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Law Reform Commission of Victoria

Report No. 11

ANNUAL REPORT

September 1987

NCJRS

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ISSN 0818 7320
ISBN 0 7241 6668 8

Produced by Remington's Electronic Publishing System



LAW REFORM COMMISSION OF VICTORIA

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MELBOURNE, VIC. 3000
AUSTRALIA
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To the Hon. J. H. Kennan, MLC
Attorney-General for Victoria

In accordance with Section 20 (5) of the *Law Reform Commission Act*
1984, we submit this Report to you.

David St. L Kelly, Chairperson
David Neal
Jude Wallace
James Gobbo
Linda Hancock
Susan McCulloch
Leigh Masel
Marcia Neave
Anthony Smith
Gary Sullivan
Frank Vincent
Louis Waller
Philip Williams

September, 1987

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1. INTRODUCTION

101. This is the third Annual Report of the Victorian Law Reform Commission since its establishment by the Law Reform Commission Act 1984.

Functions

102. The functions of the Commission are:

- to examine, report and make recommendations to the Attorney-General in respect of any proposal or matter relating to law reform in Victoria referred to the Commission by the Attorney-General;
- to examine, report and make recommendations to the Attorney-General on any matter which the Commission considers raises relatively minor legal issues which 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;
- to 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;
- to monitor and co-ordinate law reform activity in Victoria.

103. The Commission reports to the Attorney-General at the end of its work on a reference. Some references are designated as "standing references" which may generate a number of separate reports. The Attorney-General may specify a reporting date on a reference. The Commission's reports are tabled in the Parliament within 14 sitting days of their receipt by the Attorney-General.

Current References

104. During 1986/87, the Commission was engaged on the following references from the Attorney-General:

- Occupational Regulation
- Land Law
- Sexual Offences
- Obsolete Legislation
- Medicine, Science and the Law
- Plain English
- Homicide
- Liquidated Damages and Penalties
- Insanity and Automatism in the Criminal Law

105. Details of the work on these reference are set out in the following chapter headed **Review of the Year's Work**. New references received from the Attorney-General included Obsolete Legislation, Insanity and Automatism, Liquidated Damages and Penalties and an additional topic under the Land Law reference.

The Commission

106. The Commission is constituted by full and part-time Commissioners. At 30 June 1987, they were:

Full Time Commissioners

David St. L. Kelly (Chairperson)
David Neal
Jude Wallace

Part Time Commissioners

The Hon. Mr. Justice James Gobbo
Dr. Linda Hancock
Ms. Susan McCulloch
Mr. Leigh Masel
Professor Marcia Neave
Mr. Anthony Smith
Mr. Gary Sullivan
The Hon. Mr. Justice Frank Vincent
Professor Louis Waller
Dr. Philip Williams

107. During the year, three Commissioners left the Commission. Professor Robert Eagleson had been appointed to the Commission to lead work on the Plain English reference. His term of appointment expired on 31 December 1986. Dr. Jocelyne Scutt, the Commission's Deputy Chairperson, resigned in August 1986 to go to the Victorian Bar. Professor Peter Sallman left the Commission in February 1987 to become the first Director of the Australian Institute of Judicial Administration. The Commission wishes to record its thanks to each former member.

New Commissioners

108. Ms Jude Wallace was appointed a full-time Commissioner for a term of 18 months from 1 July 1986. The appointment was subsequently extended to December 1989. Ms Wallace holds the degrees of LL.B from the University of Melbourne and LL.M from the University of Virginia. She is a Senior Lecturer in Law at Monash University where, since 1967, she has taught a variety of subjects, including Property Law, Poverty and Social Security Law and Legal Philosophy. She was a member of the Law Institute Conveyancing Committee for 4 years and has prepared a major report for the Attorney-General on the Property Law Act 1958. Ms Wallace is one of Victoria's leading experts on land law and has been appointed Commissioner in Charge of Land Law References.

109. Mr. Gary Sullivan was appointed a part-time Commissioner for three years from 17 March 1987. Since 1982 he has been employed with the West Heidelberg Community

Centre Legal Service. In 1985 Mr. Sullivan became the co-ordinating solicitor for the Centre. He brings to the Commission a strong background in legal aid work and in community law.

110. Dr. David Neal was appointed to the Commission for three years from June 1987 until June 1990. He is on leave from the University of New South Wales where he is a senior lecturer in the Law Faculty. He has both legal and social science qualifications and has published in the fields of criminal justice, legal history, delivery of legal services and legal policy with respect to the handicapped. He co-edited the Victorian Legal Resources Book and is author of The Rule of Law in a Penal Colony: Law and Politics in early New South Wales (forthcoming) and co-author of a new criminal law teaching book, Criminal Law and Criminal Justice in Australia: A Case Book for Criminal Law to be published in 1988.

Consultants

111. A major strength of the Victorian Law Reform Commission is its network of honorary consultants. The consultants assist the divisions of the Commission in the development of discussion papers and reports. The men and women who act as consultants bring to the Commission a diverse array of talents and backgrounds.

112. The quality of the Commission's work is strongly influenced by the long hours consultants devote to their tasks. The Commission recognises that its consultants are an irreplaceable resource. It expresses its deep appreciation for this assistance.

113. The consultants assisting on Commission references during 1986/87 are set out below.

Sexual Offences

Ms. Carmel Benjamin
Ms. Meredith Carter
Ms. Alison Champion
His Hon. Judge Cullity
Mr. Matthew Goode
Mr. Ian Gray
Ms. Christine Haag
His Hon. Judge Hassett
Mr. Ian Heath
Dr. Terry Kaufman
Det. Sen. Sergeant Peter Laidler
Professor David Lanham
Det. Sen. Sergeant Joy Murphy
Mr. Richard Read
Professor Peter Sallman
Mr. Michael Tovey
Mr. John Willis

Plain English

The Hon. Michael Arnold, MLC
Mr. Ben Bodna
Mr. Robin Brett
Mr. David Burridge
Mr. Bruce Cameron
Mr. Michael Crennan
Mr. Phillip Cummins, QC
Mr. Mark Dreyfus
Mr. J. Q. Ewens, CMG, CBE, QC
Professor Harold Ford
Ms. Eve Grimm
Mr. Peter Ickeringill
Mr. Campbell Johnston
Dr. Greg Lyons
Mr. Peter Marks
Mr. Robert Miller
Mr. Eamonn Moran
Mr. Ian Renard
Dr. Robert Smith
The Hon. Haddon Storey, QC, MLC
Ms. Kathy Walter

Homicide

Mr. Matthew Goode

Occupational Regulation

Mr. Anthony Moore
Dr. Anthony Tarr

Obsolete Legislation

Mr. John Finemore, QC

Medicine, Science and the Law

Mr. Ian Cunningham
Professor David Danks
Associate Professor John Funder
Dr. Neville Hicks
Professor Richard Lovell
Professor Harold Luntz
Mr. John Snowden

Land Law

Mr. Paul Brotchie
Mr. Peter Duncan
Mr. Bob Eddington
Mr. Robert Hatch
Mr. Dennis Hall
Mr. John Hockley
Mr. A. Lyons
Mr. A. J. Myers
Mr. Richard Park
Mr. Shiv Rakkar
Mr. Peter Shattock
Mr. Lester Welton
Mr. P. N. Wikrama

2. REVIEW OF THE YEAR'S WORK

201. The Commission was engaged on nine References for the Attorney-General during 1986/87. In the review period, five Reports were submitted. The Commission also published five Discussion Papers. In this section, a brief review of the year's operations is set out.

Occupational Regulation

202. The Division is:

David St. L. Kelly (Chairperson)
Mr. Leigh Masel
Mr. Gary Sullivan
Dr. Philip Williams.

203. The law regulating the conduct and entry to many occupational groups has been largely unchanged over many years. In line with its policy to expose the Victorian economy to more competition, the Government has decided on a review of regulations covering a number of occupations. This project is being conducted jointly by the Commission and the Regulation Review Unit in the Department of Industry, Technology and Resources. The project is managed by the Commission's Division together with the Unit's Director, Mr. Robert Miller. Research resources are drawn from both organisations and supplemented by private consultants.

204. The reference is limited initially to the re-assessment of occupational regulation systems administered by the Attorney-General and the Minister for Police and Emergency Services. Statistical and other data have been collected and an examination is being undertaken of the aims and objectives of occupational regulation and its effects on competition and of the legal structures through which regulation is, and might be, imposed.

205. A series of discussion papers on various occupations will be issued in September-November 1987, followed by consultations with industry and community groups. Reports on the occupations will be completed by the end of March 1988. The first two discussion papers concern Real Estate Agents and Auctioneers, and Secondhand Dealers and Pawnbrokers.

Land Law

206. The Division is:

David St. L. Kelly (Chairperson)
Ms. Jude Wallace (Commissioner in Charge)
Professor Marcia Neave
Mr. Tony Smith
Dr. Philip Williams.

207. The Land Law Reference involves an examination of the laws governing the land title system. The impetus for the reference lay in the plans of the Department of Property and Services to computerise land registration and to establish Landata, a comprehensive computer-based land information retrieval system.

208. Work commenced on this reference at the beginning of July in collaboration with the Department of Property and Services, the Department responsible for the Land Titles Office and Landata.

209. The reference was composed of seven segments; with an eighth segment being added after the close of the financial year:

1. Torrens Register Book

This topic required investigation of the form and content of the Land Title Register. A Discussion Paper was published in October 1986. A number of sub-projects were undertaken.

- The FLINT (Filed Land Interests) project involved an investigation and catalogue of all administrative powers to affect land in order to determine whether the decision should be recorded on the title or in Landata.
- The Stopped Case project investigated the causes and cures for faulty dealings lodged at the Land Titles Office.
- A Conveyancing Users Survey was conducted to discover customers' attitudes to proposed changes. Working parties were established to investigate the feasibility of collection of Stamp Duty at the Titles Office and to amalgamate the Notice of Change of Ownership with the Transfer of Land.

The Report is in final stages of preparation.

2. Mortgagee Sales and Judgement Debts

Processes by which mortgagees and creditors can satisfy debts by sale of land were examined in this sub-reference. A Discussion Paper was published in October 1986. The report was presented to the Attorney-General on 30 June 1987 and tabled in Parliament by the Attorney-General on 15 September 1987. The report recommends changes in default procedures designed to protect debtors and simplify enforcement procedures. The Commission recommends more flexible opportunities for dispute resolution. It also recommends lower cost procedures for mortgagees.

3. Land Title Priorities

A Discussion Paper has been prepared for this topic, which concerns the rules which should govern disputes between holders of competing interests in land. It will be published shortly.

4. State Guarantee

A Discussion Paper concerning the State guarantee of registered land title and alternative insurance schemes, is being prepared by part-time Commissioner, Dr. Philip Williams, an economist at the University of Melbourne.

5. Restrictive Covenants and Easements

A Discussion Paper on this sub-reference is being prepared. The sub-reference concerns restrictions on the uses of land and the rights of third parties to that land - for example, the rights of government statutory authorities, such as the State Electricity Commission, to enter land and erect structures on it.

6. Land Titles Act

This project will draw the previous projects together in a rewritten Land Titles Act which will replace the existing Property Law Act and Transfer of Land Act. The new legislation will create broad administrative powers in the Registrar of Titles to utilize modern computer technology.

7. Sale of Land

On 23 September 1986, the Commission received a further reference from the Attorney-General directing attention to issues arising from the conveyancing process itself. A Discussion Paper covering a wide range of issues including conveyancing documentation and insurance is being prepared.

Sexual Offences

210. The Division is:

David St. L. Kelly (Chairperson)
Dr. Linda Hancock
Ms. Susan McCulloch
Dr. David Neal
Professor Marcia Neave
Mr. Justice Vincent
Ms. Jude Wallace
Professor Louis Waller.

211. Work commenced on this reference in January 1986. The work has been divided into four components. The first, dealing with the substantive aspects of rape, indecent assault and allied offences, has been completed. A discussion paper on this aspect was published in August 1986 and the report presented to the Attorney-General on June 5 1987.

212. The second component involves an analysis of procedural and evidentiary aspects relating to the prosecution of rape and allied offences. A discussion paper was distributed in March 1987. The report is under preparation and will be presented to the Attorney-General late in 1987.

213. The third component of the reference focusses upon victims with impaired mental functioning. A discussion paper is in the process of completion and should be distributed towards the end of September 1987. This discussion paper will examine substantive, procedural and evidentiary aspects that are of particular relevance to adult victims of sexual assault who are intellectually disabled or mentally ill.

214. The fourth section of the reference will be devoted to child victims of sexual assault. A discussion paper will be released towards the end of 1987 which will cover substantive, procedural, evidentiary and jurisdictional issues. To assist the Commission in its deliberations, three empirical research projects have been planned covering the specific issues of reporting of offences and procedural and evidentiary issues to criminal prosecution. The fourth and final report on the reference is scheduled to be presented to the Attorney-General by 30 June 1988.

Obsolete Legislation

215. The Division is:

David St. L. Kelly (Chairperson)
Mr. Tony Smith
Ms. Jude Wallace.

216. On 24 March 1987, the Attorney-General gave the Commission a reference requiring it to review the Acts still in force in Victoria to determine whether they were still useful. The first report was required to deal with specified Acts.

217. Mr. J. Finemore AO, OBE, QC was appointed by the Commission to direct research on the relevant Acts. Research involved:

- searches of company records at the Public Records Office at Laverton and at the Corporate Affairs Office;
- searches of land titles and survey maps;
- searches of relevant government files.

218. Research established that some of the specified Acts had recently been repealed. In the case of the remaining Acts, the Commission consulted with the relevant Department, Authority or other organisation affected by the relevant Act. This process had led to the conclusion that the Act is either no longer needed or that it must be retained. It was not necessary to advertise publicly or to publish tentative proposals in the form of a discussion paper.

219. The Commission presented its report to the Attorney-General on 21 August 1987.

Medicine, Science and the Law

220. The Division is:

David St. L. Kelly (Chairperson)
Professor Louis Waller (Commissioner in Charge)
The Hon. Mr. Justice James Gobbo
Dr. Linda Hancock
Mr. Leigh Masel
Ms. Susan McCulloch
Professor Marcia Neave
The Hon. Mr. Justice Frank Vincent
Dr. Philip Williams.

221. The Commission's work on this reference is being conducted in two projects:

Informed Consent to Medical Procedures and Surgical Operations

222. The law requires that a patient gives an informed consent before a doctor may proceed with any medical or surgical intervention. This means that a doctor needs to give a patient sufficient information for the patient to understand the nature of the proposed treatment, its implications and risks and the consequences of not taking the treatment. The patient then decides whether or not to consent to the procedure. The legal notion of informed consent upholds the patient's right to make decisions about their own body, rather than leaving the doctor to act in the patient's best interests.

223. The topic was chosen for consideration because of concern in medical and legal circles about the legal status of informed consent. It was considered important to clarify the issues following the decision in the House of Lords in the Sidaway case.

224. A meeting of interested parties was held to ascertain some of the problems for patients and practitioners. Throughout 1986/87 a program of inquiry was conducted with medical, administrative and patient organisations. A survey of doctors' attitudes to informed consent has been completed and a survey of the attitudes of patients is in progress. This research will form the basis of the discussion paper to be published in October 1987.

225. The problems of people other than competent adults were considered in a series of symposia in 1986. A range of personnel working in each area was invited to contribute. The symposia papers will also be published in October.

Gene Modification

226. Gene modification concerns the use of genetic material from one organism to another organism. The reference explores the legal issues raised by this rapidly developing area of science. Two discussion papers have been completed. The first is a short paper directed towards a general audience. The second is much longer and will be sent to readers known to be expert in, or to have a special interest in, problems raised by recombinant DNA technology. These include members of the Recombinant DNA Monitoring Committee, doctors, scientists, research institutions, commercial organisations manufacturing recombinant DNA products, representatives of relevant Government Departments and environmentalists.

Plain English

227. The Division is:

David St. L. Kelly (Chairperson)
Professor Robert Eagleson (Commissioner in Charge until 31/12/1986)
The Hon. Mr. Justice James Gobbo
Mr. Leigh Masel
Professor Marcia Neave
Mr. Tony Smith
Ms. Jude Wallace.

228. On 3 September 1986, the Commission published a discussion paper dealing with most aspects of the reference. Copies were sent to all Members of Parliament, Judges, heads of Government Departments and Parliamentary Counsel in Australia. They were also sent to magistrates, members of the Law Institute and barristers in Victoria.

229. The discussion paper identified a series of problems with present drafting styles and made a number of proposals for implementing a plain English policy in the Office of Chief Parliamentary Counsel and in the Public Service. Seminars were held in October 1986 with members of the Law Institute and with members of the Bar Council to discuss the Commission's findings and proposals. The document was also discussed at meetings of Chief Administrators, subordinate legislation officers, instructing officers and officers of Chief Parliamentary Counsel's Office. Apart from these seminars and meetings, written submissions were received from numerous individuals and bodies, including Ministers, judges, lawyers and public servants.

230. The Report is in the final stages of production. It is accompanied by three volumes of appendixes. The appendixes include a complete rewrite of the Takeovers Code, completed under the guidance of expert honorary consultants. It demonstrates that even the most complex legislation can be written in plain English.

231. The Report is expected to be tabled early in October 1987.

Homicide

232. The Division is:

David St. L. Kelly (Chairperson)
Dr. Linda Hancock
Dr. David Neal (Commissioner in Charge)
Mr. Anthony Smith
Mr. Justice Frank Vincent
Ms. Jude Wallace
Professor Louis Waller.

233. Work commenced on this reference in October 1982 and a Working paper, Murder: Mental Element and Punishment was published in May 1984.

234. A Report on the Sentence for Murder: Report No. 1 of the Law Reform Commission of Victoria, was published in September 1985, recommending that the sentence for murder be a maximum of life imprisonment in place of the then mandatory life imprisonment. The recommendations in that Report were embodied in the Crimes (Amendment) Act 1986 of the Victorian Parliament.

235. The scope of the work in hand was expanded in 1986 to include the mental element in both murder and manslaughter. A background issues paper has been prepared and a discussion paper will be published before the end of 1987. The Commission's Report is due for completion in March 1988.

Liquidated Damages and Penalties

236. A Division of the Commission has not yet been formed for this Reference. A project plan is being developed to meet a January deadline for the production of a discussion paper. The Report on the Reference is scheduled for May 1988.

Insanity and Automatism in the Criminal Law

237. This reference arose from the recommendations contained in the Commission's Report on Automatism (Intoxication) and Criminal Responsibility. The reference concerns the rules relating to insanity and automatism as criminal defences. A discussion paper will be published in March 1988.

Community Law Reform

238. Under the Law Reform Commission Act 1984, the Commission may report to the Attorney-General on any matter which it considers raises relatively minor legal issues which are of general community concern if the Commission is satisfied that the examination of those matters will not require a significant deployment of its resources. To date no reports have been made under this power, partly because the Commission's resources

have been fully deployed on references and partly because the Commission is concerned to exercise the power on the basis of a strategy, rather than in an ad hoc manner.

239. To assist in the development of a strategy, the Commission has examined the community law reform programs of the Australian Law Reform Commission and the New South Wales Law Reform Commission. A paper examining how the power could be exercised will be considered by the Commission in 1987/8.

3. INITIATIVES IN 1986/87

301. During 1986/87 it was recognised that the Commission's workload and the limited availability of research resources demanded the introduction of modern techniques relating to project and resource management. Accordingly, appropriate systems and procedures were developed during the year to accommodate the Commission's rapidly expanding work program.

302. The Commission has a program budget approach for management of its resources. The program budget approach allocates resources against "programs", rather than using the traditional line item of allocating funds to recurrent and capital expenditures. A project management system has been implemented to ensure the effective delivery of the Commission's references. The new approaches have been installed for the 1987/88 financial year.

Program Budgets

303. The Commission has developed a budgetary system which allows policy and budgetary decisions to be more effectively integrated. The system also assists in monitoring the Commission's performance against budget objectives.

304. The key features of the structure developed for the Commission are:

- (i) two programs: 'Corporate' and 'Project Delivery';
- (ii) a sub-program structure for the Project Delivery program which organises the Commission's law reform activities into the following major themes: Public Administration, Medicine Science and the Law, Criminal Justice, Property and Commerce, Community Law Reform, Co-ordination of Law Reform.

305. The development of the program budget has ensured that the Commission's 1987/88 budget is set on a "zero-base". Thus the full Commission is in a position to assess the relative importance of individual law reform projects. It ensures that proposed funding outlays reflect organisational priorities.

Project Management

306. The effectiveness of the Commission as a law reform agency is in a large part determined by the timely delivery of its reports. The reports must be of a high quality. They must reflect adequate levels of community and professional consultation.

307. In order to ensure timely delivery of discussion papers and reports, the Commission has developed and applied its own project management system. The system incorporates a detailed project plan for each reference. Performance against the plan is monitored through regular project review meetings and adherence to agreed publication deadlines.

308. The development of the project management system during 1986/87 will allow the Commission to approach its heavy publication schedule in 1987/88 with some confidence. An effective project management system facilitates the rational allocation of the Commission's scarce research resources.

309. The Commission's approach to project management distinguishes it from some other law reform agencies in Australia. A frequent criticism of the law reform process is that it does not give due importance to meeting agreed deadlines. This is a criticism the Victorian Law Reform Commission seeks to avoid.

4. STRATEGIC GOALS FOR 1987/88

401. It is the Commission's overriding strategy to discharge its statutory responsibilities by delivering to the Attorney-General high quality reports on its references in a timely manner. The Commission recognises that it is operating in a changing economic and legal environment. Its success as a law reform agency is determined by its ability to maintain its relevance to the community and Government in that environment.

402. The strategic goals set out below are intended to ensure that the overall strategy is met.

Deliver the Commission's indicated Work Program

403. The Commission has set itself a challenging work program for 1987/88. The delivery of this program is supported by three management support initiatives. First, the Commission's work program is determined by its strategic plan. Second, financial resource allocation necessary to deliver the plan is set out and governed by the Commission's program budget. Third, the delivery of each of the Commission's reference projects is controlled by detailed project management processes.

404. The Commission has agreed with the Attorney-General the delivery of 38 formal Reports and Discussion Papers in 1987/88. Details of this program are set out in the following chapter. The indicative Work Program represents a most challenging and extensive law reform effort. The output from the proposed years work can be expected to make a significant contribution to the legal landscape in Victoria.

Enhance Law Reform Monitoring and Co-ordination Processes in Victoria

405. The Law Reform Commission Act empowers the Commission to monitor and co-ordinate law reform activity in Victoria. The existing law reform process in the State is fragmented and "ad hoc". Law reform initiatives emerge from diverse sources across most Government Departments. Law reform activity is not confined to these areas. Judicially sponsored operations, such as the Chief Justice's Committee and the Parliament's Constitutional and Legal Committee, also have a significant impact in the area. No mechanisms exist to facilitate the monitoring activity. There are no formal or informal communications channels available to assist the Commission in effectively discharging this function.

406. A priority task in 1987/88 is to develop an action plan for achieving a workable and efficient monitoring and co-ordination mechanism. The establishment of this system will enhance the Commission's own effectiveness in law reform.

Assist the Development of Uniform Law Reform in Australia

407. The pace of economic change in Australia has been placing increasing strains on the ability of the legal system to maintain its relevance to the community generally, and the business sector in particular. The Attorney-General has recognised the problems

inherent in the existing fragmented legal arrangements and the problems generated by unco-ordinated law reform programs in individual States and Territories.

408. The Attorney-General has given the Commission a reference requesting it to report to him on the applicability of designated law reform reports and proposals from other jurisdictions to Victoria. The Australasian Law Reform Agencies Conference has requested the Victorian and New South Wales Commissions to report to it on ways of achieving better co-ordination of law reform activities.

409. The Commission believes that the steps taken to open up the Australian economy will assist the cause of uniformity. It is difficult to conceive of an efficient and flexible national economy in the face of diverse and unharmonised legal systems in place in the various jurisdictions. It is probable that the fragmentation process which has progressed unchecked since Federation in 1901 has peaked. The steps noted above give the Commission a positive role in reversing this process.

410. The Commission will advise the Attorney-General on opportunities for furthering the cause of uniformity. The Attorney-General has empowered the Commission to actively pursue "joint-venturing" arrangements in law reform which will further support the process.

Install a Technologically Modern Publishing System

411. The Commission has identified a need to install a modern office support system to enhance its ability to effectively manage its internal operations and its production link to its printers and sources of external advice. The Commission is evaluating a range of feasible computer based systems to meet these ends.

412. The Commission's aim is to install a system which is up to date and cost effective. The preferred solution will be expected to satisfy three goals. First, the system will allow greater opportunities for productivity gains in the report and discussion paper preparation function. The system, therefore, will improve the word processing and document production activities. Second, the system will significantly reduce printing costs. Third, the system will allow direct communication with the majority of Victoria's solicitors through the Law Institute's recently unveiled computerised "Network". The Law Institute's proposed system provides the Commission with an additional means of low cost consultation and information dissemination.

5. THE 1987/88 WORK PROGRAM

501. As part of the development of the Commission's budget for 1987/88, a work program was developed and submitted to the Attorney-General. The table below sets out the program that was anticipated in May 1987.

Table 5.1

PROPOSED TIMETABLE FOR PUBLICATION OF
DISCUSSION PAPERS AND REPORTS IN THE
1987/88 FINANCIAL YEAR

PROGRAM/REFERENCE	DISCUSSION PAPER	REPORT
<i>PUBLIC ADMINISTRATION</i>		
Plain English	-	July 87
Legislation Rewrite	-	
(a) Act 1	-	
(b) Act2	-	
Obsolete Legislation	-	Sept 87
Occupational Regulation*	-	
(a) General Principles	Aug 87	Jan 88
(b) Real Estate & Auctioneers	Oct 87	Jan 88
(c) Second Hand Dealers	Aug 87	Jan 88
(d) Private Agents	Oct 87	Jan 88
(e) Sheepowners	Aug 87	Jan 88
<i>PROPERTY & COMMERCE</i>		
Land Law		
(a) Guarantee	Aug 87	Dec 87
(b) Covenants and Easements	Sep 87	Dec 87
(c) Torrens System		July 87
(d) Mortgages		July 87
(e) Titles	Sept 87	Dec 87
(f) Priorities	July 87	Nov 87
Liquidated Damages and Penalties	Feb 88	May 88
<i>MEDICINE, SCIENCE & LAW</i>		
Informed Consent	Sept 87	Mar 88
Informed Consent Symposium	July 87	-
Gene Modification	Aug 87	Dec 88

* In association with the Regulation Review Unit, Department of Industry, Technology and Resources.

Table 5.1 cont'd

CRIMINAL JUSTICE

Sexual Offences

(a) Rape - Substantive Aspects	-	July 87
(b) Rape - Procedure and Evidence	-	Sept 87
(c) Child abuse	Oct 87	Mar 88
(d) Disabled	Aug 87	Dec 87
Homicide	Sept 87	Mar 88
Insanity	May 88 -	

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502. The indicative work program does not include reports and discussion papers which may emerge from the Commission's recent references from the Attorney-General. It is anticipated the new standing reference on the reports and recommendations of interstate law reform agencies will generate further publications from the Commission. This reference was received after the close of the reporting year.

Appendix A

STAFF OF THE COMMISSION

Executive Director

Andrew Phillips (to 23 June 1987)

Secretary to the Commission

Robin Jackson

Administrative Staff

Debra Bartlett
Kylie Owen
Elizabeth Russell
Esther Shoueka
Cathy Williamson

Reference Secretaries

Christine Frazer
Pauline Martin
Sandy Ward

Research Staff

Peggie Booth
Francine McNiff
Bronwyn Naylor (to
26 Sept 1986)
Murray Raff
Kathy Sanders
Loane Skene
Robert Smith
Josef Szwarc
Nerida Wallace

Appendix B

REPORTS AND DISCUSSION PAPERS 1986/87

Report No. 4

Deregulation of Hire Purchase

July 1986

Discussion Paper No. 1

Legislation, Legal Rights and Plain
English

August 1986

Discussion Paper No. 2

Rape and Allied Offences: Substantive
Aspects

August 1986

Report No. 5

Annual Report 1985-86

September 1986

Discussion Paper No. 3

The Torrens Register Book

October 1986

Discussion Paper No. 4

Mortgagee Sales and Judgements Debts

October 1986

Report No. 6

Criminal Responsibility: Intention and
Gross Intoxication

November 1986

Discussion Paper No. 5

Rape and Allied Offences: Procedure
and Evidence

March 1987

Report No. 7

Rape and Allied Offences: Substantive
Aspects

June 1987

Report No. 8

Mortgagee Sales and Judgement Debts

June 1987

Report No. 9

Plain English and the Law

June 1987

Appendix C

AUDITOR-GENERAL'S REPORT

The accompanying financial statements comprising balance sheet, statement of income and expenditure, statement of sources and applications of funds and notes to the financial statements of the Law Reform Commission of Victoria have been audited as required by the Law Reform Commission Act 1984 and in accordance with Australian Auditing Standards.

In my opinion, the financial statements present fairly the financial position of the Law Reform Commission of Victoria as at 30 June 1987 and the results of its operation for the year ended on that date in accordance with the form approved by the Treasurer and in accordance with Australian Accounting Standards.

MELBOURNE
14/10/1987

R.G. HUMPHRY
Auditor-General

LAW REFORM COMMISSION OF VICTORIA

CERTIFICATE

In our opinion, the Balance Sheet, the accompanying Statement of Income and Expenditure, and accompanying notes (attached thereto), have been properly drawn up so as to present fairly the financial transactions of the Law Reform Commission of Victoria for the period ended 30 June, 1987 and the financial position of the Commission as at that date.

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

D. Jackson
.....
PRINCIPAL ACCOUNTING OFFICER

29/9/87
.....
DATE

R. Kelly
.....
CHAIRPERSON

29/9/87
.....
DATE

D. Neal
.....
COMMISSIONER

29/9/87
.....
DATE

STATEMENT OF INCOME AND EXPENDITURE

for the year ended 30 June, 1987.

	Notes	1987	1986
		\$	\$
<u>INCOME</u>			
Instalments received from Victoria			
Law Foundation	8	1,335,000	840,400
Other Income			
- Donations		2,221	13,512
- Insurance Recoveries		4,192	--
- Interest Received/			
Receivable		4,344	2,394
- Publications Sold		160	240
- Other		35	--
		<u>10,952</u>	<u>16,146</u>
		1,345,952	856,546
Less:			
<u>EXPENDITURE</u>			
Advertising		9,564	--
Accounting Fees		5,072	4,745
Annual Leave		15,257	39,633
Audit Fees		2,160	3,880
Bank Charges and Fees		800	--
Conferences and Meetings		10,609	12,020
Consultancy Fees		73,772	305
Courier, Postage and Telephone		22,553	--
Depreciation of Fixed Assets		35,987	29,876
Electricity		6,383	--
Fringe Benefits Tax		2,623	--
Hiring Expenses		12,000	--
Insurance		312	--
Library Expenses		34,787	23,312
Long Service Leave		(2,150)	(1,163)
Loss on Sale of Fixed Assets		2,499	--
Motor Vehicles		10,293	--
Office Expenses		42,807	65,861
Payroll Tax		48,909	24,614
Printing and Distribution		41,155	23,385
Rent and Rates		92,731	76,440
Repairs and Maintenance		19,454	8,238
Salaries		743,241	479,328
Software		3,861	2,784
Superannuation		56,713	9,714
Travelling		38,592	31,142
Workcare		3,983	--
		<u>1,333,967</u>	<u>834,114</u>
SURPLUS FOR THE YEAR		11,985	22,432
RETAINED EARNINGS - 1 July, 1986		42,228	19,796
APPROPRIATIONS - Closure of Special Account	4	(13,435)	--
RETAINED EARNINGS - 30 June, 1987		<u>40,778</u>	<u>42,228</u>

The accompanying notes form an integral part of the statement

LAW REFORM COMMISSION OF VICTORIA
BALANCE SHEET

as at 30 June, 1987.

	Notes	1987	1986
		\$	\$
<u>CURRENT ASSETS</u>			
Cash at Bank	4	85,742	52,971
Cash on Hand		33	---
Prepayments		13,976	6,717
Interest Receivable		154	367
Other Receivables		<u>4,057</u>	<u>---</u>
		103,962	59,155
<u>FIXED ASSETS</u>			
	5	<u>200,667</u>	<u>178,198</u>
Total Assets		<u>304,629</u>	<u>237,353</u>
<u>CURRENT LIABILITIES</u>			
Provision for Annual Leave		70,062	50,839
Provision for Long Service Leave		6,191	1,155
Accrued Expenses		76,682	33,829
Unexpended Advance	6	<u>8,800</u>	<u>---</u>
		161,735	85,823
<u>NON CURRENT LIABILITIES</u>			
Provision for Long Service Leave		3,468	10,654
<u>CAPITAL AND RESERVES</u>			
Retained Earnings		40,778	42,228
Contributed Capital	7	<u>98,648</u>	<u>98,648</u>
		<u>139,426</u>	<u>140,876</u>
Total Equities and Liabilities		<u>304,629</u>	<u>237,353</u>

The accompanying notes form an integral part of the balance sheet.

LAW REFORM COMMISSION OF VICTORIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS for the year ended 30 June, 1987.

1. FORMATION OF COMMISSION

The Commission was formed under the Law Reform Commission Act 1984 to replace the Law Reform Commissioner from 4 December, 1984.

2. STATEMENT OF ACCOUNTING POLICIES

(a) Basis of Preparation of Financial Statements

As from 4 December, 1984 the financial statements are prepared on an accrual basis, in accordance with the Law Reform Commission Act 1984.

The financial statements have been prepared on a historical cost basis and are in accordance with the applicable accounting standards issued by the Australian accounting bodies.

(b) Long Service Leave

The provision represents the Commission's estimated liability as at 30 June, 1987 for the Long Service Leave entitlements of its employees. The estimate is based on a qualifying period of ten years. Payments of Long Service Leave are included as expenditure under the item 'salaries' in the Statement of Income and Expenditure. The Commission's policy on the accrual of a liability in respect of Long Service Leave is that it should commence after five years' employment with the Law Reform Commissioner/Law Reform Commission. The portion of the total liability relating to employees with more than 10 years service is considered to be current, the balance is considered to be non-current.

(c) Annual Leave

The provision represents the Commission's liability for Annual Leave as at 30 June, 1987. The amount is based on the value of actual entitlements as at balance date and includes a leave loading component. Payments of annual leave are included as expenditure under the item 'salaries' in the Statement of Income and Expenditure. The total liability has been shown as current in the Balance Sheet.

(d) Depreciation

The rates of depreciation prescribed by Income Tax Order No. 1217 have been used in all instances. It has been considered appropriate to use the diminishing value method. In accordance with recommendations from the Department of Management and Budget, Victoria, calculations have been made to the closest possible month.

LAW REFORM COMMISSION OF VICTORIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS for the year ended 30 June, 1987. (continued)

3. SUMMARY OF SOURCES AND APPLICATIONS OF FUNDS

	1987 \$	1986 \$
<u>SOURCES OF FUNDS</u>		
Funds from Operations (1)		
Inflow of Funds From Operations		
- Grant	1,335,000	840,400
- Other Revenue	10,952	16,146
- Proceeds from Sale of Fixed Assets	<u>2,900</u>	<u>--</u>
	1,348,852	856,546
Outflow of Funds from Operations	<u>1,311,066</u>	<u>805,401</u>
	<u>37,786</u>	<u>51,145</u>
Reduction in Assets		
Current Assets		
- Interest Receivable	213	--
- Prepayments	--	5,444
Increase in Liabilities		
Current Liabilities		
- Provision for Annual Leave	19,223	39,633
- Accrued Expenses	42,853	18,360
- Unexpended Advance	<u>8,800</u>	<u>--</u>
	70,876	57,993
<u>TOTAL SOURCES OF FUNDS</u>	<u>108,875</u>	<u>114,582</u>

LAW REFORM COMMISSION OF VICTORIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS for the year ended 30 June, 1987, (continued)

	1987 \$	1986 \$
<u>APPLICATION OF FUNDS</u>		
Increase in Assets		
Current Assets		
- Cash at Bank	33,671	48,846
- Cash on Hand	33	--
- Prepayments	7,259	--
- Other Receivables	4,057	--
- Interest Receivable	<u>--</u>	<u>367</u>
	45,020	49,213
Non Current Assets		
Fixed Assets	<u>63,855</u>	<u>65,369</u>
Total Applications of Funds	108,875	114,582

	1987 \$	1986 \$
<u>(1) FUNDS FROM OPERATIONS</u>		
Operating Profit	11,985	22,432
Add Depreciation	35,987	29,876
Provision for Long Service Leave	(2,150)	(1,163)
Loss on Sale of Fixed Assets	2,499	--
Less Special Account	<u>13,435</u>	<u>--</u>
	34,886	51,145
Add Proceeds on Sale of Fixed Assets	<u>2,900</u>	<u>--</u>
	<u>37,786</u>	<u>51,145</u>

LAW REFORM COMMISSION OF VICTORIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS for the year ended 30 June, 1987. (continued)

4. BANK ACCOUNTS

	1987 \$	1986 \$
Cheque Account	69,682	10,046
Access Account	16,060	31,440
Special Account	<u>--</u>	<u>10,585</u>

Special Account

The Commission established a Special Account to receive funds gifted by Dr Jocelynn A. Scutt to the Commission, being payments to her in respect of sitting fees outside the Commission. It was determined that funds from this account will be employed for special purposes, such as the Law Reform Commission Essay Prize, purchase of books, etc. The Special Account was however closed off during the 1986/87 financial year and transferred to another account not under the control of the Law Reform Commission.

As the movement in this account formed part of the income and expenses of the Law Reform Commission in prior years, it was considered appropriate to close the account through the Retained Earnings of the Commission at the date the account was closed.

LAW REFORM COMMISSION OF VICTORIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS for the year ended 30 June, 1987. (continued)

5. FIXED ASSETS

	1987		1986	
	\$	\$	\$	\$
(a) Fixed assets as at 30 June, 1987 are reported at cost less Accumulated Depreciation				
Office Furniture and Fittings	81,969		75,951	
Less: Accumulated Depreciation	<u>26,324</u>		<u>20,673</u>	
		55,645		55,278
Office Equipment	62,765		47,276	
Less: Accumulated Depreciation	<u>12,822</u>		<u>8,235</u>	
		49,943		39,041
Word Processing Equipment	113,640		87,275	
Less: Accumulated Depreciation	<u>51,135</u>		<u>31,930</u>	
		62,505		55,345
Miscellaneous Items	9,363		9,363	
Less: Accumulated Depreciation	<u>2,822</u>		<u>1,668</u>	
		6,541		7,695
Partitions (Demountable)	21,237		21,237	
Less: Accumulated Depreciation	<u>1,961</u>		<u>398</u>	
		19,276		20,839
Motor Vehicles	8,719		--	
Less: Accumulated Depreciation	<u>1,962</u>		<u>--</u>	
		6,757		--
Totals:				
Fixed Assets - at cost	297,693		241,102	
Less: Accumulated Depreciation	<u>97,026</u>		<u>62,904</u>	
		<u>200,667</u>		<u>178,198</u>

(b) Policies in respect of depreciation are set out in Note 2 (d).

(c) Library books, literature and fixed assets of an insignificant value have been expensed in the year of purchase.

LAW REFORM COMMISSION OF VICTORIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS for the year ended 30 June, 1987. (continued)

6. DEPARTMENT OF COMMUNITY WELFARE SERVICES FOR SEXUAL OFFENCES REFERENCE

This represents an advance to the Commission by the Department of Community Welfare Services for two research projects. The costs of the research projects are borne by the Department and funds are advanced directly to the Commission by that Department.

7. CONTRIBUTED CAPITAL

Pursuant to section 23 of the Law Reform Commission Act 1984, all assets and liabilities of the Law Reform Commissioner have been vested in the Commission. Details of these items brought to account as at 4 December, 1984 are as follows:

ASSETS

Cash at Bank		\$38,287
Fixed Assets	\$106,225	
Less Accumulated Depreciation	<u>\$24,790</u>	\$81,435
Prepaid Expenses		<u>\$714</u>
		<u>\$120,436</u>

Less:

LIABILITIES

Long Service Leave	\$4,526	
Annual Leave	\$6,845	
Accrual Expenses	<u>\$10,417</u>	\$21,788
		<u>\$98,648</u>

8. INSTALMENTS RECEIVED FROM VICTORIA LAW FOUNDATION

The revised approved estimate payable by the Victoria Law Foundation in respect of the 1986/87 financial year was \$1,335,000. This amount has been used as follows:

	1987 \$	1986 \$
Drawn by Law Reform Commission of Victoria	1,335,000	840,400
Unspent as at 30 June, 1987 and not available to be carried forward to the next financial year	--	3,400
	<u>1,335,000</u>	<u>843,800</u>

LAW REFORM COMMISSION OF VICTORIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS for the year ended 30 June, 1987. (continued)

9. LEASE COMMITMENTS

	1987 \$	1986 \$
Operating lease expenditure contracted for is payable as follows:		
Not later than one year	112,872	95,256
Later than one year, not later than two years	89,058	71,442
Later than two years, not later than five years	<u>14,680</u>	<u>--</u>
	<u>216,610</u>	<u>166,698</u>

Operating lease payments are charged to the profit and loss account and are included in the expense caption described as rent and rates.

Appendix D

CUMULATIVE LIST OF PUBLICATIONS

LAW REFORM COMMISSION OF VICTORIA (1984 to date)

Report No. 1

The Law of Homicide in Victoria: The
Sentence for Murder

September 1985*

Report No. 2

Unsworn Statements in Criminal Trials

September 1985

Report No. 3

Annual Report 1984-85

September 1985*

Background Paper No. 1

The Role of the Jury in Criminal Trials

November 1985*

Report No. 4

Deregulation of Hire Purchase

July 1986

Discussion Paper No. 1

Legislation, Legal Rights and
Plain English

August 1986

Discussion Paper No. 2

Rape and Allied Offences: Substantive
Aspects

August 1986

Report No. 5

Annual Report 1985-1986

September 1986*

Discussion Paper No. 3

The Torrens Register Book

October 1986

Discussion Paper No. 4

Mortgagee Sales and Judgement Debts

October 1986

Report No. 6

Criminal Responsibility: Intention and
Gross Intoxication

November 1986

Discussion Paper No. 5

Rape and Allied Offences: Procedure and
Evidence

March 1987

Report No. 7

Rape and Allied Offences: Substantive
Aspects

June 1987

Report No. 8

Mortgagees Sales and Judgement Debts

June 1987

LAW REFORM COMMISSIONER (1974-1984)

Report No. 1

August 1974

Law of Murder

(Degrees of murder - capital and
non-capital murder - narrowing definitions
of murder)

Working Paper No. 1

June 1974*

Report No. 2

October 1974*

Criminal Procedure: (Miscellaneous
Reforms)

Partially implemented Crimes Act, 1976

Working Paper No. 2
Report No. 3

January 1975*
June 1975*

Criminal Liability of Married
Persons: (Special Rules)

Crimes (Married Persons' Liability)
Act, 1977

Working Paper No. 3
Report No. 4

June 1975*
February 1976*

Delays in Supreme Court Actions

Partially implemented Wrongs (Actions
for Damages) Act, 1978

Working Paper No. 4
Report No. 5

February 1976*
June 1976

Rape Prosecutions: (Court Proceedings
and Rules of Evidence).

Rape Offences (Proceedings) Act 1976

Report No. 6

November 1976*

Spouse-Witnesses: (Competence and
Compellability)

Crimes (Competence and Compellability of
Spouse Witnesses) Act, 1978, No. 9230

Report No. 7

June 1978*

Innocent Misrepresentation

Working Paper No. 5
Report No. 9

September 1978*
October 1980

Duress, Necessity and Coercion

Report No. 8

1979*

Pre-Incorporation Contracts

Working Paper No. 6

July 1979

Provocation as a Defence to Murder

Report No. 10

December 1980

Delivery of Deeds

Report No. 11

June 1981*

Unsworn Statements in Criminal Trials

Working Paper No. 7

1981*

Report No. 12

1982

Provocation and Diminished Responsibility
Defence to Murder

Issues Paper

1983*

Discussion Paper

June 1984*

Intoxication and Criminal Responsibility

Working Paper No. 8

May 1984

Murder: Mental Element and Punishment

<p>* Indicates out of print. Photocopies may be provided where special circumstances exist.</p>
