

The Law Reform Commission
of Western Australia

ANNUAL REPORT

1 July 2000 – 30 June 2001



The Law Reform Commission of Western Australia

Contents

2000-2001 Highlights	1
A Message from the Chairman	3
PART I: Annual Report 2000-2001	5
PART II: Performance Indicators	12
PART III: Financial Statements	16
PART IV: Appendix I: Terms of Reference	28
Appendix II: Publications	31
Appendix III: History of References	35

©Law Reform Commission of Western Australia

ALL RIGHTS RESERVED

Applications for reproduction should be made in writing
to the Law Reform Commission of Western Australia

ISBN: 1 74035 013 8

2000-2001 Highlights

Justice System Review Recommendations are to be implemented

- The former Attorney General Peter Foss QC urged the Ministry of Justice to examine the Commission's 447 recommendations made during its Review of the Criminal and Civil Justice System.
- The Ministry of Justice commenced implementing the Justice System Review, with the support of the new Attorney General Jim McGinty.
- The Commission's Executive Officer, Marion Brewer, subsequently left the Commission to take up a Project Management position with the Ministry of Justice's Policy and Legislation Division, assisting them with the massive implementation process. Marion was replaced by Heather Kay, who commenced with the Commission in January 2001.

Aboriginal Customary Laws

- The Commission received a new reference on Aboriginal Customary Laws on 2 December 2000, from the former Attorney General Peter Foss. This new reference resulted from the Commission's Justice System Review, where concerns were expressed regarding the treatment of Indigenous Australians in the current justice system.
- The reference aims to canvas issues relating to the recognition of traditional Aboriginal laws and customs within the Western Australian justice system. The Terms of Reference are set out in full in Appendix 1.
- The Commission immediately went to tender for project managers, writers, researchers and editors. The tender closed on 31 January 2001 and the Commission was very much impressed by the quantity and quality of the response received. A

Reference Group of representatives from various Aboriginal organisations was formed to evaluate the tender responses received and it is anticipated that a project team will be appointed in the later half of 2001.

- The reference is very broad in its terms and is estimated to take anywhere between three to five years to complete, with various consultation drafts and discussion papers to be published throughout that time.



Writs and Warrants of Execution

- The Commission envisages the reference will be run in the same manner as the Justice System Review, with numerous public meetings, extensive consultations with Aboriginal people and frequent visits to remote communities.

Law of Contempt

- In 1976 the Commission was asked to review the law relating to writs and warrants of execution. Because of the technical nature of much of the subject and the receipt of a very late submission on 30 June 1999, the Commission had to revise the draft after its final recommendations had been settled.
- The publication of Writs and Warrant brings to an end the only outstanding reference that predates the current Commission and its new operational structure.

Alliance with the Ministry of Justice for efficiency and economy

- Work continued on this reference with a public tender seeking consulting specialist writers with expertise in the field. The tender ran after the end of 1999-2000 financial year, with four successful tenderers being appointed in January 2001. The Commission expects to submit its final report during this financial year.
- The Commission increased its use of the Ministry of Justice's external and internal e-mail communications systems saving time and money in mail handling as well as postage, courier and telecommunications costs.
- During the past year the Commission's staff handled more than 16,000 letters, faxes, e-mail messages and telephone calls — many from members of the public concerned about legal issues and problems with the justice system.
- The Commission benefited from the economies of scale associated with using finance, library, human resources and information technology services provided by the Ministry of Justice.

A cycle of continuous improvement

- The public tender process, used to locate and engage consultants for the Justice System Review, was employed to select a printer to produce a five volume boxed set of publications associated with the Review of the Criminal and Civil Justice System.
- The Commission engaged a consultant to evaluate its operations and recommend a modified administrative structure to efficiently handle multiple references.
- The State Law Publisher now sells all Commission publications from a convenient William Street location in central Perth or through the Internet.

A Message from the Chairman



*Wayne Martin QC
Chairman*

The Law Reform Commission of Western Australia (LRCWA) commenced an exciting year with a new Reference and a new Executive Officer. Marion Brewer, who worked for the LRCWA for several years, resigned to assist the Ministry of Justice's Policy and Legislation Division in implementing some of the 447 recommendations made by the LRCWA during its Review of the Criminal and Civil Justice System. Her successor, Heather Kay, joined the LRCWA in January 2001, in time to commence work on what may prove to be one of its most complex and controversial references to date.

This new reference focuses on Aboriginal Customary Laws and aims to canvas issues relating to the recognition of traditional Aboriginal laws and customs within the Western Australian justice system. The reference resulted from the LRCWA's Review of Criminal and Civil Justice System where concerns were expressed in relation to the treatment received by Indigenous Australians in the current justice system. The Commission believed that these concerns would be best dealt with as a separate reference in its own right.

On 2 December 2000, the former Attorney General delivered the reference, prompting the LRCWA to immediately tender for project managers, writers, researchers and editors. The tender closed on 31 January 2001 and the Commission was overwhelmed by the responses received. A Reference Group was formed with representatives from various Aboriginal organisations was formed to evaluate the tender responses received and it is anticipated that a project team will be appointed in the later half of 2001.

The LRCWA envisages the reference will be run in a similar manner as the Review of the Criminal and Civil Justice System, with numerous public meetings, extensive culturally appropriate consultations with Aboriginal people and visits to all parts of the State. Although the Commission has not been given a deadline to complete the reference, it is hoped that by the end of 2002, an Issues Paper and a Consultation Draft will be published.

This year also saw the long awaited completion and subsequent publication of the Final Report on Writs and Warrants. This reference has been pending for 25 years and is the only one which predates the current Commission and its new operational structure. Work has also continued on our reference on the Law of Contempt. After seeking public comments and submissions, the Commission expects to deliver its Final Report by the end of 2001.



The other subsidiary project the Commission is currently working on is the conversion of all previous reports and discussion papers into an electronic format. These papers will then be republished on a CD-ROM to be distributed as a part of our 30th Anniversary celebrations in 2002. This project also complements the Commission's prior move to have all publications republished on microfiche, thus increasing accessibility and protecting the integrity of our publications for historic purposes.

The Attorney General has indicated that as the year 2002 marks the Law Reform Commission's 30th Anniversary, he proposes to take the opportunity to legislate to implement the vast bulk of the Law Reform Commission's previous reports. As a result, the Commission is currently undertaking an audit of all its publications to be presented to the Attorney General for his consideration.

We would like to take the opportunity to acknowledge the Attorney General for his support of the Commission's work and for his interest in implementing our prior report recommendations, in our anniversary year.

The Commission sincerely appreciates the contributions of all those individuals and organisations who assisted us throughout the year, particularly the representatives who form our Reference Group for the Aboriginal Customary Laws review. These generous individuals have provided us with their knowledge and guidance on a voluntary basis and will be instrumental in assisting the Commission to select a comprehensive project team.

Wayne Martin QC

Annual Report 2000-2001

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

The mission and performance indicators

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

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

The community served

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

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

Stakeholders

The Commission's stakeholders include those governed by particular laws and those charged with enforcing them. With each reference the Commission makes an effort to

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

Current assignments

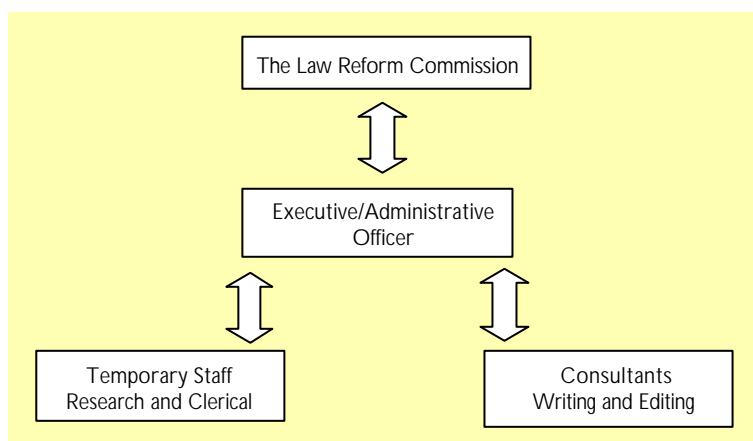
The LRCWA received a new reference to deal with Aboriginal Customary Laws. Work is continuing on the reference received last year on the Law of Contempt. Appendix I contains the Terms of Reference and a brief description of each of these current references. The Commission also completed its final report on 'Writs and Warrants of Execution' in connection with Reference 67.

Administrative restructure

In an effort to revitalise the Law Reform Commission and keep pace with changing societal demands and law reform requirements, the members of the Commission, after consultation with the Attorney General, embarked upon a plan to restructure the Commission's operations. Changes planned during in the 1996-1997 financial year were implemented in the years 1997-1998 and 1998-1999. The Commission presently employs only one person full-time who acts primarily as an executive and legal officer. The Commission engages additional temporary staff as needed to assist with particular projects.

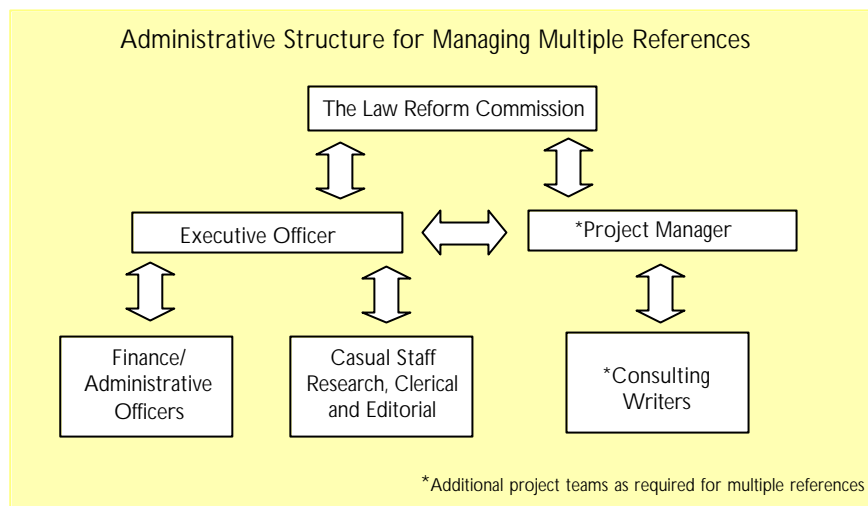
A cycle of continuous improvement for law reform

During the course of the Review of the Criminal and Civil Justice System in 1999 the LRCWA operated with a single regular staff member.



This structure was exceedingly cost effective. However, the Commission was of the view that, for managing multiple references, a project team system should augment the regular operational structure. The LRCWA engaged a consultant at the conclusion of the justice system review to evaluate the administrative officer's position. The result was a reclassification of the position and a recommendation for further restructuring and additional staff.

For accountability purposes and operational stability, a diversification of executive and financial roles was implemented. Separating the executive functions from the finance and administrative also enhanced efficiency. The following diagram illustrates the new operational structure trialed in 2000-2001.



Diversification

One goal of the restructure of the Law Reform Commission was to give the Commission an increased ability to draw upon the experience and expertise of specialists. The LRCWA engages consultants for research, writing and editing. This permits individuals who would not previously have been able to participate in the process of law reform to bring their unique and special skills to the Commission's law reform activities on less than a full time basis. The LRCWA endeavours to use the public tender procedure to select writers, editors and researchers for each project.

Research and publications

The Commission's core activities traditionally have been research and development of recommendations for reform. Appendix I provides current Terms of Reference. All references to the Commission since its establishment in 1972 and to its predecessor, the Law Reform Committee, are identified in Appendix III. Appendix II lists all LRCWA publications beginning with the most recent. Publication information is available on the Commission's web-site: <www.wa.gov.au/lrc/>. All previous publications are for sale from the State Law Publisher. Transferring sales to the State Law Publisher in 2000 was an important change to facilitate public access to the Commission's work.

Legislative change

There were no statutory changes nor significant judicial decisions affecting the LRCWA in 2000-2001

Structure and membership of the Commission

The Commission may consist of up to five members, two full-time and three part-time, appointed by the Governor of Western Australia. Of the part-time members, one is to be a private legal practitioner with not less than eight years' experience, one must be engaged in teaching law at a university in Western Australia with a status not less than

that of Senior Lecturer, and the third is to be a legal officer of the Crown Solicitor's Office with not less than eight years' experience. Full-time members are to be legal practitioners of at least eight years' standing, or persons suitable for appointment by reason of their legal qualifications and experience, whether in Western Australia or elsewhere.

Members' terms

Each of the present members of the Commission was appointed initially for a term of one year. Mr Martin QC has since been reappointed for a two year term and Professor Simmonds and Carolyn Jenkins were reappointed for further one year terms:

Member	Appointment Date	Reappointment	Appointment Expiry/ Resignation
Mr Martin QC	22 October 1996	17 October 2000	21 October 2002
Prof Simmonds	20 January 1997	17 October 2000	21 October 2001
Ms Jenkins	29 December 1999	17 October 2000	21 October 2001



Wayne Martin QC

Chairman

Wayne Martin QC is a member of the independent bar. He was appointed Queens Counsel in 1993. He has served as President of the Western Australian Bar Association. Mr Martin has law degrees from The University of Western Australia (LLB with honours) and London University (LLM). Mr Martin is a part-time member of the Administrative Review Council.

Mr Martin was elected Chairman of the Law Reform Commission on 25 February 1997. Pursuant to section 5 of the *Law Reform Commission Act 1972*, the Commission elects its Chairman from among the members. The Chairman may hold office for a term not exceeding one year, but shall be eligible for re-election.



Professor Ralph Simmonds

Members

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

Carolyn Frances (Lindy) Jenkins replaced Mr Cock QC as the Crown Solicitor's Office representative at the end of 1999. She is Senior Assistant Crown Counsel and has served in the Crown Solicitor's Office since 1989. Prior to coming to Western Australia she served with the Northern Territory Department of Law for seven years.



Lindy Jenkins

Members' fees

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

Meetings of the Commission

The Commission held 12 meetings during the 2000-2001 financial year. These were devoted primarily to finalising the Terms of Reference for the Aboriginal Customary Laws review, consulting with various stakeholders in relation to the Aboriginal Customary Laws review, finalising the publication of the Report on Writs and Warrants, and considering the drafts produced in connection with the reference on the Law of Contempt. The Commission also held one meeting with the Attorney General during the year.

The staff

The Executive Officer who coordinated the administrative and legal research activities and for the first half of the financial year was Marion Brewer, BA (Distinction) (Stanford), JD (Georgetown), LLM Candidate (The University of Western Australia).

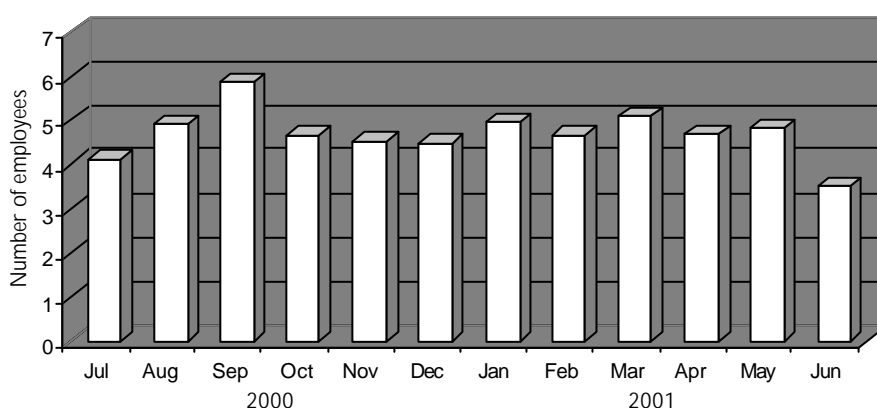
The Executive Officer coordinating administrative and legal research activities and currently managing the Aboriginal Customary Laws Reference for the Law Reform Commission is Heather Kay, LLB (The University of Western Australia), LLM Candidate (The University of Western Australia). She serves on a contract basis and is not a permanent officer of the Western Australian public service.

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

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

Staff 2000-2001: Brionie Ayling, Tim Ayling, Sharne Cranston, Beverley Edwards, Valerie Hobbs, Jennifer Hopa, Margaret Jordan, Leith Kay, Yuki Kobayashi, Cheryl MacFarlane, Lorna Paterson, Sean Redden, Annabelle Tilly, Chris Westcott, Adrian Wiley, Anne Yardley, Carla Yazmadjian

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



Office

The Commission may be reached by telephone on (08) 9264 6116; fax (08) 9264 6115; and e-mail: Ircwa@justice.wa.gov.au. The administrative office is located at Level 4 of the Hartley Poynton Building in Westralia Square, 141 St Georges Terrace, Perth, the headquarters of the Ministry of Justice. The Commission's website is located at:

<<http://www.wa.gov.au/lrc/>>. The Commission utilises facilities provided by the Ministry including information technology, human resources and financial management services and shares library facilities with other Ministry of Justice Library users.

Declaration of interests

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

Workplace agreement

The Commission's Workplace Agreement was adopted on 28 July 1999 and remains in operation until the end of 2002. It was implemented with the assistance of Human Resources from the Ministry of Justice before the close of the last financial year.

Advertising and sponsorship

During the 2000-2001 financial year the Law Reform Commission had no qualifying expenditures under section 175ZE of the *Electoral Act*.

Public sector standards and code of ethics

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

Code of conduct

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

Plan for women outcomes

The LRCWA is not participating in the government's two-year plan for women (1999-2001). However, the Commission's only full time regular employee and part-time Finance Officer are women and of the 17 temporary staff employed during the 2000/2001 Financial Year, seventy-five percent were women.

Information statement

Pursuant to sections 94-97 of the *Freedom of Information Act 1992* the LRCWA must publish annually an information statement. This Annual Report endeavours to present the required information. The Commission's formal information statement was also delivered to the Attorney General during 2000-2001.

As a result of restructuring, the relocation of its office, the development of the web site, and the State Law Publishers' take over of the sale of all LRCWA publications, the Commission's *Accounting Manual* has been redeveloped.

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

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

Except for submissions, correspondence or other information of a confidential nature covered by exemptions from the *Freedom of Information Act*, LRCWA material is available for inspection. Any requests for access to documents or amendment of any

personal information in any document should be addressed to the Executive Officer who is responsible for initial decisions about access or amendment. Appeals from the Executive Officer's decisions would be referred to the Commission.

Disability services

The LRCWA delivered its original Disability Services Plan in December 1995. During the 1997-1998 financial year the Commission relocated to the headquarters of the Ministry of Justice. The LRCWA enjoys the same access and facilities as others in the Ministry. As there has been a significant alteration in the Commission's mode of operation with the work of research and writing papers and reports no longer being carried out by full-time research officers, but by consultants appointed for particular projects, there is now greater flexibility in the Commission's working arrangements.

The Commission's community outreach program, developed during the 1998-1999 year, includes public meetings. In each instance the Commission selects venues with disabled access in mind. One location provided special facilities for the hearing impaired. At public meetings hosted by the LRCWA the Commission simultaneously projects the discussion notes on large screens so that people attending the meeting can see what is being recorded. Electronic publishing allows documents to be enlarged at will or projected. Modern technology may assist the visually or hearing impaired access to Commission publications.

Customer focus outcomes

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

Equal employment opportunity

The LRCWA seeks to promote equal opportunity for all persons. The Commission is committed to eliminating and ensuring the absence of discrimination in employment on the ground of sex, marital status, pregnancy, family responsibility or family status, race, religious or political conviction, impairment or age. The Commission has in place an equal opportunity management plan for 2001-2004, which recognises that a diverse workforce and diversity management is part of the solution to the successful implementation of workplace reform and cultural change.

Performance Indicators

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

Introduction

The changes in the Commission's operational structure and its approach to law reform activities generally prompted the redevelopment of performance indicators. The Commission is refining a new measure of effectiveness: community awareness. The change correlates with the LRCWA's new budgetary output performance measures that analyse web-site activity, media outreach, communications and public out reach. Perhaps most importantly, the changes give the Commission responsibility for achieving outcomes by which its performance can be measured.

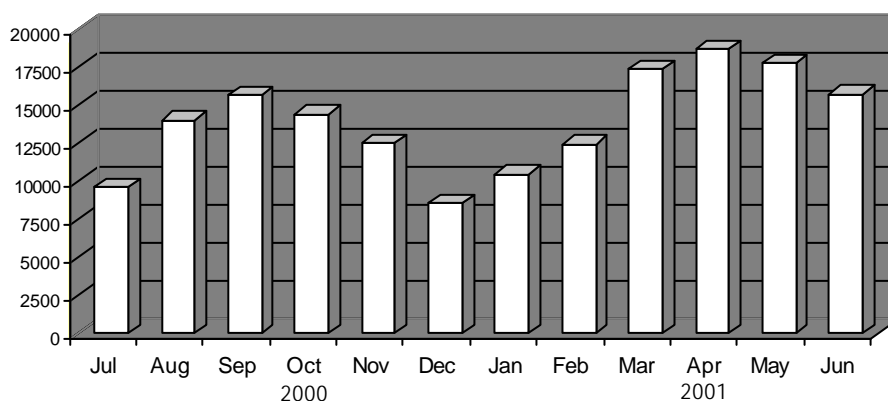
Effectiveness Indicator: Publications on Law Reform

The extent to which the Commission was able to report to the public and the Attorney General on topics within its references.

OUTPUT: Publications on Law Reform

During the year, the Commission completed its Writs and Warrants reference. Libraries throughout Western Australia are to receive a copy free of charge so that students and people interested can have easy access to the report. The Commission's web site has also maintained a high level of interest during the past year. This indicates that the Commission's previous publications are still considered relevant to the needs of society.

The Commission is also undertaking a major task, which involves the conversions of all previous reports and discussion papers into an electronic format. These papers will



then be republished on a CD-ROM to be distributed next year. The LRCWA recently sent hardcopies of all its publications to the United States to be republished on microfiche. Both these projects complement one another and will help to increase accessibility and protect the integrity of the publications for historic purposes.

All publications listed in Appendix II of this report are now available for sale through the State Law Publisher. The transfer of the Commission's sales activities makes all LRCWA publications more accessible.

The Commission has eliminated the previous practice of reporting progress on projects in favour of dealing with publications produced in connection with its references. This approach will permit tracking of costs in a project management context and enhance accountability by promoting reporting accuracy.

Work in Progress	2000-2001	1999-2000
Total references at start of year	2	2
New references received during the year	1	1
References completed	1	1
Publications	3	9
Number of consulting writers and specialists	5	3
Number of short term contract staff	17	15
Number of regular staff	2	1

**Effectiveness Indicator:
Submissions of Law Reform
Proposals**

The extent to which proposals for review of areas of law submitted by the Commission were adopted as the subject of references given to the Commission by the Attorney General.

The Commission submitted a proposal to review an area of the law to the Attorney General during the year. The proposal is under review and the Commission awaits the Attorney General's approval.

Under section 11(1) of the *Law Reform Commission Act 1972*, the Commission may prepare and submit to the Attorney General proposals for the review of any area of law with a view to reform. It may submit proposals for law reform made to it by any person or entity. The Commission encourages submissions from members of the public, whether orally or in writing, concerning a possible need for changes to the law. If the matters identified disclose a problem which may be suitable for reference to the Commission, the Commission refers the matter to the Attorney General. Sometimes issues raised by members of the public can be resolved by bringing them to the attention of the Attorney General or other responsible minister, without a formal reference.

**Efficiency Indicator:
Cost of Outputs**

Cost of Outputs	2000-2001	1999-2000
Output:		
Total Publications	3	9
Cost Per Publication (\$ 000)	201	76
Total Community Contacts	16 132	9 979
Cost Per Contact	\$10.45	\$17.15

Effectiveness Indicator:
Community Contacts

The extent to which the Commission was able to communicate with the public concerning law reform matters and promote community awareness of law reform, measured by community contacts.

OUTPUT: Community contacts

To keep the law relevant to the needs of society, the views of the public should be canvassed and considered. Through greater community awareness and education regarding the law and how the legal system operates, the Commission can assist in keeping the law relevant to the needs of society. To this end, the Commission provides all Western Australian public libraries with its publications. The Commission's web-site also had over 167,000 hits over the past financial year and took over 10,500 phone calls from the general public and interested parties.

Community Contacts	2000-2001	1999-2000
Public contacts (phone, fax, mail, e-mail etc)	16,082	9,939
Public meetings hosted	1	0
Public appearances	1	15
Media Outreach Results	48	25

Note that comparatives have been adjusted to reflect a change in methodology used to calculate community contacts.

STATEMENT OF CERTIFICATION

We hereby certify that the performance indicators are based on proper records and fairly represent the performance of the Law Reform Commission of Western Australia for the year ending 30 June 2001.



WS MARTIN QC
Chairman



RL SIMMONDS
Member



CF JENKINS
Member

16 August 2001



AUDITOR GENERAL

To the Parliament of Western Australia

LAW REFORM COMMISSION OF WESTERN AUSTRALIA PERFORMANCE INDICATORS FOR THE YEAR ENDED JUNE 30, 2001

Scope

I have audited the key effectiveness and efficiency performance indicators of the Law Reform Commission of Western Australia for the year ended June 30, 2001 under the provisions of the Financial Administration and Audit Act 1985.

The Commission is responsible for developing and maintaining proper records and systems for preparing and presenting performance indicators. I have conducted an audit of the key performance indicators in order to express an opinion on them to the Parliament as required by the Act. No opinion is expressed on the output measures of quantity, quality, timeliness and cost.

My audit was performed in accordance with section 79 of the Act to form an opinion based on a reasonable level of assurance. The audit procedures included examining, on a test basis, evidence supporting the amounts and other disclosures in the performance indicators, and assessing the relevance and appropriateness of the performance indicators in assisting users to assess the Commission's performance. These procedures have been undertaken to form an opinion as to whether, in all material respects, the performance indicators are relevant and appropriate having regard to their purpose and fairly represent the indicated performance.

The audit opinion expressed below has been formed on the above basis.

Audit Opinion

In my opinion, the key effectiveness and efficiency performance indicators of the Law Reform Commission of Western Australia are relevant and appropriate for assisting users to assess the Commission's performance and fairly represent the indicated performance for the year ended June 30, 2001.

K O O'NEIL
ACTING AUDITOR GENERAL
November 29, 2001

Part III

Financial Statements

for year ending 30 June 2001

Note:

The Law Reform Commission uses the financial services of the Ministry of Justice. KPMG performed its 2000-2001 internal audit under contract through the Ministry. The Commission acknowledges Alan Andersson of the Ministry of Justice who has served as the financial officer for the LRCWA since 1998.

LAW REFORM COMMISSION OF WESTERN AUSTRALIA
Statement of Financial Performance
for the year ended 30 June 2001

	Note	2000-01 \$	1999-00 \$
COST OF SERVICES			
Expenses from ordinary activities			
Employee expenses	2	243,116	198,534
Supplies and services	3	314,026	413,850
Depreciation expense	4	34,821	25,324
Accommodation expenses	5	40,648	15,517
Net loss on disposal of non-current assets	6	127,992	21
Other expenses from ordinary activities	7	82,415	202,363
Total cost of services		<u>843,018</u>	<u>855,609</u>
Revenues from ordinary activities	8	<u>7,428</u>	<u>7,754</u>
Net cost of services		<u>835,590</u>	<u>847,855</u>
REVENUES FROM GOVERNMENT			
Appropriations	9	778,000	762,000
Liabilities assumed by the Treasurer		20,040	14,720
Resources received free of charge		211,887	169,309
Total revenues from Government		<u>1,009,927</u>	<u>946,029</u>
Total changes in equity other than those resulting from transactions with owners as owners		<u>174,337</u>	<u>98,174</u>

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

Statement of Financial Position
as at 30 June 2001

	Note	2000-01 \$	1999-00 \$
CURRENT ASSETS			
Cash assets	10	564,023	255,547
Inventories	11	73,466	77,410
Receivable	12	10,029	483
Other assets	13	5,173	–
Total current assets		<u>652,691</u>	<u>333,440</u>
NON-CURRENT ASSETS			
Property, plant, equipment and vehicles	14	38,909	182,021
Total assets		<u>691,600</u>	<u>515,461</u>
CURRENT LIABILITIES			
Payables	15	9,967	16,200
Provisions	16	4,841	6,965
Other liabilities	17	5,250	3,064
Total current liabilities		<u>20,058</u>	<u>26,229</u>
NON-CURRENT LIABILITIES			
Provisions	16	12,524	4,551
Total liabilities		<u>32,582</u>	<u>30,780</u>
NET ASSETS		659,018	484,681
EQUITY	18		
Accumulated surplus		<u>659,018</u>	<u>484,681</u>
TOTAL EQUITY		659,018	484,681

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

Statement of Cash Flows
for the year ended 30 June 2001

	Note	2000-01 \$	1999-00 \$
CASH FLOWS FROM GOVERNMENT			
Recurrent appropriations		<u>778,000</u>	<u>762,000</u>
Net cash provided by government		<u>778,000</u>	<u>762,000</u>
Utilised as follows:			
CASH FLOWS FROM OPERATING ACTIVITIES			
Payments			
Payments to employees and suppliers		(447,706)	(671,953)
GST payments		(22,1303)	–
Receipts			
Receipts from services		159	8,211
GST receipts		19,854	–
Net cash provided by/(used in) operating activities	19(b)	<u>(449,823)</u>	<u>(663,742)</u>
CASH FLOWS FROM INVESTING ACTIVITIES			
Proceeds from sale of non-current assets		10,108	–
Purchase of non-current assets		(29,809)	(18,978)
Net cash provided by/(used in) financing activities		<u>(19,701)</u>	<u>(18,978)</u>
Net increase in cash held		308,476	79,280
Cash assets at the beginning of the financial year		255,547	176,267
Cash at the end of the financial year	19(a)	<u>564,023</u>	<u>255,547</u>

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

LAW REFORM COMMISSION OF WESTERN AUSTRALIA
Notes to the Financial Statements
the year ended 30 June 2001

1. Significant Accounting Policies

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

General Statement

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

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

(a) Valuation of Non-current Assets

Non-current assets as at 30 June 1995 were brought to account at fair market values and additions since that date are brought to account at cost.

(b) Depreciation of non-current assets

All non-current assets having a limited useful life are systematically depreciated over their useful lives in a manner which reflect the consumption of their service potential. Depreciation is provided for on the straight line basis using rates which are reviewed annually. Useful lives for each class of depreciable asset are:

Office equipment and computers	3 to 10 years
Library	15 years

(c) Inventories

Stocks are valued on a first in first out basis at the lower of cost and realisable value. Obsolete stock with a publication date exceeding seven years is written off.

(d) Employee Entitlements

(i) Annual Leave

This entitlement is recognised at current remuneration rates and is measured at the amount unpaid at the reporting date in respect to employees' service up to that date.

(ii) Long service leave

A liability for long service leave is recognised, and is measured as the present value of expected future payments to be made in respect of services provided by employees up to 30 June 2001. Consideration is given, when assessing expected future payments, to expected future wage and salary levels including relevant on costs, experience of employee departures and periods of service. Expected future payments are discounted using interest rates to obtain the estimated future cash outflows. The long service leave liability is based on a shorthand factor provided by an Actuary.

This method of measurement of the liability is consistent with the requirements of Australian Accounting Standard AAS30 "Accounting for Employee Entitlements".

(iii) Superannuation

Staff may contribute to the Superannuation and Family Benefits Act Scheme, a defined benefits pension scheme now closed to new members, or the Gold State Superannuation Scheme, a defined benefit and lump sum scheme now also closed to new members. All staff who do not contribute to either of these schemes become non-contributory members of the West State Superannuation Scheme, an accumulation fund complying with the Commonwealth Government's Superannuation Guarantee (Administration) Act 1992.

The superannuation expense is comprised of the following elements:

- change in the unfunded employers liability in respect of current employees who are members of the Superannuation and Family Benefits Act Scheme and current employees who accrued a benefit on transfer from that Scheme to the Gold State Superannuation Scheme; and
- notional employer contributions which would have been paid to the Gold State Superannuation Scheme and West State Superannuation Scheme if the Law Reform Commission had made concurrent employer contributions to those Schemes.

(e) Appropriations

Appropriations in the nature of revenue whether recurrent or capital are recognised as revenues in the period in which the Commission gains control of the appropriated funds. The Commission gains control of appropriated funds at the time those funds are deposited into the Commission's bank account.

(f) Receivables, accrued salaries and payables

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

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

Accrued salaries represents the amount due to staff but unpaid at the end of the financial year, as the end of the last pay period for that financial year does not coincide with the end of the financial year.

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

(g) Resources received free of charge

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

(h) Comparative figures

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

	2000-01	1999-00
	\$	\$
2. Employee expenses		
Salaries	211,538	158,309
Change in annual / long service leave entitlements	5,849	6,453
Superannuation expense	20,040	14,720
Other employee expenses	5,689	19,052
	<u>243,116</u>	<u>198,534</u>

	2000-01 \$	1999-00 \$
3. Supplies and services		
Goods and supplies	14,260	13,251
Services and contracts	87,879	231,290
Resources received free of charge (note 9)	211,887	169,309
	<u>314,026</u>	<u>413,850</u>
4. Depreciation expense		
Office equipment and furnishings	21,581	12,084
Library	13,240	13,240
	<u>34,821</u>	<u>25,324</u>
5. Accommodation expense		
Building rent operating lease expense	<u>40,648</u>	<u>15,517</u>
6. Net loss on disposal of non-current assets		
Office equipment and computers	(4,308)	21
Library	132,300	-
	<u>127,992</u>	<u>21</u>
7. Other expenses from ordinary activities		
Advertising	27,748	1,560
Communication expenses	4,906	13,617
Insurance	7,840	6,209
Printing	17,654	169,452
Other expenses	24,267	11,525
	<u>82,415</u>	<u>202,363</u>
8. Other revenues from ordinary activities		
Publication sales	3,217	7,754
Other revenue	4,211	-
	<u>7,428</u>	<u>7,754</u>
9. Revenues from Government		
Recurrent appropriation revenue received this year	<u>778,000</u>	<u>762,000</u>
Superannuation liability assumed by the Treasurer	<u>20,040</u>	<u>14,720</u>
Resources received free of charge have been determined on the basis of the following estimates provided by agencies.		
Office of the Auditor General		
Audit services	6,500	6,500
Ministry of Justice		
Accounting, human resources and information technology services	204,471	161,853
Government Property Office		
Property management services (notional management fee based on lease payments)	916	956
	<u>211,887</u>	<u>169,309</u>

	2000-01 \$	1999-00 \$
10. Cash assets		
Operating account	<u>564,023</u>	<u>255,547</u>
11. Inventories		
Stocks of publications	<u>73,466</u>	<u>77,410</u>
12. Receivables		
Trade debtors	7,753	483
GST receivable	2,276	-
	<u>10,029</u>	<u>483</u>
The carrying amount of debtors approximates to their net fair values.		
13. Other assets		
Prepayments	<u>5,173</u>	<u>-</u>
14. Property, plant, equipment and vehicles		
Plant, equipment and vehicles		
At cost	82,373	62,261
Accumulated depreciation	(43,464)	(25,780)
	<u>38,909</u>	<u>36,481</u>
Library		
At fair value	-	198,500
Accumulated depreciation	-	(52,960)
	<u>-</u>	<u>145,540</u>
Reconciliations:		
Plant, equipment and vehicles		
Carrying amount at start of year	36,481	29,608
Additions	29,809	18,978
Disposals	(5,800)	(21)
Depreciation	(21,581)	(12,084)
Carrying amount at end of year	<u>38,909</u>	<u>36,481</u>
Library		
Carrying amount at start of year	145,540	158,780
Additions	-	-
Disposals	(132,300)	-
Depreciation	(13,240)	(13,240)
Carrying amount at end of year	<u>-</u>	<u>145,540</u>
15. Payables		
Trade and other creditors	<u>9,967</u>	<u>16,200</u>
The carrying amount of payables approximates to their net fair values.		
16. Provisions		
Current – Annual leave	4,841	6,965
Non-current – Long service leave	12,524	4,551
Total provision for employee entitlements	<u>17,365</u>	<u>11,516</u>
The Commission considers the carrying amount of employee entitlements approximates the net fair value.		

	2000-01	1999-00
	\$	\$
17. Other liabilities		
Accrued Salaries		
Amounts owing for the 6 working days from 22 June to 30 June 2001. (2000, 6 working days).	<u>5,250</u>	<u>3,064</u>
Accrued salaries are settled within a few days of the financial year end. The carrying amount of accrued salaries is equivalent to the net fair value.		
18. Equity		
Equity represents the residual interest in the net assets of the Commission. The Government holds the equity interest in the Commission on behalf of the community.		
Accumulated surplus		
Opening balance	484,681	386,507
Change in net assets	174,337	98,174
Closing balance	<u>659,018</u>	<u>484,681</u>
Total equity	<u>659,018</u>	<u>484,681</u>
19. Notes to the Statement of Cash Flows		
(a) Reconciliation of cash		
For the purpose of the Statement of Cash Flows, cash includes cash at bank. Cash at the end of the financial year as shown in the Statement of Cash Flows is reconciled to the related items in the Statement of Financial Position as follows:		
Cash assets	<u>564,023</u>	<u>255,547</u>
(b) Reconciliation of net cost of services to net cash flows provided by/(used in) operating activities		
Net cost of services	(835,590)	(847,855)
Non-cash items:		
Depreciation	34,821	25,324
Superannuation	20,040	14,720
Resources received free of charge	211,887	169,309
Loss on sale of property, plant and equipment	127,992	21
(Increase) / decrease in assets:		
Receivables	(7,270)	457
Inventories	3,944	(38,603)
Other current assets	(5,173)	1,466
Increase / (decrease) in liabilities:		
Payables	(6,233)	4,573
Other current liabilities	2,186	393
Current provisions	(2,124)	3,254
Non-current provisions	7,973	3,199
Change in GST receivables	(2,276)	-
Net cash provided by/(used in) operating activities	<u>(449,823)</u>	<u>(663,742)</u>

	2000-01	1999-00
	\$	\$
20. Commitments for expenditure		
Lease commitments		
Commitments in relation to leases contracted for at the reporting date but not recognised as liabilities payable: within 1 year	<u>27,544</u>	<u>-</u>

21. Remuneration and Retirement Benefits of Members of the Accountable Authority and Senior Officers

Remuneration of Members of the Accountable Authority

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

	2000-01	1999-00
\$20,001 - \$30,000	2	2

The total remuneration of the members of the Accountable Authority is:	<u>44,662</u>	<u>45,998</u>
--	---------------	---------------

Retirement Benefits of Members of the Accountable Authority

The following amounts in respect of retirement benefits were paid or became payable for the financial year:

Notional contributions to West State Superannuation Scheme	<u>2,688</u>	<u>-</u>
--	--------------	----------

Remuneration of Senior Officers

The number of Senior Officers other than the members of the Accountable Authority, whose total of fees, salaries and other benefits received or due and receivable for the financial year fall within the following bands are:

	2000-01	1999-00
\$30,001 - \$40,000	2	-
\$50,001 - \$60,000	-	1

The total remuneration of senior officers is:	<u>67,075</u>	<u>59,266</u>
---	---------------	---------------

Retirement Benefits of Senior Officers

The following amounts in respect of retirement benefits were paid or became payable for the financial year:

Notional contributions to West State Superannuation Scheme	<u>5,459</u>	<u>4,132</u>
--	--------------	--------------

No members of the Accountable Authority or its Senior Officers were members of the Superannuation and Family Benefits Act Scheme.

22. Financial instruments

Interest rate risk exposure

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

Credit risk exposure

All financial assets are unsecured.

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

23. Explanatory statement

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

Significant variations have been defined as those greater than 5% and \$7,000 of the budget estimate. Comparisons are on an 'accrual' basis.

	Budget 2000-01 \$	Actual 2000-01 \$	Variance \$
Depreciation expense	22,000	34,821	12,821
Net loss on disposal of assets	-	127,992	127,992
Other expenses from ordinary activities	639,000	437,089	(201,911)
Resources received free of charge	101,000	211,887	110,887

Depreciation expense

The increase in depreciation expense is due to the purchase of new computer equipment during the year.

Net loss on disposal of assets

The net loss on disposal of assets can be explained by the transfer of a substantial portion of the Commission's library to the Ministry of Justice on 22 June 2001. The items transferred included law reports, statutes, reference books and journals. In addition, a recent valuation of the remaining library items indicated that they had limited general appeal and were of minimal value.

Other expenses from ordinary activities

The saving is due to the delay in commencement of the review of Aboriginal Customary Law which has meant that the associated costs have also been delayed.

Resources received free of charge

The Commission relies extensively on the Ministry of Justice for the provision of library, information technology, finance and human resource functions. The budget is based on the estimated activities performed in these areas and costs are distributed to the Commission on a percentage of actual costs basis. The increase in resources received free of charge is due to the Ministry's actual costs for the year in these areas being higher than anticipated.

(b) Significant variations between revenues and expenditures for the financial year and revenues and expenditures for the immediately preceding financial year.

Significant variations have been defined as those greater than 5% and \$7,000 of the previous years actuals. Comparisons are on an 'accrual' basis.

	Actual 2000-01 \$	Actual 1999-00 \$	Variance \$
Employee expenses	243,116	198,534	44,582
Depreciation expense	34,821	25,324	9,497
Net loss on disposal of assets	127,992	21	127,971
Other expenses from ordinary activities	437,089	631,730	(194,641)
Resources received free of charge	211,887	169,309	42,578

Employee expenses

The increase in employee expenses is due to a policy change whereby the Commission now prefers to employ staff as employees rather than contract staff. Contract staff costs are included under the heading 'Services and Contracts'.

Depreciation expense

The explanation for the increase is explained at 23(a).

Net loss on disposal of assets

The explanation for the increase is explained at 23(a).

Other expenses from ordinary activities

The explanation for the decrease is explained at 23(a).

Resources received free of charge

The explanation for the increase is explained at 23(a).

24. Supplementary financial information

- There were no losses of public moneys or other public property through theft or default during the financial year (1999-00, nil).
- There were no write offs of public money or other public property during the financial year (1999-00, nil).
- There were no gifts of public property during the financial year (1999-00, nil).
- There were no contingent liabilities as at 30 June 2001 (1999-00, nil).
- There were no events occurring after the balance date at the end of the financial year.
- The Commission had no related bodies during the financial year (1999-00, nil).
- The Commission had no affiliated bodies during the financial year (1999-00, nil).

LAW REFORM COMMISSION OF WESTERN AUSTRALIA

STATEMENT OF CERTIFICATION

The accompanying financial statements of the Law Reform Commission of Western Australia have been prepared in compliance with the provisions of the *Financial Administration and Audit Act 1985* from proper accounts and records to present fairly the financial transactions for the year ending 30 June 2001 and financial position as at 30 June 2001.

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



WS MARTIN QC
Chairman

31 August 2001



RL SIMMONDS
Member

31 August 2001



PJ KING
Principal Accounting Officer

31 August 2001



AUDITOR GENERAL

To the Parliament of Western Australia

LAW REFORM COMMISSION OF WESTERN AUSTRALIA FINANCIAL STATEMENTS FOR THE YEAR ENDED JUNE 30, 2001

Scope

I have audited the accounts and financial statements of the Law Reform Commission of Western Australia for the year ended June 30, 2001 under the provisions of the Financial Administration and Audit Act 1985.

The Commission is responsible for keeping proper accounts and maintaining adequate systems of internal control, preparing and presenting the financial statements, and complying with the Act and other relevant written law. The primary responsibility for the detection, investigation and prevention of irregularities rests with the Commission.

My audit was performed in accordance with section 79 of the Act to form an opinion based on a reasonable level of assurance. The audit procedures included examining, on a test basis, the controls exercised by the Commission to ensure financial regularity in accordance with legislative provisions, evidence to provide reasonable assurance that the amounts and other disclosures in the financial statements are free of material misstatement and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with Accounting Standards, other mandatory professional reporting requirements and the Treasurer's Instructions so as to present a view which is consistent with my understanding of the Commission's financial position, the results of its operations and its cash flows.

The audit opinion expressed below has been formed on the above basis.

Audit Opinion

In my opinion,

- (i) the controls exercised by the Law Reform Commission of Western Australia provide reasonable assurance that the receipt and expenditure of moneys and the acquisition and disposal of property and the incurring of liabilities have been in accordance with legislative provisions; and
- (ii) the Statement of Financial Performance, Statement of Financial Position and Statement of Cash Flows and the Notes to and forming part of the financial statements are based on proper accounts and present fairly in accordance with applicable Accounting Standards, other mandatory professional reporting requirements and the Treasurer's Instructions, the financial position of the Commission at June 30, 2001 and the results of its operations and its cash flows for the year then ended.

K O O'NEIL
ACTING AUDITOR GENERAL
November 29, 2001

4th Floor Dumas House, 2 Havelock Street, West Perth 6005, Western Australia. Tel: 08 9222 7500 Fax: 08 9322 5664

Appendices

Appendix I: Terms of Reference

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

The traditional approach to law reform in Western Australia

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

A new approach for a Review of the Criminal and Civil Justice System

On 22 September 1997 the Commission received the most significant reference in its 30-year history: a request for a Review of the Criminal and Civil Justice System. Using the traditional approach it would not have been possible to review the Criminal and Civil Justice System within a limited period of time.

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

Writs and Warrants of Execution — Project 67

To review the law relating to writs and warrants of execution as they relate to the Transfer of Land Act 1893 and to review the priority of writs and warrants of execution generally, including warrants of execution under the Justices Act 1902.

In 1976 the Commission was asked to review the law relating to writs and warrants of execution. Issues included the questions of whether the law should be amended so that the period under section 133 of the Transfer of Land Act 1897 is longer than four months, and whether there should be provision to apply to the Court for an extension of the period. Under section 133, a judgment creditor may serve on the Registrar of Titles a copy of a writ of 'fi fa' (fieri facias) for registration against the land of the judgment debtor. A writ of fi fa is a type of writ of execution directing the sheriff to

take from the property of the debtor a sum equal to the amount of a judgment debt, interest and the costs of execution. When served the writ binds land involved for four months from the date of service. There is no provision in the Transfer of Land Act for extension of the four-month period. If a judgment creditor is unable to sell the land concerned within that time a further copy of the writ may be served on the Registrar before or after the expiry of a previous four-month period. Section 133 applies (with necessary changes) to writs of fi fa issued out of the District Court and to warrants of execution issued out of the Local Court.

Other issues include the priority of writs and warrants of execution when issued out of the same court or different courts and the question of whether stale writs of execution should remain uncanceled on the title.

Because of the technical nature of much of the subject and the need to finally conclude this reference, the Commission did not issue a discussion paper or seek public comment on the issues involved. Work on the reference had been suspended until 1996 as a result of other priorities. A former staff member who is now retired completed work on a draft report and the LRCWA circulated the draft for comment in November 1998. The Commission received a very late submission and completed its final report on 30 June 2001. The Commission will submit the report to the Attorney General for tabling in Parliament early in the next financial year.

Contempt

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

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

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

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

PETER FOSS QC MLC 17 May 2000

The Commission commenced work on this reference with a public tender seeking consulting specialist writers with expertise in the field. The tender ran after the end of the 1999-2000 financial year. Three writers and an editor were subsequently engaged and work commenced shortly thereafter, on the drafting of discussion papers. After seeking submissions from various stakeholders and interested parties, the Commission expects to deliver its final report by the end of this year.

Current reference

Aboriginal Customary Laws — Project 94

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

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

Particular reference will be given to:

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

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

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

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

This review also is the first to trial the Commission's new project team structure, as discussed above (see also Part 1 of the report). The Commission anticipates the appointment of a project manager early in the new financial year, with a project team to be assembled shortly thereafter. The Commission estimates the project will extend over several years, involving extensive public consultations and travel to remote Aboriginal communities. The Commission is very enthusiastic about commencing work on such a significant reference, particularly as it follows so closely on from the success of the Review of the Criminal and Civil Justice System,

Appendix II: Publications

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

Year	Topic	Reference No	Publication Type
2001	Writs and Warrants of Execution Annual Report 2000-2001	67	Rep Rep
2000	19th Australian Law Reform Agencies Conference Annual Report 1999-2000		CD Rep
1999	Review of the Criminal and Civil Justice System: • Final Report • Consultation Drafts (2 volumes) • Project Summary • Executive Summary • Submissions Summary • 2 CDs, containing reports in electronic format Annual Report 1998-1999	92	Rep Rep Rep Rep CD Rep
1998	Financial Protection in the Building and Construction Industry Sale of Goods Act 1895 Reforming the Justice System Annual Report 1997-1998	82 89 92	Rep Rep I/P Rep
1997	Limitation and notice of actions Restrictive covenants Annual Report 1996-1997	36 Pt II 91	Rep Rep Rep
1996	Annual Report 1995-1996		Rep
1995	Enforcement of judgments of Local Courts Enforcement of judgments of Local Courts Restrictive covenants Implied terms in the Sale of Goods Act 1895 Equitable rules in contracts for the sale of goods Financial protection in the building and construction industry Annual Report 1994-1995	16 Pt II 16 Pt II 91 89 89 82	D/P Rep D/P D/P D/P D/P
1994	Annual Report 1993-1994 Enforcement of orders of Courts of Petty Sessions United Kingdom statutes in force in Western Australia Consent to sterilisation of minors Joint tenancy and tenancy in common	55 Pt III 75 77 Pt II 78	Rep Rep Rep Rep
1993	Annual Report 1992-1993 Professional privilege for confidential communications	90	Rep
1992	Limitation and notice of actions Police Act offences Annual Report 1991-1992	36 Pt II 85	D/P Rep
1991	Criminal process and mental disorder Effect of marriage or divorce on wills Medical treatment for the dying Evidence of children and other vulnerable witnesses Professional privilege for confidential communications Annual Report 1990-1991	69 76 Pt II 84 87 90	Rep Rep Rep Rep D/P
1990	Confidentiality of medical records and medical research Effect of marriage or divorce on wills Administration Act Evidence of children and other vulnerable witnesses Annual Report 1989-1990	65 Pt II 76 Pt II 88 87	Rep D/P Rep D/P Rep
1989	Confidentiality of medical records and medical research Payment of witnesses in civil proceedings Police Act offences Incitement to racial hatred Incitement to racial hatred Annual Report 1988-1989	65 Pt II 83 85 86 86	D/P Rep D/P D/P Rep Rep
1988	Local Courts Minors' contracts Administration of assets Medical treatment for minors Payment of witnesses in civil proceedings Medical treatment for the dying Annual Report 1987-1988	16 Pt I 25 Pt II 34 Pt VII 77 83 84	Rep Rep Rep D/P D/P D/P Rep
1987	Criminal process and mental disorder Annual Report 1986-1987	69	D/P Rep

Year	Topic	Reference No	Publication Type
1986	Judicial review of administrative decisions Alteration of ground levels Courts of Petty Sessions Problem of old convictions Annual Report 1985-1986	26 Pt II 44 55 Pt II 80	Rep Rep Rep Rep
1985	Wills: substantial compliance Pawnbrokers Act Pawnbrokers Act Annual Report 1984-1985	76 Pt I 81 81	Rep D/P Rep Rep
1984	Recognition of interstate and foreign grants of probate and administration Trustees' powers of investment Alteration of ground levels Courts of Petty Sessions Wills: substantial compliance Problem of old convictions Annual Report 1983-1984	34 Pt IV 34 Pt V 44 55 Pt II 76 Pt I 80	Rep Rep D/P D/P D/P D/P Rep
1983	Local Courts Annual Report 1982-1983	16 Pt I	D/P Rep
1982	Appeals from administrative decisions Limitation and notice of actions: latent disease and injury Strata Titles Act Annual Report 1981-1982	26 Pt I 36 Pt I 56	Rep Rep Rep Rep
1981	Liability for stock straying on to the highway (2nd report) Judicial review of administrative decisions Trustees' powers of investment Liability of highway authorities for non-feasance Privacy Interest on judgments Absconding Debtors Act Annual Report 1980-1981	11 26 Pt II 34 Pt V 62 65 70 73	Rep D/P D/P Rep D/P Rep Rep Rep
1980	Liability for stock straying on to the highway (2nd W/P) Admissibility in evidence of computer records Recognition of interstate and foreign grants of probate and administration Unclaimed money Privilege for journalists Exemption from jury service Retention of court records Absconding Debtors Act Annual Report 1979-1980	11 27 34 Pt IV 51 53 71 72 73	D/P Rep D/P Rep Rep Rep Rep D/P Rep
1979	Annual Report 1978-1979 Defamation Appeals from Courts of Petty Sessions Small Debts Court Bail Retention of court records	8 55 Pt I 63 64 72	Rep Rep Rep Rep D/P
1978	Minors' contracts Appeals from administrative decisions Admissibility in evidence of computer records Official attestation of forms and documents Administration of deceased insolvent estates Appeals from Courts of Petty Sessions Liability of highway authorities for non-feasance Small Debts Court Fatal accidents Fatal accidents Exemption from jury service Annual Report 1977-1978	5 Pt II 26 Pt I 27 28 34 Pt III 55 Pt I 62 63 66 66 71	D/P D/P D/P Rep Rep D/P D/P D/P D/P Rep Rep D/P Rep
1977	Official attestation of forms and documents Competence and compellability of spouses as witnesses Administration of deceased insolvent estates Compensation for new street alignments Suitors' Fund Act Part B: criminal proceedings Privilege for journalists Strata Titles Act Section 2 of the Gaming Act Enforcement of judgment debts Bail Annual Report 1976-1977	28 31 34 Pt III 39 49 53 56 58 61 64	D/P Rep D/P Rep Rep D/P D/P Rep Rep D/P Rep

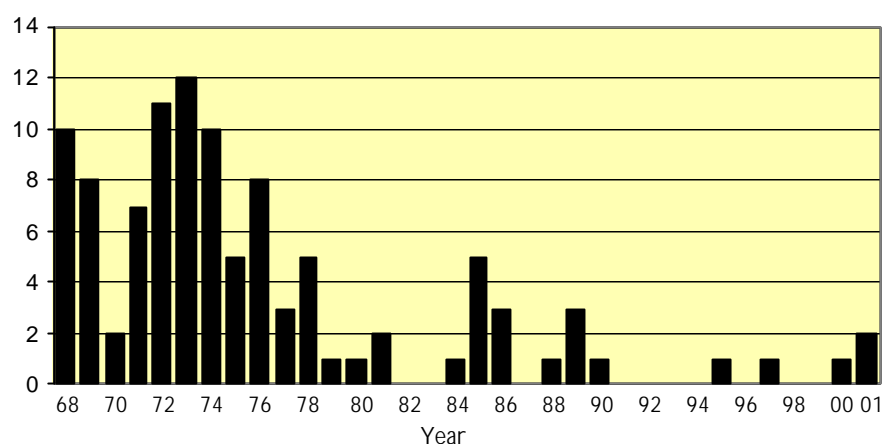
Year	Topic	Reference No	Publication Type
1976	Administration bonds and sureties	34 Pt II	Rep
	Compensation for persons detained in custody	43	D/P
	Suitors' Fund Act Part A: civil proceedings	49	Rep
	Unclaimed money	51	D/P
	Section 2 of the Gaming Act	58	D/P
	Protection of money awarded as damages	-	Rep
	Annual Report 1975-1976		Rep
1975	Special constables	29	Rep
	Dividing fences	33	Rep
	Administration bonds and sureties	34 Pt II	D/P
	Production of medical and technical reports in court proceedings	40	Rep
	Tenancy bonds	41	Rep
	Criminal injuries compensation	46	D/P
	Criminal injuries compensation	46	Rep
	Suitors' Fund Act	49	D/P
	Local body election practices	52	D/P
	Local body election practices	52	Rep
	Alternatives to cautions	60	D/P
	Alternatives to cautions	60	Rep
	Annual Report 1974-1975		Rep
1974	Commercial arbitration and commercial causes	18	Rep
	Special constables	29	D/P
	Competence and compellability of spouses as witnesses	31	D/P
	Land Agents Act *	37	Rep
	Production of medical and technical reports in court proceedings	40	D/P
	Tenancy bonds	41	D/P
	Mortgage brokers	45	D/P
	Mortgage brokers	45	Rep
	Contractors' liens	54	D/P
	Contractors' liens	54	Rep
	Annual Report 1973-1974		Rep
1973	Protection for purchasers of home units	1 Pt III	Rep
	Innocent misrepresentation	22	Rep
	Immunity of suit between spouses	32	D/P
	Immunity of suit between spouses	32	Rep
	Dividing fences	33	D/P
	Distribution on intestacy	34 Pt I	Rep
	Land Agents Act	37	D/P
	Sale of undivided shares in land	38	D/P
	Sale of undivided shares in land	38	Rep
	Annual Report 1972-1973		Rep
1972	Retention of trust money by land agents	1 Pt II	D/P
	Protection for purchasers of home units	1 Pt III	D/P
	Defamation: privileged reports	8	Rep
	Motor vehicle insurance	10	D/P
	Motor vehicle insurance	10	Rep
	Payment of costs in criminal cases	12	D/P
	Payment of costs in criminal cases	12	Rep
	Evidence of criminal convictions in civil proceedings	20	Rep
	Associations Incorporation Act	21	Rep
	Innocent misrepresentation	22	D/P
	Legal representation of children	23	D/P
	Legal representation of children	23	Rep
	Legal capacity of minors	25 Pt I	Rep
	Legal capacity of minors	25 Pt I	D/P
	Distribution on intestacy	34 Pt I	D/P
1971	Offices of profit under the Crown	14	Rep
	Imposition of driving disqualifications	15	D/P
	Imposition of driving disqualifications	15	Rep
	Commercial arbitration and commercial causes	18	D/P
	Evidence of criminal convictions in civil proceedings	20	D/P
	Associations Incorporation Act	21	D/P
	Succession rights of adopted children	24	D/P
	Succession rights of adopted children	24	Rep
1970	Testator's Family Maintenance Act	2	Rep
	Succession rights of illegitimate children	3	Rep
	Committal proceedings	4	Rep

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

Year	Topic	Reference No	Publication Type
1970	Summary trial of indictable offences	6	Rep
	Disposal of uncollected goods	7	Rep
	Liability for stock straying on to the highway (1st working paper)	11	D/P
	Liability for stock straying on to the highway (1st report)	11	Rep
	Affiliation proceedings	13	Rep
	Motor car manslaughter	17	Rep
	Motor car manslaughter	17	D/P
1969	Protection for purchasers of land	1 Pt I	Rep
	Interim hearings in personal injury cases	5	Rep
	Defamation: privileged reports	8	D/P
1968	Protection for purchasers of land	1 Pt I	D/P
	Testator's Family Maintenance Act	2	D/P
	Succession rights of illegitimate children	3	D/P
	Committal proceedings	4	D/P
	Interim hearings in personal injury cases	5	D/P
	Summary trial of indictable offences	6	D/P
	Disposal of uncollected goods	7	D/P

Appendix III: History of References

Appendix III details the history of references received by the Law Reform Commission of Western Australia and the legislative action on the reports from 1968 to 2001.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. This reference was not given a project number.

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

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

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

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

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

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

Ref No	Project	Recommendations	Legislative Action
88	Administration Act Referred: 1989 Report: August 1990	The Administration Act 1903 should be reformed in specified ways.	
89	Sale of Goods Act 1895 Referred: 1989 DPs: Aug & Oct 1995 Report: June 1998	The Sale of Goods Act 1895 should be reformed in several minor ways.	
90	Professional Privilege for Confidential Communications Referred: 1990 DP: December 1991 Report: May 1993	Judges should be given a discretion to excuse witnesses from disclosing information in breach of a confidential relationship. ²⁴	
91	Restrictive Covenants Referred: 1995 DP: June 1995 Report: June 1997	The law relating to the extinguishment, modification and enforcement of restrictive covenants should be reformed in specified ways.	
92	Review of the Criminal and Civil Justice System Referred: 1997 Issues Paper: June 1998 Consultation Drafts: 1999 Final Report: October 1999 Project Summary: 1999	447 recommendations for reform of the criminal and civil justice system.	

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