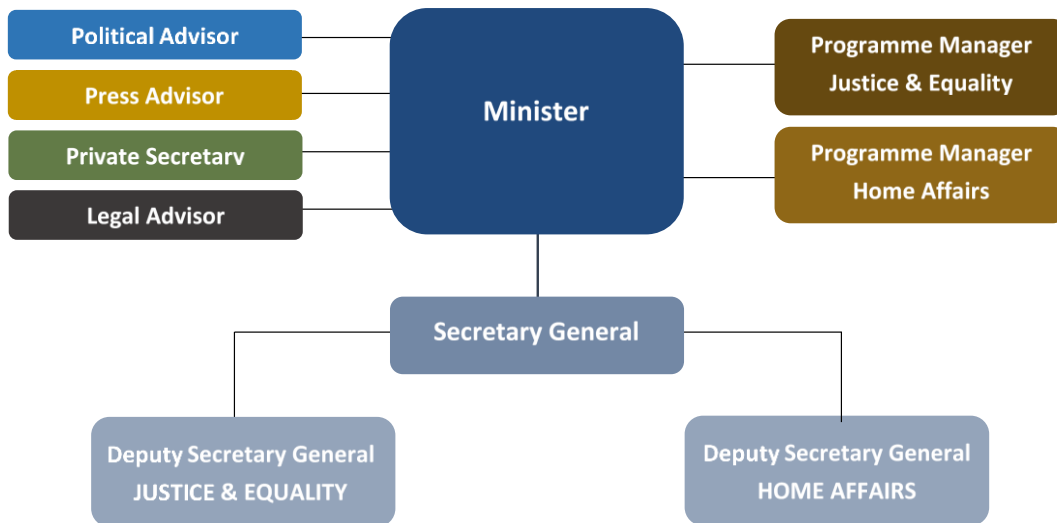
In providing direct, personal support to the Minister, the Programme Managers would strengthen the capacity of any Minister to absorb the immense flow of information from the Department, act as an early warning system for issues arising from the specific perspective of the Minister, and prevent gaps arising.

#### Interaction between the Minister's Office and the restructured Department

Following the reorganisation of the Department, the direct engagement, both formal and informal, between the Minister and the Secretary General, as well as the Deputy Secretary General of Justice & Equality Division and the Deputy Secretary General of Home Affairs, will constitute a strong platform for enhanced communication and trust within the Department. It will also provide Departmental clarity on the Minister's priorities, while ensuring that the Department's analysis and advice are transmitted and understood.

This revised model of support for the Minister is illustrated at Figure H.

Figure H.



The Secretary General and the two Deputy Secretaries General will themselves in turn be supported in their tasks by a materially more focussed and resilient Department in the Functional Model.

Given the political sensitivity of the responsibilities of the Minister, this model is specifically adapted to reduce the chances of avoidable crises, while supporting more effective engagement with emerging issues. Crises will arise and the combined revised structures of the Minister’s Office and the Department provides a far more resilient and resourced foundation from which to respond.

### 3) Adopt an operating model that supports the reorganised Department

A key component of the change of organisational design of the Department from the Traditional Model to a Functional Model is the introduction of an operating model designed to support it. Indicatively, this should have the following elements:

*Organisational Design:* The roles, headcounts and skills down through the organisation that are necessary to support the Functional Model. This should include the level in the organisation where decisions should be made (embracing delegation wherever appropriate), and the criteria for referral of information to the Executive Board.

Data, Process and Technology Structure: An implemented data model describing the information which is stored in the Department and its agencies and the technology and processes necessary to store, process and communicate it.

Performance Management: Development of key performance indicators and mechanisms to report on them both for the sector and for the Department which are: allocated to individuals; demonstrate transparently the efficacy of the sector and its organisation; serve to communicate progress to the public, stakeholders and staff; and allows international benchmarking. Indicative examples of this might include waiting times for court hearings, waiting times for asylum request decisions, repeat offence statistics, quality of care statistics in the prison service and direct provision facilities, crime rates, and financial efficiency in policing.

Staff Location: Currently the Department's staff are located across multiple locations and this should be reviewed to facilitate better coherence in culture, communication and decision making.

Governance: A strong capability which ensures the Department will achieve and demonstrate its own good governance including its policies and priorities as well as how it provides accountability, transparency and measures its performance and the performance of the agencies for which it is responsible.

Culture: Culture is the beliefs and values that people share, it is also the outcome of the organisation's history, environment, strategy and the critical components of an organisation's operating model – functional capabilities, organisation structure, skills & competency, and performance management. To build culture-change these levers need to be activated, connected to outcomes and measured. Staff find it easier to buy into this and a process of change and reinforcement starts.

The redesign of the organisational structure is the catalyst for building the culture outlined in the Department's Culture Charter. Indicatively, the additional levers to be activated are:

- leverage the culture specifically to drive strategy and outcomes;
- build leadership capabilities to continuously drive and sustain change;
- build a system of accountability to empower staff and foster a learning and development culture; and
- build the capability to re-engineer key business processes to put in place improved and value for money services and help staff accept and learn how to deal with change.

Building these competencies and capabilities is an important element of culture-change strategy and requires focus and significant levels of on-going training and mentoring. We will address the culture change levers in more detail in our next report due in September.

#### **4) Examine converting INIS and Irish Prison Service into separate agencies**

The Irish Naturalisation and Immigration Service (INIS) and the Irish Prison Service (IPS) are large operational organisations, which remain integrated into the Department. This requires the Department to act as a provider of direct services to the public, in addition to being the director and overseer of that service provision and its regulator.

The Group believes that the structure of these organisations should be examined with a view to converting their operational elements into agencies in their own right which are responsible in their performance to the Minister. Prior to any conversion, the functional elements of these organisations should be absorbed into the new Functional Model of the Department while their operations are directed and over-seen by the Governance Unit.

Devolving operational control of INIS and IPS to new agencies would:

- provide the Minister and the public with objective oversight functions over these important organisations through the Home Affairs Governance Unit in the Department;
- clarify the purpose of the Department across the sector - that it directs, oversees and regulates direct provision of service to the public but does not operate direct service provision at scale;
- reduce the number of staff in the Department deployed in the direct provision of these services, therefore freeing up resources to focus on overall direction, oversight and regulation of the services;
- introduce clear responsibility and accountability into the management of these services, allowing them to develop cultural and operating models appropriate to their remit; and
- formalise the operational independence of these organisations which already exists in practical terms.

The Group recognises that the Minister has some inalienable executive functions relating to the work of INIS and IPS but in any devolution of the organisations into separate entities these functions could be retained.

## PART II: Relationship with Gardaí

The relationship between the Department and An Garda Síochána is best understood in the broader context of the place of the Gardaí in Irish society and politics, as well as the Traditional Model the Department operates.

### **Background and Context**

An Garda Síochána is a single national police service,<sup>12</sup> a core element of Irish identity and is broadly trusted by the public to protect it. Its place at the core of Irish public life is reinforced by the prominent role security played during the Troubles and more currently, with the emergence of new kinds of internationally-generated security threats.

Traditionally, Ministers for Justice and Equality have put the protection of the public from crime and terrorism at the top of their priorities both during election campaigns and in Government. The achievement of this priority is judged not only in the objective safety of the public but, perhaps as importantly, in the public's perception of how safe it is. The key to both is the Gardaí.

The political potency of this reality is demonstrated by the pledges made by successive Governments to increases in the numbers of Gardaí as a clear and uncomplicated statement of their commitment to a safer society. It is equally well demonstrated in the reverse, where criticism of the Garda Commissioner acts as a very effective proxy for criticism of the Minister for Justice. This latter phenomenon has become particularly pronounced in recent years as Irish politics and media trends nationally and internationally have changed.

As a consequence, the perceptions of the performances and roles of the Minister for Justice and Equality and of the Gardaí have become closely entwined in the public mind. Ministers for Justice over many Governments have been reluctant to criticise the Garda Commissioner or the Gardaí, as to do so may impact the public's perception of its own safety and imply that the Government may be failing in its fundamental responsibility of keeping people safe. This convention equally works reciprocally, with the Garda leadership rarely, if ever, critical of the Minister of the day or of public policy.

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<sup>12</sup> Ireland's tradition of having a singular, national police service contrasts with the tradition in numerous other countries which divide policing functions on geographic, urban/rural or federal lines. Examples include: England and Wales, which has 43 local police services/constabularies; France, where the *Police nationale* has jurisdiction in larger towns and cities, and the *Gendarmerie*, is tasked with policing more rural areas; and the United States, where governments at a Federal, State, County and Municipal level all have separate policing functions.

From these origins, an interdependent relationship between the political system and the Gardaí has evolved, which has become a primary influence on how the Department and the Garda Commissioner prioritise and also on the pace of longer-term structural development of policing in the State. Because the attention of the public will most often be drawn to immediate operational policing matters, such as gangland violence or concern at specific failures in Garda management<sup>13</sup> that is also where political focus and that of the Garda Commissioner is most frequently drawn.

This results in a pattern of prioritisation of the immediate over the long-term and a system, which is defined by reaction to crises rather than to structural planning, development and execution. This may have short term benefits in the maintenance of stability and immediate public confidence but it is often at the expense of the longer-term institutional strength and structural evolution that is required to make future crises less frequent.

### **The Department's historical approach to its relationship with the Gardaí**

In the context described above, the Department's role in respect of policing has become one primarily of intermediation of the relationship between the Minister for Justice and Equality of the day and the Gardaí. In this model, the focus of the Department is dominated by the maintenance of current confidence in policing and security matters and dealing with immediate issues as they arise publicly. It also generates a sense of being *'in it together'* with the Gardaí when it comes to responding to crises or public criticism. This in turn places heightened emphasis on the maintenance of good personal relationships between Department officials and senior Gardaí Officers, leading to a marked hesitancy to disturb this ecosystem by engaging in robust or consequence-based governance.

This model of relationship between the Department and the Gardaí is reinforced by the traditional organisation of the Department by issue rather than function. There is a significant concentration of relationship with the Gardaí in just two of the eight divisions:

- vi) Crime and Security Division, which deals with all of the operational aspects of policing and security; and
- vii) Policing Division, which deals with the structural and governance aspects of the Gardaí and its regulatory agencies.

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<sup>13</sup> For example, this is evidenced by the sets of circumstances that gave rise to the extensive work of the Morris Tribunal (The Tribunal of Inquiry into complaints concerning some Gardaí of the Donegal Division) and the Smithwick Tribunal, as well as more recent incidents such as the reporting of crime statistics and problems with recording activity on breath tests and at roadside checkpoints.



The other divisions also have regular interaction with certain parts of the Gardaí, but to a lesser extent<sup>14</sup>.

These two core Crime and Security divisions deal with all interactions with the Gardaí in their subject matter areas, from oversight and crisis management, to policy and Parliamentary Questions. The Assistant Secretaries in charge of these divisions, as well as the officials who work under them, are in a position where they must intermix all of these functions on a daily basis, with the longer-term importance of one Garda-related task often losing out to the immediate priority of another. Equally, the relationship with the Gardaí which is required to manage one task well can often be the opposite of the relationship required for another,<sup>15</sup> but yet they each remain vested primarily in the same small group of people.

It is inevitable that mixing these levels of disparate roles without clear definition and with little measurement of specific outputs leads to a situation in which the objective of the official's job within the Department quickly dissolves into one heavily focused on maintaining immediate stability and addressing the immediate problems facing the Minister. This is what the system values and rewards. Equally, it becomes inevitable that the same Department officials consistently dealing with the same Senior Garda Officers across all of these tasks leads to a mutual dependence and blurring of roles. People end up in the trenches together.

As a result, improvements that the Department sponsors in the longer-term projects of structural and efficiency improvements in the Gardaí, although noticeably expedited since the Toland Report, have typically been incremental, reactive and slow. This is exacerbated by the absence of a comprehensive, research-led policy vision in the Department of how the Garda service should be organised, resourced, governed and equipped for a 21<sup>st</sup> century Ireland.<sup>16</sup>

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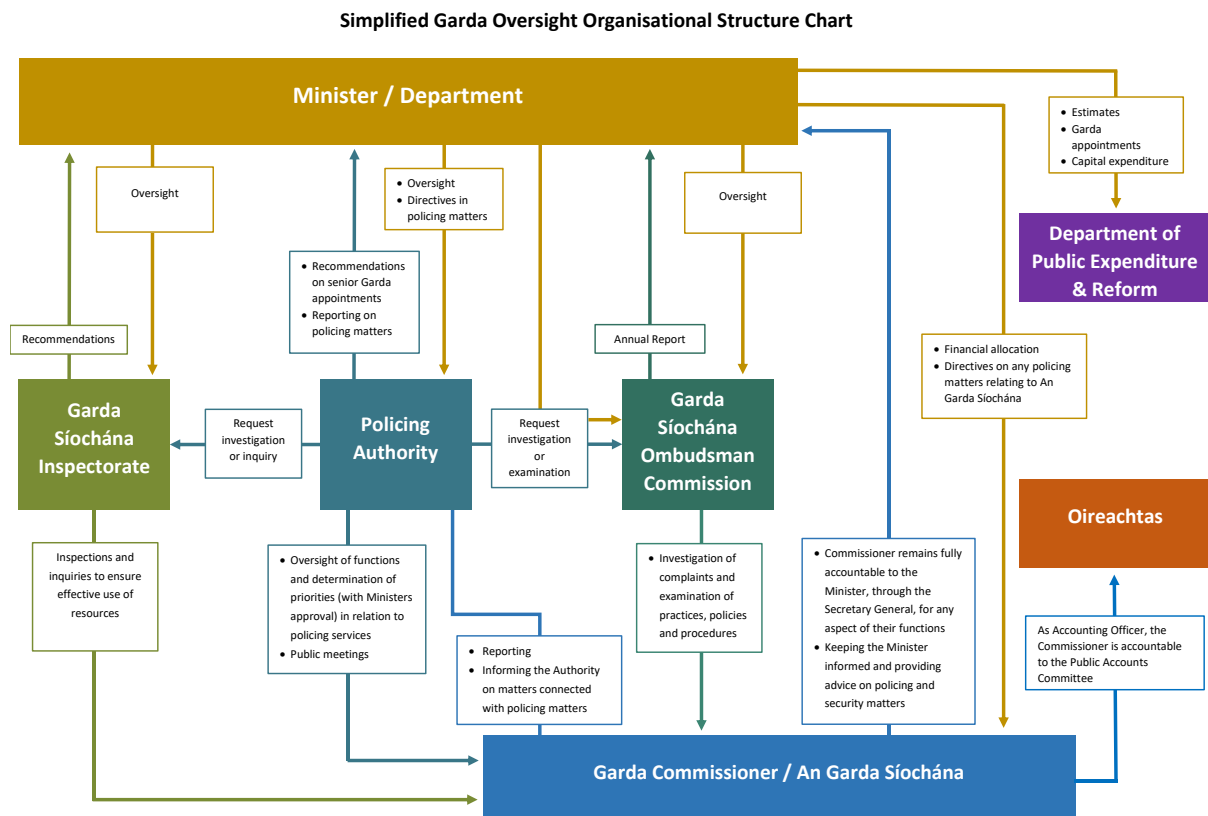
<sup>14</sup> See Figure B on page 12 [Department Organisation Chart]

<sup>15</sup> For example, the regulatory-like relationship required for robust governance and oversight is very different from the close teamwork required for crisis management.

<sup>16</sup> The content of such a policy is now being prepared by the Commission on the Future of Policing in Ireland, Chaired by Kathleen O'Toole, which was established by the Government in May 2017.

It is also reflected in the current governance model of the Gardaí which was developed reactively and rapidly in response to various crises<sup>17</sup> and which has created what appears to be a splintered system in which, despite very good work being done by many, there is little clear accountability, allocation of responsibility, or obvious efficiencies. This is illustrated in Figure I.

Figure I



It is as if the system has naturally evolved to ensure that the buck stops nowhere. This is the antithesis of the Department’s objective, as it can lead to Ministers, Secretaries General, and Garda Commissioners having to resign, step-aside or retire, even for issues not of their own making, simply because accountability cannot be found elsewhere.

This environment has, over many years, led to a situation in which actual and perceived problems in policing and its governance not only have been happening at an increasing pace but, very importantly, the *contagion* of those problems on the stability of the system has

<sup>17</sup> The Garda Inspectorate and the Garda Síochána Ombudsman Commission were established by the Garda Síochána Act 2005 in response to the subject matter at issue in the Morris Tribunal 2002-08. The Policing Authority was established under the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015 in response to the Garda whistle-blower scandal which emerged in 2014.

amplified materially. We believe that these outcomes are not rooted in any lack of integrity of effort, expertise, operational response or commitment in the Department, but rather in a lack of a resilient and nimble organisational structure, which prioritises effectiveness and speed of output and clarity of function.

### **The role the Department should play**

Policing is an executive power of the State which, under the Constitution, is exercised “*by or on the authority of the Government*”.<sup>18</sup> The primary legislation that provides this authority to An Garda Síochána and defines its relationship with the Minister and the Department is the Garda Síochána Act 2005, as amended, (the “2005 Act”).

It is not intended to review in detail in this Report the current Garda governance infrastructure in respect of which the Minister exercises these powers, as this is a focus of the Commission on the Future of Policing in Ireland, chaired by Kathleen O’Toole, which is due to report in September 2018. We will review any recommendations that the Commission may make on the governance structures for the Gardaí and will report our views in December 2018 on how the Department may need to adjust further its own approach to governance of the Gardaí in light of any such recommendations.

For the present, our focus is on how the Department organises and equips itself to assist the Minister to undertake each of the tasks required of him or her in respect of the Gardaí. The importance of this analysis is highlighted by the perceptions of many stakeholders, including those of the Policing Authority, which has stated, in respect of the oversight and accountability architecture, that “*[t]he dynamic of the day-to-day relationship of the Department of Justice and Equality with An Garda Síochána means that the Department is critically conflicted.*”<sup>19</sup>

Although we do not agree that this assessment is necessarily correct, there is undoubtedly a pervasive lack of clarity in the allocation of responsibility and accountability for the Gardaí, not only within the Department itself but equally, as can be seen above in Figure I, in the governance infrastructure for the Gardaí on which the Department depends.

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<sup>18</sup> Article 28.2 of the Constitution of Ireland.

<sup>19</sup> Submission of the Policing Authority to the Commission on the Future of Policing in Ireland, January 2018, Page 7.

The question we therefore need to ask and address is what role *should* the Department play in its relationship with the Gardaí and how does it equip itself to do so?

The answer to this question starts with the responsibilities of the Minister, on whose behalf the Department acts. In accordance with the Constitution, the Minister has an overarching responsibility for democratic accountability to the Oireachtas in respect of policing and security and this is informed in a practical manner by the expectations of the Dáil and of the electorate. This breaks down into three primary and distinct components:

- 1) transparent and timely communication of information required in the public interest;<sup>20</sup>
- 2) structural oversight and direction of the Gardaí and the agencies that assist in its oversight; and
- 3) development of policy required for the present and future policing and security of the State.<sup>21</sup>

We will now address each of these obligations in turn.

### **1) Transparency & Communication**

A primary responsibility of any Minister is transparency and the timely communication, to the Dáil and the public, of information required in the public interest. In the Department of Justice and Equality where the societal rights and personal safety of every individual across society are at the core of that responsibility, this is a colossal task.<sup>22</sup> In the changed media and political environment in which we now live, and in which there can be rushes to immediate public judgement, sometimes based simply on allegation but that can result in irreversible swings in popular opinion, it can become a nearly overwhelming one.

Against this backdrop, agile, accurate and comprehensive information flow from the Gardaí to the Minister is of critical importance in enabling the Minister to do his or her job effectively. Although this information flow has improved materially since the Toland Report, particularly in early warning of significant operational developments, it still lacks structure and can be unreliable and slow.

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<sup>20</sup> This derives from the responsibility of Government to Dáil Éireann under Article 28.4 of the Constitution of Ireland.

<sup>21</sup> Section 20 of the Garda Síochána Act 2005, as amended.

<sup>22</sup> The Department each week deals with an average of 123 PQ's, 600 representations, 30 press queries, 27 Leaders Questions notes, and 15 FOIs.

It is evident that this is an area in which the Department has struggled for some time. Although the Garda Commissioner has always had an obligation to report to the Minister<sup>23</sup> it was felt necessary to underpin this obligation more particularly in the 2005 Act. Under this Act, the Commissioner has a statutory obligation to advise the Minister on policing and security matters<sup>24</sup> and also to keep the Minister and the Secretary General fully informed of relevant information.<sup>25</sup> It is worth quoting this obligation in full:

*41.— (1) The Garda Commissioner shall keep the Minister and the Secretary General of the Department of Justice, Equality and Law Reform fully informed of the following:*

*(a) matters relating to significant developments concerning—*

*(i) the preservation of peace and public order in the State,*

*(ii) the protection of life and property in the State, and*

*(iii) the protection of the security of the State;*

*(b) significant developments that might reasonably be expected to affect adversely public confidence in the Garda Síochána;*

*(c) matters relevant to the accountability of the Government to the Houses of the Oireachtas;*

*(d) any other matters that, in the Commissioner's opinion, should be brought to the Minister's attention.<sup>26</sup>*

This is a clear statement of the information the Minister needs in order to fulfil his or her duty of transparency. However, notwithstanding the clarity and statutory basis of this obligation, the reliability of information flow and communications between the Department and the Gardaí remains a core concern.

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<sup>23</sup> Section 2 of the Garda Síochána Act 1924.

<sup>24</sup> Section 26(c) of the 2005 Act.

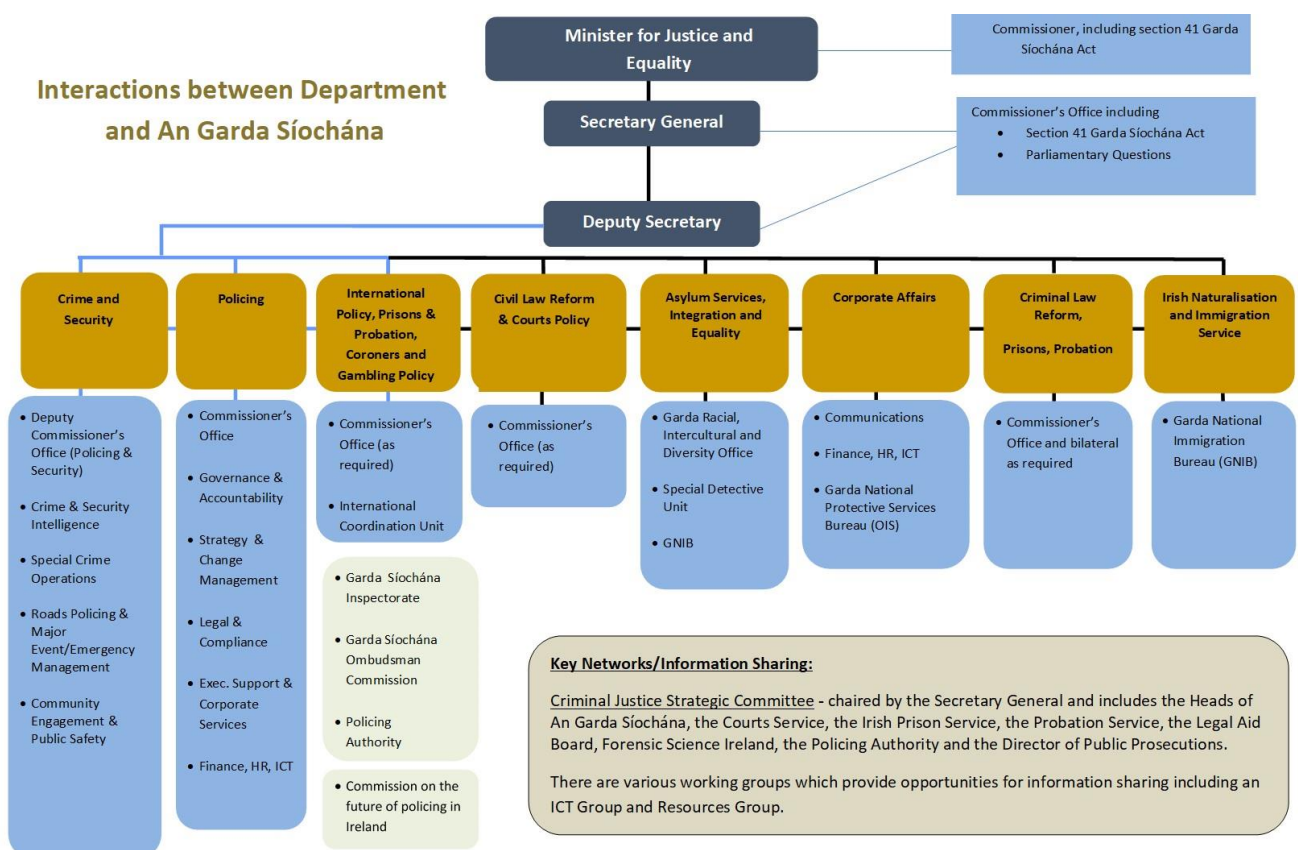
<sup>25</sup> Section 41(1) of the 2005 Act.

<sup>26</sup> In addition, the Commissioner has a duty to report on any matters which the Minister may specify and an obligation to provide, on request by the Secretary General, any document in the power or control of An Garda Síochána.

This problem has most recently been sought to be addressed in the introduction of a new Communications Protocol, dated 26 April 2018, between the Department and the Gardaí.<sup>27</sup> This Protocol seeks to introduce greater clarity and written processes into the communications relationship with the Gardaí and reflects an increasing focus by the Department on how essential it is to ensure the reliability and timeliness of information flow from the Gardaí to the Department.

In our view, this Protocol represents an initial step only. The complexity alone of subject matter experts across the Department attempting to marshal a myriad of disconnected information flows with their counterparts across the Gardaí, with no one dedicated to managing those information flows cohesively, is a guarantee in itself that gaps will arise. It also inevitably leads to duplication and inefficiency. This is clear from the innumerable different communication channels currently in place, which is illustrated in Figure J.

**Figure J. Interactions between the Department and An Garda Síochána**



<sup>27</sup> In addition, under Section 40(2) of the 2005 Act the Commissioner has a duty to report on any matters which the Minister may specify and an obligation to provide, on request by the Secretary General, any document in the power or control of An Garda Síochána.

This information flow structure has built up over many years and it is doubtful that it was ever objectively designed as a whole. Where in this structure is the dedicated responsibility for ensuring all of the information required in the public interest for democratic accountability is cohesively collected, collated and communicated, either in the Department or the Gardaí?

For the Department to meet the increased information demands of the new environment in which it now operates, this core problem needs to be solved. This requires building a function in the Department that is responsible for all information and communications flows relating to the Gardaí on a dedicated basis, with the bandwidth and specialist skills to fulfil that role. This function would make clear to the Gardaí, on a daily basis, the information it needs, and have the internal resources and expertise to absorb, understand and use that information effectively in a joined-up manner.<sup>28</sup> This function forms part of the Transparency Unit we describe in some detail in Part I.

The Transparency function, as applied to the Gardaí, requires a separate Governance function to support it to interface with the governance structure of the Gardaí, which currently comprises primarily of the Policing Authority and the Garda Commissioner. This Governance function operates very differently and ensures in a formal and structured manner that the information and organisational structures required in the Gardaí, to fulfil the requirements of Section 41 of the 2005 Act, as well as all other information obligations, are planned, designed and implemented.

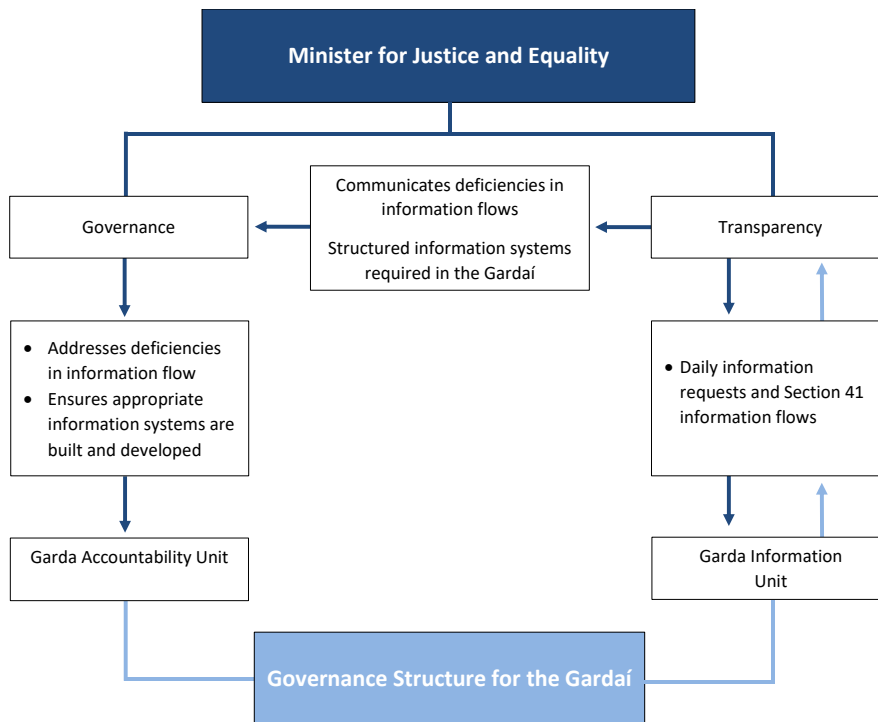
This Governance function and its personnel need to be fully distinct from the Transparency function so that the work of the latter does not detract from the ability of the Department to mandatorily ensure that its long-term vision for the Gardaí is realised. This is part of the Governance function we describe in some detail in Part I.

Figure K provides an indication of how this structure would look.

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<sup>28</sup> We observe that the Gardaí would need an equivalent function and clear responsibilities below Commissioner level for all information flows, for this structure to work properly.

**Figure K: Proposed communication flows between the Department and An Garda Síochana**



This provides a clearly defined and dedicated channel in which all material, factual information and data is provided by the Gardaí to the Department. However, this does not mean that there should not be a range of additional regular contacts between the Department and the Gardaí. For example, the Garda Commissioner will continue to need to speak to the Secretary General of the Department or the Deputy Secretary General for Home Affairs on matters of particular importance, the Operations Unit of the Department will need to speak to relevant Gardaí in managing a crisis, and the Gardaí will need to work with the Governance Unit in respect of budgeting. We recommend that these channels are reviewed and rationalised in a manner consistent with the new organisational structures described in Part I.

But all of these connections should be based on the core information provided by the Gardaí through the Transparency channel. This ensures that information is sought and communicated consistently, in a manner that avoids duplication or gaps, and where the responsibility for that information is clear.

The exception to this is in matters of operationally sensitive national security in which there should be a direct channel from the Garda Commissioner to the Secretary General of the Department or the Deputy Secretary General for Home Affairs.



## 2) Structural Governance, Budget and Direction

In order to fulfil his or her constitutional duty of democratic accountability and governance in respect of the Gardaí, the Minister must be able to direct the Gardaí and ensure that they are accountable. While the governance structures between the Department and the Gardaí are there to assist the Department in these tasks, the Minister retains final responsibility for them. It is a core part of the Governance function we describe in some detail in Part I to assist the Minister in doing this, not just in respect of the Gardaí themselves, but also in respect of the governance of the other agencies under the Department's remit.

To achieve this, the Governance Unit proposed as part of the Functional Model needs to have a clear, policy-defined and Ministerially-driven picture of what is structurally required of the Gardaí in any given timeframe. This is informed strongly by the views of the Garda Commissioner and the Policy Unit. Its job is then to direct and enable the entire governance framework to this end, as well as to monitor its progress and enforce when that is required. We do not at this stage wish to be more prescriptive about how it should do this in practice as that would pre-empt the deliberations of the Commission on the Future of Policing in Ireland in respect of governance structures for the Gardaí.

However, it is already clear to us that no matter what governance structure for the Gardaí is finally put in place below the Department, the Department will not be equipped to improve its oversight of the Gardaí without the basic tool of a detailed budgetary process.

*The Department's Governance of the Gardaí is missing the core mechanism of a budget.*

In common with many other agencies of the State, there is no detailed annual or multi-annual budget in place to guide the relationship between the Department and the Gardaí. The Vote pursuant to which the Gardaí are financed<sup>29</sup> assigns all expenditure, this year over €1.5 billion, to a single programme – 'Working with Communities to Protect and Serve'. This in itself provides no insight into how the voted resources are to be deployed and no basis for testing how they are used.<sup>30</sup>

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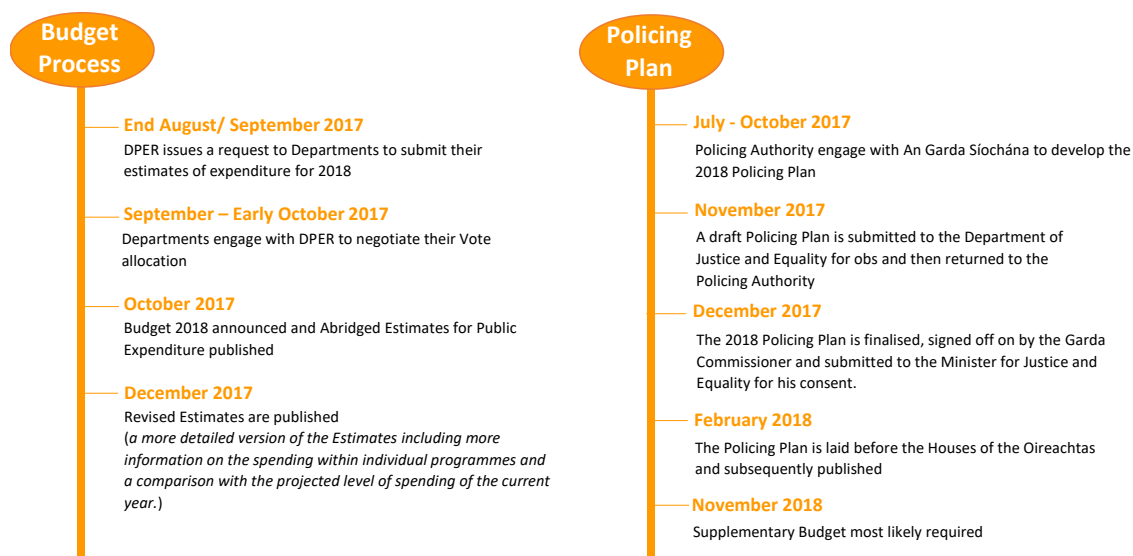
<sup>29</sup> Although separate Votes are presented and reported for the Department and the Gardaí, in practice discussions on the detail of the Estimates are conducted directly between the Department and the Department of Public Expenditure and Reform, which results in an aggregate Justice Group of Votes. In addition to the Garda Vote, there are separate votes for the Department, the Prison Service, the Courts Service, the Policing Authority and the Irish Human Rights and Equality Service.

<sup>30</sup> The Garda Síochána Inspectorate's 'Changing Policing in Ireland' Report (2015) contains a useful examination of the budgetary and financial management structure both within the Gardaí and its interaction with the

This allocated amount is usually required to be supplemented later in the year, to varying levels. In many such years the necessity of this is evident from the beginning as the original Vote is insufficient to cover pay, benefits and pensions of existing or committed Gardaí for the year. This reduces, in a fundamental way, the statutory accountability of the Garda Commissioner as it removes any structural discipline on him or her to manage resources in a 12-month framework to a fixed budget. As a result the pattern repeats in the following year.

In a separate process, the Garda Commissioner produces an annual Policing Plan for consideration by the Policing Authority and the Minister. This plan is a high-level and un-costed statement of how the resources available to the Commissioner will be deployed to achieve the primary objectives of the Gardaí for the year. This is prepared by reference to the three-year Strategic Plans of the Gardaí and is not reconciled with the Vote for the year. It is not clear that the delivery, or not, of the objectives identified in the Policing Plan is thoroughly tested or has any material relationship with the level of funding provided to the Gardaí in the following year. Taking the 2017 process as an example, the 2018 Policing Plan was published in February 2018. Figure L illustrates the process.

**Figure L: Timeline of 2018 Budgetary Process and 2018 Policing Plan**



Department of Justice & Equality and the Department of Public Expenditure & Reform, including the challenges to long term strategic planning associated with annual rather than multi-annual financial planning and associated recommendations.

The absence of a detailed budget process in the Gardaí is usually explained by reference to the fact that Garda pay, pensions and benefits consume the vast bulk of spending. This is driven primarily by the numbers of Gardaí, a matter usually dictated directly by the political process and Garda terms and conditions, which are negotiated directly between the Garda Representative Association and the Department. This being the case, some would say, there is little need or use for a costed budget.

We disagree. A detailed budget is perhaps the most fundamental governance tool for any organisation and its absence is a fundamental weakness in the Department's governance of the Gardaí. An annual budget (optimally in a multi-annual framework) agreed by the Department of Public Expenditure & Reform and Department with the Policing Authority and Garda Commissioner prior to the beginning of a calendar year would provide:

- a structured negotiated process within which to make choices as to priorities for the year, negotiated and agreed in one clear package with the policy input of the Department, the operational input of the Gardaí, and the structural input of the Policing Authority;
- a basis for clear accountability in the allocation and use of resources in that period;
- a mechanism for transparent measurement of performance.

As the personnel numbers and remuneration of the Gardaí are not always within his or her control and these account for the bulk of spend, the Garda Commissioner, although the Accounting Officer for the Gardaí,<sup>31</sup> currently has uneven input into how the financial resources provided to the Gardaí are orientated and therefore unclear accountability. For example, he or she is not always free to rebalance spend in a significant manner away from new personnel and into technology, even if this would, in his or her opinion, provide the best operational outcome.

A well-designed budget process would ensure the Garda Commissioner had to commit in advance how to optimally deploy allocated resources to achieve the desired policing outcomes, just like any chief executive would and should. With this responsibility would

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<sup>31</sup> The Garda Commissioner, as Accounting Officer for the Vote, is responsible and accountable to the Dáil Public Accounts Committee for the regularity and propriety of all expenditure and for the efficiency and economy of the organisation. Without a budget, however, there is little to measure this against.

also come measurable accountability<sup>32</sup> for the Garda Commissioner in respect of the use of that resource.

Without the structure and transparency of this budgetary process, it is difficult to see how there can ever be clarity in precisely what the Department requires of the Gardaí or whether the Gardaí are delivering it.

### **3) Policy**

The final element required of the Minister for democratic accountability is the development of policy required for the present and future policing and security of the State. This vision is essential to informing every other decision, big and small, in respect of the Gardaí, from short to long timeframes. This vision needs to be research-led and based on changing crime and security threats, demographic development, technological advancement and an evolving rights-based society, as well as international experience and best practice.

Traditionally, this vision has tended to be boiled down to increases in the *numbers* of Gardaí, as that is a simple shortcut to communicating to the public a commitment to a safer society. This has been an attractive message for the political process over many years but these commitments have often been made without adequate analysis of whether those exact numbers are needed, how they would be deployed, trained or overseen, or what impact a large increase at a single time would have on the shape of An Garda Síochána as those numbers moved up the ranks.

The Department does not currently have an evidenced-based policy vision of how An Garda Síochána needs to evolve to meet the new challenges the country is facing. We expect that the Commission on the Future of Policing in Ireland will, in September, inform that vision to a great extent. However, in order to assist future Ministers to continually develop and iterate that vision, as well as to help add to the public's understanding of the issues involved, the Department should have a function dedicated to policy analysis and design. This is part of the Policy function we describe in more detail in Part I and is likely to work in tandem with other elements of the governance structure for the Gardaí.

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<sup>32</sup> For example, the issue of Garda overtime is one that the Department has struggled to regulate for some time. With a detailed budget, the Garda Commissioner would be responsible for managing overtime to budget on a whole-year basis and would be accountable on a basis not currently available.

It would be welcome if this moved the public's interest in due course from focus on the number of Gardaí to the overall financial resource, deployed between personnel, equipment, technology, and training that is more likely to provide the best operational outcomes.

## Next Steps

The Department needs to get to the end of this current cycle of change and move forward again with a renewed mandate, purpose and energy. This requires the restructuring we describe in this report to begin and proceed to conclusion quickly. Change of this scale requires momentum and clarity and an extended timeframe can undermine both materially.

Change is not easy, a sentiment raised by many in our meetings with the Department and stakeholders. Although few organisational change efforts tend to be complete failures, few tend to be entirely successful. Most transformational changes encounter problems: they take longer than expected, they cost a great deal in terms of managerial upheaval and low staff morale or they require more time commitment and skilled resources than expected. In order for change to be successful it will require concerted effort from all involved.

The first thing required is sponsorship at the most senior political and civil service levels as well as, crucially, the appointment of the new Secretary General and two Deputy Secretaries General to lead the process and take ownership of the reorganised operating model. The Group recognises that these appointments will take time, but believes strongly that, to the degree possible, they need to be expedited. While the appointments of the two Deputy Secretaries General will almost certainly follow that of the new Secretary General, optimally this should be co-ordinated so that the panel of candidates for the Deputy Secretary General positions is fully developed when the new Secretary General comes on board.

It is equally important that the other aspects of the project do not happen in a linear manner, where one step starts only when the previous one has finished. We believe that the following steps should be initiated as soon as possible, independently of the timeframe for the appointments:

1. Communicating

The change outlined in this paper will naturally generate a lot of questions and uncertainty both from staff in the Department and perhaps more broadly with other stakeholders. It is particularly important to the change process that this is embraced and addressed. Pending the appointments referred to above and shortly after the publication of this Report, the senior leadership of the Department and the Civil Service Management Board should undertake a programme to communicate and explain the changes and process and to answer proactively the questions which will arise.

The Group will assist in formulating this programme and participating in it as appropriate.

## 2. Procurement of External Change Management Specialists

The skill sets, expertise and level of resource required to support this level of structural change do not reside in the Department and cannot simply be transferred in from other areas of the public service. It will require the services of a specialised firm or firms from the private sector to provide significant levels of Project and Change Management resource.

This resource, which will need to be funded, will assist the Secretary General, the Management Board and both Executive Boards in designing the operating model and providing the management capacity required in building the new organisation. Crucially, the appointment of this resource will enable the transition from the Traditional Model to the Functional Model to proceed in parallel with the Department continuing to perform its ongoing roles for the Minister.

The procurement process for this firm or firms should begin as soon as possible, so that the resource is in place and ready to start once the appointments referred to above are made. The Group will assist in designing and guiding this process as necessary.

## 3. Definition of Governance Structure

The governance and team structure for the change management process is an essential part of the architecture of the reorganisation of the Department. In addition, significant levels of planning and training must be undertaken to ensure a smooth transition. This again is something the Group can assist to design and the work on it should commence promptly.

In accordance with our Terms of Reference, the Group will stay in place to oversee the changes required, working closely with the Department and all stakeholders. Following the appointments of the Secretary General and two Deputy Secretaries General we expect the work in the first phase to adopt a structured Change Management approach, the most important aspect of the preparation phase, which will include a Change Impact Analysis, a Risk Analysis and an Organisational Readiness Assessment. It will also include a diagnostic

of the types of resistance that, as is normal, will be encountered, as well as a plan to address that.

Finally, we await the report of the Commission on the Future of Policing in Ireland and will address its conclusions in our future reports as they affect the Department.

We will report further progress on 30 September 2018.



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## Appendix

The Group met with or interviewed a number of people for the purposes of this report including:

- Charlie Flanagan T.D., Minister for Justice and Equality
- David Stanton T.D., Minister of State at the Department of Justice and Equality
- Senator Michael McDowell, former Minister for Justice, Equality and Law Reform
- Frances Fitzgerald, T.D., former Minister for Justice and Equality
- Sarah Kavanagh, Special Advisor to the Minister for Justice & Equality
- Martin Fraser, Secretary General, Department of the Taoiseach
- Robert Watt, Secretary General, Department of Public Expenditure & Reform
- Management Board, Department of Justice and Equality
- Oonagh McPhillips, Secretary General [acting], Department of Justice and Equality
- Jimmy Martin, Assistant Secretary, Department of Justice and Equality
- Doncha O'Sullivan, Assistant Secretary, Department of Justice and Equality
- Conan McKenna, Assistant Secretary, Department of Justice and Equality
- Michael Donnellan, Director General, Irish Prison Service
- Michael Flahive, Assistant Secretary, Department of Justice and Equality
- Peter Mullan, Assistant Secretary, Department of Justice and Equality
- Michael Kirrane, Director General, Irish Naturalisation Immigration Service
- John O'Callaghan, Assistant Secretary, Department of Justice and Equality
- Carol Baxter, Assistant Secretary, Department of Justice and Equality
- Paddy Forsyth, Principal Officer, Department of Justice and Equality
- Martina Colville, Principal Officer, Department of Justice and Equality
- Yvonne Fury, Principal Officer, Department of Justice and Equality
- Richard Fallon, Principal Officer, Department of Justice and Equality
- Eileen Leahy, Principal Officer, Department of Justice and Equality
- Principal Officer Forum, Department of Justice and Equality
- Ken O'Leary, Former Deputy Secretary General of Department of Justice and Equality
- Con Haugh, External Chair, Audit Committee, Department of Justice and Equality
- Kathleen O'Toole, Chair of the Commission on the Future of Policing in Ireland
- Josephine Feehily, Chairperson, Policing Authority

- Det. Chief. Super. Patrick Clavin, Chief Bureau Officer, Criminal Assets Bureau
- Dónall Ó Cualáin, Garda Commissioner [acting], An Garda Síochána
- Alan Mulligan, Director of HR, An Garda Síochána
- Justice Mary Ellen Ring, Chairperson, Garda Síochána Ombudsman Commission
- Mark Toland, Chief Inspector, Garda Inspectorate
- Professor Mary Rogan, Chairperson, Implementation Oversight Group on Penal Policy
- Brendan Ryan, Chief Executive, Courts Service
- Seamus Woulfe, Attorney General
- Peter Finnegan, Clerk of the Dáil
- Jennifer Carroll MacNeill, Special advisor to Eoghan Murphy T.D., Minister for Housing, Planning & Local Government
- Colm Lavery, Programme Manager, Department of Housing, Planning & Local Government
- Justice for Magdalenes
- Michael Lynn S.C.