

# NSW Law Reform Commission Annual Report 2008-09



NSW  
Law Reform  
Commission



# NSW Law Reform Commission Annual Report 2008-09

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## Our Profile

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 43 years.

In 2008-09, the Commission comprised a Chairperson and eight Commissioners (one full-time), all appointed by the Government. Commissioners may be current or former judicial officers, experienced legal practitioners, experienced academic lawyers, or people with special qualifications, training or experience. All the current Commissioners have legal qualifications.

The Commission had 15 staff (full-time and part-time) in 2008-09.

## Our Guiding Principles

The Commission strives to provide high quality advice to the Attorney General based on detailed research, and reflecting extensive community consultation.

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 internationally.

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 people. 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

- Consultation Paper 4 Jury Directions published in December 2008 *(See page 9)*
- Report 119 Young People and Consent to Health Care realised in March 2009 *(See page 8)*
- Report 120 Invasion of Privacy published in April 2009 *(See page 8)*
- Report 121 Emergency Medical Care and the Restricted Right to Practise published in April 2009 *(See page 8)*
- Two new references were received: Penalty Notices Offences; and Access to Personal Information
- Three reports were wholly or partially implemented by legislation. These dealt with young offenders, family provision and intestacy. *(See page 10)*

## Five-Year Performance Summary

	2004/05	2005/06	2006/07	2007/08	2008-09
<b>Clients</b>					
Consultation Papers and Reports	9	5	6	5	4
Website Hits	1 048 600	974 448	796 049	1,820,410	2,145,880
<b>Organisation</b>					
Commissioners (only one full-time)	20	11	7	9	9
Staff (number)	17	16	17	15	15
Legal interns/student placements	15	16	16	22	8
Operating surplus/deficit	-\$50 556	+\$172 034	-\$61 031	-\$14 732	+88 163



Chairperson

The Hon James Wood  
AO QC

## 2008-09 - Report of the Chairperson

I am delighted to present this annual report on the work of the NSW Law Reform Commission for the period from July 2008 to June 2009.

The challenge for law reform is to remain relevant and timely in a fast changing world. The global financial crisis, the ongoing preoccupation with international and national security issues has provided challenges to remaining focused on the importance of law reform in NSW.

Therefore, I was pleased to return to law reform from my work conducting the Special Commission of Inquiry into Child Protection Services in NSW which was concluded in December 2008 and to focus my energies on the need to revitalise the NSW Law Reform Commission in the second half of 2008-2009.

Law reform is critical in today's world because of the need to bring a new perspective to areas of the law which were once considered settled, but which are no longer appropriate, or relevant, for the conditions of contemporary society.

My objective is to ensure that the Commission continues to provide independent, high quality and timely advice to the Attorney General – in practice this means providing the advice within the timeframe agreed at the time the reference is received and or within the current term of office of the government, preferably to the Attorney that made the reference and with the degree of expedition as the urgency of the reference requires.

My second objective is to ensure that our work is characterised by innovative, well researched and analysed options and proposals that deal with issues of real social and legal importance, drawing upon actual experience in practice or in relevant fields of academic research and that we have the flexibility to employ those with expert knowledge and practical experience.

I am ably supported in reaching these objectives by Professor Michael Tilbury who is the full time Commissioner and the part time Commissioners, Associate Professor Jane Goodman Delahunty, The Hon Justice David Hodgson AO, The Hon Gregory James QC, The Hon Hal Sperling QC, His Honour Judge Kevin O'Connor, The Hon David Hunt AO QC and His Honour Judge Ken Taylor AM RFD.

Peter Hennessy, who had been the Executive Director for the past 19 years, left the Commission in October 2008.

Peter joined the Commission in 1989 after nine years with the Australian Law Reform Commission where he played a leading role in the drafting of the report on Aboriginal Customary Law. Peter has participated in over 64 reports at the NSW LRC, including those in important areas such as defamation, sentencing, contempt and, most recently, in the Commission's review of jury service.

This report provides an overview of the work of the Commission over the year, the visits from overseas delegations and the work in the coming year. Please see our website for detailed information of our work.

The challenge in 2009-2010 is that of supporting the number of references that are coming to the Commission.

Law reform is vital and the new references on issues such as family violence and fines and penalties will have an impact on the community and as such deserve full and well resourced attention by the Law Reform Commission.

Mr Wood was  
appointed  
Chairperson in  
January 2006.

For details of all  
Commissioners,  
please see page 5

The Hon James Wood AO QC

# Organisation

On 30 June 2009, the Commission comprised one full-time and eight part-time Commissioners (including the Chairperson). There were 15 full-time and part-time members of staff.

## Executive Director

Mr Peter Hennessy to October 2008. Ms Deborah Sharp (acting) from November 2008.

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

The Executive Director is also represents the Commission in the Attorney General's Department's strategic planning process.

## Legal Staff

### Legal Officers (Grades I-III)

Francesca Di Benedetto  
Catherine Gray  
Donna Hayward  
Robyn Johansson  
Rebecca Kang  
Ani Luzung  
Judy Maynard  
Sharminie Niles  
Joseph Waugh

### Graduate Program

Alison Merridew  
Lynsey Blayden

## Administrative Staff

### Administrative Officer

Suzanna Mishhawi

### Publications Coordinator

Terence Stewart

### Executive Assistant

Wendy Stokoe

### Librarian

Anna Williams

### Library Assistants \*

Nikki Mason  
Jenny Davis  
Noelene Osborne

## 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 David Hunt AO QC  
The Hon Gregory James QC  
His Honour Judge Kevin O'Connor AM  
The Hon Hal D Sperling QC  
His Honour Judge Kenneth Taylor AM RFD  
*(see pages 5 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 12 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.

— Direct line of responsibility

..... Indirect line of responsibility

\* The position of Library Assistant is located in the Law Reform and Policy Library however it is formally on the establishment of the Attorney General's Department Library. It is currently filled on a job share basis.

# Commissioners

## Chairperson

**The Hon James Wood AO QC**

*appointed January 2006*

Chairperson, Sentencing Council of NSW (2006 - current)

Inspector, Police Integrity Commission (2005 - 2006)

Chief Judge at Common Law of the NSW Supreme Court (1998 - 2005)

Judge of the NSW Supreme Court (1984 - 2005)

Commissioner, Royal Commission into Police Corruption (1994 - 1997)

Full-time Commissioner of the NSW Law Reform Commission (1982 - 1984)

## Full-time Commissioner

**Professor Michael Tilbury**

*appointed July 2002*

Professional Fellow at the University of Melbourne (current)

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)

Edward Jenks Professor of Law at the University of Melbourne (1996 - 2004)

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

## Part-time Commissioners

**Professor Jane Goodman-Delahunty**

*appointed May 2002*

Professor, Australian Graduate School of Policing, Charles Sturt University (2009 - current)

Director of the Forensic Psychology Postgraduate Program at the University of NSW (2001 - 2009)

**The Hon Gregory James QC**

*appointed January 1999*

Judge of the NSW Supreme Court (1998 - 2004)

President of the Mental Health Review Tribunal (2006 - current)

Part-time Commissioner of the NSW Law Reform Commission (1985 - 89, 1999 - 2006, 2007 - current)

**The Hon Justice David Hodgson AO**

*appointed January 1994*

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

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

Judge of the NSW Supreme Court (1983 - 1997)

**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)

**His Honour Judge Kevin O'Connor AM**

*appointed March 2008*

President of the Administrative Decisions Tribunal of NSW (1998 - current)

Judge of the NSW District Court (1998 - current)

Chair of the Fair Trading Tribunal (1999 - 2001)

Chair of the Commercial Tribunal (1997 - 1999)

Chair of the Public Interest Advocacy Centre (PIAC) (1997 - 1998)

Federal Privacy Commissioner (1989 - 1996)

**The Hon David Hunt AO QC**

*appointed July 2008*

Acting Judge of Appeal of the NSW Supreme Court (2005 - 2007)

Royal Commissioner for the Inquiry into the Centenary House Lease (2004)

Judge of the Appeals Chambers of the Yugoslavia and Rwanda Tribunals (2001 - 2003)

President Judge of UN International Criminal Tribunal for the former Yugoslavia Trial Chamber II (2000 - 2001)

Judge of UN International Criminal Tribunal for the former Yugoslavia (1998 - 2000)

Chief Judge of the Common Law Division in the NSW Supreme Court (1991 - 1998)

Judge of the NSW Supreme Court (1979 - 1991)

Part-time Commissioner of the NSW Law Reform Commission (1992 - 1999, 2008 - current)

**His Honour Judge Ken Taylor AM RFD**

*appointed April 2008*

NSW Privacy Commissioner (2008 - current)

Judge of the NSW District Court (1991 - current)

## Staff

All staff are employed under the *Public Sector Employment and Management Act 2002*.

	Men	Women	Full-time	Part-time	Total
Executive Director		1	1		1
Legal Officer Grade I-III	2	7	5	4	9
Graduate Clerk		2	2		2
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
<b>Total</b>	<b>3</b>	<b>15</b>	<b>10</b>	<b>7</b>	<b>18</b>

## Student Placements

The Commission makes intern positions available to university students from Australia and overseas. The Commission introduces each participant to the work of the Commission and each participant is encouraged to take an active part in the work of the Commission. Participants then provide feedback on their experience. The following students had placements at the Commission in 2008-09:

Alicia Back UTS  
Sean Behringer Macquarie Uni  
Ilana Cohn UNSW  
Rebecca Piplica Uni of Sydney  
Calvin Shaw UNSW  
Michelle Wen UNSW  
Anshu De Silva Wijeyeratne UNSW  
Wendy Zhang UNSW  
Surjit Ram UNSW  
Mary Papadopoulous UNSW



## Staff Development

The Commission promotes the development of its staff. All staff receive regular feedback on their work and have six-monthly interviews with the Executive Director to review their work programs. During the year, staff were encouraged to undertake a minimum of five days training.

Approximately half of the Commission's staff undertook five or more days of training.

In house seminars were delivered on project management, legal citation, statistical analysis, library research skills and plagiarism.

## Occupational Health and Safety

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

## Information Technology

The desktop computers of all staff were replaced in April 2009 as part of the Attorney General's Department's IT leasing arrangements.

## 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 has been producing smaller publications only in electronic form. The Commission's Annual Report is also published electronically and hard copies are produced as needed.

## Performance for 2008-09

### 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 2008-09, the Commission completed the following reports.

#### **Report 119 Young People and Consent to Health Care**

In June 2004, the Commission published Issues Paper 24, *Minors' Consent to Medical Treatment*, as part of a review which considered when young people, below the age of 18, should be able to make decisions about their medical care by themselves. The Paper examined who should be able to make medical decisions for minors on their behalf, and what the legal liability of medical practitioners should be who treat minors without valid legal consent.

The Commission conducted consultations in the second half of 2006, and conducted a full-day seminar in November 2006, jointly organised with the Law School at Macquarie University.

The Commission's Final Report was published in 2008 (tabled in the Legislative Assembly on 24 March).

#### **Report 121 Emergency Medical Care and the Restricted Right to Practise**

In November 2008, the Attorney General asked the NSW Law Reform Commission to review the Medical Practice Act 1992 (NSW) to determine whether individuals whose legal right to practise medicine is restricted ought to be under any, and if so what, obligation to provide emergency medical care contrary to the restriction on their right to practise.

Practitioners whose right to practise is restricted may only be able to provide "urgent" services if they act in breach of the restrictions imposed on their right to practise. If they abide by those restrictions, their conduct amounts to "unsatisfactory professional conduct". On the other hand, if they ignore the restrictions and provide the urgent treatment required, they are likewise guilty of unsatisfactory professional conduct under the Act for ignoring a condition attached to their registration. The Act does not resolve this difficulty.

The Commission has completed this project and the Report was published in May 2009.

#### **Report 120 Invasion of Privacy**

The Commission published Consultation Paper 1 (CP 1), entitled *Invasion of Privacy*, in May 2007. The Paper considered the question whether a new cause of action based on invasion of privacy should be enacted in New South Wales. The Paper considered the elements of such a cause of action, the defences and the remedies.

Since the publication of CP 1, the Australian Law Reform Commission (ALRC) has published Discussion Paper 72, a very detailed review of Australian privacy law which tentatively supports a new cause of action based on invasion of privacy. The ALRC launched its Privacy Final Report in August 2008.

The NSW Law Reform Commission has completed a Report dealing with the issue of whether there should be a new cause of action. This Report was completed in April 2009 and released by the Attorney General in August 2009.

## CP4 Jury Directions in Criminal Trials

In February 2007, the Attorney General requested that the Commission inquire into the directions and warnings given by a judge to a jury in a criminal trial. The Commission is required to have regard to:

- the increasing number and complexity of the directions, warnings and comments required to be given by a judge to a jury
- the timing, manner and methodology adopted by judges in summing up to juries (including the use of model or pattern instructions)
- the ability of jurors to comprehend and apply the instructions given to them by a judge
- whether other assistance should be provided to jurors to supplement the oral summing up
- any other related matter.

The Commission has published a consultation paper (CP 4) that looks at the instructions that judges currently give. It poses the question of what instructions are necessary for a fair trial and, if so, whether they can be presented to jurors in a more effective way.

Consideration is also given to the ways in which judges' oral directions can be supplemented by other materials, such as computer technology, written summaries, and flow charts setting out pathways to a verdict.

The LRC has received submissions on all aspects of jury directions, including the ways in which they are delivered. A series of advisory committee meetings will be organised during 2009, and the Commission expects to publish a Report towards the end of the 2009.

### **The Ombudsman's review of the *Freedom of Information Act 1989***

In March 2009, the Commission released a paper entitled *The Ombudsman's Review of the Freedom of Information Act 1989 (NSW)*. The paper was a response to a Special Report delivered by the Ombudsman to NSW Parliament recommending a number of reforms to the *Freedom of Information Act 1989 (NSW)*. Chief among these was the need for greater proactive disclosure of government-held information supported by new disclosure-focused legislation, the rationalisation of various laws dealing with access to personal information, and the appointment of an independent Information Commissioner, within the office of the Ombudsman, to oversee the new regime. The Ombudsman also recommended that the Privacy Commissioner's office be subsumed within that of the Information Commissioner.

Since this was directly relevant to our ongoing review of privacy laws in NSW, we responded to the Ombudsman's recommendations, indicating overall support for the overhaul of the *Freedom of Information Act 1989 (NSW)* and the introduction of new legislation with an emphasis on disclosure. We also endorsed the establishment of the Office of Information Commissioner, but considered that the integrity and independence of the Office would be better served if established separately from the Ombudsman. We were also of the view that the Privacy Commissioner should remain distinct from the Information Commissioner's Office, pending further consideration of the relationship between information privacy and disclosure.

The NSW Government accepted the Commission's views, establishing the Information Commissioner as a separate, independent office under the *Government Information (Information Commissioner) Act 2009 (NSW)*. The Attorney General referred to us the question of the interface between the protection of personal privacy and the disclosure of government-held information, including consideration of the roles of both the Information and Privacy Commissioners (see *Access to Personal Information*, page 14). These issues, together with other information privacy matters, are the subject of two Reports to be released in late 2009.

## Implementation

The following reports were wholly or partially implemented within the reporting period:

- Report 116 - Uniform Succession Laws: Intestacy - *Succession Amendment (Intestacy) Act 2009*.
- Report 110 - Uniform Succession Laws: Family Provision - *Succession Amendment (Family Provision) Act 2008*.
- Report 104 - Young Offenders - *Children (Criminal Proceedings) Amendment Act 2008*.

## 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 NSW, 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 Consultation 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 or submissions. The Commission distributes copies free of charge to people 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 87% 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 2008 - June 2009, the Commission's website recorded approximately 2,145,880 hits, an average of around 179,000 hits per month.

## Consulting with Other Stakeholders

Reference Groups are established for projects that require external experts to offer specialist advice and guidance. Groups have been established for the projects on privacy (cause of action for breach of privacy), jury directions and people with cognitive and mental health impairments and the criminal justice system.

## Law Week

The NSW Law Reform Commission's free public seminar on Mental Health and the Criminal Justice System was held in the Jubilee Room of Parliament House at lunchtime on 11 May 2009. The Hon. James Wood AO QC, chairperson of the Law Reform Commission, chaired the seminar. The seminar was presented by the Hon Greg James, President of the NSW Mental Health Review Tribunal, and Ms Alison Merridew of the NSW Law Reform Commission.

The presentation explained the legal framework for dealing with people who have cognitive or mental impairments who are alleged or found to have committed criminal offences and highlighted the major reform issues currently being considered by the LRC, using real cases to illustrate some of the problems with the current system as it works in practice.

The venue was filled to capacity indicating the level of community interest in this topic.

## 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 people with cognitive and mental health impairments and the criminal justice system 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, for example, the Tasmanian Legislative Council Select Committee on Mental Health Legislative Measures.

## Conference and Seminar Papers

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

Panel member, "Hypothetical: Presumed Guilty? What do Jurors Really Think?", 11th International Criminal Law Congress, Sydney, 8-12 October 2008.

"The work of the NSWLRC on jury directions", Jury directions symposium, Victorian Law Reform Commission, Melbourne, 5-6 February 2009.

Vietnam- Australian Human Rights Technical Cooperation Program, Human Rights Training Programs, February 2009:

- "Presentation one: stages of human rights development in international law"
- "Presentation two: international standards on human rights"
- "Presentation three: the current situation of implementation of international standards on human rights in the world"
- "Presentation four: Australian experience on lawyer's role in the protection of human rights"
- "Presentation five: ensuring the effectiveness of the participation of lawyers in the protection of human rights – some issues for discussion"

"Commissions of inquiry – a new direction?", IPAA NSW Forum - Commissions of Inquiry, Sydney, 25 March 2009.

Commentator, District Court Twilight Seminar: Courts, DoCS and Child Protection in NSW, Sydney, 20 May 2009.

**Prof Michael Tilbury:**

“Reform and the Regulation of Privacy in New South Wales”, FOI/Privacy Practitioners Network, Parliament House, Sydney, 13 August 2008.

“A Cause of Action for Invasion of Privacy and the NSW Law Reform Commission’s Review of Privacy Law”, Government Lawyers’ CLE Conference, Law Society of NSW, Parliament House, Sydney, 16 September 2008.

“Who will be protected by a private right of action for invasion of privacy?”, Symposium on Meeting Privacy Challenges: The ALRC and NSWLRC Reviews, Cyberspace Law and Policy Centre, University of NSW, 2 October 2008.

“A Statutory Cause of Action for Invasion of Privacy and the Role of Freedom of Expression”, Seminar, Centre for Media and Communications Law, University of Melbourne, 8 October 2008.

“A Comment on Giller v Procopets”, Seminar “Privacy case law implications for contemporary media practices”, Centre for Media and Communications Law, University of Melbourne, Sydney, 26 February 2009.

“Developments in Legal Education in Australia”, Faculty Seminar, Faculty of Law, University of Windsor, Ontario, 6 May 2009.

“Reforming Privacy Law”, Town and Gown Guest Lecture, Faculty of Law, University of Windsor, Ontario, 8 May 2009.

“‘Win-win’ or ‘Who Will Rid Me of this Turbulent Priest?’: The Relationship between Law Reform Commissions and Governments”, Public Lecture, Law Commission of Ontario, University of Windsor Faculty of Law and the Law Society of Upper Canada, Convocation Hall, Osgoode Hall, Toronto, Ontario, 12 May 2009.

“How We Do Law Reform”, Law Reform Symposium, Law Commission of Ontario, Faculty of Law, University of Toronto, 13 May 2009.

**The Hon Greg James QC and Alison Merridew:**

“People with cognitive and mental health impairments in the criminal justice system”, NSW Law Week Seminar, Parliament House, Sydney, 11 May 2009.

**Francesca Di Benedetto:**

“Why can’t I decide? Young people and consent to health care”, Health Care for Kids: The People, the Map, and the Measure, Manly, 17 November 2008.

**Alison Merridew:**

“Intellectual disability and the defence of ‘mental illness’”, Risks vs Rights, Australian and New Zealand Association of Psychiatry and Law annual congress, Manly, 23-26 October 2008.

**Joseph Waugh:**

“Two steps forward, one step back: Reform of jury exemption provisions in NSW”, Conference on jury research and practice, Brisbane, 14 November 2008.

“Use only as directed? Studying juror understanding of judicial instructions in NSW”, Jury directions symposium, Victorian Law Reform Commission, Melbourne, 5-6 February 2009.

### Other Conferences Attended

Australasian Law Reform Agencies Conference, Vanuatu, 10-12 September 2008. Prof Michael Tilbury, Peter Hennessy.

Harmonisation Conference, Standing Committee of Attorneys General, Sydney, 18 September 2008. The Hon James Wood AO QC.

Commonwealth Association of Law Reform Agencies Conference, Hong Kong, 4-5 April 2009. The Hon James Wood AO QC.

Commonwealth Law Conference, Hong Kong, 5-9 April 2009. The Hon James Wood AO QC.

### 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 NSW.

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 2007-08, the following international visitors or delegations met with the Commission.

#### Overseas visitors

Chinese National Judges College, December 2008.

Iraq Human Rights delegation, 9 February 2009, 16 March 2009.

Ms Laura Watts, British Columbia Law Institute, 31 March 2009.

Ms Leilani Tuala, Executive Director, Samoan Law Reform Commission, March 2009.

Professor Lakshman Marasinge, Sri Lanka LRC and Madam Justice Rohini Marasinge, Sri Lanka Court of Appeal, 17 April 2009.

Nepal Law Commission together with delegates from the Nepalese Ministry of Law Justice and Constituent Assembly Affairs and Office of the Attorney General, 26 May 2009.

## Projects for 2009-10

Project	Participants	Timetable
<b>Uniform Succession Laws</b> (joint project with all States and Territories) - Administration of Estates	<i>Division</i> Hon Justice David Hodgson* Professor Michael Tilbury Hon James Wood AO QC  <i>Participants</i> Joseph Waugh	<i>NSWLRC Report on Administration of Estates November 2009</i>
<b>Privacy Principles</b>	<i>Division</i> Hon James Wood AO QC Professor Michael Tilbury* Hon Hal Sperling QC  <i>Participants</i> Catherine Gray Sharminie Niles Donna Hayward Ani Luzung	<i>Report August 2009.</i>
<b>Access to Personal Information</b>	<i>Division</i> Hon James Wood AO QC Professor Michael Tilbury* Hon Hal Sperling QC  <i>Participants</i> Nicole Aberdee Abi Paramaguru	<i>Report December 2009.</i>
<b>Jury Directions</b>	<i>Division</i> Hon James Wood AO QC* Professor Michael Tilbury Associate Professor Jane Goodman-Delahunty His Honour Judge Kenneth Taylor AM RFD Hon David Hunt AO QC  <i>Advisory Committee</i> Mr Nicholas Cowdery AM QC Mr Mark Ierace SC Mr Lloyd Babb SC 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  <i>Participants</i> Joseph Waugh Rebecca Kang	<i>Jury Survey September 2008. (Survey commenced June/July 2007.) Consultation Paper December 2008. Report June 2010.</i>

\* Commissioner in Charge



Project	Participants	Timetable
People with Cognitive and Mental Health Impairments and the Criminal Justice System	<p><i>Division</i></p> <p>Hon James Wood AO QC            Professor Michael Tilbury*            Hon Greg James QC            Hon Hal Sperling QC</p> <p><i>Advisory Committee</i></p> <p>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></p> <p>Rebecca Kang            Donna Hayward            Alison Merridew</p>	<p><i>Consultation Paper            December 2009.</i></p>
Review of Common Law of Complicity	<p><i>Division</i></p> <p>Hon James Wood AO QC*            Professor Michael Tilbury            His Honour Judge Kenneth Taylor AM RFD            Hon David Hunt AO QC</p> <p><i>Participants</i></p> <p>Robyn Johansson            Judy Maynard</p>	<p><i>Report March 2010.</i></p>
Workplace Deaths	<p><i>Division</i></p> <p>Hon James Wood AO QC*            Professor Michael Tilbury*            His Honour Judge Kenneth Taylor AM RFD</p> <p><i>Participants</i></p> <p>Sharminie Niles            Michelle Wen</p>	<p><i>Report August 2009.</i></p>
Review of Fines and Penalties	<p><i>Division</i></p> <p>Hon James Wood AO QC*            Professor Michael Tilbury            His Honour Judge Kenneth Taylor AM RFD</p> <p><i>Participants</i></p> <p>Francesca Di Benedetto            Catherine Gray            Ani Luzung</p>	<p><i>Consultation Paper            December 2009</i></p>
Family Violence	<p><i>Division</i></p> <p>Hon James Wood AO QC*            Professor Michael Tilbury            A/Professor Jane Goodman-Delahunty            Judge Kevin O'Connor</p> <p><i>Participants</i></p> <p>Nicole Abadee            Francesca Di Benedetto            Catherine Gray            Donna Hayward            Bella Khabbaz            Ani Luzung</p>	<p><i>Terms of reference finalised            July 2009. Final report            July 2010</i></p>

\* Commissioner in Charge

## Finances

	2007	2008	2009 Budget	2009 Actual
<b>REVENUE</b>				
other revenue	20,161	21,630	13,855	196
sale of publications	1,823	837	1,847	2,763
<b>TOTAL REVENUE</b>	<b>21,984</b>	<b>22,467</b>	<b>15,702</b>	<b>2,959</b>
<b>EXPENSES: Employee Related</b>				
salaries and wages	1,138,532	1,212,744	1,165,622	1,091,934
allowances	18,325	11,781	18,652	11,402
overtime	0	148	0	0
leave entitlements	104,426	112,745	106,667	116,248
workers compensation insurance	6,911	4,670	5,139	5,995
payroll tax	86,109	80,028	76,168	78,319
fringe benefits tax	13,074	6,638	5,122	5,387
crown liabilities	69,381	58,483	71,513	74,049
<b>TOTAL</b>	<b>1,436,758</b>	<b>1,487,239</b>	<b>1,448,883</b>	<b>1,383,334</b>
<b>EXPENSES: Maintenance &amp; Working</b>				
advertising and publicity	860	246	254	1,697
bank charges	225	225	298	180
consultancies	0	0	0	7,938
electricity and gas	30,735	15,124	19,989	7,393
fees	134,389	102,399	130,255	97,548
freight and cartage	5	0	0	30
general expenses	77	109	618	279
grants	0	0	0	0
insurance	1,960	1,803	1,688	1,688
interpreters and translators	0	0	0	0
maintenance contracts	938	0	0	0
motor vehicle	13,793	14,232	4,725	2,676
postal expenses	2,837	1,235	4,986	324
printing	31,377	10,238	31,978	14,773
publications	45,486	76,734	49,854	86,330
rates and charges	10,493	7,758	8,797	6,389
removal costs	266	0	0	0
rent	306,128	403,896	244,114	246,334
staff expenses	8,784	7,566	18,773	26,225
stores and stationery	5,851	4,838	7,659	7,944
telephone	8,705	8,499	9,332	8,702
travel	9,018	9,003	15,040	16,056
other expenses	4,130	2,095	0	0
<b>TOTAL</b>	<b>616,057</b>	<b>666,000</b>	<b>548,360</b>	<b>532,506</b>
<b>TOTAL EXPENSES</b>	<b>2,052,815</b>	<b>2,153,239</b>	<b>1,997,243</b>	<b>1,915,840</b>
LESS Revenue	21,984	22,467	15,702	2,959
LESS Crown Liabilities	69,381	58,485	71,513	74,049
<b>NET COST OF SERVICES</b>	<b>1,961,450</b>	<b>2,072,287</b>	<b>1,910,028</b>	<b>1,838,832</b>
LESS Depreciation	38,124	13,017	116,262	133,229
<b>NET POSITION</b>	<b>1,999,574</b>	<b>2,059,270</b>	<b>1,793,766</b>	<b>1,705,603</b>

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 2008/2009 financial year, with comparisons for the two previous years.

## 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, including a literature review, 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 consultation 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.

Research reports

Research reports publish the results of empirical 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

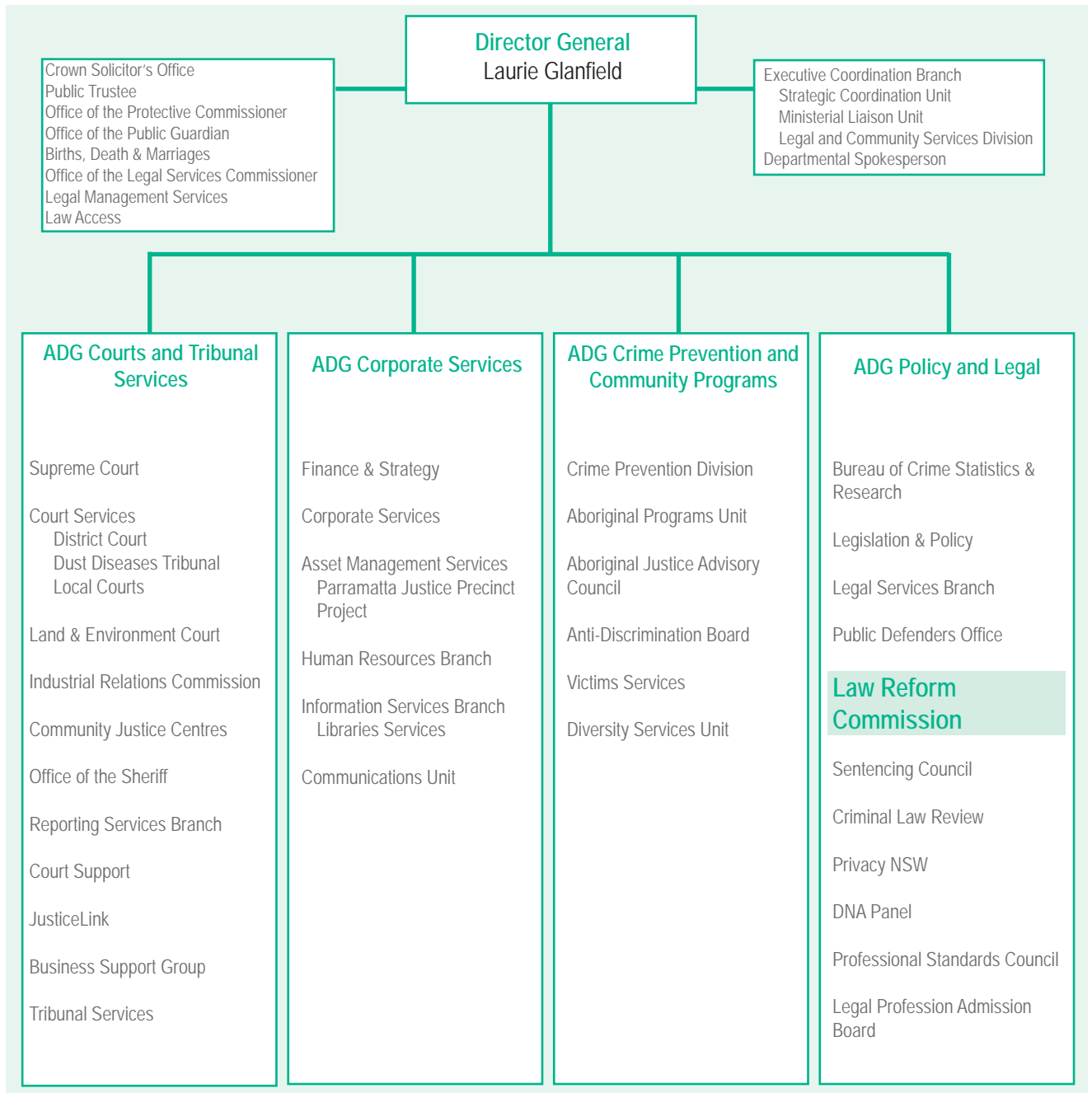
The reports set out below, published between 1999 - 2009, have not yet been substantially implemented, although several are under active consideration or have been partially implemented.

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

Report Number	Report Name	Publication Date
<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 100</b>	Contempt by Publication	<b>(June 2003)</b>
<b>Report 102</b>	Sentencing: Corporate Offenders	<b>(June 2003)</b>
<b>Report 105</b>	Time Limits on Loans Payable on Demand	<b>(October 2004)</b>
<b>Report 113</b>	Relationships	<b>(June 2006)</b>
<b>Report 114</b>	Blind or Deaf Jurors	<b>(September 2006)</b>
<b>Report 115</b>	Disputes in Company Title Home Units	<b>(April 2007)</b>
<b>Report 117</b>	Jury Selection	<b>(September 2007)</b>
<b>Report 119</b>	Young People and Consent to Health Care	<b>(October 2008)</b>
<b>Report 120</b>	Invasion of Privacy	<b>(April 2009)</b>
<b>Report 121</b>	Emergency Medical Care and the Restricted Right to Practice	<b>(April 2009)</b>

## 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.  
(contact details appear on the outside back cover).

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