

T A S M A N I A

LAW REFORM

I N S T I T U T E

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Annual Progress and Financial Report 2019

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Director's Report

2019 was a challenging year for the TLRI. Having been displaced since the May 2018 floods, we were pleased to return to our home in the Law School in June 2019.

In spite of the disruption caused by our temporary relocations, 2019 was still a productive year, with many projects reaching fruition.

The Institute's agreement was renegotiated and extended, this time for a 3-year period. The new agreement better reflects the contemporary role and operation of the Institute, clarifies the Director's role and articulates the basis for the Institute's independence.

A matter that has not yet been resolved in negotiations between the University (represented by Professor McCormack), and the Government (Attorney General), is the base funding for the Institute's Operational cost. As such the Agreement was re-formed with the continuing commitment to a \$50,000 per annum amount as originally agreed to in 2001. This leaves the Institute unable to undertake its role as the state's peak independent law reform body. Beyond the issue of indexing, the Institute's work and portfolio has developed significantly since its inception, and the quality and complexity of the work it has undertaken has steadily increased

in complexity since 2015. During her incumbency Assoc Prof Terese Henning negotiated additional funding under the Agreement which, during designated times, quadrupled the baseline funding for the Institute. She also successfully obtained several grants for specific projects. The Institute understood that the increased baseline funding would be a precursor to a permanent increase in funding to properly support its current and future work and ensure it continues to deliver the same public service. A benchmarking exercise is to be undertaken in 2020 to consider the Institute's governance arrangements, the minimum and preferred level of funding, and the manner in which funding is allocated under the Agreement.

Thank you to all who contributed to the Institute's work in 2019. We look forward to another busy and productive year in 2020.

The Director, Associate Professor Terese Henning, retired at the end of December 2019. A position description was prepared to enable the position to be advertised and the Director undertook all necessary tasks to enable the University to advertise the position. However, the University has not yet advertised the position and a permanent replacement is yet to be appointed. The Board requests that the University to attend to this as a matter of urgency. In the meantime, Dr Brendan Gogarty has generously been acting in the position. The Board expresses its sincere thanks to Assoc Prof Henning for her considerable contribution to increasing the profile, funding and breadth of work undertaken by the Institute, during her tenure. It also expresses its thanks to Dr Gogarty for acting in the Director's role and taking on its considerable workload on top of his existing duties. The Board also thanks Kira White, Dylan Richards, Jemma Holt, Kate Hanslow, Rebecca Bradfield and Jessica Feehely and Bruce Newey who maintained the work of the Institute throughout 2019 under difficult circumstances.

Assoc Prof Terese Henning (2019) & Brendan Gogarty (2020)

1. Structure, Board Members and Staff

The Institute was established on 23 July 2001 by Agreement between the State Government, the University of Tasmania and the Law Society of Tasmania. In April 2015, the Partners to the Institute Agreement finalised a renewal agreement extending the agreement for five years, until November 2019.

Negotiations on renewal were initiated early in 2019 and an agreement was signed for a three-year extension, with funding held at the same level as that under the founding 2001 agreement. This funding level was set when the TLRI was a fledgling Institute. However, the Institute, its work and the nature of the references it receives has developed significantly over the subsequent two decades. The 2001 funding level is unsustainable and undermines Tasmania's ability to undertake regular modernisation and reform of its law compared to other jurisdictions in the federation.

Assoc Prof Henning was successful in negotiating a fourfold increase to baseline funding for the Institute for specific periods of time and in gaining grants for specific projects on the understanding that increased baseline funding would be provided on a permanent basis. The increased funding, when provided, demonstrated the clear value of its provision, but also the administrative complexity of managing its provision on a piecemeal or temporary basis. The TLRI Agreement was revised as noted above. A copy of the new Agreement is attached. It is a condition of the agreement that a benchmarking exercise will be undertaken to look at the Institute's governance arrangements.

The functions and operations of the Institute are undertaken by its Director, with assistance from Board members, executive officers, research assistants and Law Faculty staff and students. Director, Assoc Prof Terese Henning was appointed in April 2015. She notified the

University that she would retire at the end of 2019. No replacement has been appointed.

Jess Feehely, who was the Executive Officer (Research), resigned from the position in July 2019, in order to take up an offer of work in Queensland. There was no replacement appointed to the role, but a portion of the work was covered by existing casual staff.

The Institute's work was supported by part-time casual Executive Officer (Administration), Kira White. We are also grateful for the regular assistance of Bruce Newey in editing reports, and the administrative support provided by University staff (see Financial statements for in-kind contributions).

All written proposals for law reform projects are presented to the Board, which then makes recommendations for consideration by the Institute (Tasmania Law Reform Institute Renewal Agreement, clause 3.3), including identifying a recommended project's extent, time for completion, expected output and cost (clause 3.4).

Board members 2019

- Associate Professor Terese Henning, Director of the Institute, appointed by the Vice-Chancellor of the University of Tasmania
- Professor Tim McCormack, Dean of the Faculty of Law at the University of Tasmania
- The Honourable Justice H Wood, appointed by the Honourable Chief Justice of Tasmania
- Kristy Bourne, appointed by the Attorney-General
- Rohan Foon, appointed by the Law Society
- Dr Jeremy Prichard, appointed by the Council of the University
- Craig Mackie, nominated by the Bar Association
- Ann Hughes, appointed by the Board as a community representative
- Kim Baumeler, appointed by the Board
- Rosie Smith, appointed by the Board as a member of the Tasmanian Aboriginal community

The Board met eight times in 2019. Seven meetings were held at the University of Tasmania Law Faculty, and one at the home of Assoc Prof Henning.

Legal researchers during 2019

- Dr Rebecca Bradfield BA/LLB (Hons), PhD
- Dr Elise Histed BA, LLB (Hons), PhD
- Jemma Holt
- Kate Hanslow
- Dylan Richards
- Leigh Sealy SC
- Ken Mackie

2. Activities

(a) Completed Projects

Notional Estates Legislation for Tasmania

Background

Following an approach by the then Treasurer, the Hon Peter Gutwein MP on behalf of a constituent, the then Attorney-General, the Hon Vanessa Goodwin MLC, requested the Institute to prepare a report on whether notional estate legislation should be introduced in Tasmania. The Board accepted the reference in February 2017.

The project examined whether Tasmanian succession law should be reformed to allow eligible family claimants who had not been adequately provided for from a deceased's estate, to extend their claim beyond the deceased's actual estate to the deceased's "Notional Estate". The work built on the uniform succession laws project, and reforms adopted in New South Wales.

Reports and recommendations

An Issues Paper was released in March 2019. The launch was accompanied by an explanatory video. During the consultation period the Institute received 28 written responses and four verbal submissions to the questions asked in the Issues Paper, comprising the views of 67 individuals and two organisations.

The Final Report, released in September 2019, concluded that Tasmania should not introduce notional estate laws unless nationally uniform family provision laws are enacted. Several submissions raised concerns about the potential for notional estate laws to be avoided through "jurisdiction shopping", with NSW the only Australian jurisdiction with laws of this type. The report observed that the effectiveness of the NSW scheme had not yet been evaluated. Several respondents suggested that notional estate laws increase the complexity, time and cost of court disputes.

Acknowledging that the State government may legitimately conclude that reform is desirable given some strong arguments advanced in favour of it, the Report suggested that any reform should enact a narrower scheme than that in New South Wales and should focus on situations where people intentionally avoid claims.

Researchers

Some early work on the project was carried out by Dr Elise Histed, Ken Mackie and Dylan Richards. Kate Hanslow, who had previously worked on the Guardianship reference, was re-employed to finalise the Issues Paper, undertake consultation and prepare the Final Report.

Funding

The project was supported by a grant of \$65,022 from the Solicitors' Guarantee Fund.

Insanity and Fitness to Plead: Review *Criminal Justice (Mental Impairment) Act 1999 (Tas)* and s 16(3) of the *Criminal Code Act 1924 (Tas)*

Background

In November 2016, the Institute accepted a request from the then Attorney-General to review the options for clarifying the defence of insanity in s 16(3) of the *Criminal Code Act 1924 (Tas)* and the operation of the fitness to stand trial provisions in the *Criminal Justice (Mental Impairment) 1999 (Tas)*. The need for such a review was flagged in the Institute's Final Report on Self-defence in 2015.

Reports and recommendations

An Issues Paper was released in February 2019, which asked a range of questions about the operation of the rules relating to fitness to stand trial and the defence of insanity in Tasmania. In addition to reviewing current laws and the submissions received, Dr Bradfield carried out empirical research to profile the use of the fitness to plead and insanity provisions. This work was done, with invaluable assistance from the Mental Health Tribunal.

The Final Report was released in December 2019. Key recommendations include:

- Changing the definitions of ‘fitness to stand trial’ and the ‘defence of insanity’ to ensure that vulnerable defendants in the criminal justice system have access to a regular trial wherever possible;
- Replacing indefinite orders with a time limit, based on the court’s best estimate of the length of the person’s sentence if they had been found guilty at a normal trial;
- Shifting the focus of the test of ‘fitness to stand trial’ from the current one of cognitive capacity to a supported decision-making approach;
- Renaming the ‘defence of insanity’, which came into use in the 18th century, to fit current medical knowledge and language. The recommended term is ‘defence of mental or cognitive impairment’.

Researchers

Dr Rebecca Bradfield undertook work on this reference, with support from an expert reference group comprising The Hon Justice Helen Wood, Dr Aaron Groves, Daryl Coates SC, Yvonne Chaperon, Marita O’Connell and Assoc Prof Jeremy Prichard.

Funding

The review was supported by a grant of \$87,171 from the Solicitors’ Guarantee Fund. In 2018, the Institute applied for additional funds for empirical research to profile the use of the fitness to plead and insanity provisions but was unsuccessful. That work was carried out unfunded, using funds from the Institute’s general account.

Social Media, Jurors and Fair Trials

Background

In early 2018, the Board accepted a reference from barrister and Board member, Ms Kim Baumeler, about the effect of online information on whether the accused received a fair trial. There was seen to be an increasing problem of jurors doing their own research about accused persons via online sources, despite directions to the contrary.

In accepting the reference, it was understood that this would be a difficult problem to solve. The project will raise awareness of the issue and look at the adequacy of directions to jurors.

Status, reports and recommendations

The Institute engaged a researcher, commencing in February 2019, to develop a 2018 honours supervised research paper into an Issues Paper, undertake consultation and produce a Final Report.

The Issues Paper was released in August 2019. It sought to elicit discussion on juror misconduct through the use of social media and other internet activity during criminal trials. The Institute invited submissions on this topic and questions were posed in the Issues Paper to guide responses. Twenty public submissions, one confidential and several anonymous

submissions were received. The Final Report and recommendations were provided to the Attorney-General in December 2019, and the public release was scheduled for mid- January 2020. The Acting TLRI Director, Brendan Gogarty created an explainer video for the launch.

The Report recommended improved education for jurors to stop inappropriate use of social media and internet during criminal trials. Key recommendations include improvements to the training and information that prospective jurors receive at the courthouse before they are chosen as jurors; and the directions that jurors are given by the judge once they are chosen to sit on a trial.

Researchers

Law Honours student, Victoria Geason, prepared the honours supervised research paper, under the supervision of Dr David Plater, Deputy Director of the South Australia Law Reform Institute at the University of Adelaide, and the TLRI Director.

Jemma Holt a practitioner from South Australia, was engaged to complete the project, commencing in February 2019.

Funding

The project was supported by a grant of \$46,000 from the Law Foundation of Tasmania.

Review of the *Judicial Review Act 2000 (Tas)*

Background

The Institute accepted a request from Community Legal Centres Tasmania and the Law Society of Tasmania to conduct a review of the *Judicial Review Act 2000 (Tas)*. The major concerns with the current statutory scheme are that it limits judicial review to decisions made ‘under an enactment’, and that the High Court has adopted a narrow construction of the necessary link between the enactment and the decision subject to review.

Status, Reports and Recommendations

An Issues Paper outlining a range of possible reform options was released for comment in September 2018. During the consultation period, six submissions were received on a selection of the thirteen questions asked in the Issues Paper. While responses were limited, the majority of submissions either expressed dissatisfaction with the current judicial review regime, or were broadly supportive of reform in this area.

The Final Report was provided to the Attorney-General in December 2019. It recommended reforms aimed at addressing these concerns raised and assisting the Act to achieve its original purpose of providing a simpler, more accessible means to review government action

The Report was scheduled for release in January 2020.

Researchers

Michael Stokes prepared the Issues Paper, with the support of an expert reference group comprising Prof Matthew Groves, Associate Prof Terese Henning, Ben Bartl, and Claire Bookless.

Due to Mr Stokes moving interstate, Dylan Richards was appointed to undertake consultation and to prepare the Final Report.

Funding

This project was funded by a grant of \$21,345 from the Law Foundation of Tasmania.

(b) Ongoing Projects

Legal Recognition of Sex and Gender

Background

In November 2018, the Attorney-General requested that the Institute investigate the following issues:

- What steps should be required to register a change of sex or intersex status on official documents?
- What categories of sex / gender should be displayed on birth certificates and other documents?
- What, if any, reforms should be made in relation to consent to medical treatment to alter a person's sex or gender?
- What, if any, reforms should be made in relation to the definitions or use of terms relating to sex and / or gender in Tasmanian legislation?

The reference was accepted by the Board in January 2019.

Status

The Institute commenced work on the reference in early 2019 and released an issues paper in late June 2019. Given the high level of public and media interest in the reference, an extended period of consultation was undertaken. The final report and recommendations were delivered to the Attorney-General in December 2019 and will be publicly launched in May-June 2020. The launch was originally intended for February-March 2021 but has been delayed by COVID-19 restrictions. The Institute plans to produce an explainer video to accompany the launch.

Researchers

Jess Feehely and Dylan Richards are working as researchers on the project.

Funding

The project was supported by a grant of \$77,000 from the Solicitors' Guarantee Fund.

Conversion Therapy

Background

In late 2016, the Institute received a reference from representatives of the LGBTIQ community to investigate the extent to which conversion therapy (also known as reparative or sexual reorientation therapy) occurs in Tasmania and whether current laws adequately address the legal issues surrounding the practice.

The UN High Commissioner for Human Rights has said that such therapy is “unethical, unscientific and ineffective, and may be tantamount to torture”.

The Institute approached the Attorney-General requesting that the government consider formally referring this issue to the TLRI but the government did not make a reference.

Status

Volunteer Siobhain Galea worked with the Institute for several weeks, mapping an initial

structure to reflect the scope of the project, and reviewing international jurisdictions that could provide a model. The inaugural Vanessa Goodwin Scholarship recipient, Lilli Roberts, will contribute to the research as part of her internship with the TLRI. Dylan Richards has been employed to prepare the Issues Paper and Final Report, and to carry out community consultation. He will commence work on the project on 20 April 2020.

It is likely that the project will take an anti-discrimination approach to addressing conversion practices, rather than the health services regulation approach of some other jurisdictions.

Researchers

Siobhain Galea, volunteer, carried out some initial work on the project. Lilli Roberts, the inaugural Vanessa Goodwin Scholarship recipient, will also contribute to the project. Dylan Richards has been employed to prepare the Issues Paper and Final Report, and to undertake consultation.

Funding

After several years of unsuccessfully attempting to obtain funding for this project, the Institute was pleased to receive a grant of \$42,000 from the University Vice-Chancellor Prof Rupert Black in late 2019.

Related to this project, the TLRI lodged a joint application to the Tasmanian Community Fund with the Menzies Institute for Medical Research. The intention of the application was to examine the exposure to, and harm caused by LGBTIQ+ conversion practices and ideology in the Tasmanian context. The Tasmanian Community Fund notified the Menzies Institute that it was unsuccessful in obtaining funding on 9 June 2020. TLRI and Menzies have begun meetings to reorientate the project towards a national grant funder and will continue these discussions and form a new plan for funding in the second half of 2020.

Review of the Tasmanian Constitution Act 1934

Background

In 2016 the Tasmanian Chapter of the Australian Association of Constitutional Law (AACL) partnered with the Law Foundation of Tasmania, UTAS Faculty of Law, and the TLRI to undertake a year-long deliberative review of the Tasmanian Constitution. This process was initiated with an expert symposium comprised of constitutional experts from the Crown Law Office, the academy, the Bar, the Judiciary, NGOs and Parliament.

This symposium identified a number of problems with the Tasmanian *Constitution Act 1934*, which produce uncertainty and inefficiency in the governance of the State and undermine core conventions such as the rule of law, access to justice and governmental accountability. The symposium participants concluded that a formal review of the State constitution should be referred to the TLRI.

The Board accepted the reference to analyse and recommend the most appropriate ways to reform the Tasmanian Constitution in response to the wide-ranging deficiencies identified by the symposium.

Status

The project has been delayed due to Mr Sealy SC's significant work commitments, however he has provided a first draft of the Issues Paper to the Institute, which awaits review by Institute staff before being considered by the Board.

Researchers

Leigh Sealy SC has prepared a draft Issues Paper and with Dr Brendan Gogarty will prepare the Final Report.

Funding

The Law Foundation has provided funding for both the initial expert symposium (\$7,335) and the detailed review (\$33,114).

The Operation of the Special Hearing Scheme under Section 6A Evidence (Children and Special Witnesses) Act 2001 (Tas)

Background

This work aims to evaluate and improve the operation of the justice system and improve the quality of legal services provided to the public.

The research consists of a partnered investigation with the South Australian Law Reform Institute and the University of Adelaide on major reforms to the criminal justice process, with the focus of the Tasmanian work being the operation of the pre-trial recording of the evidence of children and special witnesses under ss 6 & 6A *Evidence (Children and Special Witnesses) Act 2001* (Tas).

The Institute has obtained the necessary ethics approvals and consent from the Supreme Court to observe relevant matters. We have scheduled regular meetings with members of the legal profession with experience working with this legislation to discuss its operation, the benefits it offers witnesses, and what more needs to be done to optimise opportunities for children and other vulnerable witnesses to participate in the criminal justice process.

Status

A significant hurdle for this project has been the restricted ability of researchers to gain access to recordings and transcripts of interviews. An amendment to the *Evidence (Children and Special Witnesses) Act 2001* (Tas) received Royal Assent on 2 October 2019. The Attorney-General has instructed her Department to commence the work required to have the Tasmania Law Reform Institute prescribed as a 'law reform body' for the purposes of section 7D of the Act. At the time of writing (May 2020), this has still not been completed.

A researcher is yet to be appointed to the project.

Funding

The Institute has received a \$50,870 grant from the Solicitors' Guarantee Fund grant to support research to progress this project. The project is expected to be completed in 2021.

(c) New Projects

The Institute has received funding to commence the following projects in 2020:

- Review of Privacy Laws in Tasmania - \$76,354 grant from Solicitors' Guarantee Fund
- Re-examination of the Case for Tasmanian Human Rights Act (research paper only) - \$23,015 grant from Law Foundation of Tasmania.

(d) Other Activities

In addition to its core business of undertaking law reform projects and developing proposals for reform, the Institute engages in a range of other activities which contribute to public awareness of the law and the process of law reform, forge links with other law reform bodies and develop scholarly communities of practice to foster excellence in law reform research.

Research collaborations

South Australian Law Reform Institute

The TLRI continued its ongoing collaboration in 2019 with the South Australian Law Reform Institute which is based at the University of Adelaide. Professor John Williams and Dr David Plater visited the TLRI in Hobart and provided valuable input to our work on juries and social media, and notional estate laws.

Prior-Fault in Criminal Law: UK research partnership

In December 2018, the Institute agreed to be a Collaborating Organisation in research being conducted by Dr John Child of Birmingham Law School, Dr Hans Crombag (University of Sussex) and Professor Rudi Fortson QC regarding the role of regulation of prior-fault. The research involves a comparative analysis of the application of prior-fault to offences, defences and sentencing decisions in a number of countries.

At the inception of this collaboration Dr Rebecca Bradfield agreed to participate on behalf of the Institute, in light of her involvement in relevant reviews including intoxication rules and recidivist drinking driving. The project was expected to commence in 2019 and conclude in 2022.

However, Dr Bradfield has subsequently accepted another position, and the Institute has not heard from the research partners. The new Director will follow up with them.

Prevention of Elder Abuse in Tasmania (PEAT)

The Institute continued its work in 2019 with a cross-disciplinary group of academics from health sciences, social sciences and law. The PEAT Research Team is also part of a working group to prevent and remedy elder abuse and neglect in Tasmania with Equal Opportunity Tasmania (EOT) and the Council on the Ageing Tasmania (COTA) and is also a member of SEAPAC which advises the State Govt on elder abuse issues.

Topics being investigated by the PEAT team include:

- The incidence of elder abuse in Tasmania;
- The current State and national regulatory framework applying to elder abuse in Tasmania;
- The dimensions of abuse of older women in Tasmania with a focus on socio-legal responses to elder sexual abuse in Tasmania;
- Institutional policy and practice frameworks for dealing with elder abuse in Tasmania;
- Institutional cultures that affect responses to elder abuse.

Work has commenced on this research with seed funding from the University of Tasmania.

In 2018 and 2019, the Institute applied for a Solicitors' Guarantee Fund grant to undertake preliminary research into the difficulty many people experience in finding accurate information about complaints procedures - when complaints can be made, to whom, what investigation and

enforcement powers exist, how often complaints are made, how are complaints dealt with, and what have been the outcomes of those complaints – and to compile a report addressing identified difficulties. While these applications were unsuccessful, the Institute will continue to seek funds to support this work.

PEAT obtained funding from the Tasmanian Community Fund in 2019 to undertake research through participatory on-line workshops into Institutional Responses to Elder Abuse. PEAT is shortly to commence the workshops; ethics approval has been obtained and a research assistant appointed to assist with the project.

Evaluation of Tasmanian Problem-Solving Courts

In partnership with the Tasmanian Institute of Law Enforcement Studies (TILES), the Institute is continuing research into Tasmanian problem-solving courts, particularly the operation of the Drug Court and Mental Health Diversion list. This complements the work being done to establish an evaluation mechanism for a Recidivist Drink Driving list. The TLRI continues its role as a member of the Magistrates Court Users group.

Researcher in Residency Program

The Institute has continued the ‘Researcher in Residency’ program, following the success of the funded pilot program in 2017-2018. To maintain this program will require recurrent funding, which the Institute will continue to seek.

In addition, the program involves secondments from various sectors in the Tasmanian legal profession. In 2019, the Institute again employed Kate Hanslow and Dylan Richards, from the private profession. Ms Hanslow worked on the Notional Estates project, and Mr Richards worked on both the Review of the *Judicial Review Act 2000* (Tas), and the Legal Recognition of Sex and Gender projects. The Institute also employed South Australian practitioner Jemma Holt who completed the project on Jurors, Social Media and the Right to a Fair Trial. An amendment to the TLRI now recognises the important role that the Law Society has in fostering and promoting this program within the legal profession.

Vanessa Goodwin Scholarship in Law

The Institute continued its efforts to establish a TLRI scholarship trust, to enable University of Tasmania undergraduate and post-graduate students to work on law reform projects.

In 2019, the Vanessa Goodwin Scholarship in Law was established with an initial \$30,000 contribution from the TLRI, which was supplemented by an additional grant of \$60,000 from the Solicitors’ Guarantee Fund following a successful application by Assoc Prof Henning. Additional funding from Dr Goodwin’s estate enabled the launch of the scholarship in 2019. The scholarship will be awarded annually for a student entering Year 4 or 5 of a Bachelor of Laws or combined Law degree, or final year of a Criminology major. It will include a research internship with the Tasmania Law Reform Institute. Its criteria include an interest in law reform and social justice.

The inaugural recipient is Lily Russell, who will work with the Institute on its Conversion Practices project. She will work on the project during the winter and summer semesters.

Meetings with the Attorney-General

The TLRI Director and key staff met with Attorney-General, the Hon. Elise Archer MP in February, June, and October. Throughout the year, the Director and staff also communicated with key Departmental officers to discuss relevant issues.

Meetings with other key stakeholders

Throughout 2019, the TLRI Director and key staff met with justice stakeholders to discuss the Institute's work:

- University of Tasmania Vice Chancellor, Prof Rufus Black;
- University of Tasmania Deputy Vice Chancellor (Research), Prof Anthony Koutoulis;
- Executive Dean of CALE, Prof Kate Darian-Smith;
- Director of the ISSC, Richard Eccleston;
- President and CEO, Law Society of Tasmania;
- Labor opposition Shadow Attorney-General, Ella Haddad MP;
- Commissioner for Children and Young People (Tas), Leanne McLean;
- Speaker of the House, Sue Hickey MP;
- Megg Webb, member of the Legislative Council; and
- Prof John Williamson, Director SALRI and Dr David Plater Deputy Director SALRI.

(e) Reform commentary

In addition to providing formal reports to the Government on references undertaken by the TLRI, the Institute provided comment on the following:

- *Anti-Bullying Bill 2019*
- *Discussion Paper – section 194 K Evidence Act 2001 (Tas)*
- *Proposed reforms re tendency and coincidence evidence*
- *Electoral Act Review*
- *Justice Legislation (Organisational Liability for Child Abuse) Amendment Bill 2019*
- *Workplaces (Protection from Protestors) Amendment Bill 2019*
- *Magistrate's Court Reforms contained in:*
 - *Magistrates Court (Criminal and General Division) Bill 2019;*
 - *Magistrates Court (Criminal and General Division) (Consequential Amendments) Bill 2019; and*
 - *Restraint Orders Bill 2019.*

(f) Community and media engagement

Public communication

The Institute has continued efforts to improve communication regarding our work by:

- maintaining a Facebook platform with regular posts regarding Institute projects and related developments. The number of followers on the TLRI Facebook page has grown by 45% in 2019, and efforts to grow the audience will continue;
- expanding its use of Twitter and YouTube, including the production of explainer videos to launch our publications;
- publishing Easy Read versions of relevant issues papers and/or final reports, including for the Insanity and Fitness to Plead, 'Notional Estate' Laws, Legal Recognition of Sex and Gender and Jurors and Social Media projects;

- producing short videos on relevant references to encourage community participation and explain recommendations in an accessible fashion. Videos were produced to support the Notional Estates and Jurors and Social Media projects. The videos were made available through the University of Tasmania YouTube page, the Institute’s website and the Institute’s Facebook page. The Institute plans to continue the use of video ‘explainers’ in future;
- submitting Talking Point articles to support the release of Issues Papers and Final Reports;

Media

The Institute’s media profile has continued to grow. In 2019, the Institute obtained 702 total mentions, which is an increase of 111%, and a total ASR (Advertising Space Rate) for online and print of \$3.26m – more than treble the previous year.

The following media engagement occurred in 2019:

- Media releases regarding:
 - Insanity and Fitness to Plead, Issues Paper No. 27
 - 'Notional Estate' Laws, Issues Paper No. 28
 - Legal Recognition of Sex and Gender, Issues Paper No. 29
 - Jurors and Social Media, Issues Paper No. 30
 - 'Notional Estate' Laws, Final Report No. 27
 - Insanity and Fitness to Plead, Final Report No. 28
 - The Vanessa Goodwin Scholarship in Law
 - Statement on Transgender & Intersex (Legal Recognition of Sex & Gender) Project, clarifying project terms of reference
- Talking Point articles submitted and published regarding the Insanity and Fitness to Plead, Notional Estate Laws, Legal Recognition of Sex and Gender and Jurors and Social Media projects.
- Radio and television interviews regarding the Insanity and Fitness to Plead Issues Paper and Final Report; 'Notional Estate' Laws Issues Paper and Final Report; Legal Recognition of Sex and Gender Issues Paper; and Jurors and Social Media, Issues Paper.
- Kate Hanslow was interviewed on ABC Radio National’s *Law Report* regarding the case of an elderly Tasmanian man who succeeded in overturning the appointment of a guardian;
- The Conversation
- Articles published in the Law Society of Tasmania’s Law Letter regarding the work of the Institute.

Public events, university and other community engagement

- The TLRI is a member of the Magistrates Court Users Group and the Director attended three meetings of the group in 2019.
- The Director is a member of the Sentencing Advisory Council and attended bi-monthly meetings throughout 2019;

- The Director is a member of the SASH Independent Oversight Committee and attended meetings throughout 2019;
- Director attended the Equal Opportunity Tasmania ‘Free and Equal’ meeting with Dr Kay Patterson on 7 May and 6 August 2019;
- Director met with Amber Mignot of Justice Department Chair of the RCIRCSA implementation Committee to discuss elements of a Tasmanian Intermediaries program 23rd May;
- The Director worked with the Just Time program in the minimum security division of the men’s prison at Risdon for nine weeks commencing on 6th August 2019

Summary of publications in 2019

- *Insanity and Fitness to Plead: Review Criminal Justice (Mental Impairment) Act 1999 (Tas) and s 16(3) of the Criminal Code Act 1924 (Tas)*, Issues Paper No. 27
- *Should Tasmania Introduce 'Notional Estate' Laws?*, Issues Paper No. 28
- *Legal Recognition of Sex and Gender*, Issues Paper No. 29
- *Jurors, Social Media and the Right of the Accused to a Fair Trial*, Issues Paper No. 30
- *Should Tasmania Introduce 'Notional Estate' Laws?*, Final Report No. 27
- *Insanity and Fitness to Plead: Review Criminal Justice (Mental Impairment) Act 1999 (Tas) and s 16(3) of the Criminal Code Act 1924 (Tas)*, Final Report No. 28

3. Financial Statement for the period 1/1/19 - 31/12/19

Summary of all TLRI Account Balances at 31 December 2019 (full details below)

	\$
General Operating Funds (<i>includes 2020 annual payment</i>)	55,159.71
Solicitors' Guarantee Fund – Guardianship Review	984.78
Solicitors' Guarantee Fund – Notional Estates	0.00
Solicitors' Guarantee Fund – Insanity & Fitness to Plead	(-158.75)
Solicitors' Guarantee Fund – Transgender & Intersex Law Reforms	15,637.06
Solicitors' Guarantee Fund – Special Witness Hearings Study	50,870.00
Law Foundation – Review of Judicial Review Act	52.54
Law Foundation – Review of Tasmanian Constitution	33,074.73
Law Foundation – Jurors, Social Media and Fair Trials	5,267.83
Vice Chancellor – Conversion Practices	42,000.00

Balance (surplus) at 31 December 2019	202,887.90
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General Operating Funds

Balance at 31 December 2018	125,572.36
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Income

2019 Contract annual grant from State Govt Dept of Justice	50,000.00	
2020 Contract annual grant from State Govt Dept of Justice (<i>paid early</i>)	50,000.00	
		100,000.00

Expenditure

Salary (including superannuation, payroll tax and workers' compensation insurance)	137,094.08	
Scholarship – contribution to Vanessa Goodwin Scholarship	30,000.00	
Consultant costs (Easy Read)	5,595.19	
Travel	553.39	
Printing	(-4,044.00) ¹	
Other	1,213.99	
		170,412.65

Balance (surplus) at 31 December 2019	55,159.71
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¹ Costs transferred to relevant research project

Solicitors' Guarantee Fund – Guardianship Review

Balance carried forward from 31 Dec 2018		14,761.15
Expenditure		
Salaries and salary on-costs	7,450.37	
Easy Read Translation	1,700.00	
Printing	4,626.00	
		13,776.37

Balance at 31 Dec 2019	984.78
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Solicitors' Guarantee Fund – Notional Estate Legislation

Balance carried forward from 31 Dec 2018		46,958.16
Expenditure		
Salaries and salary on-costs	38,449.09	
Easy Read Translation	5,354.80	
Video filming, editing & production	2,000.00	
Printing	1,147.00	
Other	7.27	
		46,958.16

Balance at 31 Dec 2019	0.00
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Solicitors' Guarantee Fund – Insanity & Fitness to Plead

Balance carried forward from 31 Dec 2018		14,444.03
Expenditure		
Salaries and salary on-costs	3,870.96	
Printing	3,550.00	
Easy Read Translation	7,181.82	
		14,602.78

Balance at 31 Dec 2019	(-158.75)
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Solicitors' Guarantee Fund – Transgender + Intersex Law Reforms

Grant Income		77,000.00
Expenditure		
Salaries and salary on-costs	56,364.94	
Easy Read Translation	3,900.00	
Printing	1,028.00	
Training and related costs	70.00	
		61,362.94

Balance at 31 Dec 2019	15,637.06
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Solicitors' Guarantee Fund – Special Witness Hearings Study

Grant income		50,870.00
Expenditure		
Nil		0.00

Balance at 31 Dec 2019	50,870.00
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Law Foundation – Review of Judicial Review Act

Balance carried forward from 31 Dec 2018		2,121.38
Expenditure		
Salaries and salary on-costs	2,068.84	
		2,068.84

Balance at 31 Dec 2019	\$52.54
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Law Foundation – Review of Tasmanian Constitution

Balance carried forward from 31 Dec 2018		\$33,074.73
Expenditure		
Nil		0.00

Balance at 31 Dec 2019	\$33,074.73
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Law Foundation – Jurors, Social Media & Fair Trials

Grant income		46,000.00
Expenditure		
Salaries and salary on-costs	37,014.17	
Easy Read Translation	2,450.00	
Printing	1,268.00	
		40732.17
Balance at 31 Dec 2019		5,267.83

Vice Chancellor – Conversion Practices

Grant income		42,000.00
Expenditure		
Nil		0.00
Balance at 31 Dec 2019		\$42,000.00

University Contributions (in kind)

Note: the methodology for calculating in-kind contributions has been revised from 2019

LABOUR COSTS				
Non casual staff *				
<i>Salary & on-costs</i>				
Role	Staff Type	Classification	Full Time Equivalent Percentage (FTE%)	Total Salary Costs
Institute Director	Academic	Level D	50.00%	92,453.16
Board members	Academic & Professional	Various	7.37%	12,539.44
HDR + Hons supervisor	Academic	Level C	6.50%	11,390.25
Research – reports **	Academic	Level C	7.80%	13,668.31
Law School Manager & Administrators	Professional	Various	4.77%	5,151.49
Law social media	Academic	Level B	0.29%	430.36
IT support	Professional	HEO Level 7	4.34%	5,409.91
TOTAL NON-CASUAL				141,042.92

Casual staff (paid hourly rate) *				
<i>Salary & on-costs</i>				
Role	Staff Type	Classification	Estimated No of Hours per year	Total Salary Costs
Web management	Professional	CG04	40.00	1,969.00
TOTAL CASUAL				1,969.00
TOTAL LABOUR				143,011.92

OTHER EXPENSES	
Consumables & equipment depreciation ***	10,224.00
TOTAL OTHER EXPENSES	10,224.00

INDIRECT COSTS	
Labour costs component @ 35%	50,054.00
Non-Labour costs component @ 35%	3,578.00
TOTAL INDIRECT COSTS	53,632.00

TOTAL UTAS IN-KIND CONTRIBUTION	206,867.92
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* calculated on University contract research rates, exclusive of GST.

** annual average calculated from Faculty staff research on issues papers and reports over life of Institute

*** includes computer depreciation, furniture depreciation, postage, stationery, and photocopier and printer costs.

1. THE PARTIES AGREE AS FOLLOWS:

1.1 In this Agreement, unless the context otherwise requires:

- a) "Attorney-General" means the Attorney-General of the State of Tasmania;
- b) "Board" means the Board established under clause 3(1);
- c) "Commencement Date" means 23 November 2014;
- d) "Director" means the Director appointed under clause 5;
- e) "Founding Agreement" means the agreement between the Government of the State of Tasmania, the University of Tasmania and the Law Society of Tasmania dated 23rd July 2001.
- f) "Institute" means the Tasmania Law Reform Institute established by this Agreement;
- g) "Law Society" means the Law Society of Tasmania; and
- h) "University" means the University of Tasmania.

2. ESTABLISHMENT OF THE INSTITUTE

2.1 The Institute was established as a Research Centre within the University of Tasmania in clause 2.1 of the Founding Agreement.

2.2 The functions and objectives of the Institute are:

- a) To conduct reviews and research on areas specified by the Board; and
- b) To conduct these reviews and research, where appropriate on a consultancy basis;
- c) To consider proposals from the Attorney-General for the reform of the law;
- d) To conduct reviews and research on proposals for reform of the law referred by the Attorney-General; and
- e) To review an area of law with a view to-
 - i. the modernisation of the law; and
 - ii. the elimination of defects in the law; and
 - iii. the simplification of the law; and
 - iv. the consolidation of any laws; and
 - v. the repeal of laws that are obsolete or unnecessary;
 - vi. optimising the operation of the law and facilitating access to justice; and

- vii. uniformity between laws of other States and the Commonwealth; and
- f) To make reports to the Attorney-General or other authorities arising out of any review and, in those reports, to make recommendations ; and
- g) To work with the law reform agencies in other states and territories on proposals for reform of the laws in any other jurisdiction or within the Commonwealth;

in accordance with the University's standard procedures for the operation of Research Centres.

- 2.3 The performance of the Institute's functions and objectives is subject to funding being made available for the purposes of the Institute.
- 2.4 The University is entitled to make a reasonable charge for undertaking the Institute's functions and objectives if the funding is not otherwise available to enable the Institute to undertake those functions and objectives. The University will provide the Department of Justice with notice of any intention to charge the State.

3. BOARD OF THE INSTITUTE

- 3.1 The Board of the Institute, entitled the "Board", is established as an advisory body.
- 3.2 The membership of the Board shall consist of:
 - a) The Director appointed under clause 5.
 - b) The Dean of the Faculty of Law at the University.
 - c) 1 person appointed by the Honourable the Chief Justice of Tasmania.
 - d) 1 person appointed by the Attorney-General.
 - e) 1 person appointed by the Law Society.
 - f) 1 person appointed by the Council of the University.
 - g) 1 person appointed by the Tasmanian Bar.
 - h) No more than 3 co-opted members, one of whom shall be a member of the Tasmanian Aboriginal Community.
- 3.3 The Board is to advise the Director with respect to the conduct of business at the Institute, including making recommendations as to whether a particular reform project should be undertaken.
- 3.4 At the time of recommending the selection of a project to the Institute, the Board will identify the extent of the project, the time for completion, the expected output and the cost of the project.
- 3.5 The Board shall record in its minutes of proceedings all proposals

received for law reform projects.

- 3.6 The Board should meet at least four times each year.
- 3.7 The Director shall act as Chair for meetings of the Board.
- 3.8 The right to appoint persons under Clause 3.2 includes the right to revoke an appointment or to substitute another for a person appointed.
- 3.9 Board members will not be entitled to any additional remuneration on account of their being a member of the Board.

4. OPERATION OF THE INSTITUTE

- 4.1 The Institute may receive proposals for law reform or research projects from:
 - a) the judiciary;
 - b) the Attorney-General;
 - c) Legal Aid Commission of Tasmania;
 - d) Tasmanian government departments;
 - e) the Parliament;
 - f) the legal profession; and
 - g) members of the community or community groups
- 4.2 The Institute must hold and maintain the reports and papers of the former Law Reform Commission and Law Reform Commissioner.
- 4.3 The Institute may publish any of the following:
 - (a) Research Papers: These papers contain the results of a research projects.
 - (b) Issues Papers: These papers outline the key issues in relation to a problem, the existing law, the questions to be investigated, the different views and opinions on the topic, outlines of the working papers or reports of other law reform agencies and possible tentative proposals. Issues Papers are intended to be distributed for assessing expert and public opinion on the issues to be addressed.
 - (c) Final Reports: These documents formulate the position taken by the Institute after consultation and deliberation by the Board. Each report contains an executive summary and may include draft legislation. Each report will be provided to the Hon. the Attorney- General of Tasmania.
 - (d) Annual Reports: These are provided for under Clause 7.
- 4.4 Where the Institute has received a proposal under clause 4.1 from the Attorney-General, Legal Aid Commission of Tasmania, a Tasmanian Government department, or Parliament, the final report will be provided to

that person or agency four weeks prior to it being published.

- 4.5 The University owns the copyright in all publications produced by the Institute. The University grants to the State a non-exclusive, perpetual, royalty free licence in the copyright of all publications produced by the Institute to enable any proper use by the State in its discretion.

5. DIRECTOR

- 5.1 There shall be a Director of the Institute who shall be appointed by the Vice-Chancellor of the University.
- 5.2 The Director shall be a member of the academic staff of the University.
- 5.3 The Director shall be responsible for:
- providing leadership, strategic direction and oversight of the work of the Institute;
 - working to ensure the independence of the Institute;
 - speaking publicly on behalf of the Institute and providing leadership and guidance on law reform and the work of the Institute to the Tasmanian community;
 - providing advice on draft bills and legislation;
 - communicating with key stake holders, the Government, the University, the Law Society of Tasmania and the Tasmanian Community, including leading community consultation and engagement in law reform, to advance the work of the Institute ;
 - disseminating the work of the TLRI at the local, national and international levels and to encourage participation in and engagement with law reform work generally and more specifically the work of the TLRI at these levels;
 - collaborating with national and international bodies in promulgating law reform and supporting law reform and reform projects elsewhere that are consistent with the objectives of the TLRI;
 - the day to day administration of the Institute including the selection and appointment of researchers and administrative staff of the Institute and management of researchers and administrative staff in connection with the research, drafting and settling of Issues Papers and Final Reports;
 - negotiating all agreements and funding grants as and where necessary;
- 5.4 The Director shall chair the meetings of the Board, seek the advice of the members of the Board and report on Institute activities at each meeting of the Board.
- 5.5 If the Director is likely to absent for more than one month, the Board may appoint an acting Director for the period of absence.

6. FUNDING FACILITIES AND STAFF

- 6.1 Funding for the Institute shall be provided on an annual basis as

follows:

- a) The State agrees to provide funding of \$50,000 per annum.
 - b) The University of Tasmania agrees to provide funding of up to \$206,000 (including in-kind contributions) per annum.
- 6.2 The Law Society will support the operation of the Institute by the provision of advice on proposals for research projects under clause 4.1(d) and the provision of funding on a case by case basis.
 - 6.3 The Law Society will support the implementation and promotion of a secondment program facilitating the placement of members of the legal profession to work on specific law reform proposals under the auspices of the Institute.
 - 6.4 The Law Foundation of Tasmania may provide annual grants, subject to available funds for the operations of the Institute.
 - 6.5 The Institute shall investigate other funding avenues, particularly from external research grants and donations.
 - 6.6 The Institute shall review its funding on an annual basis. At the request of the Institute, the annual funding from the State may be increased during the term of the agreement. The Institute may also request additional funding in the course of any year during the term of this Agreement. With any request for increased funding, the Institute must provide the State with a business case outlining why additional funds are required and why those funds cannot be sourced by other means. The State does not by this clause commit to any additional funding.
 - 6.7 The Institute may employ administrative staff to support the operation of the Institute within its available annual funding.
 - 6.8 The University shall provide office premises suitable for the operation of the Institute, as part of the University's in kind contribution.
 - 6.9 All funding will be accounted for in accordance with the University's standard procedures for the operation of Research Centres.
 - 6.10 The Tasmanian Government may, by notice in writing, demand that the Institute repay any funding that is used, or applied by the Institute, for a purpose other than in accordance with the provisions of this Agreement.

7. ANNUAL REPORTS

- 7.1 The Institute shall at the end of each calendar year prepare a report on its operations for the Council of the University, the Hon. Chief Justice of Tasmania, the Hon. Attorney-General, the Law Society of Tasmania and the Law Foundation of Tasmania.
- 7.2 The Institute shall prepare an Annual Financial Statement of the source and application of funds for the year of report.
- 7.3 The Annual Report shall be made available to the public.

8. PERIOD OF AGREEMENT

- 8.1 The term of this Agreement will be three years from the Commencement Date.
- 8.2 The Agreement may be extended by the written agreement of the parties.

SIGNED, SEALED and DELIVERED

THE GOVERNMENT OF TASMANIA as represented by



Hon Elise Archer MP
Attorney-General

THE UNIVERSITY OF TASMANIA by its authorised representative



Prof Rufus Black
Vice-Chancellor

THE LAW SOCIETY OF TASMANIA



Mr Luke Rheinberger
Executive Director