

T A S M A N I A  
**LAW REFORM**  
I N S T I T U T E

# CONTEMPT OF COURT

Project Plan

## 1. Extent of the project

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 law surrounding contempts of court has been the impetus of several projects by law reform bodies around the nation. The ALRC released its report *Contempt*, in 1987,<sup>1</sup> the NSWLRC followed in June 2003 with a report *Contempt by Publication*,<sup>2</sup> and the LRCWA released *Review of the Law of Contempt* at the same time.<sup>3</sup> The several reports have identified major inadequacies with the law of contempts as it presently stands, primarily on grounds of the vague nature of the existing common law of contempts, and further on grounds of the summary nature of contempt proceedings and associated concerns with ensuring due process.<sup>4</sup> The LRCWA has also criticised the anomalous status of contempts as an area of criminal law largely unregulated by the *Criminal Code Compilation Act 1913* (WA) and the *Sentencing Act 1995* (WA). Preliminary research indicates that the law and procedures for prosecuting contempts in Tasmania can be criticised on the same grounds.<sup>5</sup>

The major areas for investigation relating to these inadequacies are:

- The appropriate boundaries of the law of contempts based upon competing policy objectives regarding individual rights to justice and transparency in the administration of justice;
- Whether the scope of the current common law of contempts exceeds appropriate boundaries, or fails to clearly define appropriate boundaries;
- The mental elements for offences based upon contempts;
- The content of defences to contempt prosecutions;

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<sup>1</sup> Australian Law Reform Commission, 1987. *Contempt*. Report 35. Australian Government Publishing Service, Canberra.

<sup>2</sup> New South Wales Law Reform Commission, 2003. *Contempt by Publication*. Report 100. NSWLRC, Sydney.

<sup>3</sup> Law Reform Commission of Western Australia, 2003. *Report on Review of the Law of Contempt*. Report 93. LRCWA, Perth.

<sup>4</sup> LRCWA 93, p 3- 4.

<sup>5</sup> *Criminal Code Act, 1924* (Tas), s 10; see also *Martin v Trustrum (No 3)* [2003] TASSSC80.

- The appropriate procedures for prosecuting contempts, including contempt of administrative tribunals and avenues of appeal upon conviction;
- The penalties and sentencing options that ought to be available upon a conviction for contempt;
- Whether legislative intervention is the appropriate means of addressing the above inadequacies; and
- Whether legislative intervention should take the form of a dedicated Contempt of Court Act, or amendments to existing legislation.

## 2. Expected output

Contempts of court represent a range of offences that can be divided into three broad categories:

- Contempt by publication: Perpetrated by:
  - a publication regarding matters before a court in a manner that (as the present law stands) "...has, as a matter of practical reality, the tendency to interfere with the due course of justice in a particular case."<sup>6</sup> ("*sub judice*" contempt); and
  - publications that scandalize the court or court officers.
- Contempt by disobedience to a court order: Perpetrated by "...disobedience to judgements and other orders of the court, including undertakings given by a party to the court, which at law have the same effect as court orders."<sup>7</sup> At common law, contempt by disobedience has both criminal and civil aspects and there is substantial overlap between acts constituting contempts by disobedience and failure to comply with case management procedures.
- Contempt in the face of the court: A category with ill-defined parameters currently based on interference with the due administration of justice.<sup>8</sup> Contempt in the face of the court encompasses acts such as insulting the presiding officer, interfering with proceedings, refusal by a witness to answer questions (subject to privilege), and recording court proceedings without permission. Further, a number of statutory offences, such as suppressing evidence, are arguably forms of contempt in the face of the court.<sup>9</sup>

Preliminary research indicates that several of the inadequacies outlined above are pertinent to all categories of contempt. As a result of this, advocating reform of any single category outlined above without advocating reform of all categories would be impractical. It is therefore proposed that the Institute produce three separate issues papers on each of the three categories of contempt outlined above, with a single final report that encompasses the law of contempts as a whole. This process will also have the advantage of allowing the Institute to target issues papers to stakeholder groups with specialist interests in limited fields of the law of contempts, eg: media organizations and contempt by publication.

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<sup>6</sup> *John Fairfax & Sons Pty Ltd v McRae* (1955) 93 CLR 351, 370.

<sup>7</sup> LRCWA 93, p83.

<sup>8</sup> *Izuora v The Queen* [1953] AC 327.

<sup>9</sup> *Criminal Code* 1924 (Tas) s 99.