

Te Tauākī Koronga mō ngā Mahi kia Tutuki

Statement of Performance Expectations

1 July 2022 – 30 June 2023



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

ISSN: 2815-7257 (Online)

Published as Parliamentary Paper E.31

This Statement of Performance Expectations is also available
on the internet at the Law Commission's website:
www.lawcom.govt.nz

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Statement of responsibility

Te Aka Matua o te Ture | Law Commission prepares and presents this Statement of Performance Expectations (SPE) to the House of Representatives under Part 4 of the Crown Entities Act 2004. It should be read together with the Commission's Statement of Intent 1 July 2020 – 30 June 2024.

This SPE sets out forecast financial information for the year 1 July 2022 to 30 June 2023. The financial information has not been audited and should not be relied on for any other purposes.

The Board acknowledges responsibility for the preparation of this document.



Amokura Kawharu

Tumu Whakarae | President

Date: 30 June 2022



Geof Shirtcliffe

Kaikōmihana | Commissioner

Date: 30 June 2022

Purpose and funding

Te Aka Matua o te Ture | Law Commission (the Commission) is an independent Crown entity operating under its own statute, the Law Commission Act 1985 (the Act). The Commission reports to the Minister responsible for the Commission, who is currently the Minister of Justice.

The Act's purpose is to “promote the systematic review, reform and development of the law of New Zealand”. The Commission was established to fulfil this purpose. Its particular 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 on ways in which the law can be made as understandable and accessible as is practicable.

The Act requires the Commission to act independently in performing its statutory functions.

The Commission receives funding through an appropriation within Vote Justice for Non-Departmental Output Expenses: Services from the Law Commission. For the 2022-2023 year, the appropriation amount is \$3.993 million.

Total appropriation

Actual 2021-2022 \$000	Budget 2022-2023 \$000
3,993	3,993

To deliver the work programme confirmed for 2022-23 the Commission will spend more than the \$3.993 million provided.

What is intended to be achieved with this appropriation?

The appropriation is spent to enable the Commission to deliver its law reform output. This includes:

- (1) providing advice on projects that may be included in the Commission’s future work programme;
- (2) providing law reform advice in respect of projects included within the current work programme that is agreed with the Minister of Justice; and
- (3) publishing occasional “study papers” that provide the Government, judiciary, researchers and others with detailed analyses of issues considered to be materially relevant to the ongoing development of the law.

These activities enable the Commission to achieve its statutory purpose, of promoting the systematic review, reform and development of the law.

The Commission provides advice based on rigorous research, extensive consultation and in-depth analysis. 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. By producing high quality law reform recommendations, the Commission fulfils an important role in improving the quality and currency of legislative and regulatory frameworks. The independent, careful and deliberate nature of the Commission’s work helps to sustain confidence that our laws support a modern democracy, an efficient economy and a just society. Through this role in law reform the Commission also contributes to the Government’s overarching objectives of a unified, value-based government for all New Zealanders that is strongly focussed on improving wellbeing.

In summary, in 2022-2023 the Commission will have five projects continuing and one new project starting, meaning six projects will be underway. As at the date of this SPE the Commission’s work programme and planned outputs for the next three years are as set out in the table below.

For the 2021-2022 work programme, the Commission was referred three new projects, the review of Preventive Detention, the Third Review of the Evidence Act, and a project on Tikanga Māori. In relation to the project on Tikanga Māori, The Commission plans to produce a Study Paper in 2022-2023 that provides an explanation of tikanga Māori, including an account of what it is and where it comes from, grounded in mātauranga Māori. The Study Paper will also consider the interface between tikanga and institutional or state law, including the common law and legislation. This work supports the Commission’s ability to meet its statutory obligation to take into account te ao Māori, and its strategic objective outlined in its Statement of Intent to contribute to a wider and

enduring understanding and recognition of te ao Māori, including tikanga Māori. It also supports the Government’s objective of supporting future-focussed Māori-Crown relations.

For the 2022-2023 work programme, the Commission will be referred one new project. As at the date of this SPE no project planning has been done for this project and outputs are therefore marked as “tbc”.

SUMMARY OF WORK PROGRAMME

Project	2022-2023 (planned)	2023-2024 (anticipated)	2024-2025 (anticipated)
Emergency Powers for Pandemics and Other Threats (commenced 2020-2021)	Study paper published and project completes	-	-
Ngā Huarahi Whakatau: Review of the law relating to adult decision-making capacity (commenced 2020-2021)	First issues paper published	Second issues paper published Final report published and project completes	-
Tikanga Māori (commenced 2021-2022)	Study paper published and project completes	-	-
Preventive Detention (commenced 2021-2022)	Terms of reference and issues paper published	Preferred approach paper published	Final report published and project completes
Third Review of the Evidence Act (commenced 2021-2022)	Terms of reference and issues paper published	Final report published and project completes	-
New reference (to be commenced in 2022-2023)	tbc	tbc	tbc

Revenue has been static for many years. The budget for 2021-2022 was (\$412,553) and anticipated the Commission using reserves to meet the shortfall. Actual expenditure in 2021-2022 is likely to be below budget as outputs were delivered for lower than the costs budgeted. However, expenditure is still above the appropriation resulting in an estimated shortfall of \$142,343, which will be met from reserves. Expenditure required to progress the work programme for 2022-2023 is budgeted to be \$4,868,830. Budgeting for some projects has been done at an early stage of those projects and is based on best estimates. Budgeted expenditure therefore exceeds the appropriation the Commission will receive for the year. The Commission will again use its reserves to meet the shortfall.

How will performance be measured?

MEASURING OUR OUTPUT PERFORMANCE

The Commission assesses its output performance using a combination of quantitative and qualitative measures that are applied to the Commission’s outputs during the year.

1. Advice to the Minister about priorities for law reform

This output is intended to fulfil the Commission’s statutory responsibility to prepare and submit to the Minister of Justice, at least once a year, programmes for the review of appropriate aspects of the law of Aotearoa New Zealand with a view to their reform or development. It also helps to fulfil the Commission’s function of keeping the law under systematic review.

The Commission engages with key stakeholders on areas of law that may require review. Proposals for law reform projects received from members of the legal profession, judiciary, media and the public are noted on a register. The Commission uses the register to assist in the development of advice to the Minister about priorities for law reform. The advice to the Minister then helps to inform what projects may be included in the Commission’s work programme.

Measure	How	Actual 2020-2021	Expected 2021-2022	Planned 2022-2023
The number of times the Commission provides advice to the Minister	The total number of times advice is provided to the Minister	Not measured	Not measured	1
This measure is a quantitative measure that enables the Commission to record that it has met its statutory obligation to provide advice to the Minister about priorities for law reform at least once a year.				

2. Independent and practical law reform advice and recommendations

This output is intended to achieve the development of law that is modern and more just and accessible through the provision of practicable and implementable law reform advice and recommendations to the responsible Minister, the Minister of Justice.

The Commission undertakes a programme of law reform projects that is agreed with the Minister of Justice. The agreed work programme will, typically, cover several projects across different areas of law. For each project the Commission will typically publish terms of reference, one or more consultation documents (usually called issues papers) and a

final report. In making law reform recommendations, the Commission is required to 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.

2.1 Timely publication of terms of reference, consultation papers and final reports and other law reform advice

Measure	How	Actual 2020-2021	Expected 2021-2022	Planned 2022-2023
The number of terms of reference, consultation papers and final reports and other advice	The total number of published terms of reference, consultation papers and final reports and other advice	3	6	5 in total, comprising: 2 terms of reference, and 3 issues papers
<p>The above quantitative measure concerns the Commission’s output productivity.</p> <p>In 2022-2023 the Commission plans to publish terms of reference for two projects, Preventive Detention and the Third Review of the Evidence Act. Terms of reference are published following preliminary research and engagement and describe the scope and intent of the project. The Commission expects to publish the terms of reference for Preventive Detention on 1 July 2022. The Evidence project, including timing, is still being scoped.</p> <p>In addition, the Commission plans to publish three issues papers, one in each of Ngā Huarahi Whakatau (in around late November 2022), Preventive Detention (likely May 2023) and the Third Review of the Evidence Act (timing to be confirmed). Issues papers provide a basis for consultation. They will typically explain the current law under review, perceived problems in the law and potential reform options, and invite feedback on those problems and reform options.</p>				
Reports or law reform advice produced in timeframe agreed with the responsible Minister	The date the report or advice is sent to the responsible Minister	100%	100%	Not applicable
<p>The above quantitative measure concerns the timeliness of the Commission’s final reports and law reform advice. It is not applicable in 2022-2023, as no final report is due this financial year.</p>				

2.2 Engagement

Measure	How	Actual 2020-2021	Expected 2021-2022	Planned 2022-2023
The number of submissions received	The target number of submissions received for each issues paper is met	100%	100%	All targets met (3 out of 3)
<p>The above quantitative measure concerns whether the Commission received at least the target number of submissions in response to each of its issues papers. The target number for a given issues paper will usually be based on the number of people or organisations within the core community of interest in relation to the project. The number of submissions received will vary greatly depending on the nature of the project. A technical project may receive far fewer submissions than a project of wide public interest. Once a target number is set, this is recorded in a Board paper. Although the measure is normally applied at the end of a project, the Commission will provide a progress report on the number of submissions received in response to the issues papers to be published in 2022-2023, for Ngā Huarahi Whakataua, Preventive Detention and the Third Review of the Evidence Act. As at the date of this SPE the target number of submissions in response to these issues papers is yet to be determined.</p>				
The number of consultation meetings held	The target number of consultation meetings per project is met	100%	100%	Not applicable
<p>The above quantitative measure concerns whether the Commission was able to consult with at least the target number of core stakeholders during the lifetime of a project. As with submissions, the target number in a given project will likely refer to the number of people or organisations within the core community of interest in relation to the project and will be recorded in a Board paper. The measure is not applicable for 2022-2023 as no projects will complete this financial year.</p>				

2.3 Consideration of substantive legal and policy issues

Measure	How	Actual 2020-2021	Expected 2021-2022	Planned 2022-2023
High quality evidence-based legal and policy analysis	Survey of independent experts	Agree	Agree	Not applicable
Recognition of te ao Māori	Māori Liaison Committee feedback and survey of independent experts	Agree	Agree	Not applicable
Clear and understandable consultation papers, reports or other advice	Survey of independent experts	Agree	Agree	Not applicable
Independent and practicable recommendations	Survey of independent experts	Agree	Agree	Not applicable
<p>The above qualitative measures are applied to final reports and advice. They rely upon surveys of the members of the Expert Advisory Group (EAG) established for each project and, with respect to the obligation to take account of te ao Māori, external feedback from the chair of Commission's standing Māori Liaison Committee. The measures are not applicable for 2022-2023 as no law reform projects will complete this financial year.</p>				

3. Study papers

This output is intended to achieve improved understanding and informed discussion on matters relevant to an area of law or law reform through in-depth research and articulation of the issues where there are gaps in understanding or differences in views about how the law should be applied or developed. The publication of study papers contributes to the Commission's systematic review of the law.

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.

3.1 Timely publication of high-quality study papers

Measure	How	Actual 2020-2021	Expected 2021-2022	Planned 2022-2023
The number of study papers	The total number of published study papers	Not applicable	Not applicable	2
Study papers produced within planned timeframe	The date the paper is published on the website	Not applicable	Not applicable	Achieved
High-quality research and analysis	Survey of independent experts	Not applicable	Not applicable	Agree
Clear and understandable	Survey of independent experts	Not applicable	Not applicable	Agree
Recognition of te ao Māori	Māori Liaison Committee feedback and survey of independent experts	Not applicable	Not applicable	Agree

Two study papers are planned for publication in 2022-2023, one for the Tikanga Māori project, and one for the project concerning Emergency Powers for Pandemics and Other Threats.

In relation to the Tikanga Māori project the applicable qualitative measures will rely upon a survey of the members of the Expert Advisory Group (EAG) established for the project. The survey allows EAG members to respond to questions by selecting answers from a sliding scale and by providing comments. Members of an EAG are chosen for their independence and expertise and are appointed on a voluntary basis. For the Emergency Powers for Pandemics and Other Threats project the measures will be applied through a focus group survey.

With respect to our undertaking to recognise te ao Māori, the Commission will seek external feedback from the chair of the Commission's standing Māori Liaison Committee. Committee members are drawn from the judiciary, academia, te ao Māori and the legal profession, and comprise persons with strong connections to te ao Māori.

The current chair is the Hon Justice Joe Williams KNZM. Other members are named on our website.

MEASURING OUR IMPACT

The **impact measures** enable the assessment of whether the Commission’s purpose is realised over the long-term, and the influence of the Commission’s work on the wider legal system. The measures are expressed as minimum targets.

4. Implementation rate

Measure	How	Actual 2020-2021	Expected 2021-2022	Target (minimum) 2022-2023
Implementation of reports or other advice	The percentage implementation of reports and advice over the previous 10-year period	75.76%	75.9%	60%

The above quantitative measure concerns the implementation rate of Commission recommendations over a rolling 10-year period. The target minimum percentage is 60% implementation. The Commission developed an assessment system of implementation categories and scores, after reviewing and taking into account international practice.

5. The Commission's wider influence

Measure	How	Actual 2020-2021	Expected 2021-2022	Target (minimum) 2022-2023
The number of community engagements	The number of community engagements (such as presentations, interviews and published articles)	26	28	15
The number of references to the Commission's work	The number of references in higher court decisions	85 (judicial)	99 (judicial) (as at 30 April 2022)	60 (judicial)
	The number of references in Parliamentary debates New Zealand legal texts and journals, and the media	464 (other)	406 (other) (as at 30 April 2022)	300 (other)

In addition to the implementation of the Commission's recommendations, the Commission's work also impacts more widely and significantly in the legal system through its influence in professional and community consideration of the law and law reform issues. The above quantitative measures concern the number of community engagements by Commissioners and staff, and the number of references to the Commission's work by the senior courts, Parliament, academia, the media and others. Many of the references are picked up through media monitoring. Others are picked up through the Commission's own searches, for example, of senior court judgments.

Prospective financial information

Under the Crown Entities Act 2004, the Commission must include prospective financial statements in its Statement of Performance Expectations.

These financial statements indicate the likely financial impact of implementing the Law Commission's strategic direction. The information is indicative and may not be appropriate for any other purpose. These financial statements are not audited.

STATEMENT OF FORECAST COMPREHENSIVE INCOME (GST EXCLUSIVE)

INCOME	2020-2021 Actual \$	2021-2022 Forecast \$	2022-2023 Planned \$
Revenue from Crown	4,293,000	3,993,000	3,993,000
Other Income	3,224	2,926	4,000
Total revenue	4,296,224	3,995,926	3,997,000
EXPENDITURE			
Personnel costs	2,874,620	3,029,799	3,215,044
Occupancy costs	240,746	256,535	290,000
Direct project costs	137,372	87,000	713,663
Library	106,969	120,320	136,210
Audit Fees	32,539	33,000	46,913
Other operating costs	270,038	531,071	342,500
Depreciation	83,492	80,544	82,500
Total expenditure	3,745,776	4,138,269	4,868,830
Operating surplus/(deficit)	550,448	(142,343)	(871,830)
Cumulative surplus/(deficit)	550,448	(142,343)	(871,830)

STATEMENT OF FORECAST CASH FLOW (GST INCLUSIVE)

INCOME	2020-2021 Actual \$	2021-2022 Forecast \$	2022-2023 Planned \$
Cash flows from operating activities			
Receipts			
Other Revenue	3,224	20,839	4,000
Revenue from Crown	4,293,000	3,993,000	3,993,000
	4,296,224	4,013,839	3,997,000
Payments			
Payments to Employees	2,814,759	2,998,928	3,257,044
Payments to Suppliers	835,982	1,184,050	1,489,143
Goods and services tax (net)	5,696	5,973	138
	3,656,437	4,188,951	4,746,325
Net cash flow from operating activities	639,787	(175,112)	(749,325)
Cash flows from investing activities			
Purchase of property, plant and equipment	(25,158)	(18,734)	(115,000)
Net cash flow from investing activities	(25,158)	(18,734)	(115,000)
Net (decrease)/increase in cash and cash equivalents	614,629	(193,846)	(864,325)
Opening bank	2,566,332	3,180,961	2,987,115
Closing bank	3,180,961	2,987,115	2,122,790

STATEMENT OF FORECAST FINANCIAL POSITION

	2020-2021 Actual \$	2021-2022 Forecast \$	2022-2023 Planned \$
Non-current assets	406,865	345,055	377,555
Current assets			
Bank	3,180,961	2,987,115	2,122,790
Receivables	47,014	68,472	22,000
Total Assets	3,634,840	3,400,642	2,522,345
Creditors due within one year			
Accounts payable and accruals	84,284	99,109	100,398
Employee entitlements	288,640	202,359	215,000
	372,924	301,468	315,398
Non-current liabilities	98,590	78,192	57,795
Total net assets	3,163,326	3,020,982	2,149,152
Equity			
Retained Earnings	3,163,326	3,020,982	2,149,152

STATEMENT OF FORECAST CHANGES IN EQUITY

	2020-2021 Actual \$	2020-2021 Forecast \$	2021-2022 Planned \$
Net surplus/(deficit) for period	550,448	(142,343)	(871,830)
Total comprehensive revenue and expenses for the year	550,448	(142,343)	(871,830)
Equity at Beginning of Period	2,612,877	3,163,325	3,020,982
Equity at End of Period	3,163,325	3,020,982	2,149,152

Statement of Underlying Assumptions

Under the Crown Entities Act 2004, Te Aka Matua o te Ture | Law Commission must include prospective financial statements in its Statement of Intent as part of promoting public accountability.

The purpose for which these financial statements have been prepared is to indicate the likely financial impact of the implementation of the Commission's longer-term strategic direction. The information disclosed is indicative only and may not be appropriate for any other purpose. These financial statements are not audited.

The statements have been prepared on the assumption that current Government policies and appropriations and Government funding and financial reserves will be adequate to cover operating costs and capital purchases for the short-medium term. The statements contain the best estimates and assumptions as to future events that are expected to occur. As the statements are prospective, actual results are likely to vary from the information presented. All material variations will be disclosed in the subsequent annual report.

The 2021-2022 estimated actual position is based on the Commission's judgements, estimates and assumptions.

Occupancy and administration costs are based on historical experience and the current lease agreement. All known or reasonably estimated increases or decreases in any expense category have been included.

No allowance for revaluation of fixed assets has been made in these statements. Depreciation and amortisation costs are based on the assumption that the Commission will replace assets, including software, as required.

It is assumed that the Commission will continue with three full time equivalent Commissioners for the foreseeable future.

The Commission has a lease with Robert Jones Holdings Limited for the current office space. This contract extends for the nine years from 24 April 2018 to 23 April 2027 with a right of renewal for a following six years.

Statement of Accounting Policies

Reporting Entity

The Commission is a Crown Entity under the Crown Entities Act 2004. The Commission was established by the Law Commission Act 1985 and is domiciled in New Zealand. As such, the Commission's ultimate parent is the New Zealand Crown.

The Commission's functions and responsibilities are set out in the Law Commission Act 1985. The Commission's statutory purpose is to undertake the systematic review, reform and development of the law of New Zealand. The Commission undertakes to provide high-quality advice to the Government and Parliament and does not have a specific objective of making a financial return to the Crown. Accordingly, the Commission has designated itself as a public benefit entity for the purposes of New Zealand Generally Accepted Accounting Practice (NZ GAAP).

Basis of Preparation

The forecast financial statements have been adapted to comply with NZ GAAP. The preparation of forecast financial statements in conformity with NZ IFRS requires judgements, estimates and assumptions that affect the application of policies and reported amounts of assets and liabilities, income and expenditure.

The prospective financial statements have been prepared on the historical cost basis, modified by the revaluation of library collections, furniture and fittings, and office equipment. The Commission has complied with FRS42 in the preparation of these prospective financial statements.

Accounting Policies

The following accounting policies, which materially affect the measurement of financial performance and financial position, have been applied. These accounting policies have been applied consistently to all periods presented in these prospective financial statements.

Revenue

The Commission derives revenue from the provision of outputs to the Crown, the sale of its publications to third parties, provision of specialist services, and income from investments. Government funding is recognised as revenue in the year for which it is appropriated and is

recognised on a straight-line basis. Other revenue is recognised in the period in which it is earned.

Goods and Services Tax (GST)

All items in the financial statements are exclusive of GST, with the exception of receivables and payables, which are stated with GST included.

Taxation

The Commission is a public authority in terms of the Income Tax Act 2004 and consequently is exempt from income tax.

Foreign Currency

Transactions in foreign currencies are initially translated at the foreign exchange rate at the date of the transaction.

Fixed Assets

All fixed assets are initially recorded at cost. Library collections, furniture and fittings, and office equipment are stated at fair value. Fair value is determined using market-based evidence. Additions between revaluations are recorded at cost.

Changes in revaluation are charged to the asset revaluation account. When such charges result in a debit balance in the revaluation reserve account, the balance is expensed to the prospective statement of comprehensive income.

Depreciation

Depreciation is provided on a straight-line basis on all fixed assets at a rate that will write off the cost (or valuation) of the assets over their useful lives. The useful lives and associated depreciation rates of major classes have been estimated as follows:

Asset Class	Estimated Useful Life (Years)	Rate of Depreciation (%)
Computer Equipment	2-8 years	13-67%
Furniture and Fittings	3-10 years	20%
Office Equipment	5 years	20-67%
Library Collections	9 years	11.11%

Intangible Assets

Software that is not integral to the operation of the hardware is a finite life intangible and is recorded at cost less accumulated amortisation and impairment. Amortisation is charged on a straight-line basis over a period of three years.

Operating Leases

Leases where the lessor effectively retains substantially all the risks and benefits of ownership of the leased items are classified as operating leases. Operating lease expenses are recognised on a systematic basis over the period of the lease.

Cost Allocation Policy

Direct costs identifiable against specific projects are charged directly to those projects. Indirect costs are recorded against the generic cost and allocated at a later stage against projects on an hours spent basis.

Financial Instruments

The Commission is a party to financial instruments as part of its normal operations. These financial instruments include bank accounts, short-term deposits, debtors and creditors. All financial instruments are recognised in the prospective statement of financial position and all revenue and expenses in relation to financial instruments are recognised in the prospective statement of comprehensive income. All financial instruments are shown at their estimated fair value.

Accounts Receivable

Accounts Receivable are stated at their estimated realisable value after providing for doubtful and un-collectable debts.

Employee Entitlements

Provision is made in respect of employee's annual leave. The provision is calculated on current rates of pay and expected to be settled within 12 months of reporting date (or approval gained to carry forward leave) and is measured at nominal values on an actual entitlement basis at current rate of pay. These amounts are included within accounts payable.

Provision is made for sick leave entitlement in accordance with New Zealand Equivalent to International Accounting Standard 19.11-14. The Commission does not provide long service leave or retirement leave.



The office of Te Aka Matua o te Ture | Law Commission is located at:

Level 9, Solnet House, 70 The Terrace, Wellington

The postal address is:

PO Box 2590, Wellington, 6140 DX SP23534

Telephone: (04) 473 3453

Email: com@lawcom.govt.nz

Information about the Commission and its work is available from the website at www.lawcom.govt.nz.