

TASMANIA
LAW REFORM
INSTITUTE

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Annual Progress and Financial Report 2002

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1. Structure, Board Members and staff

The Institute was established on July 23 2001 and has now been operating for 18 months.

The functions and operations of the Institute are undertaken by its director, with assistance from Board members, research assistants and Law Faculty staff and students.

All written proposals for law reform projects are presented to the Board, which then makes recommendations for consideration by the Institute (clause 4.3), including identifying a recommended project's extent, time for completion, expected output and cost (clause 4.4).

Board Members

Professor Kate Warner, Director of the Institute, appointed by the Vice-Chancellor of the University of Tasmania

Professor Donald Chalmers, Dean of the Faculty of Law at the University of Tasmania
The Honourable Justice AM Blow OAM, appointed by the Honourable Chief Justice of Tasmania

Paul Turner, appointed by the Attorney-General

Philip Jackson, appointed by the Law Society

Terese Henning, appointed by the Council of the University

Staff

Jenny Gawlik (research assistant)

2. Activities

Board meetings

The Board had eight meetings in 2001 (6 Feb, 7 Mar, 2 May, 6 June, 31 July, 4 Sept, 7 Oct, 18 Nov), all held at the Law Faculty of the University.

The agreement states that the Board should meet at least four times a year.

The next meeting of the Board is set for 11 February 2003.

Ongoing law reform projects

Sentencing

The Attorney-General requested that the Institute undertake a reference on sentencing in late September 2001. The terms of the reference were agreed on 20 November 2001, however in April the Attorney requested that they be extended to include issues surrounding parole. An issues paper was released on 2 September 2002, written by Kate Warner. Kate spent over 250 hours on the project, and received research assistance from Jenny Gawlik. Kate conducted a number of television, newspaper and radio interviews to promote the issues paper and met with a number of interested bodies to discuss the matters raised by the paper and receive informal responses to the paper. Over 20 written responses to the issues paper were received. It is intended that the final report with recommendation to the government will be written early in 2003.

Suspended sentences

The topic of suspended sentences was dealt with briefly in the Sentencing issues paper, where the need for further research on this topic was reiterated. Kate Warner has prepared an ARC Linkage Grant application for a postgraduate to undertake a thesis on this topic which was submitted in the December round. The sum of XX was applied for.

Sentencing young offenders

Originally part of the sentencing reference from the Attorney in 2001, this issue was not included in the Sentencing law reform project due to the different issues to be considered and the large size of the Sentencing project. It is intended that this topic will be the subject of an issues paper in 2003.

Bail

In 2001 the Attorney also referred issues relating to bail to the Institute. The main areas of concern were offenders re-offending while on bail, and the factors given consideration when deciding to grant bail. Due to difficulties in data access a detailed study of offending whilst on bail is not possible at this time. An initial investigation was approved by the Board and was begun in September. Police bail data was provided by Commander Tony Mulder and Sergeant David Richardson from the Police Online Charging System. Supreme Court bail data was provided by Kerry Worsley?? and Magistrates Court bail data for Hobart was provided by Jonathon Rees of the Justice Department. This data is currently being analysed by research assistants Jenny Gawlik and Cathrine Radley. It is intended that a research paper will be published in the first quarter of 2003. The Institute also provided assistance to the team working on the prison infrastructure project by providing them with access to the data received from the police online charging system.

Commissions of Inquiry Act

In 2001 preliminary research was undertaken into criticisms made by the Gilewicz Report in relation to the *Commissions of Inquiry Act*. On 12 March 2002 the Attorney forwarded terms of reference to the Institute. The Institute sought interest from the legal profession to undertake the project, however, only one application was received and due to the cost it was rejected. In November a graduate student, Michael Jackson, was employed to write the report, under the guidance of Don Chalmers and Kate Warner, to be completed in February 2003.

Criminal Law (Detention and Interrogation) Act

The issues paper for this project was released in April 2002. Six responses were received. The final report is to be considered by the Board in January. It is anticipated that it will be released and tabled in Parliament soon after.

Physical Punishment

This project was proposed in September 2001 by the Children's Commissioner, Patmalar Ambikapathy. The Board agreed that the project be undertaken in February 2002. An issues paper was written by Jenny Gawlik, Terese Henning and Kate Warner and was released in November, receiving a lot of media attention. Kate Warner conducted 6 television interview, approximately 20 radio interviews, and a number of newspaper interviews. Kate Warner and Jenny Gawlik also made presentations and held discussions with various groups around the state. Responses were due on December 16, although many were accepted after that date. At the end of December 45 responses had been received. It is anticipated that the final report will be given Board consideration in February 2003.

New law reform proposals and projects

Bioinformatics

In July, Don Chalmers was asked by Richard Bingham, secretary of the Department of Justice and Industrial Relations to consider and comment on the Centre for Bioinformatics Ethics Study by Dr Nicholas Tonti-Filippini on behalf of the Institute. In September, Don Chalmers met with Michelle Allen, the CEO of the Bioinformatics Board. They agreed that she would prepare the response to the Tonti-Fillippini paper with Professor Chalmer's assistance. Following round table discussions in November interested parties agreed that there should be one composite approach, with proposals for legislation to be placed before the next meeting in February.

Obsolete offences

In October the Attorney requested that the Institute undertake a project examining the need for the repeal of obsolete crimes and offences such as blasphemy. Graduate Holly Outram has been employed to write an issues paper on this topic, with the assistance of Kate Warner and Jenny Gawlik.

Adoption by same sex couples

In November the Attorney requested that the Institute undertake this project. Formal terms of reference were given in December. Graduate Clare Buxton has been employed to write an issues paper on this topic, to be completed by 28 February. She is working with the guidance and assistance of Sam Hardy (Lecturer in law) and Kate Warner.

Proposals not undertaken

- Mechanism for the review of police complaints

Complaints were received from members of the public about the mechanism for investigating and reviewing complaints against police. The Institute wrote to the Police Commissioner, the Ombudsman, the Bar Association, the Legal Aid Commissioner, community legal services and civil liberties groups in order to ascertain whether there was a real problem in this area and whether it is appropriate for the Institute to undertake a law reform project on this topic. Three responses were received. Upon consideration of the responses by the Board it was agreed that no law reform project should be undertaken on this topic.

Additional activities

Visit by Peter Lown

The Institute was visited by Peter Lown QC, Director of the Alberta Law Reform Institute (on which the Tasmania Law Reform Institute is based) in early February 2002. Peter Lown met with Board members and Anita Smith (representing the Attorney) and provided documents relating to the operations of the Alberta Institute. Peter Lown also conducted a staff seminar on the Institute's behalf, looking at the relationship between academia and law reform. His visit was very beneficial to the Institute.

Australasian Law Reform Agencies Conference

Don Chalmers attended this conference on the Institute's behalf (and at no cost to the Institute) in June, as Kate Warner was unable to attend. The Institute received a warm response, as well as comments and interest from other law reform bodies. South Australia, in particular, has continued to take an interest in our model.

Review of the Law of Negligence – medical indemnity

At the September Board meeting national activities in this area were discussed, particularly the release of the first report of the Review of the Law of Negligence. The Institute wrote to the Treasurer seeking involvement in this review at a state level. Kate Warner and Terese Henning attended a meeting on Friday 27 September to discuss the matter and were asked to prepare a brief document outlining the Institute's concerns in relation to the proposed reforms. Kate Warner did so (with the assistance of University staff Lynden Griggs and Julia Davis). No further news has been received from the Treasurer

Uniform succession laws

In his capacity as Board member of the Institute Don Chalmers has continued in his role as Tasmanian representative on the National Committee for Uniform Succession Laws.

Progress review meeting

On December 13 a progress review meeting was held. The Attorney General, Melinda Maddock, Richard Bingham and Board members attended. Professor Andrew Glenn, Simon Cooper (President of the Bar Association), Mr Chris Cunningham (President of the Law Society) were unable to attend. Problems with the operation of the Institute to date and plans and proposals for its future operations were discussed. Most notably it was agreed that sub-committees be formed, headed by Board members to oversee and guide law reform projects. It was also agreed that the Bar Association be asked to nominate a Board member.

Article in 'Reform'

Jenny Gawlik wrote an article about the Institute which was published in the Autumn 2002 edition of the Australian Law Reform Commission's journal, *Reform*.

Internet site management training

In December research assistant Jenny Gawlik received training so that she will be able to manage the Institute's web page. This will allow the Institute to deliver information online in a more efficient and up to date manner.

Volunteer workers

In September undergraduate students began performing volunteer research work for the Institute. This work is beneficial to the students in gaining research experience and is beneficial to the Institute, not only for the work they do, but also in giving us the opportunity to assess possible future employees for paid research work. A number of the graduates undertaking research assistant work over the summer period are former volunteer workers.

Summary of publications

Custody, Arrest and Police Bail, issues paper no. 1, March 2002

Sentencing, issues paper no. 2, August 2002

Physical Punishment of Children, issues paper no. 3, October 2002

3. Financial Statement for the period 1/1/01 - 31/12/02**Income**

Accumulated funds from 2001		\$27,211
Grant from State Govt Dept of Justice & Ind. Rel. (exclusive of GST)		\$65,000
J Gawlik's insurance claim on stolen computer		\$1,200
Total Income		\$93,411

Expenditure

Salaries		
Salary	\$21,607	
Superannuation	\$1,843	
Payroll Tax	\$1,470	
Workers Comp. Insurance	\$151	\$25,071
Non-Salary expenditure		
Visitors, entertainment, catering	\$987	
General travel	\$257	
Other staff development	\$55	
Computer purchase	\$1,590	
Consumables	\$166	
Printing	\$2,176	\$5,231
Total Expenditure		\$30,302

Total Income less Expenditure 2002 **\$63,109**

Estimated University Contributions (in kind)

Professor Kate Warner:		
work as Director: 40 hours x \$171*		\$6,840
work as editor, writer of reports and consultant:		
Sentencing: 330 hours x \$171		\$56,430
Arrest and custody: 15 hours x \$171		\$2,565
Physical punishment: 39 hours x \$171		\$6,669
Terese Henning: work as editor and writer of reports		
84 hours x \$121*		\$10,164
Professor Don Chalmers:		
attendance at ALARC conf.: 24 hours x \$171*		\$4,104
Bioinformatics project: 15 hours x \$171*		\$2,565
National Committee for Uniform Succession Laws:		
2 hours x \$171*		\$342
Commissions of Inquiry project briefings:		
1 hour x \$171		\$171
Office and running costs**		\$3,600
Computer support (Peter Edwards) 16 hours x \$79*		\$1,264
Computer training course and software		\$820
Total		\$95,534

*University consultancy policy charge out rates.

** includes telephone, office rental, computer depreciation, furniture depreciation, stationary, heating and electricity and use of fax, photocopier and printer.