

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 2017

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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.

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. The founding Director, Emeritus Professor Kate Warner, retired from the position in December 2014. The current Director, Assoc Prof Terese Henning was appointed in April 2015.

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

Associate Professor Terese Henning, Director of the Institute, appointed by the Vice-Chancellor of the University of Tasmania
Professor Margaret Otlowski, Dean of the Faculty of Law at the University of Tasmania

The Honourable Justice H Wood, appointed by the Honourable Chief Justice of Tasmania

Simon Overland, appointed by the Attorney-General (resigned Aug 2017)

Kristy Bourne, appointed by the Attorney-General (commenced Nov 2017)

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 at the invitation of the Board

Legal researchers during 2017

Dr Helen Cockburn BA, LLB (Hons), PhD

Dr Rebecca Bradfield BA/LLB (Hons), PhD

Bruce Newey BA, LLB, LLM

Rikki Mawad BA/LLB (Hons), MCDR

Taya Ketelaar-Jones

Kate Hanslow

Dylan Richards

Kate Brown

Michael Stokes

Leigh Sealy SC

Ken Mackie

Dr Elise Histed

2. Activities

(a) Board Meetings

The Board held seven meetings in 2017 (22 February, 29 March, 31 May, 27 September, 25 October, 22 November and 21 December). The first six meetings were held at the University of Tasmania Law Faculty, and the final meeting at Assoc. Prof Henning's home.

(b) Projects

Completed law reform projects

Court intermediaries

In June 2015, the Institute received a reference from the then Attorney-General to examine the feasibility of instituting an expert intermediary scheme as a special measure to facilitate the reception of evidence in criminal trials from child witnesses and witnesses with cognitive impairments in Tasmania.

The reference examined the special measures currently available in Tasmania to support people with communication needs throughout the criminal trial process. It considered the approaches in other Australian jurisdictions and overseas, concentrating on communication assistant schemes but also noted the range of special measures available to ensure victims, witnesses and accused persons with communication difficulties have equal access to justice.

In preparing the Issues paper on this reference, the Institute conducted a number of discussions with key stakeholders and subsequently co-hosted with the then Attorney-General, the Hon Dr Vanessa Goodwin, a Ministerial Roundtable attended by over 35 key stakeholders to obtain advice about key issues to be addressed in the Issues Paper.

Following the release of the Issues Paper and Easy Read Summary in May 2016, researcher Rikki Mawad travelled around Tasmania to consult with Tasmanians in over 20 communities. Ms. Mawad also met with young people in the Ashley Youth Detention Centre, people with disabilities who had interactions in the criminal justice system and stakeholders across the disability, education, justice and community sectors. She also hosted a Community Conversation on Access to Justice at the University of Tasmania in September 2016.

Approximately 20 written submissions and over 300 oral responses to the Issues Paper were received. Crown counsel, Kate Brown was seconded from the Office of the Director of Public Prosecutions to work with Rikki Mawad and the Director on the Final Report and Recommendations for this reference.

The draft Final Report and Easy Read English version were approved by the Board in late November 2017 for release in January 2018.

The report recommended significant changes to the State's criminal justice system including using appropriately trained communication experts (intermediaries) to assist victims, witnesses and defendants who have communication needs to engage with police, lawyers and the courts. It was recommended that intermediaries not be advocates, but rather act as independent advisors and quasi-translators for people with communication needs. They would provide expert advice to police, lawyers and judges about the best way to communicate with people with communication needs and may intervene in questioning that does not match their linguistic capacities.

The Institute's recommendations correspond with those made by the Royal Commission into Institutional Responses to Child Sexual Abuse that intermediary schemes should be implemented in all Australian jurisdictions. They would also ensure that Tasmania's laws are consistent with international human rights obligations.

Completion of the project was assisted by receipt of \$16,481.60 from the Solicitors' Guarantee Fund with an additional amount of \$5000 secured to cover the cost of producing Easy Read versions of both the Issues Paper and Final Report.

Dangerous Criminals

In October 2016, the President of the Prisoner's Legal Service Association requested that the Institute review the provisions in the *Sentencing Act 1997* (Tas) relating to the indefinite detention of declared dangerous criminals with a view to modernisation of the law, and achieving uniformity between the laws of Tasmania and other jurisdictions.

The Board decided that this was not an appropriate topic for a complete reform project, but it was accepted as an appropriate subject for a more limited response from the Institute, in the form of a research paper. At her regular meeting with the Attorney General in late 2016, the Director flagged this reference. The Attorney General originally expressed her intention to refer a broad-based review of the Tasmanian dangerous criminal legislation to the Institute. After the project had begun, however, the Institute was advised that the Government would review

that legislation in-house, but remained interested in receiving a research paper for consideration in undertaking that work.

Research papers provide background information on areas of law reform, but their preparation does not involve the publication of an Issues Paper, the undertaking of consultation, or the preparation of a Final Report with recommendations.

A final year Law undergraduate Ms Taya Ketelaar-Jones undertook her Honours research project on this issue, supervised by Dr Helen Cockburn. The student's work incorporated the broader terms of reference previously foreshadowed by the Attorney General. This preliminary research formed the basis for a Research Paper which was released by the Institute in July 2017. There was significant media interest in the paper.

Ongoing law reform projects

Consensual assaults

The Institute received a reference on the issue of consensual assaults from the then Attorney-General in May 2015. Questions about justifiable State intervention in consensual acts of violence pit the right to personal autonomy against the public interest in preventing violence. The issue is particularly complex where the violence occurs in the context of sports, sadomasochistic behaviours or partner violence.

Research focused on the tensions between the valuable role the provision plays and the importance of addressing public concerns about violence in the home, as well as the difficulties caused by outdated language. Recommendations sought to navigate these tensions and set out a potential reform that would preserve the function of the provision, eliminate outmoded language and address the failure of the provision to adequately address violence in the home.

An Issues Paper for this reference was prepared by Dr Helen Cockburn, and released in June 2017. Mr Dylan Richards was recruited to undertake the consultation phase of project, and to prepare the Final Report. After the release of the Issues Paper, the Institute received submissions from key stakeholders. A preliminary draft of the Final Report and recommendations was considered by the Board in December 2017, with further work to be completed in early 2018. A release date is expected of April 2018.

Responding to the Problem of Recidivist Drink Drivers

In 2013 the Tasmanian Institute of Law Enforcement Studies (TILES) and the University of Tasmania's Faculty of Law hosted an international workshop designed to map pathways in addressing the problem of recidivist drink driving. The workshop identified as one of the main issues in this area the poor fit of some criminal justice responses to instances of repeat drink driving.

The TLRI successfully obtained funding of \$16,481.60 from the Solicitor's Guarantee Fund to review options available to Tasmanian courts in sentencing recidivist drink drivers. A reference group was formed to provide expert advice. Members of the reference group were: Tasmania's former Chief Magistrate Michael Hill, Dr Isabelle Bartkowiak-Théron of the Tasmania Institute for Law Enforcement Studies at the University of Tasmania, Victor Stojcevski, Senior Policy Adviser, Magistrates Court of Tasmania and Liz Moore, Court Diversion Officer, Mandated Diversion team, Tasmanian Department of Justice.

Research focused on whether a therapeutic approach might be the most appropriate response in cases of repeat drink driving. As part of this research, the Institute constructed the State's first profile of repeat drink driving offenders. To undertake this aspect of the reference, the Institute obtained a further grant of \$14,214 from the MAIB. An Issues Paper was released in May 2017. The release was followed by stakeholder consultation sessions and receipt of submissions.

Following the close of submissions on 17 August 2017, Dr Bradfield presented an overview of key themes identified to the Board. Additionally, she was contacted by a representative of Carlton & United Breweries who expressed interest in making a late submission, as the company runs a program to promote responsible drinking, and wants to invest in programs in communities. The Final Report and Recommendations were reviewed and accepted by the Board at its meeting in January 2018. The Report will be released in April 2018.

Review of the Guardianship and Administration Act 1995 (Tas)

The Attorney-General first approached the Institute in 2015 to review the operation of the *Guardianship and Administration Act 1995 (Tas)*. The Act covers the laws relating to people with disability who, because of their disability are unable to make decisions about their personal and financial matters, or medical treatment. The purpose of the review was to determine whether the policies reflected in existing guardianship laws are still current, sustainable and appropriate in today's society, and will be responsive to meet future challenges and expectations.

Community attitudes towards disability have changed since Tasmania's Guardianship laws were first introduced, and this review aims to ensure that reforms are consistent with the international human rights framework and are responsive to the needs of all Tasmanians. A background paper was prepared for the Board's consideration at its meeting in February 2016.

In 2017, the Institute obtained a grant of \$120,000 from the Solicitors Guarantee Fund to conduct the reference, with \$110,000 to be devoted to the employment of a researcher on the project. The Institute called for expressions of interest through the Law Society of Tasmania and through alumni networks for a suitably qualified person to work as the researcher on this project. Ms Kate Hanslow, a private practitioner, was recruited and commenced work on the project in late July 2017.

An Issues Paper was released in December 2017, together with an Easy Read version. The paper was the first comprehensive review of the Act since it was introduced more than 20 years ago. The paper presented a range of options for reforming the laws in Tasmania including new ways to provide people with disability with support to make their own decisions.

The TLRI review of the Act focuses on the decision-making and other human rights of people with disability. It examines the roles of administrators, guardians, persons responsible, the Guardianship and Administration Board and the Public Guardian in making substitute decisions for people who are unable to make their own decisions.

A short video has been released, and consultation sessions held with various groups to invite submissions.

Consultation will remain open until 19 March 2018, and it is anticipated that the Final Report and recommendations will be released in about July 2018.

Review of the Judicial Review Act 2000 (Tas)

The Institute received a request from the Community Legal Centres of Tasmania and the Law Society of Tasmania in September 2016 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. The Board accepted the reference in November 2016. A successful application was made to the Law Foundation of Tasmania for funding to support the completion of the reference, with a grant of \$21,345 being obtained.

Mr Michael Stokes initially agreed to write the Issues Paper and Final Report for this reference. A reference group consisting of experts in this area of the law was established to assist with the project. Its members are, Michael Stokes, Prof Matthew Groves, Terese Henning, Ben Bartl, and Claire Bookless. It is expected that the Issues Paper will be presented to the Board in February 2018. Due to Mr Stokes move interstate, Mr Dylan Richards has been recruited to undertake the consultation phase, and to prepare the Final Report and recommendations. The consultation with key stakeholders will be completed by approximately May 2018 and the Final Report prepared by the end of August 2018.

A Review of the fitness to plead provisions in the Criminal Justice (Mental Impairment) Act 1999 (Tas) and the defence of insanity in s16(3) of the Criminal Code 1924 (Tas).

In October 2016, the then Attorney-General requested that the Institute review the options for clarifying the defence of insanity in s 16(3) of the Tasmanian *Criminal Code 1924* 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. The Board accepted this reference at its meeting in November 2016.

Dr Rebecca Bradfield is undertaking the work on this reference. The Institute obtained \$87,171 to conduct the review from the Solicitors’ Guarantee Fund in December 2016. A reference group was established, consisting of The Hon Justice Helen Wood, Dr Aaron Groves, Mr Daryl Coates SC, Ms Yvonne Chaperon, Ms Marita O’Connell and Dr Jeremy Prichard. The group met for the first time in late September 2017 to review a preliminary first draft of the unfitness section of the Issues Paper, together with an overview document. At that time, the insanity section had not yet been developed. Group members provided valuable insights into how these laws operate in practice, and about the availability and accuracy of relevant data.

It is anticipated that the Issues Paper will be ready for consideration by the Board at its meeting in April 2018, after the reference group reviews it in March 2018. The Issues Paper and an Easy Read version will be released for public consultation in mid to late May 2018. Public comment and consultation will take place May to July 2018. Preparation of the Final Report will be carried out from August–October 2018.

Review of the Tasmanian Constitution Act 1934

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, (supported by funding of \$7,335 obtained from the Law Foundation of Tasmania) 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.

This second stage of the project seeks to identify the most appropriate options for reform in the interests of the Tasmanian community, governance and legal system. An application to the Law Foundation for funding resulted in a grant of \$33,114 to support work on this reference.

This stage will analyse and recommend the most appropriate ways to reform the Tasmanian Constitution in response to the wide-ranging deficiencies that were identified in Stage 1. It will produce new knowledge about appropriate ways of clarifying and strengthening existing constitutional arrangements in Tasmania.

A project reference group was established, and materials passed on to researcher Leigh Sealy. A meeting has been held to brief him.

Mr Sealy is preparing a draft Issues Paper, however due to his other legal commitments it is now expected that he will not complete the Issues Paper until September 2018. He is nonetheless committed to completing the project. The Issues Paper will be disseminated late in 2018. The Final Report is now expected early in 2019.

New law reform projects and proposals

The Institute considered three new proposals for law reform projects in 2017. Two were accepted and one is still under active consideration.

Notional Estate Legislation for Tasmania

Following an approach by the 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 Institute's Board accepted the reference at its meeting in February 2017. A grant of \$65,022 was approved from the Solicitors Guarantee Fund to carry out the research.

The project examines whether Tasmanian succession law should be reformed such that, if an eligible claimant establishes that they had not been adequately provided for from a deceased's estate, their claim would no longer be limited to the deceased's actual estate. It would also take into account the deceased's Notional Estate, allowing the court to include other property outside the estate as being within it. This would extend the potential property that could be subject to a family provision claim, possibly increasing the money available for distribution and so notionally increasing the value of the estate.

A significant amount of work was done in considering uniform succession laws in Australia between 1997 and 2009 via the Queensland Law Reform Commission and the NSW Law Reform Commission. Notional estate provisions were recommended as part of that reform but have thus far only been adopted in New South Wales.

Researchers Dr Elise Histed, Mr Ken Mackie and Mr Dylan Richards have been employed to work jointly on the project. Substantial work has been done on a first draft of the Issues Paper and it is anticipated that it will be released for consultation in May 2018.

The Impact of Social Media on Jury Deliberations and on Fair Trials

At its meeting in October 2017, the Board reviewed a suggested 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.

It was agreed that Institute staff would prepare a scoping document for presentation to the Board in early 2018, including looking into how this issue had been approached in other jurisdictions.

In accepting the reference, it was understood that this is a difficult problem to solve. The project would raise awareness of the issue, and look at the adequacy of directions to jurors. Some possible approaches could be de-identification of offenders, or allowing them to opt for judge-only trials. Jurors could be made to sign an agreement that they would not research defendants online.

The Institute has engaged a Supervised Research (First Class Honours) student, Ms Victoria Geason to undertake a Research Paper on this topic that may be converted into an Issues Paper after July 2018. Ms Geason is being co-supervised by Dr David Plater, Deputy Director of the South Australia Law Reform Institute at the University of Adelaide, and the TLRI Director.

Conversion Therapy

This reference is still under consideration, pending questions about funding sources, and the scope of the project.

It was referred to the Institute by representatives of the LGBTIQ community. Conversion therapy is sometimes also known as ‘reparative’ or ‘sexual re-orientation’ therapy. The UN High Commissioner for Human Rights has said that such therapy is “unethical, unscientific and ineffective, and may be tantamount to torture”.

If undertaken, the project would seek to determine to what extent conversion therapy occurs in Tasmania, whether the current state of the law in Tasmania adequately addresses the legal issues surrounding the practice of conversion therapy or whether law reform is required and, if so, what law reform options are available.

In Victoria, the matter has been addressed under the *Health Services Complaints Act 2016* (Vic), which introduced a statutory code of conduct for unregistered health service providers and empowered the Health Complaints Commissioner to take action against them.

The review would be conducted having regard to existing legislation and developments in other jurisdictions in Australia and overseas. If undertaken, it is likely to involve extensive consultation with the medical profession, medical and psychology organisations and the Tasmanian community, with a focus on the LGBTIQ community.

The Institute was approached by a prospective post graduate student in 2017, who expressed interest in undertaking the project for a Master’s degree. However, this student subsequently withdrew his candidature.

Anticipated law reform projects and proposals

The Institute also anticipates receiving references on:

- *A Review of Tasmania's Child Protection Processes in the Magistrate's Court;*
- *A Review of Tasmanian Strata law;*
- *Consolidation of Legislation Relating to Police Powers;*
- *A Review of Preliminary Proceedings*

(c) Additional 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.

Legislative Impact

The *Neighbourhood Disputes About Plants Act 2017* (Tas) was proclaimed and came into effect on 1 Dec 2017. The Act encompassed most of the Institute's recommendations made in its Final Report *Problem Trees and Hedges: Access to Sunlight and Views*, which was released in January 2016.

The Director of the Institute was invited to New Zealand in September 2017 to provide expert advice to the New Zealand Law Commission on vulnerable witnesses with reference to New Zealand Evidence legislation.

Other Research Projects and Priorities

In addition to work on references received from the Government, the legal community and the Tasmanian community generally, the Institute has set the following major research priorities for 2019-2020. Preliminary work has commenced on a number of these projects.

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

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, the University of Adelaide and the Victorian Justice Department and the University of New South Wales, on major reforms to the criminal justice process instituted to enable people with communication needs to participate in the justice process. The focus of the Tasmanian work is on the operation of the pre-trial recording of the entirety of the evidence of children and special witnesses under ss 6 & 6A *Evidence (Children and Special Witnesses) Act 2001* (Tas) which has implications for the allied development of an intermediary/communication assistant scheme for Tasmania (one of the Institute's recently-completed references).

The Institute has commenced work on this project and obtained ethics approval for it. Members of the legal profession who have worked with this legislation to date have been interviewed

about its operation, the benefits it offers witnesses and what more needs to be done to optimise the opportunity for children and other vulnerable witnesses to participate in the criminal justice process and give their best evidence. This work accords with recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse. It seeks to prevent the occurrence of the type of cases dealt with by the Commission by researching the optimum ways to elicit evidence from children and other vulnerable witnesses with communication needs that have hitherto prevented them from participating in the criminal justice process.

A Reference Group for this research has been created and includes: the Director and Deputy Director of Public Prosecutions, the Assistant Deputy Registrar of the Supreme Court and representatives from the Criminal Bar. This project will be finalised by December 2020.

Prevention of Elder Abuse in Tasmania (PEAT)

This research team is a cross-disciplinary group of academics across 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). 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. To date the PEAT team has undertaken work on the current State and national regulatory framework relevant to elder abuse in Tasmania and on the recognition of abusive behaviour at the institutional level. Based on this work, the research group was requested to provide expert advice to the Coroner, Olivia McTaggart in relation to her investigation in *The Matter of Mrs Mackozdi*. The Institute's contributions to research into the prevention of elder abuse and neglect also intersects with the Institute's review of the Tasmanian *Guardianship and Administration Act 1995*.

In November 2017 the Institute, on behalf of the PEAT researchers, hosted a Symposium on Elder Abuse and Neglect in Tasmania at Parliament House. The Symposium brought together over 60 representatives from the aged care sector, the legal profession, police, unions, clinicians, policy makers and academic researchers to examine the social, legal, and clinical dimensions of elder abuse and neglect in Tasmania. Professor Wendy Lacey addressed attendees as a national expert who was part of the Australian Law Reform Commission's report on Protecting the Rights of Older Australians. Three key themes were discussed as part of the event:

- Ageism and the Culture of Invisibility
- Giving Older People a Voice
- Financial Elder Abuse

The Symposium attendees made 7 key recommendations for reform to prevent and remedy elder abuse and neglect in Tasmania:

1. Improve knowledge of elder abuse through research to improve understanding of the incidence, vulnerability factors and enabling culture.
2. Enhance strategies to address ageism including the development and use of guidelines promoting positive ageing language and images consistent with commitment under the *Strong, liveable communities: Tasmania's Active Ageing Plan 2017-2022* to address ageism and combat age-related stereotypes.
3. Promote community understanding and shared responsibility for addressing elder abuse and neglect through awareness raising campaigns.
4. Embed a human rights culture within the Tasmanian community through the adoption of a Tasmanian Charter of Human Rights, containing a duty incumbent on all persons and public authorities to act consistently with human rights. The Charter must also contain mechanisms to allow individuals to seek remedy where protected human rights are violated.
5. Endorse and adopt the recommendations of the Australian Law Reform Commission's report into Elder Abuse – A National Legal Response including the adoption of state and territory adult safeguarding laws to give adult safeguarding agencies the role of safeguarding and supporting at risk adults.
6. Establish a transparent, independent and quick State-based complaints mechanism for taking, investigating and addressing elder abuse and neglect, including broad provisions for 3rd parties to make complaints.
7. Ensure that appropriate independent legal support, including access to mediation and family conferencing, is available to all adults including prior to signing residential aged care and related contracts.

The PEAT research team and the Institute in partnership with the University of Melbourne were also shortlisted for an ANROWS grant in 2017 and also narrowly missed a medium grant from the Tasmanian Community Fund.

Evaluation of Tasmanian Problem-Solving Courts

In partnership with the Tasmanian Institute of Law Enforcement Studies, the Institute is continuing research into the Tasmanian problem-solving courts. As well as the work being undertaken with the Tasmanian Institute of Law Enforcement Studies (TILES), on the operation of the Drug Court and Mental Health Diversion list, the Institute is seeking to establish an evaluation mechanism for a Recidivist Drink Driving list in Tasmania with other key stakeholders. This work has relevance to the Institute's reference on Responses to the Problem of Recidivist Drink-driving and to the Reference on Unfitness to Plead and the Defence of Insanity.

Contribution to the Construction of a Criminal Order Repository

Throughout 2017 the Institute has been a key stakeholder as part of the bid to create a new Criminal Order Repository (COR) through the Justice Connect and digital transformation projects in the Department of Justice and associated agencies. The TLRI aims to work with ICT experts in industry and the tertiary sector to ensure that the systems developed for Tasmania will enable us to conduct quality research that will create a strong evidence base for reform. The data linkage opportunities and enhanced data capturing that will come from the

Justice Connect infrastructure have the potential to transform the way the Institute undertakes law reform research in Tasmania. This work is relevant to all TLRI research and references.

Researcher in Residency Program

The Institute has continued the ‘Researcher in Residency’ program begun with funding received for 2017-2018. A pilot program has been successfully established. To maintain this program will require continued funding at the level received for 2017-2018. A major component of this work is to foster law reform partnerships with the Department of Foreign Affairs and Trade in the arena of rights based education and empowerment for women and girls of the kind undertaken in relation to the *Girls Gotta Know* India pilot in 2017.

In addition, the program involves secondments from various sectors in the Tasmanian legal profession. Through the Director of Public Prosecutions, the Institute arranged for a Crown Law officer, Ms Kate Brown, to be seconded to the TLRI to work on the Intermediary/Communication Assistants reference for a number of months. The Institute is currently employing, Ms Kate Hanslow and Mr Dylan Richards, from the private profession. Ms Hanslow is undertaking the *Review of the Guardianship and Administration Act 1995* (Tas). Mr Richards is working on the review of s 182(4) of the *Tasmanian Criminal Code 1924*, and the Notional Estates project, and will also finalise the Review of the *Judicial Review Act 2000* (Tas).

International Partnerships and Projects

The Institute is working towards a partnership agreement with the OP Jindal Global University in India. The partnership will enable student law reform exchanges as well as opportunities for teaching and research partnerships.

The Institute is also working with the Tasmanian Office of the Department of Foreign Affairs and Trade to explore opportunities to contribute to law reform in the Asia Pacific Region. In 2017, the Institute was part of several discussions with representatives of DFAT and also assisted to host visiting Nepalese MP Mahalaxmi Updadhay ‘Dina’.

The Institute is also a key part of the University of Melbourne-led Disability Access to Justice Research Consortium. The Consortium is comprised of over forty researchers from Universities and Disabled People’s Organisations in Australia and New Zealand who are focused on co-produced, cross-disciplinary research on measures to improve access to justice for people with disability.

Expanding and Modernising Measures for Community Consultation

The Institute has sought to continue its efforts in this regard and to consolidate measures commenced in 2016 by:

- establishing and maintaining a Facebook platform in 2017;
- offering Easy Read versions of relevant Issues Papers and Final Reports (begun in 2016) including for the Review of the Guardianship and Administration Act Issues Paper and Court Intermediaries Final Report;

- producing short videos on relevant references to encourage community participation and responses to Law Reform projects. The videos are available through the University of Tasmania YouTube page, the Institute's website and the Institute's Facebook Page.

TLRI Scholarship and Bursary Program

The Institute seeks to continue its work in establishing scholarships and bursaries by establishing a TLRI Scholarship Trust, to enable University of Tasmania undergraduate and post-graduate students to work on law reform projects. Work is underway on this priority and \$30,000 seeding funding has been obtained. The Institute has consulted staff of the University Foundation, with a view to identifying potential donors, and developing materials required for establishment of the Trust.

Clinical Legal Education

The Institute commenced work with the Clinical Legal Education program in the Law Faculty to provide work integrated learning opportunities in law reform as a practicum for undergraduate students. One student undertook work on this basis with the Institute on a defined area of research for the review of the *Guardianship and Administration Act*.

Meetings with the Attorney-General

In 2017 the TLRI Director and key staff met with Attorney-General The Hon. Vanessa Goodwin MLC in February, Acting Attorney-General, the Hon. Matthew Groom MP in June and August and Minister for Justice, the Hon. Elise Archer MP in December. The Institute also met with Heads of Agency in Justice on three additional occasions to discuss various research projects relating to Tasmania's problem solving courts.

Major funding success

The TLRI obtained additional funding of \$50,000 for 2019-2020 from the SGF in order to maintain its law reform work at a new and advanced level set out in the 2016 Annual Report. The Institute also made a budget submission to the 2018-19 Tasmanian State Budget to increase the annual allocation to \$150,000 per annum from 2018-19.

Student Engagement

The Institute continued to be assisted by undergraduate students performing volunteer work for the Institute. The work is beneficial to the students in gaining an insight into the work of the Institute 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. In 2017, two final year students undertook research related to ongoing Institute projects and preliminary examination of proposals for reform in fulfilment of the requirements of the supervised research component of their Honours degree. The topics covered were, the *Guardianship and Administration Act 1995* (Tas); and the Recidivist Drink Driving reference.

Laura Michaelson, a PhD candidate at the Faculty of Law, worked for the Institute to advance a proposed longitudinal study of the therapeutic jurisdiction of the Magistrates' Court.

Additionally, a student enrolled in the CLE unit of the Law Degree, assisted in finalisation of the Issues Paper on the *Guardianship and Administration Act 1995* (Tas).

(d) Addresses, presentations and consultations

In addition to providing Reports to the Government on references undertaken by the TLRI, the Government also sought the Institute's advice on the following Bills which was provided:

- Criminal Code Amendment (Sexual Assault) Bill 2017;
- Sentencing Amendment (Phasing Out Suspended Sentences) Bill 2017;
- Anti-Discrimination Amendment Bill 2016;
- The Limitation Amendment Bill 2017;
- Criminal Code Amendment (Dangerous Driving) Bill 2017;
- Evidence and Related Legislation Amendment Bill 2017;
- Criminal Code Amendment (Sexual Assault) Bill 2017

Associate Professor Henning was invited to provide advice to the New Zealand Law Commission about reforms to their Evidence Act in Wellington, NZ and to chair a panel on the Evidence of Vulnerable Witnesses at the New Zealand Law Reform Conference on the 7th and 8th September 2017.

(e) Public appearances, community and media engagement

The Institute's media profile and reach continues to deepen with the Institute obtaining 147 items in 2017. The cumulative audience of those items is 2,040,099 with an ASR (Advertising Space Rate) of \$401,961.

The following is a representative sample of community engagement during 2017:

- Associate Professor Henning, Ms Rikki Mawad, Ms Kate Hanslow, Mr Dylan Richards, and Dr Rebecca Bradfield spoke to a number of key stakeholders about on-going TLRI references to provide advice about those references, to seek feedback on them and to discuss points of particular relevance to those stakeholders.

In conjunction with the release of the Issues Paper, *Responding to the Problem of Recidivist Drink Driving*, in May 2017 the Institute convened a number of events including:

- A public launch of the Issues Paper with Dr Rebecca Bradfield, Dr Isabelle Bartkowiak-Theron, Associate Professor Terese Henning and former Chief Magistrate, Mr Michael Hill.
- Dr Bradfield and Assoc Prof Terese Henning participated in a number of information sessions with key stakeholders including with Community Legal Centres, the Tasmanian Magistrates, Tasmanian Problem Solving Court Administrators and Tasmanian Community Corrections officers.

Consensual Assault

- In June, in conjunction with the launch of Issues Paper No, 24, *Consensual Assault*, Dr Helen Cockburn and Mr Dylan Richards consulted with a range of stakeholders.

- Research and discussions focused on the tensions between the valuable role the provisions play and the importance of addressing public concerns about violence in the home, as well as the difficulties caused by outdated language. Recommendations sought to navigate these tensions and set out a potential reform that would preserve the function of the provision, eliminate outmoded language and address the failure of the provision to adequately address violence in the home.

Intermediaries and Witness Special Measures

- In July 2017 Terese Henning and Rikki Mawad addressed the annual conference of Crown solicitors on Australian Intermediary Schemes;
- Associate Professor Henning and Ms Rikki Mawad addressed the Tasmanian Legal Aid Conference in Hobart on the 20th October 2017 about the Intermediaries/Communication Assistant reference;
- In July 2017 Ms Kate Brown and Ms Rikki Mawad organised a public lecture at the University of Tasmania by Her Honour Judge Lees of the UK Circuit Court on the UK Intermediary Scheme;
- In July 2017 Ms Kate Brown and Ms Rikki Mawad organised a staff seminar at the Law Faculty by Her Honour Judge Lees of the UK Circuit Court on the UK Intermediary Scheme;
- Terese Henning spoke as a panel member to recruits at the Police Academy in May 2017;
- In September Associate Professor Henning attended the New Zealand Law Commission Evidence Law Conference to chair discussion and provide advice on vulnerable witness measures including pre-recording and intermediary/communication assistant schemes.

Summary of publications

2017:

Responding to the Problem of Recidivist Drink Drivers, Issues Paper No. 23 (May).
Consensual Assault, Issues Paper No. 24 (June).
A Comparative Review of National Legislation for the Indefinite Detention of 'Dangerous Criminals', Research Paper No. 4 (July).
Review of the Guardianship and Administration Act 1995 (Tas), Issues Paper No. 25 (Dec).

2016:

Bullying, Final Report No 22 (January)
Problem Trees and Hedges: Access to Sunlight and Views, Final Report No 21 (January)
Facilitating Equal Access to Justice: An Intermediary/Communication Assistant Scheme for Tasmania? Issues Paper No 22 (May)

2015:

Terese Henning "Opinion Piece: Liquor Bill Crosses the Line of the Law", *The Examiner* October 11th 2015.

Review of the Law Relating to Self-Defence, Final Report No 20 (October)
Bullying, Issues Paper No 21 (May)

2014:

Neighbours' Hedges as Barriers to Sunlight and a View, Issues Paper No 19 (March)
Review of the Law Relating to Self-Defence, Issues Paper No 20 (November)

2013:

The Legal Issues Relating to Same-Sex Marriage, Research Paper No 3 (October).
Protecting the Anonymity of Victims of Sexual Crimes, Final Report No 19 (November).

2012:

Sexual Offences against Young People, Final Report No 18 (October).
Protecting the Anonymity of Victims of Sexual Crimes, Issues Paper No 18 (August).
Non-Therapeutic Male Circumcision, Final Report No 17 (August).
Sexual Offences against Young People, Issues Paper No 17 (May).
Evidence Act 2001 Sections 97, 98 & 101 and Hoch's case: Admissibility of 'Tendency' and 'Coincidence' Evidence in Sexual Assault Cases with Multiple Complainants, Final Report No 16 (February).

2011:

Consolidation of Arrest Laws in Tasmania, Final Report No 15 (May)
Racial Vilification and Racially Motivated Offences, Final Report No 14 (April)

2010:

Criminal Liability of Drivers Who Fall Asleep Causing Motor Vehicle Crashes Resulting in Death or Serious Injury, Final Report No 13 (October).
Racial Vilification and Racially Motivated Offences, Issues Paper No 16 (June).
Law of Easements in Tasmania, Final Report No 12 (March).

2009:

Evidence Act 2001 Sections 97, 98 & 101 and Hoch's Case: Admissibility of Tendency and Coincidence Evidence in Sexual Assault Cases with Multiple Complainants, Issues Paper No 15 (September).
Non-Therapeutic Male Circumcision, Issues Paper No 14 (June).
Law of Easements in Tasmania, Issues Paper No 13 (February).

2008:

Sentencing, Final Report No 11 (June).

2007:

A Charter of Rights for Tasmania? Final Report No 10 (October).
Criminal Liability of Drivers Who Fall Asleep Causing Motor Vehicle Crashes Resulting in Death or Serious Injury, Issues Paper No 12 (September).
Criminal Liability of Organisations, Final Report No 9 (April).

2006:

The Establishment of a Drug Court Pilot in Tasmania, Research Paper No 2 (December).
Warnings in Sexual Offences Cases Relating to Delay in Complaint, Final Report No 8 (October).
A Charter of Rights for Tasmania? Issues Paper No 11 (August).
Intoxication and Criminal Responsibility, Final Report No 7 (August).
Consolidation of Arrest Laws in Tasmania, Issues Paper No 10 (July).

2005:

Criminal Liability of Organizations, Issues Paper No 9 (June).
Warnings in Sexual Offences Cases Relating to Delay in Complaint, Issues Paper No 8 (June).
Intoxication and Criminal Responsibility, Issues Paper No 7 (March).

2004:

The Forfeiture Rule, Final Report No 6 (December).
Vendor Disclosure, Final Report No 5 (September).
Vendor Disclosure, Issues Paper No 6 (June).
Offending While on Bail, Research Paper No 1 (May).

2003:

The Forfeiture Rule, Issues Paper No 5 (December).
Physical Punishment of Children, Final Report No 4 (November).
Report on the Commissions of Inquiry Act 1995, Final Report No 3 (September).
Adoption by Same Sex Couples, Final Report No 2 (May).
Custody, Arrest and Police Bail, Final Report No 1 (March).
Adoption by Same Sex Couples, Issues Paper No 4 (February).

2002:

Physical Punishment of Children, Issues Paper No 3 (October).
Sentencing, Issues Paper No 2 (August).
Custody, Arrest and Police Bail, Issues Paper No 1 (March).

3. Financial Statement for the period 1/1/17 - 31/12/17

Summary of all TLRI Account Balances at 31 December 2017 (full details below)

	\$	\$
General Operating Funds	146,343.95	
MAIB – Recidivist Drink Drivers	0.00	
Solicitors’ Guarantee Fund – Guardianship Review	80,533.00	
Solicitors’ Guarantee Fund – Notional Estates	61,149.05	
Solicitors’ Guarantee Fund – Insanity & Fitness to Plead	47,124.00	
Law Foundation – Review of Judicial Review Act	21,345.00	
Law Foundation – Review of Tasmanian Constitution	33,114.00	
		389,609.00
Less balance earmarked for TLRI Trust PhD scholarships		30,000.00
Balance (surplus)		359,609.00

General Operating Funds

Balance at 31 December 2016 **30,678.61**

Income

Contract annual grant from State Govt Dept of Justice	50,000.00	
Additional SGF grant for 2017-18	200,000.00	
Royalty income	39.27	
		250,039.27

Expenditure

Salary (including superannuation, payroll tax and workers’ compensation insurance)	124,582.76	
Communications	443.50	
Travel	2,152.28	
Printing	4,548.06	
Catering	812.33	
Office administration	1,775.91	
Gifts	59.09	
		134,373.93

Balance (surplus) at 31 December 2017	146,343.95**
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***Note that \$30,000 of General Operating Funds has been earmarked for new TLRI Trust PhD scholarships. Thus, available balance is \$116,343.95*

MAIB – Problem of Recidivist Drink Drivers

Balance carried forward from 31 Dec 2016	10,447.58
Expenditure	
Salaries and salary on-costs	10,447.58
Balance	0.00

Solicitors' Guarantee Fund – Guardianship Review

Income	120,000.00
Expenditure	
Salaries and salary on-costs	39,467.00
Balance	80,533.00

Solicitors' Guarantee Fund – Notional Estate Legislation

Income	65,022.00
Expenditure	
Salaries and salary on-costs	3872.95
Balance	61,149.05

Solicitors' Guarantee Fund – Insanity & Fitness to Plead

Income	87,171.00
Expenditure	
Salaries and salary on-costs	40,047.00
Balance	47,124.00

Law Foundation – Review of Judicial Review Act

Income	\$21,345.00
Expenditure	
Salaries and salary on-costs	0.00

Balance	\$21,345.00
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Law Foundation – Review of Tasmanian Constitution

Income	\$33,114.00
Expenditure	
Salaries and salary on-costs	0.00

Balance	\$33,114.00
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University Contributions (in kind)

Academic Support*

Salary and salary on-costs

Terese Henning (Director) 30 days @ \$1,822	54,660.00
Prof Margaret Otlowski (Board member) 4 days @ \$1,822	7,288.00
Jeremy Prichard (Board member) 6 days @ \$1,388	8,328.00
Dylan Richards (researcher)	5000.00
	75,276.00

Administrative Support*

Salary and salary on-costs

David McGuire 4 days @ \$1,213	4852.00
Rachael Ormerod 4 days @ \$1,027	4108.00
Samantha Howlett 2 days @ \$1,027	2054.00
IT support 10 days @ \$1,027	10,270.00
	17,245.00

Office and Running Costs (Law Reform Inst. Office) **	9,732.00
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Furniture and new fittings	4,500.00
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Total	106,753.00
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* calculated on University consultancy rates, exclusive of GST

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