



THE CAYMAN ISLANDS LAW REFORM COMMISSION



ANNUAL REPORT NO. 16

1st APRIL, 2020/31st MARCH, 2021



Mr. Hector Robinson, QC
Chairman

CHAIRMAN'S FOREWORD

I am pleased to present to the Honourable Attorney General, the Sixteenth Annual Report of the Cayman Islands Law Reform Commission (“the Commission”). The Report covers the activities of the Commission for the period 1st April, 2020 to 31st March, 2021.

This reporting period took place in the midst of the daunting challenges for these Islands and the world due to the COVID-19 global pandemic, which few could have foreseen. Despite those challenges, it has been a progressive year for the Commission.

As in previous years, the Commission continued to keep the laws of the Cayman Islands under review in a systematic way by maintaining a record of possible future law reform projects through its own assessment of the areas in need of reform, and by receiving and evaluating law reform referrals from the Attorney General, the legal profession and other stakeholders.

The Commission has maintained concentration upon its core work with the result that during and post the “shelter in place” legislative requirements, a range of projects, all of which have direct bearing on the needs of the contemporary Cayman Islands society, were advanced.

On 8th November, 2020 the Final Report of the Commission was submitted to the Honourable Attorney General titled ***“Bullying: Legislation, Policy or Both?”***. The Final Report contained recommendations which sought to respond to the issues that relate to bullying behaviour in public and private schools and was supported by the draft ***“Education (Amendment) Bill, 2020”*** and the ***“Anti-Bullying (Schools) Regulations, 2020”***. The Commission hopes that the Government will favourably consider the recommendations of the Commission in this area and will deem it appropriate to advance the legislative proposals.

During the period, law reform recommendations resulted in significant legislation being introduced into and progressed through Parliament for implementation. Our research and subsequent Final Reports respectively titled ***“A Review of Litigation Funding in the Cayman Islands – Conditional and Contingency Fee Agreements”***, 30th September, 2019 and ***“Decriminalisation of Suicide”***, 31st March, 2020 culminated in the enactments of the ***Private***

Funding of Legal Services Act, 2020, the ***Penal Code (Amendment) Act, 2020*** and the ***Health Care Decisions (Amendment) Act, 2020***.

The ***Private Funding of Legal Services Act, 2020***, seeks to facilitate greater access to justice by providing a legal and regulatory framework for the third party funding of legal claims which will not only benefit persons who might otherwise be unable to fund their legal claims, but also potentially benefit the Cayman Islands economy by facilitating the pursuit in this jurisdiction of legal claims which may otherwise have been pursued elsewhere. The ***Penal Code (Amendment) Act, 2020*** and the ***Health Care Decisions (Amendment) Act, 2020*** decriminalise the common law offence of suicide for the reason that treatment, rather than prosecution, was considered to be the appropriate response for a person struggling with suicidal notions. These enactments should no doubt be regarded as defining additions to the statute books of these Islands.

The Commission hopes that its approach and the learning reflected in the Final Report, titled ***“Contempt of Court”***, submitted to the Honourable Attorney General, and which is supported by the ***Contempt of Court Bill, 2020*** and the ***Penal Code (Amendment) Bill, 2020***, is approved by the Government and will be seen as an opportunity to bring reform to one of the more fundamental but complicated areas of the judicial system.

On 28th August, 2020 the Commission published for public review and comment a proposed ***Registered Land (Amendment) Bill, 2020***. This Bill was informed by submissions received from several stakeholders and the general public with respect to the Commission’s Discussion Paper titled ***“The Enforcement Of Mortgage-type Security Over Real Estate: Is Reform Of The Law Necessary?”***.

The Discussion Paper considered whether reform of the law relating to the enforcement of charges over residential properties was necessary in light of reports expressing concerns regarding the number of enforcement proceedings initiated and the level of hardship experienced by the owners of residential property affected by such proceedings. A number of questions were raised in the Discussion Paper which stimulated responses from several stakeholders.

The proposed legislation has benefited significantly from those stakeholder responses and is the product of a detailed examination of the manner in which charges over land are regulated under the ***Registered Land Act (2018 Revision)***.

Several other projects of the Commission are at different stages of the law reform process. These include reforms of the Penal Code, the creation of a dedicated administrative appeals tribunal and the modernization of the Interpretation Act. More detailed information on each of these projects can be found throughout this Annual Report.

As a Commission, our role has been to work towards adding value to the legal expertise of the Government by drawing on research and analysis of the Commission and its staff and presenting issues in a manner which we hope is clear and impartial. Similar to past areas we have examined, it is our belief that the legal reform arising from the subjects reviewed during the period and which are currently under examination will make a material contribution to the development of a number of areas of Cayman Islands society.

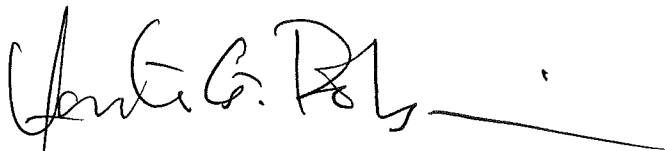
We understand that the law reform process and its outcomes are enhanced when Commissioners and staff actively engage with the public, practitioners, stakeholders and persons with relevant policy and legal expertise.

Even if our proposals are not implemented into legislation, we seek to ensure that our research and analysis of the law will have practical utility by providing continuous learning for those who may wish to refer to our reports as a legal resource. The strength of the Commission comes in large part from the contribution of its personnel. In this regard, I express my thanks to my fellow Commissioners for affording us the benefit of their expertise and the staff of the Commission for their dedication to the work of the Commission. I also use this opportunity to mention that during the year, the vacancy of Senior Legislative Counsel and Paralegal Officer arose. I am happy to welcome to the Paralegal Officer role, Miss Felicia Connor and I understand that in due course there will be an opportunity to welcome the new Senior Legislative Counsel.

I thank the Attorney General for his continued support and guidance over the years. I also extend my appreciation to all stakeholders for their submissions and proposals.

Law reform plays an important role in any society which aspires to maintain the rule of law. As our society evolves, our laws have to change to meet the needs of the society in order to prevent injustice and unfairness.

For the coming year, I join the Commissioners and staff in their commitment to continuing the law reform process and maintaining the high standards set by our predecessors as we pursue and conclude law reform projects that seek to contribute to the development of a Cayman Islands society based on democratic values, social justice and fundamental human rights for all.

A handwritten signature in black ink, appearing to read 'Hector G. Robinson', followed by a long horizontal line extending to the right.

Mr. Hector Robinson, QC
Chairman

31st March, 2021

TABLE OF CONTENTS

OVERVIEW OF THE LAW REFORM COMMISSION	6
LAW REFORM COMMISSION – COMMISSIONERS	8
LAW REFORM COMMISSION - LEGAL AND ADMINISTRATIVE STAFF	9
YEAR IN REVIEW - PROJECTS OF THE LAW REFORM COMMISSION, 1ST APRIL, 2020 TO 31ST, MARCH, 2021	10
MEETINGS OF THE LAW REFORM COMMISSION	10
COMPLETED PROJECTS	10
Anti-Bullying Legislation	10
(a) Amendments to the Education Act, 2016 to Facilitate an Anti-Bullying Policy	12
(b) Introduction of Anti-Bullying Regulations	13
CURRENT PROJECTS	16
A. Enforcement of Mortgage-type Security over Real Estate	17
B. Penal Code Reform	17
C. Administrative Appeals Tribunal	18
D. Interpretation Act Modernisation	19
OTHER PROJECTS	19
(a) Consumer protection;	19
(b) Severance of joint tenancies;	19
(c) Succession and wills;	19
(d) Defamation; and	20
(e) Usury.	20
CONCLUSION	20
APPENDIX – PUBLICATIONS	21

OVERVIEW OF THE LAW REFORM COMMISSION

The Commission was established by the Law Reform Commission Act No. 6 of 2005 and commenced operations on 16th September, 2005.

In accordance with the Act, the Commission's mandate is to study and keep under constant review the statutes and other laws comprising the laws of the Cayman Islands with a view to its systematic development and reform, including in particular —

- (a) the modification of any branch of the law as far as that is practicable;
- (b) the elimination of anomalies in the law, the repeal of obsolete and unnecessary enactments and the simplification and modernisation of the law;
- (c) the development of new areas in the law with the aim of making them more responsive to the changing needs of Cayman Islands society;
- (d) the adoption of new or more effective methods for the administration of the law and the dispensation of justice; and
- (e) the codification of the unwritten laws of the Cayman Islands.

The Commission, in the performance of its functions, may —

- (a) review and consider any proposals for the reform of the law which may be referred to it by any person or authority;
- (b) prepare and submit to the Attorney General from time to time, a programme for the study and examination of any branch of the law with a view to making recommendations for its improvement, modernisation and reform;
- (c) initiate and carry out or direct the initiation and carrying out of, studies and research necessary for the improvement and modernisation of the law;
- (d) undertake, pursuant to any such recommendation approved by the Attorney General, the formulation and preparation of drafts in the form of Bills or other instruments for consideration by the Cabinet and the Legislative Assembly;
- (e) provide, at the instance of Government departments and other authorities concerned, advice, information and proposals for reform or amendment of any branch of the law; and
- (f) with the approval of the Attorney General appoint or empanel committees, whether from among members of the Commission or from among persons outside the Commission or both, to study and make recommendations to the Commission on any aspect of the law referred to it by the Commission.

The work of the Commission is conducted by six Commissioners and the staff of the Commission, which consists of two full time attorneys-at-law (the Director and Senior Legislative Counsel), a Paralegal Officer and an Administrative Secretary.

The Commission is a department of the Portfolio of Legal Affairs, but it acts independently in its review of matters. Its recommendations are based on its own research and analysis of ideas submitted by stakeholders and by the public.

The Honourable Attorney General refers matters to the Commission, but the Commission may initiate and carry out studies and research necessary for the improvement and modernisation of any area of the law of the Cayman Islands, based on comments from the public, recommendations from interest groups or on the Commission's independent research.

The law reform process is extensive and comprises of legal research, writing and consultation. The Commission usually prepares two publications during the course of a project. The first publication, which is an Issues Paper or Discussion Paper, sets out the Commission's preliminary suggestions for reform. The preliminary suggestions are usually made after legal research is carried out by the staff of the Commission and after such research has been considered by the Commissioners. The Commission either publishes the Discussion or Consultation paper on www.lrc.gov.ky and www.gov.ky or it submits the Consultation paper to identified stakeholders for comments.

The second publication is a Final Report, which is submitted to the Honourable Attorney General. It contains the final recommendations of the Commission which, in the majority of cases to date, are supported by draft legislation.

The Commission makes its final recommendations after it takes into account the responses it receives to the Discussion or Consultation Paper. Since its establishment, the Commission has produced several project papers, final reports and fifteen Annual Reports. These are listed in the Appendix.

THE CAYMAN ISLANDS LAW REFORM COMMISSION

COMMISSIONERS



CHAIRMAN
Hector Robinson, QC
Partner at Mourant Ozannes



COMMISSIONER
Honourable Justice Alexander Henderson, QC
Senior Counsel at Dentons



COMMISSIONER
Vaughan Carter, Attorney-at-Law
Partner at Etienne Blake



COMMISSIONER
Abraham Thoppil, Attorney-at-Law
Partner at Maples and Calder



COMMISSIONER
Reshma Sharma, Attorney-at-Law
Solicitor General



COMMISSIONER
Patrick Moran, Attorney-at-Law
Director of Public Prosecutions

THE CAYMAN ISLANDS LAW REFORM COMMISSION

LEGAL AND ADMINISTRATIVE STAFF



DIRECTOR
José Griffith, Attorney-at-Law



PARALEGAL OFFICER
Felicia Connor



ADMINISTRATIVE SECRETARY
Lourdes Pacheco

YEAR IN REVIEW

PROJECTS OF THE LAW REFORM COMMISSION

1st APRIL, 2020 TO 31st MARCH, 2021

MEETINGS OF THE LAW REFORM COMMISSION

The Law Reform Commission (“the Commission”) met five times between 1st April, 2020 and 31st March, 2021 on the following dates —

- (a) 25th June, 2020;
- (b) 23rd July, 2020;
- (c) 3rd November, 2020;
- (d) 25th February, 2021; and
- (e) 25th March, 2021.

COMPLETED PROJECTS

During the 2020/2021 reporting period, the Commission completed its Final Report on anti-bullying legislation in schools.

Anti-Bullying Legislation

On 8th November, 2020 the Final Report of the Commission, titled “***Bullying: Legislation, Policy or Both?***” was submitted to the Honourable Attorney General. This Final Report contains recommendations which seek to respond to the issues that relate to bullying behaviour in public and private schools, and is supported by a proposed “***Education (Amendment) Bill, 2020***” and a proposed “***Anti-Bullying (Schools) Regulations, 2020***”.

The research of the Commission into the issue of bullying in schools included an examination of-

- (a) what constitutes bullying;
- (b) the different types of bullying;
- (c) the causes of bullying;
- (d) the legal issues to consider when dealing with bullying;
- (e) the persons who should be held accountable for bullying;
- (f) bullying legislation in other jurisdictions; and
- (g) policies that assist in the regulation of bullying conduct.

The research findings of the Commission resulted in the formulation for consultation of an Issues Paper, titled – “***Bullying: Legislation, Policy or Both?***”; a proposed ***Education (Amendment) Bill, 2019***; and a proposed ***Anti-Bullying (Schools) Regulations, 2019***.

The Issues Paper was published for general public comment. Stakeholders and members of the general public were invited to respond to the issues and questions identified in the Paper.

The consultation period on the Issues Paper commenced on 20th January, 2016 and concluded on 2nd May, 2016. During the period, the Commission acceded to requests by various stakeholders to extend the time for submission of comments.

The Commission relied on the submissions received on the Issues Paper in formulating the proposed ***Education (Amendment) Bill, 2019*** and ***Anti-Bullying (Schools) Regulations, 2019***. Stakeholders and members of the general public were invited to respond to the provisions of the proposed ***Education (Amendment) Bill, 2019*** and ***Anti-Bullying (Schools) Regulations, 2019***.

The consultation period on the proposed legislation commenced on 17th July, 2019 and concluded on 16th September, 2019. During the period, the Commission acceded to requests by the various stakeholders to extend the time for submission of comments. By the end of the extended consultation period, the Commission received responses from several organisations and individual stakeholders including the following –

- The Alex Panton Foundation;
- Cayman Islands Legal Practitioners Association;
- National Drug Council;
- Colours Cayman;
- Parent “Stop and Now”;
- Cayman Islands Government Primary School Principals;
- United Against Bullying Foundation;
- Ministry of Education, Youth, Sports, Agriculture and Lands; and
- Human Rights Commission.

In the Issues Paper, the Commission pointed out that bullying behaviour among children and adolescents was becoming more recognised worldwide. Moreover, various mediums such as print and electronic media highlighted the occurrences of bullying. It was indicated that as a consequence, numerous studies were conducted at a global level into bullying behaviour and that several initiatives were developed and implemented in various jurisdictions to manage this type of conduct.

The areas of focus included –

- the definition of bullying;
- the types of bullying that occur (whether they be direct, indirect or sexual);
- the causes of bullying;
- the prevalence, impact and demographic differences of bullying; and
- the legal consequences of bullying from a civil, criminal and constitutional perspective.

The Commission examined the position in several jurisdictions, notably Canada, the United States and Australia, which have undertaken substantive measures on bullying.

The Commission noted that legislation is not the only prescription that may address bullying and submitted that school policies and programmes may need to be adapted to reflect an approach to learning which promotes more parental involvement, increases adult supervision, engages the school leadership and sends a firm message to the community that bullying issues will be addressed appropriately and in a timely and just manner.

Following the examination of the issues for consideration, the Commission raised several questions in order to gauge the views of respondents on whether bullying should be dealt with by legislation, policy or both.

The views of individual respondents varied. One respondent stated that behaviour policy to control bullying behaviour in the schools is sufficient and mandating legislation will leave no room for discussion.

Another respondent indicated that the current system has been failing due to the fact that schools are not mandated by law to comply with any prescribed policy to address bullying behaviour. The respondent explained that after their child experienced several incidents of bullying, the school only addressed it in what was described as a “piecemeal fashion”.

It was felt that a general Anti-Bullying Policy that is applicable to both public and private schools, should be adopted along with the requirement for teachers, students and guardians to be properly educated and trained on how to address bullying behaviour.

Additionally, organisational responses raised different points. The Save Our Youth Foundation was of the view that bullying behaviour should not be singled out without underlining the issues that affect students such as gangs, violence, juvenile delinquency and teen pregnancy. The Foundation did not support having legislation to address this type of behaviour.

The Human Rights Commission expressed the view that legislation should be introduced to deal with bullying and cyberbullying. They indicated that bullying behaviour is a human rights issue. The Human Rights Commission touched on the obligation of the State, which is to provide an education to every child and further to protect a child’s physical and mental wellbeing whilst in the State’s care. Additionally, the Human Rights Commission expressed the view that the importance attached to education should be explicitly stated in the preamble of the law.

Further to the views emerging from the consultation process and drawing from the modern legislative models adopted by other jurisdictions, the Commission recommended a legislative framework to address bullying in schools in the form of amendments to the *Education Act, 2016*. These amendments will be supported by regulations that focus on the formulation of anti-bullying policies and the establishment of administrative measures.

(a) Amendments to the *Education Act, 2016* to facilitate an Anti-Bullying Policy

In relation to the *Education Act, 2016*, the Commission recommended amendments as contained in the proposed *Education (Amendment) Bill, 2020*, to make provision for the introduction of an Anti-Bullying Policy.

The Commission noted that the *Education Act, 2016* does not contain an enabling provision to address an Anti-Bullying Policy. The Commission therefore recommended an amendment to the Education Act to require every school to put in place a written Anti-Bullying Policy based on national policy and other prescribed requirements. This school policy should include the disciplinary penalties to be imposed or other disciplinary action to be taken against persons subject to the legislation and the procedures for the enforcement of the disciplinary penalties or other action.

It is also recommended that policy oversight measures be included as a means to ensure that the policy formulated by a school meets the minimum requirements of the legislation. In this regard, schools should be required to submit their Anti-Bullying Policy for approval by –

- (a) the Department, in the case of a Government school;
- (b) the governing body of an assisted or independent school; and
- (c) the Ministry of Education and the Education Council.

In order to facilitate the effective implementation of an Anti-Bullying Policy, it is recommended that Cabinet be empowered to make regulations prescribing –

- (a) the contents of an Anti-Bullying Policy;
- (b) the reporting and notification requirements;
- (c) the investigation procedures in relation to bullying;
- (d) the type and form of the disciplinary penalties to be imposed or other disciplinary action to be taken;
- (e) the procedures for the enforcement of the disciplinary penalties or other disciplinary action;
- (f) all matters that may be necessary for giving effect to any disciplinary mechanisms; and
- (g) the submission of reports on bullying.

(b) Introduction of Anti-Bullying Regulations

In support of amendments to the *Education Act, 2016*, the Commission recommended the introduction of regulations which will take the form of the proposed *Anti-Bullying (Schools) Regulations, 2020*.

It is proposed that the regulations contain a definition of “bullying”, “parent”, “school staff”, and “student”. While the Commission believes that a school should be permitted to formulate an Anti-Bullying Policy which is consistent with that school’s circumstances, the Commission recommends that at minimum, an Anti-Bullying Policy should contain key inescapable provisions in order for the policy to be relevant and enforceable. In particular, it is proposed that the contents of an Anti-Bullying Policy should include provisions which –

- (a) Contain prohibitions in relation to –
 - (i) the places where bullying may occur;
 - (ii) the use of telecommunication networks to facilitate different forms of bullying;
 - (iii) the use of written or verbal communication or unwanted physical contact to facilitate bullying; and
 - (iv) retaliating against someone who reports bullying conduct.

- (b) Establish procedures and where relevant, strategies for —
 - (i) reporting, (whether or not anonymously) and investigating bullying;
 - (ii) restoring a sense of safety for a victim of bullying and assessing the victim's need for protection; and
 - (iii) providing counselling or referrals to appropriate services for students, family members and other persons affected by bullying.
- (c) Provide for the delivery of anti-bullying programmes, interventions and other support mechanisms to the school staff, students and parents by social workers, psychologists, or other professionals who have relevant training and qualifications.
- (d) Provide, where relevant, for the education and training of students, parents and school staff about —
 - (i) bullying, the anti-bullying policies of the school and how parents can provide support and reinforce such anti-bullying policies within the household;
 - (ii) actions required to be taken by school staff to prevent and respond to bullying behaviour;
 - (iii) the systems for the anonymous reporting of acts of bullying or retaliation;
 - (iv) the connection between mental issues and bullying conduct; and
 - (v) strategies for promoting a positive school climate.
- (e) Promote a positive school climate that is inclusive and accepting of all students irrespective of sex, race, colour, language, religion, social class, political or other opinion, national or social origin, association, age, mental or physical disability, property, birth, sexual orientation, gender identity or other status.
- (f) Require the utilisation of surveys to collect information on school bullying from its students, school staff and parents of the students at least once every year.
- (g) Require the maintenance of a record of relevant information and statistics on acts of bullying or retaliation in school and reports of bullying.
- (h) Require the imposition of disciplinary penalties against a student who engages in bullying or retaliation, as a result of a report made about bullying including —
 - (i) detention;
 - (ii) suspension;
 - (iii) expulsion; and
 - (iv) exclusion.
- (i) Provide for appropriate action to be taken against a student who —
 - (i) witnesses conduct which may constitute bullying or retaliation and fails to make a report to the school leader or a member of the school staff; or

- (ii) makes a false allegation of bullying or retaliation knowing there is no basis to make the allegation.

The Commission recommends that a schools Anti-Bullying Policy be brought to the attention of school staff, students and parents by providing these persons with a copy of the policy and also posting the policy on the school walls and official website of the school.

The Commission recommends the introduction of provisions which identify the role of the Department, in the case of public schools and the governing body, in the case of independent and assisted schools when dealing with the prevention of bullying.

The role of a school leader with regard to an Anti-Bullying Policy should also be made clear in regulations. It is proposed that a school leader shall be responsible for the implementation and oversight of the regulations and the policies to respond to bullying.

The Commission recommends the imposition of a reporting obligation, in written form. This shall apply to school staff, who are exercising their general duty of care towards a student who is or was being subjected to bullying or retaliation.

It also recommended that an obligation should be imposed on a student to report to the school leader or member of the school staff any act of bullying or act of retaliation witnessed by that student, or that has come to that student's attention.

An important element of any anti-bullying legislative framework is the investigative mechanisms to ensure effectiveness of the policy. In this regard, it is recommended that a school leader, on receiving any report on bullying shall –

- (a) immediately investigate the circumstances surrounding the conduct and take such measures as are appropriate to protect the victim during the course of the investigation;
- (b) within twenty-four hours of receiving a report, notify the parents of the affected parties with respect to the details of the conduct; and
- (c) if deemed necessary, refer a bullying incident to the Department or the governing body for guidance.

The Commission is cognisant that without appropriate sanctions to ensure compliance with any legislative framework, the objective of the regulation would be compromised. The Commission therefore recommends the following –

- (a) A school leader or a member of the school staff within a Government school who fails, without reasonable cause, to comply with their obligations under the regulations and the Anti-Bullying Policy of the school should be liable to such disciplinary action as may be determined by the Department including —
 - (i) in the case of a member of the school staff who is a civil servant, action permissible under the *Public Service Management Act (2018 Revision)* and the *Personnel Regulations (2019 Revision)*; and

- (ii) in the case of all other members of the school staff, suspension or termination of service.
- (b) A school leader or a member of the school staff within an independent and assisted school who fails, without reasonable cause, to comply with their obligations under these regulations and the Anti-Bullying Policy of the school, should be liable to such disciplinary action as may be determined by the governing body of that school including the suspension or termination of service of the school leader or the member of the school staff.

As an overarching oversight mechanism, the Commission recommends that a school leader –

- (a) Update or revise the anti-bullying policies and procedures of the school in accordance with a written request made by the Department, the governing body, the Ministry or the Education Council.
- (b) At the end of each school term but not later than the commencement of the subsequent school term, submit a written report to the Department, in the case of a government school or to the governing body, in the case of an assisted and an independent school, containing details of —
 - (i) all reported incidents of bullying or retaliation;
 - (ii) the outcome of the bullying and retaliation investigations;
 - (iii) the disciplinary penalties imposed or other disciplinary action taken against a student;
 - (iv) the measures utilised to counsel the victim and the person who engaged in the bullying;
 - (v) the measures and outcome of the measures employed to prevent a recurrence of the bullying;
 - (vi) the measures imposed against a school leader, a member of the school staff or a parent for acting in contravention of the regulations; and
 - (vii) any other matter that may be required by the Department or the governing body.
- (c) Submit the report to the Ministry and Education Council for review and any other action that the Ministry, after consultation with the Education Council, deems appropriate.

CURRENT PROJECTS

The Commission, during this 2020/2021 reporting period, advanced other projects. These projects related to —

- (a) Enforcement of Mortgage-type Security over Real Estate;
- (b) Penal Code Reform;
- (c) Administrative Appeals Tribunals;
- (d) Interpretation Act Modernisation

A. Enforcement of Mortgage-type Security over Real Estate

On 28th August, 2020 the Commission published for public review and comment a proposed ***Registered Land (Amendment) Bill, 2020***. This Bill was informed by submissions received from several stakeholders and the general public with respect to the Commission's Discussion Paper titled ***"The Enforcement Of Mortgage-type Security Over Real Estate: Is Reform Of The Law Necessary?"***.

The Discussion Paper considered whether reform of the law relating to the enforcement of charges over residential properties was necessary in light of concerns regarding the number of foreclosure proceedings initiated, and the level of hardship experienced by the owners of residential property who have been affected by such proceedings.

The Discussion Paper raised a number of questions and corresponding responses were received. The proposed legislation has accordingly benefited from those responses and is the product of a detailed examination of the manner in which charges over land are regulated under the ***Registered Land Act (2018 Revision)***. In particular, focus was placed on the provisions dealing with the –

- (a) form of charges over land;
- (b) chargee's remedies when the chargor defaults in payment or in satisfying some other obligation;
- (c) manner in which the chargee's power of sale is exercised; and
- (d) variation of the chargee's powers under the legislation.

The legislation critically provides for a "Lending and Pre-action Protocol" supported by a "Financial Circumstances Assessment Questionnaire", both of which are intended to facilitate fairness and reasonableness between lender and borrower when seeking to resolve any matter of default in relation to a charge over land.

The Protocol and Questionnaire seek to encourage between the lender and borrower greater pre-lending engagement before the registration of a charge and greater pre-action engagement before the commencement of enforcement proceedings.

The consultation period for these proposals expired on the 16th October, 2020 and was subsequently extended to 20th November, 2020. By that time the Commission received responses from the general public and several stakeholders including the Cayman Islands Legal Practitioners Association, the Cayman Islands Bankers' Association, the Judiciary, the Registrar of Lands, the Ministry of Financial Services and Home Affairs, and the Cayman Islands Monetary Authority.

The Commission is in the process of reviewing all submissions and intends to make appropriate amendments to the legislative proposals in order to make them available for a second round of consultation before finalising its recommendations.

B. Penal Code Reform

The Commission continues its review of the ***Penal Code (2020 Revision)*** (the "Penal Code") for human rights compatibility, to remove obsolete provisions and to modernize archaic provisions. In

this regard, the Commission is in the process of preparing a discussion paper, the scope of which is to examine the provisions in the Penal Code against the Bill of Rights. The examination has so far identified several provisions of the Penal Code that raise human rights issues, including provisions relating to immature age (minimum age of criminal responsibility), compulsion by spouse, insulting the modesty of a woman, procuring abortion, unnatural offences, indecent assault and incest.

The Commission intends to analyse these offences in greater detail and prepare a discussion paper which will invite stakeholder and public submissions on the issues identified.

C. Administrative Appeals Tribunals

The Commission has commenced its review of administrative appeals tribunals in the Cayman Islands in order to determine whether legislative provisions should be put in place to establish a permanent administrative appeals tribunal in substitution for the current arrangements for separate appeals tribunals to deal with matters such as planning, immigration, labour and other administrative matters.

The development of new legislation to establish a permanent administrative appeals tribunal to hear and determine appeals against decisions of public authorities recognizes the importance of government decision making on the lives of persons in the Cayman Islands community.

The Ernest and Young report titled *“Project Future Creating a Sustainable Future for the Cayman Islands, a review of the Public Service”*, was commissioned by the Cayman Islands Government and published in 2014 (the “EY Report”), and explored the centralisation of all tribunals in the Cayman Islands.

The EY Report revealed that there are over 15 tribunals and over 100 bodies making administrative decisions across the Cayman Islands Government service. The legislation governing the right to appeal against decisions of public authorities, these appeals tribunals having jurisdiction over such appeals and the appeals processes are scattered in a number of different pieces of legislation and provisions having varying degrees of inconsistencies with each other.

Some of the appeals tribunals and other tribunals include the following —

- (a) the Immigration Appeals Tribunal;
- (b) the Labour Tribunal and the Labour Appeals Tribunal of Cayman Brac and Little Cayman;
- (c) the Education Appeals Tribunal;
- (d) the Planning Appeals Tribunal and Planning Appeals Tribunal of Little Cayman and Cayman Brac;
- (e) the Health Appeals Tribunal;
- (f) the Gender Equality Tribunal;
- (g) the Development Plan Tribunal; and
- (h) the Land Adjudication Tribunal.

In considering a legislative framework for a centralised administrative appeals tribunal for the Cayman Islands, the Commission is examining the tribunals’ legislation and systems of the Cayman

Islands against relevant legislation and tribunal systems in Australia, the United Kingdom, and New Zealand as well as reports and other material emanating from those jurisdictions regarding appeals against administrative decisions. The matters of focus will include -

- (a) the cost benefit analysis in relation to the establishment of a centralized appeals tribunal;
- (b) the composition of the appeals tribunal;
- (c) the terms and conditions of appointment of members;
- (d) the powers and procedures of the appeals tribunal including the conduct of hearings of appeals;
- (e) the range of government administrative decisions that will fall within the jurisdiction of the tribunal;
- (f) the binding or persuasive nature of the decision of the tribunal;
- (g) the adoption of a quasi-judicial appeals process that is fair, just, economical, informal and quick;
- (h) the conduct of hearings by the appeals tribunal in public; and
- (i) the opportunity of the parties to attend the Tribunal and be heard.

The Commission intends to prepare a discussion paper which will seek stakeholder and public submissions on the issues identified.

D. Interpretation Act Modernisation

The Law Reform Commission continues its work on the reform of the *Interpretation Act (1995 Revision)* (the “Interpretation Act”). The reform project is aimed at modernizing and updating the provisions concerning the general principles of interpretation, gender of words, nomenclature and commencement of laws. The reform will ensure that the Interpretation Act is consistent with current standards and other legislation.

In particular the Commission is examining the following -

- (a) a number of changes to the definitions provided in section 3 (Interpretation of terms applicable generally) in order to modernise the definitions and make them consistent with current usage of those terms;
- (b) the commencement and citation of laws in the provisions found in sections 13 to 22 of the Interpretation Act;
- (c) provisions as to powers found in sections 31 to 39 of the Interpretation Act;
- (d) penalties in respect of those provisions in sections 43 to 50; and
- (e) miscellaneous matters found in sections 51 to 64.

OTHER PROJECTS

The research, analysis and the legislative drafting of the Commission continues in the following areas and will be made available for publication, consultation or submission to the Attorney General at the appropriate stages of the law reform process –

- (a) Consumer protection;
- (b) Severance of joint tenancies;

- (c) Succession and wills;
- (d) Defamation; and
- (e) Usury.

CONCLUSION

In order to enhance justice and legal efficiency and to contribute to socio-economic development, reform needs to be of a high standard and done in a manner which helps to ensure that our legal system can respond appropriately and effectively. The approach of the Commission in the next year will continue to be one where we seek to stimulate reflection on the laws in our society, and make sound recommendations which inform the required legislative reforms.

APPENDIX

PUBLICATIONS

ISSUES PAPERS

- Enforcement of Foreign Judgments and Interim Orders – 6th March, 2012
- Directors’ Duties: Is Statutory Codification Needed? – 16th January, 2014
- Conditional Fees: Legislative Recognition and Regulation in the Cayman Islands – 3rd September, 2015
- Bullying: Legislation, Policy or Both? – 19th January, 2016
- Cybersecurity: Strategic Policy and Legislation – 29th November, 2017

DISCUSSION/CONSULTATION PAPERS

- Review of the Legal Aid System in the Cayman Islands (Preliminary Paper) – 28th March, 2006
- Review of the Law of Landlord and Tenant (Discussion Paper) – 30th September, 2006
- Review of the Law of Landlord and Tenant (Consultation Paper) – 29th January, 2007
- Review of the Law regulating legal practitioners in the Cayman Islands – 29th January, 2007
- Review of Corporate Insolvency Law in the Cayman Islands and Recommendations for the Amendment of Part V of the Companies Law (2004 Revision) – 20th July, 2007
- Review of the legal aid system in the Cayman Islands – 14th December, 2007
- Enduring Power of Attorney, Preliminary Paper (Draft) – 19th January, 2009
- Regulation of Charitable Non-profit Organisations in the Cayman Islands – 26th January, 2009
- Review of the Arbitration Laws of the Cayman Islands – 11th May, 2009
- Review of the Law of contempt of court in the Cayman Islands (Part 1) Contempt in the face of the court - September 2010
- Tort Reform - Caps on Non-Economic Damages and Reducing the Limitation Period – 22nd October, 2010
- Family Law Reform (Part 1) - Review of the Matrimonial Causes Law (2005 Revision) – 18th February, 2011
- Modernisation of the regulation of Strata titles in the Cayman Islands (Part 1) – Management of Strata Schemes – 4th April, 2011
- Introduction of the office of the Administrator-General in the Cayman Islands (Preliminary Paper) – 2nd June, 2011

- Introduction of the office of the Administrator-General in the Cayman Islands – 22nd March, 2012
- Modernisation of the regulation of strata titles in the Cayman Islands (Part 2) -Review of the creation, management and termination of strata schemes - 3rd January, 2013
- Family Law Reform (Part 2) – Review of the Matrimonial Causes Law (2005 Revision), the Maintenance Law (1997 Revision) and the Family Property (Rights of Spouses) Bill, 2013 – 9th July, 2013
- Contempt of Court -10th January, 2014
- Contempt of Court: The Sub Judice Rule, 21st March, 2014
- Legislative Protection of Whistle Blowers - an Examination of the Legislation in the Cayman Islands and other Jurisdictions - 14th April, 2014
- The Way Forward for Regulation of Timeshares in the Cayman Islands – 15th September, 2014
- Consumer Protection: Entrenching Consumer Supremacy in the Cayman Islands, 27th November, 2015
- Litigation Funding Review – Discussion Paper – 29th December, 2015
- Contempt of Court – 15th January, 2016
- Contempt of Court – 15th July, 2016
- Trusts Law Reform – 5th April, 2017
- Regulation of Queen’s Evidence: Immunity from prosecution & reduced sentences – 25th September, 2017
- Enforcement of Mortgage-type Security over Real Estate: Is Reform of the Law Necessary – 23rd November, 2018
- Decriminalisation of Suicide – 16th August, 2019
- Usury – The Common Law and Statutory Position in the Cayman Islands (Discussion Paper) – 20th December, 2019\

FINAL REPORTS

- Review of the Corporate Insolvency Law and recommendations for the amendment of Part V of the Companies Law - 12th April, 2006
- Review of the Law Regulating Legal Practitioners in the Cayman Islands – May 2007
- Review of Corporate Insolvency Law in the Cayman Islands and recommendations for the Amendment of Part V of the Companies Law (2004 Revision) – 15 July 2007
- Review of the Law Regulating the Relationship of Landlords and Tenants in the Cayman Islands – July 2008
- Review of the Legal Aid System in the Cayman Islands – July 2008

- Is there a need for enduring Powers of Attorney in the Cayman Islands – 30th April, 2009
- Protection against Domestic Violence – 31st March, 2010
- Review of the Law regulating Charitable Organisations in the Cayman Islands – 31st March, 2010
- Tort Reform – 26th November, 2010
- Arbitration Law Review – Final Report 4th January 2012
- Introduction of the Office of the Administrator-General in the Cayman Islands – 8th August, 2012
- Enforcement of Foreign Judgments and Interim Orders Part I: Interim Orders in Aid of Foreign Proceedings – 8th March, 2013
- Enforcement of Foreign Judgments and Interim Orders Part II: Enforcement of Foreign Judgments – 8th March, 2013
- Sexual Harassment – 1st May, 2013
- Review of Legislative Protection for Whistleblowers in the Cayman Islands – 3rd December, 2014
- Legislative Protection of Whistle Blowers - an Examination of the Legislation in the Cayman Islands and other Jurisdictions – 5th December, 2014
- Stalking Legislation – 5th February, 2015
- The Way Forward For the Regulation of Timeshares in the Islands – 24th August 2015
- Review of the Matrimonial Causes Law (2005 Revision) and the Maintenance Law (1997 Revision); the Family Property (Rights of Spouses) Bill, 2016 – 24th August, 2015
- Modernisation of the Regulation of Strata Titles in the Cayman Islands – 9th November, 2016
- Directors Duties: Is Statutory Codification Needed – 30th March, 2017
- A Review of Litigation Funding in the Cayman Islands - Conditional and Contingency Fee Agreements – 26th January, 2018
- Regulation of Queen’s Evidence: Immunity from Prosecution and Reduced Sentences – 20th March, 2018
- Trusts Law Reform – Final Report, 1st May, 2018
- Contempt of Court – Final Report – 23rd January, 2019
- Litigation Funding – Final Report – 30th September, 2019
- Contempt of Court – Final Report – 31st March, 2020
- Decriminalisation of Suicide – Final Report – 31st March, 2020
- Anti-Bullying Final Report: Bullying: Legislation, Policy or Both? – 5th November, 2020

BILLS

- Legal Aid Bill, 2005
- Companies (Amendment) Bill, 2006
- Draft Residential Tenancies Bill, 2006
- Companies (Amendment) Bill July, 2007
- Legal Practitioners Bill, 2007
- Residential Tenancies Bill, 2008
- Draft Charities Bill, 2009
- The Trusts (Amendment) Bill - 26 June, 2009 (Draft)
- Protection Against Domestic Violence Bill, 2009
- Arbitration Bill, 2012
- Strata Titles Registration (Amendment) Bill, 2011
- Administrator-General Bill, 2012
- Foreign Judgments Reciprocal Enforcement (Amendment) Bill, 2012
- Grand Court (Amendment) Bill, 2012
- Sexual Harassment Bill, 2012
- Family Property (Rights of Spouses) Bill, 2013
- Foreign Judgments Reciprocal Enforcement (Scheduled Countries and Territories) Order, 2013
- Foreign Judgments Reciprocal Enforcement (Amendment) Bill, 2013
- Grand Court Amendment Bill, 2013
- Maintenance Bill, 2013
- Sexual Harassment Bill, 2013
- Charities Bill, 2014
- Penal Code (Amendment) Bill 2014 – Consultation Draft
- Protected Disclosures Bill, 2014
- Strata Titles Bill, 2014
- Timeshare Bill, Draft 2014
- Stalking (Civil Jurisdiction) Bill, 2014
- Funding of Litigation Bill, 2015
- Legal Aid Bill, 2015
- Whistleblower Protection Bill, 2015

- Penal Code (Amendment) Bill, 2016
- Contempt of Court Bill, 2016
- Matrimonial Causes Bill, 2016
- Timeshare Bill, 2016
- The Tourism (Timeshare) (Amendment) Bill, 2016
- Plea Bargains Bill – Discussion Draft - August 2017
- Draft Consumer Protection and Guarantees Bill, 2017
- Draft Trusts (Amendment) Bill, 2017
- Contempt of Court Bill, 2018
- Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2018
- Trusts (Amendment) Bill, 2018
- The Private Funding of Legal Services Bill, 2018
- Contempt of Court Bill, 2019
- Penal Code (Amendment) Bill, 2019
- Anti-Bullying (Schools) Bill, 2019
- Private Funding of Legal Services Bill, 2019
- Private Funding of Litigation Bill, 2019
- Registered Land (Amendment) Bill, 2019
- Penal Code (Amendment) Bill, 2019
- Health Care Decisions (Amendment) Bill, 2019
- Penal Code (Amendment) Bill, 2020
- Contempt of Court Bill, 2020
- Education (Amendment) Bill, 2020
- Health Care Decision (Amendment) Bill, 2020
- Private Funding of Legal Services Bill, 2020

REGULATIONS

- Legal Aid Regulations, March, 2006
- Accountant's Reports Regulations, May 2007
- Legal Aid Regulations, 2015
- Private Funding of Legal Services Regulations, 2018

- Private Funding of Legal Services Regulations, 2019
- Private Funding of Litigation Regulations, 2019
- Anti-Bullying (Schools) Regulations, 2020
- Private Funding of Legal Services Regulations, 2020

ANNUAL REPORTS

- Annual Report no. 1 – 16th September, 2005/31st March, 2006
- Annual Report no. 2 – 1st April, 2006/31st March, 2007
- Annual Report no. 3 – 1st April, 2007/31st March, 2008
- Annual Report no. 4 – 1st April, 2008/31st March, 2009
- Annual Report no. 5 – 1st April, 2009/31st March, 2010
- Annual Report no. 6 – 1st April, 2010/31st March, 2011
- Annual Report no. 7 – 1st April, 2011/31st March, 2012
- Annual Report no. 8 – 1st April, 2012/31st March, 2013
- Annual Report no. 9 – 1st April, 2013/31st March, 2014
- Annual Report no. 10 – 1st April, 2014/31st March, 2015
- Annual Report no. 11 – 1st April, 2015/31st March, 2016
- Annual Report no. 12 – 1st April, 2016/31st March, 2017
- Annual Report no. 13 – 1st April, 2017/31st March, 2018
- Annual Report no. 14 – 1st April, 2018/31st March, 2019
- Annual Report no. 15 – 1st April 2019/31st March, 2020



**The Cayman Islands
Law Reform Commission**

**The Cayman Islands
Law Reform Commission
Portfolio of Legal Affairs
4th Floor Government Administration Building
133 Elgin Avenue, George Town,
P.O. Box 136, KY1-9000
Grand Cayman, Cayman Islands**

Telephone: (345) 946-0022
Email: cilawreform@gov.ky
Website: www.lrc.gov.ky