

Annual Report 2023-2024

ANNUAL REPORT

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Contact details

NSW Law Reform Commission
Locked Bag 5000
Parramatta NSW 2124 Australia

Email: nsw-lrc@dcj.nsw.gov.au

Website: www.lawreform.nsw.gov.au

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The year in review

I am pleased to present the NSW Law Reform Commission's Annual Report for 2023–2024.

In this year, the Commission commenced a review into the effectiveness of s 93Z of the *Crimes Act 1900* (NSW) in addressing serious racial and religious vilification. We also continued two other reviews of the law concerning serious road crime offences, and of the *Anti-Discrimination Act 1977* (NSW).

I am grateful for the invaluable contributions made by my colleagues, the Hon Justice Anna Mitchelmore and Kate Eastman AM SC over the reporting period.

I congratulate Kate on her appointment as Commissioner in August 2023. The Commission has benefitted greatly from her expertise and experience, especially in the areas of discrimination law, employment law and human rights.

As can be seen, the Commission presently has three major reviews on foot. This has placed a considerable burden on the Commission's staff. They have responded magnificently. I express my gratitude for their skill and dedication.

I also express my gratitude to all the legal bodies, community organisations and individuals who have made submissions to each of our reviews. Without exception, they have been insightful and of very great assistance in the carrying out of our work.



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 the NSW Government, through the Attorney General, on matters that the Attorney General refers to us.

In undertaking this work, we:

- research and analyse the operation of NSW law
- conduct comparative research into similar laws in other jurisdictions, and
- consult widely, including with members of the community, legal organisations, non-governmental organisations, academics and other experts.

Our recommendations are contained in formal reports to the Attorney General, which are tabled in NSW Parliament.

During the reporting year, the Commission consisted of a Chairperson and two part-time Commissioners.

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.

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.

Commissioner: Kate Eastman AM SC



Kate Eastman AM SC was appointed as a part-time Commissioner of the NSW Law Reform Commission on 30 August 2023.

She was admitted as a solicitor in 1990 and a barrister in 1998, and appointed Senior Counsel in 2012.

Kate’s areas of practice include human rights, employment law and public law. She has taught international law and human rights at the University of Technology Sydney and Monash University. In 2012, she was appointed Senior Fellow of the

Faculty of Law at Monash University.

In 2021, Kate was appointed a Member of the Order of Australia. In 2022 she was awarded a Doctor of Laws (Honoris causa), University of Technology Sydney.

Implementation and government responses

As at 30 June 2024, 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*

In our Annual Report 2022–2023, we referred to a project by the Standing Council of Attorneys-General towards developing a national access scheme for digital records after death or incapacity. *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.

The Standing Council of Attorneys-General agreed to discontinue this project on 22 September 2023, noting the complexities and challenges associated with developing a uniform scheme.¹

Engagement

We continued our social media engagement through X (formerly Twitter), posting about projects and submission processes. We also continued to send out a periodic email newsletter with updates about our work.

Members of the Commission and Secretariat staff attended the following events:

- Chairperson Tom Bathurst attended the second International Law Commissions Digital Roundtable, hosted by the Law Commission for England and Wales, on 4 July 2023.
- Alex Sprouster and Jackie Hartley attended the Applied Research in Crime and Justice Conference 2023, hosted by the NSW Bureau of Crime Statistics and Research in partnership with the Griffith Criminology Institute, on 14–15 August 2023.
- Sophie Sauerman attended the meeting of the Communities of Practice – Communications Professionals Working in Law Reform, hosted online by the Queensland Law Reform Commission on 10 April 2024.

1. Standing Council of Attorneys-General, *Communiqué (22 September 2023)* <www.ag.gov.au/about-us/publications/standing-council-attorneys-general-communications> (retrieved 23 August 2024).

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 accessory 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 91 preliminary submissions.

We conducted 10 targeted preliminary consultations.

We published a consultation paper on 11 December 2023, and received 73 submissions.

We will provide further updates on this project in the 2024–2025 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 received 95 preliminary submissions. We also conducted targeted initial consultations with agencies and academic experts.

We will provide further updates on this review in the 2024–2025 Annual Report.

Review of section 93Z of the *Crimes Act 1900* (NSW)

Under terms of reference dated 14 February 2024, we have been asked to expeditiously review and report on the effectiveness of section 93Z of the *Crimes Act 1900* (NSW) in addressing serious racial and religious vilification in NSW.

The terms of reference require us to consider matters including, but not limited to:

- the impact of racial and religious vilification on all parts of the NSW community
- criminal vilification offences in other Australian and international jurisdictions, and the desirability of harmonisation and consistency between New South Wales, the Commonwealth and other Australian States or Territories

- the availability of civil vilification provisions in the *Anti-Discrimination Act 1977* (NSW)
- the impacts on freedoms, including freedom of speech, association and religion
- the need to promote community cohesion and inclusion
- the views of relevant stakeholders as determined by the Commission, and
- any other matter the Commission considers relevant.

We received 42 submissions in response to the terms of reference.

We released an options paper on 7 June 2024. We received 23 submissions on the options paper as at 30 June 2024.

We will provide further updates on this review in the 2024–2025 Annual Report.

People

Staff

The NSW Law Reform Commission and Sentencing Council Secretariat is part of the Law Reform and Legal Services division in the Department of Communities and Justice. The following people worked in the Secretariat during the reporting period:

Name	Position
Dr Jackie Hartley	Policy Manager (job share)
Tanya Railton	Policy Manager (job share) (from April 2024)
Alexandra Sprouster	Policy Manager (job share) (to February 2024)
Simon Tutton	Policy Manager (February–June 2024)
Alexandra Hammond	Senior Policy Officer
Jonathan Lee	Senior Policy Officer (February–June 2024)
Sophie Sauerman	Senior Policy Officer
Laura Schultz	Senior Policy Officer
Joseph Waugh PSM	Senior Policy Officer
Julia Brieger	Policy Officer (March–June 2024)
Dr Nikki Edwards	Policy Officer
Carol Hoang	Policy Officer
Madison Thompson	Policy Officer
Rebecca Winder	Policy Officer (from June 2024)
Peter Hassmann	Graduate Policy Officer (August–November 2023)
Anna Williams	Research Support and Librarian

Interns

The Secretariat’s paid internship program takes place annually. The following student interns made significant contributions to our work over the reporting period.

Winter 2023

- Joseph Verity, University of Sydney
- Angela Xu, University of Sydney

Autumn/Winter 2024

- Jamie Cheeseman, Australian National University
- Rajiv Sharndil, Macquarie University
- Juwariya Syed, University of New South Wales
- Rebecca Wahl, University of Sydney

