

NSW Law Reform Commission
Annual Report 2007-08



NSW
Law Reform
Commission

NSW Law Reform Commission Annual Report 2007-08

Contents

Our Profile	1
Our Guiding Principles	1
Our Business	1
Highlights	2
2007-08 Report of Chairperson	3
Organisation	5
Commissioners	6
Hon Gordon Samuels AC CVO QC	8
Staff	9
Performance for 2007-08	11
Projects for 2007-08	16
Finances	18
Appendix A - Project Stages	19
Appendix B - Implementation	21
Appendix C - The Attorney General's Department	22
Guarantee of Service	Inside back cover
Contact Details	Back cover



NSWLRC Executive Director, Mr Peter Hennessy

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 42 years.

In 2007-08, 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 persons with special qualifications, training or experience. All the current Commissioners have legal qualifications.

The Commission had 15 staff (full-time and part-time) in 2007-08.

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 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

- Two reports dealing with the role and composition of juries
(see page 11 & 12)
- Two consultation papers published dealing with the law of complicity and NSW privacy legislation *(see page 13)*
- Seven reports were implemented by legislation. These dealt with young offenders, evidence, community justice centres, jury selection, relationships and anti-discrimination law
- Relocated offices in February 2008 from the Goodsell Building at Chifley Square to Swire House, 10 Spring Street

Five-Year Performance Summary

	2003/04	2004/05	2005/06	2006/07	2007/08
Clients					
Consultation Papers and Reports	8	9	5	6	5
Consultations	3	21	13	15	21
Website Hits	1 154 340	1 048 600	974 448	796 049	800,967
Organisation					
Commissioners (only one full-time)	19	20	11	7	9
Staff (number)	15	17	16	17	15
Legal interns/student placements	5	15	16	16	22
Operating surplus/deficit	+\$42 507	-\$50 556	+\$172 034	-\$61 031	-\$14 732



Chairperson
The Hon James Wood
AO QC

2007-08 - Report of the Chairperson

The Commission published two Reports, two Consultation Papers and one Research Report in the year ending 30 June 2008. The Reports dealt with the role and composition of juries. Report 117 recommended expanding the categories of persons eligible for jury service in NSW. Report 118 recommended that juries should not have a role in sentencing offenders. A further report on relationships (Report 113) completed in 2006 was released by the Attorney General in April 2008.

The two Consultation Papers published dealt with the law of complicity in criminal cases (Consultation Paper 2) and NSW privacy legislation (Consultation Paper 3). The Research Report set out the results of a study undertaken by researchers at Macquarie University into the capacity of deaf people to serve as jurors. The Commission co-funded the research with the Macquarie University External Collaborative Grants Scheme.

During the year, the Commission met with a number of delegations from overseas. This included two from China, one from Iraq, and one from the Solomon Islands.

Two events impacted on the Commission's work program. The first was my appointment to conduct a Special Commission of Inquiry into Child Protection Services in NSW. The Inquiry commenced in November 2007 and continued throughout 2008. The second was the office relocation of the Commission from the Goodsell Building, 8-12 Chifley Square, to Swire House, 10 Spring Street, Sydney. While the move was small in distance, significant staff resources were involved in the planning of the office fitout, the relocation of the library, and the logistics of the move itself. There were also delays in finalising the building work, which meant it took some time before the Commission was fully operational.

During the year, the Commission met with a number of delegations from overseas. This included two from China, one from Iraq, and one from the Solomon Islands. The focus of these meetings is usually the role of law reform commissions within the government system in Australia. However, some meetings focus on particular legal issues or developments. The Commission considers it important to meet with these delegations to share its experience as an independent policy adviser to the Attorney General for over 40 years.

The Commission also provided material assistance to the newly-established Solomon Islands Law Reform Commission. As a result of its office relocation and the increased availability of legal materials online, the Commission had a large collection of journals and statutes which were excess to its needs. This material was all donated to the Solomon Islands Law Reform Commission, which now has one of the best collections of legal materials in the country.

Mr Wood was appointed Chairperson in January 2006.

For details of all Commissioners, please see pages 6-7

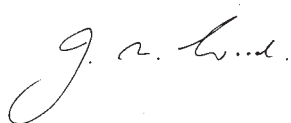
Throughout 2007-2008, the Commission continued to provide opportunities for tertiary students to undertake placements at the Commission. In addition to offering one summer clerkship, the Commission had 22 students on placements at the Commission. Some of the student placements are organised by the universities as part of their formal coursework. Other students participate in the Commission's internship program. This is usually on a part-time basis during university semesters or full-time during vacation periods. Most students are at Sydney universities, but two students were from overseas, one from Germany and the other from the US.

Three new part-time Commissioners were appointed during the year; the Hon David Hunt AO QC, His Honour Judge Ken Taylor AM RFD, and His Honour Judge Kevin O'Connor AM. This increased the number of full-time and part-time Commissioners to nine. The other Commissioners are Professor Michael Tilbury (full-time), the Hon H D Sperling QC, the Hon Justice David Hodgson, the Hon Greg James QC, and Associate Professor Jane Goodman-Delahunty.

I also need to make special mention of the death in December 2007 of the Hon Gordon Samuels AO QC. Gordon Samuels had a very long association with the Law Reform Commission, commencing when he was appointed Chairperson in 1993, and later as a part-time Commissioner from 2001-2007. It was interrupted for five years when he served as Governor of NSW. A tribute to Gordon Samuels is set out later in this Report.

There have been a number of significant challenges for the Commission during the current year, and I thank all Commissioners and staff for their contribution.

The Hon James Wood AO QC

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

Organisation

On 30 June 2008, 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

Mr Hennessy has over 20 years experience in law reform, having previously worked as a principal legal officer at the Australian Law Reform Commission.

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

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

Legal Staff

Legal Officers (Grades I-III)

Francesca Di Benedetto
Catherine Gray
Donna Hayward
Robyn Johansson
Rebecca Kang
Ani Luzung
Judy Maynard
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

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

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 H D Sperling QC
His Honour Judge Kenneth Taylor AM RFD
(see pages 6 - 7 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 16 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.

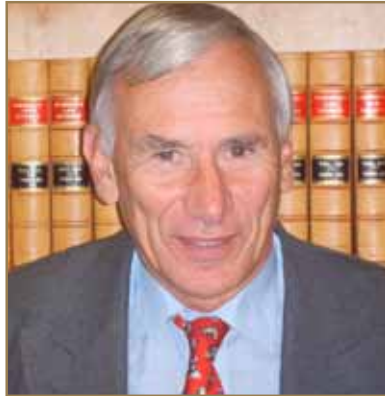
Part-time Commissioners

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.

Commissioners



*Chairperson
The Hon James Wood AO QC*

Chairperson

The Hon James Wood AO QC

appointed January 2006

Chairperson, Sentencing Council of NSW (2006 - current)

Inspector, Police Integrity Commission (2005 - 6)

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*

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 NSW (2001 - current)



The Hon Justice David Hodgson

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 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 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)



Hon Gordon Samuels AC CVO QC

The death in Sydney on 10 December 2007 of Gordon Jacob Samuels, at the age of 84, marked the end of a glittering career in the law and in many other fields of public service.

Although his family had established links with Australia, specifically with Walcha and Moree in NSW, Gordon Samuels was born in London on 12 August 1923. He was educated at University College School and at Balliol College, Oxford. Between 1942 and 1946, he saw military service in the British Army, rising to the rank of artillery captain in the 96th (Royal Devon Yeomanry) Field Regiment.

He came to Australia in 1949 and worked as a clerk for Dawson Waldron Edwards and Nicholls. He then joined the New South Wales Bar in 1952. His commanding presence, high intelligence, beautiful voice and forensic skills quickly won him an enormous practice. He had great powers as a persuasive advocate and destructive cross-examiner. He was equally at home in large commercial disputes, personal injury trials before juries, and advocacy before appellate courts.

Between 1964 and 1970, he was the Challis Lecturer in Pleading at the University of Sydney, teaching the common law rules which elsewhere had been abolished by the Judicature Acts. He explained the subject with a lofty sense of whimsy, having learned the reformed system in his law studies in England. In 1964, he was appointed Queen's Counsel for NSW and later for Victoria. Between 1971 and 1972 he served as President of the NSW Bar Association.

In 1972, Samuels was appointed a judge of the Supreme Court of NSW. He was quickly elevated to the Court of Appeal in 1974. As a Judge of Appeal between 1974 and 1992, and Acting Judge for a year thereafter, he participated in many of the leading decisions of that court. His talents as an appellate judge shone brightly. No judge was more gifted in delivering accurate and elegant *ex tempore* reasons immediately following argument. He displayed a command of facts and law and the well-furnished mind that he brought to the resolution of every judicial problem.

While a judge of Appeal, Samuels performed many other public functions. These included as President of the Australian Academy of Forensic Sciences (1974-1976); President of the Australian Society of Legal Philosophy (1976-1979); President of the Commonwealth Security Appeals Tribunal (1989-1990); Chairman of the Australian Legal Education Council (1981-1985); and Presiding Member of the Advisory Committee on the Educational Needs of Overseas Trained Doctors and of the NSW Migrant Employment and Qualifications Board (1992-1995). Before and after judicial appointment, he delivered many penetrating and valuable lectures on legal subjects.

In 1976, Samuels was elected Chancellor of the University of NSW. He held that post until 1994, during the time that the university was developing its law school to one of great strength. He was the quintessential civilised university leader and was commonly described as "the Chancellor from Central Casting". A professional chair in law, bearing his name, has been created by the university to remember "his excellent example".

When he quit judicial office, Samuels was quickly appointed to the Board of Governors at the Law Foundation (1992-1993) and as Chairman of the NSW Law Reform Commission (1993-1996). During his service in the Commission, he enjoyed his return to an avowedly creative life. Several important reports of the Commission bore the stamp of his liberal legal and social views.

In 1996, Samuels was appointed by the Queen as Governor of NSW, a post he held until 2001. He had a capacity to deal with individual members of the public in terms that put the nervous at ease. Yet he remained modest in demeanour and he maintained personal links with many friends in the judiciary, the legal profession and the arts.

In the last years of his life, he fought various forms of ill-health without complaint and with courage. His final illness, however, was brief. His was a life lived to the full in the law and far beyond. He was a most exemplary public citizen and few could match his public grace.

*This is an edited extract from an Obituary prepared by Justice Michael Kirby AC and published at (2008) 82 ALJ 284, 285-287.

Staff

All staff 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

* see page 5

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 NSW (and on occasions from overseas universities). The following students had placements at the Commission in 2007-08.

Huang Nhu Vu - University of Technology, Sydney
 Olivia Huntingdon - University of Technology, Sydney
 Erin Hourigan - University of Technology, Sydney
 Fiona Smith - University of Technology, Sydney
 Michael Andrews - University of Wollongong
 Rhiannon O'Donoghue - University of Technology, Sydney
 Laura Goodwin - University of Technology, Sydney
 Anna Schwetka - University of Kassel, Germany
 Darko Vranesovic - University of Sydney
 Tess Lumsdaine - University of Technology, Sydney
 Susan Cirillo - University of NSW
 Shenuka Jayasuriya - University of Sydney
 Edward Chee - University of Sydney
 James Parkin - University of NSW
 Jeremy Vogel - Columbia University School of Law,
 New York, NY, USA
 Feng Huang - University of Wollongong
 Michael Evry - University of Western Sydney
 Alan Trethewey - University of Western Sydney
 Tijana Jovanovic - University of Western Sydney
 Jane Fan - University of NSW
 Archana Gelda - University of NSW
 Marcela Salgado Mar - University of Wollongong
 Rita Youssef - University of Technology, Sydney

Future Priorities

- review library collection to take account of reduced storage capacity in new office
- ensure all staff complete five days training per year



Legal officer Ms Sharminie Niles

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. While a target of an average five days training was not achieved for all staff, some staff participated in significantly more development opportunities than in previous years. In 2008-09, the target for training is five days training for each staff member.

All staff are also encouraged to seek out secondment opportunities. One member of staff, Ms Sharminie Niles, was seconded to the Office of the Commissioner for Children and Young People in 2007-08, which will continue into 2008-09.

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 Commission's website is part of the Lawlink site of the Attorney General's Department. Updates 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.



The Commission's library at Chifley Square

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 published one of the consultation papers only in electronic form to assess whether this is a viable option. The Commission's Annual Report is also published electronically and hard copies are produced as needed.



Librarian Ms Anna Williams and librarian assistant Ms Jenny Davis

Performance for 2007-08

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 2007-08, the Attorney either tabled in Parliament or authorised the release of the following reports.

Relationships (Report 113)

In 1984, NSW enacted legislation to deal with aspects of the breakdown of de facto relationships. The legislation was based on recommendations put forward by the Commission in Report 36 (1983). This legislation, now called the *Property (Relationships) Act 1984* (PRA), was amended in 1999 to include same sex relationships and other close personal relationships. The legislation uses the phrase "domestic relationships" to incorporate the various relationships covered by it.

The Attorney General referred this review to the Commission in 1999, to consider the adequacy of provisions dealing with financial adjustment orders that courts can make between persons in domestic relationships.

The nature of the review changed significantly when the decision was taken by NSW (as well as some other States) to refer its constitutional powers over de facto relationships to the Commonwealth in 2003. However, the Commonwealth then indicated that, if it legislated, it would only do so with respect to opposite sex de facto relationships. The Commission suspended work for a number of years, awaiting clarification on the scope of any proposed Commonwealth legislation. When it became apparent that legislation may take some considerable time to develop, the Commission decided to proceed to prepare a Report, but essentially limited to same sex de facto relationships and close personal relationships.

The major recommendations in the Report were as follows:

- Financial adjustment orders. The PRA should follow more closely the approach in the *Family Law Act 1975* (Cth) and allow the court to consider past contributions, as well as the current and future needs of the parties.
- Definition of de facto relationship. Cohabitation should not be a prerequisite to establish the existence of a de facto relationship. However, generally a relationship should exist for two years before property adjustment proceedings can be brought.
- Registration. There should be a system for de facto couples to register their relationships. This would not be the same as the "civil union" approach favoured by the ACT and adopted in NZ and the UK.
- Children and same sex relationships. For the purposes of the PRA, a "child of a domestic relationship" should not be defined in the biological sense, but as "children for whose day-to-day care and long-term welfare both parties exercise responsibility".
- Financial agreements. Parties should be able to make their own financial agreements before, during and on termination of a relationship.

The NSW Government has announced that it will implement a number of the Commission's recommendations, including that a lesbian co-mother of an artificially-conceived child should be the parent of a child. Further implementation is likely to be considered in consultation with the other States and Territories and the Commonwealth.

Jury Selection (Report 117)

In this project, received in August 2006, the Commission had to review aspects of the *Jury Act 1977* (NSW), focussing in particular on the qualifications for jury service in NSW and the options for excusing a person from jury service.

The Commission published an Issues Paper in November 2006. The Report was completed in late 2007 and was released by the Attorney General on 8 January 2008. The Report contained 74 recommendations directed at significantly expanding the categories of persons eligible for jury service. The main recommendations are set out below.

- Lawyers should generally be eligible for jury service unless they work in the provision of legal services in criminal cases.
- People employed in the public sector in the administration of justice should be eligible.
- No person should be entitled to be excused from jury service solely because of his or her occupation, profession or calling (eg, doctors, dentists, pharmacists).
- Potential jurors should be allowed an opportunity to defer jury service and nominate another date within the next 12 months.

The Report also recommended increasing the attendance and travel allowances for jurors, strengthening the employment protection provisions for jurors, giving the court the power to appoint up to three additional jurors, and giving the court the power to discharge a juror without discharging the whole jury in special circumstances.

Role of Juries in Sentencing (Report 118)

In February 2005, the Commission was asked by the Attorney General to investigate whether current sentencing procedures would be improved by involving juries in sentencing decisions. The Commission was asked to investigate the merits of allowing the presiding judge in a criminal trial to canvass the views of the jury when sentencing an offender. In addition, the Commission was asked to take into account whether allowing jury input in sentencing would enhance the public confidence in the administration of justice. The suggestion for this inquiry was made by the Chief Justice of NSW, the Honourable James Spigelman AC.

The Commission's Report, which was tabled in Parliament in October 2007, recommended that there should be no changes to the current practice in NSW, and that jurors should not be involved in the sentencing process. It also recommended that further empirical studies should be done on public perceptions of the sentencing process.

The Attorney General has announced that the Government accepts the Commission's recommendations.

Complicity

In January 2008, the Commission published a Consultation Paper on the law of complicity. Complicity refers to rules that widen criminal liability beyond the main perpetrator of a criminal act to another person or persons who may have assisted the main perpetrator to commit an offence. The secondary participant can be held equally guilty of the crime committed. The concept is often referred to as derivative or secondary liability. The law of complicity in NSW is still based on the common law, unlike most States, Territories and the Commonwealth, which have codified the relevant principles.

The Commission's Paper focuses on two types of complicity: (1) extended common purpose, and (2) accessorial liability. The third type, which is not considered in any detail, is concerned with joint criminal enterprise.

The Paper outlines the criticisms which have been directed at these aspects of the law of complicity, particularly by Justice Kirby in a number of High Court cases.

The Commission will complete a Report on complicity in 2009.

Future Priorities

- Report on consent to medical treatment by young people
- Report on complicity
- Report on invasion of privacy
- Consultation Paper on jury directions
- Consultation Paper on people with cognitive and mental health impairments and the criminal justice system

Privacy

The Commission published Consultation Paper 1 (CP 1), entitled *Invasion of Privacy*, in May 2007. The Paper considers the question whether a new cause of action based on invasion of privacy should be enacted in NSW. The Paper considers 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 is scheduled to complete its review by 31 May 2008.

The NSW Law Reform Commission will publish a Report in July 2008 dealing with the issue of whether there should be a new cause of action.

The Commission will also be publishing another Consultation Paper in June 2008 which examines aspects of NSW privacy legislation (primarily the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*).

Disputes in Company Title Home Units (Report 115)

Under its Community Law Reform Program, the Commission undertook a review of the current law regulating disputes in company title home units. The review commenced in May 2006, and the Report was completed in April 2007. It was tabled in the Legislative Council in October 2007.

Prior to 1961, when strata title legislation was introduced in NSW, company title was the common method used for horizontal subdivision of space. It involved a form of community ownership. A person became entitled to live in a residential home unit by purchasing shares in an incorporated body (either a company or association). Company title units were often governed by restrictive constitutions, and disputes between owners could result in the Equity Division of the Supreme Court being required to adjudicate.

The Commission's Report 115 recommended that the Consumer, Trade and Tenancy Tribunal should be given jurisdiction to hear disputes arising in company title home unit buildings in relation to most types of disputes.

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/submissions. The Commission distributes copies 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 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.



Legal Officer Ms Francesca Di Benedetto

In the period July 2007 - June 2008, 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:

- Young People and Consent to Medical Care (IP 24)
- Privacy (Consultation Paper 1, Consultation Paper 3)
- Jury Directions
- People with Cognitive and Mental Health Impairments and the Criminal Justice System

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 and the project on people with cognitive and mental health impairments and the criminal justice system were 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, eg, NSW Parliamentary Committee Review of aspects of juvenile justice.

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.



Administrative Officer Ms Suzanna Mishhawi

Other conference presentations

Peter Hennessy :

- Tranby College - 1st Year students, "Law Reform Commission and community involvement" 23 October 2007

Prof. Michael Tilbury:

- "Minors' Consent to Medical Treatment and NSW Health Guidelines", Paediatric Postgraduate Weekend for General Practitioners, Westmead Children's Hospital, 5 August 2007.
- "A Cause of Action for Invasion of Privacy: the Commission's Recommendations", FOI/Privacy Practitioners Network, Parliament House, Sydney, 26 August 2007.
- "Non-pecuniary Loss and Privacy", Second International Symposium on the Law of Remedies, Auckland, New Zealand, 16 November 2007.
- "Privacy Litigation and the NSW Law Reform Commission's Proposed Statutory Cause of Action", Centre for Media and Communications Law, the University of Melbourne, Sydney, 19 March 2008.
- "The Value and Future of Legal Research", Keynote Address, Undergraduate Research Colloquium, University of Technology, Sydney, 5 April 2008.
- "The Role of Public Interest in a Cause of Action for Breach of Privacy", Public Seminar on Public Interest in US and Australian Media Law, Ross Parsons Centre for Commercial Corporate and Taxation Law and United States Studies Centre, Sydney Law School, 30 May 2008.

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

Anna Guthleben and research staff from Solomon Islands Law Reform Commission

Peter Adamson, New Zealand Law Commission (2 October 2007)

Iraqi Human Rights Delegation (17 delegates) (11 March 2008)

Delegation of Chinese Lawyers (17 March 2008)

Delegation of Chinese Legal Aid Lawyers (12 May 2008)

Sir Geoffrey Palmer, New Zealand Law Commission



NSWLRC Executive Director, Peter Hennessy, with Anna Guthleben (third from left) and research staff from Solomon Islands Law Reform Commission

Projects for 2008-09

Project	Participants	Timetable
Uniform Succession Laws (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>Report on Administration of Estates (QLRC) December 2008 (subject to National Committee agreement).</i>
	<i>Participants</i> Joseph Waugh	
Young People and Consent to Health Care	<i>Division</i> Professor Michael Tilbury* Hon Justice David Hodgson Associate Professor Jane Goodman-Delahunty Hon James Wood AO QC Hon Hal Sperling QC	<i>Report December 2008. Seminar with Macquarie University February 2008.</i>
	<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	
	<i>Participants</i> Rebecca Kang Robyn Johansson Ani Luzung Judy Maynard Joseph Waugh Francesca Di Benedetto	
Privacy	<i>Division</i> Hon James Wood AO QC Professor Michael Tilbury* Hon Hal Sperling QC	<i>Report April 2009.</i>
	<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 His Honour Judge Kenneth Taylor AM RFD	
	<i>Participants</i> Catherine Gray Sharminie Niles Donna Hayward Ani Luzung	

* Commissioner in Charge

Project	Participants	Timetable
Jury Directions	<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>Jury Survey September 2008. (Survey commenced June/July 2007.) Consultation Paper December 2008. Report June 2009.</i>
	<i>Advisory Committee</i> Mr Nicholas Cowdery AM QC Mr Mark Ierace SC Mr Paul Byrne 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> Ani Luzung Joseph Waugh Francesca Di Benedetto Catherine Gray	
People with Cognitive and Mental Health Impairments and the Criminal Justice System	<i>Division</i> Hon James Wood AO QC Professor Michael Tilbury* Hon Greg James QC Hon Hal Sperling QC	<i>Consultation Paper May 2009.</i>
	<i>Advisory Committee</i> Professor David Greenberg Mr Hugh Donnelly Mr Peter Goslett Superintendent David Donohue Deputy Chief Magistrate Helen Syme Mr Brian Sandland	
	<i>Participants</i> Alison Merridew Donna Hayward	
Review of Common Law of Complicity	<i>Division</i> Hon James Wood AO QC* Professor Michael Tilbury His Honour Judge Kenneth Taylor AM RFD Hon David Hunt AO QC	<i>Report June 2009.</i>
	<i>Participants</i> Robyn Johansson Judy Maynard	
Workplace Deaths	<i>Division</i> Hon James Wood AO QC* Professor Michael Tilbury His Honour Judge Kenneth Taylor AM RFD	<i>Consultation Paper April 2009.</i>
	<i>Participants</i> Sharminie Niles	<i>* Commissioner in Charge</i>

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 2007/2008 financial year, with comparisons for the two previous years.

	2006	2007	2008 Budget	2008 Actual
REVENUE				
other revenue	6,283	20,161	13,517	21,630
sale of publications	4,794	1,823	1,802	837
TOTAL REVENUE	11,077	21,984	15,319	22,467
EXPENSES: Employee Related				
salaries and wages	1,058,543	1,138,532	1,271,581	1,212,744
allowances	0	18,325	1,086	11,781
overtime	1,390	0	0	148
leave entitlements	95,618	104,426	104,065	112,745
workers compensation insurance	6,499	6,911	4,663	4,670
payroll tax	72,278	86,109	78,464	80,028
fringe benefits tax	1,892	13,074	4,997	6,638
crown liabilities	52,974	69,381	65,428	58,483
TOTAL	1,289,194	1,436,758	1,530,284	1,487,239
EXPENSES: Maintenance & Working				
advertising and publicity	2,153	860	248	246
bank charges	0	225	291	225
consultancies	0	0	0	0
electricity and gas	15,193	30,735	29,258	15,124
fees	15,193	134,389	144,190	102,399
freight and cartage	539	5	0	0
general expenses	1,188	77	603	109
grants	0	0	0	0
insurance	2,512	1,960	2,391	1,803
interpreters and translators	0	0	0	0
maintenance contracts	1,238	938	0	0
motor vehicle	0	13,793	1,068	14,232
postal expenses	13,337	2,837	4,864	1,235
printing	41,668	31,377	31,198	10,238
publications	42,160	45,486	48,638	76,734
rates and charges	8,513	10,493	8,582	7,758
removal costs	0	266	0	0
rent	265,056	306,128	309,683	403,896
staff expenses	20,504	8,784	8,559	7,566
stores and stationery	8,466	5,851	7,472	4,838
telephone	10,713	8,705	9,104	8,499
travel	12,141	9,018	9,795	9,003
other expenses (contractors)		4,130	2,969	2,095
TOTAL	539,601	616,057	618,913	666,000
TOTAL EXPENSES	1,828,795	2,052,815	2,149,197	2,153,239
LESS Revenue	11,077	21,984	15,319	22,467
LESS Crown Liabilities	52,974	69,381	65,428	58,485
NET COST OF SERVICES	1,764,744	1,961,450	2,068,450	2,072,287
LESS Depreciation	49,521	38,124	23,912	13,017
NET POSITION	1,715,223	1,999,574	2,044,538	2,059,270

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 - 2008, have not yet been substantially implemented, although several are under active consideration or have been partially implemented.

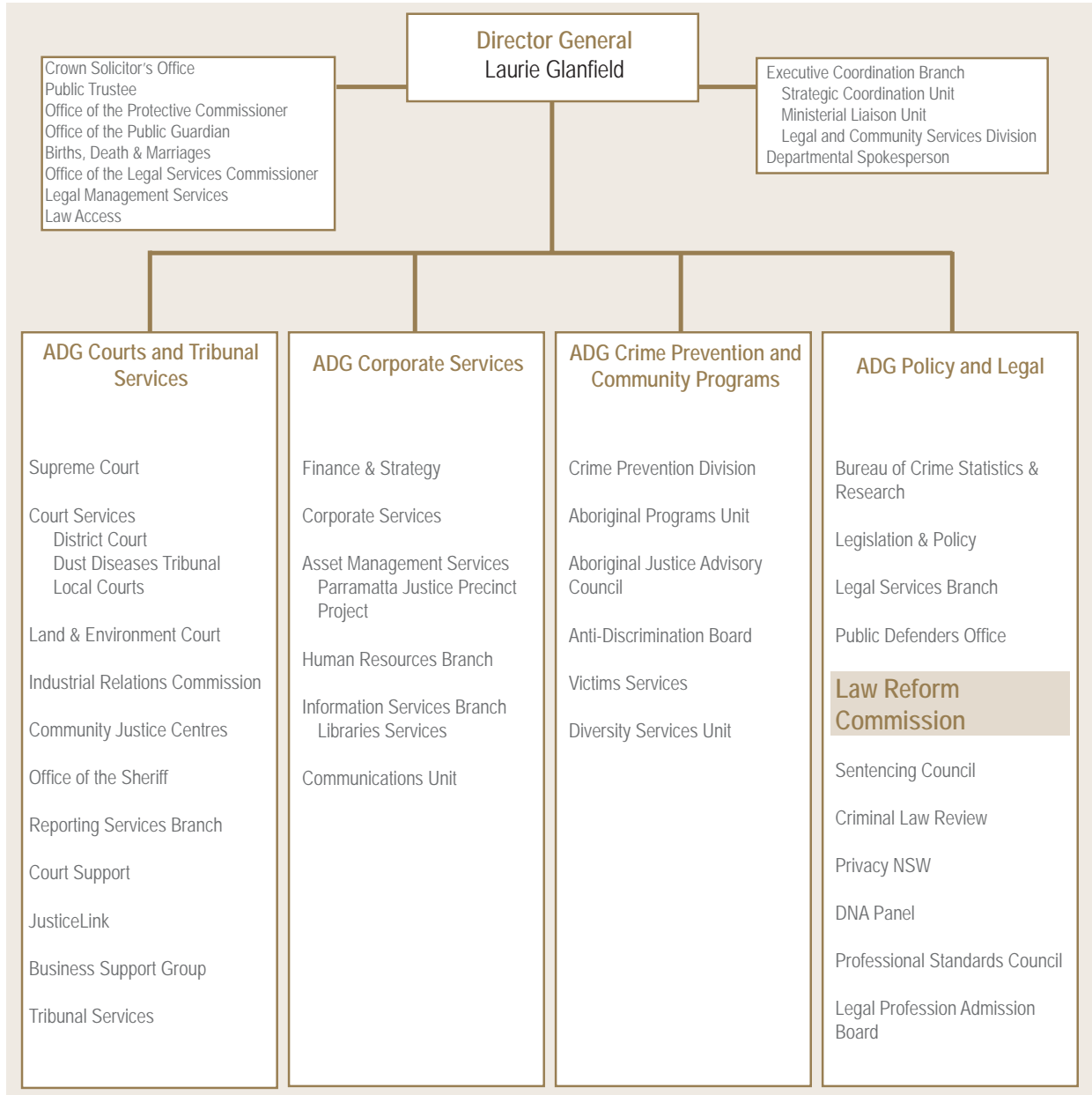
Report Number	Report Name	Publication Date
Report 93	Review of Section 316 of the <i>Crimes Act 1900</i>	(December 1999)
Report 96	Sentencing: Aboriginal Offenders	(October 2000)
Report 100	Contempt by Publication	(June 2003)
Report 102	Sentencing: Corporate Offenders	(June 2003)
Report 105	Time Limits on Loans Payable on Demand	(October 2004)
Report 113	Relationships	(June 2006)
Report 114	Blind or Deaf Jurors	(September 2006)
Report 115	Disputes in Company Title Home Units	(April 2007)
Report 117	Jury Selection	(September 2007)



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

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 Ms Deborah Sharp, A/Executive Director

(contact details appear on the outside back cover).



ADDRESS

Level 13 Swire House
10 Spring Street, Sydney 2000
GPO Box 5199, Sydney 2001
DX 1227 Sydney

TELEPHONE

+61 2 8061 9270

FACSIMILE

+61 2 8061 9376

INTERNET

www.lawlink.nsw.gov.au/lrc

EMAIL

nsw_lrc@agd.nsw.gov.au

ISSN 0816-4525 (Annual Report)