

Te Tauāki Whakamaunga Atu Statement of Intent

1 July 2020 – 30 June 2024



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

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1. President's foreword

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 | the 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 | the Law Commission will contribute to the Government's priorities to support a safe and just Aotearoa New Zealand and to progress a programme of law reform that improves wellbeing.

Laws need to undergo review and renewal to ensure they continue to reflect and maintain the values and aspirations of the people they serve. The Commission has an important role in law reform because it is responsible for keeping the law under systematic review. It provides independent advice based on rigorous research and consultation. In this way, the Commission helps to sustain confidence that our laws support a modern democracy, an efficient economy and a just society. During the period covered by this Statement of Intent, for example, the Commission will undertake in-depth law reform projects across core areas including family, property and criminal law and civil litigation.

Over the last year, and through the collective work of everyone at the Commission, we have developed a vision for its future – Kia whanake ngā ture o Aotearoa New Zealand mā te arotake motuhake – Better law for Aotearoa New Zealand through independent review. We also concluded that the following values are critical to achieving this vision:

- Whanaungatanga – we care for each other in our everyday actions, building honest, strong and positive relationships;
- Hiranga – we strive for excellence in all that we do. We are dedicated, collaborative and innovative;
- Te ao Māori – we commit to understanding te ao Māori and to engaging with and promoting matters of particular concern to Māori;
- Mana – we seek to uphold the mana of all people of Aotearoa New Zealand.

The Commission is committed to these values. They create our culture and underpin our daily work.

Over the next four years, the Commission intends to strengthen its institutional capability to recognise and consider 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. The Commission is supported in this aspect of its work by its Māori Liaison Committee,

currently chaired by the Hon Justice Sir Joe Williams. The results of these efforts will not only contribute to the Commission’s recommendations for law reform but will permeate the wider justice sector and help to “renovate the house of the law”.¹

In addition, the Commission will also 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 achieving 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

Te Aka Matua o te Ture | Law Commission

¹ The Hon Justice Dame Helen Winkelmann, Chief Justice of New Zealand “Renovating the House of the Law” (speech to Te Hūnga Rōia Māori o Aotearoa, Wellington, 29 August 2019).

2. Statement of responsibility

The Crown Entities Act 2004 requires te Aka Matua o te Ture | 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 2020 and 30 June 2024.



Amokura Kawharu

Tumu Whakarae | President

Te Aka Matua o te Ture | Law Commission

Date: 6 August 2020



Helen McQueen

Tumu Whakarae Tuarua | Deputy President

Te Aka Matua o te Ture | Law Commission

Date: 6 August 2020

3. What is the Commission and what does it do?

Te Aka Matua o te Ture | the 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:

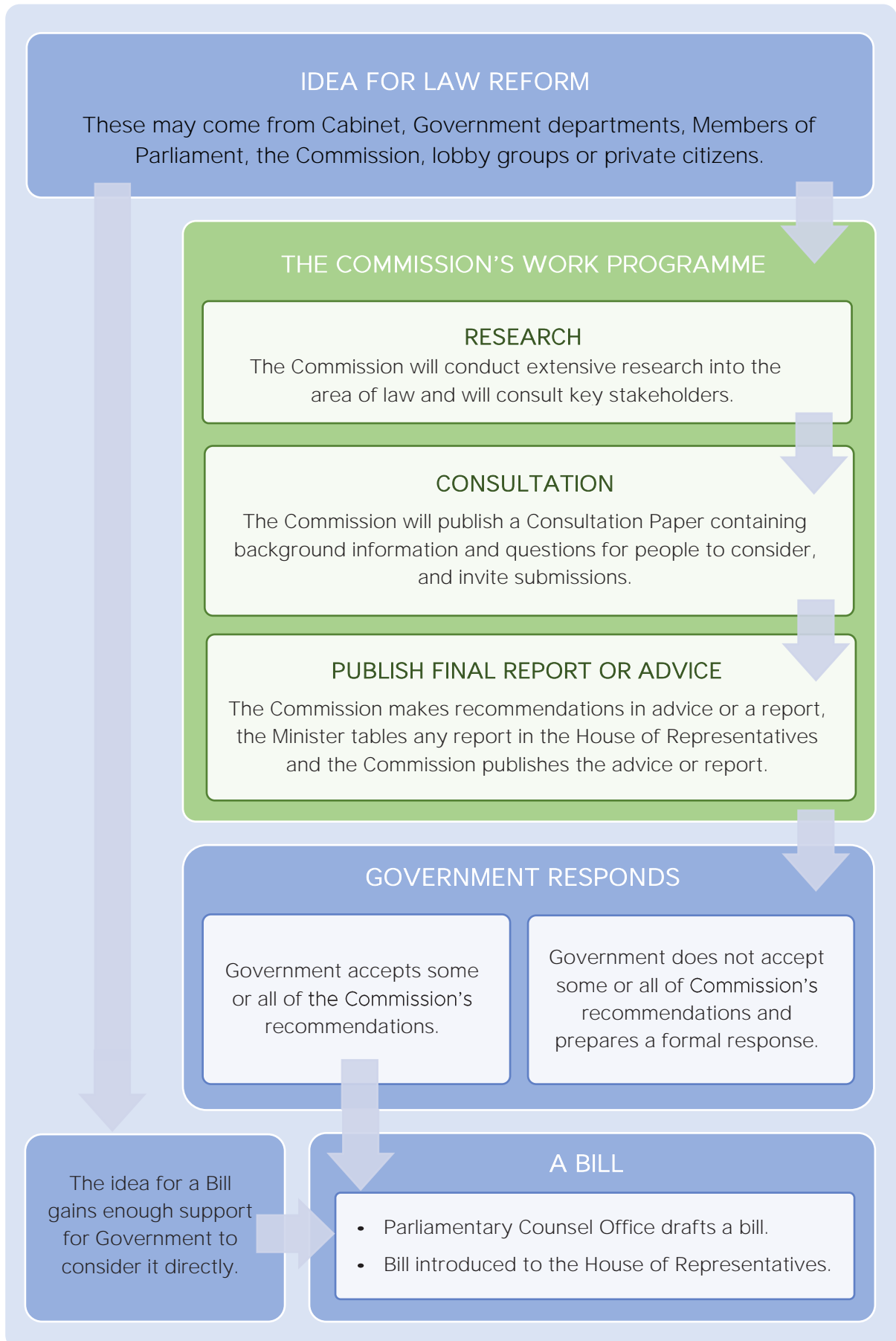
- a. take and keep under review in a systematic way the law of New Zealand;
- b. make recommendations for the law’s reform and development;
- c. advise on the review of any aspect of the law conducted by any government department or organisation and on proposals made as a result of that review; and
- 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.

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 Circular² 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. 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.

² Cabinet Office Circular “Law Commission: Process for Setting the Work Programme and Government Response to Reports” (24 April 2009) CO 09/1.

HOW THE COMMISSION APPROACHES ITS ROLE IN THE LAW REFORM PROCESS



4. Pae tawhiti | 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.³

PAE TAWHITI

Kia whanake ngā ture o Aotearoa mā te arotake motuhake

VISION

Better law for Aotearoa New Zealand through independent review

Operating in the wider justice sector, the Commission contributes to a unified value-based government for the people of Aotearoa New Zealand. 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.

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.

³ The Commission acknowledges and thanks Te Ripowai Higgins for writing the statement of vision and values in te reo Māori.

THE COMMISSION'S VALUES

Ngā mātāpono me ngā tikanga	Our values
<p data-bbox="240 344 742 380">Ngā mātāpono me ngā tikanga:</p> <ul data-bbox="240 412 802 1111" style="list-style-type: none"> <li data-bbox="240 412 802 568">• Whanaungatanga – i ngā mahi katoa ka manāki tētahi i tētahi kia tipu ai ngā hononga pono, pūmau, whaipanga hoki. <li data-bbox="240 591 802 748">• Hiranga – ka whai i te hiringa i a mātou mahi katoa, arā te manawanui, te mahi tahi me te auaha hoki. <li data-bbox="240 770 802 972">• Te Ao Māori – ka tūturu tā mātou whai kia mārāma ake mātou ki te ao Māori, a, ka tūhono atu, ka tautoko hoki i ngā take nunui o te ao Māori. <li data-bbox="240 994 802 1111">• Mana – E aro nui ana mātou ki te hāpai i te mana o ngā tāngata katoa o Aotearoa. <p data-bbox="240 1133 802 1447">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 data-bbox="847 344 1380 380">At the Law Commission we value:</p> <ul data-bbox="847 412 1428 1111" style="list-style-type: none"> <li data-bbox="847 412 1428 568">• Whanaungatanga – we care for each other in our everyday actions, building honest, strong and positive relationships. <li data-bbox="847 591 1428 748">• Hiranga – we strive for excellence in all that we do. We are dedicated, collaborative and innovative. <li data-bbox="847 770 1428 972">• Te ao Māori – we commit to understanding te ao Māori and to engaging with and promoting matters of particular concern to Māori. <li data-bbox="847 994 1428 1111">• Mana – we seek to uphold the mana of all people of Aotearoa New Zealand. <p data-bbox="847 1187 1428 1424">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>

THE COMMISSION'S STRATEGIC INTENTIONS

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

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



The Commission's intention of developing an institutional approach to the recognition and consideration of tikanga Māori provides an opportunity to examine 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 can then reflect upon its work and learn from the experiences.

These steps are important, given the constitutional status of te Tiriti o Waitangi | the Treaty of 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 a good record of developing partnerships with Māori. 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 also intends to implement strategies to develop its cultural capabilities and to promote the recruitment of Māori personnel.

5. The **Commission's** work for the next four years

As at 1 July 2020, the Commission's law reform programme for the next four years is:

Law reform references	2020/21	2021/22	2022/23	2023/24 ⁴
Review of the use of DNA in criminal investigations	Report completed ⁵			
Review of succession law	Consultation Paper published and consultation undertaken	Report completed November 2021		
Review of class actions and litigation funding	Consultation Paper published and consultation underway	Consultation Paper published and consultation undertaken Report completed May 2022		
Review of the law relating to adults with impaired decision-making capacity	Reference to be commenced	Consultation Paper published and consultation underway	Consultation Paper published and consultation undertaken	Report likely completed 2023
Review of surrogacy law	Reference to be commenced	Consultation Paper published and consultation undertaken Report likely completed in 2022		
New reference 1, to be determined		Reference commenced early 2022	Consultation Paper published and consultation underway	Consultation Paper published and consultation undertaken
New reference 2, to be determined			Reference commenced late 2022	Consultation Paper published and consultation underway

⁴ As at 1 July 2020, s202 of the Evidence Act 2006 is still in force. Unless repealed, it will require a third review of the Act to be triggered by 28 February 2024. The second review recommended the repeal of s202, but this recommendation is yet to be implemented.

⁵ Completion of this Report was delayed due to Covid-19.

6. **The Commission's** impact and how we assess our performance

“One of the strengths of the Law Commission’s work is this ability to walk backwards into the future – to be courageous in re-examining legal frameworks and exploring law reform options, while respecting the deep-rooted principles, shared understandings and culture that have shaped the course thus far.”

The Rt Hon Dame Patsy Reddy, GNZM, QSO
Law Commission 30th Anniversary Symposium, 3 November 2016

For over 30 years, the Commission has been responsible for leading law reform projects across our legal system, addressing core issues such as family, property and criminal law and civil dispute resolution. The Commission continues to undertake work across these areas, producing independent advice and recommendations in reports and other papers to support the ongoing review and renewal of laws to ensure that those laws reflect and maintain the values and aspirations of the people they serve.

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 “Prolixity 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 New Zealand, compared to an average of 68.3% across 12 commissions (according to the latest figures at the time).⁶ The Commission will develop a methodology for assessing implementation rates of the Commission's reports, which can appropriately account for both full and partial implementation, and plans to report on the implementation of its recommendations over time.

⁶ 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.

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 impacts more widely 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".⁷

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,⁸ addressed by academics⁹ and discussed in judgments from Aotearoa New Zealand courts¹⁰ – sometimes years after they were written. The Commission and other law reform bodies around the world regularly draw on each other's work.¹¹

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".¹²

The Commission recognises and confirms the 'ripple effect' in Aotearoa New Zealand. The impact of the Commission's work is far-reaching:

⁷ 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.

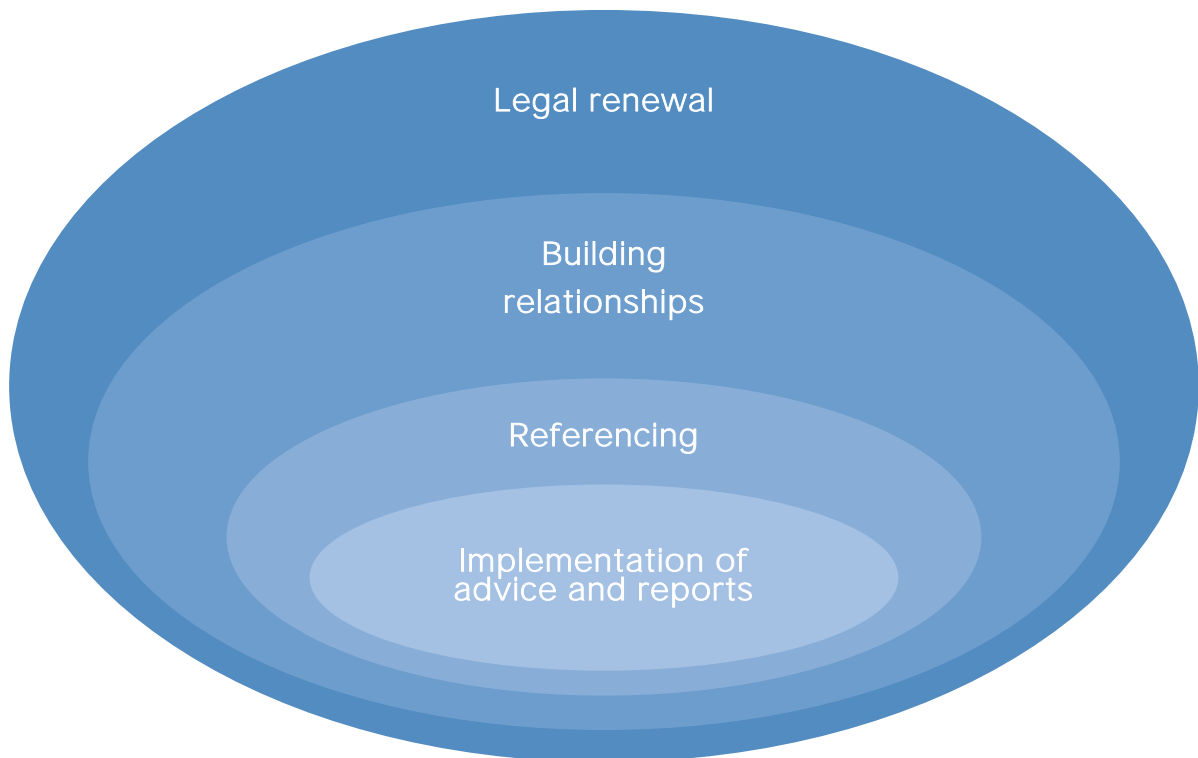
⁸ For a recent example, see Hon Andrew Little (24 July 2019) 739 NZPD 12560 discussing the Trusts Bill.

⁹ For a recent example, see Bill Atkin *Relationship Property in New Zealand* (3rd edition, Lexis Nexis, Wellington, 2018).

¹⁰ For a recent 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 at [102] to [104].

¹¹ For a recent example, see the references to our publications on the review of the Property (Relationships) Act 1976 in the Scottish Law Commission's *Aspects of Family Law Discussion Paper on Cohabitation* (Scottish Law Commission, Discussion Paper No 170, February 2020).

¹² 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 long-term influence of its work.

- Survey of independent experts on the Commission's consideration of substantive legal and policy issues for each project.
- 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.
- The number of consultation papers, reports or other papers or advice published by the Commission.
- The percentage of references completed on time in accordance with the annual work programme approved by the Minister.
- The number of community engagements, such as presentations, interviews and published articles.
- 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.
- Implementation of reports over time.

7. How the Commission manages its organisational health and capability

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 2020-21 with three Commissioners (tangata whenua and tangata Tiriti), 13 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. In recent years, due to a static budget and in order to remain solvent, the Commission has needed to reduce staff numbers.

The Commission undertakes its work on references through teams of Legal and Policy Advisers led by a Commissioner. Between two and five Advisers may work on one reference at a time, depending on the 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. They are appointed for a five-year term although those terms may be extended. 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 reo me ōna tikanga and 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. During the period of this Statement of Intent the Commission will explore extending the role of Principal Legal and Policy Adviser by offering greater responsibility for particular references. This may create a more extended career path within the Commission for some staff. This may also benefit the Commission by allowing additional references to progress at any one time.

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 and te Tiriti o Waitangi | the Treaty of Waitangi.

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.

8. Risk management

The Commission has a robust internal control operating environment through its policies and procedures. During 2020-24 we will continue to have an appropriate system of risk oversight and management for the Commission. The Board will review the risk framework annually.

The catastrophic event of COVID-19 has created global uncertainty. Challenges to and opportunities for how the workplace will operate and look in the future will emerge over time.

The IT platform at the Commission is a Cloud solution. As planned, the Commission moved in 2018 to smaller and less expensive premises and migrated to Office 365 software for operational matters and SharePoint for electronic records management. This has enabled the Commission to work remotely in a productive manner, as demonstrated in the context of COVID-19. This approach provides access to most official records remotely. The Commission's website acts as a repository of all the Commission's published work.

Between February and May 2021, the warrants of two Commissioners will expire, creating a risk of loss of institutional knowledge.

Under the Crown Entities Act 2004, the Commissioners are also the Commission Board members. As the 2020-21 year commences, there are only three Commissioners. This is a deliberate strategy to ensure the Commission is best positioned to operate effectively and efficiently within its appropriation, which has remained unchanged for over ten years. However, the requirement in section 9(1) of the Law Commission Act that there be a minimum of three Commissioners does highlight a risk if any of them were to become unavailable.

The Commission is funded from Vote Justice through a non-departmental output expense appropriation.

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