

Report of the

LAW COMMISSION
Te Aka Matua o te Ture

for the year ended 30 June 1998

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

September 1998
Wellington, New Zealand

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1 September 1998

Dear Minister

I have the honour to submit to you the report of the Law Commission for the year ended 30 June 1998.

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 seeks to give effect to the Treaty of Waitangi, 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
Joanne Morris OBE
Judge Margaret Lee
DF Dugdale
Denese Henare ONZM
Timothy Brewer ED

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Information about the Law Commission and its work is available via the internet from the Commission's website:

<http://www.lawcom.govt.nz>.

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 Commission work. The members are:

Rt Rev Bishop Manuhuia Bennett ONZ CMG

Judge MJA Brown CNZM

Chief Judge ETJ Durie

Professor Mason Durie

Te Atawhai Tairaroa

Whetumarama Wereta

Annual Report 1998

PRESIDENT'S REPORT

Hon Justice Baragwanath

SECURING PUBLIC CONFIDENCE IN THE LAW and the administration of justice is fundamental; it requires laws that are and are seen by all New Zealanders to be fair and workable. We seek to recognise these basics in applying our test for work proposals – that the project

- 1 is of highest priority in improving New Zealanders' condition of life; and
- 2 is better performed by the Commission than others.

Access to Justice, researched from the standpoint of New Zealand women, is directed at the fundamentals of the operation of the rule of law. It includes lessons from the experience of Māori women; as with projects in Alternatives to Prosecution, Māori Custom Law and Coroners it will seek to contribute to good race relations through sound lawmaking. The final report on Juries will include empirical research into how the jury system is operating.

The clash of competing values exposed by the reports on *Witness Anonymity* (NZLC R42) and *Compensation for Wrongful Conviction or Prosecution* (NZLC PP31) presents formidable challenge to any system of law, revealing yet again the law's function of providing social stability and balancing freedom and constraint in a principled fashion.

In *Habeas Corpus: Procedure* (NZLC R44) we removed the barnacles from the constitutional measures that are of regular application, yet require recourse to English practice and to eighteenth-century statutes. In *Some Insurance Law Problems* (NZLC R46) we proposed that insurers must be more specific in their proposals if they wish to rely on non-disclosure to avoid a policy, removing unfairness to insurers in the treatment of claims made policies, and providing a more specific test of whether an increased risk exclusion should apply. This is an eclectic collection of very different cases; each illustrates the role of the Commission in improving our law.

That role is continuing with our current work. Our project concerned with Systematic Protection of the Public has its genesis in the Cave Creek disaster, which revealed a fundamental gap in our law: safeguarding the physical integrity of the citizen is a prime state responsibility which has never been substantially examined, although alluded to in the Commission's earlier work on Accident Compensation.

Our major report on Evidence, which is close to completion, will bring order into the present ragbag of rules and legislation.

The need for our commercial law to keep pace with the demands of trade underlies Electronic Commerce and Cross Border Insolvency.

The expenditure of past surpluses requires us to operate within the limits of our annual grant. The need to live within a reduced income, although still substantial by overseas standards, has been turned to advantage in accelerating the changes in direction and pace that are constantly required for the Commission to keep sharply focused on the real issues. We record our appreciation of the support given to us by many, including the Minister of Justice to whom we report, and his officials, who recognise that our independent role requires us on occasion to support a different view from that which commends itself to the Government.

To work with Commissioners and staff of high quality is a privilege. We seek progressively to extend the vigorous inhouse debate and the experts, whose essential contribution I wish to acknowledge, to the public whom we serve. Exposure of our work through publication of preliminary papers, the media, and now the internet, provides ideas and criticism which significantly improve the quality of our advice.

I mention finally our pleasure that the need for a systematic approach to securing Parliamentary consideration of the Commission's reports, usually incorporating draft bills, has been recognised by the Minister of Justice and the Leader of the House. We are confident that as a result the effectiveness of the Commission's contribution to improving our law will be enhanced.

THE YEAR UNDER REVIEW

Public law

Justice Baragwanath continued to oversee this area of our work with assistance from senior researcher Padraig McNamara, and researcher Diana Pickard. In October we tabled *Review of the Official Information Act 1982* (NZLC R40), a task that has occupied the time of a number of researchers over the past 5 years.

Treaty Making: Reform and the Role of Parliament (NZLC R45, 1997) was published in December 1997. This report forms part of the Commission's ongoing work to increase awareness of New Zealand's international obligations. The report recommended striking a new balance in the treaty making process by major changes to the way in which New Zealand commits itself to international treaties and gives effect to them in our law. It addressed the entire treaty making process from the treaty negotiation stage through to the means of best implementing treaty obligations in domestic legislation. Government amendments to the treaty making process, announced in December 1997 and adopted on a trial basis, were a step towards our recommended reforms. Researcher Diana Pickard played a significant role in this project.

Habeas Corpus: Procedure (NZLC R44) deals with the constitutional basics that require the safeguard of statutory confirmation for the procedures to challenge unjustifiable detention. The project was headed by Commissioner Dugdale with assistance from researcher Ross Carter.

Compensation for Wrongful Conviction or Prosecution (NZLC PP31) was our preliminary response to the issue of how systematic procedures can be established to deal with the exceptional, but uniquely troublesome, issue presented by such claims without unsettling the established procedures of the criminal law. Following public consultation we are currently preparing a final report. Justice Baragwanath was responsible for this project with assistance from Padraig McNamara.

Protection of the public from accidental harm resulting from systemic failure is a new project arising out of the work done in the aftermath of the Cave Creek disaster. One problem is that the Accident Compensation legislation, with its bar to damages claims, was enacted without the introduction of effective systems to promote safety which authors of the scheme had recommended. The Health and Safety in Employment Act 1992, while a major advance, leaves at risk wide areas of activity. We are satisfied that a

more principled approach can be adopted without unravelling the ACC scheme. Our report will include the Legal Status and Liability of the Crown.

In New Zealand as elsewhere, there is increasing recognition that the complexity of modern society brings with it systems that require a systemic approach. The International Civil Aviation Organisation has expressed the view that if the lessons of Erebus had been learned the events of Bophal, Zeebrugge and Kings Cross might have been avoided. One may add Cave Creek. Writers such as James Reason of Manchester and Charles Billings of Ohio have pointed to the need for those at all levels of an organisation whose conduct can contribute to or avoid an accident to be provided with incentives to focus upon safety. Our work to date has received considerable support from the experts we have consulted here and abroad.

We are currently identifying the issues requiring consultation with those with responsibility in this sphere and with the public.

Judicial Review is another new project, dealing with statutory and judge-made procedures for enforcement of the rule of law. It will include consideration of the current anomalies within the Judicature Amendment Acts 1972 and 1977 and Part VII of the High Court Rules.

Commercial law

Commissioner Donald Dugdale is responsible for the Commercial team and has been assisted by researchers Ross Carter, Nick Russell, René Trussell-Cullen and Megan Leaf, and by Paul Heath OC, a consultant to the Commission.

The report on insurance law topics foreshadowed in our last annual report has been published: *Some Insurance Law Problems* (NZLC R46). A discussion paper, *Repeal of the Contracts Enforcement Act 1956* (NZLC PP30), has also been published. There has been preliminary scoping work on an examination of the possible statutory rationalisation of remedies for loss of or damage to goods.

A draft report on defamation and qualified privilege, a response to *Lange v Atkinson*, has recently been circulated for comment. A preliminary paper will be issued shortly.

The work on schemes involving shared ownership of land has been divided into two separate projects. One is concerned with reforms to both the law under which the cross-lease device for shared ownership operates, and to the Unit Titles Act 1972. Under this project it is likely that we will recommend a new statute adopting

overseas models and broadly analogous to the present unit titles legislation but making far more sophisticated provision for shared amenities. The other project, intended to proceed concurrently, is concerned with the marketing (including the application of the Securities Act 1978) and the prudential management of various shared ownership schemes such as retirement villages.

Under the supervision of Paul Heath OC, the Commercial team is engaged in a series of three reports in the area of international trade law, the first of which, due in September 1998, deals with electronic commerce. It will be circulated as part of the materials for the New Zealand Law Society conference, "Commerce and the Internet", in November. Researcher Nick Russell is assisting in this report. Submissions on issues raised for discussion in the first report will be addressed in the second, which will also deal with domestic issues. A third report will be issued in early 1999 on international convention and model laws in international trade and commercial law, with a view to acceptance and implementation in New Zealand. Paul Heath is also leading work on cross-border insolvency, looking in particular at the UNCITRAL Model Law on Cross-Border Insolvency. This report will be discussed at the INSOL Pacific '99 Conference in Auckland next February. Researchers Diana Pickard and Megan Leaf provided assistance in this area.

Criminal procedure

For the first part of the 1997/98 year the Commissioner responsible for Criminal Procedure was Les Atkins OC (now a judge of the District Court). He was succeeded by Commissioner Timothy Brewer, previously a consultant to the Commission, whose appointment took effect on 1 October 1997. The research team has consisted of senior researchers Christine Hickey and Susan Potter with support from researchers Brigit Laidler, Diana Pickard and Nick Russell. They were joined in early 1998 by Sharon Opai, a senior researcher working primarily with Commissioner Henare but seconded to the team to assist with the Alternatives to Prosecution project. A former Commissioner, Jim Cameron, acted as a consultant.

The work of the Criminal Procedure team has been divided between five main projects and a number of smaller ones. The main projects are:

- THE SYSTEM OF CRIMINAL PROSECUTION. A discussion paper, *Criminal Prosecution* (NZLC PP28) was published in March 1997. It attracted a great deal of comment and the Commission has consulted further with key agencies such as the Crown Law

Office, the New Zealand Police and the Serious Fraud Office, and is now compiling a final report. The report confirms many of the proposals in the discussion paper. In particular, the Commission affirms the need for a stand-alone prosecution division within the police (a need which the police have recognised and are implementing). The Commission also remains of the view that the Crown solicitor system should be strengthened with earlier Crown solicitor oversight of the prosecution of indictably laid charges.

- AN EXAMINATION OF THE JURY SYSTEM. A comprehensive discussion paper was prepared largely under the supervision of Commissioner Atkins. Its publication was delayed by the Commission's decision to sponsor, in conjunction with Victoria Link Ltd, a major research project aimed at finding out how New Zealand juries work in practice. This research, under the direction of Professor Warren Young, is almost complete. In the meantime, in early July 1998, the Commission published separately chapters of the paper not dependent on the research: *Juries in Criminal Trials: Part One* (NZLC PP32). Part Two will follow early in 1999, and it is expected that the results of the research project will be incorporated into the relevant sections of the discussion paper. A final report will be published in the middle of 1999.
- COSTS IN CRIMINAL CASES. An issues paper on the topic, *Costs in Criminal Cases* (NZLC MP12), was published in November 1997. It attracted a number of thoughtful submissions which the Commission has analysed and debated. Further consultation has taken place and we will publish a report containing recommendations for the reform of the present system by February 1999.
- ALTERNATIVES TO PROSECUTION. This major project is still in the research stage. The Commission is consulting widely and researchers, together with Commissioner Henare, have already visited a number of programmes which are seen as being effective in addressing, in particular, offending by young people. The project raises important issues regarding responses to offending by Māori, and the way in which the criminal justice system responds to criminal offending generally. A discussion paper will be published later this year.
- A REVIEW OF ASPECTS OF CRIMINAL EVIDENCE. This has been done in conjunction with Commissioner Lee's Evidence team and the results have been incorporated into the proposed Evidence Code. The Criminal Procedure team's particular topics were identification evidence and the right to silence.

The smaller projects which the Criminal Procedure team became involved in included work on the Community Magistrates Bill, the Crimes Amendment Act 1997, and assisting with *Compensation for Wrongful Conviction or Prosecution* (NZLC PP31).

Evidence

Commissioner Judge Margaret Lee continued to lead the Evidence team with the assistance of senior researcher and policy manager Elisabeth McDonald, senior researchers David Calder (who also managed project planning) and Susan Potter, and researchers Diana Pickard, Karen Belt and Brigit Laidler. Judge Lee and Elisabeth McDonald were both seconded to the Commission for the project. With the project's imminent completion they have both returned to their respective vocations: Elisabeth in April to Victoria University School of Law and Judge Lee to the Wellington District Court in May. Both have agreed to continue work to finalise the code by the end of 1998 and to advise the Commission on implementation of the code. We are delighted that Judge Lee will return to the Commission in October.

Highlights for the year included the Evidence team's major role in the formulation of anonymous witnesses legislation in late 1997. Knowing that the government planned to fast-track legislation, a final report, *Evidence Law: Witness Anonymity* (NZLC R42), was published in October. Our recommendations were substantially the same as those proposed in a discussion paper of the same name (NZLC PP29). Members of the team were invited to make an oral submission to the Justice and Law Reform Select Committee considering the Evidence (Witness Anonymity) Amendment Bill.

For most of 1998 the team has been in the final stages of drawing together the strands of the evidence code. The original date for completion by the end of February 1998 had to be extended after the successful Evidence Code roadshow in March 1998. Funded by the New Zealand Law Foundation and administered by the New Zealand Law Society, the roadshow saw Judge Lee, Elisabeth McDonald and the project's academic consultant, Associate Professor Richard Mahoney of the University of Otago, take the draft code to the five main centres with an invitation to members of the legal profession to help test the code in action. Comments and suggestions made by members of the profession during and after the roadshow were being incorporated into the proposed code as the 1997/98 year concluded. The final report will be issued at the end of 1998.

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 Professor Mahoney, and the Commission's Legislative Counsel, Garth Thornton QC.

Succession

Commissioner Donald Dugdale was responsible for bringing to a close a significant proportion of this project late in 1997. He was assisted by researcher Ross Carter. The final 6 months of 1997 saw three succession reports published and tabled in the House of Representatives: *Homicidal Heirs* (NZLC R38), *A Succession (Adjustment) Act* (NZLC R39), and *A Succession (Wills) Act* (NZLC R41).

In considering the work of the Succession team, the Commission has abandoned an earlier intention to modernise the Administration Act 1969. However, we are currently giving some thought to the time limit under the Administration Act 1969 s 47 now that the administration of estates has been so greatly simplified by the abolition of death duties. We may also consider how that section accords and operates with the Trustee Act 1956 s 35. The Commission also intends, at an appropriate time, to prepare a report on intestacy, although it seems sensible to delay this until Parliament settles the property entitlements of parties to de facto marriages.

The Treaty of Waitangi

Commissioner Denese Henare continues to guide te ao Māori work. Commissioner Henare has been assisted by senior researchers Philippa McDonald and Sharon Opai, and by researchers Mākere Papuni and Nigel Christie. The Treaty touches all of the Commission's work and has implications in public law, criminal procedure and evidence law. Both Commissioner Henare and Sharon Opai have participated in work with a number of other agencies. In the area of succession law, specific research has been undertaken and a record of the points made at consultation hui with Māori in 1995–1997 on succession law has been prepared and forwarded to marae and Māori organisations. This draws together various themes relating to the law of succession affecting Māori. Work on a general discussion paper reviewing the law as it applies to Māori ancestral property is in progress.

At the consultation hui on the succession law project, Māori expressed concern that practices under the Coroners Act 1988 were not responsive to Māori cultural values. A draft discussion paper is being prepared to address these and other issues to ensure fair and just exercise of coronial powers.

A draft report looking at Justice: The Experience of Māori Women is currently nearing completion and will be used for consultation with agencies in the justice sector. Following this round of consultation a final report will be published which will draw on the experiences of Māori women. Specifically, it will examine the Treaty of Waitangi and identify some principles and processes to ensure justice sector agencies better understand and are responsive to the needs of Māori women.

The Commission continues to carry out its project on Māori Custom Law using funds provided by the New Zealand Law Foundation. To date academic commentary has been provided on a paper by Chief Judge Durie. Joe Williams and Whaimutu Dewes, with the guidance of the Māori Committee, have identified some fundamental values of tikanga Māori. The next stage in the project is to consider how judges and others dealing with issues of custom law should apply these values. These issues might arise when interpreting a statute or dealing with matters of procedure.

Te Kōmiti Māori

He Kōmiti tēnei i whiriwhiria hei hoa kōrero mo te Aka Matua o Te Ture mo ngā take Māori, e pa ana ki ngā ture o te motu.

Ko te Aka Matua tētahi o ngā rōpu hanga ture mo te Kāwanatanga.

I mahi tahi te Kōmiti i te kai-komihana ko Denese Henare, a ka hono ai te Kōmiti ki ngā rōpu Māori e mātua tonu ana i ngā take Māori. Kei to whānui hoki ngā tohutohu o te Kōmiti e pa ana ki ētahi kaupapa nui, me ngā āhuatanga katoa o te Aka Matua o te Ture.

Koia nei ngā take i whaia e te Kōmiti Māori i te tau 1997:

- ko ngā ture tauatanga me ngā tikanga Māori
- ko ngā tikanga Māori me ngā ture
- ko ngā tikanga e rua i roto i ngā ture o Aotearoa
- ko te putanga o ngā wāhine Māori ki ngā ture
- ko te hātepe mo ngā mahi hanga tiriti
- te pepa whakawhiti kōrero mo te *Juries in Criminal Trials: Part One* (NZLC PP32)
- te Kaupapa Whakaaturanga.

Nā ngā tohutohu o te Kōmiti, kua puawai ētahi o ngā tipu o te Aka Matua o te Ture.

The Māori Committee assists the Commission in addressing those aspects of its work which relate to te ao Māori. The Committee works closely with Commissioner Denese Henare and facilitates

linkages with other Māori groups and individuals. Its advice is both specific (to particular projects) and general (to the Commission's overall work).

In 1997 the Māori Committee assisted with several projects including:

- the law of succession and tikanga Māori
- the relationship of Māori custom to the law
- bicultural jurisprudence
- the access of Māori women to the justice system
- the treaty making process
- the discussion paper *Juries in Criminal Trials: Part One* (NZLC PP32)
- the evidence project.

Advice from the Committee greatly assisted the Commission in meeting its objectives.

Women's Access to Justice: He Putanga mö ngä 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.

Commissioner Morris was assisted by senior researcher and project manager Michelle Vaughan and by part-time research assistants Melanie Smith and Sarah McKenzie. Commissioner Henare was assisted by senior researchers Philippa McDonald and Sharon Opai and researcher Nigel Christie. Director Robert Buchanan also assisted in the formulation of drafts of the final reports.

During the year, the decision was taken to produce two final reports in the project: one examining barriers to New Zealand women's access to legal services, the other exploring the basis of Māori women's concerns that the policies and practices of state sector justice agencies pay inadequate regard to the principles of the Treaty of Waitangi (see pages 8–9).

The project published its sixth and final miscellaneous paper, *The Education and Training of Law Students and Lawyers* (NZLC MP11) in September 1997. Since then, the information from the six papers and the responses made to them (163 written submissions and numerous further meetings with legal services providers) have been drawn together in a draft final report on legal services. The draft is now being refined and is primarily concerned with the responsiveness of the civil legal aid scheme, community-based legal

services, and lawyers' services to the diverse needs of New Zealand women. It will recommend:

- 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.

Advisory work

In addition to its own project work the Law Commission provides advice to select committees, government departments and agencies on a wide range of law reform proposals. One of the Commission's statutory functions is to advise on the review of any aspect of the law of New Zealand conducted by government departments or organisations. The Commission's developing links with government organisations, coupled with its statutory independence, allows it to provide well-informed and impartial advice. An important aspect of this work from the Commission's perspective is that law reform proposals of other departments are often relevant to the Commission's own project work.

During the year under review, advice was provided on the matters listed in appendix A. Many were in the area of commercial law (eg, participation in the Security Commission's review of the Life Insurance Act 1908, the Ministry of Commerce's review of penalties under the Commerce Act 1986, and advice to that Ministry on insolvency issues). The Commission also commented on various proposals by the Ministry of Justice including those relating to reserve jurors and sentencing policy; and made submissions to the Justice and Law Reform Committee on the Community Magistrates Bill 1997 and the Evidence (Witness Anonymity) Amendment Bill 1997, and to the Government Administration Committee on the De Facto Relationships (Property) Bill 1998. A full list of advisory work initiated or continued during the year, including work undertaken on behalf of the Legislation Advisory Committee, is contained in appendix A.

The Law Commission also continued to provide research support to the Legislation Advisory Committee (LAC) in discharging its function of reviewing legislation and advising select committees on matters of legislative policy. Due to the ongoing absence of a chairperson, responsibility for preparing submissions to select committees fell mostly upon the Commission's research staff. As the role of the LAC continues to evolve, the Law Commission looks

forward to continuing its involvement and to the appointment of a new chairperson.

In relation to insolvency issues, we have been asked to provide detailed advisory work to the Ministry of Commerce on the topic of preferential debts in insolvency regimes.

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. A particular highlight in the year under review was the introduction of the Interpretation Bill 1997 based substantially on draft legislation contained in *A New Interpretation Act: To Avoid "Prolivity and Tautology"* (NZLC R17, 1990). Other work in this area is listed in appendix A.

Finance

As in the past few years, the Commission budgeted and operated at a deficit, funding the shortfall in revenue from its reserves. The Commission appreciates the contribution from the New Zealand Law Foundation for both the Māori Custom Law project and the touring of the draft Evidence Code.

The financial statements are set out on pages 17–28.

Corporate services

During the year, the finance and administration functions, the library services and the project management functions were re-structured into a corporate services division.

Some of the achievements during the year included:

- implementation of intranet/internet facilities
- development of a web site on which a number of the Commission's publications are now available
- development of a client contact database
- development of a serial database for the library
- renewal of the office lease and refurbishment of the office.

These changes have improved the efficiency of our research management and contact management and enabled better utilisation of available research resources (in both traditional and electronic form).

Te Aka Kōrero, our quarterly newsletter, remains central to the Commission's communications strategy. Having run to nine issues it is now available on the Commission's internet site. We are currently refining the manner in which we publish material in

electronic form, and hope to be able to reduce the size of our paper print runs and put money saved to other uses. Printouts of the newsletter will be supplied upon request.

External relations

During the year the Commission was pleased to receive visits from the Rt Hon Dr David Clark, Chancellor of the Duchy of Lancaster; the deans and academic staff from the New Zealand law schools; and in February, His Excellency Cao Qing-ze, Minister of Supervision of the People's Republic of China.

Other activities

Justice Baragwanath sits regularly in the High Court at Auckland. In September 1997 he delivered a paper "The Impact in New Zealand of Human Rights Legislation" to the Australasian Law Reform Agencies Conference in Melbourne. He has spoken regularly on the Commission's work. His addresses have included "Indigenous Rights and the Treaty; the international position: how we deal with them" (Whitireia Polytechnic), "A Constitutional Aspect of the Future of Policing in New Zealand" (Auckland Council of Civil Liberties), "Does the Law Protect the Criminal at the Expense of the Victim?" (Rotary Club of Wellington), "How Can the Law Contribute to an Equal and Just Society?" (Gay Association of Professionals), "Human Rights Legislation in New Zealand: the Tensions of Judicial Review in Human Rights" (Third Annual Administrative Law Conference) and "The Judiciary and the Fourth Estate" (Commonwealth Press Union). He is one of the advisors to the project "A New New Zealand Jurisprudence" at the University of Waikato.

Commissioner Morris has continued to be involved in gender education for New Zealand judges and other adjudicators. In September 1997, she led the half-day gender issues component of the Tenancy Tribunal adjudicators' annual general meeting. In March 1998, she was a presenter and facilitator in the gender component of the annual orientation programme for recently appointed judges. In December 1997 she published "Women's Experiences of the Justice System" (1997) VUWLR 649. Commissioner Morris has some continuing responsibilities to the Waitangi Tribunal, of which she was a member until 1996.

Commissioner Dugdale attended the Eighth Annual Journal of Contract Law Conference in August. His observations at the conference were subsequently published in the Business Law Quarterly

((1998) 4 NZBLO 41) and in the Journal of Contract Law ((1998) 13 JCL 39). His address "Legislating for Quasi-Connubiality" to the annual general meeting of the Legal Research Foundation in October was subsequently published in the New Zealand Law Journal ([1998] NZLJ 123). He has addressed various other gatherings during the year on aspects of the Commission's work. He continues as a contributor to *Gault on Commercial Law* (Brooker's, Wellington).

Commissioner Denese Henare is a Director of Tainui Corporation Limited and is the Convener of the Working Party establishing the Waikato Endowed College at Hopuhopu. She was a director of the Transitional Health Authority until December 1997. Commissioner Henare is one of the advisers to the project "A New New Zealand Jurisprudence" at the University of Waikato. In August 1997, she presented a paper to a Wellington seminar, "The Draft Declaration on the Rights of Indigenous Peoples: Implications for New Zealand and Internationally", on behalf of the New Zealand branch of the International Law Association and the New Zealand section of the International Commission of Jurists. Commissioner Henare also delivered papers to the Rahiri Lecture Club, Auckland (Women's Association), "The Treaty Claims Process – What it Means", and to Te Oru Rangahau, Research and Māori Development Conference, School of Māori Studies, Massey University, on "The Law of Difference – Will it Make a Difference?", and has contributed to the Māori Statistics Forum.

Part-time consultant Paul Heath was convener of the New Zealand Law Society's Commercial and Business Law Committee until 1 April 1998, and is a New Zealand Law Society representative on the Company Law Monitoring Group. He continues to be a member of the Joint New Zealand Law Society/Institute of Chartered Accountants of New Zealand Joint Insolvency Committee which will consider changes to the law of insolvency as the Ministry of Commerce develops policy. In addition he has delivered and published papers on electronic commerce and international insolvencies: "A Legal Infrastructure for Electronic Commerce?" (1998) 7 *Canta LR* No 1; "International Insolvencies: a New Zealand Perspective" (1998) 6 *Insolv LJ* 90.

Christine Hickey, a senior researcher in the criminal team, was appointed by the Minister of Justice in March 1998 to the Wellington District Legal Services Committee to represent the interests of community law centres.

Sharon Opai, a senior researcher, continues her work as a member of the Casino Control Authority.

Nick Russell, a researcher in the evidence and commercial law areas, was admitted as a barrister and solicitor in September 1997.

Our library manager, Judith Porter, and computer system administrator, Serena Barrett, are both involved in the Justice Sector Information Strategy: Judith as a member of the Sharing Library Resources Working Group and Serena as a member of the Information Management Policies for the Justice Sector Working Group.

Members and staff

At the end of August 1997, after a term of 5 years, Les Atkins OC left the Law Commission to return full-time to his Palmerston North practice. He oversaw four major publications (the *Police Questioning* report, and papers on privilege against self-incrimination, and the prosecutions and jury systems), and contributed to many others, including some of the evidence papers. The work on the jury system was of special interest to him. Recently he was appointed to the District Court bench.

Our Director of 3 years, Robert Buchanan, left in April 1998 to take up a position with the Auditor-General as Assistant Auditor-General (Legal). As Director, Robert was responsible for the smooth link between our law reform role and its administrative functions.



From left to right, standing: Bala Benjamin, Jacqueline Kitchen, Justice David Baragwanath, Colleen Gurney, Pippa Fraser, Judith Porter, Barbara McPhee, Susan Potter, Pdraig McNamara, Leonie Gwiazdzinski, Moira Thorn, Paul Heath OC, Joanne Morris OBE, DF Dugdale, Timothy Brewer ED; seated: Marilyn Cameron, Christine Hickey, Brenda Speak, Helen Bradshaw, Denese Henare ONZM, Nick Russell, Megan Leaf. Absent: Serena Barrett, Pam Evans, Matthew Oliver, Sharon Opai

During the year ten research staff members left the Commission: David Calder, Ross Carter, Nigel Christie, Loretta Desourdy, Brigit Laidler, Elisabeth McDonald, Philippa McDonald, Mäkere Papuni, René Trussell-Cullen, and Michelle Vaughan. Each made a valuable and distinctive contribution to the Commission and its work. Their contributions are acknowledged with thanks.

Katrina Young-Drew, our library manager for 9 years left in September 1997. Other members of the corporate services staff to leave during the year were Christine Kleingeld, our senior PA and secretarial coordinator, and our library student assistant, Ron McIntosh.

The contribution of all to the work of the Commission during their respective times here has been greatly valued. They leave behind many friends at the Commission and we extend our sincere gratitude to them all.

A full list of current 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 1998.

Hon Justice Baragwanath
President

Bala Benjamin
Corporate Services Manager

LAW COMMISSION

FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 1998

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, are capitalised from 1 July 1997.

Library collections will be valued 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, the 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 (years)	Rate of depreciation %
Computer equipment	5	20
Furniture and fittings	5	20
Office equipment	5	20
Computer software	5	20
Library collections	5	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 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.

Financial 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 financial instruments include bank accounts, investments, debtors and creditors, all of which 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 except for the capitalisation of library collections and depreciating them over their economic life. All other policies have been applied on a basis consistent with prior years.

LAW COMMISSION

STATEMENT OF FINANCIAL PERFORMANCE
FOR THE YEAR ENDED 30 JUNE 1998

	Note	1998 Actual \$	1997 Actual \$	1998 Budget \$
REVENUE				
Government grant		2,975,111	2,975,111	2,975,100
Judges' salaries paid by the Department for Courts		241,117	281,250	288,310
Interest		120,070	163,162	15,000
Sale of publications		23,421	20,834	20,000
Contribution from the Law Foundation		50,000	0	10,000
Surplus on sale of fixed assets		1,338	0	0
Total revenue		<u>3,411,057</u>	<u>3,440,357</u>	<u>3,308,410</u>
EXPENDITURE				
Personnel costs		2,229,702	2,224,298	2,388,159
Project costs		360,672	571,692	466,008
Library costs		83,253	148,185	87,850
Administration costs	1	654,858	790,368	709,500
Loss on disposal of fixed assets		0	5,047	0
Depreciation		198,691	103,519	190,000
Total expenditure		<u>3,527,176</u>	<u>3,843,109</u>	<u>3,841,517</u>
Net Surplus (Deficit)		<u>(116,119)</u>	<u>(402,752)</u>	<u>(533,107)</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 1998

	1998 Actual \$	1997 Actual \$	1998 Budget \$
Equity at the beginning of the year	<u>1,743,335</u>	<u>2,128,927</u>	<u>1,743,335</u>
Surplus and revaluations			
Net surplus (deficit) for the year	(116,119)	(402,752)	(533,107)
Revaluation of library collections	<u>0</u>	<u>17,160</u>	<u>0</u>
Total recognised revenues and expenses for the year	<u>(116,119)</u>	<u>(385,592)</u>	<u>(533,107)</u>
Equity at the end of the year	<u><u>1,627,216</u></u>	<u><u>1,743,335</u></u>	<u><u>1,210,228</u></u>

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

LAW COMMISSION

STATEMENT OF FINANCIAL POSITION
AS AT 30 JUNE 1998

	Note	1998 Actual \$	1997 Actual \$	1998 Budget \$
EQUITY				
Accumulated funds		1,610,056	1,726,175	1,193,068
Asset revaluation reserve		17,160	17,160	17,160
Total Crown equity		1,627,216	1,743,335	1,210,228
Represented by:				
CURRENT ASSETS				
Cash and bank balances		921	7,209	6,476
Bank – call deposit		119,000	45,000	80,000
Short-term investments		1,000,000	1,155,000	600,000
Receivables and prepayments	2	52,189	45,977	35,000
Total current assets		1,172,110	1,253,186	721,476
NON-CURRENT ASSETS				
Fixed assets	3	669,764	685,277	663,752
Total non-current assets		669,764	685,277	663,752
TOTAL ASSETS		1,841,874	1,938,463	1,385,228
CURRENT LIABILITIES				
Payables and accruals	4	214,658	195,128	175,000
Total current liabilities		214,658	195,128	175,000
TOTAL LIABILITIES		214,658	195,128	175,000
NET ASSETS		1,627,216	1,743,335	1,210,228

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 1998

	1998 Actual \$	1997 Actual \$	1998 Budget \$
Cash flow from operating activities			
Cash was provided from:			
Government grant	2,975,111	2,975,111	2,975,100
Interest	113,358	182,739	15,000
Customers	23,921	36,968	30,977
Grant from Law Foundation	50,000	0	10,000
	<u>3,162,390</u>	<u>3,194,818</u>	<u>3,031,077</u>
Cash was applied to:			
Payments to suppliers and employees	(3,067,838)	(3,547,678)	(3,383,335)
	<u>(3,067,838)</u>	<u>(3,547,678)</u>	<u>(3,383,335)</u>
Net cash inflow (outflow) from operating activities	<u>94,552</u>	<u>(352,860)</u>	<u>(352,258)</u>
Cash flow from investing activities			
Cash was provided from:			
Sale of Fixed Assets	1,338	284	0
	<u>1,338</u>	<u>284</u>	<u>0</u>
Cash was applied to:			
Purchase of fixed assets	(183,178)	(462,178)	(168,475)
	<u>(183,178)</u>	<u>(462,178)</u>	<u>(168,475)</u>
Net cash inflow (outflow) from investing activities	<u>(181,840)</u>	<u>(461,894)</u>	<u>(168,475)</u>
Net increase (decrease) in cash held	(87,288)	(814,754)	(520,733)
Plus opening cash balance:			
BNZ current account	7,209	6,963	7,209
BNZ call account	45,000	115,000	45,000
BNZ short-term deposits	1,155,000	1,900,000	1,155,000
	<u>1,207,209</u>	<u>2,021,963</u>	<u>1,207,209</u>
Closing cash balance	<u>1,119,921</u>	<u>1,207,209</u>	<u>686,476</u>
Made up of			
BNZ current account	921	7,209	6,476
BNZ call account	119,000	45,000	80,000
BNZ short-term deposits	1,000,000	1,155,000	600,000
	<u>1,119,921</u>	<u>1,207,209</u>	<u>686,476</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 1998

RECONCILIATION OF NET DEFICIT TO
NET CASH INFLOW FROM OPERATING
ACTIVITIES

	1998 Actual \$	1997 Actual \$	1998 Budget \$
Reported deficit	(116,119)	(402,752)	(533,107)
Less items not involving cash flows:			
Depreciation	198,691	103,519	190,000
Loss on disposal of Fixed Assets	0	5,047	0
Add (less) movements in working capital:			
Increase in receivable and prepayments	(6,212)	48,360	10,977
Increase in payables and accruals	19,530	(107,034)	(20,128)
Add proceeds of fixed assets sale shown under investing activities	(1,338)	0	0
Net cash inflow (outflow) from operating activities	<u>94,552</u>	<u>(352,860)</u>	<u>(352,258)</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 1998

1 Administration costs include

	1998	1997
	\$	\$
Audit fee	8,000	8,000
Increase in provision for doubtful debts	nil	2,683
Rental expenses on operating leases	9,645	11,113
	<u> </u>	<u> </u>

2 Receivables and prepayments

	1998	1997
	\$	\$
Sundry debtors	6,567	14,652
GST receivable	11,611	19,384
Trade debtors	4,495	3,425
Less: Provision for doubtful debts	(2,683)	(2,683)
Prepayments	32,199	11,199
	<u> </u>	<u> </u>
	<u>52,189</u>	<u>45,977</u>

3 Fixed assets

	Cost/ valuation	Accumulated depreciation	Net book value 1998	Net book value 1997
	\$	\$	\$	\$
Computer equipment	603,459	432,821	170,638	214,869
Furniture and fittings	1,052,276	985,955	66,321	79,757
Office equipment	88,215	77,454	10,761	10,351
Computer software	278,570	86,276	192,294	177,497
Library collections	287,187	57,437	229,750	202,803
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
	<u>2,309,707</u>	<u>1,639,943</u>	<u>669,764</u>	<u>685,277</u>

4 Payables and accruals

	1998	1997
	\$	\$
Suppliers of goods/services	54,602	68,372
Employee entitlements	111,592	65,859
Accrued expenses	42,952	33,051
Other creditors	5,512	27,846
	<u> </u>	<u> </u>
	<u>214,658</u>	<u>195,128</u>

5 Commitments

Capital commitments

There were no commitments for capital expenditure at balance date (30 June 1997, \$ nil).

Lease commitments

Commitments for non-cancellable leases on rental accommodation (till 30 June 2007) and office equipment (till 22 October 2001):

	1998	1997
	\$	\$
Less than 1 year	378,336	546,555
Between 1 and 2 years	378,336	nil
Between 2 and 3 years	378,336	nil
Between 3 and 4 years	372,010	nil
Between 4 and 5 years	369,180	nil
Over 5 years	1,476,720	nil

6 Contingent liabilities

There are no material contingent liabilities as at balance date (30 June 1997, \$13,863).

7 Related party information

The Law Commission is a Crown owned entity. The Commission received from the Ministry of Justice \$2,975,111 as grant for the financial year (1996/97, \$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 Bank of New Zealand, a high quality bank.

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.

9 Remuneration of the Chief Executive

In terms of the Law Commission Act 1985, the President of the Commission is the Chief Executive. The current President is a High Court Judge and is paid by the Department for Courts as a High Court Judge. An amount of \$110,700 is recognised in the financial statements as cost and revenue on account of this. The amount does not represent the actual remuneration received by the President. In determining the amount, consideration has been given to the fact that the President sits in the Auckland High Court for a period of the year.

10 Remuneration of Commissioners and staff

Two Commissioners received remuneration packages between \$170,000–\$180,000.

One Commissioner is a District Court Judge and was paid by the Department for Courts as a District Court Judge. An amount of \$130,417 has been recognised in the financial statements as cost and revenue on account of this. The amount does not represent the actual remuneration received by the Commissioner.

LAW COMMISSION

STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 1998

Output Class: Policy advice

Budgeted expenditure: \$3,841,517 (excluding GST)

Actual expenditure: \$3,527,176 (excluding GST)

Quality

All outputs and other work completed by the end of the year met the quality standards set out on pages 35–37, to the extent applicable.

Quantity and timeliness

The work produced by the Commission is set out in the annual work programme submitted to the Minister of Justice under s7(1) of the Law Commission Act 1985. 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.

Public Law

	Planned	Actual
Official Information Act (Report)	August 1997	Published October 1997 (NZLC R40)
The Treaty Making Process: Reform and the Role of Parliament (Report)	October 1997	Published December 1997 (NZLC R45)
Habeas Corpus (Report)	September 1997	Published October 1997 (NZLC R44)
Crown Liability (Review)	November 1997	Not yet published
Crown Liability (Report)	June 1998	Not yet published ¹
Compensation for Wrongful Conviction or Prosecution (Review)	April 1998	Published April 1998 (NZLC PP31)
Remedies for Abuse of Process (Review)	December 1998	Progressing
Treaty of Waitangi: Coroners (Review)	April 1998	Not yet published ²

Notes

¹ Work on Crown Liability in respect of both the review and the report has been deferred to give priority to the urgent reference from the Minister of Justice on Compensation for Wrongful Conviction or Prosecution. The review is now expected to be published in March 1999 as part of the project Protection of the Public from Accidental Harm Resulting from Systems Failure, including Legal Status and Liability of the Crown.

² The review is now expected in March 1999.

Commercial Law

	Planned	Actual
Contracts Enforcement Act (Report)	September 1997	Preliminary paper published in November 1997 (NZLC PP30)
Some Problems with Goods (Review)	November 1997	Not yet published
Some Problems with Goods (Report)	May 1998	Not yet published ¹
Insurance Law Reform (Review)	November 1997	Draft circulated in March 1998
Insurance Law Reform (Report)	May 1998	Published May 1998 (NZLC R46)
Contributory Interests in Land (Review)	November 1997	Not yet published
Contributory Interests in Land (Report)	March 1998	Not yet published ²
Civil Contribution (Report)		Published June 1998 (NZLC R47)

Notes

¹ Work on Some Problems with Goods in respect of both the review and the report have been deferred.

² Contributory Interests in Land is now Shared Ownership and a review is due in December 1998.

Criminal Procedure

	Planned	Actual
Juries in Criminal Trials (Review)	September 1997	Part One (NZLC PP32) published July 1998; Part Two to be published January 1999
Juries in Criminal Trials (Report)	June 1998	Not yet published ¹
Criminal Prosecution (Report)	November 1997	Not yet published ²
Alternatives to Prosecution (Review)	November 1997	Not yet published ³
Costs in Criminal Cases (Report)	June 1998	Not yet published ⁴

Notes

- ¹ Part Two of the discussion paper and the report have been deferred to take advantage of results of the research project examining the decision-making process of New Zealand juries. The research is being undertaken by Victoria University of Wellington Faculty of Law and the Institute of Criminology (through Victoria Link Ltd), in collaboration with the Law Commission. The report is now expected to be published in June 1999.
- ² A preliminary paper (NZLC PP28) was published in March 1997. The report is expected to be published in September 1998.
- ³ Significant project definition issues have required extended consultation with other agencies. Publication is now expected in February 1999.
- ⁴ The Commission published an issues paper (NZLC MP12) in November 1997. The report is now expected in February 1999.

Evidence

	Planned	Actual
Witness Anonymity (Review)	September 1997	Published September 1997 (NZLC PP29)
Witness Anonymity (Report)		Published October 1997 (NZLC R42)
Privilege (Report)	February 1998	Not yet published
Keeping Silent (Report)	February 1998	Not yet published
Identification Evidence (Report)	February 1998	Not yet published
Memory (Review)		Not yet published ¹
Evidence: Final Report and Draft Evidence Code (Report)	April 1998	Not yet published ²

Notes

- ¹ A separate miscellaneous paper will be published in September 1998.
- ² The Evidence final report and Draft Evidence Code due to be published in December 1998 will also incorporate the Privilege, Keeping Silent, and Identification Evidence reports.

Succession

	Planned	Actual
Homicidal Heirs (Report)	July 1997	Published July 1997 (NZLC R38)
Succession Adjustment (Report)	August 1997	Published August 1997 (NZLC R39)
Wills Reform (Report)	September 1997	Published October 1997 (NZLC R41)
Intestacy (Review)	April 1998	Not yet published ¹
Maori Succession Law (Review)	June 1998	Not yet published ²

Notes

¹ The review has been deferred pending the Government's decisions on *Succession Law: A Succession (Adjustment) Act* (NZLC R39, 1997) concerning the succession rights of de facto partners.

² Work deferred because of priority given to Maori Women's Access to Justice project.

The Treaty of Waitangi

	Planned	Actual
Maori Custom Law (Report)	December 1997	Not yet published ¹

Note

¹ Competing demands on the time of the project's external consultant have delayed preparation of this report. It is now expected to be published in December 1998.

Women's Access to Justice

	Planned	Actual
Lawyers' Education (Review)	August 1997	Published September 1997 (NZLC MP11)
Maori Women's Access to Justice (Review)	November 1997	Not yet published ¹
Women's Access to Justice (Report/Accessibility Advice)	April 1998	Not yet published ²
Follow-up (Advice)	June 1998	

Notes

¹ The draft report will shortly be distributed for consultation with state sector agencies. The report is expected to be published in October 1998.

² The report is now expected in October 1998, the extra time being required for discussion of the draft report both within and outside the Commission.

Advisory Work

Appendix A lists the various items of advice provided throughout the year under review.

Work completed in accordance with timetables and deadlines set in each case.

Cost

The costs listed below for each area of project activity consist of both direct and indirect costs. Direct costs include staff time (recorded in the practice management system), and all other costs that can be directly identified with a project. Indirect costs are those that cannot be identified directly with a project which are allocated so that the total cost of the Commission is reflected in its outputs.

Project	Budget \$	Actual \$
Public Law	458,444	338,584
Commercial Law	345,228	395,820
Criminal Procedure	331,536	384,468
Evidence	983,733	859,819
Maori Custom Law	110,745	67,532
Succession	360,626	276,573
Women's Access to Justice	1,070,600	1,066,882
Advisory work	180,605	137,498
Total	3,841,517	3,527,176

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 1998

We have audited the financial statements on pages 18 to 37. The financial statements provide information about the past financial and service performance of the Law Commission and its financial position as at 30 June 1998. This information is stated in accordance with the accounting policies set out on pages 18 to 20.

Responsibilities of the members of the Law Commission

The Public Finance Act 1989 requires the members of 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 1998, the results of its operations and cash flows and the service performance achievements for the year ended 30 June 1998.

Auditor's responsibilities

Section 43(1) of the Public Finance Act 1989 requires the Audit Office to audit the financial statements presented by the Law Commission. 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 members of the Law Commission in the preparation of the financial statements; and

- whether the accounting policies are appropriate to 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 18 to 37:

- comply with generally accepted accounting practice; and
- fairly reflect:
 - the financial position as at 30 June 1998
 - 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 21 August 1998 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 1997–1998

Bills and legislative proposals

Advice on	Provided to
Community Magistrates Bill	Justice and Law Reform Select Committee
De Facto Relationships (Property) Bill	Government Administration Select Committee
Health and Safety in Employment Amendment Bill	Ministry of Justice

Constitutional and courts issues

Advice on	Provided to
Proposals for reserve jurors	Ministry of Justice
Sentencing policy	Ministry of Justice
Justice sector goals and objectives	Ministry of Justice
Human rights	Human Rights Commission

Commercial law

Advice on	Provided to
Regulatory management	Ministry of Commerce
Insolvency issues	Ministry of Commerce
Netting proposals	Ministry of Commerce
Review of the Securities Commission	Ministry of Commerce
Review of life insurance law and practice	Securities Commission
Review of penalties under the Commerce Act 1986	Ministry of Commerce
Stock exchange proposed securities transfer system	Ministry of Commerce Securities Commission

Legislative reviews

Advice on	Provided to
Review of the Privacy Act 1993	Office of the Privacy Commissioner

Implementation of Law Commission reports

Advice on	Provided to
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 Justice and Law Reform Select Committee
Emergencies (NZLC R22)	Department of Internal Affairs
The Format of Legislation (NZLC R27)	Parliamentary Counsel Office
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
Review of the Official Information Act (NZLC R40)	Ministry of Justice
Witness Anonymity (NZLC R42)	Justice and Law Reform Select Committee

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

Conveyancers Bill
Education Legislation Amendment Bill
Health Occupational Registration Acts Amendment Bill
Home Detention Bill
Inquiry into Audit Office legislation
Rating Valuations Bill
Resource Management (Marine Farming and Heritage Protection) Amendment Bill
Social Security (Conjugal Status) Amendment Bill
Social Security (Overseas Pensions) Amendment Bill
Statutes Amendment Bill (No 2)
Summary Proceedings Amendment (No 3) Bill

Regular and continuing involvement

Membership of the Courts Consultative Committee

Participation in the Criminal Justice and Public Law Focus Groups of the Ministry of Justice

Administrative support to the Law and Economics Association of New Zealand

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

APPENDIX B
Members and staff of the
Law Commission as at
30 June 1998

Members of the Law Commission

Hon Justice Baragwanath – President
Joanne Morris OBE
Judge Margaret Lee
Donald Dugdale
Denese Henare ONZM
Timothy Brewer ED

Permanent staff of the Law Commission

SENIOR LEGAL RESEARCHERS

Christine Hickey
Padraig McNamara
Sharon Opai
Susan Potter

LEGAL RESEARCHERS

Megan Leaf
Diana Pickard
Nicholas Russell
Bala Benjamin
Matthew Oliver
Judith Porter

CORPORATE SERVICES MANAGER

PUBLICATIONS AND INFORMATION OFFICER

LIBRARY MANAGER

REFERENCE LIBRARIAN

SERIALS LIBRARIAN

LIBRARY STUDENT ASSISTANT

SECRETARIES

Barbara McPhee
Jacqueline Kitchen
Charlotte Grant
Helen Bradshaw
Pam Evans
Pippa Fraser
Leonie Gwiazdzinski
Maira Thorn

RECEPTIONIST/ASSISTANT PUBLICATIONS OFFICER

SYSTEMS ADMINISTRATOR

FINANCE AND ADMINISTRATION ASSISTANT

ADMINISTRATION AND LIBRARY ASSISTANT

Colleen Gurney
Serena Barrett
Brenda Speak
Marilyn Cameron

APPENDIX C
Areas of law reviewed by the Law Commission
as at 30 June 1998

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	Followed by report NZLC R47
	Apportionment of Civil Liability	Report	NZLC R47	May 1998	Under consideration

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 Recommended reforms being developed by Minister of Health and Minister of Justice respectively
COMMERCIAL LAW	Some Insurance Law Problems	Report	NZLC R46	May 1998	Awaited
	Repeal of the Contracts Enforcement Act 1956	Discussion Paper	NZLC PP30	December 1997	Submissions being considered
	A Personal Properties Securities Act for New Zealand	Report	NZLC R8	April 1989	Legislation being prepared under the supervision of the Ministry of Justice with assistance from the Commission
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

Area of law	Publication	Type	Ref	Date	Outcome
<i>Company law (cont)</i>	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
	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)
	Costs in Criminal Cases	Issues Paper	NZLC MP12	November 1997	To be followed by a report
CROWN	Crown Liability and Judicial Immunity: A response to <i>Baigent's</i> case and <i>Harvey v Derrick</i>	Report	NZLC R37	May 1997	Under consideration by the Minister of Justice
	Review of the Official Information Act 1982	Discussion Paper	NZLC R40	October 1997	Under consideration by the Minister of Justice
	Habeas Corpus: Procedure	Report	NZLC R44	November 1997	Under consideration by the Minister of Justice

Area of law	Publication	Type	Ref	Date	Outcome
COURTS (Reference)	Compensation for Wrongful Conviction or Prosecution	Discussion Paper	NZLC PP31	April 1998	Under consideration by the Minister of Justice To be followed by a report
	The Structure of the Courts	Discussion Paper	NZLC PP4	December 1987	Followed by report NZLC R7
DAMAGES	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
	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)
	Aspects of Damages: Interest on Debts and Damages	Discussion Paper	NZLC PP17	November 1991	Followed by a report
EMERGENCIES	Aspects of Damages: The Award of Interest on Money Claims	Report	NZLC R28	May 1994	Under consideration by the Minister of Justice
	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; ongoing liaison with and advice to Department of Internal Affairs

Area of law	Publication	Type	Ref	Date	Outcome
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
EVIDENCE LAW (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	
	Evidence Law: Documentary Evidence and Judicial Notice	Discussion Paper	NZLC PP22	May 1994	
	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	

Area of law	Publication	Type	Ref	Date	Outcome
	Evidence Law: Witness Anonymity	Discussion Paper	NZLC PP29	September 1997	Followed by report NZLC R42
	Evidence Law: Witness Anonymity	Report	NZLC R42	October 1997	Largely implemented by the Evidence (Witness Anonymity) Act 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 "Prolivity and Tautology"	Report	NZLC R17	December 1990	Recommendations form the basis of the Interpretation Bill 1997
	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 largely implemented by a Committee chaired by Chief Parliamentary Counsel

Area of law	Publication	Type	Ref	Date	Outcome
<i>Legislation (cont)</i>	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
MĀORI 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
	The Treaty Making Process: Reform and the Role of Parliament	Report	NZLC R45	December 1997	Partially implemented by proposed changes to Standing Orders For use as a resource
SUCCESSION LAW	Succession Law: Testamentary Claims	Discussion Paper	NZLC PP24	August 1996	Followed by reports NZLC R38, NZLC R39 and NZLC R41

Area of law	Publication	Type	Ref	Date	Outcome
WOMEN'S ACCESS TO JUSTICE	Succession Law: Homicidal Heirs	Report	NZLC R38	July 1997	} To be followed by a report
	Succession Law: A Succession (Adjustment) Act	Report	NZLC R39	August 1997	
	Succession Law: A Succession (Wills) Act	Report	NZLC R41	October 1997	
	Information about Lawyers' Fees	Consultation Paper	NZLC MP3	October 1996	
	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	} To be followed by a report	
The Education and Training of Law Students and Lawyers	Consultation Paper	NZLC MP11	September 1997		

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

