

Annual Report 2022-2023

ANNUAL REPORT

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The year in review

I am pleased to present the NSW Law Reform Commission's Annual Report for 2022–2023.

In my first full year as Chairperson, the Commission completed one review and commenced two others.

In *Report 150 – Bail: Firearms and Criminal Associations*, the Commission provided timely and independent expert advice to the NSW Attorney General on potential reforms to the *Bail Act 2013* (NSW). Our two ongoing reviews focus on issues that are deeply important to the NSW community: the law concerning serious road crimes, and anti-discrimination law.

I am grateful for the invaluable contributions made by my colleagues, the Hon Paul Brereton AM RFD SC (Deputy Chairperson) and the Hon Justice Anna Mitchelmore (Commissioner), over the reporting period.

With his term on the Commission ending on 30 June 2023, I take this opportunity to congratulate Mr Brereton on his well-deserved appointment as inaugural Commissioner of the National Anti-Corruption Commission. The NSW Law Reform Commission has benefitted greatly from Mr Brereton's expertise and experience, most recently in the completion of *Report 149 – Open Justice: Court and Tribunal Information: Access, Disclosure and Publication* and the *Bail* report. I wish him well in the next chapter of his long and distinguished career of service to the people of Australia.

The Commission could not function without the assistance of the Secretariat, which may fairly be described as the engine room of the Commission. The highly competent members of the Secretariat approach the Commission's references with both enthusiasm and a keen eye for the issues involved. Work includes strategising the manner in which the Commission will approach references; preparation of the appropriate persons to consult; attending on stakeholders in consultation meetings; preparing discussion papers and assisting in the preparation of final reports. Can I extend my and my fellow Commissioners' appreciation to them for the quality of the work which they carry out and the enthusiasm with which they do so.



The Hon Tom Bathurst AC KC

Chairperson

The NSW Law Reform Commission

The NSW Law Reform Commission is an independent statutory body constituted under the *Law Reform Commission Act 1967* (NSW).

We provide expert law reform advice to government, through the Attorney General, on matters that the Attorney General refers to us.

In undertaking this work, we:

- research the law, which includes assessing the relevant academic commentary
- conduct or commission empirical research where necessary, and
- consult with stakeholders, the community and experts in the field.

The outcomes of our projects are contained in formal reports to the Attorney General, which are tabled in parliament and considered by government.

During the reporting year, the Commission consisted of a Chairperson, a Deputy Chairperson and a part-time Commissioner.

Chairperson: Hon Tom Bathurst AC KC



Mr Bathurst began his term as Chairperson of the NSW Law Reform Commission on 1 June 2022. Tom served as Chief Justice of NSW from 1 June 2011 until his retirement on 5 March 2022. He was called to the bar in 1977 and appointed Queen's Counsel in 1987.

Mr Bathurst was a member of the Australian Government Takeovers, Mergers and Corporate Reconstructions Panel between 2006 and 2011. He was President of the Australian Bar Association (2008–2010) and President of the NSW Bar Association (2009–2011).

He was made a Companion of the Order of Australia in 2014 and was elected an Honorary Bencher of the Middle Temple in 2016. In 2019 Tom received an Honorary Doctor of Laws from the University of Sydney. From 2015 to 2022 he was Chair of the Judicial Section of LAWASIA. Tom is also a Member of the Australian Academy of Law.

Deputy Chair: Hon Paul Brereton AM RFD SC



Mr Brereton was appointed as a part-time Commissioner of the NSW Law Reform Commission on 1 June 2016 and as Deputy Chairperson on 1 July 2016. His term expired on 30 June 2023.

Mr Brereton was admitted as a solicitor in 1982, called to the Bar in 1987 and appointed Senior Counsel in 1998. He was appointed as a Judge of the Supreme Court in 2005 and a Judge of Appeal in 2017.

He retired from his judicial appointments on 31 May 2023 to assume the appointment of inaugural Commissioner of the National Anti-Corruption Commission from 1 July 2023.

He has also served as Deputy President of the Defence Force Discipline Appeal Tribunal, and an Assistant Inspector-General of the Australian Defence Force. He was appointed a Member of the Order of Australia (Military Division) in 2010 and was awarded the Reserve Force Decoration in 1995.

Commissioner: Hon Justice Anna Mitchelmore



Justice Mitchelmore was appointed as a part-time Commissioner of the NSW Law Reform Commission on 1 September 2021. Justice Mitchelmore was appointed to the NSW Court of Appeal in March 2022.

She was admitted as a solicitor in 2000 and commenced at the private bar in 2006. She was appointed Senior Counsel in 2018, practising predominantly in the areas of administrative law, constitutional law, criminal law, and planning and environment law.

Completed references

The Commission completed one reference in 2022–2023.

Bail: Firearms and Criminal Associations

The Commission transmitted *Report 150 – Bail: Firearms and Criminal Associations* to the Attorney General on 20 October 2022. The report was tabled in the NSW Parliament on 4 November 2022.

The report recommended against amending the *Bail Act 2013 (NSW) (Bail Act)* in the manner contemplated by the terms of reference. We were not persuaded that any changes were necessary or supported by evidence. We were also concerned about the potential for unintended, and undesirable, consequences for vulnerable groups and the wider criminal justice system.

Terms of reference

On 16 August 2022, the then Attorney General asked the Commission to review and report on three discrete aspects of the *Bail Act*, that is, whether:

- the list of firearms offences treated as show cause offences should be expanded
- further legislative guidance should be provided on the meaning of “criminal associations”, and
- the list of offences relating to criminal associations treated as show cause offences should be expanded.

The review process

The Commission conducted 14 consultation sessions with senior judicial officers, defence lawyers, prosecutors, police and legal organisations. We also received 15 written submissions.

Implementation and government responses

As at 30 June 2023, implementation action and / or government responses were outstanding on the following reports, which were completed within the last three years:

- *Report 150 – Bail: Firearms and Criminal Associations*
- *Report 149 – Open Justice: Court and Tribunal Information: Access, Disclosure and Publication*

Uniform model legislation for a national access scheme for digital records after death or incapacity was on the agenda of the Standing Council of Attorneys-General and its predecessor, the Meeting of Attorneys-General.¹ *Report 147 – Access to Digital Records upon Death or Incapacity* (2019) recommended a new statutory scheme for NSW and supported the adoption of a nationally consistent scheme.

Engagement

The Commission continued its social media engagement through Twitter, posting about projects and other news. The Commission also continued to send out a periodic email newsletter with updates about its work.

Commissioners and Secretariat staff attended the following events:

- Anna Williams attended the Australian Law Librarians Association Conference in Hobart on 24–26 August 2022.
- Tom Bathurst and Sophie Sauerman attended a Law Reform Panel hosted by the UNSW Law Society on 19 June 2023.

1. Meeting of Attorneys-General, *Communiqué* (12 August 2022) 1; Standing Council of Attorneys-General, *Communiqué* (9 December 2022) 5.

Ongoing projects

Review of serious road crime offences

Under terms of reference dated 10 November 2022, we have been asked to review and report on:

- whether the existing provisions of the *Crimes Act 1900* (NSW) dealing with serious road and dangerous driving offences (in particular in Part 3 Division 6 and manslaughter) (serious road crime) and accessorial liability provisions remain fit for purpose
- whether the maximum sentences available for serious road crimes remain appropriate
- relevant sentencing principles in statute and the common law for serious road crimes
- the experiences and rights of victims of serious road crime and their families within the criminal justice system, and
- any other matter the Commission considers relevant.

We called for preliminary submissions on the terms of reference on 29 November 2022. We received 89 preliminary submissions as at 30 June 2023.

We also conducted targeted preliminary consultations. We will provide further updates on this project in the 2023–2024 Annual Report.

Review of the *Anti-Discrimination Act 1977* (NSW)

Under terms of reference dated 19 June 2023, we have been asked to review and report on the *Anti-Discrimination Act 1977* (NSW). The terms of reference require us to consider matters including, but not limited to:

- whether the Act could be modernised and simplified to better promote the equal enjoyment of rights and reflect contemporary community standards
- whether the range of attributes protected against discrimination requires reform
- whether the areas of public life in which discrimination is unlawful should be reformed
- whether the existing tests for discrimination are clear, inclusive and reflect modern understandings of discrimination
- the adequacy of protections against vilification, including (but not limited to) whether these protections should be harmonised with the criminal law

- the adequacy of the protections against sexual harassment and whether the Act should cover harassment based on other protected attributes
- whether the Act should include positive obligations to prevent harassment, discrimination and vilification, and to make reasonable adjustments to promote full and equal participation in public life
- exceptions, special measures and exemption processes
- the adequacy and accessibility of complaints procedures and remedies
- the powers and functions of the Anti-Discrimination Board of NSW and its President, including potential mechanisms to address systemic discrimination
- the protections, processes and enforcement mechanisms that exist in other Australian and international anti-discrimination and human rights laws, and other NSW laws
- the interaction between the Act and Commonwealth anti-discrimination laws, and
- any other matters the Commission considers relevant.

We called for preliminary submissions on matters relevant to the terms of reference on 20 July 2023. We will provide further updates on this project in the 2023–2024 Annual Report.

People

Staff

The NSW Law Reform Commission and Sentencing Council Secretariat is part of the Law Reform and Legal Services Division of the Department of Communities and Justice.

The following people worked within the Secretariat for at least part of the reporting period:

Name	Position
Dr Jackie Hartley	Policy Manager (job share)
Ms Alexandra Sprouster	Policy Manager (job share)
Ms Sophie Sauerman	Senior Policy Officer
Ms Laura Schultz	Senior Policy Officer
Mr Joseph Waugh PSM	Senior Policy Officer
Mr Oliver Cumming	Policy Officer
Dr Nikki Edwards	Policy Officer
Ms Carol Hoang	Policy Officer
Ms Uma Ossatjyz	Policy Officer
Ms Madison Thompson	Policy Officer
Ms Aelish White	Policy Officer
Ms Claudia McGuinness	Graduate Policy Officer
Ms Anna Williams	Research Support and Librarian

Interns

Our paid winter internship program takes place during the university vacation. Student interns make significant contributions to research and writing on a range of projects.

The following interns worked with the Secretariat during the 2022 winter program:

- Ms Angelique Donoghue, University of Newcastle, and
- Mr Tom Jilek, University of Melbourne.

