



LAW·COMMISSION
TE·AKA·MATUA·O·TE·TURE

Report of the

LAW COMMISSION
Te Aka Matua o te Ture

for the year ended 30 June 1997

*Presented to the House of Representatives under
section 17 of the Law Commission Act 1985 and
section 44A of the Public Finance Act 1989*

1997
Wellington, New Zealand

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Contents

| | <i>Page</i> |
|---|-------------|
| Letter of transmittal | v |
| DIRECTORY | vii |
| ANNUAL REPORT 1997 | 1 |
| President's report | 1 |
| Highlights of the year under review | 4 |
| Criminal Procedure | 4 |
| Evidence | 5 |
| Public Law | 7 |
| Succession | 8 |
| Women's Access to Justice: | |
| He Putanga mö ngā Wāhine ki te Tika | 10 |
| Te Ao Māori and the Treaty of Waitangi | 12 |
| Commercial Law | 13 |
| Advisory Work | 14 |
| Finance | 15 |
| Administration and communications | 15 |
| External relations | 16 |
| Other activities | 17 |
| Members and staff | 18 |
| FINANCIAL STATEMENTS | |
| Statement of responsibility | 19 |
| Financial statements for the year ended 30 June 1997 | 20 |
| Statement of Service Performance for the year ended 30 June 1997 | 31 |
| The Law Commission's performance standards | 38 |
| Report of the Audit Office | 41 |
| APPENDICES | |
| A Advisory work 1996/97 | 43 |
| B Members and staff of the Law Commission as at 30 June 1997 | 46 |
| C Areas of law reviewed by the Law Commission as at 30 June 1997 | 48 |

13 November 1997

Dear Minister

I have the honour to submit to you the report of the Law Commission for the year ended 30 June 1997.

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

Yours sincerely

The Hon Justice Baragwanath
President

The Hon Douglas Graham MP
Minister of Justice
Parliament House
WELLINGTON

The Law Commission: Te Aka Matua O Te Ture Directory

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. Its purpose 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.

The members of the Law Commission, appointed under s 9 of the Law Commission Act 1985, are:

Hon Justice Baragwanath – President
Leslie H Atkins QC (term finished 31 August 1997)
Joanne Morris OBE
Judge Margaret Lee
DF Dugdale
Denese Henare ONZM
Timothy Brewer ED (from 1 October 1997)

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Information about the Law Commission and its work is available
via the Internet from the NZ Government Online site:
www.govt.nz/lawcom.

Funding

The Law Commission is funded from money appropriated by Parliament through Vote:Justice.

Māori Committee

The Māori Committee to the Law Commission facilitates the Commission's consultation with Māori, assists the Commission in

identifying projects to advance te ao Māori, and helps in achieving a reflection of te ao Māori in its work. The members are:

Rt Rev Bishop Manuhua Bennett ONZ CMG

Judge MJA Brown CNZM

Chief Judge ETJ Durie

Professor Mason Durie

Archie Tairaoa

Whētu Weretā

Annual Report 1997

PRESIDENT'S REPORT

Hon Justice Baragwanath

THE YEAR BEGAN with Professor Richard Sutton as acting President. This followed the appointment of the Hon Sir Kenneth Keith to the Court of Appeal and the resignation of the Hon Sir John Wallace QC to attend to the heavy demands of the Electoral Commission caused by the first MMP Election. We are grateful for continuing support from all three. I took up office as President in October 1996, and in January 1997 Professor Sutton returned to the Faculty of Law at the University of Otago. Mr DF Dugdale and Ms Denese Henare ONZM (Ngati Hine, Ngapuhi) were then appointed as Commissioners. We have undertaken a fundamental reappraisal of the Law Commission and its work, which is carried out in very different conditions from those which existed at the time of its establishment.

The principles have not changed: a publicly funded, independent body taking a hard look at our laws and institutions, applying rigorous analysis and constitutional principle to reform them to meet citizens' needs in a way that combines foresight and practicality.

But for Law Commissions here, in England, Australia, Canada and elsewhere, the focus has altered. Over the last decade the communications revolution and the collapse of communism have made globalisation a reality. Corporatisation and privatisation have shrunk the core public sector throughout much of the world, and the role of the private sector has increased. Efficiency and accountability are pre-eminent. In New Zealand, Treaty of Waitangi issues have become prominent. Economic success for some has thrown into relief the plight of others. The quest for stability that rejected the first-past-the-post system of government has not finished.

The Law Commission is nearing the end of major projects on the law of Evidence, Succession, and Women's Access to Justice. In revising the work programme we established two principles:

- 1 Our work should address those issues, determined in conjunction with the Minister of Justice and Ministry officials, which are of

the highest priority in improving New Zealanders' condition through law reform.

- 2 We should concentrate on such of those issues as are better performed by the Law Commission than by others, while
 - retaining the autonomy which is critical to our ability to give dispassionate independent advice, and
 - maintaining close liaison with other public and private sector agencies with whom we have common cause.

In that way we seek to ensure that the taxpayer receives full value for each dollar spent.

The need for stability and confidence in the legal system requires continued priority for work in the area of constitutional law. The Treaty of Waitangi presents both great opportunity and challenge for the new millennium; the appointment of Commissioner Henare, and the continuing guidance of the distinguished members of our Māori Committee, have allowed us to accept further responsibility in respect of the Treaty. The Treaty provides a vital dimension to existing projects, particularly the Women's Access to Justice project and the Criminal Procedure work on alternatives to prosecution.

An efficient legal system is not only essential to citizens' ability to set and achieve their own goals in a free society, but is also the lubricant of the trade which earns us revenue to fund other activity. Recognising this, we have given renewed priority to commercial law reform with Commissioner Dugdale taking prime responsibility.

We have strengthened the experience of the Commission by retaining Mr Tim Brewer ^{ED}, Crown Solicitor at New Plymouth, and Mr Paul Heath of Hamilton, as part-time consultants. (Mr Brewer was appointed a Commissioner on 3 September 1997 effective 1 October 1997.) With an outstanding research and support staff, we are well placed to deal with our considerable and stimulating task.

Our perception of what the Law Commission can contribute to the common good is shared by those with whom we work most closely. It is essential to ensure our work

- is tightly focused,
- proceeds in harmony with that of others except where there is reason to disagree, and
- is implemented.

To assist these processes we have exposed our proposals to public and peer examination, issuing discussion papers and accepting invitations to discuss the issues at meetings, conferences and with the media. The contribution of others by constructive criticism has both increased the quality of our work and helped us to keep it relevant. We express our gratitude for the contribution of time and effort, at the high cost of adding to an existing heavy workload, of those who have helped us.

For all of us, our time at the Commission is finite. Commissioners and staff alike are determined to use their time, and the taxpayers' funding that pays for it, to improve the lives of all New Zealanders.

HIGHLIGHTS OF THE YEAR UNDER REVIEW

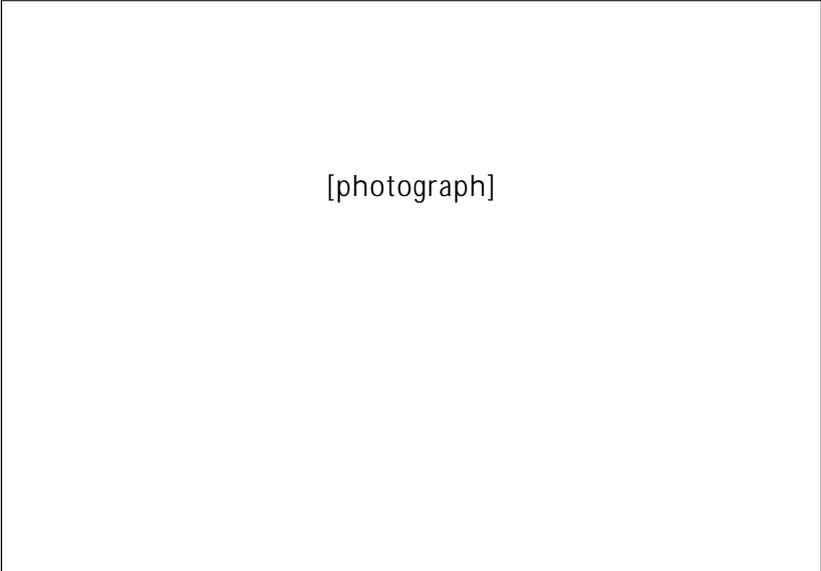
The 3-year objectives adopted in the *Strategic Business Plan 1996/97* included the completion of:

- the Women's Access to Justice project by the end of 1997 (subject to the availability of information from the 1996 census);
- the Evidence reference by the end of March 1998;
- the Succession project by the end of the June 1998 year; and
- all existing work on Criminal Procedure by the end of the June 1998 year (subject to the replanning of the reference).

Each of those targets remains within sight. The Commission has also made significant progress during the year in public law, and laid the foundations for new work in commercial law and law in respect of the Treaty of Waitangi and te ao Māori. Details on each area of the Law Commission's work are in the Statement of Service Performance on pages 31–37. Highlights are summarised on the following pages.

Criminal Procedure

Les Atkins OC was the Commissioner responsible for Criminal Procedure. The research team was headed by senior researcher Janet Lewin (until her departure in February 1997) with support from senior researchers Philippa McDonald, Christine Hickey and Susan Potter, and researchers Ian Murray and Diana Pickard. Tim Brewer (pictured with the Criminal Procedure team) and a former Law Commissioner, Jim Cameron, acted as consultants.



[photograph]

Four aspects of Criminal Procedure are under consideration:

- aspects of criminal evidence that are relevant to the project on evidence law reform;
- the system of prosecution and alternatives to prosecution;
- the jury system; and
- awards of costs in criminal cases.

In relation to criminal evidence, the Commission published a discussion paper, *The Privilege Against Self-Incrimination* (NZLC PP25) in August 1996. It also completed an internal paper on identification evidence, which it circulated to a limited audience for comment. Both topics will be the subject of further publications in 1998.

A discussion paper on *Criminal Prosecution* (NZLC PP28) was published in March 1997 and attracted considerable interest and support. It proposed a reform of the existing system for the prosecution of offences including the creation of a stand-alone prosecutions division within the Police; a strengthening of the role of Crown Solicitors; and the establishment of a co-ordinating unit within the Crown Law Office. The relevant agencies are now taking steps to implement these changes.

There is increasing recognition of the need for viable alternatives to standard prosecution for particular offences and offenders. This will be the subject of a major project by the Law Commission, in conjunction with other agencies including the Strategic Responses to Crime Group of the Ministry of Justice. The topic raises major and important issues in relation to the Treaty of Waitangi and responses to offending by Māori.

A paper on the jury system will be published later in 1997. It will address the availability of jury trials; the jury selection process; the discharge of jurors; jury secrecy; the media and their influence; means of assisting jury deliberation; jury disagreement; and majority verdicts. The Commission also plans to sponsor, in conjunction with Victoria Link Ltd, empirical research into New Zealand juries.

Evidence

The evidence team was led by senior researcher Elisabeth McDonald, under the overall supervision of Judge Margaret Lee, with help from senior researchers David Calder (who manages project planning), Bill Sewell and Susan Potter, and researchers Nick Russell and Karen Belt.

The evidence law reform has been a massive undertaking. Among the many important and difficult questions it raises are:

[photograph]

- In what circumstances, if any, should witnesses be able to give evidence in a trial without revealing their identity?
- Should everyone who is eligible to give evidence be compellable to give that evidence?
- Should evidence of an acquittal ever be admissible in a later proceeding?
- Should evidence based on memory recovered through therapy (including hypnosis) be admissible in a criminal proceeding?
- When an accused person is proved to have told a deliberate lie, what use might a jury make of that evidence?
- When should evidence of the previous convictions of an accused person be admissible? For what purpose?

With most of these questions, there are arguments either way. Perhaps this is most graphically shown in the first of the topics listed, that of witness anonymity. At stake is the public interest in not convicting the innocent, which is at the heart of the requirement for fair trials. In a fair trial accused persons must be able to challenge their accusers, and to do that must first know who the accusers are. On the other side of the balance is the integrity of the criminal justice system itself. If those accused of criminal offending are able to intimidate potential witnesses from testifying against them, the public will lose the protection of the law and the criminal justice system will fall into disrepute. The answer requires a fine balance between two conflicting public interests. In the end, the conflict may only be capable of resolution by a decision as to which public interest should prevail.

This was a key area of research in the year under review, and was subsequently addressed in a discussion paper and a final report (see *Evidence Law: Witness Anonymity*, NZLC PP29 and NZLC R42, 1997), following the Court of Appeal decision in *R v Hines* (CA 465/96).

Other highlights for the year were the publication of *The Evidence of Children and Other Vulnerable Witnesses* (NZLC PP26) and *Evidence Law: Character and Credibility* (NZLC PP27, 1997), each of which was well received, and the completion of our revision of the hearsay rule (which was the subject of an earlier publication).

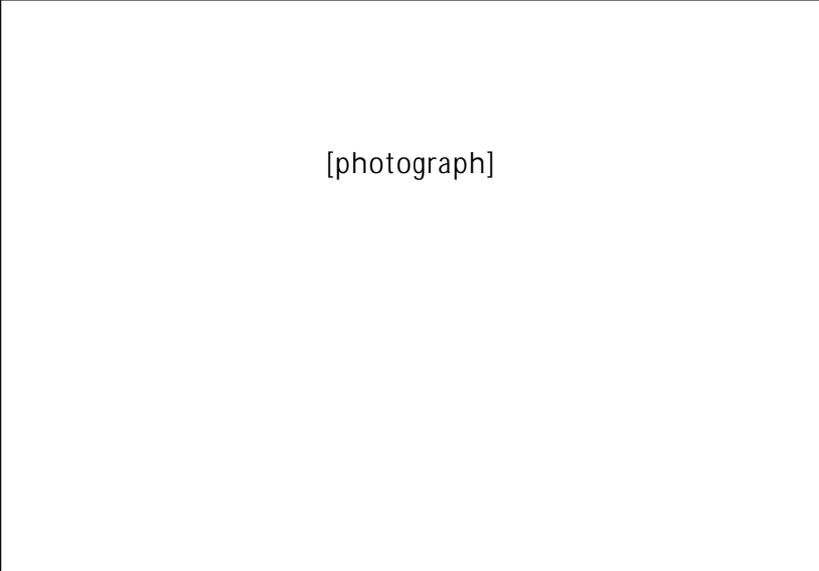
The Law Commission acknowledges the support of those practitioners, judges, academics, interested persons, and community groups who assisted the project during the year. It is especially grateful to the project's academic consultant, Associate Professor Richard Mahoney of the University of Otago, and the Commission's Legislative Counsel, Garth Thornton OC.

This long running but valuable project will be completed in 1998.

Public Law

The Commission's work on public law is headed by Justice Baragwanath, with the help of Commissioner Dugdale, senior researcher Padraig McNamara, and researchers Ross Carter and Diana Pickard.

The focus was to complete reports on Crown liability and judicial immunity, the review of the Official Information Act 1982, and, in international law, the treaty-making process and the role of



[photograph]

Parliament. Drafts prepared by Sir Kenneth Keith for consultation purposes in previous years provided the foundation for this work.

Crown Liability and Judicial Immunity: A Response to Baigent's case and Harvey v Derrick (NZLC R37, 1997) was published in May 1997, and addressed a substantial part of the reference given to the Law Commission to review the legal status of the Crown. The report affirmed the Court of Appeal's decision in *Baigent's* case, which held that damages could be awarded for breach of the New Zealand Bill of Rights Act 1990. It concluded that, while the Crown is liable for breaches of the Act by Ministers and government departments, public bodies performing public functions should have primary responsibility for their own breaches. It recommended legislation to enable all judges to have immunity from civil suit, and to prevent actions against the Crown for breach by judges of the Bill of Rights Act.

The report received a positive response from the Minister of Justice. Completion of the work on the Crown reference will result in two further reports: one in the forthcoming year on reducing the incidence of death and injuries from systemic accidents (a response to the Cave Creek disaster); and a later one on the Crown Proceedings Act 1950.

Work on the Official Information Act was substantially complete by the end of the year, and a report was subsequently published in October 1997: *Review of the Official Information Act 1982* (NZLC R40, 1997).

The report on treaty making will also be published before the end of 1997. It will examine the stages of negotiating, accepting and implementing international treaties in light of globalisation, and the increasing amount of law being made offshore. As part of its work in this topic, the Commission made submissions to the Foreign Affairs, Defence and Trade Select Committee which was considering an inquiry into the involvement of Parliament in the treaty-making process.

Thanks to progress made in other areas, the Commission was also able to prepare and circulate for comment a draft report on habeas corpus, which had been on the work programme for some time. The publication of the report is now imminent.

Succession

The Succession project team was led by Professor Sutton, until his departure, and then by Commissioner Dugdale, with assistance from

[photograph]

senior researcher Loretta Desourdy and researchers Ross Carter and Nigel Christie.

The succession project has three main aspects:

- 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 affects Māori; and
- review and consideration of reforms to the law of wills and the law of intestacy.

With the exception of intestacy, the Commission is not proceeding with the review of the Administration Act 1969, which it originally planned.

In August 1996, the Commission published *Succession Law: Testamentary Claims* (NZLC PP24, 1996) and its companion booklet *What should happen to your property when you die?* (NZLC MP1, 1996). A large number of submissions were received on both papers. Major policy issues arose in respect of the ability of non-dependent adult children to claim against their parents' estates, and the application of the law as regards de facto or same sex partners of deceased people. A final report, *Succession Law: A Succession (Adjustment) Act* (NZLC R39, 1997), has since been published.

Professor Tony Angelo of Victoria University, with help from Cate Alcorn, produced a paper for the Commission on the private international law aspects of the "adjustment" proposals.

Work on a discussion paper on Māori succession laws was commenced following two series of regional and urban hui in 1995 and 1996. The paper is now being discussed with Māori, and will be published next year.

The Law Commission's work on wills draws substantially on the work of the Uniform Succession Laws Project in Australia. A consultation paper, *Succession Law: Wills Reforms* (NZLC MP2, 1996) was published in October 1996 and sent for consultation to practitioner interest groups. The Commission greatly appreciates the work that the members of these groups have given to the project. Work on a final report on wills commenced during the year and was completed with the publication of *Succession Law: A Succession (Wills) Act* (NZLC R41, 1997) in October 1997.

As well as working on the three main aspects identified above, the Commission reported on the question of what happens if an estate beneficiary, say under a will, has unlawfully killed the will-maker. This work was given priority in response to a request from the Minister in Charge of the Public Trust Office. The report, *Succession Law: Homicidal Heirs* (NZLC R38), was completed by the end of the financial year and was published in July 1997.

Women's Access to Justice: He Putanga mö ngā Wāhine ki te Tika

The Women's Access to Justice project is led by Commissioner Joanne Morris OBE. Commissioner Henare is responsible for the Māori dimension of the project. Senior researcher and project manager Michelle Vaughan and researchers Mākere Papuni and Brigit Laidler made up the project team, with help from Kristina Ryan, a part-time research assistant.

Drawing on meetings and hui held around the country the Commission published five consultation papers which addressed, in context, the most urgent of the interrelated concerns raised by thousands of New Zealand women about their access to the justice system:

- access to legal information;
- information about lawyers' fees;
- civil legal aid;
- access to legal advice and representation;
- lawyers' costs in family cases.

To date the response to the papers from government agencies, the legal profession, community groups, and individual women has

[photograph]

been very positive. Two further papers were in preparation at year's end, on

- the education and training of law students and lawyers (published in September 1997), and
- Māori women's access to justice.

The Commission has now begun the task of analysing all the information gathered during the project, to develop its recommendations to the Minister of Justice. The report will address:

- principles and processes to be followed by policy makers and lawmakers,
 - specific law reforms, and
 - educational and other strategies,
- to promote the just treatment of women by the legal system.

The project team and the Commission suffered a very sad loss during the year with the death of Mrs Hēpora Young. Hēpora led the Māori women's core group (Te Rōpu Uho), which planned and conducted the extensive programme of consultation with Māori women. She was a revered source of advice and support for the project team.

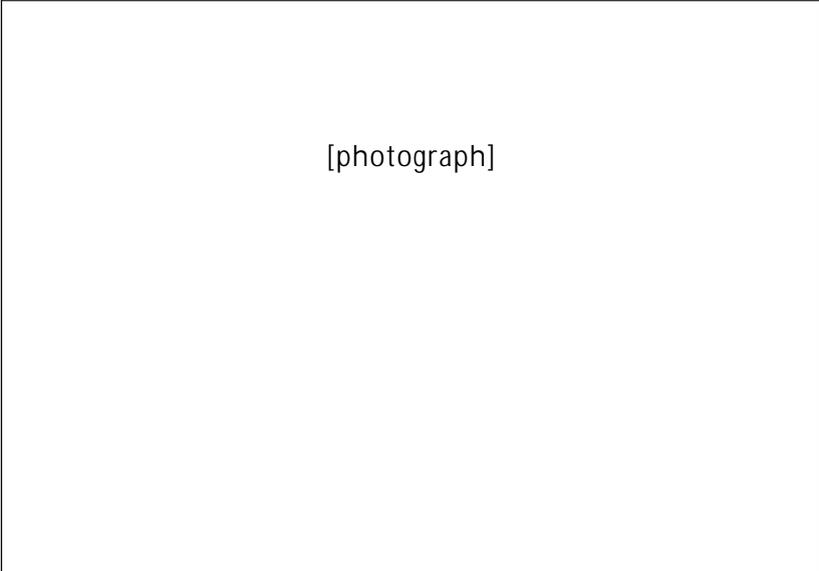
Since the consultation hui were conducted, the group of Māori women advising the project has expanded and has been guided by Ms Keri Kaa, to whom the project team, and the Commission, are particularly indebted. Before her appointment as a Commissioner, Denese Henare was a member of that advisory group, a fact which eased her transition to her present role.

Te Ao Māori and the Treaty of Waitangi

The appointment of Commissioner Henare has strengthened the role of the Māori Committee to the Law Commission. The Māori Committee (chaired by the Rt Rev Manuhuia Bennett ONZ CMG) acts as a conduit for the Commission's relationship with Māori, providing wise and thoughtful advice. A new project for the forthcoming year will examine the implications of the Treaty of Waitangi in respect of the Coroners Act 1988 and the return of body parts to relatives.

The Commission is carrying out a project on Māori custom law on behalf of the Māori Committee, using funds provided by the New Zealand Law Foundation. It involves the preparation of an outline which will enable judges and other decision-makers to recognise concepts of Māori custom law when, for example, a court receives expert evidence of Māori custom or is called upon to apply custom law by statute. Drawing upon a paper by Chief Judge Durie and other academic commentary, the outline is being written by Whaimutu Dewes and Joe Williams. Philippa McDonald, a senior researcher, was responsible for managing the project during the year.

The Treaty of Waitangi touches on all the Law Commission's work. The Commission included in its June 1997 newsletter a contribution to the public discussion concerning the nature of Māori law. It advanced the contention that New Zealand's legal system is "duadic", comprising one element derived from England, and another deriving from Māori law and custom confirmed by the Treaty of Waitangi and English law.



[photograph]

TE KOMITI MAORI

He Komiti tenei i whiriwhiria hei hoa korero mo te Aka Matua o Te Ture mo nga take Maori, e pa ana ki nga ture o te motu.

Ko Te Aka Matua te tahi o nga ropu hanga ture mo te Kawanatanga.

I mua he ropu Pakeha anake tenei hunga a i roto i nga marama ka huri nei ka whaka nohoia a Denese Henare, he mokopuna na Tau Henare tuatahi, hei mema mo tenei Komihana; hei kanohi hei reo hoki mo taua te Iwi Maori a ko tetahi o nga mahi ano mo te Komiti Maori he awhina, he awhi i a Denese i roto i ana mahi, ana tautohe me ana tohutohu i te Komihana mo nga tikanga o te Ao Maori.

I roto i nga marama ka huri ka mawehe atu a Hepora Young i te Ao turoa. A kei te mau mahara tonu ki taua rangatira me nga mahi i waihotia e ia i roto i tenei ropu nui whakahara na reira e kui moe mai ra.

Commercial Law

The Law Commission's discussions with the Securities Commission and the Ministries of Commerce and Justice have identified three areas of commercial law reform, with a view to commencing work in the 1997/98 year. The work will be led by Commissioner Dugdale, with help from consultant Paul Heath, senior researchers Loretta Desourdy and David Calder, and researchers Ross Carter and Nick Russell.

First, the Commission is to consider the reform of four aspects of the law of insurance:

- charges on insurance money payable as indemnity for liability to pay compensation or damages (Law Reform Act 1936, s 9);
- time limits on claims under contracts of insurance and "claims-made" policies (Insurance Law Reform Act 1977, s 9);
- non-causative exemptions (Insurance Law Reform Act 1977, s 11); and
- a would-be insured's general law duty to disclose his or her circumstances to a would-be insurer, and the consequences of breaching this duty.

Secondly, the Commission was invited by the Securities Commission to embark on a project relating to the marketing of undivided interests in land. This project, which has the additional support of the Ministry of Commerce, will examine the grey area between securities law and land law in such contexts as retirement villages, timeshares, and other interests in land that involve pooling and management arrangements.

Thirdly, the Commission investigated the possibility of a project in international trade law. The particular focus will be on electronic commerce as it affects the international supply of goods and services. Work in this area remains at an early stage.

In April 1989, the Commission published *A Personal Property Securities Act for New Zealand* (NZLC R9, 1989). The report received widespread support, but the reforms recommended were not included in the company law reform package of the early 1990s. It was hoped that the PPSA statute would replace the provisions in the Companies (Registration of Charges) Act 1993 which were due to expire on 30 June 1997, but those provisions remain in force.

Some progress has, however, been made. In July 1996, the Ministry of Commerce circulated a paper which set out its preliminary thinking on personal property securities law reform. Policy proposals for a PPSA statute were in preparation by the Ministry by the end of the financial year. The Commission commented on the policy paper and will play a significant advisory role in the completion of the reform.

Advisory work

Besides its own projects, the Law Commission gives advice to Ministers, select committees, and government departments and agencies on a wide range of matters connected with the reform and development of the law. Its statutory independence makes it well placed to provide detached advice. Legislative proposals from departments may also impact significantly on areas of law which are under review by the Commission.

The Commission also provides research support to the Legislation Advisory Committee (LAC) in discharging its function of reviewing legislation and advising select committees on matters of legislative policy. Following the retirement of Dr Mervyn Probyn CB as LAC Chairperson in August 1996, an extra responsibility fell on the Commission's research staff pending the appointment of a replacement. The Commission values its involvement with the LAC, which complements its own advisory work.

A further dimension of the Commission's advisory work is the assistance it gives to Ministers, officials and select committees on the implementation of its own law reform proposals. The Legal Services Group of the Ministry of Justice is responsible for implementation but there is no systematic means of progressing recommendations through to the point of their introduction as Bills. The Commission is giving priority to addressing this deficiency, and expects progress to be made in the forthcoming year.

Details of all advisory work (including work in connection with the LAC and in respect of past reports of the Commission) are in appendix A. The work was co-ordinated by senior researchers Louise Delany (before she departed in August 1996) and Padraig McNamara.

Finance

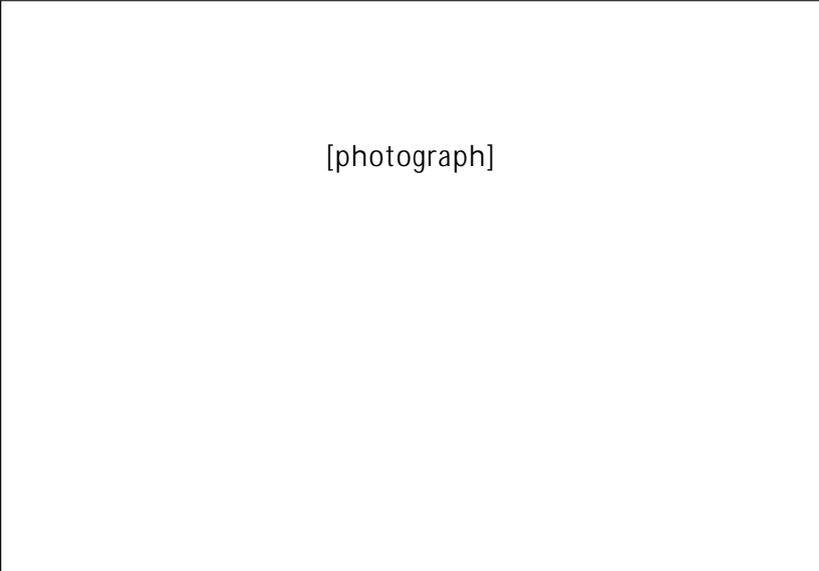
This year the Commission again budgeted to operate at a deficit, funding the shortfall in income from its reserves. It also applied its reserves to a capital replacement programme in respect of its computer systems.

The financial statements are set out on pages 20–29.

Administration and communications

Some key changes were identified in the *Strategic Business Plan 1996/97*. Major achievements during the year included:

- the replacement of our computer system, enabling in particular the installation of new library and legal research software;
- the redesign and automation of our project planning, administration, and time-recording systems;
- a revision of our performance standards, and in particular the way we measure the quality of our work;
- the launch of a new publications series (Miscellaneous Publications); and
- a streamlining of our publication process.



[photograph]

These changes have improved the efficiency of our project planning and reporting; enabled better use to be made of the available research resources (in both traditional and electronic form); and improved the number, timeliness and quality of our publications.

The redesign of the Commission's publications was completed early in the financial year. *Te Aka Kōrero*, the quarterly newsletter launched at the same time, has now run to seven issues and is central to the Commission's communications strategy. The next publications project, due for launch in the 1997/98 year, is to establish a direct presence on the Internet. In anticipation, a number of previous reports and discussion papers have been re-converted to a suitable electronic form.

External relations

As noted in the President's report, close contact with related organisations is critical to the success of an organisation like the Law Commission. Regular contact was maintained with the Ministry of Justice and other government departments and organisations. Commissioners Atkins and Morris were members of Focus Groups established by the Ministry of Justice.

Participation in Ministerial and other consultative committees enables us to extend the Law Commission's contributions in a variety of ways. Justice Baragwanath was a member of the Courts Consultative Committee. Professor Sutton's membership of the Copyright Consultative Committee enabled the Commission to monitor and contribute to developments in intellectual property. Commissioner Atkins represented the Commission on the Criminal Practice Committee. The Commission also participated in a committee established by the Principal Family Court Judge to monitor international family law issues.

Judicial contacts were maintained through these bodies and by the presence of both a High Court Judge and a District Court Judge on the Commission itself. Justice Baragwanath continued to sit as a judge in Auckland at regular intervals. Commissioner Morris was a member of the Judicial Working Group on Gender Equity and its Seminar Planning Group, and contributed to the 2-day seminar on gender issues attended by nearly all of New Zealand's judges. Her paper incorporated material provided in the Women's Access to Justice project by New Zealand women about their experiences in court as lawyers, parties and witnesses.

Regular meetings were held during the year with the New Zealand Law Society and a number of its committees.

Contacts with overseas law reform agencies were also maintained during the year and are thought to be of considerable value. In August 1996 the Law Commission's Director, Robert Buchanan, represented the Commission at the triennial meeting of Commonwealth Law Reform Agencies in Vancouver, presenting a paper "Law Reform and Social Enquiry" at the opening working session.

Other activities

In April 1997, Justice Baragwanath chaired a meeting of the Aviation Study Group, of which he is a member, at Linacre College, Oxford relating to safety and in particular, systemic accidents. He also provided advice to the APEC Aviation Safety Group on systemic safety. Also in April Justice Baragwanath delivered a paper, "The Treaty and the Constitution", in a New Zealand Law Society seminar series and another, "The Future of Administrative Law", to an AIC conference. He chaired sessions in the Legal Research Foundation seminar series on the Official Information Act, and another at Victoria University of Wellington on the Treaty of Waitangi, on which he also commented at the Pipitea Marae series.

Professor Sutton attended a number of meetings called by the Ministry of Commerce on forthcoming conferences of the World Intellectual Property Organisation (WIPO). After leaving the Commission he remained involved in the University of Waikato's project examining the development of bicultural jurisprudence.

Commissioner Morris has some continuing responsibilities to the Waitangi Tribunal, of which she was a member until 1996.

Commissioner Dugdale continues as a contributor to *Gault on Commercial Law* (Brooker's, Wellington).

Commissioner Henare is a director of the Transitional Health Authority and a member of the Northern Regional Health Committee. She also continues her legal practice in Auckland.

Commissioners and staff participated in the activities of a number of other organisations, including the Institutes of Public Law and Dispute Resolution at Victoria University, the Law and Economics Association of New Zealand (LEANZ), the International Law Association, and the New Zealand Association for Comparative Law.

Elisabeth McDonald, Research and Policy Manager of the evidence project, travelled to Fiji in June 1997 to assist in the process of criminal evidence reform. Her travel and accommodation expenses were sponsored by the Pacific Regional Human Rights Education Resource Team, a project seeking to enhance the legal and social status of women in the Pacific.

Michelle Vaughan, a senior researcher, was invited by the Legal Services Board to join an advisory committee for research into contributions and changes under the Legal Services Act 1991.

Philippa McDonald, a senior researcher, is also a member of the Complaints Review Tribunal.

Members and staff

The Commission farewelled Professor Richard Sutton at the end of his term on the Commission in January. Professor Sutton was appointed as a Commissioner in 1991, and served as Deputy President (and briefly as the acting President) from the middle of 1996. He has made a major contribution not only to the work of the Law Commission but also as a law reformer over a period of many years. As one of New Zealand's leading academic lawyers the Commission benefited hugely from his presence.

Four members of the research staff, Louise Delany, Bill Sewell, Janet Lewin, and Ian Murray, left the Commission during the year under review. Each made a valuable and distinctive contribution to the Commission and its work. Their contributions are acknowledged with thanks.

John Lett, Finance and Administration Manager since 1991, left the Commission in May 1997. We also lost the services of two of our secretaries, Alison Johnston and Jacqui Kellett, during the year. The Commission acknowledges their contributions and those of the other secretarial, support, and library staff. From June 1997 the Corporate Services Manager has been Mr Bala Benjamin.

A full list of members and staff appears at appendix B.

LAW COMMISSION

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 1997.

Hon Justice Baragwanath
President

Bala Benjamin
Corporate Services Manager

LAW COMMISSION

FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 1997

Reporting Entity

The Law Commission is a Crown entity established by the Law Commission Act 1985.

The financial statements have been prepared pursuant to section 17 of the Law Commission Act.

Measurement base

The general accounting principles recognised as appropriate for the measurement and reporting of results and financial position on an historical basis, modified by the revaluation of library collections, have been followed.

Accounting policies

The following accounting policies, which materially affect the measurement of results and financial position, have been applied:

1 *Goods and Services Tax (GST)*

The financial statements have been prepared exclusive of GST, with the exception of receivables and payables which are stated with GST included.

2 *Fixed assets*

All fixed assets are initially recorded at cost. Additions to library collections were expensed up to 30 June 1997 (except for the initial cost of establishment of the library).

Library collections were valued for the first time, as at 30 June 1997, at depreciated replacement cost. All serial acquisitions, and other expenditure which will enhance the useful life of the collections beyond the financial year, will be capitalised from 1 July 1997.

Library collections will be revalued every 3 years. Upwards or downwards revaluation of library collections is charged to Revaluation of Library collections reserve account. When this results in a debit balance in the reserve account, that balance is expensed in the statement of financial performance.

3 *Depreciation*

Depreciation is provided on a straight line basis which will write off the cost (or revaluation) of the assets over their useful lives.

The useful lives and associated rates of depreciation for major classes of assets have been estimated as follows:

| | Estimated useful life | Rate of depreciation |
|------------------------|-----------------------|----------------------|
| Computer equipment | 5 years | 20% |
| Furniture and fittings | 5 years | 20% |
| Office equipment | 5 years | 20% |
| Computer software | 5 years | 20% |
| Library collections | 5 years | 20% |

4 *Investments*

Investments are stated at the lower of cost and net realisable value.

5 *Leases*

Operating lease payments, where the risks and benefits of ownership are effectively retained by the lessor, are charged as expenses in the period in which they are incurred.

6 *Statement of cash flows*

Cash means cash balances on hand, held in bank accounts, demand deposits and other highly liquid investments, in which the Law Commission invests as part of its day to day cash management.

Operating activities include cash received from all income sources and the cash payments made for the supply of goods and services.

Investing activities are those activities relating to the acquisition and disposal of non-current assets.

Financing activities comprise the change in equity of the Commission.

7 *Financial instruments*

The Law Commission is a party to financial instruments as part of its normal operations. Those instruments include bank accounts, investments, debtors and creditors. They are recognised in the statement of financial position. Revenue and expenses in relation to financial instruments are recognised in the statement of financial performance.

8 *Income tax*

The Law Commission is exempt from income tax.

9 *Receivables*

Accounts receivable are stated at their estimated realisable value after providing for doubtful and uncollectable debts.

10 *Employee entitlements*

Provision is made in respect of the Commission's liability for annual leave. Annual leave has been calculated on an actual entitlement basis at current rates of pay.

11 *Change in accounting policies*

There have been no changes in accounting policies. The policies have been applied on a basis consistent with previous years.

The revised policy with regard to library collections will be effective from 1 July 1997.

LAW COMMISSION

STATEMENT OF FINANCIAL PERFORMANCE
FOR THE YEAR ENDED 30 JUNE 1997

| | Note | 1997 Actual \$ | 1996 Actual \$ | 1997 Budget \$ |
|---|------|----------------------|----------------------|----------------------|
| REVENUE | | | | |
| Government grant | | 2,975,111 | 2,975,111 | 2,975,100 |
| Judges' salaries paid by the Department for Courts | | 281,250 | 0 | 0 |
| Interest | | 163,162 | 227,444 | 176,500 |
| Sale of publications and others | | 20,834 | 20,393 | 16,300 |
| Total revenue | | <u>3,440,357</u> | <u>3,222,948</u> | <u>3,167,900</u> |
| EXPENDITURE | | | | |
| Personnel costs | | 2,224,298 | 2,068,420 | 2,288,792 |
| Project costs | | 571,692 | 518,740 | 835,150 |
| Library costs | | 148,185 | 158,310 | 145,800 |
| Administration costs | 1 | 790,368 | 779,972 | 801,132 |
| Loss on disposal of fixed assets | | 5,047 | 0 | 0 |
| Depreciation | | 103,519 | 50,648 | 125,160 |
| Total expenses | | <u>3,843,109</u> | <u>3,576,090</u> | <u>4,196,034</u> |
| Net Surplus (Deficit) | | <u>(402,752)</u> | <u>(353,142)</u> | <u>(1,028,134)</u> |

The accompanying accounting policies and notes form part of these financial statements

LAW COMMISSION

STATEMENT OF MOVEMENTS IN EQUITY
FOR THE YEAR ENDED 30 JUNE 1997

| | 1997 | 1996 |
|---|-------------------------|-------------------------|
| | \$ | \$ |
| Equity at the beginning of the year | <u>2,128,927</u> | <u>2,482,069</u> |
| Surplus and revaluations | | |
| Net surplus (deficit) for the year | (402,752) | (353,142) |
| Revaluation of library collections | <u>17,160</u> | <u>0</u> |
| Total recognised revenues and expenses for the year | <u>(385,592)</u> | <u>(353,142)</u> |
| Equity at the end of the year | <u><u>1,743,335</u></u> | <u><u>2,128,927</u></u> |

The accompanying accounting policies and notes form part of these financial statements

LAW COMMISSION

STATEMENT OF FINANCIAL POSITION
AS AT 30 JUNE 1997

| | Note | 1997 \$ | 1996 \$ |
|----------------------------------|------|------------------|------------------|
| EQUITY | | | |
| Accumulated funds | | 1,726,175 | 2,128,927 |
| Asset Revaluation Reserve | | 17,160 | 0 |
| Total Crown Equity | | <u>1,743,335</u> | <u>2,128,927</u> |
| Represented by: | | | |
| CURRENT ASSETS | | | |
| Cash and bank balances | | 7,209 | 121,963 |
| Short-term investments | | 1,200,000 | 1,900,000 |
| Receivables and prepayments | 2 | 45,977 | 94,337 |
| Total current assets | | <u>1,253,186</u> | <u>2,116,300</u> |
| NON-CURRENT ASSETS | | | |
| Fixed assets | 3 | 685,277 | 314,789 |
| Total non-current assets | | <u>685,277</u> | <u>314,789</u> |
| TOTAL ASSETS | | <u>1,938,463</u> | <u>2,431,089</u> |
| CURRENT LIABILITIES | | | |
| Payables and accruals | 4 | 195,128 | 302,162 |
| Total current liabilities | | <u>195,128</u> | <u>302,162</u> |
| TOTAL LIABILITIES | | <u>195,128</u> | <u>302,162</u> |
| NET ASSETS | | <u>1,743,335</u> | <u>2,128,927</u> |

Hon Justice Baragwanath
President

Bala Benjamin
Corporate Services Manager

The accompanying accounting policies and notes form part of these financial statements

LAW COMMISSION

STATEMENT OF CASH FLOWS FOR
THE YEAR ENDED 30 JUNE 1997

| | 1997 | 1996 |
|--|-------------------------|-------------------------|
| | \$ | \$ |
| Cash flow from operating activities | | |
| Cash was provided from: | | |
| Government grant | 2,975,111 | 2,975,111 |
| Interest | 182,739 | 234,600 |
| Customers | 36,968 | 11,063 |
| | <u>3,194,818</u> | <u>3,220,774</u> |
| Cash was applied to: | | |
| Payments to suppliers and employees | <u>(3,547,678)</u> | <u>(3,424,396)</u> |
| | <u>(3,547,678)</u> | <u>(3,424,396)</u> |
| Net cash inflow (outflow) from operating activities | <u>(352,860)</u> | <u>(203,622)</u> |
| Cash flow from investing activities | | |
| Cash was provided from: | | |
| Sale of fixed assets | <u>284</u> | <u>0</u> |
| | <u>284</u> | <u>0</u> |
| Cash was applied to: | | |
| Purchase of fixed assets | <u>(462,178)</u> | <u>(107,549)</u> |
| | <u>(462,178)</u> | <u>(107,549)</u> |
| Net cash inflow (outflow) from investing activities | <u>(461,894)</u> | <u>(107,549)</u> |
| Net increase (decrease) in cash held | (814,754) | (311,171) |
| Plus opening cash balance: | | |
| BNZ current account | 6,963 | 8,134 |
| BNZ call account | 115,000 | 125,000 |
| BNZ short-term deposits | <u>1,900,000</u> | <u>2,200,000</u> |
| | <u>2,021,963</u> | <u>2,333,134</u> |
| Closing cash balance | <u>1,207,209</u> | <u>2,021,963</u> |
| Made up of: | | |
| BNZ current account | 7,209 | 6,963 |
| BNZ call account | 45,000 | 115,000 |
| BNZ short-term deposits | <u>1,155,000</u> | <u>1,900,000</u> |
| | <u>1,207,209</u> | <u>2,021,963</u> |

The accompanying accounting policies and notes form part of these financial statements

LAW COMMISSION

STATEMENT OF CASH FLOWS FOR
THE YEAR ENDED 30 JUNE 1997

RECONCILIATION OF NET DEFICIT TO
NET CASH OUTFLOW FROM OPERATING
ACTIVITIES

| | 1997 | 1996 |
|--|------------------|------------------|
| | \$ | \$ |
| Reported deficit | (402,752) | (353,142) |
| Less items not involving cash flows: | | |
| Depreciation | 103,519 | 50,648 |
| Loss on disposal of fixed assets | 5,047 | 0 |
| Add (less) movements in working capital: | | |
| Decrease in receivables and prepayments | 48,360 | (9,892) |
| Decrease in payables and accruals | (107,034) | 108,764 |
| Net cash outflow from operating activities | <u>(352,860)</u> | <u>(203,622)</u> |

The accompanying accounting policies and notes form part of these financial statements

LAW COMMISSION

NOTES TO FINANCIAL STATEMENTS FOR
THE YEAR ENDED 30 JUNE 1997

1 Administration costs include

| | 1997 | 1996 |
|--|----------------|----------------|
| | \$ | \$ |
| Audit fee | 8,000 | 7,500 |
| Increase in provision for doubtful debts | 2,683 | Nil |
| Rental expenses on operating leases | 11,113 | 11,113 |
| Rent and rates on office accomodation | 523,348 | 501,034 |
| | <u>523,348</u> | <u>501,034</u> |

2 Receivables and prepayments

| | 1997 | 1996 |
|------------------------------------|---------------|---------------|
| | \$ | \$ |
| Sundry debtors | 14,652 | 34,187 |
| GST receivable | 19,384 | 14,296 |
| Trade debtors | 3,425 | 19,601 |
| Less: Provision for doubtful debts | (2,683) | Nil |
| Prepayments | 11,199 | 26,253 |
| | <u>45,977</u> | <u>94,337</u> |

3 Fixed assets

| | Cost/ valuation | Accumulated depreciation | Net book value 1997 | Net book value 1996 |
|------------------------|--------------------|-----------------------------|------------------------|------------------------|
| | \$ | \$ | \$ | \$ |
| Computer equipment | 591,748 | 376,879 | 214,869 | 39,734 |
| Furniture and fittings | 1,040,227 | 960,470 | 79,757 | 74,902 |
| Office equipment | 83,692 | 73,341 | 10,351 | 8,921 |
| Computer software | 208,060 | 30,563 | 177,497 | 5,589 |
| Library collections | 202,803 | - | 202,803 | 185,643 |
| | <u>2,126,530</u> | <u>1,441,253</u> | <u>685,277</u> | <u>314,789</u> |

Revalued library collections are stated at depreciated replacement cost as determined by valuers, Lambert's Library Services, as at 30 June 1997. Stephanie Lambert of Lambert's Library Services holds a New Zealand Library Studies Certificate awarded by the School of Library Studies, Wellington Teachers College.

4 Payables and accruals

| | 1997 | 1996 |
|-----------------------------|----------------|----------------|
| | \$ | \$ |
| Suppliers of goods/services | 68,372 | 72,118 |
| Employee entitlements | 65,859 | 133,642 |
| Accrued expenses | 33,051 | 51,747 |
| Other creditors | 27,846 | 44,655 |
| | <u>195,128</u> | <u>302,162</u> |

5 Commitments

Capital commitments

There were no commitments for capital expenditure at balance date (30 June 1996, \$ nil).

Lease commitments

Non-cancellable operating leases for rental accommodation and office equipment:

| | 1997 | 1996 |
|-----------------------|----------------|------------------|
| | \$ | \$ |
| Less than 1 year | 542,655 | 546,555 |
| Between 1 and 2 years | 0 | 538,222 |
| Total | <u>542,655</u> | <u>1,084,777</u> |

6 Contingent liabilities

\$13,863 claimed by a computer services supplier is in dispute. The Commission has denied liability for this amount.

There are no other material contingent liabilities as at balance date (30 June 1996, \$ nil).

7 Related party information

The Law Commission is a wholly owned entity of the Crown. The Commission received from the Ministry of Justice \$2,975,111 as a grant for the financial year (1995/96, \$2,975,111).

8 Financial instruments

Fair value

The fair value of financial instruments is equivalent to the carrying amount disclosed in the Statement of Financial Position.

Credit risk

Credit risk is the risk that an outside party will not be able to meet its obligations to the Commission.

Financial assets which potentially subject the Commission to concentration of credit risk consist principally of cash, short-term deposits and receivables.

The cash and short-term deposits are placed with the Bank of New Zealand, with a Standard and Poors AA credit rating.

Concentration of credit risk with respect to receivables is limited by its small value and relatively large number of customers involved.

The Commission does not have exposure to interest rate or currency risks.

LAW COMMISSION

STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 1997

Output Class: Policy advice

Budgeted Expenditure: \$4,196,034 (excluding GST)
Actual Expenditure: \$3,843,109 (excluding GST)

Quality

All outputs and other work completed by the end of the year met the quality standards set out on pages 38–40, to the extent applicable.

Quantity and timeliness

The work produced by the Commission during the course of each year is set out in an annual work programme submitted to the Minister of Justice under s 7(1) of the Law Commission Act. The work programme is subject to revision from time to time.

The statement of service performance reports the outputs produced during the financial year as compared with those established in the annual work programme agreed in a Memorandum of Understanding with the Minister of Justice.

Evidence Law Reform

| | Planned | Actual |
|--|---|-------------------------------------|
| The Evidence of Children and Other Vulnerable Witnesses (Review) | Publish by October 1996 | Published October 1996 (NZLC PP26) |
| Evidence Law: Character and Credibility (Review) | Publish by December 1996 | Published February 1997 (NZLC PP27) |
| The Law of Parliamentary Privilege in New Zealand Reference Paper (Review) | Not planned in the 1996/97 Work Programme | Published December 1996 (NZLC MP5) |
| Other | Progress policy development to the point where the final report and draft code will be completed and published in the 1997/98 year. | Achieved |

Criminal Procedure

| | Planned | Actual |
|---|--|---|
| The Privilege Against Self-Incrimination (Review) | Publish by September 1996 | Published September 1996 (NZLC PP25) |
| Criminal Prosecution (Review) | Publish by January 1997 | Published March 1997 (NZLC PP28) ¹ |
| Juries in Criminal Trials (Review) | Publish by April 1997 | Not yet published ² |
| Alternatives to prosecution (Review) | Publish by February 1997 | Not yet published ³ |
| Right of Silence and Confessions (Report) | Publish by June 1997 | Not yet published ⁴ |
| Other | Complete preliminary research on costs in criminal cases by February 1997 | Achieved |
| | Complete analysis of submissions, and progress policy development, on all papers published in 1996/97. | Achieved |

Notes

- 1 Completion of the paper *Criminal Prosecution* was delayed by the need to ensure compliance with the necessary quality standards.
- 2 Completion of the discussion paper *Juries in Criminal Trials* was delayed for resource reasons. It will be published before the end of the calendar year.
- 3 The project to examine alternatives to prosecution follows the examination of the system of prosecution itself (see note 1 above). The project was refocused and replanned following consultation with the Law Commission's Māori Committee, the Ministry of Justice, the Police, and other interested parties.
- 4 The right of silence and confessions were two of the topics addressed in the discussion paper *Criminal Evidence: Police Questioning* (NZLC PP21). They overlap with the privilege against self-incrimination. The Commission decided to prepare a report which covered all three topics. The report is scheduled for publication by February 1998 under the umbrella of the Evidence project.

Succession project

| | Planned | Actual |
|--|---|---|
| Succession Law: Testamentary Claims (Review) | Publish by August 1996 | Published August 1996 (NZLC PP24, NZLC MP1) |
| Wills Reform (Review) | Publish by October 1996 | Published October 1996 (NZLC MP2) |
| Conflicts of laws issues (Review) | Publish by March 1997 | Not published ¹ |
| Intestacy (Review) | Publish by June 1997 | Not published ² |
| Māori Succession Issues (Review) | Publish by June 1997 | Not published ³ |
| Other | Commence work on a final report by February 1997, and progress policy development to a point where the final report will be completed and published in the 1997/98 year | Achieved ⁴ |

Notes

- 1 The Commission asked Professor Tony Angelo to prepare a paper on the overseas aspects of succession law, with a view to its publication for consultation purposes. The paper was completed in early 1997 with the assistance of Cate Alcorn, and was circulated to a limited audience. Its formal publication was considered unnecessary.
- 2 The Commission deferred completing this paper until the report on the adjustment of succession claims (see *Succession Law: A Succession (Adjustment) Act*, NZLC R39, August 1997) had been published and/or legislation concerning *inter vivos* matrimonial and de facto property claims had been introduced to Parliament.
- 3 Policy options on Māori succession issues were developed in early 1997 and are now the subject of further consultation with Māori.
- 4 A single final report is now unnecessary.

Women's Access to Justice

| | Planned¹ | Actual |
|---|--|---|
| Information about Lawyers' Fees (Review) | Publish by October 1996 | Published October 1996 (NZLC MP3) |
| Women's Access to Legal Information (Review) | Publish by October 1996 | Published March 1997 (NZLC MP4) |
| Women's Access to Civil Legal Aid (Review) | Publish by February 1997 | Published March 1997 (NZLC MP8) |
| Women's Access to Legal Advice and Representation (Review) | Publish by May 1997 | Published April 1997 (NZLC MP9) |
| Lawyers Costs in Family Law Disputes (Review) | Publish by April 1997 | Published June 1997 (NZLC MP10) |
| The Education and Training of Law Students and Lawyers (Review) | Publish by April 1997 | Not yet published ² |
| Māori Women's Access to Justice (Review) | Publish by June 1997 | Not yet published ³ |
| Other | Complete all general consultation by 31 March 1997 and progress policy development to the point where the final report will be completed and approved for publication by the end of 1997 | The Commission expects to complete and approve the report to the Minister of Justice by end of March 1998, with publication in April 1998 |

Notes

- 1 Specific publication dates were not included in the original or the revised work programme, but were included in the relevant project plans during the course of the year.
- 2 The paper was published in September 1997.
- 3 The paper is due to be published in November 1997.

Public Law projects

| | Planned | Actual |
|--|--|--------------------------------|
| Crown (Civil Liability) (Report) | Complete consultation and policy development work by November 1996 and publish a report by June 1997 | Published May 1997 (NZLC R37) |
| Crown (other work) | Progress initial concept definition work by 30 June 1997 ¹ | Achieved |
| Official Information Act | Publish by June 1997 | Not yet published ² |
| Legislation | Commence work on Legislation Manual Part 4 by 1 May 1997, with a view to completion during 1997/98 | Not achieved ³ |
| International Obligations: The Making, Acceptance and Implementation of Treaties | Complete research and policy development by 30 June 1997, with a view to publication of a report early in the 1997/98 year | Achieved ⁴ |
| Habeas Corpus | Complete research and policy development by 30 June 1997, with a view to publication of a report early in the 1997/98 year | Achieved ⁵ |

Notes

- 1 This work was not envisaged at the start of the financial year.
- 2 Work on Crown civil liability was given priority in the work programme for the year. (The report was published in October 1997 (NZLC R40)).
- 3 This project is no longer on the Law Commission's work programme. At year end the role of the Law Commission in relation to legislation, and those of other bodies including the Parliamentary Counsel Office and the Legislation Advisory Committee, were under review by the Ministry of Justice.
- 4 A report is due for publication in 1997/98.
- 5 This work was not envisaged at the start of the financial year. A report is due for publication in 1997/98.

Māori Custom Law

The Law Commission is undertaking this project on behalf of its Māori Committee, with funding provided by the New Zealand Law Foundation and administrative support provided by the Law Commission itself.

It was planned to achieve approval for publication of the report by 30 June 1997 with a view to actual publication thereafter. The timetable for the project was disrupted because of competing commitments of the consultant writers. The project is now scheduled for completion by the end of 1997.

Other projects

| | Planned | Actual |
|--------------------|---|-----------------------|
| Civil Contribution | Monitor further developments | Achieved ¹ |
| Other | Preliminary work for potential new projects | Achieved ² |

Notes

- 1 A review of progress was completed in June 1997.
- 2 This formed part of the Law Commission's work programme development following the appointment of new Commissioners during the year.

Advisory work

As to quantity, see appendix A.

As to timeliness, all deadlines set or agreed in respect of work for the Legislation Advisory Committee were met. For other advisory work, deadlines were set or agreed in 14 cases, and met in 13. The delay in the one outstanding case was not prejudicial.

Cost

The costs listed below for each area of project activity consist of both direct costs and indirect costs. Direct costs include staff time (recorded on the practice management system), consultants, travel, publication costs, and other incidental expenses. Indirect costs are allocated (using the formula [total indirect cost/total time recorded] x time recorded against individual project) to ensure that the total cost of the Commission is reflected in its outputs.

| Activity | Budgeted \$ | Actual \$ |
|---------------------------|------------------|----------------------|
| Evidence Law Reform | 1,123,121 | 983,935 |
| Criminal Procedure | 985,231 | 789,532 |
| Succession Project | 785,086 | 658,778 |
| Women's Access to Justice | 782,483 | 964,312 ¹ |
| Public Law Projects | 330,983 | 234,469 |
| Māori Custom Law | 105,301 | 58,468 |
| Other Projects | 33,075 | 55,965 ² |
| Advisory Work | 50,754 | 97,650 ³ |
| Total | 4,196,034 | 3,843,109 |

Notes

- 1 The costs of publishing five consultation papers were not included in the budget at the start of the year. The budget for external consultants and travel was substantially underspent.
- 2 This includes work done in redeveloping the Commission's work programme in the first half of 1997.
- 3 This reflects the larger than expected number of requests for advice received from other agencies.

The Law Commission's performance standards

Each product¹ is measured against four performance standards: quality, quantity, timeliness and cost.

Quality

All products are measured against six quality goals:

| | |
|-------------------|--|
| PURPOSE | The paper will clearly identify its purpose and focus on remedying the mischief to which it is addressed. |
| LOGIC | All argument will be logical and supported by facts, and explain any assumptions made. |
| CONSULTATION | Advice and recommendations will be the result of appropriate consultation with interested parties, and will identify all reasonable objections. |
| ACCURATE RESEARCH | The paper will be supported by research which is thorough, accurate and takes account of all relevant material. |
| PRACTICALITY | The paper will consider questions of practicality, especially issues of implementation, cost, technical feasibility, timing, and consistency with other Commission policies. |
| PRESENTATION | The paper will be clearly written in plain English. |

¹ The Law Commission has four types of product (or output), based on s 5 of the Law Commission Act 1985. They all fall within the output class: Policy Advice. The types are:

- Review of an aspect of the law of New Zealand (s 5(1)(a)). The review is usually contained in a paper published for consultation purposes. This type of product is described as a "Review";
- Recommendations for reform and development of the law (s 5(1)(b)). These recommendations are usually contained in a Report to the Minister of Justice. They are described as "Reports";
- Advice on the review or development of the law of New Zealand conducted by a department or other organisation, or on proposals made as a result of the review, under s 5(1)(c) (described simply as "Advice"); this type of product includes work done in relation to the Legislation Advisory Committee and concerning the implementation of Law Commission recommendations; and
- Advice to the Minister of Justice on ways in which the law of New Zealand can be made as understandable and accessible as is practicable (s 5(1)(d)). This type of product is described as "Accessibility Advice". Advice under s 5(1)(d) often forms part of other products. A product will be described as "Accessibility Advice" when this is the predominant characteristic.

The quality of those products described as reviews and reports is measured by:

- compliance with the Law Commission's internal quality assurance processes;
- internal peer review and policy approval by all appointed members of the Commission;
- external review by selected experts; and
- submissions and feedback received from interested parties.

The quality of those products described as advice and accessibility advice is measured by:

- compliance with the Law Commission's internal quality assurance processes;
- internal peer review and policy approval by some or all appointed members of the Commission;
- feedback received from recipients of the advice and interested parties; and
- continuing requests by Ministers, departments and organisations for the Law Commission's advice on matters concerning the reform and development of the law of New Zealand.

Quantity

REVIEWS AND REPORTS

The quantity of work described as a review or a report is determined by the requirements of the projects in the Law Commission's work programme.

Projects are included in the work programme either by reference from the Minister of Justice under s 7 of the Law Commission Act 1985, or on the Law Commission's own initiative in consultation with the Minister of Justice. The number and nature of products from a project are determined by the Law Commission, in consultation where necessary with the Minister of Justice and other interested parties, having regard to the subject matter of the project and the available resources.

ADVICE AND ACCESSIBILITY ADVICE

The quantity of work described as advice or accessibility advice is measured with reference to:

- the number of advice requests received by the Law Commission from Ministers, departments and organisations (including the Legislation Advisory Committee), or
- any other matter or occasion arising, on which the Law Commission considers it appropriate and necessary to offer advice.

Timeliness

REVIEWS AND REPORTS

Work described as a review or a report is published on or before the planned publication date set out in the work programme.

Publication dates are set by means of the Law Commission's internal project planning procedures, having regard to:

- the subject matter of the project;
- its priority in relation to other projects and activities of the Commission;
- the availability of resources; and
- where applicable, the reporting date set in the terms of reference for the project, or by the Minister of Justice under s 7(3) of the Law Commission Act 1985.

ADVICE AND ACCESSIBILITY ADVICE

Work described as advice or accessibility advice is produced:

- on or before the date specified by, or agreed with, the person requesting the advice; or
- when no date is specified, within a timeframe which ensures that the advice will be relevant and usable by the recipient.

Cost

REVIEWS AND REPORTS

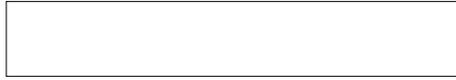
Work described as a review or a report is produced at or under the budgeted cost of the project in question. Project budgets are set by means of the Law Commission's internal project planning procedures, having regard to:

- the subject matter of the project (including any consultation requirements); and
- the availability of resources.

ADVICE AND ACCESSIBILITY ADVICE

Work described as advice or accessibility advice is produced within the total budget for advice work, fixed annually by the Law Commission having regard to the availability of resources and the competing demands of other projects.

All costs are measured using the Law Commission's financial and project management systems and by the recording of staff time.



REPORT OF THE AUDIT OFFICE

TO THE READERS OF THE FINANCIAL STATEMENTS
OF THE LAW COMMISSION FOR THE
YEAR ENDED 30 JUNE 1997

We have audited the financial statements on pages 20 to 40. The financial statements provide information about the past financial and service performance of the Law Commission and its financial position as at 30 June 1997. This information is stated in accordance with the accounting policies set out on pages 20 to 22.

Responsibilities of the members of the Law Commission

The Public Finance Act 1989 requires the members of the Law Commission (the members) 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 1997, the results of its operations and cash flows and the service performance achievements for the year ended 30 June 1997.

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 HC 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 members 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 and the Law Commission's compliance with significant legislative requirements.

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 20 to 40:

- comply with generally accepted accounting practice *and*
- fairly reflect:
 - the financial position as at 30 June 1997
 - the results of its operations and cash flows for the year ended on that date *and*
 - the service performance achievements in relation to the performance targets and other measures adopted for the year ended on that date.

Our audit was completed on 24 October 1997 and our unqualified opinion is expressed as at that date.

HC Lim
Audit New Zealand
On behalf of the Controller and Auditor-General

Wellington, New Zealand

APPENDIX A

Advisory work 1996/97

Advice on making the law as understandable and accessible as is practicable

| Advice on | Provided to |
|---|---|
| Accessibility of regulations | Parliamentary Counsel Office |
| Mental health resources for Māori | Mental Health Foundation of New Zealand |
| Review of compilation of legislation | Parliamentary Counsel Office |
| Structure and style of legislation (following <i>Legislation Manual: Structure and Style</i> NZLC R35) | Parliamentary Counsel Office |
| Format of Legislation (following <i>The Format of Legislation</i> NZLC R27) | Parliamentary Counsel Office |

Constitutional and courts issues

| Advice on | Provided to |
|--|---|
| Various constitutional and governance issues | Attorney-General Minister of Justice |
| Proposals on court assisted mediation | Courts Consultative Committee |
| Review of night court hearings | Department for Courts |
| Jury selection and empanelment issues | Department for Courts |
| Community magistrates proposal | Department for Courts |
| Review of operations of District Courts | Department for Courts |

International law

| Advice on | Provided to |
|--|---------------------------------------|
| Proposal for an international criminal court | Ministry of Foreign Affairs and Trade |

Legislative reviews

| Advice on | Provided to |
|---|--|
| Draft Archives Bill | Department of Internal Affairs |
| Draft Cultural Heritage Bill | Department of Internal Affairs |
| Fisheries: inquiry into cost recovery | Primary Production Select Committee |
| Review of firearms safety | Commission of Inquiry into Firearms Safety |
| Review of limitation periods under the Fair Trading Act 1986 | Ministry of Consumer Affairs |
| "Consistency 2000": review of human rights provisions in legislation | Human Rights Commission |
| Review of s 35A, Securities Act 1978 | Ministry of Commerce |
| Driving and land transport law reform | Land Transport Safety Authority |
| Review of Privacy Act 1993 | Office of the Privacy Commissioner |
| Research on contributions and charges under the Legal Services Act 1991 | Legal Services Board |

Policy proposals

| Advice on | Provided to |
|---|---------------------------------|
| Vehicle glazing rules | Land Transport Safety Authority |
| Justice sector information management policies | Ministry of Justice |
| Review of contingency fee rules | New Zealand Law Society |
| Resolution Business Design Project | New Zealand Police |
| Policy framework on government-held information | State Services Commission |

Implementation of Law Commission reports

| Advice on | Provided to |
|--|---|
| Limitation defences (NZLC R6) | Ministry of Justice |
| Personal property securities legislation (NZLC R8) | Ministry of Commerce |
| Preliminary hearings and disclosure in criminal cases (NZLC R14) | Department for Courts Ministry of Justice |
| A New Interpretation Act (NZLC R17) | Ministry of Justice Parliamentary Counsel Office |

| Advice on | Provided to |
|---|---|
| Emergencies (NZLC R22) | Department of Internal Affairs |
| Community safety: mental health and criminal justice (NZLC R30) | Ministry of Justice Ministry of Health |
| Crown liability and judicial immunity (NZLC R37) | Ministry of Justice |

Regular and ongoing involvement

Membership of the Courts Consultative Committee, the Criminal Practice Committee and the Committee to advise the Principal Family Court Judge on international law issues.

Participation in the criminal justice and public law focus groups of the Ministry of Justice.

Participation in the Law and Economics Association of New Zealand.

Provision of a quarterly contribution to the Australian Journal *Public Law Review*.

Submissions on bills by the Legislation Advisory Committee, with research assistance provided by the Law Commission

Biosecurity Amendment (No 4) Bill
 Fisheries (Quota Operations Validation) Bill
 Harassment and Criminal Associations Bill
 Human Assisted Reproductive Technologies Bill
 Māori Reserved Land Amendment Bill
 Passive Resistance Sprays Reform Bill
 Penal Institutions Amendment Bill
 Producer Board Acts Reform Bill
 Social Security Amendment Bill
 Statutes Amendment Bill
 Trans-Tasman Mutual Recognition Bill

APPENDIX B
Members and staff of the
Law Commission as at
30 June 1997

Members of the Law Commission

Hon Justice Baragwanath – President
Leslie H Atkins OC
Joanne Morris OBE
Judge Margaret Lee
DF Dugdale
Denese Henare ONZM

Permanent staff of the Law Commission

| | |
|--------------------------------------|--------------------|
| DIRECTOR | Robert Buchanan |
| SENIOR LEGAL RESEARCHERS | David Calder |
| | Loretta Desourdy |
| | Christine Hickey |
| | Philippa McDonald |
| | Elisabeth McDonald |
| | Padraig McNamara |
| | Susan Potter |
| | Michelle Vaughan |
| LEGAL RESEARCHERS | Karen Belt |
| | Ross Carter |
| | Nigel Christie |
| | Brigit Laidler |
| | Mäkere Papuni |
| | Diana Pickard |
| | Nicholas Russell |
| CORPORATE SERVICES MANAGER | Bala Benjamin |
| PUBLICATIONS AND INFORMATION OFFICER | Matthew Oliver |
| LIBRARY MANAGER | Katrina Young-Drew |
| REFERENCE LIBRARIAN | Judith Porter |
| SERIALS LIBRARIAN | Jacqueline Kitchen |

SUPERVISING SECRETARY
SECRETARIES

Christine Kleingeld
Pam Fitzgerald
Pippa Fraser
Leonie Gwiazdzinski
Maira Thorn
Colleen Gurney
Serena Barrett
Brenda Speak
Marilyn Cameron

RECEPTIONIST
SYSTEMS ADMINISTRATOR
FINANCE AND ADMINISTRATION ASSISTANT
ADMINISTRATION AND LIBRARY ASSISTANT



APPENDIX C
Areas of law reviewed by the Law Commission
as at 30 June 1997

| Area of law | Publication | Type | Ref | Date | Outcome |
|---|---|------------------|-----------|----------------|---|
| ACCIDENT COMPENSATION SCHEME (Reference) | The Accident Compensation Scheme | Discussion Paper | NZLC PP2 | September 1987 | Followed by reports NZLC R3 and NZLC R4 |
| | The Accident Compensation Scheme: Interim Report on Aspects of Funding | Report | NZLC R3 | November 1987 | Considered in preparing the Accident Rehabilitation and Compensation Insurance Act 1992 and some recommendations reflected in its provisions |
| | Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme) | Report | NZLC R4 | May 1988 | Considered also in connection with reviews of the Accident Rehabilitation and Compensation Insurance Act 1992 and implementing regulations undertaken in 1994 |
| APPORTIONMENT OF CIVIL LIABILITY | Apportionment of Civil Liability | Discussion Paper | NZLC PP19 | March 1992 | Under further consideration in the context of the law relating to professional liability To be followed by a report |

| Area of law | Publication | Type | Ref | Date | Outcome |
|--------------------------------|---|------------------|-----------|----------------|---|
| ARBITRATION | Arbitration | Discussion Paper | NZLC PP7 | November 1988 | Followed by report NZLC R20 |
| | Arbitration | Report | NZLC R20 | October 1991 | Implemented by the Arbitration Act 1996 |
| COMMUNITY SAFETY (Reference) | Community Safety: Mental Health and Criminal Justice Issues | Report | NZLC R30 | August 1994 | Comments on provisions of the Mental Health (Compulsory Assessment and Treatment) Act 1992, including its definition of "mental disorder", and the Criminal Justice Act 1985 Further reform under consideration by Minister of Health and Minister of Justice respectively |
| COMPANY LAW (Reference) | Company Law | Discussion Paper | NZLC PP5 | December 1987 | Followed by reports NZLC R9 and NZLC R16 |
| | Company Law: Reform and Restatement | Report | NZLC R9 | June 1989 | Companies Act 1993, Receiverships Act 1993 and amendments to the Property Law Act 1952 and the Companies Act 1955 entered into force on 1 July 1994 |
| | Company Law Reform: Transition and Revision | Report | NZLC R16 | September 1990 | |
| | The Property Law Act 1952 | Discussion Paper | NZLC PP16 | July 1991 | Followed by report NZLC R29 |
| | A New Property Law Act | Report | NZLC R29 | June 1994 | Under consideration by the Minister of Justice |
| | Tenure and Estates in Land | Discussion Paper | NZLC PP20 | June 1992 | No further consideration is intended |
| CRIMINAL PROCEDURE (Reference) | The Prosecution of Offences | Issues paper | NZLC PP12 | November 1990 | Followed by discussion paper NZLC PP28 |
| | Criminal Prosecution | Discussion Paper | NZLC PP28 | March 1997 | To be followed by a report |

| Area of law | Publication | Type | Ref | Date | Outcome |
|-------------------------------------|--|------------------|-----------|----------------|--|
| <i>Criminal procedure continued</i> | Criminal Procedure: Part One: Disclosure and Committal | Report | NZLC R14 | June 1990 | Under consideration by the Minister of Justice and Minister for Courts |
| | Criminal Evidence: Police Questioning | Discussion Paper | NZLC PP21 | September 1993 | Followed by report NZLC R31 To be followed by a further report on the right of silence and confessions, and the privilege against self-incrimination |
| | Police Questioning | Report | NZLC R31 | October 1994 | Under consideration by the Minister of Justice |
| | The Privilege Against Self-Incrimination | Discussion Paper | NZLC PP25 | September 1996 | To be followed by a report (see above) |
| CROWN | Crown Liability and Judicial Immunity: A response to <i>Baigent's case</i> and <i>Harvey v Derrick</i> | Report | NZLC R37 | May 1997 | Under consideration by the Minister of Justice |
| COURTS (Reference) | The Structure of the Courts | Discussion Paper | NZLC PP4 | December 1987 | Followed by report NZLC R7 |
| | The Structure of the Courts | Report | NZLC R7 | March 1989 | Substantial effect given to the Commission's recommendations in the various enactments passed to reform the jurisdiction of the courts in 1991 and 1992 |
| DAMAGES | Aspects of Damages: Employment Contracts and the Rule in <i>Addis v Gramophone Co</i> | Report | NZLC R18 | March 1991 | Implemented almost in entirety by the Employment Contracts Act 1991 |
| | 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 rule in <i>Bain v Fothergill</i> implemented by the Property Law Amendment Act 1994 Problems with the rule in <i>Joyner v Weeks</i> partially addressed in <i>Māori Trustee v Rogross Farms Ltd</i> [1994] 3 NZLR 410 (CA) |

| Area of law | Publication | Type | Ref | Date | Outcome |
|-----------------------------|---|------------------|-----------|----------------|---|
| | Aspects of Damages: Interest on Debts and Damages | Discussion Paper | NZLC PP17 | November 1991 | Followed by a report |
| | Aspects of Damages: The Award of Interest on Money Claims | Report | NZLC R28 | May 1994 | Under consideration by the Minister of Justice |
| EMERGENCIES | First Report on Emergencies: Use of the Armed Forces | Report | NZLC R12 | February 1990 | Implemented in the Defence Act 1990 |
| | Final Report on Emergencies | Report | NZLC R22 | December 1991 | Recommended principles for the grant of emergency powers adopted. Draft War Emergencies Act under consideration by Government |
| INTELLECTUAL PROPERTY | Intellectual Property: The Context for Reform | Report | NZLC R13 | March 1990 | For use as a resource No law changes recommended |
| LAW OF CONTRACT | "Unfair" Contracts | Discussion Paper | NZLC PP11 | September 1990 | No further consideration is intended |
| | Contract Statutes Review | Report | NZLC R25 | May 1993 | Under consideration by the Minister of Justice |
| LAW OF EVIDENCE (Reference) | Hearsay Evidence | Options Paper | NZLC PP10 | June 1989 | } To be followed by a report |
| | Evidence Law: Principles for Reform | Discussion Paper | NZLC PP13 | April 1991 | |
| | 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 | |

| Area of law | Publication | Type | Ref | Date | Outcome |
|--------------------------------------|--|-------------------------------|-----------|----------------|---|
| <i>The law of evidence continued</i> | Evidence Law: Documentary Evidence and Judicial Notice | Discussion Paper | NZLC PP22 | May 1994 | To be followed by a report |
| | Evidence Law: Privilege | Discussion Paper | NZLC PP23 | May 1994 | |
| | The Evidence of Children and Other Vulnerable Witnesses | Discussion Paper | NZLC PP26 | October 1996 | |
| | Evidence Law: Character and Credibility | Discussion Paper | NZLC PP27 | February 1997 | |
| LEGISLATION (Reference) | Imperial Legislation in Force in New Zealand | Report | NZLC R1 | March 1987 | Largely implemented by the Imperial Laws Application Act 1988 and associated legislation |
| | Legislation and its Interpretation: The Acts Interpretation Act 1924 and Related Legislation | Discussion Paper | NZLC PP1 | June 1987 | Followed by report NZLC R17 |
| | Legislation and its Interpretation | Discussion and seminar papers | NZLC PP8 | December 1988 | Followed by report NZLC R17 |
| | Legislation and its Interpretation: Statutory Publications Bill | Report | NZLC R11 | September 1989 | Implemented in part by the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publications Act 1989 |
| | A New Interpretation Act: To Avoid "Prolixity and Tautology" | Report | NZLC R17 | December 1990 | Under consideration by the Government |

| Area of law | Publication | Type | Ref | Date | Outcome |
|--------------------------------|---|------------------|----------|----------------|---|
| | The Format of Legislation | Report | NZLC R27 | December 1993 | Recommendations endorsed by the Justice and Law Reform Select Committee and referred to the Standing Orders Committee for consideration; being considered by a Committee chaired by Chief Parliamentary Counsel |
| | Legislation Manual: Structure and Style | Report | NZLC R35 | May 1996 | For use as a resource Proposals on structure and style substantially adopted by the Parliamentary Counsel Office, and in wide-spread use |
| LIMITATION PERIODS (Reference) | The Limitation Act 1950 | Discussion Paper | NZLC PP3 | September 1987 | Followed by report NZLC R6 |
| | Limitation Defences in Civil Proceedings | Report | NZLC R6 | October 1988 | Reflected in part in the Building Act 1991 |
| MAORI FISHERIES (Reference) | The Treaty of Waitangi and Māori Fisheries – Mataitai Nga Tikanga Māori me te Tiriti o Waitangi | Background Paper | NZLC PP9 | March 1989 | For use as a resource Reference withdrawn by the Minister of Justice at the Law Commission's request |
| 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 | Implemented by the Sale of Goods (United Nations Convention) Act 1994 |
| | A New Zealand Guide to International Law and its Sources | Report | NZLC R34 | May 1996 | For use as a resource. No law changes recommended |

| Area of law | Publication | Type | Ref | Date | Outcome |
|------------------------------|---|-----------------------|-----------|--------------|----------------------------|
| SUCCESSION LAW | Succession Law: Testamentary Claims | Discussion Paper | NZLC PP24 | August 1996 | To be followed by a report |
| WOMEN'S ACCESS TO JUSTICE | Information about Lawyers' Fees | Consultation Paper | NZLC MP3 | October 1996 | To be followed by a report |
| | Women's Access to Legal Information | Consultation Paper | NZLC MP4 | March 1997 | |
| | Women's Access to Civil Legal Aid | Consultation Paper | NZLC MP8 | March 1997 | |
| | Women's Access to Legal Advice and Representation | Consultation Paper | NZLC MP9 | April 1997 | |
| | Lawyers' Costs in Family Law Disputes | Consultation Paper | NZLC MP10 | June 1997 | |

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