

LAW COMMISSION BILL

EXPLANATORY NOTE

THIS Bill, which comes into force on 1 February 1986, establishes a Law Commission as a central advisory body for the review, reform, and development of the law of New Zealand.

No. 131—1

Hon. Geoffrey Palmer

LAW COMMISSION

ANALYSIS

Title	10. Appointment of Judge as member not to affect tenure, etc.
1. Short Title and commencement	11. Term of office
2. Act to bind the Crown	12. Vacation of office
3. Purpose	13. President and deputy
4. Establishment	14. Procedure
5. Functions	15. Proceedings of Commission
6. Powers	16. Reports
7. Responsibilities	17. Annual report
8. Assistance by departments	18. Consequential amendments to other enactments
9. Membership	Schedules

A BILL INTITULED

An Act to establish a Law Commission as a central advisory body for the review, reform, and development of the law of New Zealand

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Law Commission Act 1985.

10 (2) This Act shall come into force on the 1st day of February 1986.

2. Act to bind the Crown—This Act binds the Crown.

3. Purpose—The purpose of this Act is to promote the systematic review, reform, and development of the statute law
15 and the common law of New Zealand.

No. 131—1

4. Establishment—(1) For the achievement of the purpose of this Act, there is hereby established a commission to be called the Law Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of entering into contracts, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may do and suffer.

5. Functions—(1) The principal functions of the Commission are—

- (a) To take and keep under review in a systematic way the law of New Zealand:
 - (b) To make recommendations for the reform and development of the law of New Zealand:
 - (c) To advise on reviews of any aspect of the law of New Zealand conducted by any Government department or organisation (as defined in **section 8 (2)** of this Act) and on proposals made as a result of such reviews:
 - (d) To advise the Minister of Justice on ways in which the law of New Zealand can be made as understandable and accessible as is practicable.
- (2) In making its recommendations, the Commission—
- (a) Shall take into account *te taha Maori* (the Maori dimension) and the values and customs of the Maori, and shall also have regard to the multicultural character of New Zealand society; and
 - (b) Shall have regard to the desirability of simplifying the expression and content of the law, as far as that is practicable.

6. Powers—(1) The Commission shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions.

(2) Without limiting the generality of **subsection (1)** of this section, the Commission shall have the power—

- (a) To initiate proposals for the review, reform, or development of any aspect of the law of New Zealand and to receive and consider any such proposals made or referred to it by any person:
- (b) To initiate, sponsor, and carry out such studies and research as it thinks expedient for the proper discharge of its functions:

- (c) To publicise such parts of its work in such manner as it thinks expedient, to conduct public hearings, to seek comments from the public on its proposals, and to consult with any persons or classes of persons:
- 5 (d) To provide advice and assistance to, and to request information from, any Government department or organisation (as defined in **section 8 (2)** of this Act) considering the review, reform, or development of any aspect of the law of New Zealand.

10 **7. Responsibilities**—(1) The Commission shall prepare and submit to the Minister of Justice, at least once a year, programmes for the review of appropriate aspects of the law of New Zealand with a view to their reform or development.

15 (2) The Minister of Justice may, at any time, request the Commission to examine any aspect of the law of New Zealand, and the Commission shall review that aspect accordingly, and report to the Minister of Justice thereon with its recommendations.

20 (3) The Minister of Justice may request the Commission to give priority to the examination of any aspect of the law of New Zealand (whether or not included in a programme), and the Commission shall give that matter appropriate priority.

25 (4) The Minister of Justice may invite the Commission to comment on any proposed change in the law of New Zealand, and the Commission may make such comment thereon as it thinks fit.

8. Assistance by departments—(1) The Commission may consult with any Government department or organisation concerning any review of any aspect of the law of New Zealand administered by that department or organisation and may receive from the department or organisation such information relating to that review as is appropriate.

(2) In this section “organisation” means—

- 35 (a) An organisation named in Part II of the First Schedule to the Ombudsmen Act 1975;
- (b) An organisation named in the First Schedule to the Official Information Act 1982;
- (c) The Audit Office (as defined in section 14 of the Public Finance Act 1977).

40 **9. Membership**—(1) The Law Commission shall consist of no fewer than 3 nor more than 6 Commissioners to be appointed from time to time by the Governor-General on the recommendation of the Minister of Justice.

(2) One Commissioner, who shall be a Judge or retired Judge of the Court of Appeal or the High Court, or a barrister or solicitor of the High Court of not less than 7 years' practice, shall be appointed as the president of the Commission.

10. Appointment of Judge as member not to affect tenure, etc.—The appointment of a Judge as a member of the Commission, or service by a Judge as a member of the Commission, does not affect the Judge's tenure of the judicial office or the Judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as a Judge (including those in relation to superannuation) and, for all purposes, the Judge's service as a member shall be taken to be service as a Judge. 5 10

11. Term of office—(1) Except as otherwise provided in **section 12** of this Act, every Commissioner shall hold office for such term not exceeding 5 years as the Governor-General on the recommendation of the Minister of Justice shall specify in the instrument appointing that Commissioner. 15

(2) Every Commissioner shall be eligible for reappointment from time to time. 20

(3) Where the term for which a Commissioner has been appointed expires, that Commissioner, unless sooner vacating or removed from office under **section 12** of this Act, shall continue to hold office, by virtue of the appointment for the term that has expired, until— 25

- (a) That Commissioner is reappointed; or
- (b) A successor to that Commissioner is appointed; or
- (c) That Commissioner is informed in writing by the Minister of Justice that that Commissioner is not to be reappointed and that a successor to that Commissioner is not to be appointed. 30

12. Vacation of office—(1) Subject to **subsection (2)** of this section, any Commissioner may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General. 35

(2) If at any time any Commissioner holds judicial office, that Commissioner shall not be removed from the office of Commissioner unless that Commissioner is removed or suspended from the Commissioner's judicial office. 40

(3) Any Commissioner may at any time resign the office of Commissioner by notice in writing addressed to the Minister of Justice.

(4) The powers of the Commission shall not be affected by
5 any vacancy in its membership.

13. President and deputy—(1) The president of the Commission shall be its chief executive and shall supervise and direct the work of the Commission.

(2) The president of the Commission may from time to time
10 appoint another member of the Commission as the deputy of the president of the Commission.

(3) In any case in which the president of the Commission becomes incapable of acting by reason of illness, absence, or other sufficient cause or during any vacancy in the office of
15 president, the deputy of the president of the Commission shall have and may exercise all the powers, functions, and duties of the president.

(4) No acts done by a person holding office as the deputy of the president of the Commission in that person's capacity
20 as such deputy, and no act done by the Commission while a deputy of the president of the Commission is acting as such deputy, shall in any proceedings be questioned on the ground that the occasion for the deputy's so acting had not arisen or had ceased.

25 **14. Procedure**—The Commission may regulate its procedure in such manner as it thinks fit.

15. Proceedings of Commission—The provisions of the First Schedule to this Act shall have effect in relation to the Commission and its proceedings.

30 **16. Reports**—(1) The Commission—

(a) Shall submit to the Minister of Justice every report prepared by it on any aspect of the law of New Zealand; and

(b) Subject to **subsection (2)** of this section, shall publish every
35 report submitted to the Minister of Justice pursuant to **paragraph (a)** of this subsection.

(2) Where the Minister of Justice, acting under **section 7 (4)** of this Act, invites the Commission to comment on any proposed change in the law of New Zealand, the Commission
40 shall not, without the approval of the Minister of Justice, publish any report or any part of a report made to the Minister of Justice in response to the invitation under **section 7 (4)** of this Act.

(3) Where the Commission furnishes to the Minister of Justice a report prepared by it on any aspect of the law of New Zealand (not being a report prepared by it in response to an invitation under **section 7 (4)** of this Act), the Minister of Justice shall lay a copy of that report before Parliament as soon as practicable after the receipt of that report by that Minister. 5

(4) Where the Commission furnishes to the Minister of Justice a report prepared by it in response to an invitation under **section 7 (4)** of this Act, the Minister of Justice may publish the whole or any part of that report and shall lay before Parliament, as soon as practicable after publication, so much of that report as is published by the Minister of Justice or with the approval of the Minister of Justice. 10

17. Annual report—(1) As soon as practicable after the end of each year ending with the 31st day of March, the Commission shall furnish to the Minister of Justice a report of its operations during that year. 15

(2) A copy of the report shall be laid before Parliament as soon as practicable after its receipt by the Minister of Justice.

18. Consequential amendments to other enactments— 20
The enactments specified in the **Second** Schedule to this Act are hereby amended in the manner indicated in that Schedule.

SCHEDULES

FIRST SCHEDULE

Section 15

PROVISIONS RELATING TO LAW COMMISSION

1. Remuneration, allowances, and expenses of members of Commission—(1) There shall be paid to the members of the Commission such remuneration by way of fees, salary, wages, or allowances as may from time to time be fixed, either generally or in respect of any particular member or members of the Commission, by the Higher Salaries Commission.

(2) Any decision under **subclause (1)** of this clause shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no such date is specified, the decision shall take effect on the date thereof.

(3) The Commission is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(4) There shall be paid to the members of the Commission travelling allowances and travelling expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

2. Employees of Commission—(1) Subject to the provisions of this clause, the president may, on behalf of the Commission, from time to time appoint such officers and employees, including acting or temporary or casual officers and employees, as the president thinks necessary for the efficient carrying out of the Commission's functions, powers, and duties under this Act or any other enactment.

(2) The number of officers and employees who may be appointed under **subclause (1)** of this clause, whether generally or in respect of any specified duties, shall from time to time be determined by the Minister of Justice.

(3) Officers and employees appointed under **subclause (1)** of this clause shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the president, on behalf of the Commission, from time to time determines in agreement with the State Services Commission, or as the Minister of Justice from time to time determines in any case where the president and the State Services Commission fail to agree.

(4) Any determination under **subclause (3)** of this clause shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no date is so specified, the determination shall take effect on the date thereof.

3. Committees and consultants—(1) To assist the Commission in the exercise of its functions, the president may, on behalf of the Commission, from time to time,—

- (a) Establish committees and appoint members thereof; and
- (b) Engage such consultants as the president thinks fit.

(2) The Commission shall pay persons appointed or engaged under **subclause (1)** of this clause, for services rendered by them, fees and commission or either at such rates as the president thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Commission.

FIRST SCHEDULE—*continued***4. Application of certain Acts to members and staff of Commission—**

No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956 by reason of that person's appointment as a member of the Commission, or an officer or employee of the Commission, or a person appointed by the president under **clause 3** of this Schedule.

5. Superannuation or retiring allowances—(1) For the purpose of providing a superannuation fund or retiring allowance for any of the officers or employees of the Commission or for any full-time members of the Commission, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this clause.

(2) If the question whether or not any member of the Commission is a full-time member for the purposes of **subclause (1)** of this clause arises, that question shall be determined by the Minister of Justice, whose decision shall be final.

(3) Notwithstanding anything in this Act, any person who immediately before becoming an officer or employee of the Commission or member of the Commission is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to be an officer or employee of the Commission or to hold office as a member of the Commission; and that Act shall apply to that person in all respects as if that person's service as such an officer or employee or as such a member were Government service.

(4) Subject to the Government Superannuation Fund Act 1956, nothing in **subclause (3)** of this clause shall entitle any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(5) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with **subclause (3)** of this clause, to a person who is in the service of the Commission, whether as an officer or employee or as a member, and is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to any such person who is in the service of the Commission, means the Commission.

6. Crown may provide services for Commission—The Crown, acting through any Government department, may from time to time, at the request of the Commission, execute any work or enter into arrangements for the execution or provision by the Government department for the Commission of any work or service, or for the supply to the Commission of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

7. Money to be appropriated by Parliament for purposes of this Act—All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

FIRST SCHEDULE—*continued*

8. Funds of Commission—The funds of the Commission shall consist of—

- (a) Any money appropriated by Parliament for the purposes of the Commission and paid to the Commission for the purposes of the Commission;
- (b) All other money lawfully received by the Commission for the purposes of the Commission;
- (c) All accumulations of income derived from any such money.

9. Bank accounts—(1) The Commission shall open at any bank or banks such accounts as are necessary for the exercise of its functions and powers.

(2) All money received by the Commission, or by any employee of the Commission shall, as soon as practicable after it has been received, be paid into such bank accounts of the Commission as the Commission from time to time determines.

(3) The withdrawal or payment of money from any such account shall be authorised in such manner as the Commission thinks fit.

(4) The withdrawal or payment of money from any such accounts shall be by cheque signed by such person or persons as the Commission may from time to time authorise.

10. Investment of money—Any money which belongs to the Commission and which is not immediately required for expenditure by the Commission may be invested in the same manner in which money in the Public Account may be invested pursuant to section 50 of the Public Finance Act 1977.

11. Accounts and audit—(1) The Commission shall keep full and correct accounts of all its financial transactions, assets, liabilities, and funds; and its accounts shall be audited by the Audit Office which for that purpose shall have and may exercise all such powers as it has under the Public Finance Act 1977 in respect of public money and stores.

(2) The financial year of the Commission shall end on the 31st day of March or on such other date as may from time to time be directed by the Minister of Justice.

(3) At the end of each financial year, the Commission shall prepare an income and expenditure account showing its financial transactions for that year, together with a balance sheet as at the last day of the financial year.

(4) As soon as practicable after the end of its financial year, the Commission shall submit its income and expenditure account and balance sheet to the Audit Office for audit.

(5) A copy of the audited accounts of the Commission together with the Audit Office report thereon shall be laid before Parliament no later than 6 months after the end of the financial year and may be incorporated in the annual report of the Commission prepared under section 17 of this Act.

12. Seal—The Commission's seal shall be judicially noticed in all Courts and for all purposes.

13. Exemption from income tax—The income of the Commission shall be exempt from income tax.

FIRST SCHEDULE—*continued*

14. Proceedings privileged—(1) No proceedings, civil or criminal, shall lie against the Commission for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that it acted in bad faith.

(2) No proceedings, civil or criminal, shall lie against any member of the Commission for anything the member may do or say or fail to do or say in the course of the operation of the Commission, unless it is shown that the member acted in bad faith.

(3) No member of the Commission, or officer or employee thereof, or person appointed or engaged under clause 3 of this Schedule, shall be required to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to the knowledge of the member, officer, employee, or person in the course of the operations of the Commission.

(4) Anything said or any information supplied or any document produced by any person in the course of any proceedings before the Commission shall be privileged in the same manner as if the proceedings were proceedings in a Court.

(5) For the purposes of clause 5 of the First Schedule to the Defamation Act 1954, any report made by the Commission in the course of the exercise or intended exercise of its functions shall be deemed to be an official report made by a person holding an inquiry under the authority of the legislature of New Zealand.

SECOND SCHEDULE

Section 18

ENACTMENTS AMENDED

Title of Act	Amendment
1977, No. 110—The Higher Salaries Commission Act 1977	By inserting in the Fourth Schedule (as substituted by section 3 of the Higher Salaries Commission Amendment Act 1980), after the item "The members of the Information Authority" (as inserted by section 50 of the Official Information Act 1982), the item "The members of the Law Commission".
1982, No. 156—The Official Information Act 1982	By inserting in the First Schedule, after the item relating to the Information Authority, the following item: "Law Commission".