



**New South Wales
Law Reform Commission**

Annual Report 2010-11

September 2011
www.lawlink.nsw.gov.au/lrc



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Highlights 2010-11

- 2 reports were released on complicity and family violence.
- 5 consultation papers were released on young people with mental health and cognitive impairments in the criminal justice system; security for costs; penalty notices; cheating at gambling; and compensation to relatives.
- 3 new references were received on cheating at gambling; compensation to relatives; and bail.
- 2 reports were wholly or partly implemented by legislation.

Chairperson's report

In 2010-11 the Law Reform Commission had a number of significant achievements. This includes major reports on complicity and family violence (with the ALRC), and consultation papers on young people with mental health and cognitive impairments in the criminal justice system, security for costs, penalty notices, cheating at gambling and compensation to relatives.

As at July 2011, the New South Wales Law Reform Commission has 7 references underway, making it the busiest Law Reform Commission in Australia, and emphasising its key role in the development of law reform and legal policy generally in New South Wales

Our current list of references is diverse, and highly relevant to important policy issues facing NSW and Australia.

The references on people with mental health and cognitive impairments in the criminal justice system, penalty notices, and bail respond directly to key Government priorities including reducing re-offending and ending the "offender revolving door". These references seek to address pressing public policy issues and to make the criminal justice system fairer and more effective.

The reference on cheating at gambling responds to an emerging issue. Gaming and wagering has become a billion dollar industry in Australia, but the criminal law – in all jurisdictions of Australia - has not kept up. This reference asks us to look at the criminal law relating to cheating, especially in relation to sports betting and match fixing, and provides an opportunity for NSW to take national leadership in this important area.

Other references, such as compensation to relatives, and security for costs, respond to the aim of improving access to the civil justice system.

The Commission's key strengths are in considering legal issues with multiple stakeholders and strong and divergent community views where independent advice to government is important, and in dealing with issues of considerably legal complexity where thorough research is required.

The new Government has recognised these strengths by giving the Commission new references in complex areas, most recently the law of bail. In response, we seek to provide well-researched, timely reports with practical recommendations.

The 2010-11 year proved to be a year of consolidation for the Commission as we made progress on a large number of references. This has set us up well for 2011-12 which promises to be a year of significant reports.

I would like to record my appreciation for the service of the Hon Rod Howie QC, who served as a Commissioner during 2010-11. I would also like to thank Lauren Judge, for her valuable contribution as the Acting Executive Director of the Commission, during a period while Paul McKnight was on secondment.

I am delighted to present the Annual Report of the Law Reform Commission.

The Hon James Wood AO QC

The NSW Reform Commission: profile

Roles and responsibilities

The NSW Law Reform Commission is an independent statutory body constituted under the *Law Reform Commission Act 1967* (NSW). It provides expert law reform advice to Government through the Attorney General on matters referred to it by the Attorney General.

Services and activities

The NSW Law Reform Commission's principal service is the provision of policy advice on law reform matters. It undertakes work on references provided by the Attorney General.

In undertaking this work the Commission:

- broadly researches the law, and the academic and other commentary on it;
- can conduct or commission empirical research; and
- consults broadly with stakeholders and the community, and draws on experts in the field.

The outcomes of NSW Law Reform Commission projects are contained in formal reports to the Attorney General, which are considered by Government and tabled in Parliament.

Commissioners and staff

As at 30 June 2011, the Commission comprised a Chairperson, the Hon James Wood AO QC, a full-time Commissioner, Professor Hilary Astor, and a number of part-time Commissioners. A profile of Commissioners during 2010-11 is included below under "People".

A small team of highly-skilled staff supports the work of the Commission. A staff list and details of staff movements are included below under "People".

Performance for 2010-11

The role of the NSW Law Reform Commission is to provide law reform advice. In this respect it contributes to a range of government priorities including: the NSW State Plan goal of Keeping People Safe, and the Department of Attorney General and Justice strategic priority of providing quality client services and an accessible and effective justice system.

Measuring performance in terms of quantity, quality and timeliness has been a challenge for Law Reform Commissions and similar bodies. The performance of the Commission is currently measured against a range of performance indicators set out below.

Measure	07/08	08/09	09/10	10/11	11/12	12/13
	Historical Actuals				Targets	
Number of Consultation papers and reports published	8	6	12	14	10	10
Number of consultation events/meetings held	15	21	53	73	70	70
Percentage of projects conforming to project planning standards	-	-	-	100%	100%	100%
Percentage of projects meeting timeliness goals	-	-	-	71%	75%	80%
Law Reform Commission mentions in court decisions	23	15	16	17	15	15

This year three new measures were developed for performance:

- The measurement of projects meeting project planning standards – this should be 100% as the Commission meets its own project planning standards.
- Timeliness goals – this is set lower than 100% to recognise that resource constraints sometime impact on timeliness measures.
- Mentions in court decisions – this measure recognises the value of the work of the Commission to the higher courts.

The Commission also notes that 53% of reports produced since 1995 have been implemented. Implementation rates are important in law reform, and are a measure of the quality and practicality of the recommendations. However, implementation is not something the Commission directly controls and there is a range of reasons for non-implementation that have nothing to do with quality. A measure of implementation will be further developed that covers implementation over a reasonable period.

Progress on references

Significant reports and consultation papers released or completed during 2010-11 are set out below. These represent the main body of work produced by the Commission during the year.

Family violence – national frameworks

The Family Violence reference, jointly undertaken with the Australian Law Reform Commission (ALRC), was completed in October 2010. The NSW Commission contributed resources and expertise to this broad project, working cooperatively with the ALRC.

The focus of this reference was on the interaction in practice of State and Territory family/domestic violence and child protection laws with the *Family Law Act* and relevant Commonwealth, State and Territory criminal laws; and the impact of inconsistent interpretation or application of laws in cases of sexual assault occurring in a family/domestic violence context, including rules of evidence, on victims of such violence.

In 2010-11 the Commission reported to the Commonwealth and NSW Attorneys General. The NSW Commission provided, in addition, advice to the NSW Attorney General concerning the implications for NSW, and steps that could be taken for implementation.

Report 128 : Family Violence: Improving Legal Frameworks (Released October 2010)

In their report, the Commissions made 187 recommendations for improving focused on improving safety through:

- A common interpretative framework: establishing a shared understanding of what constitutes family violence across relevant legislative schemes.
- Corresponding jurisdictions: expanding the jurisdiction of courts dealing with family violence to maximise the chance that families will be able to get all the legal protections they need from any court they approach.
- Specialist family violence practice: fostering expertise within magistrates courts with staff who understand the dynamics of family violence and the complex array of legislation that applies.
- Improving police and prosecutorial practice: to produce safe, fair and just outcomes for victims.
- Integrated responses: ensuring that the many services needed by those who suffer family violence work together, building a better and shared understanding of violence and a national system of registration of family violence orders.
- Alternative dispute resolution: developing ADR responses, but with careful and appropriate protections for those who are the victims of violence.
- Training and information: underpinning legal changes by better understandings of family violence across the whole system, including a

national family violence bench book and a national register of relevant orders.

In addition, sexual assault in the context of family violence is the subject of numerous recommendations to improve legal frameworks, including reducing attrition rates for sexual assault cases and improving the experience of victims in the courts.

Complicity

The terms of reference for the review of the common law of complicity were received on 3 July 2007, a consultation paper was issued in January 2008 and submissions were received in the first half of 2008.

In the second half of 2010, further submissions were received and a further consultation was held with relevant stakeholders from the criminal justice system.

Report 129: Complicity (Completed December 2010)

In this Report, the Commission reviewed the principles relating to complicity by which a person may be found liable for offences committed by another, including the principles that attach secondary or derivative liability to accessories before the fact, principals in the second degree, parties to a joint criminal enterprise, and parties to an extended joint criminal enterprise. The Commission also reviewed the related inchoate offences of conspiracy and incitement.

The Commission recommended a “codification” of the common law principles in order to fill the gaps and remove the uncertainties in the common law:

- **Accessory liability.** The Commission recommended that a person who assists or encourages another to commit an offence should be liable for that offence. This would replace archaic terms in the common law with a plain English approach. The Commission also clarified the forms of conduct that give rise to liability as an accessory after the fact by recommending an offence of providing assistance to another to escape apprehension or prosecution with respect to a serious indictable offence or to obtain, keep or dispose of the proceeds of that offence.
- **Joint criminal enterprise.** The Commission recommended the retention of joint criminal enterprise liability where a person agrees with another to commit an offence (and the offence or an offence of the same type is committed) as a separate head of liability to accessory liability in order to deal effectively with situations involving group activity. The Commission also recommended a formulation of the principle of extended joint criminal enterprise to impose liability on a person in circumstances where another party to the joint criminal enterprise commits an additional offence that is different from the agreed offence.
- **Constructive murder.** The Commission recommended changes to the constructive murder provisions in s 18 of the *Crimes Act 1900* (NSW) so that liability will only attach to the person whose act caused death, leaving the liability of an accomplice to be determined according to the principles of joint criminal enterprise.

- **Conspiracy.** The Commission recommended the replacement of the common law offence of conspiracy (which covers agreements to commit “unlawful acts”) with an offence that is limited to agreements to commit criminal offences. The Commission also recommended the abolition of the common law offence of conspiracy to cheat and defraud.
- **Incitement.** The Commission recommended the extension of the inchoate offence of incitement to cover acts of assistance as well as encouragement.

Finally, the Commission recommended a staged review of the various provisions in NSW statute law which extend liability for criminal offences.

People with cognitive and mental health impairments in the criminal justice system

The terms of reference provide for a general consideration of the criminal law and procedure as it applies to people with cognitive and mental health impairments. In particular, the Commission was directed to have regard to:

- sections 32 and 33 of the *Mental Health (Forensic Provisions) Act 1990*;
- fitness to be tried;
- the defence of “mental illness”;
- the consequences of being dealt with via the above mechanisms on the operation of Part 10 of the *Crimes (Forensic Procedures) Act 2000*; and
- sentencing.

Issues to do with mental illness and intellectual and other cognitive disabilities are among the most difficult concerns for law and policy makers to address. As a progressive, civilised society, we seek to provide adequate care and support services for those who are most vulnerable. People with mental illness and cognitive impairments unquestionably fall into this category.

The purpose of this reference is to examine the law and practice regulating what happens to people with a mental illness or a cognitive impairment, or both, who commit crimes. The law recognises that a defendant’s mental state may affect the nature of the criminal justice response that would ordinarily attach to his or her actions. This reference asks the Commission to assess the effectiveness of the current operation of the criminal justice system in its dealings with offenders who have cognitive or mental health impairments. We do so against the background of the current legislative and administrative regime as well as the service context within which the law operates.

Significant achievements in 2010-11 include:

- The release of Consultation Paper 11, *Young people with cognitive and mental health impairments in the criminal justice system*.
- The formation of an Expert Advisory Panel to provide advice to Commission in the development of the Commission’s report.
- Receipt, examination and evaluation of over 50 submissions addressing over 200 questions raised in our consultation papers.

- Development of a comprehensive consultation strategy and undertaking intensive consultations with more than 180 individuals representing a diverse range of stakeholders including agencies, courts, consumers, NGOs, legal professionals, and health and disability services.
- Organisation of a joint symposium with the Sydney Institute of Criminology to discuss the potential of a mental health 'court' or a specialist list to address issues of diversion in relation to people with cognitive and mental health impairments who encounter the criminal justice system. The symposium featured a panel of experts from around Australia, was attended by over 70 stakeholders and was broadcast nationally on ABC radio.

Consultation Paper 11: Young people with cognitive and mental health impairments in the criminal justice system

(Released December 2010)

This is the fifth consultation paper in the Commission's reference on people with cognitive and mental health impairments in the criminal justice system. This paper looks at young people with cognitive and mental health impairments and what distinguishes their engagement with the criminal justice system, with a particular focus on bail, Apprehended Violence Orders ("AVOs"), diversion, fitness to be tried, the defence of mental illness and sentencing. Key questions are whether existing early intervention, diversionary mechanisms and rehabilitation programs are effective in their application to young people with cognitive and mental health impairments, and whether special rules should be developed in relation to procedures and sentencing for this group.

Penalty notices

There are around 7,000 offences that can be dealt with by penalty notices in New South Wales. In the six-year period from 2003-2009, more than 16 million penalty notices were issued, with a face value of approximately \$2.4 billion.

The penalty notices reference asks the Commission to consider:

- whether current penalty amounts are commensurate with the objective seriousness of the offences to which they relate;
- the consistency of current penalty amounts for the same or similar offences;
- the formulation of principles and guidelines for determining which offences are suitable for enforcement by penalty notices;
- the formulation of principles and guidelines for a uniform and transparent method of fixing penalty amounts and their adjustment over time;
- whether penalty notices should be issued to children and young people, having regard to their limited earning capacity and the requirement for them to attend school up to the age of 15. If so: (a) whether penalty amounts for children and young people should be set at a rate different to adults; (b) whether children and young people should be subject to a shorter conditional "good behaviour" period following a write-off of their fines; and (c) whether the licence sanction scheme under the *Fines Act 1996* should apply to children and young people; and

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- whether penalty notices should be issued to people with an intellectual disability or cognitive impairment.

While the Commission may consider penalty notice offences under road transport legislation administered by the Minister for Roads, the terms of reference indicate we need not consider any potential amendments to these offences as they have already been subject to an extensive review.

Consultation Paper 10: Penalty notices (Released September 2010)

The Commission published a Consultation Paper in September 2010, looking at the following issues:

- whether there is a need for a stand-alone statute dealing with penalty notices;
- whether there is a need for a centralised oversight body to monitor the penalty notice regime;
- how penalty notice offences can be determined in a more consistent way;
- how penalty notice amounts can be set in a more consistent way;
- how the practices and procedures governing the issue and enforcement of penalty notices can be made more transparent and accessible;
- the impact of penalty notices on a range of vulnerable groups, including children and young people, prisoners, Indigenous people, people living in non-metropolitan areas and people with mental health and cognitive impairments; and
- the use of Criminal Infringement Notices by police as an alternative to prosecution for public order offences.

Following publication of the Consultation Paper, the Commission received 45 submissions and conducted 31 roundtable meetings and consultations with a wide range of agencies that issue and enforce penalty notices and community organisations that work with vulnerable people. The Commission consulted directly with a number of people who may be disproportionately affected by the penalty notice system.

Cheating at gambling

Terms of reference to review the coverage of the criminal law in relation to cheating at gambling were received on 5 January 2011.

Twenty four preliminary submissions were received in January 2011-March 2011 and four preliminary consultations were held in January and February 2011. Following the publication of Consultation Paper 12, in March 2011, 15 submissions were received and three round table consultations were held with regulators and law enforcement agencies, sporting organisations and betting providers.

Consultation Paper 12: Cheating at gambling

(Released March 2011)

In this Consultation Paper, the Commission provided an overview of the regulation of gambling in NSW, in relation to both sports and event betting and gaming. The Commission also reviewed the number of offences in NSW that might possibly be invoked to respond to cheating at gambling. Each of the offences reviewed presented difficulties in their application.

The Commission, therefore, considered issues relevant to the development of a specific cheating offence in relation to sports and event betting and proposed, for the purposes of consultation, a possible offence to deal with match-fixing and the misuse of inside information in relation to sporting events. The Commission also considered issues concerning the consolidation and codification of an offence of cheating at gambling, including an offence that would deal with cheating at gaming.

The Commission also considered a number of related matters within the wider landscape in which gambling and gaming takes place, including the possible establishment of a single gambling commission or authority in NSW, the procedures for approving betting events and gaming activities and the roles of the sports controlling bodies and integrity units, and of the betting agencies, in securing the integrity of sporting and other events and of gaming.

Compensation to relatives

This reference deals with certain aspects of the law relating to the compensation that dependants of certain victims of wrongful death can recover.

Terms of reference were received on 3 November 2010, and asked the Commission to inquire into the legislation governing the provision of damages, including under the *Compensation to Relatives Act 1897*, *Law Reform (Miscellaneous Provisions) Act 1944*, *Dust Diseases Tribunal Act 1989* and *Civil Liability Act 2002*, and consider whether a principle of assessment of damages, called the *Strikwerda principle*, should be overruled in NSW. This principle operates to reduce the amount that some dependant relatives can recover as compensation for the death of their family member where the death was caused by a dust disease, in particular asbestosis and mesothelioma.

The Commission is asked to consider the merits of abolishing this principle, including any equity issues arising from its possible abolition or retention; whether any economic modelling is required to determine the effect on the liabilities of dependants of any amendment that is recommended; and any other related matters.

Significant achievements in 2010-11 include:

- the release of Consultation Paper 14, *Compensation to Relatives*;
- the receipt and evaluation of submissions; and
- consultation with relevant stakeholders, including the families of victims of asbestos-related disease, former asbestos producers, compensation funds and insurers, to seek their views on the options raised in Consultation Paper 14.

The Commission expects to publish a report before the end of 2011.

Consultation Paper 14: Compensation to Relatives

(Released May 2011)

The Consultation Paper describes the background to the issue identified in the terms of reference, explaining the current law and the legal frameworks for compensation that apply in NSW and the particular relevance of the issue to victims of asbestos-related disease. The paper then sets out six options as alternatives for responding to the issues raised.

Security for costs and associated orders

The security for costs and associated orders reference arose out of a growing awareness of two particular challenges: first, that there is no law expressly giving courts power to order costs against litigation funders; and secondly, that those bringing public interest proceedings may not have the resources to mount and maintain a court case.

This reference asks the Commission to inquire into and report on whether the law and practice relating to security for costs and to associated orders, such as protective costs orders and public interest orders, strikes an appropriate balance between protecting a plaintiff's right to pursue a legitimate claim regardless of their means and ensuring that a defendant is not unduly exposed to the costs of defending that litigation.

Consultation Paper 13: Security for costs and associated costs orders

(Released May 2011)

In response to the terms of reference, the Commission published Consultation Paper 13 ("CP 13"). In CP 13, consideration was given to:

- the sources of courts' jurisdiction to order security for costs, particularly r 42.21 of the *Uniform Civil Procedure Rules 2005* (NSW) and s 1335(1) of the *Corporations Act 2001* (Cth);
- the principles of security for costs where the plaintiff is funded or assisted by third parties;
- security for costs in public interest proceedings; and
- issues relating to procedures and appeals.

Bail

In June 2011, the Commission received terms of reference for a review of the *Bail Act 1978* (NSW). In undertaking this review, the Commission was asked to consider:

- whether the Bail Act should include objectives;
- what criteria should be taken into account in making a bail determination;

- what presumptions should apply to bail determinations and how they should apply;
- appropriate responses to breaches of bail;
- provisions about repeat bail applications;
- whether the *Bail Act* should make special provision for children and young people, Aboriginal people and Torres Strait Islanders, cognitively impaired people and those with a mental illness;
- bail laws in other jurisdictions.

The Attorney General has asked the Commission to report by November 2011. Given this short time frame, the Commission released 'questions for discussion' rather than preparing a consultation paper.

Following the publication of the questions for discussion, the Commission has embarked on an intensive consultation process with key stakeholders in the criminal justice system and members of the community including judicial officers, magistrates, police, government departments, legal service providers, practitioners, advocates, academics and specific interest groups. At the time of writing, the Commission had completed ten consultations, including a larger 'roundtable' meeting with key stakeholders.

Questions for discussion

(Released June 2011)

The questions for discussion were released in June 2011. The questions focused on the key features of the current Bail Act and sought detailed views about the workability and impact of various provisions in the Act. In total, 34 submissions have been received in response to the questions for discussion.

Consultation and community engagement

Commissioners and staff gave a number of presentations and published papers on references and other matters of general interest. These activities are detailed in appendix A.

The Commission has also had experience of working with the ALRC on the family violence reference using e-newsletters, online forums, a family violence blog, twitter and on-line submissions. This experience will also be evaluated for future references.

In a number of key references, the consultation activity of the Commission increased significantly. References such as penalty notices and people with mental health and cognitive impairments in the criminal justice system have involved extensive community consultation. The Commission continues to learn from and build on the experiences in other references, and to build this experience into its processes.

Implementation

During 2010-11 legislation was passed relating to two of the Commission's reports:

- The *Privacy and Government Information Legislation Amendment Act 2010* (NSW) implemented aspects of Report 125: *The Offices of the Information and Privacy Commissioners* (2009) and Report 126: *Access to Personal Information* (2010).

Priorities for 2011-12

References

The first and most important priority for the Commission is to deliver on our references. Subject to resources, the Commission expects to deliver reports in at least five of our six current references (though not necessarily on all aspects of each reference). The reports will build on the tradition of excellence in scholarship and policy analysis for which the Commission is known, and will be based on full consultation with stakeholders and the broader community.

An overview of the NSW Law Reform Commission's seven current references and our expected progress in 2011-12 is detailed in this section.

People with mental health and cognitive impairments in the criminal justice system

Commissioners: Prof Hilary Astor (Lead Commissioner), the Hon Gregory James QC, the Hon Harold Sperling QC, the Hon James Wood AO QC

Expert Advisory Panel: Prof Eileen Baldry, Dr Jonathan Phillips, Mr Jim Simpson, Prof Ian Webster

Reference received: 17 September 2007; expanded 7 July 2008.

Consultation papers issued: May 2010, December 2010

This is a significant reference with a broad scope. It will be a high priority reference for the Commission in 2011-12.

As noted above, the Commission has released 5 consultation papers.

In 2011-12, the Commission intends to conduct further consultations, and produce a report. We currently expect to report in stages. The first report will cover definitions and diversion and will be issued toward to end of 2011.

Penalty notices

Commissioners: Prof Hilary Astor (Lead Commissioner), the Hon James Wood AO QC, Prof David Weisbrot AM

Reference received: 5 December 2008.

Consultation Paper issued: September 2010.

This is a high priority reference for the Commission. As noted above, the Commission published a consultation paper on this reference in September 2010. Since that time, the Commission has undertaken consultations with government agencies that issue penalty notices, non-government organisations that advocate for vulnerable individuals adversely affected by penalty notices, and the general community. Work is currently underway on a report expected to be issued in 2011.

Security for costs

Commissioners: Prof Hilary Astor (Lead Commissioner), the Hon James Wood AO QC, His Honour Judge Peter Johnstone

Reference received: 8 December 2009.

Consultation Paper issued: May 2011

The Security for Costs reference asks the Commission to inquire into and report on whether the law and practice relating to security for costs and to associated orders, such as protective costs orders and public interest orders, strikes an appropriate balance between protecting a plaintiff's right to pursue a legitimate claim regardless of their means against ensuring that a defendant is not unduly exposed to the costs of defending that litigation.

Following the publication of a Consultation Paper in May 2011, the Commission intends to:

- examine and evaluate submissions; and
- conduct consultations with key stakeholders.

This reference has been given mid priority by the Commission and it is expected that a report will be forthcoming in the first half of 2012.

Cheating at gambling

Commissioners: the Hon James Wood AO QC (Lead Commissioner), Mr Timothy Game SC, Prof David Weisbrot AM.

Expert advisors: The Hon Rod Howie QC, Associate Prof Alex Steel

Reference received: 5 January 2011.

Consultation Paper issued: March 2011.

Report Issued: August 2011

This reference (described above) has been accorded high priority by the Commission. During July 2011, final consultations were conducted and a report finalised for transmission to the Attorney on 4 August 2011 and tabled on 26 August 2011 (see below).

Report 130: Cheating at Gambling (August 2011)

In this report, the Commission recognises that sports betting has become a major industry in Australia. Cheating at sports betting, including by match-fixing, undermines the integrity and reputation of the sports in question, can involve significant fraud, and has the potential to cause disruption to a significant economic activity. The criminal law has not kept up to date and the Commission proposes two new sets of sports specific offences.

The first set of offences cover conduct by anybody (including players, match officials and team support people) that "corrupts the betting outcome of an event" with the intention of obtaining a financial advantage from betting.

The conduct of a person “corrupts a betting outcome” if it affects or would be likely to affect the outcome of a bet, and is contrary to the standards of integrity expected by reasonable people.

This covers, for example, spot and match fixing, deliberate underperformance, tanking, disrupting or interfering with the course of the event, and deliberately officiating in a dishonest way. It extends to anybody who fixes the event, or agrees to do so, or persuades another to do so, and also to conduct designed to conceal the existence of any such arrangement.

The second set of offences cover using inside information in connection with a sporting event to bet on that event, as well as providing inside information to someone else to enable them to bet on the event.

In both cases, the Commission proposes a maximum penalty of 10 years imprisonment, the same penalty as for fraud, recognising the seriousness of activity that can involve the corruption of sporting activities in aid of betting.

The Commission notes that national work is underway in this area following the adoption by the Australian Sports Ministers of the National Policy on Match-Fixing in Sport; and the agreement of the Standing Committee of Attorneys-General to develop a nationally consistent approach to criminal offences relating to match-fixing.

The Commission reviews the role of sports controlling bodies and wagering agencies in ensuring the integrity of sporting events and gives support to the initiatives underway in Australia and internationally in this respect.

The Commission also examines cheating at gaming in connection with gaming machines and Casino type games, and proposes a review to rationalise the range of existing offences including the creation of a new general cheating at gaming offence in the Crimes Act.

Finally, the Commission recommends a review to improve NSW’s complex regulatory and enforcement arrangements to consider the creation of a single authority to replace the current division of authority between the Office of Liquor Gaming and Racing and the Casino Liquor and Gaming Control Authority, and to rationalise the powers of inspectors.

Compensation to relatives

Commissioners: the Hon James Wood AO QC (Lead Commissioner),
Prof Hilary Astor, His Honour Judge Peter Johnstone.

Reference received: November 2010.

Consultation paper issued: May 2011.

As set out above, this reference deals with aspects of the law relating to the compensation that dependants of certain victims of wrongful death can recover.

This reference has high priority. During July and August work will proceed on a report expected in 2011.

Jury directions

Commissioners: the Hon James Wood AO QC (Lead Commissioner), Prof Hilary Astor, Prof Jane Goodman-Delahunty.

Expert advisors: Prof Jill Hunter, Her Honour Judge Gaye Murrell, His Honour Judge Peter Berman, Justice Graham Barr.

Reference received: 16 February 2007.

Consultation paper issued: December 2008.

This reference is about the instructions that a judge gives to a jury in a criminal trial. It arises in the context of a growing concern in Australia and overseas about the problems associated with jury directions. The Victorian and Queensland Law Reform Commissions have undertaken similar projects. These Australian law reform inquiries have been prompted, in part, by the Standing Committee of Attorneys General's recent consideration of "the feasibility of a review of jury directions and warnings, including areas for improved consistency".

The reference requires the Commission to consider:

- 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.

For most of 2009/10 this reference was on hold due to resource constraints. This reference was accorded a lower priority in 2010-11.

In 2011-12 the Commission intends to focus on key issues in jury directions including:

- aids to jury comprehension;
- issues of trial management to assist jury decision-making; and
- some key directions including directions on the standard of proof.

The aim is to complete a short report in 2012 focussed on key practical reforms to assist jury trials.

Bail Review

Commissioners: The Hon Hal Sperling QC (Lead Commissioner), Prof Hilary Astor, Prof David Brown, The Hon James Wood AO QC.

Reference received: 8 June 2011.

Questions for discussion issued: June 2011.

This reference is a high priority for the Commission. The government issued terms of reference on 8 June 2011 and requested the Commission report by November. The review builds on the work previously undertaken in looking at bail laws and the *Bail Act 1978* (NSW). In undertaking this reference, the Commission is considering:

- the purpose of bail and the objectives of bail laws;
- the presumptions and considerations that should apply to a bail determination;
- any special needs that particular groups in the community may have in relation to bail; and
- the appropriate structure and legislative framework for the *Bail Act*.

At the time of writing, the Commission has received 38 submissions in response to the questions for discussion, and has conducted broad consultation meetings. In the remainder of 2011, the Commission intends to:

- continue to consult with judicial officers, government departments, legal service providers, practitioners, advocates and special interest groups; and
- consider the submissions received from stakeholders.

Work is underway towards a report in this important area. The Commission expects to report to the Government in November 2011.

Other priorities

During 2010-11, the Commission increased its consultation activities considerably, engaging with stakeholders particularly in the references on Penalty Notices and People with Mental Health and Cognitive Impairments in the criminal justice system.

During 2011-12, the Commission will build on its recent efforts to establish a more robust framework for engagement, in part by focussing on technological opportunities delivered by the Department's one website project which will involve a redevelopment of the Commission's website.

In this way we expect to foster better awareness in the community of the Commission and its work, and to improve the quality of our advice to government.

People

Commissioners

Chairperson

The Hon James Wood AO QC (appointed January 2006)

Mr Wood commenced his term as chairperson in January 2006, having previously been a full-time Commissioner with the NSW Law Reform Commission in 1982-1984. He was Chief Judge at Common Law, 1998-2005, having been appointed a Supreme Court Judge in 1984. He was Commissioner of the Royal Commission into Police Corruption, 1994-1997 and Commissioner of the Special Commission of Inquiry into Child Protection Services in NSW, 2007-2008. He has previously been the Inspector, Police Integrity Commission, 2005-2006 and the chairperson, Sentencing Council of NSW, 2006-2009, and is currently the deputy chairperson.

Full-time Commissioner

Emeritus Professor Hilary Astor (appointed March 2010)

Professor Astor commenced as full-time Commissioner in March 2010. She was previously a part-time Commissioner from 1999-2006. Professor Astor joined the Faculty of Law at the University of Sydney in 1986 and most recently held the position of Professor of Dispute Resolution. Her areas of interest are dispute resolution, especially mediation, and family law. She is the co-author, with Professor Christine Chinkin, of *Dispute Resolution in Australia* (2nd edition, Butterworths, Sydney, 2002). She was the inaugural Chairperson of the National Alternative Dispute Resolution Advisory Council and is currently a member of the Council of the Australasian Institute of Judicial Administration.

Part-time Commissioners

Emeritus Professor David Brown (appointed 1 July 2011)

Emeritus Professor David Brown was a Professor in Law at the University of NSW until his retirement in 2008. He is a widely recognised academic specialist in criminal law, criminology and penology, including as an author of the leading textbook on NSW criminal law. He is admitted as a Barrister and Solicitor of the High Court of New Zealand.

Professor Jane Goodman-Delahunty (appointed May 2002)

Professor Goodman-Delahunty, who was appointed to the Commission in May 2002, is a Professor in the Australian Graduate School of Policing at the Charles Sturt University. She was previously Director of the Forensic Psychology Postgraduate Program at the University of New South Wales (2001-2009) and is also editor of *Psychology, Public Policy, & Law*, a Member of the NSW Administrative Decisions Tribunal Community Services Division, and a Mediator for the NSW Office of Fair Trading Mediation Services Unit.

The Hon Gregory James QC (appointed January 1999)

Mr James is currently the President of the Mental Health Review Tribunal. A retired Supreme Court Judge and former leading criminal barrister, he was appointed to the Commission in January 1999, having previously been a part-time Commissioner in 1985-1989.

Mr Timothy Game SC (appointed July 2009)

Mr Game was admitted to the NSW Bar in 1985 and was appointed Senior Counsel in 1996. He is a member of the NSW Bar Association's Criminal Law Committee. He is also a member of the Law Council of Australia's Anti-Money Laundering Working Group and Co-chair of the National Criminal Law Liaison Committee.

The Hon Rod Howie QC (April 2010-June 2011)

The Hon Rod Howie was appointed to the Commission in April 2010. He recently retired as a Judge of the Supreme Court, having been appointed in 2000. Previously he held the positions as: Director of the Criminal Law Review Division of the Attorney General's Department, 1984-1987; Deputy Director of Public Prosecutions 1987-1993; Crown Advocate, 1993-1996 and District Court Judge 1996-2000. He has co-authored *Butterworths Criminal Practice and Procedure in New South Wales* and has been a major contributor to the section of *Halsbury's Laws of Australia* on Sentencing and Criminal Procedure.

The Hon Hal Sperling QC (appointed January 2005)

Mr Sperling was a Judge of the Supreme Court, 1995-2004. He was previously a part-time Commissioner from 1981-1996 and a Deputy Chairperson of the Commission in 1996.

Professor David Weisbrot (appointed 1 July 2011)

Professor David Weisbrot AM is admitted to the bar in both NSW and California. He was the longest serving President of the Australian Law Reform Commission from 1999-2009, and has previously served as a full-time (from 1990-1993) and part-time (from 1994-1999) member of the NSW Law Reform Commission, and of the Law Reform Commission of Fiji (1994-95). He has served as Dean of the Sydney Law School. He currently holds Chairs as Professor of Law and Governance at Macquarie Law School and Professor of Legal Policy at the United States Studies Centre of Sydney University.

Staff

The Staff of the Commission as at 30 June 2011

Paul McKnight	Executive Director
Marthese Bezzina	Assistant Law Reform Officer
Jacob Campbell	Assistant Law Reform Officer
Jenny Davis	Library Assistant (<i>attached to the LRC from Library Services</i>)
Francesca Di Benedetto	Legal Officer (on secondment)
Ani Luzung	Legal Officer (on secondment)
Rebecca Kang	Legal Officer
Robyn Johansson	Legal Officer
Zrinka Lemezina	Law Reform Project Officer
Maree Marsden	Executive Assistant
Suzanna Mishhawi	Administrative Assistant
Bridget O'Keefe	Law Reform Project Officer
Abi Paramaguru	Law Reform Project Officer
Dara Read	Legal Officer
Ihab Shalbak	Law Reform Project Officer
Joseph Waugh PSM	Senior Law Reform Officer
Anna Williams	Librarian

Staff movements during the year

The Commission was pleased to welcome Marthese Bezzina, Jacob Campbell Zrinka Lemezina, Dara Read and Ihab Shalbak to the staff.

The Commission records its thanks to Terry Stewart who retired during the course of the year, and to Lauren Judge who served as Acting Executive Director for the period November 2010 to February 2011.

Internships

The work of the Commission is greatly assisted by student interns who work at the Commission principally as a means of furthering their education, through University placements, and through the Commission's own internship programs during the summer and winter vacations.

Student interns contribute directly to references and have made significant contributions to the Commission's research and writing, including to our publications.

The following students had placements at the Commission in 2010-2011:

Name	University	Period	References
Amelia Avery-Williams	UNSW	University (Sem 2, 2010)	Penalty Notices Security for Costs
Ingrid Brown	Newcastle	Winter program 2011	Mental Health
Gillian Buchan	UNSW	University (Sem 1, 2011)	Mental Health
Philippa Curran	UNSW	University (Sem 1, 2011)	Penalty Notices
Chloe Davidson	Wollongong	University (Feb/Mar 2011)	Mental Health
Ryan Doherty	Sydney	Summer program 10/11	Security for Costs
Edward Elliott	UTS	Winter program 2011	Bail
Emma Hunt	Sydney	University (Sem 2, 2010)	Mental Health
Alex Langshaw	UNSW	University (Sem 1, 2011)	Security for Costs
Emma Lee	ANU	Summer program 10/11	Jury Directions
Emilia Lukeman	Macquarie	Summer program 10/11	Gambling
Akiko Morioka	UNSW	Winter program 2011	Penalty Notices
Shireen Morris	Monash	Summer program 10/11	Penalty Notices
Kirri Piper	Wollongong	Winter program 2011	Bail
Nithya Ramesh	Sydney	Summer program 10/11	Compensation to Relatives
Melissa Rubbo	UTS	Summer program 10/11	Mental Health
Shariqa Shaheed	UNSW	Winter program 2011	Mental Health
Jessica Todhunter	Wollongong	Summer program 10/11	Jury Directions
Von Vargas	UNSW	University (Sem 2, 2010)	Special Projects

Presentations, Papers and Publications

The Hon James Wood AO QC

- Presentation regarding The Inspector Police Integrity Commission, September 2010.
- Virtual Global Taskforce Conference 2010, the Sydney Convention and Exhibition Centre, Darling Harbour, Sydney. Hypothetical panel: Improving International Collaboration in Protecting Children Globally, 2 December 2010.
- Presentation to the Police Communications Unit, Tuggerah, 7 December 2010.
- Human Rights Delegation - Sentencing Council, 2 March 2011.
- Symposium "Should NSW have a mental health court?", Sydney Law School, 1 April 2011.
- Meeting with Consulate-General of Japan in Sydney: Consul and Police Attache (Koutaro Yanagi) and Prosecutor (Akira Okamoto), 4 April 2011.
- China-Australia Human Rights Commission – invitation to speak in China – Police Supervision Seminar, 18-20 April 2011.
- "Keep them Safe" launch – Parliament House, 11 November 2010.

Emeritus Professor Hilary Astor

- "Improving Evidence and Information Sharing About Family Violence in the Context of FDR" 2010 Family Law Conference NSW Legal Aid, Sydney, August 2010.
- "Reforming the Law on Family Violence: Directions for Family Dispute Resolution", Family Relationships Australia National Conference, Melbourne, November 2010.
- Women's Day launch. Crown Solicitors Office, March 2011.
- "The 'Family Violence – A National Legal Response' Report and Implementation of Recommendations", LEADR/ADRA Family Dispute Resolution Conference 2011 *The Changing Face of Family Dispute Resolution*, Sydney, March 2011.
- "Mental Health Law Reform in NSW", *Controversies in Risk Assessment and Mental Health Law Conference*, Sheraton on the Park, Sydney (with the Hon Greg James QC and the Hon Hal Sperling QC), 7 May 2011.
- "Family Violence Victims Seeking Clear Path to Help" (2010) 84 (12) *Law Institute Journal* 85 (with Prof Rosalind Croucher).

- "Fractured Families, Fragmented Responsibilities - Responding to Family Violence in a Federal System" (2010) 33 *University of New South Wales Law Journal* 854 (with Professor Rosalind Croucher).
- "The ALRC/NSWLRC's Family Violence Inquiry: A Work in Progress" (2010) 24 *Australian Journal of Family Law* 150 – 159 (with Professor Rosalind Croucher).

Abi Paramaguru

- "Young people with cognitive and mental health impairments in the criminal justice system", Justice Health Lecture Program, 10 February 2011.

Other publications:

- H Astor and A Paramaguru, "Want to contribute to law reform for disadvantaged youth?", Croakey – the Crikey health blog, 13 January 2011.
- B O'Keefe, "What are the pros and cons of mental health courts? A free symposium", Croakey – the Crikey health blog, 22 March 2011.



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Attorney General & Justice

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