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**ANNUAL REPORT  
AND  
STATEMENT OF AFFAIRS**

2001-2002

Queensland Law Reform Commission  
August 2002

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2001-2002

Queensland Law Reform Commission  
August 2002



## COMMISSIONERS<sup>1</sup>

Chairperson: **The Hon Mr Justice J D M Muir\***  
**The Hon Justice R G Atkinson\***

Members: **The Hon Justice D A Mullins**  
**Mr P D T Applegarth SC\***  
**Mr W G Briscoe\***  
**Ms A Colvin\***  
**Ms H A Douglas\***  
**Assoc Prof P J M MacFarlane\***  
**Mr G W O'Grady\***

## SECRETARIAT<sup>2</sup>

Director: **Ms P A Cooper**

Secretary: **Mrs S Pickett**

Senior Research Officer: **Ms C E Riethmuller**

Legal Officers: **Miss M T Collier**  
**Mrs C A Green** (part-time)  
**Ms C M Treloar** (part-time)

Administrative Officers: **Ms T L Bastiani**  
**Ms J F Braddy**

The Commission's premises are located on the 7th Floor, 50 Ann Street, Brisbane.  
The postal address is PO Box 13312, George Street Post Shop, Qld 4003.  
Telephone (07) 3247 4544. Facsimile (07) 3247 9045.  
E-mail address: [law\\_reform\\_commission@jag.qld.gov.au](mailto:law_reform_commission@jag.qld.gov.au)  
Internet home page address: <http://www.qlrc.qld.gov.au>

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<sup>1</sup> An asterisk indicates that the member held office for only part of the reporting period. The terms of individual members are set out at pp 20-23 of this Report.

<sup>2</sup> As at 30 June 2002.



28 August, 2002

The Hon R Welford MP  
Attorney-General and Minister for Justice  
Level 18, State Law Building  
50 Ann Street  
BRISBANE QLD 4000

Dear Attorney

I have pleasure in presenting to you the Annual Report of the Queensland Law Reform Commission for the year to 30 June 2002.

The reporting period has been one during which the membership of the Commission underwent a number of changes.

At the beginning of July 2001, there were three unfilled part-time member positions. Subsequent vacancies arose, with the consequence that there were five part-time positions vacant as well as the position of the full-time member. Mr Wayne Briscoe resigned as a part-time member in August; Mr Peter Macfarlane resigned as full-time member in December; and the appointment of the previous Chairman, the Honourable Mr Justice John Muir, expired on December 31. I would like to take this opportunity to thank those members, and particularly the Chair of the Commission, for their contribution to the work of the Commission and for their dedication and commitment to the law reform process.

Four new part-time members - Mr Peter Applegarth SC, Ms Alison Colvin, Ms Heather Douglas and Mr Gary O'Grady - were appointed for a three year period commencing on 21 December 2001. My appointment as Chairperson took effect from 1 January 2002. The full-time member's position remained unfilled at the end of the reporting period, but an appointment is expected in the near future. I am confident that the newly appointed members will continue the Commission's reputation for publications which demonstrate not only a high standard of legal scholarship but also a focus on issues of social justice.

The remuneration of the non-judicial part-time members was recently increased to more adequately reflect the important nature of the contribution made by, and the stature of, the Commissioners. Unfortunately the remuneration of the full time Commissioner is not comparable to the remuneration received by full time Commissioners in similar organisations, such as the Australian and New South Wales Law Reform Commissions and is a matter that remains to be addressed.

Although the vacancy rate during the reporting period inevitably impacted on its workload, the Commission produced three publications in that time. It completed a report on vicarious liability, a discussion paper on recognition of interstate and foreign grants of probate and letters of administration, and an issues paper on the practice, in a wrongful death claim by a surviving spouse, of discounting the spouse's damages to allow for the possibility that the claimant may subsequently enter into a new relationship of financially supportive cohabitation. A summary of the work undertaken by the Commission in the 2001-2002 financial year is set out at pages 7 - 19 of this Report.

The Commission was pleased to finalise with you the withdrawal of a number of outstanding references from a previous program, and to receive a new reference on the privilege against self-incrimination. Details of the Commission's current references are set out at pages 2 - 4 of this Report.

A highlight of the reporting period was the participation of three of the part-time members in the biennial Australasian Law Reform Agencies Conference, which was held in Darwin in May 2002. The theme of the conference was "Law Reform Agencies in the 21<sup>st</sup> Century". The conference provides an important opportunity for delegates to contribute to and learn about law reform processes and initiatives in other jurisdictions, and to meet with their counterparts in other law reform agencies not only in Australia but also in New Zealand, the Pacific, south-east Asia and the United Kingdom.

We look forward to the forthcoming twelve months as a period where the Commission can continue to make an important contribution to law reform in this State.

Yours sincerely

Justice Roslyn Atkinson  
**Chairperson**

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# **ANNUAL REPORT**

**2001-2002**

## **MISSION STATEMENT**

The mission of the Queensland Law Reform Commission is to meet the needs of the Queensland community by reviewing areas of law in need of reform, and making to Parliament through the Attorney-General recommendations for reform, based on extensive research, public consultation, impartiality, equity and social justice.

## **CONSTITUTION OF THE COMMISSION**

The Law Reform Commission is an independent statutory body which is constituted under the *Law Reform Commission Act 1968*.

## **FUNCTION OF THE COMMISSION**

The function of the Law Reform Commission as provided in the *Law Reform Commission Act 1968* is to keep under review the law applicable to Queensland with a view to its systematic development and reform having regard to its codification, the elimination of anomalies and of obsolete and unnecessary enactments, the reduction of the number of separate enactments, and generally the simplification and modernisation of the law.

## **MEMBERS**

Members of the Commission are appointed by the Governor in Council on the advice of the Attorney-General. The *Law Reform Commission Act 1968* provides that each person appointed to be a member shall be a person appearing to the Governor in Council to be suitably qualified by the holding of judicial office or by experience as a barrister or as a solicitor or as a teacher of law in a University.

## **SECRETARIAT**

The role of the Secretariat is to provide the Commission with high quality and effective administrative, secretarial and research support, to ensure that the

Commission's resources are effectively deployed in support of the Commission, and to meet Commission timetables with respect to provision of research material, publishing and printing, payment of accounts and provision of management information to the Commission. The Secretariat consists of the Director, the Senior Research Officer, two full-time Legal Officer positions, two Administrative Officers and the Commission Secretary.

## CONTACT DETAILS

The Commission's premises are located at: Level 7, State Law Building, 50 Ann Street, Brisbane, 4000. The address for correspondence is: PO Box 13312, George Street Post Shop, Brisbane Qld 4003.

Phone: (07) 3247 4544. Fax: (07) 3247 9045.

The e-mail address is: [law\\_reform\\_commission@jag.qld.gov.au](mailto:law_reform_commission@jag.qld.gov.au)

The Internet home page address is: <http://www.qlrc.qld.gov.au>

## THE WORK OF THE COMMISSION

The Commission undertakes the review of areas of law referred to it by the Attorney-General. Since its inception, the Commission has completed four programs of references:

First Program	Approved in August 1969.
Second Program	Approved on 15 February 1973.
Third Program	Approved on 8 September 1983.
Fourth Program	Approved in September 1990.

A Fifth Program of References was received from the Attorney-General in June 1996. After consultation between the Commission and the Attorney-General it was modified in 1997 to comprise the following items:

1. Review of the role of Justices of the Peace in Queensland, in particular the desirability of maintaining this office in the light of a changing society.
2. Review of the law on the enforcement of judgments for debts and fines.
3. Review of the *Limitation of Actions Act 1974*, with a view to potential amendment in order to:

- give due recognition to the enhanced capacity of the medical profession to indicate the cause of disease and injury arising from events occurring outside current limitation periods for the bringing of actions;
  - overcome difficulties caused by the general rule that a limitation period commences when the cause of action accrues;
  - provide for situations of latent damage to property or latent loss or damage resulting from reliance on negligent advice;
  - simplify the legislation by providing for a limitation period of general application.
4. Review the capacity of the judicial system, both in its criminal and civil aspects, to receive into evidence information stored and conveyed in electronic, magnetic or similar form.
  5. Review of the capacity of the judicial system to properly receive the evidence of children.
  6. Review of the law of real property, in particular easements and covenants.
  7. Review of the law relating to choses in action, particularly assignments.
  8. Review of the *Common Law Practice Act 1867*.
  9. Completion of the Uniform Succession Laws project for Australia as requested by the Standing Committee of Attorneys General.
  10. Review of the *Justices Act 1886* and the *Magistrates Court Act 1921* with a view to amalgamation of these Acts.

Items 2, 4, 6, 7, 8 and 10 of the Fifth Program were withdrawn by the Attorney-General on 28 February 2002.

The Commission received the following reference from the Attorney-General in July 2000:

Review whether the damages recoverable by the spouse or child of a deceased person in a wrongful death claim should be affected by -

- (a) in the case of a claim by the spouse:
  - (i) the remarriage of the spouse or the spouse's entry into a relationship of financially supportive cohabitation;
  - (ii) the prospects of the spouse's remarriage or of the spouse's entry into a relationship of financially supportive cohabitation; or

- (iii) the possibility that the relationship between the spouse and the deceased might have ended in divorce or might otherwise have ended;
- (b) in the case of a claim by the child:
  - (i) the remarriage of the surviving parent or the surviving parent's entry into a relationship of financially supportive cohabitation;
  - (ii) the prospects of the surviving parent's remarriage or of the surviving parent's entry into a relationship of financially supportive cohabitation; or
  - (iii) the possibility that the relationship between the surviving parent and the deceased might have ended in divorce or might otherwise have ended.

In June 2002, the Commission also received the following reference from the Attorney-General:

The privilege against self-incrimination (which applies to both documents and oral testimony) is sometimes abrogated by statute. Sometimes the statutory provisions contain both use and derivative use immunities and on other occasions only a use immunity. Sometimes the use immunity applies only to criminal proceedings and on other occasions to any proceedings. The Queensland Law Reform Commission is requested to:

- Examine the various statutory provisions abrogating the privilege in Queensland.
- Examine the bases for abrogating the privilege.
- Recommend whether there is ever justification for the abrogation of the privilege and, if so, in what circumstances and before what type of forum.
- If there are circumstances and forums where the abrogation may be justified, recommend whether the abrogation be accompanied by both a use and derivative use immunity, especially having regard to the limitations that a derivative use immunity may have on subsequent prosecutions.
- Recommend whether these immunities should apply to subsequent criminal proceedings only or to all subsequent proceedings (including civil or disciplinary proceedings).
- If there are circumstances and forums where the abrogation may be justified, recommend an appropriate statutory formula which can be used to rationalise existing provisions and as a model for future provisions.

## **RECENT PUBLICATIONS OF THE COMMISSION**

As at 30 June 2002, a total of 56 reports, 56 working papers and 37 miscellaneous papers had been completed.

The Commission completed four publications during the reporting period. They were:

- *Annual Report and Statement of Affairs 2000-2001* (August 2001).

- *Vicarious Liability* (R 56, December 2001).
- *Uniform Succession Laws: Recognition of Interstate and Foreign Grants of Probate and Letters of Administration* (WP 55, December 2001).
- *Damages in an Action for Wrongful Death: The Effect of Entering into, or the Prospect of Entering into, a Financially Supportive Relationship, and the Effect of the Likelihood of Divorce or Separation on the Assessment of Damages in a Wrongful Death Claim* (WP 56, June 2002)

The *Law Reform Commission Act 1968* requires that all formal reports submitted by the Law Reform Commission to the Attorney-General be tabled in Parliament. The Commission completed one formal report during the reporting period. Report 56 (*Vicarious Liability*) was tabled on 11 April 2002.

A list of all available Reports, Working Papers and Miscellaneous Papers produced by the Queensland Law Reform Commission is included in this Report at Appendix 3.

Most current publications of the Commission are available on the Commission's home page (<http://www.qlrc.qld.gov.au>).

## **MEETINGS OF THE COMMISSION**

During the reporting period 12 meetings of the full Commission were held.

## **BENEFITS**

In 1990, the Governor in Council determined that the annual remuneration for part-time members of the Commission who are not members of the judiciary should be \$12,600. In the reporting period, this determination applied to the remuneration received by Mr W Briscoe. Mr Briscoe's resignation from the Commission was effective from 30 August 2001. He therefore received a pro rata payment for the period from 1 July 2001 until that date.

As from 21 December 2001, the annual remuneration for part-time members of the Commission who are not members of the judiciary was increased to \$15,158. Mr P Applegarth, Ms A Colvin, Ms H Douglas and Mr G O'Grady, who were appointed to the Commission on 21 December 2001, received pro rata payments for the period from that date until 30 June 2002.

## **INTERNET HOME PAGE**

The Queensland Law Reform Commission launched its home page in March 1998.

The site address is: <http://www.qlrc.qld.gov.au>

Current publications of the Commission are available on the home page. Facilities have been provided for the lodgment of submissions in relation to the Commission's current references, as well as for the lodgment of orders for copies of Commission publications.

During its first year of operation, the Commission's home page had 2,617 visitors. The number of visitors increased during 1999 to 9,650 and in 2000 to 18,698. In the reporting year, 21,862 visitor sessions were recorded at an average of 65 per day. Almost one third of visitor sessions (30.99%) were from Australia. Overseas users accounted for 29.26% of visitor sessions, while 39.74% of visitor sessions were of unknown origin.

## CURRENT PROJECTS

### 1. THE EVIDENCE OF CHILDREN

In April 2001, the Attorney-General and Minister for Justice, the Hon R Welford MP, tabled the Commission's Report 55 Part 2 - *The Receipt of Evidence by Queensland Courts: The Evidence of Children*. The recommendations set out in this part of the Report represent the Commission's general scheme for facilitating the evidence of child witnesses. Because of a request by former Attorney-General, the Hon Denver Beanland MLA, that the Commission have regard to the Sturgess Report on sexual offences committed against children,<sup>3</sup> the Commission gave some emphasis in its recommendations to cases involving allegations of child abuse, and other particular situations where, in the view of the Commission, a child witness may feel especially vulnerable.

In formulating its recommendations, the Commission was guided by three objectives:

- to preserve the integrity of a child's evidence to the greatest extent possible;
- to reduce distress or trauma experienced by a child witness as a result of having to give evidence; and
- to ensure, in a criminal matter, that an accused against whom evidence is given by a child witness receives a fair trial.

Some of the recommendations contained in Part 2 of the Report (for example, the power to restrict inappropriate cross-examination and to prevent an unrepresented accused from cross-examining a child witness in person) had been previously published in Report 55 Part 1 (June 2000) and were implemented by the *Criminal Law Act Amendment Act 2000*.

The Commission intends to supplement its general scheme by a further report about the position of a number of special categories of child witness. That report will deal with witnesses who may be under some kind of disadvantage in addition to their age and vulnerability, as a result of which they may need further consideration beyond the general scheme put forward in Part 2 of the Report to ensure that they are able to give evidence effectively. These witnesses might include, for example, indigenous children and children from non-English speaking backgrounds, and children with a physical or mental disability which affects the way that they give evidence. It is envisaged that the report will also deal with children who are accused of having committed a criminal offence, and consider whether the general scheme should apply to them, or whether the general scheme should be modified in its application.

No further work on the reference was undertaken during the reporting period.

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<sup>3</sup> Sturgess DG, QC, Report, *An Inquiry into Sexual Offences Involving Children and Related Matters* (November 1985).

## 2. UNIFORM SUCCESSION LAWS

The Commission continues to lead the Uniform Succession Laws Project, which was initiated by the Standing Committee of Attorneys General with a view to developing uniform succession laws for the Australian States and Territories.

In 1995, the Commission, as the co-ordinating agency, asked the then Attorney-General to request his counterparts in each Australian jurisdiction to nominate a person or agency to represent that jurisdiction on a National Committee for Uniform Succession Laws. The National Committee presently includes representatives from the Australian Capital Territory Law Reform Commission, the Australian Law Reform Commission, the New South Wales Law Reform Commission, the Northern Territory Department of Justice and the Victorian Law Reform Commission, as well as a representative from Tasmania.

The project was initially divided into four parts:

- wills;
- family provision;
- administration of estates; and
- intestacy.

### a. Wills

In December 1997, the National Committee completed its *Consolidated Report to the Standing Committee of Attorneys General on the Law of Wills* (MP 29). That Report included model legislation to be used as the basis for reform by individual States and Territories. The model legislation made provision for court-authorized wills for minors who understand the implications of making a will, as well as for people (including minors) who lack testamentary capacity. It also included a number of provisions to give greater effect to a testator's intentions, and to remove some of the technical grounds on which wills have in the past been invalidated. These included provisions about the admissibility of extrinsic evidence to clarify a will, the court's power to dispense with the formal requirements for the execution of a will, and the court's power to rectify a will.

The *Wills Act* (NT), which commenced on 1 March 2001, is based closely on the model wills legislation. The *Wills Act 1997* (Vic) is also largely consistent with the model wills legislation.

### b. Family provision

In December 1997, the National Committee also completed its *Report to the Standing Committee of Attorneys General on Family Provision* (MP 28). One of the major recommendations made in that Report concerned eligibility to apply for family provision. Legislation in most jurisdictions specifies various categories of persons who may apply for family provision. The National Committee recommended that a

person should be able to apply for family provision if, having regard to certain specified criteria, the deceased had a responsibility to make provision out of the estate for that person. The National Committee also recommended the adoption of provisions, based on the New South Wales family provision legislation, enabling the court to designate certain property as part of the “notional estate” of the deceased and to order that provision be made out of the estate so designated.

### **c. Administration of estates**

The National Committee is presently working on the administration of estates. This stage of the project has been divided into two parts:

- The first part deals with general issues of administration, such as the appointment and removal of personal representatives, the powers, duties and liability of personal representatives, the vesting of property on the death of a person, the order of payment of debts, and the payment of legacies. A Discussion Paper on this topic was released in 1999: *Administration of Estates of Deceased Persons* (MP 37).
- The second part deals with the more specific issue of how a grant made in one jurisdiction may be recognised in another jurisdiction. At present, when a person dies leaving assets in two or more jurisdictions, it is necessary for the personal representative to obtain fresh authority to administer the estate in each of those jurisdictions. This authority may take the form of an original grant made by the Supreme Court of each jurisdiction. Alternatively, it may be possible to have a grant that has been made in one jurisdiction resealed by the Supreme Court of another jurisdiction, in which case the resealed grant has effect as if it were an original grant. In December 2001, the Commission released a Discussion Paper examining the issues in relation to the resealing and recognition of grants: *Recognition of Interstate and Foreign Grants of Probate and Letters of Administration* (WP 55).

The Discussion Paper proposed a uniform procedure for the resealing of a grant made in another Australian jurisdiction or overseas. At present, there is considerable divergence in the resealing legislation of the Australian States and Territories in relation to matters such as the persons entitled to apply for the resealing of a grant, the countries whose grants may be resealed, and the instruments that may be resealed.

The Discussion Paper also proposed a scheme, developed from earlier recommendations made by the Law Reform Commission of Western Australia, that would avoid altogether the need to reseal certain grants made in an Australian State or Territory. Under the proposed scheme, a grant made by the court of the jurisdiction in which the deceased was domiciled at the time of death would have effect in all Australian States and Territories as if it had been resealed in that jurisdiction.

Several conflict of laws issues were also raised for consideration, including whether the court's jurisdiction to make or reseal a grant should be founded on the presence of property within the jurisdiction.

Work has commenced on the final report on the administration of estates. However, some of the issues that will be addressed in that report overlap with issues arising in the context of a scheme involving the automatic recognition of certain grants. Accordingly, it is intended to deal separately with the more discrete question of a uniform procedure for the resealing of grants, and to give priority to the preparation of the final report on that issue. That report should be completed in 2003. At the same time, the National Committee will also work on the final report dealing with the broader issues relating to the administration of deceased estates, including whether certain grants should be recognised throughout Australia without having to be resealed.

### 3. VICARIOUS LIABILITY

On 11 April 2002, the Attorney-General tabled the Commission's Report No 56: *Vicarious Liability*.

The terms of the reference were to examine the law of vicarious responsibility, with particular reference to:

- (i) parent/child relationships;
- (ii) teacher/pupil relationships;
- (iii) employer/employee relationships;
- (iv) adult supervisor/child relationships.

The Report, which included draft legislation to give effect to its recommendations, examined the circumstances in which vicarious liability should be imposed, and a number of related issues.

A person may be held vicariously liable for a tort (a civil wrong - for example, negligence, defamation or trespass) committed by another person, even though the person on whom liability is imposed may have done nothing wrong. Vicarious liability is therefore to be contrasted with personal or direct liability, which involves an element of personal fault on the part of the person liable.

The principles generally put forward to explain the imposition of vicarious liability are:

- the need to provide an injured plaintiff with a financially viable defendant;
- the advancement of the economic interest of an enterprise through the employment of others;
- loss distribution; and
- deterrence of future harm.

However, in the view of the Commission, there is no single policy ground that can always be identified as a sufficient justification for imposing vicarious liability. In particular, the Commission considers that financial capacity to meet an award of damages is, on its own, an unacceptable basis for imposing vicarious liability and that it should be the overall nature of the relationship between the actual wrongdoer and the person whom it is sought to make liable that should determine whether the imposition of vicarious liability can be justified.

In the Report, the Commission recommended a number of changes to the law, including changes in relation to:

- the liability of an employer for a tort committed by an employee who has been lent - for example, on secondment or by way of a hiring agreement - to another employer;
- the liability of the State for a tort committed by an employee or a person in the service of the State who is performing a duty conferred not by the State, but by law, and who exercises an independent discretion in the performance of that duty; and
- the rights of indemnity and contribution between an employer and an employee in circumstances where the employer is vicariously liable for the tort of the employee.

The Commission's major recommendations are summarised below.

- **Vicarious liability in the workplace**
  - a. **Employees and independent contractors**

At present, vicarious liability is imposed on an employer for the torts of an employee committed in the course and scope of the employment. However, a principal is not vicariously liable for the torts of an independent contractor.<sup>4</sup>

\* ***Who is an employee?***

The distinction between an employee and an independent contractor is vital to the law of vicarious liability. However, there is no general statutory definition of "employee" for this purpose. Whether a person who has committed a tort is an employee or an independent contractor is determined by the case law, taking into account the particular circumstances of each individual situation. Courts apply a "multi-facet" test, looking at factors such as the degree of control which can be exercised over the worker, arrangements for payment and taking leave, and provision of tools or equipment.

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<sup>4</sup>

A principal may, in certain circumstances, be liable for the tort of an independent contractor if the independent contractor was acting as the principal's agent. However, in this situation, the liability of the principal is personal rather than vicarious.

The Commission did not support the introduction of a statutory definition of “employee” in this context. Although it acknowledged a degree of uncertainty in the present situation, it was concerned that it would be difficult to formulate a definition sufficiently precise to distinguish between a worker who is so closely associated with the enterprise that the owner of the enterprise should be vicariously liable for his or her torts, and a worker who operates his or her own enterprise, contracting for the provision of labour or services. It was also concerned that the certainty of a statutory definition would be obtained at the cost of the current flexibility to deal with varying types of employment relationships and the changing nature of work practices.

**The Commission recommended that there should be no legislative change to the common law concerning the determination of whether a worker is an employee or an independent contractor.**

\* ***Vicarious liability for the torts of an independent contractor***

The Commission considered whether legislation should be enacted to extend the imposition of vicarious liability to the torts of independent contractors. It concluded that the policy considerations that justify the imposition of vicarious liability in the employer/employee relationship do not apply to the relationship between a principal and an independent contractor so as to justify making principals vicariously liable for the torts of independent contractors they engage.<sup>5</sup> It was of the view that the flexibility of the existing test for distinguishing between an employee and an independent contractor allowed liability to be imposed where sufficient connection could be shown between the person who committed the tort and the employing enterprise.

**The Commission recommended that there should be no change to the common law concerning the liability of a principal for the tort of an independent contractor.**

**b. Liability for the torts of a lent employee**

In the absence of express legislation to the contrary, an employer who lends an employee - for example, on secondment or by way of a hiring agreement - to another employer is vicariously liable for a tort committed by the employee while carrying out work for the “borrowing” employer, unless the “lending” employer can prove that, at the time the tort was committed, the employee had effectively become the employee of the “borrowing” employer.

The Commission was concerned that the present position, under which liability for the torts of a lent employee may sometimes be transferred from the “lending” to the “borrowing” employer, might make it difficult for a plaintiff to identify the correct defendant and that the resulting need to join both the “lending” and “borrowing” employers as defendants would make litigation more complex and could hinder a

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<sup>5</sup> However, the principal may be personally liable for a tort committed by an independent contractor. See note 4 above.

negotiated settlement of the plaintiff's claim.

The Commission considered that greater certainty could be achieved by legislation providing that the "lending" employer remained vicariously liable for the torts of the lent employee. Such a provision would not expose a "lending" employer to significantly greater risk of litigation than already exists because the onus of proving the transfer to the "borrowing" employer is heavy and difficult to meet; the cost of insurance against loss or injury caused by the lent employee can be absorbed into hiring charges; and the "lending" employer may be able to impose on the "borrowing" employer a contractual obligation to indemnify the "lending" employer against loss or liability incurred as a result of a tort committed by the employee.

**The Commission recommended that legislation should be introduced to provide that, where an employer lends or lets on hire an employee's services to another person and the employee commits a tort while there continues to exist a contract of service between the employer and the employee, the employer is vicariously liable for the tort to the same extent, if any, that the employer would have been vicariously liable if the employer had not lent or let the employee's services to another person.**

**c. Liability of the State**

**\* State employees**

If a State employee commits a tort in the course of his or her employment, the State is generally in the same position as any other employer and is vicariously liable for the tort. However, the State is not liable if the employee commits the tort in the exercise of an independent discretion conferred by law. The independent discretion exception is explained below.

**\* Persons in the service of the State**

There are other persons who perform certain work or functions for the State, but who are not under a contract of employment with the State. They may, for example, hold office by virtue of appointment by the executive council to a board or commission. They are not employees for the purposes of the law of vicarious liability and the State is not vicariously liable for a tort committed in the performance of the work or the exercise of the functions.

The Commission concluded that the State should be vicariously liable for a tort committed by a person in the service of the State to the same extent that the State would be liable if the person were a State employee.

**\* The exercise of an independent discretionary function**

The independent discretionary function principle is an exception to the general rule that an employer is vicariously liable for a tort committed by an employee in the course of the employment. The effect of the principle is that an employer is not

vicariously liable for a tort committed by an employee in the course of the employment if the employee is performing a duty or exercising an authority conferred on the employee, not by the employer, but by common law or statute.

The basis for the immunity is that, where an employee must exercise an independent discretion in the exercise of his or her obligations, the employer has no authority either to discharge the duty or control the performance of the duty by the employee.

Although the independent discretionary function principle usually applies to State employees or persons in the service of the State, there has been some doubt about its application in the private sector since two members of the High Court have suggested that its operation is not limited to the torts of public officers.

The principle has been extensively criticised, particularly in relation to torts committed by public officers, because its effect is either to impose sole liability on the employee who committed the tort or, where the employee is unable to satisfy a judgment, to leave the victim of the tort without financial recompense.

In two Australian jurisdictions (New South Wales and South Australia), the principle has been entirely abrogated by statute. The Australian Law Reform Commission recently recommended that it should be abolished in relation to the Commonwealth.<sup>6</sup> In the other States and Territories, including Queensland, it has been abrogated only in relation to police officers who were historically regarded, where their duties related to preservation of the peace or the apprehension of offenders, as exercising an independent discretion, so that the State could not be held liable for torts committed in the performance of those functions.

The Commission concluded that the State should not be able to avoid liability on the ground that a tort committed by an employee or a person in the service of the State was done in the exercise of an independent discretion conferred by law. The Commission also believed that the position in relation to private sector employees should be clarified by legislation.

**The Commission recommended that legislation should be introduced to provide that vicarious liability can be imposed on all employers, including the State, for a tort committed in the exercise of an independent discretion, and that the State is vicariously liable for a tort committed by a person in the service of the State in the performance of that service, whether or not the person was exercising an independent discretion.<sup>7</sup>**

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<sup>6</sup> It has also been abrogated in the United Kingdom, New Zealand and most Canadian provinces.

<sup>7</sup> Implementation of the Commission's recommendations would involve certain amendments to the *Police Service Administration Act 1990* (Qld).

- **Issues concerning indemnity and contribution**

- a. **The rule in *Lister v Romford Ice***

The rule in *Lister v Romford Ice*<sup>8</sup> is a common law rule which, subject to certain exceptions and statutory modifications, still applies in Queensland although it has been widely criticised on the grounds that it is harsh and unfair, that it does not represent the expectations of employers and employees and that it is not conducive to good industrial relations.

The rule originally enabled an employer who is vicariously liable for the tort of an employee to claim an indemnity from the employee, thus requiring the employee to compensate the employer (or, where relevant, the employer's insurer) for damages the employer (or insurer) had to pay as a result of the employee's tort. However, the effect of the rule has been significantly limited by Commonwealth legislation<sup>9</sup> which allows an insurer, acting in the place of an employer, to enforce an indemnity only in circumstances where the conduct of the employee amounted to serious or wilful misconduct.

The rule does not apply if the employer has required an employee to engage in an activity which is illegal or in breach of the employee's employment contract.

Certain State employees may be indemnified by the State, as a result of either specific legislation or government policy, for any liability they may incur because of a tort committed in the performance of their duties.

Legislation in New South Wales, South Australia and the Northern Territory has abrogated the right of employers to claim an indemnity from employees and has provided employees with a statutory right of indemnity from their employer.

The Commission concluded that, except where the conduct of an employee amounted to serious and wilful misconduct, the rule in *Lister v Romford Ice*, to the extent that it still applies in Queensland, defeats the purpose of the law of vicarious liability, because it can result in an employee having to pay personally any damages awarded as compensation for the consequences of the employee's tortious conduct.

**The Commission recommended that legislation should be introduced to abolish the rule in *Lister v Romford Ice*, except in situations where the conduct of an employee amounted to serious and wilful misconduct, and to provide that an employer, including the State, must indemnify an employee, including a person in the service of the State, in relation to liability incurred for a tort committed by the employee or person in the service of the State in the course of the employment or service, unless the conduct of the employee or the person in the service of the State amounted to serious and wilful misconduct.**

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<sup>8</sup> *Lister v Romford Ice and Cold Storage Ltd* [1957] AC 555.

<sup>9</sup> *Insurance Contracts Act 1984* (Cth) s 66.

## **b. Contribution**

If an employer is found to be vicariously liable for a tort committed by an employee, the employer may, under existing legislation, claim contribution from the employee.

The Commission concluded that it would be inconsistent to remove the right of an employer to claim an indemnity but to leave intact the employer's right to contribution from an employee in respect of damages awarded for loss or injury resulting from a tort committed by the employee in the course of the employment.

**The Commission recommended that legislation should be introduced to provide that an employer, including the State, may not claim contribution from an employee, including a person in the service of the State, in relation to liability incurred by the employer for a tort of the employee or person, unless the conduct amounted to serious and wilful misconduct.**

- **Liability for the torts of children**

At present, the common law does not impose vicarious liability on parents for torts committed by their children, or on teachers or other adult supervisors for torts committed by children in their care. The Commission's terms of reference required the Commission to consider whether the law of vicarious liability should be extended to include these relationships.

Vicarious liability can be imposed only in circumstances where the person who committed the tort can be held liable for the loss or injury it causes. Although there is no age limit below which a child cannot be found liable for tortious conduct, the younger the child when the damage occurs the more difficult it is likely to be to show that the conduct did in fact constitute a tort. For example, in an action for negligence, which involves a breach of the duty of care, the standard of care demanded of a child defendant is not that of a reasonable adult, but only that to be reasonably expected of a child of the defendant's age, intelligence and experience. In relation to an intentional tort, such as trespass to the person, it is necessary to show that the child had the required intention. Although this is the same test as for an adult, it may be difficult to prove in the case of a young child.

Apart from this difficulty, the Commission concluded that vicarious liability should not be imposed on adults for torts committed by their own children or by children in their care. The Commission was of the view that such an extension of the law of vicarious liability could not be justified on the basis of the policy considerations that underlie the imposition of vicarious liability.

However, this does not mean that an injured plaintiff will be left without a remedy. A parent, teacher or other adult supervisor, although not vicariously liable, may be personally liable for damage caused by the conduct of a child if it can be shown that there was a breach of the duty to take reasonable care in the supervision of the child. A school authority also owes a duty to exercise reasonable care in the supervision of its pupils so as to avoid loss or injury to third persons as a result of the

conduct of a pupil. In the case of an injured school child, a school authority owes a non-delegable duty of care to protect pupils against the risk of injury.

**The Commission recommended that there should be no legislative change to the common law concerning the vicarious liability of parents for the torts of their children or of teachers and other adult supervisors for torts committed by children in their care.**

#### 4. DAMAGES IN AN ACTION FOR WRONGFUL DEATH

In July 2000 the Commission was requested to review whether the damages recoverable by a spouse or child of a deceased person in a wrongful death claim should be affected by -

- (a) in the case of a claim by a spouse:
  - (i) the remarriage of the spouse or the spouse's entry into a relationship of financially supportive cohabitation;
  - (ii) the prospects of the spouse's remarriage or entry into a relationship of financially supportive cohabitation; or
  - (iii) the possibility that the relationship between the spouse and the deceased might have ended in divorce or might otherwise have ended; or
- (b) in the case of a claim by a child:
  - (i) the remarriage of the surviving parent or the surviving parent's entry into a relationship of financially supportive cohabitation;
  - (ii) the prospects of the surviving parent's remarriage or of the surviving parent's entry into a relationship of financially supportive cohabitation; or
  - (iii) the possibility that the relationship between the surviving parent and the deceased might have ended in divorce or might otherwise have ended.

When a person dies as a result of a wrongful act of another person, certain people can sue the wrongdoer for compensation for the death of the deceased. This is known as a wrongful death action.

Damages in a wrongful death action are based on the financial value of the support and services that the deceased would have been expected to provide to the claimants if he or she had not been killed. This calculation involves a consideration of various contingencies. For example, if the deceased had lived, the level of financial support or services he or she provided to the claimants may, for a number of reasons, have been less than anticipated. The calculation must also take into account future events which may affect the level of compensation to which the claimants are entitled.

As a result, in an action for the benefit of a surviving spouse (including a de facto partner), the estimated value of the loss of financial support and loss of services resulting from the wrongful death may be discounted to take into account a number of factors, including:

- the possibility that, if the deceased had not died, the relationship between the deceased and the surviving spouse may have ended in divorce or separation; and
- the possibility that the surviving spouse may, after the damages have been paid, enter into a new relationship of financially supportive cohabitation.

A wrongful death action does not provide compensation for the grief and sorrow that the claimants have suffered. The process of assessing damages in a wrongful death claim is intended to ensure that the surviving spouse and children of the deceased receive adequate financial compensation, whilst at the same time guarding against overcompensation. The risk of overcompensation may arise in two situations - first, where the financial support or services provided by the deceased would not have continued even if the deceased had lived; secondly, where the financial support or services provided by the deceased have been, or are likely to be, replaced in whole or in part by financial support or services from a subsequent relationship entered into by the surviving spouse after the death of the deceased.

The risk of overcompensation is relevant because, in many cases, the source of compensation is an insurance policy. Insurance is generally recognised as an effective means of distributing the losses arising from modern living conditions - for example, motor vehicle accidents and workplace injuries. Recently, concerns have been expressed about the continued ability of the insurance industry to meet increasing claims and about the cost to the community as a result of rising premiums. Any change to the existing system of assessing damages would therefore need to take into account the potential impact on a cost which is ultimately borne by the community at large.

However, the practice of discounting a surviving spouse's damages for the prospect that he or she will enter a new financially supportive relationship has been widely criticised.

It has been said that it is demeaning to the surviving spouse, that it is distasteful for the judge and that it is based on speculation.

It has also been argued that, because of the changes that have taken place in the nature of domestic relationships, in employment trends and in accepted social norms, it relies on outmoded assumptions and stereotypes. Whereas, in the past, most wrongful death claims involved consideration of the widow's remarriage, it can no longer be assumed that the surviving spouse of a person who has been wrongfully killed will be a dependent widow.

It has also been suggested that the practice may operate in a way that places women at a disadvantage. Many of the decided cases dealing with the application of

the discount have concerned surviving spouses who are female. The reason for this may simply be that, in the past, the majority of wrongful death claims have been made by women and there have been relatively few claims by surviving male spouses. However, it may also be that the discount is more readily applied when the surviving spouse is female.

The Commission's terms of reference require it to review the existing practice, in a wrongful death claim, of discounting a surviving spouse's damages for the possibility that the spouse's relationship with the deceased may have ended in separation or divorce, or for the prospect that the spouse may enter a new financially supportive relationship. The terms of reference also call for consideration of these issues in relation to a claim by a dependent child of the deceased.

In June 2002, the Commission published an Issues Paper for consultation purposes. The Issues Paper outlined the present law, its underlying principles and the arguments for and against change. The Issues Paper also set out the situation in a number of comparable jurisdictions and suggested a number of possible options for reform.

# WHO'S WHO AT THE COMMISSION

## MEMBERS

*The Hon Mr Justice J D M Muir BA LLB - Chairperson*

15 June 2001 - 31 December 2001

The Honourable Mr Justice Muir was appointed as a Judge of the Supreme Court of Queensland in 1997. His Honour was previously Queen's Counsel with an extensive commercial practice.

Mr Justice Muir is a member of the Centre for Commercial and Property Law Advisory Panel (QUT), and of the Committee of the Bar Practice Centre.

Mr Justice Muir was first appointed as Chairperson of the Commission for a three year term commencing on 20 March 1998. After the expiry of that term in March 2001, Mr Justice Muir was reappointed for a further term until 31 December 2001.

*The Hon Justice R G Atkinson BA (Hons) BEd St LLB (Hons) - Chairperson*

1 January 2002 - 20 December 2004

Justice Atkinson was admitted to the Bar in 1987 and had a broad general public and private litigation practice in Courts and tribunals including constitutional, administrative, corporate and industrial cases.

While in practice at the Bar, Her Honour was also the first member and then the first President of the Queensland Anti-Discrimination Tribunal, a member of and then Deputy Chair of the Queensland Law Reform Commission, Hearing Commissioner for the Human Rights and Equal Opportunity Commission and member of the Social Security Appeals Tribunal.

Her Honour was appointed a Judge of the Supreme Court of Queensland on 3 September 1998. She is also President of the International Commission of Jurists (Qld branch) and member of the Queensland University of Technology Faculty Advisory Committee for Law Courses.

*The Hon Justice D A Mullins BCom LLB (Hons) LLM (Adv)*

1 October 1999 - 30 September 2002

Justice Mullins was admitted as a solicitor in 1980 and worked for a Brisbane law firm for four years. She was then admitted as a barrister and was in private practice in Queensland from June 1984 until her appointment as a Judge of the Supreme Court of Queensland on 16 March 2000. Her practice at the Bar was predominantly in matters in the commercial and property areas and in estates. Justice Mullins was made a Senior Counsel in 1998. She was a part-time member of the Queensland Building Tribunal from December 1994 until March 2000.

Justice Mullins was first appointed to the Commission for a three year term commencing on 12 July 1996. After the expiry of that term in July 1999, Justice Mullins was reappointed in October that year for a further three year term.

*Mr P D T Applegarth SC BA LLB (Hons) BCL (Oxon)*

21 December 2001 - 20 December 2004

Mr Applegarth was admitted as a solicitor in 1983. In 1985 he was awarded the degree of Bachelor of Civil Law from the University of Oxford. He has practised at the Queensland Bar since 1986 and was appointed a Senior Counsel in 2000.

Mr Applegarth lectures at the Queensland University of Technology, Griffith University and the Bar Practice Centre on subjects which include defamation law and Federal Court practice. Between 1998 and 2001 Mr Applegarth was a member of the Board of Legal Aid Queensland. He is, and has been for many years, an Executive Member of the Queensland Council for Civil Liberties.

*Wayne Briscoe LLB (Hons) MA (Calif)*

4 February 2000 - 30 August 2001

Mr Briscoe graduated with Honours in Law from the University of Tasmania, where he was awarded the Butterworths prize in Criminology in 1978 and the Sir Henry Baker Memorial Fellowship in 1982 for study into Juvenile Justice in Tasmania. He has a Master's degree in Criminal Justice from the California State University, Sacramento.

Mr Briscoe worked as a barrister and solicitor in Hobart before being appointed as Research Director and full-time member of the Law Reform

Commission of Tasmania from 1984 to 1988 and Defender of the Fund of the Marshall Islands Nuclear Claims Tribunal from 1988 to 1990.

Mr Briscoe has lectured and tutored in various subjects at the University of Tasmania Law School, Murdoch Law School in Perth and the Queensland University of Technology Law School.

He was Senior Research Officer of the Law Reform Commission of Western Australia from 1991 to 1993.

Mr Briscoe initially joined the Queensland Law Reform Commission on 4 January 1993 as a full-time member. He resigned on 4 June 1999 and was re-appointed as a part-time member on 4 February 2000. Mr Briscoe resigned from the Commission on 30 August 2001.

*Ms A Colvin BA LLB (Hons)*

21 December 2001 - 20 December 2004

Ms Colvin was admitted as a solicitor of the Supreme Court of Victoria in 1990 and of the Supreme Court of Queensland in 1992.

She has worked as a solicitor at the Aboriginal and Torres Strait Islander Legal Service and at Queensland Advocacy Inc. She has also been a case manager at the National Native Title Tribunal.

She is currently a conference registrar at the Administrative Appeals Tribunal and a member of the Mental Health Review Tribunal.

*Ms H A Douglas BA LLB LLM*

21 December 2001 - 20 December 2004

Ms Douglas was admitted as a barrister and solicitor in 1990 and practised criminal law, firstly at a Melbourne law firm and then from 1992 at the Aboriginal Legal Service in Alice Springs.

Since 1996 Ms Douglas has worked at Griffith University Law School, where she is a lecturer. Her teaching areas currently include technology and the law and criminal law. For five years Ms Douglas co-ordinated a pre-law program for Aboriginal students. She is the author of a number of articles and publications.

Ms Douglas has been a member of the management committees at Fitzroy Legal Service, Women's Legal Resource Centre (Melbourne), Domestic Violence Legal Help (Alice Springs) and Caxton Legal Service.

*Peter MacFarlane BA BLegS LLM - Full time member*

10 January 2000 - 28 December 2001

Associate Professor Peter MacFarlane joined the Commission on secondment from the Queensland University of Technology Law School where he lectured in the areas of Torts, Medico-Legal Issues and Professional Responsibility. He is author and co-author of a number of books and articles, including contributions to *The Laws of Australia* (LBC) and *Halsbury's Laws of Australia* (Butterworths).

Associate Professor MacFarlane has been admitted to practice as a barrister in New South Wales and Queensland.

Although appointed for a three year period, Associate Professor MacFarlane resigned his position as full-time member in December 2001 in order to take up a position at the University of the Southern Pacific in Vanuatu.

*Mr G W O'Grady BSc LLB LLM*

21 December 2001 - 20 December 2004

Mr O'Grady was admitted to practice as a barrister of the Supreme Court of Queensland in 1983 and is admitted to the High Court of Australia. He is also a barrister and solicitor of the Supreme Court of Vanuatu.

Prior to commencing full-time practice at the Bar, Mr O'Grady was a lecturer in law at the University of Queensland for several years. He continued as a part time law lecturer at that university until 1992. He is currently a lecturer in the Bar Practice Course at the Queensland University of Technology.

His legal interests include personal injury law, company law, taxation, bankruptcy and commercial law, including trade practices, and he has published numerous papers and articles and contributed to several books in these areas.

**SECRETARIAT**

*Penny Cooper BA LLB LLM - Director*

Ms Cooper is admitted to practice as a barrister of the Supreme Court of Queensland.

Initially, Ms Cooper was appointed as Principal Legal Officer of the Commission in 1991. In 1994, she was appointed as a full-time Commission

member for a period of three years. Upon the expiration of that period, she resumed her role within the Commission Secretariat.

Prior to her appointment at the Commission, Ms Cooper tutored and lectured in law at the University of Queensland. She has a continuing interest in tertiary education, particularly of young women, through her involvement with the Council of the Women's College within the University of Queensland, of which she has been President since 1995.

Ms Cooper has presented numerous papers in Queensland and at national and international conferences on topics related to Commission references.

*Claire Riethmuller BA LLB (Hons) - Senior Research Officer*

Ms Riethmuller graduated with First Class Honours in Law from the University of Queensland in 1986, having been awarded the Women Lawyers' Association Prize.

Ms Riethmuller was admitted to practice as a solicitor of the Supreme Court of Queensland in 1988, and worked as a solicitor at Minter Ellison, practising in the areas of commercial litigation and professional indemnity litigation, before joining the Commission.

In September 1994 Ms Riethmuller was appointed as Director of the Commission. Upon Ms Cooper's return to that position in August 1997, Ms Riethmuller was appointed to the position of Senior Research Officer.

*Sharyn Pickett - Commission Secretary*

Ms Pickett was appointed Secretary of the Commission in September 2000. She has been a member of the staff of the Department of Justice and Attorney-General since March 1996. At the time of her appointment she was acting as a Senior Management Accountant in the Financial Management Branch of the Department.

*Mary Collier LLB (QUT) - Legal Officer*

Miss Collier graduated with a Bachelor of Laws degree from the Queensland University of Technology in 1994. From 1995 to 1998 she worked with Insurance Broker, Gordon Wilson and Associates, gaining extensive experience in corporate insurances, specialising in marine insurance risks. In 1999 she accepted a position in Human Resources with the Queensland Police Service where she remained until her commencement with the Commission.

Miss Collier is presently studying towards a Graduate Diploma of Applied Finance with the Securities Institute of Australia.

*Cathy Green BSc LLB - Legal Officer*

Mrs Green served two periods of secondment at the Commission before being appointed on a permanent basis in May 2002.

Mrs Green graduated with a Bachelor of Science degree from the University of Queensland in 1984, and from 1984 until early 1990 she worked as a research scientist at the Queensland Institute of Medical Research.

Mrs Green graduated with a Bachelor of Laws degree from the Queensland University of Technology in 1996, having been awarded the Justin Geldard Memorial Prize. She was admitted to practice as a barrister of the Supreme Court of Queensland in 1996.

Mrs Green previously worked in the Office of the Director of Public Prosecutions and as a research officer at the Parliamentary Library.

*Cheryl Ann Treloar BCom LLB (Hons) Grad Dip Lib & Inf Studies - Legal Officer*

Ms Treloar was admitted as a solicitor of the Supreme Court of Queensland in 1994. Prior to joining the Commission in February 1998 she worked as a solicitor in private practice and as a Research Fellow in Law at Griffith University. She has a post-graduate qualification in Library Science from the Queensland University of Technology.

*Terri Bastiani and Jane Braddy - Administrative Officers*

The Commission's Administrative Officers are Ms Terri Bastiani and Ms Jane Braddy.

The Administrative Officers are responsible for a wide range of secretarial and administrative functions of the Commission, including the word processing and desk top publishing involved in the production of the majority of the Commission's publications.

## APPENDIX 1

### LEGISLATIVE ACTION ON REPORTS

No.	Title	Date of Report	Date Report Tabled	Background Papers	Legislation Implementing the Commission's Recommendations (in whole, in part, or with alterations)
R 56	Vicarious Liability	December 2001	11.04.02	WP 48 1995	
R 55	The Receipt of Evidence by Queensland Courts: The Evidence of Children (Part 2)	December 2000	05.04.01	WP 53 1998	
R 55	The Receipt of Evidence by Queensland Courts: The Evidence of Children (Part 1)	June 2000	03.07.00	WP 53 1998	<i>Criminal Law Amendment Act 2000</i> (Act 43 of 2000. Assent 13.10.00)
R 54	The Role of Justices of the Peace in Queensland	December 1999	31.05.00	WP 51 1998 WP 54 1999	
R 53	Review of the <i>Limitation of Actions Act 1974</i> (Qld)	September 1998	22.12.98	WP 50 1997 WP 49 1997	
R 52	The Law of Wills	December 1997	23.12.97	MP 10 1994 WP 46 1995 MP 15 1996 MP 19 1996 MP 29 1997	
R 51	Consent to Health Care of Young People Vols 1, 2, & 3	December 1996	30.04.97	MP 2 1993 MP 6 1993 MP 7 1993 WP 42 1994 MP 14 1995 WP 44 1995 WP 44A 1995 MP 17 1996	
R 50	Minors' Civil Law Capacity	December 1996	25.03.97	WP 45 1995	<i>Residential Tenancies Amendment Act 1998</i> (Act 29 of 1998. Assent 18.5.98)

No.	Title	Date of Report	Date Report Tabled	Background Papers	Legislation Implementing the Commission's Recommendations (in whole, in part, or with alterations)
R 49	Assisted and Substituted Decisions: Decision-Making by and for People with a Decision-Making Disability Vols 1, 2, & 3	June 1996	07.08.96	WP 43 1995 WP 43A 1995 WP 38 1992 MP 1 1991	<i>Powers of Attorney Act 1998</i> (Act 22 of 1998. Assent 14.5.98) <i>Guardianship and Administration Act 2000</i> (Act 8 of 2000. Assent 20.4.00)
R 48	De Facto Relationships: Claims by Surviving De Facto Partners under the <i>Common Law Practice Act 1867</i> for Damages for Wrongful Death	November 1994	25.11.94	MP 8 1994	<i>Common Law Practice and Workers' Compensation Amendment Act 1994</i> (Act 85 of 1994. Assent 2.12.94)
R 47	Female Genital Mutilation	16.09.94	18.10.94	MP 7 1993 WP 42 1994	<i>Criminal Law Amendment Act 2000</i> (Act 43 of 2000. Assent 13.10.00)
R 46	The <i>Freedom of Information Act 1992</i> Review of Secrecy Provision Exemption	22.03.94	22.03.94	MP 3 1993	<i>Freedom of Information (Review of Secrecy Provisions Exemption) Amendment Act 1994</i> (Act 34 of 1994. Assent 12.08.94)
R 45	The Assessment of Damages in Personal Injury and Wrongful Death Litigation: Griffiths v Kerkemeyer Section 15C <i>Common Law Practice Act 1867</i>	08.10.93	16.11.93	MP 4 1993 MP 5 1993	No changes recommended
R 44	De Facto Relationships	30.06.93	15.07.93	WP 36 1991 WP 40 1992	<i>Property Law Amendment Act 1989</i> (Act 89 of 1999. Assent 21.12.99)
R 43	The Bail Act 1980	28.06.93	15.07.93	WP 35 1991 WP 41 1993	
R 42	Intestacy Rules	07.06.93	15.07.93	WP 37 1992	<i>Succession Amendment Act 1997</i> (Act 54 of 1997. Assent 16.10.97)
R 41	The Protection of Statements Made to Religiously Ordained Officials	02.04.91	09.04.91	Nil	
R 40	Consolidation of <i>Real Property Acts</i>	March 1991	07.04.91	WP 32 1990	<i>Land Title Act 1994</i> (Act 11 of 1994. Assent 07.03.94)
R 39	Henry VIII Clauses	29.06.90	05.12.90	WP 33 1990	<i>Legislative Standards Act 1992</i> (Act 26 of 1992. Assent 01.06.92)
R 38	Report on the <i>Oaths Act</i>	31.03.89	07.06.90	WP 31 1988	

No.	Title	Date of Report	Date Report Tabled	Background Papers	Legislation Implementing the Commission's Recommendations (in whole, in part, or with alterations)
R 37	Report on a Bill to Amend the <i>Property Law Act 1974</i>	17.09.87	07.06.90	WP 30 1986	<i>Property Law Act Amendment Act</i> (Act 54 of 1990. Assent 03.09.90)
R 36	Report on a Bill to Alter the Civil Jurisdiction of the District Court of Queensland	20.12.85	07.06.90	WP 29 1985	<i>District Courts Act and Other Acts Amendment Act 1989</i> (Act 40 of 1989. Assent 05.05.89)
R 35	Report on a Bill to Amend and Reform the <i>Jury Act</i> , the <i>Justices Act</i> and the Criminal Code insofar as those Acts Relate to Committal Proceedings and Trial by Jury in Criminal Courts	25.10.85	07.06.90	WP 28 1984	
R 34	Report on a Bill to Establish Limited Liability Partnerships	22.01.85	07.06.90	WP 27 1984	<i>Partnership (Limited Liability) Act 1988</i> (Act 78 of 1988. Assent 11.11.88)
R 33	Report on a Bill to Prevent the Avoidance of Civil Liability in Cases of Death or Personal Injury Caused by Negligence	26.10.84	07.06.90	WP 26 1984	
R 32	Report on a Bill to Consolidate, Amend and Reform the <i>Supreme Court Acts</i> and Ancillary Acts Regulating Civil Proceedings in the Supreme Court	1982	07.06.90	WP 24 1982	
R 31	Report on an Examination of the Imperial Statutes in Force in Queensland	23.09.81	07.06.90	WP 23 1979	<i>Imperial Acts Application Act 1984</i> (Act 70 of 1984. Assent 12.10.84)
R 30	Report on a Draft Associations Incorporation Act	01.02.80	07.06.90	WP 22 1978	<i>Associations Incorporation Act 1981</i> (Act 74 of 1981. Assent 7.10.81)
R 29	Report on A Bill to Repeal <i>The Second Hand Wares Act of 1921</i> and to Update Legislation Concerning Dealers and Collectors	03.01.80	07.06.90	WP 21 1978	<i>Second Hand Dealers and Collectors Act 1984</i> (Act 59 of 1984. Assent 15.5.84)
R 28	Report on Matters Arising out of the Report of the Committee of Inquiry into the Enforcement of the Criminal Law in Queensland (The Lucas Inquiry)	17.05.79	07.06.90	Nil	
R 27	Proposals to Amend Practices of Criminal Courts	08.12.78	07.06.90	WP 19 1977	
R 26	Report on an Examination of the Procedure and Practice in Children's Courts and on a Bill to Amend the <i>Children's Services Act 1965-1977</i>	30.08.78	07.06.90	WP 15 1976	

No.	Title	Date of Report	Date Report Tabled	Background Papers	Legislation Implementing the Commission's Recommendations (in whole, in part, or with alterations)
R 25	Report on an Examination of the Law Relating to Bail in Criminal Proceedings	10.08.78	20.09.78	WP 20 1978	<i>Bail Act 1980</i> (Act 35 of 1980. Assent 14.5.80)
R 24	Report on the Law Relating to Actions Against the Crown	17.04.78	12.09.79	WP 17 1977	<i>Crown Proceedings Act 1980</i> (Act 2 of 1980. Assent 31.3.80)
R 23	Report on a Review of the <i>Pawnbrokers Act 1849-1971</i>	24.02.78	13.03.79	WP 16 1976	<i>Pawnbrokers Act 1984</i> (Act 12 of 1984. Assent 27.2.84)
R 22	Report on the Law Relating to Succession	24.02.78	09.10.79	WP 14 1975	<i>Succession Act 1981</i> (Act 69 of 1981. Assent 7.10.81)
R 21	Reform of the Law of Rape	13.08.76	07.06.90	Nil	
R 20	Report on the Law of Succession and Other Allied Considerations in Relation to Illegitimate Persons	18.12.75	11.03.76	Nil	<i>Status of Children Act 1978</i> (Act 30 of 1978. Assent 8.6.78)
R 19	Report on the Law Relating to Evidence	14.11.75	11.03.76	WP 13 1975	<i>Evidence Act 1977</i> (Act 47 of 1977. Assent 3.10.77)
R 18	The Commission's Third Report on Statute Law Revision	17.03.75	22.03.75	Nil	<i>Acts Repeal Act 1975</i> (Act 35 of 1975. Assent 17.9.75)
R 17	Report on a Bill to Amend the Criminal Code in Certain Particulars	19.12.74	27.02.75	WP 12 1974	<i>The Criminal Code and the Justices Act Amendment Act 1975</i> (Act 27 of 1975. Assent 15.5.75)
R 16	Report on a Bill to Consolidate, Amend and Reform the Law Relating to Conveyancing, Property, and Contract and to Terminate the Application of Certain Imperial Statutes	28.02.73	07.06.90	WP 10 1972	<i>Property Law Act 1974</i> (Act 76 of 1974. Assent 1.11.74)
R 15	The Commission's Second Report on Statute Law Revision	22.12.72	20.03.73	Nil	<i>Acts Repeal Act 1973</i> (Act 46 of 1973. Assent 22.10.73)
R 14	Report on a Bill to Amend and Consolidate the Law Relating to Limitation of Actions	02.10.72	20.03.73	WP 11 1972	<i>Limitation of Actions Act 1974</i> (Act 75 of 1974. Assent 1.11.74)
R 13	Report on a Bill to Consolidate and Amend the Law Relating to Money Lending	24.04.72	09.08.72	WP 8 1971	<i>The Money Lenders Act 1916</i> was repealed (from May 1989) by the <i>Credit Act 1987</i> .
R 12	Report on a Bill to Establish an Appeal Costs Fund	21.04.72	09.08.72	Nil	<i>Appeal Costs Fund Act 1973</i> (Act 51 of 1973. Assent 22.10.73)

No.	Title	Date of Report	Date Report Tabled	Background Papers	Legislation Implementing the Commission's Recommendations (in whole, in part, or with alterations)
R 11	Report on Statute Law Revision	21.04.72	09.08.72	Nil	<i>New South Wales (Termination of Application) Acts 1973</i> (Act 1 of 1973. Assent 11.4.73)
R 10	Report in Relation to an Examination of the Law Relating to Interest on Damages	10.09.71	09.08.72	WP 6 1971	<i>Common Law Practice Act Amendment Act 1972</i> (Act 34 of 1972. Assent 21.12.72)
R 9	Report in Relation to an Examination of the Provisions of the <i>Fatal Accidents Acts</i> with a View to the Elimination of Anomalies	10.09.70	09.08.72	WP 7 1971	<i>Common Law Practice Act Amendment Act 1972</i> (Act 34 of 1972. Assent 21.12.72)
R 8	Report on the Law Relating to Trusts, Trustees, Settled Land and Charities	16.06.71	09.08.72	WP 5 1970	<i>Trusts Act 1973</i> (Act 24 of 1973. Assent 19.4.73)
R 7	Report on the Law Relating to Perpetuities and Accumulations	24.05.71	26.08.71	WP 9 1971	<i>Perpetuities &amp; Accumulations Act 1972</i> (Act 9 of 1972 Assent 15.12.72) (later incorporated into the <i>Property Law Act 1974</i> )
R 6	Report on a Review of: <i>The Statute of Frauds, 1677</i> (29 Car II c 3); <i>The Statute of Frauds Amendment Act, 1828</i> (9 Geo IV c 14); <i>The Statute of Frauds and Limitations of 1867</i> (Qld) (31 Vic No 22); <i>The Sale of Goods Act of 1896</i> (Qld) (60 Vic No 6) (Sect 7)	08.06.70	26.08.71	WP 4 1970	<i>Statute of Frauds 1972</i> (Act 12 of 1972. Assent 15.12.72) (later incorporated into the <i>Property Law Act 1974</i> )
R 5	Report on a Bill to Make Provision for the Abatement of Litter and Other Purposes	08.06.70	07.06.90	Nil	<i>Litter Act 1971</i> (Act 28 of 1971. Assent 22.04.71)
R 4	Report on a Bill to Consolidate the Law Relating to Arbitration	08.06.70	26.08.71	WP 2 1969	<i>Arbitration Act 1973</i> (Act 34 of 1973. Assent 22.04.71)
R 3	<i>The Common Law Practice Acts, 1867 to 1964</i> (Section 2): Illegitimate Children	20.03.70	08.09.70	Nil	<i>Common Law Practice Act Amendment Act 1970</i> (Act 44 of 1970. Assent 21.12.70)
R 2	Abolition of the Distinction between Wilful Murder and Murder	16.03.70	08.09.70	WP 3 1969	<i>The Criminal Code and the Offenders Probation and Parole Act Amendment Act 1971</i> (Act 41 of 1971. Assent 25.10.71)

<b>No.</b>	<b>Title</b>	<b>Date of Report</b>	<b>Date Report Tabled</b>	<b>Background Papers</b>	<b>Legislation Implementing the Commission's Recommendations (in whole, in part, or with alterations)</b>
R 1	Report on the Law Relating to Relief from Forfeiture of Leases and to Relief from Forfeiture of an Option to Renew and Certain Aspects of the Law Relating to Landlord and Tenant	26.02.70	07.06.90	WP 1 1969	

## APPENDIX 2

### PUBLICATIONS RELATING TO WORKING PAPERS

No.	Title	Date of Paper	Related Papers
WP 56	Damages in an Action for Wrongful Death: The Effect of Entering into, or the Prospect of Entering into, a Financially Supportive Relationship, and the Effect of the Likelihood of Divorce or Separation on the Assessment of Damages in a Wrongful Death Claim	June 2002	
WP 55	Recognition of Interstate and Foreign Grants of Probate and Letters of Administration	December 2001	
WP 54	The Role of Justices of the Peace in Queensland	May 1999	R 54 1999 WP 51 1998
WP 53	The Receipt of Evidence by Queensland Courts: The Evidence of Children	December 1998	R 55 Part 1 2000 R 55 Part 2 2000
WP 52	The Receipt of Evidence by Queensland Courts: Electronic Records	August 1998	
WP 51	The Role of Justices of the Peace in Queensland	February 1998	R 54 1999 WP 54 1999
WP 50	Review of the <i>Limitation of Actions Act 1974</i> (Qld)	December 1997	R 53 1998 WP 49 1997
WP 49	Review of the <i>Limitation of Actions Act 1974</i> (Qld)	April 1997	R 53 1998 WP 50 1997
WP 48	Vicarious Liability	July 1995	R 56 2001
WP 47	Uniform Succession Laws for Australian States and Territories: Issues Paper No 2 - Family Provision	June 1995	MP 28 1997
WP 46	Uniform Succession Laws for Australian States and Territories: Issues Paper No 1 - The Law of Wills	June 1995 (originally published July 1994)	MP 29 1997 R 52 1997
WP 45	Minors' Civil Law Capacity	April 1995	R 50 1996
WP 44	Consent to Medical Treatment of Young People	May 1995	R 51 1996
WP 44A	Consent to Medical Treatment of Young People: Summary of Recommendations	May 1995	R 51 1996
WP 43	Assisted and Substituted Decisions: Decision-making by and for People with a Decision-making Disability	February 1995	R 49 1996 WP 38 1992
WP 43A	Assisted and Substituted Decisions: Summary of Recommendations	February 1995	R 49 1996 WP 38 1992
WP 42	Female Genital Mutilation	July 1994	R 47 1994
WP 41	The Bail Act	February 1993	R 43 1993 WP 35 1991
WP 40	De Facto Relationships	September 1992	R 44 1993 WP 36 1991
WP 39	Personal Property Securities Law: A Blueprint for Reform (produced jointly with the Victorian Law Reform Commission)	August 1992	

No.	Title	Date of Paper	Related Papers
WP 38	Assisted and Substituted Decisions: Decision-making for People Who Need Assistance Because of Mental or Intellectual Disability	July 1992	R 49 1996 WP 43 1995
WP 37	Intestacy Rules	July 1992	R 42 1993
WP 36	Shared Property: Resolving Property Disputes between People Who Live Together and Share Property	October 1991	R 44 1993 WP 40 1992
WP 35	To Bail or Not to Bail - A Review of Queensland's Bail Law	March 1991	R 43 1993 WP 41 1993
WP 34	Working Paper on Statute Law Revision	08.03.91	
WP 33	Henry VIII Clauses	10.02.90	R 39 1990
WP 32	Working Paper on a Bill in Respect of an Act to Reform and Consolidate the <i>Real Property Acts</i> of Queensland	1989	R 40 1991
WP 31	Working Paper on a Bill in Respect of an Act to Replace the <i>Oaths Act 1867-1981</i>	29.02.88	R 38 1989
WP 30	Working Paper on a Bill to Amend the <i>Property Law Act 1974-1985</i>	18.12.86	R 37 1987
WP 29	Working Paper on a Bill to Alter the Civil Jurisdiction of the District Court of Queensland	12.04.85	R 36 1985
WP 28	Working Paper on Legislation to Review the Role of Juries in Criminal Trials	30.11.84	R 35 1985
WP 27	Working Paper on a Bill to Establish Limited Partnerships	31.07.84	R 34 1985
WP 26	Working Paper on a Bill to Prevent the Avoidance of Civil Liability in Cases of Death or Personal Injury Caused by Negligence	1984	R 33 1984
WP 25	Working Paper on a Bill to Amend the <i>Real Property Acts</i> with respect to the Provisions Relating to Writs of Execution, Bills of Encumbrance and Bills of Mortgage, and Caveats	1982	
WP 24	Working Paper on a Bill to Consolidate, Amend and Reform the <i>Supreme Court Acts</i> and Ancillary Acts Regulating Civil Proceedings in the Supreme Court	05.03.82	R 32 1982
WP 23	Working Paper in relation to an Examination of the Imperial Statutes in Force in Queensland	13.08.79	R 31 1981
WP 22A	Supplementary Paper on a Draft Associations Incorporation Act	05.02.79	R 30 1980 WP 22 1978
WP 22	Working Paper on a Draft Associations Incorporation Act	08.12.78	R 30 1980 WP 22A 1979
WP 21	Working Paper on a Bill to Repeal the <i>Second Hand Wares Act of 1921</i> and to Update Legislation Concerning Dealers and Collectors	17.04.78	R 29 1980
WP 20	Working Paper on a Bill to Amend the Law in Relation to Bail	24.02.78	R 25 1978
WP 19	Working Paper on Proposals to Amend the Practice of Criminal Courts in Certain Particulars	05.12.77	R 27 1978

No.	Title	Date of Paper	Related Papers
WP 18	Working Paper on a Bill to Remove Anomalies Presently Existing with Respect to Civil Liability for Animals and to Rationalize the Existing Rules of the Common Law for Damage Done by Animals	30.09.77	
WP 17	Working Paper on an Examination of the Law Relating to Actions Against the Crown and the Replacement of the <i>Claims Against Government Act of 1866</i>	06.07.77	R 24 1978
WP 16	Working Paper on a Bill to Amend the <i>Pawnbrokers Act 1849-1971</i>	23.12.76	R 23 1978
WP 15	Working Paper on an Examination of the Procedure and Practice in Children's Courts and to Amend the <i>Children's Services Act 1965-1974</i>	23.12.76	R 26 1978
WP 14	Working Paper on a Bill to Consolidate and Amend the Law of Succession and the Administration of Estates	18.12.75	R 22 1978
WP 13	Working Paper on a Bill to Consolidate, Amend and Reform the Law of Evidence	13.06.75	R 19 1975
WP 12	Working Paper on a Bill to Amend the Criminal Code in Certain Particulars	30.07.74	R 17 1974
WP 11	Working Paper on a Bill to Amend and Consolidate the Law Relating to Limitation of Actions	21.06.72	R 14 1972
WP 10	Working Paper on a Bill to Consolidate, Amend and Reform the Law Relating to Conveyancing, Property, and Contract and to Determine the Application of Certain Imperial Statutes	10.04.72	R 16 1973
WP 9	Working Paper on the Law Relating to Perpetuities and Accumulations	24.02.71	R 7 1971
WP 8	Working Paper on a Bill to Consolidate and Amend the Law Relating to Money Lending	20.04.71	R 13 1972
WP 7	Working Paper in Relation to an Examination of the Provisions of the <i>Fatal Accidents Acts</i> with a View to the Elimination of Anomalies	04.01.71	R 9 1971
WP 6	Working Paper in Relation to an Examination of the Law Relating to Interest on Damages	04.01.71	R 10 1971
WP 5	Working Paper on a Bill to Consolidate and Amend the Law Relating to Trusts, Trustees, and Settled Land	22.10.70	R 8 1971
WP 4	Working Paper on a Review of: <i>The Statute of Frauds, 1677</i> (29 Car II c 3); <i>The Statute of Frauds Amendment Act, 1828</i> (9 Geo IV, c 14); <i>The Statute of Frauds and Limitations of 1867</i> (Qld) (31 Vic No 22); and <i>The Sale of Goods Act of 1896</i> (Qld) (60 Vic No 6) (Sect 7)	04.03.70	R 6 1970
WP 3	Working Paper on the Proposed Abolition of the Distinction between Wilful Murder and Murder	19.12.69	R 2 1970
WP 2	Working Paper on a Bill to Consolidate the Law Relating to Arbitration	19.12.69	R 4 1970

<b>No.</b>	<b>Title</b>	<b>Date of Paper</b>	<b>Related Papers</b>
WP 1	Working Paper on the Law Relating to Relief from Forfeiture of Leases and to Relief from Forfeiture of an Option to Renew and Certain Aspects of the Law Relating to Landlord and Tenant	03.11.69	R 1 1970

## APPENDIX 3

### LIST OF PUBLICATIONS

The prices of all Commission publications are subject to change without notice. Current publications are available on the Commission's home page at <http://www.qlrc.qld.gov.au>

#### REPORTS

No.	Title	Date	Price	GST	Total Price
1.	Report on the Law Relating to Relief from Forfeiture of Leases and to Relief from Forfeiture of an Option to Renew and Certain Aspects of the Law Relating to Landlord and Tenant	1970	7.90	.80	8.70
2.	Abolition of the Distinction between Wilful Murder and Murder	1970	7.00	.70	7.70
3.	Report on <i>The Common Law Practice Acts 1867-1964</i> (Section 2): Illegitimate Children	1970	7.00	.70	7.70
4.	Report on a Bill to Consolidate the Law Relating to Arbitration	1970	7.50	.75	8.25
5.	Report on a Bill to Make Provision for the Abatement of Litter and Other Purposes	1970	7.20	.70	7.90
6.	Report on a Review of: <i>The Statute of Frauds, 1677; The Statute of Frauds Amendment Act, 1828; The Statute of Frauds and Limitations of 1867</i> (Qld); and <i>The Sale of Goods Act 1896</i> (Qld) (Sect 7)	1970	7.50	.75	8.25
7.	Report on the Law Relating to Perpetuities and Accumulations	1971	7.30	.75	8.05
8.	Report on the Law Relating to Trusts, Trustees, Settled Land and Charities	1971	13.40	1.35	14.75
9.	Report in Relation to the Provisions of the <i>Fatal Accidents Acts</i> with a View to the Elimination of Anomalies	1970	7.20	.70	7.90
10.	Report in Relation to an Examination of the Law Relating to Interest on Damages	1971	7.00	.70	7.70
11.	Report on Statute Law Revision	1972	7.70	.75	8.45
12.	Report on a Bill to Establish an Appeal Costs Fund	1972	7.50	.75	8.25
13.	Report on a Bill to Consolidate and Amend the Law Relating to Money Lending	1972	7.90	.80	8.70
14.	Report on a Bill to Amend and Consolidate the Law Relating to Limitation of Actions	1972	7.50	.75	8.25
15.	The Commission's Second Report on Statute Law Revision	1972	7.00	.70	7.70

No.	Title	Date	Price	GST	Total Price
16.	Report on a Bill to Consolidate, Amend and Reform the Law Relating to Conveyancing, Property, and Contract and to Terminate the Application of Certain Imperial Statutes	1973	18.00	1.80	19.80
17.	Report on a Bill to Amend the Criminal Code in Certain Particulars	1974	7.40	.75	8.15
18.	The Commission's Third Report on Statute Law Revision	1975	7.20	.70	7.90
19.	Report on the Law Relating to Evidence	1975	11.00	1.10	12.10
20.	Report on the Law of Succession and Other Allied Considerations in Relation to Illegitimate Persons	1975	7.60	.75	8.35
21.	Reform of the Law of Rape	1976	7.20	.70	7.90
22.	Report on the Law Relating to Succession	1978	9.80	1.00	10.80
23.	Report on a Review of the <i>Pawnbrokers Act 1849-1971</i>	1978	7.40	.75	8.15
24.	Report on the Law Relating to Actions Against the Crown	1978	7.50	.75	8.25
25.	Report on an Examination of the Law Relating to Bail in Criminal Proceedings	1978	8.00	.80	8.80
26.	Report on an Examination of the Procedure and Practice in Children's Courts and on a Bill to Amend the <i>Children's Services Act 1965-1977</i>	1978	7.20	.70	7.90
27.	Proposals to Amend the Practice of Criminal Courts in Certain Particulars	1978	8.00	.80	8.80
28.	Report on Matters Arising out of the Report of the Committee of Inquiry into the Enforcement of Criminal Law in Queensland	1979	7.40	.75	8.15
29.	Report on a Bill to Repeal <i>The Second-hand Wares Act of 1921</i> and to Update Legislation Concerning Dealers and Collectors	1980	7.60	.75	8.35
30.	Report on a Draft Associations Incorporation Act	1980	8.00	.80	8.80
31.	Report on an Examination of the Imperial Statutes in Force in Queensland	1981	8.00	.80	8.80
32.	Report on a Bill to Consolidate, Amend and Reform the <i>Supreme Court Acts</i> and Ancillary Acts Regulating Civil Proceedings in the Supreme Court	1982	11.90	1.20	13.10
33.	Report on a Bill to Prevent the Avoidance of Civil Liability in Cases of Death or Personal Injury Caused by Negligence	1984	7.20	.70	7.90
34.	Report on a Bill to Establish Limited Liability Partnerships	1985	7.40	.75	8.15
35.	Report on a Bill to Amend and Reform The Jury Act, The Justices Act and The Criminal Code insofar as those Acts Relate to Committal Proceedings and Trial by Jury in Criminal Courts	1985	14.30	1.45	15.75
36.	Report on a Bill to Alter the Civil Jurisdiction of the District Court of Queensland	1985	8.30	.85	9.15
37.	Report on a Bill to Amend the <i>Property Law Act 1974-1986</i>	1987	8.30	.85	9.15
38.	Report on the <i>Oaths Act</i>	1989	11.70	1.15	12.85

No.	Title	Date	Price	GST	Total Price
39.	Henry VIII Clauses	1990	7.60	.75	8.35
40.	Consolidation of the <i>Real Property Acts</i>	1991	11.20	1.10	12.30
41.	The Protection of Statements made to Religiously Ordained Officials	1991	7.20	.70	7.90
42.	Intestacy Rules	1993	11.20	1.10	12.30
43.	The Bail Act 1980	1993	9.80	1.00	10.80
44.	De Facto Relationships	1993	17.00	1.70	18.70
45.	The Assessment of Damages in Personal Injury and Wrongful Death Litigation: Griffiths v Kerkemeyer Section 15C <i>Common Law Practice Act 1867</i>	1993	11.40	1.15	12.55
46.	The <i>Freedom of Information Act 1992</i> : Review of Secrecy Provision Exemption	1994	14.40	1.45	15.85
47.	Female Genital Mutilation	1994	10.60	1.05	11.65
48.	De Facto Relationships: Claims by Surviving De Facto Partners under the <i>Common Law Practice Act 1867</i> for Damages for Wrongful Death	1994	8.00	.80	8.80
49.	Assisted and Substituted Decisions: Decision-making by and for People with a Decision-making Disability Volume 1: Full Report Volume 2: Draft Legislation Volume 3: Summary	1996	24.00 14.60 no charge	2.40 1.45 no charge	26.40 16.05 no charge
50.	Minors' Civil Law Capacity	1996	no charge	-	-
51.	Consent to Health Care of Young People Volume 1: The Law and the Need for Reform Volume 2: The Commission's Legislative Scheme Volume 3: Summary of the Commission's Report	1996	no charge	-	-
52.	The Law of Wills	1997	no charge	-	-
53.	Review of the <i>Limitation of Actions Act 1974</i> (Qld)	1998	no charge	-	-
54.	The Role of Justices of the Peace in Queensland	1999	no charge	-	-
55.	The Receipt of Evidence by Queensland Courts: The Evidence of Children (Part 1)	2000	no charge	-	-
55.	The Receipt of Evidence by Queensland Courts: The Evidence of Children (Part 2)	2000	no charge	-	-
56.	Vicarious Liability	2001	no charge	-	-

**WORKING PAPERS**

No.	Title	Type	Date	Price	GST	Total Price
1.	Working Paper on the Law Relating to Relief from Forfeiture of Leases and to Relief from Forfeiture of an Option to Renew and Certain Aspects of the Law Relating to Landlord and Tenant	Working Paper	1969	7.90	.80	8.70
2.	Working Paper on a Bill to Consolidate the Law Relating to Arbitration	Working Paper	1969	7.50	.75	8.25
3.	Working Paper on the Proposed Abolition of the Distinction between Wilful Murder and Murder	Working Paper	1969	7.00	.70	7.70
4.	Working Paper on a Review of: <i>The Statute of Frauds, 1677</i> (29 Car II c 3); <i>The Statute of Frauds Amendment Act, 1828</i> (9 Geo IV, c 14); <i>The Statute of Frauds and Limitations of 1867</i> (Qld) (31 Vic No 22); and <i>The Sale of Goods Act of 1896</i> (Qld) (60 Vic No 6) (Sect 7)	Working Paper	1970	7.50	.75	8.25
5.	Working Paper on a Bill to Consolidate and Amend the Law Relating to Trusts, Trustees, and Settled Land	Working Paper	1970	11.30	1.15	12.45
6.	Working Paper in Relation to an Examination of the Law Relating to Interest on Damages	Working Paper	1971	7.00	.70	7.70
7.	Working Paper in Relation to an Examination of the Provisions of <i>The Fatal Accidents Acts</i> with a View to the Elimination of Anomalies	Working Paper	1971	7.10	.70	7.80
8.	Working Paper on a Bill to Consolidate and Amend the Law Relating to Money Lending	Working Paper	1971	9.10	.90	10.00
9.	Working Paper on the Law Relating to Perpetuities and Accumulations	Working Paper	1971	7.30	.75	8.05
10.	Working Paper on a Bill to Consolidate, Amend and Reform the Law Relating to Conveyancing, Property, and Contract and to Determine the Application of Certain Imperial Statutes	Working Paper	1972	11.10	1.10	12.20
11.	Working Paper on a Bill to Amend and Consolidate the Law Relating to Limitation of Actions	Working Paper	1972	7.50	.75	8.25
12.	Working Paper on a Bill to Amend the Criminal Code in Certain Particulars	Working Paper	1974	7.40	.75	8.15

No.	Title	Type	Date	Price	GST	Total Price
13.	Working Paper on a Bill to Consolidate, Amend and Reform the Law of Evidence	Working Paper	1975	10.90	1.10	12.00
14.	Working Paper on a Bill to Consolidate and Amend the Law of Succession and the Administration of Estates	Working Paper	1975	9.90	1.00	10.90
15.	Working Paper on an Examination of the Procedure and Practice in Children's Courts and to Amend the <i>Children's Services Act 1965-1974</i>	Working Paper	1976	7.60	.75	8.35
16.	Working Paper on a Bill to Amend the <i>Pawnbrokers Act 1849-1971</i>	Working Paper	1976	7.20	.70	7.90
17.	Working Paper on an Examination of the Law Relating to Actions Against the Crown and the Replacement of the <i>Claims Against Government Act of 1866</i>	Working Paper	1977	7.40	.75	8.15
18.	Working Paper on a Bill to Remove Anomalies Presently Existing with Respect to Civil Liability for Animals and to Rationalize the Existing Rules of the Common Law for Damage Done by Animals	Working Paper	1977	7.20	.70	7.90
19.	Working Paper on Proposals to Amend the Practice of Criminal Courts in Certain Particulars	Working Paper	1977	8.80	.90	9.70
20.	Working Paper on a Bill to Amend the Law in Relation to Bail	Working Paper	1978	7.80	.80	8.60
21.	Working Paper on a Bill to Repeal the <i>Second Hand Wares Act of 1921</i> and to Update Legislation Concerning Dealers and Collectors	Working Paper	1978	7.30	.75	8.05
22.	Working Paper on a Draft Associations Incorporation Act	Working Paper	1978	10.50	1.05	11.55
22A.	Supplementary Paper on a Draft Associations Incorporation Act	Working Paper	1979	7.40	.75	8.15
23.	Working Paper in relation to an Examination of the Imperial Statutes in Force in Queensland	Working Paper	1979	9.00	.90	9.90
24.	Working Paper on a Bill to Consolidate, Amend and Reform the <i>Supreme Court Acts</i> and Ancillary Acts Regulating Civil Proceedings in the Supreme Court	Working Paper	1982	11.50	1.15	12.65
25.	Working Paper on a Bill to Amend the <i>Real Property Acts</i> with respect to the Provisions Relating to Writs of Execution, Bills of Encumbrance and Bills of Mortgage, and Caveats	Working Paper	1982	7.50	.75	8.25
26.	Working Paper on a Bill to Prevent the Avoidance of Civil Liability in Cases of Death or Personal Injury Caused by Negligence	Working Paper	1984	7.10	.70	7.80

No.	Title	Type	Date	Price	GST	Total Price
27.	Working Paper on a Bill to Establish Limited Liability Partnerships	Working Paper	1984	10.70	1.05	11.75
28.	Working Paper on a Bill to Review the Role of Juries in Criminal Trials	Working Paper	1984	11.90	1.20	13.10
29.	Working Paper on a Bill to Alter the Civil Jurisdiction of the District Court	Working Paper	1985	7.90	.80	8.70
30.	Working Paper on a Bill to Amend the <i>Property Law Act 1974-1985</i>	Working Paper	1986	8.00	.80	8.80
31.	Working Paper on a Bill in Respect of an Act to Replace the <i>Oaths Act 1867-1981</i>	Working Paper	1988	11.80	1.20	13.00
32.	Working Paper on a Bill in Respect of an Act to Reform and Consolidate the <i>Real Property Acts</i> of Queensland	Working Paper	1989	19.30	1.95	21.25
33.	Henry VIII Clauses	Working Paper	1990	7.50	.75	8.25
34.	Working Paper on Statute Law Revision	Working Paper	1991	7.90	.80	8.70
35.	To Bail or Not to Bail - A Review of Queensland's Bail Law	Discussion Paper	1991	10.60	1.05	11.65
36.	Shared Property	Discussion Paper	1991	11.20	1.10	12.30
37.	Intestacy Rules	Working Paper	1992	8.00	.80	8.80
38.	Assisted and Substituted Decisions	Discussion Paper	1992	16.70	1.65	18.35
39.	Personal Property Securities: A Blueprint for Reform	Discussion Paper	1992	9.60	.95	10.55
40.	De Facto Relationships	Working Paper	1992	17.50	1.75	19.25
41.	The Bail Act	Working Paper	1993	9.50	.95	10.45
42.	Female Genital Mutilation	Draft Report	1994	8.70	.85	9.55
43.	Assisted and Substituted Decisions	Draft Report	1995	21.30	2.15	23.45
		Draft Legislation	1995	12.00	1.20	13.20
43A.	Assisted and Substituted Decisions: Summary of Recommendations	Draft Report: Summary	1995	7.40	.75	8.15
44.	Consent to Medical Treatment of Young People	Discussion Paper	1995	17.60	1.75	19.35
44A.	Consent to Medical Treatment of Young People: Summary of Recommendations	Discussion Paper: Summary	1995	7.20	.70	7.90
45.	Minors' Civil Law Capacity	Draft Report	1995	9.50	.95	10.45
46.	Uniform Succession Laws for Australian States and Territories: Issues Paper No 1 - The Law of Wills	Working Paper	1995	9.40	.95	10.35

No.	Title	Type	Date	Price	GST	Total Price
47.	Uniform Succession Laws for Australian States and Territories: Issues Paper No 2 - Family Provision	Working Paper	1995	10.50	1.05	11.55
48.	Vicarious Liability	Discussion Paper	1995	10.70	1.05	11.75
49.	Review of the <i>Limitation of Actions Act 1974</i> (Qld)	Information Paper	1997	no charge	-	-
50.	Review of the <i>Limitation of Actions Act 1974</i> (Qld)	Discussion Paper	1997	no charge	-	-
51.	The Role of Justices of the Peace in Queensland	Issues Paper	1998	no charge	-	-
52.	The Receipt of Evidence by Queensland Courts: Electronic Records	Issues Paper	1998	no charge	-	-
53.	The Receipt of Evidence by Queensland Courts: The Evidence of Children	Discussion Paper	1998	no charge	-	-
54.	The Role of Justices of the Peace in Queensland	Discussion Paper	1999	no charge	-	-
55.	Recognition of Interstate and Foreign Grants of Probate and Letters of Administration	Discussion Paper	2001	no charge	-	-
56.	Damages in an Action for Wrongful Death: The effect of entering into, or of the prospect of entering into, a financially supportive cohabitation relationship, and the effect of the likelihood of divorce or separation on the assessment of damages in a wrongful death claim	Issues Paper	2002	no charge	-	-

## MISCELLANEOUS PAPERS

No.	Title	Date	Price	GST	Total Price
1.	Steering Your Own Ship - Assisting People Who are Unable to Make Decisions for Themselves	1991	5.00	.50	5.50
2.	Consent by Young People to Medical Treatment	1993	5.00	.50	5.50
3.	Section 48 <i>Freedom of Information Act</i>	1993	5.00	.50	5.50
4.	Griffiths v Kerkemeyer	1993	5.00	.50	5.50
5.	Exclusions of Benefits from the Assessment of Wrongful Death - Section 15C <i>Common Law Practice Act</i>	1993	5.00	.50	5.50
6.	Circumcision of Male Infants	1993	5.00	.50	5.50
7.	Female Genital Mutilation	1993	5.00	.50	5.50

No.	Title	Date	Price	GST	Total Price
7A.	Submission to House of Representatives Standing Committee on Legal and Constitutional Affairs - <i>Inquiry into the Crimes (Child Sex Tourism) Amendment Bill 1994</i>	1994	5.00	.50	5.50
8.	De Facto Relationships: Claims by Surviving De Facto Partners under the <i>Common Law Practice Act 1867</i> for Damages for Wrongful Death	1994	5.00	.50	5.50
9.	A Bill to Consolidate, Amend and Reform the <i>Supreme Court Acts</i> and Ancillary Acts Regulating Civil Proceedings in the Supreme Court	1990	5.00	.50	5.50
10.	First Issues Paper - The Law of Wills	1994	5.00	.50	5.50
11.	Enforcement of Judgments in Debt	1983	5.00	.50	5.50
12.	<i>Real Property Acts</i>	-	5.00	.50	5.50
13.	Problems Relating to Passing of Risk between Vendor and Purchaser	1984	5.00	.50	5.50
14.	Consent to Medical Treatment of Young People: Submission to Queensland Health on Review of the <i>Health Act 1937</i> - New Population Health Legislation for Queensland	1995	5.00	.50	5.50
15.	Uniform Succession Laws: Wills	1996	5.00	.50	5.50
16.	Uniform Succession Laws: The Effect of the Lex Situs and Mozambique Rules on Succession to Immovable Property	1996	5.00	.50	5.50
17.	Consent to Medical Treatment of Young People: Medical Examinations in Cases of Suspected Child Abuse	1996	5.00	.50	5.50
18.	<i>Health Services Act 1991</i> , Section 62: Submission to Queensland Health and Others	1996	5.00	.50	5.50
19.	National Committee for Uniform Succession Laws: Report to SCAG - The Law of Wills NOT FOR PUBLIC DISTRIBUTION	1996	not available	-	-
20.	Uniform Succession Laws: Law of Wills - Outstanding Issues NOT FOR PUBLIC DISTRIBUTION	1997	not available	-	-
21.	Uniform Succession Laws: Family Provision - Summary of Submissions to Issues Paper NOT FOR PUBLIC DISTRIBUTION	1997	not available	-	-
22.	Minutes of the Meeting of the National Committee for Uniform Succession Laws NOT FOR PUBLIC DISTRIBUTION	April 1997	not available	-	-
23.	Minutes of the Meeting of the National Committee for Uniform Succession Laws (Teleconference) NOT FOR PUBLIC DISTRIBUTION	May 1997	not available	-	-
24.	Submission to Attorney-General and Minister for Justice: Powers of Attorney Bill 1997 NOT FOR PUBLIC DISTRIBUTION	July 1997	not available	-	-
25.	Submission to Attorney-General and Minister for Justice: Succession Amendment Bill 1997 (Intestacy Rules) NOT FOR PUBLIC DISTRIBUTION	July 1997	not available	-	-

No.	Title	Date	Price	GST	Total Price
26.	Minutes of the Meeting of the National Committee for Uniform Succession Laws (Teleconference) NOT FOR PUBLIC DISTRIBUTION	Aug 1997	not available	-	-
27.	Australasian Law Reform Agencies Conference: Record of Proceedings NOT FOR PUBLIC DISTRIBUTION	Sept 1995	not available	-	-
28.	National Committee for Uniform Succession Laws: Report to the Standing Committee of Attorneys General on Family Provision	Dec 1997	no charge	-	-
29.	National Committee for Uniform Succession Laws: Consolidated Report to the Standing Committee of Attorneys General on the Law of Wills	Dec 1997	no charge	-	-
30.	Uniform Civil Procedure Rules: Submission on Probate and Administration	Feb 1998	no charge	-	-
31.	Minutes of the Meeting of the National Committee for Uniform Succession Laws (Teleconference) NOT FOR PUBLIC DISTRIBUTION	Nov 1997	not available	-	-
32.	Evidence and Technology - Institute for Information Management Ltd - Discussion on Evidence and Technology	May 1998	no charge	-	-
33.	Minutes of the Meeting of the National Committee for Uniform Succession Laws and Registrars of Probate NOT FOR PUBLIC DISTRIBUTION	June 1998	not available	-	-
34.	Submission to Attorney-General - Guardianship NOT FOR PUBLIC DISTRIBUTION	May 1998	not available	-	-
35.	Minutes of the Meeting of the National Committee for Uniform Succession Laws (Teleconference) NOT FOR PUBLIC DISTRIBUTION	Oct 1997	not available	-	-
36.	Minutes of the Meeting of the National Committee for Uniform Succession Laws (Teleconference) NOT FOR PUBLIC DISTRIBUTION	May 1998	not available	-	-
37.	National Committee for Uniform Succession Laws: Discussion Paper, Administration of Estates of Deceased Persons	June 1999	no charge	-	-

## APPENDIX 4

### HOLDERS OF OFFICE UNDER THE *LAW REFORM COMMISSION ACT 1968*<sup>10</sup>

#### CHAIRPERSON

The Honourable Mr Justice W B Campbell (later Chief Justice and Governor of Queensland)	01.03.69 - 01.03.73
The Honourable Mr Justice G L Hart	01.03.73 - 15.05.73
The Honourable Mr Justice D G Andrews (later Chief Justice)	26.05.73 - 17.09.82
The Honourable Mr Justice B H McPherson CBE*	20.09.82 - 31.12.91
The Honourable Mr Justice R E Cooper*	01.01.92 - 30.06.93
The Honourable Justice G N Williams*	01.07.93 - 30.06.96
The Honourable Justice P de Jersey (later Chief Justice)	12.07.96 - 19.03.98
The Honourable Mr Justice J D M Muir	20.03.98 - 19.03.01 15.06.01 - 31.12.01
The Honourable Justice R G Atkinson*	01.01.02 - 20.12.04

#### FULL-TIME MEMBERS

Dr J M Morris	01.06.73 - 30.06.80
Professor K W Ryan CBE QC* (later the Honourable Mr Justice K W Ryan CBE)	01.11.80 - 31.10.82
Mr F J Gaffy QC*	01.10.83 - 16.10.84 10.12.84 - 31.05.89
Mr A A Preece	05.01.87 - 30.06.90
Ms L Willmott*	17.09.90 - 31.10.92
Ms C Richards	24.09.90 - 24.04.92

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An asterisk indicates that the member has been appointed to more than one Queensland Law Reform Commission position.

Mr W G Briscoe*	04.01.93 - 04.06.99
Mr J Herlihy	04.01.93 - 10.09.93
Ms P A Cooper	09.05.94 - 31.07.97
Assoc Prof P J M MacFarlane	10.01.00 - 28.12.01

## PART-TIME MEMBERS

Mr B H McPherson QC* (later the Honourable Mr Justice B H McPherson)	01.03.69 - 31.12.81
Sir John Rowell CBE	01.03.69 - 31.12.89
Mr P R Smith	01.03.69 - 08.07.76
Sir John Nosworthy CBE	01.01.76 - 31.12.87
Mr G N Williams QC* (later the Honourable Justice G N Williams)	09.08.76 - 06.04.82 17.01.83 - 16.03.89
Professor K W Ryan CBE QC* (later the Honourable Mr Justice K W Ryan CBE)	05.07.80 - 31.10.80 01.11.82 - 10.02.84
Mr R E Cooper QC* (later the Honourable Justice R E Cooper)	14.06.82 - 02.02.89 03.02.89 - 31.12.89
Mr M O Klug	01.01.88 - 31.12.89
Mr F J Gaffy QC*	01.06.89 - 30.09.89
Ms H O'Sullivan (later Her Honour Judge H O'Sullivan)	01.05.90 - 08.04.91 09.04.91 - 29.08.94
Ms R G Atkinson* (later the Honourable Justice R G Atkinson)	01.05.90 - 30.06.96
Mr P A Keane QC	01.05.90 - 12.02.92
Mr W A Lee	01.07.90 - 30.06.96
Mr R S O'Regan QC	11.05.92 - 23.11.92
Ms L Willmott*	15.03.93 - 15.03.94
Dr J A Devereux	29.08.94 - 28.08.97
Mr P D McMurdo QC	22.05.95 - 21.05.01
Mrs D A Mullins SC (later the Honourable Justice D A Mullins)	12.07.96 - 11.07.99 01.10.99 - 30.09.02
Mr P M McDermott RFD	12.07.96 - 11.07.99

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Professor W D Duncan	26.09.97 - 25.09.00
Ms S C Sheridan	26.09.97 - 25.09.00
Mr W G Briscoe*	04.02.00 - 30.08.01
Mr P D T Applegarth SC	21.12.01 - 20.12.04
Ms A Colvin	21.12.01 - 20.12.04
Mr G W O'Grady	21.12.01 - 20.12.04
Ms H A Douglas	21.12.01 - 20.12.04

### **COMMISSION SECRETARY**

Mr F N Albietz	March 1969 - August 1969
Mr K J Dwyer	September 1969 - November 1980
Mr D M Hensler	December 1980 - June 1982
Mr L A J Howard	July 1982 - June 1990
Mr M J Richards	July 1990 - September 1991
Mrs S P Fleming	January 1992 - September 2000
Mrs S Pickett	September 2000 to the present

## APPENDIX 5

### FINANCIAL INFORMATION

	<b>95/96 Budget</b>	<b>96/97 Budget</b>	<b>97/98 Budget</b>	<b>98/99 Budget</b>	<b>99/2000 Budget</b>	<b>2000/01 Budget</b>	<b>2001/02 Budget</b>
Base Allocation: Salaries	\$378,820	\$345,000	\$418,600	\$412,000	\$432,200	\$487,800	\$510,500
Administration costs	\$130,960 <sup>11</sup>	\$120,000	\$55,400	\$60,000	\$82,950	\$60,900	\$43,000
Salary related taxes	\$17,720	\$19,500	\$19,000	\$18,000	\$20,000	\$17,300	\$19,500
Departmental specials	\$13,200	\$46,000	\$36,000	\$43,000	6,000	\$27,000	\$16,000
Plant and equipment Purchase and maintenance	\$22,700	\$500	\$0	\$0	\$3,100	\$3,000	\$0
Capital Works	\$11,000	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total base and departmental special allocations</b>	<b>\$574,400</b>	<b>\$531,000</b>	<b>\$529,000</b>	<b>\$533,000</b>	<b>\$544,250</b>	<b>\$596,000</b>	<b>\$589,000</b>
Treasury Specials - EB Funding, LSL			\$23,000				
Superannuation	\$47,000	\$34,000	\$34,000	\$56,000	\$58,000	\$50,000	\$44,700
Property Maintenance <sup>12</sup>	\$0	\$98,200	\$158,000	\$171,000	\$170,750	\$173,000	\$179,300
	<b>\$621,400</b>	<b>\$663,200</b>	<b>\$744,000</b>	<b>\$760,000</b>	<b>\$773,000</b>	<b>\$819,000</b>	<b>\$813,000</b>

11 A departmental special allocation was provided to the Commission in 1993/94 and in 1994/95 for the Commission's printing and postage costs. In 1995/96 the base allocation provided to the Commission was adjusted to meet the costs and the special allocation was withdrawn.

12 In December 1996, the Government decided to move the Commission from the Central Courts Building to the State Law Building. As a result, an allocation towards the property maintenance costs was provided to the Commission.

# STATEMENT OF AFFAIRS

**2001-2002**

This Statement of Affairs is published in accordance with the requirements of the *Freedom of Information Act 1992*. The Queensland Law Reform Commission is required to complete the Statement of Affairs as it is an “agency” as defined by the Act.

Section 8(1) of the *Freedom of Information Act 1992* defines “agency” to mean “a department, local government or public authority”. The term “public authority” is defined in section 9(1)(a) of the Act to mean:

- (a) a body (whether or not incorporated) that -
  - (i) is established for a public purpose by an enactment.

The Queensland Law Reform Commission was established under the *Law Reform Commission Act 1968*, and therefore is an agency under the *Freedom of Information Act 1992*.

Section 18(2) of the *Freedom of Information Act 1992* prescribes the material which must be contained in an agency’s Statement of Affairs. These have been addressed individually.

During the past twelve months the Queensland Law Reform Commission received no requests for information to be released pursuant to the *Freedom of Information Act 1992*.

There have been no requests for statements of reasons pursuant to the *Judicial Review Act 1991*.

**Section 18(2)(a) requires “a description of the agency’s structure and functions”.**

## **The Commission**

The structure and functions of the Queensland Law Reform Commission are as defined in the following provisions of the *Law Reform Commission Act 1968*:

**3. Constitution of Commission**

- (1) A Law Reform Commission shall be constituted in accordance with this Act.
- (2) The Commission must consist of at least 3 members, who may be full-time or part-time members.
- (3) So long as there are 2 or more members, no act or proceeding of the Commission or of any member shall be vitiated by reason only that, at the time when the act or proceeding was done taken or commenced, there was a vacancy in the office of any member.

**4. Members of Commission**

- (1) Each person appointed to be a member shall -
  - (a) be a person appearing to the Governor in Council to be suitably qualified by the holding of judicial office or by experience as a barrister or as a solicitor or as a teacher of law in a University; and
  - (b) be appointed by the Governor in Council by Gazette notice -
    - (i) in the case of the holder of judicial office - for the term fixed by the Governor in Council; and
    - (ii) in any other case - for a term of not more than 3 years fixed by the Governor in Council.
- (1A) A member holds office on the terms not provided for by this Act as are determined by the Governor in Council.
- (2) A member whose term of office has expired shall be eligible for re-appointment.
- (3) A member is to be appointed under this Act, and not under the *Public Service Act 1996*.
- (4) An officer of the public service who is appointed as a member may hold the appointment in conjunction with the public service office held by the officer.

...

**10. Functions and duties of Commission**

- (1) The function of the Commission shall be to take and keep under review all the law applicable to the State with a view to its systematic development and reform, including in particular -
  - (a) the codification of such law; and
  - (b) the elimination of anomalies; and
  - (c) the repeal of obsolete and unnecessary enactments; and
  - (d) the reduction of the number of separate enactments; and
  - (e) generally the simplification and modernisation of the law.

- (2) To remove any doubt, it is declared that the law applicable to the State includes both substantive law and procedural law, including, for example, court rules.
- (3) For the purposes of carrying out its functions, the Commission shall -
  - (a) receive and consider any proposal for the reform of the law which may be made or referred to it;
  - (b) at the request of the Minister, provide assistance to any department or instrumentality of the Government by undertaking the examination of any particular branch of the law and making recommendations for the reform of that branch of the law to bring it into accord with current conditions;
  - (c) prepare and submit to the Minister from time to time, or at the request of the Minister at any time, a program for the examination, in order of priority, of different branches of the law for the purposes of reform, consolidation or statute law revision;
  - (d) undertake, pursuant to approval by the Minister of any program, and in accordance with the approved order of priority, the examination of particular branches of the law, and the formulation of recommendations for reform, consolidation or statute law revision;and may for these purposes hold and conduct such inquiries as it thinks fit, and inform itself on any matter in such manner as it thinks fit.
- (4) The Minister may vary -
  - (a) any program submitted to the Minister by the Commission by adding or deleting or making such alteration to any particular branch or branches of the law as the Minister thinks fit; and
  - (b) the order of priority on any such program.
- (5) For the purpose of assisting the Commission to formulate a program or recommendation the Commission may publish its working and discussion papers and such other papers as it thinks fit and may circulate those papers to such persons as it thinks fit.
- (6) Any programs of and recommendations formulated by the Commission and approved by the Governor in Council shall be laid before Parliament.

### **The Secretariat**

The function of the Commission's Secretariat is to provide quality administrative, research and secretarial services to the Queensland Law Reform Commission, in particular:

- to ensure that the Commission's budget is disbursed effectively and efficiently and in compliance with the Financial Management Standards;
- to ensure the efficient and effective provision of accurate research services;

- to draft material for consideration by Commissioners for inclusion in Commission publications;
- to provide accurate and timely word processing and clerical services to the Commission;
- to arrange Commission meetings, formulate agendas, and distribute meeting material;
- to provide an accurate record of the decisions made at Commission meetings;
- to provide efficient, courteous and timely responses to Ministerial, Governmental and citizen correspondence;
- to process, promote and disseminate publications emanating from the Commission;
- to develop, implement, monitor and evaluate operational strategies for the Commission; and
- to assess critically the Commission's operating procedures and implement methods for improvement.

**Section 18(2)(b) requires “a description of the ways in which the agency’s functions (including, in particular, its decision-making functions) affect members of the community”.**

**Section 18(2)(c) requires “a description of any arrangements that exist to enable members of the community to participate in the formulation of the agency’s policy and the exercise of the agency’s functions”.**

Generally, the decision-making functions of the Queensland Law Reform Commission have no direct effect on the public. The decisions of the Queensland Law Reform Commission affect members of the community only if, or when, the recommendations made by the Commission are incorporated into the law of Queensland.

The Commission uses consultative processes in the majority of the references undertaken. Members of the community are invited to make written submissions in response to Discussion Papers and Working Papers published by the Queensland Law Reform Commission. Calls for written submissions are made via the media, or by circulation of Commission publications to interested parties. Occasionally, open forums are held. All submissions are considered by the Commission.

The *Law Reform Commission Act 1968* provides:

**11. Powers of Commission**

- (1) For the purposes of any inquiry under this Act by the Commission, a member shall have the powers, authorities, protections and immunities, conferred on a commissioner by the *Commissions of Inquiry Act 1950*, and the chairperson or member presiding shall have the powers and authorities conferred on a chairperson of a commission within the meaning of those Acts.
- (2) The provisions of the *Commissions of Inquiry Act 1950* shall, with necessary changes, apply to and in respect of any such inquiry and to and in respect of any witness or person summoned by or appearing before the Commission.

Officers have contact with members of the public in the process of obtaining submissions for the Commission and in the distribution of the publications of the Commission. In the consultative processes, Commissioners, the Director, the Senior Research Officer and the Legal Officers fulfil an educational function by addressing meetings, providing media interviews and preparing written outlines of the Commission's work in hand. The Commission informs members of the public about the current law which is the subject of a Commission reference, the need for reform and the options for reform.

**Section 18(2)(d) requires “a description of the various kinds of documents that are usually held by the agency, including -**

- (i) the kinds of documents that are available for inspection at the agency (whether or not as part of a public register) under an enactment other than this Act, whether or not inspection of any such document is subject to a fee or charge; and**
- (ii) the kinds of documents that are available for purchase from the agency; and**
- (iii) the kinds of documents that are available from the agency free of charge”.**

**Section 18(2)(e) requires “a description of the literature available from the agency by way of subscription services or free mailing lists”.**

The findings and recommendations of the Queensland Law Reform Commission are presented to the Attorney-General as Reports in printed form.

Once the Reports have been tabled in Parliament by the Attorney-General, they are available for general distribution to anyone who wishes to be placed on the mailing list.

The Working Paper series of publications, which includes working papers, issues papers, discussion papers, and draft reports, is distributed to those who have indicated an interest in the particular reference. Some recipients and/or agencies have requested that they receive a copy of all Queensland Law Reform Commission publications. The Miscellaneous Papers series of publications is distributed only to those with whom the Commission needs to consult on a particular matter.

All Queensland Law Reform Commission Working Papers, Issues Papers, Discussion Papers and Reports are available to members of the public. Current documents are supplied free of charge. A small charge is made for the supply of older publications. Although inspection of these publications is possible, it is not the norm. A complete list of documents available to date is set out in Appendix 3. Those publications which are currently available free of charge are identified in Appendix 3.

Current publications may also be accessed free of charge on the Commission's home page.

Other documents held by the Commission are:

- administration files relating to the day to day work of the Secretariat;
- agenda and minutes of Law Reform Commission meetings;
- submissions (some of which are made in confidence) relating to references undertaken by the Commission;
- correspondence files relating to the references undertaken by the Commission;
- research material;
- curriculum vitae and resumes from persons interested in gaining employment within the Commission;
- financial reports and expenditure reports for the Queensland Law Reform Commission;
- personnel files of Queensland public servants currently employed in the Secretariat;
- Annual Reports.

**Section 18(2)(f) requires "a list of all boards, councils, committees and other bodies constituted by 2 or more persons that -**

- (i) are a part of, or that have been established for the purpose of advising, the agency; and**
- (ii) whose meetings are open to the public or the minutes of whose meetings are available for public inspection”.**

There are no such boards, councils or committees associated with the Queensland Law Reform Commission.

**Section 18(2)(g) requires “a description of the arrangements that exist to enable a member of the community to obtain access to the agency’s documents and to seek amendment of the agency’s documents concerning the person’s personal affairs”.**

**Section 18(2)(h) requires “a description of the agency’s procedures in relation to the giving of access to the agency’s documents and to the amendment of the agency’s documents concerning the personal affairs of a member of the community, including -**

- (i) the designation of officers to whom inquiries should be made; and**
- (ii) the addresses at which applications under this Act should be lodged”.**

Members of the community may make application under the *Freedom of Information Act 1992* by completing the appropriate application form, a copy of which is included in this Statement of Affairs. Applications under the Act should be addressed to:

The Director  
Queensland Law Reform Commission  
P O Box 13312, George Street Post Shop  
BRISBANE QLD 4003

The initial application will be reviewed by the Director.

## APPENDIX 1

### QUEENSLAND LAW REFORM COMMISSION PROCEDURES FOR REQUESTS UNDER THE *FREEDOM OF INFORMATION ACT 1992*

All applications for information under the *Freedom of Information Act 1992* must immediately be handed to the Director for consideration. It is the role of the Director, under the delegated authority of the Chairperson, to determine whether or not the request can be approved. FOI decisions will not be made by other members of staff.

*An applicant applying for access to a document that does NOT concern the applicant's personal affairs must pay an application fee of thirty-one dollars (\$31) at the time the application is made.*

*If any charge is payable in excess of the application fee, the applicant will be notified of this at the time of being advised that the application has been approved. The charge must be paid before access is granted.*

*A4 size photocopies of documents shall be charged at fifty cents (50c) per page.*

*An application fee IS NOT payable for access to a document which concerns the applicant's personal affairs.*

*A charge IS NOT payable for access to a document which concerns the applicant's personal affairs.*

The applicant must be notified of the receipt of the request not later than 14 days after the application is received.

If a person has directed an application under this Act to the wrong agency, it is the duty of the agency to assist the person to direct the application to the appropriate agency or Minister.

# QUEENSLAND LAW REFORM COMMISSION

## FOI - REQUEST FOR INFORMATION

To: FOI Designated Officer  
Queensland Law Reform Commission  
P O Box 13312, George Street Post Shop  
BRISBANE QLD 4003

I hereby make application under the *Freedom of Information Act 1992* for access to documents. Relevant details are:

### *Details of Applicant*

<u>Name</u>	
<u>Address</u>	
Telephone	Fax:

### *Details of Information Requested*

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\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

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### RECEIPT DETAILS

Fees Received \$ \_\_\_\_\_

Receipt Number \_\_\_\_\_

Received by \_\_\_\_\_

Date \_\_\_\_\_