



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

Report of the

LAW COMMISSION
Te Aka Matua o te Ture

for the year ended 30 June 2002

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

August 2002
Wellington, New Zealand

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

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26 August 2002

Dear Minister

I have the honour to submit to you the report of the Law Commission for the year ended 30 June 2002.

This report is prepared under section 17 of the Law Commission Act 1985 and section 44A of the Public Finance Act 1989.

Yours sincerely

J Bruce Robertson
President

The Hon Lianne Dalziel
Minister Responsible for the
Law Commission
Parliament Buildings
Wellington

The Law Commission: Te Aka Matua o te Ture Directory

THE LAW COMMISSION is an independent, publicly funded, central advisory body established by statute to undertake the systematic review, reform and development of the law of New Zealand. Its purpose is to help achieve law that is just, principled, and accessible, and that reflects the heritage and aspirations of the peoples of New Zealand.

In developing its proposals, the Commission recognises the Treaty of Waitangi as the founding document of New Zealand, and takes account of community and international experience.

The members of the Law Commission as at 30 June 2002, appointed under section 9 of the Law Commission Act 1985, are:

The Honourable Justice J Bruce Robertson – President
Judge Patrick Keane
Professor Ngatata Love QSO JP
Vivienne Ullrich QC

ADDRESS DETAILS

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Information about the Law Commission and its work is available via the Internet from the Commission's website at:
<http://www.lawcom.govt.nz>.

FUNDING

The Law Commission is funded from money appropriated by Parliament through Vote:Justice.

MĀORI COMMITTEE

The Māori Committee to the Law Commission assists the Commission in identifying projects to advance te ao Māori, and helps the Commission in implementing te ao Māori in its work. The current members are:

Sir Graham Latimer (Chairman)

Hon Justice ET Durie

Professor Mason Durie CNZM

Judge Michael JA Brown CNZM

Te Atawhai / Archie Tairora

Jacqui Te Kani CNZM

Shane Jones

Chief Judge Joseph Williams.

A former Chairman, the Rt Rev Bishop Manuhuia Bennett ONZ CMG died on 20 December 2001.

President's report

HONOURABLE JUSTICE J BRUCE
ROBERTSON

ALTHOUGH THE LAW COMMISSION ACT 1985 properly describes the Commission as a body corporate with perpetual succession, the reality is that the work and contribution which the Commission can make is a direct reflection of the people who are involved with it. Although this is a phenomenon that is shared in all organisations, because of our scale of operation the effect on our momentum and stability of any change is substantial.

In April this year the face of the Commission changed significantly as Donald Dugdale completed a five-year term, and Paul Heath a three-year term that had followed a period in which he had been engaged as a consultant.

With his distinctive style and fearless advocacy, DF Dugdale will undoubtedly stand out as a major character in the history of the Commission. His insatiable appetite for work and his quick mind meant that he made an extraordinary contribution during his time with us. Mr Dugdale's willingness to assess, investigate and recommend in a multitude of areas is apparent from our published work. His succinct and often devastating assessment of the work of others was legendary. He will be a hard act to follow.

Paul Heath, as well as engaging himself fully in all aspects of the Commission's work, developed a particular interest in electronic commerce, insolvency and cross-border issues. He undertook important work in these areas directly for the Commission and in consultation with other agencies of government. His appointment as a High Court Judge was a matter of great delight but no surprise to those with whom he had worked.

The output and commitment of these two men was immense and their absence is sorely felt. The operation of the Commission is reduced without their contribution or that of Commissioners to replace them.

Mr Dugdale and Justice Heath would be the first to acknowledge that (although they provided significant leadership) the day-by-day

work and contribution of our researchers, administrative and support staff contribute equally to the total output that we are able to make. An innovation in the past 12 months that has had immense value for the Commission has been secondments from three government agencies. Not only have these officers brought their individual knowledge, experience and skill, they have ensured that there are bridges with groups working in similar areas so as to ensure the best concerted result is achieved.

One of the important organs within the Law Commission has been the Māori Committee that, over the years, has provided wise counsel and careful advice. The death in December of former Chairman, the Rt Rev Bishop Manuhuia Bennett ONZ CMG saw the passing of a great New Zealander and a good friend of the Commission.

The touchstone of our operations is the simplification of the law so that it is more relevant and accessible. As the following pages demonstrate, we have undertaken work in a variety of areas and have provided ad hoc advice as and when requested.

As predicted in our 2001 Annual Report, a substantial part of the time and effort of the Commission has been consumed by the Structure of the Courts project. We have adopted a community-based interactive model for our consultation with the public. The first preliminary paper produced as part of the project, *Striking the Balance: Your Opportunity to Have Your Say on the New Zealand Court System* (NZLC PP51), was well received and has stimulated some of the greatest interest in any of the Commission's reports ever. The ongoing work, involving uninhibited consultation with a broad array of those who have a view on or contribution to New Zealand's court system is demanding of our resources and exhausting in its challenge. We remain persuaded, however, that if we do not operate in this community-based consultative way we will have failed to identify all the significant issues in this constitutionally important area.

The Commission continues to be extraordinarily well served by those working at our office and greatly assisted by the people who are prepared to provide their counsel, advice and suggestions on an ad hoc and informal basis.

As was apparent at a workshop that I attended in Dhaka, Bangladesh, in June involving India, Pakistan, Bangladesh, Canada and New Zealand, operating a Law Commission in the twenty-first century is fraught with difficulty. There are constant pressures from groups wanting change and who advocate new initiatives and

approaches, while there are others as determined to maintain the status quo. To hold the balance between the demands of those who want scrutiny of every area except their own, and those who want change of everything sometimes just for the sake of change, has moments of tension and demand. It is an exciting area in which we all are fortunate to be involved.

The constant challenge for the Law Commission is how to fill a unique role within New Zealand society. Although we must be scrupulous legal researchers and sensible advisers to Government, our functions must be wider than that if we are to justify the not inconsiderable investment made in us.

It is the value of independence and time for mature and uninhibited reflection which is at the core of our operation. To maintain our credibility we must be vigilant to ensure that we do not stray into areas in which we lack the appropriate expertise and operational approach. However, we can add value if we are fearless and detached in our involvement with all sectors that have an interest in a project, and if we are uninhibited in what we offer in the public good.



The Commissioners

CURRENT COMMISSIONERS

Hon Justice J Bruce Robertson

JUSTICE ROBERTSON began a five-year term as President of the Law Commission on 1 May 2001. He was appointed a High Court Judge in 1987 sitting in Auckland. He has been a member of the Criminal Appeal Division of the New Zealand Court of Appeal since 1996 and has regularly presided in the Court of Appeal of Vanuatu.

Justice Robertson graduated BA, LLB from the University of Otago. As a Harkness Fellow of the Commonwealth Fund of New York he completed an LLM at the University of Virginia in the early 1970s. He has been awarded an Honorary Doctorate of Laws from Otago where he was both a part-time lecturer and a Council member for almost 20 years. For six years he was Pro-Chancellor.

He was a partner in the Dunedin law firm Ross Dowling Marquet & Griffin and is a former President of the Otago District Law Society, served on the Council of Legal Education, and was for 10 years President of the Legal Research Foundation. He is a founding member of the Legislation Advisory Committee.

He is the consulting Editor of both *Adams on Criminal Law* and the New Zealand Law Society's *Introduction to Advocacy*.

Judge Patrick Keane

Judge Keane began a three-year term as a Law Commissioner on 1 May 2001. In 1987 he was appointed a District Court Judge and a Taxation Review Authority. He has held a Family Court warrant and currently holds a trial warrant. He has been a partner in two law firms, Izard Weston & Co and Watts & Patterson (or, as it became, Rudd Watts & Stone). He has also been a Crown Counsel.

Dr Ngatata Love QSO JP

Dr Love began a three-year term as a part-time Law Commissioner on 1 May 2001. He works part-time as a Professor in the School of

Management at Victoria University of Wellington and is an Emeritus Professor of Massey University, Palmerston North. He was formally the Chief Executive of Te Puni Kōkiri. From 1973 to 1995, Dr Love held a number of academic posts at Massey University. He served as Dean of the Faculty of Business Studies there between 1986 and 1995. Dr Love provides the Law Commission with specialist knowledge on Māori issues and policy practices in the public sector.

Vivienne Ullrich QC

Vivienne Ullrich began a three-year term as a part-time Law Commissioner on 1 May 2001. She practises as a Queen’s Counsel in Wellington, specialising in family law.

After her admission to the bar she was employed by Wallace McLean Bawden & Partners in Auckland and after spending some years as a member of the Law Faculties in Auckland and Victoria Universities she returned to practice in 1985 with Buddle Findlay and began practice as a Barrister sole in 1990. She was a member of the first executive committee of the Family Law Section of the New Zealand Law Society and is an author of *Trapski’s Family Law* on guardianship and matrimonial property. She has also held a warrant as a member of the Removal Review Authority and the Residence Appeal Authority.

FORMER COMMISSIONERS

DF Dugdale

DF Dugdale retired after a five-year term as a Law Commissioner on 16 April 2002.

Paul Heath QC

Paul Heath completed a three-year term as a part-time Law Commissioner on 16 April 2002 at which time he became a Judge of the High Court.

The year under review

THE COMMISSION published a number of papers and reports in the areas of property, family, business and the courts.

The first report of the year, released on 19 July 2001, was *Some Criminal Defences with Particular Reference to Battered Defendants* (NZLC R73). In this report the Commission considered that the theory of “battered woman syndrome” did not adequately or comprehensively describe the nature of battering relationships or the effects of battering and recommended that the term “battered woman syndrome” not be used. Instead, the Commission recommended that reference be made to expert evidence on the nature and dynamics of battering relationships and the effects of battering, and suggested ways in which such evidence could assist the fact-finder in cases involving battered defendants.

Report 73 looked at a number of proposed defences tailored specifically to meet the situation of battered defendants but concluded that none of them should be adopted. Changes to section 48 of the Crimes Act 1961 (which deals with self-defence) were recommended to recognise better the exigencies of threatened violence in the context of battering relationships.

The report examined the partial defences of provocation, diminished responsibility and excessive self-defence and recommended their replacement by a sentencing discretion for murder. The Commission proposed that judges should have a limited discretion to impose a sentence of less than life imprisonment for murder in exceptional cases. Finally, the Commission recommended the replacement of section 24 of the Crimes Act 1961 (which deals with the defence of compulsion) with a new provision on duress by threats and codification of the defence of duress of circumstances.

The next was *Minority Buy-Outs* (NZLC R74). The 1993 Companies legislation made provision, for the first time in New Zealand, for minority buy-outs. But when this procedure was first tested in litigation between Infratil 1998 Ltd and Natural Gas Corporation Holdings Ltd, the High Court criticised the lack of detail in the statutory provision. In its report, the Law Commission recommended changes to the Companies Act 1993 to specify the

minority buy-outs procedure in more detail. The report recommended a replacement of section 112 and an amendment to clause 2(2) of the First Schedule.

The first of a number of discussion papers released for public comment during the year was *The Future of the Joint Family Homes Act* (NZLC PP44). The Law Commission discussed whether or not the Joint Family Homes Act 1964 should be repealed. On the one hand, the Joint Family Homes Act provides a cheap method of changing ownership of a home from one spouse to both and a degree of protection against unsecured creditors, by way of registering the property concerned under the Act. On the other hand, registrations now are relatively few, there are fewer marriages, there are no death duties, and rights under the Matrimonial Property legislation are strong enough to make the Joint Family Homes Act unnecessary for protecting spousal entitlements. The only substantial advantage remaining is the degree of protection against unsecured creditors, which is better than that provided by the Matrimonial Property Act 1976.

In its paper, the Law Commission asked whether or not the Joint Family Homes Act should be repealed and the degree of protection against unsecured creditors ensured in some other way.

If the Joint Family Homes Act were not to be repealed, the Commission pointed out a number of issues that would have to be addressed. It stated there would seem to be a logical obligation, in the interests of consistency with the recent Property (Relationships) legislation to extend Joint Family Home protections to those in de facto relationships. The amount of the protection (designed to enable a bankrupt to acquire a substitute home), being necessarily fixed on a New Zealand-wide basis, took no account of different levels of home prices in different parts of the country.

After it had considered the submissions received in response to the paper, the Commission issued its report *The Future of the Joint Family Homes Act* (NZLC R77) on 16 January 2002. In this report, the Law Commission recommended that the Joint Family Homes Act 1964 be repealed and not replaced. Not many people nowadays are sufficiently impressed by the protection against creditors to want to incur the expense of registering their homes as joint family homes. The giving of privileges to the married discriminates against those living in de facto relationships and even if the protection were extended to those in de facto relationships there would be discrimination against those who choose, or are compelled by circumstances, to live alone.

In September 2001, the Law Commission released a discussion paper ***Reforming the Rules of General Discovery*** (NZLC PP45). Discovery and inspection is a process in a civil case where each litigant is usually required to make a list of relevant documents, and opponents have the right to examine and copy any listed documents that are not privileged from disclosure.

The rules relating to discovery date from an era when documents, unless they were printed, had to be copied by hand. Inventions such as typewriters, computers and photocopiers have resulted in much more documentation. Today, in litigation of any complexity, the list of documents to be disclosed is likely to be enormous.

Because of this, compliance with the discovery rule can result in cost and delay out of proportion to what is at stake in the litigation. It is too easy for defendants to obstruct proceedings or exhaust a plaintiff's resources by contrived or excessive discovery demands.

The discovery rules have been reviewed in other Commonwealth jurisdictions and, in its discussion paper, the Law Commission urged a similar examination in New Zealand.

The Commission received submissions on this discussion paper and then released its report ***General Discovery*** (NZLC R78) in April 2002. In this report, the Commission made suggestions for change to the procedures by which a party to a civil court action is made to disclose to the opponent all documents relevant to the case.

The shape of the general discovery rules proposed was that although general discovery would continue to be available as of right, the extent of the obligation would be narrowed. The approach advanced should, in general cases, confine the general discovery obligation to documents likely to be of real importance to the ultimate disposal of the case. It should provide a sufficiently flexible mechanism to enable the court, in appropriate cases, either to limit even further the general discovery obligation or to supplement it with particular discovery, and in each case in doing so to prescribe a mode of compliance that fits the situation.

Also in September 2001, the Commission released the discussion paper ***Improving the Arbitration Act 1996*** (NZLC PP46). Although the Arbitration Act 1996 works well generally, when it came into force it made fundamental changes to the law of arbitration, and experience seems to indicate the need for fine-tuning in a few respects. In particular, issues of confidentiality, appeal and transitional provisions have been identified in cases brought before the courts.

In this discussion paper, the Law Commission raised a number of potential improvements for consideration. The Commission asked whether the exemptions to confidentiality protection provisions were sufficiently comprehensive. It asked: if an arbitration ends up in court, how should the clash be resolved between arbitration confidentiality and the general rule that courts operate in public. Are the rules laid down by the Court of Appeal for when awards may be challenged on points of law satisfactory? Has the Act got its transition provisions right for agreements made before the 1996 Act, particularly where the machinery under a pre-1996 agreement requires an umpire? How workable is the provision designed to protect consumers?

Submissions closed on 20 December 2001. A final report is ready and is awaiting draft legislation from the Parliamentary Counsel Office.

In November 2001, the Commission issued the report ***Proof of Disputed Facts on Sentence*** (NZLC R76). At sentencing, the offender being sentenced has been found or pleaded guilty, but the severity of the penalty or the length of imprisonment is still at stake. The offender may assert a mitigating fact, which could reduce the penalty. The prosecution may assert an aggravating fact, which could increase the penalty. When they dispute each other's assertion, the sentencing judge must decide the position. At present, there is no clear procedure that judges can apply when faced with such disputed facts. In this report the Law Commission recommended a simple and comprehensive procedure for judges to follow when presented with disputed facts at sentence.

The Commission recommended that if the prosecution alleges an aggravating feature of the offence (such as violence) at sentence, which the offender disputes, this should be proved beyond reasonable doubt. This is because the offender's liberty interests are at stake; the penalty or term of imprisonment will be greater if the aggravating feature is found to have happened. But if the offender alleges some mitigating feature that is not part of the offence and that is strictly within the offender's knowledge, the offender should convince the judge that on balance this probably happened.

The first publication of 2002 was the discussion paper ***Family Court Dispute Resolution*** (NZLC PP47). In June 2001, the Law Commission received terms of reference from the Government to undertake a review to consider what changes, if any, are necessary and desirable in the administration, management and procedure of the Family Court in order to facilitate the early resolution of disputes.

The paper described the current processes and procedures in the Family Court as well as giving social and historical background to the operation of the Court since it was first set up in 1981. The roles of all the players in the system such as judges, clients, Court staff, special report writers, lawyers and legal aid were detailed. The paper highlighted the main problems perceived with the current system and then canvassed some options for change including: improved data collection for the purposes of empirical research; expanded conciliation services including more focused intake procedures and more comprehensive mediation provisions; information sessions for separating parents; new options for ascertaining children's views; more differentiated case management; and more culturally appropriate processes for Māori clients.

The Commission has received submissions from members of the public as well as from professionals working in the Family Court. The final report will be published later in 2002.

Also in January 2002, the discussion paper ***Some Problems in the Law of Trusts*** (NZLC PP48) was published. In this paper, it was pointed out that trusts are used in increasingly innovative ways, but the law has not kept up with these changes. The discussion paper asked such questions as: to what extent should trustees be allowed to delegate decisions to skilled professionals? Should provisions in trust deeds excusing trustees from negligence be enforceable? Should the rules for paying trustees be rationalised? Are provisions for decisions of substance, to be made by "protectors", an illegitimate device to enable a settlor to have their cake and eat it by obtaining the advantages of setting up a trust, but retaining real decision-making in their own hands? Are trading trusts on the Australian model desirable?

The Commission released its report on trusts ***Some Problems in the Law of Trusts*** (NZLC R79) in May. In it, it stated that the modern role of a trustee (like that of a company director) is one that can call for professional skills particularly in investment and financial management. But people also like to have as trustees friends and members of the family who are more likely to understand the needs of the beneficiaries than are strangers. In imposing duties on trustees should the law distinguish between these two classes? In relation to the degree of skill expected, the law already answers this question "yes". It suggested ways of tackling some of the problems with the law of trusts by extending this distinction to clauses excusing trustees from liability for breaches. Professional trustees are likely to be insured and should not be allowed to shelter behind such

protections. Those who serve as trustees without reward should be able to do so.

Other topics the report dealt with included: trustees' powers to insure, trading trusts, and the need to adopt an existing international convention that provides a workable code for deciding which country's law should apply to a particular trust.

The discussion paper ***Protecting Personal Information from Disclosure*** (NZLC PP49) was released in February 2002. This is the first stage of a larger review of privacy law. This discussion paper described how the current Privacy Act 1993 came into being, looked at privacy law in other countries, and invited debate on some of the assumptions that underpin the Act. In matters of freedom of speech and public safety, the interest of an individual in having personal information protected can compete with the interests of the wider community. The paper asked whether the current Privacy Act strikes the right balance, or whether alternative legal mechanisms, discussed in the paper, may be preferable. Submissions to this paper closed April 2002. A final report is expected in 2003.

This financial year, the Commission began a comprehensive examination of central and local government agency powers to enter private property, carry out searches, and seize goods for use as evidence. The first activity connected with this was the study paper ***Electronic Technology and Police Investigations: Some Issues*** (NZLC SP12), which was released in March 2002. The paper was presented to the Ministry of Justice in advance of publication of the discussion paper *Entry, Search and Seizure* (NZLC PP50) to enable it to meet certain legislative timelines.

Questions dealt with in the study paper included whether: the police should have power to use electronic devices to monitor the movements of vehicles and packages; if the police have a warrant to search a computer, people (other than suspects) should be under a duty to help the police, by locating and downloading the information sought and providing passwords and information enabling decryption; if the law should impose such an obligation to help, the police should have to compensate the providers of these services; providers should be required to employ systems that will preserve, in accessible form, information that police are likely to need (to enable them to track down the makers of calls on mobile phones for example); and there are circumstances in which it should be permissible to use evidence of other crimes obtained by chance in the course of an authorised interception.

Then, in April 2002, the Law Commission published the discussion paper *Entry, Search and Seizure* (NZLC PP50).

In relation to police powers, the paper asked whether there should be a change to the rule that search warrants be available only where the offence is punishable by imprisonment. The paper suggested the need to rationalise the rules that prevent the police, when searching premises because one offence is suspected, from seizing evidence of a different offence chanced upon in the course of the search. It proposed a more precise definition of police search powers on arrest and of police powers to enter premises, without a warrant, to affect an arrest.

It suggested in relation to most powers (other than police powers) that they be made subject to a uniform set of rules. One advantage of this is that it would then be easier for those scrutinising new legislation (such as select committees) to spot departures from standard powers.

The difficulties that result from the Bill of Rights provision as to “unreasonable search and seizure” were discussed. This provision originated in the opposition of the American colonists in the reign of George III to certain Crown investigatory practices. Its application in New Zealand in the twenty-first century is a continuing course of difficulty. Care is taken by the United States Supreme Court to ensure that front-line police have clear rules under which to operate. In New Zealand, by contrast, the police are left uncertain as to what the extent of their powers is in any given case. The Law Commission asked whether the Bill of Rights should be amended to substitute some test other than the vague test of reasonableness.

The discussion paper expressed the tentative view that some powers should be abolished and others modified. The closing date for submissions was 30 June 2002.

The final report for the year was *Protections Some Disadvantaged People May Need* (NZLC R80).

Sometimes restrictions and restraints have to be imposed by those caring for people who are intellectually disadvantaged. A person who is elderly may have to be protected from wandering off and getting lost. Sometimes it is necessary that caregivers insist that people under their care wear enough clothing to avoid hypothermia, or take medication.

Just what degree of coercion the law allows has never been entirely clear. The situation was not improved when the mental health

legislation was changed to exclude those with personality disorders and congenital disability. Family Court Judges find themselves in the difficult position of being asked to make coercive orders, but being uncertain as to just what their powers are.

An attempt in 1999 by the then Minister of Health to sort matters out by an Intellectual Disabilities (Compulsory Care) Bill aroused strong opposition to the lumping together of those who had offended criminally and those who had not.

The Law Commission, in its report, suggested amending the Protection of Personal and Property Rights Act 1988 to remove the uncertainties. At the same time, various safeguards were proposed including the provision of periodic review by the Family Court, an extension of the jurisdiction of District Inspectors under the mental health legislation, and a rule that coercive powers must be exercised so as not to compromise unnecessarily the dignity, privacy or self-respect of the person concerned.

The Commission ended its year on a high note with the publication of the discussion paper ***Striking the Balance: Your Opportunity to Have Your Say on the New Zealand Court System*** (NZLC PP51) the first publication of the Structure of the Courts project. This was the first stage of a three-part review of the structure and operation of the New Zealand court system, commissioned by the Government.

The discussion paper noted the often-heard concerns that courts are too slow, too expensive, and too exhausting. It covered a wide range of issues and asked for views and suggestions with regard to questions such as: whether there is enough good information easily available for people who need to go to court; whether non-lawyers should be able to represent people in court in some situations; whether cost plays a significant part in preventing people from taking a case to court and others from having adequate – or any – legal representation.

It asked questions about when formality helped and when it hindered justice; in what circumstances court sittings might be held outside of courtrooms; and whether court processes could be streamlined to provide fairer, faster and less expensive justice.

It also examined the structure of the court system and the distribution of work and asked whether more or different courts would better cater for New Zealand in the future, and whether changes were needed to the appeal system.

The closing date for submissions to this paper was 12 July 2002.

All these publications are available from the Commission or can be downloaded free-of-charge from our website at www.lawcom.govt.nz.

ADVISORY SERVICES TO OTHER STATE AGENCIES AND SUBMISSIONS ON BILLS

For details please refer page 35.

CORPORATE SERVICES

Library Operations

The Library staff provided an efficient information service throughout the year.

The Library continued with the Law Reform project. This project consisted of checking law reform catalogue records, identifying and disposing of duplicate law reform materials, reorganising the way the law reform materials were shelved, and checking the Commission's exchange agreements with other law reform bodies. Once the Library has checked that its exchange agreements with other law reform bodies are current, this project will be completed.

The Library Manager was also involved in a project to update and develop the Commission's Intranet. The commencement of this project has been timely because over the last couple of years the Library has started to increase its holdings of electronic resources and eventually all of these resources will be accessible through the Intranet.

The Library continued to develop its training and induction materials and procedures. With the increase in access to electronic resources, the Library's induction and training materials and sessions for new Commission staff members have become more comprehensive.

The Library purchased DB/Text *WebPublisher*, the web version of the software the Library uses to run its in-house databases, and subscribed to Westlaw.

Library staff members continued to participate in a number of external and internal committees. The external committees included the Justice Sector Information Management Sub Working Group, the New Zealand Law Librarians Group Conference 2002 Committee, and the Special Libraries and Information Services SIG. The internal committees included the Library Committee and the Net (Internet/Intranet) Committee.

Information Technology

Computers and servers were replaced at the beginning of the year. The operating system was upgraded to Windows 2000 while some of the other softwares were also upgraded. The Commission was involved in the e-govt project run by the State Services Commission.

Finance

The Commission ended the financial year with a smaller operating deficit than that budgeted for. The variance was mainly as a result of actual expenditure on certain items being considerably less than the budgets. Some of the research staff joined the Commission part way through the year whereas the budgets were for the full year. Two Commissioners, who completed their terms in April 2002, were not replaced up to the balance date. Part-time Commissioners worked fewer hours than what had been budgeted for. These factors all contributed to the substantial under-expenditure in personnel costs. There were savings in the printing costs of publications as well as in some items of administration and project costs.

Changes in staff

During the year the following staff members left the Commission:

- Andrew Wong She
- Amelia Bardsley
- Anne Tucker
- Anthea Miller
- David Thompson
- Gareth Kayes
- Louise Symons.

During the year the following staff members joined the Commission:

- Chris Waight
- Christine Kleingeld
- Claire Phillips
- Elizabeth Craig
- Gareth Kayes
- Janet November
- Kerry Davis
- Margaret Thompson (seconded from the Department for Courts)
- Patricia Sarr (seconded from the Ministry of Justice)
- Rachel Hayward
- Simon Karipa (seconded from Te Puni Kōkiri).

Commissioners and staff



From left to right, back row: Bala Benjamin, Judith Porter, Julia de Bres, Janet November, Joanna Hayward, Brenda Speak, Michael Josling, Colleen Gurney, Simon Karipa, Marilyn Cameron, Christine Kleingeld, Elizabeth Craig, Rachel Hayward, Rachael James, Chris Waight.

From left to right, front row: Ngatata Love, Margaret Thompson, Trish Sarr, Bruce Robertson, Vivienne Ullrich, Patrick Keane, Jacqueline Kitchen, Marcus McMillan.

Absent: Helen Colebrook, Gloria Hakiwai, Barbara McPhee, Claire Phillips, Rahira Walsh, Susan Hall.

Financial statements
for the year ended
30 June 2002

STATEMENT OF RESPONSIBILITY

THE COMMISSION accepts responsibility for the preparation of the financial statements and the judgments used herein.

The Commission accepts responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of its financial and non-financial reporting.

In the opinion of the Commission the annual financial statements for the year ended 30 June 2002 fairly reflect the financial position and operations of the Law Commission.

Hon Justice Robertson
President

B Benjamin
Executive Manager

23 August 2002

23 August 2002

STATEMENT OF ACCOUNTING POLICIES FOR THE YEAR ENDED 30 JUNE 2002

Reporting entity

The Law Commission is a Crown entity established by the Law Commission Act 1985.

The Financial Statements have been prepared in accordance with section 17 of the Law Commission Act.

Measurement base

The financial statements have been prepared on an historical basis, modified by the revaluation of library collections, furniture and fittings, and office equipment.

Accounting policies

The following particular accounting policies that materially affect the measurement of financial performance and financial position have been applied:

1 *Budget figures*

The budget figures are those approved by the Commission at the beginning of the financial year.

The budget figures have been prepared in accordance with generally accepted accounting practice and are consistent with the accounting policies adopted by the Commission for the preparation of the financial statements.

2 *Revenue*

The Commission derives revenue through the provision of outputs to the Crown, from the sale of its publications to third parties and income from investments. Such revenue is recognised when earned and is reported in the financial period to which it relates.

3 *Goods and Services Tax (GST)*

All items in the financial statements are exclusive of GST with the exception of receivables and payables, which are stated with GST included.

4 *Taxation*

The Law Commission is a public authority in terms of the Income Tax Act 1994 and is consequently exempt from income tax.

5 *Fixed assets*

All fixed assets are initially recorded at cost. Library collections are valued every three years to fair value. Furniture and fittings and office equipment were revalued for the first time as at 30 June 2001 to fair value. Changes in revaluation are charged to the Asset Revaluation Reserve account. When this results in a debit balance in the reserve account, the balance is expensed in the Statement of Financial Performance.

6 *Depreciation*

Depreciation is provided on a straight-line basis on all fixed assets at a rate that will write off the cost (or valuation) of the assets to their residual value over their useful lives.

The useful lives and associated depreciation rates of major classes of assets have been estimated as follows.

	Estimated useful life (years)	Rate of depreciation (%)
Computer equipment	3	33.3
Furniture and fittings	5	20
Office equipment	3	33.3
Computer software	3	33.3
Library collections	4	25

7 *Investments*

Investments are stated at the lower of cost and net realisable value.

8 *Leases*

Operating leases

Leases where the lessor effectively retains substantially all the risks and benefits of ownership of the leased items are classified as operating leases. Operating lease expenses are recognised on a systematic basis over the period of the lease.

9 *Statement of cash flows*

Cash means cash balances on hand, held in bank accounts, demand deposits and other highly liquid investments, in which the Commission invests as part of its day-to-day cash management.

Operating activities include all activities other than investing and financing activities. The cash inflows include receipts from the sale

of goods and services and other sources of revenue that support the Law Commission's operating activities. Cash outflows include payments made to employees, suppliers and for taxes.

Investing activities are those activities relating to the acquisition and disposal of non-current assets.

Financial activities comprise the change in equity of the Commission.

10 *Cost of service statements*

The cost of service statements report the net cost of outputs of the Law Commission.

Cost allocation policy

Direct costs identified against specific projects are charged directly to those projects. Indirect costs are charged to specific projects in proportion to the direct hours recorded against those projects.

Criteria for direct and indirect costs

"Direct costs" are those costs directly attributable to a specific project.

"Indirect costs" are those costs that cannot be identified in an economically feasible manner with a specific project.

Cost drivers for allocation of indirect costs

The cost of goods and services not directly charged to projects is allocated as overheads using the direct labour hours recorded against projects.

11 *Financial instruments*

The Law Commission is a party to financial instruments as part of its normal operations. These financial instruments include bank accounts, short-term deposits, debtors and creditors. All financial instruments are recognised in the Statement of Financial Position. Revenue and expenses in relation to financial instruments are recognised in the Statement of Financial Performance.

12 *Receivables*

Accounts receivable are stated at their estimated realisable value after providing for doubtful and uncollectable debts.

13 *Employee entitlements*

Provision is made in respect of the Commission's liability for annual leave. It has been calculated on an actual entitlement basis at

current rates of pay and is expected to be settled within 12 months of reporting date.

14 *Change in accounting policies*

There have been no changes in accounting policies since the date of the last audited financial statements.

All policies have been applied on a basis consistent with previous years.

STATEMENT OF FINANCIAL PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2002

		2002 Actual \$	2001 Actual \$	2002 Budget \$
Note				
REVENUE				
Government grant	9	2,975,111	2,727,186	2,975,111
Interest		95,056	102,068	30,000
Sale of publications		21,315	24,975	20,000
Contribution from Ministry of Economic Development for the Electronic Commerce Project		0	4,380	0
Surplus on sale of fixed assets		6,256	18	0
Sundry income		2,500	0	0
Total operating revenue		3,100,238	2,858,627	3,025,111
EXPENDITURE				
Personnel costs		1,732,534	1,753,869	2,126,589
Project costs		344,984	308,416	490,165
Library costs		44,070	44,897	49,000
Administration costs	1	559,162	597,026	655,020
Depreciation	2&5	426,430	289,981	323,399
Fixed assets written off		0	42,128	0
Total expenditure		3,107,180	3,036,317	3,644,173
Net surplus (deficit) for the period		(6,942)	(177,690)	(619,062)

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

STATEMENT OF MOVEMENTS IN EQUITY
FOR THE YEAR ENDED 30 JUNE 2002

	2002 Actual \$	2001 Actual \$	2002 Budget \$
Equity at the beginning of the year	1,824,886	1,843,857	1,645,664
Surplus and revaluations			
Net surplus (deficit) for the year	(6,942)	(177,690)	(619,062)
Surplus on revaluation of furniture and fittings	0	150,049	0
Surplus on revaluation of office equipment	0	8,670	0
Total recognised revenues and expenses for the year	(6,942)	(18,971)	(619,062)
Equity at the end of the year	1,817,944	1,824,886	1,026,602

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

STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 2002

		2002 Actual \$	2001 Actual \$	2002 Budget \$
PUBLIC EQUITY				
Accumulated funds		1,659,225	1,666,167	867,883
Revaluation reserve – furniture and fittings		150,049	150,049	150,049
Revaluation reserve – office equipment		8,670	8,670	8,670
Total Public equity		1,817,944	1,824,886	1,026,602
Represented by:				
CURRENT ASSETS				
Cash and bank		21,762	3,590	15,000
Bank – call deposit – BNZ		117,000	267,000	120,606
Short-term investments – BNZ		1,400,000	1,150,000	600,000
Receivables and prepayments	3	38,277	40,425	13,000
Total current assets		1,577,039	1,461,015	748,606
NON-CURRENT ASSETS				
Fixed assets	4	474,215	581,431	477,996
Total non-current assets		474,215	581,431	477,996
Total assets		2,051,254	2,042,446	1,226,602
CURRENT LIABILITIES				
Payables and accruals	6	233,310	217,560	200,000
Total current liabilities		233,310	217,560	200,000
Total liabilities		233,310	217,560	200,000
NET ASSETS		1,817,944	1,824,886	1,026,602

Hon Justice Robertson
President

B Benjamin
Executive Manager

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

STATEMENT OF CASH FLOWS FOR THE
YEAR ENDED 30 JUNE 2002

	2002 Actual \$	2001 Actual \$	2002 Budget \$
CASH FLOW FROM			
OPERATING ACTIVITIES			
Cash was provided from:			
Government grant	2,975,111	2,727,186	2,975,111
Interest received	97,337	102,384	34,000
Customers	20,960	18,981	12,000
Contribution from Ministry for Economic Development for the Electronic Commerce Project	0	4,380	0
Sundry income	2,500	0	0
Net Goods and Services tax	5,761	(6,929)	6,000
	<u>3,101,669</u>	<u>2,846,002</u>	<u>3,027,111</u>
Cash was applied to:			
Payments to employees	(1,513,607)	(1,602,403)	(1,850,318)
Payments to suppliers	(1,156,932)	(1,189,226)	(1,520,456)
	<u>(2,670,539)</u>	<u>(2,791,629)</u>	<u>(3,370,774)</u>
Net cash inflow (outflow) from operating activities	<u>431,130</u>	<u>54,373</u>	<u>(343,663)</u>
CASH FLOW FROM			
INVESTING ACTIVITIES			
Cash was provided from:			
Sale of fixed assets	7,071	18	0
	<u>7,071</u>	<u>18</u>	<u>0</u>
Cash was applied to:			
Purchase of fixed assets	(320,029)	(228,291)	(389,845)
	<u>(320,029)</u>	<u>(228,291)</u>	<u>(389,845)</u>
Net cash inflow (outflow) from investing activities	<u>(312,958)</u>	<u>(228,273)</u>	<u>(389,845)</u>
NET INCREASE (DECREASE)			
IN CASH HELD	118,172	(173,900)	(733,508)
Plus opening cash balance:			
BNZ – current account	3,590	7,490	3,590
BNZ – call account	267,000	112,000	315,524
BNZ – short-term deposits	1,150,000	875,000	1,150,000
National Bank – short-term deposits	0	600,000	0
	<u>1,420,590</u>	<u>1,594,490</u>	<u>1,469,114</u>

CLOSING CASH BALANCE	1,538,762	1,420,590	735,606
Made up of:			
BNZ – current account	21,762	3,590	15,000
BNZ – call account	117,000	267,000	120,606
BNZ – short-term deposits	1,400,000	1,150,000	600,000
	<u>1,538,762</u>	<u>1,420,590</u>	<u>735,606</u>

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

NOTES TO FINANCIAL STATEMENTS FOR
THE YEAR ENDED 30 JUNE 2002

1 Administration costs include

	30 June 2002	30 June 2001
	\$	\$
Fees paid to Auditors:		
– External audit	8,500	8,500
– Other services	0	7,476
Increase (decrease) in provision for doubtful debts	222	(215)
Rental expenses on operating leases	11,585	10,445
Rent and rates on office accommodation	399,667	405,779

2 Depreciation on:

	30 June 2002	30 June 2001
	\$	\$
Computer equipment	68,906	56,604
Furniture and fittings	31,629	14,244
Office equipment	14,913	9,684
Computer software	66,500	66,408
Library collections	244,482	143,041
Total	<u>426,430</u>	<u>289,981</u>

3 Receivables and prepayments

	30 June 2002	30 June 2001
	\$	\$
Sundry debtors	5,643	22,999
GST receivable	11,050	16,811
Trade debtors	556	676
Less: Provision for doubtful debts	(222)	(61)
Prepayments	21,250	0
Total	<u>38,277</u>	<u>40,425</u>

4 Fixed assets

	Cost	Valuation	Accumulated depreciation	Net book value 30 June 2002	Net book value 30 June 2001
	\$	\$	\$	\$	\$
Computer equipment	196,942	0	85,091	111,851	20,873
Furniture and fittings	0	158,144	31,629	126,515	158,629
Office equipment	9,246	35,537	14,913	29,870	35,867
Computer software	310,695	0	295,194	15,501	78,902
Library collections	567,236	307,057	683,815	190,478	287,160
Total	1,084,119	500,738	1,110,642	474,215	581,431

5 Changes to depreciation

The depreciation charges on some non-current assets have been changed for this year because the useful lives have been reassessed. These changes are:

Computer equipment – from 5 years to 3 years

Computer software – from 5 years to 3 years

Office equipment – from 5 years to 3 years

Library collections – from 5 years to 4 years.

The financial effect of these changes has been to increase the depreciation charge for the year by \$130,964.

6 Payables and accruals

	30 June 2002	30 June 2001
	\$	\$
Suppliers of goods and services	59,833	90,063
Employee entitlements	101,315	36,353
Accrued expenses	56,976	72,059
Other creditors	15,186	19,085
Total	233,310	217,560

7 Commitments

Capital expenditure commitments

There are no commitments for capital expenditure at balance date (30 June 2001, \$123,956).

Lease commitments

Commitments for non-cancellable leases on rental office accommodation (till 30 June 2007) and office equipment (till 24 July 2004 and 24 Jan 2006):

	30 June 2002	30 June 2001
	\$	\$
Less than one year	391,302	412,060
Between 1–2 years	391,302	377,040
Between 2–5 years	1,144,450	1,116,055
Over 5 years	0	369,180

8 Contingent liabilities and assets

There are no material contingent liabilities or assets as at balance date (30 June 2001, \$Nil).

9 Related party information

The Law Commission is a Crown owned entity. The Commission received from the Ministry of Justice \$2,975,111 as a grant for the financial year (year ended 30 June 2001, \$2,727,186).

10 Financial instruments

Fair value

The fair value of financial instruments is equivalent to the carrying amount disclosed in the Statement of Financial Position.

Credit risk

Credit risk is the risk that an outside party will not be able to meet its obligations to the Commission.

Financial Assets that potentially subject the Commission to a concentration of credit risk consist principally of cash, short-term deposits and receivables.

The cash and short-term deposits are placed with the Bank of New Zealand, a high-quality bank.

The concentration of credit risk with respect to receivables is limited by its small value and the relatively large number of customers involved.

The Commission does not have exposure to interest rate or currency risks.

11 Reconciliation of net surplus to net cash inflow from operating activities

	2002	2001	2002
	Actual	Actual	Budget
	\$	\$	\$
Reported surplus (deficit)	(6,942)	(177,690)	(619,062)
Add (less) non-cash items:			
Depreciation	426,430	289,981	323,399
Fixed assets written off	0	42,128	0
Add (less) movements in working capital:			
Decrease in receivable and prepayments	2,148	(5,679)	2,000
Increase in payables and accruals	15,750	(94,349)	(50,000)
Add (less) surplus on fixed assets sales shown under investing activities	(6,256)	(18)	0
Net cash inflow (outflow) from operating activities	<u>431,130</u>	<u>54,373</u>	<u>(343,663)</u>

12 Remuneration of the Chief Executive

In terms of the Law Commission Act 1985, the President of the Commission is the Chief Executive. The current President is a High Court Judge and is paid by the Department for Courts as a High Court Judge. The Commission reimbursed \$121,767 on account of this. The amount does not represent the actual remuneration received by the President. In determining the amount, consideration has been given to the fact that he sits in the Court of Appeal for a period of the year.

13 Remuneration of Commissioners and Staff

Remuneration range \$	Number of Commissioners and employees	
	30 June 2002	30 June 2001
Between 100,001 and 110,000	0	1
Between 110,001 and 120,000	1	3
Between 150,001 and 160,000	1	0
Between 170,001 and 180,000	1	0
Between 200,000 and 210,000	0	1

Above numbers include one Commissioner, who is a District Court Judge, who was paid by the Department for Courts as a District Court Judge. The Commission reimbursed \$158,292 on account of this. The amount does not represent the actual remuneration received by the Judge. In determining the amount, consideration has been given to the fact that the Judge carried out some judicial functions during the year.

Statement of Service Performance for the year ended 30 June 2002

OUTPUT CLASS: POLICY ADVICE

Budgeted expenditure: \$3,644,173

Actual expenditure: \$3,107,180

QUALITY

All outputs and other work completed by the end of the year met the quality standards set out on page 38, to the extent applicable.

QUANTITY AND TIMELINESS

The work produced by the Commission is set out in the annual work programme submitted to the Minister of Justice under section 7(1) of the Law Commission Act 1985. The work programme is subject to revision from time to time.

The statement of service performance reports the outputs produced during the financial year as compared with those established in the annual work programme agreed in the Memorandum of Understanding with the Minister Responsible for the Law Commission.

Public Law

Output	Planned	Actual
Review of the Structure of the Courts		
– Issues Paper	30 April 2002	Preliminary Paper NZLC PP51 released in May 2002

Output	Planned	Actual
Privacy Law Review – Preliminary Paper	April 2002	Preliminary Paper NZLC PP49 released in February 2002

Common Law

Output	Planned	Actual
Discovery in Civil Cases – Scoping Paper	September 2001	Preliminary Paper NZLC PP45 released in September 2001 Report NZLC R78 released in March 2002
Genetic Modification Liability – Preliminary Paper	August 2002	Report given to the Minister in May 2002. Published as a Study Paper in August 2002

Criminal Law

Output	Planned	Actual
Status Hearings Review – Preliminary Paper	December 2002	Working with the ministry of justice on empirical research. Preliminary paper expected in December 2003
Facts in Sentencing – Preliminary Paper	31 December 2001	No Preliminary Paper issued
– Report	30 June 2002	Report NZLC R76 released in November 2001
Review of Search Warrant Powers – Preliminary Paper	30 November 2001	Study Paper NZLC SP12 released in March 2002. Preliminary Paper NZLC PP50 released in April 2002

Output	Planned	Actual
– Report	30 April 2002	Awaiting the appointment of new Commissioners to work on the report

Commercial Law

Output	Planned	Actual
Minority Buy-Outs – Report	31 October 2001	Report NZLC R74 released in August 2001
Arbitration – Preliminary Paper	30 September 2001	Preliminary Paper NZLC PP46 released in September 2001
– Report	30 April 2002	Was awaiting draft legislation from Parliamentary Counsel Office to complete the report

Family Law

Output	Planned	Actual
Review of Family Court Dispute Resolution – Preliminary Paper	31 October 2001	Preliminary Paper NZLC PP47 released in January 2002
– Report	31 March 2002	Report expected in October 2002
Review of the Law of Trusts – Preliminary Paper	February 2002	Preliminary Paper NZLC PP48 released in January 2002
– Report	May 2002	Report NZLC R79 released in April 2002
Protections Some Disadvantaged People May Need – Study Paper	May 2002	Report NZLC R80 released in May 2002

Output	Planned	Actual
Review of the Joint Family Homes Act		
– Preliminary paper	30 September 2001	Preliminary Paper NZLC PP44 released in August 2001
– Report	30 April 2002	Report NZLC R77 released in December 2001

Te ao Māori

Output	Planned	Actual
Treaty of Waitangi Claims: Addressing the Post Settlement Phase		
– Study Paper	30 June 2002	Study Paper given to the Minister on 28 June 2002

Advisory Work

The Commission provided advice to:

- the Justice and Electoral Select Committee on Hate Crimes
- the Ministry of Justice on Care of Children
- the Ministry of Justice on Guardianship.

Submissions on Bills

Submissions were made on the following Bills:

- Construction Contracts Bill
- Films, Videos, and Publications Classification Act 1993
- Matrimonial Properties Act Bill
- Police Amendment Bill (No 2)
- Prostitution Reform Bill
- Retirement Villages Bill.

Follow-up work

The Commission carried out follow-up work on the following Law Commission reports/study papers:

- Evidence NZLC R55
- Criminal Prosecution NZLC R66
- Juries in Criminal Trials NZLC R69
- Acquittal Following the Perversion of the Course of Justice NZLC R70
- Some Criminal Defences with Particular Reference to Battered Defendants NZLC R73

- Proof of Disputed Facts on Sentence NZLC R76
- Protecting Construction Contractors NZLC SP3
- Simplification of Criminal Procedure Legislation: An Advisory Report to the Ministry of Justice NZLC SP7
- Insolvency Law Reform: Promoting Trust and Confidence: An Advisory Report to the Ministry of Economic Development NZLC SP11.

Work in Progress

As at the balance date, 30 June 2002, the following projects were in progress:

- Review of the Structure of the Courts
- Privacy Law Review
- Entry, Search and Seizure
- Review of Status Hearings
- Arbitration
- Family Court Dispute Resolution.

COSTS

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

Project	Budget	Actual
	\$	\$
Public Law	1,329,227	1,344,674
Common Law	295,325	176,379
Criminal Law	594,225	495,473
Commercial Law	142,798	119,771
Family Law	888,696	714,301
Te ao Māori	344,674	209,290
Advisory Work, Submissions and Follow-up Work	49,228	47,292
Total	3,644,173	3,107,180

PERFORMANCE STANDARDS

Background

Functions of the Commission

The Law Commission Act 1985 stipulates four key activities for the Law Commission. These are:

- to systematically review the law of New Zealand (section 5(1)(a));
- to recommend reform and development of the law of New Zealand (section 5(1)(b));
- to advise on the review of the law of New Zealand conducted by a department or other organisation or on resulting proposals (section 5(1)(c)); and
- to advise the Minister of Justice on ways in which the law of New Zealand can be made as understandable and accessible as is practicable (section 5(1)(d)).

Work Programme

The Commission's yearly programme is made up of:

- references from the Minister Responsible for the Law Commission in terms of section 7 of the Law Commission Act;
- projects selected by the Commission on its own initiative (but in practice usually in consultation with the Minister Responsible for the Law Commission (section 5 of the Law Commission Act)); and
- projects selected at the request of other State agencies (section 5 of the Law Commission Act).

Outputs

The Commission's key outputs usually appear in published form. There are four types of publications:

- *Preliminary papers*. For each project the Commission usually publishes a discussion paper on which interested parties are invited to make submissions.
- *Reports*. In most cases a report will follow a preliminary paper. Reports are produced after taking into account the submissions made by the interested parties. Reports will contain recommendations for law changes and/or new laws. In some cases they will include draft legislation. Reports are tabled in Parliament by the Minister Responsible for the Law Commission or the Portfolio Minister.

- *Miscellaneous papers.* Miscellaneous papers contain the findings of the research done on specific subjects that are considered important.
- *Study papers.* These are mainly advice given to other government agencies on specific matters and studies on subjects of a general nature.

Performance standards

The performance of the Commission is measured against the following four standards: quality, quantity, timeliness and cost.

Quality

Quality is achieved by ensuring the following:

- *Purpose.* The purpose will be clearly identified and focused on remedying the mischief to which it is addressed.
- *Logic.* All argument will be logical and supported by facts, and explain any assumptions made.
- *Accurate research.* The paper will be supported by research that is thorough, accurate and takes account of all relevant material.
- *Practicality.* The paper will consider questions of practicality, especially issues of implementation, cost, technical feasibility, timing, and consistency with other Commission policies.
- *Consultation.* Advice and recommendations will be the result of appropriate consultation with interested parties, and all reasonable objections will be identified. All submissions will be carefully considered before the final report.
- *Peer review.* In many cases, selected external experts will review the papers.
- *Internal review.* Each publication will be subjected to rigorous and critical review by all the Commissioners.
- *Presentation.* The paper will be written in as clear a manner as accepted legal phrasing allows.

Quantity

The outputs listed in the work programme will be achieved.

Timeliness

Timeliness will be achieved by meeting the reporting dates set in the work programme. However, unless the Commission is expressly called upon to meet a particular timeframe, reporting dates are arrived at for the internal purposes of the Commission in relation to such matters as workflow control. Predicted dates can, in practice,

be exceeded for a number of reasons, which include such factors as setting aside a particular project to meet a more urgent subsequent deadline and unforeseeable developments in the topic under discussion.

Cost

Each project will be completed within the budgeted cost.



Audit New Zealand

REPORT OF THE AUDITOR-GENERAL

TO THE READERS OF THE FINANCIAL STATEMENTS OF THE LAW COMMISSION FOR THE YEAR ENDED 30 JUNE 2002

We have audited the financial statements on pages 18 to 39. The financial statements provide information about the past financial and service performance of the Law Commission and its financial position as at 30 June 2002. This information is stated in accordance with the accounting policies set out on pages 18 to 21.

Responsibilities of the Members of the Law Commission

The Public Finance Act 1989 requires the Members of the Law Commission to prepare financial statements in accordance with generally accepted accounting practice in New Zealand that fairly reflect the financial position of the Law Commission as at 30 June 2002, the results of its operations and cash flows and service performance achievements for the year ended on that date.

Auditor's responsibilities

Section 15 of the Public Audit Act 2001 and Section 43(1) of the Public Finance Act 1989 require the Auditor-General to audit the financial statements presented by the Law Commission. It is the responsibility of the Auditor-General to express an independent opinion on the financial statements and report that opinion to you.

The Auditor-General has appointed HC Lim, of Audit New Zealand, to undertake the audit.

Basis of opinion

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- the significant estimates and judgements made by Members of the Law Commission in the preparation of the financial statements; and

- whether the accounting policies are appropriate to the Law Commission's circumstances, consistently applied and adequately disclosed.

We conducted our audit in accordance with the Auditing Standards published by the Auditor-General, which incorporate the Auditing Standards issued by the Institute of Chartered Accountants of New Zealand. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion, we also evaluated the overall adequacy of the presentation of information in the financial statements.

Other than in our capacity as auditor acting on behalf of the Auditor-General, we have no relationship with or interests in the Law Commission.

Unqualified opinion

We have obtained all the information and explanations we have required.

In our opinion the financial statements of the Law Commission on pages 18 to 39.

- comply with generally accepted accounting practice in New Zealand; and
- fairly reflect:
 - the Law Commission's financial position as at 30 June 2002;
 - the results of its operations and cash flows for the year ended on that date; and
 - its service performance achievements in relation to the performance targets and other measures adopted for the year ended on that date.

Our audit was completed on 23 August 2002 and our unqualified opinion is expressed as at that date.

HC Lim
Audit New Zealand
On behalf of the Auditor-General
Wellington, New Zealand

APPENDIX A
Members and staff of
the Law Commission as at
30 June 2002

MEMBERS OF THE LAW COMMISSION

The Hon Justice J Bruce Robertson – President
Judge Patrick Keane
Dr Ngatata Love QSO JP
Vivienne Ullrich QC

STAFF OF THE LAW COMMISSION

Executive Manager	Bala Benjamin
Senior Legal Researchers	Helen Colebrook Michael Josling Margaret Thompson Patricia Sarr Rachel Hayward
Legal Researchers	Claire Phillips Elizabeth Craig Kerry Davis Simon Karipa
Library Manager	Judith Porter
Reference Librarian	Barbara McPhee
Serials Librarian	Jacqueline Kitchen
Student Library Assistant	Marcus McMillan
Secretaries	Barbara Sutton Christine Kleingeld Gloria Hakiwai

Receptionist/Assistant Publications Officer
Systems Administrator
Administration and Library Assistant
Finance and Administration Assistant

Colleen Gurney
Brenda Speak
Marilyn Cameron
Chris Waight

APPENDIX B

Law Commission publications as at 30 June 2002

REPORT SERIES

No	Name	Released	Outcome
NZLC R1	Imperial Legislation in Force in New Zealand	March 1987	Largely implemented by the Imperial Laws Application Act 1988 and associated legislation
NZLC R2	Annual Report	1987	
NZLC R3	The Accident Compensation Scheme: Interim Report on Aspects of Funding	November 1987	Considered in preparing the Accident Rehabilitation and Compensation Insurance Act 1992 and some recommendations reflected in its provisions
NZLC R4	Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme)	May 1988	Considered also in connection with reviews of the Accident Rehabilitation and Compensation Insurance Act 1992 and implementing regulations undertaken in 1994
NZLC R5	Annual Report	1988	
NZLC R6	Limitation Defences in Civil Proceedings	October 1988	Re-examined in discussion paper NZLC pp39 <i>Limitation of Civil Actions</i>

No	Name	Released	Outcome
NZLC R7	The Structure of the Courts	March 1989	Substantial effect given to the Commission's recommendations in the various enactments passed to reform the jurisdiction of the courts in 1991 and 1992
NZLC R8	A Personal Property Securities Act for New Zealand	April 1989	Implemented by the Personal Property Securities Act 1999
NZLC R9	Company Law: Reform and Restatement	June 1989	Companies Act 1993, Receiverships Act 1993 and amendments to the Property Law Act 1952 and the Companies Act 1955 entered into force on 1 July 1994
NZLC R10	Annual Report	1989	
NZLC R11	Legislation and its Interpretation: Statutory Publications Bill	September 1989	Implemented in part by the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publications Act 1989
NZLC R12	First Report on Emergencies: Use of the Armed Forces	February 1990	Implemented in the Defence Act 1990
NZLC R13	Intellectual Property: The Context for Reform	March 1990	For use as a resource. No law changes recommended
NZLC R14	Criminal Procedure: Part One: Disclosure and Committal	June 1990	Being considered in the Committal Hearings and Criminal Disclosure Bill
NZLC R15	Annual Report	1990	
NZLC R16	Company Law Reform: Transition and Revision	September 1990	A supplement to NZLC R9

No	Name	Released	Outcome
NZLC R17	A New Interpretation Act: To Avoid "Prolixity and Tautology"	December 1990	Recommendations form the basis of the Interpretation Act 1999
NZLC R18	Aspects of Damages: Employment Contracts and the Rule in <i>Addis v Gramophone Co</i>	March 1991	Implemented almost in entirety by the Employment Contracts Act 1991
NZLC R19	Aspects of Damages: The Rules in <i>Bain v Fothergill</i> and <i>Joyner v Weeks</i>	May 1991	Abolition of the rule in <i>Bain v Fothergill</i> implemented by the Property Law Amendment Act 1994 Problems with the rule in <i>Joyner v Weeks</i> partially addressed in <i>Māori Trustee v Rogross Farms Ltd</i> [1994] 3 NZLR 410 (CA)
NZLC R20	Arbitration	October 1991	Implemented by the Arbitration Act 1996
NZLC R21	Annual Report	1991	
NZLC R22	Final Report on Emergencies	December 1991	A supplement to NZLC R12
NZLC R23	The United Nations Convention on Contracts for the International Sale of Goods: New Zealand's Proposed Acceptance	June 1992	Implemented by the Sale of Goods (United Nations Convention) Act 1994
NZLC R24	Annual Report	1992	
NZLC R25	Contract Statutes Review	May 1993	Some recommendations included in the Statutes Amendment Bill 2001

No	Name	Released	Outcome
NZLC R26	Annual Report	1993	
NZLC R27	The Format of Legislation	December 1993	Adopted by Chief Parliamentary Counsel
NZLC R28	Aspects of Damages: The Award of Interest on Money Claims	May 1994	No action
NZLC R29	A New Property Law Act	June 1994	No action
NZLC R30	Community Safety: Mental Health and Criminal Justice Issues	August 1994	Included in the Criminal Justice Amendment Bill (No 7) and the Intellectual Disability (Compulsory Care) Bill
NZLC R31	Police Questioning	October 1994	No action
NZLC R32	Annual Report	1994	
NZLC R33	Annual Report	1995	
NZLC R34	A New Zealand Guide to International Law and its Sources	May 1996	For use as a resource – no law changes recommended
NZLC R35	Legislation Manual: Structure and Style	May 1996	For use as a resource Proposals on structure and style substantially adopted by the Parliamentary Counsel Office and are in widespread use
NZLC R36	Annual Report	1996	

No	Name	Released	Outcome
NZLC R37	Crown Liability and Judicial Immunity: A Response to <i>Baigent's</i> case and <i>Harvey v Derrick</i>	May 1997	Recommendations as to <i>Baigent's</i> case accepted Implemented in part by section 26 Interpretation Act 1999
NZLC R38	Succession Law: Homicidal Heirs	July 1997	No action
NZLC R39	Succession Law: A Succession (Adjustment) Act	August 1997	No action
NZLC R40	Review of the Official Information Act 1982	October 1997	No action
NZLC R41	Succession Law: A Succession (Wills) Act	October 1997	No action
NZLC R42	Evidence Law: Witness Anonymity	October 1997	Largely implemented by the Evidence (Witness Anonymity) Act 1997
NZLC R43	Annual Report	1997	
NZLC R44	Habeas Corpus: Procedure	November 1997	Implemented by Habeas Corpus Act 2001
NZLC R45	The Treaty Making Process: Reform and the Role of Parliament	December 1997	Partially implemented by proposed changes to Standing Orders For use as a resource
NZLC R46	Some Insurance Law Problems	May 1998	No action
NZLC R47	Apportionment of Civil Liability	May 1998	No action
NZLC R48	Annual Report	September 1998	

No	Name	Released	Outcome
NZLC R49	Compensating the Wrongly Convicted (1998)	September 1998	Implemented by adoption of new Cabinet policy
NZLC R50	Electronic Commerce Part One: A Guide for the Legal and Business Community	October 1998	Followed by Part Two No recommendations for law changes made but basis for law reform to accommodate needs of electronic commerce explored and submissions invited: see further NZLC R58
NZLC R51	Dishonestly Procuring Valuable Benefits	December 1998	The result recommended achieved in a different way by the Crimes Amendment Bill (No 6) 1999
NZLC R52	Cross-Border Insolvency: Should New Zealand Adopt the UNCITRAL Model Law on Cross-Border Insolvency?	February 1999	Awaits consideration by the Ministry of Economic Development's insolvency law review
NZLC R53	Justice: The Experiences of Māori Women Te Tikanga o te Ture: Te Mātauranga o ngā Wāhine Māori e pa ana ki rēnei	April 1999	No specific measure proposed
NZLC R54	Computer Misuse	May 1999	Most recommendations included in the Crimes Amendment Bill (No 6) 1999
NZLC R55	Evidence	August 1999	Early implementation indicated
NZLC R56	Annual Report	September 1999	
NZLC R57	Retirement Villages	September 1999	Recommendations considered in the Retirement Villages Bill

No	Name	Released	Outcome
NZLC R58	Electronic Commerce Part Two: A Basic Legal Framework	November 1999	Recommendations reflected in Electronic Transactions Bill reported back from Commerce Committee on 19 June 2001
NZLC R59	Shared Ownership of Land	November 1999	No action
NZLC R60	Costs in Criminal Cases	May 2000	No action proposed in the report
NZLC R61	Tidying the Limitation Act	July 2000	No action
NZLC R62	Coroners	August 2000	Recommendations to be considered for a Coroner's Bill
NZLC R63	Annual Report 2000	August 2000	
NZLC R64	Defaming Politicians: A Response to <i>Lange v Atkinson</i>	August 2000	No action
NZLC R65	Adoption and Its Alternatives: A Different Approach and a New Framework	September 2000	An inter-agency working group is considering the recommendations
NZLC R66	Criminal Prosecution	October 2000	Early implementation indicated
NZLC R67	Tax and Privilege: Legal Professional Privilege and the Commissioner of Inland Revenue's Powers to Obtain Information	October 2000	A government discussion paper has been released on which submissions have been called IRD hoping to introduce legislation next year
NZLC R68	Electronic Commerce Part Three: Remaining Issues	December 2000	No legislative amendments recommended; additional policy work on remaining issues have been undertaken by Ministry of Economic Development and Ministry of Consumer Affairs, among others

No	Name	Released	Outcome
NZLC R69	Juries in Criminal Trials	February 2001	Early implementation indicated
NZLC R70	Acquittal Following Perversion of the Course of Justice	March 2001	Early implementation indicated
NZLC R71	Misuse of Enduring Powers of Attorney	April 2001	Under consideration
NZLC R72	Subsiding Litigation	May 2001	To be included in the Lawyers and Conveyancers Bill
NZLC R73	Some Criminal Defences with Particular Reference to Battered Defendants	May 2001	Policy work in progress at the Ministry of Justice
NZLC R74	Minority Buy-Outs	August 2001	Under consideration by the Ministry of Economic Development
NZLC R75	Annual Report	August 2001	
NZLC R76	Proof of Disputed Facts on Sentence	December 2001	Recommendations partly implemented in the Sentencing Act 2002
NZLC R77	The Future of the Joint Family Homes Act	January 2002	Cabinet paper being prepared
NZLC R78	General Discovery	February 2002	No government action expected Recommendations were made to the High Court Rules Committee No action No action
NZLC R79	Some Problems in the Law of Trusts	May 2002	

No	Name	Released	Outcome
NZLC R80	Protections Some Disadvantaged People May Need	April 2002	No action
PRELIMINARY PAPER SERIES			
No	Name	Released	Outcome
NZLC PP1	Legislation and its Interpretation: The Acts Interpretation Act 1924 and Related Legislation	June 1987	Followed by report NZLC R17
NZLC PP2	The Accident Compensation Scheme	September 1987	Followed by reports NZLC R3 and NZLC R4
NZLC PP3	The Limitation Act 1950	September 1987	Followed by report NZLC R6
NZLC PP4	The Structure of the Courts	December 1987	Followed by report NZLC R7
NZLC PP5	Company Law	December 1987	Followed by reports NZLC R9 and NZLC R16
NZLC PP6	Reform of Personal Property Security Law (report by Prof JH Farrar and MA O'Regan)	1988	Followed by report NZLC R8
NZLC PP7	Arbitration	November 1988	Followed by report NZLC R20
NZLC PP8	Legislation and its Interpretation	December 1988	Followed by report NZLC R17

No	Name	Released	Outcome
NZLC PP9	The Treaty of Waitangi and Māori Fisheries – Mataitai Nga Tikanga Māori me te Tiriti o Waitangi	March 1989	For use as a resource Reference withdrawn by the Minister of Justice at the Law Commission's request
NZLC PP10	Hearsay Evidence	June 1989	Followed by report NZLC R55
NZLC PP11	"Unfair" Contracts	September 1990	No further consideration is intended
NZLC PP12	The Prosecution of Offences	November 1990	Followed by discussion paper NZLC PP28
NZLC PP13	Evidence Law: Principles for Reform	April 1991	Followed by report NZLC R55
NZLC PP14	Evidence Law: Codification	April 1991	Followed by report NZLC R55
NZLC PP15	Evidence Law: Hearsay	April 1991	Followed by report NZLC R55
NZLC PP16	The Property Law Act 1952	July 1991	Followed by report NZLC R29
NZLC PP17	Aspects of Damages: Interest on Debts and Damages	November 1991	Followed by report NZLC R28
NZLC PP18	Evidence Law: Expert Evidence and Opinion Evidence	December 1991	Followed by report NZLC R55
NZLC PP19	Apportionment of Civil Liability	March 1992	Followed by report NZLC R47
NZLC PP20	Tenure and Estates in Land	June 1992	No further consideration is intended
NZLC PP21	Criminal Evidence: Police Questioning	September 1993	Followed by report NZLC R31

No	Name	Released	Outcome
NZLC PP22	Evidence Law: Documentary Evidence and Judicial Notice	May 1994	Followed by report NZLC R55
NZLC PP23	Evidence Law: Privilege	May 1994	Followed by report NZLC R55
NZLC PP24	Succession Law: Testamentary Claims	August 1996	Followed by reports NZLC R38, NZLC R39, and NZLC R41
NZLC PP25	The Privilege Against Self-Incrimination	September 1996	Followed by report NZLC R55
NZLC PP26	The Evidence of Children and Other Vulnerable Witnesses	October 1996	Followed by report NZLC R55
NZLC PP27	Evidence Law: Character and Credibility	February 1997	Followed by report NZLC R55
NZLC PP28	Criminal Prosecution	March 1997	Followed by report NZLC R66
NZLC PP29	Evidence Law: Witness Anonymity	September 1997	Followed by report NZLC R42
NZLC PP30	Repeal of the Contracts Enforcement Act 1956	December 1997	Deferred
NZLC PP31	Compensation for Wrongful Conviction or Prosecution	April 1998	Followed by report NZLC R49
NZLC PP32	Juries in Criminal Trials: Part One	July 1998	Followed by Juries in Criminal Trials: Part Two NZLC PP37 and report NZLC R69

No	Name	Released	Outcome
NZLC PP33	Defaming Politicians: A Response to <i>Lange v Atkinson</i>	September 1998	Followed by report NZLC R64
NZLC PP34	Retirement Villages	October 1998	Followed by report NZLC R57
NZLC PP35	Shared Ownership of Land	January 1999	Followed by report NZLC R59
NZLC PP36	Coroners: A Review	August 1999	Followed by report NZLC R62
NZLC PP37	Juries in Criminal Trials: Part Two	November 1999	Followed by report NZLC R69
NZLC PP38	Adoption: Options for Reform	October 1999	Followed by report NZLC R65
NZLC PP39	Limitation of Civil Actions	February 2000	Followed by report NZLC R61
NZLC PP40	Misuse of Enduring Powers of Attorney	May 2000	Followed by report NZLC R71
NZLC PP41	Battered Defendants: Victims of Domestic Violence Who Offend	August 2000	Followed by report NZLC R73
NZLC PP42	Acquittal Following Perverstion of the Course of Justice: A Response to <i>R v Moore</i>	September 2000	Followed by report NZLC R70
NZLC PP43	Subsidising Litigation	December 2000	Followed by report NZLC R72
NZLC PP44	The Future of the Joint Family Homes Act	August 2001	Followed by report NZLC R77
NZLC PP45	Reforming the Rules of General Discovery	September 2001	Followed by report NZLC R78

No	Name	Released	Outcome
NZLC PP46	Improving the Arbitration Act 1996	September 2001	To be followed by a report
NZLC PP47	Family Court Dispute Resolution	January 2002	To be followed by a report
NZLC PP48	Some Problems in the Law of Trusts	January 2002	Followed by report NZLC R79
NZLC PP49	Protecting Personal Information from Disclosure	February 2002	Final report to be issued
NZLC PP50	Entry, Search and Seizure	April 2002	Final report to be issued
NZLC PP51	Striking the Balance: Your Opportunity to Have Your Say on the New Zealand Court System	May 2002	Options paper and final report to be issued

STUDY PAPER SERIES

No	Name	Released	Outcome
NZLC SP1	Women's Access to Legal Services	June 1999	No specific measures proposed
NZLC SP2	Priority Debts in the Distribution of Insolvent Estates: An Advisory Report to the Ministry of Commerce	October 1999	Awaits completion of the Ministry of Economic Development's review of insolvency law

No	Name	Released	Outcome
NZLC SP3	Protecting Construction Contractors	November 1999	Adopted in Construction Contracts Bill currently before Parliament
NZLC SP4	Recognising Same-Sex Relationships	December 1999	Submission to the Ministry of Justice – no further Law Commission action required
NZLC SP5	International Trade Conventions	November 2000	Resource only
NZLC SP6	To Bind their Kings in Chains: An Advisory Report to the Ministry of Justice	December 2000	Reflected in provisions of Crown Organisations (Criminal Liability) Bill
NZLC SP7	Simplification of Criminal Procedure Legislation: An Advisory Report to the Ministry of Justice	January 2001	Under consideration
NZLC SP8	Determining Representation Rights under Te Ture Whenua Māori Act 1993: An Advisory Report for Te Puni Kōkiri	March 2001	Under consideration
NZLC SP9	Māori Custom and Values in New Zealand Law	March 2001	Resource only
NZLC SP10	Mandatory Orders Against the Crown and Tidying Judicial Review	March 2001	No action

No	Name	Released	Outcome
NZLC SP11	Insolvency Law Reform: Promoting Trust and Confidence: An Advisory Report to the Ministry of Economic Development	May 2001	Awaits completion of the Ministry of Economic Development's review of insolvency law
NZLC SP12	Electronic Technology and Police Investigations	February 2002	Advice to the Ministry of Justice

MISCELLANEOUS PAPER SERIES

No	Name	Released	Outcome
NZLC MP1	What Should Happen to your Property when you Die?	August 1996	Preliminary to NZLC R39 and NZLC R41
NZLC MP2	Succession Law: Wills Reforms	October 1996	Preliminary to NZLC R39 and NZLC R41
NZLC MP3	Information about Lawyers' Fees	October 1996	Preliminary to NZLC SP1
NZLC MP4	Women's Access to Legal Information	March 1997	Preliminary to NZLC SP1
NZLC MP5	The Law of Parliamentary Privilege	December 1996	Resource only
NZLC MP6	The Taking into Account of Te Ao Māori in Relation to Reform of the Law of Succession	July 1996	Resource only

No	Name	Released	Outcome
NZLC MP7	Strategic Business Plan 1996/97	December 1996	Resource only
NZLC MP8	Women's Access to Civil Legal Aid	March 1997	Preliminary to NZLC SPI
NZLC MP9	Women's Access to Legal Advice and Representation	April 1997	Preliminary to NZLC SPI
NZLC MP10	Lawyers' Costs in Family Law Disputes	June 1997	Preliminary to NZLC SPI
NZLC MP11	The Education and Training of Law Students and Lawyers	September 1997	Preliminary to NZLC SPI
NZLC MP12	Costs in Criminal Cases	November 1997	Followed by report NZLC R60
NZLC MP13	Aspects of Memory	August 1999	Resource only

