

Annual Report

2020–2021

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QUEENSLAND LAW REFORM COMMISSION**

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August 2021

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To: The Honourable Shannon Fentiman MP
Attorney-General and Minister for Justice
Minister for Women and Minister for the Prevention
of Domestic and Family Violence

In accordance with section 15 of the *Law Reform Commission Act 1968*, the Commission is pleased to present its *Annual Report 2020-21*.

Handwritten signature of Peter Applegarth in black ink.

The Hon Justice Peter Applegarth AM
Chairperson

Handwritten signature of Penelope White in black ink.

Ms Penelope White
Member

Handwritten signature of Anthony Rafter in black ink.

His Honour Judge Anthony Rafter SC
Member

Handwritten signature of Mark Hinson in black ink.

Mr Mark Hinson QC
Member

Handwritten signature of Clare Endicott in black ink.

Ms Clare Endicott
Member

COMMISSION MEMBERS¹

Chairperson:	The Hon Justice Peter Applegarth AM ²
Part-time members:	The Hon Margaret Wilson QC ³ Dr Nigel Stobbs ⁴ Ms Ruth O’Gorman ⁵ Ms Penelope White His Honour Judge Anthony Rafter SC ⁶ Mr Mark Hinson QC ⁷ Ms Clare Endicott ⁸ Ms Constance Johnson ⁹

SECRETARIAT

Director:	Mr David Groth
Assistant Director:	Mrs Cathy Green
Secretary:	Mrs Jenny Manthey
Senior Legal Officers:	Ms Paula Rogers Ms Anita Galeazzi Mrs Elise Ho
Administrative Officers:	Ms Kahren Giles Mrs Brie Henri

Additional temporary staff for the Voluntary assisted dying review¹⁰

Consultants:	Dr Jayne Hewitt Ms Eve Gibson Mr Hal Quin
Principal Legal Officer:	Ms Krista Lee-Jones
Senior Legal Officer:	Mrs Nicolee Dixon
Research Officer:	Ms Susanna Connolly ¹¹

¹ This list represents the membership of the Commission over the reporting period.

² The Hon Justice Peter Applegarth AM was appointed as Chairperson on 31 July 2020. He was appointed a full-time member of the Commission from 1 February 2021 to 31 May 2021.

³ Until 14 September 2020.

⁴ Ibid.

⁵ Ibid.

⁶ From 17 September 2020.

⁷ Ibid.

⁸ Ibid.

⁹ From 17 September 2020 to 15 March 2021.

¹⁰ Temporary additional staff for various periods from December 2020 onwards.

¹¹ From 1 February 2021 to 10 May 2021.

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CHAIR'S REPORT

Work undertaken and key milestones during the reporting period

The reporting period ending 30 June 2021 covers work undertaken by the Commission or key milestones that occurred in respect of several reviews referred to the Commission under section 10(3) of the Law Reform Commission Act 1968.

On 30 June 2020, the Commission submitted its Report No 78 (together with its draft Criminal Code (Consent and Mistake of Fact) Amendment Bill 2020). That report was tabled in Parliament on 31 July 2020. On 13 August 2020, the Criminal Code (Consent and Mistake of Fact) Amendment Bill 2020 was introduced. (The Bill lapsed on 6 October 2020.)

On 26 November 2020, the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 was re-introduced in substantially the same form as the lapsed Bill. That Bill was referred to the Parliamentary Legal Affairs and Safety Committee. On 12 February 2021, the Committee tabled its report recommending that the Bill be passed. On 25 March 2021, the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021 was passed.

On 21 May 2020, we received terms of reference to develop an appropriate legislative scheme for voluntary assisted dying in Queensland and to prepare draft legislation to give effect to the recommendations. As required by the terms of reference, we commenced this review on 1 July 2020 — the week after the report on Consent laws and the excuse of mistake of fact was submitted. On 10 May 2021, the Final Report (and draft Bill), Summary Report and brief four page summary was submitted.

The pressure on the Commission's part-time members and staff to complete the review by its reporting date of 10 May was immense. This date was always ambitious in light of the enormous complexity of the review, and the need to also draft legislation during this short period. On 25 May 2021, the Voluntary Assisted Dying Bill 2021 was introduced. That Bill was referred to the Parliamentary Health and Environment Committee with a requirement to report back by 20 August 2021.

Current resources and Program of law reform

The Commission has a small Secretariat consisting of a Director, an Assistant Director, three senior legal officers, a Commission secretary (AO4) filled part-time and an administrative officer (AO2) filled part-time.

Compared to other law reform and similar bodies, the Commission's staff numbers make it 'the poor cousin' of law reform in this State. It should not be.

Yet, the Commission's law reform responsibilities are broad, and it is regularly asked to undertake complex and controversial reviews in a short time.

With its current resourcing, the Commission is presently capable of undertaking only one major review at a time. Our permanent resources have been supplemented by additional temporary resources to enable the last two reviews to be completed. This situation is neither sustainable nor efficient. We welcome the acknowledgment by government of the need to review the Commission's resources, and any structural changes that may be required for it to undertake, as some comparable Commissions do, more than one review at any one time.

The Commission is required by law to develop a proposed program of law reform. The development of a proposed program is one of several important statutory duties it is required to undertake in carrying

out its functions. A proposed program is subject to variation by the Attorney-General, before or after its approval. Under its Act, the Commission shall receive and consider any proposal for law reform which may be made or referred to it by the Attorney-General.

In late 2019, we embarked on the process of consultation that is required to develop a proposed program of law reform. The Commission received many submissions from government departments, non-government organisations and other bodies. Some of those subjects are relatively small in scope, would not require extensive community consultation, and might be efficiently undertaken with the Commission's current financial and human resources. One example is to reform the unnecessarily complex wording of the self-defence provisions of the Criminal Code.

Widespread support for most of the many reforms suggested to the Commission would seem to exist, thereby giving a realistic prospect of implementation for reform. The need for reform would appear to be reasonably demonstrated and the matters are likely to be ones which are suitable to be undertaken by the Commission unless some other body is thought to be better suited to undertaking such reform.

Some of the suggested reviews could not be presently undertaken by the Commission with its current resources. However, they are strongly supported by government departments and stakeholders. They seem suitable for a body such as the Law Reform Commission because of its independence, the experience of the Commission's part-time Members and Secretariat in undertaking complex reviews and the economic and social benefits that could arise from a reform process.

Some identified reforms have significant economic as well as social benefits. For example, a variety of stakeholders and the Land Court recognise the need for a review of the administrative processes for the granting of mining leases and associated environmental authorities. An improved system would have significant benefits for landholders, miners, environmental interests and others who regard the current system as unsatisfactory. This is a significant issue for the State's environment and economy.

Other suggested reforms are long overdue, for example a review of the *Transplantation and Anatomy Act 1979*, which Queensland Health explained is in urgent need of review by the Commission.

The Commission's initial consideration of potential subjects for a law reform program identified about 20 matters. However, because we were completely preoccupied with the voluntary assisted dying review, we did not have time to develop a program of law reform in the first half of 2021. Our lack of resources and lack of time did not enable us to perform one of our important statutory functions during this period.

Since the Commission's consultation process occurred, some of the suggested reviews have been referred to other bodies for review.

In early June 2021, we sought to initiate a dialogue with the Attorney-General and her department with a view to finalising a proposed program of law reform which is informed by the Government's priorities for law reform and consistent with the criteria in the Commission's Protocol for the development of proposed programs. These criteria include:

- is there a demonstrated need for reform?
- is the item one that is suitable to be undertaken by the Commission?
- are the necessary resources available to carry out the item effectively?
- is there a real likelihood of implementation?
- does the overall program contain an appropriate number and mix of items?

We identified to the Attorney-General in June 2021 many items that were under consideration by the Commission for inclusion in its proposed program of law reform. The Commission proceeded to consider these items against its criteria, and at its 6 August 2021 meeting adopted a proposed program of law reform which included a limited number of items for submission to the Attorney-General.

Although the adoption of that program post-dates the year under review, the program was the product of consultation and consideration by the Commission during that year. It reflects the Commission's independent view about current priorities for law reform from many matters in which law reform is overdue.

The Commission's limited resources and small number of staff mean that it can only effectively and efficiently conduct one review at a time. This makes the careful selection by the Attorney-General of a new review critically important.

Another consequence of the Commission being asked to undertake more reviews than its current resources allow is that work on previously nominated reviews (such as the Workplace Surveillance review) are postponed and developments in that or associated fields occur. New reviews that have a higher priority take its place, yet the review remains 'on the Commission's books' as it were.

The year under review ended with an exhausted Commission. The demands and stresses placed on its staff and members over many months by the voluntary assisted dying review, particularly in the final stages of the review, were more than should have been expected. While the Commission values the widespread appreciation expressed about the quality of its report, I would never wish to see its dedicated staff or my fellow part-time members again placed in that position.

The year under review ended with the opportunity to allow the Commission to do the job it is required by law to do. This included the thoughtful development by the Commission of a program of law reform from among the numerous matters that have been suggested to it as in need of reform and review by the Commission.

The confidence placed by government and non-government entities in the competence and independence of the Commission to review many important matters in need of reform is welcome. However, presently we can only undertake one review at a time.

If the Commission is to do its job properly, then it requires more staff. It must have the capacity to progress reviews that are the product of the law reform program contained in the Act, as well as any additional reviews that it is required to undertake, without much notice, because a topical and complex issue is thought to warrant the Commission's independent review.

The Commission cannot do the job expected of it by government or the Queensland public with its current resources and with compressed timetables to complete reviews.

Thanks

I wish to acknowledge the significant contributions to the work of the Commission made by its former part-time members, The Hon Margaret A Wilson QC, Dr Nigel Stobbs, and Ms Ruth O'Gorman — whose service to the Commission ended on 14 September 2020.

In particular, I wish to pay tribute to The Hon Margaret A Wilson QC who served with distinction over 6 years. This included important recommendations for changes to the law following reviews about voluntary assisted dying, sexual consent laws and the excuse of mistake of fact, civil surveillance and the protection of privacy, termination of pregnancy, expunging historical gay sex convictions, child protection mandatory reporting and neighbourhood disputes involving fences and trees.

I also wish to thank Ms Constance Johnson for the contribution she has made to the work of the Commission. She was a part-time member of the Commission from 17 September 2020 to 15 March 2021.

Finally, I wish to express my warm gratitude to and acknowledge the significant contributions to the work of the Commission made by all members of the Commission and by the dedicated officers of its Secretariat. These dedicated individuals all worked tirelessly to ensure that the Commission completed its comprehensive reviews to such a high standard.

The members of the Commission, who all serve in a part-time capacity, look forward to continuing the Commission's important contribution to law reform in this State.

A handwritten signature in black ink, appearing to read 'PDT Applegarth'.

The Hon Justice Peter Applegarth AM

Chair

OVERVIEW OF THE COMMISSION

Constitution

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

Function

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

- (a) codifying laws;
- (b) eliminating anomalies;
- (c) repealing obsolete and unnecessary enactments;
- (d) reducing the number of separate enactments; and
- (e) generally, simplifying and modernising the law.

Statutory duties

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

- undertake law reform reviews referred to it from time to time by the Attorney-General;¹²
- prepare and submit to the Attorney-General for review and approval a proposed program of law reform reviews, in order of priority;¹³ 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.¹⁴

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. These 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 Law Reform Commission Act.

¹² *Law Reform Commission Act 1968* (Qld) s 10(3)(b), (e).

¹³ *Law Reform Commission Act 1968* (Qld) s 10(3)(c).

¹⁴ *Law Reform Commission Act 1968* (Qld) s 10(3)(d), 10(4).

Members and staff

Commission Members

Members of the Commission are appointed by the Governor in Council on the advice of the Attorney-General. The Law Reform Commission Act provides that the Commission must consist of at least three members, who may be full-time or part-time members.¹⁵

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.¹⁶

As currently constituted, the Commission has five part-time members, including the Chair.

Commission Secretariat

The Secretariat of the Commission comprises the Director, the Assistant Director, three senior legal officers, a part-time Commission Secretary, a part-time administrative officer and a temporary 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, including undertaking research and consultation. 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.

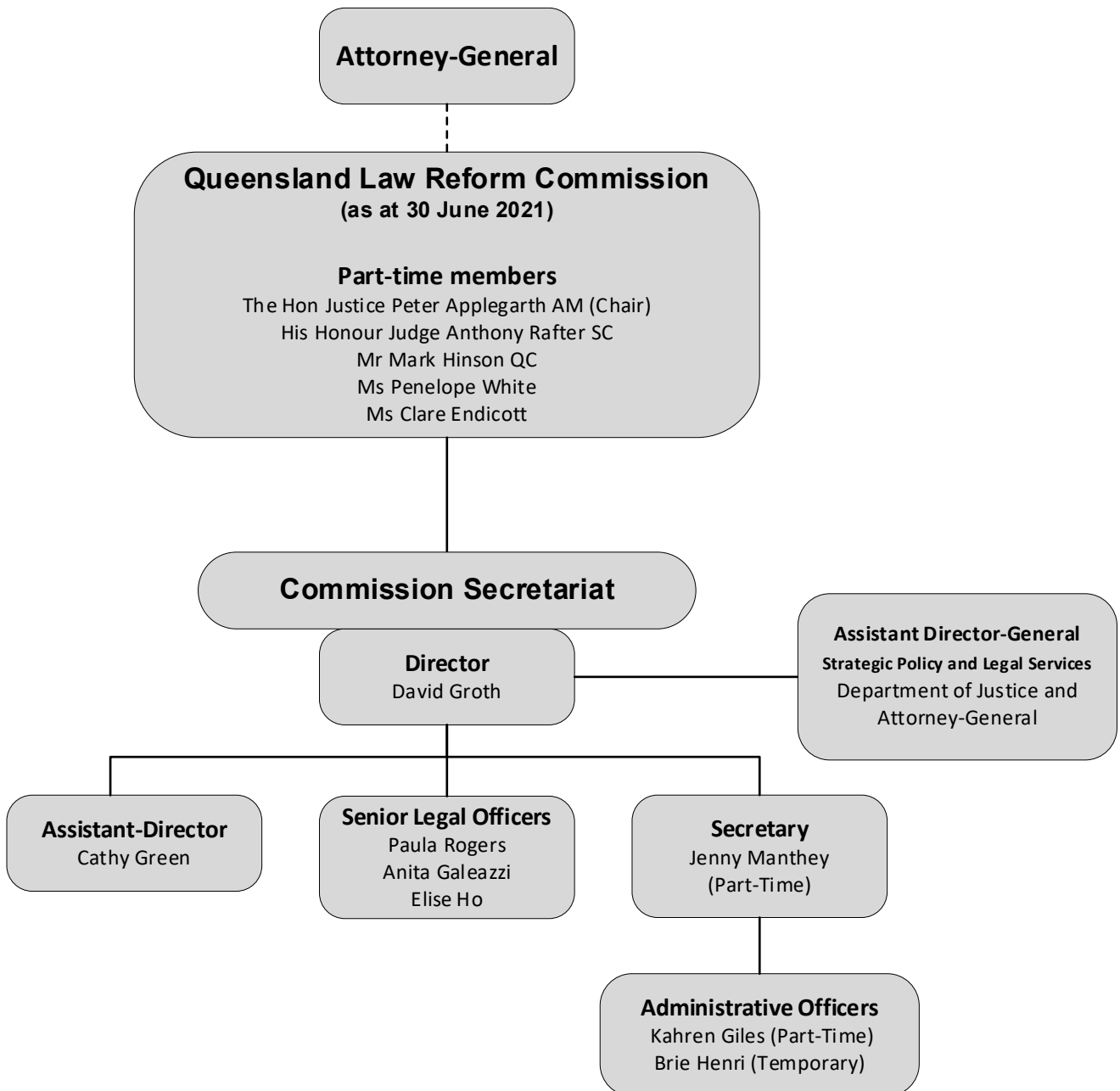
Section 9 of the Law Reform Commission Act provides that the Commission may engage, on a temporary basis, any person who has technical or specialist knowledge or who is experienced in a particular branch of the law.¹⁷

¹⁵ *Law Reform Commission Act 1968* (Qld) s 3(2).

¹⁶ *Law Reform Commission Act 1968* (Qld) s 4(1)(a).

¹⁷ For example, for its consent laws review and its voluntary assisted dying reviews, the Commission engaged a small team of experts with relevant experience to assist it in undertaking the review.

Organisational chart



Meetings of the Commission

During the reporting period, the Commission held 17 Commission meetings.

Remuneration of Commission Members

Part-time members of the Commission are remunerated in accordance with the Queensland Government policy, Remuneration procedures for Part-time Chairs and Members of Queensland Government Bodies.¹⁸

The total remuneration paid to part-time members for work performed in 2020-21 was \$51,154.50.¹⁹

Right to Information Act 2009

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 information routinely available from the Commission and the terms on which the information will be made available.

Public Sector Ethics Act 1994

Section 10(1) of the *Public Sector Ethics Act 1994* (Qld) (the 'Public Sector Ethics Act') provides 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 Public Sector Ethics 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.

Commission Members

The Commission, as a public sector entity, has an approved code of conduct that applies to the members of the Commission in their capacity as public officials. The Commission's code of conduct is available on the Commission's website.

Commission Secretariat

The staff of the Commission Secretariat, as employees of the Department of Justice and Attorney-General, are covered by the Code of Conduct for the Queensland Government Public Service.

Section 12K of the Public Sector Ethics Act requires public officials of a public service agency to be given access, including at regular intervals during their employment, to appropriate education and training about public sector ethics covering:

- the operation of the Public Sector Ethics Act;
- the application of ethics principles and obligations to the public officials;
- the contents of the approved code of conduct for public service agencies; and
- any approved standard of practice.

During the reporting period, officers of the Secretariat undertook annual 'Workplace Ethics' refresher training from the Department of Justice and Attorney-General.

¹⁸ By virtue of s 13 of the *Law Reform Commission Act 1968* (Qld), judicial officers do not receive any remuneration for performing duties as a part-time member of the Commission.

¹⁹ See Appendix 1.

THE WORK OF THE COMMISSION²⁰

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

The reporting period covers work undertaken by the Commission or key milestones that occurred in respect of several reviews referred to it by the Attorney-General under section 10(3) of the Law Reform Commission Act.

Review of Queensland's laws relating to workplace surveillance

On 24 July 2018, the Attorney-General referred to the Commission for review 'the issue of privacy protections for workers in the context of current and emerging surveillance devices in workplaces'.²¹

The Commission's terms of reference require it to recommend whether Queensland should consider legislation to appropriately protect the privacy of workers in the context of current and emerging surveillance device technologies in workplaces, including to:

1. regulate the surveillance of workers by employers using surveillance devices (such as optical surveillance devices, tracking devices, listening devices and data surveillance devices);
2. regulate the communication or publication of information derived from surveillance devices;
3. provide for offences relating to the unlawful use of surveillance devices and the unlawful communication or publication of information derived from a surveillance device;
4. provide appropriate regulatory powers and enforcement mechanisms in relation to the use of surveillance devices;
5. provide appropriate penalties and remedies; and
6. otherwise appropriately protect the privacy of workers in relation to the use of surveillance devices.

Surveillance devices in workplaces most commonly include optical surveillance in and around workplaces, data surveillance devices to monitor computer and internet use by employees and tracking devices to monitor the location of employees. Employers use these devices for a number of legitimate reasons, including to protect property and detect possible fraud, monitor employee performance and to ensure employee health and safety. The use of surveillance devices in workplaces must, however, be balanced against an employee's reasonable expectations of privacy.

The reporting date for this review has been extended twice—firstly to 31 August 2020 and then to 30 April 2021—due to the prioritisation of the Commission's work on its civil surveillance review, consent and mistake of fact review and its voluntary assisted dying review.

This review will be allocated a further extended reporting date as part of the Commission's amended work program for the remainder of its term.

²⁰ The Commission prepares its own annual reports pursuant to s 15(2) of the *Law Reform Commission Act 1968*. Section 15(1) of the Act also requires that the annual report of the Department of Justice and Attorney-General 'must include a report about the operations of this Act during the year'.

²¹ The terms of reference for this review are available on the Commission's website at <<https://www qlrc.qld.gov.au/current-reviews>>

Review of consent laws and the excuse of mistake of fact

On 2 September 2019, the Attorney-General referred to the Commission for review and investigation:²²

the definition of consent in section 348 (Meaning of consent) in Chapter 32 (Rape and sexual assaults) of the Criminal Code and the operation of the excuse of mistake of fact under section 24 (Mistake of fact) as it applies to Chapter 32.

The terms of reference required the Commission to examine the operation and practical application of those provisions and to make recommendations on:²³

- (a) whether there is a need for reform of:
 - (i) the definition of consent in section 348;
 - (ii) the excuse of mistake of fact in section 24 as it applies to rape and sexual assaults in Chapter 32 of the Criminal Code; and
- (b) any other matters the Commission considers relevant having regard to the issues relating to the referral.

The terms of reference asked the Commission to prepare, if relevant, draft legislation based on its recommendations.

On 31 July 2020, the Commission's Report 78 (and draft Criminal Code (Consent and Mistake of Fact) Amendment Bill 2020) was tabled in Parliament.

On 13 August 2020, the then Attorney-General introduced the Criminal Code (Consent and Mistake of Fact) Amendment Bill 2020. The Bill lapsed on 6 October 2020 when Parliament was dissolved.

On 26 November 2020, the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence re-introduced the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020. The Bill, (in substantially the same form as the lapsed Bill), was referred to the Parliamentary Legal Affairs and Safety Committee. On 12 February 2021, the Committee tabled its report recommending that the Bill be passed.

On 25 March 2021, the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021 was passed.

The key features of the Commission's draft Criminal Code (Consent and Mistake of Fact) Amendment Bill 2020 (the 'draft Bill'), which implements the Commission's recommendations, are to amend the Criminal Code by:

- Inserting a new subsection in section 348 to provide that a person is not to be taken to give consent to an act only because at or before the time of the act the person does not say or do anything to communicate that the person does not consent to the act.²⁴
- Applying the definition of 'consent' in section 348 to the offences provided for under sections 351(1) (assault with intent to commit rape) and 352(1)(a) (sexual assault).²⁵

²² Terms of reference, para 1. The terms of reference are set out in full in Appendix A of Report No 78, *Review of consent laws and the excuse of mistake of fact*, available on the Commission's website at <<https://www qlrc qld gov au/publications>>.

²³ Ibid para 3.

²⁴ See Rec 5-1, and draft Criminal Code (Consent and Mistake of Fact) Amendment Bill 2020 cl 5, inserting new s 348(3).

²⁵ See Rec 5-2, and draft Criminal Code (Consent and Mistake of Fact) Amendment Bill 2020 cll 3, 4, inserting new definition of 'assault' for ch 32.

- Inserting a new subsection in section 348 to provide that, if an act is done or continues after consent to the act is withdrawn by words or conduct, then the act is done or continues without consent.²⁶
- Inserting a new subsection in section 348 to provide that, for offences in Chapter 32, in deciding under section 24 whether a defendant did an act under an honest and reasonable, but mistaken, belief that the complainant gave consent to the act, regard may be had to anything the defendant said or did to ascertain whether the other person was giving consent to the act.²⁷
- Inserting a new subsection in section 348 to provide that, for offences in Chapter 32, in deciding under section 24 whether a defendant did an act under an honest and reasonable, but mistaken, belief that the complainant gave consent to the act, regard may not be had, in deciding whether a belief was reasonable, to the voluntary intoxication of the defendant by alcohol, a drug or another substance.²⁸

Review of voluntary assisted dying

On 21 May 2020, the Acting Attorney-General gave the Commission terms of reference to develop an appropriate legislative scheme for voluntary assisted dying for Queensland and to prepare draft legislation to give effect to its recommendations.²⁹

The Commission commenced the review, in accordance with the terms of reference, on 1 July 2020. It was required to provide its final report and draft legislation to the Attorney-General by 1 March 2021.

On 16 October 2020, the Commission released its comprehensive consultation paper (WP 79) inviting submissions on the key issues outlined in the paper — posing 50 questions. Submissions closed on Friday 27 November 2020. The Commission received 126 submissions, many of which addressed all 50 questions. This consultation included researchers with a detailed knowledge of the area (who supplemented their submissions with articles), professional bodies representing a range of health practitioners and disciplines, organisations that support or oppose voluntary assisted dying, religious bodies, unions, members of the public who have experienced suffering themselves or witnessed it in members of their family, health practitioners, including practitioners in the field of palliative care, disability advocates, lawyers' groups, public authorities, ethicists, and members of the public.

Due to the size and complexity of the review, the Commission sought further time and temporary resources. On 7 December 2021, the Commission was given a new reporting date of 10 May 2021 and additional temporary resources to complete the review within that timeframe.

On 10 May 2021, the Commission delivered its Final Report (and draft Bill), Summary Report and brief four page summary.

'Voluntary assisted dying' refers to the self-administration of a prescribed substance or its administration by a health practitioner with the purpose of bringing about the person's death.

The Commission's report details the principles on which its draft the Bill is based. The draft legislation is about individuals who are 'suffering and dying'. The Commission notes that when a person is dying and

²⁶ See Rec 5-3, and draft Criminal Code (Consent and Mistake of Fact) Amendment Bill 2020 cl 5, inserting new s 348(4)

²⁷ See Rec 7-1, and draft Criminal Code (Consent and Mistake of Fact) Amendment Bill 2020 cl 6, inserting new s 348A(1)–(2).

²⁸ See Rec 7-2, and draft Criminal Code (Consent and Mistake of Fact) Amendment Bill 2020 cl 6, inserting new s 348A(1), (3).

²⁹ The terms of reference are set out in full in Appendix A of Report No 79, *A legal framework for voluntary assisted dying*, available on the Commission's website at <<https://www.qirc.qld.gov.au/publications>>

experiencing intolerable suffering, the interest in personal autonomy has greater weight. A person's autonomy includes autonomy in determining end of life choices.

The Commission recommended a qualified prohibition (as in Western Australia), which allows a medical practitioner or nurse practitioner to initiate a discussion about voluntary assisted dying, provided at the same time there is a wider discussion about the person's treatment and palliative care options and their likely outcomes.

The Commission has set five criteria for eligibility. The person must: have an eligible condition; have decision-making capacity; be acting voluntarily and without coercion; be aged at least 18 years; and fulfil a residency requirement.

To satisfy, the person must have been diagnosed with a disease, illness or medical condition that is: advanced, progressive and will cause death, expected to cause death within 12 months, and causing suffering that the person considers to be intolerable. The timeframe of 12 months makes it clear that voluntary assisted dying is an option only for those who are at the end of life.

The Commission emphasised that allowing eligible people who are dying to begin the process during what is expected to be the last 12 months of their lives does not mean that they will proceed to obtain the substance and administer it as soon as they become eligible. Experience shows they are likely to wait until they are closer to death.

The Commission considered that a person should be able to make an informed decision about the method of administration best suited to them. Similar to Western Australia, a person can make an administration decision (either a self-administration decision or a practitioner administration decision) in consultation with and on the advice of the coordinating practitioner.

The Commission's draft Bill provides that a person who accesses the scheme is taken to have died from the disease, illness or medical condition from which they were dying, and which made them eligible at the end of their life to access voluntary assisted dying. It also states that a person who dies as a result of the self-administration or administration of a substance in accordance with the law does not die by suicide.

The Commission's scheme has many safeguards, including that:

- the person must be separately and independently assessed by two doctors (who meet the law's qualification and training rules) to be eligible.
- the process of request and assessment involves three separate requests that are clear and documented.
- the process has a waiting period of at least nine days between the first and final request.
- the person must also be told, more than once, that they may decide at any time not to continue the voluntary assisted dying process.

The Commission's scheme permits doctors, nurses and other health practitioners who have a conscientious objection to voluntary assisted dying to choose not to participate.

The Commission recommended provisions to reconcile competing rights of individuals to access the scheme (including to obtain information about voluntary assisted dying, request it if they choose, engage in the assessment process and, finally, if eligible, to administer the substance) and the rights and interests of entities to not provide services they do not wish to provide and to not facilitate their provision by others.

The Commission Report outlines the minimum qualifications, experience and training required for health practitioners to perform particular roles under the proposed scheme.

The Commission highlighted the legal uncertainty about whether the use of telephone, video, email and other forms of electronic communications to convey information and advice about voluntary assisted dying may contravene Commonwealth laws that prohibit the use of a 'carriage service' to counsel, promote or provide instruction on suicide. The Report recommends that Queensland and other states with voluntary assisted dying laws raise this legal uncertainty with the Commonwealth Government with a view to the Criminal Code (Cth) being amended and clarified.

The Commission noted that any implementation process must be fit for purpose for Queensland's geographic, cultural and health care environment. To facilitate the efficient and effective implementation of the proposed scheme, new bodies are recommended — which include: the Voluntary Assisted Dying Review Board; a Statewide Care Navigator Service; and a Statewide Pharmacy Service. The Commission considered that a dedicated, well-designed and tested ICT system that supports the voluntary assisted dying scheme is also critical to the effectiveness of the scheme.

The Commission's draft Voluntary Assisted Dying Bill 2021 (Appendix F to the Report) comprises 175 clauses (107 pages). It makes consequential amendments to the *Coroners Act 2003*, *Guardianship and Administration Act 2000*, *Medicines and Poisons Act 2019* and the *Powers of Attorney Act 1998*.

On 25 May 2021, the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence introduced the Voluntary Assisted Dying Bill 2021. That Bill was referred to the Parliamentary Health and Environment Committee with a requirement to report back by 20 August 2021.

Commission publications

A list of the Commission's Reports, Working Papers and Miscellaneous Papers is available on its website at <<http://www.qllrc.qld.gov.au/publications>> . 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 legislative action taken on Commission reports.

WHO'S WHO AT THE COMMISSION

Commission Members

The Hon Justice P D Applegarth AM, Chair

31 July 2020—current

Justice Applegarth was appointed a judge of the Supreme Court of Queensland on 29 August 2008. His Honour served as a Supervised Case List judge in 2010 and as a Commercial List judge between 2011 and 2013. Justice Applegarth resumed duties as a Supervised Case List Judge in 2014.

He was admitted to the Queensland Bar in 1986 and was appointed as Queen's Counsel in 2000.

During his time as a barrister Justice Applegarth was a board member of Legal Aid Queensland (1998—2001), and a part-time member of the Queensland Law Reform Commission (2001—04).

Justice Applegarth's Extra Judicial Positions include:

- Fellow, Australian Academy of Law

- Council Member, Australasian Institute of Judicial Administration
- Part Time Lecturer, TC Beirne School of Law, University of Queensland (2008-)
- Member, Faculty Advisory Board, Griffith Law School
- Patron and Board Member, UQ Pro Bono Centre

Justice Applegarth was appointed a Member of the Order of Australia in 2020 for his significant service to the law, judiciary and social justice.

His Honour was appointed Chair of the Commission on 31 July 2020. He was appointed as a full-time member of the Commission from 1 February 2021 until 31 May 2021.

The Hon Margaret Wilson QC BA LLB (Hons)

1 August 2014–14 September 2020

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 in 1998.

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.

She was the Commissioner of the Barrett Adolescent Centre Commission of Inquiry from September 2015 to June 2016.

Ms Wilson has been a Justice of the Court of Appeal of Solomon Islands since August 2014.

She is presently a part-time PhD candidate in the Melbourne Law School, researching Sub Judice Contempt in the Current Communications Environment.

Dr Nigel Stobbs BA, Dip Ed, MA (UQ), LLB (Hons) (QUT), PhD (Bond)

15 September 2017–14 September 2020

Dr Stobbs is a senior lecturer and Director of the Compassion Informed Law Research program at the Queensland University of Technology Faculty of Law. Prior to undertaking a full-time academic career, he practised as a criminal defence barrister at the Queensland Bar between 2001 and 2008.

He has been involved in research and development work in specialist sentencing courts in Australia and the US - particularly drug and alcohol diversion courts and Indigenous sentencing courts. His main area of research is within the field of Therapeutic Jurisprudence and he is the Australian representative on the Board of Trustees of the International Society of Therapeutic Jurisprudence. His book *Method and Practice of Therapeutic Jurisprudence* was published by Carolina Academic Press in April 2019. He is the co-author of *Principles of Sentencing* (published by the Federation Press), of *Professional Responsibility*

and Ethics for Qld Lawyers (published by Thomson Reuters) and the author of the Therapeutic Jurisprudence chapters and updates in the Oxford Encyclopedia of International Criminology.

Dr Stobbs is currently working with colleagues from Swinburne University of Technology on projects related to the use of predictive algorithms and machine learning to generate augmented decision making tools for sentencing judges. Stobbs, N., Bagaric, M., & Hunter, D. (2017), 'Can sentencing be enhanced by the use of artificial intelligence?', *Criminal Law Journal*, 41(5), 261-277.

In recent years he has presented on research into sentencing, criminal law and Therapeutic Jurisprudence at international conferences and public lectures in Vienna, London, New York, Amsterdam, Shanghai, Rome, Prague and Washington DC. His other main area of research is the Chinese legal system. In 2017 he was a visiting researcher at Harvard Law School, translating legal documents of the Tang and Qing Dynasties held in the Harvard-Yenching Library.

Ms Ruth O'Gorman LLB

15 September 2017–14 September 2020

Ms O'Gorman was admitted as a solicitor of the Supreme Court of Queensland in 2006. She was admitted as a barrister of the Supreme Court of Queensland in 2009.

Her principal areas of practice include the criminal law, regulatory prosecutions and disciplinary proceedings.

Ms O'Gorman is currently a member of the Council of the Queensland Bar Association and has been a member of the Bar Association's Criminal Law Committee since 2014.

Ms Penelope White BBus LLB

15 September 2017–current

Ms White was admitted as a solicitor of the Supreme Court of Queensland in 2000. She practised as a criminal defence solicitor for 17 years. As a solicitor, she was a Queensland Law Society Accredited Specialist in Criminal Law since 2006. She was a member of the Queensland Law Society Criminal Law Specialist Accreditation Committee from 2008 to 2010.

Ms White was appointed as Counsel Assisting the Commission of Inquiry into Organised Crime in Queensland in 2015.

In 2018 Ms White was admitted as a barrister of the Supreme Court of Queensland. She practises primarily in the area of criminal law.

His Honour Judge Anthony Rafter SC

17 September 2020–current

His Honour was appointed a Judge of the District Court of Queensland and a Judge of the Childrens Court of Queensland on 15 December 2006.

His Honour was appointed a Judge of the Planning and Environment Court on 23 February 2007.

Judge Rafter is a graduate of the Queensland Institute of Technology completing a Bachelor of Laws.

His Honour was admitted as a barrister of the Supreme Court of Queensland in 1985 and practised as a barrister in Queensland from 1987 to 2006.

Judge Rafter was appointed Senior Counsel in 2003.

His Honour served as director of Barrister Services Limited from 2003 to 2006. Judge Rafter has also served as member of the Queensland Police Service Academic Advisory Committee (2006) and the Board of Legal Aid Queensland (2006).

Judge Rafter was chairperson of the Nursing Tribunal in 2006 and Commissioner of the Queensland Thoroughbred Racing Commission of Inquiry (2004-05).

His Honour served as an Acting Justice of the Supreme Court of Queensland from 1 February 2021 until 31 May 2021.

Mr Mark Hinson QC

17 September 2020–current

Mr Hinson QC is a graduate of The University of Queensland completing a Bachelor of Arts and Bachelor of Laws (Hons).

He completed a Master of Laws at the University of Cambridge.

He was admitted as a barrister in 1981.

He tutored law at the University of Queensland until commencing full-time practice as a barrister in 1986.

Mr Hinson QC was appointed Queen's Counsel in 1998.

He was appointed an Acting Judge of the District Court between August–November 1998.

Ms Clare Endicott

17 September 2020–current

Ms Endicott is a graduate of The University of Queensland completing a Bachelor of Arts and Bachelor of Laws.

She was admitted as a solicitor in 1978.

Ms Endicott completed a Master of Laws in 1987.

She has practised as a litigation solicitor until 2005 and was a partner in Brisbane legal firms for almost 25 years.

Ms Endicott has extensive experience on tribunals and boards, including the Social Security Appeals Tribunal, the Solicitor's Complaints Tribunal and the practitioners' panel of the Legal Practice Tribunal. She was appointed as a member of the Guardianship and Administration Tribunal from 2005 until 2009, and Deputy President of the Guardianship and Administration Tribunal from 2006 to 2009.

She was appointed as the senior member of the Human Rights Division of the Queensland Civil and Administrative Tribunal since its inception until her retirement from that role in June 2017.

Ms Endicott is currently appointed as a sessional member at the Queensland Civil and Administrative Tribunal.

Ms Constance Johnson

17 September 2020–15 March 2021

Ms Johnson is a postgraduate researcher at the University of Wollongong. She has taught at universities in Queensland, New South Wales, and The Netherlands. Ms Johnson has been published in Australian and international academic publications and spoken at numerous international academic conferences.

She is a graduate of The University of Queensland completing a Bachelor of Arts and a Bachelor of Laws.

Ms Johnson also holds a Masters of Laws from the Queensland University of Technology.

She is admitted as a Solicitor of the Supreme Court of Queensland and as a Solicitor and Barrister of the Supreme Court of Victoria.

Ms Johnson has performed previous senior policy and legal advice roles for the Queensland and Australian Governments and non-government organisations such as WWF-Australia.

Commission Secretariat

David Groth BA LLB, Director

Mr Groth graduated with a Bachelor of Laws degree from The University of Queensland in 1990. He also holds a Bachelor of Arts degree from The University of Queensland.

He was admitted as a barrister of the Supreme Court of Queensland in 1992.

He has performed previous senior 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 performed senior policy roles in both the Department of the Premier and Cabinet and the Department of Justice and Attorney-General.

He has previously worked in various roles at 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. She was appointed as the Commission's Principal Legal Officer in 2005, as the Commission's Assistant Director in 2008. She is the Commission's Right to Information and Information Privacy Officer.

Mrs Green has previously worked as a legal officer in the Office of the Director of Public Prosecutions, as a legal officer at the Guardianship and Administration Tribunal, as a policy officer at the Office of Fair Trading, as a research officer at the Queensland Parliamentary Library and as a research scientist at the Queensland Institute of Medical Research.

Paula Rogers BA LLB (Hons), 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. 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 as a legal officer at the Commission in February 2005. She was appointed as a senior legal officer on 21 August 2017.

Anita Galeazzi BA LLB (Hons) GradDipLegalPrac, Senior Legal Officer

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

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

Ms Galeazzi commenced work as a legal officer at the Commission in January 2011. She was appointed as a senior legal officer on 21 August 2017.

Elise Ho BJus LLB GradDipLegalPrac LLM, Senior Legal Officer

Mrs Ho 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.

Mrs Ho was admitted as a legal practitioner of the Supreme Court of Queensland in September 2009. She completed her Master of Laws (Health Law) in 2012.

Mrs Ho has worked as a research assistant at the Queensland University of Technology, as a legal officer at the Office of the Director of Public Prosecutions and as a senior legal officer with the Office of the Public Advocate.

Mrs Ho commenced work at the Commission as a legal officer in February 2015. She was appointed as a senior legal officer on 21 August 2017.

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

Brie Henri, Administrative Officer

Ms Giles and Mrs Henri are responsible for a wide range of secretarial and administrative functions within the Commission.

Ms Giles commenced work at the Commission in October 2007.

Mrs Henri commenced work at the Commission in January 2020.

APPENDIX 1: MEMBERS, MEETINGS AND REMUNERATION³⁰

Position	Name	Meetings / sessions attendance ³¹	Approved annual, sessional or daily fee ³²	Approved sub-committee fees if applicable	Actual fees paid ³³
Chair	The Hon Justice Peter Applegarth AM	19	Nil	N/A	Nil
	The Hon Margaret Wilson QC	2	<ul style="list-style-type: none"> • Meeting (4 hrs or less): \$250 • Meeting (more than 4hrs): \$500 • Additional work (4 hrs or less): \$250 • Additional work (more than 4hrs): \$500 	N/A	\$1,368.75
	Dr Nigel Stobbs	4	As above	N/A	\$2,142.50
	Ms Ruth O'Gorman	3	As above	N/A	\$1,595.00
	Ms Penny White	16	As above	N/A	\$13,413.75
	His Honour Judge Rafter	15	As above	N/A	Nil
	Mr Mark Hinson QC	18	As above	\$1,916.25	\$18,662.00
	Ms Clare Endicott	15	As above	N/A	\$11,497.50
	Ms Constance Johnson	6	As above	N/A	\$2,475.00
	Total fees paid				\$51,154.50
No. scheduled meetings/sessions³⁴	19				
Total out of pocket expenses	Nil				

³⁰ The Commission is not a 'statutory body' within the meaning of s 9 of the *Financial Accountability Act 2009* as it is 'a part of a department' within the meaning of s 8(3) of that Act (given the source of its funding).

³¹ Includes sub-committee meetings.

³² By virtue of s 13 of the *Law Reform Commission Act 1968* (Qld), a judicial member does not receive any salary or fees for performing the duties of a member of the Commission.

³³ These fees are inclusive of superannuation.

³⁴ Includes sub-committee meetings.