

LAW COMMISSION FIRST TRIMESTER REPORT

1 July to 31 October 2019

1. Introduction

This is the Law Commission's First Trimester report for 2019/20, as required by the letter of expectations between the Minister Responsible for the Law Commission and the Law Commission.

2. Summary of Law Reform Projects – as at 31 October 2019¹

Project	Current status	Target dates ²
Review of the Criminal Investigations (Bodily Samples) Act 1995	The Issues Paper was published on 17 December 2018. There was a consultation period until 31 March 2019.	The target date for the final report is May 2020
Review of Class Actions and Litigation Funding	The project recommenced in March 2019, having previously been put on hold due to resourcing constraints.	Terms of reference and timeframes are being determined
Review of Succession Law	This project was referred in July 2019. Terms of reference and a timeframe are under preparation.	Terms of reference and timeframes are being determined
Review of the law relating to adults with impaired decision-making capacity	This project was referred in July 2019. Due to resourcing constraints this project has not yet started.	N/A

3. Law Reform Programme

3.1 Final reports

No final reports were completed in the first trimester period.

3.2 Issues Papers

No Issues Papers were released during the first trimester period.

3.3 Timeliness of completion of reports and issues papers

The timeframe for completing the review of the Criminal Investigations (Bodily Samples) Act 1995 was extended to the 2019/20 year as a result of resourcing constraints.

3.4 Bills before the House - First Trimester Report 2019-20

(a) The following information relates to Bills before the House that relate (at least in part) to the Law Commission's earlier work:

¹ The review of the Declaratory Judgments Act 1908 and the review of the Law of Trusts – Stage 2: Statutory and Trustee Corporations have been removed from the work programme by the Minister.

² **Target date** is the date of a resolution by the Law Commission's Board that a final report is approved to go to the Minister, or a paper approved for online release on the Law Commission website. It does not mean a report will have been tabled in Parliament and does not necessarily mean the report will have been printed.

- i. *Abortion Legislation Bill 164-1* (Introduced 5/08/2019; First reading 8/08/2019; referred to select committee with report due 14 February 2020)

The Bill was informed by the Law Commission's Ministerial briefing paper *Alternative approaches to abortion law* (NZLC MB4, 2018)

- ii. *Births, Deaths, Marriages, and Relationships Registration Bill 296-2* (Introduced 10/08/2017; Select Committee report 10/08/2018; awaiting second reading).

The Bill responds to three discrete issues raised by the Law Commission report *Burials and Cremations* (NZLC R134, 2015).

- iii. *Privacy Bill 34-2* (Introduced 20/03/2018; Second reading 7/08/2019; awaiting Committee of the Whole House).

The Bill repeals and replaces the Privacy Act 1993 as recommended by the Law Commission Report *Review of the Privacy Act 1993: Review of the Law of Privacy Stage 4* (NZLC R132, 2011).

- iv. *Sexual Violence Legislation Bill 185 -1* (Introduced 11 November 2019: First reading 14 November 2019; referred to select committee with report due 14 May 2020).

The Bill responds to some of the recommendations in the Law Commission reports *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes* (NZLC R136, 2015) and *The Second Review of the Evidence Act 2006 – Te Arotake i te Evidence Act 2006* (NZLC R142, 2019).

- (b) The following information relates to bills given the Royal Assent in the first trimester of this year that relate (at least in part) to the Law Commission's earlier work:

- i. *Legislation Act 2019 (2019/58) (Legislation Bill 275-3) and Legislation (Repeals and Amendments) Act 2019 (2019/59) (Legislation (Repeals and Amendments) Bill 275-3A) - Royal Assent 28/10/19)*

These Acts implement aspects of the Government response to recommendations made in the reports of the Law Commission: *Presentation of New Zealand Statute Law* (NZLC R104, 2008) and *A New Interpretation Act: To Avoid "Prolivity and Tautology"* (NZLC R17, 1990).

- ii. *Trusts Act 2019 (2019/38) (Trusts Bill 290-3 – Royal assent 30/07/2019).*

The Act reflects recommendations made by the Law Commission following its review of trust law from 2009 to 2013, including its report *Review of the Law of Trusts: A Trusts Act for New Zealand* (NZLC R130, 2013). The Act replaces the Trustee Act 1956 and the Perpetuities Act 1964 to make trust law more accessible and to clarify and simplify core trust principles and essential obligations for trustees.

- iii. *Contempt of Court Act 2019 (2019/44) (Contempt of Court Bill 39-2 – Royal Assent 26/08/19).*

The Act implements the recommendations of the Law Commission's report *Reforming the Law of Contempt of Court: A Modern Statute – Ko te Whakahou i te Ture mō Te Whawhati Tikanga ki te Kōti: He Ture Ao Hou* (NZLC R140, 2017). The Act modernises and clarifies the law of contempt.

(c) The following information relates, at least in part, to the Law Commission’s earlier work:

- i.* Incorporated Societies law – The Ministry of Business Innovation and Employment (MBIE) is reviewing the Incorporated Societies Act 1908 to implement the Law Commission report *A New Act for Incorporated Societies* (NZLC R129, 2013). A number of important points were made by submitters to an earlier exposure draft bill released by MBIE in 2016. Work has begun on preparing these changes for Cabinet approval.
- ii.* Insurance contract law – A Ministry of Business Innovation and Employment (MBIE) review is underway and aims to address some of the issues raised by the Law Commission reports *Some Insurance Law Problems* (NZLC R46) and *Life Insurance* (NZLC R87, 2004).
- iii.* Burial and cremation law – The Ministry of Health (MOH) and Department of Internal Affairs are working to improve the death certification processes used by health professionals and funeral directors, following the Law Commission’s report *Death, Burial and Cremation: a New Law for Contemporary New Zealand* (NZLC R134, 2015). On 14 November 2019 MOH released a consultation document presenting options for modernising legislation relating to death, burial, cremation and funerals in New Zealand.

4. Risks facing the Law Commission

4.1 Budget bid

We have submitted our 2020/21 budget bid to the Ministry of Justice (Valerie Kirk). The MOJ will provide it to the Treasury.

In previous years the Commission was using its reserves as operating expenditure at a much faster rate than the four years planned, due to essential unbudgeted expenditure. The Commission’s unsustainable use of reserves to provide day to day operating expenditure has been previously disclosed to the Crown monitor.

The Commission will endeavour to deliver an effective and efficient law reform work programme but is constrained by its budget.

5. Statement of Forecast Service Performance 2019-2020

Output Performance Measure		
Quantitative measures	Target for 2019/20	First Trimester Result 2019/20
Measure – Publication of Final Reports	Target – 1 report provided	The target date for the Final Report in Review of the Criminal Investigations (Bodily Samples) Act 1995 is May 2020.

Measure – Publication of Issues Papers	Target – 1 Issues paper posted to website	Target is not expected to be met, given terms of references and timeframes on Class Actions and Litigation Funding and Review of Succession Law are still to be determined, and the review of the law relating to adults with impaired decision making capacity is not yet underway because of resourcing constraints.
Measure – Ministerial briefing papers	Target – No ministerial briefing papers	
Measure – Management of the work programme	Target – within total revenue and reserves as agreed with the Minister	
Qualitative measures	Target for 2019/20	First Trimester Result 2019/20
Measure - High quality evidence-based analysis	Feedback from members of the Expert Advisory Group and other interested parties on references	Feedback will be sought on the Final Report in the Review of the Criminal Investigations (Bodily Samples) Act 1995.
Measure - Engagement and/or consultation	Feedback from members of the Expert Advisory Group and other interested parties on references	
Measure – Clear and understandable reports	Feedback from members of the Expert Advisory Group and other interested parties on references	
Measure – Independent and practicable recommendations	Feedback from members of the Expert Advisory Group and other interested parties on references	

6. Financial Reporting

Below are the Profit and Loss and Balance Sheet as at 31 October 2019.

Profit & Loss

Law Commission For the month ended 31 October 2019

	Actual	Budget	Var NZD	Var %	YTD Actual	YTD Budget	Var NZD	Var %
Income								
Interest Income	1,429	4,500	(3,071)▼	-68.2%▼	8,819	18,000	(9,181)▼	-51.0%▼
Other Income	20,262	-	20,262▲	0.0%	46,458	-	46,458▲	0.0%
Revenue from Crown	332,750	332,750	-	0.0%	1,331,000	1,331,000	-	0.0%
Sale of Publications	-	-	-	0.0%	393	-	393▲	0.0%
Total Income	354,441	337,250	17,191	5.1%	1,386,670	1,349,000	37,670	2.8%
Gross Profit	354,441	337,250	17,191	5.0%	1,386,670	1,349,000	37,670	3.0%
Less Operating Expenses								
Archiving, disposal and moving	-	500	(500)▼	-100.0%▼	-	2,000	(2,000)▼	-100.0%▼
Communications	1,743	-	1,743▲	0.0%	8,369	-	8,369▲	0.0%
Consultancy	-	3,000	(3,000)▼	-100.0%▼	-	12,000	(12,000)▼	-100.0%▼
Depreciation and Amortisation	6,654	6,000	654▲	10.9%▲	26,769	24,000	2,769▲	11.5%▲
Foreign Currency Gains and Losses	(133)	-	(133)▼	0.0%	(18)	-	(18)▼	0.0%
General Expenses	37,885	23,071	14,814▲	64.2%▲	182,293	92,284	90,009▲	97.5%▲
Library Costs	6,076	7,735	(1,659)▼	-21.4%▼	26,756	30,940	(4,184)▼	-13.5%▼
Occupancy Costs	19,615	21,200	(1,585)▼	-7.5%▼	78,591	84,800	(6,209)▼	-7.3%▼
Personnel Costs	210,839	276,100	(65,261)▼	-23.6%▼	834,914	1,104,394	(269,480)▼	-24.4%▼
Project Costs	830	16,742	(15,912)▼	-95.0%▼	12,067	66,968	(54,901)▼	-82.0%▼
Temporary Contractors	810	-	810▲	0.0%	6,047	-	6,047▲	0.0%
Total Operating Expenses	284,318	354,348	(70,030)	-19.8%	1,175,788	1,417,386	(241,598)	-17.0%

Profit & Loss

	Actual	Budget	Var NZD	Var %	YTD Actual	YTD Budget	Var NZD	Var %
Net Profit	70,123	(17,098)	87,221	510.0%	210,882	(68,386)	279,268	408.0%

Balance Sheet

Law Commission As at 31 October 2019

	31 Oct 2019	31 Oct 2018
Assets		
Current Assets		
Accounts Receivable	62	12,532
Accrued Income	-	(3,301)
Cash	2,074,419	1,718,252
GST	21,373	25,738
Prepayments	54,416	47,568
Total Current Assets	2,150,271	1,800,789
Non-current Assets		
Fixed Assets	504,791	580,334
Total Non-current Assets	504,791	580,334
Total Assets	2,655,062	2,381,123
Liabilities		
Current Liabilities		
Creditors and Provisions	77,610 ¹	169,792
Current Lease Incentive Provision	20,398	20,398
Employee Entitlements	191,471	175,870
Total Current Liabilities	289,479	366,060
Non-Current Liabilities		
Non-Current Lease Incentive Provision	132,587	152,985
Total Non-Current Liabilities	132,587	152,985
Total Liabilities	422,066	519,045
Net Assets	2,232,996	1,862,077
Equity		
Current Year Earnings	210,882	(89,757)
Retained Earnings	2,022,114	1,951,834
Total Equity	2,232,996	1,862,077

Notes

1

Figures converted into New Zealand Dollar using the following rate:
0.639362 USD United States Dollar per NZD. Rate provided by XE.com on 31 Oct 2019.