



THE LAW REFORM COMMISSION
of
WESTERN AUSTRALIA

ANNUAL REPORT

1 JULY 2021 - 30 JUNE 2022

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STATEMENT OF COMPLIANCE

Statement of Compliance with the *Financial Management Act 2006 (WA)*

For the year ending 30 June 2022

Hon John Quigley MLA
Attorney General

In accordance with section 63 of the *Financial Management Act 2006 (WA)*, I hereby submit for your information and presentation to State Parliament the Annual Report of the Law Reform Commission of Western Australia for the year ending 30 June 2022.

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

Yours sincerely



The Hon Lindy Jenkins

Chair of the Law Reform Commission
of Western Australia

13 September 2022



Dr Sarah Murray

Member of the Law Reform Commission
of Western Australia

13 September 2022

ABOUT THIS REPORT

This report provides an overview of the activities of the Law Reform Commission of Western Australia (the Commission) during 2021-22.

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

Appendix 1 outlines the Commission's current reference.

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

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

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LAW REFORM COMMISSION OF WESTERN AUSTRALIA – CHARTER

Purpose of this Charter

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

Role of the Commission

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

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

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

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

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

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

Commitments aimed at maintaining the independence and integrity of the Commission

Government

The Government and its agencies must ensure:

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

Commission and members

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

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

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

LAW REFORM COMMISSION OF WESTERN AUSTRALIA – CHARTER (cont.)

Public consultation and engagement

Being an organisation that spends public funds, the Commission and each of its members understand the importance and the right of the public to be involved in the law reform process and consequently value all input from interested stakeholders. The Commission (and, where applicable, its contractors), is to give due consideration to all submissions it receives and is to specifically acknowledge these in reporting its opinions on law reform.

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

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

Values

Integrity

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

Accountability

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

Operational Structure

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

Membership

Under section 4 of the Act, the Commission may consist of up to five members: two full-time and three part-time, appointed by the Governor of Western Australia.

Under section 7 of the Act:

- a full-time member shall not hold office for a term exceeding five years and, while eligible for reappointment, shall not hold office for a period exceeding eight consecutive years; and
- a part-time member shall not hold office for a term exceeding three years and, while eligible for reappointment, shall not hold office for a period exceeding six consecutive years,

unless, in the opinion of the Governor, there are special circumstances warranting an extension of that period.

Under section 5, the Commission is to elect its Chair from its members. The Chair may hold office for a term not exceeding one year but shall be eligible for re-election.

Members' fees

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

Contractors

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

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

MESSAGE FROM THE CHAIR

The 2021-22 financial year has been a busy one for the Commission. The Commission completed its reference on the review of the *Equal Opportunity Act 1984 (WA)* (the EO Act) (Project 111) and the review of Admissibility of propensity and relationship evidence in Western Australia (Project 112). The Commission also received a new reference from the Attorney General to review sexual offences in the *Criminal Code Act Compilation Act 1913 (WA)* (the Criminal Code) (Project 113).

Since July 2014, the Department has been tasked with providing all project management and executive support functions to the Commission from its own resources. In 2014, the Commission had capital which was used over the intervening years to pay for some of the Commission's costs. This capital was not replenished by the Government and it is now entirely depleted. However, the Commission is pleased that the Government through the Department's Cost and Demand Model (CDM) has provided ongoing funding for the Commission from the 2022-23 financial year to the 2025-26 financial year which will be paid as annual grants to the Commission.

The Commission is grateful for the financial and administrative support that it has received to date, including in the 2021-22 financial year, a budget allocation within the Department's budget process from which to remunerate members who are eligible for remuneration and conduct its projects. In addition, an updated Memorandum of Understanding is currently being negotiated with the Department for the provision of agreed free of cost services.

An overview of this year's references is provided below. The Commission has continued to adopt an outsourcing model for assistance in research and writing. In addition, the Commissioners dedicate many days to research, reading and listening to stakeholders' submission and writing and editing its publications.

In the financial year, the Commission:

- published a Discussion Paper and Issues Papers on Project 111;
- completed a Final Report on Project 111;
- engaged Dr Jamie Walvisch as a project writer for Project 111 and Project 113;
- engaged Sam Vandongen SC as a project writer for Project 112;
- engaged Lydia Kilcullen from Fred Consulting to facilitate public consultations for Project 111;
- published an Issues Paper on Project 112;
- completed the Final Report on Project 112;

- sought and received preliminary submissions from targeted stakeholders for Project 113; and
- liaised with national and international law reform bodies on current trends and projects in law reform.

Completed References

Review of the Equal Opportunity Act 1984 (WA)

On 28 February 2019, the Attorney General, the Hon John Quigley MLA, instructed the Commission to provide advice and make recommendations for consideration by Government on possible amendments to enhance and update the EO Act. In undertaking its review, the Commission was tasked with considering relevant legislation in other jurisdictions, relevant Western Australian reviews, including those previously undertaken by the Equal Opportunity Commission, relevant Commonwealth reports, including those on religious freedom, and relevant international reports and agreements.

At the request of the Attorney General, the Commission conducted a preliminary review into whether there was a need for any reform and if so, the scope of reform, regarding the exceptions to grounds of discrimination in the legislation, including those for religious institutions. Corrs Chambers Westgarth was engaged to provide the research and writing services for this part of the project. For the remainder of the Terms of Reference, independent legal firm, Clayton Utz, was engaged to provide research and writing services. Eleni Kannis assisted the Commission in further drafting and editing. There were delays in the preparation of the Discussion paper due to changes in the Commission's membership, the impacts of the COVID-19 pandemic and developments in discrimination law at a Commonwealth level.

In the 2021-22 financial year, the Commission engaged Dr Jamie Walvisch to assist with project finalisation. Dr Walvisch was assisted by Nikiesha Fairey, Darcie Mather-McCaw and Kate Dromey. Following preliminary submissions from targeted stakeholders, a Discussion Paper was published on 31 August 2021. The Commission undertook a media campaign to encourage submissions in response to the Discussion Paper. Lydia Kilcullen from Fred Consulting assisted the Commission with a number of public consultations that were facilitated in response to the overwhelming number of written responses received from stakeholders. In total, the Commission received more than 1,000 written and oral submissions from stakeholders and members of the public.

Reviews such as this give the public an opportunity to comment on the relevance and effectiveness of legislation. The

MESSAGE FROM THE CHAIR (cont.)

Commission is sincerely thankful for the submissions made by the public to this reference and the dedication of the project writers.

The Commission submitted the Final Report to the Attorney General on 3 May 2022.

Review of Admissibility of propensity and relationship evidence in Western Australia

On 26 August 2021, the Attorney General, the Hon John Quigley MLA, instructed the Commission to provide advice and make recommendations for consideration by Government on the rules of evidence that should apply to determine the admissibility of propensity and relationship evidence, and other evidence of discreditable conduct.

The Terms of Reference for the project required the Commission to have regard to section 31A of the *Evidence Act 1906 (WA)* and the recently introduced Model Uniform Evidence Bill. In the context of the Government's commitment to enact a new Evidence Act in line with the Commonwealth's uniform evidence law, the Terms of Reference required that regarding propensity and relationship evidence, and other evidence of discreditable conduct, the Commission review the relevant laws such that the integrity of the evidence available to the courts and the right to a fair trial for the accused, is maintained.

The Commission engaged barrister Sam Vandongen SC as project writer for the reference. On 23 December 2021, the Commission published an Issues Paper and invited submissions. The Commission subsequently received five submissions from key legal stakeholders. A further online public consultation was conducted on 7 April 2022. The Commission sincerely appreciated the participation and views of legal professionals with an array of expertise in the area, without which, an informed Final Report would not have been possible.

In accordance with the Terms of Reference, the Final Report was submitted to the Attorney General on 29 April 2022.

Current References

Sexual offence laws in the Criminal Code

On 1 November 2021, the Attorney General, the Hon John Quigley MLA, referred a new matter to the Commission relating to sexual offences. On 4 February 2022, the Attorney General narrowed the scope of the Terms of Reference to require the Commission to provide advice and make recommendations for consideration by Government as to whether there should be any reform, and if so, the extent of any reform, to sexual offences contained in the Criminal Code. The Attorney General advised that the Department would undertake a separate review of the responses of the criminal justice system to sexual offences, concurrently with the Commission's reference.

The Terms of Reference for the project require the Commission to review Chapter XXXI and sections 186, 191 and 192 of the Criminal Code, having regard to contemporary understanding of, and community expectations relating to, sexual offences. In carrying out the review, the Commission will consider whether the concept of affirmative consent should be reflected in the legislation, how consent may be vitiated (including through coercion, fraud or deception) and whether special verdicts should be used. Additionally, the Commission will review the application of section 24 of the Criminal Code (dealing with mistake of fact) to sexual offences in Western Australia.

In May 2022, the Commission engaged Dr Jamie Walvisch as project writer for the reference. The Commission contacted targeted stakeholders in early April 2022 to ascertain preliminary views in advance of circulating a Discussion Paper. The final date for preliminary submissions concluded on 3 June 2022 and the Commission accepted late submissions by application from several stakeholders. In June 2022, the Commission took steps to engage a project director and research assistant for the reference. The Commission is well placed to publish a Discussion Paper and complete the Final Report in 2022-23.

MESSAGE FROM THE CHAIR (cont.)

Community Consultation

The Commission commences each reference with a detailed program of research which culminates in the publication of a Discussion Paper or an Issues Paper and a period of public consultation.

Prior to preparation of the Discussion Paper for Project 111, the Commission consulted with a large number of stakeholders by first requesting written preliminary submissions and conducting a face-to-face consultation session with the Equal Opportunity Commission. It subsequently facilitated online and face-to-face meetings with stakeholders. Following publication of the Discussion Paper, the Commission invited and received close to 1,000 written submissions on the issues raised in the Discussion paper.

The Commission also undertook a similar process for Project 112, although there was much less public interest in it.

The Commission commenced Project 113 by calling for preliminary submissions from key stakeholder groups. The Commission's work on Project 113 will occur alongside the work of the Commissioner for Victims of Crime who has a parallel reference from Government to report on investigative and procedural issues relating to sexual offending in Western Australia.

The Commission has been fortunate to have had the input of many interested stakeholders and dedicated experts who were willing to bring their knowledge and skills to the preparation of the Commission's reports. The Commission sincerely appreciates the efforts made by all involved. Their views and efforts in identifying issues in current laws and proposing improvements to them, play a significant role in developing proposals and reports. The efforts made by individuals and organisations ensure that the Commission's reports are comprehensive, accurate, considered and, most importantly, relevant to the needs and expectations of the Western Australian public.

Final Thanks

The Commission is constituted by myself, Dr Sarah Murray and Ms Kirsten Chivers PSM. Dr Murray and Ms Chivers make exceptional contributions to the work of the Commission, despite their commitments to other duties. I am very grateful for their support and their commitment to the Commission.

The Department provides administrative support to the Commission. I wish to thank the Director General, Dr Adam Tomison, for his continued support, including the assistance of his staff; in particular, Dominic Fernandes, acting as the Commission's Executive Officer and the suite of Departmental staff providing executive support.

I would also like to expressly thank the Attorney General, the Hon John Quigley MLA for his ongoing support of the Commission.

The Hon Lindy Jenkins

Chair

August 2022

OVERVIEW OF THE LAW REFORM COMMISSION OF WESTERN AUSTRALIA

Executive Summary

The Commission's role is to keep the law up-to-date and relevant to the needs of Western Australian society. The Commission achieves this by receiving terms of reference and reviewing laws at the request of the Attorney General to identify opportunities for reform.

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

The Commission's output measures the progress of a reference against milestone targets. The extent to which the Commission meets the timeframes set by the Attorney General is therefore considered to be a key performance indicator which measures the extent to which the Commission is performing its functions under the Act.

The community served

It is a critical aspect of law reform to ensure a thorough and balanced examination of the law and to make meaningful and effective recommendations for change where required. In order to maintain this balanced approach, the people of Western Australia are the Commission's primary focus.

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

Stakeholders

The Commission's stakeholders include those governed by particular laws and those charged with enforcing and administering them. With each reference, the Commission makes an effort to identify stakeholders concerned with, or who have expertise in the specific topic and invites submissions to assist in developing its recommendations. However, the Commission invites and values all submissions from people and organisations who wish to contribute to its work.

Performance Highlights

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

The Commission undertook a review of the EO Act. In undertaking its review, the Commission considered relevant legislation in other jurisdictions, Western Australian reviews including those carried out by the Equal Opportunity Commission of Western Australia, Commonwealth reports and relevant international reports and agreements.

The Terms of Reference for this review included consideration of the objects of the EO Act, the grounds of discrimination and the areas of public life to which the EO Act applies, a review of definitions contained in the EO Act and exceptions to grounds of discrimination. The Commission considered whether amendments should be made to the EO Act to include vilification (including racial, religious, sexual orientation, and impairment vilification) as well as the potential for inclusion of a positive duty not to discriminate. The Commission also reviewed the functions and investigative powers of the Equal Opportunity Commission and the role and jurisdiction of the State Administrative Tribunal (SAT) under the EO Act. The EO Act's interaction with Commonwealth laws, including the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) and other laws relevant to equal opportunity and non-discrimination were considered as part of the review.

Under the Terms of Reference, the Commission undertook a public call for submissions and consulted with relevant stakeholders. These stakeholders included but were not limited to; churches, religious schools and institutions, organisations that represent sometimes marginalised groups, including women, Aboriginal peoples, culturally and linguistically diverse people, lesbian, gay, bisexual, transgender, queer and intersex people and people with disabilities. The Commission conducted a number of consultation stages, considering one or several matters contained in the Terms of Reference by inviting preliminary submissions and, following the publication of the Discussion Paper on 31 August 2021, wider public consultation. In accordance with the Terms of Reference, the Commission also considered matters related to the EO Act brought to the attention of the Commission during the research and consultation phases. To assist in the Commission's review, the call for public submissions in response to the Discussion Paper included a radio interview with the Commission, media statements, Issues Papers relevant to discrete topics published on the Commission's website and an information video posted online.

The Commission submitted the Final Report to the Attorney General on 3 May 2022.

OVERVIEW OF THE LAW REFORM COMMISSION OF WESTERN AUSTRALIA

Review of Admissibility of propensity and relationship evidence in Western Australia (Project 112)

On 26 August 2021, the Attorney General, the Hon John Quigley MLA, instructed the Commission to provide advice and make recommendations for consideration by Government on the rules of evidence that should apply to determine the admissibility of propensity and relationship evidence, and other evidence of discreditable conduct.

The Terms of Reference for the project required the Commission have regard to section 31A of the *Evidence Act 1906 (WA)* and the recently introduced Model Uniform Evidence Bill. In the context of the Government's commitment to enact a new Evidence Act in line with the Commonwealth's uniform evidence law, the Terms of Reference required that regarding propensity and relationship evidence and other evidence of discreditable conduct, that the Commission review the relevant laws to maintain the integrity of those types of evidence available to the courts whilst continuing to ensure a fair trial for accused.

On 23 December 2021, the Commission published an Issues Paper and subsequently received five submissions from key stakeholders by the closing date of 11 February 2022. The Commission granted late submissions by application although no late submissions were received. A further public consultation was conducted via the online video Zoom platform on 7 April 2022.

In accordance with the Terms of Reference, the Final Report was submitted to the Attorney General on 29 April 2022.

Other Ongoing References

Sexual offence laws in the Criminal Code (Project 113)

On 1 November 2021, a new matter was referred to the Commission relating to sexual offences. On 4 February 2022, the Attorney General provided Terms of Reference to require the Commission provide advice and make recommendations for consideration by Government as to whether there should be any reform, and if so, the extent of any reform, to sexual offences contained in the Criminal Code. Broader matters falling within the scope of sexual offence laws will be concurrently reviewed by the Department as part of a separate review.

The Terms of Reference for the project require the Commission to review Chapter XXXI and sections 186, 191 and 192 of the Criminal Code having regard to contemporary understanding of, and community expectations relating to, sexual offences. In carrying out the review, the Commission will consider whether the concept of affirmative consent should be reflected in the legislation, how consent may be vitiated (including through coercion, fraud or deception) and whether special verdicts should be used. Additionally, the Commission will review whether section 24 of the Criminal Code (dealing with mistake of fact) applies to sexual offences in Western Australia.

After Dr Jamie Walvisch's work on Project 111 concluded in April 2022 he commenced work on Project 113. The Commission contacted targeted stakeholders in early April 2022 to ascertain preliminary views in advance of circulating a Discussion Paper. The final date for preliminary submissions concluded on 3 June 2022. In June 2022, the Commission took steps to engage a project director and research assistant for the reference. The work on the reference is ongoing and the Commission is well placed to publish a Discussion Paper and complete the Final Report in 2022-23.

Technological and Administrative Changes

To facilitate the citation and reference to the Commission's considerable body of work, all publications are available in electronic format as a PDF document on the Commission's website. The Commission's Final Reports are not able to be published on the website until they have been tabled in Parliament by the Attorney General.

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

During the 2021-2022 financial period, the Commission's website had 104,874 unique page views. The Commission's reference on Project 111 and Aboriginal Customary Laws (Project 94) were the most accessed pages on the site during this period. That Project 94 remains one of the most accessed pages, despite being finalised many years ago, is a worthy example of the value of reports from Commissions such as ours, which highlight to Government and the public, areas in which valued law reform might be undertaken.

OVERVIEW OF THE LAW REFORM COMMISSION OF WESTERN AUSTRALIA (cont.)

Through the 2021 upgrade to its website, the Commission seeks to ensure it delivers high quality, useful, usable and accessible online information to all users, including people with disabilities, who may use assistive technologies. The Commission's website aims to meet the Western Australian Government's web accessibility requirements, including meeting the World Wide Web Consortium's Web Content Accessibility Guidelines version 2.1 (WCAG 2.1) at level A.

During the 2021-22 financial year, the Commission processed 1,888 letters, emails and telephone calls from members of the public. The majority of public contacts related to the Equal Opportunity reference, despite the fact that public submissions had not yet been invited. Very few contacts related to the Fatal Accidents reference, reflecting the completion of that reference early in the financial year.

All projects remain of vital importance to the Commission's mandate to advise government on keeping the laws of Western Australia up to date and relevant to the needs of society.

Through an ongoing arrangement, the Commission's administrative duties, executive support and project management functions continued to be provided by the Department.

Financial Forecasts

The Department provided executive support and project management to the Commission free of charge pursuant to a memorandum of understanding, which is reviewed annually. The cost of the services were accommodated within the Department's budget.

From the 2022-23 financial year a new funding mechanism will be in place whereby the Department will receive funding for the Commission from Government. That funding will be paid by the Department to the Commission by way of annual grants. The Department will continue to provide some services to the Commission free of charge pursuant to a memorandum of understanding.

Operational Structure

Enabling legislation

The Commission was established as a Statutory Authority under the Act on 31 October 1972.

Responsible Minister

The Hon John Quigley MLA, Attorney General.

The Commission reviews areas of the law referred to it by the Attorney General of the day to identify potential opportunities for law 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 Act sets out the functions of the Commission.

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

Mission

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

Structure and membership of the Commission

The Commission may consist of up to five members: two full-time and three part-time, appointed by the Governor of Western Australia.

Of the part-time members, the Commission may have one private legal practitioner with no less than eight years' experience; one member must be engaged in teaching law at a university in Western Australia with a status no less than that of Senior Lecturer; and the third is to be a legal officer of the State Solicitor's Office with no less than eight years' experience.

Full-time members are to be legal practitioners of at least eight years' standing, or persons suitable for appointment by reason of their legal qualifications and experience, whether in Western Australia or elsewhere.

OVERVIEW OF THE LAW REFORM COMMISSION OF WESTERN AUSTRALIA (cont.)

Chair

Under section 5 of the Act, the Commission elects its Chairperson from its members. The Chair may hold office for a term not exceeding one year but shall be eligible for re-election.

Hon Lindy Jenkins (BA, LLB (Macquarie)) was Chair during the reporting period. The Hon Ms Jenkins relocated to Western Australia in 1989 and commenced work with the then Crown Solicitor's Office, now known as the State Solicitor's Office. While holding various legal positions, including Deputy Crown Counsel, she appeared in all Western Australian courts, the Federal and High Courts and advised many Departments and successive Governments. Commissioner Jenkins previously served with the Commission as a part-time member from the Crown Solicitor's Office from 1999 to 2001. The Hon Ms Jenkins served as a judge in the District Court of Western Australia from 2001-2004 and in the Supreme Court from 2004-2020. Prior to her retirement from the Supreme Court, the Hon Ms Jenkins was the then longest still serving judge in Western Australia. From March 2021 to March 2022, the Hon Ms Jenkins was appointed by the Governor as a Commissioner to the Perth Casino Royal Commission.

Dr Sarah Murray (BA (Hons), LLB (Hons), PhD (Monash)) joined the Commission as a special member in June 2019 to assist with the review of the EO Act and was subsequently appointed as a Commissioner in August 2019. Dr Murray is a Professor at the University of Western Australia Law School where she has worked as an academic since 2007. Dr Murray is a WA co-convenor of the Electoral Regulation Research Network and the Australian Association of Constitutional Law and is the co-chair of the ICON-S AUS-NZ Chapter. Dr Murray graduated from the University of Western Australia Law School with a Bachelor of Arts (First Class Honours in Anthropology) and a Bachelor of Laws (First Class Honours). Her PhD from Monash University was awarded the 2011 Mollie Holman Doctoral Medal for Law. Dr Murray has published a range of books and articles across a variety of Australian and international journals.

Former members of the Commission are listed on the Commission's website:

<https://www.wa.gov.au/organisation/law-reform-commission-of-western-australia/about-the-commission>

Members

Ms Kirsten Chivers PSM (LLB (Hons) Murdoch) joined the Commission in November 2019. Ms Chivers holds a Bachelor of Laws with Merit Honours from Murdoch University. She is currently an Acting Deputy State Solicitor at the State Solicitor's Office, where she has worked since 2002. In that role, Ms Chivers leads the Advice, Policy and Public Law team at the State Solicitor's Office. She is responsible for the provision of legal advice to the State Government in relation to a broad range of legal and legal policy issues, including legislative reform, administrative law, parliament and parliamentary committees, statutory interpretation, emergency management and the fields of freedom of information, privacy and information sharing. Ms Chivers has also been heavily involved in the State's COVID-19 response, having managed the legal aspects of that response throughout much of the pandemic.

OVERVIEW OF THE LAW REFORM COMMISSION OF WESTERN AUSTRALIA (cont.)

Members' Remuneration

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

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

There is currently no fee determined for full-time members. Remuneration for full-time members is by agreement between the parties and approved by the Governor in Executive Council.

The following table outlines the remuneration for Commission members during the reporting period:

Law Reform Commission of Western Australia				
Name	Position	Type of remuneration	Period of membership*	Gross/actual remuneration**
Hon Lindy Jenkins	Chair (full time)	Honorarium	1 year	\$12,636
Ms Kirsten Chivers	Member (part time)	None#	1 year	Not applicable
Dr Sarah Murray	Member (part time)	Honorarium	1 year	\$43,978
			Total	\$56, 614

* Refers to board members' membership during the reporting period not their entire tenure on the Commission.

** Rounded to the nearest dollar amount.

As Ms Chivers is employed at the State Solicitor's Office under the *Public Sector Management Act 1994 (WA)*, she is not remunerated separately for her membership of the Commission.

OVERVIEW OF THE LAW REFORM COMMISSION OF WESTERN AUSTRALIA (cont.)

Senior Officer

During 2021-22, Mr Dominic Fernandes, Director, Legislative Services at the Department served as Executive Officer.

Administered legislation

Key legislation impacting on the Commission's activities is listed below.

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

- *Auditor General Act 2006*
- *Disability Services Act 1993*
- *Electoral Act 1907*
- *Equal Opportunity Act 1984*
- *Evidence Act 1906; Acts Amendment (Evidence) Act 2000*
- *Freedom of Information Act 1992*
- *Industrial Relations Act 1979*
- *Interpretation Act 1984*
- *Library Board of Western Australia Act 1951*
- *Limitation Act 1935*
- *Management Act 1981*
- *Minimum Conditions of Employment Act 1993*
- *Public Interest Disclosure Act 2003*
- *Public Sector Management Act 1994*
- *Salaries and Allowances Act 1975*
- *State Records Act 2000*
- *State Records (Consequential Provisions) Act 2000*
- *State Superannuation Act 2000*
- *State Supply Commission Act 1991*
- *Criminal Code 1913*
- *Work Health and Safety Act 2020*
- *Workers Compensation and Injury Management Act 1981*

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

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

Diversification

The Commission engages consultants for research, writing and editing. This permits individuals who would not otherwise have been able to participate in the process of law reform to bring their unique and special skills to the Commission's law reform activities on less than a full-time basis.

Publications

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

Legislative change

There were no statutory changes or significant judicial decisions affecting the Commission in 2021-22.

Meetings of the Commission

The Commission held 11 formal Commission meetings during the 2021-22 financial year. In addition, the Commission conducted numerous meetings with various stakeholders and contractors in regard to the references undertaken during the 2021-22 financial year (in addition to a significant number of internal meetings for those references).

OVERVIEW OF THE LAW REFORM COMMISSION OF WESTERN AUSTRALIA (cont.)

Performance Management Framework

Outcome Based Management Framework

Government Goal

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

The Law Reform Commission of Western Australia's desired outcome

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

Changes to Outcome Based Management Framework

The Commission's Outcome Based Management Framework did not change during 2021-22.

Shared Responsibilities with other Agencies

The Commission did not share any responsibilities with other agencies in 2021-22.

AGENCY PERFORMANCE

Report on Operations

Review of the Equal Opportunity Act 1984 (WA)

The Commission completed work on this reference to provide advice and make recommendations for consideration by Government on possible amendments to enhance and update the EO Act taking into account Australian and international best practices regarding equality and non-discrimination.

The Terms of Reference for this review included consideration of objects of the EO Act, the grounds of discrimination and the areas of public life to which the EO Act applies, a review of definitions contained in the EO Act and exceptions to grounds of discrimination. The Commission considered whether amendments should be made to the EO Act to include vilification (including racial, religious, sexual orientation, and impairment vilification) as well as the potential for inclusion of a positive duty not to discriminate. The Commission also reviewed the functions and investigative powers of the Equal Opportunity Commission and the role and jurisdiction of the State Administrative Tribunal (SAT) under the EO Act. The EO Act's interaction with Commonwealth laws, including the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) and other laws relevant to equal opportunity and non-discrimination were considered as part of the review.

During the reporting period, the Commission engaged external researchers and writers for this reference which added to the body of work already undertaken as a result of tenders reported on in previous Annual Reports. A Discussion Paper was released on 31 August 2021 inviting public submissions.

The Commission submitted the Final Report to the Attorney General on 3 May 2022.

Admissibility of propensity and relationship evidence in WA

This year, the Commission received a new reference on rules of evidence, specifically the admissibility of propensity and relationship evidence, and other evidence of discreditable conduct. Under the Terms of Reference, the Commission was tasked with making recommendations for consideration by Government on whether the law in relation to these types of evidence should be modified in line with Uniform laws in other states of Australia or otherwise amended.

The Commission engaged external researchers and writers to assist with this project. An Issues Paper was released on the Commission's website in December 2021. Following a period of public consultation, the Commission submitted the Final Report to the Attorney General on 29 April 2022.

Review of sexual offences

The Commission received a second new reference for the 2021-22 year; to provide advice and make recommendations for consideration by Government on sexual offences contained within the Criminal Code.

In January 2022, the Commission engaged a project writer for the reference. The Commission contacted targeted stakeholders in early April 2022 to ascertain preliminary views in advance of circulating a Discussion Paper. In June 2022 the Commission took steps to engage a project director and research assistant for the reference.

The work on this reference is ongoing and the Commission is well placed to publish a Discussion Paper and complete the Final Report in 2022-23.

Key Performance Indicators

Actual results vs budget targets

Summary of Key Performance Indicators	2022 Target	2022 Actual	Variation
Outcome: <i>The law is reviewed as requested by the Attorney General and stakeholders are kept informed.</i>			
Key Effectiveness Indicator: Progress against target milestone timelines – The extent to which the Commission is meeting the Attorney General's law reform requests in a timely manner.	100%	100%	N/A
Service: <i>Publications on law reform.</i>			
Key Efficiency Indicator: Average cost per publication	\$114,950	\$141,441	N/A
Total community contacts ⁽¹⁾	550	1,888	N/A
Average cost per contact	\$33	\$11.83	\$21.17
Number of publications on law reform	3	3	N/A

⁽¹⁾ Target for community contacts for this financial year were set in Commission Minutes dated 13 September 2021. Community contact was high due to the significant increased community contacts as a result of the public interest in Project 111.

SIGNIFICANT ISSUES IMPACTING THE AGENCY

Current and Emerging Issues and Trends

The most fundamental issue for the Commission is to assist in keeping Western Australian law up-to-date and relevant to the needs of society. A further issue resulting from this is the need to make law reform as meaningful and effective as possible.

The COVID-19 pandemic and the associated need for social distancing has impacted how agencies consult with the public. This reporting period, the Commission undertook most face-to-face public consultations and meetings via video-conferencing platforms. While the process of consultation is well in hand, the Commission will ensure that consultations remain reflective of the broader community.

Economic and Social Trends

Since the 2014-15 financial year, no specific allocation has been made for the Commission's operations in the Budget Statements. Responsibility for ensuring the Commission is able to discharge its statutory functions has been assumed by the Department.

Ongoing funding is incorporated into the Department's Cost and Demand Model (CDM) as part of the 2021-22 Budget process.

The CDM assumes the Department will internally fund the Commission for 2021-22 and provides an annual average funding amount based on the Commission's previous expenditure. This figure is not fixed and will be updated on a yearly basis to reflect an agreed appropriate level of cash expenditure for future years. The Department has undertaken to cover any shortfall resulting from this arrangement.

The Department has continued to provide a high level of service in the way of administrative support to the Commission, ensuring the Commission is able to discharge its statutory functions.

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

- a review of the EO Act; and
- the review of admissibility of propensity and relationship evidence in WA.

In 2021-22 and beyond, the level of support that the Department is willing and able to provide to the Commission will influence the extent to which the Commission is capable of discharging its statutory duties and reporting to the Attorney General on a timely basis. Relevant to this is the extent to which the new funding arrangement will enable the Commission, where appropriate, to engage external resources such as independent experts and project writers. The Commission is optimistic that the new funding arrangement will enable it to discharge its statutory duties and report to the Attorney General in a timely manner.

Changes in Written Law

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

Likely Development and Forecast Results of Operations

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

The Final Reports on the EO Act and the 'Admissibility of propensity and relationship evidence' references were completed in May 2022 and April 2022 respectively. The Commission expects a Final Report for the sexual offences reference will be published in the upcoming financial year.

AUDITOR GENERAL'S INDEPENDENT AUDITOR'S REPORT



Auditor General

INDEPENDENT AUDITOR'S REPORT

2022

Law Reform Commission of Western Australia

To the Parliament of Western Australia

Report on the audit of the financial statements

Opinion

I have audited the financial statements of the Law Reform Commission of Western Australia (Commission) which comprise:

- the Statement of Financial Position at 30 June 2022, and the Statement of Comprehensive Income, Statement of Changes in Equity and Statement of Cash Flows for the year then ended
- Notes comprising a summary of significant accounting policies and other explanatory information.

In my opinion, the financial statements are:

- based on proper accounts and present fairly, in all material respects, the operating results and cash flows of the Law Reform Commission of Western Australia for the year ended 30 June 2022 and the financial position at the end of that period
- in accordance with Australian Accounting Standards, the *Financial Management Act 2006* and the Treasurer's Instructions.

Basis for opinion

I conducted my audit in accordance with the Australian Auditing Standards. My responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of my report.

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

Responsibilities of the Commission for the financial statements

The Commission is responsible for:

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

AUDITOR GENERAL'S INDEPENDENT AUDITOR'S REPORT (cont.)

In preparing the financial statements, the Commission is responsible for:

- assessing the entity's ability to continue as a going concern
- disclosing, as applicable, matters related to going concern
- using the going concern basis of accounting unless the Western Australian Government has made policy or funding decisions affecting the continued existence of the Commission.

Auditor's responsibilities for the audit of the financial statements

As required by the *Auditor General Act 2006*, my responsibility is to express an opinion on the financial statements. The objectives of my audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Australian Auditing Standards will always detect a material misstatement when it exists.

Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control.

A further description of my responsibilities for the audit of the financial statements is located on the Auditing and Assurance Standards Board website. This description forms part of my auditor's report and can be found at https://www.auasb.gov.au/auditors_responsibilities/ar4.pdf.

Report on the audit of controls

Opinion

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

In my opinion, in all material respects, the controls exercised by the Law Reform Commission of Western Australia are sufficiently adequate to provide reasonable assurance that the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities have been in accordance with legislative provisions during the year ended 30 June 2022.

The Commission's responsibilities

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

AUDITOR GENERAL'S INDEPENDENT AUDITOR'S REPORT

Auditor General's responsibilities

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

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

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

Limitations of controls

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

Report on the audit of the key performance indicators

Opinion

I have undertaken a reasonable assurance engagement on the key performance indicators of the Law Reform Commission of Western Australia for the year ended 30 June 2022. The key performance indicators are the Under Treasurer-approved key effectiveness indicator and key efficiency indicators that provide performance information about achieving outcomes and delivering services.

In my opinion, in all material respects, the key performance indicators of the Law Reform Commission of Western Australia are relevant and appropriate to assist users to assess the Commission's performance and fairly represent indicated performance for the year ended 30 June 2022.

The Commission's responsibilities for the key performance indicators

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

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

AUDITOR GENERAL'S INDEPENDENT AUDITOR'S REPORT (cont.)

Auditor General's responsibilities

As required by the *Auditor General Act 2006*, my responsibility as an assurance practitioner is to express an opinion on the key performance indicators. The objectives of my engagement are to obtain reasonable assurance about whether the key performance indicators are relevant and appropriate to assist users to assess the entity's performance and whether the key performance indicators are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. I conducted my engagement in accordance with Standard on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* issued by the Australian Auditing and Assurance Standards Board. That standard requires that I comply with relevant ethical requirements relating to assurance engagements.

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

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

My independence and quality control relating to the reports on controls and key performance indicators

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

Other information

The Commission is responsible for the other information. The other information is the information in the entity's annual report for the year ended 30 June 2022, but not the financial statements, key performance indicators and my auditor's report.

My opinions on the financial statements, controls and key performance indicators do not cover the other information and, accordingly, I do not express any form of assurance conclusion thereon.

In connection with my audit of the financial statements, controls and key performance indicators, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and key performance indicators or my knowledge obtained in the audit or otherwise appears to be materially misstated.

If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact. I did not receive the other information prior to the date of this auditor's report. When I do receive it, I will read it and if I conclude that there is a material misstatement in this information, I am required to communicate the matter to those charged with governance and request them to correct the misstated information. If the misstated information is not corrected, I may need to retract this auditor's report and re-issue an amended report.

AUDITOR GENERAL'S INDEPENDENT AUDITOR'S REPORT

Matters relating to the electronic publication of the audited financial statements and key performance indicators

This auditor's report relates to the financial statements and key performance indicators of the Law Reform Commission of Western Australia for the year ended 30 June 2022 included in the annual report on the Commission's website. The Commission's management is responsible for the integrity of the Commission's website. This audit does not provide assurance on the integrity of the Commission's website. The auditor's report refers only to the financial statements, controls and key performance indicators described above. It does not provide an opinion on any other information which may have been hyperlinked to/from the annual report. If users of the financial statements and key performance indicators are concerned with the inherent risks arising from publication on a website, they are advised to contact the entity to confirm the information contained in the website version.

Mark Ambrose

Mark Ambrose
Senior Director Financial Audit
Delegate of the Auditor General for Western Australia
Perth, Western Australia
13 September 2022

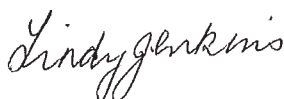
DISCLOSURES AND LEGAL COMPLIANCE

CERTIFICATION OF FINANCIAL STATEMENTS

For the reporting period ended 30 June 2022

The accompanying financial statements of the Law Reform Commission of Western Australia have been prepared in compliance with the provisions of the *Financial Management Act 2006* from proper accounts and records to present fairly the financial transactions for the reporting period ending 30 June 2022 and the financial position as at 30 June 2022.

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



The Hon Lindy Jenkins
Chair of the Law Reform Commission
of Western Australia

12 September 2022



Dr Sarah Murray
Member of the Law Reform Commission
of Western Australia

12 September 2022



John Deery
Chief Finance Officer

12 September 2022



DISCLOSURES AND LEGAL COMPLIANCE

CERTIFICATION OF FINANCIAL STATEMENTS (cont.)

The Law Reform Commission of Western Australia (the Commission) has pleasure in presenting its audited general purpose financial statements for the reporting period ended 30 June 2022 which provides users with the information about the Commission's stewardship of resource entrusted to it. The financial information is presented in the following structure:

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DISCLOSURES AND LEGAL COMPLIANCE

CERTIFICATION OF FINANCIAL STATEMENTS (cont.)

Primary financial statements

Statement of comprehensive income

For the year ended 30 June 2022

	Notes	2022 \$	2021 \$
Cost of services			
Expenses			
Commission members expenses	2.1	62,807	53,954
Supplies and services	2.2	376,187	348,850
Other expenses	2.3	7,663	4,712
Total cost of services		446,657	407,516
Net cost of services		446,657	407,516
Income from State Government			
Income received from other public sector entities	3.1	359,000	-
Resources received	3.1	186,335	166,998
Total income from State Government		545,335	166,998
Surplus/(deficit) for the period		98,678	(240,518)
Total comprehensive income/(loss) for the period		98,678	(240,518)

The Statement of comprehensive income should be read in conjunction with the accompanying notes.



DISCLOSURES AND LEGAL COMPLIANCE

CERTIFICATION OF FINANCIAL STATEMENTS (cont.)

Primary financial statements

Statement of financial position

As at 30 June 2022

	Notes	2022 \$	2021 \$
Assets			
Current Assets			
Cash and cash equivalents	5.1	162,062	37,998
Receivables	4.1	-	9,783
Other current assets		-	-
Total current assets		162,062	47,781
Total assets		162,062	47,781
Liabilities			
Current liabilities			
Payables	4.2	16,499	896
Total current liabilities		16,499	896
Total liabilities		16,499	896
Net assets		145,563	46,885
Equity			
Contributed equity		17,000	17,000
Accumulated surplus		128,563	29,885
Total equity		145,563	46,885

The Statement of financial position should be read in conjunction with the accompanying notes.



DISCLOSURES AND LEGAL COMPLIANCE

CERTIFICATION OF FINANCIAL STATEMENTS (cont.)

Primary financial statements

Statement of changes in equity

For the year ended 30 June 2022

	Contributed equity	Accumulated surplus	Total equity
	\$	\$	\$
Balance at 1 July 2020	17,000	270,403	287,403
Deficit	-	(240,518)	(240,518)
Total	17,000	29,885	46,885
Balance at 30 June 2021	17,000	29,885	46,885
Balance at 1 July 2021	17,000	29,885	46,885
Surplus	-	98,678	98,678
Total	17,000	128,563	145,563
Balance at 30 June 2022	17,000	128,563	145,563

The Statement of changes in equity should be read in conjunction with the accompanying notes.

DISCLOSURES AND LEGAL COMPLIANCE

CERTIFICATION OF FINANCIAL STATEMENTS (cont.)

Primary financial statements

Statement of cash flows

For the year ended 30 June 2022

	Notes	2022 \$	2021 \$
Cash flows from the State Government			
Funds from other public sector entities		359,000	-
Net cash provided by the State Government		359,000	-
<i>Utilised as follows:</i>			
Cash flows from operating activities			
Payments			
Payments to Commission members		(62,435)	(54,290)
Payments to suppliers (incl. GST)		(182,284)	(267,983)
Receipts			
GST receipts from taxation authority		9,783	-
Net cash provided by/(used in) operating activities		124,064	(322,273)
Net increase/(decrease) in cash and cash equivalents		124,064	(322,273)
Cash and cash equivalents at the beginning of the period		37,998	360,271
Cash and cash equivalents at the end of the period	5.1	162,062	37,998

The Statement of cash flows should be read in conjunction with the accompanying notes.

DISCLOSURES AND LEGAL COMPLIANCE

NOTES TO THE FINANCIAL STATEMENTS

1. Basis of preparation

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

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

These annual financial statements were authorised for issue by the Accountable Authority of the Commission on 12 September 2022.

Statement of compliance

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

- 1) the *Financial Management Act 2006 (FMA)*
- 2) Treasurer's instructions (TIs)
- 3) Australian Accounting Standards (AASs) – Simplified Disclosures
- 4) where appropriate, those AAS paragraphs applicable for not-for-profit entities have been applied.

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

Basis of preparation

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

Accounting for Goods and Services Tax (GST)

Income, expenses and assets are recognised net of the amount of goods and services tax (GST), except that the:

- (a) amount of GST incurred by the Commission as a purchaser that is not recoverable from the Australian Taxation Office (ATO) is recognised as part of an asset's cost of acquisition or as part of an item of expense; and
- (b) receivables and payables are stated with the amount of GST included.

Cash flows are included in the Statement of cash flows on a gross basis. However, the GST components of cash flows arising from investing and financing activities which are recoverable from, or payable to, the ATO are classified as operating cash flows.

Contributed equity

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

Comparative information

Except when an AAS permits or requires otherwise, comparative information is presented in respect of the previous period for all amounts reported in the financial statements.

Judgements and estimates

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

DISCLOSURES AND LEGAL COMPLIANCE

NOTES TO THE FINANCIAL STATEMENTS (cont.)

2. Use of our funding

Expenses incurred in the delivery of services

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

	Notes
Commission members expenses	2.1
Supplies and services	2.2
Other expenses	2.3

2.1 Commission members expenses

	2022	2021
	\$	\$
Commission members fees	57,094	49,273
Superannuation – defined contribution plans	5,713	4,681
Total Commission members expenses	62,807	53,954

Superannuation is the amount recognised in profit or loss of the Statement of Comprehensive Income comprises contributions paid to the Gold State Superannuation (concurrent contributions), the GESB West State Superannuation, the Government Employees Superannuation Board (GESB), or other superannuation funds.

2.2 Supplies and services

	2022	2021
	\$	\$
Supplies and services		
Business and finance services ^(a)	13,988	13,839
Shared information services ^(a)	33,750	33,750
Strategic reform services ^(a)	116,527	101,832
Services and contracts	197,515	186,564
Audit fees ^(a)	13,100	12,865
Communications ^(a)	1,307	-
Total supplies and services	376,187	348,850

2.3 Other expenses

	2022	2021
	\$	\$
Printing ^(a)	7,663	4,712
Total other expenses	7,663	4,712

(a) Services received free of charge. These items of expenditure were provided in line with the terms of the Memorandum of Understanding with the Department of Justice. Refer to note 3.1 'Income from state government'.

Supplies and services are recognised as an expense in the reporting period in which they are incurred.

Other operating expenses generally represent the day-to-day running costs incurred in normal operations.

DISCLOSURES AND LEGAL COMPLIANCE

NOTES TO THE FINANCIAL STATEMENTS (cont.)

3. Our funding sources

How we obtain our funding

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

	Notes	
Income from State Government	3.1	
3.1 Income from State Government		
	2022	2021
	\$	\$
Income received from other public sector entities during the period:		
- Service grant from the Department of Justice	359,000	-
Total income received from other public sector entities	359,000	-
Resources received from other public sector entities during the period:		
Supplies and services from Department of Justice	186,335	166,998
Total resources received	186,335	166,998
Total income from State Government	545,335	166,998

Income from other public sector entities is recognised as income when the Commission has satisfied its performance obligations under the funding agreement. If there is no performance obligation, income will be recognised when the Commission receives the funds.

Resources received from other public sector entities is recognised as income equivalent to the fair value of those services that can be reliably determined, and which would have been purchased if not donated.

DISCLOSURES AND LEGAL COMPLIANCE

NOTES TO THE FINANCIAL STATEMENTS (cont.)

4. Other assets and liabilities

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

	Notes
Receivables	4.1
Payables	4.2

4.1 Receivables

	2022	2021
	\$	\$
Current		
GST receivable	-	9,783
Total receivables at end of the period	-	9,783

4.2 Payables

	2022	2021
	\$	\$
Current		
Trade payables ^(a)	15,231	-
Accrued fees ^(b)	1,268	896
Total payables at end of period	16,499	896

(a) **Trade payables** are recognised as the amounts payable when the Commission becomes obliged to make future payments as a result of a purchase of assets or services. The carrying amount is equivalent to fair value as settlement is generally within 15-20 days.

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

DISCLOSURES AND LEGAL COMPLIANCE

NOTES TO THE FINANCIAL STATEMENTS (cont.)

5. Financing

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

	Notes
Cash and cash equivalents	5.1

5.1 Cash and cash equivalents

	2022	2021
	\$	\$
Cash and cash equivalents	162,062	37,998
Balance at end of period	162,062	37,998

For the purpose of the statement of cash flows, cash and cash equivalent assets comprise cash on hand.

6. Financial instruments and contingencies

This note sets out the key risk management policies and measurement techniques of the Commission.

	Notes
Financial instruments	6.1
Contingent assets and liabilities	6.2

6.1 Financial instruments

The carrying amounts of each of the following categories of financial assets and financial liabilities at the end of the reporting period are:

	2022	2021
	\$	\$
Financial assets		
Cash and cash equivalents	162,062	37,998
Total financial assets	162,062	37,998
Financial liabilities		
Financial liabilities at amortised cost ^(a)	16,499	896
Total financial liability	16,499	896

(a) The amount of Financial liabilities at amortised cost excludes GST payable to the ATO (statutory payable)

6.2 Contingent assets and liabilities

There were no contingent assets and contingent liabilities as at 30 June 2022 (2021: nil).

DISCLOSURES AND LEGAL COMPLIANCE

NOTES TO THE FINANCIAL STATEMENTS (cont.)

7. Other disclosures

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

	Notes
Events occurring after the end of the reporting period	7.1
Key management personnel	7.2
Related party transactions	7.3
Related bodies	7.4
Affiliated bodies	7.5
Remuneration of auditors	7.6
Supplementary financial information	7.7

7.1 Events occurring after the end of the reporting period

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

7.2 Key management personnel

The Commission has determined key management personnel to include cabinet ministers and members of the Commission. The Commission does not incur expenditures to compensate Ministers and those disclosures may be found in the *Annual Report on State Finances*.

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

Compensation band (\$)	2022	2021
40,001 – 50,000	1	1
10,001 – 20,000	1	-
0 – 10,000	-	3
	2022	2021
	\$	\$
Total compensation of Commission members	62,807	53,954

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

DISCLOSURES AND LEGAL COMPLIANCE

NOTES TO THE FINANCIAL STATEMENTS (cont.)

7.3 Related party transactions

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

Related parties of the Commission include:

- all Cabinet ministers and their close family members, and their controlled or jointly controlled entities;
- all Commission members and their close family members, and their controlled or jointly controlled entities;
- other agencies and statutory authorities, including related bodies, that are included in the whole of government consolidated financial statements (i.e. wholly-owned public sector entities);
- associates and joint ventures of a wholly-owned public sector entity; and
- the Government Employees Superannuation Board (GESB).

Material transactions with related parties

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

7.4 Related bodies

The Commission had no related bodies during the financial year (2021: nil).

7.5 Affiliated bodies

The Commission had no affiliated bodies during the financial year (2021: nil).

7.6 Remuneration of auditors

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

	2022	2021
	\$	\$
Auditing the accounts, financial statements, controls, and key performance indicators	13,500	13,100

7.7 Supplementary financial information

There were no losses of public moneys or other public property through theft or default during the financial year (2021: nil).

There were no write offs of public money or other public property during the financial year (2021: nil).

There were no gifts of public property during the financial year (2021: nil).

DISCLOSURES AND LEGAL COMPLIANCE

KEY PERFORMANCE INDICATORS – CERTIFICATION OF KEY PERFORMANCE INDICATORS

AUDITED KEY PERFORMANCE INDICATORS FOR THE YEAR ENDED 30 JUNE 2022

Certification of Key Performance Indicators

We hereby certify that the performance indicators are based on proper records, are relevant and appropriate for assisting users to assess the Law Reform Commission of Western Australia's performance, and fairly represent the performance of the Law Reform Commission of Western Australia for the financial year ended 30 June 2022.



The Hon. Lindy Jenkins

Member of the Law Reform Commission
of Western Australia

12 September 2022



Dr Sarah Murray

Member of the Law Reform Commission
of Western Australia

12 September 2022



DISCLOSURES AND LEGAL COMPLIANCE

KEY PERFORMANCE INDICATORS

– DETAILED INFORMATION IN SUPPORT OF KEY PERFORMANCE INDICATORS

GOVERNMENT GOAL: OUTCOME BASED SERVICE DELIVERY

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

THE COMMISSION'S STRATEGIC OBJECTIVE

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

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

KEY PERFORMANCE INDICATORS

KEY EFFECTIVENESS INDICATOR: Progress against target timelines.

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

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

The percentage of references proceeding as planned against target timelines:

	2021-2022 Target ^(a)	2021-2022 Actual	2020-2021	2019-2020
% on target	100%	100%	100%	100%

(a) In the 2019-2020 to 2021-22 financial year, the final report due date has been set as per the AG's request outlined in the TOR for each project and extended from time to time.

References	2021-2022	2020-2021	2019-2020
Brought forward	1	2	3
New	2	0	0
Total to be reviewed	3	2	3
References completed during the year	2	1	1
References with elapsed time	-	-	-

The Commission had three references to review in the financial year 2021-22, two of which have been completed within the financial year 2021-22. The effectiveness of each reference is measured separately as shown below.

DISCLOSURES AND LEGAL COMPLIANCE

KEY PERFORMANCE INDICATORS

– DETAILED INFORMATION IN SUPPORT OF KEY PERFORMANCE INDICATORS (cont.)

EQUAL OPPORTUNITY ACT

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

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

Milestones	TOR referred to LRC	Project Plan completed/signed	Tender process completed/contracts awarded & signed	Project writer engaged	First draft of Discussion Paper	Discussion Paper published	Report to LRC on response to discussion paper & submissions	Draft Report submitted to LRC	Final Report forwarded to AG
Target Date(a)	N/A	March 2020	July 2020	July 2020	December 2020	August 2021	December 2021	January 2022(a)	4 May 2022
Actual Date	28 February 2019	-	21 May 2020	21 May 2020(b)	25 February 2021	31 August 2021	3 December 2021	31 January 2022(c)	3 May 2022

Key:

- (a) Interim milestone targets agreed and extended by the Commission. A revised milestone target was not set for the completion of the Final Report.
- (b) Project writers Clayton Utz and Corrs Chambers Westgarth were engaged on 21 May 2020 and 10 May 2019 respectively for work on the project. In January 2022 Dr Jamie Walvisch was engaged to assist the Commission to revise, edit and write the Final Report which had been drafted initially by Clayton Utz. The Commission also engaged Eleni Kannis, Darcie Mather-McCaw, Nikiesha Fairey and Kate Dromey at various times to assist with revising and editing the Discussion Paper and Final Report.
- (c) The Commission received chapters 1 to 9 on 24 December 2021 and the remaining chapters on 31 January 2022.

DISCLOSURES AND LEGAL COMPLIANCE

KEY PERFORMANCE INDICATORS

– DETAILED INFORMATION IN SUPPORT OF KEY PERFORMANCE INDICATORS (cont.)

ADMISSIBILITY OF PROPENSITY AND RELATIONSHIP EVIDENCE IN WESTERN AUSTRALIA

Project 112: Review of admissibility of propensity and relationship evidence in Western Australia

Table B – Progress towards the admissibility of propensity and relationship evidence in Western Australia

Milestones	TOR referred to LRC	Project Plan completed/signed	Tender process completed/contracts awarded & signed	Project writer engaged	First draft of Issues Paper	Issues Paper published	Report to LRC on response to Issues Paper & submissions	Draft Report submitted to LRC	Final Report forwarded to AG
Target Date(a)	N/A	October 2021	N/A	N/A	26 November 2021	Before 25 December 2021	-	April 2022	29 April 2022(d)
Actual Date	26 August 2021	22 November 21	3 November 2021(b)	3 November 2021(b)	24 November 2021	23 December 2021	-	April 2022(c)	29 April 2022

Key:

- (a) Interim milestone targets agreed and extended by the Commission.
- (b) The project writer for the reference was Sam Vandongen SC.
- (c) The first uncompleted draft was submitted on 13 April 2022. This draft was amended and edited by the Commission and then returned to Sam Vandongen SC for completion. His final draft report was submitted to the Commission on 27 April 2022
- (d) The date set by the AG as per the ToR was 29 April 2022.

DISCLOSURES AND LEGAL COMPLIANCE

KEY PERFORMANCE INDICATORS

– DETAILED INFORMATION IN SUPPORT OF KEY PERFORMANCE INDICATORS (cont.)

SEXUAL OFFENCES

Project 113: Review of sexual offences in the *Criminal Code Compilation Act 1913* (WA)

Table C – Progress towards the Sexual Offences reference

Milestones	TOR referred to LRC	Project Plan completed/signed	Tender process completed/contracts awarded & signed	Project writer engaged	First draft of Discussion Paper	Discussion Paper published	Report to LRC on response to discussion paper & submissions	Draft Report submitted to LRC	Final Report forwarded to AG
Target Date(a)	N/A	-	-	-	-	-	-	-	1 July 2023(b)
Actual Date	4 February 2022	-	-	10 May 2022(c)	-	-	-	-	-

Key:

(a) Milestone targets for this reference will be reported on in the 2022-23 Annual Report.

(b) The date set by the AG as per the ToR is 1 July 2023.

(c) Dr Jamie Walvisch's service agreement dated January 2022 (in relation to Project 111) was extended and a new contract (in relation to Project 113) was entered into at the conclusion of the extension.

DISCLOSURES AND LEGAL COMPLIANCE

KEY PERFORMANCE INDICATORS

– DETAILED INFORMATION IN SUPPORT OF KEY PERFORMANCE INDICATORS (cont.)

EFFICIENCY INDICATOR: Publications on Law Reform.

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

Service: Publications on Law Reform

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

Total publications refers to references referred to the Commission in the 2021-2022 financial year and comparative years as well as references carried over from previous financial years.

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

Total Publications and Community Contacts and their Average Cost

The following table shows the total number of publications and the average cost per publication in 2021-22 and previous financial years. The table also identifies the total community contacts and the average cost per contact in the same period.

	Target 2021-2022	Actual 2021-2022	Actual 2020-2021	Actual 2019-2020	Actual 2018-2019
Service: Total Publications (a)	3	3	2	3	4
Average cost per publication (a)	\$114,950	\$141,441	\$193,570	\$145,492	\$152,993
Total community contacts	550	1,888(b)	500	102	679
Average cost per community contact	\$33.00	\$11.83	\$40.75	\$225.22	\$47.44

Key:

- (a) Total publications refers to the number of published, in-progress and completed references during the 2021-22 financial year and includes references carried over from previous financial years.
- (b) This figure is greater than the target because of the significant community interest in Project 111 which resulted in a high number of public contacts.

DISCLOSURES AND LEGAL COMPLIANCE (cont.)

Ministerial Directives

There have been no ministerial directives in this reporting period.

Other Financial Disclosures

Capital works

The Commission has no capital works projects.

Employment and industrial relations

Staff Profile	2021-22	2020-21
Full-time permanent	Nil	Nil
Full-time contract	Nil	Nil
Part-time measured on an FTE basis	Nil	Nil
On secondment	Nil	Nil

Staff development

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

Workers' compensation

No workers' compensation claims were recorded during the financial year.

Governance Disclosures

Contracts with senior officers

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

Personal use of corporate credit card

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

Other Legal Requirements

Advertising and sponsorship

In accordance with section 175ZE of the *Electoral Act 1907 (WA)*, the Commission incurred the following expenditure relating to advertising and sponsorship during the 2021-22 financial year.

Category	Amount
Advertising agencies	Nil
Market research	Nil
Polling	Nil
Direct mail	Nil
Media advertising	Nil
Total	Nil

Disability access and inclusion plan outcomes

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

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

This annual report, like the recently released 'review of the *Equal Opportunity Act 1984 (WA)*', is designed to be print-accessible to people with disabilities and can be supplied in alternative formats on request. In accordance with the Commission's community outreach program, all public meeting venues are selected with disabled access in mind, including special facilities for the hearing-impaired and the projection of discussion notes on large screens so that people attending the meeting can see what is being recorded. Electronic publishing allows documents to be enlarged at will or projected.

Online meetings are enabled with live written transcript and chat boxes for the hearing impaired.

DISCLOSURES AND LEGAL COMPLIANCE (cont.)

Compliance with Public Sector Standards and Ethical Codes

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

The Commission uses the Department's human resource services and the Executive Officer ensures that human resource management principles have adequate checks in place to ensure compliance requirements are met. The Commission's Code of Conduct is close to completion using the Public Sector Commission's Code of Conduct template for government boards. Various measures are in place to ensure that Commission members and staff assisting the Commission are familiar with the WA Public Sector Commission's Code of Ethics. The Commission has its own Charter which is made available to new members.

In 2021-22, no breach claims were lodged in relation to either the Public Sector Standards or the WA Public Sector Commission's Code of Ethics.

Recordkeeping Plan

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

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

Freedom of Information

In 2021-22, the Commission received no freedom of information (FOI) applications.

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

All of the Commission's publications, including Discussion Papers, Final Reports and Annual Reports are available to download for free from the Commission's website.

The Commission holds other documents which are not published, such as general correspondence, submissions received from stakeholders, minutes of its meetings, contracts and tender documents.

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

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

Access to personal information

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

Personal information can be:

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

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

DISCLOSURES AND LEGAL COMPLIANCE (cont.)

Freedom of Information (cont.)

Amendment of personal information

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

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

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

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

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

Access to non-personal information

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

Access applications have to:

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

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

The Law Reform Commission of Western Australia
Level 23, David Malcolm Justice Centre
28 Barrack Street
PERTH WA 6000
Or emailed to: lrcwa@justice.wa.gov.au

Service delivery

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

Notice of decision

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

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

Review rights

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

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

DISCLOSURES AND LEGAL COMPLIANCE (cont.)

Charges

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

- charge for time taken dealing with the application - \$30.00 per hour
- charge for access time supervised by staff - \$30.00 per hour
- charges for photocopying - \$30.00 per hour for staff time; and 20c per copy
- charges for staff time in transcribing information from a tape or other device - \$30.00 per hour
- charge for duplicating a tape, film or computer information - actual cost
- charge for delivery, packaging and postage - actual cost.

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

Government Policy Requirements

Substantive Equality

Although the Commission is not required to negotiate annually the scope of implementation for the *Policy Framework for Substantive Equality* with the Commissioner for Equal Opportunity, the Commission is aware of the intent and substance of the Policy Framework. Agencies may choose to report on progress achieved in implementing the Policy Framework for Substantive Equality, noting progress on developing and implementing the framework and/or achievement of outcomes in the framework.

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

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

Western Australian Multicultural Policy Framework

The Commission relies on the Department's Multicultural Plan 2021-2025. The plan was developed in consultation with the Office of Multicultural Interests (OMI) and is aligned with the Western Australian Multicultural Policy Framework. The Multicultural Plan is an integral part of the Department's commitment to diversity and inclusion and assists the Commission in ensuring a culturally safe and inclusive workplace, and a responsive service that meets the needs of our culturally and linguistically diverse consumers.

Occupational Health and Safety

The Commission is committed to meeting its obligations and responsibilities under the *Workers' Compensation and Injury Management Act 1981 (WA)*, the *Work Health and Safety Act 2020 (WA)* and the *Work Health and Safety (General) Regulations 2022 (WA)* in such a manner as it ensures the provision and maintenance of a safe and healthy work environment for its members, Departmental staff and the general public.

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

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

DISCLOSURES AND LEGAL COMPLIANCE (cont.)

Government Policy Requirements (cont.)

Commission members and staff assisting the Commission are expected to comply with the Code of Practice – Occupational Safety and Health in the WA Public Sector, and to conduct themselves in a safe manner, not placing themselves and others at risk. During the 2021-22 reporting period, no workers' compensation claims were lodged, nor was any time lost from work as a result of work-related illness or injury.

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

The Commission is committed to consulting with its members and staff assisting the Commission in a meaningful and effective manner on occupational safety and health issues, enabling each Commission member and Departmental staff member to contribute to decisions that may affect their health, safety and welfare at work. This has been particularly important during the COVID-19 pandemic with the Commission employing remote access tools to facilitate online communication and adhering to increased Departmental hygiene, social distancing and working from home requirements where necessary.

National Strategic Plan for Asbestos Awareness and Management 2019-2023

The National Strategic Plan for Asbestos Awareness and Management 2019-2023 is consistent with the Western Australian Government policy on occupational safety and health.

On 9 November 2020, the Western Australian Government endorsed targets one to seven (targets eight and nine are Federal targets) of the National Strategic Plan for Asbestos Awareness and Management 2019-2023, which aims to eliminate asbestos-related diseases in Australia by preventing exposure to asbestos fibres.

Each State and local government department, agency, authority and government enterprise is required to report on its progress in achieving Western Australia's targets.

As the Commission does not have its own premises, the identification and assessment of risks associated with asbestos-containing material, asbestos awareness and training are undertaken by the Department's Procurement, Infrastructure and Contract Services on the Commission's behalf.

Government Building Contracts

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

Annual performance for 2021-22

Measure	Actual Results		Results against Target	
	2020-21 ⁽¹⁾	2021-22	Target	Comment on result
Number of fatalities	0	0	0	
Lost time injury and/or disease incidence rate	0	0	0 or 10% reduction in incidence rate	
Lost time injury and/or disease severity rate	0	0	0 or 10% reduction in severity rate ⁽²⁾	
Percentage of injured workers returned to work: (i) within 13 weeks (ii) within 26 weeks	N/A ⁽³⁾ N/A ⁽³⁾	N/A ⁽³⁾ N/A ⁽³⁾	100% Greater than or equal to 80%	
Percentage of managers trained in occupational safety, health and injury management responsibilities	100%	100%	Greater than or equal to 80%	

Note ⁽¹⁾ The performance reporting examines a three-year trend and, as such, the comparison base year is two years prior to the current reporting year.

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

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

APPENDIX 1: CURRENT REFERENCES

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

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

Review of sexual offences in the Criminal Code

Pursuant to section 11(2)(b) of the *Law Reform Commission Act 1972 (WA)*, the Law Reform Commission of Western Australia is to review Chapter XXXI of the *Criminal Code Compilation Act 1913 (WA)* (Code) and sections 186, 191 and 192 of the Code and provide advice for consideration by the Government on possible amendments to enhance and update these provisions (and related or ancillary provisions or legal rules), having regard to contemporary understanding of, and community expectations relating to, sexual offences.

In carrying out its review, the Commission should consider whether there is a need for any reform and, if so, the scope of reform regarding the law relating to consent (including knowledge of consent) and, in particular:

- (a) whether the concept of affirmative consent should be reflected in the legislation;
- (b) how section 24 of the Code (dealing with mistake of fact) applies to the offences created by the above-mentioned provisions;
- (c) how consent may be vitiated, including through coercion, fraud or deception, for example, through “stealthing”; and
- (d) whether special verdicts should be used.

Hon John Quigley MLA

4 February 2022

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THE LAW REFORM COMMISSION
of
WESTERN AUSTRALIA

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