

LAW REFORM
COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ

ANNUAL REPORT 2016

THE COMMISSION

The Law Reform Commission comprises 5 members, the President and 4 other Commissioners.¹ In 2016, the Commission members were as follows:

The Hon Mr Justice John Quirke
President

Finola Flanagan BL (to 29 February 2016)
Commissioner

Raymond Byrne BL (from 14 April 2016)
Commissioner

Professor Donncha O’Connell, School of Law, NUI Galway
Commissioner

Tom O’Malley BL, Senior Lecturer, School of Law, NUI Galway
Commissioner

The Hon. Ms Justice Carmel Stewart
Commissioner

COMMISSION RESEARCH STAFF

Director of Research:
Raymond Byrne (to 14 April 2016)²

Access to Legislation Manager:
Alma Clissmann

Access to Legislation Assistant Manager:
Jane Murphy (to 31 July 2016)
Kate Doran (from 27 June 2016)

LEGAL RESEARCHERS³

Hanna Byrne, Lydia Bracken, Hugh Dromey, Niall Fahy, Owen Garvey, Sarah Keating, Finn Keyes, Karen McLaughlin, Meghan McSweeney, Claire O’Connell and Fiona O’Regan.

¹ On the terms of appointment of the 5 Commission members, see Chapter 4, below.

² Professor Ciarán Burke was appointed Director of Research in February 2017.

³ Not all legal researchers were employed for the full calendar year.

COMMISSION ADMINISTRATION STAFF⁴

Head of Administration: Deirdre Fleming

Library and Information Manager: Órla Gillen

Executive Officers: Pearl Martin
John Harding
Brendan Meskell

Staff Officer: Annmarie Cowley

Clerical Officer: Patricia Mooney
Brid Rogers

⁴ Not all members of the administration staff 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 2016.

During 2016, the Commission completed the remaining projects in our Third Programme of Law Reform and made significant progress towards the completion of our Fourth Programme.

During the year, the Commission published a detailed *Report on Harmful Communications and Digital Safety*, which recommended reform of our criminal law to address serious wrongdoing in this area. It also recommended the establishment of a statutory Digital Safety Commissioner to develop comprehensive policies on positive digital citizenship, as well as overseeing effective take down procedures, building on the processes already in place. This project derived from a considerable number of submissions received by us during the preparation of our Fourth Programme which had strongly suggested the need to examine this aspect of our digital society.

The Commission also completed in 2016 our *Report on Consolidation and Reform of Aspects of the Law of Evidence*. This incorporated the final 3 Projects remaining from the Third Programme of Law Reform (on the hearsay rule, documentary and electronic evidence, and expert evidence). The Report also included a consolidation, with reforms, of existing Evidence Acts, on which the Commission had published an Issues Paper. As with all our Reports, we included a draft Evidence (Consolidation and Reform) Bill to give effect to the recommendations made.

We also published 4 Issues Paper in 2016 on projects in the Fourth Programme, which concerned: (1) Regulatory Enforcement and Corporate Offences; (2) Section 117 of the Succession Act 1965; (3) Contempt of Court and Other Offences and Torts Involving the Administration of Justice; and (4) Accessibility, Consolidation and Online Publication of Legislation. We continued to make progress on completing these projects during the first half of 2017.

The Commission's work on Access to Legislation continues to grow and to provide much needed services to the legal and general community, notably by providing access to over 300 Revised Acts, which are administrative consolidations of Acts in their amended form.

I would like to thank my fellow Commissioners for their commitment, work and support during 2016.

I would particularly like to thank and record the thanks and appreciation of my fellow Commissioners for the invaluable contribution that Ms Finola Flanagan has made to the work of the Commission during her term of office as full-time Commissioner, and to wish her continued success in the future.

I also warmly welcome the appointment of Raymond Byrne as full-time Commissioner, who was appointed after a public appointments process under the auspices of TLAC and PAS.

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 the Office of the Attorney, and from other Government and non-governmental agencies.

The work completed by the Commission during 2016 has been significant but there is much more to be done, and the Commission, its staff and its management are determined to deliver a comprehensive service and an excellent Fourth Programme before proceeding to its 5th Programme.

Mr Justice John Quirke,
PRESIDENT

June 2017.

CHAPTER 1

INTRODUCTION

OVERVIEW OF THE COMMISSION'S WORK IN 2016

By 2016, the Commission had begun or completed work on each of the projects in the 4th Programme of Law Reform. Of the 11 projects in the 4th Programme, 2 had been overtaken by developments since the Programme was finalised in 2013.⁵ The Commission also completed in 2016 the 3 remaining projects from the 3rd Programme of Law Reform, which concerned the law of evidence.

The key developments in 2016 were the following.

- **Law reform publications**

In 2016 the Commission published the following 2 Reports (each of which included draft Bills) and 4 Issues Papers:

1. *Report on Harmful Communications and Digital Safety* (LRC 116-2016). This Report recommended consolidation and reform of the criminal law in this area to address serious wrongdoing such as intentional online victim shaming and threatening messaging. It also recommended the establishment of a statutory Digital Safety Commissioner to develop comprehensive policies on positive digital citizenship, as well as overseeing effective take down procedures, building in particular on the processes already in place within social media companies.
2. *Report on Consolidation and Reform of Aspects of the Law of Evidence* (LRC 117-2016). This incorporated the final 3 Projects from the Commission's 3rd Programme of Law Reform (on the hearsay rule, on documentary and electronic evidence, and on expert evidence). The Report also incorporated a consolidation, with reforms of existing Evidence Acts, on which the Commission had published an Issues Paper.
3. *Issues Paper on Regulatory Enforcement and Corporate Offences* (LRC IP 8-2016), which addressed a range of issues arising in two connected areas: regulatory powers and enforcement in the financial and economic context and corporate criminal liability.
4. *Issues Paper on Section 117 of the Succession Act 1965* (LRC IP 9-2016), which addressed issues concerning proper provision for children, including adult children, by a deceased parent in a will.
5. *Issues Paper on Contempt of Court and Other Offences and Torts Involving the Administration of Justice* (LRC IP 10-2016), which addressed issues concerning the law on contempt of court as well as related areas such as maintenance and champerty (third party litigation funding).
6. *Issues Paper on Accessibility, Consolidation and Online Publication of Legislation* (LRC IP 11-2016), which discusses issues concerning what further improvements can be made to make legislation more accessible online, including by making best use of ICT.

- **Access to legislation**

The Commission's work on access to legislation during 2016 included the following:

⁵ See Chapter 2, footnote 6, below.

1. Updates to the Legislation Directory, the online index of legislative changes to Acts and Statutory Instruments, updated to within 1 to 2 months.
2. Updates to over 300 Revised Acts, which are Acts as amended showing changes made since enactment, updated to within two months.
3. Updates to the Classified List of Legislation, which comprises over 2,000 Acts that are in force organised under 36 subject titles, updated bi-annually; and the publication of the first draft Classified List of Statutory Instruments, organised in the same manner.

FUNCTIONS OF THE COMMISSION

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 200 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 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 2 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

Since it was established in 1975, the Commission has worked under 4 Programmes of Law Reform. The Commission's 4th Programme of Law Reform was approved by the Government on 8 October 2013. Developments during 2016 concerning the Commission's law reform work are discussed in detail in Chapter 2.

Access to Legislation

Since 2006 the Commission's work has also involved making legislation more accessible to the public. Developments during 2016 in the work on Access to Legislation are discussed in Chapter 3.

STRATEGY STATEMENT 2015-2017

The Commission's *Strategy Statement 2015-2017*, available at www.lawreform.ie, 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

2015-2017, including clear responsibilities and accountabilities for the achievement of these priorities.

Key Objectives in the Strategy Statement

The *Strategy Statement 2015-2017* identifies 3 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.

METHODS OF WORK AND CONSULTATION PROCESS

The Commission's work is based on careful and thorough research. The Commission fully appreciates 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 and NGOs, 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 work, researchers work under the direction of the Access to Legislation Manager and Assistant Manager.

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

The consultation process, including roundtables, workshops and conference

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 (at various times since 1975 referred to as Working Papers, Consultation Papers and Issues Papers). These provide a structured process through which written submissions are sought from interested parties. The 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 2016, the Commission held 2 round table discussions in March with interested parties on the Commission's project on the law of evidence, which greatly assisted the

Commission in finalising the recommendations in the *Report on Consolidation and Reform of Aspects of the Law of Evidence* (LRC 116-2016), which also completed the remaining 3 projects from the 3rd Programme of Law Reform.

In April, the Commission held a 2 day workshop with young people, facilitated by the Department of Children and Youth Affairs, in connection with harmful online communications, which influenced the analysis in the Commission's *Report on Harmful Communications and Digital Safety* (LRC 116-2016) (4th Programme of Law Reform, Project 6).

The Commission's annual conference, held on 3rd November in Dublin Castle, focused on the matters discussed in the *Issues Paper on Regulatory Enforcement and Corporate Offences* (LRC IP 8-2016) (4th Programme of Law Reform, Project 1).

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 work on Access to Legislation, including the Office of the Attorney General, government departments, the legal profession and the general public. The Commission takes an active part in the work of the eLegislation Group under the auspices of the Department of the Taoiseach and in the ongoing development of the electronic Irish Statute Book (eISB).

To facilitate accessibility, all Commission publications including consultations are available online on the website of the Commission or the website of the eISB.

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, which assists in the development of the Commission's Programmes of Law Reform, 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 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.

On 20 January 2016, the Commission hosted a delegation from the Law Office of the Republic of Cyprus. Members of the delegations included Mr Demetris Lysandrou, Dr Despina Kyprianou, Ms Elena Papageorgiou, Ms Elena Symeonidou and Mr Despo Savvidou.

On 16 September 2016, the Commission hosted Mr Douglas White QC, Chair of the New Zealand Law Commission, and former judge of the New Zealand Court of Appeal. The Commission also arranged a visit for Mr White to the Court of Appeal, facilitated by the President of the Court of Appeal Mr Justice Seán Ryan and hosted by Ms Justice Mary Finlay Geoghegan and Mr Justice Gerard Hogan.

In general, Commissioners with coordinating roles in specific projects and the Director of Research act as media spokespersons for the Commission.

Appendix 2 contains a selection of Commission events, including media-related interviews, seminars and visits in 2016.

CHAPTER 2

LAW REFORM: IMPLEMENTATION OF 4th PROGRAMME OF LAW REFORM, COMPLETION OF 3rd PROGRAMME AND LEGISLATION RELATED TO COMMISSION PROPOSALS

OVERVIEW

(1) Law reform publications in 2016

By 2016, the Commission had begun or completed work on each of the projects in the 4th Programme of Law Reform. Of the 11 projects in the 4th Programme, 2 projects had been overtaken by developments since it was finalised in 2013.⁶ The Commission also completed in 2016 the 3 remaining projects from the 3rd Programme of Law Reform as well as beginning work on a request from the Attorney General. These are discussed in detail below.

In 2016 the Commission published the following 2 Reports (each of which included draft Bills) and 4 Issues Papers:

1. *Report on Harmful Communications and Digital Safety* (LRC 116-2016) (4th Programme of Law Reform, Project 6). This Report recommended consolidation and reform of the criminal law in this area to address serious wrongdoing such as intentional online victim shaming and threatening messaging. It also recommended the establishment of a statutory Digital Safety Commissioner to develop comprehensive policies on positive digital citizenship, as well as overseeing effective take down procedures, building in particular on the processes already in place within social media companies.
2. *Report on Consolidation and Reform of Aspects of the Law of Evidence* (LRC 117-2016) (3rd Programme of Law Reform, Projects 7, 8 and 11). This Report incorporated the final 3 Projects from the Commission's 3rd Programme of Law Reform (Project 7 on documentary and electronic evidence, Project 8 on the hearsay rule and Project 11 on expert evidence). The Report also incorporated a consolidation, with reforms of existing *Evidence Acts*, on which the Commission had published an Issues Paper in 2013.
3. *Issues Paper on Regulatory Enforcement and Corporate Offences* (LRC IP 8-2016) (4th Programme of Law Reform, Project 1), which addressed a range of issues arising in two connected areas: regulatory powers and enforcement in the financial and economic context and corporate criminal liability.
4. *Issues Paper on Section 117 of the Succession Act 1965* (LRC IP 9-2016), (4th Programme of Law Reform, Project 7, Module 2), which addressed issues concerning proper provision for children, including adult children, by a deceased parent in a will.
5. *Issues Paper on Contempt of Court and Other Offences and Torts Involving the Administration of Justice* (LRC IP 10-2016) (4th Programme of Law Reform, Project 4), which addressed issues concerning the law on contempt of court as well as related areas such as maintenance and champerty (third party litigation funding).
6. *Issues Paper on Accessibility, Consolidation and Online Publication of Legislation* (LRC IP 11-2016) (4th Programme of Law Reform, Project 11),

⁶ Project 2 in the 4th Programme (concerning sexual offences involving children) was overtaken by the enactment of the *Criminal Law (Sexual Offences) Act 2017*. Project 9 (concerning landlord and tenant law) was overtaken by the Government's policy document *Rebuilding Ireland: An Action Plan for Housing and Homelessness* (2016) and the enactment of the *Planning and Development (Housing) and Residential Tenancies Act 2016*.

which discusses issues concerning what further improvements can be made to make legislation more accessible online, including by making best use of ICT.

(2) Implementation of Commission proposals in 2016

The following legislation, enacted or under consideration in 2016, involved the implementation of recommendations made by the Commission: the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* and the *Criminal Law (Sexual Offences) Bill 2015* (enacted in 2017). 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*, the Scheme of a *Landlord and Tenant Bill*, the Scheme of a *Consolidated Domestic Violence Bill* (published as the *Domestic Violence Bill 2017*) and the Scheme of a *Mediation and Conciliation Bill* (published as the *Mediation Bill 2017*). From time to time, Private Members Bills are published with a view to implementing the draft Bills in Commission Reports.⁷ The Commission's website www.lawreform.ie includes a section containing a general overview of the implementation of Commission Reports, updated on a regular basis.

DETAILED REVIEW OF COMMISSION WORK AND IMPLEMENTATION IN 2016

The material in this part of the chapter is discussed under the following 6 general headings:

1. Courts, Public Law and Regulatory Enforcement (pp.13-15).
2. Criminal Law and Procedure (pp.15-17).
3. Civil and Commercial Law (p.17).
4. Law of Evidence (pp.17-19).
5. Land Law, Succession and Trusts (pp.19-20).
6. Family Law (p.20).

1. COURTS, PUBLIC LAW AND REGULATORY ENFORCEMENT

1.(a) Regulatory Enforcement and Corporate Offences

In 2016, the Commission published its *Issues Paper on Regulatory Enforcement and Corporate Offences* (LRC IP 8-2016) (4th Programme of Law Reform, Project 1). This addressed and sought views on a range of issues arising in two connected areas: regulatory powers and enforcement in the financial and economic context and corporate criminal liability. The Paper examined, first, whether the supervisory and enforcement powers of the State's main financial and economic regulators (such as the Central Bank, ComReg, the Competition and Consumer Protection Commission and the Director of Corporate Enforcement) are adequate or need to be supplemented by, for example, civil financial sanctions and more effective co-ordination between such regulators. The Paper also examined whether there are gaps in the criminal law, particularly in relation to fraud, that need to be filled in order to respond more effectively to serious wrongdoing by corporate bodies, and whether there is a case for introducing an offence of reckless trading.

The Commission's annual conference, held on 3rd November in Dublin Castle, focused on this project. The principal speaker on regulatory powers and enforcement was

⁷ In recent years, a small number of Private Member's Bills (PMBs) have been enacted but it is over 25 years since an enacted PMB has derived from Commission Reports. The *Judicial Separation and Family Law Reform Act 1989* and the *Adoption Act 1991* were initiated as Private Member's Bills, and involved implementation of Commission Reports.

Professor Christopher Hodges, Professor of Justice Systems, Centre for Socio-Legal Studies, University of Oxford; to which there were replies by Ms Derville Rowland, Director of Enforcement, Central Bank of Ireland and Professor Colin Scott, Professor of EU Regulation & Governance, UCD Sutherland School of Law, University College Dublin. The principal speaker on corporate liability and criminal offences was Professor David Ormerod, Professor of Criminal Justice, University of London and a Law Commissioner with the Law Commission of England and Wales; to which there were replies by Dr Imelda Higgins, Barrister, Senior Associate, McCann FitzGerald Solicitors, Dublin and by Professor Irene Lynch-Fannon, School of Law, University College Cork. The conference was attended by over 100 delegates, who also made significant contributions during the open forums for each session.

1.(b) Implementation of International Obligations in Domestic Law

During 2016, the Commission developed a draft inventory of international obligations and draft Discussion Paper on the project concerning the implementation of international obligations in domestic law (4th Programme of Law Reform, Project 10). The Commission intends to publish the inventory and Discussion Paper on this project during 2017, which will complete the work on this project.

1.(c) Consolidation and Codification of Law

In 2016, the Commission published its *Issues Paper on Accessibility, Consolidation and Online Publication of Legislation* (LRC IP 11-2016) (4th Programme of Law Reform, Project 11). This discusses issues concerning what further improvements can be made to make legislation more accessible online, including by making best use of ICT.

The Issues Paper describes how there have been significant improvements in recent years in making legislation in its enacted form available free online, including on the electronic Irish Statute Book (the eISB), managed by the Office of the Attorney General, and on the Legislative Observatory of the Houses of the Oireachtas. In addition, the Commission maintains on its website the full text of over 300 Acts in their as-amended up-to-date state (called Revised Acts), and also tracks all amendments to all Acts (this work is also available on the eISB).

The Issues Paper points out, however, that

- there are over 3,000 Acts in force (of which over 1,000 are pre-1922 Acts from before the State was established),
- the vast majority of these Acts have been amended many times, but
- except for the 300+ Revised Acts on the Commission's website, it is very difficult to trace the up-to-date legislation on many topics without spending significant amounts of time doing this.

The Paper notes that this is clearly not satisfactory from a number of perspectives, including:

- the constitutional or rule of law perspective: it is vital that all persons have access to the law as it currently stands; and
- the economic perspective: improved access to legislation is a key part of the State's policy on regulatory reform and reducing compliance costs and the cost of doing business.

The Paper therefore addresses to what extent a number of areas, such as planned programmes of consolidation, and maximising technology in the online publication of legislation, could improve the accessibility of legislation in Ireland.

1.(d) Jury Service

The Government Legislation Programme Autumn-Winter Session 2016 (Section C) stated that a *Juries Bill* is to be published to implement the Commission's Report *Report on Jury Service* (LRC 107-2013) (3rd 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*.

1.(e) Alternative Dispute Resolution: Mediation

The Government Legislation Programme Autumn-Winter Session 2016 (Section B) stated that a *Mediation Bill* is to be published to implement the Commission's *Report on Alternative Dispute Resolution: Mediation and Conciliation* (LRC 98-2010) (3rd Programme of Law Reform, Project 5). In 2017, the Government published the *Mediation Bill 2017* which, at the time of writing, is before the Oireachtas.

1.(f) Consolidation and Reform of the Courts Acts

The Government Legislation Programme Autumn-Winter Session 2016 (Section C) stated 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) (3rd Programme of Law Reform, Project 6). In 2017, the Department of Justice and the Courts Service announced the establishment of a Working Group on Civil Procedure, which would examine reform of civil procedures, taking into account among other matters the Commission's 2010 Report.

2. CRIMINAL LAW AND PROCEDURE

2.(a) Harmful Communications and Digital Safety

In 2016, the Commission published its *Report on Harmful Communications and Digital Safety* (LRC 116-2016) (4th Programme of Law Reform, Project 6).

The Report notes that the revolution in telecoms and digital media has brought enormous positive benefits, because it has facilitated a new form of online and digital consumer society and also allowed us to participate on a national and international level in civic society and in public discourse generally. This freedom has, however, also brought some negative aspects. Examples include the intentional victim-shaming of individuals sometimes referred to as "revenge porn". Other negative developments include intimidating and threatening online messages directed at private persons and public figures. Digital technology has also facilitated a new type of voyeurism, sometimes referred to as "upskirting". In addition, there have also been many instances of online and digital harassment and stalking, which also mirror to some extent the pre-digital versions of these harmful behaviours. The Report contains recommendations to reform both the criminal law (which already addresses some, but not all, of these harmful communications), as well a new statutory national oversight system that would promote and support positive digital safety.

As to criminal law, the Report recommends the enactment of 2 new criminal offences to deal with posting online of intimate images without consent. The first is to deal with the intentional victim-shaming behaviour of posting intimate images without consent, often done after a relationship has broken down (so-called "revenge porn"). The second new offence also deals with posting intimate photos or videos and is to deal with a new type of voyeurism, often called "upskirting" or "down-blousing".

The Report recommends reforms of the existing offence of harassment, to ensure that it includes online activity such as posting fake social media profiles; and that there should be a separate offence of stalking, which is really an aggravated form of harassment. The Report also recommends reform of the existing offence of sending threatening and intimidating messages, again to ensure that it fully captures the most serious types of online intimidation.

As to the need for a statutory oversight system, the Report recommends the establishment of a statutory Digital Safety Commissioner, modelled on comparable offices in Australia and New Zealand. The Commissioner's general function would be to promote digital safety, including an important educational role to promote positive digital citizenship among children and young people, in conjunction with the Ombudsman for Children and all the education partners. The Report recommends that the Digital Safety Commissioner's role would also include publication of a statutory Code of Practice on Digital Safety. This would build on the current non-statutory take down procedures and standards already developed by the online and digital sector, including social media sites. The Code would set out nationally agreed standards on the details of an efficient take-down procedure.

Under the proposed statutory system, individuals would initially apply directly to a social media site to have harmful material removed in accordance with agreed time-lines: this is similar to the statutory system in place in Australia. If a social media site did not comply with the standards in the Code of Practice, the individual could then appeal to the Digital Safety Commissioner, who could direct a social media site to comply with the standards in the Code. If a social media site did not comply with the Digital Safety Commissioner's direction, the Commissioner could apply to the Circuit Court for a court order requiring compliance.

2.(b) Suspended Sentences

During 2016, the Commission developed a draft paper on its project on suspended sentences (4th Programme of Law Reform, Project 5). This project examines the principles that courts apply when deciding whether to impose a suspended sentence. Some aspects of the suspended sentence are dealt with in section 99 of the *Criminal Justice Act 2006* (as amended). The project will build on the Commission's previous work in this area, including its analysis of the principles of sentencing in its 2013 *Report on Mandatory Sentences* (LRC 108-2013) (which arose from an Attorney General request). The Commission intends to publish an Issues Paper on this project in 2017.

2.(c) Sexual Offences: Capacity to Consent and Third Party Disclosure

Part 3 of the *Criminal Law (Sexual Offences) Bill 2015*, which concerns sexual acts with protected persons (persons who do not have capacity to consent to sexual acts), took account of the Commission's *Report on Sexual Offences and Capacity to Consent* (LRC 109-2013) (3rd Programme of Law Reform, Projects 12 and 14). Section 39 (in Part 6) of the 2015 Bill, on disclosure of third party records in certain trials, implemented recommendations in the Commission's *Report on Disclosure and Discovery in Criminal Cases* (LRC 112-2014) (4th Programme of Law Reform, Project 2). The 2015 Bill was enacted as the *Criminal Law (Sexual Offences) Act 2017*.

2.(d) Spent Convictions

The *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* implemented the key recommendations in the Commission's *Report on Spent Convictions* (LRC 84-2007) (2nd Programme of Law Reform, Project 10). The enactment of the 2016 Act, which had been introduced as the *Criminal Justice (Spent Convictions) Bill 2012*, had been delayed in order to provide that it was fully

compatible with the European Convention on Human Rights, in particular taking account of the decision in the English case *R (T) v Chief Constable of Greater Manchester Police*,⁸ 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.

3. CIVIL AND COMMERCIAL LAW

Defamation and court reporting

In 2016, the Commission began work on a request from the Attorney General, made in accordance with section 4(2)(c) of the *Law Reform Commission Act 1975*, to examine the extent and scope of the absolute privilege in section 17(2)(i) of the *Defamation Act 2009* concerning a fair and accurate report of court proceedings. The Attorney General's request raised the question as to whether, having regard to the importance of ensuring that court proceedings are accessible to the public through the media, it would be appropriate to provide that a court report that does not come within the scope of section 17(2)(i) might nonetheless be subject to a qualified privilege based on absence of malice; and whether any claim related to such a qualified privilege should require leave of the court before proceeding.

4. LAW OF EVIDENCE

In 2016, the Commission completed its *Report on Consolidation and Reform of Aspects of the Law of Evidence* (LRC 117-2016) (3rd Programme of Law Reform, Projects 7, 8 and 11). This Report incorporated the final 3 remaining projects from the Commission's 3rd Programme of Law Reform, and therefore completed the Commission's work under the 3rd Programme. The Report also included a consolidation, with reforms, of existing *Evidence Acts*. The Report follows from 4 consultative papers published by the Commission, dealing with: (a) hearsay evidence, (b) documentary and electronic evidence, (c) expert evidence and (d) consolidation of existing *Evidence Acts*. The draft *Evidence (Consolidation and Reform) Bill* appended to the Report would, if implemented, allow for the repeal in full and replacement (with reforms) of 18 Evidence Acts, 15 of which are pre-1922 Acts.

The Report also includes a draft *Evidence (Consolidation and Reform) Bill* (containing 110 sections) to implement the 87 recommendations in the Report. While this draft Bill, if enacted, would not constitute a complete codification of the law of evidence, it would involve a significant step towards codification (which the Commission supports). The main recommendations in the Report are as follows.

4.(a) Hearsay, including business records

The Report supports the continuing importance of a key principle of the law of evidence that, in general, evidence should be capable of being tested in court, especially by cross-examination. Hearsay evidence (which the Report and draft Bill defines as is a statement, whether verbal or in a document, made out of court by a person who is not called as a witness and is presented in court to prove the truth of the fact or facts asserted in the statement) is, in general, not admissible because it cannot be tested by cross-examination. This long-standing approach is reinforced by the constitutional requirement of fair procedures.

A number of exceptions that allow hearsay to be admitted in evidence have been developed over the years by the courts. The Report recommends that hearsay evidence should only be admissible, whether in civil or criminal cases, under these

⁸ [2013] EWCA Civ 25, [2014] UKSC 35.

exceptions (such as for confessions, which are subject to many important protections) or under the reforms proposed for business records, discussed below.

The Report recommends that, in general, business records (whether electronic or paper records, such as emails or letters) should be presumed to be admissible in both civil and criminal cases (subject to procedural requirements to ensure that the records are reliable). Business records, such as hospital records for personal injuries cases, are among the most commonly adduced form of hearsay evidence.

Making business records admissible in civil cases, with the addition of a presumption of admissibility, means that admitting them in evidence would no longer depend on the agreement of the parties, which is sometimes only given when the case is about to start, and a witness may therefore be on stand-by to confirm that the record has been properly compiled in the course of business. These proposed changes should therefore assist in reducing the cost of criminal trials, notably complex trials, and also civil proceedings, including personal injuries actions.

The Report notes that business records have been admissible in criminal cases since the enactment of the *Criminal Evidence Act 1992*, but because the presumption of admissibility proposed in the Report would also apply to criminal cases, this could also reduce the need for example for Gardaí to be on stand-by during a trial to confirm that a specific written record complied with the requirements for business records.

The proposed reforms concerning business records would lead to a single set of clear rules for both civil and criminal cases, and this would also allow for the replacement of a patchwork of overlapping laws in this area, including the *Criminal Evidence Act 1992* (which applies in criminal cases only) and the *Bankers' Books Evidence Act 1879* (as amended, which applies in both civil and criminal cases but is limited to the records of licensed banks).

4.(b) Documentary and electronic evidence

The Report discusses the challenges faced in both civil and criminal cases where huge numbers of documents are presented in evidence (especially documents generated electronically), and the Commission therefore recommends that, subject to suitable safeguards (based on those that have been in place for many years in Australia and New Zealand), in such cases a written summary of such voluminous documents may be used to prove such documents in place of the documents themselves.

The Report recommends that, in relation to electronic signatures which are becoming an increasingly important part of many transactions, there should not be a general requirement to use an advanced electronic signature based on Public Key Infrastructure (PKI), and that such a requirement should only be prescribed on a case-by-case basis.

The Report also recommends that an electronic signature that complies with the 2014 EU Regulation on Electronic Identification and Trust Services for Electronic Transactions (the e-IDAS Regulation) should be given the same legal effect as a handwritten signature and therefore should be admissible on the same basis.

4.(c) Expert evidence

The Commission's Report recommends that, to avoid the risk that an expert may be seen as the "hired gun" of the party who engages him or her, the following 4 main duties of an expert witness, whether giving evidence in a civil or criminal case, should be set out in legislation:

- an overriding duty to the court to provide truthful, independent and impartial expert evidence;
- a duty to state the facts and assumptions (and, where relevant, any underlying scientific methodology) on which his or her evidence is based and to fully inform himself or herself of any fact that could detract from his or her evidence;
- a duty to confine his or her evidence to matters within the scope of his or her expertise; and
- a duty to his or her instructing party to act with due care, skill and diligence, including a duty to take reasonable care in drafting any written report.

To underline the importance of these duties, the Report recommends that if an expert fails to comply with them a court may rule inadmissible his or her evidence.

Because the immunity of an expert from being sued is difficult to justify (and has been abolished in some jurisdictions, including the UK), the Report recommends that it should be abolished. The Report also recommends, however, that it should be replaced by a statutory provision that an expert should be capable of being sued only if the evidence is given in a grossly negligent manner, that is, falling far below the standard of care to be expected from that expert.

The Report also recommends that the Minister for Justice and Equality should publish statutory codes of practice for expert witnesses, prepared by a representative group of persons with suitable knowledge of the relevant areas; and that expert witnesses would be required to comply with the contents of such a code of practice.

4.(d) Consolidating and reforming Evidence Acts

As well as making recommendations to reform aspects of the law of evidence discussed above, the Report includes an examination of 18 *Evidence Acts*, 15 of which precede the foundation of the State in 1922. The Commission recommends that some of these *Evidence Acts* should be repealed because they are obsolete, while others should be retained subject to suitable updating, as provided for in the Commission's draft Bill included in the Report.

Among the pre-1922 Acts examined in the Report are the *Oaths Acts 1888 and 1909* which provide that evidence must be given in court either by swearing an oath to tell the truth on a religious text or by swearing to tell the truth by an affirmation. An oath and affirmation have the same legal effect, including for the purposes of a charge of perjury, but the 1888 and 1909 Acts require that a person who wishes to give evidence by affirmation must state that he or she does not have any religious belief. The Report recommends that a witness should continue to testify either on oath or by affirmation, but that a person choosing to give evidence by affirmation should not be required to state that he or she does not have any religious belief.

5. LAND LAW, SUCCESSION AND TRUSTS

5.(a) Succession law

In 2016, the Commission published its *Issues Paper on Section 117 of the Succession Act 1965* (LRC IP 9-2016) (4th Programme of Law Reform, Project 7, Module 2). Section 117 of the 1965 Act provides that a child, including an adult child, of a deceased parent who has made a will may apply to court for a declaration that the parent failed in his or her "moral duty to make proper provision for the child" in accordance with the parent's means during the parent's lifetime, whether in the parent's will or otherwise. If the court agrees that the parent failed to comply with the duty to make proper provision for the child, it may make an order that such provision as it considers just should be made for the child out of the deceased parent's estate. The Issues Paper discussed a number of matters, including the following: whether section 117 of the 1965 Act should be amended to prescribe the matters to which the

court should have regard in deciding whether to make an order under it; whether section 117 should be extended to permit applications by children of parents who have died intestate (that is, without having made a will); and whether the 6 month time limitation period for applications under section 117 should be increased and/or whether the courts should have a discretion to extend it. In May 2017, the Commission published its *Report on Section 117 of the Succession Act 1965: Aspects of Provision for Children* (LRC 118-2017). This Report completed the Commission's work on this project, having published in 2015 its *Report on Prevention of Benefit from Homicide* (LRC 114-2015) (4th Programme of Law Reform, Project 7, Module 1).

5.(b) Compulsory purchase law

In 2016, the Commission began work on the project on compulsory purchase law (4th Programme of Law Reform, Project 8). This project will involve the consolidation, clarification and reform of the rules and principles on compulsory acquisition of land. The current process is considered unnecessarily complex, lengthy and costly and the purpose of the project would be to put in place a fair, effective and efficient system. In addition, the current law emanates from many different pieces of legislation and different rules apply depending on the type of compulsory purchase order (CPO) involved, whether for electricity, railways, roads or other matters. Much of the relevant legislation predates the foundation of the State, including the *Lands Clauses Consolidation Act 1845*, the *Railways Clauses Consolidation Act 1845* and the *Acquisition of Land (Assessment of Compensation) Act 1919*. Among the matters included in the project will be: simplification, consolidation and codification of the law; the principles for the assessment of compensation on the acquisition of land or interests in land; time limits for implementation of a CPO; and submissions from third parties whose land is not being acquired. The Commission intends to publish an Issues Paper on this project by the end of 2017.

5.(c) Landlord and tenant

The Government Legislation Programme Autumn-Winter Session 2016 (Section C) stated 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) (2nd Programme of Law Reform, Project 23), a *Landlord and Tenant Bill* is to be published.

5.(d) Trust Law and the Settled Land Acts

The Government Legislation Programme Autumn-Winter Session 2016 (Section C) stated 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 (3rd 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

The Government Legislation Programme Autumn-Winter Session 2016 (Section A) stated that a *Domestic Violence Bill* would be published. In 2017, the Government published the *Domestic Violence Bill 2017* which, at the time of writing, is before the Oireachtas. The 2017 Bill takes account of the Commission's recommendations in the *Report on Aspects of Domestic Violence* (LRC 111-2013) (3rd Programme of Law Reform, Project 24).

CHAPTER 3

ACCESS TO LEGISLATION

INTRODUCTION

Irish law is frequently amended so that the legislation as enacted may change significantly over time. The Commission's work on Access to Legislation is intended to make it easier for all users, professional and others, to find the law in its current state rather than as originally made. To achieve this objective, the Commission undertakes 3 main tasks, the Legislation Directory, Revised Acts and the Classified List of Legislation.

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 1996 onwards, it also lists commencement orders and other related Statutory Instruments made under powers in an Act. During 2016 it was kept up-to-date within one to two months.

The Commission also produces and publishes **Revised Acts** which show each amended Act with all its amendments, fully annotated, in a single document. This enables the reader to see the law as it currently is, as well as see information on previous versions, what provisions or amendments have been commenced and when, and those which have not yet been commenced.

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 is updated twice a year.

LEGISLATION DIRECTORY

The Commission maintains the Legislation Directory, an index of legislative changes, which is published on the electronic Irish Statute Book website (eISB). It analyses all new legislation, notes its effects on existing legislation, and records the effects in tables belonging to each Act. Thus for example, to see all changes to the *Succession Act 1965* made since it was enacted, a user can find the 1965 Act listed on the eISB, and look up the linked table of changes.

The Legislation Directory includes tables for pre-1922 Acts which remain in force. It also includes tables for statutory instruments and legislative effects made by statutory instruments from the current date back to 1 January 1997. In 2016, on foot of a Business Case, the Commission received specific additional funding approval from the Department of Public Expenditure and Reform to extend the Directory for statutory instruments back to 1973 when Ireland joined the European Union (then the European Communities). Having carried out in early 2017 a publicly advertised recruitment campaign for this project, work began on this in mid-2017.

The Commission maintains the Legislation Directory in two formats, an older format that the Commission inherited in 2006, which lists amendments to Acts only, and a newer format introduced by the Commission which includes commencement information and related secondary legislation as well as the list of amendments. In 2016, the newer format was extended back from 1999 to 1996.

The Legislation Directory was maintained up to date to within one to two months in 2016.

In 2016 the Commission completed its conversion of the Legislation Directory from a collection of files to a database. This work laid the foundation for greater efficiencies in the work of the Access to Legislation team.

REVISED ACTS

Revised Acts

The Commission prepares and updates administrative consolidations of a growing number of Acts, now over 300, known as Revised Acts. Around half of these Acts are all Acts from 2006 onwards that have been textually amended, other than Finance and Social Welfare Acts. The others, just over 130, are selected pre-2006 Acts and include groups such as employment law, child law, family law and road traffic Acts, as well as other much-used Acts such as the *Data Protection Acts 1988 and 2003*, the *Planning and Development Act 2000* and the *Road Traffic Act 1961*. The preparation of the Revised Acts is assisted by the Commission's work on the Legislation Directory.

The Revised Acts are updated to within two months of being amended and are published on the Commission website. In 2016 they were individually linked from the relevant original Act on the eISB, with a choice of display by section and by entire Act in HTML format, with annotations, and by entire Act in PDF, with and without annotations. The annotations include the sources of any changes and commencement information. In 2016 over 200 Revised Acts were updated to within two months, some multiple times.

They may be viewed at
<http://revisedacts.lawreform.ie/revacts/alpha>

CLASSIFIED LIST OF LEGISLATION

Classified List of Acts

The Commission maintains a list of Acts in force classified under 36 subject headings or titles. It is published twice a year, with 2016 editions in February and September.

Irish legislation is currently available to the public in the order in which it is made and is listed on the eISB chronologically by number. This makes it difficult for lawyers and public alike to know the various Acts which deal with a subject such as environmental law, local government or marriage. The Classified List groups the Acts together by subject matter and is thus a useful access point. It is available on the Commission website and linked from the home page of the eISB.

Draft Classified List of Statutory Instruments

In May 2016 the Commission published a draft Classified List of Statutory Instruments to complement the List of Acts. It contained around 15,000 statutory instruments listed

under their enabling Acts, of over 35,000 instruments made since the foundation of the State. The Commission was assisted by the feedback received from Government Departments in the previous 3 years. Many instruments have been identified as spent, obsolete, superseded or inappropriate. It is intended that this list should serve as a working list, being refined as more information comes to light, and serve as a resource for drafters and legislators to assist in the revocation of redundant legislation, bringing greater clarity to the statute book. With the ongoing development of the Legislation Directory for statutory instruments, there is now a publicly accessible repository for noting revocation and other changes to statutory instruments. The Classified List of Acts and Statutory Instruments was updated with further feedback and published as a September edition.

Work started on integrating the Classified Lists with the new Legislation Directory database, with a view to basing future updates on the database and reducing duplication of work.

CHAPTER 4 ADMINISTRATION

INTRODUCTION

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 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 organisational structure of the Commission (as of December 2016) is set out in Appendix 1.

THE COMMISSION

The Commission consists of the President and 4 other Commissioners. Commissioners are appointed by the Government for a term of up to 5 years, and their appointment may be renewed. The President of the Commission, Mr Justice John Quirke, is a former judge of the High Court, who was re-appointed for a 5 year term in 2015. Of the other 4 Commissioners, it has been the practice for 1 Commissioner to be appointed on a full-time basis (and, in effect, also act as chief executive officer) and for the other 3 Commissioners to be appointed on a part-time basis. The full-time Commissioner to end February 2016 (when her term of office was completed) was Ms Finola Flanagan BL, who had previously been Director General of the Office of the Attorney General. From April 2016, the full-time Commissioner is Raymond Byrne BL who, prior to his appointment, had been Director of Research in the Commission. He was appointed for a 5 year term, following a public appointments process under the auspices of the Top Level Appointments Commission (TLAC) and the Public Appointments Service (PAS). The 3 Commissioners (part-time), who were appointed for a 5 year term in 2015, are: Professor Donncha O'Connell, School of Law NUI Galway, Mr Tom O'Malley, Barrister-at-law, and School of Law NUI Galway; and Ms Justice Carmel Stewart, judge of the High Court.

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 10 times each year.

MANAGEMENT COMMITTEE

The Commission's Management Committee consists of the full-time Commissioner, the Head of Administration, the Director of Research and the Access to Legislation Manager. The Management Committee meets 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.

ADMINISTRATIVE STAFF

The Commission's administrative and library staff consisted of a Head of Administration and a team of 5 staff as of December 2016.

During 2016, 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 online publication of Issues Papers and Reports (and a limited print run of Reports).

The Administration also arranged for the 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, seminars and the annual conference.

RESEARCH AND LIBRARY STAFF

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 subsequent stages of a project this involves the development of a draft Issues Paper and draft Report.

Research Team

The law reform research team is headed by the Director of Research who until April 2016 had been Raymond Byrne, barrister, and formerly of the School of Law and Government, Dublin City University. As noted above, he was appointed full-time Commissioner in April 2016. During the second half of 2016, the Commission conducted a publicly advertised competition for the post and, in February 2017, Professor Ciarán Burke, Professor of Law, University of Jena, took up the post of Director of Research. The Commission's Access to Legislation work (the Legislation Directory, Revised Acts and the Classified List of Legislation) is overseen by the Access to Legislation Manager, Alma Clissmann, Solicitor, and Deputy Manager, Kate Doran. During 2016, the Commission recruited legal researchers on fixed-term contracts from its panel to ensure that there were 8 full-time Legal Researcher positions.

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 of Research, the Access to Legislation Manager and Deputy Manager, and the legal research team meet on a weekly basis 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.

During 2016 the Library and Information Manager 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.

FINANCE

Income and expenditure

The Commission is funded by a grant from the Minister for Public Expenditure and Reform via the Office of the Attorney General. Total income received in 2016 from all sources (including grant-in-aid, net deferred funding from pensions, transfers to capital account, sale of publications and income received from the Department of Social Protection) amounted to €1,962,572.

Expenditure in 2016 amounted to €1,962,786. 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.

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 and the Research team. The Accounting Officer for the Commission is the Director General of the Office of the Attorney General.

Under current accounting procedures, funding is drawn down from the Office of the Attorney General on a monthly basis by way of a grant. There is a service level agreement between the Commission and the Office of the Attorney General.

External Audit

Appropriation accounts for 2016 were submitted to the Comptroller and Auditor General for audit. Once the accounts are approved, they are sent to the Minister for Public Expenditure and Reform and laid before the Houses of the Oireachtas in accordance of the *Law Reform Commission Act 1975*.

Audit Committee

The Commission is audited by the Audit Committee of the Office of the Attorney General each year. In 2016, the Commission was audited and there were no issues raised.

Prompt payments

The Commission did not incur any late interest penalties during 2016 under the *Prompt Payment of Accounts Act 1997*, as amended by the *European Communities (Late Payment in Commercial Transactions) Regulations 2002*.

Ethics in Public Offices Acts 1995 and 2001

The Law Reform Commission is a public body for the purposes of the *Ethics in Public Offices Acts 1995 and 2001*.

CODE OF PRACTICE FOR THE GOVERNANCE OF STATE BODIES

During the period of this Annual Report, the Commission operated primarily under the 2009 Code of Practice for the Governance of State Bodies and began the process of updating procedures and policies in line with the revised 2016 Code of Practice.

The Code of Practice provides a framework for the application of best practice in corporate governance by commercial and non-commercial state bodies. The Code outlines compliance requirements for the non-commercial bodies such as the Law Reform Commission in the following areas, which are discussed below:

- Reports, Remuneration and Accounts
- System of Internal Financial Control
- Conduct of Directors and Employees
- Procurement
- Travel and Subsistence
- Risk Management
- Output Statement

Reports, Remuneration and Accounts

In addition to the information on income and finance above, the figures below set out the salaries, expenses, and costs incurred of attending conferences, for the President and 4 other Commissioners.

<i>Commissioner Name</i>	<i>No. of meetings attended</i>	<i>Salary/ fees</i> €	<i>Travel expenses to Commission meetings</i> € ⁹	<i>Attendance at conferences/ lectures</i> €
<i>President</i> Mr Justice John Quirke	10	48,000	0	688
<i>Commissioner (full-time)</i> Ms Finola Flanagan (to 29 February 2016)	2	175,193	0	0
<i>Commissioner (full-time)</i> Mr Raymond Byrne (from 14 April 2016, appointed for 5 year term)	7	136,496	0	688
<i>Commissioners (part-time)</i>				
Prof Donncha O'Connell	10	0	1,250	0
Mr Tom O'Malley	9	0	1,250	0
Ms Justice Carmel Stewart	8	0	0	0

The President was re-appointed in 2015 on a part-time basis and his salary was agreed in accordance with relevant Government guidelines.

⁹ The travel expenses to Commission meetings for Commissioners O'Connell and O'Malley in 2016 are based on an estimate, and had not been claimed at the time of writing (June 2017).

The full-time Commissioner's salary to February 2016 was at Secretary General level; and from April 2016 was at Assistant Secretary General level.

The 3 part-time Commissioners receive no salary or fees arising from Government policy of "one State salary." Travel expenses to Commission meetings for the Commissioners are related to travel from outside Dublin, and the Commissioners have not claimed any travel expenses for 2016 yet.

Travel and Subsistence

Flights and accommodation were organised and paid for in advance by the Legal and Corporate Services Unit in compliance with Government travel policy, and any other related expenses were vouched. Commission members and staff attended the following conferences abroad in 2016:

- Conference on Library Management Software, London,
- Meeting of European Forum of Official Gazettes, Vienna,
- Seminar on codification: a civil law solution to a common law conundrum, Institute of Advanced Legal Studies, London,
- Meeting of Council of Bars and Law Societies of Europe (CCBE) on Access to Legislation, Brussels,
- Annual meeting of Law Reform Commissions of England/Wales, Ireland, Jersey and Scotland, Jersey.

System of Internal Financial Control

The Law Reform Commission has an appropriate system of internal financial control in place which is reviewed each year by the Comptroller and Auditor General and by the Audit Committee of the Office of the Attorney General.

Conduct of Commissioners and Employees

The Law Reform Commission has a Code of Business Conduct for Commissioners which has been formally adopted and approved. The Administration staff of the Commission are civil servants and are required to comply with the requirements of the Civil Service Code of Standards and Behaviour and the *Official Secrets Act 1963*.

Procurement

Procurement in the Law Reform Commission is conducted by the Administration staff who ensure that procurement is in the line with EU law and Government circulars. They are in regular contact with the Office of Government Procurement to avail of centralised managed services where available.

Commission's Risk Register

The Commission's Risk Register was updated in November 2016 and is kept under regular review by the Commission.

Strategy Statement and Business Plan

The Key Objectives in the Commission's *Strategy Statement 2015-2017* are matched at an organisational 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.

PMDS

Performance of individual staff members (and of legal researchers, who are employed on fixed-term contracts) is managed through PMDS.

ENERGY EFFICIENCY

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 2016 that it took appropriate steps concerning energy conservation and reduction measures.

FREEDOM OF INFORMATION ACT 2014

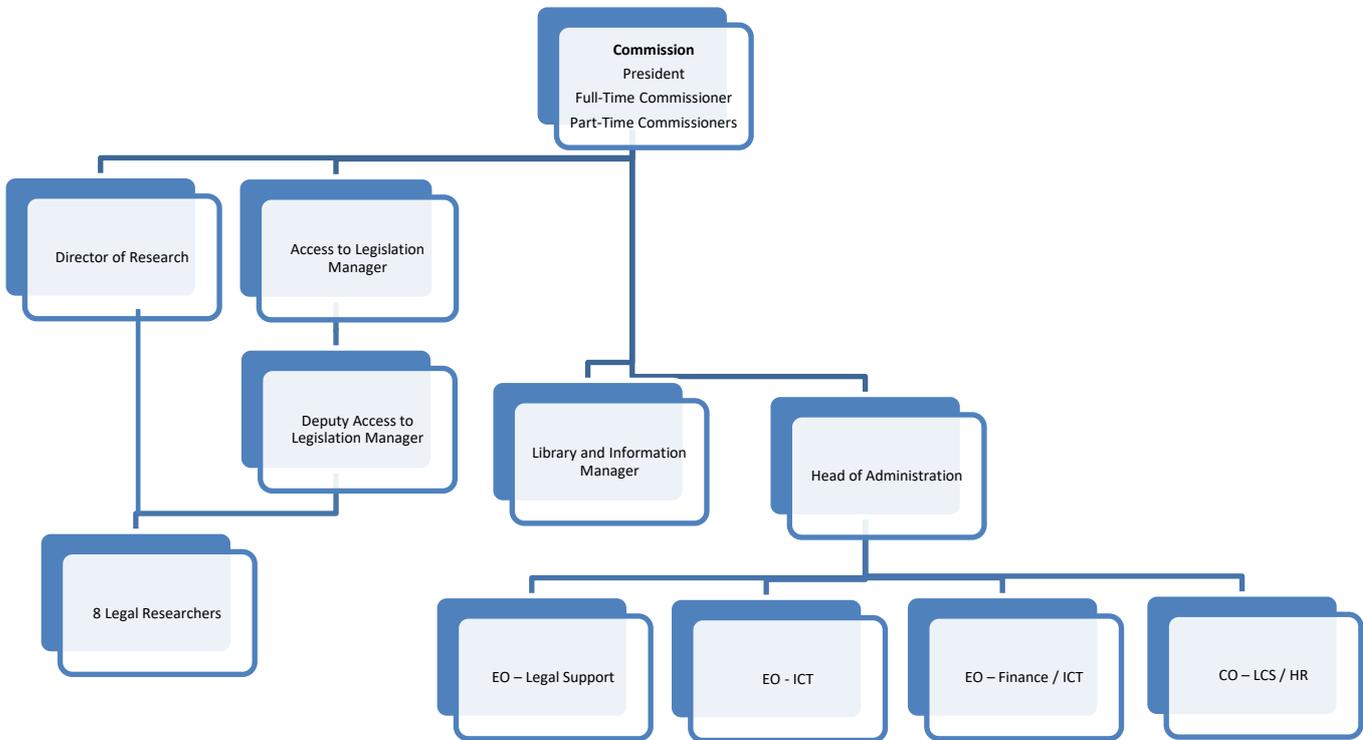
The Commission continues to meet its obligations under the *Freedom of Information Act 2014* in accordance with its Freedom of Information (FOI) Scheme, which is published on its website, www.lawreform.ie. FOI requests are logged on the Commission's FOI Log, which forms part of its FOI Scheme. In 2015, the Commission received 2 FOI requests, which were not allowed because the material requested emanated from bodies whose material is exempt from the 2014 Act. In 2016, the Commission received 1 FOI request under the 2014 Act, which was not allowed because the information requested concerned the Commission's 2005 *Report on Multi-Party Litigation* (LRC 76-2005), and therefore pre-dated 2008, the date on which the 2014 Act came into force for the Commission. However, in accordance with relevant guidance, the full time Commissioner met the applicant in question and discussed in general terms the thinking that led to the 2005 Report.

PROTECTED DISCLOSURES ACT 2014

The Commission, as a public body, is required under section 22 of the *Protected Disclosures Act 2014* to publish an annual report in relation to the number of protected disclosures made to it in the preceding year, and the action taken in response to any such protected disclosures.

No protected disclosures were made to the Commission in the period 1 January 2016 to 31 December 2016.

APPENDIX 1
Law Reform Commission Organisation Chart in 2016



APPENDIX 2

Selection of Law Reform Commission Events in 2016

January

- Hosted delegation from the Law Office of the Republic of Cyprus
- Attended meeting of eLegislation Group, Department of the Taoiseach (and throughout the year)
- *Issues Paper on Regulatory Enforcement and Corporate Offences* (LRC IP 8-2016)
- President Quirke, interviews concerning *Issues Paper on Regulatory Enforcement and Corporate Offences*, 27 January (RTE Radio 1, Morning Ireland; Newstalk, Pat Kenny)

March

- 2 round table meetings, on expert evidence and hearsay, part of consultation that culminated in *Report on Consolidation and Reform of Aspects of the Law of Evidence* (LRC 117-2016)

April

- 2 day workshop with young people on harmful communications, facilitated by Department of Children and Youth Affairs, part of consultation that culminated in *Report on Harmful Communications and Digital Safety* (LRC 116-2016)
- *Issues Paper on Section 117 of the Succession Act 1965* (LRC IP 9-2016)
- Commissioner O'Malley, interviews concerning *Issues Paper on Section 117 of the Succession Act 1965*, 25 & 26 April (RTE Radio 1, Morning Ireland; Highland Radio, Caroline Orr)
- Commissioner Byrne, interview concerning *Issues Paper on Section 117 of the Succession Act 1965*, 25 April (Newstalk, Pat Kenny)

June

- President Quirke and Commissioner Byrne attended annual meeting of Law Commissions of England/Wales, Ireland, Jersey and Scotland, held in Jersey

July

- *Issues Paper on Contempt of Court and Other Offences and Torts Involving the Administration of Justice* (LRC IP 10-2016)

September

- *Report on Harmful Communications and Digital Safety* (LRC 116-2016)
- Commissioner O'Connell, interviews concerning *Report on Harmful Communications and Digital Safety*, 27 and 28 September (including RTE Radio 1, Morning Ireland; Galway FM)
- Hosted visit of Mr Douglas White, QC, Chair of the New Zealand Law Commission, and visit to the Court of Appeal, hosted by Ms Justice Mary Finlay Geoghegan and Mr Justice Gerard Hogan

November

- Commission Annual Conference, Dublin Castle, on Regulatory Enforcement and Corporate Offences, part of consultation process arising from *Issues Paper on Regulatory Enforcement and Corporate Offences* (LRC IP 8-2016)

December

- *Issues Paper on Accessibility, Consolidation and Online Publication of Legislation* (LRC IP 11-2016)
- *Report on Consolidation and Reform of Aspects of the Law of Evidence* (LRC 117-2016)