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Labor Member for Clark

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REVIEW OF THE TASMANIA LAW REFORM INSTITUTE

Dear Professor Williams

Thank you for the opportunity to provide input into the review of the Tasmania Law Reform Institute (the TLRI). I welcome the opportunity to provide comment and do so on behalf of the Tasmanian Parliamentary Labor Party.

Tasmanian Labor recognises the extremely high regard in which the TLRI is held. The TLRI plays a vital role in law reform in our state, providing invaluable advice and support on the improvement, modernisation and consolidation of Tasmanian law, as well as contributing to law reform at a national level.

In preparing my submission, I have engaged with other key stakeholders with an interest in the review including Community Legal Centres Tasmania and the Tasmanian Council of Social Services. Labor is broadly supportive of many of the recommendations made in the submissions made to the review by both these organisations.

This submission will briefly address each of your review's terms of reference.

Whether the aims and objectives of the Institute, set out in its Founding Agreement require modernization, clarification or amendment.

Under the Founding Agreement, the TLRI is to conduct reviews with a view to modernising the law, eliminating defects, simplifying and consolidating the law, as well as identifying need for repeal of obsolete laws and facilitating uniformity of laws across jurisdictions.

Importantly, the objectives were expanded in 2019 to include the ability for the TLRI to conduct reviews with a view to 'optimising the operation of the law and facilitating access to justice'. This is an important role which should be retained.

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Labor recognises the fact that in the criminal justice system, there is frequently a disproportionate impact on disadvantaged members of our community. Future law reform embarked on by government should have at its heart, the impact of legislative change on vulnerable and marginalised community members. Maintaining the capacity for the TLRI to conduct reviews with this aim in mind will no doubt have a positive impact.

An additional aim to be added to the TLRI's remit could be to expressly allow for the TLRI to conduct reviews that recommend new laws or areas of future law reform and legislative change needed in Tasmania.

Whether there are sufficient provisions for the protection and promotion of the institutional integrity and independence of the Institute

Tasmanian Labor recognises the extremely high regard in which the TLRI is held. Not only by all sides of politics, but also in the legal community, the academic community and the general community locally, nationally and internationally.

Tasmania should be extremely proud of the work conducted by the TLRI over many years and the positive impact the Institute has had on improving Tasmania's laws impacting on the lives of Tasmanians.

The TLRI is known and respected as an independent body providing evidence based, unbiased and impartial advice. It is vital that as a result of this review, this is not lost and is retained and strengthened.

While the Agreement and Renewal Agreement have served the Institute well to date, with rapid changes in administration within the University and within government (two of the founding partners), it is important that the independence of the TLRI is expressly stated and enshrined in future iterations of the Agreement.

For example, under the current agreement, the TLRI can receive references from a wide range of bodies. Unlike in some other jurisdictions, the TLRI is not limited to taking references only from government.

We believe this should be retained and strengthened. As noted in the submission to this review provided by Community Legal Centres Tasmania, a little under half of the references accepted by the TLRI have been from stakeholders other than the Attorney-General. The TLRI has accepted references from the parliament, the legal profession, statutory office holders, the general community and have self-initiated research projects as well.

Labor believes it is essential that future agreements expressly allow for the TLRI to self-initiate research as well as to take references from stakeholders other than the Attorney-General and government. We support the express inclusion of statutory officers as a named up stakeholder able to submit references to the TLRI.

Future agreements should also outline the ability for the TLRI to either accept or refuse references based on a decision of the Director and/or the Board.

The position, role and relationship of the Institute to its founding members, the Government of Tasmania, and the University of Tasmania (in particular its placement within the Law Faculty of UTAS), including specifically the research capacities and priorities of the University and the Law Faculty

It is an important part of the TLRI's history and foundation that it has been established with the support of the three founding members: the Government, the University and the Law Society.

While the ongoing support of all three of the founding partners is imperative, equally important is that none of the partners have either perceived or actual 'ownership' over the work of the TLRI.

As described above, the independence of the operation of the TLRI as well as the impartiality of its research and advice is the Institute's strength.

The ability of the Institute to operate independently is a measure of its ability to effectively serve the Tasmanian community. To date, the Institute has operated with a high level of independence partly based on good will between the three partners and the Institute.

It is important that the new Renewal Agreement reinforces, entrenches and makes explicit the fact the Institute is able to operate independently. This should include accepting references from a broad range of stakeholders and the general community, and expressly stating the TLRI can conduct research by its own motion.

It would be inappropriate for the Institute to have its work directed or directly influenced by any of the three founding partners, or by any of the bodies sending references to the TLRI.

Notwithstanding the financial contribution of government and the large in kind and financial contribution of UTAS, it should remain the case that the TLRI is empowered to conduct research, including when that research does not necessarily align with the policy priorities of any of the founding partners.

Each of the founding partners has their own capacity to conduct research specifically to progress their own policy priorities. Equally, there is no obligation for government to accept or act upon advice from the TLRI.

It is fundamental to the independent operation of any law reform institute that they can conduct research and provide advice that is evidence based and impartial, which may not necessarily align with government or university policy and priority.

The adequacy and appropriateness of the Institute's current constitution, governance arrangements and reference process

One of the strengths of the Institute is the diversity of the current Board structure. It is appropriate that the Board retains its current make up with representatives of the three founding partners as well as the Supreme Court, the Faculty of Law, the Tasmanian Bar and others, community representatives and a member of the Tasmanian Aboriginal community.

The governance of the Institute could be strengthened by an amendment that allows the Board to appoint the Director rather than a single founding partner.

The appropriateness and sustainability of the Institute's resourcing and staffing having regard to the size of the jurisdiction in which it operates

It is widely known in the legal, academic, public sector and general community that the TLRI performs admirably on a very limited and precarious funding base.

Upon its establishment, the TLRI received a base funding commitment from government (via the Department of Justice) of \$50,000 per annum. This base figure has not increased in twenty years which in effect means that the funding has gone backwards in real terms as other operating costs continue to increase.

UTAS provides significant financial and in kind support including the salary of the Director, office space, salary for research staff engaged on a project basis and specific project funding for some references.

The Institute often relies on specific project based funding from sources including the Solicitor's Guarantee Fund (SGF) and the Law Foundation (TLF). Ongoing reliance on these funding sources can be seen to pose a risk as they are volatile funds that should not be relied upon to make up core or base level funding for the basic operations of the Institute.

While the primary purpose of the TLRI is to conduct research and produce reports, in practice, the Institute is also frequently called upon to provide advice on other matters including government legislation, policy issues, and providing advice or working with law reform bodies in other states and territories on harmonisation of laws at a national level.

Without an increased and secure base level of funding to employ staff, there is a very real risk that the work of the TLRI will be under threat including their capacity to conduct community consultations and to produce accessible easy read versions of reports. This would go against one of the objectives in the Renewal Agreement, being to "facilitate access to justice".

Ideally the Institute should have secure accommodation along with its own secure base of funding to employ a director, and permanent research and administrative staff, while also retaining the ability to apply for grant funding for research requests that require it.

Yours sincerely,



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Shadow Attorney-General
Shadow Minister for Justice
Shadow Minister for Corrections
Shadow Minister for Housing
Shadow Minister for Equality
Shadow Minister for Multicultural Affairs