

SECOND QUARTERLY REPORT

For 2021 - 2022

**1 OCTOBER 2021 – 31 DECEMBER
2021**



1. INTRODUCTION

This is the second quarterly report for 2021-22 for Te Aka Matua o te Ture | Law Commission (the Commission). It should be read alongside the Commission’s Statement of Performance Expectations dated June 2021.

During the second quarter, the Commission published:

- i. The Final Report in He arotake i te āheinga ki ngā rawa a te tangata ka mate ana | Review of Succession Law: rights to a person’s property on death.
- ii. The Terms of Reference in He Arotake i te Ture mō ngā Huarahi Whakatau a ngā Pakeke | Review of Adult Decision-making Capacity Law.

Other projects continue to make good progress and remain on track as reported on below.

2. LAW REFORM PROJECTS – AS AT 31 DECEMBER 2021

Project	Status	Target dates ¹
Ko Ngā Hunga Take Whaipānga me ngā Pūtea Tautiringa Review of Class Actions and Litigation Funding	The Supplementary Issues Paper was published on 30 September 2021. The project continues.	The final report is planned for delivery to the Minister in May 2022.
He arotake i te āheinga ki ngā rawa a te tangata ka mate ana Review of Succession Law: rights to a person’s property on death	The Final Report was delivered to the Minister on the 17 November 2021.	The Commission’s work on this project is complete. A Government Response is due by 14 April 2022.

¹ A **target date** is the target date set by the Board of the Commission for delivery of a final report to the Minister, or publication of a paper approved for online release on the Commission’s website. It does not mean that a report will have been tabled in Parliament and does not necessarily mean the report will have been printed, on that date.

He Arotake i te Ture mō ngā Huarahi Whakatau a ngā Pakeke Review of Adult Decision-making Capacity Law	The Terms of Reference were published on 6 October 2021. The project continues.	A consultation document is planned for 2022-23.
Te Kōpū Whāngai: He Arotake Review of Surrogacy Law	The Issues Paper was published on 29 July 2021. The project continues.	The final report is planned for delivery to the Minister in April 2022.
Emergency Powers for Pandemics and other Threats	The project continues.	A study paper is planned for 2022-23.
Tikanga	The project has commenced.	To be determined.
Preventive Detention	The project has commenced.	To be determined.

3. OUTPUTS AS AT 31 DECEMBER 2021

3.1 Terms of reference

The terms of reference for one project are due to be published in 2021-22. Terms of reference were published on 6 October 2021 in relation to: He Arotake i te Ture mō ngā Huarahi Whakatau a ngā Pakeke | Review of Adult Decision-making Capacity Law.

3.2 Issues papers

Two issues papers are due to be published in 2021-22. The Issues Paper in Te Kōpū Whāngai: He Arotake | Review of Surrogacy (NZLC IP 47) was published on 29 July 2021 and the Supplementary Issues Paper in Ko Ngā Hunga Take Whaipānga me ngā Pūtea Tautiringa | Class Actions and Litigation Funding (NZLC IP 48) was published on 30 September 2021.

3.3 Final reports

Three final reports are due to be published in 2021-22. He Arotake i te āheinga ki ngā rawa a te tangata ka mate Ana | Review of Succession Law: rights to a person's property on death is complete, Te Kōpū Whāngai: He Arotake | Review of Surrogacy Law, and Ko Ngā Hunga Take Whaipānga me ngā Pūtea Tautiringa | Review of Class Actions and Litigation Funding are still to be completed.

3.4 Timeliness

All work remains on schedule for delivery within the agreed timeframes.

3.5 Implementation update - Bills before the House

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

- i. *Incorporated Societies Bill 15-1* (Introduced 17 March 2021; second reading 17 November 2021).

The Bill implements the Law Commission report *A New Act for Incorporated Societies* (NZLC R129, 2013).

- ii. *Security Information in Proceedings Legislation Bill 97-1* (Introduced 25 November 2021, first reading 14 December 2021, referred to the Justice Committee)

The Bill is the Government's response to Part 2 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)

The following are bills that related (at least in part) to the Commission's earlier work and gained royal assent during this quarter:

- i. *Births, Deaths, Marriages, and Relationships Registration Bill 296* (Introduced 10 August 2017; royal assent 15 December 2021). *Births, Deaths, Marriages, and Relationships Registration Act 2021*.

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

- ii. *Sexual Violence Legislation Bill 185-2* (Introduced 11 November 2019; royal assent 20 December 2021). *Sexual Violence Legislation Act 2021*.

The Bill responded to several recommendations in the Commission's 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).

4. RISKS FACING THE COMMISSION

4.1 Budget

Given its current level of reserves, the Commission did not make a budget bid for 2022-23. Nonetheless, as a result of ongoing cost pressures and future budget uncertainty, the Commission continues to adopt a conservative operating position. The Commission's efficiency would be improved by having four Commissioners at all times, as it would enable a material increase in outputs while requiring only a marginal increase in fixed overhead costs (including support services). However, current funding levels are insufficient for a fourth Commissioner. In consequence, the Commission is not in a position to fully deliver on its strategic objectives. Within the constraints of the existing financial operating environment the Commission will continue to endeavour to deliver a timely and effective law reform work programme.

4.2 Other risks

One Commissioner was appointed recently for a one-year term to lead a project on tikanga and is based in Auckland. With only three other Commissioners, the Commission is more heavily exposed to the risk of a Commissioner becoming incapacitated for a material period, as the two remaining Commissioners could not realistically absorb the incapacitated Commissioner's workload. This impact of a Commissioner's incapacitation would be materially lower if an additional Commissioner were appointed, for the usual term.

With three long-running law reform projects due to complete in 2021-22, the Commission recognises that there is a risk of turnover of key staff. Aotearoa New Zealand society continues to experience the ongoing impacts of the COVID-19 and the measures adopted in response to the pandemic. For the Commission, there are risks of negative impacts on staff wellbeing and the Commission's ability to engage with stakeholders across its various projects. There may also be an increased risk of staff resignations as a reaction to the COVID-19 environment, as appears to be occurring in other countries.

As with all other organisations in Aotearoa New Zealand, the Commission's work would likely be slowed down in the event of widespread and sustained community transmission of SARS-COV-2 / COVID-19 if this resulted in a materially increased level of staff illness.

5. DRAFT STATEMENT OF SERVICE PERFORMANCE 2021-22

Measure	How	Planned 2021-2022	Actual 2021-2022 (year-to-date)
Timely production of terms of reference, consultation or other papers, reports and written advice			
The number of terms of reference, consultation or other papers, reports or written advice	The number of published terms of reference, consultation or other papers, reports and written advice	6	4
Reports or advice produced in the original timeframe advised to the Responsible Minister ²	The date the report or advice is sent to the Responsible Minister	100%	100%
Stakeholder engagement			
The number of consultation meetings held	The percentage of target number of consultation meetings per project	100%	100%
The number of submissions received	The percentage of target number of submissions per project	100%	100%

² Subject to any request by the Minister for the Commission to give other work priority, as provided by s 7(3) Law Commission Act 1985.

Measure	How	Planned 2021-2022	Actual 2021-2022 (year-to-date)
Consideration of substantive legal and policy issues (qualitative measures)			
High quality evidence-based legal and policy analysis ³	Survey of independent experts	Agree	tbc
Recognition of te ao Māori ⁴	(a) Survey of independent experts and (b) Māori Liaison Committee feedback	Agree	tbc
Clear and understandable papers, reports or written advice ⁵	Survey of independent experts	Agree	tbc
Independent and practical recommendations ⁶	Survey of independent experts	Agree	tbc

³ The quality of the Commission's legal and policy analysis in reports and advice is measured through Expert Advisory Group (EAG) survey questions that address whether the Commission's analysis is based on accurately and thoroughly explained legal research, the identification and analysis of relevant issues, and the identification and assessment of evidence-based options for reform. The survey uses a sliding scale rating system, where 1 indicates strong agreement and 5 indicates strong disagreement with a survey question

⁴ The Commission is required by s 5(2)(a) of the Law Commission Act 1985 to take te ao Māori into account in making its recommendations and this is an area of strategic focus. The Commission's success is measured through an EAG survey question that asks whether te ao Māori is appropriately recognised and discussed in its reports and advice. The Chair of the Māori Liaison Committee is asked to respond on behalf of the Committee to the same question but is not asked to respond through a sliding scale.

⁵ The clarity of the Commission's reports and advice is measured through an EAG survey question that asks whether the report or advice is presented in as clear, understandable and constructive manner as the technical nature of the subject matter allows.

⁶ The quality of the Commission's recommendations in reports and advice is measured through an EAG survey question that asks whether the recommendations are supported by evidence-based analysis, take into account the relevant context, and recognise practical issues of implementation, cost, technical feasibility and timing.

Measure	How	Planned 2021-2022	Actual 2021-2022 (year-to-date)
<p>In meeting the expected productivity and quality standards, the Commission will sustain its long-term influence across the legal system and in the law reform community, including through implementation of its recommendations, maintenance of constructive and enduring relationships and citations to its work.</p>			
<p>Long term influence (impact measures)</p>			
Implementation of reports or other advice	The percentage implementation of reports and advice delivered over the previous 10-year period	60%	75.9%
The number of community engagements	The number of community engagements (such as presentations, interviews and published articles)	10	20
The number of references to the Commission's reports or advice	In court decisions	60 (judicial)	75
	In Parliamentary debates and committee reports, academic publications and other media	300 (other)	280

6. FINANCIAL

REPORTING

6.1 PROFIT AND

Profit & Loss
Law Commission
For the quarter to 31 December 2021

LOSS

STATEMENT FOR THE QUARTER TO 31 DECEMBER 2021

	Actual	Budget	Variance
Income			
Interest Income	\$3,443.36	\$501.00	\$2,942.36
Other Income	\$1,300.00	\$501.00	\$799.00
Revenue from Crown	\$998,250.00	\$998,250.00	\$0.00
Total Income	\$1,002,993.36	\$999,252.00	\$3,741.36
Gross Profit	\$1,002,993.36	\$999,252.00	\$3,741.36
Less Operating Expenses			
Communication and Consultancy	\$2,986.49	\$3,750.00	-\$763.51
Depreciation and Amortisation	\$19,810.79	\$20,625.00	-\$814.21
General Expenses	\$149,814.99	\$81,954.00	\$67,860.99
Library Costs	\$43,979.28	\$30,003.00	\$13,976.28
Occupancy Costs	\$66,129.51	\$66,129.00	\$0.51
Personnel Costs	\$762,483.21	\$782,832.00	-\$20,348.79
Project Costs	\$0.00	\$59,127.00	-\$59,127.00

Total Operating Expenses	\$1,045,204.27	\$1,044,420.00	\$784.27
Net Profit	-\$42,210.91	-\$45,168.00	\$2,957.09

6.2 DRAFT BALANCE SHEET AS AT 31 DECEMBER 2021

Balance Sheet Law Commission As at 31 December 2021

	31 Dec 2021	31 Dec 2020
Assets		
Current Assets		
Accounts Receivable	\$1,807.42	\$851.04
Cash	\$5,303,461.53	\$3,796,440.33
GST	-\$266,369.63	-\$175,286.88
Prepayments	\$120,091.14	\$78,625.99
Total Current Assets	\$5,158,990.46	\$3,700,630.48
Non-current Assets		
Fixed Assets	\$374,741.78	\$448,055.88
Total Non-current Assets	\$374,741.78	\$448,055.88
Total Assets	\$5,533,732.24	\$4,148,686.36
Liabilities		
Current Liabilities		
Creditors and Provisions	\$115,145.36	\$64,641.60
Current Lease Incentive Provision	\$20,398.00	\$20,398.00
Employee Entitlements	\$190,958.47	\$275,590.79
Income in Advance	\$1,996,500.00	\$665,500.00
Total Current Liabilities	\$2,323,001.83	\$1,026,130.39
Non-Current Liabilities		
Non-Current Lease Incentive Provision	\$88,391.47	\$108,789.43
Total Non-Current Liabilities	\$88,391.47	\$108,789.43
Total Liabilities	\$2,411,393.30	\$1,134,919.82
Net Assets	\$3,122,338.94	\$3,013,766.54
Equity		
Current Year Earnings	-\$40,986.06	\$400,889.16
Retained Earnings	\$3,163,325.00	\$2,612,877.38

Total Equity	\$3,122,338.94	\$3,013,766.54
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