

Submission to the Review of the Tasmania Law Reform Institute (TLRI)

The Hon. Rob Valentine MLC

Legislative Council – Parliament of Tasmania

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Please find below shorter observations regarding each of the Terms of Reference and thank you for providing an opportunity for input and I apologise for their brevity. Comments are generally in the context of the role the TLRI plays in its interactions with Parliament and the development of state legislation.

1. *Whether the aims and objectives of the Institute, set out in its Founding Agreement, require modernisation, clarification or amendment;*

On reading the functions and objectives in the TLRI's *Founding Agreement* (constitution?), in the context of the question above, it would be an advantage to have an overarching statement early in the document that clearly sets out the Institute as an independent, non-partisan, law reform body (similar to the South Australian Law Reform Institute), followed by a broader positioning statement(s), basically setting the primary context in which the TLRI exists. The NSW Law Reform Commission (LRC) has a set of three such statements - *What we do; Who we are; Our law reform process*.

The NSW LRC's statements provide clarity and leave the reader with a fair degree of certainty as to the context within which the Institute's aims and objectives are set.

The Aims and Objectives should certainly provide for the provision of non-partisan briefings to Parliament on subjects with which they have demonstrated expertise (either House) when required.

2. *Whether there are sufficient provisions for the protection and promotion of the institutional integrity and independence of the Institute;*

To ensure independence, funding of the Institute could be on a set CPI-based amount, calculated on past activity over, say, the previous 5-year period, given its fundamental usefulness to the legislative process. The aim would be to remove it from the influence of any party or parties in government at the time, but be subject to the scrutiny of Parliament (as a disallowable instrument perhaps?).

Any funding changes should only be allowed to be applied two years hence, to provide sufficient lead-time for any adjustment that may be applied through a process of review.

Such a model would need to be enshrined in a proper constitution (rather than Founding Agreement) that can only be altered at 5 yearly intervals through a specified parliamentary process.

3. *The position, role and relationship of the Institute to its founding members, the Government of Tasmania (in particular its placement within the Law Faculty of UTas), including specifically the research capabilities and priorities of the University and the Law Faculty;*

It is important the TLRI remain in the Faculty of Law where it presently resides. There would appear to be no conflict and every reason for it to be so, with the need for evidence-informed reporting on matters, leading to evidence informed decision making by Parliament.

One would think any research undertaken by the Institute could only strengthen the general knowledge of the Faculty and assist in the delivery of its various courses.

It is so important that, being the highest level of critical thinking and research, the TLRI is available to provide valuable contemporary thinking, especially in relation to the policy-setting process and consequent development of legislation which involves the discipline of law.

It should report factual information and analysis. How the learnings are applied is for the receiving bodies to decide.

4. *The position, role and relationship of the Institute to the Government of Tasmania, as represented by the Attorney General;*

While the Institute is certainly valuable to the process of legislative reform, consideration could be given to a form of governance that strengthens its independence by removing it from any form of partisan control, yet retains parliamentary oversight.

5. *The adequacy and appropriateness of the Institute's current constitution, governance arrangements and reference process; and*

It is important to maintain the capacity for any Member of Parliament to submit a reference to the TLRI on a matter they may wish to have examined. It will be for the governing board to assess the merits of such a reference and the capacity of the TLRI to undertake such research within its funding.

Above all, any reference provided at the will of Parliament, should be favourably considered for acceptance by the TLRI, providing the funds are, or have been made available to undertake such research.

6. *The appropriateness and sustainability of the Institute's resourcing and staffing having regard to the size of the jurisdiction in which it operates.*

There should be no price on the availability of good research that is focussed on delivering evidence-informed decision-making, which of itself delivers evidence-informed legislation, which is fundamental to governing Tasmania as a state.

Whatever level of funding of the TLRI is required to deliver the above, it needs to be set and quarantined from cuts to ensure certainty for such an institution that is fundamental to the development of good, robust legislation.

Position Statement:

With respect to the observations expressed above, they are current thoughts on my experience and in the context of the information I presently have to hand. Should any matters consequently come before the Legislative Council for review in relation to the TLRI at some future date, I would of course judge each matter at that time on its merits and in the context of further information that may be provided at such a time.

A handwritten signature in black ink, appearing to read 'Rob Valentine', with a stylized, cursive script.

The Hon. Rob Valentine

Independent Member for Hobart

Legislative Council of Tasmania

14/4/2022