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LAW·COMMISSION  
TE·AKA·MATUA·O·TE·TURE

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*Report of the*

LAW COMMISSION  
Te Aka Matua o te Ture

*for the year ended 30 June 2001*

*Presented to the House of Representatives under  
section 17 of the Law Commission Act 1985 and  
section 44A of the Public Finance Act 1989*

*August 2001*  
Wellington, New Zealand

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31 August 2001

Dear Ministers

I have the honour to submit the report of the Law Commission for the year ended 30 June 2001.

This report is prepared under section 17 of the Law Commission Act 1985 and section 44A of the Public Finance Act 1989.

Yours sincerely

*J Bruce Robertson*  
President

*The Hon Margaret Wilson*  
Minister Responsible for the  
Law Commission  
Parliament Buildings  
Wellington

*The Hon Phil Goff*  
Minister of Justice  
Parliament Buildings  
Wellington



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# The Law Commission: Te Aka Matua o te Ture Directory

THE LAW COMMISSION is an independent, publicly funded, central advisory body established by statute to undertake the systematic review, reform and development of the law of New Zealand. Its purpose is to help achieve law that is just, principled, and accessible, and that reflects the heritage and aspirations of the peoples of New Zealand.

In developing its proposals, the Commission recognises the Treaty of Waitangi as the founding document of New Zealand, and takes account of community and international experience.

The members of the Law Commission as at 30 June 2001, appointed under section 9 of the Law Commission Act 1985, are:

The Honourable Justice J Bruce Robertson – President  
DF Dugdale

Paul Heath QC

Judge Patrick Keane

Professor Ngatata Love QSO JP

Vivienne Ullrich QC

## ADDRESS DETAILS

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Information about the Law Commission and its work is available via the Internet from the Commission's website at: <http://www.lawcom.govt.nz>.

## FUNDING

The Law Commission is funded from money appropriated by Parliament through Vote:Justice.

## MĀORI COMMITTEE

The Māori Committee to the Law Commission assists the Commission in identifying projects to advance te ao Māori, and helps the Commission in implementing te ao Māori in its work. The current members are:

Sir Graham Latimer (Chairman)

Rt Rev Bishop Manuhuia Bennett ONZ CMG

Hon Justice ET Durie

Professor Mason Durie

Judge Michael JA Brown CNZM

Te Atawhai Taiaroa

Whetumarama Weretā

Jackie Te Kani

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# President's report

HONOURABLE JUSTICE J BRUCE  
ROBERTSON

THE PAST 12 MONTHS have seen substantial changes in personnel at the Law Commission but the fundamentals of our task remain unchanged and unchanging.

Behind the formal words of our statute the mission and function can be expressed succinctly. The Commission exists to assist in the process of ensuring that the law in New Zealand is as:

- simple;
- relevant; and
- accessible

as it reasonably can be.

The community in which we live, the political system under which we are governed and the dynamics of a global economy are constantly changing. The Commission is required to be responsive to changing expectations and demands but vigilant in ensuring the maintenance of fundamental rights and norms that must always be preserved.

There will inevitably be a tension between the agenda and policy of successive governments and the preservation and maintenance of fundamentally unchanging tenets. The Commission needs to be of the community and responsive to its needs but independent of any sector or group and able to advocate fearlessly proposals for reform following inquiry and research.

During the past year, as is detailed below, reports and study papers have been issued in a wide variety of areas.

As discussed in depth in the Annual Report 2000 when commenting on the Review of the Commission undertaken by the Rt Hon Sir Geoffrey Palmer, a major issue has been the implementation of our reports. This is an important facet of the relationship between the Law Commission and Executive Government. Commitments have now been made and we are optimistic that protocols can be established which ensure that the Commission's energy is directed in areas that are of concern and where a difference can be made.

This must always happen without compromising the statutory independence which is essential if the Commission is to have credibility and the confidence of the wider community.

Over its period of existence, successive Presidents and various Commissioners have brought an amazing range of skills, experience, vision and ability to the Law Commission. At this time we acknowledge in particular the commitment of Justice Baragwanath as President from 1996–2001, and the wisdom, experience and determination of both Judge Margaret Lee and Tim Brewer during their respective terms.

These Commissioners, whose terms concluded prior to or at 31 March 2001, made extraordinary efforts to bring to fruition, by the presentation and publication of reports or study papers, virtually all work in which they had been involved. The output of the Commission in the past five years has been immense. A major task now exists for the present Commissioners of ensuring that this material becomes a catalyst for change and is influential in reform that is undertaken.

We have a number of areas in which we are continuing to work on existing projects but a new raft of references have been received.

The largest in its outreach, volume and complexity is a consideration of the structure of the courts in New Zealand (apart from the Privy Council and the present Court of Appeal or any institutions in substitution therefor).

The terms of reference anticipate, and the determination of the Commission is, that there should be the widest possible consultation with all sectors and groups within society. Publicly created and administered courts and tribunals must be responsive to the needs of the entire community, sensitive to requirements and aspirations across the board, but always efficient and sensible in their operation. The judicial system must be a servant of the community by which the rights and responsibilities that have been created and developed over centuries are enforced and upheld with integrity, dignity, impartiality and objectivity.

The Courts reference will be a major collaborative enterprise in which the Commission will work closely with relevant government agencies and departments. It will necessarily involve collaboration with the judiciary and the legal profession but at its heart it must be responsive to the expectations, requirements and demands of ordinary New Zealanders. In this exercise we are particularly mindful of the need to assess and respond to the Māori perspective and the position of minority groups within our community.

We have other references involving powers of search, the appropriateness and operation of status hearings and sentence indications within criminal courts, the nature of the processes operating in Family Courts, the scope and operation of general discovery in civil litigation, and issues relating to the use and enjoyment of assets obtained as part of Treaty settlement processes.

It is inevitable that different people at the Commission will mean changes in emphasis and approach. The strong existing foundations will be built on and enhanced to ensure that the Commission meets its statutory function in ways that are effective. Being engaged with but not absorbed by the political, bureaucratic, academic, business and legal milieux is our challenge.

The output and influence of the Law Commission are products of not only the Commissioners for the time being, but the research and support staff, independent consultants and others with whom we are engaged in collaborative and consultative work.

In all of this we have been, and continue to be, very fortunate and well served.

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# The Commissioners

## CURRENT COMMISSIONERS

### **Hon Justice J Bruce Robertson**

JUSTICE ROBERTSON began a five-year term as President of the Law Commission on 1 May 2001. He was appointed a High Court Judge in 1987 sitting in Auckland. He has been a member of the Criminal Appeal Division of the New Zealand Court of Appeal since 1996 and has regularly presided in the Court of Appeal of Vanuatu. He continues with both of these involvements.

The Judge graduated BA, LLB from the University of Otago. As a Harkness Fellow of the Commonwealth Fund of New York he completed an LLM at the University of Virginia in the early 1970s. He has an Honorary Doctorate of Laws from Otago where he was both a part-time lecturer and a Council member for almost 20 years. For six years he was Pro-Chancellor.

He was a partner in a Dunedin law firm, is a former President of the Otago District Law Society, served on the Council of Legal Education, and was for 10 years President of the Legal Research Foundation. He has been a member of the Legislation Advisory Committee since its inception.

He is the consulting editor of *Adams on Criminal Law* and the New Zealand Law Society's *Introduction to Advocacy*.

### **DF Dugdale**

DF Dugdale was appointed a Law Commissioner for a term of five years from 16 April 1997.

He graduated in Law at Auckland University and was formerly senior partner of Kensington Swan in Auckland. He has been President of the Auckland District Law Society, Vice-President of the New Zealand Law Society, and has served on both the Council of Legal Education and the Council of Law Reporting. He was a member of the Contracts and Commercial Law Reform Committee during

the 20 years of its existence and has specialised in commercial and property litigation. His publications in the year under review include the *Laws of New Zealand* title “Sale of Land”.

### **Paul Heath QC**

Paul Heath was appointed as a part-time Law Commissioner on 10 May 1999 for a term of three years.

He graduated LLB from Auckland University in 1978 and since 1996 has been FCI Arb (UK) and FAMINZ (Arb). He practises as a Queen’s Counsel in Hamilton specialising in commercial litigation (especially insolvency-related issues), arbitration and mediation. Paul Heath is a former partner of Stace Hammond Grace & Partners in Hamilton and a past Convenor of the New Zealand Law Society’s Commercial and Business Law Committee. He has also been a member of the Joint Insolvency Committee, which was established by the New Zealand Law Society and the Institute of Chartered Accountants of New Zealand to consider insolvency law reform.

### **Judge Patrick Keane**

Judge Keane has been appointed as a Law Commissioner for a term of three years from 1 May 2001. He graduated BA (1968) and LLB (Hons) (1970) from Victoria University of Wellington. In 1987 he was appointed a District Court Judge and a Taxation Review Authority. He has held a Family Court warrant and currently holds a trial warrant. He has been a partner in the law firms Izard Weston & Co and Watts & Patterson (and, as it became, Rudd Watts & Stone). He has also been a Crown Counsel.

### **Dr Ngatata Love QSO JP**

Dr Love has been appointed as a part-time Law Commissioner for a term of three years from 1 May 2001.

He studied at Victoria University of Wellington and graduated BCom (1969), BCA (Hons) (1969) and PhD (1978). He has recently retired as the Chief Executive of Te Puni Kōkiri having served in that position since 1995. From 1973 to 1995, Dr Love held a number of academic posts at Massey University and was appointed as a professor in 1981. He served as Dean of the Faculty of Business Studies between 1986 and 1995. Dr Love will provide the Law Commission with specialist knowledge on Māori issues and policy practices in the public sector.

## **Vivienne Ullrich QC**

Vivienne Ullrich was appointed as a part-time Law Commissioner in May 2001 for a term of three years. She practises as a Queen's Counsel in Wellington, specialising in family law.

After her admission to the bar she was employed by Wallace McLean Bawden & Partners in Auckland and after spending some years as a member of the Law Faculties in Auckland and Victoria Universities she returned to practice as a barrister sole in 1990. She was a member of the first executive committee of the Family Law Section of the New Zealand Law Society and is an author of *Trapiski's Family Law* on guardianship and matrimonial property. She has also held a warrant as a member of the Removal Review Authority and the Residence Appeal Authority.

## **FORMER COMMISSIONERS**

### **Hon Justice David Baragwanath**

Justice Baragwanath completed a four-and-a-half-year term as President on 31 March 2001.

He graduated from Auckland University with an LLB in 1964 and as a Rhodes Scholar at Balliol College Oxford was awarded a BCL (First Class) in 1966. He undertook research at the University of Virginia on a Fulbright Travel Award in 1981.

Justice Baragwanath was a partner in Meredith Connell & Co the Crown Solicitors in Auckland from 1966 until he went to the Separate Bar in 1977. He was made Silk in 1983 and appointed a High Court Judge in 1995. Justice Baragwanath has for some years been a member of the Aviation Study Group based in Linacre College Oxford and has now returned as Puisine Judge in the High Court at Auckland.

### **Judge Margaret Lee**

Judge Margaret Lee completed a five-year term as a Law Commissioner on 31 March 2001. Judge Lee was born in China. She had a varied working life before beginning her legal career and held positions in New Zealand and with international agencies overseas involving staff training, education and research.

She was admitted to the Bar in 1980 and became a Partner in Tripe, Matthews & Feist, a Wellington Law firm, in 1982 and a District Court Judge in 1987. She has conducted jury trials since 1992.

## **Tim Brewer ED**

Tim Brewer was a part-time Law Commissioner from 30 September 1997 until 31 March 2001 although he has continued as a consultant to complete some continuing work. Tim Brewer is a fifth generation Taranakian and has practiced in New Plymouth as a lawyer since November 1980. He has been the Crown Solicitor at New Plymouth since 1988.

Tim Brewer holds a First Class Honours degree in Law from Victoria University of Wellington, has been a member of the New Zealand Law Society Criminal Law Committee and of the Courts Martial Panel of Advocates. He serves in the New Zealand Army in the rank of Brigadier (Territorial Force) and was awarded the Territorial Force Decoration (ED) in 1994.

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# The year under review

## REPORTS

THE FOLLOWING REPORTS were published this year.

### **Some Criminal Defences with Particular Reference to Battered Defendants (NZLC R73, May 2001)**

This report was completed and printed in May 2001 and tabled in Parliament in July 2001.

The Commission considers that the theory of “battered woman syndrome” does not adequately or comprehensively describe the nature of battering relationships or the effects of battering and recommends that the term “battered woman syndrome” not be used.

Instead, the Commission recommends that reference be made to expert evidence on the nature and dynamics of battering relationships and the effects of battering, and suggests ways in which such evidence could assist the fact-finder in cases involving battered defendants.

The report looks at a number of proposed defences specifically tailored to meet the situation of battered defendants but concludes that none of them should be adopted.

Changes to section 48 of the Crimes Act 1961 (which deals with self-defence) are recommended to better recognise the exigencies of threatened violence in the context of battering relationships.

The report examines the partial defences of provocation, diminished responsibility and excessive self-defence and recommends their replacement by a sentencing discretion for murder. The Commission proposes that judges should have a limited discretion to impose a sentence of less than life imprisonment for murder in exceptional cases.

Finally, the Commission recommends the replacement of section 24 of the Crimes Act 1961 (which deals with the defence of compulsion) by a new provision on duress by threats and codification of the defence of duress of circumstances.



## **Subsidising Litigation (NZLC R72, May 2001)**

*Subsidising Litigation* (NZLC R72) was released on 22 May 2001. In this report, the Law Commission considers the laws preventing officious intermeddling in the litigation of others. It describes the torts of maintenance and champerty, suggests a liberalisation of the existing law as to contingency fee charging by lawyers, and discusses solutions to the financing of claims by liquidators and assignees in bankruptcy.

## **Misuse of Enduring Powers of Attorney (NZLC R71, April 2001)**

In May 2000, the Law Commission published a discussion paper *Misuse of Enduring Powers of Attorney* (NZLC PP40). The paper discussed the absence of adequate safeguards for the protection of donors of enduring powers of attorney under the provisions of Part IX of the Protection of Personal Property Rights Act 1988. This statute, since it came into force on 1 October 1988, has provided the legal machinery to allow decisions to be made on behalf of those unable to manage their own financial affairs or properly look after themselves.

This report considers the substantial number of submissions made to the Law Commission in response to PP40 and answers the questions formulated in that discussion paper.

## **Acquittal Following Perversion of the Course of Justice (NZLC R70, March 2001)**

The Law Commission delivered to the Minister of Justice its report *Acquittal Following Perversion of the Course of Justice* in March 2001. This report responds to the request by the former Minister to consider the case of Kevin Moore. In September 2000, the Commission issued a discussion paper *Acquittal Following Perversion of the Course of Justice: A Response to R v Moore* (NZLC PP42), in which the Commission set out the issues and options. The Commission received a number of helpful responses, which have contributed to the advice conveyed in this report.

The Commission confirmed the fundamental importance of the rule against double jeopardy; but for the reasons contained in the report, the Commission recommends a limited and principled exception to it in cases where an accused has secured apparently unmerited acquittal in the most serious classes of case, by perjury or other conduct designed to defeat the course of justice.

## **Juries in Criminal Trials (NZLC R69, February 2001)**

In its final report *Juries in Criminal Trials* the Commission reaffirms the importance of the jury system as an essential and desirable feature of the criminal justice system. However, it also recommends a number of major changes.

Juries should be able to reach their verdict by a majority of 11:1, a move which will remove the influence of the small minority of irrational jurors and may decrease the rate of hung juries.

Currently juries must be used in trials for the most serious crimes (such as murder and rape). The Commission recommends that the accused should be able to apply for trial by judge alone in such cases, but this would only be granted if, because of the subject matter of the case or the identity of the accused, a fair trial by jury is not possible.

The Commission also recommends that in cases which will last for six weeks or more, which is too long to expect a jury to sit, the prosecution should be able to apply for a trial by judge alone. This recommendation is aimed at complex fraud trials, and the prosecution would not be able to do this in cases of serious violent crimes.

The high number of people who avoid jury service, particularly skilled and educated people, is currently a cause of concern. The Commission recommends that this should be addressed from two angles. First, it should be made easier to serve by allowing jurors to defer their service to a more convenient time, making it an offence for employers to prejudice an employee's job because that employee is or might be on a jury, and, in some circumstances, allowing reimbursement of actual financial loss in excess of the normal juror fee. Secondly, the penalty for failing to answer the jury summons without proper excuse should be raised from the current fine of \$300 to a maximum penalty of \$1000 and seven days imprisonment

## **Electronic Commerce Part Three: Remaining Issues (NZLC R68, December 2000)**

This is the Law Commission's third and final report on electronic commerce, *Electronic Commerce Part Three: Remaining Issues* (NZLC R68). The purpose of the latest report is threefold: it addresses the issues on which submissions were sought in *Electronic Commerce Part Two*, it provides an update on developments at international forums regarding both criminal and civil laws relating to e-commerce, and it comments on the Electronic Transactions Bill recently introduced

into Parliament. While the report explains the policy differences between the Commission's recommendations in its earlier reports and the provisions of the Electronic Transactions Bill, it does not express any disagreement with the resulting legislation.

*Electronic Commerce Part Three* also addresses privacy issues raised by the caching of electronic information, transportation documents, civil remedies for computer misuse, and recommendations for the review of the Code of Banking Practice to be conducted in 2001.

### **Tax and Privilege: Legal Professional Privilege and the Commissioner of Inland Revenue's Powers to Obtain Information (NZLC R67, October 2000)**

On 26 October 2000, the Law Commission released its report *Tax and Privilege: Legal Professional Privilege and the Commissioner of Inland Revenue's Powers to Obtain Information*.

In that report, a majority of the Law Commission endorsed in a modified form a proposal by the Wine-Box Inquiry to restrict the privilege that protects the privacy of communications between taxpayers and their lawyers. The Commission recommends that privilege apply only to communications made after a tax return has been furnished. Communications prior to that stage should be part of the information to which the Commissioner of Inland Revenue has access under the exercise of his normal information-gathering powers.

The Commission believes that the law change proposed will assist the Commissioner of Inland Revenue in performing his or her legal duty to collect the highest net revenue that is practicable within the law, by ensuring the Commissioner has access to all relevant information. The majority of Commissioners are of the view that legal privilege in a non-litigious context is not to be regarded as so sacrosanct that it cannot, in appropriate cases, be set aside in the public interest.

This report includes a statement of minority view by Commissioner Paul Heath QC. He considers that there are other means of ensuring that the privilege is not abused by taxpayers, and that public dissatisfaction with the exercise by the Inland Revenue Department of its statutory powers makes it inappropriate, at least for the meantime, to restrict legal privilege in this context.

### **Criminal Prosecution (NZLC R66, October 2000)**

The Law Commission published a report *Criminal Prosecution* (NZLC R66) in October 2000. This report concludes that the criminal prosecution system is generally in good shape and not in need of

radical changes, being for the most part effective and respectful of human rights. It does, however, note concerns expressed by Māori and offers certain proposals for meeting those concerns. The report recommends a number of ways in which existing structures can be modified and made more efficient.

Issues which the report addresses include:

- criminal disclosure and preliminary hearings. The Commission repeats its recommendation for a statute comprehensively covering criminal disclosure. This recommendation has been made before and received considerable support, but as yet legislation has not been passed;
- the rejection of the suggestion that New Zealand needs a Crown Prosecution Service, of the type that exists in England, instead of our current system of Crown Solicitors in private practice;
- the role of Crown Solicitors in the prosecution system;
- the need for increased oversight of the prosecution process by the Crown Law Office, particularly in light of the increasing role of government prosecuting agencies;
- the proper test to be used in decisions to prosecute;
- charge negotiation and sentence indication;
- the proper scope of section 347 Crimes Act 1961 (power to discharge accused) and whether a similar power should exist in the summary jurisdiction; and
- the role of private prosecutions and proposals to ensure adequate safeguards against vexatious and unjustified private prosecutions.

### **Adoption and Its Alternatives: A Different Approach and a New Framework (NZLC R65, September 2000)**

This report was released on 29 September 2000.

Adoption law has not changed substantially since 1955. In that time society has changed greatly, and the law as it stands does not take into account social changes, such as the desire for open adoption, and new technologies, such as assisted human reproductive technologies and surrogacy. Adoption law is also currently out of step with other family-related legislation.

In its report, the Commission makes recommendations on many aspects of Adoption. The Commission also recommends a comprehensive Care of Children Act which will state the responsibilities and rights of parenthood and will incorporate provisions from the Guardianship Act and the Children, Young

Persons, and Their Families Act. Adoption would then be regarded as one of a number of options for the permanent care of a child.

As well as making recommendations, the Commission raises issues for further consideration such as the issues surrounding assisted reproductive technologies and surrogacy. The Government Administration Select Committee is considering the Commission's report and has received public submissions.

### **Defaming Politicians: A Response to *Lange v Atkinson* (NZLC R64, August 2000)**

In this report, the Commission discusses the Court of Appeal's second *Lange* decision following the reference backed by the Privy Council. The Commission confirms its recommendation that the only satisfactory solution is a short amendment to the Defamation Act, imposing, as the price of the privilege the Court of Appeal created in its first *Lange* decision, a simple duty of reasonable care.

### **Coroners (NZLC R62, July 2000)**

In its report *Coroners*, the Commission has identified a number of problems with the coronial system. These include:

- inadequate procedures for the appointment of coroners;
- the lack of uniformity of coronial practices throughout New Zealand;
- a need for training programmes for coroners; and
- the perception that in the coronial system there is little or no regard taken of the cultural values and beliefs of communities, particularly Māori cultural values and beliefs.

A key recommendation of the report is the appointment of a Chief Coroner, suitably resourced, to devise and maintain the necessary support systems for coroners, to oversee coroners, and to monitor the implementation of coronial recommendations.

The proposed reforms work as a package to address:

- the role and status of coroners;
- the practices, systems and services required to improve the operation of the coronial system;
- amendments to the Coroners Act 1988; and
- the concerns of Māori and other cultural and religious groups, as well as many individual families, that current coronial practices are insensitive, both in their treatment of the deceased and with regard to the removal and retention of body parts.

## **Tidying the Limitation Act (NZLC R61, July 2000)**

On 17 July 2000, the Law Commission released its report *Tidying the Limitation Act*, which recommends changes to the time limits within which civil claims must be brought.

There are a number of areas where the Limitation Act (now more than 50 years old) is causing problems. One problem is where time runs out before a potential claimant is even aware that there is a problem. Another problem is where the psychological damage caused by sexual abuse is so profound that the victim is disabled from summoning the resolution to start proceedings before time has expired. There are some classes of claims, such as those for relief against mistake, where the six-year period runs from discovery of the mistake, which is much too open-ended to be fair to potential defendants.

In its recommendations, the Law Commission aims to strike a balance between what is fair to intending plaintiffs and what is fair to intended defendants.

## **PRELIMINARY PAPERS**

The following preliminary papers were published during the year. All of these papers resulted in final reports after submissions and consultation were taken into account.

### **Subsidising Litigation (NZLC PP43, December 2000)**

In New Zealand today, the rich can afford to engage in civil litigation. Legal aid may be available to the very poor. But between these two extremes there is a very broad band of people who cannot enforce their legal rights because to do so would be too expensive. This is one reason why members of the public are prepared to resort to the naming and shaming techniques available to the media and exemplified by the television programme *Fair Go*. The Disputes Tribunals, which dispose of 30,000 cases a year, were meant to help with this problem, and do, but they suit only the assertive and articulate and their jurisdiction is only up to \$7,500 or \$12,000 if both parties agree.

One solution to this problem that has been proposed is to allow lawyers to charge for their litigation services on a contingency basis. Should the law be changed to permit New Zealand lawyers to handle cases on terms that they will be paid only if the case succeeds, and if

the case does succeed, be entitled to a fee that is higher than normal to make up for the risk the lawyer has run of not being paid at all? *Subsiding Litigation* discusses this and connected questions.

### **Acquittal Following Perversion of the Course of Justice: A Response to *R v Moore* (NZLC PP42, September 2000)**

On 26 September, the Law Commission released a discussion paper on how the law should respond to a defendant who has secured acquittal, by perjury or similar means, for a crime that he or she very probably committed.

The Law Commission's discussion paper outlines five options:

- maintain the status quo;
- increase the maximum sentence for perjury and related crimes;
- create a new crime of aggravated perjury/conspiracy to pervert the course of justice;
- abandon the double jeopardy rule; and
- create a principled exception to that rule.

The Commission regards the fourth option as inconceivable and the second and third options as difficult.

### **Battered Defendants (NZLC PP41, August 2000)**

The Commission released its discussion paper *Battered Defendants: Victims of Domestic Violence Who Offend* on 14 August 2000.

In recent years, awareness of the extent of domestic violence has grown and with it, concern about the way the law applies to victims of domestic violence who commit offences. It has been argued that the legal defences do not properly take account of the circumstances that lead such defendants to offend. In particular, it is argued that a number of defences are based on male offending patterns and apply inequitably to battered defendants, who in the main are women. In response to this concern, the Law Commission undertook the battered defendants project. The terms of reference, approved by the Minister of Justice, were to:

- examine how the existing New Zealand law applies to those who commit criminal acts in circumstances where they are victims of domestic violence, in particular, the defences of self-defence, provocation, duress and necessity;
- consider developments and proposals in other jurisdictions, in particular, the defences of self preservation, diminished

- responsibility and judicial discretion in sentencing for murder; and
- make proposals for reform, if appropriate.

## STUDY PAPERS

The following study papers were released this year.

### **Insolvency Law Reform: Promoting Trust and Confidence (NZLC SP11, May 2001)**

The Law Commission released its advisory report to the Ministry of Economic Development to assist it in its current review of insolvency laws as a study paper. This paper is intended to be used to facilitate consultation that the Ministry is carrying out.

The topics considered in the paper are:

- the role of the State in insolvency law;
- whether additional provision should be made to deal with business rehabilitation or reorganisation;
- whether statutory management under the Corporations (Investigation and Management) Act 1989 should be retained in its existing or some modified form; and
- whether it is desirable for New Zealand to adopt a generic statute dealing with all insolvency law issues.

In considering these issues, we have paid particular regard to the need to ensure that any insolvency regime is appropriate for New Zealand conditions.

Ultimately, the theme that we have found to underlie these four topics is the need to instil trust and confidence in an insolvency law system so that insolvency law can act as a cornerstone of both fiscal and social policy decisions.

### **Mandatory Orders Against the Crown and Tidying Judicial Review (NZLC SP10, March 2001)**

This study paper records options for reform of the procedures for judicial review of administrative action. It contains the argument by the former President of the Law Commission in favour of reform.

This study paper raises two broad issues for discussion. The first concerns an aspect of the status of the citizen in relation to the State in litigation: whether mandatory orders should become available against the Crown. The second issue relates to the procedures for



judicial review of administrative action. These issues overlap when mandatory orders are sought on judicial review.

### **Māori Custom and Values in New Zealand Law (NZLC SP9, March 2001)**

The Law Commission's study paper, *Māori Custom and Values in New Zealand Law NZLC SP9*, has two main purposes. One is to examine how Māori custom and values impact on our current law. The second is to consider ideas for future law reform projects in the Law Commission to give effect to Māori values in the laws of New Zealand.

What underlies the focus of the paper is the importance of developing a legal system that reflects New Zealand's cultural heritage and of which all New Zealanders, not just the dominant majority, feel a part.

Māori custom law, also referred to as *tikanga Māori*, is extremely dynamic and should not be treated as frozen in time. The paper provides some explanations of a number of values that underpin the totality of *tikanga*. In exploring Māori values, the paper stresses that a focus on heritage and tradition will not yield a complete picture – a forward-looking dimension is also important. In the words of Professor Mason Durie:

Māori values are not simply about celebrating the past but have always had a rationale that is premised on the future – survival.

The paper explores colonial and evolving judicial attitudes towards Māori custom law as well as modern treatment of *tikanga* by the courts and the legislature. It discusses the evolving role of the Māori Land Court and canvasses Treaty law and issues arising from references to the Treaty or its principles in legislation. Finally, the paper explores some options for future work in the Law Commission in co-operation with others, to move New Zealand closer to a system of law that is shaped by the philosophies of both English law and *tikanga Māori*.

### **Determining Representation Rights under Te Ture Whenua Māori Act 1993: An Advisory Report for Te Puni Kōkiri (NZLC SP8, March 2001)**

The Commission released *Determining Representation Rights under Te Ture Whenua Māori Act 1993: An Advisory Report for Te Puni Kōkiri* (NZLC SP8, March 2001) as a companion paper to *Māori Custom*

*and Values in New Zealand Law* (NZLC SP9). The companion paper considers problems and issues relating to the operation of section 30 of Te Ture Whenua Māori Act 1993 (power of Māori Land Court to give advice or make determination as to representatives of class or group of Māori). It is referred to in chapter 4 of *Māori Custom and Values in New Zealand Law* as part of a discussion of the evolving role of the Māori Land Court.

### **Simplification of Criminal Procedure Legislation (NZLC SP7, January 2001)**

This paper was presented to the Ministry of Justice in October 2000 as an advisory report in response to a request to assist the Ministry to simplify the statutory provisions governing the laying of criminal charges.

The Commission proposes a new Criminal Proceedings Act, which would replace the various criminal procedure provisions to be found currently in the Summary Proceedings Act 1957, District Courts Act 1947 and Crimes Act 1961. Much of the current confusion in determining questions of criminal procedure and jurisdiction comes from having to cross-refer to two or more of these statutes. The introduction of one statute consolidating the relevant provisions should simplify these procedures.

The most significant reform proposed by the Commission is discontinuing the classification of offences as either “summary” or “indictable”. Instead, the Commission proposes four broad categories of offences: those punishable by a maximum of three months imprisonment, those punishable by more than three months but (in general) less than 14 years imprisonment, “middle band” offences, and those offences that can only be heard in the High Court.

### **To Bind their Kings in Chains (NZLC SP6, December 2000)**

When it passed a new Interpretation Act in 1999, Parliament was undecided on two matters. The Act contains an unusual provision requiring the Ministry of Justice to report on these two matters by 30 June 2001, and in preparing its report the Ministry must take into account advice from the Law Commission. The Law Commission published its advisory report *To Bind their Kings in Chains* (NZLC SP6).

The first matter to be reported on is whether Acts of Parliament should continue to bind the Crown only if they expressly say so. The alternative suggestion is that the presumption should be reversed

so that an Act will bind the Crown unless it says that it does not. The Law Commission explains why such a change would not be a good idea. The second matter is whether the Crown should ever be criminally liable. The Law Commission points out the difficulties.

It is possible to impose punishments using the machinery of civil proceedings. The Commerce Act contains well-known examples. This seems a neater approach than the counter-intuitive technique of trying to overturn the well-established constitutional axiom that the role of the Crown in relation to the criminal law is that of enforcer.

### **International Trade Conventions (NZLC SP5, November 2000)**

This study paper examines various international trade conventions and recommends whether the conventions should be adopted as part of New Zealand law. The study paper discusses a number of conventions affecting various areas from international payment systems to liability for goods in international transit. In respect of each convention, the current situation at New Zealand law is discussed, as well as the likely impact on New Zealand traders if the convention were adopted. The Commission recommends that New Zealand consider adopting the Hague Conventions on the taking of evidence abroad and on the service abroad of certain legal documents, to improve these procedures for New Zealand parties engaged in cross-border litigation. Copies of these conventions are included in the study paper as appendices.

### **ADVISORY SERVICES TO OTHER STATE AGENCIES AND SUBMISSIONS ON BILLS**

For details please refer to pages 40–42.

### **CORPORATE SERVICES**

#### **Library**

The 2000/2001 financial year has again been busy for Library staff. Apart from providing Law Commission staff members and Commissioners with an efficient information service, the Library undertook the following projects.

The Library moved to a maintenance programme for purchasing upgrades to Inmagic DB/Textworks, the software it uses to run its in-house databases. Development work was organised to enhance

the Interloans database and build a Suppliers database. Development work on the Interloans database has enabled the Library to track the movements of materials borrowed or lent and the costs of Interloans with greater efficiency.

The Library commenced a Law Reform project. This project consists of checking law reform catalogue records, identifying and disposing of duplicate law reform materials, reorganising the way law reform materials have been shelved, and checking our exchange agreements with other law reform bodies. As at 30 June 2001 the Library has completed about half of this project.

Library training and induction materials and procedures were revised and updated. With the recent changes in Commissioners and researchers, this project was timely.

Library staff members continued to participate in a number of external and internal committees. The external committees included the Justice Sector Information Management Sub Working Group, the New Zealand Law Librarians Group Conference 2002 Committee, and the Special Libraries and Information Services (a special interest group of the Library and Information Association of New Zealand Aotearoa. The internal committees included the Library Committee and the Net (Internet/Intranet) Committee. The Library Manager attended an Intranet Content Management Conference in Auckland on 30–31 May 2001.

## **Information Technology**

The significant event during this financial year was the preparation and signing of contracts for the replacement of the computer system. After careful evaluation the Commission decided to purchase Compaq computers and upgrade the operating system to windows 2000 as well as upgrade other software. The new computer system was rolled out on 9 July 2001. This system is expected to meet the needs of the Commission for the next three years.

## **Others**

Staff members attended various training programmes. The Corporate Services staff continued to provide excellent service to researchers and

Commissioners, supporting the law reform activities. The Commission is grateful to them for their dedication and commitment.

## Finance

All expenses were within budget. In view of the replacement of the computer system in July 2001, the remaining book values of the hardware and relevant software were written off to expenditure.

Furniture and fittings and office equipment were valued for the first time as at 30 June 2001.

### *Commissioners and staff as at 30 June 2001*



*From left to right, standing:* Barbara McPhee, Andrew Wong She, Donald Dugdale, Brenda Speak, Bala Benjamin, Jacqueline Kitchen, Marcus McMillan, Marilyn Cameron, Michael Josling, Barbara Sutton, Judge Patrick Keane, Amelia Bardsley, Colleen Gurney, Anthea Miller, Louise Symons, Anne Tucker.

*From left to right, seated:* Professor Ngatata Love QSO, Vivienne Ullrich QC, Hon Justice Bruce Robertson, Helen Barrett.

*Absent:* Helen Colebrook, Gloria Hakiwai, Paul Heath QC, Judith Porter, David Thompson.

## **Changes in staff**

During the year the following staff members left the Commission:

- Lucy McGrath
- Meika Foster
- Karen Belt

During the year the following staff members joined the Commission:

- Marcus McMillan
  - David Thompson
  - Amelia Bardsley
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Financial statements  
for the year ended  
30 June 2001

STATEMENT OF RESPONSIBILITY

**W**E ACKNOWLEDGE responsibility for the preparation of these financial statements and for the judgments used herein.

We acknowledge responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of the Commission's financial reporting.

In our opinion these annual financial statements fairly reflect the financial position and operations of the Law Commission for the year ended 30 June 2001.

*Hon Justice Robertson*  
President

*B Benjamin*  
Executive Manager

# STATEMENT OF ACCOUNTING POLICIES FOR THE YEAR ENDED 30 JUNE 2001

## **Reporting entity**

The Law Commission is a Crown entity established by the Law Commission Act 1985.

The Financial Statements have been prepared in accordance with section 17 of the Law Commission Act.

## **Measurement base**

The general accounting principles recognised as appropriate for the measurement and reporting of results and financial position on a historical basis, modified by the revaluation of library collections, furniture and fittings, and office equipment, have been followed.

## **Accounting policies**

The following accounting policies which materially affect the measurement of results and financial position have been applied:

### *1 Goods and Services Tax (GST)*

The Financial Statements have been prepared exclusive of GST with the exception of receivables and payables, which are stated with GST included.

### *2 Fixed assets*

All fixed assets are initially recorded at cost. Library collections are valued every three years. Furniture and fittings and office equipment were revalued for the first time as at 30 June 2001. Changes in revaluation are charged to the Asset Revaluation Reserve account. When this results in a debit balance in the reserve account, the balance is expensed in the Statement of Financial Performance.

### *3 Depreciation*

Depreciation is provided on a straight-line basis, which will write off the cost (or valuation) of the assets over their useful lives.

The useful lives and associated rates of depreciation for major classes of assets have been estimated as follows.



|                        | Estimated<br>useful life<br>(years) | Rate of<br>depreciation<br>(%) |
|------------------------|-------------------------------------|--------------------------------|
| Computer equipment     | 5                                   | 20                             |
| Furniture and fittings | 5                                   | 20                             |
| Office equipment       | 5                                   | 20                             |
| Computer software      | 5                                   | 20                             |
| Library collections    | 5                                   | 20                             |

#### 4 *Investments*

Investments are stated at the lower of cost and net realisable value.

#### 5 *Leases*

Operating lease payments, where the risks and benefits of ownership are effectively retained by the lessor, are charged as expenses in the period in which they are incurred.

#### 6 *Statement of cash flows*

Cash means cash balances on hand, held in bank accounts, demand deposits and other highly liquid investments, in which the Commission invests as part of its day-to-day cash management.

Operating activities include cash received from all income sources and the cash payments made for the supply of goods and services.

Investing activities are those activities relating to the acquisition and disposal of non-current assets.

Financial activities comprise the change in equity of the Commission.

#### 7 *Financial instruments*

The Law Commission is a party to financial instruments as part of its normal operations. Those financial instruments include bank accounts, investments, debtors and creditors all of which are recognised in the Statement of Financial Position. Revenue and expenses in relation to financial instruments are recognised in the Statement of Financial Performance.

#### 8 *Income tax*

The Law Commission is exempt from income tax.

9 *Receivables*

Accounts receivable are stated at their estimated realisable value after providing for doubtful and uncollectable debts.

10 *Employee entitlements*

Provision is made in respect of the Commission's liability for annual leave. Annual leave has been calculated on an actual entitlement basis at current rates of pay.

11 *Change in accounting policies*

There have been no changes in accounting policies during the year.

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STATEMENT OF FINANCIAL PERFORMANCE  
FOR THE YEAR ENDED 30 JUNE 2001

|  |      | 2001<br>Actual<br>\$ | 2000<br>Actual<br>\$ | 2001<br>Budget<br>\$ |
|--|------|----------------------|----------------------|----------------------|
|  | Note |                      |                      |                      |
| <b>REVENUE</b>   |      |                      |                      |                      |
| Government grant   | 7    | 2,727,186            | 2,988,980            | 2,975,111            |
| Interest   |      | 102,068              | 90,826               | 30,000               |
| Sale of publications   |      | 24,975               | 33,136               | 25,000               |
| Contribution from Ministry of<br>Economic Development for<br>Electronic Commerce project |      | 4,380                | 6,500                | 0                    |
| Surplus on sale of fixed assets  |      | 18                   | 1,144                | 0                    |
| <b>Total revenue</b>   |      | <u>2,858,627</u>     | <u>3,120,586</u>     | <u>3,030,111</u>     |
| <br><b>EXPENDITURE</b>   |      |                      |                      |                      |
| Personnel costs  |      | 1,753,869            | 1,830,629            | 2,017,304            |
| Project costs  |      | 308,416              | 290,355              | 538,026              |
| Library costs  |      | 44,897               | 42,564               | 52,000               |
| Administration costs   | 1    | 597,026              | 589,869              | 613,100              |
| Depreciation   |      | 289,981              | 272,596              | 290,000              |
| Fixed assets written off   |      | 42,128               | 0                    | 0                    |
| Debit balance in Asset<br>Revaluation Reserve<br>account written off                     |      | 0                    | 19,387               | 0                    |
| <b>Total expenditure</b>   |      | <u>3,036,317</u>     | <u>3,045,400</u>     | <u>3,510,430</u>     |
| <b>Net surplus (deficit)</b>   |      | <u>(177,690)</u>     | <u>75,186</u>        | <u>(480,319)</u>     |

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The accompanying accounting policies and notes form part of these Financial Statements.

STATEMENT OF MOVEMENTS IN EQUITY  
FOR THE YEAR ENDED 30 JUNE 2001

|  | 2001<br>Actual<br>\$ | 2000<br>Actual<br>\$ | 2001<br>Budget<br>\$ |
|--|----------------------|----------------------|----------------------|
| <b>Equity at the beginning of the year</b>                     | 1,843,857            | 1,785,831            | 1,843,857            |
| <b>Surplus and revaluations</b>                                |                      |                      |                      |
| Net surplus (deficit) for the year                             | (177,690)            | 75,186               | (480,319)            |
| Surplus on revaluation of<br>furniture and fittings            | 150,049              | 0                    | 0                    |
| Surplus on revaluation of<br>office equipment                  | 8,670                | 0                    | 0                    |
| Deficit on revaluation of<br>Library collections               | 0                    | (17,160)             | 0                    |
| <b>Total recognised revenues and<br/>expenses for the year</b> | (18,971)             | 58,026               | (480,319)            |
| <b>Equity at the end of the year</b>                           | 1,824,886            | 1,843,857            | 1,363,538            |

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The accompanying accounting policies and notes form part of these Financial Statements.

STATEMENT OF FINANCIAL POSITION AS  
AT 30 JUNE 2001

|   | Note | 2001<br>Actual<br>\$ | 2000<br>Actual<br>\$ | 2001<br>Budget<br>\$ |
|---|------|----------------------|----------------------|----------------------|
| <b>EQUITY</b>                                   |      |                      |                      |                      |
| Accumulated funds                               |      | 1,666,167            | 1,843,857            | 1,363,538            |
| Revaluation reserve –<br>furniture and fittings |      | 150,049              | 0                    | 0                    |
| Revaluation reserve –<br>office equipment       |      | 8,670                | 0                    | 0                    |
| <b>Total Crown equity</b>                       |      | <u>1,824,886</u>     | <u>1,843,857</u>     | <u>1,363,538</u>     |
| <b>Represented by:</b>                          |      |                      |                      |                      |
| <b>CURRENT ASSETS</b>                           |      |                      |                      |                      |
| Cash and bank balances                          |      | 3,590                | 7,490                | 1,000                |
| Bank – call deposit – BNZ                       |      | 267,000              | 112,000              | 44,018               |
| Short-term investments – BNZ                    |      | 1,150,000            | 875,000              | 400,000              |
| Short-term investments –<br>National Bank       |      | 0                    | 600,000              | 550,000              |
| Receivables and prepayments                     | 2    | 40,425               | 34,746               | 17,000               |
| <b>Total current assets</b>                     |      | <u>1,461,015</u>     | <u>1,629,236</u>     | <u>1,012,018</u>     |
| <b>NON-CURRENT ASSETS</b>                       |      |                      |                      |                      |
| Fixed assets                                    | 3    | 581,431              | 526,530              | 426,520              |
| <b>Total non-current assets</b>                 |      | <u>581,431</u>       | <u>526,530</u>       | <u>426,520</u>       |
| <b>Total assets</b>                             |      | <u>2,042,446</u>     | <u>2,155,766</u>     | <u>1,438,538</u>     |
| <b>CURRENT LIABILITIES</b>                      |      |                      |                      |                      |
| Payables and accruals                           | 4    | 217,560              | 311,909              | 75,000               |
| <b>Total current liabilities</b>                |      | <u>217,560</u>       | <u>311,909</u>       | <u>75,000</u>        |
| <b>Total liabilities</b>                        |      | <u>217,560</u>       | <u>311,909</u>       | <u>75,000</u>        |
| <b>NET ASSETS</b>                               |      | <u>1,824,886</u>     | <u>1,843,857</u>     | <u>1,363,538</u>     |

*Hon Justice Robertson*  
President

*B Benjamin*  
Executive Manager

The accompanying accounting policies and notes form part of these Financial Statements.

# STATEMENT OF CASH FLOWS FOR THE YEAR ENDED 30 JUNE 2001

|  | 2001<br>Actual<br>\$ | 2000<br>Actual<br>\$ | 2001<br>Budget<br>\$ |
|--|----------------------|----------------------|----------------------|
| <b>CASH FLOW FROM OPERATING ACTIVITIES</b>   |                      |                      |                      |
| <b>Cash was provided from:</b>   |                      |                      |                      |
| Government grant   | 2,727,186            | 2,864,170            | 2,975,111            |
| Interest   | 102,384              | 96,983               | 32,600               |
| Customers  | 18,981               | 59,607               | 25,543               |
| Contribution from Ministry of Economic Development for the Electronic Commerce Project | 4,380                | 6,500                | 0                    |
|  | 2,852,931            | 3,027,260            | 3,033,254            |
| <b>Cash was applied to:</b>  |                      |                      |                      |
| Payments to suppliers and employees  | (2,798,558)          | (2,550,098)          | (3,442,736)          |
|  | (2,798,558)          | (2,550,098)          | (3,442,736)          |
| <b>Net cash inflow (outflow) from operating activities</b>                             | 54,373               | 477,162              | (409,482)            |
| <b>CASH FLOW FROM INVESTING ACTIVITIES</b>   |                      |                      |                      |
| <b>Cash was provided from:</b>   |                      |                      |                      |
| Sale of fixed assets   | 18                   | 1,144                | 0                    |
|  | 18                   | 1,144                | 0                    |
| <b>Cash was applied to:</b>  |                      |                      |                      |
| Purchase of fixed assets   | (228,291)            | (197,267)            | (189,990)            |
|  | (228,291)            | (197,267)            | (189,990)            |
| <b>Net cash inflow (outflow) from investing activities</b>                             | (228,273)            | (196,123)            | (189,990)            |
| <b>NET INCREASE (DECREASE) IN CASH HELD</b>  |                      |                      |                      |
|  | (173,900)            | 281,039              | (599,472)            |
| <b>Plus opening cash balance:</b>  |                      |                      |                      |
| BNZ – current account  | 7,490                | 451                  | 7,490                |
| BNZ – call account   | 112,000              | 103,000              | 112,000              |
| BNZ – short-term deposits  | 875,000              | 860,000              | 875,000              |
| National Bank – short-term deposits  | 600,000              | 350,000              | 600,000              |
|  | 1,594,490            | 1,313,451            | 1,594,490            |

Statement of cash flows for the year ended 30 June 2001 cont'd

|                                     | 2001<br>Actual<br>\$ | 2000<br>Actual<br>\$ | 2001<br>Budget<br>\$ |
|-------------------------------------|----------------------|----------------------|----------------------|
| <b>CLOSING CASH BALANCE</b>         | 1,420,590            | 1,594,490            | 995,018              |
| <b>Made up of:</b>                  |                      |                      |                      |
| BNZ – current account               | 3,590                | 7,490                | 1,000                |
| BNZ – call account                  | 267,000              | 112,000              | 44,018               |
| BNZ – short-term deposits           | 1,150,000            | 875,000              | 400,000              |
| National Bank – short-term deposits | 0                    | 600,000              | 550,000              |
|                                     | <u>1,420,590</u>     | <u>1,594,490</u>     | <u>995,018</u>       |

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The accompanying accounting policies and notes form part of these Financial Statements.

# STATEMENT OF CASH FLOWS FOR THE YEAR ENDED 30 JUNE 2001

## RECONCILIATION OF NET SURPLUS TO NET CASH INFLOW FROM OPERATING ACTIVITIES

|  | 2001<br>Actual<br>\$ | 2000<br>Actual<br>\$ | 2001<br>Budget<br>\$ |
|--|----------------------|----------------------|----------------------|
| <b>Reported Surplus (Deficit)</b>  | (177,690)            | 75,186               | (480,319)            |
| <b>Add (less) items not involving cash flows:</b>                                |                      |                      |                      |
| Depreciation   | 289,981              | 272,596              | 290,000              |
| Fixed assets written off   | 42,128               | 0                    | 0                    |
| Debit balance in Asset Revaluation Reserve account written-off                   | 0                    | 19,387               | 0                    |
| <b>Add (less) movements in working capital:</b>                                  |                      |                      |                      |
| Increase in receivable and prepayments   | (5,679)              | 32,699               | 17,746               |
| Decrease in payables and accruals  | (94,349)             | 78,438               | (236,909)            |
| <b>Add (less) proceeds of fixed assets sale shown under investing activities</b> | (18)                 | (1,144)              | 0                    |
| <b>Net cash inflow (outflow) from operating activities</b>                       | 54,373               | 477,162              | (409,482)            |

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The accompanying accounting policies and notes form part of these Financial Statements.



# NOTES TO FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2001

## 1 Administration costs include

|   | 30 June 2001 | 30 June 2000 |
|---|--------------|--------------|
|   | \$           | \$           |
| Fees paid to Auditors:                              |              |              |
| – External audit                                    | 8,500        | 9,000        |
| – Other services                                    | 7,476        | 1,280        |
| Increase (decrease) in provision for doubtful debts | (215)        | 72           |
| Rental expenses on operating leases                 | 10,445       | 9,162        |
| Rent and rates on office accommodation              | 405,779      | 407,796      |

## 2 Receivables and prepayments

|                                    | 30 June 2001 | 30 June 2000 |
|------------------------------------|--------------|--------------|
|                                    | \$           | \$           |
| Sundry debtors                     | 22,999       | 7,945        |
| GST receivable                     | 16,811       | 9,882        |
| Trade debtors                      | 676          | 2,592        |
| Less: Provision for doubtful debts | (61)         | (276)        |
| Prepayments                        | 0            | 14,603       |
| Total                              | 40,425       | 34,746       |

## 3 Fixed assets

|                        | Cost/<br>valuation | Accumulated<br>depreciation | Net<br>book value<br>30 June<br>2001 | Net<br>book value<br>30 June<br>2000 |
|------------------------|--------------------|-----------------------------|--------------------------------------|--------------------------------------|
|                        | \$                 | \$                          | \$                                   | \$                                   |
| Computer equipment     | 37,058             | 16,185                      | 20,873                               | 80,697                               |
| Furniture and fittings | 158,629            | 0                           | 158,629                              | 21,575                               |
| Office equipment       | 35,867             | 0                           | 35,867                               | 32,702                               |
| Computer software      | 307,596            | 228,694                     | 78,902                               | 118,354                              |
| Library collections    | 726,493            | 439,333                     | 287,160                              | 273,202                              |
| Total                  | 1,265,643          | 684,212                     | 581,431                              | 526,530                              |

Furniture and fittings and office equipment are at depreciated replacement value as determined by independent valuer Rolle Ltd – a qualified valuer. The valuation was confirmed on 18 June 2001.

The valuation of furniture and fittings as at 30 June 2001 was \$150,048 more than the book value. This amount has been

transferred to the Furniture and Fittings Revaluation Reserve account.

The valuation of office equipment as at 30 June 2001 was \$8,669 more than the book value. This amount has been transferred to the Office Equipment Revaluation Reserve account.

#### 4 Payables and accruals

|                                 | 30 June 2001   | 30 June 2000   |
|---------------------------------|----------------|----------------|
|                                 | \$             | \$             |
| Suppliers of goods and services | 90,063         | 46,647         |
| Employee entitlements           | 36,353         | 104,643        |
| Accrued expenses                | 72,059         | 26,267         |
| Other creditors                 | 19,085         | 134,352        |
| Total                           | <u>217,560</u> | <u>311,909</u> |

#### 5 Commitments

##### *Capital expenditure commitments*

Commitment for capital expenditure (to purchase computer hardware) at balance date was \$123,956 (30 June 2000, \$ Nil).

##### *Lease commitments*

Commitments for non cancellable leases on rental office accommodation (till 30 June 2007), Commissioner's rental accommodation (till 21 April 2002) and office equipment (till 24 July 2004):

|                    | 30 June 2001 | 30 June 2000 |
|--------------------|--------------|--------------|
|                    | \$           | \$           |
| Less than one year | 412,060      | 402,256      |
| Between 1–2 years  | 377,040      | 372,232      |
| Between 2–3 years  | 377,040      | 369,180      |
| Between 3–4 years  | 369,835      | 369,180      |
| Between 4–5 years  | 369,180      | 369,180      |
| Over 5 years       | 369,180      | 738,360      |

#### 6 Contingent liabilities and assets

There are no material contingent liabilities or assets as at balance date (30 June 2000, \$Nil).

#### 7 Related party information

The Law Commission is a Crown owned entity. The Commission received from the Ministry of Justice \$2,727,186 (includes amounts

deducted and invoiced for Judicial salaries) as grant for the financial year (year ended 30 June 2000, \$ 2,988,980).

## 8 Financial instruments

### *Fair value*

The fair value of financial instruments is equivalent to the carrying amount disclosed in the Statement of Financial Position.

### *Credit risk*

Credit risk is the risk that an outside party will not be able to meet its obligations to the Commission.

Financial Assets that potentially subject the Commission to a concentration of credit risk consist principally of cash, short-term deposits and receivables.

The cash and short-term deposits are placed with the Bank of New Zealand and the National Bank, both high-quality banks.

The concentration of credit risk with respect to receivables is limited by its small value and the relatively large number of customers involved.

The Commission does not have exposure to interest rate or currency risks.

## 9 Remuneration of the Chief Executive

In terms of the Law Commission Act 1985, the President of the Commission is the Chief Executive. The current President, and the previous President whose term expired on 31 March 2001, are High Court Judges and are paid by the Department for Courts as High Court Judges. The Commission reimbursed \$84,099 for the previous President and \$19,324 for the current President on account of this. The amounts do not represent the actual remuneration received by the individuals involved. In determining the amounts, consideration has been given to the fact that these Judges sit in the High Court and the Court of Appeal from time to time.

## 10 Remuneration of Commissioners and Staff

| Remuneration range \$       | Number |
|-----------------------------|--------|
| Between 100,000 and 110,000 | 1      |
| Between 110,001 and 120,000 | 2      |
| Between 200,000 and 210,000 | 1      |

One Commissioner who is a District Court Judge was paid by the Department for Courts as a District Court Judge. The Commission

reimbursed \$113,520 on account of this. The amount does not represent the actual remuneration received by the Judge. In determining the amount, consideration has been given to the fact that the Judge carried out some judicial functions during the year.

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# Statement of service performance for the year ended 30 June 2001

## OUTPUT CLASS: POLICY ADVICE

Budgeted expenditure: \$3,510,430

Actual expenditure: \$3,036,317

## QUALITY

All outputs and other work completed by the end of the year met the quality standards set out on pages 42–44, to the extent applicable.

## QUANTITY AND TIMELINESS

The work produced by the Commission is set out in the annual work programme submitted to the Minister of Justice under section 7(1) of the Law Commission Act 1985. The work programme is subject to revision from time to time.

The statement of service performance reports the outputs produced during the financial year as compared with those established in the annual work programme agreed in the Memorandum of Understanding with the Minister of Justice.

## Public Law

| Output                       | Planned      | Actual   |
|------------------------------|--------------|--|
| Judicial Review              |              |  |
| – Preliminary Paper          | October 2000 | Study Paper NZLC<br>SP10 released in<br>March 2001   |
| Civil Liability of the Crown |              |  |
| – Report                     | March 2001   | Study Paper NZLC SP6<br>released in December<br>2000 |

| <b>Output</b>  | <b>Planned</b> | <b>Actual</b>  |
|--|----------------|--|
| Acquittal Following Perversion<br>of the Course of Justice:<br>A Response to <i>R v Moore</i><br>– Preliminary Paper | October 2000   | Preliminary Paper<br>NZLC PP42 released in<br>September 2000 |
| – Report   | March 2001     | Report NZLC R70<br>released in March 2001                    |
| Adoption<br>– Report   | September 2000 | Report NZLC R65<br>released in<br>September 2000             |
| Privacy<br>– Preliminary Paper   | December 2000  | Awaiting a reference<br>from the Minister                    |
| Misuse of Enduring Powers<br>of Attorney<br>– Report   | December 2000  | Report NZLC R71<br>released in April 2001                    |

## **Common Law**

| <b>Output</b>                     | <b>Planned</b> | <b>Actual</b>                                   |
|-----------------------------------|----------------|---|
| Defamation<br>– Report            | October 2000   | Report NZLC R69<br>released in February<br>2001 |
| Limitation of Actions<br>– Report | July 2000      | Report NZLC R61<br>released in July 2000        |

## **Criminal Law**

| <b>Output</b>                         | <b>Planned</b> | <b>Actual</b>                                   |
|---------------------------------------|----------------|---|
| Juries in Criminal Trials<br>– Report | December 2000  | Report NZLC R69<br>released in February<br>2001 |
| Prosecution<br>– Report               | November 2000  | Report NZLC R66<br>released in November<br>2000 |

| <b>Output</b>                                    | <b>Planned</b> | <b>Actual</b>   |
|--|----------------|---|
| Battered Defendants                              |                |   |
| – Preliminary Paper                              | August 2000    | Preliminary Paper NZLC PP41 released in August 2000   |
| – Report   | March 2001     | Report NZLC R73 sent to Minister in May 2001. Released in July 2001                                 |
| Tax and Privilege                                |                |   |
| – Report   | October 2000   | Report NZLC R67 released in October 2000  |
| Simplification of Criminal Procedure Legislation |                |   |
| – Study Paper                                    | December 2000  | Paper sent to Ministry of Justice on 27 October 2000. Study Paper NZLC SP7 released in January 2001 |

## **Commercial Law**

| <b>Output</b>   | <b>Planned</b>                    | <b>Actual</b>   |
|---|-----------------------------------|---|
| Insolvency – Advice to the Ministry of Economic Development (MED) | Advice to MED on 28 February 2001 | Report delivered to MED on 28 February 2001. Study Paper NZLC SP11 published May 2001 |
| Adopting International Trade Conventions                          |                                   |   |
| – Study Paper   | November 2000                     | Study Paper NZLC SP5 released in November 2000  |
| Electronic Commerce Part Three: Remaining Issues                  |                                   |   |
| – Report  | December 2000                     | Report NZLC R68 released in December 2000   |

| <b>Output</b>   | <b>Planned</b> | <b>Actual</b>   |
|---|----------------|---|
| Abuse of Process and Maintenance and Champerty<br>– Preliminary Paper | December 2000  | Preliminary Paper NZLC PP43<br>– Subsidising Litigation released in December 2000<br>– Report NZLC R72 released in May 2001 |

## **The Treaty of Waitangi**

| <b>Output</b>   | <b>Planned</b> | <b>Actual</b>   |
|---|----------------|---|
| Coroners – Report   | July 2000      | Report NZLC R62 released in August 2000   |
| Determining Representation Rights under Te Ture Whenua Māori Act 1993<br>– Advisory Report for Te Puni Kōkiri | August 2000    | Advisory report sent to Te Puni Kōkiri on 23 August 2000<br>Study Paper NZLC SP8 released in March 2001 |
| Māori Custom Law<br>– Study Paper   | December 2000  | Study Paper NZLC SP9 released in March 2001   |

## **Advisory Work**

The Commission advised Government departments on the following subjects:

Consumer credit law reform

Criminal disclosure regime

Criminal prosecution

Foetal tissue sampling

Patent attorney regulation

Sentencing reform



Submissions were made on the following Bills:

Construction Contracts Bill

Crimes Amendment Bill No 6

Electronic Transaction Bill

Habeas Corpus Bill

Personal Property (Relationships) Amendment Bill

Prostitution Reform Bill

Victims Rights Bill

and to the Government Administration Committee's inquiry into the Films, Videos and Publications Classifications Act 1993

The Commission carried out follow-up work on the following Law Commission reports:

Adoption and its Alternatives: A Different Approach and a New Framework NZLC R65

Costs in Criminal Cases NZLC R60

Criminal Prosecution NZLC R66

Juries in Criminal Trials NZLC R69

A Personal Property Securities Act for New Zealand NZLC R8

### **Work in Progress**

Some work has been done on the following projects, which are on the work programme for the year ending 30 June 2002:

After Settlement Asset Project

Entry, Search and Seizure

An Evaluation of the Arbitration Act 1996

A Factual Basis for Sentencing

Minority Buy-Outs

A Review of Joint Family Homes Act 1950

Status Hearings

## COSTS

The costs listed below for each area of project activity consist of both direct and indirect costs. Direct costs include Commissioners and staff time (recorded in the Practice Management System) and all other costs that can be directly identified with individual projects. Indirect costs are those that cannot be identified directly with a project which are allocated so that the total cost of the Commission is reflected in its outputs.

| <b>Project</b>                | <b>Budget</b>    | <b>Actual</b>    |
|-------------------------------|------------------|------------------|
|                               | <b>\$</b>        | <b>\$</b>        |
| Public Law                    | 586,649          | 405,653          |
| Commercial Law                | 571,018          | 546,630          |
| Criminal Law                  | 1,110,735        | 956,988          |
| Common Law                    | 48,967           | 46,961           |
| The Treaty of Waitangi        | 539,874          | 534,083          |
| Advisory Work and Submissions | 653,187          | 546,002          |
| <b>Total</b>                  | <b>3,510,430</b> | <b>3,036,317</b> |

## PERFORMANCE STANDARDS

### **Background**

#### *Functions of the Commission*

The Law Commission Act 1985 stipulates four key activities for the Law Commission. These are:

- to systematically review the law of New Zealand (section 5(1)(a));
- recommend reform and development of the law of New Zealand (section 5(1)(b));
- advise on the review of the law of New Zealand conducted by a department or other organisation or on resulting proposals (section 5(1)(c)); and
- advise the Minister of Justice on ways in which the law of New Zealand can be made as understandable and accessible as is practicable (section 5(1)(d)).

#### *Work Programme*

The Commission's yearly programme of the above activities are selected by:

- references from the Minister of Justice in terms of section 7 of the Law Commission Act;

- projects selected by the Commission on its own initiative (but in practice usually in consultation with the Minister of Justice (section 5 of the Law Commission Act)); and
- projects selected at the request of other State agencies (section 5 of the Law Commission Act).

### *Outputs*

The Commission's key outputs usually appear in published form. There are four types of publications:

- *Preliminary papers.* For each project the Commission usually publishes a discussion paper on which interested parties are invited to make submissions.
- *Reports.* In most cases a report will follow a preliminary paper. Reports are produced after taking into account the submissions made by the interested parties. Reports will contain recommendations for law changes and/or new laws. In some cases they will include draft legislation. Reports are tabled in Parliament by the Minister of Justice.
- *Miscellaneous papers.* A miscellaneous paper doesn't recommend law changes but contains the findings of the research done on specific subjects that are considered important.
- *Study papers.* A series of publications which include advice given to other government departments on specific matters and studies on subjects of a general nature.

## **Performance standards**

The performance of the Commission is measured against the following four standards: quality, quantity, timeliness and cost.

### *Quality*

Quality is achieved by ensuring the following:

- *Purpose.* The purpose will be clearly identified and focused on remedying the mischief to which it is addressed.
- *Logic.* All argument will be logical and supported by facts, and explain any assumptions made.
- *Accurate research.* The paper will be supported by research that is thorough, accurate and takes account of all relevant material.
- *Practicality.* The paper will consider questions of practicality, especially issues of implementation, cost, technical feasibility, timing, and consistency with other Commission policies.
- *Consultation.* Advice and recommendations will be the result of appropriate consultation with interested parties, and all reasonable objections will be identified. All submissions will be carefully considered before the final report.

- *Peer Review.* In many cases, selected external experts will review the papers.
- *Internal review.* Each publication will be subjected to rigorous and critical review by all the Commissioners.
- *Presentation.* The paper will be written in as clear a manner as accepted legal phrasing allows.

#### *Quantity*

The projects listed in the work programme will be completed.

#### *Timeliness*

Timeliness will be achieved by meeting the reporting date set in the work programme. However, unless the Commission is expressly called upon to meet a particular timeframe, reporting dates are arrived at for the internal purposes of the Commission in relation to such matters as workflow control. Predicted dates can in practice be exceeded for a number of reasons, which include such factors as setting aside a particular project to meet a more urgent subsequent deadline and unforeseeable developments in the topic under discussion.

#### *Cost*

Each project will be completed within the budgeted cost.

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## REPORT OF THE AUDIT OFFICE

TO THE READERS OF THE FINANCIAL STATEMENTS  
OF THE LAW COMMISSION  
FOR THE YEAR ENDED 30 JUNE 2001

We have audited the financial statements on pages 24 to 44. The financial statements provide information about the past financial and service performance of the Law Commission and its financial position as at 30 June 2001. This information is stated in accordance with the accounting policies set out on pages 24 to 26.

### **Responsibilities of the Members of the Law Commission**

The Public Finance Act 1989 requires the Members of the Law Commission to prepare financial statements in accordance with generally accepted accounting practice which fairly reflect the financial position of the Law Commission as at 30 June 2001, the results of its operations and cash flows and the service performance achievements for the year ended 30 June 2001.

### **Auditor's responsibilities**

Section 43(1) of the Public Finance Act 1989 requires the Audit Office to audit the financial statements presented by the Law Commission. It is the responsibility of the Audit Office to express an independent opinion on the financial statements and report its opinion to you.

The Controller and Auditor-General has appointed HC Lim, of Audit New Zealand, to undertake the audit.

### **Basis of opinion**

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- the significant estimates and judgements made by the Members of the Law Commission in the preparation of the financial statements; *and*

- whether the accounting policies are appropriate to the Law Commission's circumstances, consistently applied and adequately disclosed.

We conducted our audit in accordance with generally accepted auditing standards, including the Auditing Standards issued by the Institute of Chartered Accountants of New Zealand. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion, we also evaluated the overall adequacy of the presentation of information in the financial statements.

We have performed assurance-related assignments for the Law Commission. Other than these assignments and in our capacity as auditor acting on behalf of the Controller and Auditor-General, we have no relationship with or interests in the Law Commission.

### **Unqualified opinion**

We have obtained all the information and explanations we have required.

In our opinion the financial statements of the Law Commission on pages 24 to 44:

- comply with generally accepted accounting practice; *and*
- fairly reflect:
  - the financial position as at 30 June 2001;
  - the results of its operations and cash flows for the year ended on that date; *and*
  - the service performance achievements in relation to the performance targets and other measures adopted for the year ended on that date.

Our audit was completed on 31 August 2001 and our unqualified opinion is expressed as at that date.

*HC Lim*  
Audit New Zealand  
On behalf of the Controller and Auditor-General  
Wellington, New Zealand

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APPENDIX A  
Members and staff of  
the Law Commission as at  
30 June 2001

MEMBERS OF THE LAW COMMISSION

The Hon Justice J Bruce Robertson – President  
DF Dugdale  
Paul Heath QC  
Judge Patrick Keane  
Dr Ngatata Love QSO JP  
Vivienne Ullrich QC

PERMANENT STAFF OF THE LAW  
COMMISSION

|                                      |   |
|--------------------------------------|---|
| Executive Manager                    | Bala Benjamin   |
| Senior Legal Researcher              | Louise Symons   |
| Legal Researchers                    | Helen Colebrook<br>Michael Josling<br>David Thompson<br>Amelia Bardsley |
| Library Manager                      | Judith Porter   |
| Reference Librarian                  | Barbara McPhee  |
| Serials Librarian                    | Jacqueline Kitchen  |
| Student Library Assistant            | Marcus McMillan   |
| Publications and Information Officer | Anne Tucker   |
| Secretaries                          | Helen Barrett<br>Anthea Miller<br>Barbara Sutton<br>Gloria Hakiwai      |

Receptionist/Assistant Publications Officer  
Systems Administrator  
Administration and Library Assistant  
Finance and Administration Assistant

Colleen Gurney  
Brenda Speak  
Marilyn Cameron  
Andrew Wong She

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APPENDIX B  
Law Commission Publications as at 30 June 2001

REPORT SERIES

| No      | Name  | Released      | Outcome   |
|---------|---|---------------|---|
| NZLC R1 | Imperial Legislation in Force in New Zealand  | March 1987    | Largely implemented by the Imperial Laws Application Act 1988 and associated legislation  |
| NZLC R2 | Annual Report   | 1987          |   |
| NZLC R3 | The Accident Compensation Scheme: Interim Report on Aspects of Funding                | November 1987 | Considered in preparing the Accident Rehabilitation and Compensation Insurance Act 1992 and some recommendations reflected in its provisions                  |
| NZLC R4 | Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme) | May 1988      | Considered also in connection with reviews of the Accident Rehabilitation and Compensation Insurance Act 1992 and implementing regulations undertaken in 1994 |
| NZLC R5 | Annual Report   | 1988          |   |
| NZLC R6 | Limitation Defences in Civil Proceedings  | October 1988  | Re-examined in discussion paper NZLC PP39 <i>Limitation of Civil Actions</i>  |

| No       | Name  | Released       | Outcome   |
|----------|---|----------------|---|
| NZLC R7  | The Structure of the Courts                                     | March 1989     | Substantial effect given to the Commission's recommendations in the various enactments passed to reform the jurisdiction of the courts in 1991 and 1992 |
| NZLC R8  | A Personal Property Securities Act for New Zealand              | April 1989     | Implemented by the Personal Property Securities Act 1999  |
| NZLC R9  | Company Law: Reform and Restatement                             | June 1989      | Companies Act 1993, Receiverships Act 1993, and amendments to the Property Law Act 1952 and the Companies Act 1955 entered into force on 1 July 1994    |
| NZLC R10 | Annual Report   | 1989           |   |
| NZLC R11 | Legislation and its Interpretation: Statutory Publications Bill | September 1989 | Implemented in part by the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publications Act 1989                                       |
| NZLC R12 | First Report on Emergencies: Use of the Armed Forces            | February 1990  | Implemented in the Defence Act 1990   |
| NZLC R13 | Intellectual Property: The Context for Reform                   | March 1990     | For use as a resource. No law changes recommended   |
| NZLC R14 | Criminal Procedure: Part One: Disclosure and Committal          | June 1990      | Under consideration along with NZLC R66   |

| No       | Name   | Released       | Outcome  |
|----------|--|----------------|--|
| NZLC R15 | Annual Report  | 1990           |  |
| NZLC R16 | Company Law Reform:<br>Transition and Revision   | September 1990 | A supplement to NZLC R9  |
| NZLC R17 | A New Interpretation Act:<br>To Avoid “Prolivity and<br>Tautology”   | December 1990  | Recommendations form the basis of the Interpretation Act<br>1999   |
| NZLC R18 | Aspects of Damages:<br>Employment Contracts and<br>the Rule in <i>Addis v Gramophone<br/>Co</i>                            | March 1991     | Implemented almost in entirety by the Employment Contracts<br>Act 1991   |
| NZLC R19 | Aspects of Damages: The Rules<br>in <i>Bain v Fothergill</i> and <i>Joyner<br/>v Weeks</i>                                 | May 1991       | Abolition of the rule in <i>Bain v Fothergill</i> implemented by the<br>Property Law Amendment Act 1994<br>Problems with the rule in <i>Joyner v Weeks</i> partially addressed in<br><i>Māori Trustee v Rogross Farms Ltd</i> [1994] 3 NZLR 410 (CA) |
| NZLC R20 | Arbitration  | October 1991   | Implemented by the Arbitration Act 1996  |
| NZLC R21 | Annual Report  | 1991           |  |
| NZLC R22 | Final Report on Emergencies  | December 1991  | A supplement to NZLC R12   |
| NZLC R23 | The United Nations Convention<br>on Contracts for the International<br>Sale of Goods: New Zealand’s<br>Proposed Acceptance | June 1992      | Implemented by the Sale of Goods (United Nations<br>Convention) Act 1994   |

| No       | Name  | Released      | Outcome   |
|----------|---|---------------|---|
| NZLC R24 | Annual Report   | 1992          |   |
| NZLC R25 | Contract Statutes Review                                    | May 1993      | No action   |
| NZLC R26 | Annual Report   | 1993          |   |
| NZLC R27 | The Format of Legislation                                   | December 1993 | Adopted by Chief Parliamentary Counsel  |
| NZLC R28 | Aspects of Damages: The Award of Interest on Money Claims   | May 1994      | No action   |
| NZLC R29 | A New Property Law Act                                      | June 1994     | No action   |
| NZLC R30 | Community Safety: Mental Health and Criminal Justice Issues | August 1994   | Further reform under consideration by Minister of Health and Minister of Justice respectively   |
| NZLC R31 | Police Questioning  | October 1994  | Under consideration by the Minister of Justice  |
| NZLC R32 | Annual Report   | 1994          |   |
| NZLC R33 | Annual Report   | 1995          |   |
| NZLC R34 | A New Zealand Guide to International Law and its Sources    | May 1996      | For use as a resource – no law changes recommended  |
| NZLC R35 | Legislation Manual: Structure and Style                     | May 1996      | For use as a resource<br>Proposals on structure and style substantially adopted by the Parliamentary Counsel Office and in widespread use |
| NZLC R36 | Annual Report   | 1996          |   |

| No       | Name   | Released      | Outcome   |
|----------|--|---------------|---|
| NZLC R37 | Crown Liability and Judicial Immunity: A Response to <i>Baigent's</i> case and <i>Harvey v Derrick</i> | May 1997      | Recommendations as to <i>Baigent's</i> case accepted<br>Recommendation for extended judicial immunity the subject of Constitution Bill before Parliament. Implemented in part by section 26 Interpretation Act 1999 |
| NZLC R38 | Succession Law: Homicidal Heirs  | July 1997     | No action   |
| NZLC R39 | Succession Law: A Succession (Adjustment) Act  | August 1997   | No action but some reflection in judgments of criticism of awards to adult children   |
| NZLC R40 | Review of the Official Information Act 1982  | October 1997  | No action   |
| NZLC R41 | Succession Law: A Succession (Wills) Act   | October 1997  | Recommendation expected from Ministers of Justice to Cabinet that it be enacted   |
| NZLC R42 | Evidence Law: Witness Anonymity  | October 1997  | Largely implemented by the Evidence (Witness Anonymity) Act 1997  |
| NZLC R43 | Annual Report  | 1997          |   |
| NZLC R44 | Habeas Corpus: Procedure   | November 1997 | Implemented by Habeas Corpus Act 2001   |
| NZLC R45 | The Treaty Making Process: Reform and the Role of Parliament   | December 1997 | Partially implemented by proposed changes to Standing Orders<br>For use as a resource   |
| NZLC R46 | Some Insurance Law Problems  | May 1998      | Recommendation expected from Ministers of Justice to Cabinet that it be enacted   |
| NZLC R47 | Apportionment of Civil Liability   | May 1998      | No action   |

| No       | Name   | Released       | Outcome   |
|----------|--|----------------|---|
| NZLC R48 | Annual Report  | September 1998 |   |
| NZLC R49 | Compensating the Wrongly Convicted (1998)  | September 1998 | Implemented   |
| NZLC R50 | Electronic Commerce Part One: A Guide for the Legal and Business Community                                       | October 1998   | Followed by Part Two<br>No recommendations made but basis for law reform to accommodate needs of electronic commerce explored and submissions invited: see further NZLC R58 |
| NZLC R51 | Dishonestly Procuring Valuable Benefits  | December 1998  | The result recommended achieved in a different way by the Crimes Amendment Bill (No 6) 1999   |
| NZLC R52 | Cross-Border Insolvency: Should New Zealand Adopt the UNCITRAL Model Law on Cross-Border Insolvency?             | February 1999  | Under consideration as part of the Ministry of Economic Development's insolvency law review   |
| NZLC R53 | Justice: The Experiences of Māori Women Te Tikanga o te Ture: Te Mātauranga o ngā Wāhine Māori e pa ana ki tēnei | April 1999     | No specific measures proposed   |
| NZLC R54 | Computer Misuse  | May 1999       | Most recommendations included in the Crimes Amendment Bill (No 6) and Supplementary Order Paper No 85 reported back from the Law and Order Select Committee                 |
| NZLC R55 | Evidence   | August 1999    | Early implementation indicated  |
| NZLC R56 | Annual Report  | September 1999 |   |

| No       | Name   | Released       | Outcome   |
|----------|--|----------------|---|
| NZLC R57 | Retirement Villages  | September 1999 | Early implementation indicated  |
| NZLC R58 | Electronic Commerce Part Two:<br>A Basic Legal Framework   | November 1999  | Recommendations reflected in Electronic Transactions Bill reported back from Commerce Committee on 19 June 2001   |
| NZLC R59 | Shared Ownership of Land   | November 1999  | No action   |
| NZLC R60 | Costs in Criminal Cases  | May 2000       | No action proposed by report  |
| NZLC R61 | Tidying the Limitation Act   | July 2000      | No action   |
| NZLC R62 | Coroners   | August 2000    | Early implementation indicated  |
| NZLC R63 | Annual Report 2000   | August 2000    |   |
| NZLC R64 | Defaming Politicians: A Response<br>to <i>Lange v Atkinson</i>   | August 2000    | No action   |
| NZLC R65 | Adoption and Its Alternatives:<br>A Different Approach and a<br>New Framework  | September 2000 | The Government Administration Select Committee is currently considering the laws relating to adoption and required changes based on Law Commission report                             |
| NZLC R66 | Criminal Prosecution   | October 2000   | Under consideration   |
| NZLC R67 | Tax and Privilege: Legal<br>Professional Privilege and the<br>Commissioner of Inland Revenue's<br>Powers to Obtain Information | October 2000   | No action   |
| NZLC R68 | Electronic Commerce Part Three:<br>Remaining Issues  | December 2000  | No legislative amendments recommended; additional policy work on remaining issues being undertaken by Ministry of Economic Development and Ministry of Consumer Affairs, among others |

| No       | Name  | Released      | Outcome   |
|----------|---|---------------|---|
| NZLC R69 | Juries in Criminal Trials   | February 2001 | Under consideration   |
| NZLC R70 | Aquittal Following Perversion of the Course of Justice                  | March 2001    | Under consideration   |
| NZLC R71 | Misuse of Enduring Powers of Attorney                                   | April 2001    | Under consideration   |
| NZLC R72 | Subsidising Litigation  | May 2001      | Proposals concerning contingency fees expected to be reflected in the bill to replace Law Practitioners Act |
| NZLC R73 | Some Criminal Defences with Particular Reference to Battered Defendants | May 2001      | Early implementation of some proposals indicated  |

### PRELIMINARY PAPER SERIES

| No       | Name   | Released       | Outcome                                 |
|----------|--|----------------|---|
| NZLC PP1 | Legislation and its Interpretation: The Acts Interpretation Act 1924 and Related Legislation | June 1987      | Followed by report NZLC R17             |
| NZLC PP2 | The Accident Compensation Scheme   | September 1987 | Followed by reports NZLC R3 and NZLC R4 |



| No        | Name  | Released       | Outcome   |
|-----------|---|----------------|---|
| NZLC PP3  | The Limitation Act 1950   | September 1987 | Followed by report NZLC R6  |
| NZLC PP4  | The Structure of the Courts   | December 1987  | Followed by report NZLC R7  |
| NZLC PP5  | Company Law   | December 1987  | Followed by reports NZLC R9 and NZLC R16  |
| NZLC PP6  | Reform of Personal Property Security Law (report by Prof JH Farrar and MA O'Regan)              | 1988           | Followed by report NZLC R8  |
| NZLC PP7  | Arbitration   | November 1988  | Followed by report NZLC R20   |
| NZLC PP8  | Legislation and its Interpretation  | December 1988  | Followed by report NZLC R17   |
| NZLC PP9  | The Treaty of Waitangi and Māori Fisheries – Mataitai Nga Tikanga Māori me te Tiriti o Waitangi | March 1989     | For use as a resource<br>Reference withdrawn by the Minister of Justice at the Law Commission's request |
| NZLC PP10 | Hearsay Evidence  | June 1989      | Followed by report NZLC R55   |
| NZLC PP11 | “Unfair” Contracts  | September 1990 | No further consideration is intended  |
| NZLC PP12 | The Prosecution of Offences   | November 1990  | Followed by discussion paper NZLC PP28  |
| NZLC PP13 | Evidence Law: Principles for Reform   | April 1991     | Followed by report NZLC R55   |
| NZLC PP14 | Evidence Law: Codification  | April 1991     | Followed by report NZLC R55   |
| NZLC PP15 | Evidence Law: Hearsay   | April 1991     | Followed by report NZLC R55   |
| NZLC PP16 | The Property Law Act 1952   | July 1991      | Followed by report NZLC R29   |

| No        | Name  | Released       | Outcome  |
|-----------|---|----------------|--|
| NZLC PP17 | Aspects of Damages: Interest on Debts and Damages       | November 1991  | Followed by report NZLC R28                          |
| NZLC PP18 | Evidence Law: Expert Evidence and Opinion Evidence      | December 1991  | Followed by report NZLC R55                          |
| NZLC PP19 | Apportionment of Civil Liability                        | March 1992     | Followed by report NZLC R47                          |
| NZLC PP20 | Tenure and Estates in Land                              | June 1992      | No further consideration is intended                 |
| NZLC PP21 | Criminal Evidence: Police Questioning                   | September 1993 | Followed by report NZLC R31                          |
| NZLC PP22 | Evidence Law: Documentary Paper                         | May 1994       | Followed by report NZLC R55                          |
| NZLC PP23 | Evidence Law: Privilege                                 | May 1994       | Followed by report NZLC R55                          |
| NZLC PP24 | Succession Law: Testamentary Claims                     | August 1996    | Followed by reports NZLC R38, NZLC R39, and NZLC R41 |
| NZLC PP25 | The Privilege Against Self-Incrimination                | September 1996 | Followed by report NZLC R55                          |
| NZLC PP26 | The Evidence of Children and Other Vulnerable Witnesses | October 1996   | Followed by report NZLC R55                          |
| NZLC PP27 | Evidence Law: Character and Credibility                 | February 1997  | Followed by report NZLC R55                          |
| NZLC PP28 | Criminal Prosecution                                    | March 1997     | Followed by report NZLC R66                          |
| NZLC PP29 | Evidence Law: Witness Anonymity                         | September 1997 | Followed by report NZLC R42                          |

| No        | Name  | Released       | Outcome   |
|-----------|---|----------------|---|
| NZLC PP30 | Repeal of the Contracts Enforcement Act 1956  | December 1997  | Deferred  |
| NZLC PP31 | Compensation for Wrongful Conviction or Prosecution                                     | April 1998     | Followed by report NZLC R49   |
| NZLC PP32 | Juries in Criminal Trials: Part One   | July 1998      | Followed by Juries in Criminal Trials: Part Two NZLC PP37 and report NZLC R69 |
| NZLC PP33 | Defaming Politicians: A Response to <i>Lange v Atkinson</i>                             | September 1998 | Followed by report NZLC R64   |
| NZLC PP34 | Retirement Villages   | October 1998   | Followed by report NZLC R57   |
| NZLC PP35 | Shared Ownership of Land  | January 1999   | Followed by report NZLC R59   |
| NZLC PP36 | Coroners: A Review  | August 1999    | Followed by report NZLC R62   |
| NZLC PP37 | Juries in Criminal Trials: Part Two   | November 1999  | Followed by report NZLC R69   |
| NZLC PP38 | Adoption: Options for Reform  | October 1999   | Followed by report NZLC R65   |
| NZLC PP39 | Limitation of Civil Actions   | February 2000  | Followed by report NZLC R61   |
| NZLC PP40 | Misuse of Enduring Powers of Attorney   | May 2000       | Followed by report NZLC R71   |
| NZLC PP41 | Battered Defendants: Victims of Domestic Violence Who Offend                            | August 2000    | Followed by report NZLC R73   |
| NZLC PP42 | Acquittal Following Perversion of the Course of Justice: A Response to <i>R v Moore</i> | September 2000 | Followed by report NZLC R70   |

| No        | Name                   | Released      | Outcome                     |
|-----------|------------------------|---------------|-----------------------------|
| NZLC PP43 | Subsidising Litigation | December 2000 | Followed by report NZLC R72 |

## STUDY PAPER SERIES

| No       | Name  | Released      | Outcome  |
|----------|---|---------------|--|
| NZLC SP1 | Women's Access to Legal Services  | June 1999     | No specific measures proposed  |
| NZLC SP2 | Priority Debts in the Distribution of Insolvent Estates: An Advisory Report to the Ministry of Commerce | October 1999  | Awaits completion of the Ministry of Economic Development's review of insolvency law |
| NZLC SP3 | Protecting Construction Contractors   | November 1999 | Adopted in Construction Contracts Bill currently before Parliament                   |
| NZLC SP4 | Recognising Same-Sex Relationships  | December 1999 | Submission to the Ministry of Justice – no further Law Commission action required    |
| NZLC SP5 | International Trade Conventions   | November 2000 | Resource only  |
| NZLC SP6 | To Bind their Kings in Chains: An Advisory Report to the Ministry of Justice                            | December 2000 | Reflected in provisions of Crown Organisations (Criminal Liability) Bill             |
| NZLC SP7 | Simplification of Criminal Procedure Legislation: An Advisory Report to the Ministry of Justice         | January 2001  | Under consideration  |

| No        | Name  | Released   | Outcome  |
|-----------|---|------------|--|
| NZLC SP8  | Determining Representation Rights under Te Ture Whenua Māori Act 1993: An Advisory Report for Te Puni Kōkiri      | March 2001 | Under consideration  |
| NZLC SP9  | Māori Custom and Values in New Zealand Law  | March 2001 | Resource only  |
| NZLC SP10 | Mandatory Orders Against the Crown and Tidying Judicial Review  | March 2001 | No action  |
| NZLC SP11 | Insolvency Law Reform: Promoting Trust and Confidence: An Advisory Report to the Ministry of Economic Development | May 2001   | Awaits completion of the Ministry of Economic Development's review of insolvency law |

## MISCELLANEOUS PAPER SERIES

| No       | Name  | Released     | Outcome                              |
|----------|---|--------------|--------------------------------------|
| NZLC MP1 | What Should Happen to your Property when you Die? | August 1996  | Preliminary to NZLC R39 and NZLC R41 |
| NZLC MP2 | Succession Law: Wills Reforms                     | October 1996 | Preliminary to NZLC R39 and NZLC R41 |
| NZLC MP3 | Information about Lawyers' Fees                   | October 1996 | Preliminary to NZLC SP1              |
| NZLC MP4 | Women's Access to Legal Information               | March 1997   | Preliminary to NZLC SP1              |

| No        | Name  | Released       | Outcome                     |
|-----------|---|----------------|-----------------------------|
| NZLC MP5  | The Law of Parliamentary Privilege  | December 1996  | Resource only               |
| NZLC MP6  | The Taking into Account of Te Ao Māori in Relation to Reform of the Law of Succession | July 1996      | Resource only               |
| NZLC MP7  | Strategic Business Plan 1996/97   | December 1996  |                             |
| NZLC MP8  | Women's Access to Civil Legal Aid   | March 1997     | Preliminary to NZLC SP1     |
| NZLC MP9  | Women's Access to Legal Advice and Representation                                     | April 1997     | Preliminary to NZLC SP1     |
| NZLC MP10 | Lawyers' Costs in Family Law Disputes   | June 1997      | Preliminary to NZLC SP1     |
| NZLC MP11 | The Education and Training of Law Students and Lawyers                                | September 1997 | Preliminary to NZLC SP1     |
| NZLC MP12 | Costs in Criminal Cases   | November 1997  | Followed by report NZLC R60 |
| NZLC MP13 | Aspects of Memory   | August 1999    | Resource only               |

## OTHER LAW COMMISSION PUBLICATIONS

### *Report series*

- NZLC R1 Imperial Legislation in Force in New Zealand (1987)
- NZLC R2 Annual Reports for the years ended 31 March 1986 and 31 March 1987 (1987)
- NZLC R3 The Accident Compensation Scheme (Interim Report on Aspects of Funding) (1987)
- NZLC R4 Personal Injury: Prevention and Recovery (Report on the Accident Compensation Scheme) (1988)
- NZLC R5 Annual Report 1988 (1988)
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