

Oifig an Árd-Aighne

THE OFFICE OF THE ATTORNEY GENERAL



GOVERNMENT OF IRELAND

Expenditure Review Initiative

The Law Reform Commission

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EXECUTIVE SUMMARY

This Report sets out the analysis, conclusions and recommendations developed and reached by the Steering Committee of the Office of the Attorney General in the Expenditure Review of the Law Reform Commission (“the Commission”). The Expenditure Review has been carried out by the Office of the Attorney General as part of the implementation of the Government’s Strategic Management Initiative. The objective of the Review was to examine the work of the Commission against its objectives, to evaluate the efficiency and effectiveness with which the Commission is meeting its objectives, consider whether the objectives of the Commission continue to be relevant and whether the allocation of public money to support those objectives remains justified. The Review also had as one of its purposes the proposal of indicators against which the efficiency and effectiveness of the Commission can be measured in the future.

The Commission comprises 5 Commissioners – the President who is now full-time, a full-time Commissioner and 3 part-time Commissioners. The staff of the Commission comprises the Secretary/Head of Administration, a Director of Research, a Project Manager, 6 other administrative and legal information staff and 8 Researchers. A further 5 Researchers were sanctioned at end-September, 2006¹.

The Steering Committee wishes to note specifically at the outset that the Commission has adopted methodologies which will be of assistance in the future in valuing the efficiency and effectiveness of the Commission’s work. These methodologies include increased engagement with relevant stakeholders, such as Government Departments, the legal profession and other representative bodies of relevance to particular projects. The Commission has also ensured that projects are completed within defined time periods and is developing suitable measurable performance indicators to reflect the Value for Money derived from its work.

The Steering Committee found it was necessary in its Review to look not only to the statutory objectives set out for the Commission in the Law Reform Commission Act 1975, but also to the underlying objectives of the Commission. Having identified the objectives, the Committee went on to examine whether they have evolved and whether they remain relevant today.

The Steering Committee found that the Commission has the broad objectives of promoting law reform as well as the statutory objectives of keeping the law under review, preparing programmes for law reform and carrying out an examination and conducting research into areas of law identified as requiring reform or areas of law referred to the Commission by the Attorney General. The objectives of the Commission do not appear to have evolved substantially since the Commission was established in 1975. While there is some slight change in emphasis, the objectives – both the underlining objectives as well as the specific statutory objectives – remain relevant. In May, 2006, the Government decided that the Commission should take on the additional role of preparing a programme of Statute Law Restatements. Following consultation between the Office of the Attorney General and the

¹ Two further Researchers were sanctioned in January, 2007 along with Project Managers for Restatements of Legislation Project and Chronological Tables Project and 5 administrative staff.

Commission, the Commission has agreed to take on responsibility for preparation of the Chronological Tables to the Statutes.

The Steering Committee found that the Commission is meeting its objectives. It has prepared two Programmes as part of its function to keep the law under review. The last Programme was given a limited life span of 7 years thus ensuring that the Commission will be carrying out this function again in 2007/2008. The Commission is carrying out its examination and research into the areas of law identified in the Second Programme and is well on its way to meeting the work set in the Second Programme. The Commission has also conducted the reviews required of it by the Attorney General. Between 2000 and 2006 the Commission had published 51 major documents, comprising 27 Consultation Papers (which contain detailed analysis of the relevant law and provisional recommendations) and 24 Reports (which contain final recommendations and draft legislation). The Steering Committee found that the Commission is promoting law reform not only through its examination and research into areas of law identified in its Programmes but also through its effective communication with its stakeholders.

This Report details the resources available to the Commission and examines the sufficiency of its grant-in-aid to cover the current expenditure of the Commission. It considers the receipt of funding in recent years by the Commission for individual projects from sources other than the grant-in-aid. In 2000, the Commission's grant-in-aid was €1.009 million and this had increased to €1.9 million in 2005 and to €2.044 million in 2006 reflecting the increase in the number of legal research posts from 2002². The Steering Committee notes that for the 3-year period 2003 to 2005, the Commission's outputs, in terms of major documents, was double those for the period 2000 to 2002. The increased outputs reflect the additional research staff available to the Commission.

The Steering Committee analysed the activities and outputs of the Commission with particular reference to the outputs relating to the Second Programme. In this context the Steering Group examined ways of placing a financial value on the Commission's outputs of Reports and Consultation Papers. While the Commission does not have in place information systems to allow for a determination of the full cost of producing an output, the Committee was equally aware that an examination of the performance of the Commission should take into account not only the cost of each individual output but also the impact value of those outputs both from a financial and non-financial point of view.

In order to measure the financial value of the Commission's outputs, the Steering Committee looked at some examples of legal consultancy fees which have been paid. In terms of the non-financial value, the Report considers the overall value of a Commission output but acknowledges that it is difficult to specify a direct cause and effect link in relation to the non-financial value of the Commission's work. In this regard it is necessary to rely on such indicators as the stakeholders' responses and the use of the Commission Reports and Consultation Papers in litigation.

The Steering Committee also examined the secondary outputs of the Commission's work. These include the seminars and other media events which the Commission now conducts. It became clear to the Steering Committee that the changes in the methodology of the

² An allocation of €4.910 million has been provided in the 2007 Estimates and €4.162 million in 2008, taking account of the increased staffing levels sanctioned, accommodation needs etc.

Commission and the impact generally of the Commission as reflected in the information furnished by the stakeholders, is indicative of substantial and effective outcomes of the Commission's work.

In examining the justification for the continued allocation of public money to the Commission, the Steering Committee examined the question of whether law reform through a Commission remains necessary and in this context looked at the experience in other jurisdictions. The Report also examines whether the objectives could be achieved through alternative, more economic means. The picture is completed in the Report with an examination of alternative methodologies to see whether, even in the context of a Commission, there are different ways in which the objectives of the Commission can be achieved more efficiently and effectively.

The Steering Committee concluded that the way of proceeding as set out in the 1975 Law Reform Commission Act represents a tried and tested method of achieving law reform. In both Australia and Canada the existence of a Law Reform Commission was questioned and, indeed, some Commissions were disbanded. Those Commissions have been re-established and it would seem therefore that at international level there is confirmation that law reform through a Law Reform Commission is the best method of achieving the objectives of law reform.

It is clear from what the stakeholders have said that the changes which have taken place in the way in which the Commission goes about its work are considered beneficial. The consultation process which now precedes the scoping of the project is clearly welcomed, as is the continued involvement in projects by legal and other professionals. It would seem clear, therefore, that not only from the international perspective but also domestically the continued allocation of public money to the Commission is justified.

Finally, the Report seeks to set performance indicators against which the Commission can monitor and evaluate how well it is meeting its objectives. Given the objectives of the Commission, it is difficult to set performance indicators against which its work can be valued in concrete measurable terms. The Report seeks to give some monitoring indicators drawn from the earlier parts of the Report. The Report then turns to the performance indicators and sets some criteria which can be used in developing these. In terms of efficiency, this can be measured either through a direct relationship between resources and outputs or through a study of the effectiveness of systems and practices within the Commission. A direct comparison of the resources consumed and outputs delivered could be obtained through the introduction of an information system which is able to track the unit cost of an output.

The Steering Committee reached the conclusion that many aspects of the effectiveness of the Commission cannot be measured. Some aspects, such as the implementation of recommendations and the enactment of relevant legislation, can be and are measured. However, implementation by legislation is not the only way of measuring the effectiveness of the Commission. Ultimately, it may be necessary to value the effectiveness of the Commission through research and surveys of the opinions of the stakeholders.

Overall, the Steering Committee has concluded that the Commission has increased the level of its primary outputs in recent years and at the same time has introduced new types of outputs in terms of wider consultation, seminars and conferences. The Commission is meeting both the underlining objectives of law reform and also the objectives of the

Commission set in statute. The work done to meet the Second Programme and the views of the stakeholders regarding the increased impact of the work of the Commission provide supporting evidence of the achievement of its objectives. The Committee makes a number of recommendations on the methods of evaluation which the Commission could use in the future in addition to those already employed.

1 INTRODUCTION

Background

1. The Expenditure Review Initiative (ERI) was introduced as part of the Government's modernisation programme for the Civil and Public Service under the Strategic Management Initiative. In common with other SMI initiatives, the ERI is aimed at shifting the management focus in public sector organisations from inputs to the outputs and results of public service activities. Expenditure Reviews have recently been rebranded as Value for Money Reviews and Review subjects are chosen by each Department and Office, in this case the Office of the Attorney General, in consultation with the Department of Finance.

Terms of Reference of the Expenditure Review

2. The overall objective of this Expenditure Review of the Law Reform Commission (the Commission) is to examine the work of the Commission in order to establish the extent to which it is meeting its objectives, the efficiency and effectiveness with which it is doing so, whether the objectives continue to be relevant and whether the allocation of public money remains justified. The Review also seeks to propose indicators against which the effectiveness and efficiency of the Commission may be measured in the future.
3. The specific terms of reference for the Review were established by reference to the guidance provided by the Expenditure Review Central Steering Committee on this matter. The terms of reference adopted are as follows:
 - 1 Establish what are the objectives of the Commission (and how they have evolved).
 - 2 Examine whether the objectives continue to be relevant.
 - 3 Examine the extent to which the objectives have been achieved.
 - 4 Quantify the resources which have been consumed in achieving those objectives.
 - 5 Identify the outputs of the Commission and examine how efficiently they are produced.
 - 6 Examine the question of whether the allocation of public money to the Commission continues to be justified.
 - 7 Examine whether the same objectives of the Commission could be achieved by some other more economical means.
 - 8 Suggest performance indicators by which the efficiency and effectiveness of the Commission can be measured in the future.

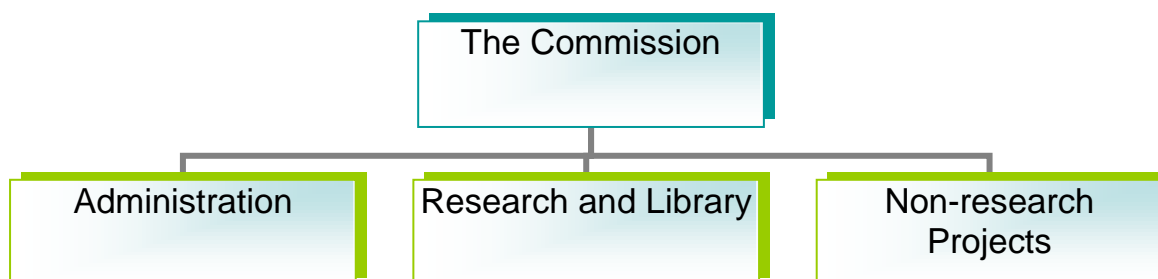
Scope of the Expenditure Review

Legislative scope

4. The Commission was established by the Law Reform Commission Act 1975 (the 1975 Act). This Report, therefore, examines the work of the Commission, and the continued justification for the Commission, against the objectives set out in the 1975 Act. The Review also examines the question of whether law reform itself continues to be necessary and desirable, that is, the continuing validity of the underlying objective.

Organisational scope

5. The Commission comprises a President, a full-time Commissioner and three part-time Commissioners. The Commissioners hold office for a term of up to five years which may be renewed. The functional organisational structure of the Commission is summarised below.



The Commission is supported by a Secretary who is Head of Administration, a Director of Research and a Project Manager. The Secretary and Head of Administration is responsible, with one Executive Officer and three Clerical Officers, for the administration of the Commission, including the functions of finance, personnel, IT and the Library. The Library has a Legal Information Manager and a Cataloguer. The Director of Research is in charge of eight Researchers and varying numbers of part-time Researchers employed by project. The Project Manager is responsible for the development of the profile of the Commission, with specific responsibility for public relations and managing relationships with other agencies and Government Departments. In September, 2006, an additional 5 Researchers were sanctioned³.

6. In May 2006, the Government (at the request of the Attorney General) formally requested that the Commission should take on the additional role of preparing a programme of Statute Law Restatements. The Commission has begun work on this project. Statute Restatements are administrative consolidations of legislation which, when certified by the Attorney General under the *Statute Law (Restatement) Act 2002*, may be cited in court as stating the law. This new role of the Commission is consistent with its functions under the 1975 Act. Agreement has also been reached between the Commission and the Office of the

³ In January, 2007, an additional 8 staff - 1 Principal Officer to Quality Assure/Project Manager the Restatements Project and an Executive Officer for that Project, a Principal Officer to be Project Manager of the Chronological Tables and 2 Researchers were sanctioned and a Higher Executive Officer, 2 Executive Officers and 1 Clerical Officer for General Administration.

Attorney General that the Commission would be responsible for the preparation of the Chronological Tables to the Statutes.

7 The Commission conducts its research by reference to a programme of law reform and on the basis of specific requests or references from the Attorney General. The programme for law reform is required to be prepared by the Commission in consultation with the Attorney General for submission to the Taoiseach who then submits it to Government and, if agreed, lays it before the Houses of the Oireachtas. The Attorney General can also refer areas of law for examination by the Commission. The Commission is required by Section 6 of the 1975 Act to report on its activities to the Attorney General at the end of each year. The Attorney General forwards the Report to the Taoiseach who submits it to Government and lays it before the Houses of the Oireachtas.

Financial scope

8 The Commission's principal source of income is its annual grant-in-aid, which forms part of the annual Vote by the Oireachtas to the Office of the Attorney General. The grant-in-aid in respect of the Commission as provided in Subhead C of Vote 3 – Office of the Attorney General - in the 2006 Estimates was €2,044,000, an increase of €144,000 over 2005⁴. The Director General is the Accounting Officer for the Law Reform Commission as well as the Office of the Attorney General. In 2004 and 2005 the Commission received a total sum of €34,000 from the Department of Community, Rural and Gaeltacht Affairs for one element of the Commission's Charities project. In 2004 the Commission applied to the Information Society Fund – which was established by the Government to enable public bodies such as the Commission to seek relevant funding for Information Technology projects – to enable the Commission to commission work on a process model in relation to its eConveyancing project. The Information Society approved funding of €250,000 and this was drawn down in 2005. In addition, in 2004 the Commission embarked upon a joint project on the reform and modernisation of land law and conveyancing law with the Department of Justice, Equality and Law Reform. Under this joint project, the Department directly funded some elements of the research and drafting work involved in the preparation of the Commission's 2005 *Report on the Reform and Modernisation of Land Law and Conveyancing Law*. In early 2006 the Commission received funding of €15,000 from the Department of Justice, Equality and Law Reform in respect of the Courts Acts project and further funding of €60,000 has been promised for that project. With the support of the Office of the Attorney General, the Commission sought assistance from the Government's Change Management Fund for funding for the preparation of the Commission's Strategy Statement 2006 – 2008 and €37,500 was approved. These projects were consistent with the Commission's work.

9 Separate annual financial statements are prepared by the Commission and are audited by the Comptroller and Auditor General. The Commission is required under Section 9(2) of the Law Reform Commission Act 1975 to submit its accounts annually to the Minister for Finance for presentation to the Houses of the Oireachtas. The financial analysis and scope of

⁴ An allocation of €2,564,000 was provided for in the 2007 Abridged Estimates and this was increased to €4,910,000 in the Revised Estimates published on 22 February, 2007. Also the Change Management Fund approved an allocation of €45,000 to the Commission for the preparation of its Third Programme. The 2008 allocation is €4,162,000.

this Expenditure Review covers the years 2000 to 2004, with appropriate reference to developments in 2005 and some reference to developments in 2006.

Temporal Scope

10 When the Commission was established in 1975 it prepared a programme for the examination of different branches of the law with a view to their reform for submission to the Government. The First Programme was adopted in January, 1977. In 1997 the Commission began to draw up a Second Programme which was adopted by the Government on 19 December 2000, although the Commission had been working on the basis of the Second Programme prior to 2000. The draft Programme was referred by the Taoiseach to the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights on 3 October 2000. The Oireachtas Committee met the Commission on 24 October 2000 when the proposed Programme was discussed.

11 This Review examines the objectives of the Commission by reference to the 1975 Act. The activities and outputs of the Commission are considered by reference to the Second, current Programme and in doing so draw upon comparisons with the First Programme and changes which have been made to the way in which the Commission carries out its work between the First and Second Programmes.

Methodology

Steering Committee

12 In order to carry out the Review the Office of the Attorney General established a Steering Committee under whose direction the Review was conducted. Members of the Steering Committee were Pat O'Sullivan (Head of Administration, AGO, Chairman), Ruth FitzGerald (Advisory Counsel Grade II, AGO, Lead Evaluator), Paul Gibney (Change Management Unit, AGO), Joseph Brady (Professional Accountant, AGO), *Ken Gorman (Change Management Unit, AGO, Secretary), Raymond Byrne (Director of Research, Law Reform Commission) and Colm Dunne (external consultant from Epsilon Consulting).

Review of documents

13 The principal documents referred to in the course of the review were:

- Oireachtas Debates
- the First Programme of the Commission (**Appendix 1**)
- the Deloitte & Touche Report of April 1997
- the Annual Reports and Annual Financial Statements of the Commission
- the Second Programme of the Commission (**Appendix 2**)
- comparative literature of the organisation of law reform in other jurisdictions.

* Mr. Gorman ceased to be Secretary in December 2005 when he transferred to another Government Department.

Interviews and questionnaire

14 In order to evaluate the impact of the work of the Commission, examine the efficiency of its work practices and explore other possible means of achieving the same objectives, a number of Commission personnel - the full-time Commissioner, the Secretary and Head of Administration, the Director of Research and the Project Manager - were interviewed during the course of the Review.

15 A questionnaire on stakeholder opinions was prepared and issued to the list of stakeholders set out in **Appendix 3**. The responses received are set out, without attributing their provenance, in **Appendix 4**.

Comparable jurisdictions

16 In order to consider the question of whether law reform could be achieved in some way other than through a Commission, or through a Commission with different functions, the provisions in place in other jurisdictions for law reform were considered, drawing, *inter alia*, on documents already prepared in this regard such as the Deloitte & Touche report mentioned and a report of Brice Dickson and Michael Hamilton “Re-forming Law Reform in Northern Ireland”. The web sites www.WorldLII.org and www.uea.ac.uk and the websites of numerous Law Reform Commissions were also consulted to obtain information about law reform in other jurisdictions.

Organisation of the Report

17 Chapter 2 of the Report considers the first three elements of the terms of reference. This focuses on the origin and continuing relevance of the objectives of law reform. The Chapter also considers the effectiveness of the Commission in meeting the objectives.

18 The resources of the Commission are reviewed in Chapter 3 which considers the financial resources allocated to the Commission and current staffing issues. The funding of Commission projects by stakeholders is also considered. The activities and outputs of the Commission are established in Chapter 4.

19 The continuing justification for the allocation of public money to the Commission is dealt with in Chapter 5. This Chapter also addresses the issue of whether the objectives could be met through alternative means by looking at approaches to law reform in other countries.

20 Suggestions for performance indicators to monitor the outputs and impact of Commission activities are presented in Chapter 6.

21 The Report is supported by 9 Appendices.

2 ACHIEVING THE OBJECTIVES OF LAW REFORM

Introduction

22 This Chapter is concerned with the first three elements of the terms of reference, which are to

- establish what are the objectives of the Commission (and how they have evolved);
- examine whether the objectives continue to be relevant; and
- examine the extent to which the objectives have been achieved.

The Chapter begins by examining the objectives of law reform itself and then establishing the original and current objectives of the Commission. The relevance of the objectives is considered both in terms of the current work of the Commission and by reference to international developments in the pursuit of law reform. The Chapter then concludes with a short assessment of the achievement of the objectives of the Commission.

The objectives of law reform

23 Many public bodies are engaged in law reform, from interdepartmental committees examining ways of implementing “Better Regulation” to tribunals making recommendations for changes in the law. The Legislature is the ultimate reformer of laws when it implements policies to update the law and make it more accurately reflect society’s values. Judges make law but judge-made law is not considered an adequate or sufficient mechanism for law reform⁵.

24 The Commission is unique as the only body whose sole function is that of law reform. The establishment of the Commission has led to a planned and systematic approach to law reform.⁶ The Steering Committee considers that a review of the objectives of the Commission would be incomplete without also examining the objectives of law reform itself.

25 In its Mission Statement, the Commission undertakes, as a body independent in the performance of its functions, and as effectively as possible within the resources available, in the interests of improving and maintaining justice in the law, to keep the laws under review with a view to ensuring that they are regularly and systematically reformed. It can be concluded that the Commission’s view of the objective of law reform is that of improving and maintaining justice in the law.

26 In order to identify the objectives of law reform, the Steering Committee looked at the intentions behind the establishment of the Commission. The then Attorney General, Declan Costello TD, moving the Bill which established the Commission, indicated that law reform

⁵ See, for example, the paper by the former Chief Justice Ronan Keane (a former President of the LRC) “Thirty Years of Law Reform”, page 5

⁶ In moving the 1975 Bill before the Dáil the then Attorney General, Mr Declan Costello, TD, said that the Commission was to be “...the institutional framework by means of which law reform can be undertaken more effectively and more expeditiously than heretofore”.

was a means available to Government to reform society and also to ensure that the law keeps up to date with the changes in society so as to avoid injustices which might otherwise result. He said:

“... Modern Governments who consciously undertake the task of reforming society have many means available to achieve this end. Taxation policies can be used to redistribute wealth; physical resources can be so allocated as to help the most needy; social welfare, health and education policies can be so formulated as to alter radically unjust social conditions. A series of comprehensive and systematic well conceived programmes of law reform is yet another means available to a Government which wishes to reform a society for which it is responsible. ...

Laws affect the citizen as a member of a family, as a consumer, as a tenant or property owner, an employee or employer, as a party to a contract as a victim of a tort, a participant in court proceedings, a vendor or purchaser. If a community’s laws become inadequate for the functions for which they were designed, if they become obsolete, or are too numerous, or are over refined by judicial interpretation, then cases of individual injustices will multiply and societies as a whole will suffer. Governments in a dynamic fast changing world should ensure that the laws are kept under constant review and are regularly and systematically reformed.”

Dáil Debates 4 February 1975

27 In the stakeholder questionnaire, respondents were asked for their views on the objectives of law reform. In their replies, many different objectives for law reform were proposed, as summarised in **Table 1**.

Table 1: Stakeholder views of the objectives of law reform

- reviewing current and proposed legislative provisions,
- advising and informing legislators and generally educating the wider community,
- advising policy formulators of the practical effect of proposals for legislation,
- ensuring that the legislative framework reflects the ethos and mores of its citizens and attracts the support and respect of the community generally,
- ensuring that the law meets the needs of the society to which it applies,
- ensuring that out of date legislation does not bring the law into disrepute so as to ensure respect and observance of the law so that antisocial practices do not creep in,
- evaluating, considering and reviewing the branches of law and make recommendations in regard to issues and anomalies that require amendment, consolidation or repeal,
- ensuring that anomalies resulting from judge-made law and out of date legislation are corrected.

28 In analysing the stakeholders’ views, the Steering Committee considers that, for the purposes of this Expenditure Review, the objectives of law reform can be summarised as follows:

- To ensure that the law reflects the ethos and morals of citizens and addresses the contemporary needs of society⁷.
- reform society,
- improve and maintain justice in the law for all persons governed by the law of the State,
- keep the law up to date with technical and societal changes,
- address the issues which judge-made law and out of date legislation throw up, and
- where possible simplify the law and increase public access to it.

The objectives of the Commission

29 The Law Reform Commission Act 1975 established the Commission and gave it the task of keeping the law under review as well as undertaking examinations and conducting research with the view to reforming the law and formulating proposals for law reform. The specific statutory functions of the Commission under the Act⁸ are presented in **Table 2**.

Table 2: Statutory Functions of the Commission

- prepare for submission by the Taoiseach to the Government programmes setting out the different branches of law to be examined with a view to their reform and may identify in the programmes the agencies by which the examinations and formulation of proposals for reform are to be conducted;
- undertake examinations of, and conduct research into, branches of the law and, if appropriate, formulate and submit to the Taoiseach proposals for reform in that branch of the law in accordance with the programme approved by Government;
- undertake, at the request of the Attorney General, an examination of, and conduct research in relation to, any particular branch or matter of law and, if requested, formulate and submit proposals for its reform.

30 The Commission has the function of keeping the law under review in order to identify areas requiring reform which can then be listed in a programme to be agreed by Government. The Commission also has the function of carrying out the necessary research and formulating proposals for law reform in the areas listed in the programme. The Review noted that the legislation envisages that the Commission may identify other agencies which can carry out the necessary research and formulate proposals for law reform. This suggests that the function of “*keeping the law under review*” is for the purpose of identifying and prioritising areas of the law which need reform, even if those reforms cannot be effected within the existing Commission resources. This is discussed in more detail in paragraphs 84 to 86, below. The Steering Committee also notes that, when the Commission was established in 1975, there was no Government Department with the specific remit of law reform. In 1992, the Department of Equality and Law Reform was established, and its functions have, since 1997, been incorporated into the Department of Justice, Equality and Law Reform.

⁷ One aspect expressed by some of the stakeholders of the view that the law must meet the needs of society in which it applies, is that if the law is not appropriate to society then this will lead to a loss of respect and observance for the law which in turn may have the effect of alienating people, leading to anti-social practices and attitudes.

⁸ Law Reform Commission Act 1975, Section 4

31 The Steering Committee asked for the views of stakeholders of the objectives of the Commission. The examples given by the stakeholders in relation to the effectiveness and non-effectiveness of the Commission also indicated what they consider to be the objectives of the Commission. While the stakeholders refer to the outputs of the Commission in terms of the Consultation Papers and Reports produced by it, they also refer to the contribution to debate and awareness-raising which the Commission makes. The views of stakeholders on the objectives of the Commission are set out in **Table 3** below. These objectives are in accordance with the general purport of the legislation.

Table 3: Stakeholders' views of objectives of the Commission

- Promotion of law reform generally
- Identification through appropriate consultation of areas of law which require law reform
- Highlighting issues which require law reform
- Production of well researched and documented consultation papers and working papers
- Engendering of informed debate and decision making at policy level
- Encouragement of communication amongst experts in different areas of law
- Influencing the development and content of legislation and policies
- Providing the Government and the Oireachtas with a range of options which are technically sound amongst which Government and the Oireachtas may make the necessary policy choices

32 The widest of the Commission's objectives is the promotion of law reform. Law reform is intended to improve and maintain justice in the law, to act as means as reforming society and to avoid injustices which might result from changes in society if the law could not keep up with them. Thus, in order to fulfil the objective of promoting law reform, the Commission has an implicit function of communicating with other individuals and groups who are interested in the reform of law and with political and civil society generally to raise the profile and awareness of law reform. In pursuing this objective, the Commission has, *inter alia*, the objective of communicating with others to secure the promotion of law reform. The Commission has the specific functions of keeping the law under review to identify areas requiring reform, and actually conducting the necessary examination, research and formulation of proposals for reform in some of those areas identified as requiring reform and also those areas of law referred to it by the Attorney General.

33 On this basis, for the purposes of the Expenditure Review, the objectives of the Commission can be summarised as follows:

- Promoting law reform
- Communicating with others to secure the promotion of law reform
- Keeping the law under review
- Preparing programmes for law reform
- Carrying out an examination of and conducting research into areas of law identified in the programme and also those referred to the Commission by the Attorney General.

Whether the objectives of Commission have evolved

34 The Steering Committee noted that the responses of the stakeholders to the questions on objectives refer not only to the objectives originally set for the Commission but also to the objectives of law reform as identified in the Oireachtas debates which preceded the enactment of the legislation establishing the Commission and to the objectives set by the Commission in its Mission Statement. As there is continuity between the three sources of objectives, it can be concluded that the objectives of law reform have not changed in the last 30 years.

35 For example, the stakeholders referred to one of the objectives of law reform being the need to ensure that the rights of different sectors of society are re-balanced as the laws become out of date and injustices creep in. This view reflects that expounded by the then Attorney General, Declan Costello T.D., when he introduced the Bill establishing the Commission.

36 The rather technical point is made by some of the stakeholders that because the common law is based on judge-made law, law reform is necessary to ensure legislation can be enacted which overrides any unanticipated interpretation of the law by the courts. This reflects the same point made in 1975 by both Deputy John M. Kelly and Senator Mary Robinson. The point here is that judge-made law can result in an unanticipated interpretation of the law or that a finding in one case leading to deficiencies and anomalies in law which were not highlighted by the facts of the particular case in which the finding was made. Law reform allows the Legislature to ensure that any resulting deficiencies and anomalies are rectified.

37 Technical changes are now happening more rapidly than would have been envisaged in 1975, thereby requiring more active law reform than might have been thought necessary originally. This may explain a slight shift in emphasis from the view originally put at the establishment of the Commission that law reform is a tool to facilitate reform of society to the view expressed by the majority of the stakeholders to the effect that law reform is required to retain the rule of law, i.e. ensure that the law remains relevant to society. Whereas in 1975 the law was to be reformed so as to be inclusive, in 2005 the law is to be reformed to ensure there is no alienation of groups in society.

38 On the basis of the stakeholder responses on this issue, the Steering Committee is satisfied that there is no substantive change in the objectives of the Commission and of law reform generally. As the statutory objectives of the Commission are sufficiently broad to comprehend in them the objectives of the Commission and law reform identified by the stakeholders, those objectives remain relevant.

39 The working practices of the Commission have changed over time. The work at the front-end of a project has been expanded and projects are now scoped in such a manner as to ensure that they meet the requirements of interested parties. The Commission decided some years ago that, as a matter of policy, there should be regular liaison with the Departments of State. This is reflected by, for example, the biannual meetings with the Department of Justice, Equality and Law Reform, which deal with both civil and criminal law. This ensures that the Commission remains aware of any relevant developments with the Department that might affect the Commission's ongoing work programme.

40 The changes in work practices indicate a change in the emphasis which the Commission places on its objectives. Thus, the objective of communicating with others is now more vigorously pursued with the Commission conducting extensive consultations at the beginning of projects, holding seminars to discuss Consultation Papers and draft recommendations and expanding its working groups to include many non-Commission members. The Commission is also more effectively promoting its own work with well planned launches of its reports and the inclusion on its working groups of the relevant departmental officials. The Commission has a role in promoting debate on topics it is reviewing and that may have a significant impact on society. The topic for the Commission's annual conference in 2004 was *Modernisation of Land Law and Conveyancing Law* and in 2005 was *Vulnerable Adults and the Law*. The Commission has also adopted a more holistic approach to some of the areas of law it has reviewed. For example, its project on eConveyancing (the largest project undertaken by the Commission to date and planned to run over several years) not only involved a major study to update, modernise and simplify substantive land law but also involved an extensive review of the conveyancing process. The project involved numerous stakeholders in both the private and public sector and already has had an impact on strategic plans for a number of these bodies.

Whether the objectives remain relevant today

41 It is clear from the answers to the questionnaire that the stakeholders consider that law reform remains necessary. As explained above, a comparison of what was said at the time of the establishment of the Commission and the responses of the stakeholders, indicates a slight change in attitudes regarding the objectives of law reform and of the Commission. Whereas in 1975, there was greater emphasis on modernising archaic law, now, perhaps because the Commission has made substantial progress in this regard (complemented by the review of pre-1922 legislation in the Office of the Attorney General, which has already led to the enactment of the *Statute Law Revision (pre-1922) Act 2005* and the preparation of the *Statute Law Revision Bill 2007*⁹ the emphasis is on law reform necessary to meet changes in society and technology, i.e. law reform as leading change, not following it.

42 The stakeholders have identified the risk in not reforming the law as something very significant, namely that of alienating sectors of society. While reforming society – the objective of law reform in 1975 – might have been a worthwhile objective at the outset, the Steering Committee agrees with the views of stakeholders that ensuring that sectors of society are not alienated, is a much more crucial objective. Thus, if anything, law reform is considered more important today than in 1975.

43 The consequences which are suggested will result if the law is not kept up to date are very significant. It is suggested in the responses to the questionnaire that, in effect, the rule of law will be in jeopardy if the law does not keep up with society. The shift in emphasis from reforming society through law reform, to keeping the law relevant to society is, therefore, a significant change.

44 There are a few changes in the way in which the objectives of law reform and the Commission have been expressed between the responses of the stakeholders and the issues identified as being the subject matter of law reform in 1975. For example one of the stakeholders saw meeting the requirements of a changing economic environment, i.e. issues

⁹ The 2007 Bill has now been enacted.

such as competitiveness and deregulation, as an objective of law reform¹⁰. That was not an issue in 1975. This perhaps reflects a better understanding now of how law can affect economic activity.

45 Another change is that the stakeholders in their responses referred to the need to take account of other legal systems and EC law. While EC law was relevant when the Commission was established, its scope was smaller and the extent of the changes it would bring about in Irish law were unclear. In 1975 the only other jurisdictions which we looked at were common law jurisdictions. Now it is necessary to understand civil law jurisdictions as it is their law which informs many EC measures.

46 The stakeholders also referred to an objective of law reform being keeping the law up-to-date in relation to medical and technological changes. Again, this emphasises a change in the view of law reform as proactively dealing with the future rather than as in 1975, reforming archaic laws. Medical and technological changes are, of course, far more pronounced now than in the past. Society now engages in debates on the moral aspects of technological change more readily, e.g. issues such as stem cell research. It is therefore no surprise that this too is reflected in the responses to the questionnaire.

47 Finally, whereas in 1975, review of the law for the purposes of consolidation was considered necessary as a mechanism to update the law, now the issue of consolidation is viewed in the context of making law accessible to citizens and reform of the public service through Better Regulation.

48 On the basis of the above, it would seem that at the level of the higher aims of law reform there has been a change, i.e. while the objective of reforming society through law reform is still extant, of far more significance would seem to be the objective of ensuring that law reflects society. The lower level objectives of addressing anomalies in the law and making the law more accessible remain the same. The objective of law reform and the Commission, based on the responses of the stakeholders and international practice, if anything, is of greater relevance today than heretofore.

Commission Outcomes

49 The outcomes of the Commission can be viewed in terms of the immediate, intermediate and global impact of its work from several dimensions, principally time and the stakeholders served. The nature of the work of the Commission means that there is a close cause-and-effect relationship between the activities and outputs of the projects and the outcomes achieved. The Steering Committee identified a number of outcome drivers that could form the basis for considering the effectiveness of the Commission's work. These are discussed below.

¹⁰ *Interestingly, the need to create the appropriate economic and social climate was the raison d'être of the Thai Law Commission, in contrast to other Law Reform Commissions whose functions relate more to the review of the law relating to individuals rather than economic models.*

Selection of matters to be addressed in Law Reform Programmes

50 In terms of the specific subject matters to be covered, the Second Programme emphasises areas where recent changes in society trigger a need for the law to be reformed to underpin and consolidate those changes. Thus the Second Programme refers to the importance of Government accountability, the need to make the law accessible to the citizen, the need to address the rights of vulnerable groups and the areas where developments in scientific and technical fields require the introduction of regulation. The Second Programme also recognises the need to take into account in law reform the increasing interaction of the legal system with other national legal systems and with European Law including the European Convention on Human Rights. The relevance of the Second Programme to the current needs and priorities for law reform is an important starting point for establishing the impact of the Commission's work.

51 In addition to the changes mentioned above, the way in which the Commission has approached the task of identifying areas of law which need to be examined with a view to their reform contributes to its effectiveness. While in some cases very specific areas of law are identified in much the same way as was done in the First Programme, e.g. the law of homicide, the law relating to condominiums etc., there are other areas identified which indicate an awareness of needs from society's point of view rather than from a lawyer's point of view, e.g. access to the law for the citizen, law and the elderly. This should have a contribution to immediate and intermediate impacts.

Consultation with stakeholders

52 The degree of stakeholder consultation and the success of this consultation contributes to the effectiveness of the Commission. The Steering Committee noted there have been important changes to the working methods of the Commission since 1997. There is a broader system of consultation which is used from the outset so that projects can be scoped with input of those in society concerned with the particular area of law so as to ensure that the project itself meets the requirements of society in that particular area. An example can be found in the consultative process which took place in scoping the "Law and the Elderly Project" details of which are set out in **Appendix 5**.

53 The Commission welcomes invitations to explain publicly its recommendations in different areas of law. Since 1998, the Commission has appeared a number of times before the Oireachtas Joint Committee on Justice, Equality and Law Reform. In 2003, the Commission was invited by the Chairperson of the Committee to discuss its current work programme. In 2004, the Commission was invited to discuss the Commission project on Reform and Modernisation of Land Law. The Commission regularly contributes to the preparation of answers to Parliamentary Questions which relate directly to the progress of Commission projects. It has also accepted invitations from non-Government groups, e.g. the Ballymun Community Law Centre, to speak about its recommendations on two occasions in 2004 and 2005 on cohabitees and legal capacity respectively.

The Consultative Committee

54 A Consultative Committee was established under the aegis of the Attorney General in March 1998. That Committee consisted of representatives of interested Government Departments, the Bar Council, the Law Society and the Law Reform Commission. The Consultative Committee was to assist the Attorney General in his functions under the Act both with regard to the formulation of the new Programme of work (the Second Programme) and in respect of references by the Attorney General to the Commission. The Committee was also to monitor the implementation of recommendations by the Commission. The Consultative Committee had some input into the Second Programme. It met regularly at first and became a channel of communication between the Commission and Departments of State. The meetings of the Consultative Committee enabled the Commission to keep Departments informed of its work. It also enabled the Departments to keep the Commission informed of progress on the implementation of Commission recommendations and to highlight to the Commission legal issues of concern to them which might warrant work by the Commission.

Information and Communication strategy

55 In the Second Programme, more attention and resources have been applied to promoting law reform so that it would become a factor which is taken into account by the Legislature. The Commission seeks to ensure that its proposals are readily capable of being translated into legislation. While the professional work of the Commission in producing high quality and relevant outputs is extremely important, the Steering Committee considers that an active information and communication strategy is vital to achieving wider impact, i.e. in seeing its recommendations implemented. The Commission can ensure that, while retaining its independence, it communicates well with Departments of State so that its work will be relevant and to engage Departmental Officials in promoting its work. The Steering Committee is satisfied that the Commission is active in this role and believes that the Consultative Committee could also continue to contribute to this area.

Usefulness of Commission outputs

56 All of the stakeholders identified the Consultation Papers and Reports prepared by the Commission as the primary outputs of its work. Some of the stakeholders also make the point that the Papers and Reports prepared by the Commission are valuable not only in terms of the proposals which they make for law reform but as tools for legal research. Detailed analysis of the applicable law in different areas together with comparison with the law of other jurisdictions, makes the Consultation Papers and Reports particularly helpful in researching the law in Ireland where the market is not large enough to promote large numbers of text books. One of the stakeholders pointed out that in some cases a Commission Report is the only source of information about particular practices of Irish law. In this connection the Steering Committee noted that courts in decided cases have frequently quoted the reports of the Commission. **Appendix 6** sets out some of the law reports since 2000 which have quoted Commission Reports.

57 Two of the stakeholders referred to seminars organised by the Commission as an output. It is also clear from answers given to other questions in relation to the work of the Commission that the debate which flows from the consultation process carried out by the Commission both at the scoping stage as well as for the purposes of consultation papers, and also on publication of the reports through formal launches to which the media are invited, are

important outputs from the work of the Commission. While this is not a very definable output, it is clear that the stakeholders regard this as a valuable one.

Inclusion of Draft Legislation in Reports

58 The Commission has assisted in the process of translating reports into legislation by ensuring its work addresses issues that are easily translatable into legislation. In relevant circumstances, the inclusion of draft legislation in Reports facilitates consideration of relevant reforms. During the lifetime of the *First Programme of Law Reform (1975-2000)*, the Commission occasionally, but not invariably, included a draft scheme of legislation in its Reports, for example, the *Report on the Rule against Hearsay in Civil Cases* (LRC 25-1988) and the *Report on Privacy* (LRC 57-1998). Since 2000, the Commission has included draft legislation as an Appendix to all Reports. This began with the publication of the Commission's *Report on Statutory Drafting and Interpretation* (LRC 61-2000). In addition to including draft legislation in all its reports since 2000, the Commission has, since 2003, occasionally, but not invariably, included a draft scheme of legislation in its Consultation Papers, for example, the *Consultation Paper on Homicide, The Plea of Provocation* (LRC CP 27-2003) and the *Consultation Paper on Prosecution Appeals from Unduly Lenient Sentences in the District Court* (LRC CP 33-2004).

59 The most visible outcome from the Commission's work is the legislation that results from its Reports. The value of the Commission's work here is not only in terms of the quality of work, i.e. the structured analysis and reflection which supports the recommendations, but also the thorough and careful nature of the resulting legislation and, in some instances, the saving of parliamentary time where the report of the Commission has facilitated the introduction of legislation. Thus, the *Proceeds of Crime Bill* was drafted and enacted in 1996 in a matter of days largely because of the work that had already been done by the Commission in its report on the *Proceeds of Crime*. Similarly, in November 2005, when the Government published the comprehensive and reforming *Tribunals of Inquiry Bill 2005* (which would replace with significant amendments 8 existing Acts dating back to 1921), the Minister for Justice, Equality and Law Reform stated that it 'implements in large part the recommendations contained in the Law Reform Commission's final *Report on Public Inquiries including Tribunals of Inquiry*, published in May 2005.'

Extent to which Commission achieves its objectives

Promoting Law Reform

60 The Steering Committee acknowledges the impact to date of the Commission in terms of its influence on the debate on those areas of law which it has examined. The Commission's objective of promoting law reform is largely achieved through its communication with others who can influence implementation of law reform. Thus, the Oireachtas debate on the *Commissions of Investigation Bill 2004* referred to the Consultation Paper on Public Inquiries including Tribunals of Inquiries. The *Consultation Paper on Law and the Elderly* was referred to in the Irish Financial Services Regulatory Authority's draft Consumer Protection Code and also led to the Law Society's Guidelines on Enduring Powers of Attorney. The *Consultation Paper on Corporate Killing* influenced the Safety, Health and Welfare at Work Act 2005. Non-statutory implementation of Commission recommendations is also an important impact of the Commission's work. The Steering Committee has

concluded that the usefulness of the Commission's outputs is a key determinant of its wider impact.

Keeping the law under review

61 The output relevant to the objective of keeping the law under review is the programme for law reform which the Commission prepares for submission by the Taoiseach to the Government. The objective of keeping the law under review with a view to identifying areas requiring reform is achieved if the areas of law which are identified in the programme are a good reflection of the issues which concern society at the point where the programme is drafted.

62 The objective of keeping the law under review is achieved, in statutory terms, by the Commission's preparation of a programme to be approved by Government. The First and Second Programmes set out the branches of law which the Commission was – and is - to review. Thus the Commission has conducted its review of the law in order to identify areas requiring reform on two occasions since it was established. The process for conducting this review has now been built into the programme preparation approach.

63 The Second Programme identifies not only specific areas of law requiring review but also subject areas which involve a number of different aspects of the law which are to be the subject of review. Thus headings such as “The legal system”, “Civil rights law”, “Law and the information society” and “Vulnerable groups in the law” all involve different legal subject matters, i.e. administrative law, contract, criminal law, property law, but reflect the issues which are important to society. This way of identifying areas of life in society which are of concern and in respect of which it is necessary to ensure that the law is as updated as possible, demonstrates a response to law reform from society's point of view rather than from the point of view of lawyers who tend to address specific areas of law.

64 Issues such as the balancing of rights of different sectors of society and the regulation of new areas which did not previously require to be regulated, identified by the stakeholders as a requirement for proper law reform are addressed in the Second Programme. So too is overall Government policy in relation to Better Regulation. The objective identified by the stakeholders that law reform is necessary to ensure that the law commands respect is also addressed by the Second Programme in areas where there does seem to be public concern such as appeals from administrative decisions including judicial review and corporate criminal liability, these two being areas in which public confidence may be low.

65 Another feature of the Second Programme which allows it to meet the objective of keeping the law under review is the introduction of a timeframe for achievement of the Second Programme. The time limit for achievement of the Programme not only allows the Commission to check compliance, it also means that the law will be kept under review at regular intervals. This ensures that the Commission can, at any point during the 7 year Programme see how much of the Programme has been achieved, and allow it to redistribute resources available amongst the various projects. It also allows the Commission to quantify additional resources available and to re-prioritise where necessary. The Steering Committee considers that a timeframe of 7 years is appropriate for a detailed Programme of Law Reform, such as the Second Programme. The timeframe allows the Commission to engage both in short projects aimed at discrete topics - such as the project on Judicial Review - and also in longer projects which require wide-ranging consultation and therefore a longer period to

bring to completion – such as the project on vulnerable adults and the elderly (described in **Appendix 6**).

66 The possibility of references from the Attorney General must be factored into the Commission's ability to meet the Programme objectives. References, however, have the beneficial effect as they assist the Commission in ensuring that its work is of immediate relevance to Government.

67 The Second Programme, in particular, identifies areas of law which need to be reformed in order to meet changes in society and technology. The increase in life expectancy is an issue which will have an impact on a number of areas of law in the future. The Commission is currently working in this area, identifying aspects of law which need to be updated. For example, the law in relation to capacity which is quite arcane, will, with an increasing age profile in the population, mean that this area of law will become more important. Thus, the Commission has identified the need for an easier, more streamlined legal mechanism for dealing with the issue of capacity.

68 Changes in technology coupled with the very archaic way of conveying property means that the law of conveyancing is ripe for reform. Again, this is an area in which the Commission has identified the need for reform. (See paragraph 40, above). Reform in this area will ultimately affect all house purchasers who will be able to avail of a simpler, more technologically based system of conveyancing.

Achievements to date of the Second Programme

Independence and Funding Issues

69 One of the attributes of the Commission which is considered most important by commentators is its independence. The independence of the Commission means that it can, without political overtones, decide what areas of law require reform (provided the Government approves the programme) and the Commission can carry out the research into the areas in question and prepare proposals for reform from a neutral standpoint. As the former Chief Justice (and former President of the Commission) Mr Justice Ronan Keane put it in his paper "*30 Years of Law Reform*":

"A body which is simply another branch of the executive will inevitably be perceived as being concerned with implementing whatever may be government policy at any particular time rather than bringing forward proposals for law reform which, viewed objectively, can be seen as being in the interest of society as a whole."

70 The objectives of keeping the law under review, preparing programmes of the areas of law requiring reform and then carrying out the necessary examination and research into the areas of law set out in the programme, suggest that the Commission, allowing for some flexibility on the basis of the expertise available etc., is required to set itself some priorities as to the work it carries out. The legislation envisages that references from the Attorney General may affect the prioritisation. In terms of funding, however, Section 8 of the 1975 Act states that:

"There may be paid to the Commission in each financial year, out of moneys provided by the Oireachtas, a grant or grants of such amount or amounts as the Minister for Finance, on

the recommendation of the Attorney General, may consider necessary to enable the Commission to perform its functions.”

71 To date, a contribution to parts of two projects, mentioned in paragraph 8 above, have been supported from funds other than the grant-in-aid in the Vote for the Office of the Attorney General. The Commission also applied to the Information Society Fund in 2004 to enable it to commission work in respect of the Commission’s eConveyancing project. Any contribution which the Commission has obtained has been towards projects included in its programme of work and this is an important principle. The Commission therefore does not consider that such contribution towards projects outside the grant-in-aid mechanism has affected prioritisation of its work.

Achievements of the Second Programme – Outcomes

72 The Commission’s Second Programme of Law Reform, approved by the Government in December 2000, reflects a clear prioritisation of what branches of law require to be examined for the purposes of reform. The Second Programme lists 32 topics for examination and this is preceded by a statement that its contents ‘reflect the rapid pace of social and political change in Ireland and internationally.’ The Second Programme notes that in Ireland there is ‘increasing emphasis on the importance of government accountability; and on the need to improve the interface between the citizen and the law.’ The Second Programme therefore included areas such as the law of public inquiries (including tribunals of inquiry), the law concerning vulnerable persons, including older persons and those with limited intellectual capacity, and the rights and duties of cohabitants. The Commission has published Consultation Papers and Reports on these areas. The Second Programme also referred to how ‘the information revolution is already affecting the way we live our lives and conduct our business.’ The Second Programme thus includes electronic commerce as an area for examination, and the Commission has engaged in an eConveyancing project in this respect, including the commissioning of a project model for eConveyancing (see paragraph 82, below). As to international developments, the Second Programme refers to the need to be ‘in constant touch with developments in other common law jurisdictions’ and to ‘bear in mind the common human rights standards in the field of human rights set by the European Convention on Human Rights.’ The Commission’s publications invariably reflect this international dimension. It is clear that the processes for the selection of work topics and prioritisation have significantly evolved since the First Programme and the Steering Committee notes that these processes are continuing to evolve in the preparation for the Commission’s next Statement of Strategy and the development of the Third Programme. The effectiveness framework for the work of the Commission would be enhanced if the selection and prioritisation criteria were more explicitly stated in the Third Programme.

73 The Second Programme, which runs from 2000 to 2007, has been in place for over six years. By the end 2006, the Commission had published 51 major documents relating to the Second Programme (with some arising from additional requests from the Attorney General), comprising 27 Consultation Papers and 24 Reports (see also **Table 10**, below). **Appendix 5** sets out the work done relative to the 32 areas of law specified for work by the Commission in the Second Programme. As can be seen from Appendix 5, considerable progress has been made towards completion. In some cases a number of different aspects of the topics specified in the Second Programme have been the subject of a consultation paper or a report in line with a more comprehensive approach to law reform rather than a concentration on discrete

technical issues of law, exemplified by the Commission's 2005 *Report on the Reform and Modernisation of Land Law and Conveyancing Law*.. The outputs of the Second Programme are considered further in Chapter 4, below.

74 The Steering Committee notes that, taking account of Reports actually enacted in legislation and Reports which the Government has committed itself to implement in the near future in its Legislative Programme of September 2006, 67 Reports out of 83 published¹¹ have been accepted, an implementation rate of just over 67%.¹² This figure includes 10 Reports concerning land law and conveyancing law which were incorporated into a comprehensive project on the Reform and Modernisation of Land Law and Conveyancing Law and which are to be implemented in the Government Bill published in 2006. In other jurisdictions where the information is available, the rate of implementation of reports in legislation is comparable to Ireland, e.g. India where 96 Reports out of 191 have been implemented¹³, and in England and Wales where the general implementation rate for the Law Commission is over 60%, and approximately 50% for the period 1985 to 2001.¹⁴ There are many reasons why reports of law reform bodies are not implemented, such as a lack of sufficient political interest or legislative time to do so, or to their content being overtaken by other developments. Within the context of an Expenditure Review, the Steering Committee considered that it was sufficient to confirm that the general implementation for the Law Reform Commission is comparable to relevant international examples. But it also notes that the Commission's project on Land Law and Conveyancing Law involved a review of the non-implementation of some discrete reports and their amalgamation into a comprehensive reform project which had a more realistic prospect of implementation.

Communicating with others

75 The increase in the use of seminars and conferences and the media communications regarding publication of reports is regarded by stakeholders as very effective although some stakeholders also see scope for greater consultation by the Commission. The comments of the stakeholders suggest that there is an increased visibility of the Commission and of its work and, therefore, a wider debate in relation to law reform. As one stakeholder said, it is sometime easier to get people to attend a two-hour seminar and say what they think rather than persuade them to commit their thoughts into writing.

76 The primary statutory function of the Commission is that of keeping the law as a whole under review to ascertain where reform is needed. The mechanisms for communication with others interested in the reform of law in particular areas assists the Commission in its function of keeping the law under review. The broader the communications between the Commission and other groups – including international groups – the better able is the Commission to meet the objective of keeping the law under review so as to identify areas requiring reform. Thus, not only the objective of communication for the purposes of promoting law reform generally but also the objective of keeping the law under review is met by the seminars and conferences introducing the Commission's work methods and by attendance by Commission members at international seminars and conferences. The methods

¹¹ The Steering Committee has taken into account Reports published to the end of 2006 in this calculation.

¹² Appendix 8 sets out the reports of the Commission which have been converted into legislation and those to which the Government has committed itself in its Legislative Programme of September 2006.

¹³ See www.lawcommissionofindia.nic.in

¹⁴ *Quinquennial of the Law Commission* by John Halliday C.B., March 2003, paragraph 6.12

used by the Commission in scoping the projects and the broader composition of working groups, most particular with the inclusion of the appropriate departmental officials and practitioners, whether legal or otherwise, on those groups, also ensures that the Commission obtains the broader view of requirements for law reform.

77 Additional mechanisms to engage with Departments of State and to promote law reform through wider consultation have only been in place under the Second Programme. It is not possible at this stage to evaluate whether those mechanisms will result in a greater proportion of proposals of the Commission (where such a recommendation is made) being translated into legislative and other instruments. All that can be said at this point is that it would appear at least anecdotally and on the basis of the information provided by stakeholders, that the mechanisms which are in place ought to improve the implementation rate of Commission recommendations.

78 It is also clear from the responses given to the Questionnaire that the stakeholders consider that the Commission has been effective in meeting its objectives. Of the nine responses, five consider the Commission has been very effective. Two see it as being moderately effective, one as not very effective and one sees the question as dependent upon the actions of the Legislature.

79 The Commission is required to bring about an independent, impartial and expert review of the law. It is clear from the Consultation Papers and Reports which the Commission produces that it does not adopt the position of any one group over others in the recommendations which it makes. A high level of expertise is evident from its Reports and the comments made about the Commission outputs by those questioned.

80 The Commission has the function of consulting with experts, both legal and non-legal and there has been a significant increase in the level of consultation with experts, both legal and non-legal, in the fulfilment of the Second Programme. While some of those who responded to the Questionnaire did indicate that they would wish for more contact with the Commission, they also indicated that they did have adequate contact.

81 The Commission works in close co-operation with Government. This has been achieved not only through the establishment of the First and Second Programmes but also through interaction with Government Departments and the establishment of the Consultative Committee in March 1998. In 2000, a Project Manager who was a former civil servant was appointed. The Commission, as a matter of policy, has regular meetings with relevant Departments, notably the Department of Justice, Equality and Law Reform (see paragraph 39 above) and ensures that the relevant departmental officials are appointed to the relevant working groups. There is a scheduled annual meeting between the Attorney General and the Commission to discuss its programme for the year. These initiatives allow the Commission to achieve the requirement of co-operating with Government.

82 Not all of the stakeholders measure the effectiveness of the Commission in meeting its objectives in terms of the Reports which have been translated into legislation¹⁵. Indeed, one of the stakeholders says that the non-acceptance of Commission proposals should not always

¹⁵ Thus the Law Reform Commission of Western Australia in its Annual Report 2002/03 at page 3 says: "The Commission formerly considered implementation of its reports as a performance indicator but the use of this standard has been discontinued. While it is important, implementation is beyond the Commission's area of responsibility and under the control of others."

be seen as a failure on the part of the Commission. Most of the stakeholders consider the effectiveness of the Commission by reference to the influence which it exerts over debate on matters relating to law reform, e.g. highlighting issues which might not otherwise attract interest, and on the value of the reports as analysing and setting out the law in particular areas. Almost all of the stakeholders refer to the quality of the Consultation Papers and Reports. The Steering Committee agrees that effectiveness is wider than implementation.

83 On 23 June 2005, in a speech marking the 30th anniversary of the Commission, the Taoiseach affirmed the effectiveness of the work of the Commission in the following terms:

“Over its three decade history, the Commission has made a valuable and significant contribution to updating the laws of the State... What was envisaged – and what has been achieved over time – is an impartial agency, engaged in the task of law reform, with the flexibility to consult freely with outside experts from legal and other disciplines.”

Objective of identifying other bodies to carry out reform

84 Section 4(2)(a) of the 1975 Act states that a programme of law reform prepared by the Commission ‘may recommend the agency (including the Commission or another body)’ by which an examination of the law with a view to reform should be made. The Commission’s Second Programme of Law Reform refers, in the context of commercial law, to the Government’s proposal to establish a statutory Company Law Review Group (which occurred in 2001). With this exception, where the Second Programme identified a specialised group already in existence or about to be set up for a specific purpose, it may be difficult before any examination or scoping of a topic has taken place to state in a programme of law reform what other body or agency should carry out research to formulate proposals for law reform. It may be more appropriate to do so where the Commission has engaged in a project, for example, where the Commission publishes a Consultation Paper: the Commission has done this in its 2003 and 2005 *Consultation Papers on Law and the Elderly and on Vulnerable Adults and the Law: Capacity*. It is also worth noting that, when the Commission was established in 1975, there was no Government Department with a specific remit for law reform: the Department of Justice, Equality and Law Reform now has this remit, and the Commission has established, as a matter of policy, close links with that Department (see paragraph 39 above).

85 The Programme notes that ‘the Commission will, where appropriate, have regard to the activities of other official bodies interested in law reform, among them the Courts Service, and be ready to co-operate with them.’ This echoes the acknowledgment in the 1975 Act that other State authorities, including Government Departments, are regularly engaged in reform in areas connected with the Commission’s programmes. In this context, this Report has already referred (see paragraph 60) to the influence of the work of the Commission in promoting law reform with other relevant bodies, such as the Department of Enterprise, Trade and Employment (which had responsibility for promoting the *Safety, Health and Welfare at Work Bill 2004* in the Oireachtas), IFSRA and the Law Society of Ireland.

86 The Steering Committee notes that the Commission has also identified areas where specific projects in its Second Programme involve research which could be done more effectively outside the Commission. For example, in its *Consultation Paper on Law and the Elderly* (2003), the Commission identified that the Irish Financial Services Regulatory Authority (IFSRA) already had a role in regulating financial services, including those

provided to older persons. **Appendix 6** contains further details of this. Similarly, in 2004 the Commission applied to the Information Society Fund for assistance to enable it to commission the drawing up of a process model for eConveyancing, which was connected to the Commission's eConveyancing project (in this case, the work was conducted by a private firm who were awarded the work after a public tendering exercise). Another aspect of this issue is that, even where the Commission has commenced work on a topic included in its programme of law reform and learns that similar work is being undertaken by a Government Department, it may postpone or cease doing the work. This occurred in relation to charity law, which is included in the Second Programme. When the Commission began work on this in 2002, it was informed that the relevant Government Department had begun work on a similar review. The Commission then stopped its work on this area. In 2004, when the relevant Department indicated that it would welcome assistance on a specific aspect of this law, charitable trust law, the Commission recommenced work on this. The specific provisions of section 4(2)(a) of the 1975 Act will be considered again by the Commission when it formulates its Third Programme of Law Reform.

Conclusions

87 As indicated above, it is not possible simply to look at the objectives of the Commission without also looking at the objectives of law reform. It is very difficult to measure how much law reform has taken place. In addition to the influence which the work of the Commission has on other bodies also engaged in law reform (see paragraphs 84 and 85 above), one concrete mechanism for measurement of the success of the Commission work is to look at how many reports have been translated into laws. However, the Commission is not in control of this process and it requires the Executive to be willing to introduce legislation and the Legislature to allow time to debate the proposals. Furthermore, a number of Commission Reports have specially recommended that legislation not be enacted, either because the case for law reform has not been made or because the necessary changes can be made in a non-statutory way (as now recommended where possible by "Better Regulation"). Thus, the translation of proposals for reform into legislation is not necessarily a very good yardstick against which to measure the Commission success.

88 The Steering Committee finds that the Commission has the broad objectives of promoting law reform as well as the statutory objectives of keeping the law under review, preparing programmes for law reform and carrying out an examination of and conducting research into areas of law identified as requiring reform or areas of law referred to the Commission by the Attorney General. The objectives of the Commission have not evolved substantially since it was established in 1975. While there has been some slight change in emphasis, the objectives originally established for the Commission remain relevant today.

89 One potentially significant change which has occurred in the way the Commission goes about its business is the funding of individual projects other than through the grant-in-aid. One Commission project has been supported through the payment of staff for the project. In two further cases, projects have been funded individually.

90 The Steering Committee has found that the Commission is meeting all of its objectives. It is promoting law review through its communication with the various stakeholders, from individuals and groups in society with specific interests in particular areas of law reform, to Government Departments. It is keeping the law under review and identifying areas requiring reform. It is carrying out an examination of and research into areas of law identified

as requiring reform. In this regard, the Commission is well on its way to meeting the targets of the Second Programme which is due for completion by the end of 2007. In terms of the implementation of recommendations in its Reports, the Commission is achieving similar levels of implementation, as other Law Reform entities in comparable jurisdictions.

Recommendations

91 The Steering Committee recommends that:

- In fulfilling its functions of keeping the law under review and deciding upon areas of law requiring reform for the Third Programme, the Commission should further develop its explanation, as contained in its Second Programme, of how it chooses topics for law reform by describing the process used and the criteria applied.
- The Commission's discretion under the 1975 Act to identify bodies other than the Commission which would carry out the examination of and research into areas of law requiring reform should continue to be addressed in the Commission's Programme of Law Reform and in detail in its Consultation Papers and Reports.
- The introduction of a temporal limitation on the Second Programme means that the objective of keeping the law under review is likely to be considered at regular intervals. The temporal limit also means that it is possible to evaluate the effectiveness and efficiency of the Commission against a set programme. The Steering Committee understands that the Commission has decided that future Programmes will also be time limited and commends this decision. An interim evaluation of progress and a review of areas of law requiring reform should be built into the Programme as formal outputs (as it did for the Second Programme, and which was published in Chapter 5 of the Commission's *Annual Report 2004*).
- The Commission should continue its policy of effective communication with relevant stakeholders.

3 COMMISSION RESOURCES

Introduction

92 This Chapter analyses the financial and non-financial resources available to the Commission to support its work. The consideration of resources is achieved by an expenditure review over the last five years and specific analysis of the main elements of expenditure. The Chapter also discusses sources of funding for Commission work.

93 The term of reference covered by this Chapter is to quantify the resources which have been consumed in achieving objectives.

Summary of Income and Expenditure

94 A summary of the income and expenditure accounts of the Commission in the years 2000 to 2004 is set out below. The detailed income and expenditure accounts and balance sheets for the years 1998 to 2004 are included in **Appendix 7**.

Table 4: Summary Income and Expenditure Accounts – 2000 to 2004

	2000	2001	2002	2003	2004
	€	€	€	€	€
Grant in aid	1,150,383	1,278,662	1,348,000	1,577,000	1,593,000
Other income	12,089	5,709	2,108	10,426	71,111
Total income	1,162,472	1,284,371	1,350,108	1,587,426	1,664,111
Transfer (to)/from capital account	(124,352)	(72,026)	9,778	25,277	21,593
Total available income	1,038,120	1,212,345	1,359,886	1,612,703	1,685,704
Expenditure	1,009,247	1,286,979	1,524,739	1,644,005	1,642,116
Surplus/(Deficit) for year	28,873	(74,634)	(164,853)	(31,302)	43,588
Capital Account at 1 January	191,625	220,498	145,861	(18,992)	(50,294)
Capital Account at 31 December	220,498	145,864	(18,992)	(50,294)	(6,706)

95 The 2004 grant-in-aid was constricted by the overall budgetary position but that since then the amount has been progressively increased i.e. to €1,900,000 in 2005 and €2,044,000 in 2006. The Commission's other income rose in 2004, partly due to support from other Departments and conference revenue, thus off-setting the small increase in the grant-in-aid for that year.

Resources consumed in the production of outputs

Expenses

96 The expenses of the Commission for the years 2000 to 2004 are summarised in **Table 5** below:

Table 5: Commission Expenses – 2000 to 2004

	2000	2001	2002	2003	2004
	€000	€000	€000	€000	€000
Employee costs	538	708	961	971	939
Other operational costs	21	21	23	27	52
Library	63	50	56	63	68
Printing, stationery & office management	51	142	228	228	236
<i>Subtotal operational costs</i>	<i>673</i>	<i>921</i>	<i>1,268</i>	<i>1,289</i>	<i>1,295</i>
Rent and service costs	239	229	156	241	247
Depreciation	61	82	46	51	50
Office running costs	36	54	54	63	50
<i>Subtotal Office costs</i>	<i>336</i>	<i>365</i>	<i>256</i>	<i>355</i>	<i>347</i>
Total Expenses	1,009	1,286	1,524	1,644	1,642

97 The total expenses represent the normal running costs of the Commission. The table shows that annual expenses (running costs) have risen steadily by almost 63% over the last five years but have levelled out between 2003 and 2004.

98 **Table 5** divides expenses between operational costs and office running costs. The operational costs include the entire staff costs of the Commission and major operational items like printing, office management and the library. The other operational costs figure includes staff travel and subsistence, seminars and training. The main movements in operational costs over the period can be summarised as follows:

- Annual staff salaries costs have increased by 74% over the period, from €38,000 in 2000 to €39,000 in 2004. The total number of staff employed has increased from 19¹⁶ to 22, principally by the recruitment of three extra researchers in 2001/02. Salary increases are based on the relevant pay agreements that operated during the period. There was an exceptional payment in respect of death gratuities in 2002.
- Expenditure on the library has increased by 10% per year from 2001 onwards. Over the period there was a continual review of hard copy subscriptions and their relative worth in view of the increased efficiencies of subscriptions to online databases. This led to savings in hard copy subscriptions. There was an ongoing development of library infrastructure including changes in layout. These costs are partly recorded under office running costs;

¹⁶ In 2000 there were 15 full time and 4 part-time staff. In 2005 there were 18 full time and 4 part-time staff.

- Printing costs increased sharply in 2003 and 2004 due to increased output, expanded consultation and dissemination of the Commission's work and an increase in communications activities like seminars and workshops. In 2004, the Commission commenced work on the improvement of the visual presentation of its publications, having regard to the improved quality of publications of public service bodies generally. This involved engaging in a public tendering exercise for its printing requirements, which included for the first time a design requirement. Arising from this tendering exercise, a new design for publications was introduced in 2005 to coincide with the Commission's 30th Anniversary. The design element of the exercise in turn led to further work to enhance the Commission's publication template, which was completed by the end of 2005. As a result, from 2006 onwards all Commission publications include tables of legislation, tables of cases and, in the case of Reports, a template for proposed draft legislation which is in line with the template used by the Office of the Attorney General. The costs associated with these enhancements are intended to improve the Commission's outputs. The Commission anticipates that printing costs for 2005 will have increased over 2004, primarily due to increased publishing activity as well as some aspects of the design enhancements made in 2005. The Commission expects that some increases will be offset by other design changes, including the reduction in the type face used for Commission publications, introduced in September 2005 in its *Report on the Court Poor Box: Probation of Offenders*.
- There were several once-off items under the heading printing, stationery and office management costs in 2002. These included a review of the Commission's IT infrastructure (€22,000) and the migration of all Commission hard copy publications since foundation in 1975 to PDF format in preparation for the launch of the website (€42,000).
- The increase in other operational costs from €7,000 in 2003 to €52,000 in 2004 is explained by the inclusion of once-off costs of €18,970 for a land law conference. Staff training costs increased from €4,384 to €11,500 and seminar costs increased from €6,895 to €11,146.

99 The increasing cost of printing and publications, like all other Commission costs, will continue to be kept under review. The AGO Library and the Audit Committee have made suggestions for organising shared tenders between the Commission, AGO and CSSO to maximise purchasing power and effect price reductions and the Steering Committee supports this approach, where practical.

Office costs

100 The larger office running costs are property rent, service charges and depreciation. The Commission occupies premises in the first floor of 35-39 Shelbourne Road, Ballsbridge, Dublin 4 comprising 6,550 square feet office space and 15 designated car spaces. The term of the current lease is 22 years 7 months from 1 June 1986. The lease agreement allows for rental reviews every five years and the lease will expire on 1 January 2009. The current annual rent is €225,000 with a further service charge in the region of €40,000. The accommodation needs extend to office space, library, research and seminar facilities, a boardroom and computer room facilities. In view of its increased activity generally in recent years, the Commission continues to review its accommodation requirements in accordance with its statutory power in section 3(6) of the 1975 Act to acquire, hold and dispose of land with the assistance and advice, where appropriate, of the Office of the Attorney General and

the Office of Public Works. The other office running costs include such items as stationery and office management, telephone, insurance and audit and accountancy costs. These are summarised in **Table 6**.

Table 6: Other Office Running costs

	2000	2001	2002	2003	2004
	€000	€000	€000	€000	€000
Telephone	12	15	13	14	16
Cleaning	9	10	11	11	9
Insurance	3	3	3	4	3
Postage	3	5	8	22	6
Sundry	4	7	7	3	3
Audit fees	3	6	10	6	10
Accounting fees	-	-	2	3	3
Repairs	2	8	-	-	-
Total other office running costs	36	54	54	63	50

101 Increases in stationery and postage are related to the increased communications and consultation activities. The remaining costs have remained fairly stable over the period.

Capital expenditure

102 In addition to the operating expenses of the Commission, public money is also expended on capital items. The trend in the acquisition of capital assets over the last five years is shown in Table 7 below.

Table 7: Capital Expenditure - 2000 to 2004

	2000	2001	2002	2003	2004
	€000	€000	€000	€000	€000
Fixtures and Fittings	150	8	1	21	7
Other fixed assets	36	146	35	5	21
Acquisition of fixed assets	186	154	36	26	28

Total Commission Expenditure

103 Based on the analysis in this Chapter, the total Commission expenditure for the period 2000 to 2004 can be established as follows:

Table 8: Total Commission Expenditure – 2000 to 2004

	2000	2001	2002	2003	2004
	€000	€000	€000	€000	€000
Expenses	1,009	1,286	1,524	1,644	1,642
Less Depreciation	61	82	46	51	50
Net recurrent expenditure	948	1,204	1,478	1,593	1,592
Capital expenditure	186	154	36	26	28
Total actual Commission Expenditure	1,134	1,358	1,514	1,619	1,620

Non-financial inputs

104 The Commission benefits from services and support provided on a free-of-charge basis for both its professional work and supporting functions. The professional support comes from the participation of legal professionals on working committees and in interacting with Commission projects. No attempt was made to quantify this support in terms of hours or financial value, but the Steering Committee acknowledges that the extent of these inputs is substantial.

105 The annual value of free-of-charge support to the Commission from the Office of the Attorney General for 2005 was estimated at €7,000 in respect of library, technical IT support and training.

Funding of Expenditure

106 The 1975 Act provides that a grant or grants may be paid to the Commission in each financial year of such amount or amounts as the Minister for Finance, on the recommendation of the Attorney General, may consider necessary to enable the Commission to perform its functions. The level of grant in aid for the period under review and the total expenditure are summarised in **Table 4** above. The table shows that the level of grant-in-aid was equivalent to the net recurrent expenditure in all years except 2003 where it was short by €130,000.

Table 4 shows grant-in-aid figures for 2000-2004 respectively as: €1,150,383; €1,278,662; €1,348,000; €1,577,000; €1,593,000. The equivalent figures for net recurrent expenditure are given in **Table 8** as: €948,000; €1,204,000; €1,478,000; €1,593,000; €1,592,000. The surplus/(deficit) for the years of grant-in-aid over net recurrent expenditure is thus: €202,383; €74,662; (€130,000); (€16,000); €1,000.

There is a small amount of other income from the sale of publications and in 2004 and the Commission has received funding for some elements of its projects from other sources (see paragraph 8 above). There was also income earned of €23,394 from the Land Law

Conference held in November, 2004 against which expenses of €18,970 were incurred. The 2003 shortfall and the funding of capital expenditure over the period was made up primarily from drawing on the own resources of the Commission, which had accrued. The annual accounts reflect this depletion of resources through the movement of the income and expenditure account over the period, which was as follows:

Table 9: Income and Expenditure Account

	2000	2001	2002	2003	2004
	€000	€000	€000	€000	€000
Income & Expenditure Account	220	146	(19)	(50)	(7)
Closing balance an end of year					
Increase/(Decrease) per year		(74)	(165)	(31)	43

In summary, the level of total expenditure of the Commission increased from €1.13 million in 2000 to €1.62 million in 2004. The published outputs for 2003 to 2005 were double those for 2000 to 2002 (see paragraph 118, below) but there was not any increase in administrative staff during that time.

Budgetary provision for 2006

107 The budgetary position for 2006 is that €2,044,000 allocated in the 2006 Revised Estimates¹⁷ ..

Conclusions

108 The conclusions are:

- Between 2000 and 2004 the grant-in-aid to the Commission increased from €1.15 to €1.59 million. The expenditure of the Commission increased from €1.01 million to €1.64 million over the same period.
- The funding available to the Commission over the period was sufficient to cover the expenditure of the Commission for all years under review except 2002. The own resources of the Commission (€20,000) were depleted during the period. These resources represented a carry forward of unspent grant-in-aid provisions in the years prior to 2000.
- The Commission has received contributions to support specific projects that are in keeping with its Programme. While this is a means of supporting a higher level of activity without recourse to a higher Vote allocation, it would be more appropriate to have the grant-in-aid increased if necessary on the basis of the discussion of the 1975 Act in paragraph 106 above.
- The financial systems of the Commission have not been developed to enable it to monitor the full unit costs of projects.

¹⁷ The Estimates allocation for 2007 is €4,910,000 and the allocation for 2008 is €4,162,000.

Recommendations

109 The Steering Committee recommends:

- The Commission should continue to review its financial procedures regularly to enable it to ensure that its grant-in-aid remains sufficient to support its operations and the costs of the implementation of its programme of law reform.
- When framing future Programmes the Commission should take into account the level of funding required and the likely funding that is to be available to it over the period.
- Future Commission Strategy Statements should take into account the funding likely to be available to the Commission over the period.
- In accordance with Section 8 of the Law Reform Commission Act 1975 the most appropriate manner of funding the Commission is the annual grant-in-aid. However, if in exceptional circumstances, a situation arises where a Commission project might appropriately be assisted through money advanced from another source of funding provided by the Oireachtas, or assisted by way of the provision of staff, the Commission should consult with the Office of the Attorney General on the terms of such a subvention prior to approval being sought from the Minister for Finance.

4 COMMISSION ACTIVITIES AND OUTPUTS

110 This Chapter establishes the outputs of the Commission and the activities that produce these outputs. It reviews how work practices at the Commission are evolving and the effect of changing work practices on the efficiency and effectiveness of the Commission.

111 The term of reference covered by this Chapter is to identify the outputs of the Commission and examine how efficiently they are produced.

Commission Activities

112 The debates upon the introduction of the 1975 Act provide some insights on the intended resources and activities of the Commission. It was stated that the Commission should be

- an independent, impartial and expert agency,
- composed of persons full-time engaged in the task of law reform,
- freely consulting experts, both legal and non-legal,
- working in close co-operation with Government,
- keeping the law as a whole under review to ascertain where reform is needed, setting the appropriate priorities for reform and recommending who should carry out necessary research and examinations,
- examining and conducting research into branches of law as agreed in a programme and as referred by the Attorney General, and
- including in reports a draft Bill so as to shorten the gap between proposals for law reform and their translation into legislation and to facilitate a more objective debate in the Oireachtas.

The First Programme

113 In fulfilment of its obligation to prepare a Programme for submission by the Taoiseach to the Government of the areas of law to be examined with a view to their reform, the Commission submitted its First Programme on 1 December 1976. The Programme set out the working methods which were to be used by the Commission in line with the legislative framework. These were as follows:

- the Commission would establish the priority of the subjects to be reviewed,
- a working paper would be prepared in respect of areas of law listed in the programme and, where appropriate, would be accompanied by draft legislative proposals,
- where the Commission received views of interest parties on the content of the working paper and proposals for reform, the Commission, would prepare a final report and if appropriate, formulate and submit to the Taoiseach proposals for reform in that particular branch of the law, and might include a draft Bill as part of its proposals,

- the Commission envisaged establishing working parties and including on them non-Commission experts for the purposes of examining areas of law and making recommendations in that regard in accordance with an agreed process or protocol,
- the Commission would also examine the question of desirability of recommending consolidation of certain areas of statute law.

114 The First Programme specified a number of branches of the law which were to be examined (see copy of First Programme at **Appendix 1**). It did not specify the date by which its work was to be completed. During the currency of that First Programme the Commission produced 53 Reports containing proposals for law reform, 11 Working Papers, 11 Consultation Papers and 17 Annual Reports. During that period there were also 19 topic referrals of work from the Attorney General.

The Second Programme

115 The Second Programme (see **Appendix 2**), prepared by the Commission for the Taoiseach, was approved by the Government on 19 December 2000. The Second Programme set out some of the changes to be introduced to the working methods of the Commission. One significant change was the setting of a temporal limit on the Second Programme: the work outlined in the Second Programme was to be carried out in the space of seven years. Another innovation was the acceptance by the Commission of invitations to explain publicly its recommendations after adoption. Between 2000 and 2006, the Commission published 51 major documents comprising 24 Reports and 27 Consultation Papers.

116 The Commission holds numerous meetings annually with Government Departments. As outlined in paragraph 39, above, it meets biannually with both the civil and criminal law divisions of the Department of Justice, Equality and Law Reform. As to other Departments, in 2004 the Commission met the Department of Community, Rural and Gaeltacht Affairs on several occasions in connection with the reform of the law of Charities. In March 2005, the Commission met officials from the Department of the Environment, Heritage and Local Government in connection with its work on Multi-Unit developments. The Commission also meets regularly with stakeholders. For example, in January 2004, a meeting was held with IFSRA, with a follow up meeting in April 2005, to discuss recommendations made in the Consultation Paper on Law and the Elderly (see also paragraph 84, above). In March 2004 a meeting was held with the e-Conveyancing Task Group of HM Land Registry London and the e-Conveyancing Group of the Law Society of England and Wales. In July 2004, the Commission met with Professor Robert Clark of UCD to discuss reform of contract and commercial law. In 2005, there were meetings with representatives of eConveyancing Task Group from Ontario Canada and also representatives from the Land Registry of England and Wales. In 2004 and 2005 the Commission participated in discussions in Dublin, British Columbia and Northern Ireland with a Group of Public Guardians and Trustees in connection with models of guardianship and decision making processes for vulnerable adults (further details are included in **Appendix 6** of this report).

117 Another important innovation of the current Commission is the introduction of seminars and conferences as a working method of the Commission. Seminars are held as part of the consultation process. For example, during 2004 the Commission held four seminars, one in relation to the *Consultation Paper on the Establishment of a DNA database*, one in relation to the *Consultation Paper on Multi-Party Litigation*, one in respect of the Consultation Paper on

the Court Poor Box and one in relation to the *Consultation Paper on Corporate Killing*. An annual conference is now also held, with the first in 2004 held on the *Reform and Modernisation of Land Law and Conveyancing*, and a second one in 2005 on *Guardianship: Law and Vulnerable Adults*. Both lawyers and non-lawyers, and Irish and non-Irish experts, are invited to these seminars and conferences. The Commission decided to organise these annual conferences to allow it promote formal debate on important areas within its programme of law reform.

Outputs of the Commission

Primary Outputs

Commission Reports and Consultation Papers

118 The Reports and Consultation Papers are the most visible and primary outputs of the Commission. The volume of Reports and Consultation Papers published by the Commission in the period 2000 to 2006 is set out in the following table. The increased output since 2001 reflects the effect of an increase in research staff numbers from that time. The feedback from stakeholders indicates that the quality of the outputs has remained high. A listing of the Reports and Papers is set out in **Appendix 5**.

Table 10: Law Reform Commission Publications 2000-2006

	Reports	Consultation Papers	Total	Total expenses €million
2000	4	1	5	1,009
2001	1	1	2	1,287
2002	4	2	6	1,524
2003	2	9	11	1,644
2004	2	6	8	1,642
2005	6	4	10	1,900
2006	5	4	9	2,044

Comparative and relative 'value' of Commission outputs

119 The unit cost of Commission outputs is set out in paragraph 123 below. The Steering Committee holds the view, however, that a proper treatment of the performance of the Commission should consider the impact value of the Commission's outputs. This could be approached from both a financial and non-financial perspective. In applying a financial perspective, an estimate of the 'full value' of the Commission's published outputs for 2002 to 2004 could be made by referring to proxy measures of the comparative and relative 'full value' of projects or of the cost of comparable 'non-Commission' projects.

120 The comparable value of the work of the Commission could also be considered by referring to amounts paid for professional legal services by Government Departments and Offices as proxy measures of the value of the professional work of the Commission. This applies whether in respect of narrow-focus projects (such as the project on judicial review procedure) or wider projects (such as the Joint Project on Reform and Modernisation of Land Law). The main difficulties with this approach are the selection of suitable projects for

comparison purposes and the need to adjust for the commercial profit margins included in the provision of legal services". However, with a view to setting the context, at least, of the costs of the Commission it is worth noting some examples of legal consultancy fees referred to by the Minister for Finance in 2004 (Vol.580 Dáil Debates, col.198ff, 17 February 2004) were:

- legal advice provided by a (named) firm of solicitors to the Department of Finance on the establishment of the Irish Financial Services and Regulatory Authority (IFSRA): €1.5 million (2001); and €76,640 (2002);
- legal advice provided by a (named) firm of solicitors to the Department on the drafting of the *Unclaimed Life Assurance Policies Bill*: €156,000 (2002);
- legal advice provided by a (named) firm of solicitors to the Department on a Report on the *Modernisation and Reform of Legislation Relating to Rosslare Harbour*: €42,250 (2002).

The Steering Committee considers that these examples provide support for a conclusion on the relative value-for-money of the work of the Commission. Further consideration of this would require the construction of suitable effectiveness and impact evaluation models which are beyond the terms of reference for the current exercise.

121 A non-financial approach might seek to monitor the implementation of Commission publications and their influence on the general law reform agenda. Where it involves dealing with one of the 32 specific areas referred to in the Commission's Second Programme of Law Reform (2000), the Commission is implementing its commitment to analyse the area and, where relevant, make proposals for reform. Some projects may involve a relatively narrow area of law, such as judicial review procedure where the wider impact can be identified. Other projects, such as those on the Law of the Elderly or the Law of Cohabitees, may involve a broad range of inter-related areas of law. Such wide-ranging projects may require a substantial commitment in terms of time, resources and a broad consultative process necessary to ensure that recommendations are grounded in an evidence-based approach to research. While it is fair to assert the overall value of these outputs, the wider impact might only be stated in terms of the contribution made to a more fundamental reform agenda. In these cases, the allocation of causality to the Commission's output would be very difficult to establish or monitor particularly where there is a dearth of empirical data available.

122 A good example of the far-reaching impact of a Commission output is reflected by the *Joint Project on Land Law and Conveyancing Statutes*. While the project was not a typical one because of the breath and scope of the task undertaken, it does reflect the variety in the benefits which result from the Commission's work. The project announced in 2004 which serves a number of purposes:

- it is consistent with the objectives of land law reform set out in the Second Programme of Law Reform; it builds on and incorporates previous recommendations of the Commission in this area;
- it has been agreed in close co-operation with the relevant Government Department with responsibility for legislative reform in this area, thus enhancing the prospects for its implementation;
- the Department of Justice, Equality and Law Reform directly engaged two consultants for the project;

- the Commission has briefed the relevant Oireachtas Committee on this specific project;
- it proposes the repeal of over 150 pre-1922 laws on land law (making it the most ambitious single law reform project the Commission has undertaken);
- through the various Land Law Working Groups, which the Commission has established to manage the project, a vast range of professional expertise and time has been made available on a voluntary basis which, if costed on a commercial basis (see the ‘non-Commission’ examples below), would involve considerable expense to the State;
- the use of such Working Groups, drawn from a wide range of relevant stakeholders, has the added advantage of providing ongoing communication to the relevant stakeholders, thus enhancing the potential for wider acceptance of the proposals for reform being made;
- it complements the Government’s general public policy objectives set out in the *White Paper on Better Regulation* (2004) concerning the reform and modernisation of pre-1922 legislation in general.
- it draws on international good practice, exemplified in the Commission decision that its 2004 Annual Conference, which dealt with this topic, was addressed by international speakers
- the expertise generated by the project resulted in the Government decision in 2005 to invite the Commission to lead the project team to draft the Government Bill intended to implement the Commission’s 2005 *Report on the Reform and Modernisation of Land Law and Conveyancing Law* (which had included a draft Bill). The resulting Bill – the *Land and Conveyancing Law Reform Bill 2006* was published in June, 2006 and passed by the Seanad in November, 2006.
- the project will facilitate the introduction of eConveyancing, in line with the Government’s plans for eGovernment.

Unit cost of output

123 The Commission’s broader role in promoting law reform involves further ‘non financial value for money, but it is useful to note that the Commission also currently provides financial value for money. The financial cost of the published outputs could be assessed by reference to the Commission’s budget for the period in which they were produced (see paragraph 118). The total expenses for the relevant years are shown in **Table 10**. As already noted in paragraph 118, above, between 2003 and 2005, the Commission published 29 major documents, comprising 19 Consultation Papers and 10 Reports. This compares with the publication of 13 major documents between 2000 and 2002, comprising 4 Consultation Papers and 9 Reports. Thus, the major publications for 2003 to 2005 were more than double those for the period 2000 to 2003. A simple calculation of total costs divided by outputs could be used to calculate an average ‘unit cost’ for each major document in those two periods. This would show that, for 2000 to 2002, the ‘unit cost’ was €293,846, and that, for 2003 to 2005, the ‘unit cost’ had *decreased* to €178,828. The Steering Committee consider that it would not be meaningful in this expenditure review to attempt any deeper analysis of the matching of cost to output at this stage because each output is unique. (The analysis, as presented, provides a perspective on the investment value of the outputs of the Second Programme as a whole. This provides a starting point for considering the impact value of the outputs. The output from the Law Commission of England and Wales during the review period was comparable but unit costs were greater.

124 Information systems in the Commission have not been developed to a stage where it might be possible to determine the full cost of producing an output (either a Report or a Consultation Paper) on a routine basis. In order to do this, it would be necessary to reconfigure the chart of accounts to make each project or output a cost centre. Then it would be possible, using traditional management accounting principles, to assemble routine project cost reports. In the context of a small public sector body such as the Commission, three issues would need to be addressed in setting up such a system:

- The analysis of unit cost output would take into account overall staff costs and the relative 'value' (both financial and non-financial) of a particular project;
 - A suitable basis for the absorption of overheads would need to be found;
- Non-financial inputs (for example, the value of voluntary professional time contributed to the project) would need to be identified and built into the cost model.

The Steering Committee believe that a knowledge of the unit cost of outputs would be useful for resource allocation and performance measurement at the Commission, as it would:

- Provide a basis for studying productivity issues in the Commission
- Allow for better prioritisation in the allocation of resources when they are scarce
- Identify cases where project costs move out of line
- Support the proper estimation of project costs where external funding may be involved
- Support the monitoring of the financial performance of the Commission.

Secondary Outputs

Seminars and Conferences

125 In recent years, as part of its consultation process and prior to drafting a Report, the Commission has hosted a seminar to which it invites interested parties, and those who have made submissions on a Consultation Paper. For each seminar, the Commission draws up a tailored list of persons, including members of the judiciary, legal practitioners, experts in a particular field, and other interested persons who wish to bring their knowledge and expertise to the Commission's consultative process. During 2004, the Commission hosted 4 seminars. The Commission also hosted, for the first time, a public conference in November 2004 on its *Consultation Paper on Reform and Modernisation of Land Law*.

- *September 2004*: seminar on the Commission's *Consultation Paper on the Establishment of a DNA Database*, published in March 2004. Among those who attended were members of the judiciary, legal practitioners, geneticists and those with forensic science expertise.
- *October 2004*: seminar on its *Consultation Paper on Multi Party Litigation*, published in July 2003. This was attended by, for example, practitioners with a particular interest in personal injury litigation and those with expertise in insurance.
- *November 2004*: seminar on its *Consultation Paper on the Court Poor Box*, published in March 2004. This was attended by, amongst others, members of the judiciary from the District Court and Circuit Court involved in the application of the court poor box disposition as well as representatives of charities.

- *November 2004*: conference on 25th November on its *Consultation Paper on Reform and Modernisation of Land Law*, published in October 2004. This was attended by over 200 delegates and addressed by an international panel of speakers who addressed the conference on the general reform proposals and the intention to link the reform to other elements of modernisation, including e-conveyancing.
- *December 2004*: seminar on its *Consultation Paper on Corporate Killing*, published in October 2003. This was attended by representatives of employers and employees, in particular with an interest in occupational safety and health, as well as by those with an interest in corporate behaviour and organisational psychology.

Research capabilities

126 The Commission is staffed by a number of researchers on short contracts (usually one to two years but more recently 3 years). While at the Commission, the researchers receive formal training in research methodologies and gain excellent on-the-job experience in applying research methods in a structured way. The research of the Commission is very focused on the practical application of law. Accordingly, the trained researchers are an important and valuable output of the Commission that contributes directly to the standard of the legal profession in Ireland.

127 The objectives of the Commission make no reference to contributing to the standard of the research capabilities of the legal profession in Ireland, so the output of fully trained legal researchers is a by-product of the production of properly researched papers and reports. The investment in research capability is an important requisite for sustaining the work of the Commission.

Website

128 The Commission's website is an output which ties back to the consultation papers and reports and their value as a tool for legal research. All of the reports of the Commission are on the website which makes the site a major resource for anyone wishing to research the law in Ireland. In 2003, the number of 'hits' for the website were 10,152. In 2004, this had risen to 24,033. A 'snapshot' for the 24 hour period between 12 and 13 April 2006 recorded 161 hits: this would involve an annualised hit rate of over 50,000.

Free of charge outputs

129 The Commission performs a number of activities on behalf of the State or of other Government agencies and offices and provides outputs that might otherwise need to be purchased elsewhere. An indicative sample of these outputs are as follows:

Free-of-charge outputs to Public Sector and other organisations

- making all Commission publications available 'free to air' on its website, thus assisting the national and international legal community (not all comparable Commissions do this)

- assisting the Irish Financial Services Regulatory Authority (IFSRA) (submission on draft Consumer Code)
- assisting the Company Law Review Group (submission on charitable legal structures)
- assisting the Law Society (membership of Committee drafting Guidelines on EPAs)
-
- assisting the Medical Council (assisting on revised guidelines on consent to treatment)
- membership of bodies such as the Fennelly Working Group on the Jurisdiction of the Courts and the Irish Human Rights Commission Advisory Committee on Older People in Long Stay Care.

Outputs on behalf of the State or other Government Departments and Offices

- membership of international bodies such as the Hague Convention on Private International Law, to which the Commission has regularly sent Irish-accredited delegates along with representatives of AGO and DJELR
- assisting the judiciary (**Appendix 9** mentions the judicial references to Commission Reports, also noted in the *Thirty Years of Law Reform* lecture)
- influencing the content of legislation over and above specific recommendations for reform (e.g. the Consultation Paper on Corporate Killing influencing increased penalties and focus on management liability in the Safety, Health and Welfare at Work Act 2005)
- presenting numerous papers to national and international seminars and conferences related to the Commission's activities, which facilitate the further dissemination of the Commission's work
- liaising with other law reform bodies internationally and contributing to the development of their programmes of law reform, both through regular bilateral meetings and email discussion and communication
- participating in deliberations leading to the establishment of a Law Commission for Northern Ireland (discussed in Dickson and Hamilton, *Re-formulating Law Reform for Northern Ireland*) and agreeing in principle to undertake joint projects on its establishment (under the general framework of the 1998 Belfast Agreements)

While no attempt has been made to assign financial values to the identified free-of-charge outputs, the Steering Committee is satisfied that the potential value of these outputs is at least equivalent to the non-financial support received by the Commission. Regardless of their financial value, these outputs also contribute to the important function of ensuring broad knowledge of the Commission's work, both nationally and internationally.

Conclusions

130 The conclusions are:

- The outputs of the Commission have expanded during the period to include an annual conference, seminars and other media events. This is consistent with a modern

interpretation of the objectives of the Commission. The production of trained and highly skilled legal researchers is a further output of the Commission.

- The Commission benefits from significant free-of-charge inputs in the form of voluntary participation by legal professionals in its work. The Commission also delivers substantial non-financial outputs.
- The most visible outcomes of the Commission are the legislative and non-statutory changes that are triggered by its work. In this respect, the key impact drivers are the relevance of the work programme, the degree of consultation with stakeholders, the information and communication strategy and the ultimate usefulness of the outputs produced.

Recommendations

131 The Steering Committee recommends that:

- The Consultative Committee on Law Reform should continue to contribute to the work of the Project Manager in monitoring progress in relation to the Commission's Programme and implementation of Reports. This role would complement the direct contacts between the Commission and other relevant Departments and Offices and State Organisations.
- The Consultative Committee should have a role in assisting the Commission in its preparation of the Third Programme. This could include several of the original functions identified as valid for the Committee, including
 - assisting the Attorney General in his consultations with the Commission on research programmes, and
 - assisting the Attorney General in the selection of specific topics.
 - monitoring the implementation of the recommendations of the Commission, particularly where implementation of proposals impact on the area of responsibility of more than one Government Department, including the implementation of proposals of the Commission in relation to various Hague, UNCITRAL and UNIDROIT Conventions requires to be co-ordinated.

5 JUSTIFICATION FOR CONTINUED ALLOCATION OF PUBLIC MONEY TO THE COMMISSION

Introduction

132 This Chapter deals with the following elements of the terms of reference:

- Examine the question of whether the allocation of public money to the Commission continues to be justified.
- Examine whether the same objectives of the Commission could be achieved by some other more economical means.

133 The Chapter begins by considering the continuing reasons for the allocation of public money to the Commission in terms of the continuing need for law reform. In considering alternative approaches to achieving the same objectives, references are made to how other jurisdictions are approaching law reform.

Whether the allocation of public money to the Commission continues to be justified

Whether law reform through a Commission remains necessary

134 It is clear from what the stakeholders have said (see Chapter 2, paragraphs 41 to 48) that they consider that law reform remains necessary to society. There are some changes in the emphasis of the objectives of law reform but these do not diminish the continuing need for law reform.

135 The stakeholders were canvassed on the question of whether the law reform through a Commission remains necessary. Only one of the stakeholders thought that law reform could be achieved without a Commission. Another of the stakeholders thought that law reform could be achieved without the Commission but that this would result in law reform taking place in a piecemeal manner, lacking in strategic approach. A third stakeholder thought that law reform could be achieved without the Commission but that a properly funded Commission, with a clear independent mandate, was a useful tool for society to have available to encourage Government legislative action. The other stakeholders considered that law reform could not be achieved without the Commission, based on three contributing factors, namely, the past performance of the Commission, a centralised, holistic approach to law reform which the Commission to develop a strategic approach to law reform and the independence of the Commission. The preponderance of the stakeholder opinion was that the Commission remains necessary in order to bring about law reform in a planned, organised non-partisan way.

136 The question of whether law reform needs to be carried out by a separate body has also been considered internationally. Thus, William H. Hulburt Q.C. has stated¹⁸ that:

¹⁸ in *“Law Reform Commissions in the United Kingdom, Australia and Canada, Edmonton, Juriliber, 1986*

“... there still remains a place for separate law reform machinery activated by concerns which are different from those of the executive government of the day and which are also different from the concerns of government departments and agencies. That place includes the technical law, areas of social policy not fully occupied by existing government machinery, and areas of social policy in which the expertise and independence of the separate law reform machinery are useful to government. Failing separate law reform machinery, the necessary work of law reform is likely to be neglected and the law will become less and less suitable to change to conditions and values of society ...”

Experience in other Jurisdictions

137 It is relevant to look to other jurisdictions and the weight they attach to law reform to evaluate how important law reform is today. A number of countries established law reform commissions after Ireland did¹⁹. Commissions established either before or after 1975 are all producing reports and proposals for law reform. Internationally it can be observed that law reform remains an important issue.

138 Confirmation of the relevance of the objectives of law reform and the Commission can be found in the international sphere. In Canada the Canadian Law Reform Commission was abolished in 1992. The Ontario and British Columbia Commissions were closed in 1996 and 1997 respectively. The Canadian Law Reform Commission was re-established in 1996 and the provincial Commissions have been resurrected. In Australia there was significant debate about the possibility of abolishing the Law Reform Commission in 1994 but the Commission survived the review. Similarly, the New Zealand Commission survived rigorous review. These Commissions have the same objectives as those of the Irish Commission and the fact that they survived review or were resurrected indicates that in the countries in question – Australia, Canada and New Zealand – the objectives of a law reform commission are relevant to society in those countries. Primarily for the reasons discussed in paragraphs 135 and 136, above, namely the need for an independent body with sufficient status to carry out the task of sustained law reform, these comparable law reform bodies have been retained or reinstated.

139 In March 2005, the relevance of law reform agencies was described by the South African Deputy Minister for Justice and Constitutional Development, in the following way:

*“As society is dynamic, there is a constant need for law reform. Law reform is a continuing task, especially in our day and age with its intricate and rapidly changing social climate hence the phenomenon of standing law reform agencies...”*²⁰

Whether the objectives could be achieved by alternative more economical means

Stakeholder views

¹⁹ e.g. Fiji and Nigeria in 1979, Hong Kong SAR and Tanzania in 1980, New Zealand in 1985, Thailand in 1997 and Malawi in 1998.

²⁰ Advocate Johnny de Lange, MP, South African Deputy Minister for Justice and Constitutional Development, at the Association of Law Reform Agencies of Eastern and Southern Africa’s Law Reform Conference, Cape Town.

140 The stakeholders were asked whether they thought there were other ways in which the objectives of law reform and of the Commission could be achieved. They indicated that either they could not think of a more effective mechanism and that even if different mechanisms were undertaken, the same expertise would have to be used, research would have to be contracted out to specialists, the projects would still have to be managed and, ultimately, the results might be quite uneven. The stakeholders consider that it is unlikely that the same quality and quantity of productivity could be achieved by any other means than to have a body such as the Commission.

Practices in other Jurisdictions

141 Other common law jurisdictions have Law Reform Commissions similar in nature and strategic focus to the Commission in Ireland. Indeed, as mentioned above, in those instances where it was thought possible to abolish the Law Reform Commissions, they were quickly re-established as the most appropriate way to develop proposals for law reform. As David Walker has written in a review of the work of the Scottish Law Commission²¹:

“ ...There is little doubt that it is better to have a permanent body concerned with law reform and revision than leaving it to the occasional Royal Commissions, Departmental Committees or other rather haphazard investigations. It is only a permanent body which can undertake the long term detailed investigations which are necessary before any changes in a substantial and complicated of law, such as succession, diligence [enforcement of debts] or evidence can be settled and put into a proper form for enactment ...”

The Steering Committee regards the recent experience of other jurisdictions which have abolished and re-established law reform agencies in the central government sector as confirmation of the public good argument that there is no persuasive economic case for establishing the law reform function in a different way. The international experience considered in this review has not yielded a better suitable alternative to the current Irish arrangements for law reform.

Alternative means of setting the law reform agenda

142 One variation in the way in which Law Reform Commissions go about their business is the way in which the work programme of the Commissions is set. Under Irish legislation the Commission formulates its programme of work which is approved by Government. The Commission also receives requests for research to be carried out and recommendations made in additional specific areas of law from the Attorney General. In other jurisdictions, the entire work programme of the Commission is constituted by requests from the Government to prepare proposals for law reform in specific areas. That is the position in the case of the Law Reform Commissions of Australia and Hong Kong.

143 The benefit of the system which operates in Australia and Hong Kong is that the rate of implementation of the Commissions' Reports is quite high. This appears to be a direct result of the work of the Commissions being determined by the Government which, if it refers an issue to the Commission, clearly has an interest in pursuing law reform in that area. The suggestion is that if the programme of work was set (and not only approved, as is the case

²¹ DM Walker “The Scottish Law Commission under Review” (1987) *Statute Review* 115

here) by the Government there might be a greater implementation rate of the Commission's recommendations.

144 In this context, the Steering Committee considered whether implementation of the Commission's work is a true measure of its effectiveness. If this is the case, then it would be appropriate to consider whether a change in the way in which the programme of work is set for the Commission would be beneficial in effecting a higher rate of translation into legislation of the work of the Commission. A number of stakeholders have pointed out that implementation is not necessarily the best way of judging the work of the Commission. They are that in certain circumstances the Commission itself suggests that primary legislation is not necessary and in any event, the drive to implementation is a matter for politicians. Nonetheless some stakeholders clearly see implementation of the Commission's recommendations as equating with the success of the Commission.

145 The Steering Committee considers that the responses given by the stakeholders – (and in this context the views of the former Chief Justice Ronan Keane represent the view of a stakeholder make clear that the functions of the Commission in determining areas of law which require to be reformed is something which is highly valued. The stakeholders refer to the independence of the Commission and the benefits of that independence not only in terms of the actual research carried out by the Commission into individual areas of law but also in its overseeing function namely, to keep the law under review, notably through the preparation from time to time of new programmes of law reform (which the Commission began most recently in 2006 with a view to preparing a new programme that will commence in 2008) and, to respond to requests from the Attorney General on specific topics. The Steering Committee considers that the views expressed by the stakeholders would suggest that it would not be worth sacrificing the overseeing functions of the Commission in order to achieve greater implementation. The problem of implementation, if there be one, rests with parties other than the Commission.

146 In further support of this conclusion it is worth noting that in other jurisdictions (save for Australia and Hong Kong) the same system as is provided here is used so that Law Reform Commissions in India, Canada, Bangladesh, South Africa, New Zealand, Kenya, Sri Lanka and Nigeria all establish their own work programme and also accept references from the Government.

Alternative work methodologies

147 An examination of the methodologies employed by other jurisdictions indicates that the same basic methodologies as used by the Commission are used elsewhere. Discussion papers are produced accompanied sometimes by seminars. These are followed by reports which make recommendations for reform. Working Groups are established, sometimes involving departmental officials and legal experts. An issue has arisen in other jurisdictions about the benefit of having non-legal members of the Commission. The legislation in Ireland permits this and the Commission has had non-legal members in the past. Therefore, where this is considered beneficial²² in the future, the existing legislation already provides for it.

148 As other jurisdictions use the same methodologies as the Commission it is difficult to suggest other ways in which the objectives can be achieved – perhaps the very fact that the

²² see the views of the former Chief Justice Ronan Keane at page XII of his paper

methodologies used by the Commission are the same as are used elsewhere of itself is evidence of the fact that there are no such other methodologies.

149 There is little information from other jurisdictions as to alternative methodologies which can be used to achieve the same objectives. The stakeholders have said that the changes which have taken place in the methodology, in particular, the consultation process which precedes the establishment of the precise project in particular areas of law, is most beneficial not only because it assists the targeting of the project but also because of the debate which it engenders. The comments of the stakeholders make clear that changes which have taken place have been welcomed.

Conclusions

150 The Steering Committee concludes that the way of proceeding as set out in the Law Reform Commission Act 1975 represents a tried and tested methodology for achieving law reform. It further considers that the evidence from other jurisdictions, as well as what has been said by the stakeholders is convincing and indicates that there really are no better ways of achieving the objectives of the Commission.

151 It is clear from what the stakeholders have said that the changes which have taken place in the way in which the Commission goes about its work, in particular the consultation process which precedes the establishment of the precise project in particular areas of law, are considered most beneficial not only because they assisted the targeting of the project but also because of the debate which they engender. The comments of the stakeholders make clear that the changes which have taken place in the scoping of projects accompanied by early consultation, the introduction of seminars, the public launch of consultation papers and reports are all changes which bolster achievement of the objectives of the Commission and are all to be welcomed.

152 Having taken into account what has occurred in other jurisdictions – including the rigorous review of the need for Law Reform Commissions – the Steering Committee considers that an independent Law Reform Commission funded by the Exchequer is the best means of achieving law reform. The stakeholders have indicated that they not only consider this to be only way of achieving law reform, but that they consider it an effective and efficient method. While implementation of the Commission's reports is one way of measuring the success of the Commission, its value does not outweigh the value which is attributed to having a Law Reform Commission which independently decides its own work programme, albeit while it also accepts references from the Attorney General. The stakeholders have clearly indicated that the changes introduced to the way in which the Commission goes about its business are very welcome and increase the effectiveness of the Commission in its work.

153 The continued allocation of public money to underpin the work programme of the Commission is justified.

154 The level of funding provided over the period of the review appears to have been sufficient to support the work done by the Commission under its Second Programme, to the extent that, as **Appendix 5** of this Report indicates, the Commission had by the end of 2006 completed a substantial proportion of the topics identified in the Programme and is in a position to complete its work under the Programme within the timeframe envisaged. It is also

clear that this is good relative value for money as it is likely that the same outputs would have required greater funding if carried out by another body (see paragraph 118, above).

Recommendations

155 The Steering Committee has no recommendations arising from consideration of the issues referred to in this Chapter.

6 PERFORMANCE INDICATORS

Introduction

156 This Chapter draws on the analysis of inputs, outputs and outcomes in Chapters 2 to 5 to propose monitoring and evaluation indicators that could be used by the Commission.

157 The term of reference covered by this Chapter is to:

- Suggest performance indicators by which the efficiency and effectiveness of the Commission can be measured in the future.

Performance Monitoring and Evaluation Indicators Framework

158 A performance indicator framework for the Commission should distinguish between monitoring and evaluation indicators. Monitoring indicators should, as far as possible, be captured in routine reports to middle and senior managers and to the Commissioners. Evaluation indicators are more likely to be used for senior management reports and reports to external stakeholders. The potential groups of monitoring and evaluation indicators are defined in **Table 11**.

Table 11: Monitoring and Evaluation Indicators

Monitoring indicators	
<i>Performance Indicator</i>	<i>What the indicator aims to reflect:</i>
Resource indicators	The financial, human, and administrative inputs to the programmes
Activity/output indicators	The actual outputs of projects and/or the activities that produce those outputs. These would be work-in-progress reports
Outcome indicators	The short term effect of the outputs on the different primary stakeholders of law reform
Impact indicators (where measurable)	The longer term contribution of the work of the Commission to the legal framework and to Irish society.
Evaluation Indicators	
Economy indicators	indicators of the mix and relative cost of inputs
Efficiency indicators	indicators of volume, timeliness and the unit cost of output

Effectiveness indicators	indicators of the extent of the achievement of project/ programme targets/objectives (including impact indicators).
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Monitoring indicators

159 The monitoring indicators are used to gain an understanding of current activities outputs and outcomes of the Commission at periodic intervals (possibly quarterly). Monitoring indicators are descriptive and non-judgmental. They provide feedback on the results of resource allocation and programme implementation decisions and are mainly needed to track progress in the achievement of the targets in the Second Programme. By their nature, monitoring indicators should be quantitative and should be capable of measurement without controversy and through current information systems at the Commission. Middle managers use monitoring indicators to make assessments of progress, for quality assurance purposes and the make routine project management decisions.

160 The monitoring indicators are based on the assumption that the work of the Commission can be accurately described in terms of resources that are applied through activities for the production of outputs. The satisfactory delivery of outputs leads to achievement of the strategic objectives of the Commission. The Steering Committee is satisfied that it is appropriate to view the nature of Commission project activities in this way.

161 A potential set of performance monitoring indicators for the Commission is set out in **Table 12**. The indicators identified are drawn from the analysis in the earlier Chapters of this report.

Table 12: Typical Monitoring Indicators

	Commission Programmes
Resource indicators	<ul style="list-style-type: none"> • Total expenditure • Total operational and office running costs • Total capital expenditure • Analysis of cost according to staff, other direct project costs and office costs • Total number of available working days analysed per project • Number of staff training days
Activity/output indicators	<ul style="list-style-type: none"> • Trend in number of outputs: • Numbers of reports, papers, seminars, consultations, free-of-charge outputs • Number of visits connected with projects
Outcome indicators	<ul style="list-style-type: none"> • Dissemination of output to stakeholders, including publications • Appearances at public events • Degree of transfer to legislation

	<ul style="list-style-type: none"> • References to Commission output by the Courts • Degree of contact from stakeholders (e.g. website hits, correspondence etc.)
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162 The Commission already monitors many of the resources, activities and outputs indicated in the table in various ways. The type of monitoring information that is formally considered by senior management and the Commissioners on a regular basis should be reassessed by reference to the suggested monitoring indicators.

Performance evaluation indicators

163 While the monitoring indicators are descriptive and susceptible to measurement, the performance evaluation indicators are judgmental and seek to describe an interpretation of performance by reference to set criteria. The most common evaluation criteria in the public sector are economy, efficiency, effectiveness and impact.

Economy

164 The study of economy is concerned with ensuring that the Commission has an appropriate mix of resources available for the delivery of the Second Programme and for subsequent programmes. Based on the financial analysis in Chapter 3, it is clear that the Commission has a number of economy issues to deal with:

- Control of staff costs, including managing the appropriate mix and grade of available staff
- Minimising the accommodation costs in line with securing appropriate office accommodation for the activities of the Commission
- Seeking economies through collaboration with AGO, CSSO and others
- Controlling the costs associated with consultations and dissemination of outputs – printing, seminars etc.

165 The operating costs of the Commission have increased steadily over the period of the Second Programme and this corresponds with increased outputs over that period (see paragraph 118, above). This increases the pressure on the Commissioners to seek out greater efficiency in the execution of work and the delivery of outputs. There are two general ways of considering the efficiency of the work of the Commission – by making a direct relationship between resources and outputs, or by studying the productivity of systems and practices in use at the Commission.

Efficiency

166 A direct comparison of the resources consumed and the outputs delivered would be achieved by tracking the unit cost of output. This would require a project costing system at the Commission. The actual cost of each project is an important indicator as it is a tool to underpin any attempt to control or contain output costs.

167 In the analysis of expenditure and outputs in Chapters 3 and 4, some of the relationships between cost and increased activity can be clearly seen, but an analysis of efficiency can only be made at an aggregate level. It was observed by the Steering Committee that the level of primary output (reports and papers) has risen in recent years while at the same time the type of output has diversified to cover consultations, seminars and conferences as well. As

experience is gained in running these new events, it would be important to retain a knowledge of unit costs for different kinds of events so that a suitable baseline might be established in future for performance evaluation purposes. There is general acceptance that the quality of output has been maintained at a high level.

168 A complementary approach to efficiency for the Commission would be to seek to measure the timeliness of project work. This would involve measuring the elapsed time of projects and comparing against project plans. This is currently done. It would also involve tracking the time spent by project teams in the conduct of projects and delivery of outputs. A basis for the assignment of staff costs to projects is needed.

Effectiveness and Impact

169 The effectiveness of the Commission has been considered in some detail in Chapter 2 where the main effectiveness drivers were identified. It has been established that the consensus view is that the effectiveness of the Commission can be viewed in terms of the extent to which the outputs fulfil the requirements of the targets in the Second Programme. There is a range of views on this, with some commentators holding the view that the implementation of recommendations and enactment of recommended legislation are the visible measurable signs of the Commission's effectiveness. Other stakeholders would go further and argue that the strength of the debate generated through the work of the Commission is a valuable outcome of Commission work. This would be difficult to measure.

170 The Steering Committee holds the view that some aspects of effectiveness of the Commission are inherently measurable. These include the implementation of recommendations and the enactment of relevant legislation. These can be and are measured. It accepts the argument, raised in the international literature, that this does not provide a full picture of the effectiveness of the Commission and that it would be wrong to link the grant-in-aid to such a limited measure of effectiveness. For longer-term impact, there is scope for conducting more research and surveys of the opinions of both professional stakeholders and the general public about the Commission and about law reform in general. An awareness of these opinions is important to the Commission in shaping the next programme.

Table 13: Performance Indicators for the Commission

Economy indicators	<ul style="list-style-type: none"> • Trend in overall costs • Trend in salary costs • Training cost as % of salary cost • Administrative cost as % of programme cost • Cost per available working day
Efficiency indicators	<ul style="list-style-type: none"> • Extent of achievement of deadlines for the publication of outputs • Projects completed on time and on budget • Full cost per project
Effectiveness indicators	<ul style="list-style-type: none"> • Extent of completion of the Second Programme • Degree of implementation of Commission recommendations • Degree of conversion of reports into law

	<ul style="list-style-type: none"> • Maintenance of capacity (good practices, technology, intellectual capital) to manage and undertake law reform programmes and projects
Impact indicators	<ul style="list-style-type: none"> • Prioritisation of topics in future law reform programmes • Public perception of the need for law reform and the relevance on the Commission's programme

Management Reporting Framework for the Commission

171 In the management of the Commission a balance must be struck between the outputs and outcomes achieved from its work and the maintenance of its capability to continue achieving the desired outcomes into the long term from one Programme to another. This requires that performance reporting in the Commission should provide a multi-dimensional perspective of Commission activities that links the achievement of objectives with the maintenance of operational capability. A popular way to establish these links is to use a Balanced Scorecard or other multi-dimensional performance monitoring report.

172 The Balanced Scorecard is intended to be used as a monitoring tool for the implementation of a strategic plan or programme. The recommended approach is for a baseline measure to be established for each indicator at the outset of the programme and for a target to be set to be achieved by the end of the period. The owners of the strategy (the Commissioners and project controllers) would then monitor progress towards the achievement of the target on a regular basis, possibly quarterly.

Conclusions

173 The Commission uses many of the monitoring indicators identified in this Chapter. For example, the Commission monitors the achievement of deadlines for the publication of outputs, and these now form part of the briefing for the annual Estimates process. Similarly, in the Commission's Annual Report 2004, it conducted a mid-term review of the extent of completion of the Second Programme and this allowed it to plan for completion of the work involved within the timeframe of the Programme. The Commission publishes on its website a Table of Implementation of Commission recommendations, and this facilitates comparison with comparable law reform bodies. Also, the Commission's Second Programme identified priority topics for review during the lifetime of the Programme, which enabled it to examine these at an early stage to ensure they would be completed within the timeframe of the Programme. Further work on the monitoring indicators identified in this Chapter can be done.

Recommendations

174 The Steering Committee recommends that:

- The Commission should develop its information system to facilitate cost allocation on a project or individual basis in order to support the production of costing information – specifically, the unit cost of output of Commission projects. This will provide better and more relevant information to inform decision making and resource allocation plans and

priorities taking into account that decisions should not be based exclusively on financial cost alone, but should also be based on the wider non-financial value of projects.

- The extent of implementation of the recommendations of the Commission is a measurable indicator of effectiveness but does not give a full picture of effectiveness. The Commission should continue to monitor the extent of the implementation in legislation of its recommendations as a basis for discussing and assessing the effectiveness and impact of its work, taking into account that this should not be seen as the only indicator of its effectiveness and that other indicators of its effectiveness, including those used by other law reform bodies, should also continue to be monitored.
- The Commission should consider the introduction of a multi-dimensional performance indicator reporting system like the Balanced Scorecard, as a support to the continuous review of its efficiency and effectiveness.

APPENDICES

APPENDIX 1: FIRST PROGRAMME

The Law Reform Commission

AN COIMISÚN UM ATHCHÓIRIU AN DLÍ

FIRST PROGRAMME FOR EXAMINATION OF CERTAIN BRANCHES OF THE LAW WITH A VIEW TO THEIR REFORM

INTRODUCTION

1. The Law Reform Commission was established by the Law Reform Commission Act 1975 as a statutory body corporate to keep the law of the State under review and, in accordance with the provisions of the Act, to undertake examination and conduct research with a view to reforming the law and to formulate proposals for law reform. By section 4 of the Act the Commission is required, in consultation with the Attorney General, from time to time to prepare for submission by the Taoiseach to the Government programmes for the examination of different branches of the law with a view to their reform. If such programmes prepared by the Commission are approved by the Government, then the Commission shall undertake an examination of and conduct research in relation to the subjects set out in the programme and, if the Commission thinks fit, formulate and submit to the Taoiseach proposals for the reform of the law.

2. The Act also provides that, at the request of the Attorney General, The Commission shall undertake an examination of and conduct research in relation to any particular branch or matter of law whether or not such branch or matter is included in the programme submitted by the Commission and approved of by the Government. If the Commission is so requested by the Attorney General, then it shall formulate and submit to the Attorney General proposals for reform of the particular branches or matters of law submitted. Pursuant to this provision of the Act, the Attorney General has already submitted to the Law Reform Commission the following matters:

- (1) The law relating to the age majority;
- (2) The law relating to the domicile of married women;
- (3) The prohibited degrees of relationship in the law of marriage;
- (4) The application of foreign law in cases in which the courts of this country have jurisdiction to grant a decree of nullity of marriage.

In respect of each of these subjects the Attorney General has requested the Law Reform Commission to undertake an examination of and conduct research into the law and, if it thinks fit, to formulate proposals for reform of the law in question and to submit these proposals to him. The Law Reform Commission is currently engaged in the examination of all these matters.

3. For some time the Law Reform Commission has under consideration possible areas of study to be undertaken by the Commission in its early years. As it obviously would not be feasible to endeavour to include in the Commission's first programme a review of all the laws of the State, a selection of subjects has been made that will encompass an area touching on many different branches of the law. In the programme the subjects appear in alphabetical order. While the Commission hopes to be able to deal with the several aspects of these subjects concurrently, it is clear that all aspects of a particular subject cannot be dealt with at the one time, and the Commission may find it necessary or desirable to deal separately with different aspects of a particular subject. It is also clear that some subjects will require a longer period of research and study than others. However, as a matter of priority, the Commission will give its first attention to the subject of family law and to the law relating to the liability of builders, vendors and lessors for the quality and fitness of premises.

4. With respect to the matters appearing in its programme for law reform the procedure of the Commission in its work will be to prepare, after the necessary study and research, a working paper on the subject, which

may, if the Commission thinks it necessary or desirable, be accompanied by draft legislative proposals for consultation with interested parties. When the Commission, within whatever time-limit it fixes, has received the views of the various interested parties, the Commission will prepare a final report and will, where it thinks fit, formulate and submit to the Taoiseach proposals for reform in that particular branch of the law; and may, if it thinks it helpful to do so, also submit as part of its proposals a draft Bill to implement the proposals.

5. The Commission will take into account the reports, findings or recommendations of any other committees that have dealt with or are currently dealing with any aspect of the subjects contemplated in the Commission's programme. It also envisages the setting up of working parties, partly composed of persons from outside the Commission, for the purpose of examining and making recommendations to the Commission in respect of any aspect of the programme referred to such working parties by the Commission. It is also contemplated that the Commission may from time to time consider the desirability of recommending that certain areas of our statute law should be referred for consolidation to one or more of the existing statute law consolidation agencies, e.g., the statutes relating to the sale of intoxicating liquors (the Licensing Laws), the statutory provisions for compulsory acquisition of land and premises, the statutes dealing with local government and the enactments relating to prisons (the Prisons Acts).

THE PROGRAMME

Administrative Law

6. As a first step in the examination of this vast subject the Commission proposes to examine the question of establishing a uniform procedural system to govern-

- (1) the making and processing of applications for the many different kinds of licences now required by law for various activities,
- (2) the decisions to grant or refuse such licences, and
- (3) The hearing of appeals from decisions granting or refusing such licences.

Animals (liability for injuries or damages caused by)

7. This will involve an examination of the present state of the law and consideration of whether there is justification for the continuation of the doctrine of *scienter* and whether any distinction should be made between liability for animals used for, and necessary for, the owner's or keeper's trade or business and liability for other animals. It will also involve an examination of the necessity for or the desirability of a continued distinction being made between the liability of those who keep wild animals and that of those who keep what are regarded in law as domestic animals.

Conflict of Laws

8. There is very little case law in Ireland in regard to private international law and little has been written on the subject. The Commission intends as a long-term project to prepare proposals for a statute codifying, reforming and modernising the rules of conflicts as they apply in the State. They propose that in the meantime the conflict rules in various branches of the law be examined with a view to recommending reforms, in particular so far as concerns the following matters:

- (1) Recognition and (where appropriate) enforcement of foreign marriages, legitimations, adoptions, *filiations*, maintenance decrees, annulments, legal separations and divorces;
- (2) Recognition and enforcement of foreign arbitral awards;
- (3) The concept of domicile and the concept of habitual residence;
- (4) The application and construction of foreign law;
- (5) The rules of conflict in regard to matrimonial property regimes and succession, in particular, (a) the distinction drawn between movables and immovables and between plurality of succession and unity of succession, (b) the application of the *lex situs*, the *lex domicilli* or the *lex patriae* and (c) the doctrine of *renvoi* etc.;
- (6) The rules of conflict in regard to contractual and non-contractual obligations, including the rules on the international sale of goods.

9. In considering the rules of private international law in any particular branch of the law the Commission will take account of the various International Conventions (multilateral, bilateral and regional) dealing with conflict of laws, and more particularly the Conventions prepared by The Hague Conference on Private International Law since 1954. The Commission will also examine the present method of implementing in municipal law and ratifying International Conventions as well as the interpretation by the courts of the rules contained in the Conventions (use of *travaux préparatoires* etc.).

Criminal Law

10. The Commission proposes to examine various aspects of the criminal law, and especially the following subjects:

- (1) The law concerning larceny and kindred offences and concerning acts involving fraud and dishonesty. This is largely covered at present by the Larceny Act 1916, which has proved to be unsatisfactory in many respects and inadequate in others. The Commission considers it desirable to provide a clearer and more effective code of law to replace the existing law.
- (2) The mental element in crime and the legal fault required to constitute a crime.
- (3) Criminal responsibility, including such matters as intoxication, necessity, duress and age.
- (4) The criminal culpability of corporations.
- (5) The law relating to minor offences concerned with public peace and order. In the Commission's view the existing statutory law in this area (e.g., the Vagrancy Act and the Dublin Police Acts) require to be amended and consolidated or replaced.
- (6) The law relating to offences against the person and offences against property, including the question of the possible reclassification of the existing statute and common law offences and reform and consolidation of the law relating to malicious injury and damage to property and to persons.
- (7) The law on matters proper to be taken in to account in sentencing convicted persons.

Evidence

11. The existing law of evidence rests mostly on judicial decisions and to a considerably lesser extent upon statutory provisions. The revision and codification of the law of evidence, both civil and criminal, has been a subject much discussed for many years in common law countries and there seems to be general agreement as to the desirability of a code or codes of evidence, if such should prove to be practicable. The Commission appreciates that because of the immensity of the task it would not be feasible to undertake the preparation of comprehensive codes all at once. It is proposed that particular areas of the law be examined with a view to reform and that the reforms be designed to fit in to an ultimate whole without the necessity for any subsequent substantial change. Priority will be given to areas where the reforms will simplify and improve court procedures and to particular problems, such as burdens of proof (evidential and persuasive burdens etc.), the competence and compellability as a witness of the spouse of an accused person, the hearsay rule, the Judges' Rules, unsworn evidence by children, and unsworn statements by an accused person. The Commission also proposes to examine the question of the desirability of retaining the oath for witnesses and for jurors.

It is to be noted that the Criminal Law Bill of 1967 contained much of a reforming character and the Commission will give close attention to the provisions of that Bill in its examination of the criminal law and the law of evidence.

Family Law

12. This is a subject which covers a very wide area and in this programme it is not the intention of the Commission to undertake studies in the whole field of family law. For example, certain aspects of it, such as the law of succession, have been the subjects of comprehensive legislation, which came into operation as late as 1 January 1967. Also, certain proposals by the Government for the amendment of the law of nullity have recently been put forward by the Attorney General for public discussion. The Commission considers that it should undertake an examination of both the substantive and the procedural law relating to matrimonial causes and the nature and the basis of existing matrimonial proceedings generally.

In addition, the Commission proposes to examine the law relating to causes of action (other than strictly matrimonial proceedings) such as criminal conversation, loss of *consortium*, breach of promise to marry, and the adequacy of the existing law for the protection of the family. Furthermore, the Commission proposes to undertake an examination of the rights of husband and wife (including property rights) arising out of the marriage and the duties and relationship of the members of the family (parents and children) towards each other. The Commission will also examine the law as to illegitimacy (including the succession and other rights of illegitimate children). In examining the various aspects of family law the Commission will consider the question of the best type of judicial or court structure or structures appropriate to deal with the different matters which fall under the general heading of family law.

Privacy

13. There appears to be growing public concern in most countries, including Ireland, at the lack of legal protection in this area. It is proposed by the Commission to examine the whole area of the protection of privacy and to include in this examination and under this heading, in addition to purely personal privacy, the question of professional secrets, industrial secrets, expertise and what is commonly referred to nowadays as "know-how". The examination will also cover the protection of the knowledge of persons who by their research or other work produce new varieties or species of plant life.

Sales

14. The desirability and the feasibility of enacting in one statute or in some codified form a law dealing with the sale, and matters arising from the sale, of both movables and immovables are matters that the Commission proposes to examine. This would include the liability of the vendors, lessors and builders of premises and the quality and fitness of the premises. This latter aspect is one which the Commission proposes to examine at a very early stage, as mentioned in paragraph 3 *supra*. In considering the law as to sale, the Commission will examine the desirability of ratifying, and giving effect to, the two Hague Conventions of 1 July 1964 on (1) the Uniform Law on the International Sale of Goods and (2) the Uniform Law on the Formation of Contracts for the International Sale of Goods.

State Side Actions

15. The whole basis of that form of litigation which comes under the heading of "State Side", e.g., *Mandamus*, *Certiorari*, *Prohibition* etc., requires to be examined with a view to seeing whether the continuation of the present forms of procedure can be justified or whether the same or similar relief ought to be obtainable under a general heading in appropriate cases. The Commission will undertake this examination.

Statute Law

16. For some time there has been an increasing interest in common law countries in the desirability of a more flexible rule for the interpretation and construction of statutes and for a departure from what is at present largely a purely literal interpretation. Since our membership of the European Communities involves us in a very close way in legal and other matters with countries that have a much more flexible approach to statutory interpretation than is the case in this country and since Community instruments and regulations will be interpreted by the standards and methods of the European Communities, it is desirable to re-examine this whole question in the context of our own legal system. It is to be noted that in the United States of America, which is a common law country, there is a much more flexible approach to the interpretation of statutes than exists here. However, "interpretation" covers not merely the general approach to the problem but also the question of what materials (written or other) outside the statute itself may legitimately be used for the purpose of ascertaining the intent of the legislature. Specifically, the Commission will examine the use of *travaux préparatoires* and of commentaries by experts. They will also examine such canons of interpretation as the *ejusdem generis* rule and the rule (often known as the rule in *Heydon's case*) under which the court has to consider the law before the enactment of the statute, the defect or mischief in that law and the remedy adopted to cure that defect or mischief. These canons of interpretation will, of course, have to be considered not alone in the context of ordinary statutes but also in the context of codified law and of the International Conventions that become part of Irish law.

17. The Commission proposes to examine ways in which the present method and style of drafting statute law might be improved. It also proposes to examine the form of production and publication of statutes and of amendments to statutes, as well as the question of the consolidation of statute law (already referred to in paragraph 5 *supra*).

December 1976

APPENDIX 2: THE SECOND PROGRAMME

second programme for examination of certain branches of the law with a view to their reform: 2000-2007**approved by government on 19 december 2000
after submission by the Taoiseach to the Government,
pursuant to section 5(1) of the Law Reform Commission Act 1975****PART ONE - OVERVIEW****Introduction**

The Law Reform Commission was established by the Law Reform Commission Act 1975 as a statutory body corporate to keep the law of the state under review and, in accordance with the provisions of the Act,

- (a) to undertake examinations and conduct research with a view to reforming the law, and
- (b) to formulate proposals for law reform.

In order to give effect to these requirements the Commission is required by section 4 of the Act, in consultation with the Attorney General, from time to time to prepare for submission by the Taoiseach to the Government programmes for the examination of different branches of the law with a view to their reform. Such programmes prepared by the Commission are subject to approval by the Government. (A second way in which the functions of the Commission under the Act are to be performed is pursuant to specific requests, commonly called "references", from the Attorney General to the Commission to examine, conduct research into or make proposals for reform of particular branches of the law whether or not they are included in a Programme.)

This Second Programme for Law Reform sets out the work which will be undertaken by the Law Reform Commission over the next seven years. This Programme lists (in Part Two below) thirty one topics grouped under the following general branches of the law: the Legal System; Evidence; Administrative Law; Civil Rights Law; Criminal Law; the Law of Obligations; Real and Personal Property; Company and Commercial Law; Law and the Information Society; Vulnerable Groups and the Law; Family Law; and International Law. It also envisages the continuation of an exercise recently undertaken by the Commission: the preparation of proposals for an annual Law Reform (Miscellaneous Provisions) Bill. In addition to the items covered in the Programme, the Commission will continue to give priority to any issues which may be referred to the Commission by the Attorney General.

The Commission has been operating under its First Programme of Work adopted by the Government in 1977. While many of the broad fields set out for study under the First Programme continue to deserve sustained attention, much of the more specific work listed therein has been completed. Over sixty key documents, including Working Papers (known since the mid 80s as Consultation Papers) and Reports, have been adopted on topics as diverse as: plain language in statutory drafting and interpretation, defamation, personal injuries, family courts, sentencing, privacy and the law governing inter-country adoption. Much of this work has led on to reforming legislation.

Mission Statement

The Commission sees its mission in the following terms (which is the formulation used in its Strategy and Business Plan, 1999-2001):

In accordance with the provisions of the Law Reform Commission Act, 1975, but subject thereto, acting as a body which is independent in the performance of its functions, and as effectively as possible within the resources available to it:

1. in the interest of improving and maintaining justice in the law for all persons governed by the laws of the State, to keep those laws under independent, impartial and expert review with a view to ensuring that they are regularly and systematically reformed, and

2. with a view to the achievement of the foregoing objective

(a) in consultation with the Attorney General, to prepare for submission by the Taoiseach to the Government for its approval (with or without amendment) Programmes for the examination of different branches of the law with a view to their reform;

(b) to undertake examinations and conduct research with a view to reforming the law pursuant to Programmes for law reform approved by the Government aforesaid;

(c) at the request of the Attorney General, to undertake examinations of and conduct research in relation to particular branches of the law; and

(d) to formulate proposals for law reform on matters specified in such Programmes or at the request of the Attorney General.

Procedural Developments

It is appropriate to record here a number of developments in our modus operandi which have been growing during our First Programme and which will, we believe, be important during the Second Programme.

Following the Deloitte and Touche Report on the Commission, a Consultative Committee under the aegis of the Attorney General was set up by Government decision of March 1998. The Committee consists of representatives of interested Government Departments, the Bar Council, the Law Society and the Law Reform Commission. Its remit is to assist the Attorney General in his functions under the Act with regard both to research programmes and to particular references by the Attorney General to the Commission; and to monitor the implementation of recommendations of the Commission. The Consultative Committee is therefore to continue in existence after the settling of this Second Programme. The Committee will be a channel by which the Commission can keep Departments of State informed about its work; and they can keep the Commission abreast of their progress in implementing recommendations for law reform, within a reasonable time frame; and also as regards areas in which they themselves are preparing law reform.

Recently the Commission has welcomed invitations to explain publicly its recommendations after their adoption. This helps to keep the importance of law reform before those interested and the broader public. This was noted as follows in the foreword of the President of the Commission, Mr Justice Lavan, to the Commission's statutory Annual Report for 1998:

"During the year the Law Reform Commission appeared for the first time before an Oireachtas Committee, namely, the Joint Committee on Justice, Equality and Law Reform, to present and discuss the Commission's report on Privacy (Surveillance and the Interception of Communications). While it is not of course the function of the Commission to enter the political arena with regard to the implementation of its recommendations for law reform, it is entirely consistent with the Commission's independent, non political role that it should explain its recommendations to those interested, whether they are our elected representatives or others. The Commission therefore greatly welcomes this development".

The Commission will continue its practice of consulting widely with the general public and experts, including: legal and other appropriate practitioners, governmental organisations and scholars in all relevant disciplines. Where appropriate, the Commission may establish other standing Working Groups comprised of experts in particular fields, as has already been done in the field of land law and conveyancing and, more recently, in the sphere of private international law.

The Second Programme

The contents of the Second Programme reflect the rapid pace of social and political change in Ireland and internationally.

In **Ireland** there is increasing emphasis on the importance of government accountability; and on the need to improve the interface between the citizen and the law. There is also greater sensitivity towards the plight of vulnerable groups such as children, the disabled (including those with legal incapacities) and the elderly. On the scientific and technological front, new dilemmas for law and society are emerging; and the information revolution is already affecting the way we live our lives and conduct our business.

On the **International** plane, the issue of law reform is necessarily affected by the trend towards economic globalisation and greater European integration. The problems that arise if there are differences between national legal systems have become more acute; often, they require the conflict of laws aspect of a law reform problem to be considered as well as its substantive features.

Hence, too, as a separate matter, it is ever more important that the Commission should pay close attention to the law and practice of our fellow EU Member States, while keeping in constant touch with developments in other common law jurisdictions. And, of course, the Commission must always bear in mind the common standards in the field of human rights set by the European Convention on Human Rights.

The Programme may prove to be an ambitious one for a seven-year period. When the likelihood of Attorneys General's references, which have priority, is taken into account, it may well be that not everything in the Programme can be completed within that period. Indeed, some of the topics listed are probably of a long-term nature and likely to have a life of more than seven years. While the Commission in seven years' time will be free to decide what to propose for its next Programme, it seems likely that there will be a degree of carry-over from the present Programme to its successor, just as there has been from the First Programme to the present one. At all events, it is considered better to be ambitious than to be over cautious.

Certain topics in the list contained in Part Two of this Programme, which are identified by means of an asterisk, will be given priority by the Commission in addressing its tasks under the Programme.

The Commission intends during the next seven years to fulfil its mission on the basis of the Second programme and of further statutory requests from the Attorney General, in co-operation where appropriate with those other official bodies which have a role in Law Reform.

PART TWO – BRANCHES OF THE LAW AND SPECIFIC TOPICS

The Legal System

- 1** Access to the law for the citizen and, in particular, the effectiveness of the promulgation and dissemination of statutes and statutory instruments.
- 2** Limitation of actions.
- 3** Class actions and representative actions taken in the public interest.
- 4** Alternative dispute resolution.
- 5** Statute Law: completion of the Commission's remit under its First Programme in the sphere of statutory drafting and interpretation.

Evidence

- 6 Forensic evidence.
- 7 Other aspects of the law of evidence in civil and criminal cases.

Administrative Law

- 8 Tribunals of inquiry.
- 9 Appeals from administrative decisions including judicial review.

Civil Rights Law

- 10 The law of privacy
 - (i) Privacy and the law of confidentiality;
 - (ii) Privacy in the context of the criminal justice system: longevity of criminal records and the expunging of certain offences from the record;
 - (iii) Privacy in specific institutional contexts: the workplace; the healthcare system; prisons.

Criminal Law

- 11 The law of homicide.
- 12 Defences including provocation, legitimate defence, duress and necessity.
- 13 Inchoate offences.
- 14 Procedure in criminal cases.
- 15 Restorative Justice.
- 16 Corporate criminal liability.
- 17 Penalties for minor offences.

Law of Obligations

- 18 The law of tort. Aspects of the law of compensation for personal injuries.
- 19 The law of contract. Privity of contract and the rights of third parties.

Real and Personal Property

- 20 The law of trusts including the law of charities.
- 21 Succession law.
- 22 The law relating to condominiums.
- 23 The Commission will continue its general review of land and conveyancing law with the assistance of its standing specialist Working Group.

Commercial Law

- 24 Mindful of the Government's proposal to establish a statutory Company Law Review Group, current issues arising in the area of commercial law will, as appropriate, be reviewed and examined.
- 25 Exceptions to the *nemo dat quod non habet* principle on transfer of title to goods.

Law and The Information Society

- 26 Electronic commerce and the Internet, where appropriate having regard to activities undertaken or to be undertaken by Government Departments and in particular:
 - (i) privacy on the internet and encryption.
 - (ii) liability of service providers.

Vulnerable Groups and The Law

- 27 Law and the elderly, including the legal protection of older persons transferring assets and 'advance care directives.'
- 28 The law affecting persons with physical, mental or learning disabilities, including issues of capacity, guardianship and the right to marry.

Family Law

29 The law of adoption - a general review.

30 Rights and duties of cohabitantes.

International Law

31 Negotiation and preparation of various international agreements, including their implementation in Irish law. We pay particular regard to Ireland's participation in conventions prepared by UNIDROIT, UNCITRAL and the Hague Conference on Private International Law.

Miscellaneous Provisions Bill

32 The Commission will continue to prepare an annual Law Reform (Miscellaneous Provisions Bill), as a vehicle for making minor reforms, ranging over the branches of the law which are covered by this Programme.

General

It is naturally difficult to anticipate change which may call for law reform in the future. Accordingly, the Commission considers it best to supplement the list of discrete topics given above by stating that if events require law reform in any area within any of the branches of the law set out above, the Commission will, where appropriate, and subject to the limits of its available resources, bring forward the necessary proposals.

The Commission retains a continuing interest in codification of the law and proposes to address the issue of codification with regard to matters falling within branches of the law set out in this Programme as appropriate. In all these areas, the Commission will, where appropriate, have regard to the activities of other official bodies interested in law reform, among them the Courts Service, and be ready to co-operate with them.

APPENDIX 3: CONTACT LIST OF STAKEHOLDERS

Paul Appleby	Director of Corporate Enforcement
Bob Browne	Assistant Secretary, Department of Justice, Equality & Law Reform
Brid Clarke	CEO, Mental Health Commission
Noel Conroy	Garda Commissioner
Fergus Glavey	Comptroller & Auditor General's Office
James Hamilton	Director of Public Prosecutions
The Hon. Mr. Justice Adrian Hardiman	Judge of the Supreme Court
Maurice Manning	President, Irish Human Rights Commission
Hugh Mohan	Chairman of the Bar Council
Frank Murphy	Solicitor, Community Law Centre, Ballymun
Ken Murphy	Director General, Law Society of Ireland
Kerida Naidoo	Barrister – at law
Pat Nolan	Department of Enterprise, Trade & Employment (Secretary to the Company Law Review Group)
Mary O'Dea	Consumer Director, IFSRA
Caoimhin O'hUiginn	Assistant Secretary, Department of Justice, Equality & Law Reform (since retired)
Aishling Reidy	Director, Irish Council for Civil Liberties
Sheila Simmons	Irish Association of Older People

APPENDIX 4: QUESTIONNAIRE RESPONSES

1. Purpose of Law Reform

1.(a) What in your view is the purpose of law reform?

To review both current legislative provisions and areas where new legislative provisions may be required and to make recommendations (1)

The purpose of law reform is to examine existing legislation, propose amendments or enactment of new laws, advise and inform legislators and generally educate the wider community. It also has the function in advising policy formulators of the likely practical effect of the implementation of proposed legislation, the overall objective being to ensure that the legislative framework within which a modern democratic State operates reflects the ethos and morals of its citizens and attracts support and respect of the Community generally. (2)

The main purpose is to try and ensure that the law meets the needs of the society in which it applies. Out of date or inappropriate laws do not appropriately regulate the balance of interests in society, and thereby bring the law into disrepute. This can lead to less respect and observance, and to people making other arrangements so they do not have to rely on it. Ultimately this can have the effect of adversely affecting people from their society, so that anti social practices and attitudes creep in (3)

In our view, the aim of Law Reform is to evaluate, consider and review various branches of the law in the State and to make recommendations in regard to the various issues and anomalies that require amendment, consolidation or appeal (4)

Updating, reforming or developing areas of law when it becomes apparent that such scrutiny becomes necessary. (6)

Firstly, to identify areas of the law that no longer serve the purpose for which they were originally designed (or that do so with less effectiveness than they should) and to examine how best to remedy those deficiencies; secondly, taking account of the needs of a changing society, to develop recommendations for new laws in order to achieve stated policy objectives or otherwise to respond to changed circumstances. (7)

To ensure that the law generally is kept up to date, specifically to enable legislation to be amended so as to ensure that common law developments are translated into statute in order to maintain clarity and prevent judge made rules from taking the place of the function of the legislature in advancing legal development. A complementary function ought to be to ensure that areas of the law which are not of political or public interest are nonetheless kept under review and updated where necessary. (8)

Law reform is in my view absolutely essential. The primary reason for this is that the common law is not a system which sets out a general principles from which the answers to legal problems may be derived, but rather works in the opposite direction extracting general principles from the answers which have been given in specific cases. While this system has many advantages, it has one marked disadvantage in that the common law has no method by which it can correct its own errors when it takes a wrong turning. We therefore have to rely on statute to do this. There are innumerable examples which could be given where statutory intervention has been required in order to correct or eliminate obvious injustices which had crept into the common law.

In addition to this, nowadays the world is changing so rapidly that it is frequently necessary to legislate in order to deal with some new problem that the law has not previously encountered. One has only to consider such areas as computer crime or the problems raised by developments in biological medicine to appreciate this. If one

were to wait for the common law to develop answers to the problems which arise there would be great uncertainty in the law for many years and no guarantee that the answers which would be given by the courts would be correct. Finally, in a democratic society law is too important to be left to the judges. Much of law is not merely a question of finding technical solutions to technical problems but involves policy choices which should be made democratically. The opinion of judges on what those choices should be is not necessarily better than the opinion of lay people. (9)

1. (b) Do you think that Law Reform is necessary: Yes (1) Yes (2) Yes, very necessary (3) Yes (4) Yes (5) Yes, most definitely. (6) Yes. (7) Yes. (8) Absolutely necessary (9)

1. (c) Please give reasons to support your answer

An independent body whose designated function is to review the law is required to ensure our legislative provisions are in line with best practice and to take account of changing societal norms and expectations. Reviews of law also should provide the wider public with an opportunity to comment and be consulted and raise issues of importance and concern to the public (1)

The rapidity of societal change over the last half century is unprecedented and as change is being managed in many other spheres e.g. public administration, human rights, independent and on going review of the legislative framework which forms the basis for governing the State is essential. (2)

As mentioned in (a) above, the ultimate price for neglecting law reform is the fragmentation of society, with all the resulting costs, for example, tax evasion, corruption, an underclass operating outside the law in relation to work and crime and the undermining of law enforcement and social capital. If law is necessary, it must be law which commands the respect of the community in which it applies. This respect and loyalty can only be maintained if law is up to date, relevant, gives people fair remedies and achieves a balance in protecting the interests of different sectors. In order to ensure this, it is necessary to respond to situations where the law is clearly inadequate. It is also desirable to undertake systematic review of law with a view to improving the contribution which law can make to a better society. An example of this is the current project undertaken by the LRC to review land law and conveyancing law. Reforms in these areas have the potential to make the transfer and ownership of land more efficient and less costly, thereby making the economy more competitive (3).

With the enlargement of the EU, the growth of the Irish economy and prosperity of the people, Ireland is now part of a diverse and multi cultural society that requires a constant review of its laws in the interest of the people and the State. (4)

It is clear that even the best designed statutes need review and overhaul periodically. With the passage of time practices and case law develop such that the law needs revisiting, e.g. consider the development that has taken place in the enumeration of personal rights that has taken place over the past 50 years. (6)

Because of the needs and deficiencies as identified in answer (a) above, and because such needs and deficiencies are likely to continue to arise as time passes. (7)

In order for laws to develop in a rational and principled manner, their reform should be subject to objective analysis by competent independent experts who can advise Parliament as to the available options for reform, thus ensuring that legislators do not act solely in response to lobbying by special interests groups. On-going review of existing legislation can also anticipate problem areas and thereby obviate the necessity for emergency legislative amendment. (8)

1. (d) Do you think that the nature of law reform changes over time, and if so, what are the factors which effected?

Societal changes and development in our knowledge have impacted on the nature of law reform. For example, advances in medical knowledge have raised issues in relation to consent, appropriate care and treatment. (3)

What is meant by “nature of law reform”? If it means the source from which law making derives its authority i.e. Article 15.2 of the Constitution, then the sources does not change but law itself must adapt to changing circumstances and reflect the existing and emerging needs and aspirations of citizens. (2)

Several factors have a major influence in the kinds of law reform which have been undertaken in recent years.

- One is the wish to consolidate and simplify legislation, an example of which is the Taxes Act of 1967 and the initiative signalled by the Statute Law Restatement Act 2003.
- Another is the desire to achieve real social change, an example of which is the Succession Act 1965 and the recent Family Law Acts introducing redistribution and family property of separation and divorce.
- A third is the influence of the EU, which has set an agenda and pace from Brussels. An example of this is the environmental legislation
- A fourth is to react to unacceptable shortcomings and omissions in current laws of which an example is the current concern about the Coroner’s lack of power to enforce the attendance of a witness at an inquest.
- A fifth factor is the need to rebalance the rights of different interests in society, and a recent example is the Residential Tenancies Act 2004.
- A sixth is a political need to be seen to be doing the right thing, even though it may not result in any useful changes. Examples are the constitutional referenda in relation to abortion.

There may well be other reasons for which law reform is undertaken, and they will vary over time, depending on the perceived political priorities of the moment. For example, the recognition of the hidden operating costs in Irish society have led to a commitment on the part of the Government to make sectors more efficient, resulting in the Competition Act and the establishment of the PIAVB system. Other priorities can be expected to develop over time. (3)

Yes, see (c) (4)

Yes (5)

It is more that I think the areas where reform is necessary changes over time than that the process changes over time. Law reform is a creature of socio-political discourse and it is inevitable that there is a demand for new “legal products”. Forty years ago, for example, apartment management complexes and the issues of company and contract law which arise for them were not an issue. (6)

Yes. Societal change is a reality and the law must continually evolve to address new challenges and meet new needs. Law reform is not like the painting of the Forth Bridge: it is not something which must be started again once it is complete. As reforms are recommended and implemented, the scope for further reform theoretically narrows, but the evolution of society means that there continues to be a need for an admittedly more *recherché* process of reform, (to continue the analogy of the first sentence) areas where a lick of paint is needed to touch up cracks that begin to show. (7)

On balance no, the pressures which drive law reform tend to be consistent and in order for law reform to function properly the remit of those charged with carrying it out should be clear both to them and to the public. In saying this I draw a distinction between on-going review of the law, which I understand to be the subject of this questionnaire, and the kind of reform which may result from fundamental changes in Government policy. (8)

With regard to the specific question whether the nature of law reform changes over time, I would say it does both because the nature of society changes and the legal problems facing society change, even though human nature remains the same. (9)

2. Outputs of the Law Reform Commission

2 (a) What, in your view are the outputs of the Law Reform Commission

Publication of well researched and documented consultation and working papers which informed debate and decision making both at policy level and by the legislature. (1)

The Law Reform Commission has to date published 70 reports with only one of which ... [this body] ... can make an informed comment. A more public profile would help to engage the interest of the general public and might encourage wider debate on recommendations. (2)

The major outputs are the reports and consultation papers. Others include the occasional seminars and the opportunity it gives for invited experts to meet and contribute to the consultation process. (3)

The various working and consultation papers published by the LRC. (4)

Its Reports and recommendations. (6)

The primary outputs are Consultation Papers and Reports, whether on matters referred by the Attorney or on items in the Commission's programme of law reform. Other outputs include annual reports, which are of a housekeeping nature (work about work as distinct from substantive law reform), and their periodic publications of programmes, which are a bridge between the housekeeping and substantive work. (7)

The only outputs of which I have any personal experience are the Law Reform Commission Reports and Recommendations. (8)

The principal purpose of the Law Reform Commission is to give a technical examination to legal questions which arise in the context of possible law reform so as to provide policy makers and lawmakers with a range of options and choices. While it is not the primary purpose of the Law Reform Commission, their consultation papers and reports necessarily contain detailed analysis of existing Irish law and a comparative analysis of the law in other jurisdictions. As a result good reports and working papers can form a very useful tool for the legal student or researcher or anybody who wants to acquaint themselves with the state of Irish law. (9)

2. (b) How often do you use the primary outputs of the Law Reform Commission?

Often (1)

Sometimes (2)

Often. There are a very useful and concise summaries of the law and where relevant address important issues of doubt and uncertainty. (3)

Sometimes (4) Rarely (5)

Rarely. (6)

Very often (much more than 5 times a year). (7)

Sometimes. (8)

I find I use the primary outputs of the Law Reform Commission (by which I take it you mean their reports and consultations papers) very frequently. Often Law Reform Commission reports are the only source of information about particular branches of Irish law. For example, the law on contempt of court is particularly inaccessible and were it not for the Commission's report it would be difficult to find the law summarised in one place. While this Office has no responsibility for law reform, it is nevertheless consulted on a frequent basis by the Department of Justice, Equality and Law Reform and the reports of the Law Reform Commission in relation to criminal law invariably help to form our views as to what changes should be made in the criminal law, even though we may not always agree. (9)

2 (c) Have you noticed any change on how the Law Reform Commission goes about its work over the past few years?

Higher public profile in highlighting issues and publications. (1)

Have not been observing developments. (2)

There has been a noticeable increase in the output of the LRC over the last few years. (3)

No (4)

Contact with the community (5)

No. (6)

From my own point of view, the practice of engaging in informal consultations with the Department whose Minister is most likely to be the one responsible for ushering proposals for law reform through Parliament that has emerged in the last 5 years or so is a welcome one. The involvement of key civil servants in the implementing Department in specific proposals at the development and consultation paper stage (e.g. reform of land and conveyancing law) is an example of co-operation which in no way compromises the Commission's statutory independence but helps to further the common goal of sensible reform. The increasing use by the Commission in recent years of working groups comprising Commissioners and staff outside experts from the judiciary, the legal professions, academia and elsewhere as the need arises is another progressive and advantageous measure. (7)

Yes. There appears to be a greater effort to seek the assistance and views of practitioners working in the areas which are the subject of review and study by the Commission. (8)

Concerning the manner in which the Commission has gone about its work over the last few years, there have indeed been changes. The work of the Commission has become much more directed towards matters of practical concern. This has come about as a result of more focused programmes. In particular on a number of occasions the Attorney General has referred particular matters to the Commissions because the Government or a Government Department was desirous of reforming the law in that area and wished expert guidance on the options available. In addition the second programme of the Commission is much more specific than the first which was a very broad programme, not all of which could possibly have been attempted. If a programme is too broad the Commission is in effect left to choose its own priorities which may not be those of the Government. So far as the actual method of working is concerned, recent years have seen a greater use of seminars and meetings. I think this has been effective. It is sometimes easier to get people to attend a two-hour meeting and say what they think than to get them to put their thoughts on paper. People often mean to provide written comments but simply do not get around to it because of the pressure of other work. Most of the seminars I have attended have led to lively and interesting discussion.

I should add that over the past twenty years the Commission has produced a series of papers and reports which now cover a large part of the substantive criminal law. As a result of the implementing laws, much of the criminal law has been modernised and put into statutory form within the past fifteen years. While not all of the recommendations of the Commission have been implemented or followed, in every case I think it is fair to say that the Commission's work has stimulated a debate which has informed the content of legislation and the non-acceptance of Law Reform Commission proposals should not always be seen as a failure on the part of the Commission (9).

2. (d) Are there further changes to the work of the Law Reform Commission that you would like to see? Please provide brief details.

Further engagement perhaps with agencies in relation to how their policies could be developed in line with the proposed legislative reforms, in the absence of specific legislative provision. (1)

The work of the LRC appears very satisfactory. The only desirable change is that more of the recommendations would be duly enacted in law. (3)

No (4)

More contact with the community (5)

I would like to see its reports and recommendations more integrated with overall public policy development. It does seem to me to have some of the flavour of an ivory tower such that there is often little political or administrative buy in to its reports. (6)

Assuming this question to be about work practices rather than the subject of work programmes, I don't see any particular need for the Commission to depart from the practices that it has put in place in recent years (see (c) above). (7)

No. (8)

3. Stakeholders of the work of the Law Reform Commission

3(a) who and what do you think is, and has been, effected by the work of the Law Reform Commission?

State agencies, the Legislature, Government, public, service users and carers. (1)

Public Servants, Legislators, the Voluntary and Community Sector and all Agencies influencing public policy are enlightened and informed on an on going basis. (2)

The LRC has set a high standard in their approach to law reform and as such is likely to have influenced the civil servants, the legal profession and academic study. Where the proposals have been implemented in law, the LRC has an even wider influence. (3)

Individuals, the State and various other entities. (4)

In principle, I would like to say that the populace as a whole and public and private bodies have been affected by the LRC but in practice the implementation rate of their reports is low. (6)

Different groups within society have been affected in different ways by various aspects of the work of the Commission. For instance, the Commission's report on Illegitimacy in the early 1980s led to far-reaching changes in the law as it relates to persons whose parents have not married each other; its proposals on domestic violence were (as implemented by the Oireachtas) in ease of spouses, partners and children who find themselves under oppression in the home; and its recommendations on the Statute of Limitations as it applies to those who have suffered latent personal injuries changes things both for those suffering such injuries and the insurance industry. It is hardly the case that every body of people whose common link was that a particular change in the law has affected them or might affect them would regard themselves either individually or collectively as ongoing stakeholders in the work of the Commission. On the other hand, when a particular proposal is the subject of a Consultation Paper, individuals or bodies who submit responses can be expected to consider themselves as having a stake in the outcome of the consultation in question. (7)

I cannot identify any particular category of person who might have been affected by the work of the Commission but it is the nature of the function of such organizations that they affect the development of society in subtle ways which are not easily articulated, but the absence of which would be identifiable over longer periods of time. (8)

It would be difficult to give a comprehensive list of who the Commission's stakeholders are, but the significant ones certain include the Government, the Oireachtas, perhaps the People of Ireland, the Attorney General, my Office, the Department of Justice, Equality and Law Reform, and the legal profession. In addition other interest groups will be stakeholders in respect of particular issues – a good example would be the farming community when the Commission reported on occupiers' liability.(9)

3(b) Do you consider your organisations/office to be a stakeholder in the work of the Law Reform Commission

Yes (1)

Yes (further information is identifying). (2)

Yes, a significant one in that we seek to feed into the LRC process where appropriate, and have a keen interest in the results. (3)

Yes, in so far as the work of the LRC applies to the law relating to companies in particular. Matters of general Criminal law as might effect the functions of a prosecutor are also relevant. (4)

Yes (5)

I do not think my organisation would have a conscious sense of itself as being such a stakeholder. (6)

Yes, the work of the Law Reform Divisions of the Department of Justice, Equality and Law Reform is influenced by the Commission's output. The role of the Department as stakeholder is also evident where joint activity is undertaken, e.g. reform of land and conveyancing law, and to some extent in relation to matters referred by the Attorney General to the Commission at the instigation of the Minister. On the other hand, the Department is a conduit through which the Commission's proposals come to fruition in the form of a draft Bill; to that extent it is not a stakeholder in the Commission's work in the same way as, say, auctioneers or conveyancing lawyers with a vested interest in the outcome of the Commission's proposals for land law reform might see themselves. (7)

Yes (8)

So far as the level of interaction of this Office with the Law Reform Commission is concerned it is excellent. We are frequently asked for views in relation to proposed working papers and reports and I doubt if any papers have been published in the criminal law area which have not had some input from this Office. Successive Presidents of the Commission and Commissioners have worked hard to maintain a good relationship with this Office and I would regard this relationship as a highly satisfactory one. (9)

3 (c) If so, are you satisfied with the level of interaction your organisation/office has with the Law Reform Commission.

Yes. Does Law Reform Commission has involved ... in its work where appropriate, addressed issues raised by ... and assisted... in the fulfilment of its statutory functions. (1)

A more formal relationship... would be welcome but a better organised and systematic approach from (this organisation) would also be necessary. (2)

Yes, access to and cooperation with the Commission is welcomed by it. (3)

Yes (4)

Would like more contact (5)

No. See 3(b) above. (6)

Yes. (7)

Yes. I have personally been asked to participate in both the review of Judicial Review and the legislation dealing with DNA evidence. (8)

4(A) how effective do you think the Law Reform Commission is at achieving its objectives?

Very effective (1)

Given the dependency on the Legislator while its current effectiveness may be problematic, its potential most be considerable. (2)

Very effective (3)

Very effective (4)

Moderately effective (5)

Not very effective. (6)

By and large, very effective. (7)

Moderately effective (8)

Very effective (9)

4. (b) Please give examples as to the effectiveness/non effectiveness of the Law Reform Commission

Influenced the development and content of our legislation and policies. The Law Reform Commission has also over the years been effective in highlighting issues that did not always attract interest or support or where there has been an absence of knowledge or awareness. (1)

If the Commission had had the opportunity to review the health legislation the monumental cock up in relation to pension deductions might have been avoided and given the manner in which the most recent statutes in relation to this issue were enacted there may be an important role for the Commission in this regard. (2)

The level of analysis in the reports is excellent, and the recommendations are invariably sensible, thoughtful and practicable. The current seven year programme addresses some important and complex areas of law which will be a major task to reform but very worthwhile, including general trust law, land law and conveyancing. Other important areas which have been identified for examination include elder law and the law for capacity for persons suffering under a disability, and the law of homicide. Important reports include those on reforms of various aspects of land law, which needs this sort of systematic and comprehensive review and recasting. The large number of excellent consultation papers currently published contain other important examples of the effectiveness of the LRC, including those on trust and charitable trusts, Tribunals of inquiry and multi party litigation. (3)

The effectiveness can be measured by the high quality of the work and number of recommendations implemented from the various reports published by the LRC. Even where certain recommendations are not implemented, they nevertheless raise an awareness of certain issues that might in the future be considered more appropriate. An example might be the proposal concerning a physical prosecutor and Revenue Court. (4)

Just tot up the number of reports where no action has taken place and compare them with those reports which have been acted upon. (6)

The careful consultation process undertaken by the Commission as it prepared its second programme of law reform resulted in a solid and realistic forward plan on which the Commission can be confident of giving substantial delivery. The Commission's methodology in drawing up and publishing consultation papers, generally displaying in each case a high quality of research and thought, enables it to adjust its provisional recommendations in the light of the responses to the consultation process. (7)

To take the two examples I have had some personal involvement with, I think that the legislation dealing with DNA evidence was well thought out, researched and implemented, whereas the considerable effect that went into studying the Judicial Review process appears not to have had any impact. (8)

I think the earlier part of the answer to the questions has already indicated that my view is that the Law Reform Commission has been very effective in achieving its objectives. The extent of reform of the criminal law is testimony to the effectiveness of the Commission. In so far as the objective of actually reforming the law is concerned, this is, of course, a matter for politicians and I do not believe that the Commission could be more active in pushing a case for law reform than it has been in the past. They have in general been very effective in publicising the reports, particularly in recent years, and invariably the launch of a paper has been accompanied by media publicity in which one of the Commissioners or the Director of research would give an interview and explain the Commission's proposals. This has been a highly effective method of operating and one which has brought to the attention of the public the contents of the papers which often are not easy to explain to lay persons. So far as concerns methods to improve the working of the Commission, the Commission has over the years been fortunate to have the services of experts in criminal law in the Commission, in addition to which all its Presidents had experience of presiding over criminal trials. However, inevitably not all of the Commission will have such expertise. (9)

4(c) how, in your view, could the effectiveness of the Law Reform Commission be improved?

The format adopted by the Law Reform Commission of issuing a consultation paper followed by a report is an effected approach. Further opportunities for consultation which would include structured workshops would enhance the effectiveness of the Law Reform Commission's Consultative processes. (1)

Could the Commission have an advisory role in drafting legislation? (2)

This is difficult to answer without knowledge of the internal workings of the Commission. From our perspective, it does an excellent job. It supplies speakers and relevant topics for conferences and requests, its website is excellent and allows everyone to follow its activities and its publications are readily available for modest sums. We regard it as a very productive body. (3)

Additional resources might yield more consultation papers on various subject matters that require review. (4)

More contact with the community (5)

The problem as I see it is the perceived distance of LRC from the bodies which might actually study and scrutinise their reports and recommendations. Why, for example, is the LRC not required to report to the relevant Minister with policy responsibility for a particular area rather than to the Taoiseach, with that Minister required to respond to the recommendations within 6 months of receiving them. Also, it might be appropriate to have two-phase reports with options circulated for consideration before adoption – rather like a Green Paper/White Paper approach. (6)

No particular view at present. (7)

In a great many cases recommendation made by the Commission are not acted on by Government and it appears often to be the case that the commissioning of reports by Government is employed as a means of avoiding or stalling legislative action in controversial areas. It also appears to be the case that the Commission could operate more effectively if it had the remit and resources to undertake examinations and conduct research on its own initiative. (8)

There are many important projects in the field of criminal law in the Second Programme yet to be completed. I believe the area is sufficiently important to warrant a permanent sub-committee of the Commission with input from other experts who are not Commissioners such as operates, I understand, in relation to conveyancing. (9)

5. Continued justification of the Commission

(a) Do you think that law reform could be achieved in Ireland without a Law Reform Commission?

No. Without the Law Reform Commission, there is a likelihood that law reform will be based on immediate operational matters and the strategic overview will be lost. (1)

In a rapidly changing society in which it may still be prudent “to hold fast to the things that are good” some mechanism for monitoring cause and effect is necessary. The Law Reform Commission is in place. Is it necessary to reinvent the wheel? (2)

Yes. (3)

LRC should be the driving force (5)

In practice, that is what happens anyway. But such reform takes place in a piecemeal unstrategic way. (6)

Law reform as a feature of Government policy clearly predates the establishment of the Commission and resulted in some very fine work. However, the Commission’s ability to act at a certain remove from the day-to-day exigencies of the political system and to deliberate calmly and independently on aspects of the law under its scrutiny means that areas of the law that need particular research and examination can be addressed alongside those areas regarded by the legislature as of pressing political need. (7)

Clearly law reform could be achieved without the Law Reform Commission but a properly funded Commission with a clear independent mandate is a useful tool for society to have available to encourage Government legislative action. (8)

I think that the business of law reform in Ireland would be much harder to achieve without a Law Reform Commission in some form. It is important that before legislative proposals are put forward that a range of expert advice be taken and that there be public discussion of the options which exist for legislation. The Law Reform Commission provides one mechanism to do this. In other cases, working parties, expert groups, or specific commissions are established and perform a similar function. Where legislation is introduced without any prior public consultation it is not always well thought out. Our statute book is littered with examples of badly thought-out legislation which was enacted without any serious discussion or consideration as far as one can see. The Oireachtas itself is not a very effective body for improving draft legislation from the technical point of view. It will not necessarily contain the sort of expertise which is able to form a critical judgment on the legal technical elements in proposals for legislation. In addition, party political point scoring can sometimes worsen rather than improve the quality of legislation. The value of the Law Reform Commission is to provide the Government and the Oireachtas with a possible range of options so as to enable them to make policy choices and to do so in the confidence that having opted for the policy of their choice its technical implementation will be as effectively carried out as is possible.(9)

5(b) If so, how else do you think it could be achieved?

Not aware of any other more effective mechanism. (1)

The same expertise would have to be tapped into, and law reform research would have to be contracted out to specialists. The process would still require management, and the results would probably be uneven. For major projects such as the reform of land law and conveyancing, the LRC has the advantage of continuity and consistency which might be more difficult to ensure if the job were contracted out, because of its size. We think it unlikely that the same of quality and quantity of productivity could be achieved more efficiently. It is of course very helpful for the public that there is one known centre for this activity to which it can address itself.(3)

Not applicable (4)

I think there is a continuing need for an LRC but I think it is necessary to examine the operation of effective LRCs in other jurisdictions – by effective I mean having recommendations addressed with more seriousness, and generally achieving a better rate of implementation. (6)

By being developed in promoting Departments where it would be in competition for research resources with matters of more immediate political necessity. (7)

APPENDIX 5: WORK DONE UNDER THE SECOND PROGRAMME OF LAW REFORM AND ATTORNEY GENERAL REQUESTS

The following reviews the work done by the Commission between 2000 and end 2006 on the 32 individual headings identified in the *Second Programme of Law Reform 2000-2007*, agreed by the Government in December 2000 under section 4(2)(a) of the *Law Reform Commission Act 1975*, and also in response to requests made by the Attorney General under section 4(2)(c) of the 1975 Act.

A Report contains the Commission's final recommendations. A Consultation Paper contains the Commission's provisional recommendations.

Items identified by an asterisk (*) were identified as priority areas in the Second Programme.

Items identified by an exclamation mark (!) arose, in whole or in part, from Attorney General requests.

The Legal System

1. Access to the law for the citizen and in particular, the effectiveness of the promulgation and dissemination of statutes and statutory instruments.
 - *Report on Statutory Drafting and Interpretation: Plain Language and the Law* (LRC 61-2000)
 - Work begun on *Consultation Paper on Consolidation and Reform of the Courts Acts* November 2005
2. Limitation of actions.
 - *Report on the Statutes of Limitations: Claims in Contract and Tort in respect of latent Damage (Other than Personal Injury)* (LRC 64-2001) (!)
3. Class actions and representative actions taken in the public interest.
 - *Consultation Paper on Multi-Party Litigation (Class Actions)* (LRC CP 25-2003)
 - *Report on Multi-Party Litigation* (LRC 76-2005)
4. Alternative dispute resolution.
 - Work begun on *Consultation Paper on Alternative Dispute Resolution* October 2006
5. Statute Law: completion of the Commission's remit under its First Programme in the sphere of statutory drafting and interpretation.

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

Evidence

6. Forensic evidence.

- *Consultation Paper on the Establishment of a DNA Database (LRC CP 29-2004) (!)*
- *Report on the Establishment of a DNA Database (LRC 78-2005) (!)*

7. Other aspects of the law of evidence in civil and criminal cases.

- Work begun on *Consultation Paper on Aspects of the Law of Evidence* October 2006

Administrative Law

8. *Tribunals of inquiry.

- *Consultation Paper on Public Inquiries including Tribunals of Inquiry (LRC CP 22-2003)*
- *Report on Public Inquiries including Tribunals of Inquiry (LRC 73-2005)*

9. Appeals from administrative decisions including judicial review.

- *Consultation Paper on Judicial Review Procedure (LRC CP 20-2003)*
- *Report on Judicial Review Procedure (LRC 71-2004)*

Civil Rights Law

10. The law of privacy

- i. Privacy and the law of confidentiality.
- ii. Privacy in the context of the criminal justice system: longevity of criminal records and the expunging of certain offences from the record.

iii. Privacy in specific institutional contexts: the workplace; the healthcare system; prisons.

- *Consultation Paper on the Court Poor Box* (LRC CP 31-2004) (Chapter 5, on expunging criminal records: Report on this aspect being finalised in 2006)

Criminal Law

11. *The law of homicide.

- *Consultation Paper on Homicide: the Mental Element in Murder* (LRC CP 17-2001)
- *Seminar Paper on the Consultation Paper on Homicide: the Mental Element in Murder* (LRC SP 1-2001)
- Work on *Consultation Paper on Involuntary Manslaughter* being finalised in 2006

12. Defences including provocation, legitimate defence, duress and necessity.

- *Consultation Paper on Homicide: the Plea of Provocation* (LRC CP 27-2003)
- *Consultation Paper on Duress and Necessity* (LRC CP 39-2006)
- *Consultation Paper on Legitimate Defence* (LRC CP 41-2006)

13. Inchoate offences.

- Work begun on *Consultation Paper on Inchoate Offences* October 2006

14. Procedure in criminal cases.

- *Consultation Paper on Prosecution Appeals in Cases brought on Indictment* (LRC CP 19-2002)
- *Consultation Paper on Prosecutions Appeals from Unduly Lenient Substances in the District Court* (LRC CP 33-2004) (!)
- *Report on Prosecution Appeals and Pre-trial Hearings* (LRC 81-2006) (in part, !) (covering 2002 and 2004 Consultation Papers)

15. Restorative Justice.

- *Consultation Paper on the Court Poor Box* (LRC CP 31-2004)
- *Report on the Court Poor Box: Probation of Offenders* (LRC 75-2005)

16. Corporate criminal liability.

- *Consultation Paper on Corporate Killing* (LRC CP-26-2003)
- *Report on Corporate Killing* (LRC 77-2005)

17. *Penalties for minor offences.

- *Report on the Indexation of Fines: A Review of Developments* (LRC 65-2002)
- *Consultation Paper on Penalties for Minor Offences* (LRC CP 18-2002)
- *Report on Penalties for Minor Offences* (LRC 69-2003)

Revenue Law (!)

- *Consultation Paper on a Fiscal Prosecutor and A Revenue Court* (LRC CP 24-2003) (!)
- *Report on A Fiscal Prosecutor and A Revenue Court* (LRC 72-2004) (!)

Law of Obligations

18. The law of tort. *Aspects of the law of compensation for personal injuries.

- *Report on Aggravated, Exemplary and Restitutionary Damages* (LRC 60-2000)
- *Report on Section 2 of the Civil Liability (Amendment) Act 1964: the Deductibility of Collateral Benefits from Awards of Damages* (LRC 68-2002) (!)
- Work begun on *Consultation Paper on Civil Liability of “Good Samaritans” and Volunteers* June 2006 (!)

19. The law of contract. Privity of contract and the rights of third parties.

- *Consultation Paper on Privity of Contract: Third Party Rights* (LRC CP 40-2006)

Real and Personal Property

20. *Law of trusts including the law of charities.

- *Report on the Variation of Trusts* (LRC 63-2000)
- *Consultation Paper on Trust Law: General Proposals* (LRC CP 35-2005)
- *Consultation Paper on Charitable Trust Law: General Proposals* (LRC CP 36-2005)
- *Consultation Paper on Legal Structures for Charities* (LRC CP 38-2005)
- *Report on Charitable Trusts and Legal Structures for Charities* (LRC 80-2006) (incorporates material from CP 36-2005 and CP 38-2005)

21. *Succession law.

- Not proceeded with, due to proposed EU Regulation in this area.

22. Law relating to condominiums.

- *Consultation Paper on Multi-Unit Developments* (LRC CP 42-2006)

23. The Commission will continue its general review of land and conveyancing law with the assistance of its standing specialist Working Group.

Land law generally

- *Report on the Rule against Perpetuities and Cognate Rules* (LRC 62-2000)
- *Report on the Acquisition of Easements and Profits a Prendre by Prescription* (LRC 66-2002)
- *Report on Title by Adverse Possession of Land* (LRC 67-2002)
- *Report on Land Law at Conveyancing Law: Positive Covenants over Freehold Land and other Proposals* (LRC 70-2003)
- *Consultation Paper on Judgment Mortgages* (LRC CP 30-2004)
- *Consultation Paper on Reform and Modernisation of Land Law and Conveyancing Law* (LRC CP 34-2004)
- *Report on Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74 2005) (This 2005 Report includes a comprehensive draft Land and Conveyancing Bill and incorporates all previous Commission recommendations in this area)
- *Report on eConveyancing: Modelling of the Irish Conveyancing System* (LRC 79 – 2006)

Landlord and tenant law

- *Consultation Paper on Business Tenancies* (LRC CP 21-2003)
- *Consultation Paper on General Law of Landlord and Tenant* (LRC CP 28-2003)
- Work on *Report on Reform and Modernisation of pre-1922 Landlord and Tenant Law* being finalised in 2006

Commercial Law

24. Mindful of the Government's proposal to establish a statutory Company Law Review Group, current issues arising in the area of Commercial Law will, as appropriate, be reviewed and examined.
- *Consultation Paper on Legal Structures for Charities* (LRC CP 38-2005)
 - *Report on Charitable Trusts and Legal Structures for Charities* (LRC 80-2006)
25. Exceptions to the *nemo dat quod non habet* principle on transfer of title to goods.
- Not proceeded with, due to proposed general review of sale of goods law by Department of Enterprise, Trade and Employment

Law and The Information Society

26. Electronic commerce and the Internet, where appropriate having regard to activities undertaken or to be undertaken by Government Departments and in particular:
- privacy on the internet and encryption,
 - liability of service providers.
- *Report on eConveyancing: Modelling of the Irish Conveyancing System* (LRC 79 – 2006)

Vulnerable Groups and The Law

27. *Law and the elderly, including the legal protection of older persons transferring assets and 'advance care directives'
- *Consultation Paper on the Law and the Elderly* (LRC CP 23-2003)

- *Report on Vulnerable Adult and the Law* (LRC 83-2006) (incorporating capacity issues: see heading 28, below)

28. Law affecting persons with physical, mental or learning disabilities, including issues of capacity, guardianship and the right to marry.

- *Consultation Paper on Vulnerable Adult and the Law: Capacity* (LRC CP 37-2005)
- *Report on Vulnerable Adult and the Law* (LRC 83-2006) (incorporating elderly issues: see heading 27, above)

Family Law

29. The Law of adoption - a general review.

- Work begun on *Consultation Paper on Aspects of Intercountry Adoption Law* February 2006 (!)

30. Rights and duties of cohabitees.

- *Consultation Paper on the Rights and Duties of Cohabitees* (LRC CP 32-2004) (Report in 2006)
- *Report on the Rights and Duties of Cohabitants* (LRC 82-2006)

International Law

31. Negotiation and preparation of various international agreements, including their implementation in Irish law. We pay particular regard to Ireland's participation in conventions prepared by: UNIDROIT, UNCITRAL and the Hague Conference on Private International Law.

- *Discussed in various Consultation Papers and Reports*

Miscellaneous Provisions Bill

The Commission will continue to prepare an annual Law Reform (Miscellaneous Provisions) Bill, as a vehicle for making minor reforms, ranging over the branches of the law which are covered by this Programme.

- *Civil Law (Miscellaneous Provisions) Bill 2006* published by Government, May 2006

General

It is naturally difficult to anticipate change which may call for law reform in the future. Accordingly the Commission considers it best to supplement the list of discrete topics given above by stating that, if events require law reform in any area within any of the branches of the law set out above, the Commission will, where appropriate, and subject to the limits of its available resources, bring forward the necessary proposals.

The Commission retains a continuing interest in codification of the law, and proposes to address the issue of codification with regard to matters falling within branches of the law set out in this Programme as appropriate.

In all these areas, the Commission will, where appropriate, have regard to the activities of other official bodies interested in law reform, among them the Courts Service, and be ready to co-operate with them.

- *Consultation Paper on Charitable Trust Law: General Proposals* (LRC CP 36-2005) (with Department of Community, Rural and Gaeltacht Affairs)
- *Report on the Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74 2005) (with Department of Justice, Equality and Law Reform)
- *Report on eConveyancing: Modelling of the Irish Conveyancing System* (LRC 79–2006) (funding from Information Society Fund)
- *Report on Charitable Trusts and Legal Structures for Charities* (LRC 80-2006) (with Department of Community, Rural and Gaeltacht Affairs)
- Work begun on *Consultation Paper on Consolidation and Reform of the Courts Acts* November 2005 (with Courts Service and Department of Justice, Equality and Law Reform)

APPENDIX 6: EXAMPLE OF CONSULTATION PROCESS BY THE COMMISSION – VULNERABLE GROUPS AND THE LAW

Under the general heading of Vulnerable Groups and the Law, item 27 of the Commission's *Second Programme of Law Reform 2000-2007* committed the Commission to examining 'law and the elderly,' while item 28 requires it to examine 'the law affecting persons with physical, mental or learning disabilities, including issues of capacity, guardianship and the right to marry.' These aspects of the Second Programme clearly involve broad issues of general concern to Irish society. The Commission therefore engaged in a wide-ranging and extensive inter-disciplinary consultation process during the course of its examination of these topics. By 2006, the Commission had completed its examination and made final proposals for reform. This process produced four outputs:

- *Consultation Paper on Law and the Elderly* (LRC CP 23-2003)
- *Consultation Paper on Vulnerable Adults and the Law: Capacity* (LRC CP 37-2005)
- 2005 Annual Conference of the Commission, *Guardianship: A New Structure for Vulnerable Adults*
- *Report on Vulnerable Adults and the Law* (LRC 83-2006).

The Commission's 2006 Report incorporated the material in the two Consultation Papers. In accordance with the Commission's usual practice, the Report includes a draft Mental Capacity and Guardianship Bill to implement these recommendations.

The consultation process which culminated in the 2006 Report involved a combination of:

- (a) information gathering from relevant stakeholders
- (b) contribution to the debate on reform generally
- (c) influencing relevant actors to engage in reform where appropriate

(a) Information gathering from relevant stakeholders

Under this heading, the Commission held meetings with:

- the Irish Financial Services Regulatory Authority (IFSRA)
- the Medical Council
- representatives of various medical organisations, including gerontologists
- representatives of service providers to those with limited intellectual capacity
- the Mental Health Commission
- the Office of the Wards of Court, Courts Service
- members of the judiciary and the legal profession
- representatives of various health boards and, since 2005, of the Health Service Executive
- representatives of social workers
- international experts, including Professor Robert Gordon, Simon Fraser University, British Columbia, Mr Jay Chalke, Public Guardian and Trustee of British Columbia, Canada, and Mr Denzil Lush, Master of the Court of Protection, England and Wales.

(b) Contribution to the debate on reform generally

Under this heading, the Commission participated in committees, seminars and conferences, nationally and internationally, aimed at ensuring that the fullest debate on these areas was maintained. This included:

- participation in the Irish Human Rights Commission's Advisory Committee on the Treatment of Elderly in Institutions
- participation in the consideration of enduring powers of attorney by the Law Society of Ireland
- discussion on reform of Medical Council guidelines on consent to medical treatment
- discussion with the Financial Regulator, IFSRA, on the development of a Consumer Protection Code, culminating in the publication of a Consumer Protection Code in 2006
- presenting a paper on *Reform of the Law on Capacity and Decision Making for Adults with Intellectual Disability* organised by NAMHI, the leading Irish NGO for those with limited intellectual capacity.
- presenting papers on *Reform of the Wardship Jurisdiction in Ireland* at two international Conferences of Public Trustees and Public Guardians, one in Dublin, the other in Victoria, Canada;
- hosting the Commission's Second Annual Conference, *Guardianship: A New Structure for Vulnerable Adults* in 2005. This conference was attended by over 200 delegates, drawn from a wide range of relevant stakeholders, including the medical and health care professionals, senior members of the Health Service Executive, senior officials from the Departments of Justice and Health, the Courts Service and the legal profession and judiciary. The conference was addressed by leading international experts in this area, including Baroness Hale of Richmond, Mr Jay Chalke, Public Guardian and Trustee of British Columbia, Canada, and Mr Denzil Lush, Master of the Court of Protection, England and Wales.

(c) Influencing relevant actors to engage in reform where appropriate

The Commission has also engaged with various relevant actors to achieve appropriate non-legislative reform. These have included:

- Arising from the publication of the *Consultation Paper on Law and the Elderly* (2003), which discussed enduring powers of attorney (EPAs), the Law Society of Ireland published *Guidelines on Enduring Powers of Attorney* in 2004
- Also arising from that Consultation Paper, and meetings between the Commission and IFSRA, in February 2005 IFSRA published a draft *Consumer Protection Code*, which include 'warnings suggested by the Law Reform Commission in respect of equity release schemes' (p.11 of the Draft Code). The Commission continued to liaise with IFSRA in the consultative process which began after publication of the draft Code. This included the publication in December 2005 of IFSRA's response to the consultation process, in which it affirmed its commitment to include provisions on equity release schemes in the final Code, and this occurred with the publication of the Code in 2006.
- Arising from the publication of the *Consultation Paper on Vulnerable Adults and the Law: Capacity* (2005), and meetings between the Commission and the Medical Council, the Medical Council publicly announced its intention to revise its Ethical Guidelines on consent to medical treatment involving persons with limited intellectual capacity.

The Commission has no formal role in legislative implementation of its Reports, which is a matter for the Government and Oireachtas. Arising from the publication of the Commission's *Report on Vulnerable Adults and the Law* (2006), which included a draft Mental Capacity and Guardianship Bill to implement the Commission's final recommendations, a Private Member Bill based on this draft Bill was introduced in the Seanad, and the Government stated that it accepted the principles in the Bill.

Law Reform Commission Financial Statements	1998	1999	2000	2001	2002	2003	2004
	€	€	€	€	€	€	€
Income							
Oireachtas Grant in aid	707,244	1,102,133	1,150,383	1,278,662	1,348,000	1,577,000	1,593,000
Sale of publications	6,330	7,546	4,782	5,709	962	7,167	7,983
Other		20,497	7,307	0	1,146	3,259	19,696
Land Law Conference							23,394
Grant from Dept Community, Rural & Gaelteacht							20,038
	713,574	1,130,176	1,162,472	1,284,371	1,350,108	1,587,426	1,664,111
Transfer from Capital Account	-69,244	-76,739	-124,352	-72,026	9,778	25,277	21,593
	644,330	1,053,437	1,038,120	1,212,345	1,359,886	1,612,703	1,685,704
Expenditure							
Salaries and superannuation	421,006	434,730	538,652	707,900	960,589	971,462	938,986
Rent,rates and service charges	43,129	209,066	239,405	229,015	155,795	241,124	247,489
Telephone	12,800	16,241	12,073	15,393	13,408	14,485	16,028
Stationery and Office Managemet	51,537	90,686	37,985	112,381	210,985	139,099	150,213
Seminars					8,297	6,895	11,146
Library	23,706	49,078	63,554	49,539	56,485	62,685	68,022
Travel and Subsistence	13,048	12,304	17,017	15,255	12,126	14,341	12,836
Cleaning	4,826	5,988	8,668	9,774	10,910	11,053	9,159
Printing	29,928	19,214	13,028	29,951	17,638	89,273	86,018
Insurance	1,672	2,958	2,933	3,203	3,430	3,750	3,034
Postage	5,770	3,803	2,539	4,888	8,094	22,072	5,741
Depreciation	30,229	42,704	60,894	82,126	45,734	51,042	50,072
Sundry	8,059	639	3,530	7,418	7,482	3,364	2,627
Audit Fees	3,473	3,771	3,492	5,818	10,040	5,950	7,250
Accounting Fees					2,040	3,025	3,025
Training			3,572	5,922	1,726	4,384	11,500
Repairs			1,905	8,396			
Land Law Conference							18,970
	649,183	891,182	1,009,247	1,286,979	1,524,739	1,644,005	1,642,116
Deficit for the year	-4,853	162,255	28,873	-74,634	-164,853	-31,302	43,588
Suprlus/(Deficit)at 1 January	34,223	29,370	191,625	220,498	145,861	-18,992	-50,294
Suprlus/(Deficit)at 31st December	29,370	191,625	220,498	145,864	-18,992	-50,294	-6,706

Balance Sheet 31 December	1998	1999	2000	2001	2002	2003	2004
	€	€	€	€	€	€	€
Fixed Assets	108,170	184,909	309,261	381,287	371,510	346,233	324,640
Current Assets							
Cash on Hand and at Bank	132,862	232,641	333,705	216,544	33,638	18,789	31,208
Debtors and Prepayments	11,974	5,586	6,151	16,903	6,625	5,187	20,452
	<u>144,835</u>	<u>238,227</u>	<u>339,856</u>	<u>233,447</u>	<u>40,263</u>	<u>23,976</u>	<u>51,660</u>
Current Liabilities							
Creditors and accruals	115,465	46,602	119,358	87,587	59,256	74,271	58,367
Net Current Assets	<u>29,370</u>	<u>191,625</u>	<u>220,498</u>	<u>145,860</u>	<u>-18,993</u>	<u>-50,295</u>	<u>-6,707</u>
Total Assets Less Current Liabilities	<u>137,541</u>	<u>376,534</u>	<u>529,759</u>	<u>527,147</u>	<u>352,517</u>	<u>295,938</u>	<u>317,933</u>
Finance by							
Capital Account	108,170	184,909	309,261	381,287	371,509	346,232	324,639
Income and Expenditure account	29,370	191,625	220,498	145,860	-18,992	-50,294	-6,706
	<u>137,541</u>	<u>376,534</u>	<u>529,759</u>	<u>527,147</u>	<u>352,517</u>	<u>295,938</u>	<u>317,933</u>

APPENDIX 8: IMPLEMENTATION OF LAW REFORM COMMISSION REPORTS

Report	Statutory provisions	Recommendation	Implementation
Report on Vulnerable Adults and the Law LRC 83-2006	Bill prepared and contained in the Report	Recommends general mental capacity law to facilitate informal decision-making for adults who lack capacity; and establishment of Guardianship Board and Office of Public Guardian to replace Wards of Court system	
Report on Rights and Duties of Cohabitants LRC 82-2006	Bill prepared and contained in the Report	Recommends reform to allow cohabitant agreements, to confer certain entitlements on cohabitants and to provide for application to court for relief for certain qualified cohabitants	
Report on Prosecution Appeals and Pre-trial Hearings LRC 81-2006	No recommendation for new legislation ('without prejudice' prosecution appeal introduced in <i>Criminal Justice Act 2006</i>)	Approved 'without prejudice' appeal for prosecution in trials on indictment in <i>Criminal Justice Act 2006</i> (recommended in Consultation Paper); recommended non-statutory pre-trial questionnaire	<i>Criminal Justice Act 2006, ss.21 to 24</i>
Report on Charitable Trusts and Legal Structures for Charities LRC 80-2006	Bill prepared and contained in the Report	Recommends reform of duties of charity trustees and new legal structure for charities, Charitable Incorporated Organisation	In part (charity trustees): General Scheme of <i>Charities Bill 2006</i> published by Government (2006)
Report on eConveyancing: Modelling of the Irish Conveyancing System LRC 79-2006	Report on Modelling of Conveyancing System: no recommendations for legislation	Recommends establishment of eConveyancing Group to set out roadmap and recommendation to Government	
Report on the Establishment of a DNA Database LRC 78-2005	Bill prepared and contained in the Report	Recommends establishment of limited DNA Database	Government decision to draft <i>Criminal Justice (Forensic Sampling and Evidence) Bill (2006)</i>
Report on Corporate Killing LRC 77-2005	Bill prepared and contained in the Report	Recommends offence of corporate killing and associated individual offence	
Report on Multi-Party Litigation LRC 76-2005	Draft Rules of Court and Bill prepared and contained in the Report	Recommends Multi-Party Litigation Procedure in Rules of Court	
Report on the Court Poor	Bill prepared and	Recommends	

Box: Probation of Offenders LRC 75-2005	contained in the Report	replacement of court poor and updating <i>Probation of Offenders Act 1907</i>	
Report on Reform and Modernisation of Land Law and Conveyancing Law LRC 74-2005	Bill prepared and contained in the Report	Recommends reform and modernisation of over 140 pre-1922 Acts on land law and conveyancing law	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006)
Report on Public Inquiries Including Tribunals of Inquiry LRC 73-2005	Bill prepared and contained in the Report	Recommends reform and consolidation of <i>Tribunals of Inquiry Acts 1921 to 2004</i>	<i>Consolidating Tribunals of Inquiry Bill 2005</i> published by Government
Report on a Fiscal Prosecutor and a Revenue Court LRC 72-2004	Bill prepared and contained in the Report	Recommends changes to Taxes Consolidation Act 1997	In part in <i>Finance Act 2005</i> (threshold for publication of tax defaulters)
Report on Judicial Review Procedure LRC 71-2004	Bill and amendments to Rules of Court prepared and contained in the Report	Recommends changes to <i>O.84 Rules of the Superior Courts 1986</i> , <i>Illegal Immigrants (Trafficking) Act 2000</i> and making of various Practice Directions	
Report on Land Law and Conveyancing Law (7): Positive Covenants over Freehold Land and Other Proposals LRC 70-2003	Bill prepared and contained in the Report		<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006)(see <i>LRC 74-2005</i>)
Report on Penalties for Minor Offences LRC 69-2003	Draft legislative provisions contained in the Report.	Recommends limit to imprisonment power of District Court; to allow amount of fine to be tailored to means of individual offender; to increase maximum fine for corporation to 3 times that for individuals.	Administrative implementation (by parliamentary counsel) of consideration of limit to imprisonment power of District Court; <i>Fines Bill</i> to be published (Government Legislative Programme September 2006)
Report on the Deductibility of Collateral Benefits from Awards of Damages LRC 68-2002	Draft legislative provisions contained in the Report.	Recommends amendment to s. 2 of the <i>Civil Liability Act 1964</i> (as amended) and s. 50 of the <i>Civil Liability Act 1961</i> .	<i>Civil Liability and Courts Act 2004</i> , section 27
Report on Title by Adverse Possession of Land LRC 67-2002	Bill prepared and contained in the Report.	Clarifies the exact type of title acquired by a 'squatter' and recommends the granting of a parliamentary conveyance.	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (see <i>LRC 74-2005</i>)
Report on the Acquisition of Easements and <i>Profits à Prendre</i> by Prescription LRC 66-2002	Bill prepared and contained in the Report.	New scheme for prescriptive acquisition, and recommends the repeal of the <i>Prescription Act 1832</i> .	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (see <i>LRC 74-2005</i>)
Report on the Indexation of Fines: A Review of Developments LRC 65-2002	Draft legislative provisions contained in the Report.	Recommends the introduction of standard fine system based on the model proposed in the Commission's Report on	<i>Fines Bill</i> to be published (Government Legislative Programme September 2006)

		Indexation of Fines (LRC 37-1991): see below.	
Report on the Statutes of Limitations: Claims in Contract and Tort in Respect of Latent Damage (Other than Personal Injury) LRC 64-2001	Draft Bill contained in Report.	Recommends that the discoverability limitation period begins when person first knew or ought reasonably to have known of the relevant factors.	
Report on the Variation of Trusts LRC 63-2000	Draft Bill contained in Report	Various recommendations on jurisdiction of courts to vary trusts.	<i>Civil Law (Miscellaneous Provisions) Bill 2006</i> passed Second Stage in Dáil Éireann (October 2006)
Report on the Rule against Perpetuities and Cognate Rules LRC 62-2000	Draft Bill published in Report.	Recommends the abolition of the rule against perpetuities and the rule against accumulations.	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (see LRC 74-2005)
Report on Statutory Drafting and Interpretation: <i>Plain Language and the Law</i> LRC 61 - 2001	Draft legislative provisions in Report.	Recommends purposive approach to legislation, updated interpretation of older legislation and use of plain language in drafting legislation.	<i>Interpretation Act 2005</i>
Report on Aggravated, Exemplary and Restitutionary Damages LRC 60 - 2000		Recommended primarily judicial development of the law on aggravated, exemplary and restitutionary damages; limited statutory reform	
Report on Gazumping LRC 59 - 1999	Did not recommend legislation	Recommended gazumping should be dealt with by way of information to consumers	Approved in <i>Report of Auctioneering/Estate Agency Review Group</i> (2005)
Report on the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption LRC 58 - 1998		Recommended State ratification of Convention	<i>Adoption (Hague Convention) Bill</i> to be published (Government Legislative Programme, September 2006)
Report on Privacy LRC 57 - 1998	Draft Bill included in Report	Recommended various legislative protections for privacy in connection with surveillance	<i>Privacy Bill 2006</i> published by Government
Report on Land Law and Conveyancing Law; (6) Further General Proposals Including the Execution of Deeds LRC 56 - 1998	Draft legislative provisions included in Report	Recommended that words of limitation should not be required for the creation or transfer of any interest in freehold registered land	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (see LRC 74-2005)
Report on the Unidroit Convention on Stolen or Illegally Exported Cultural Objects LRC 55 -1997		Recommended State ratification of Convention	
Report on Personal Injuries: Periodic	Draft legislative provisions included in	Recommended periodic payments and structured	

Payments and Structured Settlements LRC 54 - 1996	Report	settlements in compensation claims	
Report on Sentencing LRC 53 - 1996	Recommended limited legislative reforms; primarily recommended non-legislative reform	Recommended discretion to reduce sentence where guilty plea entered; recommended non-statutory sentencing guidelines	<i>Criminal Justice Act 1999</i> , s.29 (discretion of court to reduce sentence where guilty plea entered)
Report on Family Courts LRC 52 - 1996		Various recommendations on family law and its administration	<i>Children Act 1997</i> , s.28 (appointment of guardian for litigation); <i>Civil Liability and Courts Act 2004</i> , s.40 (<i>in camera</i> rule)
Report on Intoxication LRC 51 - 1995		Recommended that intoxication not a defence.	Incorporated into Project on Codification of Criminal Law: Advisory Committee established under <i>Criminal Justice Act 2006</i>
An Examination of the Law of Bail LRC 50 - 1995		Not requested to make specific proposals for reform	<i>Bail Act 1997</i>
Report on the Interests of Vendor and Purchaser in Land during the Period Between Contract and Completion LRC 49 - 1995			<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (<i>see LRC 74-2005</i>)
Report on Hague Convention Abolishing Requirement of Legalisation of Foreign Public Documents LRC 48 - 1995		Recommended State ratification of Convention	<i>Rules of the Superior Courts (No.1) (Proof of Foreign Diplomatic, Consular and Public Documents) 1999 (SI No.3 of 1999)</i>
Report on Contempt of Court LRC 47 - 1994		Recommended reform of contempt of court law	
Report on Occupiers' Liability LRC 46 - 1994		Recommended reform of common law rules and legislative regulation	<i>Occupiers Liability Act 1995</i>
Report on Non-Fatal Offences Against the Person LRC 45 - 1994		Recommended reform of common law and statutory rules	<i>Non-Fatal Offences Against the Person Act 1997</i>
Land Law and Conveyancing Law: (5) Further General Proposals LRC 44 - 1992		Various recommendations for reform	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (<i>see LRC 74-2005</i>)
Report on the Law Relating to Dishonesty LRC 43 - 1992		Recommended reform of common law and statutory rules	<i>Criminal Justice (Theft and Fraud) Offences Act 2001</i>
Report on United Nations (Vienna) Convention on Contracts for the International Sale of Goods LRC 42 - 1992		Recommended State ratification of Convention	
Report on the Crime of Libel LRC 41 - 1991		Recommended reform of common law and	<i>Defamation Bill 2006 (Part 5 of Bill)</i> passed

		statutory rules	Second Stage in Seanad Éireann (December 2006)
Report on Land Law and Conveyancing Law: (4) Service of Completion Notices LRC 40 - 1991		Various recommendations for reform	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (<i>see LRC 74-2005</i>)
Report on Land Law and Conveyancing Law: (3) The Passing of Risk from Vendor to Purchaser LRC 39 - 1991		Various recommendations for reform	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (<i>see LRC 74-2005</i>)
Report on the Civil Law of Defamation LRC 38 - 1991		Recommended reform of common law and statutory rules	<i>Defamation Bill 2006</i> passed Second Stage in Seanad Éireann (December 2006)
Report on Indexation of Fines LRC 37 - 1991		Recommends the introduction of standard fine system	<i>Fines Bill</i> to be published (Government Legislative Programme September 2006)
Report on the Hague Convention on Succession to the Estates of Deceased Persons LRC 36 - 1991		Recommended State ratification of Convention	
Report on Confiscation of the Proceeds of Crime LRC 35 - 1991		Recommended introduction of restraint orders, and international co-operation regarding confiscation orders	<i>Criminal Justice (No.3) Act 1994, Proceeds of Crime Act 1996 and Proceeds of Crime (Amendment) Act 2005</i>
Report on Oaths and Affirmations LRC 34 - 1990		Various recommendations	Implemented in part (<i>Children Act 1997</i>)
Report on Sexual Offences against the Mentally Handicapped LRC 33 - 1990		Various recommendations on sexual offences with person of limited intellectual capacity; consent of DPP required to take proceedings	<i>Criminal Law (Sexual Offences) Act 1993 and Criminal Justice (Miscellaneous Provisions) Act 1997</i>
Report on Child Sexual Abuse LRC 32 - 1990		Various recommendations: mandatory reporting of child sexual abuse; immunity for those who report child abuse in good faith; care orders; barring orders; offences of child sexual abuse; consenting and non-consenting sexual offences with children (same-sex and opposite sex); video-recording evidence	Implemented in part: <i>Child Care Act 1991, Criminal Evidence Act 1992, Criminal Law (Sexual Offences) Act 1993, Domestic Violence Act 1996, Criminal Justice (Miscellaneous Provisions) Act 1997, Protection for Persons Reporting Child Abuse Act 1998</i>
Report on Land Law and Conveyancing: (2) Enduring Powers of Attorney LRC 31 - 1989		Recommendations on characteristics, registration and scope of power of attorney	<i>Powers of Attorney Act 1996, Family Law (Miscellaneous Provisions) Act 1997</i>
Report on Land Law and Conveyancing: (1)		Recommended substitution of 5 years for	<i>Landlord and Tenant (Amendment) Act 1994</i>

General Proposals LRC 30 - 1989		3 years for a new tenancy	
Report on the Recognition of Foreign Adoption Decrees LRC 29 - 1989		Recommended validity of foreign adoptions made in place of habitual residence of the adopters	<i>Adoption Act 1991</i>
Report on Debt Collection: (2) Retention of Title LRC 28 - 1988		Various recommendations concerning retention of title contract clauses	
Report on Debt Collection: (1) The Law Relating to Sheriffs LRC 27 - 1988		Recommended abolition of power of sheriffs to seize leasehold land	<i>Land and Conveyancing Law Reform Bill 2006</i> passed by Seanad Éireann (November 2006) (<i>see LRC 74-2005</i>)
Report on Malicious Damage LRC 26 - 1988		Various recommendations including abolition of common law offence of arson and making of compensation orders	<i>Criminal Damage Act 1991, Criminal Justice Act 1993</i>
Report on the Rule Against Hearsay in Civil Cases LRC 25 - 1988		Various recommendations for reform of common law rules	<i>Civil Evidence Bill to be published</i> (Government Legislative Programme September 2006)
Report on Rape and Allied Offences LRC 24 - 1988		Recommended wider definition of rape; and abolition of marital rape exemption	<i>Criminal Law (Rape) (Amendment) Act 1990, Criminal Justice Act 1993</i>
Report on Receiving Stolen Property LRC 23 - 1987		Recommended new offence of handling stolen goods: see also Report on the Law Relating to Dishonesty, LRC 43-1992, above.	<i>Larceny Act 1990, Criminal Justice (Theft and Fraud Offences) Act 2001</i>
Report on the Service of Documents Abroad re Civil Proceedings – the Hague Convention LRC 22 - 1987		Recommended ratification of Convention by State.	<i>Rules of the Superior Courts (No.3) 1994, District Court (Service Abroad of Documents in Civil or Commercial Matters) Rules 1994</i> (now consolidated in <i>District Court Rules 1997</i>)
Report on the Statute of Limitations: Claims in Respect of Latent Personal Injuries LRC 21 - 1987		Recommended that limitation period should begin to run from the date of knowledge of certain facts.	<i>Statute of Limitations (Amendment) Act 1991</i>
Report on Jurisdiction in Proceedings for Nullity of Marriage, Recognition of Foreign Nullity Decrees and Hague Convention LRC 20 - 1985		Recommended ratification of Convention by State.	<i>Family Law Act 1995</i>
Report on Private International Law Aspects of Capacity to Marry and Choice of Law in Proceedings for Nullity of		Made recommendations concerning recognition of foreign annulments.	

Marriage LRC 19 - 1985			
Report on the Liability in Tort of Mentally Disabled Persons LRC 18 - 1985		Made recommendations concerning extent of liability in tort.	
Report on the Liability in Tort of Minors and the Liability of Parents for Damage Caused by Minors LRC 17 - 1985		Made recommendations concerning extent of liability in tort	
Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters LRC 16 - 1985		Recommended ratification of Convention by State.	
Report on Minors' Contracts LRC 15 - 1985		Made recommendations concerning extent of liability in contract law	
Report on Offences Under the Dublin Police Acts and Related Offences LRC 14 - 1985		Recommended reform of public order offences	<i>Criminal Justice (Public Order) Act 1994</i>
Report on Competence and Compellability of Spouses as Witnesses LRC 13 - 1985		Recommended that spouse or former spouse is competent to give evidence	<i>Criminal Evidence Act 1992</i>
Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters LRC 12 -1985		Recommended ratification of Convention in the State.	<i>Child Abduction and Enforcement of Custody Orders Act 1991</i>
Report on Vagrancy and Related Offences LRC 11 - 1985		Recommended abolition of offence of wandering abroad in the Vagrancy Act 1824; new offences of: entering a building with intent to commit an offence; soliciting or importuning for the purposes of the commission of a sexual offence; living on earnings of prostitution	<i>Housing Act 1988, Criminal Law (Sexual Offences) Act 1993, Criminal Justice (Public Order) Act 1994</i>
Report on Recognition of Foreign Divorces and Legal Separations LRC 10 - 1985		Recommended residence as basis for recognition, in place of domicile	<i>Domicile and Recognition of Foreign Divorces Act 1986, Family Law Act 1995</i>
Report on Nullity of Marriage LRC 9 - 1984		Recommended reform and codification of common law rules	
Report on Divorce a Mensa et Thoro and Related Matters LRC 8 - 1983		Recommended replacement of common law divorce <i>a mensa et thoro</i> with statutory judicial separation	<i>Judicial Separation and Family Law Reform Act 1989, Family Law Act 1995</i>
Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws LRC 7 -		Recommended abolition of domicile of dependency	<i>Domicile and Recognition of Foreign Divorces Act 1986</i>

1983			
Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters LRC 6 - 1983		Recommended abolition of proceedings for the restitution of conjugal rights, and of petition for jactitation of marriage.	<i>Family Law Act 1988, Family Law Act 1995</i>
Report on the Age of Majority, the Age for Marriage and Some Connected Subjects LRC 5 - 1983		Recommended reduction of age of majority from 21 years to 18 years; and concerning age of marriage	<i>Age of Majority Act, 1985, Family Law Act 1995, Family Law (Miscellaneous Provisions) Act 1997</i>
Report on Illegitimacy LRC 4 - 1982		Recommended abolition of status of illegitimacy; that the marital status of parents to have no effect on children's status; refusal to give a blood test in paternity proceedings allows court to draw its own inferences.	<i>Status of Children Act 1987</i>
Report on Defective Premises LRC 3 - 1982	Draft Bill prepared and included in Report	Recommended statutory provisions to protect purchasers of defective premises	Non-statutory HomeBond scheme introduced
Report on Civil Liability for Animals LRC 2 - 1982	Draft Bill prepared and included in Report	Recommended reform of common law rules concerning damage caused by animals straying onto a highway; and powers of Garda Síochána concerning stray animals.	<i>Animals Act 1985.</i>
Report on Family Law LRC 1 - 1981	Draft Bill prepared and included in Report	Recommended abolition of common law action for criminal conversation and for harbouring a spouse, and of action for breach of a promise to marry.	<i>Family Law Act 1981.</i>

APPENDIX 9: IRISH HIGH COURT AND SUPREME COURT DECISIONS WITH REFERENCES TO THE LAW REFORM COMMISSION SINCE 1999

D.P.P.-v-Fergal Cagney [2004] IECCA 10 (27 May 2004) [62%]??

D.P.P.-v-Ronan McGrath [2004] IECCA 11 (27 May 2004)

Corway v. Independent Newspapers (Ireland) Limited [1999] IESC 5; [1999] 4IR 485; [2000] 1 ILRM 426 (30th July, 1999)

Kelly v. O'Neill [1999] IESC 81; [2000] 1 IR 354; [2000] 1 ILRM 507 (2nd December, 1999)

M. (C.) v. Delegacion Provincial de Malaga Consejeria de Trabajoe y Asuntos Sociales [1999] IEHC 138; [1999] 2 IR 363 (24th March, 1999)

Browne v. Tribune Newspapers plc t/a The Sunday Tribune [2000] IESC 74; [2001] 1 IR 521 (24th November, 2000)

Gough v. Neary & Anor [2003] IESC 39 (3 July 2003)

Weir Rodgers –v- The S.F. Trust Ltd [2005] IESC 2 (21 January 2005)

Norbrook Laboratories Limited v. Smithkline Beecham t/a Smithkline Beecham Animal Health [1999] 2 ILRM 391 (18th May, 1999)

McG. (G.) v. W. (D.) [2000] IESC 52 (31st March, 2000)

Grealis v. D.P.P. [2001] IESC 50; [2002] 1 ILRM 241 (31 May 2001)

Cooper-Flynn v. R.T.E. & Ors [2004] IESC 27 (28 April 2004)

A.G. v. Hilton [2004] IESC 51 (30 July 2004)

W. (F.) v. B.B.C. [1999] IEHC 145 (25th March, 1999)

O'C. (S.) v. Governor of Curragh Prison [2000] IEHC 4; [2000] 2 ILRM 76 (14th January, 2000)

C. (M.E.) v. C. (J.A.) [2001] 2 IR 399 (9th March, 2001)

Sligo Corporation v. Cartron Bay Construction Ltd. [2001] IEHC 94 (25th May, 2001)

D.P.P. v. O'Donnell [2002] IEHC 83 (24 July 2002)

Hunter v. Gerald Duckworth & Co Ltd. & Anor [2003] IEHC 81 (31 July 2003)

Orwell Park Management Ltd. v. Henihan & Anor [2004] IEHC 87 (14 May 2004)

Murray & Anor v. Commission to Inquire into Child Abuse & Ors [2004] IEHC 102 (27 January 2004)

Murphy v. British Broadcasting Corporation [2004] IEHC 420 (21 December 2004)

De Rossa v. Independent Newspapers [1999] IESC 63; [1999] 4 IR 432 (30th July, 1999)

D.P.P. v. Finn [200] IESC 75; [2001] 2 IR 25 (24th November, 2000)

Crilly v. T. & J. Farrington Ltd. [2001] IESC 60; [2002] 1 ILRM 161 (11 July 2001)

O'C. (S.) v. Governor of Curragh Prison [2001] IESC 68 (13 July 2001)

O'C. (M.) v. Minister for Health [2001] IESC 72 (31 July 2001)

B. (D.) v. Minister for Health and Children [2003] IESC 22 (26 March 2003)

W. (D.) v. D.P.P. [2003] IEHC 54 (31 October 2003)

K. (C.) v. K. (J.) [2004] IESC 21 (31 March 2004)