



LAW REFORM
COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ

REPORT

THIRD PROGRAMME OF LAW REFORM

2008-2014

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THIRD PROGRAMME OF LAW REFORM

In consultation with the Attorney General and in accordance with Section 4 (2)(a) of the *Law Reform Commission Act 1975* the Law Reform Commission submits for approval to Government our *Third Programme of Law Reform*, which will commence on 1 January 2008.

The Hon **Mrs Justice Catherine McGuinness**,
former judge of the Supreme Court



Commissioner **Patricia T. Rickard-Clarke**



Commissioner **Finbarr McAuley**



Commissioner **Marian Shanley**



Commissioner **Donal O'Donnell**



Approved by Government in December 2007, in accordance with section 5 of the *Law Reform Commission Act 1975*.

THE PRESIDENT'S FOREWORD

I am very pleased to present, on behalf of the Commission, this *Third Programme of Law Reform 2008 – 2014*. The Commission's Programmes of Law Reform are the principal basis on which we carry out our statutory mandate (under the *Law Reform Commission Act 1975*) to keep the law under review with a view to its reform. The *Third Programme of Law Reform* contains 37 law reform projects which will be examined by the Commission over the next seven years.

The Commission's work in framing the *Third Programme of Law Reform* has followed a wide-ranging and extensive consultation with the public, Government Departments, members of the legal profession and non-governmental community and voluntary organisations. In doing so, we had the benefit of over 200 submissions on which to base the final selection of topics. The Commission is extremely grateful for the time and care taken by those organisations and individuals who contributed to our deliberations. The Commission also had the benefit of an insight into the perspectives of other jurisdictions. We were delighted that Mr Justice Michael Kirby of the High Court of Australia and former Chairman of the Australian Law Reform Commission spoke at the Commission's third public consultation seminar. He noted that: "In a way, to be Irish is to be interested in reform. History teaches the need for it. Society, technology and changing values demand it."

It goes without saying that the law has a significant impact on all our lives and, as our society changes, it is necessary for our laws to respond to these changes. Each Programme of Law Reform has tried to reflect this need to be responsive to change. While delivering a lecture to mark the 30th Anniversary of the Commission in 2005, Mr Justice Ronan Keane pointed out that the Commission's First Programme (1976) included a wide review of criminal law and family law, while the Second Programme (2000) addressed accessibility of the law for the citizen, emerging concerns for vulnerable groups (including older persons) and changes in family structures. His address emphasised that the Commission's work should continue to contribute "to a body of law which is fair, accessible and relevant to the needs of Irish society today."

The Commission shares the ambition of all those who have contributed to the preparation of the Third Programme that it must respond to the needs of a modern

Ireland. The topics contained in this Programme reflect a society which is currently in a process of great change. It is equally clear that the topics will present enormous challenges to the Commission to continue the interdisciplinary research which has been an increasing feature of our work under the *Second Programme of Law Reform*. That work has also greatly benefited from a growing realisation that law reform proposals cannot easily fit within a particular area of law nor of governmental responsibility but involve cross-cutting issues that require integrated responses across a number of bodies and institutions.

We look forward to initiating and completing the projects set out in the *Third Programme of Law Reform* and also responding to any other areas of law referred to us by the Attorney General under the 1975 Act. We acknowledge that the successful completion of these projects will depend upon consultation with members of the legal profession, with experts from other disciplines, and with interested parties and organisations. The Commission is ready and eager to embark on a new Programme which contains many challenging, interesting and important law reform projects.

A handwritten signature in black ink that reads "Catherine McGuinness". The signature is written in a cursive style and is underlined with a single horizontal line.

The Hon Mrs. Justice Catherine McGuinness
President

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PART I

INTRODUCTION

THE COMMISSION'S FUNCTIONS

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

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

PROGRAMMES OF LAW REFORM

A Programme of Law Reform is prepared by the Commission, in consultation with the Attorney General, and contains a specific number of areas of law that require examination with a view to their reform. When such a Programme of Law Reform is approved by the Government, the Commission will examine and research the subjects set out in it and, if appropriate, formulate and submit to the Taoiseach proposals for the reform of the law in those areas. The Commission's *First Programme of Law Reform* was in place between 1977 and 1999. The *Second Programme of Law Reform* had a defined timeframe from 2000 to the end of 2007. The *Third Programme of Law Reform* will also run for the specified timeframe from 2008 to 2014.

STATUTE LAW RESTATEMENT AND LEGISLATION DIRECTORY

Until 2006, the Commission carried out its statutory mandate primarily through Programmes of Law Reform, together with requests by the Attorney General under the 1975 Act to examine specific areas of law. In 2006, the scope of the Commission's research work was expanded to include two other areas of activity, Statute Law Restatement and the Chronological Tables of the Statutes. Statute Law Restatement is a process of making legislation more accessible by updating existing Acts to incorporate all changes made by subsequent Acts or Statutory Instruments into a single text, which is certified by the Attorney General. The Chronological Tables of the Statutes consists of an Index listing in chronological order all amendments to legislation made by Acts and Statutory Instruments which have been enacted or made since 1922. Following the Commission's assumption of responsibility for the Chronological tables of Statutes,

the commission made the decision to change the name of the " Chronological Tables of Statutes" to "Legislation Directory". This decision was taken in order to better indicate to potential users the function of this resource as an electronically searchable guide to legislative effects. These roles are fully consistent with the Commission's law reform remit under the 1975 Act.

SECOND PROGRAMME OF LAW REFORM 2000 TO 2007

Under the Second Programme of Law Reform 2000 to 2007 the Commission published over 60 documents - Consultation Papers and Reports - containing proposals for law reform covering the 30 specific topics in the Programme. The Commission also responded to requests from the Attorney General to examine specific areas of law under the 1975 Act. These Consultation Papers and Reports dealt with issues such as:

- Plain Language in the Law
- The Establishment of a DNA database
- Tribunals of Inquiry
- Murder and Manslaughter, Corporate Killing and Defences in Criminal Law
- Reform and Modernisation of Land Law and Conveyancing law, eConveancing and Multi-Unit Developments
- Mental Capacity and Vulnerable Adults
- Rights and Duties of Cohabitants
- Contract Law and Third Parties

The Commission is very pleased to note that much of this work has led on to reforming legislation.¹

THE DEVELOPMENT OF THE THIRD PROGRAMME

The Commission firmly believes that law cannot exist for its own sake or in a vacuum. The law exists to serve Irish society and it operates within the framework of that society. If the law is to continue to have a real meaning for our society, it must reflect the values and attitudes of our society. Law must be expressed in modern, clear and readily understandable language.

¹ See Appendix 6, which sets out the table of implementation of Law Reform Commission Reports to 2007.

The Context of the Third Programme

As the Commission approached the preparation of the Third Programme, it was conscious that its role of law reform takes place against the background of a number of related initiatives:

- Better Regulation: the Government's White Paper *Regulating Better* (2004) is based on the same principles that underlie the *Law Reform Commission Act 1975*: modernisation and simplification of the law.
- Pre-1922 Statute Law Revision Project: this is a major component of the Better Regulation Policy, and has culminated in the enactment (of the *Statute Law Revision Act 2007* which contains) the first definitive list (the "White List") of all pre-1922 Acts that currently apply in the State.
- Significant increase in the level of general legislative law reform in the Oireachtas in recent years.
- The establishment of specific working groups or committees to deal with reform in specific areas – some placed on a statutory footing, such as the Company Law Review Group and the Criminal Law Codification Advisory Committee.
- The increasing importance of the international dimension to law reform, including the EU, OECD, the UN, the 1998 Belfast Agreements and other international treaties.
- The enactment of the *European Convention on Human Rights Act 2003* and the increased relevance of the European Court of Human Rights and its case law.

Public Consultation Process

The Commission decided that public consultation was essential if the Commission was to develop a new Programme of Law Reform that was responsive to the needs of modern Ireland. To that end, the Commission organised a number of public consultations on the *Third Programme of Law Reform*. These were designed to provide the widest opportunity for all interested parties to engage in the law reform process and to suggest areas of law that require reform, modernisation and renewal. The

Commission aimed to identify gaps in the law and also issues that would require review during the seven year timescale of the new Programme.

The first public consultation took place in NUI Galway in March 2007 and the second at University College Cork in April 2007. The final public consultation, which was also the Commission's Annual Conference for 2007, took place in Dublin in July and over 300 people attended. The keynote address was delivered by Justice Michael Kirby of the High Court of Australia² and the Attorney General, Paul Gallagher SC, opened the Conference.

Attorney General's Consultative Committee

In September 2007, the Commission met with the Attorney General's Consultative Committee on Law Reform.³ The Consultative Committee comprises representatives of certain Government Departments, the Law Society of Ireland, the Bar Council and the Commission. One of its functions is to assist the Attorney General in his consultations with the Commission on the *Third Programme of Law Reform*. The Consultative Committee discussed and approved the Commission's draft Programme of Law Reform.

Meetings with Oireachtas Committee

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

Selection Criteria

To facilitate the public consultation process, the Commission published a Seminar Paper which set out the approach of the Commission in developing the *Third Programme of Law Reform*. This outlined the selection criteria which have assisted the Commission in choosing the law reform projects for the *Third Programme of Law Reform*.⁴ The selection criteria are:

- a) *Public benefit*: projects must meet a real community need by providing a remedy for a deficiency or gap in the law, including the need to modernise an outdated law.

² Justice Kirby provided two versions of his Keynote Address; both versions are available from www.lawreform.ie and www.hcourt.gov.au/publications_05.html#MichaelKirby.

³ This Consultative Committee was established by a Government decision in March 1998.

⁴ See *Seminar Paper Third Programme of Law Reform (SP3-2007)* at pages 14-15, available at www.lawreform.ie.

- b) *Suitable for a law reform body*: projects should be suitable for analysis by the legal expertise available in the Commission, supplemented by appropriate consultation with other professionals and interested parties.
- c) *Mix of projects and resources*: the programme should include a mix of narrow-focus projects and wider-focus projects that are relevant to society, so that the Commission's resources are not tied up in one project.
- d) *Avoid duplication*: projects should not overlap with the work of other bodies engaged in law reform activities, but should complement such work where appropriate.

Application of the Selection Criteria

The Commission received over 200 submissions suggesting approximately 400 areas of law for inclusion in the Third Programme. All submissions were fully considered by the Commission. The Commission concluded it would be feasible to include 37 law reform projects because:

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

The Commission concluded that a number of other projects merited examination but were unlikely to be completed within the timeframe of the *Third Programme of Law Reform*. Other projects involved areas which were more suitable for examination by relevant Government Departments, either because they involved exclusively policy issues or were otherwise already under consideration by those Departments.⁵ In accordance with the Commission's remit under the *Law Reform Commission Act 1975*

⁵ For a fuller discussion on law reform and policy see *Seminar Paper Third Programme of Law Reform (SP3-2007)* at pages 4-5, available at www.lawreform.ie.

to identify other bodies which may appropriately carry out law reform projects, the Commission communicated with those Departments concerning these other projects.

THIRD PROGRAMME OF LAW REFORM 2008 TO 2014

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

- Review of the Law Relating to Juries
- Alternative Dispute Resolution
- Documentary Evidence and Technology
- The Law of Sexual Offences
- The Victim and the Criminal Justice System
- Further Statutory Codification of Land Law
- eConveyancing Road Map
- Legal Aspects of Family Relationships
- Children and the Law
- Legal Aspects of New and Emerging Members of Irish Society
- Legal Aspects of Assisted Human Reproduction
- Insurance Contracts
- Civil Law Aspects of the Law of Missing Persons

As the President's Foreword indicates, these topics involve recognition of the need to respond to the changing and complex legal issues that affect Irish society.

Mid-term Review of the Third Programme of Law Reform

The Commission is aware that a seven year Programme of Law Reform should be reviewed to take account of developments after its initial publication. Under the Second Programme, the Commission conducted a mid-term review in 2004 in order to take stock of developments since its initiation in 2000 and to plan for completion of the remaining work in the Programme.⁶ This exercise proved extremely useful and the Commission envisages that it will repeat this exercise at the mid-way point of the Third Programme.

⁶ See Law Reform Commission, *Annual Report 2004*, Chapter 5, available at www.lawreform.ie.

As noted in the *Second Programme of Law Reform*, it is difficult if not impossible to anticipate change which may call for law reform in the future. Therefore, the Commission considers that this mid-term review might provide an opportunity to supplement the list of law reform projects set out in this Programme. The Commission will do this where it considers appropriate, subject to its available resources.

Consultation on Projects in the Third Programme

The Commission will continue to have regard to the activities and work of all bodies that have a law reform remit with a view to consulting, co-operating and collaborating with them as appropriate.

Third Programme of Law Reform and Codification

The Commission, in accordance with its statutory remit to keep the law under review retains a continuing interest in codification of the law. The Commission proposes to address the issue of codification in the context of the projects in this Programme of Law Reform as appropriate. This work will complement the work of the Commission on Statute Law Restatement and the Legislation Directory.

PART 2

PROJECTS INCLUDED IN THE THIRD PROGRAMME OF LAW REFORM

A. LEGAL SYSTEM AND PUBLIC LAW

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

B. LAW OF EVIDENCE

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

C. CRIMINAL LAW

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

D. LAND LAW AND PROPERTY

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

E. FAMILY LAW

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

F. SPECIFIC GROUPS IN A CHANGING SOCIETY

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

G. TECHNOLOGY, INNOVATION AND THE INDIVIDUAL

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

H. COMMERCIAL LAW AND THE LAW OF OBLIGATIONS

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

I. INTERNATIONAL LAW

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

APPENDIX 1

ABSTRACTS OF PROJECTS IN THE THIRD PROGRAMME OF LAW REFORM

A. LEGAL SYSTEM AND PUBLIC LAW

1 The Law Relating to Juries

This project will involve a general review of the law concerning the jury system in Ireland, with particular emphasis on reform of the *Juries Act 1976*. This will include qualification for jury service, jury selection and the consequences of failure to attend for jury service. The Commission will consult with all interested parties, including the Courts Service.

2 Debt Enforcement and Securing Interests over Personal Property

This project will include an examination of the legal issues surrounding the instalment order procedure. The Commission will also examine the attachment of security interests to personal property. The Commission is aware that FLAC (the Free Legal Advice Centres) has carried out work on some aspects of this project and will consult with them and other interested parties.

3 Bench Warrants and Search Warrants

This project will examine the enforcement of court orders and the service of proceedings in both civil and criminal cases, in particular the procedure for the execution of bench warrants and search warrants. The associated procedural problems in this area have resulted in inefficient use of court resources.

4 Limitation of Actions

This project will examine in general the limitation periods for civil claims in the *Statute of Limitations 1957* and the potential for consolidation of the limitation periods. This project involves the completion of work begun under the Commission's *Second Programme of Law Reform*, and which reflected earlier work by the Commission that reviewed specific aspects of this area of law.

5 Alternative Dispute Resolution

This project involves the completion of work begun under the Commission's *Second Programme of Law Reform*. The Commission will examine the main processes of ADR including partnering, mediation, conciliation, expert determination and collaborative lawyering. Key principles, including confidentiality, enforceability of ADR agreements and training of ADR professionals will also be examined.

6 Consolidation and Reform of the Courts Acts

The project will lead to a draft *Courts Bill* which will contain a complete legislative statement of the jurisdiction of the courts in Ireland, currently contained in over 100 Acts, both pre-1922 and post-1922. The project involves the completion of work begun under the Commission's *Second Programme of Law Reform*. The project will also incorporate proposals for reform in this area.

B. LAW OF EVIDENCE

7 Documentary Evidence and Technology

Documentary evidence is an essential element of nearly all litigation. This project will discuss the rules concerning proof of execution and authentication of documents, and consider the need for their modernisation. The project will also consider whether electronic evidence should be regulated as a separate category of evidence.

8 Hearsay in Civil and Criminal Cases

The Commission has previously examined the hearsay rule as it applies in civil cases. This project will build on this previous work and extend the analysis to include the use of hearsay in both civil and criminal cases.

9 Advance Disclosure of Defence Cases

This project will examine whether it would be appropriate to require advance disclosure of defence cases in criminal trials. The *Report of the Balance in the Criminal Law Review Group (2007)* recommended that this should be examined in some detail.

10 Forensic Evidence

This project will build on previous work by the Commission under the *Second Programme of Law Reform*, notably on the Establishment of a DNA Database. That work benefited greatly from the interdisciplinary assistance of experts from the scientific and forensic community and the Commission will continue to consult widely on this project in order to ensure that relevant developments are reflected in law reform proposals.

11 Expert Evidence

This project involves the completion of work begun under the Commission's Second Programme of Law Reform. The project will examine the current rules concerning the admissibility of expert evidence in court and the role and function of the expert witness. The project will also examine arrangements for ensuring the quality of expert evidence.

C. CRIMINAL LAW

12 The Law of Sexual Offences

This project will involve a general examination of the law of sexual offences. It will build on previous work by the Commission, which resulted in some legislative reforms. The project will include an examination of consent to sexual contact and whether there should be a statutory definition of the term "consent". The project will also explore the extent to which the law in this area can be consolidated.

13 The Victim and the Criminal Justice System

This project will involve a general review of the interaction between victims of crime and the criminal justice system. This will include areas such as communication of information, anonymity of parties, the right of representation, video and remote evidence, victim impact statements and media reporting.

14 Vulnerable Persons and the Criminal Justice System

This project will examine how vulnerable persons, including those who are vulnerable arising from limited intellectual capacity, are dealt with in the criminal justice system in Ireland. The project will examine how vulnerable persons are treated before, during and after the court process.

15 Restorative Justice

This project will examine restorative justice from a community, victim and offender perspective. This project will build on previous work by the Commission under the *Second Programme of Law Reform* in which the Commission examined the Court Poor Box and the issue of spent convictions. The project will take into account any relevant work being undertaken by the National Commission on Restorative Justice.

16 Having regard to the establishment of the Criminal Law Codification Advisory Committee, examination of issues arising in the general part of the criminal law

The Criminal Law Codification Advisory Committee was established under Part 14 of the *Criminal Justice Act 2006*. The Commission will continue to collaborate with the Committee and will engage in appropriate research – in particular in connection with the general principles of criminal liability – which complements the Committee’s work programme.

17 The Law of Homicide

This project involves the completion of work begun under the Commission’s *Second Programme of Law Reform*. This is focused on reform of the law on murder and involuntary manslaughter in the wider context of codification of the criminal law. This also complements the Commission’s related work on defences in the criminal law.

18 Defences in the Criminal Law

This project also involves the completion of work begun under the Commission’s *Second Programme of Law Reform*. The project will deal with the defences of provocation, legitimate defence (including self-defence), duress and necessity. This will also assist the work of the Criminal Law Codification Advisory Committee.

19 Inchoate Offences

This project will examine the criminal offences of attempt, conspiracy, and incitement. This project also involves the completion of work begun under the Commission’s *Second Programme of Law Reform* and concerns particular aspects of the general principles of criminal liability.

D. LAND LAW AND PROPERTY

20 Further Statutory Codification of Land Law

This project will deal with a number of discrete areas, including adverse possession. It will build on the extensive codification work of the Commission under the *Second Programme of Law Reform*. This work has resulted in the *Land and Conveyancing Law Reform Bill 2006*, which will repeal almost 200 pre-1922 Acts in this area and replace many common law and statutory rules with a single legislative code.

21 Trust Law and the Settled Land Acts

This project will deal with an issue arising from the repeal of the Settled Land Acts when the *Land and Conveyancing Law Reform Bill 2006* is enacted.

The project will also build on the work of the Commission under the *Second Programme of Law Reform* concerning the modernisation and replacement of the *Trustee Act 1893*.

22 eConveyancing Road Map

Under the *Second Programme of Law Reform* the Commission oversaw (with the assistance of the Information Society Commission) a modelling of the current conveyancing process in Ireland. This included an analysis of the state of readiness of the various stakeholders, public and private, for the eventual introduction of an eConveyancing system. In this project the Commission will, in conjunction with the Department of Justice, Equality and Law Reform, develop a roadmap for an eConveyancing system which will be presented to Government.

E. FAMILY LAW

23 Legal Aspects of Family Relationships

This project will examine the rights and duties of fathers, in relation to guardianship, custody and access to their children. It will also examine the rights and duties (if any) of grandparents.

24 Domestic Violence

This project will involve a general review of the law on domestic violence. This will include a review of its current scope, including its application to persons other than spouses and its extension to other relationships, in particular older persons.

25 The Law of Annulment in the 21st Century

This project will build on previous work by the Commission under the *First Programme of Law Reform* in which it completed an examination of the law on nullity of marriage. It is necessary to re-examine this area, in particular, in the light of the introduction of divorce legislation.

F. SPECIFIC GROUPS IN A CHANGING SOCIETY

26 Children and the Law

This project will examine a range of issues, including the age at which children are competent to consent to medical treatment and the issue of internet regulation for children. The Commission is committed to ensuring that its consultation process includes appropriate mechanisms for obtaining the views of young persons. The Commission will also liaise with the Ombudsman for Children on this project.

27 Gender Recognition

This project will review current law on gender recognition to ensure that it complies fully with international human rights standards, including the European Convention on Human Rights and Fundamental Freedoms.

28 Legal Aspects of New and Emerging Members of Irish Society (Reunification Procedures and Citizenship)

This project will examine specific issues arising from the new and emerging patterns of migration to Ireland. The project will focus in particular on the extent to which family reunification procedures and the related issue of citizenship are consistent with international law and best practice.

29 Legal Aspects of Carers

This project will examine the extent to which the current law ensures appropriate standards for professional carers, in particular those engaged in the provision of care to vulnerable persons. The Commission will ensure that this project takes full account of the work of the Health Information and Quality Authority (HIQA).

G. TECHNOLOGY, INNOVATION AND THE INDIVIDUAL

30 Legal Aspects of Bioethics

This project will examine the extent to which certain aspects of bioethics require legal regulation. The project will focus on specific issues, such as advance care directives and certain feeding interventions in a medical care setting. The Commission will ensure that this project benefits from existing collaborative links it has developed with the Irish Council for Bioethics.

31 Legal Aspects of Assisted Human Reproduction

This project will examine the need for regulation of assisted human reproduction in Ireland, taking into account general policy reviews already done in this area. The project will include the legal aspects of sperm donation, surrogacy and related issues such as consent. The Commission will consult with those who have particular expertise in the scientific and medical aspects of this area.

32 Privacy

This project will build on previous work by the Commission under the *First Programme of Law Reform* in which it completed an examination of privacy and surveillance. The project will take into account relevant legislative developments, in particular the *Privacy Bill 2006*.

H. COMMERCIAL LAW AND THE LAW OF OBLIGATIONS

33 Frustration of Contracts

This project on frustration of contracts will examine the legal effects of unforeseeable and other events (such as war or industrial action) which are outside the control of contracting parties. This research will build on previous work by the Commission on the reform of other aspects of contract law.

34 Insurance Contracts

This project will review existing rules concerning insurance contracts, such as formalities, material non-disclosure, 'basis of contract' clauses and the concept of insurable interest. The project will examine whether these rules would benefit from codification, from the perspectives of business efficiency and consumer protection.

35 Damages in Contract and Tort Law

This project will examine the legal principles concerning the award of damages in contract and tort law. This research will build on previous work by the Commission on the law of damages.

I. INTERNATIONAL LAW

36 **The Status of International Law in Domestic Irish Law**

This project will examine the extent to which international law and international conventions affect domestic Irish law. The project will include an analysis of the manner in which international conventions are implemented in Irish law and the methods used to interpret the rules contained in those conventions.

37 **Civil Law Aspects of the Law of Missing Persons**

This project will examine the civil law aspects of missing persons, including the presumption of death, the issuing of a death certificate and the effect of a declaration of presumed death. The project will examine the effects on the civil status of those left behind (such as married status) and on the succession and property rights of the missing person and those left behind.

APPENDIX 2

VALUES IN CARRYING OUT OUR ROLE

In carrying out our role, the Commission places a particular emphasis on a number of values. These values were set out in the Seminar Paper that was produced to assist in the development of the *Third Programme of Law Reform*.⁷ These values are essential to the work of the Commission and we will apply them to our work under the *Third Programme of Law Reform*.

INDEPENDENCE

The Commission's independence in reviewing the law and in formulating proposals for law reform is of paramount importance in ensuring that we properly fulfil our role. The Commission believes that its independence is vital to its continued success under the Third Programme.

While independence is a fundamental principle, we also realise that there must be proper liaison with all stakeholders in society, including the public and the Government. It is important that law reform is a collaborative enterprise between the Commission, the public and Government Departments.⁸ While the Commission is fully committed to retaining its independence, this will not be a recipe for isolation or non-engagement. Such isolation would impede the effectiveness of the Commission and the relevance of its recommendations for law reform.

IMPARTIALITY

The Commission recognises the crucial importance of carrying out its role in an impartial and objective way. This concept is very much intertwined with the notion of its independence. The Commission objectively makes its recommendations following detailed research, consideration of the legal issues and public consultation leading up to and following the publication of Consultation Papers.

⁷ See *Seminar Paper Third Programme of Law Reform (SP3-2007)* at page 7, available at www.lawreform.ie.

⁸ The conference on Multi-Unit Developments, held in January 2007, is an example of this. The conference was held following the publication of the *Consultation Paper on Multi-Unit Developments* in December 2006 and was aimed at members of the public and interested parties. The Commission organised this consultative conference in conjunction with the Department of Justice, Equality and Law Reform. The National Consumer Agency (NCA) and the Office of the Director of Corporate Enforcement (ODCE) were also involved in this consultation and addressed the conference. Many members of the public made valuable contributions to the discussion on Multi-Unit Developments both at the conference and through written submissions.

HIGH QUALITY RESEARCH

High quality research and expert review of the law is at the core of the Commission's work. Reports produced by a Law Reform Commission are often regarded as "the definitive text" on that particular area of law.⁹ More significantly, they "...may serve to shape attitudes, values and understandings into the future, laying the ground work for reform at a later time."¹⁰

We increasingly see the value of interdisciplinary research. Law reform agencies throughout the world progressively examine more law reform topics outside of what is considered to be traditional "black letter law". Such legal research requires greater interdisciplinary work. These law reform projects often involve more social policy and will require better understanding of disciplines such as information technology, economics and medical science. The Commission is particularly mindful of this, as many of the law reform projects included in the Third Programme will require interdisciplinary research.

For example, the Commission's 2005 *Report on the Establishment of a DNA Database*¹¹ greatly benefited from consultation with forensic scientists. Similarly, the 2006 *Report on Vulnerable Adults and the Law*¹² required considerable consultation with experts from general and specialised areas of medicine and with NGOs and State bodies involved with those having limited intellectual capacity. Indeed, the Commission gained some of its most valuable insights from informal discussions with carers and the families of those with limited intellectual capacity. The Commission is aware that it will need to collaborate on many projects included in the Third Programme, particularly in respect of projects included under the heading *Technology, Innovation and the Individual*.

EFFECTIVE RELATIONSHIPS

External legal specialists and other experts are invited to assist the Commission as members of working groups, and they play an important part in the examination of particular areas of the law. The Commission also has ongoing relationships with the

⁹ Weisbrot, "The Future for Institutional Law Reform" in Opeskin and Weisbrot (eds) *The Promise of Law Reform* (Federation Press 2005), at 25.

¹⁰ *Ibid.*

¹¹ LRC 78-2005, available at www.lawreform.ie.

¹² LRC 83-2006, available at www.lawreform.ie.

Office of the Attorney General, the Department of Justice, Equality and Law Reform, and other Departments of Government. The development of effective relationships is of key importance to the Commission's work, consistent with the commitment to ensure that its independence and impartiality is retained.

THE IMPLEMENTATION OF RECOMMENDATIONS

As the Commission is independent from the Government it is natural that, from time to time, the Government does not agree with some recommendations of the Commission and will take a different course of reform, or decide not to implement some recommendations. In general terms, under the First and Second Programmes, about 70% of the Commission's recommendations have been or are in the process of being implemented.¹³

The Commission is firmly of the view that its recommendations should be rooted in rigorous analysis but should also be tested against the question: "will they work in practice?" We believe that this approach will ensure that our work remains relevant to society - and to public representatives in Government and the Oireachtas. The Commission is also committed to ensuring that implementation of its recommendations is facilitated through the continued publication of draft legislation in Reports published under the Third Programme.

While the Commission recognises the need to be implementation minded, it is also committed not to become implementation obsessed. The Commission will continue to focus on a number of other indicators of "success."¹⁴ For example the Commission places value on:

- Raising community awareness of a particular issue
- Instigation of debate on an area of law
- Encouraging alternative reform mechanisms which do not involve legislative change, consistent with the Government's White Paper *Regulating Better* [2004].¹⁵

¹³ See Appendix 3 for the Table of Implementation of Commission Reports to 2007.

¹⁴ For a fuller discussion of other measures of success see Opeskin and Weisbrot (eds) "Measuring Success" in *The Promise of Law Reform* (Federation Press 2005), at 202.

¹⁵ Available at www.betterregulation.ie.

RESPONSIVENESS

Our responsiveness to the needs of Irish society is a core value. Responsiveness was identified by the Commission as being particularly important as we engaged in the public consultation for the *Third Programme of Law Reform*. We believe that the projects included in the Third Programme are responsive to the issues raised throughout the consultation process.

CONSULTATION

The consultation process has been integral to the formulation of the Commission's new Programme. The input from the public and interested groups into the Commission's Consultation Papers and Reports produced under the *First* and *Second Programmes of Law Reform* enriched the content of these publications and the laws enacted as a result. It is the belief of the Commission that this input will continue to be invaluable as the Commission begins work on the law reform projects under the *Third Programme of Law Reform*.

The Commission's aim was to ensure that consultation for the Third Programme presented the widest opportunity for comment on areas of law that require renewal and reform. The public consultative seminars were an integral part of the Commission's strategy to identify law reform topics for the Third Programme.

The principle of public consultation is intertwined with the concepts of independence, interdisciplinary research, responsiveness, relevance and accountability. The broad consultation process has been beneficial not only for the Commission but, we hope, also for all of those groups who participated in the process.

CONFIDENTIALITY

Private submissions from members of the public are treated confidentially. Many submissions received by the Commission on the Third Programme involved disclosure of highly personal information, which the Commission has treated confidentially. This approach will continue to be adopted as the Commission consults interested parties on the law reform projects included in the Third Programme.

THE CONTEXT OF LAW REFORM IN 2007

As we approached the preparation of the Third Programme, the Commission was conscious that its role of law reform took place against the background of a number of related initiatives:

- Better Regulation: the Government's White Paper *Regulating Better (2004)* is based on the same principles that underlie the *Law Reform Commission Act 1975*: modernisation and simplification of the law.
- Pre-1922 Statute Law Revision Project: this is a major component of the Better Regulation Policy, and has culminated in the passing of the *Statute Law Revision Act 2007*, which contains the first definitive list (the "White List") of all pre-1922 Acts that apply in the State.
- Significant increase in the level of general legislative law reform in the Oireachtas in recent years.
- The establishment of specific working groups or committees to deal with reform in specific areas – some placed on a statutory footing, such as the Company Law Review Group and the Criminal Law Codification Advisory Committee.
- The increasing importance of the international dimension to law reform, including the EU, OECD, the UN, the 1998 Belfast Agreements and other international treaties.
- The enactment of the *European Convention on Human Rights Act 2003* and the increased relevance of the European Court of Human Rights and its case law.

GENERAL APPROACH TO THIRD PROGRAMME

The following general criteria underlined our approach to the development of the *Third Programme of Law Reform*:

- Develop, update and clarify the law
- Respond to changes in our society
- Include some projects that will involve codification of areas of law and some which deal with discrete areas of law
- Have regard to the work of other bodies engaged in law reform. The Commission does not have a monopoly on the law reform process and will endeavour to ensure that the Commission will remain aware of the work of other bodies with a law reform remit
- Have regard to the international – including comparative – aspects of law reform

When the *Law Reform Commission Act 1975* was being debated in Dáil Éireann in 1975, the Attorney General of the time Declan Costello summed up concisely the rationale behind the establishment of the Commission:

“If a community’s laws become inadequate for the functions for which they were designed, if they become obsolete, or are too numerous, or over-refined by judicial interpretation, then cases of individual injustices will multiply and society as a whole will suffer. Governments in a dynamic and fast changing world should ensure that the laws are kept under constant review and are regularly and systematically reformed.”¹⁶

The Commission considers that this view of law reform is still very relevant today.

¹⁶ Vol. 277 Dáil Debates (4 February 1975), Available at www.oireachtas-debates.gov.ie.

APPENDIX 3

THE CONSULTATION PROCESS: THIRD PROGRAMME OF LAW REFORM

The Commission decided that public consultation was essential if the Commission was to develop a Programme of Law Reform that was responsive to the needs of modern Ireland. To that end, the Commission organised a number of public consultations on its *Third Programme of Law Reform*. These public consultations were designed to provide the widest opportunity for all interested parties to engage in the law reform process and suggest areas of law which require reform, modernisation and renewal. The Commission aimed to identify gaps in the law and also issues that would require review during the seven year timescale of the *Third Programme of Law Reform 2008 – 2014*.

The first public consultation took place in NUI Galway on 26 March 2007. Approximately 100 people attended this consultation. The second consultative seminar took place on 30 April 2007 at University College Cork; approximately 100 people also attended this consultation. The final public consultation, which was also the Commission's Annual Conference for 2007, took place in Dublin Castle on 18 July and over 300 people attended this consultation. The keynote address at this consultation was delivered by Justice Michael Kirby of the High Court of Australia¹⁷ and the Attorney General, Paul Gallagher SC, opened the conference.

The Approach to the Development of the Third Programme of Law Reform

The Commission committed itself to a strategic and forward looking approach to the selection of topics for the *Third Programme of Law Reform*. It recognised that the renewal and reform of law in Ireland is influenced not only by what happens in the courtroom, but also by what occurs in society as a whole: workplaces, schools and universities, scientific laboratories, hospitals, and the home. This approach is reflected in the types of law reform projects that have been included in this *Third Programme of Law Reform*.

The engagement and participation of Irish society in the law reform process is essential to our work. In facing up to this challenge, the Commission used new forms of technology and consultation to encourage submissions from a wide range of sources on its *Third Programme of Law Reform*.

Consultation Timeline

It was decided that the consultation period for the Third Programme should provide the greatest opportunity for people and organisations to make submissions. To that end, the consultation period ran from the beginning of January 2007 to 30 July 2007. The

¹⁷ Justice Kirby's Keynote Address is available from www.lawreform.ie.

Commission received a significant number of submissions after this deadline and full consideration was given to these submissions. As the *Third Programme of Law Reform* is to run for seven years it was felt that the consultation process should be long enough to ensure that any pressing legal issues were identified.

Seminar Paper

The Commission prepared a Seminar Paper for the public consultations. This Seminar Paper explained the work of the Commission and set out clearly and concisely the approach of the Commission in formulating its *Third Programme of Law Reform*. The Seminar Paper was a useful tool in soliciting submissions and explaining the types of projects the Commission could examine. The Seminar Paper was available on the Commission's website and it was distributed at the public consultations and other consultative meetings on the Third Programme.

Consultation with Members of the Public

Consultation with members of the public on the *Third Programme of Law Reform* was achieved primarily through the three public consultations. The Commission advertised the consultations in the print media and issued press releases. The Commission also gave interviews on the *Third Programme of Law Reform* to national and local broadcast and print media in order to publicise the consultation process. The Commission contacted all members of the Oireachtas, hundreds of non-governmental and voluntary organisations and invited them to attend the public consultations and make either written or oral submissions. A large number of members of the public and representatives of non-governmental, voluntary and community organisations attended the consultations and made written and oral submissions, suggesting areas of law in need of reform.

Consultation with the Legal Profession

The Commission began the consultation process with the legal profession in December 2006 by placing a one page advertisement in the Bar Council of Ireland Yearbook and Diary and Directory. The advertisements announced the commencement of the consultation process for the Third Programme and invited submissions on law reform projects for the new programme. The Commission also contacted the Director General of the Law Society and the Chairperson of the Bar Council in January 2007. The Commission invited both bodies to engage with the law reform process and to publicise the consultations.

Solicitors practicing in Galway and Cork and the surrounding counties were invited to attend the consultative seminars in Galway and Cork. All barristers practicing on the Western, South Western, Cork and South Eastern Circuits were invited to the consultations in Galway and Cork.

The Commission published an article in the March 2007 edition of the Law Society Gazette. This article further publicised the Commission's public consultative seminars and invited legal practitioners to make submissions on the Third Programme. The Commission organised a meeting with the Law Reform Committee of the Law Society which took place in February 2007. The Commission also held a meeting in March 2007 with the Irish Family Lawyers Association.

Many solicitors, barristers and members of the judiciary attended the public consultations on the *Third Programme of Law Reform* and suggested law reform projects.

Consultation with Government Departments

All Government Departments and all relevant state agencies were written to in April 2007 inviting them to submit suggestions for the Third Programme of Law Reform and to attend the public consultations. The Commission published a short article in Link, The Newsletter of Better Governance, in the February 2007 edition. This publicised the public consultations in Galway and Cork and encouraged attendance and submissions. The Commission wrote to all Government Departments located in Galway and Cork and the surrounding counties and invited them to make submissions and attend the consultations on the Third Programme.

Consultation with other Law Reform Bodies

The Commission held a meeting with the Law Commission for Scotland, the Law Commission for England and Wales and the Law Commission for Northern Ireland in July 2007. This meeting discussed the work of the different Commissions and the development of Programmes of Law Reform.

Legal Research

The Commission appointed a full-time researcher who co-ordinated the consultation process and carried out legal research on law reform in Ireland and law reform activity in other jurisdictions. Research was carried out on the legal topics that were under examination by other Law Reform Agencies, which informed the deliberations of the Commission.

Use of Information Technology

The Commission used its website¹⁸ to publicise the consultation process for the Third Programme. Details of the Third Programme and the consultative seminars were uploaded onto the Commission's website. In addition to the public consultations, the Commission invited suggestions for law reform in written or oral format. A dedicated email address thirdprog@lawreform.ie was created and the majority of submissions were submitted to the Commission via this contact point. The Commission stressed that there was no required format for making a submission and that there was no requirement to use technical legal language. This was to encourage submissions from members of the public and to ensure that the consultation process was as broad as possible. The details of the public consultations were publicised on the Commission's website, the Bar Council website, the Law Society website and other legal network websites. Hundreds of organisations were invited via email to make submissions and attend the public consultations.

Consultative Meetings on Third Programme of Law Reform

The Commission met a number of interest groups and Government Departments. Discussion at these meetings was focused on law reform projects for the *Third Programme of Law Reform*. These meetings were very beneficial and greatly assisted the Commission in developing its Third Programme.

Participants in the Consultation Process

The Commission would like to thank all persons who assisted in the development of this *Third Programme of Law Reform*. In particular, the Commission would like to thank all those persons who took the time to make submissions and attend the public consultations.

¹⁸ www.lawreform.ie

APPENDIX 4

OVERVIEW OF HOW THE COMMISSION WORKS

A Programme of Law Reform

The *Law Reform Commission Act 1975* requires the Commission to prepare Programmes of Law Reform from time to time. The topics set out in our Programmes of Law Reform provide the main source of our work. The *Second Programme of Law Reform 2000-2007*¹⁹ contains 30 specific topics, many of which contain, in turn, a number of sub-headings requiring separate investigation and review. The *Third Programme of Law Reform* contains 37 specific law reform projects.

Attorney General Requests

Under the 1975 Act the Attorney General may also request that the Commission examine, conduct research into or make proposals for reform of particular branches of the law. Examples of requests include:

- The Possible Benefits of a Revenue Court and a Fiscal Prosecutor
- The Establishment of a DNA Database
- Aspects of Intercountry Adoption Law

Consultation Papers and Reports

The Commission publishes Consultation Papers and Reports based on detailed and thorough research. In the course of our research, we give careful consideration to the relevant legislation, case law and academic commentary that is available. We also place a focus on comparative law, because the laws of other States may provide solutions to the area of law under review.

In the initial stages of our research, we may meet with professionals working in a particular area, or representatives of interest groups. We publish a Consultation Paper, containing our analysis and provisional recommendations. The Commission then looks for submissions from the public and all interested parties on the provisional recommendations made in the Consultation Paper. We often hold a seminar after a Consultation Paper is published in order to provide a forum for experts and interested parties to make their views known on the Commission's provisional recommendations.

The Commission takes the submissions from the consultation process into account when drafting the final Report on the subject. Any issues or concerns raised are

¹⁹ Available at www.lawreform.ie.

considered within the Report, which contains the Commission's final recommendations and, where relevant, draft legislation.

Working Groups

In addition to the consultation process already mentioned, the Commission may set up Working Groups to assist in the examination of particular areas of law, such as the reform and modernisation of land law and conveyancing law. We receive the benefit of the advice and knowledge of the members of these Working Groups on a purely voluntary basis. The time and advice which is freely given by our working group members is an invaluable addition to our work. Undoubtedly, these Working Groups will continue to assist the Commission as it examines the different areas of law in the *Third Programme of Law Reform*.

APPENDIX 5

SUBJECT MATTER OF REPORTS COMPLETED UNDER THE FIRST AND SECOND PROGRAMMES OF LAW REFORM²⁰

A. LEGAL SYSTEM AND ADMINISTRATIVE LAW

Report on Multi-Party Litigation (LRC 76-2005) (September 2005)

Report on Public Inquiries including Tribunals of Inquiry (LRC 73-2005) (May 2005)

Report on A Fiscal Prosecutor and A Revenue Court (LRC 72-2004) (December 2004)

Report on Judicial Review Procedure (LRC 71-2004) (February 2004)

Report on Statutory Drafting and Interpretation: Plain Language and the Law (LRC 61-2000) (December 2000)

B. EVIDENCE

Report on the Establishment of a DNA Database (LRC 78-2005) (November 2005)

Report on Oaths and Affirmations (LRC 34-1990) (December 1990)

Report on the Rule Against Hearsay in Civil Cases (LRC 25-1988) (September 1988)

Report on Competence and Compellability of Spouses as Witnesses (LRC 13-1985) (July 1985)

C. CRIMINAL LAW AND PROCEDURE

Report on Spent Convictions (84-2007) (July 2007)

Report on Prosecution Appeals and Pre-Trial Hearings (81-2006) (November 2006)

²⁰ Commission Reports are all available at: <http://www.lawreform.ie/publications/publications.htm>.

Report on Corporate Killing (LRC 77-2005) (October 2005)

Report on the Court Poor Box: Probation of Offenders (LRC 75-2005)
(September 2005)

Report on Penalties for Minor Offences (LRC 69-2003) (March 2003)

Report on the Indexation of Fines: A Review of Developments
(LRC 65-2002) (July 2002)

Report on Sentencing (LRC 53-1996) (August 1996)

Report on Intoxication (LRC 51-1995) (November 1995)

An Examination of the Law of Bail (LRC 50-1995) (August 1995)

Report on Contempt of Court (LRC 47-1994) (September 1994)

Report on Non-Fatal Offences Against the Person
(LRC 45-1994) (February 1994)

Report on The Law Relating to Dishonesty (LRC 43-1992) (September 1992)

Report on the Crime of Libel (LRC 41-1991) (December 1991)

Report on the Indexation of Fines (LRC 37-1991) (October 1991)

Report on Confiscation of the Proceeds of Crime (LRC 35-1991)
(January 1991)

Report on Sexual Offences against the Mentally Handicapped
(LRC 33-1990) (September 1990)

Report on Child Sexual Abuse (LRC 32-1990) (September 1990)

Report on Malicious Damage (LRC 26-1988) (September 1988)

Report on Rape and Allied Offences (LRC 24-1988) (May 1988)

Report on Receiving Stolen Property (LRC 23-1987) (December 1987)

Report on Offences under the Dublin Police Acts and Related Offences (LRC 14-1985) (July 1985)

Report on Vagrancy and Related Offences (LRC 11-1985) (June 1985)

D. LAND LAW AND CONVEYANCING LAW

Report on the Law of Landlord and Tenant (85-2007) (November 2007)

Report on Charitable Trusts and Legal Structures for Charities (80-2006) (October 2006)

Report on eConveyancing: Modelling of the Irish Conveyancing System (79-2006) (April 2006)

Report on the Reform and Modernisation of Land Law and Conveyancing Law (LRC 74-2005) (July 2005)

Report on Land Law and Conveyancing Law: (7) Positive Covenants over Freehold Land and other Proposals (LRC 70-2003) (March 2003)

Report on Title by Adverse Possession of Land (LRC 67-2002) (December 2002)

Report on The Acquisition of Easements and Profits À Prendre by Prescription (LRC 66-2002) (December 2002)

Report on the Variation of Trusts (LRC 63-2000) (December 2000)

Report on the Rule against Perpetuities and Cognate Rules (LRC 62-2000) (December 2000)

Report on Gazumping (LRC 59-1999) (August 1999)

Report on Land Law and Conveyancing Law; (6) Further General Proposals including the execution of Deeds (LRC 56-1998) (May 1998)

Report on Interests of Vendor and Purchaser in Land during the Period between Contract and Completion (LRC 49-1995) (April 1995)

Land Law and Conveyancing Law: (5) Further General Proposals (LRC 44-1992) (October 1992)

Report on Land Law and Conveyancing Law: (4) Service of Completion Notices (LRC 40-1991) (December 1991)

Report on Land Law and Conveyancing Law: (3) The Passing of Risk from Vendor to Purchaser (LRC 39-1991) (December 1991)

Report on Land Law and Conveyancing Law: (2) Enduring Powers of Attorney (LRC 31-1989) (October 1989)

Report on Land Law and Conveyancing Law: General Proposals (LRC 30-1989) (June 1989)

E. FAMILY LAW

Report on the Rights and Duties of Cohabitants (82-2006) (December 2006)

Report on Family Courts (LRC 52-1996) (March 1996)

Report on Recognition of Foreign Divorces and Legal Separations (LRC 10-1985) (April 1985)

Report on Nullity of Marriage (LRC 9-1984) (October 1984)

Report on Divorce a Mensa et Thoro and Related Matters (LRC 8-1983) (December 1983)

Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983) (December 1983)

Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters (LRC 6-1983) (November 1983)

Report on Illegitimacy (LRC 4-1982) (September 1982)

First Report on Family Law - Criminal Conversation, Enticement and Harbours of a Spouse or Child, Loss of Consortium, Personal Injury to a Child, Seduction of a Child, Matrimonial Property and Breach of Promise of Marriage (LRC 1-1980) (March 1981)

F. VULNERABLE GROUPS AND THE LAW

Report on Vulnerable Adults and the Law (83-2006) (December 2006)

Report on the Liability in Tort of Minors and the Liability of Parents for Damage Caused by Minors (LRC 17-1985) (September 1985)

Report on Minors' Contracts (LRC 15-1985) (August 1985)

Report on the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5-1983) (April 1983)

G. COMMERCIAL, CONTRACT AND TORT LAW

Report on Section 2 of the Civil Liability (Amendment) Act 1964: The Deductibility of Collateral Benefits from Awards of Damages (LRC 68-2002) (December 2002)

Report on the Statutes of Limitations: Claims in Contract and Tort in Respect of Latent Damage (Other Than Personal Injury) (LRC 64-2001) (February 2001)

Report on Aggravated, Exemplary and Restitutionary Damages (LRC 60-2000) (May 2000)

Report on Privacy: Surveillance and the Interception of Communications (LRC 57-1998) (June 1998)

Report on Personal Injuries: Periodic Payments and Structured Settlements (LRC 54-1996) (December 1996)

Report on Occupiers Liability (LRC 46-1994) (April 1994)

Report on the Civil Law of Defamation (LRC 38-1991) (December 1991)

Report on Debt Collection: (2) Retention of Title (LRC 28-1988) (April 1989)

Report on Debt Collection: (1) The Law Relating to Sheriffs
(LRC 27-1988) (October 1988)

Report on the Statute of Limitations: Claims in Respect of Latent Personal
Injuries (LRC 21-1987) (September 1987)

Report on Defective Premises (LRC 3-1982) (May 1982)

Report on Civil Liability for Animals (LRC 2-1982) (May 1982)

H. INTERNATIONAL LAW

Report on the Hague Convention on Protection of Children and Co-operation
in Respect on Inter Country Adoption 1993 (LRC 58-1998) (June 1998)

Report on The Unidroit Convention on Stolen or Illegally Exported Cultural
Objects (LRC 55-1997) (October 1997)

Report on the Hague Convention Abolishing the Requirement of Legalisation
for Public Documents (LRC 48-1995) (February 1995)

Report on United Nations (Vienna) Convention on Contracts for the
International Sale of Goods 1980 (LRC 42-1992) (May 1992)

Report on the Hague Convention on Succession to the Estates of
Deceased Persons (LRC 36-1991) (May 1991)

Report on the Recognition of Foreign Adoption Decrees
(LRC 29-1989) (June 1989)

Report on the Service of Documents Abroad re Civil Proceedings - the Hague Convention (LRC 22-1987) (December 1987)

Report on Jurisdiction in Proceedings for Nullity of Marriage, Recognition of Foreign Nullity Decrees, and the Hague Convention on the Celebration and Recognition of the Validity of Marriages (LRC 20-1985) (October 1985)

Report on Private International Law Aspects of Capacity to Marry and Choice of Law in Proceedings for Nullity of Marriage (LRC 19-1985) (October 1985)

Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16-1985) (August 1985)

Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters (LRC 12-1985) (June 1985)

APPENDIX 6

TABLE OF IMPLEMENTATION OF REPORTS UNDER THE FIRST AND SECOND PROGRAMMES OF LAW REFORM²¹

Report	Statutory provisions	Recommendation	Implementation
Report on the Law of Landlord and Tenant LRC 85-2007	Bill prepared and contained in the Report	Recommends reform and modernisation of general law and business tenancies.	
Report on Spent Convictions LRC 84-2007	Bill prepared and contained in the Report	Recommends certain old convictions be spent for certain purposes	
Report on Vulnerable Adults and the Law LRC 83-2006	Bill prepared and contained in the Report	Recommends general mental capacity law to facilitate informal decision-making for adults who lack capacity; and establishment of Guardianship Board and Office of Public Guardian to replace Wards of Court system	<i>Mental Capacity and Guardianship Bill</i> to be published (Government Legislative Programme, September 2007)
Report on Rights and Duties of Cohabitants LRC 82-2006	Bill prepared and contained in the Report	Recommends reform to allow cohabitant agreements, to confer certain entitlements on cohabitants and to provide for application to court for relief for certain qualified cohabitants	<i>Domestic Partnership Bill</i> to be published (Government Legislative Programme, September 2007)
Report on Prosecution Appeals and Pre-trial Hearings LRC 81-2006	No recommendation for new legislation ('without prejudice' prosecution appeal introduced in <i>Criminal Justice Act 2006</i>)	Approved 'without prejudice' appeal for prosecution in trials on indictment in <i>Criminal Justice Act 2006</i> (recommended in Consultation Paper); recommended non-statutory pre-trial questionnaire	<i>Criminal Justice Act 2006, ss.21 to 24</i>

²¹ Commission Reports are all available at: <http://www.lawreform.ie/publications/publications.htm>.

Report	Statutory provisions	Recommendation	Implementation
Report on Charitable Trusts and Legal Structures for Charities LRC 80-2006	Bill prepared and contained in the Report	Recommends reform of duties of charity trustees and new legal structure for charities, Charitable Incorporated Organisation	In part: <i>Charities Bill 2007</i> published by Government (April 2007) (charity trustees)
Report on eConveyancing: Modelling of the Irish Conveyancing System LRC 79-2006	Report on Modelling of Conveyancing System: no recommendations for legislation	Recommends establishment of eConveyancing Group to set out roadmap and recommendation to Government	eConveyancing Steering Group established (March 2007)
Report on the Establishment of a DNA Database LRC 78-2005	Bill prepared and contained in the Report	Recommends establishment of limited DNA Database	General Scheme of <i>Criminal Justice (Forensic Sampling and Evidence) Bill 2007</i> published by Government (February 2007)
Report on Corporate Killing LRC 77-2005	Bill prepared and contained in the Report	Recommends offence of corporate killing and associated individual offence	<i>Corporate Manslaughter Bill</i> to be published (Government Legislative Programme, September 2007)
Report on Multi-Party Litigation LRC 76-2005	Draft Rules of Court and Bill prepared and contained in the Report	Recommends Multi-Party Litigation Procedure in Rules of Court	
Report on the Court Poor Box: Probation of Offenders LRC 75-2005	Bill prepared and contained in the Report	Recommends replacement of court poor box and updating <i>Probation of Offenders Act 1907</i>	
Report on Reform and Modernisation of Land Law and Conveyancing Law LRC 74-2005	Bill prepared and contained in the Report	Recommends reform and modernisation of over 140 pre-1922 Acts on land law and conveyancing law	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006)

Report	Statutory provisions	Recommendation	Implementation
Report on Public Inquiries Including Tribunals of Inquiry LRC 73-2005	Bill prepared and contained in the Report	Recommends reform and consolidation of <i>Tribunals of Inquiry Acts 1921 to 2004</i>	Consolidating <i>Tribunals of Inquiry Bill 2005</i> published by Government (September 2005)
Report on a Fiscal Prosecutor and a Revenue Court LRC 72-2004	Bill prepared and contained in the Report	Recommends changes to Taxes Consolidation Act 1997	In part in <i>Finance Act 2005</i> (threshold for publication of tax defaulters)
Report on Judicial Review Procedure LRC 71-2004	Bill and amendments to Rules of Court prepared and contained in the Report	Recommends <i>changes to O.84 Rules of the Superior Courts 1986, Illegal Immigrants (Trafficking) Act 2000</i> and making of various Practice Directions	
Report on Land Law and Conveyancing Law (7): Positive Covenants over Freehold Land and Other Proposals LRC 70-2003	Bill prepared and contained in the Report		<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (see LRC 74-2005)
Report on Penalties for Minor Offences LRC 69-2003	Draft legislative provisions contained in the Report.	Recommends limit to imprisonment power of District Court; allowing amount of fine to be tailored to means of individual offender; increasing maximum fine for corporation to three times that for individuals.	Administrative implementation (by parliamentary counsel) of consideration of limit to imprisonment power of District Court; <i>Fines Bill 2007</i> published by Government (January 2007)
Report on the Deductibility of Collateral Benefits from Awards of Damages LRC 68-2002	Draft legislative provisions contained in the Report.	Recommends amendment to s. 2 of the <i>Civil Liability Act 1964</i> (as amended) and s. 50 of the <i>Civil Liability Act 1961</i> .	<i>Civil Liability and Courts Act 2004</i> , section 27

Report	Statutory provisions	Recommendation	Implementation
Report on Title by Adverse Possession of Land LRC 67-2002	Bill prepared and contained in the Report.	Clarifies the exact type of title acquired by a 'squatter' and recommends the granting of a parliamentary conveyance.	
Report on the Acquisition of Easements and Profits à Prendre by Prescription LRC 66-2002	Bill prepared and contained in the Report.	New scheme for prescriptive acquisition, and recommends the repeal of the Prescription Act 1832.	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (see LRC 74-2005)
Report on the Indexation of Fines: A Review of Developments LRC 65-2002	Draft legislative provisions contained in the Report.	Recommends the introduction of standard fine system based on the model proposed in the Commission's Report on Indexation of Fines (LRC 37-1991): see below.	<i>Fines Bill 2007</i> published by Government (January 2007)
Report on the Statutes of Limitations: Claims in Contract and Tort in Respect of Latent Damage (Other than Personal Injury) LRC 64-2001	Draft Bill contained in Report.	Recommends that the discoverability limitation period begins when person first knew or ought reasonably to have known of the relevant factors.	
Report on the Variation of Trusts LRC 63-2000	Draft Bill contained in Report	Various recommendations on the jurisdiction of courts to vary trusts.	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (see LRC 74-2005)
Report on the Rule against Perpetuities and Cognate Rules LRC 62-2000	Draft Bill published in Report.	Recommends the abolition of the rule against perpetuities and the rule against accumulations.	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (see LRC 74-2005)

Report	Statutory provisions	Recommendation	Implementation
Report on Statutory Drafting and Interpretation: <i>Plain Language and the Law</i> LRC 61 - 2001	Draft legislative provisions in Report.	Recommends purposive approach to legislation, updated interpretation of older legislation and use of plain language in drafting legislation.	<i>Interpretation Act 2005</i>
Report on Aggravated, Exemplary and Restitutionary Damages LRC 60 - 2000		Recommended primarily judicial development of the law on aggravated, exemplary and restitutionary damages; limited statutory reform	
Report on Gazumping LRC 59 - 1999	Did not recommend legislation	Recommended gazumping should be dealt with by way of information to consumers	Approved in <i>Report of Auctioneering / Estate Agency Review Group (2005)</i>
Report on the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption LRC 58 - 1998		Recommended State ratification of Convention	<i>Adoption (Hague Convention) Bill</i> to be published (Government Legislative Programme, September 2007)
Report on Privacy LRC 57 - 1998	Draft Bill included in Report	Recommended various legislative protections for privacy in connection with surveillance	<i>Privacy Bill 2006</i> published by Government (June 2006)
Report on Land Law and Conveyancing Law; (6) Further General Proposals Including the Execution of Deeds LRC 56 - 1998	Draft legislative provisions included in Report	Recommended that words of limitation should not be required for the creation or transfer of any interest in freehold registered land	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (<i>see LRC 74-2005</i>)
Report on the Unidroit Convention on Stolen or Illegally Exported Cultural Objects LRC 55 -1997		Recommended State ratification of Convention	

Report	Statutory provisions	Recommendation	Implementation
Report on Personal Injuries: Periodic Payments and Structured Settlements LRC 54 - 1996	Draft legislative provisions included in Report	Recommended periodic payments and structured settlements in compensation claims	
Report on Sentencing LRC 53 - 1996	Recommended limited legislative reforms; primarily recommended non-legislative reform	Recommended discretion to reduce sentence where guilty plea entered; recommended non-statutory sentencing guidelines	<i>Criminal Justice Act 1999</i> , s.29 (discretion of court to reduce sentence where guilty plea entered)
Report on Family Courts LRC 52 - 1996		Various recommendations on family law and its administration	<i>Children Act 1997</i> , s.28 (appointment of guardian for litigation); <i>Civil Liability and Courts Act 2004</i> , s.40 (in camera rule)
Report on Intoxication LRC 51 - 1995		Recommended that intoxication not a defence.	Incorporated into <i>Report on Codification of Criminal Law (2004)</i> : Advisory Committee in <i>Criminal Justice Act 2006</i>
An Examination of the Law of Bail LRC 50 - 1995		Not requested to make specific proposals for reform	<i>Bail Act 1997</i>
Report on the Interests of Vendor and Purchaser in Land during the Period Between Contract and Completion LRC 49 - 1995			<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (see LRC 74-2005)

Report	Statutory provisions	Recommendation	Implementation
Report on Hague Convention Abolishing Requirement of Legalisation of Foreign Public Documents LRC 48 - 1995		Recommended State ratification of Convention	<i>Rules of the Superior Courts (No.1) (Proof of Foreign Diplomatic, Consular and Public Documents) 1999 (SI No.3 of 1999)</i>
Report on Contempt of Court LRC 47 - 1994		Recommended reform of contempt of court law	
Report on Occupiers' Liability LRC 46 - 1994		Recommended reform of common law rules and legislative regulation	<i>Occupiers Liability Act 1995</i>
Report on Non-Fatal Offences Against the Person LRC 45 - 1994		Recommended reform of common law and statutory rules	<i>Non-Fatal Offences Against the Person Act 1997</i>
Land Law and Conveyancing Law: (5) Further General Proposals LRC 44 - 1992		Various recommendations for reform	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (see LRC 74-2005)
Report on the Law Relating to Dishonesty LRC 43 - 1992		Recommended reform of common law and statutory rules	<i>Criminal Justice (Theft and Fraud) Offences Act 2001</i>
Report on United Nations (Vienna) Convention on Contracts for the International Sale of Goods LRC 42 - 1992		Recommended State ratification of Convention	
Report on the Crime of Libel LRC 41 - 1991		Recommended reform of common law and statutory rules	<i>Defamation Bill 2006 (Part 5 of Bill)</i> at Committee Stage in Seanad Éireann (March 2007)

Report	Statutory provisions	Recommendation	Implementation
Report on Land Law and Conveyancing Law: (4) Service of Completion Notices LRC 40 - 1991		Various recommendations for reform	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) [see LRC 74-2005]
Report on Land Law and Conveyancing Law: (3) The Passing of Risk from Vendor to Purchaser LRC 39 - 1991		Various recommendations for reform	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) [see LRC 74-2005]
Report on the Civil Law of Defamation LRC 38 - 1991		Recommended reform of common law and statutory rules	<i>Defamation Bill 2006</i> at Committee Stage in Seanad Éireann (March 2007)
Report on Indexation of Fines LRC 37 - 1991		Recommends the introduction of standard fine system	<i>Fines Bill 2007</i> published by Government (January 2007)
Report on the Hague Convention on Succession to the Estates of Deceased Persons LRC 36 - 1991		Recommended State ratification of Convention	
Report on Confiscation of the Proceeds of Crime LRC 35 - 1991		Recommended introduction of restraint orders, and international co-operation regarding confiscation orders	<i>Criminal Justice (No.3) Act 1994, Proceeds of Crime Act 1996 and Proceeds of Crime (Amendment) Act 2005</i>
Report on Oaths and Affirmations LRC 34 - 1990		Various recommendations	Implemented in part (<i>Children Act 1997</i>)

Report	Statutory provisions	Recommendation	Implementation
Report on Sexual Offences against the Mentally Handicapped LRC 33 - 1990		Various recommendations on sexual offences with person of limited intellectual capacity; consent of DPP required to take proceedings	<i>Criminal Law (Sexual Offences) Act 1993</i> and <i>Criminal Justice (Miscellaneous Provisions) Act 1997</i>
Report on Child Sexual Abuse LRC 32 - 1990		Various recommendations: mandatory reporting of child sexual abuse; immunity for those who report child abuse in good faith; care orders; barring orders; offences of child sexual abuse; consenting and non-consenting sexual offences with children (same-sex and opposite sex); video-recording evidence	Implemented in part: <i>Child Care Act 1991</i> , <i>Criminal Evidence Act 1992</i> , <i>Criminal Law (Sexual Offences) Act 1993</i> , <i>Domestic Violence Act 1996</i> , <i>Criminal Justice (Miscellaneous Provisions) Act 1997</i> , <i>Protection for Persons Reporting Child Abuse Act 1998</i>
Report on Land Law and Conveyancing: (2) Enduring Powers of Attorney LRC 31 - 1989		Recommendations on characteristics, registration and scope of power of attorney	<i>Powers of Attorney Act 1996</i> , <i>Family Law (Miscellaneous Provisions) Act 1997</i>
Report on Land Law and Conveyancing: (1) General Proposals LRC 30 - 1989		Recommended substitution of 5 years for 3 years for a new tenancy	<i>Landlord and Tenant (Amendment) Act 1994</i>
Report on the Recognition of Foreign Adoption Decrees LRC 29 - 1989		Recommended validity of foreign adoptions made in place of habitual residence of the adopters	<i>Adoption Act 1991</i>
Report on Debt Collection: (2) Retention of Title LRC 28 - 1988		Various recommendations concerning retention of title contract clauses	

Report	Statutory provisions	Recommendation	Implementation
Report on Debt Collection: (1) The Law Relating to Sheriffs LRC 27 - 1988		Recommended abolition of power of sheriffs to seize leasehold land	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (see LRC 74-2005)
Report on Malicious Damage LRC 26 - 1988		Various recommendations including abolition of common law offence of arson and making of compensation orders	<i>Criminal Damage Act 1991, Criminal Justice Act 1993</i>
Report on the Rule Against Hearsay in Civil Cases LRC 25 - 1988		Various recommendations for reform of common law rules	<i>Civil Evidence Bill</i> to be published (Government Legislative Programme September 2007)
Report on Rape and Allied Offences LRC 24 - 1988		Recommended wider definition of rape; and abolition of marital rape exemption	<i>Criminal Law (Rape) (Amendment) Act 1990, Criminal Justice Act 1993</i>
Report on Receiving Stolen Property LRC 23 - 1987		Recommended new offence of handling stolen goods: see also Report on the Law Relating to Dishonesty, LRC 43- 1992, above.	<i>Larceny Act 1990, Criminal Justice (Theft and Fraud Offences) Act 2001</i>
Report on the Service of Documents Abroad re Civil Proceedings – the Hague Convention LRC 22 - 1987		Recommended ratification of Convention by State.	<i>Rules of the Superior Courts (No.3) 1994, District Court (Service Abroad of Documents in Civil or Commercial Matters) Rules 1994</i> (now consolidated in <i>District Court Rules 1997</i>)

Report	Statutory provisions	Recommendation	Implementation
Report on the Statute of Limitations: Claims in Respect of Latent Personal Injuries LRC 21 - 1987		Recommended that limitation period should begin to run from the date of knowledge of certain facts.	<i>Statute of Limitations (Amendment) Act 1991</i>
Report on Jurisdiction in Proceedings for Nullity of Marriage, Recognition of Foreign Nullity Decrees and Hague Convention LRC 20 - 1985		Recommended ratification of Convention by State.	<i>Family Law Act 1995</i>
Report on Private International Law Aspects of Capacity to Marry and Choice of Law in Proceedings for Nullity of Marriage LRC 19 - 1985		Made recommendations concerning recognition of foreign annulments.	
Report on the Liability in Tort of Mentally Disabled Persons LRC 18 - 1985		Made recommendations concerning extent of liability in tort.	
Report on the Liability in Tort of Minors and the Liability of Parents for Damage Caused by Minors LRC 17 - 1985		Made recommendations concerning extent of liability in tort	
Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters LRC 16 - 1985		Recommended ratification of Convention by State.	

Report	Statutory provisions	Recommendation	Implementation
Report on Minors' Contracts LRC 15 - 1985		Made recommendations concerning extent of liability in contract law	
Report on Offences Under the Dublin Police Acts and Related Offences LRC 14 - 1985		Recommended reform of public order offences	<i>Criminal Justice (Public Order) Act 1994</i>
Report on Competence and Compellability of Spouses as Witnesses LRC 13 - 1985		Recommended that spouse or former spouse is competent to give evidence	<i>Criminal Evidence Act 1992</i>
Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters LRC 12 -1985		Recommended ratification of Convention in the State.	<i>Child Abduction and Enforcement of Custody Orders Act 1991</i>
Report on Vagrancy and Related Offences LRC 11 - 1985		Recommended abolition of offence of wandering abroad in the Vagrancy Act 1824; new offences of: entering a building with intent to commit an offence; soliciting or importuning for the purposes of the commission of a sexual offence; living on earnings of prostitution	<i>Housing Act 1988, Criminal Law (Sexual Offences) Act 1993, Criminal Justice (Public Order) Act 1994</i>
Report on Recognition of Foreign Divorces and Legal Separations LRC 10 - 1985		Recommended residence as basis for recognition, in place of domicile	<i>Domicile and Recognition of Foreign Divorces Act 1986, Family Law Act 1995</i>

Report	Statutory provisions	Recommendation	
Report on Nullity of Marriage LRC 9 - 1984		Recommended reform and codification of common law rules	
Report on Divorce a Mensa et Thoro and Related Matters LRC 8 - 1983		Recommended replacement of common law divorce a mensa et thoro with statutory judicial separation	<i>Judicial Separation and Family Law Reform Act 1989, Family Law Act 1995</i>
Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws LRC 7 - 1983		Recommended abolition of domicile of dependency	<i>Domicile and Recognition of Foreign Divorces Act 1986</i>
Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters LRC 6 - 1983		Recommended abolition of proceedings for the restitution of conjugal rights, and of petition for jactitation of marriage.	<i>Family Law Act 1988, Family Law Act 1995</i>
Report on the Age of Majority, the Age for Marriage and Some Connected Subjects LRC 5 - 1983		Recommended reduction of age of majority from 21 years to 18 years; also concerns the age of marriage	<i>Age of Majority Act, 1985, Family Law Act 1995, Family Law (Miscellaneous Provisions) Act 1997</i>
Report on Illegitimacy LRC 4 - 1982		Recommended abolition of status of illegitimacy; that the marital status of parents to have no effect on children's status; refusal to give a blood test in paternity proceedings allows court to draw its own inferences.	<i>Status of Children Act 1987</i>
Report on Defective Premises LRC 3 - 1982	Draft Bill prepared and included in Report	Recommended statutory provisions to protect purchasers of defective premises	Non-statutory HomeBond scheme introduced

Report	Statutory provisions	Recommendation	Implementation
Report on Civil Liability for Animals LRC 2 - 1982	Draft Bill prepared and included in Report	Recommended reform of common law rules concerning damage caused by animals straying onto a highway; and powers of Garda Síochána concerning stray animals.	<i>Animals Act 1985.</i>
Report on Family Law LRC 1 - 1981	Draft Bill prepared and included in Report	Recommended abolition of common law action for criminal conversation and for harbouring a spouse, and of action for breach of a promise to marry.	<i>Family Law Act 1981.</i>

