

TASMANIA
LAW REFORM
INSTITUTE

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Annual Report 2001

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1. Structure, Board Members and staff

The Institute was established on July 23 2001.

The functions and operations of the Institute are undertaken by its director, with assistance from a research assistant.

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

Phillip Jackson, appointed by the Law Society
Terese Henning, appointed by the Council of the University

Staff

Jenny Gawlik (research assistant)

2. Activities

Board meetings

The Board had three meetings in 2001 (7 Sept, 10 Oct, 20 Nov), all held at the Law Faculty of the University.

The agreement states that the Board should meet at least four times a year. The Board agreed no firm timetable should be set for meetings at this stage.

The next meeting of the Board is set for 6 February.

Law reform proposals and projects

At the first meeting of the Board it was agreed that only proposals in writing be considered by the Board.

In September the Institute called for proposals for law reform projects from the legal profession, members of the judiciary, members of Parliament, government departments and statutory authorities. This call was delivered by e-mail (see Appendix A). The Law Society took responsibility for its delivery to the legal profession. Only one response to this call was received (from the Children's Commissioner – see details below).

Sentencing Reference

The Attorney-General requested that the Institute undertake a reference on sentencing in late September. The terms of the reference were finalised on November 20 (see Appendix B). A budget of \$5000 was allocated to the project, with the Institute to bring the matter back to the Board if more funds are needed. A research paper is currently being prepared by the Institute for completion in February 2002.

The Attorney also referred issues relating to bail and suspended sentences to the Institute. The Board agreed that these should not be grouped with the sentencing law reform project. The Board agreed that the Attorney be approached in relation to "linkage grants" for these projects. The applications for these can be made in 2002.

Commissions of Inquiry Act

Preliminary research was undertaken into complaints made by the Gilewicz Report in relation to the *Commissions of Inquiry Act*. At the first meeting of the Board (Sept 7) it was resolved that the Institute write to the Attorney-General, seeking official confirmation that he wishes the Institute to undertake a reform project into the *Commissions of Inquiry Act* and asking for suggestions as to its expected scope. The Attorney has not requested the Institute to undertake the project, though it is understood that it may be asked to do so at a later date.

Criminal Law (Detention and Interrogation) Act

In October Board member Terese Henning proposed that the Institute undertake a project into two specific problems with the *Criminal Law (Detention and Interrogation) Act*. Details of the proposal were circulated amongst Supreme Court judges, magistrates, prison groups, probation service, the Police Commissioner, the Legal Aid Commission and members of the legal profession (via the Law Society, the Bar Association and the Independent Bar Association) seeking views as to any other problems with this Act which might be included in this project. There was little response. It is anticipated that the project, as proposed, will be started early in 2002.

Abortion

By a letter dated 23 November 2001 the Attorney-General referred to the Law Reform Institute the issue of abortion. This arose because following a police investigation of abortion at the Royal Hobart Hospital, fear of prosecution led doctors to cease to perform abortions. They also ceased in the North and North-West. With just one doctor continuing to perform abortions at the Royal Hobart Hospital one day a week, there was a long waiting list. The Institute was requested to report upon whether or not reform of the Criminal Code was necessary and if so what legislative measures and/or codes of conduct where necessary. The Attorney indicated that he would like this reference to be given priority over the Sentencing Reference. The reference was accepted and preliminary work was undertaken gathering literature and information for the reference. However the reference was pre-empted because by the second week of December it became clear that Parliament would be recalled for a special sitting before Christmas in an attempt to resolve the issue quickly without waiting for recommendations from the Institute. This was done and by 21 December legislation had passed both Houses inserting a new provision in the Criminal Code for the "medical termination of pregnancy" (s 164). The legislation came into force on 24 December.

Corporal Punishment

In response to the Institute's call for proposals the Children's Commissioner proposed that a law reform project be undertaken looking at corporal punishment of children. It was agreed the proposal be reconsidered by the Board at a later date.

Other

- A letter from Jocelyne Scutt, the Anti-Discrimination Commissioner, was received (July 24). The Institute wrote to her for further explanation and information, no response was received.
- A letter from a Mrs Kim Searl (Sept 6) regarding the taking of the oath in Court was considered by the Board and it was resolved that no reform project should be undertaken on the issue. Ms Searl was so advised.
- Four other proposals were received from the Children's Commissioner (Sept 12) which the Institute did not consider to be appropriate for law reform projects.

Additional activities

Publications of the former Law Reform Commission and Commissioner were retrieved from the Parliamentary library prior to the first meeting of the Board.

An email address was established and a web site is in the process of being established.

Kate Warner gave a talk about the Institute to a meeting of senior police officers on August 29.

Information about the Institute and a copy of the Institute's founding agreement was given to Margaret Davies in South Australia and Ben Lee in the Northern Territory. These jurisdictions do not have law reform bodies and are interested in our model.

The Institute is anticipating the visit of Peter Lown QC, Director of the Alberta Law Reform Institute (on which the Tasmania Law Reform Institute is based) in early February 2002.

An article about the Institute was submitted to the journal 'Reform'. The submission was too late for inclusion in the most recent edition and is it is intended to be resubmitted for the next issue (due out in April, 2002).

3. Financial Statement

**STATEMENT OF INCOME AND EXPENDITURE
FOR THE PERIOD 1 JANUARY – 31 DECEMBER 2001**

Income

State Govt Department of Justice & Ind. Rel.		<u>\$38,500</u>
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Total Income		<u>\$38,500</u>
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Expenditure

GST		(\$3,500)
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Salaries

Administrative Assistance - J Gawlik		
Salary	(\$6,485)	
Superannuation	(\$519)	
Payroll Tax	(\$441)	
Workers Comp. Insurance	<u>(\$45)</u>	(\$7,490)

Consumables

Catering	<u>(\$298)</u>	<u>(\$298)</u>
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Total Expenditure		<u>(\$11,288)</u>
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<u>Total Income less Expenditure</u>		<u>\$27,212</u>
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Appendix A

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CALL FOR PROPOSALS FOR LAW REFORM PROJECTS

The Tasmania Law Reform Institute has been established as a joint initiative of the State Government, the University of Tasmania and the Law Society of Tasmania. The Institute calls for submissions as to specific areas of the law considered to be in need of reform.

The functions and objectives of the Institute include the review of laws with a view to –

- (i) the modernisation of the law;
- (ii) the elimination of defects in the law;
- (iii) the simplification of the law;
- (iv) the consolidation of any laws;
- (v) the repeal of laws that are obsolete or unnecessary; and
- (vi) uniformity between laws of other States and the Commonwealth.

The Institute may receive proposals for law reform or research projects from the judiciary, the Attorney-General, the Legal Aid Commission, government departments, the Parliament, the legal profession, members of the community and community groups.

Submissions should be in writing and as detailed as possible. Proposals will be considered by the Board of the Institute with a view to undertaking a law reform project.

Appendix B

SENTENCING REFERENCE

1. Sentencing Trends

Examine whether there has been a change in sentencing patterns in Tasmania for major crimes and summary offences.

2. Crime reduction

(a) Examine whether there is a relationship between crime levels and sentencing in Tasmania.

(b) What role can sentencing legislation and sentencing measures have in achieving the Tasmania Together Goals in relation to perceptions of safety and achieving safe environments?

3. Sentencing options

Examine the suitability of present sentencing options (including options provided in the Youth Justice Act 1997) and to consider whether any changes should be made to existing options and whether new sentencing options should be introduced.

4. Role of victims

Consider whether the interests of victims are adequately dealt with in the sentencing process and to what extent the objective of section 3(h) [that of recognising the interests of victims] has been met.

In particular to consider the efficacy of compensation orders and the victim's levy.

5. Role of the community

(a) Consider the level to which the objective in section 3(f) of the Sentencing Act [of promoting public understanding of sentencing practices and procedures] has been met and make recommendations as to how the public can be informed of the sentencing process.

(b) Consider how community attitudes towards sentencing should be ascertained.

(c) Examine whether any mechanism could be adopted to more adequately incorporate community views into the sentencing process.