

Western Australia

## **Law Reform Commission Act 1972**



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## Law Reform Commission Act 1972

**An Act to establish the Law Reform Commission of Western Australia and for purposes incidental thereto.**

**1. Short title**

This Act may be cited as the *Law Reform Commission Act 1972*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.

**3. Interpretation**

In this Act, unless the context otherwise requires —

“**Chairman**” means Chairman of the Commission;

“**member**” means full-time member or part-time member of the Commission;

“**section**” means section of this Act; and

“**the Commission**” means the Law Reform Commission of Western Australia established under this Act.

*[Section 3 amended by No. 91 of 1978 s. 3.]*

**4. Constitution of Commission**

- (1) There shall be a Commission to be known as the Law Reform Commission of Western Australia which, except as provided in

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section 10, shall, subject to subsection (1a) of this section, consist of 5 members, appointed by the Governor.

- (1a) Of the 5 members appointed under subsection (1) —
- (a) 3 members shall be members who are part-time members; and
  - (b) 2 members shall be members who are full-time members.
- (2) So long as there are 3 members, no act or proceeding of the Commission or of any member shall be vitiated by reason only that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of any member.

*[Section 4 amended by No. 91 of 1978 s. 4.]*

**5. Chairman**

- (1) The Commission shall elect the Chairman from amongst its members.
- (2) The member elected as the Chairman shall hold that office for a term not exceeding one year.
- (3) The outgoing Chairman shall be eligible for re-election at the next succeeding election, and at each subsequent election, of the Chairman.
- (4) Where the Chairman is absent, the Commission shall elect another member to act temporarily as the Chairman during that absence and, while so acting, that other member shall be deemed to be the Chairman.

*[Section 5 amended by No. 91 of 1978 s. 5.]*

**6. Qualification of members**

- (1) Of the members who are part-time members —
  - (a) one shall be a certificated practitioner (within the meaning of the *Legal Practice Act 2003*) who is practising as a practitioner on his own account, whether

alone or in partnership, and who has had, in this State or elsewhere, not less than 8 years' experience as a legal practitioner;

- (b) one shall be a person who is engaged in the teaching of law at a university in the State with a status not less than that of senior lecturer or the equivalent thereof;
  - (c) one shall be a legal practitioner (as defined in the *Legal Practice Act 2003*) who is an officer of the State Solicitor's Office and who has had, in this State or elsewhere, not less than 8 years' experience as a legal practitioner.
- (2) A person shall not be eligible for appointment as a member who is a full-time member unless he —
- (a) is or has been a barrister or solicitor of the High Court of Australia or of the Supreme Court of a State or Territory of the Commonwealth of not less than 8 years' standing; or
  - (b) is, in the opinion of the Governor, suitable for appointment as a member by reason of his legal qualifications and experience, whether in this State or elsewhere.

*[Section 6 inserted by No. 91 of 1978 s. 6; amended by No. 31 of 1993 s. 51; No. 65 of 2003 s. 45, 94.]*

## **7. Tenure of office**

- (1) Each member who is a part-time member shall hold office for such period, not exceeding 3 years, as is specified in the instrument of his appointment.
- (2) Each member who is a full-time member shall hold office for such period, not exceeding 5 years, as is specified in the instrument of his appointment.
- (3) A member whose term of office has expired shall be eligible for reappointment, but —

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- (a) a member who is a part-time member shall not hold office for a period exceeding 6 consecutive years; or
- (b) a member who is a full-time member shall not hold office for a period exceeding 8 consecutive years,

unless, in the opinion of the Governor, there are special circumstances warranting an extension of that period.

*[Section 7 amended by No. 91 of 1978 s. 7.]*

**8. Removal from office**

- (1) If a member ceases to have the qualifications under which he was appointed, his office shall become vacant.
- (2) A member may resign his office in writing under his hand addressed to the Attorney General.
- (3) The Governor may remove a member from office if he —
  - (a) becomes incapable of performing his duties as member;
  - (b) is guilty of misconduct;
  - (c) is convicted of an indictable offence; or
  - (d) fails to comply with the conditions of his appointment.

**9. Conditions of appointment**

- (1) A member shall be paid such remuneration and allowances as the Governor may from time to time determine.
- (2) The Governor shall not determine the remuneration and allowances to be paid to a member who is a part-time member who is a person to whom Part 3 of the *Public Sector Management Act 1994* applies except with the prior approval in writing of the Minister for Public Sector Management.
- (3) The appointment of a member shall, subject to this Act, be in accordance with such terms and conditions as may be specified in the instrument of his appointment.



- (4) Acceptance of or acting in the office of member by any person shall not of itself —
  - (a) render the provisions of Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to him; or
  - (b) in the case of a member who is a part-time member, affect or prejudice the application to him of the provisions referred to in paragraph (a) if those provisions applied to him at the time of the acceptance of or acting in that office.
- (5) A member who is a full-time member who, immediately prior to his appointment, occupied an office under Part 3 of the *Public Sector Management Act 1994* —
  - (a) shall, if he resigns his office or if his term of office expires by effluxion of time and he is not reappointed, be entitled to be appointed to an office under that Part not lower in status than the office which he occupied immediately prior to his appointment as a full-time member; and
  - (b) shall continue to retain his existing and accruing rights, including his rights under the *Superannuation and Family Benefits Act 1938* <sup>2</sup>, as if his service as a full-time member were service as a public service officer within the meaning of the *Public Sector Management Act 1994*.
- (6) In relation to a member who is a full-time member to whom subsection (5) does not apply —
  - (a) the Commission is deemed to be a department; and
  - (b) that full-time member is deemed to be an employee, within the meaning and for the purposes of the *Superannuation and Family Benefits Act 1938* <sup>2</sup>, but he is not compelled to become a contributor for pension, superannuation or benefits under that Act.

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*[Section 9 amended by No. 91 of 1978 s. 8; No. 32 of 1994 s. 19; No. 42 of 1997 s. 8.]*

**10. Acting members**

- (1) The Attorney General may, on such terms and conditions as he things fit, appoint a person to act temporarily as a member during the absence of any member, and a person so appointed shall, while so acting, be deemed to be a member.
- (2) A person shall not be appointed an acting member unless he has the like qualification, within the meaning of section 6, as the member who is absent.

**11. Functions of Commission**

- (1) The Commission shall prepare and submit to the Attorney General from time to time proposals for the review of any area of law with a view to reform, and for this purpose may consider any proposals for the reform of the law which may be made to it by any person.
- (2) The Attorney General may refer to the Commission —
  - (a) any of the matters in the proposals submitted to him by it under subsection (1); or
  - (b) any other matter.
- (3) On a reference made to it by the Attorney General under subsection (2), the Commission shall —
  - (a) examine critically the law with respect to the matter mentioned in the reference; and
  - (b) report to the Attorney General on the results of the examination of that law and make any recommendations with respect to the reform of that law, that it considers to be desirable.
- (4) Without limiting the generality of subsection (3) the commission shall examine the law to which the reference relates

for the purposes of ascertaining and reporting whether that law —

- (a) is obsolete, unnecessary, incomplete or otherwise defective;
- (b) ought to be changed so as to accord with modern conditions;
- (c) contains anomalies; or
- (d) ought to be simplified, consolidated, codified, repealed or revised,

and, if appropriate, whether new or more effective methods for the administration of that law should be developed.

- (5) The Commission shall deal with references made by the Attorney General in the order of priority, if any, approved by him.
- (6) The Commission may for the purposes of this section hold and conduct such inquiries as it thinks fit, and inform itself on any matter in such manner as it thinks fit, and obtain such information as to the law and the administration of justice of other countries as appears to the Commission likely to facilitate the performance of any of its functions.
- (7) The Attorney General shall cause the proposals and reports (including the recommendations) made by the Commission pursuant to the other provisions of this section to be presented to each House of Parliament as soon as practicable after they have been submitted to him.

*[Section 11 amended by No. 98 of 1985 s. 3.]*

## **12. Proceedings of Commission**

- (1) The Commission shall meet from time to time at such places and times as the Chairman directs.

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- (2) The Commission may regulate and conduct the proceedings at its meetings as it thinks fit and shall keep minutes of those proceedings.
- (3) Subject to this Act, the Commission may delegate to any of the members any of its powers, authorities, duties, or functions except this power of delegation.
- (4) The Commission may revoke a delegation given under subsection (3) and no delegation so given prevents the exercise or discharge by the Commission of any of its powers, authorities, duties, or functions.

**13. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

*[Section 13 inserted by No. 98 of 1985 s. 3; amended by No. 77 of 2006 s. 17.]*

**14. Staff**

- (1) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*, such officers and temporary employees as may be necessary to provide administrative, research, and other services to the Commission to enable it to exercise and perform the powers, functions, and duties conferred on the Commission by this Act, and to permit the Commission to undertake studies and research concerning law reform and to make investigations and reports with regard to the carrying out of this Act.
- (2) The Minister may, on the request of the Commission, engage, under contract for services, such professional and research or other assistance as may be necessary to enable the Commission

to carry out effectively its functions under this Act, and enter into arrangements with —

- (a) a Minister of the Crown of any State of the Commonwealth, a Minister of the State of the Commonwealth, a department or an instrumentality of the Commonwealth or any State of the Commonwealth; or
- (b) a university or other tertiary institution; or
- (c) any other body or person,

with respect to the conduct of any investigation, study or research that may be necessary or desirable for the purposes of this Act.

*[Section 14 amended by No. 32 of 1994 s. 19.]*

## **15. Funds of Commission**

- (1) The funds available to the Commission for the purpose of enabling it to exercise its functions, powers, and duties under this Act are —
  - (a) moneys from time to time appropriated by Parliament for that purpose;
  - (b) any other moneys made available to the Commission for the purposes of this Act.
- (2) An agency special purpose account called the Law Reform Commission Account is established under section 16 of the *Financial Management Act 2006* to which the moneys referred to in subsection (1) are to be credited.
- (3) All expenditure incurred by the Commission for the purposes of giving effect to this Act shall be charged to the account referred to in subsection (2).

*[Section 15 amended by No. 49 of 1996 s. 64; No. 77 of 2006 s. 17.]*

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- <sup>1</sup> This is a compilation of the *Law Reform Commission Act 1972* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Law Reform Commission Act 1972</i>	59 of 1972	31 Oct 1972	19 Jan 1973 (see s. 2 and <i>Gazette</i> 19 Jan 1973 p. 83)
<i>Law Reform Commission Act Amendment Act 1976</i>	50 of 1976	10 Sep 1976	10 Sep 1976
<i>Law Reform Commission Act Amendment Act 1978</i>	91 of 1978	8 Nov 1978	1 Oct 1979 (see s. 2 and <i>Gazette</i> 21 Sep 1979 p. 2919)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985 (as amended by No. 4 of 1986)	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Ministry of Justice) Act 1993 Pt. 13</i> <sup>3</sup>	31 of 1993	15 Dec 1993	Deemed operative 1 Jul 1993 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Equal Opportunity Amendment Act (No. 3) 1997 s. 8</i>	42 of 1997	9 Dec 1997	6 Jan 1998 (see s. 2(1))
<b>Reprint of the <i>Law Reform Commission Act 1972</i> as at 26 Oct 2001</b> (includes amendments listed above)			
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 45, 94, 97</i> <sup>5</sup>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 17</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 53 <sup>4</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

<sup>2</sup> Repealed by the *State Superannuation Act 2000*.

<sup>3</sup> The *Acts Amendment (Ministry of Justice) Act 1993* Pt. 19 reads as follows:

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### Part 19 — Savings and Transitional

#### 68. Savings

If this Act is not passed until after 1 July 1993, anything done after that day but before this Act is passed that would have been in accordance with law if this Act had not come into operation but as a result of the coming into operation of this Act is contrary to law, is deemed to be in accordance with law.

#### 69. Transitional

Unless the contrary intention appears, a reference, however expressed, in any law or document to the former Department of Corrective Services or Crown Law Department, the chief executive officer of either of those departments, or an office or organizational unit within either of those departments, is to be read as a reference to the Ministry of Justice, the chief executive officer of the Ministry of Justice, or the corresponding office or unit within the Ministry of Justice, as is appropriate.

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<sup>4</sup> On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 53 had not come into operation. It reads:

“

**53. Law Reform Commission Act 1972 amended**

Section 9 of the *Law Reform Commission Act 1972* is amended as follows:

- (a) in subsection (5)(b) by deleting “; including his rights under the *Superannuation and Family Benefits Act 1938*,”;
- (b) by deleting subsection (6).

”.

<sup>5</sup> The *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 97 reads as follows:

“

**97. References to Crown Solicitor**

If in a written law or other document or instrument there is a reference to the Crown Solicitor that reference may, where the context so requires, be read as if it had been amended to be a reference to the State Solicitor.

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