



Queensland  
Law Reform Commission

## **Annual Report**

2014-15

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**Queensland  
Law Reform Commission**

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September 2015



## **Commission members<sup>1</sup>**

**Chairperson:** **The Hon Justice David Jackson**

**Part-time members:** **Mr Peter Hastie QC**  
**Prof Peter McDermott RFD**  
**Mrs Samantha Traves**  
**The Hon Margaret Wilson QC**

## **Secretariat**

**Director:** **Mr David Groth**

**Assistant Director:** **Mrs Cathy Green**

**Commission Secretary:** **Mrs Jenny Manthey**

**Legal Officers:** **Ms Anita Galeazzi<sup>2</sup>**  
**Ms Anna Homan<sup>3</sup>**  
**Ms Amber Manwaring<sup>4</sup>**  
**Ms Elise Nolan<sup>5</sup>**  
**Ms Paula Rogers<sup>6</sup>**

**Administrative Officer:** **Ms Kahren Giles**

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<sup>1</sup> All Commission members were appointed on 1 August 2014.

<sup>2</sup> Acting Senior Legal Officer from 5 January 2015 until 30 June 2015.

<sup>3</sup> Acting Senior Legal Officer from 13 April 2015 until 30 June 2015.

<sup>4</sup> Acting Senior Legal Officer from 9 February 2015 to 31 March 2015.

<sup>5</sup> Legal Officer from 2 February 2015 until 31 March 2015 and Acting Senior Legal Officer from 1 April 2015 to 30 June 2015.

<sup>6</sup> 1 July 2014 until 2 January 2015. On secondment from the Commission from 5 January 2015 to 30 June 2015.





Queensland  
Law Reform Commission

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8 September 2015

The Honourable Yvette D'Ath MP  
Attorney-General and Minister for Justice  
and Minister for Training and Skills  
Level 18, State Law Building  
50 Ann Street  
BRISBANE QLD 4000

Dear Attorney

I present to you the Commission's Annual Report for the financial year ending 30 June 2015.

This is the first annual report of the Commission as currently constituted.

During the reporting period, the Commission has developed a protocol to guide the Commission in developing its proposed program of law reform.

The Commission has followed this protocol in developing its first program of law reform, which has been submitted to you for approval.

The Commission has made progress on its two reviews – the Review of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* received on 27 October 2014 and its Review of child protection mandatory reporting laws for the early childhood education and care sector received on 6 November 2014. Discussion papers have been released for public comment. The work of dealing with the responses has commenced and is progressing.

The other members of the Commission and I look forward to continuing the Commission's reputation for producing high quality work.

Yours sincerely

David Jackson  
Chair





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# Overview of the Commission

## Constitution of the Commission

The Queensland Law Reform Commission is an independent statutory body, and is constituted under the *Law Reform Commission Act 1968* (Qld) ('the LRC Act').

## Function of the Commission

The function of the Commission, as provided in section 10(1) of the LRC Act, is to review the law applicable to Queensland with a view to its systematic development and reform, including, in particular:

- (a) codification of laws;
- (b) elimination of anomalies;
- (c) repeal of obsolete and unnecessary enactments;
- (d) reduction of the number of separate enactments; and
- (e) generally, simplification and modernisation of the law.

## Statutory duties of the Commission

The Commission's key statutory duties, as provided in section 10(3) of the LRC Act, include to:

- undertake law reform reviews referred to it from time to time by the Attorney-General;<sup>1</sup>
- prepare and submit to the Attorney-General for review and approval a proposed program of law reform reviews, in order of priority;<sup>2</sup> and
- undertake any approved program of law reform reviews, subject to any variations made by the Attorney-General in terms of the proposed reviews or their order of priority.<sup>3</sup>

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<sup>1</sup> *Law Reform Commission Act 1968* (Qld) s 10(3)(b) and (e).

<sup>2</sup> *Law Reform Commission Act 1968* (Qld) s 10(3)(c).

<sup>3</sup> *Law Reform Commission Act 1968* (Qld) ss 10(3)(d) and 10(4).

## Organisational objectives

The Commission aims to meet the needs of the Queensland community by reviewing areas of the law in need of reform and by making recommendations for reform. The Commission's recommendations are based on extensive research, public consultation, and the principles of impartiality, equity and social justice. They are published in its final reports, which are presented to the Attorney-General for tabling in Parliament in accordance with the requirements of section 16 of the LRC Act.

## Commission members and staff of the Secretariat

### *Commission members*

Members of the Commission are appointed by the Governor in Council on the advice of the Attorney-General. The LRC Act provides that the Commission must consist of at least three members, who may be full-time or part-time members.<sup>4</sup>

Each person appointed to be a Commission member must 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.<sup>5</sup>

The Commission has five part-time members (including the Chair).

### *Commission Secretariat*

The Secretariat of the Commission is currently comprised of the Director, the Assistant Director, three Acting Senior Legal Officers, a part-time Commission Secretary and a part-time Administrative Officer.

Secretariat Staff are employed by the Department of Justice and Attorney-General under the *Public Service Act 2008* (Qld).

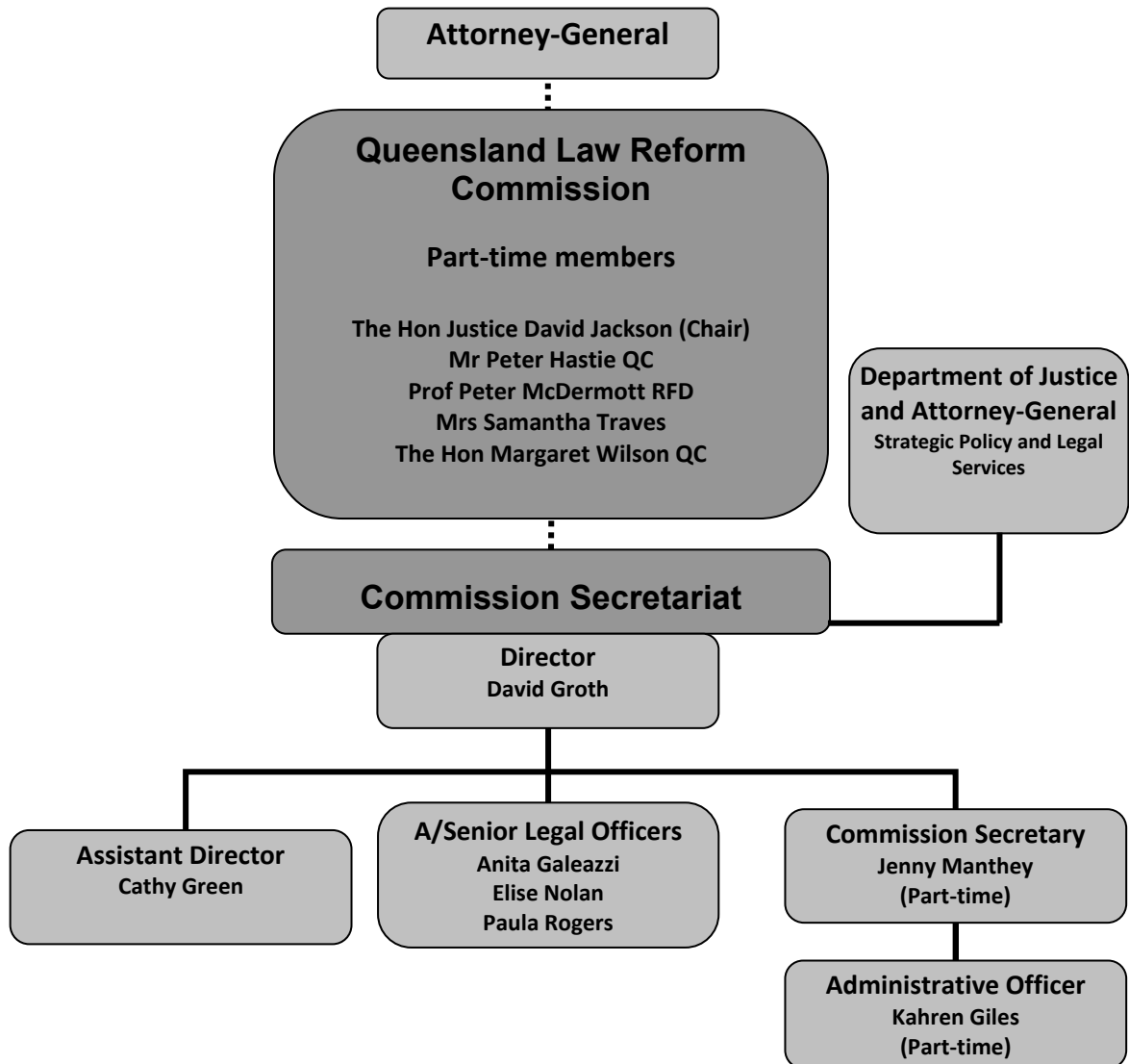
The staff of the Secretariat have the day-to-day responsibility for the carriage of the Commission's reviews. The Secretariat also provides the Commission with administrative and secretarial support. This includes the management of corporate governance, human resources and financial matters relating to the Commission and the staff of the Secretariat.

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<sup>4</sup> *Law Reform Commission Act 1968* (Qld) s 3(2).

<sup>5</sup> *Law Reform Commission Act 1968* (Qld) s 4(1)(a).

## Organisational chart



## Meetings of the Commission

During the reporting period, the Commission held 13 Commission meetings.

## Remuneration of Commission members

Part-time members of the Commission are remunerated in accordance with the Queensland Government's policy *Remuneration procedures for Part-time Chairs and Members of Queensland Government Bodies*.<sup>6</sup>

Total remuneration paid to part-time members in 2014-15 was \$27,250.

## *Right to Information Act 2009 (Qld)*

In accordance with the requirements of the *Right to Information Act 2009 (Qld)*, the Commission's website includes a Publication Scheme. That scheme describes and categorises the information that is routinely available from the Commission and the terms on which it will make the information available.

## *Public Sector Ethics Act 1994 (Qld)*

During the reporting period, two officers of the Secretariat undertook yearly 'Workplace Ethics' refresher training. 'Workplace Ethics' refresher training (which expired in late June 2015) undertaken by the remaining officers of the Secretariat will be outlined in the Commission's next annual report.

## The work of the Commission

### Protocol for the development of proposed programs

During the reporting period the Commission developed a Protocol to guide the Commission in preparing and submitting its proposed Program of law reform matters to the Attorney-General.

The Commission finalised its Protocol in October 2014. A copy of the protocol is available on the Commission's website.<sup>7</sup>

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<sup>6</sup> The Chair of the Commission, as a judicial member, does not receive remuneration for holding the office of Chair.

<sup>7</sup> Queensland Law Reform Commission, *Protocol for the Development of Proposed Programs* (October 2014) <[http://www qlrc qld gov au/RTI\\_OurPolicies.htm](http://www qlrc qld gov au/RTI_OurPolicies.htm)>.

The objectives of the Protocol are to ensure that the Commission's proposed Program:

- is well-informed;
- contains law reform issues that are both important and suitable to be undertaken by the Commission taking into account its function, expertise and resources; and
- is capable of being achieved within the timeframe of the program taking into account the nature of the issues involved and the human and other resources available to the Commission.

The Protocol is not intended to be exhaustive, but simply provides a framework of the steps to be taken and matters to be considered by the Commission in preparing and submitting a proposed program of law reform for the Attorney-General's consideration.

The Protocol was developed having regard to past practice of the Commission, as well as the processes adopted by law reform commissions in other jurisdictions.

## Proposed program of law reform

Section 10(3)(c) of the LRC Act requires the Commission to prepare and submit a proposed Program of law reform to the Attorney-General for approval.

In accordance with its Protocol, the Commission identified items for possible inclusion in its proposed Program from a variety of sources, including proposals made to the Commission from time to time (principally by members of the public),<sup>8</sup> issues raised in the legal or wider community (including in judicial decisions and the work of other law reform agencies), the Commission members' professional experiences and suggestions made in response to a targeted consultation process.

The Commission received a total of more than 40 suggested items from a large range of respondents. The Commission is most grateful for the contribution of those respondents.

In assessing prospective items for the proposed program, and their order of priority, the Commission applied the criteria set out in its Protocol. In particular, the Commission considered whether there is a demonstrated need for reform, whether the item is suitable having regard to the role of an independent law reform commission, whether the Commission has the necessary resources available to undertake the item, the likelihood of implementation and the mix of relevant items.

The Commission also took into account the referral to the Commission of the two stand-alone reviews made by the former Attorney-General in October 2014 and November 2014, which are both due for completion by the end of 2015.<sup>9</sup>

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<sup>8</sup> See *Law Reform Commission Act 1968* (Qld) s 10(3)(a).

<sup>9</sup> These reviews are discussed further below.

The proposed Program of law reform matters has been submitted to the Attorney-General under section 10(3) of the LRC Act for review and approval. The proposed Program is subject to variation by the Attorney-General, before or after its approval, under section 10(4) of the LRC Act.

## **Law reform reviews referred to the Commission by the Attorney-General**

During the reporting period, the Commission undertook work on the following law reform reviews referred to it by the Attorney-General under section 10(3)(b) or (e) of the LRC Act:

- A review of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld)*; and
- A review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector.

### ***Review of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld)***

Section 97 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* ('the ND (DFT) Act') requires the Attorney-General to begin a review of its operation and effectiveness within 3 years of its commencement (i.e. by 1 November 2014).

On 27 October 2014, the Commission received terms of reference to undertake a statutory review of the ND (DFT) Act.

The main purpose of the review is to consider whether the objects of the ND (DFT) Act remain valid and whether the ND (DFT) Act is meeting its objects.

The Review must examine a number of specific issues that the Attorney-General has included in the terms of reference, namely:

- whether the allocation of responsibilities, liabilities and rights under the ND (DFT) Act promotes resolution by neighbours of issues relating to dividing fences and trees;
- whether dispute resolution processes under the ND (DFT) Act are fair, just and effective;
- the simplicity and ease of use of the ND (DFT) Act for members of the community;
- whether the ND (DFT) Act provides QCAT with sufficient powers to resolve issues;
- the remedies and penalties in the ND (DFT) Act;
- the operation of the ND (DFT) Act in relation to other Acts or laws;
- QCAT's power to make orders to protect the severe obstruction of a view;



- the provisions enabling a neighbour to serve a notice on a tree owner to prune certain overhanging branches; and
- whether the scope of the ND (DFT) Act should be expanded to cover retaining walls built on neighbouring properties' boundaries.

A discussion paper was completed in June 2015.

The Commission will be consulting on the discussion paper and responses the Commission has received to it during July and August 2015.

The final report on the review is due to the Attorney-General by 1 November 2015.

### ***Review of child protection mandatory reporting laws for the early childhood education and care sector***

On 6 November 2014, the Commission received terms of reference to undertake a review of the legislative mandatory reporting requirements under the *Child Protection Act 1999* (Qld).

The Review requires the Commission to consider:

- whether the mandatory reporting requirements under the *Child Protection Act 1999* (Qld) should be expanded to cover the early childhood and education (ECEC) sector, including long day care and family day care services and kindergartens;
- if it determines that the mandatory reporting requirements should be expanded to the ECEC sector, make recommendations as to which professionals, office holders or workers within that sector should be included in the mandatory reporting scheme; and
- when considering those issues, take into account the policy environment, including the Queensland Government's implementation of the recommendations of the Queensland Child Protection Commission of Inquiry.

The Commission released a discussion paper in July 2015 (after close of the reporting period) seeking submissions from key stakeholders and the community.

The final report on the Review is due to the Attorney-General on 31 December 2015.

## **Recent publications of the Commission**

During the reporting period, the Commission produced the following:

- Discussion Paper WP 72, *Review of the Neighbourhood Disputes (Dividing fences and Trees) Act 2011* (Qld), June 2015;
- *Queensland Law Reform Commission - Protocol for the development of proposed programs*; and
- *Queensland Law Reform Commission – Annual Report 2013/14*.

A list of all of the Commission's Reports, Working Papers and Miscellaneous Papers is available on its website at <<http://www qlrc qld gov au/publications.htm>>. Copies of the Commission's recent publications, and most of its older publications, are also available on its website. The Commission's website also details the legislative action taken on Commission reports. A list of former holders of office under the *Law Reform Commission Act 1968* can also be found on the Commission's website.

## Commission Code of Conduct

As a public sector entity, the Commission is required to have a Code of Conduct that applies to the members of the Commission.<sup>10</sup>

Section 10(1) of the *Public Sector Ethics Act 1994* ('the PSE Act'), provides generally that, in recognition of the ethics principles and values for public service agencies, public sector entities and public officials, codes of conduct are to apply to those agencies, entities and officials in performing their official functions.

Section 10(2) of the PSE Act provides that the purpose of a code of conduct is to provide standards of conduct for public service agencies, public sector entities and public officials consistent with the ethics principles and values.

The Commission has submitted its proposed Code of Conduct to the Attorney-General for review and approval.<sup>11</sup>

## Who's who at the Commission

### Commission members

#### The Hon Justice D S Jackson — Chair

1 August 2014 – Current

Justice Jackson was appointed a Judge of the Trial Division of the Supreme Court of Queensland on 8 October 2012 and is a Commercial List Judge. He was admitted to the Queensland Bar in 1977 and was appointed as Queen's Counsel for the State of Queensland in 1990. He was a member of the Council of the Bar Association of Queensland and the Supreme Court Library Committee.

His Honour was appointed Chair of the Commission on 1 August 2014.

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<sup>10</sup> The staff of the Commission Secretariat as employees of the Department of Justice and Attorney-General are covered by the Queensland Government public sector code of conduct.

<sup>11</sup> The proposed Code of Conduct was approved on 2 September 2015 by the Attorney-General and Minister for Justice, and Minister for Training and Skills.

**Mr P Hastie QC BA LLB LLM (Qld)**

1 August 2014 – Current

Mr Hastie was admitted to the Queensland Bar in 1983. He was appointed as a Queen's Counsel for the State of Queensland in 2013.

Mr Hastie has also been admitted to practice in New South Wales, South Australia, and Victoria. He is entitled to practice in the Federal and High Courts.

Mr Hastie has a broad civil practice involving contractual and commercial disputes, building and construction disputes, professional liability, administrative law, corporations law, insurance, property, trusts, equity, personal injuries, arbitrations, expert determinations and mediations.

Mr Hastie originally worked in the Solicitor-General's Office and as a crown prosecutor at the Office of the Director of Public Prosecutions. Mr Hastie commenced private practice in January 1986.

Mr Hastie was also a consultant to the former Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (Fitzgerald Inquiry).

**Professor P M McDermott RFD LLB (Hons) (Qld), LLM (Qld), PhD (Griffith)**

1 August 2014 – Current

Professor McDermott was admitted as a barrister of the Supreme Court of Queensland in 1978. He is an Adjunct Professor of the Central Queensland University and an Academic Fellow of Emmanuel College, The University of Queensland. He is a former Reader in Law at the Law School of The University of Queensland.

He is a co-author of *Company Law* (2<sup>nd</sup> ed, 2008) (Foreword: Justice Michael Kirby). His recent research on "Enemy Aliens in the First World War: Legal and Constitutional Issues" will shortly be published in *Security, Dissent and the Limits of Toleration in War and Peace: Canadian State Trials Vol IV, 1914-1939* (University of Toronto Press, 2015).

Professor McDermott was a junior Counsel to Sir Maurice Byers QC for the Thayorre People in the *Wik* case. Professor McDermott was the Senior Legal Officer (1982-1988) and later the Principal Legal Officer (1988-1991) of the Queensland Law Reform Commission. He is a former Deputy Chairman of the Queensland Law Reform Commission (1996-1998). Professor McDermott is a Senior Member of the Administrative Appeals Tribunal and formerly served on the Queensland Civil and Administrative Tribunal. He has been a Member of the South Queensland Regional Community Corrections Board (2002-2006).

**Mrs S J Traves LLB (Hons) LLM**

1 August 2014 – Current

Mrs Traves was admitted as a solicitor of the Supreme Court of Queensland in 1990.

She has a broad range of legal and academic experience.

Mrs Traves is a former Senior Lecturer and Visiting Fellow at the Faculty of Law, Queensland University of Technology where she was Head of Commercial Law and Insurance Law. Mrs Traves is the author of *Commercial Law*, LexisNexis, 3rd ed, and co-author of *Due Diligence*, LawBook Co. She has published widely, in particular in the areas of commercial and insurance law.

Mrs Traves has assisted in the drafting of insurance contracts legislation for Papua New Guinea, has been guest speaker at National and State insurance law conferences and is a past recipient of the Australian Insurance Law Association (AILA) Insurance Law Prize. She is a former member of the committee of the National Insurance Lawyers Group of the Law Council of Australia, and currently serves on the Scientific Council of the Association International de Droit des Assurances (AIDA). Mrs Traves was Chair of the Plenary Session on Preventive Measures at the 2014 AIDA World Congress in Rome.

On 1 June 2015, Mrs Traves was appointed to the Queensland Civil and Administrative Tribunal.

**The Hon M A Wilson QC BA LLB (Hons)**

1 August 2014 – Current

Ms Wilson is a graduate of The University of Queensland.

She completed articles of clerkship with Feez Ruthning and Co, Solicitors, and was admitted as a solicitor in 1978. She was admitted as a barrister in March 1979, and became a Queen's Counsel in 1992. She practised at the Queensland Bar continuously from her admission until her appointment to the Bench.

Ms Wilson served as a Judge of the Trial Division of the Supreme Court of Queensland between August 1998 and April 2014, when she sat on a wide range of criminal and civil trials and appeals. She was the Judge constituting the Mental Health Court for three years, a Commercial List Judge for two years, and an Additional Judge of Appeal in 2011-2012. She was a member of the Rules Committee appointed under the *Supreme Court of Queensland Act 1991* between 1999 and 2012 and a member of the Judges' Building Committee between 2006 and 2012.

Ms Wilson is a Justice of the Court of Appeal of Solomon Islands.

## **Commission Secretariat**

### **David Groth BA LLB — Director**

Mr Groth graduated with a Bachelor of Laws degree from The University of Queensland in 1990. He was admitted as a barrister of the Supreme Court of Queensland in 1992. He also holds a Bachelor of Arts degree from The University of Queensland.

Mr Groth has performed previous roles including Director of Legal Services Coordination in the Department of Justice and Attorney-General, Secretary of the Bundaberg Hospitals Commission of Inquiry/Queensland Public Hospitals Commission of Inquiry, Court Administrator of the Supreme and District Courts, and Research Director of the Parliamentary Criminal Justice Committee.

Mr Groth has also performed senior policy roles in both the Department of the Premier and Cabinet and the Department of Justice and Attorney-General.

Mr Groth has previously performed senior roles in the Office of the Director of Public Prosecutions including Manager of the Sentencing Unit.

Mr Groth commenced work at the Commission in April 2014.

### **Cathy Green BSc LLB — Assistant Director**

Mrs Green graduated with a Bachelor of Laws degree from the Queensland University of Technology in 1996. She was admitted to practice as a barrister of the Supreme Court of Queensland in 1996. Mrs Green also holds a Bachelor of Science degree from the University of Queensland.

Mrs Green served two periods of secondment at the Commission before being appointed as a Legal Officer on a permanent basis in 2002. In 2005, Mrs Green was appointed as the Commission's Principal Legal Officer and, in 2008, as the Commission's Assistant Director. She is also the Commission's Right to Information and Information Privacy Officer.

Mrs Green previously worked as a research scientist at the Queensland Institute of Medical Research, in the Office of the Director of Public Prosecutions and as a research officer at the Queensland Parliamentary Library.

### **Anita Galeazzi BA LLB (Hons) GDLP — A/Senior Legal Officer**

Ms Galeazzi graduated with Honours in Law from The University of Queensland in 2006. She was admitted to the legal profession in Queensland as a lawyer in 2010. She completed a Graduate Diploma in Legal Practice through the Australian National University.

Ms Galeazzi worked as a research officer at the Supreme Court of Queensland Library.

Ms Galeazzi commenced work at the Commission in January 2011.

**Elise Nolan BJur LLB GradDipLegalPrac LLM — A/Senior Legal Officer**

Ms Nolan graduated with a Bachelor of Laws degree from the Queensland University of Technology in 2008. She also holds a Bachelor of Justice degree from the Queensland University of Technology.

Ms Nolan was admitted as a legal practitioner of the Supreme Court of Queensland in September 2009.

Ms Nolan completed her Master of Laws (Health Law) in 2012.

Ms Nolan has worked as a Research Assistant at the Queensland University of Technology, Legal Officer at the Office of the Director of Public Prosecutions, and as a Senior Legal Officer with the Office of the Public Advocate.

Ms Nolan commenced work at the Commission in February 2015.

**Paula Rogers BA LLB (Hons) — A/Senior Legal Officer**

Ms Rogers graduated with First Class Honours in Law from Griffith University in 2003, having been awarded the University Medal and the Arts Medal, and was admitted as a legal practitioner of the Supreme Court of Queensland in January 2005.

Ms Rogers worked as a Judge's Associate at the Supreme Court of Queensland in 2003. She completed her articles of clerkship at Allens Arthur Robinson during 2004, where she worked in the energy and resources practice group. Ms Rogers has also worked as a Senior Legal Officer in Strategic Policy in the Department of Justice and Attorney-General.

Ms Rogers commenced work at the Commission in February 2005.

**Jenny Manthey BSc (Hons) Cert III Bus (Office Admin) — Commission Secretary**

Mrs Manthey graduated with a Bachelor of Science from The University of Queensland in 1993. She worked as a Scientific Technician from 1992 to 1995 at CSIRO Long Pocket Laboratories, and completed her Honours degree in 1998.

After gaining qualifications in Office Administration in 2000, Mrs Manthey was employed in a variety of administrative roles before commencing work at the Commission in January 2004.

**Kahren Giles BA — Administrative Officer**

Ms Giles is responsible for a wide range of secretarial and administrative functions within the Commission. She commenced work at the Commission in October 2007.