
QUESTION TIME BRIEF

REVIEW OF THE TASMANIA LAW REFORM INSTITUTE (TLRI)

KEY MESSAGES

- The Tasmania Law Reform Institute (TLRI) was established in 2001 to review Tasmanian laws where particular issues have been identified in accordance with its foundation agreement.
- Let me take this opportunity to welcome the recent appointment of Associate Professor Jeremy Prichard as Acting Director of the TLRI. Associate Professor Prichard has a long-standing involvement with the TLRI, and I look forward to his work in this important position.
- The TLRI continues to undertake a number of important law reform projects, including:
 - a review of Tasmanian constitutional law;
 - a review of conversion practices;
 - a review of privacy laws in Tasmania;
 - a re-examination of the need for a Tasmanian Human Rights Act; and
 - Minimum Age of Criminal Responsibility (a paper for the Commissioner for Children and Young People).
- The activities of the TLRI are funded through a combination of Government funding, in-kind support from the University of Tasmania, and grants for specific projects from sources such as Government, , the Law Foundation and MAIB Injury Prevention and Management Foundation.
- The Agreement commits the University of Tasmania to a contribution of in-kind support for the TLRI's activities (including the Director's salary, academic support, office facilities and administrative support).

- The Government provides \$50,000 per annum funding to the TLRI with the University of Tasmania Faculty of Law providing in-kind support for staffing, amenities and funding administration.
- The TLRI's functions are undertaken by its Director, with assistance from Board members, research assistants, Law Faculty staff and students.
- The TLRI was established on 23 July 2001 by agreement between the State Government, 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.
- In November 2019, the parties agreed to continue the operation of the Tasmania Law Reform Institute by entering into an amended agreement for a further term of three years.
- The University of Tasmania commissioned a review of the TLRI that considered and made recommendations about the structure, form governance and funding of the TLRI as the state's peak law reform body.
- I was consulted with regard to the terms of reference for the review and the object of the review is to ensure the continuing success and sustainability of the Institute.
- The Review Panel delivered its final report on 20 July 2022. The Report makes 20 recommendations which are currently being considered by Government and the other partners to the Institute Agreement.
- There has been public concern about funding of the TLRI. The Review notes that the agreed TLRI funding has in practice been increased at times, including additional amounts from Government and other sources, and further in-kind contributions from the University.
- However, the Review identifies the funding challenges and recommends an increase in annual baseline funding from the Government to at least \$200,000 per annum.
- The Government will consider that Report's recommendations in all respects carefully prior to the expiration of the current agreement.
- The Report and, where possible, the written submissions have been made public, and are published on the TLRI website.

- The Review and submissions are not subject to the 'Publication of Submissions Received by Tasmanian Government Departments in Response to Consultation on Major Policy Issues' policy.

BACKGROUND:

- There have been media and public statements of concern about the funding and other arrangements for the TLRI, such as noted at the end of this section.
- The Tasmania Law Reform Institute was established on 23 July 2001 by agreement between the State Government, University of Tasmania and the Law Society of Tasmania. In November 2019, the Partners to the Institute Agreement finalised a renewal agreement extending the agreement for three years, until November 2022.
- The Government's commitment in the Agreement is to provide \$50,000 per annum funding to the TLRI with the University of Tasmania Faculty of Law providing in-kind support for staffing, amenities and funding administration. This amount has not changed in the Agreement since 2001, but in practice has been higher at times, including a one-off approval of the Attorney-General for a \$250,000 grant that the Review notes led to higher output of the TLRI from 2016-2019.
- The TLRI'S functions were recently being undertaken by interim Director, Professor Michael Stuckey, with assistance from Board members, research assistants, Law Faculty staff and students.
- Until January 2022, Dr Brendan Gogarty was Acting Director, following the retirement of the previous Director, Associate Professor Terese Henning in December 2019. The TLRI Board recently agreed to the appointment of Associate Professor Jeremy Prichard to the acting role at a .2 fraction. The Review recommendation is for a .5 fraction appointment. It is understood the University will be formally advising you of this appointment in the near future.
- The TLRI may receive proposals for law reform or research projects from a wide range of sources, including the Attorney-General, the Judiciary, the Parliament, Government Agencies, the Legal Aid Commission, the legal profession, members of the community and community groups.
- The Review Panel consists of Professor John Williams (University of Adelaide), Professor Kate Warner, and Dr David Plater (University of Adelaide).
- You approved the terms of reference and composition of the Review Panel.
- You have also previously advised Professor Michael Stuckey that you consider that point 5 of the proposed terms of reference, regarding the examination of the appropriateness of the Institute's current governance arrangements and the reference process, is of crucial importance.
- On 16 December 2021 Craig Mackie, on behalf of the Board of the TLRI, wrote to you to express concerns about the long term viability of the TLRI. Those concerns included:
 - the baseline annual funding of the TLRI and other funding issues;
 - the reduction of operational staff;
 - the reduction in the availability of law academics to undertake research projects;
 - the absence of a permanent Director of the TLRI; and
 - lack of information about the review.

- The Independent Member for Nelson, Meg Webb, has expressed concerns about the TLRI, including in a website statement of 22 July 2022, and making a submission to the Review. Ms Webb states the funding concerns need to be addressed urgently, and asserted the TLRI is currently without a Director or research staff.
- The Examiner ran a story titled “Concerns held for future of State’s law reform institute” and included the following quotes from various stakeholders;
 - Community Legal Centres Tasmania policy officer Ben Bartl said it was clear the TLRI needed a more sustainable funding model. “The government’s commitment to provide \$50,000 per annum has not changed in 20 years with the TLRI observing recently that this amount leave the institute unable to undertake its role as the state’s peak independent law reform body,” he said. “Expressed in another way, whilst the university is now providing more than twice as much resourcing to the TLRI as was originally agreed, the government’s commitment has gone backwards in real terms. “Given that law reform ultimately benefits the community, it is clear that the Tasmanian Government needs to significantly increase its core funding of the TLRI.”
 - Law Society of Tasmania president Simon Gates said it was assumed that the institute had only been able to operate as it has done through the university’s support. “It appears clear that a renewed commitment from government is needed for the TLRI to survive,” he said. “The law society is strongly of the view that a well resourced TLRI is essential for the development of the law in Tasmania.”
 - Nelson independent MLC Meg Webb said the review raised concerns as to whether the institute was being deliberately run down. “The review the TLRI is currently without a director or research staff, leaving this described jewel in the university’s crown struggling to function,” she said.
 - “It is now imperative that the TLRI’s founding partners, particularly UTAS and the Attorney-General, commit to accepting the review’s recommendations and provide a timeframe by which they will be delivered.”
 - Equality Tasmania spokesman Rodney Croome said the institute had made an invaluable contribution to a fairer Tasmania. “To ensure it can continue to make our state a better place, the TLRI needs to be adequately funded and to have its independence guaranteed,” he said.

Contact Officer:	David Sealy	Cleared by:	Kristy Bourne
Position:	Assistant Director (Administration of Justice)	Position:	Deputy Secretary
Phone:	6165 4933	Phone:	6165 4943

Status: Minor changes

Updated: 28 July 2022

Reviewed: 11 August 2022

Doc/21/151319

24 November 2021

The Hon Elise Archer
Attorney-General and Minister for Justice
GPO Box 123
HOBART TAS 7001

by email: Minister.Archer@dpac.tas.gov.au

Dear Attorney-General,

Proposed Review of the Tasmania Law Reform Institute

I write to inform you about the proposed arrangements by the University to conduct a review of the Tasmania Law Reform Institute, and to seek your approval for the same.

The proposed terms of reference:

The Review Panel shall consider and make recommendations about the structure, form, governance and funding of the Tasmania Law Reform Institute, as the State's peak law reform body. The object of the review is to ensure the continuing success and sustainability of that Institute in the ongoing improvement of Tasmania's systems of law and justice. In particular, the Panel should consider:

- Whether the aims and objectives of the Institute, set out in its Founding Agreement, require modernisation, clarification or amendment;
- Whether there are sufficient provisions for the protection and promotion of the institutional integrity and independence of the Institute;
- The position, role and relationship of the Institute to its founding members, the Government of Tasmania, and the University of Tasmania (in particular its placement within the Law Faculty of UTAS), including specifically the research capacities and priorities of the University and the Law Faculty;
- The position, role and relationship of the Institute to state Parliament and Tasmanian community;
- The adequacy and appropriateness of the Institute's current constitution, governance arrangements and reference process; and

Faculty of Law

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- The appropriateness and sustainability of the Institute's resourcing and staffing having regard to the size of the jurisdiction in which it operates.

Professor John Williams (Acting Provost, University of Adelaide) has agreed to lead a panel to conduct the review, and Professor Kate Warner and Dr David Plater (University of Adelaide, and sometimes South Australia Law Reform Institute) have agreed to work with Prof. Williams as the panel members.

The University would be grateful for your reflections on, and if you are agreeable, your approval of, both these terms of reference and the constitution of the review panel.

Naturally we would be pleased to discuss any amendments you might wish to see, or otherwise address any of your queries.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Stuckey', with a long horizontal line underneath it.

Professor Michael Stuckey
Dean, Faculty of Law


Cc: Ms Ginna Webster - Ginna.Webster@justice.tas.gov.au
Department of Justice

Department of Justice



Tasmania

Critical Date: 12 January 2022

APPROVED / NOT APPROVED / NOTED SIGNED:  DATE: 13/1/21
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Briefing Note for the Attorney-General and Minister for Justice

Tasmania Law Reform Institute and the UTAS Faculty of Law

Minister's notation:

Action as discussed at meeting on 13/1/21.



PURPOSE: To brief you regarding the Tasmania Law Reform Institute (TLRI) and recent correspondence received in relation to it, and the University of Tasmania (UTAS) Faculty of Law more generally.

KEY ISSUES:

1. The TLRI was established on 23 July 2001 by agreement between the State Government, UTAS 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.
2. In November 2019, the parties agreed to continue the operation of the TLRI by entering into an amended agreement for a further term of three years. UTAS is seeking to undertake a review of the TLRI to consider and make recommendations about the structure, form governance and funding of the TLRI as the state's peak law reform body.
3. You have recently received correspondence in relation to the TLRI (and the UTAS Faculty of Law more generally) from a number of interested parties, along with a question on notice in Parliament.

BACKGROUND:

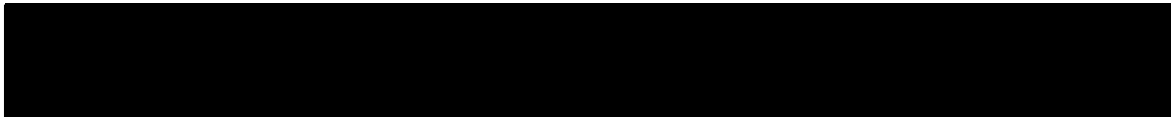
- The TLRI was established in 2001 to review Tasmanian laws where particular issues have been identified in accordance with its foundation agreement.
- The activities of the TLRI are funded through a combination of Government funding, in-kind support from UTAS, and grants for specific projects from sources such as the Solicitors' Guarantee Fund when it is in surplus, the Law Foundation and MAIB Injury Prevention and Management Foundation.
- The agreement commits UTAS to a contribution of in-kind support for the TLRI's activities (including the Director's salary, academic support, office facilities and administrative support).
- In November 2019, the parties agreed to continue the operation of the TLRI by entering into an amended agreement for a further term of three years.
- The amended agreement will expire in November 2022. Prior to entering into a new agreements, UTAS is proposing to undertake a review of the TLRI.
- On 24 November 2021, the Dean of the UTAS Faculty of Law, Professor Michael Stuckey, wrote to you seeking your approval of the proposed terms of reference of the review of the TLRI, and the composition of the review panel.
- The proposed terms of reference, as set out in Professor Stuckey's letter, are as follows:

The Review Panel shall consider and make recommendations about the structure, form, governance and funding of the Tasmania Law Reform Institute, as the State's peak law reform body. The object of the review is to ensure the continuing success and sustainability of that Institute in the ongoing improvement of Tasmania's systems of law and justice. In particular, the Panel should consider:

- *Whether the aims and objectives of the Institute, set out in its Founding Agreement, require modernisation, clarification or amendment;*
 - *Whether there are sufficient provisions for the protection and promotion of the institutional integrity and independence of the Institute;*
 - *The position, role and relationship of the Institute to its founding members, the Government of Tasmania, and the University of Tasmania (in particular its placement within the Law Faculty of UTAS), including specifically the research capacities and priorities of the University and the Law Faculty;*
 - *The position, role and relationship of the Institute to state Parliament and Tasmanian community;*
 - *The adequacy and appropriateness of the Institute's current constitution, governance arrangements and reference process; and*
 - *The appropriateness and sustainability of the Institute's resourcing and staffing having regard to the size of the jurisdiction in which it operates.*
- The proposed review panel consists of Professor John Williams (Acting Provost, University of Adelaide), Professor Kate Warner, and Dr David Plater (University of Adelaide).

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- A copy of Professor Stuckey's letter is attached.
- On 25 November 2021 the Hon Meg Webb MLC submitted a Question on Notice regarding the TLRI. It asks questions related to the funding of the TLRI and whether the Government intends to renew the agreement in relation to the TLRI. A copy of the Question on Notice is attached.



- On 14 December 2021, the President of the Law Society of Tasmania, Mr Simon Gates, wrote to you regarding concerns about changes to the delivery of the Bachelor of Laws degree at UTAS, funding and staffing of the TLRI and the delivery of the legal practice course, specifically:

1. Recent and proposed changes to the delivery of the LLB at the University of Tasmania Law School
2. The apparent diminishing support by the University of the TLRI; and
3. The decision by the University to terminate the ongoing arrangement for the delivery of the Legal Practice Course by the Centre of Legal Studies, without consultation with the Legal Profession.

- A copy of Mr Gates' letter is attached.
- On 16 December 2021 Mr Craig Mackie wrote to you on behalf of the Board of the TLRI regarding the Board's concerns in relation the funding and staffing of the TLRI, the vacancy of the position of Director of the TLRI, and the status of the review of the TLRI.
- A copy of Mr Mackie's letter is attached.
- The Chief Justice, Mr Gates and the Board of the TLRI have all expressed a desire to discuss the matters raised in their respective correspondence with you directly.
- The Secretary of the Department of Justice and the Deputy Secretary, Justice and Reform will meet with you on 13 January 2022 to provide a further briefing in respect of the matters above.

Kristy Bourne
Deputy Secretary, Justice and Reform

Prepared by:	David Sealy	Cleared by:	Kristy Bourne
Position:	Assistant Director (Administration of Justice)	Position:	Deputy Secretary
Phone:	6165 4933	Phone:	6165 4943
Date:	21 December 2021	Date:	23 December 2021

Attachments:

1. Letter from Professor Michael Stuckey;
2. Question on Notice submitted by the Hon Meg Webb MLC;
3. Letter from the Chief Justice, the Hon Alan Blow AO;
4. Letter from Mr Simon Gates; and
5. Letter from Mr Craig Mackie.



Chief Justice's Chambers
Hobart

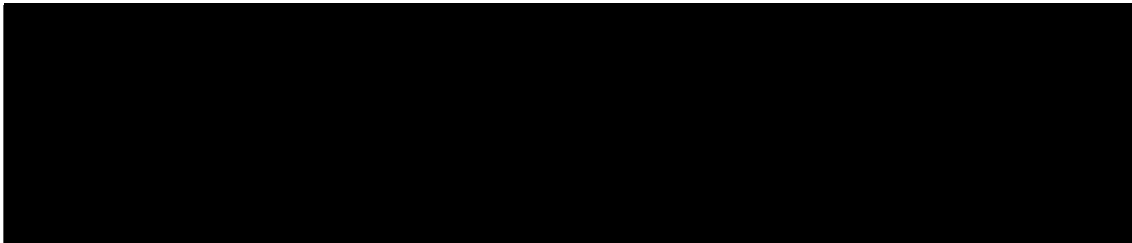
7 December 2021

The Hon Elise Archer MP
Attorney-General
Email: Minister.Archer@dpac.tas.gov.au

Dear Attorney,

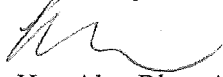
Re: University of Tasmania and Board of Legal Education

There is serious concern amongst the judges of the Supreme Court as to the future quality of the LLB degree at the University of Tasmania, the future of the Tasmanian Legal Practice Course, and the future of the Tasmania Law Reform Institute. I understand that representatives of the Law Society of Tasmania have already spoken to you about similar concerns.



If it is convenient, I would be grateful if you could telephone me on my mobile phone to discuss this matter.

Yours sincerely



The Hon Alan Blow AO
Chief Justice



**THE LAW
SOCIETY
OF TASMANIA**

Our ref: SG/AG/GW/ST

14 December 2021

The Hon. Elise Archer MP
Attorney-General for Tasmania

By email only: elise.archer@parliament.tas.gov.au
Cc: Ginna Webster, Secretary
Department of Justice
Cc: Sam Thompson, Senior Advisor
Department of Justice

Dear Attorney-General

Changes to the delivery of the LLB, funding and staffing of the TLRI and the delivery of the Legal Practice Course

On behalf of the Law Society, I wish to raise with you my concerns regarding the above matters and the impact they may have on the standard of tertiary legal education in Tasmania, legislative development and review in this State and the future of the legal sector more generally.

Concerns have been received by the Law Society regarding the following developments in recent weeks:

1. Recent and proposed changes to the delivery of the LLB at the University of Tasmania Law School
2. The apparent diminishing support by the University of the TLRI; and
3. The decision by the University to terminate the ongoing arrangement for the delivery of the Legal Practice Course by the Centre of Legal Studies, without consultation with the Legal Profession.

I understand that a significant number of long-term academic staff members have left the Law School recently and more are soon to follow due to changes at the Law School.

I have long held the view that the UTAS Law School's excellent reputation and high ranking among the 40 or so Law Schools in Australia was built on the very high standard of academic staff at the Law School and the face-to-face and intimate educational environment at the Law School, which has been delivered to a very high standard by experts in the disciplines they teach. Each of these points of difference would appear to be at risk under the proposed changes at the Law School and as a result of the loss and impending loss of many excellent academic staff.

The Law School has always been a very important institution in Tasmania, as well it should be given that so many of those in leadership roles within the State are its alumni.

The UTAS Law School is the only one in the State. A very large majority of members of the Tasmanian legal profession and the Judiciary are graduates of the Law School. Accordingly, any issue, internal or otherwise, that has the potential to threaten the reputation and good standing of the Law School and the quality of students it attracts and graduates it produces are very much matters about which we are rightly concerned.

The attraction and retention of good law students and the Law School's capacity to provide those students with the highest standard of legal education is critical for the administration of justice in this State. In this respect, it is incumbent on the University to ensure that the Law School provides the educational environment in which students can thrive and attain the highest level of legal knowledge and skills so that they are equipped to be future leaders in the legal sector (among others) of this State.

I would welcome the opportunity to further discuss these issues with you.

Yours sincerely,



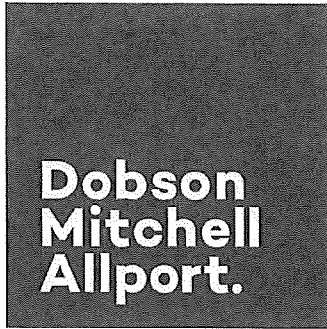
Simon Gates
PRESIDENT



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This email and attachments (if any) may contain legally privileged and confidential information. If you are not the intended recipient, please reply to let me know and delete this email.

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COMMERCIAL
LITIGATION
PROPERTY
LAWYERS

The Hon Elise Archer MP
Attorney-General's Office
by email: elise.archer@dpac.tas.gov.au

16 December 2021

Professor Rufus Black
Vice-Chancellor
University of Tasmania
by email: Vice.Chancellor@utas.edu.au

The President
Law Society of Tasmania
by email: simon.gates@burniechambers.com.au

Dear Sir/Madam

Tasmanian Law Reform Institute

The Board of the Tasmanian Law Reform Institute met on 9 November 2021, at which time concerns were raised about the Institute's long term viability, including in relation to the following:

- The inadequate baseline annual funding currently provided to the Institute;
- The reduction in operational staff;
- The insufficiency of funding for existing operational staff and operational costs;
- The diminished funding for specific Institute projects;
- The reduction in the availability of law academics to engage in research for law reform projects;
- The Institute operating without a Director, the University's last action in this regard being to appoint Mr Brendan Gogarty as Acting Director in 2019; and
- The status of the review of the institute which was announced in March 2020 - but about which the Board has received no further information concerning the process or invitation to be involved in it.

As you know the Tasmanian Law Reform Institute is this State's premier law reform body.

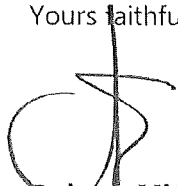
There is concern that the Institute should continue to receive appropriate support from its founders to ensure its work can continue.

Several members of the Board have asked me to respectfully request a meeting between the Attorney-General, the Vice-Chancellor of the University of Tasmania, the President of the Law Society of Tasmania, and the Board to discuss the future of the Institute.

In anticipation that you are prepared to meet with the Board, Ms Kira White, the Executive Officer of the Tasmanian Law Reform Institute, will be in contact with your office early in the new year to arrange a meeting time convenient to you.

We look forward to meeting with you shortly.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Craig Mackie', written over the typed name.

Dobson Mitchell Allport

Craig Mackie

PRINCIPAL

T. +61 3 6210 0056

craig.mackie@doma.com.au



Tasmania

Critical Date: 5 February 2022

<p>APPROVED / NOT APPROVED / NOTED</p> <p>SIGNED: <i>[Signature]</i></p> <p>DATE: 3/2/22</p>
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Minute to the Attorney-General and Minister for Justice
Proposed review of the Tasmania Law Reform Institute

Minister's notation:

RECOMMENDATION:

That you:

1. Note the contents of this minute; and
2. Sign the attached letter to Professor Michael Stuckey.

KEY ISSUES:

1. The University of Tasmania (UTAS) is seeking to undertake a review of the TLRI to consider and make recommendations about the structure, form governance and funding of the TLRI as the state's peak law reform body.
2. By letter dated 24 November 2021, Professor Michael Stuckey, Dean of the UTAS Faculty, wrote to you regarding the proposed terms of reference for the review, and the membership of the review panel.

BACKGROUND:

- The proposed terms of reference, as set out in Professor Stuckey's letter, are as follows:

The Review Panel shall consider and make recommendations about the structure, form, governance and funding of the Tasmania Law Reform Institute, as the State's peak law reform body. The object

of the review is to ensure the continuing success and sustainability of that Institute in the ongoing improvement of Tasmania's systems of law and justice. In particular, the Panel should consider:

- Whether the aims and objectives of the Institute, set out in its Founding Agreement, require modernisation, clarification or amendment;
 - Whether there are sufficient provisions for the protection and promotion of the institutional integrity and independence of the Institute;
 - The position, role and relationship of the Institute to its founding members, the Government of Tasmania, and the University of Tasmania (in particular its placement within the Law Faculty of UTAS), including specifically the research capacities and priorities of the University and the Law Faculty;
 - The position, role and relationship of the Institute to state Parliament and Tasmanian community;
 - The adequacy and appropriateness of the Institute's current constitution, governance arrangements and reference process; and
 - The appropriateness and sustainability of the Institute's resourcing and staffing having regard to the size of the jurisdiction in which it operates.
- The Department of Justice understands that you are supportive of the terms of reference, subject to a revision of point four, to refer to the Government of Tasmania, as represented by the Attorney-General.
 - The proposed review panel consists of Professor John Williams (Acting Provost, University of Adelaide), Professor Kate Warner, and Dr David Plater (University of Adelaide).
 - The proposed review panel members are suitably qualified. Professor Warner is a former director of the TLRI. Professor Williams and Dr Plater have both been involved with the South Australian Law Reform Institute.
 - Attached, for your consideration and signature, is a letter to Professor Stuckey.

Kristy Bourne
Deputy Secretary, Justice and Reform

Prepared by:	David Sealy	Cleared by:	Kristy Bourne
Position:	Assistant Director (Administration of Justice)	Position:	Deputy Secretary, Justice and Reform
Phone:	6165 4933	Phone:	6165 4943
Date:	19 January 2022	Date:	19 January 2022

Attachments:

- I. Letter to Professor Michael Stuckey.

Attorney-General
Minister for Justice
Minister for Corrections
Minister for Workplace Safety and Consumer Affairs
Minister for the Arts



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07 FEB 2022

Professor Michael Stuckey
Dean
Faculty of Law
University of Tasmania
By email: michael.stuckey@utas.edu.au

Dear Professor Stuckey

Thank you for your letter dated 24 November 2021 regarding proposed arrangements by the University to conduct a review of the Tasmania Law Reform Institute (TLRI). I have sought advice from the Department of Justice to inform my consideration of the proposed terms of reference.

I am pleased to advise that I support the proposed terms of reference as set out in your letter, subject to the following revision.

It is my view that the wording of point four of the terms of reference should read:

"The position, role and relationship of the Institute to the Government of Tasmania, as represented by the Attorney-General."

I would like to mention that point 5 of the proposed terms of reference regarding the examination of the appropriateness of the TLRI's current governance arrangements and the reference process, is of crucial importance.

I am also pleased to approve the proposed constitution of the review panel. The panel members bring with them a wealth of knowledge and expertise, which I know will help to ensure that a thorough and considered review is undertaken.

I look forward to having the opportunity to be consulted during the review process, along with all relevant stakeholders.

I further note that you have recently been appointed as an interim Director of the TLRI. I assume that this will only be an interim measure, given your other significant roles and responsibilities as Dean of the Law School.

Yours sincerely

Hon Elise Archer MP
Attorney-General
Minister for Justice

PARLIAMENTARY BRIEFING

TASMANIA LAW REFORM INSTITUTE (TLRI)

KEY MESSAGES

- The Tasmania Law Reform Institute (TLRI) was established in 2001 to review Tasmanian laws where particular issues have been identified in accordance with its foundation agreement.
- The TLRI continues to undertake a number of important law reform projects, including:
 - A review of Tasmanian constitutional law;
 - A review of conversion practices;
 - A review of privacy laws in Tasmania;
 - A re-examination of the need for a Tasmanian Human Rights Act; and
 - Minimum Age of Criminal Responsibility (a paper for the Commissioner for Children and Young People).
- The activities of the TLRI are funded through a combination of Government funding, in-kind support from the University of Tasmania, and grants for specific projects from sources such as the Solicitors' Guarantee Fund when it is in surplus, the Law Foundation and MAIB Injury Prevention and Management Foundation.
- The Agreement commits the University of Tasmania to a contribution of in-kind support for the TLRI's activities (including the Director's salary, academic support, office facilities and administrative support).
- The Agreement establishes an advisory Board of the Institute, with current membership as follows:
 - Acting Director, Dr Brendan Gogarty - appointed by the Vice-Chancellor of UTas
 - The Hon Justice Helen Wood - appointed by the Chief Justice of Tasmania

- Kristy Bourne, Deputy Secretary Justice and Reform, DoJ - appointed by the Attorney-General
 - Craig Mackie, Legal Practitioner - appointed by the Tasmanian Bar Association
 - Rohan Foon, Principal, Douglas & Collins legal practice - appointed by the Law Society
 - Ann Hughes - appointed at the invitation of the Board as a community representative
 - Kim Baumeler, Barrister, Liverpool Chambers - appointed at the invitation of the Board
 - Rosie Smith - appointed at the invitation of the Board as a member of the Tasmanian Aboriginal community
- The Dean of Law is an ex-officio member. The Director of the Institute and the University Council appointments are until the end of the Agreement. The remaining appointments do not have a specific tenure and continue until the appointee is unable to continue and/or the appointing body remove or make a new appointment.
 - The Government provides \$50,000 per annum funding to the TLRI with the University of Tasmania Faculty of Law providing in-kind support for staffing, amenities and funding administration. This amount has not changed since 2001.
 - The TLRI's functions are undertaken by its Director, with assistance from Board members, research assistants, Law Faculty staff and students.

If asked about the Review of the Tasmania Law Reform Institute

- The TLRI was established on 23 July 2001 by agreement between the State Government, 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.
- In November 2019, the parties agreed to continue the operation of the Tasmania Law Reform Institute by entering into an amended agreement for a further term of three years.
- I am aware that the University of Tasmania is seeking to undertake a review of the TLRI to consider and make recommendations about the structure,

form governance and funding of the TLRI as the state's peak law reform body.

- My Department has been contacted with regard to the proposed draft terms of reference for the review.
- I understand that the object of the review is to ensure the continuing success and sustainability of the Institute.
- My office has not been approached by the University in relation to the nature of the review at this stage.

BACKGROUND:

- The Tasmania Law Reform Institute (TLRI) was established on 23 July 2001 by agreement between the State Government, University of Tasmania and the Law Society of Tasmania. In November 2019, the Partners to the Institute Agreement finalised a renewal agreement extending the agreement for three years, until November 2022.
- The Government provides \$50,000 per annum funding to the TLRI with the University of Tasmania Faculty of Law providing in-kind support for staffing, amenities and funding administration. This amount has not changed since 2001.
- The TLRI'S functions are being undertaken by its Acting Director Dr Brendan Gogarty following the retirement of the previous Director, Associate Professor Terese Henning in December 2019, with assistance from Board members, research assistants, Law Faculty staff and students.
- The Director's position has not been refilled as at 10 November 2021 and the Department has been informally advised that Dr Gogarty will not be continuing in the role after January 2022.
- The TLRI may receive proposals for law reform or research projects from a wide range of sources, including the Attorney-General, the Judiciary, the Parliament, Government Agencies, the Legal Aid Commission, the legal profession, members of the community and community groups.

Contact Officer: Kristy Bourne
Position: Deputy Secretary
Phone: 6165 4943

Department of Justice



Critical Date: n/a

APPROVED	NOT APPROVED	NOTE
SIGNED		
DATE:	18/11/22	

Briefing Note for the Attorney-General and Minister for Justice
Tasmania Law Reform Institute (TLRI) Review - Final Report

Minister's notation:
 UTAS should lead - provide DOJ with a plan and cost. How will they structure etc.
 * A-6 to discuss with Secretary. 18/11

PURPOSE: To brief you regarding the content of, and recommendations made in, the final report (the Report) prepared by the review panel (the Review Panel) undertaking the review of the TLRI (the Review), and to inform next steps that you may wish to take.

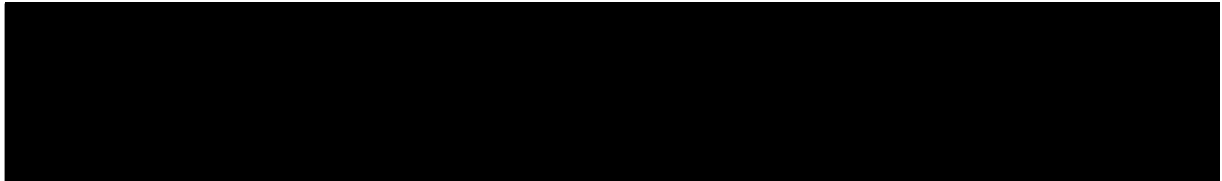
KEY ISSUES:

1. The University of Tasmania (UTAS) commissioned the Review to consider and make recommendations about the structure, form governance and funding of the TLRI as the state's peak law reform body.
2. The Review Panel delivered its final report on 20 July 2022. The Report addresses the submissions received by the Panel and makes 20 recommendations.
3. Many of the recommendations relate to amendments and clarification to be included in any future agreement between UTAS, the Government and the Law Society (the Founding Partners), with the aim of clarifying the role of the TLRI and its governance arrangements. Some recommendations deal with resourcing considerations. Recommendation 19, in particular, calls for a significant increase in the Government's contribution to baseline funding of the TLRI, from \$50,000 per annum to \$200,000 per annum.
4. At a meeting of the TLRI Board on Wednesday the 27th of July, attended by Deputy Secretary Kristy Bourne, your representative on the Board, Board members expressed a strong preference that the Founding Partners meet as a matter of urgency to discuss next steps following the release of the Report, and for these next steps to be communicated to the Board.

5. Subject to further direction from you and/or your office, the Department can provide further advice to assist you in any future discussions with the Founding Partners to implement, if desired, some or all of the recommendations made in the Report.

BACKGROUND:

- This Briefing Note is based on the contents of the Report only. The Department of Justice has not had the opportunity to review all of the published submissions received by the Panel.



- The Report makes a total of 20 recommendations under three separate categories (the categories do not align directly with the individual terms of reference):
 - Aims, Objectives and Operation of the Founding Agreements;
 - Strengthening Independence and Governance; and
 - Sustainability and Resources.

- The Executive Summary of the Report states:

'The first two categories reflect an opportunity for the Founding Partners to refine the Agreement in light of the twenty years of operation of the TLRI. Recent experience has brought into sharper relief some of the omissions and ambiguities within the Agreement and the need to anticipate the future evolution of the TLRI.'

- It is understood that references to 'the Agreement' are references to the renewal agreement signed by the Founding Partners in 2019, and any suggested revisions of the terms of 'the Agreement' are made by reference to the terms of the 2019 renewal agreement.
- The Executive Summary also notes that "*all parties consulted were unanimous in their view that there was an ongoing need for a strong and vibrant TLRI.*"

Aims, Objectives and Operation of the Founding Agreements

Recommendation 1: It would be useful to have an opening framing statement in clause 2, such as: 'The functions and objectives of the Institute include to conduct impartial and independent reviews or research on areas of law and legal policy in order to provide independent advice and recommendations on the area investigated, with a view to, or for the purposes of (then follows the list of objectives in (e) with 'and/or' between each objective). (TOR 1)

- This opening framing statement was apparently suggested by Terese Henning, the TLRI's former Director. The Report does not provide any significant or direct explanation as to why this recommendation has been made.

Recommendation 2: There should be an additional framing position referring to human rights such as that contained in s 24(1) of the *Australian Law Reform Commission Act 1996*. (TOR I)

- This recommendation arises from a submission from Robin Banks.
- Section 24(1) of the *Australian Law Reform Commission Act 1996* provides:

'In performing its functions, the Commission must aim at ensuring that the laws, proposals and recommendations it reviews, considers or makes:

(a) do not trespass unduly on personal rights and liberties or make the rights and liberties of citizens unduly dependent on administrative rather than judicial, decisions; and

(b) are, as far as practicable, consistent with Australia's international obligations that are relevant to the matter.'
- The Report recommends that such a framing clause should be included after the list of functions and objectives in any future agreement. It does not directly address the reasons this recommendation has been made.

Recommendation 3: The current list of objectives in clause 2.2(e) should be amended by: adding 'the codification of laws'; adding 'promoting equality before the law and social inclusion'; replacing '(vi) optimising the operation of the law and facilitating access to justice' with two items, namely 'adopting new or more effective methods for administering the law and dispensing justice' and 'providing improved access to justice', as in the ALRC Act, s 21(a)(iv) and (v); and including 'territories' in (vii). (TOR I)

- In respect of the replacement of (vi) in the current lists of objectives, the Report indicates that the current objective (vi) is broad enough to encompass the matters referred to in the recommended additional objectives, but that it would be of benefit to emphasise the additional objectives separately.
- The inclusion of the word 'territories' in objective (vii) is intended to remedy an apparent omission in the current renewal agreement, which refers only to 'other States and the Commonwealth'.

Recommendation 4: It is recommended that clause 2.2(a) be omitted and replaced by the framing statement proposed in Recommendation 1. Further, the ability of the Institute to reject a proposal should be clarified by omitting clause 2.1(c) and by adding a provision to clause 4 to the effect that the Institute may reject any proposal. (TOR I)

- The purpose of the omission of clause 2.2(a) is to remedy an inconsistency between that clause and clause 3.1. Clause 2.2(a) provides that the TLRI is to 'to conduct reviews and research on areas specified by the Board'; however, clause 3.1 provides that the TLRI Board is an advisory body only.
- The Panel considers that the Board should remain exclusively an advisory body, and no submissions suggested that should change.
- The omission of clause 2.1(c) is recommended on the basis that: *'As was pointed out in the Law Society's submission, clause 2.1(d) could be read as suggesting that Attorney-General's*

proposals must be accepted. This is inconsistent with clause 3.3, which implies that the Director, on the advice of the Board, may reject any proposal.'

- The reference to clauses 2.1(c) and 2.1(d) appear to be an error (there are no such clauses in the renewal agreement). They are presumably intended to be references to clause 2.2(c) and 2.2(d). It also appears that the recommendation is intended to be for the omission of clause 2.2(d), rather than 2.2(c), as that is the clause that actually appears to create ambiguity, and Recommendation 6 deals with clause 2.2(c) in any event.

Recommendation 5: We recommend the retention of clause 2.2 (b) of the Agreement, which provides that the Institute is to 'conduct these reviews and research, where appropriate on a consultancy basis'. This should be supplemented by adding paragraph (b) to clause 6.5 (which deals with funding), providing that 'The Institute may, as indicated in clause 2.2(b), accept funding from any body or person for a particular reference, after receiving the advice of the Board as to the appropriateness of doing so'. (TOR 1)

- The context of this recommendation is that the submissions to the review considered that there was ambiguity as to whether clause 2.2(b) was intended to allow the TLRI to charge a referring person or body to conduct a research project, or whether it was intended to allow the TLRI to engage consultants to undertake projects on its behalf.
- The review Panel prefers the former interpretation. The Panel also supports the retention of the ability for the TLRI to accept payment for a reference, so long as there is oversight from the Board as to whether the acceptance of a given referral is appropriate.
- While it is not stated in the recommendation itself, the Report makes it clear that the Panel's view is that if the TLRI accepts a paid referral it should:
 - disclose the source of funding;
 - adopt appropriate terms of reference; and
 - make it clear to the referring body or person that the work will be undertaken independently and impartially.

Recommendation 6: It is recommended that: (a) clause 2.2(c) be either omitted, or amended to state that the Institute is bound 'to consider and report to the Board all proposals received for law reform projects'; and (b) all references to Research Centres in clause 2 be omitted. (TOR 1)

- The Panel considers that '*provision in clause 2.2(c) that the Institute is bound 'to consider proposals from the Attorney-General' is unnecessary in light of provisions in clause 3.3, 3.4 and 3.5.*'
- The recommendation that references to Research Centres be omitted is on the basis that the University does not have standard procedures for Research Centres and the references are therefore redundant.

Recommendation 7: It is recommended that a more exhaustive statement of the scope/functions of the work of the Institute be made, by including the following additional

functions at clause 2.2: (h) working with other agencies and bodies on research in relation to law reform; and (i) providing advice on draft bills and legislation to Parliament. (TOR I)

- The additional functions recommended by Recommendation 7 were proposed by Terese Henning.
- The Report finds that the TLRI has undertaken those functions in recent years, and that the inclusion of those functions will *'provide a broader understanding of the scope of the Institute's work than the current provision.'*

Strengthening Independence and Governance

Recommendation 8: For the protection and promotion of the independence of the Institute, the Panel recommends including an explicit statement of the TLRI's independence in clause 2 (Establishment of the Institute) such as: 'The Institute has a duty to act independently and impartially in performing all of its functions and achieving its objectives.'

We also recommend that this be reinforced in clause 4 (Operation of the Institute) with a provision requiring the Institute to operate independently of the control, direction or interference of any person, body or authority, including but not limited to its Founding Partners, the Government, funders, and those who give references to the Institute. (TOR II)

- The Report indicates that all submissions referred to the importance of the independence, impartiality and institutional integrity of the TLRI. The Report quotes or reproduces a number of relevant submissions on this point,
- According to the Report:

'There was broad consensus that the Agreement contained insufficient protections to ensure the independence and integrity of the Institute, and that some of its provisions were problematic in terms of their potential to undermine independence. While independence had not been an apparent problem in practice for most of the Institute's life, it was submitted by the Institute's Board that more recently it has had 'concerns about intrusions upon the independence of the Institute'. In the submission of the Board, the independence of the TLRI was compromised by the way this current review was handled by the University and its failure to inform the Board of the reason or ambit of the review until March 2022. Kim Baumeler, barrister and Board member, spoke of the attempts of both the University and the Government to control and influence the Institute and the Board, beginning with the Births, Deaths and Marriages reference in 2019-2020.'

- The TLRI Board also reported concerns about interference by the University's media office in relation to the timing and content of media releases regarding TLRI projects.
- The Review Panel did not investigate the substance of the matters raised, but concludes that a stronger statement of independence may *'alleviate such concerns'*.

Recommendation 9: It is recommended that the non-statutory Law School-located agreement model be retained. (TOR III)

- The Report indicates that the appropriateness of the current model is not within the terms of reference of the Review; however, the Review Panel supports the retention of the current model.

- The majority of submissions supported the retention of the current model, referred to as the 'Alberta Model', of a non-statutory body located with the University of Tasmania Law School. Tasmania Legal Aid submitted that the TLRI should instead 'be a statutory body with members appointed by the Governor on the recommendation of a panel of representatives of key justice agencies including TLA.'

Recommendation 10: It is recommended that the new agreement provide that it can only be dissolved by agreement of the three Founding Partners in writing. (TOR III)

- This recommendation proposes that the current approach of new agreements being entered into by the Founding Partners every three to five years be replaced by a term in the next agreement providing that the TLRI can only be dissolved by written agreement of the three Founding Partners.
- It is suggested that this change will enhance the sustainability and independence of the TLRI.

Recommendation 11: It is recommended that the period of agreement provision (currently in clause 8) should also provide that the parties should review the terms of the Agreement at specified intervals (4- or 5-yearly) to ensure that it meets the requirements of the Institute at that time.

The period of agreement provision should also provide that if a formal review process is deemed necessary by the parties to the Agreement, the Director, or the Board, that the terms of reference and appointment of a Review Panel should be determined after consultation between them. (TOR III)

- This recommendation supplements Recommendation 10, by providing a mechanism that ensures that the agreement in respect of a standing TLRI continues to meet the TLRI's requirements. It is also, presumably, aimed at addressing criticism of the Review process.
- In the Report, the Panel states: *'The process of this review was said to illustrate deficiencies in the relationship between the Institute and the Founding Partners and particularly with the University.'*
- The Report refers to concerns raised by Terese Henning, Robin Banks, the TLRI Board, Equality Tasmania and Meg Webb MLC regarding the review process. According to the Report:

'The Board asserted that it had neither been informed of the reason for the review, nor of the terms of reference, nor invited to be involved until March 2022. This was related to assertions of intrusions on the independence of the Institute (and was referred to under TOR II). Board member Justice Helen Wood reported that the Board were initially concerned about the review, why it was being held, and under what authority. However, once they learnt the composition and expertise of the Review Panel and were informed of the terms of reference, their concerns were allayed. The former Dean, Professor Michael Stuckey, attributed the disquiet about the review process to poor communication with the Board and the fact that the Attorney-General had been slow to respond to the University.' (emphasis added)

Recommendation 12: The Agreement should explicitly recognise the supportive role of each of the Founding Partners and ensure the parties communicate regularly. (TOR III)

- This Recommendation is based on the submission of Terese Henning that the agreement should explicitly address the supportive role of the Founding Partners in promulgating its work, in providing references, and in making and soliciting submissions on references.
- The Report finds: *'The submissions, both written and oral, demonstrate the commitment and support of each of the Founding Partners to the continuing viability of the Institute and the Panel is satisfied that they are so committed, despite recent events which may suggest otherwise.'*
- The 'recent events' to which the Report refers are addressed earlier in the Report:

'In addressing TOR III, the TLRI Board observed that its relationship with its founders is impaired by the current financial situation facing the Institute, specifically with the Government because of the inadequate baseline annual funding and diminished funding for specific projects; and with the University because of the staffing situation at the Law School, reducing the availability of law academics to engage with the Institute's work, and delays with regard to the Director's position. The University's failure to ensure the Director has adequate time for the role and its delay in appointing a permanent replacement for Terese Henning suggested to the Board that the University lacks commitment to the Institute. Indeed, in the Board's view, its relationship with the University has deteriorated to the point that it has questioned the viability of the university-based law reform model for Tasmania...

... Kim Baumeler, a leading defence lawyer, referred to the apparent breakdown in the relationship between the Board and the Government and the University. She described the relationship between the Board and the Law Society as 'non-existent'. Justice Wood referred to the workload changes for the Law School's academic staff, which had increased their teaching load at the expense of community engagement or ability to participate in TLRI projects. This, together with the exodus of staff, meant that the most recent Director had no one with expertise to assist with the age of criminal responsibility reference.'

Recommendation 13: It is recommended that the maximum number of co-opted Board members be increased in clause 3.2(h) of the Agreement. (TOR V)

- This recommendation appears to arise from submissions that there would be a benefit in the Board having additional co-opted members from communities affected by the work of the TLRI. In addition to submissions in support of the retention of a member of the Aboriginal community as a co-opted Board member, there were submissions in support of including representatives of stigmatised and minority communities, or a community representative nominated by community organisation stakeholders.
- The Panel's conclusion is that it would be preferable to increase the maximum number of co-opted Board members, leaving the precise composition to the Board rather than specifying additional members from any particular constituency.

Recommendation 14: It is recommended that the Agreement make provision for the Board to have the power to appoint an independent Chair if the Board deems this to be necessary and with the consent of the parties to the Agreement to such appointment. (TOR V)

- The Report finds that there are valid arguments for and against separating the role of Director and Chair of the Board. Commenting that it has not posed a problem for the TLRI in the past, and that a similar model has been successful in South Australia, the Report finds:

'It has proved to be effective and efficient, and the Panel considers that separating the positions may prove an unhelpful complication and confuse lines of communication and create conflict. There are issues in relation to the appointment, role and possible remuneration of such a Chair. The Panel understands that chairing meetings that take Board members through drafts of papers and reports requires considerable preparation, and this would no doubt require extensive briefing of an independent Chair by the Director and Institute staff prior to such meetings. For all of these reasons, the Panel considers that requiring an independent Chair is likely to be counterproductive to the Institute's work, rather than of assistance to it.'

- However, the Panel also considers that there may be circumstances in which it is beneficial for there to be an independent Chair and, as such, the Board should have the power to appoint an independent Chair with the consent of the Founding Partners.

Recommendation 15: It is recommended that clause 5.1 of the Agreement be amended to provide that the position of Director should be a University appointment made by the Vice-Chancellor of the University, in consultation with the Founding Partners and the Board. (TOR V)

- Submissions to the Review raised concerns about the potential for the appointment of the Director of the TLRI being made by the Vice-Chancellor to compromise the independence of the TLRI. A number of submissions supported the power to appoint the Director to be given to the TLRI Board.

- The Review Panel concluded that:

'The Panel is of the view that the appointment of the Director should continue to be by the Vice-Chancellor, as the Director is a member of staff of the University and the University is paying the Director's salary. Their employment is governed by the University staff agreement and policies in relation to such things as promotion and eligibility for external study leave programmes.'

- However, the Panel was of the opinion that the next agreement should explicitly provide that the Vice-Chancellor is to consult with the Board and the Founding Partners in relation to the appointment of the Director. This might include relevant representation on any selection panel as part of the selection process.

Recommendation 16: It is recommended that the Board's power in clause 5.5 of the Agreement (to appoint an Acting Director if the Director is likely to be absent for more than one month) be extended to provide for the appointment by the Board of an Acting Director on the resignation or retirement of the Director. (TOR V)

- This recommendation arises from concerns raised by the Board about the delay in appointing a new Director following the resignation of Terese Henning. The Chief Justice also reportedly raised concerns about the lack of guidance in the Agreement on the appointment of an Interim or Acting Director.
- The Report does not provide further explanation as to why it is desirable that this power rest with the Board when it appears that the Vice-Chancellor already has the power to make an acting appointment.
- The recommendation is based on a suggestion from Terese Henning.

Recommendation 17: It is recommended that Clause 4.1 be amended as follows: Amend 4.1(a) to read 'members of the judiciary'; Amend 4.1(e) to read 'members of Parliament'; Amend 4.1(f) to read 'members of the legal profession'; and Add 'statutory officers' as a new category to clause 4.1.

Clause 4 should be amended to add, after clause 4.1, a new express provision stating that the Institute may accept or reject, amend, prioritise or delay any proposal received under clause 4.1. Further, clause 4 should include a new provision that makes it clear that the Institute can initiate its own proposals. (TOR V)

- The Report states:

'Submissions which commented on the reference process strongly supported retaining the power to accept proposals from any person or organisation, rather than restricting references to those from the Attorney-General. This was regarded as a key strength of the TLRI and a hallmark of its independence...

...The Review Panel agrees that the Institute's power to accept references from a wide range of stakeholders is a key strength and should be retained. Similarly, its power to accept or reject references including references from the Attorney-General is integral to its ability to set its own agenda.'

- The recommendations in respect of clauses 4.1(a), (e) and (f) are essentially clarifications to confirm that individual judges, members of parliament and members of the legal profession can also refer a project to the TLRI. This does not appear to be a true substantive change.
- The addition of 'statutory officers' in clause 4.1 is also essentially a clarification, to make it clear that statutory officers such as the Commissioner for Children and Young People can make a referral. It seems this is already captured by clause 4(g), which allows the TLRI to accept a referral from members of the community.
- The recommendation for the addition of provisions in relation to the acceptance, rejection, amendment, prioritisation or delay of any referral received is based on submissions from Ella Haddad MP, Meg Webb MLC, TasCOSS, and Equality Tasmania. The inclusion of an express provision that the TLRI can initiate its own referrals is based on submissions from Terese Henning, Meg Webb MLC, TasCOSS and CLC Tas.
- The Report does not directly address why these provisions are desirable, other than to note that submissions were made that such powers should be provided for in the agreement.

Sustainability and Resources

- The Report makes some notable comments about the resourcing of the TLRI. It states that: *'The lack of resources, financial and staffing, is an existential challenge currently facing the Institute.'* It also finds that the current baseline funding is *'grossly inadequate'*.
- The Report notes that TLRI currently does not have a Director, any researchers, and only an administrative officer in a 0.6 FTE position. Further:

'Work on its four ongoing references has ground to a halt, as has all other work such as engaging with law reform bodies in other jurisdictions, contributing to inquiries, commenting on draft legislation and engaging students in law reform projects. The student recipient of the 2022 Vanessa Goodwin Law Reform Scholarship has had no mentor or meaningful work from the Institute, until this was remedied by the recently appointed Acting Dean.'

- The report also comments that the current model of a non-statutory law reform body based at the University of Tasmania requires not only adequate funding, but also *'depends upon a vibrant, well-functioning and appropriately staffed Law School so that the advantages of a Law School based law reform body can be realised.'*
- The Report notes that a range of submissions *'indicate that wider issues at the Law School have exacerbated the Institute's funding crisis.'* These issues include an increase in academic workloads and a decrease in allocations for administrative work and community engagement. It also points to the recent resignation of a significant number of academic staff as impacting staff availability to support the work of the TLRI:

'According to Dr Martin Clark, a former UTAS/TLRI staff member, the Law School no longer has appropriately qualified subject matter experts in the areas of criminal law, administrative law, contract law, property law and other areas that are relevant to the TLRI's work.'

- The Report also comments on the problems caused by the current reliance on grants, such as from the Solicitors' Guarantee Fund, and the current lack of available grant funding.
- One issue highlighted was the effect of reliance on grant funding on the independence of the TLRI:

'The Board submitted that success or failure to attract a project specific grant from the SGF can depend on whether it relates to a reference from the Attorney-General. Grants received are often considerably less than the amounts applied for, which affects the conduct and scope of the references, and the Institute's communication of its research recommendations.'

Recommendation 18: It is recommended that the University continue to fund the Director's position at least at a 0.5 FTE, and provide facilities and support for the TLRI. The funding amount provided by the University (including in-kind contributions per annum) in clause 6.1 (b) should be increased to \$220,000 in the new Agreement. (TOR VI)

- The Panel considers that the Director's position must be at least a 0.5 FTE in order to carry out the duties of the role effectively.
- Other in-kind contributions include office facilities; support from Law School administrative staff; library access; computers and IT support; printing, postage and stationery; media support; and web management.

Recommendation 19: It is recommended that the annual baseline or recurrent funding from the Government be increased to at least \$200,000 per annum to support the Institute's work programme. (TOR VI)

- The figure of \$200,000 appears to be based on the suggestions contained in submissions from Terese Henning and Rikki Mawad. The Panel states in the Report that it has not attempted to work out how a budget of \$200,000 should be allocated, but the Panel believes

that amount is required to pay for necessary permanent staff, as well as non-project related community and stakeholder engagement costs. The funding would also support referrals from persons or organisations that come without funding.

- Such baseline funding would, in the Panel's view, also allow the TLRI to conduct wide and inclusive community consultation on law reform projects.
- It appears, though it is not expressly stated, that the amount of \$200,000 is also intended to achieve near parity in the contributions made by UTAS and the Government, as the current disparity was the subject of submissions to the Review.
- It should be noted that the Director's salary forms part of the in-kind contribution by UTAS, and would not be part of the costs paid by the Government's baseline funding.
- In respect of the need for permanent staff, the Report states:

'The Director needs to be supported by a permanent research officer with strong research and writing skills, and an administrative officer. These positions should be permanent or long-term contracts in order to attract the best candidates. Without these positions, the Institute will only limp along and lack the capacity to complete projects in an appropriate timeframe as well as supervise researchers and students employed to work on specific projects...'

... In the Panel's view, these three core positions (Director, Research Officer and Administrator) are necessary to plan and conduct the Institute's work programme and to respond in a timely and effective manner to emerging and controversial issues.'

- A footnotes to the Report indicates:

'A 0.5 FTE administrative position would cost approximately \$50,000 (HEO 5) and a 0.5 FTE Research Fellow position, \$65,000 (Level B).'

- Importantly, the figure of \$200,000 is for baseline funding only, and the Report recommends that it should be separate from specific funding that comes with referrals from the Attorney-General. It is implicit that the Panel considers that any referrals from the Attorney-General should come with additional funding to cover the costs of the referral.

Recommendation 20: It is recommended that the University give consideration to a review of academic workloads in annual workload reviews to allow for a workload allocation which can support the work of the Institute. (TOR VI)

- This recommendation is intended to address the issue referred to above whereby there have been recent changes to academic workloads at the Law School, causing an increase in teaching workload and a decrease in time available to assist with law reform references and to support the work of the TLRI.

Other issues not the subject of specific recommendations

- The Report does not make any specific recommendations regarding TOR IV, dealing with the TLRI's position, role and relationship to Government. However, the Report expresses concerns raised in some submissions in relation to this term of reference:

'The TLRI Board observed that the relationship between the Board and the Attorney-General had declined with respect to funding and referrals, with no new referrals since the transgender and intersex law reform project in October 2018. Martin Clark commented that the TLRI had been overlooked by the Attorney-General and recent law reform projects referred elsewhere. He urged that the reasons for this should be explored and remedied. Others commented on the reasons for the lack of recent references from the Attorney-General. Equality Tasmania explained this in terms of 'an attempt by the Government to punish the TLRI for not doing what it wanted [in relation to the way it dealt with the sex and gender recognition reference], and/or an attempt to pressure the TLRI into being more compliant to the Government's wishes in the future.' The submissions indicated that there was a broad perception that the Attorney-General was uneasy with some of the references or unhappy with the TLRI's handling of the legal recognition of sex and gender reference (e.g. Professor Margaret Otowski; Professor Tim McCormack).'

- In relation to the TLRI's referral process, the Report notes that submissions were received that a more formal referral process should be established, but comments:

'While there is wisdom in the suggestion that the Institute should develop a transparent and formal set of criteria to guide the selection process and prioritise references, including such considerations as resources, capacity, urgency of reference and balancing subject matter, we make no formal recommendation as to this.'

Kristy Bourne
Deputy Secretary, Justice and Reform

Prepared by:	David Sealy	Cleared by:	Kristy Bourne
Position:	Assistant Director (Administration of Justice)	Position:	Deputy Secretary
Phone:	6165 4933	Phone:	6165 4943
Date:	26 July 2022	Date:	1 August 2022

QUESTION TIME BRIEF

UTAS LAW SCHOOL ISSUES

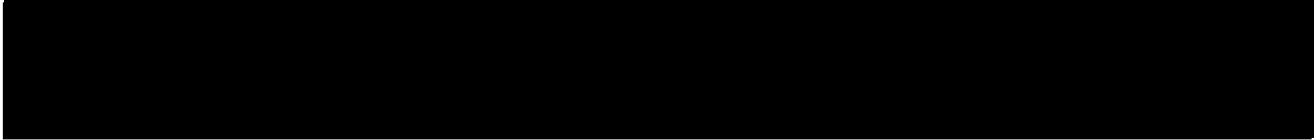
KEY MESSAGES

- The Government is aware of concerns regarding the Bachelor of Law course delivered by the University of Tasmania Law School, including recent staff departures.
- I understand that in February this year a number of senior members of the Tasmanian legal profession, including the Chief Justice, the Hon Alan Blow AO, and former Governor, Professor Kate Warner, attended a meeting with the UTAS Vice Chancellor, Professor Rufus Black, the then Dean of the Law School, Professor Michael Stuckey, and other UTAS representatives to discuss a range of matters regarding the Law School and the Tasmania Law Reform Institute.
- The Government was not part of those discussions, and it would not be appropriate to offer an opinion on them.
- As one of the largest employers of law graduates in the State, the Department of Justice has a very strong interest in the training and development of law graduates, and continues to regularly engage with UTAS, the Dean of the Law School, and student representatives, as well as other key stakeholders, including the Law Society, the Chief Justice and the Chief Magistrate.
- I note that the University is established as a statutory corporation under the *University of Tasmania Act 1992* and its operations are conducted under the governing authority of the University Council.
- While my Department continues to engage with both the University and key stakeholders, matters such as staffing and course content and delivery are matters for the University and are not subject to the direction of Government.

IF ASKED: TLRI – Funding and Review See QTB TLRI Law Reform Reports

- The TLRI was established on 23 July 2001 by agreement between the State Government, 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.

- In November 2019, the parties agreed to continue the operation of the Tasmania Law Reform Institute by entering into an amended agreement for a further term of three years.
- I am aware that the University of Tasmania has undertaken a review of the TLRI to consider and make recommendations about the structure, form governance and funding of the TLRI as the state's peak law reform body.
- I approved the Terms of Reference and the Review Panel and I personally met with the panel on 27 April 2022, as did the Secretary and Deputy Secretary of my Department.
- The conduct of the Review has been a matter for the University and the Independent Review Panel.
- The Final Report of the Review of the TLRI 2022, together with the written submissions to the Review, were released on 20 July 2022 and are available on the TLRI website.
- The Final Report makes 20 recommendations to the Founding Partners of the Agreement that established the TLRI and those recommendations will be carefully considered prior to the expiration of the current TLRI agreement.



BACKGROUND:

Structure and TLRI Review

- Professor John Williams (Acting Provost, University of Adelaide) has led a panel to conduct the review, and Professor Kate Warner and Dr David Plater (University of Adelaide, and sometimes South Australia Law Reform Institute) agreed to work with Prof. Williams as the panel members.
- Both you and the Department of Justice were contacted with regard to the proposed draft terms of reference for the review, as well as the proposed panel members.
- The terms of reference for the review were:
 1. whether the aims and objectives of the Institute, set out in its Founding Agreement, require modernisation, clarification or amendment;
 2. whether there are sufficient provisions for the protection and promotion of the institutional integrity and independence of the Institute;
 3. the position, role and relationship of the Institute to its founding members, the Government of Tasmania, and the University of Tasmania (in particular its placement within the Law Faculty of UTAS), including specifically the research capacities and priorities of the University and the Law Faculty;
 4. the position, role and relationship of the Institute to the Government of Tasmania, as represented by the Attorney-General;
 5. the adequacy and appropriateness of the Institute's current constitution, governance arrangements and reference process; and
 6. the appropriateness and sustainability of the Institute's resourcing and staffing having regard to the size of the jurisdiction in which it operates.
- The Government provides \$50,000 per annum funding to the TLRI with the University of Tasmania Faculty of Law providing in-kind support for staffing, amenities and funding administration. This amount has not changed since 2001.

Contact Officer:	Michelle Lowe	Cleared by:	Kerrie Crowder
Position:	Director, Office of the Secretary	Position:	Deputy Secretary
Phone:	6165 4953	Phone:	6164 4943

Status: No changes

Updated: 22 July 2022

Reviewed: 5 September 2022

QUESTION WITHOUT NOTICE

Question to be asked by Hon. Meg Webb MLC

During the week commencing: 23 May 2022

Ms Webb to ask the Honourable Leader of the Government — With regard to the ongoing involvement of the Tasmanian government in the Tasmanian Law Reform Institute (TLRI) as one of the three founding parties, and specifically the review currently undertaken by the South Australian Law Reform Commission:

My questions are to the Leader:

- 1. Clarify whether it will receive a copy of the final Review Report when it is provided to the University of Tasmania Vice-Chancellor who commissioned the review, and if not, will the government formally request a copy?**
- 2. (a) Did the Government agree with the proposal that all stakeholder submissions to the review would be provided solely to the University of Tasmania; and**
(b) Given the established public and community sector interest and involvement in the TLRI, will the government upon the review's completion formally request copies of the stakeholder submissions made, and will those, exempting any confidentiality or sensitivity concerns, be made public in accordance with the government's 'Publication of Submissions Received by Tasmanian Government Departments in Response to Consultation on Major Policy Issues' policy?
- 3. Will the Government, as one of three founding parties, have any direct role responding to and acting upon any of the Review's recommendations?**
- 4. Confirm the government's position is to secure the ongoing viable operations of the TLRI and the valuable contribution it makes to sound public policy development, the legal sector and the broader Tasmanian community?**

GOVERNMENT RESPONSE

As previously advised to a Question on Notice by the Member for Nelson on this matter, the review of the Tasmanian Law Reform Institute (TLRI) is being conducted by the University of Tasmania. It was initiated independently by the University and not at the request of the Tasmanian Government.

Our Government is aware that the Review is being undertaken by an Independent Review Panel, to consider and make recommendations about the structure, governance and funding of the TLRI, as the State's peak law reform body.

As Attorney-General and Minister for Justice, on behalf of the Tasmanian Government, I was consulted regarding the Terms of Reference (ToRs) of the review and constitution of the review panel, as one of the founding parties to the TLRI Agreement. As previously advised, the Department of Justice has been actively engaged in this process, including providing input as appropriate into the ToRs for the review.

However, any decision about the conduct of the Review, including whether to share or publish the final Review Report, is a matter for the University and the Independent Review Panel. This includes whether stakeholder submissions are provided solely to the University of Tasmania or released publicly.

The Review and submissions are not subject to the 'Publication of Submissions Received by Tasmanian Government Departments in Response to Consultation on Major Policy Issues' policy.

I am a strong supporter of the TLRI and I value the research and analysis undertaken by this institution. I am pleased to have been consulted by the Review Panel to date, and look forward to the outcome of the review and considering any recommendations that may relate to the Tasmanian Government.



Hon Elise Archer MP
Attorney-General
Minister for Justice

Date: 20 May 2022

Hon. Elise Archer MP
Attorney-General
Minister for Justice
Minister for Corrections and Rehabilitation
Minister for Workplace Safety and Consumer Affairs
Minister for the Arts

Adviser:

Department: Justice

Ministerial RM Ref: MIN22/8762

TTas RM Ref: MIN22/308

Meeting with the Tasmania Law Reform Institute Review Panel Wednesday, 27 April 2022, 1.45pm

In attendance: Dr David Plater, Professor Kate Warner, Professor John Williams
Department contact: David Sealy, Assistant Director (Administration of Justice)
On-site event contact:

GUIDANCE NOTES

What is the purpose of the meeting?

- By letter dated 22 March 2022, Dr David Plater, on behalf of the Review Panel undertaking the review of the Tasmania Law Reform Institute (TLRI), wrote to you to advise that the Panel will be in Hobart on 27 April 2022.
- The Panel has requested to meet with you to seek your views in relation to the review.

Hon. Elise Archer MP

Attorney-General

Minister for Justice

Minister for Corrections and Rehabilitation

Minister for Workplace Safety and Consumer Affairs

Minister for the Arts

- The Review Panel consists of Professor John Williams (University of Adelaide), Professor Kate Warner, and Dr David Plater (University of Adelaide).
- You have previously approved the terms of reference and composition of the Review Panel. A copy of Dr Plater's letter to you of 22 March 2022, which sets out the final terms of reference for the review, is attached.
- You have also previously advised Professor Michael Stuckey that you consider that point 5 of the proposed terms of reference, regarding the examination of the appropriateness of the Institute's current governance arrangements and the reference process, is of crucial importance.
- On 16 December 2021 Craig Mackie, on behalf of the Board of the TLRI, wrote to you to express concerns about the long term viability of the TLRI. Those concerns included:
 - the baseline annual funding of the TLRI and other funding issues;
 - the reduction of operational staff;
 - the reduction in the availability of law academics to undertake research projects;
 - the absence of a permanent Director of the TLRI; and
 - lack of information about the review.
- A copy of Mr Mackie's letter is attached.
- The Secretary and your representative on the TLRI, Deputy Secretary Kristy Bourne, are also meeting with the Review Panel on Wednesday 27 April 2022.

BUDGET ESTIMATES BRIEF

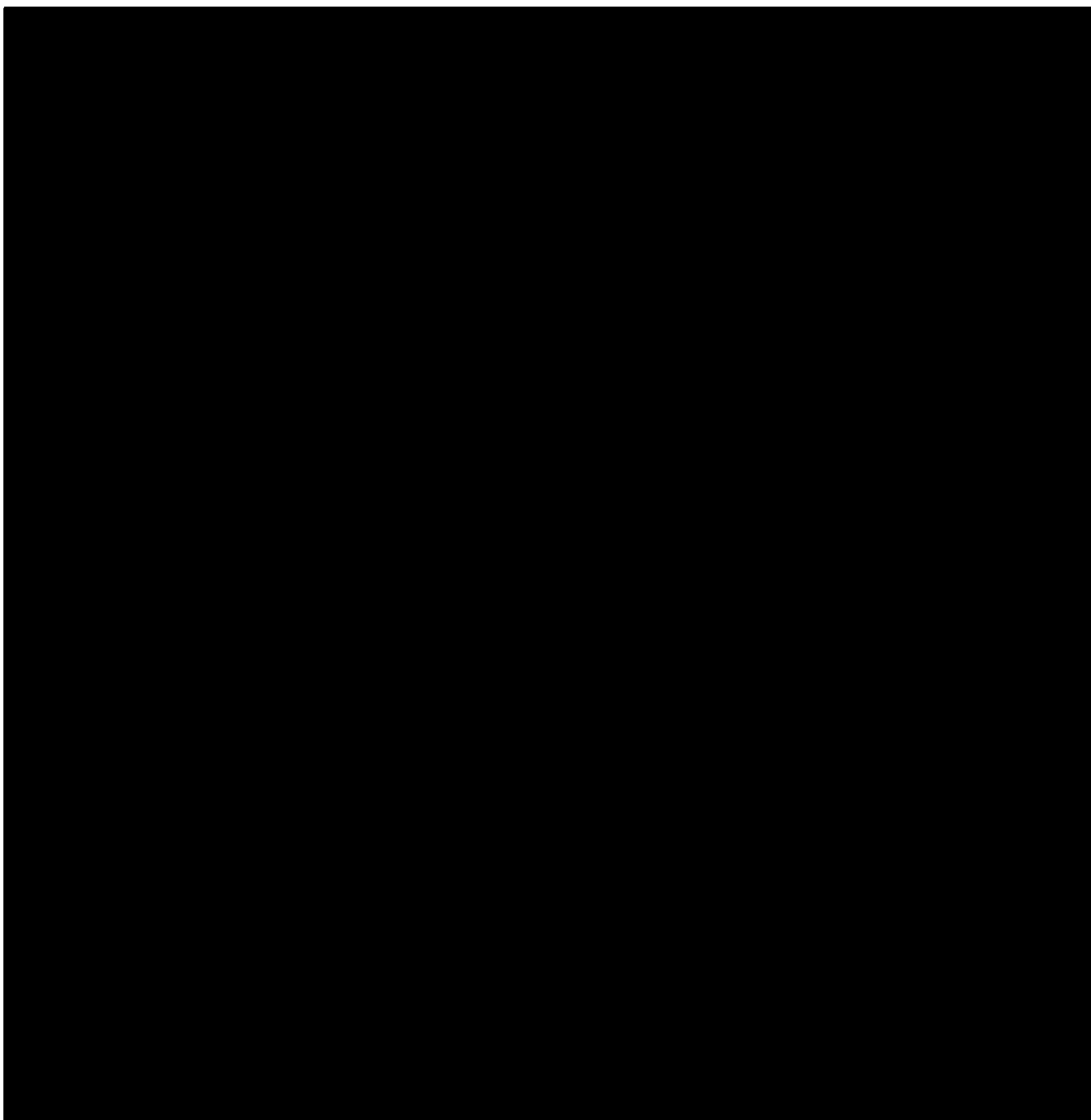
TLRI PROJECTS AND REPORTS

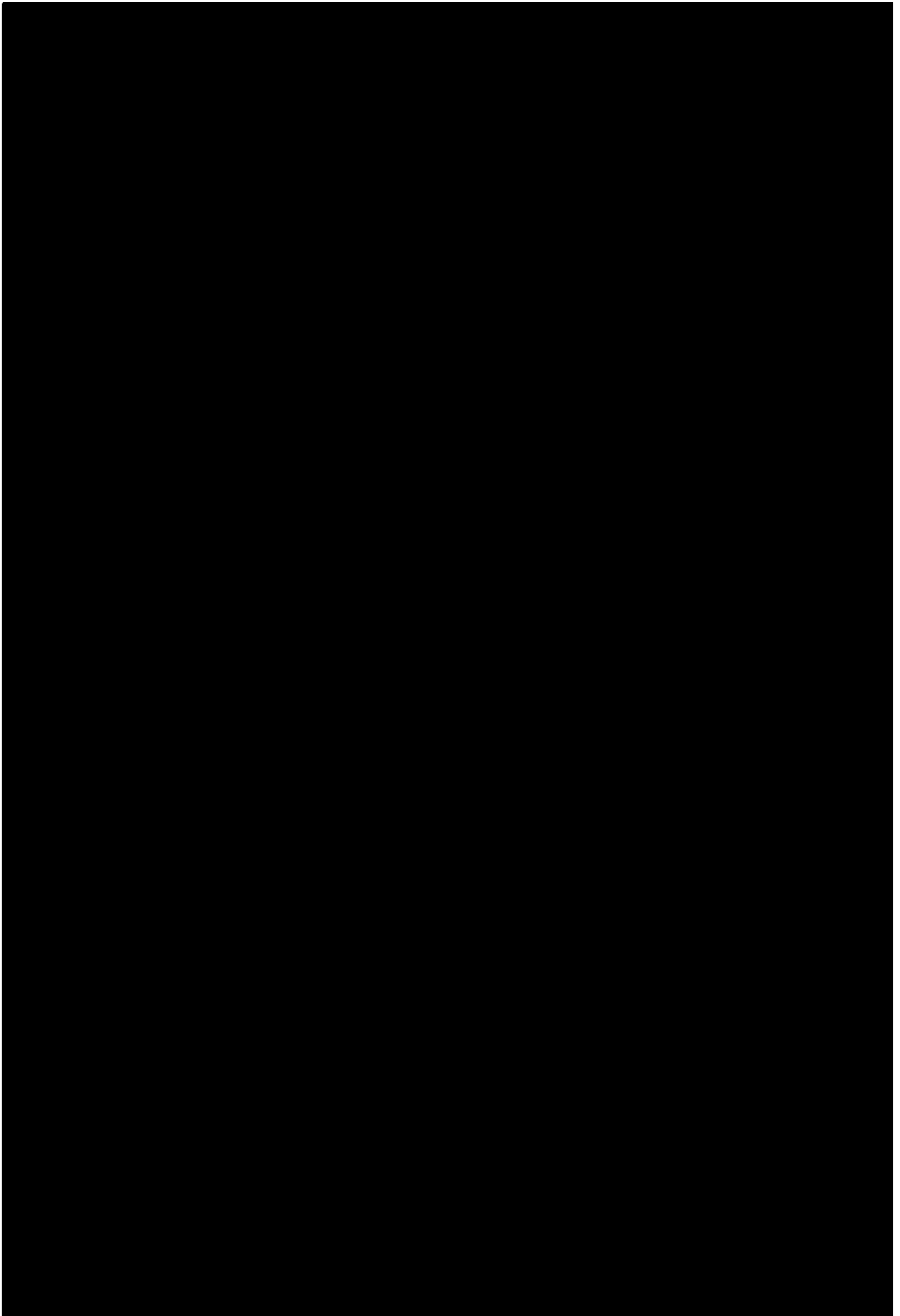
KEY MESSAGES

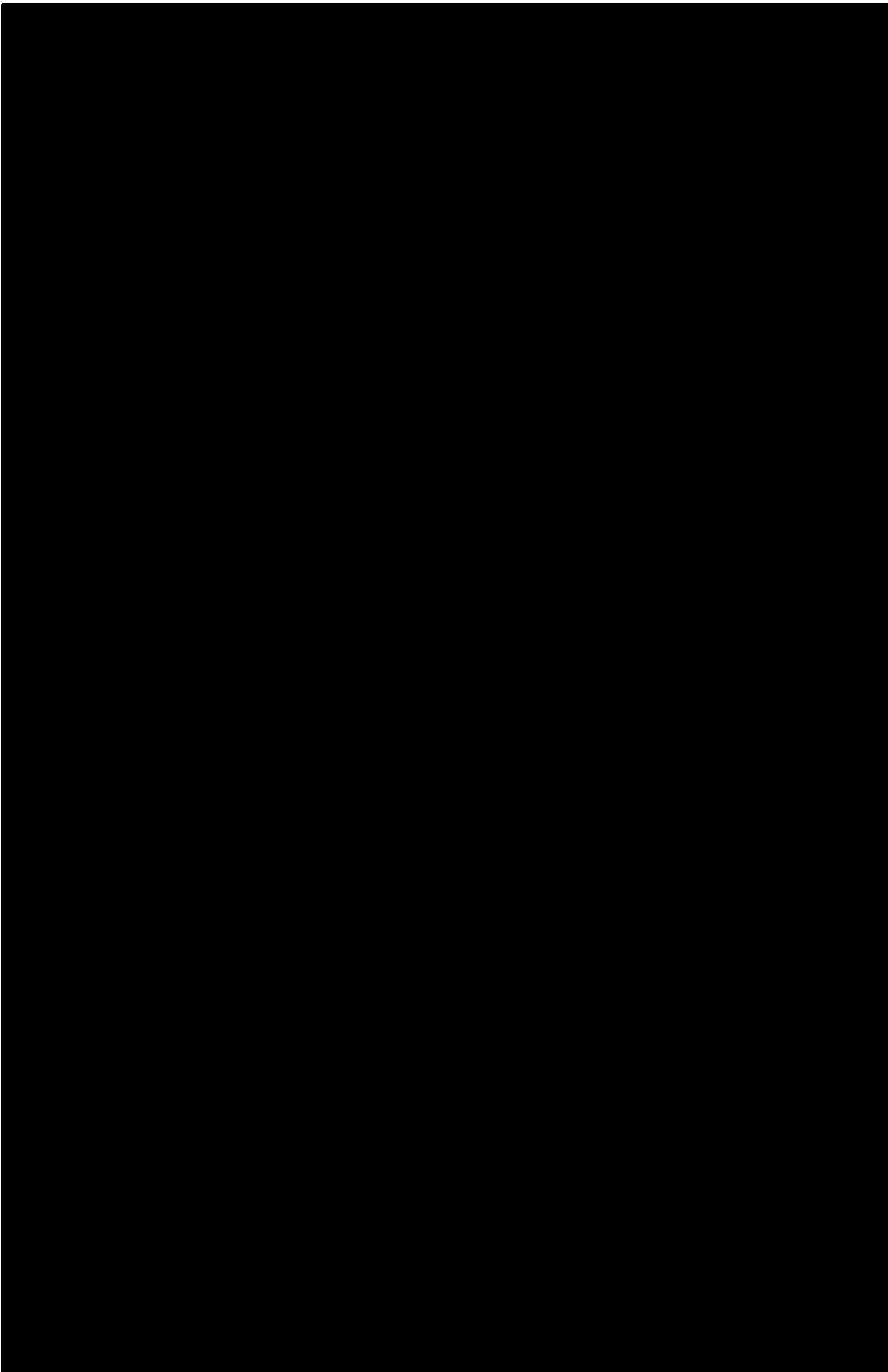
Review of the Tasmania Law Reform Institute

- The TLRI was established on 23 July 2001 by agreement between the State Government, 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.
- In November 2019, the parties agreed to continue the operation of the Tasmania Law Reform Institute by entering into an amended agreement for a further term of three years.
- I am aware that the University of Tasmania is currently undertaking a review of the TLRI to consider and make recommendations about the structure, form governance and funding of the TLRI as the state's peak law reform body.
- I have been consulted by the University with regard to the proposed draft terms of reference for the review, and the constitution of the review panel, which I have approved.
- I understand that the object of the review is to ensure the continuing success and sustainability of the Institute.
- The review is being undertaken by an Independent panel, to consider and make recommendations about the structure, governance and funding of the TLRI, as the state's peak law reform body.
- As Attorney General and Minister for Justice, on behalf of the Tasmanian Government, I was consulted on the Terms of Reference of the review and constitution of the review panel.
- However, any decision about the conduct of the Review, including whether to share or publish the final Review Report is a matter for the University and the Independent Review Panel.

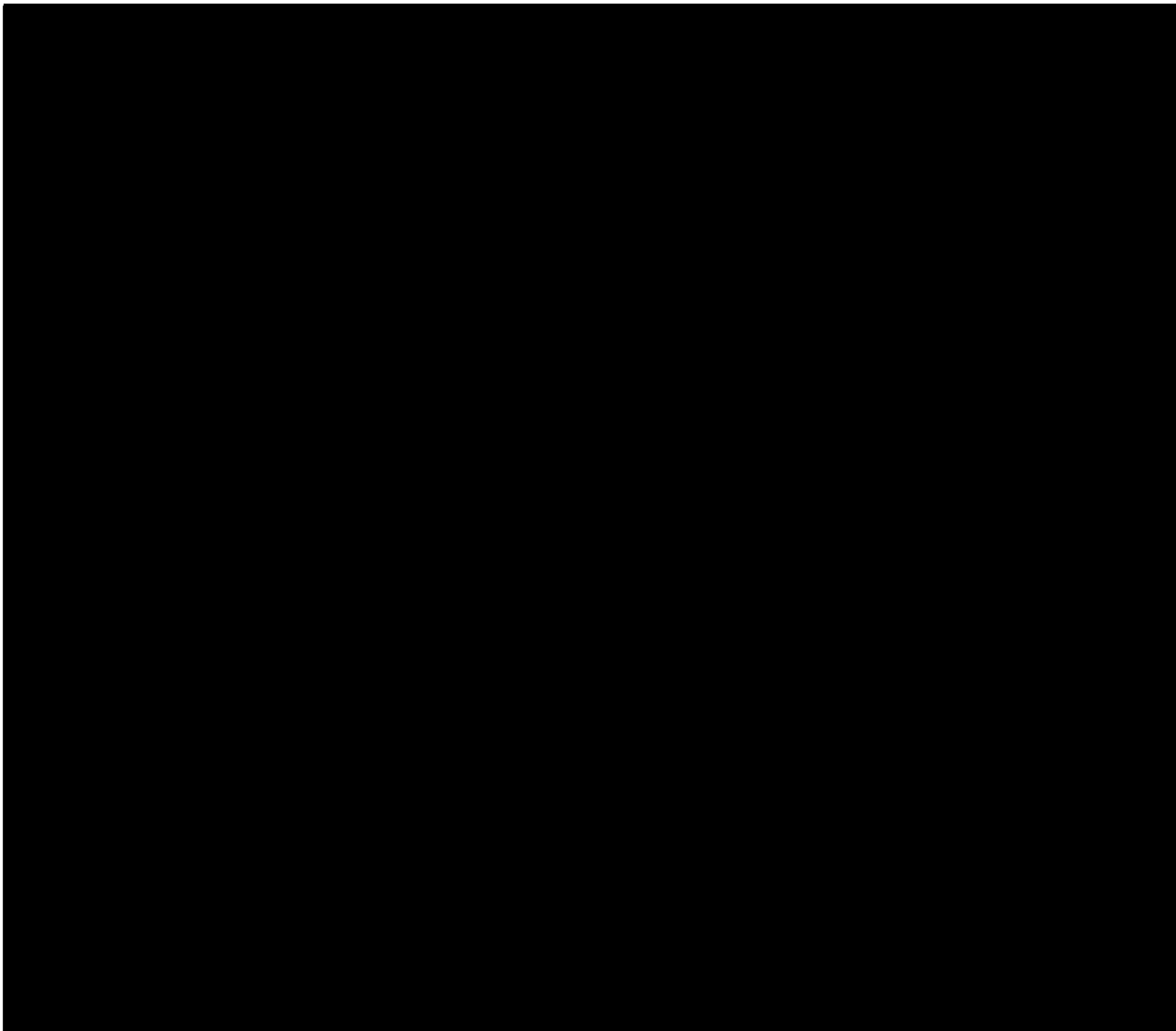
- It is my understanding that the Vice-Chancellor, Professor Rufus Black, has indicated an intention to share the report with both our Government and the Law Society, two of the three founding partners, prior to its public release.
- I also understand that it is the Review Panel's intention to make the Report and where possible, the written submissions public, and publish them on the TLRI website in due course.
- I personally met with the review panel on 27 April 2022, as did the Secretary and Deputy Secretary of my Department and I look forward to hearing the review panel's findings.











KEY FIGURES

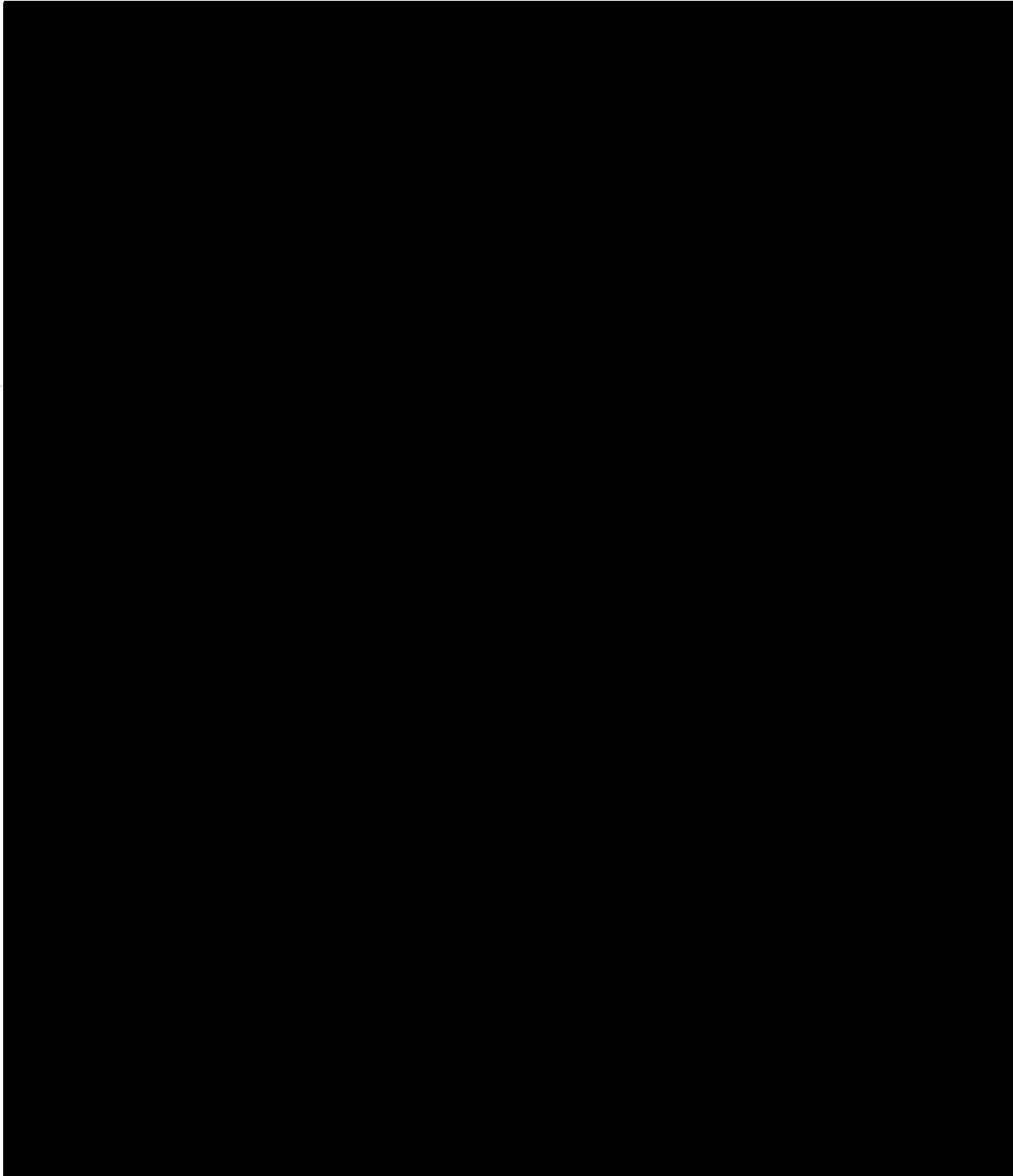
- The Government provides \$50,000 per annum funding to the TLRI with the University of Tasmania Faculty of Law providing in-kind support for staffing, amenities and funding administration.
- The Agreement commits the University of Tasmania to a contribution of in-kind support for the TLRI's activities (including the Director's salary, academic support, office facilities and administrative support). For the calendar year January– December 2020 the total in-kind contribution was valued at \$173,759.51. The TLRI is yet to finalise its 2021 Annual Report.

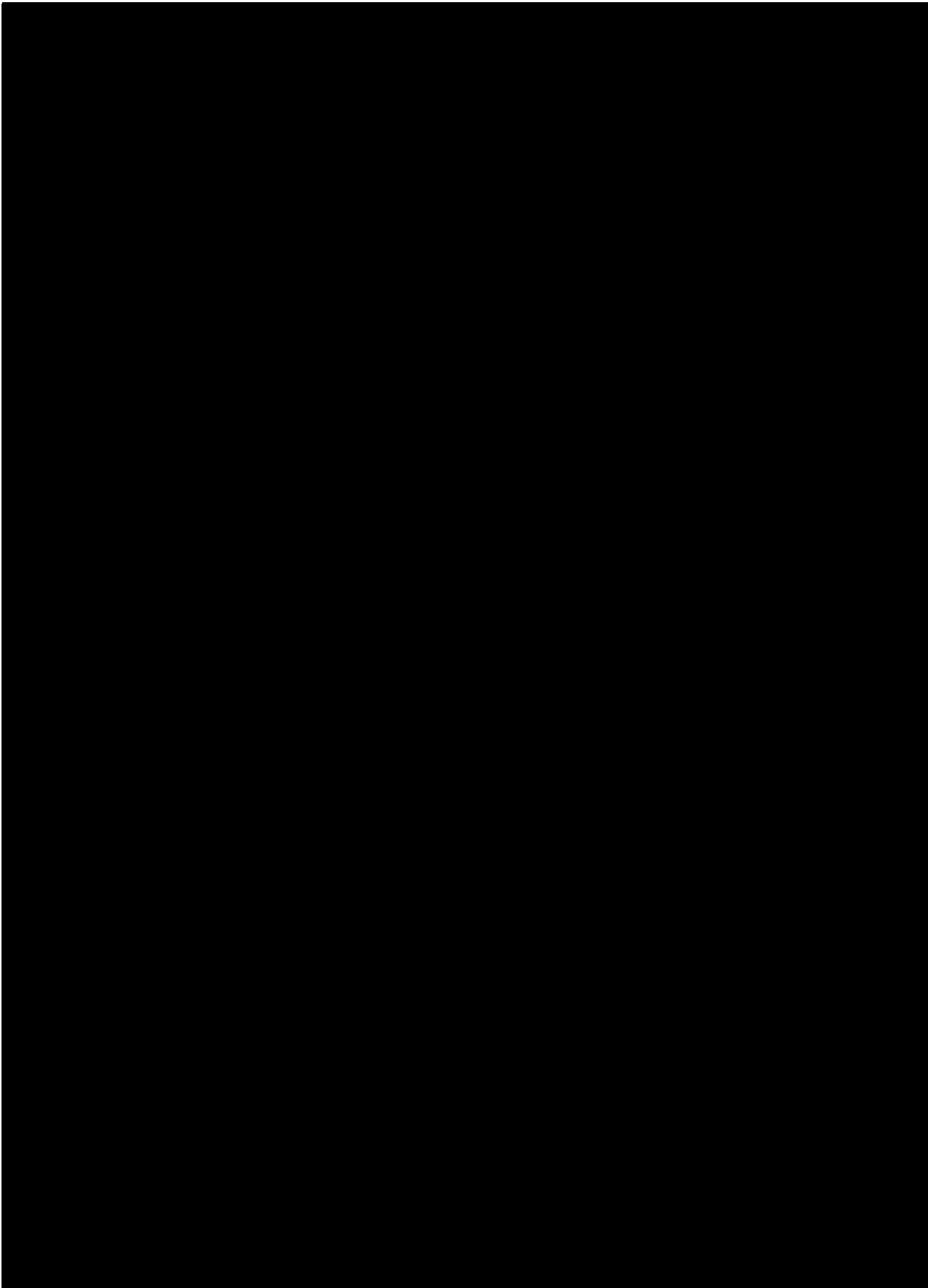
BACKGROUND:

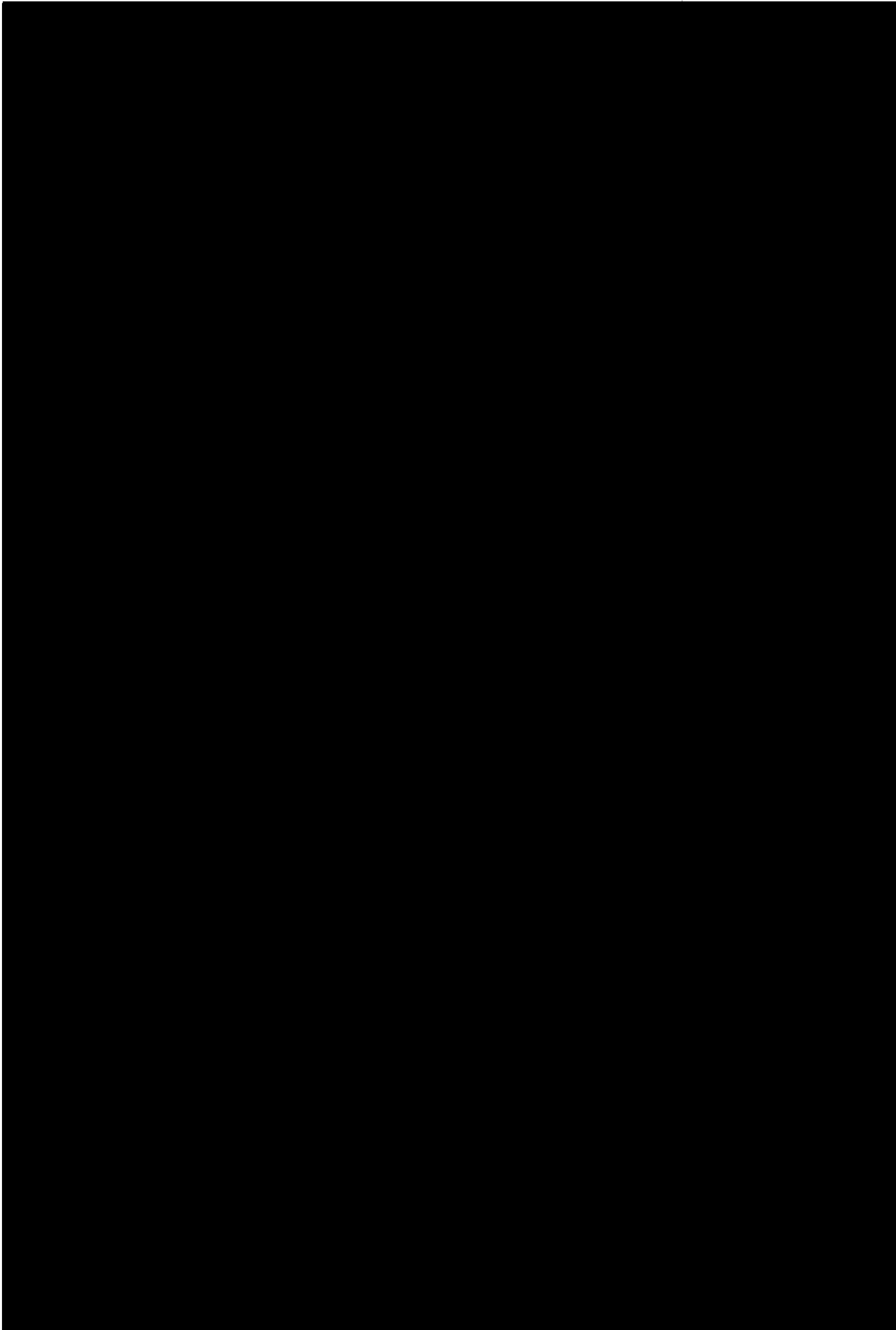
Structure and TLRI Review

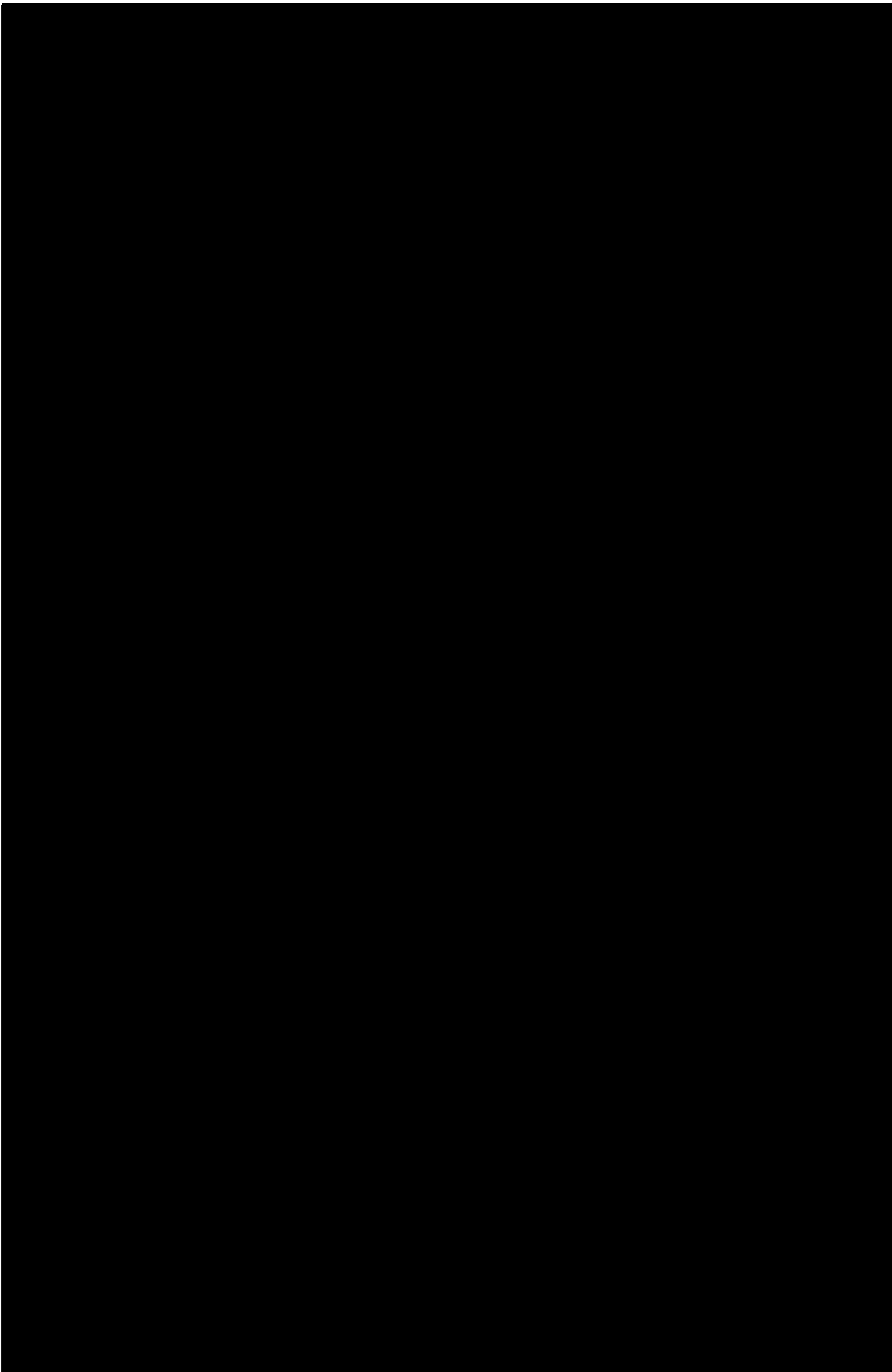
- The Tasmania Law Reform Institute (TLRI) was established on 23 July 2001 by agreement between the State Government, University of Tasmania and the Law Society of Tasmania. In November 2019, the Partners to the Institute Agreement finalised a renewal agreement extending the agreement for three years, until November 2022.
- Prior to a new agreement, the University of Tasmania is undertaking a review of the TLRI to consider and make recommendations about the structure, form governance and funding of the TLRI as the state's peak law reform body.
- Professor John Williams (Acting Provost, University of Adelaide) has agreed to lead a panel to conduct the review, and Professor Kate Warner and Dr David Plater (University of Adelaide, and sometimes South Australia Law Reform Institute) have agreed to work with Prof. Williams as the panel members.
- Both you and the Department of Justice were contacted with regard to the proposed draft terms of reference for the review as well as the proposed panel members.
- The terms of reference for the review are:
 1. Whether the aims and objectives of the Institute, set out in its Founding Agreement, require modernisation, clarification or amendment;
 2. Whether there are sufficient provisions for the protection and promotion of the institutional integrity and independence of the Institute;
 3. The position, role and relationship of the Institute to its founding members, the Government of Tasmania, and the University of Tasmania (in particular its placement within the Law Faculty of UTAS), including specifically the research capacities and priorities of the University and the Law Faculty;
 4. The position, role and relationship of the Institute to the Government of Tasmania, as represented by the Attorney-General;
 5. The adequacy and appropriateness of the Institute's current constitution, governance arrangements and reference process; and
 6. The appropriateness and sustainability of the Institute's resourcing and staffing having regard to the size of the jurisdiction in which it operates.
- The Government provides \$50,000 per annum funding to the TLRI with the University of Tasmania Faculty of Law providing in-kind support for staffing, amenities and funding administration. This amount has not changed since 2001.

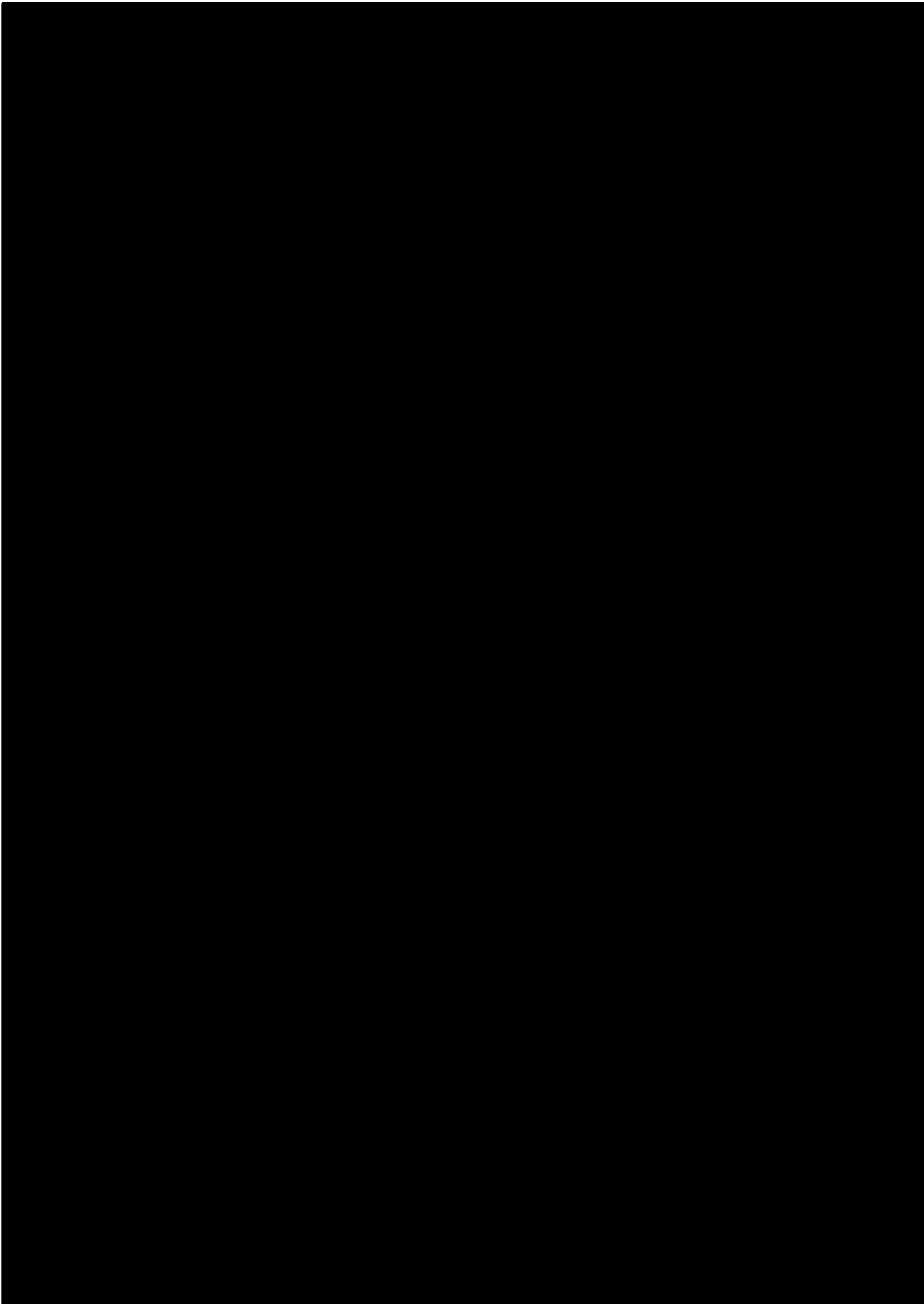
- The TLRI'S functions were undertaken by its Acting Director Dr Brendan Gogarty following the retirement of the previous Director, Associate Professor Terese Henning in December 2019, with assistance from Board members, research assistants, Law Faculty staff and students. The Department was informally advised that Dr Gogarty would not be continuing in the role after January 2022. The Director's position has not been filled as at time of writing.
- The TLRI may receive proposals for law reform or research projects from a wide range of sources, including the Attorney-General, the Judiciary, the Parliament, Government Agencies, the Legal Aid Commission, the legal profession, members of the community and community groups.

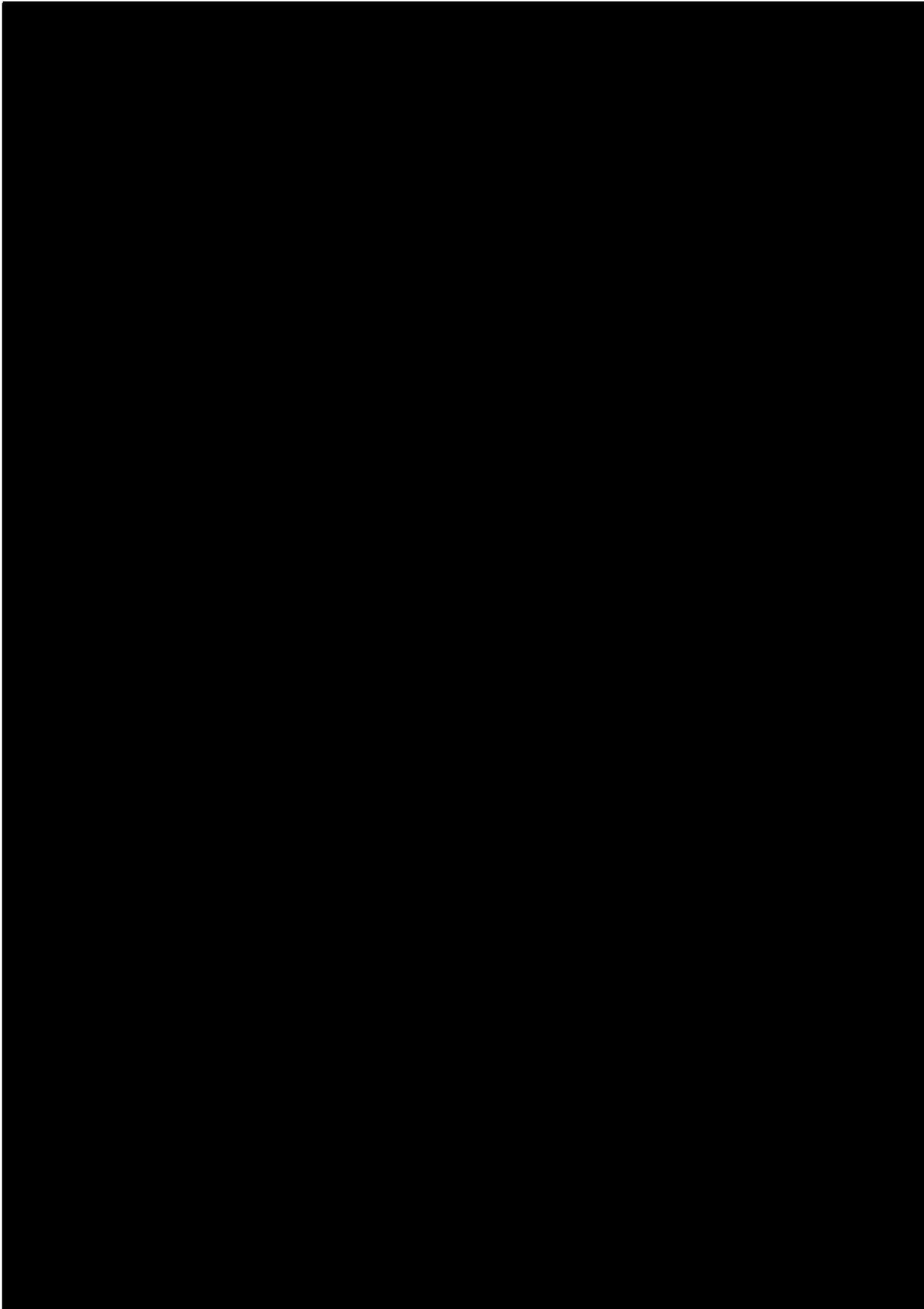


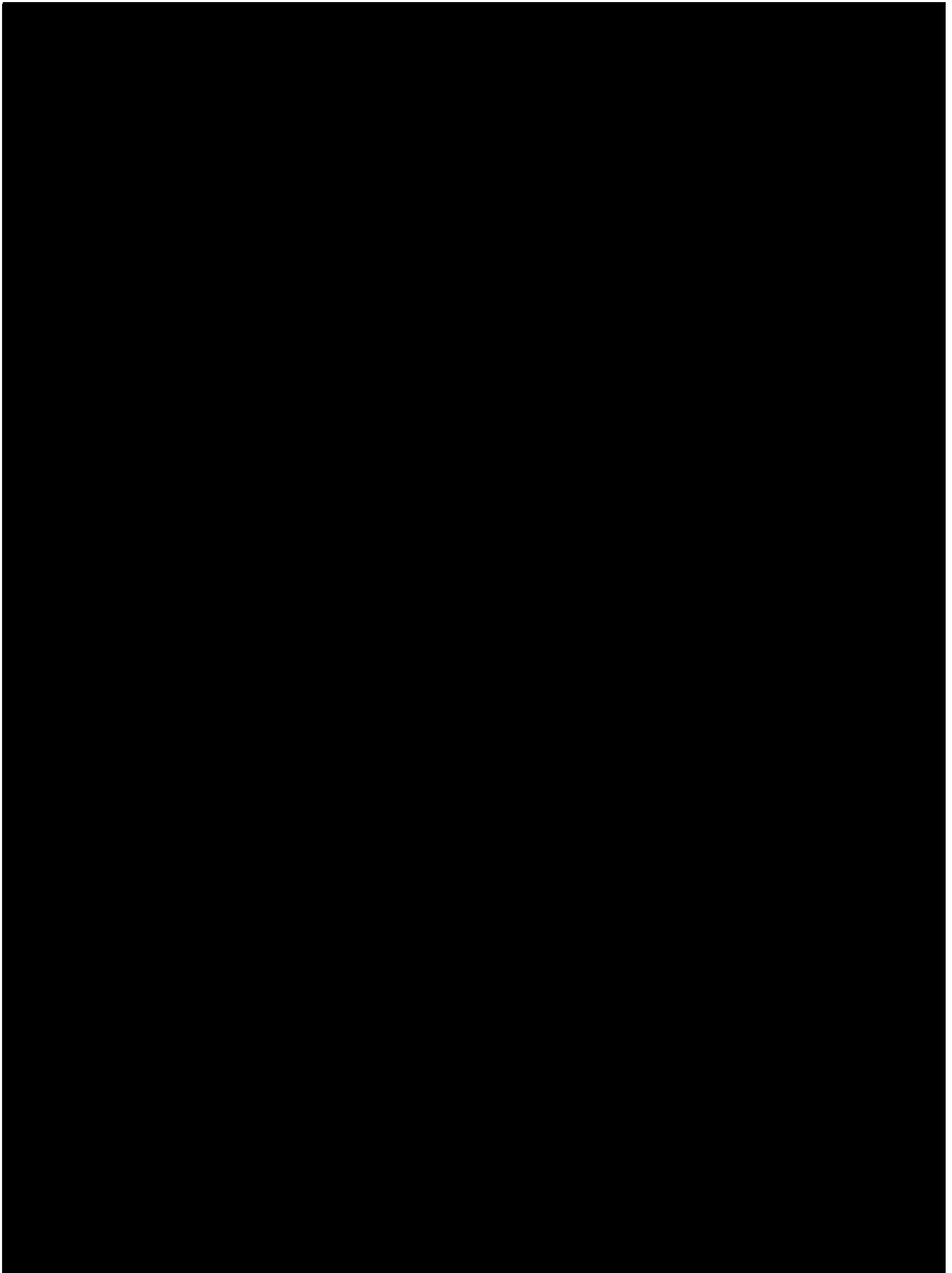


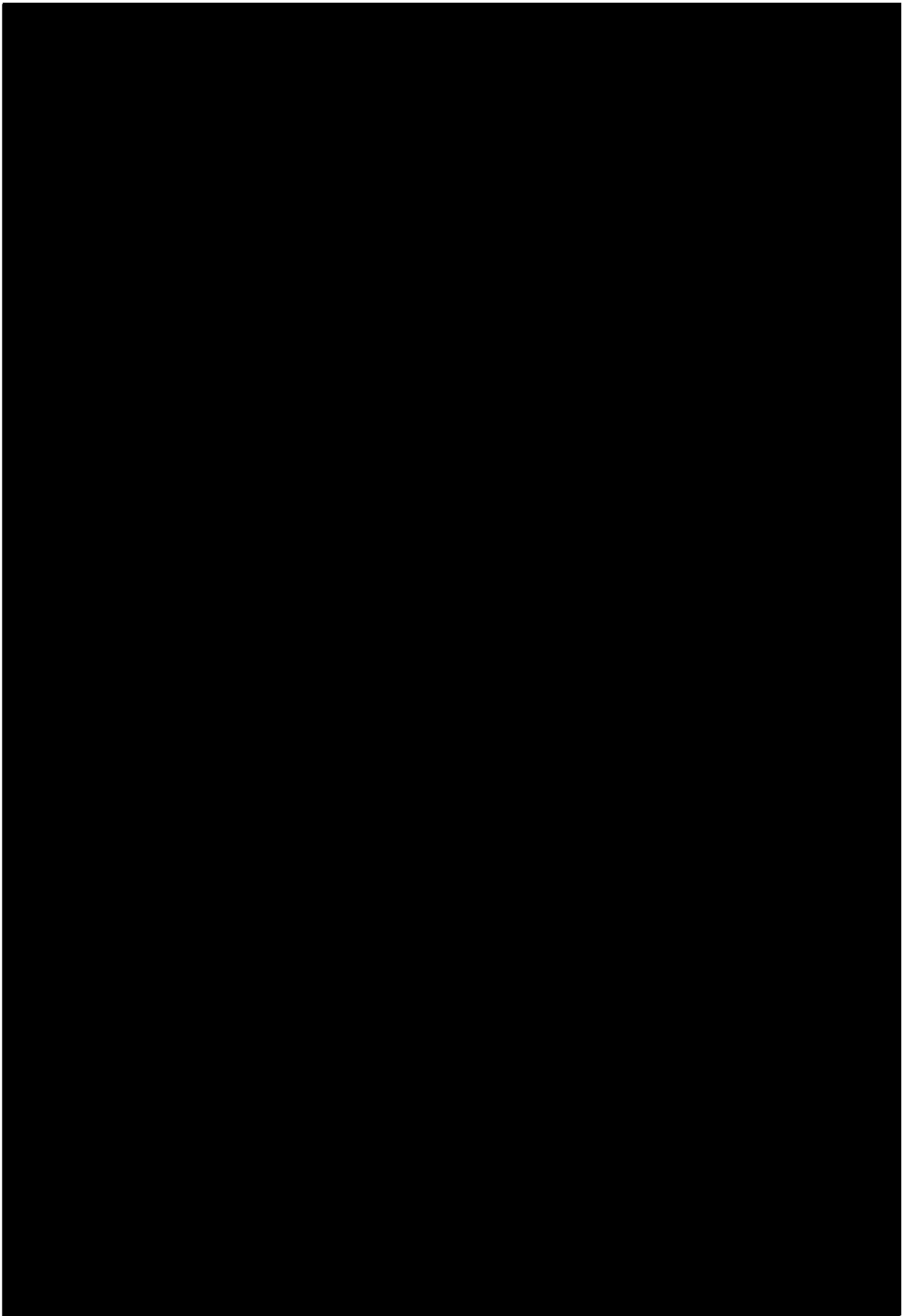


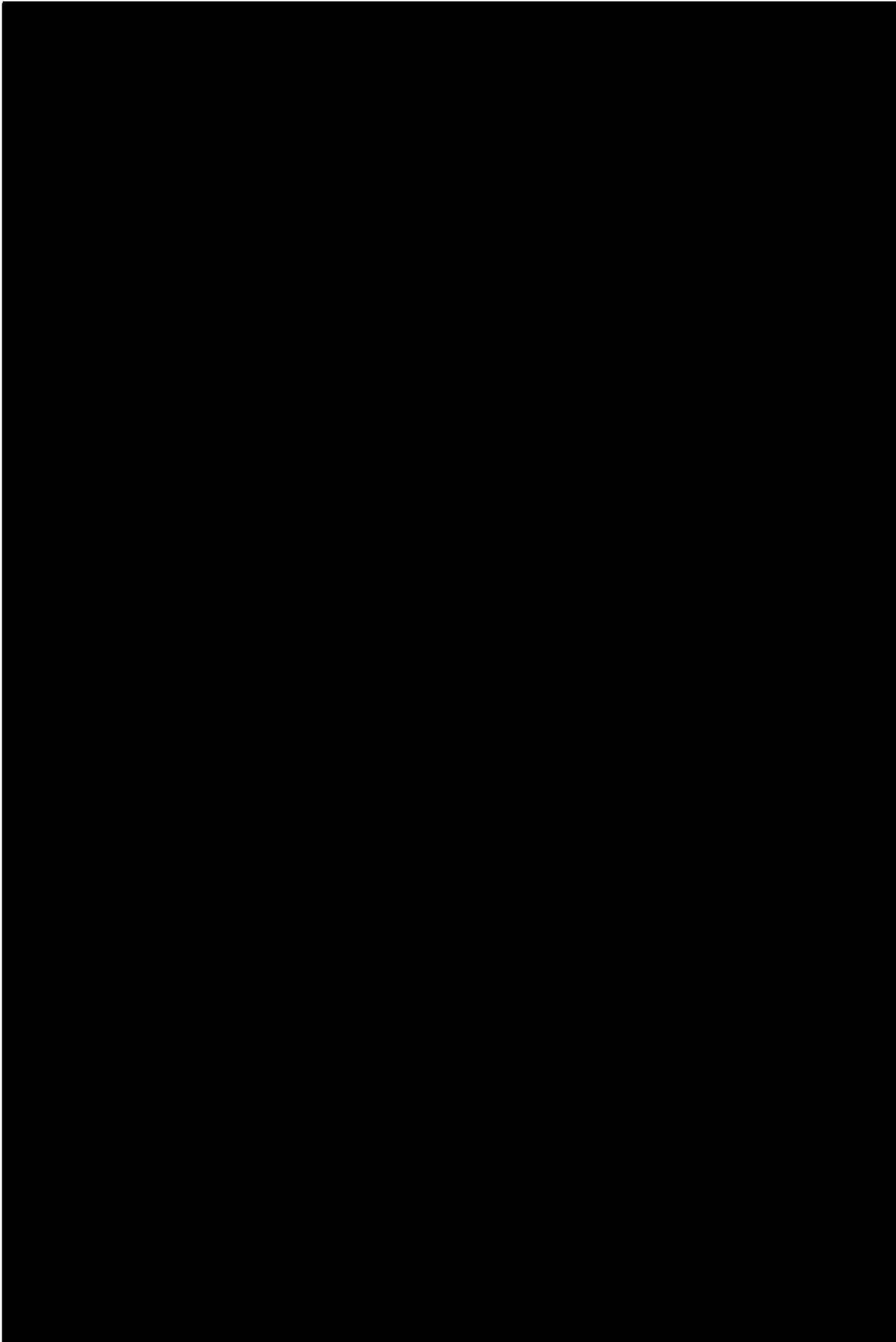


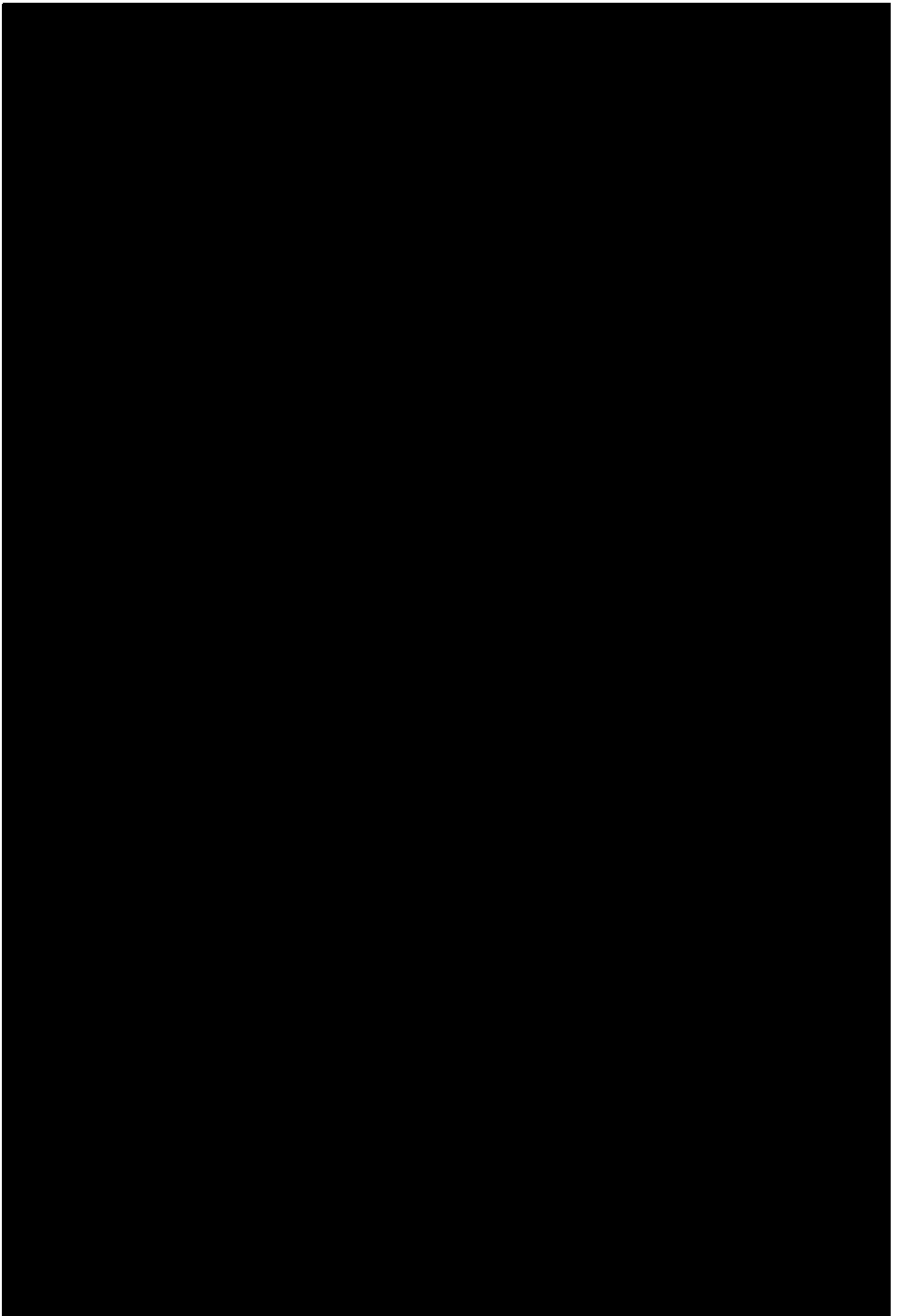


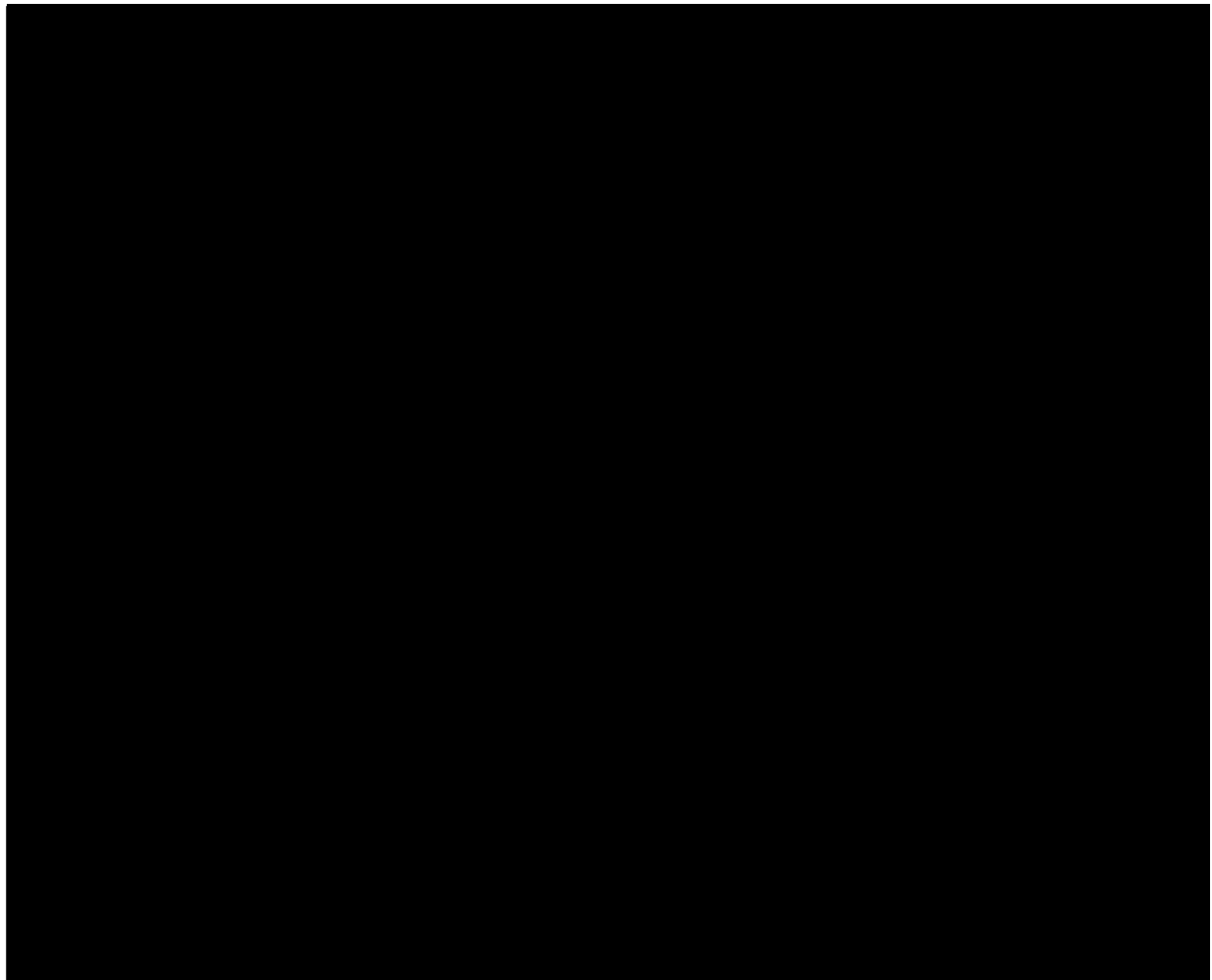












Contact Officer: Bruce Paterson
Position: A/Director, SLP
Phone: 6165 4926

Cleared by: Kristy Bourne
Position: Deputy Secretary
Phone: 6165 4943



APPROVED	NOT APPROVED / NOTED
SIGNED: <i>[Signature]</i>	
DATE: 31/3/2022	

Critical Date: 15 April 2022

Minute to the Attorney-General and Minister for Justice
Review of the Tasmania Law Reform Institute

Minister's notation:
 I didn't instruct I wouldn't be part in actual review - just not attend previous meeting of stakeholders. letter amended.

RECOMMENDATION:

That you:

1. Note the contents of this Minute; and
2. Sign the attached letter to Dr David Plater. - as amended.

KEY ISSUES:

1. By letter dated 22 March 2022, Dr David Plater, on behalf of the Review Panel undertaking the review of the Tasmania Law Reform Institute (TLRI), wrote to you to advise that the Panel will be in Hobart on 26 or 27 April 2022. A copy of Dr Plater's letter is attached.
2. The Panel would like to meet with you and/or interested officers of the Department of Justice.
3. The Department understands that your preference is for representatives of the Department of Justice — including the Secretary of the Department and your representative on the board of the TLRI, Deputy Secretary Kristy Bourne — to meet with the Review Panel and provide input in relation to the review. The Department of Justice is currently making arrangements to meet with and make submissions to the Review Panel.

BACKGROUND:

- The University of Tasmania is undertaking a review of the TLRI to consider and make recommendations about the structure, form governance and funding of the TLRI as the state's peak law reform body.
- The Review Panel consists of Professor John Williams (Acting Provost, University of Adelaide), Professor Kate Warner, and Dr David Plater (University of Adelaide).
- You have previously approved the terms of reference and composition of the Review Panel.
- Attached, for your consideration and signature, is a letter to Dr Plater.

Kristy Bourne
Deputy Secretary, Justice and Reform

Prepared by:	David Sealy	Cleared by:	Kristy Bourne
Position:	Assistant Director (Administration of Justice)	Position:	Deputy Secretary, Justice and Reform
Phone:	6165 4933	Phone:	6165 4943
Date:	28 March 2022	Date:	29 March 2022

Attachments:

1. Letter from Dr Plater on behalf of the Review Panel, 22 March 2022; and
2. Letter to Dr David Plater.

Attorney-General
Minister for Justice
Minister for Corrections
Minister for Workplace Safety and Consumer Affairs
Minister for the Arts



Level 10 15 Murray Street HOBART TAS 7000 Australia
GPO Box 123 HOBART TAS 7001 Australia
Ph: +61 3 6165 7739
Email Minister.Archer@dpactas.gov.au

31 MAR 2022

Dr David Plater
Deputy Director
South Australian Law Reform Institute
Ligertwood Building, Adelaide Law School
University of Adelaide
Adelaide SA 5005

By email: david.plater@adelaide.edu.au

Dear Dr Plater

Thank you for your letter dated 22 March 2022 on behalf of the Review Panel undertaking the review of the Tasmania Law Reform Institute (TLRI). The Tasmanian Government welcomes the opportunity to contribute to the review of the TLRI.

My office is in the process of arranging for me to meet with the Panel and provide input into the review. Should you need to contact my office, please call Linda Jacobs on (03) 61657668, who will assist you with arrangements.

I trust this information is of assistance.

Yours sincerely

Hon Elise Archer MP
Attorney-General
Minister for Justice

SOUTH AUSTRALIAN
LAW REFORM
INSTITUTE



Hon Elise Archer MP
Attorney-General
Level 10
15 Murray Street
Hobart TAS 7000

elise.archer@dpac.tas.gov.au

22 March 2022

Dear Attorney-General

REVIEW OF TASMANIA LAW REFORM INSTITUTE

I am writing in relation to the present review that is being undertaken into the Tasmania Law Reform Institute (the TLRI) which is based at the University of Tasmania.

As you are aware, the TLRI is an independent law reform body established under an agreement between the Attorney-General of Tasmania, the University of Tasmania and the Law Society of Tasmania. This review has been commissioned by Professor Rufus Black, the Vice-Chancellor and President of the University of Tasmania, and has the support of the other founding parties, namely the Tasmanian Government and the Law Society of Tasmania. The Review Panel consists of the Chair, Professor John Williams, as well as the Honourable Professor Kate Warner AC and Associate Professor David Plater. Professor Williams and Associate Professor Plater are from the University of Adelaide.

The Terms of Reference for the review are noted on the following page.

The Review Panel will be available in person in Hobart to discuss this Review with interested parties on 26 or 27 April 2022. We would welcome the opportunity, if possible, to meet you and/or interested officers of the Department of Justice. An online meeting (via Zoom) may also be arranged if that is a preference.

We are encouraging contributions and welcome any written submission or comments in relation to the Review of the TLRI, noting the Terms of Reference. The input of the Department of Justice would be appreciated, if possible, whether it be on some or all of the items to be covered in the review.

Submissions may be given on a confidential basis and parties may wish to provide information to the review which is to be treated as entirely confidential. However, specific sensitive assertions within such submissions may be considered with due regard to that context. It is not expected that there will be provision for anonymous submissions.

The Vice-Chancellor, in commissioning the review, will receive the Final Report, but it is also expected that any submissions, and especially those made confidentially, will be treated and held in a way which respects that status. **The Vice-Chancellor will make any submission available to the TLRI's contracting partners (ie: the Tasmanian Government and the Law Society of Tasmania) on request.**

Thank you for your consideration. Please get in touch if there are any questions.

Yours faithfully

Dr David Plater
Deputy Director
South Australian Law Reform Institute

Review of the Tasmania Law Reform Institute (TLRI) Terms of Reference

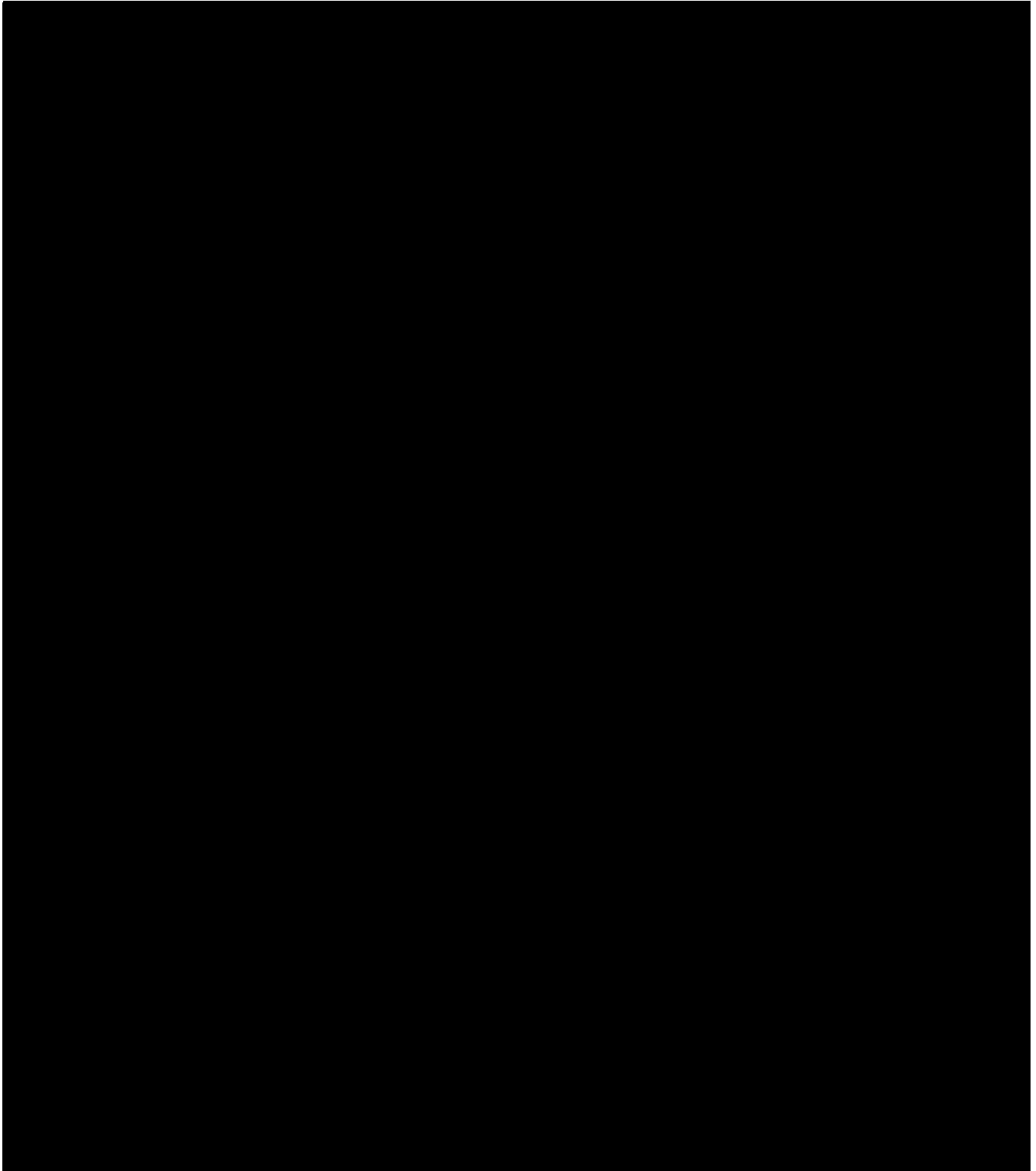
The Review Panel shall consider and make recommendations about the structure, form, governance and funding of the Tasmania Law Reform Institute, as the State's peak law reform body. The object of the review is to ensure the continuing success and sustainability of that Institute in the ongoing improvement of Tasmania's systems of law and justice. In particular, the Panel should consider:

1. Whether the aims and objectives of the Institute, set out in its Founding Agreement, require modernisation, clarification or amendment;
2. Whether there are sufficient provisions for the protection and promotion of the institutional integrity and independence of the Institute;
3. The position, role and relationship of the Institute to its founding members, the Government of Tasmania, and the University of Tasmania (in particular its placement within the Law Faculty of UTAS), including specifically the research capacities and priorities of the University and the Law Faculty;
4. The position, role and relationship of the Institute to the Government of Tasmania, as represented by the Attorney-General;
5. The adequacy and appropriateness of the Institute's current constitution, governance arrangements and reference process; and
6. The appropriateness and sustainability of the Institute's resourcing and staffing having regard to the size of the jurisdiction in which it operates.

QUESTION TIME BRIEF

TASMANIA LAW REFORM INSTITUTE – LAW REFORM REPORTS

KEY MESSAGES

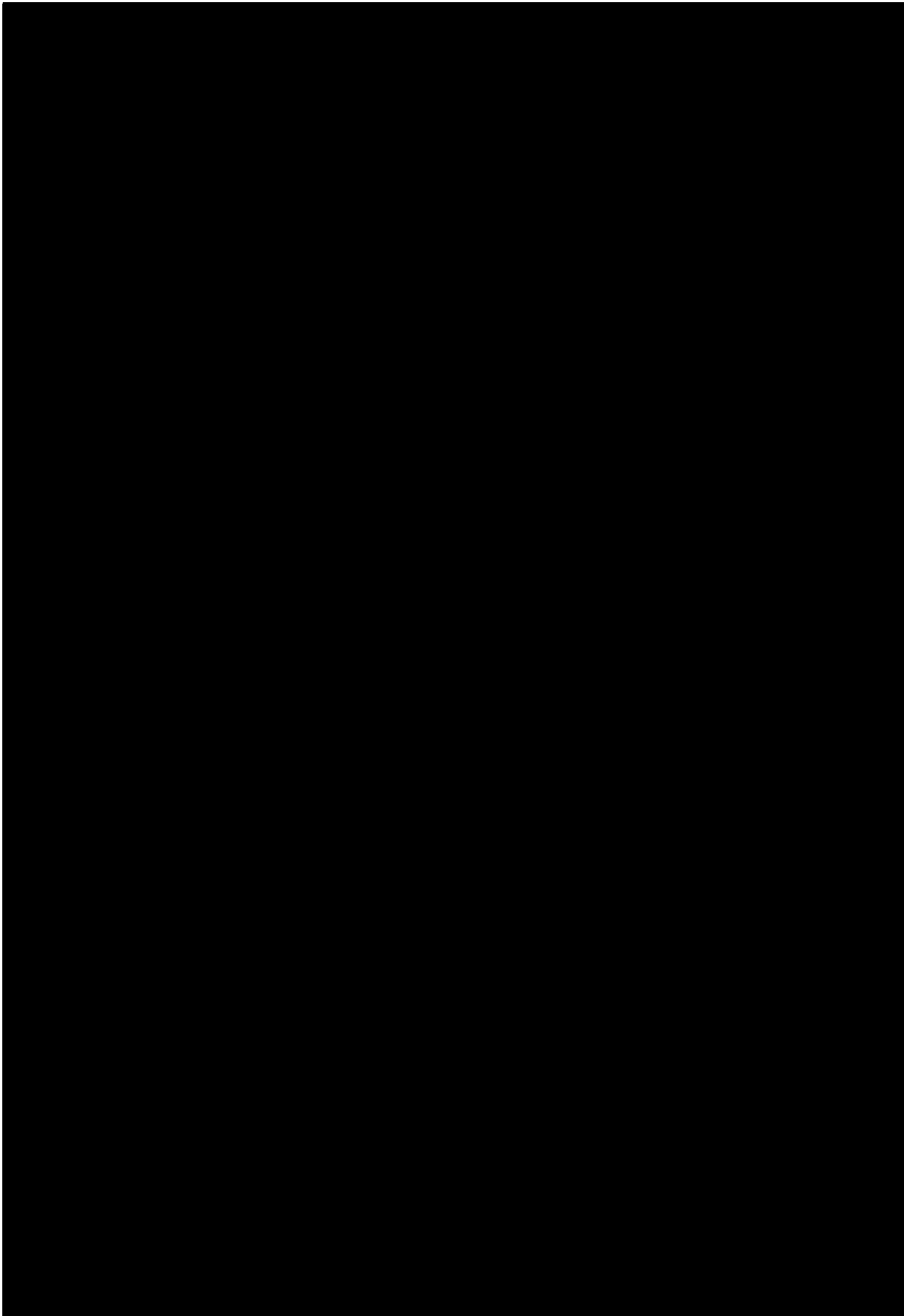


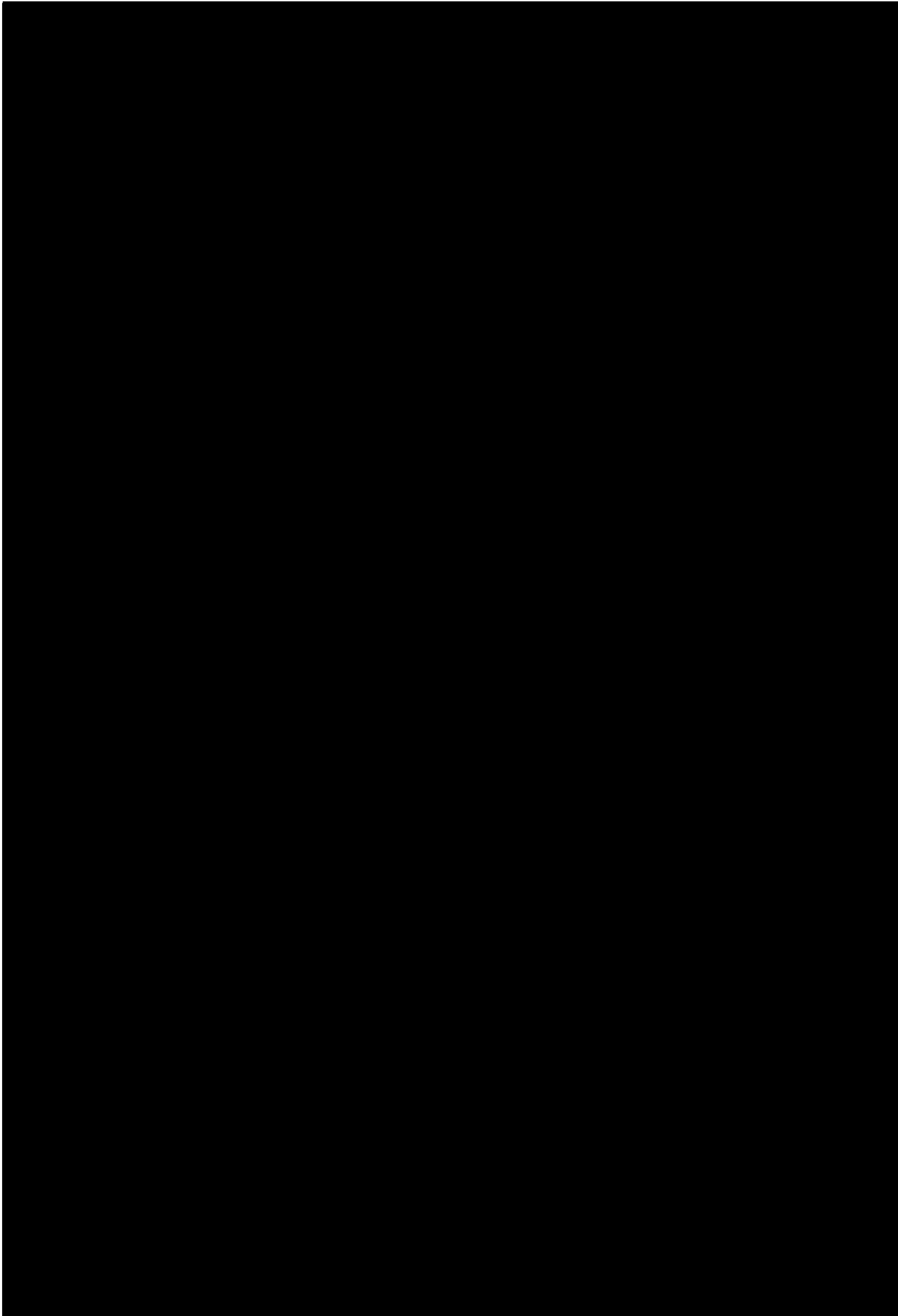
If Asked - About the Review of the Tasmania Law Reform Institute
[separate QTB Law School Issues also notes the Review]

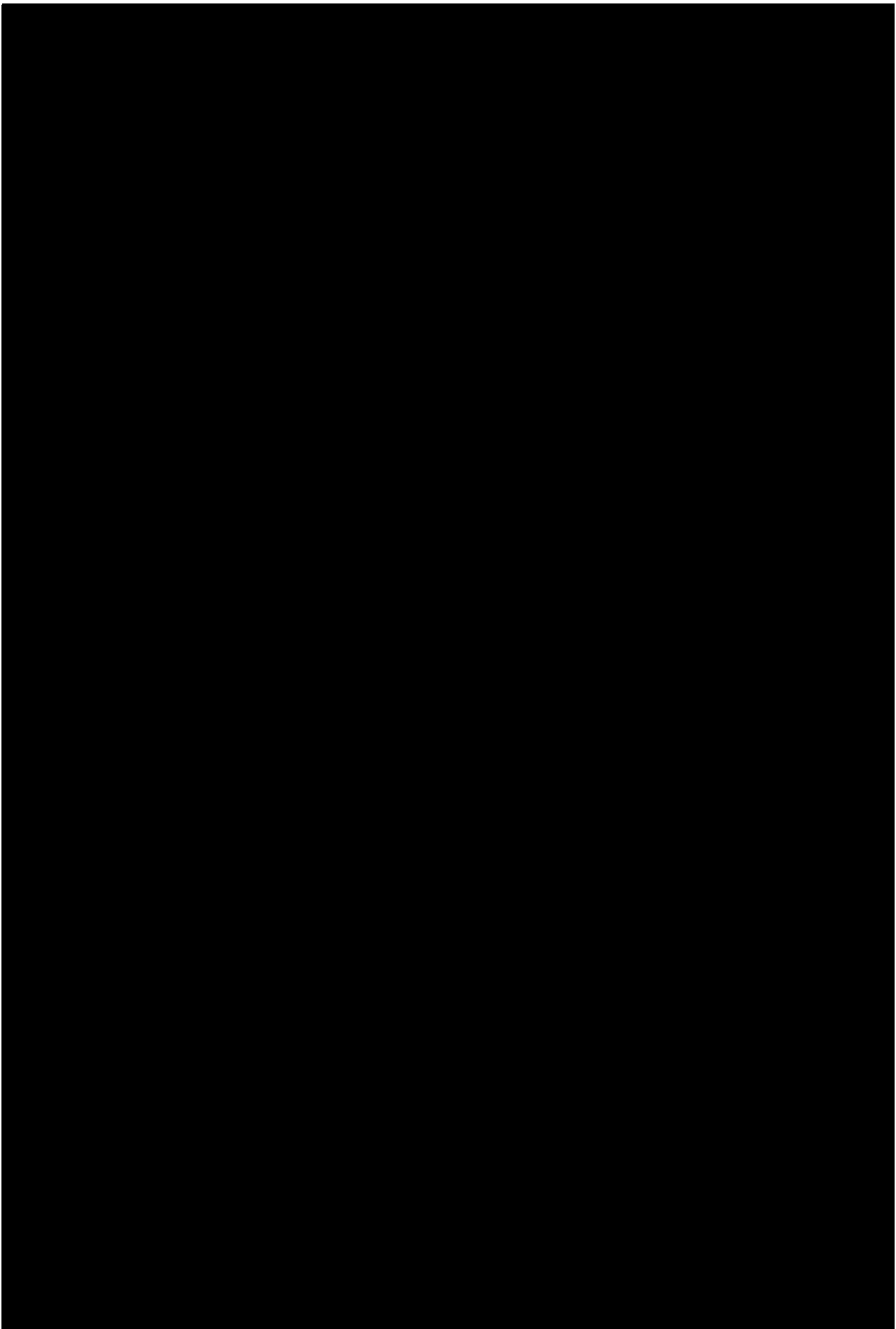
- The TLRI was established on 23 July 2001 by agreement between the State Government, University of Tasmania and the Law Society of Tasmania. In April 2015, the Partners to the Institute Agreement finalised a renewal agreement extending the agreement for five years until November 2019.
- In November 2019, the parties agreed to continue the operation of the Tasmania Law Reform Institute by entering into an amended agreement for a further term of three years.
- The University of Tasmania initiated a review of the TLRI to consider and make recommendations about the structure, form governance and funding of the TLRI as the state's peak law reform body.
- This Review was conducted with the support of the Law School, the Tasmanian Government and the Law Society of Tasmania. These and other stakeholders and interested people were engaged in the consultation process.
- The Review Panel's findings were released on 20 July 2022.

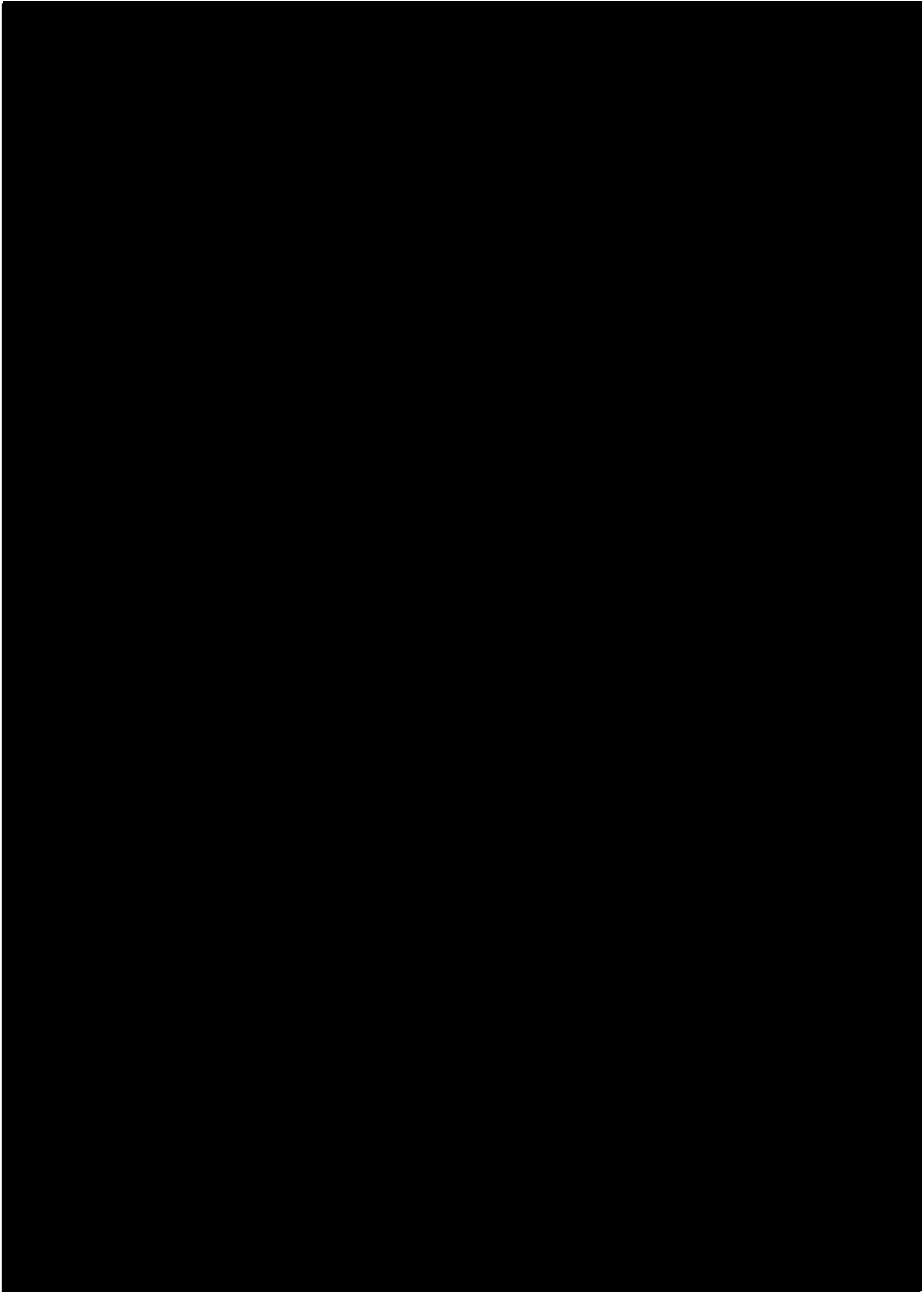
- In releasing the findings, the University noted the Review Panel invited submissions from almost 100 parties or organisations, receiving 16 written submissions and meeting with 22 individuals or groups during April and May 2022.
- The Review Panel was reassured that all parties consulted were unanimous in their view that there was an ongoing need for a strong and vibrant TLRI. Moreover, the submissions highlighted the significant and lasting contribution to the laws of the State and how the TLRI had facilitated an informed and impartial discussion about the role law can make to improve the lives of all Tasmanians.
- The Report makes 20 recommendations and the Panel hopes that these will provide an opportunity to reinvigorate the relationship between the Founding Partners and place the TLRI on a secure and sustainable footing into the future.
- The Government will consider that Report's recommendations carefully prior to the expiration of the current agreement.

BACKGROUND:











TLRI Background and Review

- The Government provides \$50,000 per annum funding to the TLRI with the University of Tasmania Faculty of Law providing in-kind support for staffing, amenities and funding administration. This amount has not changed since 2001.
- The TLRI'S functions are being undertaken by its Acting Director Dr Brendan Gogarty following the retirement of the previous Director, Associate Professor Terese Henning in December 2019, with assistance from Board members, research assistants, Law Faculty staff and students.
- The Department has been informally advised that Dr Gogarty will not be continuing in the role after January 2022. It appears the Director's position has not been filled as at 5 May 2022.
- The TLRI may receive proposals for law reform or research projects from a wide range of sources, including the Attorney-General, the Judiciary, the Parliament, Government Agencies, the Legal Aid Commission, the legal profession, members of the community and community groups.
- Prior to a new agreement, the University of Tasmania is undertaking a review of the TLRI to consider and make recommendations about the structure, form governance and funding of the TLRI as the state's peak law reform body.
- Professor John Williams (Acting Provost, University of Adelaide) has agreed to lead a panel to conduct the review, and Professor Kate Warner and Dr David Plater (University of Adelaide, and sometimes South Australia Law Reform Institute) have agreed to work with Prof. Williams as the panel members.

- Both you and the Department of Justice were contacted with regard to the proposed draft terms of reference for the review as well as the proposed panel members.
- The terms of reference for the review are:
 1. Whether the aims and objectives of the Institute, set out in its Founding Agreement, require modernisation, clarification or amendment;
 2. Whether there are sufficient provisions for the protection and promotion of the institutional integrity and independence of the Institute;
 3. The position, role and relationship of the Institute to its founding members, the Government of Tasmania, and the University of Tasmania (in particular its placement within the Law Faculty of UTAS), including specifically the research capacities and priorities of the University and the Law Faculty;
 4. The position, role and relationship of the Institute to the Government of Tasmania, as represented by the Attorney-General;
 5. The adequacy and appropriateness of the Institute's current constitution, governance arrangements and reference process; and
 6. The appropriateness and sustainability of the Institute's resourcing and staffing having regard to the size of the jurisdiction in which it operates

Contact Officer:	Bruce Paterson	Cleared by:	Kristy Bourne
Position:	Acting Director SLP	Position:	Deputy Secretary
Phone:	6165 4926	Phone:	6165 4943

Status: No changes

Updated: 15 July 2022

Reviewed: 29 August 2022

TASMANIA
LEGISLATIVE COUNCIL

SESSION 2021

NOTICE OF QUESTION

25 November 2021

I (*Ms Webb*) tomorrow to ask the Honourable Leader of the Government —

Recognising that historically the Tasmanian Government has received independent law reform advice from advisory commissions, commissioners and institutes in one form or another since 1974, can the Government detail the following in relation to the Tasmania Law Reform Institute (TLRI):

- (1) Any funding support allocated to the TLRI from the Solicitor's Guarantee Fund, or any other government source for the financial years 2020-21 and 2021-22; and

The Government provides \$50,000 per annum funding to the TLRI with the University of Tasmania Faculty of Law providing in-kind support for staffing, amenities and funding administration. This amount has not changed since 2001.

The activities of the TLRI are funded through a combination of Government funding, in-kind support from the University of Tasmania, and grants for specific projects from sources such as the Solicitors' Guarantee Fund when it is in surplus, the Law Foundation and the MAIB Injury Prevention and Management Foundation.

Due to the lack of surplus funds in the SGF in 2020 and given the pressures on the legal assistance sector due to the COVID-19 pandemic, the Government has committed \$2.2 million per year for four years to fund grants to organisations in the legal assistance sector. Expressions of interest for funding from this source have been received from a number of organisations and are currently under consideration.

- (2) whether the Government intend to renew the current Renewal Agreement between the Government of Tasmania, the University of Tasmania and the Law Society of Tasmania, referred to as the parties, beyond its current expiry date of November 2022?

The TLRI was established on 23 July 2001 by agreement between the State Government, 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.

In November 2019, the parties agreed to continue the operation of the Tasmania Law Reform Institute by entering into an amended agreement for a further term of three years.

I am aware that the University of Tasmania is seeking to undertake a review of the TLRI to consider and make recommendations about the structure, form governance and funding of the TLRI as the state's peak law reform body.

My Department and I have been contacted with regard to the proposed draft terms of reference for the review.

I understand that the object of the review is to ensure the continuing success and sustainability of the Institute.

.....
Signed



Hon. Elise Archer MP
Attorney-General
Minister for Justice
Minister for Corrections
Minister for Workplace Safety and Consumer Affairs
Minister for the Arts

Adviser: Natalie Cameron

Department: Justice

Ministerial RM Ref:

Dept Ref:

Meeting with: Brendan Gogarty (Director, Tasmania Law Reform Institute) – Regular TLRI stakeholder meeting

Date, time: 19 July 2021 AND TIME

Location: INSERT LOCATION

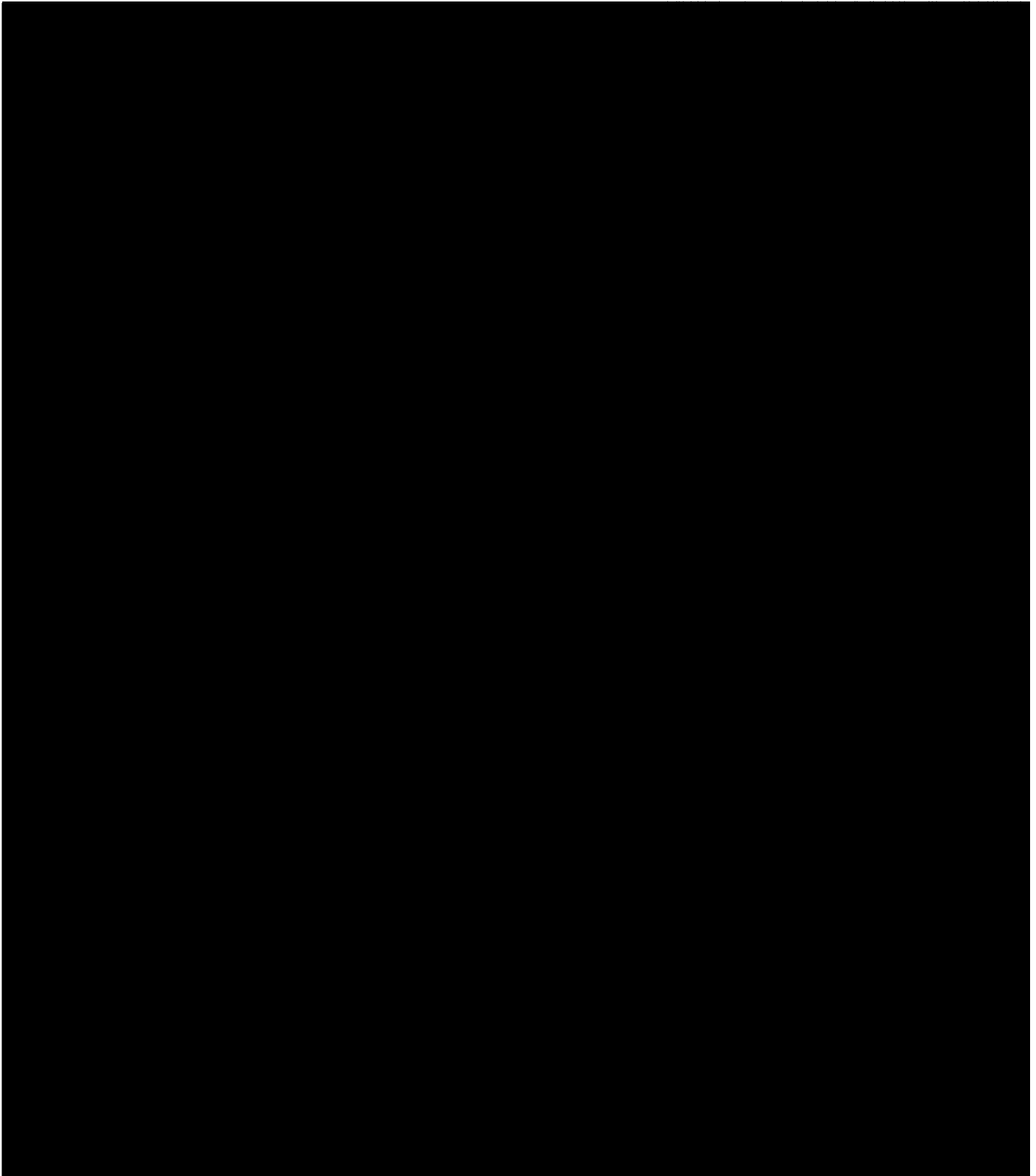
In attendance: Dr Brendan Gogarty (Director, Tasmania Law Reform Institute)

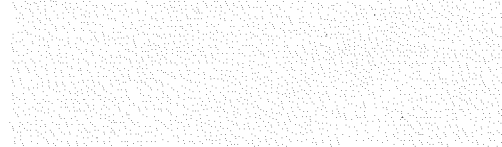
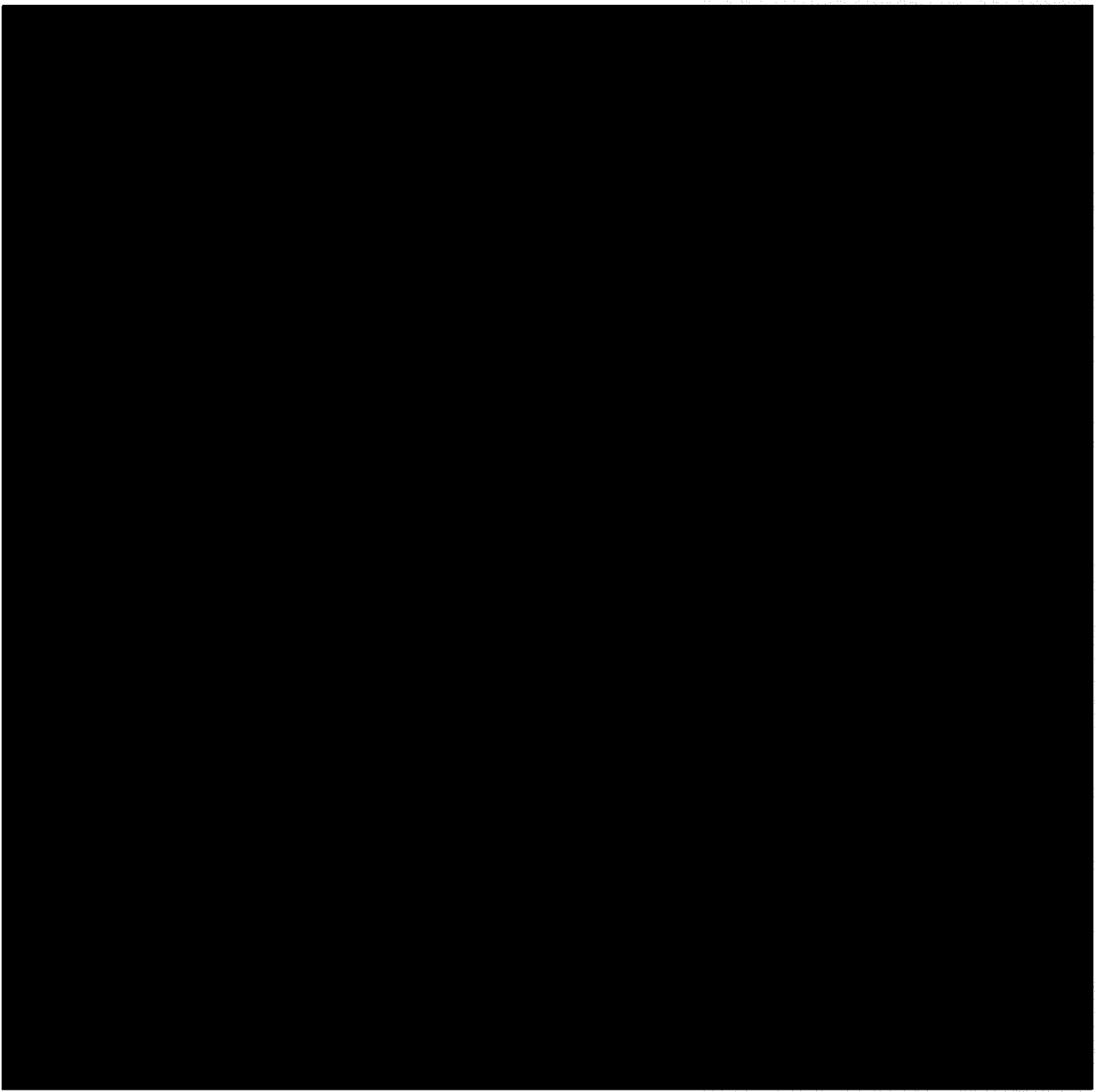
Department contact: Bruce Paterson, Assistant Director, ext. 54954

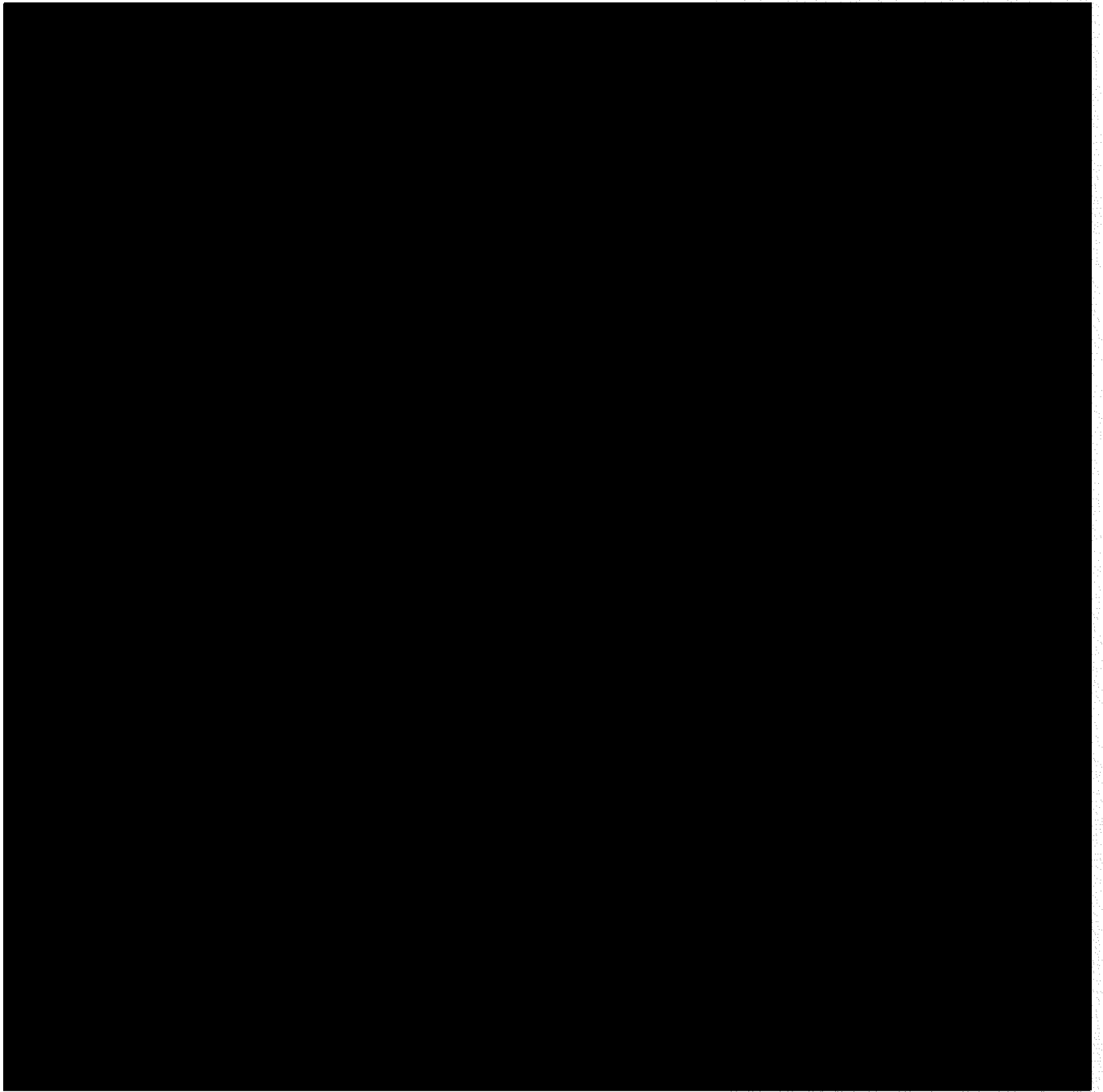
On-site event contact: Event organiser, phone number (mobile)

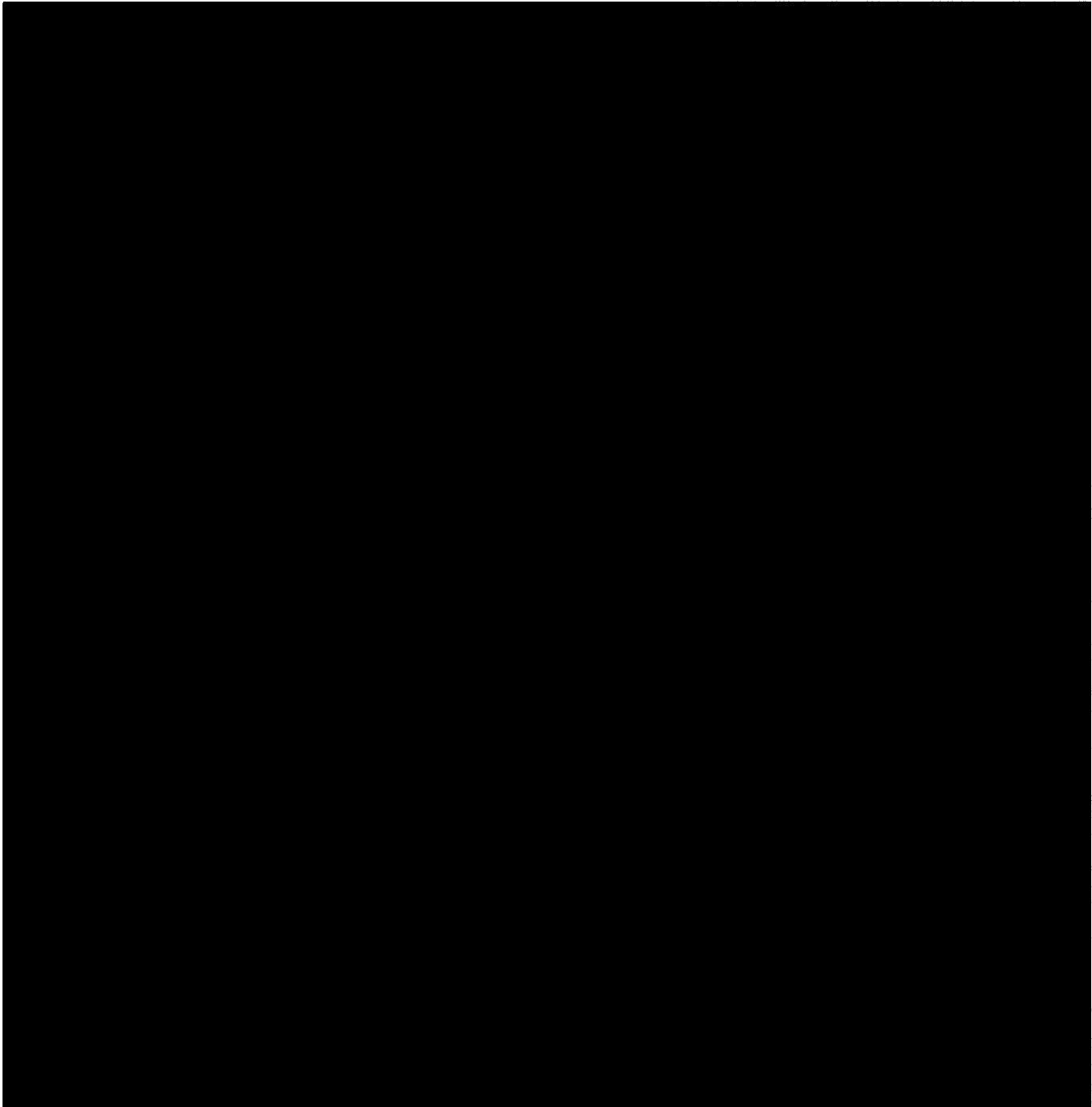
GUIDANCE NOTES

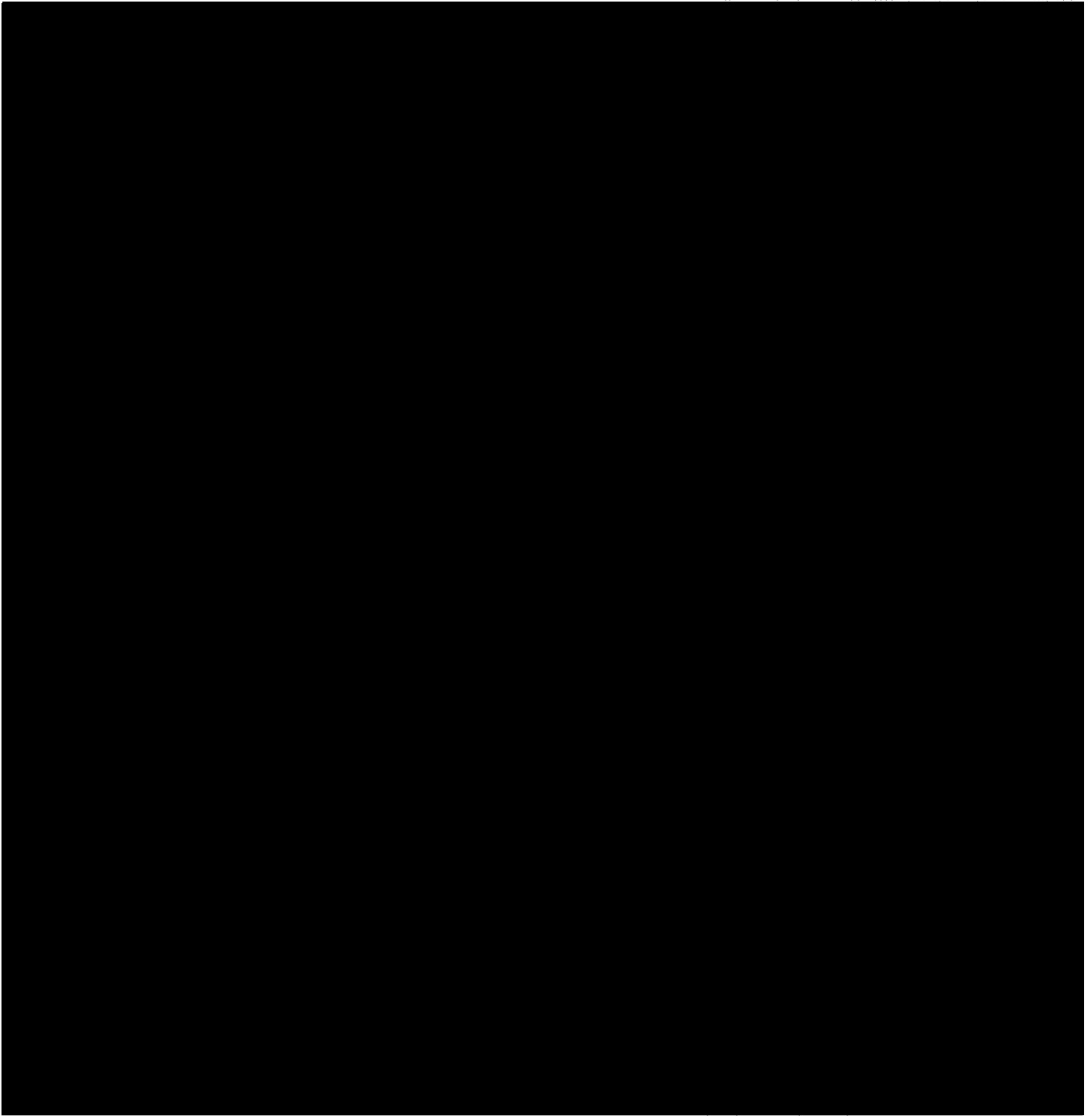
- Dr Brendan Gogarty (Director, Tasmania Law Reform Institute) is meeting with you for the regular TLRI discussion on current topics.
- Dr Gogarty has provided a proposed run-sheet for the meeting. This briefing follows the form of the run-sheet.
- The underlined items with a double asterisk (**) indicate the items Dr Gogarty wishes to discuss. The other items come from the TLRI Annual Report, which the TLRI sent to you last month.





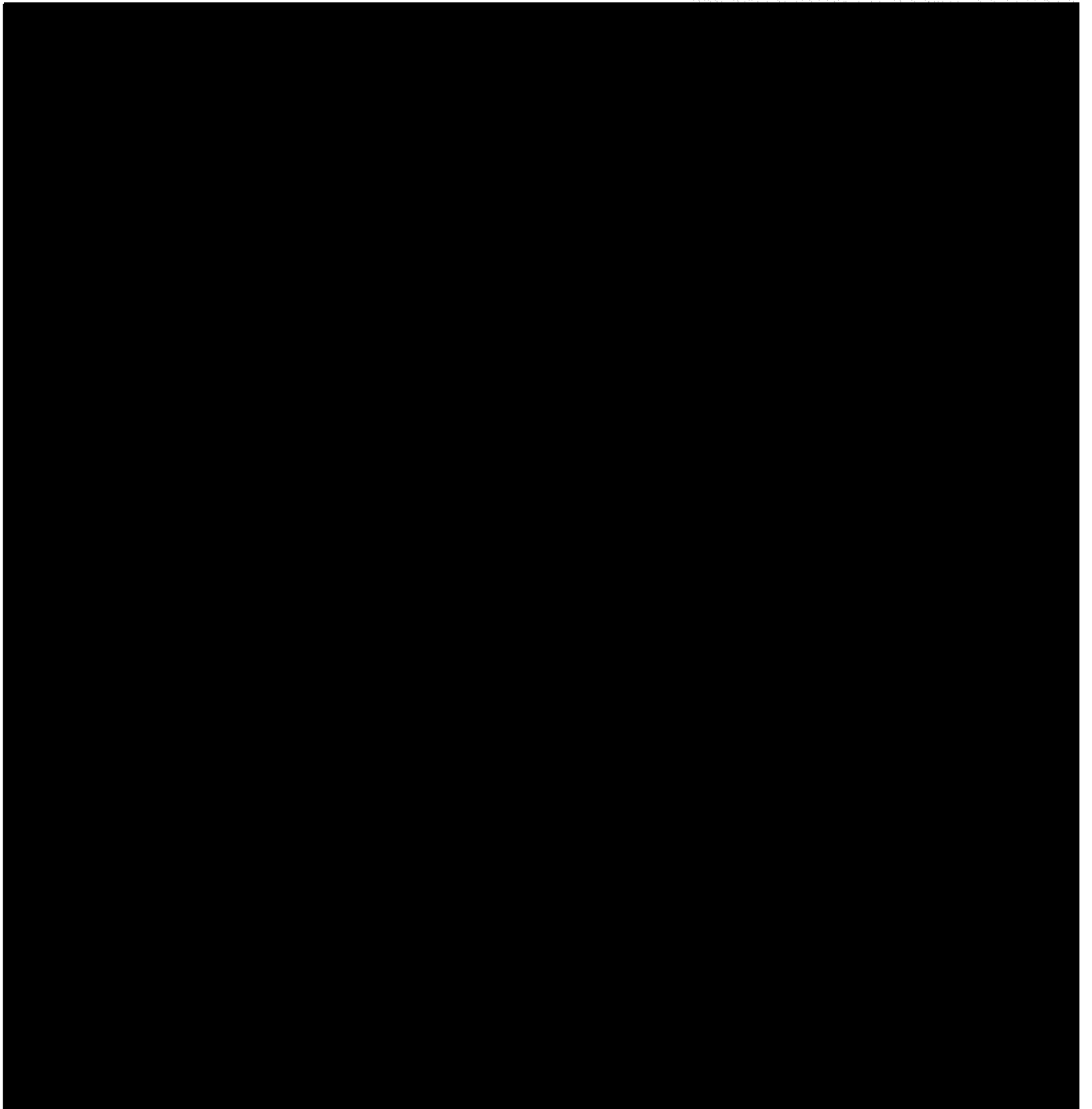






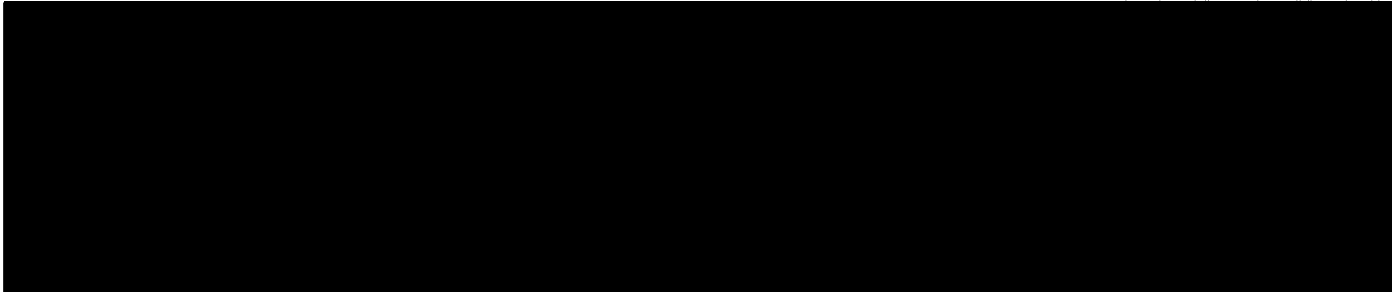
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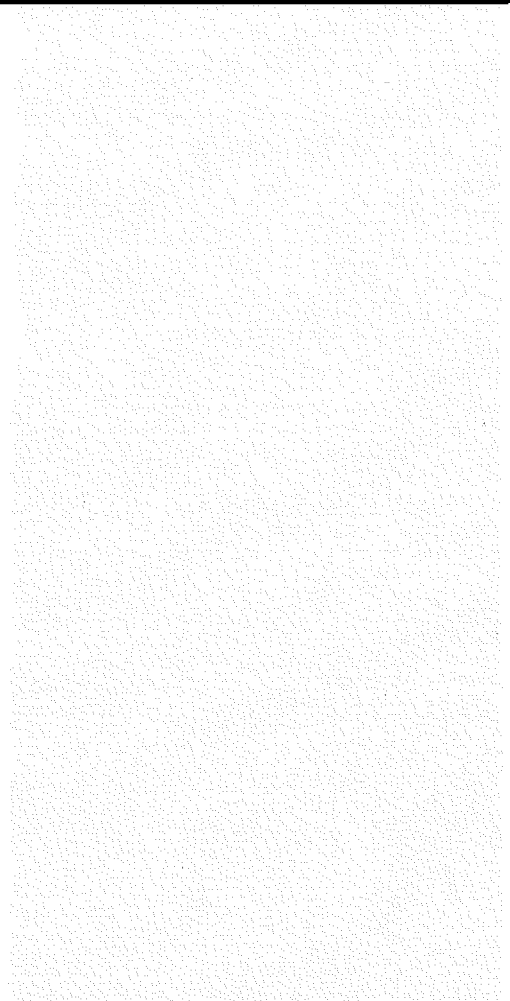
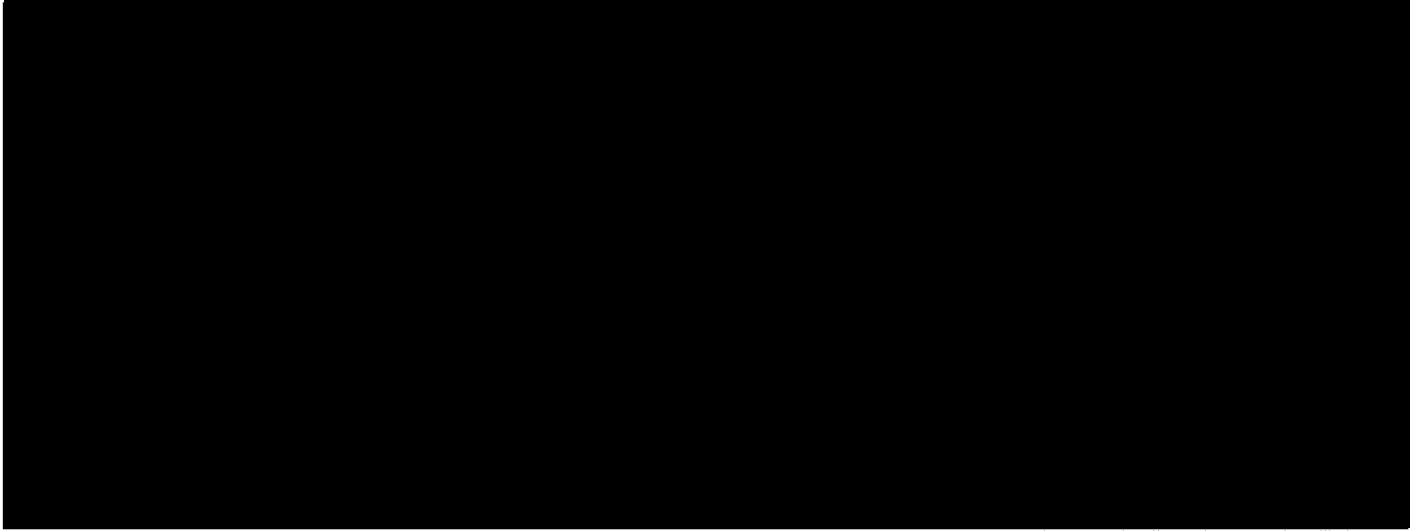
[Redacted text]





4. Institute position & sustainability

- ****Funding/staffing/structure/positioning/media & branding**
 - The Government provides \$50 000 per annum funding to the TLRI. This amount has not changed since the 2001 Agreement.
 - The Agreement commits the University of Tasmania to a contribution of in-kind support for the TLRI's activities (including the Director's salary, academic support, office facilities and administrative support). Between January and December 2020 the total in-kind contribution was valued at \$173 759.51.
 - The TLRI also applies for funding for specific projects from sources such as the Solicitors' Guarantee Fund and the Law Foundation of Tasmania.
 - **Review and Agreement**
 - The TLRI was established on 23 July 2001 by agreement between the State Government, University of Tasmania and the Law Society of Tasmania. In November 2019, the Partners to the Institute Agreement finalised a renewal agreement extending the agreement for three years, until November 2022.
- 



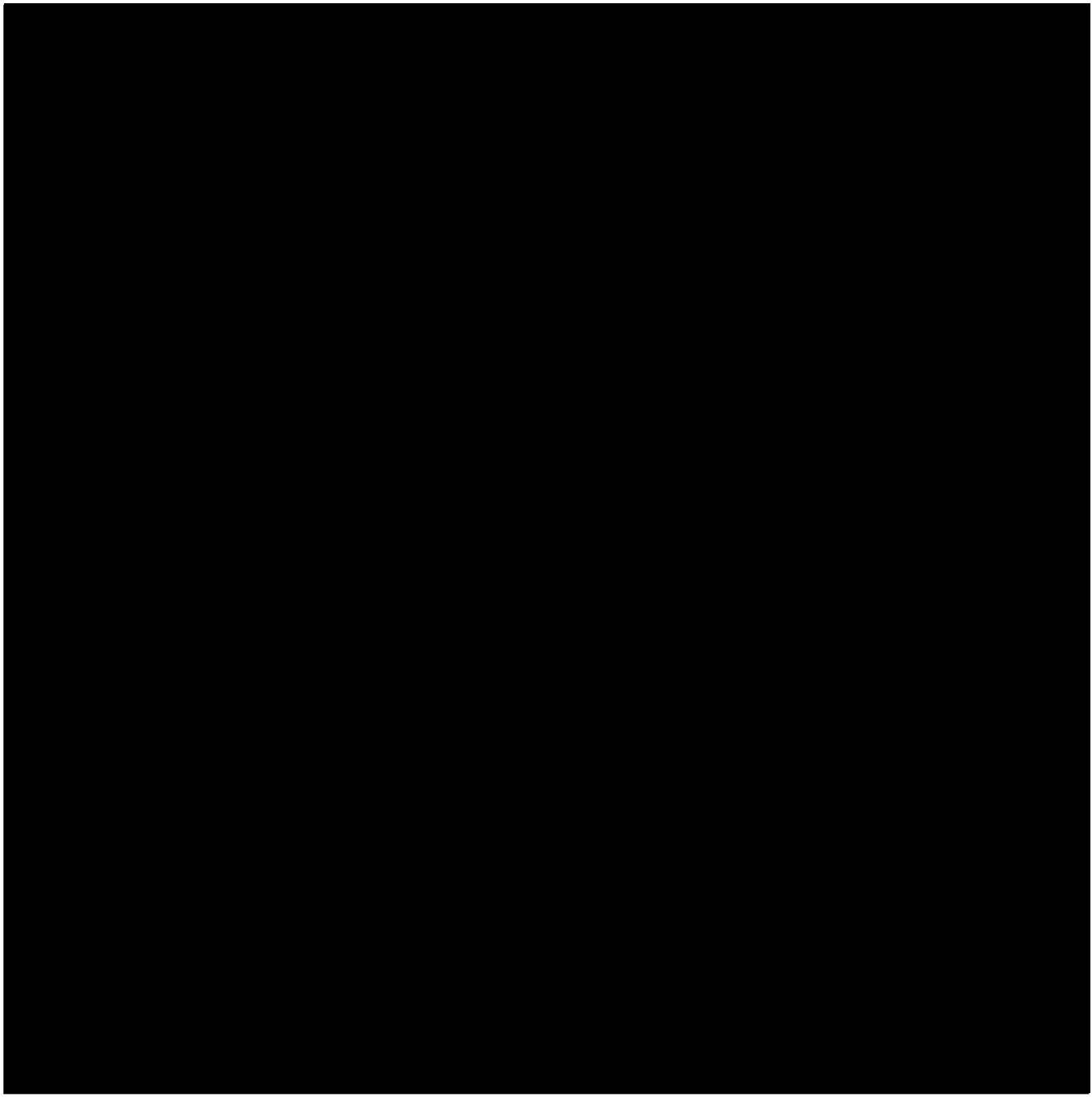
2021 INCOMING GOVERNMENT BRIEF

Attorney-General, Minister for Justice

TASMANIA LAW REFORM INSTITUTE (TLRI) PROJECTS

Overview

- The TLRI was established in 2001 to review Tasmanian laws where particular issues have been identified in accordance with its foundation agreement.





Background

- The TLRI was established by agreement between the State Government, University of Tasmania and the Law Society of Tasmania. In April 2015, the partners to the TLRI Agreement finalised a renewal agreement extending the agreement for five years, until November 2019. The Agreement was then renewed for three years.
- The Government provides \$50 000 per annum funding to the TLRI with the University of Tasmania Faculty of Law providing in-kind support for staffing, amenities and funding administration. This amount has not changed since 2001. The TLRI also receive grants for specific projects from sources such as the Solicitors' Guarantee Fund, the Law Foundation and MAIB Injury Prevention and Management Foundation.
- The TLRI's functions are being undertaken by its Acting Director Dr Brendan Gogarty following the retirement of the previous Director, Associate Professor Terese Henning in December 2019, with assistance from Board members, research assistants, Law Faculty staff and students. The Director's position has not been refilled.
- The TLRI may receive proposals for law reform or research projects from a wide range of sources, including the Attorney-General, the Judiciary, the Parliament, Government Agencies, Tasmania Legal Aid, the legal profession, members of the community and community groups.

Contact Officer: Bruce Paterson
Position: Assistant Director
Phone: (03) 6165 4954
Date: 19 April 2021

Cleared by: Kerrie Crowder
Position: Deputy Secretary
Phone: 6165 4943
Date: 22 April 2021

Hon. Elise Archer MP
Attorney-General
Minister for Justice
Minister for Corrections
Minister for Building and Construction
Minister for the Arts
Minister for Racing

Adviser:

Department:

Ministerial RM Ref:

TTas RM Ref: MIN/20/1102

Meeting with: Tasmanian Law Reform Institute

Date, time: 5 October 2020

Location

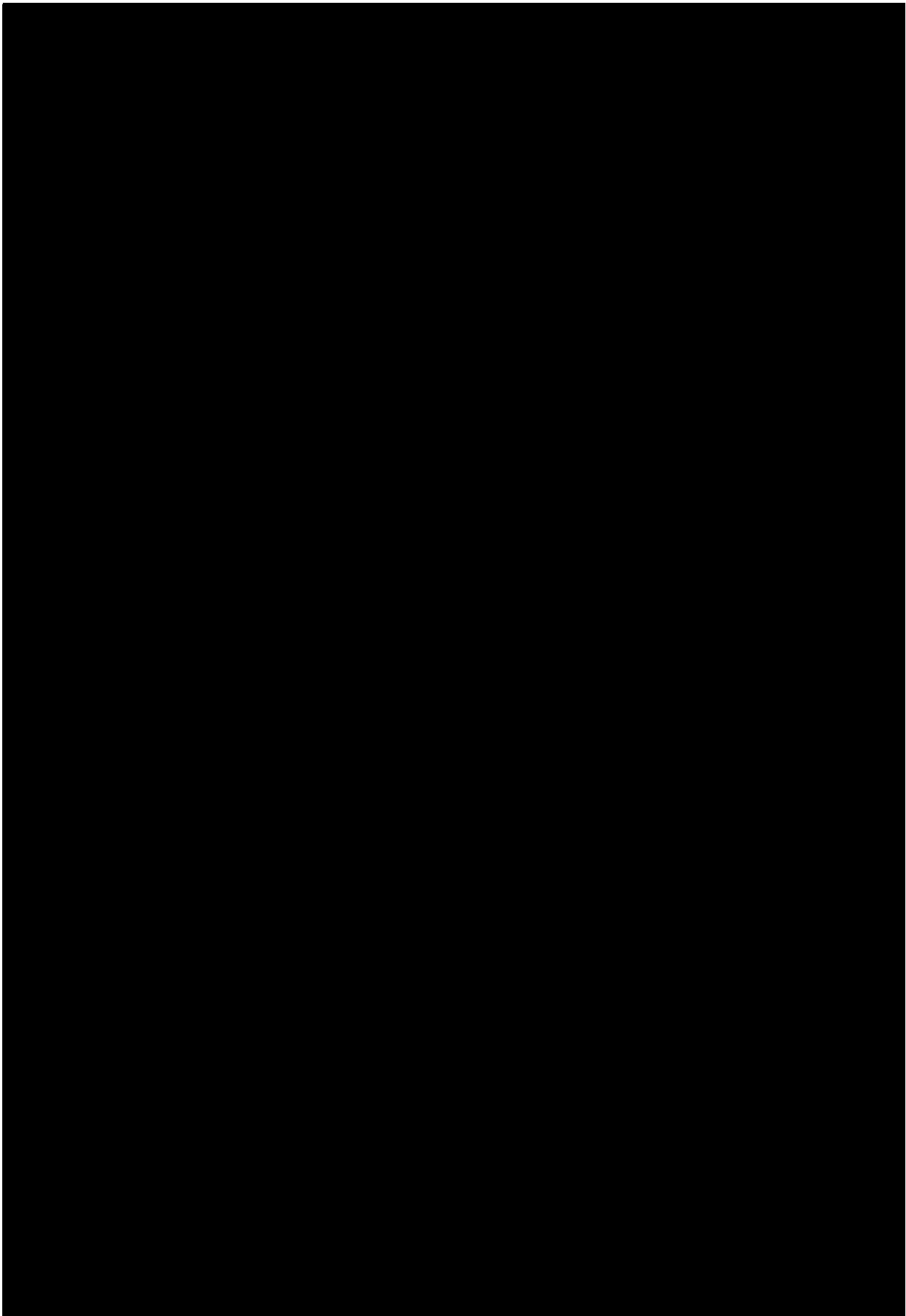
In attendance:	Names and titles of people attending the meeting
Department contact:	Name, job title, phone number
On-site event contact:	Event organiser, phone number (mobile)

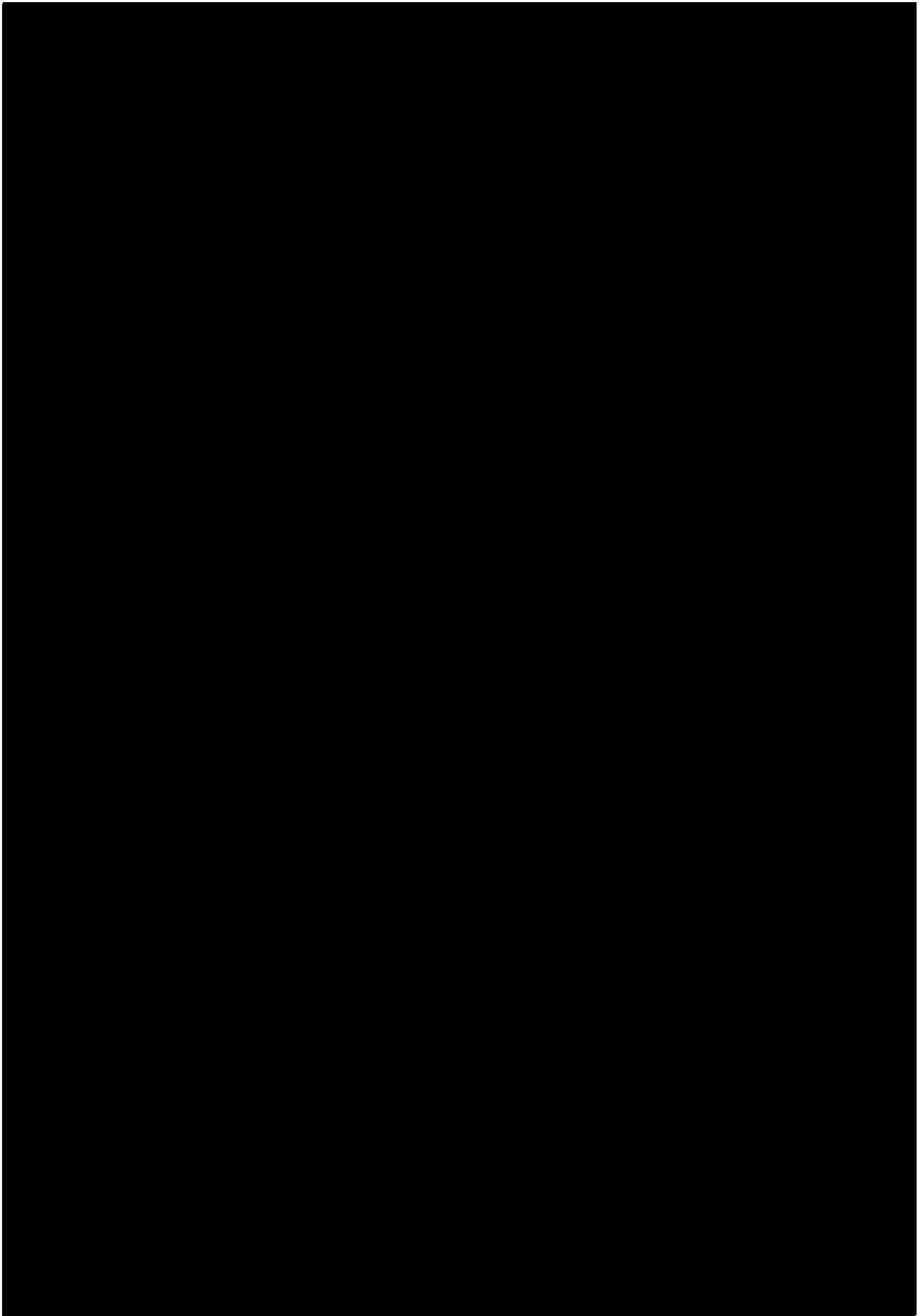
GUIDANCE NOTES

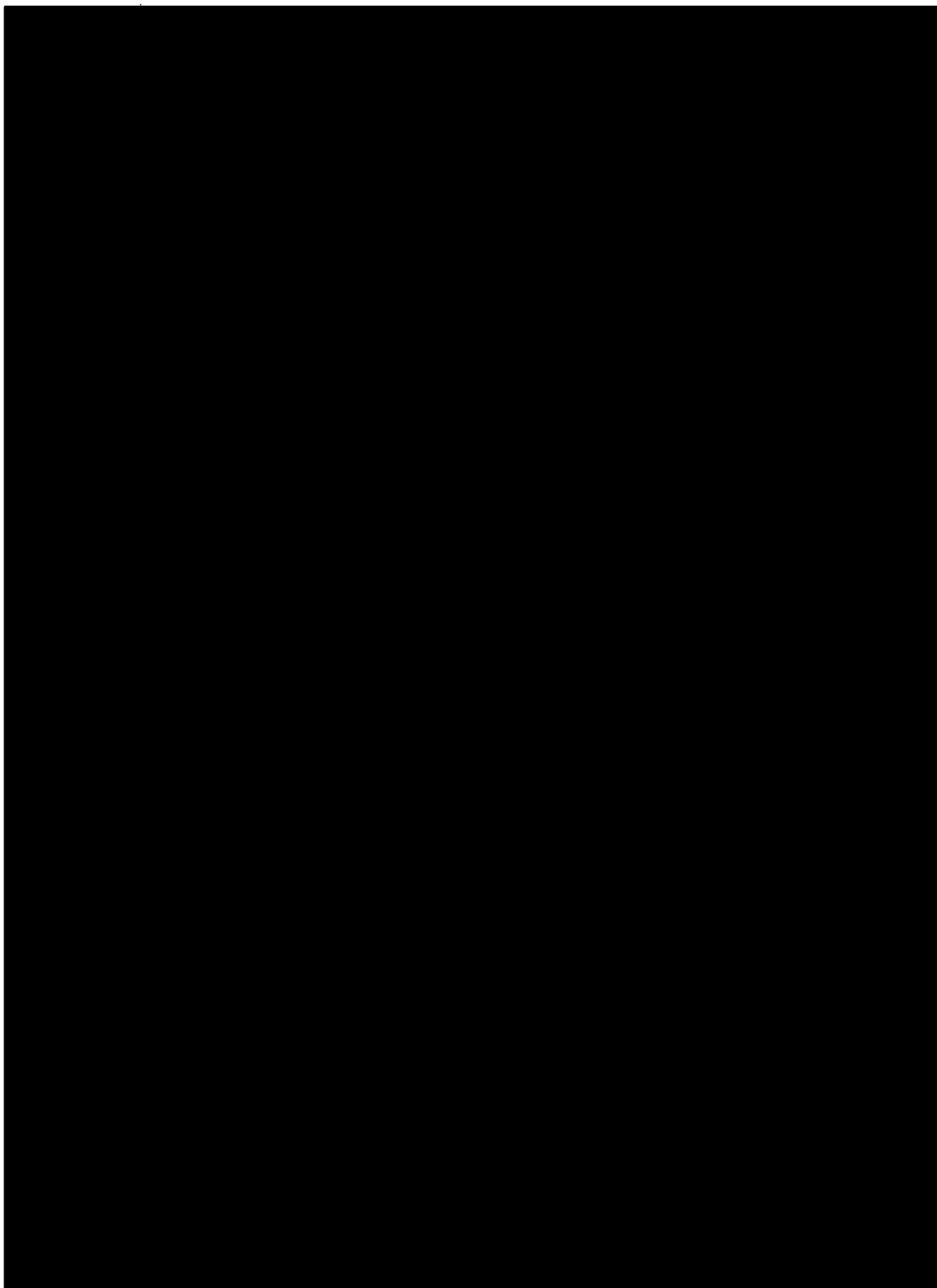
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BACKGROUND

For Discussion










Status of the TLRI Agreement

- In 2019 the TLRI agreement was renewed for 3 year, a shorter period that previous renewals.
 - This followed discussions with the then Dean of the Law School about the needs of the TLRI, noting that the agreement that underpins it is now 20 years old.
 - The renewed agreement contained further information, drafted by the then Dean, about the role of the Director. This was to assist in the recruitment of a new Director as the then Director had advised that she would be retiring.
 - The Law School and TLRI were going to conduct a review of the needs of a modern law reform body to inform the terms of a new agreement.
 - Before the COVID-19 pandemic the Law School and TLRI had made contact with the South Australian Law Reform Institute for assistance regarding this review and a benchmarking exercise for a Tasmanian model.
 - The most recent advice is that this will now be progressed in coming months.
 - In the past the TLRI have requested an increase in Government funding provided for in the agreement (\$50,000 p/a) however the Government's view is that it is appropriate that the review into the needs of the TLRI moving forward is completed first.
- 

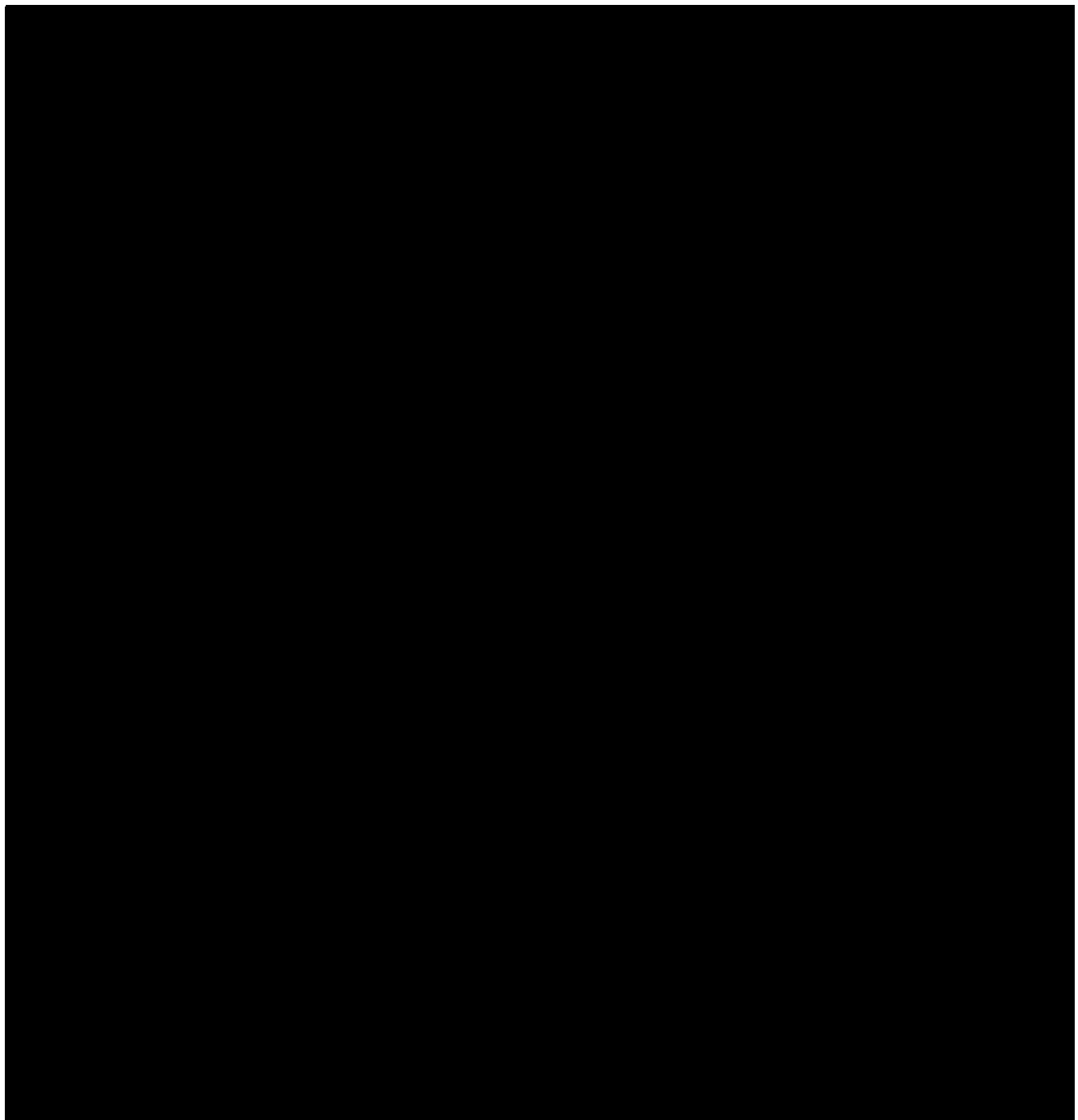


BUDGET ESTIMATES BRIEF

TASMANIAN LAW REFORM INSTITUTE (TLRI) PROJECTS

KEY MESSAGES

- The Tasmania Law Reform Institute (TLRI) was established in 2001 to review Tasmanian laws where particular issues have been identified in accordance with its foundation agreement.



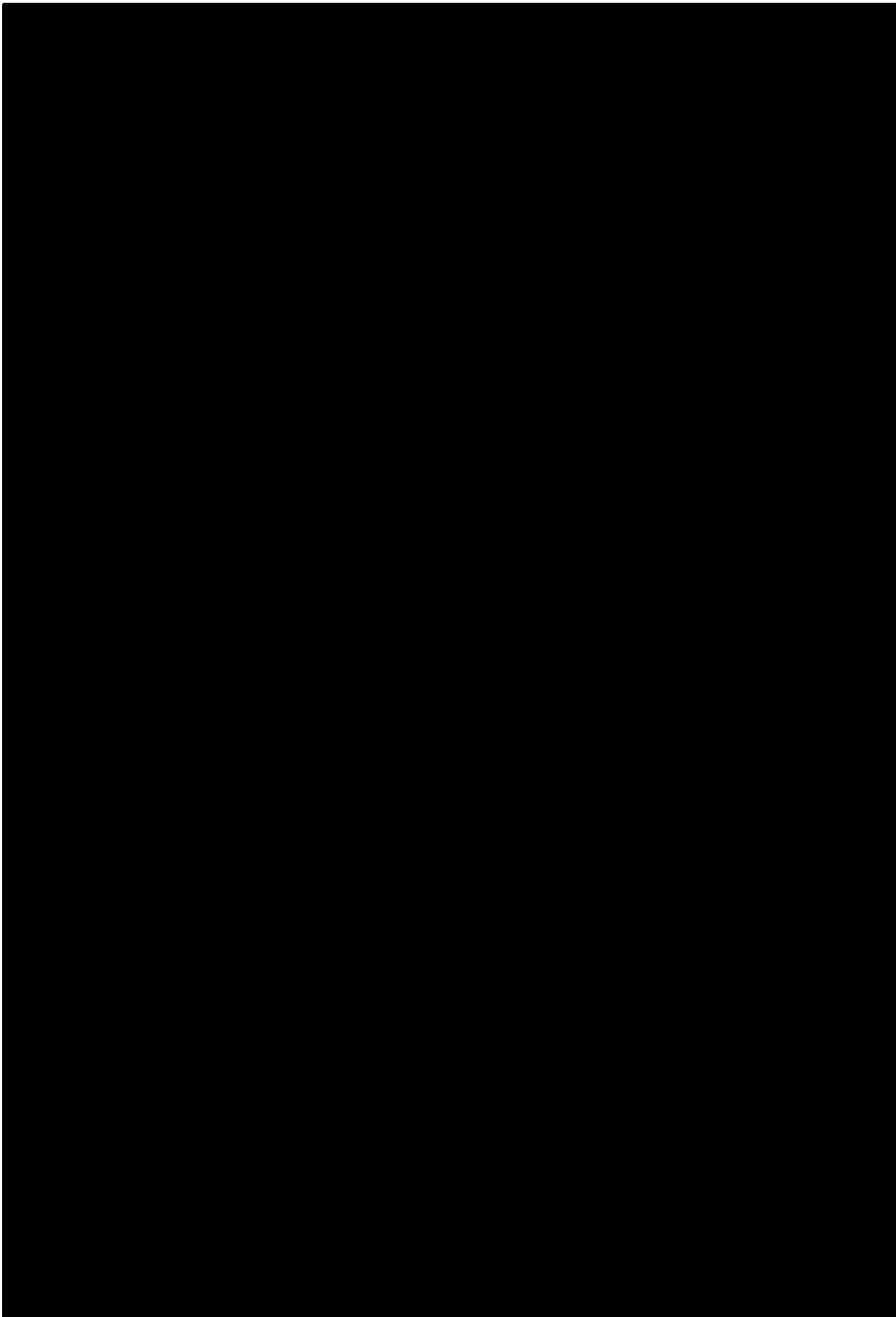


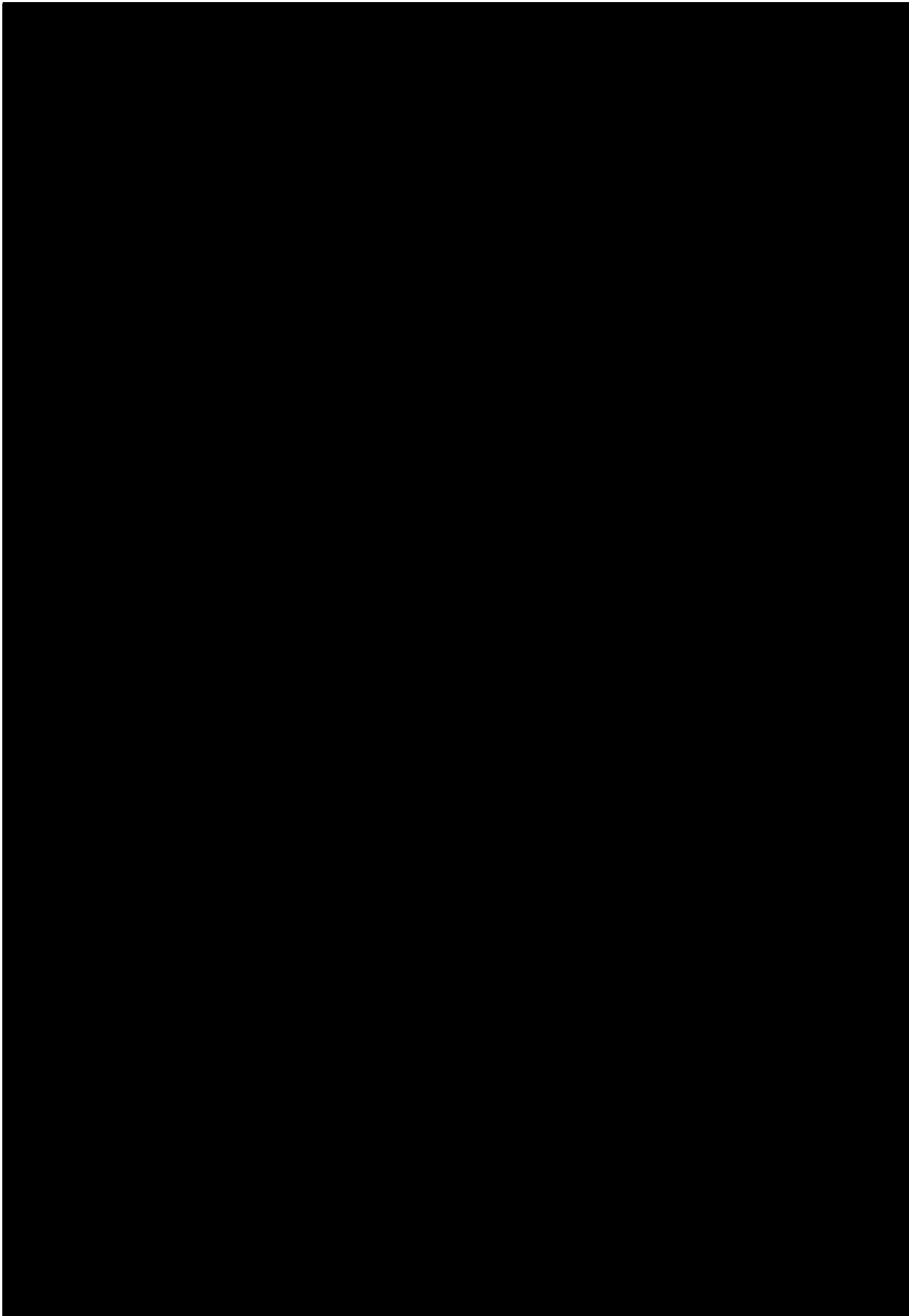
KEY FIGURES

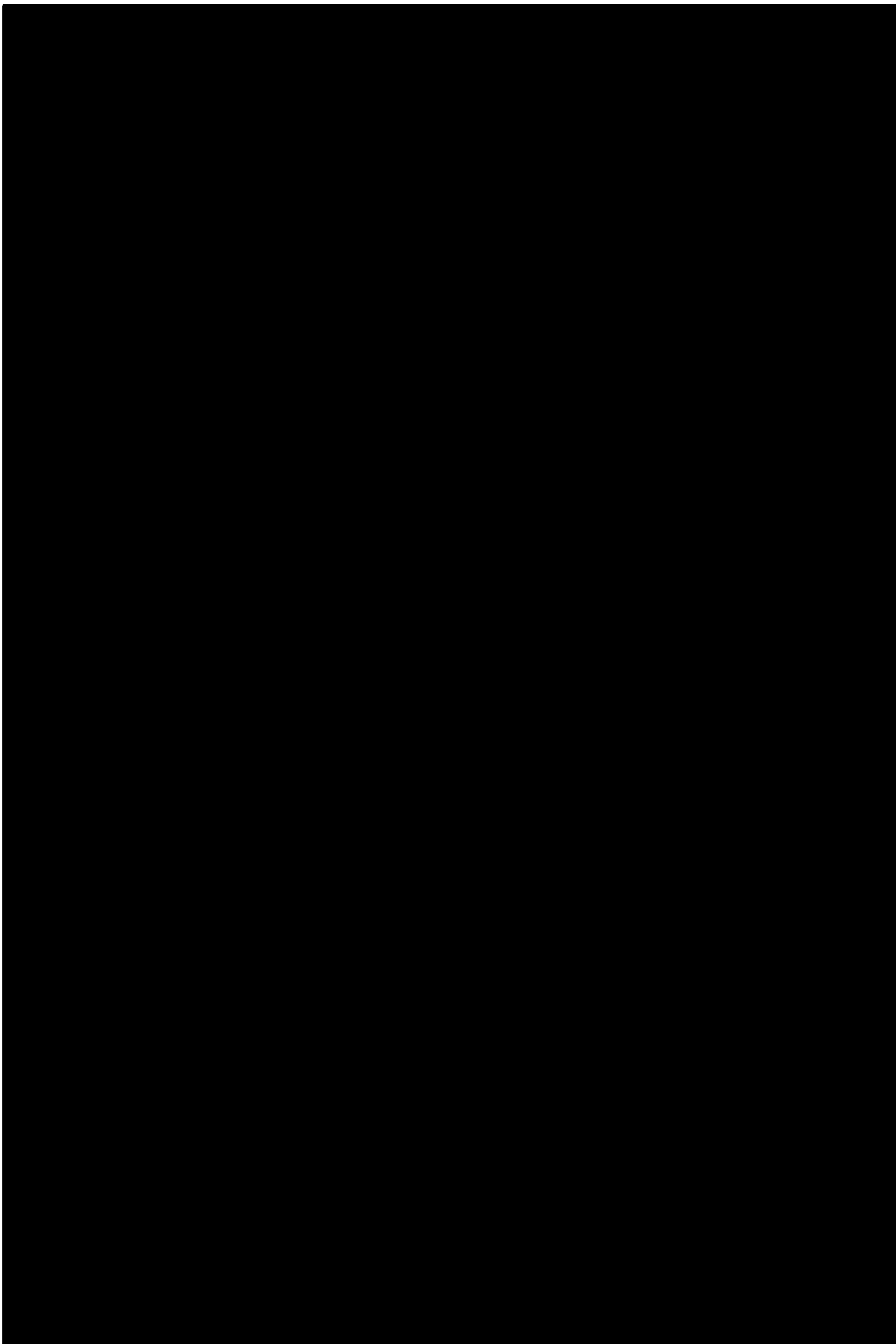
- The Government provides \$50,000 per annum funding to the TLRI with the University of Tasmania Faculty of Law providing in-kind support for staffing, amenities and funding administration.
- The TLRI received additional funding by making application through the Solicitors' Guarantee Fund (SGF) of \$100,000 per annum for 2 years in 2016-2017. The TLRI received an additional contribution of \$50,000 towards its baseline funding for 2018 from the SGF.
- The Agreement commits the University of Tasmania to up to \$80,000 of in-kind support for the TLRI's activities (including the Director's salary, academic support, office facilities and administrative support). For a number of years, this contribution has been significantly higher, and in 2018 was valued at \$112,500.
- The TLRI also applies for funding for specific projects from sources such as the SGF and the Law Foundation of Tasmania.

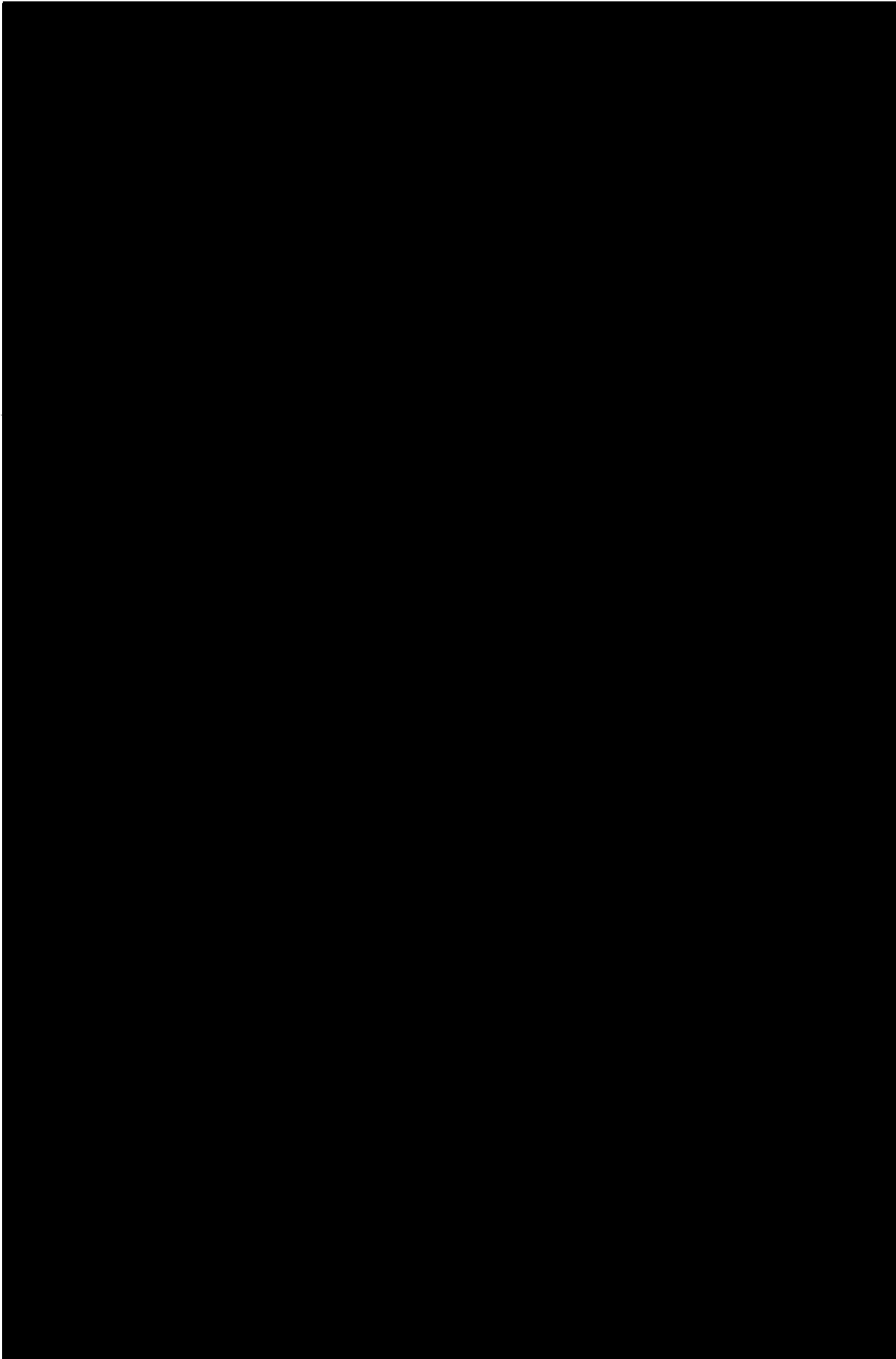
BACKGROUND:

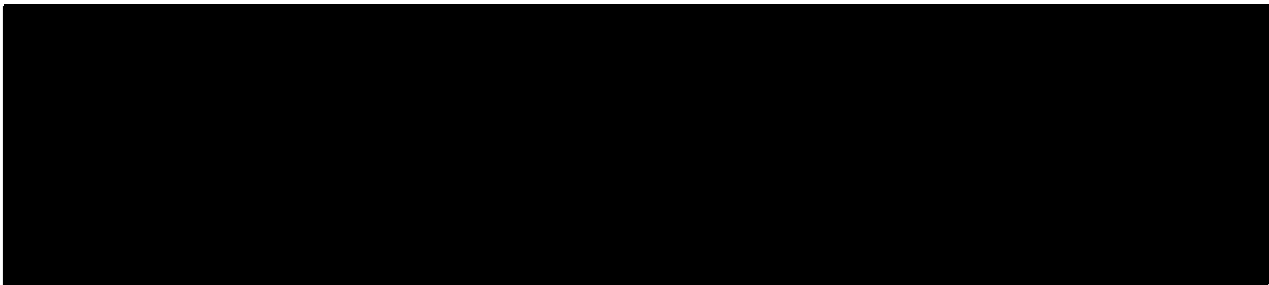
- The TLRI was established on 23 July 2001 by agreement between the State Government, University of Tasmania and the Law Society of Tasmania. In April 2015, the Partners to the Institute Agreement finalised a renewal agreement extending the agreement for five years, until November 2019.
- The agreement establishes an advisory Board of the Institute, with current membership as follows:
 - Associate Professor Terese Henning, Director of the Institute – appointed by the Vice-Chancellor of UTas
 - Professor Tim McCormack, Dean of the Faculty of Law at UTas
 - The Hon Justice Helen Wood – appointed by the Chief Justice of Tasmania
 - Kristy Bourne, Deputy Secretary Administration of Justice, DoJ – appointed by the Attorney-General
 - Dr Jeremy Prichard, Deputy Dean Faculty of Law, UTas – appointed by the Council of the University of Tasmania
 - Craig Mackie, Legal Practitioner – appointed by the Tasmanian Bar Association
 - Rohan Foon, Principal, Douglas & Collins legal practice - appointed by the Law Society
 - Ann Hughes – appointed at the invitation of the Board as a community representative
 - Kim Baumeler, Barrister, Liverpool Chambers – appointed at the invitation of the Board
 - Rosie Smith – appointed at the invitation of the Board as a member of the Tasmanian Aboriginal community
- The Dean of Law is an ex-officio member with the incumbent continuing while they remain in that position. The Director of the Institute and the University Council appointments are 5 year appointments until the end of the Agreement. The remaining appointments do not have a specific tenure and continue until the appointee is unable to continue and/or the appointing body remove or make a new appointment.
- The Government provides \$50,000 per annum funding to the TLRI with the University of Tasmania Faculty of Law providing in-kind support for staffing, amenities and funding administration. This amount has not changed since 2001.
- The TLRI's functions are undertaken by its Director, Associate Professor Terese Henning (appointed April 2015), with assistance from Board members, research assistants, Law Faculty staff and students.
- The TLRI may receive proposals for law reform or research projects from a wide range of sources, including the Attorney-General, the Judiciary, the Parliament, Government Agencies, the Legal Aid Commission, the legal profession, members of the community and community groups.











Contact Officer: Sonia Weidenbach
Position: Senior Legislative and Policy Officer
Phone: 03 6165 4951

Cleared by: Kathrine Morgan-Wicks
Position: Secretary
Phone: 6165 4943

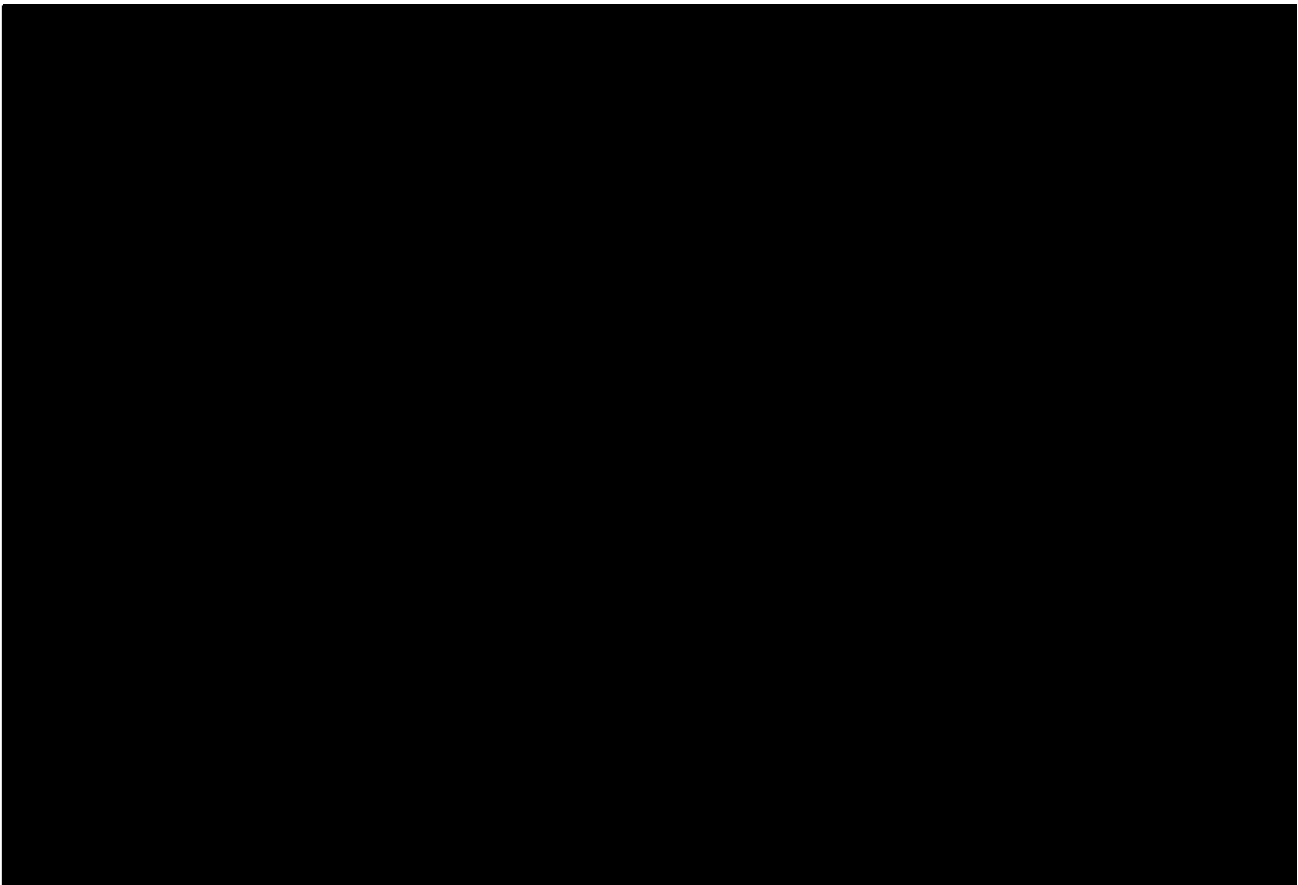
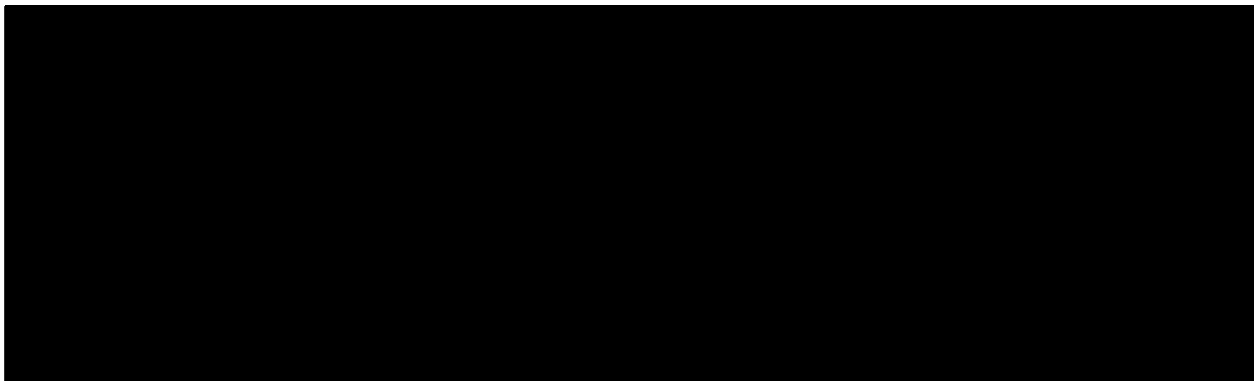
Briefing Note – Attorney-General

20 June 2019

FOR DISCUSSION



- TLRI funding: renewal of TLRI Agreement



TLRI AGREEMENT

- The current TLRI Agreement between UTAS, the Tasmanian Government and the Law Society will expire in November 2019. The terms of the agreement need to be updated regarding:
 - financial and formal in-kind commitments from the parties;
 - the governance arrangements for the Institute;
 - objectives and operation of the Institute.
- We request a meeting between the staff of the Attorney-General's office, Department of Justice, and the Institute to discuss the future direction and demands on the Institute, governance arrangements and sustainable base funding to deliver on agreed objectives.

Ideally, a meeting could be scheduled for August 2019 to allow time for other parties to be consulted on the outcome prior to negotiation of any renewed agreement.

