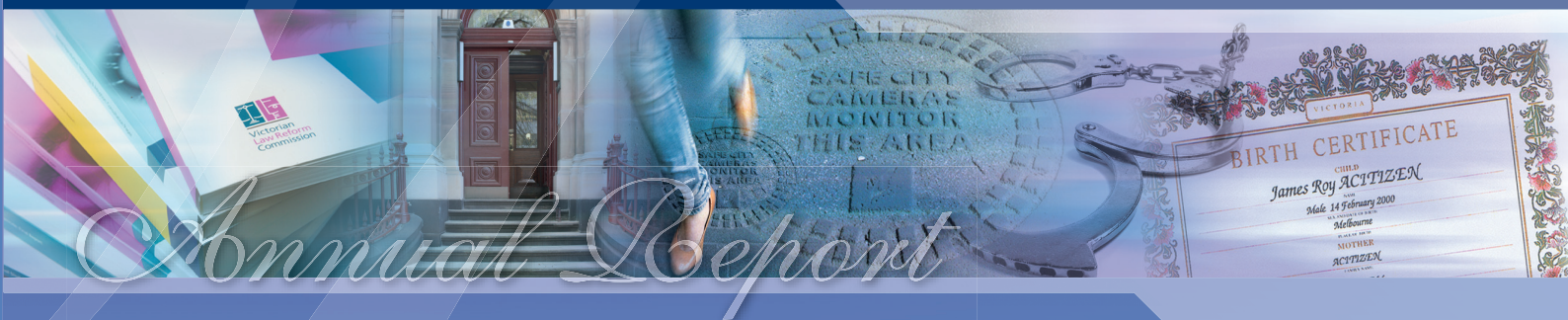




Victorian
Law Reform
Commission

ANNUAL REPORT 2006-07



Annual Report



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Highlights of the year

HIGHLIGHTS OF THE YEAR

- > Completion of the *Assisted Reproductive Technology & Adoption Final Report*, which recommended removal of barriers to access, recognition of same-sex parents and a legal framework to govern surrogacy arrangements.
- > Civil Justice Consultation Paper released and extensive consultation with the profession undertaken to develop recommendations for the report due next year.
- > New Chairperson Professor Neil Rees took up his role at the end of the year.
- > Numerous roundtable consultations held with a wide range of users of surveillance in public places in preparation for a consultation paper to be released next year.
- > Development of final recommendations in the Review of the Bail Act project, with a final report to be given to the Attorney-General next year.
- > Revamp of the commission's website undertaken ready for launch of a new site next year.
- > The government banned surveillance in workplace toilets and change-rooms as a result of the commission's *Workplace Privacy Final Report*, and introduced the second bill to implement recommendations from the *Sexual Offences Final Report*.





CHAIRPERSON'S REPORT *Report*

Professor Neil Rees



The Victorian Law Reform Commission has experienced substantial change and activity over the past 12 months with the appointment of two new full-time commissioners, the commencement of a reference which may extend over a number of years, and the tabling in parliament of a report which was the final product of many years work.

The Contribution of Justice Neave

The first Chairperson of the commission, Justice Marcia Neave AO, together with the commissioners and staff, built an organisation which, in her own words, has become 'an established feature of the legal landscape'. The commission is known for its intellectual rigour, its commitment to consultation with people who are interested in its references, and for its capacity to provide government

with law reform recommendations which are balanced and capable of implementation. It has been a privilege to join an organisation which, since its establishment in 2001, has quickly gained widespread support for both the processes it has adopted to assist it in the challenging task of formulating law reform proposals and for the quality of its final recommendations to government.

Reports to Parliament

A highlight of the past year was the tabling in parliament of the report titled Assisted Reproductive Technology & Adoption. The report, which contained 130 recommendations for reform, was the final product of a reference that lasted four years and which required the commission to consider a range of complex social, ethical and legal issues concerning assisted reproduction and adoption. The consultation process was extensive. During the course of the reference the commission published a consultation paper, three occasional papers and three position papers. The commission received over 1000 submissions in response to these publications and it also engaged in numerous roundtable and individual consultations. The final report, which was tabled in parliament on 7 June 2007, was greatly enhanced by this broad community participation.

Acting Chairs

The commission had acting chairs throughout most of the past year. The Chief Executive Officer, Ms Padma Raman, acted as the Chairperson of the commission from 1 July 2006 until 17 October 2006, when she took maternity leave. Dr Iain Ross, a former Vice-President of the Australian Industrial Relations Commission and now a partner at the law firm Corrs Chambers Westgarth, was Acting Chairperson from 18 October 2006 until 1 June 2007 when my appointment commenced.

I wish to thank both Ms Raman and Dr Ross for the contributions they made to the commission in the capacity of Acting Chairperson. Dr Ross devoted a substantial amount of time and energy to the Assisted Reproductive Technology & Adoption reference, particularly in providing key stakeholders and the media with comprehensive briefings about the contents of the Final Report.

Civil Justice Reference

Work on the Civil Justice reference commenced in September 2006 with the arrival of Dr Peter Cashman as full-time commissioner in charge of that reference. A Consultation Paper published in October 2006 generated a large number of submissions. Dr Cashman and the team working on the Civil Justice reference are well advanced in the task of identifying aspects of the civil justice system which merit close attention and, perhaps, comprehensive reform. Their energy and commitment to the task have resulted in this reference generating significant community interest.

It is anticipated that this will be a two-stage reference with an interim, or stage one, report published during the next financial year.

Other References

The commission's reference on the reform of bail laws is nearing completion. It is anticipated that the final report will be delivered to the Attorney-General in August 2007. This has been a lengthy and complex reference which will be the subject of more detailed reporting in our next Annual Report.

Work on the second stage of the Privacy reference, which concerns surveillance in public places, is well underway. The commission's report on the first stage of this reference, *Workplace Privacy: Final Report*, was tabled in parliament in late 2005. Extensive consultation and research has taken place in relation to surveillance in public places and the commission anticipates publication of a consultation paper in early 2008.

Commissioners and Staff

We are fortunate to have six part-time commissioners who manage to find the time in their busy lives to make exceptional contributions to the work of the commission in activities ranging from chairing roundtable discussions, to reading extensive amounts of background material and actively participating in the formulation of detailed law reform proposals. The combined experience and judgment of

the part-time commissioners is one of the great strengths of the organisation and I take this opportunity to thank them publicly for their work.

The commission is an attractive, but exacting, workplace because the issues which we examine are invariably complex and challenging. The policy and research officers require and demonstrate first-rate research and writing skills. I congratulate them on the quality of what they do. Communication is also a vital part of the commission's work. Our communications officers undertake a variety of tasks ranging from liaison with the media to editing all of the commission's publications in a highly professional manner. Our administrative staff members also make important contributions to daily working life at the commission and to our publications, which are often many months, or years, in the making.

The Year Ahead

I have come to the position of Chairperson of the commission after a long absence from Victoria. In the early 1990s, after a term as the first President of the Mental Health Review Board, I left Melbourne to establish a new law school at the University of Newcastle. Much has changed in the Victorian legal landscape during my 16 year absence.

I sense an enthusiastic desire among many lawyers to continue the never-ending task of improving our laws and legal processes. The community legal centre sector, in particular, has grown substantially in both size and influence over the past two decades. It has the capacity to generate proposals for reform which translate into references for the commission.

I look forward to the opportunity to work with the entire Victorian legal profession and the broader community in the task of developing law reform proposals.

Professor Neil Rees
Chairperson



Commissioners

COMMISSIONERS

The Victorian Law Reform Commission has eight commissioners: two full-time and six part-time commissioners, with a full-time chairperson at the helm.

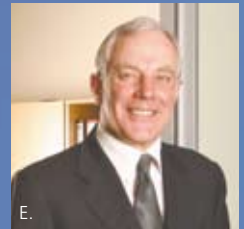
In September 2006 Dr Peter Cashman began work as the full-time commissioner overseeing the Civil Justice review.

The Attorney-General announced in February 2007 that Professor Neil Rees would replace Justice Marcia Neave as the full-time chairperson of the commission, and he took up the role on 1 June 2007.

The acting chairperson's role was filled by CEO Padma Raman and part-time commissioner Dr Iain Ross in the 15 months between Justice Neave's departure and Professor Rees' starting date.



- A. Paris Aristotle
- B. Peter Cashman
- C. Jennifer Coate
- D. Felicity Hampel
- E. David Harper
- F. Sam Ricketson
- G. Neil Rees
- H. Iain Ross



Commissioners are responsible for the overall direction of the organisation. They are each members of divisions of the commission in which they work on specific references. All commissioners meet regularly to discuss interim and final reports for all references.

Mr Paris Aristotle AM was appointed as a part-time commissioner in August 2002. He has been the Director of the Victorian Foundation for Survivors of Torture since 1988 and holds several positions on government advisory bodies in the settlement and human services fields, including the Refugee Resettlement Advisory Council and the Immigration Detention Advisory Group. He also sits on the board of the Adult Multicultural Education Services.

Mr Aristotle has been a member of the divisions for the Assisted Reproductive Technology & Adoption, and Surveillance in Public Places references.

Dr Peter Cashman is a barrister and was formerly Associate Professor at the University of Sydney's law school. He established the law firm Cashman & Partners, which merged with the Melbourne firm Maurice Blackburn to form the national firm of Maurice Blackburn Cashman. He was formerly national president of the Australian Plaintiff Lawyers' Association and founding director of the Public Interest Advocacy Centre. He was joint commissioner in charge of the Australian Law Reform Commission's class actions inquiry, from 1986 to 1987.

Her Honour Judge Jennifer Coate became a part-time commissioner in October 2001. She has been a judge of the County Court since June 2000 and was President of the Children's Court until May 2006. For the eight years before the County Court she was a magistrate. Judge Coate has worked as a barrister, solicitor and academic and served on social policy groups and committees.

In the past year, Judge Coate has been a member of the Bail division.

Her Honour Judge Felicity Hampel

has been a part-time commissioner since October 2001. She was appointed as a Judge of the County Court in 2005, prior to which she was a practising Senior Counsel and Adjunct Professor of Law at Monash University. She joined the Victorian Bar in 1981, was appointed Queens Counsel in 1996 and throughout her career has been active in human rights and public interest advocacy and legal education. In 2005, she received the Women Lawyers' Achievement Award in Victoria.

Judge Hampel has been a member of the commission's divisions for Assisted Reproductive Technology & Adoption (chair), Bail, and Civil Justice references.

The Honourable Justice David Harper

has been with the commission since October 2001. After a long career at the Bar—he was made a QC in Victoria in 1986 and in New South Wales in 1989 and was the Bar Chairman in 1990–91—he was appointed as a judge to the Supreme Court of Victoria in 1992. He is currently chair of the International Humanitarian Law Advisory Committee of the Red Cross (Victorian branch), President of the Victorian Association for the Care and Resettlement of Offenders, and Chair of The Northcote Trust, which helps talented young people finish their education.

Among his other commission work, Justice Harper has been a member of the commission's divisions for the Bail (chair) and Civil Justice references.

Professor Sam Ricketson has been a part-time commissioner since October 2001. He is a practising barrister specialising in matters of copyright and intellectual property law and has published widely in these areas. Since 2000, he has been a Professor of Law at the University of Melbourne and was previously Professor of Commercial Law at Monash University. Prior to this, he held academic and research positions at the universities of Melbourne and London. He is also a Fellow of the Academy of the Social Sciences in Australia.

Professor Ricketson has been a member of the divisions for the Assisted Reproductive Technology & Adoption, Civil Justice, and Surveillance in Public Places (chair) references.

Professor Neil Rees has been the Chairperson of the commission since 1 June 2007. His legal career includes periods in academia, in legal practice and as a member of tribunals. Before joining the commission, he was a Professor and Foundation Dean of the Faculty of Law at the University of Newcastle. His tribunal membership includes the New South Wales Administrative Decisions Tribunal, the Mental Health Review Board and the Psychosurgery Review Board. He has been involved in the establishment of three community legal centres and clinical legal education programs: Springvale (Monash University); Kingsford (University of New South Wales); and Newcastle (University of Newcastle). He has previously been a part-time commissioner of the New South Wales Law Reform Commission.

Dr Iain Ross AO is a partner at Corrs Chambers Westgarth, specialising in workplace relations and administrative law. He was previously a Vice-President of the Australian Industrial Relations Commission. He first became involved in law reform in 1992 as a consultant to the Australian Law Reform Commission's Collective Investments Review. He was a part-time commissioner of the New South Wales Law Reform Commission from 1998 to 2001 and joined the Victorian Law Reform Commission in August 2003.

Dr Ross has been a member of the divisions for the Civil Justice, Bail, and Surveillance in Public Places references.



Chief Executive Officer's Report

CHIEF EXECUTIVE OFFICER'S REPORT

Padma Raman



It is a testament to the staff and part-time members that the commission functioned effectively this year despite not having a full-time chair. The commission also had to accommodate my maternity leave during the year. The highlights of the year include the completion of two major references, further work on all our systems including our community law reform function and implementation of commission recommendations.

References

The year brought the completion of the Assisted Reproductive Technology & Adoption reference with the Final Report tabled in parliament in June 2007. The report marked the end of four years of extensive consultation and research. Mary Polis, one of the commission's team leaders, led the process and along with Prue Elletson wrote the widely acclaimed report. The division chaired by Judge Hampel and comprising Professor Ricketson, Dr Ross and Mr Aristotle worked diligently to produce final recommendations.

The commission also completed the majority of work in relation to its Bail reference over the past year. Angela Langan led the reference and was ably assisted by Keren Murray. Once again the division of the commission chaired by Justice Harper gave up much of their time and worked extremely hard to develop recommendations.

Implementation

The commission's implementation record was strengthened this year with the introduction of a further Sexual Offences Bill that gave effect to the commission's recommendations in relation to alternative methods of giving evidence and jury directions in sexual offence cases. A range of the commission's non-legislative recommendations were also implemented over the year. The government also introduced legislation to ban surveillance in toilets and change rooms in line with recommendations contained in the commission's Workplace Privacy Report.

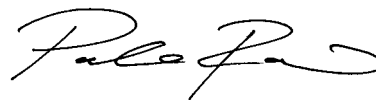
Systems and Staff

Community law reform is an important part of the commission's work. We worked on refining our processes for receiving suggestions for reform and have developed a range of systems to manage our community law reform work. Simone Marrocco and Alison Hetherington have contributed enormously in ensuring the process runs efficiently. The commission also continued to produce *Inform*, which provides information about law reform activities being conducted by a number of agencies. We have also continued to develop our profile with schools, through our involvement in Law Week activities.

The part-time members who make up the commission put in a Herculean effort over the past year to complete projects and to continue to operate in the absence of a full-time Chairperson. They provided me with their complete support when I performed the functions of the chair. The commission owes its gratitude to Dr Iain Ross for acting as part-time chairperson for part of the year.

The commission is privileged to have a fabulous and dedicated team of people working for it. Over this year they have demonstrated their professionalism in working under a range of different arrangements while the government appointed a new full-time chairperson. I am indebted to them for their patience, their hard work and for ensuring the continued success of the commission. I would like to thank Merrin Mason for acting in the CEO role while I was on maternity leave. She brought her wisdom and calm to the role in difficult circumstances.

I look forward to working with the commission's new chairperson and to the challenges and excitement brought by new references.



Padma Raman
Chief Executive Officer



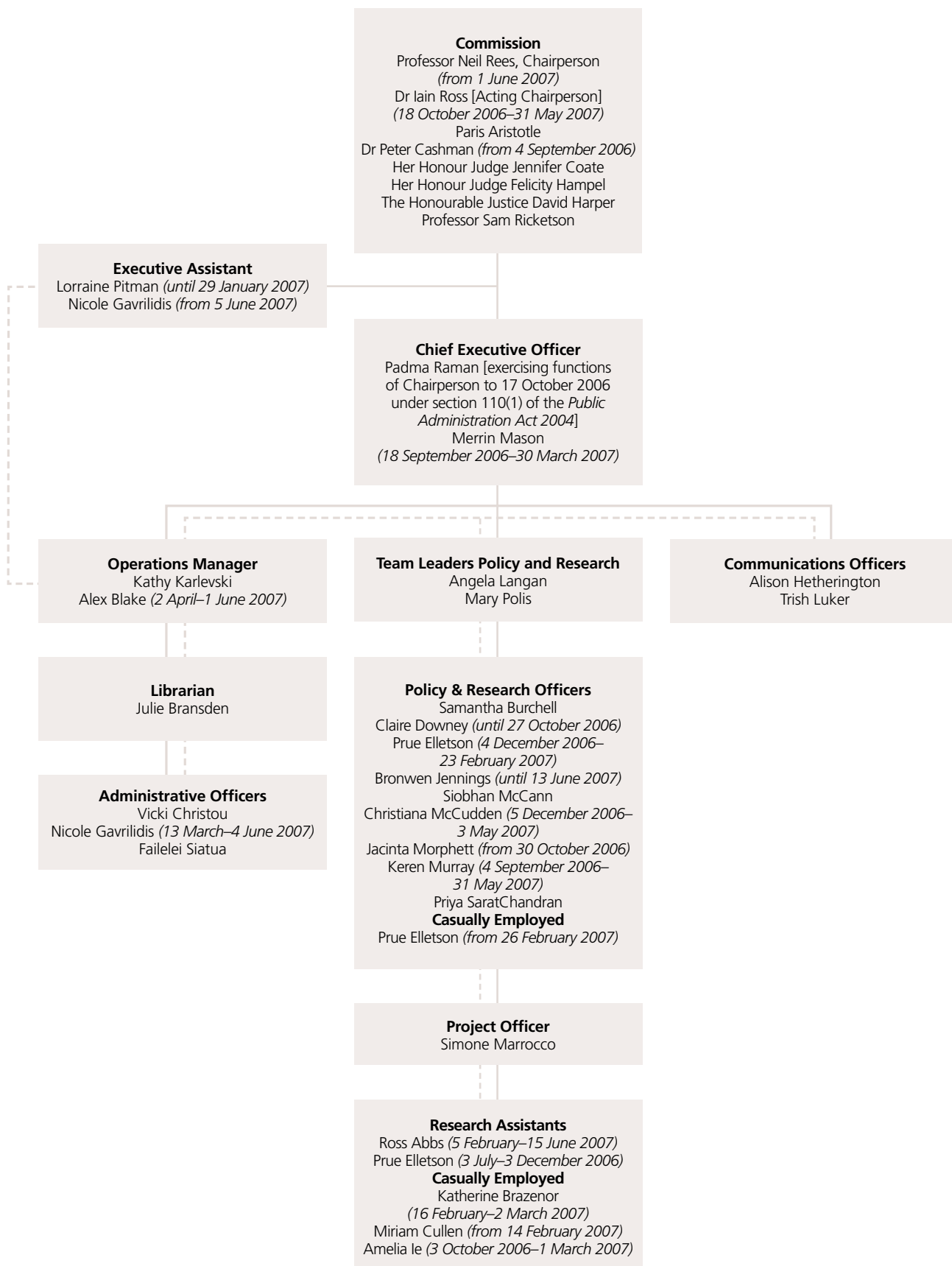
Organisational Chart

ORGANISATIONAL CHART



The commission has a small team of staff who support the commissioners by conducting research, meeting with people, writing publications, producing the publications and providing administrative functions. There have been a lot of staff movements in the past year as references finish and begin and secondments end.







Our Approach

OUR APPROACH

Functions, Visions and Objectives

The Victorian Law Reform Commission was established as an independent government-funded organisation with a charter to facilitate community-wide consultation and advise parliament on how to improve and update Victorian law. The commission is committed to transparent and public law reform which is independent of the political process.



Our Functions

The Victorian Law Reform Commission was established under the *Victorian Law Reform Commission Act 2000* as a central agency for developing law reform in Victoria.

The functions of the commission are to:

- examine, report and make recommendations to the Attorney-General on any proposal or matter relating to law reform in Victoria that is referred to the commission by the Attorney-General
- examine, report and make recommendations to the Attorney-General on any matter that the commission considers raises relatively minor legal issues that are of general community concern if the commission is satisfied that the examination of that matter will not require a significant deployment of the resources available to the commission
- suggest to the Attorney-General that a proposal or matter relating to law reform in Victoria be referred to the commission by the Attorney-General
- monitor and coordinate law reform activity in Victoria
- undertake educational programs on any area of the law relevant to a reference, whether past or current.

Our Vision and Values

Our vision is to establish the Victorian Law Reform Commission as the leading law reform agency in Australia. In all its activities, the commission will contribute to the building of a fair, just, responsive, inclusive and accessible legal system for all Victorians.

The commission will:

- maintain a reputation for rigorous legal research and extensive community consultation
- produce timely, thorough and high quality law reform recommendations which provide innovative solutions to complex policy issues
- build community trust in government and enhance the democratic process by fostering public understanding of law reform and encouraging informed community debates on key issues
- give a voice to marginalised groups within the community
- ensure the government is fully informed of law reform developments which have occurred interstate and overseas
- provide fearless, impartial and independent advice to the government of the day and be seen to be doing so
- build partnerships with other bodies involved in law reform to avoid inefficient duplication of effort.

Objectives

To provide the Attorney-General and parliament with high quality, timely, responsive and effective advice on law reform that is independent of government agencies and the political process.

Results

- Delivered *Assisted Reproductive Technology & Adoption Final Report*.
- Provided information briefings on the *Assisted Reproductive Technology & Adoption Final Report*.
- Significant work undertaken on final recommendations for the Bail and Civil Justice references.
- Contributed towards government efforts to implement recommendations.

Engage the community in law reform processes and foster community-wide debate on law reform proposals.

- Consulted widely with the community in meetings, roundtables and public forums for Bail and Surveillance in Public Places references.
- Consulted with the courts and legal services sector for the Civil Justice reference.
- Provided information about key directions in each reference to media outlets.
- Produced summary publications for specific audiences.
- Regularly updated the commission website with news on all references.

To promote the role of law reform and improve community understanding of law and legal processes relevant to the commission's references.

- Held law reform event in Geelong on Sexual Offences law reform for school students as part of Law Week.
- Prepared and distributed school curriculum support notes on Workplace Privacy law reform, in support of the Law Reform in Action booklet.
- Participated in relevant conferences, forums and other public events.

To coordinate law reform in Victoria and identify areas of emerging concern.

- Produced two editions of *Inform* e-newsletter, which contains updates on law reform activities in the state.
- Participated in conferences and forums relevant to law reform.
- Worked with community legal centres and the Equal Opportunity and Human Rights Commission Victoria on community law reform projects.

To maintain efficient and effective administrative and financial systems and provide a safe and supportive working environment to support the commission's law reform activities.

- Delivered all objectives within budget.
- Improved operation and maintenance of internal systems and databases.



REFERENCES – BAIL



The past year has been spent analysing submissions and roundtable outcomes and conducting further research to develop final recommendations for improving the operation of the Bail Act. The researchers spent the latter half of the year writing the final report.

Consultations

Following the roundtables held at the end of last year, another 13 consultations were organised to follow up issues that emerged from the roundtables and supplementary submissions about the penalty for surety defaults.

Further consultations were held with Victoria Police, the Supreme Court, Magistrates' Court, Victims Support Agency, the Criminal Justice Enhancement Project, Department of Justice, and individuals.

Surety Penalty and Preparing to Commit an Offence

The Attorney-General wrote to the commission at the end of last year asking us to consider two separate issues as part of the review of the Bail Act.

The first was the penalty for the forfeiture of a surety. This followed the decision in *R v Mokbel and Mokbel* in which Justice Gillard criticised the current two-year penalty as being inadequate for a surety as large as \$1 million.

The commission wrote to everyone who had responded to the Consultation Paper requesting another submission on the forfeiture penalty. We provided a brief paper explaining the law in Victoria and other Australian states and asked the following questions:

- Is the current penalty of two years imprisonment for failing to meet a surety, provided for in section 6(1) of the Crown Proceedings Act, inadequate?
- For what reasons should the current penalty either remain as it is or be increased?
- Should the current provision remain, or is the civil forfeiture regime found in many other Australian states to be preferred?

We received another 18 submissions in response to this request.

The second issue was a request to consider how preparatory offences would be treated under any new Bail Act. The Chief Commissioner of Police had requested the Victorian Government consider the introduction of offences for people preparing to commit an armed robbery. As this issue fitted in with the general discussion about the tests for bail the commission did not call for further submissions.

Final Report

First drafts of the final report were finished by 30 June 2007. After editing, proofreading and design is completed next year, it will be handed to the Attorney-General for tabling in parliament.

The final recommendations were developed by the bail division of commissioners: Her Honour Judge Jennifer Coate, Dr Iain Ross, the Honourable Justice David Harper and Her Honour Judge Felicity Hampel.

The division members participated in an intensive round of meetings between July and November 2006 to develop the final recommendations and in 2007 read through drafts of the report and considered further refinements of recommendations. The recommendations were then considered and decided on by the full commission.

Staffing

Keren Murray joined Angela Langan on the bail team in early September 2006 and finished in May 2007. Daniel Evans completed initial work on parts of the final report before finishing his contract on 30 June 2006.



REFERENCES – SURVEILLANCE IN PUBLIC PLACES

References



The Surveillance in Public Places project is the second stage of the commission's Privacy reference, which delivered a report on Workplace Privacy in October 2005.

The terms of reference for the project ask the commission to report on whether legislative or other measures are necessary to ensure there is appropriate control of surveillance in public places.

Scoping and Roundtable Phase

The three commissioners on the Privacy division and commission staff began to scope the new project in mid 2006.

This included initial research into the theories and commentary about surveillance and its impact on individuals and society. It also involved a thorough review of legislative and other measures to control surveillance in other jurisdictions around the world.

Roundtable discussions with users and subjects of surveillance began in October 2006 to give the commission a better understanding of why surveillance is used and what current regulation involves.

Close to 30 of these indepth discussions were held during the year and helped the division tease out people's definitions of key terms in the project, such as 'surveillance' and 'public places'.

Roundtable participants were broadly grouped into the categories of state government and statutory bodies, police, local government, private corporations and community representatives.

Amendment to Terms of Reference

The Attorney-General notified the commission in October 2006 that he wanted to amend the Privacy project's terms of reference. The commission will no longer consider the publication of photographs without the subject's consent because the issue has been taken up by the Standing Committee of Attorneys-General. While this amendment removes specific consideration of unauthorised publication of photographs, the taking of photographs remains within the ambit of the amended terms of reference.

Briefing Papers

The commission has sought briefing papers from experts in two areas—the consideration of cyberspace as a public place and the impact of anti-terrorism legislation on the control of surveillance.

Expert briefing papers are often commissioned to fill in gaps in existing research and give the commission a clearer view of the issues involved.

Other Reviews

Victoria is not alone in considering issues of privacy in the context of new and emerging technologies. Other jurisdictions have, and are, conducting reviews on privacy. The New South Wales Law Reform Commission released its Final Report into NSW surveillance laws in June 2007 and is now reviewing information privacy laws. The Australian Law Reform Commission (ALRC) is reviewing the *Privacy Act 1988* (Cth), and has released a Review of Privacy Issues Paper. The New Zealand Law Commission also announced a review of its privacy regime in October 2006.

Joint ALRC–VLRC Forum

In February 2007, the commission and the ALRC held a joint public forum at the State Library which considered various privacy issues, including surveillance. The Victorian Commission has and will continue to work cooperatively with the ALRC where relevant.

Staff

Bronwen Jennings and Priya SaratChandran were the policy and research officers working on the reference for most of the financial year. Bronwen finished her 12-month secondment with the commission in June 2007 and Michelle Burrell was appointed to the role in the same month. Miriam Cullen worked as research assistant on the reference from February 2007.



REFERENCES – ASSISTED REPRODUCTIVE TECHNOLOGY & ADOPTION

References



The commission finished its *Assisted Reproductive Technology & Adoption Final Report* in the past year, wrapping up one of its most well known projects.

The report was given to the Attorney-General on 30 March and he tabled it in the Victorian Parliament on 7 June, with the commission holding a report launch on 21 June. The reference was characterised by the strong public interest in the recommendations and stakeholders' commitment to all stages of the commission's consultation processes.

Dr Iain Ross was the commission's acting chairperson during the report's production and was the spokesperson when the report was released. More

than 60 stories about the report appeared on radio and television news programs and in Australian newspapers, websites and blogs.

The Attorney-General said the government would consider the report's content and respond by the end of 2007.

The report made more than 130 recommendations to provide clarification of parental status for all families, and remove inconsistencies and invalid provisions in the Infertility Treatment Act, which governs the provision of assisted reproductive treatment.

Access to Assisted Reproductive Technology

The commission's recommendations aim to give the Infertility Treatment Act greater flexibility to allow service providers to respond with certainty to unexpected turns in treatment and social change.

In making its recommendations the commission drew on an extensive body of social science research that has found it is the quality of parenting that most affects children's wellbeing and outcomes rather than family structure.

The commission recommended that people seeking assisted reproduction not be discriminated against on the basis of marital status, religion, race or sexuality. Access would be determined according to the likelihood of a woman becoming pregnant or the risk of her passing on a genetic disease.

The only people who could be barred from treatment are those who have past convictions for serious sexual or violent offences, who have had children taken from their care, or who are assessed by counsellors as posing a potential risk to children. All such exclusions would be subject to review by a specialist panel.

Surrogacy is not illegal in Victoria, but the Infertility Treatment Act makes it virtually impossible for people to undertake surrogacy arrangements using a reproductive clinic. This is because a surrogate mother and her partner (if she has one) must be infertile if the commissioning parents want to use their own embryo. The commission believes that if surrogacy is to be legal in Victoria this anomaly needs to be corrected, and surrogacy should be carefully regulated to protect everyone involved. Eligibility for fertility treatment should apply to the people commissioning a surrogacy arrangement and not the surrogate mother and her partner, if she has one.

Recognising Parents

Another major impact on children born through ART is the failure in many cases of the law to recognise the people who care for them as parents. This affects children who have been born through surrogacy arrangements or to same-sex couples.

Non-recognition of parents has a range of practical and social implications. The commission has recommended that where a child is born to a lesbian couple, the non-birth mother should be presumed to be a parent of the child if she has consented to her partner becoming pregnant, and should be recorded as a parent on the child's birth certificate.

People who organise a surrogacy arrangement should be able to apply to a court for a transfer of parentage from the surrogate once the child is born. If the court and surrogate mother agree, then the commissioning couple can be recognised on the birth certificate as the child's parents.

The commission has also recommended Victoria work towards national law reform for the recognition of these parents to remedy the problems that exist under federal law.

The report stresses that it is crucial for parents to tell children conceived with donated sperm, ova and embryos about their genetic origins.

The report contains many other recommendations that detail changes to process and procedures and address less common problems, such as:

- Clinics to continue to screen sperm for self-insemination.
- It should not be an offence for a partner or friend of a woman to help her self-inseminate.
- Retain the ban on non-medical sex selection.

- Donors should not be able to put qualifications on who receives their sperm or ova, unless they are donating to a known woman or couple.
- The sperm and ova of people who die can only be used if they leave written consent.
- The Infertility Treatment Authority (ITA) should decide case by case if people should be assisted to create 'saviour siblings'.
- The ITA ethics committee should decide whether clinics can use new treatments.
- Same-sex couples and single people should be allowed to adopt.
- Sperm and ova donors should not be able to directly contact their genetic children, but the ITA should continue to maintain information registers to allow contact when children initiate it.
- The ITA should facilitate contact between people born before 1998 and their donors by writing to clinics and donors about the donor registers and offering counselling to donors.
- A new independent service to manage the donor registers should be established.
- Eligibility for fertility treatment should apply to the people commissioning a surrogacy arrangement and not the surrogate mother and her partner, if she has one.
- Surrogate mothers should be 25 years or older and past pregnancies should not be a prerequisite.
- Surrogate mothers who use their own ova should undergo specific counselling.

Staffing

The bulk of work on the Final Report was undertaken by Mary Polis, with help from policy and research officer Prue Elletson.



REFERENCES – CIVIL JUSTICE



With just one year to report back to the Attorney-General, the review of Civil Justice has been hurtling ahead since the commission received the terms of reference in September 2006.

Dr Peter Cashman was appointed full-time commissioner in charge of the project, which has the following terms of reference:

1. To identify the overall objectives and principles of the civil justice system that should guide and inform the rules of civil procedure; having regard to the aims of the Attorney-General's Justice Statement: *New directions for the Victorian Justice System 2004–2014*, and in particular:
 - the modernisation, simplification and harmonisation of the rules of civil procedure within and across jurisdictions;
 - the reduction of the cost of litigation;
 - the promotion of the principles of fairness, timeliness, proportionality, choice, transparency, quality, efficiency and accountability.
2. To identify the key factors that influence the operation of the civil justice system, including those factors that influence the timeliness, cost and complexity of litigation.

3. To consult with the courts, the legal profession, business, government and other stakeholders on the current performance of the civil justice system as well as the overall objectives and principles of the civil justice system and potential options for reform.
4. The review should consider the operation of the rules of civil procedure in the Supreme Court, the County Court and the Magistrates' Court.
5. The review should have regard to recent reviews of civil procedure in other jurisdictions, both within Australia and internationally.
6. The review should also have regard to the impact of current policy initiatives on the operation of the civil justice system including the proposed increase in the jurisdiction of the County Court and investments in information technology such as an Integrated Courts Management System.
7. In presenting its report, the commission should identify areas of the civil justice system and rules of civil procedure that might form the basis of a later and more detailed review. Such areas may include, but are not limited to, the rules and practices relating to:
 - pre-commencement options
 - pleadings
 - discovery
 - summary judgment
 - expert witnesses
 - class actions
 - abuse of process
 - alternative methods of dispute resolution, including alternative dispute resolution undertaken by judicial officers
 - judicial role in case management and listing practices, including docketing systems.
8. The commission should also identify the process by which the courts, the legal profession and other stakeholders may be fully involved in any further detailed review of the rules of procedure.

9. The Victorian Law Reform Commission should report in 12 months from the date of the commencement of the review.

Publications

The commission published a Consultation Paper just three weeks after receiving the project.

People were given just over two months to make a submission to the paper, which listed 65 questions for consideration in areas such as procedural rules, expert evidence, case management and cost and delay.

Sixty submissions were received from courts, legal firms, academics, and professional associations.

Consultations

The commission undertook more than 50 consultations with people and organisations working in the civil justice area.

The courts provided generous assistance and input, as did the legal profession, representative organisations and government agencies.

Dr Cashman also met with key figures in the United Kingdom's civil justice system, including members of the judiciary and the Civil Justice Council. The United Kingdom overhauled its civil justice system ten years ago and the council was established to oversee the reforms.

Conferences

Dr Cashman has presented papers about civil justice at conferences around the country and has used these opportunities to meet with reformers in other jurisdictions and float the commission's ideas about possible improvements to the system.

Research and policy officers have also attended relevant conferences, such as the Australian Institute of Judicial Administration's Affordable Justice conference, the National Judicial College's Confidence in the Courts conference and the University of Melbourne's Civil Justice Research and Teaching Symposium.

Scope of Reference

As the first phase of a larger review, the commission has identified 12 areas where immediate reforms could be undertaken. These are:

1. standards of conduct
2. disclosure of information and cooperation before proceedings are commenced
3. getting to the truth before trial
4. alternative dispute resolution
5. expert evidence
6. class actions and public interest remedies
7. access to justice and litigation funding
8. self-represented litigants
9. costs
10. case management
11. ongoing review and civil justice reform
12. miscellaneous technical reforms.

The civil justice team has undertaken extensive research into reform initiatives that have been implemented in other parts of Australia and other countries. Researchers have also visited Melbourne courtrooms to analyse the processes and procedures involved in civil litigation and follow up issues raised in consultations.

Staffing

The commission had to quickly assemble a team to work on Civil Justice to achieve its tight deadlines.

Mary Polis, Samantha Burchell and Jacinta Morphett form the core of the team. Claire Downey was an initial member and Ross Abbs worked as a research assistant from February to June 2007. Christiana McCudden was seconded from Corrs Chambers Westgarth to work on a project about the costs of litigation for six months.



Community Law Reform



The Victorian Law Reform Commission Act allows the commission to make recommendations on minor legal issues of general community concern or suggest to the Attorney-General that he refer a law reform project to the commission.

We regularly receive suggestions for community law reform projects from community organisations and members of the public. In the past year we have had one request: to investigate the wording of police record-check consent forms.

We have also dealt with requests we received in the previous financial year, including: the process involved in police identity parades; opportunity shops trading in second-hand goods; and continuous observation of secluded mental health patients.

Two significant community law reform proposals have received attention in the past year: assistance animals and public housing appeals.

Assistance Animals

In the previous financial year the commission began researching the regulation of the use of assistance animals such as guide dogs at the request of the Equal Opportunity and Human Rights Commission of Victoria.

The law permits people who are visually or hearing impaired to use assistance dogs, but people with other disabilities do not necessarily have rights to use such animals. Even for people who are permitted to use assistance dogs, problems still sometimes arise when they use public transport or access public venues such as restaurants.

Intern Amelia Ie continued this research in the past financial year, completing a draft paper which outlines current Victorian legislation and regulation, problems with the operation of the law, public awareness of assistance animals and the approach other jurisdictions take.

The commission plans to continue this research in the coming year.

Public Housing Appeals

The commission has researched the merits review framework for public housing assistance decisions following a request from a Flemington and Kensington Community Legal Centre solicitor: in particular, the decisions in matters that fall outside residential tenancies legislation, such as rental rebate assessments, public housing eligibility and bond assistance.

These decisions are only subject to internal merits review by the Office of Housing; our inquiry sought to assess the desirability and feasibility of introducing an external merits review of public housing assistance decisions through the Victorian Civil and Administrative Tribunal.

Student interns Matthew Eglezos and Katie O'Byrne have researched the administrative law surrounding public housing and consulted with people working in the area. The commission contributed public housing assistance questions to a Homeless Persons' Legal Clinic discrimination survey, and also held a roundtable discussion with community and social housing representatives on the issue of merits reviews.

The commission decided that the scope of the project was too large for a community law reform project and will instead present its findings in a research report to the Attorney-General and consultation participants. This report assesses the current internal merits review structure and presents comparative analyses with public housing reviews in other jurisdictions and comparable merits review frameworks in other areas of administrative law.

Coordination and Monitoring of Law Reform

The commission has responsibility for coordinating and monitoring law reform activities in Victoria.

In 2003, the Victorian Law Reform Advisory Council was established to assist with the coordinating role and to share information, knowledge and experience relevant to law reform. The council also has a role in identifying potential areas of law reform which could be pursued as community law reform projects.

Members of the council are drawn from key agencies engaged in law reform, including the Federation of Community Legal Centres, Equal Opportunity and Human Rights Commission of Victoria, Law Institute of Victoria, Public Interest Law Clearing House, Victoria Law Foundation, Victoria Legal Aid, Parliamentary Law Reform Committees and the Department of Justice.

To assist with the dissemination of information about law reform activities, twice a year the commission publishes an electronic newsletter, *Inform*, which provides a round-up of law reform activities in the state.

The newsletter includes information about progress on the current projects of the commission and other law reform activities being undertaken by agencies. It is published and distributed electronically and has hyperlinks to further information.



Implementation Report

IMPLEMENTATION REPORT



One of the commission's goals is to provide recommendations which can be easily implemented by government. While legislative implementation alone is a simplistic measurement of the commission's operations, acceptance of the commission's recommendations must be seen as one of a range of success indicators.

Sex Offences

The first piece of legislation to implement recommendations in the commission's *Sexual Offences Final Report* was the *Crimes Sexual Offences Act 2006*. In the past year the Crimes (Sexual Offences) (Further Amendments) Bill was introduced and assented to on 10 October 2006.

The legislation implements the commission's recommendation that courts should presume all complainants will give evidence by CCTV, or be separated from the accused by a screen if CCTV is not installed. Complainants will also be permitted to have a support person sit with them while giving evidence.

Judicial jury warnings are also clarified by the legislation. These warnings are typically given to juries when there has been a delay in reporting a sexual offence. The amended Crimes Act says a judge must be satisfied there is sufficient evidence to justify such a warning and must not warn or suggest to a jury that it would be dangerous or unsafe to find the accused guilty because of the delay.

In non-legislative reform, the commission's recommendation that forensic officers and sexual assault doctors receive training was accepted by the government, which announced in October it would establish a new statewide network of forensic nurses to examine sexual assault victims. The service is aiming for all victims to be examined by a qualified female practitioner within 24 hours.

In September the government announced the establishment of the state's first child witness service, following the commission's recommendation that a specialist witness service be established to support child witnesses and their carers across the state.

Workplace Privacy

The new *Surveillance Devices (Workplace Privacy) Act 2006* was introduced in August and picked up the commission's recommendation to ban surveillance in all workplace toilets, changerooms and the like.

On introducing the legislation, the Attorney-General said it was the first step in responding to the commission's *Workplace Privacy Final Report*, which was tabled in October 2005.

The Victorian Government has reported it is trying to achieve nationally consistent workplace privacy laws through the Standing Committee of Attorneys-General.

Family Violence

The government is currently working on new legislation in response to the commission's *Review of Family Violence Laws Report*. It has already set aside money to fund two of the non-legislative recommendations made by the commission: the use of dedicated family violence community lawyers to support victims; and preventing victims being cross-examined by unrepresented defendants.

Evidence

The government is working on amendments to the state's evidence laws to bring them in line with the commission's recommendations in its *Implementing the Uniform Evidence Act Report*, which was released in February 2006.

The commission has continued to refine an educational booklet it has written for the legal profession that explains how the uniform Evidence Act will operate. The commission plans to publish and distribute the booklet after the government introduces a bill to change the Evidence Act.

Tenancy Databases

The government has not acted on the commission's *Residential Tenancy Databases Report*, which was released in April 2006.



EDUCATION AND OUTREACH



Helping Students

The commission has continued to help schools teach their legal studies students about the law reform process through visits to schools, law reform study notes, and the annual Law Week event.

Victims on Trial: Sexual Offences Law Reform was the title of this year's Law Week discussion for VCE students. Held at Geelong College, the afternoon session gave students the opportunity to question people working in the field and the law reformers who recommended change.

Every year the commission also talks to legal studies teachers at their annual conference about projects the commission is undertaking and the process of law reform.

This year the commission provided study notes on Workplace Privacy law reform, as a companion to last year's Sexual Offences law reform notes for students.

Intern Program

The commission was one of the prime movers behind the Victoria Law Foundation's Legal Policy internship program, which began in 2003. The program places law students with an interest in legal policy and research and community legal education in public sector and community organisations.

Three interns have completed 20-day placements at the commission in the past year and two have started their placements.

Amelia Ie, Katherine O'Byrne and Matthew Eglezos completed scoping research for two possible community law reform projects: regulation of assistance animals and public housing appeals.

Sarah Zeleznikow and Katherine Kennedy both began a project to review legislation governing the discovery of documents in all Australian and some international jurisdictions to identify possible options for reform in Victoria.

Into Print

Only two publications were released in the past year: the *Assisted Reproductive Technology & Adoption Final Report* and *Civil Justice Review Consultation Paper*. During the past year the commission operated without a full-time chairperson and as a result undertook fewer projects.

The commission always endeavours to write its publications in accessible language but sometimes a shorter, separate publication is needed to reach the widest possible audience.

The *Assisted Reproductive Technology & Adoption Final Report Summary* booklet was produced to give interested people a quick overview of the commission's work, without having to have any previous knowledge of the area.

Because of the tight reporting deadlines, the *Civil Justice Review Consultation Paper* was a list of questions rather than a comprehensive discussion of issues. It was essential to quickly issue a resource people could use to write their submissions to the review.

All commission publications are provided to the public at no cost, in hard copy and electronic versions.

Website

The website is an important link to the wider community for the commission.

All the commission's publications are available on the site the day they are released and important news is placed on the site as soon as it occurs.

In the past year extensive work has been undertaken to rewrite the content of the site to ensure it is relevant for all the different users who visit. The structure and look of the site has also been overhauled to make it easier to use and the new site will be launched next year.

We have had 20 664 unique visitors in the past year, which represents a drop of 3079 on the previous year.

Reform on Film

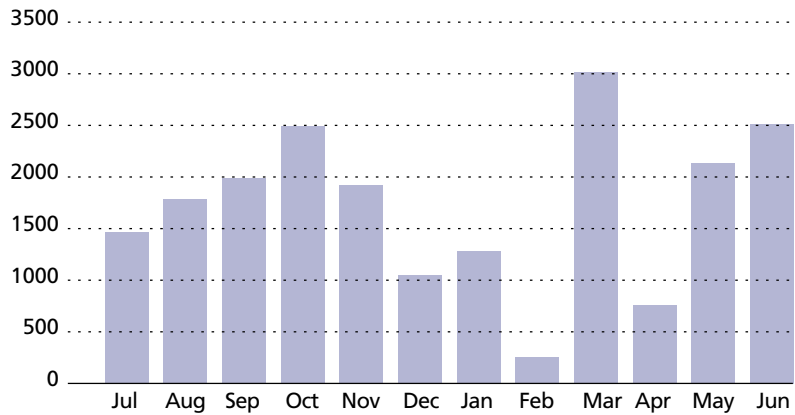
Jannine Bennett was the winner of the commission's \$500 Reform on Film prize at the Shepparton Shorts Short Film Festival for her movie Heinz 57, which is a warm profile of a woman searching to find her place in the world after her father's identity is kept from her.

The short film directly explored some of the core issues in the Assisted Reproductive Technology and Adoption project, including the desire to know genetic heritage and parental responsibility to be honest with their children about their conception. The film's subject had many parallels with the feelings experienced by children born of anonymous donated sperm.

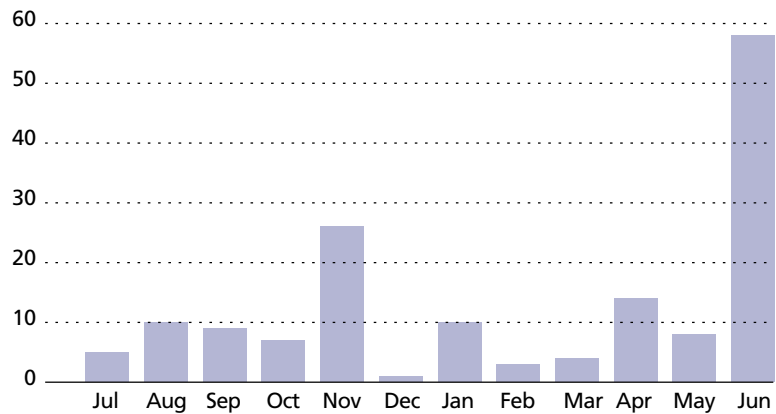
To be eligible for the prize, film-makers must address a law in need of reform or one of the projects being undertaken by the commission.

The prize is offered to get people thinking about some of the important moral and social issues involved in making, respecting and reforming laws.

Unique Visitors to the Website



Media Articles Mentioning Commission



In the News

The commission's Assisted Reproductive Technologies and Adoption reference continued to attract media attention this year, as did the Civil Justice reference.

The commission tries to help journalists with any queries they may have about law reform to ensure the public is kept informed. We also issue media releases whenever a publication is released or when the commission is holding a public event.

Typically, the bulk of the media coverage occurs when a publication is released and more so when final recommendations are given to parliament. The spike in coverage in June was the response to the release of the *Assisted Reproductive Technology & Adoption Final Report*.

Speaking Engagements

Commissioners and staff regularly speak about the commission and its work at schools and conferences and to community groups and legal sector organisations.

In the past year commission staff have judged the Kirby Cup at the University of Melbourne Law School; spoken to legal studies teachers at the Victorian Commercial Teachers Association conference; addressed a legal studies class at Mazenod College; and talked about the family violence and sex offences projects to social work students at Monash University.

Commissioners have also made presentations at legal conferences in Victoria and interstate.



DISCLOSURES

As a statutory authority, the commission is required to comply with a number of Acts and regulations.

Human Resource Management

The Chairperson has the statutory responsibility as employer of staff and for overall management of the commission. The commission is bound by the code of conduct for the Victorian public sector, which contains principles of appointment on merit, fair and reasonable treatment, equal employment opportunity and protection from discrimination, harassment and bullying.

The commission actively promotes safe work practices, career development, balanced lifestyles and a friendly, non-discriminatory workplace. The organisation provides flexibility in the workplace that will enhance productivity as well as assist staff to balance work with family and personal responsibilities. All members of staff are required to engage in a performance management program.

Staff Development and Training

The commission supports staff in their pursuit of professional development through training and further studies. During 2006–7, staff attended courses, workshops and conferences to develop their professional skills and knowledge in areas of relevance to their work and careers. The range of activities has included:

- courses in information technology, communications, financial and business requirements
- conferences of relevance to law reform generally and in relation to specific references
- executive and management training programs
- inhouse staff seminars with speakers from agencies with which the commission has a working relationship.

Some members of staff are undertaking undergraduate and postgraduate studies.

Occupational Health and Safety

The commission is committed to the continual improvement of health and safety standards and performance in the workplace. During 2006–7, there were no human or financial costs of occupational injury or illness. Many staff took advantage of the subsidised influenza immunisation program organised by the Department of Justice. All new staff received ergonomic assessments of their work spaces by qualified professionals. All staff participated in fire drill evacuation exercises. Three staff members are trained as first aid officers.

Industrial Relations

During 2006–7, commission staff have been employed under the terms of the Victorian Public Service Agreements 2004 and 2006. The commission has a cooperative relationship with the union representing the interests of staff: the Community and Public Sector Union. No time was lost during the year through industrial disputes or accidents.

Whistleblowers

The *Whistleblowers Protection Act 2001* encourages and facilitates disclosures of improper conduct by public officers and public bodies. For the 12 months ending 30 June 2007, the commission did not receive any disclosures.

Freedom of Information

The *Freedom of Information Act 1982* allows the public the right to access documents held by the commission. For the 12 months ending 30 June 2007, the commission received one application from a member of the public. The documents sought were publicly available and therefore, were not required to be viewed under the Freedom of Information Act.

Compliance with Building Act 1993

The commission does not own or control any government buildings and is exempt from notifying its compliance with the building and maintenance provisions of the *Building Act 1993*.

Department of Victorian Communities

In accordance with the requirements outlined in the Premiers Circular 2006/1, the commission is required to report on its responsiveness to the following Victorian community areas:

- culturally and linguistically diverse (CALD) communities
- Indigenous communities
- women
- young people.

This requirement forms part of the whole-of-government performance reporting framework and is required under the *Multicultural Victoria Act 2004*.

Cultural Diversity

The commission has a commitment to engaging with the Victorian community in an inclusive manner. Law reform projects involve consultation strategies aimed at enhancing the participation of people from CALD communities.

One of the commission's key strategies is the participation of representatives from community organisations on consultative committees for references. The involvement of key gate-keepers in this capacity is beneficial when the commission organises consultation meetings with people from diverse cultural backgrounds.

The Surveillance in Public Places reference held roundtables during the year and invited representatives from CALD communities, such as the Islamic Council of Victoria.

During 2006–7, the commission has maintained the availability of the brochure *Changing the Law* in 11 community languages: Arabic, Cantonese, Croatian, Greek, Italian, Macedonian, Mandarin, Spanish, Somali, Turkish and Vietnamese. The commission has not used language services during 2006–7.

Australian Indigenous Communities

One of the key strategic areas identified in the Victorian Indigenous Affairs Framework is the facilitation of active partnerships through the involvement of Indigenous Victorians in the planning, management and delivery of services.

The commission's commitment to Indigenous participation is demonstrated in the inclusion of Indigenous community representatives in the Bail reference's consultations. An Indigenous Australians roundtable forum was held as part of the Bail project, and people working in Indigenous support services and court positions were consulted. Another strategic area identified is improved justice outcomes for Indigenous families and communities. The terms of reference for the Review of the Bail Act project specifically ask the commission to 'have regard to the over-representation of Indigenous Australians held on remand', and 'the needs of marginalised and disadvantaged groups, including Indigenous Australians, and the impact of the bail system on people in those groups'.

Representatives of Indigenous communities were also invited to participate in roundtables for the Surveillance in Public Places reference.

Women

The commission is readily able to identify a commitment to the principle of representation and equity contained in the Leading with Victoria's Women: Forward Plan 2004–07. During 2006–7, the majority of senior decision-making and leadership positions in the organisation have been occupied by women and the majority of staff in the organisation overall are women.

The commission has an important role in meeting the Victorian Government's commitment to justice and safety for women, specifically in the priority areas of family violence, sexual assault and ongoing law reform. During 2006–7, the commission published the *Assisted Reproductive Technology & Adoption Final Report*, which included 130 recommendations to change the law governing access to assisted reproductive technology to remove discrimination against women based on marital status or sexuality grounds.

Young People

The terms of the Bail reference specifically request the commission to investigate the intersection of the *Bail Act 1977* and the *Children and Young Persons Act 1989*. During 2006–7, consultations were held with staff from juvenile justice and youth services agencies.

The commission's Surveillance in Public Places reference held a roundtable discussion with members of the Youth Affairs Council of Victoria and is specifically looking at the impact of surveillance in public places on young people.

Office-based Environmental Impacts

| Environmental Aspect | Description | Unit of Measure | 2006–07 |
|----------------------|--|--|---------|
| Electricity | User per FTE ¹ | kilowatt-hour per FTE | 549.30 |
| | User per square metre of office space | kilowatt-hour per square metre | 18.86 |
| | Total use—electricity | kilowatt-hour | 39110 |
| | Total associated greenhouse gas emissions | tonnes of carbon dioxide equivalent ² | 53.1707 |
| Paper | Use per FTE | reams per FTE ³ | 14 |
| | Total use | reams | 245 |
| Waste | Generated per FTE | kilograms per FTE | 58.43 |
| | Total recycled | kilograms | 1040 |
| Transportation | Employees regularly (>75 per cent of time) using public transport, cycling or walking to and from work | per cent | 96 |

Notes:

- FTE is a person who is counted as an employee and is therefore on the commission's payroll for the final pay period in the reporting period.
- Victorian greenhouse coefficients, Energy and Greenhouse Management Toolkit, Module 3, State Government of Victoria.
- One ream is equivalent to 500 sheets of A4 white or coloured office paper (1 ream A3 = 2 reams A4).

Other Environmental Impacts

- All transportation data can be found in the Department of Justice's annual report because the commission utilises departmental fleet vehicles when needed.
- The consumption of water, gas and other fuel sources is included in the building's overhead costs and charges. Consumption solely for the commission cannot be identified.
- Actions taken during the year to reduce energy use in buildings include:
 - increased maintenance of boilers to ensure higher efficiency and wastage timers set to reduce unnecessary energy use during out-of-office hours
 - dishwasher used only when full and on reduced cycle
 - lights and air-conditioning turned off when conference room vacant
 - staff encouraged to turn off equipment and lights after use
 - equipment programmed to switch off when not in use for a defined period and overnight
 - all equipment switched off during long weekends and closures.
- Other actions taken to reduce environmental impacts are:
 - recycling of toner cartridges
 - purchasing recycled paper
 - double-sided printing
 - draft printing of working documents
 - glass and plastic recycling.

Audit Committee

The main responsibilities of the audit committee are to:

- review and report independently to the commissioners on the annual report and all other financial information published by the commission
- assist the commissioners in reviewing the effectiveness of the commission's internal control environment covering:
 - effectiveness and efficiency of operations
 - reliability of financial reporting
 - compliance with applicable laws and regulations.
- determine the scope of the internal audit function and ensure that its resources are adequate and used effectively, including coordination with the external auditors
- oversee the effective operation of the risk management framework.

During the 2006–07 financial year the commission sought and was granted an exemption from Direction 2.2(e) of the Standing Directions of the Minister of Finance under the *Financial Management Act 1994*. This direction requires the commission to appoint an Audit Committee to oversee and advise it on matters of accountability and internal control affecting its operations.

The Minister for Finance has granted the commission an exemption from the requirement to have an Audit Committee for the 2006–07 financial year. The commission is in the process of establishing an Audit Committee and will be compliant in future years.