

TASMANIA LAW REFORM INSTITUTE

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Annual Progress and Financial Report 2011

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1. Structure, Board Members and staff

The Institute was established on 23 July 2001.

The functions and operations of the Institute are undertaken by its director, with assistance from Board members, research assistants and Law Faculty staff and students.

All written proposals for law reform projects are presented to the Board, which then makes recommendations for consideration by the Institute (clause 3.3), including identifying a recommended project's extent, time for completion, expected output and cost (clause 3.4).

Board Members

Professor Kate Warner, Director of the Institute, appointed by the Vice-Chancellor of the University of Tasmania

Professor Margaret Otlowksi, Dean of the Faculty of Law at the University of Tasmania

The Honourable Justice AM Blow OAM, appointed by the Honourable Chief Justice of Tasmania

Lisa Hutton, appointed by the Attorney-General

Philip Jackson, appointed by the Law Society (resigned December 2011).

Terese Henning, appointed by the Council of the University

Craig Mackie, nominated by the Bar Association

Ann Hughes, community representative.

Legal researchers during 2011

Esther Newitt LLB (Hons), 2008 (also Executive Officer)

Jenny Rudolf LLB (Hons) 2000.

Dr Rebecca Bradfield PhD, 2002, UTAS

Bruce Newey LLM, 2009

Warwick Marshall LLB (Hons), 2007, LLM, 2011

2. Activities

Board meetings

The Board had four formal meetings in 2010 (2 March, 11 May, 2 November and 20 December), all held at the Law Faculty of the University.

Projects

Completed law reform projects

Consolidating powers of arrest

This project considered the need for the enactment of legislation consolidating all powers of arrest. In July 2006 an Issues Paper on the topic was released. The Paper examined the laws that deal with arrest currently available in Tasmania and compared these provisions with arrest laws in other jurisdictions. Currently police powers of arrest are scattered throughout approximately 50 pieces of legislation. A Final Report was released in May 2011. The TLRI recommended the consolidation of all these provisions into one dedicated Act to avoid unnecessary inconsistencies and confusion. The Report also contained a number of recommendations relating to the introduction of protective provisions for vulnerable persons, including young persons, persons with impaired mental or physical functioning, Aboriginal and Torres Strait Islanders and persons who are of non-English speaking backgrounds.

Racial Vilification

In July 2009, the Board approved a project that examined the current laws in Tasmania in relation to racial vilification to determine whether they meet community expectations and needs. This project was the result of a reference made by the Vice-Chancellor of the University and the University contributed \$15,000 towards the project. An Issues Paper was released in June 2010. The Paper examined measures taken in other jurisdictions as a basis for making suggestions for possible reforms in Tasmania. The Final Report was released in April 2011. It contained seven recommendations regarding the possible introduction of criminal racial vilification provisions in Tasmania and concluded that sentence aggravation provisions are the most appropriate. The report acknowledged the symbolic role that laws can play in identifying unacceptable behaviour for the community. It noted, however, that any new provisions that are introduced need to be workable as a law that is seldom or never used would likely lose its symbolic function. The report also highlighted the need to communicate the introduction any new provisions to the community.

Ongoing law reform projects

Male circumcision

The project was the result of a request from the Children's Commissioner to review the current law regulating the circumcision of male children in Australia, with particular reference to Tasmania. The Board approved the project in February 2008. Work is being carried out by Warwick Marshall, as a Masters project, under the supervision of Professor Margaret Otlowksi and Professor Kate Warner. Warwick's LLM thesis was submitted in October 2010. Funding support for this project has been received from a postgraduate research scholarship. The TLRI project examines the criminal and civil responsibility of those who perform, aid or instigate the non-

therapeutic circumcision of male children. An Issues Paper was released in June 2009. The Final Report is now completed and due to be released in early 2012.

Hoch project

This project was approved by the Board in November 2006 and considers the operation of sections 97, 98 and 101 of the *Evidence Act 2001* in the context of sexual offence cases. The rules governing the admissibility of tendency or coincidence evidence continue to cause difficulties for complainants, prosecutors and judges, particularly in cases of sexual assault involving multiple complainants with some association. Consideration will be given to the need for amendments to the law in order to lessen the exposure of a complainant to repeated cross-examination, and to avoid repeated voir dires, appeals and retrials. The Issues Paper was released in September 2009 and the consultation period concluded at the end of December 2009. The Institute received a grant of \$10,000 from the Solicitor's Guarantee Fund in 2011 towards the production of a Final Report, which is now completed and due to be released in early 2012.

Sexual Offences involving Young Persons: Defences and Publication of Identifying Particulars

This project will review the current laws in Tasmania in relation to the 'mistake' and consent defences for sexual offences involving young persons under the *Criminal Code*. This project will also look at the operation and scope of s194K of the *Evidence Act 2001*. In particular, it will consider how this provision relates to the publication of information concerning child victims of sexual assault, including particulars that are likely to lead to the identification of those children. This project is the result of two separate references; one from the Attorney-General and one from Mr Craig Mackie. The Attorney-General approved a request from the Institute for an additional \$5,000 in funding to complete this project.

Blasphemy and Treason

In October 2002 the Attorney requested that the Institute undertake a project examining the need for the repeal of obsolete crimes and offences such as blasphemy. Due to other priorities, the project has not been completed, however the project remains on the Institute's agenda.

Contempt of Court

This project considers the need for legislation to clarify both the common law and existing statutory mechanisms surrounding contempt of court. Both the substantive law of contempt and the procedural law regarding prosecution for contempt require consideration. The project will consider contempt by publication, contempt in the face of the court, and contempt by disobedience of a court order. Draft issues papers are in various stages of preparation. In 2010, due to other priorities, the project has not been completed.

Proposals under consideration

SLAPP Suits

The SLAPP suits project was a reference from the Attorney-General. As a preliminary step, work was undertaken on this project as a supervised research project by an undergraduate student in 2009. In 2012, the Board will consider whether this is an appropriate project for the Institute (consideration of this matter was deferred in 2011).

New law reform proposals and projects

The Institute considered six proposals for reform projects in 2011. Two were accepted and four were deemed not to be appropriate for the Institute to undertake as formal law reform projects.

New law reform projects

Property Law Acts Review

The Institute received a proposal from Mr Lynden Griggs, to review the *Land Titles Act 1980* and the *Conveyancing and Law of Property Act 1884*. The Board accepted the project in May 2011. The review will consider whether the Acts, in their current form, support an efficient and effective system of property rights and transactions. It will look at whether improvements can be made to the existing legislation so that the legal regime surrounding land dealings in Tasmania are as transparent and accessible as possible for all stakeholders. The Institute intends to seek advice from both Mr Phil Kimber (Chair, Property and Commercial Law Committee of the Law Society of Tasmania) and Ms Alice Kawa (Recorder of Titles, Tasmania) in relation to the scope and direction of the project to ensure the review has practical applicability and support.

Wind Turbines

The Institute received a reference from Mr Lynden Griggs concerning the operation of current planning regulations in Tasmania in relation to the installation and use of wind turbines. The Board accepted the project in November 2011. The project will consider the current regulations for the installation and use of renewable energy sources in Tasmania. It will look at the issues surrounding noise restrictions and the setting of minimum distances between wind turbines and other residential properties as well as issues relating to easements.

Proposals not undertaken

Classification of Budgerigars as Controlled Animals

The Institute received a reference regarding the classification of budgerigars as controlled animals. The Board declined the project. It was noted that the budgerigar is currently being re-classified as domestic stock by the Department of Primary Industry and Water (DPIW). The reason for the Board's decision was communicated to the author of the reference.

Compulsory Microchipping of Dogs

The Institute received two references regarding the introduction of legislation requiring the compulsory microchipping of dogs in Tasmania. The Board decided that the issue did not warrant the Institute undertaking a project. The Board noted that the Government conducted adequate consultation on the matter through the formation of the working party and the release of the Issues Paper. The Board also does not believe that there are any deficiencies in these laws (as suggested by the references received). The reasons for the Board's decision were communicated to the authors of the references.

Introduction of 'Day-Fines'

The Institute received an informal reference concerning the introduction of 'day-fines': fines being imposed in units, with the amount of the unit varying according to

the individual's income. The Board was advised that the proposers of this project had been referred to the Sentencing Advisory Council.

Bike Trailers and Kids

The Institute received a reference regarding the use of bike trailers. The submission made particular reference to their perceived dangerousness and lack of regulations surrounding their use. The Board decided that the matter did not warrant a project.

Additional activities

Articles in Law Society

The Institute contributed to the Law Society *Law Letter* with articles about various law reform projects.

Addresses, presentations and consultations

Prof. Kate Warner gave the following paper at the ONC Conference on Law Reform September 17 2011 in Hong Kong:

'Lessons from a Small University-based Law Reform Body'. This was funded by the conference organisers (ONC Lawyers and the Centre for Comparative and Public Law, University of Hong Kong).

Summary of publications

2011:

Consolidation of Arrest Laws in Tasmania, Final Report no.15 (May)

Racial Vilification and Racially Motivated Offences, Final Report no.14 (April)

2010:

Criminal Liability of Drivers who fall asleep causing motor vehicle crashes resulting in death or serious injury, Final Report no. 13 (October).

Racial Vilification and Racially Motivated Offences, Issues Paper no.16 (June).

Law of Easements in Tasmania, Final Report no.12 (March).

2009:

Evidence Act 2001 sections 97, 98 & 101 and Hoch's case: Admissibility of tendency and coincidence evidence in sexual assault cases with multiple complainants, Issues Paper no.15.

Non-Therapeutic Male Circumcision, Issues Paper no.14.

Easements, Issues Paper no.13.

2008:

Sentencing, Final Report no.11.

2007:

A Charter of Rights for Tasmania?, Final Report no.10.

Criminal Liability of Drivers who fall asleep causing motor vehicle crashes resulting in death or serious injury Issues Paper 12, and Final Report no.9.

2006:

The Establishment of a Drug Court Pilot in Tasmania, Research Paper no.2.

Warnings in Sexual Offences Cases relating to delay in complaint, Final Report no.8.

A Charter of Rights for Tasmania?, Issues Paper no.11.

Intoxication and Criminal Responsibility, Final Report no.7.

Consolidation of Arrest Laws in Tasmania, Issues Paper no.10.

2005:

Criminal Liability of Organizations, Issues Paper no.9.

Warnings in Sexual Offences Cases Relating to Delay in Complaint, Issues Paper no.8.

Intoxication and Criminal Responsibility, Issues Paper no.7.

2004:

The Forfeiture Rule, Final Report no.6.

Vendor Disclosure, Issues Paper no.6, and Final Report no.5.

Offending While on Bail, Research Paper no.1.

2003:

The Forfeiture Rule, Issues Paper no.5.

Physical Punishment of Children, Final Report no.4.).

Report on the Commissions of Inquiry Act 1995, Final Report no.3.

Adoption by same sex couples, Issues Paper no.4, and Final Report no.2.

Custody, Arrest and Police Bail, Final Report no.1.

2002:

Physical Punishment of Children, Issues Paper no.3.

Sentencing, Issues Paper no. 2.

Custody, Arrest and Police Bail, Issues Paper no.1.

3. Financial Statement for the period 1/1/11 - 31/12/11*Accumulated funds from 2010*

\$85,855.85

Income

Standard grant from State Govt Dept of Justice \$50,000.00

Grant from Solicitor's Guarantee Fund 9,344.73
(Hoch's case project)**Total Funds Available****\$59,344.73***Expenditure*

Salaries

Salary \$41,994.45

Superannuation \$3,228.35

Payroll Tax \$2,385.09

Workers Comp. Insurance \$251.10

\$47,858.99

Non-Salary expenditure

General travel \$2,111.34

Transport & Fuel \$587.36

Publications \$2,279.00

Telephone \$452.53

Other \$47.36

\$5,477.59

Total Expenditure**\$53,336.58****Balance of Funds as at 31/12/09****\$91,864.00**

University Contributions (in kind)**Academic Support****Salary and salary on costs*

Prof. Kate Warner (Director) 30 days @ \$1,822	\$54,660.00
Prof. Margaret Otowski (Board member) 4 days @ \$1,822	\$7,288.00
Terese Henning (Board member) 6 days @ \$1,327	\$7,962.00
Lynden Griggs (consultant) 6 days @ \$1,327	\$7,962.00

Administrative Support*

David McGuire 3 days @ \$1,123	\$3,369.00
Rachael Ormerod 3 days @ \$907	\$2,721.00
Matt Taylor (computer) 7 days @ \$907	\$6,349.00

Office and Running Costs (Law Reform Inst. Office)**	\$9,309.00
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Total**\$99,620.00**

* calculated on University consultancy rates, exclusive of GST.

** includes office rental, computer depreciation, furniture depreciation, stationary, heating and electricity and use of fax, photocopier and printer.