

Annual Progress and Financial Report 2005

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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 four 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

Legal researchers during 2005

Jenny Rudolf (also Executive Officer)

Benedict Bartl

Dr. Rebecca Bradfield

Kate Cuthbertson

Rohan Foon

Claire Hemming

Bruce Newey

Damian Jacobs

Amy Fearnley-Sander

Tenille Marsh

Victor Stojcevski

2. Activities

Board meetings

The Board had six meetings in 2005 (21 Feb, 4 May, 23 May, 30 April, 27 July, 20 Dec), all held at the Law Faculty of the University.

Ongoing law reform projects

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, 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 2006.

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. Benedict Bartl and Jenny Rudolf prepared the issues paper, which was released in June 2005. The Institute received 13 responses to the issues paper. Jenny Rudolf also gave a presentation about the project at the Working Safe Conference 2005. The final report, to be released early in 2006, is in preparation.

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 were prepared on these three areas of the law of contempt by research assistants Amy Fearnley-Sander, Damian Jacobs and Tenille Marsh. Late in 2005 Dr Rebecca Bradfield undertook carriage of the project. She is currently consolidating the three issues papers, for release in 2006.

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. A draft issues paper was prepared by Victor Stojcevski, under the supervision of Terese Henning and Kate Warner. Jenny Rudolf and Terese Henning undertook further work on this draft, which is to be presented to the Board for consideration in early in 2006.

Intoxication

This project considers the need to clarify the law relating to intoxication in Tasmania. Rebecca Bradfield prepared an issues paper, under the supervision of Kate Warner which was released in March 2005. The issues paper gave consideration to the different options for reform, such as:

- Re-affirming the recognised Code position - ie in accordance with Snow: intoxication is only relevant to specific intent crimes;
- Bringing the Code in line with the common law - ie intoxication is relevant to any mental element;
- Adopting the Draft Criminal Code / Criminal Code Act 1995 (Cth) s 8.

Consideration was given to the position in other Australian states and common law jurisdictions such as the UK, Canada and NZ. Five responses were received to the issues paper. A draft final report is to be considered by the Board in February 2006.

Warnings in sexual offences cases relating to delay in complaint

This project considers 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 links in to the current review of the Uniform Evidence legislation being undertaken by the Australian Law Reform Commission. Claire Hemming undertook initial research and preparation of an issues paper, which was completed by Terese Henning, and released in June 2005. Six responses to the issues paper were received. A final report is in preparation, to be released in 2006.

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 2005. It is intended that the final report with recommendation will be released in 2006.

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. The scholarship was then advertised nationally. Lorana Bartels was the successful candidate and commenced work on the project in August 2004. The project is progressing well.

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

Drug Court Project

This project was approved by the Board in May. The project will examine the nature and extent of drug-related crime in Tasmania and assess whether it is appropriate to initiate a Drug Court pilot in this state. This project will aim to:

- Assess the need for a drug court pilot in Tasmania based on the evidence about illicit drug use and the current arsenal of responses available in dealing with offenders with drug problems;
- Survey the various drug court models that have been initiated in Australian and international jurisdictions;
- Examine how the various drug courts work;
- Survey and assess the evidence of the outcomes of the drug court initiatives
- Define a drug court's target populations;
- Consider legislative changes to pave the way for a drug court;
- Assess the costs and benefits of a drug court in Tasmania;
- Consider the impact of a drug court on the courts, treatment and service providers, lawyers and corrections;
- Consider the feasibility and practicability of moving forward with a drug court pilot in Tasmania in order to break the link between drugs and crime.

The Institute applied to the Law Foundation for a grant in relation to this project and was awarded the amount of \$8,642.50. It is intended that an issues paper will be produced in 2006.

Human Rights Project

This project was approved by the Board in December, however work on the project will not begin until April 2006. The project is a reference form 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 has 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.

Terese Henning will commence the project in April 2006. The Government will contribute \$50,000 towards the cost of the project.

Proposals not undertaken

Lowering of the age of consent

This project was proposed by Ms Cynthia Hills. It involved considering whether the age of consent to sexual intercourse should be lowered from 17 years to 16 years. It was agreed that the Institute would not undertake the law reform project. The primary reasons for this were:

- the protective nature of the law;
- that the line must be drawn somewhere and there seems no compelling evidence to suggest that it should be 16 years rather than 17 years; and
- that only a small band of relationships would be affected by any reforms.

Same-sex marriage legislation

This project was proposed by Rodney Croome (Tasmanian Gay and Lesbian Rights Group) and Nick McKim (Tasmanian Greens Justice Spokesman). The project involved consideration of whether legislation facilitating same-sex marriage should be introduced in Tasmania. The Institute felt that the issue was better debated within the political sphere, particularly as a Bill had already been put before Parliament and considerable public debate of the issue had already occurred.

Status of Children Act

This project was proposed by Paul Turner. It concerned a specific legislative anomaly with the *Status of Children Act 1974* in relation to the presumption of parentage. The Board agreed to write to the Attorney-General in relation to the matter. However, before that letter was sent the Institute became aware that the issue was being considered by the New South Wales Law Reform Commission as part of the Intestacy project (an aspect of the Uniform Succession Project). The Institute will therefore await the NSWLRC's recommendations in relation to this matter before acting further.

Additional activities

Uniform Succession Laws

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.

In addition, the Institute assisted the New South Wales Law Reform Commission in undertaking consultations in Tasmania in relation to their issues paper on Intestacy, which is part of the Uniform Succession Project. This involved corresponding with Tasmanian practitioners in relation to the issues paper and facilitating meetings between Professor Michael Tilbury of the NSWLRC and local practitioners in the north and south of the state.

Chapter in 'The Promise of Law Reform'

Kate Warner contributed the chapter: 'Institutional Architecture' to Brian Opeskin and David Weisbrot (eds) *The Promise of Law Reform* (The Federation Press, Sydney, 2005), a collection of essays published to mark the 30 years since the establishment of the Australian Law Reform Commission.

Articles in 'Reform'

The Institute contributed to the Australian Law Reform Commission's journal, *Reform*, with an article about sentencing organizations, which is an aspect of our Criminal Liability of Organizations. The Institute also contributed with updates on our activities in the 'Reform Roundup' section of the journal.

Article in 'Australian Law Librarian'

Kate Warner presented a paper, 'Why Base a Law Reform Body at a University: law reform and legal education' at the Law Librarians Symposium. The paper is now to be published in the forthcoming *Australian Law Librarian*, volume 13 (2005).

Extension of Institute Agreement

The Institute's founding agreement was due to expire on 31 December 2005. The agreement provides that it may be extended by the written agreement of the parties. Such an agreement was made, and the agreement was renewed for a further three-year period. Furthermore, the Government's contribution towards the Institute's funding will increase from \$50,000 to \$75,000 per annum during that period.

Addresses and presentations

Professor Kate Warner made the following invited presentations:

- 27 May: Magistrates Conference (Domestic Violence: problem oriented courts and some sentencing issues)
- 11 August: ALP Wapping Branch (TLRI)
- 19 August: LawFest (Controlling Crime)
- 1 September: IDDI State Reference Group (Drug Courts and Therapeutic Jurisprudence)
- 29 September: Law Librarians Symposium (Why Base a Law Reform Body at a University?)
- 24 October: University of Adelaide (Why Base a Law Reform Body at a University: law reform and legal education)

Jenny Rudolf made the following invited presentations:

- 2 July: Childhoods 2005 Oslo (Children's Rights to Protection from Physical Punishment in their Homes – Legal and Policy Progress: Developments in Australia)
- 6 May: Fifth State Road Authority Occupational Health and Safety Conference (Industrial manslaughter – Tasmanian proposals)
- 27 October: Working Safe Conference and Trade Show (Industrial Manslaughter)

Summary of publications

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 1/1/05 - 31/12/05

Accumulated funds from 2004		\$39,314.71
Income		
Grant from State Govt Dept of Justice & Ind. Rel. (exclusive of GST)		\$50,000.00
Grant from the Law Foundation for Drug Court Project (exclusive of GST)		\$7,856.82
Total Funds Available		\$97,171.53
Expenditure		
Salaries		
Salary	\$59,651.04	
Superannuation	\$5,227.11	
Payroll Tax	\$3,957.59	
Director's loading	\$593.29	
Workers Comp. Insurance	\$417.55	\$69,846.58
Non-Salary expenditure		
Consumables	\$1,93.15	
General travel	\$6,204.24	
Publications	\$1,937.00	
Telephone	\$596.52	
Asset Purchases	-	
Expenditure (Subject to FBT)	\$51.33	\$8,982.24
Total Expenditure		\$78,828.82
Balance of Funds as at 31/12/05		\$18,342.71

Linkage Grant Account (suspended sentences project)

Accumulated funds from 2004	\$33,005.64	
Income		
Commonwealth Grant	\$24,650.00	
Tasmanian Justice Department Grant	\$6,000.00	
Total Funds Available		\$63,655.64
Expenditure		
Scholarship – Post graduate	\$24,338.20	
Travel	\$879.90	
Asset Purchases	\$2,534.00	
Total Expenditure		\$27,752.10
Balance of Funds as at 31/12/05		\$35,903.54

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

Professor Kate Warner (Director) 40 days @ \$1,822	\$72,880
Professor Don Chalmers (Board member) 4 days @ \$1,822	\$7,288
Ms Terese Henning (Board member) 25 days @ \$1,283	\$32,075
Ken Mackie and Di Nicol (consultants) 8 days @ \$1,283	\$10,264
Julia Davis (consultant) 2 days @ \$1,283	\$2,566

Administrative Support*

David McGuire 4 days @ \$1,070	\$4,280
Rachel Evans 2 days @ \$827	\$1,654
Peter Edwards (computer) 4 days @ \$827	\$3,308

Office and Running Costs (Law Reform Inst. Office)**	<u>\$5,717</u>
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<u>Total</u>	<u>\$140,032</u>
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* calculated on University consultancy rates

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