

MEDIA RELEASE

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TASMANIA LAW REFORM INSTITUTE



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ATTENTION: Chiefs of Staff, News Directors

Today the Tasmania Law Reform Institute released its Final Report No 7:
Intoxication and Criminal Responsibility.

This Report addresses the questions of when, and in what ways, an accused's state of intoxication (whether by alcohol or drugs) is relevant to their trial for a criminal offence.

Australian studies - self reports by prisoners and detainees, analysis of urine samples within 48 hours of arrest and victim surveys - suggest that many offenders commit crime while under the influence of alcohol and/or drugs. Moreover, criminal assaults are common in and around licensed premises. Together with increased scientific knowledge about the effects of alcohol and drugs on behaviour and mental state, this indicates that intoxication has the potential to be a relevant consideration in criminal trials.

The Report evaluates the current state of the law of intoxication and criminal responsibility in Tasmania and considers it to be uncertain, illogical, inconsistent, unprincipled and unduly complex. The Report recommends the clarification of the law of intoxication in Tasmania.

The Report makes 13 recommendations for reform. The key recommendation is that evidence of intoxication should be relevant to any mental element, including intention, knowledge (including whether the person ought to have known), foresight of consequences and whether the act was voluntary and intentional (recommendation 7).

This represents a change to the current law in Tasmania and means that the common law approach to intoxication (as applies in Victoria) will be the standard in Tasmania. This approach is the simplest, fairest and most logical because it simply allows all relevant evidence to be considered when determining whether or not the accused had the required state of mind. This recommendation simplifies the law and allows the jury in Supreme Court trials (as the community representatives) to determine whether the accused possessed the requisite state of mind at the time of the offence (taking into account all the evidence). It is essential to recognise that intoxication is not a defence to a criminal charge. Nor is this recommendation a "drunks' charter". Despite the fears of some, the operation of this law in Victoria has not led to a spate of acquittals, nor is an accused's state of intoxication frequently relied upon to deny criminal responsibility. This is because intoxication is a 'double-edged' sword for an accused – instead of assisting an accused to deny criminal responsibility, it usually provides an explanation as to why they committed the offence. The potential danger to an accused in relying on evidence of intoxication is reflected in the relatively small number of offenders who rely on evidence of intoxication at trial when compared to the number of offenders who commit crimes while under the influence of drugs or alcohol.

Historically, in relation to crimes in Tasmania, evidence of intoxication was only admissible to try to raise a doubt about the capacity of a defendant to form the mental state required for a crime if the crime charged was a 'specific intent' crime – that is, a crime where a specific intention to bring about a certain result (such as an intention to kill a person) had to be proved by the prosecution. Even in relation to these crimes (of which there are not many), the evidence was only admissible if there was evidence of such a severe state of intoxication that the

defendant would have been *incapable* of forming the specific intent required (*Criminal Code*, s 17).

In 1997 the position became less clear in Tasmania when the Tasmanian Court of Criminal Appeal held in *Weiderman* that evidence of intoxication can be used by a defendant to try to deny specific knowledge (the relevant knowledge in that case was whether the accused knew that his actions were likely to cause the death of the victim). In particular this has left the position unsettled in relation to crimes requiring foresight of the likelihood of certain consequences (eg damage to property, wounding) and in relation to some defences under the Code. One defence of particular concern is self-defence. The issue here is whether an intoxicated person who makes a mistake as to the need for self-defence can rely on evidence of their intoxication to try to convince the jury that they really did make that mistake. Or, whether the state of intoxication of the accused can be taken into account by the jury in assessing the amount of force used.

The recommendations in this report aim to reform this complex and uncertain state of the law.

FURTHER INFORMATION/INTERVIEWS: Professor Kate Warner 6226 2067

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