



THE LAW REFORM COMMISSION
of
WESTERN AUSTRALIA

ANNUAL REPORT

1 July 2018 – 30 June 2019

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STATEMENT OF COMPLIANCE

STATEMENT OF COMPLIANCE WITH THE *FINANCIAL MANAGEMENT ACT 2006*

For the year ending 30 June 2019

Hon John Quigley MLA

Attorney General

In accordance with section 63 of the *Financial Management Act 2006*, I hereby submit for your information and presentation to State Parliament the Annual Report of the Law Reform Commission of Western Australia for the year ending 30 June 2019.

This report has been prepared in accordance with the provisions of the *Financial Management Act 2006*. The content and layout are consistent with the requirements of Treasurer's Instruction 903.

Yours sincerely



Dr David Cox

Chair

Law Reform Commission
of Western Australia

11 September 2019



Ms Fiona Seaward

Member

Law Reform Commission
of Western Australia

11 September 2019

ABOUT THIS REPORT

This report provides an overview of the activities of the Law Reform Commission of Western Australia (Commission) during 2018-19.

The overview gives a summary of the Commission's activities, operational structure and performance management framework. The Agency Performance – Report on Operations section details the Commission's operations, including key performance indicators. This is followed by the section that identifies significant issues impacting on the agency. The last section, Disclosures and Legal Compliance, covers all financial statements, governance requirements and a breakdown of key performance indicators.

Appendix 1 outlines the Commission's current references.

For further information on the operations of the Commission, for copies of this Annual Report, or to view any of the Commission's other publications, please visit the Commission's web page at www.lrc.justice.wa.gov.au.

Printed copies and copies supplied in alternative formats for those with disabilities may be requested from the Commission by calling the number listed to the right.

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LAW REFORM COMMISSION OF WESTERN AUSTRALIA

CHARTER

Purpose of this Charter

The purpose of this Charter is to formally acknowledge the Law Reform Commission of Western Australia (the 'Commission') as an independent statutory authority established under the *Law Reform Commission Act 1972* (WA) (the 'Act'). While the Commission takes its terms of reference and priorities from the Attorney General, it is independent of Government. This Charter sets out the role, responsibilities, values and operational structure of the Commission that are to be upheld and adhered to by the Government and the Commission for the primary purpose of maintaining the Commission's independence, integrity and good standing. This Charter is subject to review where appropriate to ensure it continues to reflect the status of the Commission as required by the people of Western Australia and the Government as constituted from time to time.

Role of the Commission

The role of the Commission is to advise the Government on measures to keep the law up-to-date and relevant to the needs of the people of Western Australia. The Commission achieves this by receiving terms of reference and reviewing selected legislation at the request of the Attorney General to identify opportunities for reform.

References may result from proposals submitted by the Commission, suggestions made by the public or matters referred by the Attorney General. The Attorney General determines the order of priority in which the Commission deals with references and then presents the Commission's reports to State Parliament as soon as practicable after the Commission completes its work on each reference.

Independence as expressed in the *Law Reform Commission Act 1972* (WA)

While the Commission only publishes reports and recommendations on matters referred to it by the Attorney General, it is implicit in the Act that the Commission and its members must act independently. The Act relevantly provides that the Commission:

- Must examine critically the law with respect to the matter mentioned in the reference [section 11(3)(a)]; and
- May hold and conduct such inquiries as it thinks fit, and inform itself on any matter in such manner as it thinks fit, and obtain such information as to the law and the administration of justice of other countries as appears to the Commission likely to facilitate the performance of any of its functions [section 11(6)].

The Attorney General has an obligation to ensure that the Commission's proposals and reports (including the recommendations) are presented to each House of Parliament as soon as practicable after they have been submitted to him or her [section 11(7)].

Commitments aimed at maintaining the independence and integrity of the Commission

Government

The Government and its agencies must ensure:

- non-interference in Commission matters, save for genuine input as a stakeholder during the Commission's consideration of any terms of reference;
- the provision of means necessary for the Commission to perform its statutory functions, such as the provision of financial and administrative support; and
- the Commission is provided an opportunity to take part in or be heard on discussions taken in respect to these matters.

Commission and members

The Commission and its members are responsible to the Government and to the people of Western Australia in reviewing and reporting on potential reform to the laws of the State of Western Australia.

In acknowledging this responsibility, the Commission and its members must ensure:

- they provide frank and fearless advice to the Government;
- every effort is made to be inclusive and fair in satisfying their obligations by maintaining an appropriate level of engagement through communication and consultation with the public and relevant stakeholders;
- work is completed in a reasonably timely fashion so as to ensure the delivery of an efficient and effective service;
- where a member is part-time, the member's contribution to the work of the Commission is provided independently of that member's substantive position in private practice, as an academic member or at the State Solicitor's Office;
- members notify the Commission of any actual or potential conflict of interest that may arise, promptly after becoming aware.

Public consultation and engagement

Being an organisation that spends public funds, the Commission and each of its members understand the importance and the right of the public to be involved in the law reform process and consequently value all input from interested stakeholders. The Commission (and, where

LAW REFORM COMMISSION OF WESTERN AUSTRALIA

CHARTER

applicable, its contractors), is to give due consideration to all submissions it receives and is to specifically acknowledge these in reporting its opinions on law reform.

The Commission must consult with the people of Western Australia in an open and transparent way. Such consultation may be through publication of one or more Discussion Papers on the issues arising in the reference along with proposals for reform and by then allowing the people of Western Australia a reasonable opportunity to provide submissions before taking those submissions into account when drafting any final report to the Government.

Where appropriate, the Commission is to actively engage in targeted consultation with stakeholders who have a particular interest or expertise in the subject matter of any reference to ensure that all reasonable views are taken into account in the formulation of recommendations to the Government.

Values

Integrity –

The Commission undertakes open, impartial and ethical research on law reform, performing its duties to a high standard of professionalism to reflect the transparency of its operations and maintain its good standing in the eyes of the people of Western Australia and Government.

Accountability –

The Commission responsibly and appropriately utilises State resources in discharging its obligations, acting in accordance with governing legislation, including ensuring review by external auditors as provided for in legislation.

Operational structure

The Commission is structured according to the provisions of the Act and engages with consultants for research, writing and editing purposes. The operational structure of the Commission is subject to change as the Act changes.

Membership

Under Section 5 of the Act, the Commission may consist of up to five members: two full-time and three part-time, appointed by the Governor of Western Australia. No member may be appointed for a term that in aggregate exceeds six years. The Commission elects its Chairman from its members. The Chairman may hold office for a term not exceeding one year but shall be eligible for re-election.

Members' fees

The remuneration for Commissioners is set by the Governor in Executive Council. Section 9 of the Act states that a member "shall be paid such remuneration and allowances as the Governor may from time to time determine".

Contractors

Under Section 14(2) of the Act, the Attorney General may, at the request of the Commission, engage, under contract for services, such professional and research or other assistance as may be necessary to enable the Commission to carry out its functions under this Act. Contractors must be engaged by way of fair and transparent procurement practices.

The Government, through its Department of Justice, may also engage contractors on behalf of the Commission under Government procurement practices.

MESSAGE FROM THE CHAIR

The 2018-19 financial year has been another successful one for the Commission. The Commission completed its reference on the review of the *Gender Reassignment Act 2000* (WA) and received two new references: 'Maintenance and Champerty in Western Australia' and the 'Review of the *Equal Opportunity Act 1984* (WA)'. Project writers have been engaged for these new references and work has commenced on them. The existing reference on the 'Review of the *Fatal Accidents Act 1959* (WA)' is well advanced and the Commission has completed a tender process to engage a contractor to complete an economic analysis of potential changes to the regime.

Since July 2014, the Department of Justice (the Department) has been tasked with providing all project management and executive support functions to the Commission from its own resources. This administrative arrangement is working well and the Commission continues to be very grateful to the Department for the financial and in-kind support that it has received to date.

The Commission does not receive a recurrent budget from which to remunerate members and conduct its projects, and over the past few years it has drawn from existing resources to pay these expenses. The Commission and the Department will consider whether Treasury ought to be approached for funding or whether the Commission's funding should be included within the Department's budget.

The resourcing arrangements for the Commission, while unconventional, continue to have no impact on the Commission's capacity to provide an independent voice. Independence is required by the *Law Reform Commission Act 1972* (WA) and is jealously maintained by each of the Commissioners. In recognition of this, the Director General of the Department and its predecessor departments have, since 2014, provided support to the Commission with no preconditions. For this, the Commission remains very grateful. I am pleased to confirm that at a ceremony in February 2019, the Commission and the Attorney General signed a formal Charter to further affirm the Commission's independence and obviate any suggestion that the Commission is less independent as a result of whatever funding arrangements exist now and into the future.

An overview of the current references is provided below. The Commission has adopted an outsourcing model for assistance in research and writing, most recently for the review of the *Equal Opportunity Act 1984* (WA), for part of which Corrs Chambers Westgarth (Corrs), an independent law firm, was engaged.

The Commission is also grateful for the appointment of a Special Member, Dr Sarah Murray, to assist with the *Equal Opportunity Act* review. Dr Murray, an Associate Professor at the School of Law of the University of Western Australia, brings a wealth of knowledge and experience to the Commission and the Commission is delighted to be working with her. Dr Eileen Webb will be retiring from the Commission on 14 August 2019 and Dr Murray will continue in Dr Webb's role as the academic member of the Commission after that date.

In the financial year, the Commission:

- published a Discussion Paper and Final Report on the 'Review of the *Gender Reassignment Act 2000* (WA)' reference;
- completed two tender application processes for the reference: 'Review of the *Fatal Accidents Act 1959* (WA) in relation to both researchers/writers and the preparation of an economic analysis;
- engaged a project writer from the Department for the reference: 'Maintenance and Champerty in Western Australia';
- engaged Corrs as the project writer for a portion of the reference: 'Review of the *Equal Opportunity Act 1984* (WA)'; and
- worked with the project writers, providing guidance and reviewing drafts.

This work has progressed to the point that the Commission is well placed to publish discussion papers for two of its ongoing references in the first quarter of 2019-20.

COMPLETED REFERENCES

Review of Western Australian legislation in relation to the recognition of a person's sex, change of sex or intersex status

On 16 January 2018, the Attorney General, the Hon John Quigley MLA, directed the Commission to examine and make recommendations as to any legislative reform that would be desirable to ensure that the *Gender Reassignment Act 2000* (WA) and the *Births, Deaths and Marriages Registration Act 1998* (WA) continue to be effective and relevant into the future. The Terms of Reference in substance required the Commission to identify inconsistencies between Western Australian and Commonwealth legislation in relation to the recognition of a person's sex, change of sex or intersex status.

Reviews such as this give the public an opportunity to comment on the relevance and effectiveness of legislation. Often, they examine whether the laws of the State align with, or are otherwise consistent with, the laws of the Commonwealth. While it is prudent for regular reviews to be undertaken, the timeliness of this reference was particularly appropriate given the recent legalisation of same-sex marriage.

The Commission sought and received submissions from a range of interested stakeholders to inform its preparation of the Discussion Paper and Final Report. Stakeholders included representatives of the communities concerned, sections of the medical profession, and religious and legal institutions. The level of submissions, both solicited and unsolicited, is reflective of the high level of public interest this reference garnered. The Commission is grateful to all those who made submissions. Without their assistance, it would have been very difficult to complete the reference within the requested timeframe.

In its Final Report, the Commission made 17 recommendations to Parliament. The Final Report was tabled in Parliament on 6 December 2018.

MESSAGE FROM THE CHAIR (continued)

CURRENT REFERENCES

Non-economic loss under the *Fatal Accidents Act 1959* (WA)

On 26 February 2018, the Attorney General, the Hon John Quigley MLA, instructed the Commission to provide advice and make recommendations for consideration by the Government as to whether there should be any reform, and if so, the extent of any reform, to allow for claims for non-economic loss for wrongful death under the *Fatal Accidents Act 1959* (WA) and any consequential amendments.

The Commission has been provided with Terms of Reference that identify key lines of inquiry for the project, which include the scope of the affected class of persons, the types of non-economic loss to be considered and the associated quantum of damages, as well as the financial impact of any proposed amendments.

A tender application process for this reference was completed during the financial year and two legal research writers were subsequently engaged. Paragraph 5 of the Terms of Reference refers to considering, to the extent it is measurable, the financial impact of any proposed reforms. For this, an economic analysis will be undertaken once the Discussion Paper has been released but before the Final Report is released. This analysis will be undertaken by Taylor Fry, who successfully tendered for the work.

The Commission anticipates that it will publish both the Discussion Paper and Final Report in the next financial year.

Maintenance and Champerty in Western Australia

The Commission made seven recommendations in its 2015 final Representative Proceedings report. The seventh recommendation was: *‘that, in conjunction with any implementation of the above recommendations, consideration be given by government to whether the torts of maintenance and champerty should be abolished or whether the law in relation to their operation should be otherwise modified in Western Australia’.*

Accordingly, on 16 July 2018, the Attorney General, the Hon John Quigley MLA, instructed the Commission to provide advice and make recommendations for consideration by the Government as to whether the torts of maintenance and champerty should be abolished or whether the law in relation to their operation should be otherwise modified in Western Australia and any consequential amendments. This is to be provided as a supplementary report to the Representative Proceedings report.

The analysis is to include:

1. whether a statutory provision is required to preserve the rule that provides for contracts giving effect to arrangements for maintenance and champerty to be void and/or illegal as being contrary to public policy; and
2. strategies for mitigating the adverse impacts, if any, of abolishing the torts.

The Commission has engaged a researcher and writer for this project from within the Department and the Discussion Paper will be released for public comment in about September 2019.

Review of the *Equal Opportunity Act 1984* (WA)

On 28 February 2019, the Attorney General, the Hon John Quigley MLA, instructed the Commission to provide advice and make recommendations for consideration by the Government on possible amendments to enhance and update the *Equal Opportunity Act 1984* (WA) taking into account Australian and international best practices regarding equality and non-discrimination. In undertaking its review, the Commission is to consider relevant legislation in other jurisdictions, relevant Western Australian reviews, including the Equal Opportunity Commission’s 2007 review of the Act, relevant Commonwealth reports, including those on religious freedom, and relevant international reports and agreements.

The Commission has conducted a preliminary review into whether there is a need for any reform, and if so, the scope of reform regarding the exceptions to grounds of discrimination including those for religious institutions (item (g) of the Terms of Reference). The Attorney General engaged Corrs to provide the research and writing services for this part of the project. The 2019-20 financial year will see the Commission commence work on the remainder of the Terms of Reference.

COMMUNITY CONSULTATION

The Commission commences each reference with a thorough and detailed program of research which culminates in the publication of a Discussion Paper and a period of public consultation. In the past, the Commission has been fortunate to have had the assistance of many diligent and dedicated experts who were willing to bring their knowledge and skills to the preparation of the Commission’s reports. The Commission sincerely appreciates the efforts made by all involved. Their views and efforts in identifying the difficulties in current laws and proposing new ways to address those difficulties, play a significant role in developing proposals and reports. The efforts made by individuals and organisations ensure that the Commission’s reports are comprehensive, accurate, considered and, most importantly, relevant to the needs and expectations of the Western Australian public.

Sincere thanks must be given to all of the stakeholders and interested members of the public who took time to consider the issues under review and made submissions to the Commission. Public consultation is an essential part of the Commission’s role. The model that the Commission has long used, namely the publication of a Discussion Paper followed by public consultation and finally the release of a Final Report, provides an opportunity for all Western Australians to participate meaningfully in potential law reform. This participation is highly valued by the Commission and each of the Commissioners look forward to engaging with the public in the coming year in the course of the ongoing reviews.

MESSAGE FROM THE CHAIR (continued)

FINAL THANKS

As mentioned above, the Department provides the Commission with administrative support. That support has primarily been supplied by Dominic Fernandes, acting as the Commission's Executive Officer, and with executive support being provided initially by Emily Priest and subsequently Priya Pillay. The work undertaken by Dominic, Emily and Priya is gratefully acknowledged. Without the assistance of these tireless and dedicated public servants, the productivity of the Commission would have been substantially reduced and it would not have been possible to deliver the high quality Final Report in the Commission's review of Western Australian legislation in relation to the recognition of a person's sex, change of sex or intersex status within the requested time frame without their assistance. Each of the Commissioners wish to express their appreciation for the efforts of Dominic, Emily and Priya throughout the year. They are exemplary public servants and the Commission's work has been enriched by the each of them in more ways than I can count.

More generally, the Commission recognises the outstanding support that the Department has provided the Commission over the past year and the Commission hopes that this support

will continue for many years to come. The executive and project management assistance that the Department provides relieves the Commissioners of many of the administrative tasks that they would otherwise be required to do in order to keep the Commission operational, and it allows them to focus on providing high quality advice in the reports that it prepares. There are too many people in the Department who deserve thanks for their efforts over the past year. They know who they are. I do not propose to thank them individually as I would surely forget someone. Collectively however, I would like to express the thanks of the Commission for their assistance. I would also like to expressly thank the Director General, Dr Adam Tomison. It cannot be easy for the Director General to manage his Department in circumstances where the Commission is regularly seeking the assistance of his staff. The Commission is extremely grateful to the Director General for his tolerance, commitment and support.

Finally, the Commission would like to thank the Attorney General, the Hon John Quigley MLA, for his ongoing interest in and support of the Commission's work.

Dr David Cox
Chair

OVERVIEW OF THE LAW REFORM COMMISSION

EXECUTIVE SUMMARY

The Commission's role is to keep the law up-to-date and relevant to the needs of Western Australian society. The Commission achieves this by receiving terms of reference, and reviewing selected legislation, at the request of the Attorney General to identify 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. The Attorney General determines the order of priority in which the Commission deals with references, and the Attorney General then presents the Commission's reports to State Parliament as soon as practicable after the Commission completes its work on each reference.

The Commission's output measures the progress of a reference against milestone targets. The extent to which the Commission meets the timeframes set by the Attorney General is therefore considered to be a key performance indicator which measures the extent to which the Commission is contributing to keeping Western Australian law up-to-date.

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 and administering them. With each reference, the Commission makes an effort to identify stakeholders concerned with the specific topic and invites submissions to assist in developing its recommendations.

PERFORMANCE HIGHLIGHTS

The Gender Reassignment reference

The Commission undertook a review of legislation in relation to the recognition of a person's sex, change of sex or intersex status. This reference considered the overarching policies underpinning the *Gender Reassignment Act 2000* (WA) and the *Births, Deaths and Marriages Registration Act 1998* (WA).

The Terms of Reference for this review included consideration of whether additional classifications of sex should be introduced, the role of the Gender Reassignment Board, criteria for determination of intersex status and related matters.

To inform its approach, the Commission consulted with various stakeholders before and after releasing a Discussion Paper for public comment on 20 August 2018.

In its Final Report, the Commission made 17 recommendations to Parliament including proposing amendments to the *Births, Deaths and Marriages Registration Act 1998* (WA) to simplify the process for an individual to have their gender identity legally recognised by implementing an administrative process to change gender on a Gender Identity Certificate. In formulating these recommendations, the Commission sought and received submissions from a range of interested stakeholders, including representatives of the communities concerned, sections of the medical profession, and religious and legal institutions. The Final Report was tabled in Parliament on 6 December 2018.

Other ongoing references

The Commission is continuing work on its reference to provide advice and make recommendations for consideration by the State Government as to whether there should be any reform, and if so, the extent of any reform, to allow for claims for non-economic loss for wrongful death under the *Fatal Accidents Act 1959* (WA) and any consequential amendments (Project 109).

In addition, the Commission received two new references in 2018-19, leaving it with an unusually high number of ongoing references. Notwithstanding this high workload, the Commission has made great progress on each reference, with project writers engaged for each. The new references are:

- Maintenance and Champerty in Western Australia, which is considering whether the torts of maintenance and champerty should be abolished or whether the law in relation to their operation should be otherwise modified in Western Australia (Project 110); and
- Review of the *Equal Opportunity Act 1984* (WA), which is considering possible amendments to enhance and update the Act taking into account Australian and international best practices regarding equality and non-discrimination (Project 111).

The Commission expects to publish the Discussion Papers for Projects 109 and 110 in the coming financial year.

OVERVIEW OF THE LAW REFORM COMMISSION

(continued)

TECHNOLOGICAL AND ADMINISTRATIVE CHANGES

To facilitate the citation and reference to the Commission's considerable body of work, all publications are available for download as a pdf document.

Effective law reform requires active public participation. To achieve this, the Commission seeks to inform and engage members of the general public in the law reform process through various mediums, including its website.

Throughout 2018-19, the Commission's website received 26,653 unique page views. In the interest of enhancing public engagement, the Commission updated its eAlerts system and subscribers were automatically transferred onto the new system.

Additionally, in response to feedback from the general public, the Commission also upgraded aspects of its website to ensure it delivers high quality useful, usable and accessible online information to all users, including people with a disability who may use assistive technologies. The website is regularly assessed against usability and readability guidelines as well as World Wide Web Consortium best practice.

During the financial year, Commission staff processed 679 letters, emails and telephone calls, predominately regarding the *Gender Reassignment* reference and proposals for legal reform. Staff within the Department carried out the executive support and project management functions of the Commission.

FINANCIAL FORECAST

The Department's provision of executive support and project management functions to the Commission was accommodated within the Department's existing budget.

OPERATIONAL STRUCTURE

ENABLING LEGISLATION

The Law Reform Commission was established as a Statutory Authority under the *Law Reform Commission Act 1972* (WA) on 31 October 1972.

RESPONSIBLE MINISTER

The Hon John Quigley MLA, Attorney General.

The Commission reviews areas of the law referred to it by the Attorney General of the day to identify potential 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* (WA) sets out the functions of the Commission.

The Attorney General determines the order of priority in which the Commission deals with references and presents the Commission's reports to State Parliament as soon as practicable after the Commission completes its work on each reference.

MISSION

The Commission assists in keeping the law up-to-date and relevant to the needs of Western Australian society by making recommendations for the reform of areas of law referred to it by the Attorney General.

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 no less than eight years' experience; one must be engaged in teaching law at a university in Western Australia with a status no less than that of Senior Lecturer; and the third is to be a legal officer of the State Solicitor's Office with no 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.

Chair

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

During 2018-19, **Dr David Cox** (BSc (Hons), PhD (UWA), LLB (Hons) (Murdoch)) continued his tenure as the Chair of the Commission. Dr Cox joined the Commission in August 2014. He is currently a barrister in the Western Australian law firm Francis Burt Chambers. Dr Cox's areas of practice are in commercial law, health law and intellectual property law. Prior to becoming a lawyer, he was a research scientist in the fields of biochemistry and physiology.

Members

Ms Fiona Seaward (BComm, LLB (Hons) (UWA), LLM (ANU)) joined the Commission in August 2015. She is a Senior Assistant State Solicitor employed in the State Solicitor's Office, where she has worked in various capacities since 2000. Ms Seaward graduated from the University of Western Australia in 1999 with a Bachelor of Laws with First Class Honours and a Bachelor of Commerce. Ms Seaward provides advice and acts as counsel for the State Government and its agencies in relation to a range of matters, principally in the areas of administrative law, constitutional law, land compensation and the fields of privacy and information sharing.

Dr Eileen Webb (BA (Asian Studies) (Griffith), DipEd (UQ), LLB (Hons), Master of Laws (QUT), PhD (UWA)) joined the Commission in August 2017. Dr Webb is an adjunct professor at the Curtin Law School (Curtin). She researches in real property law, particularly housing and tenancy law, competition and consumer law (including small business law) and elder law. Dr Webb coordinates and teaches the elder law programs at Curtin and the School of Law at the University of South Australia.

Dr Webb is passionate about housing issues affecting vulnerable members of our society and her recent research has focused on security of tenure for older people, how revised property and planning laws could facilitate more downsizing options for Seniors, law reform to address assets for care arrangements and whether property law and human rights principles could assist older women who have become homeless. In 2019 she will be undertaking research in relation to the Royal Commission into Aged Care Quality and Safety.

Dr Webb is a member of a number of different independent and government projects across Australia and New Zealand that are working to address issues including housing vulnerability, security of tenure, elder abuse and domestic violence. Dr Webb is a co-author of *Real Property Law* in Western Australia and *Focus Land Law* (5th Edition).

Members' Fees

The remuneration for Commissioners is set by the Western Australian Governor in Executive Council. Section 9 of the *Law Reform Commission Act 1972* (WA) states that a member "shall be paid such remuneration and allowances as the Governor may from time to time determine".

Fees payable to part-time members from academia are determined on a formula related to 25% of the salary paid to a General Division Class 1 public servant, as adjusted from time to time.

The State Solicitor's Office representative receives no additional fee beyond their ordinary salary.

Former members of the Commission can be located at the Commission's web address:

http://www.lrc.justice.wa.gov.au/P/past_members.asp?uid=5016-2351-3409-1374

OPERATIONAL STRUCTURE (continued)

The following table outlines the remuneration for Commission members:

Law Reform Commission of Western Australia				
Name	Position	Type of remuneration	Period of membership (as at 30 June)	Gross/actual remuneration
Dr David Cox	Chair (part time)	Honorarium	4 years, 10 months	\$53,237 pa
Ms Fiona Seaward	Member (part time)	None [#]	3 years, 10 months	Not applicable
Dr Eileen Webb	Member (part time)	Honorarium	1 year, 10 months	\$43,360 pa
Total				\$95,940

[#] As Ms Seaward is employed at the State Solicitor's Office under the Public Sector Management Act 1994 (WA) she is not entitled to remuneration for her membership of the Commission.

SENIOR OFFICER

During 2018-19, Mr Dominic Fernandes, Manager Legal and Legislation at the Department, served as Executive Officer for the Commission and was responsible for coordinating legal research activities, executive support and project management of the various references.

ADMINISTERED LEGISLATION

Key Legislation Impacting on the Commission's activities is listed below.

In the performance of its functions, the Commission complies with the following relevant Acts:

- *Auditor General Act 2006*
- *Disability Services Act 1993*
- *Electoral Act 1907*
- *Equal Opportunity Act 1984*
- *Evidence Act 1906; Acts Amendment (Evidence) Act 2000*
- *Freedom of Information Act 1992*
- *Industrial Relations Act 1979*
- *Interpretation Act 1984*
- *Library Board of Western Australia Act 1951*
- *Limitation Act 1935*
- *Management Act 1981*
- *Minimum Conditions of Employment Act 1993*
- *Occupational Safety and Health Act 1984*
- *Public Interest Disclosure Act 2003*
- *Public Sector Management Act 1994*
- *Salaries and Allowances Act 1975*
- *State Records Act 2000*
- *State Records (Consequential Provisions) Act 2000*
- *State Superannuation Act 2000*
- *State Supply Commission Act 1991*
- *Criminal Code 1913*
- *Workers Compensation and Injury Management Act 1981*

In the financial administration of the Commission, the Commission has complied with the requirements of the *Financial Management Act 2006* (WA) and every other relevant written law, and exercised controls that provide reasonable assurance that the receipt and expenditure of monies and the acquisition and disposal of public property and incurring of liabilities have accorded with legislative provisions.

At the date of signing, the Commission is not aware of any circumstances that would render the particulars included in this statement misleading or inaccurate.

DIVERSIFICATION

The Commission engages consultants for research, writing and editing. This permits individuals who would not otherwise 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 Commission endeavours to use the public tender procedure to select writers for each project.

PUBLICATIONS

Appendix 1 provides current terms of reference. Information about available publications can be found on the Commission's website at www.lrc.justice.wa.gov.au

LEGISLATIVE CHANGE

There were no statutory changes or significant judicial decisions affecting the Commission in 2018-19.

MEETINGS OF THE COMMISSION

The Commission held five formal Commission meetings during the 2018-19 financial year. In addition, the Commission conducted numerous meetings with various stakeholders and contractors in regards to the references undertaken during the financial year, as well as holding meetings with the Attorney General.

PERFORMANCE MANAGEMENT FRAMEWORK

OUTCOME BASED MANAGEMENT FRAMEWORK

Government Goal:

Outcomes based service delivery - Greater focus on achieving results in key service delivery areas for the benefit of all Western Australians.

The Law Reform Commission of Western Australia's desired outcome:

The Commission reviews the law as requested by the Attorney General and keeps stakeholders informed through the provision of publications on law reform. This aligns with the State Government's goal of providing a greater focus on achieving results in key service delivery areas for the benefit of all Western Australians.

CHANGES TO OUTCOME BASED MANAGEMENT FRAMEWORK

The Commission's Outcome Based Management Framework did not change during 2018-19.

SHARED RESPONSIBILITIES WITH OTHER AGENCIES

The Commission did not share any responsibilities with other agencies in 2018-19.

AGENCY PERFORMANCE

REPORT ON OPERATIONS

The Gender Reassignment reference

The Commission undertook a review of legislation in relation to the recognition of a person's sex, change of sex or intersex status. This reference considered the overarching policies underpinning the *Gender Reassignment Act 2000* (WA) and the *Births, Deaths and Marriages Registration Act 1998* (WA).

The Terms of Reference for this review included consideration of whether additional classifications of sex should be introduced, the role of the Gender Reassignment Board, criteria for determination of intersex status and related matters.

To inform its approach, the Commission consulted with various stakeholders before and after releasing a Discussion Paper for public comment on 20 August 2018. The Final Report was tabled in Parliament on 6 December 2018.

Review of the Fatal Accidents Act 1959 (WA)

The Commission is also currently undertaking a reference regarding non-economic loss under the *Fatal Accidents Act 1959* (WA) (FA Act), which will consider the requirement for reform, and, if deemed necessary, the extent of such reform, to allow for claims for non-economic loss for wrongful death under the FA Act.

The Terms of Reference for that review include consideration of the types of non-economic loss that ought to qualify, the appropriate quantum of damages for non-economic loss and the measurable financial impact of such reform.

The Commission has engaged project researchers and writers, along with a contractor to undertake an economic analysis of proposed changes to the regime.

The 2019-20 financial year will see both the Discussion Paper and Final Report published for this reference.

Maintenance and Champerty in Western Australia

This year, the Commission received a new reference to provide advice and make recommendations for consideration by the Government as to whether the torts of maintenance and champerty should be abolished or whether the law in relation to their operation should be otherwise modified in Western Australia and any consequential amendments.

This reference is to be produced as a supplementary report to the Commission's 2015 Representative Proceedings report.

The Commission has engaged an internal researcher and writer for this project. The 2019-20 financial year will see both the Discussion Paper and Final Report published for this reference.

Review of the Equal Opportunity Act 1984 (WA)

The Commission received a second new reference for the 2018-19 year to provide advice and make recommendations for consideration by the Government on possible amendments to enhance and update the *Equal Opportunity Act 1984* (WA) taking into account Australian and international best practices regarding equality and non-discrimination.

The Commission has undertaken some preliminary research into whether there is a need for any reform, and if so, the scope of reform regarding the exceptions to grounds of discrimination including those for religious institutions (item (g) of the Terms of Reference). The Attorney General engaged law firm Corrs Chambers Westgarth to provide the research and writing services for this part of the project. The 2019-20 financial year will see the Commission commence work on the remainder of the Terms of Reference.

KEY PERFORMANCE INDICATORS

ACTUAL RESULTS VS BUDGET TARGETS

Summary of Key Performance Indicators	2019 Target ¹	2019 Actual	Variation
Outcome: <i>The law is reviewed as requested by the Attorney General and stakeholders are kept informed.</i>			
Key Effectiveness Indicator: <i>Progress against target milestone timelines – The extent to which the Commission is meeting the Attorney General's law reform requests in a timely manner.</i>	100%	100%	N/A
Service: <i>Publications on Law Reform</i>			
Key Efficiency Indicator:			
Average Cost per Publication	\$262,517	\$152,993	(\$109,524)
Total Community Contacts	500	679	179
Average Cost per Contact	\$82.90	\$47.44	(\$35.46)
Number of Publications on Law Reform	3	4	1

⁽¹⁾ Targets are checked and, if necessary, revised by the members of the Commission at the beginning of each new financial year, taking into account those from the previous year as well as verbal discussions with the Attorney General and Department of Justice to estimate potential reference numbers. Target determinations for 2018-19 were discussed verbally between the Commission and the Department towards the beginning of the financial year. Total community contacts were set in Commission Minutes dated 7 June 2019.

SIGNIFICANT ISSUES IMPACTING THE AGENCY

CURRENT AND EMERGING ISSUES AND TRENDS

The most fundamental issue for the Commission is to assist in keeping Western Australian law up-to-date and relevant to the needs of society.

A further issue resulting from this is the need to make law reform as meaningful and effective as possible.

ECONOMIC AND SOCIAL TRENDS

Since the commencement of the 2014-15 financial year, no specific allocation has been made for the Commission's operations in the Budget Statements or in the out-years beyond. Responsibility for ensuring the Commission is able to discharge its statutory functions, is assumed by the Department of Justice (Department).

The Department recently underwent significant structural change through the amalgamation of the Department of Corrective Services and the Department of the Attorney General. Despite this, the Department has continued to provide a high level of service in the way of administrative support to the Commission, ensuring the Commission is able to discharge its statutory functions.

In the financial year, the Commission was tasked with reporting to the Attorney General in relation to the terms of reference for:

- the inconsistencies between Western Australian and Commonwealth legislation in relation to the recognition of a person's sex, change of sex or intersex status;
- the need for reform to allow for claims for non-economic loss for wrongful death;
- the need for the continued operation of the torts of maintenance and champerty in Western Australia; and
- a review of the *Equal Opportunity Act 1984* (WA).

In 2018-19 and beyond, the level of support that the Department is willing and able to provide to the Commission will influence the extent to which the Commission is capable of discharging its statutory duties and reporting to the Attorney General on a timely basis. Relevant to this is the extent to which the Commission may be able to use its own existing funds — or access funds through the Department — to enable it, where appropriate, to engage external resources such as independent experts and project writers. The Commission is encouraged by the continued communication between the Attorney General and the Department in relation to the existing resourcing arrangements.

CHANGES IN WRITTEN LAW

There were no changes in any written law that affected the Commission during the financial year.

LIKELY DEVELOPMENT AND FORECAST RESULTS OF OPERATIONS

The structure of the Commission has allowed it to conduct research on more than one reference at a time. It expects to continue to do so, subject to satisfactory resourcing in relation to the issues identified above.

A Discussion Paper and Final Report on the *Gender Reassignment* reference were published during the financial year. In addition, the Commission expects discussion papers and final reports for two of its other current references to be published in the coming financial year.

AUDITOR GENERAL'S INDEPENDENT AUDITOR'S REPORT



Auditor General

INDEPENDENT AUDITOR'S REPORT

To the Parliament of Western Australia

LAW REFORM COMMISSION OF WESTERN AUSTRALIA

Report on the Financial Statements

Opinion

I have audited the financial statements of the Law Reform Commission of Western Australia which comprise the Statement of Financial Position as at 30 June 2019, the Statement of Comprehensive Income, Statement of Changes in Equity, Statement of Cash Flows, and Notes comprising a summary of significant accounting policies.

In my opinion, the financial statements are based on proper accounts and present fairly, in all material respects, the operating results and cash flows of the Law Reform Commission of Western Australia for the year ended 30 June 2019 and the financial position at the end of that period. They are in accordance with Australian Accounting Standards, the *Financial Management Act 2006* and the Treasurer's Instructions.

Basis for Opinion

I conducted my audit in accordance with the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibility for the Audit of the Financial Statements* section of my report. I am independent of the Commission in accordance with the *Auditor General Act 2006* and the relevant ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) that are relevant to my audit of the financial statements. I have also fulfilled my other ethical responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Responsibility of the Commission for the Financial Statements

The Commission is responsible for keeping proper accounts, and the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards, the *Financial Management Act 2006* and the Treasurer's Instructions, and for such internal control as the Commission determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Commission is responsible for assessing the agency's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the Western Australian Government has made policy or funding decisions affecting the continued existence of the Commission.

Auditor's Responsibility for the Audit of the Financial Statements

As required by the *Auditor General Act 2006*, my responsibility is to express an opinion on the financial statements. The objectives of my audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

AUDITOR GENERAL'S INDEPENDENT AUDITOR'S REPORT (continued)

As part of an audit in accordance with Australian Auditing Standards, I exercise professional judgment and maintain professional scepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the agency's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Commission.
- Conclude on the appropriateness of the Commission's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the agency's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Commission regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Report on Controls

Opinion

I have undertaken a reasonable assurance engagement on the design and implementation of controls exercised by the Law Reform Commission of Western Australia. The controls exercised by the Commission are those policies and procedures established by the Commission to ensure that the receipt, expenditure and investment of money, the acquisition and disposal of property, and the incurring of liabilities have been in accordance with legislative provisions (the overall control objectives).

My opinion has been formed on the basis of the matters outlined in this report.

In my opinion, in all material respects, the controls exercised by the Law Reform Commission of Western Australia are sufficiently adequate to provide reasonable assurance that the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities have been in accordance with legislative provisions during the year ended 30 June 2019.

The Commission's Responsibilities

The Commission is responsible for designing, implementing and maintaining controls to ensure that the receipt, expenditure and investment of money, the acquisition and disposal of property, and the incurring of liabilities are in accordance with the *Financial Management Act 2006*, the Treasurer's Instructions and other relevant written law.

AUDITOR GENERAL'S INDEPENDENT AUDITOR'S REPORT (continued)

Auditor General's Responsibilities

As required by the *Auditor General Act 2006*, my responsibility as an assurance practitioner is to express an opinion on the suitability of the design of the controls to achieve the overall control objectives and the implementation of the controls as designed. I conducted my engagement in accordance with Standard on Assurance Engagements ASAE 3150 *Assurance Engagements on Controls* issued by the Australian Auditing and Assurance Standards Board. That standard requires that I comply with relevant ethical requirements and plan and perform my procedures to obtain reasonable assurance about whether, in all material respects, the controls are suitably designed to achieve the overall control objectives and the controls, necessary to achieve the overall control objectives, were implemented as designed.

An assurance engagement to report on the design and implementation of controls involves performing procedures to obtain evidence about the suitability of the design of controls to achieve the overall control objectives and the implementation of those controls. The procedures selected depend on my judgement, including the assessment of the risks that controls are not suitably designed or implemented as designed. My procedures included testing the implementation of those controls that I consider necessary to achieve the overall control objectives.

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Limitations of Controls

Because of the inherent limitations of any internal control structure it is possible that, even if the controls are suitably designed and implemented as designed, once the controls are in operation, the overall control objectives may not be achieved so that fraud, error, or noncompliance with laws and regulations may occur and not be detected. Any projection of the outcome of the evaluation of the suitability of the design of controls to future periods is subject to the risk that the controls may become unsuitable because of changes in conditions.

Report on the Key Performance Indicators

Opinion

I have undertaken a reasonable assurance engagement on the key performance indicators of the Law Reform Commission of Western Australia for the year ended 30 June 2019. The key performance indicators are the key effectiveness indicators and the key efficiency indicators that provide performance information about achieving outcomes and delivering services.

In my opinion, in all material respects, the key performance indicators of the Law Reform Commission of Western Australia are relevant and appropriate to assist users to assess the Commission's performance and fairly represent indicated performance for the year ended 30 June 2019.

The Commission's Responsibility for the Key Performance Indicators

The Commission is responsible for the preparation and fair presentation of the key performance indicators in accordance with the *Financial Management Act 2006* and the Treasurer's Instructions and for such internal control as the Commission determines necessary to enable the preparation of key performance indicators that are free from material misstatement, whether due to fraud or error.

In preparing the key performance indicators, the Commission is responsible for identifying key performance indicators that are relevant and appropriate having regard to their purpose in accordance with Treasurer's Instruction 904 *Key Performance Indicators*.

Auditor General's Responsibility

As required by the *Auditor General Act 2006*, my responsibility as an assurance practitioner is to express an opinion on the key performance indicators. The objectives of my engagement are to obtain reasonable assurance about whether the key performance indicators are relevant and appropriate to assist users to assess the agency's performance and whether the key performance indicators are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion.

AUDITOR GENERAL'S INDEPENDENT AUDITOR'S REPORT (continued)

I conducted my engagement in accordance with Standard on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* issued by the Australian Auditing and Assurance Standards Board. That standard requires that I comply with relevant ethical requirements relating to assurance engagements.

An assurance engagement involves performing procedures to obtain evidence about the amounts and disclosures in the key performance indicators. It also involves evaluating the relevance and appropriateness of the key performance indicators against the criteria and guidance in Treasurer's Instruction 904 for measuring the extent of outcome achievement and the efficiency of service delivery. The procedures selected depend on my judgement, including the assessment of the risks of material misstatement of the key performance indicators. In making these risk assessments I obtain an understanding of internal control relevant to the engagement in order to design procedures that are appropriate in the circumstances.

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

My Independence and Quality Control Relating to the Reports on Controls and Key Performance Indicators

I have complied with the independence requirements of the *Auditor General Act 2006* and the relevant ethical requirements relating to assurance engagements. In accordance with ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements*, the Office of the Auditor General maintains a comprehensive system of quality control including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

Matters Relating to the Electronic Publication of the Audited Financial Statements and Key Performance Indicators

This auditor's report relates to the financial statements and key performance indicators of the Law Reform Commission of Western Australia for the year ended 30 June 2019 included on the Commission's website. The Commission's management is responsible for the integrity of the Commission's website. This audit does not provide assurance on the integrity of the Commission's website. The auditor's report refers only to the financial statements and key performance indicators described above. It does not provide an opinion on any other information which may have been hyperlinked to/from these financial statements or key performance indicators. If users of the financial statements and key performance indicators are concerned with the inherent risks arising from publication on a website, they are advised to refer to the hard copy of the audited financial statements and key performance indicators to confirm the information contained in this website version of the financial statements and key performance indicators.



MARK AMBROSE
SENIOR DIRECTOR FINANCIAL AUDIT
Delegate of the Auditor General for Western Australia
Perth, Western Australia
5 September 2019

DISCLOSURES AND LEGAL COMPLIANCE

FINANCIAL STATEMENTS



LAW REFORM COMMISSION
of WESTERN AUSTRALIA

Disclosures and legal compliance

Financial Statements

Certification of Financial Statements

For the reporting period ended 30 June 2019

The accompanying financial statements of the Law Reform Commission of Western Australia have been prepared in compliance with the provisions of the *Financial Management Act 2006* from proper accounts and records to present fairly the financial transactions for the reporting period ended 30 June 2019 and the financial position as at 30 June 2019.

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

A handwritten signature in black ink, appearing to read 'David Cox'.

Dr. David Cox
Chair of the Law Reform Commission WA

2 September 2019

A handwritten signature in blue ink, appearing to read 'Fiona Seaward'.

Ms Fiona Seaward
Member of the Law Reform Commission
WA

2 September 2019

A handwritten signature in black ink, appearing to read 'Rodolfo Montilva'.

Mr. Rodolfo Montilva
A/Chief Finance Officer

2 September 2019

DISCLOSURES AND LEGAL COMPLIANCE (continued)

FINANCIAL STATEMENTS



LAW REFORM COMMISSION
of WESTERN AUSTRALIA

The Commission has pleasure in presenting its audited general purpose financial statements for the financial reporting period ended 30 June 2019 which provides users with the information about the Commission's stewardship of resources entrusted to it. The financial information is presented in the following structure:

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DISCLOSURES AND LEGAL COMPLIANCE (continued)

FINANCIAL STATEMENTS

Law Reform Commission of Western Australia Statement of Comprehensive Income

For the year ended 30 June 2019

	Note	2019 \$	2018 \$
COST OF SERVICE			
Expenses			
Employee benefits expense	2.1	105,088	101,323
Supplies and services	2.2	529,074	152,328
Other expenses	2.2	10,018	3,672
Total cost of services		644,180	257,323
Income			
Other revenue	3.2	24	-
Total income other than income from State Government		24	-
NET COST OF SERVICES		644,156	257,323
Income from State Government			
Services received free of charge	3.1	179,093	156,000
Total income from State Government		179,093	156,000
DEFICIT FOR THE PERIOD		(465,063)	(101,323)
TOTAL COMPREHENSIVE LOSS FOR THE PERIOD		(465,063)	(101,323)

The Statement of Comprehensive Income should be read in conjunction with the accompanying notes.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

FINANCIAL STATEMENTS

Law Reform Commission of Western Australia Statement of Financial Position

As at 30 June 2019

	Note	2019 \$	2018 \$
ASSETS			
Current Assets			
Cash and cash equivalents	5.1	739,304	1,040,339
Receivables	4.2	16,000	-
Total Current Assets		755,304	1,040,339
TOTAL ASSETS		755,304	1,040,339
LIABILITIES			
Current Liabilities			
Payables	4.1	180,073	45
Total Current Liabilities		180,073	45
TOTAL LIABILITIES		180,073	45
NET ASSETS		575,231	1,040,294
EQUITY			
Contributed equity	7.8	17,000	17,000
Accumulated surplus	7.8	558,231	1,023,294
TOTAL EQUITY		575,231	1,040,294

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

DISCLOSURES AND LEGAL COMPLIANCE (continued)

FINANCIAL STATEMENTS

Law Reform Commission of Western Australia Statement of Changes in Equity

For the year ended 30 June 2019

	Note	Contributed equity \$	Accumulated surplus \$	Total equity \$
Balance at 1 July 2017	7.8	17,000	1,124,617	1,141,617
Total comprehensive income for the period		-	(101,323)	(101,323)
Balance at 30 June 2018		<u>17,000</u>	<u>1,023,294</u>	<u>1,040,294</u>
Balance at 1 July 2018		17,000	1,023,294	1,040,294
Total comprehensive income for the period		-	(465,063)	(465,063)
Balance at 30 June 2019		<u>17,000</u>	<u>558,231</u>	<u>575,231</u>

The Statement of Changes in Equity should be read in conjunction with the accompanying notes.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

FINANCIAL STATEMENTS

Law Reform Commission of Western Australia Statement of Cash Flows

For the year ended 30 June 2019

	Note	2019 \$	2018 \$
CASH FLOWS FROM OPERATING ACTIVITIES			
Payments			
Employee benefits		(104,739)	(101,666)
Payments for supplies and services (including GST)		(196,296)	-
Net cash used in operating activities		(301,035)	(101,666)
Net decrease in cash and cash equivalents		(301,035)	(101,666)
Cash and cash equivalents at the beginning of the reporting period		1,040,339	1,142,005
CASH AND CASH EQUIVALENTS AT THE END OF THE PERIOD	5.1	739,304	1,040,339

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

DISCLOSURES AND LEGAL COMPLIANCE (continued)

NOTES TO THE FINANCIAL STATEMENTS

Law Reform Commission of Western Australia

NOTES TO THE FINANCIAL STATEMENTS

1. Basis of preparation

The Law Reform Commission of Western Australia (**the Commission**) is a WA Government entity and is controlled by the State of Western Australia, which is the ultimate parent. The Commission is a not-for-profit entity (as profit is not its principal objective).

A description of the nature of its operations and its principal activities have been included in the 'Overview' which does not form part of these financial statements.

These annual financial statements were authorised for issue by the Board of Commissioners of the Commission on 2 September 2019.

Commission objectives

Mission

The Commission's mission is to assist in keeping the law up-to-date and relevant to the needs of society.

Statement of compliance

These general purpose financial statements have been prepared in accordance with:

- 1) The Financial Management Act 2006 (**FMA**)
- 2) The Treasurer's Instructions (**the Instructions or TI**)
- 3) Australian Accounting Standards (**AAS**) – Reduced Disclosure Requirements
- 4) Where appropriate, those **AAS** paragraphs applicable for not-for-profit entities have been applied.

The FMA and the Instructions take precedence over AAS. Several AAS are modified by the Instructions to vary application, disclosure format and wording. Where modification is required and has had a material or significant financial effect upon the reported results, details of that modification and the resulting financial effect are disclosed in the notes to the financial statements.

Basis of preparation

These financial statements are presented in Australian dollars applying the accrual basis of accounting and using the historical cost convention. Certain balances will apply a different measurement basis (such as the fair value basis). Where this is the case the different measurement basis is disclosed in the associated note. All values are rounded to the nearest dollar.

Judgements and estimates

Judgements, estimates and assumptions are required to be made about financial information being presented. The significant judgements and estimates made in the preparation of these financial statements are disclosed in the notes where amounts affected by those judgements and/or estimates are disclosed. Estimates and associated assumptions are based on professional judgements derived from historical experience and various other factors that are believed to be reasonable under the circumstances.

Contributed equity

AASB Interpretation 1038 *Contributions by Owners Made to Wholly-Owned Public Sector Entities* requires transfers in the nature of equity contributions, other than as a result of a restructure of administrative arrangements, to be designated by the Government (the owner) as contributions by owners (at the time of, or prior, to transfer) before such transfers can be recognised as equity contributions. Capital appropriations have been designated as contributions by owners by TI 955 *Contributions by Owners made to Wholly Owned Public Sector Entities* and have been credited directly to Contributed Equity.

The transfers of net assets to/from other agencies, other than as a result of a restructure of administrative arrangements, are designated as contributions by owners where the transfers are non-discretionary and non-reciprocal.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

NOTES TO THE FINANCIAL STATEMENTS

Law Reform Commission of Western Australia

NOTES TO THE FINANCIAL STATEMENTS

2. Use of our funding

Expenses incurred in the delivery of services

This section provides additional information about how the Commission's funding is applied and the accounting policies that are relevant for an understanding of the items recognised in the financial statements. The primary expenses incurred by the Commission in achieving its objectives and the relevant notes are:

	Notes	2019 \$	2018 \$
Employee benefits expenses	2.1	105,088	101,323
Supplies and services	2.2	529,074	152,328
Other expenses	2.2	10,018	3,672

2.1 Employee benefits expenses

	2019 \$	2018 \$
Board member fees	95,971	92,533
Superannuation - defined contribution plans	9,117	8,790
	<u>105,088</u>	<u>101,323</u>

Wages and salaries:

Employee expenses include all costs related to employment including wages and salaries, fringe benefits tax, and leave entitlements.

Superannuation:

The amount recognised in profit or loss of the Statement of Comprehensive Income comprises employer contributions paid to the GESB.

The GESB and other fund providers administer public sector superannuation arrangements in Western Australia in accordance with legislative requirements. Eligibility criteria for membership in particular schemes for public sector employees vary according to commencement and implementation dates.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

NOTES TO THE FINANCIAL STATEMENTS

Law Reform Commission of Western Australia

NOTES TO THE FINANCIAL STATEMENTS

2.2 Other expenditure

	2019	2018
Supplies and services	\$	\$
Business and financial services ^(b)	6,899	17,374
Shared information services ^(b)	140,294	39,646
Policy and Aboriginal services ^(b)	6,942	48,611
Services and contracts ^{(a) (b)}	372,675	44,550
Communications ^(b)	2,264	2,147
Total supplies and services expenses	529,074	152,328
Other expenditures		
Printing ^(b)	10,018	3,672
Total other expenditures	10,018	3,672
Total other expenditure	539,092	156,000

^(a)Services and contracts contain \$12,675 of Services received free of charge

^(b)Services received free of charge: These items of expenditure were provided in line with the terms of the Memorandum of Understanding between the Department of Justice and the Commission. (See Note 3.1 Income from State Government)

Supplies and services:

Supplies and services are recognised as an expense in the reporting period in which they are incurred. The carrying amounts of any materials held for distribution are expensed when the materials are distributed.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

NOTES TO THE FINANCIAL STATEMENTS

Law Reform Commission of Western Australia

NOTES TO THE FINANCIAL STATEMENTS

3. Our funding sources

How we obtain our funding

This section provides additional information about how the Commission obtains its funding and the relevant accounting policy notes that govern the recognition and measurement of this funding. The primary income received by the Commission and the relevant notes are:

	Notes	2019	2018
		\$	\$
Income from State Government	3.1	179,093	156,000
Other income	3.2	24	-

3.1 Income from State Government

	2019	2018
	\$	\$
Services received free of charge from other state government agencies during the period:		
Department of Justice		
- Financial, human resources and information technology services	179,093	156,000
	<u>179,093</u>	<u>156,000</u>
Total Income from State Government	<u>179,093</u>	<u>156,000</u>

Services received free of charge or for nominal cost: Services received free of charge or for nominal cost that the Commission would otherwise purchase if not donated, are recognised as income at the fair value of the assets or services where they can be reliably measured. A corresponding expense is recognised for services received. Receipts of assets are recognised in the Statement of Financial Position. Services received from other State Government agencies are separately disclosed under Income from State Government in the Statement of Comprehensive Income.

3.2 Other revenue

	2019	2018
	\$	\$
Other income	24	-
	<u>24</u>	<u>-</u>

DISCLOSURES AND LEGAL COMPLIANCE (continued)

NOTES TO THE FINANCIAL STATEMENTS

Law Reform Commission of Western Australia

NOTES TO THE FINANCIAL STATEMENTS

4. Other assets and liabilities

This section sets out those assets and liabilities that arose from the Commission's controlled operations and includes other assets utilised for economic benefits and liabilities incurred during normal operations:

	Notes	2019 \$	2018 \$
Payables	4.1	180,073	45
Receivables	4.2	16,000	-

4.1 Payables

	2019 \$	2018 \$
<u>Current</u>		
Trades and other creditors	179,703	24
Accrued salaries	370	21
Total current	180,073	45

Payables are recognised at the amounts payable when the Commission becomes obliged to make future payments as a result of a purchase of assets or services. The carrying amount is equivalent to fair value, as settlement is generally within 30 days.

Accrued salaries represent the amount due to Commission members but unpaid at the end of the reporting period. Accrued salaries are settled within a fortnight of the reporting period end. The agency considers the carrying amount of accrued salaries to be equivalent to its fair value.

4.2 Receivables

	2019 \$	2018 \$
<u>Current</u>		
GST receivable	16,000	-
Total Current	16,000	-

DISCLOSURES AND LEGAL COMPLIANCE (continued)

NOTES TO THE FINANCIAL STATEMENTS

Law Reform Commission of Western Australia

NOTES TO THE FINANCIAL STATEMENTS

5. Financing

This section sets out the material balances and disclosures associated with the financing and cashflows of the Commission:

	Notes
Cash and cash equivalents	5.1
Commitments	5.2

5.1 Cash and cash equivalents

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:

	2019	2018
	\$	\$
Cash and cash equivalents	739,304	1,040,339
	<u>739,304</u>	<u>1,040,339</u>

For the purpose of the statement of cash flows, cash and cash equivalent (and restricted cash and cash equivalent) assets comprise cash on hand and short-term deposits with original maturities of three months or less that are readily convertible to a known amount of cash and which are subject to insignificant risk of changes in value.

5.2 Commitments

	2019	2018
	\$	\$
Other expenditure commitments		
Other expenditure commitments for Projects* contracted for at the end of the reporting period but not recognised as liabilities are payable as follows:		
Within 1 year	252,990	-
	<u>252,990</u>	<u>-</u>

*The Department of Justice has entered into contracts during the 2018-19 financial year as agent on behalf of the Commission for the provision of services to review Western Australian legislation in relation to the non-economic loss for wrongful death under the *Fatal Accidents Act 1959 (WA)*, referred to as Project 108 of the Commission. The contract term expires when the services have been supplied, with a current extension to 29 November 2019. Milestone payments are due in terms of the contract, with the final payment due on acceptance of the Final Report by the Commission before the expiry of the contract.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

NOTES TO THE FINANCIAL STATEMENTS

Law Reform Commission of Western Australia

NOTES TO THE FINANCIAL STATEMENTS

6. Financial instruments and contingencies

	Notes
Financial instruments	6.1
Contingent assets and liabilities	6.2

6.1 Financial instruments

The carrying amounts of each of the following categories of financial assets and financial liabilities at the balance sheet date are:

	2019 \$	2018 \$
<u>Financial Assets</u>		
Cash and cash equivalents	739,304	1,040,339
	<u>739,304</u>	<u>1,040,339</u>
<u>Financial Liabilities</u>		
Financial liabilities measured at amortised cost	180,073	45
	<u>180,073</u>	<u>45</u>

6.2 Contingent assets and liabilities

There were no contingent liabilities and contingent assets as at 30 June 2019 (2018: nil).

DISCLOSURES AND LEGAL COMPLIANCE (continued)

NOTES TO THE FINANCIAL STATEMENTS

Law Reform Commission of Western Australia

NOTES TO THE FINANCIAL STATEMENTS

7. Other disclosures

This section includes additional material disclosures required by accounting standards or other pronouncements for the understanding of this financial report.

	Notes
Events occurring after the end of the reporting period	7.1
Initial application of Australian Accounting Standards	7.2
Key management personnel	7.3
Related parties	7.4
Related bodies	7.5
Affiliated bodies	7.6
Remuneration of Auditors	7.7
Equity	7.8
Supplementary financial information	7.9

7.1 Events occurring after the end of the reporting period

There were no events occurring after the end of the reporting period.

7.2 Initial application of Australian Accounting Standards

AASB 9 Financial instruments

AASB 9 Financial instruments replaces AASB 139 Financial instruments: Recognition and Measurements for annual reporting periods beginning on or after 1 January 2018, bringing together all three aspects of the accounting for financial instruments: classification and measurement; impairment; and hedge accounting.

The Commission applied AASB 9 prospectively, with an initial application date of 1 July 2018. The adoption of AASB 9 has resulted in changes in accounting policies. The Commission did not need to restate any comparative information which would have been required in accordance with AASB 9.7.2.15 as there were no financial instruments which would have continued to be reported under AASB 139. As a result, there were no differences arising from adoption, consequently no effect on accumulated deficit.

The Commission's approach is described below:

(a) Classification and measurement

Under AASB 9, financial assets are subsequently measured at amortised cost, fair value through other comprehensive income (fair value through OCI) or fair value through profit or loss (fair value through P/L). The classification is based on two criteria: the Commission's business model for managing the assets; and whether the assets' contractual cash flows represent 'solely payments of principal and interest' on the principal amount outstanding.

The assessment of the Commission's business model was made as of the date of initial application, 1 July 2018. The assessment of whether contractual cash flows on financial assets are solely comprised of principal and interest was made based on the facts and circumstances as at the initial recognition of the assets.

The classification and measurement requirements of AASB 9 did not have a material impact to the Commission.

(b) Impairment

The adoption of AASB 9 has fundamentally changed the Commission's accounting for impairment losses for financial assets by replacing AASB 139's incurred loss approach with a forward-looking expected credit loss (ECL) approach. AASB 9 requires the Commission to recognise an allowance for ECLs for all financial assets not held at fair value through P/L. The impairment requirements of AASB 9 did not have a material impact to the Commission.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

NOTES TO THE FINANCIAL STATEMENTS

Law Reform Commission of Western Australia

NOTES TO THE FINANCIAL STATEMENTS

7.3 Key management personnel

The Commission has determined that key management personnel include Cabinet Ministers and members of the Commission. However, the Commission is not obligated to compensate Ministers and therefore disclosures in relation to Ministers' compensation may be found in the *Annual Report on State Finances*.

The total fees, salaries, superannuation, non-monetary benefits and other benefits for members of the Commission for the reporting period are presented within the following bands:

	2019	2018
Compensation Band (\$)		
50,001 – 60,000	1	1
40,001 – 50,000	1	1
0 ^(a)	1	1
	2019	2018
	\$	\$
Total compensation of members	105,088	101,323

(a) Member is employed by the State Solicitors Office under the *Public Service Management Act 1994* and is not entitled to remuneration.

Total compensation includes the superannuation expense incurred by the Commission in respect of its members.

7.4 Related party transactions

The Commission is a wholly owned public sector entity that is controlled by the State of Western Australia.

Related parties of the Commission include:

- all cabinet ministers and their close family members, and their controlled or jointly controlled entities;
- all members and their close family members, and their controlled or jointly controlled entities;
- other departments and public sector entities, including related bodies included in the whole of government consolidated financial statements;
- associates and joint ventures, that are included in the whole of government consolidated financial statements; and
- the Government Employees Superannuation Board (GESB).

Material transactions with other related parties

Outside of normal citizen type transaction with the Commission, there were no other related party transactions that involved key management personnel and/or their close family members and/or their controlled (or jointly controlled) entities.

7.5 Related bodies

The Commission had no related bodies during the financial year (2018: nil).

7.6 Affiliated bodies

The Commission had no affiliated bodies during the financial year (2018: nil).

7.7 Remuneration of auditors

Remuneration paid or payable to the Auditor General in respect of the audit for current financial year is as follows:

	2019	2018
	\$	\$
Auditing the accounts, financial statements and key performance indicators	12,865	12,675

DISCLOSURES AND LEGAL COMPLIANCE (continued)

NOTES TO THE FINANCIAL STATEMENTS

Law Reform Commission of Western Australia

NOTES TO THE FINANCIAL STATEMENTS

7.8 Equity

The Government holds the equity interest in the Commission on behalf of the community. Equity represents the residual interest in the net assets of the Commission.

Contributed equity

	2019	2018
	\$	\$
Balance at start of period	17,000	17,000
Balance at end of period	17,000	17,000

Accumulated surplus

Balance at start of period	1,023,294	1,124,617
Result for the period	(465,063)	(101,323)
Balance at end of period	558,231	1,023,294

Total Equity at end of period

575,231	1,040,294
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7.9 Supplementary financial information

There were no losses of public moneys or other public property through theft or default during the financial year (2018: nil).

There were no write offs of public money or other public property during the financial year (2018: nil).

There were no gifts of public property during the financial year (2018: nil).

DISCLOSURES AND LEGAL COMPLIANCE (continued)

KEY PERFORMANCE INDICATORS



LAW REFORM COMMISSION
of WESTERN AUSTRALIA

AUDITED KEY PERFORMANCE INDICATORS FOR THE YEAR ENDED 30 JUNE 2019

Certification of Key Performance Indicators

We hereby certify that the performance indicators are based on proper records, are relevant and appropriate for assisting users to assess the Law Reform Commission of Western Australia's performance, and fairly represent the performance of the Law Reform Commission of Western Australia for the financial year ended 30 June 2019.

Handwritten signature of Dr David Cox in black ink.

Dr David Cox

Chair of the Law Reform Commission of
Western Australia

2 September 2019

Handwritten signature of Ms Fiona Seaward in blue ink.

Ms Fiona Seaward

Member of the Law Reform Commission
of Western Australia

2 September 2019

DISCLOSURES AND LEGAL COMPLIANCE (continued)

KEY PERFORMANCE INDICATORS

Detailed Information in Support of Key Performance Indicators

GOVERNMENT GOALS: OUTCOME BASED SERVICE DELIVERY

Greater focus on achieving results in key service delivery areas for the benefit of all Western Australians.

THE COMMISSION'S STRATEGIC OBJECTIVE

Mission: To assist in keeping the law up-to-date and relevant to the needs of Western Australian society.

Desired Outcome: The law is reviewed as requested by the Attorney General (AG) and stakeholders are kept informed.

KEY PERFORMANCE INDICATORS

KEY EFFECTIVENESS INDICATOR: Progress against target timelines.

The extent to which the Commission is meeting the Attorney General's law reform requests in a timely manner.

The Law Reform Commission of Western Australia (the Commission) receives its terms of reference from the AG and performs reviews of selected areas of law at the request of the AG. The extent to which the Commission meets the timeframes set by the AG is considered to be a key performance indicator (KPI) which measures the extent to which the Commission is contributing to keeping the law up-to-date.

The percentage of references proceeding as planned against target timelines:

	2018-2019 Target ^(a)	2018-2019 Actual	2017-2018 ^(a)	2016-2017 ^(a)
% on target	100%	100%	100%	100%

(a) In the 2016-17 to 2018-19 financial years, the final report due date has been set as per the Attorney General's request outlined in the Terms of Reference for each project, and extended from time to time.

References	2018-2019	2017-2018	2016-2017
Brought forward	2	1	1
New	2	2	1
Total to be reviewed	4	3	2
References completed during the year	1 ^(a)	1	1
References with elapsed time	-	-	-

(a) Refer to Table A: Gender Reassignment Reference, for progress against milestones.

The Commission had four live references in the financial year 2018-19. The effectiveness of each reference is measured separately as shown below.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

KEY PERFORMANCE INDICATORS

GENDER REASSIGNMENT

Project 108: The inconsistencies between Western Australian and Commonwealth legislation in relation to the recognition of a person's sex, change of sex or intersex status

Table A – Progress towards the *Gender Reassignment* reference

Milestones	Terms of Reference referred to LRC	Project Plan completed / signed	Tender process completed/ contracts awarded & signed	Project writer engaged	First draft of Discussion Paper submitted to LRC	Discussion Paper published	Report to LRC on response to discussion paper & submissions	Draft Final Report submitted to LRC	Final Report provided to AG
Target Date (b)	N/A	N/A	February-March 2018	N/A	July 2018	31 July 2018 (d)	1-8 November 2018	9 November 2018	30 November 2018 (f)
Actual Date	16 January 2018 (c)	24 April 2018	27 March 2018	27 March 2018 (a)	20 July 2018	20 August 2018 (e)	22 October 2018	9 November 2018	26 November 2018

Key:

- (a) The project writer for the reference was Corrs Chambers Westgarth.
- (b) Interim milestone targets based on initial Project Plan approved by the Commission. Refer also to (d) and (f).
- (c) On 19 February 2018, AG amended preamble and removed Clause (d) of the original TOR.
- (d) Date set by AG.
- (e) On 30 July 2018, the Commission sent courtesy advice to AG re: delay in publication.
- (f) Date set by AG.

FATAL ACCIDENTS

Project 109: Claims for non-economic loss for wrongful death under the *Fatal Accidents Act 1959* (WA)

Table B – Progress towards the *Fatal Accidents* reference

Milestones	Terms of Reference referred to LRC	Project Plan completed/ signed	Tender process completed/ contracts awarded & signed	Project writer engaged	First draft of Discussion Paper submitted to LRC	Discussion Paper published	Report to LRC on response to discussion paper & submissions	Draft Final Report submitted to LRC	Final Report provided to AG
Target Date (b)	N/A	May 2018	May-June 2018 (d)	N/A	March 2019	30 August 2019	1 October 2019	1 November 2019	29 November 2019 (c)
Actual Date	26 February 2018	17 May 2018	7 August 2018	7 August 2018 (a)	13 March 2019	-	-	-	-

Key:

- (a) The project writers for the reference are Adam Nolan and Thomas Offer.
- (b) Interim milestone targets agreed and extended by the Commission. Refer also to (c).
- (c) The original date set by Attorney General as per the terms of reference was 29 March 2019, this was extended at the request of the Commission.
- (d) In a separate tender process, Taylor Fry was appointed on 4 June 2019 to undertake an economic analysis for the Final Report.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

KEY PERFORMANCE INDICATORS

MAINTENANCE AND CHAMPERTY

Project 110: Maintenance and Champerty in Western Australia

Table C – Progress towards the *Maintenance and Champerty* reference

Milestones	Terms of Reference referred to LRC	Project Plan completed/ signed	Tender process completed/ contracts awarded & signed	Project writer engaged	First draft of Discussion Paper submitted to LRC	Discussion Paper published	Report to LRC on response to discussion paper & submissions	Draft Final Report submitted to LRC	Final Report provided to AG
Target Date	N/A	N/A	N/A (a)	N/A (b)	5 July 2019	16 August 2019	1 October 2019	1 November 2019	30 November 2019 (c)
Actual Date	16 July 2018	N/A (d)	N/A	N/A	5 July 2019	-	-	-	-

Key:

- (a) The project is internally resourced, so a tender process was not required.
- (b) A project writer was not engaged due to reference being internally resourced through the Department of Justice.
- (c) Original date set by Attorney General as per the terms of reference was 31 May 2019, this was extended at the request of the Commission.
- (d) Project plan not required due to reference being internally resourced through the Department of Justice.

EQUAL OPPORTUNITY ACT

Project 111: Review of the *Equal Opportunity Act 1984* (WA)

Table D – Progress towards the *Equal Opportunity Act* reference

Milestones	Terms of Reference referred to LRC	Project Plan completed/ signed	Tender process completed/ contracts awarded & signed	Project writer engaged	First draft of Discussion Paper submitted to LRC	Discussion Paper published	Report to LRC on response to discussion paper & submissions	Draft Final Report submitted to LRC	Final Report provided to AG
Target Date	N/A	March 2020	July 2020	July 2020 (a)	December 2020	January 2021	March 2021	May 2021	30 June 2021 (b)
Actual Date	28 February 2019	-	-	-	-	-	-	-	-

Key:

- (a) Note Corrs Chambers Westgarth was appointed on 10 May 2019 to provide project assistance on Item (g) of the Terms of Reference only.
- (b) Date set by Attorney General, which takes into account a potential new Commonwealth religious discrimination law and the Australian Law Reform Commission reference regarding the framework of religious exemptions in anti-discrimination legislation due on 10 April 2020.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

KEY PERFORMANCE INDICATORS

EFFICIENCY INDICATOR: Publications on Law Reform.

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

Service: Publications on Law Reform

The delivery of the Commission's service 'Publications on Law Reform' is achieved through work undertaken in the production of reports compiled in relation to references and by the extent to which the Commission was able to reach stakeholders and inform them on matters of law reform.

Total publications refers to references referred to the Commission in the 2018-19 financial year and comparative years as well as references carried over from previous financial years.

Total community contacts refers to correspondence with stakeholders by Commission representatives in relation to Commission publications and matters of law reform, including submissions received; incoming and outgoing mail; e-mails to the Commission's email address, and phone calls.

Total Publications and Community Contacts and their Average Cost

The following table shows the total number of publications and the average cost per publication in 2018-19 and previous financial years. The table also identifies the total community contacts and the average cost per contact in the same period.

	Target 2018-2019	Actual 2018-2019	2017-2018	2016-2017	2015-2016
Service:					
Total Publications (a)	3	4	3	2	2
Average cost per publication	\$262,517	\$152,993 (b)	\$81,486	\$184,452	\$253,218
Total community contacts	500	679	497	1,062	1,911
Average cost per contact	\$82.90	\$47.44 (b)	\$25.89	\$18.28	\$13.95

Key

- (a) Total Publications refers to the number of references referred to the Commission by the Attorney General and includes published, in-progress and completed references during the financial year.
- (b) The actual average cost per publication and average cost per community contact were both higher in the 2018-19 year than the 2017-18 year due to the total cost of services being higher. This was because payments to project writers for Project 108 and Project 111 became due in the current financial year. However, they are lower than the target figures due to the Commission having a higher number of references and community contacts during the year than anticipated, and a lower total cost of services.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

MINISTERIAL DIRECTIVES

There have been no ministerial directives in this reporting period.

OTHER FINANCIAL DISCLOSURES

Capital works

The Commission has no capital works projects.

Employment and industrial relations

Staff Profile	2018-19	2017-18
Full-time permanent	Nil	Nil
Full-time contract	Nil	Nil
Part-time measured on an FTE basis	Nil	Nil
On secondment	Nil	Nil

Staff development

The learning and development of Commission members is encapsulated within the Department's Strategic Learning and Development Framework.

Workers compensation

No workers compensation claims were recorded during the financial year.

GOVERNANCE DISCLOSURES

Contracts with senior officers

No member of the Commission had any interest in or benefit from any contract that the Commission entered.

Personal use of corporate credit card

No member of the Commission was issued with a corporate credit card.

OTHER LEGAL REQUIREMENTS

Advertising and sponsorship

In accordance with section 175ZE of the *Electoral Act 1907* (WA), the Commission incurred the following expenditure relating to advertising and sponsorship during the 2018-19 financial year.

Advertising agencies	Nil
Market research organisations	Nil
Polling organisations	Nil
Direct mail organisations	Nil
Media advertising organisations	Nil
Total	Nil

Disability access and inclusion plan outcomes

The Commission is committed to ensuring that professional and appropriate services are provided to meet the needs of community members with physical, intellectual, sensory or cognitive disabilities, their carers and families.

The Commission recognises delivering the same level and quality of service and advice, with full awareness and understanding of the needs of people with disabilities.

The Commission's office — located on Level 23 of the David Malcolm Justice Centre at 28 Barrack Street, Perth — has wheelchair access, lift access to the upper floors and convenient public parking nearby.

This annual report is designed to be print-accessible to people with disabilities and can be supplied in alternative formats on request. In accordance with the Commission's community outreach program, all public meeting venues are selected 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.

COMPLIANCE WITH PUBLIC SECTOR STANDARDS AND ETHICAL CODES

The Commission has complied with Section 31(1) of the *Public Sector Management Act 1994* in the administration of the Commission's human resource management practices relating to Public Sector Standards, the Western Australian Public Sector Code of Ethics and the Commission's Code of Conduct.

The Commission uses the Department's human resource services and is confident that Departmental human resource management principles have adequate checks in place to ensure compliance requirements are met.

The Commission has adopted the Public Sector Commission's Code of Conduct template for government boards. Various measures are in place to ensure that Commission members and staff assisting the Commission are familiar with the WA Public Sector Commission's Code of Ethics and the Commission's own Code of Conduct. The Commission's Code of Conduct is made available on induction to all Commission members and related responsibilities are included in job descriptions. The Commission's Executive Officer monitors compliance.

In 2018-19 no breach claims were lodged in relation to either the Public Sector Standards or the WA Public Sector Commission's Code of Ethics.

RECORDKEEPING PLAN

In accordance with section 29 of the *State Records Act 2000*, the Commission must review its Recordkeeping Plan (RKP) every five years or when there is any significant change to the organisation's functions. As such, the Commission reviewed its RKP in April 2019 and provided a report to the State Records Commission that the Commission will not be renewing its RKP and instead will rely on the Department's plan going forward, given all administrative support is provided by Department staff.

The Department's RKP provides an accurate reflection of its recordkeeping program and is complied with by all Commission members and staff assisting the Commission. New departmental inductees assisting the Commission are required to complete the Department's Recordkeeping Awareness Training course through the Enterprise Learning Management System. Commission members and staff assisting the Commission have been trained in record-keeping practices.

FREEDOM OF INFORMATION

In 2018-19, the Commission received no freedom of information applications.

It is the aim of the Commission to make information available promptly and at the least possible cost, and whenever possible documents will be provided outside the FOI process.

All of the Commission's publications, including Background Papers, Discussion Papers, Final Reports and Annual Reports are available to download for free from the Commission's website. The Commission holds other documents which are not published, such as general correspondence, submissions received from stakeholders, minutes of its meetings, contracts and tender documents.

If information is not routinely available, the *Freedom of Information Act 1992* (WA) provides the right to apply for documents held by the Commission and to enable the public to ensure that personal information in documents is accurate, complete, up-to-date and not misleading.

The following information statement is published pursuant to the requirements of the *Freedom of Information Act 1992*.

Access to personal information

No fee or charge is payable for an application for personal information about the applicant. All applications relating to personal information must be in writing. Personal information can be:

- factual or routine information, for example, date of birth, length of employment, qualifications and/or
- opinions or evaluative material such as advice or recommendations of a third party - for example records of interviews, material in personnel records.

Applications to access the personal information of an applicant must be accompanied by proof of identification documentation. All applications lodged on behalf of another person must be accompanied by the written authorisation of the individual on whose behalf the application is lodged.

Amendment of personal information

A person can apply to amend personal information in a document held by the Commission.

Applications to amend the personal information of an applicant must be accompanied by proof of identification documentation.

All applications lodged on behalf of another person must be accompanied by the written authorisation of the individual on whose behalf the application is lodged.

Applicants must provide details and, if necessary, documentation in support of their claim to amend inaccurate, incomplete, out-of-date or misleading information. In addition, applicants must indicate how they want the amendment to be made within the options set out in the *Freedom of Information Act 1992*, including:

- altering information
- striking out or deleting information
- inserting information
- inserting a note in relation to information.

Access to non-personal information

Requests for access to information held by the Commission that do not relate solely to the applicant under the *Freedom of Information Act 1992*, must be made as non-personal applications.

Access applications have to -

- be in writing;
- give enough information so that the documents requested can be identified;
- give an Australian address to which notices can be sent; and
- be lodged at the agency with any application fee payable.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

Applications and enquiries should be addressed to the Freedom of Information Coordinator and posted or delivered to:

The Law Reform Commission of Western Australia
Level 23, David Malcolm Justice Centre
28 Barrack Street
Perth WA 6000

Or emailed to: lrcwa@justice.wa.gov.au

Service delivery

Under the *Freedom of Information Act 1992*, the Commission is required to process requests for information within 45 days of receiving the application. There is provision under section 23 of the *Freedom of Information Act 1992* to refuse access to documents and information on a range of grounds. Applicants have a right of appeal in these cases, initially to the Commission and subsequently to the Information Commissioner.

Notice of decision

The applicant will receive in writing, notice of the Commission's decision relating to the request. The notice will include the following information:

- date of the decision
- name and designation of the decision maker
- reasons for deleting any matter
- reasons for deferring access
- arrangements for giving access
- reasons for refusing access to any matter
- the amount and basis for any charges levied and
- the rights of review and procedures to be followed.

Review rights

Applicants have the right to submit a written request for a review of the decision. This must be done within 30 days after being given notice of the decision. The review is to be conducted by a person other than the person who made the original decision. The Commission must respond with a written notice of decision within 15 days and no fees are involved.

If the applicant remains unhappy, they may lodge a written complaint to the Office of the Information Commissioner within 60 days following the internal review decision (30 days for third parties). The Commissioner's decision is final unless an appeal is made to the Supreme Court on a question of law.

Charges

The Commission can apply the following charges when processing a non-personal FOI application:

- charge for time taken dealing with the application - \$30.00 per hour
- charge for access time supervised by staff - \$30.00 per hour
- charges for photocopying - \$30.00 per hour for staff time; and 20c per copy

- charges for staff time in transcribing information from a tape or other device - \$30.00 per hour
- charge for duplicating a tape, film or computer information - actual cost
- charge for delivery, packaging and postage - actual cost.

In cases where charges levied are expected to be higher than \$25.00, the applicant will be provided with an estimate of charges as soon as possible after receipt of the application. The Commission reserves the right to request an advance deposit. A reduction in charges may be sought in the case of financial hardship.

GOVERNMENT POLICY REQUIREMENTS

SUBSTANTIVE EQUALITY

Although the Commission is not required to negotiate annually the scope of implementation for the *Policy Framework for Substantive Equality* with the Commissioner for Equal Opportunity, the Commission is aware of the intent and substance of the Policy Framework.

The Commission supports the objective of the Policy Framework to achieve substantive equality in the Western Australian public sector by:

- eliminating systematic racial discrimination in the provision of public sector services; and
- promoting sensitivity to the different needs of client groups.

OCCUPATIONAL HEALTH AND SAFETY

The Commission is committed to meeting its obligations and responsibilities under the *Workers' Compensation and Injury Management Act 1981*, the *Occupational Safety and Health Act 1984* and the *Occupational Safety and Health Regulations 1996* in such a manner as it ensures the provision and maintenance of a safe and healthy work environment for its members, Departmental staff and the general public.

Since the Commission uses staff resources through Department, training opportunities are available through Department's Corporate Learning and Development Division.

Although an external audit of the Commission's occupational safety and health management systems has not occurred, the Commission continues to provide a safe and secure working environment for its members and Departmental staff.

Commission members and staff assisting the Commission are expected to comply with the Code of Practice – Occupational Safety and Health in the WA Public Sector and to conduct themselves in a safe manner, not placing themselves and others at risk. During the 2018-19 reporting period, no worker's compensation claims were lodged, nor was any time lost from work as a result of work-related illness or injury.

DISCLOSURES AND LEGAL COMPLIANCE (continued)

In the event of a work-related injury, the Commission will provide effective claims management and rehabilitation assistance aimed at supporting the injured member through the illness or injury to ensure a safe return to work, where possible.

The Commission is committed to consulting with its members and staff assisting the Commission in a meaningful and effective manner on occupational safety and health issues, enabling each Commission member and Departmental staff member to contribute to decisions that may affect their health, safety and welfare at work.

GOVERNMENT BUILDING CONTRACTS

No contracts subject to the Government Building Training Policy had been awarded.

ANNUAL PERFORMANCE FOR 2018-19

Measure	Actual Results		Results against Target	
	2015-16 ⁽¹⁾	2018-19 ⁽¹⁾	Target	Comment on Result
Number of fatalities	0	0	0	
Lost time injury and/or disease incidence rate	0	0	0	
Lost time injury and/or disease severity rate	0	0	0 ⁽²⁾	
Percentage of injured workers returned to work:				
(i) within 13 weeks	N/A ⁽³⁾	N/A ⁽³⁾	100%	
(ii) within 26 weeks	N/A ⁽³⁾	N/A ⁽³⁾	≥ 80%	
Percentage of managers trained in occupational safety, health and injury management responsibilities	100%	100%	≥ 80%	

Note (1) This is a three-year trend. Thus, the year is to be three years prior to the current reporting year (i.e. current year is 2018-19; previous year is 2015-16).

Note (2) The reduction may be calculated over a three year period.

Note (3) There were no injured workers during this reporting year.

APPENDIX 1: CURRENT REFERENCES

The Commission makes recommendations for the reform of areas of the law referred to it by the Attorney General. Once the terms of reference are received, the Commission engages specialists with experience and expertise to increase the overall efficiency of the reviews. The Commission uses a project-based management model that allows for the management of multiple references at the same time.

This section refers only to references for which work is still being undertaken i.e. references for which a Final Report has not yet been produced.

Claims for Non-Economic Loss for Wrongful Death under the *Fatal Accidents Act 1959* (WA)

Pursuant to section 11(2)(b) of the *Law Reform Commission Act 1972* (WA), I hereby refer the matter “Non-economic loss under the *Fatal Accidents Act 1959* (WA)” for consideration by the Commission in accordance with the terms of reference.

The Law Reform Commission of Western Australia is to provide advice and make recommendations for consideration by the Government as to whether there should be any reform, and if so, the extent of any reform, to allow for claims for non-economic loss for wrongful death under the *Fatal Accidents Act 1959* (the ‘Act’) and any consequential amendments.

In carrying out its review, the Commission is required to undertake a review on the following:

1. the scope of the class of persons who may claim for non-economic loss
2. the types of non-economic loss that ought to qualify
3. the appropriate quantum of damages for non-economic loss, including how damages are to be calculated and whether damages should be:
 - a. fixed or variable
 - b. capped or uncapped
4. whether other types of damages awarded for non-economic loss for wrongful death should be deducted from any damages awarded for non-economic loss for wrongful death under the Act
5. the measurable financial impact of any recommended changes on plaintiffs, insurers and the Government
6. any other related matter.

I request that you provide me with your Final Report by 29 March 2019*.

Hon John Quigley MLA

26 February 2018

*Date extended by the Attorney General to 29 November 2019

APPENDIX 1: CURRENT REFERENCES (continued)

Maintenance and Champerty in Western Australia

Pursuant to section 11(2)(b) of the *Law Reform Commission Act 1972* (WA), I hereby refer the matter “Maintenance and Champerty in Western Australia” for consideration by the Commission in accordance with the terms of reference.

The Law Reform Commission of Western Australia is to provide advice and make recommendations for consideration by the Government as to whether the torts of maintenance and champerty should be abolished or whether the law in relation to their operation should be otherwise modified in Western Australia and any consequential amendments, including:

1. whether a statutory provision is required to preserve the rule that contracts giving effect to arrangements for maintenance and champerty are void and/or illegal as being contrary to public policy;
2. strategies for mitigating the adverse impacts, if any, of abolishing the torts; and
3. any other related matter.

I request that you provide me with your Final Report, to be produced as a supplementary report to the 2015 Representative Proceedings report, by 31 May 2019*.

Hon John Quigley MLA

16 July 2018

*Date extended by the Attorney General to 30 November 2019

APPENDIX 1: CURRENT REFERENCES (continued)

Review of the *Equal Opportunity Act 1984* (WA)

Pursuant to section 11(2)(b) of the *Law Reform Commission Act 1972* (WA), I hereby refer the matter “Review of the *Equal Opportunity Act 1984* (WA)” for consideration by the Commission in accordance with the terms of reference.

The Law Reform Commission of Western Australia is to provide advice and make recommendations for consideration by the Government on possible amendments to enhance and update the *Equal Opportunity Act 1984* (WA) (“the Act”) taking into account Australian and international best practices regarding equality and non-discrimination.

In carrying out its review, the Law Reform Commission should consider whether there is a need for any reform, and if so, the scope of reform regarding:

- (a) the objects of the Act and other preliminary provisions;
- (b) the grounds of discrimination including (but not limited to) introducing grounds of gender identity and intersex status;
- (c) the areas of public life to which the Act applies;
- (d) definitions in the Act including (but not limited to) discrimination, harassment (including a requirement for disadvantage in a definition of sexual harassment), impairment (including a requirement to make reasonable adjustments for persons with an impairment), victimisation, services and employment;
- (e) the inclusion of vilification, including racial, religious, sexual orientation and impairment vilification;
- (f) the inclusion of a positive duty not to discriminate on grounds covered by the Act;
- (g) exceptions to grounds of discrimination including (but not limited to) those for religious institutions;
- (h) the burden of proof;
- (i) the functions and investigative powers of the Commissioner for Equal Opportunity including (but not limited to) the functions of the Commissioner (either personally or by counsel) assisting complainants in the presentation of their case to the State Administrative Tribunal (“SAT”);
- (j) requirements around the referral of complaints to SAT;
- (k) the role and jurisdiction of SAT under the Act, including the requirement for leave if the complaint is dismissed by the Commissioner;
- (l) interaction with the Commonwealth *Marriage Amendment (Definition and Religious Freedoms) Act 2017* and with other relevant Commonwealth laws or proposed laws;
- (m) any other element of the Act or other laws relevant to equal opportunity and non-discrimination; and
- (n) any related matter.

In undertaking its review, the Law Reform Commission is to consider relevant legislation in other jurisdictions, relevant Western Australian reviews including the Equal Opportunity Commission’s 2007 review of the Act, relevant Commonwealth reports, including those on religious freedom and relevant international reports and agreements.

The Review is to involve a public call for submissions and consultation with relevant stakeholders, including churches, religious schools and institutions, and organisations that represent marginalised groups, including women, Aboriginal peoples, lesbian, gay, bisexual, transgender, queer and intersex people and persons with disabilities.

The Law Reform Commission may undertake its review in stages, considering one or several of the above matters prior to undertaking the broader review of the entire Act.

I request that you provide me with your Final Report by 30 June 2021.

Hon John Quigley MLA

28 February 2019

APPENDIX 2: ANNUAL ESTIMATES

In accordance with Treasurer's Instruction 953, the annual estimates for the 2019-20 year are hereby enclosed in the 2018-19 Annual Report. These estimates do not form part of the 2018-19 financial statements and are not subject to audit.

Law Reform Commission

SECTION 40 ESTIMATES 2019 - 2020

	2017-18 Actuals \$000	2018-19 Estimated Actuals \$000	2019-20 Section 40 Estimates \$000
Statement of Comprehensive Income			
COST OF SERVICES			
Expenses			
Employee benefit expenses	101	106	108
Supplies and services	152	180	181
Other expenses	4	10	10
Law Reform References	-	440	-
Total cost of services	257	736	299
Income			
Total income from other than State Government			
Other Revenue	-	-	-
	-	-	-
INCOME FROM STATE GOVERNMENT			
Service appropriation	-	-	-
Services received free of charge	156	190	191
Total income from State Government	156	190	191
(DEFICIT) FOR THE PERIOD	(101)	(546)	(108)

APPENDIX 2: ANNUAL ESTIMATES (continued)

	2017-18 Actuals \$000	2018-19 Estimated Actuals \$000	2019-20 Section 40 Estimates \$000
Statement of Financial Position			
Current Assets			
Cash and cash equivalents	1,040	494	386
Receivables	-	-	-
Total Current Assets	1,040	494	386
TOTAL ASSETS	1,040	494	386
Current Liabilities			
Payables	-	-	-
Total Current Liabilities	-	-	-
TOTAL LIABILITIES	-	-	-
NET ASSETS	1,040	494	386
EQUITY			
Contributed equity			
Accumulated surplus	17	17	17
TOTAL EQUITY	1,023	477	369
	1,040	494	386
Statement of Changes in Equity			
Contributed equity at start of period	17	17	17
Equity contributions during the period	-	-	-
Contributed equity at the end of the period	17	17	17
ACCUMULATED SURPLUS			
Balance at start of period	1,124	1,023	477
(Deficit) for period	(101)	(546)	(108)
Accumulated surplus at the end of the period	1,023	477	369
Balance of equity at end of period	1,040	494	386

APPENDIX 2: ANNUAL ESTIMATES (continued)

	2016-17 Actuals \$000	2017-18 Estimated Actuals \$000	2018-19 Section 40 Estimates \$000
Statement of Cash Flows			
CASH FLOWS FROM STATE GOVERNMENT			
Appropriation	-	-	-
Net cash provided by State Government	-	-	-
Utilised as follows:			
CASH FLOWS FROM OPERATING ACTIVITIES			
Payments			
Employee benefits	(102)	(106)	(108)
Supplies and services	-	(440)	-
GST payments on purchases	-	(44)	-
Receipts			
GST receipts from taxation authority	-	44	-
Net cash provided by/(used in) operating activities	(102)	(546)	(108)
Net (decrease) in cash held	(102)	(546)	(108)
Cash assets at the beginning of the financial year	1,142	1,040	494
CASH & CASH EQUIVALENTS AT THE END OF PERIOD	1,040	494	386



THE LAW REFORM COMMISSION
of
WESTERN AUSTRALIA