LAW·COMMISSION
TE·AKA·MATUA·O·TE·TURE

Preliminary Paper 46

Improving the Arbitration Act 1996

A discussion paper

The Law Commission welcomes your comments on this paper and seeks your response to the questions raised.

These should be forwarded to the Law Commission
PO Box 2590, DX SP 23534, Wellington
com@lawcom.govt.nz
by 20 December 2001

September 2001
Wellington, New Zealand

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.

The office of the Law Commission is at 89 The Terrace, Wellington
Postal address: PO Box 2590, Wellington 6001, New Zealand
Document Exchange Number: SP 23534
Telephone: (04) 473–3453, Facsimile: (04) 471–0959
Email: com@lawcom.govt.nz
Internet: www.lawcom.govt.nz

Use of submissions

The Law Commission's processes are essentially public, and it is subject to the Official Information Act 1982. Thus copies of submissions made to the Commission will normally be made available on request, and the Commission may mention submissions in its reports. Any request for the withholding of information on the grounds of confidentiality or for any other reason will be determined in accordance with the Official Information Act 1982.

Preliminary Paper/Law Commission, Wellington, 2001
ISSN 0113–2245 ISBN 1–877187–79–8
This preliminary paper may be cited as: NZLC PP46

This discussion paper is also available on the Internet at the Commission's website: http://www.lawcom.govt.nz

Contents

Preface

AS THE TITLE to this discussion paper indicates, our intention is to improve the Arbitration Act rather than detract from its basic principles. We identify problems that have arisen in the first few years of the Act's operation (which are inevitable when a significant piece of legislation is enacted), and we suggest possible solutions to those problems in a manner consistent with the basic themes of the Act.

In identifying problems which have arisen in practice, we have been considerably assisted by a series of published articles by David Williams QC and by a copy of his submission to the Arbitrators' and Mediators' Institute of New Zealand Inc (AMINZ) on the issues raised. We have had the advantage of considering some preliminary submissions from Mr Thomson, AMINZ, the General Manager of the Dilworth Trust Board, Mr Edgar Smith and Robert F Gapes.

We should appreciate submissions on the issues raised by this discussion paper on or before Thursday 20 December 2001. Submissions can be sent by email to mjosling@lawcom.govt.nz.

Once we have considered the submissions to the discussion paper, we will issue a final report. We expect to publish that report before 31 May 2002.

The Commissioner responsible for preparation of this discussion paper was Paul Heath QC. The research was undertaken by Michael Josling, to whom the Commission expresses its appreciation.

1
Introduction

1 THE ARBITRATION ACT 1996 (the Act) came into force on 1 July 1997.[1] It fundamentally changed New Zealand's existing legal framework for arbitrations.[2] The main feature of the Act was to incorporate the UNCITRAL[3] Model Law into New Zealand law. The principles which underpin the Act are:

- party autonomy;
- reduced judicial involvement in the arbitral process;
- consistency with laws in other jurisdictions; and
- increased powers for the arbitral tribunal.

The Act makes it clear that one of its purposes is to encourage the use of arbitration as an agreed method of resolving commercial and other disputes.[4]

2 The Act appears to be working well, and relatively few flaws or ambiguities have been identified in the decided cases. The courts appear to be applying the Act in accordance with its underlying themes. Indeed, there have been frequent references in the cases to the policies underlying the Act.

3 The purpose of this paper is to address some specific (and important) problems which have been identified in the operation of the Act. Finding solutions to these problems will improve significantly the way in which the Act works. That should, in consequence, add to the viability of arbitration as a means of resolving disputes privately in New Zealand. It should also encourage offshore entities to agree to arbitration in New Zealand under the New Zealand Act.

4 On what is likely to be the most controversial issue (confidentiality), we have decided to express competing views in a way that will inform readers of the underlying policy considerations without embarking upon a detailed consideration of the competing arguments. It would be easy, on this difficult topic, for discussion of particular viewpoints to be regarded as pointing in a particular direction. We wish to ensure that does not happen.

---

1 The Act was preceded by a preliminary paper and a report from this Commission: see Law Commission *Arbitration: NZLC PP7* (Wellington, 1988) and Law Commission *Arbitration: NZLC R20* (Wellington, 1991).

2 The former framework, based on English models, was the Arbitration Act 1908.

3 United Nations Commission on International Trade Law.

4 Arbitration Act 1996, section 5(a).

5 This paper also outlines further problems which seem to be of less significance. We identify those issues in chapter 6 and invite submissions on whether legislative amendments are required to resolve those problems.

2
Confidentiality

INTRODUCTION

6 IN THIS CHAPTER we deal with two specific issues which have arisen in consequence of the passing of section 14 of the Arbitration Act 1996. Those two issues are:

- Does section 14 of the Act deal adequately with issues of confidentiality? If the answer is "no" to that question, a further question arises: how should the Act be amended to deal adequately with this issue?
- When it is necessary for parties to an arbitral proceeding to have recourse to the courts of general jurisdiction, should the (otherwise) confidential nature of the arbitral process yield to principles of open justice in courts of general jurisdiction?

In the first part of this chapter we address the issues of confidentiality as between the parties to an arbitration agreement: see paragraphs 7–12. In the second part, we discuss the clash between principles of confidentiality and open justice: see paragraphs 13–16.

CONFIDENTIALITY

7 Parties to an arbitration agreement can expressly agree that the arbitration should be conducted in private and that information concerning or disclosed in the course of the arbitration should not be published to third persons. In England, the view has grown that the confidentiality of an arbitration is essential to it being commercially attractive as a form of dispute resolution.[5] In *Dolling-Baker v Merrett*, the Court of Appeal held that:

> As between parties to an arbitration, although the proceedings are consensual and may thus be regarded as wholly voluntary, their very nature is such that there must, in my judgment, be some implied obligation on both parties not to disclose or use for any other purpose any documents prepared for and used in the arbitration, or disclosed or produced in the course of arbitration, or transcripts or notes of the evidence in the arbitration or the award – and indeed not to disclose in any other way what evidence had been given to any witness in the arbitration – save with the consent of the other party, or pursuant to an order or leave of the court. That qualification is necessary just as it is in the case of the implied obligation of secrecy between banker and customer.[6]

---

[5] See the discussion by Mason CJ in *Esso Australia Resources Ltd v Ploughman* (1995) 183 CLR 10, 25 ff.

[6] [1991] 2 All ER 890, 899.

8 Three matters need to be noted:

- First, as the Court of Appeal observed, and was to discuss further in *Ali Shipping Corp v Shipyard Trogir*,[7] the implied obligation as to confidentiality is not an unqualified one.
- Secondly, in *Esso Australian Resources Ltd v Plowman*,[8] the Australian High Court declined to hold that the law as laid down in *Dolling-Baker* was applicable in Australia.
- Thirdly, promises given by parties to an arbitration agreement (whether express or implied) while binding on the parties cannot impose obligations on third parties.[9]

9 In its report,[10] which preceded the enactment of the Arbitration Act, the New Zealand Law Commission noted that it did not recommend the inclusion of a provision to the effect that arbitral proceedings be held in camera. It reasoned that such a provision was unnecessary, because this:

- was the traditional practice in arbitration proceedings in New Zealand;
- was often an explicit term of an arbitration agreement; and
- might in some circumstances be an implied term.

10 The framers of the United Kingdom's Arbitration Act of 1996 similarly decided against including any principles relating to privacy and confidentiality in arbitrations despite the fact that the statute was intended as a restatement of the law. As described by Lord Saville:

> The reason was that this is a developing topic and it is simply not possible to frame more than the most general principles. It would have been possible to say that arbitrations and arbitration proceedings are private and confidential; but between whom? The present English law appears to rest the proposition that arbitration is private and confidential on the basis of an implied term of the arbitration agreement; but, if this is so, those who are not bound by that agreement can hardly be subject to that obligation. Again, who is to be treated as a party? In the context of much commercial arbitration, the contest is in truth between insurers, but they are not parties. Are they, the people who are paying, not to be kept informed about the arbitration? What about a company that is a party to an arbitration agreement? Must it keep what is going on confidential and thus (in certain cases at least) keep from its shareholders information which would be needed in order to give a fair and true picture of the company's financial position, which they are required to do by law? What about government bodies who are arbitrating? Does not the public have a legitimate interest in what is going on? In short the principle of privacy and confidentiality must be subject to exceptions and qualifications; these have yet to be fully worked out and indeed may never be fully worked out. Thus the best we could have done would be to have stated some general rule about privacy and confidentiality and made it subject to "all just exceptions". That, of course, would have told the reader nothing at all.[11]

---

7 [1998] 2 All ER 136.

8 *Esso Australia Resources Ltd v Ploughman*, above n 5.

9 A New Zealand example of an *inter partes* confidentiality agreement being overruled is *Re Dickinson* [1992] 1 NZLR 43 (CA).

10 *Arbitration: NZLC R20*, above n 1, para 358.

11 "The Arbitration Act 1996" (1997) *Lloyd's Maritime and Commercial Law Quarterly* 502, 507.

11 The *Esso* decision became available after the introduction of the Bill that became the New Zealand statute but before that Bill was considered by a Select Committee. It was the *Esso* decision that prompted the Select Committee to recommend the insertion into the Act of section 14 which states:

> **14 Disclosure of information relating to arbitral proceedings and awards prohibited**
>
> (1) Subject to subsection (2), an arbitration agreement, unless otherwise agreed by the parties, is deemed to provide that the parties shall not publish, disclose, or communicate any information relating to arbitral proceedings under the agreement or to an award made in those proceedings.
>
> (2) Nothing in subsection (1) prevents the publication, disclosure, or communication of information referred to in that subsection—
>
> (a) If the publication, disclosure, or communication is contemplated by this Act; or
>
> (b) To a professional or other adviser of any of the parties.

12 There seem to be two substantial difficulties with this section as it stands. The first problem is that the exceptions in subsection (2) are insufficiently wide. They are narrower than the catalogue of exceptions listed by Lord Saville in the excerpt already quoted and narrower than the catalogues of exceptions referred to by Mason CJ in *Esso* and by the English Court of Appeal in *Ali*.[12] If it is correct, as suggested by Lord Saville, that it is impossible to devise a comprehensive list, then it may be that the only solution is a simple repeal of section 14. Such a repeal would leave the precise terms of the parties' agreement as to confidentiality either:

- to be determined expressly by the parties when they make their bargain; or
- to be determined by the courts under the general law as to the implication of terms into contracts.

Does section 14 of the Act deal adequately with issues of confidentiality? If the answer is "no" to that question a further question arises: how should the Act be amended to deal adequately with this issue?

CONFIDENTIALITY VERSUS OPEN JUSTICE

13 The second problem that we identify in relation to confidentiality concerns the extent to which, when arbitral proceedings are considered by a court, the principles of open justice should prevail over the private method of dispute resolution chosen by the parties. In addressing this topic, we are mindful that third parties who become aware of and subsequently disclose matters relating to an arbitration can, where the general law imposing obligations of confidentiality applies, be subjected to claims under that law, but they should not be liable if the obligation of confidentiality arises from a contract to which they are not party.

---

[12] *Ali Shipping Corp v Shipyard Trogir*, above n 7.

14 A corollary of the fact that the confidentiality obligation prescribed by the statute is only binding between the parties to an arbitration agreement is that where the assistance of the court is invoked, the statutory provision does not (barring an express order in special circumstances)[13] displace the normal requirement of open justice. While it would be possible for Parliament to provide expressly that hearings relating to arbitral awards should be in camera, it is open to debate whether it would be proper for Parliament to do so.

15 Among the factors which weigh in favour of open justice are the need for accountability of judges and the need to maintain confidence in the administration of justice.[14] In addition, there can be added the consideration that the volume of New Zealand litigation is not large and that much of New Zealand law is unique to this jurisdiction, so its development should not be hampered by the non-publication of useful precedents. However, Lord Cooke of Thorndon on this last matter has drawn attention to a contrary viewpoint. His Lordship has said:

> Far from undermining public policy, the parties to a commercial dispute could be seen to be furthering the public interest by selecting and meeting the cost of their own dispute-resolution machinery, rather than resorting to facilities provided and subsidised by the state. Certainly the arbitration might well not provide a publicly-accessible contribution to jurisprudence; but there was no reason why parties freely contracting should be obliged by public policy to make a compulsory contribution to the worthy cause of the coherent evolution of commercial law.[15]

16 As against the merits of open justice, if a purpose of the legislation is to encourage arbitration in New Zealand, it is a purpose that would probably be promoted by stronger confidentiality provisions. That factor has been strongly stated by Lord Neill in these words:

> If some Machiavelli were to ask me to advise on the best method of driving international arbitration away from England I think that I would say that the best way would be to reintroduce . . . all the court interference that was swept away . . . The second best method – but the two boats are only separated by a canvas – would be for the House of Lords to overthrow *Dolling-Baker* and to embrace the majority judgment of the High Court of Australia in *Esso/BHP*. This would be to announce that English law no longer regarded the privacy and confidentiality of arbitration proceedings (using that term in the broadest sense) as a fundamental characteristic of the agreement to arbitrate. Lawyers and businessmen in France, Germany, Switzerland and in the countries of the Commonwealth and elsewhere would take note and there would be a flight of arbitrations from this country to more hospitable climes.[16]

---

[13] Such an order was declined in *Television New Zealand Ltd v Langley Products Ltd* [2000] 2 NZLR 250.

[14] In the New Zealand context, see, in particular, *Lewis v Wilson & Horton Limited* [2000] 3 NZLR 546 (CA) and *Television New Zealand v Langley Productions Limited*, above n 13.

[15] "Party Autonomy" (1999) 30 VUWLR 257, 264.

[16] "Confidentiality in Arbitration" (1996) 12 *Arbitration International* 287, 316.

When it is necessary for parties to an arbitral proceeding to have recourse to the courts of general jurisdiction, should the (otherwise) confidential nature of the arbitral process yield to principles of open justice in courts of general jurisdiction?[17]

---

[17] In relation to the publication of a judgment of the High Court on appeal from an arbitral award, which referred to the parties only by initials so as to preserve the confidentiality of the arbitration, see *O v SN* [2000] 3 NZLR 114, in particular para 2 at 115.

3
Appealing awards on questions of law

INTRODUCTION

17 IN THE AREA OF ARBITRATION there has always been tension between two principles. One was famously stated by Scrutton LJ in the words "There must be no Alsatia in England where the King's writ does not run".[18] The other is the belief that if parties elect to have their disputes determined by arbitration, with all that arbitration may offer in the way of speed, informality and perhaps cheapness, they should be bound by the decision of their chosen arbitrator and not permitted to complain to the courts that the arbitrator went wrong in law. Before the enactment of the 1996 statute, the law on setting aside awards for error of law was in a shamefully capricious state, and it had been hoped that the new statute would provide a more predictable environment in which the courts could act.

LEAVE TO APPEAL GUIDELINES

18 The recommendation of the Law Commission adopted by the statute certainly improved the law by providing for an appeal on questions of law by leave of the High Court or by agreement of the parties. This put an end to the artificialities of setting aside awards for error of law. The statute, however, lacked clear guidance as to when leave to appeal should be granted.

19 The Law Commission's report spells out that the absence of such guidelines was the result of a deliberate decision based on an expectation that the English cases would be followed by the New Zealand courts.[19] This method of law reform attracted contemporary criticism.[20] It is ironic that in England guidelines were in fact subsequently codified (albeit in general terms) by section 69(3) of its Arbitration Act 1996.[21]

20 In relation to the granting of leave to appeal to the High Court, clause 5 of the Second Schedule to the New Zealand Act (reproduced in Appendix A):

- may be expressly excluded by the parties as a result of section 6(2)(b) of the Act, which allows parties to a domestic arbitration to contract out of the default rules set out in the Second Schedule;

---

[18] *Czarnikow v Roth, Schmidt & Co* [1922] 2 KB 478, 488.

[19] *Arbitration: NZLC R20*, above n 1, para 433.

[20] See, for example, the description "lazy method of law reform" quoted by DAR Williams and FJ Thorp in "Arbitration" [1991] NZ Recent LR 373, 384.

[21] Section 69 is set out in full in Appendix B.

- specifies no criteria against which the High Court will judge whether, in a particular case, leave should or should not be granted; and
- states that leave to appeal should not be granted unless determination of the question of law could substantially affect the outcome.

Although the default rules set out in the Act do not expressly permit an appeal to the High Court against a finding of fact made by an arbitral tribunal, it is not clear whether the absence of evidence on which to base a finding of fact is to be regarded as a question of law on which leave to appeal may be granted.

21 Following a number of conflicting High Court decisions (essentially concerned with whether the restrictive *Nema*[22] guidelines should apply), the Court of Appeal in *Gold and Resource Developments (NZ) Ltd v Doug Hood Ltd*,[23] with a view to filling the gap left by the legislature's failure to give adequate direction, set out the approach that New Zealand courts are to take in exercising their discretion. After a survey of cases and legislation from Australia and the United Kingdom, the Court concluded that Parliament had intended that the parties should normally have to accept the arbitrator's decision and accordingly the discretion should be construed narrowly. It then set out eight guidelines for the exercise of the discretion, although it emphasised that other factors might be relevant.[24] These guidelines were:

- the strength of the challenge and/or the nature of the point of law;
- how the question arose before the arbitrators;
- the qualifications of the arbitrators;
- the importance of the dispute to the parties;
- the amount of money involved;
- the amount of delay involved in going through the courts;
- whether the contract provides for the arbitral award to be final and binding; and
- whether the dispute before the arbitrators is international or domestic.

22 The first guideline, which the Court said was the most important, effectively followed the guidelines in *The Nema* but with a change in terminology. The Court said that if the point on appeal was only a "one-off point" then usually a very strong indication of error was needed. In other cases, a strongly arguable case will normally be required.

23 In contrast to the New Zealand legislation, section 69 of the Arbitration Act 1996 (UK) (reproduced as Appendix B) states that leave to appeal shall be given only if the court is satisfied:

---

22 *Pioneer Shipping Co v BTP Tioxide* [1982] AC 724 (HL).

23 [2000] 3 NZLR 318.

24 *Gold and Resource*, above n 23, para 54.

(a) that the determination of the question will substantially affect the rights of one or more of the parties;

(b) that the question is one which the arbitral tribunal is asked to determine;

(c) that, on the basis of the findings of fact in the award –

(i) the decision of the arbitral tribunal on the question is obviously wrong; or

(ii) the question is one of general public importance and the decision of the arbitral tribunal is at least open to serious doubt; and

(d) that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

24 In addition to section 69(3) of the Arbitration Act 1996 (UK), section 69(4) requires an application for leave to appeal to identify the question of law to be determined and to state the grounds on which it is alleged that leave to appeal should be granted.

25 Apart from the requirement in section 69(3)(a) of the United Kingdom legislation, that the determination of the question will substantially affect the rights of one or more of the parties, the remaining matters relevant to the grant of leave are not expressly stated in the New Zealand legislation. That it is necessary to establish that the point of law *could* substantially affect the rights of one or more parties is clear from clause 5(2) of the Second Schedule to the New Zealand Act.

26 Accordingly, we seek opinions on whether the *Gold and Resource* criteria are appropriate in the New Zealand environment. In particular, we would invite views on whether any problems have arisen in practice from the absence of any indication of the weight to be given to various factors; particularly where factors identified may conflict. By way of example, we note that the amount at stake may make the dispute vital to the viable operation of the business of one party while being financially trifling to the other. We also invite comment on what factors should be stated in legislation if a view is expressed that the statute needs to be more precise in that regard. Finally, we invite comment on whether the statute should expressly state whether a finding of fact made on no or inadequate evidence can amount to an error of law for the purposes of clause 5(1)(c) of the Second Schedule to the Act.

Should the statute set out the grounds on which the court should grant leave to appeal?

If so, what should those grounds be?

Should the statutes state expressly whether a finding of fact based on no or inadequate evidence is an error of law?

If so, what should the rule be?

SHOULD A PERVERSE FINDING OF FACT BE AN ERROR OF LAW?

27 It is uncertain if the question of whether there was evidence to support a particular finding of fact is a question of law in the present context. The point was left open in *Gold and Resource*.[25] On the other hand, rule 887(2)(a) of the High Court Rules seems to assume that a claim of no evidence to support the finding is a question of law. The statute should be made clear on this point. If it is decided to exclude this type of error from review by the court, an example of a statutory provision which defines "error of law" for this purpose is to be found in section 476(1)(e) of the Migration Act 1958 (Cth) which defines it as:

> . . . being an error involving an incorrect interpretation of the applicable law or an incorrect application of the law to the facts as found by the persons who made the decision.

Should the statute define when, if ever, a perverse finding of fact is an error of law, and if yes, what should the rule be?

---

[25] *Gold and Resource*, above n 23, para 55.

4
Transitional issues

INTRODUCTION

28 ONE OF THE TRANSITIONAL PROVISIONS in the Act (section 19(3)) provides:

> Where an arbitration agreement, which is made before the commencement of this Act, *provides for the appointment of 2 arbitrators*, and arbitral proceedings are commenced after the commencement of this Act,—
>
> (a) Unless a contrary intention is expressed in the arbitration agreement, the 2 arbitrators shall, immediately after they are appointed, appoint an umpire; and
>
> (b) The law governing the arbitration agreement and the arbitration is the law that would have applied if this Act had not been passed. [Italics our emphasis]

29 In this chapter, we consider the following issues:

- Does the interpretation to be given to the words "provides for the appointment of two arbitrators" in section 19(3) include agreements which provide for the appointment of two arbitrators and an umpire? Apart from section 19, a number of other statutes provide that where parties agree to arbitrate a dispute, they are each to appoint an arbitrator, with those arbitrators then being required to appoint an umpire. The difficulty is that the 1996 Act makes no provision for umpires (other than in the limited circumstances set out in section 19).
- Is the transitional provision provided by the subsection appropriate in any event? (Several commentators have argued that for some classes of contract, the transition period could last for decades. In those circumstances, the Arbitration Act 1908 would continue to operate.)

APPLICATION OF SECTION 19(3) TO AGREEMENTS PROVIDING FOR TWO ARBITRATORS AND AN UMPIRE

Conflicting High Court decisions

30 In *Con Dev Construction Ltd v Financial Shelves No. 49 Ltd*[26] Master Venning considered the issue and held that section 19(3) did not apply to agreements expressly providing for the appointment of an umpire. In essence, the Master relied upon two reasons. First, he said that section 19(3) was intended to ensure that where an agreement provides for two arbitrators, there would be no deadlock.[27]

---

[26] (22 December 1997) unreported, High Court, Christchurch Registry, CP 179/97.

[27] *Con Dev v Financial Shelves*, above n 26, 4.

Second, he placed weight on the Government Administration Committee's report which commented that section 19(3) applied to agreements providing for the appointment of "only two arbitrators".[28]

31 In *Granadilla Ltd v Berben*[29] Goddard J was required to decide a separate issue in relation to an agreement providing for the appointment of two arbitrators and an umpire. In the course of her reasons for judgment she said:

> (e) The practical implication of s19(3) is that arbitrations commenced under agreements made prior to 1 July 1997 and providing for the appointment of two arbitrators will continue to be governed by the 1908 Act and associated common law rules, rather than the 1996 Act.
>
> . . .
>
> (g) The lease in this case provides . . . [for] . . . *two arbitrators, who are to appoint a third person as umpire . . . Therefore s19(3) applies*, and the law governing that arrangement . . . must be the law in existence before the 1996 Act came into force. [Italics our emphasis] [30]

32 We note that Goddard J did not refer to *Con Dev*; neither did she give any reasoning in support of her conclusion in (g). The point was not directly in issue and may not have been argued.

Our comments

33 We consider that the subsection does not apply to agreements that provide for the appointment of two arbitrators and an umpire. And reading section 19(3) in isolation this seems to be the more natural interpretation, although both interpretations are possible. We consider, however, that the purpose and scope of section 19(3) is made clear by its Parliamentary history.

34 Section 19(3) was not included in the Law Commission's draft Bill.[31] The subsection was added to the Bill as a result of a recommendation made by the Government Administration Committee. The amended Bill was then passed by Parliament without change. The Committee's commentary was as follows:

> The submission . . . also referred to the provision in the Arbitration Act 1908, which provides that where an arbitration agreement only provides for two arbitrators, the two arbitrators shall immediately after their appointment appoint an umpire. We note that existing arbitration agreements may have been drafted in reliance on that provision and their conduct would be affected by the repeal of the 1908 Act. Unco-operative parties may not be prepared to renegotiate such provisions and there may be no clear way of resolving the deadlock between the two decision-makers. However, the problem raised in the submission is confined to the period of transition from the existing regime to the new one set out in the bill.

---

[28] Arbitration Bill 1996, No 117-2 (the Government Administration Committee Report).

[29] (1998) 12 PRNZ 371.

[30] *Granadilla v Berben* above n 29, 376.

[31] *Arbitration: NZLC R20*, above n 1.

> We recommend that the bill be amended to provide that where a subsisting arbitration agreement entered into before the commencement of the new Act provides for the appointment of only two arbitrators, the two arbitrators appointed shall immediately appoint an umpire unless a contrary intention is expressed in the agreement.[32]

35 In other words, the Committee was concerned that agreements made before the new Act, which provided for only two arbitrators, may have been entered into in reliance upon the default provisions in the Arbitration Act 1908, which provided that the arbitrators must appoint an umpire.[33] The Committee considered that these arbitrations might end in deadlock. As a result, section 19(3) was recommended to ensure that in this type of case, the arbitrators were required to appoint an umpire as under the 1908 Act.

36 In addition to requiring the appointment of an umpire, section 19(3)(b) goes on to provide that the law prior to the passing of the Act shall continue to apply. Although recommended by the Committee, this amendment is not referred to in its commentary. The rationale for its inclusion, however, must be that there was doubt as to whether the 1996 Act could accommodate the role of umpires (neither the Act, nor the UNCITRAL Model Law, refer to umpires). Accordingly, it was considered necessary for the pre-1996 law to apply.

> We seek submissions on whether it is thought that section 19(3) could be replaced with legislation that is more specific in nature. If the view is that there should be a replacement for section 19(3), we seek submissions on what types of dispute should remain to be resolved under the Arbitration Act 1908.

OTHER STATUTES PROVIDING FOR ARBITRATORS AND UMPIRES

37 A number of statutes provide that where parties agree to arbitrate their dispute, they are each required to appoint an arbitrator; the arbitrators then appoint an umpire.[34] The Arbitration Act 1996 makes no provision for an umpire except in the transition provisions. We are aware of suggestions that this causes difficulty.

---

[32] Arbitration Bill 1996, above n 28, viii–ix.

[33] Clause 2 of the Second Schedule.

[34] We were referred by Hon Sir Ian Barker QC and by the submission of the Dilworth Trust Board to the First Schedule of the Public Bodies Leases Act 1969. However, there are numerous similar provisions, see for example, South Canterbury Catchment Board Act 1958, s 6; Tokoroa Agricultural and Pastoral Association Empowering Act 1968, s 6; Sharemilking Agreements Act 1937, s 49; Marine Farming Act 1971, s 39; Land Drainage Act 1908, s 5; Building Societies Act 1965, s 109; Building Research Levy Act 1969, s 6. A computer search we carried out for similar provisions revealed over 100 "hits".

38 Our provisional view is that the provisions of article 10 of the First Schedule to the Arbitration Act 1996 resolve the position. Under that article "the parties are free to determine the number of arbitrators to determine their dispute". While the term "umpire" is not used, there is nothing to prevent parties from agreeing that two arbitrators shall hear the case and only if they disagree shall the umpire enter upon the reference and make the binding determination. The default rule contained in article 10(2) of the First Schedule does, however, anticipate that a sole arbitrator will determine domestic arbitrations.

LONG TRANSITION PERIOD

39 It has been noted that section 19(3) will result in an extremely long transition period for contracts that are likely to remain in effect for a number of years, for example, leases (especially perpetually renewable ones), contracts of supply, franchise agreements, partnership agreements, and joint ventures. The commentators have said that this is unsatisfactory since it will require lawyers to remain familiar with the old law for a number of years to come.[35] Other disadvantages that we can see are:

- an outdated law will continue to apply – the 1996 Act is recognised as having introduced an improved regime, which participants should have the benefit of; and
- practitioners may inadvertently apply the 1996 Act, resulting in litigation.

In our view, the obvious way to overcome all these problems is to repeal section 19(3) and to provide that any agreement (whether implied by statute or otherwise), which provides for the appointment of an umpire, be deemed to be an agreement to appoint an additional arbitrator. There are two ways in which this could be achieved:

- The additional arbitrator could act as if that person had been appointed as an umpire. If that option was preferred, the additional arbitrator would have no power of decision unless the remaining two arbitrators disagreed.
- The section could provide that where there has been an agreement to have two arbitrators and an umpire, the arbitration could proceed under the 1996 Act but involve an arbitral tribunal empowered to proceed in the same way as two arbitrators and an umpire would have proceeded under the 1908 Act. This does not conflict with the party autonomy rule having regard to the way in which article 10 of the First Schedule is expressed.

---

[35] DAR Williams "Arbitration and Dispute Resolution" [1998] NZLJ 387; DAR Williams "Arbitration and Dispute Resolution" [1998] NZ Law Rev 7; *Brooker's Arbitration Law and Practice* (Brooker's, Wellington, 1993) para 19.04.

5
Issues affecting consumers

INTRODUCTION

40 SECTION 11 of the Act provides:

> **11. Consumer arbitration agreements—**
>
> (1) Where—
>
> (a) A contract contains an arbitration agreement; and
>
> (b) A person enters into that contract as a consumer,—
>
> the arbitration agreement is enforceable against the consumer only if—
>
> (c) The consumer, by separate written agreement, certifies that, having read and understood the arbitration agreement, the consumer agrees to be bound by it; and
>
> (d) The separate written agreement referred to in paragraph (c) discloses, if it is the case, the fact that all or any of the provisions of the Second Schedule do not apply to the arbitration agreement.
>
> (2) For the purposes of this section, a person enters into a contract as a consumer if—
>
> (a) That person enters into the contract otherwise than in trade; and
>
> (b) The other party to the contract enters into that contract in trade.
>
> (3) Subsection (1) applies to every contract containing an arbitration agreement entered into in New Zealand notwithstanding a provision in the contract to the effect that the contract is governed by a law other than New Zealand law.
>
> . . .
>
> (6) Nothing in this section applies to a contract of insurance to which section 8 of the Insurance Law Reform Act 1977 applies.

41 Section 11 provides in essence that an arbitration agreement, part of a longer contract, is enforceable against a consumer (as defined in section 11(2)) only if the consumer signs a separate document agreeing to be bound by the arbitration agreement. Other statutory provisions also provide that arbitration agreements are not necessarily binding. Section 8 of the Insurance Law Reform Act 1977 provides that arbitration agreements are not binding on the insured, unless the insured agrees to submit the dispute to arbitration *after* it arises. Section 16(2) of the Disputes Tribunals Act 1988 provides that the tribunal shall have jurisdiction to hear disputes regardless of any arbitration clauses. Apart from its extended jurisdiction where the parties consent, the Disputes Tribunal now has power to hear and determine disputes falling within its jurisdiction in respect of sums which do not exceed $7500. Such amounts are significant to many New Zealanders, and a question arises as to whether it is appropriate to remove the right of those people to submit their dispute to an arbitrator of their choice. A transitional issue also arises in the context of the inter-relationship between the 1996 Act and those provisions of other Acts still on the statute book.

42 Section 11 plainly cuts into the principle of party autonomy. However, it was thought prior to the passing of the Act that arbitration clauses could work oppressively against consumers, particularly if they were incorporated in standard form contracts. Thus the Government Administration Committee stated:

> We acknowledge that arbitration has the potential to disadvantage consumers in disputes with commercial organisations because commercial organisations are likely to have institutional advantages in determining the appointment of arbitrators and the rules governing the conduct of arbitrations. As the arbitrator's costs have to be paid for by the parties, arbitration may, in relation to the value of the subject matter in dispute, prove too costly for consumers. Legal aid is not available for arbitrations. Further, while privacy is normally one of the advantages associated with arbitration in a purely commercial context, for a consumer in a dispute with a commercial organisation the publicity of litigation may be a distinct advantage because commercial organisations will normally be sensitive to adverse effects on their reputations.[36]

43 Before considering any specific reforms, we emphasise that we agree with the broad policy that consumers should not automatically be subject to the full consequences of arbitration clauses. However, party autonomy is only desirable in so far as the person agreeing to the arbitration makes a truly voluntary choice. Otherwise, the principle of party autonomy itself will become discredited. In this regard we note that the courts' historic hostility to enforcing arbitration agreements can be to a large extent explained as a means of "consumer protection".

POTENTIAL DIFFICULTIES WITH SECTION 11

Agreement to arbitrate signed at time of original contract

44 Under section 11, the requirement is that the consumer sign the agreement to arbitration at the time of entering into the main contract, *not* after a dispute has arisen, as in section 8 of the Insurance Law Reform Act 1977. Consequently, the form is likely to be presented to the consumer as just another piece of paperwork to sign in order to complete the main transaction. As a present Commissioner, criticising the Law Commission 1991 report, put it:

> What happens in real life is that the nice kind salesman says "sign here, here and here", and the consumer like a lamb signs there, there and there without any clear idea of what he is signing or why.[37]

---

[36] Arbitration Bill, above n 28, v.

[37] DF Dugdale "Arbitration as Oppression" [1992] NZLJ 135, 136.

45 A submission to this effect was in fact made to the Government Administration Committee. However, it declined to recommend any relevant change saying "We believe that clause 9 [of the Bill] will adequately protect consumers".[38]

Section 11 fails to make provision for arbitration clauses which provide machinery to determine issues

46 As well as providing that disputes should go to arbitration, rather than be litigated in the courts, arbitration clauses also provide machinery to determine issues not otherwise justiciable (such as contested rent reviews). Section 11 seems to make those clauses unenforceable because the issue cannot be referred to arbitration unless the formal requirements of section 11 are complied with. The result is that the contract contains no machinery to determine the particular issue. In some cases, where the agreed machinery fails, the court will itself determine the issue.[39] However, this is so only where the issue is capable of resolution by objective criteria (a valuation or fixing a market rent for example). If it were intended that the issue be resolved according to subjective criteria, the views of specific persons for example, then the entire agreement may well be void for uncertainty.[40]

47 Section 11 applies even to arbitration agreements entered into prior to the passing of the Act. So parties that entered into agreements with consumers prior to the 1996 Act may find that if the consumer declines to participate in an arbitration, then the entire agreement fails for lack of a working machinery. This would appear to have particular application to Glasgow leases[41] of residential sites, which in the normal case can be characterised as contracts entered into by the lessee as a consumer. The same problem arises in cross-lease arrangements entered into prior to 1 July 1996 where no separate "consumer" agreement will have been signed.

It would assist us to receive submissions on the following issues:

- Should consumer arbitration agreements continue to be treated differently from others?
- If so, are the present protections adequate?
- How should "consumer" be defined?
- Should the Act require the consumer to agree to arbitration only after the dispute has arisen?
- Should consumers enjoy any other protections; for example an automatic right of appeal?
- Have any problems arisen in relation to "machinery" provisions?

---

38 Arbitration Bill, above n 28, v.

39 *Sudbrook Trading Estate Ltd v Eggleton* [1983] 1 AC 444 (HL).

40 *Nelson v Cook McWilliams Wines Ltd* [1986] 2 NZLR 215 (HC).

41 A Glasgow lease is a lease usually from a charitable or public body renewable in perpetuity, with provision for periodic reviews of rent to be assessed without taking into account improvements for which the lessee may be entitled to be compensated if the lessee elects not to renew the lease.

- Should "machinery" clauses be excluded from the scope of section 11, or at least be excluded if they were entered into prior to the passing of the Act?

6
Remaining issues raised for consideration

INTRODUCTION

48 A NUMBER OF further issues have been drawn to our attention which may or may not require reform. These are:

- procedures for the default appointment of arbitrators;
- requests for correction and interpretation of the award;
- the different powers of the High Court and District Court;
- the procedures for obtaining witness subpoenas;
- judicial immunity for those who appoint arbitrators; and
- the Employment Relations Act 2000.

At this stage, we have insufficient information whether these issues are, in fact, causing problems in practice.

On the issues that we identify in this chapter we seek submissions on:

- whether difficulties are being caused in practice;
- if difficulties are occurring, what form the difficulties take; and
- what can be done by way of legislation to improve the existing law significantly.

49 We deal in turn with the specific issues raised.

DEFAULT APPOINTMENT OF ARBITRATORS

50 Article 11(2) of the First Schedule provides that the parties are free to agree on a procedure for the appointment of the arbitrator. Failing such agreement, article 11(3)(b) provides that a party may request the High Court to appoint the arbitrator.

51 Clause 1 of the Second Schedule sets out a default procedure, which, unless the parties agree otherwise, is deemed to be the procedure agreed under article 11. Subclauses (3), (4) and (5) provide:

> (3) In an arbitration with—
>
> (a) A sole arbitrator

. . .

the parties shall agree on the person . . . to be appointed as arbitrator.

(4) Where, under . . . subclause (3) . . .—

(a) A party fails to act as required under such procedure; or

(b) The parties . . . are unable to reach an agreement expected of them under such procedure; or

(c) A third party . . . fails to perform any function entrusted to it . . .—

any party may, by written communication delivered to every such party, arbitrator or third party, specify the details of that person's default and propose that, if the default is not remedied within the period specified in the communication (being not less than 7 days after delivered), a person named in the communication shall be appointed to such vacant office of arbitrator as is specified in the communication . . .

(5) If the default specified in the communication is not remedied within the period specified in the communication,—

(a) The proposal made in the communication shall take effect as part of the arbitration agreement on the day after the expiration of that period; and

(b) The arbitration agreement shall be read with all necessary modifications accordingly.

52 The difficulty arises where the parties are unable to agree on the single arbitrator. Under subclause (4) this is a default. As a result, the party whose suggested arbitrator was rejected may then immediately send a default notice to the other party, stating that unless the default is remedied within seven days then the suggested arbitrator will be appointed. If the party receiving the notice does nothing, then the appointment will take effect in accordance with subclause (5). However, even if the party does respond, for example by suggesting an alternative arbitrator, arguably the first party's choice will still take effect under subclause (5). This is because the second party, by suggesting an alternative arbitrator, has not remedied the default (that is, the failure to agree). The second party could also respond with his own default notice. But by the time it expires, the first party's choice would already have taken effect.

53 Article 11(4) of the First Schedule provides that any party may apply to the High Court where under an agreed procedure, they are unable to reach the "agreement expected of them". However, the article does not apply where "the agreement on the appointment procedure provides other means for securing appointment". Accordingly the article does not assist since clause 1 does provide another means for securing the appointment, that is, the default notice procedure.

54 In summary, on a plain reading of the schedules, a party who does not agree to the other party's choice of arbitrator, for valid reasons, may find himself forced to accept that choice, with no recourse to the High Court.

We seek submissions on whether this particular difficulty causes sufficient problems to justify legislative intervention. We also seek submissions on the type of legislative intervention which is favoured if the problems are regarded as sufficiently significant.

REQUESTS FOR INTERPRETATION

55 Article 33(1) provides:

> **33. Correction and interpretation of award: Additional award—**
> (1) Within 30 days of receipt of the award, unless another period of time has been agreed upon by the parties,—
> (a) A party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature:
> (b) If so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.
> If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request. The interpretation shall form part of the award.

56 Under the article, the arbitrator may be requested to attend to the matters in article 33(1)(a) by only one of the parties. However, a request to give an interpretation must be agreed to by all of the parties. The issue is whether it should be sufficient for one of the parties to make such a request.

57 The competing arguments can be summarised briefly as follows:

- There is a concern that if all parties do not agree to the interpretation process, then one party could use the procedure to prolong or reopen a concluded dispute. The concern is alleviated to some extent by the need for the arbitral tribunal to be satisfied that the request is justified and by the short time within which a request can be made.
- Alternatively, it is said that if a significant question arises which can be clarified readily by the arbitral tribunal, in order to promote finality the tribunal should be allowed to give the interpretation which it favours.

We invite submissions on whether this issue is significant enough to justify legislative intervention and, if so, what form that legislative intervention should take.

JURISDICTION OF THE DISTRICT COURT

58 The 1996 Act differentiates between powers which can be exercised by the High Court or the District Court.

59 The provisions of the Act follow a consistent approach:

(a) Applications for a stay are heard in the court where the proceedings were filed.

(b) Applications where "assistance" is sought may be heard in either the High or District Court.

(c) The other types of application involve contested matters, involving either review of an arbitrator's decision or making orders against the arbitrator or enforcing the award. These are heard in the High Court.

60 The issue is whether the District Court should be given jurisdiction to hear contested matters falling within the scope of category (c).

We invite submissions on this issue. In particular, we are anxious to know whether it would be helpful to practitioners to enable judgment to be entered in the District Court in respect of amounts within the District Court civil jurisdiction rather than only in the High Court. The potential advantages include more readily available rights of execution and the ability to use courts to enter judgment at a wider range of locations throughout New Zealand.

WITNESS SUBPOENAS

61 Article 27 of the Act provides:

> **27. Court assistance in taking evidence—**
> (1) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the court assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.
> (2) For the purposes of paragraph (1),—
> (a) The High Court may make an order of subpoena or a District Court may issue a witness summons to compel the attendance of a witness before an arbitral tribunal to give evidence or produce documents:
> (b) The High Court or a District Court may order any witness to submit to examination on oath or affirmation before the arbitral tribunal, or before an officer of the court, or any other person for the use of the arbitral tribunal:
> . . .

62 Compared with procedures in the High Court and the District Court, the procedure under the Act has significant disadvantages. It requires two applications: first from a party to the arbitrator and then from the arbitrator (or a party with the consent of the arbitrator) to the court. It is also unclear whether the arbitral tribunal should deal *ex parte* with an application for consent or whether the application should be on notice to other parties. That lack of clarity is also undesirable. Under the Arbitration Act 1908 it was possible to obtain subpoenas from the High Court as of right upon the filing of a praecipe.

We seek submissions on whether there is any justification for declining the party direct access to the High Court or the District Court in order to obtain a subpoena to compel a witness to attend an arbitral tribunal.

IMMUNITY FOR THOSE APPOINTING ARBITRAL TRIBUNALS

63 Arbitrators are accorded judicial immunity when they act as arbitrators.[42] A question which has been raised with us is whether similar immunity should be granted in favour of those required, under the particular arbitration agreement, to appoint arbitrators.

64 There is plainly public interest in professional bodies, such as the Arbitrators' and Mediators' Institute of New Zealand Inc, appointing arbitrators from those known to be qualified to undertake the particular task. The issue is whether there is likely to be any scope for argument that those bodies are liable for damages if a party turns out to be dissatisfied with the result achieved at arbitration. This may flow from dissatisfaction with the performance of the particular arbitrator (whether justified or not).

We seek submissions on whether appointing authorities believe that any problems exist which require legislative attention. If problems are identified we seek submissions on suggested solutions. We are conscious, in identifying this issue, that the scope for work by appointing authorities may increase under the Construction Contractors Bill, which will enable adjudicators to be appointed to determine cash-flow issues affecting those working in the construction industry.

EMPLOYMENT RELATIONS ACT 2000

65 Section 155 of the Employment Relations Act 2000 permits arbitration but provides that the Arbitration Act 1996 does not apply. The concern was apparently a fear that the provisions in the Arbitration Act 1996 for recourse to the High Court would undermine the Employment Court's specialist jurisdiction. Disapplying the 1996 statute means that some other (unspecified) law applies; but what law?

We invite comment on whether the provision as it stands has led to any problems. A solution might be for the Arbitration Act to apply but as if references to the High Court were references to the Employment Court.

---

[42] Arbitration Act 1996, s 13.

APPENDIX A
Arbitration Act 1996, Second Schedule, Additional Optional Rules Applying to Arbitration Contents, clause 5

5 Appeals on questions of law—

(1) Notwithstanding anything in articles 5 or 34 of the First Schedule, any party may appeal to the High Court on any question of law arising out of an award—

(a) If the parties have so agreed before the making of that award; or

(b) With the consent of every other party given after the making of that award; or

(c) With the leave of the High Court.

(2) The High Court shall not grant leave under subclause (1)(c) unless it considers that, having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of one or more of the parties.

(3) The High Court may grant leave under subclause (1)(c) on such conditions as it sees fit.

(4) On the determination of an appeal under this clause, the High Court may, by order,—

(a) Confirm, vary, or set aside the award; or

(b) Remit the award, together with the High Court's opinion on the question of law which was the subject of the appeal, to the arbitral tribunal for reconsideration or, where a new arbitral tribunal has been appointed, to that arbitral tribunal for consideration,—

and, where the award is remitted under paragraph (b), the arbitral tribunal shall, unless the order otherwise directs, make the award not later than 3 months after the date of the order.

(5) With the leave of the High Court, any party may appeal to the Court of Appeal from any refusal of the High Court to grant leave or from any determination of the High Court under this clause.

(6) If the High Court refuses to grant leave to appeal under subclause (5), the Court of Appeal may grant special leave to appeal.

(7) Where the award of an arbitral tribunal is varied on an appeal under this clause, the award as varied shall have effect (except for the purposes of this clause) as if it were the award of the arbitral tribunal; and the party relying on the award or applying for its enforcement under article 35(2) of the First Schedule shall supply the duly authenticated original order of the High Court varying the award or a duly certified copy.

(8) Article 34(3) and (4) of the First Schedule apply to an appeal under this clause as they do to an application for the setting aside of an award under that article.

(9) For the purposes of article 36 of the First Schedule,—

(a) An appeal under this clause shall be treated as an application for the setting aside of an award; and

(b) An award which has been remitted by the High Court under subclause 4(b) to the original or a new arbitral tribunal shall be treated as an award which has been suspended.

APPENDIX B
Arbitration Act 1996 (UK), section 69

69 Appeal on point of law

(1) Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings. An agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.

(2) An appeal shall not be brought under this section except—
- (a) with the agreement of all the other parties to the proceedings, or
- (b) with the leave of the court.

The right to appeal is also subject to the restrictions in section 70(2) and (3).

(3) Leave to appeal shall be given only if the court is satisfied—
- (a) that the determination of the question will substantially affect the rights of one or more of the parties,
- (b) that the question is one which the tribunal was asked to determine,
- (c) that, on the basis of the findings of fact in the award—
  - (i) the decision of the tribunal on the question is obviously wrong, or
  - (ii) the question is one of general public importance and the decision of the tribunal is at least open to serious doubt, and
- (d) that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

(4) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted.

(5) The court shall determine an application for leave to appeal under this section without a hearing unless it appears to the court that a hearing is required.

(6) The leave of the court is required for any appeal from a decision of the court under this section to grant or refuse leave to appeal.

(7) On an appeal under this section the court may by order—
- (a) confirm the award,
- (b) vary the award,
- (c) remit the award to the tribunal, in whole or in part, for reconsideration in the light of the court's determination, or
- (d) set aside the award in whole or in part.

The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

(8) The decision of the court on an appeal under this section shall be treated

as a judgment of the court for the purposes of a further appeal. But no such appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

OTHER LAW COMMISSION PUBLICATIONS

Report series

NZLC R1	Imperial Legislation in Force in New Zealand (1987)
NZLC R2	Annual Reports for the years ended 31 March 1986 and 31 March 1987 (1987)
NZLC R3	The Accident Compensation Scheme (Interim Report on Aspects of Funding) (1987)
NZLC R4	Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme) (1988)
NZLC R5	Annual Report 1988 (1988)
NZLC R6	Limitation Defences in Civil Proceedings (1988)
NZLC R7	The Structure of the Courts (1989)
NZLC R8	A Personal Property Securities Act for New Zealand (1989)
NZLC R9	Company Law: Reform and Restatement (1989)
NZLC R10	Annual Report 1989 (1989)
NZLC R11	Legislation and its Interpretation: Statutory Publications Bill (1989)
NZLC R12	First Report on Emergencies: Use of the Armed Forces (1990)
NZLC R13	Intellectual Property: The Context for Reform (1990)
NZLC R14	Criminal Procedure: Part One: Disclosure and Committal (1990)
NZLC R15	Annual Report 1990 (1990)
NZLC R16	Company Law Reform: Transition and Revision (1990)
NZLC R17(S)	A New Interpretation Act: To Avoid "Prolixity and Tautology" (1990) (and Summary Version)
NZLC R18	Aspects of Damages: Employment Contracts and the Rule in *Addis v Gramophone Co* (1991)
NZLC R19	Aspects of Damages: The Rules in *Bain v Fothergill* and *Joyner v Weeks* (1991)
NZLC R20	Arbitration (1991)
NZLC R21	Annual Report 1991 (1991)
NZLC R22	Final Report on Emergencies (1991)
NZLC R23	The United Nations Convention on Contracts for the International Sale of Goods: New Zealand's Proposed Acceptance (1992)
NZLC R24	Report for the period l April 1991 to 30 June 1992 (1992)
NZLC R25	Contract Statutes Review (1993)
NZLC R26	Report for the year ended 30 June 1993 (1993)
NZLC R27	The Format of Legislation (1993)
NZLC R28	Aspects of Damages: The Award of Interest on Money Claims (1994)
NZLC R29	A New Property Law Act (1994)
NZLC R30	Community Safety: Mental Health and Criminal Justice Issues (1994)
NZLC R31	Police Questioning (1994)
NZLC R32	Annual Report 1994 (1994)
NZLC R33	Annual Report 1995 (1995)
NZLC R34	A New Zealand Guide to International Law and its Sources (1996)
NZLC R35	Legislation Manual: Structure and Style (1996)
NZLC R36	Annual Report 1996 (1996)
NZLC R37	Crown Liability and Judicial Immunity: A response to *Baigent's* case and *Harvey v Derrick* (1997)
NZLC R38	Succession Law: Homicidal Heirs (1997)
NZLC R39	Succession Law: A Succession (Adjustment) Act (1997)

NZLC R40 Review of the Official Information Act 1982 (1997)
NZLC R41 Succession Law: A Succession (Wills) Act (1997)
NZLC R42 Evidence Law: Witness Anonymity (1997)
NZLC R43 Annual Report 1997 (1997)
NZLC R44 Habeas Corpus: Procedure (1997)
NZLC R45 The Treaty Making Process: Reform and the Role of Parliament (1997)
NZLC R46 Some Insurance Law Problems (1998)
NZLC R47 Apportionment of Civil Liability (1998)
NZLC R48 Annual Report (1998)
NZLC R49 Compensating the Wrongly Convicted (1998)
NZLC R50 Electronic Commerce Part One: A Guide for the Legal and Business Community (1998)
NZLC R51 Dishonestly Procuring Valuable Benefits (1998)
NZLC R52 Cross-Border Insolvency: Should New Zealand adopt the UNCITRAL Model Law on Cross-Border Insolvency? (1999)
NZLC R53 Justice: The Experiences of Māori Women: Te Tikanga o te Ture: Te Mātauranga o ngā Wāhine Māori e pa ana ki tēnei (1999)
NZLC R54 Computer Misuse (1999)
NZLC R55 Evidence (1999)
NZLC R56 Annual Report (1999)
NZLC R57 Retirement Villages (1999)
NZLC R58 Electronic Commerce Part Two: A Basic Legal Framework (1999)
NZLC R59 Shared Ownership of Land (1999)
NZLC R60 Costs in Criminal Cases (2000)
NZLC R61 Tidying the Limitation Act (2000)
NZLC R62 Coroners (2000)
NZLC R63 Annual Report 2000 (2000)
NZLC R64 Defaming Politicians: A Response to *Lange v Atkinson*
NZLC R65 Adoption and Its Alternatives: A Different Approach and a New Framework (2000)
NZLC R66 Criminal Prosecution (2000)
NZLC R67 Tax and Privilege: Legal Professional Privilege and the Commissioner of Inland Revenue's Powers to Obtain Information (2000)
NZLC R68 Electronic Commerce Part Three: Remaining Issues (2000)
NZLC R69 Juries in Criminal Trials (2001)
NZLC R70 Acquittal Following Perversion of the Course of Justice (2001)
NZLC R71 Misuse of Enduring Powers of Attorney (2001)
NZLC R72 Subsidising Litigation (2001)
NZLC R73 Some Criminal Defences with Particular Reference to Battered Defendants (2001)
NZLC R74 Minority Buyouts (2001)
NZLC R75 Annual Report 2001 (2001)

Study Paper series

NZLC SP1 Women's Access to Legal Services (1999)
NZLC SP2 Priority Debts in the Distribution of Insolvent Estates: An Advisory Report to the Ministry of Commerce (1999)
NZLC SP3 Protecting Construction Contractors (1999)
NZLC SP4 Recognising Same-Sex Relationships (1999)

NZLC SP5 International Trade Conventions (2000)

NZLC SP6 To Bind their Kings in Chains: An Advisory Report to the Ministry of Justice (2000)

NZLC SP7 Simplification of Criminal Procedure Legislation: An Advisory Report to the Ministry of Justice (2001)

NZLC SP8 Determining Representation Rights under Te Ture Whenua Māori Act 1993: An Advisory Report for Te Puni Kōkiri (2001)

NZLC SP9 Maori Custom Values in New Zealand Law (2001)

NZLC SP10 Mandatory Orders Against the Crown and Tidying Judicial Review (2001)

NZLC SP11 Insolvency Law Reform: Promoting Trust and Confidence: An Advisory Report to the Ministry of Economic Development (2001)

Preliminary Paper series

NZLC PP1 Legislation and its Interpretation: The Acts Interpretation Act 1924 and Related Legislation (discussion paper and questionnaire) (1987)

NZLC PP2 The Accident Compensation Scheme (discussion paper) (1987)

NZLC PP3 The Limitation Act 1950 (discussion paper) (1987)

NZLC PP4 The Structure of the Courts (discussion paper) (1987)

NZLC PP5 Company Law (discussion paper) (1987)

NZLC PP6 Reform of Personal Property Security Law (report by Prof JH Farrar and MA O'Regan) (1988)

NZLC PP7 Arbitration (discussion paper) (1988)

NZLC PP8 Legislation and its Interpretation (discussion and seminar papers) (1988)

NZLC PP9 The Treaty of Waitangi and Māori Fisheries – Mataitai: Nga Tikanga Māori me te Tiriti o Waitangi (background paper) (1989)

NZLC PP10 Hearsay Evidence (options paper) (1989)

NZLC PP11 "Unfair" Contracts (discussion paper) (1990)

NZLC PP12 The Prosecution of Offences (issues paper) (1990)

NZLC PP13 Evidence Law: Principles for Reform (discussion paper) (1991)

NZLC PP14 Evidence Law: Codification (discussion paper) (1991)

NZLC PP15 Evidence Law: Hearsay (discussion paper) (1991)

NZLC PP16 The Property Law Act 1952 (discussion paper) (1991)

NZLC PP17 Aspects of Damages: Interest on Debt and Damages (discussion paper) (1991)

NZLC PP18 Evidence Law: Expert Evidence and Opinion Evidence (discussion paper) (1991)

NZLC PP19 Apportionment of Civil Liability (discussion paper) (1992)

NZLC PP20 Tenure and Estates in Land (discussion paper) (1992)

NZLC PP21 Criminal Evidence: Police Questioning (discussion paper) (1992)

NZLC PP22 Evidence Law: Documentary Evidence and Judicial Notice (discussion paper) (1994)

NZLC PP23 Evidence Law: Privilege (discussion paper) (1994)

NZLC PP24 Succession Law: Testamentary Claims (discussion paper) (1996)

NZLC PP25 The Privilege Against Self-Incrimination (discussion paper) (1996)

NZLC PP26 The Evidence of Children and Other Vulnerable Witnesses (discussion paper) (1996)

NZLC PP27 Evidence Law: Character and Credibility (discussion paper) (1997)

NZLC PP28 Criminal Prosecution (discussion paper) (1997)

NZLC PP29 Witness Anonymity (discussion paper) (1997)

NZLC PP30 Repeal of the Contracts Enforcement Act 1956 (discussion paper) (1998)

NZLC PP31 Compensation for Wrongful Conviction or Prosecution (discussion paper) (1998)

NZLC PP32 Juries in Criminal Trials: Part One (discussion paper) (1998)

NZLC PP33 Defaming Politicians: A response to *Lange v Atkinson* (discussion paper) (1998)

NZLC PP34 Retirement Villages (discussion paper) (1998)

NZLC PP35 Shared Ownership of Land (discussion paper) (1999)

NZLC PP36 Coroners: A Review (discussion paper) (1999)

NZLC PP37 Juries in Criminal Trials: Part Two (discussion paper) (1999)

NZLC PP38 Adoption: Options for Reform (discussion paper) (1999)

NZLC PP39 Limitation of Civil Actions (discussion paper) (2000)

NZLC PP40 Misuse of Enduring Powers of Attorney (discussion paper) (2000)

NZLC PP41 Battered Defendants: Victims of Domestic Violence Who Offend (discussion paper) (2000)

NZLC PP42 Acquittal Following Perversion of the Course of Justice: A Response to *R v Moore* (discussion paper) (2000)

NZLC PP43 Subsidising Litigation (discussion paper) (2000)

NZLC PP44 The Future of the Joint Family Homes Act (discussion paper) (2001)

NZLC PP45 Reforming the Rules of General Discovery (discussion paper) (2001)