

T A S M A N I A

LAW REFORM

I N S T I T U T E

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Annual Progress and Financial Report 2013

External Reference: DPAC - Tasmanian Law Reform Institute
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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 (Tasmania Law Reform Institute Renewal Agreement, 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 S Estcourt, appointed by the Honourable Chief Justice of Tasmania

Simon Overland, appointed by the Attorney-General

Rohan Foon, appointed by the Law Society
Terese Henning, appointed by the Council of the University
Craig Mackie, nominated by the Bar Association
Ann Hughes, community representative
Kim Baumeler, appointed at the invitation of the Board

Legal researchers during 2013

Dr Helen Cockburn BA, LLB (Hons), PhD (also Executive Officer)
Dr Caroline Spiranovic BA (Hons), PhD
Dr Rebecca Bradfield BA/LLB (Hons), PhD
Bruce Newey BA, LLB, LLM
Pip Shirley LLB (Hons) MBA, MPP
Amelia Higgs LLB (Hons)
Nicholas Howard BA LLB

2. Activities

(a) Board meetings

The Board held three formal meetings in 2013 (8 April, 19 August and 11 December), all held at the University Law Faculty.

(b) Projects

Completed law reform projects

The Legal Issues Relating to Same-Sex Marriage

This project was approved by the Board in December 2012. The objective of the project was to produce a research paper responding to problems and concerns that were identified in parliamentary debate on the Tasmanian Same-Sex Marriage Bill 2012. The paper was released in October 2013. Questions about the legal capacity of states to legislate for same-sex marriage and the consequences that might follow if such legislation was enacted emerged as major concerns. The Paper did not make recommendations or otherwise draw conclusions but simply set out the competing legal arguments for and against the constitutionality of the Tasmanian Bill and state-based legislation more generally.

It discussed the question of who would have standing to bring an action to challenge a Tasmanian same-sex law, the likely costs to the State of such a challenge and considers whether, in any case, the prospect of a challenge should discourage the State from legislating in this area if it is otherwise motivated to do so.

The Paper also examined how specific legal issues might be resolved in the event that a Tasmanian same-sex marriage law was enacted. It considered for example, which jurisdiction would deal with the dissolution of a same-sex marriage, whether such marriages could be recognised or dissolved in other jurisdictions and what consequences might ensue if a Tasmanian same-sex marriage law was enacted but subsequently invalidated.

The Institute received a grant of \$8,068 from the Premier's Discretionary Fund in 2012 towards the production of the Research Paper and an additional grant of \$10,000 from the Solicitor's Guarantee Fund in 2013. The Paper was released in October 2013.

Protecting the Anonymity of Victims of Sexual Crimes

This project was referred to the Institute by Board member, Craig Mackie. He considered that media reporting on a Tasmanian case involving a young victim of a sexual crime may have breached the prohibition against identifying the complainant in sexual offences cases which is contained in s 194K of the *Evidence Act 2001*. His reference was supported by the then Commissioner for Children (Tasmania), Paul Mason. An Issues Paper was released in August 2012 seeking public submissions on a number of questions relating to the operation and scope of s194K of the *Evidence Act 2001*. The Final Report was published in November 2013. It recommended that greater consideration should be given to victims' wishes and supported the enactment of stand-alone legislation to govern the publication of information relating to victims in sexual offences cases.

Ongoing law reform projects

Self-defence

In November 2012 the Attorney-General, the Hon. Brian Wightman, requested that the Institute conduct an examination of the law in Tasmania relating to self-defence and provide advice on whether the law should be amended. The request came in response to concerns raised with him by the Director of Public Prosecutions that the current Tasmanian law on self-defence, as contained in s 46 of the *Criminal Code*, is too lenient and is out of step with modern standards. The project considers the interaction of s 46 with the insanity provisions and the defence of intoxication, the desirability of consolidating the defence of self-defence with related defences, arguments for consistency between the *Code* provisions, s 46 and s 39 and includes a review of national and international case law and legislative provisions on self-defence. This is a far-reaching enquiry that raises a number of complex practical and theoretical legal issues. Sections of the Issues Paper have been completed in draft form. As part of the review the Institute is also surveying legal professionals in efforts to identify cases where a successful argument of self-defence has led to the acquittal of an offender charged with an offence of violence. An electronic survey has been created for this purpose. It is anticipated that the Issues Paper will be released towards the middle of 2014.

Spite Hedges

At the meeting of 8 April 2013 the Board gave approval to a project on problem trees and hedges. The project examines problems relating to loss of visual amenity, loss of sunlight, nuisance and safety issues associated with trees and hedges growing on or near adjoining property boundaries. An Issues Paper has been prepared which considers the current law in Tasmania and other domestic and international jurisdictions, the need for the establishment of a complaints process to resolve disputes between neighbours and possible options for reform. It is anticipated that the Paper will be published in February 2014 followed by a period of public consultation. The Institute will develop additional strategies to maximise public comment on the Issue Paper including the option to submit feedback online. A Final Report will be produced in July 2014.

New law reform proposals and projects

The Institute considered two proposals for reform projects in 2013. One is still under review and one has been rejected.

Anti-Discrimination Project

In September 2013 the Institute was approached by the Attorney-General's Department to examine the enrolment exemption granted to faith-based schools through amendments to the *Anti-Discrimination Act 1998*. The initial proposed terms of reference were very broad. At its

December meeting the Board agreed that this was an appropriate project for the Institute but that the Department should be approached to refine the scope of the project. The Institute is awaiting notification of the revised terms of reference before proceeding further with this reference.

Bullying

The Institute was approached by representatives of a social media movement known as ‘Chloe’s Law’. This group is agitating for a government review of Tasmania’s anti-bullying laws. Some aspects of such a review are likely to be a matter for Commonwealth regulation and thus outside the Institute’s functions and objectives. Moreover, the Attorney’s office has indicated that it is likely the Department of Justice will conducting its own review of the law in this area. Accordingly, the Institute will not be proceeding with this reference.

(c) Additional activities

Journal publications

CA Warner, ‘Setting the Boundaries of Child Sexual Assault: Consent and Mistake as To Age Defences’ (2013) 36(3) *Melbourne University Law Review*, 1009

Student engagement

The Institute continued to be assisted by undergraduate students performing volunteer work for the Institute. The work is beneficial to the students in gaining an insight into the work of the Institute and is beneficial to the Institute, not only for the work they do, but also in giving us the opportunity to assess possible future employees for paid research work.

(d) Addresses, presentations and consultations

17 August — Professor Warner made the following invited presentation:

International Society for Reform of the Criminal Law Conference 2013, ‘Conventional and Innovative Responses to Young Sex Offenders’ (Speaker and Session Chair).

17 August — Dr Cockburn made the following presentation:

International Society for Reform of the Criminal Law Conference 2013, ‘Protecting Sexual Assault Victims from Publicity: The Competing Considerations of Open Justice, Privacy and Victim Agency’.

4 September — Professor Warner took part in a panel at Law Fest on ‘The Politics of Law Reform’ with Associate Professor Richard Eccleston.

15 October — Professor Warner, Dr Gogarty and Amelia Higgs addressed the Legislative Council on the same-sex marriage Research paper.

14 November — Professor Warner and Dr Cockburn hosted a workshop on effective law reform at Community Legal Centres Tasmania Conference and Training day – ‘Black, White or Grey? The Role of Law in our Community’.

Summary of publications

2013:

The Legal Issues Relating to Same-Sex Marriage, Research Paper No 3 (October).

Protecting the Anonymity of Victims of Sexual Crimes, Final Report No 19 (November).

2012:

Sexual Offences against Young People, Final Report No 18 (October).
Protecting the Anonymity of Victims of Sexual Crimes, Issues Paper No 18 (August).
Non-Therapeutic Male Circumcision, Final Report No 17 (August).
Sexual Offences against Young People, Issues Paper No 17 (May).
Evidence Act 2001 Sections 97, 98 & 101 and Hoch's case: Admissibility of 'Tendency' and 'Coincidence' Evidence in Sexual Assault Cases with Multiple Complainants, Final Report No 16 (February).

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 (September).
Non-Therapeutic Male Circumcision, Issues Paper No 14 (June).
Law of Easements in Tasmania, Issues Paper No 13 (February).

2008:

Sentencing, Final Report No 11 (June).

2007:

A Charter of Rights for Tasmania?, Final Report No 10 (October).
Criminal Liability of Drivers who Fall Asleep Causing Motor Vehicle Crashes Resulting in Death or Serious Injury, Issues Paper No 12 (September).
Criminal Liability of Organisations, Final Report No 9 (April).

2006:

The Establishment of a Drug Court Pilot in Tasmania, Research Paper No 2 (December).
Warnings in Sexual Offences Cases Relating to Delay in Complaint, Final Report No 8 (October).
A Charter of Rights for Tasmania?, Issues Paper No 11 (August).
Intoxication and Criminal Responsibility, Final Report No 7 (August).
Consolidation of Arrest Laws in Tasmania, Issues Paper No 10 (July).

2005:

Criminal Liability of Organizations, Issues Paper No 9 (June).

Warnings in Sexual Offences Cases Relating to Delay in Complaint, Issues Paper No 8 (June).

Intoxication and Criminal Responsibility, Issues Paper No 7 (March).

2004:

The Forfeiture Rule, Final Report No 6 (December).

Vendor Disclosure, Final Report No 5 (September).

Vendor Disclosure, Issues Paper No 6 (June).

Offending While on Bail, Research Paper No 1 (May).

2003:

The Forfeiture Rule, Issues Paper No 5 (December).

Physical Punishment of Children, Final Report No 4 (November).

Report on the Commissions of Inquiry Act 1995, Final Report No 3 (September).

Adoption by Same Sex Couples, Final Report No 2 (May).

Custody, Arrest and Police Bail, Final Report No 1 (March).

Adoption by Same Sex Couples, Issues Paper No 4 (February).

2002:

Physical Punishment of Children, Issues Paper No 3 (October).

Sentencing, Issues Paper No 2 (August).

Custody, Arrest and Police Bail, Issues Paper No 1 (March).

3. Financial Statement for the period 1/1/13 - 31/12/13

Accumulated funds from 2012

\$83,094.26

Income

Standard grant from State Govt Dept of Justice	\$50,000.00
Premier's Discretionary Fund grant (Same-sex Marriage project)	\$8,068.00
Solicitor's Guarantee Fund grant (Same-sex Marriage Project)	\$10,000.00
Solicitor's Guarantee Fund grant (Self-defence project)	\$19,577.00
Sentencing Advisory Council (salary re-imbursment)	\$3,764.00
Other	\$272.73

Total income

\$91,681.73

Total Funds Available

\$174,775.99

Expenditure

Salaries

Salary	\$86,008.17
Superannuation	\$7,620.50
Payroll Tax	\$5,556.73
Workers Comp. Insurance	<u>\$584.37</u>
	\$99,769.77

Non-Salary expenditure

General travel	\$1,281.63
Publications	\$1,312.00
Telephone	\$315.38
Entertainment	\$71.71
Advertising	\$561.82
FBT Expense	\$63.94
Other	<u>\$13.15</u>
	\$3,619.63

Total Expenditure

\$103,389.40

Balance of Funds as at 31/12/13

\$71,386.59

University Contributions (in kind)

Academic Support*

Salary and salary on-costs

Prof. Kate Warner (Director) 30 days @ \$1,822	\$54,660.00
Prof. Margaret Otlowski (Board member) 4 days @ \$1,822	\$7,288.00
Terese Henning (Board member) 6 days @ \$1,388	\$8,328.00
Lynden Griggs (consultant) 6 days @ \$1,388	\$8,328.00
Brendan Gogarty (consultant) 3 days @ \$1,388	\$4,164.00

Administrative Support*

Salary and salary on-costs

David McGuire 3 days @ \$1,213	\$3,639.00
Rachael Ormerod 3 days @ \$1,027	\$3,081.00
Matt Taylor (computer) 7 days @ \$1,027	\$7,189.00

Office and Running Costs (Law Reform Inst. Office) **	\$9,495.00
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Total

\$106,172.00

* 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.