Inclusive
Independent
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Law reform in action.
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A guide to the Victorian Law Reform Commission
January 2015
The Victorian Law Reform Commission reviews Victorian laws and recommends ways to make them better.
Sometimes laws are out of date, discriminatory or too complex. We provide independent advice to the government about reforming the law.

The Commission aims to improve the law for all Victorians. Our recommendations are based on extensive public consultations, and anyone can make a submission to our projects.

When we complete a project, we report to the Attorney-General of Victoria with practical recommendations to make the law fairer, up-to-date, inclusive and accessible.

The Commission is independent and non-political in its work and recommendations.

The Commission does not provide legal advice.

The Commissioners
The Commission has a full-time chair and a group of part-time Commissioners, appointed by the Attorney-General. Commissioners have included former judges, members of the legal profession, academics and community representatives. They decide on the recommendations and approve the reports published by the Commission.

Staff
The Commission has a small staff that carries out consultations, advises the Commissioners, researches, writes and publishes reports.
LAW REFORM EXPLAINED

Where our projects come from.

Law reform projects begin in one of two ways.

References
The Attorney-General can ask the Commission to review an area of law. This is called a ‘reference’ and comes with ‘terms of reference’ that state what issues the Commission is to consider, and a date by which the report must be ready. The Commission usually takes on two or three references a year.

Examples of recent references include:

Succession laws.
We made 78 recommendations to reform the laws that regulate what happens to the assets of Victorians after they die.

Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997.
We made 107 recommendations to reform the laws that determine what happens when people who are affected by a mental condition are charged with offences.

Jury empanelment.
We recommended reforms to the way people are selected to sit on juries.

See page 16 for a full listing of all our projects.

Community law reform projects
Any member of the public, or community organisation, with a good idea to improve the law can suggest a community law reform project. The Commission considers all ideas it receives, and takes on approximately one new community law reform project each year.

Community law reform projects must be relatively small and simple. Projects need to be of benefit to many people or to disadvantaged members of our community.

Examples of community law reform projects include:

Birth registration and birth certificates.
We recommended changes to make it easier for people to register the birth of a baby or get a birth certificate.

Assistance animals.
We recommended improvements to the accreditation system for guide dogs and the right of a person with an assistance animal not to experience discrimination.

If you have an idea for a community law reform project you can submit a proposal via our website, or call us to discuss the idea first.

For comprehensive information about all our current and completed projects, see www.lawreform.vic.gov.au/all-projects
How we work.

Who works on the project?
When the Commission begins a project, the Chair appoints a number of Commissioners to oversee the project. A small team of staff members conducts research into the law, studies relevant cases, talks to people affected and identifies the issues. Sometimes a panel of experts with specific knowledge of an issue assists the Commission.

Consultations and submissions
The Commission publishes a consultation paper which identifies the issues, asks questions and invites the public to respond. Anyone can make a submission through our website, via email, or in documents sent to the Commission. Submissions can be long or short, and do not have to be written in a particular way. They are made public unless the person making the submission asks for it to be confidential.

The Commission carries out consultations with people affected by the law and takes particular care to include disadvantaged groups. Commission staff travel to many parts of Victoria to consult as many people as possible. We also seek information through online surveys.

The Commission uses the submissions, consultations, expert advice and public input, as well as its research findings, as the basis for its recommendations. The recommendations are included in a report, and delivered to the Attorney-General by the required date.

See the next page for a detailed breakdown of the Commission’s working process.

How the law changes.

In the case of references, the Attorney-General must table our report in Parliament within 14 parliamentary sitting days of receiving it. In practice, the Attorney-General usually tables community law reform projects as well, although that is not required by law. After the tabling, the Commission publishes the report. Anyone can request a hard copy or read it online at www.lawreform.vic.gov.au

It is the Government’s decision whether to proceed with changes to the law based on the Commission’s recommendations. The Commission itself has no power to change the law.
The law reform process.

This chart shows the process followed by the Commission when it reviews the law.

The process begins after the Attorney-General has referred a matter to the Commission, or the Commission has decided to commence a community law reform project.

The process generally involves these stages, but may vary depending on the terms of reference and the time available. The entire process usually takes between one and two years, depending on the size of the project.

1. THE COMMISSION RECEIVES A REFERENCE OR BEGINS A COMMUNITY LAW REFORM PROJECT
   - Either the Victorian Attorney-General refers a matter to the Commission for review (this is called a reference), or the Commission decides to commence a community law reform project, based on a proposal from the community.
   - References from the Attorney-General come with 'terms of reference' which specify what the Commission is to review and the reporting date.
   - The Commission forms a ‘division’ of Commissioners to work on the project.

2. STAFF BEGIN TO RESEARCH AND CONSULT
   - The Commission appoints a team, usually two or three staff members, who research laws in Victoria, other states and other countries; look at relevant cases; and talk to people affected by the law.
   - This is background work to help the Commission identify the most important issues.

3. AN EXPERT PANEL IS FORMED
   - The Commission may form an expert panel that meets during the project to provide advice. For example, the expert panel for the project on crimes and mental impairment included people with special knowledge of psychology and mental illness, as well as legal experts.
   - The expert panel provides advice but does not make recommendations.

4. CONSULTATION PAPER AND QUESTIONS ARE PUBLISHED AND SUBMISSIONS ARE CALLED FOR
   - The Commission publishes a consultation paper which sets out the background to the project, explains the issues, and asks questions to guide submissions. These will include questions about whether the law should be changed, and how. The consultation paper includes the deadline for submissions.

5. CONSULTATIONS WITH AFFECTED PARTIES AND THE COMMUNITY
   - It is very important for the Commission to include the views of a wide range of Victorians, especially disadvantaged and marginalised groups. Staff of the Commission travel around the state to hold meetings and roundtables with people who have experience of the laws, or are affected by them.

6. SUBMISSIONS ARE RECEIVED AND CONSIDERED
   - Submissions are people’s ideas and opinions about the law and how to improve it. Anyone can make a submission. Submissions can be made in writing, via an online form, or by speaking to a staff member who takes notes. All submissions are considered by the Commission, and are published on the Commission’s website (unless they are marked confidential).
The Commission considers and analyses the research and input from consultations and submissions. Commissioners make recommendations to reform the law and/or make changes to procedures. The Commission writes a report that includes all the recommendations and the reasoning behind them.

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The Commission produces a printed version of the report and delivers it to the Attorney-General by the reporting date.

The Attorney-General tables the report in the Victorian Parliament within 14 sitting days of receiving it. After this, the report can be published and uploaded to the Commission’s website.

The government decides whether it accepts the Commission’s recommendations, which may include passing new laws, or changes to procedures.

If the government introduces new legislation, the Victorian Parliament debates changes to the law, which may be accepted, amended or rejected.
Terms of reference
The terms of reference from the Attorney-General stated:
‘The Victorian Law Reform Commission is to review and to recommend any procedural, administrative and legislative changes that may simplify, shorten or otherwise improve the charges, directions and warnings given by judges to juries in criminal trials. In particular, the Commission should:
(a) identify directions or warnings which may no longer be required or could be simplified;
(b) consider whether judges should be required to warn or direct the jury in relation to matters that are not raised by counsel in the trial; and
(c) clarify the extent to which the judge need summarise the evidence for the jury.’

Important dates
January 2008
The Attorney-General asked the Victorian Law Reform Commission to review the law and practice concerning the directions and warnings that judges are required to give juries in criminal trials.

February 2008
Retired Supreme Court judge, the Hon. Geoff Eames QC was appointed to work on the project.

September 2008
The Commission published a consultation paper, suggesting possible reforms and calling for submissions.

December 2008
The Commission published Jury Directions: A Closer Look, summarising and refining the proposals for reform.

30 January 2009
Deadline for submissions.

29 July 2009
The Commission’s report on jury directions, with 52 recommendations, was tabled in Parliament.

13 December 2012
The government introduced legislation into Parliament to simplify jury directions, based on the Commission’s recommendations as well as other expert input.

1 July 2013
The Jury Directions Act 2013 commenced on 1 July 2013 and applies to all trials in Victoria after that date.

Who conducted the project?
A number of Commissioners worked on this project in conjunction with the Hon. Geoff Eames QC. They met several times, overseeing the direction of the project and developing the recommendations.

A small team of policy and research staff worked on the project. Under the direction of the Chair, they planned and coordinated the reference, carried out research, drafted papers and the final report, and conducted meetings and consultations with stakeholders.

The Commission also established a consultative committee consisting of experienced criminal lawyers and judges.
The report and recommendations
Our report contained 52 recommendations. The most important was the first, which recommended that Parliament should pass a new law about jury directions:

- The law concerning jury directions in criminal trials should be located in a single statute.

The other recommendations included:

- The statute should guide judges about when to give directions and the content of directions.
- All directions should be clear, simple, brief, comprehensible and relevant.
- Judges should not restate all the evidence, only what is necessary to ensure a fair trial.
- The statute should clarify what judges should tell juries about the conduct of the accused after the offence (such as lies).

New legislation
In December 2012, the Victorian Government introduced a bill into Parliament that would enact the Commission’s recommendations into law. The Bill also reflected the recommendations of the report *Jury Directions: A New Approach* by the Criminal Law Review, Department of Justice, and the *Simplifying of Jury Directions Project Report* (Weinberg Report).

The legislation was passed in 2013, and the new law, the *Jury Directions Act 2013* came into force on 1 July 2013.

What happened next
It will take some time before the effect of the changes can be seen in trials and retrials. However, the legislation is expected to have several positive outcomes for the criminal justice system. These include:

- Shorter, more relevant, clearer directions which juries can understand
- Less confusion on the part of juries

And for the system as a whole:

- Shorter trials
- Fewer appeals and retrials
- More public confidence in the justice system

More information
More information about this project, including the report, the consultation paper and the submissions, can be viewed on the completed projects page on the Commission’s website at www.lawreform.vic.gov.au/all-projects
Terms of reference
As this was a community law reform project, suggested by the community not the Attorney-General, the Commission wrote its own terms of reference:
‘The Victorian Law Reform Commission will consider and review aspects of the Births, Deaths and Marriages Act 1996 (Vic). The purpose of this review is to:
• examine the processes for birth registration and obtaining a birth certificate to consider whether they are efficient, effective and accessible to all members of the community, particularly culturally and linguistically diverse (CALD) and Aboriginal communities, and the disadvantaged and vulnerable.
• identify practical solutions to problems that may exist in Victorian law and practice with regard to birth registration and obtaining a birth certificate.

In undertaking this review, the Commission will have particular regard to:
• whether the need to apply separately for a birth certificate (in addition to registering a birth) creates a barrier to obtaining a birth certificate, and if so, what can be done to remove or minimise this barrier.
• whether specific criteria should apply to section 49 of the Act (which provides for the remission of fees), and if so, what these criteria should be and whether they should be contained in legislation, regulations or a publicly available policy document.

The Commission will consider legislative developments in Australian and international jurisdictions.’

Important dates
Early 2012
The Victorian Law Reform Commission held discussions with the Castan Centre about barriers to birth registration affecting Aboriginal people.

May 2012
The Commission developed terms of reference for a project about birth registration and birth certificates for the whole community.

September 2012
The Commission published a consultation paper that identified the issues and asked people for their opinions, ideas and experiences.

September 2012 – January 2013
The Commission held 33 consultations with individuals and groups in Melbourne and regionally.

1 November 2012
Deadline for submissions.

July 2013
The Commission completed its final report on birth registration and birth certificates, with 26 recommendations, and delivered it to the Attorney-General.

November 2013
The report was tabled in the Victorian Parliament.

What was this project about?
This project was part of the Victorian Law Reform Commission’s community law reform program.

The project reviewed the laws around registering births and getting a birth certificate in Victoria, and the policy and practices of the Victorian Registry of Births, Deaths and Marriages.

The proposal to review the law started with the Castan Centre for Human Rights Law at Monash University.

Why did the law need to change?
The law requires Victorians to register the birth of a child within 60 days of the birth. There are around 75,000 births each year in Victoria and the vast majority are registered. However, more than 2,000 births each year are not registered six months later. Many of these births will be registered later and the total number of unregistered births is unknown.

A birth must be registered before a person can get a birth certificate. Without a birth certificate, a person may be unable to access their full citizenship rights—such as enrolling at school, getting a Medicare card, driver licence, passport, and government benefits.

The Commission looked at ways to improve processes to make it easier for everyone, and in particular to assist disadvantaged and vulnerable groups.
Our report included 26 recommendations to reform the law, and the policy and practice of the Registry of Births, Deaths and Marriages. We wanted to assist people from disadvantaged and vulnerable groups to register the births of their babies more easily and at a lower cost.

Recommendations included:

- Granting a fee waiver of the birth certificate fee ($28.60) for vulnerable and disadvantaged people. The Commission suggested methods of offsetting this cost against other Registry services.
- Making it easier for people to obtain the identity documents they need, if they apply for a birth certificate years after their birth was registered.
- Changing the process for birth registration in cases where domestic violence may be an issue.

What happened next


The Attorney-General said work by the Registry of Births, Deaths and Marriages was underway or completed on many of the Commission’s recommendations, including:

- Additional information provided on birth registration forms
- Additional protections for identifying information where the applicant is at risk of family violence
- Development of an online system for parents to register births
- A page on the Registry website providing information about Koori services
- Revisions to proof of identity requirements when registering a birth
- Development of guidelines for waiving certificate fees.

More information

More information about this project, including the report, the consultation paper and the submissions can be viewed on the completed projects page on the Commission’s website at www.lawreform.vic.gov.au/all-projects
Terms of reference
The terms of reference from the Attorney-General stated:
‘The Victorian Law Reform Commission is asked to review and report on whether the jury empanelment process operates justly, effectively and efficiently.

Peremptory challenges and the Crown right to stand aside jurors
The review should consider peremptory challenges in criminal and civil trials and the Crown right to stand aside jurors in criminal trials with regard to:
• resourcing implications
• the representativeness of the jury
• the impartiality of the jury
• procedural fairness
• the effects on jurors.

The review should have regard to reviews of peremptory challenges and the Crown right to stand aside jurors in other jurisdictions, both within Australia and internationally. The review should also consider existing alternative mechanisms and recommend new procedural, administrative and legislative changes if appropriate to do so.

Calling of panel
The review should consider the calling of the panel outlined in s.31 of the Juries Act. In Victoria, name or number and occupation identify prospective and empanelled jurors. The review should consider the introduction of the practice of empanelling juries by number in every (or most) instance in the context of procedural fairness and the effects on and protection of jurors.

Additional jurors
The review should consider s.48 of the Juries Act 2000, which applies when there are additional jurors on the jury. The review should consider whether it is necessary or desirable for the jury to be reduced to 12 (or 6 as the case requires) before the jury retires to consider its verdict. In reviewing this section, the Commission is to have particular regard to the effects on jurors.

The Commission is to report by 31 May 2014.’

Important dates
March 2013
The Commission received terms of reference from the Attorney-General.

September 2013
The Commission set up an online survey for jurors and received 381 responses.

October 2013
The Commission published a consultation paper asking 27 questions. 36 consultations were held.

15 November 2014
The Commission received 18 submissions by the closing date.

31 May 2014
The report was delivered to the Attorney-General.

3 September 2014
The report was tabled in Parliament.
Consultations and submissions
Throughout October and November 2013, the Commission conducted 36 face-to-face and telephone consultations with a range of experts and stakeholders, including jurors. In particular, the Commission observed jury empanelments and consulted with people who had participated in empanelments. A survey of former jurors (online and printed) received 381 responses. The Commission was assisted to contact jurors by the Juries Commissioner’s Office. The Commission received 18 written submissions, nine from organisations and nine from individuals. These are available on the Commission’s website.

Report and recommendations
The report was completed in May 2014, and delivered to the Attorney-General. The report contained 16 recommendations. The main recommendations:

- Reducing the number of jurors that both sides can challenge, from six to three in criminal cases and from three to two in civil cases. This will help to ensure that juries are representative of the community.
- Protecting the privacy of jurors by always identifying them in court by number instead of by name.
- Changes to the jury empanelment process to make it less stressful for jurors and the accused.
- Abolishing the practice of ‘balloting off’ any extra jurors empanelled for long trials, before the jury retires to consider its verdict, due to the distress this can cause.

What happened next
The report was tabled in the Victorian Parliament in September 2014. The Attorney-General said the Victorian Government would give careful consideration to the report’s recommendations.

The Government has already introduced legislation to amend the Juries Act to provide that any prospective juror who is stood aside by the Crown should be removed from the ballot for that trial, allowing them to go back into the jury pool for other trials, as was recommended by the Commission.

More information
The consultation paper, report, submissions and other information about the project can be found on the Commission’s website at www.lawreform.vic.gov.au/all-projects
A list of our projects.

To find out more detail about any of our projects, including new projects, visit www.lawreform.vic.gov.au

Abortion (2008)
Assistance animals* (2009)
Assisted reproductive technology and adoption (2007)
Bail (2007)
Birth registration and birth certificates* (2013)
Civil justice (2008)
Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (2014)
Criminal liability for workplace death in the public sector (2002)
Defences to homicide (2004)
Disputes between co-owners (2002)
Easements and covenants (2010)
Evidence (2006)
Family violence (2006)
Forfeiture rule (2014)
Guardianship (2012)
Intellectual disabilities and compulsory care (2003)
Jury directions (2009)
Jury empannelment (2014)
Medicinal cannabis (2015)
Photographing and filming tenants’ possessions for advertising purposes* (2015)
Property law (2010)
Protection applications in the Children's Court (2010)
Regulatory regimes preventing infiltration of organised crime (2016)
Residential tenancy databases* (2006)
Sexual offences (2004)
Sex offenders registration (2011)
Succession laws (2013)
Supporting young people in police interviews* (2011)
Surveillance in public places (2010)
Trading trusts (2015)
The role of victims of crime in the criminal trial process (2016)
Workplace privacy (2005)

The due date for delivery of the report to the Attorney-General is shown in brackets.
* denotes community law reform project
Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997

REPORT
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Community education

Staff members from the Commission visit schools, TAFEs, universities, and professional and community groups across Victoria to explain the work of the Commission as a free service.

We offer presentations throughout the year to legal studies classes in metropolitan and regional Victoria.

During Law Week in May each year, we partner with the Victoria Law Foundation on a full-day seminar, Law Week Law Talks, held in Melbourne. This event includes a range of high-profile speakers covering topics from the legal studies curriculum for Year 12 students.

Find out more at the teachers and students section of the website, which also includes law reform case studies, videos and other resources. www.lawreform.vic.gov.au/teachers-and-students

If you would like a presenter to visit your group, email your request to law.reform@lawreform.vic.gov.au

An expert panel discussing dispute resolution at Law Week Law Talks in Melbourne, 2014
Have your say.

The Commission welcomes community input.

If you have an idea for an area of Victorian law that you think needs to be reformed, contact our community law reform team or complete the online form on our website (look for ‘About community law reform’ under the All projects menu).

If you want to contribute to a project, you can do so by participating in consultations, or by making a submission. We also gather the views of the community through online surveys. Check out the current projects section of our website.

If you wish to make a submission you can complete an online form on our website, send us an email or letter, speak to us in person or over the phone. There is no set format for submissions—we want to hear your opinions and experiences relevant to the laws we are looking at.

To stay in touch with the Commission’s work, subscribe to our free e-newsletter for a quarterly round up of what is happening in law reform.

For our contact details, see the back cover of this booklet.