

# MEDIA RELEASE

NEWS FROM THE UNIVERSITY OF TASMANIA

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ATTENTION: Chiefs of Staff, News Directors

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Today the Tasmania Law Reform Institute released its Issues Paper No 7:

TASMANIA  
**LAW REFORM**  
INSTITUTE

## Intoxication and Criminal Responsibility

This Issues Paper looks at when, and in what ways, an accused person's state of intoxication by alcohol or drugs is relevant to trial.

Being intoxicated is no defence to a criminal charge. In many instances evidence that an accused was intoxicated will be detrimental to their case. However, in some instances evidence of intoxication may be helpful to an accused in trying to deny (or at least raise a reasonable doubt about) one or more of the matters which the prosecution must prove before a defendant is found guilty. For example, to be guilty of grievous bodily harm a person must not only cause grievous bodily harm to someone, but also intend to cause that harm, or at least foresee the likelihood of their actions causing that harm. If a person is so drunk that they act without this required state of mind, should they still be guilty of the crime?

Historically, in Tasmania, using evidence of intoxication to try to raise doubt about the defendant's capacity to form the mental state required for a crime was only admissible if the crime charged was a 'specific intent' crime – that is, a crime where a specific intention to bring about a certain result (such as an intention to kill a person) had to be proved by the prosecution. Even in these few crimes, the evidence was only admissible if it was evidence of such a severe state of intoxication that the defendant would have been *incapable* of forming the specific intent required (*Criminal Code*, s 17). This strict approach to allowing evidence of intoxication reflects a strong desire to hold people responsible for their actions during their voluntarily induced state of intoxication.

This approach was also the traditional approach at common law (which applies in England, Victoria and South Australia and applied in NSW until 1996). However in 1980 the High Court held in the case of *O'Connor* that evidence of intoxication may be relied on to negate any mental state, not just specific intent, including "voluntariness" – whether the defendant meant to do the act. Some argue that this approach is the simplest, fairest and most logical because it allows all relevant evidence on whether the accused had the required state of mind. Furthermore, despite the fears of some, this law has not led to a spate of acquittals, nor is the defence frequently invoked. This law applies to summary offences in Tasmania.

In 1997 the position became less clear in Tasmania when the Tasmanian Court of Criminal Appeal held in *Weiderman* that evidence of intoxication could be used by a defendant to try and deny specific knowledge. The relevant knowledge in that case was whether the accused *knew* that his actions were likely to cause the death of the victim. In particular, this has left the position unsettled in crimes requiring foresight of the likelihood of certain consequences (eg damage to property, wounding). One defence of particular concern is self-defence. The issue here is whether an intoxicated person who makes a mistake about need for self-defence can rely on evidence of their intoxication to try to convince the jury that they really did make that mistake (eg if someone is drunk they may mistake a friendly approach for an attack and then use force in self-defence).

The Issues Paper proposes reform to address this complex and uncertain state of the law. The paper discusses the law in other jurisdictions, then outlines four basic options for reforming the substantive law relating to intoxication, as well as discussing a number of possible additional/supplementary reform options.

The Institute invites responses to the Issues Paper by 2 May 2005.

**FOR MORE INFORMATION/INTERVIEWS:**

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