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LAW·COMMISSION  
TE·AKA·MATUA·O·TE·TURE

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*Report of the*

LAW COMMISSION  
Te Aka Matua o te Ture

*for the year ended 30 June 1999*

*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 1999*  
Wellington, New Zealand

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*1 September 1999*

Dear Minister

I have the honour to submit to you the report of the Law Commission for the year ended 30 June 1999.

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 Tony Ryall MP*  
Minister of Justice  
Parliament House  
WELLINGTON



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# The Law Commission: Te Aka Matua o te Ture Directory

**T**HE 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  
Judge Margaret Lee  
Donald Dugdale  
Denese Henare ONZM  
Timothy Brewer ED  
Paul Heath OC

## **Address Details**

The office of the Law Commission is located at Level 10, 89 The Terrace, Wellington  
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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 its work. The members are:

Rt Rev Bishop Manuhua Bennett ONZ CMG (Chairman)

The Hon Justice ETJ Durie

Judge MJA Brown CNZM

Professor Mason Durie

Te Atawhai Tairaoa

Whetumarama Weretā

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# Annual Report 1999

## PRESIDENT'S REPORT

*Hon Justice Baragwanath*

THE LAW COMMISSION'S FUNCTIONS include taking and keeping under review in a systematic way the law of New Zealand, making recommendations for its reform and development, and advising on ways in which it can be made as understandable and accessible as practicable (Law Commission Act 1985, section 5(1)(a) (b) and (d)).

The outstanding requirements for today's law reformers are to maintain public confidence in our laws and institutions, and to keep the law up to date with changing social and other developments. The dynamism of modern life causes them to overlap.

The former came under particularly close examination in the Commission's Report 53 *Justice: The Experiences of Māori Women*, in the study *Women's Access to Legal Services*, and in the research for our forthcoming preliminary paper *Juries in Criminal Trials: Part Two*. In Report 53 we learned:

Many of the women whom we consulted were concerned that they did not have ready access to the legal system, and too often said it was something of which they did not feel part. They usually expressed their feelings in terms of inadequate performance of the Treaty of Waitangi. We have attempted first to grasp what they sought to convey and then to work out how to deal with the result.

In recent times, there has been much profound discussion about the Treaty and its principles. Many agencies with whom we spoke saw Treaty principles as lawyerly notions, to be found in decisions of the Waitangi Tribunal and the Court of Appeal. For present purposes what the women saw as the relevant principles were simpler, namely that the Treaty promised that:

- the values of Māori must be respected and protected (the Article II promise); and

- Māori should form part of the new society and feel as much at home in New Zealand and its institutions as other New Zealanders (the Article III promise, reinforced by the preamble to the Treaty of Waitangi).

We are of the view that those simple principles are of general application. Measured by that standard, our laws and institutions fall short to a concerning extent, which it is our responsibility as well as that of others to seek to make good. The problems include access to justice, aspects of its administration, and deficiencies in the rules of law.

Following the annual January retreat at which we review the Commission's work plan with senior Justice personnel, we received from the Minister of Justice a reference to examine the operation of our system of family law, to which the bulk of the civil legal aid budget is applied. In the *Juries* paper, we will refer to the findings of Professor Warren Young and his research team that the virtues of the jury system include the satisfaction of jurors in performing a function essential to the administration of justice, and the need for greater involvement of Māori and other rural New Zealanders who too often are excluded from jury service by reason of where they live. In a new project *Victims of Domestic Violence Who Offend*, we are examining the medical and legal issues concerning what appears to be the misnamed "Battered Woman Syndrome". In the major Report 55 *Evidence*, which has just been released, we offer proposals for reform of the way in which the evidence of children is treated.

To assist in keeping the law up to date, we are about to issue a preliminary paper on Adoption which will review that important institution in the light of the major social changes since the current statute was enacted in 1955. The phenomenal development of computer technology has resulted in major work by our commercial team, including Report 50 *Electronic Commerce Part One: A Guide for the Legal and Business Community*; an urgent Report 51 *Dishonestly Procuring Valuable Benefits* which responded to the gap in the law of theft exposed by *R v Wilkinson* [1999] 1 NZLR 403, and Report 54 *Computer Misuse. Electronic Commerce Part Two: A Basic Legal Framework* is well advanced.

The lesson of our predecessors as to the importance of maintaining an international perspective has become ever more compelling. Report 52 *Cross-Border Insolvency: Should New Zealand Adopt the UNCITRAL Model Law?*, visits to and from UNCITRAL, close

liaison with colleagues in other jurisdictions, and review of overseas developments are part of the Commission's response to the demands of an ever shrinking world.

Of no less importance is the opposite perspective of practical operation of everyday life in New Zealand. Actual and potential problems concerning retirement villages and shared ownership of land are the subject of discussion papers which, following consultation, will shortly result in reports.

I record the Commission's thanks to its former Commissioner Joanne Morris, OBE, whose term as a Commissioner culminated with her major study *Women's Access to Legal Services*. The appointment as a Commissioner of our colleague Paul Heath OC reflects the contribution he has made to our work during his previous period as a consultant to the Commission. We thank the Rt Hon Sir Douglas Graham for his unfailing help and support, and welcome the appointment of the Hon Tony Ryall as Minister of Justice.

In last year's Annual Report, I referred to the recognition by the Minister of Justice and the Leader of the House of the need for a systematic approach to securing Parliamentary consideration of the Commission's reports. Since then, substantial work has been performed. We look forward to its completion, which will allow the Commission to contribute more effectively to the changes in our law that are essential to minimise both injustice and inefficiency.

The privilege of a term as a Law Commissioner includes the responsibility for keeping steadily in view basic constitutional elements, including the rule of law, and for careful identification of and balanced judgment among the competing values in a pluralist society. To do so requires the guidance, and where necessary the criticism, of the many New Zealanders outside the Commission who contribute to and comment upon our work. We extend to them our particular thanks.

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## THE YEAR UNDER REVIEW

### Public law and women's access to justice

Public law is the responsibility of the President and researchers Helen Colebrook and Megan Noyce.

Following the release of the Commission's Report 49 *Compensating the Wrongly Convicted*, its recommendations have been adopted by the Government.

The Commission's work on its self reference Systemic Protection of the Public, having its genesis in the Cave Creek disaster and the overlapping need for comprehensive consideration of liability of the Crown, has been deferred at the request of the Minister pending a report by the Ministry of Justice on aspects of it. We will review what remains to be done following release of the Ministry's advice.

A report on *Judicial Review* is close to completion.

A preliminary paper on *Adoption* will be printed shortly.

The major study *Women's Access to Legal Services* prepared by former Commissioner Joanne Morris, OBE, was published in June. Proper access to justice is crucial to the health of our society. Its importance and current major deficiencies in achieving it, are the essence of that work. The next phase is that, at the request of the Minister of Justice, the Commission has undertaken the preparation of a report on Family Court procedures and is considering the topic of victims of domestic violence who offend.

### Commercial law

Commissioners Dugdale and Heath QC are responsible for commercial law. They are assisted by researchers Megan Leaf, Jason Clapham, and Lucy McGrath. A preliminary paper *Shared Ownership of Land* (NZLC PP35) advancing the possibility of various changes to the law relating to flat and office-owning companies, cross-leases, unit titles and jointly owned access ways was published in January 1999. The paper attracted some media attention, particularly in relation to a proposed phasing out of cross-leases. The project has been assisted by numerous thoughtful, constructive, and detailed submissions. It is anticipated that a final report will be presented later this year.

One of the Commission's first reports published in October 1988 proposed radical change to the law of limitations (*Limitation De-*

*fences in Civil Proceedings* (NZLC R6)). That report was not received with universal enthusiasm and has never been acted on. The Commission decided to revisit the area following some observations made by the Court of Appeal in the case of *Gilbert v Shanahan* [1998] 3 NZLR 528. It is expected that shortly there will be published a preliminary paper on the only two issues that the Commission understands to be of current concern, namely fixing the date from which limitation periods run in situations where a ground of claim is undiscovered (a matter requiring consideration of provision of a long stop date) and the absence of any precise rules where claims are founded on quasi-contractual or other equitable grounds.

In October 1998, the Commission published a brief paper on retirement villages (*Retirement Villages – A discussion paper* (NZLC PP34)). The information as to current commercial practice in this swiftly developing area contained in the submissions that this paper elicited has enabled the Commission to produce a more elaborate final report, publication of which is expected shortly.

*Defaming Politicians – A Response to Lange v Atkinson* (NZLC PP33) was published in September 1998. Further work on the topic is on hold pending a decision from the Privy Council on the appeal brought from the Court of Appeal decision discussed.

On 21 December 1998 under the title *Dishonestly Procuring Valuable Benefits* (NZLC R51), the Commission published a report suggesting a method of plugging what it saw as an alarming gap in the law revealed by the decision of the Court of Appeal delivered on 13 October 1998 in the case of *R v Wilkinson* [1999] 1 NZLR 403. Although the Commission saw the matter as urgent and responded accordingly, there has as yet been no corrective legislation introduced.

Some work has been done on examination of liability for auditors' negligence but it seems likely that it will be unnecessary to recommend legislative intervention in the light of the Court of Appeal decision in *Boyd Knight v Purdue* [1999] 2 NZLR 278.

The Commission believes that there is need for examination of the law as to abuse of process including maintenance and champerty and has made a start on work on this topic. Relaxation of the ethical ban on contingency charging raises issues of maintenance and champerty in acute form; abuse of process in its criminal aspects dovetails neatly with matters raised in our report *Compensating the Wrongly Convicted* (NZLC R49) and in the work currently in hand on costs in criminal cases.

*Electronic Commerce Part One* was published on 1 October 1998. The report analysed the application of current commercial law to transactions entered into by electronic means and suggested a variety of ways in which the law could be improved both to remove barriers to and to facilitate electronic commerce. The report discussed in some detail the solutions suggested by the UNCITRAL Model Law on Electronic Commerce and sought submissions. The second electronic commerce report (*Electronic Commerce Part Two: A Basic Legal Framework*) will be published later this year and will make recommendations on matters raised in the first report.

*Cross-Border Insolvency* considered whether New Zealand should adopt the UNCITRAL Model Law on Cross Border Insolvency. The report discusses in some detail the current New Zealand law on this topic which is becoming more important as international trade figures increase. The report recommends adoption of the UNCITRAL Model Law. In coming to that conclusion, the Commission discusses a number of factors which are weighed; in particular, globalisation trends, physical considerations, considerations of fairness and deficiency, sovereignty and whether the existing law is adequate. It was, however, concluded that adoption of the Model Law should not affect statutory management of a bank under the Reserve Bank of New Zealand Act 1989.

In response to concerns which had been expressed about the inadequacy of New Zealand criminal law to deal adequately with computer hacking, the Law Commission published a report in May 1999 dealing with *Computer Misuse*. This report was published shortly after an announcement had been made by the Minister of Justice that legislation would be introduced. The Commission recommended that four distinct offences should be created, each carrying a maximum term of imprisonment of 10 years: ie, unauthorised interception, unauthorised access with intent to cause harm or gain a pecuniary benefit, unauthorised use, and damage. The Commission continues to liaise with the Minister of Justice in relation to proposed computer hacking legislation.

In 1998, the Commission was asked to prepare an advisory report for the Ministry of Commerce on *Priority Debts in the Distribution of Insolvent Estates*. The report was made available to the Ministry of Commerce in late May 1999. The report will soon be published as part of the Commission's new Study Paper series. Recommendations were made in that report for the abolition of certain priority debts. Principles and policy considerations against

which proposals for new priority debts could be tested were also recommended in the report.

## **Criminal procedure**

Commissioner Brewer is assisted by senior researchers Louise Symons and Christine Hickey. During the 1998/99 financial year, the Commission has been involved in four major projects in the criminal procedure reference. Those projects are:

- Juries in Criminal Cases;
- Criminal Prosecution;
- Costs in Criminal Cases Act 1967; and
- Alternatives in Prosecution.

### *Juries*

The first part of the Juries in Criminal Trials preliminary paper was published in July 1998, and substantial submissions have been received from public interest groups and individuals. The second part was delayed to allow the completion of a major empirical study by Professor Warren Young of Victoria Link Limited. The research was completed by the end of 1998, and the analysis of the research is in the course of being finalised now. The second part of the preliminary paper will be published in time to coincide with a major series of educational seminars by the New Zealand Law Society to commence on 27 November 1999. Commissioner Brewer will be one of the presenters for those seminars.

### *Criminal prosecution*

The Commission received extensive submissions to its preliminary paper on this topic, which was published in March 1997, and has conducted further discussions with interested parties such as the Serious Fraud Office and the Police. As a result of the recommendations in the preliminary paper, the Police National Prosecutions Service was created on 1 July 1999, and the Commission has been consulted and kept informed as that has been developed. The final report is in the last stages of finalisation and will be published before the end of this year.

### *Costs in Criminal Cases Act 1967*

This paper has been delayed as priority has been given to the juries and criminal prosecution projects. However, it has now

been substantially completed and publication is expected by the end of November.

In substantial addition, the Commission has been involved in a number of discrete projects, including:

- submissions on the Crimes (Home Invasion) Amendment Bill and the Criminal Justice Amendment (No. 6) Bill;
- advice to the Minister on possible amendment to the Criminal Investigations (Blood Samples) Act 1995 to allow blood samples to be taken from offenders for the purpose of comparison with foetal tissue;
- beginning background research on the international regulation of criminal misuse of the internet.

### *Alternatives in prosecution*

This project seeks to evaluate the traditional objectives and processes of the criminal justice system against the aim of keeping communities safe, and examines possible alternatives. Senior researcher Sharon Opai is doing the bulk of the research and writing the discussion paper, due for publication in November. She is assisted by senior researcher Louise Symons and researcher Meika Foster. The project is under the joint supervision of Commissioners Henare and Lee.

### **Evidence**

Judge Margaret Lee returned to the Commission from the Wellington District Court in October 1998 to oversee the finalisation of this project. The Commission is grateful to Chief District Court Judge R L Young for agreeing to her extended secondment. Elisabeth McDonald, the research and policy manager of the project, resumed her responsibilities at Victoria University as senior law lecturer and dean of students in April 1998, but made time to complete the report in the early part of 1999. The Evidence Code and Commentary also took its final shape in the early months of 1999, as did a miscellaneous paper which gathers together recent research into three aspects of human memory: namely, eyewitness identification, children's memory, and recovered memories.

The final stages of checking, editing and proof-reading took longer than anticipated. The responsibility for this important and exacting task was cheerfully and ably borne by researcher Karen Belt, assisted by Elisabeth McDonald. The finished product is in three volumes: *Evidence: Reform of the Law*, the *Evidence Code and Commentary*,



and the miscellaneous paper *Total Recall? The Reliability of Witness Testimony*.

## **Victims of domestic violence who offend**

In response to mounting public dissatisfaction with the way the criminal law failed to take account of the situation of victims of domestic violence who kill, the Commission resolved to:

- (1) examine how the existing New Zealand law applies to those who commit criminal acts in circumstances where they are victims of domestic violence, in particular, the defences of self defence, provocation, duress and necessity;
- (2) consider developments and proposals in other jurisdictions, in particular, the development of the defences of self preservation, diminished responsibility, and judicial discretion in sentencing for murder;
- (3) make proposals for reform, if appropriate.

The Commission will undertake research and consultations, publish a discussion paper in December which will include preliminary proposals, seek public submissions and comment, and publish a report with final recommendations in mid-2000.

At the Minister's request, the discussion paper will take into account the Commission's recommendations in the Evidence project and cover the latest scientific thinking on what is often referred to as "Battered Woman Syndrome".

Karen Belt is the researcher, working under the supervision of Judge Lee.

In May 1999, a first meeting with a panel of experts in forensic psychiatry provided much crucial information on, and assistance with, the mental health aspects of the project, including the so-called "Battered Woman Syndrome". A survey of the literature is well under way and a draft discussion paper is in the course of preparation.

## **The Treaty of Waitangi**

*Justice – The Experiences of Māori Women: Te Tikanga o te Ture – Te Matauranga o ngā Wāhine Māori e pa ana ki tenei*

Commissioner Denese Henare was responsible for bringing this project to a close earlier this year. She was assisted by senior

researcher Sharon Opai. The report focuses on Māori women as clients and users of the justice system. Its overall conclusion is clear: the justice system has failed to meet the needs of Māori women due to barriers created by disregard of cultural values, socio-economic disadvantage, and ineffective services. The report's primary purpose is to assist those employed by the State, and on whom the Crown depends in the performance of its Treaty of Waitangi obligations, to better understand and respond to Māori women's needs and values. Its emphasis upon two principles of the Treaty that women see as particularly relevant are recorded in the President's report.

### *Coroners: A Review*

The Law Commission published this preliminary paper early in August 1999. The Commissioner in charge of the paper was Denese Henare. She was assisted by researchers Jason Clapham and Meika Foster. The project arose after Māori expressed concerns at consultation hui held in 1995 and 1996 on succession law that practices under the Coroners Act 1988 were not responsive to Māori cultural values. In this paper, the Commission:

- considers the issues which were raised during the consultation process;
- reviews the relevant law both in New Zealand and overseas; and
- proposes amendments to the Coroners Act 1988 to deal with the concerns which have been identified.

The Commission has attempted to develop proposals which give weight to cultural values, particularly Māori cultural values, as well as recognise that determining the cause of death is the important function of the coronial system. The Commission will publish a final report once submissions on the paper have been considered.

### *Māori Custom Law*

This paper is still in progress. The project seeks to articulate some concepts and values of tikanga Māori before considering the various categories within which tikanga Māori can apply. One of its primary functions is to inform judges and decision-makers about aspects of custom law to enable them to better recognise and take into account tikanga when called upon to do so. The paper does not claim to be definitive; and tikanga Māori in any event is not static. It is the Commission's hope that a further effect of the paper will be to encourage further contribution from, and debate among, Māori.

## **Advisory work**

Please refer to Appendix A for details.

## **Publications**

The volume of the Commission's publications in hard copy and on the Internet has placed considerable demands on our Publications and Information Officers, Matthew Oliver (until March 1999) and Anne Tucker. Their insistence on high standards of quality in terms both of presentation and accuracy, combined with energy, organisational ability, and good humour, make a major contribution to the Commission's work.

## **Corporate services**

Our Executive Manager, Bala Benjamin, and his team, Brenda Speak, Colleen Gurney and Marilyn Cameron and our secretaries, Helen Bradshaw, Pam Evans, Pippa Fraser, Moira Thorn and Leonie Gwiazdzinski, have maintained an outstanding performance during the year. So too have our Library staff, Judith Porter, Barbara McPhee, and Jacqueline Kitchen and student assistant Charlotte Grant.

## **Finance**

As in the past few years, the Commission budgeted for an operating deficit but the final actual result for the year was an operating surplus. Many research staff left during the year to move on in their careers and those positions were progressively filled with new staff. The timing of appointments contributed to some savings on personnel costs. Tight expenditure controls also produced savings in costs.

The Commission received \$55,000 from four State agencies towards the costs of the Electronic Commerce Steering Committee where Commissioner Heath is a leading member. Some of the expenses relating to this activity will arise in the next financial year.

The financial statements are set out on pages 15–26.

## **Year 2000**

The Commission has identified the potential Year 2000 (Y2K) issues on its information systems and general operations. Steps recommended by hardware and software suppliers as necessary to address Y2K issues have been carried out. On the basis of assurances given, we believe that our internal systems are Y2K compliant.

We continue to secure such assurances as we can from external providers, in particular our landlord, payroll agent, printing company, library database providers, telecommunication companies, internet service provider, and bankers. The Commission depends on the information it receives from its suppliers of goods and services. It is therefore unable to give assurances to those who depend on its services that its systems, and those of third parties on which it directly or indirectly relies, will be Y2K compliant.

## Other activities

Justice Baragwanath sits regularly in Court. In October, he delivered a paper in Kuala Lumpur at the APEC steering committee on Electronic Commerce, after attending the OECD conference on that topic and speaking to a Refugee Judges seminar in Ottawa. In New York, he visited the paperless courtroom of the US Federal Bankruptcy Court and discussed Electronic Commerce with Dr Gerold Herrmann of UNCITRAL who later visited the Commission on two occasions. In Geneva, he visited the International Commission of Jurists and the United Nations Commission for Trade and Development and discussed the work of the WTO and of the International Law Commission. He is an advisor to the project "A New New Zealand Jurisprudence" at the University of Waikato led by Judge Michael Brown. He has spoken regularly on the Commission's work. He maintains membership of the Oxford Aviation Study Group.

Commissioner Dugdale contributed the title "Censorship" to the *Oxford Companion to New Zealand Literature* published in November 1998. His article "Formal Requirements: the Proposed Repeal of the New Zealand Contracts Enforcement Act 1956" was published at (1998) 12 *Journal of Contract Law* 268. An article on issues arising under the proposed Personal Property Securities legislation (one part of which is a version of the text of a paper delivered to a Legal Research Foundation Symposium on 18 August 1998) is to be found at [1998] NZLJ 383. Mr Dugdale is a contributor to *Gault on Commercial Law* and has been engaged to prepare the title "Sale of Land" for *The Laws of New Zealand*.

## Visitors

Visitors this year included: Professor Fritz Juenger of the University of California at Davis, whose guidance as to the future of private international law was invaluable; the Rt Hon Lord Irvine, Lord High Chancellor, with whom we discussed law reform topics and methods; Song Dahan and colleagues, representing the People's Republic of China, with whom we discussed a wide range of

commercial issues; Daniel Glosband, who represented the International Bar Association at UNCITRAL Working Group meetings on cross-border insolvency, and Prof Jay Westbrook, who was a delegate at the same sessions for the USA, both regarded as among the world's leading experts on cross-border insolvency; Dr Gerold Herrmann of UNCITRAL; Hon Justice Ralph Zulman, of the Supreme Court of Appeals of South Africa and also members of the South African Law Commission; the Hon Mr Justice Sossain and Mr Kazihabibul Awal of the Bangladesh Law Commission; and Professor James Crawford of Cambridge and author of the International Law Commission's Rome Treaty on International Criminal Law, who gave the Commission a fascinating account of the processes and issues.

## Members and staff

Commissioner Joanne Morris OBE completed her five year term in March 1999. She continued to work on her project *Women's Access to Legal Services* as a consultant until its publication.

Paul Heath QC was appointed as a Commissioner from May 1999. Paul had been a consultant to the Commission for the previous two years and is the Commissioner responsible for the Electronic Commerce project.



*From left to right, standing: Donald Dugdale, Anne Tucker, Bala Benjamin, Helen Colebrook, Jason Clapham, Megan Leaf, Pam Evans, Barbara McPhee, Brenda Speak, Megan Noyce, Judith Porter, Leonie Gwiazdzinski, Helen Bradshaw, Louise Symons, Lucy McGrath, Alastair McClymont, Meika Foster, Paul Heath QC; seated: Judge Margaret Lee, Denese Henare ONZM, Justice David Baragwanath, Marilyn Cameron, Colleen Gurney, Karen Belt. Absent: Tim Brewer ED, Pippa Fraser, Jacqueline Kitchen, Sharon Opai.*

During the year the following staff members left the Commission:

Padraig McNamara

Diana Pickard

Susan Potter

Nick Russell

Matthew Oliver

Serena Barrett

The following staff joined during the year:

Jason Clapham

Louise Symons

Helen Colebrook

Megan Noyce

Lucy McGrath

Meika Foster

Anne Tucker

We thank all the Commission's staff, both past and present, for their valuable contributions.

A full list of current members and staff appears at Appendix B.

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LAW COMMISSION

FINANCIAL STATEMENTS  
STATEMENT OF RESPONSIBILITY

We acknowledge responsibility for the preparation of these financial statements and for the judgements 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 1999.

*Hon Justice Baragwanath*  
President

*B Benjamin*  
Executive Manager

## LAW COMMISSION

### FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 1999

#### **Reporting entity**

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 three 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 during the year.

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LAW COMMISSION

STATEMENT OF FINANCIAL PERFORMANCE  
FOR THE YEAR ENDED 30 JUNE 1999

	1999 Actual \$	1998 Actual \$	1999 Budget \$
REVENUE			
Government grant (note 7)	2,999,445	2,975,111	2,975,111
Judges' salaries paid by the Department for Courts	0	241,117	0
Interest	89,854	120,070	60,000
Sale of publications	27,992	23,421	20,000
Contribution from the Law Foundation	0	50,000	0
Contribution from State agencies for Electronic Commerce project	55,000	0	0
Surplus on sale of fixed assets	549	1,338	0
Total revenue	<u>3,172,840</u>	<u>3,411,057</u>	<u>3,055,111</u>
EXPENDITURE			
Personnel costs	1,849,057	2,229,702	2,111,354
Project costs	355,179	360,672	394,205
Library costs	32,330	83,253	52,000
Administration costs (note 1)	545,626	654,858	634,880
Depreciation	232,033	198,691	204,000
Total expenditure	<u>3,014,225</u>	<u>3,527,176</u>	<u>3,396,439</u>
Net Surplus (Deficit)	<u>158,615</u>	<u>(116,119)</u>	<u>(341,328)</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 1999

	1999 Actual \$	1998 Actual \$	1999 Budget \$
Equity at the beginning of the year	<u>1,627,216</u>	<u>1,743,335</u>	<u>1,627,216</u>
Surplus and revaluations			
Net surplus (deficit) for the year	<u>158,615</u>	<u>(116,119)</u>	<u>(341,328)</u>
Total recognised revenues and expenses for the year	<u>158,615</u>	<u>(116,119)</u>	<u>(341,328)</u>
Equity at the end of the year	<u><u>1,785,831</u></u>	<u><u>1,627,216</u></u>	<u><u>1,285,888</u></u>

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The accompanying accounting policies and notes form part of these Financial Statements

LAW COMMISSION

STATEMENT OF FINANCIAL POSITION  
AS AT 30 JUNE 1999

	1999 Actual \$	1998 Actual \$	1999 Budget \$
<b>EQUITY</b>			
Accumulated funds	1,768,671	1,610,056	1,268,728
Asset revaluation reserve	17,160	17,160	17,160
<b>Total Crown equity</b>	<u>1,785,831</u>	<u>1,627,216</u>	<u>1,285,888</u>
Represented by:			
<b>CURRENT ASSETS</b>			
Cash and bank balances	451	921	8,362
Bank call deposit – BNZ	103,000	119,000	70,000
Short-term investments – BNZ	860,000	1,000,000	695,462
Short-term investments – Countrywide Bank	350,000	0	0
Receivables and prepayments (note 2)	67,445	52,189	50,000
<b>Total current assets</b>	<u>1,380,896</u>	<u>1,172,110</u>	<u>823,824</u>
<b>NON-CURRENT ASSETS</b>			
Fixed assets (note 3)	638,406	669,764	662,064
<b>Total non-current assets</b>	<u>638,406</u>	<u>669,764</u>	<u>662,064</u>
<b>TOTAL ASSETS</b>	<u>2,019,302</u>	<u>1,841,874</u>	<u>1,485,888</u>
<b>CURRENT LIABILITIES</b>			
Payables and accruals (note 4)	233,471	214,658	200,000
<b>Total current liabilities</b>	<u>233,471</u>	<u>214,658</u>	<u>200,000</u>
<b>TOTAL LIABILITIES</b>	<u>233,471</u>	<u>214,658</u>	<u>200,000</u>
<b>NET ASSETS</b>	<u>1,785,831</u>	<u>1,627,216</u>	<u>1,285,888</u>

*Hon Justice Baragwanath*  
President

*B Benjamin*  
Executive 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 1999

	1999 Actual \$	1998 Actual \$	1999 Budget \$
<b>Cash flow from operating activities</b>			
Cash was provided from:			
Government grant	2,780,443	2,975,111	2,975,111
Interest	82,608	113,358	60,000
Customers	34,982	23,921	22,189
Grant from Law Foundation	0	50,000	0
Contribution from State agencies for Electronic Commerce project	40,000	0	0
	<u>2,938,033</u>	<u>3,162,390</u>	<u>3,057,300</u>
Cash was applied to:			
Payments to suppliers and employees	(2,544,377)	(3,067,838)	(3,207,097)
	<u>(2,544,377)</u>	<u>(3,067,838)</u>	<u>(3,207,097)</u>
Net cash inflow (outflow) from operating activities	<u>393,656</u>	<u>94,552</u>	<u>(149,797)</u>
<b>Cash flow from investing activities</b>			
Cash was provided from:			
Sale of fixed assets	549	1,338	0
	<u>549</u>	<u>1,338</u>	<u>0</u>
Cash was applied to:			
Purchase of fixed assets	(200,675)	(183,178)	(196,300)
	<u>(200,675)</u>	<u>(183,178)</u>	<u>(196,300)</u>
Net cash inflow (outflow) from investing activities	<u>(200,126)</u>	<u>(181,840)</u>	<u>(196,300)</u>
Net increase (decrease) in cash held	<u>193,530</u>	<u>(87,288)</u>	<u>(346,097)</u>
Plus opening cash balance:			
BNZ current account	921	7,209	921
BNZ call account	119,000	45,000	119,000
BNZ short-term deposits	1,000,000	1,155,000	1,000,000
	<u>1,119,921</u>	<u>1,207,209</u>	<u>1,119,921</u>
Closing cash balance	<u>1,313,451</u>	<u>1,119,921</u>	<u>773,824</u>
Made up of:			
BNZ current account	451	921	8,362
BNZ call account	103,000	119,000	70,000
BNZ short-term deposits	860,000	1,000,000	695,462
Countrywide Bank short-term deposits	350,000	0	0
	<u>1,313,451</u>	<u>1,119,921</u>	<u>773,824</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 1999

RECONCILIATION OF NET SURPLUS TO NET  
CASH INFLOW FROM OPERATING  
ACTIVITIES

	1999 Actual \$	1998 Actual \$	1999 Budget \$
Reported surplus (deficit)	158,615	(116,119)	(341,328)
Add (less) items not involving cash flows:			
Depreciation	232,033	198,691	204,000
Add (less) movements in working capital:			
Increase in receivable and prepayments	(15,256)	(6,212)	2,189
Increase in payables and accruals	18,813	19,530	(14,658)
Add (less) proceeds of fixed assets sale shown under investing activities	(549)	(1,338)	0
Net cash inflow (outflow) from operating activities	<u>393,656</u>	<u>94,552</u>	<u>(149,797)</u>

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The accompanying accounting policies and notes form part of these Financial Statements

LAW COMMISSION

NOTES TO FINANCIAL STATEMENTS FOR  
THE YEAR ENDED 30 JUNE 1999

**1 Administration costs include**

	30 June 1999	30 June 1998
Audit fee	\$9,000	\$8,000
Increase (decrease) in provision for doubtful debts	(\$2,479)	nil
Rental expenses on operating leases	\$8,853	\$9,645
Rent and rates on office accommodation	\$400,744	\$449,185
	<u>\$407,118</u>	<u>\$466,835</u>

**2 Receivables and prepayments**

	30 June 1999	30 June 1998
Sundry debtors	\$13,810	\$6,567
GST receivable	\$17,407	\$11,611
Trade debtors	\$19,444	\$4,495
Less: Provision for doubtful debts	(\$204)	(\$2,683)
Prepayments	\$16,988	\$32,199
Total	<u>\$67,445</u>	<u>\$52,189</u>

**3 Fixed assets**

	Cost/ valuation	Accumulated depreciation	Net bookvalue 30 June 99	Net bookvalue 30 June 98
Computer equipment	\$626,721	\$492,024	\$134,697	\$170,638
Furniture and fittings	\$1,052,840	\$1,010,927	\$41,913	\$66,321
Office equipment	\$88,215	\$81,293	\$6,922	\$10,761
Computer software	\$309,602	\$143,695	\$165,907	\$192,294
Library collections	\$433,006	\$144,039	\$288,967	\$229,750
Total	<u>\$2,510,384</u>	<u>\$1,871,978</u>	<u>\$638,406</u>	<u>\$669,764</u>

**4 Payables and accruals**

	30 June 1999	30 June 1998
Suppliers of goods/services	\$70,222	\$54,602
Employee entitlements	\$58,774	\$24,990
Accrued expenses	\$49,975	\$42,952
Other creditors	\$54,500	\$92,114
Total	<u>\$233,471</u>	<u>\$214,658</u>



## 5 Commitments

### *Capital expenditure*

There are no commitments for capital expenditure at balance date (30 June 98, \$Nil).

### *Lease commitments*

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

	1999	1998
	\$	\$
Less than 1 year	402,256	378,336
Between 1–2 years	378,336	378,336
Between 2–3 years	372,010	378,336
Between 3–4 years	369,180	372,010
Between 4–5 years	369,180	369,180
Over 5 years	<u>1,107,540</u>	<u>1,476,720</u>

## 6 Contingent liabilities

There are no material contingent liabilities as at balance date (30 June 98, \$Nil).

## 7 Related party information

The Law Commission is a Crown owned entity. The Commission received from the Ministry of Justice \$2,999,445 (includes amounts deducted for Judicial salaries) as grant for the financial year (1997/98, \$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 a 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 and Countrywide Bank, both high-quality banks.

The concentration of credit risk with respect to receivables is limited by its small value and the 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 was deducted from the grant by the Ministry of Justice 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**

Between \$110,000 and \$120,000 – one Commissioner

Between \$130,000 and \$140,000 – one Commissioner

Between \$180,000 and \$190,000 – one Commissioner

One Commissioner who is a District Court Judge was paid by the Department for Courts as a District Court Judge. An amount of \$108,302 was deducted from the grant by the Ministry of Justice on account of this. The amount does not represent the actual remuneration received by the Commissioner.

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LAW COMMISSION

STATEMENT OF SERVICE PERFORMANCE  
FOR THE YEAR ENDED 30 JUNE 1999

**Output class: Policy advice**

Budgeted expenditure: \$3,396,439

Actual expenditure: \$3,014,225

**Quality**

All outputs and other work completed by the end of the year met the quality standards set out on pages 31–33, 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 section 7(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 (MOU) with the Minister of Justice.

## *Public Law*

	<b>Planned</b>	<b>Actual</b>
Compensating the Wrongly Convicted (Report)	August 1998	September 1998 (NZLC R49)
Protection of the Public from Accidental Harm Resulting from Systemic Failure Including Legal Status and Liability of the Crown (PP)	March 1999	Deferred at the request of the Minister of Justice
Judicial Review (PP)	October 1998	In progress
Adoption (PP) (Not in MOU)	June 1999	In progress

## *Commercial Law*

	<b>Planned</b>	<b>Actual</b>
Shared Ownership of Land (PP)	December 1998	January 1999 (NZLC PP35)
Limitation of Actions (PP) (not in MOU)	June 1999	In progress
Retirement Villages (PP)	November 1998	October 1998 (NZLC PP34)
Cross-Border Insolvency (Report)	March 1999	February 1999 (NZLC R52)
Electronic Commerce – Pt 1 (Report)	September 1998	October 1998 (NZLC R50)
– Pt 2 (Report)	April 1999	In progress

## *Common Law*

	<b>Planned</b>	<b>Actual</b>
Auditors' Negligence (PP) (not in MOU)	September 1999	In progress
Defamation (PP)(not in MOU)	August 1998	September 1998 (NZLC PP33)
Abuse of Process Including Maintenance and Champerty (PP) (not in MOU)	November 1998	In progress
Evidence – Report, Code, and Commentary (Report)	September 1998	In progress
Evidence: Total Recall? The Reliability of Witness Testimony (MP)	September 1998	In progress

### *Criminal Procedure*

	<b>Planned</b>	<b>Actual</b>
Alternatives in Prosecution (PP)	February 1999	In progress
Costs in Criminal Cases (Report)	February 1999	In progress
Criminal Prosecution (Report)	September 1998	In progress
Juries in Criminal Trials – Pt 1 (PP)	July 1998	July 1998 (NZLC PP32)
Juries in Criminal Trials – Pt 2 (PP) – Report	January 1999 June 1999	In progress In progress
Computer Misuse (Report) (not in MOU)	May 1999	May 1999 (NZLC R54)
Theft by Procuring Transfer of Funds (Report)(not in MOU)	December 1998	December 1998 (NZLC R51)
Victims of Domestic Violence Who Offend (PP)	June 1999	In progress

### *The Treaty of Waitangi*

	<b>Planned</b>	<b>Actual</b>
Justice: The Experiences of Māori Women (Report)	October 1998	April 1999 (NZLC R53)
Māori Custom Law (Report)	December 1998	In progress
Māori Coroners (PP)	March 1999	In progress

### *Women's Access to Justice*

	<b>Planned</b>	<b>Actual</b>
Women's Access to Legal Services (Study Paper)	October 1998	July 1999 (NZLC SP1)

### *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	525,715	297,007
Commercial Law	797,520	770,507
Criminal procedure	841,079	436,421
Common Law	412,835	596,329
The Treaty of Waitangi	446,698	372,931
Women's Access to Justice	214,806	355,578
Advisory work	157,786	185,452
<b>Total</b>	<b>3,396,439</b>	<b>3,014,225</b>

## The Law Commission's performance standards

Each product<sup>1</sup> 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.

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<sup>1</sup> 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 section 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 section 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 1999

We have audited the financial statements on pages 16 to 33. The financial statements provide information about the past financial and service performance of the Law Commission and its financial position as at 30 June 1999. This information is stated in accordance with the accounting policies set out on pages 16 to 18.

#### **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 1999, the results of its operations and cash flows and the service performance achievements for the year ended 30 June 1999.

#### **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 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 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 16 to 33:

- comply with generally accepted accounting practice; and
- fairly reflect:
  - the financial position as at 30 June 1999
  - 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 31 August 1999 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

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## APPENDIX A

### Advisory Work 1998–1999

Advice on	Provided to
Annual return fee	Ministry of Commerce
Constitutional Amendment Bill 1999	Submission to the Select Committee
De facto Relationships Property Bill 1998	Submission to the Select Committee
Degrees of Murder Bill	Submission to the Select Committee
Home Invasion Bill	Submission to the Select Committee
Preferential Debts	Ministry of Commerce
Stored Semen of Deceased Males	National Ethics Committee on Assisted Human Reproduction
Taxation of Māori Authorities	Inland Revenue Department

#### *Assistance provided to the Legislation Advisory Committee*

- Assisted Human Reproduction
- Crimes (Publications) Bill 1999
- Immigration Amendment Bill 1998
- Judicial (Rules Committee and Technical Advisors) Bill

#### *Follow up and/or implementation of Law Commission reports*

- Apportionment of Civil Liability NZLC R47
- Crown Liability and Judicial Immunity NZLC R37
- Defaming Politicians – a Response to *Lange v Atkinson* NZLC PP33
- Electronic Commerce Part One: A Guide for the Legal and Business Community NZLC R50
- Emergencies NZLC R22
- Insurance Law Reform NZLC R46
- Limitation Defences in Civil Proceedings NZLC R6
- A Personal Property Securities Act for New Zealand NZLC R8
- A Property Law Act NZLC R29
- Review of the Official Information Act 1982 NZLC R40
- Evidence Law: Witness Anonymity NZLC R42

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APPENDIX B  
Members and staff of the Law  
Commission as at  
30 June 1999

*Members of the Law Commission*

Hon Justice Baragwanath – President  
Judge Margaret Lee  
Donald Dugdale  
Denese Henare ONZM  
Timothy Brewer ED  
Paul Heath OC

*Permanent staff of the Law Commission*

Executive Manager	Bala Benjamin
Senior Legal Researchers	Christine Hickey Sharon Opai Louise Symons
Legal Researchers	Karen Belt Jason Clapham Helen Colebrook Meika Foster Megan Leaf Lucy McGrath Megan Noyce Judith Porter
Library Manager	Barbara McPhee
Reference Librarian	Jacqueline Kitchen
Serials Librarian	Charlotte Grant
Library Student Assistant	Anne Tucker
Publications and Information Officer	Helen Bradshaw
Secretaries	Pam Evans Pippa Fraser Leonie Gwiazdzinski Moir Thorn
Receptionist/Assistant Publications officer	Colleen Gurney
Systems Administrator	Brenda Speak
Administration and Library Assistant	Marilyn Cameron

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APPENDIX C  
Areas of law reviewed by the Law Commission  
as at 30 June 1999

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

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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
COMMERCIAL LAW	Some Insurance Law Problems	Report	NZLC R46	May 1998	Awaited
	Repeal of the Contracts Enforcement Act 1956	Report	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
	Electronic Commerce Part One: A Guide for the Legal and Business Community	Report	NZLC R50	October 1998	To be followed by Part Two
	Cross Border Insolvency: Should NZ Adopt the UNCITRAL Model Law on Cross-Border Insolvency?	Report	NZLC R51	February 1999	Under consideration by the Government
	Retirement Villages	Discussion Paper	NZLC PP34	October 1998	To be followed by a report
	Shared Ownership of Land	Discussion Paper	NZLC PP35	January 1999	To be followed by a report
	Computer Misuse	Report	NZLC R54	May 1999	Under consideration by the Ministry of Justice

Area of law	Publication	Type	Ref	Date	Outcome
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
COMMON LAW	Defaming Politicians: A Response to <i>Lange v Atkinson</i>	Discussion Paper	NZLC PP33	September 1998	A report may follow after the decision of the Privy Council
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



Area of law	Publication	Type	Ref	Date	Outcome
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
	Dishonestly Procuring Valuable Benefits	Report	NZLC R51	December 1998	Under consideration by the Ministry of Justice
Juries in Criminal Trials: Part One	Discussion Paper	NZLC PP32	July 1998	To be followed by a further preliminary paper and report	

Area of law	Publication	Type	Ref	Date	Outcome
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; Constitution Amendment Bill before Parliament
	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 Ministry of Justice
	Compensation for Wrongful Conviction or Prosecution	Discussion Paper	NZLC PP31	April 1998	Followed by report NZLC R49
	Compensating the Wrongly Convicted (1998)	Report	NZLC R49	September 1998	Implemented
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

Area of law	Publication	Type	Ref	Date	Outcome
<i>Damages (cont)</i>	Aspects of Damages: The Rules in <i>Bain v Fothergill</i> and <i>Joyner v Weeks</i>	Report	NZLC R19	May 1991	Abolition of the 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
	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
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 Report 55
	Evidence Law: Principles for Reform	Discussion Paper	NZLC PP13	April 1991	
	Evidence Law: Codification	Discussion Paper	NZLC PP14	April 1991	

Area of law	Publication	Type	Ref	Date	Outcome
<i>Evidence Law (cont)</i>	Evidence Law: Hearsay	Discussion Paper	NZLC PP15	April 1991	To be followed by Report 55
	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	
	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

Area of law	Publication	Type	Ref	Date	Outcome
<i>Legislation (cont)</i>	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 Act 1999
	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

Area of law	Publication	Type	Ref	Date	Outcome
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
	Succession Law: Homicidal Heirs	Report	NZLC R38	July 1997	Under consideration by the Ministry of Justice
	Succession Law: A Succession (Adjustment) Act	Report	NZLC R39	August 1997	Under consideration by the Ministry of Justice

Area of law	Publication	Type	Ref	Date	Outcome
<i>Succession Law (cont)</i>	Succession Law: A Succession (Wills) Act	Report	NZLC R41	October 1997	
THE TREATY OF WAITANGI	Justice: The Experience of Māori Women	Report	NZLC R52	April 1999	Under consideration: much already accepted by the Crown
WOMEN'S ACCESS TO JUSTICE	Information about Lawyers' Fees	Consultation Paper	NZLC MP3	October 1996	} Followed by Study Paper 1
	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	
	The Education and Training of Law Students and Lawyers	Consultation Paper	NZLC MP11	September 1997	
	Women's Access to Legal Services	Study Paper	NZLC SP1	June 1999	Under consideration by the Government





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