



ATTENTION: Chiefs of Staff, News Directors

Today the Tasmania Law Reform Institute released its Issues Paper No 10:

CONSOLIDATION OF ARREST LAWS IN TASMANIA.

The Paper considers the need for reforms to the law of arrest in Tasmania. Arrest involves the involuntary deprivation of a person's liberty to go where he or she pleases. It is a power conferred on police officers, authorised persons or private citizens who may be acting under conditions that are stressful or volatile and which may involve instantaneous decision-making.

Powers to arrest fall into two categories, arrest with and arrest without a warrant. This Issues Paper focuses primarily on the law in Tasmania relating to arrest without a warrant. Given the significance of arrest in the criminal justice process and for the individual arrestee, the law of arrest should be clear and readily ascertainable. Currently, in Tasmania however, the opposite is the case – the law is complex, uncertain and difficult to discover. Primarily this is because police powers of arrest are located in a multiplicity of statutes as well as in the common law. Over 30 different Tasmanian statutory instruments contain over 70 powers of arrest; these powers were created at different times, are framed in a varying terms and cover different situations. The grounds of arrest they prescribe, (when an arrest may be made), are often differently formulated and even within key statutory arrest provisions (such as those contained in the Tasmanian *Criminal Code 1924* and the *Police Offences Act 1935 (Tas)*) there are anomalies, inconsistencies and uncertainties.

This Issues Paper considers a number of matters relating to the law of arrest in Tasmania, specifically:

1. whether powers of arrest in Tasmania should be consolidated into one statute;
2. whether the power to arrest should extend to all offences or whether it should be limited to particular offences;
3. whether the law relating to when an arrest can be made, that is the grounds of arrest, should be rationalised to provide a single, uniform ground of arrest for all arrestable offences;
4. particular issues relating to the execution of a lawful arrest, namely:
 - a. the obligation to inform the arrestee of the reasons for the arrest;
 - b. how much force may be used in effecting an arrest;
 - c. where an arrest may take place, that is, whether the police should have the power to enter private premises without the consent of the owner or occupier to effect an arrest;
5. the process for the issue of arrest warrants and the power of arrest pursuant to an arrest warrant;
6. whether powers of arrest should be conferred on persons other than the police; and
7. alternatives to arrest and whether the summons process should be simplified or supplemented by enabling the police to issue on the spot attendance notices.

This issues paper contains 17 proposals for reform that are aimed at improving the current framework for arrest in Tasmania. The Institute's view is that the aim of consolidation of arrest laws in Tasmania should be to rationalise and simplify the law in order to increase its certainty, consistency and clarity. A concurrent aim would be to make the law more accessible to arrestors, arrestees and those trying to assess the lawfulness of any particular arrest. The Institute suggests that it is important, however, that the public interest in simplicity and consistency not be purely a formalist goal ignorant of the practicalities of the criminal justice system. Arrest powers must be sufficient to enable the police to perform their function effectively while also being subject to constraints, which ensure that they are not used unnecessarily or unreasonably. To that end, important principles guiding consolidation of the powers of arrest must be efficiency and fairness.

The paper also considers alternatives to arrest. Currently, it is open to police to proceed by summons rather than arrest. The policy framework within which the police currently operate requires them to employ arrest as a method of last resort to achieve the attendance of a defendant at court. However, the alternative process of the summons cannot be characterised as offering incentives to comply with this policy as it is a relatively cumbersome process. Accordingly, the preliminary view of the Institute is that a simplified process be made available to the police: that they be empowered to issue on-the-spot attendance notices where appropriate in preference to proceeding by summons or arrest.

Any group or person is invited to respond to this issues paper. Following consideration of all responses it is intended that a final report will be published, containing recommendations.

The Institute invites responses to the Issues Paper by 29 September 2006.

FURTHER INFORMATION/INTERVIEWS: Terese Henning 6226 2079

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The Report can be downloaded from www.law.utas.edu.au/reform/
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