



Queensland
Law Reform Commission

**Annual Report and
Statement of Affairs**

2007-08

**Queensland
Law Reform Commission**

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Statement of Affairs
2007–08**

November 2008

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COMMISSION MEMBERS¹

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*
Ms R M Treston*
Dr B P White*

SECRETARIAT²

Director: **Ms C E Riethmuller**

A/Assistant Director: **Mrs C A Green**

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² As at 30 June 2008.



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7 November 2008

The Honourable Kerry Shine MP
Attorney-General and Minister for Justice and
Minister Assisting the Premier in Western Queensland
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 2008.

The past year has been a particularly busy one for the Commission, in which the Commission completed two final reports.

In July 2007, the Commission completed Volume 2 of its Report, *Public Justice, Private Lives: A New Approach to Confidentiality in the Guardianship System*. That Report contained draft legislation that gave effect to the Commission's recommendations in Volume 1 of that Report, which was completed in June 2007. I am pleased to see that, in May 2008, you introduced into Parliament the Guardianship and Administration and Other Acts Amendment Bill 2008, which substantially implements the Commission's recommendations.

Further, in December 2007, the Commission completed its final Report, *A review of the Peace and Good Behaviour Act 1982*. That report makes important recommendations for a new and comprehensive legislative scheme to protect members of the community from violent and threatening conduct.

In April 2008, you gave the Commission terms of reference for three new reviews: a review of the excuse of accident and the defence of provocation under the Criminal Code; a review of jury directions; and a review of jury selection. The Commission is pleased that you value its contribution to the development of law reform on significant issues such as these.

Finally, I would like to mention a number of changes to the Commission's membership during the reporting period. Dr Ben White completed his term as full-time member in November 2007. Dr White had the carriage of the first stage of the Commission's guardianship review, and I was very pleased to welcome him back to the Commission as a part-time member in December 2007. I was also pleased to welcome Ms Rebecca Treston to the Commission as a new part-time member in December 2007, as well as the reappointments of Mr John Bond SC and Mr Brian Herd as part-time members.

I would also like to record my thanks to the Commission's two outgoing part-time members, Mr Gary O'Grady and Dr Heather Douglas, who served on the Commission with distinction from December 2001 to December 2007.

I look forward to the forthcoming twelve months, during which the Commission can continue its important contribution to law reform in this State.

Yours sincerely

**The Hon Justice Roslyn Atkinson
Chairperson**

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Annual Report

2007–08

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's current establishment is five part-time members (including the Chairperson) and one full-time member.

SECRETARIAT

The Secretariat's usual establishment consists of the Director, the Assistant Director, 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 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*;
- The Uniform Succession Laws Project: Administration of estates of deceased persons;
- A review of the excuse of accident and the defence of provocation; and
- A review of jury directions.

The Commission also received terms of reference to review jury selection.

The Commission's current and recently completed reviews are discussed at pages 4–21 of this Report.

RECENT PUBLICATIONS OF THE COMMISSION

The Commission completed the following publications during the reporting period:

- *Public Justice, Private Lives: A New Approach to Confidentiality in the Guardianship System*, Report 62, Volume 2 (July 2007)
- *A new approach to confidentiality: A guide for people who may need help with decision-making*, MP 40 (August 2007);

- *A new approach to confidentiality: A guide for families, friends and advocates*, MP 41 (August 2007);
- *Public Justice, Private Lives: A Companion to the Confidentiality Report*, MP 42 (August 2007)
- *A review of the Peace and Good Behaviour Act 1982*, Report 63, Volumes 1 and 2 (December 2007);
- *A review of the excuse of accident*, Discussion Paper, WP 62 (June 2008).

A list of all the Commission's Reports, Working Papers and Miscellaneous Papers is available on its website at <<http://www qlrc.qld.gov.au/publications.htm#1>>. The Commission's current and recent publications and many of its older publications are also available on its website.

MEETINGS OF THE COMMISSION

During the reporting period eleven 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 \$20,856 per annum.³

³

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

The Commission's current reviews

THE GUARDIANSHIP REVIEW

Stage one

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 one of the review, which was completed in July 2007, involved an examination of 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.

In July 2007, the Commission concluded stage one of the review with the publication of Volume 2 of that report. That volume included draft legislation that gave effect to the recommendations contained in Volume 1, which was completed in June 2007.

In August 2007, the Commission completed two companion publications to assist people to understand the recommendations contained in its final report:

- 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*.

On 14 May 2008, the Attorney-General and Minister for Justice introduced the Guardianship and Administration and Other Acts Amendment Bill 2008, which substantially implements the Commission's recommendations in stage one of

this review. In particular, the Bill replaces the existing provisions dealing with confidentiality orders with new provisions that provide for four new types of limitation orders:

- *adult evidence orders* (section 109B), 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* (section 109C), 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* (section 109D), which permit the Tribunal to prohibit the publication of information about Tribunal proceedings; and
- *confidentiality orders* (section 109E), which permit the Tribunal to withhold a document or information from an active party or other person.

The circumstance in which the Tribunal may make a limitation order has also been significantly narrowed.

Stage two

Stage two of the review requires an examination of a wide range of complex matters under the guardianship legislation, namely:

- (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;
 - 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.

During the reporting period, the Commission commenced work on a Discussion Paper that considers several significant threshold issues that shape the guardianship system:

- the definition of ‘capacity’ under the legislation, which is fundamental to determining whether the Tribunal has jurisdiction to appoint a substitute decision-maker for an adult;
- the General Principles, which must be applied when a power or a function under the legislation is exercised or performed in relation to an adult; and
- the Health Care Principle, which must be applied by a substitute decision-maker who is making decisions about an adult’s health matters or special health matters.

The Commission expects to complete its Discussion Paper in September 2008 and to undertake consultation in October and November 2008.

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

The Commission completed its final report on *A Review of the Peace and Good Behaviour Act 1982* in December 2007.

The *Peace and Good Behaviour Act 1982* (Qld) (the current Act) permits a magistrate to make an order requiring another person to ‘keep the peace and be of good behaviour’ for a period of time. The terms of reference required the Commission, if it formed the view that the current Act fails to provide the community with an appropriate, easily accessible and effective mechanism for protection, to consider whether changes should be made to the existing Act or

whether a new mechanism should be established. The terms of reference also required the Commission to develop draft legislation, if appropriate.

The current Act is very brief, having only 13 sections. It leaves many issues unaddressed or in need of clarification. In its final report, the Commission formed the view, based on its own research and wide consultation, that the current Act is seriously deficient in many important respects. Among other things, the Commission found that the existing grounds for obtaining an order are too restrictive, the procedure for seeking an order is too complex, the existing mechanism for referral to mediation is inadequate in resolving disputes, and there is inadequate provision for prosecution of breaches. Consequently, the Commission recommended the development of a new and comprehensive legislative mechanism, rather than the amendment of the current Act. Accordingly, the Commission's report included new draft legislation — the Personal Protection Bill 2007 (the proposed Bill) — to give effect to its recommendations.

In contrast to the current Act, which is of general application, the Bill covers people who fall outside the coverage of the Queensland domestic violence legislation, such as neighbours and people who share a residence but who are not in a domestic relationship. The Commission envisages that the proposed Bill, in conjunction with the domestic violence legislation, will provide people who are in need of protection with a more uniform framework for obtaining a protective order, regardless of their particular relationship with the person against whom the order is sought.

The Bill empowers the court to make two types of protection orders: a personal protection order, to protect a person from actual or threatened acts of wilful injury, harassment or intimidation or wilful damage to the person's property, and a workplace protection order, to protect people or property in a workplace from similar behaviour committed in relation to the workplace.

Features of the Bill that are not dealt with under the current Act include:

- provision for specific classes of people who may apply for an order on their own or another person's behalf;
- clarification that children may be parties to protection orders, subject to certain restrictions and safeguards;
- a simplified process for making an application to the court, which no longer involves the screening of an application before a summons is issued;
- removal of the filing fee for applications;
- use of mediation and preliminary conferences;
- the ability to make interim (temporary) orders and consent orders;

- specification of particular conditions the court may impose when it makes an order;
- the ability to apply to the court to vary or set aside an order that has been made;
- the ability for similar orders made in other jurisdictions to be registered, and have effect, in Queensland; and
- the removal of the burden on a person protected by an order to prosecute breaches of the order on his or her own.

A REVIEW OF THE EXCUSE OF ACCIDENT AND THE DEFENCE OF PROVOCATION

On 2 April 2008, the Commission received terms of reference to review the excuse of accident under section 23 of the Criminal Code (Qld), the defence of provocation under section 304 of the Code, which operates as a partial defence to murder, and the complete defence of provocation under sections 268 and 269 of the Code, which operate as a complete defence to an offence of which assault is an element. The terms of reference are as follows:

I, Kerry Shine, Attorney-General and Minister for Justice and Attorney-General and Minister Assisting the Premier in Western Queensland, having regard to:

- the need for the Criminal Code to reflect contemporary community standards;
- the need for the Criminal Code to provide coherent and clear offences which protect individuals and society;
- the need for concepts of criminal responsibility to be readily understood by the community;
- the need for the criminal law to provide appropriate offences and penalties for violent conduct;
- the need for the criminal law to provide appropriate and fair excuses and defences for all types of assault offences as well as for murder and manslaughter; and
- the existence of a mandatory life sentence for murder and the Government's intention not to change law in this regard;
- refer to the Queensland Law Reform Commission (the Commission) pursuant to section 10 of the *Law Reform Commission Act 1968* (Qld), a review of the excuse of accident (section 23(1)(b) of the Criminal Code) and the defences of provocation (sections 268, 269 and 304 of the Criminal Code).

In undertaking this reference, the Commission is to have particular regard to:

- (a) the results of the Attorney-General's audit of homicide trials on the nature and frequency of use of the excuse of accident and the partial defence to murder of provocation;
- (b) whether the current excuse of accident (including current case law) reflects community expectations;
- (c) whether the partial defence of provocation (section 304 of the Criminal Code) should be abolished, or recast to reflect community expectations;
- (d) whether the complete defence of provocation (sections 268 and 269 of the Criminal Code) should be abolished, or recast to reflect community expectations;
- (e) the use of alternative counts to charges of manslaughter (for example, assault or grievous bodily harm), including whether section 576 of the Code should be redrafted;
- (f) whether current provisions are readily understood by a jury and the community;
- (g) whether there is a need for new offences, for example assault occasioning grievous bodily harm or assault causing death (to apply where accident would otherwise be a complete defence to a murder or manslaughter charge); and
- (h) recent developments and research in other Australian and overseas jurisdictions, including reviews of the law of accident and provocation undertaken in other jurisdictions.

In undertaking this reference, the Commission is to, where possible and appropriate, consult stakeholders.

The Commission is to provide a report to the Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland on the results of the review by 25 September 2008.

This review was prompted by the outcome of three homicide trials in 2007, and followed an audit commissioned that year by the Attorney-General into the nature and frequency of the reliance on the excuse of accident and the partial defence of provocation in homicide cases.

Section 23(1)(b) of the Code provides that a person is not responsible for an event that occurs 'by accident'. Under the current formulation of the test of accident under that section, a defendant is not criminally responsible for an event if he or she did not intend or foresee the event and an ordinary person in the position of the defendant would not reasonably have foreseen the event as a possible outcome.

In June 2008, the Commission released a Discussion Paper examining the excuse of accident. That paper contained a comprehensive analysis of the operation of the excuse. It also set out the arguments for and against, and sought submissions on, the following options:

- retaining the excuse of accident in its current form;
- changing the scope of the excuse of accident (for example, widening the event to which foresight relates to include serious injury or grievous bodily harm);
- retaining, amending or repealing section 23(1A); and
- creating a new offence of assault occasioning death or a new category of manslaughter based on an unlawful and dangerous act, to which accident would not apply.

The Commission will release a further Discussion Paper examining the partial defence of provocation (to murder) under section 304 and the complete defence of provocation (to assault) under sections 268 and 269 of the Code before completing its final report in September 2008.

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 process 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-authorized wills for minors who understand the implications of making a will, as well as for people (including minors) who lack testamentary capacity. It also included a number of provisions to give greater effect to a testator's intentions, and to remove some of the technical grounds on which wills have 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 substantially implemented in New South Wales, the Northern Territory, Victoria and Western Australia.

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.

On 25 June 2008, the Succession Amendment (Family Provision) Bill 2008 (NSW) was introduced into the New South Wales Legislative Council. That Bill substantially implements the National Committee's model Family Provision Bill.

Intestacy

The New South Wales Law Reform Commission, on behalf of the National Committee, had the carriage of the third stage of the project, which involved 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).

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

- 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

This 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, which is close to completion, will include model administration legislation that is presently being finalised by the Office of the Queensland Parliamentary Counsel.

The National Committee met in Brisbane in August 2007 to consider and settle its recommendations for the report. 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 court's jurisdiction to make and revoke grants, 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.

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.

The final report will examine the law in relation to the resealing of grants, with a view to clarifying and simplifying a number of issues about resealing.

Recognition of interstate grants without the need for resealing

The National Committee has also considered whether it is possible to develop a scheme to enable certain Australian grants to be automatically recognised within Australia without having to be resealed. Such a scheme, which was first proposed by the Law Reform Commission of Western Australia in the 1980s, would reduce the need for grants made in a particular Australian State or Territory to be resealed in order to be effective in other Australian jurisdictions.

A REVIEW OF JURY DIRECTIONS AND WARNINGS

On 7 April 2008, the Commission received terms of reference to review the directions, warnings and summings up given by judges to juries in criminal trials, with a view to simplifying and improving the current system. The terms of reference are as follows:

I, Kerry Shine, Attorney-General and Minister for Justice and Attorney-General and Minister Assisting the Premier in Western Queensland, having regard to:

- the critical role juries have in the justice system in Queensland to ensure a fair trial;
- the reviews currently being undertaken by the New South Wales Law Reform Commission and Victorian Law Reform Commission of directions and warnings given by a judge to a jury in a criminal trial; and
- the Jury Charges Research Project currently being undertaken by the Australian Institute of Judicial Administration;

refer to the Queensland Law Reform Commission (the Commission) pursuant to section 10 of the *Law Reform Commission Act 1968* (Qld), the review of directions, warnings and summing up given by a judge to jurors in criminal trials in Queensland and to recommend any procedural, administrative and legislative changes that may simplify, shorten or otherwise improve the current system.

In undertaking this reference, the Commission is to have particular regard to:

- (a) subject to authorisation being given by the Supreme Court under section 70(9) of the *Jury Act 1995* (Qld), conducting research into jury decision-making in Queensland with a view to obtaining information about:
 - The views and opinions of jurors about the number and complexity of the directions, warnings and comments required to be given by a judge to a jury and the timing, manner and methodology adopted by judges in summing up to juries;

- The ability of jurors to comprehend and apply the instructions given to them by a judge;
 - The information needs of jurors;
 - The nature of the split for hung juries;
 - The reason/s for a juror or jurors' dissent in hung juries;
- (b) directions or warnings which could be simplified or abolished;
- (c) whether judges should be required to warn or direct the jury in relation to matters that are not raised by counsel in the trial;
- (d) the extent to which the judge needs to summarise the evidence for the jury;
- (e) possible solutions to identified problems relating to jury directions and warnings, including whether other assistance should be provided to jurors to supplement the oral summing up; and
- (f) recent developments and research in other Australian and overseas jurisdictions.

In undertaking this reference, the Commission is to work, where possible and appropriate, with other law reform commissions and consult stakeholders.

The Commission is to provide a report to the Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland on the results of the research and the review by 31 December 2009.

Similar reviews are currently being undertaken by the New South Wales Law Reform Commission and the Victorian Law Reform Commission. These reviews arise out of a recommendation by the Australian Law Reform Commission in its Report, *Uniform Evidence Law* (ALRC 102, Recommendation 18–1) that:

The Standing Committee of Attorneys-General should initiate an inquiry into the operations of the jury system, including such matters as eligibility, empanelment, warnings and directions to juries.

The Commission expects to release a consultation paper for this review in early 2009.

A REVIEW OF JURY SELECTION

On 7 April 2008, the Commission also received terms of reference to review the provisions of the *Jury Act 1995* (Qld) dealing with the selection of jurors. The terms of reference are as follows:

I, Kerry Shine, Attorney-General and Minister for Justice and Attorney-General and Minister Assisting the Premier in Western Queensland, having regard to:

- The critical role juries have in the justice system in Queensland to ensure a fair trial;
- The fact that jury duty is an important civic duty and those who become involved in criminal trials have an expectation that they will be determined by a judge and jury;
- It is an essential feature of the institution of juries that a jury is a body of persons representative of the wider community, to be composed in a way that avoids bias or the apprehension of bias and that one of the elements of the principle of representation is that the panel of jurors be randomly or impartially selected rather than chosen by the prosecution or the State;
- The importance of ensuring and maintaining public confidence in the justice system;
- The recent reports released by the New South Wales Law Reform Commission report on Jury Selection (Report 117, 2007) and Blind or deaf jurors (Report No 114, 2006) which make a number of recommendations;
- The review of the selection, eligibility and exemption of jurors currently being undertaken by the Western Australia Law Reform Commission;
- Reforms concerning the composition of juries and conditions of jury service which have occurred in other jurisdictions;
- The Australian, New South Wales and Victorian Law Reform Commissions' Report on *Uniform Evidence Law* recommended that the Standing Committee of Attorneys-General should initiate an inquiry into the operation of the jury system, including matters such as eligibility, empanelment, warnings and directions to juries.
- The provisions in the *Jury Act 1995* (Qld) prescribing those persons who are ineligible for jury service have not been reviewed or amended since 2004.

refer to the Queensland Law Reform Commission (the Commission) pursuant to section 10 of the *Law Reform Commission Act 1968* (Qld), a review of the operation and effectiveness of the provisions in the *Jury Act 1995* (Qld) relating to the selection (including empanelment), participation, qualification and excusal of jurors.

The scope of this review does not include review by the Commission of Part 6 of the *Jury Act 1995* which contains provisions about jury trial in Queensland, including, for example:

- consideration of whether juries should have a role in sentencing;
- the merits or desirability of trial by jury; or
- the requirement for majority verdicts in Queensland.

In undertaking this review, the Commission is to have particular regard to:

- Whether the current provisions and systems relating to qualification, ineligibility and excusals for jury service are appropriate, including specifically whether:
 - (a) there are any additional categories of persons who should be ineligible for jury service, such as:
 - (i) a person employed or engaged in the public sector in law enforcement, criminal investigation, the provision of legal services in criminal cases, the administration of justice or penal administration; and
 - (ii) local government chief executive officers.
 - (b) there are any categories of persons currently ineligible for jury service which are no longer appropriate;
 - (c) the ineligibility of a person who has a physical or mental disability that makes the person incapable of effectively performing the functions of a juror remains appropriate, particularly in the context of persons who are profoundly deaf or have a significant hearing or sight impairment, having regard to the *Anti-Discrimination Act 1991* (Qld), the *Disability Discrimination Act 1992* (Cth), and the need to maintain confidence in the administration of justice in Queensland.
- Possible improvements to proceedings for offences and a review of the appropriateness of maximum penalties under the *Jury Act 1995* (Qld), including:
 - Whether the Act should be amended to specifically allow a prosecution for an offence against the Act to be commenced by complaint of the Sheriff of Queensland or someone else authorised by the Minister or Chief Executive; and
 - Review the current level of maximum penalties for offences in the *Jury Act 1995* (Qld), particularly relating to the return of notices by prospective jurors and compliance with a summons requiring a person to attend for jury service and, if selected as a member of a jury, to attend as instructed by the court until discharged and whether the maximum penalties should be increased and having regard to the level of penalties for similar offences in Queensland and in other Australian jurisdictions;
- Possible alternative options for excusing a person from jury service, such as deferment;
- The extent to which juries in Queensland are representative of the community and to which they may have become unrepresentative because of the number of people who are ineligible for service or exercise their right to be excused from service, including whether there is appropriate representation of minority groups (such as Aboriginal people and Torres Strait Islanders), the factors which may contribute to

under-representation and suggestions for increasing representation of these groups;

- Recent developments in other Australian and international jurisdictions in relation to the selection of jurors; and
- Any other related matters.

In performing its functions under this reference, the Commission is asked to prepare, if relevant, any legislation based on the Commission's recommendations and undertake consultation with stakeholders.

The Commission is to provide a report to the Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland on its review by 31 December 2010.

At present, the *Jury Act 1995* (Cth) provides that the following persons are ineligible for jury service:

- the Governor;
- a member of Parliament;
- a local government mayor or other councillor;
- a person who is or has been a judge or magistrate (in the State or elsewhere);
- a person who is or has been a presiding member of the Land and Resources Tribunal;
- a lawyer actually engaged in legal work;
- a person who is or has been a police officer (in the State or elsewhere);
- a detention centre employee;
- a corrective services officer;
- a person who is 70 years or more, if the person has not elected to be eligible for jury service under section 4(4) of the Act;
- a person who is not able to read or write the English language;
- a person who has a physical or mental disability that makes the person incapable of effectively performing the functions of a juror;
- a person who has been convicted of an indictable offence, whether on indictment or in a summary proceeding;
- a person who has been sentenced (in the State or elsewhere) to imprisonment.

In addition to requiring the Commission to examine whether any of these categories should no longer be ineligible for jury service, the terms of reference also require the Commission to examine the extent to which Queensland juries are representative of the community, including whether there is appropriate representation of minority groups (such as Aboriginal people and Torres Strait Islanders).

This review also arises out of the Australian Law Reform Commission's recommendation in its Report, *Uniform Evidence Law* (ALRC 102) mentioned earlier. A similar review is presently being undertaken by the Law Reform Commission of Western Australia.

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 2010

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 2011

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 2010

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.

Ms R M Treston LLB (Hons)

21 December 2007–20 December 2010

Ms Treston was admitted as a solicitor in 1991. In 1996 she was admitted to the Queensland Bar, where she has remained in private practice ever since. She is also admitted to practice in the ACT and Vanuatu. She is entitled to practice in the Federal and High Courts.

Ms Treston's practice is in civil litigation and advice. In particular she specialises in estate litigation, insurance, contractual and commercial disputes, professional liability, trusts and equity, and personal injuries.

Ms Treston has presented numerous papers on Succession and Estate Litigation and Personal Injuries Litigation. She was a member of the Queensland Bar Council in 2001 and 2002.

Dr Ben White LLB (Hons) (QUT), DPhil (Oxon)

4 September 2005–2 November 2007

21 December 2007–20 December 2010

Dr White is a Senior 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.

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.

Dr White initially served as the Commission's full-time member from 5 September 2005 to 2 November 2008. On 21 December 2008, he was appointed as a part-time member of the Commission.

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.

From 2004 to 2008, Ms Riethmuller was a member of the Human Research Ethics Committee of the Queensland Institute of Medical Research.

Cathy Green BSc LLB—Acting Assistant Director

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. Since June 2008, Mrs Green has acted as the Commission's Assistant Director.

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.

Marissa Ker BA LLB (Hons), Grad Dip LP—Legal Officer

Ms Ker graduated with a Bachelor of Laws with Honours and a Bachelor of Arts (Japanese) from the University of Queensland. She was admitted as a solicitor of the Supreme Court of Queensland in 2001 and worked as a lawyer at Minter Ellison Lawyers, at firms in regional Queensland, and for a native title representative body. Subsequently, Ms Ker drafted

legislation as an Assistant Parliamentary Counsel with the Office of the Queensland Parliamentary Counsel. She commenced work with the Commission in January 2008.

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 the Arts Medal, and was admitted as a legal practitioner of the Supreme Court of Queensland in January 2005.

Ms Rogers worked as a Judge's Associate 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.

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 commencing work at the Commission in January 2004.

Kahren Giles, Anna Lathouras —Administrative Officers

Ms Giles and Mrs Lathouras are 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 63	A review of the <i>Peace and Good Behaviour Act 1982</i>	December 2007	25.08.08	WP 59 2005	
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	Guardianship and Administration and Other Acts Amendment Bill 2008
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</i> was repealed (from May 1989) by the <i>Credit Act 1987</i> .
R 12	Report on a Bill to Establish an Appeal Costs Fund	21.04.72	09.08.72	Nil	<i>Appeal Costs Fund Act 1973</i>
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 & Accumulations Act 1972</i> (later incorporated into the <i>Property Law Act 1974</i>)
R 6	Report on a Review of: <i>The Statute of Frauds, 1677</i> (29 Car II c 3); <i>The Statute of Frauds Amendment Act, 1828</i> (9 Geo IV c 14); <i>The Statute of Frauds and Limitations of 1867</i> (Qld) (31 Vic No 22); <i>The Sale of Goods Act of 1896</i> (Qld) (60 Vic No 6) (Sect 7)	08.06.70	26.08.71	WP 4 1970	<i>Statute of Frauds 1972</i> (later incorporated into the <i>Property Law Act 1974</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 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>
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</i> (Section 2): Illegitimate Children	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	

Current and recent publications and many of the Commission's older publications are available on the Commission's website at [www.qlrc.qld.gov.au](http://www qlrc.qld.gov.au).

Appendix 2

Holders of office under the *Law Reform Commission Act 1968*⁴

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*	01.01.02–20.12.10

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

⁴

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 (later the Honourable Justice P D T Applegarth)	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	15.11.02–20.12.10
Mr J K Bond SC	17.03.05–16.03.11
Ms R M Treston	21.12.07–20.12.10
Dr B P White*	21.12.07–20.12.10

Statement of affairs

2007–08

INTRODUCTION

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*.

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) MATTERS

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.

The Commission’s structure and functions

The Commission

The Commission’s structure is set out in sections 3 and 4 of the *Law Reform Commission Act 1968*, which deal with the Commission’s constitution and membership:

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.

The Commission's function is set out in section 10 of the *Law Reform Commission Act 1968*:

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; and
 - (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; and
 - (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; and
 - (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
 - (e) if asked by the Minister, examine particular branches of the law and make recommendations to the Minister about the reform of the branch of the law, including consolidation of the law 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 and distribute meeting material;
- to provide an accurate record of the decisions made at Commission meetings;
- to provide efficient, courteous and timely responses to correspondence.

The effect of the Commission's functions on members of the community and opportunities for the community to participate in the exercise of the Commission'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 receives both written and oral submissions, and meets 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.

The kinds of documents usually held by the Commission and literature available free of charge from the Commission

Copies of current Commission Reports, Working Papers, Miscellaneous Papers and Annual Reports 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; and
- a fact sheet explaining the role of the Commission.

Members of the public are invited to be placed on a free mailing service to receive updates and consultation papers for current Commission reviews.

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

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*.

Associated boards, councils and committees

There are no boards, councils or committees constituted by two or more persons that are a part of, or that have been established for the purpose of advising, the Commission.

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.

Procedure

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.

The application should be addressed to:

The Director
Queensland Law Reform Commission
PO Box 13312
George Street Post Shop
Brisbane Qld 4003

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.

Fees

An applicant applying for access to a document that does not concern the applicant's personal affairs must pay an application fee of \$38.00 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.

Procedure

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.

The application should be addressed to:

The Director
Queensland Law Reform Commission
PO Box 13312
George Street Post Shop
Brisbane Qld 4003

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.