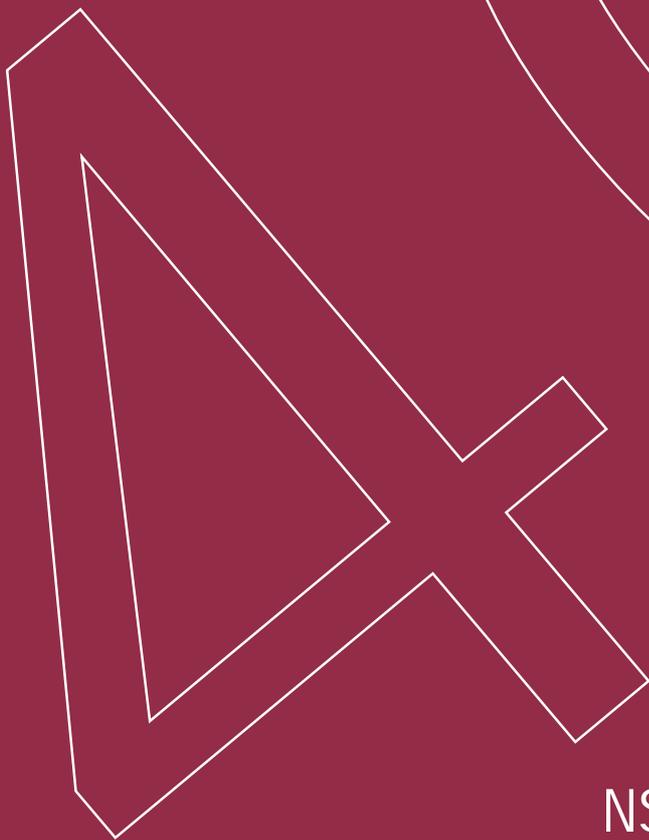


Forty Years of Law Reform



NSW
Law Reform
Commission

NSW Law Reform Commission
Annual Report 2006-07

Forty Years of Law Reform

This report acknowledges the fortieth anniversary of the enactment of the Law Reform Commission Act 1967. The New South Wales Law Reform Commission was the first agency of its kind established in Australia.

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Executive Director, Mr Peter Hennessy, and part-time Commissioner, the Hon Hal Sperling QC

Our Profile

- IC The Law Reform Commission of NSW is a state government funded statutory authority regulated by the *Law Reform Commission Act 1967*. It was established in 1966 and has been in operation for 41 years.
- IC
- IC
- 1 In 2006-07, the Commission comprised a Chairperson and six Commissioners (one part-time), all appointed by the Government. Commissioners may be current or former judicial officers, experienced legal practitioners, experienced academic lawyers, or persons with special qualifications, training or experience. All the current Commissioners have legal qualifications.
- 2
- 4
- 5
- 7
- 10 The Commission had 17 staff (full-time and part-time) in 2006-07.
- 16

Our Guiding Principles

- 18
- 23
- 24 The Commission strives to provide high quality advice to the Attorney General based on detailed research and reflecting extensive community consultation.
- 26
- 27 In the Commission's view, recommendations for changes to law and procedure should be evidence-based so that the law develops in a coherent way that reflects community standards.

On all of its law reform projects, the Commission reviews developments in other Australian States and Territories, as well as in overseas countries.

The Commission operates in an open and transparent manner. It seeks to engage the community in the law reform process by publishing consultation papers and inviting submissions and comments from interested persons. The Commission conducts seminars and participates in public meetings to provide opportunities for community participation.

Our Business

The Commission reviews areas of the law referred to it by the Attorney General. Law reform projects cover a diverse range of subject areas. Current projects relate to succession law, privacy, juries, criminal law, and legal consent to medical treatment. Projects may involve a comprehensive review of an area of law, or a review of the operation of a single Act or part of an Act.

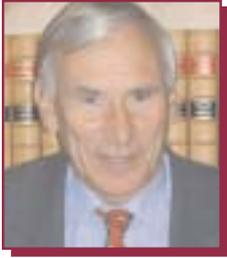
The Commission undertakes comprehensive research and consultation in developing recommendations for changes to the law.

Highlights

- Fortieth anniversary of the enactment of the Law Reform Commission Act 1967 *(see page 18)*.
- Four reports published, dealing with guaranteeing debts, blind or deaf jurors, disputes in company title units, and intestacy *(see page 10)*.
- An issues paper published dealing with who should be eligible for jury service *(see page 12)*.
- Five reports were implemented by legislation. These dealt with wills, apprehended violence orders, expert witnesses, and neighbourhood disputes *(see page 26)*.
- An external review of the Commission acknowledged the productivity of the Commission and the high quality of the publications, but recommended a number of measures which it considered would further improve productivity *(see page 9)*.
- Conducted a one-day seminar with the Law School at Macquarie University on consent to medical treatment by young people *(see page 14)*.

Five-Year Performance Summary

	2002/03	2003/04	2004/05	2005/06	2006/07
Clients					
Consultation Papers and Reports	6	8	9	5	6
Consultations	n/a	3	21	13	15
Website Hits	n/a	1 154 340	1 048 600	974 448	796 049
Organisation					
Commissioners (only one full-time)	20	19	20	11	7
Staff (number)	15	15	17	16	17
Training (total hours)	n/a	n/a	n/a	126.5	359
Legal interns/student placements	8	5	15	16	16
Operating surplus/deficit	-\$83 098	+\$42 507	-\$50 556	+\$172 034	-\$61 031



2006-07 - Report of the Chairperson

This Report acknowledges the 40th anniversary of the enactment of the *Law Reform Commission Act 1967*. The New South Wales Law Reform Commission was the first law reform agency of its kind established in Australia, and was modelled on the Law Commission of England and Wales, which was established in 1965. Some of the highlights of the Commission's 40-year history are set out later in this Report (see page 14).

Chairperson

The Hon James Wood
AO QC

The Commission completed four reports and published one issues paper during 2006-07. The priority for the Commission was to finalise two long-standing projects: one focusing on the law relating to people who guarantee other people's debts (Report 107), and the other which considered whether people who are blind or deaf should be able to serve on juries

"The New South Wales Law Reform Commission was the first law reform agency of its kind established in Australia"

(Report 114). In relation to both of these projects, and a third relating to intestacy (Report 116), the Commission had previously completed important empirical studies. This reflects the Commission's approach to try to ensure that the recommendations that it makes for changes to, or development of, the law of New South Wales are based on up-to-date and comprehensive data.

In relation to the project on guarantees, the Commission participated in a joint study with the Law School at the University of Sydney. The research project was aimed at "finding out more about the experiences of people who guarantee loans for others, including why they agree to be guarantors; how they get into trouble in those transactions; and what might have assisted them in avoiding such difficulties" (see Report 107, p xiii).

For the project on jurors, the Commission contracted Ms Jemina Napier from the Department of Linguistics at Macquarie University to conduct a series of studies relating to the use of Auslan in court. The studies focused on interpreting judges' instructions to juries. The results of these exercises were very helpful in identifying some of the key challenges for interpreters dealing with complex legal concepts, and some of the practical difficulties confronting deaf people in court.

The third empirical study was conducted as part of the Commission's work on intestacy. The Commission decided that, in formulating proposals for change to the law of intestacy, it would be useful to obtain information about how people who make wills choose to distribute their estates (Research Report 13, p 2). The study looked at 650 matters filed in the Supreme Court of New South Wales in September 2004. The rationale for the study was to try to ensure that the laws of intestacy were consistent with the practices of people who made wills. The empirical research was undertaken by two students on placement at the Commission, Ms Joula Dekker and Mr Mark Howard, both of whom were studying for Masters degrees at the University of New South Wales.

The Commission's recognition of the importance of empirical studies continues in 2007. On one of the Commission's new projects relating to the law and practice relating to judges' directions to juries in criminal trials, a further study has been commissioned. The Bureau of Crime Statistics and Research will conduct a survey of juries in the second half of 2007 to gain some insights into the level of understanding by jurors of judges' instructions. The results of this study will be published, and will assist the Commission in formulating recommendations to go to the Attorney General in 2008.

Mr Wood was appointed Chairperson in January 2006.

For details of all Commissioners, please see pages 5-6

In the second half of 2006, a review of the Commission's management and operations was completed by Mr Russell Cox. Details of this review are set out on page 9. While the report on the review was a positive outcome for the Commission, it also posed a number of challenges for the Commission, which will be examined further in 2007-08.

Since the commencement of the 2006-07 financial year, the Commission operated with a significantly smaller number of part-time Commissioners than it has for several years. Justice Michael Adams, Associate Justice Joanne Harrison, Justice Greg James, and Justice David Kirby completed their terms as part-time Commissioners on 30 June 2006. Professor Richard Chisholm completed his term on 30 December 2006. Justice David Hodgson and Associate Professor Jane Goodman-Delahunty were re-appointed as part-time Commissioners in the latter half of 2006. The Hon Greg James QC and the Hon H D Sperling QC were re-appointed as part-time Commissioners in early 2007.

The end of the financial year also marked the end of a significant term as a part-time Commissioner of the Hon Gordon Samuels AC CVO QC. Gordon Samuels was a former Chairperson of the Commission and former Governor of New South Wales. A short note on his work at the Commission is contained on page 6.

In late 2007 or early 2008, the Commission will be relocating from Level 17 of the Goodsell Building to Level 13 of 10 Spring Street, Sydney. This follows the decision to sell the Goodsell



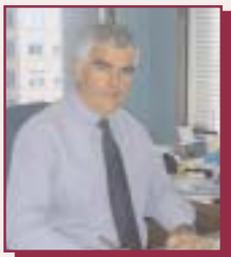
Presentation by Hon James Wood AO QC

Building and to relocate almost all staff of the Attorney General's Department into new offices in a new justice precinct at Parramatta. An office move of this kind involves a significant amount of planning and disruption, and the Commission hopes this move can be made as smoothly as possible.

I thank all the Commissioners and staff for their continued commitment and dedication to the work of the Commission. I look forward to the next financial year and the next decade of the important work undertaken by the Law Reform Commission.

The Hon James Wood AO QC

Organisation



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.

On 30 June 2007, the Commission comprised one full-time and six part-time Commissioners (including the Chairperson). There were 17 full-time and part-time members of staff.

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

The Hon James Wood AO QC (Chairperson)
 Professor Michael Tilbury (Full-time Commissioner)
 Associate Professor Jane Goodman-Delahunty
 The Hon Justice David Hodgson
 The Hon Gregory James QC
 The Hon Gordon Samuels AC CVO QC
 The Hon H D Sperling QC

(see pages 5-6 for further details)

Chairperson

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

See page 7 for details of current projects.

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.

Legal Staff

Legal Officers (Grades I-III)

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

Graduate Program

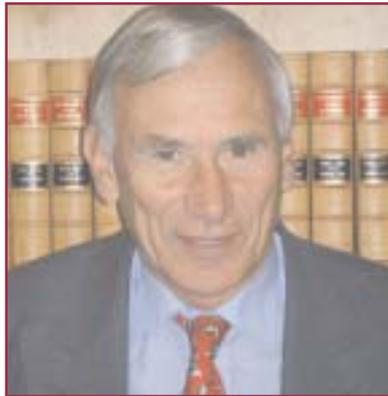
Alison Merridew

Administrative Staff

Administrative Officer
 Suzanna Mishhawi
 Publications Coordinator
 Terence Stewart
 Executive Assistant
 Wendy Stokoe
 Librarian
 Anna Williams
 Library Assistants
 Nikki Mason
 Jenny Davis

— Direct line of responsibility
 Indirect line of responsibility
 p/t Part-time

Commissioners



Chairperson
The Hon James Wood AO QC

Chairperson

The Hon James Wood AO QC

appointed January 2006

Chairperson, Sentencing Council of New South Wales (2006 - current)

Inspector, Police Integrity Commission (2005 - 6)

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

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



Associate Professor Jane Goodman-Delahunty

appointed May 2002

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

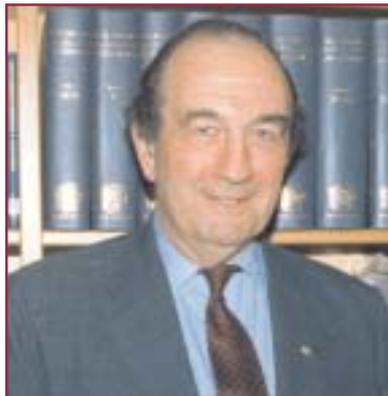
Judge of the NSW Supreme Court (1983 - 1997)



The Hon Gregory James QC
appointed January 1999
Judge of the NSW Supreme Court
(1998 - 2004)
President, Mental Health Review
Tribunal (2006 - current)
Part-time Commissioner of the NSW
Law Reform Commission (1985 -
1989, 1999 - 2006, 2007 - current)



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 (1981 -
1989, 1990 - 1996, 2005 - 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)
Part time Commissioner of the NSW
Law Reform Commission (2001 -
2007)

Hon Gordon Samuels AC CVO QC

The Hon Gordon Samuels AC CVO QC ended a long association with the Law Reform Commission on 30 June 2007. Mr Samuels did not seek re-appointment to the Commission.

Mr Samuels was appointed Chairperson of the Commission in 1993 following his retirement as Supreme Court judge. He was a member of the NSW Court of Appeal from 1974-1992.

He resigned as Chairperson on his appointment as Governor of New South Wales in February 1996. Following a five-year term as Governor, he was reappointed to the Commission as a part-time Commissioner in 2001.

During his time at the Commission, Mr Samuels was involved in a diverse range of law reform projects, including defamation, sentencing, blasphemy, rights to access to neighbouring land, contempt by publication and uniform succession laws.

Staff

All staff, with the exception of the Executive Director, are employed under the *Public Sector Employment and Management Act 2002*.

	Men	Women	Full-time	Part-time	Total
Executive Director (SES)	1		1		1
Legal Officer Grade I-III	2	7	5	4	9
Graduate Clerk		1	1		1
Clerk Grade 5-6	1		1		1
Clerk Grade 3-4		2	1	1	2
Librarian Grade 3		1	1		1
Library Assistant		2		2	2
Total	4	13	10	7	17

The Hon Leslie Katz SC works at the Commission on an honorary basis for approximately 20 hours per week.

Student Placements

The Commission participates in student placement schemes run by universities in New South Wales (and on occasions from overseas universities). These schemes are predominantly for law students, although in 2006-07 the Commission had two students undertaking Masters degrees in forensic psychology. The following students had placements at the Commission in 2006-07.

- Erika van Aalst - University of NSW
- Melissa Adler - University of NSW
- Renee Chartres - University of Technology, Sydney
- Victoria Cohn - Forensic Psychology, University of NSW
- Alice Dillon - University of NSW
- Sally Dwyer - Forensic Psychology, University of NSW
- Jane Fan - University of NSW
- Laura Goodwin - University of Technology, Sydney
- Lucy Gray - University of Wollongong
- Tijana Jovanovic - University of Western Sydney
- Rhiannon O'Donnoghue - University of Technology, Sydney
- Melissa Pinto - University of Western Sydney
- Marcela Salgado Mar - University of Wollongong
- Stephen Stokes - Irish Law Graduate
- Nelson Trieu - University of NSW
- Rita Youseff - University of Technology, Sydney

Future Priorities

- office relocation to Level 13, 10 Spring St in early 2008
- review library collection to take account of reduced storage capacity in new office
- increase staff training to five days per year



Ms Alison Merridew, employed at the Commission under the Attorney General's Department graduate program

Staff Development

The Commission promotes the development of its staff. All staff have six-monthly interviews with the Executive Director to review their work programs. During the year, staff were encouraged to undertake a minimum of three days training. While a target of an average three days training was achieved, some staff participated in significantly more development opportunities. In 2007-08, the target for training has been increased to five days training for each staff member.

All staff are also encouraged to seek out secondment opportunities. One member of staff, Ms Sharminie Niles, will be undertaking a secondment to the Office of the Commissioner for Children and Young People in 2007-08.

Occupational Health and Safety

The Commission provides a healthy and safe workplace. No claims for workers' compensation were made during the year.

The Commission is represented on the OH & S Committee for the Goodsell Building (Attorney General's Department).

Information Technology

The Commission does not have complex information technology needs. During the year, the Commission examined whether the acquisition of EndNote software would assist in the production of its publications. The Commission deferred a decision on acquisition until next financial year.

The Commission's website is part of the Lawlink site of the Attorney General's Department. Updating and enhancements to the Commission's electronically published material requires consultation with the Attorney General's Department. The Commission commenced a review of better ways to manage the growing volume of material published on Lawlink.

During the year, the Commission's reports, which are currently published initially on Lawlink, were replicated on AustLII.

Freedom of Information Requests

The Commission received no requests for information under the *Freedom of Information Act 1989* during the financial year.

Environmental Awareness

The Commission participates in paper and other recycling systems established within the Attorney General's Department. It has also reduced the number of publications it prints in order to reduce paper use.



The Commission's current premises

Review of the Law Reform Commission

In September-October 2006, Mr Russell Cox, Deputy Chief Executive Officer Business and Client Services of the Legal Aid Commission of NSW, conducted a review of the administrative, research, and management structure of the Commission. The review focused on four matters:

1. Identifying opportunities to meet more effectively the current and future needs of the Commission.
2. Ensuring the Commission has the capacity and flexibility to meet the Attorney General's expectations for delivering law reform reports.
3. Ensuring the Chairperson of the Commission has appropriate high-level executive and management support overseeing research and administrative services.
4. Ensuring research and administrative research is structured and co-ordinated to support the Commission's work program.

The report of the review found that the Commission was productive and had a strong reputation for the quality of its work. It suggested that the Commission would demonstrate the success of its performance by developing better performance standards and indicators. It also suggested that the Commission may need to develop more flexible approaches to the conduct of

The report of the review found that the Commission was productive and had a strong reputation for the quality of its work.

references, depending on the scope and timeframe imposed. It also suggested that clearer lines of management responsibility would improve performance.

The review made a number of detailed recommendations, including:

- Creation of a second full-time Commissioner position.
- Clarifying the role of the Chairperson and Commissioners, including developing better position descriptions.
- Negotiating timeframes with the Attorney General before matters are referred to the Commission.
- Limiting the preparation of draft legislation to be included in Commission reports.
- Streamlining the publications produced on each project, in particular, publishing only one consultation paper.
- As far as possible, producing Commission consultation papers and reports in-house.
- Providing greater opportunities for rotation/secondment of legal staff.
- Reviewing the IT needs of the Commission, including a focus on preparing publications in a more streamlined manner.
- Developing new performance standards and indicators.
- Reviewing part-time working arrangements.
- Creating a new position of Executive Assistant for the Chairperson, and upgrading the position of Library Assistant to one of a Senior Library Technician.

Implementation

- reviewed IT needs
- published Annual Report in-house
- revised part-time working arrangements

The Commission has closely examined the recommendations contained in the review and supports the overall thrust of the report. No changes to the *Law Reform Commission Act 1967* are required to implement the recommendations in the review.

The Commission strongly endorses the appointment of a second full-time Commissioner. However, this has significant cost implications, and ways of funding this will be considered further in the next financial year. The Commission has also decided to publish its annual report in-house, but, for the time being, it is not feasible to produce all other consultation papers and reports in-house. The Commission has also reviewed aspects of its information and technology needs, and a number of these have been discussed with the Attorney General's Department, which provides these services to the Commission. The Commission is also actively seeking opportunities for staff to undertake secondments to other legal agencies.

Performance for 2006-07

Reports and Consultation Papers

The Commission's primary client is the Attorney General. The Attorney General refers matters to the Commission for review. On completion of a review, the Commission reports directly to the Attorney and the reports are required to be tabled in Parliament.

In 2006-07, the Attorney either tabled in Parliament or authorised the release of the following reports.

Surveillance: Final Report (Report 108)

The Commission's Final Report on *Surveillance* (Report 108) was tabled in NSW Parliament on 21 June 2007, following its completion in May 2005. Report 108 came about as a result of a request from the former Attorney General, the Hon Bob Debus MP, to revisit some of the issues raised in the Interim Report on *Surveillance* (Report 98, February 2001). In Report 98, we recommended a comprehensive legislative framework to regulate overt and covert surveillance. The former Attorney General asked the Commission to take into account some of the legal and other developments that had occurred after the Interim Report had been completed. This included, of course, the radically changed legal and political landscape following the events of 11 September 2001.

We were also asked to consider the implications of the recommendations in Report 98 for media organisations, especially in light of the High Court decision in *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199. That case involved the broadcast by the ABC of surveillance footage obtained covertly by a third party, and generated discussion concerning the balance between privacy and freedom of expression. The Commission concluded in Report 108 that, while *Lenah Game Meats* was relevant to our work on surveillance, nothing in the judgment precluded a legislative statement on surveillance of the kind recommended by the Commission. Indeed, the reluctance of the High Court to make a definitive statement on privacy and surveillance highlights the complexity of the area, and the need for a clear legislative pronouncement.

Report 108 endorsed the approach taken in Report 98, and made seven further recommendations aimed largely at clarifying the application of Report 98 to media organisations.

Blind or Deaf Jurors (Report 114)

This Report, published in September 2006, considers whether people who are blind or deaf should be able to serve on juries. Although the *Jury Act 1977* (NSW) does not directly prohibit them from so doing, in practice they are excluded due to an administrative determination by the Sheriff that they are unable to discharge the functions of a juror.

The Commission considered such matters as the ability of people who are blind or deaf to evaluate evidence, the feasibility of using sign language interpreters and other means of accommodation, the existing rules regarding the secrecy of jury deliberations, and the likely effects on the length and cost of trial. It also examined the situation in other jurisdictions, principally the United States, where blind or deaf persons are permitted to serve on juries.

While fairness of the trial is the foremost consideration, the Commission found that this was not threatened by removing the blanket exclusion from jury service of all people who are blind or deaf. The existing prohibition was regarded as excessive and unnecessary, excluding one class of citizens from participating in the responsibilities of citizenship without proper enquiry as to the ability of any individual member to perform the duties required.

The Commission recommended that people who are blind or deaf should be qualified to serve on juries and not be prevented from doing so on the basis of physical disability alone. The trial judge should still have the power to stand aside a prospective juror who is blind or deaf where it appears that the person will not, in the circumstances, be able to properly discharge the duties required. This could happen, for example, where crucial evidence is aural or visual in nature.

Other recommendations include allowing sign interpreters and stenographers to assist deaf or blind jurors during the trial and deliberations, and giving judicial officers and court staff the opportunity to participate in professional awareness activities that facilitate the inclusion of blind or deaf people on juries.

Uniform Succession Laws: Intestacy (Report 116)

Report 116 is the result of the Commission's review of the law of intestacy, conducted as part of the work of the National Committee for Uniform Succession Laws. The National Committee aims to recommend a national scheme for all aspects of succession law. All States (except South Australia) and Territories participated in this review. The report recommends a new, easier-to-follow, set of provisions that:

- Give the whole estate of a deceased person to the surviving spouse or partner in cases where there are no children from another relationship. This accords with current practice in wills and the general expectation that the surviving spouse or partner will leave the estate to the surviving children when he or she dies.
- Allow property to be divided between surviving spouses or partners and surviving descendants where some of the children of the deceased are offspring of another relationship.
- Broaden the rights of the surviving spouse or partner (where there are also surviving descendants of the deceased who are entitled) to elect to obtain particular items of property in the deceased estate. The current law in NSW only allows the spouse or partner to elect to obtain the matrimonial home.
- Extend the categories of relatives entitled to take on intestacy to first cousins of the deceased. In NSW, the categories of relatives entitled to take are limited to the deceased's aunts and uncles (but not their children). This brings NSW broadly into line with other States and with societal expectations that cousins should be entitled to take from an intestate estate in preference to the government.
- Allow a special regime for the distribution of estates of Indigenous people, where members of the deceased's family request it.

Future Priorities

- Report on consent to medical treatment by young people
- Report on jury service
- Consultation Paper on invasion of privacy
- Consultation Paper on jury directions

People Who Guarantee Other People's Debts (Report 107)

The Commission's Report on the law relating to guaranteeing someone else's debts was tabled in Parliament on 9 May 2007. The Commission was asked to examine the legal framework that protects guarantors of small business and other loans. In particular, whether:

- the interests of personal guarantors are adequately protected
- there is a reasonable level of satisfaction with the existing legislative framework
- there are better strategies for providing personal guarantees that would improve lending practices without placing undue constraints on small business lending.

There is a widespread use of guarantees in commercial transactions. It generally arises where a lender will only provide money if a loan is secured. If a borrower has no acceptable security, the lender may agree to provide the money if it is secured against some property or other interest of a third party. This often results in spouses or family members being guarantors of the loan. If the guarantee is enforced because the borrower is unable to repay the loan, it can often have serious financial consequences for the guarantor, such as the loss of a home.

In undertaking this review, the Commission had to consider the application of the *Contracts Review Act 1980* (NSW), the *Fair Trading Act 1987* (NSW), and the national consumer credit legislation (the Consumer Credit Code), which came into operation in all States and Territories in 1996.

The Commission published an Issues Paper in May 2000, setting out the major issues to be considered in the review.

Between 2000 – 2003, the Commission participated in a major empirical study into the practical effect of guarantees. This study was undertaken in partnership with the Law School at the University of Sydney. Following completion of the empirical study, entitled *Darling, please sign this form: a report on the practice of third party guarantees in New South Wales* (October 2003), the Commission undertook further consultations and completed the substantive part of its work in 2006.

The Report's major recommendation was for the development of uniform laws (to apply in all States and Territories) relating to contracts guaranteeing another's debts. The Report contained 46 recommendations detailing the content of the uniform law proposed. These included that specific information should be made available to prospective guarantors which, if not complied with, would render the guarantee unenforceable.

In addition to these four reports, the Commission also published one Issues Paper.

Jury Service (Issues Paper 28)

In Issues Paper 28, published in November 2006, the Commission considers the operation and effectiveness of the system for selecting jurors under the *Jury Act 1977* (NSW), including:

- basic qualifications for jury service;
- the current categories of disqualification, ineligibility and right to exemption;
- the grounds on which people may be excused from service;
- systems for deferring service to a more convenient time;
- other matters relating to the management of jury service, including conditions of service and allowances.

The Commission will complete a Report on jury service in the latter half of 2007.

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.

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



Presentation by Professor Michael Tilbury

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 2006 - June 2007, the Commission's website recorded almost 800,000 hits, an average of over 65,000 hits per month. The average is a reduction on the previous year and we are investigating what the reason for this may be.

Consulting with Other Stakeholders

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)
- Privacy
- Jury Service
- Jury Directions

Community Law Reform Program

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.

Assistance to the Community

In addition to its primary work in conducting reviews of areas of the law at the request of the Attorney General, the Commission also provides legal information and assistance to members of the community. This assistance, usually by phone or e-mail, may relate to information about current law reform reviews being conducted by the Commission. It may also relate to previous reviews completed by the Commission, and information about current legal issues that have received media coverage.

Submissions to Inquiries

The Commission is regularly invited to make submissions to government inquiries and inquiries by parliamentary committees (both State and Commonwealth). The Commission makes submissions if it has the necessary expertise or has undertaken relevant research as part of current or completed projects. During the current year, Professor Michael Tilbury and Mr Peter Hennessy gave evidence to an inquiry conducted by the Human Rights and Equal Opportunity Commission into Commonwealth legislation discriminating against same sex-couples. The Commission also met with the Productivity Commission (Commonwealth agency) as part of an inquiry being conducted into consumer protection legislation.

Participation in Conferences and Seminars

Commissioners and staff are regularly invited to participate, usually by presentation of a paper, in conferences and seminars. These are usually in Australia, but occasionally may be overseas. The subject areas for presentation generally relate to current or completed law reform reviews or to the process of law reform. Conferences and seminars also provide an opportunity to discuss areas of law that may be in need of review.

Overseas conferences/visits

- Professor Michael Tilbury visited Hainan, China, as part of a Human Rights and Equal Opportunity Commission delegation, and presented a paper on “The Role, Composition and Procedure of Juries: Recent Inquiries” (December 2006) (Peoples’ Assessers Research Seminar - China/Australia Human Rights Technical Cooperation Program)
- Hon James Wood AO QC visited the Law Commission of England and Wales and met with a number of judges in London and Edinburgh (May 2007)
- Hon James Wood AO QC participated in the Bahrain Expert Witness Workshop conducted by the American Bar Association (January 2007)
- Mr Peter Hennessy met with a group of Cambodian lawyers in Phnom Penh, Cambodia (January 2007)

Seminar on consent to medical treatment

The Commission collaborated with the Law School of Macquarie University to organise a one-day seminar focusing on the Commission’s review of the law relating to the consent to medical treatment by young people. The seminar was held in December 2006 in the Parliament House Theatre. Speakers included Professor Derek Morgan, Dr Michael Fasher, Ms Gillian Calvert, Professor Richard Chisholm, Professor Mary Chiarella, Dr Tracey O’Brien, Dr David Dossitor, Dr Melissa Kang, Ms Michelle Taylor, Ms Fiona Richards, Ms Robyn Rosina, Mr James Ward, Ms Jane Saunders, Professor John Devereux, Ms Kerry Boland and Associate Professor Cameron Stewart.

Other conference presentations

- Hon James Wood AO QC, presentation to a seminar on the role of juries in sentencing, University of Sydney (October 2006)
- Hon James Wood AO QC, presentation to Supreme and Federal Court Judges Conference, Perth (January 2007)
- Hon James Wood AO QC, presentation to 19th Biennial Conference of District and County Court Judges of Australia and New Zealand, Perth (June 2007)
- Professor Michael Tilbury, “Hot Topics in Law Reform”, Macquarie Law Seminar Series (November 2006)
- Professor Michael Tilbury, “Three Models of Jury Sentencing”, Juries and Emerging Technologies Seminar, University of Canberra (10 November 2006)
- Professor Michael Tilbury, “The Role of Legal Scholarship in Law Reform”, Eighth Postgraduate Law Conference, Faculty of Law, University of Sydney (November 2006)
- Professor Michael Tilbury, “Towards Uniform Succession Laws”, 5th Annual LexisNexis Wills, Succession and Estate Planning Conference, Sydney, (February 2007); Melbourne (March 2007)
- Professor Michael Tilbury, “A Statutory Cause of Action for Invasion of Privacy?”, Asia Pacific Privacy Authorities Forum, Cairns (June 2007)
- Professor Michael Tilbury, presentation to a seminar on privacy in Sydney in conjunction with the Australian Law Reform Commission (March 2007)

- Professor Michael Tilbury, presentation to a seminar at the Office of the Privacy Commission (Cth) (May 2007)
- Mr Peter Hennessy, presentation to a Legal Studies Teachers Conference, Parramatta (March 2007)
- Mr Peter Hennessy, HSC Legal Studies Conference, Sydney (November 2006)
- Mr Peter Hennessy, presentation to HSC Legal Studies Conference, Sydney (May 2007)
- Ms Catherine Gray, presentation to group of HSC students from Dubbo Senior College (October 2006)
- Staff of the Commission also participated in a number of events during Law Week 2007, including Ms Francesca Di Benedetto, who gave a presentation at an Italian bilingual school in Leichhardt.

Assistance to Overseas Delegations/Agencies

The Commission is a member of the Commonwealth Association of Law Reform Agencies, which aims to encourage international co-operation on law reform. There are currently over 25 member agencies. The Commission provides assistance to member agencies by circulating copies of its publications. It also responds to requests to send information on current law or legal developments in New South Wales.

The Commission hosted a six-week visit by Rachel Odoi-Musoke, Secretary of the Uganda Law Reform Commission, in April-May 2007. Rachel gained a good understanding of the workings of the Commission and attended Commission project meetings. She also met with many legal agencies during her time in Sydney.

The Commission meets regularly with delegations of overseas lawyers and judges who are interested in the work undertaken by the Commission, and the methodology it adopts. During 2006-07, the following international visitors or delegations met with the Commission.

- Mr Satoshi Kameda, Mr Masato Fujita, Japanese Judicial Systems Department
- Mr Ewan Morris, Mr Mark Hickford, New Zealand Law Commission
- Ms Anna Guthleben, Solomon Islands Law Reform Commission
- Ms Odoi-Musoke, Uganda Law Reform Commission
- Professor Joap Doak, Chair of the UN Committee on Rights of the Child
- Delegation of Government Ministers and officials from Kazakstan
- Delegation from Ministry of Justice, Japan
- Delegation of Vietnamese lawyers sponsored by Human Rights and Equal Opportunity Commission
- Mr Sumit Man, General Coordinator, International Relations Institute, Cambodia
- Sir Geoffery Palmer, Chairman, New Zealand Law Commission

Projects for 2007-08

Project	Participants	Timetable
<p>Uniform Succession Laws (joint project with all States and Territories) - Administration of Estates</p>	<p><i>Division</i> Justice David Hodgson* Professor Michael Tilbury Hon James Wood AO QC</p> <p><i>Participants</i> Joseph Waugh</p>	<p><i>Report on Administration of Estates (QLRC) March 2008 (subject to National Committee agreement).</i></p>
<p>Consent to Medical Treatment by Minors</p>	<p><i>Division</i> Professor Michael Tilbury* Justice David Hodgson Associate Professor Jane Goodman-Delahunty Hon James Wood AO QC Hon Hal Sperling QC</p> <p><i>Advisory Committee</i> Dr Michael Fairley Mr David Worswick Professor Loane Skene Professor John Devereux Professor Don Chalmers Ms Amanda Adrian Professor Mary Chiarella Dr Louise Newman Associate Professor Cameron Stewart Professor Derek Morgan</p> <p><i>Participants</i> Rebecca Kang Robyn Johansson Ani Luzung Judy Maynard Joseph Waugh Francesca Di Benedetto</p>	<p><i>Report December 2007. Seminar with Macquarie University February 2008.</i></p>
<p>Privacy</p>	<p><i>Division</i> Hon James Wood AO QC Professor Michael Tilbury* Hon Hal Sperling QC</p> <p><i>Advisory Committee</i> Associate Professor Megan Richardson Associate Professor Andrew Kenyon His Honour Judge Kevin O'Connor AM Professor Raymond Wacks Mr David Marr Hon Justice Patricia Bergin Professor David Partlett Lord Justice Sedley</p> <p><i>Participants</i> Catherine Gray Sharminie Niles Donna Hayward Ani Luzung</p>	<p><i>Consultation Paper on Privacy Legislation December 2007. Final Report June 2008.</i></p>

* Commissioner in Charge

Project	Participants	Timetable
Jury Service	<p><i>Division</i> Hon James Wood AO QC* Professor Michael Tilbury Associate Professor Jane Goodman-Delahunty</p> <p><i>Advisory Committee</i> Ms Lynn Anamourlis Hon Alan Abadee RFD QC</p> <p><i>Participants</i> Joseph Waugh</p>	<i>Report September 2007.</i>
Jury Directions	<p><i>Division</i> Hon James Wood AO QC* Professor Michael Tilbury Associate Professor Jane Goodman-Delahunty Hon Hal Sperling QC</p> <p><i>Advisory Committee</i> Mr Nicholas Cowdery AM Mr Mark Ierace SC Mr Paul Byrne SC Mr Lloyd Babb Hon Justice Roderick Howie Mr Hugh Donnelly Professor Jill Hunter Ms Dorne Boniface His Honour Judge Peter Berman SC Her Honour Judge Gay Murrell SC</p> <p><i>Participants</i> Ani Luzung Joseph Waugh</p>	<i>Jury Survey December 2007. (Survey commenced June/July 2007.) Consultation Paper December 2007. Report June 2008.</i>
People with Cognitive and Mental Health Impairments and the Criminal Justice System	<p><i>Division</i> Hon James Wood AO QC* Professor Michael Tilbury Hon Greg James QC Hon Hal Sperling QC</p> <p><i>Advisory Committee</i> Professor David Greenberg Mr Hugh Donnelly Mr Peter Goslett Superintendent David Donohue Deputy Chief Magistrate Helen Syme Mr Brian Sandland</p> <p><i>Participants</i> Alison Merridew</p>	<i>Consultation Paper December 2007. Report April 2008.</i>
Review of Common Law of Complicity	<p><i>Division</i> Hon James Wood AO QC* Professor Michael Tilbury Hon Hal Sperling QC</p> <p><i>Participants</i> Robyn Johansson</p>	<i>Report December 2007.</i>

* Commissioner in Charge

Highlights of Four Decades of Law Reform in New South Wales*

1966: HOW IT ALL STARTED

The Opposition Advocates

The Law Commission of England and Wales was established in 1965. The NSW Opposition Leader of the Liberal-Country Party suggested in the election campaign of 1965 that a similar agency be established in NSW.

Following the election of a new Government in the 1965 State elections, the establishment of the Law Reform Commission was announced “as an important step towards ensuring the preservation of basic human rights and freedoms.” (NSW Parliamentary Debates 3rd series, vol 57, at 3 (24 August 1965))

The new Attorney General, the Hon Kenneth McCaw, saw a need to establish the Commission immediately, so he sought and obtained approval of Cabinet for the establishment of the Commission by administrative action, rather than waiting for legislative reform. He did, however, believe the Commission needed a statutory foundation to ensure its independence and permanence, which he would later put into place.

The First Chairperson

The Commission began work in January 1966 with its first Chairperson, Justice James Kenneth Manning of the Supreme Court, and Deputy Chairperson, Mr R D Conacher, barrister-at-law.

The First Commissioners

The first Commissioners were Professor Benjafield, on secondment from Sydney University for two years, and Mr H M Scott, a recently retired Deputy Crown Solicitor.

The Commission's First Program

In September 1966, the Commission published its first program containing 13 topics, with some of the more important including: -

- Rights of appeal from administrative decisions and the desirability of appointing an Ombudsman
- The age of majority in relation to voting, contracts and property
- Law and procedure in personal injury actions

1967-1976: THE FIRST DECADE OF LAW REFORM

1967 Becoming a Statutory Authority

Mr McCaw introduced a Bill to Parliament in August 1967 to constitute the Law Reform Commission as a statutory authority. The *Law Reform Commission Act 1967* received Royal Assent on 25 September 1967.

1969 The Second Chairperson

In October 1969, Justice Manning resigned to take up an appointment to the Court of Appeal, and was succeeded by Justice Raymond George Reynolds

1971 Move to the Goodsell Building

After discussions around the possibility of being located in the new Commonwealth-State Law Courts Building, the Commission moved into the newly-completed Goodsell Building in Chifley Square, where the chief offices of the Attorney General's Department were situated.



Justice Raymond Reynolds

1972 The Third Chairperson

Upon Justice Reynolds's appointment to the Court of Appeal, Justice Charles Leycester Devenish Meares became the third Chairperson of the Commission. During Justice Meares's tenure, the Commission attained a normal staffing level of six commissioners, an executive member, a chief legal officer, three research assistants and four secretarial staff.

1976 Backlog and Review by the Government

While many of the Commission's early reports were rapidly implemented by the Government, a backlog began to build up, primarily because the Commission found it necessary to engage in continuing community consultations once a report had been presented.

In 1976, the Commission expressed disappointment that implementation of its reports had "tended to be slow and uncertain" (New South Wales Law Reform Commission Annual Report for Year Ended 30 June 1976 (1976) at 10), and this problem was remedied in the next few years with all outstanding reports being reviewed by the Government.

Review of law and practice in relation to the Legal Profession

In September 1976, the newly-elected Labor Attorney General, the Hon F J Walker, issued a reference to the Commission requiring it to inquire into and review the law and practice relating to the legal profession. It was one of the most extensive tasks ever entrusted to a law reform agency and was to occupy most of the Commission's resources for the next six years.

The project required analysis of samples of complaints against lawyers, surveys of the operation of the "fused" profession in South Australia, and research into the auditing of solicitors' trust accounts. The Commission also co-operated with the Law Foundation of NSW in an extensive questionnaire on the training and experiences, attitudes and work of both barristers and solicitors.

Six detailed discussion papers marked a new, more public approach by the Commission, since the aim was to stimulate discussion and encourage responses from a wide range of individuals and groups.

The Fourth Chairperson

In December 1976, Justice John Halden Wootten replaced Justice Meares as Chairperson, while Judge Trevor Martin and Mr Julian Disney were appointed Commissioners.



Justice J H Wootten

1977 -1986: THE SECOND DECADE OF LAW REFORM

1978 Review of Law of Evidence

This was a long-standing reference given to the LRC and, during the period of 1977-1982, significant work was undertaken, primarily by Professor J D Heydon as a Commissioner.

In 1978, a report on the hearsay rule was released, recommending the relaxation of the strict common law rule in favour of an approach which allowed evidence to be admitted on grounds of reliability. This report received much public attention.

1981 Amendments to the Law Reform Commission Act

Amendments were proposed to the Act in order to reform the Commission's structure and organisation, due to the shift of law reform bodies in Australia handling subjects which required detailed consideration of social policy. The Amendment Bill was introduced into Parliament and received Royal Assent on 20 March 1981.

The amended Act allowed the Commission to alter its membership according to the requirements of the inquiries it undertook, to draw from a wider range of expertise, and to work more effectively on a number of simultaneous projects.



Professor Ronald Sackville

The Fifth Chairperson

Justice Wootten returned to the bench and was replaced in July 1981 by Professor Ronald Sackville, who presided over the above restructuring of the Commission.

1981 A New Accident Compensation Scheme

In November 1981, the Commission commenced a major review of accident compensation legislation. The aim was to develop a new scheme for transport accidents. Major empirical studies were undertaken by consultants for the Commission. This was a new approach by the Commission. The Commission's final Report was completed in late 1984 and tabled in Parliament in March 1985. Legislation to implement the scheme was enacted in 1987 (*Transport Accidents Compensation Act*), but it had a short life, being substantially changed following a change of government in March 1988.

1982 Review of Unincorporated Associations

A Report was published in 1982, recommending the enactment of draft legislation which would allow non-profit associations to become registered and incorporated as legal entities.

A New Deputy Chairperson

Mr Conacher, who had been Deputy Chairperson since the Commission's establishment, retired. Mr Russell Scott succeeded him.

Review of De Facto Relationships

As the legal profession review was drawing to a close, the Commission was able to take on a project on the subject of de facto relationships. Both the Issues Paper and Report were widely praised for their comprehensiveness, clarity and readability, and the Commission's recommendations were implemented in totality by the Government (*De Facto Relationships Act 1984*).

Introduction of the Community Law Reform Program

In May 1982, the Attorney General wrote to the Commission authorising it to give preliminary consideration to proposals by the legal profession and the community at large, in order to bring to the Attorney General's attention matters which warranted a formal reference to the Commission. Over the years, the Commission has given serious consideration to over 400 matters brought to its attention, and has received 24 references from the Attorney under this program.

1983 Examination of need for laws relating to Artificial Conception

This reference considered new technologies and practices associated with human conception, pregnancy and birth. It was commenced under the direction of the Deputy Chairperson, Mr Russell Scott, an internationally-recognised authority on biomedical law.

1984 The Sixth Chairperson

Professor Sackville's term as Chairperson expired, and Mr Keith Mason QC succeeded him. Mr Mason oversaw the progress of the Commission's remaining work on artificial conception, and revived two existing references relating to evidence and sale of goods.

1987 – 1996: THE THIRD DECADE OF LAW REFORM

1987 The Seventh Chairperson

On Mr Mason's appointment as Solicitor General for NSW, Ms Helen Gamble took up the position of Chairperson in May 1987. Ms Gamble had served as a full-time Commissioner in charge of the Community Law Reform Program from March 1986.

Efficiency Audit

In 1987, the Public Service Board conducted an 'efficiency audit' of the Commission. The audit report was full of praise for the quality of the Commission's work and its record for implementation of recommendations, and concluded that the efficiency of the Commission would be enhanced by additional funding, permitting an increase in the number of full-time Commissioners and the purchase of computer equipment.



Ms Helen Gamble

1988 **Relocation to The Rocks**

In February 1988, the Commission moved from the Goodsell Building to Kent Street in The Rocks, Sydney. This created some difficulties in terms of access to the major law libraries in the city, but was somewhat overcome by the development of the Internet. The move also enhanced the independence of the Commission from the Attorney General's Department.

1989 **"An Extremely Difficult Year"**

After more than a decade of modestly rising and stable budgets, the allocation for 1988-1989 was severely reduced, which heavily affected staffing numbers. There was speculation that the Commission would be shut down.

The Eighth Chairperson

Ms Gamble resigned to take up a position as Foundation Chair of Legal Studies at the University of Wollongong, and Mr Keith Mason QC, Solicitor General and a former Chairperson, agreed to serve as Chairperson on a part-time, caretaker basis.



Mr Keith Mason QC

1990 **Positive Developments**

After the severe funding cuts of 1989, and speculation about the Commission's future, there were positive developments in 1990.

The Ninth Chairperson and an Executive Director

The Hon R M Hope AC CMG QC was appointed a part-time Chairperson and Mr Peter Hennessy was appointed Executive Director. At this time, it was indicated to the Commission that its budget allocation would not suffer another substantial reduction in the following year.



The Hon R M Hope AC CMG QC

From this time onwards, the Commission operated with one full-time Commissioner (previously, there had been up to four), but a larger number of part-time Commissioners.

1991 **People with an Intellectual Disability**

In 1991, the Commission received a major project to review the law relating to people with an intellectual disability within the criminal justice system. As part of its research, the Commission contracted Associate Professor Susan Hayes to undertake a study to determine the number of people with an intellectual disability who were actually appearing in local courts. The final Report was published in 1996.

1992 **Review of Adoption Legislation**

In December 1991, the Commission commenced a review of the *Adoption Information Act 1990*. The Act had been in operation for only 12 months, and the Commission had to review the implementation, public awareness and administration of the legislation, as well as the impact of the legislation on birth parents, children surrendered for adoption, and adopting parents and the extended families of all parties. (NSWLRC Annual Report 1992 at 21) The report was released in 1992.

Following this review, the Commission was asked to conduct a substantial review of the *Adoption of Children Act*. This review required extensive consultation, and was completed in 1997. It was implemented in the *Adoption Act 2000*.

1993 **The Tenth Chairperson**

The Hon G J Samuels AC CMG QC was appointed Chairperson to succeed the Hon R M Hope AC QC.



The Hon G J Samuels AC CMG QC

1995 **Release of Report on Defamation**

In 1992, the Commission had received a reference from the Attorney General to review defamation laws. The report was released in 1995. It recommended some significant changes to defamation law, and that the Government give "urgent consideration to the development of privacy laws, including the interaction of those laws with the law of defamation." (Report 75 (1995) Defamation – NSWLRC)

1996 Sentencing

Major changes to sentencing laws had been made in NSW in 1989. In 1994, the Commission was asked to review aspects of sentencing, and the terms of reference were expanded following a change of government in 1995. The Commission's first Report in 1996, on fundamental principles of sentencing, led to significant legislative changes between 1998-2002. Three further Reports were published as part of this review, dealing with Aboriginal offenders (2000), corporate offenders (2003), and young offenders (2005).



Mr Michael Adams QC

The Eleventh Chairperson

At the end of The Hon G J Samuels's term in 1996, Mr Michael Frederick Adams QC was appointed Chairperson.

Return to Goodsell Building

After spending eight years in office accommodation in The Rocks area of Sydney, the Commission relocated to the Goodsell Building in October 1996.

1997– 2006: THE FOURTH DECADE OF LAW REFORM

1999 Review of Anti-Discrimination Act 1977

In 1991, the President of the Anti-Discrimination Board, Mr Steve Mark, brought to the attention of the Commission the need for a major review of the much-amended *Anti-Discrimination Act 1977*, including the operation and procedures of the Equal Opportunity Tribunal.

Report 92 (1999), Review of the *Anti-Discrimination Act 1977*, was ultimately released in 1999. It recommended a major rewrite of the Act, including the introduction of three new grounds of discrimination: religious belief, political opinion, and carer responsibilities.

2002 Consent of Minors to Medical Treatment

This review of the law relating to consent to medical treatment by young people commenced in 2002, and will be completed in 2007. It considers the rights of young people, their parents and guardians, as well as medical practitioners.

2004 Juries

Commencing in 2004, the Commission has undertaken several projects relating to juries. These include: –

- whether majority verdicts by juries should be introduced in NSW (Report 111, 2005)
- whether people who are blind or deaf should serve on juries (Report 114, 2006)
- the role of juries in sentencing (Report 118, 2007)
- who should serve on a jury (Report 117, to be published late 2007).

2005 Surveillance

In 2005, the Commission's Final Report on surveillance was completed, following an Interim Report published in 2001. The Reports recommended the need for regulation of both covert and overt surveillance whether undertaken by law enforcement agencies, the media, private investigators, or by individuals.



The Hon James Wood AO QC

2006 The Twelfth Chairperson

The Hon James Wood AO QC succeeded Justice Michael Adams in January 2006. Justice Adams had been Chairperson for over 10 years. Prior to his appointment, Mr Wood was the Chief Judge at Common Law in the Supreme Court of New South Wales.

Review by Russell Cox

In August-September 2006, Mr Russell Cox, Deputy Chief Executive of the Legal Aid Commission of NSW, conducted a management review of the Law Reform Commission. [see page 9]

**Information primarily taken from the 'About Us' and 'Publications' sections of the NSW Law Reform Commission*

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 2006/2007 financial year, with comparisons for the two previous years.

The Commission ended the financial year with a deficit of approximately \$61,000. This was due to an insufficient allocation for the Chairperson's remuneration. This occurred when the Commission's budget was being formulated in May 2006. While this miscalculation was identified, a decision was taken within the Attorney General's Department not to provide supplementation during the year.

	2005	2006	2007 Budget	2007 Actual
REVENUE				
other revenue	4,794	6,283	13,079	20,161
sale of publications	6,283	4,794	1,744	1,823
TOTAL REVENUE	11,078	11,077	14,823	21,984
EXPENSES: Employee Related				
salaries and wages	977,205	1,058,543	1,209,129	1,138,532
allowances	0	0	1,044	18,325
overtime	1,390	1,390	0	0
leave entitlements	95,618	95,618	100,062	104,426
workers compensation insurance	0	6,499	4,550	6,911
payroll tax	67,398	72,278	82,797	86,109
fringe benefits tax	1,892	1,892	4,805	13,074
crown liabilities	57,714	52,974	98,056	69,381
TOTAL	1,201,217	1,289,194	1,500,443	1,436,758
EXPENSES: Maintenance & Working				
advertising and publicity	2,153	2,153	246	860
bank charges	0	0	288	225
consultancies	0	0	0	0
electricity and gas	15,193	15,193	28,922	30,735
fees	44,699	15,193	48,078	134,389
freight and cartage	539	539	0	5
general expenses	1,188	1,188	596	77
grants	0	0	0	0
insurance	2,512	2,512	3,137	1,960
interpreters and translators	0	0	0	0
maintenance contracts	5,010	1,238	0	938
motor vehicle	0	0	4,518	13,793
postal expenses	13,337	13,337	4,808	2,837
printing	41,668	41,668	30,840	31,377
publications	42,160	42,160	48,080	45,486
rates and charges	8,513	8,513	8,484	10,493
removal costs	0	0	0	266
rent	265,056	265,056	306,128	306,128
staff expenses	20,504	20,504	8,460	8,784
stores and stationery	8,466	8,466	7,612	5,851
telephone	10,713	10,713	9,000	8,705
travel	12,141	12,141	9,981	9,018
other expenses (contractors)	11,603		448	4,130
TOTAL	544,611	539,601	519,626	616,057
TOTAL EXPENSES	1,745,829	1,828,795	2,020,069	2,052,815
LESS Revenue	11,078	11,077	14,823	21,984
LESS Crown Liabilities	57,714	52,974	98,056	69,381
NET COST OF SERVICES	1,677,036	1,764,744	1,907,190	1,961,450
LESS Depreciation	49,521	49,521	31,353	38,124
NET POSITION	1,627,516	1,715,223	1,938,543	1,999,574

Appendix A - 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 B - Implementation

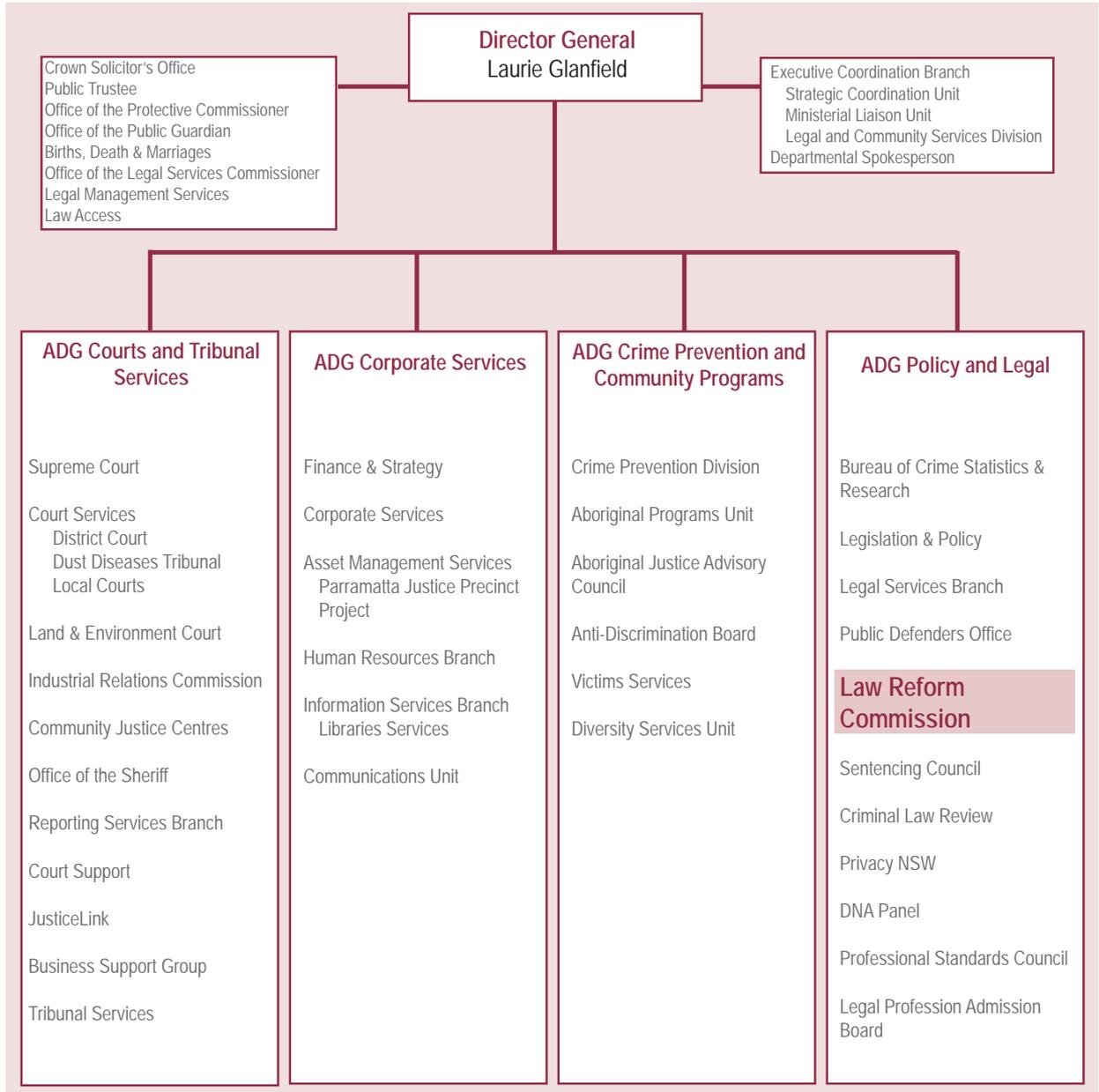
Reports not yet substantially implemented

The reports set out below, published between 1994 - 2006, have not yet been substantially implemented, although several are under active consideration.

Report Number	Report Name	Publication Date
Report 74	Blasphemy	(November 1994)
Report 78	Provisional Damages	(September 1996)
Report 80	People with an Intellectual Disability and the Criminal Justice System	(December 1996)
Report 83	Partial Defences to Murder: Provocation and Infanticide	(October 1997)
Report 93	Review of Section 316 of the <i>Crimes Act 1900</i>	(December 1999)
Report 96	Sentencing: Aboriginal Offenders	(October 2000)
Report 100	Contempt by Publication	(June 2003)
Report 102	Sentencing: Corporate Offenders	(June 2003)
Report 103	Apprehended Violence Orders	(October 2003)
Report 105	Time Limits on Loans Payable on Demand	(October 2004)
Report 106	Community Justice Centres	(February 2005)

Appendix C - The Attorney General's Department

The NSW Law Reform Commission is established as an independent statutory authority. However, for certain administrative and reporting purposes, it operates under the umbrella of the Attorney General's Department. Set out below is the current organisational structure of the Attorney General's Department.



GUARANTEE OF SERVICE

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

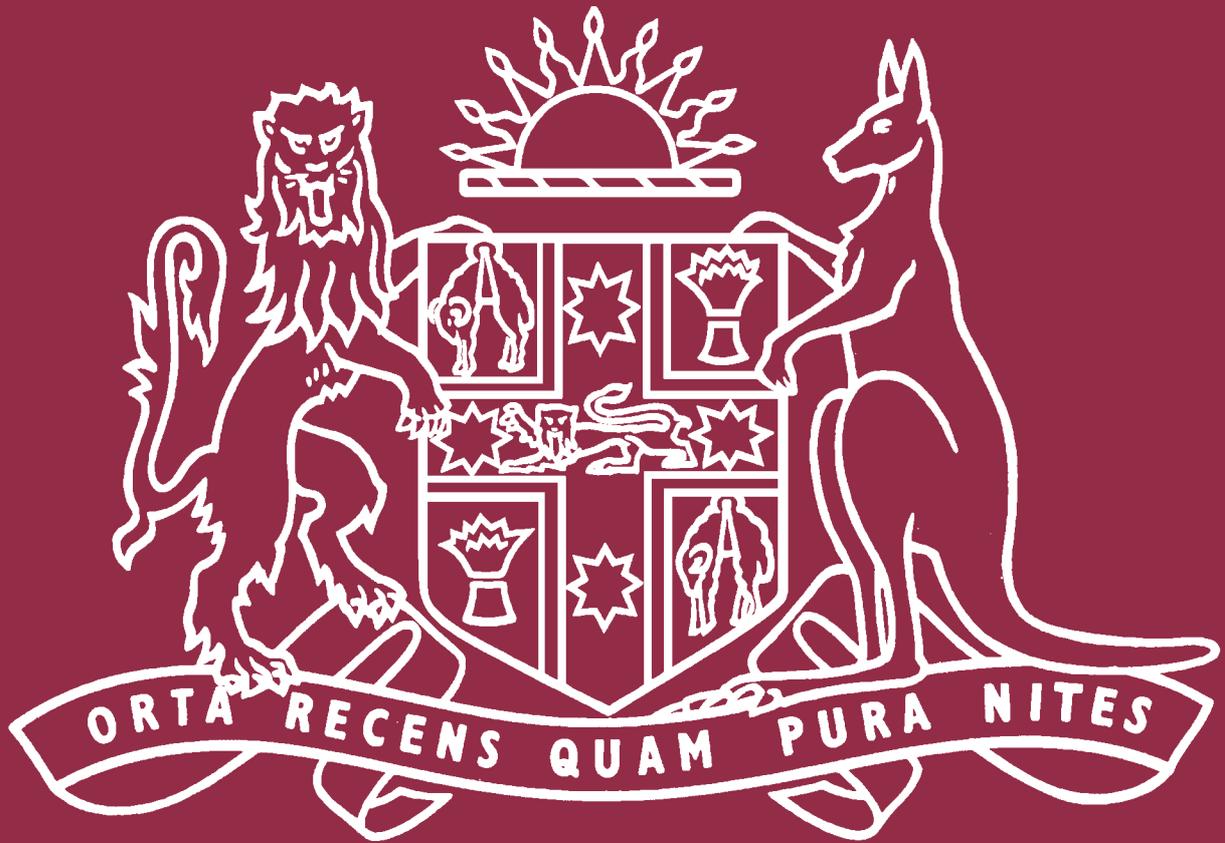
- All Commission publications may be relied on for their accuracy and authoritative statements about current law.
- The Commission will provide opportunities for the public to participate in the law reform process.
- All correspondence will either be responded to immediately or acknowledged within five 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).



ADDRESS

Level 17 Goodsell Building
8-12 Chifley Square, Sydney 2000

GPO Box 5199, Sydney 2001

DX 1227 Sydney

TELEPHONE

+61 2 9228 8230

FACSIMILE

+61 2 9228 8225

TTY

+61 2 9228 7676

INTERNET

www.lawlink.nsw.gov.au/lrc

EMAIL

nsw_lrc@agd.nsw.gov.au