

## Annual Progress and Financial Report 2006

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### **1. Structure, Board Members and staff**

The Institute was established on 23 July 2001 and has now been operating for almost five 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  
Kate McQueeney, nominated by the Women Lawyers Association

#### *Legal researchers during 2006*

Dr Rebecca Bradfield (also Executive Officer)	Philippa Dixon
Bruce Newey	Jess Reidy
Jenny Rudolf	Victor Stojcevski
Kate Cuthbertson	Rohan Foon

## 2. Activities

### *Board meetings*

The Board had 6 meetings in 2006 (6 Feb, 20 June, 10 July, 23 Aug, 21 Nov, 19 Dec), all held at the Law Faculty of the University.

### *Projects completed in 2006*

#### *The Establishment of a Drug Court Pilot in Tasmania*

This project was approved by the Board in May 2005. The Institute applied to the Law Foundation for a grant in relation to this project and was awarded the amount of \$8,642.50. A research paper was prepared by Victor Stojcevski and released in December 2006. This paper brings together statistical and other material about drug use, the rationales behind and the characteristics of drug courts in other jurisdictions and information about the level and type of drug services available in Tasmania. A drug court is a court, or a division of a court, which is responsible for sentencing and supervising the treatment of offenders with drug problems, who have committed an offence under the influence of drugs or to support a drug habit. Tasmania is the only Australian State not to have trialled or established a drug court. However, a two-year trial of a court mandated drug diversion program was announced by the Attorney-General in September 2006. The government is currently working on the detail of this pilot program which is to be introduced early in 2007. It is hoped that this paper will assist in the implementation of the government's program and provide background and context to an understanding of the appropriate responses to drug-related crime in Tasmania in the short and longer term.

#### *Warnings in sexual offences cases relating to delay in complaint*

This project considered the warnings required to be given in sexual assault cases in jurisdictions where the Uniform Evidence Legislation operates. Concern has been expressed in a number of cases that the multitude and nature of the warnings required in sexual assault cases makes it unnecessarily difficult for trial judges to instruct a jury in such a way as to ensure that there is no basis for appeal. This project was linked with review of the Uniform Evidence legislation being undertaken by the Australian Law Reform Commission. The project was supervised by Terese Henning with research and drafting assistance provided by Claire Hemming and Victor Stojcevski. The issues paper was released in June 2005. Six responses to the issues paper were received. A final report was released in October 2006. The Report makes three recommendations that (if implemented) would change the warnings/directions that trial judges are permitted to give to juries in sexual offences cases about victims' delay in making complaint.

#### *Intoxication*

This project considers the need to clarify the law relating to intoxication in Tasmania. It addresses the questions of when, and in what ways, an accused's state of intoxication (whether by alcohol or drugs) is relevant to their trial for a criminal offence. The project was supervised by the Director and Rebecca Bradfield drafted the issues paper and the final report for the Board. Five responses were received to the issues paper. The final report was prepared by Rebecca and was released in August 2006. The Report makes 13 recommendations for reform. The key recommendation is that evidence of intoxication should be relevant to any mental element, including

intention, knowledge (including whether the person ought to have known), foresight of consequences and whether the act was voluntary and intentional (recommendation 7).

### *Ongoing law reform projects*

#### *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. The Attorney-General referred the following terms of reference:

1. Identify current protections for human rights in Tasmania and any need to enhance or extend human rights protections in Tasmania.
2. Research models that protect and enhance human rights in other jurisdictions (in Australia and overseas).
3. In consultation with key stakeholders identify appropriate models for Tasmania and develop a discussion paper setting out options and their advantages and disadvantages.
4. Conduct community consultation on how human rights and obligations can best be promoted and protected in Tasmania.
5. Provide a recommendation as to an appropriate model for Tasmania to protect and enhance human rights.

The Government has contributed \$50,000 towards the cost of the project. Terese Henning was released from undergraduate teaching commitments for second semester 2006 to enable her to write the issues paper and conduct the community consultations. An issues paper was released in August 2006. Widespread community consultation was undertaken with presentations being made to 70 groups. Almost 400 responses were received to the issues paper. The final report is being prepared by Terese Henning for release in early 2007.

#### *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 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 has now been 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. The importance of this issue was highlighted by a motion at the 2004 ALP State Party Conference recommending that the government conduct an investigation into the need for reform in this area. 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. A further draft final report will be presented for consideration of the Board in January 2007.

*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. Kate Cuthbertson was employed to prepare a draft issues paper for the Board. The issues paper is expected to be released in early 2007.

*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 2007.

*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 the end of 2007.

*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 2007, Dr Brendan Gogarty will take 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**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 commence work on an issues paper in 2007, under the supervision of Terese Henning.

### ***Proposals not undertaken***

#### *Dog Control Act*

The Board received a proposal from Peter Bright that involved a consideration of the adequacy of the *Dog Control Act* to control the nuisance caused by dog barking. After investigating the issue, the Board decided that the laws appear adequate to address the issue of dog barking and that the administration/enforcement of the legislation was a matter that had been addressed by the Ombudsman and had been considered by the Local government review and that it was not an appropriate project for the Institute.

#### *Access to justice, whistleblowers and slapp suits*

The Board received a proposal from Nigel Burch that involved a consideration of several broad issues, that were narrowed to a focus on access to justice, whistleblower protection and slapp suits. A briefing paper was prepared for the Board. The Board decided that the question of access to justice was too broad for the Institute and beyond its resources. In relation to the whistleblower legislation, it appears that the ASIC situation would be covered by amendments to the Corporations law. Further, a national whistleblower project is being undertaken by Griffith University and it was the view of the Board that it would be inappropriate to duplicate it with our own project. In relation to slapp suits, it was noted that changes had been made to defamation laws that provided that a corporation cannot sue for defamation. The Board's view was that it was difficult to envisage a reform that could improve on the current rules that allow an action to be struck out if it has no prospect of success without shutting out meritorious cases.

#### *Local government contracting rules*

The Board received a proposal from Rolf Miezitis that involved a consideration of potential inconsistency that existed between a treasury directive concerning the use of common use contracts by local governments and the tender provisions contained in the *Local Government Act*. The Institute's view was that this is a policy matter in relation to the circumstances in which the government wants local authorities to use common use contracts and not an appropriate subject for an Institute project.

### ***Additional activities***

#### *Uniform Succession Laws*

##### Uniform Laws on Administration of Estates

Mr Ken Mackie represented the Institute at a meeting of the National Committee for Uniform Succession Laws held in August at the Queensland Law Reform Commission.

## Uniform Laws on Intestacy

Following the release of an Issues Paper (No 26) in 2005 concerning uniform intestacy laws extensive discussion took place in all jurisdictions including Tasmania in 2006 by Professor Tilbury of the New South Wales Law Reform Commission. In Tasmania, the consultations with interested members of the profession were organised by the Institute. Mr Ken Mackie represented the Institute as a member of the National Committee at a meeting on 29 and 30 August to finalise the Report which was released for discussion in October. The report was accompanied by a 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 the charter of rights project and recommended reforms to the law of intoxication in Tasmania.

### *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:

17 March 2006: Committee of Law Deans Meeting; "Why base a law reform institute at a University?"

3rd April 2006: AIJA Youth Justice and Child Protection Conference; "Therapeutic Jurisprudence in the Youth Court" (Drug Courts Project)

30 June 2006: Bar Association Seminar; "Sentencing Corporations" (Criminal Liability of Organisations project)

18 August 2006: Law Fest; "Trends in Crime" (Sentencing project)

23 August 2006: Law Society Continuing Legal Education seminars; "Sentencing Developments" (Sentencing project).

**Ms Terese Henning** and **Dr Rebecca Bradfield** made 53 presentations in connection with the human rights consultation process. These are listed in the appendix.

## **Summary of publications**

### **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 1/1/06 - 31/12/06

Accumulated funds from 2005		\$18,342.71
<b>Income</b>		
Standard grant from State Govt Dept of Justice & Ind. Rel. (exclusive of GST)		\$50,000.00
Additional grant from State Govt Dept of Justice & Ind. Rel. (exclusive of GST) in the sum of \$25,000 each for 2006, 2007 and 2008 being the difference between the old \$50,000 base grant and the new agreed base grant of \$75,000		\$75,000.00
Grant for Charter of Rights project from State Govt Dept of Justice & Ind. Rel. (exclusive of GST)		\$50,000.00
<b>Total Funds Available</b>		<b>\$193,342.71</b>
<b>Expenditure</b>		
Salaries		
Salary	\$67,727.53	
Superannuation	\$5,577.62	
Payroll Tax	\$4,403.91	
Workers Comp. Insurance	\$466.34	\$78,175.40
Non-Salary expenditure		
Consumables	\$1,281.85	
General travel	\$10,767.86	
Publications	\$9,491.00	
Telephone	\$568.18	
Asset Purchases	-	
Expenditure (Subject to FBT)	\$744.39	\$22,853.28
<b>Total Expenditure</b>		<b>\$101,028.68</b>
<b>Balance of Funds as at 31/12/05</b>		<b>\$92,314.03</b>

**Linkage Grant Account (suspended sentences project)**

Accumulated funds from 2005	\$35,903.54	
<b>Income</b>		
Commonwealth Grant	\$15,513.00	
Tasmanian Justice Department Grant	\$3,500.00	
<b>Total Funds Available</b>		<b>\$54,916.54</b>
<b>Expenditure</b>		
Scholarship – Post graduate	\$24,851.08	
Travel	\$61.18	
Consumables	\$2828.74	
<b>Total Expenditure</b>		<b>\$27,741.00</b>
<b>Balance of Funds as at 31/12/05</b>		<b>\$27,175.54</b>

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

Professor Kate Warner (Director) 69 days @ \$1,822	\$125,718
Professor Don Chalmers (Board member) 1 day @ \$1,822	\$1,822
Terese Henning (Board member) 140 days @ \$1,283	\$179,620
Ken Mackie (consultant) 10 days @ \$1,283	\$12,830
Di Nicol (consultant) 1 day @ \$1,283	\$1,283
Julia Davis (consultant) 1 day @ \$1,283	\$1,283
Michael Stokes (consultant) 1 day @ \$1,283	\$1,283
Greg Carnes (consultant) 3 days @ \$1,283	\$3,849

**Administrative Support\***

David McGuire 4 days @ \$1,070	\$4,280
Rachael Ormerod 2 days @ \$827	\$1,654
Antony Cave (computer) 4 days @ \$827	\$3,308

**Office and Running Costs (Law Reform Inst. Office)\*\*** \$8,008

**Total** **\$344,938**

\* calculated on University consultancy rates

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

## Appendix

Date	Name	Organisation	Presentation type
4/9/06	Terese Henning	Tasmanian Law Reform Institute	Launch of Issues Paper
6/9/06	Terese Henning	International Commission of Jurists	Presentation of Issues Paper
18/9/06	Terese Henning	University of Tasmania	Introduction to law lecture
24/9/06	Terese Henning	UNA	Workshop presentation to UNA
26/9/06	Terese Henning	University of Tasmania	Media law class
9/10/06	Terese Henning	TROGA	Presentation to members of TROGA
15/10/06	Rebecca Bradfield/Julian Eades	Family Based Care North	Presentation
15/10/06	Rebecca Bradfield/Julian Eades	Speak Out Interest Group	Discussion
16/10/06	Terese Henning	Hobart City Council, Youth ARC	Presentation to members of Youth ARC
16/10/06	Terese Henning	Community and Public Sector Union	Presentation to members of Union with hook-up to Nth West
17/10/06	Terese Henning	Huon FM	Radio presentation to members of Huon Valley community
17/10/06	Rebecca Bradfield	School for Seniors Devonport	Presentation
17/10/06	Rebecca Bradfield	Seniors Forum, Ulverstone	Presentation
18/10/06	Terese Henning	School for Seniors, Geeveston	Presentation to members university of the third Age
23/10/06	Terese Henning	Snr Executives, Justice Department	Meeting with Senior executives
23/10/06	Terese Henning	Tas Centre for Global Learning	Presentation at International House
24/10/06	Terese Henning	ABC (North) Radio	Radio presentation
24/10/06	Terese Henning	RPH Radio	Radio presentation to listeners of RPH
24/10/06	Terese Henning	Women's Council	Presentation to members of Women's Council
24/10/06	Terese Henning	AFUW	Presentation to members of AFUW
25/10/06	Terese Henning	Over 50s Club, Bellerive	Presentation to members of Club

26/10/06	Terese Henning	Catholic Women's League (Launceston)	Presentation to members of the League
26/10/06	Terese Henning	City Park Radio	Radio presentation to listeners of Launceston's City Park Radio
26/10/06	Terese Henning	Evatt Foundation	Presentation to members of the Foundation
27/10/06	Terese Henning	The Examiner Newspaper	Meeting with Janine Davis for article in Examiner
27/10/06	Terese Henning	Launceston Women's Shelter	Presentation to members of the Shelter
31/10/06	Rebecca Bradfield	Nthn Anglicare	Presentation to members
1/11/06	Terese Henning	Colony 47	Presentation to members of Colony 47
1/11/06	Terese Henning	Catholic Women's League (Hobart)	Presentation to members of the league
3/11/06	Terese Henning	TasCOSS	Meeting with Social Policy Council
7/11/06	Terese Henning	Covehill	Discussion with intellectually disabled workers at Covehill
8/11/06	Terese Henning	Amnesty International/UNA	Meeting with UN / Amnesty International
9/11/06	Terese Henning	COPP	Meeting with Julian Punch
14/11/06	Terese Henning	Anglicare Sth	Presentation to Hobart Anglicare members
15/11/06	Terese Henning	University of the Third Age	Presentation to members of Uni of 3 <sup>rd</sup> Age
15/11/06	Terese Henning	Family Planning	Presentation to members of Family Planning
15/11/06	Terese Henning	Multicultural Council	Presentation to members of Hobart MC
16/11/06	Terese Henning/ Larissa Behrendt	Women Lawyers Association	Presentation to members of the Association
17/11/06	Terese Henning	ABC Tasmania	Television interview with Stateline ABC television.
20/11/06	Terese Henning	Advocacy Tasmania	Presentation at New Norfolk to intellectually disabled workers at Willow Court
20/11/06	Terese Henning	Australian Education Union	Presentation to members of the AEU
20/11/06	Terese Henning	Whistleblowers Tasmania	Presentation to members of Whistleblowers Tasmania
21/11/06	Terese Henning	Friends of the ABC	Presentation to members of the Friends of the ABC
23/11/06	Terese Henning	Speak Out	Presentation to members of Speak Out
23/11/06	Terese Henning	Young Labour	Presentation to Young Labor
24/11/06	Terese Henning	TGLRG	Presentation to members of the TGLRG

27/11/06	Terese Henning	Department of Premier and Cabinet	Meeting with Department of Premier and Cabinet
27/11/06	Terese Henning	Council for Civil Liberties	Presentation to members of the Tasmanian Council for Civil Liberties
30/11/06	Terese Henning	COPP, State GLBTI, and TGLRG	Meeting with members
7/12/06	Terese Henning / Margaret Reynolds	Insight Forum, Margate	Presentation and Forum with members
12/12/06	Rebecca Bradfield	Young Women's Shelter, Launceston	Presentation to members
20/12/06	Rebecca Bradfield	TGLRG, Launceston	Presentation to members
20/12/06	Terese Henning	Health Department	Meeting with the Health Department