

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 2014

External Reference: DPAC - Tasmanian Law Reform Institute
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1. Structure, Board Members and Staff

The Institute was established on 23 July 2001.

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 (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).

Board members

Professor Kate Warner, 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

Terese Henning, 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 2014

Dr Helen Cockburn BA, LLB (Hons), PhD (also Executive Officer)
Dr Caroline Spiranovic BA (Hons), PhD
Dr Rebecca Bradfield BA/LLB (Hons), PhD
Bruce Newey BA, LLB, LLM
Claire Jago LLB (Hons)

2. Activities

(a) Board meetings

The Board held two formal meetings in 2014 (June 17th and October 6th), all held at the University Law Faculty.

(b) Projects

Completed law reform projects

The Institute did not publish any Final Reports during 2014.

Ongoing law reform projects

Self-defence

In November 2012 the 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. The Issues Paper was released in November 2014. This is a far-reaching enquiry that raises a number of complex practical and theoretical legal issues so the electronic version of the Paper was accompanied by a Submission Template which is intended to guide respondents through the process of preparing a submission. The Issues Paper considers whether the current law of self-defence in Tasmania should be retained or whether any amendments should be made to the existing law. There is scope for considerable debate about the extent to which a person can rely on a mistaken belief for the purposes of self-defence, and whether the reason for the mistake has a role to play in making this assessment. This is the particular concern addressed in this Paper. It is anticipated that the Final Report will be released towards the middle of 2015.

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. In a bid to maximise public comment on the Issue Paper, the Institute hosted an online survey which received more than 150 responses. The Final Report will be released in February 2015.

New law reform proposals and projects

The Institute considered four proposals for reform projects in 2014. One was accepted as a project, two were deemed unsuitable as matters for extensive review but have been accepted as appropriate subjects for a more limited response from the Institute, and the Board has not yet agreed on terms of reference for the final proposal.

Further rights of appeal

In January 2014 a member of the public wrote to the Institute requesting it to undertake a review of Tasmania's laws governing a convicted person's right of appeal. The request followed recent amendments to appeal rights in South Australia. It is the Institute's practice to engage senior law students to undertake preliminary research in appropriate cases, with a view to developing their work into an Issues Paper. In this case a final year student completed a supervised research paper on the issue of further appeal rights during the latter half of 2014. In the interim, the Attorney-General indicated her intention to amend the law governing rights of appeal to allow for a criminal case review if new evidence comes to light after normal appeal rights are exhausted. Accordingly, the reference was not accepted. Instead, the student paper will form the basis of a critical review of the proposed amendments to be published by the Institute as a Research Paper.

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 has not received a reference as yet. Consent to the application of force raises a number of issues to do with sport, sadomasochistic behaviours and domestic violence. At its meeting in June 2014 the Board unanimously agreed it would be good to encourage it as a reference from the Attorney. A final year law student completed a supervised research paper on the issue during the latter half of 2014 and proposed terms of reference will be developed in the light of her initial research.

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. It is anticipated that the Issues Paper will be released in February 2015.

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 considers 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, subject to the approval of the Institute Board, a formal approach will be made to the Attorney-General with a recommendation for legislative reform along the lines suggested by Dr Burke. The draft letter of recommendation will be tabled at the first Board meeting in 2015.

(c) Additional activities

Publications

Kate Warner, 'Lessons from a Small University-based Law Reform Body' in Michael Tilbury, Simon N Young and Ludwig Ng (eds), *Reforming Law Reform: Perspectives from Hong Kong and Beyond* (Hong Kong University Press, 2014)

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, one of the students was employed to produce an Issues Paper for the Institute based on her undergraduate research paper.

(d) Addresses, presentations and consultations

Problem Hedges consultations

In conjunction with the release of the Issues Paper, *Neighbours' Hedges as Barriers to Sunlight and a View*, the Institute conducted a number of consultations designed to elicit the views of important stakeholders.

2 April — Local Government Association of Tasmania held at Glenorchy Council Chambers

4 April — Department of Justice held at Local Government Association of Tasmania headquarters Hobart

10 April — Northern Tasmanian Councils held at Launceston City Council Chambers

28–30 May — **Professor Warner** and **Dr Cockburn** attended the Australasian Law Reform Agencies Conference in hosted by the Samoa Law Reform Commission in Apia, Samoa. Professor Warner presented a paper entitled, 'The Relevance of Aboriginality to Sentencing in Australia' and Dr Cockburn presented a paper entitled, 'The Admission of Customary Law in Common Law Courts: Some Regional Comparisons'. The conference was attended by the

Chief Justice of Samoa, the Attorney-General and other members of the government and many other members of the legal community.

May — **Professor Warner** addressed a gathering of Rotary members at New Norfolk on the work of the Institute and the projects on which it is currently engaged.

22–26 June — **Professor Warner** presented a paper at the 27th Conference of the International Society for the Reform of Criminal Law entitled, ‘Australian Parole Systems in Crisis? Current Issues and Future Research Directions’.

August — **Professor Warner** addressed senior students at St Michael’s Collegiate School in Hobart on law reform generally and the work of the Institute.

October — **Professor Warner** delivered an address to members of Probus Sandy Bay on law reform generally and the work of the Institute.

October — **Professor Warner** spoke to legal studies students at St Mary’s College in Hobart about the work of the Institute and issues relating to the use of suspended sentences in Tasmania

Summary of publications

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 1/1/14 - 31/12/14

Accumulated funds from 2013	\$71,386.59
Income	
Standard grant from State Govt Dept of Justice	\$50,000.00
Department of Justice grant (Cyber-bullying project)	\$15,291.50
Sentencing Advisory Council (salary reimbursement)	\$3,964.64
Other	
Total income	\$69,256.14
Total Funds Available	
	<u>\$140,642.73</u>
Expenditure	
Salaries and salary on-costs	
Salary (including superannuation, payroll tax and workers' compensation insurance)	\$70,639.44
Other salary	\$5,496.56
	<u>\$76,136.00</u>
Non-Salary expenditure	
Domestic travel	\$1,757.43
International travel	\$1,969.32
Conference registration	\$655.41
Publications	\$1,706.00
Telephone	\$117.43
Entertainment	\$198.18
Advertising	\$1,423.12
Equipment	\$302.85
Other	\$14.49
Other	
	<u>\$8144.23</u>
Total Expenditure	<u>\$84,280.23</u>
Balance of Funds as at 31/12/13	
	<u>\$56,362.50</u>

University Contributions (in kind)

Academic Support*

Salary and salary on-costs

Prof Kate Warner (Director) 30 days @ \$1,822	\$54,660.00
Prof Margaret Otlowski (Board member) 4 days @ \$1,822	\$7,288.00
Terese Henning (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
Matt Taylor (computer) 7 days @ \$1,027	\$7,189.00

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

Total

\$107,560.00

* 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.