

Law Commission

Te Aka Matua o Te Ture

Second Trimester Report

1 November 2019 – 29 February 2020



1. Introduction

This is the Law Commission's second Trimester report for 2019-20. This is supplied as required by the letter of expectations between the Minister Responsible for the Law Commission and the Law Commission dated 8 April 2019.

This report is written in the COVID-19 pandemic operating environment. Although the Commission continued to work efficiently and effectively throughout the first and second trimester, the ability to deliver previously agreed targets will be challenging during the third trimester. The impact of COVID-19 upon the Commission's outputs is not yet quantifiable. *The Commission has offered its policy and legal advice capacity to the Ministry of Justice for more urgent work, should that be needed.*

2. Summary of Law Reform Projects – as at 29 February 2020

Project	Current status	Target dates ¹
Review of the Criminal Investigations (Bodily Samples) Act 1995	The final report is being drafted. Access to key external information and feedback is likely to be unavailable due to COVID-19.	The target date for the final report is June 2020. At this point it is uncertain what the impact of COVID-19 is on the Commission's ability to deliver this report.
Review of Class Actions and Litigation Funding	The project is underway.	Final report is planned for December 2021. At this point it is uncertain what the impact of COVID-19 is on the Commission's ability to deliver this report.
Review of Succession Law	This project is underway.	Final report is planned for November 2021. At this point it is uncertain what the impact of COVID-19 is on the Commission's ability to deliver this report.
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 commenced.	N/A

¹ **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

3. Law Reform Programme

3.1 Final reports

No final reports were completed in the second trimester period.

3.2 Issues Papers

No Issues Papers were released during the second 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. Completing the final report within the 2019/20 year may be now affected by the COVID-19 operating environment.

3.4 Bills before the House - Second 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:

- i. *Births, Deaths, Marriages, and Relationships Registration Bill 296-2* (Introduced 10 August 2017; Select Committee report 10 August 2018; awaiting second reading however (deferred due to problems arising in the Select Committee process).

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

- ii. *Privacy Bill 34-2* (Introduced 20 March 2018; Second reading 7 August 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).

- iii. *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 second trimester of this year that relate (at least in part) to the Law Commission's earlier work:

i. Abortion Legislation Act 2020 (2020/6) Royal Assent 23 March 2020

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

(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 draft bill is awaiting consideration by Cabinet.

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). An exposure draft Bill for consultation is expected to be released in 2020.

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). We understand the Ministry of Justice submitted the bid 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. Due to the appointment of a fourth Commissioner (and President) only occurring and being effective from 11 May 2020 the personnel costs are under budget. Thus, having only three Commissioners for all of the 2019-20 year has temporarily slowed the negative impact on reserves.

The Commission will endeavour to deliver an effective and efficient law reform work programme but considerable budget constraints have and continue to make this a challenge.

5. Statement of Forecast Service Performance 2019-2020

Output Performance Measure		
Quantitative measures	Target for 2019-20	Second 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 June 2020. COVID-19 may prevent the delivery of this report.
Measure – Publication of Issues Papers	Target – 1 Issues paper posted to website	Target is not expected to be met, given timeframes for Class Actions and Litigation Funding and Review of Succession Law, and that 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	Second 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 if it is delivered at the target date..
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 29 February 2020.

Profit and Loss statement for the 8 months to 29 February 2020:

Profit & Loss
Law Commission
For the 8 months ended 29 February 2020

	<i>YTD Actual</i>	<i>YTD Budget</i>	<i>Var NZD</i>	<i>Var %</i>
Income				
Interest Income	\$15,086.34	\$36,000.00	-\$20,913.66	-58.1%
Other Income	\$68,970.83	\$0.00	\$68,970.83	
Revenue from Crown	\$2,662,000.00	\$2,662,000.00	\$0.00	0.0%
Sale of Publications	\$454.35	\$0.00	\$454.35	
Total Income	\$2,746,511.52	\$2,698,000.00	\$48,511.52	1.8%
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Total Income	\$2,746,511.52	\$2,698,000.00	\$48,511.52	1.8%
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Less: Operating Expenses				
Communications	\$15,131.68	\$0.00	\$15,131.68	
Consultancy	\$0.00	\$24,000.00	-\$24,000.00	-100.0%
Depreciation and Amortisation	\$53,387.12	\$48,000.00	\$5,387.12	11.22%
Foreign Currency Gains and Los:	-\$24.66	\$0.00	-\$24.66	
General Expenses	\$365,985.95	\$183,568.00	\$182,417.95	99.37%
Library Costs	\$53,226.77	\$66,880.00	-\$13,653.23	-20.41%
Occupancy Costs	\$158,383.52	\$169,600.00	-\$11,216.48	-6.61%
Personnel Costs	\$1,669,119.31	\$2,208,804.00	-\$539,684.69	-24.43%
Project Costs	\$15,942.44	\$133,936.00	-\$117,993.56	-88.1%
Total Operating Expenses	\$2,331,152.13	\$2,834,788.00	-\$503,635.87	-17.77%
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Net Surplus	\$415,359.39	-\$136,788.00	\$552,147.39	403.65%

Balance Sheet as at 29 February 2020:

Balance Sheet
Law Commission
As at 29 February 2020

	29 Feb 2020	30 Jun 2019
Assets		
<i>Current Assets</i>		
Accounts Receivable	\$4,327.94	\$23,435.21
Cash	\$2,322,650.80	\$1,888,756.99
GST	\$17,132.11	\$19,969.20
Prepayments	\$48,522.81	\$0.00
Total Current Assets	\$2,392,633.66	\$1,932,161.40
<i>Non-current Assets</i>		
Fixed Assets	\$478,200.96	\$531,560.85
Total Non-current Assets	\$478,200.96	\$531,560.85
Total Assets	\$2,870,834.62	\$2,463,722.25
Liabilities		
<i>Current Liabilities</i>		
Creditors and Provisions	\$60,934.15	\$85,184.32
Current Lease Incentive Provision	\$20,398.00	\$20,398.00
Employee Entitlements	\$226,303.55	\$196,701.76
Total Current Liabilities	\$307,635.70	\$302,284.08
<i>Non-Current Liabilities</i>		
Non-Current Lease Incentive Provision	\$125,787.73	\$139,386.37
Total Non-Current Liabilities	\$125,787.73	\$139,386.37
Total Liabilities	\$433,423.43	\$441,670.45
Net Assets	\$2,437,411.19	\$2,022,051.80
Equity		
Current Year Earnings	\$415,359.39	\$70,279.33
Retained Earnings	\$2,022,051.80	\$1,951,772.47
Total Equity	\$2,437,411.19	\$2,022,051.80