



Queensland
Law Reform Commission

Annual Report

2016-17

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Queensland Law Reform Commission

**Annual Report
2016–17**

July 2017

Commission members¹

Chairperson: **The Hon Justice David Jackson**

Part-time members: **Mr Peter Hastie QC
Dr 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**

A/Senior Legal Officers: **Ms Anita Galeazzi
Mrs Elise Ho
Ms Paula Rogers**

Administrative Officer: **Ms Kahren Giles**

¹

All Commission members were appointed on 1 August 2014.



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7 July 2017

The Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice and
Minister for Training and Skills
1 William Street
BRISBANE QLD 4000

Dear Attorney

I am pleased to submit for tabling in Parliament the *Queensland Law Reform Commission Annual Report 2016-17*.

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

During the reporting period, the Commission has finalised two reviews.

The Commission's final report on its review of expunging criminal convictions for historical gay sex offences (August 2016) was tabled in Parliament on 29 November 2016.

The Commission's final report on its review of a domestic violence disclosure scheme was submitted to you by the due date of 30 June 2017.

On 19 June 2017, the Commission received terms of reference to conduct a review and investigation into the issue of modernising Queensland's laws relating to the termination of pregnancy. The final report for the review is due by 30 June 2018.

Yours sincerely

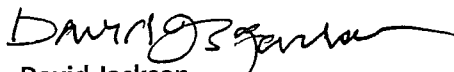

David Jackson
Chair

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Chair's report

This annual report coincides with the three year anniversary of the appointments of the current members of the Commission. In this time, the Commission completed four references from the Attorney-General by their due reporting dates and produced eight publications.

- **Neighbourhood Disputes (Dividing Fences and Trees) Act 2011**
 - *Review of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, Discussion Paper, WP No 72 (June 2015)
 - *Review of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, Report No 72 (December 2015), tabled in Parliament on 11 May 2016.
- **Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector**
 - *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Discussion Paper, WP No 73 (July 2015)
 - *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector*, Report No 73 (December 2015), tabled in Parliament on 25 February 2016.
- **Expunging criminal convictions for historical gay sex offences**
 - *Review of expunging of criminal convictions for historical gay sex offences*, Consultation Paper, WP No 74 (February 2016)
 - *Expunging criminal convictions for historical gay sex offences*, Report No 74 (August 2016), tabled in Parliament on 29 November 2016.
- **Domestic violence disclosure scheme**
 - *Review about whether a domestic violence disclosure scheme should be introduced in Queensland*, Consultation Paper, WP No 75, (December 2016)
 - *Domestic violence disclosure scheme*, Report No 75 (June 2017)

Legislation implementing the Commission's recommendations for two of those reviews has been passed or introduced:

- *Child Protection (Mandatory Reporting—Mason's Law) Amendment Act 2016*; and
- Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017.

In this time, the Commission also:

- produced three Annual Reports;
- formulated a *Protocol for the development of proposed programs* (October 2014);
- developed and submitted to the Attorney-General for review and approval the *Queensland Law Reform Commission Proposed Program 2015—2020* (December 2014);
- established the *Queensland Law Reform Commission Code of Conduct* (May 2015); and
- developed and submitted to the Attorney-General for review and approval the *Queensland Law Reform Commission Amended Proposed Program 2015—2020* (October 2016).

More information about the references undertaken by the Commission during this period can be found in this and previous Commission annual reports.

Overview of the Commission

Constitution

The Queensland Law Reform Commission is an independent statutory body, and is 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, in particular:

- (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;²
- prepare and submit to the Attorney-General for review and approval a proposed program of law reform reviews, in order of priority;³ 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.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. 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.

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.⁵

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.⁶

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

² *Law Reform Commission Act 1968* (Qld) s 10(3)(b) and (e).

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

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

⁵ *Law Reform Commission Act 1968* (Qld) s 3(2).

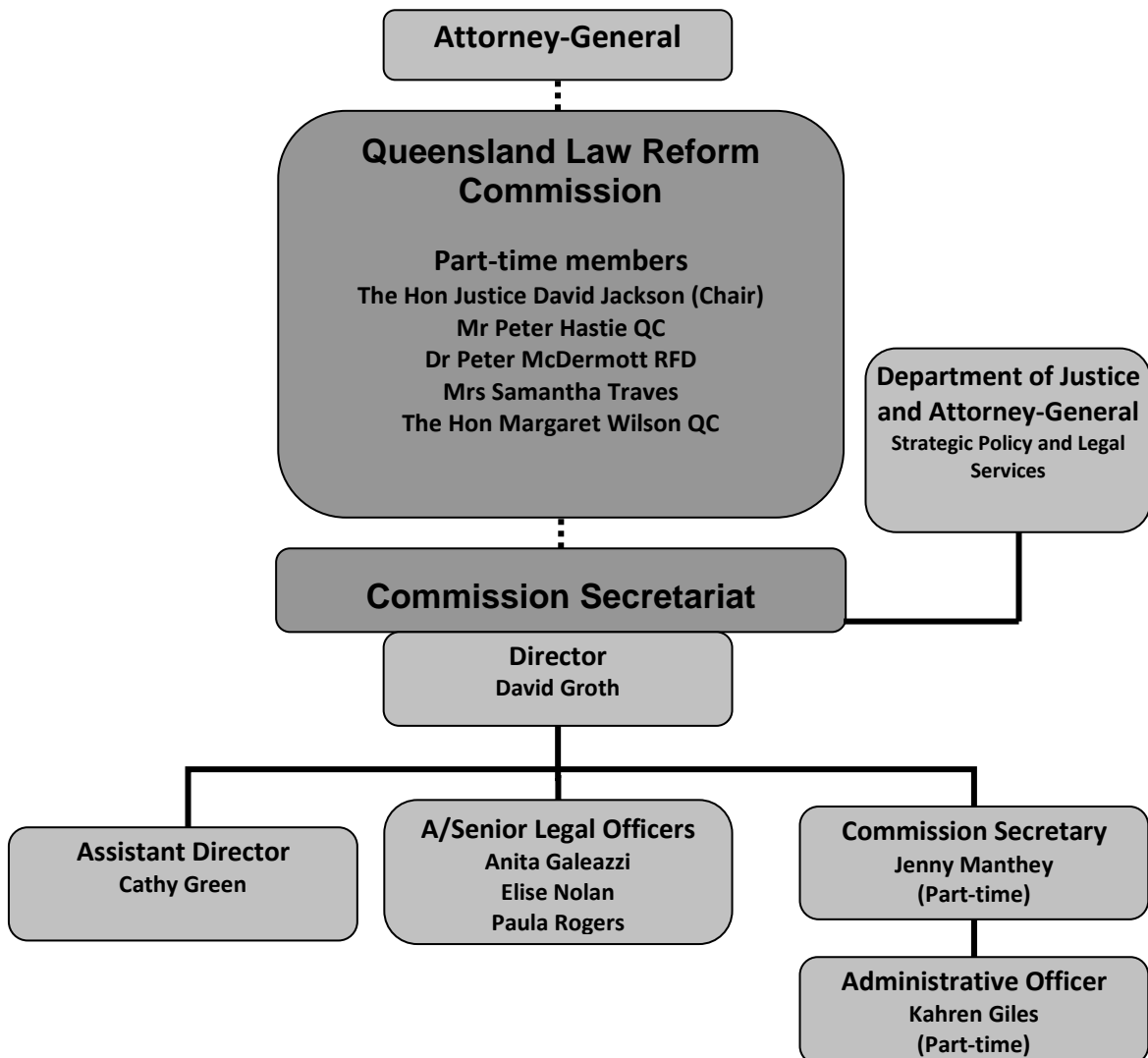
⁶ *Law Reform Commission Act 1968* (Qld) s 4(1)(a).

Commission Secretariat

The Secretariat of the Commission comprises 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, 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.

Organisational chart



Meetings of the Commission

During the reporting period, the Commission held 11 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*.⁷

The total remuneration paid to part-time members in 2016—17 was \$21 967.50.

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 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

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 Conduct⁸ 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.

Section 21 of the Public Sector Ethics Act requires public officials of a public sector entity to be given access to appropriate education and training about:

- public sector ethics relating to the operation of the Public Sector Ethics Act;

⁷ By virtue of s 13 of the *Law Reform Commission Act 1968* (Qld), the Chair of the Commission, as a judicial member, does not receive any salary for performing the duties of a member of the Commission.

⁸ The Commission's Code of Conduct was approved on 2 September 2015 by the Attorney-General and Minister for Justice, and Minister for Training and Skills.

- the application of ethics principles and obligations to the public officials;
- the contents of the entity's approved code of conduct; and
- the rights and obligations of the officials in relation to contraventions of the approved code of conduct.

To satisfy these educational and training requirements of the Public Sector Ethics Act the Commission members received a presentation titled 'Public Sector Ethics Act 1994 — Education and training' from the Ethical Standards Unit within the Department of Justice and Attorney-General.

Commission Secretariat

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.

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

The work of the Commission

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) of the Law Reform Commission Act:

- review of expunging criminal convictions for historical gay sex offences;
- review of whether Queensland should introduce a domestic violence disclosure scheme; and

- review of Queensland’s laws relating to the termination of pregnancy.

Expunging criminal convictions for historical gay sex offences

On 13 January 2016, the Commission received terms of reference from the Attorney-General, Minister for Justice and Minister for Training and Skills, to recommend how Queensland could expunge criminal convictions for historical gay sex offences from a person’s criminal history and what the features of such an expungement scheme should be.

The Commission undertook an extensive public consultation process. The Commission released a consultation paper in February 2016, raising questions and options for reform and inviting submissions.

It also undertook consultation meetings with legal stakeholders, lesbian, gay, bi-sexual, transgender and intersex (‘LGBTI’) community and groups, human rights organisations and relevant state and interstate government departments and agencies.

The Commission received 17 submissions from more than 40 organisations and individuals, including the LGBTI Legal Service Inc and other community legal centres, the Anti-Discrimination Commission Queensland, the Bar Association of Queensland, human rights law organisations, legal academics, historians and members of the public.

The final report for the review was provided to the Attorney-General by the reporting date of 31 August 2016.

The Commission’s approach in the review was informed by a number of general principles.

First, ‘expungement’ was considered to mean the process of removing a past conviction from a person’s criminal history. The proposed expungement scheme should therefore restore a person’s position so that, as far as possible, they are treated in law as if the conviction had never been imposed.

Second, as well as overcoming the effect of criminal history disclosure laws, the expungement scheme should recognise the wider impact on individuals and the LGBTI community of the continued existence of historical gay sex convictions on a person’s criminal history, and the reparative purpose of expungement.

Third, convictions for historical gay sex offences should be expunged if the conduct constituting the offence is no longer an offence. In this respect, expungement is a further step in the reform process that began with the legalisation of private homosexual acts between consenting adults by the *Criminal Code and Another Act Amendment Act 1990* (Qld).

Fourth, the expungement scheme should be as simple and clear as possible, both for those seeking expungement and those administering the scheme. Expungement is a significant legal step and requires an objective and procedurally fair decision-making framework. The expungement scheme should be practical to implement, taking into account the age, form and diversity of relevant records and record keeping systems, and the importance of preserving historical records for legitimate research purposes.

The Commission’s final report made 31 recommendations.

In essence, the recommendations create a framework that would allow eligible people to apply on a case-by-case basis to an administrative decision-maker — the Director-General of the Department of Justice and Attorney-General — to have eligible convictions expunged.

The Executive Summary to the Report includes an overview of the proposed scheme and a jurisdictional guide outlining the key elements of the Commission's proposed scheme compared against similar expungement schemes in other jurisdictions.

The Commission's report was tabled in Parliament on 29 November 2016 by the Attorney-General and Minister for Justice and Minister for Training and Skills.

On 11 May 2017, the Government introduced the Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017. The Bill largely gives effect to the Commission's recommendations in its final report.

The Bill has been referred to the Legal Affairs and Community Safety Committee for report by 14 July 2017.⁹

Whether Queensland should introduce a domestic violence disclosure scheme

On 21 July 2016, the Commission received terms of reference from the Attorney-General and Minister for Justice and Minister for Training and Skills to review and investigate whether Queensland's response to domestic and family violence would be strengthened by introducing a domestic violence disclosure scheme, and if so, what the features of the scheme should be.

The Commission conducted an extensive public consultation process for the review. On 12 December 2016, it released a consultation paper inviting submissions on the issues raised by the review. The Commission also held consultation meetings in Townsville, Mt Isa, Cairns, Rockhampton, the Sunshine Coast, Toowoomba, the Gold Coast and Brisbane. At each of these locations, it provided an opportunity for members of the public to consult face-to-face with Commission staff.

The Commission submitted its final report to the Attorney-General and Minister for Justice and Minister for Training and Skills by the reporting date of 30 June 2017.

Termination of pregnancy laws

On 19 June 2017, the Commission received terms of reference from the Attorney-General and Minister for Justice and Minister for Training and Skills to conduct a review and investigation into the issue of modernising Queensland's laws relating to the termination of pregnancy.

The Commission is required to provide its final report by 30 June 2018.

The terms of reference also require the Commission to prepare draft legislation based on the Commission's recommendations.

⁹ On

Proposed program of law reform

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

A proposed program is subject to variation by the Attorney-General, before or after its approval, under section 10(4) of the Law Reform Commission Act.

The Commission developed a proposed program in accordance with its *Protocol for the development of proposed programs*.¹⁰ This Protocol outlines 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.

As required by section 10(3) of the Law Reform Commission Act, on 19 December 2014, the Commission submitted a proposed program of law reform matters to the then Attorney-General for review and approval.

On 12 October 2016, the Commission submitted an amended proposed program to the Attorney-General for approval.

Recent publications

During the reporting period, the Commission released the following publications:

- *Expunging criminal convictions for historical gay sex offences*, Report No 74 (August 2016).
- *Review about whether a domestic violence disclosure scheme should be introduced in Queensland*, Consultation Paper, WP No 75 (December 2016).
- *Domestic violence disclosure scheme*, Report No 75 (June 2017).

The Commission also produced its *Queensland Law Reform Commission—Annual Report 2015—16* (August 2016).

A list of the Commission's Reports, Working Papers and Miscellaneous Papers is available on its website at <[http://www.qlrc.qld.gov.au/publications](http://www qlrc 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.

¹⁰ This Protocol is available from the Commission's website at: <http://www.qlrc.qld.gov.au/data/assets/pdf_file/0008/371978/QLRC_Protocol_for_the_development_of_proposed_Program.PDF>.

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.

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 Court and High Court.

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).

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

1 August 2014—Current

Dr 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 University of Queensland.

He is an author of *Equitable Damages* (2004) (Foreword: Sir Robert Megarry) and a co-author of *Company Law* (2nd ed, 2008) (Foreword: Justice Michael Kirby). His recent research on 'Enemy Aliens in the First World War: Legal and Constitutional Issues' was published in Barry

Wright, Sir Eric Tucker and Susan Binnie (eds), *Security, Dissent and the Limits of Toleration in War and Peace: Canadian State Trials Vol IV, 1914–1939* (University of Toronto Press, 2015), pp 71–96.

Dr McDermott was a junior Counsel to Sir Maurice Byers QC for the Thayorre People in the *Wik* case. Dr 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 Commission (1996–1998). Dr McDermott serves on 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.

She was the Commissioner of the Barrett Adolescent Centre Commission of Inquiry from 14 September 2015 to 24 June 2016.

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.

He 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.

He 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, she 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 has also 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.

Anita Galeazzi BA LLB (Hons) GDLP, Acting 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 an acting senior legal officer on 5 January 2015.

Elise Ho BJur LLB GradDipLegalPrac LLM, Acting 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 an acting senior legal officer on 1 April 2015.

Paula Rogers BA LLB (Hons), Acting 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 an acting senior legal officer on 5 January 2015.

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.