

**TASMANIA**  
**LAW REFORM**  
**INSTITUTE**

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## Annual Progress and Financial Report 2003

### *Contents*

1. Structure, Board Members and staff	1
2. Activities	2
3. Financial Statement	6

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

The Institute was established on 23 July 2001 and has now been operating for almost two 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

Paul Turner, 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

#### *Staff*

Jenny Rudolf (legal researcher, executive officer)

Kate Cuthbertson (legal researcher)

## 2. Activities

### *Board meetings*

The Board had eight meetings in 2003 (17 Feb, 17 Mar, 5 May, 6 June, 5 Aug, 17 Sept, 14 Oct, 28 Oct), all held at the Law Faculty of the University.

The agreement states that the Board should meet at least four times a year.

### *New Board members*

Two new Board members were appointed during 2003:

Mathew Wilkins, nominated by the Bar Association

Kate McQueeney, nominated by the Women Lawyers Association

### *Projects completed in 2003*

#### *Commissions of Inquiry Act*

In 2001 preliminary research was undertaken into criticisms made by the Gilewicz Report in relation to the *Commissions of Inquiry Act*. On 12 March 2002 the Attorney forwarded terms of reference to the Institute. A final report, containing recommendations, was released 9 September 2003.

#### *Criminal Law (Detention and Interrogation) Act*

The issues paper for this project was released in April 2002. Six responses were received. The final report, containing recommendations, was released 18 March 2003.

#### *Physical Punishment*

This project was proposed in September 2001 by the Children's Commissioner, Patmalar Ambikapathy. The Board agreed that the project be undertaken in February 2002. An issues paper was released in October 2002. Fifty-six responses to the issues paper were received. A final report, containing recommendations, was released 26 November 2003.

#### *Adoption by same sex couples*

In November 2002 the Attorney requested that the Institute undertake this project. Formal terms of reference were received in December 2002. An issues paper was released in February 2002. 195 original responses were received (many duplicate responses were also received – in total there were over 1300 responses). A final report, with recommendations, was released 28 May 2003. The recommendations were partly implemented by the *Relationships (Consequential Amendments) Act 2003* (same sex and de facto couples are now eligible to apply for known child adoptions).

### *Ongoing law reform projects*

#### *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, written by Kate Warner. Over 20 written responses to the issues paper were received. Due to other priorities, the final report for this project was not

completed in 2003. It is intended that the final report with recommendation will be released in 2003.

#### *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 reiterated. Kate Warner 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 June 2003. Rachel Vermey accepted the Australian Postgraduate Award to undertake the research in December 2003.

#### *Bail*

In 2001 the Attorney referred issues relating to bail to the Institute. The main areas of concern were offenders re-offending while on bail, and the factors given consideration when deciding to grant bail. Due to difficulties in data access and availability a detailed study of offending whilst on bail is not possible at this time. An initial investigation was approved by the Board and was begun in September 2002. Police bail data was provided by Commander Tony Mulder and Sergeant David Richardson from the Police Online Charging System. Supreme Court bail data was provided by Kerry Worsley and Magistrates Court bail data for Hobart was provided by Jonathon Rees of the Justice Department. This data has been analysed and it is intended that a research paper will be released in 2004.

#### *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. Initial work on the project was undertaken in 2002. Due to other priorities, work was not continued on the project until December 2003. It is intended that a final report, containing recommendations, will be completed in 2004.

### ***New law reform proposals and projects***

#### *The Forfeiture Rule*

The forfeiture rule provides that a killer cannot inherit from their victim. It is argued that in some cases, for example those where the killing is in response to severe domestic violence by the deceased, public policy does not necessarily require that the killer be disinherited. This project was proposed by Ben Bartl, an undergraduate student of the Faculty of Law. The project was approved by the Board in May, with Kate McQueeney, Ken Mackie, Jenny Rudolf and Ben Bartl forming a sub-committee to oversee the project. Ben Bartl wrote the issues paper, which was released in December. The Institute has invited responses by 27 February 2004. Following consideration of all responses it is intended that a final report will be published, containing recommendations to the Attorney-General.

#### *Vendor Disclosure*

This project considers the need for the enactment of legislation requiring vendor disclosure of certain matters prior to the sale of property. The project will examine current practices in Tasmania and possible problems caused by a lack of vendor disclosure, as well as the experiences and approaches of other jurisdictions. The project was proposed by the Institute's Property Law Reform Group, and was approved by the Board in October, with Mathew Wilkins, Lynden Griggs, Phil Kimber and Jenny Rudolf forming a sub-committee to oversee the project. An undergraduate law student, Leigh Wilson, is currently preparing an issues paper, to be released early 2004.

### *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, with Kate Warner, Philip Jackson and Kate Cuthbertson forming a sub-committee to oversee the project. Kate Cuthbertson is currently preparing an issues paper, to be released early in 2004.

### *Corporate Manslaughter*

This project considers the desirability of introducing a corporate manslaughter provision. Such a provision would provide specific definitions of manslaughter in the case where the alleged perpetrator is a corporation, as well as providing specific penalties. The project was proposed by Ben Bartl, and was approved by the Board in October, with Kate Warner, Justice Blow, Leigh Mackie and Jenny Rudolf forming a sub-committee to oversee the project. Ben Bartl and Jenny Rudolf are currently preparing an issues paper, to be released in 2004.

### *Proposals not undertaken*

- Information privacy

The Institute declined to undertake a consultative project for the Justice Department regarding the government's proposed information privacy legislation.

## ***Additional activities***

### *Property law reform group*

A property law reform group was formed in July. The group is comprised of Dr Val Haynes, Peter Murphy, Phillip Kimber, Lynden Griggs, Mathew Wilkins, Jon Osborn, Michael Giudici, Michael Dixon, Alice Kawa, Ken Mackie and Jenny Rudolf. Following group consideration of proposals for law reform projects, the group proposed the vendor disclosure project to the board of the Institute.

### *Limitation Act*

The Institute was consulted by the Department of Justice regarding proposed amendments to the *Limitation Act 1974*.

### *Uniform succession laws*

The Institute formed a Uniform Succession Law Committee to consider proposals, as they arise from time to time, for and from the National Committee for Uniform Succession Laws. The Institute's committee is made up of Kate McQueeney, Professor Chalmers, Peter Joyce and Paul Turner. The Institute's committee considered and responded to proposals from the Queensland Law Reform Commission in August. In November Kate McQueeney represented the Institute in a teleconference to further consider these proposals.

### *Review of Administrative Appeal Processes*

Professor Warner, Justice Blow and Jenny Rudolf considered and reported to the Board on State Service Commissioner Greg Vines' report: 'Review of Administrative Appeal Processes'. The Board agreed that the Institute take no action in this area at present.

### *Building and Renovation Research*

An article in the Weekend Australian Magazine raised concerns for home-owner builders and renovators due to the erosion of consumer rights and the privatization of home indemnity

insurance. The article asserted that Tasmania in particular had problems in this area. In December preliminary research on this topic was undertaken, to be considered by the Board in 2004.

#### *Bioinformatics*

Professor Chalmers has continued to be involved in proposals for a Tasmanian Centre for Bioinformatics. Professor Chalmers reported to the Board in August that the Bioinformatics project has been split into three separate projects: Health Informatics, Informatics (generally) and an Ethics project. A proposal has been made to the Intelligent Island Board for the Institute, the Centre for Law and Genetics and the University to construct an ethics program for the Ethics Project. If the proposal is approved by the Intelligent Island Board Professor Chalmers will present a proposal for the Institute Board's consideration

#### *Article in 'Reform'*

The Institute contributed to the 'Reform Roundup' section of the Australian Law Reform Commission's journal, *Reform*.

#### *Volunteer workers*

The Institute continued to be assisted by undergraduate students performing volunteer research work for the Institute. The work is beneficial to the students in gaining research experience 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*

Kate Warner made the following invited presentations on law reform issues:

- 5 March: Women's Council (same sex adoption)
- 8 May: RHH Research Foundation MBS Breakfast (law reform)
- 12 June: Asia Pacific Children, Commissioners Conference (law reform)
- 9 July: Policy Division of Premier and Cabinet (sentencing)
- 6 August: Australian Tertiary Education Managers (role of the Director of the TLRI)
- 22 August: Law Fest (physical punishment of children; same sex adoption)
- 30 August: National Association of Community Legal Centres Conference (law reform)
- 22 November: Liberal Party Policy Forum (sentencing)

#### *Summary of publications*

##### **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. (March)

**3. Financial Statement** for the period 1/1/03 - 31/12/03

Accumulated funds from 2002		\$63,109.63
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**Income**

Grant from State Govt Dept of Justice & Ind. Rel. (exclusive of GST)		\$50,000.00
Payment from State Govt Dept of Justice & Ind. Rel. for work on Adoption by Same Sex Couples project (exclusive of GST)		\$21,849.00
<b>Total Funds Available</b>		<b>\$134,958.63</b>

**Expenditure**

Salaries		
Salary	\$35,246.03	
Superannuation	\$2,951.81	
Payroll Tax	\$2,361.17	
Workers Comp. Insurance	<u>\$246.72</u>	\$40,805.73
Non-Salary expenditure		
Visitors, entertainment, catering	\$228.63	
General travel	\$613.96	
Publications	\$131.75	
Computer software	\$69.00	
Printing	<u>\$2,899.00</u>	\$3,942.34
<b>Total Expenditure</b>		<b>\$44,748.07</b>

<b>Balance of Funds as at 31/12/03</b>		<b>\$90,210.56</b>
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**Estimated University (in kind) Contributions,****Academic Support***Salary and salary on costs*

Professor Kate Warner (Director) 40 days	\$21,480
Professor Don Chalmers (Board member) 8 days	\$5,296
Ms Terese Henning (Board member) 10 days	\$3,730
Dr Val Haynes, Professor Margaret Otlowski, Julia Davis and Lynden Griggs (Consultants) 3 days total	\$1,119
<i>Academic Infrastructure Support (20% of salary costs)</i>	\$6,325
<b>Office and Running Costs (Law Reform Inst. Office)*</b>	\$4,160
<b>Computer Support</b>	<u>\$1,200</u>
<b>Total</b>	<b><u>\$43,310</u></b>

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