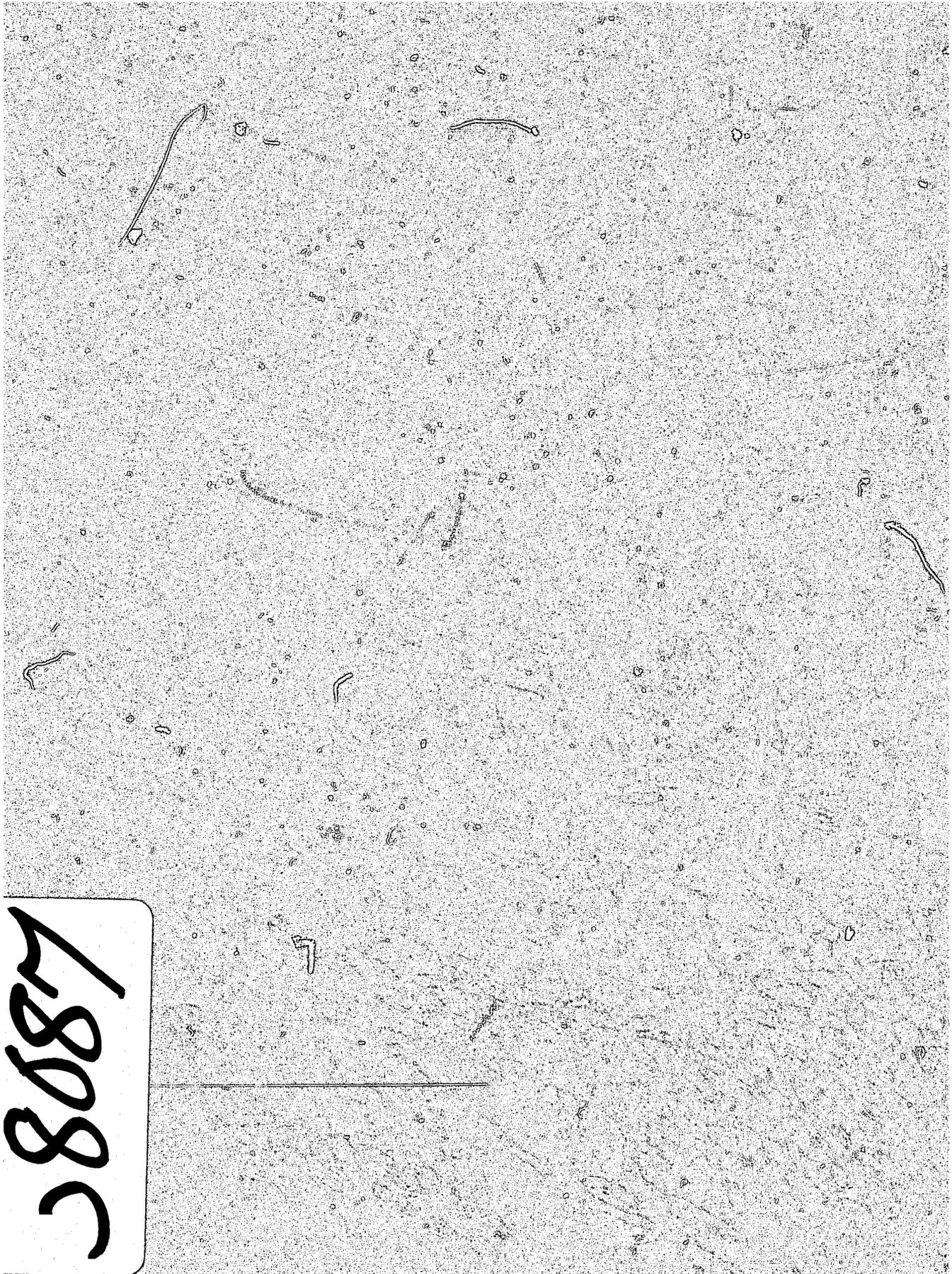
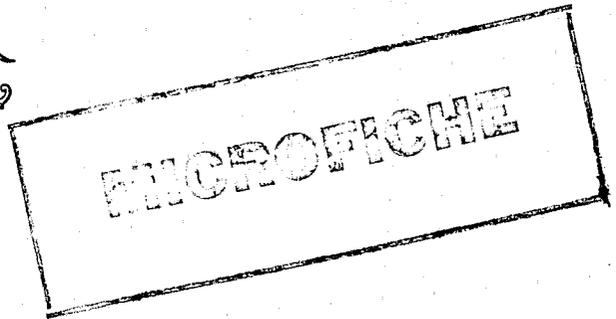


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1978



PARLIAMENT OF TASMANIA

X **LAW REFORM COMMISSION  
OF TASMANIA**

**Third Report to year ended  
31 December 1977**

58087

*Presented to both Houses of Parliament pursuant to section 11 of the Law Reform Commission Act 1974*

By Authority:

E. S. DOHERTY, Acting Government Printer, Tasmania

The Attorney-General,  
The Honourable B. K. MILLER, M.L.C.,  
39 Murray Street,  
Hobart

ISSN 0313-3486

7 March 1978

SIR,

We have the honour to submit the Third Annual Report of the Law Reform Commission of Tasmania, constituted under the Law Reform Commission Act 1974.

The report covers the calendar year ended 31 December 1977, and is forwarded under the provisions of section 11 (1) of the Act.

### COMPOSITION

The composition of the Commission has been as follows:—

- (1) Chairman—Mr C. G. Brettingham-Moore.
- (2) Deputy Chairman and Executive Director—Mr W. H. Goudie.
- (3) Members—

A practitioner nominated by the Law Society of Tasmania—(Until 31 July 1977) Mr J. B. Piggott; (from 1 August 1977) Mr P. R. Cranswick.

A practitioner nominated by the Tasmanian Bar Association—(until 31 July 1977) Mr W. P. M. Zeeman; (from 1 August 1977) Mr P. G. Underwood.

A member of the full-time academic staff of the Faculty of Law of the University of Tasmania—Due to leave and other circumstances this nomination by the Faculty of Law was shared during the year between Professor D. Roebuck and Mr N. E. Palmer. Mr Palmer has now left Tasmania and Professor Roebuck is the current member.

Two persons other than practitioners nominated by the Attorney-General—Mrs W. M. King and Mrs J. A. Tunney.

The Deputy Chairman and Executive Director is the only full-time appointment. The Commission is based in Hobart, and its membership is, therefore, predominantly from the South of the State. However, the North has been represented by Mr W. P. M. Zeeman and Mrs J. A. Tunney. Our responsibility is, of course, recognized as being State-wide.

### RETIREMENTS AND NEW MEMBERS

Mr W. P. M. Zeeman and Mr N. E. Palmer served the Commission well during their comparatively short terms of office, and we acknowledge our indebtedness to them and thank them for their assistance. We feel however, that especial mention should be made of the contribution to the work of the Commission and Law Reform generally by Mr J. B. Piggott. He had been a member of the Commission since its inception in August 1974, and of the Law Reform Committee before that. His imaginative ideas, especially on the reform of Civil procedure, and his great ability and long experience in legal practice were invaluable in all areas of the Commission's work. We acknowledge our indebtedness and thank him accordingly.

We welcomed Mr P. R. Cranswick and Mr P. G. Underwood as our two new professional members and the reappointments of Mrs W. M. King and Mrs J. A. Tunney, our two lay members.

### MEETINGS

During the year 1977 the Commission held nine ordinary meetings, all in Hobart. Additionally, numerous Committees have been appointed to investigate and report to the Commission on particular projects, which the Commission has then considered before making its own report to the Attorney-General for tabling in Parliament.

Various representatives from community and other organisations and Government officers have met representatives of the Commission to discuss and give information in regard to particular projects. In particular, we wish to mention our close liaison throughout the year with the Director of Road Safety with whom we have discussed numerous matters of mutual concern. Additionally, he has been an invaluable member of the Committee appointed to investigate and report on the Rehabilitation Course for disqualified drivers. He attended the International Conference on Alcohol, Drugs and Traffic Safety from 23-28 January 1977 at Melbourne and obtained much material from this Conference, and was largely responsible for the basic recommendations in our Report on this matter.

**OFFICES AND LIBRARY FACILITIES**

We are pleased to be able to report that we have remained for the whole year in the same offices. We reported last year that the library facilities were poor. We have made some purchases, particularly of State Statutes, and the library facilities have also been considerably supplemented by the Attorney-General's Department. However, there is still a need for the New Zealand and English Statutes and more text books.

Our extremely modest estimate of \$2 000 for 'Law Books and Binding' in the 1977-78 Estimates was reduced by half to \$1 000 without explanation. We wish again to stress that books are our basic tools of trade and that without them being readily available for reference our work is seriously hampered and time wasted.

**ESTIMATES OF EXPENDITURE**

The system under which our Estimates are considered and the annual vote settled seems to us to be most unsatisfactory.

On 3 June 1977 we put in our Annual Estimates totalling \$47 800; which included the salary of the Deputy Chairman and Executive Director, and allowances to members, totalling \$29 500. The total balance was therefore only \$18 300.

On 5 September 1977 the Chairman queried why the overall figure of \$47 800 had been cut to \$41 000 in the Appropriation Bill. Enquiries elicited that this reduction was approved by Cabinet without prior consultation with the Attorney-General's Department, and incidentally, without anyone having consulted the Commission or asked for explanations in regard to any particular item. We were also informed that 'No information is given as to the particular areas of your operations where reductions have been made' and were sent 'a copy of the notes prepared for Parliament showing the adjusted figures to agree with the reduced amount made available.'

These reductions or 'adjustments' were as follows:—

	\$
Fees for part-time research assistants— Reduced from \$7 500 to \$3 700 .. .. .	3 800
Travelling expenses—Reduced from \$4 000 to \$3 000 .. .. .	1 000
Office requisites, printing and advertising—Reduced from \$4 000 to \$3 000	1 000
Law books and binding—Reduced from \$2 000 to \$1 000 .. .. .	1 000
	<hr/>
Total reduction .. .. .	\$6 800
	<hr/>

It would seem therefore that our overall estimate was reduced and individual items subsequently arbitrarily 'adjusted' to make up the reduction on the overall figure. If this is correct, it is difficult to see how, if the individual items mean anything at all, their seemingly arbitrary 'adjustment' can be justified.

## WORK OF THE COMMISSION

The work of the Commission during the year under review is summarised as follows:—

### A. Reports submitted

- (1) *Family law and the rights of de facto spouses*.—Report tabled, August 1977.
- (2) *Fisheries Act 1959, Division III Part IV. Forfeiture of things used or employed in the illegal taking of fish*.—Report tabled, September 1977.
- (3) *Discrimination on the ground of sex in existing State legislation and suggested safeguards to prevent discrimination in legislation and community activities for the future*.—Report tabled, September 1977.
- (4) *Competence and compellability of spouses*.—Supplementary Report on subsequent submission by Marriage Guidance Council submitted at request of Attorney-General on 16 September 1977.
- (5) *Admissibility of computer data in evidence*.—Final report submitted, December 1977.
- (6) *Education course for drivers disqualified after drink/driving offences*.—Report submitted, December 1977.
- (7) *Residential Tenancies*.— Report submitted, December 1977.

### B. State of outstanding References

- (8) *Reform of Civil Procedure*.—In Committee.
- (9) *Disposal of uncollected and found goods*.—Committee report under consideration by Commission.
- (10) *Aspects of insurance law*.—Awaiting Report of Australian Law Reform Commission by direction of Attorney-General.
- (11) *Exclusion clauses and implied obligations in contracts for goods and services*.—In Committee and in consultation with the Consumer Affairs Council.
- (12) *Law and procedure of corroboration*.—Draft Report in course of preparation.
- (13) *Civil disabilities of convicts, Criminal Code Sections 435-452*.—Draft Report under consideration.

### C. References requested but not yet granted or refused

- (14) *Insanity and diminished responsibility*.—Reference requested on 19 July 1977.
- (15) *Confessions, trials-within-trials, and unsworn statements of accused*.—Reference requested in December 1977.

### D. Some other activities of the Commission

(16) *Suggestions for law reform*.—We have continued to solicit suggestions for law reform, particularly from the Judiciary and Magistracy, and from Legal Practitioners through the Law Society and Bar Association representatives on the Commission. We have been pleased to receive some suggestions from Magistrates, Legal Practitioners and others. All of these have received careful consideration. Where it has been decided that reforms are required and practicable, the Attorney-General has been so advised, and where it has been decided not to pursue the suggestion, we have advised the proposer accordingly, with our reasons.

(17) *Conferences, meetings, and visits*.—The Executive Director attended a two-day Community Health Conference at Hobart in May 1977.

In July 1977, Professor D. Roebuck, Mr W. P. M. Zeeman, and the Executive Director attended a Law Reform Agencies Conference at Sydney, and the Executive Director attended the Australian Legal Convention which followed the Agencies Conference.

During the year the Executive Director attended various meetings in Hobart, including a number of Criminology Research meetings concerned with the Social Consequences of Crime, a meeting of the Homeless Persons Advisory Committee to explain and discuss the Commission's Report on Decriminalisation of Drunkenness and Vagrancy, a meeting of the Mental Health Bill Committee, and a meeting

of the Joint Parliamentary Select Committee on Privacy. He represented the Government at a week-end International Trade Meeting at Canberra. Until October 1977 he also took part in numerous meetings and seminars in his capacity as Chairman of the Child Protection Assessment Board. With the utmost regret, however, he found it necessary to tender his resignation from this appointment as the increase in the work of both Law Reform and Child Protection had made it impossible for him to continue to do full justice to his full-time Law Reform appointment and also his part-time Child Protection duties.

During the year the Chairman, Executive Director, and other members of the Commission met and entertained various visitors and discussed with them matters of mutual interest and concern. These included, the Hon. B. K. Miller, M.L.C., Attorney-General; Mr Justice M. D. Kirby, the Chairman, and other members of the Australian Law Reform Commission; Justice Roma Mitchell, Chairman of the Criminal Law and Penal Methods Reform Committee of South Australia; Dr I. R. Scott, Director of the Institute of Judicial Administration at the University of Birmingham, England; and Justice Elizabeth Evatt, Chief Judge of the Family Court of Australia.

### PROGRESS OF THE COMMISSION

In our last Annual Report we attached as an Appendix A a summary of all references received since the Commission's inception with particulars of their disposal or their present position. In this Report we include as Appendix A a summary of all actual Reports submitted since the Commission's inception showing so far as is known the steps taken to implement recommendations made by us in such Reports.

The Law Reform Commission considers that its work might be of more use to the Government if the Commission were to receive indications from time to time of the Government's views on the Reports submitted, what purpose they were seen to serve, and the role of the Law Reform Commission generally.

Usually, the only indication we get that the Government has decided to legislate on our recommendations is from newspaper reports after a Bill has actually been introduced into Parliament. At one time we were supplied with Progress Reports on Bills by Parliamentary Counsel but this practice ceased last year, and we enquired from Parliamentary Counsel why these were no longer received, and we were informed that the Distribution List had been reduced on Cabinet instructions, and the Commission was no longer entitled to this information. This is only one example of the dearth of information given to the Commission on matters which vitally affect its statutory Law Reform responsibilities as laid down in the Law Reform Commission Act 1974. Section 7 (1) requires the Commission (*inter alia*) 'at the request of the Attorney-General or of its own motion . . . to do such other acts and things as are necessary or desirable for the systematic development, reform, and revision of the law applicable to this State.' We feel that the Commission is being given insufficient information and support to enable it to carry out its full responsibilities under the Act. We have offered to meet any Government or Departmental representative periodically to discuss matters of mutual interest. Monthly meetings were suggested and eagerly accepted by the Commission, but no steps have been taken to implement the suggestion.

There would appear to us to be duplication of the proper role of the Commission by the appointment of various *ad hoc* Committees. As examples, Departmental Committees have been set up to investigate and report on the Child Welfare Act, the provision of legal aid services, 'class action' laws, and Workers' Compensation. In New South Wales, the question of legal aid services is part of the reference on the legal profession which is currently being handled by the Law Reform Commission. In South Australia, the Law Reform Committee has been given a reference on class actions affecting both environmental and consumer matters.

We are also concerned at some apparent lack of community interest in our activities which we try to publicise by information to the Press and periodic advertisements. We feel that a few comments on our Reports in Parliament might well encourage such interest.

We think it relevant in setting out what we believe to be the progress of the Commission to publish the views of the Government so far as they are known to us. We accordingly quote the following extract from the Minutes of a Meeting of the Commission held on 15 April 1977, which was attended by the Attorney-General. This extract was approved by the Minister prior to the circulation of the Minutes.

'Reference was also made to the twenty-four matters of law reform which had been referred to the Commission, and the Reports filed, which showed that, quantitatively, the Commission had a very considerable output of work. The Commission hoped that the quality was equally good, but the Commission realised it could not make a judgment on this. The Attorney-General was therefore asked to give his own, and the Government's views on the performance of the Commission in this respect, and was invited to make suggestions and criticisms, which would be given the most careful consideration. The Attorney-General then addressed the Commission. He said that the Government was pleased with the calibre of work produced by the Commission, and it had every right to feel pleased with the way it was going about its affairs.'

## UNIFORMITY OF LAWS

The Australian Law Reform Commission in its Annual Reports for 1975 and 1976 referred to the necessity for the achievement of a mechanism for uniform law reform under our Constitution and that this still had to be found. As a State Commission we are concerned that so little would seem to have been achieved in the way of uniformity in many areas of law which seem to us to cry out for at least some measure of uniformity.

'Proposals were advanced by the Second Conference of Law Reform Agencies in 1975 suggesting to the Standing Committee of Attorneys-General that the agencies, coming together in the Conference, could supplement the work of the Standing Committee, propose suitable areas for uniform law reform, and if authorised to do so, proceed jointly or separately to prepare draft legislation for consideration. The resolutions were rejected by the meeting of the Standing Committee, in Canberra in July 1975. Alternative procedures were suggested by which proposals would be made, not by the Conference but by individual law reform bodies; not to the Standing Committee but to individual Attorneys-General. This procedure would not prohibit discussion of appropriate subjects at the Conference. Nor would it restrain co-ordinated approaches by different agencies. However, the opportunities for delay and inco-ordination are plainly magnified.' (Australian Law Reform Commission Annual Report 1976, pages 5-6.)

The Tasmanian Law Reform Commission would welcome guidance from the Government as to whether or not it would appreciate suggestions about areas of uniform law reform and the best way in which it is considered that our Commission could assist in this field. We have endeavoured at Agencies Conferences to press that everything possible should be done to achieve at least some measure of uniformity, between the States, Territories, and the Commonwealth, in those areas of law where the desirability of one set of laws, instead of a multiplicity, is self-evident.

## THE FUTURE OF THE COMMISSION

We attach as Appendix B a table setting out details of all References received by the Commission until 31 December 1977.

We call attention to the striking reduction of References during the year under review.

Whereas during the years 1975 and 1976 the Commission received respectively nine and twelve References, during the year 1977 we received only two comparatively minor References.

As shown in a preceding paragraph of this Report under the heading 'Reports Submitted', during the year under review we submitted seven Reports.

Of six References remaining outstanding one cannot be completed until the Australian Law Reform Commission has reported on Insurance Law generally, and four further References are likely to be completed during the next few months.

We therefore call attention to the fact that the Commission will soon be in danger of running out of work, and that we are ready, able, and willing to accept new References. We also mention the two references requested by us on which we await a decision. One is quite recent, but the other, on Insanity and Diminished Responsibility, was requested in July 1977 and we were informed in August 1977 that 'a decision can be expected in the near future.'. The request for this reference was supported by the Chief Justice and the Bar Association.

We would also welcome as early notification as possible of the Government's intention as regards the future of the Commission. The Law Reform Commission Act 1974, under which the Commission is constituted, expires on 1 August 1979, and we are therefore unable to plan ahead beyond this date without such information.

#### LIAISON WITH LAW REFORM AND OTHER AGENCIES

There has been close co-operation between this Commission and the Australian Law Reform Commission, and the Law Reform Agencies in the other States and overseas. We are grateful to them all for their co-operation. Our mailing list continues to expand, and we now either correspond with or send our publications, usually on a reciprocal basis, to upwards of 120 persons or organisations.

#### APPRECIATION

The Commission, once again, wishes to express its appreciation for the co-operation, assistance, and support received from the Law Society, and the Bar Association, and from practitioners generally. It also expresses its appreciation to representatives from the University of Tasmania, particularly from the Faculty of Law, for their contribution on Committees and through opinions and otherwise. We also again acknowledge our indebtedness to our Secretarial Staff, Miss P. Smallbane and Mrs Vicki Daly, and thank them for their loyalty and assistance.

Yours faithfully,

C. BRETTINGHAM-MOORE, Chairman.

W. H. GOUDIE, Deputy Chairman and Executive Director.

D. ROEBUCK	} Members.
P. R. CRANSWICK,	
P. G. UNDERWOOD,	
W. M. KING,	
J. A. TUNNEY,	

APPENDIX A

Summary of all reports submitted since the Law Reform Commission became operative on 1 August 1974 showing extent of implementation of such reports so far as known to the Commission

Serial No.	File No.	Details of reference	Date report submitted	Implementation	Remarks
/ 1	6/23 (b)	Review of Road Safety (Alcohol and Drugs) Act 1970	August 1975	Road Safety Alcohol and Drugs) Act (No. 2) 1975	
/ 2	6/22	Review of the Criminal Process (Bodily Descriptions) Bill 1974	September 1975	Criminal Process (Identification and Search Procedures) Act 1976	
3	2/5	Unclaimed charitable funds	September 1975	None so far as known	
/ 4	3/17	Review of Evidence Bill 1975 (Microfilm and other reproductions)	December 1975	Evidence Act (No. 2) 1976	
5	2/3	Taking of evidence on commission	February 1976	None so far as known	
/ 6	6/35	The law and procedure in rape cases; mitigation of embarrassment and harassment of complainants	March 1976	In part by Criminal Code Act (No. 2) 1976 and Evidence Act (No. 3) 1976	Considerable administrative action recommended. We have no information as to any such implementation.
7	3/23	Simplification of procedure in action involving deceased driver where no estate proved	April 1976	None so far as known	
8	3/19	Proof of boundaries; Crown lands, townships, and other specified areas	September 1976	None so far as known	Requests have been received for copies of Report and information by Government Departments affected, suggesting that implementation might be under consideration.
/ 9	6/33	Rehabilitation of offenders	December 1976	None so far as known	Largely administrative action required to implement recommendations. We have no information of any such implementation. Suggested amendment to section 100 of the Evidence Act 1910 would not seem to have been implemented yet.
/ 10	6/40	Decriminalisation of offences of drunkenness and vagrancy	December 1976	None	Moved to Parliamentary Select Committee on Victimless Crimes.

Serial No.	File No.	Details of reference	Date report submitted	Implementation	Remarks
/ 11	6/24	Powers of arrest, search and bail	December 1976	None so far as known	
12	5/7	Rights of <i>de facto</i> spouses	May 1977	None so far as known	
13	5/6	Discrimination on the ground of sex	August 1977	None so far as known	
/ 14	6/38	Forfeiture of things used in the illegal taking of fish	August 1977	None so far as known	
/ 15	6/36 (1)	Competence and compellability of spouses	December 1976	None so far as known	
/ 16	6/36 (2)	Subsequent submission by Marriage Guidance Council on which report requested	Supplementary Report September 1977	Not applicable	
/ 17	3/13	Admissibility of Computer Data in Evidence	December 1977	....	Report to be tabled next Parliamentary Session.
/ 18	6/37	Education courses for drivers convicted of drink/driving offences	December 1977	....	Report to be tabled next Parliamentary Session.
19	1/13	Residential tenancies	December 1977	....	Report to be tabled next Parliamentary Session.

## APPENDIX B

*Details of all references received since the Law Reform Commission became operative, on 1 August 1974, until 31 December 1977, showing date of receipt of reference and how it originated*

Serial No.	File No.	Reference	Date received	How originated
1	6/23 (b)	Review of Road Safety (Alcohol and Drugs) Act 1970	1 August 1974	Taken over from former Law Reform Committee
2	3/17	Review of Evidence Bill 1975 (Microfilm and other reproductions)	1 August 1974	Taken over from former Law Reform Committee
3	2/3	Taking of Evidence on commission	1 August 1974	Taken over from former Law Reform Committee
4	3/19	Proof of boundaries; Crown lands, townships, and other specified areas	1 August 1974	Taken over from former Law Reform Committee
5	6/22	Review of the Criminal Process (Bodily Descriptions) Bill 1974	9 October 1974	Request by Attorney-General
6	2/5	Unclaimed Charitable Funds	14 February 1975	Request by Attorney-General
7	3/9 }	Review of Privacy and Listening Devices Bills	20 February 1975	Commission request, approved by Attorney-General and Select Committee
8	3/12 }			
9	3/13	Admissibility of Computer Data in Evidence	3 April 1975	Request by Attorney-General
10	5/6	Discrimination on the ground of sex	23 June 1975	Commission request, approved by Attorney-General
11	5/7	Rights of <i>de facto</i> spouses	29 September 1975	Commission request, approved by Attorney-General
12	3/20	Reform of Civil Procedure	3 July 1975	Commission request, approved by Attorney-General
13	6/35	The law and procedure in rape cases; mitigation of embarrassment and harassment of complainants	2 December 1975	Request by Attorney-General
14	6/36 (1)	Competence and Compellability of spouses	4 December 1975	Request by Attorney-General
15	6/36 (2)	Subsequent submission by Marriage Guidance Council on which Report requested	28 April 1977	Request by Attorney-General
16	6/33	Rehabilitation of offenders	8 January 1976	Commission request, approved by Attorney-General
17	6/33	Publication of names in criminal proceedings	8 January 1976	Commission request, approved by Attorney-General
18	6/38	Forfeiture of things used in the illegal taking of fish	19 January 1976	Request by Attorney-General
19	6/37	Education courses for drivers convicted of drink/driving offences	22 January 1976	Request by Attorney-General
20	6/40	Decriminalisation of offences of drunkenness and vagrancy	17 March 1976	Request by Attorney-General
21	3/23	Simplification of procedure in action involving deceased driver where no estate proved	19 March 1976	Commission request, approved by Attorney-General
22	6/24 (1)	Powers of Arrest, Search, and Bail	23 April 1976	Commission request, approved by Attorney-General

Serial No.	File No.	Reference	Date received	How originated
23	2/7	Disposal of uncollected and found goods	25 June 1976	Commission request, approved by Attorney-General
24	4/3	Aspects of Insurance Law	27 July 1976	Commission request, approved by Attorney-General
25	6/31	Law and procedure of corroboration	13 September 1976	Commission request, approved by Attorney-General
26	4/5	Exclusion clauses and implied obligations in goods and services contracts	13 September 1976	Commission request, approved by Attorney-General
27	1/13	Residential Tenancies	5 November 1976	Request by Attorney-General
28	6/50	Civil disabilities of 'convict'. Section 435-452 Criminal Code	16 December 1977	Request by Attorney-General

*Total number of References received—*

28

*Details by years:*

From 1 August 1974-31 December 1974—

Taken over from former Law Reform Committee ..... 4  
 Request by Attorney-General ..... 1

— 5

From 1 January 1975-31 December 1975—

Request by Attorney-General ..... 4  
 Commission request approved by Attorney-General ..... 5

— 9

From 1 January 1976-31 December 1976—

Request by Attorney-General ..... 4  
 Commission request approved by Attorney-General ..... 8

— 12

From 1 January 1977-31 December 1977—

Request by Attorney-General ..... 2

— 2

Total ..... — 28

*Details of disposal—*

Reports submitted to Attorney-General ..... 19

Submissions to Select Committee on Privacy and Listening Devices Bills ..... 2

— 21

*Outstanding—*

Civil procedure,  
 Uncollected and found goods,  
 Exclusion clauses and implied obligations,  
 Corroboration,  
 Civil disabilities of convicts,  
 Aspects of Insurance Law (awaiting report of A.L.R.C. at request of Attorney-General) .. 6

Publication of names in criminal proceedings (withdrawn by Attorney-General) ..... 1

Total ..... — 28