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Dear Professors Warner and Williams and Associate Professor Plater,

RE: REVIEW OF TASMANIA LAW REFORM INSTITUTE

I thank you for the opportunity to provide a written submission to your review of the TLRI.

I note the Terms of Reference for this review framed by the Vice Chancellor. I will direct my points to them as directly as possible below, after providing what I consider to be essential background and context. I do wish to note that some of the points I make here may at first seem beyond those TORs, but they are closely related to the TORs and the wider questions with which a review must grapple. Specifically, they relate to the staffing, expertise and funding in the Faculty of Law and consequently the TLRI. The review should take account of the broader situation with UTAS Law and the University because that partly explains the situation at TLRI. I urge those who will respond to your recommendations to take these issues seriously. To my mind, they are the central problem affecting the TLRI and solving them will remedy many of the other concerns about the Institute that are reflected in the TORs.

I also wish to assure yourselves and any other readers that what follows is my own views and experiences of TLRI and, where relevant, the Faculty of Law and broader University. My views of TLRI have been shaped by working closely with Acting Director Dr Brendan Gogarty, Bruce Newey and Kira White since August 2020, and in particular the many conversations that Dr Gogarty and I have had in the course of the conversion practices project, as well as a few conversations with Associate Professor Therese Henning. These are not their views and I have not discussed the contents of this written submission with any of them.

Background at UTAS Law and TLRI

[Redacted at the request of the author]

Response to the TORs

I direct the remainder of this submission to the TORs. The background and context provided above is relevant for fixing several issues that are relevant to these TORs.

Whether the aims and objectives of the Institute, set out in its Founding Agreement, require modernization, clarification or amendment

I do not hold any strong opinions on whether the aims and objectives of the Institute in its Founding Agreement need to be changed. They seem to me to accurately describe what its work is and should be. It may be useful to add to the functions and objectives an explicit reference to community-initiated proposals so that community members understand that the TLRI can receive their proposals (though this point is clear from the TLRI website).

Whether there are sufficient provisions for the protection and promotion of the institutional integrity and independence of the Institute

As detailed above, the most serious issue with the protection and promotion of the TLRI's institutional integrity and independence is around staffing and funding. Nothing in my time at the TLRI suggested at any point that the Institute or its staff had any issues regarding integrity or independence. The involvement of expert groups does help with the integrity and independence of the Institute and ensures it has proper unbiased expertise relevant to the specifics of an inquiry. Nonetheless, any potential future concerns about integrity and independence would be best allayed at the structural level by increasing the number of staff. Having only one or two people responsible for the bulk of the Institute's research, writing and delivery of inquiries and reports leaves it open for the community to question whether the views of those people are too strongly reflected in the activities and conclusions of the Institute. Again, I do not suggest that this occurred during my time there, but this risk may eventuate in the future. Committing more resources to the Institute to once again have a Deputy Director, more researchers, and staff with stronger expertise in areas relevant to the TLRI's work would help reduce independence and integrity risks and reassure the community that a wide range of experts were involved in the work and conclusions of the TLRI in all its references.

The position, role and relationship of the Institute to its founding members, the Government of Tasmania, and the University of Tasmania (in particular its placement with the Law Faculty of UTAS), including specifically the research capacities and priorities of the University and the Law Faculty

If the TLRI is to remain associated with UTAS, it should either continue to be located in the Faculty of Law, subject again to the points above about the need to hire a new director, more law staff with subject-matter expertise, and to be properly funded and accommodated in the new Faculty of Law building, or nearby to it. The Faculty of Law previously had good research capacities of relevance to the TLRI: those have been severely weakened by departures and a failure to replace those staff with subject matter experts. Again, the Faculty of Law has no strong current expertise in contract law, criminal law, administrative law, property law and several other important areas. Consequently, the Faculty of Law is not capable of supporting the TLRI appropriately, or indeed the Faculty of Law itself for that matter. This is an urgent problem that must be fixed as soon as possible.

An alternative would be to remove TLRI from the Faculty of Law and place it directly under the Vice-Chancellor, akin to the relatively new Institute for Social Change. That does not

solve the broader issue of a lack of relevant experts in law. Such a move would carry other risks of its independence and work being too closely monitored or directed by the Vice-Chancellor, but appropriate institutional safeguards could be established to avoid or manage those risks. The TLRI would draw heavily on Faculty of Law staff — again, once more experts are hired — but it could also have ongoing subject-matter experts from the wider University. That all said, TLRI is perfectly capable of doing so in its current setting within the Faculty of Law. For example, for the conversion practices project we called on and received assistance from, among other areas, academics from the Menzies Institute for Medical Research and from Sociology.

If the TLRI is to be moved from the University, it should be re-established as an independent statutory body and appropriately staffed and resourced. Personally, I am not opposed to this outcome. I do think a Faculty of Law is an entirely appropriate institutional place for a law reform body, and has made advantages of expertise and institutional distance from Government. The current Faculty of Law, however, does not fulfil the expertise requirement, and the Tasmanian community's many recent criticisms of the University may adversely affect the work of the TLRI and the community's confidence in its activities.

The position, role and relationship of the Institute to the Government of Tasmania, as represented by the Attorney-General

I do not have any comments on the position, role and relationship of the TLRI to the Government, save for again to urge that the Government support an increase in its staffing and funding. I also note that a range of recent law reform related projects — from an inquiry into Tasmanian racing to the inquiry into moving towards a Treaty with Tasmania's Aboriginal Community — would have been appropriately supported or run by TLRI. To my knowledge, TLRI was not approached about those projects. Whatever the reasons for those decisions, the TLRI should be an institution of first approach for such major projects, and any issues that explain why it was not approached should be remedied urgently.

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

One issue in the Institute's current constitution is that some Board roles overlap too substantially. As I understand it, the (Acting) Director is also chair of the Board, and if Professor Stuckey continues as Acting Director, he will also fill a third board position of Vice-Chancellor's representative. These roles need to be disaggregated and filled by different people. Ideally a Chair or President of the TLRI would be able to act as an additional advisor for the Director and relieve the Director of the tasks of calling and running Board meetings. I would also urge that past Directors be offered seats on the Board; the TLRI would benefit from formal input from its past Directors. Indeed, past Directors would make good candidates for a President.

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

I reiterate two points made above.

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[REDACTED]

More generally, the TLRI's staffing and funding must be increased urgently, and staff workloads in Law must be changed to allow them to support the TLRI's work where appropriate. Dr Gogarty worked tirelessly on several major reports. These reports have taken quite some time to prepare, partly due to the complexity of their subject matter and extensive community interest. For example, the conversion practices report received more than 250 submissions, many of them detailed and addressed to a range of concerns. While TLRI received very useful support to analyse that bulk of material, more staff hours would have meant the conversion practices project would have been completed far more swiftly than it was. This problem also explains the delays in a range of other major projects, and needs to be urgently remedied.

I thank you for considering this submission and I hope that this review will help to improve the TLRI. Should you have any further questions please do not hesitate to contact me [REDACTED] via email at martin.clark@unimelb.edu.au.

Yours, sincerely,



Martin Clark