

TASMANIA
LAW REFORM
INSTITUTE

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Annual Progress and Financial Report 2007

Contents

1. Structure, Board Members and staff	1
2. Activities	2
3. Financial Statement	8
4. Appendix	10

1. Structure, Board Members and staff

The Institute was established on 23 July 2001 and has now been operating for almost six and a half years.

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 4.3), including identifying a recommended project's extent, time for completion, expected output and cost (clause 4.4).

Board Members

Professor Kate Warner, Director of the Institute, appointed by the Vice-Chancellor of the University of Tasmania
Professor Donald Chalmers, 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
Terese Henning, appointed by the Council of the University
Mathew Wilkins, nominated by the Bar Association

Legal researchers during 2007

Dr Rebecca Bradfield (also Executive Officer)	Jessica Reidy
Bruce Newey	Dr Victor Stojcevski
Brendan Gogarty	Adam Purton
Helen James	Warwick Marshall
Kate Cuthbertson	Suzannah Ball
	Pauline Van Adrichem

2. Activities

Board meetings

The Board had six meetings in 2007 (6 Feb, 3 July, 14 Aug, 24 Aug, 7 Nov, 17 Dec), all held at the Law Faculty of the University.

Projects completed in 2007

Human Rights Project

This project was approved by the Board in December 2005, and work on the project began in April 2006. The project is a reference from the Attorney-General. The project aims to establish a process of discussion and consultation with the Tasmanian community on how human rights can best be promoted and protected in Tasmania, and to make recommendations to achieve that aim. An issues paper was released in August 2006. Widespread community consultation was undertaken with presentations being made to 70 groups. The final report was being prepared by Terese Henning and released in October 2007.

Criminal Liability of Organisations (Corporate Manslaughter)

This project initially considered the desirability of introducing an offence of corporate manslaughter in Tasmania. However the project was re-framed in broader terms, considering the criminal liability of organisations more generally. Another important aspect of the project is a consideration of the sentencing options available when dealing with organizations. An issues paper was released in June 2005. The Institute received 13 responses to this paper. The Board considered a number of drafts of the final report in 2006. The Board approved the final report in February 2006 and the report was released in April 2007. Following the release of the paper, the Greens tabled the *Criminal Code Amendment (Clarification of Organisational Liability) Bill 2007*, which reflected the recommendations in the Institute's report.

Ongoing law reform projects

Hoch project

This project was approved by the Board in November 2006 and will consider 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 complainant's to repeated cross-examination, and to avoid repeated voir dire, appeals and retrials. Rebecca Bradfield will continue working on the issues paper in 2008, under the supervision of Terese Henning.

Consolidating powers of arrest

This project considers the need for the enactment of legislation consolidating all powers of arrest. Currently police powers of arrest are scattered throughout approximately 30 pieces of legislation, with various different circumstances needing to exist before the power to arrest arises. The project will detail all police powers of

arrest and consider the merits of introducing a consolidating statute. Consideration will also be given to ways of introducing more consistency in the criteria for arrest. The Issues paper was released in July 2006. Four responses were received to the issues paper. The final report is being prepared under the supervision of Terese Henning and Kate Warner for release in 2008.

Driving Causing Death (Jiminez)

This project considers the need for legislative and/or procedural change to address the criminal liability of drivers who fall asleep causing motor vehicle accidents resulting in death or other serious injuries. Following media attention about the acquittal of drivers who have fallen asleep thereby causing accidents resulting in the death of other road users, the Attorney-General indicated an interest in this issue being addressed by the Institute. The Board approved the project in October 2003. An issues paper was released in August 2007. To date, the Institute has received 9 responses. A final report will be prepared for release in 2008.

Sentencing

The Attorney-General requested that the Institute undertake a reference on sentencing in late September 2001. The terms of the reference were agreed in November 2001. An issues paper was released in September 2002. Over 20 written responses to the issues paper were received. Due to other priorities, the final report for this project has not yet been completed. In December 2006 an additional matter was added to the terms of reference which required the Institute to 'consider whether the protection of society required legislative change to the *Sentencing Act* and the *Youth Justice Act* in relation to sentencing of sexual offenders'. It is intended that the final report with recommendation will be released in early 2008.

Suspended sentences

The topic of suspended sentences was dealt with briefly in the Sentencing issues paper, where the need for further research on this topic was highlighted. Kate Warner and Terese Henning successfully applied for an ARC Linkage Grant for a postgraduate to undertake a PhD thesis on this topic, with the Justice Department as industry partner. The sum of \$60,000 was granted in 2003. The scholarship was then advertised nationally. Lorana Bartels was the successful candidate and commenced work on the project in August 2004. She is expected to submit her thesis by early 2008.

Contempt of Court

This project will consider the need for legislation to clarify both the common law and existing statutory mechanisms surrounding contempts of court. Both the substantive law of contempts 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 2008, Dr Brendan Gogarty will have carriage of this project under the supervision of Dr Di Nicol.

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.

New law reform proposals and projects

Easements

At the meeting on 14 August 2007, the Board approved a project on the laws of easement. This project will review the current laws of easements and analogous rights to determine whether they currently meet community expectations and needs. The review will provide a report of the current law of easements and outline possible areas for reform, consider the current legislative requirements in Tasmania for the creation, variation and termination of easements, and consider the interaction of the legislation with the current common law requirements. This project will not commence until March 2008. It is intended that the initial research for the project be undertaken as a supervised research project by an undergraduate student under the supervision of Lynden Griggs.

Proposals not undertaken

(a) Safe at home legislation

The Board received a proposal for law reform from Paul Godden in relation to the safe at home legislation. It was noted that under the legislation a statutory review is built into the legislation and that the Government had put out a tender for a review, which is due by the end of March 2008. The Board did not consider that it was an appropriate project for the Institute.

(b) whether Australia needs legislation on legal technique and legal reasoning.

The Board received a proposal for law reform had been received from Mr Julio Altamirano (Jnr) in relation to whether Australia needs legislation on legal technique and legal reasoning. The Board did not consider that this was an appropriate project for the Institute.

(c) Fatal Accidents Act 1934

The Board received a proposal for law reform had been received from Craig Hobbs in relation to the *Fatal Accidents Act 1934*. The Board considered a law reform project was not appropriate to deal with the suggested reforms. It was agreed that Professor Warner would write to the Attorney-General indicating the support of the Board for the suggested reforms.

Additional activities

Uniform Succession Laws

Uniform Laws on Administration of Estates and Intestacy

Mr Ken Mackie continued to represent the Institute on the National Committee for Uniform Succession Laws which made considerable progress in the area of administration and probate.

Uniform Laws on Intestacy

Mr Ken Mackie responded (through Professor Warner) to the State Government on the recommendations contained *Uniform Succession Laws: Intestacy Report 116* and accompanying Draft Intestacy Bill.

Articles in 'Reform'

The Institute contributed to the Australian Law Reform Commission's journal, *Reform*, with updates on our activities in the 'Reform Roundup' section of the journal.

Articles in Law Society

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

Student volunteer work

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.

Addresses and presentations

Professor Kate Warner made the following invited presentations:

27 June 2007: Guilford Young College Legal Studies; 'The role of the Tasmanian Law Reform Institute';

3 October 2007: University Women's Forum: 'Recent work of the Tasmanian Law Reform Institute'.

Ms Terese Henning made the following invited presentations:

19 February 2007: Zonta Club Hobart; 'A Charter of Rights for Tasmania?';

26 February 2007: Rotary Club Hobart; 'A Charter of Rights for Tasmania?'.

Summary of publications

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 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 1/1/07 - 31/12/07

Accumulated funds from 2006		\$92,314.03
Income		
Standard grant from State Govt Dept of Justice & Ind. Rel. (exclusive of GST)		\$50,000.00
Total Funds Available		\$142,314.03
Expenditure		
Salaries		
Salary	\$62,404.63	
Superannuation	\$5,483.76	
Payroll Tax	\$4,141.22	
Workers Comp. Insurance	<u>\$436.85</u>	\$72,466.46
Non-Salary expenditure		
Consumables	\$372.22	
General travel	\$589.67	
Transport & Fuel	\$2,420.00	
Publications	\$10,397.55	
Telephone	\$1,056.05	
Asset Purchases	\$2,648.00	
Expenditure (Subject to FBT)	<u>\$370.36</u>	\$17,853.85
Total Expenditure		\$90,320.31
Balance of Funds as at 31/12/07		\$51,993.72

Linkage Grant Account (suspended sentences project)

Accumulated funds from 2006	\$27,176.54	
Income		
Commonwealth Grant	\$0.00	
Tasmanian Justice Department Grant	<u>\$00.00</u>	
Total Funds Available		\$27,176.54
Expenditure		
Scholarship – Post graduate	\$20,639.39	
Total Expenditure		\$20,639.39
Balance of Funds as at 31/12/07		\$6,537.15

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

Professor Kate Warner (Director) 70 days @ \$1,822	\$127,540
Professor Don Chalmers (Board member) 4 day @ \$1,822	\$7,288
Terese Henning (Board member) 60 days @ \$1,283	\$76,980

Ken Mackie (consultant) 7 days @ \$1,283	\$8,981
Di Nicol (consultant) 1 day @ \$1,283	\$1,283
Michael Stokes (consultant) 1/2 day @ \$1,283	\$641
Greg Carnes (consultant) 4 days @ \$1,283	\$5,132
Lynden Griggs (consultant) 3 days @ \$1,283	\$3,849
Administrative Support*	
David McGuire 6 days @ \$1,070	\$6,420
Rachael Ormerod 2 days @ \$827	\$1,654
Antony Cave (computer) 4 days @ \$827	\$3,308
Office and Running Costs (Law Reform Inst. Office)**	<u>\$8,368</u>

Total \$251,444

* calculated on University consultancy rates

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

Office renovations *****\$170,980**

*** new facilities for the Tasmanian Law Reform Institute were built within the Faculty of Law. Construction was completed in 2008. The amount stated includes the renovations to the Tasmanian Law Reform Institute offices and the foyer area.