



Queensland  
Law Reform Commission

**Annual Report and  
Statement of Affairs**  
2006–07

November 2007

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Law Reform Commission**

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Statement of Affairs  
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## **COMMISSION MEMBERS**

Chairperson: **The Hon Justice R G Atkinson**

Full-time member: **Dr B P White**

Part-time members: **Mr J K Bond SC**  
**Dr H A Douglas**  
**Mr B J Herd**  
**Mr G W O'Grady**

## **SECRETARIAT<sup>1</sup>**

Director: **Ms C E Riethmuller**

Secretary: **Mrs S Pickett**  
**Mrs J Manthey**

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27 November 2007

The Honourable Kerry Shine MP  
Attorney-General and Minister for Justice and Minister  
Assisting the Premier in Western Queensland  
18th Floor  
State Law Building  
50 Ann Street  
BRISBANE QLD 4000

Dear Attorney

I have pleasure in presenting to you the Annual Report of the Queensland Law Reform Commission for the financial year ending 30 June 2007.

The past year has been a busy and productive one for the Commission, which has seen the completion of the first stage of the Guardianship Review. In August 2006, the Commission launched its Discussion Paper, *Confidentiality in the Guardianship System: Public Justice, Private Lives*, together with a series of associated publications tailored for a range of different audiences. This was followed by an extensive community consultation program, which resulted in the receipt of some 260 submissions. The Commission's final report, *Public Justice, Private Lives: A New Approach to Confidentiality in the Guardianship System*, was completed in June 2007, and is discussed in greater detail at pages 4–10 of this Report.

From the outset of this review, the Commission has recognised the importance of maintaining a genuine dialogue with the people affected by our guardianship laws, and I would like to acknowledge the extraordinary contribution made by members of the public who took the time to share their very personal experiences with the Commission. That contribution is vital to the development of positive reforms that will enhance the State's guardianship system and promote the interests of the vulnerable adults who are affected by that system.

During the reporting period, the Commission also made significant progress towards the completion of the final reports for its review of the *Peace and Good Behaviour Act 1982* (Qld) and for its review of the law in relation to the administration of the estates of

deceased persons. The latter report will complete the Uniform Succession Laws Project, which has been a significant undertaking for the Commission.

I would particularly like to acknowledge Dr White's role in leading Stage 1 of the Guardianship Review. I would also like to acknowledge the contribution made by the other members and staff of the Commission over the last year. The completion of the final report for the first stage of the Guardianship Review, as well as the Commission's work on the two other reviews nearing completion, has placed quite high demands on the members and staff of the Commission. The Commission has, however, responded to these challenges with industriousness and a spirit of collegiality.

Yours sincerely

**The Hon Justice Roslyn Atkinson**  
**Chairperson**

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# Annual Report

2006–07

## CONSTITUTION OF THE COMMISSION

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

## FUNCTION OF THE COMMISSION

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

## MISSION STATEMENT

The Commission's mission is to meet the needs of the Queensland community by reviewing areas of the law in need of reform, and making recommendations for reform. These recommendations are based on extensive research, public consultation, impartiality, equity and social justice. The Commission's recommendations are published in its final Reports, which are presented to the Attorney-General for tabling in Parliament in accordance with the requirements of the *Law Reform Commission Act 1968*.

## 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 1968* provides that the Commission must consist of at least three members, who may be full-time or part-time members. 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.

The Commission presently has five part-time members (including the Chairperson) and one full-time member.

## SECRETARIAT

The Secretariat's usual establishment consists of the Director, the Principal Legal Officer, two Legal Officers, the Commission Secretary, and one Administrative Officer.

During the reporting period, the Commission received additional funding from the Department of Justice and Attorney-General for the Guardianship Review, out of which it was able to appoint an additional legal officer.

The staff of the Secretariat, together with the full-time member, have the day to day responsibility for the carriage of the Commission's reviews. The Secretariat also provides the Commission with high quality and effective administrative and secretarial support. This includes the management of all corporate governance, human resources and financial matters for the Commission.

## THE WORK OF THE COMMISSION

The Commission reviews areas of the law referred to it by the Attorney-General. During the reporting period, the Commission undertook work on the following reviews:

- The Guardianship Review;
- A review of the *Peace and Good Behaviour Act 1982*; and
- The Uniform Succession Laws Project:
  - Administration of estates of deceased persons; and
  - Intestacy;

These reviews are discussed in more detail at pages 4 to 17 of this Report.

## RECENT PUBLICATIONS OF THE COMMISSION

The Commission completed the following publications during the reporting period:

- *Confidentiality in the Guardianship System: Public Justice, Private Lives*, Discussion Paper (WP 60, July 2006);
- *Public Justice, Private Lives: A Companion Paper* (WP 61, July 2006);
- *Public Justice, Private Lives: A CD-ROM Companion* (WP 62, July 2006);
- *Confidentiality: Key questions for people who may need help with decision-making* (MP 38, July 2006);
- *Confidentiality: Key questions for families, friends and advocates* (MP 39, July 2006);
- *Annual Report and Statement of Affairs 2005–06* (October 2006);
- *Public Justice, Private Lives: A New Approach to Confidentiality in the Guardianship System* (R 62 Vol 1, June 2007).

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

## **MEETINGS OF THE COMMISSION**

During the reporting period 16 full Commission meetings were held.

The Commission has also established a subcommittee for each of its current reviews. Each subcommittee includes at least two Commission members. Subcommittee meetings were held as required.

## **BENEFITS**

The remuneration for part-time members of the Commission during the reporting period was \$19,437 per annum.<sup>2</sup>

## **WEBSITE**

The Commission's current and recent publications and many of its older publications are available on its website at <[www.qlrc.qld.gov.au](http://www qlrc.qld.gov.au)>. The Commission is presently in the process of making all its older publications available on its website. To date, over two-thirds of its Reports and an even higher proportion of its Working Papers are available online.

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<sup>2</sup>

The Chairperson of the Commission, as a judicial member, does not receive any additional remuneration for that office.

# Current reviews

## THE GUARDIANSHIP REVIEW

### The Commission's terms of reference

In October 2005, the Commission received a reference to review aspects of the *Guardianship and Administration Act 2000* (Qld) and the *Powers of Attorney Act 1998* (Qld). These Acts regulate substitute decision-making by and for adults with impaired decision-making capacity.

The Commission's terms of reference require it to conduct this review in two stages. Stage 1 involved reviewing the confidentiality provisions of the guardianship legislation. Those provisions:

- allow the Guardianship and Administration Tribunal to make 'confidentiality orders' in relation to Tribunal hearings, information and documents received by the Tribunal, and the Tribunal's decisions and reasons;
- prohibit the publication of information about Tribunal proceedings and the disclosure of the identity of persons involved in those proceedings; and
- impose a duty of confidentiality on people who gain certain personal information through their involvement in the administration of the legislation.

The Commission was required to provide a final report to the Attorney-General on Stage 1 by 30 June 2007.<sup>3</sup> The terms of reference also required the Commission to prepare draft legislation, if relevant, based on its recommendations.

In Stage 2, the Commission is to review the guardianship legislation more generally by examining:

- (a) the law relating to decisions about personal, financial, health matters and special health matters under the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998* including but not limited to:
  - the General Principles;
  - the scope of personal matters and financial matters and of the powers of guardians and administrators;
  - the scope of investigative and protective powers of bodies involved in the administration of the legislation in relation to allegations of abuse, neglect and exploitation;

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In March 2007, the terms of reference were amended to extend the date for the completion of the final report on confidentiality from March 2007 to June 2007, and to provide that the general principles (which are guidelines for all decisions made under the legislation) are to be reviewed as part of the wider review in Stage 2 of the reference, rather than as a separate stage of their own. This change enables the general principles to be reviewed in the broader legislative context in which they operate, and will increase the effectiveness of the review.

- the extent to which the current powers and functions of bodies established under the legislation provide a comprehensive investigative and regulatory framework;
- the processes for review of decisions;
- consent to special medical research or experimental health care;
- the law relating to advance health directives and enduring powers of attorney;
- the scope of the decision-making power of statutory health attorneys;
- the ability of an adult with impaired capacity to object to receiving medical treatment; and
- the law relating to the withholding and withdrawal of life-sustaining measures;

...

- (c) whether there is a need to provide protection for people who make complaints about the treatment of an adult with impaired capacity;
- (d) whether there are circumstances in which the *Guardianship and Administration Act 2000* should enable a parent of a person with impaired capacity to make a binding direction appointing a person as a guardian for a personal matter for the adult or as an administrator for a financial matter for the adult.

### Stage 1: call for submissions

In July 2006, the Commission published a Discussion Paper entitled *Confidentiality in the Guardianship System: Public Justice, Private Lives* (WP 60, 2006). The purpose of that paper was to provide information on the current law and the issues the Commission envisaged would need to be addressed by its review, and to call for submissions on those issues. To facilitate wide and inclusive consultation, the Commission also produced:

- a shorter and independent guide to the Discussion Paper – *Public Justice, Private Lives: A Companion Paper* (WP 61, 2006);
- two pamphlets setting out the key issues:
  - *Confidentiality: Key questions for people who may need help with decision-making* (MP 38, 2006); and
  - *Confidentiality: Key questions for families, friends and advocates* (MP 39, 2006); and
- an interactive CD-ROM to allow people who prefer or need to see and/or listen to new information to navigate the review’s key issues – *Public Justice, Private Lives: A CD-ROM Companion* (WP 62, 2006).

The Discussion Paper and its associated companion publications were officially launched by the then Attorney-General and Minister for Justice, the Hon Linda Lavarch MP, at a public function held in Brisbane on 9 August 2006 and attended by more than 100 people.

The release of the Discussion Paper and the Commission's call for submissions was also announced in a media statement and advertised in *The Courier-Mail*. The Commission called for submissions in the Queensland Law Society's monthly magazine, *Proctor*,<sup>4</sup> and in the national internet journal, *On Line Opinion*.<sup>5</sup> The Commission also participated in a number of television and radio interviews to promote public awareness of the Commission's review and to encourage people in the community to respond to the Discussion Paper.<sup>6</sup> The Commission's consultation process was the subject of many newspaper articles.<sup>7</sup>

## Engaging with the community

In addition to seeking views through these consultation documents, the Commission conducted a wide and inclusive consultation process for Stage 1 of the Guardianship Review. The Commission was aware of the significant community interest in its review and was particularly keen to hear from people whose lives are affected by the guardianship legislation. It held ten publicly advertised forums across the State to engage with members of the community. The Commission held a forum in Brisbane and travelled to the Gold and Sunshine Coasts, Toowoomba, Bundaberg, Rockhampton, Mackay, Townsville, Cairns and Mt Isa. These forums were well attended and enabled the Commission to hear, in person, from hundreds of people in the community.

The Commission also held 15 focus group sessions with people interested in, or affected by, the guardianship legislation. Four of these sessions were with groups of adults who need, or may need, assistance with decision-making. Other sessions were held with representatives from the Guardianship and Administration Tribunal, the Office of the Adult Guardian, the Community Visitor Program, and the Office of the Public Advocate.

After the release of its Discussion Paper, the Commission also established a telephone hotline, as well as an on-line submission form on its internet homepage, to assist people in making a submission.

The Commission also sought feedback from key stakeholders through its Reference Group. This group, which represents a cross-section of people who are affected by,

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<sup>4</sup> B White and P Rogers, 'Public Justice, Private Lives' (2006) 26 *Proctor* 11.

<sup>5</sup> B White and P Rogers, 'Accountability with privacy: confidentiality in the guardianship system' (31 October 2006) *On Line Opinion* <<http://www.onlineopinion.com.au/view.asp?article=5060>> at 18 September 2007.

<sup>6</sup> For example, Damien Carrick, ABC Radio National: *The Law Report*, 'Queensland Adult Guardianship and Administration Tribunal' (Brisbane, 15 August 2006); Madonna King, ABC 612 Brisbane: *Mornings with Madonna King* (Brisbane, 25 September 2006); Paul Barclay, ABC Radio National: *Australia Talks Back*, 'Guardianship: Protecting the Vulnerable' (28 September 2006).

<sup>7</sup> For example, Margaret Wenham, 'Guardianship Privacy Study', *The Courier-Mail* (16 September 2006).

administer, or are otherwise interested in Queensland's guardianship legislation, met in June 2007 to comment on a draft of the Commission's final report.

The consultation undertaken by the Commission for Stage 1 of the review was recognised during Disability Action Week 2007 with the Commission receiving the inaugural Human Rights and Justice Award for its inclusive community engagement.

### **A record consultation response**

The Commission received an enormous response to its call for submissions. In addition to the response it received at community forums and focus groups, the Commission received many written and telephone submissions and met with a number of people in person. In total, the Commission received 260 submissions from 150 individuals and organisations prior to the release of its final report. This is the largest response the Commission has ever received to a single round of consultation.

As part of informing itself about the practical operation of the law, the Commission also sought and received empirical information from the Guardianship and Administration Tribunal about the number and type of confidentiality orders that have been made. Staff of the Commission also attended a number of Tribunal hearings to gain further understanding of Tribunal practices and procedures.

### **A final report for Stage 1**

The Commission completed its final report for Stage 1 of the review in June 2007, and will settle the draft legislation that gives effect to the recommendations contained in that report in July 2007.

The central principle that has guided the Commission's recommendations is that there should be greater openness in the guardianship system. The Commission considers this important for two reasons.

The first is the need for the community to have confidence in the guardianship system. Greater openness will increase public confidence by making decision-making processes more accountable and transparent. It will also increase public awareness of the role of the guardianship system.

The second reason why greater openness is needed is to promote and safeguard the rights and interests of adults with impaired decision-making capacity. Traditionally, it has been argued that an adult's rights and interests warrant the imposition of some level of confidentiality. However, the Commission considers that insufficient weight has been given to the important role that open justice and procedural fairness play in promoting and safeguarding the rights and interests of adults with impaired capacity, both individually and as a group.

The Commission's main recommendations are set out below.



### ***Tribunal proceedings***

The Guardianship and Administration Tribunal should retain its power to close hearings to the public, to exclude people from hearings, and to withhold documents and information from active parties to proceedings. However, to make the guardianship system more open, the Commission made the following recommendations:

- The current provisions dealing with ‘confidentiality orders’ do not reflect the fact that it is only in limited circumstances that a document or information will be kept confidential from an active party. Accordingly, the Commission has recommended the creation of four new types of orders (collectively called ‘limitation orders’) that better reflect the nature of the order being made by the Tribunal:
  - *adult evidence orders* – which permit the Tribunal to speak with the adult in the absence of others if, for example, it is necessary to obtain relevant information that the Tribunal would otherwise not receive;
  - *closure orders* – which permit the Tribunal to close a hearing or part of a hearing to all or some members of the public, or to exclude a particular person (including an active party) from a hearing or part of a hearing;
  - *non-publication orders* – which permit the Tribunal to prohibit the publication of information about Tribunal proceedings; and
  - *confidentiality orders* – which permit the Tribunal to withhold a document or information from an active party.
- The criteria for making limitation orders should be significantly narrowed. In particular, the Commission has recommended that there be a legislative presumption in favour of openness and that, generally, the Tribunal must be satisfied that making such an order is necessary to avoid serious harm or injustice.
- A series of procedural safeguards should be established to promote community confidence and ensure careful deliberation in the making of limitation orders. Those safeguards should include:
  - granting standing to be heard, and to appeal, to the Public Advocate and others affected, such as the media; and
  - requiring the Tribunal to give written reasons for the making of a limitation order.
- The guardianship legislation should state that active parties are allowed to have all credible, relevant and significant information and documents being considered by the Tribunal, unless a confidentiality order is made.

***Tribunal decisions and reasons***

The Guardianship and Administration Tribunal should not retain its power to withhold from active parties to a proceeding a decision and the reasons for it. This reflects the Commission's view that the provision of reasons for a decision is an integral part of ensuring transparent and accountable decision-making by the Tribunal.

The Commission has recommended, however, that the Tribunal may delay notification of a decision for a period up to 14 days to avoid serious harm to a person or the effect of the Tribunal's decision being defeated.

***Publication of information about Tribunal proceedings***

Generally, the media and others should be able to publish information about Guardianship and Administration Tribunal proceedings. The Commission considers that this will promote accountability and transparency in decision-making, and will also improve community understanding of the Tribunal and its role in the guardianship system.

However, the Commission recognises the potential vulnerability of adults with impaired capacity, and has therefore recommended that the publication of information that is likely to lead to the identification of people about whom applications are made should be prohibited. The Commission has also recommended that the Tribunal should have the power to vary this position so that publication of information otherwise permitted may be prohibited, and that publications generally prohibited may be permitted.

***General duty of confidentiality***

The general duty to keep information that is received in the course of performing a role under the guardianship legislation confidential should be retained. However, the Commission has recommended that the duty be reconceptualised as a duty to use information appropriately, rather than as one that imposes a blanket prohibition on disclosure (subject to the existence of an exception). This shift in the nature of the duty responds to concerns expressed during the Commission's consultations that the imposition of a blanket duty inhibits disclosures of confidential information that are appropriate and necessary for the guardianship system to function effectively.

The Commission has recommended that a wider range of exceptions be introduced, including exceptions permitting disclosures of confidential information to the police and guardianship agencies, and for the purpose of obtaining legal and financial advice. The retention of a specific exception for disclosures by the Adult Guardian during an investigation has also been recommended.

***Forthcoming associated companion publications***

The Commission is again preparing a range of companion publications to assist people to understand the Commission's recommendations:

- a shorter, independent guide to the final report – *Public Justice, Private Lives: A Companion to the Confidentiality Report*; and
- two pamphlets setting out its key findings: *A new approach to confidentiality: A guide for people who may need help with decision-making* and *A new approach to confidentiality: A guide for families, friends and advocates*.

It is expected that these publications will be completed in August 2007.

## **A REVIEW OF THE PEACE AND GOOD BEHAVIOUR ACT 1982**

In 2004, the Commission received a reference to review the *Peace and Good Behaviour Act 1982*. The terms of reference are:

1. I, ROD WELFORD, Attorney-General and Minister for Justice refer the *Peace and Good Behaviour Act 1982* (the Act) to the Queensland Law Reform Commission (the Commission) for review pursuant to section 10 of the *Law Reform Commission Act 1968*, including but not limited to:
  - whether the Act provides an appropriate, easily accessible and effective mechanism for protection of the community from breaches of the peace;
  - if the Commission considers the Act does not provide an appropriate, easily accessible and effective mechanism:
    - (a) what amendments should be made to make it appropriate, easily accessible and effective; or
    - (b) should a new mechanism be established.
2. In undertaking this reference I ask the Commission to have regard to:
  - the procedure in the Act for a complainant to seek a Peace and Good Behaviour order from the Magistrates Court which requires:
    - a complaint made to a justice of the peace about threatened conduct;
    - the justice of the peace issuing a summons for the defendant's appearance in court or a warrant of apprehension if the justice of the peace is satisfied that it is reasonable for the complainant to be in fear of the defendant; and
    - the Magistrate making an order on the appearance of the defendant in response to the summons or warrant;
  - the grounds for obtaining a summons, warrant and an order which require:
    - (a) the defendant to have threatened to assault or to do bodily injury to the complainant or to any person under the care of

- the complainant (which includes the defendant getting another person to threaten the complainant); or
- (b) the defendant to have threatened to destroy or damage any property of the complainant (which includes the defendant getting another person to threaten the complainant); and
- (c) the complainant to be in fear of the defendant;
- a proposed additional basis for obtaining a summons, warrant and order which would permit a complainant to apply for an order where the defendant's conduct causes the complainant apprehension or fear of personal violence or violence against property but the defendant's conduct falls short of an actual threat;
  - the protection provided against domestic violence by the *Domestic and Family Violence Protection Act 1989* and the expansion of that Act's jurisdiction in 2002 to cover many persons who might have otherwise sought an order under the Act;
  - issues that have been raised about the effectiveness of the Act in addressing the needs of the community in terms of protecting individuals against breaches of the peace. In particular that:
    - the ambit of conduct covered by the Act is not appropriate being either too wide or too restrictive;
    - the process to obtain an order is complex;
    - the filing fee prevents many people from seeking orders;
    - it is difficult to enforce orders which means that the orders are ineffectual.
3. In performing its functions under this reference, the Commission is asked to prepare, if relevant, draft legislation based on the Commission's recommendations.
4. The Commission is to report to the Attorney-General and Minister for Justice by 31 December 2005.

In March 2005, the Commission released a Discussion Paper, which considered the provisions of the *Peace and Good Behaviour Act 1982* (Qld), as well as comparable legislation in other Australian jurisdictions, and raised a number of issues for consideration. For the purposes of preparing the Discussion Paper, the Commission sought preliminary information from a number of people and organisations with experience in the operation of the Act, including the Chief Magistrate, the Commissioner of Police, Legal Aid Queensland, the Dispute Resolution Branch of the Department of Justice and Attorney-General, the Justices of the Peace Branch of the Department of Justice and Attorney-General, Caxton Legal Centre Inc and various private organisations representing Queensland justices of the peace.

The release of the Discussion Paper was accompanied by a call for submissions, which was published in *The Courier-Mail*, in a national law journal, in various publications of

peak bodies with an interest in this area of the law, and on the Queensland government website 'ConsultQld'.

Many of the stakeholders who provided preliminary information to the Commission have also made submissions in response to the issues raised in the Discussion Paper.

The Commission has consulted with a wide range of people and organisations in relation to the issues raised in the review – in particular, with numerous community legal services, disability advocacy services, domestic violence resource workers, tenancy advocacy organisations, and peak representative bodies for employers and employees. A number of interested individuals have also made submissions. The Commission is grateful to all respondents for their contribution to the review.

During the 2006–07 reporting period, the Commission has made substantial progress towards the completion of the final Report. It is anticipated that the final Report, which will include draft legislation, will be completed in December 2007.

## **THE UNIFORM SUCCESSION LAWS PROJECT**

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

In 1995, the Commission, as the co-ordinating agency, asked the then Queensland Attorney-General to request his counterparts in each Australian jurisdiction to nominate a person or agency to represent that jurisdiction on a National Committee for Uniform Succession Laws. The National Committee is presently comprised of representatives from the ACT Law Reform Commission, the Australian Law Reform Commission, the New South Wales Law Reform Commission, the Northern Territory Department of Justice, the Tasmania Law Reform Institute, the Victorian Law Reform Commission and the State Solicitor's Office of Western Australia.

The project has been divided into four stages:

- wills;
- family provision;
- intestacy; and
- the administration of estates of deceased persons (including the resealing and recognition of interstate and foreign grants).

The first three stages of the project – wills, family provision and intestacy – have been completed. The National Committee is presently in the processing of completing the final stage of the project – the administration of estates of deceased persons.

## Wills

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

The National Committee's recommendations in relation to the anti-lapse rule were subsequently modified by its report, *Wills: Anti-lapse Rule – Supplementary Report to the Standing Committee of Attorneys General* (R 61, March 2006). That report corrected a drafting error in the anti-lapse provision that appeared in the original consolidated wills report.

The National Committee's recommendations in relation to the law of wills (including the updated recommendations in relation to the anti-lapse rule) were implemented in 2006 by the *Succession Amendment Act 2006* (Qld), which amended Part 2 of the *Succession Act 1981* (Qld).

The National Committee's recommendations in relation to the law of wills have also been implemented in New South Wales, the Northern Territory and Victoria, and will be substantially implemented in Western Australia when the Wills Amendment Bill 2006 (WA) is passed.

## Family provision

In December 1997, the National Committee also completed its *Report to the Standing Committee of Attorneys General on Family Provision* (MP 28). In July 2004, the National Committee completed a Supplementary Report on Family Provision (R 58).

The Supplementary Report included model legislation, prepared by the New South Wales Parliamentary Counsel's Office, to give effect to the recommendations made in the original report and to the further recommendations made in the Supplementary Report. It also examined changes to the law of family provision that had occurred since the original report was completed, and explained the several differences between the original recommendations and the provisions contained in the model legislation.

The two main areas to which changes have been recommended are eligibility to apply for family provision and the property out of which provision may be ordered.

Legislation in most Australian jurisdictions specifies various categories of persons who may apply for family provision. The National Committee has recommended that four categories of persons should be able to apply for provision:

- the husband or wife of the deceased person;

- a person who was, at the time of the deceased person's death, the de facto partner (or equivalent, as may be applicable in the enacting jurisdiction) of the deceased person;
- a non-adult child of the deceased person; and
- a person for whom the deceased person, having regard to certain specified criteria, had a responsibility to make provision.

The last of these categories was based on the eligibility provision of the *Administration and Probate Act 1958* (Vic), where this is the sole basis on which a person's eligibility may be established.

The National Committee also recommended the adoption of provisions, based on the *Family Provision Act 1982* (NSW), to enable the court to designate certain property as part of the 'notional estate' of the deceased and to order that provision be made out of the property so designated.

## Intestacy

The New South Wales Law Reform Commission, on behalf of the National Committee, has had the carriage of the third stage of the project, which involves an examination of the laws of intestacy. These laws apply when a person dies without leaving a will, or without leaving a will that disposes of all the person's property. They determine how the person's property is to be shared among the person's spouse or partner, children and other relations (if any).

In April 2005, the New South Wales Law Reform Commission published an Issues Paper, *Uniform Succession Laws: intestacy* (NSWLRC IP 26), which examined the intestacy laws of the Australian States and Territories, and sought submissions on a range of matters.

The National Committee's final Report on intestacy, which includes model intestacy legislation, was completed in April 2007 (NSWLRC R 116). The main recommendations in the Report are:

- Where there are no surviving issue of the intestate, the surviving spouse or partner of the intestate should be entitled to the whole of the intestate estate.
- Where the intestate is survived by a spouse or partner and issue, the surviving spouse or partner should be entitled to the whole intestate estate if all the issue are the issue of the intestate and the surviving spouse or partner. However, if some of the issue of the intestate are from another relationship, the estate should be shared among the surviving spouse or partner and all surviving issue.
- Where an intestate is survived by a spouse or partner and issue of another relationship, the spouse or partner should be entitled to:

- a statutory legacy, which should be set initially at \$350,000 for all jurisdictions and adjusted to reflect changes in the Consumer Price Index;
  - all the tangible personal property of the intestate except for property used exclusively for business purposes, banknotes or coins (unless part of a collection made in pursuit of a hobby or some other non-commercial purpose), property held as a pledge or other form of security, property in which the intestate invested as a hedge against inflation or adverse currency movements, such as gold bullion or uncut diamonds, and any interest in land;
  - one half of the residue of the estate after he or she has received the statutory legacy (with interest) and the tangible personal property of the intestate.
- In cases where the surviving spouse or partner is entitled to claim statutory legacies in more than one jurisdiction, he or she should receive legacies of a combined value that is no more than the highest statutory legacy from among the jurisdictions in which he or she is entitled.
  - The surviving spouse or partner should be able to elect to obtain any property in the intestate's estate and should be able to provide satisfaction for the interest in the relevant property, first by relying on any share of the intestate estate to which he or she is entitled and then, if his or her share is insufficient to cover the value, by paying the difference from other resources available to him or her.
  - Where an intestate is survived by a spouse or partner and issue of another relationship, the issue of the intestate should be entitled, *per stirpes*, to half the residue of the estate after the surviving spouse or partner has received the statutory legacy (with interest) and the tangible personal property of the intestate.
  - Where an intestate is not survived by a spouse or partner, the issue of the intestate should take their share *per stirpes*.
  - Distribution to relatives of the intestate should be *per stirpes* in all cases.
  - *Bona vacantia estates* should vest in the relevant State or Territory.
  - A 30 day survivorship period should apply to all persons entitled to take on intestacy, except where the effect of the 30 day survivorship period would be that the estate vests in the relevant State or Territory as *bona vacantia*.
  - Where the forfeiture rule prevents a person from sharing in the estate or where a person has disclaimed the share to which he or she is otherwise entitled, that person should be deemed to have died before the intestate.



## **Administration of estates of deceased persons**

The Commission has the carriage, on behalf of the National Committee, of the preparation of the final report on the administration of estates of deceased persons. The final report will contain the National Committee's recommendations in relation to the following three areas:

- general issues of administration;
- the resealing of interstate and foreign grants; and
- the recognition of interstate grants without the need for resealing.

### **General issues of administration**

Among the general issues of administration being reviewed by the National Committee are the appointment and removal of personal representatives, the duties, powers and liabilities of personal representatives, the vesting of property on the death of a person, the order of payment of debts in an insolvent estate, the application of assets towards the payment of debts in a solvent estate, the payment of legacies, the presumptions of death and survivorship that apply when persons die in circumstances where the order of their deaths cannot be ascertained, and the remuneration of personal representatives.

A Discussion Paper examining these issues was released in 1999: *Administration of Estates of Deceased Persons* (MP 37).

### **Resealing of interstate and foreign grants**

At present, when a person dies leaving property in two or more jurisdictions, it is necessary for a personal representative to be authorised to administer the deceased's estate in each jurisdiction in which the deceased left property. That authority may take the form of an original grant made by the Supreme Court of the jurisdiction in which the property is situated. Alternatively, it may be possible to have a grant that has been made in one jurisdiction resealed by the Supreme Court of another jurisdiction, in which case the resealed grant has effect as if it were an original grant made by the latter Court.

In December 2001, the Commission released a Discussion Paper that examined the law in relation to the resealing of grants: *Recognition of Interstate and Foreign Grants of Probate and Letters of Administration* (WP 55). That Discussion Paper proposed a uniform procedure for the resealing of grants made in other Australian jurisdictions or overseas.

### **Recognition of interstate grants without the need for resealing**

The National Committee is also considering whether it is possible to enable certain Australian grants to be automatically recognised within another Australian jurisdiction without having to be resealed. In the Discussion Paper, *Recognition of Interstate and Foreign Grants of Probate and Letters of Administration* (WP 55), it was proposed on a preliminary basis that, where a grant had been made in the Australian State or Territory in which the deceased was domiciled at the time of death, that grant should have effect

in all other Australian States and Territories as if it had been resealed in those jurisdictions.

### **Final report**

The National Committee met in Brisbane in August 2006 to settle its recommendations on a large number of issues that are addressed in the final report. Work is well advanced on the final report on the administration of estates of deceased persons, and on the model administration legislation that will be included in the final report. It is anticipated that the final report will be completed in early 2008.

## **A REVIEW OF THE LAW IN RELATION TO THE FINAL DISPOSAL OF A DEAD BODY**

In December 2003, the Commission received a reference to review the law in relation to the final disposal of a dead body. The terms of reference are:

1. I, ROD WELFORD, Attorney-General and Minister for Justice, having regard to—
  - the fact that at common law the executor (or person having the highest claim to administer the estate of the deceased person) has the duty and the right to arrange for the final lawful disposal of the deceased person's body including, probably, the disposal of the deceased person's ashes; and
  - the fact that at common law the wishes of the personal representative or person who has the duty and the right to dispose of the body are regarded as paramount with respect to the disposal; and
  - the extent to which this common law position is or may be amended by the *Cremations Act 2003* and the current provisions governing cremations contained in the *Coroners Act 1958*, or by any other Queensland laws; and
  - the many and varied cultural and spiritual beliefs and practices in relation to the disposal of bodies; and
  - the fact that from time to time questions arise regarding:
    - whether a person who may have caused the death be allowed to arrange for the final disposal of the body; and
    - what methods of final disposal of a body are lawful in Queensland; and
  - the fact that from time to time disputes arise regarding:
    - to whom a body is to be released (for example by a hospital or, where relevant, a coroner) for final disposal; and

- the method of final disposal of the body in a particular case; and
- the place for the final disposal of the body or ashes;

refer to the Queensland Law Reform Commission for review pursuant to section 10 of the *Law Reform Commission Act 1968* Queensland's laws regarding the duties and rights associated with the final disposal of a dead body, including, but not limited to:

- a. whether, and to what extent, a comprehensive legislative framework is required; and
  - b. whether any new legislation should provide for an easily accessible mechanism to deal with disputes and, if so, the nature of such a mechanism.
2. In performing its functions under this reference, the Commission is asked to prepare, if relevant, draft legislation based on the Commission's recommendations.
  3. The Commission is to report to the Attorney-General and Minister for Justice by 30 June 2006.

In June 2004, the Commission published an Information Paper, *A Review of the Law in Relation to the Final Disposal of a Dead Body* (WP 58), for consultation purposes. The Information Paper outlined the legal rights and obligations and the common practices in relation to the disposal of dead bodies in Queensland. It also considered issues such as:

- whether diverse beliefs and customs are able to be sufficiently accommodated in the disposal of dead bodies in Queensland;
- what should happen when there is a dispute regarding the disposal of a dead body (including whether a person who may have caused the deceased's death should be allowed to arrange for the disposal of the deceased's body).

The Information Paper also examined the right to dispose of ashes or cremated remains.

Although substantial work has been made towards the completion of the Commission's final report, work on this review was placed on hold in October 2005 when the Commission received the terms of reference for the Guardianship Review.

# Who's who at the Commission

## COMMISSION MEMBERS

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

1 January 2002–20 December 2007

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

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

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

*Mr J K Bond SC BCom LLB (Hons)*

17 March 2005–16 March 2008

Mr Bond was admitted to the Queensland Bar in 1987. He has been in private practice at the Queensland Bar since then. He was appointed as a Senior Counsel for the State of Queensland in 1999. He has also been admitted to practice in New South Wales, South Australia, Western Australia and in the Northern Territory. He is entitled to practise in the Federal and High Courts.

Mr Bond's practice is in the area of commercial litigation and advice. Within that context, areas in which he has advised or appeared have concerned, inter alia, administrative law, arbitration, banking and finance, building and construction contracts, constitutional law, contract law, corporations law, insurance, leases, mining, native title, professional liability, trade practices and trusts and equity.

*Dr H A Douglas BA LLB LLM PhD*

21 December 2001–20 December 2007

Dr Douglas was admitted as a barrister and solicitor in 1990 and practised criminal law, firstly at a Melbourne law firm and then from 1992 at the Aboriginal Legal Service in Alice Springs. She worked as a lecturer at the Law School at Griffith University from 1996 until 2005.

Dr Douglas is currently a Senior Lecturer at the TC Beirne School of Law, University of Queensland. Her teaching and research areas include criminal law, women and the law, and Indigenous people and the law. She is the author of a number of articles and publications.

*Mr B J Herd BA LLB (Hons)*

15 November 2002–20 December 2007

Mr Herd was admitted as a Solicitor in 1983 and has been in private practice since then.

For many years he has practised in the area of commercial law and litigation but has, in the last few years, concentrated on the area of Elder Law, or law for older people, encompassing estate and life planning, guardianship and administration, family and business succession and lifestyle options, including aged care and retirement.

He has prepared and presented numerous papers and seminars on aspects of Elder Law and is a member of the Queensland Law Society's Aged Care and Retirement Committee and the National Academy of Elder Law Attorneys of America.

*Mr G W O'Grady BSc LLB LLM*

21 December 2001–20 December 2007

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

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

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

*Dr Ben White LLB (Hons) (QUT), DPhil (Oxon)—Full-time member*

5 September 2005–2 November 2007

Dr White graduated with First Class Honours and a University Medal in law from the Queensland University of Technology. He then worked as an Associate at the Supreme Court of Queensland and at Legal Aid Queensland, and was admitted as a barrister of the Supreme Court of Queensland. Dr White won a Rhodes Scholarship to complete a DPhil at Oxford University, where his doctoral thesis investigated the role that consultation plays in the law reform

processes of the Australian Law Reform Commission and the Law Commission of England and Wales. Prior to joining the Queensland Law Reform Commission, Dr White was a lecturer at the QUT Law Faculty. His particular research interest is health law, which he has taught at both undergraduate and post graduate levels. He has also published a number of articles in this area.

## SECRETARIAT

### *Claire Riethmuller BA LLB (Hons)—Director*

Ms Riethmuller graduated with First Class Honours in Law from the University of Queensland in 1986, and was admitted to practice as a solicitor of the Supreme Court of Queensland in 1988. She worked as a solicitor at Minter Ellison, practising in the areas of commercial litigation and professional indemnity litigation, before commencing work with the Commission in September 1994.

Ms Riethmuller is a member of the Human Research Ethics Committee of the Queensland Institute of Medical Research.

### *Cathy Green BSc LLB—Principal Legal Officer*

Mrs Green served two periods of secondment at the Commission before being appointed as a Legal Officer on a permanent basis in May 2002. In December 2005, Mrs Green was appointed as the Commission's Principal Legal Officer.

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

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

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

### *Mary Collier LLB—Legal Officer*

Ms Collier graduated with a Bachelor of Laws degree from the Queensland University of Technology in 1994. From 1995 to 1998 she worked with Insurance Broker, Gordon Wilson and Associates, gaining extensive experience in corporate insurances, specialising in marine insurance risks. In 1999 she was employed in Human Resources with the Queensland Police Service, where she remained until she commenced work with the Commission in 2000.

Ms Collier was elected as a Director of the Brisbane Turf Club Ltd in October 2003.

*Paula Rogers BA LLB (Hons)—Legal Officer*

Ms Rogers graduated with First Class Honours in Law from Griffith University in 2003, having been awarded the University 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 in 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 commenced work at the Commission in 2005, and was appointed permanently in March 2006.

*Shih-Ning Then BSc LLB (Hons)—Legal Officer*

Ms Then holds the degrees of Bachelor of Laws with First Class Honours and Bachelor of Science (Biomedical Science) from the University of Queensland, and was admitted as a Legal Practitioner of the Supreme Court of Queensland in 2006.

She previously worked as an Associate to the Honourable Justice GL Davies at the Queensland Court of Appeal, and as a lawyer at Minter Ellison Lawyers in the Commercial Advisory and Dispute Resolution Group.

*Sharyn Pickett—Commission Secretary*

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

*Jenny Manthey BSc (Hons) Cert III Bus (Office Admin)—Acting 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 working for the Commission as an Acting Administrative Officer in January 2004, being appointed as Acting Secretary in April 2007.

*Zan Boldery —Administrative Officer*

Mrs Boldery is responsible for a wide range of secretarial and administrative functions within the Commission.



# Appendix 1

## Legislative action on Reports

No.	Title	Date of Report	Date Report Tabled	Background Papers	Legislation Implementing the Commission's Recommendations (in whole, in part, or with alterations)
R 62	Public Justice, Private Lives: A New Approach to Confidentiality in the Guardianship System – Volume 1	June 2007	12.10.07	WP 62 2006 WP 61 2006 WP 60 2006 MP 38 2006 MP 39 2006	
R 61	Wills: The Anti-lapse Rule – Supplementary Report to the Standing Committee of Attorneys General	March 2006	22.06.06	MP 29 R 52	<i>Succession Amendment Act 2006</i>
R 60	A Review of the Uniform Evidence Acts	September 2005	28.10.05	–	
R 59	The Abrogation of the Privilege Against Self-incrimination	December 2004	08.03.05	WP 57 2003	
R 58	Family Provision: Supplementary Report to the Standing Committee of Attorneys General	July 2004	22.09.04	MP 28 1997 WP 47 1995	
R 57	Damages in an Action for Wrongful Death: The effect of entering into, or the prospect of entering into, a financially supportive relationship, and the effect of the likelihood of divorce or separation on the assessment of damages in a wrongful death claim	November 2003	19.12.03	WP 56 2002	<i>Justice and Other Legislation Amendment Act 2004, Part 24</i>
R 56	Vicarious Liability	December 2001	11.04.02	WP 48 1995	<i>Justice and Other Legislation Amendment Act 2004, Part 19</i>

No.	Title	Date of Report	Date Report Tabled	Background Papers	Legislation Implementing the Commission's Recommendations (in whole, in part, or with alterations)
R 55	The Receipt of Evidence by Queensland Courts: The Evidence of Children (Part 2) The Receipt of Evidence by Queensland Courts: The Evidence of Children (Part 2A) – Summary of Recommendations	December 2000	05.04.01	WP 53 1998	<i>Evidence (Protection of Children) Amendment Act 2003</i>
R 55	The Receipt of Evidence by Queensland Courts: The Evidence of Children (Part 1)	June 2000	03.07.00	WP 53 1998	<i>Criminal Law Amendment Act 2000</i>
R 54	The Role of Justices of the Peace in Queensland	December 1999	31.05.00	WP 51 1998 WP 54 1999	
R 53	Review of the <i>Limitation of Actions Act 1974</i> (Qld)	September 1998	22.12.98	WP 49 1997 WP 50 1997	
R 52	The Law of Wills	December 1997	23.12.97	MP 10 1994 WP 46 1995	<i>Succession Amendment Act 2006</i>
R 51	Consent to Health Care of Young People Vols 1, 2, & 3	December 1996	30.04.97	MP 2 1993 MP 6 1993 MP 7 1993 WP 42 1994 MP 14 1995 WP 44 1995 WP 44A 1995 MP 17 1996	
R 50	Minors' Civil Law Capacity	December 1996	25.03.97	WP 45 1995	<i>Residential Tenancies Amendment Act 1998</i>
R 49	Assisted and Substituted Decisions: Decision-Making by and for People with a Decision-Making Disability Vols 1, 2, & 3	June 1996	07.08.96	WP 43 1995 WP 43A 1995 WP 38 1992 MP 1 1991	<i>Powers of Attorney Act 1998</i> <i>Guardianship and Administration Act 2000</i>
R 48	De Facto Relationships: Claims by Surviving De Facto Partners under the <i>Common Law Practice Act 1867</i> for Damages for Wrongful Death	November 1994	25.11.94	MP 8 1994	<i>Common Law Practice and Workers' Compensation Amendment Act 1994</i>
R 47	Female Genital Mutilation	16.09.94	18.10.94	MP 7 1993 WP 42 1994	<i>Criminal Law Amendment Act 2000</i>

No.	Title	Date of Report	Date Report Tabled	Background Papers	Legislation Implementing the Commission's Recommendations (in whole, in part, or with alterations)
R 46	The <i>Freedom of Information Act 1992</i> Review of Secrecy Provision Exemption	22.03.94	22.03.94	MP 3 1993	<i>Freedom of Information (Review of Secrecy Provisions Exemption) Amendment Act 1994</i>
R 45	The Assessment of Damages in Personal Injury and Wrongful Death Litigation: Griffiths v Kerkemeyer Section 15C <i>Common Law Practice Act 1867</i>	08.10.93	16.11.93	MP 4 1993 MP 5 1993	No changes recommended
R 44	De Facto Relationships	30.06.93	15.07.93	WP 36 1991 WP 40 1992	<i>Property Law Amendment Act 1989</i>
R 43	The <i>Bail Act 1980</i>	28.06.93	15.07.93	WP 35 1991 WP 41 1993	
R 42	Intestacy Rules	07.06.93	15.07.93	WP 37 1992	<i>Succession Amendment Act 1997</i>
R 41	The Protection of Statements Made to Religiously Ordained Officials	02.04.91	09.04.91	Nil	
R 40	Consolidation of <i>Real Property Acts</i>	March 1991	07.04.91	WP 32 1990	<i>Land Title Act 1994</i>
R 39	Henry VIII Clauses	29.06.90	05.12.90	WP 33 1990	<i>Legislative Standards Act 1992</i>
R 38	Report on the <i>Oaths Act</i>	31.03.89	07.06.90	WP 31 1988	
R 37	Report on a Bill to Amend the <i>Property Law Act 1974</i>	17.09.87	07.06.90	WP 30 1986	<i>Property Law Act Amendment Act</i>
R 36	Report on a Bill to Alter the Civil Jurisdiction of the District Court of Queensland	20.12.85	07.06.90	WP 29 1985	<i>District Courts Act and Other Acts Amendment Act 1989</i>
R 35	Report on a Bill to Amend and Reform the <i>Jury Act</i> , the <i>Justices Act</i> and the Criminal Code insofar as those Acts Relate to Committal Proceedings and Trial by Jury in Criminal Courts	25.10.85	07.06.90	WP 28 1984	
R 34	Report on a Bill to Establish Limited Liability Partnerships	22.01.85	07.06.90	WP 27 1984	<i>Partnership (Limited Liability) Act 1988</i>
R 33	Report on a Bill to Prevent the Avoidance of Civil Liability in Cases of Death or Personal Injury Caused by Negligence	26.10.84	07.06.90	WP 26 1984	

No.	Title	Date of Report	Date Report Tabled	Background Papers	Legislation Implementing the Commission's Recommendations (in whole, in part, or with alterations)
R 32	Report on a Bill to Consolidate, Amend and Reform the <i>Supreme Court Acts</i> and Ancillary Acts Regulating Civil Proceedings in the Supreme Court	1982	07.06.90	WP 24 1982	
R 31	Report on an Examination of the Imperial Statutes in Force in Queensland	23.09.81	07.06.90	WP 23 1979	<i>Imperial Acts Application Act 1984</i>
R 30	Report on a Draft Associations Incorporation Act	01.02.80	07.06.90	WP 22 1978	<i>Associations Incorporation Act 1981</i>
R 29	Report on A Bill to Repeal <i>The Second-Hand Wares Act of 1921</i> and to Update Legislation Concerning Dealers and Collectors	03.01.80	07.06.90	WP 21 1978	<i>Second Hand Dealers and Collectors Act 1984</i>
R 28	Report on Matters Arising out of the Report of the Committee of Inquiry into the Enforcement of the Criminal Law in Queensland (The Lucas Inquiry)	17.05.79	07.06.90	Nil	
R 27	Proposals to Amend Practices of Criminal Courts	08.12.78	07.06.90	WP 19 1977	
R 26	Report on an Examination of the Procedure and Practice in Children's Courts and on a Bill to Amend the <i>Children's Services Act 1965–1977</i>	30.08.78	07.06.90	WP 15 1976	
R 25	Report on an Examination of the Law Relating to Bail in Criminal Proceedings	10.08.78	20.09.78	WP 20 1978	<i>Bail Act 1980</i>
R 24	Report on the Law Relating to Actions Against the Crown	17.04.78	12.09.79	WP 17 1977	<i>Crown Proceedings Act 1980</i>
R 23	Report on a Review of the <i>Pawnbrokers Act 1849–1971</i>	24.02.78	13.03.79	WP 16 1976	<i>Pawnbrokers Act 1984</i>
R 22	Report on the Law Relating to Succession	24.02.78	09.10.79	WP 14 1975	<i>Succession Act 1981</i>
R 21	Reform of the Law of Rape	13.08.76	07.06.90	Nil	
R 20	Report on the Law of Succession and Other Allied Considerations in Relation to Illegitimate Persons	18.12.75	11.03.76	Nil	<i>Status of Children Act 1978</i>
R 19	Report on the Law Relating to Evidence	14.11.75	11.03.76	WP 13 1975	<i>Evidence Act 1977</i>
R 18	The Commission's Third Report on Statute Law Revision	17.03.75	22.03.75	Nil	<i>Acts Repeal Act 1975</i>

No.	Title	Date of Report	Date Report Tabled	Background Papers	Legislation Implementing the Commission's Recommendations (in whole, in part, or with alterations)
R 17	Report on a Bill to Amend the Criminal Code in Certain Particulars	19.12.74	27.02.75	WP 12 1974	<i>The Criminal Code and the Justices Act Amendment Act 1975</i>
R 16	Report on a Bill to Consolidate, Amend and Reform the Law Relating to Conveyancing, Property, and Contract and to Terminate the Application of Certain Imperial Statutes	28.02.73	07.06.90	WP 10 1972	<i>Property Law Act 1974</i>
R 15	The Commission's Second Report on Statute Law Revision	22.12.72	20.03.73	Nil	<i>Acts Repeal Act 1973</i>
R 14	Report on a Bill to Amend and Consolidate the Law Relating to Limitation of Actions	02.10.72	20.03.73	WP 11 1972	<i>Limitation of Actions Act 1974</i>
R 13	Report on a Bill to Consolidate and Amend the Law Relating to Money Lending	24.04.72	09.08.72	WP 8 1971	<i>The Money Lenders Act 1916 was repealed (from May 1989) by the Credit Act 1987.</i>
R 12	Report on a Bill to Establish an Appeal Costs Fund	21.04.72	09.08.72	Nil	<i>Appeal Costs Fund Act 1973</i>
R 11	Report on Statute Law Revision	21.04.72	09.08.72	Nil	<i>New South Wales (Termination of Application) Acts 1973</i>
R 10	Report in Relation to an Examination of the Law Relating to Interest on Damages	10.09.71	09.08.72	WP 6 1971	<i>Common Law Practice Act Amendment Act 1972</i>
R 9	Report in Relation to an Examination of the Provisions of the <i>Fatal Accidents Acts</i> with a View to the Elimination of Anomalies	10.09.70	09.08.72	WP 7 1971	<i>Common Law Practice Act Amendment Act 1972</i>
R 8	Report on the Law Relating to Trusts, Trustees, Settled Land and Charities	16.06.71	09.08.72	WP 5 1970	<i>Trusts Act 1973</i>
R 7	Report on the Law Relating to Perpetuities and Accumulations	24.05.71	26.08.71	WP 9 1971	<i>Perpetuities &amp; Accumulations Act 1972 (later incorporated into the Property Law Act 1974)</i>
R 6	Report on a Review of: <i>The Statute of Frauds, 1677 (29 Car II c 3); The Statute of Frauds Amendment Act, 1828 (9 Geo IV c 14); The Statute of Frauds and Limitations of 1867 (Qld) (31 Vic No 22); The Sale of Goods Act of 1896 (Qld) (60 Vic No 6) (Sect 7)</i>	08.06.70	26.08.71	WP 4 1970	<i>Statute of Frauds 1972 (later incorporated into the Property Law Act 1974)</i>
R 5	Report on a Bill to Make Provision for the Abatement of Litter and Other Purposes	08.06.70	07.06.90	Nil	<i>Litter Act 1971</i>

No.	Title	Date of Report	Date Report Tabled	Background Papers	Legislation Implementing the Commission's Recommendations (in whole, in part, or with alterations)
R 4	Report on a Bill to Consolidate the Law Relating to Arbitration	08.06.70	26.08.71	WP 2 1969	<i>Arbitration Act 1973</i>
R 3	<i>The Common Law Practice Acts, 1867 to 1964 (Section 2): Illegitimate Children</i>	20.03.70	08.09.70	Nil	<i>Common Law Practice Act Amendment Act 1970</i>
R 2	Abolition of the Distinction between Wilful Murder and Murder	16.03.70	08.09.70	WP 3 1969	<i>The Criminal Code and the Offenders Probation and Parole Act Amendment Act 1971</i>
R 1	Report on the Law Relating to Relief from Forfeiture of Leases and to Relief from Forfeiture of an Option to Renew and Certain Aspects of the Law Relating to Landlord and Tenant	26.02.70	07.06.90	WP 1 1969	

## Appendix 2

### Publications relating to Working Papers

No.	Title	Date of Paper	Related Papers
WP 62	Public Justice, Private Lives: A CD-ROM Companion	August 2006	R 61 vol 1 2007 WP 61 2006 WP 60 2006 MP 39 2006 MP 38 2006
WP 61	Public Justice, Private Lives: A Companion Paper	July 2006	R 61 vol 1 2007 WP 62 2006 WP 60 2006 MP 39 2006 MP 38 2006
WP 60	Confidentiality in the Guardianship System: Public Justice, Private Lives	July 2006	R 61 vol 1 2007 WP 62 2006 WP 61 2006 MP 39 2006 MP 38 2006
WP 59	A Review of the <i>Peace and Good Behaviour Act 1982</i>	March 2005	
WP 58	A Review of the Law in relation to the Final Disposal of a Dead Body	June 2004	
WP 57	The Abrogation of the Privilege Against Self-Incrimination	August 2003	R 59 2004
WP 56	Damages in an Action for Wrongful Death: The Effect of Entering into, or the Prospect of Entering into, a Financially Supportive Relationship, and the Effect of the Likelihood of Divorce or Separation on the Assessment of Damages in a Wrongful Death Claim	June 2002	R 57 2003
WP 55	Recognition of Interstate and Foreign Grants of Probate and Letters of Administration	December 2001	
WP 54	The Role of Justices of the Peace in Queensland	May 1999	R 54 1999 WP 51 1998
WP 53	The Receipt of Evidence by Queensland Courts: The Evidence of Children	December 1998	R 55 Part 1 2000 R 55 Part 2 2000
WP 52	The Receipt of Evidence by Queensland Courts: Electronic Records	August 1998	Reference withdrawn
WP 51	The Role of Justices of the Peace in Queensland	February 1998	R 54 1999 WP 54 1999
WP 50	Review of the <i>Limitation of Actions Act 1974</i> (Qld)	December 1997	R 53 1998 WP 49 1997
WP 49	Review of the <i>Limitation of Actions Act 1974</i> (Qld)	April 1997	R 53 1998 WP 50 1997
WP 48	Vicarious Liability	July 1995	R 56 2001
WP 47	Uniform Succession Laws for Australian States and Territories: Issues Paper No 2 – Family Provision	June 1995	R 58 2004 MP 28 1997

No.	Title	Date of Paper	Related Papers
WP 46	Uniform Succession Laws for Australian States and Territories: Issues Paper No 1 – The Law of Wills	June 1995 (originally published July 1994)	R 61 2006 MP 29 1997 R 52 1997
WP 45	Minors' Civil Law Capacity	April 1995	R 50 1996
WP 44	Consent to Medical Treatment of Young People	May 1995	R 51 1996
WP 44A	Consent to Medical Treatment of Young People: Summary of Recommendations	May 1995	R 51 1996
WP 43	Assisted and Substituted Decisions: Decision-making by and for People with a Decision-making Disability	February 1995	R 49 1996 WP 38 1992
WP 43A	Assisted and Substituted Decisions: Summary of Recommendations	February 1995	R 49 1996 WP 38 1992
WP 42	Female Genital Mutilation	July 1994	R 47 1994
WP 41	The Bail Act	February 1993	R 43 1993 WP 35 1991
WP 40	De Facto Relationships	September 1992	R 44 1993 WP 36 1991
WP 39	Personal Property Securities Law: A Blueprint for Reform (produced jointly with the Victorian Law Reform Commission)	August 1992	
WP 38	Assisted and Substituted Decisions: Decision-making for People Who Need Assistance Because of Mental or Intellectual Disability	July 1992	R 49 1996 WP 43 1995
WP 37	Intestacy Rules	July 1992	R 42 1993
WP 36	Shared Property: Resolving Property Disputes between People Who Live Together and Share Property	October 1991	R 44 1993 WP 40 1992
WP 35	To Bail or Not to Bail – A Review of Queensland's Bail Law	March 1991	R 43 1993 WP 41 1993
WP 34	Working Paper on Statute Law Revision	08.03.91	
WP 33	Henry VIII Clauses	10.02.90	R 39 1990
WP 32	Working Paper on a Bill in Respect of an Act to Reform and Consolidate the <i>Real Property Acts</i> of Queensland	1989	R 40 1991
WP 31	Working Paper on a Bill in Respect of an Act to Replace the <i>Oaths Act 1867–1981</i>	29.02.88	R 38 1989
WP 30	Working Paper on a Bill to Amend the <i>Property Law Act 1974–1985</i>	18.12.86	R 37 1987
WP 29	Working Paper on a Bill to Alter the Civil Jurisdiction of the District Court of Queensland	12.04.85	R 36 1985
WP 28	Working Paper on Legislation to Review the Role of Juries in Criminal Trials	30.11.84	R 35 1985
WP 27	Working Paper on a Bill to Establish Limited Partnerships	31.07.84	R 34 1985
WP 26	Working Paper on a Bill to Prevent the Avoidance of Civil Liability in Cases of Death or Personal Injury Caused by Negligence	1984	R 33 1984
WP 25	Working Paper on a Bill to Amend the <i>Real Property Acts</i> with respect to the Provisions Relating to Writs of Execution, Bills of Encumbrance and Bills of Mortgage, and Caveats	1982	



No.	Title	Date of Paper	Related Papers
WP 24	Working Paper on a Bill to Consolidate, Amend and Reform the <i>Supreme Court Acts</i> and Ancillary Acts Regulating Civil Proceedings in the Supreme Court	05.03.82	R 32 1982
WP 23	Working Paper in relation to an Examination of the Imperial Statutes in Force in Queensland	13.08.79	R 31 1981
WP 22A	Supplementary Paper on a Draft Associations Incorporation Act	05.02.79	R 30 1980 WP 22 1978
WP 22	Working Paper on a Draft Associations Incorporation Act	08.12.78	R 30 1980 WP 22A 1979
WP 21	Working Paper on a Bill to Repeal the <i>Second Hand Wares Act of 1921</i> and to Update Legislation Concerning Dealers and Collectors	17.04.78	R 29 1980
WP 20	Working Paper on a Bill to Amend the Law in Relation to Bail	24.02.78	R 25 1978
WP 19	Working Paper on Proposals to Amend the Practice of Criminal Courts in Certain Particulars	05.12.77	R 27 1978
WP 18	Working Paper on a Bill to Remove Anomalies Presently Existing with Respect to Civil Liability for Animals and to Rationalize the Existing Rules of the Common Law for Damage Done by Animals	30.09.77	
WP 17	Working Paper on an Examination of the Law Relating to Actions Against the Crown and the Replacement of the <i>Claims Against Government Act of 1866</i>	06.07.77	R 24 1978
WP 16	Working Paper on a Bill to Amend the <i>Pawnbrokers Act 1849-1971</i>	23.12.76	R 23 1978
WP 15	Working Paper on an Examination of the Procedure and Practice in Children's Courts and to Amend the <i>Children's Services Act 1965-1974</i>	23.12.76	R 26 1978
WP 14	Working Paper on a Bill to Consolidate and Amend the Law of Succession and the Administration of Estates	18.12.75	R 22 1978
WP 13	Working Paper on a Bill to Consolidate, Amend and Reform the Law of Evidence	13.06.75	R 19 1975
WP 12	Working Paper on a Bill to Amend the Criminal Code in Certain Particulars	30.07.74	R 17 1974
WP 11	Working Paper on a Bill to Amend and Consolidate the Law Relating to Limitation of Actions	21.06.72	R 14 1972
WP 10	Working Paper on a Bill to Consolidate, Amend and Reform the Law Relating to Conveyancing, Property, and Contract and to Determine the Application of Certain Imperial Statutes	10.04.72	R 16 1973
WP 9	Working Paper on the Law Relating to Perpetuities and Accumulations	24.02.71	R 7 1971
WP 8	Working Paper on a Bill to Consolidate and Amend the Law Relating to Money Lending	20.04.71	R 13 1972
WP 7	Working Paper in Relation to an Examination of the Provisions of the <i>Fatal Accidents Acts</i> with a View to the Elimination of Anomalies	04.01.71	R 9 1971
WP 6	Working Paper in Relation to an Examination of the Law Relating to Interest on Damages	04.01.71	R 10 1971
WP 5	Working Paper on a Bill to Consolidate and Amend the Law Relating to Trusts, Trustees, and Settled Land	22.10.70	R 8 1971

No.	Title	Date of Paper	Related Papers
WP 4	Working Paper on a Review of: <i>The Statute of Frauds, 1677</i> (29 Car II c 3); <i>The Statute of Frauds Amendment Act, 1828</i> (9 Geo IV, c 14); <i>The Statute of Frauds and Limitations of 1867</i> (Qld) (31 Vic No 22); and <i>The Sale of Goods Act of 1896</i> (Qld) (60 Vic No 6) (Sect 7)	04.03.70	R 6    1970
WP 3	Working Paper on the Proposed Abolition of the Distinction between Wilful Murder and Murder	19.12.69	R 2    1970
WP 2	Working Paper on a Bill to Consolidate the Law Relating to Arbitration	19.12.69	R 4    1970
WP 1	Working Paper on the Law Relating to Relief from Forfeiture of Leases and to Relief from Forfeiture of an Option to Renew and Certain Aspects of the Law Relating to Landlord and Tenant	03.11.69	R 1    1970

# Appendix 3

## List of publications

Current and recent publications and many of the Commission's older publications are available on the Commission's website at <[www.qjrc.qld.gov.au](http://www.qjrc.qld.gov.au)>. The Commission has standardised its fees and charges for reports and working papers:

- \$10.00 for a small publication
- \$17.00 for a medium publication
- \$28.00 for a large publication
- \$15.00 for a CD ROM.

The prices of all Commission publications are subject to change without notice.

### REPORTS

No.	Title	Date	Price (inclusive of GST)
62.	Public Justice, Private Lives: A New Approach to Confidentiality in the Guardianship System – Volume 1	2007	No charge
61.	Wills: The Anti-lapse Rule – Supplementary Report to the Standing Committee of Attorneys General (National Committee for Uniform Succession Laws)	2006	No charge
60.	A Review of the Uniform Evidence Acts	2005	No charge
59.	The Abrogation of the Privilege Against Self-incrimination	2004	No charge
58.	Family Provision – Supplementary Report to the Standing Committee of Attorneys General (National Committee for Uniform Succession Laws)	2004	No charge
57.	Damages in an Action for Wrongful Death: The effect of entering into, or the prospect of entering into, a financially supportive relationship, and the effect of the likelihood of divorce or separation on the assessment of damages in a wrongful death claim	2003	Medium
56.	Vicarious Liability	2001	Medium
55.	The Receipt of Evidence by Queensland Courts: The Evidence of Children (Part 1)	2000	Medium
	The Receipt of Evidence by Queensland Courts: The Evidence of Children (Part 2)	2000	Large
	The Receipt of Evidence by Queensland Courts: The Evidence of Children (Part 2A) – Summary of Recommendations	2000	Small
54.	The Role of Justices of the Peace in Queensland	1999	Large
53.	Review of the <i>Limitation of Actions Act 1974</i> (Qld)	1998	Medium
52.	The Law of Wills	1997	Medium

No.	Title	Date	Price (inclusive of GST)
51.	Consent to Health Care of Young People Vol 1: The Law and the Need for Reform Vol 2: The Commission's Legislative Scheme Vol 3: Summary of the Commission's Report	1996 1996 1996	Medium Medium Medium
50.	Minors' Civil Law Capacity	1996	Medium
49.	Assisted and Substituted Decisions: Decision-making by and for People with a Decision-making Disability Volume 1: Full Report Volume 2: Draft legislation Volume 3: Summary	1996 1996 1996	Large Medium Small
48.	De Facto Relationships: Claims by Surviving De Facto Partners under the <i>Common Law Practice Act 1867</i> for Damages for Wrongful Death	1994	Small
47.	Female Genital Mutilation	1994	Medium
46.	The <i>Freedom of Information Act 1992</i> : Review of Secrecy Provision Exemption	1994	Medium
45.	The Assessment of Damages in Personal Injury and Wrongful Death Litigation: Griffiths v Kerkemeyer Section 15C <i>Common Law Practice Act 1867</i>	1993	Medium
44.	De Facto Relationships	1993	Medium
43.	The Bail Act 1980	1993	Small
42.	Intestacy Rules	1993	Medium
41.	The Protection of Statements made to Religiously Ordained Officials	1991	Small
40.	Consolidation of the <i>Real Property Acts</i>	1991	Medium
39.	Henry VIII Clauses	1990	Small
38.	Report on the <i>Oaths Act</i>	1989	Medium
37.	Report on a Bill to Amend the <i>Property Law Act 1974–1986</i>	1987	Small
36.	Report on a Bill to Alter the Civil Jurisdiction of the District Court of Queensland	1985	Small
35.	Report on a Bill to Amend and Reform The Jury Act, The Justices Act and The Criminal Code insofar as those Acts Relate to Committal Proceedings and Trial by Jury in Criminal Courts	1985	Medium
34.	Report on a Bill to Establish Limited Liability Partnerships	1985	Small
33.	Report on a Bill to Prevent the Avoidance of Civil Liability in Cases of Death or Personal Injury Caused by Negligence	1984	Small
32.	Report on a Bill to Consolidate, Amend and Reform the <i>Supreme Court Acts</i> and Ancillary Acts Regulating Civil Proceedings in the Supreme Court	1982	Medium

No.	Title	Date	Price (inclusive of GST)
31.	Report on an Examination of the Imperial Statutes in Force in Queensland	1981	Small
30.	Report on a Draft Associations Incorporation Act	1980	Small
29.	Report on a Bill to Repeal <i>The Second-Hand Wares Act of 1921</i> and to Update Legislation Concerning Dealers and Collectors	1980	Small
28.	Report on Matters Arising out of the Report of the Committee of Inquiry into the Enforcement of Criminal Law in Queensland	1979	Small
27.	Proposals to Amend the Practice of Criminal Courts in Certain Particulars	1978	Small
26.	Report on an Examination of the Procedure and Practice in Children's Courts and on a Bill to Amend the <i>Children's Services Act 1965–1977</i>	1978	Small
25.	Report on an Examination of the Law Relating to Bail in Criminal Proceedings	1978	Small
24.	Report on the Law Relating to Actions Against the Crown	1978	Small
23.	Report on a Review of the <i>Pawnbrokers Act 1849–1971</i>	1978	Small
22.	Report on the Law Relating to Succession	1978	Small
21.	Reform of the Law of Rape	1976	Small
20.	Report on the Law of Succession and Other Allied Considerations in Relation to Illegitimate Persons	1975	Small
19.	Report on the Law Relating to Evidence	1975	Medium
18.	The Commission's Third Report on Statute Law Revision	1975	Small
17.	Report on a Bill to Amend the Criminal Code in Certain Particulars	1974	Small
16.	Report on a Bill to Consolidate, Amend and Reform the Law Relating to Conveyancing, Property, and Contract and to Terminate the Application of Certain Imperial Statutes	1973	Medium
15.	The Commission's Second Report on Statute Law Revision	1972	Small
14.	Report on a Bill to Amend and Consolidate the Law Relating to Limitation of Actions	1972	Small
13.	Report on a Bill to Consolidate and Amend the Law Relating to Money Lending	1972	Small
12.	Report on a Bill to Establish an Appeal Costs Fund	1972	Small
11.	Report on Statute Law Revision	1972	Small
10.	Report in Relation to an Examination of the Law Relating to Interest on Damages	1971	Small
9.	Report in Relation to the Provisions of the <i>Fatal Accidents Acts</i> with a View to the Elimination of Anomalies	1970	Small
8.	Report on the Law Relating to Trusts, Trustees, Settled Land and Charities	1971	Medium
7.	Report on the Law Relating to Perpetuities and Accumulations	1971	Small

No.	Title	Date	Price (inclusive of GST)
6.	Report on a Review of: <i>The Statute of Frauds, 1677; The Statute of Frauds Amendment Act, 1828; The Statute of Frauds and Limitations of 1867 (Qld); and The Sale of Goods Act 1896 (Qld) (Sect 7)</i>	1970	Small
5.	Report on a Bill to Make Provision for the Abatement of Litter and Other Purposes	1970	Small
4.	Report on a Bill to Consolidate the Law Relating to Arbitration	1970	Small
3.	Report on <i>The Common Law Practice Acts 1867–1964 (Section 2): Illegitimate Children</i>	1970	Small
2.	Abolition of the Distinction between Wilful Murder and Murder	1970	Small
1.	Report on the Law Relating to Relief from Forfeiture of Leases and to Relief from Forfeiture of an Option to Renew and Certain Aspects of the Law Relating to Landlord and Tenant	1970	Small

## WORKING PAPERS

No.	Title	Type	Date	Price (inclusive of GST)
62.	Public Justice, Private Lives: A CD-ROM Companion	CD-Rom	2006	No charge
61.	Public Justice, Private Lives: A Companion Paper	Companion Paper	2006	No charge
60.	Confidentiality in the Guardianship System: Public Justice, Private Lives	Discussion Paper	2006	No charge
59.	A Review of the <i>Peace and Good Behaviour Act 1982 (Qld)</i>	Discussion Paper	2005	No charge
58.	A Review of the Law in relation to the Final Disposal of a Dead Body	Information Paper	2004	No charge
57.	The Abrogation of the Privilege Against Self-Incrimination	Discussion Paper	2003	Medium
56.	Damages in an Action for Wrongful Death: The effect of entering into, or of the prospect of entering into, a financially supportive cohabitation relationship, and the effect of the likelihood of divorce or separation on the assessment of damages in a wrongful death claim	Issues Paper	2002	Small
55.	Recognition of Interstate and Foreign Grants of Probate and Letters of Administration	Discussion Paper	2001	Medium
54.	The Role of Justices of the Peace in Queensland	Discussion Paper	1999	Large
53.	The Receipt of Evidence by Queensland Courts: The Evidence of Children	Discussion Paper	1998	Medium
52.	The Receipt of Evidence by Queensland Courts: Electronic Records	Issues Paper	1998	Small
51.	The Role of Justices of the Peace in Queensland	Issues Paper	1998	Small

No.	Title	Type	Date	Price (inclusive of GST)
50.	Review of the <i>Limitation of Actions Act 1974 (Qld)</i>	Discussion Paper	1997	Medium
49.	Review of the <i>Limitation of Actions Act 1974 (Qld)</i>	Information Paper	1997	Small
48.	Vicarious Liability	Discussion Paper	1995	Medium
47.	Uniform Succession Laws for Australian States and Territories: Issues Paper No 2 – Family Provision	Working Paper	1995	Medium
46.	Uniform Succession Laws for Australian States and Territories: Issues Paper No 1 – The Law of Wills	Working Paper	1995	Small
45.	Minors' Civil Law Capacity	Draft Report	1995	Small
44A.	Consent to Medical Treatment of Young People: Summary of Recommendations	Discussion Paper: Summary	1995	Small
44.	Consent to Medical Treatment of Young People	Discussion Paper	1995	Medium
43A.	Assisted and Substituted Decisions: Summary of Recommendations	Draft Report: Summary	1995	Small
43.	Assisted and Substituted Decisions	Draft Report	1995	Large
		Draft Legislation	1995	Medium
42.	Female Genital Mutilation	Draft Report	1994	Small
41.	The Bail Act	Working Paper	1993	Small
40.	De Facto Relationships	Working Paper	1992	Medium
39.	Personal Property Securities: A Blueprint for Reform	Discussion Paper	1992	Small
38.	Assisted and Substituted Decisions	Discussion Paper	1992	Medium
37.	Intestacy Rules	Working Paper	1992	Small
36.	Shared Property	Discussion Paper	1991	Medium
35.	To Bail or Not to Bail – A Review of Queensland's Bail Law	Discussion Paper	1991	Medium
34.	Working Paper on Statute Law Revision	Working Paper	1991	Small
33.	Henry VIII Clauses	Working Paper	1990	Small
32.	Working Paper on a Bill in Respect of an Act to Reform and Consolidate the <i>Real Property Acts</i> of Queensland	Working Paper	1989	Large
31.	Working Paper on a Bill in Respect of an Act to Replace the <i>Oaths Act 1867–1981</i>	Working Paper	1988	Medium
30.	Working Paper on a Bill to Amend the <i>Property Law Act 1974–1985</i>	Working Paper	1986	Small
29.	Working Paper on a Bill to Alter the Civil Jurisdiction of the District Court	Working Paper	1985	Small

No.	Title	Type	Date	Price (inclusive of GST)
28.	Working Paper on a Bill to Review the Role of Juries in Criminal Trials	Working Paper	1984	Medium
27.	Working Paper on a Bill to Establish Limited Liability Partnerships	Working Paper	1984	Medium
26.	Working Paper on a Bill to Prevent the Avoidance of Civil Liability in Cases of Death or Personal Injury Caused by Negligence	Working Paper	1984	Small
25.	Working Paper on a Bill to Amend the <i>Real Property Acts</i> with respect to the Provisions Relating to Writs of Execution, Bills of Encumbrance and Bills of Mortgage, and Caveats	Working Paper	1982	Small
24.	Working Paper on a Bill to Consolidate, Amend and Reform the <i>Supreme Court Acts</i> and Ancillary Acts Regulating Civil Proceedings in the Supreme Court	Working Paper	1982	Medium
23.	Working Paper in relation to an Examination of the Imperial Statutes in Force in Queensland	Working Paper	1979	Small
22A.	Supplementary Paper on a Draft Associations Incorporation Act	Working Paper	1979	Small
22.	Working Paper on a Draft Associations Incorporation Act	Working Paper	1978	Medium
21.	Working Paper on a Bill to Repeal the <i>Second Hand Wares Act of 1921</i> and to Update Legislation Concerning Dealers and Collectors	Working Paper	1978	Small
20.	Working Paper on a Bill to Amend the Law in Relation to Bail	Working Paper	1978	Small
19.	Working Paper on Proposals to Amend the Practice of Criminal Courts in Certain Particulars	Working Paper	1977	Small
18.	Working Paper on a Bill to Remove Anomalies Presently Existing with Respect to Civil Liability for Animals and to Rationalize the Existing Rules of the Common Law for Damage Done by Animals	Working Paper	1977	Small
17.	Working Paper on an Examination of the Law Relating to Actions Against the Crown and the Replacement of the <i>Claims Against Government Act of 1866</i>	Working Paper	1977	Small
16.	Working Paper on a Bill to Amend the <i>Pawnbrokers Act 1849–1971</i>	Working Paper	1976	Small
15.	Working Paper on an Examination of the Procedure and Practice in Children's Courts and to Amend the <i>Children's Services Act 1965–1974</i>	Working Paper	1976	Small
14.	Working Paper on a Bill to Consolidate and Amend the Law of Succession and the Administration of Estates	Working Paper	1975	Medium
13.	Working Paper on a Bill to Consolidate, Amend and Reform the Law of Evidence	Working Paper	1975	Medium



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

## MISCELLANEOUS PAPERS

No.	Title	Date	Price (inclusive of GST)
39.	Confidentiality: Key questions for families, friends and advocates	July 2006	–
38.	Confidentiality: Key questions for people who may need help with decision-making	July 2006	–

No.	Title	Date	Price (inclusive of GST)
37.	National Committee for Uniform Succession Laws: Discussion Paper, Administration of Estates of Deceased Persons	June 1999	–
32.	Evidence and Technology – Institute for Information Management Ltd – Discussion on Evidence and Technology	May 1998	–
30.	Uniform Civil Procedure Rules: Submission on Probate and Administration	Feb 1998	–
29.	National Committee for Uniform Succession Laws: Consolidated Report to the Standing Committee of Attorneys General on the Law of Wills	Dec 1997	–
28.	National Committee for Uniform Succession Laws: Report to the Standing Committee of Attorneys General on Family Provision	Dec 1997	–
18.	<i>Health Services Act 1991</i> , Section 62: Submission to Queensland Health and Others	1996	5.50
17.	Consent to Medical Treatment of Young People: Medical Examinations in Cases of Suspected Child Abuse	1996	5.50
16.	Uniform Succession Laws: The Effect of the Lex Situs and Mozambique Rules on Succession to Immovable Property	1996	5.50
15.	Uniform Succession Laws: Wills	1996	5.50
14.	Consent to Medical Treatment of Young People: Submission to Queensland Health on Review of the <i>Health Act 1937</i> – New Population Health Legislation for Queensland	1995	5.50
13.	Problems Relating to Passing of Risk between Vendor and Purchaser	1984	5.50
12.	<i>Real Property Acts</i>	–	5.50
11.	Enforcement of Judgments in Debt	1983	5.50
10.	First Issues Paper – The Law of Wills	1994	5.50
9.	A Bill to Consolidate, Amend and Reform the <i>Supreme Court Acts</i> and Ancillary Acts Regulating Civil Proceedings in the Supreme Court	1990	5.50
8.	De Facto Relationships: Claims by Surviving De Facto Partners under the <i>Common Law Practice Act 1867</i> for Damages for Wrongful Death	1994	5.50
7A.	Submission to House of Representatives Standing Committee on Legal and Constitutional Affairs – <i>Inquiry into the Crimes (Child Sex Tourism) Amendment Bill 1994</i>	1994	5.50
7.	Female Genital Mutilation	1993	5.50
6.	Circumcision of Male Infants	1993	5.50
5.	Exclusions of Benefits from the Assessment of Wrongful Death – Section 15C <i>Common Law Practice Act</i>	1993	5.50
4.	<i>Griffiths v Kerkemeyer</i>	1993	5.50
3.	Section 48 <i>Freedom of Information Act</i>	1993	5.50
2.	Consent by Young People to Medical Treatment	1993	5.50
1.	Steering Your Own Ship – Assisting People Who are Unable to Make Decisions for Themselves	1991	5.50

# Appendix 4

## Holders of office under the *Law Reform Commission Act 1968*<sup>8</sup>

### CHAIRPERSONS

The Honourable Mr Justice W B Campbell (later Chief Justice and Governor of Queensland)	01.03.69–01.03.73
The Honourable Mr Justice G L Hart	01.03.73–15.05.73
The Honourable Mr Justice D G Andrews (later Chief Justice)	26.05.73–17.09.82
The Honourable Mr Justice B H McPherson CBE*	20.09.82–31.12.91
The Honourable Mr Justice R E Cooper*	01.01.92–30.06.93
The Honourable Justice G N Williams*	01.07.93–30.06.96
The Honourable Justice P de Jersey (later Chief Justice)	12.07.96–19.03.98
The Honourable Mr Justice J D M Muir	20.03.98–19.03.01 15.06.01–31.12.01
The Honourable Justice R G Atkinson*	01.01.02–20.12.07

### FULL-TIME COMMISSION MEMBERS

Dr J M Morris	01.06.73–30.06.80
Professor K W Ryan CBE QC* (later the Honourable Mr Justice K W Ryan CBE)	01.11.80–31.10.82
Mr F J Gaffy QC*	01.10.83–16.10.84 10.12.84–31.05.89
Mr A A Preece	05.01.87–30.06.90
Ms L Willmott*	17.09.90–31.10.92
Ms C Richards	24.09.90–24.04.92
Mr W G Briscoe*	04.01.93–04.06.99

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<sup>8</sup>

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

Mr J Herlihy	04.01.93–10.09.93
Ms P A Cooper	09.05.94–31.07.97
Assoc Prof P J M MacFarlane	10.01.00–28.12.01
Ms R A Hill	30.09.02–10.03.05
Dr B P White	05.09.05–02.11.07

## **PART-TIME COMMISSION MEMBERS**

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

Mrs D A Mullins SC (later the Honourable Justice D A Mullins)	12.07.96–11.07.99 01.10.99–30.09.02
Mr P M McDermott RFD	12.07.96–11.07.99
Professor W D Duncan	26.09.97–25.09.00
Ms S C Sheridan	26.09.97–25.09.00
Mr W G Briscoe*	04.02.00–30.08.01
Mr P D T Applegarth SC	21.12.01–20.12.04
Ms A Colvin	21.12.01–31.12.05
Mr G W O'Grady	21.12.01–20.12.07
Dr H A Douglas	21.12.01–20.12.07
Mr B J Herd	15.11.02–20.12.07
Mr J K Bond SC	17.03.05–16.03.08

## COMMISSION SECRETARY

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

## Appendix 5

### Financial information<sup>9</sup>

	<b>2000-01 Budget</b>	<b>2001-02 Budget</b>	<b>2002-03 Budget</b>	<b>2003-04 Budget</b>	<b>2004-05 Budget</b>	<b>2005-06 Budget</b>	<b>2006-07 Budget</b>
Base Allocation: Salaries	\$487,800	\$510,500	\$487,000	\$502,700	\$516,340	\$526,095	\$538,136
Administration costs	\$60,900	\$43,000	\$75,600	\$81,396	\$54,983	\$57,262	\$42,653
Salary related taxes	\$17,300	\$19,500	\$22,000	\$22,500	\$22,706	\$25,161	\$24,150
Departmental specials	\$27,000	\$16,000	\$18,500	\$0	\$0	\$0	\$0
Plant and equipment Purchase and maintenance	\$3,000	\$0	\$0	\$0	\$0	\$0	\$0
Additional funding for the Guardianship Review						\$93,000	\$170,000
<b>Total base and departmental special allocations</b>	<b>\$596,000</b>	<b>\$589,000</b>	<b>\$603,100</b>	<b>\$606,596</b>	<b>\$594,029</b>	<b>\$701,518</b>	<b>\$774,939</b>
Superannuation	\$50,000	\$44,700	\$50,600	\$52,600	\$53,417	\$59,193	\$58,200
Property Maintenance	\$173,000	\$179,300	\$171,200	\$174,496	\$174,476	\$176,289	\$177,626
	<b>\$819,000</b>	<b>\$813,000</b>	<b>\$824,900</b>	<b>\$833,692</b>	<b>\$821,922</b>	<b>\$937,000</b>	<b>\$1,010,765</b>

<sup>9</sup>

This information is presented in summary form only. The Commission's budget allocation and expenditure are included in the audited accounts of the Department of Justice and Attorney-General.

# Statement of affairs

## 2006–07

This Statement of Affairs is published in accordance with the requirements of the *Freedom of Information Act 1992*.

The Queensland Law Reform Commission is required to complete the Statement of Affairs as it is an ‘agency’ as defined by the Act. Section 8(1) of the *Freedom of Information Act 1992* defines ‘agency’ to mean ‘a department, local government or public authority’. The term ‘public authority’ is defined in section 9(1)(a) of the Act to mean:

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

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

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

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

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

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

### The Commission

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

#### 3. Constitution of Commission

- (1) A Law Reform Commission shall be constituted in accordance with this Act.
- (2) The Commission must consist of at least 3 members, who may be full-time or part-time members.

- (3) So long as there are 2 or more members, no act or proceeding of the Commission or of any member shall be vitiated by reason only that, at the time when the act or proceeding was done taken or commenced, there was a vacancy in the office of any member.

#### **4. Members of Commission**

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

#### **10. Functions and duties of Commission**

- (1) The function of the Commission shall be to take and keep under review all the law applicable to the State with a view to its systematic development and reform, including in particular—
- (a) the codification of such law; and
  - (b) the elimination of anomalies; and
  - (c) the repeal of obsolete and unnecessary enactments; and
  - (d) the reduction of the number of separate enactments; and
  - (e) generally the simplification and modernisation of the law.
- (2) To remove any doubt, it is declared that the law applicable to the State includes both substantive law and procedural law, including, for example, court rules.



- (3) For the purposes of carrying out its functions, the Commission shall—
- (a) receive and consider any proposal for the reform of the law which may be made or referred to it;
  - (b) at the request of the Minister, provide assistance to any department or instrumentality of the Government by undertaking the examination of any particular branch of the law and making recommendations for the reform of that branch of the law to bring it into accord with current conditions;
  - (c) prepare and submit to the Minister from time to time, or at the request of the Minister at any time, a program for the examination, in order of priority, of different branches of the law for the purposes of reform, consolidation or statute law revision;
  - (d) undertake, pursuant to approval by the Minister of any program, and in accordance with the approved order of priority, the examination of particular branches of the law, and the formulation of recommendations for reform, consolidation or statute law revision;

and may for these purposes hold and conduct such inquiries as it thinks fit, and inform itself on any matter in such manner as it thinks fit.

- (4) The Minister may vary—
- (a) any program submitted to the Minister by the Commission by adding or deleting or making such alteration to any particular branch or branches of the law as the Minister thinks fit; and
  - (b) the order of priority on any such program.
- (5) For the purpose of assisting the Commission to formulate a program or recommendation the Commission may publish its working and discussion papers and such other papers as it thinks fit and may circulate those papers to such persons as it thinks fit.
- (6) Any programs of and recommendations formulated by the Commission and approved by the Governor in Council shall be laid before Parliament.

### **The Secretariat**

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

- to have the day to day responsibility for the carriage of the Commission's reviews (in conjunction with the full-time member);
- to manage all corporate governance, human resources and financial matters for the Commission;
- to process, promote and disseminate publications produced by the Commission;
- to arrange Commission meetings, formulate agendas, and distribute meeting material;

- to provide an accurate record of the decisions made at Commission meetings;
- to provide efficient, courteous and timely responses to Ministerial, Governmental and citizen correspondence;
- to develop, implement, monitor and evaluate operational strategies for the Commission; and
- to assess critically the Commission’s operating procedures and implement methods for improvement.

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

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

The decision-making functions of the Commission have a direct effect on members of the community when the recommendations made by the Commission in its final Reports are incorporated into the law of Queensland.

The Commission engages in community consultation as part of its reviews. Members of the community are invited to make submissions in response to Working Papers published by the Commission. Calls for submissions are made through the media, and by circulation of Commission publications to interested parties. The Commission is happy to receive both written and oral submissions, and to meet with individuals and organisations who wish to make submissions. Depending on the nature of the review, the Commission may also hold public forums.

In formulating its recommendations, the Commission considers all the submissions that have been made to it.

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

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

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

Copies of current Commission Reports, Working Papers and Miscellaneous Papers are available free of charge by contacting the Commission. The following documents are also available free of charge:

- a series of fact sheets produced to explain various aspects of the Commission’s Guardianship Review;
- a fact sheet explaining the role of the Commission.

Members of the public are presently being invited to be placed on a free mailing service to receive updates and publications in relation to the Guardianship Review.

A small charge is made for the supply of older Commission publications.

A complete list of publications, including the purchase price (where applicable), is set out in Appendix 3 to this Report. Current publications and many older publications may also be accessed free of charge on the Commission’s website at <[www.qlrc.qld.gov.au](http://www qlrc qld gov au)>.

Other documents held by the Commission would generally be able to be sought only through an application under the *Freedom of Information Act 1992*.

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

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

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

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

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

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

### **Applications for access to documents**

A person may apply for access to documents under the *Freedom of Information Act 1992*. The right of access provided by the Act is subject to a number of exemptions that protect matters of public and private interest.

Applications for access to documents under the *Freedom of Information Act 1992* should be in writing and should provide as much detail as possible to enable the requested documents to be identified and located. Applications should be addressed to the Director.

All applications for information under the *Freedom of Information Act 1992* are initially considered by the Director. It is the role of the Director, under the delegated authority of the Chairperson, to determine whether or not the request can be approved.

The applicant must be notified of the receipt of the request not later than 14 days after the application is received and, generally, must be notified of the decision within 45 days.

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

An applicant applying for access to a document that does NOT concern the applicant’s personal affairs must pay an application fee of \$36.00 at the time the application is made.

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

A4 size photocopies of documents shall be charged at 20c per page.

An application fee IS NOT payable for access to a document that concerns the applicant’s personal affairs.

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

### **Applications to amend information relating to a person's personal affairs**

A person who has had access to a document from the Commission (whether or not under the *Freedom of Information Act 1992*) containing information relating to the person's personal affairs is entitled to apply to the Commission for amendment of any part of the information that the person claims is inaccurate, incomplete, out-of-date or misleading.

An application for amendment must:

- be in writing;
- state an address to which a notice of the Commission's decision may be sent;
- state the information that the applicant claims is inaccurate, incomplete, out-of-date or misleading and the document containing the information;
- state the way in which the applicant claims the information to be inaccurate, incomplete, out-of-date or misleading and the grounds for the applicant's claim;
- if the applicant claims the information to be inaccurate or misleading—state the amendments the applicant claims are necessary for the information to be accurate or not misleading; and
- if the applicant claims the information to be incomplete or out-of-date—state the other information the applicant claims is necessary to complete the information or to bring it up-to-date.

If the Director of the Commission decides to amend the information to which the application relates, the amendment may be made by altering the information or by adding an appropriate notation to the information.

