

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

## **Submission Template**

### **Jurors, Social Media and the Right of an Accused to a Fair Trial**

The Tasmania Law Reform Institute is currently researching jurors' use of social media and other internet platforms during criminal trials. The Institute is seeking to:

- assess, as far as is possible, the nature and gravity of this phenomenon;
- explore how and why juror misconduct of this kind occurs and the causes and/or motivations that underlie juror misconduct of this kind;
- canvas the laws and practices which currently exist to safeguard against juror misconduct of this kind as well as those that exist to remedy and/or otherwise deal with such misconduct after it occurs; and
- examine the operation and efficacy of these measures as well as the possible alternatives.

This Issues Paper seeks to elicit open discussion on juror misconduct in this contemporary context to inform the Institute's inquiries into this area of topical concern.

The Institute invites submissions on this topic until **4 October 2019**.

**You can answer any or all of the questions and provide as little or as much information as you wish.**

The Template can be filled in electronically and sent by email or printed out and filled in manually and posted.

- The form is designed to be completed electronically by entering responses. The space provided for your answer will expand (if necessary) as you type. You are invited to include as much or as little information as you choose.
- Alternatively, you may print out the form and either fill it in manually or use a separate answer sheet (if you use a separate answer sheet, please ensure that you clearly number your answers to correspond with the questions in the Issues Paper). Again, you are invited to include as much or as little information as you choose.

After you have completed your submission please either email or post the document to the Institute:

**Email:** [law.reform@utas.edu.au](mailto:law.reform@utas.edu.au)

**Post:** Tasmania Law Reform Institute

Private Bag 89  
Hobart TAS 7001

This study has been approved by the Tasmanian Social Sciences Human Research Ethics Committee. If you have concerns or complaints about the conduct of this study, please contact the Executive Officer of the HREC (Tasmania) Network on +61 3 6226 6254 or email [human.ethics@utas.edu.au](mailto:human.ethics@utas.edu.au). The Executive Officer is the person nominated to receive complaints from research participants. Please quote ethics reference number [H0016752].

## Personal Information

Name

Organisation (if any)

Address

Email

Phone number

## Publication of Submissions

The Institute uses any submissions received to inform its research. Submissions may be referred to or quoted from in a final report which will be published on the Institute's website. Extracts may also be used in published scholarly articles and/or public media releases. However, if you do not wish your response to be referred to or identified, the Institute will respect that wish.

**Therefore, when making a submission to the Institute, please tick the applicable box to identify how you would like it to be treated based on the following categories:**

Public submission – the Institute may refer to or quote directly from my submission and name me as the source of the submission in relevant publications.

Anonymous submission – the Institute may refer to or quote directly from my submission in relevant publications but must not identify me as the source of the submission.

Confidential submission – the Institute must not refer to or quote directly from my submission but may aggregate information in my submission with other submissions for inclusion in any report or publication.

Confidential submissions will only be used to inform the Institute generally in its deliberations of the particular issue under investigation, and/or provide publishable aggregated statistical data.

Providing a submission is completely voluntary. You are free to withdraw your participation at any time, by contacting Kira White on (03) 6226 2069 or email [Law.Reform@utas.edu.au](mailto:Law.Reform@utas.edu.au). You can withdraw without providing an explanation. However, once the report has been sent for publication, it will not be possible to remove your comments.

All responses will be held by the Tasmania Law Reform Institute for a period of five (5) years from the date of the first publication and then destroyed. Electronic submissions will be stored on a secure, regularly backed-up University network drive. Hard copy submissions will be stored in a locked filing cabinet. At the expiry of five years, submissions be deleted from the server, in the case of electronic submissions, or shredded and securely disposed of in the case of paper submissions.

# QUESTIONS

## Question 1

What is your experience of jurors using social media and/or other internet platforms during a criminal trial?

## Question 2

Based on your experience, what is your assessment of the prevalence of jurors' inappropriate use of social media and/or other internet platforms during criminal jury trials?

### **Question 3**

Do you think that such conduct is confined largely to high profile cases which have a high level of media coverage and community interest? Or does it also present in a wider range of criminal trials?

### **Question 4**

Based on your experience, what do you think causes and/or motivates jurors to use social media and/or other internet platforms inappropriately during a criminal trial?

## Question 5

- (a) What can and should be done by way of controlling prejudicial material that is potentially available to jurors on the internet and social media platforms at the pre-trial stage?
- (b) Whose obligation should it be to attend to these pre-emptive and precautionary pre-trial measures?

## Question 6

- (a) How can pre-empanelment juror information/training be improved in Tasmania?
- (b) What can be learned from other jurisdictions?
- (c) Should pre-empanelment juror information/training expressly address social media?
- (d) Should pre-empanelment juror information/training specifically cover both '*information in*' and '*information out*' uses of the internet/social media?
- (e) Should pre-empanelment juror information/training provide an explanation of the rationale behind the restrictions in social media/internet use?

## Question 7

- (a) Could/should the juror oath/affirmation and its surrounding procedure be employed to assist in preventing jurors inappropriately using social media and other internet platforms during trials?
- (b) If so, how might this be achieved?

## Question 8

- (a) Should 'standard' directions to jurors, similar to those used in New South Wales and Victoria, regarding the internet and social media be adopted in Tasmania?
- (b) What should these directions include?
  - (i) Specific mention of social media;
  - (ii) A comprehensive list of prohibited internet and social media platforms as well as prohibited activity ('*information in*' and '*information out*');
  - (iii) Explanations for the internet/social media restrictions;
  - (iv) Warnings about personal consequences for juror misconduct;
  - (v) Reminders to jurors of their obligation to report irregularities;
  - (vi) Repetition; and/or
  - (vii) Written directions?

Could/should the underlying knowledge and understanding of the internet and social media on the part of the judiciary be improved? If so, how?

### **Question 9**

- (a) How effective is the practice of taking mobile phones and other electronic devices away from jurors during the trial and deliberations?
- (b) Is it a practice that should continue?

### **Question 10**

- (a) Should juror assurances regarding their impartiality and compliance with judicial directions be accepted at face value?
- (b) Should counsel make pre-trial enquiries of jurors' internet and social media presence and/or monitor jurors' internet and social media activity during the course of a trial to ensure the veracity of juror assurances in this respect?

## **Question 11**

- (a) When jurors sit in more than one trial during their summonsed period, does such 'experience' make them better jurors? If so, how?
- (b) Are jurors who are empanelled for a second and/or subsequent time less likely to engage in juror misconduct by inappropriately using the internet/social media? If so, why?
- (c) What influence, if any, do you think that jurors who sit in second and/or subsequent trials have on their fellow first-time jurors?

## **Question 12**

- (a) How can the efficacy of juror reporting of fellow juror misconduct be supported and/or improved?
- (b) Is public awareness of juror misconduct a viable option for increasing juror accountability (ie enlisting jurors' online 'friends' to report juror misconduct they observe on the internet/social media)?

### **Question 13**

- (a) Should jurors be punished for using social media and other internet platforms inappropriately during criminal trials?
- (b) If so, would legislative codification of applicable common law contempt laws assist in dealing with jurors for misconduct of this kind?