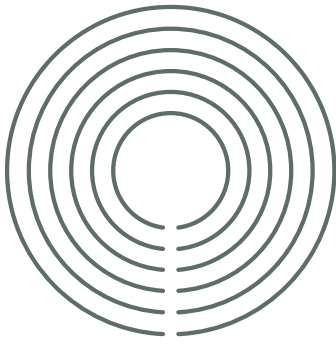




LAW REFORM
COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ

ANNUAL REPORT 2007



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COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ

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2007

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The Law Reform Commission consists of a President, one full-time Commissioner and three part-time Commissioners

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Former Judge of the Supreme Court

Patricia T Rickard-Clarke BCL, Solicitor

Full-time Commissioner

Professor Finbarr McAuley BCL, LLB, MPhil, LL.D,

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GALLERY



TOP Multi-Unit Developments Conference held in the Law Society January 2007: Ken Murphy Director General of the Law Society, Michael McDowell Minister of Justice, Equality and Law Reform, Mrs. Justice Catherine McGuinness President of the Commission, and Patricia T. Rickard-Clarke Commissioner. // **BOTTOM LEFT** Justice Michael Kirby of the High Court Australia presents the keynote speech at the Commission's Annual Conference 2007 on the Third Programme of Law Reform // **BOTTOM RIGHT** The Attorney General, Mr Rory Brady SC at the launch of the Commission's Consultation Paper on Aspects of Inter Country Adoption Law, March 2007.



TOP Mrs. Justice Catherine McGuinness, President of the Commission and The Attorney General, Paul Gallagher SC at the 2007 Annual Conference. // **BOTTOM** Attorney General Paul Gallagher SC who launched the Commission's Consultation Paper on Restatement, with the President of the Commission Mrs. Justice Catherine McGuinness and Legal Researcher John P. Byrne.



TOP Members of the Commission Staff in 2007 // **MIDDLE** Attorney General Paul Gallagher SC (centre), with Director of Research Ray Byrne, Commissioner Donal O'Donnell, Legal Researcher Charles O'Mahony, Commissioner Patricia T. Rickard-Clarke, Mrs. Justice Catherine McGuinness President, and Commissioners Finbarr McAuley and Marian Shanley. // **BOTTOM** Meeting of the Representatives of Law Reform Agencies in July 2007 **Front Row:** The Hon. Mr. Justice Declan Morgan from the Law Commission for Northern Ireland, Mrs. Justice Catherine McGuinness President of the Law Reform Commission (Ireland), The Hon. Mr. Justice Ethern Chairperson of the Law Commission (England and Wales) and Lord Drummond Young Chairperson of the Scottish Law Commission. **Back Row:** Joanne Williams Legal Researcher, Michael Lugton CEO of the Scottish Law Commission, Commissioner Patricia T Rickard Clarke of the Irish Commission, Steve Humphries CEO of the English Law Commission, Professor Gerry Maher of the Scottish Law Commission, Commissioners Donal O'Donnell and Marian Shanley of the Irish Law Reform Commission, Legal Researcher Charles O'Mahony and Director of Research Ray Byrne.

TABLE OF CONTENTS

FOREWORD	12
CHAPTER 1	
THE LAW REFORM COMMISSION	14
Introduction	14
Preparing the Third Programme of Law Reform 2008-2014	15
Methods of Work and Consultation Process	17
Strategy Statement 2006-2008	19
CHAPTER 2	
THE COMMISSION'S PUBLICATIONS AND ROLLING WORK PROGRAMME IN 2007	22
Introduction	22
The Legal System	22
Law of Evidence	24
Criminal Law	24
Land law and Conveyancing	25
Family Law	27
Specific and Vulnerable Groups	27
Commercial Law and the Law of Obligations	28
Commission Publications in 2007	28
CHAPTER 3	
STATUTE LAW RESTATEMENT	30
Introduction	30
Overview	30
CHAPTER 4	
LEGISLATION DIRECTORY	32
Introduction	32
Overview	32

CHAPTER 5	
THE COMPLETION OF THE SECOND PROGRAMME OF LAW REFORM 2000-2007	34
Overview of the Completion of the Second Programme	34
The Legal System	36
Law of Evidence	37
Administrative Law	37
Criminal Law	38
Revenue Law	39
Land Law and Conveyancing	39
Vulnerable Groups and the Law	40
Family Law	41
Commercial Law and the Law of Obligations	42
CHAPTER 6	
ADMINISTRATION	44
Introduction	44
Commission	44
Management Committee	44
Administrative Staff	44
Research and Library Staff	46
Finance	47
Governance Arrangements	48
Appendix A	
<i>Third Programme of Law Reform 2008-2014</i>	49
Appendix B	
Working Groups	51
Appendix C	
Conferences and Visits	53
Appendix D	
List of Law Reform Commission Publications	55
Appendix E	
Organisation Chart	62

FOREWORD

I am very pleased on behalf of my Commission colleagues and on my own behalf to introduce the Law Reform Commission's *Annual Report 2007*. During the year the Commission had two main aims - the completion of our *Second Programme of Law Reform 2000-2007* and the formation of our *Third Programme of Law Reform 2008-2014*. As may be seen from this Annual Report the Commission has succeeded in achieving both these aims. In addition the Commission has made substantial progress in our two more recent areas of work, Statute Law Restatement and the Legislation Directory.

In the context of the completion of the *Second Programme* of Law Reform the Commission is happy to have published five Consultation Papers and two Reports during the year. Of these both the Consultation Paper on Aspects of Inter-country Adoption and the *Consultation Paper on Civil Liability of Good Samaritans and Volunteers* were the subjects of requests from the Attorney General under Section 4(2)(c) of the *Law Reform Commission Act 1975*. Details of the Commission's publications and programme of work can be found in Chapter 2 of this Report.

During the *Second Programme* the Commission followed a policy of annexing a draft Bill to each Report published. This has been done to facilitate the implementation of the Commission's recommendations for the reform of the current law where the Government decides to enact these recommendations. Thus, for example, the Commission's *Report on the Law of Landlord and Tenant* includes a comprehensive draft Landlord and Tenant Bill. This particular Report follows on after the Commission's earlier major work on the reform of land law and conveyancing law, which has culminated in the *Land and Conveyancing Law Reform Bill 2006*, which is now before the Oireachtas. Another major area of work of the Commission has resulted in the publication during 2007 of the *Consultation Paper on Consolidation and Reform of the Courts Acts*.

Since 2006, following a Government decision made at the request of the Attorney General, the Commission's work has expanded to include two challenging new areas, Statute Law Restatement and the Legislation Directory (previously called the Chronological Tables of the Statutes). During 2007 the Commission has made steady progress in establishing the foundations for our work in these two new areas, including the publication of the *Consultation Paper on Statute Law Restatement*. Details of these areas of work are to be found in Chapters 3 and 4 of this Report.

In our *Annual Report 2006* The Commission referred to plans for a wide consultation with the general public, government organisations, the legal profession and other interest groups with a view to identifying topics for inclusion in our *Third Programme of Law Reform 2008-2014*. This process was carried out to the full. The Commission has had broadly based consultation with the Attorney General, members of the public and public representatives, Government Departments, legal bodies such as the Bar Council and the Law Society, and non-governmental voluntary and community organisations. Three well-attended public consultations were held in Galway, Cork and Dublin. This process culminated in the Commission's *Third Programme of Law Reform 2008-2014*, which was presented to and approved by the Government in December 2007, and has been published by the Commission.

During 2007 the Commission continued to pursue the strategic goals of the organisation, both legal and non-legal, as set out in our *Strategy Statement 2006-2008*. Progress has been monitored

through the Commission's Business Plan, which gives effect to the key objectives set out in the Strategy Statement.

As President I want to thank all who have been involved in a most productive year's work - my fellow Commissioners, all the legal and administrative staff and all those who have so generously given us their expertise, advice and time on a voluntary basis in working groups, consultations and meetings.

While the Commission is an independent statutory body it does not operate at a remove from the legislative process. It therefore values the ongoing exchanges it has with Government Departments to further the contribution it can make to that process. The Commission also wishes to thank the Office of the Attorney General for its very valuable support to the Commission in doing its work.

A handwritten signature in black ink, reading "Catherine McGuinness". The signature is written in a cursive style with a horizontal line underneath the name.

Catherine McGuinness
President

CHAPTER 1

THE LAW REFORM COMMISSION

INTRODUCTION

The Commission is an independent statutory body established by the *Law Reform Commission Act 1975*. The 1975 Act states that the Commission's role is to keep the law under review and to conduct research with a view to the reform of the law, and it defines law reform to include:

- The development of law
- Its codification (including its simplification and modernisation) and
- The revision and consolidation of statute law.

Programmes of Law Reform and Attorney General Requests

The Commission's research work has, until recently, arisen from two main sources: first, under a Programme of Law Reform prepared by the Commission and agreed by Government and laid before the Houses of the Oireachtas under the 1975 Act; and second, in accordance with a request from the Attorney General under the 1975 Act.

A Programme of Law Reform is prepared by the Commission, approved by Government and placed before both Houses of the Oireachtas in accordance with the 1975 Act. The Commission's *First Programme of Law Reform* was in place between 1977 and 1999. This was replaced by the *Second Programme of Law Reform 2000-2007*, which was approved by the Government in 2000. In Chapter 5, the Commission describes the completion of its work under the *Second Programme*.

During 2007, in addition to completing its work under the *Second Programme* of Law Reform, the Commission prepared its *Third Programme of Law Reform 2008-2014* following broad consultation and discussion with the Attorney General, members of the public and public representatives, Government Departments and non-governmental voluntary and community organisations. This process is discussed below.

Statute Law Restatement and Legislation Directory

Since 2006, the scope of the Commission's research work has expanded to include two new areas of activity, Statute Law Restatement and the Legislation Directory (previously called the Chronological Tables of the Statutes). Statute Law Restatement involves incorporating all amendments to an Act into a single text, making legislation more accessible. The Legislation Directory is an electronically searchable guide to legislative changes.

These new roles are fully consistent with the Commission's remit of law reform, which (as indicated) the 1975 Act defines to include the codification of the law, including in particular its simplification, and the revision and consolidation of statute law. The Commission is also conscious that these roles may be of assistance to the wider *Better Regulation* policy of the Government, including the pre-1922 Statute Law Revision project, most recently indicated by the Statute Law Revision Act 2007. In Chapter [s 3 and 4], the Commission discusses the developments in 2007 concerning these new areas of work.

PREPARING THE THIRD PROGRAMME OF LAW REFORM 2008-2014

As already mentioned, the Commission focused on two major matters in 2007: completing its work under the *Second Programme* of Law Reform and preparing its *Third Programme of Law Reform 2008-2014*. In Chapter 5, the Commission reviews its work over the timeframe of the *Second Programme* to complete its analysis of the 30 topics in the Programme. In this Chapter, the Commission outlines its approach to the preparation of the Third Programme.

Public consultation process

At an early stage, the Commission decided that significant public consultation would be required in preparing the *Third Programme of Law Reform*. This is because of the Commission's firm belief that law cannot exist for its own sake or in a vacuum. The law exists to serve Irish society and it operates within the framework of that society. If the law is to continue to have a real meaning for our society, it must reflect the values and attitudes of our society. In addition, in line with *Better Regulation* principles, in March 2007 the Commission published a *Seminar Paper: Third Programme of Law Reform* (LRC SP 3-2007) to assist those who participated in the public seminars on the Third Programme.

The first public seminar took place in NUI Galway in March 2007 and the second at University College Cork in April 2007. The final public consultation, which was also the Commission's Annual Conference for 2007, took place in Dublin in July and over 300 people attended. The keynote address was delivered by Justice Michael Kirby of the High Court of Australia and the Attorney General, Paul Gallagher SC, opened the Conference. During 2007, the Commission received more than 200 verbal and written submissions, many by email, suggesting over 400 areas of law for inclusion in the *Third Programme*.

The Commission also met with the Attorney General's Consultative Committee on Law Reform. The Consultative Committee comprises representatives of certain Government Departments, the Law Society of Ireland, the Bar Council and the Commission. One of its functions was to assist the Attorney General in his consultations with the Commission on the Third Programme. In September 2007, the Consultative Committee discussed and approved the Commission's draft Programme. In October 2007, the Government considered the draft Programme and decided to refer it to the Oireachtas for discussion. In November 2007, the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights considered and discussed to with the Commission the content of the proposed *Third Programme of Law Reform*.

Approval and launch of Third Programme

On 12 December 2007, the Government approved without amendment the draft *Third Programme of Law Reform* and it was then laid before both House of the Oireachtas in accordance with the *Law Reform Commission Act 1975*. On 17 December 2007, the Third Programme was formally launched by the Attorney General, Paul Gallagher SC.

Selection criteria

The Commission's Seminar Paper on the Third Programme set out four general selection criteria which the Commission used in deciding what to include in the Third Programme. These were:

- The selected projects must meet a real community need, especially by filling a gap in the law, including the need to modernise an outdated law;
- The projects should be suitable for analysis by the legal expertise available in the Commission, supplemented by appropriate consultation with other professionals and interested parties;
- The Programme should include a mix of projects, so that the Commission's resources are not tied up in one project; and
- The projects should not overlap with the work of other bodies engaged in law reform activities.

Applying these criteria, the Commission concluded it would be feasible to include 37 law reform projects in the *Third Programme of Law Reform* because:

- The projects addressed legal issues in need of reform that would meet a real community need,
- The projects were considered suitable for analysis by the Commission, taking into consideration both the resources and the expertise available to the Commission.
- The Commission was likely to complete the projects selected within the timeframe of the Programme and they represented a good mix of different areas of law.
- The projects did not duplicate work being done elsewhere.

The Commission concluded that a number of other projects merited examination but were unlikely to be completed within the timeframe of the Third Programme. Other projects involved areas which were more suitable for examination by relevant Government Departments, either because they involved exclusively policy issues or were otherwise already under consideration by those Departments. In accordance with the Commission's remit under the *Law Reform Commission Act 1975* to identify other bodies which may appropriately carry out law reform projects, the Commission communicated with those Departments concerning these other projects.

Overview of content of Third Programme

Having applied the selection criteria, the *Third Programme of Law Reform* lists 37 projects, including the following:¹

- Review of the Law Relating to Juries
- Alternative Dispute Resolution
- Documentary Evidence and Technology
- The Law of Sexual Offences
- The Victim and the Criminal Justice System
- Further Statutory Codification of Land Law
- eConveyancing Road Map

¹ See Report on *Third Programme of Law Reform 2008-2014* (LRC 86-2007), available at www.lawreform.ie

- Legal Aspects of Family Relationships
- Children and the Law
- Legal Aspects of New and Emerging Members of Irish Society
- Legal Aspects of Assisted Human Reproduction
- Insurance Contracts
- Civil Law Aspects of the Law of Missing Persons

In her Foreword to the Third Programme, the Commission President, Mrs Justice Catherine McGuinness, stated:

“The Commission shares the ambition of all those who have contributed to the preparation of the Third Programme that it must respond to the needs of a modern Ireland. The topics contained in this Programme reflect a society which is currently in a process of great change... We acknowledge that the successful completion of these projects will depend upon consultation with members of the legal profession, with experts from other disciplines, and with interested parties and organisations.”

The Commission has now begun the process of examining the many challenging projects included in the *Third Programme of Law Reform*.

METHODS OF WORK AND CONSULTATION PROCESS

The Commission’s Consultation Papers and Reports are based on careful and thorough research. In the course of research on any topic, consideration is given to case law, legislation, jurisprudence and academic writings, both domestic and international. The Commission gives particular attention to the laws of comparable jurisdictions, as well as to proposals put forward by law reform bodies in these jurisdictions. The Commission is also conscious of the importance of ensuring that any proposals for reform are grounded in practice. In the course of preparing proposals, the Commission conducts informal consultations with legal practitioners and also with other relevant professional persons and representative bodies. The practical insights which these contacts provide the Commission are acknowledged in the Commission’s publications.

Methodology

To achieve the goals set out in its Programmes of Law Reform, the Commission ensures that each project is assigned a Researcher who works under the general direction of the Director of Research. In the case of Statute Law Restatement and the Legislation Directory, two teams of researchers assigned specifically to these areas work under the direction of two Project Managers. The Commission also makes use of Working Groups, whose members provide their expertise on a voluntary basis, in areas where significant expert input is necessary. A list of Working Groups and their membership is included in Appendix B.

Given the complexity of some of the issues that arise, the Commission regularly consults with experts in particular areas of legal and other professional knowledge on a particular subject. The Commission carries out its work on the basis of a Rolling Work Programme, which contains target dates for the achievement of the various stages of work. In order to assist the Commission in monitoring their

achievement of these targets, regular reviews of the Work Programme are conducted. Chapter 2 outlines the Commission's publications and ongoing work programme in 2007.

The Consultation Process

The consultation process is of central importance to the Commission's work. Consultation may take several forms. In the initial stages of its research, the Commission may meet with experts or practitioners working in a particular area, or representatives of interest groups. The Commission will then prepare and publish a Consultation Paper. The Commission will seek written submissions from interested parties on the provisional recommendations made in the Consultation Paper. These submissions will be taken into account in the drafting of the final Report on the subject, and any issues or concerns they raise will be dealt with in the Report. Before the drafting of the Report, a seminar is usually held to which the Commission may invite interested parties, or those who have made submissions.

In 2007, the Commission held five seminars on the following topics:

- Privity of Contract (March),
- *Third Programme of Law Reform* (March and April),
- Defences in Criminal Law (June),
- Involuntary Manslaughter (November).

Since 2000, the Commission invariably includes a draft Bill in each Report where it makes recommendations requiring legislative change.

In connection with the projects on Statute Law Restatement and the Legislation Directory, the Commission also consults with a wide range of interested parties. This includes the Office of the Attorney General, Government Departments, the Oireachtas, the legal profession and the general public. The Commission has also placed considerable emphasis on the technological aspects of both projects in order to ensure maximum accessibility of Restatements and the Legislation Directory. In particular, the Commission has taken into account the development of the Government's eLegislation strategy and the modernisation of the Irish statute book, including the enactment of the Statute Law Revision Act 2007.

Communication with Consultative Committee and Government Departments

It has been the practice of the Commission for many years to communicate with government departments as to the projects upon which it is currently engaged or is likely to be engaged in the foreseeable future. The Commission also has an arrangement with the Department of Justice, Equality and Law Reform, providing for bi-annual meetings to review matters of mutual interest, both in criminal law and civil law matters. These meetings enable the Commission and the Department to discuss issues currently being addressed by them and of progress in the legislative process.

In 1998, the Government established a Consultative Committee under the auspices of the Office of the Attorney General, comprising representatives of certain government Departments, the Bar Council of Ireland, the Law Society of Ireland, as well as the Commission. In September 2007, the Commission met with the Consultative Committee to discuss the Commission's draft *Third Programme of Law Reform*, which the Consultative Committee approved.

Meetings with Oireachtas Committee

Since 1998, the Commission has held periodic meetings with the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights to discuss the work programme of the Commission. The Commission greatly values the meetings with the Committee. In November 2007, the Joint Committee considered and discussed with the Commission the content of the proposed *Third Programme of Law Reform*.

Annual Conference

Since 2004, the Commission has hosted an Annual Conference connected with the Commission's Programme of Law Reform and rolling work programme. In 2007, the Annual Conference took place in July and formed part of the Commission's public consultation on the draft *Third Programme of Law Reform 2008-2014*. The Conference was attended by over 300 people and the keynote address was delivered by Justice Michael Kirby of the High Court of Australia and was opened by the Attorney General, Paul Gallagher SC.

Conferences, Visits and Media Contacts

Commissioners also regularly attend and participate in public seminars and conferences. Contacts with law reform bodies are also maintained through attendance at relevant seminars and through hosting visits from other law reform bodies. In addition, news and press releases are distributed to the media to coincide with publication of a Consultation Paper or Report. In general, the Director of Research and Commissioners with lead roles in specific projects act as media spokespersons for the Commission. Details of conferences attended and visits to and from law reform bodies are contained in Appendix C.

STRATEGY STATEMENT 2006-2008

In 2006, the Commission finalised its *Strategy Statement 2006-2008* which sets out a framework for the work of the Commission over a crucial three year period that spanned the completion of the *Second Programme* and the preparation of the Third Programme. It followed the Commission's two previous Strategy and Business Plans for 1999-2002 and 2003-2005.

The Commission's most important working document

The Strategy Statement underlines the Commission's need to be forward-looking and to adapt current methods of work in order to achieve the goals set out in the Commission's Programme of Law Reform - and to take into account the Commission's new role in Statute Law Restatement and the Legislation Directory, discussed above. It also reflects the views of the Commission and senior management on what needs to be done to maximise the central role and contribution of the Commission to law reform and to ensure that the organisation operates to optimum efficiency and effectiveness and makes the best use of available resources. The emphasis in drawing up the Statement was to ensure that it had a real meaning for the organisation and its staff, that it represented the key priorities of the Commission for 2006-2008 and that it set out clear responsibilities and accountabilities for the achievement of these priorities. The Commission

took the view that it is to be the most important working document for the Commission, management and staff and one to which they will constantly refer in assessing the performance and development of the organisation.

KEY OBJECTIVES

The Commission's Strategy Statement initially identified five Key Objectives which it would implement over the lifetime of the Statement. In 2007, the Commission added Key Objective 6 to reflect its new role concerning the Legislation Directory. The six Key Objectives now included in the Strategy Statement are:

KEY OBJECTIVE 1

To progress towards completion to a high standard the examination of: (1) the projects currently selected by the Commission from the 37 Projects in the *Third Programme of Law Reform 2008-2014*; (2) the projects remaining from the *Second Programme of Law Reform 2000-2007*; and (3) the particular areas of law which the Attorney General has requested the Commission to examine.²

KEY OBJECTIVE 2

To develop a *Third Programme of Law Reform* and to submit this programme to the Taoiseach for Government approval.

KEY OBJECTIVE 3

To implement the responsibilities assigned to the Commission by the Attorney General in 2006 in regard to statute law restatement.

KEY OBJECTIVE 4

To ensure that the research area of the organisation operates, with the full involvement of all legal staff, at optimum efficiency and effectiveness and in accordance with best international practice.

KEY OBJECTIVE 5

To support the work of the Commission in ensuring that services are delivered in the most cost effective and efficient way and with the maximum involvement and participation of staff.

KEY OBJECTIVE 6

To implement the responsibilities assigned to the Commission by the Attorney General in 2007 in regard to the Chronological Tables of the Statutes.

These Key Objectives underline the significant tasks facing the Commission in the three year period covered by the Strategy Statement.

² This is the current version of Key Objective 1. It replaced (from January 2008) the original Key Objective 1, which read: "To complete to a high standard (1) the examination of particular areas of the law from the point of view of law reform under requests to the Commission from the Attorney General and (2) the current Second Law Reform Programme of the Commission in accordance with the provisions of that programme and to the maximum possible extent within the period of this Strategy Statement." This became redundant when the Commission began work on the *Third Programme of Law Reform 2008-2014*.

Key Objective 1 includes the important mandate of progressing towards completing the examination of: (1) the projects currently selected by the Commission from the 37 Projects in the *Third Programme of Law Reform 2008-2014*; (2) the projects remaining from the *Second Programme of Law Reform 2000-2007*; and (3) the particular areas of law which the Attorney General has requested the Commission to examine of completing the work envisaged by the Commission's *Second Programme of Law Reform 2000-2007* and in response to specific requests from the Attorney General.

Key Objective 2 anticipated the need to prepare the *Third Programme of Law Reform*, which the Commission completed in 2007 and on which work began in early 2008.

Key Objectives 3 and 6 also indicate the high priority which the Commission gives to the new challenges assigned by Government to prepare a programme of Statute Law Restatement and to maintain the Legislation Directory.

Key Objectives 4 and 5 deal with the necessary legal research and administrative supports required to ensure that the Commission's mandate can be achieved.

Monitoring Implementation of the Key Objectives

The Strategy Statement also sets out important mechanisms for monitoring the implementation of its Key Objectives. These include the preparation and review of quarterly rolling Business Plans, indicating the contribution of the legal research and administration teams to the achievement of the Key Objectives. The Business Plans set out clearly the specific actions being taken in each area; the person or persons responsible for the implementation of each action; the overall deadline for each action; the target for the year and for the next quarter; and the person with overall accountability for results under each action. For each quarter, the Commission's Management Committee assesses progress on each key objective in conjunction with the person or persons having overall accountability for the objective. The Management Committee reports on progress every six months to the Commission and also brings to its notice any major problems, threats or opportunities emerging. The Commission reviews the Strategy Statement annually and decides, in the light of progress, whether any major changes need to be made to it for the following year. The Commission also liaises with the Office of the Attorney General to review progress generally under the Strategy Statement. In December 2006, the Commission agreed that the Strategy Statement should be revised in 2007 to take into account the request from the Attorney General concerning the Legislation Directory. In January 2008, it was also agreed to amend Key Objective 1 to take account of the start of the *Third Programme of Law Reform 2008-2014*.

CHAPTER 2

THE COMMISSION'S PUBLICATIONS AND ROLLING WORK PROGRAMME IN 2007

INTRODUCTION

In this Chapter, the Commission outlines the content of its publications during 2007 and the other elements of the Commission's Rolling Work Programme. These are discussed under the following general headings which are based on those in the *Third Programme of Law Reform 2008-2014*:

- The Legal System
- Law of Evidence
- Criminal Law
- Land Law and Conveyancing
- Family Law
- Specific and Vulnerable Groups
- Commercial Law and the Law of Obligations

These branches, together with any additional areas referred to the Commission at the request of the Attorney General, provide a convenient basis for outlining the Commission's work in 2007. In Chapter [5], the Commission describes its completion of the work under the *Second Programme* from 2000-2007.

This Chapter also provides an opportunity to discuss any relevant developments in 2007 concerning implementation of proposals for reform made by the Commission. The Commission's website, www.lawreform.ie, includes a dedicated section containing a general overview of the implementation of all Commission Reports, and this is updated on a regular basis.

THE LEGAL SYSTEM

Accessibility of Legislation

As mentioned in Chapter 1, in 2006 the Commission took over functional responsibility for Statute Law Restatement and, in 2007, the Commission assumed functional responsibility for the Legislation Directory, previously called the Chronological Tables of the Statutes. Statute Law Restatement involves the administrative consolidation of all amendments to an Act into a single text, making legislation more accessible. Under the *Statute Law (Restatement) Act 2002*, where this text is certified by the Attorney General it can be relied on as evidence of the law in question. The Legislation Directory is a searchable annotated guide to legislative changes. After the Commission took over responsibility for this important resource, it decided to change the name to Legislation Directory to indicate its function more clearly. These areas are discussed in more detail in Chapters 3 and 4 below.

Alternative Dispute Resolution

In 2006, the Commission began a project on Alternative Dispute Resolution (ADR) under the *Second Programme of Law Reform 2000-2007*. This involves examination of fundamental principles of access to civil justice. In this respect, ADR can be seen as integrating all methods of dispute resolution, from mediation, through conciliation, arbitration, Ombudsmen, regulatory bodies and the courts (including the small claims court). The Commission will explore recent developments

in this area, both national and international. The work on this project will be completed under the *Third Programme of Law Reform 2008-2014* and the Commission intends to publish a Consultation Paper on it in 2008.

Consolidation and Reform of the Courts Acts

In 2007, the Commission published a *Consultation Paper on Consolidation and Reform of the Courts Acts* (LRC CP 46-2007). This arises from a project which the Commission began in 2005 under the *Second Programme of Law Reform 2000-2007* to reform and consolidate the Courts Acts, which comprise up to 100 Acts, including a large number that predate the foundation of the State. Since 1922, almost 60 Courts Acts have been enacted by the Oireachtas, making it difficult to access the relevant law. The Commission has embarked on this project jointly with the Department of Justice, Equality and Law Reform and the Courts Service. In that respect, it is similar to the Joint Project on Reform and Modernisation of Land Law and Conveyancing Law, referred to below. The Consultation Paper includes a draft consolidated text of the relevant Courts Acts with a view to the eventual enactment of a Consolidated Courts Bill. In addition, the Consultation Paper also identifies a number of specific areas which the Commission considers are worthy of further analysis with a view to possible reform. These include: the case stated procedure; the *in camera* rule; fixed charge penalties; appeals in civil and criminal matters; increasing the general monetary limits in the District Court and Circuit Court; the rules of courts committees; summary trial of indictable offences and the right of election; and allocating cases between the Circuit Criminal Court and Central Criminal Court. The Commission has now begun preparations for the completion of this project under the *Third Programme of Law Reform 2008-2014*.

Limitation of Actions

In 2007, the Commission began a general review of the law on limitations under the *Second Programme of Law Reform 2000-2007*. This project will examine in general the limitation periods for civil claims in the *Statute of Limitations Act 1957* and the potential for consolidation of the limitation periods. It also builds on earlier work by the Commission that reviewed specific aspects of this area of law. The work on this project will be completed under the *Third Programme of Law Reform 2008-2014* and the Commission intends to publish a Consultation Paper on it by the end of 2008.

Tribunals of Inquiry

The government's *Tribunals of Inquiry Bill 2005*, which proposes to implement the main elements of the *Commission's Report on Public Inquiries Including Tribunals of Inquiry* (LRC 73-2005), was restored to the Order Paper of Dáil Éireann in the wake of the General Election in 2007. The Commission's Report, and the 2005 Bill, would reform and consolidate the existing *Tribunals of Inquiry (Evidence) Acts 1921 to 2004* which currently comprise eight separate Acts.

LAW OF EVIDENCE

DNA Database

In February 2007, the Government published the *General Scheme of a Criminal Justice (Forensic Sampling and Evidence) Bill 2007* [available at www.justice.ie] which broadly seeks to implement the Commission's recommendation in its *Report on the Establishment of a DNA Database* (LRC 78-2005).

Expert Evidence

In 2006, the Commission began a project on the law of expert witnesses and their evidence. This project will explore options for reform of aspects of this area of the law of evidence, covering the admissibility of such evidence and related matters concerning the reliability and oversight of expert witnesses. The Commission made considerable progress on this project in 2007 and intends to publish a Consultation Paper on it in 2008.

CRIMINAL LAW

The Commission's work on substantive criminal law complements the work of the Criminal Law Codification Advisory Committee, established under Part 14 of the *Criminal Justice Act 2006*, whose work is aimed at the development of a criminal code (see www.criminalcode.ie).

Corporate Killing

The Government's Legislative Programme for September 2007 states that it intends to publish a *Corporate Manslaughter Bill* which would implement the Commission's recommendations in its *Report on Corporate Killing* (LRC 77-2005).

Defences in Criminal Law

The Commission is engaged in the completion of a project on defences in criminal law. Under the *Second Programme of Law Reform 2000-2007*, the Commission published three Consultation Papers, a *Consultation Paper on Homicide: The Plea of Provocation* (LRC CP 27-2003), a *Consultation Paper on Duress and Necessity* (LRC CP 39-2006) and a *Consultation Paper on Legitimate Defence* (LRC CP 41-2006). The material in the Consultation Papers will be incorporated into a Report on Defence in Criminal Law which will be completed under the *Third Programme of Law Reform 2008-2014*.

Homicide: Murder and Involuntary Manslaughter

In 2007, the Commission published a *Consultation Paper on Involuntary Manslaughter* (LRC CP 44-2007), which followed its *Consultation Paper on Homicide: The Mental Element in Murder* (LRC CP 17-2001). In 2008, the Commission published its *Report on Homicide: Murder and Involuntary Manslaughter* (LRC 87-2008), which brought together the material in both Consultation Papers. The Commission will return to discuss the 2008 Report in its Annual Report for 2008.

Inchoate Offences: Attempts, Conspiracy and Incitement

In 2006, the Commission began a project on inchoate offences. This will examine options for reform in the law concerning attempts, conspiracy and incitement. The Commission intends to publish a Consultation Paper on this area in 2008.

Minor Offences: Fines

In January 2007, the Government published a *Fines Bill 2007* which proposes to implement the recommendations of the Commission in its *Report on the Indexation of Fines: A Review of Developments* (LRC 65-2002) and *Report on Indexation of Fines* (LRC 37-1991).

Restorative Justice: Spent Convictions

In 2007, the Commission published a *Report on Spent Convictions* (LRC 84-2007). The Commission's *Consultation Paper on the Court Poor Box* (LRC CP 31-2004) had also pointed out that the Court Poor Box is often used to avoid entering a conviction, which under current law involves a permanent criminal record. The Commission noted that many other States operate 'spent conviction' laws, under which minor and old convictions could be removed from the record for some purposes, though they could be disclosed for other purposes, especially involving sensitive jobs. The Commission's *Report on Spent Convictions* recommends that such a scheme be introduced in this State for adult offenders (a scheme for under-18s already exists under the *Children Act 2001*). The Report recommends that some offences should be excluded from the proposed scheme (a) any offence triable by the Central Criminal Court, such as murder; (b) any sexual offence as defined in the *Sex Offenders Act 2001*; and (c) any other offence where a sentence of more than 6 months (including a suspended sentence) has been imposed in court. The Report recommends that the length of time a person must be conviction-free to qualify for the conviction to be regarded as "spent" is 7 years from the date of conviction where a custodial sentence of up to 6 months is imposed, and 5 years from the date of conviction where a non-custodial order is made, such as a fine or disqualification. The Report recommends that convictions, including spent convictions, would still be disclosed at a sentencing hearing and in some non-criminal cases such as those involving access to children and that it would also have to take account of the need for disclosure in the context of vetting for employment. The Commission notes that a *Spent Convictions Bill 2007*, a Private Member's Bill, was published in late 2007 and is largely based on the Commission's draft Bill attached to the Report.

LAND LAW AND CONVEYANCING

Codification of Land Law and Conveyancing Law

During 2007, the Commission continued to be involved in assisting the legislative discussions and debates on the *Land and Conveyancing Law Reform Bill 2006*, which is based on its draft Bill in the *Report on the Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74-2005). When enacted, the 2006 Bill will repeal almost 150 pre-1922 Acts in this area (commencing with *De Donis Conditionalibus of 1285*) and replace in a single legislative code many common law and statutory rules on land law, conveyancing and related areas.

eConveyancing Road Map

The substantive changes being made in the 2006 Bill form part of the Commission's eConveyancing Project, which it launched in 2003 with the Department of Justice, Equality and Law Reform under the *Second Programme of Law Reform 2000-2007*. This Joint Project involves a comprehensive review of the substantive law and also embraces the relevant procedural and administrative elements with a view to the eventual introduction of eConveyancing. The Commission oversaw (with the assistance of the Information Society Commission) a modelling of the current conveyancing process in Ireland, which led to the *Report on eConveyancing: Modelling of the Irish Conveyancing System* (LRC 79-2006). During 2007, the Commission began work on the next stage of this project.

Landlord and Tenant Law

In parallel with its project on land law and conveyancing law, the Commission initiated a major research project on Landlord and Tenant Law with a view to making recommendations for reform. In 2007, the Commission published its *Report on the Law of Landlord and Tenant* (LRC 85-2007). This Report draws together the material in the Commission's *Consultation Paper on Business Tenancies* (LRC CP 21-2003) and *Consultation Paper on the General Law of Landlord and Tenant* (LRC CP 28-2003). The Report contains a draft Landlord and Tenant Bill which consolidates the main law of landlord and tenant.

The general law of landlord and tenant describes the key legal features of the relationship between landlord and tenant, which is based on the contract between the parties. On this aspect, the draft Bill: clarifies the extent of the general obligations of the landlord and tenant, in particular where the parties fail to make specific provision in the lease or tenancy agreement; clarifies and modernises the rules on terminating a lease or tenancy (currently called "notice to quit") and deals with the rights to a new tenancy or the restrictions on those rights; proposes to circumscribe the current blanket exemptions of the State as landlord in business tenancies; and proposes the repeal and replacement of pre-1922 statutes concerning landlord and tenant law, notably "Deasy's Act," the *Landlord and Tenant Law Amendment Act Ireland 1860*. In terms of the discrete aspect of landlord and tenant law concerning business tenancies, the draft Bill replaces, with reform, the current legislation contained in the *Landlord and Tenant (Amendment) Acts 1980, 1984, 1989 and 1994*.

The law of landlord and tenant is a vast area and the Report deals with significant elements of this, but it does not deal with all aspects. An area not covered specifically is residential tenancies, which is already dealt with in the *Residential Tenancies Act 2004*. Nor does the Report deal specifically with agricultural tenancies (relatively rare in Ireland nowadays), although farming leases are covered to the extent that they involve a business. The Report does not deal with ground rents legislation, which the Commission considers is such a complex area that it deserves a separate study. The Commission notes that a constitutional challenge to the existing ground rents legislation is currently pending in the Supreme Court (*Shirley v A. O'Gorman & Co Ltd*).

Trust Law: Charitable Trusts

In April 2007, the Government published the Charities Bill 2007 which proposes to implement those parts of the Commission's *Report on Charitable Trusts and Legal Structures for Charities* (LRC 80-2006) dealing with the trustees of charities.

FAMILY LAW

Adoption Law

In 2007, the Commission published a *Consultation Paper on Aspects of Intercountry Adoption* (LRC CP 43-2007). This arose from a request to the Commission by the Attorney General, in accordance with the *Law Reform Commission Act 1975*, to consider and recommend reforms concerning the status and rights of a child resident outside the State who is the subject of a foreign adoption order made in favour of an Irish citizen or citizens; and the most effective manner of securing the performance of the constitutional and legal duties of the adoptive parents – and of the State – in respect of such a child. The request from the Attorney General came against the immediate background of *Attorney General v Dowse (2006)*, which concerned the adoption of an Indonesian child, which was recognised and registered in Ireland under the Adoption Act 1991, but which the adoptive parents later applied to have revoked. The Commission provisionally recommended that if a situation like the Dowse case arises in future, the Attorney General, in his role as guardian of the public interest, and in conjunction with the diplomatic and consular services of the Government, is the most appropriate officer of the State to protect the rights of the child subject to relevant principles of international law. The Commission also reiterated a previous recommendation made in 1998 that the 1993 *Hague Convention on the Protection of Children and Co-Operation in Respect of Intercountry Adoption* be ratified and incorporated into Irish law. The Commission welcomes the Government's proposed legislation to do so. The Commission published its Report on this area in 2008 and will return to discuss that Report in the Annual Report for 2008.

Cohabitants

The Government Legislative Programme of September 2007 states that the Government intends to publish a *Domestic Partnership Bill*, part of which would implement the recommendations in the Commission's *Report on the Rights and Duties of Cohabitants* (LRC 82-2006).

SPECIFIC AND VULNERABLE GROUPS

Vulnerable Adults, Capacity and Guardianship

The Government Legislative Programme of September 2007 states that the Government intends to publish a *Mental Capacity and Guardianship Bill* which would implement the recommendations in the Commission's *Report on Vulnerable Adults and the Law* (LRC 83-2006). This follows the debate in Seanad Éireann in 2007 on a Private Member's Bill, the *Mental Capacity and Guardianship Bill 2007*, which was based on the Commission's draft Bill in the 2006 Report. In response to the Private Member's Bill, the Government stated that it accepted the principles in the Bill and it was deemed to have passed Second Stage in the Seanad.

COMMERCIAL LAW AND THE LAW OF OBLIGATIONS

Civil Liability of Good Samaritans and Volunteers

In 2007, the Commission published a *Consultation Paper on the Civil Liability of Good Samaritans and Volunteers* (LRC CP 47-2007). This followed a request by the Attorney General to consider the duty of care and/or standard of care in the law of Good Samaritans and those providing voluntary services, for the benefit of society; and whether the law should be reformed to impose a duty to intervene to assist an injured person or a person at risk of such an injury. The Commission has provisionally recommended in the Consultation Paper that the law should not be amended to impose any general positive duty to intervene to rescue people in danger over and above what already exists in the law (for example under safety and health at work legislation). The Commission has provisionally recommended that, to deal with any anxiety on the part of those who decide to be Good Samaritans or who volunteer in society, and also to clarify the law, the relevant rules should be put in a statutory form. The proposed law would cover both Good Samaritans and also voluntary rescuers. The Commission has also provisionally recommended that the proposed legislation should provide for a full defence against a civil liability claim for Good Samaritans and voluntary rescuers, unless there is gross negligence, that is, negligence falling far below the standard to be expected in the circumstances. This gross negligence test is in line with similar laws in place in many countries, including the United States, Canada, Australia and New Zealand. The Commission intends to publish a Report on this issue in 2008.

Defamation

The *Defamation Bill 2006*, which proposes to implement, among other matters, the recommendations in the Commission's *Report on the Civil Law of Defamation* (LRC 38-1991) and *Report on the Crime of Libel* (LRC 41-1991), reached Committee Stage in Seanad Éireann in March 2007. The 2006 Bill was restored to the Order Paper of Seanad Éireann in the wake of the General Election in 2007.

COMMISSION PUBLICATIONS IN 2007

In 2007, the Commission published three Reports, five Consultation Papers and a Seminar Paper. These were:

- *Consultation Paper on Aspects of Intercountry Adoption Law* (LRC CP 43-2007) (March 2007) *
- *Seminar Paper on the Third Programme of Law Reform* (LRC SP 3-2007) (March 2007)
- *Consultation Paper on Involuntary Manslaughter* (LRC CP 44-2007) (April 2007)
- *Consultation Paper on Statute Law Restatement* (LRC CP 45-2007) (July 2007)

- *Consultation Paper on Reform and Consolidation of Courts Acts* (LRC CP 46-2007) (July 2007)
- *Report on Spent Convictions* (LRC 84-2007) (July 2007)
- *Consultation Paper on Civil Liability of 'Good Samaritans' and Volunteers* (LRC CP 47-2007) (November 2007) *
- *Report on the General Law of Landlord and Tenant* (LRC 85-2007) (November 2007)
- *Report on the Third Programme of Law Reform 2008-2014* (LRC 86-2007) (December 2007)

Publications which arose from requests by the Attorney General are marked by an asterisk (*)

CHAPTER 3

STATUTE LAW RESTATEMENT

INTRODUCTION

Most of the Irish Statute Book consists of legislation which has been amended or which amends other legislation. In order to establish the current state of the law, it is necessary to combine the original and amending legislation into one text. This is a time consuming and painstaking process, and costly for all users of legislation. The *Better Regulation* initiative identified the opportunity for rationalisation of the Statute Book, and the *Statute Law (Restatement) Act 2002* was enacted. Statute Law Restatement is a process whereby amending legislation is applied to and integrated with existing legislation, resulting in a unified text which can be read seamlessly. The Act of 2002 provides that restatements may be certified by the Attorney General as statements of the law contained in them to which they relate, and that they may be relied upon in court, subject to precedence given to the original legislation from which they are assembled if there should be any conflict.

Four restatements were certified by the Attorney General in 2003 and 2004 and are available on the website of the Attorney Generals Office.

OVERVIEW

The Commission was conferred with responsibility for Restatement in 2006 by Government decision. In July 2007 the Commission published a *Consultation Paper on Statute Law Restatement* (LRC CP 45-2007). The Paper set out the general background of the Statute Law Restatement project, the results of the Public Consultation exercise initiated by the Taoiseach in May 2006, the provisional list of Acts proposed to the Commission for restatement given priority weighting in accordance with certain criteria, the technological aspects of the project including the format of the electronic repository of legislation and the publication of restatements, and three versions of a draft restatement of the *Freedom of Information Act 1997* completed by the Commission. The Consultation Paper invited further submissions in relation to a range of issues raised in the Paper.

The Commission's research identified XML as the mark-up language of choice for holding and working with the electronic repository of legislation. In October 2007 the Commission entered into a public procurement process for the development of an XML authoring tool which would assist in preparing restatements, with features supporting electronic searching, editing, formatting, ordering, quality assurance checklists and audit trails. The Commission identified a preferred supplier, the UK firm TSO, in December 2007 and entered into an agreement in principle for the supply of an authoring tool similar to that already developed by TSO for the Statute Law Database project in the UK.

The Commission procured temporary accommodation in Mespil Road for the new Restatement and Legislation Directory teams from July 2007 to January 2008. It arranged for the fitting out of these offices and the installation of a link to the computer system in the main office in Shelbourne Road. A Project Manager for the Restatement project was recruited and completed the Restatement team.

After the consultation period advertised in the Consultation Paper ended on 30 September 2007, work commenced on the preparation of a Report based on the Consultation Paper, submissions received and further research. The team undertook restatement exercises using word processing software (as opposed to XML) to develop the methodology and document the process, and identified related groups of in-force legislation in preparation for developing a first programme of restatement.

CHAPTER 4

LEGISLATION DIRECTORY

INTRODUCTION

The Legislation Directory is a publicly available database. Its main purpose is to document modifications to primary legislation by subsequent legislation. The resource provides a vital source of information which aids legal professionals, legislators and lay persons to inform themselves as to the current position of the law.

The compilation and maintenance of the Legislation Directory forms part of the overall policy of “*Better Regulation*” discussed in the 2004 Government White Paper entitled *Regulating Better*. The White Paper was designed to:

“...contribute to improving national competitiveness and better Government by ensuring that new regulations – Acts and Statutory Instruments (Orders) – are more rigorously assessed in terms of their impacts, more accessible to all and better understood”

In this document, transparency and accountability were recognised as two of the six principles of better regulation to be promoted as part of the “*Better Regulation*” initiative. The maintenance of the Legislation Directory enhances the transparency of the Irish Statute Book. It makes the law more accessible to citizens and serves to enhance the accountability of the law.

OVERVIEW

Responsibility for the Legislation Directory (previously known as the Chronological Tables of Statutes) was transferred from the Office of the Attorney General to the Law Reform Commission in July 2007. The Office of the Attorney General completed the last of its maintenance functions on the Legislation Directory in January 2008 when it updated the Legislation Directory to 31 December 2005.

During 2007 The Commission recruited a Project Manager and two researchers to work on the new project.

The Commission made the decision in December 2007 to change the name of the “Chronological Tables of Statutes” to “Legislation Directory”. This decision was taken in order to better indicate to potential users the function of this resource as an electronically searchable guide to legislative effects, as well as marking out the new allocation of responsibility to the Commission which in due course will lead to new innovations in terms of presentation and functionality.

In 2007 the Commission began a review of the Legislation Directory along with preparations for the publication in 2008 of a Consultation Paper – *The Legislation Directory: Towards a Best Practice Model*.

The contract for the authoring tool concluded with TSO, and already referred to in the context of Statute Law Restatement, also included provision for a tool in respect of the authoring and maintenance of the Legislation Directory.

The Commission also conducted a series of meetings in relation to its work on the Legislation Directory. These included meetings with the Statutory Publications Office in Belfast, the Office of Public Sector Information (OPSI) in London and with Mr. Ed Hicks, a Canadian consultant, in the Office of the Attorney General, on legislative drafting technology and publication in Canada.

CHAPTER 5

THE COMPLETION OF THE SECOND PROGRAMME OF LAW REFORM 2000-2007

In this Chapter, the Commission describes the work completed under the *Second Programme of Law Reform 2000-2007* under the following headings, which are based on those in the Commission's *Second Programme* and also taking account of matters dealt with by the Commission in response to requests by the Attorney General:

1. The Legal System
2. The Law of Evidence
3. Administrative Law
4. Criminal Law
5. Revenue Law
6. Land Law and Conveyancing
7. Vulnerable Groups and the Law
8. Family Law
9. Commercial Law and the Law of Obligations

OVERVIEW OF THE COMPLETION OF THE SECOND PROGRAMME

The Commission is now in the early stages of its *Third Programme of Law Reform 2008-2014*. This section of the Chapter provides a high level overview of the completion by the Commission of the projects in the *Second Programme of Law Reform 2000-2007*. In addition, during 2000-2007, the Commission dealt with specific requests from the Attorney General under the 1975 Act: these additional Attorney General requests averaged one per year during that time. The following general comments identify the work of the Commission between 2000 and 2007.

- The *Second Programme of Law Reform 2000-2007* listed 30 areas of law for examination with a view to their reform (headings 31 and 32 refer more generally to private international law and a Miscellaneous Provisions Bill).
- In its *Annual Report 2004*, Chapter 5, the Commission published a mid-term review of the progress made on the completion of the Programme.
- Some of these 30 areas or headings contain a single topic (heading 19 refers to privity of contract and third party rights); some contain a number of different - usually related - topics (heading 12 refers to the defences of provocation, legitimate defence, duress and necessity); and others involve a very general area (heading 2 is entitled 'Limitation of actions').
- Under the *Second Programme of Law Reform 2000-2007* and in response to requests from the Attorney General between 2000 and 2007, the Commission published 32 Consultation Papers and 30 Reports listed in the Table below. Three Reports published in 2008 (Privity of Contract, Multi-Unit Developments and Trustee Law) involved the completion of *Second Programme* projects.

Table of Law Reform Commission Publications 2000-2008

YEAR	REPORTS	CONSULTATION PAPERS	TOTAL
2000	4	1	5
2001	1	1	2
2002	4	2	6
2003	2	9	11
2004	2	6	8
2005	6	4	10
2006	5	4	9
2007	3	5	8
2008	3	0	3
Total	30	32	62

- Of these 62 publications, 11 arose from requests to the Commission from the Attorney General.
- The 62 publications dealt with 30 separate areas of law.³
- A number of the projects actually undertaken by the Commission between 2000 and 2007 involved considerable expansion of specific subject areas identified in the *Second Programme* of Law Reform. For example, the Project on Reform and Modernising Land Law has resulted in two major initiatives. First, the Commission's *Report on Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74-2005) is a *Better Regulation* initiative, and involves the repeal of over 150 pre-1922 statutes on land law and conveyancing and replacing them with a consolidating and codifying law. This led to the publication of the Government's *Land Law and Conveyancing Law Reform Bill 2006* (passed by Seanad Éireann in November 2006), and the Commission continued to be involved in the working group engaged in the drafting and amendment of that Bill during the course of its progress in the Oireachtas. Second, the Commission's *Report on eConveyancing: Modelling of the Irish Conveyancing System* (LRC 79-2006) builds on the Commission's 2005 Report by setting out a detailed process model of the conveyancing transaction and setting out a roadmap for eventual eConveyancing. This project will be completed under the *Third Programme of Law Reform 2008-2014*.
- By the end of the period of the *Second Programme*, the Commission had begun or completed projects dealing with 27 of the 30 areas in the *Second Programme*.

³ The Report on the Reform and Modernisation of Land Law and Conveyancing Law (LRC 74 – 2005) has been counted as covering one area of law, although it incorporated previous work by the Commission, including 5 Reports and one Consultation Paper published between 2000 and 2004.

- Of the 30 areas identified in the *Second Programme*, 4 areas had been overtaken, whether in whole or in part, by developments since 2000, in the sense that other bodies had begun or completed comparable projects in those areas.

In summary, the Commission had begun or completed projects under all the headings in the *Second Programme* which had not been overtaken by developments since 2000. The Commission is therefore in a position to state that there has been substantial completion of the *Second Programme* within the timeframe to the end of 2007 which was set in 2000.⁴

The remainder of this Chapter contains a detailed analysis of the work completed by the Commission on each of the 30 topics in the *Second Programme of Law Reform 2000-2007* based on the seven major headings listed at the beginning of the Chapter.

1. THE LEGAL SYSTEM

Under this heading, the *Second Programme of Law Reform 2000-2007* identified five areas of law for examination with a view to their reform:

- Access to the law for the citizen and, in particular, the effectiveness of the promulgation and dissemination of statutes and statutory instruments.
- Limitation of actions.
- Class actions and representative actions taken in the public interest.
- Alternative dispute resolution.
- Statute Law: completion of the Commission's remit under its First Programme in the sphere of statutory drafting and interpretation.

1.1 General comment on completion of areas under Legal System heading

Under this heading the Commission began or completed projects under each of the five areas.

1.2 Detailed comments on completion of areas under Legal System heading

On **access to the law for the citizen**, the Commission completed its *Report on Statutory Drafting and Interpretation: Plain Language and the Law* (LRC 61-2000). In addition, in 2007, the Commission published a *Consultation Paper on Reform and Consolidation of Courts Acts* (LRC CP 46-2007) which includes a draft Consolidated Courts Bill, encompassing not only the legislation passed since 1924 but also relevant pre-1922 legislation. The project is being conducted by the Commission with the support of the Department of Justice, Equality and Law Reform and the Courts Service. This project has been incorporated into the *Third Programme of Law Reform*.

On **limitation of actions**, the Commission published a *Consultation Paper on the Law of Limitation of Actions arising from Non-Sexual Abuse Of Children* (LRC CP 16-2000) and a *Report on the Statutes of Limitations: Claims in Contract and Tort in Respect of Latent Damage (Other than Personal Injury)* (LRC 64-2001). These arose from requests to the Commission by the Attorney General. In 2007, the Commission began a general review of the law on limitations, which has been incorporated into the *Third Programme of Law Reform*.

⁴ Some projects will be completed from 2008 onwards and these were, therefore, carried over for completion under the *Third Programme of Law Reform 2008-2014*.

Under the heading **class actions and representative actions** taken in the public interest, the Commission published a Report on *Multi-Party Litigation* (LRC 76 – 2005), following from its *Consultation Paper on Multi-Party Litigation* (LRC CP 25 – 2003).

As to **alternative dispute resolution**, the Commission began work on this project in October 2006 and will publish a Consultation Paper on the issue in the first half of 2008. This has been incorporated into the *Third Programme of Law Reform*.

On **completion of the Commission's remit under its First Programme in the sphere of statutory drafting and interpretation**, the Commission published its *Report on Statutory Drafting and Interpretation: Plain Language and the Law* (LRC 61-2000).

2. THE LAW OF EVIDENCE

Under this heading, the *Second Programme* identified two areas of law for examination with a view to their reform:

- Forensic evidence.
- Other aspects of the law of evidence in civil and criminal cases.

2.1 General comment on completion of areas under Evidence heading

Under this heading the Commission began or completed projects under both areas.

2.2 Detailed comments on completion of areas under Evidence heading

Under **forensic evidence**, the Commission published a *Report on the Establishment of a DNA Database* (LRC 78 – 2005), following from its *Consultation Paper on the Establishment of a DNA Database* (LRC CP 29-2004). This arose from a request to the Commission by the Attorney General. The Commission has also incorporated this area into the *Third Programme of Law Reform*.

As to **other aspects of the law of evidence in civil and criminal cases**, the Commission began a project on the law of expert evidence in October 2006 and will publish a Consultation Paper on the issue in the first half of 2008. Specific aspects of the law of evidence have also been incorporated into the *Third Programme of Law Reform*.

3. ADMINISTRATIVE LAW

Under this heading, the *Second Programme* identified two areas of law for examination with a view to their reform:

- Tribunals of inquiry.
- Appeals from administrative decisions including judicial review.

3.1 General comment on completion of areas under Administrative Law heading

Under this heading the Commission has completed projects under both areas.

3.2 Detailed comments on completion of areas under Administrative Law heading

As to **tribunals of inquiry**, the Commission published a *Report on Public Inquiries Including Tribunals of Inquiry* (LRC 73-2005), following from its *Consultation Paper on Public Inquiries Including Tribunals of Inquiry* (LRC CP 22-2003).

As to **appeals from administrative decisions including judicial review**, the Commission published a *Report on Judicial Review Procedure* (LRC 71-2004), following from its *Consultation Paper on Judicial Review Procedure* (LRC CP 20-2003).

4. CRIMINAL LAW

Under this heading, the *Second Programme* identified seven areas of law for examination with a view to their reform:

- The law of homicide.
- Defences including provocation, legitimate defence, duress and necessity.
- Inchoate offences.
- Procedure in criminal cases.
- Restorative Justice.
- Corporate criminal liability.
- Penalties for minor offences.

4.1 General comment on completion of areas under Criminal Law heading

Under this heading the Commission began or completed projects under all seven areas.

4.2 Detailed comments on completion of areas under Criminal Law heading

As to the **law of homicide**, the Commission published a *Consultation Paper on Homicide: The Mental Element in Murder* (LRC CP 17 - 2001) and a *Consultation Paper on Homicide: Involuntary Manslaughter* (LRC CP 44-2007). This project was incorporated into the *Third Programme of Law Reform* and, in 2008, the Commission published a *Report on Homicide: Murder and Involuntary Manslaughter* (LRC 87-2008).

As to **defences including provocation, legitimate defence, duress and necessity**, the Commission published a *Consultation Paper on Homicide: The Plea of Provocation* (LRC CP 27 - 2003), a *Consultation Paper on Duress and Necessity* (LRC CP 39 - 2006) and a *Consultation Paper on Legitimate Defence* (LRC CP 41 - 2006). The Commission will publish a Report on these defences in 2008 and this has been incorporated into the *Third Programme of Law Reform*.

As to **inchoate offences**, the Commission published a *Consultation Paper on Inchoate Offences* (LRC CP 48-2008) in 2008 and this area has been incorporated into the *Third Programme of Law Reform*.

In connection with **procedure in criminal cases**, the Commission published a *Report on Prosecution Appeals and Pre-Trial Hearings* (LRC 81-2006), which incorporated the material in its *Consultation Paper on Prosecution Appeals in Cases brought on Indictment* (LRC CP 19-2002) and *Consultation Paper on Prosecution Appeals from Unduly Lenient Sentences in the District Court* (LRC CP 33-2004), the latter arising from a request from the Attorney General.

As to **restorative justice**, the Commission published a *Report on the Court Poor Box: Probation of Offenders* (LRC 75 – 2005), following from its *Consultation Paper on the Court Poor Box* (LRC CP 31-2004). In light of the establishment of a Restorative Justice Commission by the Department of Justice, Equality and Law Reform (based on its Restorative Justice Services pilot projects), the Commission concluded that it would not be appropriate to undertake further research in this area under the *Second Programme* but has included this matter in the *Third Programme of Law Reform*.

As to **corporate criminal liability**, the Commission published a *Report on Corporate Killing* (LRC 77-2005), following from its *Consultation Paper on Corporate Killing* (LRC CP 26-2003).

Under **penalties for minor offences**, the Commission published a *Report on Penalties for Minor Offences* (LRC 69-2003), following from its *Consultation Paper on Penalties for Minor Offences* (LRC CP 18-2002). The Commission also published a *Report on the Indexation of Fines: A Review of Developments* (LRC 65-2002).

5. REVENUE LAW

5.1 Comment on Revenue Law heading

Arising from a request from the Attorney General, the Commission published a *Report on A Fiscal Prosecutor and A Revenue Court* (LRC 72 – 2004), following from its *Consultation Paper on A Fiscal Prosecutor and A Revenue Court* (LRC CP 24 – 2003).

6. LAND LAW AND CONVEYANCING

Under the heading Real and Personal Property, the *Second Programme* identified four areas of law for examination with a view to their reform:

- The law of trusts including the law of charities.
- Succession law.
- The law relating to condominiums.
- The Commission will continue its general review of land and conveyancing law with the assistance of its standing specialist Working Group.

6.1 General comment on completion of areas under Land Law and Conveyancing heading

Under this heading the Commission began or completed projects under three of these four areas. Of these, the area of succession law had been overtaken by events since 2000 and the Commission therefore decided not to begin a project under this heading.

6.2 Detailed comments on completion of areas under Land Law and Conveyancing heading

As to **the law of trusts including the law of charities**, the Commission published a *Report on Charitable Trusts and Legal Structures for Charities* (LRC 80-2006), which incorporated its *Consultation Paper on Charitable Trust Law: General Proposals* (LRC CP 36-2005) and *Consultation Paper on Legal Structures for Charities* (LRC CP 38-2005). The Commission also published a

Consultation Paper on Trust Law: General Proposals (LRC CP 35-2005) and will publish a Report on this in 2008.

Under succession law, the Commission had intended to examine private international law aspects of succession law, but decided that it would not be appropriate to proceed with this project in light of the possible adoption of an EU Regulation in this area ('Brussels IV').

As to the **law relating to condominiums**, the Commission published a Report on Multi-Unit Developments (LRC 90-2008), following from its Consultation Paper on Multi-Unit Developments (LRC CP 42-2006).

In the context of the commitment to **continue its general review of land and conveyancing law with the assistance of its standing specialist Working Group:**

- The Commission published a *Report on the Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74 – 2005), following from its *Consultation Paper on the Reform and Modernisation of Land Law and Conveyancing Law* (LRC CP 34-2004). This was done as part of a Joint Project with the Department of Justice, Equality and Law Reform. Following its publication, and with the agreement of the Attorney General, the Minister for Justice Equality and Law Reform requested the Commission to continue with further work on the drafting of the Government's Land Law and Conveyancing Law Reform Bill 2006, and the Commission was happy to agreed to this innovative approach. This has included joint work on all amendments to the Bill in its passage through the Oireachtas.
- The 2005 Report built on and incorporated previous work by the Commission in this area, including a *Report on the Rule against Perpetuities and Cognate Rules* (LRC 62-2000), a *Report on the Variation of Trusts* (LRC 63-2000), a *Report on the Acquisition of Easements and Profits à Prendre by Prescription* (LRC 66-2002), a *Report on Title by Adverse Possession of Land* (LRC 67-2002), a *Report on Land Law and Conveyancing Law: (7) Positive Covenants over Freehold Land and other Proposals* (LRC 70-2003) and a *Consultation Paper on Judgment Mortgages* (LRC CP 30-2004).
- The Commission also engaged in associated projects on the **law of landlord and tenant**, which resulted in the publication of a *Report on Landlord and Tenant Law* (LRC 85- 2007), following from its *Consultation Paper on Business Tenancies* (LRC CP 21-2003) and *Consultation Paper on General Law of Landlord and Tenant* (LRC CP 28-2003).

7. VULNERABLE GROUPS AND THE LAW

Under this heading, the *Second Programme* identified two areas of law for examination with a view to their reform:

- Law and the elderly, including the legal protection of older persons transferring assets and 'advance care directives.'
- The law affecting persons with physical, mental or learning disabilities, including issues of capacity, guardianship and the right to marry.

7.1 General comment on completion of areas under Vulnerable Groups and the Lawheading

Under this heading the Commission completed projects under both areas.

7.2 Detailed comments on completion of areas under Vulnerable Groups and the Lawheading

As to **law and the elderly, including the legal protection of older persons transferring assets and 'advance care directives'** the Commission published a *Report on Vulnerable Adults and the Law* (LRC 83 – 2006), following from its *Consultation Paper on Law and the Elderly* (LRC CP 23 – 2003). The Report also incorporated the material in the *Consultation Paper on Vulnerable Adults and the Law: Capacity* (LRC CP 37 – 2005), dealing with the second area under this heading, below.

Under **the law affecting persons with physical, mental or learning disabilities, including issues of capacity, guardianship and the right to marry**, the Commission published a *Report on Vulnerable Adults and the Law* (LRC 83 – 2006), following from its *Consultation Paper on Vulnerable Adults and the Law: Capacity* (LRC CP 37 – 2005). The Report also incorporated the material in the *Consultation Paper on Law and the Elderly* (LRC CP 23 – 2003), dealing with the first area under this heading, above.

8. FAMILY LAW

Under this heading, the *Second Programme* identified two areas of law for examination with a view to their reform:

- The law of adoption - a general review.
- Rights and duties of cohabitants.

8.1 General comment on completion of areas under Family Law heading

Under this heading the Commission completed the project on cohabitants. The adoption law topic was superseded by developments since 2000.

8.2 Detailed comments on completion of areas under Family Law heading

As to the law of adoption - a general review, this was superseded by a general review of adoption law by the Department of Health and Children, resulting in the publication in 2005 of *Adoption Legislation: 2003 Consultation and Proposals for Change*, which is to lead to the *Adoption Bill 2008*. In this context, the Commission did not consider it appropriate to engage in a general review of the law.

In response to a specific request from the Attorney General, in 2008 the Commission published a *Report on Aspects of Intercountry Adoption* (LRC 89-2008), which followed its *Consultation Paper on Aspects of Intercountry Adoption* (LRC CP 43-2007).

In connection with **rights and duties of cohabitants**, the Commission published a *Report on the Rights and Duties of Cohabitants* (LRC 82 – 2006), following from its *Consultation Paper on the Rights and Duties of Cohabitees* (LRC CP 32-2004).

9. COMMERCIAL LAW AND THE LAW OF OBLIGATIONS

Under four headings, the Law of Obligations, Commercial Law, Civil Rights Law and Law and the Information Society, the *Second Programme* identified 6 areas of law for examination with a view to their reform:

- The law of tort: aspects of the law of compensation for personal injuries.
- The law of contract: privity of contract and the rights of third parties.
- Mindful of the Government's proposal to establish a statutory Company Law Review Group, current issues arising in the area of commercial law will, as appropriate, be reviewed and examined.
- Exceptions to the *nemo dat quod non habet* principle on transfer of title to goods.
- The law of privacy: (i) privacy and the law of confidentiality; (ii) privacy in the context of the criminal justice system: longevity of criminal records and the expunging of certain offences from the record; (iii) privacy in specific institutional contexts: the workplace; the healthcare system; prisons.
- Electronic commerce and the Internet, where appropriate having regard to activities undertaken or to be undertaken by Government Departments and in particular: (i) privacy on the internet and encryption; (ii) liability of service providers.

9.1 General comment on completion of areas under Commercial Law and Law of Obligations heading

Under this heading the Commission began or completed projects under 5 of these 6 areas. In connection with the *nemo dat quod non habet* principle on transfer of title to goods, this area was overtaken by developments since 2000, discussed below.

9.2 Detailed comments on completion of areas under Commercial Law and Law of Obligations heading

As to the **law of tort: aspects of the law of compensation for personal injuries**, the Commission published a *Report on Aggravated, Exemplary and Restitutionary Damages* (LRC 60-2000). The Commission also published a *Report on Section 2 of the Civil Liability (Amendment) Act 1964: The Deductibility of Collateral Benefits from Awards of Damages* (LRC 68-2002), which arose from a request to the Commission by the Attorney General. In 2007, the Commission published a *Consultation Paper on the Civil Liability of 'Good Samaritans' and Volunteers* (LRC CP 47-2007), which also arose from a request from the Attorney General. The Commission will publish a Report on this matter in 2008.

As to the **law of contract: privity of contract and the rights of third parties**, the Commission published a *Report on Privity of Contract and Third Party Rights* (LRC 88-2008), which followed its *Consultation Paper on Privity of Contract: Third Party Rights* (LRC CP 40-2006).

As to the commitment to **review and examine current issues arising in the area of commercial law** (mindful of the Government's proposal to establish a statutory Company Law Review Group), the Commission notes that the Company Law Review Group (CLRG) was established under the *Company Law Enforcement Act 2001* and published a draft Scheme of a *Companies Consolidation Bill in 2007*. The Commission made a number of submissions to the CLRG, for example, on the

appropriate legal structure for charities and owner management companies (see the Land Law heading above). The Commission also notes the establishment of the National Consumer Agency in this context: see below.

In connection with **exceptions to the *nemo dat quod non habet* principle on transfer of title to goods**, the Commission notes that the *Criminal Justice (Theft and Fraud Offences) Act 2001* has already dealt with one aspect of this, and that a general review of sale of goods law has been proposed by the Department of Enterprise, Trade and Employment in the context of the establishment in 2007 of the National Consumer Agency. The Commission therefore concluded that further work in this area would not be appropriate.

As to **electronic commerce and the Internet**, the Commission published a *Report on eConveyancing: Modelling of the Irish Conveyancing System* (LRC 79-2006), and is engaged in the next stage of this project – the development of a road map for eConveyancing in Ireland – in conjunction with the Department of Justice, Equality and Law Reform. This has been incorporated into the *Third Programme of Law Reform*.

Under **the law of privacy (including privacy in the context of the criminal justice system: longevity of criminal records and the expunging of certain offences from the record)**, in 2007 the Commission published a *Report on Spent Convictions* (LRC 84-2007), following from the discussion of this in the *Consultation Paper on the Court Poor Box* (LRC CP 31-2004). The law of privacy has also been incorporated into the *Third Programme of Law Reform*.

CHAPTER 6

ADMINISTRATION

INTRODUCTION

In this Chapter, the Commission outlines the administrative aspects of its work. It focuses on the essential administrative arrangements and supports which ensure that the Commission's research programme can be carried out in practice. The current structure of the Commission is set out in Appendix E.

COMMISSION

The Commission consists of a President and four Commissioners. The Commissioners are appointed by the Government for a term of up to five years, and their appointment may be renewed. The current Commission consists of two full-time Commissioners and three part-time Commissioners. The President of the Commission, Mrs Justice Catherine McGuinness, former judge of the Supreme Court, is one of the fulltime Commissioners. The other full-time Commissioner, Patricia Rickard-Clarke, is a solicitor who, until her appointment, had been a partner with McCann FitzGerald, Solicitors. The three part-time Commissioners are: Professor Finbarr McAuley, Jean Monnet Professor of Criminal Law, University College Dublin; Marian Shanley, Solicitor, member of the Commission to Inquire into Child Sexual Abuse; and Donal O'Donnell, Senior Counsel.

The Commission decides on the content of the programme for law reform and determines the contents of the research output of the Commission (contained in Consultation Papers and Reports). The Commission also oversees the planning, management and implementation of the Restatement and Legislation Directory projects. The Commission makes all key administrative and financial decisions. The Commission meets formally as a body at least once a month. In addition, its members meet frequently and are in ongoing communication and consultation with each other and with Commission staff.

MANAGEMENT COMMITTEE

The Commission has an internal Management Committee which supervises the ongoing review of administrative arrangements. The Committee consists of the President of the Commission, the full time Commissioner, the Secretary/Head of Administration, the Director of Research, the Restatement Project Manager and the Legislation Directory Project Manager. The Management Committee meets on a regular basis to monitor and review the general administration of the Commission. One of the principle responsibilities of the Committee is to monitor progress on achieving the targets set out in the Annual Business Plan.

ADMINISTRATIVE STAFF

The Commission's administrative staff consists of a Secretary/Head of Administration and a team of nine staff. During 2007 the Department of Finance in recognition of the increasing workload of the Commission sanctioned an additional Higher Executive Officer post, three Executive Officer posts and one Clerical Officer post. These posts have been assigned to a number of areas

including the provision of administrative support for the Research Team, the Restatement project and the Legislation Directory project. The Finance Unit and the Change Management Unit have also benefitted from the assignment of additional resources.

The Administration Unit has overall responsibility for carrying out the day-to-day administrative tasks within the Commission. In particular the Unit is responsible for:

- Managing, processing and reporting on all financial transactions in the Commission. The latter includes managing the Commission's payroll function
- Maintaining the Commission's buildings and IT infrastructure
- Managing the Commission's human resource function
- Providing administrative support for the research function
- Carrying out a variety of administrative functions in relation to seminars, annual conferences, launches of publications and the printing of Reports and Consultation Papers

These functions are carried into effect by the Secretary/Head of Administration and other members of the administrative unit, acting under the direction of the Commission.

The Grant-In-Aid for 2007 as approved by the Minister for Finance on the recommendation of the Attorney General amounted to €3,567,200. The Commission's expenditure in 2007 amounted to €2,889,769. The Commission also received other payments amounting to €22,431 in 2007. These latter payments represent income from the sale of publications and funds received from the Government's Change Management Fund.

The increased responsibilities associated with the Restatement and Legislation Directory projects and the consequent increase in staff numbers during 2007 resulted in a need for temporary accommodation. Temporary accommodation was obtained on Mespil Road and staff were located there until January 2008 when accommodation became available in the Commission headquarters at Shelbourne Road. The Commission's IT Network was extended to take account of the increased number of users. The capacity and capability of the Network was also enhanced to take account of the Restatement and Legislation Directory projects. This work will continue into 2008.

The Administration Unit provides support for the research function within the Commission. Typically this involves arranging for the printing and distribution of the Commission's publications and planning and organising the various tasks associated with the launch of the Commission's publications. In 2007 there were nine publications which are detailed in Chapter 2 of this Report. The Administration Unit was also involved in the preparation of launches, seminars and the Annual Conference,

The Administration Unit assisted and participated in developing the functionality of the Commission's publications template, and the introduction of a new corporate symbol/identity. The new publication template will be introduced in 2008. The Commission's documentation will reflect the new design in 2008.

RESEARCH AND LIBRARY STAFF

The primary role of the Commission's research staff is to develop draft texts for consideration by the Commission to enable it carry through its Rolling Work Programme. This includes preparing an initial Scoping Paper for a project, which sets out the parameters of the areas under discussion. In the later stages of a project this involves the development of a draft Consultation Paper or Report and, where the Commission deems it appropriate, a Seminar Paper. The Director of Research manages a team of ten Researchers in carrying out these tasks.

Research staff are also assigned to work on the Restatement and Legislation Directory projects. Each of the two projects is managed by a Project Manager who works with a number of Researchers.

Research – Law Reform

The research team is headed by the Director of Research, to whom the research staff report directly. The present Director of Research is Mr Raymond Byrne, formerly of the School of Law and Government, Dublin City University. During 2007, the Commission had authority to employ 10 full-time Legal Researchers to enable it to carry out its Rolling Work Programme. These ten Researchers work with the Director of Research to deliver on the individual projects contained in the *Third Programme of Law Reform 2008-2014*. The Research Team may also be assigned to work on references from the Attorney General. Researchers are usually engaged on one year contracts, which may be renewed. From time to time, the Commission also consults with external experts for particular projects. The Commission may also set up Working Groups, which meet on a regular basis during the lifetime of a particular project. Ad hoc groups, which meet occasionally, have also been set up to consult on particular topics (see Appendix B).

The function of the Director of Research is to lead and manage the research teams, and generally advise and assist the researchers with a view to assuring an appropriate output and quality of work. This includes carrying out general background research, preparing issues papers, preparing draft documents and draft Consultation Papers and Reports for consideration by the Commission. The Director conducts a number of seminars during the year for the researchers on areas of particular interest and the researchers regularly meet as a group to exchange views on the areas on which they are conducting research. Researchers also attend conferences on relevant areas of interest, including seminars organised by the Office of the Attorney General. Legal Researchers are also encouraged to publish in relevant law journals during their time with the Commission including articles dealing with areas on which the researcher is actively involved.

The Director of Research and the legal support staff also produce a monthly bulletin which provides the Commissioners with an update on the progress made in relation to the various projects contained in the *Third Programme of Law Reform*. The bulletin also provides updates in relation to any references from the Attorney General which have not been completed.

Research – Restatement project

The Restatement Team is headed by the Project Manager, Ms Alma Clissmann, Solicitor. The Project Manager leads a team of three Researchers. The Project Manager has been active in specifying and procuring an authoring system to support the Restatement process, and in promoting the upgrading of the electronic repository of legislation to enable its use by the authoring system. She manages a team of three Researchers who are employed on the same terms and conditions as the Researchers assigned to the Research Team. In the early stages of the Restatement undertaking, the Researchers focused on preparation of the Consultation Paper (LRC CP 45-2007) and the Report (LRC 91-2008), the latter directed and edited by the Project Manager. Concurrently the Restatement Team undertook pilot restatements of legislation including the *Freedom of Information Act 1997*, the Data Protection Acts 1988 and 2003 and the *Prevention of Corruption Acts 1889 to 2005*. The Restatement Team also contributed to the specification and testing of the authoring system and to the development of Restatement standards and conventions.

Research – Legislation Directory

The Legislation Directory Team was headed up in 2007 by the Project Manager, Ms Deirdre Ahern, Solicitor. The Project Manager leads a team of two Researchers. In 2007, the researchers assigned to this project analysed the content and format of the Legislation Directory and worked towards the publication of a Consultation Paper. Into the future, the Researchers will work on the compilation of updates to the Legislation Directory and the preparation of a Report on this area.

Library

The primary role of the Commission's library, which is an indispensable tool of the Commission, is to anticipate and respond to the needs of the Commissioners and the Commission's research teams for library and information services in partnership with other libraries and information providers. The library is staffed by a Legal Information Manager/Librarian and a Cataloguer/Library Assistant. Assistance is also provided, when required, by members of the Administrative Unit.

The Legal Information Manager/Librarian works in close consultation with the the Research Team and the Restatement and Legislation Directory teams to provide timely access to new hard-copy and electronic resources.

An internal bulletin of current legal developments, focusing on new library acquisitions, is circulated to all staff on a weekly basis. The Legal Information Manager/Librarian is assisted in his role by a full time Cataloguer.

FINANCE

Income and expenditure

The Grant-In-Aid approved by the Minister for Finance on the recommendation of the Attorney General represents the majority of the Commission's income. In 2007, the Grant-In-Aid was

€3,567,000. In 2007 the Commission also received €14,337 from the Governments Change Management Fund. A sum of €7,094 was received from the sale of publications.

Expenditure in 2007 amounted to €2,889,000. The expenditure covered salaries and superannuation of Commissioners and staff, rent and office expenses, overheads, maintenance of the Commission's library, maintenance of the Commission's IT network and printing and distribution costs. The Commission did not incur any late interest penalties during 2007 under the *Prompt Payment of Accounts Act 1997*.

GOVERNANCE ARRANGEMENTS

Overall responsibility and accountability for Commission activities rests with the Commission. The Commission is assisted in that role by the Management Committee, the Administration Unit, the Research teams and the Library staff.

The Commission's Strategy Statement, referred to previously, sets out the Commission's objectives over the lifetime of the Statement. The Strategy Statement objectives are matched at an organisation level by a series of targets which are set out in the Commission's Annual Business Plan. The Business Plan contains quarterly targets under each strategic objective. Progress made in achieving these targets is monitored on a regular basis by the Management Committee with a formal review each quarter.

Performance of individual staff members is managed through a performance management system for both managers and staff. Civil servants are subject to the Performance Management Development System. For all other staff the Commission has its own performance management system which is overseen by Commissioner Rickard-Clarke.

Under the present accounting procedure, monies are drawn down from the Office of the Attorney General on a monthly basis by way of a Grant-In-Aid. The Commission also derives some income from the sale of publications. Commission internal financial controls and expenditure are monitored by the Comptroller and Auditor General on an annual basis. The Commission is also subject to audit by the Office of the Attorney General's Internal Audit Unit.

The Commission maintains a risk management register which is updated on a regular basis. The Commission reviews the risk register as part of its overall review of control procedures within the Commission.

APPENDIX A

THIRD PROGRAMME OF LAW REFORM 2008-2014

PROJECTS INCLUDED IN THE THIRD PROGRAMME OF LAW REFORM

A. Legal System and Public Law

1. The Law Relating to Juries
2. Debt Enforcement and Securing Interests over Personal Property
3. Bench Warrants and Search Warrants
4. Limitation of Actions
5. Alternative Dispute Resolution
6. Consolidation and Reform of the Courts Acts

B. Law of Evidence

7. Documentary Evidence and Technology
8. Hearsay in Civil and Criminal Cases
9. Advance Disclosure of Defence Cases
10. Forensic Evidence
11. Expert Evidence

C. Criminal Law

12. The Law of Sexual Offences
13. The Victim and the Criminal Justice System
14. Vulnerable Persons and the Criminal Justice System
15. Restorative Justice
16. Having regard to the establishment of the Criminal Law Codification Advisory Committee, examination of issues arising in the general part of the criminal law
17. The Law of Homicide
18. Defences in the Criminal Law
19. Inchoate Offences

D. Land Law and Property

20. Further Statutory Codification of Land Law
21. Trust Law and the Settled Land Acts Project
22. eConveyancing Road Map

E. Family Law

23. Legal Aspects of Family Relationships
24. Domestic Violence
25. The Law of Annulment in the 21st Century

F. Specific Groups in a Changing Society

- 26. Children and the Law
- 27. Gender Recognition
- 28. Legal Aspects of New and Emerging Members of Irish Society
(Reunification Procedures and Citizenship)
- 29. Legal Aspects of Carers

G. Technology, Innovation and the Individual

- 30. Legal Aspects of Bioethics
- 31. Legal Aspects of Assisted Human Reproduction
- 32. Privacy

H. Commercial Law and the Law of Obligations

- 33. Frustration of Contracts
- 34. Insurance Contracts
- 35. Damages in Contract and Tort Law

I. International Law

- 36. The Status of International Law in Domestic Irish Law
- 37. Civil Law Aspects of the Law of Missing Persons

APPENDIX B

WORKING GROUPS

As noted in Chapter 1, under the *Law Reform Commission Act 1975*, the Commission may set up Working Groups to examine particular areas of the law. In addition to Working Groups, which meet on a regular basis during the lifetime of a particular project, the Commission has also set up *ad hoc* groups (which meet occasionally) to consult with on particular topics.

WORKING GROUP ON LANDLORD AND TENANT LAW

In 2001, the Commission initiated a major research project on Landlord and Tenant Law with a view to making recommendations for reform that would include proposals for consolidation of the existing landlord and tenant legislation, including a draft Bill. Professor John Wylie is leading the projects undertaken by this Working Group. The members of the Working Group consist of experienced practitioners and representatives of the Department of Justice, Equality and Law Reform and the Department of the Environment and Local Government.

Members of Working Group on Landlord and Tenant Law

Mrs Justice Catherine McGuinness, President

Commissioner Patricia T Rickard-Clarke (Convenor)

Professor John C W Wylie (Leader of the Project)

Mr John F Buckley, Solicitor and former Circuit Court judge

Ms Ruth Cannon, Barrister-at-Law

Mr James Dwyer, SC

Mr Patrick Fagan, Solicitor

Mr Ernest B Farrell, Solicitor

Mr Colin Keane, Solicitor

Mr Michael McGrath, SC

Mr Gavin Ralston, SC

Ms Regina Terry, Department of Justice Equality and Law Reform

Mr John Walsh, Solicitor

Áine Clancy replaced Aoife McCarthy as Secretary/Researcher to the Group in 2007.

AD HOC GROUP ON APARTMENT COMPLEXES AND MULTI-UNIT DEVELOPMENTS

During the year the Commission set up an Ad Hoc Group to assist its deliberation on the subject of Apartment Complexes and Multi Unit Developments.

Members of Ad Hoc Group on Apartment Complexes and Multi Unit Developments

Mrs Justice Catherine McGuinness, President

Commissioner Patricia T Rickard-Clarke

Professor John C W Wylie (Leader of the Project)

Ms Sheena M Beale, Solicitor

Ms Vivienne Bradley, Solicitor

Ms Marjorie Murphy, Solicitor

Mr Jerry Sheehan, Solicitor

Áine Clancy replaced Aoife McCarthy as Secretary/Researcher to the Group in 2007.

WORKING GROUP ON CONSOLIDATION AND REFORM OF THE COURTS ACTS

In November 2005, the Commission established a Working Group on the Consolidation and Reform of the Courts Acts. This is a joint project involving the Commission, the Department of Justice, Equality and Law Reform and the Courts Service.

Members of Working Group on Consolidation and Reform of the Courts Acts

Mrs Justice Catherine McGuinness, President

Commissioner Patricia T Rickard-Clarke

Mr Raymond Byrne, Director of Research

Mr Robert Browne, Assistant Secretary General,
Department of Justice, Equality and Law Reform

Mr John Cronin, Principal Officer, Courts Policy Division,
Department of Justice, Equality and Law Reform

Professor Hilary Delany, School of Law, Trinity College Dublin

Mr Justice Hugh Geoghegan, judge of the Supreme Court

Mr Benedict Ó Floinn, Barrister-at-Law

Mr Noel Rubotham, Director of Reform and Development, Courts Service

Claire Bruton acted as Secretary/Researcher to the Group in 2007.

APPENDIX C

CONFERENCES AND VISITS

As discussed in Chapter 1, Commissioners regularly attend and participate in public seminars and conferences concerning areas of research connected with the *Second Programme* and the Commission's Rolling Programme of Work. Contacts with law reform bodies are also maintained through attendance at relevant seminars and through hosting visits from other law reform bodies. The following is a selection of conferences attended - and other external discussions conducted - by Commissioners and researchers during 2007. In many instances, these involved delivering papers concerning the Commission's work.

- 18 January** (London) Visit to Office of Public Sector Information (OPSI) to discuss the compilation of chronological tables of legislative effects, and the experience of OPSI with the authoring of, proofing and publication of secondary legislation.
- 25 January** (Dublin) Law Reform Commission Conference on Multi Unit Developments.
- 27 January** (Dublin) New Rules for the Irish – The Immigration, Residence and Protection Bill.
- 7 February** (Dublin) Law Society of Ireland (CPD Programme) Acting for the Vulnerable Client. (Presentation given by full-time Commissioner.)
- 27 February** (Dublin) Dublin Solicitors Bar Association Seminar on the Land and Conveyancing Law Reform Bill 2006. (Presentation given by full-time Commissioner.)
- 26 March** (Galway UCG) Law Reform Commission Third Programme Seminar.
- 3-5 April** (Kent) Socio-Legal Studies Association (SLSA) Conference 2007. (Paper presented by David Prendergast, Researcher on "Inchoate Liability and Glorifying Terrorism".)
- 30 April** (Cork) Law Reform Commission Third Programme Seminar.
- 8 May** (Dublin) Dublin Solicitors Bar Association Seminar on Multi-Unit Developments. (Presentation given by full-time Commissioner.)
- 18 May** (Dublin) STEP Annual Conference on Trust Law: The Reform Agenda. (Presentation given by full-time Commissioner.)
- 13 June** (Dublin) *Third Programme of Law Reform* Presentation. (Given at Ballymun Community Law Centre).

- 28 June** (Padua, Italy) International Academy of Law and Mental Health. Congress on Mental Health. (Presentation given by full-time Commissioner)
- 2-3 July** (London) Current Legal Issues Colloquium: Law and Bioethics.
- 10-13 September** (Durham). Society of Legal Scholars Annual Conference 2007.
- 5-6 September** (Dublin). Annual North-South Criminology Conference.
- 26-28 September** (Dublin) Registering the World Conference organised by the Property Registration Authority of Ireland.
- 16 November** (Belfast) Meeting with the Statutory Publications Office to discuss the operation of the Northern Ireland Chronological Tables of the Statutes.
- 23 November** (Tralee). Violence Against Women: The Crime, Contexts and Concerns.
- 12 December** (Armagh) Hay Consultants North South Alliance Public Sector Leadership Challenge.
- 17 December** (Dublin) Meeting of the eLegislation Working Group.
- 20 December** (Dublin) Department of Justice Equality and Law Reform eConveyancing Briefing to Government Departments. (Presentation given by full-time Commissioner).

APPENDIX D

LIST OF LAW REFORM COMMISSION PUBLICATIONS

- First Programme for Examination of Certain Branches of the Law with a View to their Reform** *(December 1976) (PrI 5984)*
- Working Paper No 1-1977, The Law Relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises** *(June 1977)*
- Working Paper No 2-1977, The Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects** *(November 1977)*
- Working Paper No 3-1977, Civil Liability for Animals** *(November 1977)*
- First (Annual) Report** *(1977) (PrI 6961)*
- Working Paper No 4-1978, The Law Relating to Breach of Promise of Marriage** *(November 1978)*
- Working Paper No 5-1978, The Law Relating to Criminal Conversation and the Enticement and Harboursing of a Spouse** *(December 1978)*
- Working Paper No 6-1979, The Law Relating to Seduction and the Enticement and Harboursing of a Child** *(February 1979)*
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Report on Nullity of Marriage (LRC 9-1984) (October 1984)

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(LRC 21-1987) (September 1987)

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(LRC 36-1991) *(May 1991)*

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Thirteenth (Annual) Report *(1991)* *(PI 9214)*

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Consultation Paper on Family Courts *(March 1994)*

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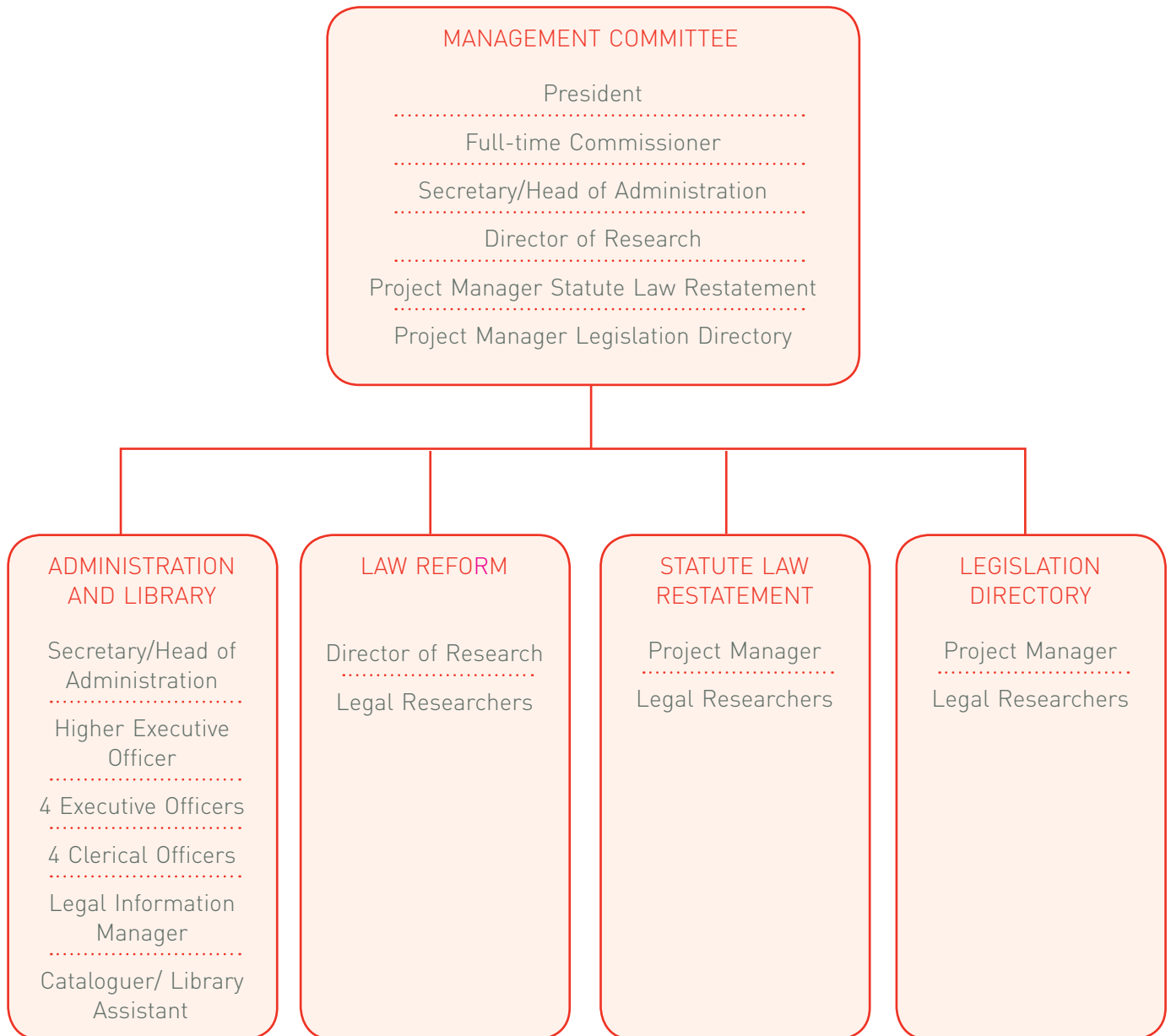
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APPENDIX E

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The Law Reform Commission is a statutory body established by the Law Reform Commission Act 1975



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