

**NEW ZEALAND LAW COMMISSION**  
**TE AKA MATUA O TE TURE**

***Report No 33***

**Annual Report 1995**

28 November 1995

Dear Minister

I have the honour to transmit to you the report of the Law Commission for the year ended 30 June 1995.

This report is prepared under section 17 of the Law Commission Act 1985 and section 44a of the Public Finance Act 1989.

Yours sincerely

K J Keith  
President

Hon Douglas Graham MP  
Minister of Justice  
Parliament House

WELLINGTON

## **Part A**

### **Report on the Year Ended 30 June 1995**

#### **THE LAW COMMISSION**

The Law Commission is an independent, publicly funded, central advisory body established by statute to undertake the systematic review, reform and development of the law of New Zealand.

#### *Purpose*

The purpose of the Law Commission is to help achieve law that is just, principled, and accessible, and that reflects the heritage and aspirations of the peoples of New Zealand. In developing its proposals, the Commission recognises the Treaty of Waitangi as the founding document of New Zealand, and takes account of community and international experience.

#### *Objectives*

The Commission's objectives are to improve:

- the substantive content of the law of New Zealand;
- the law making process;
- the administration of the law;
- methods of resolving disputes between one member of the public and another and between members of the public and the state.

#### *Outputs*

Under the output class: Policy Advice, the Commission does its work through:

- projects for the reform and development of particular aspects of the law;
- follow-up to its reports, primarily with a view to ensuring their implementation;
- advisory work, involving aspects of the law being reviewed by other public sector bodies (and proposals made as a result);
- contributing to the work of the Legislation Advisory Committee.

The Commission's recommendations affect many people. In this sense, the Commission's "customers" are:

- all members of the public, and organisations representing interested or affected sections of the public: they are the ultimate users of the law;
- members of the legal and other professions, and experts in a variety of fields: they contribute to and benefit from the Commission's work by helping it to identify issues and apply standards relevant to particular areas of the law and the law as a whole;
- members of the judiciary and others engaged in dispute resolution: in applying the statute law, as well as the common law and equity, they take account of policy issues and trends identified in the Commission's reports and other publications;
- government departments and other public sector organisations, the Minister of Justice and other Ministers, Cabinet, Parliamentary Select Committees and Parliament as a whole: they
  - consider the recommendations made in the Commission's reports, or Bills based on draft legislation recommended in the Commission's reports, and
  - draw on the Commission's reports and other advice and consider submissions from the Legislation Advisory Committee in reviewing other aspects of the law of New Zealand.

## **Projects**

Projects for the reform and development of the law form the greatest part of the Commission's work. Many address topics which are complex and broad-ranging. They involve thorough research and revision of the law, often over an extended period and with wide and open consultation with all affected interests.

Projects may be taken up either at the request of the Minister of Justice or Cabinet, or on the Commission's own initiative.

At the end of a project, the Commission reports to the Minister of Justice with its recommendations on changes to the law or its administration. Draft legislation will be included where necessary. The report is tabled in the House of Representatives, and then published.

A list of projects and their terms of reference appears at Appendix A.

### *Evidence Law Reform*

The codification of evidence law is a complex and very substantial exercise. Since beginning work on the project in 1990, the Commission has published six preliminary papers, on the following topics:

Principles for Reform (NZLC PP13)

Codification (NZLC PP14)

Hearsay (NZLC PP15)

Expert Evidence and Opinion Evidence (NZLC PP18)

Documentary Evidence and Judicial Notice (NZLC PP22)

Privilege (NZLC PP23)

Submissions on the two most recent papers, Documentary Evidence and Privilege, were received and analysed during the year. Further consultation took place with lawyers concerning the Commission's proposals on legal professional privilege.

Two further papers are in preparation: first, on the complex topic of evidence of character and credibility; and secondly, on the question of competence and the rules necessary to protect vulnerable witnesses when giving evidence in court.

A further evidence-related paper, on the privilege against self-incrimination, is to be published in the coming year as part of the Commission's criminal procedure project.

Many other aspects of the law of evidence are being addressed during the project by internal research, resulting in limited circulation of papers to selected practitioners, judges, academics and government agencies. These topics include the law of identification evidence, the application of the rules of evidence in tribunal proceedings, the rules for the questioning of witnesses in court, and waiver. Substantial progress was made in advancing research and writing on these aspects of the project. It proved difficult in some instances, however, to complete the formulation of policy.

The completion of the evidence project is a priority for the Commission. The objective is to finish work on the project, and produce a final report with a draft evidence code, during the 1997/98 year. The project promises to bring about substantial improvements in dispute resolution within the courts system, with consequent cost savings to litigants and taxpayers.

### *Review of Criminal Procedure*

The Commission's reference from the Minister of Justice on criminal procedure requires it to review "the whole of the law governing criminal procedure". The Commission has been working on the reference in stages.

A report was published in October 1994 on Police Questioning (NZLC R31), which proposed a three-pronged reform of the law:

- people suspected of criminal offences should be given timely advice of their rights, especially the right of silence and the right to legal assistance;
- the police should have express limited powers to detain and question suspects for a defined period, after they have arrested them for an imprisonable offence on the basis of their present powers of arrest;
- a new rule, the improperly obtained evidence rule, should replace the rules currently used by the courts to exclude evidence obtained unfairly or in breach of the New Zealand Bill of Rights Act 1990.

The proposed reforms aim to achieve greater accessibility and clarity of the law, stated in a coherent, principled set of legislative provisions.

As with the preliminary paper which preceded it (*Criminal Evidence: Police Questioning*, NZLC PP21), the report has generated widespread public debate and comment within the legal profession. Several opportunities arose for the Commission to clarify its proposals, and to respond to articles and letters commenting on the report.

A report dealing with the right of silence and confessions (which were also discussed in *Criminal Evidence: Police Questioning*) has yet to be published. Research on a related topic, the privilege against self-incrimination, was largely completed during the year and will result in a discussion paper in 1996.

The next stage of the Commission's review of criminal procedure encompasses the prosecution of offences and the alternatives to prosecution. Research on the prosecutions system, begun in the previous year, was completed at year's end, and the drafting of a discussion paper containing proposals for reform was well advanced. The discussion paper will address not only the question of who is responsible for making decisions to prosecute, and what accountability there should be for decisions pertaining to prosecutions, but also the question of what other input there should be into prosecution decisions and what alternatives to formal prosecution should be considered.

Alternatives to prosecution will be taken further in a discussion paper on diversion, for which preliminary research was completed during the year. The diversion project will consider the criteria for diversion, the forms diversion might take, diversion policies, and who should have power to issue directions or guidelines.

The Commission also intends to undertake a project looking at aspects of the jury system. Trial by jury is a subject of mounting public debate. Preliminary research has been aimed at identifying which aspects of the system require urgent examination.

In this and other aspects of its criminal procedure work, the Commission aims to co-operate with the several other government agencies with responsibilities in the criminal justice area. Such co-operation will be increasingly important as the new Ministry of Justice and the Department for Courts develop their roles.

### *Law of Succession*

Following extensive discussion and consultation in the first part of 1994, the Commission was able to define its objectives for the succession project and to make substantial progress in researching and developing policy options for reform.

The project has three main aspects:

- a review of the law relating to testamentary claims under the Family Protection Act 1955, the Matrimonial Property Act 1963, and the Law Reform (Testamentary Promises) Act 1949;
- the law of succession as it applies to Maori families;
- a review and consideration of necessary reforms to the law of wills and the law of intestacy.

Important issues of social and legal policy are raised by all three areas. The research phases of the project have resulted in 16 internal research papers and a further 10 papers developed for the project by external consultants.

In the coming year the project will publish a discussion paper on testamentary claims, following which the law of wills and the law of intestacy will be addressed.

Of special concern is the law of succession as it applies to Maori families. This is an area of intense interest to Maori, and laws affecting succession to Maori property should recognise that the fundamental principles of tikanga apply amongst Maori people. The Commission has engaged Professor Pat Hohepa and Dr David Williams as consultants to advise on this aspect of the project and will, in the coming year, be consulting with Maori at regional and national levels.

The Commission aims to have the succession project substantially completed in 1996.

### *Community Safety*

The Commission published its report *Community Safety: Mental Health and Criminal Justice Issues* (NZLC R30) in August 1994. It had earlier made submissions to the Social Services Select Committee on the Mental Health (Compulsory Assessment and Treatment) Amendment Bill, which had been introduced to Parliament shortly after the Commission's community safety reference was received from the Ministers of Justice and Health.

The publication of the Commission's report was followed by two seminars, held in Auckland and Wellington during September, and a further submission to the Select Committee in November 1994. The seminars in large part confirmed the direction taken by the Commission in its report: that a new detention regime for dangerous offenders, separate from the existing criminal justice and mental health systems, was not necessary and that, for this reason, the Amendment Bill ought not to proceed. The Commission reiterated, in its further submission to the Select Committee, its view that improvements in mental health services required appropriate resources, staffing, training, and implementation, rather than legislative change.

The Amendment Bill remained before the Select Committee at the end of the year under review.

#### *Women's Access to Justice: He Putanga Mo Nga Wahine Ki Te Tika*

From the concept outline which was developed in the first part of 1994, and following extensive preliminary consultation with women throughout New Zealand, the Women's Access to Justice project formally became part of the Commission's programme in May 1995.

The strategy of consulting extensively during the formative stages of the project was both innovative and remarkably successful. The consultations shaped the terms of reference and prioritised the areas for research. Many meetings were held, with high attendance and substantial interest from women of all backgrounds. Major themes emerging from the consultations were access to legal advice, the difficulty of accessing legal information, and the monocultural and male-dominated nature of the legal system.

The first stage of the project itself, following the adoption of its terms of reference, will involve further gathering of submissions and consultation with Maori and non-Maori women.

The Commission has appointed Mrs Hepora Young (Te Arawa, Waitangi Tribunal Member and historian) to lead Te Roopu Uho, a group appointed to assist the Commission to plan its consultation strategy with Maori. Members of the group are Ria Earp (Te Ohu Whakatupu, Ministry of Women's Affairs), Ripeka Evans (Te Mangai Paho), Charmaine Ross (Wellington Community Law Centre), Ina Edwardson (Maori

Women's Welfare League) and Philippa McDonald, a senior legal research officer at the Commission.

Extensive preliminary work has also been undertaken to give the project a multicultural dimension.

The Commission intends to report to the Minister of Justice by the end of 1997 with recommendations for:

- principles and processes to be followed by policy makers and lawmakers,
- specific law reforms, and
- educational and other non-legislative strategies

which will promote the just treatment of women by the legal system.

Joanne Morris (the Commissioner responsible for the project) is also a member of the Judicial Working Group on Gender Equity, chaired by the Chief Justice and Justice Silvia Cartwright. The Group intends to develop an education programme for judges to improve their understanding of gender issues. The Commission is assisting the Group with the first stage of its project, which involves the collation and research of New Zealand material.

#### *Apportionment of Civil Liability*

In 1992 the Commission published a discussion paper (NZLC PP19 – *Apportionment of Civil Liability*) which recommended the retention of joint and several liability for loss or damage caused by the acts or omissions of two or more persons.

This issue impacts substantially on the question of the liability of auditors and others for acts or omissions in their professional capacity. Reforms proposed in Australia have favoured a proportionate liability rule, and this has been the preference of professional bodies in New Zealand.

During the year, the Commission re-examined its 1992 proposals in light of the Australian developments, and with the benefit of an economic analysis of the proportionate liability rule. By year's end, it was engaged in further discussion with the New Zealand Society of Accountants and the New Zealand Law Society about the proposals.

The Commission does not at this stage intend to publish a formal report on this project because of the broader context in which it now sits. It is, however, keeping the Minister of Justice informed of the options for reform.



## *Official Information Act 1982*

The Commission was unable to bring its draft report on the Official Information Act to completion during the year, in part because of other priorities and also because of changes in the political environment in the lead-up to proportional representation. Those changes have particular implications for the Act's provisions on the disclosure of information relating to the policy process (one of the issues needing to be addressed under the Minister's reference).

## *Legislation*

The Commission has both a standing reference from the Minister of Justice and a statutory duty to advise on ways of making the law of New Zealand as understandable and accessible as is practicable. The attainment of this goal will result in significant long-term savings in costs for everyone concerned with making, administering or applying the law.

Work on developing a *Legislation Manual* was given priority this year. Substantial progress was made towards completion of the parts of the Manual dealing with the structure of legislation and matters of style. Other parts of the Manual, which will deal with the development of legislation and with matters relating to recurring policy and drafting questions, are also in preparation but will be published at a later stage.

The completion of the Manual was held up by a combination of insufficient resources in the Commission and delays in obtaining feedback on draft material circulated for comment. The first instalment should be published in the coming year.

## *International Obligations*

The focus of the international obligations project is to promote awareness of, and compliance with, New Zealand's international obligations, as well as to understand and, as appropriate, to promote the internationalisation of the law itself.

The Commission has been working on a guide to international law and the making and operation of New Zealand law, which includes reference to materials and sources of help to lawmakers in finding, interpreting, and understanding our international obligations. During the year, with the help of many government bodies whose work is affected by New Zealand's international obligations, progress was made to the point where a draft of the Guide was circulated to interested persons for comment. The final version will be published in the coming year.

A paper on the making, acceptance and implementation of treaties was also drafted and circulated to interested persons for comment.

The Commission continued its association with the Pacific Economic Co-operation Council (PECC) and had a large involvement in organising a conference on harmonising international law, in conjunction with PECC and other bodies. The conference was held in Auckland in July 1995.

### *Other projects*

The Commission currently has more projects on its programme than it has resources to devote to them. Regrettably, several projects of lower priority received little attention during the past year. The Commission intends a full review of its programme in the coming year as part of a wide-ranging strategic review (see “Future Outlook”, page 17).

### *A possible project*

A possible project referred to in last year’s Annual Report concerned the law permitting creditors to set aside fraudulent conveyances (at present contained in section 60 of the Property Law Act 1952). Comment received on a Commission paper outlining the advantages and disadvantages of reforming this area of the law led the Commission to decide not to undertake a project at this stage.

## **Follow-up**

Implementation of the proposals made by the Commission cannot ever be guaranteed. Follow-up activity, aimed at explaining, gathering support for, and influencing the implementation of, proposals is therefore an important and legitimate endeavour.

Most reports of the Law Commission recommend legislative change to one degree or another. Progress was made on implementing three Commission reports during the year:

The Sale of Goods (United Nations Convention) Act 1994, which brings the United Nations Convention on Contracts for the International Sale of Goods into New Zealand law (see NZLC R23, 1992), received the Royal assent. (The Act came into force by Order in Council on 1 October 1995.)

The Commission’s proposals for the reform of the law on arbitration (NZLC R20, 1991) were the subject of extensive ongoing activity. (This led to the introduction of the Arbitration Bill on 20 September 1995.)

The proposal that the aspects of the law on damages known as the rule in *Bain v Fothergill* and the rule in *Joyner v Weeks* be abolished (NZLC R19, 1991) was addressed by the Law Reform (Miscellaneous Provisions) Bill (No 3), introduced in September 1994. The provision abolishing the rule in *Bain v Fothergill* was enacted as the Property Law Amendment Act 1994. The rule in *Joyner v Weeks* was, however, reformulated by the Court of Appeal in *Maori Trustee v Rogross Farms Ltd* [1994] 3 NZLR 410, in a way which achieved the substance of the Commission's proposal. On the Commission's further recommendation, the legislative abolition of this rule did not proceed.

In the general sense, the Commission is disappointed at the slow rate at which its proposals are being introduced into the House as Bills. So far as it is aware, all but one of its reports have broad support and are not the subject of any political disagreement. The exception is the report on *Police Questioning*, NZLC R31.

Reports awaiting implementation are as follows:

*Limitation Defences in Civil Proceedings* (NZLC R6, 1988): one area of difficulty was addressed in the Building Act 1991, but problems which the Commission's proposals would have resolved continue to arise and to cause unnecessary litigation.

*A New Interpretation Act* (NZLC R17, 1990): enactment of this legislation would help to make the law more accessible; the justice policy issued by the National Party before the 1993 election included a new Acts Interpretation Act.

*Contract Statutes Review* (NZLC R25 1993): useful detailed improvements to the statutory aspects of the law of contract, which would be of benefit to the commercial sector.

*Aspects of Damages: The Award of Interest on Money Claims* (NZLC R28, 1994): a more efficient, clearer and principled set of rules which would contribute in a major way to the resolution of commercial disputes.

*A New Property Law Act* (NZLC R29, 1994): a substantial rewriting of law of great practical importance, to make it more accessible and wider in its coverage, and to modify unsatisfactory parts of it.

*Police Questioning* (NZLC R31, 1994): see the summary under the heading of "Review of Criminal Procedure", at page 4.

Furthermore, the Commission is aware that three other reports are the subject of current consideration. They are:

*A Personal Property Securities Act for New Zealand* (NZLC R8, 1989): by the Ministry of Commerce.

*Criminal Procedure: Part One – Disclosure and Committal* (NZLC R14, 1990): by the Criminal Practice Committee.

*The Format of Legislation* (NZLC R27, 1993): by a committee convened by Chief Parliamentary Counsel following a positive report by the Justice and Law Reform Select Committee (see 1994 Annual Report of the Commission, page 17) and at the

request of the Standing Orders Committee. The Committee met only twice during the year, on 3 and 21 November.

In all cases the Commission has undertaken extensive research and consulted widely. That consultation involves much time and effort volunteered by many able and willing people in the professions and in the wider community. The process confirms, in each case, that the proposals relate to areas of the law which are broadly considered to require reform. People who have responded in this way frequently express disappointment that the work to which they have contributed has not resulted in change.

Implementation of most of the reports listed above would be consistent with the Government's current strategic result areas for the public sector, in particular by reducing the costs and legal uncertainties of commercial activities, and making the law more accessible, and hence contributing to fair and efficient conduct of business.

## **Advisory work**

The Law Commission's advisory work now accounts for 15 percent of the direct output hours worked by Commissioners and researchers. (The other direct outputs are project work, follow-up, and work for the Legislation Advisory Committee.) Over the past year the work continued to grow in volume and variety.

Some of the advisory work is connected with work on current projects, or with work on which the Commission has expertise by reason of its earlier reports. In other cases, it reflects increasing awareness that the Commission is a source of objective advice based on a wide view of the law and its administration. Advice is frequently sought by Ministers, officials and public sector agencies on whether their proposals accord with general legal principle and mesh well with the law as a whole.

The Commission aims to provide high quality, timely and relevant advice on each matter it becomes involved in. It expects its work to contribute, in the broader sense, to good lawmaking, and to improve knowledge and understanding by officials about the importance of constitutional and public law principles in legislation.

Eighty-seven new requests for advice were received by the Commission during the year. Many, such as the Commission's participation in the review of the Department of Justice, involved substantial amounts of work. Twenty-five matters remained ongoing or incomplete by year's end. A list of examples of work undertaken appears at Appendix B.

## **Legislation Advisory Committee**

The Commission's contribution to the work of the Legislation Advisory Committee takes two forms: first, through Sir Kenneth Keith's participation as a member of the

Committee; and secondly, through research and secretarial resources made available to the Committee for the preparation of submissions on Bills.

The Commission also provides office space and facilities for the Chairperson of the Committee, Dr Mervyn Probine.

As with its advisory work, the Commission's objective in contributing to the Committee is to help ensure that each item of legislation introduced to the House gives effect to the policy of the legislation, consistent with general principle.

During the year under review, the Committee made submissions on 30 Bills: see Appendix C.

## **Te ao Maori**

The Commission has a statutory obligation, in making its recommendations, to take into account te ao Maori (the Maori dimension). In giving effect to this objective, the Commission recognises the Treaty of Waitangi as the founding document of New Zealand.

Last year, the Commission reported the establishment of a Maori Committee with terms of reference directed at advising the Commission on consultation with Maori, assisting it to identify law reform and development projects of interest or concern to Maori, and advising of the priority for projects and processes for their development.

The original members of the Committee were Bishop Manuhua Bennett, Judge Michael Brown, Professor Mason Durie, and Mrs Whetu Wereta. During the year, Chief Maori Land Court Judge Edward Durie and Mrs Hepora Young generously agreed to join as additional members.

The Committee acts as a conduit for the Commission's relationship with Maori. It does not purport to speak for Maori. Its advice on how the Commission should consult with Maori has been invaluable, and significant progress was made during the year in establishing structures and processes within Commission projects which will enable proper consultation to take place.

Te ao Maori is of particular importance to the Commission's current work on criminal procedure, succession and women's access to justice. The terms of reference of the projects on criminal procedure and women's access to justice both refer expressly to the Treaty of Waitangi (see Appendix A).

The Maori Committee also began to give active consideration to possible law reform and development projects which would be of particular interest or benefit to Maori. One such

possibility was a project to develop a continuing and contemporary jurisprudential framework of Maori custom law. The need was identified in terms of:

- enabling the proper application within the New Zealand justice system of Maori values and traditions and customs, and references to Maori terms in legislation (for example, in the Resource Management Act 1991), and
- providing a basis for further development of the law within a bicultural framework,

thereby increasing understanding of Maori concepts and values among members of the wider Maori and Pakeha communities.

With the support of the Commission, the Maori Committee decided to promote a research project encompassing these objectives. It was agreed that, because it would involve primary research rather than secondary or applied research, the work could not be undertaken as part of the Commission's programme. Other resources would be required, and these were the subject of ongoing consideration by the Committee by year's end.

Such a project, if it can be initiated, would be of substantial value to the development of New Zealand jurisprudence.

The Commission continues in its search for a bicultural framework for its own operations. Again with the Maori Committee's help, it has implemented internal policies directed at this need. Any measures will, however, be of limited value as long as the Commission continues to have no Maori members and only a small number of Maori staff.

These issues will receive a heavy emphasis in the Commission's strategic planning over the course of the coming year.

## **ISSUES OF SIGNIFICANCE**

### *Legislative Issues*

The Commission has serious concerns about the quality of some legislation. Much of the advice which it gives to departments and other agencies relates to the formulation of legislative proposals. The legislation itself is then observed at the select committee stage. Six issues recur.

First, *inadequate problem definition*. Framing the problem too narrowly or too broadly, or wrongly identifying it, results in policies and legislation which are inappropriate and ineffective.

Secondly, *an assumption that legislation is needed when it may not be*. This may be the result of inadequate and delayed legal advice.

Thirdly, *a failure of the legislation to give effect to the intended policy*. This is often a reflection of the first problem and the next.

Fourthly, *premature introduction of legislation*. This is a growing problem, in the Commission's view. It leaves large and complex issues to be grappled with by select committees. Resolving those issues takes time and resources which are more profitably used at the drafting and policy development stages. Underprepared legislation also compromises the public submissions process, especially when the need for further development is acknowledged at the time of its introduction.

Fifthly, *a failure to comply with accepted constitutional principle*. One example is the use of open-textured drafting. This could be a legitimate choice (for example, to leave the development of the law in certain areas to the courts), but there must as well be proper and comprehensive policy development before the legislation is introduced.

Sixthly, *a failure to draft law which is as understandable and accessible as possible*. Improvements can be observed, but much legislation could be written more plainly, with major advantages to those affected by it.

The Commission welcomes comment on how the quality of lawmaking processes might be improved. Its *Legislation Manual*, when published, should provide guidance in problem areas. Even in draft, the document is having a useful impact.

### *Unplanned Absences by Commissioners*

In July 1994, Sir Kenneth Keith and Justice Wallace were invited by the Minister of Justice to assist with the review of the Department of Justice: Sir Kenneth in relation to the Department's policy advice functions (now the responsibility of the Ministry of Justice) and Justice Wallace in relation to the review of court services (which resulted in the establishment of the Department for Courts). Their responsibilities were very time-consuming.

The President and members of the Commission have a range of other official duties. For example, Sir Kenneth Keith continued as a member and Vice-President of the International Humanitarian Fact-Finding Commission, which was established under the First Additional Protocol to the Geneva Conventions for the Protection of War Victims. Justice Wallace divided his time between the Law Commission and his duties as President of the Electoral Commission. He also continued as a member of the Courts Consultative Committee, creating a valuable link with the Law Commission. Joanne Morris sat on the Waitangi Tribunal and also (until 1994) as a member of the Broadcasting Standards Authority.

These types of activities are very beneficial to the Commission. At the same time, unscheduled and prolonged absences from the Commission are disruptive. Regular

Commissioner input is essential to enable projects to be managed efficiently, and Commissioner unavailability over long periods of time is both frustrating to research staff and a significant cause of delay.

### *Other activities*

Members and staff of the Commission participated during the year in many other activities which encouraged understanding of the law, its accessibility, and the resolution of disputes. Particular encouragement was given to the activities of the Law and Economics Association of New Zealand, of which Professor Richard Sutton became President in June 1995. Considerable effort was also devoted to the development of mediation as a method of resolving disputes, notably by means of a national seminar held in late 1994 which discussed the possibility of a national strategy on mediation.

## **Membership and staff of the Commission**

The membership of the Commission remained unchanged during the year under review.

In December 1994, Alison Quentin-Baxter QSO retired after eight years as the Commission's Director. As the first holder of that office, she made huge contributions to the methods, philosophy and spirit of the Commission. Alison Quentin-Baxter drew most generously on her high personal and professional qualities and wide and wise experience as a lawyer, especially in the public sector, in New Zealand, the Pacific and more widely. She moved on to further challenges (most immediately with the reviews of the New Zealand honours system and the Constitution of Fiji) with the best wishes of her friends and colleagues in the Commission.

The Commission's new Director, from February 1995, is Robert Buchanan, formerly Director of Legal Affairs at the New Zealand Law Society.

Four members of the research staff, Phil Shattky, Penelope Stevenson, Hamish Dempster and Sachin Zodgekar, left the Commission during the year. Two long-serving members of the administrative staff, Lynette Bridgeman (secretary) and Glenys Bunkall (receptionist) also left during the year, as did Rachael Brown, a part-time filing and library clerk.

The Commission acknowledges the distinctive contribution made by each of the departing staff members to its work.

A list of the current members and staff of the Commission appears at Appendix D.



## **Future outlook**

The Commission will face a number of major changes in its working environment in the coming years. These changes are in:

- the political context, resulting from the transition to MMP;
- the constitutional setting, and particularly the growing recognition of the significance of the Treaty of Waitangi;
- the legal and policy-making environment, especially resulting from the establishment of the Ministry of Justice;
- the economic, social, and cultural environment, and its effect on the Commission's work and processes;
- the technological environment, which is changing the face of legal research but even more the world in which the law must operate.

In May 1995 the Commission decided to embark on a comprehensive strategic review of its aims, objectives, work programme, and working methods. It engaged a consultant, Mr Miles Shephard of Shephard Associates Ltd, to advise and assist in the review. By year's end the preliminary stages of the process had been completed, and the Commission has the objective of completing a strategic business plan, together with a revised work programme, by October 1995.

## **Part B**

### **Finance**

The Law Commission is funded from money appropriated by Parliament.

For the year under review the Commission budgeted to operate at a deficit, funding the shortfall in income from its reserves. The Commission's deficit budgeting strategy is designed to enable it to achieve its planned long-term operating level. The Commission's reserves will be used in the coming year in a capital replacement programme and to meet part of its operating deficit. An increase in the annual appropriation may be necessary to enable the Commission to sustain its strategic operating goals.

In the 1994/95 year the Commission budgeted for operating expenditure of \$3 725 034 of which \$3 019 560 was to be provided by way of appropriation and \$705 474 from other income and reserves.

The Commission's actual operating expenditure was \$3 349 214 of which \$3 019 566 was by way of appropriation and \$329 658 from other income and reserves.

The financial statements for the year ended 30 June 1995 follow.

## FINANCIAL STATEMENTS

### STATEMENT OF RESPONSIBILITY

We acknowledge responsibility for the preparation of these financial statements and for the judgments used herein.

We acknowledge responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of the Commission's financial reporting.

In our opinion these annual financial statements fairly reflect the financial position and operations of the Law Commission for the year ended 30 June 1995.

K J Keith	J E Lett
President	Finance Manager

### STATEMENT OF FINANCIAL PERFORMANCE FOR THE YEAR ENDED 30 JUNE 1995

Budget \$	Note	1995 \$	1994 \$
	INCOME		
3 019 560	Government grant	3 019 556	2 817 778
105 000	Interest received	218 852	152 334
9 000	Sale of publications	17 437	12 048
–	Miscellaneous	1 433	–
<b>3 133 560</b>	<b>Total income</b>	<b>3 257 278</b>	<b>2 982 160</b>

	EXPENDITURE		
1 968 554	Personnel	1 944 024	1 655 866
147 000	Research and consultation	130 133	164 684
160 000	Publications	51 748	121 913
130 000	Travel	110 587	120 097
189 000	Library	154 934	139 433
525 960	Rent and rates	498 597	505 186
8 400	Audit fees	7 000	7 000
153 120	Depreciation	146 410	143 839
283 000	Services and supplies	248 727	227 278
160 000	Professional services	57 054	120 577
<b>3 725 034</b>	<b>Total Expenditure</b>	<b>3 349 214</b>	<b>3 205 873</b>
<b>(591 474)</b>	<b>Deficit for year</b>	<b>(91 936)</b>	<b>(223 713)</b>
		3/4	

**STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 1995**

<b>Budget</b>		<b>Note</b>	<b>1995</b>	<b>1994</b>
<b>\$</b>			<b>\$</b>	<b>\$</b>
	CURRENT ASSETS			
10 516	Bank of New Zealand		8 134	3 580
150 000	Call deposits		125 000	100 000
1 675 000	Short-term deposits	1	2 200 000	2 275 000
1 000	Accounts receivable		1 583	4 407
23 253	Prepayments		30 621	18 846
40 000	Interest receivable		41 342	42 134
15 000	Goods and services tax		10 899	16 438
1 914 769			2 417 579	2 460 405

277 762	FIXED ASSETS	2	257 888	380 882
<b>2 192 531</b>	<b>TOTAL ASSETS</b>		<b>2 675 467</b>	<b>2 841 287</b>
	CURRENT LIABILITIES			
210 000	Accounts payable and accruals		193 398	267 282
210 000	TOTAL LIABILITIES		193 398	267 282
1 982 531	ACCUMULATED FUNDS	3	2 482 069	2 574 005
<b>2 192 531</b>	<b>TOTAL FUNDS EMPLOYED</b>		<b>2 675 467</b>	<b>2 841 287</b>

**STATEMENT OF CASH FLOWS FOR THE YEAR ENDED 30 JUNE 1995**

<b>Budget</b>		<b>Note</b>	<b>1995</b>	<b>1994</b>
<b>\$</b>			<b>\$</b>	<b>\$</b>
	CASH FLOWS FROM OPERATING ACTIVITIES			
	Cash was provided from:			
3 019 560	Government grant		3 019 556	2 817 778
12 407	Receipts from customers		20 269	12 460
107 134	Interest		219 644	135 448
3 139 101			3 259 469	2 965 686
	Cash was disbursed to:			
3 632 165	Suppliers and employees		3 282 931	3 008 812
<b>(493 064)</b>	<b>Net cash used in operating activities</b>	<b>4</b>	<b>(23 462)</b>	<b>(43 126)</b>
	CASH FLOWS FROM INVESTING ACTIVITIES			
	Cash was provided from:			
600 000	Investments		75 000	60 000
–	Proceeds from sale of fixed assets		1 433	–
600 000			76 433	60 000
	Cash was applied to:			
50 000	Purchase of fixed assets		23 417	23 992
50 000			23 417	23 992
<b>550 000</b>	<b>Net cash from investing activities</b>		<b>53 016</b>	<b>36 008</b>
56 936	Net increase (decrease) in cash held		29 554	(7 118)
103 580	Add opening cash balance		103 580	110 698
<b>160 516</b>	<b>Closing cash balance carried forward</b>		<b>133 134</b>	<b>103 580</b>
	Represented by:			

10 516	BNZ Current Account	8 134	3 580
150 000	BNZ Call Account	125 000	100 000
<b>160 516</b>		<b>133 134</b>	<b>103 580</b>

## STATEMENT OF ACCOUNTING POLICIES

### 1 Reporting entity

The financial statements presented here for the reporting entity, the Law Commission, are prepared pursuant to section 17 of the Law Commission Act 1985 and section 41(1) of the Public Finance Act 1989.

### 2 Measurement system

The accounting principles recognised as appropriate for the measurement and reporting of results and financial position on an historical cost basis have been applied.

### 3 Accounting policies

- Investments are valued at cost.
- The foundation library is valued at cost and is not depreciated. Purchases are charged to the foundation library where these purchases represent sets of publications and the initial purchase is of previously issued volumes. Current volumes are charged to library acquisitions.
- Other fixed assets are stated at cost less accumulated depreciation. Depreciation has been calculated using the straight line method at a rate of 20%.
- GST is accounted for by the net method.
- All financial instruments are recognised in the Statement of Financial Position.

### 4 Changes in accounting policies

There have been no changes in accounting policies. All policies have been applied on bases consistent with those used in previous years. Comparative figures have been restated where necessary to conform to the current year presentation.

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 1995

<b>1 Short term investments</b>
---------------------------------

<b>Maturity</b>	<b>1995</b> <b>\$</b>	<b>1994</b> <b>\$</b>
One month	950 000	1 775 000
Two months	500 000	–
Three months	750 000	–
Four months	–	500 000
	<b>2 200 000</b>	<b>2 275 000</b>

Interest rates for deposits maturing in one month range from 9.20% to 9.55%. Interest rates for deposits maturing in two and three months are 9.00% and 9.05% respectively. The fair value of financial instruments is equivalent to the carrying amount disclosed in the Statement of Financial Position.

<b>2 Fixed assets</b>			
	<b>1995</b>		
	<b>Cost</b> <b>\$</b>	<b>Accumulated</b> <b>Depreciation</b> <b>\$</b>	<b>Book</b> <b>Value</b> <b>\$</b>
Computer equipment	393 918	348 506	45 412
Foundation library	185 643	–	185 643
Furniture and fittings	939 591	922 630	16 961
Office equipment	76 114	66 242	9 872
	<b>1 595 266</b>	<b>1 337 378</b>	<b>257 888</b>
	<b>1994</b>		
	<b>Cost</b> <b>\$</b>	<b>Accumulated</b> <b>depreciation</b> <b>\$</b>	<b>Book</b> <b>value</b> <b>\$</b>
Computer equipment	384 458	268 575	115 883
Foundation library	185 643	–	185 643
Furniture and fittings	935 824	867 131	68 693
Office equipment	69 425	58 762	10 663
	<b>1 575 350</b>	<b>1 194 468</b>	<b>380 882</b>

<b>3 Accumulated funds</b>		
	<b>1995</b> <b>\$</b>	<b>1994</b> <b>\$</b>
Balance at 1/7/94	2 574 005	2 797 718

Excess expenditure over income	(91 936)	(223 713)
Balance at 30/6/95	<b>2 482 069</b>	<b>2 574 005</b>

<b>4 Reconciliation of statement of financial performance to statement of cash flows</b>			
		<b>1995</b>	<b>1994</b>
		<b>\$</b>	<b>\$</b>
Excess income over expenditure		(91 936)	(223 713)
Profit sale of assets	(1 433)		
Depreciation	146 410	144 977	143 839
		<b>53 041</b>	<b>(79 874)</b>
Movements in working capital			
Decrease in accounts receivable	2 824		18 351
Increase in prepayments	(11 775)		(1 552)
Decrease in interest receivable	792		(16 887)
Decrease in GST	5 539		(8 193)
Decrease in accounts payable	(73 883)	(76 503)	45 029
Net cash flow used in operating activities		<b>(23 462)</b>	<b>(42 946)</b>

<b>5 Commitments</b>		
Non-cancellable operating leases for rental of accommodation and office equipment.		
	<b>1995</b>	<b>1994</b>
	<b>\$</b>	<b>\$</b>
One to two years	1 066 108	994 514
Two to five years	524 271	994 514
Beyond five years	–	–
	<b>1 590 379</b>	<b>1 989 028</b>

#### **6 Contingencies**

There were no material contingent liabilities as at balance date (1994 \$nil).

## **STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 1995**

**Output class: Policy advice**

Estimated Expenditure: (excluding GST)	\$3 725 034	Actual Expenditure: (excluding GST)	\$3 349 214
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<b>Statement of objectives for 1994/95</b>	<b>Performance measures</b>	<b>Outputs produced</b>
The Law Commission's objectives are:		
<b>Projects</b>	<b>Projects</b>	<b>Projects</b>
To carry through their various stages towards final report the projects for the reform and development of particular areas of law which have been included in the Commission's programme.	<p><i>Quantity</i></p> <p>The number of projects included in the Commission's programme is to be as determined by the Commission, taking account of section 7 of the Law Commission Act 1985.</p> <p>The number of publications to be produced, or amount of other work to be done, within each project, is to be as set out in project plans approved by the Commission.</p>	<p><i>Quantity</i></p> <p>The projects on the Commission's programme during the period were</p> <p>(a) those included in the programme as at 30 June 1994 (listed in the Commission's report for the year ended 30 June 1994);</p> <p>(b) a project on Women's Access to Justice added to the programme in May 1995 following extensive preliminary activity which began in September 1994.</p> <p>The publications produced or other work done in the period 1 July 1994 to 30 June 1995 (including the preliminary activity on Women's Access to Justice) were as set out in project plans approved by the Commission. During the period the Commission approved modifications to some plans to take account of changed priorities or developments within the project itself.</p> <p>See narrative account, pages 2 to 10, for description of all work done.</p>
	<p><i>Quality</i></p> <p>The Commission's project work is to be of the standard set by the Commission, as assured by its</p>	<p><i>Quality</i></p> <p>All the Commission's project work (including the preliminary activity on Women's Access to Justice) was performed</p>



	internal processes and external review. <sup>1</sup>	to the standard set by the Commission, as assured by its internal processes and external review. <sup>1</sup>
	<i>Time</i> The time for the production of project work is to be as set out in approved project plans.	<i>Time</i> The time taken for the production of project work (including the preliminary activity on Women's Access to Justice) was as set out in approved project plans, with such modifications as the Commission approved to take account of changed priorities or developments within the project itself.
	<i>Cost</i> The cost of project work is to be within the approved project budget.	<i>Cost</i> The Commission set individual project budgets for all work to be done (including the preliminary activity on Women's Access to Justice) in the period 1 July 1994 to 30 June 1995 (or beyond if the budgeted phase of the project was to extend beyond the end of the financial year). Time and other expenditure was recorded against the project budget, and the Commission received regular (monthly) reports of actual time and cost against the project budget. The Commission's expenditure on its projects as a whole was \$2,532,496. <sup>2</sup>
<b>Follow-up</b>		
To follow up all final reports by <ul style="list-style-type: none"> <li>taking part in discussions with interested individuals and groups, privately and in public forums, on the meaning and effect of the Commission's recommendations,</li> <li>discussing with relevant Ministers and their Departments the</li> </ul>	<i>Quantity</i> Follow-up is to <ul style="list-style-type: none"> <li>be discussed at the regular policy meetings between the Law Commission and the Department of Justice;</li> <li>be discussed with the Minister of Justice, other Ministers or departments and parliamentary select committees as requested, or on the Commission's initiative where appropriate;</li> </ul>	<i>Quantity</i> Follow-up included <ul style="list-style-type: none"> <li>regular discussions and correspondence with the Minister of Justice, the Leader of the Opposition, the Leader of the House, and the Department of Justice about the inclusion in the Government's legislative programme of draft Acts recommended by the Law Commission;</li> <li>submissions to the Social Services Select Committee in connection with the Commission's recommendations on <i>Community Safety: Mental Health and Criminal Justice Issues</i> (NZLC R30).</li> </ul>

<p>nature and the timing of the steps necessary to implement the Commission's recommendations, and participating in appropriate ways in the preparation of legislation implementing the Commission's recommendations and in the parliamentary processes leading to its enactment.</p>	<ul style="list-style-type: none"> <li>involve participation in, or the convening of, seminars and conferences as appropriate and as opportunity offers.<sup>2</sup></li> </ul>	<p>See narrative account, pages 10 to 12, for description of all work done.</p>
	<p><i>Quality</i></p> <p>To the Commission's standards, as assured by its internal processes and external review.<sup>1</sup></p>	<p><i>Quality</i></p> <p>All follow-up work was performed to the Commission's standards, as assured by its internal processes and external review.<sup>1</sup></p>
	<p><i>Time</i></p> <p>As agreed, or otherwise at a time enabling the follow-up work to be effective, taking account of the Government's legislative programme, the parliamentary timetable and other relevant factors.</p>	<p><i>Time</i></p> <p>All follow-up work was undertaken as agreed, or otherwise at a time enabling it to be effective, taking account of the Government's legislative programme, the parliamentary timetable and other relevant factors.</p>
	<p><i>Cost</i></p> <p>Within the budget for <b>follow-up</b>.</p>	<p><i>Cost</i></p> <p>The Commission did not set a separate budget for <b>follow-up</b> for the 1994/95 financial year, but Commissioner and research officer time spent on discrete aspects of <b>follow-up</b> was charged to that output. The Commission's expenditure on <b>follow-up</b> as a whole was \$67,787.<sup>2, 3</sup></p>
<p><b>Advisory work</b></p>		
<p>To provide advice, in accordance with s 5(1)(c) of the Law Commission</p>	<p><i>Quantity</i></p> <p>Advice is to be provided on proposals</p>	<p><i>Quantity</i></p> <p>The Commission received 87 new requests for advice from Cabinet Ministers,</p>

<p>Act 1985, on proposals by other agencies for the review or reform of the law.</p>	<ul style="list-style-type: none"> <li>· referred to the Law Commission by the Minister of Justice, other Ministers or select committees, and, to the extent that resources permit, by other government agencies, and</li> <li>· on the Commission's initiative where the proposals bear on the Commission's project work or Commission involvement is an important step in achieving the Commission's purpose and objectives.<sup>4</sup></li> </ul>	<p>departments and select committees and other sources in the year to 30 June 1995</p> <p>See narrative account, page 12, for a summary of work done.</p>
	<p><i>Quality</i></p> <p>To the Commission's standards as assured by its internal processes and external review.<sup>1</sup></p>	<p><i>Quality</i></p> <p>All advice was provided to the Commission's standards as assured by its internal processes and external review.<sup>1</sup></p>
	<p><i>Time</i></p> <p>As agreed with the recipient, or otherwise at a time enabling the advice to be taken into account and acted upon within the timeframe of the recipient.</p>	<p><i>Time</i></p> <p>All advice was provided as agreed with the recipient, or otherwise at a time enabling the advice to be taken into account and acted upon within the timeframe of the recipient.</p>
	<p><i>Cost</i></p> <p>Within the budget for <b>advisory work</b>.</p>	<p><i>Cost</i></p> <p>The Commission set a budget of \$484,790 for <b>advisory work</b> for the 1994/95 financial year. All Commissioner and research officer time spent on advisory work was charged to that output. The Commission's expenditure on advisory work was \$546,434.<sup>2</sup></p>
<p><b>Legislation Advisory Committee</b></p>		
<p>The output is the contribution to the work of the <b>Legislation Advisory Committee</b> to be provided by Sir</p>	<p><i>Quantity</i></p>	<p><i>Quantity</i></p> <p>The work done was as agreed with the Committee.</p>

<p>Kenneth Keith in his capacity as a member of the Committee, the assistance of the Commission's research and secretarial staff and the office accommodation made available for the Chairman of the Committee, Dr Mervyn Probine.</p>	<p>As agreed with the Committee, subject to the availability of the Commission's resources.</p>	<p>See narrative account, pages 12 to 13, for description of all work done.</p>
	<p><i>Quality</i></p> <p>To the Commission's standards as assured by its internal processes and external review.<sup>1</sup></p>	<p><i>Quality</i></p> <p>All work was performed to the Commission's standards as assured by its internal processes and external review.<sup>1</sup></p>
	<p><i>Time</i></p> <p>As agreed with the Committee.</p>	<p><i>Time</i></p> <p>All work was done within a timeframe agreed with the Committee.</p>
	<p><i>Cost</i></p> <p>To be within the Commission's budget for its contribution to the work of the <b>Legislation Advisory Committee</b>.</p>	<p><i>Cost</i></p> <p>The Commission set a budget of \$172,611 for its contribution to the work of the <b>Legislation Advisory Committee</b> for the 1994/95 financial year. All Commission and research officer time spent on that contribution was charged to that output. The Commission's expenditure on the output as a whole was \$202,497.<sup>2, 5</sup></p>

**Notes to the Statement of Service Performance**

1 In the case of the Commission's project work, external review involves both the use of expert consultants—to contribute to the writing, or to consider and comment on successive drafts—and also wide consultation with interested agencies and groups. In the early stages of a project, external review is directed at the project outline, the issues to be addressed, and (in the case of the project on Women's Access to Justice) the project terms of reference themselves. In the advanced stages of a project, external consultants contribute to the writing of, or consider and comment on drafts of, publications. Drafts are also frequently circulated to interested agencies and groups before publication. In most cases, a discussion paper is published and widely circulated,

and submissions on it are invited and considered before the preparation of a final report which itself contains a description of the consultation process followed in the particular case.

Reports are published, tabled in Parliament and copies are distributed to interested or affected individuals and groups, including major law firms. They are submitted to appropriate legal journals for review, and a great deal of informal feedback is received from Ministers and parliamentary select committees, legal and other professional societies, judges, members of the legal profession, and law reform agencies, interested bodies and individuals in other countries.

In the case of **follow-up, advisory work** and assistance to the **Legislation Advisory Committee**, external review consists of the informal feedback received in the course of any consultations with officials or others (including the Legislation Committee of the New Zealand Law Society) outside the Law Commission in the course of preparing the submission, advice or other document, or received from the recipient, together with evidence of the extent to which the submission, advice or other document is accepted and acted upon.

- 2 The Commission received regular (monthly) reports on the quantity and timeliness of all work done and on actual costs, as compared with budgeted costs, for each phase of its projects, for advisory work, and for assistance to the Legislation Advisory Committee.
- 3 For budgetary purposes, the Commission's **follow-up** work is treated as if it were a single consolidated project. The Director received regular reports on the actual costs charged to particular items within the follow-up output.
- 4 For administrative and budgetary purposes, the Commission's **advisory work** is treated as though it were a single, consolidated project. A budget is allocated in advance and resources organised so as to make one member of the research staff primarily available for advisory work. It is not always possible, however, to foresee the specific occasions on which the Commission will be asked (or will consider it appropriate) to provide advice and, consequently, what other research resources will have to be allocated to advisory work. Therefore the specification of quantity relates to the number of requests received and other items undertaken which bear on project work or enhance the achievement of the Commission's purpose and objectives.
- 5 For budgetary purposes, the Commission's contribution to the work of the **Legislation Advisory Committee** is treated as if it were a single consolidated project.

## **REPORT OF THE AUDIT OFFICE TO THE READERS OF THE FINANCIAL STATEMENTS OF THE LAW COMMISSION FOR THE YEAR ENDED 30 JUNE 1995**

We have audited the financial statements on pages 19 to 31. The financial statements provide information about the past financial and service performance of the Law Commission and its financial position as at 30 June 1995. This information is stated in accordance with the accounting policies set out on page 23.

### **Responsibilities of the Law Commission**

The Public Finance Act 1989 requires the Law Commission to prepare financial statements in accordance with generally accepted accounting practice which fairly reflect the financial position of the Law Commission as at 30 June 1995, the results of operations and cash flows and the achievements as measured against performance targets and other measures by which the Law Commission can be judged in relation to its objectives for the year ended 30 June 1995.

### **Auditor's Responsibilities**

Section 43(1) of the Public Finance Act 1989 requires the Audit Office to audit the financial statements presented by the Members. It is the responsibility of the Audit Office to express an independent opinion on the financial statements and report its opinion to you.

The Controller and Auditor-General has appointed H C Lim of Audit New Zealand to undertake the audit.

### **Basis of Opinion**

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- the significant estimates and judgments made by the Law Commission in the preparation of the financial statements, and
- whether the accounting policies are appropriate to the Law Commission's circumstances, consistently applied and adequately disclosed.

We conducted our audit in accordance with generally accepted auditing standards in New Zealand. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion, we also evaluated the overall adequacy of the presentation of information in the financial statements.

Other than in our capacity as auditor acting on behalf of the Controller and Auditor-General, we have no relationship with or interests in the Law Commission.

### **Unqualified Opinion**

We have obtained all the information and explanations we have required.

In our opinion the financial statements of the Law Commission on pages 19 to 31

- • comply with generally accepted accounting practice; and
  - • fairly reflect:
    - the financial position as at 30 June 1995
    - the results of its operations and cash flows for the year ended on that date;
- and
- the achievements as measured against the performance targets and other measures adopted for the year ended 30 June 1995.

Our audit was completed on 27 October 1995 and our unqualified opinion is expressed as at that date.

H C Lim

Audit New Zealand

On behalf of the Controller and Auditor-General  
Wellington, New Zealand

## APPENDIX A

### Projects on the Law Commission's programme 1994/95

#### GROUP: Evidence/Criminal procedure

<i>Project</i>	<i>Purpose</i>	<i>Subprojects</i>
Evidence	To replace the present complex and uncertain common law and statutory rules of evidence with an evidence code.	Privilege Conduct, character and credibility Competence of witnesses, vulnerable witnesses

		<p>Identification evidence</p> <p>Witness questioning rules</p> <p>Tribunal evidence</p> <p>Miscellaneous research tasks</p> <p>Policy</p>
Criminal procedure	To review the whole of criminal procedure, to ensure that it provides for fair trials and effective and efficient investigation and prosecution of offences, taking account of New Zealand's obligations under the International Covenant on Civil and Political Rights, the New Zealand Bill of Rights Act 1990 and the Treaty of Waitangi.	<p>Police questioning (completed 1994)</p> <p>Right of silence and confessions</p> <p>Privilege against self-incrimination</p> <p>Prosecution of offences</p> <p>Diversion</p> <p>Jury trials</p>

**GROUP: Commercial law and property**

<i>Project</i>	<i>Purpose</i>	<i>Subprojects</i>
Succession	To replace the Wills Act 1837, the Administration Act 1969, the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949 with a new Succession Act which will simplify the law, enable better effect to be given to the intentions of testators and take account of the diversity of New Zealand families.	<p>Wills</p> <p>Non-wills</p> <p>Policy</p> <p>Procedures</p>
Property: Tenures*	To consider the implications of abolishing tenures and estates for the Land Transfer Act 1952.	



Remedies for wrongs to goods	To review the fragmentary common law remedies and replace them with a modern statute.	
Apportionment of civil liability	To review the law relating to liability where the acts or omissions of two or more persons cause loss or damage.	
Unfair contracts*	To review aspects of the law of contract and ensure that it meets the needs of the commercial community and consumers.	

**GROUP: Public law**

<i>Project</i>	<i>Purpose</i>	<i>Subprojects</i>
Women's Access to Justice	<p>To examine the response of the legal system to the experiences of women in New Zealand, recognising the importance of the Treaty of Waitangi in the examination of Maori women's experiences, taking account of the multicultural character of New Zealand society and New Zealand's obligations under international law.</p> <p>To report to the Minister of Justice by the end of 1997 concerning:</p> <ul style="list-style-type: none"> <li>· principles and processes to be followed by policy makers and lawmakers,</li> <li>· specific law reforms, and</li> <li>· educational and other strategies</li> </ul> <p>which will promote the just treatment of women by the legal system.</p> <p>Priority will be placed on examining the impact of laws, legal procedures and the delivery of legal services upon:</p> <ul style="list-style-type: none"> <li>· family and domestic relationships,</li> <li>· violence against women, and</li> <li>· the economic position of women.</li> </ul>	

	At all stages of the project, there will be widespread consultation with women throughout New Zealand. The project will also draw upon, and complement, the work of other government agencies, the Judicial Working Group on Gender Equity and other Law Commission projects.	
Official Information Act 1982	To review the operation in practice of aspects of the Act.	
Community safety (completed 1994)	To consider relevant provisions in the Mental Health (Compulsory Assessment and Treatment) Act 1992 and the Criminal Justice Act 1985 with the purpose of protecting members of the public from substantial risk of harm from individuals whose release into the community would pose that risk.	
Legislation	To make the law of New Zealand as understandable and accessible as practicable.	Legislation Manual Parts 2 and 3  Legislation Manual Part 4
Habeas Corpus	To review and replace the Imperial Acts dealing with the remedy of Habeas Corpus.	
International obligations	To promote the adoption of uniform or harmonised law and law consistent with New Zealand's international obligations.	Guide to International Legal Materials
Crown	To review the legal status of the Crown, generally and in the context of the Crown Proceedings Act 1950.	
* These projects have subsequently been removed from the programme.		

## **APPENDIX B**

### **Examples of advisory work undertaken by the Commission in the year to 30 June 1995**

#### *Legislative reviews*

Advice to the Securities Commission on regulations and proposals for amendments to the Securities Act 1978.

Comments on the draft Code of Rights for Consumers of Health and Disability Services.

Advice to the Department of Social Welfare on the consolidation of, and the reintroduction of privileges into, the Social Security Act 1964.

Advice to the Inland Revenue Department on drafting guidelines for tax legislation, core provisions, and the binding rulings regime.

Advice to the Ministry of Transport on land and maritime transport reforms.

#### *Policy proposals*

Advice to the Ministry of Health on food standard setting (trans-Tasman initiatives), the public health regulatory review, and occupational regulation.

Advice on the restructurings of the Ministry of Agriculture and Fisheries, and the Office of the Auditor-General.

Comment on the initiatives of Business Compliance Cost Reduction and the Quality of Regulation project (the Treasury and the Ministry of Commerce).

Membership of the Department of Justice Review Group and the Courts Services Review Group.

Advice to the Accident Rehabilitation and Compensation Insurance Corporation as part of the Eminent Persons Advisory Group, and also to the Corporation directly on issues of legislative policy.

Advice to the Department of Social Welfare on asset testing and residential care.

Advice to the Regulations Review Committee on the Australian Legislative Amendments Bill.

#### *Constitutional issues*

Advice to Ministers on proportional representation and on Maori governance issues.

#### *Regular and ongoing involvement*

Participation in, and provision of assistance to, the Law and Economics Association of New Zealand.

Membership of the Courts Consultative Committee and the Judicial Working Group on Gender Equity.

Contribution to the Public Law Review.

## **APPENDIX C**

### **Submissions made by the Legislation Advisory Committee, with research assistance provided by the Commission, in the year to 30 June 1995**

#### **1994**

Watercare Services Ltd (Auckland Emergency Water Supply) Bill

Fisheries Amendment Bill

Inquiry into the Privilege Provisions of section 11 of the Social Security Act 1964

Copyright Bill

Intercountry Adoption Bill

Finance Bill (No 2), SOP 36

Law Reform (Miscellaneous Provisions) Bill (No 3)\*

Long Term Care of the Elderly Committee Bill

Misuse of Drugs (Drugs Paraphernalia) Amendment Bill

Regulations Review Committee Inquiry into the Resource Management (Transitional) Regulations.

#### **1995**

Reserve Bank of New Zealand Amendment Bill

Hazardous Substances and New Organisms Bill

Crimes Amendment Bill (No 2)

Fisheries Bill

Overseas Investment Amendment Bill

Finance Bill (No 4)\*

Medical Practitioners Bill  
Parliament Centre Bill  
Domestic Violence Bill  
Local Government Law Reform Bill  
Social Welfare Reform Bill  
Parliamentary Privilege Bill  
Land Transport Law Reform Bill  
Health and Disability Services Amendment Bill  
Residential Tenancies Amendment Bill  
Crown Pastoral Land Bill  
Financial Transactions Reporting Bill

By arrangement the Law Commission, rather than the Legislation Advisory Committee, reported on the following:

International War Crimes Tribunal Bill  
Taxation Reform (Binding Rules and Other Matters) Bill  
Criminal Investigations (Blood Samples) Bill

\* Additional submissions also made, on request of the relevant Select Committee.

## **APPENDIX D**

### **Members and staff of the Law Commission**

Members of the Law Commission:

Sir Kenneth Keith KBE QC—*President*  
The Hon Justice Wallace—*Deputy President*  
Professor Richard J Sutton—*Commissioner*  
Leslie H Atkins QC—*Commissioner*  
Joanne Morris OBE—*Commissioner*

Permanent staff of the Law Commission as at 30 June 1995:

<i>Director</i>	Robert Buchanan
<i>Senior Legal Research Officers</i>	Loretta Desourdy
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## APPENDIX E

### Areas of law reviewed by the Law Commission as at 30 June 1995

<i>Area of Law</i>	<i>Publication</i>	<i>Type</i>		<i>Date</i>	<i>Outcome</i>
LEGISLATION (Reference)	Imperial Legislation in Force in New Zealand	Report	NZLC R1	March 1987	Largely implemen Imperial Laws 1988 and assoc
	Legislation and its Interpretation: The Acts Interpretation Act 1924 and Related Legislation	Discussion paper	NZLC PP1	June 1987	Followed by re
	Legislation and its Interpretation	Discussion and seminar papers	NZLC PP8	December 1988	Followed by re
	Legislation and its Interpretation: Statutory Publications Bill	Report	NZLC R11	September 1989	Implemented i Regulations (D 1989 and the A Publications A
	A New Interpretation Act: To Avoid "Prolixity and Tautology"	Report	NZLC R17	December 1990	Under consider Minister of Jus
	The Format of Legislation	Report	NZLC R27	December 1993	Recommendati Justice and Law Committee and Standing Order consideration;

					a Committee c Parliamentary
ACCIDENT COMPENSATION SCHEME  (Reference)	The Accident Compensation Scheme	Discussion paper	NZLC PP2	September 1987	Followed by re NZLC R4
	The Accident Compensation Scheme: Interim Report on Aspects of Funding	Report	NZLC R3	November 1987	Considered in Accident Reha Compensation and some recor reflected in its  and,  considered also reviews of the Rehabilitation Insurance Act implementing undertaken in
	Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme)	Report	NZLC R4	May 1988	
LIMITATION PERIODS  (Reference)	The Limitation Act 1950	Discussion paper	NZLC PP3	September 1987	Followed by re
	Limitation Defences in Civil Proceedings	Report	NZLC R6	October 1988	Under consider Minister of Jus part in the Buil
COURTS  (Reference)	The Structure of the Courts	Discussion paper	NZLC PP4	December 1987	Followed by re
	The Structure of the Courts	Report	NZLC R7	March 1989	Substantial eff Commission's the various ena



					reform the jurisdiction of the courts in 1991
COMPANY LAW (Reference)	Company Law	Discussion paper	NZLC PP5	December 1987	Followed by re NZLC R16
	Company Law: Reform and Restatement	Report	NZLC R9	June 1989	Companies Act Receiverships amendments to Act 1952 and the 1955 entered in 1994
	Company Law Reform: Transition and Revision	Report	NZLC R16	September 1990	
LAW OF PROPERTY	Reform of Personal Property Security Law	Discussion paper	NZLC PP6	May 1988	Followed by re
	A Personal Property Securities Act for New Zealand	Report	NZLC R8	April 1989	Under consideration Minister of Justice Companies (Re Charges) Act 1993 in force on 1 July 1993. The provisions of section 463 of the 1955 to compare re-registered under Act 1993, but, Companies Act 1993 which comes in force on the close of 30 June 1993. Companies Act
	The Property Law Act 1952	Discussion paper	NZLC PP16	July 1991	Followed by re
	A New Property Law Act	Report	NZLC R29	June 1994	Under consideration Minister of Justice
	Tenure and Estates in Land	Discussion paper	NZLC PP20	June 1992	No further consideration intended

ARBITRATION	Arbitration	Discussion paper	NZLC PP7	November 1988	Followed by re
	Arbitration	Report	NZLC R20	October 1991	Under consider Minister of Jus after reporting
MAORI FISHERIES (Reference)	The Treaty of Waitangi and Maori Fisheries—Mataitai: Nga Tikanga Maori me te Tiriti o Waitangi	Background paper	NZLC PP9	March 1989	For use as a res withdrawn by Justice at the L request
LAW OF EVIDENCE	Hearsay Evidence	Options paper	NZLC PP10	June 1989	Followed by d NZLC PP13, M PP15, NZLC M and NZLC PP2
	Evidence Law: Principles for Reform	Discussion paper	NZLC PP13	April 1991	To be followe
	Evidence Law: Codification	Discussion paper	NZLC PP14	April 1991	
	Evidence Law: Hearsay	Discussion paper	NZLC PP15	April 1991	
	Evidence Law: Expert Evidence and Opinion Evidence	Discussion paper	NZLC PP18	December 1991	
	Evidence Law: Documentary Evidence and Judicial Notice	Discussion paper	NZLC PP22	May 1994	
	Evidence Law: Privilege	Discussion paper	NZLC PP23	May 1994	
LAW OF CONTRACT	“Unfair” Contracts	Discussion paper	NZLC PP11	September 1990	No further con intended

	Contract Statutes Review	Report	NZLC R25	May 1993	Under consideration Minister of Justice
EMERGENCIES	First Report on Emergencies: Use of the Armed Forces	Report	NZLC R12	February 1990	Implemented in 1990
	Final Report on Emergencies	Report	NZLC R22	December 1991	Recommended grant of emergency powers adopted. Draft Bill for Emergency Act under consideration Government
COMMUNITY SAFETY (Reference)	Community Safety: Mental Health and Criminal Justice Issues	Report	NZLC R30	August 1994	Comments on the Mental Health Assessment and Treatment Act 1992, including "mental disorder" in Criminal Justice Act
CRIMINAL PROCEDURE (Reference)	The Prosecution of Offences	Issues paper	NZLC PP12	November 1990	To be followed by a paper
	Criminal Procedure: Part One: Disclosure and Committal	Report	NZLC R14	June 1990	Under consideration Minister of Justice
	Criminal Evidence: Police Questioning	Discussion paper	NZLC PP21	September 1992	Followed by recommendations to be followed by the Right of Silence and Confessions
	Police Questioning	Report	NZLC R31	October 1994	Under consideration Minister of Justice
INTELLECTUAL PROPERTY	Intellectual Property: The Context for Reform	Report	NZLC R13	March 1990	For use as a reference for changes recommended
DAMAGES	Aspects of Damages: Employment Contracts and the	Report	NZLC R18	March 1991	Implemented as the Employment Act 1991

	Rule in <i>Addis v Gramophone Co</i>				
	Aspects of Damages: The Rules in <i>Bain v Fothergill</i> and <i>Joyner v Weeks</i>	Report	NZLC R19	May 1991	Abolition of the <i>Fothergill</i> implied Property Law Act 1994. Problem <i>Joyner v Weeks</i> in <i>Maori Trusts Ltd</i> [1994] 3 N
	Aspects of Damages: The Award of Interest on Debts and Damages	Discussion paper	NZLC PP17	November 1991	Followed by a
	Aspects of Damages: The Award of Interest on Money Claims	Report	NZLC R28	May 1994	Under consideration Minister of Jus
APPORTIONMENT OF CIVIL LIABILITY	Apportionment of Civil Liability	Discussion paper	NZLC PP19	March 1992	Under further context of the professional lia
PRIVATE INTERNATIONAL LAW	The United Nations Convention on Contracts for the International Sale of Goods: New Zealand's Proposed Acceptance	Report	NZLC R23	June 1992	Backgrounds, support for, the announced intention implementing according to the of Goods (United Convention) Act July 1994 and 1995

\* For a list of the Law Commission's publications in numerical order, see inside front cover (Reports) and i (Preliminary Papers).