

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 2015

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1. Structure, Board Members and Staff

The Institute was established on 23 July 2001 by Agreement between the State Government, the University of Tasmania and the Law Society. In April 2015 the Partners to the Institute Agreement finalised a renewal agreement extending the agreement for five years, until November 2019.

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. The founding Director, Emeritus Professor Kate Warner, retired from the position in December 2014. The new Director, Ms Terese Henning was appointed in April 2015.

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).

Info about new agreement and new director

Board members

Ms Terese Henning, Director of the Institute, appointed by the Vice-Chancellor of the University of Tasmania

Professor Margaret Otlowski, 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
Jeremy Prichard, 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 2015

Dr Helen Cockburn BA, LLB (Hons), PhD (also Executive Officer)
Dr Rebecca Bradfield BA/LLB (Hons), PhD
Bruce Newey BA, LLB, LLM
Claire Jago LLB (Hons)
Rikki Mawad BA/LLB (Hons), MCDR
Emilie McDonnell BA/LLB (Hons)

2. Activities

(a) Board meetings

The Board held four formal meetings in 2015 (April 14th, July 7th, September 10th and November 26th), all held at the University Law Faculty.

(b) Projects

Completed law reform projects

Self-defence

In November 2012 the then 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. An Issues Paper was released in November 2014. The Final Report was released in October 2015. The Report considers the circumstances in which a person can lawfully use force (including lethal force) to defend himself or herself or someone else. In particular, it focuses on the difficulties which arise when a person is mistaken about the existence of a threat or about the seriousness of the threat posed by another.

A mistaken belief in the need for self-defence is particularly problematic when it results from a delusion caused by a mental illness, when it is the product of psychological factors personal to the accused that made him or her more sensitive to threats of danger than the normal person, when it arises from self-induced intoxication, or when it proceeds from a delusion caused by drug-induced psychosis.

The Report makes 23 recommendations including recommendations relating to the approach to be taken to evidence of drug-induced psychoses and the interaction between the defence of self-defence and the defences of intoxication and insanity. It also makes recommendations for specific amendments to the *Evidence Act* to accommodate the admission of family violence

evidence in self-defence cases and in relation to partial defences to murder. The Report concludes that the implementation of many of the suggested reforms will require a comprehensive review of the defence of insanity in s 16 of the *Criminal Code*.

Genetic Privacy

In July 2014 the Institute was approached by Dr Jo Burke, Manager of the Tasmanian Clinical Genetics Service at the Royal Hobart Hospital. She outlined her concern that, in Tasmania, federal privacy legislation governing the disclosure of the results of genetic testing by third parties to at-risk genetic relatives, where there is a refusal by the patient to do so, does not apply to public and private sector health organisations across the board. Dr Burke submitted a proposal for the Institute's consideration that the Tasmanian legislation be amended so that a uniform privacy regime applies to both public and private sector organisations in Tasmania that obtain genetic information in the course of providing health services to individuals. The Institute considered that, in light of the work that has already been undertaken in other jurisdictions, a separate law reform enquiry on the issue of the consistent application of genetic privacy legislation is not required in Tasmania. Instead, a formal approach was made to the Attorney-General with a recommendation for legislative reform along the lines suggested by Dr Burke. A briefing paper on the issue and a letter of recommendation was sent to the Attorney-General in April 2015.

Ongoing law reform projects

Problem 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 was released in March 2014. It 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. After the release of the Paper the Institute conducted a number of consultations with key stakeholders. These included the Local Government Authority, representatives from the Department of Justice in Hobart and representatives from Northern Councils in Launceston. The Final Report will be released in January 2016. It recommends that a statutory scheme be implemented to address problems with trees and hedges on neighbouring land which block access to sunlight and views and that the scheme vests the Resource Management and Planning Appeals Tribunal with jurisdiction to hear disputes.

Bullying

In May 2014 the Institute received a formal reference from the Attorney-General to inquire into the capacity of Tasmanian laws to address the issue of bullying and so-called 'cyber-bullying' in particular. The request was made following a strong public campaign to introduce anti-bullying laws in the wake of the suicide of a young person who had apparently been the victim of bullying. Some aspects of bullying behaviour are likely to be a matter for Commonwealth regulation and thus outside the Institute's functions and jurisdictional reach. However, other aspects are clearly subject to State law and regulation. An Issues Paper was released in May 2015. The release was accompanied by a public information evening hosted by the Director of the Institute which provided an opportunity to explore the questions raised in the Issues Paper about how best to respond to the complex problem of bullying and for attendees to contribute ideas to the debate. The Final report will be released in February 2016.

Consensual assaults

In April 2014 The Chief Justice wrote to the Director asking whether the Institute had received a reference from the Attorney-General relating to the criminalisation of consensual assaults. The Chief Justice has concerns about the operation of s 182(4) of the Criminal Code which deals with consensual assaults. The Institute received a reference on the issue from the Attorney-General in May 2015. Consent to the application of force raises a number of issues to do with sport, sadomasochistic behaviours and domestic violence. An Issues Paper is being prepared for release in February 2016.

New law reform proposals and projects

The Institute considered three proposals for reform projects in 2014. Two were accepted as projects and the other was deemed unsuitable as a matter for extensive review but was accepted as an appropriate subject for a more limited response from the Institute.

Acts intended to cause grievous bodily harm – s 170 Criminal Code (Tas)

At the July meeting of the Board Dr Jeremy Prichard raised an apparent anomaly in s 170 of the *Code* which covers a wide range of extremely serious violent acts accompanied by a specific intent to ‘maim, disfigure, or disable any person, or to do any grievous bodily harm to any person, or to resist or prevent the lawful arrest or detention of any person’. Section 170(1) provides that a charge under this provision is defined as ‘Committing an unlawful act intended to cause bodily harm’. Although this title uses the word ‘unlawful’, close reading of s 170 shows that unlawfulness is not actually included as an element of the crime. Without such an element a person charged under s 170 technically has no vehicle to rely on s 46 ‘Self-defence and defence of another person’. Although the Institute is not aware of any judicial consideration of this issue, nor of any criminal prosecutions in which the absence of the element of unlawfulness has caused complications, the absence of the element from s 170 is inconsistent with the structure and operation of other violent crimes contained in the *Criminal Code*.

In December a letter was sent to the Attorney-General recommending an amendment to s 170 to make it consistent with other violent crimes in Chapter 18 of the *Code*. The government has responded by tabling the Crimes (Miscellaneous Amendments) Bill 2016 which amends s 170 to clarify that the conduct be unlawful.

Recidivist drink driving court

In 2013 the Tasmanian Institute of Law Enforcement Studies (TILES) and the University of Tasmania’s Faculty of Law hosted an international workshop designed to map pathways in addressing the problem of recidivist drink driving. The workshop identified as one of the main issues in this area the poor fit of some criminal justice responses to instances of repeat drink driving. The Tasmanian Magistrates’ Court is considering extending their problem-solving court model which currently operates in the Youth Court, the Court Mandated Diversion program (for issues of illicit drug addiction) and its Mental Health Diversion List to recidivist drink drivers. However, before appending this problem area to the jurisdiction of existing Tasmanian problem-solving courts there is very real need to examine models in other jurisdictions before recommending a model to meet local requirements. To this end, the Institute has secured funding from the Solicitors’ Trust to examine problem court solving models. A preliminary consultation paper is being prepared to distribute to stakeholders in February 2016.

Court intermediaries

In June 2015 the Institute received a reference from the Attorney-General to examine the feasibility of instituting an expert intermediary scheme as a special measure to facilitate the reception of evidence in criminal trials from child witnesses and witnesses with cognitive impairments in Tasmania. Early consultation on this Reference revealed that for a full and informed evaluation of the issues, the scope of the Reference should be extended to include victims, witnesses and accused persons with complex communication needs who may require special measures to give evidence and to participate in the criminal justice system. In the early stages of preparing the Issue Paper a Roundtable was held at Parliament House, organised by the Institute and hosted by the Attorney General, the Hon Dr Vanessa Goodwin. The Roundtable was attended by over fifty key stakeholders and helped to refine the issues to be dealt with in the Issues Paper and to advance awareness and discussion of the communication assistant scheme more generally.

The reference examines the special measures currently available in Tasmania to support people with complex communication needs to give evidence from the first point of contact with police throughout the criminal trial process. It considers the approaches in other jurisdictions around Australia and overseas, focusing on intermediary schemes but also the full suite of special measures available to ensure victims, witnesses and an accused persons with communication difficulties have equal access to justice. An Issues Paper on the Reference is being prepared to distribute to stakeholders in February 2016.

In addition to this reference, the Attorney-General also engaged Equal Opportunity Tasmania to create a Disability Justice Strategy for Tasmania. The Institute and Equal Opportunity Tasmania are working to ensure that the Issues Paper, community consultations and the recommendations of the Final Report complement the draft Disability Justice Plan.

(c) Additional activities

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. In 2014, four final year students undertook research related to ongoing Institute projects and preliminary examination of proposals for reform in fulfilment of the requirements of the supervised research component of their Honours degree. After graduating, Claire Jago was employed by the Institute to produce the Issues Paper for the project on bullying which was based on her undergraduate research paper. She participated in the public consultations and also produced the Final Report for the project. Additionally, Emilie McDonald, the current University of Tasmania Rhodes scholar, assisted in finalisation of the Report.

(d) Addresses, presentations and consultations

In addition to providing Reports to the Government on references undertaken by the TLRI, the Government also sought the Institute's advice on the following Bills, which was provided:

- *Criminal Code Amendment (Second or Subsequent Appeal for Fresh and Compelling Evidence) Bill 2015.*
- *Law Officers (Miscellaneous Amendments) Bill 2015.*
- Comments on Discussion Paper on Single Tribunal for Tasmania.
- *Crimes (Miscellaneous Amendments) Bill 2016*

Bullying

In conjunction with the release of the Issues Paper, *Bullying*, the Institute convened a number of consultative events including;

- A public launch organised by Ms Claire Jago. The launch was hosted by the Law School and provided an opportunity for individuals and representatives of professional and community associations to explore the questions raised in the Issues paper and to contribute to the content of the Final Report.
- Terese Henning addressed a meeting of the Tasmanian Young Lawyers' Committee on the issue of bullying. The Committee then drafted a submission to the Issues Paper.
- Terese Henning and Helen Cockburn participated in an information session with staff from colleges in Northern Tasmania at Launceston College.
- Radio presentations were given by Terese Henning and Claire Jago on the ABC Drive and Morning programs.

Self defence

- In October, in conjunction with the launch of Final Report No 20, *Review of the Law Relating to Self-defence*, a number of talks were given on ABC local radio programs.

Court intermediaries

To ensure that all issues are addressed on this reference and to engage fully with stakeholders, the Institute has instituted a number of significant consultative initiatives in preparing the Issues Paper.

- Terese Henning and Rikki Mawad conducted a number of consultations designed to elicit the views of important stakeholders including the Chief Justice, Blow CJ and Justice Wood (6th September), the Hobart Women's Legal Service (21st September), the Hobart Community Legal Service (21st September), the Tasmanian Law Society Executive (28th September), the Children's Commissioner (30th September), the Tasmanian Anti-Discrimination Commissioner (5th October), the Sexual Assault Support Service (7th September), Magistrates at the Hobart Magistrates Court, the Criminal Law Committee of the Tasmanian Law Society, Save the Children and TASCOS.
- A Roundtable with key stakeholders at Parliament House hosted by the Attorney General, the Hon Dr Vanessa Goodwin, was organised by Ms Rikki Mawad. Attendees included the Attorney General, opposition and Greens Party members of Parliament, the acting DPP, senior officials from Tasmania Police, the Tasmanian Law Society, The Tasmanian Bar Association, Equal Opportunity Tasmania, The Children's Commissioner, the Hobart Community Legal Centre, the Hobart Women's Community Legal Centre, TASCOS and the Sexual Assault Support Service. The Roundtable, which was attended by over 60 people, was held on 21st October.
- A number of radio presentations were given on ABC local radio following the Roundtable.

- At the invitation of the then acting Director of Public Prosecutions, Terese Henning addressed prosecution lawyers on special measures for witnesses with complex communication needs on the 19th August.
- Terese Henning delivered the Keynote Address at the South Australian Justice Disability Conference in Adelaide on 19th November.
- Terese Henning conducted a break out session at the Justice Disability Conference in Adelaide on the 19th November and Ms Rikki Mawad contributed to another breakout session at the same conference.

General TLRI presentations and community activities

- Terese Henning gave an address about the work of the TLRI at the Law Faculty component of the University of Tasmania Welcome Home Celebrations on the 29th August;
- Terese Henning spoke to St Mary's students on the work of the TLRI on the 2nd September;
- Terese Henning spoke on ABC morning radio about amendments to Tasmanian Anti-Terror legislation.

Summary of publications

2015:

Terese Henning "Opinion Piece: Liquor Bill Crosses the Line of the Law", *The Examiner* October 11th 2015.

Review of the Law Relating to Self-defence, Final Report No 20 (October)
Bullying, Issues Paper No 21 (May)

2014:

Neighbours' Hedges as Barriers to Sunlight and a View, Issues Paper No 19 (March)
Review of the Law Relating to Self-defence, Issues Paper No 20 (November)

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 1/1/15 - 31/12/15

Accumulated funds from 2014	\$56,362.50
Income	
Standard grant from State Govt Dept of Justice	50,000.00
Solicitors' Trust grant (Court intermediaries and recidivist drink driving projects)	33,684.00
Total income	\$83,684.00
Total Funds Available	
	<hr/> <u>\$140,046.50</u>
Expenditure	
Salaries and salary on-costs	
Salary (including superannuation, payroll tax and workers' compensation insurance)	100,566.36
Non-Salary expenditure	
IT and communications	418.87
Travel	1956.73
Publications	1335.00
Entertainment	183.36
Subscriptions	70.00
Total non-salary	<hr/> 3963.96
Total Expenditure	
	<hr/> <u>\$104,530.32</u>
Balance of Funds as at 31/12/15	
	<hr/> <u>\$35,516.18</u>

University Contributions (in kind)

Academic Support*

Salary and salary on-costs

Terese Henning (Director) 30 days @ \$1,822	\$54,660.00
Prof Margaret Otlowski (Board member) 4 days @ \$1,822	\$7,288.00
Jeremy Prichard (Board member) 6 days @ \$1,388	\$8,328.00
Lynden Griggs (consultant) 10 days @ \$1,388	\$13,880.00

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
IT support 10 days @ \$1,027	\$10,270.00

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

Total

\$110,641.00

* 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.