



LAW REFORM

COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ

ANNUAL REPORT 2015

THE COMMISSION

The Law Reform Commission comprises a President, one full-time Commissioner and three part-time Commissioners. In 2015, the Commission was comprised as follows:

The Hon. Mr. Justice John Quirke
President

Finola Flanagan BL
Full-time Commissioner

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

Tom O’Malley BL
Part-time Commissioner

Ms Justice Marie Baker (to August 2015)
Part-time Commissioner

Ms Justice Carmel Stewart (from September 2015)
Part-time Commissioner

COMMISSION RESEARCH STAFF

Director of Research:
Raymond Byrne

Project Manager for Access to Legislation:
Alma Clissmann

Assistant Project Manager for Access to Legislation:
Jane Murphy

LEGAL RESEARCHERS¹

Hanna Byrne, Lydia Bracken, Cormac Forristal, Niall Fahy, Owen Garvey, Finn Keyes, Kerri McGuigan, Karen McLaughlin, Meghan McSweeney, Sarahrose Murphy, Aileen O’Leary, Fiona O’Regan and Denise Roche

¹ Not all members of research staff were employed for the full calendar year.

COMMISSION ADMINISTRATION STAFF²

Head of Administration: Ciara Carberry (up to April)
Deirdre Fleming (from May)

Legal Information Manager: Órla Gillen

Executive Officers: Pearl Martin

Staff Officer: Annmarie Cowley

Clerical Officer: Liam Dargan
Brian Purcell
Patricia Mooney

² Not all members of 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 2015.

This Report identifies the progress made during 2015 towards completion of the Commission's Third Programme of Law Reform, the further development and completion of the Commission's Fourth Programme, and the significant review and development of the Commission's methodology and working methods.

During 2015 the Commission's publications included comprehensive final Reports on (1) Consumer Insurance Contracts, (2) the Prevention of Benefit from Homicide and (3) Search Warrants and Bench Warrants. Each of those Reports included draft Bills.

In April 2015 the Commission hosted a successful Seminar on Crime affecting Personal Safety, Privacy and Reputation including Cyber bullying which is within the Commission's 4th Programme.

Work has continued and nears completion on the Commission's 3rd Programme. This incorporates the final 3 Projects (No 7, Documentary and Electronic Evidence, No 8 the Hearsay Rule and No 11 Expert Evidence).

There has been significant development of the Commission's methodology and working methods and this is described within the Report and continues.

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

I would like to thank my fellow Commissioners Flanagan, O'Malley, Baker and O'Connell for their commitment, work and support during 2015.

I would particularly like to thank and record the thanks and appreciation of my fellow Commissioners for the tireless and invaluable contribution that Ms Justice Marie Baker has made to the work of the Commission during her term of office.

I also warmly welcome the re-appointment of Commissioners O'Malley and O'Connell and the appointment of Ms Justice Carmel Stewart.

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

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

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

The work completed by the Commission during 2015 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 2016.

CHAPTER 1

INTRODUCTION

OVERVIEW OF THE COMMISSION'S WORK IN 2015

The Commission's role under the *Law Reform Commission Act 1975* is to keep the law under review, to make recommendations for law reform and to make current law accessible. The key developments in 2015 were the following:

- *Law Reform Publications*
In 2015 the Commission published the following Reports, each of which included draft Bills:
 1. *Report on Consumer Insurance Contracts* (LRC 113-2015), which recommended the enactment of legislation to consolidate and reform the law on insurance contracts for individual consumers and SMEs, including: replace the pre-contractual duty of disclosure with a duty to answer specific questions; provide for proportionate remedies for breach of duties by individual consumers and SMEs; replace insurance warranties with provisions that identify actual risks insured; abolish the requirement for an insurable interest; and allow third parties to claim directly against insurer in specified cases.
 2. *Report on Prevention of Benefit from Homicide* (LRC 114-2015), which recommended inserting new provisions into the *Civil Liability Act 1961* to prevent a person who commits murder, attempted murder or manslaughter from obtaining a benefit from any property of the victim, whether in the victim's estate or in any other property (including in a joint tenancy, insurance policy or pension).
 3. *Report on Search Warrants and Bench Warrants* (LRC 115-2015), which recommended that over 300 laws on search warrants be replaced by a single Search Warrants Act with standard rules on applying for, issuing and executing warrants; and that search warrants should only be issued by a court.

- *Access to legislation*
The Commission's work on access to legislation included the following:
 1. Updates to the Legislation Directory, the online index of legislative changes to Acts and Statutory Instruments, updated to within one to two months.
 2. Updates to over 240 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 preparation of a Classified List of Statutory Instruments.

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 190 documents (Issues Papers, Consultation Papers, Working Papers and Reports) containing proposals for law reform. A full list of Commission publications is available on the Commission's website at www.lawreform.ie where all publications are available to download free of charge.

Programmes of Law Reform and Requests from the Attorney General

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

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

The Commission has had four *Programmes of Law Reform*. The Commission's *Fourth Programme of Law Reform* was approved by the Government on 8 October 2013. Developments during 2015 concerning the Commission's law reform work are discussed in Chapter 2.

Access to Legislation

Since 2006 the Commission's work has also involved making legislation more accessible to the public. Developments during 2015 in the Access to Legislation project are discussed in Chapter 3.

STRATEGY STATEMENT 2015-2017

The Commission's *Strategy Statement 2015-2017* 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 three Key Objectives. These are:

Key Objective 1: Law Reform

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

Key Objective 2: Access to Legislation

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

Key Objective 3: Administration

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

This Annual Report follows the sequence of these Key Objectives.

METHODS OF WORK AND CONSULTATION PROCESS

The Commission's work is based on careful and thorough research. The Commission knows the importance of ensuring that its proposals for reform are grounded in practice. In the course of preparing proposals, consultations are held with interested parties including legal practitioners, other relevant professionals, representative bodies, politicians and members of the Government and Government Departments and Offices, and members of the public who wish to engage with the Commission. The opinions and experiences of these contacts are taken into account in the Commission's publications.

Methodology

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

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

The consultation process

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

In 2015, the Commission held a public seminar on 22 April following the publication of the *Issues Paper on Cyber-crime Affecting Personal Safety, Privacy and Reputation including Cyber-bullying* (LRC IP 6-2014) (Fourth Programme of Law Reform, Project 2).

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

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

To facilitate accessibility, all Commission publications including consultations are available online on the website of the Commission or the website of the electronic Irish Statute Book, 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 comprises representatives of certain government departments, the Council of the Bar of Ireland, the Law Society of Ireland and the Office of the Attorney General.

Meetings with Oireachtas Committees

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

Conferences, visits and media contacts

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

CHAPTER 2

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

OVERVIEW

(1) Law reform publications in 2015

During 2015, the Commission was engaged in work on many of the 11 projects in the *Fourth Programme of Law Reform* and in completing the remaining projects from the *Third Programme*. These are discussed in detail below.

In 2015 the Commission published the following:

1. *Report on Consumer Insurance Contracts* (LRC 113-2015) (Third Programme, Project 34), which recommended the enactment of legislation to consolidate and reform the law on insurance contracts for individual consumers and SMEs, including: replace the pre-contractual duty of disclosure with a duty to answer specific questions; provide for proportionate remedies for breach of duties by individual consumers and SMEs; replace insurance warranties with provisions that identify actual risks insured; abolish the requirement for an insurable interest; and allow third parties to claim directly against insurer in specified cases.
2. *Report on Prevention of Benefit from Homicide* (LRC 114-2015) (Fourth Programme, Project 7), which recommended inserting new provisions into the *Civil Liability Act 1961* to prevent a person who commits murder, attempted murder or manslaughter from obtaining a benefit from any property of the victim, whether in the victim's estate or in any other property (including in a joint tenancy, insurance policy or pension).
3. *Report on Search Warrants and Bench Warrants* (LRC 115-2015) (Third Programme, Project 3), which recommended that over 300 laws on search warrants be replaced by a single Search Warrants Act with standard rules on applying for, issuing and executing warrants; and that search warrants should only be issued by a court.

(2) Implementation of Commission proposals in 2015

The following legislation, enacted or under consideration in 2015, involved the implementation of recommendations made by the Commission: the *Assisted Decision-Making (Capacity) Act 2015*, the *Children and Family Relationships Act 2015*, the *Civil Debt (Procedures) Act 2015*, the *Finance (Tax Appeals) Act 2015*, the *Criminal Justice (Spent Convictions) Bill 2012* (enacted in 2016 as the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*) and Part 3 of the *Criminal Law (Sexual Offences) Bill 2015*. 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* and the Scheme of a *Mediation and Conciliation Bill*. 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.

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

1. Courts, Public Law and Regulatory Enforcement (pp.11-12).
2. Criminal Law and Procedure (p.13).
3. Civil Liability and Commercial Law (p.15).
4. Law of Evidence (p.13).
5. Land Law, Succession and Trusts (p.17).
6. Family Law (p.17).

1. COURTS, PUBLIC LAW AND REGULATORY ENFORCEMENT

1.(a) Regulatory Enforcement and Corporate Offences

During 2015, the Commission completed consideration of an Issues Paper in connection with its project on Regulatory Enforcement and Corporate Offences (4th Programme of Law Reform, Project 1). Arising from this, in January 2016 the Commission published its *Issues Paper on Regulatory Enforcement and Corporate Offences* (LRC IP 8-2016).

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

During 2015, the Commission continued work on the project concerning the implementation of international obligations in domestic law (4th Programme of Law Reform, Project 10). The Commission intends to publish a Paper on this project during 2016.

1.(c) Consolidation and Codification of Law

During 2015, the Commission continued work on the project concerning the consolidation and codification of legislation (4th Programme of Law Reform, Project 11). The Commission intends to publish an Issues Paper on this project during 2016.

1.(d) Jury Service

The Government Legislation Programme Autumn-Winter Session 2015 (Section C) states that a *Juries Bill* is to be published to implement the Commission's *Report on Jury Service* (LRC 107-2013) (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 2015 (Section B) states that a *Mediation Bill* is to be published to implement the Commission's *Report on Alternative Dispute Resolution: Mediation and Conciliation* (LRC 98-2010) (3rd Programme of Law Reform, Project 5).

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

The Government Legislation Programme Autumn-Winter Session 2015 (Section C) states that a *Courts (Consolidation and Reform) Bill* is to be published, which would

implement the Commission's 2010 *Report on the Consolidation and Reform of the Courts Acts* (LRC 97-2010) (3rd Programme of Law Reform, Project 6).

1.(g) Tribunals of Inquiry

The *Tribunals of Inquiry Bill 2005*, based on the draft *Tribunals of Inquiry Bill* in the Commission's *Report on Public Inquiries Including Tribunals of Inquiry* (LRC 73-2005) (2nd Programme of Law Reform, Project 8), was awaiting Report Stage in Dáil Éireann in 2015.

2. CRIMINAL LAW AND PROCEDURE

2.(a) Search Warrants and Bench Warrants

In 2015, the Commission published its *Report on Search Warrants and Bench Warrants* (LRC 115-2015) (3rd Programme of Law Reform, Project 3).

Search warrants

The Report noted that every year, thousands of search warrants are issued, primarily in the District Court. Many warrants authorise the search of premises and seizure of material in connection with suspected theft, drugs offences or corporate offences. The Report pointed out that as of 2015 there were over 300 separate legislative provisions (143 Acts and 159 ministerial Regulations) that authorise An Garda Síochána and regulators (such as the Central Bank, ComReg and the Environmental Protection Agency) to apply to the District Court for search warrants. Many of these laws contain different rules about applying for, issuing and executing search warrants, giving rise to a serious risk of confusion and inefficiency.

The Commission's Report recommends that these 300 laws on search warrants should be replaced by a single generally applicable Search Warrants Act, which would contain standard rules on applying for, issuing and executing warrants. Among the main recommendations on search warrants are:

- Search warrants should only be issued by a court. In the vast majority of cases this will be the District Court, as is currently the case. Some existing legislation allows Gardaí and peace commissioners to issue search warrants in urgent situations where a judge of the District Court is not available; but the Report recommends that only a judge of the High Court should be able to issue emergency search warrants, and that this may be done using a live television link or by phone.
- The proposed Search Warrants Act would apply to all indictable offences and to certain summary offences (notably those involving implementation of EU-derived law).
- The general validity period for search warrants should be 7 days, which may be extended if needed (three extensions only). Emergency search warrants issued by the High Court should last for 24 hours only. Exceptional 30 day time limits for search warrants in, for example, the *Central Bank (Supervision and Enforcement) Act 2013* and the *Companies Act 2014* should be retained because they are needed to investigate complex corporate offences.
- Search warrants should, in general, be executed at reasonable times (usually, daylight hours), but may be executed at other times (so called "dawn raids") if a case is made to the court that this is required.
- Material reasonably believed to be evidence of or relating to an offence, not necessarily the offence to which the search warrant refers, may be seized if found during a search.
- The admissibility of material over which privilege is claimed (for example, legal professional privilege) should be adjudicated by the High Court.

- A Code of Practice on Search Warrants should be published by the Minister for Justice and Equality, which would contain practical guidance on the procedures to be followed in search warrants.
- Failure to comply with the Search Warrants Act or the Code of Practice should not, of itself, affect the admissibility of evidence. The rules on the admissibility or inadmissibility of illegally and unconstitutionally obtained evidence will continue to be developed by the courts.

Bench warrants and committal warrants for unpaid fines: main recommendations

Bench warrants are arrest warrants, usually issued by the District Court after a person has failed to appear in court. Almost 30,000 bench warrants are issued by the District Court every year. Most of these relate to drink driving and other road traffic offences and public order offences, though a significant minority deal with criminal damage, drugs and theft offences. In 2014, over 31,000 bench warrants (many involving a backlog of older warrants) were unexecuted.

Committal warrants (sometimes called “penal warrants”) are also arrest warrants, and are also usually issued by the District Court, which order a person’s arrest and imprisonment. In 2014, almost 9,000 committal warrants led to imprisonment for non-payment of fines; and a further 88,000 committal warrants (many also involving a backlog of older warrants) were unexecuted.

Among the main recommendations on bench warrants and committal warrants are:

- The Report supports the recommendations in the Garda Inspectorate’s 2014 *Report on Crime Investigation* on a consistent national approach to deal with the backlog of unexecuted bench warrants and committal warrants, which is largely an operational Garda matter.
- The *Fines (Payment and Recovery) Act 2014* should be brought into force: it allows a court the option to order that a fine may be paid by instalments or through an attachment order, and this would greatly reduce the need to issue committal warrants for non-payment of fines (since the Report was published the 2014 Act was brought into force in 2016).
- Thousands of committal warrants relate to non-payment of fines for road traffic offences and often involve non-payment of fixed charge penalty notices. Section 44 of the *Road Traffic Act 2010*, which allows a person to pay a fixed charge notice after a summons has been issued, should also be brought into force because this would also greatly reduce the number of committal warrants being issued every year.
- Legislation should be enacted to allow a person who has been charged with an offence in the District Court that carries a fine to respond by post: this facility is already available in many other countries, including in the UK., which recommended that over 300 laws on search warrants be replaced by a single Search Warrants Act with standard rules on applying for, issuing and executing warrants; and that search warrants should only be issued by a court.

2.(b) Crime affecting personal safety, privacy and reputation including cyber bullying

In April 2015 the Commission hosted a seminar on its project on cyber crime affecting personal safety including cyber bullying (4th Programme of Law Reform, Project 6), which followed the publication of its *Issues Paper on cyber crime affecting personal safety, privacy and reputation including cyber bullying* (LRC IP 6-2014). The seminar speakers were: Sir Michael Tugendhat, retired senior media judge of the English High Court; Mary Aiken, Professor and Director at the Royal College of Surgeons Ireland Cyber Psychology Research Centre; Dr Brian O’Neill, Chairperson of the Internet Content Governance Advisory Group; Fergal Crehan, Barrister-at-Law; Michael McDowell, Senior Counsel; Jennifer Schweppe, Lecturer in Law, University of

Limerick; Sinéad McSweeney, Twitter's Senior Director of Public Policy for Europe, the Middle East and Africa; Ian Power, Executive Director at SpunOut.ie; and Detective Sergeant Jennifer Molony, Domestic Violence and Sexual Assault Investigation Unit, An Garda Síochána. Following further consultation with interested parties, the Commission intends to publish its Report on this subject in 2016.

2.(c) Suspended Sentences

In November 2015, the Commission began work on its project on Suspended Sentences (4th Programme of Law Reform, Project 5), which will consider the principles applied by the courts when deciding to impose a suspended sentence.

2.(d) Sexual Offences: Capacity to Consent

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). The 2015 Bill passed all stages in Seanad Éireann in January 2016.

2.(e) Spent Convictions

The *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*, which was enacted in February 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*,³ 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 LIABILITY AND COMMERCIAL LAW

3.(a) Consumer Insurance Contracts

In 2015 the Commission published its *Report on Consumer Insurance Contracts* (LRC 113-2015) (3rd Programme of Law Reform, Project 34), which made over 100 recommendations for reform of the current rules in consumer insurance contracts. The Report noted that many of these rules date from the 18th Century, when insurance was usually arranged between shipping traders and small insurers, and the traders often had more information than the insurers to judge the risk being insured. However, these rules continue to apply today in insurance contracts that are made between consumers (including SMEs) and large multi-national insurers with significant financial, technical and actuarial resources. The Report concluded that current rules do not match the current realities of the bargaining powers of consumers compared to large insurers. The Report therefore recommended the enactment of legislation to reform and re-balance the duties of insurers and consumers.

The Report also noted that, since 2006, the Law Commission of England and Wales and the Scottish Law Commission had been engaged in a joint review of insurance contract law, which had already resulted in the enactment of significant changes to

³ [2013] EWCA Civ 25, [2014] UKSC 35.

comparable UK law, in the UK *Third Parties (Rights against Insurers) Act 2010*, the UK *Consumer Insurance (Disclosure and Representations) Act 2012* and the UK *Insurance Act 2015*. The Report therefore paid particular attention to these changes in UK law because they were likely to affect insurance undertakings operating in Ireland. The Report also pointed out that the European Commission had concluded in 2014 that differences in the respective insurance contract laws of Member States could constitute a significant barrier to the further development of the insurance sector in the EU, thus reinforcing the need to ensure that Irish and UK law should remain broadly similar.

Reforms to apply to individual consumers and SMEs

The Report recommended that its proposals would apply to insurance contracts between insurance companies and individual consumers or SMEs with a turnover of less than €3 million. This definition of consumer to include SMEs already applies to the Office of the Financial Services Ombudsman (which provides a mediation service on consumer insurance complaints) and under the Central Bank's *Consumer Protection Code 2012* (which contains important requirements on insurance contracts).

The Report's recommendations include the following.

1. Duty of disclosure and on proportionate remedies. The Report's recommendations to reform the consumer's duty of disclosure and the insurer's current right to repudiate liability for non-disclosure are related. The current law imposes an onerous duty on a consumer to disclose information that a hypothetical "prudent insurer" *might* rely on in deciding whether to insure the consumer. This requires a consumer to try to anticipate what an insurer *might* need to know, even if the consumer is not aware that the information was relevant; and the insurer does not have to prove that it would *actually* have relied on that information even it had been disclosed. The Report recommends that the law should be reformed so that the insurer would be required, by asking consumers specific questions, to identify what information it *actually* considers is relevant in its decision whether to insure the consumer and/or what premium to charge. A corresponding obligation should be imposed on consumers to answer, carefully and honestly, those specific questions.

Under the current law, where a consumer has not complied with the duty of disclosure, the insurance company can repudiate liability, that is, refuse completely to pay anything out under an insurance contract. The Commission's Report recommends that this "all or nothing" approach should be replaced by a system of proportionate remedies. This would mean that, where a consumer's non-disclosure, misrepresentation or other breaches of contract are innocent or due to negligence, insurers should not be able to repudiate all liability under the insurance contract but should be required to make proportionate payments to the consumer. The Commission recommends, however, that where a consumer's non-disclosure, misrepresentation or other breaches of contract are fraudulent (that is, where made intentionally or recklessly), the insurer's right to completely repudiate liability should remain. There must be clear provisions within our laws which will deter fraudulent insurance claims.

2. Insurance warranties (including "basis of contract" clauses) should be prohibited to protect consumers from unfair and unjust outcomes. Warranties in insurance contracts are special terms or conditions that permit a party to an insurance contract (usually the insurer) to repudiate the contract and refuse to meet the claim if the particular provision (the warranty) is breached. They include any statement made by a consumer which the insurance policy states is the "basis of the contract" between the consumer and the insurance company. This means for example that if a consumer wrongly "warrants" that a particular type of burglar alarm has been installed (or states will be the "basis of the contract") and the premises subsequently burns down as a result of

faulty electrical wiring, the insurer will probably be entitled to repudiate liability under the policy even though there has been no connection between the breach of warranty (the absence of a burglar alarm) and the event giving rise to the claim (a fire).

The Report refers to many cases highlighted by the courts where reliance by insurers on breaches of warranties has appeared to be unfair and unjust and has failed to provide satisfactory protection to consumers. The Commission therefore recommended the abolition of the concept of warranties in consumer insurance contracts and their replacement with statutory rules that will enable insurers to continue to include provisions in contracts that (a) precisely identify or define the risk insured and (b) protect consumers from the unfair and unjust effects of the current law.

3. Third parties intended to benefit under an insurance contract should be able to make a direct claim against the insurer. In general, a person who is not party to a contract (a “third party”) does not have enforceable legal rights under the contract even where the contract is intended to benefit him or her. Subject to very limited exceptions, this general rule (called the “privity rule”) applies to insurance contracts. The privity rule can make it difficult (and sometimes impossible) for third parties to obtain the benefits to which they should be entitled under certain insurance contracts (such as public or employer’s liability contracts). This means that a (perhaps) seriously injured person cannot directly recover compensation from the insurer of an employer or other person who has paid for and holds a valid insurance policy expressly intended to benefit the injured person. This can happen where the policyholder is a corporate body in liquidation, receivership or examinership, or an individual who has died, is missing or whose decision-making capacity is in question. The Commission recommends in the Report that third parties should be allowed to bring claims directly against insurers where that is necessary and appropriate; that they should be able to pay any excess under a policy where this is required to proceed with a case; and to obtain relevant documentary and other information directly from insurers where that is required.

4. Subrogation in family and close relationships. Subrogation (which means substitution) entitles an insurer to “step into the shoes” of its policyholders in order to provide indemnity and secure its own rights as insurer. In road traffic claims, subrogation allows insurers to defend or settle claims made against their policyholders and then to initiate claims in the names of those policyholders in order to recover some or all of the compensation. The Report does not make any recommendation to reform this application of subrogation. However, subrogation can give rise to some difficulties in insurance claims involving family and close relationships. For example, if a homeowner makes an insurance claim for damage to a dwelling caused by the carelessness of a visiting relative or close friend, subrogation entitles the insurer to bring a claim against the offending (and possibly uninsured) relative or friend in the name of the insured homeowner. This may result in unfair pressure being placed on the insured homeowner by an insurer not to make an otherwise perfectly valid claim for compensation. To avoid this, the Report recommends that subrogation should not be permitted in such cases.

5. Other recommendations. Among the other recommendations in the Report are:

- insurers should be required: to provide consumers with plainly written documents containing the essential terms of the contract; to provide clear warnings of the consequences of non-compliance with the statutory duties proposed in the Report; and to provide consumers with policy documents as soon as possible after the contract has been completed.
- there should be a duty on consumers to pay premiums within a reasonable time and a duty on insurers to handle claims and complaints promptly and fairly.
- the general statutory provisions on unfair contract terms should be suitably adapted to consumer insurance contracts (including that insurance contract terms

will not be deemed unfair where they have actually been considered by the insurer in the calculation of the premium and where they have been drawn to the attention of the consumer).

- the requirement that a consumer must have an “insurable interest” in the risk being insured (on which the law has been described as an “illogical mess”) should be abolished, and there should instead be a rule that the consumer should simply be asked to prove what actual loss has been sustained when a claim is made.

3.(b) Prevention of Benefit from Homicide

In 2015, the Commission published its *Report on Prevention of Benefit from Homicide* (LRC 114-2015) (4th Programme of Law Reform, Project 7, Module 1). Under section 120 of the *Succession Act 1965*, a person may not ordinarily inherit any part of the estate of a person whom he or she has murdered, attempted to murder or killed in circumstances amounting to manslaughter. In a 2011 High Court decision, *Cawley v Lillis*,⁴ it was pointed out that section 120 of the 1965 Act does not apply where a joint tenant kills his or her spouse who was also a joint tenant at the time of death. This is because in a joint tenancy where one of the joint tenants dies, the entire interest in the property automatically passes to the surviving joint owner (under the “right of survivorship”) and the property held in the joint tenancy does not become part of the deceased joint owner's estate. The High Court (Laffoy J) held that, under the current law, the interest of the deceased should be held by the surviving spouse - the killer - in trust for the deceased's daughter. The Court also suggested that the law in this area should be reviewed, and the Commission's 2015 Report did this.

The Report recommended that comprehensive legislative reform was required to implement the two general principles that a person should be prevented from benefitting from his or her wrongdoing, especially an act of homicide, and that no cause of action should arise from one's own wrongful act. This is to ensure that the principles are applied not only under succession law but also to prevent an offender benefitting in any other context, whether under a joint tenancy or, for example, a life insurance policy or a pension. The Report therefore contains a draft *Civil Liability (Amendment) (Prevention of Benefit from Homicide) Bill*, which would insert a new Part IIIA into the *Civil Liability Act 1961*, to implement this.

Among the recommendations in the Report are these:

1. In a case involving property held in a joint tenancy, the offender should be precluded from obtaining the benefit of the right of survivorship; that the legal and beneficial interests in the property held under the joint tenancy between the victim and the offender should be deemed severed from the date when any homicide offence was committed; and that it is to be presumed (subject to the next recommendation) that the victim holds at least half of the interest in the property.
2. The actual amount and value to be held by the offender may be decided by a court to be at such a level as the court considers just and equitable, having regard to the fact that the right of survivorship was accelerated by the homicide and to all other relevant circumstances. The Report referred to *O'Brien v McCann*, a 1998 Circuit Court case, in which the defendant (who had murdered his wife) was left with 15.7% of the total value of the family home that had been held in a joint tenancy between the defendant and his wife.
3. The proposed legislation should continue to apply to the three most-recognised types of homicide (murder, attempted murder and manslaughter), but should not apply to other offences that lead to death, such as dangerous driving causing death.

⁴ [2011] IEHC 515, [2012] 1 IR 281.

4. Where the offender has committed manslaughter, a court should be empowered to modify or disapply completely the rule that prevents the offender from benefitting, but only if the court is satisfied that this is required in the interests of justice. This would allow a court to take account of a case where a spouse has been convicted of manslaughter and there have been mitigating circumstances and a long history of domestic violence leading up to the offence.
5. Emphasising the civil nature of the recommendations, the proposed legislation would apply where either there has been no criminal prosecution or conviction of the offender, including where this is because the offender has died before being convicted or because the offence occurred outside the State; and it would also apply where a person has been found either unfit to be tried or not guilty by reason of insanity under the *Criminal Justice (Insanity) Act 2006*.
6. In any court proceedings under the proposed legislation, the court would, other than in exceptional circumstances, order that the costs of the proceedings are to be paid by the offender: this is because such proceedings only arise because of the wrongful act of the offender.
7. In connection with related probate proceedings, where a person has died in circumstances that give rise to a criminal investigation in respect of which a prosecution for murder or manslaughter is pending, an interested person (such as next-of-kin) may enter a caveat in the probate office concerning the estate of the deceased; and while that caveat is in force there must be no transfer of any estate or interest affected by the caveat.
8. A person who is convicted of murder or manslaughter should be presumed to be not entitled to extract a grant of probate or letters of administration intestate in the estate of the victim: this presumption should be rebuttable, in order to provide for those circumstances in which the court in its discretion orders that the rule should not be applied, as recommended in the Report, in cases of manslaughter.

3.(c) Adult Assisted Decision-Making Capacity and Advance Care Directives

The *Assisted Decision-Making (Capacity) Act 2015* was enacted in December 2015. This derives from the Commission's recommendations in its *Report on Vulnerable Adults and the Law* (LRC 83-2006) (2nd Programme of Law Reform, Projects 27 and 28) to replace the wards of court system with a modern statutory framework on decision-making capacity for adults; and from the Commission's *Report on Bioethics: Advance Care Directives* (LRC 94-2009) (3rd Programme of Law Reform, Project 30), which recommended the enactment of legislation on advance care directives.

3.(d) Debt Enforcement Procedures: Removal of Imprisonment

The *Civil Debt (Procedures) Act 2015* repealed the possibility of imprisonment for non-payment for debts, as recommended by the Commission in its *Report on Personal Debt Management and Debt Enforcement* (LRC 100 - 2010) (3rd Programme of Law Reform, Project 2). Significant elements of the 2010 Report had been implemented in the *Personal Insolvency Act 2012*.

3.(e) Tax Appeals

The *Finance (Tax Appeals) Act 2015* reformed the system of tax appeals and established the Tax Appeals Commission, thus implementing the main recommendations in the Commission's *Report on a Fiscal Prosecutor and a Revenue Court* (LRC 72-2004) (which arose from a 2002 request by the Attorney General under the *Law Reform Commission Act 1975*).

4. LAW OF EVIDENCE

4.(a) Hearsay, Documentary Evidence, Expert Evidence and Consolidation of Evidence Acts

During 2015, the Commission considered the draft text of its composite *Report on the Law of Evidence*, which will incorporate three projects in the 3rd Programme of Law Reform. These are: Project 7 (Documentary and Electronic Evidence), Project 8 (Hearsay Rule) and Project 11 (Expert Evidence). The Report will also include a consolidation of existing pre-1922 and post-1922 Evidence Acts, as discussed in its *Issues Paper on Consolidation of Evidence Legislation* (LRC IP 3-2013). The Commission intends to publish its Report on this area during 2016.

4.(b) DNA Database

The *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014*, which sets out a statutory basis for a limited DNA Database and which also repealed and replaced existing legislation on the taking of forensic evidence, was brought into force in 2015. The 2014 Act derives from the Commission's 2005 *Report on the Establishment of a DNA Database* (LRC 78-2005) (which arose from a 2002 request by the Attorney General under the *Law Reform Commission Act 1975*).

5. LAND LAW, SUCCESSION AND TRUSTS

5.(a) Succession law

In 2015, the Commission began work on its project on section 117 of the *Succession Act 1965* (4th Programme of Law Reform, Project 7, Module 2). Section 117 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 Commission will publish an Issues Paper on this project in 2016, in which it will discuss a number of matters, including the following: whether section 117 of the Succession Act 1965 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.

5.(b) Landlord and tenant

The Government Legislation Programme Autumn-Winter Session 2015 (Section B) states that, following the publication in 2012 of the Scheme of a *Landlord and Tenant Bill* (which derived from the Commission's *Report on the Law of Landlord and Tenant* (LRC 85-2007) (2nd Programme of Law Reform, Project 23), a *Landlord and Tenant Bill* is to be published.

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

The Government Legislation Programme Autumn-Winter Session 2015 (Section C) states that a *Trusts Bill* is to be published which would consolidate and reform the *Trustee Act 1893*, taking account of the Commission's *Report on Trust Law: General*

Proposals (LRC 92-2008) and the Commission's work on its project on Trust Law and the Settled Land Acts (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

6.(a) Domestic Violence

In 2015, the Department of Justice published the *Scheme of a Consolidated Domestic Violence Bill*, which takes account of the Commission's recommendations in the *Report on Aspects of Domestic Violence* (LRC 111-2013) (3rd Programme of Law Reform, Project 24).

6.(b) Family Relationships and Children

In 2015, the *Children and Family Relationships Act 2015* was enacted. Part 4 of the 2015 Act, which reformed the law on guardianship of children, derived from the Commission's *Report on Legal Aspects of Family Relationships* (LRC 101-2010) (3rd Programme of Law Reform, Project 23).

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 1999 onwards, it also lists commencement orders and other related Statutory Instruments made under powers in an Act. During 2015 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 readable 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 1999. The Commission plans to extend the Directory for statutory instruments back further as resources permit.

The Commission maintains the Legislation Directory in two formats - an older format that the Commission inherited in 2006, which solely lists the legislative effects, and a newer format introduced by the Commission which includes commencement information and related secondary legislation as well as the legislative effects. In 2015, the newer format was extended back from 2005 to 1999.

The Legislation Directory was maintained up to date to within one to two months in 2015.

Towards the end of 2015 the Commission started to implement the conversion of the Legislation Directory from a collection of files to a database. This work will continue into 2016 and will lay 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 over 260 Acts, known as Revised Acts. Around half of these Acts are all Acts from 2006 onwards which were textually amended, other than Finance and Social Welfare Acts. The others are selected pre-2006 Acts and include groups such as employment, child law, family law and Road Traffic Acts, as well as other much used Acts such as Data Protection, Planning and Development and Local Government Acts. 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 with a link from the eISB home page. All the changes are annotated with their sources and commencement information. In 2015 over 100 Revised Acts were updated to within two months, some multiple times.

They may be viewed at

<http://www.lawreform.ie/revised-acts/alphabetical-list-of-revised-acts.360.html>.

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 2015 editions in March and August.

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.

Classified List of Statutory Instruments

During 2015, the Commission continued its work to develop a Classified List of statutory instruments to complement the List of Acts. The last instalments of feedback were received from Government Departments in the course of 2015 and incorporated in the text, and bringing its preparation closer to conclusion. 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 creation of the Legislation Directory for statutory instruments, there is now a publicly accessible repository for noting revocation and other changes to statutory instruments.

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 current organisation structure of the Commission (as of December 2015) is set out in the Appendix.

THE COMMISSION

The Commission consists of a President and four Commissioners. Commissioners are appointed by the Government for a term of up to five years, and their appointment may be renewed. The President of the Commission, Mr Justice John Quirke, is a former judge of the High Court. The full-time Commissioner, Finola Flanagan, is a barrister and former Director General of the Office of the Attorney General. The three part-time Commissioners are: Professor Donncha O'Connell, School of Law NUI Galway, Mr Tom O'Malley, barrister-at-law, and School of Law NUI Galway; and until August 2015, Ms Justice Marie Baker, judge of the High Court and, since September 2015, 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 ten times each year.

MANAGEMENT COMMITTEE

The Commission's Management Committee consisted of the full-time Commissioner, the Head of Administration, the Director of Research and the Access to Legislation Project 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 five staff as of December 2015.

During 2015, 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 and seminars.

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 later stages of a project this involves the development of a draft Issues Paper or Report and, where the Commission deems it appropriate, a Seminar Paper.

Research Team

The law reform research team is headed by the Director of Research, Raymond Byrne, Barrister, and formerly of the School of Law and Government, Dublin City University. The Commission's Access to Legislation work (the Legislation Directory, Revised Acts and the Classified List of Legislation) are overseen by the Access to Legislation manager, Alma Clissmann, Solicitor, and Deputy Manager, Jane Murphy, Barrister. During 2015, the Commission recruited legal researchers engaged on fixed-term contracts to ensure that there were eight 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 regularly as a group to exchange views on the areas on which they are conducting research. Researchers are encouraged to publish in relevant law journals during their time with the Commission. This includes articles dealing with areas on which the researcher is actively involved.

Library and Information Services

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

During 2015 the Legal Information Manager/Librarian worked in consultation with the research teams to provide timely access to new electronic and hard-copy

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

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 2015 that it took appropriate steps concerning energy conservation and reduction measures.

FINANCE

Income and expenditure

The Commission is funded by a grant from the Minister for Public Expenditure and Reform. Total income received in 2015 from all sources (including grants, net deferred funding from pensions, transfers to capital account, sale of publications and income received from Department of Social Protection) amounted to **€2,085,531**.

Expenditure in 2015 amounted to **€2,049,461**. 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.

External Audit

Under current accounting procedures, moneys are drawn down from the Office of the Attorney General on a monthly basis by way of a grant. Commission internal financial controls and expenditure are monitored by the Comptroller and Auditor General on an annual basis. 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.

Prompt payments

The Commission did not incur any late interest penalties during 2015 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*.

Reporting Requirements under the Code of Practice for the Governance of State Bodies

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 a number of areas:

- 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

The figures below set out the salaries, expenses, and costs incurred of attending conferences, for the President and 4 Commissioners.

<i>Commissioner Name</i>	<i>No. of meetings attended</i>	<i>Salary/ fees €</i>	<i>Travel expenses to Commission meetings €</i>	<i>Attendance at conferences/ lectures €</i>
<i>President</i> Mr Justice John Quirke (re-appointed July 2015 for 5 year term)	10	48,000	0	2,442
<i>Commissioner (full-time)</i> Ms Finola Flanagan (re-appointed March 2015 for 1 year term)	10	175,193	0	2,396
<i>Commissioners (part-time)</i>				
Prof Donncha O'Connell (re-appointed July 2015 for 5 year term)	9	0	1,418.94	0
Mr Tom O'Malley (re-appointed July 2015 for 5 year term)	9	0	826.02	0
Ms Justice Marie Baker (to July 2015)	7	0	0	0
Ms Justice Carmel Stewart (appointed September 2015 for 5 year term)	3	0	0	0

The President was appointed, and re-appointed in 2015, on a part-time basis and his salary was agreed in accordance with relevant Government guidelines. The full-time Commissioner's salary is at Secretary General level. The part-time Commissioners receive no salary or fees arising from Government policy of "one State salary."

Travel expenses to Commission meetings for the part-time Commissioners are related to travel from outside Dublin, and each claim is in accordance with

Government travel policy. The figures above are estimated figures that will be paid in 2016 for travel claims for the two years 2014 and 2015.

In 2015, the President and the full-time Commissioner represented the Commission at 4 law reform events outside the State. 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. These 4 events were:

- March 2015: Scarman Lecture 2015 (“The Law Reform Enterprise: Evaluating the Past and Charting the Future” given by Mr Geoffrey Palmer, former Chair of the New Zealand Law Commission), in conjunction with Law Commission of England and Wales (London);
- April 2015: Conference of Commonwealth Association of Law Reform Agencies (CALRAs), in conjunction with Scottish Law Commission (Edinburgh);
- June 2015: Conference of Law Commissions of England/Wales, Scotland, Jersey and Ireland (London); and
- July 2015: Lecture to mark 50th Anniversary of Law Commission of England and Wales (London).

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 and they ensure procurement is in the line with Government circulars and EU guidelines. They are in regular contact with the Office of Procurement to avail of centralised managed services where available to the office.

Commission’s Risk Register

The Commission’s Risk Register was updated in November 2015 and is kept under regular review by the Commission.

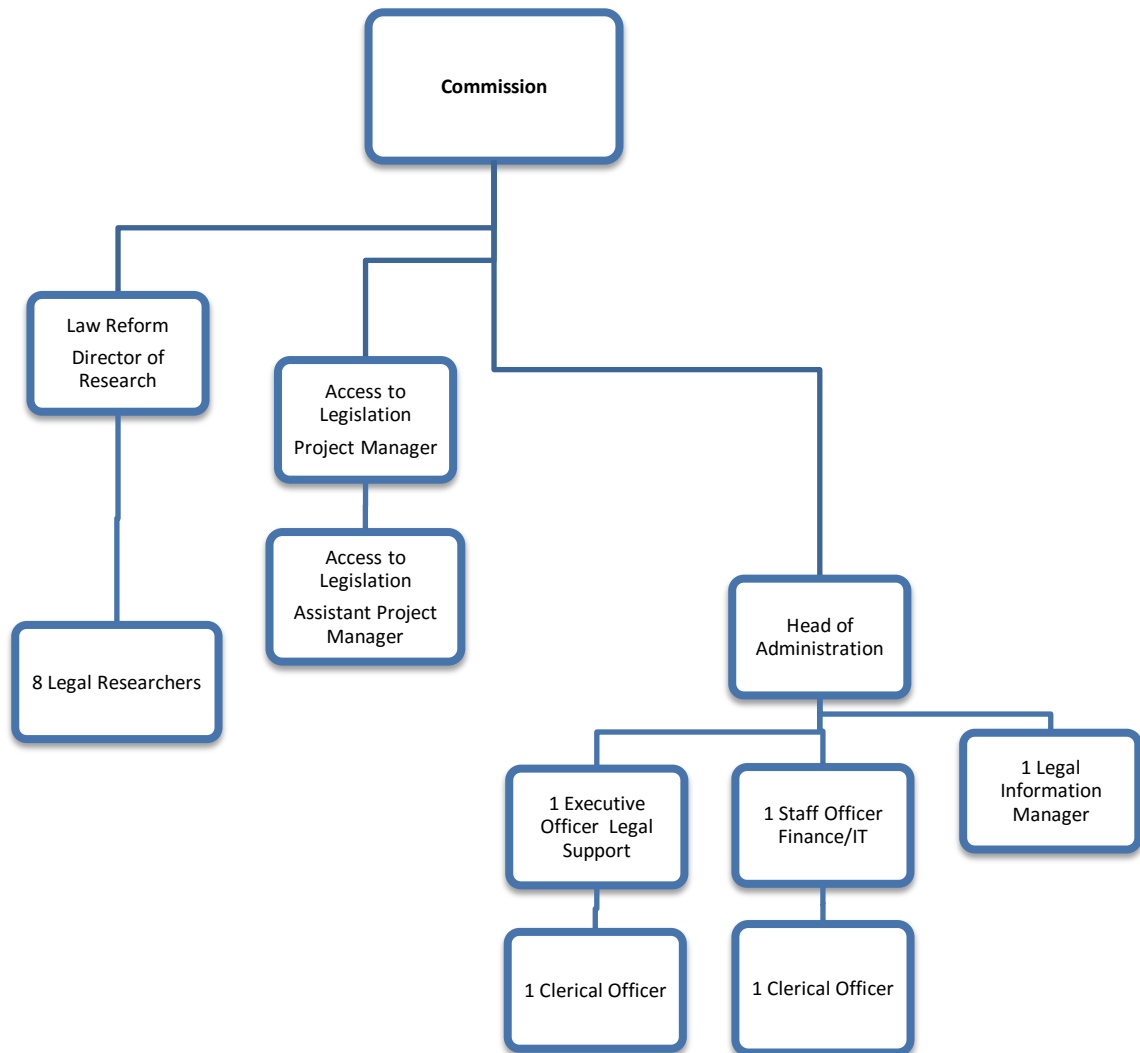
Strategy Statement

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.

ORGANISATION CHART



Law Reform Commission Organisation Chart at 31 December 2015