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Annual Report of the
LAW COMMISSION
for the year ended 31 March 1988

Presented to the House of Representatives pursuant to section 17 of the Law
Commission Act 1985

1988

Wellington, New Zealand

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8 July 1988

Rt Hon Geoffrey Palmer
Minister of Justice
Parliament Buildings
Wellington

Dear Minister

I have the honour to transmit to you the annual report of the Law Commission for
the year ended 31 March 1988.

This report is prepared pursuant to section 17 of the Law Commission Act 1985.

Yours sincerely,

A.O. WOODHOUSE
President

INTRODUCTION

The Law Commission was established by the Law Commission Act 1985 and came into existence on 1 February 1986. This report covers the second full year of its operation.

The Commission's principal functions are to keep the whole of the law of New Zealand under review in a systematic way; to make recommendations to the Minister of Justice for the reform or development of particular aspects of the law; to advise on reviews of the law conducted by other government agencies; and to propose ways of making the law as understandable and accessible as is practicable. In making its recommendations the Commission is to take into account te ao Maori (the Maori dimension) and to give consideration to the multicultural character of New Zealand society.

AN OVERVIEW OF THE PAST YEAR

The membership of the Commission was brought up to its statutory maximum of six by the appointment in February 1988 of Margaret A. Wilson, Senior Lecturer in Law at the University of Auckland. The Commission warmly welcomes this addition to its strength.

The past year has been characterised by:

- A gradual increase in staff. However the number of research officers in particular remains inadequate in relation to the size of the Commission's programme. We have received approval to increase the establishment of researchers to ten. In the circumstances we have been extremely fortunate in our student vacation workers who have reinforced our permanent research staff and have produced work of very high quality.
- The development of administrative procedures and methods of handling projects. While the nature of a particular topic dictates the way in which it should be dealt with, the need for efficient project planning is common to all.
- An increase in library holdings. The Commission's policy is to build up good collections of statutes, law reports and periodicals without neglecting other materials.
- Good progress on many of the items on our programme without any yet having been concluded. This programme is reviewed in detail later in this report.
- A continuing involvement in work on the Imperial Laws Application Bill, which has remained under consideration by the Justice and Law Reform Committee of Parliament. In its report on Imperial Legislation (NZLC R1), the Commission had made detailed comments on the Bill and proposed an alternative draft.

The Commission's programme is an ambitious one, and has strained our resources. The structure and jurisdiction of the courts, the review of the accident compensation scheme, the reform of company law (including chattels securities), and the review of aspects of legislation, including style and interpretation, is each a major task by any standard. Other items are minor only in comparison. Even so, it is only a proportion of what could usefully be done. Many suggestions have reached us for the reform of other aspects of the law. We continue to welcome new ideas and proposals, since they show us what matters are seen in the community as needing attention: future programmes can take them into account.

The Commission's general policy is to have as far as practicable on its programme a mixture of major and more circumscribed items, and to spread its

work over a number of branches of the law. In doing so it does of course have regard to work being done elsewhere. Thus the Commission has not sought to be involved in the current review of the criminal code. But it is embarking on a review of some other aspects of criminal law that this review will not fully cover.

CO-OPERATION WITH OTHER AGENCIES

The Law Commission's function as a central advisory body to promote the systematic review, reform and development of the law of New Zealand gives it a concern with all legal, and especially legislative, change. Plainly however the Commission cannot itself review the whole law at once or even in the medium term. So there are two principal ways of carrying out its task. The first is to take up topics that the Minister refers to the Commission or that the Commission decides to examine on its own initiative. These constitute the Commission's programme. Second, the Commission aims to keep itself informed of the development and operation of the whole law, whether made by judges or Parliament. As well as noting events that suggest defects in the law we look for trends and emerging principles and practices. Where appropriate we will comment on these.

A large and increasing part of the law of New Zealand is to be found in Acts of Parliament. Legislation will continue to be the principal vehicle of legal change. But the common law and statute need to be seen as part of a single system, interrelated and interacting. Statutes assume the principles and rules of the common law, though they frequently modify and sometimes replace parts of it. Indeed an Act is often not intelligible without reference to the common law. Acts also assume (whether or not they expressly refer to it) a large body of general statute law. The interpretation of Acts by the courts in turn develops the law these Acts deal with.

And in a wider sense the courts are coming to use statutes by analogy in deciding common law issues, as providing indications of public policy. All new legislation needs to take into account and fit into the matrix of other statutes and legal principles. Some basic legal principles (for example those gathered under the umbrella of civil liberties and human rights) impose constraints of a constitutional character on proposals for change.

The review of specific areas of the law with a view to their improvement is an unending task to which it is hard to set limits. The Commission's present programme covers no more than a small fraction of the field. Yet its resources are at full stretch. There is more than enough work for all existing agencies that develop proposals for law reform. There are many such agencies, even apart from temporary and ad hoc bodies such as Royal Commissions and ministerial or Cabinet appointed committees and working parties. They include the Legislation Advisory Committee, which is linked with the Commission through its membership. And the Department of Justice has a similar ongoing function. Then there are the other departments and ministries, some dealing with traditional subjects of administrative responsibility, and others focussing on their impact in a particular context - women, consumers, the environment. In addition there are other independent statutory bodies - the Human Rights Commission, the N.Z. Planning Council, the Securities Commission and so on. Law reform is an explicit or implicit aspect of the work of all these agencies. Often a particular topic is not within the exclusive purview of any one of them, and no one of them can be said to have the principal interest.

How can we best ensure the most efficient and effective use of limited resources to carry on the work of law reform? A habit of early consultation is one important way. Common membership of working parties is another. Sometimes a joint exercise (perhaps involving decisions on outside research) may be the most

profitable approach. No single answer will be right for all cases, but something better is needed than the present rather haphazard process.

The relationship of the Law Commission with law reform agencies overseas is also of importance. This is especially true in relation to Australia, where the policy goal of governments is the harmonisation of commercial law. Harmonisation need not of course mean identical law or that one country must defer to the other's legislation, as New Zealand once tended to do with England. And in many areas national attitudes and circumstances will call for different approaches and solutions. Nonetheless there is room for greater co-operation. At government level, New Zealand has for many years attended meetings of the Standing Committee of Attorneys-General (SCAG). In 1986 this Commission hosted the annual meeting of the Australasian Law Reform Agencies. Last year representatives from the Commission attended the meeting in Perth. These links are valuable for the opportunity not just to take part in the proceedings of groups with shared interests but also to gain new insights from informal contacts with others working in the same field. In addition it may be possible with some law reform topics (where national differences are unlikely to be significant) to undertake joint projects. Again this would avoid unnecessary duplication of resources.

SOURCES OF REFORM

There is no one correct way of handling law reform topics or developing ideas for their solution. Approaches will vary according to the nature of the topic and the state of the existing law. So too the extent of recommendations will differ, from fine-tuning (the reversal of a court decision, the curing of a legislative oversight) to the fashioning of a new body of law in a particular area. The New Zealand accident compensation scheme and matrimonial property legislation are past examples of the latter.

The experience of other countries may sometimes be instructive. This does not mean facile copying or mere technical adaptation. The success of a piece of law may depend not only on a country's history and its social and moral attitudes and priorities, but on its law and legal system as a whole. All these differences must be taken into account. They are not always fatal. One modern instance of the happy transfer of an institution to New Zealand, as the result of a careful adaptation and naturalisation, is the Ombudsman. In other cases the law of another country may simply provide an idea or insight. One example from the past is the uniform legislation in the United States on simultaneous deaths: see the Simultaneous Deaths Act 1958.

Where a topic has a history of New Zealand reform and development, the best course may well be to build on what we have, modify and update it. In a number of areas New Zealand has, often without any conscious intention, evolved a legal tradition and approach of its own. This is true for example of administrative, criminal and family law. In these cases to discard what we have in favour of a new approach taken elsewhere, against a different background, will seldom be sensible.

LEGISLATION

The Commission has received a reference from the Minister of Justice requiring it to review the language and structure of legislation and the law relating to its interpretation. Linked with the Commission's statutory duty to advise the Minister on ways in which the law of New Zealand can be made as understandable and accessible as is practicable, this reference calls for an ongoing review.

Four interacting aspects of legislation can be identified:

- Content

- meaning
- form or style
- availability

The way in which Acts are written affects and is affected by the way in which the courts approach their interpretation. In March, these issues were addressed at a well-attended seminar. They will be followed up as part of the Commission's formal programme.

The Commission is also working in other ways towards the important goal that members of the public should know and be able to find the law. This relates both to what has come to be called plain drafting and to physical accessibility.

Following the report of the Law Reform Commission of Victoria on Plain English and the Law one of the leading exponents of the 'plain English' movement, Professor Robert Eagleson of the University of Sydney, visited us early in 1988. At a series of meetings with interested individuals and groups including Parliamentary Counsel, Professor Eagleson showed how legal documents, including legislation, could be better ordered and written in clearer language without any loss of content or precision. The aim should be to make a document intelligible to those who need to use it. People will then understand their rights and obligations, administration is more efficient and costs are reduced.

The Commission is itself experimenting with a plainer style of drafting and a layout of Acts which would make them easier to read. It will continue to discuss these matters with other interested agencies and encourage the use of plain English in the community as a whole.

Another issue is the form of the New Zealand statute book. Significant improvements are possible, using modern computer technology. The immediate need is to create a database containing a complete text of the statute law of New Zealand, kept up to date. The design and status of the database are still to be settled. Should it be merely a collection of Acts and amendments to them; a consolidation of principal Acts and their amendments; or, as in some other jurisdictions, should the text of the statutes be revised so as itself to become the law, the equivalent of a re-enactment? If so, how far should this text update cross-references and do away with spent provisions and other textual anomalies? The Commission has formed a committee (the Consultative Committee on Legislation Databases) comprising representatives of Parliamentary Counsel's Office, the Office of the Clerk of the House of Representatives, the Government Printing Office, the Parliamentary Services Commission and the Law Commission, to discuss ways in which a computer database of the statute law might best be designed to suit the needs of the ultimate user. Properly planned and executed this exciting project could have a major effect on the accessibility - in the widest sense - of the statute law of New Zealand.

Of course a database alone is not the full answer. For many years at least there will still be a demand for written texts. These too must be available in a convenient and up-to-date form.

PROGRAMME

The Commission's programme comprises aspects of the law either referred to it by the Minister of Justice or taken up by the Commission on its own initiative. Its reports are published and tabled in Parliament. Usually (though not invariably) they will be preceded by one or more discussion papers. A list of publications is set out in Appendix B.

The following paragraphs summarise the state of our current projects as at 31 March 1988.

ACCIDENT COMPENSATION

[REFERENCE FROM THE MINISTER OF JUSTICE 10/3/87]

THE COMMISSION IS ASKED TO REVIEW THAT PART OF THE ACCIDENT COMPENSATION ACT 1982 WHICH RECOGNISES AND IS INTENDED TO PROMOTE THE GENERAL PRINCIPLES OF COMMUNITY RESPONSIBILITY, COMPREHENSIVE ENTITLEMENT, COMPLETE REHABILITATION, REAL COMPENSATION AND IN PARTICULAR ADMINISTRATIVE EFFICIENCY AS PROPOUNDED BY THE 1967 ROYAL COMMISSION REPORT ON PERSONAL INJURY IN NEW ZEALAND. THOSE PRINCIPLES ARE TO BE TAKEN AS BROADLY ACCEPTABLE AND DESERVING OF SUPPORT.

THE BASIS UPON WHICH THE ACCIDENT COMPENSATION CORPORATION OR ITS PREDECESSOR HAS MADE PROVISION FROM TIME TO TIME FOR THE ANNUAL AMOUNTS NEEDED BY THE ACCIDENT COMPENSATION SCHEME FOR BENEFITS, ADMINISTRATION AND CONTINGENCY OR OTHER RESERVES TOGETHER WITH THE PRINCIPLES AND METHODS APPLIED IN THEIR ALLOCATION OR DISTRIBUTION FORMS PART OF THE OVERALL INQUIRY. A DISCUSSION PAPER (NZLC PP2) WAS PUBLISHED IN SEPTEMBER 1987 AND AN INTERIM REPORT ON ASPECTS OF FUNDING (NZLC R3) IN NOVEMBER. THE COMMISSION WILL PRESENT ITS FINAL REPORT AT THE BEGINNING OF MAY.

ARBITRATION

THE COMMISSION ITSELF TOOK UP THE TOPIC OF COMMERCIAL ARBITRATION, WITH A VIEW TO UPDATING THE LAW CONCERNING BOTH ITS DOMESTIC AND INTERNATIONAL ASPECTS. A WIDESPREAD FEELING EXISTS AMONG LAWYERS AND BUSINESSMEN THAT THE PRESENT LAW IS SERIOUSLY INADEQUATE. SEVERAL MODERN OVERSEAS MODELS ARE AVAILABLE.

COMPANY LAW

[REFERENCE FROM THE MINISTER OF JUSTICE 5/9/86]

THE LAW COMMISSION IS ASKED TO EXAMINE AND REVIEW THE LAW RELATING TO BODIES INCORPORATED UNDER THE COMPANIES ACT 1955, AND TO REPORT ON THE FORM AND CONTENT OF A NEW COMPANIES ACT.

THE CONTINUING WORK OF THE SECURITIES COMMISSION IN THE FIELDS OF TAKEOVERS, INSIDER TRADING, AND COMPANY ACCOUNTS WILL FORM PART OF THIS OVERALL INQUIRY. ALSO RELATED TO THIS REFERENCE IS THE REVIEW BEING CONDUCTED BY THE DEPARTMENT OF JUSTICE OF THE LAW AND PRACTICE OF COMPANY LIQUIDATIONS AND INDIVIDUAL INSOLVENCY.

A DISCUSSION PAPER (NZLC PP5) WAS PUBLISHED IN DECEMBER 1987 INVITING RESPONSES BY 15 MARCH 1988. THAT PAPER ADDRESSED THE FORM AND CONTENT OF A NEW COMPANIES ACT AND SUGGESTED A DISTINCTION BETWEEN COMPANIES LAW AND SECURITIES LAW. PARTICULAR MATTERS UNDER STUDY INCLUDE THE REGISTRATION OF COMPANY NAMES, THE WAY IN WHICH COMPANY LAW IS ENFORCED OVERSEAS, ABOLITION OF SHARE CERTIFICATES, PROCEDURAL REFORMS FOR MINORITY SHAREHOLDER ACTION, AND OPTIONS FOR REFORM IN THE AREA OF CORPORATE INSOLVENCY.

AN ESSENTIAL ASPECT OF A REVIEW OF COMPANY LAW IS THE RULES CONCERNING COMPANY CHARGES. IN TURN THESE CANNOT BE DEALT WITH IN ISOLATION FROM THE GENERAL LAW CONCERNING CHATTELS SECURITIES, CONTAINED PARTLY IN THE CHATTELS TRANSFER ACT 1924. THIS IS UNIVERSALLY ACKNOWLEDGED TO BE IN URGENT NEED OF RADICAL REFORM. THE GOVERNMENT HAS ANNOUNCED ITS INTENTION TO INTRODUCE A BILL RELATING TO

SECURED INTERESTS IN MOTOR VEHICLES. THIS IS UNDOUBTEDLY A MATTER OF MAJOR PUBLIC INTEREST, ESPECIALLY TO PROVIDE BETTER PROTECTION FOR VEHICLE PURCHASERS. AT THE SAME TIME IT IS ONLY A PART OF THE WIDER PROBLEM; AND CONSISTENCY BETWEEN THE RULES APPLICABLE TO VEHICLES AND OTHER CHATTELS IS DESIRABLE. IN THE UNITED STATES AND PARTS OF CANADA SCHEMES EXIST FOR THE REGISTRATION OF SECURITY INTERESTS IN CHATTELS. THE COMMISSION INVITED TWO PEOPLE WITH EXPERTISE IN THIS FIELD, PROFESSOR JOHN FARRAR OF THE UNIVERSITY OF CANTERBURY AND MR MARK O'REGAN, A WELLINGTON BARRISTER AND SOLICITOR, TO VISIT NORTH AMERICA TO EXAMINE LAWS AND PRACTICES THERE. THEY WILL BE REPORTING TO THE COMMISSION SHORTLY.

IT IS HOPED TO PUBLISH FURTHER MATERIAL BEFORE THE END OF 1988 WITH THE OBJECTIVE OF AN EARLY REPORT.

CONTRACT

THE COMMISSION INTENDS TO HOLD A SEMINAR IN MAY 1988 TO DISCUSS THE CONTRACT REFORM LEGISLATION OF THE LAST 20 YEARS AND TO HELP IDENTIFY NEEDS FOR ANY FURTHER CHANGE.

CONTRIBUTION IN CIVIL CASES

THIS PROJECT CONCERNS THE RIGHTS OF TWO OR MORE CIVIL WRONGDOERS TO CLAIM CONTRIBUTION FROM OTHERS TOWARDS THE LOSS OR DAMAGE THEY MUST MAKE GOOD. ON THE COMPLETION OF RESEARCH A DISCUSSION PAPER WILL BE PUBLISHED.

CONVERSION OF GOODS

THIS TOPIC HAS ATTRACTED SOME PUBLIC INTEREST, INITIALLY WITH REFERENCE TO THE REMOVAL OF PARKED CARS. A DISCUSSION PAPER WILL BE PUBLISHED.

COURTS

[REFERENCE FROM THE MINISTER OF JUSTICE 29/4/86]

THE PURPOSES OF THIS REFERENCE ARE TO DETERMINE THE MOST DESIRABLE STRUCTURE OF THE JUDICIAL SYSTEM OF NEW ZEALAND IN THE EVENT THAT THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL CEASES TO BE THE FINAL APPELLATE TRIBUNAL FOR NEW ZEALAND, TO ASCERTAIN WHAT CHANGES MAY BE NECESSARY OR DESIRABLE IN THE COMPOSITION, JURISDICTION AND OPERATION OF THE VARIOUS COURTS IN ORDER TO FACILITATE FURTHER THE PROMPT AND EFFICIENT DESPATCH OF THEIR BUSINESS; SIMILARLY TO ASCERTAIN WHAT FURTHER CHANGES, IF ANY, ARE DESIRABLE TO ENSURE THE READY ACCESS TO THE COURTS OF THE PEOPLE OF NEW ZEALAND.

WITH THESE PURPOSES IN MIND THE COMMISSION IS ASKED TO REVIEW THE STRUCTURE OF THE JUDICIAL SYSTEM OF NEW ZEALAND, INCLUDING THE COMPOSITION, JURISDICTION AND OPERATION OF THE VARIOUS COURTS, HAVING REGARD AMONG OTHER MATTERS TO ANY CHANGES IN LAW AND PRACTICE CONSEQUENT UPON THE RECOMMENDATIONS OF THE ROYAL COMMISSION ON THE COURTS, AND TO MAKE RECOMMENDATIONS ACCORDINGLY.

A DISCUSSION PAPER ON THE STRUCTURE OF THE COURTS WAS PUBLISHED IN DECEMBER 1987 (NZLC PP4), INVITING RESPONSES BY 1 APRIL 1988.

CRIMINAL LAW

THE COMMISSION INTENDS TO REVIEW CERTAIN ASPECTS OF THE CRIMINAL LAW, PARTICULARLY PROCEDURAL ASPECTS. THEY INCLUDE THE LAW RELATING TO STATEMENTS MADE BY PERSONS IN POLICE CUSTODY; THE BURDEN OF PROOF IN CRIMINAL CASES AND STATUTES THAT REVERSE THE NORMAL ONUS; AND TIME LIMITS FOR BRINGING CRIMINAL PROCEEDINGS.

THE CROWN

THE COMMISSION HAS DECIDED TO RE-EXAMINE THE LAW RELATING TO THE IDENTITY OF THE CROWN AND ITS PROCEDURAL AND SUBSTANTIVE RIGHTS AND OBLIGATIONS. THE REVIEW WILL INCLUDE THE CROWN PROCEEDINGS ACT 1950.

DAMAGES

PRELIMINARY RESEARCH HAS COMMENCED ON SUCH MATTERS AS EXEMPLARY DAMAGES, TREBLE DAMAGES AND THE IMPLICATIONS OF INFLATION IN MAKING AWARDS OF DAMAGES INCLUDING APPROPRIATE RATES OF INTEREST. THERE ARE ALSO ISSUES CONCERNING COMMON LAW LIMITS ON DAMAGES FOR A BREACH OF A CONTRACT OF EMPLOYMENT.

EVIDENCE

THE COMMISSION HAS SET UP A SMALL STANDING COMMITTEE TO CONTINUE THE REVIEW OF THE LAW OF EVIDENCE BEGUN BY THE EVIDENCE LAW REFORM COMMITTEE. WHETHER THIS SHOULD LEAD ON TO COMPLETE CODIFICATION IS AT PRESENT AN OPEN QUESTION. IN THE MEANTIME THE COMMITTEE WILL RESTRICT ITSELF TO THE STATUTORY PART OF THE LAW. IT IS HOPED TO PRESENT A FIRST PAPER WITH PROPOSALS FOR LEGISLATION BY THE END OF THIS YEAR OR EARLY NEXT.

FAMILY LAW

THE COMMISSION MAINTAINS AN INTEREST IN THE DEVELOPMENT OF FAMILY LAW. A MEETING WAS HELD IN MARCH WITH REPRESENTATIVES OF THE VARIOUS PUBLIC AGENCIES INVOLVED IN THIS FIELD TO IDENTIFY WHAT ARE THE MAIN AREAS REQUIRING ATTENTION, ASPECTS WHERE LEGISLATION IS BEING DEVELOPED AND WHETHER THERE ARE SIGNIFICANT GAPS. THE INFORMATION GAINED WAS MOST USEFUL, NOT ONLY TO THE LAW COMMISSION BUT TO THE VARIOUS AGENCIES THEMSELVES.

ONE ASPECT THAT THE GOVERNMENT SEES AS IN NEED OF URGENT REVIEW IS MATRIMONIAL PROPERTY LAW INCLUDING THE RIGHTS OF SURVIVING SPOUSES, AND ITS APPLICATION TO DE FACTO COUPLES. THE DEPARTMENT OF JUSTICE HAS BEEN GIVEN THE PRINCIPAL INITIATING RESPONSIBILITY, WORKING TO A COMMITTEE OF THE CABINET SOCIAL EQUITY COMMITTEE. REPRESENTATIVES OF THE COMMISSION HAVE BEEN INVITED TO ASSIST. THE TIMETABLE IS TIGHT.

IMPERIAL STATUTES

ARISING FROM ITS REPORT ON IMPERIAL LEGISLATION (NZLC R1), THE COMMISSION WILL BE EXAMINING VARIOUS STATUTES THAT REMAIN PART OF THE LAW OF NEW ZEALAND, WITH A VIEW TO REPLACING THEM WHERE NECESSARY BY LEGISLATION ENACTED BY THE NEW ZEALAND PARLIAMENT. TWO GROUPS OF IMPERIAL ENACTMENTS IN THIS CATEGORY ARE THE STATUTES RELATING TO PROPERTY (INCLUDING THE LAW OF LANDLORD AND TENANT) AND THE HABEAS CORPUS ACTS.

INTELLECTUAL PROPERTY

A SMALL COMMITTEE IS BEING SET UP TO IDENTIFY AREAS REQUIRING REFORM AND ASSIST WITH PRELIMINARY WORK ON SELECTED TOPICS.

LEGISLATION AND ITS INTERPRETATION

[REFERENCE FROM THE MINISTER OF JUSTICE 29/5/86]

PURPOSE: TO PROPOSE WAYS OF MAKING LEGISLATION AS UNDERSTANDABLE AND ACCESSIBLE AS PRACTICABLE AND OF ENSURING THAT IT IS KEPT UNDER REVIEW IN A SYSTEMATIC WAY. TO ASCERTAIN WHAT CHANGES, IF ANY, ARE NECESSARY OR DESIRABLE IN THE LAW RELATING TO THE INTERPRETATION OF LEGISLATION.

WE HAVE ALREADY MENTIONED A NUMBER OF INITIATIVES CONNECTED WITH THIS REFERENCE. IN ADDITION, A DISCUSSION PAPER AND QUESTIONNAIRE ON THE ACTS INTERPRETATION ACT 1924 (NZLC PP1) WAS ISSUED IN JUNE 1987. THE RESPONSES ARE BEING CONSIDERED. A FURTHER DISCUSSION PAPER IDENTIFYING THE ISSUES TO BE CONSIDERED IN FRAMING ANY STATUTORY DIRECTION AS TO THE INTERPRETATION OF LEGISLATION WILL BE ISSUED SHORTLY. A REPORT AND DRAFT BILL REPLACING THE PRESENT ACTS INTERPRETATION ACT IS PLANNED FOR 1989.

LIMITATION ACT

[REFERENCE FROM THE MINISTER OF JUSTICE 12/5/86]

THE COMMISSION IS ASKED TO EXAMINE THE LIMITATION ACT 1950 AND TO MAKE RECOMMENDATIONS ON WHAT, IF ANY, CHANGES ARE NEEDED IN THE ACT, TAKING ACCOUNT IN PARTICULAR OF THE PROBLEM OF LATENT DAMAGE.

A DISCUSSION PAPER (NZLC PP3) WAS ISSUED IN SEPTEMBER 1987. THE COMMISSION IS NOW COMPLETING A REPORT AND DRAFT BILL, TAKING ACCOUNT OF THE SUBMISSIONS RECEIVED.

MAORI FISHERIES

[REFERENCE FROM THE MINISTER OF JUSTICE 12/5/86]

PURPOSE: TO ENSURE THAT THE LAW GIVES SUCH RECOGNITION TO THE INTERESTS OF THE MAORI IN THEIR TRADITIONAL FISHERIES AS IS PROPER, IN THE LIGHT OF THE OBLIGATIONS ASSUMED BY THE CROWN IN TE TIRITI O WAITANGI (THE TREATY OF WAITANGI).

WITH THIS PURPOSE IN MIND THE COMMISSION IS ASKED TO CONSIDER AND REPORT ON THE RECOGNITION OF MAORI FISHERIES (INCLUDING LAKE AND RIVER FISHERIES) IN THE LAW, AND WHETHER ANY, AND IF SO WHAT, CHANGES OUGHT TO BE MADE TO THE LAW IN THAT REGARD; WHAT PROTECTION MAORI FISHERIES SHOULD HAVE IN RESPECT OF ACTS OR OMISSIONS BY THE CROWN, PUBLIC BODIES AND OTHER CORPORATIONS, AND INDIVIDUALS; WHAT MEASURES AND PROCEDURES ARE NECESSARY OR DESIRABLE TO ENSURE THAT LEGISLATIVE PROPOSALS IN ANY WAY AFFECTING MAORI FISHERIES TAKE ADEQUATE ACCOUNT OF MAORI INTERESTS; WHAT CRITERIA SHOULD BE APPLIED IN RESOLVING CONFLICTS BETWEEN MAORI INTERESTS IN RESPECT OF FISHERIES AND OTHER PUBLIC INTERESTS.

FOLLOWING EXTENSIVE RESEARCH, IT IS HOPED TO PUBLISH SHORTLY A BACKGROUND PAPER ON ISSUES RAISED BY THIS REFERENCE AND IN PARTICULAR ON THE HISTORICAL ASPECTS. IN DECEMBER 1987 THE GOVERNMENT SET UP A JOINT WORKING GROUP TO REPORT ON HOW MAORI FISHERIES MAY BE GIVEN EFFECT, AND THE FUTURE OF THIS REFERENCE IS UNDER DISCUSSION.

RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT 1934

ARISING FROM ITS WORK ON ARBITRATION, WITH PARTICULAR REFERENCE TO THE ENFORCEMENT OF FOREIGN ARBITRAL AWARDS, THE COMMISSION HAS DECIDED TO REVIEW THIS RELATED ENACTMENT.

STATE IMMUNITY

IN CONSULTATION WITH THE MINISTRY OF FOREIGN AFFAIRS, THE COMMISSION IS STUDYING THE RECENT LEGISLATION ON THIS TOPIC IN OTHER COMMON LAW JURISDICTIONS AND ALSO THE DRAFT ARTICLES RECENTLY COMPLETED BY THE INTERNATIONAL LAW COMMISSION. SUBJECT TO OTHER PRIORITIES IT IS HOPED TO COMPLETE A REPORT WITHIN TWELVE MONTHS.

CO-OPERATION WITH OTHER ORGANIZATIONS

THE WORK OF THE COMMISSION HAS BEEN GREATLY ASSISTED BY THOSE WHO HAVE ACTED AS CONSULTANTS OR COMMENTED ON OUR PUBLICATIONS IN DRAFT AS WELL AS THE MANY WHO HAVE MADE SUBMISSIONS. THEY INCLUDE MEMBERS OF THE JUDICIARY AND THE BAR, LAW FACULTIES, GOVERNMENT DEPARTMENTS AND VARIOUS GROUPS AND ORGANISATIONS AS WELL AS OTHER EXPERTS IN PARTICULAR FIELDS AND MANY MEMBERS OF THE GENERAL PUBLIC WHO ARE AFFECTED BY THE MATTERS WE ARE CONSIDERING. WE HAVE ALSO BEEN PRIVILEGED TO RECEIVE A NUMBER OF DISTINGUISHED VISITORS FROM OVERSEAS.

THE LAW COMMISSION WAS REPRESENTED AT THE N.Z. LAW CONFERENCE, CHRISTCHURCH; THE AUSTRALIAN LEGAL CONVENTION AND THE AUSTRALASIAN LAW REFORM AGENCIES CONFERENCE, PERTH; THE COMPANIES & SECURITIES WORKSHOP, MELBOURNE, AND AT A NUMBER OF SEMINARS ON TOPICS RELATED TO ITS PROJECTS.

IN THE COURSE OF A PRIVATE JOURNEY OVERSEAS, ONE OF THE COMMISSIONERS VISITED BRITISH COLUMBIA, OREGON AND WASHINGTON AND HAD DISCUSSIONS WITH A NUMBER OF INTERESTS CONCERNING INDIAN FISHING RIGHTS THERE. THIS IS GERMANE TO THE COMMISSION'S WORK ON MAORI FISHERIES.

EARLY IN 1987 MEMBERS OF THE LAW COMMISSION AND ITS STAFF, ALONG WITH MEMBERS OF THE COUNCIL OF THE WELLINGTON DISTRICT LAW SOCIETY, WERE GUESTS ON AN OVERNIGHT VISIT TO TE WEHI WEHI MARAE, OTAKI. IN APRIL OUR HOSTS ACCEPTED THE MUCH MORE MODEST HOSPITALITY WE COULD OFFER THEM ON A RETURN VISIT TO THE LAW COMMISSION'S OFFICES.

FINANCE

THE COMMISSION IS FUNDED FROM MONEY APPROPRIATED BY PARLIAMENT. THE ACCOUNTS OF THE COMMISSION FOR THE YEAR ENDED 31 MARCH 1988 ARE ATTACHED.

REPORT OF THE AUDIT OFFICE

THE AUDIT OFFICE, HAVING BEEN APPOINTED IN TERMS OF SECTION 15 OF THE LAW COMMISSION ACT 1985, HAS AUDITED THE FINANCIAL STATEMENTS OF THE LAW COMMISSION.

THE AUDIT WAS CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS AND PRACTICES.

IN THE OPINION OF THE AUDIT OFFICE, THE FINANCIAL STATEMENTS APPEARING ON PAGES 15 TO 18 FAIRLY REFLECT THE FINANCIAL POSITION AS AT 31 MARCH 1988 AND THE FINANCIAL RESULTS OF OPERATIONS FOR THE YEAR ENDED ON THAT DATE.

D. MENON
FOR CONTROLLER AND AUDITOR-GENERAL.

22 AUGUST 1988

BALANCE SHEET AS AT 31 MARCH 1988

	Note	As at 31/3/88	As at 31/3/87
CURRENT ASSETS			
Bank of New Zealand		-	2,849
Short term deposits	2	1,025,000	908,784
Accounts receivable		795	-
Interest receivable		15,996	228
Prepayments		2,640	-
Goods and Services Tax		44,219	26,462
		<hr style="width: 100%;"/>	<hr style="width: 100%;"/>
		1,088,650	938,323
FIXED ASSETS	3	964,815	710,840
Total Assets		<hr style="width: 100%;"/>	<hr style="width: 100%;"/>
		2,053,465	1,649,163
CURRENT LIABILITIES			
Bank of New Zealand		347	-
Accounts Payable		147,149	372,025
		<hr style="width: 100%;"/>	<hr style="width: 100%;"/>
		147,496	372,025
ACCUMULATED FUNDS			
Total Funds		<hr style="width: 100%;"/>	<hr style="width: 100%;"/>
Employed		1,905,969	1,277,138
		<hr style="width: 100%;"/>	<hr style="width: 100%;"/>
		2,053,465	1,649,163

**STATEMENT OF INCOME AND EXPENDITURE
FOR THE YEAR ENDED 31 MARCH 1988**

					12 months to 31/3/88	14 months to 31/3/87
INCOME						
Justice Department-Set up Grant	..	..	..	..	-	42,798
Government Grant	..	..	..	..	2,218,182	2,127,000
Interest Received	..	..	..	..	330,119	159,626
Rent Received	..	..	..	..	16,263	-
Sales of Publications	..	..	..	..	1,000	-
Seminar Fees	..	..	..	..	13,264	-
					<u>\$2,578,828</u>	<u>\$2,329,424</u>
EXPENDITURE						
Personnel						
Salaries & Wages	..	..	..	..	1,025,893	575,406
ACC Levy	..	..	..	..	5,240	-
Commission Activities						
Advertising	..	..	..	..	2,696	9,796
Publications	..	..	..	..	79,905	-
Research and Consultation	..	..	..	..	101,432	8,232
Travel	..	..	..	..	89,329	70,987
Library						
Library Acquisitions	..	..	..	..	41,627	11,577
Searches-Database	..	..	..	..	4,169	2,174
Computer Software	..	..	..	..	11,142	17,425
Administration						
Audit Fees	..	..	..	..	5,500	5,500
Bank Interest and Charges	..	..	..	..	182	521
Cleaning	..	..	..	..	9,750	1,827
Communications	..	..	..	..	52,271	14,720
Depreciation	..	..	..	..	159,831	72,575
Electricity	..	..	..	..	9,997	1,926
Goods and Services Tax	..	..	..	..	-	85,561
Other Operating	..	..	..	..	33,892	20,775
Professional Services	..	..	..	..	38,272	41,854
Rent and Rates	..	..	..	..	214,359	81,617
Repairs and Maintenance	..	..	..	..	36,184	10,306
Stationery	..	..	..	..	28,326	19,457
Total Expenditure	..	..	..	..	<u>\$1,949,997</u>	<u>\$1,052,286</u>
Excess Income over Expenditure, Transfer to Accumulated Funds					<u>\$628,831</u>	<u>\$1,277,138</u>

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 MARCH 1988**

1. STATEMENT OF ACCOUNTING POLICIES

GENERAL ACCOUNTING PRINCIPLES

THE MEASUREMENT BASE ADOPTED IS THAT OF HISTORICAL COST. RELIANCE IS PLACED ON THE FACT THAT THE COMMISSION IS A GOING CONCERN. ACCRUAL ACCOUNTING HAS BEEN USED TO MATCH EXPENSES AND REVENUES.

PARTICULAR ACCOUNTING POLICIES

THE FOLLOWING PARTICULAR ACCOUNTING POLICIES WHICH MATERIALLY AFFECT THE MEASUREMENT OF EARNINGS AND THE FINANCIAL POSITION HAVE BEEN APPLIED:

THE FIXED ASSETS HAVE BEEN STATED AT COST LESS AGGREGATE DEPRECIATION.

THE RATES AND BASES USED ARE AS FOLLOWS:

FURNITURE AND FITTINGS	20% DV
OFFICE EQUIPMENT	20% DV
COMPUTER EQUIPMENT	20% DV

GOODS AND SERVICES TAX HAS BEEN ACCOUNTED FOR UNDER THE NET METHOD.

CHANGES IN ACCOUNTING POLICIES

THE METHOD OF ACCOUNTING FOR GOODS AND SERVICES TAX HAS CHANGED FROM THE GROSS TO THE NET METHOD. ALL OTHER POLICIES HAVE BEEN APPLIED ON BASES CONSISTENT WITH THOSE USED IN THE PREVIOUS SET OF FINANCIAL STATEMENTS.

2. SHORT TERM INVESTMENTS

	INTEREST RATE	MATURITY DATE	12 MTHS TO 31/3/88
BNZ TERM INVESTMENTS	16.50%	25/4/88	400,000
	15.35%	24/5/88	250,000
	16.25%	09/6/88	350,000
			<u>1,000,000</u>
BNZ MONEY MARKET DEPOSITS	15.00%	05/4/88	25,000
			<u>\$1,025,000</u>

3. FIXED ASSETS

	Cost	Aggregate Depreciation	Book Value 12 mths to 31/3/88	14 mths to 31/3/87
Furniture and fittings	579,429	104,413	475,016	224,716
Office Equipment	55,190	17,217	37,973	41,203
Computer equipment	416,425	109,584	306,841	321,015
Library	144,985	-	144,985	123,906
	<u>\$1,196,029</u>	<u>\$231,214</u>	<u>\$964,815</u>	<u>\$710,840</u>

4. COMMITTED EXPENDITURE

AS AT BALANCE DATE, THE FOLLOWING EXPENDITURE HAD BEEN COMMITTED, BUT IS NOT INCLUDED IN THESE FINANCIAL STATEMENTS SINCE IT HAD NOT BEEN INVOICED FOR AT THAT DATE:

CAPITAL EXPENDITURE	322,339
CLEANING	165
COMMUNICATIONS	2,727
CONSULTANTS FEES	5,300
ELECTRICITY	110
FREIGHT	1,000
G.S.T.	28,306
LIBRARY ACQUISITIONS	2,388
PUBLICATIONS	7,594
REPAIRS AND MAINTENANCE	13,232
RENT	15,690
	<u>\$398,851</u>

APPENDIX A

MEMBERS OF THE LAW COMMISSION:

THE RT HON SIR OWEN WOODHOUSE KBE DSC - PRESIDENT

Professor K. J. Keith - Deputy President

Mr B. J. Cameron CMG

Miss Sian Elias

Mr J. E. Hodder

Margaret A. Wilson

Permanent staff of the Law Commission as at 31 March 1988:

<i>Director</i>	Alison Quentin-Baxter
<i>Law Drafting Officer</i>	David C. Elliott
<i>Research Officers</i>	Helen Aikman
	Amanda McDonald
	Janet McLean
	Prue Oxley
	Megan Richardson
<i>Librarian</i>	Rosie Bevan
<i>Manager</i>	Frank Muller
<i>Senior Administration Officer</i>	Kath Parkinson
<i>Executive Assistant</i>	Penelope Root
<i>Secretaries</i>	Lynette Bridgeman
	Judy Burge
	Catherine Hunt
	Kath Perkins
<i>Receptionist</i>	Glenys Bunkall
<i>Systems Operator</i>	Tracy Forde
<i>Office Assistant</i>	Anna Palmer

The office of the Law Commission is at Level 10, Fletcher Challenge House, 87-91 The Terrace, Wellington.

Telephone (04) 733-453 Fax (04) 710-959

APPENDIX B

Law Commission publications to 31 March 1988:

REPORT SERIES

NZLC R1 - Imperial Legislation in force in New Zealand
NZLC R2 - Annual Reports for the years ended 31 March 1986 and 31 March 1987
NZLC R3 - The Accident Compensation Scheme (Interim Report on Aspects of Funding)

PRELIMINARY PAPER SERIES

NZLC PP1 - Legislation and its interpretation: the Acts Interpretation Act 1924 and related legislation
NZLC PP2 - The Accident Compensation Scheme
NZLC PP3 - The Limitation Act 1950
NZLC PP4 - The Structure of the Courts
NZLC PP5 - Company Law

An annual subscription is available for all publications issued during the calendar year (\$110 including GST). Individual copies are available from Government Bookshops. On request the Commission will be glad to provide copies of particular discussion papers to inquirers who have an interest in the subject-matter and may want to submit comments.

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