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Tuesday 24 July 2007



Rt Hon Helen Clark  
Prime Minister

Address at  
Book Launch of:  
*Reflections of the New Zealand Law  
Commission*  
Papers from the 20<sup>th</sup> Anniversary Seminar

HP Tower. 181 Featherston Street  
Wellington

6.05 pm

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I am pleased to be here to launch this book, *Reflections on the New Zealand Law Commission*, containing papers given at the twentieth Anniversary seminar of the Law Commission. Thanks are due to all those who contributed papers, and to the publisher, LexisNexis.

At last year's anniversary seminar, the problems of getting Law Commission reports implemented, was heavily discussed, as is noted in Sir Geoffrey Palmer's foreword to the book.

I am therefore pleased to be able to announce today the introduction of more efficient measures for the government's consideration of the reports, which I believe will give the Law Commission a new lease of life and sense of purpose.

As Prime Minister, I am known as one who keeps an eye on progress across a wide range of government activities. Sometimes, it is a question of co-ordination. Sometimes it is a question of arbitrating between competing views. On other occasions, it is discovering an issue which simply never comes into view for busy ministers. All three issues have arisen with Law Commission reports.

In late 2005, in discussion with the Rt Hon Justice Blanchard of the Supreme Court, at a Parliamentary reception, I learned that as a Law Commissioner years before, he had been in charge of a large project to reform the Property Law Act. I was surprised to learn that nothing had ever been done with his report after it had gone to the government in June 1994 – eleven years before ! I then made some enquires of the Law Commission, and found that there were rather a lot of Law Commission reports which had suffered similar neglect.

This did not seem to me to be a satisfactory state of affairs. In fact, I found it rather shocking ! So I became determined to set it right. In my 2006 Prime Minister's Statement to Parliament, I said that the government would "give priority to law reform proposals already received from the Law Commission, which update key statutes, for example in the property law area".

Accordingly, the Property Law Bill was introduced in October 2006. Before that, months of work was necessary to take into account changes to the law made since the report was completed, so that they could be reflected in the Bill. That Bill has now been considered by a Select Committee and reported back to the House. It should be enacted this year.

It is an important bill which deals with fundamental issues concerning property dealings, the protection of property rights, leases, powers of attorney, and that subject dear to almost all New Zealanders — "mortgages". Although it is a long bill of 260 pages, there was virtually no political controversy attached to it. Yet by the time it is enacted, it will be more than thirteen years since the report was completed.

The Evidence Act passed in 2006, and due to come into force on 1 August, is also legislation which arises from a very substantive and important law reform project of the Commission. Yet it took more than six years from the completion of the report to get the measure on the statute book.

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In light of the unsatisfactory rate of progress on law reform in these two major areas, I asked the Law Commission for advice on any other such reports which had been carefully worked through and consulted on, but not enacted. From that first trawl of reports, the government was able to move to introduce last year, the Wills Bill which rewrites our current 1837 English legislation, the Succession (Homicide) Bill, and Arbitration Amendment Bill. All are now in their final stages of Parliamentary debate.

This year we did a further trawl through Law Commission reports on which no action had been taken. As a result :

- a 2002 report dealing with *Some problems in the Law of Trusts* will be the subject of a bill soon
- the Law Commission Report on *Costs in Criminal Cases* was completed in 2000, and a bill enacting the recommendations will be introduced soon
- a bill on a 2001 report, *Minority Buyouts*, is close to introduction
- a bill reforming the law relating to limitation times in civil cases is likely to be introduced this year. This latter topic has been the subject of two previous Law Commission reports, the first in 1988 !
- we are also looking at a 2001 report on *Aspects of damages: The Award of Interest on Money Claims*.

We are also working hard to progress more recent Law Commission reports :

- One of the most rapidly adopted reports is that of 2006 on *Sentencing Guidelines and Parole Reform*. The Criminal Justice Reform Bill which resulted from it is due to pass through Parliament this week.
- A bill based on the Law Commission's 2007 report on *Reforming the Law of Sedition* has already been introduced and sent to a select committee.
- Cabinet will shortly be considering how to proceed on the Commission's *Customs Report* of 2006.
- Consultation with stakeholders has been occurring on a draft Waka Umanga Bill following the Law Commission's 2006 report on Māori entities, and we are working to see a Bill introduced to Parliament this year.
- The Law Commission's 2006 report on Access to Court Records has been referred to a Select Committee for hearings.

This experience of pushing for reports to be acted on caused me to wonder why the Commission's reports had over twenty years been treated in a dilatory way. It seemed such a waste of valuable and scarce resources.

Our Law Commissioners are invariably highly experienced and eminent lawyers, and thus well qualified to provide advice on reform of our statute law. So why was there so often a deafening silence ? My enquiries revealed that this was not merely a problem in New Zealand; it was actually a problem everywhere Law Commissions exist.

The Hon Justice Michael Kirby of the High Court of Australia was the first Chair of the Australian Law Reform Commission. He spoke about the problems of Law Commissions in the Commonwealth in his address to the Law Commission's twentieth anniversary seminar last year. In his speech, which appears in the book I am launching this evening, he reached a sombre conclusion. He said:

*“So what can be done about the apparent logjam that remains as much an impediment to law reform action today as it was in earlier times? What can be done to address this systemic obstacle to institutional effectiveness, that is as real in Britain and Australia as it is in New Zealand? Consistently with our notions of a democratic and responsible Parliament, is it impossible to alter the means by which law reform reports secure their appropriate share of parliamentary time? This is the central issue that requires, and deserves, our attention. Beside it, all other institutional problems seem readily capable of solution.”*

It was clear to me that the way New Zealand governments handled Law Commission reports had to change, as it was a waste of valuable time and resources to go on the way we had over the last twenty years. I became a champion of change, and Cabinet has now agreed to a new system for government references to the Commission, which will ensure Law Commission reports get prompt consideration by ministers.

The system for government references now on is as follows :

- projects for the Law Commission can be proposed by any minister.
- each year the Minister Responsible for the Law Commission will present a Cabinet Paper putting forward the projects supported by portfolio ministers, including their resource implications
- if Cabinet approves a project, departmental resources will be made available for close collaboration during the life of the project, so that officials are kept in touch with developments and can provide advice on it. This will stop the problem of long delays after a project is finished before it can be considered by the government
- where consensus cannot be reached and differences of opinion remain, these will be clearly identified and discussed
- after the Law Commission has completed its recommendations, it will give a report to the relevant ministers and seek his or her initial views
- a draft Cabinet Paper will be promptly prepared, reflecting the views of the minister and all the other relevant agencies and incorporating split recommendations where there is no consensus
- unless the minister otherwise directs, the Law Commission will prepare the draft Cabinet paper on the portfolio minister's behalf
- once the minister is satisfied with the draft Cabinet Paper, he or she will present the paper to Cabinet to seek approval for the recommendations to the extent that he or she considers appropriate

- if Cabinet accepts the recommendations, it will invite either the minister or the Law Commission to issue drafting instructions to Parliamentary Counsel Office. There will be no further need for a government response
- the bill which ensues will be introduced in the normal way in the name of a portfolio minister;
- if the Cabinet rejects the recommendations, the government will continue to be required to formally respond as at present, by way of a paper presented to the House of Representatives within six months of the publication of the Law Commission's report.

As the Law Commission's independence is critical for high quality law reform, it will continue to be able to present reports on self-referred projects, with a government response required within six months. That response may take the form of a bill which receives its first reading within the required period.

The changes I am announcing today will make an enormous difference to government decision-making on Law Commission reports. In essence they will ensure that law reform proposals are considered in a timely fashion, and in general should result in legislation being introduced expeditiously.

In my view, where the Law Commission has taken two or three years to produce a reasoned, fully researched report on which it has consulted extensively, it ought not to be consigned to oblivion without consideration by ministers. In the past, failure to consult the Commission by government officials charged with advising on its reports has sometimes led to significant misconceptions and misunderstandings about the proposals themselves.

Lack of timely engagement with the reports progressively reduces the value of the work and increases implementation costs. Institutional knowledge of expert contributors has often dispersed by the time the government has come to consider the recommendations, if it ever did !

I believe the New Zealand statute book will benefit from the new procedures and I am proud to have been a champion of them. Making good law is a fundamental obligation of Parliament, and the Law Commission assists it in fulfilling that basic function.

I thank all Law Commissioners past and present for their commitment to and enthusiasm for law reform, and look forward to receiving further reports for government and Parliament to consider.

Thank you.