

TASMANIA
LAW REFORM
INSTITUTE

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Annual Progress and Financial Report 2004

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1. Structure, Board Members and staff

The Institute was established on 23 July 2001 and has now been operating for almost three and a half years.

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

Mathew Wilkins, nominated by the Bar Association

Kate McQueeney, nominated by the Women Lawyers Association

Legal researchers during 2004

Jenny Rudolf (also Executive Officer)

Benedict Bartl

Dr. Rebecca Bradfield

Kate Cuthbertson

Rohan Foon

Claire Hemming

Damian Jacobs

David Jackson

Amy Fearnley-Sander

Tenille Marsh

Victor Stojcevski

Leigh Wilson

2. Activities

Board meetings

The Board had four meetings in 2004 (10 Mar, 19 May, 8 Sept, 13 Oct), all held at the Law Faculty of the University.

Projects completed in 2004

Vendor Disclosure

This project considered the need for the enactment of legislation requiring vendor disclosure of certain matters prior to the sale of property. The project examined current practices in Tasmania and possible problems caused by a lack of vendor disclosure, as well as the experiences and approaches of other jurisdictions. The project was proposed by the Institute's Property Law Reform Group, and was approved by the Board in October 2003, with Mathew Wilkins, Lynden Griggs, Phil Kimber and Jenny Rudolf forming a sub-committee to oversee the project. An undergraduate law student, Leigh Wilson, prepared an Issues Paper (no. 6), which was released June 2004. Jenny Rudolf prepared the Final Report (no. 5) on the topic, which was released in September 2004, recommending the introduction of vendor disclosure in Tasmania.

Offending while on Bail

In 2001 the Attorney referred issues relating to bail to the Institute. This research paper examined the extent and nature of offending while on bail by seeing how often people who were charged were already on bail (for a previous offence) at the time of charge. The study also looked at the types of offences people were charged with, and the types of offences they were on bail for when charged. Data from four data-bases was sourced in order to build as complete as possible a picture of each defendant's bail history. The primary data source was the Police Online Charging System. This research paper (no. 1) was released in May 2004.

The Forfeiture Rule

The forfeiture rule provides that a killer cannot inherit from their victim. It was argued that in some cases, for example those where the killing is in response to severe domestic violence by the deceased, public policy does not necessarily require that the killer be disinherited. This project was proposed by Benedict Bartl, then an undergraduate student of the Faculty of Law. The project was approved by the Board in May 2003, with Kate McQueeney, Ken Mackie, Jenny Rudolf and Benedict Bartl forming a sub-committee to oversee the project. Benedict Bartl, Jenny Rudolf and Ken Mackie wrote the Issues Paper (no. 5), which was released in December 2003. Ken Mackie (Law Faculty senior lecturer) and Jenny Rudolf prepared the Final Report (no. 6), which was released in December 2004. The Final Report recommended the introduction of a Forfeiture Act, and made recommendations in relation to the detail of such an Act.

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 in November 2001. An issues paper was released in September 2002, written by Kate Warner. Over 20 written responses to the issues paper were received. Due to other priorities, the final report for this project was not

completed in 2004. It is intended that the final report with recommendation will be released in 2005.

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 successfully applied for an ARC Linkage Grant for a postgraduate to undertake a PhD thesis on this topic, with the Justice Department as industry partner. The sum of \$ 60,000 was granted in June 2003. Rachel Vermey accepted the Australian Postgraduate Award to undertake the research in December 2003. She began research in 2004, however, for personal reasons, she withdrew her candidacy in March 2004. The scholarship was then advertised nationally. Lorana Bartels was the successful candidate and commenced work on the project in August 2004.

Blasphemy and Treason

In October 2002 the Attorney requested that the Institute undertake a project examining the need for the repeal of obsolete crimes and offences such as blasphemy. Due to other priorities, the project has not been completed, however it is intended that a final report, containing recommendations, will be made in 2005.

Driving Causing Death (Jiminez)

This project considers the need for legislative and/or procedural change to address the criminal liability of drivers who fall asleep causing motor vehicle accidents resulting in death or other serious injuries. Following media attention about the acquittal of drivers who have fallen asleep thereby causing accidents resulting in the death of other road users, the Attorney-General indicated an interest in this issue being addressed by the Institute. The Board approved the project in October 2003, with Kate Warner, Philip Jackson and Kate Cuthbertson forming a sub-committee to oversee the project. Kate Cuthbertson is currently preparing an issues paper, to be released early in 2005.

Criminal Liability of Organisations (Corporate Manslaughter)

This project initially considers the desirability of introducing an offence of corporate manslaughter in Tasmania. However the project has now been re-framed in broader terms, considering the criminal liability of organisations more generally. Another important aspect of the project is a consideration of the sentencing options available when dealing with organizations. The importance of this issue was highlighted by a motion at the 2004 ALP State Party Conference recommending that the government conduct an investigation into the need for reform in this area. Benedict Bartl and Jenny Rudolf are currently preparing an issues paper, to be released early in 2005.

New law reform proposals and projects

Contempt of Court

This project will consider the need for legislation to clarify both the common law and existing statutory mechanisms surrounding contempts of court. Both the substantive law of contempts and the procedural law regarding prosecution for contempt require consideration. The project will consider contempt by publication, contempt in the face of the court, and contempt by disobedience of a court order. Separate issues papers are being prepared on these three areas of the law of contempt (by Amy Fearnley-Sander, Damian Jacobs and Tenille Marsh) for release in 2005.

Consolidating powers of arrest

This project considers the need for the enactment of legislation consolidating all powers of arrest. Currently police powers of arrest are scattered throughout approximately 30 pieces of legislation, with various different circumstances needing to exist before the power to arrest arises. The project will detail all police powers of arrest and consider the merits of introducing a consolidating statute. Consideration will also be given to ways of introducing more consistency in the criteria for arrest. An issues paper is being prepared by Victor Stojcevski, under the supervision of Terese Henning and Kate Warner, to be released in 2005. At a later stage consideration will be given to undertaking a wider project on consolidating police powers.

Intoxication

The project considers the need to clarify the law relating to intoxication in Tasmania.

Consideration is given to the different options for reform, such as:

- Re-affirming the recognised Code position - ie in accordance with Snow: intoxication is only relevant to specific intent crimes;
- Bringing the Code in line with the common law - ie intoxication is relevant to any mental element;
- Adopting the Draft Criminal Code / Criminal Code Act 1995 (Cth) s 8.

Consideration is given to the position in other Australian states and common law jurisdictions such as the UK, Canada and NZ. Dr Rebecca Bradfield is currently preparing an issues paper, under the supervision of Kate Warner which is to be released in early 2005.

Warnings in sexual offences cases relating to delay in complaint

The project will consider the warnings required to be given in sexual assault cases in jurisdictions where the Uniform Evidence Legislation operates. Concern has been expressed in a number of cases that the multitude and nature of the warnings required in sexual assault cases makes it unnecessarily difficult for trial judges to instruct a jury in such a way as to ensure that there is no basis for appeal. This project links in to the current review of the Uniform Evidence legislation being undertaken by the Australian Law Reform Commission. Claire Hemming has undertaken initial research and preparation of an issues paper, to be completed by Terese Henning, for release in early 2005.

Proposals not undertaken

The Voluntary Euthanasia Society proposed that the Institute undertake a law reform project on euthanasia. The Board sought the opinion of Professor Margaret Otlowski and the Attorney-General on the matter. The Attorney was of the view that as there had been a Parliamentary inquiry and some consultation on this issue in 1998 the matter did not need to be re-considered at this stage. Professor Otlowski felt that there was little point in revisiting the issue unless there was government support for the project. The Board agreed that the project not be undertaken.

Additional activities

Articles in 'Reform'

The Institute contributed to the Australian Law Reform Commission's journal, *Reform*, with an article on our Contempt project, as well as updates on our activities in the 'Reform Roundup' section of the journal.

Uniform defamation laws

Dr. Julia Davis and Dr. Dianne Nicol made a submission on behalf of the Law Reform Institute to the Standing Committee of Attorneys-General (SCAG) in response to the Committees' Discussion Paper entitled *Proposal for Uniform Defamation Laws*. The Discussion Paper contained 21 recommendations in total, five of which were the focus of the submission made by Drs. Davis and Nicol.

Uniform succession laws

The Institute formed a Uniform Succession Law Committee to consider proposals, as they arise from time to time, for and from the National Committee for Uniform Succession Laws. The Institute's committee is made up of Kate McQueeney (chair), Professor Chalmers, Peter Joyce and Paul Turner. Kate McQueeney, considered and responded to proposals from the Queensland Law Reform Commission at various times during the year.

Volunteer workers

The Institute continued to be assisted by undergraduate students performing volunteer research work for the Institute. The 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.

Addresses and presentations

Kate Warner made the following invited presentations on law reform issues:

3 March: Tasmanian Club (law reform)

22 March: National Seniors Association (law reform)

21 April: University Foundation (law reform)

12 June: Association of Australian Magistrates (Trends in Sentencing reform)

18 June: Association of Independent Retirees (Sentencing reform and community safety)

23 October: Human Rights Conference (gender, sexuality and law reform)

5 November: School for Seniors (law reform)

Funding Review

In accordance with clause 6.5 of the Institute's agreement, upon completion of the Institute's third year of operation the Institute undertook a funding review and reported to the Attorney-General on the adequacy of its funding in November 2004. This included projected funding requirements until 2011.

Summary of publications

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 1/1/04 - 31/12/04

| | | |
|--|------------|---------------------|
| Accumulated funds from 2003 | | \$90,210.56 |
| Income | | |
| Grant from State Govt Dept of Justice & Ind. Rel. (exclusive of GST) | | \$50,000.00 |
| Total Funds Available | | \$140,210.56 |
| Expenditure | | |
| Salaries | | |
| Salary | \$75221.69 | |
| Superannuation | \$6506.04 | |
| Payroll Tax | \$4985.43 | |
| Director's loading | \$2921.55 | |
| Workers Comp. Insurance | \$526.60 | \$90,161.31 |
| Non-Salary expenditure | | |
| Consumables | \$2728.15 | |
| General travel | \$3296.24 | |
| Publications | \$1372.00 | |
| Telephone (from August) | \$324.41 | |
| Asset Purchases | \$2955.00 | |
| Expenditure (Subject to FBT) | \$58.74 | \$10,734.54 |
| Total Expenditure | | \$100,895.85 |
| Balance of Funds as at 31/12/04 | | \$39,314.71 |

Linkage Grant Account (suspended sentences project)

| | | |
|--|--------------|---------------------|
| Accumulated funds from 2003 | \$ 15,871.00 | |
| Income | | |
| Commonwealth Grant | \$ 24,130.00 | |
| Tasmanian Justice Department Grant | \$ 6,595.00 | |
| Total Funds Available | | \$ 46,596.00 |
| Expenditure | | |
| Scholarship – Post graduate | \$ 12,916.40 | |
| Asset Purchases | \$ 673.96 | |
| Total Expenditure | | \$ 13,590.36 |
| Balance of Funds as at 31/12/04 | | \$ 33,005.64 |

University Contributions (in kind)**Academic Support****Salary and salary on costs*

| | |
|---|----------|
| Professor Kate Warner (Director) 40 days @ \$1,822 | \$72,880 |
| Professor Don Chalmers (Board member) 4 days @ \$1,822 | \$7,288 |
| Ms Terese Henning (Board member) 15 days @ \$1,283 | \$19,245 |
| Lynden Griggs, Professor Margaret Otlowski, Ken Mackie, Di Nicol and Julia Davis (Consultants) 10 days @ \$1,283 | \$12,830 |

Administrative Support*

| | |
|---|---------|
| David McGuire 4 days @ \$1,070 | \$4,280 |
| Rachel Evans 2 days @ \$827 | \$1,654 |
| Peter Edwards (computer) 4 days @ \$827 | \$3,308 |

Office and Running Costs (Law Reform Inst. Office)**\$8,773**Total****\$130,258**

* calculated on University consultancy rates

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