

# New South Wales Law Reform Commission

Annual Report  
2004-05



NSW  
Law Reform  
Commission

## Letter to the Minister

**The Hon R J Debus MP**

Attorney General  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

**Dear Attorney**

I am pleased to submit the thirty-ninth Annual Report of the New South Wales Law Reform Commission for presentation to the Parliament of New South Wales.

The Report has been prepared in accordance with section 13(3) of the Law Reform Commission Act 1967. The Report covers the year ending 30 June 2005.

Yours sincerely



The Honourable Justice Michael Adams  
**Chairperson**

His Honour Judge Christopher Armitage  
Professor Hilary Astor  
Mr Jim Bennett SC  
Professor Janet Chan  
Dr Duncan Chappell  
Acting Judge Michael Chesterman  
Professor Richard Chisholm  
Associate Professor Andrea Durbach  
Associate Professor Jane Goodman-Delahunty  
Associate Justice Joanne Harrison  
The Hon Justice David Hodgson  
The Hon Gregory James QC  
Her Honour Acting Judge Angela Karpin  
The Hon Justice David Kirby  
The Hon Gordon Samuels AC CVO QC  
The Hon Jeff Shaw QC  
The Hon Hal Sperling QC  
Professor Michael Tilbury  
Dr Don Weatherburn PSM

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## Our Vision

To be a leader in the field of law reform in Australia.

## Our Mission

Provide high quality legal policy advice based on detailed research and reflecting extensive community consultation.

## Our Values

We strive to provide quality services and information.

We operate with integrity, honesty and accountability.

We communicate consistently and effectively with our clients/stakeholders.

We are committed to equity and diversity in the workplace.

We respect the contributions of the community.

## Clients/Stakeholders

Our principal client is the NSW Attorney General. Our stakeholders include the Attorney General, the Government, the Parliament, the judiciary, the legal profession and the community.

## Our Functions

The NSW Law Reform Commission is an independent statutory authority which conducts research and provides advice to the Attorney General on reforming the law in NSW.

## Our Structure

The Commission comprises one full-time and 19 part-time Commissioners (including the Chairperson). There are 17 full-time and part-time staff.

# Highlights

## Publications

The Law Reform Commission released the following publications during the year under review:

- Report 105, *Time Limits on Loans Payable on Demand* (October 2004)
- Report 106, *Community Justice Centres* (February 2005)
- Report 109, *Expert Witnesses* (June 2005)
- Report 110, *Uniform Succession Laws: Family Provision* (May 2005)
- Research Report 12, *Mediation and Community Justice Centres: An empirical study* (October 2004)
- Issues Paper 25, *Expert Witnesses* (November 2004)
- Issues Paper 26, *Uniform Succession Laws: Intestacy* (April 2005)
- A further report, *Surveillance* (Report 108), has been completed but not yet released

## Legislative Implementation

- Legislation was enacted to substantially implement Report 101, Questioning of Complainants by Unrepresented Accused in Sexual Offence Trials: *Criminal Procedure Amendment (Sexual Offence Evidence) Act 2004*.
- The *Legal Profession Amendment Act 2004* and *Legal Profession Act 2004* implemented substantial parts of Report 99, Complaints Against Lawyers.
- The *Civil Procedure Act 2005* implemented Report 94, Set-off.
- The *Crimes (Administration of Sentences) Amendment (Parole) Act 2004* implemented a further aspect of Report 79, Sentencing.
- The *Anti-Discrimination Amendment (Miscellaneous Provisions) Act 2004* implemented parts of Report 92, Review of the Anti-Discrimination Act 1977 (NSW).

The following Commission Reports are currently under consideration for implementation:

- Neighbour and Neighbour Relations (Report 88)
- Apprehended Violence Orders (Report 103)
- Time Limits on Loans Payable on Demand (Report 105)
- Expert Witnesses (Report 109)

## Other Matters of Significance

- The Staff Survey (December 2004) indicated very high levels of morale and job satisfaction.
- In early 2005, the Plain English Foundation assessed a sample of publications produced by the Commission in the last three years. The Foundation concluded that the Commission, by most of its measures, was within the best practice range for plain English.

## 2004-05 - Report of the Chairperson



Chairperson

The Hon Justice  
Michael Adams

By the end of the 2004-05 financial year, I will have completed almost 10 years as Chairperson of the Law Reform Commission. During that time, the Commission completed major reviews of complex areas of the law including the law on adoption of children, anti-discrimination legislation, the law of provocation and diminished responsibility, sentencing, the right to silence, apprehended violence orders, succession law, and the review and development of laws relating to surveillance and issued 30 reports and over 30 consultation papers and reports of empirical studies. Major projects at the Commission involve considerable research, often multidisciplinary, wide community consultation, and usually extend over a number of years.

The work of the Commission can be characterised as follows:

- Reviews of legislation that may not have been reviewed for many years and there is a need to update to better reflect community practices (eg, adoption and anti-discrimination legislation);
- Areas of law where problems have arisen, and a review and update of the law is needed (eg, questioning of complainants by an unrepresented accused in sexual offence trials; the review of the law of contempt);
- Consideration of whether new laws are needed to meet changes in society or technological development (eg, laws relating to surveillance);
- Reviews of legislation that are required to be reviewed every five years (eg, disability legislation and provision in the Crimes Act relating to apprehended violence orders);

During the current year, the Commission completed five reports: Time Limits on Loans Payable on Demand, Community Justice Centres, Expert Witnesses, Surveillance, and Uniform Succession Laws: Family Provision. Two Issues Papers were published, one on Intestacy and the other on Expert Witnesses. A Research Report of an empirical study of mediation in Community Justice Centres was also published. The Commission also provided input to an Issues paper published by the Australian Law Reform Commission as part of the review of the *Evidence Act 1995* (NSW).

During 2005, the Commission has worked on two projects in conjunction with other law reform agencies. The first is a review of the *Uniform Evidence Acts* in conjunction with the Australian Law Reform Commission and the Victorian Law Reform Commission. The Queensland Law Reform Commission, the Western Australia Law Reform Commission and the Northern Territory Law Reform Commission have also participated in consultations on this project.

The second uniformity project is a long-term review of succession laws. This project has been led by the Queensland Law Reform Commission, and representatives from most states and territories have participated over the course of the review. The aim of this project is to produce model draft succession laws for Australia. It will be completed in the 2005-06 financial year.

The Commission received four new projects during the year. The first was to review the operation of the *Evidence Act 1995* (NSW). The second project asked the Commission to consider whether majority verdicts by juries should be introduced in New South Wales. The third required the Commission to report on the operation and effectiveness of the rules and procedures governing expert witnesses in New South Wales courts. The fourth requires the Commission to consider whether juries should have any role in the sentencing of offenders.

Justice Adams was  
appointed Chairperson in  
May 1996.

For details of all  
Commissioners, please  
see pages 26-28

In the next financial year, the Commission will complete two major long-term projects: the review of the *Property (Relationships) Act 1984* and the review of the law relating to people who guarantee other people's debts. A report on whether people who are blind or deaf should be able to serve on juries will also be completed.

Prior to 2004-05 the budget for the Law Reform Commission had not changed substantially for several years. At the commencement of the 2004-05 financial year, the Commission budget was reduced by almost 10%. Although no permanent staff left the Commission during the year, a legal officer position which had become vacant in June 2004 could not be filled and the budget reduction caused a shortfall in the salary and wages of existing staff. As a result, the Commission overran its budget by approximately \$50,000. A further reduction in the Commission's budget has been foreshadowed for 2005-06 and the Commission is considering options to make the necessary savings. As a small agency, there are limited opportunities for the Commission to make significant savings, other than by a reduction in staff numbers.

A number of new Commissioners were appointed during the financial year. His Honour Judge Chris Armitage and Mr James Bennett SC were appointed in October 2004 to work on the Commission's review of the *Evidence Act 1995*. Professor Richard Chisholm (formerly a judge of the Family Court) and the Hon H C Sperling QC (formerly a judge on the New South Wales Supreme Court) were also appointed and have devoted significant time to the Commission's review of expert witnesses. The Hon Greg James QC, also a former judge of the New South Wales Supreme Court, whose term expired at the end of 2004, was re-appointed as a Commissioner in June 2005.

The term of Justice Ruth McColl AO expired in December 2004. Justice McColl was a part-time Commissioner from October 1998 and made a significant contribution to several of the Commission's major projects during her time. Justice David Ipp resigned as a Commissioner on 3 August 2004.

I must also make special mention of Judge Bob Bellear, who died on 15 March 2005. Bob was a part-time Commissioner at the Law Reform Commission for several years, and his quiet but passionate advocacy on issues that concerned him were well-remembered at Commission meetings. A fuller tribute to Bob Bellear is set out later in this Report.

I also acknowledge the dedication of all the staff of the Commission. The high standard of the Commission's publications is in considerable part due to their consistent hard work and professionalism.

## The Commission's Role

The Commission was established in 1966 and given an independent statutory basis in 1967. It was the first permanent body in Australia with the task of reforming the general law. The Commission's functions are set out in section 10(1) of the *Law Reform Commission Act 1967* (NSW).

### Our responsibilities

We are required to consider the laws of New South Wales with a view to:

- repealing obsolete or defective laws;
- consolidating, revising or modernising the law;
- adopting new or more effective methods of the administration of the law.

The Commission does not:

- have a general responsibility to oversee all the laws of NSW;
- review the laws of other governments;
- offer legal advice or intervene in legal matters.

### Who decides what the Commission researches?

It is an important feature of the Commission's activities that its work is generated by referral from the Attorney General.

The Commission has limited powers to initiate its own inquiries.

Under the Community Law Reform Program, the Commission assesses proposals for reform from members of the public, and must decide whether the subject matter is appropriate to request a referral from the Attorney General.

## Relationship to Attorney General's Department

The Commission operates under the umbrella of the NSW Attorney General's Department. The Attorney has ministerial responsibility for the NSW Law Reform Commission.

The NSW Attorney General's Department is made up of over 35 agencies, some operating independently of each other.

As the roles of these agencies are diverse, they have been grouped into programs to focus operations and planning:

- Community and Regional Services
- Court and Tribunal Services
- Policy and Crime Prevention
- Corporate Services.

For details of Department programs and other agencies, see the NSW Attorney General's Department Annual Report.

# Organisational Structure

<b>Director General</b> Laurie Glanfield				
Crown Solicitor's Office	Community & Regional Services	Court & Tribunal Services	Policy & Crime Prevention	Corporate Services
Office of the Protective Commissioner and Public Guardian				
Public Trustee				
Registry of Births, Deaths & Marriages				
	Anti-Discrimination Board Privacy NSW Victims Services Community Justice Centres Community Relations Division Legal Representation Office Public Defenders Office LawAccess NSW Office of the Legal Services Commissioner Legal Practitioners Admission Board Legal Profession Advisory Council Professional Standards Council Legal Management Service Diversity Services	Supreme Court Industrial Relations Commission Land & Environment Court District Court Local Courts and Office of the Sheriff Dust Diseases Tribunal Administrative Decisions Tribunal Attorney General's Department Law Libraries Law Courts Library Reporting Services Branch	Aboriginal Justice Advisory Council Bureau of Crime Statistics & Research Legislation & Policy Criminal Law Review Division Crime Prevention Division Law Reform Commission Strategic Policy Unit Sentencing Council	Asset Management Services Corporate Human Resources Financial Services Information Technology Services Organisational Performance Division



## Consulting with the Community

On all its projects, the Commission seeks to involve the community in developing law reform proposals.

The extent of this involvement depends largely on the area of law under review. Some projects are of a highly technical nature and may be of particular concern to specialised interest groups and the legal profession, while others are of widespread community interest. The Commission consults primarily in New South Wales, but on occasions it meets with individuals and organisations interstate to obtain up-to-date information on recent developments (eg, meetings in Brisbane on expert witnesses in December 2004).

The Commission primarily involves the community in its projects by seeking submissions on Issues Papers and Discussion Papers. Copies are sent to key members of the legal profession, public and university libraries, the judiciary, and government departments both interstate and overseas for their review and any comments/submissions. The Commission distributes them free of charge to persons wishing to read and comment on law reform proposals.

The Commission's website, which is part of the Attorney General's Department's Lawlink website, continues to make a large number of the Commission's publications available to the general public. The site now contains 85% of the Commission's publications dating back to 1966, with all publications since 1988 now available online. The site also contains media releases, conference and seminar papers, and other information about the Commission and its activities.

In the period July 2004 - June 2005, the Commission's website recorded almost 1 million hits, an average of over 80,000 hits per month. This is a little lower than the previous year.

In the first half of 2004, the content and structure of the website were extensively reviewed as part of the rollout of the new Lawlink databases. The work on revising the website has been substantially completed, and the changeover to the new version was completed in the second half of 2004.

## Consulting with Other Stakeholders

### Reference Groups

Reference Groups are established for projects that require external experts to offer specialist advice and guidance. Reference Groups have been established for:

- Blind or Deaf Jurors (see DP 46)
- Minors' Consent to Medical Treatment (see IP 24)

### External Committees

Commissioners and staff are called on from time to time to be members of external committees that provide input into policy formulation:

- Working party established by the Legal Services Commissioner on conflict of interest. Representative: Peter Hennessy.
- National Committee for Uniform Succession Laws. Representatives: Professor Michael Tilbury, Peter Hennessy and Joseph Waugh.
- Post Adoption Resource Centre Advisory Committee. Representative: Peter Hennessy.
- Criminal Justice Research Network. Representatives: Peter Hennessy, Catherine Gray.
- Advisory Committee for NSW Association for Adolescent Health. Representative: Robyn Johansson.

## **Visitors**

Visitors to the Commission during 2004-05 included Ms Mary-Elizabeth Monyakane from the Lesotho Law Reform Commission in July 2004. Judge Takasugi from Japan visited in October 2004.

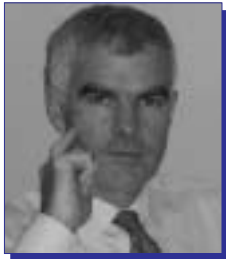
## **Community Law Reform Program**

The Commission only investigates and reports on projects referred to it by the Attorney General. However, under the Community Law Reform Program, members of the community are invited to suggest areas where they believe law reform is needed.

The Commission regularly receives suggestions for law reform from judges, legal practitioners, and members of the community. Some matters coming to the Commission's attention through the media have been considered as part of the Community Law Reform Program.

## Our People

On 30 June 2005, the Commission comprised one full-time and 19 part-time Commissioners (including the Chairperson). There were 17 full-time and part-time members of staff.



### Executive Director

#### Mr Peter Hennessy

Mr Hennessy has over 20 years experience in law reform, having previously worked as a principal legal officer at the Australian Law Reform Commission. He is currently on a five-year Senior Executive Service contract commencing October 2003.

Peter is responsible for the day-to-day management of the Commission and is involved in all the Commission's projects.

He also represents the Commission in the Attorney General's Department's strategic planning process.

### Legal Staff

#### Legal Officers (Grades I-III)

Francesca Di Benedetto (p/t)  
 Catherine Gray (p/t)  
 Donna Hayward  
 Robyn Johansson (p/t)  
 Rebecca Kang (p/t)  
 Ani Luzung  
 Judy Maynard (p/t)  
 Sharminie Niles  
 Joseph Waugh  
 Joshua Smith (ATSI cadet)

### Administrative Staff

#### Administrative Officer

Suzanna Mishhawi

#### Clerical Trainee

Sally-Ann Smith

#### Publications Coordinator

Terence Stewart

#### Executive Assistant

Wendy Stokoe

#### Librarian

Anna Williams

#### Library Assistants

Peta Sainsbery  
 Jenny Davis

### Commissioners

Commissioners are statutory office-holders appointed by the government on the recommendation of the NSW Attorney General.

Commissioners are responsible for determining the scope and direction of the Commission's projects.

#### List of Commissioners

(see Appendix A for further details)

The Hon Justice Michael Adams (Chairperson)

The Hon Jeff Shaw QC (Deputy Chairperson)

Professor Michael Tilbury (Full-time Commissioner)

His Honour Judge Christopher Armitage

Professor Hilary Astor

Mr Jim Bennett SC

Professor Janet Chan

Dr Duncan Chappell

Acting Judge Michael Chesterman

Professor Richard Chisholm

Associate Professor Andrea Durbach

Associate Professor Jane Goodman-Delahunty

Associate Justice Joanne Harrison

The Hon Justice David Hodgson

The Hon Gregory James QC

Her Honour Acting Judge Angela Karpin

The Hon Justice David Kirby

The Hon Gordon Samuels AC CVO QC

The Hon Hal Sperling QC

Dr Don Weatherburn PSM

#### Chairperson

The Chairperson appoints Divisions of the Commission to work on particular projects based on each Commissioner's expertise and experience.

See pages 17-24 for details of current projects and divisions.

#### Full-time Commissioner

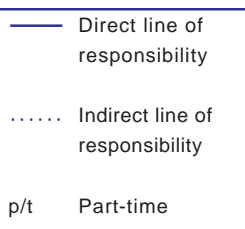
The full-time Commissioner attends meetings and provides advice to the Commission. In addition, the full-time Commissioner gives advice and guidance to Legal Officers.

#### Part-time Commissioners

Part-time Commissioners attend meetings and provide advice and expertise to the Commission.

#### Fees

Part-time Commissioners are paid \$5150 a year plus \$412 per sitting day. Fees are not paid to Commissioners who are judicial officers or otherwise employed by the government.



## Conferences, Seminars and Training

During the year, staff participated in the following conferences/seminars/training:

- Constitutional Law Conference (18 February 2005) attended by Peter Hennessy and Michael Tilbury
- NSW Bar Association Seminar on Expert Witnesses (3 March 2005). Presentation by Professor Richard Chisholm
- Attorney General's Department Executive Development Conference (10-11 March 2005) attended by Peter Hennessy
- Conference on the Evidence Act (30 April 2005) attended by Peter Hennessy and Michael Tilbury
- Australian Law Reform Commission Promise of Law Reform Conference (9 June 2005). Presentation by Michael Tilbury. Attended by Peter Hennessy, Robyn Johansson and Lisa Hemingway
- Plain English Foundation Training Workshop (23 June 2005) attended by all Commission staff.

## Staff Survey

In December 2004, Commission staff participated in a survey conducted by the Attorney General's Department. The survey was designed to identify issues of concern to staff, including job satisfaction, career path, organisation culture, and workplace behaviour.

The Commission staff profile at that time was 60% female, 53% were aged over 45 years, and 80% had worked with the Commission for over three years (53% for three to nine years).

The survey indicated high levels of morale and job satisfaction at the Commission, with very high levels of satisfaction with:

- communication within the organisation;
- clear understanding of job objectives;
- honest behaviour by immediate managers;
- being treated fairly;
- being able to balance work and family; and
- being given freedom to use initiative.

## Plain English

In early 2005, the Plain English Foundation evaluated a sample of 13 Commission publications produced in the previous three years. The Plain English Foundation has developed a number of analytical tools and benchmarks in order to assess an organisation's writing standard. These focus on:

- the structure of publications – including the placement of key material, the ratio of analysis to description, effective telescoping of large reports, and sound layout and design, and
- expression – including readability, sentence length, the use of active verbs and low level of clutter.

The Plain English Foundation reported that the Commission's writing scored above the government average using its verbumetric analysis (this includes structure plus expression benchmarks). The structural results were particularly strong, and the readability was the best the Foundation had encountered in a NSW government agency.

The Plain English Foundation conducted a one-day advanced training course for all Commission staff on 23 June 2005. The course was tailored specifically to the areas which would move the Commission closer to best practice (eg, sentence mechanics, verb use, and expression).

## Cadetship

### **Aboriginal and Torres Strait Islander Cadetship Program for the NSW Public Sector**

In July 2002, the Commission offered a cadetship to Joshua Smith under the *Aboriginal and Torres Strait Islander Cadetship Program for the NSW Public Sector*, a joint initiative between the Office of the Director of Equal Opportunity in Public Employment (NSW), Department of Employment, Workplace Relations and Small Business (Cth), Department of Education, Training and Youth Affairs (Cth), and the NSW Premier's Department.

The program provides opportunities for NSW public sector agencies to support Aboriginal and Torres Strait Islander people in combining tertiary study with employment in an agency.

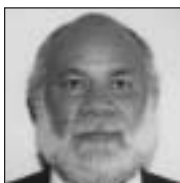
From November 2004 to February 2005, during the summer break from his law degree studies at the University of Technology, Sydney, Mr Smith worked full-time as a paralegal at the Commission.

At the successful completion of his cadetship, which will coincide with the completion of his law degree in late 2005, Mr Smith will be offered full-time employment within the Attorney General's Department.

## Temporary Staff

- Brendan Atkinson worked as a paralegal at the Commission for a period of almost 12 months. He graduated in December 2004, and left to seek full-time permanent employment.
- Rhys Bortignon, a Commerce/Law student from the University of Wollongong, completed tertiary placement at the Commission in June/July 2004, and returned for a further brief period in October 2004.
- Cassandra Bourne, studying a Masters degree in Forensic Psychology at UNSW, undertook a placement commencing in June 2004.
- Patricia Mikolajski, a Forensic Psychology Masters student from UNSW, commenced a placement in August 2004.
- Georgina Matthews, also completing a Masters degree in Forensic Psychology at UNSW, undertook a placement commencing in August 2004.
- Danielle White, a Communications/Law student at UTS, commenced a work experience placement at the Law Reform Commission in October 2004.
- Tamsyn Chapman, a law student from University of Wollongong, completed a placement in November/December 2004.
- Linda Hayes, a Masters student in Forensic Psychology at UNSW, undertook a placement during the period December 2004 to March 2005.
- Tina Lee, having recently completed her law degree at UNSW, undertook a period of work experience commencing in December 2004.
- Edwina Hill, a law student at the University of Wollongong, commenced a placement at the Commission in January 2005.
- Kim Moore, a Forensic Psychology Masters student from UNSW, commenced a placement in January 2005.
- Krista McNaught-Davis, a criminal justice student at Washington State University in the USA, undertook a three-month internship at the Commission, commencing in January 2005.
- Jacky Lo, a law student from Macquarie University, undertook a three-week work experience placement in February 2005.
- Melissa Cooley, a Masters student in Forensic Psychology, commenced a placement at the Commission in March 2005.
- Lisa Hemingway (BA/LLB, UNSW) undertook a placement at the Commission to complete the practical legal training requirement of her law degree.

## Judge Robert Belliar



*Bob Belliar, one of the Commission's longest-serving part-time Commissioners, died in March 2005. Bob was appointed a Commissioner in November 1996. He did not seek re-appointment when his term expired in September 2004 as a result of the illness which ultimately led to his death. He was given a State Funeral in Sydney Town Hall, and the State Parliament was suspended for the afternoon as a mark of respect.*

*Bob was one of nine children raised on the North Coast of New South Wales, near Mullumbimby. He left school early and joined the Navy. He trained as a fitter and turner, and rose to the level of Petty Officer, the first Aborigine to do so. He left the Navy in 1968 and, five years later, went back to school to complete his Higher School Certificate. In 1974, he commenced studies for his law degree at the University of New South Wales. He was admitted to the Bar in 1979 and later worked as a Public Defender before being appointed to the District Court in 1996. He was the first Aboriginal person in Australia to be appointed a judge. In addition to his achievements in the law, Bob was a great community worker, particularly for the Aboriginal community. He helped found the Aboriginal Housing Company at Redfern in 1972, was the Director of the Aboriginal Medical Service and the Aboriginal Legal Service through the 1970s, and was a Director and Chairperson of Tranby Aboriginal College. His legal practice was primarily criminal law, but he also represented traditional owners in three important land claims, and was also counsel assisting the Royal Commission into Aboriginal Deaths in Custody.*

*At the Law Reform Commission, Bob worked primarily on the Commission's project on sentencing, which produced four reports. He also worked on the Commission's project on the right to silence in criminal proceedings. Reforming the law to better reflect the needs of Aboriginal people and society in general was one of Bob's many passions. He is missed by all the Commissioners and staff at the Law Reform Commission who worked with him.*

### Report 105: Time Limits on Loans Payable on Demand

Currently, a loan payable on request (that is, one where no time for repayment is specified or where the loan is stated to be payable “on demand”) creates an immediate debt. This means that the cause of action accrues at the first moment the lender can commence action. Such loans are, therefore, subject to a six year limitation period from when the borrower receives the money. The application of the limitation period may cause injustice in the case of loans between friends or family members where the expectation is often that the money will not be repaid until the lender demands it.

In Report 105, the NSWLRC has proposed amendments to the *Limitation Act 1969* (NSW) to ameliorate the situation. The main recommendation is that the *Limitation Act 1969* (NSW) should be amended to provide that the limitation period for a loan payable on demand should run as if the cause of action accrued at the time the demand for repayment was made.

Published in October 2004.

### Report 106 and Research Report 12: Community Justice Centres

Community Justice Centres (“CJCs”) were first established as a pilot program in 1980 to provide a means of settling disputes that conventional court-based procedures are unable to resolve satisfactorily. The scheme was made permanent in 1983 with the passing of the *Community Justice Centres Act 1983* (NSW) (“CJCs Act”). CJCs assist in settling disputes through mediation. The mediation services that they provide to disputing parties are available free of charge. The mediations are conducted by mediators who provide their services on a sessional basis (receiving small remuneration) and who are substantially drawn from the communities where the services are provided.

Since CJCs were established 25 years ago, there has been an explosion in the provision of mediation services in New South Wales. Instead of being one of the few providers of mediation services, CJCs are now one of many.

In Report 106, the NSWLRC considers CJCs’ unique role in providing mediation services free of charge across the whole of NSW. The Report makes recommendations relating to the following matters:

**The scope of activities that CJCs can undertake.** These activities include not only the provision of the usual mediation service, but can also involve other dispute resolution and related activities such as conflict management and community development, training mediators, and the development and promotion of ADR. The Report recommends the inclusion (in the CJCs Act) of an objects clause to reflect these activities.

**The structure of CJCs.** Report 106 recommends a reconstituted CJCs Council to develop the strategic direction of CJCs, endorse policies, promote the role of CJCs and provide advice, when required, to the Director of CJCs and the Attorney General.

**What matters should or should not be brought within the scope of mediation offered by CJCs.** Report 106 looks at what factors ought to be taken into account in deciding whether to exclude particular disputes from mediation at CJCs, with a particular focus on disputes that involve some form of violence. The Report recommends a list of factors to be taken into account when deciding whether a particular dispute is suitable for mediation.

Report 106 also discusses:

- The process of mediation
- The protections that have been included in the CJCs Act
- How to maintain the high standards set by CJCs in the field of mediation

- The accreditation, selection and training of mediators
- The special needs of Indigenous communities.

In July 2004, the NSWLRC, in conjunction with Community Justice Centres, conducted a survey of users of the Community Justice Centres mediation service. The results of this survey (Research Report 12) confirmed a high level of satisfaction by participants in CJC mediations.

Research Report 12 published in October 2004.

Report 106 published in February 2005.

### Report 109: Expert Witnesses

The Report considers the role that expert witnesses should have in court. Its primary recommendation is that, in civil proceedings, parties may not adduce expert evidence without the court's permission. The Report also addresses the problem of bias among expert witnesses, who have sometimes been called 'hired guns', and accused of writing reports that conceal anything disadvantageous to their clients.

One of the recommendations in the report is the use of the "joint expert witness". The idea of the joint expert witness is to limit the expert evidence on a question arising in court proceedings to that of one expert witness, selected jointly by the parties, or, if they fail to agree, in a manner directed by the court.

The primary objective of the appointment of a joint expert witness is to ensure that the witness does not favour one party over the other. It reinforces the notion that the duty of an expert witness is to the court. It has the potential to minimise costs and delay to the parties and to the court by limiting the volume of expert evidence that would otherwise be presented.

The Report also discusses "no win no fee" arrangements, under which a party engages a person to act as an expert witness on the basis that the expert will be paid a fee only if the party wins the case.

It recommends that fee arrangements with an expert witness must be disclosed. This will give parties and the court an opportunity to assess the risk that the fee arrangements might lead a witness to become an advocate for a client's case, rather than providing objective and independent evidence to the court. Opposing parties may, for example, submit that the fee arrangements with the opponent's expert witness should lead the court to attach little weight to that expert's evidence, or even disregard it entirely.

Published in June 2005.

### Report 110: Uniform Succession Laws: Family Provision

In 1995, the Commission received a reference from the Attorney to participate in a project to develop uniform succession laws for Australia. The project is led by the Queensland Law Reform Commission. An earlier Report on Wills, three Issues Papers and one Discussion Paper have been published to date on this project.

Report 110 supports the introduction of uniform laws for family provision across Australia.

Family provision laws allow a person to challenge a will – or a distribution on an intestacy – when that person believes the deceased ought to have made adequate provision for his or her maintenance, but failed to do so.

The laws are different across Australia and this leads to complexity when people die leaving property in more than one State.



The family provision reforms are substantially based on the NSW provisions, which have been in operation for more than 20 years. They are part of a package of uniform proposals relating to the law of succession and the administration of deceased estates.

Published in May 2005.

### Issues Paper 26: Uniform Succession Laws: Intestacy

Issues Paper 26 is also published as part of the uniform succession laws project.

If a person dies without a will or with a will that only disposes of part of their estate, the part of the estate that has not been dealt with will usually be distributed according to a set of statutory rules that apply to intestate estates. Different rules for distribution apply in different States and Territories across Australia.

The Issues Paper raises the following issues:

- whether the existing lists for distribution are appropriate
- the definition of “spouse” or “partner”
- entitlement to a shared home
- the definition of “issue” of an intestate person
- who should constitute “next of kin” for the purpose of intestacy
- the distribution when there are no relatives
- how to account for gifts made before death
- special issues relating to indigenous people.

Published in April 2005.

# Performance and the Year Ahead

## Our 2005-06 Goals and Strategies

### OUR CLIENT

Provide high quality advice with clear policy directions

Complete the following projects:

- Sentencing: Young Offenders
- Uniform Succession Laws: Intestacy
- Guaranteeing Someone Else's Debts
- Review of the Property (Relationships) Act 1984
- Blind or Deaf Jurors
- Minors' Consent to Medical Treatment
- Evidence
- Majority Verdicts

### THE COMMUNITY

Increase community input by raising awareness of LRC projects

### OUR ORGANISATION

Improve management and forward planning processes

### OUR PEOPLE

Develop and improve staff skills

## Measuring Performance

The most accurate measurement of the Commission's performance is the amount of work completed on each project within the year.

### Targets

The Commission sets targets for each stage of its projects. However, the nature of research work, community consultation, and other external factors often mean priorities given to projects need to be regularly reviewed.

### What affects our performance?

In any given year, the following external factors may affect the Commission's performance:

- allocation of new references;
- expiry of terms of Commissioners and appointment of new Commissioners;
- the work commitments of part-time Commissioners (for example, major trials, judicial circuits, sabbaticals);
- the availability of community groups for consultation;
- financial resources;
- political sensitivity of some projects; and
- the balance of power in the Parliament.

### Implementation

The implementation of Commission reports, once tabled in Parliament, is a matter for the government. The Commission does not regard implementation of its reports as an appropriate measure of Commission performance, although it takes a special interest in tracking implementation, and is requested from time to time to assist in the implementation process.

## Sentencing Laws

Received: 12 April 1995

The Commission is reviewing the laws of sentencing. The project has been expanded and divided into phases:

- (1) General Principles (completed)
- (2) Sentencing of groups of offenders who require special consideration:
  - Corporate Offenders (Completed)
  - Young Offenders
  - Aboriginal Offenders (Completed)
- (3) Legislative Sentencing

### Commissioners

Hon Justice Michael Adams\*  
Professor Janet Chan  
Dr Duncan Chappell  
Associate Professor Andrea Durbach  
Acting Judge Angela Karpin  
Hon Gordon Samuels AC CVO QC  
Professor Michael Tilbury  
Dr Don Weatherburn PSM

### Legal Research

Catherine Gray

### Publications

Discussion Paper 33 (April 1996)  
Report 79 (December 1996)  
Report 96 (October 2000)  
Issues Paper 19 (July 2001)  
Issues Paper 20 (December 2002)  
Report 102 (June 2003)

### Young Offenders

Offenders who are aged between 10 and 17 years at the time they commit an offence, and who are under 21 when charged, are sentenced under a separate system to adults.

While earlier legislation dealing with people aged under 18 years refers to them as “children” or “juveniles”, the relevant New South Wales legislation uses the term “young offender”.

The Commission is reviewing the particular issues that arise in sentencing young offenders. Following on the publication in July 2001 of Issues Paper 19, the Commission is now completing its final report recommending changes to the law relating to sentencing young offenders.

Report due December 2005.

### Legislative Sentencing

The Commission has employed the term “legislative sentencing” as a general description of legislative schemes of sentencing that constrain the exercise of judicial discretion. Some schemes

impose mandatory minimum terms, others specify a range within which sentences should be imposed, but allowing departure either upwards or downwards as circumstances vary.

Although Discussion Paper 33 and Report 79 looked at some of these schemes, the Commission decided to revisit the question of legislative sentencing in light of the enactment of relevant legislation in the Northern Territory (since repealed) and Western Australia, as well as increasing public debate about levels of sentencing.

The subsequent enactment of the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002* (NSW), which provides a form of legislative sentencing.

The Commission will consult with the Attorney General about what future work should be undertaken on this project.

## Property Relationships

Review of the *Property (Relationships) Act 1984*

Received: 6 September 1999

The Commission is to inquire into and report on the operation of the *Property (Relationships) Act 1984*.

### Commissioners

Professor Michael Tilbury\*  
Hon Justice Michael Adams  
Professor Hilary Astor  
Acting Judge Michael Chesterman  
Associate Justice Joanne Harrison  
Hon Gordon Samuels AC CVO QC

### Legal Research

Ms Francesca Di Benedetto  
Ms Sharminie Niles

### Publications

Discussion Paper 44 (April 2002)

After allowing for an extended consultation period on Discussion Paper 44, progress on the drafting of the report was further affected by the referral of State powers over de facto property matters to the Commonwealth. New South Wales has enacted the *Commonwealth Powers (De Facto Relationships) Act 2003*, which refers to the Commonwealth the power to make laws affecting people in de facto relationships. Queensland and Victoria have also referred powers; WA had sought to make a partial reference of powers to extend superannuation splitting provisions to de facto couples, but the Bill lapsed when the WA Parliament was prorogued in January 2005; Tasmania has indicated its intention to refer powers, but to date has not done so; South Australia has declined to refer powers.

If the Commonwealth enacts legislation pursuant to this referral of power, it will significantly reduce the need for State legislation relating to de facto couples. The Commonwealth Government has indicated its intention to legislate only in respect of heterosexual de facto couples. Same sex couples and people in close personal relationships would continue to be covered by State laws.

As the *Property Relationships Act 1984* is likely to focus on the rights of persons in same sex relationships, the Commission conducted targeted consultations in July/August 2004 with the gay and lesbian community about possible changes to the law. A series of focus groups was conducted in August 2004. The gay and lesbian community across NSW were also invited to fill out a questionnaire which the Commission designed and posted on its website. Over 70 responses were received.

A final Report is to be completed by March 2006.

## Surveillance

Received: 5 May 1995

The Commission is required to review the scope and operation of the *Listening Devices Act 1984*, and the need to regulate the overt and covert use of other surveillance equipment.

### Commissioners

Hon Justice Michael Adams\*  
Acting Judge Michael Chesterman  
Associate Professor Jane Goodman-Delahunty  
Hon Gordon Samuels AC CVO QC  
Professor Michael Tilbury

### Legal Research

Ms Donna Hayward  
Ms Judy Maynard

### Publications

Issues Paper 12 (May 1997)  
Interim Report 98 (February 2001)

At the Attorney General's request following the release of the Interim Report, the Commission conducted further consultations with media organisations. The Final Report will discuss issues pertaining to the way in which surveillance conducted by the media should be regulated. The Final Report will also examine other issues raised in submissions received by the Commission from the insurance and private investigation industries, government organisations, and those involved in the manufacturing, distribution and maintenance of surveillance equipment.

A number of significant legal and social developments have also occurred since Report 98 was written, which impact on government and community attitudes and legislative responses to surveillance. This includes, for example, the focus on surveillance technology as an anti-terrorism measure following September 11, the increased pressure to regulate the monitoring and misuse of email, and the recent introduction of the *Workplace Surveillance Bill 2004* (NSW). The Final Report will discuss these developments, and the extent to which they necessitate changes being made to the Recommendations in Report 98.

The Final Report, together with a draft Bill, was delivered to the Attorney General in May 2005 and is awaiting tabling in Parliament before its public release.

## Third Party Guarantees

### Guaranteeing Someone Else's Debts

Received: 2 March 1999

The Commission has been asked to examine the legal framework that protects guarantors of small business and other loans.

#### Commissioners

Professor Michael Tilbury\*  
Hon Justice Michael Adams  
Associate Justice Joanne Harrison  
Associate Professor Andrea Durbach  
Hon Justice David Hodgson

#### Legal Research

Robyn Johansson  
Joseph Waugh  
Ani Luzung  
Catherine Gray

#### Publications

Issues Paper 17 and Summary (April 2000)  
Research Report 11 (October 2003)

Between 2000 and 2003, the Commission participated in an empirical study conducted by researchers at the University of Sydney Law School.

The research involved a systematic study of the operation of the law, and involved surveys of guarantors, lawyers, judges and lenders, as well as a survey of relevant case law. The results of this study were published as a Research Report in October 2003.

The Commission is using the findings in this study to prepare its final report and recommendations on third party guarantees.

Report due March 2006.

## Uniform Succession Laws

Received: 5 May 1995

The Commission has been asked to review the existing law and procedure relating to succession. These laws relate to the distribution of a person's property after death. The project has been divided into five phases:

- (1) Law of Wills (Completed)
- (2) Family Provision (Completed)
- (3) Administration of Estates
- (4) Recognition of Interstate and Foreign Grants of Probate and Letters of Administration
- (5) Intestate Estates

#### Commissioners

Hon Justice David Hodgson\*  
Hon Gordon Samuels AC CVO QC  
Associate Justice Joanne Harrison  
Professor Michael Tilbury

## **Legal Research**

Joseph Waugh

## **Publications**

Issues Paper 10 (February 1996)

Issues Paper 11 (February 1996)

Report 85 (April 1998)

Discussion Paper 42 (September 1999)

Issues Paper 21 (May 2002)

Issues Paper 26 (April 2005)

Report 110 (May 2005)

The Commission has been asked to participate in a long-term, national uniform succession law project that is being co-ordinated by the Queensland Law Reform Commission. The timetable for completion of publications is determined by the National Committee.

Reports on Administration of Estates and Intestacy will be completed in the first half of 2006.

## **Minors' Consent to Medical Treatment**

Received: 14 August 2002

The Commission has been asked to inquire into the laws relating to the consent of minors to medical treatment, with particular reference to whether: the rights and interests of minors and of parents and guardians are appropriately recognised; medical practitioners are adequately protected; and codification and/or amendment of the law is necessary.

## **Commissioners**

Professor Michael Tilbury\*

Hon Gordon Samuels AC CVO QC

Associate Justice Joanne Harrison

Hon Justice David Hodgson

Associate Professor Jane Goodman-Delahunty

Hon Justice Michael Adams

Professor Richard Chisholm

## **Legal Research**

Rebecca Kang

Leslie Katz SC

Ani Luzung

Robyn Johansson

## **Publications**

Issues Paper 24 (June 2004)

Following the publication of IP 24, the Commission extended the date for written submissions to 31 December 2004.

The Commission will be conducting final consultations early in 2006.

Report due August 2006.

## Blind or Deaf Jurors

Received: 19 March 2002

The Commission has been asked to inquire into and to report on whether persons who are profoundly deaf or have a significant hearing or sight impairment should be able to serve as jurors.

### Commissioners

Hon Gordon Samuels AC CVO QC\*  
Associate Professor Jane Goodman-Delahunty  
Hon Justice Michael Adams  
Hon Justice David Kirby  
Professor Michael Tilbury

### Legal Research

Judy Maynard

### Publications

Discussion Paper 46 (March 2004)

Submissions were received from individuals and interest groups following the release of DP 46. A Disability Reference Group was established to provide disability expertise to the Commission. The issues involved are complex and involve consideration of:

- the rights of an accused to a fair trial;
- the need to maintain confidence in the justice system;
- the expectation that people with disabilities can fully participate in society without the hindrance of prejudice and unfounded assumptions; and
- the existing legislative framework, eg, the *Jury Act 1977* (NSW), the *Anti-Discrimination Act 1977* (NSW), and the *Disability Discrimination Act 1992* (Cth).

Report due April 2006.

## Evidence

Review of the *Evidence Act 1995*

Received: 2 July 2004

The Commission has been asked to inquire into and report on the operation of the *Evidence Act 1995* (NSW). In carrying out this review, the Commission, in keeping with the spirit of the uniform Evidence Act scheme, will:

- (a) work in association with the Australian Law Reform Commission, with a view to producing agreed recommendations,
- (b) consult with the other members of the uniform Evidence Act scheme - the Australian Capital Territory and Tasmania,
- (c) consult with other States and Territories as appropriate; and
- (d) consult with other relevant stakeholders, in particular the courts, their client groups and the legal profession;

in the interests of identifying and addressing any defects in the current law, and with a view to maintaining and furthering harmonisation of the laws of evidence throughout Australia.



**Commissioners**

Hon Justice Michael Adams\*  
Acting Judge Angela Karpin  
Professor Michael Tilbury  
Mr Jim Bennett SC  
Judge Christopher Armitage  
Hon Greg James QC

**Legal Research**

Catherine Gray  
Robyn Johansson

The ALRC published an Issues Paper in December 2004 (IP 28). Discussion Paper 47, published jointly with the Australian Law Reform Commission (DP 69) and the Victorian Law Reform Commission, due in July 2005. A final Report is due in December 2005.

### Majority Verdicts by Juries

Received: 17 September 2004

The NSW Law Reform Commission has been asked to inquire into whether the requirement in criminal trials that jury verdicts are unanimous should remain in New South Wales.

**Commissioners**

Hon Justice Michael Adams\*  
Associate Professor Jane Goodman-Delahunty  
Hon Justice David Kirby  
Professor Michael Tilbury  
Acting Judge Michael Chesterman  
Dr Duncan Chappell  
Dr Don Weatherburn PSM  
Professor Janet Chan

**Legal Research**

Donna Hayward

In the course of writing the Report, the Commission has consulted with all major stakeholders, including:

- all NSW Supreme and District Court judges;
- the Director of Public Prosecutions, the Public Defender's Office, and the Legal Aid Commission;
- the Law Society of NSW, the NSW Bar Association, and the Judicial Commission;
- the Dean of every Law Faculty;
- all Aboriginal Legal Services in NSW, and the Women's Legal Resources Centre; and
- the Homicide Victims' Support Group, the Victims' Advisory Board, Enough is Enough, and the NSW Sentencing Council.

Report due August 2005.

## Role of Juries in Sentencing

Received: 25 February 2005

The NSW Law Reform Commission has been asked to inquire into and report on whether or not a judge in a criminal trial might, following a finding of guilt, and consistent with the final decision remaining with the judge, consult with the jury on aspects of sentencing.

### **Commissioners**

Hon Justice Michael Adams\*  
Professor Michael Tilbury  
Mr Jim Bennett SC  
Associate Professor Andrea Durbach  
Acting Judge Angela Karpin  
Hon Greg James QC

### **Legal Research**

Leslie Katz SC  
Donna Hayward  
Robyn Johansson

The Chief Justice of NSW, the Hon J J Spigelman AC, raised the issue of whether juries should have some role in the sentencing process in a speech to the opening of Law Term in February 2005.

Discussion Paper due March 2006.

*\*Denotes Commissioner-in-charge*

## Our Finances

The Commission's financial information is incorporated in the consolidated financial statements of the NSW Attorney General's Department, which have been certified by the Auditor General.

The audit certificate for these records appears in the NSW Attorney General's Department Annual Report.

The following financial statement gives an indication of the Commission's income and expenditure for the 2004/2005 financial year, with comparisons for the two previous years.

	2003	2004	2005 Actual	2005 Budget
<b>REVENUE</b>				
other revenue	1,040	4,409	4,632	4,794
sale of publications	3,689	5,448	6,071	6,283
<b>TOTAL REVENUE</b>	<b>4,729</b>	<b>9,857</b>	<b>10,703</b>	<b>11,078</b>
<b>EXPENSES: Employee Related</b>				
salaries and wages	1,110,929	1,082,692	930,039	977,205
allowances	846	710	0	0
overtime	0	0	1,324	1,390
leave entitlements	18,936	8,844	91,811	95,618
workers compensation insurance	5,483	6,052	5,324	0
payroll tax	83,543	73,030	64,222	67,398
fringe benefits tax	588	473	1,819	1,892
crown liabilities	152,828	157,162	115,383	57,714
<b>TOTAL</b>	<b>1,373,153</b>	<b>1,328,965</b>	<b>1,209,922</b>	<b>1,201,217</b>
<b>EXPENSES: Maintenance &amp; Working</b>				
depreciation	33,871	33,963	38,245	49,521
advertising and publicity	472	1,225	2,136	2,153
bank charges	70	140	0	0
consultancies	0	0	0	0
electricity and gas	15,748	20,190	14,750	15,193
fees	48,177	45,836	44,353	44,699
freight and cartage	0	0	535	539
general expenses	235	325	1,179	1,188
grants	0	0	0	0
insurance	1,867	2,492	2,492	2,512
interpreters and translators	221	150	0	0
maintenance contracts	477	503	4,864	5,010
motor vehicle	0	1,988	0	0
postal expenses	9,629	11,351	13,234	13,337
printing	10,064	39,520	41,346	41,668
publications	46,563	44,864	41,834	42,160
rates and charges	8,075	7,880	8,448	8,513
removal costs	5,926	0	0	0
rent	249,579	247,278	254,477	265,056
staff expenses	5,803	9,886	20,346	20,504
stores and stationery	11,398	14,216	8,401	8,466
telephone	16,053	12,459	10,630	10,713
travel	12,494	14,795	12,480	12,141
other expenses	11,618	11,603		
<b>TOTAL</b>	<b>488,340</b>	<b>520,664</b>	<b>526,505</b>	<b>544,611</b>
<b>TOTAL EXPENSES</b>	<b>1,861,493</b>	<b>1,849,627</b>	<b>1,741,291</b>	<b>1,745,829</b>
LESS Revenue	4,729	9,893	10,703	11,078
LESS Crown Liabilities	152,828	157,162	115,383	57,714
<b>NET COST OF SERVICES</b>	<b>1,703,936</b>	<b>1,682,572</b>	<b>1,615,205</b>	<b>1,677,036</b>
LESS Depreciation	33,871	33,963	38,245	49,521
<b>NET POSITION</b>	<b>1,670,065</b>	<b>1,648,609</b>	<b>1,576,960</b>	<b>1,627,516</b>

## Appendix A - The Commissioners

### Chairperson

**The Hon Justice Michael Adams**

***appointed May 1996***

Judge of the NSW Supreme Court (1998 - current)

Part-time Commissioner of the NSW Law Reform Commission (1995 - 1996)

### Deputy Chairperson

**The Hon Jeff Shaw QC**

***appointed March 2001***

Barrister (2005 - current)

Judge of the NSW Supreme Court (2003 - 2005)

Barrister (2000 - 2003)

NSW Attorney General and Minister for Industrial Relations (1995 - 2000)

### Full-time Commissioner

**Professor Michael Tilbury**

***appointed July 2002***

Inaugural Director of the Centre for Commercial Law in the University of Zimbabwe (2000 - 2002)

Part-time Commissioner of the NSW Law Reform Commission (1996 - 2000)

Professor of Law at the University of Melbourne (1996 - 2000)

Full-time Commissioner of the NSW Law Reform Commission (1994 - 1996)

### Part-time Commissioners

**His Honour Judge Christopher Armitage**

***appointed October 2004***

Judge of the District Court (2004 - current)

Judge of the NSW Compensation Court and member of the Dust Diseases Tribunal (1994 - 2004)

Part-time Commissioner of the NSW Law Reform Commission (2000 - 2003)

**Professor Hilary Astor**

***appointed October 1999***

Abbott Tout Professor of Litigation and Dispute Resolution and Pro-Dean of the Faculty of Law at the University of Sydney (1997 - current)

Inaugural Chairperson of the National Alternative Dispute Resolution Advisory Council (1995 - 1997)

**Mr Jim Bennett SC**

***appointed October 2004***

Deputy Senior Crown Prosecutor (1999 - current) (on leave 2000 - 2003)

Member National Crime Authority (2000 - 2003)

Acting Crown Prosecutor (1997 - 1999)

Barrister (1981 - 1997)

**Professor Janet Chan**

***appointed March 2001***

Head of the School of Social Science and Policy at the University of New South Wales (1999 - current)

**Dr Duncan Chappell**

***appointed May 2002***

President of the Mental Health Review Tribunal (2001 - current)

Deputy President of the Administrative Appeals Tribunal (Cth) (1990 - 2000)

**Acting Judge Michael Chesterman**

***appointed January 1999***

Acting Judge NSW District Court (1998 - current)

Deputy President of the Administrative Decisions Tribunal (2002 - current)

Emeritus Professor, Faculty of Law, University of New South Wales (2001 - current)

Professor of Law at the University of New South Wales (1979 - 2001) (on leave 1983 - 1986)

Part-time Commissioner of the NSW Law Reform Commission (1993 - 1996)

Dean, Faculty of Law, University of New South Wales (1990 - 1995)

Full-time Commissioner of the Australian Law Reform Commission (1983 - 1986)

**Professor Richard Chisholm**

***appointed September 2004***

Professor of Law, University of Sydney (2004 - current)

Judge of the Family Court of Australia (1993 - 2004)

Legal Academic, University of New South Wales (1970 - 1993)

Part-time Commissioner of the NSW Law Reform Commission (1991 - 1997)

**Associate Professor Andrea Durbach**

***appointed October 1999***

Associate Professor, School of Law, University of New South Wales (2004 - current)

Director of the Public Interest Advocacy Centre and Co-ordinator of the Public Interest Law Clearing House (1991 - 2004)

Member of the Human Rights Council of Australia

Part-time member of the Administrative Decisions Tribunal

**Associate Professor Jane Goodman-Delahunty**

***appointed May 2002***

Director of the Forensic Psychology Postgraduate Program at the University of New South Wales (2001 - current)

Editor of the Psychology, Public Policy and Law Journal (2001 - current)

**Associate Justice Joanne Harrison**

***appointed January 1999***

Associate Justice (formerly Master) of the NSW Supreme Court (1997 - current)

**The Hon Justice David Hodgson**

***appointed January 1994***

Judge of the NSW Court of Appeal (2001 - current)

Chief Judge in Equity in the NSW Supreme Court (1997 - 2001)

Judge of the NSW Supreme Court (1983 - 1997)

**The Hon Gregory James QC**

***appointed January 1999***

Judge of the NSW Supreme Court (1998 - 2004)

Part-time Commissioner of the NSW Law Reform Commission (1985 - 1989)

**Her Honour Judge Angela Karpin**

***appointed May 1995***

Deputy President, Administrative Decisions Tribunal (2005 - current)

Acting Judge of the NSW District Court (2005 - current)

Judge of the NSW District Court (1991 - 2005)

Deputy Chief Magistrate of the NSW Local Courts (1989 - 1991)

Member of the Review Committee which led to the Mental Health Act 1990

**The Hon Justice David Kirby**

***appointed May 2002***

Judge of the NSW Supreme Court (1998 - current)

**The Hon Gordon Samuels AC CVO QC**

***appointed August 2001***

Governor of New South Wales (1996 - 2001)

Chairperson of the NSW Law Reform Commission (1993 - 1996)

Judge of the NSW Court of Appeal (1974 - 1992)

Chancellor of the University of New South Wales (1976 - 1994)

**The Hon Hal Sperling QC**

***appointed January 2005***

Judge of the NSW Supreme Court (1995 - 2005)

Part-time Commissioner of the NSW Law Reform Commission (1990 - 1996)

Part-time Commissioner of the NSW Law Reform Commission (1981 - 1989)

**Dr Don Weatherburn PSM**

***appointed May 2002***

Director of the NSW Bureau of Crime Statistics and Research (1989 - current)

## Appendix B - Project Stages

Projects are unique and require individual methodologies. However, generally projects follow the course outlined.

### **Phase 1**

#### **Initiation of project**

##### **Division and research team formed**

The Attorney General writes to the Commission asking it to inquire into and report on the need for reform of the law on a particular topic.

The Chairperson appoints Commissioners to be responsible for the project and the Executive Director allocates staff to work on it. Sometimes, the Commission will engage consultants to assist with the reference.

##### **Preliminary research and issues identified**

Work at this stage includes: planning the initial research and publication program, identifying defects in the law, any existing proposals for reform, and finding the relevant law in other states and overseas.

##### **Invite preliminary submissions**

Work at this stage includes: consulting people and organisations with a special interest in the area, and publicising the inquiry.

### **Phase 2**

#### **Preliminary papers**

The major method by which the Commission seeks to involve the public in the process of law reform is by publishing papers which discuss the issues and options for reform, and inviting comments on proposals for change.

The number and content of such publications depends on the needs of each reference. Publications are distributed widely to lawyers, academics, organisations, individuals, and the media.

##### **Issues paper published**

Issues papers take a preliminary look at issues and principles which could guide proposals for reform.

##### **Discussion paper published**

Discussion papers are more detailed than issues papers. They explain the legal problems, discuss options for reform, and make tentative proposals for reform.

##### **Research reports**

Research reports publish the results of research conducted by the Commission. Research reports are useful for understanding a problem or evaluating solutions.

## **Phase 3**

### **Research and consultations**

#### **Further research and consultation**

The Commission undertakes further research and consultation.

#### **Submissions received**

Members of the community are consulted for their views, as well as judges, lawyers and experts in the topic under review. Anyone is welcome to make a submission.

Submissions can contain comments on matters raised in a consultation paper, or can discuss anything relevant to the topic under review.

Submissions are usually written, but they can be oral, for example, a telephone call.

#### **Public hearings, focus groups, seminars**

Other consultation methods include:

- public meetings
- surveys
- talk-back radio interviews

Naturally, there are many differing, often conflicting, views advanced by the community. The Commission's task is to consider carefully all the information presented to it before publishing its report.

## **Phase 4**

### **Report to Parliament**

#### **Analyse all feedback and prepare final report**

Commissioners working on the reference consider submissions received from the public, and research carried out by staff and consultants. They determine what the recommendations for reform will be. If they do not all agree, the report will include dissenting recommendations and reasons.

The Commission's report to the Attorney General contains all the recommendations for reform and explains the reasons for them.

If appropriate, a report will contain draft legislation which can be adopted by the Government if the recommendations are accepted.

#### **Report published**

The NSW Attorney General tables the report in Parliament. However, there is no guarantee that the Government will accept the Commission's advice and implement its recommendations.



## Appendix C - Implementation

### Implementation

#### Reports not yet substantially implemented

The reports set out below, published between 1994 - 2004, have not yet been substantially implemented, although several are under active consideration.

Complex or controversial reports can often take many years to implement. Other reports of a technical nature or dealing with obscure areas of law are often not accorded a high legislative priority.

**Report 74 (November 1994)**

Blasphemy

**Report 78 (September 1996)**

Provisional Damages

**Report 80 (December 1996)**

People with an Intellectual Disability and the Criminal Justice System

**Report 83 (October 1997)**

Partial Defences to Murder: Provocation and Infanticide

**Report 85 (April 1998)**

Uniform Succession Laws: The Law of Wills

**Report 87 (November 1998)**

Review of Section 409B of the Crimes Act 1900

**Report 88 (November 1998)**

Neighbour and Neighbour Relations

**Report 90 (July 1999)**

Review of the Community Services (Complaints, Appeals and Monitoring) Act 1993

**Report 91 (July 1999)**

Review of the Disability Services Act 1993

**Report 93 (December 1999)**

Review of Section 316 of the Crimes Act 1900

**Report 96 (October 2000)**

Sentencing: Aboriginal Offenders

**Report 98 (February 2001)**

Surveillance: An Interim Report

**Report 100 (June 2003)**

Contempt by Publication

**Report 102 (June 2003)**

Sentencing: Corporate Offenders

**Report 103 (October 2003)**

Apprehended Violence Orders

**Report 105 (October 2004)**

Time Limits on Loans Payable on Demand



## GUARANTEE OF SERVICE

### **The Commission adopts the following principles as its guarantee of service to its clients**

All Commission publications may be relied on for their accuracy and authoritative statements about current law.

The Commission will provide opportunities for the public to participate in the law reform process.

All correspondence will either be responded to immediately or acknowledged within five working days. Where feasible, the acknowledgement will provide a timeframe for anticipated action.

A contact name will be provided in all correspondence and telephone inquiries.

All Law Reform Commission Consultation Papers and Reports will conform to the Commission standards of high quality research, will be written in plain English, and will comply with the Commission's publication style.

The Commission will continue to ensure that its staff are well-trained, and provide professional and competent service.

Service standards will be monitored regularly via client feedback. Results will be reported in the Commission's Annual Report.

### **Your invitation to participate**

The Commission invites members of the public to take part in law reform in New South Wales and in particular to contribute to the Community Law Reform Program. Participation in this Program ensures that issues of community concern receive the attention of those responsible for the reform of the law.

### **Your comments and criticisms**

The Commission welcomes comments on ways to improve its service.  
Please contact Mr Peter Hennessy, Executive Director  
(contact details appear on the back cover).

**ADDRESS**

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Level 17 Goodsell Building  
8-12 Chifley Square, Sydney

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GPO Box 5199, Sydney

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DX 1227 Sydney

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**TELEPHONE**

---

+61 2 9228 8230

---

**FACSIMILE**

---

+61 2 9228 8225

---

**TTY**

---

+61 2 9228 7676

---

**INTERNET**

---

[www.lawlink.nsw.gov.au/lrc](http://www.lawlink.nsw.gov.au/lrc)

---

**EMAIL**

---

[nsw\\_lrc@agd.nsw.gov.au](mailto:nsw_lrc@agd.nsw.gov.au)

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