

The Law Reform Commission
of Western Australia

ANNUAL REPORT

1 July 2002 – 30 June 2003



The Law Reform Commission of Western Australia

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A Message from the Chairman



*Professor Ralph Simmonds
Chairman*

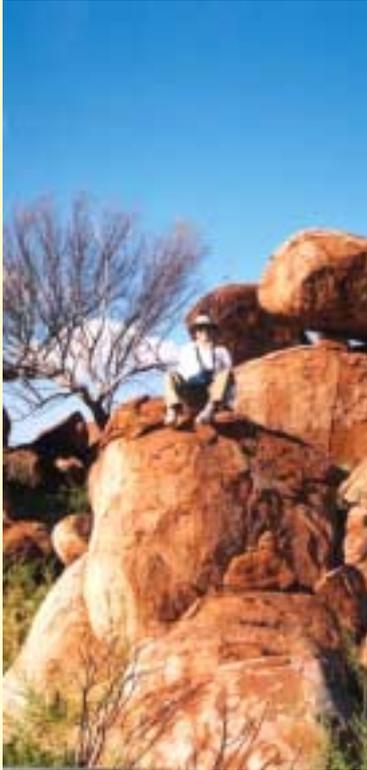
During the 2002/2003 Financial Year, the Law Reform Commission of Western Australia (the 'Commission' or 'LRCWA') continued to celebrate 30 years of operation by welcoming its newest member, Ms Gillian Braddock SC, to the Commission following the expiration of Wayne Martin QC's official term on 21 October 2002. Gillian Braddock was appointed as the Commission's member from private practice and brings with her a wealth of experience and knowledge having practiced from 1985 until 1987 as Crown Counsel in Hong Kong and since 1990, as a member of the independent bar in Western Australia. Gillian's appointment is also significant for another important reason, namely, that for the first time in the history of the LRCWA, we have a majority of female Commissioners.

The Commission continued to work on its most historic and groundbreaking reference to date on Aboriginal Customary Laws. The Commission proudly introduced the project team at a launch held on 28 August 2002, and attended by the Attorney General and key members of the Aboriginal community and legal fraternity. Shortly thereafter, the LRCWA commenced the pre-consultation phase of the project. This phase has now been completed and the Commission and its project team are now heavily involved in the regional consultation phase. Five large community based consultations have already occurred in the Perth metropolitan area and three regional consultations have taken place in the Goldfields, Pilbara and Geraldton region. Further major regional consultations are planned throughout the state during the remainder of 2003.

In December 2002, the Commission completed and published its Final Report on the *Judicial Review of Administrative Decisions*. The Report was tabled in Parliament on 25 February 2003 and later launched by the Attorney General on 27 March 2003. It was during the launch that the Commission was heartened to learn that its recommendations had been fully endorsed by the Attorney General and would, along with the Western Australian Civil and Administrative Tribunal Taskforce's *Report on The Establishment of the State*



Gillian Braddock and Wayne Martin



Administrative Tribunal, form the basis of major changes to the way appeals and disputes are handled in Western Australia.

The Commission completed and distributed its third Discussion Paper on Contempt by Disobedience to the Orders of the Court, in November 2002. The Final Report on Contempt outlining the Commission's recommendations for change in this area of the law was completed in June 2003 and will be tabled in Parliament, early in the new Financial Year.

We would like to take the opportunity to acknowledge the Attorney General for his support of the Commission's work and for his continued commitment to implement our recommendations contained both in past and present reports.

The Commission sincerely appreciates the contributions of all those individuals and organisations who assisted us throughout the year, particularly our Aboriginal Special Commissioners and those individuals who form our Project Team and our Aboriginal Research Reference Council. Their ongoing knowledge and guidance will be instrumental in assisting the Commission to complete a thorough review of the issues surrounding the Aboriginal customary laws reference.

Ralph Simmonds



Annual Report 2002–2003

The Law Reform Commission of Western Australia (the 'Commission' or 'LRCWA') reviews areas of the law upon reference from the Attorney General, to identify the opportunities for reform. References may result from proposals submitted by the Commission, suggestions made by the public or topics of interest to the Attorney General. Section 11 of the *Law Reform Commission Act 1972* (the 'Act') sets out the functions of the Commission. The Attorney General determines the order of priority in which the Commission deals with references. The Attorney General presents the Commission's reports to Parliament as soon as practicable after the Commission completes its work on each reference.

The mission and performance indicators

The Commission's mission is to assist in keeping the law up to date and relevant to the needs of society. The performance indicators help to measure the Commission's efforts in achieving its mission. Part II of this Annual Report reports these indicators. The performance indicators were updated in 1999 to reflect the significant changes to the Commission's operational structure made between 1997 and 1999.

The Commission formerly considered implementation of its reports as a performance indicator but the use of this standard has been discontinued. While it is important, implementation is beyond the Commission's area of responsibility and under the control of others.



The community served

The people of Western Australia are the Commission's primary clients or customers. This must be the case for a law reform organisation funded by the taxpayers in a society governed by law. To be meaningful and effective, law reform must make every effort to be inclusive and fair.

The law reform process should include communication and consultation with the public and the relevant stakeholders concerned with particular projects. Moreover, the Commission's work must be completed in a reasonably timely fashion in order to be efficient and effective.

Stakeholders

The Commission's stakeholders include those governed by particular laws and those charged with enforcing them. With each reference the Commission makes an effort to identify stakeholders concerned with the specific topic. The stakeholders' list changes from project to project. While farmers and country residents may be concerned about stock straying on highways, parents and doctors may be interested in medical treatment for minors. Merchants and finance companies may seek changes to the *Sale of Goods Act 1895* while builders and suppliers may be concerned with financial protection in the building and construction industry. Once an issue is identified the Commission often invites stakeholders' submissions when developing its recommendations.

Current assignments

Work is continuing on the Aboriginal Customary Laws Reference, with the Commission currently undertaking extensive metropolitan and regional community consultations. Appendix I contains the Terms of Reference and a brief description of the project. The Commission also completed its reference on the Judicial Review of Administrative



Consultation meeting in the Pilbara

Decisions, its review of the Law of Contempt and the conversion of all its previous Working Papers, Discussion Papers and Reports into an electronic CD-ROM format. This CD-ROM was packaged along with the Commission's 30th Anniversary Implementation Report and the two CD-ROM set from the Commission's Project 92, the Review of the Criminal and Civil Justice System.

Diversification

The LRCWA engages consultants for research, writing and editing. This permits individuals who would not previously have been able to participate in the process of law reform to bring their unique and special skills to the Commission's law reform activities on less than a full time basis. The LRCWA endeavours to use the public tender procedure to select writers, editors and researchers for each project.

Research and publications

The Commission's core activities traditionally have been research and development of recommendations for reform. Appendix I provides current Terms of Reference. All



references to the Commission since its establishment in 1972 and to its predecessor, the Law Reform Committee, are identified in Appendix III. Appendix II lists all LRCWA publications beginning with the most recent. Publication information is available on the Commission's web-site: <www.lrc.justice.wa.gov.au>. All previous publications are for sale from the State Law Publisher. Transferring sales to the State Law Publisher in 2000 was an important change to facilitate public access to the Commission's work.

Legislative change

There were no statutory changes or significant judicial decisions affecting the LRCWA in 2002-2003.

Structure and membership of the Commission

The Commission may consist of up to five members, two full-time and three part-time, appointed by the Governor of Western Australia. Of the part-time members, one is to be a private legal practitioner with not less than eight years' experience, one must be engaged in teaching law at a university in Western Australia with a status not less than that of Senior Lecturer, and the third is to be a legal officer of the Crown Solicitor's Office with not less than eight years' experience. Full-time members are to be legal practitioners of at least eight years' standing, or persons suitable for appointment by reason of their legal qualifications and experience, whether in Western Australia or elsewhere.

Members' terms

Each of the present members of the Commission was appointed initially for a term of one year. Professor Ralph Simmonds was reappointed for a further two-year term on 1 April 2003 to enable him to oversee the Aboriginal Customary Laws reference to its completion. Ms Ilse Petersen was reappointed for a further one-year term at the end of 2002.

Member	Appointment Date	Reappointment	Appointment Expiry/ Resignation
Prof R Simmonds	20 January 1997	1 April 2003	17 December 2004
Ms I Petersen	17 December 2001	17 December 2002	21 December 2003
Ms G Braddock	22 October 2002		21 October 2003



Ralph Simmonds

Chairman

Pursuant to section 5 of the *Law Reform Commission Act 1972*, the Commission elects its Chairman from among the members. The Chairman may hold office for a term not exceeding one year, but shall be eligible for re-election.

Professor Ralph Simmonds, the academic member, joined the Commission on 20 January 1997 and was appointed as Chairman on 31 August 2001. He is the Foundation Professor of Law and was the first Dean of the School of Law at Murdoch University. He holds an LLB with honours from the University of Western Australia and his LLM is from the University of Toronto. Professor Simmonds was an Associate Professor at McGill University for ten years before returning to Perth in 1990 to establish the Murdoch University School of Law. He worked with the Ontario Law Reform Commission as joint project director of its reference on wrongful interference with goods. Between 1994 and 1997 he was a member of the Reference Group for the School Education Bill.



Ilse Petersen

Members

Ilse Petersen replaced Deputy Crown Counsel Lindy Jenkins as the Crown Solicitor's Office representative on the Law Reform Commission at the end of 2001. Ms Petersen is a Senior Assistant Crown Solicitor and has served in the Crown Solicitor's Office for over 10 years. Prior to commencing with the Crown Solicitor's Office she served with the Australian Government Solicitor. She was formerly a member of the Council of the Law Society of Western Australia and is presently the convener of its Equal Opportunity Committee. Ms Petersen holds degrees in Jurisprudence and Law from the University of Western Australia. On 22 October 2002, Gillian Braddock SC was appointed to the Law Reform Commission, replacing Wayne Martin QC as the Commission's member from private practice. She has been a member of the independent bar since 1990 and was appointed Senior Counsel in September 2001. Ms Braddock holds a BA in Law from Cambridge University, England and came to Western Australia from Hong Kong where she was employed as Crown Counsel from 1985-1987. Ms Braddock is currently serving as Vice President of the Western Australian Bar Association and practices primarily in criminal and family law.



Gillian Braddock

Members' fees

Fees payable to part-time members from private practice and academia are determined on a formula related to the salaries paid to university lecturers. The Crown Solicitor's Office representative receives no fee. Former members of the Commission are listed in the 1997-1998 Annual Report at Appendix II.





Meetings of the Commission

The Commission held 26 formal meetings, eight informal meetings and five telephone conference calls during the 2002-2003 financial year. These were devoted primarily to the Aboriginal Customary Laws reference, and related project management issues, finalising the Report on Judicial Review of Administrative Decisions and the final Discussion Paper on the Law of Contempt reference. The Commission also met with the Attorney General twice during 2002-2003 to discuss the progress of the Aboriginal Customary Laws reference.

The staff

The Executive Officer coordinating administrative and legal research activities and currently managing the Aboriginal Customary Laws reference for the Law Reform Commission is Heather Kay, LLB (The University of Western Australia), LLM (The University of Western Australia).



*Heather Kay
Executive Officer*

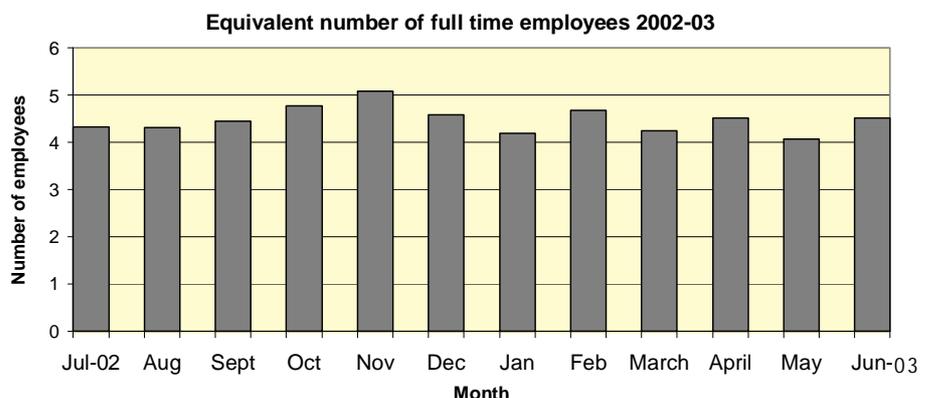
The Commission engages other staff from time to time on a casual basis. The Commission receives payroll and other assistance from the Human Resources Branch of the Department of Justice. Flexibility enabled the Commission to add personnel as necessary to manage the volume of work.

The day to day operations of the Commission include dealing with public, managing the regular operations of a government agency, processing submissions, maintaining the Commission's web-site, and assisting consulting writers, editors and researchers.

Staff 2001–2002:

Sharne Cranston	Tammy Finlay	Yuki Kobayashi	Loran Paterson
Christopher Dent	Tatum Hands	Cheryl MacFarlane	Jeannine Purdy
Diana Ding	Elizabeth Handsley	Alana McCarthy	Carla Yazmadjian
Beverley Edwards	Martin James	Hannah McGlade	Victoria Williams

The following diagram illustrates the varying numbers of employees engaged during the past year to produce the Commission's publications and operate the agency.



Office

The Commission may be reached by telephone on (08) 9321 4833; fax (08) 9321 5833; and e-mail: lrcwa@justice.wa.gov.au. The Commission's website is located at: www.lrc.justice.wa.gov.au. The administrative office is located at Level 3 of the BGC Centre, 28 The Esplanade, Perth. The Commission utilises facilities provided by the Department of Justice, including information technology, human resources and financial management services and shares library facilities with other Department of Justice Library users.

Declaration of interests

No member of the Commission or its staff had any interest in or benefit from any contract entered into by the LRCWA.

Public Sector General Agreement

The Public Sector General Agreement replaced the Commission's Workplace Agreement 2002, in January 2003.

Advertising and sponsorship

During the 2002-2003 financial year the Law Reform Commission had no qualifying expenditures under section 175ZE of the *Electoral Act 1907*.

Public sector standards and code of ethics

Section 31(1) of the *Public Sector Management Act 1994* requires the Commission to comply with Public Sector Standards, Codes of Ethics and any relevant code of conduct. The Commission believes it has complied with public sector standards and the code of ethics. No applications for breach of standards review have been lodged for the reporting period.

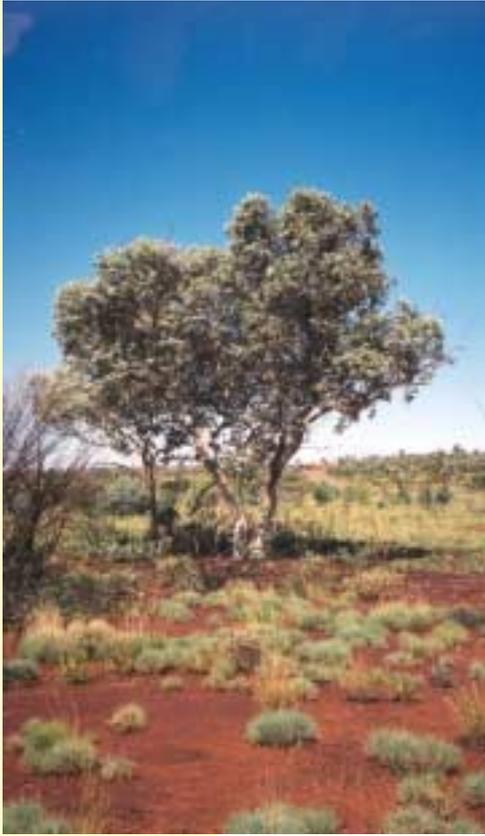
Code of conduct

The Commission has adopted a template code of conduct for government boards.

Information statement

Pursuant to sections 94-97 of the *Freedom of Information Act 1992* the LRCWA must publish annually an information statement. This Annual Report endeavours to present





the required information. A formal information statement was also published during 2002-2003

The Commission uses *The Australian Guide to Legal Citation* (Melbourne University Law Review Association Inc, 1998) in its publishing and editing work.

The Commission maintains only current files and records in its office. Its publications are available in the JS Battye Library of Western Australian History at the Alexander Library in Perth. All historical records and publication stock are in storage in Welshpool.

Except for submissions, correspondence or other information of a confidential nature covered by exemptions from the *Freedom of Information Act*, LRCWA material is available for inspection. Any requests for access to documents or amendment of any personal information in any document should be addressed to the Executive Officer who is responsible for initial decisions about access or amendment. Appeals from the Executive Officer's decisions would be referred to the Commission.

Disability services

The LRCWA updated its Disability Services Plan in September 2001 whilst located within the headquarters of the Department of Justice, however, in February 2002, the Commission was required to relocate to the BGC Centre on the Esplanade in Perth. This relocation has not significantly altered the current

Disability Services Plan, with the Commission still enjoying the same level of access and facilities available at its previous location.

As there has been a significant alteration in the Commission's mode of operation with the work of research and writing papers and reports no longer being carried out by full-time research officers, but by consultants appointed for particular projects, there is now greater flexibility in the Commission's working arrangements.

The Commission's community outreach program, developed during the 1998-1999 year, includes public meetings. The Commission selects all venues with disabled access in mind, including special facilities for the hearing impaired and the projection of discussion notes on large screens so that people attending the meeting can see what is being recorded. Electronic publishing allows documents to be enlarged at will or projected. Modern technology may assist the visually or hearing impaired access to Commission publications.

Customer focus outcomes

The Commission has developed a mission statement and strategic plan in connection with its new performance indicator on community outreach. The restructuring of the Commission's operations enables the Commission to focus on delivering services to the public, the stakeholders and the Attorney General. The elimination of an expensive operational infrastructure enables the Commission to utilise its resources more effectively for law reform and public education purposes.

Equal employment opportunity

The LRCWA seeks to promote equal opportunity for all persons. The Commission is committed to eliminating and ensuring the absence of discrimination in employment on

the ground of sex, marital status, pregnancy, family responsibility or family status, race, religious or political conviction, impairment or age. The Commission's only full time regular employee and part-time Finance Officer are both women and of the 16 temporary staff employed during the 2002-2003 Financial Year, 14 (or 87.5%) were women. The Commission also has in place an equal opportunity management plan for 2001-2004, which recognises that a diverse workforce and diversity management is part of the solution to the successful implementation of workplace reform and cultural change.

Language and Cultural Diversity Outcomes and Youth Outcomes

The Commission meets the requirements of these two outcomes by actively supporting the principles and practices of equal opportunity, encouraging feedback from the general public and employing a diverse range of people in a variety of positions.

Energy Smart Government Policy

Although the Energy Smart policy does not apply to the Law Reform Commission, by virtue of the size of the agency, the Commission has adopted the principles of the policy as an integral part of our business and as a way of contributing to Western Australia's broad environmental outcomes while pursuing good business practice.

Waste Paper Recycling

Consistent with the Government's and the Commission's commitment to waste reduction and recycling, all staff follow the guidelines for recycling as set out in the *WA Waste Reduction and Recycling Policy*.





Part II

Performance Indicators

OUTCOME: Law kept up-to-date and relevant to the needs of society

Introduction

The changes in the Law Reform Commission of Western Australia's ("the Commission") operational structure, and its approach to law reform activities generally, prompted the redevelopment of performance indicators. Recently the Commission approached the Attorney General seeking approval to refine its current Outcome Statement from "The law kept up-to-date and relevant to the needs of society", to "The law reviewed as requested by the Attorney General, with stakeholders to be kept informed." This new Outcome Statement better reflects the desired outcome the Commission addresses and will enable it to develop more accurate measures of effectiveness. The Attorney General approved this change, which will come into effect in the 2004-2005 Financial Year.

Effectiveness Indicator: Stakeholder satisfaction

The extent to which the Commission's stakeholders are satisfied with the work it carries out.

The role of the Commission is to examine areas of the law upon reference from the Attorney General to identify opportunities for reform that will assist in keeping the law up-to-date and relevant to the needs of society. In order to ensure that the work of the Commission meets those needs, it is necessary from time to time, to consult with various representatives of the Commission's stakeholder base.

Stakeholder Satisfaction	2002-2003	2001-2002	2000-2001
Publications periodically used by Stakeholders	89%	-	-
Publication satisfaction reported by Stakeholders	100%	-	-
Stakeholders that regularly visited the Commission's Website	54%	-	-
Satisfaction Reported by Website users	90%	-	-



In December 2002 the Commission conducted a Publication and Customer Satisfaction Survey to determine whether its publications were still relevant and useful and whether there were areas that the Commission needed to improve upon. The Commission surveyed 145 people all of whom were stakeholders. Of those 145, 37 people responded. The survey featured 16 questions in three sections: eight questions on general publications, five questions specific to the 30th Anniversary CD-ROM publication, and three questions on the Commission's dedicated website.

Stakeholders were asked various questions including, whether they had ever used LRC publications in the past, how useful did they find them and which publication format did they prefer. As this is the first time the Commission has utilised stakeholder satisfaction as an effectiveness indicator there are no previous years figures to provide a comparison, nevertheless, the survey responses received are presented in the table on page 11.

OUTPUT: Publications on Law Reform

Efficiency Indicator: Publications on Law Reform

The extent to which the efforts of the Commission resulted in recommendations and public awareness.

The Commission's output 'Publications on Law Reform' is achieved through the production of various papers and reports compiled in relation to references and the extent to which the Commission was able to meet the needs of society relating to matters of law. The Commission reviewed its performance indicators following the change in the methodology in accounting for them and has revised the cost allocation between the publications and community contacts.

During the past financial year the Commission has been successful in reducing its average cost per publication by publishing certain of its reports in CD-ROM format. Though the CD-ROM format is not appropriate to all reports, the Commission is committed to the use of this technology wherever practicable. The savings realised by publishing in CD-ROM format, as opposed to hard copy format, are approximately \$7.00 per copy.

The Commission relies on the services provided 'free of charge' by the Department of Justice for many of its administrative functions. Although the services are free to the Commission, the Department of Justice allocates a percentage of its annual cost to the Commission and such costs are reflected in the average cost of publications and the average cost of community contacts. The increase in the resource free of charge, the introduction of Capital User Charge and the revision of cost allocation are the main reasons for the change in the average cost of community contacts when compared with the previous financial years.

	2002-2003	2001-2002	2000-2001
Output:			
Total Publications	7	6	3
Average Cost Per Publication	\$128 348	\$144 020	\$224 813
Total Community Contacts	17 036	14 549	16 132
Average Cost Per Contact	\$5.86	\$6.60	\$10.45



STATEMENT OF CERTIFICATION

We hereby certify that the performance indicators are based on proper records, are relevant and appropriate for assisting users to assess the performance of the Law Reform Commission of Western Australia, and fairly represent the performance of the Law Reform Commission of Western Australia for the year ending 30 June 2003.

RL SIMMONDS
Chairman

ID PETERSEN
Member

AG BRADDOCK
Member

30 August 2003



AUDITOR GENERAL

INDEPENDENT AUDIT OPINION

To the Parliament of Western Australia

LAW REFORM COMMISSION OF WESTERN AUSTRALIA PERFORMANCE INDICATORS FOR THE YEAR ENDED JUNE 30, 2003

Audit Opinion

In my opinion, the key effectiveness and efficiency performance indicators of the Law Reform Commission of Western Australia are relevant and appropriate to help users assess the Commission's performance and fairly represent the indicated performance for the year ended June 30, 2003.

Scope

The Commission's Role

The Commission is responsible for developing and maintaining proper records and systems for preparing performance indicators.

The performance indicators consist of key indicators of efficiency and effectiveness.

Summary of my Role

As required by the Financial Administration and Audit Act 1985, I have independently audited the performance indicators to express an opinion on them. This was done by looking at a sample of the evidence.

An audit does not guarantee that every amount and disclosure in the performance indicators is error free, nor does it examine all evidence and every transaction. However, my audit procedures should identify errors or omissions significant enough to adversely affect the decisions of users of the performance indicators.

A handwritten signature in black ink, appearing to read 'D D R Pearson'.

DDR PEARSON
AUDITOR GENERAL
October 14, 2003

Part III

Financial Statements

for year ending 30 June 2003

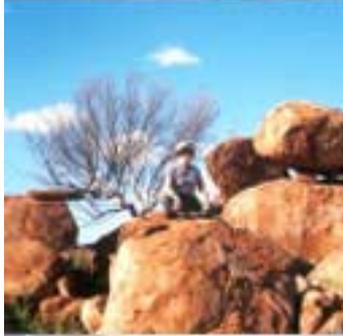
Note:

The Law Reform Commission of Western Australia ("the Commission") uses the financial services of the Department of Justice. Hall Chadwick (Perth) performed its 2002–2003 internal audit. The Commission acknowledges Peter Parolo of the Department of Justice who served as the senior financial officer for the Commission.

LAW REFORM COMMISSION OF WESTERN AUSTRALIA (NET COST OF SERVICES)
Statement of Financial Performance
for the year ended 30 June 2003

	Note	2003 \$	2002 \$
COST OF SERVICES			
Expenses from ordinary activities			
Employee expenses	2	395 097	365 363
Supplies and services	3	398 441	348 677
Depreciation expense	4	18 685	18 794
Accommodation expenses	5	39 218	39 845
Capital user charge	6	60 680	57 000
Other expenses from ordinary activities	7	86 142	130 453
Total cost of services		<u>998 263</u>	<u>960 132</u>
Revenues from ordinary activities			
Revenue from operating activities:			
Sale of goods	8	404	477
Proceeds from disposal of non-current assets		–	5
Revenue from non-operating activities:			
Other revenue from ordinary activities	10	–	40
Total revenues from ordinary activities		<u>404</u>	<u>522</u>
Net cost of services		<u>997 859</u>	<u>959 610</u>
REVENUES FROM STATE GOVERNMENT			
Output appropriation	11	819 000	828 000
Resources received free of charge		165 508	204 531
Total revenues from State Government		<u>984 508</u>	<u>1 032 531</u>
Total changes in equity other than those resulting from transactions with WA State Government as owners		<u>(13 351)</u>	<u>72 921</u>

The Statement of Financial Performance should be read in conjunction with the accompanying notes.



Statement of Financial Position
as at 30 June 2003

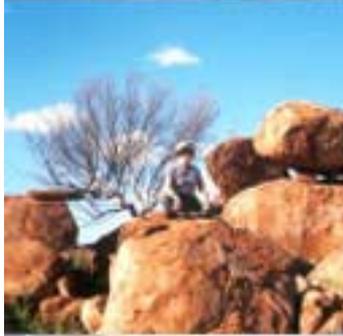
	Note	2003 \$	2002 \$
CURRENT ASSETS			
Cash assets	21(a)	771 484	784 361
Restricted cash assets	12	8 618	641
Receivables	13	11 971	8 097
Amounts receivable for outputs	14	10 000	9 000
Other assets	15	1 775	2 909
Total current assets		<u>803 848</u>	<u>805 008</u>
NON-CURRENT ASSETS			
Equipment	16	11 064	28 131
Total non-current assets		<u>11 064</u>	<u>28 131</u>
Total assets		<u>814 912</u>	<u>833 139</u>
CURRENT LIABILITIES			
Payables	17	53 060	59 640
Provisions	18	1 811	7 200
Other liabilities	19	8 360	6 341
Total current liabilities		<u>63 231</u>	<u>73 181</u>
NON-CURRENT LIABILITIES			
Provisions	18	22 093	18 019
Total non-current liabilities		<u>22 093</u>	<u>18 019</u>
Total liabilities		<u>85 324</u>	<u>91 200</u>
NET ASSETS		<u>729 588</u>	<u>741 939</u>
EQUITY			
Contributed equity	20	11 000	10 000
Accumulated surplus		<u>718 588</u>	<u>731 939</u>
TOTAL EQUITY		<u>729 588</u>	<u>741 939</u>

The Statement of Financial Position should be read in conjunction with the accompanying notes.

Statement of Cash Flows
for the year ended 30 June 2003

	Note	2003 \$	2002 \$
CASH FLOWS FROM STATE GOVERNMENT			
Output appropriations		809 000	819 000
Capital contributions		1 000	10 000
Holding account drawdowns		9 000	-
Net cash provided by State Government		<u>819 000</u>	<u>829 000</u>
Utilised as follows:			
CASH FLOWS FROM OPERATING ACTIVITIES			
Payments:			
Employee costs		(354 525)	(312 640)
Supplies and services		(403 607)	(234 234)
Capital user charge		(60 680)	(57 000)
GST payments		(39 041)	(23 828)
Receipts:			
Receipts from sale of goods and services		484	9 550
GST receipts		35 087	18 142
Net cash provided by/(used in) operating activities	21(b)	<u>(822 282)</u>	<u>(600 010)</u>
CASH FLOWS FROM INVESTING ACTIVITIES			
Proceeds from sale of non-current assets		-	5
Purchase of non-current assets		(1 618)	(8 016)
Net cash provided by/(used in) investing activities		<u>(1 618)</u>	<u>(8 011)</u>
Net increase in cash held		(4 900)	220 979
Cash assets at the beginning of the financial year		785 002	564 023
CASH ASSETS AT THE END OF THE FINANCIAL YEAR	21(a)	<u>780 102</u>	<u>785 002</u>

The Statement of Cash Flows should be read in conjunction with the accompanying notes.



LAW REFORM COMMISSION OF WESTERN AUSTRALIA (NET COST OF SERVICES)
Notes to the Financial Statements
the year ended 30 June 2003

1. Significant Accounting Policies

The following accounting policies have been adopted in preparation of the financial statements of the Law Reform Commission (for the purpose of these notes the "Commission"). Unless otherwise stated these policies are consistent with those adopted in the previous year.

General Statement

The financial statements constitute a general purpose financial report which has been prepared in accordance with Australian Accounting Standards, Statements of Accounting Concepts and other authoritative pronouncements of the Australian Accounting Standards Board and Urgent Issues Group (UIG) Consensus Views as applied by the Treasurer's Instructions. Several of these are modified by the Treasurer's Instructions to vary the application, disclosure, format and wording. The Financial Administration and Audit Act and the Treasurer's Instructions are legislative provisions governing the preparation of financial statements and take precedence over Accounting Standards, Statements of Accounting Concepts and other authoritative pronouncements of the Australian Accounting Standards Board and UIG Consensus Views. The modifications are intended to fulfil the requirements of general application to the public sector together with the need for greater disclosure and also satisfy accountability requirements.

If any such modification has a material or significant financial effect upon the reported results, details of that modification and where practicable, the resulting financial effect is disclosed in individual notes to these financial statements.

Basis of Accounting

The financial statements have been prepared on the accrual basis of accounting using the historical cost convention, except for certain assets and liabilities which, as noted, are measured at fair value and subject to the exceptions noted in these accounting policies.

(a) Output Appropriations

Output Appropriations are recognised as revenues in the period in which the Commission gains control of the appropriated funds. The Commission gains control of appropriated funds at the time those funds are deposited into the Commission's bank account or credited to the holding account held at the Department of Treasury and Finance. *Refer to Note 11 for further commentary on output appropriations.*

(b) Contributed Equity

Under UIG 38 "Contributions by Owners Made to Wholly-Owned Public Sector Entities" transfers in the nature of equity contributions must be designated by the Government (owners) as contributions by owners (at the time of, or prior to transfer) before such transfers can be recognised as equity contributions in the financial statements. Capital contributions (appropriations) have been designated as contributions by owners and have been credited directly to Contributed Equity in the Statement of Financial Position. All other transfers have been recognised in the Statement of Financial Performance. Prior to the current reporting period, capital appropriations were recognised as revenue in the Statement of Financial Performance. Capital appropriations which are repayable to the Treasurer are recognised as liabilities. *Refer to Note 11 for further commentary on the application of UIG 38.*

(c) Revenue Recognition

Revenue from the sale of goods and disposal of other assets and the rendering of services, is recognised when the Commission has passed control of the goods or other assets or delivery of the service to the customer.

(d) Acquisition of Assets

The cost method of accounting is used for all acquisitions of assets. Cost is measured as the fair value of the assets given up or liabilities undertaken at the date of acquisition plus incidental costs directly attributable to the acquisition.



Assets acquired at no cost or for nominal consideration, are initially recognised at their fair value at the date of acquisition.



(e) Depreciation of Non-Current Assets

All non-current assets having a limited useful life are systematically depreciated over their useful lives in a manner which reflects the consumption of their future economic benefits.

Depreciation is calculated on the straight line basis, using rates which are reviewed annually. Useful lives for each class of depreciable asset are:

Office equipment and computers 3 to 10 years



(f) Leases

The Commission has entered into an operating lease for the rent of the building where the lessor effectively retains all of the risks and benefits incident to ownership of the items held under the operating lease. Equal instalments of the lease payments are charged to the Statement of Financial Performance over the lease term as this is representative of the pattern of benefits to be derived from the leased property.

(g) Cash

For the purpose of the Statement of Cash Flows, cash includes cash assets and restricted cash assets.



(h) Inventories

Inventories are valued at lower of cost and net realisable value. Costs are assigned on a first in first out basis.

(i) Receivables

Receivables are recognised at the amounts receivable as they are due for settlement no more than 30 days from the date of recognition.

Collectability of receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. A provision for doubtful debts is raised where doubt as to the collection exists.

(j) Payables

Payables, including accruals not yet billed, are recognised when the Commission becomes obliged to make future payments as a result of a purchase of assets or services. Payables are generally settled within 30 days.



(k) Employee Entitlements

Annual leave

This benefit is recognised at the reporting date in respect to employees' services up to that date and is measured at the nominal amounts expected to be paid when liabilities are settled.

Long service leave

Leave benefits are calculated at remuneration rates expected to be paid when the liabilities are settled. A liability for long service leave is recognised after an employee has completed four years of service. An actuarial assessment of long service leave undertaken by Price Waterhouse Coopers in 2003 determined that the liability measured using the short hand method was not materially different from the liability measured using the present value of expected future payments.

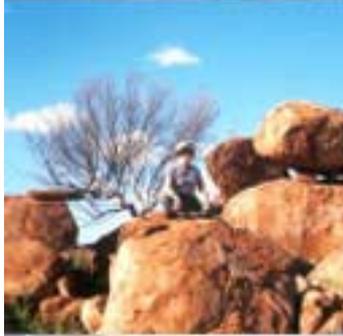


This method of measurement of the liability is consistent with the requirements of Accounting Standards AAS 30 "Accounting for Employee Entitlements".

Superannuation

Staff may contribute to the Pension Scheme, a defined benefits pension scheme now closed to new members, or the Gold State Superannuation Scheme, a defined benefit lump sum scheme now also closed to new members. All staff who do not contribute to either of these schemes become non-contributory members of the West State Superannuation Scheme, an





accumulation fund complying with the Commonwealth Government's Superannuation Guarantee (Administration) Act 1992. All of these schemes are administered by the Government Employees Superannuation Board (GESB).

The liabilities for the superannuation charges under the Gold State Superannuation Scheme and West State Superannuation Scheme are extinguished by payment of employer contributions to the GESB.

The note disclosure required by paragraph 6.10 of AASB 1028 (being the employer's share of the difference between employees' accrued superannuation benefits and the attributable net market value of plan assets) has not been provided. State scheme deficiencies are recognised by the State in its whole of government reporting. The GESB's records are not structured to provide the information for the Commission. Accordingly, deriving the information for the Commission is impractical under current arrangements, and thus any benefits thereof would be exceeded by the cost of obtaining the information.

Employee benefit on-costs

Employee benefit on-costs, including payroll tax, are recognised and included in employee benefit liabilities and costs when the employee benefits to which they relate are recognised as liabilities and expenses (see notes 2 and 18).

(l) Accrued Salaries

Accrued salaries (refer note 19) represent the amount due to staff but unpaid at the end of the financial year, as the end of the last pay period for that financial year does not coincide with the end of the financial year. The Commission considers the carrying amount approximates net fair value.

(m) Resources Received Free of Charge

Resources received free of charge or for nominal value which can be reliably measured are recognised as revenues and as assets or expenses as appropriate at fair value.

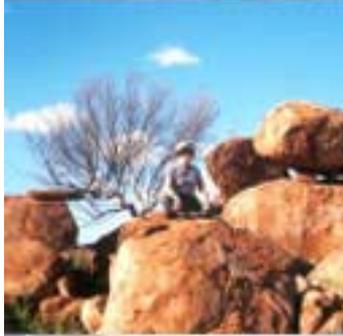
(n) Comparative figures

Comparative figures are, where appropriate, reclassified so as to be comparable with the figures presented in the current financial year.

(o) Rounding of amounts

Amounts in the financial statements have been rounded to the nearest dollar.

	2003 \$	2002 \$
2. Employee expenses		
Salaries	344 529	307 734
Change in annual and long service leave	10 699	13 851
Superannuation	31 274	24 483
Other related expenses	8 595	19 295
	<u>395 097</u>	<u>365 363</u>
3. Supplies and services		
Goods and supplies	19 466	5 103
Services and contracts	213 467	139 043
Resources received free of charge (note 11)	165 508	204 531
	<u>398 441</u>	<u>348 677</u>
4. Depreciation expense		
Office equipment and furnishings	18 685	18 794
	<u>18 685</u>	<u>18 794</u>



	2003	2002
	\$	\$
5. Accommodation expense		
Building rent operating lease expense	39 218	39 845
6. Capital user charge		
Capital user charge	60 680	57 000
<p>A capital user charge rate of 8% has been set by the Government for 2002-03 and represents the opportunity cost of capital invested in the net assets of the Commission used in the provision of outputs. The charge is calculated on the net assets adjusted to take account of exempt assets. Payments are made to the Department of Treasury and Finance on a quarterly basis.</p>		
7. Other expenses from ordinary activities		
Inventory write down	-	73 466
Printing	7 083	23 261
Insurance	14 452	11 823
Equipment repairs and maintenance	780	5 720
Advertising	11 992	3 983
Communication expenses	5 658	3 083
Other expenses	46 177	9 117
	<u>86 142</u>	<u>130 453</u>
8. Sale of goods		
Publication sales	404	477
9. Net profit/(loss) on disposal of non-current assets		
Gain on disposal of non-current assets:		
Office equipment and computers	-	5
Loss on disposal of non-current assets:		
Office equipment and computers	-	-
Net profit/(loss)	<u>-</u>	<u>5</u>
10. Other revenues from ordinary activities		
Other revenue	<u>-</u>	<u>40</u>
11. Revenues from Government		
Appropriation revenue received during the year:		
Output appropriations (i)	819 000	828 000
Resources received free of charge (ii)		
Determined on the basis of the following estimates provided by agencies:		
Office of the Auditor General –		
Audit services	8 000	8 000
Department of Justice –		
Accounting, human resources and information technology services	156 170	195 497
Department of Housing and Works –		
Property management services	1 338	1 034
	<u>165 508</u>	<u>204 531</u>



- (i) Output appropriations are accrual amounts reflecting the full cost of outputs delivered. The appropriation revenue comprises a cash component and a receivable (asset). The receivable (holding account) comprises the depreciation expense for the year and any agreed increase in leave liability during the year.
- (ii) Where assets or services have been received free of charge or for nominal consideration, the Commission recognises revenues (except where the contribution of assets or services is in the nature of contributions by owners, in which case the Commission shall make a direct adjustment to equity) equivalent to the fair value of the assets and/or fair value of those services that can be reliably determined and which would have been purchased if not donated, and those fair values shall be recognised as assets or expenses, as applicable.

	2003	2002
	\$	\$
12. Restricted cash assets		
Current		
Capital contributions remaining at year end (i)	8 618	641
(i) Cash held in the account is to be used only for the purchase of computers and office equipment.		
13. Receivables		
Trade debtors	55	135
GST receivable	11 916	7 962
	<u>11 971</u>	<u>8 097</u>
14. Amounts receivable for outputs		
Current	10 000	9 000
This asset represents the non-cash component of output appropriations. It is restricted in that it can only be used for asset replacement or payment of leave liability.		
15. Other assets		
Prepayments	1 775	2 909
16. Equipment		
Equipment:		
At cost	90 547	88 929
Accumulated depreciation	(79 483)	(60 798)
	<u>11 064</u>	<u>28 131</u>
Reconciliations:		
Equipment		
Carrying amount at start of year	28 131	38 909
Additions	1 618	8 016
Disposals	-	-
Depreciation	(18 685)	(18 794)
Carrying amount at end of year	<u>11 064</u>	<u>28 131</u>



	2003	2002
	\$	\$

17. Payables

Trade and other creditors	53 060	59 640
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18. Provisions

Current		
Annual leave	1 811	7 200
<i>Non-current</i>		
Long service leave	22 093	18 019

The Commission considers the carrying amount of employee entitlements approximates the net fair value.

Employee Entitlements

The aggregate employee entitlement liability recognised and included in the financial statements is as follows:

Provision for employee entitlements:

Current	1 811	7 200
Non-current	22 093	18 019
	<u>23 904</u>	<u>25 219</u>

19. Other liabilities

Accrued Salaries

Amounts owing for the 7 working days from 20 June to 30 June 2003. (2002, 6 working days).

	8 360	6 341
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20. Equity

Contributed equity		
Opening balance	10 000	-
Capital contributions (i)	1 000	10 000
Closing balance	<u>11 000</u>	<u>10 000</u>

(i) Capital Contributions, have been designated as contributions by owners and are credited straight to equity in the Statement of Financial Position.

Accumulated surplus / (deficiency)

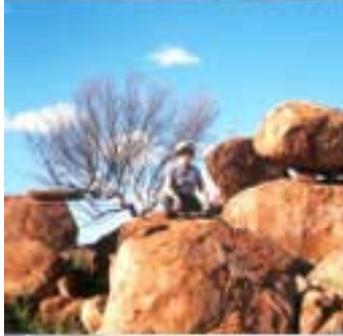
Opening balance	731 939	659 018
Change in net assets after restructuring	(13 351)	72 921
Closing balance	<u>718 588</u>	<u>731 939</u>

21. Notes to the Statement of Cash Flows

(a) Reconciliation of cash

Cash at the end of the financial year as shown in the Statement of Cash Flows is reconciled to the related items in the Statement of Financial Position as follows:

Cash assets	771 484	784 361
Restricted cash assets (refer note 12)	8 618	641
	<u>780 102</u>	<u>785 002</u>



	2003 \$	2002 \$
(b) Reconciliation of net cost of services to net cash flows provided by/(used in) operating activities		
Net cost of services	(997 859)	(959 610)
Non-cash items:		
Depreciation	18 685	18 794
Resources received free of charge	165 508	204 531
Loss on sale of property, plant and equipment	-	(5)
(Increase) / decrease in assets:		
Receivables	80	7 618
Inventories	-	73 466
Other current assets	1 134	2 264
Increase / (decrease) in liabilities:		
Payables	(6 580)	49 673
Other current liabilities	2 019	1 091
Current provisions	(5 389)	2 359
Non-current provisions	4 074	5 495
Change in GST receivables	(3 954)	(5 686)
Net cash provided by/(used in) operating activities	<u>(822 282)</u>	<u>(600 010)</u>

22. Commitments for expenditure

Lease commitments

Commitments in relation to leases contracted for at the reporting date but not recognised as liabilities are payable as follows:

Within 1 year	24 544	32 726
Later than 1 year and not later than 5 years	-	24 544
	<u>24 544</u>	<u>57 270</u>

23. Remuneration of Members of the Accountable Authority and Senior Officers

Remuneration of Members of the Accountable Authority

The number of members of the Accountable Authority, whose total of fees, salaries, superannuation and other benefits for the financial year fall within the following bands are:

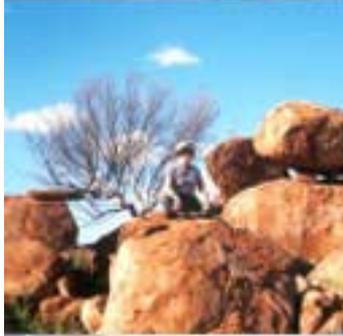
\$10,001 - \$20,000	1*	1
\$20,001 - \$30,000	2	1

* Former Chairman Wayne Martin resigned in September 2002

The total remuneration of the members of the Accountable Authority is:	<u>50 672</u>	<u>47 995</u>
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The superannuation included here represents the superannuation expense incurred by the Commission in respect of members of the Accountable Authority.

No members of the Accountable Authority are members of the Pension Scheme.



	2003	2002
	\$	\$

Remuneration of Senior Officers

The number of Senior Officers other than senior officers reported as members of the Accountable Authority, whose total of fees, salaries, superannuation and other benefits for the financial year fall within the following bands are:

\$70 001 - \$80 000	1	1
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The total remuneration of senior officers is:

<u>75 497</u>	<u>76 242</u>
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The superannuation included here represents the superannuation expense incurred by the Commission in respect of Senior Officers other than senior officers reported as members of the Accountable Authority.

No Senior Officers are members of the Pension Scheme.

24. Financial instruments

(a) Interest rate risk exposure

The Commission does not have any interest bearing accounts and is therefore not subject to any interest rate risk exposure.

(b) Credit risk exposure

All financial assets are unsecured.

Amounts owing by other government agencies are guaranteed, therefore no credit risk exists in respect of those amounts. In respect of other financial assets the carrying amounts represent the Commission's maximum exposure to credit risk.

25. Supplementary financial information

- There were no losses of public moneys or other public property through theft or default during the financial year (2002, nil).
- There were no write offs of public money or other public property during the financial year (2002, nil).
- There were no gifts of public property during the financial year (2002, nil).
- There were no contingent liabilities as at 30 June 2003 (2002, nil).
- There were no events occurring after the balance date at the end of the financial year.
- The Commission had no related bodies during the financial year (2002 nil).
- The Commission had no affiliated bodies during the financial year (2002, nil).

26. Explanatory Statement

(i) Significant variations between actual revenues and expenditures for the financial year

Details and reasons for significant variations between actual results with the corresponding items of the preceding year are detailed below. Significant variations are considered to be those greater than 5% and \$7,000.

	Actual 2003	Estimate 2003	Variance
	\$	\$	\$
Employee expenses	395 097	258 000	137 097
Supplies and services	398 441	666 000	(267 559)
Depreciation expense	18 685	9 000	9 685
Accommodation expense	39 218	67 000	(27 782)
Capital user charge	60 680	34 000	26 680
Other expenses from ordinary activities	86 142	417 000	(330 858)

Employee expenses

The increase in employee expenses is due to the Commission's preference to engage the many research and writing services under short term casual employment contracts rather than as fixed price contracts for services.



Supplies and services

The Aboriginal Customary Laws reference has continued to be a complex and challenging project because of the nature of the subject matter. The unforeseen delay in various aspects of this reference has resulted in actual expenses being significantly less than the Estimate.

Accommodation expenses

The decrease in accommodation expenses is due to the lower cost of rent charges at the Commission's new premises.

Other expenses from ordinary activities

The Aboriginal Customary Laws reference has continued to be a complex and challenging project because of the nature of the subject matter. The unforeseen delay in various aspects of this reference has resulted in actual expenses being significantly less than the Estimate.

(ii) Significant variations between estimates and actual results for the financial year

Details and reasons for significant variations between actual results with the corresponding items of the preceding year are detailed below. Significant variations are considered to be those greater than 5% and \$7,000.

	2003 \$	2002 \$	Variance \$
Employee expenses	395 097	365 363	29 734
Supplies and services	398 441	348 677	49 764
Other expenses from ordinary activities	86 142	130 453	(44 311)
Output appropriation	819 000	828 000	(9 000)
Resources received free of charge	165 508	204 531	(39 023)

Employee expenses

The increase in employee expenses reflects the labour intensive nature of the Aboriginal Customary Law Reference.

Supplies and services

The increase is due to the extensive travel, project management and research work that was done as part of the Aboriginal Customary Laws Reference.

Other expenses from ordinary activities

The variance is due to Commission writing off the Inventory of Past Publications in 2002 resulting in a one-off extraordinary expense of \$73 466.

Output Appropriation

The decrease is partly due to the budgeted decrease in the Capital User Charge from \$50 000 in 2002 to \$34 000 in 2003.

Resources received free of charge

The decrease is due largely to a change in 2003 in the methodology used by the Department of Justice (the "Department") in the way the Capital User Charge expense was allocated amongst the Department's business areas. As a result of this change, the Capital User Charge allocated to the Department's Corporate business area was significantly reduced with a proportional decrease in the Corporate Capital User Charge allocated to the Commission.



LAW REFORM COMMISSION OF WESTERN AUSTRALIA
(NET COST OF SERVICES)

CERTIFICATION OF FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2003

The accompanying financial statements of the Law Reform Commission of Western Australia have been prepared in compliance with the provisions of the *Financial Administration and Audit Act 1985* from proper accounts and records to present fairly the financial transactions for the year ending 30 June 2003 and financial position as at 30 June 2003.

At the date of signing we are not aware of any circumstances which would render the particulars included in the financial statements misleading or inaccurate.

PJ KING
Principal Accounting Officer
30 August 2003

RL SIMMONDS
Chairman
30 August 2003

ID PETERSEN
Member
30 August 2003



AUDITOR GENERAL

INDEPENDENT AUDIT OPINION

To the Parliament of Western Australia

LAW REFORM COMMISSION OF WESTERN AUSTRALIA FINANCIAL STATEMENTS FOR THE YEAR ENDED JUNE 30, 2003

Audit Opinion

In my opinion,

- (i) the controls exercised by the Law Reform Commission of Western Australia provide reasonable assurance that the receipt and expenditure of moneys, the acquisition and disposal of property, and the incurring of liabilities have been in accordance with legislative provisions; and
- (ii) the financial statements are based on proper accounts and present fairly in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia and the Treasurer's Instructions, the financial position of the Commission at June 30, 2003 and its financial performance and cash flows for the year ended on that date.

Scope

The Commissions's Role

The Commission is responsible for keeping proper accounts and maintaining adequate systems of internal control, preparing the financial statements, and complying with the Financial Administration and Audit Act 1985 (the Act) and other relevant written law.

The financial statements consist of the Statement of Financial Performance, Statement of Financial Position, Statement of Cash Flows and the Notes to the Financial Statements.

Summary of my Role

As required by the Act, I have independently audited the accounts and financial statements to express an opinion on the controls and financial statements. This was done by looking at a sample of the evidence.

An audit does not guarantee that every amount and disclosure in the financial statements is error free. The term "reasonable assurance" recognises that an audit does not examine all evidence and every transaction. However, my audit procedures should identify errors or omissions significant enough to adversely affect the decisions of users of the financial statements.

DDR PEARSON
AUDITOR GENERAL
October 14, 2003

Appendices

Appendix I: Current References

The Commission operates under references from the Attorney General. Once the terms of reference are settled, the work generally goes through a number of stages.

The traditional approach to law reform in Western Australia

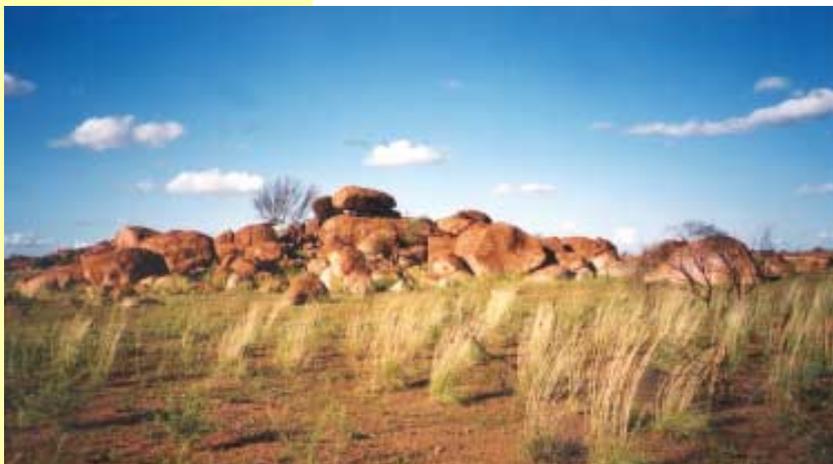
The approach varies according to the nature of each reference. In the past primary responsibility for a particular project was allocated to an individual research officer, under the general direction of the Executive Officer and Director of Research and the members of the Commission. An alternative but infrequently used procedure was to engage a consultant with expertise in the subject-matter of the project. A preliminary paper was generally prepared on the scope of the project and the approach to be taken by the Commission.

A new approach for a ground breaking reference

On 22 September 1997 the Commission received the most significant reference in its 30-year history: a request for a Review of the Criminal and Civil Justice System. Using

the traditional approach it would not have been possible to review the Criminal and Civil Justice System within a limited period of time.

The restructure therefore had the added benefit of enabling the Commission to engage specialists with experience and expertise and of increasing the overall efficiency of reviews. This structure has since been improved upon, with the Commission adopting a more project team structure, which will allow for the management of multiple references.



Contempt – Project 93

I, Peter Foss, Attorney General for the State of Western Australia, having regard to the fact that the laws of Western Australia make little express provision in respect of the principles, practices and procedures pertaining to contempt of Court hereby refer the following matter to the Law Reform Commission of Western Australia.

The Law Reform Commission of Western Australia is to inquire into and Report upon whether, and if so in what manner, the principles, practices and procedures pertaining to the law of contempt of Court requires reform, and in particular, and without detracting from the generality of this reference:

- (a) to inquire into and report upon the principles, practices and procedures relating to contempt by publication and whether the law pertaining thereto should be reformed and, if so, in what manner;
- (b) to inquire into and report upon the principles, practices and procedures relating to contempt in the face of the Court and whether the law pertaining thereto should be reformed and, if so, in what manner;
- (c) to inquire into and report upon the principles, practices and procedures relating to contempt by disobedience to the orders of the Court and whether the law pertaining thereto should be reformed and, if so, in what manner.

In carrying out this reference the commission is to have regard to the law as it applies to the Courts and Tribunals presently operating in the State of Western Australia.

PETER FOSS QC MLC 17 May 2000



*Chairman with Tatum Hands (editor
of the Contempt Final Report*

The Commission commenced work on this reference with a public tender seeking consulting specialist writers with expertise in the field. The tender ran after the end of the 1999-2000 financial year. Three writers and an editor were subsequently engaged and work commenced shortly thereafter, on the drafting of Discussion Papers. The Commission has published and distributed three Discussion Papers on this reference, namely, Contempt in the Face of the Court, Contempt by Publication and Contempt by Disobedience to the Orders of the Court. After seeking submissions from various stakeholders and interested parties, the Commission published its Final Report on the Law of Contempt at the end of June 2003.

Aboriginal Customary Law – Project 94

Recognising that all persons in Western Australia are subject to and protected by this State's legal system; and there may be a need to recognise the existence of, and take into account within this legal system, Aboriginal customary laws:

The Law Reform Commission of Western Australia is to enquire into and report upon Aboriginal customary laws in Western Australia other than in relation to Native Title and matters addressed under the Aboriginal Heritage Act 1972 (WA).

Particular reference will be given to:

1. how those laws are ascertained, recognised, made, applied and altered in Western Australia;
2. who is bound by those laws and how they cease to be bound; and
3. whether those laws should be recognised and given effect to; and, if so, to what extent, in what manner and on what basis, and in particular whether:
 - (a) the laws of Western Australia should give express recognition to Aboriginal customary laws, cultures and practices in the administration or enforcement of Western Australian law;
 - (b) the practices and procedures of the Western Australian courts should be modified to recognise Aboriginal customary laws;
 - (c) the laws of Western Australia relating to the enforcement of criminal or civil law should be amended to recognise Aboriginal customary laws; and
 - (d) whether other provisions should be made for the identification and application of Aboriginal customary laws.

For the purposes of carrying out this inquiry, the Commission is to have regard to:

- matters of Aboriginal customary law falling within state legislative jurisdiction including matters performing the function of or corresponding to criminal law (including domestic violence); civil law (including personal property law, contractual arrangements and torts); local government law; the law of domestic relations; inheritance law; law relating to spiritual matters; and the laws of evidence and procedure;
- relevant Commonwealth legislation and international obligations;
- relevant Aboriginal culture, spiritual, sacred and gender concerns and sensitivities; and
- the views, aspirations and welfare of Aboriginal persons in Western Australia.

PETER FOSS QC MLC, 2 December 2000



Aboriginal Customary Law – Project 94



On 2 December 2000, the Commission commenced what may prove to be one of the broadest reviews of Aboriginal customary laws ever undertaken in Western Australia. After receiving the reference, the Commission's immediate response was to issue a request for tender seeking the assistance from researchers, editors, writers and project managers with an expertise in Aboriginal customary laws. The Commission received an overwhelming number of applications and, with the assistance of an Aboriginal Reference Group, undertook a detailed evaluation of the various tender responses lodged.

This review is also the first to trial the Commission's new project team structure, as discussed above (see also Part 1 of the Report). The Commission appointed an Aboriginal Project Manager in March 2002, with two Research Directors appointed shortly thereafter. The Project Manager has since assembled highly respected community people and representatives from key Aboriginal organisations to form the project's Aboriginal Reference Council. The Attorney General also approved the appointment of a prominent Aboriginal male and female representative of the Western Australian Aboriginal community as the project's Aboriginal Special Commissioners.

The project will extend over the next two and a half years, and has already involved extensive public consultations and travel to remote and regional Aboriginal communities. The Commission is very enthusiastic about the work involved on this significant reference and aims to follow closely the thorough consultation process made so successful in its Review of the Criminal and Civil Justice System.



Judicial Review of the Administrative Decisions – Project 95

Recognising that:

- (a) all Western Australians have an interest in ensuring that administrative decisions are lawful and just;
- (b) the law and procedures pertaining to the judicial review of administrative decisions have not been evaluated in the light of contemporary expectations of justice and fairness;
- (c) those expectations of justice and fairness are best achieved by a harmonious relationship between the law and procedures pertaining to review of administrative decisions by reference to their merits and review of administrative decisions by reference to their lawfulness;
- (d) it is the intention of the Government of Western Australia to comprehensively reform the law and procedures pertaining to the review of administrative decisions on their merits and a taskforce has been appointed to assist and advise the Government in that regard (the Civil & Administrative Review Tribunal Taskforce - "the Taskforce");

the Law Reform Commission of Western Australia is directed to inquire into the inadequacies and deficiencies of the current law and procedures pertaining to the judicial review of administrative decisions and to report on those inadequacies and deficiencies and to make recommendations with respect to the reform of:

- (i) the substantive grounds upon which the lawfulness of an administrative decision might be challenged;
- (ii) the practices and procedures pertaining to judicial review of administrative decisions including the appropriate extent of the jurisdictions of the various Courts of the State to entertain challenges to the lawfulness of administrative decisions;
- (iii) the law governing the extent to which Western Australians are entitled to obtain a statement of reasons for an administrative decision.

In undertaking this reference the Commission is to:

- (a) have regard to the extent to which it is desirable that the law and procedures pertaining to the judicial review of administrative decisions reflect the law and procedures pertaining to the judicial review of Commonwealth administrative decisions pursuant to the laws of the Commonwealth;
- (b) liaise and consult with the Taskforce.

Note: In this reference "administrative decisions" means decisions, whether of an administrative, judicial, quasi-judicial, legislative, quasi-legislative or other character made:

- (a) pursuant to or under the authority of a written law of the State of Western Australia; or
- (b) by a Minister or other officer of the State of Western Australia or a Local Government within the State of Western Australia; or
- (c) by the Governor of the State of Western Australia on the advice of a Minister of State;

and "Commonwealth administrative decision" bears a corresponding meaning.

The Commission is requested to deliver its report and recommendations not later than 15 February 2002 or such later date as I might direct.

JIM MCGINTY MLA, 6 September 2001

On 6 September 2001, the Commission received new Terms of Reference from the Attorney General, to inquire into and report on the inadequacies and deficiencies of the current law and procedures pertaining to the Judicial Review of Administrative Decisions, and to make recommendations for reform. The Commission engaged a research assistant and produced a Discussion Paper in June 2002. Once all submissions and comments were received, a Final Report was published in December 2002, tabled in parliament on 25 February 2003 and launched with the Attorney General's full endorsement on 27 March 2003.

**30th Anniversary
Reform CD-Rom
boxed set**



In May 2001, the Attorney General advised that as the year 2002 marked the Commission's 30th Anniversary, he proposed to take the opportunity to legislate to implement the vast bulk of the Commission's previous reports. As a result, the Commission carried out an audit of its previous reports and presented its 30th Anniversary Reform Implementation Report to the Attorney General for his consideration in December 2001. The published version of the report was released on 28 May 2002 as part of the Commission's 30th Anniversary celebrations.

Following on from this, all Working Papers, Discussion Papers and Final Reports published by the Commission during its 30 years in operation were converted into electronic format and published on CD-ROM. This CD-ROM has been packaged in a boxed set along with the Commission's 30th Anniversary Reform Implementation Report and the two CD-ROM set from the Commission's Project 92, the Review of the Criminal and Civil Justice System.



Appendix II: Publications

Following is a list of reports and discussion papers produced by the Commission.

Year	Topic	Reference No	Publication Type
2003	Judicial Review of the Administrative Decisions Contempt by Disobedience Final Report on the Law of Contempt Annual Report 2002-2003	95 93(III) 93	Rep D/P Rep
2002	30th Anniversary Reform Implementation Report Reports and Working Papers 1972-2002 Boxed set containing all LRCWA publications – Project Nos 1-92 Judicial Review of the Administrative Decisions Contempt in the Face of the Court Contempt by Publication Annual Report 2001-2002	95 93(I) 93(II)	Rep CD CDs D/P D/P Rep
2001	Writs and Warrants of Execution Annual Report 2000-2001	67	Rep Rep
2000	19th Australian Law Reform Agencies Conference Annual Report 1999-2000		CD Rep
1999	Review of the Criminal and Civil Justice System: • Final Report • Consultation Drafts (2 volumes) • Project Summary • Executive Summary • Submissions Summary • 2 CDs, containing reports in electronic format Annual Report 1998-1999	92	Rep Rep Rep Rep Rep CD Rep
1998	Financial Protection in the Building and Construction Industry Sale of Goods Act 1895 Reforming the Justice System Annual Report 1997-1998	82 89 92	Rep Rep I/P Rep
1997	Limitation and notice of actions Restrictive covenants Annual Report 1996-1997	36 Pt II 91	Rep Rep Rep
1996	Annual Report 1995-1996		Rep
1995	Enforcement of judgments of Local Courts Enforcement of judgments of Local Courts Restrictive covenants Implied terms in the Sale of Goods Act 1895 Equitable rules in contracts for the sale of goods Financial protection in the building and construction industry Annual Report 1994-1995	16 Pt II 16 Pt II 91 89 89 82	D/P Rep D/P D/P D/P D/P
1994	Annual Report 1993-1994 Enforcement of orders of Courts of Petty Sessions United Kingdom statutes in force in Western Australia Consent to sterilisation of minors Joint tenancy and tenancy in common	55 Pt III 75 77 Pt II 78	Rep Rep Rep Rep
1993	Annual Report 1992-1993 Professional privilege for confidential communications	90	Rep
1992	Limitation and notice of actions Police Act offences Annual Report 1991-1992	36 Pt II 85	D/P Rep
1991	Criminal process and mental disorder Effect of marriage or divorce on wills Medical treatment for the dying Evidence of children and other vulnerable witnesses Professional privilege for confidential communications Annual Report 1990-1991	69 76 Pt II 84 87 90	Rep Rep Rep Rep D/P
1990	Confidentiality of medical records and medical research Effect of marriage or divorce on wills Administration Act Evidence of children and other vulnerable witnesses Annual Report 1989-1990	65 Pt II 76 Pt II 88 87	Rep D/P Rep D/P Rep



Year	Topic	Reference No	Publication Type
1989	Confidentiality of medical records and medical research	65 Pt II	D/P
	Payment of witnesses in civil proceedings	83	Rep
	Police Act offences	85	D/P
	Incitement to racial hatred	86	D/P
	Annual Report 1988-1989	86	Rep
1988	Local Courts	16 Pt I	Rep
	Minors' contracts	25 Pt II	Rep
	Administration of assets	34 Pt VII	Rep
	Medical treatment for minors	77	D/P
	Annual Report 1987-1988	84	Rep
1987	Criminal process and mental disorder	69	D/P
	Annual Report 1986-1987		Rep
1986	Judicial review of administrative decisions	26 Pt II	Rep
	Alteration of ground levels	44	Rep
	Courts of Petty Sessions	55 Pt II	Rep
	Annual Report 1985-1986	80	Rep
1985	Wills: substantial compliance	76 Pt I	Rep
	Pawnbrokers Act	81	D/P
	Annual Report 1984-1985	81	Rep
			Rep
1984	Recognition of interstate and foreign grants of probate and administration	34 Pt IV	Rep
	Trustees' powers of investment	34 Pt V	Rep
	Alteration of ground levels	44	D/P
	Courts of Petty Sessions	55 Pt II	D/P
	Wills: substantial compliance	76 Pt I	D/P
	Annual Report 1983-1984	80	D/P
1983	Local Courts	16 Pt I	D/P
	Annual Report 1982-1983		Rep
1982	Appeals from administrative decisions	26 Pt I	Rep
	Limitation and notice of actions: latent disease and injury	36 Pt I	Rep
	Strata Titles Act	56	Rep
	Annual Report 1981-1982		Rep
1981	Liability for stock straying on to the highway (2nd report)	11	Rep
	Judicial review of administrative decisions	26 Pt II	D/P
	Trustees' powers of investment	34 Pt V	D/P
	Liability of highway authorities for non-feasance	62	Rep
	Privacy	65	D/P
	Interest on judgments	70	Rep
	Annual Report 1980-1981	73	Rep
1980	Liability for stock straying on to the highway (2nd W/P)	11	D/P
	Admissibility in evidence of computer records	27	Rep
	Recognition of interstate and foreign grants of probate and administration	34 Pt IV	D/P
	Unclaimed money	51	Rep
	Privilege for journalists	53	Rep
	Exemption from jury service	71	Rep
	Retention of court records	72	Rep
	Annual Report 1979-1980	73	D/P
1979	Annual Report 1978-1979		Rep
	Defamation	8	Rep
	Appeals from Courts of Petty Sessions	55 Pt I	Rep
	Small Debts Court	63	Rep
	Retention of court records	72	D/P
1978	Minors' contracts	5 Pt II	D/P
	Appeals from administrative decisions	26 Pt I	D/P
	Admissibility in evidence of computer records	27	D/P
	Official attestation of forms and documents	28	Rep
	Administration of deceased insolvent estates	34 Pt III	Rep
	Appeals from Courts of Petty Sessions	55 Pt I	D/P



Year	Topic	Reference No	Publication Type
1978	Liability of highway authorities for non-feasance	62	D/P
	Small Debts Court	63	D/P
	Fatal accidents	66	D/P
	Fatal accidents	66	Rep
	Exemption from jury service	71	D/P
	Annual Report 1977-1978		Rep
1977	Official attestation of forms and documents	28	D/P
	Competence and compellability of spouses as witnesses	31	Rep
	Administration of deceased insolvent estates	34 Pt III	D/P
	Compensation for new street alignments	39	Rep
	Suitors' Fund Act Part B: criminal proceedings	49	Rep
	Privilege for journalists	53	D/P
	Strata Titles Act	56	D/P
	Section 2 of the Gaming Act	58	Rep
	Enforcement of judgment debts	61	Rep
	Bail	64	D/P
	Annual Report 1976-1977		Rep
1976	Administration bonds and sureties	34 Pt II	Rep
	Compensation for persons detained in custody	43	D/P
	Suitors' Fund Act Part A: civil proceedings	49	Rep
	Unclaimed money	51	D/P
	Section 2 of the Gaming Act	58	D/P
	Protection of money awarded as damages	-	Rep
Annual Report 1975-1976		Rep	
1975	Special constables	29	Rep
	Dividing fences	33	Rep
	Administration bonds and sureties	34 Pt II	D/P
	Production of medical and technical reports in court proceedings	40	Rep
	Tenancy bonds	41	Rep
	Criminal injuries compensation	46	D/P
	Criminal injuries compensation	46	Rep
	Suitors' Fund Act	49	D/P
	Local body election practices	52	D/P
	Local body election practices	52	Rep
	Alternatives to cautions	60	D/P
	Alternatives to cautions	60	Rep
	Annual Report 1974-1975		Rep
1974	Commercial arbitration and commercial causes	18	Rep
	Special constables	29	D/P
	Competence and compellability of spouses as witnesses	31	D/P
	Land Agents Act *	37	Rep
	Production of medical and technical reports in court proceedings	40	D/P
	Tenancy bonds	41	D/P
	Mortgage brokers	45	D/P
	Mortgage brokers	45	Rep
	Contractors' liens	54	D/P
	Contractors' liens	54	Rep
Annual Report 1973-1974		Rep	
1973	Protection for purchasers of home units	1 Pt III	Rep
	Innocent misrepresentation	22	Rep
	Immunity of suit between spouses	32	D/P
	Immunity of suit between spouses	32	Rep
	Dividing fences	33	D/P
	Distribution on intestacy	34 Pt I	Rep
	Land Agents Act	37	D/P
	Sale of undivided shares in land	38	D/P
	Sale of undivided shares in land	38	Rep
Annual Report 1972-1973		Rep	
1972	Retention of trust money by land agents	1 Pt II	D/P
	Protection for purchasers of home units	1 Pt III	D/P
	Defamation: privileged reports	8	Rep
	Motor vehicle insurance	10	D/P
	Motor vehicle insurance	10	Rep
	Payment of costs in criminal cases	12	D/P
	Payment of costs in criminal cases	12	Rep
	Evidence of criminal convictions in civil proceedings	20	Rep
	Associations Incorporation Act	21	Rep
	Innocent misrepresentation	22	D/P

* This also contains the Report on *Retention of trust money by land agents* (Project No 1, Part II).

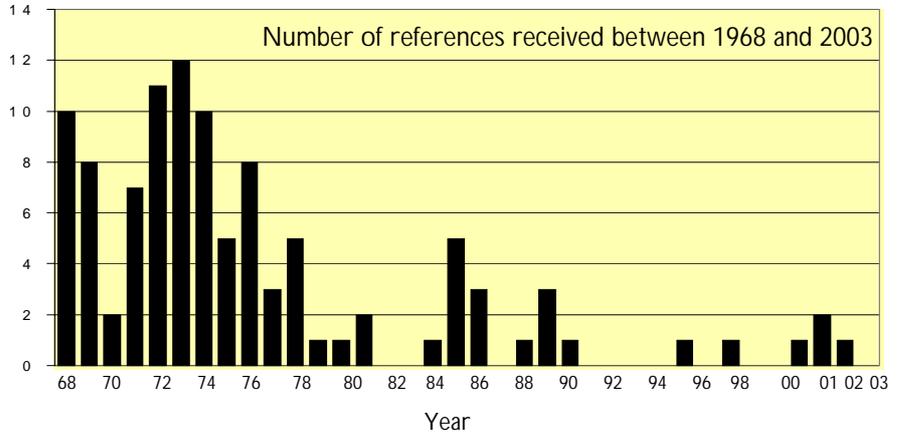


Year	Topic	Reference No	Publication Type
1972	Legal representation of children	23	D/P
	Legal representation of children	23	Rep
	Legal capacity of minors	25 Pt I	Rep
	Legal capacity of minors	25 Pt I	D/P
	Distribution on intestacy	34 Pt I	D/P
1971	Offices of profit under the Crown	14	Rep
	Imposition of driving disqualifications	15	D/P
	Imposition of driving disqualifications	15	Rep
	Commercial arbitration and commercial causes	18	D/P
	Evidence of criminal convictions in civil proceedings	20	D/P
	Associations Incorporation Act	21	D/P
	Succession rights of adopted children	24	D/P
Succession rights of adopted children	24	Rep	
1970	Testator's Family Maintenance Act	2	Rep
	Succession rights of illegitimate children	3	Rep
	Committal proceedings	4	Rep
	Summary trial of indictable offences	6	Rep
	Disposal of uncollected goods	7	Rep
	Liability for stock straying on to the highway (1st working paper)	11	D/P
	Liability for stock straying on to the highway (1st report)	11	Rep
	Affiliation proceedings	13	Rep
	Motor car manslaughter	17	Rep
	Motor car manslaughter	17	D/P
1969	Protection for purchasers of land	1 Pt I	Rep
	Interim hearings in personal injury cases	5	Rep
	Defamation: privileged reports	8	D/P
1968	Protection for purchasers of land	1 Pt I	D/P
	Testator's Family Maintenance Act	2	D/P
	Succession rights of illegitimate children	3	D/P
	Committal proceedings	4	D/P
	Interim hearings in personal injury cases	5	D/P
	Summary trial of indictable offences	6	D/P
	Disposal of uncollected goods	7	D/P



Appendix III: History of References

Appendix III details the history of references received by the Law Reform Commission of Western Australia and the legislative action on the reports from 1968–2003.



Ref No	Project	Recommendations	Legislative Action
1 (Pt I)	Protection for Purchasers of Land Referred: 1968 WP: October 1968 Report: September 1969	(1) In a terms contract for the sale of land the purchaser be given notice before the vendor can act against the purchaser on default; (2) (Supplementary report) A person be prohibited from selling subdivisinal land containing five or more lots unless that person is the registered proprietor of that land.	Sale of Land Act 1970
1 (Pt II)	Retention of Trust Money by Land Agents WP: June 1972 [see Ref No 37]	The Commission's recommendations were included in its Report on Project No 37 (see below).	
1 (Pt III)	Protection for Purchasers of Home Units WP: June 1972 Report: March 1973	Part III of the Sale of Land Act 1970 be amended so as to apply to the sale of strata title lots. ¹	Acts Amendment (Strata Titles) Act 1985
2	Testator's Family Maintenance Act Referred: 1968 WP: December 1968 Report: August 1970	The classes of possible claimants under the Testator's Family Maintenance Act be widened as specified.	Inheritance (Family and Dependants Provision) Act 1972
3	Succession Rights of Illegitimate Children Referred: 1968 WP: December 1968 Report: August 1970	Illegitimate children be treated as legitimate for all purposes relating to succession.	Administration Act Amendment Act 1971; Property Law Act Amendment Act 1971; Wills Act Amendment Act 1971
4	Committal Proceedings Referred: 1968 WP: December 1968 Report: May 1970	Subject to prescribed limitations, written statements of witnesses be admitted in evidence for purposes of the committal, trial and sentencing of persons charged with indictable offences, and that an accused person be permitted to elect to go to trial without any preliminary hearing.	Justices Act Amendment Act 1976
5	Interim Hearings in Personal Injury Cases Referred: 1968 WP: October 1968 Report: May 1969	The court be empowered to decide the issue of liability before the issue of damages, and to order interim payments meanwhile. ²	

1. This recommendation (extended so as to include the sale of two or more strata lots) was endorsed in the Commission's report on the *Strata Titles Act* (Project No 56).

2. The Motor Vehicle (Third Party Insurance) Act Amendment Act (No 2) 1969 enacts legislation covering one of the recommendations in this report.



Ref No	Project	Recommendations	Legislative Action
6	Summary Trial of Indictable Offences Referred: 1968 WP: December 1968 Report: June 1970	The jurisdiction of courts to deal with indictable offences summarily be extended as specified.	Criminal Code Amendment Act 1972; Justices Act Amendment Act 1972; Child Welfare Act Amendment Act (No 2) 1972
7	Disposal of Uncollected Goods Referred: 1968 WP: December 1968 Report: April 1970	Legislation be enacted dealing with the disposal of uncollected goods along specified lines.	Disposal of Uncollected Goods Act 1970
8	Defamation Referred: 1968 Privileged Reports WP: July 1969 Report: August 1972 Defamation Report: October 1979	The class of privileged reports of legislative and judicial proceedings, conferences and meetings be extended in specified ways. A uniform defamation code be enacted which reforms the law both in respect of matters of substance and of procedure. ³	Criminal Code Amendment Act 1977 s2
9	Statute Law Revision Referred: 1968	Withdrawn	
10	Motor Vehicle Insurance Referred: 1968 WP: May 1972 Report: December 1972	That the law of motor vehicle insurance be amended in specified ways in the interests of the insured. ⁴	
11	Liability for Stock Straying on to the Highway 1st Referred: 1969 1st WP: June 1970 1st Report: December 1970 2nd Referred: 1978 2nd WP: August 1980 2nd Report: June 1981	1st Report: legislation be enacted to provide that liability for stock straying on to the highway be in accordance with ordinary principles of negligence. 2nd Report: liability for stock straying on to the highway be determined according to the law of negligence only, but that a maximum limit be imposed on the amount of damages recoverable by a successful claimant.	Highways (Liability for Straying Animals) Act 1983; Dog Amendment Act 1983
12	Payment of Costs in Criminal Cases Referred: 1969 WP: March 1972 Report: August 1972	This report recommended introducing legislation making the Crown liable to pay costs when a complaint is dismissed or withdrawn in summary proceedings. ⁵	Official Prosecutions (Defendants' Costs) Act 1973
13	Affiliation Proceedings Referred: 1969 Report: March 1970	That statutory provision be made for blood tests in affiliation proceedings.	Family Court Act 1975 (WA) s 82E
14	Offices of Profit Under The Crown Referred: 1969 Report: March 1971	That the law be modified as to the circumstances in which persons who hold offices of profit under the Crown, or who have contracts with the Government, can be members of Parliament.	Acts Amendment and Repeal (Disqualification for Parliament) Act 1984
15	Imposition of Driving Disqualifications Referred: 1969 WP: February 1971 Report: June 1971	The Commission was asked to consider the need for legislation imposing driving disqualifications on persons who committed crimes involving the use of a motor vehicle. No legislative action was called for in this report.	
16 16 (Pt I)	Local Courts Act and Rules Referred: 1969 Local Courts WP: April 1983 Report: June 1988	That Local Courts and Courts of Petty Sessions be merged, ⁶ and that the jurisdiction, procedure and administration of Local Courts be reformed along specified lines.	

3. This report, and the report of the Australian Law Reform Commission on the same subject, Unfair Publication: Defamation and Privacy (ALRC 11 1979), together with a draft uniform Defamation Bill, were considered by the Standing Committee of Attorneys General. In May 1985 the Standing Committee announced that it had been unable to agree on a uniform defamation law for Australia: Press Release from Attorney General of Western Australia (Hon J M Berinson), 3 May 1985. However, the issue of uniform defamation legislation is now again being considered by the Standing Committee.

4. The major recommendations in this report were implemented administratively by the State Government Insurance Commission.

5. The Family Court Act 1975 s82E (added 1988) provides that when the parentage of a child is in issue in proceedings under the Act (which include proceedings for maintenance and findings of parenthood), the court may order a parentage testing procedure and make other necessary or desirable orders. It is therefore unnecessary to take any further action on the Commission's Report.

6. The Commission had earlier made a similar recommendation in its report on Project No 55 Part II. A Ministry of Justice Report published in



Ref No	Project	Recommendations	Legislative Action
16 (Pt II)	Enforcement of Judgments of Local Courts DP: February 1995 Report: December 1995	That the means of enforcing judgments of Local Courts be reformed as specified; that attachment of earnings be introduced, and imprisonment for debt abolished. ⁷	
17	Motor Car Manslaughter Referred: 1969 WP: June 1970 Report: August 1970	That except for minor drafting amendments, the relevant provisions of the Criminal Code be left unaltered.	Criminal Code Amendment Act 1972 (WA) ss 277, 291A, 595 Road Traffic Act 1974 (WA) s 59
18	Commercial Arbitration and Commercial Causes Referred: 1969 WP: October 1971 Report: January 1974	That the Arbitration Act be revised as specified.	Commercial Arbitration Act 1985
19	Chattel Securities and the Bills of Sale Act Referred: 1970	Withdrawn 1983	
20	Evidence of Criminal Convictions In Civil Proceedings Referred: 1970 WP: September 1971 Report: April 1972	That in defamation actions conviction after trial be made conclusive evidence that the party committed the offence. ⁸	
21	Associations Incorporation Act Referred: 1971 WP: June 1971 Report: March 1972	That the Associations Incorporation Act be revised as specified.	Associations Incorporation Act 1987
22	Innocent Misrepresentation Referred: 1971 WP: May 1972 Report: October 1973	That the legal remedies available for an innocent misrepresentation inducing a contract be revised. ⁹	
23	Legal Representation of Children Referred: 1971 WP: March 1972 Report: June 1972	That courts be empowered to order the separate representation of children.	Legal Representation of Infants Act 1977; Suitors' Fund Act Amendment Act 1977
24	Succession Rights of Adopted Children Referred: 1971 WP: April 1971 Report: July 1971	That the Adoption Act be amended to provide for the complete assimilation of the legal position of adopted children to that of the legitimate children of the adopting parents.	Adoption of Children Act Amendment Act 1971, ss 13, 14, 15 Adoption Act 1994 Property Law Act 1969
25 (Pt I)	Legal Capacity of Minors Referred: 1971 WP: January 1972 Report: April 1972	That the age of majority be lowered to 18 years.	Age of Majority Act 1972
25 (Pt II)	Minors' Contracts WP: June 1978 Report: May 1988	That all contracts made by minors be recognised as binding, but that courts be empowered to grant various kinds of relief to minors where the contract is prejudicial to the minor's best interests.	
26 (Pt I)	Appeals From Administrative Decisions Referred: 1971 WP: November 1978 Report: January 1982	That the existing rights of appeal from administrative decisions be rationalised along suggested lines. ¹⁰	

October 1996 contains proposals that would implement this recommendation: Ministry of Justice: *Court Services Amalgamation of Courts of Summary Jurisdiction Draft Report* (1996).

- A Ministry of Justice Report published in June 1997 contains proposals for a uniform civil judgment debt recovery system for all courts, adopting many of the Commission's recommendations: Ministry of Justice: *Court Services Division Civil Judgment Debt Recovery System: Part 1 Legislative Recommendations: Report* (1997).
- In September 1985, the Attorney General (Hon J M Berinson) announced that the Government had decided that it was now unnecessary to act on this report, in view of the decision of the Supreme Court of Western Australia (Full Court) in *Mickelberg v Director of the Perth Mint* [1986] WAR 365 in which it was held that evidence of a criminal conviction could be admissible as prima facie evidence of the facts on which the conviction depended: Media Statement from Attorney General, 26 September 1985.
- In September 1984, the Attorney General (Hon J M Berinson) announced that the Government had decided not to take any further action on this report in view of developments in the law since it had been submitted: News Statement from Attorney General, 5 September 1984.
- The Report of the Royal Commission into Commercial Activities of Government and Other Matters Part II* (1992) para 3.4.8 recommended that this report should be implemented forthwith, subject only to the observations in para 3.5.2 about the establishment of an Administrative Appeals Tribunal. The failure to implement the report was criticised by the Commission on Government in its Report No 4 (1996) para 5.2.



Ref No	Project	Recommendations	Legislative Action
26 (Pt II)	Judicial Review of Administrative Decisions WP: June 1981 Report: January 1986	That the procedure and remedies for obtaining judicial review be reformed along specified lines, and that a right to reasons for decisions be created. ¹¹	
26 (Pt III)	New Rights of Appeal	Withdrawn 198	
27 (Pt I)	Admissibility in Evidence of Computer Records Referred: 1971 WP: May 1978 Report: July 1980	That the range of cases in which computer records and other documentary statements are admissible in evidence be extended as specified.	Evidence Amendment Act 1987
27 (Pt II)	Admissibility in Evidence of Reproductions	Withdrawn 1983	
28	Formalities of Oaths, Declarations and Attestation of Documents Referred: 1972		
28 (Pt I)	Official Attestation of Forms and Documents WP: April 1977 Report: November 1978	That legislation be introduced to provide for an unattested statutory declaration; and that the signing of affidavits with a rubber stamp be prohibited.	
28 (Pt II)	Formalities of Oaths, Declarations and Attestation of Documents	Withdrawn 1983	
29	Special Constables Referred: 1972 WP: June 1974 Report: March 1975	That the law and practice as to appointment and control of special constables be revised as specified.	Police Amendment Act 1980
30	Imposition of Fines Referred: 1972	Withdrawn 1982	
31	Competence and Compellability of Spouses as Witnesses Referred: 1972 WP: February 1974 Report: January 1977	That the law in this area be amended in certain respects.	Acts Amendment (Evidence) Act 1991
32	Immunity of Suit Between Spouses Referred: 1972 WP: June 1973 Report: September 1973	That immunity of action in tort between spouses be abolished. ¹²	
33	Dividing Fences Referred: 1972 WP: December 1973 Report: November 1975	That the Dividing Fences Act 1961 be amended in certain respects.	
34	Trusts and Administration of Estates Referred: 1972		
34 (Pt I)	Distribution on Intestacy WP: December 1972 Report: May 1973	That the law relating to the distribution of intestate estates be amended in certain respects and enacted in local legislation.	Administration Act Amendment Act 1976; Administration Amendment Act 1984
34 (Pt II)	Administration Bonds And Sureties WP: June 1975 Report: March 1976	That administration bonds be abolished, the duties of personal representatives be specified by statute and the Supreme Court be empowered to require sureties to guarantee the due administration of the estate.	Administration Act Amendment Act 1976
34 (Pt III)	Administration of Deceased Insolvent Estates WP: April 1977 Report: December 1978	That the Administration Act be amended to provide for the administration of deceased insolvent estates as specified.	Acts Amendment (Insolvent Estates) Act 1984

11. The Report of the Royal Commission into Commercial Activities of Government and Other Matters Part II (1992) recommended that an Administrative Decisions (Reasons) Act be enacted as a matter of urgency (para 2.210) and that the other recommendations in this report be implemented forthwith (para 3.4.8).

12. The Family Law Act 1975 (Cth) s 119 provides that 'either party to a marriage may bring proceedings in contract or tort against the other party'.



Ref No	Project	Recommendations	Legislative Action
34 (Pt IV)	Recognition of Interstate and Foreign Grants of Probate and Administration WP: December 1980 Report: November 1984	That the rules governing resealing of grants of probate and administration in each Australian jurisdiction be unified, and that a system of automatic recognition of grants within Australia be introduced. ¹³	Trustees Amendment Act 1987 ¹⁴
34 (Pt V)	Trustees' Powers of Investment WP: December 1981 Report: January 1984	That the investment powers of trustees contained in section 16 of the Trustees Act be amended in specified ways.	
34 (Pt VI)	Charitable Trusts	Withdrawn 1996	
34 (Pt VII)	Administration of Assets Report: June 1988	That the old order of application of assets of a solvent deceased estate towards the payment of debts and legacies be replaced by a statutory order modelled on the <i>Queensland Succession Act 1981</i> .	
34 (Pt VIII)	Protection and Remuneration of Trustees	Withdrawn 1996	
35	Unauthorised Disposal of Goods Interstate: Right to Repossession Referred: 1972	Withdrawn 1983	
36	Limitation and Notice of Actions Referred: 1972	The limitation period for all personal injury actions continue to be six years, but that this period should not apply where a court determines that it is just for it not to apply. A new Limitation Act be enacted providing for most causes of action to be governed by two standard limitation periods, with a possibility of extension in exceptional cases where the interests of justice so required.	Acts Amendment (Asbestos Related Diseases) Act 1983 ¹⁵
36 (Pt I)	Latent Disease and Injury Report: October 1982		
36 (Pt II)	Limitation and Notice of Actions DP: February 1992 Report: January 1997		
37	Land Agents Act Referred: 1972 WP: June 1973 Report: January 1974	That a new real estate and business agents authority be established, empowered to license and regulate agents in ways specified in the report.	Real Estate and Business Agents Act 1978
38	Sale of Undivided Shares in Land Referred: 1972 WP: March 1973 Report: May 1973	That the Sale of Land Act be amended to regulate the sale of undivided shares in land.	Sale of Land Act Amendment Act 1974
39	Compensation for New Street Alignments Referred: 1973 Report: March 1977	The Commission was asked to comment in this report on proposed amendments to section 364 of the Local Government Act. No legislative action was called for in the report.	
40	Production of Medical and Technical Reports in Court Proceedings Referred: 1973 WP: June 1974 Report: July 1975	That provision be made for medical and expert reports to be produced to the other party before trial.	Acts Amendment (Expert Evidence) Act 1976
41	Tenancy Bonds Referred: 1973 WP: June 1974 Report: January 1975	That changes be made to the Small Claims Tribunals Act 1974 to facilitate the hearings of claims in respect of tenancy bonds.	Small Claims Tribunals Amendment Act 1975 s 2
42	Unrepresented Defendants Referred: 1973	Withdrawn 1982	

13. Implementation of the Commission's recommendations is being discussed by the Queensland Law Reform Commission in its reference on Uniform Succession Law.

14. Note also the Public Trustee Amendment Act 1984, which extended the Public Trustee's power to invest in land in terms generally in line with the recommendations in the report.

15. This Act extended the limitation period for claims for death or injury caused by asbestos-related diseases. It did not implement the wider reforms recommended by the Commission.



Ref No	Project	Recommendations	Legislative Action
43	Compensation for Persons Detained in Custody Referred: 1973	Withdrawn 1983	
44	Alteration of Ground Levels Referred: 1973 DP: September 1984 Report: February 1986	That common law rights of support for land should be extended to buildings, and that the statutory and by-law powers of local authorities to deal with alterations of ground levels should be widened in specified ways. ¹⁶	
45	Mortgage Brokers Referred: 1973 WVP: February 1974 Report: September 1974	That mortgage brokers should be subject to statutory control in specified ways.	Finance Brokers Control Act 1975
46	Criminal Injuries Compensation Referred: 1974 WVP: June 1975 Report: October 1975	That the Criminal Injuries (Compensation) Act 1970 be revised in specified ways.	Criminal Injuries (Compensation Act) Amendment Act 1976; Criminal Injuries Compensation Act 1982
47	Jailing of First Offenders Referred: 1973	Withdrawn 1982	
48	Appeals from Courts of Petty Sessions Referred: 1973	Became No 55 (Pt I)	
49	Suitors' Fund Act Referred: 1973 WVP: March 1975 Report: • Part A (civil proceedings) - March 1976 • Part B (criminal proceedings) - May 1977	That the Suitors' Fund Act 1964 be revised to extend the classes of civil proceedings for which compensation for costs may be claimed, and that provision for compensation for costs in criminal proceedings be removed from that Act and re-enacted, with amendments, in the Official Prosecutions (Defendants' Costs) Act 1973.	Suitors' Fund Act Amendment Act 1978; Suitors' Fund Act Amendment Act (No 2) 1978
50	Appeals to the Privy Council Referred: 1973	Withdrawn 1976	
51	Unclaimed Money Referred: 1973 WVP: October 1976 Report: December 1980	That the Unclaimed Moneys Act be revised and consolidated to enable unclaimed money to be used for public purposes.	Unclaimed Money Act 1990
52	Local Body Election Practices Referred: 1974 WVP: May 1975 Report: October 1975	That the law in this area should be tightened in certain respects.	Local Government Act 1995 s 4.87
53	Privilege for Journalists Referred: 1974 WVP: June 1977 Report: February 1980	That journalists called to give evidence in judicial proceedings should not be granted a statutory right to refuse to disclose the sources of their information. ¹⁷	
54	Contractors' Liens Referred: 1974 WVP: August 1974 Report: October 1974	That legislation providing for the registration of contractors' liens or for the creation of contractors' charges should not be introduced.	
55 55 (Pt I)	Justices Act Referred: 1974 Appeals from Courts of Petty Sessions Referred: 1974 WVP: February 1978 Report: April 1979	That the Justices Act be amended to provide for a single mode of appeal. That Courts of Petty Sessions and Local Courts be merged and that the rules relating to justices of the peace and procedure in Courts of Petty Sessions be reformed along specified lines.	Justices Amendment Act 1989 Miscellaneous Repeals Act 1991 ¹⁸

16. In September 1992 the Working Party on the Integrated Building Act reported to the Minister for Local Government in respect of a proposed Western Australia Building Act. The Working Party considered the Commission's report in part, but its recommendation on the right of support for the land of an adjoining owner does not adopt the Commission's recommendation.

17. The Commission reconsidered this issue in its report on *Professional privilege for confidential communications* (Project No 90).

18. This Act repeals imperial enactments relating to justices, as recommended in the report. A Ministry of Justice Report published in October 1996 contains proposals that would implement the recommendation that Courts of Petty Sessions and Local Courts be merged: Ministry of Justice: Court Services *Amalgamation of Courts of Summary Jurisdiction Draft Report* (1996).



Ref No	Project	Recommendations	Legislative Action
55 (Pt II)	Courts of Petty Sessions Referred: 1974 WP: June 1984 Report: November 1986	The report commented on proposals of a Ministry of Justice Project dealing with methods of enforcing the payment of fines. It recommended changes designed to ensure that indigent fine defaulters were not disadvantaged.	
55 (Pt III)	Enforcement of Orders of Courts of Petty Sessions Referred: 1974 Report: April 1994		Fines, Penalties and Infringement Notices Enforcement Act 1994; Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994
56	Strata Titles Act Referred: 1974 WP: February 1977 Report: December 1982	That the Strata Titles Act 1966 be revised as specified.	Strata Titles Act 1985; Acts Amendment (Strata Titles) Act 1985
57	Enforcement of Custody Orders Referred: 1974	Withdrawn 1976	
58	Section 2 of The Gaming Act Referred: 1975 WP: February 1976 Report: January 1977	That section 2 of the Gaming Act 1835 be repealed and section 1 of that Act and section 84I of the Police Act 1892 be amended.	Betting Control Act Amendment Act 1978; Gaming and Betting (Contracts and Securities) Act 1985; Acts Amendment (Gaming and Related Provisions) Act 1985
59	Audit Provisions of the Local Government Act Referred: 1975	Withdrawn 1982	
60	Alternatives to Cautions Referred: 1975 WP: August 1975 Report: November 1975	That the court's power to dismiss a proved charge without conviction, or discharge a convicted offender without penalty after conviction, should be extended as specified.	Criminal Code Amendment Act 1979
61	Enforcement of Judgment Debts Referred: 1975 Report: April 1977	This report was a commentary on a draft report entitled 'Enforcement of judgment debts' prepared for the Commonwealth Commission of Enquiry into Poverty. No legislative action was called for in the report.	
62	Liability of Highway Authorities for Non-Feasance Referred: 1975 WP: March 1978 Report: May 1981	That the non-feasance rule be abolished and highway authorities be required to take such care as is reasonable in all the circumstances to safeguard persons using their highways against dangers which make them unsafe for normal use.	
63	Small Debts Court Referred: 1976 WP: July 1978 Report: April 1979	That the Local Courts Act and Rules be amended to create a special Small Debts Division in Local Courts.	Local Courts Amendment Act 1982
	Protection of Money Awarded as Damages ¹⁹ Referred: 1976 Report: August 1976	That the power of the court to make a protection order in respect of money awarded as damages be revised as specified.	
64	Bail Referred: 1976 WP: November 1977 Report: March 1979	That a Bail Act be enacted to deal comprehensively with bail.	Bail Act 1982; Bail Amendment Act 1984; Bail Amendment Act 1988
65 (Pt I)	Privacy Referred: 1976 WP: 1981	Withdrawn 1993	
65 (Pt II)	Confidentiality of Medical Records and Medical Research DP: March 1989 Report: August 1990	That the law be clarified to control the disclosure of patient-identifiable information for medical research purposes.	

19. This reference was not given a project number.



Ref No	Project	Recommendations	Legislative Action
66	Fatal Accidents Referred: 1976 WP: February 1978 Report: December 1978	That the Fatal Accidents Act be amended to extend the class of claimants, to provide for an award for loss of assistance and guidance and various other matters.	Fatal Accidents Amendment Act 1985
67	Writs and Warrants of Execution Referred: 1976 Report: 2001	That the law relating to writs and warrants be revised in specified ways including the implementation of a unified civil debt recovery system for the Local, District and Supreme Courts and the amendment of s 133 of the <i>Transfer of Land Act 1895</i> .	
68	Illegitimacy Referred: 1976	Withdrawn 1986	
69	Criminal Process and Mental Disorder Referred: 1976 DP: February 1987 Report: August 1991	That the law relating to the defence of insanity, fitness to stand trial and review of the detention of those acquitted under the insanity defence or found unfit to stand trial be revised in specified ways.	Criminal Law (Mentally Impaired Defendants) Act 1996; Mental Health (Consequential Provisions) Act 1996
70	Interest on Judgments Referred: 1977		
70 (Pt I)	Pre-judgment Interest Report: August 1981	That sections 32 and 33 of the Supreme Court Act be replaced by a new provision giving courts a broader power to award pre-judgment interest.	Supreme Court Amendment (No 2) Act 1982
70 (Pt II)	Interest on Judgments	Withdrawn 1987	
71	Exemption from Jury Service Referred: 1977 WP: 29 August 1978 Report: June 1980	That the Juries Act be amended in a number of respects, in particular so as to replace the notion of exemption from jury service with the notions of ineligibility and excusal as of right.	Juries Amendment Act 1984
72	Retention of Court Records Referred: 1977 WP: March 1979 Report: June 1980	With certain exceptions, Courts of Petty Sessions and Local Courts should be empowered to destroy their records after they have been kept for 15 years.	Local Courts Amendment Act 1981; Justices Amendment Act 1982; District Court of WA
73	Absconding Debtors Act Referred: 1978 WP: December 1980 Report: November 1981	The Absconding Debtors Act should be repealed and replaced by a new Act to allow a creditor, in certain circumstances, to prevent a debtor from leaving the State or removing assets.	Restraint of Debtors Act 1984
74	Limited Partnerships Referred: 1978	Withdrawn 1992	
75	United Kingdom Statutes in Force in Western Australia Referred: 1978 Report: October 1994	That various statutes passed in England between 1235 and 1829 which are still in force in Western Australia should be either repealed, preserved or reenacted in modern Western Australian legislation. ²⁰	
76 (Pt I)	Wills: Substantial Compliance Referred: 1979/80 DP: November 1984 Report: November 1985	That the Supreme Court should be given power to dispense with Wills Act formalities if satisfied that there is no doubt that testator intended the document to constitute his/her will.	Wills Amendment Act 1987; Wills Amendment Act 1989
76 (Pt II)	Effect of Marriage or Divorce on Wills DP: March 1990 Report: December 1991	That the exceptions to the rule that a will is revoked on marriage be widened, and that on divorce a gift in a will in favour of a former spouse should be revoked. ²¹	

20. In 1996 Parliamentary Counsel prepared a first draft of legislation (the Imperial Acts (Law Reform) Bill) to implement this report

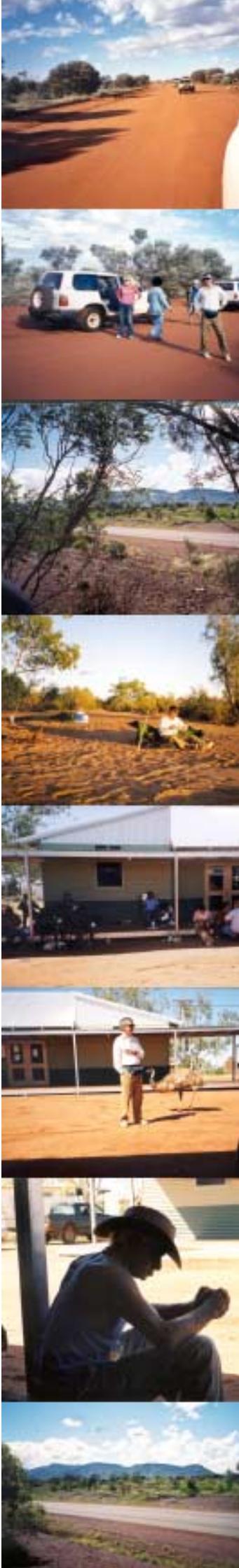
21. The Commission has been consulted by the Crown Solicitor's Office concerning proposals for legislation to implement this report.



Ref No	Project	Recommendations	Legislative Action
77 (Pt I)	Medical Treatment for Minors Referred: 1981 DP: 1988 Report: December 1992	Withdrawn 1998	
77 (Pt II)	Consent to Sterilisation of Minors Referred: 1981 Report: Oct 1994	A scheme should be established for decisions about sterilisation of minors to be made by an appropriate decision-making body, in an informal setting, applying the principle that it should act in the child's best interests.	
78	Joint Tenancy and Tenancy in Common Referred: 1980 Report: November 1994	The law relating to whether a joint tenancy or tenancy in common is created should be made more certain, the common law right to sever a joint tenancy secretly should be abolished and notice should become a statutory precondition for severance.	
79	Prescribed Interests Under the Companies Code Referred: 1981	Withdrawn 1984	
80	Problem of Old Convictions Referred: April 1982 DP: March 1984 Report: June 1986	A legislative scheme (set out in detail in the report) should be adopted to limit the effects of convictions which have become "spent".	Spent Convictions Act 1988; Spent Convictions Amendment Act 1988
81	Pawnbrokers Act Referred: 1984 DP: January 1985 Report: June 1985	The Pawnbrokers Act should be redrafted in modern terms, with amendments as specified.	Pawnbrokers and Secondhand Dealers Act 1994
82	Financial Protection in the Building and Construction Industry Referred: 1985 DP: December 1995 Report: March 1998	That the law be amended to regulate the payment of those working in the building and construction industry, by the setting up of a trust scheme, with payment bonds available as an alternative.	
83	Payment of Witnesses in Civil Proceedings Referred: 1986 DP: February 1988 Report: July 1989	No changes should be made to the law relating to payment of witnesses in civil proceedings.	
84	Medical Treatment for the Dying Referred: 1986 DP: June 1988 Report: February 1991	Persons should be able to appoint an agent to make treatment decisions on their behalf if they are terminally ill and unable to make such decisions for themselves. ²²	
85	Police Act Offences Referred: 1986 DP: June 1989 Report: August 1992	Specified offences in the Police Act be abolished, and that the surviving offences be incorporated in a Summary Offences Act. ²³	
86	Incitement to Racial Hatred Referred: 1988 DP: May 1989 Report: October 1992	New provisions should be included in the Criminal Code to outlaw certain kinds of racially inflammatory activity.	Criminal Code Amendment (Racist Harassment and Incitement to Racial Hatred) Act 1990
87	Evidence of Children and Other Vulnerable Witnesses Referred: 1989 DP: April 1990 Report: April 1991	The Evidence Act should be amended to reform the rules relating the giving of evidence by children, and that new procedures to assist the court to receive children's evidence should be introduced.	Acts Amendment (Sexual Offences) Act 1992; Acts Amendment (Evidence of Children and Others) Act 1992

22. The Medical Care for the Dying Bill, which implements some of the recommendations in this report, was introduced into the Legislative Assembly by an opposition member in March 1995. It was considered in Committee in May 1996: see Western Australia Parliamentary Debates, Legislative Assembly, 15 May 1996, 2027-2036. The Commission has been asked to give advice on drafts of the Medical Treatment for the Dying Bill, a Government Bill which would implement most of the recommendations in the report. This Bill has not yet been introduced into Parliament.

23. In 1995 Parliamentary Counsel prepared a first draft of legislation (the Simple Offences Bill, the Criminal Investigation and Procedure Bill, the Simple Offences and Criminal Investigation (Consequential Provisions) Bill and the Intoxicated Persons Bill) to implement this report.



Ref No	Project	Recommendations	Legislative Action
88	Administration Act Referred: 1989 Report: August 1990	The Administration Act 1903 should be reformed in specified ways.	
89	Sale of Goods Act 1895 Referred: 1989 DPs: Aug & Oct 1995 Report: June 1998	The Sale of Goods Act 1895 should be reformed in several minor ways.	
90	Professional Privilege for Confidential Communications Referred: 1990 DP: December 1991 Report: May 1993	Judges should be given a discretion to excuse witnesses from disclosing information in breach of a confidential relationship. ²⁴	
91	Restrictive Covenants Referred: 1995 DP: June 1995 Report: June 1997	The law relating to the extinguishment, modification and enforcement of restrictive covenants should be reformed in specified ways.	
92	Review of the Criminal and Civil Justice System Referred: 1997 Issues Paper: June 1998 Consultation Drafts: 1999 Final Report: October 1999 Project Summary: 1999 Submissions Summary: 1999	447 recommendations for reform of the criminal and civil justice system.	
93(Pt I)	Contempt in the Face of the Court Referred: 2000 DP: August 2001 Report: June 2003	The law of contempt of court in Western Australia, other than as applicable under the Family Court Act, should be codified and the procedures for prosecution made uniform.	
93(Pt II)	Contempt by Publication Referred: 2000 DP: March 2002 Report: June 2003		
93(Pt III)	Contempt by Disobedience to the Orders of the Court Referred: 2000 DP: Nov 2002 Report: June 2003		
94	Aboriginal Customary Law Referred: 2000	Project is ongoing.	
95	Judicial Review of the Administrative Decisions Referred: 2001 DP: June 2002 Report: Dec 2002	The law relating to the judicial review of administrative action in Western Australia should be reformed in specified ways.	

24. This matter was considered by the Standing Committee of Attorneys General: Western Australia Parliamentary Debates, 16 May 1995, 2967.

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