

# **FIRST QUARTERLY REPORT**

## **For 2021 - 2022**

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**1 JULY 2021 – 30 SEPTEMBER 2021**



## 1. INTRODUCTION

This is the first 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 first quarter, the Commission published:

- i. The Issues Paper in Te Kōpū Whāngai: He Arotake | Review of Surrogacy (NZLC IP 47); and
- ii. The Supplementary Issues Paper in Ko Ngā Hunga Take Whaipānga me ngā Pūtea Tautiringa | Class Actions and Litigation Funding (NZLC IP 48).

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

## 2. LAW REFORM PROJECTS – AS AT 30 SEPTEMBER 2021

| Project  | Status  | Target dates <sup>1</sup>   |
|--|---|---|
| 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 target date for publishing an issues paper in the first quarter of 2021-22 was met. 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              | The Issues Paper was published on 15 April 2021. The project continues.                   | Delivery of the final report to the Minister is planned for the second quarter of 2021-22, in November 2021.  |

<sup>1</sup> 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.

|   |   |   |
|---|---|---|
| <b>He Arotake i te Ture mō ngā Huarahi Whakatau a ngā Pakeke   Review of the Law Relating to Adult Decision-making Capacity</b> | The Terms of Reference were published on 6 October 2021. The project continues. | An issues paper is planned for 2022-23.   |
| <b>Te Kōpū Whāngai: He Arotake   Review of Surrogacy Law</b>  | The Issues Paper was published on 29 July 2021. The project continues.          | The target date for publishing an issues paper in the first quarter of 2021-22 was met. The final report is planned for delivery to the Minister in April 2022. |
| <b>Emergency Powers for Pandemics and other Threats</b>   | The project continues.  | A study paper is planned for 2022-23.   |
| <b>Tikanga</b>  | The project is yet to commence.   | To be determined.   |
| <b>Preventive Detention</b>   | The project is yet to commence.   | To be determined.   |

### 3. OUTPUTS AS AT 30 SEPTEMBER

#### 3.1 Terms of reference

The terms of reference for one project are due in 2021-22 (in relation to: He Arotake i te Ture mō ngā Huarahi Whakatau a ngā Pakeke | Review of the Law Relating to Adult Decision-making Capacity).

#### 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 (in relation to: He Arotake i te Āheinga ki ngā Rawa a te Tangata Ka Mate Ana | Review of Succession Law, 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).

### 3.4 Timeliness

The timelines for the completion of the issues papers have been met. All other 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 Law Commission's earlier work:

- i. *Births, Deaths, Marriages, and Relationships Registration Bill 296-2* (Introduced 10 August 2017; Select Committee report 10 August 2018; second reading 18 August 2021).

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

- ii. *Sexual Violence Legislation Bill 185-2* (Introduced 11 November 2019; first reading 14 November 2019; Select Committee report 9 June 2020; second reading 25 February 2021, awaiting Committee stage).

The Bill responds to several 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).

- iii. *Incorporated Societies Bill 15-1* (Introduced 17 March 2021; first reading 6 April 2021).

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

## 4. RISKS FACING THE COMMISSION

### 4.1 Budget

Given its current level of reserves, the Commission does not intend to 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

The General Manager resigned during the first quarter, leading to temporary measures being adopted to fulfil GM functions while recruitment is underway in a tight market. Inability to fill the role in a timely manner increases operational risks and fiscal risks (as temporary measures are less efficient and more expensive).

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.

## 5. DRAFT STATEMENT OF SERVICE PERFORMANCE 2021-22

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

<sup>2</sup> 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<br>2021-2022 | Actual<br>2021-2022<br>(year-to-date) |
|--|--|----------------------|---------------------------------------|
| <b>Consideration of substantive legal and policy issues (qualitative measures)</b> |  |                      |                                       |
| High quality evidence-based legal and policy analysis <sup>3</sup>                 | Survey of independent experts  | Agree                | tbc                                   |
| Recognition of te ao Māori <sup>4</sup>  | (a) Survey of independent experts and (b) Māori Liaison Committee feedback | Agree                | tbc                                   |
| Clear and understandable papers, reports or written advice <sup>5</sup>            | Survey of independent experts  | Agree                | tbc                                   |
| Independent and practical recommendations <sup>6</sup>                             | Survey of independent experts  | Agree                | tbc                                   |

<sup>3</sup> 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

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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<br>2021-2022 | Actual<br>2021-2022<br>(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>   |   |                      |                                       |
| <p>Implementation of reports or other advice</p>   | <p>The percentage implementation of reports and advice delivered over the previous 10-year period</p> | <p>60%</p>           | <p>74%</p>                            |
| <p>The number of community engagements</p>   | <p>The number of community engagements (such as presentations, interviews and published articles)</p> | <p>10</p>            | <p>12</p>                             |
| <p>The number of references to the Commission's reports or advice</p>  | <p>In court decisions</p>   | <p>60 (judicial)</p> | <p>44</p>                             |
|  | <p>In Parliamentary debates and committee reports, academic publications and other media</p>          | <p>300 (other)</p>   | <p>170</p>                            |



## 6. FINANCIAL REPORTING

### 6.1 PROFIT AND LOSS STATEMENT FOR THE QUARTER TO 30 SEPTEMBER 2021

**Profit & Loss**  
**Law Commission**  
**For the quarter to 30 September 2021**

|                                   | Actual                | Budget                | Variance             |
|-----------------------------------|-----------------------|-----------------------|----------------------|
| <b>Income</b>                     |                       |                       |                      |
| Interest Income                   | \$621.29              | \$501.00              | \$120.29             |
| Other Income                      | \$0.00                | \$501.00              | -\$501.00            |
| Revenue from Crown                | \$998,250.00          | \$998,250.00          | \$0.00               |
| <b>Total Income</b>               | <b>\$998,871.29</b>   | <b>\$999,252.00</b>   | <b>-\$380.71</b>     |
| <hr/>                             |                       |                       |                      |
| <b>Gross Profit</b>               | <b>\$998,871.29</b>   | <b>\$999,252.00</b>   | <b>-\$380.71</b>     |
| <hr/>                             |                       |                       |                      |
| <b>Less Operating Expenses</b>    |                       |                       |                      |
| Communication and Consultancy     | \$4,608.27            | \$3,750.00            | \$858.27             |
| Depreciation and Amortisation     | \$18,977.45           | \$20,625.00           | -\$1,647.55          |
| Foreign Currency Gains and Losses | \$54.09               | \$0.00                | \$54.09              |
| General Expenses                  | \$115,911.08          | \$75,863.00           | \$40,048.08          |
| Library Costs                     | \$9,315.14            | \$30,003.00           | -\$20,687.86         |
| Occupancy Costs                   | \$66,148.49           | \$66,129.00           | -\$19.49             |
| Personnel Costs                   | \$792,336.99          | \$906,266.00          | -\$113,929.01        |
| Project Costs                     | \$0.00                | \$31,513.00           | -\$31,513.00         |
| <b>Total Operating Expenses</b>   | <b>\$1,007,351.51</b> | <b>\$1,134,149.00</b> | <b>-\$126,797.49</b> |
| <hr/>                             |                       |                       |                      |
| <b>Net Profit</b>                 | <b>-\$8,480.22</b>    | <b>-\$134,897.00</b>  | <b>\$126,416.78</b>  |

## 6.2 DRAFT BALANCE SHEET AS AT 30 SEPTEMBER 2021

### Balance Sheet Law Commission As at 30 September 2021

|                                       | 30 Sep 2021           | 30 Sep 2020           |
|---------------------------------------|-----------------------|-----------------------|
| <b>Assets</b>                         |                       |                       |
| <b>Current Assets</b>                 |                       |                       |
| Accounts Receivable                   | \$136.59              | \$136.59              |
| Cash                                  | \$4,121,117.39        | \$3,297,495.67        |
| GST                                   | \$19,948.17           | -\$31,547.46          |
| Prepayments                           | \$68,638.12           | \$58,908.85           |
| <b>Total Current Assets</b>           | <b>\$4,209,840.27</b> | <b>\$3,324,993.65</b> |
| <b>Non-current Assets</b>             |                       |                       |
| Fixed Assets                          | \$387,887.09          | \$458,703.45          |
| <b>Total Non-current Assets</b>       | <b>\$387,887.09</b>   | <b>\$458,703.45</b>   |
| <b>Total Assets</b>                   | <b>\$4,597,727.36</b> | <b>\$3,783,697.10</b> |
| <b>Liabilities</b>                    |                       |                       |
| <b>Current Liabilities</b>            |                       |                       |
| Creditors and Provisions              | \$143,875.77          | \$122,144.63          |
| Current Lease Incentive Provision     | \$20,398.00           | \$20,398.00           |
| Employee Entitlements                 | \$187,328.85          | \$196,405.56          |
| Income in Advance                     | \$998,250.00          | \$407,750.00          |
| <b>Total Current Liabilities</b>      | <b>\$1,349,852.62</b> | <b>\$746,698.19</b>   |
| <b>Non-Current Liabilities</b>        |                       |                       |
| Non-Current Lease Incentive Provision | \$93,490.96           | \$113,888.92          |
| <b>Total Non-Current Liabilities</b>  | <b>\$93,490.96</b>    | <b>\$113,888.92</b>   |
| <b>Total Liabilities</b>              | <b>\$1,443,343.58</b> | <b>\$860,587.11</b>   |
| <b>Net Assets</b>                     | <b>\$3,154,383.78</b> | <b>\$2,923,109.99</b> |
| <b>Equity</b>                         |                       |                       |
| Current Year Earnings                 | -\$8,480.22           | \$310,232.63          |
| Retained Earnings                     | \$3,162,864.00        | \$2,612,877.36        |
| <b>Total Equity</b>                   | <b>\$3,154,383.78</b> | <b>\$2,923,109.99</b> |