

TASMANIA
LAW REFORM
INSTITUTE

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Annual Progress and Financial Report 2009

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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 (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 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
Lisa Hutton, appointed by the Attorney-General
Philip Jackson, 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.

Legal researchers during 2009

Dr Rebecca Bradfield (also
Executive Officer)
Bruce Newey
Warwick Marshall

Esther Newitt
Brittany Quayle

2. Activities

Board meetings

The Board had four meetings in 2009 (18 March, 7 April, 20 October 2009, 14 December), all held at the Law Faculty of the University.

Ongoing law reform projects

Easements and analogous rights

In August 2007, the Board approved a project on the laws of easement. This project resulted from a request to consider the issue from a member of the public. It commenced in March 2008. Initial work was carried out by Kirsten Muskett as a supervised research project, under the supervision of Lynden Griggs. The project reviews the current laws of easements and analogous rights to determine whether they currently meet community expectations and needs. The review provides a report of the current law of easements and outlines possible areas for reform, considers the current legislative requirements in Tasmania for the creation, variation and termination of easements, and considers the interaction of the legislation with the current common law requirements. An Issues Paper was released in February and attracted considerable public interest. The Final Report is due to be released in 2010.

Male circumcision

The project was the result of a request from the Children's Commissioner to review the current law regulating the circumcision of male children in Australia, with particular reference to Tasmania. The Board approved the project in February 2008. Work is being carried out by Warwick Marshall, as a Masters project, under the supervision of Professor Margaret Otlowski and Professor Kate Warner. Funding support for this project has been received from a postgraduate research scholarship. The project examines the criminal and civil responsibility of those who perform, aid or instigate the non-therapeutic circumcision of male children. An Issues Paper was released in June and work is underway on the Final Report.

Hoch project

This project was approved by the Board in November 2006 and will consider the operation of sections 97, 98 and 101 of the *Evidence Act 2001* in the context of sexual offence cases. The rules governing the admissibility of tendency or coincidence evidence continue to cause difficulties for complainants, prosecutors and judges, particularly in cases of sexual assault involving multiple complainants with some association. Consideration will be given to the need for amendments to the law in order to lessen the exposure of a complainant to repeated cross-examination, and to avoid repeated voir dices, appeals and retrials. The Issues Paper was released in September and the consultation period concluded at the end of December.

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. The Issues paper was released in July 2006. The Final Report is close to finalisation and will be released in 2010.

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. An issues paper was released in August 2007. The Final Report is close to finalisation and will be released in 2010.

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.

Contempt of Court

This project considers the need for legislation to clarify both the common law and existing statutory mechanisms surrounding contempt of court. Both the substantive law of contempt 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 are in various stages of preparation. In 2009, due to other priorities, the project has not been completed.

New law reform proposals and projects

The Institute considered three proposals for reform projects, one was accepted (racial vilification), one is under review (Strategic Litigation Against Public Participation ('SLAPP' suits)) and one was rejected.

New law reform projects

Racial vilification

In July, the Board approved a project that examines the current laws in Tasmania in relation to racial vilification to determine whether they meet community expectations and needs. Research will examine measures taken in other jurisdictions as a basis for making suggestions for possible reforms in Tasmania. The creation of a new offence and the possibility of amending sentencing provisions to provide for increased penalties will be examined. Consideration will be given to legislation and cases from various comparable jurisdictions and to the work of other law reform bodies in this area. This project was the result of a reference made by the Vice-Chancellor of the University and the University has contributed \$15,000 towards the project.

Proposals under consideration

The SLAPP suits project was a reference from the Attorney-General. As a preliminary step, work was undertaken on this project as a supervised research project by an undergraduate student. In 2010, the Board will consider whether this is an appropriate project for the Institute.

Proposals not undertaken

Hate crimes

A proposal was received from Rodney Croome who requested that the Institute extend the racial vilification project to the broader topic of hate crimes generally. This was not done due to the advanced stage of the issues paper and the desire to have the work completed in a timely fashion.

Additional activities

Uniform Succession Laws

Mr Ken Mackie continued to represent the Institute on the National Committee for Uniform Succession Laws. The Institute has provided comment on draft *Intestacy Bill 2009*.

Articles in 'Reform'

The Institute contributed to the Australian Law Reform Commission's journal, *Reform*, with updates on our activities in the 'Reform Roundup' section of the journal.

Articles in Law Society

The Institute contributed to the Law Society *Law Letter* with articles about various law reform projects.

Student volunteer work

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.

New Institute Agreement

The Institute's founding agreement expired on 31 December 2008. At this time, there was 'in principle' agreement for a five-year extension to the founding agreement. It was then decided that a new agreement would be appropriate and this has been prepared and signed by all parties.

Addresses and presentations

Ms Terese Henning made the following invited presentation:

21 April: Senior Citizens (Human Rights)

29 May: RAWA (Human Rights)

18 June: Legislative Council (Human Rights)

7 December: Young Labour Charter of Rights Forum (Human Rights)

Dr Rebecca Bradfield made the following invited presentation:

1 September: Law fest (Role of TLRI)

Dr Rebecca Bradfield also represented the Institute at the Jury directions Symposium held at the Victorian Law Reform Commission, 5 – 6 February.

Summary of publications

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).

Easements, 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 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 1/1/09 - 31/12/09

Accumulated funds from 2008		\$43,586
Income		
Standard grant from State Govt Dept of Justice (exclusive of GST)		\$50,000
Total Funds Available		\$93,586
Expenditure		
Salaries		
Salary	\$31,047	
Superannuation	\$2,794	
Payroll Tax	\$2,064	
Workers Comp. Insurance	\$217	\$36,123
Non-Salary expenditure		
Consumables	\$2,376	
Computer software and licensing costs	\$109	
General travel	\$713	
Transport & Fuel	\$3,286	
Publications	\$3,550	
Stationery	\$327	
Telephone	\$969	
Non-Employee entertainment	\$209	
Expenditure (Subject to FBT)	\$440	\$11,979
Total Expenditure		\$48,102
Balance of Funds as at 31/12/09		\$45,484

Linkage Grant Account (suspended sentences project)

Accumulated funds from 2008	\$344	
Income		
Commonwealth Grant	\$0	
Tasmanian Justice Department Grant	\$0	
Total Funds Available		\$344
Expenditure		
Consumables	\$327	
Total Expenditure		\$327
Balance of Funds as at 31/12/09		\$17

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

Professor Kate Warner (Director) 12 days***@ \$1,822	\$21,864
Professor Don Chalmers (Board member) 2 days @ \$1,822	\$3,644
Terese Henning (Board member) 16 days @ \$1,327	\$21,232
Ken Mackie (consultant) 2 days @ \$1,327	\$2,654
Lynden Griggs (consultant) 25 days @ \$1,327	\$33,175
Rebecca Bradfield (consultant) 13 days @ \$1,123	\$14,599

Administrative Support*

David McGuire 3 days @ \$1,123	\$3,369
Rachael Ormerod 3 days @ \$907	\$2,721
Antony Cave/Matt Taylor (computer) 4 days @ \$907	\$3,628

Office and Running Costs (Law Reform Inst. Office)** \$8,951

Total **\$115,837**

* 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.

***on leave from end of July to mid December. Terese Henning was Acting Director for this period.