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1 Commonwealth Jurisdiction

The first part of this report examines law reform bodies that focus on the federal laws of Australia. These are the Australian Law Reform Commission (ALRC) and the Independent National Security Legislation Monitor (INSLM).

1.1 The Australian Law Reform Commission

The Australian Law Reform Commission is an independent government agency that provides recommendations of issues of law reform to the Australian Federal Government.¹

1.1.1 Policies Establishing the Organisation and Mandating its Functions

The Law Reform Commission was originally established by the *Law Reform Commission Act 1973* as the 'Law Reform Commission' in 1975.² This Act was superseded by the *Australian Law Reform Commission Act 1996* (ALRC Act) which renamed the commission to the 'Australian Law Reform Commission'. Section 5 of the ALRC Act established the existence of the commission.³ Section 21 of the ALRC Act sets out the commission's functions. These functions are:

1. Reviewing Commonwealth laws relevant to those matters for the purposes of systematically developing and reforming the law. This is done particularly by:
 - Bringing the law in line with current conditions and ensuring it meets current needs; and
 - Removing defects in the law; and
 - Simplifying the law; and
 - Adopting new or more effective methods for administering the law and dispensing justice; and
 - Providing improved access to justice;
2. Considering proposals for making or consolidating Commonwealth laws about those matters;
3. Considering proposals for the repeal of obsolete or unnecessary laws about those matters;
4. Considering proposals for uniformity between State and Territory laws about those matters;
5. Considering proposals for complementary Commonwealth, State and Territory laws about those matters.⁴

The ALRC also has a duty to report to the Attorney-General on the results of any review or consideration it undertook under the functions above and the report should include the ALRC's recommendations regarding the inquiry.⁵

1.1.2 Methodological Approach

The ALRC lays out their general law reform process in detail on their website. The process may differ depending on the key stakeholders, complexity of laws, and time allocated for the review.⁶ The ALRC usually completes 1–2 inquiries each year.⁷ The following process is summarised from the ALRC's website.

¹ 'About', *Australian Law Reform Commission* (Web Page) <<https://www.alrc.gov.au/about/>>.

² *Law Reform Commission Act 1973* (Cth) s 5.

³ *Australian Law Reform Commission Act 1996* (Cth) s 5(1) ('ALRC Act').

⁴ *Ibid* s 21(1).

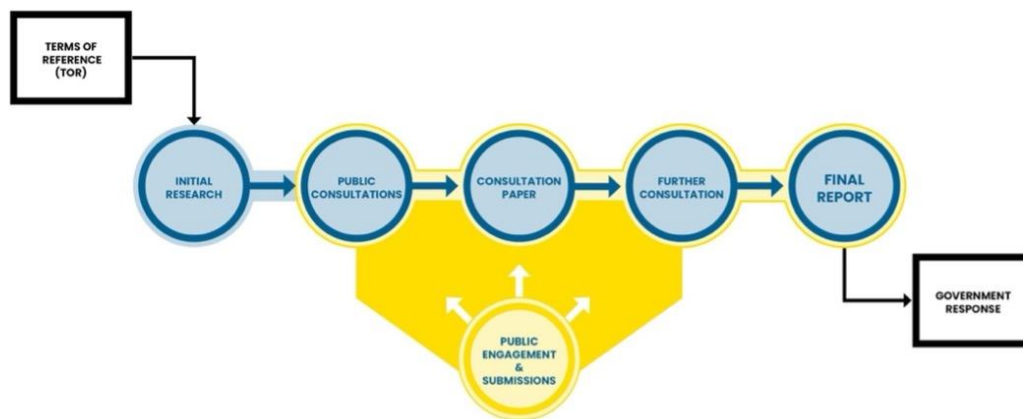
⁵ *Ibid* s 21(2).

⁶ 'Law reform process', *Australian Law Reform Commission* (Web Page) <<https://www.alrc.gov.au/about/law-reform-process/>> ('Law reform process').

⁷ See *ibid*.



Figure 1: ALRC Law Reform Process Flowchart⁸



Firstly, the Australian Government identifies an area of the law that may need reform. This can be because of community concern, recent legal developments highlighting deficiencies in the law, or scientific or technological developments require the law to be updated. The Attorney-General will then refer the inquiry to the ALRC in writing. This referral is called the Terms of Reference.

The Terms of Reference set out the subject matter and defines the goals of the inquiry. The ALRC will examine the Terms of Reference and decide on the scope of the inquiry.

The ALRC will the conduct research and consultations with stakeholders in the inquiry such as people who have expertise and experience in the laws under review, as well as people likely to be affected by the laws in question.

After the initial research and consultations, the ALRC will usually form an advisory committee or panel of experts. The advisory panel usually meets at least twice during an inquiry and helps to identify key issues and provides quality assurance in the research and consultation processes. The committee may give advice, but the ALRC is not bound to accept it.

The ALRC will then produce consultation documents. The number of documents produced varies depending on the needs of the needs of the inquiry. They usually consist of a Consultation Paper, Background Papers and a Final Report.

After the ALRC releases consultation documents, it makes a formal call for submissions to gauge what people think about the current laws, how they should be changed, and can test its proposals for reform prior to finalising them.

Everyone is welcome to make a submission, and they can comment on any matters relevant to the topic under review. Public submissions are published on the ALRC website as soon as practicable. The opinions and arguments from these are considered together with other forms of consultation and in-depth research.

The Final Report contains the recommendations that the ALRC considers should be made either to laws or legal processes. The ARLC uses a process where many different inputs are balanced to achieve desirable policy outcomes to come to their final recommendations.

The Final Report is delivered to the Attorney-General by the date specified in the Terms of Reference.

⁸ Ibid.

The Attorney-General is required to table the Final Report in Parliament within 15 sitting days of receiving it, after which it can be made public. There is no set timeframe by which the Government is required to respond. The progress of reports is tracked on the ALRC website.

The specific process undertaken in each inquiry is described in each final report and can also be found in their appendix usually under the heading 'methodology'.

1.1.3 How Key Findings are Documented and Presented

The ALRC documents and presents their inquiry in a range of different publications. These publications include inquiry reports, consultation documentation, information sheets, and a Reform journal.⁹ The publications that the ALRC currently produces come in the form of inquiry reports and consultation documentation. The last information sheet was published in 2018.¹⁰ The Reform journal publications ceased in 2009, save for a special issue that arose out of the work of law students relating to the inquiry into religious exemptions in anti-discrimination legislation in 2021.¹¹

The following observations are based on documents the four latest inquiries undertaken by the ALRC:

- Safe, Informed, Supported: Justice Responses to Sexual Violence ('ALRC Report 143')¹²; and
- Maximising the Realisation of Human Rights: Religious Educational Institutions and Anti-Discrimination Laws ('ALRC Report 142')¹³; and
- Confronting Complexity: Reforming Corporations and Financial Services Legislation ('ALRC Report 141')¹⁴; and
- Without Fear or Favour: Judicial Impartiality and the Law on Bias ('ALRC Report 138').¹⁵

1.1.3.1 Inquiry Reports

After the ALRC completes a review, they publish a final report detailing all their findings, research and recommendations for a particular inquiry. This is the main document associated with each inquiry. The final reports produced by the ALRC are structured around their recommendations and their justification of these recommendations are supported by their findings. The ALRC tends to put strong emphasis on consultation with stakeholders when collating their findings.

The final reports for the first 3 inquiries mentioned above were generally quite prose-heavy with few diagrams and tables scattered throughout the report. 'ALRC Report 138', however, contained a substantial quantity of graphs and tables as there was strong reliance on surveys conducted during the review process in the findings.

The balance of qualitative data and quantitative data used in each report appears to be highly dependent on the issues covered by the review. For example, the 'ALRC Report 143' focuses more on experiences of stakeholders and only referred to ABS statistics occasionally. On the other hand, 'ALRC Report 141' focused heavily on submissions, consultations with stakeholders and expert commentary while taking on a large-scale legislative data analysis because the inquiry required investigation into the complexity of the relevant legislation. These reports relied on both qualitative and quantitative data but due to the nature of the inquiry questions, the findings were overall more reliant on the qualitative

⁹ 'Publications', *Australian Law Reform Commission* (Web Page) <<https://www.alrc.gov.au/publications/>>.

¹⁰ 'Publications', *Australian Law Reform Commission* (Web Page) <<https://www.alrc.gov.au/publications/information-sheet/>>.

¹¹ 'Reform journal', *Australian Law Reform Commission* (Web Page) <<https://www.alrc.gov.au/publication/reform-journal/>>.

¹² Australian Law Reform Commission, *Safe, Informed, Supported: Justice Responses to Sexual Violence* (Report No 143, January 2025) ('*Safe, Informed, Supported: Justice Responses to Sexual Violence Review*').

¹³ Australian Law Reform Commission, *Maximising the Realisation of Human Rights: Religious Educational Institutions and Anti-Discrimination Laws* (Report No 142, December 2023) ('*Maximising the Realisation of Human Rights: Religious Educational Institutions and Anti-Discrimination Laws Review*').

¹⁴ Australian Law Reform Commission, *Confronting Complexity: Reforming Corporations and Financial Services Legislation* (Report No 141, November 2023).

¹⁵ Australian Law Reform Commission, *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (Report No 138, December 2021) ('*Without Fear or Favour: Judicial Impartiality and the Law on Bias Review*').



evidence. Although 'ALRC Report 138' engaged in more quantitative analysis than the other two reports, the ALRC appears to engage in qualitative analysis more frequently in general.

The ALRC also publishes a summary report to supplement each final report by documenting the ALRC's key findings, research and recommendations for a particular inquiry in a more accessible format. The final reports are usually several hundred pages long whereas the summary reports are around a tenth of the length of the final reports. These reports can be found in the final report section of the publications on the ALRC website. The structure of the final reports and summary reports differ depending on topics and issues raised by each particular inquiry.

The ALRC may also publish interim reports before making a final report.¹⁶ These reports allow the ALRC to make recommendations for immediate reform on specific issues before the final report is completed. This does not seem to be a common occurrence though as in the past 10 years, the only inquiry that involved interim reports was the Review of the Legislative Framework for Corporations and Financial Services Regulation inquiry. This was a multi-year inquiry with 3 interim reports attached.¹⁷

1.1.3.2 Consultation Documentation

The ALRC's consultation documentation for each inquiry may include consultation papers, issue papers, discussion papers, and/or background papers. The number of consultation documents produced for each inquiry varies depending on the inquiry's needs and timeframe. Consultation or issue papers are usually published after initial research and consultation with stakeholders has been conducted. They set out the draft proposal for reform for the inquiry. The ALRC invites submissions from the public after the consultation paper is released.¹⁸

The ALRC transitioned from publishing discussion papers (usually several hundreds of pages long) that may be accompanied with an issue paper to shorter consultation papers (less than 40 pages long) supplemented with background papers in late 2020 to early 2021. However, the naming of these papers for the last few reviews seems to be used interchangeably as they appear to serve the same purpose.¹⁹

Background papers are also published to provide a high-level overview of topics related to the inquiry and may accompany consultation papers or the final report.

1.1.4 How Findings Inform the Development of Options, Proposals and Recommendations for Reform

The ALRC considers various inputs when compiling their key findings and formulating their recommendations. These inputs may include written submissions from the public, face-to-face consultations with stakeholders in the inquiry, academic and industry research, international research and models, and its considerable experience in law reform.²⁰ The ALRC also has regard to any policy aims expressed in the Terms of Reference and the principles for reform that are identified for each particular inquiry when developing recommendations.

The ALRC's key findings directly influence their recommendations. Their reports are usually set up with the recommendation highlighted near the start of a chapter and then followed by an explanation of the recommendation relying on the various inputs mentioned above.

¹⁶ ALRC Act (n 3), s 22.

¹⁷ 'Review of the Legislative Framework for Corporations and Financial Services Regulation', *Australian Law Reform Commission* (Web Page, 11 September 2020) <<https://www.alrc.gov.au/inquiry/review-of-the-legislative-framework-for-corporations-and-financial-services-regulation/>>.

¹⁸ *Law reform process* (n 6).

¹⁹ 'New look' for ALRC consultation documents', *Australian Law Reform Commission* (Web Page, 30 March 2021) <<https://www.alrc.gov.au/news/new-look-for-consultation-doc/>>.

²⁰ *Law reform process* (n 6).

1.1.5 Key Factors which Influence the Law Reform Process

The Terms of Reference issued by the Attorney-General usually sets out key factors for the ALRC to consider when conducting a particular law reform review. The comprehensiveness of the factors to consider varies depending on the specific review. For example, the Terms of Reference for 'ALRC Report 143' include an extensive list of existing reports for the ALRC to consider whereas for 'ALRC Report 142', the Attorney-General merely asked the ALRC to have regard to "existing reports and inquiries, including state and territory inquiries or reviews, that it considers relevant."²¹ The influential key factors are unique to suit the scope of each inquiry.

Each of the ALRC's final and summary reports published include a list of guiding principles (or reform principles) that had informed the recommendations for reform in the inquiry. Examples of what these guiding principles may look like are below.

Table 1: Without Fear or Favour: Judicial Impartiality and the Law on Bias Guiding Principles²²

Principle 1	The court as an institution has a central role in upholding judicial impartiality.
Principle 2	The limits of judicial impartiality are determined by the function of courts.
Principle 3	Litigants and the public both have a legitimate interest in judicial impartiality.
Principle 4	The law on bias is shaped by and dependent on other institutional structures.
Principle 5	Transparency, equality, integrity, and fairness are crucial complementary values.

Table 2: Maximising the Realisation of Human Rights: Religious Educational Institutions and Anti-Discrimination Laws Guiding Principles²³

Principle 1	Human dignity is central to the expression and protection of all human rights.
Principle 2	All human rights engaged by this Inquiry are fundamentally important.
Principle 3	Human rights should be considered holistically. In managing intersections between human rights, the substance of the rights at issue should be preserved to the maximum degree possible.
Principle 4	Education performs a key role in maintaining a pluralist and socially cohesive society.
Principle 5	Students are at the centre of this Inquiry.

1.1.6 Special Policies for Eliciting Information and Engagement with Particular Groups

The ALRC has implemented several policies and frameworks in place to facilitate eliciting information or engaging with particular groups. These include the Agency Multicultural Plan and the Reconciliation Action Plan. The Agency Multicultural Plan aimed to increase multicultural access, equity and social inclusion for ALRC reforms. As part of this, the ALRC committed to engaging and consulting with culturally and linguistically diverse organisations and communities to consider the impact of law reforms

²¹ *Safe, Informed, Supported: Justice Responses to Sexual Violence Review* (n 12) 7-10; *Maximising the Realisation of Human Rights: Religious Educational Institutions and Anti-Discrimination Laws Review* (n 13) 5-6.

²² *Without Fear or Favour: Judicial Impartiality and the Law on Bias Review* (n 15) 30.

²³ *Maximising the Realisation of Human Rights: Religious Educational Institutions and Anti-Discrimination Laws Review* (n 13) 36-37.



on culturally and linguistically diverse communities.²⁴ The last mention of this was in the 2016-2017 Annual Report though so it is unclear on how these policies have progressed since then.²⁵

The ALRC also asks people who are interested in attending their consultations whether they have any special requirements to ensure that the meetings are accessible to target groups.²⁶

The ALRC has also produced resources in easy English for people who may have disabilities or literacy constraints for their Equality, Capacity and Disability in Commonwealth Laws inquiry.²⁷ The policy here was specific for this inquiry as the people with disability were one of the main stakeholders in this enquiry.²⁸

1.1.7 How Stakeholder Feedback is Used and Prioritised

The ALRC does not explicitly state how feedback from different stakeholders is used or prioritised. However, the ALRC does put a strong emphasis on consultations with groups of people who are relevant to the scope of the inquiries. This is evident as the explanations for recommendations in the final reports frequently point to consultations conducted with stakeholders. The particular stakeholders prioritised depend on the scope of the inquiry. For example, 'ALRC Report 143' had more regard to feedback from victims and judicial officials whereas 'ALRC Report 141' has more emphasis on consultations with corporations and financial services organisations. The prioritisation of different stakeholder feedback is strongly dependent on the scope of the inquiry. The Terms of Reference from the Attorney-General also direct the ALRC to consult with a non-exhaustive list of stakeholders. This list likely provides a guide to which stakeholder opinions to take into higher account.

1.2 The Independent National Security Legislation Monitor

The Independent National Security Legislation Monitor is a statutory office holder who independently reviews Australia's national security and counter-terrorism laws and can make recommendations for law reform.²⁹ The current INSLM is Jake Blight.³⁰

1.2.1 Policies Establishing the Organisation and Mandating its Functions

The INSLM position was established by section 5 of the *Independent National Security Legislation Monitor Act 2010* (INSLM Act).³¹ The INSLM is appointed under Section 11 of the INSLM Act.³² Section 12 of the INSLM Act states that the INSLM can only hold the office for a maximum of three years and can only be reappointed once.³³

Section 3 of the INSLM Act states that the objective of the INSLM is to ensure that Australia's national security and counter-terrorism legislation is:

- effective in deterring and preventing terrorism and terrorism-related activity threatening Australia's security; and

²⁴ 'Diversity', Australian Law Reform Commission (Web Page, 3 November 2014) <<https://www.alrc.gov.au/publication/annual-report-2013-2014-alrc-report-125/special-features-4/diversity-2/>>.

²⁵ Australian Law Reform Commission, *Annual Report 2016-2017* (Report No 132), September 2017) Appendix H.

²⁶ 'Communicating with people with disability', Australian Law Reform Commission (Web Page) <<https://www.alrc.gov.au/about/policies/communicating-with-people-with-disability/>>.

²⁷ Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws* (Report No 124, August 2014).

²⁸ 'Terms of Reference', Australian Law Reform Commission (Web Page, 18 September 2014) <<https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-alrc-report-124/terms-of-reference-24/>>.

²⁹ 'About', *Independent National Security Legislation Monitor* (Web Page) <<https://www.inslm.gov.au/about>>.

³⁰ 'The Current Monitor', *Independent National Security Legislation Monitor* (Web Page) <<https://www.inslm.gov.au/about/current-monitor>>.

³¹ *Independent National Security Legislation Monitor Act 2010* (Cth) s 5 ('INSLM Act').

³² *Ibid* s 11.

³³ *Ibid* s 12.

- effective in responding to terrorism and terrorism-related activity; and
- is consistent with Australia's international obligations (including human rights obligations, counter-terrorism obligations, and international security obligations); and
- contains safeguards for protecting the rights of individuals.³⁴

The functions of the INSLM are set out in Section 6 of the INSLM Act and include:

- reviewing the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation and any other law of the Commonwealth that relates to Australia's counter-terrorism and national security legislation;
- considering whether any legislation above contains appropriate safeguards for protecting the rights of individuals and remains proportionate to any threat of terrorism or threat to national security (or both) and remains necessary;
- reporting on matters relating to the performance of the Monitor's functions as set out in above dot points;
- review the operations, effectiveness and implications of the following acts:
 - Chapter 5 of the *Criminal Code*:
 - Division 82 (sabotage);
 - Part 5.2 (espionage and related offences);
 - Part 5.6 (secrecy of information)
 - Division 105A of the *Criminal Code* and any other provision of that Code as far as it relates to that Division;
 - amendments made by Schedules 1, 2 and 3 to the *Surveillance Legislation Amendment (Identify and Disrupt) Act 2021*
 - Subdivision C of Division 3 of Part 2 of the *Australian Citizenship Act 2007* (which deals with citizenship cessation), as amended by Schedule 1 to the *Australian Citizenship Amendment (Citizenship Repudiation) Act 2023*; and
 - any other provision of the *Australian Citizenship Act 2007* so far as it relates to that Subdivision.³⁵

1.2.2 Methodological Approach

The INSLM can initiate reviews of their own initiative (self-initiated reviews). They can also have a matter referred to them by the Prime Minister, Attorney General or Parliamentary Joint Committee on Intelligence and Security (referred reviews). The INSLM are additionally required to conduct reviews prescribed in the INSLM Act (statutory reviews). The INSLM website provides a comprehensive list of what the INSLM can review under these headings.³⁶

The INSLM has the power to access any materials they consider relevant (including classified information) and can determine their own review process.³⁷ The review process usually consists of producing an issue paper, holding consultation meetings and calling for submissions from interested parties. An issue paper would highlight what the scope of the inquiry is and invite submissions about it. Inquiries will often also include hearings that can be either be public or private depending on the inquiry.

³⁴ Ibid s 3.

³⁵ Ibid s 6.

³⁶ 'What can the Monitor review?', *Independent National Security Legislation Monitor* (Web Page) <<https://www.inslm.gov.au/about/what-can-monitor-review>>.

³⁷ 'Frequently Asked Questions', *Independent National Security Legislation Monitor* (Web Page) <<https://www.inslm.gov.au/about/what-can-monitor-review>> ('Frequently Asked Questions').



Once the review is complete, the INSLM will produce a report with their recommendations on the inquiry and provide it to the Attorney General to table in the Commonwealth Parliament.³⁸

The specific process undertaken by each inquiry is included in the appendix of each report.

1.2.3 How Key Findings are Documented and Presented

The INSLM mainly presents their findings in reports. They are required to produce an annual report of their work as well as special reports, statutory review reports and reports on reference by the Attorney General or Prime Minister. The annual report details the INSLM's work over the year and is not a review in itself. These reports are published on the INSLM website.³⁹ The review pages on the website include organised links for the public to access submissions, research, issue papers, transcripts, roundtable discussions and report related to the particular inquiry. These resources appear to be more available with the latest review while the previous reviews have less resources available for public access.

Since each INSLM only holds the office for a maximum of three years, the style of the published reports varies in structure and presentation.⁴⁰ The INSLM also has a strong discretion over how to conduct their reviews as inquiries do not include detailed terms of reference that set out the scope of the review. The most recent report on Secrecy Offences highlights the recommendations in the table of contents which allows the reader to quickly find where each particular recommendation is discussed.⁴¹ This contrasts previous reviews which tend to list the recommendations in one section and then only indicate which chapter it is discussed in.

1.2.4 How Findings Inform the Development of Options, Proposals and Recommendations for Reform

The INSLM uses a variety of different sources to formulate their recommendations. These include roundtable discussions, private and public hearings, submissions from the public, consultation with stakeholders, as well research conducted by the INSLM office. The process undertaken for each INSLM report is documented in the report's appendix.

The current INSLM tends to include a section summarising his findings after discussing each topic and the associated recommendation. This clearly links the INSLM's findings to the recommendations he makes. This structure differs from previous INSLMs and is more explicit.

1.2.5 Key Factors which Influence the Law Reform Process

The issue paper for each review sets out the key issues that are covered by a particular review and shape the scope of the investigation. They are different for each review depending on the review's needs. Section 8 of the INSLM Act dictates that the INSLM must have regard to Australia's international obligations. This includes human rights obligations, counter-terrorism obligations, international security obligations.⁴² The INSLM also has to consider arrangements between the Commonwealth, States and Territories to ensure that there is a harmonised approach to countering terrorism.⁴³

³⁸ See *ibid.*

³⁹ 'Annual Reports', *Independent National Security Legislation Monitor* (Web Page) <<https://www.inslm.gov.au/about/annual-reports>>.

⁴⁰ *INSLM Act* (n 30) s 12(1).

⁴¹ Independent National Security Legislation Monitor, *Secrecy Offences – Review into Part 5.6 of the Criminal Code Act 1995* (Final Report, June 2024).

⁴² *INSLM Act* (n 30) s 8(1).

⁴³ *Ibid* s 8(2).

Another factor that applies to all of the INSLM's reviews is they must put emphasis on counter-terrorism and national security legislation that has been applied or considered recently.⁴⁴ This includes "provisions of that legislation that have been applied, considered or purportedly applied by employees of agencies that have functions relating to, or are involved in the implementation of, that legislation during that financial year or the immediately preceding financial year."⁴⁵

1.2.6 Special Policies for Eliciting Information and Engagement with Particular Groups

The INSLM does not appear to have any particular practices or policies to support eliciting information or engaging with particular groups. This is likely due to its ability to act similarly to a Royal Commission which allows them to compel people to attend hearings and give evidence.⁴⁶ This contrasts with other law reform commissions where submissions tend to be voluntary.

Additionally, the scope of the reviews they conduct are very specific to national security and counter-terrorism issues and the main groups that they would usually engage with would be civil society groups and government agencies. These groups tend to be more vocal and likely do not require much outreach to encourage them to engage in the inquiry.

1.2.7 How Stakeholder Feedback is Used and Prioritised

The INSLM does not explicitly state how feedback from different stakeholders is used and prioritised. Their website says that they take various sources of feedback into account but does not indicate the weight given to each of these inputs. The weight assigned to feedback would have to be inferred by the discussion of the recommendations in each report.

⁴⁴ *INSLM Act* (n 29) s 9.

⁴⁵ See *ibid*.

⁴⁶ *Frequently Asked Questions* (n 37).



2 The Victorian Law Reform Commission

2.1.1 Policies Establishing the Organisation and Mandating its Functions

The Victorian Law Reform Commission (VLRC), a statutory authority established under the *Victorian Law Reform Commission Act 2000* (Vic) (VLRC Act) is the central body that engages in law reform in Victoria.⁴⁷ The guidelines regarding the commencement of the VLRC Act are outlined in s 2, provided below.⁴⁸

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2001, it comes into operation on that day.

2.1.2 Employment

Employment arrangements and key definitions are set out in s 1(2) and s 3 of the VLRC Act (see appendix 1 for relevant sections). Section 1(2) provides for the CEO and staff of the VLRC and notes that the VLRC may be funded by annual payments from the Public Purpose Fund maintained by the Victorian Legal Services Board. Section 3 contains the Act's definitions.

Commissioners (including the Chair) are formally appointed by the Governor in Council for terms of up to four years.⁴⁹ A current list of commissioners can be found on the VLRC Website.⁵⁰ They decide the contents of VLRC reports, including the recommendations.⁵¹ They are supported by a small staff team, employed under the *Public Administration Act 2004* (Vic).⁵² Most project staff have law degrees, and many have practised in government, private practice or the community sector.⁵³

Intern opportunities are limited.⁵⁴ The VLRC partners with community and educational organisations for internships and does not accept work-experience students outside those arrangements.⁵⁵

2.1.3 Purpose

Section 1 sets out the VLRC Act's purpose and outline. Section 8 to s 10 cover members' terms and conditions, remuneration, and vacancy, resignation and removal. Section 15 outlines the regulations regarding the VLRC employment. Section 16 provides for the appointment of consultants (see Appendix 1 for relevant sections).

⁴⁷ *Victorian Law Reform Commission Act 2000* (Vic).

⁴⁸ *Ibid* s 2.

⁴⁹ *Ibid* ss 3, 7(2), 8(1)(a).

⁵⁰ VLRC, 'Our Commissioners', Victorian Law Reform Commission, (Web page), <<https://www.lawreform.vic.gov.au/about-us/our-commissioners/>>.

⁵¹ Victorian Law Reform Commission, *Law Reform in Action* (Report, June 2023) <https://www.lawreform.vic.gov.au/wp-content/uploads/2023/06/Law_Reform_In_Action_forweb2.pdf>.

⁵² VLRC (n 47) s 15.

⁵³ Victorian Law Reform Commission, *Law Reform in Action* (Report, June 2023) <https://www.lawreform.vic.gov.au/wp-content/uploads/2023/06/Law_Reform_In_Action_forweb2.pdf>.

⁵⁴ *Ibid*.

⁵⁵ *Ibid*.

2.1.4 Establishment of the VLRC

Section 4 of the VLRC Act describes the regulations regarding the establishment of the VLRC.⁵⁶

4 Establishment of the Commission

- (1) The Victorian Law Reform Commission is established by this Act.
- (2) The Commission—
 - (a) is a body corporate with perpetual succession;
 - (b) has a common seal;
 - (c) may sue and be sued in its corporate name;
 - (d) subject to section 6, may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the common seal of the Commission affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The common seal of the Commission must be kept in such custody as the Commission directs and must not be used except as authorised by it.

2.1.5 Functions of the VLRC

The VLRC Act requires the VLRC to report to the Attorney-General on law-reform references, to make recommendations, and to undertake relevant public education programs. Its powers to spend money and deal with property are limited under the s 1(2) (see Section 2.8.1 of this report for relevant sections). The VLRC must also provide information to Parliament and its committees.

Section 5 sets out the Commission's functions.⁵⁷ Under s 5(1)(a) the VLRC must review and report on matters referred by the Attorney-General. Under s 5(1)(b) it may initiate projects on its own initiative in response to issues raised by the community.

5 Functions of the Commission

- (1) The functions of the Commission are—
 - (a) 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;
 - (b) to 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;
 - (c) 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;
 - (d) to monitor and co-ordinate law reform activity in Victoria;
 - (e) to undertake educational programs on any area of the law relevant to a reference, whether past or current.

⁵⁶ VLRC (n 47) s 4.

⁵⁷ Ibid s 5.



- (2) The Attorney-General may—
- (a) modify the terms of a reference;
 - (b) give directions to the Commission as to—
 - (i) the priority it must give to a reference;
 - (ii) the time within which it must report on a reference;
 - (c) at any time before the Commission is to report on a reference, require it to submit an interim report to him or her within a specified time.

Under the VLRC Act, s 6 sets out the Commission's powers and s 7 its constitution. Section 11 addresses the validity of acts or decisions, and s 12 regulates Commission meetings (See Appendix 1 for relevant sections).

2.2 Methodological Approach

The VLRC applies a consistent methodology to its law-reform process. Its standard process for conducting reviews and for implementing recommendations is published on the Commission's website (Our approach → Our process) and in the *Law Reform in Action* guide available under Teachers and students → Education resources.⁵⁸

The methodological approach from the VLRC website 'Our Process' Page has been inserted below describing the VLRC's approach to law reform in Victoria.⁵⁹

Our process

The process followed by the Commission during an inquiry can vary depending on the scope of the terms of reference and how much time the Commission has to complete it. In general, the process involves the following stages:

The project starts: research and scoping. The Commission receives a reference from the Attorney-General or begins a community law reform project. The terms of reference of the project define its scope.

Initial research and preliminary consultations. Commission staff begin to research and consult. This is background work to help the Commission identify the most important issues.

An expert panel / consultative committee or individual may be appointed to provide advice to the Commission on the subject of the project. They provide input but do not formulate recommendations, which is the role of the Commission.

A consultation paper and call for submissions is published with questions about whether the law should be reformed and how, calling for the community to make submissions to the inquiry. In some cases the Commission also publishes information papers providing background and explaining the issues.

⁵⁸ Victorian Law Reform Commission, 'Our process' (Web Page) <<https://www.lawreform.vic.gov.au/our-approach/our-process/>> ; Victorian Law Reform Commission, 'Law Reform in Action' (Report, June 2023) <https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/Law_Reform_In_Action_2020_forweb.pdf>.

⁵⁹ Victorian Law Reform Commission, 'Our process' (Web Page) <<https://www.lawreform.vic.gov.au/our-approach/our-process/>>.

Consultations. The Commission holds extensive consultations with affected parties and interested members of the community across Victoria, especially with disadvantaged and marginalised groups.

Submissions are received and considered. Submissions are the views of the community about what should be done. Anyone can make a submission, as an individual or on behalf of an organisation. Submissions can be made online, in writing, or by speaking to a staff member. They will be published online unless they are marked confidential.

Report. The Commission writes a report, including recommendations to reform the law and/or make changes to procedures, and delivers it to the Attorney-General by the due date.

Tabling. The Attorney-General tables the report in Parliament within 14 sitting days. The Commission then publishes the report on its website and in hard copy. The Commission's work on the project is now complete.

Government response. The government decides whether to implement the recommendations. There is no set timeline for action, and the government does not have to provide a formal response to the report.

Changes to the law. If the government introduces new legislation, Parliament decides whether the legislation is accepted, amended or rejected. If new laws are passed by Parliament, the law commences on the date specified in the legislation.

Only one Community Law Reform project is active at a time. For Attorney-General references, the Commission submits its report to the Attorney-General, who must table it in both Houses of Parliament within 14 sitting days. For community law reform projects, tabling occurs at the government's discretion.⁶⁰ Reports and most submissions are published on the VLRC website under "All projects." The government is not required to respond to or implement the Commission's recommendations, although historically more than 75 percent have been implemented.⁶¹

Any person may propose a Community Law Reform project by making a submission. Proposals must meet the selection criteria on the VLRC "Suggest a law reform project" page.⁶²

At consultation meetings, Commission staff take notes to prepare a consultation record that summarises the issues raised. It is not a verbatim transcript. Where confidential matters are discussed, the record will either omit those details or clearly mark them as confidential, consistent with the wishes of the person who provided them. A draft record is sent to participants to check for accuracy.⁶³ For larger meetings, the draft may be provided to the convenor or organiser for distribution at their discretion. The Commission reviews all comments and amends the record where appropriate. The record is finalised; only the final version is retained, and a copy is sent to participants.⁶⁴

In 2023, the Commission consulted 20 organisations, including community representatives, legal practitioners, community legal centres, and other stakeholders, seeking views on priority areas for law reform in Victoria. Suggested project areas included First Nations peoples, young people, elder abuse,

⁶⁰ Victorian Law Reform Commission, 'Annual Report 2023–24' (Report, 2024) <https://www.lawreform.vic.gov.au/wp-content/uploads/2024/11/VLRC_AnnRep23_24_fnl.pdf>.

⁶¹ Victorian Law Reform Commission, 'Implementation' (Web Page) <<https://www.lawreform.vic.gov.au/all-projects/implementation/>>.

⁶² Victorian Law Reform Commission, 'Suggest a reform' (Web Page) <<https://www.lawreform.vic.gov.au/engage-in-law-reform/suggest-a-reform/>>.

⁶³ Victorian Law Reform Commission, 'About Consultation' (Web Page) <<https://www.lawreform.vic.gov.au/engage-in-law-reform/consultation-information/>>.

⁶⁴ Ibid.



the environment, LGBTIQ+ communities, and family violence, among others.⁶⁵ These proposals are compiled in the *Law Reform Long List 2023*.⁶⁶

2.3 How Key Findings are Documented and Presented

Key findings are presented in publicly available final reports on the VLRC website (All projects → Completed reports).⁶⁷

Based on a review of completed reports, including those recommending reform (*Stalking; Improving the Response of the Justice System to Sexual Offences*) and those concluding that no reform is necessary (*Recklessness*), most reports follow a common structure: preface, terms of reference, executive summary, glossary, recommendations, approach/methodology, overview of the current law and practice, contextual material and data (historical, qualitative and quantitative), an assessment of whether reform is required, and detailed analysis supporting each recommendation.

Qualitative evidence, including real-world examples and personal accounts from submissions, is presented as indented quotations in a distinct typographic style to distinguish it from the main analysis. This format highlights the significance of these findings and conveys the human impact of the issues raised (see Section 2.8.2).

Quantitative material is communicated through tables, comparative matrices, graphs, and other numerical summaries (see Section 2.8.2).

The Commission tailors report design to its intended audience. This is evident in the Inclusive Juries report, which adopts a plain, formal layout rather than a highly visual format.⁶⁸ The report examines legislative and practice changes to enable people who are deaf or hard of hearing, blind, or have low vision to serve as jurors in Victoria. It can be inferred many readers and stakeholders may have hearing or vision impairments, where a simplified presentation improves accessibility.⁶⁹ Consistent with this aim, the report does not include infographics (see Section 2.8.2).

2.4 How Findings Inform the Development of Options, Proposals and Recommendations for Reform

Findings are largely derived from submissions made to the VLRC and from consultations the VLRC conducts. These submissions, considered alongside statistical evidence and recommendations from other relevant organisations, are used to formulate the Commission's recommendations.⁷⁰

A consultation paper is published asking whether the law should be reformed and, if so, how, and the community is invited to respond to this paper. In some cases, background material is also published explaining the issues, however, reliance on written material alone can miss marginalised groups. To address this, the VLRC holds consultations with affected parties across Victoria and with community members, with a continued focus on disadvantaged and marginalised groups.⁷¹

⁶⁵ Victorian Law Reform Commission, *The Law Reform Longlist 2023: 77 Suggestions from the Community* (Report, 2023) <<https://www.lawreform.vic.gov.au/publication/law-reform-longlist-2023/>>.

⁶⁶ Ibid.

⁶⁷ Victorian Law Reform Commission, 'All Projects' (Web Page) <<https://www.lawreform.vic.gov.au/all-projects/>>.

⁶⁸ Victorian Law Reform Commission, 'Inclusive Juries' (Report, 16 May 2023) <https://www.lawreform.vic.gov.au/wp-content/uploads/2023/05/VLRC_Inclusive-Juries-Report-Parl-May_23.pdf>.

⁶⁹ Ibid.

⁷⁰ Victorian Law Reform Commission, 'Our approach' (Web Page) <<https://www.lawreform.vic.gov.au/our-approach/>>.

⁷¹ Victorian Law Reform Commission, 'Our approach' (Web Page) <<https://www.lawreform.vic.gov.au/our-approach/>>; Email from DJCS-VLRC Law Reform Mail (Department of Justice and Community Safety, Victoria) to Pieta Gatehouse, 15 September 2025, 11:59 am AEST, 'RE: Enquiries Regarding the VLRC Law Reform Process'.

Information gathered through this process is presented and categorised by cohort (for example, gender, age, or minority group).⁷² Analysis then identifies gaps in responses and highlights the largest or most significant issues for further consideration.

The VLRC information gathered via research, consultations, submissions, and any appointed experts as the basis for its recommendations.⁷³ Every opinion is considered, but the Commissioners decide what to recommend.⁷⁴

They also refer to other reports to consider recommendations made by different bodies to the Victorian Government on similar issues and how the Government plans to implement those recommendations. For example, in the stalking report it discusses the Victorian Government's implementation of the model proposed in the Centre for Innovative Justice Review as discussed in the *Inquiry into Victoria's Criminal Justice System* (Criminal Justice Inquiry).⁷⁵ They go as far to recommend specific recommendations made; "The Victorian Government should implement the victim support recommendations in the Centre for Innovative Justice Strengthening Victoria's Victim Support System: Victim Services Review report and recommendations in the Legislative Council Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System, especially recommendations 36, 37, 40, 42, 49 and 50."⁷⁶

Recommendations are made on a broad basis, targeting multiple perspectives on the legal issue. Reports have made recommendations about support for victims, sentencing and judicial practice, as well as advice for the Victorian Government regarding its current policies and procedures. Recommendations are drawn from a combination of responses received and research conducted. Responses, alongside the corresponding research, are considered. Recommendations also prioritise what the Victorian Government can do, as it is most likely to be able to implement change (as in the *Improving the Response of the Justice System to Sexual Offences* report).⁷⁷

For example, in the Stalking Report the Commission found gaps in data and research about stalking. The corresponding recommendation focused on how the Victorian Government could improve data collection. Furthermore, barriers to reporting stalking and obtaining justice were identified, and recommendations were designed to overcome these barriers.⁷⁸

A second example is the direct link between real people's experiences from affected groups and the recommendations that reflect those experiences.⁷⁹ In that report, a submission identified the cost of monitoring stalking and the difficulty of detection as significant issues. The Commission recommended that "victim support services be bolstered to enhance the availability of ongoing technology support as a key part of safety planning" and the "provision of flexible support packages" of practical technical assistance.⁸⁰ The report also noted evidence of companies' price gouging and overcharging for phone and vehicle checks, and recommended that such services be regulated and safe. It includes an entire chapter on how to mitigate these problems, with a table listing types of practical support for stalking and

⁷² Victorian Law Reform Commission, *Stalking: Final Report* (Report No 45, Victorian Law Reform Commission, 21 September 2022) 25 <https://www.lawreform.vic.gov.au/wp-content/uploads/2022/09/VLRC_Stalking-Final-Report-web.pdf>.

⁷³ Email from DJCS-VLRC Law Reform Mail (Department of Justice and Community Safety, Victoria) to Pieta Gatehouse, 15 September 2025, 11:59 am AEST, 'RE: Enquiries Regarding the VLRC Law Reform Process'.

⁷⁴ Ibid.

⁷⁵ Victorian Law Reform Commission, *Stalking: Final Report* (pdf, 28 October 2022)

<<https://www.lawreform.vic.gov.au/publication/stalking-final-report/executive-summary/>> [5.37].

⁷⁶ Victorian Law Reform Commission, *Stalking: Final Report* (Report No 45, Victorian Law Reform Commission, 21 September 2022) [6] <https://www.lawreform.vic.gov.au/wp-content/uploads/2022/09/VLRC_Stalking-Final-Report-web.pdf>.

⁷⁷ Victorian Law Reform Commission, 'Improving the Response of the Justice System to Sexual Offences' (Report, 12, November 2021) <https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf>.

⁷⁸ Victorian Law Reform Commission, '5. Supporting people who experience stalking' *Stalking Report* (Report, 21 September 2022) <<https://www.lawreform.vic.gov.au/publication/stalking-final-report/5-supporting-people-who-experience-stalking/>>.

⁷⁹ Ibid. 45.

⁸⁰ Ibid 46 [3.86].



accompanying descriptions. In reflecting on the findings, the report also sets out current actions that are occurring in response to the evidence.⁸¹

2.5 Key Factors which Influence the Law Reform Process

2.5.1 Selection Process

Regarding the selection process for law reform projects, there are two ways the topic is determined. First, the Attorney-General of Victoria may request that the VLRC review a specific area of law in accordance with s 5(1)(a) of the VLRC Act 2000.⁸² The Attorney-General provides the Commission with written terms of reference stating the issues the Commission must consider and the date by which the report must be completed.⁸³ These references may be small or large in scope. The VLRC is usually working on one or two references at any time (for example, recklessness, stalking, and improving the response of the justice system to sexual offences).⁸⁴

Second, the VLRC may decide to begin a Community Law Reform project on a community-suggested topic in accordance with s 5(1)(b) of the VLRC Act.⁸⁵ Suggested topics are received from community organisations as well as individual members of the public; however, they are limited in scope because the VLRC can take on a new community-suggested law reform project approximately every two years.⁸⁶ These topics usually concern issues impacting the general community or members of the community who face barriers (for example, inclusive juries, neighbourhood tree disputes, and funeral and burial instructions).⁸⁷

Each report contains an “Our process” section and an “Our approach to reform” section describing the approach taken for the report and for the reform. The “Our process” section generally includes: “Our leadership”, “What we have published”, “Submissions received”, “Consultations we held”, and “Our broader engagement with Victoria”.

2.5.2 Scope and Complexity of the Review

Regarding the selection criteria, projects are limited in size and scope. They must involve “relatively minor legal issues of general community concern” and “not require a significant deployment of resources available to the Commission”.⁸⁸ Further, under s 5(1)(a) of the VLRC Act the Victorian Attorney-General issues terms of reference for the VLRC outlining at minimum the legislation, policy, and other factors to consider.⁸⁹

Data is received from multiple levels of courts and relevant bodies, including the Sentencing Advisory Council, the Supreme Court of Victoria, the County Court of Victoria, and the Magistrates’ Court.⁹⁰ Recommendations are made in response to a large range of matters, including inconsistencies in the law, identified issues, findings, and barriers.

What has already been reviewed by the VLRC will influence the scope and complexity of a new review. It was made apparent in the improving the response of the justice system to sexual offences that the focus would be on issues that had not been recently reviewed. In that report, the Commission focused

⁸¹ Ibid 46 [3.91]

⁸² Victorian Law Reform Commission, *Law Reform in Action* (Report, June 2023) <https://www.lawreform.vic.gov.au/wp-content/uploads/2023/06/Law_Reform_In_Action_forweb2.pdf>.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ VLRC (n 47) s 5(1)(b).

⁸⁶ Victorian Law Reform Commission, ‘Suggest a community law reform project’ (Web Page) <<https://www.lawreform.vic.gov.au/engage-in-law-reform/suggest-a-reform/>>.

⁸⁷ Ibid.

⁸⁸ VLRC (n 47) s 5(1)(b).

⁸⁹ Ibid s5(1)(a).

⁹⁰ Victorian Law Reform Commission, ‘Recklessness’ (Report, 28 May 2024) <https://www.lawreform.vic.gov.au/wp-content/uploads/2024/05/VLRC_Recklessness_Report_fnl_Parl.pdf>.

less on institutional contexts, as these had already been examined. Furthermore, issues subject to ongoing reviews were not a focus. (In 2020, recommendations for reform were made to enable victim survivors to tell their stories. The law has since changed, and the Victorian Government is consulting further on the issue of identifying deceased victims of sexual offences).⁹¹

Projects with narrower outcomes and questions were generally shorter and less complex. For example, the *Recklessness* and *Stalking* projects, each concerning one primary issue, were generally shorter than projects with a broader topic and multiple concerns, such as the response to sexual offences, where reports were more complex.⁹²

2.5.3 Range of People Affected

Depending on the topic of reform, the range of people affected varied. Reviews on topics with a large community impact (for example, the Stalking report or the improving the response of the justice system to sexual offences) involved consultations and submissions from a large range of groups.⁹³ Reviews that were more focused on statutory provisions, such as *Recklessness*, had consultations more limited to official organisations and one victim, with fewer participants overall.⁹⁴

For some projects, the VLRC sets up a project expert committee, an expert may perform an advisory role on a particular project, or the Commission may consult with individual experts or a group of experts in a roundtable.⁹⁵ Submissions are welcomed from experts, and the Commission generally sends its consultation/issues papers to experts to notify them that it is conducting research on a particular topic.⁹⁶ Furthermore, "experts are identified through early literature reviews and through their submissions to inquiries examining similar issues."⁹⁷

2.5.4 Time Allocated

For each reference, the Attorney-General issues written terms of reference that state the scope and the reporting date by which the VLRC must complete the project. This sits within the VLRC Act framework, under which references come from the Attorney-General.⁹⁸ Deadlines can be changed or extended by the Attorney-General (for example, the Guardianship review's due date was extended; other projects note revised reporting dates). An extension is rarely requested. If the project is a community law reform project initiated by the Commission itself, then the Commission will decide if an extension is warranted and what the duration will be. If an extension is sought from the Attorney-General, the Chair would write on behalf of the Commission setting out the reasons. There are a range of reasons why an extension might be sought for a project. For example, if the project turns out to require much more consultation or research than initially anticipated; if the scope of the project is expanded part-way through the project;

⁹¹ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, 12 November 2021) 6 [1.34–1.35] <https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf>.

⁹² Victorian Law Reform Commission, *Recklessness* (Report, 28 May 2024) <https://www.lawreform.vic.gov.au/wp-content/uploads/2024/05/VLRC_Recklessness_Report_fnl_Parl.pdf>; Victorian Law Reform Commission, *Stalking* (Report, 21 September 2022) <https://www.lawreform.vic.gov.au/wp-content/uploads/2022/09/VLRC_Stalking-Final-Report-web.pdf>.

⁹³ Victorian Law Reform Commission, *Recklessness* (Report, 28 May 2025) <https://www.lawreform.vic.gov.au/wp-content/uploads/2024/05/VLRC_Recklessness_Report_fnl_Parl.pdf>; Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, 12 November 2021) <https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf>.

⁹⁴ Victorian Law Reform Commission, 'Recklessness' (Report, 28 May 2024) <https://www.lawreform.vic.gov.au/wp-content/uploads/2024/05/VLRC_Recklessness_Report_fnl_Parl.pdf>.

⁹⁵ Email from DJCS-VLRC Law Reform Mail (Department of Justice and Community Safety, Victoria) to Pieta Gatehouse, 15 September 2025, 11:59 am AEST, 'RE: Enquiries Regarding the VLRC Law Reform Process'.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Victorian Law Reform Commission, 'Our process' (Web Page) <<https://www.lawreform.vic.gov.au/our-approach/our-process/>>.



or if the Commission is asked to take on an urgent project, or one part becomes urgent, and resources need to be temporarily diverted.⁹⁹

2.6 Special Policies for Eliciting Information and Engagement with Particular Groups

At project commencement staff identify key stakeholders, Commissioners add further names.¹⁰⁰ Consultation strategies are developed to outline who to speak with, how best to reach them and any sensitivities for particular groups and are refined as projects progress; plans are not published.¹⁰¹ These plans change as projects develop, new issues arise, and new or different people need to be consulted.¹⁰² Plans are informed by information from stakeholders about the best way to reach groups in our community and how to go about that engagement. Timeframes allow broad engagement, themes from consultations and submissions are analysed and reflected in reports, and non-confidential submissions are published online to ensure transparency.¹⁰³

The VLRC engages widely with statutory bodies, justice agencies and community organisations, and deliberately seeks the views of people most affected. Each inquiry usually begins with a consultation paper asking whether and how the law should be reformed, followed by an open invitation for public submissions and issue-explainer materials. This may give opportunity to miss marginalised groups that cannot make submissions or fear to make submissions. The VLRC attempts to mitigate this by identifying these stakeholders prior to commencement of the project and with continual identification of stakeholders as the project throughout.¹⁰⁴

A "special effort" is made to consult with groups in the community that might find it more difficult to have their voices heard on law reform issues, such as Aboriginal communities, people with disabilities, people with lived experience of mental illness or psychological distress, children and young people, LGBTIQ+ communities, sex-industry workers, people who experienced sex trafficking, people seeking asylum, care leavers and women with contact with the justice system.¹⁰⁵ For instance, in the Adoption review the VLRC conducted 38 consultations with people with lived experience and experts and received 61 written submissions from adopted people and families, academics, health professionals, community organisations and faith groups, most of which are published on its website for transparency.¹⁰⁶

Affirmed from email correspondence, "for some projects the VLRC will set up a project expert committee, or an expert might perform an advisory role on a particular project, or they may consult with individual experts or a group of experts in a roundtable."¹⁰⁷ Submissions are always welcome from experts, and generally consultation/issues papers are sent to experts to notify them that the VLRC are conducting research on a particular topic. Through early literary reviews, experts are identified and their submissions to inquiries examining similar issues.¹⁰⁸

⁹⁹ Email from DJCS-VLRC Law Reform Mail (Department of Justice and Community Safety, Victoria) to Pieta Gatehouse, 15 September 2025, 11:59 am AEST, 'RE: Enquiries Regarding the VLRC Law Reform Process'.

¹⁰⁰ Victorian Law Reform Commission, 'Our process' (Web Page) <<https://www.lawreform.vic.gov.au/our-approach/our-process/>>; Victorian Law Reform Commission, *Law Reform in Action* (Report, 2020); Email from DJCS-VLRC Law Reform Mail (Department of Justice and Community Safety, Victoria) to Pieta Gatehouse, 15 September 2025, 11:59 am AEST, 'RE: Enquiries Regarding the VLRC Law Reform Process'.

¹⁰¹ Email from DJCS-VLRC Law Reform Mail (Department of Justice and Community Safety, Victoria) to Pieta Gatehouse, 15 September 2025, 11:59 am AEST, 'RE: Enquiries Regarding the VLRC Law Reform Process'.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Victorian Law Reform Commission, *Law reform in action: A guide to the Victorian Law Reform Commission* (Report, 2020) <https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/Law_Reform_In_Action_2020_forweb.pdf>.

¹⁰⁷ Email from DJCS-VLRC Law Reform Mail (Department of Justice and Community Safety, Victoria) to Pieta Gatehouse, 15 September 2025, 11:59 am AEST, 'RE: Enquiries Regarding the VLRC Law Reform Process'.

¹⁰⁸ Ibid.

Accessibility measures include audio described resources, interpreters on request, occasional Braille for intended audiences, a recent website accessibility audit, wheelchair accessible offices and anonymous online response forms to support safe participation.¹⁰⁹

The Commission partners with representative bodies to reach specific communities, for example VACCHO on the Inclusive Juries project and the Victorian Aboriginal Legal Service on stalking and other inquiries. Collected information is disaggregated to show differential impacts across groups, typically by region, gender, age and disability status.¹¹⁰

2.7 How Stakeholder Feedback is Used and Prioritised

The VLRC advises that its final reports are transparent about what has been balanced in reaching conclusions and recommendations, and about how consultations and community engagement were conducted; processes vary by project and are tailored to the subject matter and the needs of relevant stakeholder groups.¹¹¹ Expert opinion is considered alongside the experiences of people with lived experience of the law (and their supporters) and those who practise in or administer the area; neither expert opinion nor lived experience is automatically preferred, and the weight given to any view or evidence depends on the factors relevant to the particular situation, sometimes using a matrix approach.¹¹² The Commission actively seeks the views of people who may be excluded by the law, such as deaf or blind people excluded from jury duty, and makes a special effort to consult First Peoples, people with disability, people from refugee and migrant backgrounds and young people. It does not apply a rules-based formula to evaluate feedback or resolve conflicting views; instead, reports explain the Commission's decision making and conclusions.¹¹³ In addition to submissions, consultations, surveys and expert opinion, the Commission also considers developments in other Australian and overseas jurisdictions and analogous laws, relevant data, the practicality of implementation, funding implications and community accessibility.¹¹⁴

¹⁰⁹ Victorian Law Reform Commission, *Annual Report 2023–2024* (Annual Report, 2024) <https://www.lawreform.vic.gov.au/wp-content/uploads/2024/11/VLRC_AnnRep23_24__fml.pdf>.

¹¹⁰ Victorian Law Reform Commission, 'Inclusive Juries' (Report, 16 May 2023) <https://www.lawreform.vic.gov.au/wp-content/uploads/2023/05/VLRC_Inclusive-Juries-Report-Parl-May_23.pdf>; *Stalking* (Report, 21 September 2022) <https://www.lawreform.vic.gov.au/wp-content/uploads/2022/09/VLRC_Stalking-Final-Report-web.pdf>.

¹¹¹ Email from DJCS-VLRC Law Reform Mail (Department of Justice and Community Safety, Victoria) to Pieta Gatehouse, 15 September 2025, 11:59 am AEST, 'RE: Enquiries Regarding the VLRC Law Reform Process'.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*



2.8 Appendices

2.8.1 Sections from the VLRC Act

1 Purpose and outline of Act¹¹⁵

- (1) The purpose of this Act is to establish the Victorian Law Reform Commission as a central agency for developing law reform in Victoria.
- (2) In outline this Act—
 - establishes the Victorian Law Reform Commission (VLRC) with a full-time or part-time chairperson and full-time and part-time members;
 - provides for the employment of a chief executive officer and other staff in VLRC and for it to be also assisted by consultants;
 - sets up arrangements under which VLRC may be funded by annual payments out of the Public Purpose Fund maintained by the Victorian Legal Services Board;
 - requires VLRC to report to the Attorney-General on law reform proposals referred to it by him or her;
 - enables VLRC to suggest references and undertake relevant educational programs;
 - limits VLRC's powers to deal with property and spend money;

6 Powers of the Commission¹¹⁶

- (1) Subject to subsection (2), the Commission has power to do all things necessary or convenient to be done for, or in connection with, performing its functions.
- (2) The Commission must not, without the prior written approval of the Attorney-General—
 - (a) acquire any property, right or privilege for a consideration of more than \$250 000 or any higher amount prescribed for the purposes of this paragraph; or
 - (b) dispose of any property, right or privilege that has a value, or for a consideration, of more than \$250 000 or any higher amount prescribed for the purposes of this paragraph; or
 - (c) obtain a lease over any land or premises.

7 Constitution of the Commission¹¹⁷

- (1) The Commission consists of—
 - (a) a full-time or part-time chairperson; and
 - (b) such number of full-time and part-time members as the Governor in Council considers necessary to enable the Commission to perform its functions.
- (2) The chairperson and other members are appointed by the Governor in Council.

¹¹⁵ VLRC (n 47) s 1.

¹¹⁶ Ibid s 6.

¹¹⁷ Ibid s 7.

- (3) The Attorney-General may appoint a member to act as chairperson (whether on a full-time or part-time basis) for a period not exceeding 6 months—
- (a) during a vacancy in the office of chairperson; or
 - (b) while the chairperson is absent from Victoria or is, for any other reason, unable to perform the duties of the office of chairperson.
- (4) While a member is acting as chairperson, he or she has and may exercise all the powers, and must perform all the duties, of the chairperson.

8 Terms and conditions of office of members¹¹⁸

- (1) A member holds office—
- (a) subject to section 10, for the term (not exceeding 4 years) that is specified in his or her instrument of appointment, and is eligible for re-appointment; and
 - (b) on any other terms and conditions, not inconsistent with this Act, that are specified in his or her instrument of appointment.
- (2) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

9 Payment of members¹¹⁹

A member is entitled to be paid the remuneration and allowances that are specified in his or her instrument of appointment or are fixed from time to time in respect of him or her by the Governor in Council.

10 Vacancies, resignations, removal from office¹²⁰

- (1) A member's office becomes vacant if he or she—
- (a) without the Attorney-General's approval, fails to attend 3 consecutive meetings of the Commission; or
 - (b) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.
- (2) A member may resign by writing delivered to the Governor in Council.
- (3) The Governor in Council may remove a member from office if of the opinion that the member
- (a) is guilty of improper conduct in carrying out the duties of his or her office;
 - (b) is mentally or physically incapable of carrying out satisfactorily the duties of his or her office; or
 - (c) has failed to comply with any term or condition of appointment.

11 Validity of acts or decisions¹²¹

- (1) An act or decision of the Commission is not invalid merely because of—
- (a) a defect or irregularity in, or in connection with, the appointment of a member; or

¹¹⁸ Ibid s 8.

¹¹⁹ Ibid s 9.

¹²⁰ Ibid s 10.

¹²¹ Ibid s 11.



- (b) a vacancy in the membership of the Commission.
- (2) Anything done by or in relation to a member purporting to act as chairperson is not invalid merely because—
- (a) there was a defect or irregularity in relation to the acting appointment; or
- (b) the occasion for the person to act had not arisen or had ceased.

12 Meetings of the Commission¹²²

- (1) The chairperson must convene as many meetings of the Commission as he or she considers necessary for the efficient conduct of its affairs.
- (2) The chairperson or, in his or her absence, a member appointed to act as chairperson under section 7(3), must preside at a meeting of the Commission.
- (3) The quorum for a meeting of the Commission is a majority of the members in office for the time being.
- (4) A question arising at a meeting of the Commission is determined by a majority of the votes of the members present and voting on the question.
- (5) The person presiding has a deliberative vote and, in the event of an equality of votes on any question, a second or casting vote.
- (6) Subject to this Act, the Commission may regulate its own procedure.

15 Staff¹²³

- (1) A chief executive officer of the Commission must be employed under Part 3 of the **Public Administration Act 2004**.
- (2) As many other employees as are necessary to enable the Commission to perform its functions may be employed under Part 3 of the **Public Administration Act 2004**.
- (3) The staff structure of the Commission shall be determined by the chairperson having regard to the Commission's budget.

¹²² Ibid s 12.

¹²³ Ibid s 15.

2.8.2 Examples of How Data is Presented

People who stalk should be accountable

I feel that I have to constantly make changes to fit the stalker. Not to upset them. ... My presence is upsetting the stalker, not that the stalker has a problem and ... needs to be made accountable?²⁷

- 1.36 The response to stalking has usually focused on what the victim survivor is expected to do to avoid being stalked. Such a focus can perpetuate victim-blaming, which can be a feature of the justice system response.²⁸
- 1.37 This focus means that people who stalk often do not get the help they need to address their behaviour. Too many continue their stalking behaviour without any consequence.
- 1.38 This imbalance needs to be corrected. It is not the victim survivor's responsibility to change their behaviour to stop the stalking.²⁹ An effective response to stalking must focus on the people who commit the crime.
- 1.39 However, what 'accountability' means for stalking has not been explored in any detail.³⁰ As we heard in this inquiry, and as research suggests, some victim survivors view accountability as a matter of prosecuting people who stalk and imprisoning them.³¹
- 1.40 We see accountability as a way of making sure that people who stalk take responsibility for their behaviour and take steps to address it. We also see it as a way for the community to acknowledge stalking as a harm and denounce it. It may mean civil or criminal sanctions. It may mean therapeutic intervention.³²

Figure 1: Presenting data with quotations. ¹²⁴

Table 2: Common misconceptions about sexual violence

Misconception	Reality
Sexual violence usually involves penetrative sex.	There are many different forms of sexual violence.
Sexual assault always involves obvious physical aggression. There will be visible signs of the violence afterwards.	Not all sexual assaults involve physical contact or obvious physical aggression. ³⁵
If a person is being sexually assaulted, they will resist and fight back. They will probably scream or call out for help.	People who are sexually assaulted often 'freeze' or cooperate rather than fight back. ³⁶
If a person has been sexually assaulted, they will call the police or tell someone else as soon as they can get away.	It is very common for a person who has experienced sexual violence to take time to tell other people about it. ³⁷ Many people never tell anyone else. ³⁸
Most people are sexually assaulted by strangers.	Sexual violence is most often committed by someone the victim knows. ³⁹
If a person is sexually assaulted by someone they know, they won't stay in a relationship, or continue to be friends, or act politely when they run into them.	People who have been sexually assaulted may maintain contact with the person who assaulted them. For example, they may do so to reduce the risk of being assaulted again. ⁴⁰

Figure 2: Presenting Data within a Comparison Table. ¹²⁵

¹²⁴ Victorian Law Reform Commission, *Stalking* (Report, 21 September 2022) 7 <https://www.lawreform.vic.gov.au/wp-content/uploads/2022/09/VLRC_Stalking-Final-Report-web.pdf>.

¹²⁵ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences: Report* (Report, 12 November 2021) 41 <https://www.lawreform.vic.gov.au/wp-content/uploads/2022/04/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf>.



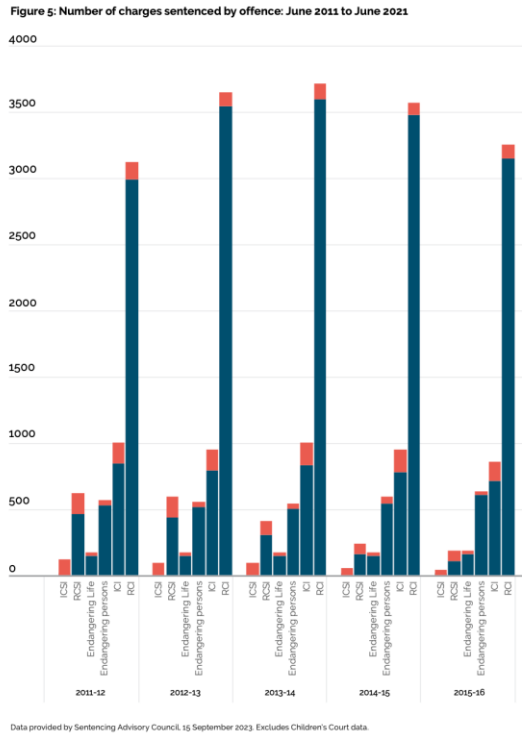


Figure 3: Presenting Data Collected in Graph Form. ¹²⁶

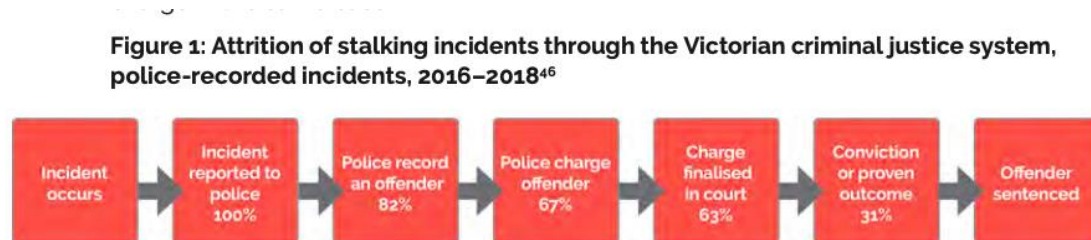


Figure 4: Presenting data collected in an infographic. ¹²⁷

¹²⁶ Victorian Law Reform Commission, *Recklessness* (Report, 28 May 2024) 206 <https://www.lawreform.vic.gov.au/wp-content/uploads/2024/05/VLRC_Recklessness_Report_fnl_Parl.pdf>.

¹²⁷ Victorian Law Reform Commission, *Stalking* (Report, 21 September 2022) 17 <https://www.lawreform.vic.gov.au/wp-content/uploads/2022/09/VLRC_Stalking-Final-Report-web.pdf>.

2.8.3 Correspondence with the VLRC

Email sent to the VLRC seeking clarity on and confirmation on the VLRC processes to law reform.

Dear Victorian Law Reform Commission team,

I am a student at the University of Queensland researching the VLRC's approach to law reform, including how it compares with peer bodies. I have reviewed your "Our process" material and several completed projects, and I would be grateful for clarification on the following points.

1. Selection and weighting of evidence

From my reading, recommendations draw on submissions, consultations, and empirical sources such as datasets and state statistics. Could you outline the specific method you use to select and weight evidence that informs proposals and final recommendations? In particular:

- Do you apply a formal assessment matrix or criteria when moving from findings to recommendations?
- How do you balance quantitative evidence against lived-experience evidence and expert opinion?

2. Identifying and engaging specific groups

From my understanding you engage with marginalised and disadvantaged groups relating to the topic of the project and on occasion the Attorney-General will set out specific things to cover or specific groups to consult with.

- What is the Commission's formal process for identifying impacted, marginalised, or hard-to-reach cohorts for a given reference?
- Do you publish or share your engagement plan for a reference, including the rationale for who is included or not included, if so where can I find this?

3. Selecting stakeholders for consultation

- What criteria determines which organisations and individuals are invited to roundtables or interviewed?
- How do you avoid over-representation of well-resourced stakeholders and ensure sufficient weight for smaller community organisations and people with lived experience?

4. Prioritising and reconciling feedback

- When feedback or findings conflict, what decision rules do you apply?
- Do you use sensitivity testing or scenarios to show how recommendations would change if different assumptions or stakeholder weights were applied?
- How are dissenting or minority views recorded and reflected in the final report?

5. Who decides it is appropriate to extend the due date of the project and on what criteria is this merited on?

I appreciate any methodology notes, templates, engagement guides, or evaluation rubrics you are able to share. Thank you for your time and for the clarity of your published materials.

Kind regards,
Pieta Gatehouse



Email response from the VLRC.

OFFICIAL

Dear Pieta

Thank you for your interest in the Commission's work.

Our final reports are transparent about what the Commission has balanced in reaching its conclusions/ recommendations and how we have approached consultations and community engagement. These processes vary greatly for each project. The Commission tailors its approach to address the subject matter of each different project and to respond to the different interests and needs of the relevant stakeholder groups on those different projects.

Selection and weighting of evidence

Generally our law reform process is as outlined on our page [Our process - Victorian Law Reform Commission](#) and explained here for year 12 students: [Education resources - Victorian Law Reform Commission](#). See additional comments below.

Identifying and engaging specific groups

At the commencement of our projects Commission staff identify key stakeholders. Commissioners also add to this list. We will set up a project page on our website to invite community members to register an interest in the work that we are doing. It is usual for additional stakeholders to be identified throughout the project

Expert opinion is considered in our reports along with the experiences of those with lived experience of the law (and their supporters) and those who practice in a particular area of law or administer it. We do not automatically preference expert opinion over a lived experience, or vice versa. The weight given to opinions and evidence received will be determined with reference to the many factors relevant to each particular situation. It is an essential research skill. Depending on the situation a matrix approach may be used.

We also seek out the opinions of people who may be excluded by the law (for example, the experiences of people who were deaf or blind who are excluded from participating in jury duty). We make a special effort to consult with groups in our community that might find it more difficult to have their voices heard on law reform issues for example, First Peoples, people with disability, people from refugee and migrant backgrounds and young people.

We seek quantitative data to support information in our reports about the application of the current law. This data is often sought from courts, Victoria police, justice bodies, community legal centres and advocacy organisations etc

For some projects we set up a project expert committee, or an expert might perform an advisory role on a particular project, or we may consult with individual experts or a group of experts in a roundtable. Submissions are always welcome from experts, and we generally send our consultation/issues papers to experts to notify them that we are conducting research on a particular topic. Experts are identified through early literary reviews and their submissions to inquiries examining similar issues etc.

Selecting stakeholders for consultation

We do not publish our consultation plans.

We typically allow a lengthy period of time to conduct consultations with a wide variety of stakeholders.

We develop consultation strategies at the outset of our projects that detail our early thinking about who we will need to speak to, how best to reach stakeholders and any sensitivities we will need to consider in relation to consultation with particular groups. These plans change as projects develop, new issues arise, and new/different people need to be consulted. Plans are informed by information from stakeholders about the best way to reach groups in our community and how to go about that engagement.

Themes are identified from consultation and submission responses and views on those themes are then reflected in the reports. Submissions that are not confidential are published online to ensure transparency.

Prioritising and reconciling feedback

We do not use a rules-based approach to evaluating feedback or dealing with conflicting views. Our reports explain our decision making and conclusions.

In addition to examining views expressed in submissions, consultations and surveys, and expert opinion, the Commission will consider a range of other factors in reaching its conclusion about law reform. For example, it will generally also consider what happens in other Australian and overseas jurisdictions and developments in analogous laws as well as relevant data. The Commission will think about how easy reforms will be to implement, funding implications and community accessibility.

Extensions

For a report to the Attorney General an extension would rarely be requested. If the project is a community law reform project initiated by the Commission itself then the Commission will decide if an extension is warranted and what the duration will be.

If an extension is sought from the Attorney-General, the Chair would write on behalf of the Commission setting out reasons.

There are a range of reasons why an extension might be sought for a project, for example, if the project turns out to require much more consultation or research than initially anticipated, if the scope of the project is expanded part way through the project or if the Commission is asked to take on an urgent project or one part becomes urgent and resources need to be temporarily diverted.

We hope this information is helpful.

Kind regards,

Merrin Mason
CEO

Kind Regards,



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This office is located on the land of the Traditional Custodians, the people of the Kulin Nations. We acknowledge their history, culture and Elders both past and present.

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[See More from Pieta Gatehouse](#)



3. The Law Reform Commission of Western Australia

3.1 Policies Establishing the Organisation and Mandating its Functions

The Law Reform Commission of Western Australia (LRCWA) was established under the *Law Reform Commission Act 1972* (WA). The 'Constitution of the Commission' is set out in s4, and establishes the LRCWA, with three part-time members, and two full-time. Members must each meet a different qualification set out in the Act.

Section 6(1) discusses part-time member qualification as:

- (a) Australian legal practitioner of at least 8 years' standing and experience
- (b) A person who is engaged in the teaching of law at a university in the State with status above senior lecturer
- (c) Australian legal practitioner who is an officer of the State Solicitor's Office of at least 8 years' standing and experience

Section 6(2) establishes full-time member requirements as either:

- (a) Australian legal practitioner of not less than 8 years' standing
- (b) In the Governor's opinion, suitable by reason of legal qualifications and experience

Under s11(1), the LRCWA's core function is to "prepare and submit to the Attorney General...proposals for the review of any area of law with a view to reform". The Attorney General has the power to refer matters to the LRCWA, enabling it to examine the law in accordance with the terms of reference, and make recommendations on relevant issues.¹²⁸ In making its recommendations, s11(4) requires the LRCWA to determine whether the law is unnecessary or defective, should be changed "to accord with modern conditions", contains inconsistencies, or should be simplified, consolidated, codified or repealed. Section 11(6) gives the LRCWA the power to conduct inquiries as it "thinks fit".

Section 5 requires that Commissioners, amongst themselves, elect a Chairman. The LRCWA meets at the Chairman's discretion, and minutes must be taken.¹²⁹ Powers, authorities, duties and functions can also be delegated by the LRCWA to any members.¹³⁰ Under s14(2), external services can be contracted to assist in research, these include:

- (a) Minister of any Australia state or of federal parliament
- (b) Tertiary body
- (c) Any other body or person

3.2 Methodological Approach

The LRCWA's methodological approach differs between each project, to meet the needs and expectations of different key stakeholders. However, a broader overview of the entire law reform process is as follows:¹³¹

1. LRCWA reviews areas of law at request of the Attorney-General
2. External individuals/bodies may be contracted for assistance in research and writing
3. Notifying public that a new project is beginning
4. Engaging relevant stakeholders

¹²⁸ *Law Reform Commission Act 1972* (WA) ss11(2) and 11(3).

¹²⁹ *Ibid* ss 12(1), 12(2).

¹³⁰ *Ibid* s 12(3).

¹³¹ 'Contribute to Law Reform', *Government of Western Australia* (Web Page, 25 March 2024) <<https://www.wa.gov.au/organisation/law-reform-commission-of-western-australia/contribute-law-reform>>.

5. Discussion Paper to ensure the public understands the scope of the issue
6. General public able to make submissions
7. Review of submissions
8. Recommendations formed
9. Attorney-General tables the Final Report in the Houses of Parliament

See Appendix 1 for a detailed and specific methodology example from the LRCWA's most recent review.¹³²

3.3 How Key Findings are Documented and Presented

The LRCWA publishes numerous different documents on their website throughout the review process. These include:

- Final Report
- Statistical Analysis Report
- Background Paper
- Discussion Papers
- Appendix of Questions
- Issue Papers
- Guiding Principles

The most relevant and key document presenting overall findings of a project/review is the Final Report. Although there is some variance in how findings are structured, ordered and presented between each review, they are generally structured as follows:

1. Recommendations
2. Defined terms
3. Terms of reference, methodology, background and structure
4. Guiding principles
5. Breakdown of each key aspect of the relevant law
 - a) Response to key questions in each section
 - i. E.g. "Should the Code specify mistaken beliefs which do not negate consent?"¹³³
6. Appendix of submissions

The Final Reports present findings and then address the key stakeholders' view on the specific issue, followed by the LRCWA's perspective. The bulk of the report is written text, either in dot point or paragraph form, with some use from tables and textboxes. Throughout the Final Report, the LRCWA frequently uses tables comparing key terms and jurisdictions, as shown in Figure 1.

¹³² Law Reform Commission of Western Australia, *Project 113: Sexual Offences* (Final Report, October 2023).

¹³³ Ibid.



Figure 1: *Project 113 Final Report Jurisdiction Comparison Table* ¹³⁴

Jurisdiction	Meaning of Consent
ACT	Informed agreement to the sexual act that is (a) freely and voluntarily given; and (b) communicated by saying or doing something. ⁷
NSW	At the time of the sexual activity, the person freely and voluntarily agrees to the sexual activity. ⁸
NT & Vic	Free and voluntary agreement. ⁹
Qld	Consent freely and voluntarily given by a person with the cognitive capacity to give the consent. ¹⁰
SA	The person freely and voluntarily agrees to the sexual activity. ¹¹
Tas	Free agreement. ¹²
WA	Consent freely and voluntarily given. ¹³

In Project 113, recommendations were clearly displayed in green boxes, responding to the specific issue that the report addresses.

Figure 2: *Project 113 Final Report Recommendation Example* ¹³⁵

Recommendations
7. The list of circumstances should provide that, as a matter of law, a child under 16 does not consent. This provision should be made subject to a similar age defence if enacted. Section 319(2)(c) of the Code should be repealed. to a sexual activity 8. The list of circumstances should provide that, as a matter of law, a person does not consent to a sexual activity if they are: • Asleep or unconscious; • So affected by alcohol or another drug as to be incapable of consenting to the activity or withdrawing consent to the activity; or • Incapable of understanding: • The physical nature or sexual character of the relevant activity; • That they can choose whether or not to participate in the relevant activity; or • That they can withdraw from the relevant activity at any time.

3.4 How Findings Inform the Development of Options, Proposals and Recommendations for Reform

Findings are structured largely around stakeholder perspectives and input, especially by relevant organisations. These perspectives and views are identified and form the basis of the LRCWA's view on each individual issue. The LRCWA aims to address each stakeholder/submission perspective in their findings, to form recommendations. These perspectives are addressed separately and clearly identify which stakeholder/body holds that view. To develop a recommendation, the LRCWA refers to other jurisdictions and takes inspiration from the laws within them.

For example, in Project 113, when evaluating the issue of the meaning of consent, the LRCWA states that consent should be defined "in terms of a person freely and voluntarily agreeing to the sexual activity (as is the case in NSW and SA) than to define it in terms of a free and voluntary agreement (as is the case in Victoria and the NT)".¹³⁶ This informed its recommendation that "the Code's definition of consent

¹³⁴ Law Reform Commission of Western Australia (n 119).

¹³⁵ Ibid.

¹³⁶ Law Reform Commission of Western Australia (n 119).

should specify that a person consents to a sexual activity if, at the time of the sexual activity, the person freely and voluntarily agrees to the sexual activity”.¹³⁷

3.5 Key Factors which Influence the Law Reform Process

The *Law Reform Commission of Western Australia Charter* requires independence and integrity, focusing on inclusivity and fairness, as the LRCWA is responsible to the people of the state.¹³⁸ It obligates the LRCWA to communicate and consult with the public and relevant stakeholders, demonstrating a value for all voices and perspectives. This Charter identifies a right of the public to be involved in the state’s law reform process. This influences the LRCWA’s consistency in holding public consultation sessions when conducting a review. The LRCWA must consult openly and transparently with the public, as per the Charter. This is achieved by publishing Discussion Papers on issues within the scope of the review and its proposals for law reform. Alongside this, the LRCWA must give the public a reasonable opportunity to make submissions to its projects. Overall, the Charter highlights the necessity of promoting the values of integrity and accountability in the LRCWA’s work. Integrity is achieved through open, impartial and ethical research, alongside transparency. Accountability is ensured by responsibly and appropriately using state resources, whilst acting in accordance with legislation.

Reviews are widely influenced by the LRCWA’s guiding principles. These are unique to each review and are identified in the early stages of the process. They are published within the Issues Papers of the review. The LRCWA’s findings and reports will largely respond to the principles identified. These principles are framed as “[the law] should [what value should be protected/incorporated/achieved]”. For example, the Project 113 Issues Paper sets out the following:¹³⁹

1. Sexual offence laws should protect sexual autonomy and bodily integrity
2. Sexual offence laws should protect people who are vulnerable to sexual exploitation
3. Sexual offence laws should incorporate a model of shared responsibility
4. Sexual offence laws should be non-discriminatory
5. Sexual offence laws should be clear
6. The interests of complainants, accused people and the community must all be considered

3.6 Special Policies for Eliciting Information and Engagement with Particular Groups

Although there are not any clear special policies for engaging with certain groups as communication and interaction differs between reviews, a relevant example is found within Project 113. In the publication of the Final Report and stakeholder submissions, the LRCWA identified that it consulted numerous sexual offence victims, whose names they could not publish to protect their safety and wellbeing.¹⁴⁰ This demonstrates how the LRCWA protects victim groups in reviews relating to criminal offences, by maintaining their anonymity.

As the LRCWA promotes transparency and believes that law reform is a “public process”, information and submissions provided by stakeholders are not treated as confidential, unless specifically requested.¹⁴¹ Despite this, individual stakeholders are largely left unidentified.¹⁴²

¹³⁷ Ibid.

¹³⁸ Law Reform Commission of Western Australia, *Law Reform Commission Charter*, (Charter, February 2021).

¹³⁹ Law Reform Commission of Western Australia, *Project 113: The guiding principles for the Law Reform Commission’s Review of Western Australia’s sexual offence laws* (Issues Paper No 1, 2023).

¹⁴⁰ Law Reform Commission of Western Australia (n 119).

¹⁴¹ Law Reform Commission of Western Australia, *Project 112: Admissibility of propensity and relationship evidence in WA* (Issues Paper, December 2021).

¹⁴² Ibid.



3.7 How Stakeholder Feedback is Used and Prioritised

The LRCWA categorises stakeholder feedback according to the terms of reference that they respond to. Most stakeholders who share the same perspective have their broader argument expressed in the Final Report without reference to any specific stakeholders.

However, specific organisations/groups that the LRCWA personally contacted requesting submissions have their arguments explained in detail, responding to the terms of reference. For example, in Project 113, the LRCWA refers to the Legal Expert Group and the National Association of Services Against Sexual Violence.¹⁴³

Overall, the LRCWA is quite successful at ensuring all stakeholder perspectives are expressed in the Final Report and review findings. This involves presenting both the majority perspective, and arguments made by a smaller percentage of stakeholders, including a contrasting, minority perspective. The LRCWA ensures that submissions are specifically referenced in the footnotes of the report, identifying whether it was made via email or the portal, and identifying the group or individual who made the submission (unless they have requested to remain anonymous).

An appendix of submissions is also provided in the Final Report, listing organisations and individuals who have made submissions to the inquiry.¹⁴⁴ These are categorised into preliminary, email and online portal submissions. Anonymous submissions are still mentioned in this list.

¹⁴³ Law Reform Commission of Western Australia (n 119).

¹⁴⁴ Law Reform Commission of Western Australia (n 119).

3.8 Appendix

3.8.1 Methodology from Project 113 Final Report

1. **Preliminary submissions** - wrote letters to organisations that are stakeholders to call for submissions to guide the review and help identify relevant issues
2. **Accumulate resources** - engaged external people/bodies including writer, director, researchers and law students. Also commissioned reports from academic experts to formulate a background paper. Finally, consulted WA Police and District Court to gather statistics and trial transcripts
3. **Background Paper** - explanation of how the law currently works and factors influencing the problems relating to sexual offence laws (social focus)
4. **Discussion Paper** - typically in multiple volumes (in this case 2). Focuses on the relevant laws. Discusses issues pursuant to the review's guiding principles and objectives
5. **Issue Papers** - summarises specific issues addressed in the Discussion Papers
6. **Media efforts** - published advertisements in the media to call for members of the public and organisations to provide their submissions. Also published on the Department of Justice's social media to target key stakeholders. The Chairman also engaged in radio interviews.
7. **Online portal and stakeholder submissions** - via the Commission's website. Enabled the public to upload submissions and respond to questions identified in the Discussion Paper
8. **Expert reference group meetings** - created 2 groups to advise on issues relevant to terms of reference. One was legal professionals; the other was non-legal who have a strong understanding of relevant social issues. This was done by inviting relevant bodies and organisations. Meetings were held over 2 months.
9. **Regional visits** - public consultations conducted in regional towns. These were advertised on the Department of Justice's social media, and flyers were put up around towns, alongside stakeholder groups being invited to attend
10. **Other consultations** - Interested public were asked to contact the Commission if they would like to be involved
11. **Data and transcript analysis** - Worked closely with the WA Police to obtain data on sexual offences, particularly focusing on the key issue areas identified within Discussion Papers. The courts were also consulted for a list of sexual offence trials and transcripts. This became a Statistical Analysis Report, formed by an external criminologist.



4. The New South Wales Law Reform Commission

4.1 Policies Establishing the Organisation and Mandating its Functions

The authorising legislation for the NSW Law Reform Commission is the *Law Reform Commission Act 1967* (NSW),¹⁴⁵ as referenced on the LRC's website.¹⁴⁶ It sets out the enabling sections of the Commission, including the constitution of the Commission (s 3), Commissioners' terms of office (s 3B), and importantly, the powers and duties of the Commission, s 10.

4.1.1 Constitution of the Commission

The constitution of the Commission is set out in s 3 of the Act, requiring there to be a Chairperson and not fewer than two other commissioners, each appointed by the Governor.¹⁴⁷

Relevantly, per s 3(3):¹⁴⁸

A person is qualified to serve as Chairperson if they are a person suitable, in the opinion of the Minister, because of:

- (a) being or having been the holder of a judicial office,*
- (b) experience as an Australian legal practitioner in legal practice,*
- (c) experience as a teacher of law, or*
- (d) academic attainment in law.*

4.1.2 Term of Office

Commissioners are appointed for a term not exceeding 7 years, and are eligible for reappointment.¹⁴⁹ This is not affected by a commissioner holding a judicial office.¹⁵⁰

4.1.3 Removal from Office

Those commissioners who are holders of judicial office may only be removed by the Governor upon the address of both Houses of Parliament.¹⁵¹

Those commissioners who are not holders of judicial office may be removed by the Governor, per s 9(2):¹⁵²

- (a) for inability, misbehaviour or failure to comply with the terms and conditions of employment as a commissioner,*
- (b) if the commissioner, being a full-time commissioner, engages, except in so far as the Minister otherwise approves in writing, in any paid employment outside the duties of the office,*

¹⁴⁵ *Law Reform Commission Act 1967* (NSW) ('NSWLRC Act').

¹⁴⁶ 'What we do', *New South Wales Law Reform Commission* (Web Page) <<https://lawreform.nsw.gov.au/about-us/what-we-do.html>>.

¹⁴⁷ *NSWLRC Act* (n 114) s 3(2).

¹⁴⁸ *Ibid* s 3(3).

¹⁴⁹ *Ibid* s 3B.

¹⁵⁰ *Ibid* s 4.

¹⁵¹ *Ibid* s 9.

¹⁵² *Ibid* s 9(2).

- (c) *if the commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,*
- (d) *if the commissioner becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act 1958 or a person under detention under Part 7 of that Act, or*
- (e) *if the commissioner is convicted in New South Wales of a crime or an offence which is punishable by imprisonment for 12 months or upwards, or the commissioner is convicted elsewhere than in New South Wales of a crime or an offence which, if committed in New South Wales, would be a crime or an offence so punishable.*

4.1.4 Duties of the commission

The following purposes are outlined for the Commission to consider the law of NSW in accordance with a reference made by the Minister:¹⁵³

- (i) eliminating defects and anachronisms in the law,*
- (ii) repealing obsolete or unnecessary enactments,*
- (iii) consolidating, codifying or revising the law,*
- (iv) simplifying or modernising the law by bringing it into accord with current conditions,*
- (v) adopting new or more effective methods for the administration of the law and the dispensation of justice,*
- (vi) systematically developing and reforming the law*

The Commission shall also:¹⁵⁴

consider proposals relating to matters in respect of which it is competent for the Legislature of New South Wales or any person under the authority of that Legislature to enact or promulgate laws

As well as:¹⁵⁵

may for the purposes of this section hold and conduct such inquiries as it thinks fit

There is thus a wide scope to the Commission's duties/purposes, conducting those reviews which the Minister requests, as well as reviews of their own accord.

4.1.5 Powers of the Commission

Under s 10(2)(a):¹⁵⁶

the Commission and the Chairperson shall have the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the Royal Commissions Act 1923, and that Act (section 13 and Division 2 of Part 2 excepted) shall, mutatis mutandis, apply to any witness summoned by or appearing before the Commission

¹⁵³ Ibid s 10(1)(a).

¹⁵⁴ Ibid s 10(1)(b).

¹⁵⁵ Ibid s 10(1)(c).

¹⁵⁶ Ibid s 10(2)(a).



Further, in ss 2(b) and 2(c):¹⁵⁷

- (b) *the provisions of Division 2 of Part 2 of that Act (section 17 excepted) shall apply where the Chairperson or the Deputy Chairperson, if he or she is a judge of the Supreme Court and is acting as Chairperson, is presiding at the inquiry, and*
- (c) *the provisions of section 17 (1), (2) and (3) of that Act shall apply where the Minister has, at any time, in, or in relation to, the reference to which the inquiry relates, declared those provisions to apply and where the commissioner presiding at the inquiry is a judge of the Supreme Court.*

Division 2 of Part 2 of the *Royal Commissions Act* refers to powers of the Commissioner to compel witnesses and punish contempt.¹⁵⁸

Section 17 of that Act abrogates the common law privilege against self-incrimination for witnesses.¹⁵⁹

Therefore, when the Chairperson is a judge of the Supreme Court, they can utilise greater powers when dealing with witnesses, mostly in relation to compulsion of evidence.

4.1.6 Divisional breakup

Interestingly, s 12A of the NSWLRC Act provides for the Chairperson to constitute a Division of the Commission, comprised of not less than three commissioners, which may include the Chairperson, to act on a reference or part of a reference.¹⁶⁰

As such, there is capacity for more formalised divisions of labour within the Commission, likely used especially when multiple reviews are ongoing.

4.2 Methodological Approach

In general terms, the process the NSWLRC outlines is as follows:¹⁶¹

1. The Attorney General asks us to review a law
2. Research and early consultations
3. Consultation paper and submissions
4. Further consultations
5. Final report
6. Government response

¹⁵⁷ Ibid ss 10(2)(b), 10(2)(c).

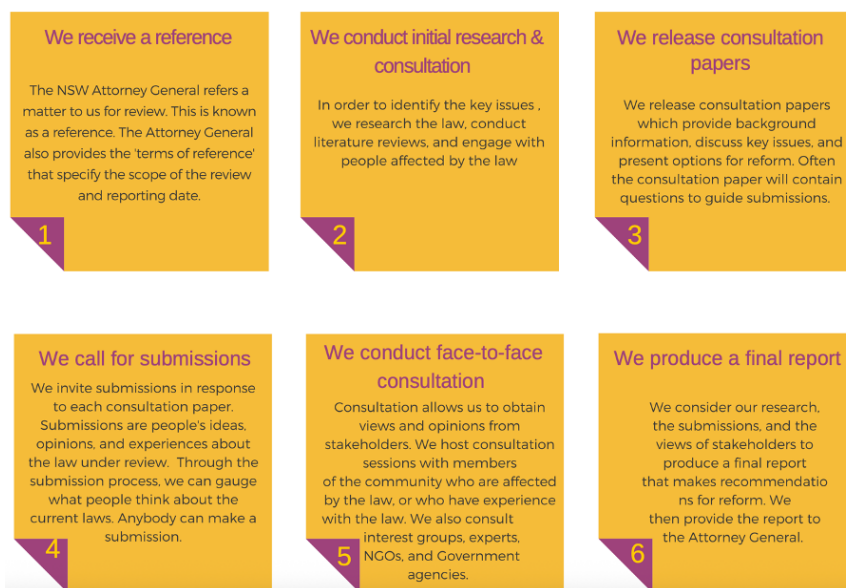
¹⁵⁸ *Royal Commissions Act 1923* (NSW) Division 2, Part 2.

¹⁵⁹ Ibid s 17.

¹⁶⁰ NSWLRC Act (n 114) s 12A.

¹⁶¹ 'What we do', *New South Wales Law Reform Commission*, (Web Page) <<https://lawreform.nsw.gov.au/about-us/what-we-do.html>>.

They are also set out in a slightly different form in the below document, but the substance is mostly identical.¹⁶²



4.2.1 The AG asks us to review a law

The Commission notes that they can only review a law if it is referred to them by the AG. They also flag the 'terms of reference', which set out the scope and nature of the review they are to conduct, and the reporting date.

4.2.2 Research and early consultations

This is the stage where the Commission gathers information about the law to be analysed, and can include steps like:

- Reading court cases
- Looking to similar laws across Australia and in foreign jurisdictions
- Considering statistics
- Reading academic material e.g. books, articles, reports

This is also the stage where preliminary consultations are made with experts and community groups to probe initial opinions and concerns. It is important to the Commission working out where the important issues lie, from stakeholders' perspectives.

Sometimes, the Commission will release a Background Paper at this stage which outlines how they plan to undertake the review and provide an overview of the law under review, however this is not consistent.

4.2.3 Consultation paper and submissions

The Commission often releases consultations papers that:

- Explain the law they are reviewing
- Set out a range of ideas for addressing any problems with the law
- Ask people and organisations to tell the Commission if they think the law should be changed, and, if so, how

¹⁶² 'Our law reform process', *New South Wales Law Reform Commission* (Web Page)
<<https://lawreform.nsw.gov.au/documents/Our-law-reform-process/Our-Law-Reform-Process.pdf>>.



The Commission then welcomes submissions in response to these papers from the public.

Surveys are also sometimes conducted to better canvas public opinion on the law under review.

4.2.4 Further consultations

Here, mostly face-to-face consultations are conducted. They are typically with the stakeholders most relevant to the law under review, but also include legal experts, government representatives and community groups.

4.2.5 Final report

At the end of its review process, the Commission provides a final report to the AG. The report includes discussion of the research conducted and the submissions received. If issues are identified with the law, it also includes recommendations on how to remedy them.

The Commission's mandate in providing reports to the AG comes from s 13 of the Act previously mentioned.¹⁶³ While s 13(1) enables the Commission to make an interim report on the reviews they conduct,¹⁶⁴ this does not seem to be often invoked.

Section 13(2) requires the Commission to provide a final report on its review, then to furnish it to the Minister.¹⁶⁵ This report, once furnished to the Minister, must then be tabled in Parliament (and thus released to the public) within 14 sitting days after the Minister receives it.

However, the Commission may also, with approval from the Minister, publish the report before its tabling in Parliament.¹⁶⁶

4.3 How Key Findings are Documented and Presented

4.3.1 Types of publications

These are the types of reports listed on the Commission's website. Notably, some seem archaic, with no report having been made in that format for decades. Those marked in green are the ones where a report has been made in the last five years.¹⁶⁷

- Reports
- Annual reports
- Background papers
- Consultants papers
- Consultation papers
- Discussion papers
- Issues papers
- Question papers
- Research papers

¹⁶³ *NSWLRC Act* (n 114) s 13.

¹⁶⁴ *Ibid* s 13(1).

¹⁶⁵ *Ibid* s 13(5).

¹⁶⁶ *Ibid* s 13(6).

¹⁶⁷ 'Publications', *New South Wales Law Reform Commission* (Web Page) <<https://lawreform.nsw.gov.au/publications.html>>.

- Research reports
- Working papers
- Preliminary papers
- Miscellaneous publications

Note that 'annual reports' relate to the 'performance' of the Commission over the preceding year as with any annual report. They are not related to a matter of law reform per se.

In general terms, the two forms which the Commissions's findings can take are that of the consultation papers and the final report. At two distinct stages of the process, each documents and displays findings.

Given the nature of this section, the best way to get a picture of how the Commission does document and present these findings within those papers and reports is to go to some recent reports and papers and see how the Commission did so there.

4.3.2 Observations from recent reports

From perusal of three recent final reports delivered, being the 'Serious Road Crimes' Report (**Road Crimes Report**),¹⁶⁸ the 'Serious Racial and Religious Vilification' Report (**Vilification Report**)¹⁶⁹ and the 'Consent in relation to Sexual Offences' Report (**Consent Report**) conducted between 2018 - 2020,¹⁷⁰ the following observations on their presentation of findings can be noted.

4.3.2.1 Road Crimes and Vilification

For the first two (Road Crimes and Vilification), they are very prose-heavy. Few diagrams or visual instruments are used. Further, they are not reliant on quantitative data to any significant extent, and instead rely on (qualitative) submissions made by various groups, with the report discussing and commenting on those submissions, and whether the commission agrees or not.

For instance, in the Road Crimes Report, some possibilities of law reform for vehicular manslaughter are dealt with as follows. The Report sets out the legislative framework relevant to the offence. It then discusses various problems raised with that framework by the various groups, citing them in footnotes as it goes. After that, it then makes its conclusions on whether it should be changed, including by citing case authority. Few statistics are used to support anything.

¹⁶⁸ New South Wales Law Reform Commission, *Serious road crime* (Report No 152, February 2025) ('*Road Crimes Report*').

¹⁶⁹ New South Wales Law Reform Commission, *Serious racial and religious vilification* (Report No 151, September 2024) ('*Vilification Report*').

¹⁷⁰ New South Wales Law Reform Commission, *Consent in relation to sexual offences* (Report No 148, September 2020) ('*Vilification Report*').



An example of the prose is provided:¹⁷¹

Negligent driving covers conduct involving lower moral culpability

- 7.62 Negligent driving occasioning death has severe and catastrophic consequences.⁶² Driving that causes the death of another person is inherently serious, and causes devastating and enduring consequences for victims, families and communities no matter the type of conduct of the accused person.
- 7.63 While we acknowledge the seriousness of this offence and the harm caused, we conclude that its classification as a summary offence appropriately reflects the conduct it covers. It is important that the criminal law appropriately reflects the seriousness of the accused person's conduct, including the degree of criminal fault. The offence of negligent driving covers situations where the driver was not "exercising the degree of care which the ordinary prudent driver would exercise in all the circumstances".⁶³ This generally involves a lower level of moral culpability, compared with other offences in the road crime hierarchy.⁶⁴

4.3.2.2 Consent

However, the Consent Report is different. Perhaps because of the different subject matter or a greater relevance of quantitative data, quantitative data is relied upon more, and is presented both within prose and by visual instrument, for example:¹⁷²

Table 2.1: Charging rates for sexual offences in NSW, July 2018 – June 2019

Offence	Number of incidents recorded by NSW Police	Number of finalised charges	Number of persons of interest recorded by NSW Police	Number of defendants with a finalised charge
Total	14,994	1,207	15,654	511
Sexual assault	5,294	539	5,395	201
Aggravated sexual assault	8,877	560	9,434	222
Sexual touching and aggravated sexual touching	629	74	631	62
Sexual act and aggravated sexual act	194	34	194	26

Source: NSW Bureau of Crime Statistics and Research²²

I note that the Consent Report was handed down in 2020, so 5 years ago now. Perhaps the style has changed since, given the two more recent reports do not have visuals of this kind.

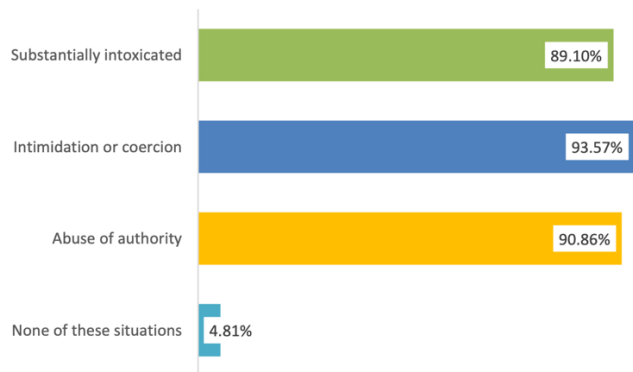
The Consent Report also included a survey to gauge general opinions on the state of consent laws. In addition to references to the survey and responses to it throughout the report, there were also two appendices relating to it.

¹⁷¹ *Road Crimes Report* (n 154) 128 [7.62].

¹⁷² *Consent Report* (n 156) 17 Table 2.1.

The first provided a summary of the responses to the survey. These were presented both in text format and visual, examples below:¹⁷³

Figure E.2: Circumstances in which it may be proved that a person does not consent



Source: SurveyMonkey Inc

Knowledge of consent

E.46 In Question 13, we invited comment on the need for prosecutors to prove that the accused person knew there was no consent.

General comments about the knowledge requirement

Many responses support the knowledge requirement

E.47 Many responses support this requirement and do not believe it should change. Reasons for this include that it is:

- needed to ensure fairness to the accused person, including in situations where they genuinely believed there was consent
- needed to stop, or deal with, false accusations, and
- appropriate, given the serious consequences of being found guilty of a sexual offence.

Below, they also extracted screenshots of the entire survey to match the questions to the answers provided above.

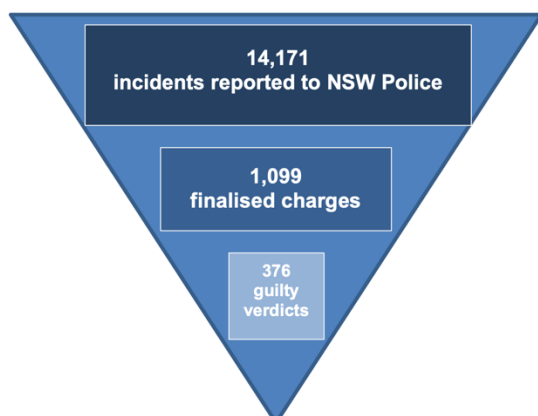
For the Consent Report, results were also presented through other visual media, including graphs and other less orthodox visual forms, including the following:¹⁷⁴

¹⁷³ Ibid 226 Figure E.2; 226 [E.46] – [E.47].

¹⁷⁴ Ibid 15 Figure 2.1; 21 Figure 2.2.

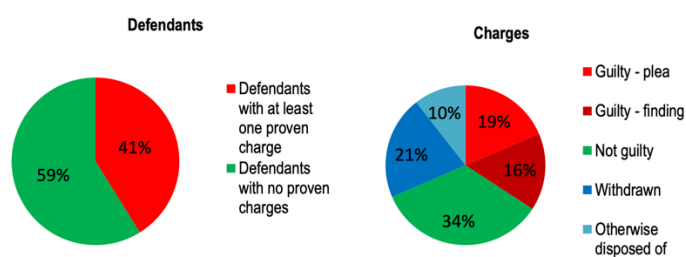


Figure 2.1: Alleged sexual assaults and aggravated sexual assaults in NSW, July 2018 – June 2019



Source: NSW Bureau of Crime Statistics and Research¹²

Figure 2.2: Sexual assault and aggravated sexual assault charges before NSW courts, July 2018 – June 2019



Source: NSW Bureau of Crime Statistics and Research⁴²

4.4 How Findings Inform the Development of Options, Proposals and Recommendations for Reform

The main form ‘findings’ take is the submissions made to the NSWLRC. Those are the ‘findings’ the Commission refers to in forming its opinions and recommendations. There are also statistics used, and discussion of academic commentary and cases, but these are on the whole less prevalent as a source of information for recommendations.

Each report includes discussion of submissions made, and the Commission comes to conclusions on whether they are persuaded by them or not, or whether they have a proper basis.

4.4.1 Examples

For example, in the Road Crimes Report, the Commission discussed the notion of creating a new, specific, Act for those crimes like so:¹⁷⁵

¹⁷⁵ *Road Crimes Report* (n 154) 119-20 [7.7] – 7.16].

There was some support for a new Act

- 7.7 Some submissions argued that a new Act could:
- influence societal attitudes and behaviours about serious road crimes, which would improve road safety and reduce serious injuries and fatalities⁸
 - improve the clarity of the law,⁹ and
 - streamline the legal process by reducing the complexity of the framework.¹⁰
- 7.8 The Road Trauma Support Group (RTSG) considered that a new Act would be a “major shift in law” that could raise social awareness of the seriousness of road crime and address escalating criminal conduct. The RTSG drew our attention to the 2007 domestic violence legislative reforms, which introduced a new standalone domestic violence Act.¹¹ In the RTSG’s view, a similar approach should be taken for serious road crime offences.¹²
- 7.9 Several submissions argued that restructuring the legislation could present an opportunity to introduce fresh offences and overhaul the sentencing procedure. For example, the RTSG considered that if a new Act was introduced, all offences could be redrafted, and a new offence of vehicular homicide could be included.¹³
- 7.10 One submission advocated for a new Act to legislate parts of the sentencing process for serious road crime offences, including guidelines for the assessment of objective seriousness, moral culpability, and aggravating and mitigating factors.¹⁴

There should not be a standalone serious road crimes Act

- 7.11 For the reasons we outline below, we conclude there should not be a standalone serious road crimes Act.

A new Act is unlikely to bring about significant change

- 7.12 The symbolic role of a new Act may be diminished in practice, particularly if the major changes to offence labelling and penalties, supported by some groups, were not adopted in the Act.
- 7.13 Creating a new Act would not necessarily mean that new offences were introduced, or that all existing offences were redrafted. A new Act may simply consolidate the existing serious road crime offences.
- 7.14 A new Act would be unlikely to bring about significant change to criminal and sentencing procedure. Courts would continue to apply general criminal and sentencing principles. When dealing with either new offences, or offences moved from other Acts, courts would use existing case law based on the previous versions of the offences, to interpret and apply offences in a new Act.
- 7.15 We also do not consider that serious road crime offences should be subject to a separate sentencing regime, or separate criminal law principles. There is no justification for treating serious road crime offenders differently from other offenders.¹⁵ We discuss this conclusion further, in chapter 6.
- 7.16 In our view, the existing sentencing framework allows for sufficient judicial discretion to adequately address the unique issues arising from serious road crime offences. We note that there are no other NSW statutes that incorporate separate sentencing principles for particular offence categories.



4.4.2 Structure of presentation of findings

Generally speaking, the structure of how ‘findings’ are considered is as follows:

First, the Commission will outline the argument for reform as found in the submissions, citing some preliminary reasons extracted from the submission without yet proffering their own view on it.

Next, the Commission will state its own view on the issue, and whether it agrees or disagrees with the majority of submissions.

If it agrees, it will usually justify this with further reference to the submissions, expressing support for the arguments put forward in them.

If it does not agree, it will often tender more of its own opinion on the matter without citing anything, or alternatively reference the submissions in the minority with which it agreed.

This process can be seen in the extracted paragraphs above in the Road Crimes Report.

Drawing that together, the submissions made to the Commission clearly inform much of its decisions on recommendations. In fact, it often seems that the Commission’s view will fall on the side of the majority of submissions, especially when impacts on the community, or just groups in general, are in question, like for instance the following from the Racial Vilification Report:¹⁷⁶

Conclusion

- 3.75 Vilification and other forms of hate-based conduct have a significant impact on the wellbeing of individuals and our community. We acknowledge the community concern at the increase in such incidents, and the low number of prosecutions of s 93Z, which led to this review.
- 3.76 However, as outlined in this chapter, we received submissions from a range of community and legal groups that weigh against reforms to s 93Z. These have informed our view that s 93Z does not require reform in response to the issues raised by the terms of reference.
- 3.77 The considerations expressed in this chapter have also informed our analysis of the options for reform that were suggested to us during this review. In the following chapters, we explain our views in response to these options.

4.4.3 Quantitative analysis

‘Findings’ can also take the form of analysis of other jurisdictions and their methods, including quantitative analysis. This is usually done when submissions have raised those other models, so the NSWLRC seeks to comment on them and the quality of the submissions’ opinions on them.

For instance, the below table extracted from the Racial Vilification Report:¹⁷⁷

¹⁷⁶ *Racial Vilification Report* (n 155) 44 [3.75] – [3.77].

¹⁷⁷ *Ibid* 49 Table 4.1.

**Table 4.1: Volume of proven charges, select WA vilification offences
(8 December 2004 — 31 July 2024)**

Criminal Code (WA) section	Offence	Proven charges
77	Carried out conduct intended to incite racial animosity or racist harassment	5
78	Engaged in conduct likely to incite racial animosity or racial hatred	1
80A	Conduct intended to racially harass	17
80B	Conduct likely to racially harass	29

Source: Western Australian Office of Crime Statistics and Research, email dated 24 September 2024

This, accompanied with the NSWLRC’s explanation of the differences between the WA and NSW legislation, and the citing of submissions that either supported or opposed an introduction of WA-style legislation, together informed the NSWLRC’s decision not to recommend any change to the relevant section.

4.5 Key Factors which Influence the Law Reform Process

This is quite a broad question.

From the outset, it should be noted that this question specifically refers to influences on the ‘process’ of the NSWLRC, rather than the outcomes or decisions made.

4.5.1 Guiding Principles

While it is not always explicit, the NSWLRC usually states some form of ‘guiding principles’ or core considerations at the outset of the final report as paramount considerations throughout their process.

For instance, in the Road Crimes report, below the heading “Our approach to this review”, the NSWLRC lists the following as of great importance to the report:¹⁷⁸

- The experiences of victims
- Reform should be evidence-based and principled
- The criminal law is just one measure to address road safety
- We consider unintended consequences

Within each of these, the NSWLRC explains its significance as a consideration of theirs, what led to that significance (which can include submissions received, and generally the NSWLRC recognising its importance themselves). The NSWLRC may also flag how that consideration is used, like for ‘unintended consequences’ to specifically consider whether any proposed reforms would lead to worse outcomes for Indigenous people. This stemmed from discussion in their Consultation Paper of the disproportionate over-representation of Indigenous people in those charged for road crimes.¹⁷⁹

¹⁷⁸ *Road Crimes Report* (n 154) 8 [1.36].

¹⁷⁹ New South Wales Law Reform Commission, *Serious road crime* (Consultation Paper 23, December 2023), 44 [3.17].



More overtly, in the Open Justice Report, the NSWLRC lists the following as ‘guiding principles’ for the report:¹⁸⁰

- Open justice is fundamental to the integrity of and confidence in the administration of justice.
- Any exception to open justice should be to the minimal extent necessary.
- Exceptions to open justice are appropriate where they are necessary to protect certain sensitive information, vulnerable people and the administration of justice.
- The power and discretion of the judicial officer to control court proceedings and to determine open justice issues, in accordance with the circumstances of each case, should be preserved to the maximum extent possible.
- Legislation that contains exceptions to open justice should (so far as practicable) be uniform and consistent.
- Any exception to open justice should (so far as practicable) be applied in a way that is transparent, accessible and subject to scrutiny.

They then replicate these principles in the following ‘Our approach’ section, similar to the Road Crimes Report.¹⁸¹

4.5.2 Terms of reference

While perhaps basic, it should be stated that the terms of reference given to the NSWLRC, and their scope, are very influential in the way the NSWLRC conducts its reviews.

They seem to be very careful to stay within the terms of reference, and only discuss issues or legislation outside them if necessary, and only to the extent that it is necessary. The NSWLRC sets this out at the start of the report, especially in response to submissions requesting them to go beyond the scope, sometimes expressing their regret that they cannot, as well as acknowledging that to make any conclusion on those other issues would require more consultation and consideration than the Commission could provide in this review. For example, in the Vilification Report, the NSWLRC acknowledges how s 93Z of the *Crimes Act* works in tandem with civil provisions in the *Anti-Discrimination Act*, but notes that examining those civil provisions would lie outside the scope of their terms of reference, though they note their concurrent review of the ADA.¹⁸²

4.5.3 Time constraints

The time available to conduct a review also factors into the NSWLRC’s process. It is generally not acknowledged in those reviews for which there was ample time available, like the Road Crimes Report, for which three years passed between the terms of reference and the final report.

However, in the Vilification Report, the NSWLRC acknowledged from the outset the expeditiousness required by the terms of reference, and noted their attempt to nonetheless consult widely on the impacts of potential reform.¹⁸³ That review concluded after less than a year.

4.6 Special Policies for Eliciting Information and Engagement with Particular Groups

There is no evidence of any overarching policies of the NSWLRC on how they engage with certain groups.

¹⁸⁰ New South Wales Law Reform Commission, ‘*Open Justice: Court and tribunal information: access, disclosure and publication*’ (Report No 149, May 2022), 5 [1.28] (‘*Open Justice Report*’).

¹⁸¹ *Ibid* 6-7.

¹⁸² *Vilification Report* (n 155) 6 [1.30] – [1.31].

¹⁸³ *Ibid* 3 [1.12].

4.6.1 Confidentiality of submissions

For submissions from people who belong to vulnerable groups, like for example victims of sexual assault in relation to the Consent Report, the Commission seems to prefer submitters to flag that their submission should remain confidential, rather than the Commission making an independent decision themselves.

The Commission does note that it may not publish a submission, or redact part of it, if:¹⁸⁴

- The author asked to keep it confidential
- The submission relates to an ongoing court case
- The submission contains particularly sensitive, offensive or potentially defamatory material

These criteria, especially the last, may extend naturally to certain vulnerable groups (like if the details of a sexual assault were detailed within), but arguably does not extend to be a 'special policy' for engaging with certain groups.

Where relevant, the Commission often acknowledges the difficulties certain groups face in regards to the topics under review, like the disproportionate representation of Indigenous people in the criminal justice system in relation to the Road Crimes Report, but go little further than that.

When discussing the attitudes of Indigenous people, the Commission most often simply refers back to submissions made by related groups e.g. the Aboriginal Legal Service (NSW/ACT) to highlight the opinions of Indigenous people.¹⁸⁵

In the 'face-to-face consultation' portion of the Road Crimes Report, the Commission acknowledges that it participated in consultations with, among others, victims. Looking to Appendix C of that Report, where consultations are listed, there is reference to the 'Victims' Roundtable', which was attended by representatives of the Road Trauma Support Group NSW and the Victims of Crime Assistance League.¹⁸⁶

No further detail is given on this consultation. One may assume that where dealing with victims, the Commission consulted through the intermediaries of the Support Group and Assistance League, through whom the victims' beliefs and opinions were conveyed.

For the Vilification Report, it is acknowledged that religious groups and groups representing Indigenous people were consulted, as is referenced in Appendix B.¹⁸⁷

No further detail on their approach to these consultations is given. Again, much seems to have been through those community groups or organisations purporting to represent those groups.

Otherwise, the only engagement the Commission seems to have with 'certain groups' is by soliciting and responding to their written submissions.

4.7 How Stakeholder Feedback is Used and Prioritised

While perhaps not explicitly prioritised, feedback from certain stakeholders seem to be given more importance than others in various reviews.

¹⁸⁴ 'Submissions', *New South Wales Law Reform Commission* (Web Page) <<https://lawreform.nsw.gov.au/completed-projects/recent/section-93z/submissions.html>>.

¹⁸⁵ See e.g. footnote 24 of the *Road Crimes Report* (n 154), 6 [1.29].

¹⁸⁶ *Road Crimes Report* (n 154) 165.

¹⁸⁷ *Vilification Report* (n 155) 108.



4.7.1 Respective importance of submissions

In the Road Crimes Report, for instance, feedback from both the Aboriginal Legal Service and Youth Justice NSW were consistently referenced, and were contained in a section towards the beginning of the paper acknowledging the importance of those groups to the review, and the effects on those groups (effects drawn from the submissions made by those aforementioned organisations) of any of the Commission's recommendations.¹⁸⁸

Further, when dealing with more practical applications of the law, the Commission clearly put special weight on the submissions by the relevant adjacent groups, being e.g. the Bar Association of NSW, Legal Aid NSW and the various Courts consulted.¹⁸⁹

Sometimes, when feedback from different sources directly contradicts each other, the Commission will acknowledge this and present both viewpoints, before saying which they agree with and why (though the justification normally accords with the argument put forth by the submission to which they are agreeing).¹⁹⁰

4.7.2 Combination of viewpoints

Submissions from stakeholders can also be used in tandem to inform different aspects of a single recommendation. By way of example, in the Open Justice Report, Recommendation 5.1(2) is informed by different stakeholders depending on the part of the recommendation in question:¹⁹¹

Recommendation 5.1: Records available to certain access applicants as of right

The access framework in the new Act should provide:

- (1) A party to a proceeding and the party's legal representative is entitled to access any record on the court file for that proceeding.
- (2) A journalist or researcher is entitled to access the following records on the court file:
 - (a) an originating process, defence or other pleading filed in civil proceedings, but only after the time for filing a defence to the originating process or reply to the defence has expired

5.1(2) captures journalists and researchers.

The inclusion of the first part of this, journalists, was justified by reference to submissions by the Children's Court, Australia's Right to Know and by a previous report of the NSW Government into Court access, and distinguished from submissions by members of the public who argued against differing treatment of journalists to other members of the public.¹⁹²

The second part, concerning researchers, was informed instead by submissions by Rape and Domestic Violence Services Australia and the Children's Court, again.¹⁹³ This demonstrates how a single part of the recommendation can be independently informed by multiple stakeholders.

To build on that, 5.1(2)(a) should be mentioned.

¹⁸⁸ *Road Crimes Report* (n 154) 13-4 [1.63] – [1.69].

¹⁸⁹ See e.g. footnote 19 of the *Road Crimes Report* (n 154), 21 [2.20].

¹⁹⁰ See e.g. *Road Crimes Report* (n 154) 23 [2.32] – [2.33].

¹⁹¹ *Open Justice Report* (n 167) 90.

¹⁹² *Ibid* 91-2 [5.8], [5.9], [5.12].

¹⁹³ *Ibid* 91 [5.8], [5.10] – [5.11].

The first part of the recommendation allows the aforementioned people to access court records. This was built on a previous report of the Commission and various Court cases where the judges had supported access by journalists/researchers to these types of records.

However, what is of note, is the second part of the recommendation, which relevantly limits the ability of journalists and researchers to access these documents until after the time for filing etc. has expired.

This limitation was introduced principally because of submissions by Legal Aid on the potential for journalists to too quickly report on proceedings, when the situation may change later on.¹⁹⁴

This is an example of how certain stakeholders' submissions can be used to inform a certain recommendation, but other stakeholders may have a role in limiting it or otherwise lessening the reliance on other submissions.

As can be seen from above, the NSWLRC has few overarching protocols beyond those set out in statute, dealing with each review as they see fit, outlining the specific steps taken for each. They also rely heavily on submissions made, especially written submissions, mostly using few visual aids to present their findings.

¹⁹⁴ Ibid 93-4 [5.20] – [5.22].



5. The Tasmanian Law Reform Institute

5.1 Policies Establishing the Organisation and Mandating its Functions

The Tasmanian Law Reform Institute (TLRI, The Institute) is a non-statutory body founded by the University of Tasmania, the Tasmanian Government, and the Tasmanian Law Society in 2001. The establishment of the Institute's organisation and function is mandated through an agreement between each party, initially created in 2001.¹⁹⁵ The founding agreement contained a clause that pertained the duration of the agreement to run until 2005,¹⁹⁶ with another clause giving an option to the parties to extend the agreement.¹⁹⁷ The agreement has been extended 5 times since 2001, being most recently renewed in 2023.¹⁹⁸ In 2023, however, the structure of renewal changed to an indefinite period, until the parties agree the institute should be dissolved,¹⁹⁹ rather than the previous agreements stating a set period of agreement and giving the option of renewal. Furthermore, the agreement should be reviewed by the parties every four years to ensure it continues to meet the work and requirements of the Institute.²⁰⁰

The agreement outlines the broad terms of the Institute, including its purpose, structure, and operation. Section 2, clause 2.1 outlines the functions of the institute as follows:²⁰¹

- To conduct impartial and independent reviews or research on areas of law and legal policy to provide independent and impartial advice and recommendations on the area investigated, with a view to, or for the purposes of:
 - Modernising the law, eliminating defects in the law, simplifying the law, consolidating laws, repealing laws that are unnecessary or obsolete, adopting new or more effective laws, providing improved access to justice, creating uniformity between jurisdictions, codifying laws, and promoting equality before the law.
- to conduct these reviews and research, where appropriate on a consultancy basis
- to consider and report to the Board on all proposals received for law reform or research proposals from the Attorney-General
- to make reports to the Attorney-General or other authorities arising out of any review and, in those reports, to make recommendations
- to work with the law reform agencies in other states and territories on proposals for reform of the laws in any other jurisdiction or within the Commonwealth
- to work with other agencies and bodies on research and law reform
- to provide advice on draft bills and legislation.

¹⁹⁵ The Government of The State of Tasmania, *Tasmanian Law Reform Institute Founding Agreement* (at 23 July 2001).

¹⁹⁶ *Ibid* cl 8.1.

¹⁹⁷ *Founding Agreement* (n 195) cl 8.3.

¹⁹⁸ Tasmanian Law Reform Institute, *Renewal of Agreement* (at 7 February 2023).

¹⁹⁹ *Ibid* cl. 8.1.

²⁰⁰ *Renewal of Agreement* (n 198) cl 8.3.

²⁰¹ *Renewal of Agreement* (n 198) cl 2.1.

After an external review of the Institute in 2022,²⁰² which the Institute endorsed, it was concluded the Institute should explicitly mention it has a policy to act independently and impartially in performing its functions. This was then enshrined in the 2023 agreement in cl 2.2.²⁰³

Cl 2.3 also enshrines the Institute's focus on ensuring its recommendations in reviews:²⁰⁴

- b) do not trespass on personal rights and liberties or make those rights unduly dependent on administrative rather than judicial decisions, and to;
- b) as far as practicably possible, make recommendations consistent with Australia's international obligations; this stance has been adopted in several reviews.

Cl 2.4 states these objectives are subject to funding being made available to the Institute,²⁰⁵ something that has been criticised for not ensuring the Institute's integrity and independence can be secured.²⁰⁶

Section 3 of the agreement also outlines how the Board within the Institute operates. The Board is the Institute's advisory body, consisting of the Dean of the Faculty of Law at the University, one person appointed by the Chief Justice of Tasmania, one person appointed by the AG, one person appointed by the Law Society, one person appointed by the Council of the University, one person appointed by the Tasmanian Bar, a co-opted member who shall be a Tasmanian Aboriginal person appointed by the AG, and further co-opted members. Once a project has been selected by the Institute, the Board's role is to identify the extent of the project, time for completion, expected output, and the cost of the project.

Section five outlines how the director of the Institute operates. The Director takes on the role of the Institute's leader – 5.3 a) – with their main responsibilities including:

- Providing leadership, strategic direction, and oversight of the work 5.3 a)
- Insuring independence and impartiality within the Institute 5.3 b)
- Speaking publicly on behalf of the Institute, and providing leadership and guidance on the process of law reform to the Tasmanian community 5.3 c)
- Providing advice on draft bills 5.3 d)
- Communicating with key stakeholders 5.3 e)
- Designating work 5.3 f)

5.2 Methodological Approach

The Institute does not have an outlined methodological approach to its review process; however, reviews are usually approached in a relatively consistent way. Firstly, the Institute will receive proposals that inform their decisions on what topic of research they are going to undertake. Section four underlines who they may receive proposals from, which includes: members of the judiciary, the Attorney-General, Tasmanian Legal Aid, Tasmanian Government Departments, MPs, legal professionals (including the Law Society of Tasmania), statutory officers, and members of the community or community groups.²⁰⁷ The Institute has stated the selection criteria that is used to assess the suitability of community law reform proposals received includes: the proposals relevance to Tasmanian law, its scope (whether it is narrow/limited, not broad), whether it is capable of being completed with the Institute's available resources, whether it would significantly benefit a large proportion of the population or a specifically disadvantaged proportion of the population, whether it has some prospect of successful implementation, and whether it is not already under review by government or Parliament.²⁰⁸

²⁰² University of Tasmania, *Review of the Tasmania Law Reform Institute* (at June 2022).

²⁰³ *Renewal of Agreement* (n 198) cl 2.2.

²⁰⁴ *Renewal of Agreement* (n 198) cl 2.3.

²⁰⁵ *Renewal of Agreement* (n 198) cl 2.4.

²⁰⁶ n 8.

²⁰⁷ *Renewal of Agreement* (n 198) cl 4.1.

²⁰⁸ 'Call For Proposals', *Tasmanian Law Reform Institute* (Web Page, 15 July 2022) <<https://www.utas.edu.au/law-reform/call-for-proposals>>.



Upon deciding on a proposal to undertake, the Institute can then commence research on the project, with consultation to the Board.²⁰⁹ The Board can also recommend proposals, but these can be declined or accepted by the Institute.²¹⁰ There is no specific information available on how the board specifically conducts research.

Proposals that involve research on broad societal legal issues (i.e. The minimum age of criminal responsibility, offending whilst on bail), as opposed to reforms of specific laws, will result in a research paper which broadly discusses how the issue affects society.²¹¹ Whereas reports on proposed reforms of specific laws (i.e. Consensual Assault defences, same-sex marriage adoption laws, self-defence, bullying laws), of which is the bulk of research the Institute does, will first involve an Issue paper.²¹² Issue Papers are usually approached in the same way.

Firstly, the current law and its operation within Australia is examined. If the project is on a certain provision, then the provision's history and operation (usually through examining case law), is researched. Secondly, identifying where the need for reform arises. This is also done in a few ways:

- Gaps in the law present in cases are examined.²¹³
- Submissions identifying gaps in the law.²¹⁴
- Whether statutes have vague or uncertain interpretations are also examined, specifically when the statutes are older and the interpretation of them may change as technology and society advances. For example, the Bullying Report considered that the Police Offences Act 1935, which prohibits 'public annoyance' in a public place, probably did not encapsulate cyberbullying considering the non-public nature of cyberbullying.²¹⁵

Thirdly, the law and its operation in other jurisdictions both within Australia and internationally are examined.

Fourthly, what options there are for reform are then considered. This usually involves examining whether legislative change is required (repealing or amending provisions), whether criminal responses should be considered, whether no change is required at all, or whether mediatory responses are required. Throughout this section, questions are posed inviting readers to respond with their own submissions containing their thoughts on law reform implementation.

Final Reports are then collated after Issue Papers are published. In these reports, the Institute will repeat its findings in the corresponding Issue Paper but will then also include its considerations of the strengths and weaknesses of arguments for reform submitted to them and will then come to its conclusion by listing recommendations for reform.

5.3 How Key Findings are Documented and Presented

As mentioned, the Institute publishes its findings as either a Research Paper, or an Issue Paper and corresponding Final Report. Research Papers 'contain the results of research projects', Issue Papers are not the final conclusion the Institute comes to but rather serve as preliminary documents that outline: the key issues to be investigated, the existing law, questions to be discussed, the differing views on the topic, and possible tentative proposals for reform.²¹⁶ Final reports are the documents that consolidate

²⁰⁹ *Renewal of Agreement* (n 198) cl 4.2.

²¹⁰ *Renewal of Agreement* (n 198) cl 4.3.

²¹¹ *Renewal of Agreement* (n 198) cl 4.7 (a).

²¹² *Renewal of Agreement* (n 198) cl 4.7 (b).

²¹³ Tasmanian Law Reform Institute, *Bullying* (Final Report No 22, January 2016) 2.1.5.

²¹⁴ *Ibid* 2.1.6.

²¹⁵ *Bullying* Final Report (n 213) 2.1.10.

²¹⁶ *Renewal of Agreement* (n 198) cl 4.7.

the Institute's final position after their research and consultation with the Board²¹⁷. They contain an executive summary and possibly draft legislation. Most importantly, at the start of each report, a table of the Institute's recommendations on reforming the law is included. Each individual recommendation is also clearly labelled in the 'Options for Reform' section, in the corresponding discussions of its legal issue and possible reforms.

The Institute will also publish annual reports,²¹⁸ but they have no relevance to its law reform process and are just concerned with outlining the Institute's annual activities undertaken and structure and function of the Institute and the Board.

Interestingly, releases of Final Reports sometimes also come with 'Easy Read' versions, designed to be easily read with accessible language and accompanying pictures.²¹⁹ The Institute, has also, at times, been creative with the way in which its findings are presented. For example, the Juries and Social Media report section titles are all labelled different social media abbreviations and terms.

5.4 How Findings Inform the Development of Options, Proposals and Recommendations for Reform

Areas that need reform are usually identified by examining any gaps in provisions within the law. These are usually identified when a statute's language has been found to be no longer consistent with evolving technological standards or when there is inconsistency on how laws are interpreted broadly, and how they are applied in courts. These gaps are usually examined through looking at interpretation in case law and from submissions by relevant stakeholders. For example, the 2016 Bullying Laws Issue Paper found that the stalking provision of the criminal code (s 192), did not encapsulate forms of behaviour now considered bullying.²²⁰ Hence, in the Final Report, Recommendation 1 was to amend s 192 from 'Stalking' to 'Stalking and Bullying', to allow the section to be interpreted as encapsulating behaviour linked to forms of bullying.²²¹ Furthermore, the 2017 Consensual Assault Issues Paper states s 182(4) of the criminal code has been interpreted inconsistently by the judiciary and poses difficulties for the jury to understand.²²² Hence, in the Final Report, the Institute recommended that s 182(4) should be reformed to modernise its operation and scope and to remove uncertainties as to its application and interpretation.²²³

In the 2006 Intoxication and Criminal Responsibility Issue Paper, it was found the law had uncertainty around:

- 1) The relevance of intoxication to subjective recklessness;
- 2) the law of involuntary intoxication;
- 3) the relationship between intoxication and defences.²²⁴

This involved discussion on how a majority of judges "allow intoxication to be taken into account for crimes of subjective recklessness", despite there being no authority to do so,²²⁵ hence creating an uncertain gap within the current law. Therefore, recommendations were made to clarify these laws in the Final Report.²²⁶

²¹⁷ Ibid.

²¹⁸ *Renewal of Agreement* (n 198) cl 7.

²¹⁹ Tasmanian Law Reform Institute, *Suggestions to Change the Guardianship and Administration Law* (Easy Read Report, 2018).

²²⁰ Tasmanian Law Reform Institute, *Bullying* (Issue Paper No 21, May 2015).

²²¹ *Bullying* Final Report (n 213).

²²² Tasmanian Law Reform Institute, *Consensual Assault* (Issue Paper No 24, June 2017).

²²³ Tasmanian Law Reform Institute, *Consensual Assault* (Final Report No 25, May 2018).

²²⁴ Tasmanian Law Reform Institute, *Intoxication and Criminal Responsibility* (Issues Paper No 7, March 2005).

²²⁵ Ibid p 44.

²²⁶ Tasmanian Law Reform Institute, *Intoxication and Criminal Responsibility* (Final Report No 7, August 2006).



Through this analysis of the need for reform, the institute will then formulate what it thinks are possible options for reform. These are included in Issue Papers, alongside corresponding questions that invite submissions on the merits or defects of these possible options.

The Institute then considers all submissions it receives from these questions; it then formulates recommendations that are listed in the Final Reports. Recommendations are formed through an analysis of the need for reform, academic commentary, and most importantly, responses to the questions listed in Issue Papers. For each option, and corresponding question, the institute will review what it deems the most significant responses and will evaluate their arguments. Across papers, it has done this in a few ways. Firstly, an analysis on the state of Tasmania and Australia, as a whole, is conducted. This ensures that the arguments they get in response to their issue papers are not personal opinions, but rather arguments that reflect the public's majority consensus. For example, in the 2003 Final Report on Same Sex Adoption, the Institute rejected the argument that homosexuality was unnatural and immoral, even though this argument was forwarded in a large number of submissions, by considering that this was not the belief held by the majority of the public.²²⁷

Secondly, expert responses to Issues Papers are almost always considered as well-informed and are given lots of weight in the discussion of possible reform options. The institute will then, after evaluating the submissions and the arguments represented in them, as well as considering its own research, will come to a final position and recommendation about how the area of law should be reformed. These recommendations will always correspond to the questions and options initially discussed in the Issue Paper. For example, in the Consensual Assault project, option 1 discussed was to make no change in the existing law.²²⁸ The corresponding recommendation was that Section 182(4) of the Tasmanian Criminal Code should be reformed to modernise its operation and scope to remove uncertainties as to its application and interpretation²²⁹. Option 2 discussed was whether a quantitative approach should be adopted by repealing s 182(4) and amending s 53.²³⁰ The corresponding recommendation was that Section 53(c) of the Tasmanian Criminal Code 1924 should be amended to modernise its language by deleting the phrase 'maim injurious to the public' and replacing it with 'grievous bodily harm, disfigurement or a disabling injury', and that Section 182(4) should be amended to proscribe consent to assaults committed by adults in private in the presence of a child or children where the assaults are of no benefit to the person or person assaulted other than to gratify that person's or those persons' desire to participate in the assaults.²³¹

Questions and their responses can also be grouped thematically and can have one recommendation produced that responds to the group of questions. For example, in the 2016 Bullying Report,²³² questions were grouped into sections of: *Structure of Reform*, *Criminal Justice Response*, *Civil Law Response*, *Workplace Bullying*, and *School Regulation*. Recommendations were then formed for each grouped section (i.e. recommendations on whether a criminal offence should be legislated, whether a tort of bullying should be legislated, and recommendations on how to deal with workplace and school bullying).

5.5 Key Factors which Influence the Law Reform Process

In the agreement, there is an emphasis on ensuring the Institute's entire process is impartial and independent.²³³ There are no explicit clauses of the agreement or primary documents that indicate how to institute ensures this. Its openness to who can submit law reform proposals (AG, Legal Aid

²²⁷ Tasmanian Law Reform Institute, *Adoption by same sex couples* (Final Report No 2, May 2003) p 26.

²²⁸ *Consensual Assault* Issue Paper (n 222).

²²⁹ *Consensual Assault* Final Report (n 223).

²³⁰ *Consensual Assault* Issue Paper (n 222).

²³¹ *Consensual Assault* Final Report (n 223).

²³² *Bullying* Final Report (n 213).

²³³ n 198 cl 2.2.

Commission, government departments, Parliament, legal professionals, community groups, members of the community), may help to create more impartiality in which projects it undertakes.

The factors/selection criteria that influence proposal consideration are explicitly mentioned as: the proposals relevance to Tasmanian law, its scope (whether it is narrow/limited, not broad), whether it is capable of being completed with the Institute's available resources, whether it would significantly benefit a large proportion of the population or a specifically disadvantaged proportion of the population, whether it has some prospect of successful implementation, and whether it is not already under review by government or Parliament.²³⁴

It's clear the institute also value a range of community stakeholders and consider a range of perspectives in their reports, as across all their issue papers they encourage the public to enter submissions to their Issue Papers, and they read every submission.

5.6 Special Policies for Eliciting Information and Engagement with Particular Groups

The only explicit mention to policies the Institute adopts to ensure engagement with certain disadvantaged groups is that it mentions law reform proposals may be selected upon the basis that they relate to a significantly disadvantaged proportion of the population. The Institute has, over its 20 plus year history, focused on disadvantaged and marginalised groups. For example, as noted in Equality Tasmania's 2022 Submission, the Institute has conducted six projects that had direct impacts on LGBTQ+ people.²³⁵ Same-sex adoption (2003),²³⁶ A Charter of Rights (2007),²³⁷ Same-sex marriage (2013),²³⁸ Sex and gender recognition (2019),²³⁹ Conversion practices (2022),²⁴⁰ Revisiting a Charter of Rights (2022).²⁴¹

Within these reviews, the Institute has also specifically mentioned and dealt with laws they view as discriminatory towards certain groups, under both Tasmanian law and international law. For example, in their 2003 report on Same Sex Adoption laws, even though "the majority of responses opposed same sex adoption",²⁴² the institute still recommended "s 20(1) of the Adoption Act be amended to permit a couple to apply for adoption regardless of the gender and marital status of the partners making up the couple".²⁴³ The institute emphasised that any laws prohibiting same sex couples from adopting, who rightfully satisfied the eligibility criteria set out in the statute, were seen as discriminatory on the basis that, firstly, they did not comply with the International Covenant on Civil and Political Rights that prohibits discrimination on the grounds of sexual orientation and, secondly, they conflicted with the Anti-Discrimination Act 1998 (Tas).²⁴⁴

5.7 How Stakeholder Feedback is Used and Prioritised

The Institute openly accepts submissions from a range of different stakeholder's, encouraging everyone's views, opinions, and recommendations on law reform issues. This information is gathered through submissions stakeholders post in response to the Institute's issue papers. In issue papers, the Institute will pose certain questions to be answered in submissions that underpin the need for reform in

²³⁴ 'Call for Proposals' (n 208).

²³⁵ Equality Tasmania, *Submission for the Review of the Tasmanian Law Reform Institute* (Submission, 2022) p 2.

²³⁶ Tasmanian Law Reform Institute, *Adoption by Same Sex Couples* (Final Report No 2, May 2003).

²³⁷ Tasmanian Law Reform Institute, *A Charter of Rights for Tasmania* (Final Report No 10, October 2007).

²³⁸ Tasmanian Law Reform Institute, *The Legal Issue Relating to Same-Sex Marriage* (Research Paper No 3, October 2013).

²³⁹ Tasmanian Law Reform Institute, *Legal Recognition of Sex and Gender* (Final Report No 31, June 2020).

²⁴⁰ Tasmanian Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Final Report No 32, April 2022).

²⁴¹ Tasmanian Law Reform Institute, *A Charter of Rights for Tasmania? Update* (Research Paper No 6, April 2024).

²⁴² *Adoption by Same Sex Couples* (n 236) p 22.

²⁴³ *Ibid* p 46.

²⁴⁴ *Ibid*.



an area, and the possible options for reform. The Institute clearly outlines the process of responding through submissions at the start of each issue paper. This process usually involves, firstly, filling out a submission template (of which they provide a link to in each report), and then providing your views and reasons for your response to the posed law reform questions.

6 The United Kingdom

6.1 The Law Commission for England and Wales

6.1.1 Policies Establishing the Organisation and Mandating its Functions

The Commission is a statutory body created by the *Law Commissions Act 1965* (UK).²⁴⁵ The Commission is an advisory non-departmental public body sponsored by the Ministry of Justice and is independent of the Government. The functions of the Commission are codified in section 3(1) of the Act. Section 3(1) of the Act states that the duty of the Commission is to take and keep under review all the law with which they are respectively concerned with a view to its systematic development and reform, including in particular the codification of such law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law.²⁴⁶

6.1.2 Methodological Approach

The organisation refers to reviews as “projects.” When starting a project, the Commission usually agrees on terms of reference with the Government. The decision to take on a project is based on:

- the strength of the need for law reform;
- the importance of the issues it will cover;
- the availability of resources in terms of both expertise and funding; and
- whether the project is suitable to be dealt with by the Commission.²⁴⁷

6.1.2.1 The Project Process

6.1.2.1.1 Initiation

The Commission decides on the remit of the project with the relevant Government department;

6.1.2.1.2 Pre-consultation

The Commission undertakes a study of the area of law and identifies its defects. The Commission examines other systems of law to evaluate how they deal with similar problems, Stakeholders are approached and initial Scoping and Issues papers are produced.

6.1.2.1.3 Consultation

The Commission issues a consultation paper detailing the existing law and its defects, providing advantages and disadvantages against the possible solutions. This consultation is publicised and interested individuals and organisations are invited to comment and provide feedback. Members of the

²⁴⁵ *Law Commissions Act 1965*.

²⁴⁶ *Ibid* s3(1).

²⁴⁷ Law Commission <<https://lawcom.gov.uk/>>.

public are also invited to provide feedback and comments on problems that the Commission may not have dealt with, or the likely effect of something that the Commission has proposed.

6.1.2.1.4 Policy Development

Responses from the consultation are analysed which may lead to developments and refinements if necessary. Further issues papers may be produced and consultations may be held on some or all of the draft Bill.

6.1.2.1.5 Reporting

At the end of a project, a report is usually submitted to the Government and final recommendations and reasons are posed. Where necessary, the Commission may include a draft Bill that would give effect to their recommendations. Depending on the nature of the project, the final report may be an advice to the Government or a scoping report.

6.1.2.1.6 Implementation

Recommendations posed by the Commission can only be implemented through Parliament. In 2010, the Law Commission and the Government agreed on a protocol detailing departmental responsibilities once the Law Commission has published a report. The framework states that the minister for the relevant department will provide an interim response as soon as possible (no later than six months) following publication unless otherwise agreed with the Commission. The Minister will provide a full response to the Commission as soon as possible after delivery of the interim response and in any event within one year of publication of the report unless otherwise agreed with the Commission. The 2010 protocol further provides that if the department either rejects or substantially modifies any significant recommendations, it will first give the Commission the opportunity to discuss and comment on its reasons before finalising the decision.

6.1.2.1.7 Assessing the impact of reform

At all stages, the Law Commission assesses the impact of reform and works closely with economists who provide specialist advice.²⁴⁸

6.1.2.2 Structuring of Projects

The work is organised between four teams:

- Commercial and Common Law
- Criminal Law
- Property, Family and Trust Law
- Public Law and Law in Wales²⁴⁹

Each work is overseen by a commissioner. A team head and senior lawyers lead the teams of lawyers and research assistants to deliver their projects.

²⁴⁸ Law Commission <<https://lawcom.gov.uk/>>.

²⁴⁹ Law Commission <<https://lawcom.gov.uk/>>.



6.1.3 How Key Findings are Documented and Presented

At the end of the project, a report is usually submitted to the Government with final recommendations and reasoning. A draft Bill is included when necessary, which would give effect to the recommendation, and the final report may be an advice or a scoping report.

The Terms of Reference document may contain information on how the Commission should present its findings. In its report, the Commission may provide a methodology for how the issue will be approached. For example, the final report of the Evidence in Sexual Offences Prosecutions states that the approach taken for each topic is to summarise the problem and any proposed solution identified in the consultation paper, set out a selection of consultees' views, and from this, explain the rationale for the conclusion reached and any recommendation posed.²⁵⁰

Findings are documented in a manner that makes the report as accessible as possible for readers.²⁵¹

6.1.4 How Findings Inform the Development of Options, Proposals and Recommendations for Reform

Findings from stakeholders at consultation events and written responses are used as an evidence base. This evidence base comprises of numerical data and detailed and considered qualitative content which is used to inform policy development. Findings are also relied on to ensure the full spectrum of views are considered and responses are carefully selected to ensure the report captures this spectrum.

The primary mechanism of how findings inform development of recommendations is by consultation papers and holding consultation sessions. For example, the Final Report for the Review of the *Arbitration Act 1996* contained two consultation papers and two consultation periods. In the first consultation paper, it was identified that the Commission should consider the question of how to identify which law governs the arbitration agreement. The Commission was persuaded that this was a relevant topic based on findings from consultations and therefore, a second consultation paper was published setting out the current law in relation to the governing law of the arbitration agreement and making provisional proposals for reform. The final report included a draft bill for Government.²⁵²

6.1.5 Key Factors which Influence the Law Reform Process

The core values of the Law Commission are independence, expertise and integrity. These factors influence the process by which the Commission investigates, inquires and poses recommendations. This is evidenced in the methodology of final reports published by the Commission.

6.1.6 Special Policies for Eliciting Information and Engagement with Particular Groups

In 2015, a protocol between the Law Commission and the Welsh Ministers was laid before the National Assembly for Wales (now the Senedd). The protocol governs the way that the Commission undertakes law reform work relating to devolved Welsh law. It discusses how the relationship will work through all stages of a project, from our decision to undertake a piece of work, to the Ministers' response to our final report and recommendations.²⁵³

The Wales Advisory Committee was set up by the Law Commission in 2012 to help identify issues of genuine concern to Wales and advise on how to carry out its roles in relation to Wales. This is a non-

²⁵⁰ Law Commission, *Evidence in Sexual Offences Prosecutions* (Law Com No 420).

²⁵¹ Law Commission <<https://lawcom.gov.uk/>>.

²⁵² Law Commission, *Review of the Arbitration Act 1996* (Law Com No 413).

²⁵³ Protocol Between the Welsh Ministers and the Law Commission dated 10 July 2015.

statutory body made up of judges, academics, legal practitioners and representatives from public sector bodies.

The Law Council of Wales was set up on the recommendation of the Commission on Justice in Wales. The Council promotes legal education and training, awareness of Welsh law and the building of a sustainable legal sector in Wales. There is a policy that the English and Welsh languages will be treated on a basis of equality (Section 7 of the Welsh Language Act 1993).

6.1.7 How Stakeholder Feedback is Used and Prioritised

None of the materials hinted at how stakeholder feedback is used or prioritised.



6.2 Scottish Law Commission

6.2.1 Policies Establishing the Organisation and Mandating its Functions

The commission was set up by the Law Commissions Act 1965. The functions of the Commission are codified in section 3(1) of the Act. Section 3(1) of the Act states that the duty of the Commission is to take and keep under review all the law with which they are respectively concerned with a view to its systematic development and reform, including in particular the codification of such law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law.²⁵⁴

6.2.2 Methodological Approach

Law reform projects can be initiated by the Scottish law reform commission itself or jointly with the Law Commission for England and Wales and the Northern Ireland Law Commission. Proposals can come from organisations or individuals and, Scottish ministers may also ask the commission to undertake work on a certain area of law. Authority to carry out work is contained in ongoing programmes of Law Reform approved by the Scottish Ministers or on the basis of a reference from the Scottish Ministers. Currently the commission is working based on the 11th programme which covers 2023 – 2027.

According to the 11th programme, the selection process for selecting new projects should adopt the following criteria:

- (a) importance: the extent to which the law is unsatisfactory (for example, unfair, unclear, inefficient, unduly complex or outdated); and the potential benefits likely to accrue from undertaking reform of the law;
- (b) suitability: whether the issues concerned are predominantly legal rather than political; and whether there is any other body better placed to examine the topic in question; and
- (c) resources: the expertise and experience of Commissioners and legal staff; in relation to projects where there may be a substantial role for a consultant, the availability of adequate funding; and the need for a mix of projects in terms of scale and timing in order to achieve a balance of workload among Commissioners and to facilitate effective management of the Programme.

Consultation for the 11th programme was held which was also recorded and put on Youtube channel. Thirty-eight formal responses were received from a wide range of consultees, including representative bodies, public officials, solicitors, academic lawyers and members of the public. The programme document lists the various projects that the commission will undertake and classifies the project as short term, medium term or medium/long term.

6.2.2.1 The Process for Deciding on Recommendations for Reform

A project begins with a study of the area of the law in question to ascertain its weaknesses. This may be assisted by a consultant, an advisory group of outside experts, or by opinion surveys or other kinds of empirical research. There will usually be research into how other countries deal with this particular area of law. A discussion paper is prepared to find out what others think of possible solutions. The paper details the existing law and its defects, the arguments for and against possible solutions are considered and comments invited. Public meetings and seminars may also be held.

²⁵⁴ Ibid s 3(1).

Comments made by external stakeholders will be used to decide upon solutions which appear us to offer the best way forward. These conclusions will be contained in a report which is submitted to the Scottish ministers. A draft Bill giving effect to the recommendations will usually be appended to the report.

6.2.3 How Key Findings are Documented and Presented

At the end of the project, a report is usually submitted to the Government with final recommendations and reasoning. A draft Bill may also be included, and this proposed legislation must be accompanied by a Business and Regulatory Impact Assessment ('BRIA'). BRIA's are used to assist in assessing the costs, benefits and risks of any proposed primary or secondary legislation that may have an impact on the public, private or third sector or regulators.²⁵⁵

6.2.4 How Findings Inform the Development of Options, Proposals and Recommendations for Reform

Findings from the consultation process are highly regarded in the development of recommendations. Comments received from stakeholders within the consultation process will be evaluated and the solution will be decided upon which offers the best way forward.

6.2.5 Key Factors which Influence the Law Reform Process

The Commission adopts the core values of independence, inclusiveness, openness and professionalism.

²⁵⁵ 'Business and Regulatory Impact Assessment (BRIA) – Toolkit' *Scottish Government* (Web Page) <<https://www.gov.scot/publications/business-regulatory-impact-assessment-bria-toolkit/pages/2/>>.



7 Canada

7.1 Law Commission of Canada

It was particularly difficult to find information for the Law Commission of Canada (LCC) because of its recently being reinstated in 2023. Between 2006 and 2023, Canada did not have a federally administered law reform body. As a consequence, most of the law reform projects being conducted by the LCC are still in the early stages of the law reform process, with little documentation surrounding their outcomes.

7.1.1 Policies Establishing the Organisation and Mandating its Functions

The policies and functions of the LCC are established under the *Law Commission of Canada Act 1996* (the Act).²⁵⁶ The relevant sections for this research were ss 3–6. The purpose of the LCC is listed under s 3, and includes the following functions:

the development of new approaches to law;

- to make the legal system more efficient, economical, and accessible;
- to establish productive networks between legal academics and other communities;
- and to eliminate obsolete laws.²⁵⁷

Under s 4, the powers listed include: undertaking, promoting, and initiating studies or research; disseminating studies, reports, and documents; sponsoring or supporting seminars and conferences; facilitating cooperation between the LCC and other stakeholders such as government, academics, and other interested organisations; and to “do all such things as are conducive to the furtherance of its purpose”.²⁵⁸

The duties of the LCC are outlined under s 5(1), including:

- annually consulting with Minister of Justice about the proposed projects to be undertaken;
- preparing reports as the Minister requires;
- and submitting reports to the Minister.²⁵⁹

Finally, the LCC is ultimately accountable to Parliament through the Minister of Justice, outlined under s 6.²⁶⁰

7.1.2 Methodological Approach

As the LCC has only recently been reinstated, there are few projects to examine in order to gain a better understanding of the LCC’s methodology. The two projects examined in this report were the inaugural ‘Charity and Law in Canada’ research project (‘Charity’) and the ‘Prison Law in Canada’ research project (‘Prison’).

The first step of the LCC’s process with the ‘Charity’ project was to conduct 10 ‘focus circles’, which involved roundtable discussions between scholars, federal government representatives, legal practitioners, and industry representatives, in this instance, individuals working in the charitable

²⁵⁶ LCC Act, SC 1996, c 9.

²⁵⁷ Ibid s 3.

²⁵⁸ Ibid s 4(h).

²⁵⁹ Ibid s 5.

²⁶⁰ Ibid s 6.

sector.²⁶¹ The result of these focus circles was the commissioning of papers on specific topics identified in the discussions between these groups. At present, these papers are still being written, and upon completion, will be disseminated to policymakers, charitable organizations, and the public.²⁶² The LCC has not outlined further action after this point.

The 'Prison' project will involve a series of reports to be commissioned on selected topics running concurrently with the focus circles.²⁶³

7.1.3 How Key Findings are Documented and Presented

The 'Charity' project findings will be presented as a series of 15 papers commissioned by the LCC.²⁶⁴ Meanwhile, the 'Prison' project findings will be presented as a series of formal reports published to the LCC's website, and the findings from the focus groups will be shared in informal, short briefs, titled "Insights from the Inside".²⁶⁵

7.1.4 How Findings Inform the Development of Options, Proposals and Recommendations for Reform

It is not possible to discuss how the LCC's findings inform the development of their law reform recommendations, as none of the projects of the current iteration have progressed to such a stage.

However, it is possible to gauge the response of the the previous 1997 to 2006 iteration of the LCC, and how they used the findings from the following report to inform their general recommendations for reform surround institutional child abuse. The report the findings drew from was titled *Restoring Dignity: Responding to Child Abuse in Canadian Institutions* (2000).²⁶⁶ This report included a number of specific recommendations addressing the processes surrounding redress for survivors of institutionalized child abuse, namely, Indigenous Canadians who had been subjected to the residential school system. This report also prompted the LCC to propose an additional six general recommendations with the aim to assist in framing the recommendations listed at the end of the 'Restoring Dignity' report.²⁶⁷

The general recommendations included the following:

- identifying the needs of survivors, their families, and their communities as the starting point for redress; and
- attempts to address these needs must be grounded in respect, engagement, and informed choice; and
- ensuring the process of redress does not cause further harm to survivors, their families, or their communities; and
- promoting community initiatives as a significant means of redressing institutional child abuse; and
- negotiated with survivors and their communities are the best official response; and
- establishing public education programs, as well as the development of prevention strategies.

²⁶¹ Law Commission of Canada, *Annual Report 2024-2025* (April 2025) 14.

²⁶² Ibid.

²⁶³ Ibid 18.

²⁶⁴ Ibid 14.

²⁶⁵ Ibid 19.

²⁶⁶ Law Commission of Canada, *Restoring Dignity: Responding to Child Abuse in Canadian Institutions* (Final Report, March 2000) 10.

²⁶⁷ Ibid.



In this instance, the findings from the report prompted a direct response from the LCC, and led them to not only endorse the recommendations from the report, but suggest the additional general recommendations listed above.

7.1.5 Key Factors which Influence the Law Reform Process

The LCC has a 4-point mission for the future of the institution as a whole, with the values of dream, repair, build, and share.²⁶⁸

‘Dream’ is meant to emphasise the future impact of law and law reform.

‘Repair’ refers to the restructuring of existing processes and procedures, and emphasises the importance of feedback from individuals with lived experience.

‘Build’ means taking on an interdisciplinary approach that is conscious of the polarization in wider public discourse, and aims to bring together research, practice, policymaking, regulation, litigation, judicial decision-making.

Finally, ‘share’ refers to understanding the law, and being able to communicate it to all members of Canadian society.

For specific projects, such as the ‘Charity’ project, the key factors highlighted were the following: historical legal traditions, including common law, civil law, and Indigenous traditions; identifying current and specific challenges facing the charity sector, such as fiduciary duties, and funding reform; the future development of charity law; its interaction with the *Canadian Charter of Rights and Freedoms*; and the sustainability and independence of the charity sector.²⁶⁹

7.1.6 Special Policies for Eliciting Information and Engagement with Particular Groups

As yet, it is not possible to identify special policies the LCC uses for engaging with certain groups. With reference to the ‘Charity’ project, the commissioned papers are as yet unreleased, and the summary briefs from the focus circles merely list the stakeholders.²⁷⁰ The same is true for the ‘Prison’ project.²⁷¹

7.1.7 How Stakeholder Feedback is Used and Prioritised

At this juncture it is too early as yet to identify how different stakeholder feedback is prioritised

²⁶⁸ Law Commission of Canada, *Annual Report 2023-2024* (April 2024) 9.

²⁶⁹ Law Commission of Canada, *Call for Papers – Charity Law in Canada* (July 2024).

²⁷⁰ Law Commission of Canada, *Charity Brief – Ottawa Discussion Circle* (March 2025).

²⁷¹ *Annual Report* (n 261) 18–19.

7.2 Alberta Law Reform Institute

As with the other law reform bodies in this section, in order to conduct the research, only one or two specific law reform projects could be analysed. The chosen projects were decided on the basis of recency rather than demographic reasons, or because it pertained to a particular area of law. This was to ensure that the most up-to-date policy approaches would be used for this report.

7.2.1 Policies Establishing the Organisation and Mandating its Functions

The Alberta Law Reform Institute (ALRI) is not a statutory body, but rather an independent institute. It was first established in 1967 with the cooperation of the Attorney General of Alberta, Governors of the University of Alberta, and the Law Society of Alberta. The ALRI is governed by a board consisting of 14 members, representing the founding parties and the broader legal community.²⁷² Funding is primarily provided by the Department of Justice and the Alberta Law Foundation, and the University of Alberta provides office premises and a small annual cash grant.

As a non-statutory commission, the ALRI does not have established powers as the LCC does. Instead, according to the 'About Us' page on the ALRI's website, per a 2017 Continuation Agreement, the ALRI's "mandate for law reform" is two-fold:

"the consideration of matters of law reform with a view to proposing to the appropriate authority the means by which laws of Alberta may be made more useful and effective; and

the preparation of proposals for law reform in Alberta, with respect to both the substantive law and the administration of justice."²⁷³

7.2.2 Methodological Approach

The ALRI has a four-step process for project selection:

- 1) Screen Suggestions – Remove non-legal topics from consideration and establish priority areas.
- 2) Preliminary Assessment – Identify issues, assess scope, and gauge interest.
- 3) Project Plan – Define the scope of the project, develop methodology, outline expectations and outcomes, and determine the resources needed to carry out the project.
- 4) Project Decision – Ensure the selected criteria is satisfied, make a go-no go decision, establish a project management committee, allocate resources, and schedule the project.

7.2.3 How Key Findings are Documented and Presented

The consultation and issues papers for each project are published to the ALRI website during the review process. A final report is presented to the provincial government and published on the ALRI website.

7.2.4 How Findings Inform the Development of Options, Proposals and Recommendations for Reform

In order to illustrate the recommendation process, the 'Alteration and Revocation of Electronic Wills' research project was used as a case study to inform the findings of this report ('Alteration and Revocation').²⁷⁴

²⁷² 'About ALRI', *Alberta Law Reform Institute* (Web Page) <alri.ualberta.ca/about/>.

²⁷³ Ibid.

²⁷⁴ Alberta Law Reform Institute, *Alteration and Revocation of Electronic Wills* (Final Report 120, February 2024).



As part of the consultation process of the 'Alteration and Revocation' project, a survey of the general public was conducted, in addition to consultation with wills and estate professionals. The results of the survey indicated the public wanted to be able to make changes to an electronic will directly, and, despite initial backlash, professionals eventually agreed this should be permitted as this policy better supports the intentions of the public.²⁷⁵ This was subsequently reflected in Recommendation 1 by the ALRI.²⁷⁶

7.2.5 Key Factors which Influence the Law Reform Process

The guiding principles identified for the 'Alteration and Revocation' project were uniformity (with the rest of Canadian law), access to justice, and incremental change²⁷⁷. The ALRI did not identify overarching factors which apply across all their research projects and law reform initiatives.

7.2.6 Special Policies for Eliciting Information and Engagement with Particular Groups

The ALRI does not appear to employ special policies when engaging with certain groups. The most that could be said for this point is that when engaging with legal professionals, the ALRI is happy to take on feedback relating to questions of law. However, this issue also usually falls within the purview of a specific project's Project Advisory Committee, which is specially selected to cover a range of stakeholders, including legal practitioners and academics.

7.2.7 How Stakeholder Feedback is Used and Prioritised

The 'Alteration and Revocation' project highlights the difference in how stakeholders' views are prioritised by examining how the views of will and estate professionals were weighed up against the general public. The feedback from legal professionals and technology experts was deferred to in establishing the legal soundness of the proposed recommendations, but the final recommendation was ultimately tempered by the general public's views and layman use.

²⁷⁵ Ibid 20.

²⁷⁶ Ibid 21.

²⁷⁷ Ibid 7.

7.3 British Columbia Law Institute

7.3.1 Policies Establishing the Organisation and Mandating its Functions

The BCLI is a registered charity, and incorporated under the Society Act 2015.²⁷⁸ According to the organisation's constitution, the BCLI has three functions:

- a) promote the clarification and simplification of the law and its adaptation to modern social needs;
- b) promote improvement of the administration of justice and respect for the rule of law, and;
- c) promote and carry out scholarly legal research.²⁷⁹

In practice, this manifests as the carrying out of scholarly research, writing, and analysis in collaboration with governments and other entities. Per the BCLI's Strategic Plan for 2023–2026, the organisation's purpose is described as “bringing collaborators together to clarify and improve the law, develop just and innovative solutions, and increase access to justice”.²⁸⁰

7.3.2 Methodological Approach

The BCLI takes different methodological approaches in conducting their research and review process depending on the format of the publication. This is exemplified in explaining the different approaches taken between the ‘Understanding Economic Abuse Through Family Businesses in Family Law’ (‘Family Business’) project,²⁸¹ and the ‘Renovating the Public Hearing’ (‘Public Hearing’) project.²⁸² These two projects are presented as a study paper and a report respectively.

The approach adopted for the ‘Family Business’ project involved a combination between a case law review and consultation with specific classes of individuals referred to as ‘key informants’. The review of selected case law was filtered based on criteria relating to the specific parameters of the study.²⁸³ In this instance, cases chosen for the review needed to meet the following three criteria: make references to the Family Law Act; include allegations of family violence; and involve the presence of a family business.²⁸⁴ However, the use of case law was limited as only reported cases could be utilised in the review. The second part of the study paper methodology was interviewing ‘key informants’, who are individuals with professional or lived experience relating to the legal issue at hand, such as lawyers, victim-survivors, or relevant advocacy groups.²⁸⁵ One of the major tenets of the ‘key informant’ approach is confidentiality and maintaining the anonymity of the informants.²⁸⁶ In gathering qualitative data, the informants are all asked the same set of questions, however, open-ended responses discussing the individual's particular experience are encouraged. The study report format appears to involve a research component as well as interviewing issue-specific stakeholders.

The ‘Public Hearing’ project opted for a different approach. In addition to a research component, this project involved a much more significant public consultation aspect. First, a project committee was formed, and for this project included local-government law, land use and planning, and public engagement experts.²⁸⁷ This particular project was conducted in partnership with the Simon Fraser

²⁷⁸ Society Act, SBC 2015, c 18.

²⁷⁹ ‘Our Constitution and Bylaws’, *British Columbia Law Institute* (Web Page) <bcli.org/about/what-we-do/>.

²⁸⁰ ‘Strategic Plan’, *British Columbia Law Institute* (Web Page) <bcli.org/about/what-we-do/>.

²⁸¹ British Columbia Law Institute, *Understanding Economic Abuse Through Family Businesses in Family Law* (Study Paper 14, May 2025).

²⁸² British Columbia Law Institute, *Renovating the Public Hearing* (Report 99, March 2025).

²⁸³ *Family Business* (n 280) 3–4.

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.* 4.

²⁸⁶ *Ibid.*

²⁸⁷ *Public Hearing* (n 281) xvi.



University Morris J. Wosk Centre for Dialogue (Wosk Centre).²⁸⁸ The Wosk Centre is an organisation which offers consulting services, and is particularly prided on fostering productive, meaningful dialogue. For the 'Public Hearing' project, the Wosk Centre facilitated many of the public interviews, workshops, and events on behalf of the BCLI. Within these workshops, feedback was shared in both general discussions and issue-specific breakout rooms.²⁸⁹ The consultation process involved a committee comprised of experts, research, and public consultation.

7.3.3 How Key Findings are Documented and Presented

The law reform body's findings are published to the BCLI's website as one of three categories of document: reports, study papers, and practical resources.²⁹⁰ The reports are high-level documents developed after a lengthy process of public consultation, expert input, and research. Reports are distinguished from study papers in that they employ more public consideration rather than solely relying on research and expert advice, as well as by providing recommendations. The study papers primarily provide an academic analysis of relevant legal issues. While study papers may consider possible avenues for reform, these do not amount to official recommendations put forth or endorsed by the BCLI. The 'Family Business' project discussed in this section is a study paper, while the 'Public Hearing' project is presented as a report.

7.3.4 How Findings Inform the Development of Options, Proposals and Recommendations for Reform

It is not possible to discuss how the findings from the 'Family Business' project informed the development of recommendations, because, as a study paper, the format does not provide for the making of recommendations. However, the 'Public Hearing' project, because it was report, did provide official recommendations. While it is difficult to directly map how the findings from the consultation process informed the development of the recommendations, a point noted earlier in this section, the report indicated where participants in the public workshops and interviews generally held unified ideas regarding the approach to reform, and where they generally disagreed, noting down the variety of proposed viewpoints for certain issues.

7.3.5 Key Factors which Influence the Law Reform Process

According to the BCLI's Strategic Plan for 2023–2026, the law reform body has identified the following key factors they wish to highlight for their continued practice: collaborative leadership; ensuring law reform recommendations align with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); and sustainable and flexible funding.²⁹¹

7.3.6 Special Policies for Eliciting Information and Engagement with Particular Groups

Since 2022, the BCLI has established the Reconciliation and Community Listening Exploration Series (Reconciliation Listening Series), a scheme which aims to ensure consistency between law reform in the province and the UNDRIP as well as the province's own Declaration on the Rights of Indigenous Peoples Act (BC). The goal of the Reconciliation Listening Series is to harmonise the legal pluralism between Indigenous legal traditions and those of the Crown.²⁹²

²⁸⁸ Ibid 15.

²⁸⁹ Ibid 16–19.

²⁹⁰ 'What We Do', *British Columbia Law Institute* (Web Page) <bcli.org/about/what-we-do/>.

²⁹¹ *Strategic Plan* (n 279).

²⁹² 'Reconciling Crown Legal Frameworks', *British Columbia Law Institute* (Web Page) <bcli.org/reconciling-crown-legal-frameworks/>.

7.3.7 How Stakeholder Feedback is Used and Prioritised

With reference to the 'Public Hearing' project, ensuring effective and meaningful consultation with Indigenous groups as providing a unique perspective was an important consideration. The consultations with Indigenous groups for this project took place under the Reconciliation Listening Series in order to create a channel for Indigenous representatives to speak to the BCLI directly,²⁹³ who then passed on insights to the project committee. As part of the Reconciliation Listening Series, the BCLI held a focus group for Indigenous peoples working at the intersection of Indigenous governance and local government.

²⁹³ *Public Hearing* (n 281) 9.





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