



# New South Wales Law Reform Commission

Annual Report 2005-06



NSW  
Law Reform  
Commission

## Letter to the Minister

**The Hon R J Debus MP**

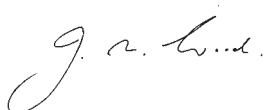
Attorney General  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

**Dear Attorney**

I am pleased to submit the fortieth 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 2006.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'J. Wood'.

The Honourable James Wood AO QC  
**Chairperson**

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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

As at June 2006 the Commission comprised one full-time and ten part-time Commissioners (including the Chairperson). There are 16 full-time and part-time staff.

# Highlights

## Publications

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

- Report 104, *Young Offenders* (December 2005, not yet released)
- Report 111, *Majority Verdicts* (August 2005)
- Report 112, *Uniform Evidence Law* (December 2005)
- Report 113, *Relationships* (June 2006, not yet released)
- Research Report 13, *I give, devise and bequeath: an empirical study of testators' choice of beneficiaries* (February 2006)
- Issues Paper 27, *Sentencing and Juries* (June 2006)
- Discussion Paper 47, *Review of the Evidence Acts* (July 2005) (published jointly with the Australian Law Reform Commission and the Victorian Law Reform Commission)

## Legislative Implementation

- *Mental Health (Criminal Procedure) Amendment Act 2005* (NSW) implemented recommendations in Report 80, *People with an Intellectual Disability and the Criminal Justice System* (1996)

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)
- *Young Offenders* (Report 104)
- *Uniform Succession Laws: The Law of Wills* (Report 85)

## Other Matters of Significance

- Hon James Wood AO QC (formerly Justice Wood of the NSW Supreme Court) was appointed Chairperson of the NSW Law Reform Commission 1 January 2006.
- The appointment of Justice Michael Adams as Chairperson concluded in December 2005 after over 11 years of continuous service.

## 2005-06 - Report of the Chairperson



Chairperson

The Hon James Wood  
AO QC

In January 2006, the New South Wales Law Reform Commission had been in operation for 40 years. The Commission was set up in 1966 and was given a legislative base with the passage of the *Law Reform Commission Act* in 1967. In its first 20 years, the Commission had three to four full-time Commissioners and a similar number of part-time Commissioners. In more recent years, this was reversed, with the Commission since 1990 only having one full-time Commissioner, and a large number of part-time Commissioners. For example, during the current financial year, the Commission had up to 20 part-time Commissioners. Similarly, there have been variations over the years in the number of staff at the Commission. The number of legal officer positions has been reduced in the last three years as a result of budgetary constraints.

Over the course of its existence, the Law Reform Commission has made a significant contribution to the development of the law in New South Wales. As at 30 June 2006, it had published 112 reports and over 120 consultation papers, generally published under the title of issues papers or discussion papers.

The Commission has also been well-served by a distinguished group of full-time and part-time Commissioners, many of whom served the Commission for significant periods of time and on more than one occasion. In this regard, I especially note that my predecessor as Chairperson, Justice Michael Adams, served for a period of over 11 years as Chairperson. The Hon H D Sperling QC, formerly a judge on the Supreme Court of New South Wales, was a part-time Commissioner on three separate occasions, in the 1980s, the 1990s and, most recently, in 2004-5. Justice David Hodgson, a judge on the New South Wales Court of Appeal, has been a part-time Commissioner for over 12 years. Acting Judge Michael Chesterman, formerly Dean of Law at the University of New South Wales, was a part-time Commissioner for over 11 years. Acting Judge Angela Karpin was a part-time Commissioner for over 10 years, and Justice Greg James, a former judge on the New South Wales Supreme Court, also served for over 10 years. Two former Attorneys General also served terms as part-time Commissioners after they retired from politics.

Over the course of its existence, the Commission has worked on diverse areas of the law. There is almost no area of civil or criminal law on which it has not conducted research and consultation. In 2005-6, the Commission completed four reports, Report 104, *Young Offenders* (not yet released), Report 111, *Majority Verdicts*, Report 112, *Uniform Evidence Law*, and Report 113, *Relationships* (not yet released). The Commission also published Discussion Paper 47, *Review of the Uniform Evidence Acts* (jointly published with the Australian and Victorian Law Reform Commissions), Issues Paper 27, *Sentencing and Juries*, and Research Report 13, *I give, devise and bequeath: an empirical study of testators' choice of beneficiaries*.

During the year, the Commission worked on 10 projects, several of which were nearing completion at the end of the financial year. These include a report on whether people who are blind or deaf should be able to serve on juries, the law relating to people who guarantee other people's debts, and a review of the *Property (Relationships) Act*. Later in 2006, the Commission will complete a report on intestacy as part of a long-term review of succession laws, in which representatives from most States and Territories have participated. The final part of this project, on administration of estates, will be completed by the Queensland Law Reform Commission. In the 2006-7 financial year, the Commission will also complete reports on sentencing and juries, consent to medical treatment by young people, and the project on company title disputes.

Mr Wood was appointed  
Chairperson in January  
2006.

For details of all  
Commissioners, please  
see pages 22-24

The Commission received two new projects during the year. One is a major review of New South Wales privacy legislation, including consideration of whether a new cause of action based on privacy should be introduced in New South Wales. In conducting this review, the Commission is liaising with the Australian Law Reform Commission, which is also reviewing the *Privacy Act 1988* (Cth). In addition, the Commission is conducting a small review as part of the Commission's Community Law Reform Program into ways of dealing with disputes in company title home units. The Attorney General has also foreshadowed that the Commission will be asked to review eligibility for jury service in New South Wales.

A large number of the Commission's part-time Commissioners completed their terms during the financial year. The terms of Judge Chris Armitage, Mr James Bennett SC (now Judge Bennett of the District Court), Professor Janet Chan, Acting Judge Angela Karptin, the Hon Jeff Shaw QC, Dr Duncan Chappell, Dr Don Weatherburn PSM, the Hon Hal Sperling QC, Acting Judge Michael Chesterman, Associate Professor Andrea Durbach all expired on 30 December 2005. Professor Hilary Astor's term expired in May 2006. In addition, the terms of Justice Michael Adams, Associate Justice Joanne Harrison, Justice David Hodgson, the Hon Greg James QC, Justice David Kirby, the Hon Gordon Samuels AC CVO QC and Associate Professor Jane Goodman-Delahunty expired on 30 June 2006. It is likely in the next financial year that the Commission will operate with a smaller number of Commissioners than it has done over the last several years. All of these Commissioners have served the Commission on its many projects and some for considerable periods of time, and I acknowledge the great contribution they have made. I also acknowledge the considerable contribution made by the staff at the Commission during the last financial year.



*The Commission often consults with the community*



*Full-time Commissioner, Professor Michael Tilbury*

## 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 General 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.

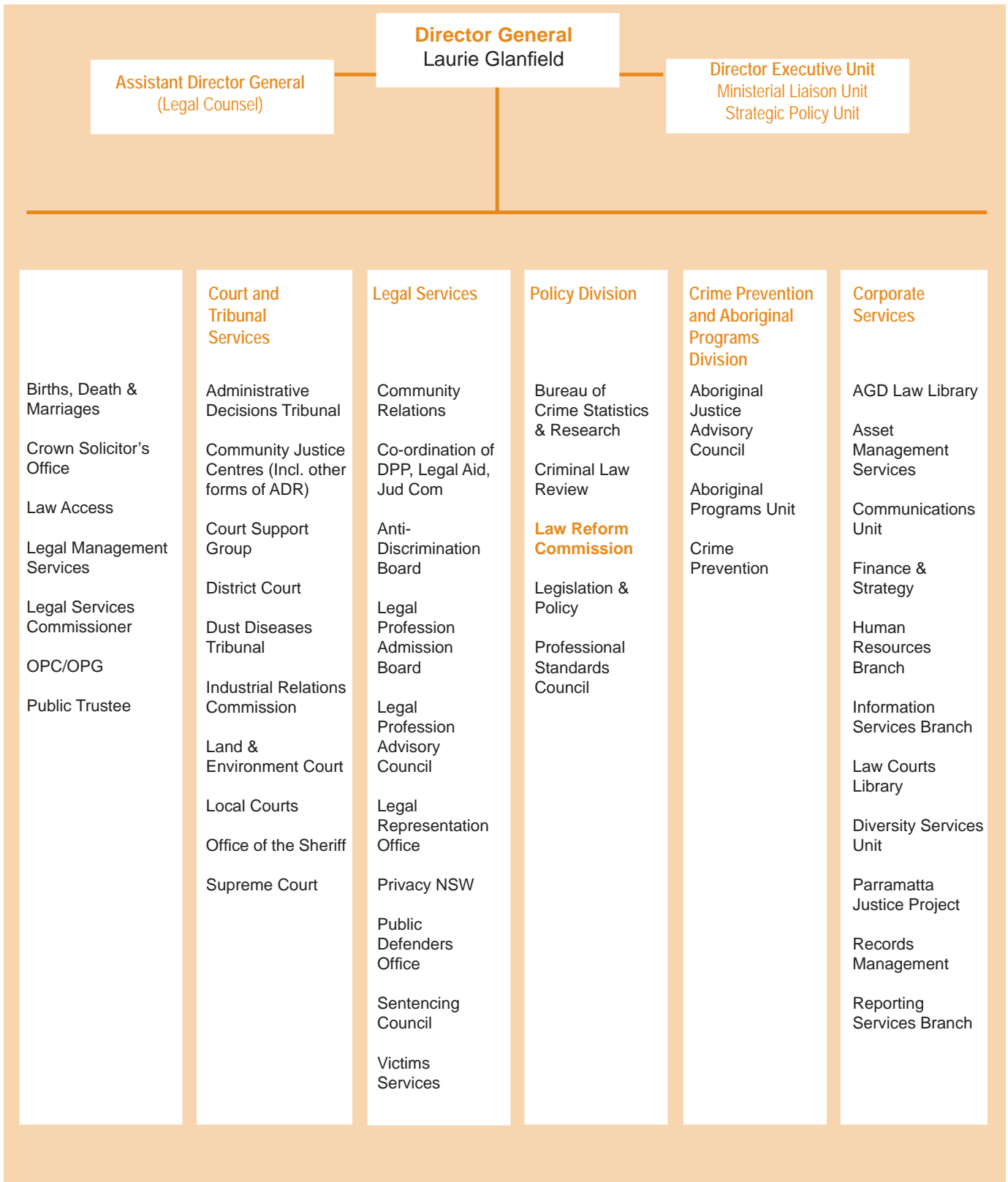
As the roles of these agencies are diverse, they have been grouped into programs to focus operations and planning:

- Legal Services
- Court and Tribunal Services
- Policy Division
- Corporate Services
- Crime Prevention and Aboriginal Programs Division

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



# Organisational Structure





## 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 on Intestacy in Melbourne, Adelaide, Perth, Brisbane and Tasmania in August/September 2005).

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 over 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 2005 - June 2006, the Commission's website recorded almost 1 million hits, an average of over 80,000 hits per month. The average is similar to the previous year.

## 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.

## 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.

The Commission's project on reviewing disputes between owners in company title units was initiated under the Community Law Reform Program.



*Executive Director Mr Peter Hennessy congratulates Mr Joshua Smith on his admission as a legal practitioner. Mr Smith was a cadet with the Commission through the Aboriginal and Torres Strait Islander Cadetship Program.*

## Our People

On 30 June 2006, the Commission comprised one full-time and ten part-time Commissioners (including the Chairperson). There were 16 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 (ml)  
 Catherine Gray (p/t)  
 Donna Hayward  
 Robyn Johansson (p/t)  
 Rebecca Kang (p/t)  
 Ani Luzung  
 Judy Maynard (p/t)  
 Sharminie Niles  
 Joseph Waugh

#### Para Legal

Joshua Smith (ATSI cadet) (until Jan.2006)

### Administrative Staff

#### Administrative Officer

Suzanna Mishhawi

#### Clerical Trainee

Sally-Ann Smith (until 2005)

#### 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 James Wood AO QC (Chairperson)

Professor Michael Tilbury (Full-time Commissioner)

Hon Justice Michael Adams

Acting Judge Michael Chesterman

Professor Richard Chisholm

Associate Professor Jane Goodman-Delahunty

Associate Justice Joanne Harrison

The Hon Justice David Hodgson

The Hon Gregory James QC

The Hon Justice David Kirby

The Hon Gordon Samuels AC CVO QC

#### Chairperson

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

See pages 15-20 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.

—	Direct line of responsibility
.....	Indirect line of responsibility
p/t	Part-time
ml	Maternity leave

## Conferences, Seminars and Training

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

- Hosted a seminar on jury research conducted by retired Judge Mike Yarnell of Arizona USA (1/12/05)

## 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 survey indicated high levels of morale and job satisfaction at the Commission.

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). This profile remained the same in the current financial year.



*The Commission's librarian Anna Williams and Nikki Mason*

## 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.

Mr Smith worked full-time as a paralegal at the Commission during the summer vacation periods.

He successfully completed his cadetship in February 2006 following the completion of his law degree at the University of Technology, Sydney. Mr Smith commenced full-time employment within the Attorney General's Department in March 2006.

### Temporary Staff/Student Placements

- Adeline Schiralli - University of Wollongong
- David Furse-Roberts - University of Western Sydney
- Elanour Brown - University of Sydney
- Jamie McPherson - University of Technology, Sydney
- Joula Dekker - Forensic Psychology, University of NSW
- Jo Sutton - University of Sydney
- Jayne Walker - University of Newcastle
- Kiril Yevtikevich - University of Western Sydney
- Mark Howard - Forensic Psychology, University of NSW
- Melissa Pinto - University of Western Sydney
- Sally Dwyer - Forensic Psychology, University of NSW
- Shanaka Jayasuriya - University of Sydney
- Soo Jin Yoon - University of Sydney
- Timothy Abrahams - University of Wollongong
- Victoria Cohn - Forensic Psychology, University of NSW
- Wenonah Tenedero - University of Wollongong

### Overseas Visitors

- Delegation of Chinese Judges (sponsored by HREOC)
- Mr Hitoshi Nasu, Japan
- Judge Yukihiko Kasai, Asahikawa District Court Japan
- Mr Joash Nache, Kenya Law Reform Commission
- Judge Ishida Kayoko, Saitama District Court Japan
- Ms Brigid Corcoran, NZ Law Commission



*Legal officer Judy Maynard*

## Work Completed 2005-06

### Issues Paper 27: Sentencing and Juries

This paper considered the question 'should jurors be able to have a say in how an offender is sentenced?'

Under the current law, the jury's role ends as soon it decides on a verdict of guilty or not guilty. The question of whether there should be any change to the law was referred to the Law Reform Commission following an address by the Chief Justice of NSW, the Honourable James Spigelman AC, in January 2005. In this speech the Chief Justice suggested various improvements to the current sentencing procedure and raised the possibility of involving the jury in the sentencing process.

The Commission's Issues Paper analyses the general principles and current procedures for sentencing, and the role that a jury may play in determining sentences in criminal trials. Currently, there is no formal defined role for the jury in this process. On the contrary, in Australia, a jury's role is limited to finding the facts that support a verdict. The judge has responsibility for the appropriate sentence. The paper provides a brief overview of the extent to which juries have a role in sentencing in a number of states in the United States of America.

Issues Paper 27 sets out the pros and cons of involving the jury in sentencing. For example, jury involvement could have the advantage of bolstering public confidence in sentencing by exposing judges directly to community views. On the other hand, knowing that the reasons for their verdict may later be examined, may make some jurors reluctant to express their views openly when deciding on the verdict. This might seriously affect the right of an accused person to a fair trial.

The Paper outlines a number of options for greater involvement of the jury and the practical difficulties that would need to be considered if any new role was given to the jury. The Commission sought submissions on the proposals on the paper by September 2006 and is planning to report in December 2006.

### Report 112: Uniform Evidence Law

The Report, Uniform Evidence Law, was the culmination of an 18 month inquiry into the operation of the Uniform Evidence Acts (primarily the *Evidence Act 1995* (Cth) and the *Evidence Act 1995* (NSW)). The aim of the review was to remedy any defects that had become obvious in the first 10 years of operation of the Uniform Evidence Acts and to further the harmonisation of the laws of evidence throughout Australia. The review was conducted jointly by the Australian Law Reform Commission, the New South Wales Law Reform Commission and the Victorian Law Reform Commission. There were also consultations with the Tasmanian Law Reform Institute, the Law Reform Commission of Western Australia, the Queensland Law Reform Commission and the Northern Territory Law Reform Committee.

The report contained 63 recommendations for reform.

Overall, the review reached the conclusion that "the uniform acts are working well, and that there are no major structural problems with the legislation, or with the underlying policy of the Acts." The report made recommendations largely of a technical nature. There was no demonstrated need or support for a major overhaul.

## Report 104: Young Offenders

Completion of Report 104 brings to an end the work the Commission has undertaken on sentencing over a 10 year period. Over this time, the Commission published four reports. The earlier three were Report 79: *Sentencing*, Report 96: *Sentencing Aboriginal Offenders* and Report 102: *Sentencing Corporate Offenders*. The focus of Report 104 is young offenders aged between 10 and 17 years at the time they commit an offence and who are under 21 when charged. These young offenders are sentenced under a separate system to adults. While earlier legislation dealing with people aged under 18 years referred to them as “children” or “juveniles”, the relevant NSW legislation uses the term “young offenders”.

The primary focus of the Report is the *Young Offenders Act 1997* (NSW). However the Report also considers relevant provisions in the *Criminal Records Act 1991* (NSW), the *Children (Criminal Proceedings) Act 1997* (NSW), the *Fines Act 1996* (NSW), the *Children (Community Service Orders) Act 1987* (NSW) and the *Children’s Court Act 1987* (NSW).

As of June 2006, this Report had not been publicly released.

## Report 111: Majority Verdicts

In Report 111, the Commission considered whether all members of a jury in a criminal trial in New South Wales should be required to agree unanimously on the verdict. The requirement of unanimity is an ancient rule of the common law. However, a number of Australian States, as well as the United Kingdom, had changed the rule by legislation so that majority verdicts of 11 - 1 or 10 - 2 were permissible.

After assessing all relevant and available statistics and research, the Commission concluded that the system of unanimity should be retained. It also recommended that empirical studies be conducted into the adequacy, and possible improvement, of strategies designed to assist the process of jury comprehension and deliberation.

The recommendations were not accepted by the Government and the *Jury Act 1977* (NSW) was amended from May 2006 to introduce a system of majority verdicts in New South Wales. The Act now provides that if a unanimous verdict has not been reached after at least eight hours’ deliberation, and it is unlikely the jury will reach a unanimous verdict, a majority verdict of 11 out of 12 jurors is acceptable (or 10 out of 11 if there are only 11 jurors).

## Report 113: Relationships

The review of the *Property (Relationships) Act 1984* was completed in June 2006. This project was referred to the Commission in September 1999, following the amendment and renaming of the *De Facto Relationships Act 1984* as the *Property (Relationships) Act 1984*. The Bill to amend the Act was reviewed by the Social Issues Committee of the NSW Parliament. The Committee in its Report outlined a number of matters which the Commission should consider as part of its review.

The Commission published a detailed Discussion Paper in April 2002. The Commission allowed an extended period for consultation but, at the same time, negotiations commenced between New South Wales and the Commonwealth to refer State powers over de facto property matters to the Commonwealth. In 2003, New South Wales enacted the *Commonwealth Powers (De Facto Relationships) Act 2003* (NSW) to enable the referral of power. Queensland and Victoria also referred power to the Commonwealth.

In the light of these developments, the Commission decided to defer any further work on this project until it was clear what legislation the Commonwealth Government would enact. In mid-2004, the Commission recommenced work when it appeared it may be some time before the Commonwealth enacted any legislation and that this legislation may be limited to only heterosexual de facto relationships.

The Commission completed its Report in June but it had not been released as at 30 June 2006.



# Performance and the Year Ahead

## Our 2006-07 Goals and Strategies

**OUR CLIENT:** Provide high quality advice with clear policy directions

Complete reports on:

- 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
- Sentencing and juries

Publish consultation papers on:

- Jury Service
- Privacy

**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.

# Law Reform Commission Projects 2006-07

## 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 James Wood AO QC  
Associate Justice Joanne Harrison  
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.

Substantive work on this project recommenced in 2005 and will be completed in 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  
Hon James Wood AO QC

### **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 is participating 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 have been completed on Wills and Family Provision. The report on Intestacy (being done by the NSW Law Reform Commission) will be completed in the second half of 2006. The final report in the series, on Administration of Estates, will be completed in early 2007.

## 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  
Hon James Wood AO QC

### **Legal Research**

Rebecca Kang  
Leslie Katz SC  
Ani Luzung  
Robyn Johansson  
Joseph Waugh

### **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 deferred work in 2005 in order to give priority to other projects.

Work recommenced in early 2006 and is scheduled for completion in early 2007.

## 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  
Hon James Wood AO QC

### 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 expertise to the Commission on disability issues. 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 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).

The Linguistics Department of Macquarie University has been contracted to undertake a number of studies into the interpretation of difficult legal concepts using Auslan. The report will be completed in the second half of 2006.

## 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 James Wood AO QC\*

Professor Michael Tilbury

Hon Greg James QC

Associate Professor Jane Goodman-Delahunty

### Legal Research

Leslie Katz SC

Donna Hayward

### Publications

Issues Paper 27 (June 2006)



*Legal officer Ani Luzung*



*Publications coordinator Terence Stewart*

## Privacy

Received 11 April 2006.

The Commission is to inquire into and report on whether existing legislation in New South Wales provides an effective framework for the protection of the privacy of an individual. In undertaking this review, the Commission is to consider in particular:

- The desirability of privacy protection principles being uniform across Australia.
- The desirability of a consistent legislative approach to privacy in the *Privacy and Personal Information Protection Act 1998*, the *Health Records and Information Privacy Protection Act 2002*, the *State Records Act 1998*, the *Freedom of Information Act 1989*, and the *Local Government Act 1993*.
- The desirability of introducing a statutory tort of privacy in New South Wales.
- Any related matters.

The Commission should liaise with the Australian Law Reform Commission, which is reviewing the *Privacy Act 1988* (Cth), as well as other relevant Commonwealth, State and Territory agencies.

### Commissioners

Hon James Wood AO QC\*  
Professor Michael Tilbury  
Professor Richard Chisholm

### Legal Research

Donna Hayward  
Joseph Waugh  
Sharminie Niles  
Catherine Gray

The Commission has divided this project into two phases. The first phase will focus on the issue of whether a statutory tort of privacy will be introduced in New South Wales. The Commission is planning to publish a consultation paper before the end of 2006. The Commission might also publish a separate report on this phase of the project.

The second phase of the project will focus on reviewing existing privacy legislation. This work will be undertaken in 2007.

*\*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 2005/2006 financial year, with comparisons for the two previous years.

	2004	2005	2006 Budget	2006 Actual
<b>REVENUE</b>				
other revenue	4,409	4,794	1,752	6,283
sale of publications	5,448	6,283	12,473	4,794
<b>TOTAL REVENUE</b>	<b>9,857</b>	<b>11,078</b>	<b>14,242</b>	<b>11,077</b>
<b>EXPENSES: Employee Related</b>				
salaries and wages	1,082,692	977,205	1,103,347	1,058,543
allowances	710	0	9,152	0
overtime	0	1,390	0	1,390
leave entitlements	8,844	95,618	95,671	95,618
workers compensation insurance	6,052	0	6,843	6,499
payroll tax	73,030	67,398	80,182	72,278
fringe benefits tax	473	1,892	6,474	1,892
crown liabilities	157,162	57,714	70,171	52,974
<b>TOTAL</b>	<b>1,328,965</b>	<b>1,201,217</b>	<b>1,371,840</b>	<b>1,289,194</b>
<b>EXPENSES: Maintenance &amp; Working</b>				
depreciation	33,963	49,521	39,886	49,521
advertising and publicity	1,225	2,153	1,309	2,153
bank charges	140	0	212	0
consultancies	0	0	0	0
electricity and gas	20,190	15,193	22,460	15,193
fees	45,836	44,699	73,243	15,193
freight and cartage	0	539	0	539
general expenses	325	1,188	311	1,188
grants	0	0	0	0
insurance	2,492	2,512	2,405	2,512
interpreters and translators	150	0	0	0
maintenance contracts	503	5,010	1,238	1,238
motor vehicle	1,988	0	7,953	0
postal expenses	11,351	13,337	7,618	13,337
printing	39,520	41,668	18,283	41,668
publications	44,864	42,160	107,984	42,160
rates and charges	7,880	8,513	9,214	8,513
removal costs	0	0	0	0
rent	247,278	265,056	304,531	265,056
staff expenses	9,886	20,504	10,505	20,504
stores and stationery	14,216	8,466	9,128	8,466
telephone	12,459	10,713	12,502	10,713
travel	14,795	12,141	10,935	12,141
other expenses	11,603			
<b>TOTAL</b>	<b>520,664</b>	<b>544,611</b>	<b>639,716</b>	<b>539,601</b>
<b>TOTAL EXPENSES</b>	<b>1,849,627</b>	<b>1,745,829</b>	<b>2,011,556</b>	<b>1,828,795</b>
LESS Revenue	9,893	11,078	14,242	11,077
LESS Crown Liabilities	157,162	57,714	70,171	52,974
<b>NET COST OF SERVICES</b>	<b>1,682,572</b>	<b>1,677,036</b>	<b>1,927,143</b>	<b>1,764,744</b>
LESS Depreciation	33,963	49,521	39,886	49,521
<b>NET POSITION</b>	<b>1,648,609</b>	<b>1,627,516</b>	<b>1,887,257</b>	<b>1,715,223</b>

## Appendix A - The Commissioners

### Chairperson

#### **The Hon James Wood AO QC**

##### ***appointed January 2006***

Chairperson, Sentencing Council of New South Wales (2006 - current)  
Inspector, Police Integrity Commission (2005 - current)  
Chief Judge at Common Law, NSW Supreme Court (1998 - 2005)  
Judge of the NSW Supreme Court (1984 - 2005)  
Commissioner, Royal Commission into Police Corruption (1994 - 1997)  
Full-time Commissioner, NSWLRC (1982 - 1984)

### 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

#### **The Hon Justice Michael Adams**

##### ***appointed May 1995***

Judge of the NSW Supreme Court (1998 - current)  
Part-time Commissioner of the NSW Law Reform Commission (1995 - 1996, 2006)  
Chairman NSW Law Reform Commission (1996-2005)

#### **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 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)

**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 following part-time Commissioners completed their terms of appointment during the year

**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)

**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)

**His Honour Judge Jim Bennett**

***appointed October 2004***

Judge of the District Court 2006

Deputy Senior Crown Prosecutor (1999 - 2006) (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 - 2006)

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

**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

**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 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 - 2005, 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.

<i>Report Number</i>	<i>Report Name</i>	<i>Publication Date</i>
<b>Report 74</b>	Blasphemy	<b>(November 1994)</b>
<b>Report 78</b>	Provisional Damages	<b>(September 1996)</b>
<b>Report 80</b>	People with an Intellectual Disability and the Criminal Justice System	<b>(December 1996)</b>
<b>Report 83</b>	Partial Defences to Murder: Provocation and Infanticide	<b>(October 1997)</b>
<b>Report 85</b>	Uniform Succession Laws: The Law of Wills	<b>(April 1998)</b>
<b>Report 87</b>	Review of Section 409B of the <i>Crimes Act 1900</i>	<b>(November 1998)</b>
<b>Report 88</b>	Neighbour and Neighbour Relations	<b>(November 1998)</b>
<b>Report 90</b>	Review of the <i>Community Services (Complaints, Appeals and Monitoring) Act 1993</i>	<b>(July 1999)</b>
<b>Report 91</b>	Review of the <i>Disability Services Act 1993</i>	<b>(July 1999)</b>
<b>Report 93</b>	Review of Section 316 of the <i>Crimes Act 1900</i>	<b>(December 1999)</b>
<b>Report 96</b>	Sentencing: Aboriginal Offenders	<b>(October 2000)</b>
<b>Report 98</b>	Surveillance: An Interim Report	<b>(February 2001)</b>
<b>Report 100</b>	Contempt by Publication	<b>(June 2003)</b>
<b>Report 102</b>	Sentencing: Corporate Offenders	<b>(June 2003)</b>
<b>Report 103</b>	Apprehended Violence Orders	<b>(October 2003)</b>
<b>Report 105</b>	Time Limits on Loans Payable on Demand	<b>(October 2004)</b>
<b>Report 106</b>	Community Justice Centres	<b>(February 2005)</b>
<b>Report 108</b>	Surveillance: Final Report (not yet released)	<b>(May 2005)</b>





## 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 outside back cover).

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