

Briefing for the Incoming Minister

November 2020



1. THE ROLE OF TE AKA MATUA O TE TURE | LAW COMMISSION

Te Aka Matua o te Ture | Law Commission (the Commission) is an Independent Crown Entity operating under the Law Commission Act 1985. The Commission keeps the law of Aotearoa New Zealand under systematic review and provides advice to the Government (and occasionally Parliament) about how to reform and develop the law to support a modern democracy, an efficient economy and a just society.

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. 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. For this to be successful additional budget funds are required.

2. KEY ROLES AS MINISTER RESPONSIBLE FOR TE AKA MATUA O TE TURE

- a. **Appoint Commissioners:** The Commission currently has three members (the Law Commission Act allows for a minimum of three and up to six Commissioners). Commissioners are appointed by the Governor General on the recommendation of the responsible Minister.

Current members of the Commission are:

- **Amokura Kawharu**, *President* – former Associate Professor of Law, Auckland University. Ms Kawharu's term expires on 10 May 2025.
- **Helen McQueen**, *Deputy President* – former partner of Chapman Tripp. Ms McQueen's term expires on 8 February 2021.
- **Donna Buckingham**, *Commissioner* – former Associate Professor of Law, Otago University. Ms Buckingham's term expires on 15 May 2021.

- b. **Approve work programme:** The Minister writes an annual letter to the Commission outlining the work programme you expect it to deliver for the upcoming financial year. To assist your decision-making, the Commission makes suggestions about appropriate projects for the work programme and you are generally required to consult with your Cabinet colleagues in accordance with the Cabinet Circular CO(09) 1.

- c. **Respond to reports:** The Minister oversees the Government's response to the Commission's reports. This will include presenting the report to the House of Representatives and preparing a Cabinet paper, and either the preparation of a draft Bill (if recommendations are accepted) or a formal response by way of a paper presented to

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).

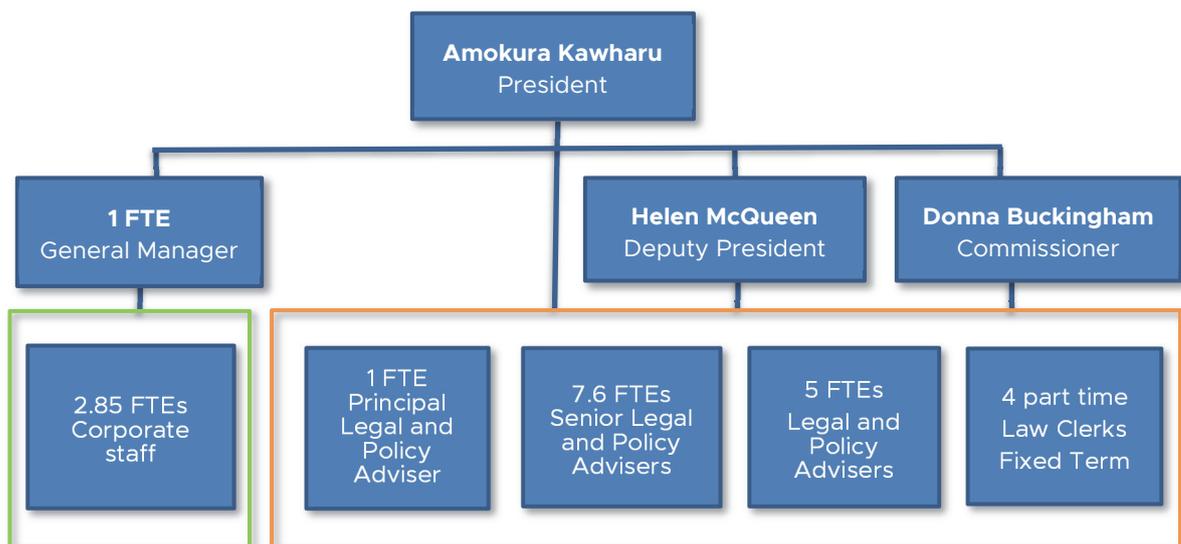
the House of Representatives (if recommendations are not accepted), in either case in accordance with the Cabinet Circular CO(09) 1.

3. MATTERS FOR EARLY ATTENTION BY YOU AS RESPONSIBLE MINISTER

- a. **Replacement of two Commissioners or extension of terms** – Two Commissioners have terms that are expiring within the next 6 months: one on 8 February 2021 and one on 15 May 2021. To maintain the statutory minimum, the Commissioners must be replaced, or their terms extended, before the relevant expiry date.
- b. **Budget bid 2021-2022** – the Law Commission will submit a budget bid requesting an increase in funding to enable the implementation of its current strategic plan.
- c. **Approve 2021-2022 work programme** – the 2021-2022 work programme will need to be developed and approved. The Commission currently has a full programme of work some of which will continue into that year. Some capacity for new work expected in early 2022. The amount of capacity will depend on resources and the budget available.

We also note that section 202 of the Evidence Act 2006 is still in force. The Commission's second review of the Evidence Act 2006 recommended the repeal of section 202, but this recommendation is yet to be implemented. Unless repealed, you will be required to instruct the Commission, by 15 February 2022, to undertake a third review of the Evidence Act.

4. OUR ORGANISATION



Headline Points: The Commission has 20.45 FTEs including three Commissioners. The Commission is funded solely by an appropriation of \$3.993m. Remuneration of the three Commissioners consumes 27.7% of the appropriation. External project costs for 2020-2021 are being funded via a one-off fiscally neutral funding transfer of \$300,000 and from reserve funding of \$100,000.

5. KEEPING THE MINISTER INFORMED

- a. Three trimester reports (November, March and July) are sent to the Minister's office. The Annual report for 2019-20 is due to be finalised and tabled in December 2020.
- b. We will arrange with your Office for regular engagements with you throughout the year to discuss Law commission activities and progress.

6. BUDGET BID FOR 2021-2022

- a. In 2020-2021, the Commission received a one-off additional fiscally neutral funding transfer of \$300,000 to assist with the implementation of its new strategic plan.
- b. A budget bid for 2021-2022 is being submitted. The increased budget is to enable the continued implementation of the Commission's strategic plan. If the bid fails, the Commission will continue to run down reserve funds with potential insolvency by 2022-2023.

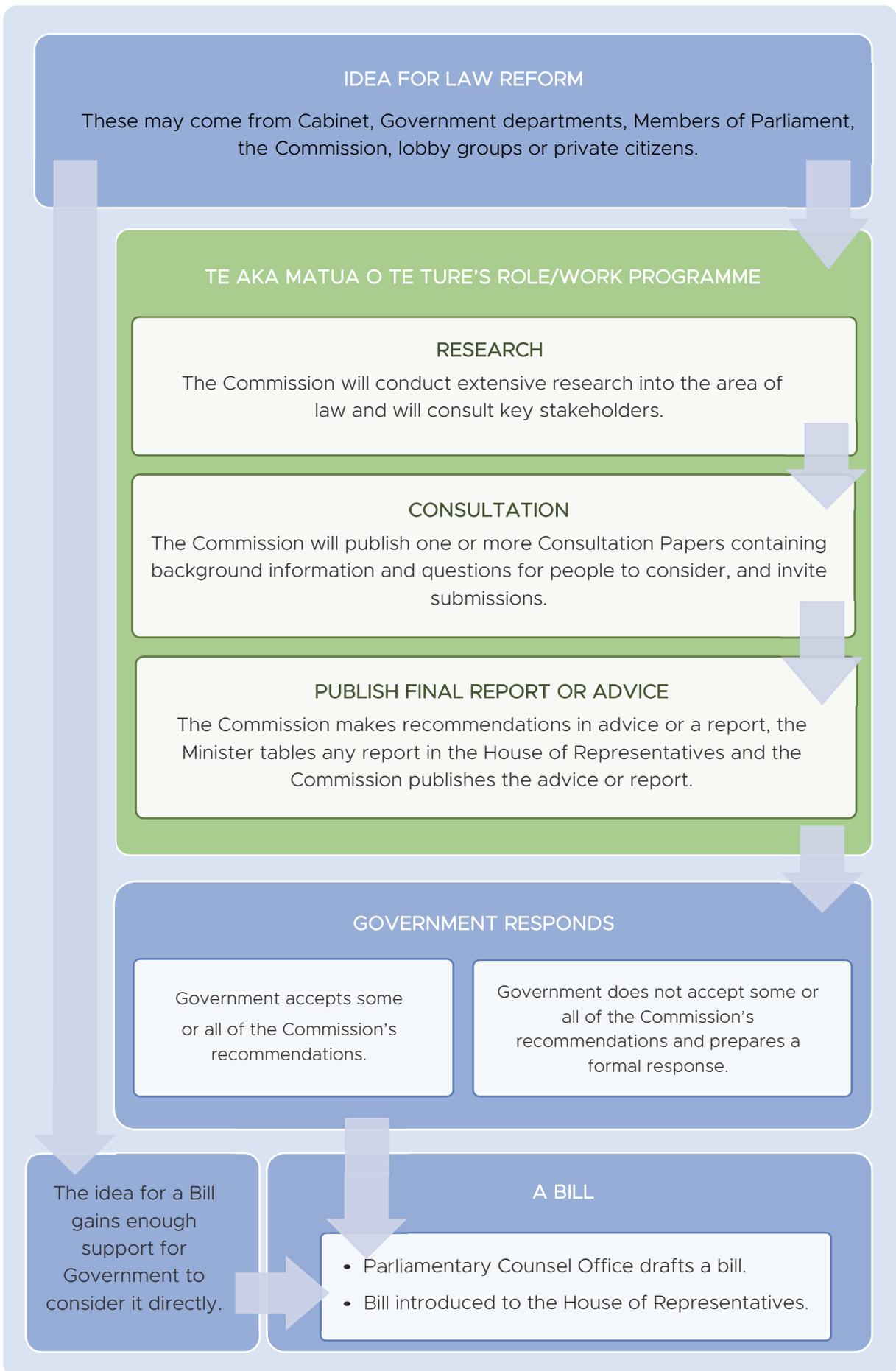
7. HOW THE COMMISSION CREATES VALUE FOR AOTEAROA NEW ZEALAND AND HELPS THE GOVERNMENT ACHIEVE ITS GOALS.

PAE TAWHITI

**Kia whanake ngā ture o Aotearoa mā te arotake motuhake
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.



8. WHAT WE ARE CURRENTLY DOING?

As at 9 November 2020, the Commission's confirmed law reform programme for the next four years is:

Law reform references	2020/21	2021/22	2022/23	2023/24
Review of the use of DNA in criminal Investigations	Report completed – provided to the Minister on 30 October 2020. The report is yet to be tabled.			
Review of succession law	Consultation Paper to be published and consultation undertaken.	Report to be completed November 2021.		
Review of class actions and litigation funding	Consultation Paper to be published and consultation undertaken.	Consultation Paper published and consultation undertaken Report to be completed May 2022.		
Review of the law relating to adults with impaired decision-making capacity	Reference to be commenced.	Consultation Paper to be published and consultation to be undertaken.	Consultation Paper to be published and consultation to be undertaken.	Report likely completed 2023.
Review of surrogacy law	Reference commenced.	Consultation Paper to be published and consultation undertaken Report likely completed in 2022.		

- a. Review of the use of DNA in criminal investigations. The final report was completed and delivered to the (caretaker) Minister on 30th October 2020. The report is yet to be tabled. This work was led by Commissioner Donna Buckingham.
- b. Review of Succession law: This project follows on from the Commission's report on the review of the Property (Relationships Act) 1976. The review is considering succession law and in particular claims against an estate. This project is being led by Deputy President Helen McQueen.
- c. Review of class actions and litigation funding: There is currently no specific regulation of litigation funding in Aotearoa New Zealand. The rules on representative actions have not changed since the 19th century and do not provide guidance on the many issues that arise in modern class actions. This project is being led by President Amokura Kawharu.
- d. Review of the law relating to adults with impaired decision-making capacity. This project is due to commence in December 2020. This work will be led by Commissioner Donna Buckingham.

- e. Review of surrogacy law. This project commenced in October 2020. This project is being led by Principal Legal and Policy Adviser Nichola Lambie under the supervision of Deputy President Helen McQueen.

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