

CHAPTER 2

OBJECTS, CONSTITUTION AND FUNCTIONING

Establishment of the Commission

The South African Law Reform Commission was established by the South African Law Reform Commission Act 19 of 1973 (the Act).

The objects of the Commission

The objects of the Commission are set out as follows in section 4 of the Act: to do research with reference to all branches of the law of the Republic and to study and investigate all such branches in order to make recommendations for the development, improvement, modernisation or reform thereof, including -

- the repeal of obsolete or unnecessary provisions;
- the removal of anomalies;
- the bringing about of uniformity in the law in force in the various parts of the Republic;
- the consolidation or codification of any branch of the law; and
- steps aimed at making the common law more readily available.

In short, the Commission is an advisory body whose aim is the renewal and improvement of the law of South Africa on a continuous basis.

Constitution of the Commission

The members of the Commission are appointed by the President.

In terms of section 3(1)(a) of the Act the Commission is constituted as follows:

- A judge of the Constitutional Court, the Supreme Court of Appeal or a High Court, as Chairperson.
- Not more than eight persons who appear to the President to be fit for appointment on account of the tenure of a judicial office or on account of experience as an advocate or as an attorney or as a professor of law at any university, or on account of any other qualification relating to the objects of the Commission.

As indicated in Chapter 1, the President appointed a new Commission for a period of five years with effect from 1 January 2007.

Annexure D contains a list of members of the Commission and the periods for which they served or for which they were appointed.

Project leaders

Although the Act does not specifically refer to the appointment of project leaders, it is the Commission's practice to appoint a project leader for an investigation on its research programme. A project leader could be a Commissioner, a member of a project committee appointed by the Minister (section 7A(1)(b)(ii)), or any other person who is not a Commissioner and who is not a member of a project committee (section 8(2)).

The main task of a project leader is to guide the designated researcher's research by evaluating the research and giving advice to the researcher.

Committees

Section 7A of the Act provides for the establishment of committees of the Commission. There are two categories: committees appointed by the Commission and consisting of members of the Commission only (such as the working committee), and committees consisting of members of the Commission and persons who are not members of the Commission. The latter are appointed by the Minister. The object of the second category of committees is to utilise the expertise of persons outside the Commission and to ensure direct community involvement in the activities of the Commission.

Committees of the Commission perform the activities assigned to them by the Commission and are subject to the Commission's directives. Activities performed by committees are deemed to be performed by the Commission and for the purposes of remuneration, members of committees are deemed to be members of the Commission.

Working committee

Under the first category of committees, the Commission has established a working committee which consists of members of the Commission co-opted for meetings according to their availability (section 7A(1)(a) of the Act).

The working committee may be considered the executive committee of the Commission. In accordance with the Commission's directives, this committee attends on a continuous basis to routine matters and other matters that require urgent attention. The working committee may exercise all the functions of the Commission excluding the approval of reports. The committee also considers the inclusion of new investigations in the Commission's programme. Furthermore, the committee plans and manages the activities of the Commission's secretariat.

Project committees

Project committees fall under the second category of committees. The Commission follows the practice of instituting project committees consisting of experts to assist with investigations and to advise the Commission if a specific investigation in the Commission's programme so requires (Section 7A(1)(b) of the Act).

The names of the members of the project committees appear in **Annexure E**. The Commission would like to express its appreciation to individuals and organisations for their willingness to serve on project committees of the Commission.

Secretariat of the Commission

The Commission is assisted in its task by a full-time Secretariat consisting of officials on the establishment of the Department of Justice and Constitutional Development. The Secretariat consists of an administrative component and a professional component. The Deputy Chief State Law Adviser (Chief Director) serves as the Secretary of the Commission. This post has been vacant since 1 April 2006. During the period under review the following Principal State Law Advisers have been appointed as acting Secretary:

- Mr M B Cronje (1 April – 30 April 2006)
- Mr M F Palumbo (1 May – 19 May 2006;
1 July 2006 – 30 April 2007)
- Ms A M Louw (20 May – 30 June 2006)

The research component of the Secretariat consists of 19 State Law Advisers from diverse backgrounds. Their task is to conduct the necessary research under the guidance of project leaders (who are appointed by the Commission), to consult with interested parties, to compile issue papers, discussion papers and draft reports and to carry out other assignments of the Commission.

Law reform cannot be delivered without high quality research. The in-house researchers at the Commission are professionally qualified lawyers, the majority of whom have vast experience in the law reform environment. The result has been the development of scholarly research publications and the involvement of the researchers in various activities as highlighted in Chapter 5.

The research posts are filled by the following persons:

Ms U A Behrtel (Senior State Law Adviser)
Ms D M Clark (Principal State Law Adviser)
Mr M B Cronje (Principal State Law Adviser)
Ms A-M Havenga (Principal State Law Adviser)
Ms A M Louw (Principal State Law Adviser)
Ms P A Matshelo (Principal State Law Adviser)
Mr M F Mdumbe (Senior State Law Adviser)
Ms G M B Moloi (Principal State Law Adviser)
Ms G E Nesbitt (Senior State Law Adviser)
Mr M F Palumbo (Principal State Law Adviser)
Ms C J Pienaar (Senior State Law Adviser)
Ms P Sukhraj – Ely (Senior State Law Adviser)
Ms L A Stuurman (Principal State Law Adviser)
Mr A W F van Vuuren (Principal State Law Adviser)
Mr P A van Wyk (Principal State Law Adviser)
Ms R van Zyl (Senior State Law Adviser)

Mr M F Palumbo serves as Assistant Secretary to the Commission.

Three posts of Senior State Law Adviser are vacant.

The administrative component of the Secretariat consists of the following persons:

Assistant Director:	Ms J M H Oosthuizen
Personal Assistant:	Ms R Bronkhorst
Senior Secretary:	Ms J M Nkabinde
Administrative Officer:	Mr A Singh
Administrative Officer:	Mr J D Kabini
Administrative Officer:	Ms M vd Berg
Librarian:	Mr N Makgoka
Administration Clerk:	Ms C Krebs
Administration Clerk:	Ms A J G Kruger
Administration Clerk:	Ms E Louw
Administration Clerk:	Ms P Mashabela
Administration Clerk:	Mr V Mavuso
Administration Clerk:	Mr R Swart
Operator:	Mr K M Mahlangu
Food Service Aid:	Ms Z A Mahlangu
Messenger:	Mr G Maseko

Financing of the Commission

The Commission's budget for the financial year 1 April 2006 – 31 March 2007 was R13, 329,000 which is made up as follows:

- Personnel expenditure R9, 586,800
- Current expenditure R3, 420,100
- RSCL (municipal levy) R2, 100
- Capital expenditure R320,000

The annual report of the Department of Justice and Constitutional Development contains information on the Commission's programme performance and financial statements.

Programme

The Act provides that the Commission must, from time to time, draw up programmes listing in order of preference the matters which in its opinion require consideration. The Commission's programme is subject to the Minister's approval.

The Commission's present programme appears in **Annexure F**. **Annexure G** contains a list of all the investigations included in the Commission's programme since its inception and indicates the final result or current state of investigations.

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Any person or body is free to submit proposals for law reform to the Commission. In each case the Commission considers the merits of a proposal. In some instances a preliminary inquiry is instituted in order to determine whether the inclusion of a matter in the Commission's programme is justified. The Commission also includes matters in the programme of its own accord.

Every effort is made to dispose of urgent matters with the least possible delay. However, the Commission has to follow certain procedures which sometimes take up considerable time. The availability of funds and skilled research capacity, the nature and extent of the inquiry and the need for consultation all determine the time spent on each project. Consultation, in particular, is time-consuming, but the Commission regards it as an indispensable part of the law reform process.

Working methods

Research is done to determine authoritatively the existing legal position and to identify shortcomings or deficiencies that need to be rectified. Consultation takes place between the researcher, project leader, project committee (where one exists), the general public, stakeholders and persons with particular knowledge concerning the matter under investigation. Comparative studies are carried out in order to enable the Commission to benefit from experiences elsewhere in the world. The consultation process is facilitated by the Commission's policy (since 1996) of compiling issue papers as a first step. Issue papers outline the problems encountered with particular areas of the law and invite submissions on possible solutions. They are distributed as widely as possible for general information and comment and are in appropriate cases also supplemented by workshops. Responses to an issue paper and further intensive research form the basis for the preparation of a discussion paper.

Discussion papers contain essential information on the investigation and the Commission's tentative proposals for reform. In particular, a discussion paper will include a statement of the existing legal position and its deficiencies, a comparative survey, and a range of possible solutions. In most cases the discussion paper will also include a draft Bill. Members of the public are informed of the availability of discussion papers by press releases and press conferences. In addition, copies are distributed to organisations and, sometimes, individuals whose views on the subject under discussion the Commission particularly wishes to canvass. The responses to the provisional proposals are carefully studied before final decisions are made. The Commission also hears oral evidence in appropriate cases. Its recommendations are embodied in comprehensive reports, which are submitted to the Minister for Justice and Constitutional Development.

In making its recommendations, the Commission bears in mind that there is a need to provide access to justice for all, to protect the rights of all parties - especially those of women, children and the poor - to make legal processes affordable, to make the law less complicated, and to give effect to the values and principles underlying the Constitution.

Judging from comments received, the Commission's discussion papers and reports are of a high standard. The faculties of law of various universities often prescribe the Commission's research publications as literature for their students at undergraduate as well as postgraduate level.

The many valuable comments and proposals received on the Commission's recommendations as contained in its documents, confirm that its working methods are successful. These methods ensure that the Commission's final recommendations are well substantiated and are the product of thorough debate. They also facilitate the enactment of the Commission's proposed legislation, which embodies the recommendations.

In the course of its activities, the Commission publishes a variety of documents. The document series of the Commission consists of the following:

Commission papers and committee papers

Commission papers and committee papers are internal documents that are normally not available outside the ranks of the Commission. In these papers suggestions for the inclusion of matters in the Commission's programme, research results for the information of or consideration by the Commission, draft issue papers, discussion papers and reports as well as a variety of other matters are dealt with. The papers are numbered in sequence as they serve before the Commission.

Issue papers

In order to involve the community actively at an earlier stage, the Commission publishes issue papers for appropriate investigations as the first step in the consultation process. The purpose of an issue paper is to announce an investigation, to clarify the aim and extent of the investigation, and to suggest the options available for solving existing problems.

Issue papers published since the introduction of the document series are listed in **Annexure B**.

Discussion papers

Discussion papers, previously referred to as working papers, are documents in which the Commission's preliminary research results are contained. In most cases discussion papers also contain draft

legislation. The main purpose of these documents is to test public opinion on solutions identified by the Commission.

Discussion papers published since the introduction of the document series are listed in **Annexure C**.

Reports

The Act requires the Commission to prepare a full report on any matter investigated by it and to submit such reports together with draft legislation, if any, to the Minister for consideration. All reports of the Commission are official, but not all are published. **Annexure G** lists the investigations reported on by the Commission since its establishment.

In addition to the reports on particular investigations, the Act provides that the Commission must annually submit to the Minister a report on all its activities during the previous year.

Papers in the Commission's research series

This series has been used mainly for publications intended to make the common law more readily available and contains translated common law sources and noters-up. Papers published in this way are listed in **Annexure H**.

Issue papers and discussion papers are supplied free of charge to interested institutions and persons who wish to comment on a particular matter. These papers are widely distributed and are also obtainable from the Commission's offices. The annual report, papers in the research series and reports on investigations that are published can be purchased from the Government Printer in Pretoria.

Meetings

The Commission met on 9 September 2006 and 24 March 2007. There were no working committee or project committee meetings during the year under review.