

TASMANIA
LAW REFORM
INSTITUTE

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Annual Progress and Financial Report 2008

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1. Structure, Board Members and staff

The Institute was established on 23 July 2001.

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

Lisa Hutton, 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

Legal researchers during 2008

Dr Rebecca Bradfield (also
Executive Officer)

Bruce Newey

Victor Stojcevski

Warwick Marshall

Lucy de Vreeze

Jason Allen

Suzannah Ball

Pauline Van Adrichem

2. Activities

Board meetings

The Board had six meetings in 2008 (27 February, 17 March, 9 April, 8 September, 5 November, 17 December), all held at the Law Faculty of the University.

Projects completed in 2008

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. Over 20 written responses to the issues paper were received. In December 2006 an additional matter was added to the terms of reference which required the Institute to 'consider whether the protection of society required legislative change to the *Sentencing Act* and the *Youth Justice Act* in relation to sentencing of sexual offenders'. The final report was released in June 2008. It contained 96 recommendations to improve the sentencing system in Tasmania.

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 highlighted. Kate Warner and Terese Henning 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 2003. The scholarship was then advertised nationally. Lorana Bartels was the successful candidate and commenced work on the project in August 2004. She was awarded her PhD in 2008. This research also provided the basis for the chapter dealing with parole in *Sentencing*, Final report 11, 2008.

Ongoing law reform projects

Easements and analogous rights

In August 2007, the Board approved a project on the laws of easement. This project resulted from a request to consider the issue from a member of the public. It commenced in March 2008. Initial work was carried out by Kirsten Muskett as a supervised research project, under the supervision of Lynden Griggs. The project reviews the current laws of easements and analogous rights to determine whether they currently meet community expectations and needs. The review provides a report of the current law of easements and outlines possible areas for reform, considers the current legislative requirements in Tasmania for the creation, variation and termination of easements, and considers the interaction of the legislation with the current common law requirements. The Issues paper is due for release in February 2009.

Hoch project

This project was approved by the Board in November 2006 and will consider the operation of sections 97, 98 and 101 of the *Evidence Act 2001* in the context of sexual offence cases. The rules governing the admissibility of tendency or coincidence evidence continue to cause difficulties for complainants, prosecutors and judges,

particularly in cases of sexual assault involving multiple complainants with some association. Consideration will be given to the need for amendments to the law in order to lessen the exposure of a complainant to repeated cross-examination, and to avoid repeated voir dices, appeals and retrials. The issues paper is due for release in February 2009.

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. The Issues paper was released in July 2006. Four responses were received to the issues paper. The final report is close to finalisation and will be released in 2009.

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. An issues paper was released in August 2007. The Institute received 9 responses. A final report will be prepared for release in 2009.

Contempt of Court

This project considers 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. Draft issues papers are in various stages of preparation. In 2008, Dr Brendan Gogarty and Jason Allen have been working on this project under the supervision of Dr Di Nicol.

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 the project remains on the Institute's agenda.

New law reform proposals and projects

Male circumcision

The project was the result of a request from the Children's Commissioner to review the current law regulating the circumcision of male children in Australia, with particular reference to Tasmania. The Board approved the project on 27 February 2008. Work is being carried out by Warwick Marshall, as a Masters project, under the supervision of Professor Margaret

Otlowski and Professor Kate Warner. Funding support for this project has been received from a postgraduate research scholarship. The project will examine the criminal and civil responsibility of those who perform, aid or instigate the circumcision of male children.

Proposals not undertaken

The Institute considered eight proposals for reform projects, one was accepted (circumcision), one is under review (tenancy) and six were rejected. The details of those proposals not undertaken are set out below.

| Topic | Proposer | Reasons |
|--|------------------------------------|--|
| The defence of reasonable correction in section 50 of the <i>Criminal Code</i> | Commissioner for Children Tasmania | Not appropriate to review the Institute's 2003 report. |
| Sino food regulations | Peter Xiao | Not appropriate. |
| Civil procedure reform | Violet Pretty | Not appropriate as too broad and beyond resources. |
| Psychiatry as a science | Dr Govindasamy | Not appropriate as beyond scope and expertise. |
| Anti-corruption commission | Law Society of Tasmania | Not appropriate. If political willingness, may be appropriate to investigate issue of appropriate model. |
| Strata Titles Act 1998 s 91(1)(b) | Member of public | Not appropriate, but wrote to Attorney-General and Premier in relation to issue. |
| Tenancy legislation | Member of public | Waiting for terms of reference from the Tenant's Union of Tasmania. |

Additional activities

Uniform Succession Laws

Mr Ken Mackie continued to represent the Institute on the National Committee for Uniform Succession Laws. The process is nearly complete and the final report has been prepared and will be submitting to the Standing Committee of Attorneys-General in February 2009.

Articles in 'Reform'

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

Articles in Law Society

The Institute contributed to the Law Society *Law Letter* with articles about various law reform projects.

Student volunteer work

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.

Extension of Institute Agreement

The Institute's founding agreement was due to expire on 31 December 2008. The agreement provides that it may be extended by the written agreement of the parties. There is 'in principle' agreement for a five-year extension and appropriate written documentation is being prepared.

Addresses and presentations

Professor Kate Warner made the following invited presentation:

22 August: Law fest (sentencing project)

Ms Terese Henning made the following invited presentations:

2 June: Round Table conference (Human rights project)

27 October: War Widows Guild (Human rights project)

Dr Rebecca Bradfield made the following invited presentation:

25 July: Providers of Sexual Assault Support (Hoch project)

Professor Kate Warner and **Dr Rebecca Bradfield** also represented the Institute at the Australasian Law Reform Agencies Conference, 10 – 12 September 2008.

Summary of publications

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 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 1/1/08 - 31/12/08

| | | |
|--|-------------|--------------------------|
| Accumulated funds from 2008 | | \$51,994.72 |
| Income | | |
| Standard grant from State Govt Dept of Justice & Ind. Rel. (exclusive of GST) | | \$50,000.00 ¹ |
| Total Funds Available | | \$142,314.03 |
| Expenditure | | |
| Salaries | | |
| Salary | \$36,413.67 | |
| Superannuation | \$3,637.35 | |
| Payroll Tax | \$2,733.73 | |
| Workers Comp. Insurance | \$288.25 | \$43,073.00 |
| Non-Salary expenditure | | |
| Consumables | \$3,273.04 | |
| Computer software and licensing costs | \$71.00 | |
| General travel | \$3,256.38 | |
| Transport & Fuel | \$4,296.44 | |
| Publications | \$3,177.00 | |
| Telephone | \$1,176.45 | |
| Expenditure (Subject to FBT) | \$85.29 | \$15,335.60 |
| Total Expenditure | | \$58,408.60 |
| Balance of Funds as at 31/12/08 | | \$43,586.12 |

Linkage Grant Account (suspended sentences project)

| | | |
|--|------------|-------------------|
| Accumulated funds from 2007 | \$6,536.15 | |
| Income | | |
| Commonwealth Grant | \$0.00 | |
| Tasmanian Justice Department Grant | \$00.00 | |
| Total Funds Available | | \$6,536.15 |
| Expenditure | | |
| Scholarship – Post graduate | \$4,815.79 | |
| Consumables | \$45.45 | |
| General Travel | \$554.55 | |
| Printing | \$776.40 | |
| Total Expenditure | | \$6,192.19 |
| Balance of Funds as at 31/12/08 | | \$343.96 |

¹ For the 3 year period 2005-2008 the Justice Department increased the annual grant by \$25,000 which was paid in advance in a lump sum of \$75,000.

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

| | |
|--|----------|
| Professor Kate Warner (Director) 21 days @ \$1,822 | \$38,262 |
| Professor Don Chalmers (Board member) 2 days @ \$1,822 | \$3,644 |
| Terese Henning (Board member) 12 days @ \$1,283 | \$15,396 |
| Ken Mackie (consultant) 2 days @ \$1,283 | \$2,566 |
| Di Nicol (consultant) X day @ \$1,283 | \$1,283 |
| Lynden Griggs (consultant) 14 days @ \$1,283 | \$17,962 |
| Brendan Gogarty (consultant) X days @ \$1,283 | |

Administrative Support*

| | |
|---------------------------------------|---------|
| David McGuire 3 days @ \$1,070 | \$3,210 |
| Rachael Ormerod 3 days @ \$827 | \$2,481 |
| Antony Cave (computer) 4 days @ \$827 | \$3,308 |

Office and Running Costs (Law Reform Inst. Office)** \$8,624

Total \$96,736

* calculated on University consultancy rates

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