

# **Te Tauākī Whakamaunga Atu**

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## **Statement of Intent**

**1 July 2023 – 30 June 2027**



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Presented to the House of Representatives pursuant to  
section 149 of the Crown Entities Act 2004

ISSN: 1178-3435 (Online)

Published as Parliamentary Paper E.31

This Statement of Intent is also available on the internet at the  
Law Commission's website: [www.lawcom.govt.nz](http://www.lawcom.govt.nz)

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## President's overview

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E rau rangatira mā, e te iwi whānui o Aotearoa, tēnā koutou katoa. Koia nei te Tauākī Whakamaunga atu o te Aka Matua o te Ture | Law Commission, me ō mātou whāinga, ō mātou kawatau, me ō mātou inenga i raro i tō mātou pae tawhiti mo te ture o Aotearoa New Zealand.

Our Statement of Intent explains how te Aka Matua o te Ture | Law Commission will support the development and continuous improvement of law in Aotearoa New Zealand and progress a programme of law reform that improves wellbeing.

The Commission has an important role in law reform. It is responsible for keeping the law under systematic review, provides law reform advice based on rigorous research and wide-ranging engagement, and concentrates its efforts on reform issues where the Commission's expertise and independence create a unique advantage.

Over the next four years, the Commission intends to continue strengthening its institutional capability to consider Māori perspectives, including tikanga Māori, in all areas of law that it reviews. This will include enhancing the cultural capability of the Commission to understand te ao Māori and ensuring its engagement and consultation with Māori is meaningful and effective.

Our Statement of Intent also highlights how the Commission will focus on its systematic approach to reviewing the law. There are opportunities to communicate and engage more with the people of Aotearoa New Zealand to ensure that their insights about law reform are understood and considered.

The Commission can best play its part in the justice sector if its relationships with others in that sector are strong. This means continuing to build relationships across government, with professional lawyer bodies, providers of legal services, academia and others with both expert and practical knowledge of the laws under review.

The Commission is optimistic about continuing to achieve its goals. Despite our small size, we have highly talented and motivated people who are committed to achieving our vision. Good law benefits current and future generations and upholds the mana of all people of Aotearoa New Zealand.

**Amokura Kawharu**

Tumu Whakarae | President

## Statement of responsibility

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The Crown Entities Act 2004 requires the Law Commission to produce this Statement of Intent.

Our functions and strategic intentions, which this document describes, are consistent with the Law Commission Act 1985.

The document covers the four-year period between 1 July 2023 and 30 June 2027.



**Amokura Kawharu**

Tumu Whakarae | President

Te Aka Matua o te Ture | Law Commission

Date: 30 June 2023



**Geof Shirtcliffe**

Tumu Whakarae Tuarua | Deputy President

Te Aka Matua o te Ture | Law Commission

Date: 30 June 2023

## What is the Law Commission's role?

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Te Aka Matua o te Ture | Law Commission is an Independent Crown Entity operating under the Law Commission Act 1985. The Commission was established to deliver the purpose set out in the Act, which is “to promote the systematic review, reform and development of the law of New Zealand”.

The Commission's work is delivered through one output area, law reform advice and recommendations. Its specific statutory functions are to:

- a. take and keep under review in a systematic way the law of New Zealand;
- b. make recommendations for the law's reform and development;
- c. advise on the review of any aspect of the law conducted by any government department or organisation and on proposals made as a result of that review; and
- d. advise the Minister of Justice and the responsible Minister for the Commission on ways in which the law can be made as understandable and accessible as is practicable.

In making law reform recommendations, the Commission must take into account te ao Māori, consider the multicultural character of Aotearoa New Zealand society and have regard to the desirability of simplifying the expression and content of the law, as far as practicable. The Act requires the Commission to act independently in performing its statutory functions.

In addition to advice and recommendations on discrete law reform projects, from time to time the Commission undertakes in-depth studies of areas of law where there are gaps in understanding or differences in views about how the law should be applied or developed. The Commission publishes study papers in these areas if doing so will support our law reform work or there is a clear case for the Commission to undertake the work (for example, it would build on our prior work), and available resources permit.

The Commission must submit a proposed work programme to the Minister responsible for the Law Commission at least annually. The Commission's agreed programme will normally include references from government, taking into account the Cabinet Circular<sup>1</sup> which sets out a process and the criteria for their selection. This includes assessing whether a project aligns with government priorities and whether departmental resources will be made available. Parliament occasionally requires law reform work to be undertaken by the Commission, as demonstrated in section 202 of the Evidence Act 2006 (now repealed). In addition, the Minister may at any time require the Commission to review any aspect of the law as a matter of priority. The Commission can itself initiate law reform proposals and receive and consider proposals from any person.

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<sup>1</sup> Cabinet Office Circular "Law Commission: Process for Setting the Work Programme and Government Response to Reports" (24 April 2009) CO 09/1.

# Our vision, values and strategic intentions

## THE COMMISSION'S VISION

The Commission's vision and values underpin how we operate to best ensure we can deliver our strategic intentions for the next four years.<sup>2</sup>

### PAE TAWHITI

**Kia whanake ngā ture o Aotearoa mā te arotake motuhake**

### VISION

**Better law for Aotearoa New Zealand through independent review**

## THE COMMISSION'S VALUES

NGĀ MĀTĀPONO ME NGĀ TIKANGA	OUR VALUES
<p>Ngā mātāpono me ngā tikanga:</p> <ul style="list-style-type: none"> <li>Whanaungatanga – i ngā mahi katoa ka manāki tētahi i tētahi kia tipu ai ngā hononga pono, pūmau, whaipāinga hoki.</li> <li>Hiranga – ka whai i te hiringa i a mātou mahi katoa, arā te manawanui, te mahi tahi me te auaha hoki.</li> <li>Te Ao Māori – ka tūturu tā mātou whai kia mārama ake mātou ki te ao Māori, a, ka tūhono atu, ka tautoko hoki i ngā take nunui o te ao Māori.</li> <li>Mana – E aro nui ana mātou ki te hāpai i te mana o ngā tāngata katoa o Aotearoa.</li> </ul> <p>Ko ngā mātāpono te tūāpapa o ā mātou mahi, ā tangata takitahi, ā rōpū hoki, kia ū ai o mātou wawata. Ma ēnei uara i waenganui i a mātou tikanga e whakarite ngā whakawhitiwhitinga me ngā whakahaeretanga o a mātou mahi mātou e arataki.</p>	<p>At the Law Commission we value:</p> <ul style="list-style-type: none"> <li>Whanaungatanga – we care for each other in our everyday actions, building honest, strong and positive relationships.</li> <li>Hiranga – we strive for excellence in all that we do. We are dedicated, collaborative and innovative.</li> <li>Te ao Māori – we commit to understanding te ao Māori and to engaging with and promoting matters of particular concern to Māori.</li> <li>Mana – we seek to uphold the mana of all people of Aotearoa New Zealand.</li> </ul> <p>Our values underpin how we behave as individuals and as an organisation to achieve our vision. Our shared values create our culture, guiding how we interact with each other and approach our work.</p>

<sup>2</sup> The Commission acknowledges and thanks Te Ripowai Higgins for writing the statement of vision and values in te reo Māori.

## THE COMMISSION'S STRATEGIC INTENTIONS

The Commission has one output area, which is law reform advice and recommendations.

Operating in the wider justice sector, the Commission contributes to a unified value-based government for the people of Aotearoa New Zealand. Through its law reform recommendations and advice, the Commission helps to sustain confidence that our laws support a modern democracy, an efficient economy and a just society. The Commission makes a positive difference to people's lives through law reform recommendations and advice that seek to improve their current and future wellbeing.

To achieve these outcomes, the Commission works across agencies, offering its law reform capacity where needed. Its independence allows it to approach each law reform task with an open mind, undertake wide-ranging engagement and consultation, consider the broader policy context and advise or recommend how to achieve better law for Aotearoa New Zealand.

The diagram below illustrates the elements of the strategy that we will implement to achieve the delivery of this output in accordance with our vision:





In recent years, there has been greater recognition of the significance of te ao Māori including tikanga Māori, and te Tiriti o Waitangi | the Treaty of Waitangi, to law reform. The Commission is well placed to support the Crown to meet its obligations under te Tiriti with its depth of expertise and reputation in this area. The Commission's ongoing development of an institutional approach to the recognition and consideration of tikanga Māori provides opportunities for examining the place of tikanga in the context of its current work programme and to consider how te ao Māori perspectives can be maintained and advanced within each project. The Commission reflects upon its work and builds from experiences across its projects.

These steps are important given the constitutional status of te Tiriti o Waitangi, the growing but still uncertain recognition and influence of tikanga as part of the law of Aotearoa New Zealand, and the Commission's statutory duty to take te ao Māori into account when making law reform recommendations. The Commission has developed its relationships within te ao Māori strategically, including a focus on relationships with pūkenga | experts to support its work. The Commission acknowledges that to fulfil its intentions and responsibilities, it needs to build on those relationships and develop new productive and mutually supportive partnerships with Māori, including mana whenua and Māori public and private organisations. In order to carry out this work and develop these relationships, the Commission is working to develop its cultural capabilities and to promote the recruitment of Māori personnel.

## The Commission's work for the next four years

As at 1 July 2023, the Commission's law reform programme for the next four years is:

LAW REFORM REFERENCES	2023-2024	2024-2025	2025-2026	2026-2027
<b>Tikanga</b>	Study paper published and project completes			
<b>Ngā Huarahi Whakatau: Review of the law relating to adult decision-making capacity</b>	Second issues paper published Final report published and project completes			
<b>Preventive Detention</b>	Preferred approach paper published	Final report published and project completes		
<b>Third Review of the Evidence Act</b>	Final report published and project completes			
<b>Sex, Gender and Discrimination</b>	Terms of reference and issues paper published	Final report published and project completes		
<b>Legal Responses to Hate</b>		Reference commenced	Consultation paper published and consultation underway (tbc)	
<b>New reference 1, to be determined</b>		Reference commenced (tbc)	Consultation paper published and consultation underway (tbc)	
<b>New reference 2, to be determined</b>			Reference commenced (tbc)	Terms of Reference published (tbc)

## The Commission's impact and how we assess our performance

*“When you want systemic change, the Law Commission is where you would go for advice. The Commission's recommendations are not driven by policy or government agenda, but provide a holistic and neutral look at things, taking social considerations into account.”*

*“It's a luxury that the Commission has the ability to take time. The Commission uses the privilege wisely, and ensures that projects look at the big picture, and that the consultation process is strong and informed by expert advisory groups.”*

*“The best government organisation we deal with.”*

Stakeholder feedback

*Te Aka Matua o te Ture Review (MartinJenkins, 16 September 2022)*

For over 35 years, the Commission has been responsible for leading law reform projects across the legal system, addressing core areas of public and private law. In 2022, the Commission engaged MartinJenkins to review the Commission's effectiveness and extract its “value story”.<sup>3</sup> MartinJenkins' report comments on the unique place the Commission occupies within the legal system given the Commission's ability to “take a macro, systemic view of law reform – tackling complex law reform issues which might be too hard to address in government departments, but not requiring a Commission of Inquiry.” The report further notes the Commission is able to maintain the quality of its work through the thought leadership of its Commissioners, who are closely involved with their project teams and also bring their collective expertise and experience to all project reports through their practice of collectively reviewing and deliberating on them.

As part of the review, MartinJenkins interviewed several stakeholders, and its report comments that “Te Aka Matua is highly regarded, with interviewees widely recognising it as the ‘gold standard’ within the justice sector”. Māori stakeholders are reported to value their engagement with the Commission on specific initiatives, and the willingness of senior staff to follow up and engage further where appropriate.

<sup>3</sup> The Commission gratefully acknowledges financial support received from the Ministry of Justice for this purpose.

## LEGISLATIVE IMPLEMENTATION OF THE COMMISSION'S RECOMMENDATIONS

Implementation of the Commission's recommendations, in whole or part, is a matter for the Government and Parliament, and may be influenced by a range of factors including other Government priorities. For this reason, the timeframes of legislative implementation of the Commission's recommendations vary from project to project. The contribution of the Commission's work to improving laws over time is illustrated by the following three case studies:

### *Case study one: Statute Law*

The first example is the Commission's work on one of its earliest Ministerial references: legislation and its interpretation. The reference commenced on 28 May 1986 and a report *A New Interpretation Act: To Avoid "Prolivity and Tautology"* was published on 20 December 1990. The Interpretation Act 1999, which contained much of the content of the draft legislation that had accompanied the report, came into force on 1 November 1999. Almost a decade had passed since the publication of the Commission's report. The Commission continued its work on statute law. In June 2017, a Legislation Bill that draws upon the remaining recommendations from the Commission's report from 2008, *Presentation of New Zealand Statute Law*, was introduced into Parliament. The Bill rewrites and replaces the Legislation Act 2012 to implement publication and other reforms relating to the production of high-quality legislation that is easy to find, use, and understand; and updates and re-enacts the Interpretation Act 1999. The Bill became law in October 2019.

### *Case study two: Privacy Law*

The second example is the Commission's work on the reference given to it in relation to a review of the Privacy Act 1993. The start date for this reference was 12 October 2006 and was the last stage of a large 5-year project to review privacy laws in New Zealand. The Commission's report was tabled in Parliament in June 2011. In March 2018, seven years after the report was tabled, a Bill was introduced to implement the Commission's recommendations. The Bill received Royal Assent in June 2020 and takes effect from 1 December 2020.

### *Case study three: Abortion Law*

The third example is the Commission’s work on the reference given to it in relation to abortion law reform. On 27 February 2018 the Commission’s responsible Minister asked the Commission, as a matter of priority, to provide a briefing paper advising what alternative approaches could be taken in New Zealand’s legal framework to align with a health approach to abortion. The Minister asked the Commission to report back to him within eight months. The Commission completed this work on time and its Ministerial Briefing Paper was tabled in Parliament on 26 October 2018. An Abortion Legislation Bill based on a modified version of one of the Commission’s options for reform was introduced on 5 August 2019 and became law in March 2020.

Despite the variability in the timing of implementation, a 2016 study demonstrated that the implementation rate of the Commission’s reports since 2006 compares very favourably against the implementation rate of recommendations by law reform commissions in comparable jurisdictions: 79% in Aotearoa New Zealand compared to an average of 68.3% across 12 commissions (according to the latest figures at the time).<sup>4</sup> The Commission has developed a methodology for assessing implementation rates of the Commission’s reports, which accounts for both full and partial implementation, and enables the Commission to report on the implementation of its recommendations over time. Using this methodology, we have assessed that 75% of reports published in the ten-year period to 30 June 2022 have been implemented in whole or substantial part.

## THE BROADER IMPACTS OF THE COMMISSION’S LAW REFORM WORK

In addition to the implementation of the Commission’s recommendations, the Commission’s work also has a wider influence in the legal system through its influence in professional and community consideration of the law. These impacts of the Commission’s law reform work help to locate the Commission’s role within a broader context. This broader perspective of the role and impacts of law reform work has been described in terms of a “pebble in a pond”. According to Professor Croucher, former President of the Australian Law Reform Commission, “there are ripples that run over the surface of a pond – the extending, echoing impact, long after the pebble has disappeared beneath the surface of the water”.<sup>5</sup>

Professor Croucher observed that these ripples of impact are multiple and overlapping. The first ripple is the value of the Commission’s reports and advice themselves. These papers are cited in Parliament,<sup>6</sup> addressed by academics<sup>7</sup> and discussed in judgments

<sup>4</sup> Grant Hammond “The Utilisation of Law Commission Reports” (2016) 24 Waikato L Rev 97 at 99; and Grant Hammond “The Legislative Implementation of Law Reform Proposals” in Matthew Dyson, James Lee and Shona Wilson Stark (eds) *Fifty Years of the Law Commissions* (Hart Publishing, 2016) 175 at 177–178.

<sup>5</sup> Rosalind Croucher “Re-imagining Law Reform – Michael Kirby’s vision, Human Rights and the Australian Law Reform Commission in the 21st Century” (2015) 17 S Cross U L Rev 31 at 34.

<sup>6</sup> For an example, see Hon Andrew Little (24 July 2019) 739 NZPD 12560 discussing the Trusts Bill.

<sup>7</sup> For an example, see Bill Atkin *Relationship Property in New Zealand* (3<sup>rd</sup> edition, Lexis Nexis, Wellington, 2018).

from Aotearoa New Zealand courts<sup>8</sup> – sometimes years after they were written. The Commission and other law reform bodies around the world regularly draw on each other’s work.<sup>9</sup>

The second ripple is the relationships formed through effective consultation with a wide range of stakeholders on the Commission’s work. These relationships often last much longer than the particular reference in which they first arose, meaning that they go on to inform and benefit future law reform work by the Commission.

The third ripple is the flame of ideas. Professor Croucher borrowed this phrase from the Hon Michael Kirby, former Judge of the High Court of Australia and inaugural Chairman of the Australian Law Reform Commission, who observed that “the flame of law reform affirms a central concept of the rule of law itself: legal renewal”.<sup>10</sup>

In these respects, the impacts of the Commission’s work in Aotearoa New Zealand are far-reaching:



<sup>8</sup> For an example, see the discussion of the Commission’s report *The Crown in Court: A review of the Crown Proceedings Act and national security information in proceedings* (NZLC R135, 2015) in the Court of Appeal’s judgment in *Attorney General v Strathboss Kiwifruit Ltd* [2020] NZCA 98, [2020] 3 NZLR 247 at [102] to [104].

<sup>9</sup> For an example, see England and Wales Law Commission and Scottish Law Commission *Building families through surrogacy: a new law* (March 2023) at [1.26].

<sup>10</sup> Michael Kirby “Law Reform – Past, Present and Future” (Speech to the Alberta Law Reform Institute, 2 June 2008), as cited in Rosalind Croucher “Re-imagining Law Reform – Michael Kirby’s vision, Human Rights and the Australian Law Reform Commission in the 21st Century” (2015) 17 S Cross U L Rev 31 at 46.

## HOW THE COMMISSION'S PERFORMANCE WILL BE MEASURED

The Commission seeks to measure its performance through a series of key performance indicators. The key performance indicators are concerned with the quality of the Commission's work and related processes, and the impacts and long-term influence of its work. They include:

- The number of consultation papers, reports or other papers or advice published by the Commission.
- The percentage of references completed within the timeframe indicated to the Minister.
- The number of submissions received for each reference, measured as a percentage of the project specific target.
- The number of consultations held for each reference, measured as a percentage of the project specific target.
- Surveys of independent experts on the Commission's consideration of substantive legal and policy issues for each project.
- The percentage of reports and advice implemented over time.
- The number of community engagements, such as presentations, interviews and published articles, measured against an annual target.
- The number of references to the Commission's consultation papers, reports or other papers or advice in Parliamentary debates and committee reports, in court decisions, in academic publications and in other media, measured against annual targets.

## How the Commission manages its organisational health and capability

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Successful and enduring independent law reform is complex. Our people are the most valuable asset the Commission has. Investing in our staff and making sure they have the skills and tools to continue to undertake their work is critical to the Commission's success.

The Commission enters 2023-24 with four Commissioners, 17 Legal and Policy Advisers, a General Manager, an Executive Assistant, an Information Technology Adviser and an Information Services and Records Management Adviser. The Commission also employs part time law clerks. Over 80% of the Commission's funds are spent on personnel and project related costs.

The Commission undertakes its work on references through teams of Legal and Policy Advisers, generally led by a Commissioner. Between one and five Advisers may work on one reference at a time, depending on the phase and complexity of the reference. Law clerks assist these teams through legal research and other tasks.

Commissioners, as the Board of the Commission, have collective responsibility for all references and in particular must approve all publications. Our Commissioners have diverse professional backgrounds and are senior members of the legal profession. A Commissioner is generally appointed for a five-year term, although the term may be extended, or it may be tied to completion of a specific project. Commissioners are responsible for the Commission's governance and provide intellectual leadership to the organisation.

The Commission employs talented and committed Advisers who bring skills and experience in legal research and writing, policy analysis, project management, te ao Māori, and relationship management. The seniority of Advisers reflects their relative skills and experience.

The small size of the Commission does create some resilience issues. The flat structure of the Commission means that the career aspirations of many Advisers require that they leave the Commission. In order to create a more extended career path for senior staff, the Commission has sometimes extended the responsibilities of Principal Legal and Policy Advisers to offer greater responsibility for particular references. This has also benefitted the Commission by allowing additional references to progress at any one time. The Commission will continue to look for suitable opportunities to do this to the extent practicable having regard to the complexity and profile of relevant references.

To successfully deliver excellent work, the Commission will also continue to use secondments and fixed term consultants with specific subject matter expertise. This will be particularly necessary to ensure we meet our strategic intentions in relation to



developing a wider and enduring understanding and recognition of te ao Māori including tikanga Māori.

The Commission is supported by a very small but skilled and committed corporate team that ensures it is able to produce its law reform work and also comply with its statutory obligations, including those under the Public Records Act 2005, Crown Entities Act 2004 and Public Finance Act 1989.

The Commission promotes equal employment opportunities in its practices relating to recruitment, leadership and workforce development, management of people and performance. With the small size and flat structure of the Commission, Commissioners and staff work closely together, aspiring to ensure that the Commission workplace is characterised by open, honest and strong relationships.

## FUNDING

The Commission is funded from Vote Justice through a non-departmental appropriation. Funding is paid to the Commission in accordance with an Appropriation Agreement between the Commission and the Ministry of Justice.

## RISK MANAGEMENT

The Commission has a robust internal control operating environment through its policies and procedures. Risk identification and management are essential activities to support the Commission achieving its strategic objectives. During 2023-27 we will continue to have an appropriate system of risk oversight and management. We are also in the process of developing a governance framework, which will further strengthen this.

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