

**TASMANIA**  
**LAW**  
**REFORM**  
**INSTITUTE**

Private Bag 89, Hobart TAS 7001  
ph: (03) 62262069, fax: (03) 62267623  
[law.reform@utas.edu.au](mailto:law.reform@utas.edu.au)  
[www.law.utas.edu.au/reform](http://www.law.utas.edu.au/reform)

# **Annual Progress and Financial Report 2010**

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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 Margaret Otlowski, 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 2010*

Esther Newitt LLB (Hons), 2008 (also Executive Officer)

Dr Rebecca Bradfield PhD, 2002, UTAS  
Bruce Newey LLM, 2009

Warwick Marshall LLB (Hons), 2007,  
Postgraduate candidate Law UTAS  
Kate Stewart LLB (Hons), 2010

## **2. Activities**

### ***Board meetings***

The Board had three formal meetings in 2010 (3 February, 21 April and 23 June), all held at the Law Faculty of the University.

The Board also approved a proposed project via email in October as it was not possible to organise a formal meeting at this time.

### ***Projects***

#### ***Completed law reform projects***

##### *Law of easements in Tasmania*

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 (LAW679), 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 considered the current legislative requirements in Tasmania for the creation, variation and termination of easements, and considered 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 was released in March 2010. It contains 14 recommendations that aim to improve landowners access to justice in easement disputes and clarify the rights and obligations of both servient and dominant tenements. This project was funded in part by a grant of \$13,000 from the Law Foundation of Tasmania.

##### *Driving causing death (Jiminez)*

This project considered the need for legislative and/or procedural change to address the criminal liability of drivers who fall asleep causing motor vehicle crashes 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 was released in October. It contained 10 recommendations. While not recommending any change to the substantive law in relation to this issue, the Report did recommend changes to the way police investigations and interviews are conducted and that precedents for the particularisations of negligence be prepared by Police prosecutors.

#### ***Ongoing law reform projects***

##### *Racial vilification*

In July 2009, 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. 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. An Issues Paper was released in June 2010. The Paper examines 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 are examined. Consideration is given to legislation and cases from various comparable jurisdictions and to the work of other law reform bodies in this area. Consultations were held during July and August. After a number of requests, the cut off date for submissions was extended to September. Work is underway on the Final Report, which is anticipated to be released in early-mid 2011.

#### *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. Warwick's LLM thesis was submitted in October 2010. Funding support for this project has been received from a postgraduate research scholarship. The TLRI 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 2009 and since the submission of his thesis, work has resumed 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 dires, appeals and retrials. The Issues Paper was released in September 2009 and the consultation period concluded at the end of December 2009. The Final Report is currently being completed.

#### *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 early 2011.

#### *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 2010, due to other priorities, the project has not been completed.

### ***Proposals under consideration***

#### ***SLAPP Suits***

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 2009. In 2011, the Board will consider whether this is an appropriate project for the Institute (consideration of this matter was deferred in 2010).

### ***New law reform proposals and projects***

The Institute considered five proposals for reform projects, one was accepted (sexual offences involving young persons), two resulted in detailed briefing papers (but were not adopted as formal projects of the Institute), and two were rejected.

#### ***New law reform projects***

##### ***Sexual Offences involving Young Persons: Defences and Publication of Identifying Particulars***

This project will review the current laws in Tasmania in relation to the ‘mistake’ and consent defences for sexual offences involving young persons under the *Criminal Code*. This project will also look at the operation and scope of s194K of the *Evidence Act 2001*. In particular, it will consider how this provision relates to the publication of information concerning child victims of sexual assault, including particulars that are likely to lead to the identification of those children. This project is the result of two separate references; one from the Attorney-General and one from Mr Craig Mackie. The Attorney-General approved a request from the Institute for an additional \$5,000 in funding to complete this project.

#### ***Proposals not undertaken***

##### ***Adverse Cost Orders***

The Institute received a proposal from a member of the public requesting a review of Adverse Cost Orders in cases where one party’s sole income is a disability pension (or similar). The Board noted that this reference was outside Tasmania’s jurisdiction and should not be a project of the Institute.

##### ***Family Violence Act 2004***

The Institute received a proposal from a member of the public requesting a review of the *Family Violence Act 2004*. The Board noted that two reviews of the Act have been performed since its commencement. The Board also noted that the ALRC and the NWSLRC are currently conducting a joint inquiry into the operation of Family Law legislation, including the *Family Violence Act 2004*. The Board decided that the reference should not be a project of the Institute.

### ***Additional activities***

#### ***Stolen Houses: Immediate v Deferred Indefeasibility***

The Institute received a reference from a member of the public concerned about the operation of the principles of ‘immediate indefeasibility’ under the Torrens system of land registration and the possibility of the registration of forged mortgages. The Institute prepared a detailed briefing paper on the matter that was forwarded to the Attorney-General and the author of the proposal. The briefing paper included a list of relevant legal principles and options. It also considered steps taken in other jurisdictions and future developments and directions. The Board decided that a formal project should not be undertaken by the Institute because of the extensive research already conducted and the likelihood of the introduction of federal government initiatives.

#### *Vicarious Liability Indemnity*

The Institute received a request from Dr Vanessa Goodwin, Shadow Attorney-General, to consider the issue of vicarious liability indemnity for employers. The Institute prepared a detailed briefing paper that was sent to Dr Goodwin, the Attorney-General and the Greens Party. The briefing paper included a list of relevant legislation and case law as well as a number of articles that consider the matter. The Board decided that a formal project should not be undertaken by the Institute.

#### *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. In particular, Kate Stewart completed a paper as part of the requirements for Law Review (LAW625) on s 194K of the *Evidence Act 2001* in October.

#### *Addresses, presentations and consultations*

**Ms Esther Newitt** made the following invited presentation:

21 July: Adult Migrant Education Services (Racial Vilification and Racially Motivated Offences)

**Prof. Kate Warner** and **Ms Esther Newitt** made the following invited presentation:

2 August: Hobart College – Students Against Racism (Racial Vilification and Racially Motivated Offences)

**Dr Rebecca Bradfield** made the following invited presentation:

13 December: Witness Assistance Service (Rape Law Reform)

**Ms Terese Henning** consulted with officers from the Attorney-General’s Department regarding the proposed Tasmanian Charter of Human Rights (2 August 2010)

**Professor Kate Warner** and **Ms Esther Newitt** also represented the Institute at the Australasian Law Reform Agencies Conference, 8-10 September 2010.

## ***Summary of publications***

### **2010:**

*Criminal Liability of Drivers who fall asleep causing motor vehicle crashes resulting in death or serious injury*, Final Report no. 13 (October).

*Racial Vilification and Racially Motivated Offences*, Issues Paper no.16 (June).

*Law of Easements in Tasmania*, Final Report no.12 (March).

### **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 1/1/10 - 31/12/10***Accumulated funds from 2009*

\$45,484.11

*Income*

Standard grant from State Govt Dept of Justice	\$50,000.00
Grant from State Govt Dept of Justice (Sexual offence involving young persons project)	\$4545.45
Grant from University of Tasmania (Racial vilification project)	\$15,000.00
Grant from Law Foundation of Tasmania (Easements project)	\$11,818.18
Payment from Board of Legal Education	\$225.00

**Total Funds Available****\$127,072.74***Expenditure*

## Salaries

Salary	\$25,685.65
Superannuation	\$2,483.16
Payroll Tax	\$1,834.43
Workers Comp. Insurance	<u>\$193.14</u>
	\$30,196.38

## Non-Salary expenditure

Consumables	\$1,290.38
Internet	\$106.27
General travel	\$3,482.22
Transport & Fuel	\$940.18
Publications	\$4707.51
Telephone	<u>\$493.95</u>
	\$11,020.51

**Total Expenditure****\$41,216.89****Balance of Funds as at 31/12/09****\$85,855.85**

## **University Contributions (in kind)**

### **Academic Support\***

#### *Salary and salary on costs*

Professor Kate Warner (Director) 23 days @ \$1,822  
                                  \$41,906.00

Professor Margaret Otlowski (Board member) 3 days @ \$1,822  
                                  \$5,466.00

Terese Henning (Board member) 5 days @ \$1,327  
                                  \$6,635.00

Jeremy Prichard (consultant) 1 day @ \$1,327  
                                  \$1,327

Jane Nielsen (consultant) 1 day @ \$1,327  
                                  \$1,327

Lynden Griggs (consultant) 10 days @ \$1,327  
                                  \$13,270.00

Rebecca Bradfield (consultant) 13 days @ \$1,123  
                                  \$14,599

### **Administrative Support\***

David McGuire 3 days @ \$1,123  
                                  \$3,369

Alex Haddad 3 days @ \$907  
                                  \$2,721

Matt Taylor (computer) 7 days @ \$907  
                                  \$6,349.00

### **Office and Running Costs (Law Reform Inst. Office)\*\***

\$9309.00

**Total**

**\$106,278.00**

\* 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.