

**LAW REFORM**

COMMISSION/COIMISIÚN UM  
ATHCHÓIRIÚ AN DLÍ

**ANNUAL REPORT 2014**

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## THE COMMISSION

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The Law Reform Commission comprises a President, one full-time Commissioner and three part-time Commissioners. In 2014, the Commission was comprised as follows:

**The Hon. Mr. Justice John Quirke**  
President

**Finola Flanagan BL**  
Full-time Commissioner

**Professor Donncha O’Connell**, Faculty of Law, NUI Galway  
Part-time Commissioner

**Ms Justice Marie Baker**  
Part-time Commissioner

**Tom O’Malley BL**  
Part-time Commissioner

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## COMMISSION RESEARCH STAFF

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**Director of Research:**  
Raymond Byrne

**Project Manager for Access to Legislation:**  
Alma Clissmann

**Assistant Project Manager for Access to Legislation:**  
Jane Murphy

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## LEGAL RESEARCHERS<sup>1</sup>

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Cormac Forristal, Owen Garvey, Morgan Harris, Kerri McGuigan, Karen McLaughlin, Sarahrose Murphy, Aileen O’Leary, Fiona O’Regan, Denise Roche, Mary Travers.

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## COMMISSION ADMINISTRATION STAFF

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**Head of Administration:** Ciara Carberry

**Legal Information Manager:** Órla Gillen

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<sup>1</sup> Not all members of research staff were employed for the full calendar year.

**Executive Officers:** Deirdre Fleming

**Staff Officer:** Annmarie Cowley

**Clerical Officers:** Ann Browne  
Liam Dargan  
Joseph Cooke

Not all members of Clerical Officers were employed for the full calendar year.

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## **FOREWORD**

On behalf of the Law Reform Commission I am pleased to introduce our Annual Report for 2014.

This Report identifies the progress made during 2014 towards completion of the Commission's Third Programme, the significant development of the Commission's methodology and working methods and the additional work done and progress made towards the further development and completion of the Commission's Fourth Programme.

During 2014 the Commission's publications included Issues Papers on (a) Search Warrants, (b) Cyber crime affecting personal safety, privacy and reputation including cyber bullying and (c) s 120 of the Succession Act 1965 and Admissibility of Criminal Convictions in Civil Proceedings. They also included a final Report on Disclosure and Discovery in Criminal Cases.

The Commission's work on Access to Legislation continues to grow and to provide much needed services to the legal and general community.

I would like to thank my fellow Commissioners Flanagan, O'Malley, Baker and O'Connell for their commitment, work and support during 2014.

I wish to acknowledge especially the work of Commission's small but dedicated staff – both research and administrative.

As Commissioners, we are greatly indebted to the many people who enhance and assist the Commission in fulfilling its function and we greatly appreciate the voluntary advice and assistance which we receive from the many individuals and groups with whom the Commission has consulted or who spontaneously contact us.

The Commission also appreciates the cooperation and courtesy which it receives from Government departments and offices, from the Attorney General and her Office and from other Government and non-governmental agencies.

The work completed by the Commission during 2014 has been significant but there is much more to be done, and the Commission, its staff and its management are determined to deliver an excellent service and an excellent Fourth Programme.

I look forward to working with them as we address the challenges that will accompany the delivery of meaningful reform of the laws of Ireland in the coming years.

Mr Justice John Quirke,  
**PRESIDENT**

October 2015.

## CHAPTER 1

### INTRODUCTION

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#### OVERVIEW OF THE COMMISSION'S WORK IN 2014

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The Commission's role under the *Law Reform Commission Act 1975* is to keep the law under review, to make recommendations for law reform and to make current law accessible. The key developments in 2014 were the following:

- *Law Reform Publications*  
In 2014 the Commission published the following:
  1. *Issues Paper on Search Warrants* (LRC IP 4-2014)
  2. *Issues Paper on Disclosure and Discovery in Criminal Cases* (LRC IP 5-2014)
  3. *Issues Paper on cyber crime affecting personal safety, privacy and reputation including cyber bullying* (LRC IP 6-2014)
  4. *Issues Paper on Section 120 of the Succession Act 1965 and Admissibility of criminal convictions in civil proceedings* (LRC IP 7-2014)
  5. *Report on Disclosure and Discovery in Criminal Cases* (LRC 112-2014).
- *Access to legislation*  
The Commission's work on access to legislation included the following:
  1. Updates to the Legislation Directory, the online index of legislative changes to Acts and Statutory Instruments, updated to within one to two months.
  2. Updates to the Classified List of Legislation, which comprises over 2,000 Acts that are in force organised under 36 subject titles; and the preparation of a Classified List of Statutory Instruments, updated bi-annually.
  3. Updates to over 240 Revised Acts, which are Acts as amended showing changes made since enactment, updated to within two months.

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#### FUNCTIONS OF THE COMMISSION

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The Commission is a statutory body established by the *Law Reform Commission Act 1975* which requires the Commission to keep the law under review and to conduct research with a view to reforming the law. Law reform is defined to include:

- the development of law
- its codification (including its simplification and modernisation)
- the revision and consolidation of statute law

Since it was established, the Commission has published over 190 documents (Issues Papers, Consultation Papers, Working Papers and Reports) containing proposals for law reform. A full list of Commission publications is available on the Commission's website at [www.lawreform.ie](http://www.lawreform.ie) where all publications are available to download free of charge.

## **Programmes of Law Reform and Requests from the Attorney General**

The Commission's work on law reform comes from two sources:

- Programmes of Law Reform prepared by the Commission and agreed by Government and laid before the Houses of the Oireachtas
- Requests from the Attorney General in relation to particular matters

The Commission has had four *Programmes of Law Reform*. The Commission's *Fourth Programme of Law Reform* was approved by the Government on 8 October 2013. Developments during 2014 concerning the Commission's law reform work are discussed in Chapter 2.

## **Access to Legislation**

Since 2006 the Commission's work has also involved making legislation more accessible to the public. Developments during 2014 in the Access to Legislation project are discussed in Chapter 3.

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## STRATEGY STATEMENT 2012-2014

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The Commission's *Strategy Statement 2012-2014* provides the framework for the work of the Commission in the three year period covered. The *Strategy Statement* reflects the views of the Commission on what needs to be done to maximise its contribution to law reform and to ensure that the organisation operates to optimum efficiency and effectiveness and makes the best use of available resources. The Commission's Mission Statement is: "to keep the law under independent, objective and expert review, to make consequent recommendations for law reform and to make current law accessible for all." Like its predecessors, the *Strategy Statement* sets out the key priorities of the Commission for 2012-2014, including clear responsibilities and accountabilities for the achievement of these priorities.

## **Key Objectives in the Strategy Statement**

The *Strategy Statement 2012-2014* identifies three Key Objectives. These are:

### *Key Objective 1: Law Reform*

*To review the law and to conduct research with a view to developing, simplifying, modernising and codifying the law of Ireland.*

### *Key Objective 2: Access to Legislation*

*To make legislation in its current state easily accessible online to the public, as amended rather than as enacted, and provide related information.*

### *Key Objective 3: Administration*

*To provide effective, modern and professional corporate administrative and business services to the Commission so as to support it in meeting its objectives.*

This Annual Report follows the sequence of these Key Objectives.

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## METHODS OF WORK AND CONSULTATION PROCESS

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The Commission's work is based on careful and thorough research. The Commission knows the importance of ensuring that its proposals for reform are grounded in practice. In the course of preparing proposals, consultations are held with interested parties including legal practitioners, other relevant professionals, representative

bodies, politicians and members of the Government and Government Departments and Offices, and members of the public who wish to engage with the Commission. The opinions and experiences of these contacts are taken into account in the Commission's publications.

### **Methodology**

To achieve the goals set out in its Programmes of Law Reform and requests from the Attorney General, each project is assigned to researchers who work under the general direction of the Director of Research. In the case of the Access to Legislation project, researchers work under the direction of the Project Manager.

The Commission carries out and reviews its work according to its annual Business Plan.

### **The consultation process**

Consultation is of central importance to the Commission's work. This may take several forms, for example meetings with experts or practitioners working in a particular area, or representatives of interest groups. The Commission also prepares and publishes consultative documents, Issues Papers. These provide a structured process through which written submissions are sought from interested parties. These submissions are taken into account in the drafting of the final Report on the subject, and any issues or concerns they raise are dealt with in the Report. Before drafting the Report, a seminar is usually held to which the Commission invites interested parties, including those who have made submissions.

In 2014, the Commission held a public seminar in April following the publication in March of an *Issues Paper on Disclosure and Discovery in Criminal Cases* (LRC IP 5-2014) (Fourth Programme of Law Reform, Project 2). The Commission's *Report on Disclosure and Discovery in Criminal Cases* (LRC 112-2014) took account of the views expressed at the seminar, as well as in the submissions received on the project.

The Commission includes a draft Bill in each Report where it makes recommendations requiring legislative change in accordance with its statutory remit under the 1975 Act to include draft legislation where it proposes reform of the law.

The Commission consults with interested parties in connection with the Access to Legislation project, including the Office of the Attorney General, government departments, the legal profession and the general public. The Commission takes account of developments in the Government's eLegislation strategy and the ongoing modernisation of the Irish Statute Book in the wider internationally accepted context of *Better Regulation*.

To facilitate accessibility, all Commission publications including consultations are available online on the websites of the Commission or the Irish Statute Book.

### **Communication with government departments**

The Commission communicates with government departments about both current and future projects. The Commission meets twice a year with the Department of Justice and Equality to review and discuss matters of mutual interest, both in criminal law and civil law.

### **Attorney General's Consultative Committee**

The Attorney General's Consultative Committee comprises representatives of certain government departments, the Council of the Bar of Ireland, the Law Society of Ireland and the Office of the Attorney General.

### **Meetings with Oireachtas Committees**

The Commission holds periodic meetings with the Oireachtas Joint Committee on Justice, Defence and Equality to discuss the work programme of the Commission. The Commission meets with other Oireachtas Committees from time to time.

### **Conferences, visits and media contacts**

Commissioners and research staff regularly attend and participate in public seminars and conferences. Contacts with law reform bodies in other jurisdictions are also maintained through attendance at relevant seminars and through hosting visits from other law reform bodies. In general, Commissioners with coordinating and lead roles in specific projects and the Director of Research act as media spokespersons for the Commission.

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## DEVELOPMENT OF WORKING METHODS

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During 2014 the Commission systematically examined how it carries out all of its core functions to ensure it is making the best possible use of its resources to deliver an excellent, timely and relevant service to the Government and the public.

The Fourth Programme of Law Reform is different from previous programmes in that the projects chosen are carefully defined and designed so that they can be delivered within a relatively short period. This is to ensure that the work of the Commission remains relevant and that matters identified by the public and the Government as being important areas in need of law reform can be addressed promptly.

A new publication format, the Issues Paper, was introduced in 2013 as a way of consulting more effectively with interested parties. Their views and expertise on particular aspects or issues arising in the course of a larger project are obtained by putting specific questions relevant to a matter and inviting responses. This has worked well and the information gathered has been valuable.

The Legislation Directory and Revised Acts programmes were merged into a single project called Access to Legislation which has as its goal an easily-accessed online resource where an interested person can find out what is the current legislation on a particular topic (i.e. without having to work through all its various amendments over the years since enactment). All researchers in the Commission now work on this project during their term and this has improved the resources available for the project.

Our use of technology in communicating with the public was reviewed and changes to our website were implemented so as to make it more user friendly for those who are looking for a publication or seeking to give feedback on a Project. Our principal publication format is now online, with all of our publications available to download free of charge from our website.

Work also began on modernising our meeting facilities with a view to allowing participants to join meetings via secure videoconference. This provides an easy, cost effective way to arrange meetings regardless of the location of the parties, whether to consult with interested persons or groups in a distant location or facilitate our interactions with the Law Commissions of other jurisdictions as part of our comparative process.

Our Library and Information service is reviewed and updated on an ongoing basis. This includes rationalisation of print based subscriptions and a move to online resources with attendant savings in administrative processing time and physical storage space as well as enhanced desk-based access for researchers. An in-house

daily news alerter service complements the weekly current awareness bulletin and the updates provided at the weekly legal research team meeting.

## CHAPTER 2

# LAW REFORM: IMPLEMENTATION OF FOURTH PROGRAMME OF LAW REFORM, COMPLETION OF THIRD PROGRAMME AND LEGISLATION RELATED TO COMMISSION PROPOSALS

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### OVERVIEW

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#### *(1) Law reform publications in 2014*

During 2014, the Commission was engaged in work on many of the 11 projects in the *Fourth Programme of Law Reform* and in completing the remaining projects from the *Third Programme*. These are discussed in detail below.

In 2014 the Commission published the following, of which items 2 to 5 related to projects in the Commission's *Fourth Programme of Law Reform* (the remaining projects from the *Third Programme* to be completed in 2015):

1. *Issues Paper on Search Warrants* (LRC IP 4-2014) (Third Programme, Project 3)
2. *Issues Paper on Disclosure and Discovery in Criminal Cases* (LRC IP 5-2014) (Fourth Programme, Project 2)
3. *Issues Paper on cyber crime affecting personal safety, privacy and reputation including cyber bullying* (LRC IP 6-2014) (Fourth Programme, Project 6)
4. *Issues Paper on Section 120 of the Succession Act 1965 and Admissibility of criminal convictions in civil proceedings* (LRC IP 7-2014) (Fourth Programme, Project 7)
5. *Report on Disclosure and Discovery in Criminal Cases* (LRC 112-2014) (Fourth Programme, Project 2).

#### *(2) Implementation of Commission proposals in 2014*

The following legislation, enacted or under consideration in 2014, involved the implementation of recommendations made by the Commission: the *Criminal Justice (Spent Convictions) Bill 2012*, the *Assisted Decision-Making (Capacity) Bill 2013* and the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014*. The Government has also published a number of Schemes of Bills (or Heads of Bills) related to Commission recommendations. These include the Scheme of a *Criminal Justice (Community Sanctions) Bill*, Scheme of a *Family Relationships and Children Bill*, Scheme of a *Landlord and Tenant Bill* and Scheme of a *Mediation and Conciliation Bill*. The Commission's website [lawreform.ie](http://lawreform.ie) includes a section containing a general overview of the implementation of Commission Reports, updated on a regular basis.

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### DETAILED REVIEW OF COMMISSION WORK AND IMPLEMENTATION IN 2014

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The material in this part of the chapter is discussed under the following six general headings:

1. The Legal System and Public Law (pp.11-12).
2. Law of Evidence (p.13).
3. Criminal Law (p.13).
4. Civil and Commercial Law (p. 15).
5. Land Law and Trust Law (p.17).
6. Family Law (p.17).

## **1. THE LEGAL SYSTEM AND PUBLIC LAW**

### **Search Warrants and Bench Warrants**

In 2014, the Commission published an *Issues Paper on Search Warrants* (LRC IP 4-2014) in connection with its project on search warrants and bench warrants (Third Programme of Law Reform, Project 3). The Issues Paper addressed two areas: the scope of offences to which a generally applicable Search Warrants Act should apply; and whether such a Search Warrants Act should provide for an electronic and/or online search warrant filing, application and issuing process. The Commission will publish its Report on this matter in 2015 (which was postponed to take account of the Supreme Court decision in *The People (DPP) v JC* [2015] IESC 31 on the admissibility of unconstitutionally obtained evidence).

### **Implementation of International Obligations in Domestic Law**

During 2014, the Commission began work on the project concerning the implementation of international obligations in domestic law (Fourth Programme, Project 10). The Commission intends to publish a Discussion Paper on this project by the end of 2015.

### **Consolidation and Codification of Law**

During 2014, the Commission began work on the project concerning the consolidation and codification of legislation (Fourth Programme, Project 11). The Commission intends to publish an Issues Paper on this project by the end of 2015.

### **Jury Service**

The Government Legislation Programme Spring-Summer Session 2015 (Section C) states that a *Juries Bill* is to be published to implement the Commission's *Report on Jury Service* (LRC 107-2013) (3<sup>rd</sup> Programme of Law Reform, Project 1), which contained wide-ranging recommendations for reform of the law on jury service, currently set out in the *Juries Act 1976*. A recommendation in the Report on additional jurors in lengthy trials was implemented through an amendment to the *Juries Act 1976* by the *Courts and Civil Law (Miscellaneous Provisions) Act 2013*.

### **Alternative Dispute Resolution: Mediation**

The Government Legislation Programme Spring-Summer Session 2015 (Section B) states that a *Mediation Bill* is to be published to implement the Commission's *Report on Alternative Dispute Resolution: Mediation and Conciliation* (LRC 98-2010) (3<sup>rd</sup> Programme of Law Reform, Project 5).

### **Consolidation and Reform of the Courts Acts**

The Government Legislation Programme Spring-Summer Session 2015 (Section C) states that a *Courts (Consolidation and Reform) Bill* is to be published, which would implement the Commission's 2010 *Report on the Consolidation and Reform of the Courts Acts* (LRC 97-2010) (Third Programme of Law Reform, Project 6).

### **Tribunals of Inquiry**

The *Tribunals of Inquiry Bill 2005*, based on the draft *Tribunals of Inquiry Bill* in the Commission's *Report on Public Inquiries Including Tribunals of Inquiry* (LRC 73-2005) (Second Programme of Law Reform, Project 8), was awaiting Report Stage in Dáil Éireann in 2014.

## 2. LAW OF EVIDENCE

### **Hearsay, Documentary Evidence, Expert Evidence and Consolidation of existing Evidence Acts**

During 2014, the Commission considered the draft text of its composite *Report on the Law of Evidence*, which will incorporate three projects in the *Third Programme of Law Reform*. These are: Project 7 (Documentary and Electronic Evidence), Project 8 (Hearsay Rule) and Project 11 (Expert Evidence). The Report will also include a consolidation of existing Evidence Acts, as discussed in its *Issues Paper on Consolidation of Evidence Legislation* (LRC IP 3-2013). The Commission intends to publish its Report on this area by the end of 2015.

### **DNA Database**

The *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014*, which sets out a statutory basis for a limited DNA Database and which also repealed and replaced existing legislation on the taking of forensic evidence, derives from the Commission's 2005 *Report on the Establishment of a DNA Database* (LRC 78-2005) (Attorney General request).

## 3. CRIMINAL LAW

### **Corporate Offences and Regulatory Enforcement**

During 2014, the Commission conducted a series of consultative meetings and exchanges with interested parties, including sectoral economic regulators, in connection with its project on Corporate Offences and Regulatory Enforcement (Fourth Programme, Project 1). Arising from this, the Commission prepared a draft Issues Paper on this project, which it intends to publish in 2015.

### **Disclosure and Discovery in Criminal Cases**

In March 2014, the Commission published an *Issues Paper on Disclosure and Discovery in Criminal Cases* (LRC IP 5-2014) (Fourth Programme of Law Reform, Project 2), which was followed by a public seminar in April. Following these consultative processes, the Commission published in December 2014 its *Report on Disclosure and Discovery in Criminal Cases* (LRC 112-2014) (Fourth Programme of Law Reform, Project 2), which completed this project.

In a criminal case, the prosecution must disclose to the defence all relevant evidence that it has gathered in its investigations. This includes everything that the prosecution intends to rely on in the trial as well as all material that it has decided not to use but which may be of use to the defence. This could be witness statements, CCTV footage, forensic reports etc. The purpose of the prosecution duty of disclosure is to ensure that the accused receives a fair trial and to prevent any possible miscarriage of justice. While the current arrangements for disclosure generally work well, difficulties have emerged in specific cases and with particular types of offence. For example:

- in sexual offence cases involving children, concern has been expressed about how the current disclosure process deals with therapeutic and counselling records, including whether disclosure of these records is actually relevant to a trial and whether disclosure may adversely affect a child's recovery.

Against this background the Report recommended that legislation should be enacted that would set out a clear statutory framework for the prosecution's duty of disclosure.

Among the key recommendations in the Report are the following:

- The proposed legislation should set out the general scope of the prosecution's duty of disclosure, including a process for listing or scheduling the material along the following lines: (a) material that is being disclosed; (b) material over which privilege is being claimed; and (c) material held by third parties, including for example therapeutic or counselling records. This scheduling of material has the advantage of clarifying what material cannot be disclosed because it is privileged, is of a confidential or sensitive nature or is held by a third party.
- Some material, such as CCTV footage, may need to be disclosed at an early stage, including when a person is detained in Garda custody.
- The following factors should determine whether disclosure is required in a summary criminal prosecution in the District Court: (a) the seriousness of the charge; (b) the importance of the prosecution material; (c) whether the accused has already been adequately informed of the nature and substance of the accusation; and (d) the likelihood of a risk of injustice from non-disclosure.
- The proposed legislation should include a procedure in which a court would resolve disputes about disclosure, such as where the prosecution (or a third party, such as a therapist or counsellor) argues that material should not be disclosed because it is subject to privilege or is not necessary for the defence case. This procedure should occur as early as possible, using the pre-trial preliminary envisaged in the *General Scheme of a Criminal Procedure Bill* published in 2014 by the Department of Justice and Equality.
- In such a pre-trial hearing, the court should have regard to the following factors in deciding whether disclosure is required: (a) the nature of the material sought and its likely probative value; (b) the extent to which access to the material appears necessary to secure the accused person's right to trial in due course of law while recognising the public interest in preserving the integrity of the judicial process; and (c) any rights of the person to whom the disputed material relates, such as privacy rights, and any harm that disclosure might cause to the person.
- In a sexual offence case, the court should have regard to the following additional factors: (a) society's interest in encouraging the reporting of sexual offences; (b) society's interest in encouraging the obtaining of treatment by complainants of sexual offences; and (c) the public interest in ensuring that adequate records are kept of counselling communications.

### **Crime affecting personal safety, privacy and reputation including cyber bullying**

In 2014, the Commission published its *Issues Paper on cyber crime affecting personal safety, privacy and reputation including cyber bullying* (LRC IP 6-2014) (Fourth Programme, Project 6). The Issues Paper sought the views of interested parties on the following 5 issues:

- Whether the harassment offence in section 10 of the *Non-Fatal Offences Against the Person Act 1997* should be amended to incorporate a specific reference to cyber-harassment, including indirect cyber-harassment;
- Whether there should be an offence that involves a single serious interference, through cyber technology, with another person's privacy;
- Whether current law on hate crime adequately addresses activity that uses cyber technology and social media;
- Whether current penalties for offences which can apply to cyber-harassment and related behaviour are adequate; and
- The adequacy of civil law remedies to protect against cyber-harassment and to safeguard the right to privacy.

The Commission hosted a seminar on this project in 2015 and intends to complete its Report by the end of 2015.

### **Sexual Offences: Capacity to Consent**

In 2014, the Department of Justice and Equality published a *Discussion Paper on Sexual Offences against Vulnerable Persons* (2014), which took account of the Commission's *Report on Sexual Offences and Capacity to Consent* (LRC 109-2013) (Third Programme of Law Reform, Projects 12 and 14), and which is to inform the content of a *Criminal Law (Sexual Offences) Bill*, in respect of which the Department also published a Scheme of a Bill in 2014.

### **Mandatory Sentences**

The *Report on Strategic Review of Penal Policy*, published by the Department of Justice and Equality in 2014, broadly endorsed the conclusions in the Commission's *Report on Mandatory Sentences* (LRC 108-2013) (Attorney General request).

### **Spent Convictions**

The *Criminal Justice (Spent Convictions) Bill 2012*, which would implement the key recommendations in the Commission's *Report on Spent Convictions* (LRC 84-2007) (Second Programme of Law Reform, Project 10), was awaiting Report Stage in Seanad Éireann in 2014. The 2012 Bill will not proceed to final stage until further consideration is given to whether it is fully compatible with the European Convention on Human Rights. This will take account in particular of the decision in the English case *R (T) v Chief Constable of Greater Manchester Police*,<sup>2</sup> in which it was held that some aspects of the comparable British legislation, the *Rehabilitation of Offenders Act 1974*, was not compatible with the right to protection of private life under Article 8 of the Convention.

## **4. CIVIL AND COMMERCIAL LAW**

### **Prevention of Benefit from Homicide**

In 2014, the Commission published an *Issues Paper on Section 120 of the Succession Act 1965 and Admissibility of criminal convictions in civil proceedings* (LRC IP 7-2014) (Fourth Programme, Project 7). This Issues Paper examined the rule in section 120 of the *Succession Act 1965* that a killer is precluded from inheriting from his or her victim's estate. The Issues Paper examined whether section 120 of the 1965 Act should be reformed, including where it applies to a joint tenant who kills his or her spouse who was also a joint tenant at the time of death. This issue had arisen in *Cawley v Lillis* [2011] IEHC 515, [2012] 1 IR 281 in which the High Court (Laffoy J) decided that, under the law, the interest of the deceased should be held by the surviving spouse - the killer - in trust for the deceased's daughter. Laffoy J also stated that the law in this area should be reviewed.

Among the questions asked in the Issues Paper were these:

- In a joint tenancy, should the legal title pass to the unlawful killer to hold the victim's interest on trust for the benefit of the victim's estate, as decided in *Cawley v Lillis*, or should the joint tenancy be severed so that it is held by the unlawful killer and the victim's estate as tenants in common?
- Should the current law be extended to other forms of homicide; and/or should it be possible for a court to modify the forfeiture rule? The Issues Paper noted that other jurisdictions had a similar rule but also allowed a court a discretion to modify the rule, usually in cases other than murder, such as where the person who has killed had previously suffered violence at the hands of the deceased person.

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<sup>2</sup> [2013] EWCA Civ 25, [2014] UKSC 35.

- Should the current law on costs in such cases be amended? The Issues Paper asked whether the costs should be paid by the person who has killed; and whether there are any other ways that current procedures can be reformed to ease the burden on those acting on behalf of the victim of an unlawful killing.
- Should a criminal conviction be admissible in a subsequent civil case on unworthiness to succeed? In *Nevin v Nevin* [2013] IEHC 80; [2013] 2 ILRM 427 the High Court (Kearns P) allowed a criminal conviction for murder to be admitted in evidence but noted that the law in this area would benefit from being clarified.

In July 2015, the Commission published its *Report on Prevention of Benefit from Homicide* (LRC 114-2015).

### **Consumer Insurance Contracts**

During 2014, the Commission completed much of the analysis required in connection with its project on consumer insurance contracts, and in July 2015 it published the resulting *Report on Consumer Insurance Contracts* (LRC 113-2015) (Third Programme of Law Reform, Project 34).

### **Adult Assisted Decision-Making Capacity**

The *Assisted Decision-Making (Capacity) Bill 2013*, which derives from the Commission's recommendations in its *Report on Vulnerable Adults and the Law* (LRC 83-2006) (Second Programme of Law Reform, Projects 27 and 28) to replace the wards of court system with a modern statutory framework on decision-making capacity for adults, passed Committee Stage in Dáil Éireann in 2015.

## **5. LAND LAW AND TRUST LAW**

### **Landlord and tenant**

The Government Legislation Programme Spring-Summer Session 2015 (Section B) states that, following the publication in 2012 of the Scheme of a *Landlord and Tenant Bill* (which derived from the Commission's *Report on the Law of Landlord and Tenant* (LRC 85-2007) (Second Programme of Law Reform, Project 23), a *Landlord and Tenant Bill* is to be published.

### **Trust Law and the Settled Land Acts**

The Government Legislation Programme Spring-Summer Session 2015 (Section C) states that a *Trusts Bill* is to be published which would consolidate and reform the *Trustee Act 1893*, taking account of the Commission's *Report on Trust Law: General Proposals* (LRC 92-2008) and the Commission's work on its project on Trust Law and the Settled Land Acts (Third Programme of Law Reform, Project 21), which arises from the repeal of the Settled Land Acts by the *Land and Conveyancing Law Reform Act 2009*.

## **6. FAMILY LAW**

### **Domestic Violence**

In 2015, the Department of Justice published the *Scheme of a Consolidated Domestic Violence Bill*, which takes account of the Commission's recommendations in the *Report on Aspects of Domestic Violence* (LRC 111-2013) (Third Programme of Law Reform, Project 24).

**Family Relationships and Children**

In 2015, the *Children and Family Relationships Act 2015* was enacted, elements of which were derived in part from the Commission's *Report on Legal Aspects of Family Relationships* (LRC 101-2010) (Third Programme of Law Reform, Project 23).

## CHAPTER 3 ACCESS TO LEGISLATION

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### INTRODUCTION

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It is difficult for users of legislation to establish what the law in force is. This is a problem for professionals, legislators and the public alike. Acts and Statutory Instruments may be repeatedly amended without being consolidated into a single up-to-date piece of legislation. Thus the law on a particular matter is often spread across many pieces of legislation made over many decades, all of which have to be identified and read together to establish the current law.

This is unsatisfactory for all concerned.

The purpose of the Access to Legislation project is to make legislation in its current state more easily accessible online to the public, as amended rather than as enacted, and to provide other important related information. It comprises the Legislation Directory, the Classified List of Legislation and Revised Acts.

The **Legislation Directory** is an online index of legislative changes to legislation, including pre 1922 Acts that remain in force. It enables users to identify the amendments which affect a piece of legislation, including where provisions have been repealed, and indicates if a provision requires a commencement order to come into effect. From 2000 onwards, it also notes commencement orders and other related Statutory Instruments made under powers in an Act. It was kept up-to-date within one to two months.

The **Classified List of Legislation** allows users to locate the legislation they seek. The Acts of the Oireachtas are published in chronological order by year, but are not arranged by subject matter. Therefore even when a user finds a principal Act such as the Family Law Act 1995, the legislation as listed chronologically does not assist in finding other family or child law legislation. The Classified List of Legislation lists over 2,000 Acts in force under 36 subject titles. Thus for example a user can find all family legislation under Title 17 and all legislation on Financial Services and Credit Institutions under Title 18. It was updated bi-annually.

The Commission also produces and publishes **Revised Acts** which show each amended Act with all its amendments, fully annotated, in a single readable document. This enables the reader to see the law as it currently is, as well as see information on previous versions. In addition, many provisions in Acts do not come into effect at the date of enactment and have no force until they are actually commenced by a commencement order made by the relevant Minister. The Revised Acts list all such commencement orders so the reader can see what provisions of legislation have come into force and when. The Revised Acts were updated to within two months.

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### LEGISLATION DIRECTORY

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The Commission continued to update the Legislation Directory in 2014 to reflect changes made by both Acts and Statutory Instruments for publication on the

electronic Irish Statute Book website. The new Legislation Directory for Statutory Instruments from 2000 to 2013 was maintained and extended to include changes made in 1999 and 2014.

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## CLASSIFIED LIST OF LEGISLATION

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### **Classified List of Acts**

The Classified List of Acts was reviewed and updated twice in the course of 2014 showing all repealed and new Acts, and published on the Commission website.

In 2013 a link to the Classified List of Acts was installed on the home page of the Irish Statute Book website to increase its visibility and accessibility to users of legislation.

### **Classified List of Statutory Instruments**

Research on the identification of the status of 35,000 Statutory Instruments made since 1922 and their classification was completed to first draft stage and was circulated to government departments for comment and feedback in December 2012.

Work started on the review of comments and feedback received from departments during 2013. When completed, this list will bring clarity to the status of all Statutory Instruments that remain in force and classify them under their enabling Acts. It is intended that the Classified List of Statutory Instruments will assist users in knowing what law is in force and assist government departments in identifying obsolete, spent, ineffective (for example, because of conflict with the EU Treaties), superseded and inappropriate instruments with a view to their revocation. With the creation of the Legislation Directory for Statutory Instruments there is now a database in which the revocation of instruments can be recorded and made available for easy consultation by all. This major review of Statutory Instruments will provide the groundwork for de-cluttering and rationalisation of the Statute Book.

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## REVISED ACTS

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In 2014 the Commission prepared, updated and published 240 Revised Acts on its website. They comprise around 100 frequently used Acts (for example legislation on employment, family, road traffic and planning), and Acts from 2006 onwards which were textually amended, other than Finance and Social Welfare Acts.

In 2013 a link to the alphabetic list of Revised Acts was installed on the home page of the Irish Statute Book website to increase their visibility and accessibility to users of legislation.

They may be viewed at  
<http://www.lawreform.ie/revised-acts/alphabetic-list-of-revised-acts.360.html>.

## **CHAPTER 4 ADMINISTRATION**

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### **INTRODUCTION**

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The Commission's administration aims to provide effective, modern and professional corporate administrative and business services to the Commission so as to support it in meeting its objectives. The outcome is a satisfactory working environment where administrative units support the legal work of the Commission by providing excellent corporate business support services such as human resource management, financial management, legal and corporate support, information technology, and library and information services.

The current organisation structure of the Commission (as of December 2014) is set out in the Appendix.

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### **THE COMMISSION**

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The Commission consists of a President and four Commissioners. Commissioners are appointed by the Government for a term of up to five years, and their appointment may be renewed. The President of the Commission, Mr Justice John Quirke, is a former judge of the High Court. The full-time Commissioner, Finola Flanagan, is a barrister and former Director General of the Office of the Attorney General. The three part-time Commissioners are: Ms Justice Marie Baker, Judge of the High Court, Professor Donncha O'Connell, School of Law NUI Galway and Mr Tom O'Malley, barrister-at-law, and School of Law NUI Galway.

The Commission makes recommendations to Government on the content of the programme of law reform, determines the contents of the research output of the Commission (contained in Issues Papers and Reports), and makes key administrative and financial decisions. The Commission meets formally as a body at least ten times each year.

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### **MANAGEMENT COMMITTEE**

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The Commission's Management Committee consisted of the full-time Commissioner, the Head of Administration, the Director of Research and the Project Manager. The Management Committee met on a regular basis to review all major issues relevant to the efficient and effective operation of the Commission. One of the principal responsibilities of the Committee is to monitor progress on achieving the targets set out in the Commission's Annual Business Plan which is updated on a quarterly basis.

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### **ADMINISTRATIVE STAFF**

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The Commission's administrative and library staff consisted of a Head of Administration and a team of five staff as of December 2014.

During 2014, the Administration had overall responsibility for:

- Managing, processing and reporting on all financial transactions in the Commission
- Managing the Commission's accommodation 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 launches of publications and the printing of Reports and Consultation Papers

The Administration also arranged for the publication and distribution of the Commission's publications and planning and organising the various tasks associated with the launch of the Commission's publications as well as event management and corporate services associated with launches and seminars.

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## RESEARCH AND LIBRARY STAFF

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The primary role of the research staff is to develop draft texts for consideration by the Commission. 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 Issues Paper or Report and, where the Commission deems it appropriate, a Seminar Paper.

### **Research Team**

The law reform research team is headed by the Director of Research, Raymond Byrne, barrister and formerly of the School of Law and Government, Dublin City University. The Commission's projects on the Legislation Directory, Classified List of Legislation and Statute Law Restatement are integrated into a single Access to Legislation project overseen by project manager, Alma Clissmann, solicitor and Deputy Project Manager, Jane Murphy, barrister. During 2014, the Commission maintained eight full-time Legal Researcher positions, filled by legal researchers engaged on temporary contracts.

The Director of Research leads and manages the law reform research team, and generally advises and assists the researchers with a view to assuring an appropriate output and quality of work. This includes carrying out general background research, preparing Scoping Papers, preparing draft documents and draft Issues Papers and Reports for consideration by the Commission. The Director, Project Manager, Deputy Project Manager, and the research team meet regularly as a group to exchange views on the areas on which they are conducting research. Researchers are encouraged to publish in relevant law journals during their time with the Commission. This includes articles dealing with areas on which the researcher is actively involved.

### **Library and Information Services**

The primary role of the Commission's library is to anticipate and respond to the needs of the Commissioners and the Commission's research team for library and information services.

The Legal Information Manager/Librarian worked in consultation with the research teams to provide timely access to new electronic and hard-copy resources. An

internal bulletin of current legal developments, focusing on new library acquisitions, was circulated to all staff on a weekly basis.

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## FINANCE

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### **Income and expenditure**

The Commission is funded by a Grant-In-Aid from the Minister for Public Expenditure and Reform. Total income received in 2014 from all sources (including grant-in-aid, net deferred funding from pensions, transfers to capital account, sale of publications and income received from Department of Social Protection) amounted to **€2,137,596**.

Expenditure in 2014 amounted to **€2,140,867**. The expenditure covered salaries and superannuation of Commissioners and staff, rent and premises overheads, maintenance of the Commission's library, maintenance of the Commission's IT network and printing and distribution costs.

### **Prompt payments**

The Commission did not incur any late interest penalties during 2014 under the *Prompt Payment of Accounts Act 1997*, as amended by the *European Communities (Late Payment in Commercial Transactions) Regulations 2002*.

### **Audit Committee**

The Commission is audited by Audit Committee of the Office of the Attorney General.

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## ENERGY EFFICIENCY

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In accordance with the *European Communities (Energy End-use Efficiency and Energy Services) Regulations 2009* (SI No. 542 of 2009), and Directive 2006/32/EC, the Commission ensured during 2014 that it took appropriate steps concerning energy conservation and reduction measures.

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## GOVERNANCE ARRANGEMENTS

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Overall responsibility and accountability for Commission activities rests with the Commission. The Commission is assisted in that role by the Management Committee, the Administration and the Research team. The Accounting Officer for the Commission is the Director General of the Office of the Attorney General.

The Strategy Statement Key Objectives are matched at an organisation level by targets set out in the Commission's Business Plan. The Business Plan contains quarterly targets under each objective. Progress made in achieving these targets is monitored on a regular basis by the Management Committee.

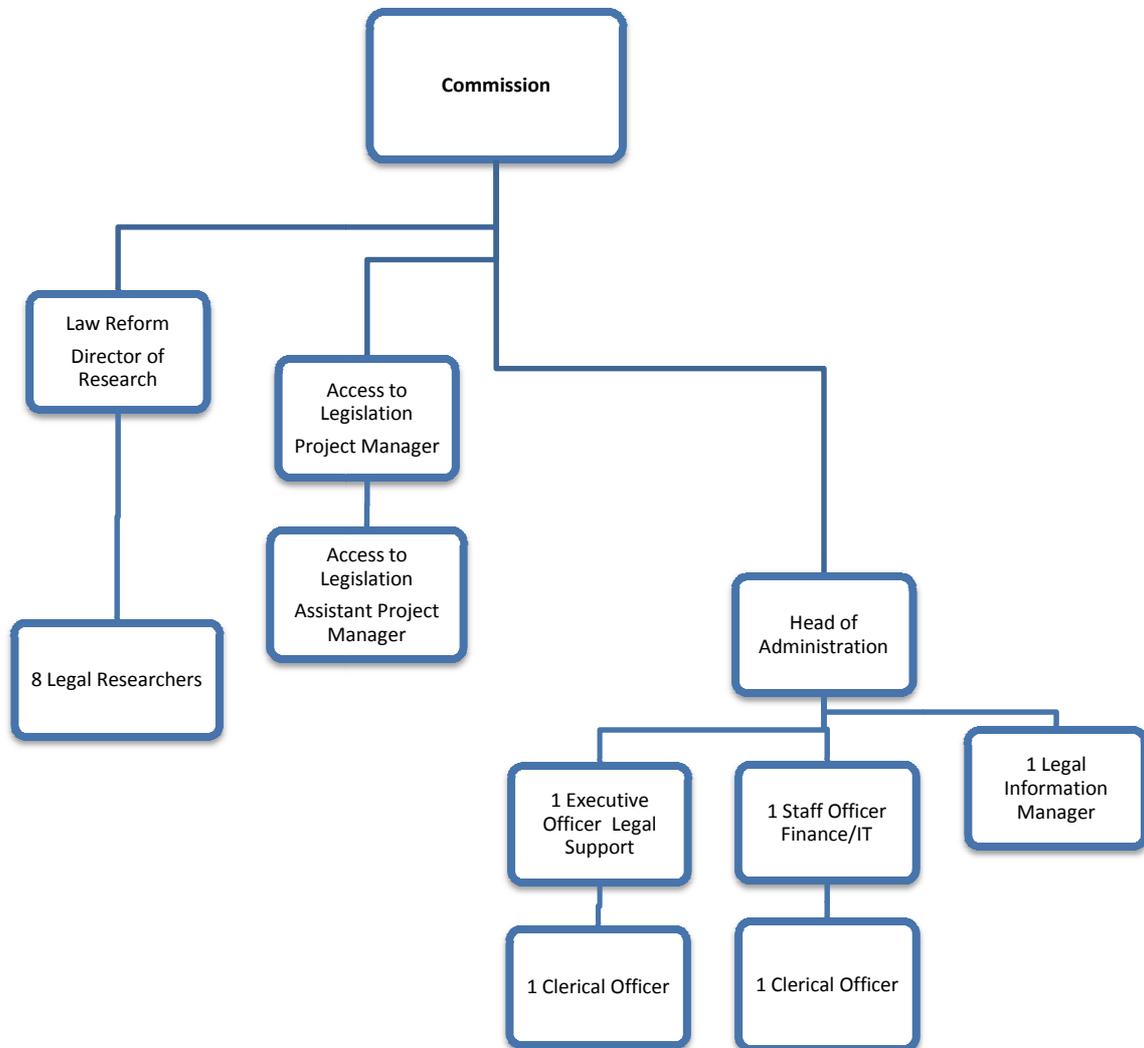
Performance of individual staff members is managed through the PMDS.

Under current accounting procedures, moneys are drawn down from the Office of the Attorney General on a monthly basis by way of a Grant-In-Aid. 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's Risk Register was last updated in November 2014 and is kept under regular review by the Commission.

## ORGANISATION CHART



Law Reform Commission Organisation Chart at 31 December 2014