

Our ref:LR

26 April 2022

Tasmania Law Reform Institute Review Panel
c/- Professor John Williams
South Australian Law Reform Institute
By email: salri@adelaide.edu.au

Dear Professor Williams

Thank you for your letter to the Law Society's Executive Director of 3 March 2022. The Law Society appreciates the opportunity to provide the following submissions and notes also that representatives of the organisation will speak with the Review Panel also.

Background

It is appropriate to first acknowledge the work of the TLRI to date. The TLRI has made a significant contribution to law reform in Tasmania for more than two decades. Its body of work covers numerous areas of the law, is large and impressive and has led to positive changes in the law.

It is the Law Society's experience that the current model has served the TLRI and the Tasmanian community well. It is only in relatively recent times that questions have been raised with respect to the suitability of the current model.

The Law Society is proud to be a foundation member of the TLRI. Having said that, on a day-to-day basis, the operations of the TLRI are very much based on the relationship between the TLRI and the University of Tasmania. The Law Society has limited insight into that relationship and has therefore little comment to make on that relationship and its current state.

Terms of Reference

The following submissions loosely follow the terms of reference. This document is not meant to be an exhaustive set of submissions, but a means to promote a further conversation with the Review Panel.

Aims and Objectives

With two exceptions the Law Society has no issue with the functions and objectives as they appear in the current agreement.

Clause 2.2 (b) provides it is a function of the TLRI to conduct reviews and research, where appropriate on a consultancy basis. The Law Society is not sure what that means, but if it means the TLRI conduct work that is paid for by an external organisation, questions of independence arise.

Clause 2.2 (c) and (d) empower the TLRI to consider proposals from the Attorney-General on the reform of the law and to conduct reviews and research on proposals for law reform referred by the Attorney-General. This suggests that, in the latter case, the TLRI is bound to review/research proposals from the Attorney-General. Again, questions of independence arise.

Institutional Integrity and Independence

The independence of the TLRI is of the utmost importance. If it were otherwise, the research and review results of the TLRI may be called into question, as might decisions as to which areas of possible reform the TLRI commits its resources to.

The Law Society understands that in the recent past, questions of independence have arisen. That that has been the case is an indication that there is not sufficient provisions for the protection of the TLRI's independence. A reading of the current agreement bears this out. The only mention of independence is as a duty of the Director.

Relationship to Founding Members Including Government

The Law Society is not able to offer much by the way of additional commentary on the position, role and relationship of the TLRI to Government and the University. The strength of the relationship and any particular issues between the TLRI and the University are no doubt best discussed between those two bodies and the Review Panel. It does appear to the Law Society that for a number of years the relationship between the TLRI and the University was a productive and harmonious one. If it is no longer the case it is hoped the Review will identify the cause or causes.

Relationship to Government

Again, this question is best addressed by the TLRI and by Government.

Governance Arrangements

The most important principle in formulating governance arrangements is that the TLRI maintain its independence from government and from the University. How best that might be achieved is open to question. At present the TLRI is a creature of an agreement. It is neither a corporation, a partnership or an incorporated association. Consideration should be given as to whether the TLRI should be a separate legal entity.

Consideration should also be given to the appointment process for the Director. At present the Director is appointed by the Vice-Chancellor. If this were to continue, at the very least there should be a formal requirement to consult with the Board in respect of any proposed appointment.

Resourcing

There is no doubt the TLRI is chronically under resourced and has been for a significant period. The amount of government funding has remained at the same level since inception; a period of over twenty years. In contrast the University's in-kind contribution has increased by almost 260%. The Law Society suspects that the TLRI has been able to continue to operate as it has, largely because of the University's support.

The only source of continuing, reliable funding for the TLRI is government. It appears clear that a renewed commitment from government is needed for the TLRI to survive.

It is worth noting that a significant source of grant funds to the TLRI for a number of years, the Law Foundation of Tasmania is itself unlikely to receive funding in the medium term. This is likely to affect its ability to make grants to organisations such as the TLRI, and demonstrates the precariousness of relying on grants from bodies such as the Law Foundation to undertake the TLRI's work.

Conclusion

The Law Society is strongly of the view that a well resourced TLRI is essential for the development of the law in Tasmania.

I look forward to discussing the issues more fully when we meet.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Gates", enclosed in a thin black rectangular border.

Simon Gates
President