

LAW REFORM
COMMISSION/COIMISIUN UM
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ANNUAL REPORT 2019

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LAW REFORM COMMISSION AND STAFF

THE COMMISSION

The Law Reform Commission comprises five members, the President and four other Commissioners. ¹ In 2019, the Commission members were as follows:

The Hon Ms Justice Mary Laffoy
President

Raymond Byrne BL
Commissioner (full-time)

Donncha O'Connell, Established Professor of Law, School of Law, NUI Galway
Commissioner (part-time)

Tom O'Malley BL, Senior Lecturer, School of Law, NUI Galway
Commissioner (part-time)

The Hon. Ms Justice Carmel Stewart
Commissioner (part-time)

COMMISSION RESEARCH STAFF

Director of Research:
Professor Ciaran Burke (to July 2019)

Deputy Director of Research:
Robert Noonan

Access to Legislation Manager:
Alma Clissmann

Access to Legislation Deputy Manager:
Kate Doran

Access to Legislation Statutory Instruments Project Manager
Fiona Carroll

Library and Information Manager:
6rla Gillen

LEGAL RESEARCHERS ²

Hazel Bergin, Leanne Caulfield, Eunice Collins, Eire Dempsey, Liam Dempsey, James Egleston, Ivan Gramatikov, Sandra Eaton, Rachel Gaffney, Morgane Herve, Niamh Ni Leathlobhair, Claire O'Connell, Rebecca O'Sullivan, Suzanne Scott.

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

² Not all legal researchers were employed for the full calendar year.

COMMISSION ADMINISTRATION STAFF³

Head of Administration:	Brfd Rogers
Executive Officers:	Gavin Walsh Ger Mooney
Clerical Officer:	Roslyn Dalton

³Not all members of the administration staff were employed for the full calendar year.

FOREWORD

On behalf of the Law Reform Commission I am pleased to introduce our Annual Report for 2019.

During 2019, the Commission made further significant progress towards the completion of our Fourth Programme of Law Reform. The Commission also began work on a number of projects in our Fifth Programme of Law Reform, which the Government approved without modification on 20th March 2019. The Commission then published the *Report on the Fifth Programme of Law Reform*, which contains an abstract of each of the 15 projects contained in the Programme.

During the year, the Commission also published two Reports that completed our work on two specific requests made by the Attorney General under the *Law Reform Commission Act 1975*, which in addition to our Programme-related work, is another source of the Commission's research on law reform.

The first of these, *Report on Privilege for Reports of Court Proceedings under the Defamation Act 2009*, required the Commission to examine the competing rights and interests involved in defamation law and how these applied in the specific context of reporting court proceedings. The Commission recommended retention of the current absolute privilege in section 17 of the 2009 Act for "fair and accurate" reports, and that section 17 would benefit from inclusion of a non-exhaustive list of factors that determine whether a court report meets that test. The Report also recommended that the scope of the privilege should continue to apply to court reports by persons other than accredited journalists, whether academic writers or "citizen journalists", and the Report addressed the need to regulate court reports through social media.

The second Report that arose from an Attorney general request was the *Report on Knowledge or Belief Concerning Consent in Rape Law*, in which the Commission recommended that the primarily subjective test currently set out in the *Criminal Law (Rape) Act 1981* should be replaced by a primarily objective test. The Commission underlined the importance of this project by including it as one of two themes in our Annual Conference held in November 2019.

Turning to the Commission's Fifth Programme, my fellow Commissioners and I were anxious to begin work as quickly as possible on a number of the 15 projects in the Programme. Thanks to the dedication of our small legal research team, we were able to publish by year end consultative Issues Papers on two of those projects, on a Regulatory Framework for Adult Safeguarding and on Capping Damages in Personal Injuries Actions. The Commission is committed to continuing to make significant progress on the ambitious content of the Fifth Programme in the coming years.

I would like to add a particular comment on the important work of the Commission under the general heading of Access to Legislation. This is now a well-established aspect of the Commission's research, and it includes a number of much needed services to the legal and general community, notably by providing access to over 380 Revised Acts (which are administrative consolidations of Acts in their amended form), the Legislation Directory (which is a comprehensive listing of all amendments and other effects to all legislation) and the Classified List of In-force Legislation (a database of over 2,000 Acts and 15,000 statutory instruments organised under 26 subject headings). In 2019 (with the important support of the Office of the Attorney General) the Commission added to our Access to Legislation work the remaining part of the pre-1922 Statute Law Revision Programme

(SLRP), which has as its objective to determine what secondary instruments from 1821 to 1922 remain in force.

I would also like to express my thanks to my fellow Commissioners for their commitment, work and support during 2019. As Commissioners, we are greatly indebted to the many people who enhance and assist the Commission in fulfilling its function. In particular, I take this opportunity to mention the voluntary advice and assistance which we receive from the many individuals and groups with whom the Commission has consulted or who spontaneously contact us. The Commission also appreciates the cooperation and courtesy which it receives from Government departments and offices, from the Attorney General and the Office of the Attorney General, and from other Government and non-governmental agencies. The Commission's work in all its aspects is greatly enhanced by the collaborative engagement throughout Irish society that this involves.

**The Hon Ms Justice Mary Laffoy,
Commission President**

CHAPTER 1

INTRODUCTION

OVERVIEW OF THE COMMISSION'S WORK IN 2019

During 2019, the Commission made significant progress on each of the remaining projects in the 4th Programme of Law Reform. Of the 11 projects in the 4th Programme, two had been overtaken by developments since the Programme was finalised in 2013.⁴ On 20th March 2019, the Government formally approved the Commission's 5th Programme of Law Reform, which contains 15 projects. The Commission therefore also began work on a number of those projects, and published consultative Issues Papers on two of those by year end. In 2019, the Commission also published its final Reports on two recent requests from the Attorney General.

The key developments in 2019 were the following.

1. Law reform publications

In 2019 the Commission published the following Reports and Issues Papers:

- *Report on the Fifth Programme of Law Reform* (LRC 120-2019). The Fifth Programme was prepared by the Commission following broad public consultation and discussion, during which the Commission received 77 written submissions and held discussions with NGOs, representative groups, Government Departments and the Oireachtas Joint Committee on Justice, Equality and Defence. Following this consultation process, in accordance with the 1975 Act the Fifth Programme of Law Reform was approved by the Government on 20th March 2019 without modification. The Report contains an abstract of each of the 15 projects in the Programme, together with a description of the consultative process and guiding principles applied by the Commission in the selection of the projects.
- *Report on Privilege of Court Proceedings under the Defamation Act 2009* (LRC 121-2019). This Report was in response to a request from the Attorney General under section 4(2)(c) of the *Law Reform Commission Act 1975* to examine whether changes should be made to the *Defamation Act 2009* dealing with privilege for reports of court proceedings. The Report recommends that the absolute privilege in section 17 of the 2009 Act should be retained and that it should be amended to provide that, in determining whether a report of court proceedings is "fair and accurate", all of the circumstances of the case are to be considered, including a non-exhaustive list of 5 factors derived from the case law.
- *Report on Knowledge or Belief Concerning Consent in Rape Law* (LRC 122-2019). This was the second Report published in 2019 that arose from a request to the Commission by the Attorney General under the 1975 Act, which involved an examination as to whether the element of knowledge or belief in the definition of rape in section 2 of the *Criminal Law (Rape) Act 1981* as amended, should be reformed. The Report recommended that the primarily subjective test in section 2 of the 1981 Act should be replaced by a primarily objective test.
- *Issues Paper on Capping Damages in Personal Injuries Actions* (LRC IP 17-2019). This Issues Paper is on a project that forms part of the Commission's *Fifth Programme of Law Reform*, and involves an examination as to whether it would be constitutionally permissible to enact legislation capping general damages in personal injuries actions. The Paper discussed relevant developments in the law on general damages and relevant constitutional rights and tests of constitutionality.

⁴ See Chapter 2, footnote 8, below.

The Paper asked consultees to consider four possible legislative models for capping general damages. The Commission intends to publish its Report on this project by the end of 2020.

- *Issues Paper on A Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019). This Issues Paper is also on a project that forms part of the Commission's *Fifth Programme of Law Reform*. The Issues Paper notes that there is widespread agreement on the need for a clear statutory framework on adult safeguarding, which would address risks of physical, psychological and financial abuse. The Issues Paper therefore examines what form that regulatory framework might take, building on existing arrangements and parallel policy and legislative developments. The Paper suggests key guiding principles of a regulatory framework for adult safeguarding and seeks the views of the public on 11 key issues that arise in this project.

2. Access to legislation

The Commission's work on access to legislation during 2019 included the following:

- Updates to the Legislation Directory, the online index of legislative changes to Acts and Statutory Instruments, now updated virtually weekly.
- Updates to over 370 Revised Acts, which are Acts as amended showing changes made since enactment, updated to within two months.
- Changing the method of updating of the Classified List of Legislation, which comprises over 2,000 Acts that are in force organised under 36 subject titles, and a draft Classified List of Statutory Instruments, organised in the same manner, to integrate it with the new Legislation Directory database. Following this work, the Commission published a database version of the Classified List in January 2020.
- In 2019, with the support of the Office of the Attorney General, the Commission began work on that remaining part of the pre-1922 Statute Law Revision Programme (SLRP) to determine what secondary instruments from 1821 to 1922 remain in force. The Commission intends to complete this research work in 2022 to coincide with the centenary of the State.

FUNCTIONS OF THE COMMISSION

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

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

Since it was established, the Commission has published over 200 documents (Issues Papers, Consultation Papers, Working Papers and Reports) containing proposals for law reform. A full list of Commission publications is available on the Commission's website at www.lawreform.ie where all publications are available to download free of charge.

Programmes of Law Reform and Requests from the Attorney General

The Commission's work on law reform comes from 2 sources:

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

Since it was established in 1975, the Commission has worked under five Programmes of Law Reform. The Commission's 5th Programme of Law Reform was approved by the Government on 20th March 2019 without modification. Developments during 2019 concerning the Commission's law reform work, including the approval of the 5th Programme, discussed in detail in Chapter 2.

Access to Legislation

The Commission's work also involves making legislation more accessible to the public. Developments during 2019 in the work on Access to Legislation are discussed in Chapter 3.

STRATEGY STATEMENT 2018-2020

The Commission's *Strategy Statement 2018-2020*, available at www.lawreform.ie, provides the framework for the work of the Commission in the 3 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 2018-2020, including clear responsibilities and accountabilities for the achievement of these priorities.

Key Objectives in the Strategy Statement

The *Strategy Statement 2018-2020* identifies 3 Key Objectives. These are:

Key Objective 1: Law Reform

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

Key Objective 2: Access to Legislation

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

Key Objective 3: Administration

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

This Annual Report follows the sequence of these Key Objectives.

METHODS OF WORK AND CONSULTATION PROCESS

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

engage with the Commission. The opinions and experiences of these contacts are taken into account in the Commission's publications.

Methodology

To achieve the goals set out in its Programmes of Law Reform and requests from the Attorney General, each project is assigned to researchers who work under the general direction of the Director of Research and, since 2018, the Deputy Director of Research. In the case of the Access to Legislation work, researchers work under the direction of the Access to Legislation Manager and Deputy Managers.

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

The consultation process, including roundtables and annual conference

Consultation is of central importance to the Commission's work. This may take several forms, for example meetings with experts or practitioners working in a particular area, or representatives of interest groups. The Commission also prepares and publishes consultative documents (at various times since 1975 referred to as Working Papers, Consultation Papers and Issues Papers). These provide a structured process through which written submissions are sought from interested parties. The submissions are taken into account in the drafting of the final Report on the subject, and any issues or concerns they raise are dealt with in the Report. Before drafting the Report, a seminar is often held to which the Commission invites interested parties, including those who have made submissions.

On 16 July 2019, the Commission held a round table discussion with interested parties in connection with the Commission's project on contempt of court (4th Programme, Project 4). These discussions greatly assist the Commission in developing its recommendations for reform in Reports that will arise from Commission projects.

The Commission's Annual Conference, held in Dublin on 13 November 2019, discussed two themes, technology and privacy in the digital era (which is Project 3 in the Commission's Fifth Programme of Law Reform) and reform of sexual offences Law (which is Project 5 in the Fifth Programme, and was a subject on which the Commission had recently published its Report on Knowledge or Belief Concerning Consent in Rape Law). The conference was opened by the Commission President, Ms Justice Laffoy. The first theme was addressed by John Danaher, Senior Lecturer in Law in NUI Galway, and Moyagh Murdock, CEO of the Road Safety Authority. The second theme was addressed by Noeline Blackwell, CEO of the Dublin Rape Crisis Centre and Commissioner O'Malley. The speeches and presentations are all available on the Commission's website.

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 also consults with interested parties in connection with its research work on Access to Legislation, including the Office of the Attorney General, Government Departments, the legal profession and the general public. The Commission has been an active participant in the work of the eLegislation Group under the auspices of the Department of the Taoiseach and in the ongoing development of the electronic Irish Statute Book (eISB).

To facilitate accessibility, all Commission law reform publications, including consultations, are available online on the website of the Commission, and our work on Access to Legislation is accessible through the website of the eLSB and on the Commission's website.

Communication with Government Departments

The Commission regularly communicates with relevant Government Departments about both current and future projects. The Commission also meets each year senior officials in the Department of Justice and Equality to review and discuss law reform developments of mutual interest, both in criminal law and civil law. In 2019, this meeting occurred on 16 May 2019, which the Commission hosted at its offices.

Meetings with Attorney General and Consultative Committee

The Commission is an organisation within the remit, in accordance with the *Law Reform Commission Act 1975*, of the Attorney General. On 20 November 2019, the five members of the Commission and senior staff met the Attorney General and senior officials at the offices of the Attorney General. This meeting provided an important structured opportunity to discuss with the Attorney General and his officials the Commission's current work programme. It also underlined the excellent working relationship between the Commission and the Office of the Attorney General, consistently with the independence of the Commission in the conduct of its functions under the 1975 Act.

In addition, the Attorney General's Consultative Committee carries out important functions that assist in the development of the Commission's Programmes of Law Reform. The Committee comprises representatives of Government Departments, the Council of the Bar of Ireland, the Law Society of Ireland and the Office of the Attorney General. The Committee met in 2018 to discuss the 15 projects in the draft 5th Programme of Law Reform which the Commission had prepared. This greatly facilitated the consideration by Government of the draft Programme, and its approval without amendment on 20th March 2019.

Meetings with and submissions to Oireachtas Committees

The Commission holds periodic meetings with Oireachtas Committees to discuss the work of the Commission. On 26 February 2019, the Commission President Ms Justice Laffoy, Commissioner Byrne and Commissioner O'Malley discussed the Commission's *Report on Regulatory Powers and Corporate Offences* (LRC 119-2018) with the Oireachtas Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach as part of the Committee's review of corporate governance and accountability in the banking sector.⁵ On 2 April 2019, the Commission President Ms Justice Laffey and Commissioner Byrne, also discussed the 2018 Report with the Joint Oireachtas Committee on Business, Enterprise and Innovation as part of that Committee's pre-legislative scrutiny of the *General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018*.⁶

On 28 March 2019, the Commission also made a written submission to the Joint Oireachtas Committee on Health as part of that Committee's detailed scrutiny (the phrase used in Oireachtas Standing Orders in connection with Private Member's Bills)

⁵ The material relevant to the meeting and surrounding coverage is available at <https://www.lawreform.ie/news/finance-committee-discusses-lrc-report-on-regulatory-powers-and-corporate-offences-with-members-of-the-commission.841.html>.

⁶ The meeting is available at https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint_committee_on_business_enterprise_and_innovation/2019-04-02/debate/mul@main.pdf.

of the *Mental Health (Amendment) Bill 2016*. The submission discussed the relationship between the 2016 Bill and the Commission's *Report on Children and the Law: Medical Treatment* (LRC 103-2011), which included proposals to reform the *Mental Health Act 2001*.

Conferences, visits and media contacts

Commissioners and research staff regularly attend and participate in public seminars and conferences.

On 9 February 2019, the Commission President Ms Justice Laffoy delivered the 2019 Brian Lenihan Memorial Address in Trinity College Dublin, the University of Dublin, on the theme of the role of the Commission. The Brian Lenihan Memorial Address is held annually and marks the substantial contribution of Brian Lenihan (1959- 2011) to Irish public life as well as his longstanding connection to the Trinity College Law School as a student, scholar and later as a lecturer.⁷

On 19 September 2019, Commissioner Byrne gave a presentation on the Commission's project on compulsory acquisition of land (4th Programme, Project 8) at a seminar in Dublin organised by local authorities.

Contacts with law reform bodies and comparable bodies in other jurisdictions are also maintained through attendance at relevant seminars and through hosting visits from other law reform bodies.

On 4 September 2019, the Commission hosted a delegation from the Czech Parliament and Ministry of Justice to discuss developments in law reform processes in Ireland and the Czech Republic.

On 15 October, the Commission hosted a delegation from the Uganda Law Commission, comprising Mr Kenneth Rutaremwa, Senior Legal Officer and Ms Sheila Lamuno, Legal Officer, which provided useful exchanges on the respective functions of the two Commissions.

On 17 and 18 October 2019, the Commission President, Ms Justice Laffey, and Commissioner Byrne attended the annual meeting of the four neighbouring Law Commissions of England and Wales, Scotland, Jersey and Ireland, respectively. These annual meetings allow for an exchange of views on developments in law reform, including methodology, as well as maintaining important links between the bodies. The theme of the 2019 meeting, held in London, was the economic and strategic value of law reform, and it provided the four Commissions with the opportunity to discuss the positive value that the work of law commissions has brought to their societies, as well as the need to ensure that they remain relevant for the future. Ms Justice Laffoy and Commissioner Byrne also accepted the invitation from the Law Commission of England and Wales to attend a session on 17 October of its conference (organised jointly with the Office of the Parliamentary Counsel to the UK Government) on the future of law and legislation, which is directly relevant to the Commission's project on the Accessibility and Consolidation of Legislation in the Digital (4th Programme of Law Reform, Project 11).

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

⁷ The lecture is available at <https://www.lawreform.ie/news/2019-brian-lenihan-memorial-address-delivered-by-the-president.852.html>.

Appendix 2 contains a selection of Commission events, including publication launches, seminars and meetings hosted by the Commission and seminars attended by staff in 2019.

CHAPTER 2

LAW REFORM: WORK ON PROGRAMMES OF LAW REFORM AND ATTORNEY REQUESTS; AND IMPLEMENTING LEGISLATION

OVERVIEW

(1) Law reform publications in 2019 and Government approval of 5th Programme

During 2019, the Commission made significant progress on each of the remaining projects in the 4th Programme of Law Reform. Of the 11 projects in the 4th Programme, two had been overtaken by developments since the Programme was finalised in 2013.⁸ On 20th March 2019, the Government formally approved the Commission's 5th Programme of Law Reform, which contains 15 projects. The Commission therefore also began work on a number of those projects, and published consultative Issues Papers on two of those by year end. In 2019, the Commission also published its final Reports concerning two requests from the Attorney General.

In 2019 the Commission published the following Reports and Issues Papers:

- **Report on the Fifth Programme of Law Reform** (LRC 120-2019). The Fifth Programme was prepared by the Commission following broad public consultation and discussion, during which the Commission received 77 written submissions and held discussions with NGOs, representative groups, Government Departments and the Oireachtas Joint Committee on Justice, Equality and Defence. Following this consultation process, in accordance with the 1975 Act the Fifth Programme of Law Reform was approved by the Government on 20th March 2019 without modification. The Report contains an abstract of each of the 15 projects in the Programme, together with a description of the consultative process and guiding principles applied by the Commission in the selection of the projects.
- **Report on Privilege of Court Proceedings under the Defamation Act 2009** (LRC 121-2019). This Report was in response to a request from the Attorney General under section 4(2)(c) of the **Law Reform Commission Act 1975** to examine whether changes should be made to the **Defamation Act 2009** dealing with privilege for reports of court proceedings. The Report recommends that the absolute privilege in section 17 of the 2009 Act should be retained and that it should be amended to provide that, in determining whether a report of court proceedings is "fair and accurate", all of the circumstances of the case are to be considered, including a non-exhaustive list of five factors derived from the case law.
- **Report on Knowledge or Belief Concerning Consent in Rape Law** (LRC 122-2019). This was the second Report published in 2019 that arose from a request to the Commission by the Attorney General under the 1975 Act, which involved an examination as to whether the element of knowledge or belief in the definition of rape in section 2 of the **Criminal Law (Rape) Act 1981** as amended, should be reformed. The Report recommended that the primarily subjective test in section 2 of the 1981 Act should be replaced by a primarily objective test.
- **Issues Paper on Capping Damages in Personal Injuries Actions** (LRC IP 17-2019). This Issues Paper is on a project that forms part of the Commission's **Fifth Programme of Law Reform**, and involves an examination as to whether it would be constitutionally permissible to enact legislation capping general damages in

⁸ Since 2013, two projects in the *Fourth Programme of Law Reform* have been overtaken by, respectively, the *Criminal Law (Sexual Offences) Act 2017* (Project 3) and by the enactment of the *Planning (Housing) and Residential Tenancies Act 2016* (Project 9). The Commission, to avoid unnecessary duplication of resources, does not engage in a project where another body is actively engaged in the area.

personal injuries actions. The Paper discussed relevant developments in the law on general damages and relevant constitutional rights and tests of constitutionality. The Paper asked consultees to consider four possible legislative models for capping general damages. The Commission intends to publish its Report on this project by the end of 2020.

- *Issues Paper on A Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019). This Issues Paper is also on a project that forms part of the Commission's *Fifth Programme of Law Reform*. The Issues Paper notes that there is widespread agreement on the need for a clear statutory framework on adult safeguarding, which would address risks of physical, psychological and financial abuse. The Issues Paper therefore examines what form that regulatory framework might take, building on existing arrangements and parallel policy and legislative developments. The Paper suggests key guiding principles of a regulatory framework for adult safeguarding and seeks the views of the public on 11 key issues that arise in this project.

(2) Implementation of Commission proposals in 2019

The great majority of Commission Reports are implemented through legislation promoted by the Government. From time to time, Private Member's Bills (PMBs) are published with a view to implementing the draft Bills in Commission Reports. Where the Government indicates that it intends to publish a Bill on the subject, a PMB does not usually proceed beyond Second Stage. Alternatively, the Government may indicate its general support for the PMB and the Bill could then proceed through subsequent stages to enactment. In 2019, two PMBs related to Commission Reports were enacted with Government support, the *Civil Law (Presumption of Death) Bill 2016*, which was enacted as the *Civil Law (Presumption of Death) Act 2019*, and the *Consumer Insurance Contracts Bill 2017*, which was enacted as the *Consumer Insurance Contracts Act 2019*.⁹

In addition, the following legislation, enacted or under consideration in 2019, involved the implementation of recommendations made in Commission Reports: the *Mental Health (Amendment) Bill 2016* (a PMB supported by Government); the *Harassment, Harmful Communications and Related Offences Bill 2017* (a PMB supported by Government); and the *Civil Liability (Amendment) (Prevention of Benefits from Homicide) Bill 2017* (a PMB supported by Government).

The Government has also published a number of Schemes of Bills (or Heads of Bills) related to Commission recommendations. These include: the Scheme of a *Criminal Justice (Community Sanctions) Bill*, the Scheme of a *Landlord and Tenant Bill*, the Scheme of a *Criminal Procedure Bill*, the Scheme of a *Courts and Civil Law (Miscellaneous Provisions) Bill* and the General Scheme of an *Online Safety and Media Regulation Bill*.

The Commission's website www.lawreform.ie includes an Implementation Table containing a general overview of the implementation of Commission Reports, updated on a regular basis.

⁹ In recent years, a number of Private Member's Bills (PMBs) have led to enacted legislation. Prior to the enactment of the *Mental Health (Amendment) Act 2018*, the *Civil Law (Presumption of Death) Act 2019* and the *Consumer Insurance Contracts Act 2019*, the most recent PMBs related to Commission Reports that had been enacted were the *Judicial Separation and Family Law Reform Act 1989* and the *Adoption Act 1991*.

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

1. Fifth Programme of Law Reform.
2. Courts, Public Law and Regulatory Enforcement.
3. Law in the Digital Era.
4. Criminal Law and Procedure.
5. Civil and Commercial Law.
6. Land Law, Succession and Trusts.
7. Health Services.
8. International law.

1. FIFTH PROGRAMME OF LAW REFORM

As noted above, the *Report on the Fifth Programme of Law Reform* (LRC 120-2019) contains an abstract of each of the 15 projects in the Programme, together with a description of the consultative process and guiding principles applied by the Commission in the selection of the projects.

The 15 projects in the Fifth Programme are:

1. Reform of Non-Court Adjudicative Bodies and Appeals to Courts;
2. A Regulatory Framework for Adult Safeguarding;
3. Privacy and Technology in the Digital Era;
4. Structured Sentencing;
5. Review and Consolidation of the Law of Sexual Offences;
6. Perjury;
7. Compensating Victims of Crime;
8. Regulation of Detention in Garda Custody;
9. Caps on Damages in Personal Injuries Litigation;
10. Protective Cost Orders;
11. Liability of Hotels and Related Establishments;
12. Liability of Unincorporated Associations;
13. Aspects of the Law of Evidence;
14. Aspects of Family Law;
15. Aspects of Land and Conveyancing Law.

The Commission began work on a number of these projects during 2019.

2. COURTS, PUBLIC LAW AND REGULATORY ENFORCEMENT

2.(a) Regulatory Framework for Adult Safeguarding

The Commission completed work in December 2019 on its *Issues Paper on A Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019), which it published in January 2020, and is on a project that forms part of the Commission's *Fifth Programme of Law Reform* (Project 2). The Issues Paper notes that there is widespread agreement on the need for a clear statutory framework on adult safeguarding, which would address risks of physical, psychological and financial abuse. The Issues Paper therefore examines what form that regulatory framework might take, building on existing arrangements and parallel policy and legislative developments. The Paper suggests that the key elements of a regulatory framework for adult safeguarding should:

- be rights-based, ensuring an appropriate balance between empowerment and protection;
- be aimed at preventing, and protecting against, all form of abuse, including physical, psychological and financial abuse; and
- actively promote, supervise and enforce a culture of high standards of behaviour.

The Issues Paper then sought the views of the public on 11 key issues that arise in this project. The Commission will engage with consultees on this project with a view to publishing a Report in 2021.

2.(b) Non-Court Adjudicative Bodies and Appeals to the Courts

In 2019, the Commission began scoping work on Project 1 in the Fifth Programme of Law Reform, which involves an examination of the relationship between adjudicative bodies and the courts. As with most jurisdictions, Ireland now has a great array of quasi-judicial bodies empowered, usually by legislation, to adjudicate issues and disputes in particular areas. They include An Bord Pleanála, the International Protection Appeals Tribunal, the Residential Tenancies Board and the Social Welfare Appeals Office. The profusion of such adjudicative bodies is inevitable in the modern administrative state, but they have grown up over many decades on a case-by-case basis, without any standard approach to procedural matters or their relationship with the courts, including by way of appeal or review.

The Commission noted in its 2016 *Report on Consolidation and Reform of Aspects of the Law of Evidence* the varying procedures and rules of evidence among quasi-judicial bodies. A number of submissions received during the consultation process for this Fifth Programme have drawn attention to the great multiplicity of avenues of appeal from these bodies, and the confusion that this generates. Questions pertaining to related issues, such as the standard of proof to be applied, and access to legal representation, may also be examined.

This project will therefore examine the case for a reformed system, including the approach to evidential matters and simplifying the avenues of appeal to the courts from such bodies. The Commission notes that significant reforms have been enacted in the UK in the *Tribunals, Courts and Enforcement Act 2007*. The 2007 Act lays down a single basis for appeals from the quasi-judicial bodies within its scope, and the project will examine to what extent this may be a useful reform model for this jurisdiction. The Commission is conscious that other aspects of the reforms in the UK 2007 Act, notably the consolidation of the various bodies into a single tribunal structure with uniform powers and procedures, may present constitutional questions in Ireland under Articles 34 and 37. The Commission will have regard to these important questions in developing the project, and will also review relevant reforms in jurisdictions other than the UK.

3. LAW IN THE DIGITAL ERA

3.(a) Accessibility of Legislation in the Digital Age

In 2019, the Commission completed the majority of its draft Report to follow from its *Issues Paper on Accessibility, Consolidation and Online Publication of Legislation* (LRC IP 11-2016) (4th Programme of Law Reform, Project 11). The Commission, having consulted further on this wide-ranging project in the first half of 2020, published its Report on this project in September 2020.

3.(b) Privacy and Technology in the Digital Era

At the Commission's Annual Conference held in November 2019, the wide scope of Project 3 in the Fifth Programme of Law Reform was addressed. The project concerns aspects of privacy and technology in the digital era. Among the elements of the project that may be examined are: how technology in the digital era has affected traditional views of privacy; and the impact of technology on procedural or substantive law, including the impact of autonomous vehicles on national road traffic law and international transport law.

3.(c) Harmful Communications and Digital Safety

The *Harassment, Harmful Communications and Related Offences Bill 2017* is a Private Member's Bill derived from the criminal law proposals in the Commission's *Report on Harmful Communications and Digital Safety* (IRC 116-2016) (4th Programme of Law Reform, Project 6). During the Dail Eireann Second Stage debate on the Bill on 31 January 2018, the Government indicated its intention to support the Bill, and having passed Second Stage it was referred for Select Committee consideration. On 1 May 2019, the Government approved the drafting of amendments to the Bill. In 2018, the Government announced that it would engage in public consultation (including a public forum on 8th March 2018) on the establishment of an Online Safety Commissioner, which the Commission's Report also recommended. In March 2019, the Government published a public consultation document setting out proposals on the regulation of harmful online content with view to publishing an Online Safety Bill. In January 2020, the Government published the General Scheme of the Online Safety and Media Regulation Bill, which includes the proposed establishment of an Online Safety Commissioner.

4. CRIMINAL LAW AND PROCEDURE

4.(a) Suspended Sentences

In 2019, the Commission continued the development of a Report to follow from its *Issues Paper on Suspended Sentences* (IRC IP 12-2017) (4th Programme of Law Reform, Project 5). The Commission, having consulted further on this project in the first half of 2020, published its Report on this important sentencing disposition in August 2020.

4.(b) Sexual offences: consent and honest belief

In 2019, the Commission published its *Report on Knowledge or Belief Concerning Consent in Rape Law* (IRC 122-2019), which followed its *Issues Paper on Knowledge or Belief Concerning Consent in Rape Law* (LRC IP 15-2018). The Report resulted from a request by the Attorney General to the Commission made in accordance with section 4(2)(c) of the *Law Reform Commission Act 1975* to examine and make recommendations on whether changes should be made to that aspect of section 2 of the *Criminal Law (Rape) Act 1981* dealing with knowledge or belief in consent. The Attorney General request was made in the wake of the Oireachtas debates on the *Criminal Law (Sexual Offences) Act 2017* and the decision of the Supreme Court in *The People (OPP) v C. O'R.*¹⁰ The Report recommended that the primarily subjective test in section 2 of the 1981 Act should be replaced by a primarily objective test. The recommendations in the Report include the following. First, the fault or mental element of the rape offence in section 2 of the 1981 Act should be reformed by adding that the accused man commits rape if, at the time of the sexual intercourse, he "does not reasonably believe" that the woman was consenting. This is

¹⁰[2016] IESC 64, [2016] 3 IR 322.

an objective test, and would be in addition to the current two situations under the 1981 Act, that is, where the accused man knows that the woman is not consenting or is subjectively reckless as to whether she is consenting.

The Report also recommended that where the question of reasonable belief arises in a rape trial, the jury is to have regard to a specific list of circumstances related to the accused's personal capacity, and only those circumstances. These are: any physical, mental or intellectual disability of the man, any mental illness of his, and his age and maturity. The Report emphasised that these factors are only to be considered relevant where any of them are such that the man lacked the capacity to understand whether the woman was consenting. Requiring the consideration of these circumstances introduces a subjective element to the test. The Commission also recommended that where the question of reasonable belief arises, the jury is also to have regard to the steps, if any, taken by the accused man to ascertain whether the woman consented to the intercourse. The Commission also recommended that the current law on self-induced intoxication, in which it is not a defence to a charge of rape where the intoxication means that the man lacked the capacity to know whether the woman was consenting, should be retained. In summary, the Commission's proposed reforms involve moving from the current primarily subjective test to a primarily objective test, having regard to certain subjective elements. It is therefore a mixed test.

4.(c) Review and consolidation of the law on sexual offences

After the publication of the *Report on Knowledge or Belief Concerning Consent in Rape Law*, discussed above, the Commission began scoping work in late 2019 on Project 5 in the Fifth Programme of Law Reform, which involves an examination of the current law on sexual offences with a view to the consolidation of the law. The Commission also discussed the 2019 Report and the scope of the Fifth Programme project at its Annual Conference held in November 2019.

As to the specific aspects of the law, the Fifth Programme project will examine:

- the definition of rape;
- sexual history evidence;
- whether the doctrine of recent complaint ought to be abolished;
- the discretionary corroboration warning;
- the anonymity of accused persons in sexual assault cases;
- whether trials for sexual assault should be heard otherwise than in public;
- the high attrition rate in sexual offences cases, and whether procedural and other reforms could have an impact on this; and
- separate legal representation for complainants.

As to consolidation, while the enactment of the *Criminal Law (Sexual Offences) Act 2017* has provided for significant reform, it did not involve complete consolidation of the law, and it remains the case that some sexual offences on the statute book date back to the 19th century. Both aspects of this project will take due account of relevant work by the Department of Justice and Equality in relation to sexual offences.

5. CIVIL AND COMMERCIAL LAW

5.(a) Defamation and court reporting

In 2019, the Commission published its *Report on Privilege of Court Proceedings under the Defamation Act 2009* (LRC 121-2019). This Report was in response to a

request from the Attorney General under section 4(2)(c) of the *Law Reform Commission Act 1975* to examine whether changes should be made to the *Defamation Act 2009* dealing with privilege for reports of court proceedings. The Report recommends that the absolute privilege in section 17 of the 2009 Act should be retained and that it should be amended to provide that, in determining whether a report of court proceedings is "fair and accurate", all of the circumstances of the case are to be considered, including a non-exhaustive list of five factors derived from the case law. The non-exhaustive list of factors are: (a) an abridged court report will be privileged provided that it gives a correct and just impression of the proceedings; (b) if the report as a whole is accurate, a slight inaccuracy or omission is not material; (c) if a report contains a substantial inaccuracy it will not be privileged; (d) it is not sufficient to report correctly part of the proceedings if by leaving out other parts a false impression is created; and (e) a report assuming a verdict before any verdict has been delivered is not privileged.

The Report also acknowledges the need to ensure that ongoing trials are not adversely affected by prejudicial social media commentary, whether because they may be defamatory, or because they could be in contempt of court or create the risk of mistrials. The Report also notes that the Chief Justice, in announcing the 2018 Practice Direction, suggested that it may need to be underpinned by legislation. The Report notes that the regulation of social media is complex. This is evidenced by the preparation by the Department of Communications of legislation to establish an Online Safety Commissioner, which as noted above would implement key recommendations in the Commission's 2016 *Report on Harmful Communications and Digital Safety*; and that this legislation must now be considered in the broader setting of implementing the 2018 EU Audiovisual Media Services Directive. In view of this, the Commission also concluded in the Report that it should not make any new recommendations on this area.

5.(b) Capping general damages in personal injuries actions

In 2019, the Commission published its *Issues Paper on Capping Damages in Personal Injuries Actions* (LRC IP 17-2019). This Issues Paper concerns Project 9 in the Commission's *Fifth Programme of Law Reform*, and involves an examination as to whether it would be constitutionally permissible to enact legislation capping general damages in personal injuries actions. The Paper discussed relevant developments in the law on general damages and relevant constitutional rights and tests of constitutionality. The Paper asked consultees to consider four possible legislative models for capping general damages. These take account of developments in Irish law and also in other jurisdictions, notably in Australia and in England and Wales. There, similar principles concerning the award of general damages have been developed by the courts, and these have been supplemented by legislation, including legislation that has involved capping some or all categories of injuries. The Paper therefore discusses these enacted models from other countries, as well as possible variations that could be considered, against the background of the constitutional principles discussed in the Paper. Having considered the views of consultees in the first half of 2020, the Commission published its Report on this project in September 2020.

5.(c) Liability of unincorporated associations (including clubs)

In 2019, the Commission began scoping work on Project 12 in the Fifth Programme of Law Reform, which involves an examination of the civil liability of unincorporated associations. The Supreme Court, in *Hickey v McGowan*,¹¹ applied the long-

¹¹ [2017] IESC 6, [2017] 2 IR 196.

established common law view that an unincorporated association has no separate legal character distinct from its members. The Court also identified the need for a review of the civil liability of unincorporated associations, a category that in the past has included many religious orders and continues to include many sports clubs and other community and social organisations. The project may also examine the criminal liability of unincorporated associations. The Commission intends to publish an Issues Paper on this project by the end of 2020 or in the first half of 2021.

5.(d) Consumer Insurance Contracts

The *Consumer Insurance Contracts Bill 2017*, a Private Member's Bill that ultimately attracted Government support, was enacted as the *Consumer Insurance Contracts Act 2019*. The 2017 Bill, and hence the 2019 Act, derives in large measure from the draft *Consumer Insurance Contracts Bill* in the Commission's *Report on Consumer Insurance Contracts* (LRC 113-2015) (3rd Programme of Law Reform, Project 34). The 2019 Act enacted significant statutory reform of the law on insurance contracts, and it applies, as recommended by the Commission, to consumers as defined for the purposes of the jurisdiction of the Financial Services and Pensions Ombudsman, that is, individuals and also businesses with an annual turnover of €3 million or less.

5.(e) Missing Persons and Presumption of Death

The *Civil Law (Presumption of Death) Bill 2016*, a Private Member's Bill that ultimately attracted Government support, was enacted as the *Civil Law (Presumption of Death) Act 2019*. The 2016 Bill, and hence the 2019 Act, derives in large measure from the presumption of death elements of the draft *Civil Law (Missing Persons) Bill* in the Commission's *Report on Civil Law Aspects of Missing Persons* (LRC 106-2013) (3rd Programme of Law Reform, Project 37).

5.(f) Prevention of Benefit from Homicide

The *Civil Liability (Amendment) (Prevention of Benefits from Homicide) Bill 2017* (a Private Member's Bill, which the Government has supported in principle) passed Second Stage in Dail Eireann in 2018, and was referred to detailed scrutiny by the Joint Committee on Justice and Equality, which occurred on 27 March 2019.¹² The 2017 Bill derives from the draft Bill in the Commission's *Report on Prevention of Benefit from Homicide* (LRC 114-2015) (4th Programme of Law Reform, Project 7, Module 1).

6. LAND LAW, SUCCESSION AND TRUSTS

Compulsory acquisition of land

In 2019, the Commission continued to develop its analysis on the development of a Report on compulsory acquisition of land, having published its *Issues Paper on Compulsory Acquisition of Land* (LRC IP 13-2017) (4th Programme of Law Reform, Project 8). On 19 September 2019, the Commission participated in a seminar addressing housing needs organised by local authorities in which the Commission outlined the role of compulsory purchase in this context, as well as the wide-ranging scope of the Commission's project.

¹² The detailed scrutiny hearing held by the Committee on 27 March 2019 is available at https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_and_equality/2019-03-27/3/?highlight%5D=civil&highlight%5D=liability&highlight%5B2%5D=amendment&highlight%583%5D=orevention&highlight%584%5D=benefits&highlight%585%5D=from&highlight%586%5D=homicide&highlight%587%5D=bill&highlight%5B8%5D=2017.

7. HEALTH SERVICES

Children and consent to medical treatment

Two Private Member's Bills under consideration in 2019 derived from the recommendations in the Commission's *Report on Children and the Law: Medical Treatment* (LRC 103-2011) (3rd Programme of Law Reform, Project 26) to enact general principles concerning consent to treatment in the mental health care setting. The *Mental Health (Amendment) Bill 2016* (which proposed age appropriate accommodation for persons under 18 in a mental health care setting) passed Seanad Éireann in 2018 and was the subject of detailed scrutiny by the Oireachtas Joint Committee on Health in March 2019, to which the Commission contributed a written submission. The *Mental Health (Capacity to Consent to Treatment) Bill 2018* (which proposed rules as to capacity to consent of 16 and 17 year olds in a mental health care setting) passed Second Stage in Seanad Éireann in 2018 and was awaiting Committee Stage in 2019.

8. INTERNATIONAL LAW

In 2019, the Commission made significant progress in completing its *Discussion Paper on Domestic Implementation of International Obligations*, and it completed work on the project in 2020 and published the Discussion Paper in September 2020. The Discussion Paper differs from many other Commission final publications on a project in that it is primarily descriptive. It sets out the methodologies used by the State to implement international obligations in domestic law, highlighting best practices such as roadmaps to ratification and the use of Regulatory Impact Analyses (RIAs). The Discussion Paper is the second and final output from this project (4th Programme of Law Reform, Project 10). The other output was the publication in 2018, with the support of the Department of Foreign Affairs and Trade, of the *Draft Inventory of International Agreements entered into by the State* (LRC P 14-2018), which comprises a draft subject-based inventory comprising 1,400 entries organised under more than 30 subject headings.

CHAPTER 3

ACCESS TO LEGISLATION

INTRODUCTION

Irish legislation 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 provides three main resources, the Legislation Directory, Revised Acts and the Classified List of Legislation.

The Legislation Directory (LO) is an online database which enables users of the electronic Irish Statute Book to identify whether a particular Act or Statutory Instrument (SI) has been amended or otherwise affected since its enactment.

During 2019, the Legislation Directory was updated on a weekly basis. In addition, the Commission populated the new format "Commencement" and "Sis made under the Act" tables back to 1947. It is planned to continue this work back to 1922 in 2020.

The Commission also produces and publishes over 380 Revised Acts which show each amended Act with all its amendments, fully annotated, in a single document. This enables the reader to see the Act 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 is a list of extant (in-force) Acts and Sis classified under 36 titles and linked to relevant Departments. Irish legislation is published in chronological order and not by subject matter. The Classified List allows a user to search over 2,000 in force Acts and over 15,000 Sis by subject matter.

LEGISLATION DIRECTORY

The Commission maintains the Legislation Directory (LO), which is published on the electronic Irish Statute Book website (eISB) hosted by the Office of the Attorney General. The LO notes the effects of all new legislation on existing legislation, in tables belonging to each Act. For example, to see all changes to the *Succession Act 1965* made since it was enacted, a user can find the 1965 Act on the eISB, and click on the "Amendments, Commencement and Sis made under the Act" tab to see how the Act has been amended since 1965.

The LO includes tables for pre-1922 Acts that remain in force. It also includes complete tables for statutory instruments and legislative effects made by statutory instruments from the current date extending back to 1 January 1972, and incomplete tables prior to that date. In 2016, on foot of a Business Case, the Commission received specific additional funding approval from the Department of Public Expenditure and Reform (DPER) to extend the Directory for statutory instruments back to 1972 when Ireland joined the European Union (then the European Communities). Having carried out in early 2017 a publicly advertised recruitment campaign for this project, work began on this in April 2017, and it concluded within the planned two year period in March 2019.

The Commission maintains the LO in two formats, an older format that the Commission inherited in 2006, which lists amendments to Acts only, and a newer format introduced by the Commission which includes commencement information and is made under the Act tables as well as the list of amendments. In 2019, the work based on the funding from DPER meant that the newer format was extended back from 1990 to 1947.

The LD was maintained up to date each week in 2019.

REVISED ACTS

Revised Acts

The Commission prepares and updates administrative consolidations of a growing number of Acts, now over 380, known as Revised Acts. Around half of these Acts are all Acts enacted from 2005 onwards that have been textually amended (such as the *Companies Act 2014* and the *Data Protection Act 2018*), other than Finance Acts and the *Social Welfare Consolidation Act 2005*, in relation to which, as noted below, a Revised Act is currently in preparation. The other Revised Acts are selected pre-2005 Acts and include groups such as employment law, child law, family law and road traffic Acts. They include much-used Acts such as the *Firearms Act 1925*, the *Road Traffic Act 1961*, the *Succession Act 1965*, the *European Communities Act 1972*, the *Building Control Act 1990* and the *Planning and Development Act 2000*. The preparation of the Revised Acts is assisted by the Commission's work on the Legislation Directory.

The Revised Acts are updated to within one to two months of being amended and are published on the Commission website. They are individually linked from the relevant original Act on the eLSB, with a choice of display by section and by entire Act in HTML format, with annotations, and by entire Act in PDF, with and without annotations. The annotations include the sources of any changes and commencement information. In 2019 over 300 revisions of Revised Acts were prepared within 2 months of amendments, some multiple updates to the same Act.

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

In 2019, the Commission continued to liaise with the Department of Employment Affairs and Social Protection to work collaboratively with a view to preparing and publishing a Revised Act of the *Social Welfare Consolidation Act 2005*. This will incorporate all amendments to the 2005 Act which have been made since 2005 in 26 Social Welfare Amendment Acts and, to a lesser extent, in 14 other Acts of the Oireachtas. The Revised Act will also include editorial details of the several hundred statutory instruments made under the 2005 Act or made under earlier legislation but continued in force by section 362(2) of the 2005 Act.

The work is being undertaken by a senior official in the Department in full compliance with the Commission's Operational Manual for the Preparation of Revised Acts. As the work involved is being undertaken by an existing staff member of the Department and by existing staff of the Commission, it is not envisaged that this project will give rise to any additional costs. The Department and Commission share the view that the work when completed will be very beneficial and will ensure that the body of social welfare law will be more accessible and can be kept up-to-date into the future. It is expected that the Revised Act will be completed by end 2020 or early 2021 and will

then be made available through the eISB on the Commission's website and the Department's website.

CLASSIFIED LIST OF LEGISLATION

Classified List of Legislation Database

The Commission maintains a Classified List of In-Force Legislation, comprising over 2,000 Acts and over 15,000 Statutory Instruments, organised under 36 subject headings or titles. 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 determine the various Acts which deal with a subject such as environmental law, local government or family law. The Classified List groups the Acts together by subject matter and is thus a useful resource. It is available on the Commission website and linked from the home page of the eISB.

During 2019, the Commission engaged in extensive testing of a database version of the Classified List, and this version went live in January 2020. The Classified List is now maintained up to date on a monthly basis, using integrated information from the Commission's Access to Legislation work on the Legislation Directory.

PRE-1922 STATUTE LAW REVISION PROJECT

In November 2018, the Office of the Attorney General agreed to support the Commission's comprehensive proposal to complete, over a three year period, certain elements of the Statute Law Revision Programme (SLRP). Arising from this support, in March 2019, the Commission carried out a recruitment process for a project manager for this work. As a result, Fiona Carroll, Solicitor, was appointed as project manager for a three year period.

The outputs from the current SLRP began with the enactment of the *Statute Law Revision (Pre-1922) Act 2005*. The Project has, through a series of five further Revision Acts enacted between 2007 and 2016, achieved a significant tidying of the Irish statute book, notably by not only repealing obsolete pre-1922 and post-1922 legislation but also by providing definitive lists of retained pre-1922 public, local and private Acts. This has provided important clarity as to the extent of pre-1922 primary legislation that remains in force in the State.

A similar level of clarity has been achieved in respect of pre-1922 secondary legislation (now called statutory instruments) made up to 1820. The *Statute Law Revision Act 2015* revoked all instruments made before 1 January 1821 other than a limited number retained and set out in the schedule to that Act. The Commission's proposal to the Office of the Attorney General was that this work should be continued and that the remaining secondary legislation made between 1821 and 1922 should also be examined with a view to determining what should be revoked or retained. This work will culminate in the enactment of either one comprehensive Bill or two separate Bills, the first dealing with instruments from 1821 to 1893 (which are more difficult to source and analyse) and the second with those from 1894 to 1922 (when official volumes were published). These Bills when enacted will provide a comprehensive picture of pre-1922 secondary legislation that will complement the comprehensive picture already achieved by the SLRP work on the pre-1922 Acts. The Commission intends that this element of the SLRP will be completed in 2022 to coincide with the centenary of the State.

CHAPTER 4

ADMINISTRATION

INTRODUCTION

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

The organisational structure of the Commission (as of December 2019) is set out in Appendix 1.

THE COMMISSION

The Commission consists of the President and four other Commissioners. Commissioners are appointed by the Government for a term of up to five years, and their appointment may be renewed. In October 2018, the Government appointed Ms Justice Mary Laffey, former judge of the Supreme Court, as Commission President for a three year term. Of the other four Commissioners, it has been the practice for one Commissioner to be appointed on a full-time basis (and, in effect, also act as chief executive officer) and for the other three Commissioners to be appointed on a part-time basis. The full-time Commissioner is Raymond Byrne BL who, prior to his appointment, had been Director of Research in the Commission. He was appointed for a five year term in April 2016, following a public appointments process under the auspices of the Top Level Appointments Commission (TLAC) and the Public Appointments Service (PAS). The three Commissioners (part-time) during 2019, who were appointed for a five year term in 2015, are: Professor Donncha O'Connell, School of Law NUI Galway, Mr Tom O'Malley, Barrister-at-law, and School of Law NUI Galway; and Ms Justice Carmel Stewart, judge of the High Court.

The Commission makes recommendations to Government on the content of the programme of law reform, determines the contents of the research output of the Commission (contained in Issues Papers and Reports), and makes key administrative and financial decisions. The Commission meets formally as a body at least 10 times each year.

MANAGEMENT COMMITTEE

During 2019, the Commission's Management Committee consisted of the full-time Commissioner, the Head of Administration, the Director of Research, the Access to Legislation Manager, the Deputy Director of Research, the Library and Information Manager and the two Deputy Managers for Access to Legislation. 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.

During 2018 and 2019, the Management Committee finalised a comprehensive Workforce Plan, which was approved by the Commission and which was submitted to and reviewed by the Office of the Attorney General in 2019. A number of proposals in the Workforce Plan were approved by the Office of the Attorney General, including that two legal research posts should be permanent in nature. As noted below, this was implemented following a recruitment process in 2019. The Management Committee will keep the Workforce Plan under active review.

ADMINISTRATIVE STAFF

As of December 2019, the Commission's administrative staff consisted of a Head of Administration, Ms Brid Rogers (appointed in October 2018 after a competitive recruitment process organised by the Office of the Attorney General), and a team of three staff.

During 2019, 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, including the organisation of recruitment processes under the Commission's CPSA recruitment licence;
- 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 Issues Papers and 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. It also arranges event management and corporate services associated with launches, seminars and the annual conference.

RESEARCH AND LIBRARY STAFF

The primary role of the research staff is to develop draft texts for consideration by the Commission. This includes preparing an initial Scoping Paper for a project which sets out the parameters of the areas under discussion. In the subsequent stages of a project this involves the development of a draft Issues Paper and draft Report.

Research Team

In 2019, the law reform research team was headed by the Director of Research, and that post was held until July 2019 by Professor Ciaran Burke, who had, prior to his appointment as Director, successfully held a Chair of Law in the University of Jena, and Professor Burke returned to Jena in July 2019. Arising from the vacancy in the post, the Commission carried out a recruitment process in November 2019. As a result, Ms Rebecca Coen was appointed as Director of Research and she took up the

post in February 2020. Prior to her appointment, Ms Coen had been a senior prosecutor in the Office of the Director of Public Prosecutions. Dr Robert Noonan is the Deputy Director of Research, having been appointed to the post in June 2018 after a recruitment process carried out by the Commission.

In 2019, the Commission's Access to Legislation work (the Legislation Directory, Revised Acts and the Classified List of Legislation) was overseen by the Access to Legislation Manager, Alma Clissmann, Solicitor, and Deputy Manager, Kate Doran. During 2019, the Commission carried out a recruitment campaign for two permanent legal researchers and, following competitive interviews, Ms Leanne Caulfield and Ms Suzanne Scott were appointed to these posts. The remainder of the Commission's sanctioned 8 full-time researchers are employed on fixed-term contracts.

As already noted, in 2019 the Commission began work on a three year Statute Law Revision Project concerning pre-1922 secondary instruments. The project manager is Ms Fiona Carroll, Solicitor, assisted by two additional sanctioned legal researchers.

The Director of Research, with the assistance (since 2018) of the Deputy 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 Deputy Director of Research, the Access to Legislation Manager and Deputy Manager, and the legal research team meet on a regular basis as a group to exchange views on the areas on which they are conducting research. Researchers are encouraged to publish in relevant law journals during their time with the Commission. This includes articles dealing with areas on which the researcher is actively involved.

Library and Information Services

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

During 2019, the Library and Information Manager, Ms Grla Gillen, continued to work in consultation with the research teams to provide timely access to new electronic and hard copy resources. These were supplemented by a daily current awareness update, as well as group training on the various services provided by the library. She also worked to improve the range and detail of information provided on the external search portal to the Commission's project and corporate publications, available via the Commission's website; including but not limited to, an Irish language version of the landing page.

FINANCE

Income and expenditure

The Commission is funded by a grant from the Minister for Public Expenditure and Reform via the Office of the Attorney General. Total income received in 2019 from all sources (including grant-in-aid, net deferred funding from pensions, transfers to capital account, sale of publications and income received from the Department of Employment Affairs and Social Protection) is set out in the Commission's Financial Statements for 2019 in Appendix 3, below. The expenditure incurred covered salaries and superannuation of Commissioners and staff, rent and premises overheads,

maintenance of the Commission's library, maintenance of the Commission's IT network and printing and distribution costs.

GOVERNANCE ARRANGEMENTS

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

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

External Audit

Appropriation accounts for 2019 were submitted to the Comptroller and Auditor General for audit and are set out in Appendix 3 below. Once the accounts are approved, they are sent to the Minister for Public Expenditure and Reform and laid before the Houses of the Oireachtas in accordance of the ***Law Reform Commission Act 1975***.

Audit Committee

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

Prompt payments

The Commission did not incur any late interest penalties during 2019 under the ***Prompt Payment of Accounts Act 1997***, as amended by the ***European Communities (Late Payment in Commercial Transactions) Regulations 2002***.

Ethics in Public Offices Acts 1995 and 2001

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

CODE OF PRACTICE FOR THE GOVERNANCE OF STATE BODIES

During the period of this Annual Report, the Commission ensured that its policies and procedures were in line with the revised 2016 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 the following areas, which are discussed below:

- Reports, Remuneration and Accounts
- System of Internal Financial Control
- Conduct of Directors and Employees
- Procurement

- ▶ Travel and Subsistence
- ▶ Risk Management
- ▶ Output Statement

Reports, Remuneration and Accounts

Appendix 3 of this Annual Report sets out general information on the Commission's income and finance in 2019.

Appendix 3 also contains a schedule of attendance at Commission meetings for 2019, including the fees and expenses, if any, received by each Commissioner.

It also contains figures on the salaries, expenses, and costs incurred of attending conferences for the Commissioners in 2019.

Travel and Subsistence

Flights and accommodation were organised and paid for in advance by the Legal and Corporate Services Unit in compliance with Government travel policy, and any other related expenses were vouched. Appendix 3 contains information on attendance by Commission staff at conferences abroad in 2019:

System of Internal Financial Control

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

Commission's Risk Register

The Commission's Risk Register was updated in 2019 and is kept under regular review by the Commission.

Strategy Statement and Business Plan

The Key Objectives in the Commission's *Strategy Statement 2018-2020* are matched at an organisational level by targets set out in the Commission's Business Plan. Progress made in achieving these targets is monitored on a regular basis by the Management Committee.

PMDS

Performance of individual staff members, including legal researchers, is managed through the Performance Management and Development System (PMDS).

ENERGY EFFICIENCY

In accordance with the *European Communities (Energy End-use Efficiency and Energy Services) Regulations 2009* (SI No.542 of 2009), and Directive 2006/32/EC, the Commission ensured during 2019 that it took appropriate steps concerning energy conservation and reduction measures in its office premises.

FREEDOM OF INFORMATION ACT 2014

The Commission continues to meet its obligations under the *Freedom of Information Act 2014* in accordance with its Freedom of Information (FOi) Scheme, which is published on its website, www.lawreform.ie. FOi requests are logged on the Commission's FOi Log, which forms part of its FOi Scheme. In 2019, the Commission received one FOi request.

PROTECTED DISCLOSURES ACT 2014

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

No protected disclosures were made to the Commission in the period 1 January 2019 to 31 December 2019.

COMMISSION RESOLUTION AS TO 2019 FINANCIAL STATEMENTS AND OUTPUTS

At the Commission meeting held on 12 August 2020, the following text was approved by the Commission.

"The Commission *considered* the draft Financial Statements for the Commission for the year ended 31st December 2019 circulated prior to the meeting by the Head of Administration. The Commission *agreed* that the draft Financial Statements correctly reflected the amount of the Commission's grant-in-aid for the year ended 31st December 2019, and that they also correctly reflected the monthly income and expenditure of the Commission during 2019, which the Commission had previously noted and approved at each of its meetings held in 2019, and at its meeting held in January 2020.

The Commission also *noted* that the Commission's outputs during 2019, which included the preparation and, where relevant, publication of law reform Issues Papers and Reports, the development of draft publications intended for publication in 2020, and outputs from its Access to Legislation research, were consistent with its rolling programme of research work, which the Commission had previously noted and approved at each of its meetings held in 2019.

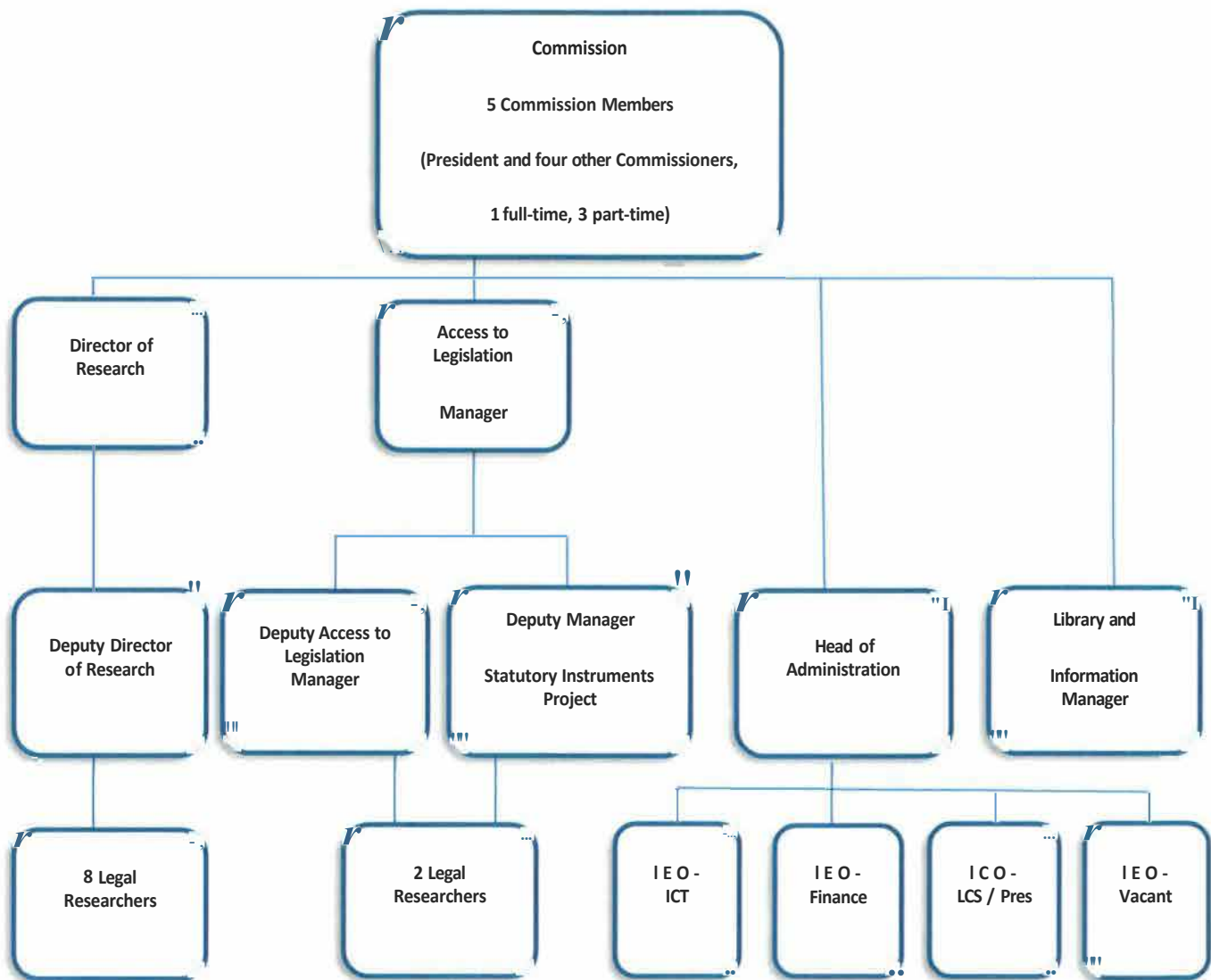
The Commission also *noted* that, in accordance with the requirements of the *Law Reform Commission Act 1975*, on 20th March 2019 the Government

formally approved the Commission's *Fifth Programme of Law Reform* without amendment.

The Commission also **noted** that the Commission had prepared a comprehensive Workforce Plan, which was submitted to and reviewed by the Office of the Attorney General in 2019 and which was discussed at a meeting between the Commission and the Attorney General, attended by officials from both sides, held on 20th November 2019 in the offices of the Attorney General. The Commission **noted** that a number of proposals in the Workforce Plan had been approved by the Office of the Attorney General, including that a number of legal research posts should be permanent in nature, and that these had been implemented during 2019. The Commission also **noted** that a number of proposals in the Workforce Plan remained under active consideration, and the Commission **agreed** that these would continue to be pursued with the Office of the Attorney General."

APPENDIX 1

Law Reform Commission Organisation Chart 2019



APPENDIX2

Selection of Commission Events, Meetings and Seminars 2019¹³

17 January 2019	Attended SEAI Public Sector Annual Conference
6 February 2019	Attended IHREC Strategy Statement launch
9 February 2019	Commission President Ms Justice Laffoy delivered 2019 Brian Lenihan Memorial Address
14 February 2019	Attended NSSO audit event
21 February 2019	Attended virtual JustisOne forum
26 February 2019	Commission made presentation to Oireachtas Joint Committee on Finance, Public Expenditure and Reform on 2018 <i>Report on Regulatory Powers and Corporate Offences</i>
27 February 2019	Attended meeting of British and Irish Association of Law Librarians (BIALL)
9 March 2019	Attended Central Law Training seminar on the law of consent
14 March 2019	Meeting with IHREC on International Obligations project
20 March 2019	Government approval of Commission's <i>Fifth Programme of Law Reform</i>
28 March 2019	Commission made written submission at request of Oireachtas Joint Committee on Health on 2011 <i>Report on Children and the Law: Medical Treatment</i> (for detailed scrutiny of <i>Mental Health (Amendment) Bill 2016</i>)
2 April 2019	Commission made presentation to Oireachtas Joint Committee on Business, Enterprise and Innovation on 2018 <i>Report on Regulatory Powers and Corporate Offences</i>
4 April 2019	Participated in King's Inns Careers Evening
11 April 2019	Hosted meeting with Hon Bruce Robertson, former President of New Zealand Law Commission, and Mr Justice Declan Budd, former Commission President
2 May 2019	Attended AIGNA (All Ireland Gerontological Nurses Association) Conference Limerick
2 May 2019	Attended Government Libraries Group (GLG) meeting
10 May 2019	Attended NDA workshop for public bodies
16 May 2019	Hosted meeting with officials from Department of Justice and Equality (civil law and criminal law) to discuss law reform
17 May 2019	Attended FLAC 50 th Anniversary Access to Justice Conference
21 May 2019	Meeting with Department of Communications, Climate Action and Environment on Commission's 2018 <i>Report on Regulatory Powers and Corporate Offences</i>
22 May 2019	Attended Soutron Users Group Meeting (website)
5 June 2019	Hosted launch of <i>Report on Fifth Programme of Law Reform</i>
16 July 2019	Hosted round table discussion on Commission project on contempt of court
23 July 2019	Hosted launch of <i>Report on Privilege for Reports of Court Proceedings under the Defamation Act 2009</i>
4 September 2019	Hosted delegation from Czech Parliament and Czech Ministry of Justice to discuss law reform processes
12 September 2019	Council of Bars and Law Societies of Europe
18 September 2019	Attended HR managers meeting
19 September 2019	Delivered presentation on Commission's project on compulsory acquisition of land at local authority seminar
11 October 2019	Attended BIALL meeting
15 October 2019	Hosted delegation from Uganda Law Commission to discuss respective functions of the two Commissions.
17-18 October 2019	Commission President Ms Justice Laffoy and Commissioner

¹³ Meetings during 2019 were attended by relevant representative or representatives of the Commission.

	Byrne attended annual conference of neighbouring Law Commissions, London
24 October 2019	Attended Justis user group meeting
7 November 2019	Attended DRCC seminar, Royal College of Surgeons
8 November 2019	Hosted launch of <i>Report on Knowledge or Belief Concerning Consent in Rape Law</i>
13 November 2019	Commission Annual Conference 2019
14 November 2019	Attended Department of Justice and Equality's Critical Perspectives Symposium of Irish Defamation Law, RIA
20 November 2019	Meeting between full membership of Commission and senior staff with Attorney General and senior officials, Offices of the Attorney General
25 November 2019	Attended EPA & ICEL Conference
28 November 2019	Attended GLG meeting
7 December 2019	Attended DPP's 20 th Annual National Prosecutor's Conference
	Meeting with US representatives of Thomson Reuters
11 December 2019	Online launch of <i>Issues Paper on Capping Damages in Personal Injuries Actions</i>
11 December 2019	Attended launch of <i>Falling through the Cracks</i> study, UCD
16 December 2019	Attended IHREC inaugural annual human rights and equality lecture (Prof Philippe Sands QC)

APPENDIX 3
Reports and Financial Statements of Law Reform Commission 2019

Law Reform Commission

Draft Reports & Financial Statements

for the financial year ended 31 December 2019

Law Reform Commission

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Law Reform Commission

Information

President

Ms Justice Mary Laffoy

Commissioners

Raymond Byrne- Full time Commissioner

Tom O'Malley- Part time Commissioner

Donncha O'Connell - Part time Commissioner

Ms Justice Carmel Stewart - Part time Commissioner

Registered office

The Law Reform Commission

5th Floor

Styne House

Upper Hatch Street

Dublin

Dublin 2

Auditor

Comptroller & Auditor General

3a Mayor Street Upper

North Wall

Dublin

Bankers

Allied Irish Bank

1-4 Lower Baggot Street

Dublin 2



Ard Reachtaire Cuntas agus Ciste Comptroller and Auditor General

Report for presentation to the Houses of the Oireachtas Law Reform Commission

Opinion on the financial statements

I have audited the financial statements of the Law Reform Commission for the year ended 31 December 2019 as required under the provisions of section 9 of the Law Reform Commission Act 1975. The financial statements comprise

- the statement of income and expenditure and retained revenue reserves
- the statement of comprehensive income
- the statement of financial position
- the statement of cash flows and
- the related notes, including a summary of significant accounting policies.

In my opinion, the financial statements give a true and fair view of the assets, liabilities and financial position of the Law Reform Commission at 31 December 2019 and of its income and expenditure for 2019 in accordance with Financial Reporting Standard (FRS) 102 - *The Financial Reporting Standard applicable in the UK and the Republic of Ireland*.

Basis of opinion

I conducted my audit of the financial statements in accordance with the International Standards on Auditing (ISAs) as promulgated by the International Organisation of Supreme Audit Institutions. My responsibilities under those standards are described in the appendix to this report. I am independent of the Law Reform Commission and have fulfilled my other ethical responsibilities in accordance with the standards.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Report on information other than the financial statements, and on other matters

The Law Reform Commission has presented certain other information together with the financial statements. This comprises the annual report, the governance statement and Commission members' report and the statement on internal control. My responsibilities to report in relation to such information, and on certain other matters upon which I report by exception, are described in the appendix to this report.

I have nothing to report in that regard.

Mark Brady
For and on behalf of the
Comptroller and Auditor General
4 November 2020

Appendix to the report

Responsibilities of Commission members

As detailed in the governance statement and Commission members' report, the Commission members are responsible for

- the preparation of financial statements in the form prescribed under section 9 of the Law Reform Commission Act 1975
- ensuring that the financial statements give a true and fair view in accordance with FRS102
- ensuring the regularity of transactions
- assessing whether the use of the going concern basis of accounting is appropriate, and
- such internal control as they determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Responsibilities of the Comptroller and Auditor General

I am required under section 9 of the Law Reform Commission Act 1975 to audit the financial statements of the Law Reform Commission and to report thereon to the Houses of the Oireachtas.

My objective in carrying out the audit is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement due to fraud or error. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with the ISAs, I exercise professional judgment and maintain professional scepticism throughout the audit. In doing so,

- I identify and assess the risks of material misstatement of the financial statements whether due to fraud or error; design and perform audit procedures responsive to those risks; and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- I obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the internal controls.
- I evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures.
- I conclude on the appropriateness of the use of the going concern basis of accounting and, based on the audit evidence obtained, on whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Law Reform Commission's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my report to the related disclosures in the financial statements or, if such

disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my report. However, future events or conditions may cause the Law Reform Commission to cease to continue as a going concern.

- I evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Information other than the financial statements

My opinion on the financial statements does not cover the other information presented with those statements, and I do not express any form of assurance conclusion thereon.

In connection with my audit of the financial statements, I am required under the ISAs to read the other information presented and, in doing so, consider whether the other information is materially inconsistent with the financial statements or with knowledge obtained during the audit, or if it otherwise appears to be materially misstated. If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact.

Reporting on other matters

My audit is conducted by reference to the special considerations which attach to State bodies in relation to their management and operation. I report if I identify material matters relating to the manner in which public business has been conducted.

I seek to obtain evidence about the regularity of financial transactions in the course of audit. I report if I identify any material instance where public money has not been applied for the purposes intended or where transactions did not conform to the authorities governing them.

I also report by exception if, in my opinion,

- I have not received all the information and explanations I required for my audit, or
- the accounting records were not sufficient to permit the financial statements to be readily and properly audited, or
- the financial statements are not in agreement with the accounting records.

Governance Statement and Commission Member's Report

Governance

The Law Reform Commission was established under the Law Reform Commission Act 1975. The functions of the Commission are set out in section 4 of the 1975 Act. The Commission is accountable to the Office of the Attorney General, the Department of An Taoiseach and the Minister for Public Expenditure and Reform. The Commission is responsible for ensuring good governance and performs these tasks by setting strategic objectives and targets in its Strategy Statement and taking strategic decisions on all key business issues. The regular day-to-day management, control and direction of the Law Reform Commission are the responsibility of the Full Time Commissioner and Senior Management team. The Full Time Commissioner and the Senior Management team must follow the broad strategic direction set by the Commission, and must ensure that all Commission members have a clear understanding of the key activities and decisions related to the Commission, and of any significant risks likely to arise. The Full Time Commissioner acts as a direct liaison between the Commission and Senior Management.

Commission Responsibilities

The work and responsibilities of the Commission are set out in the Law Reform Commission Act 1975, which describes the matters specifically reserved for Commission decisions. Standing items considered by the Commission include:

- Financial reports and management accounts;
- HR and other administration matters;
- Progress reports from the Director of Research and Deputy Director of Research on the research projects in the Commission's Programmes of Law Reform (these Programmes, which must be approved by Government under the 1975 Act, contain a list of law reform projects on which the Commission carries out research, followed by publication of Consultative Issues Papers and later, Reports with recommendations for law reform) and on specific requests made by the Attorney General;
- Review and discussion of draft papers concerning the Commission's research projects.

Section 9 of the Law Reform Commission Act 1975 requires the Commission members to keep, in such form as may be approved by the Minister for Public Expenditure and Reform, all proper and usual accounts of money received and expended by it.

In preparing these financial statements, the Commission is required to:

- Select suitable accounting policies and apply them consistently;
- Make judgements and estimates that are reasonable and prudent;
- Prepare the financial statements on a going concern basis unless it is inappropriate to presume that it will continue in operation, and;
- State whether applicable accounting standards have been followed, subject to any material departure disclosed and explained in the financial statements.

The Commission carries out an evaluation of the annual work programme at each of its monthly meetings, where it reviews progress on all projects, evaluates it in a specific form annually. which was done at its August 2020 meeting, and also when it reviews its draft Annual Report, in the case of the Annual Report 2019 at its October 2020 meeting.

The Commission is responsible for safeguarding its assets and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The Commission considers that its financial statements give a true and fair view of the financial performance and the financial position of the Law Reform Commission at 31 December 2019.

Commission Structure

The Commission comprises its 5 members, that is, the Commission President, the Full Time Commissioner and 3 Part Time Commissioners, all of whom are appointed by the Government in accordance with the Law Reform Commission Act 1975. The Full Time Commissioner was appointed in 2016 after a PAS/TLAC Competition. The members of the Commission may be appointed for a period of up to 5 years. The Commission meets at least 10 times a year. The table below details the appointment period of Commission members in 2019:

Commission member	Role	Date Appointed
Ms Justice Mary Laffoy	President	9th October 2018 (appointed)
Mr Raymond Byrne	Full Time Commissioner	16th April 2016 (appointed)
Mr Tom O'Malley	Part Time Commissioner	1st September 2015 (re-appointed)
Prof Donncha O'Connell	Part Time Commissioner	1st September 2015 (re-appointed)
Ms Justice Carmel Stewart	Part Time Commissioner	1st September 2015 (appointed)

Committees of the Commission

The Attorney General's Internal Audit and Risk Committee carries out, in close liaison with the Commission, the internal audit and risk function for the Commission. From time to time, the Commission establishes ad hoc committees and/or working groups to assist its research; in 2019, the Commission did not establish any such committee.

Schedule of Attendance, Fees and Expenses

A schedule of attendance at Commission meetings for 2019 is set out below including the fees and expenses received by each Commission member.

Commissioner Name	No. of Meetings Attended	Salary / Fees	Travel expenses to Commission meetings	Attendance at Conferences / lectures
		€	€	€
President Ms Justice Mary Laffoy	11	49,008	-	441
Commissioner (full-time) Mr Raymond Byrne	10	148,665	-	474
Commissioners (part-time)				
Mr Tom O'Malley	8	-	4,074	-
Prof Donncha O'Connell	10	-	5,422	-
Ms Justice Carmel Stewart	9	-	-	-

The President's salary is in accordance with relevant Government guidelines.

The full time Commissioner's salary is at Assistant Secretary General Level.

The part time Commissioners do not receive salaries or fees under the One Person One Salary (OPOS) policy. Travel Expenses to Commission meetings for the part-time Commissioners are related to travel from outside Dublin.

Disclosures Required by Code of Practice for the Governance of State Bodies (2016)

The Commission members are responsible for ensuring that the Law Reform Commission has complied with the requirements of the Code of Practice for the Governance of State bodies as published by the Department of Public Expenditure and Reform in August 2016. The following disclosures are required by the Code.

1) Consultancy Costs

Consultancy costs includes the cost of external advice to management and excludes outsourced "business-as-usual" functions.

	2019	2018
	€	€
Styne House Financial Konsultancy		1,519
14th Programme of Law Reform, Project 10- Draft Inventory of International Agreements and Discussion Paper		11,000
14th Programme of Law Reform, Project 1 - Regulatory Powers and Corporate Offences		10,575
Dignity at Work Adjudication		18,427
Writing Book for 45th Anniversary of the Commission	10,000	-
Consultancy on HR Issues	1,230	-
Revised Acts	880	
11th Programme of Law Reform, Contempt of Court	3,420	
Total	15,530	41,521

2) Legal Costs and Settlements

A settlement of € 5,000 concerning a contractual matter was paid in February 2019, on professional legal advice.

3) Travel and Subsistence Expenditure

Travel and subsistence expenditure is categorised as follows:

		2019	2018
		€	€
Domestic	Commission	9,496	13,694
	Employees	16	1,115
	Other		59
International	Commission	915	-
	Employees	1,625	2,912
	Other	-	-
Total		12,052	17,780

Flights and accommodation were organised and paid for in advance by the Legal and Corporate Services Unit in compliance with Government travel policy, and any other related expenses were vouched. Commission members and staff attended the following conferences in 2019:

- Bournemouth: Annual Conference of BIALL
- The Hague: European Forum of Official Gazettes

4) Hospitality Expenditure

The Income and Expenditure Account includes the following hospitality expenditure

	2019	2018
	€	€
Staff Hospitality	2,486	2,068
Client Hospitality	1,190	6,244
Total	3,676	8,312

Staff Hospitality includes refreshments for Commission meetings, interview boards, ad hoc meetings and staff canteen expenses.

Client Hospitality involves expenditure solely in respect of hosting of public consultative meetings, consultative round tables and report launches.

Statement of Compliance

The Commission has adopted the Code of Practice for the Governance of State Bodies (2016) and has put procedures in place to ensure compliance with the Code. The Commission was in full compliance with the Code of Practice for State Bodies in 2019.

Statement on Internal Control

Scope of Responsibility

On behalf of the Commission, I acknowledge its responsibility for ensuring that an effective system of internal control is maintained and operated. This responsibility takes account of the requirement of the Code of Practice for the Governance of State Bodies (2016).

Purpose of the System of Internal Control

The system of internal control is designed to manage risk to a tolerable level rather than to eliminate it. The system can therefore only provide reasonable and not absolute assurance that assets are safeguarded, transactions authorised and properly recorded and that material errors or irregularities are either prevented or detected in a timely way.

The system of internal control, which accords with guidance issued by the Department of Public Expenditure and Reform has been in place in the Commission for the year ended 31 December 2019 and up to the date of approval of the financial statements.

Capacity to Handle Risk

The Attorney General's Audit and Risk Committee also has responsibility for the Commission. This committee comprises a Chairperson, two external members, two staff from the AGO and Chief State Solicitor's Office with financial and audit expertise. It met four times in 2019. The Full-Time Commissioner, Raymond Byrne and the Head of Administration, Brid Rogers, attended one meeting of the Internal Audit Committee of the Office of the Attorney General in March 2019 at which the Law Reform Commission's audit was discussed.

The Commission is a small public sector body with 20 staff and does not have an Internal Audit Function. As noted above, the internal audit functions fall under the remit of the Audit Committee within the office of the AGO (the Commission's parent Office) which carries out reviews on a biennial basis.

The Commission has developed a risk management policy, which sets out its risk tolerance, the risk management processes in operation and details the roles and responsibilities in relation to risk. This policy has been issued to all staff who are expected to work within the Commission's risk management policies, to alert management on emerging risks and control weaknesses and who assume responsibilities for risks and controls within their own area of work.

Risk and Control Framework

The Commission has implemented a risk management system which identifies and reports key risks and the management actions being taken to address and, to the extent possible, to mitigate those risks.

A risk register is in place, which identifies the key risks facing the Commission, and these have been identified, evaluated and graded according to their significance. The register is reviewed and updated by the Management Committee on an annual basis. The outcome of these assessments is used to plan and allocate resources to ensure risks are managed to an acceptable level.

The risk register details the controls and actions needed to mitigate risks and responsibility for operations of controls assigned to specific senior staff. I can confirm a control environment containing the following elements are in place:

- Procedures for all key business processes have been documented
- Financial responsibilities have been assigned at management level with corresponding accountability
- There is an appropriate budgeting system with an annual budget which is kept under review by senior management.
- There are systems aimed at ensuring the security of the information and communication technology systems.
- There are systems in place to safeguard assets.

Ongoing Monitoring and Review

Formal procedures have been established for monitoring control processes. Control deficiencies are communicated to senior managers and the Commission who will take responsibility for corrective action where relevant. I confirm that the following ongoing monitoring systems are in place:

- Key risks and related controls have been identified. Processes have been put in place to monitor the operation of these key controls and report any identified deficiencies;
- Reporting arrangements have been established at all levels where responsibilities for financial management have been assigned; and
- There are regular reviews by senior management of periodic annual performance and financial reports which indicate performance against budgets/forecasts.

Procurement

I confirm that the Commission has procedures in place to ensure compliance with current procurement rules and guidelines. The Commission complied with those procedures during 2019.

Review of Effectiveness

I confirm that the Commission has procedures to monitor the effectiveness of its risk management and control procedures. The Commission's monitoring and review of the effectiveness of the system of internal financial control is informed by the work of the internal and external auditors, and the senior management within the Commission responsible for the development and maintenance of the internal control framework. The Internal Audit Unit of the Office of the Attorney General carry out reviews on a biennial basis.

Internal Control Issues

There were no weaknesses identified in internal controls in relation to 2019 that require disclosure in the financial statements.

Ms Justice Mary Laffoy

President



Date 3/11/2020

Law Reform Commission

Statement of Income and Expenditure and Retained Revenue Reserves

Year Ended 31 December 2019

	Note	2019 €	2018 €
Income			
Oireachtas Grant	2	2,073,350	2,008,675
Sale of Publications		-	210
Other		6,607	6,153
Transfer from/(to) Capital Account		(35,380)	35,650
Net deferred funding for pensions	7(c)	139,000	95,000
		<u>2,183,577</u>	<u>2,145,688</u>
Expenditure			
Salaries	5	1,146,968	1,093,725
Pensions	7(a)	197,355	152,364
IT		79,558	65,295
Rent and service charges		299,555	297,479
Light and Heat		9,647	10,764
Repairs and Maintenance - Buildings		7,453	4,253
Insurance		3,295	3,463
Telephone		12,098	10,654
Stationery & office management		38,735	30,159
Seminars		1,413	1,587
Library		103,930	89,489
Travelling and subsistence		12,052	17,780
Cleaning		9,261	9,244
Printing		8,964	20,892
Postage		2,439	1,829
Depreciation		96,839	88,615
Misc Office Expenses		828	707
Auditors remuneration		9,000	9,000
Training		43,864	34,395
Corporate Support		28,874	31,857
Professional fees		15,530	41,521
Annual Conference		6,811	4,220
		<u>2,134,469</u>	<u>2,019,292</u>
Surplus/(Deficit) for the Year		<u>49,108</u>	<u>126,396</u>
Balance Brought Forward at 1 January 2019		<u>74,543</u>	<u>(51,853)</u>
Balance Carried Forward as at 31st December 2019		<u>123,651</u>	<u>74,543</u>

The Statement of Cash Flows and notes 1 to 15 form part of these financial statements

Ms Justice Mary Laffoy

President

Mary Laffoy

Date 3/11/2020

Law Reform Commission

Statement of Comprehensive Income

Financial year ended 31 December 2019

		Year ended	Year ended
		2019	2018
	Note	€	€
Surplus/(Deficit) for the Year		49,108	126,396
Actuarial Loss (Gain) on Experience on pension scheme liabilities		986,000	510,000
Actuarial Loss/(Gain) on Change in assumption on pension scheme liabilities		-	-
Changes in assumptions underlying the present value of pension scheme liabilities		-	-
Actuarial losses/(gains) on pension liability	7(b)	986,000	510,000
Adjustment to deferred pension funding		986,000	510,000
Total recognised losses/(gains) for the year		49,108	126,396

The Statement of Cash Flows and notes 1 to 15 form part of these financial statements

Ms Justice Mary Laffoy

President



Date 3/11/2020

Law Reform Commission

Statement of Financial Position
As at 31 December 2019

	Note	2019 €	€	2018 €	€
Fixed assets					
Tangible assets	8	483,274		447,894	
			483,274		447,894
Current assets					
Receivables	9	172,174		187,776	
Cash and cash equivalents	3	118,462		99,429	
		290,636		287,205	
Current liabilities: amounts falling due within one year					
Payables	10	(102,356)		(135,107)	
Net current assets			188,280		152,098
			671,554		599,992
Liabilities: amounts falling due after more than one year					
	11	(64,629)		(77,555)	
			606,925		522,437
Deferred retirement benefit funding	7(c)	5,075,000		3,950,000	
Retirement benefit (liability)	7(d)	5,075,000		3,950,000	
Net assets			606,925		522,437
Representing:					
Capital account	4	483,274		447,894	
Retained Revenue Reserves		123,651		74,543	
		606,925		522,437	

The Statement of Cash Flows and notes 1 to 15 form part of these financial statements

Ms Justice Mary Laffoy

President

Mary Laffoy

Date 3/11/2020

Law Reform Commission

Statement of Cash Flows
Financial year ended 31 December 2019

	Year ended 2019 €	Year ended 2018 €
Net Cash Flows from Operating Activities		
Surplus/(Deficit) for the year	49,108	126,396
Transfer from/(to) Capital Account	35,380	{35,650}
Depreciation	96,839	88,615
Decrease/(Increase) in Receivables	15,602	{116,438}
Increase/(Decrease) in Payables	{32,751}	{ 3,033}
Increase/(Decrease) in Creditors amounts falling due after more than one year	{12,926}	{ 12,926}
Cash generated from operations	<u>151,252</u>	<u>46,964</u>
Cash flows from investing activities		
Purchase of tangible assets	<u>{132,219}</u>	<u>{52,965}</u>
Net cash used in investing activities	<u>{132,219}</u>	<u>{52,965}</u>
Net increase/(decrease) in cash and cash equivalents	19,033	{6,001}
Cash and cash equivalents at beginning of financial year	<u>99,429</u>	<u>105,430</u>
Cash and cash equivalents at end of financial year	<u>118,462</u>	<u>99,429</u>

Law Reform Commission

Notes to the Financial Statements Financial year ended 31 December 2019

1. Accounting Policies

The basis of accounting and significant accounting policies adopted by the Commission are set out below. They have all been applied consistently throughout the year and for the preceding year.

(a) General Information

The Law Reform Commission was established in 1975 in accordance with the provisions of the Law Reform Commission Act 1975. The Commission's main functions are to keep the law under review, undertake examinations and conduct research with a view to reforming the law and formulate proposals for law reform and to make legislation accessible to all.

(b) Statement of compliance

These Financial Statements of the Commission for the year ended 31 December 2019 have been prepared in compliance with FRS102, The Financial Reporting Standard applicable in the UK and Republic of Ireland issued by the Financial Reporting Council (FRC) as promulgated by Chartered Accountants Ireland.

(c) Basis of preparation

The Financial Statements have been prepared on a historical cost basis, except for certain assets and liabilities that are measured at fair values as explained in the accounting policies below. The financial statements are in the form approved by the Minister for Public Expenditure and Reform. The following accounting policies have been applied consistently in dealing with items which are considered material in relation to the Commission's financial statements.

(d) Currency

The financial statements have been presented in Euro (€) which is also the functional currency of the Commission.

(e) Revenue

Oireachtas Grant

Oireachtas Grants are recognised on a cash receipts basis.

Other Revenue

Other revenue is recognised on an accruals basis.

(f) Leased Premises Improvements, Office Equipment and Fixtures and Fittings -

Leased premises improvements, office equipment and fixtures and fittings are stated at cost less accumulated depreciation, adjusted for any provision for impairment.

Law Reform Commission

Notes to the Financial Statements (continued) Financial year ended 31 December 2019

(f) ctd Depreciation

Depreciation is provided on all lease premises improvements, office equipment and fixtures & fittings at rates estimated to write off the cost less the estimated residual value of each asset on a straight line basis over their estimated useful economic life of that asset as follows:

Lease Premises Improvements	- Over the Lease Period
Office Equipment	- 20% straight line
Fixtures & Fittings	- 10% straight line

Residual value represents the estimated amount which would currently be obtained from disposal of an asset, after deducting estimated costs of disposal, if the asset were already of an age and in the condition expected at the end of its useful life.

If there is objective evidence of impairment of the value of an asset, an impairment loss is recognised in the Statement of Income and Expenditure and Retained Revenue Reserves in the year.

There was no impairment in 2019.

(g) Receivables

Receivables are recognised at fair value, less a provision for doubtful debts.

The provision for doubtful debts is a specific provision, and is established when there is objective evidence that the Commission will not be able to collect all amounts owed to it. All movements in the provision for doubtful debts are recognised in the Statement of Income and Expenditure and Retained Revenue Reserves.

(h) Operating Leases

Rental expenditure under operating leases is recognised in the Statement of Income and Expenditure and Retained Revenue Reserves over the life of the lease. Expenditure is recognised on a straight-line basis over the lease period, except where there are rental increases linked to the expected rate of inflation, in which case these increases are recognised when incurred. Any lease incentives received are recognised over the life of the lease.

Law Reform Commission

Notes to the Financial Statements (continued) Financial year ended 31 December 2019

(i) **Employee Benefits**

Short-term Benefits

Short term benefits such as holiday pay are recognised as an expense in the year, and benefits that are accrued at the year-end are included in the Payables figure in the Statement of Financial Position.

Retirement Benefits

The Commission previously established its own defined benefit pension schemes under sections 11 and 12 of the Law Reform Commission Act 1975 and corresponding contributory spouses' and children's schemes under administrative arrangements. The schemes are funded annually on a pay-as-you-go basis from monies provided by the Vote for the Office of the Attorney General and from contributions deducted from staff and members' salaries. The Commission also operates the Single Public Services Pension Scheme ("Single Scheme"), which is a defined benefit scheme for pensionable public servants appointed on or after 1 January 2013. Single Scheme members' contributions are paid over to the Department of Public Expenditure and Reform (DPER) via the Attorney General's Office.

Pension costs reflect pension benefits earned by employees, and are shown net of staff pension contributions which are remitted to the Office of the Attorney General. An amount corresponding to the pension charge is recognised as income to the extent that it is recoverable, and offset by grants received in the year to discharge pension payments.

Actual gains or losses arising on scheme liabilities are reflected in the Statement of Comprehensive Income, and a corresponding adjustment is recognised in the amount recoverable from the Office of the Attorney General.

The financial statements reflect, at fair value, the assets and liabilities arising from the Commission's pension obligations and any related funding, and recognises the costs of providing pension benefits in the accounting periods in which they are earned by employees. Retirement benefit scheme liabilities are measured on an actuarial basis using the projected unit credit method.

Law Reform Commission

Notes to the Financial Statements (continued) Financial year ended 31 December 2019

(j) Critical Accounting Judgements and Estimates

The preparation of the financial statements requires management to make judgements, estimates and assumptions that affect the amounts reported for assets and liabilities as at the balance sheet date and the amounts reported for revenues and expenses during the year. However, the nature of estimation means that actual outcomes could differ from those estimates. The following judgements have had the most significant effect on amounts recognised in the financial statements.

Depreciation and Residual Value

The Commission has reviewed the asset lives and associated residual values of all fixed asset classes and, in particular, the useful economic life and residual values of Leased Premises Improvements, Fixtures and Fittings and Office Equipment, and has concluded that asset lives and residual values are appropriate.

Retirement Benefit Obligations

The assumptions underlying the actuarial valuations for which the amounts recognised in the financial statements are determined (including discount rates, rate of increase in future compensation levels, mortality rates and health care cost trend rates) are updated annually based on current economic conditions, and for any relevant changes to the terms and conditions of the pension and postretirement plan.

The assumptions can be affected by:

- (i) the discount rate, changes in the rate of return on high-quality corporate bonds
- (ii) future compensation levels, future labour market conditions
- (iii) health care cost trend rates, the rates of medical cost inflation in the relevant regions.

2. Oireachtas Grant

The Oireachtas Grant voted to the Commission from the Office of the Attorney General (Vote 3 Subhead A4) as shown in the financial statements consists of:

2019	2018
€	€
2,073,350	2,008,675

3. Cash and Cash Equivalents

	2019	2018
	€	€
Bank Current Accounts	118,256	99,325
Petty Cash	206	104
	<u>118,462</u>	<u>99,429</u>

Law Reform Commission

Notes to the Financial Statements (continued)
Financial year ended 31 December 2019

4. **Capital Account**

The balance on the Capital Account represents the unamortised value of the funds utilised for the acquisition of fixed assets

	2019	2018
	€	€
Opening Balance	447,894	483,544
Add: Amount applied to purchase fixed assets	132,219	52,965
Less depreciation of tangible assets	96,839	88,615
- Less: Disposals of fixed assets - Cost	-	-
Add: Accumulated Depreciation on Disposal	-	-
Closing Balance	483,274	447,894

Law Reform Commission

Notes to the Financial Statements (continued) Financial year ended 31 December 2019

5. Staff Costs

The average number of employees and aggregate payroll costs incurred during the financial year were:

	2019	2018
Average number of employees	18	18
	€	€
Wages and salaries	1,146,968	1,093,725

The above figures include the salaries (and expenses, if any) of the President and the of the Commissioner, the details of which are as follows.

Commissioner Name	2019			2018		
	No. of Meetings Attended	Salary	Expenses	No. of Meetings Attended	Salary	Expenses
		€	€		€	€
President						
Ms Justice Mary Laffoy (appointed 6/10/2018)	11	49,008	-	3	11,196	-
Retired President						
Mr Justice John Quirke				4	36,750	
Full Time Commissioner						
Mr Raymond Byrne	10	148,665		10	144,227	17
Part Time Commissioners						
Mr Tom O'Malley	8	-	4,074	8	-	8,140
Prof Donncha O'Connell	10	-	5,422	9	-	5,537
Ms Justice Carmel Stewart	9	-	-	10	-	-
Total		197,673	9,496		192,173	13,694

Law Reform Commission

Notes to the Financial Statements (continued) Financial year ended 31 December 2019

Employee Short-Term Benefits Breakdown

The table below reflects the number of employees remuneration in excess of €60,000

€	2019	2018
60,000 - 69,999	1	2
70,000 - 79,999	3	0
80,000 - 89,999	0	0
90,000 - 99,999	1	2
100,000 - 109,999	1	0
110,000 - 119,999	0	0
120,000 - 129,999	0	0
130,000 - 139,999	0	0
140,000 - 149,999	1	1

Aggregate Employee Benefits

	2019	2018
€	€	€
Staff Short-Term Benefits	1,146,968	1,093,725
Termination Benefits	-	-
Retirement Benefit Costs	197,355	152,364
Total	1,344,323	1,246,089

The total number of staff employed (WTE) at year end was 18 (2018 :18)

There were no termination benefits in 2019.

Key Management Personnel

The total remuneration of those with significant influence/decision making is €408,077 (€442,785 in 2018). This includes the President, the Commissioners and members of the management committee.

€35,920 was deducted from staff by way of pension levy and was paid over to the Office of the Attorney General (€41,124 in 2018)

Law Reform Commission

Notes to the Financial Statements (continued) Financial year ended 31 December 2019

6. Operating Lease

In August 2017 the Commission entered into an eight year lease to occupy the 5th Floor of Styne House, Upper Hatch Street, Dublin 2.

The Commission received a 5 month rent free lease period. This charge has been spread over the life of the eight year lease in accordance with FRS 102.

4th Schedule Vat in the amount of €206,029 was paid in 2017 on the lease. This has been capitalised under Leased Premises Improvements and is being depreciated over the lease period of eight years.

Lease Commitments

At 31st December 2019 the Commission had the following future minimum lease payments under non-cancellable operating leases for each of the following periods:

	2019 €	2018 €
Payable within one year	260,750	260,750
Payable within two to five years	1,525,000	1,525,000
Payable after five years	381,250	762,500

Law Reform Commission

Notes to the Financial Statements (continued)
Financial year ended 31 December 2019

7. Retirement benefit costs

	2019 €	2018 €
(a) Analysis of total retirement benefit costs charged to expenditure		
Current Service Cost	125,000	90,000
Past Service Cost	0	0
Interest on retirement benefit costs charges to expenditure	75,000	65,000
Employee contributions	(2,645)	(2,636)
	<u>197,355</u>	<u>152,364</u>
(b) Movement in net retirement benefit during the financial year		
Net retirement benefit liability at 1 January	3,950,000	3,345,000
Current Service cost	125,000	90,000
Past Service Cost	0	0
Interest Cost	75,000	65,000
Actuarial losses/(gains)	986,000	510,000
Retirement benefit paid in the year	(61,000)	(60,000)
Net Retirement benefit liability at 31 December	<u>5,075,000</u>	<u>3,950,000</u>

(c) Deferred funding for retirement benefits

The Commission recognises amounts from the State for the unfunded deferred liability for retirement benefit on the basis of a number of past events. These events include the statutory backing for Superannuation schemes and the policy and practice in relation to funding public service retirement benefit including contributions by employees and the annual estimates process. While there is no formal agreement and therefore no guarantee regarding these specific amounts with the Department of Public Expenditure and Reform, the Commission has no evidence that this funding policy will not continue to progressively meet this amount in accordance with current practice.

The Net Deferred Funding for Retirement Benefits recognised in the Statement of Income and Expenditure and Retained Revenue Reserves was as follows:

	2019 €	2018 €
Net deferred funding for Retirement Benefits in year		
Funding recoverable in respect of current year retirement benefit costs	200,000	155,000
State grant applied to pay pensioners	(61,000)	(60,000)
	<u>139,000</u>	<u>95,000</u>

The deferred funding asset for retirement benefits as at 31 December 2019 amounted to €5,075,000 (2018: € 3,950,000)

Law Reform Commission

Notes to the Financial Statements (continued) Financial year ended 31 December 2019

(d) History of defined benefit obligations	2019	2018	2017	2016
	€	€	€	€
Defined benefits obligations	5,075,000	3,950,000	3,345,000	3,240,000
Experience (gains)/losses on scheme Liabilities Amount	986,000	510,000	19,000	356,000
Percentage of the present value of Scheme Liabilities	19%	13%	0.6%	11%

The cumulative actual (gains) and losses recognised in the Statement of Comprehensive Income amounts to €2,068,900 as at 31st December 2019 (2018: € 1,082,900)

(e) General description of the Scheme

The Commission previously established its own defined benefit pension schemes under sections 11 and 12 of the Law Reform Commission Act 1975 and corresponding contributory spouses' and children's schemes under administrative arrangements. The schemes are funded annually on a pay-as-you-go basis from monies provided by the Vote for the Office of the Attorney General and from contributions deducted from staff and members' salaries. The Commission also operates the Single Public Services Pension Scheme ("Single Scheme"), which is a defined benefit scheme for pensionable public servants appointed on or after 1 January 2013. Single Scheme members' contributions are paid over to the Department of Public Expenditure and Reform (DPER) via the Attorney General's Office.

The valuation used for FRS 102 Disclosures has been based on a full actuarial valuation at each date performed by an independent qualified actuary to take account of the requirements of FRS 102 in order to assess the scheme liabilities at 31 December 2019.

Assumptions	2019	2018
Rate of expected salary increase	2.5%	2.5%
Rate of increase in pension payment	2.5%	2.5%
Discount Rate	1.0%	1.85%
Inflation	1.75%	1.75%

The mortality rates adopted allows for improvements in the life expectancy over time, so that life expectancy at retirement will depend on the year in which a member attains retirement age (age 65). The table below shows the life expectancy for members attaining age 65 in 2019 and 2018.

Year of attaining age 65	2019	2018
Life expectancy - male	21.5	22
Life expectancy - female	24	24

Law Reform Commission

Notes to the Financial Statements (continued)
Financial year ended 31 December 2019

8 Tangible assets

	Leased Premises Improvements	Office Equipment	Fixtures and fittings	Total
	€	€	€	€
Cost				
At 1 January 2019	330,829	1,114,287	619,042	2,064,158
Additions	-	126,009	6,210	132,219
At 31 December 2019	330,829	1,240,296	625,252	2,196,377
Depreciation				
At 1 January 2019	53,839	979,977	582,448	1,616,264
Charge for the financial year	41,354	51,155	4,330	96,839
At 31 December 2019	95,193	1,031,132	586,778	1,713,103
Carrying amount				
At 31 December 2019	235,636	209,164	38,474	483,274
At 31 December 2018	276,990	134,310	36,594	447,894

9. Receivables

	2019	2018
	€	€
Other Receivables	1,664	15,639
Prepayments	170,510	172,137
	<u>172,174</u>	<u>187,776</u>

10. Payables

	2019	2018
	€	€
Other creditors	-	1,360
Tax and social insurance:		
PAYE and social welfare	30,243	38,122
VAT	22,852	10,312
PSWT	4,975	5,300
Accruals	31,360	67,087
Rent free lease period accrual < 1 yr	12,926	12,926
	<u>102,356</u>	<u>135,107</u>

Law Reform Commission

Notes to the Financial Statements (continued) Financial year ended 31 December 2019

11. Liabilities: amounts falling due after more than one year.

	2019	2018
	€	€
Rent free lease period accrual > 1 yr	64,629	77,555

12. Capital Commitments

The Commission had no outstanding capital commitments as at 31 December 2019

13. Related Party Disclosures

Those with significant influence/decision making in the Commission consist of the President, the Commissioners and members of the management committee. Total compensation paid to personnel with significant influence/decision making amounted to €408,077 in 2019 (2018: €442,785)

For a breakdown of the remuneration and benefits paid to key management personnel, please refer to Note 5.

The Commission adopts procedures in accordance with the guidelines issued by the Department of Public Expenditure and Reform covering the personal interests of Commission Members. In the normal course of business, the Commission may approve grants or enter into other contractual arrangements with entities in which the Commission Members are employed or otherwise interested.

The Commission adopted procedures in accordance with the Code of Practice for the Governance of State Bodies (2016) in relation to the disclosure of interests by Commission Members and these procedures have been adhered to in the year. There were no transactions in the year in relation to the Commission's activities in which members had any beneficial interest.

14. Covid-19

In accordance with FRS102, COVID-19 is a non adjusting Post Balance Sheet event, with no impact on the financial statements for 2019. The Commission will continue to assess the impacts of emerging risks on its operations in the course of 2020, including any potential costs or impairments which may require to be reflected in the 2020 Financial Statements.

15. Approval of financial statements

The Commission approved the financial statements at its meeting on 12th August 2020.

- *Report on Knowledge or Belief/Concerning Consent in Rape Law* (LRC 122-2019). This was the second Report published in 2019 that arose from a request to the Commission by the Attorney General under the 1975 Act, which involved an examination as to whether the element of knowledge or belief in the definition of rape in section 2 of the *Criminal Law (Rape) Act 1981* as amended, should be reformed. The Report recommended that the primarily subjective test in section 2 of the 1981 Act should be replaced by a primarily objective test. The Report includes a draft Bill.
- *Issues Paper on Capping Damages in Personal Injuries Actions* (LRC IP 17-2019). This Issues Paper is on a project that forms part of the Commission's *Fifth Programme of Law Reform*, and involves an examination as to whether it would be constitutionally permissible to enact legislation capping general damages in personal injuries actions. The Paper discussed relevant developments in the law on general damages and relevant constitutional rights and tests of constitutionality. The Paper asked consultees to consider four possible legislative models for capping general damages. As noted below, the Commission published its Report on this project in September 2020.
- *Issues Paper on A Regulatory Framework for Adult Safeguarding* (LRC IP 18-2019). This Issues Paper is also on a project that forms part of the Commission's *Fifth Programme of Law Reform*. The Issues Paper notes that there is widespread agreement on the need for a clear statutory framework on adult safeguarding, which would address risks of physical, psychological and financial abuse. The Issues Paper therefore examines what form that regulatory framework might take, building on existing arrangements and parallel policy and legislative developments. The Paper suggests key guiding principles of a regulatory framework for adult safeguarding and seeks the views of the public on 11 key issues that arise in this project.

To date in 2020, the Commission has published the following four Reports:

- *Report on Suspended Sentences* (LRC 123-2020). This Report completes the examination of this project, which formed part of the Commission's *Fourth Programme of Law Reform*. The Report examines the legislation and the principles that underpin the operation of the suspended sentence and makes a number of recommendations as to how the suspended sentence and part-suspended sentence might be used more effectively, and describes the circumstances in which there is a presumption of a custodial sentence for certain offences. The Report also contains draft Sentencing Principles for Suspended Sentences, which may be of assistance to the Sentencing Information and Guidelines Committee established under the *Judicial Council Act 2019*.
- *Discussion Paper on Domestic Implementation of International Obligations* (LRC 124-2020). This Discussion Paper completes the examination of this project, which formed part of the Commission's *Fourth Programme of Law Reform*. The first element of the project was the publication in 2018 of a *Draft Inventory of International Agreements Entered into by the State* (LRC IP 14-2018), which lists the 1,400 international agreements that the State has either ratified or signed, organised under more than 30 subject headings. The 2018 Draft Inventory and Discussion Paper differ from many other Commission publications in that they are primarily descriptive and do not involve recommendations for law reform. The Discussion Paper: describes the development of Ireland's active participation in the international law community since 1922; discusses the process involved in implementing international agreements; discusses examples of best practice in ratifying international agreements; and describes the role played by the Department of Foreign Affairs, the Oireachtas, the courts, the Irish Human Rights and Equality Commission, NGOs and international monitoring bodies, which ensure that the highest possible standards are applied in the ongoing implementation of Ireland's international obligations.

- *Report on Accessibility of Legislation in the Digital Age* (LRC 125-2020). This Report completes the examination of this project, which formed part of the Commission's *Fourth Programme of Law Reform*. The Report contains recommendations as to how legislation can be made available online in a more consolidated and comprehensive way. This includes that: there should be planned programmes of consolidation of Acts, which should be organised over defined time periods of five years; the planned programmes should be overseen by a multi-agency group, the Accessibility and Consolidation of Legislation Group (ACLG); the Commission itself should, in collaboration with the proposed ACLG, continue to prepare planned programmes of Revised Acts; the electronic Irish Statute Book (eISB), hosted by the Office of the Attorney General, should be given presumptive official status (as has already occurred in many other European states and for EU law), provided that the online version is accompanied by a qualified electronic signature that complies with the 2014 EU eIDAS Regulation; and the proposed ACLG should prepare and publish guidance on legislative policy standards. The Report contains a draft Scheme of a Bill.
- *Report on Capping Damages in Personal Injuries Actions* (LRC 126-2020). This Report completes the examination of this project, which formed part of the Commission's *Fifth Programme of Law Reform*. The project involved an examination as to whether it would be constitutionally permissible or otherwise desirable to enact legislation capping general damages in personal injuries actions, and the Report examined four possible legislative models. The Report concluded that, in the Commission's view, two of the four models could be constitutionally permissible and that of these two, it would also be desirable that the model contained in the *Judicial Council Act 2019* should be given time to operate in practice. The Report also emphasises that the Commission is an advisory body, and that the constitutionality of proposed or enacted legislation is primarily a matter for the Government (advised by the Attorney General), the Oireachtas and, ultimately, the courts.

During 2019, on its Access to Legislation work, the Commission continued to update, usually on a weekly basis, the Legislation Directory to reflect changes made by both Acts and Statutory Instruments: this is published on the electronic Irish Statute Book (eISB) website, hosted by the Office of the Attorney General. In 2019 the Commission also updated and published over 380 Revised Acts on its website, including all textually amended Acts from 2005 onwards (other than Finance and Social Welfare Acts) and over 100 frequently used pre-2006 Acts, for example on employment, family, planning and road traffic (there are direct links from the eISB to these Revised Acts). The Classified List of In-Force Legislation was also reviewed and updated in 2019 and published on the Commission website, which includes over 2,000 In-Force Acts and over 15,000 Statutory Instruments made under those Acts. Since January 2020, the Classified List has been published as a full text database, and is updated monthly.

The following legislation, enacted or under consideration in 2019 and 2020, involved the implementation of recommendations made in Commission Reports:

- *Civil Law (Presumption of Death) Act 2019*: see *Report on Civil Law Aspects of Missing Persons* (LRC 106-2013);
- *Judicial Council Act 2019*, section 29 only (Minister for Justice and Equality to review presumptive minimum sentences): see *Report on Mandatory Sentences* (LRC 108-2013);
- *Consumer Insurance Contracts Act 2019*: see *Report on Consumer Insurance Contracts* (LRC 113-2015);
- *Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020* (Part 3, Chapter 3 only: admissibility of business records in civil cases): see *Report on Consolidation and Reform of Aspects of the Law of Evidence* (LRC 117-2016);

- *Scheme of Criminal Justice (Community Sanctions) Bill*: see *Report on Court Poor Box: Probation of Offenders* (LRC 75-2005);
- *Scheme of Landlord and Tenant Bill*: see *Report on the Law of Landlord and Tenant* (LRC 85-2007);
- *Scheme of Courts and Civil Law (Miscellaneous Provisions) Bill* (Part 5: Prevention of Benefit from Homicide): see *Report on Prevention of Benefit from Homicide* (LRC 114-2015).

4. Strategy Statement 2018-2020

The Commission's *Strategy Statement 2018-2020* provides the framework for the work of the Commission in the three year period covered by it. Like its predecessors, the *Strategy Statement 2018-2020* sets out the key priorities of the Commission for 2018 to 2020, including clear responsibilities and accountabilities for the achievement of these priorities. Each 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, as set out in the *Strategy Statement 2018-2020*, is: "To keep the law under independent, objective and expert review, to make recommendations for law reform and to make current law accessible for all."

The *Strategy Statement 2018-2020* identifies 3 Key Objectives. These are:

- Key Objective 1: Law Reform: to review the law and to conduct research with a view to developing, simplifying, modernising and codifying the law of Ireland (this included the preparation of the *Fifth Programme of Law Reform* which, as noted above, was approved by Government on 20 March 2019).
- Key Objective 2: Access to Legislation: to make legislation in its current state more easily accessible online to the public, in accordance with the Commission's work programme, 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.

5. Observations Returned

No observations supplied

