



THE CAYMAN ISLANDS LAW REFORM COMMISSION



ANNUAL REPORT NO. 19

1st APRIL, 2023/31st MARCH, 2024



Mr. Hector Robinson, K.C.
Chairman

CHAIRMAN'S FOREWORD

I am pleased to present to the Honourable Attorney General the Nineteenth Annual Report of the Cayman Islands Law Reform Commission ("the Commission"). The Report covers the activities of the Commission for the period 1st April, 2023 to 31st March, 2024.

During the reporting period, the Commission continued its work on a range of projects to modernise and strengthen the laws of the Cayman Islands. The Commission published two Discussion Papers and added new projects to its agenda.

The Discussion Paper titled "**Adverse Possession**" was published for public consultation on 26th July, 2023. The Paper examines the history and existing law of adverse possession and considers whether the doctrine should be abolished in the Cayman Islands or retained in a modified form. Numerous submissions were received during the consultation period, which will inform the Commission's deliberations as it prepares its Final Report in 2024.

The Discussion Paper titled "**Settled Land Act**" was published for public consultation on 1st September, 2023. The Paper examines a somewhat obscure law that preserves a form of successive interests in land and aims to determine whether the Act should be repealed or preserved in a limited form. The Paper also considers possible amendments to the *Trusts Act (2021 Revision)*. The Commission will publish its Final Report in 2024.

The Commission continues work on several ongoing projects, including consumer protection, succession, defamation, severance of joint tenancies and hate speech. In addition, the Commission has accepted a referral to examine the law relating to spent convictions.

As always, I thank the many individuals, community groups, public and private sector bodies and professional organisations that take the time to make submissions in relation to our

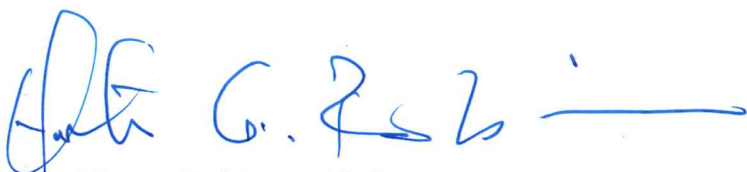
publications. Each submission is gratefully received and thoroughly considered in the Commission's deliberations.

The Commission was pleased to launch a new website during the reporting period. The website provides a more user-friendly interface than the previous website and includes new information about the law reform process, including answers to frequently asked questions. The Commission hopes the website will provide another gateway, in addition to our social media platforms, for engaging with the Cayman Islands community.

I thank my fellow Commissioners for their contributions during the reporting period. They dedicate considerable time and energy to ensuring the law reform process is conducted to the highest standard. The staff of the Commission have once again provided excellent support through their thorough research and analysis of the legal issues under consideration. During the reporting period, Paralegal Officer Ms. Felicia Connor completed her Articles of Clerkship with the Portfolio of Legal Affairs and is soon to be called to the Bar. Sincere congratulations to her on this achievement and very best wishes as she embarks on her career as an attorney. I also congratulate Administrative Secretary Ms. Milicia Bodden, who completed the Civil Service Mentorship Programme in 2023.

Finally, I thank the Honourable Attorney General for his continued support and guidance to the Commission.

I look forward to the year ahead with confidence that the Commission will continue to pursue its mandate with its usual dedication to achieving best practice reforms that seek to contribute to the development of the Cayman Islands.

A handwritten signature in blue ink, appearing to read 'H. Robinson', followed by a horizontal line.

Mr. Hector Robinson, K.C.
Chairman

31st March, 2024

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OVERVIEW OF THE LAW REFORM COMMISSION

The Commission was established by the *Law Reform Commission Act, 2005* (Act 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 seventeen Annual Reports. These are listed in the Appendix.

THE CAYMAN ISLANDS LAW REFORM COMMISSION
COMMISSIONERS



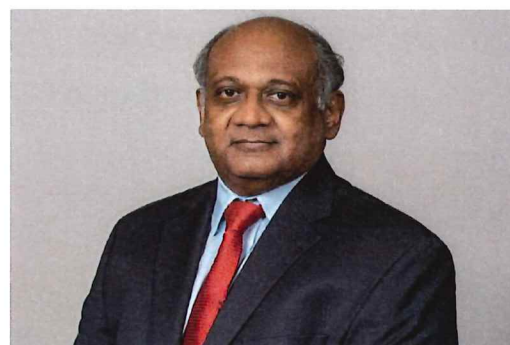
CHAIRMAN
Hector Robinson, K.C.
Partner at Maurant Ozannes (Cayman) LLP



COMMISSIONER
Hon. Justice Alexander Henderson (retired.), K.C.
Senior Counsel at Dentons



COMMISSIONER
Vaughan Carter, Attorney-at-Law
Principal at Savannah Law



COMMISSIONER
Abraham Thoppil, Attorney-at-Law

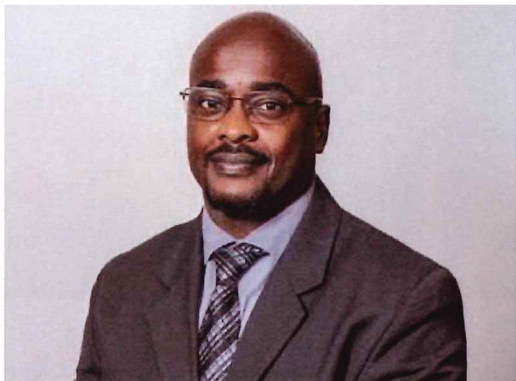


COMMISSIONER
Reshma Sharma, K.C.
Solicitor General



COMMISSIONER
Simon Davis, Attorney-at-Law
Director of Public Prosecutions

THE CAYMAN ISLANDS LAW REFORM COMMISSION
LEGAL AND ADMINISTRATIVE STAFF



DIRECTOR
José Griffith, Attorney-at-Law



SENIOR LEGISLATIVE COUNSEL
Catriona Steele, Attorney-at-Law



PARALEGAL
Felicia Connor



ADMINISTRATIVE SECRETARY
Milicia Bodden

YEAR IN REVIEW

PROJECTS OF THE LAW REFORM COMMISSION

1st APRIL, 2023 TO 31st MARCH, 2024

MEETINGS OF THE LAW REFORM COMMISSION

The Law Reform Commission (“the Commission”) met five times between 1st April, 2023 and 31st March, 2024 on the following dates —

- (a) 27th July, 2023;
- (b) 24th August, 2023;
- (c) 25th October, 2023;
- (d) 22nd February, 2024; and
- (e) 14th March 2024.

CURRENT PROJECTS

(a) Adverse Possession

On 26th July, 2023, the Commission published for public consultation a Discussion Paper titled “Adverse Possession”. Adverse possession (colloquially known as “squatters’ rights”) is the doctrine under which a person who is not the legal owner of land may acquire title to it following a period of continuous possession of the land. The Discussion Paper aims to determine whether the doctrine of adverse possession should be abolished in the Cayman Islands or retained in a modified form.

Claims to adverse possession frequently occur in the context of encroachments on neighbouring land, many of which are the inadvertent result of mistakes as to boundary. As such, any reform of the law relating to adverse possession must be undertaken with care to ensure that there are no unintended consequences that would unfairly disadvantage a person with a deserving claim.

The Discussion Paper outlines the history and existing law of adverse possession, assesses the justifications for the doctrine, and examines the law and recent reforms in other common law jurisdictions. The Discussion Paper proposes two options for reform in the Cayman Islands – abolishing adverse possession entirely, or amending the law to restrict the circumstances in which title to registered land can be acquired by adverse possession.

The consultation period expired on 27th October, 2023. The Commission will formulate a Final Report containing recommendations for submission to the Honourable Attorney General in 2024.

(b) Settled Land Act

On 1st September, 2023, the Commission published for public consultation a Discussion Paper titled “Settled Land Act”. The Discussion Paper aims to determine whether the *Settled Land Act* (1998 Revision) should be repealed. The Act provides a mechanism for creating successive interests in land that is rarely used today. However, the continued operation of the Act has implications for the modern system of land trusts and land registration in the Cayman Islands.

The Discussion Paper explains the historical origins of the Act and outlines the existing Cayman Islands legislative regime relevant to settled land and trusts. It identifies difficulties with the Act, including in relation to its interaction with the land registration system. The Paper also outlines reforms undertaken in other jurisdictions with similar forms of successive interest.

The Paper presents two options for reform for consideration. The first option is to amend the Act so that no future settlements can be created, while preserving existing settlements. The second option is to repeal the Act. In either scenario, the Commission recommends creating a unitary system of statutory trusts of land, similar to that introduced in the United Kingdom. This would be achieved by way of amendments to the *Trusts Act* (2021 Revision).

The consultation period expired on 1st December, 2023. The Commission will formulate a Final Report containing recommendations for submission to the Honourable Attorney General in 2024.

(c) Penal Code – Abortion

In its 2021 Discussion Paper, “**The Penal Code: Is it Compatible with the Bill of Rights?**”, the Commission examined the provisions of the Penal Code relating to abortion. After receiving extensive feedback during the consultation period, the Commission determined that the issue of abortion should be treated as a separate reform project to allow further consideration of the complexities involved. The Commission will publish its Final Report on reform of the law relating to abortion in 2024.

(d) Spent Convictions

Following a referral from the Office of the Deputy Governor, the Commission will be conducting a review of the *Criminal Records (Spent Convictions) Act* (2018 Revision). The review will examine a range of anomalies in the current Act, including inconsistencies relating to the expungement of criminal records. The review will result in the publication of a Discussion Paper for consultation.

(e) Other projects

The other current projects forming part of the Commission's work during 2023 that will continue into 2024 are as follows -

- consumer protection;
- reform of the *Defamation Act (1995 Revision)*;
- severance of joint tenancies;
- reform of the *Succession Act (2021 Revision)*;
- cremation;
- jury trial;
- hate speech; and
- the common law forfeiture rule.

UPDATES ON FINALISED PROJECTS

Administrative Appeals Tribunal

On 18 November, 2022, the Commission submitted a Final Report titled "Appeals Tribunals" to the Honourable Attorney General. The Final Report was supported by the *Administrative Appeals Tribunal Bill, 2022*. Both the Final Report and the Bill were submitted to Cabinet for consideration during the reporting period. The Commission remains available to assist in the advancement of this project.

CONCLUSION

The Commission will continue its systematic review of the laws of the Cayman Islands in the coming year with the goal of stimulating debate and ensuring those laws are continuously improved and adapted to best serve the needs of the Cayman Islands.

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 Discussion Paper – 12th January, 2009
- Regulation of Charitable Non-profit Organisations in the Cayman Islands – 26th January, 2009
- Review of the Arbitration Laws of the Cayman Islands – Discussion Paper – 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 – Consultation Paper – 22nd October, 2010
- Family Law Reform (Part 1) - Review of the Matrimonial Causes Law (2005 Revision) – Discussion Paper – 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 – Discussion Paper – 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 Legislation – Discussion Paper – 27th November, 2015
- Litigation Funding – Conditional and Contingency Fee Agreements – Discussion Paper – 29th December, 2015
- Contempt of Court – 15th January, 2016
- Contempt of Court – Consultation Paper – 15th July, 2016
- Trusts Law Reform – Discussion Paper – 5th April, 2017
- Regulation of Queen’s Evidence – Immunity from Prosecution and Reduced Sentences – Discussion Paper – 25th September, 2017
- Enforcement of Mortgage-type Security over Real Estate: Is Reform of the Law Necessary? – Discussion Paper – 23rd November, 2018
- Decriminalisation of Suicide – Discussion Paper – 16th August, 2019
- Usury: The Common Law and Statutory Position in the Cayman Islands – Discussion Paper – 1st November, 2021
- Appeals Tribunals – Discussion Paper – 13th December, 2021
- The Penal Code: Is it Compatible with the Bill of Rights? – Discussion Paper – 17th December, 2021
- Adverse Possession – Discussion Paper – 26th July, 2023
- Settled Land Act – Discussion Paper – 1st September, 2023

FINAL REPORTS

- Review of the Corporate Insolvency Law and recommendations for the amendment of Part V of the Companies Law – Final Report – 12th April, 2006

- Review of the Law Regulating Legal Practitioners in the Cayman Islands – Final Report – 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) – Final Report – 15th July 2007
- Review of the Law Regulating the Relationship of Landlords and Tenants in the Cayman Islands – Final Report – July 2008
- Review of the Legal Aid System in the Cayman Islands – Final Report – July 2008
- Is there a need for enduring Powers of Attorney in the Cayman Islands? – Final Report – 30th April, 2009
- Protection against Domestic Violence – Final Report – 31st March, 2010
- Review of the Law regulating Charitable Organisations in the Cayman Islands – Final Report – 31st March, 2010
- Tort Reform – Final Report – 26th November, 2010
- Review of the Arbitration Law of the Cayman Islands – Final Report – 4th January 2012
- Introduction of the Office of the Administrator-General in the Cayman Islands – Final Report – 8th August, 2012
- Enforcement of Foreign Judgments and Interim Orders Part I: Interim Orders in Aid of Foreign Proceedings – Final Report – 8th March, 2013
- Enforcement of Foreign Judgments and Interim Orders Part II: Enforcement of Foreign Judgments – 8th March, 2013
- Sexual Harassment – Final Report – 1st May, 2013
- Review of Legislative Protection for Whistleblowers in the Cayman Islands – Final Report – 3rd December, 2014
- Legislative Protection of Whistle Blowers – an Examination of the Legislation in the Cayman Islands and other Jurisdictions – Final Report – 5th December, 2014
- Stalking Legislation – Final Report – 5th February, 2015
- The Way Forward For the Regulation of Timeshares in the Islands – Final Report – 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 – Final Report – 24th August, 2015
- Modernisation of the Regulation of Strata Titles in the Cayman Islands – Final Report – 9th November, 2016
- Directors Duties: Is Statutory Codification Needed? – Final Report – 30th March, 2017
- A Review of Litigation Funding in the Cayman Islands – Conditional and Contingency Fee Agreements – Final Report – 26th January, 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? – Final Report – 5th November, 2020
- The Enforcement of Mortgage-Type Security Over Real Estate: Is Reform of the Law Necessary? – Final Report – 28th July, 2021
- Regulation of Queen’s Evidence: Immunity from Prosecution, Restricted Use Undertakings and Reduced Sentences – Final Report – 30th November, 2021
- Usury: The Common Law and Statutory Position in the Cayman Islands – Final Report – 3rd October, 2022
- Appeals Tribunals – Final Report – 18th November 2022
- The Penal Code: Is it Compatible with the Bill of Rights? – Final Report – 3rd October, 2022

BILLS

- Legal Aid Bill, 2005
- Companies (Amendment) Bill, 2006
- Residential Tenancies Bill, 2006
- Companies (Amendment) Bill, 2007
- Legal Practitioners Bill, 2007
- Residential Tenancies Bill, 2008
- Charities Bill, 2009
- Trusts (Amendment) Bill, 2009
- 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
- Protected Disclosures Bill, 2014
- Strata Titles Bill, 2014
- Timeshare Bill, 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
- Tourism (Timeshare) (Amendment) Bill, 2016
- Plea Bargains Bill, 2017
- Consumer Protection and Guarantees Bill, 2017
- Trusts (Amendment) Bill, 2017
- Contempt of Court Bill, 2018
- Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2018
- Trusts (Amendment) Bill, 2018
- 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
- Registered Land (Amendment) Bill, 2021
- Usury (Common Law Abrogation) Bill, 2021
- Penal Code (Amendment) Bill, 2022
- Administrative Appeals Tribunal Bill, 2022
- Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2022
- Contempt of Court Bill, 2022
- Education (Amendment) Bill, 2022
- Penal Code (Amendment) Bill, 2022

REGULATIONS

- Legal Aid Regulations, 2006
- Accountant's Reports Regulations, 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
- Anti-Bullying (Schools) Regulations, 2022

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
- Annual Report no. 16 – 1st April, 2020/31st March, 2021
- Annual Report no. 17 – 1st April, 2021/31st March, 2022
- Annual Report no. 18 – 1st April, 2022/31st March, 2023



The Cayman Islands
Law Reform Commission

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