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## COMMUNITY ENGAGEMENT IN THE AGE OF MODERN LAW REFORM: PERSPECTIVES FROM ADELAIDE

### ABSTRACT

This article documents the recent community engagement experience of the South Australian Law Reform Institute ('the Institute') in relation to two references: the first concerning discrimination against gay, lesbian, bisexual, transgender, intersex and queer South Australians; and the second relating to family inheritance law. These experiences underscore the importance of successful community engagement for law reform bodies and others involved in public policy making including governments. The Institute's experiences demonstrate that by adopting a range of innovative strategies to generate public interest and trust and facilitate the meaningful sharing of information and knowledge, even modest and resource-stretched bodies like the Institute can achieve strong legislative results that have broad community support.

### I INTRODUCTION

Troubled by declining citizen engagement and participation in democratic processes, law makers and law reformers around the world have embraced the idea of 'community engagement', including through 'e-government' initiatives, citizens juries or traditional submission making processes.<sup>1</sup> Successful

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<sup>1</sup> See Jim Macnamara, 'The Quadrivium of Online Public Consultation: Policy, Culture, Resources, Technology', (2010) 45(2) *Australian Journal of Political Science* 227, 228–9. For a discussion of these types of initiatives see Robin Gauld, Shaun Goldfinch, and Simon Horsburgh 'Do They Want It? Do They Use It? The "Demand-Side" of e-Government in Australia and New Zealand' (2010) 27(2) *Government Information Quarterly* 177; Kim Johnston, 'Community Engagement: Exploring a Relational Approach to Consultation and Collaborative Practice in Australia' (2010) 16(1-2) *Journal of Promotion Management* 201; see also Tony Blair, *Prime Minister's Mission for E-Government Unit* (2005 London, UK Cabinet Office); Government of South Australia, *Reforming Democracy: Deciding, Designing and Delivering Together* (13 August 2015) YourSAy <<https://www.yoursay.sa.gov.au/reforming-democracy>>.

community engagement relies upon the generation of interest and trust, and the meaningful sharing of information and knowledge.<sup>2</sup> It also requires tangible outcomes, if the community is going to engage again with the relevant body in the future. As former Director of the Tasmanian Law Reform Institute Professor Kate Warner has explained:

The fact that law reform bodies are independent of government is what sets the consultation process apart from community consultations conducted by governments. It provides a level of confidence, which is essential to achieving wide community input. While the nature and extent of community engagement depends upon the subject matter of the reference, it is no longer considered enough for a law reform body to publish a discussion or issues paper, schedule a public hearing or two and wait for the submissions to flow in. Greater creativity is expected.<sup>3</sup>

In this article, I outline how the South Australian Law Reform Institute (‘the Institute’) has grappled with the challenge of community engagement and experienced strong success, particularly in the context of two recent law reform references, despite (or perhaps because of) its limited resources. The insights gained from the Institute’s innovative practices contribute to the body of learning that all law makers should consult when reflecting on how to improve how they engage with the community when developing or reforming our laws.

The South Australian Law Reform Institute is based on the Alberta Law Reform Institute model<sup>4</sup> and exists without a statutory framework. This flexible structure, which depends upon close collaboration with the local legal profession, the academy and law students, has allowed the Institute to punch above its weight when it comes to the legislative implementation of its key recommendations. This structure also gives the Institute the flexibility and incentive to experiment with new forms of community consultation, which has helped cement the Institute’s growing reputation as a body with a genuine commitment to listening to and reflecting the views of the South Australian community in its law reform work. In addition, while its lack of statutory

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<sup>2</sup> See Macnamara, above n 1, 227; see also Johnston, above n 1, 218–19; Steven Barkan, ‘Race, Issue Engagement and Political Participation: Evidence from the 1987 General Social Survey’ (1998) 1(1) *Race and Society* 63.

<sup>3</sup> Kate Warner, ‘Lessons From a Small University-Based Law Reform Body in Australia’ in Michael Tilbury, Simon NM Young and Ludwig Ng (eds) *Reforming Law Reform: Perspectives from Hong Kong and Beyond*, (Hong Kong University Press, 2014), 127.

<sup>4</sup> The Alberta Law Reform Institute was founded in 1968 under an agreement between the Attorney-General of Alberta, the University of Alberta and the Law Society of Alberta. It is run by a board and a full-time director. Funding and support for the Institute comes from the three signatories as well as the Alberta Law Foundation. For further information see Alberta Law Reform Institute, *About ALRI* (2010) University of Alberta <<https://www.alri.ualberta.ca/index.php/about-alri>>. See also Kate Warner, ‘Institutional Architecture’ in Brian Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (The Federation Press, 2005) 55, 62.

framework may have previously raised questions about the Institute's independence and sustainability, recent experiences among national and international law reform bodies suggest that bodies with non-statutory structures are equally well placed to approach law reform with the type of intellectual independence and rigour as their statutory based cousins.<sup>5</sup>

This article reflects upon the Institute's approach to consultation across two recent references: one relating to the removal of discrimination on the grounds of gender identity, sexual orientation and intersex status ('the LGBTIQ Reference'); and the other concerning the provisions of the *Inheritance (Family Provision) Act 1972* (SA) ('the Family Inheritance Inquiry') which formed part of a broader reference on succession law in South Australia. These two very different references give rise to a number of important insights into what strategies yield the most successful results when it comes to community engagement in law reform or other forms of policy making. These insights continue to guide the work of the Institute, and are relevant to other law reform bodies, governments and others seeking to develop or enhance consultation strategies in resource-limited environments.

Part II of this article reflects upon the 'traditional' approach to consultation adopted by law reform bodies and contrasts this with the range of modern options available to facilitate community engagement. Part III of this article sets out the Institute's approach to consultation in both the LGBTIQ Reference and the Family Inheritance Inquiry. The final part of the article summarises the insights and lessons learnt from the Institute's recent experiences, highlighting their broader relevance for other law reform bodies.

## II TOWARDS A MODERN APPROACH TO COMMUNITY CONSULTATION

It is now universally accepted that at least part of the role of any law or policy making body, if not its primary purpose, is to consult broadly with the community in its

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<sup>5</sup> For example, former President of the Australian Law Reform Institute Professor Rosalind Croucher has observed that: 'the essence of effective law reform is independence and that this is *not* about how we are structured — and there are many differences amongst participating law reform agencies represented here — but how we go about our work.' Rosalind Croucher 'Law Reform Agencies and Government — Independence, Survival and Effective Law Reform?' (Speech delivered at Commonwealth Association of Law Reform Agencies, Melbourne, 25 March 2017) <<https://www.alrc.gov.au/news-media/speech-presentation-article/supporting-older-people>>. See also Patricia Hughes, 'Lessons from Law Reform in Ontario and Elsewhere in Canada', in Michael Tilbury, Simon NM Young, Ludwig Ng (eds) *Reforming Law Reform: Perspectives from Hong Kong and Beyond*, (Hong Kong University Press), 2014, ch 6; Terese Henning and David Plater, 'Law Reform on the Smell of an Oily Rag' (Speech delivered at the Australasian Law Reform Agencies Conference, Melbourne, 3 March 2016); Sir Grant Hammond, 'So Where Is It All Going?' (Speech delivered at the Australasian Law Reform Agencies Conference, Sydney, 7 March 2016).

relevant jurisdiction.<sup>6</sup> The reasons for this are manifold and derive from the role modern law reform bodies play in:

- (i) disseminating information about the law or the public policy and promoting a sense of ‘public ownership’ over the process of law or public policy making;<sup>7</sup>
- (ii) providing the public with a deliberative forum to engage in a ‘civic conversation’ about the content of the law;<sup>8</sup>
- (iii) contributing to social justice by giving people in marginalised groups an opportunity to voice their concerns and be taken seriously;<sup>9</sup>
- (iv) helping to identify and solve legal problems that are ‘invisible’ to those directly involved in legal or policy making processes;<sup>10</sup> and
- (v) presenting law reform and policy options that are ‘intellectually rigorous and practical,’ having considered the evidence of how the law or public policy will or does work in practice.<sup>11</sup>

However, as discussed below, the need for broad community consultation when engaging in law and policy making was not always accepted, and the extent and form of consultation undertaken has changed considerably over time. This underscores the

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<sup>6</sup> This shared commitment to consultation is described in many of the essays prepared as a result of a Law Reform Conference in Hong Kong in 2011, published in Tilbury, Young and Ng, above n 3. See also Croucher, above n 5.

<sup>7</sup> Roslyn Atkinson, ‘Law Reform and Community Participation’ in Brian Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (2005, The Federation Press) 160, 166; Government of South Australia, *Reforming Democracy*, above n. 1; see also Sir Peter North, ‘Problems of Law Reform’ (2002) 3 *New Zealand Law Review* 393, 396; Michael Kirby, ‘The ALRC: A Winning Formula’ (2003) 82 *Australian Law Reform Commission Reform Journal* 58, 60; Neil Rees, ‘The Birth and Rebirth of Law Reform Agencies’ (Paper presented at the Australasian Law Reform Agencies Conference 2008, Vanuatu, 10–12 September 2008) <[http://www.lawreform.vic.gov.au/sites/default/files/ALRAC%2BPaper%2B\\_NeilRees.pdf](http://www.lawreform.vic.gov.au/sites/default/files/ALRAC%2BPaper%2B_NeilRees.pdf)>.

<sup>8</sup> See Macnamara, above n 1, 229; Jürgen Habermas, ‘Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory on Empirical Research’ (2006) 16(4) *Communication Theory* 411; Marcia Neave ‘Law Reform and Social Justice’ in Brian Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (2005, The Federation Press) 358, 366.

<sup>9</sup> See John Uhr, *Deliberative Democracy in Australia: The Changing Place of Parliament* (Cambridge University Press, 1998) 4; Marcia Neave, ‘Institutional Law Reform in Australia: The Past and The Future’ (2005) 23 *Windsor Yearbook of Access to Justice* 343.

<sup>10</sup> Neave, ‘Law Reform and Social Justice’, above n 8, 365.

<sup>11</sup> Atkinson, above n 7, 166; see also North, ‘Problems of Law Reform’, above n 7, 396; Kirby, ‘The ALRC’, above n 7, 60.

need to continually record and reflect upon the consultation strategies adopted by law reform bodies and public policymakers, to ensure that they remain relevant, effective and capable of living up to the public's expectations.

As a number of scholars have documented, early Australian law reform bodies (which largely took the form of committees) were not concerned with public consultation.<sup>12</sup> The reasons for this were partly practical (members were 'part-time' and very few committees, if any, received funding for administration or research) and partly based on principle (the committees assumed that their work related to 'lawyers' law', and did not concern themselves with policy or political questions).<sup>13</sup> In other words, these early law reform committees were comprised of lawyers who assumed they were in the business of improving the law for the benefit of other lawyers. They considered the public to be both disinterested in and irrelevant to the task they were undertaking.

However, by the 1970s, powerful new influences from other jurisdictions were changing the way law reform and policy making was viewed in Australia, and highlighting the need to actively seek the views of the community.<sup>14</sup> In the area of law reform this saw a shift towards the view that it was not just lawyers' law that would occasionally need updating<sup>15</sup> but the *whole body* of law that stood potentially in need of reform.<sup>16</sup> This in turn demanded the establishment of permanent bodies to stand ready to review and reform the law, and to actively seek the views of those who may be affected by, or have an interest in, the law being reviewed. Over time, formal law reform bodies were established in most Australian jurisdictions, including at the national level. The Australian Law Reform Commission began to lead the way into a new era where community consultation was quickly identified as an essential ingredient of successful modern law reform.<sup>17</sup> As David Weisbrot reflects:

A deep commitment to undertaking expensive community consultation as an essential part of research and policy development is the sine qua non of a law

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<sup>12</sup> See, eg, J.M. Bennett, 'Historical Trends in Australian Law Reform' [1969–70] 9 *University of Western Australia Law Review* 211, 235; Anthony Mason, 'Law Reform in Australia' (1971) 4(2) *Federal Law Review* (1971), 214–17.

<sup>13</sup> Michael Tilbury, 'A History of Law Reform in Australia' in Brian Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (The Federation Press, 2005) 3, 10–11 (citations omitted).

<sup>14</sup> See *ibid* 12.

<sup>15</sup> *Ibid* 14.

<sup>16</sup> See *ibid* 12: This was based on the realisation of the 'qualitatively new principle', long advocated in England and the United States, 'that the *whole* body of law stood potentially in need of reform, and there should be a *standing* body of appropriate professional experts to consider reforms continuously' (emphasis added).

<sup>17</sup> See especially Michael Kirby, *Reform the Law: Essays on the Renewal of the Australian Legal System* (Oxford University Press, 1984) ch 3; see also Michael Kirby, 'The Law Reform Commission and the Essence of Australia' (2000) 77 *Reform* 60, 60.

reform commission. Ultimately, it is the attribute that distinguishes it from other bodies that have a law reform aspect to their work.<sup>18</sup>

In recent years, just like modern governments,<sup>19</sup> modern law reform bodies do not just welcome public input into their law reform reports, but are expected to actively ‘encourage, cajole or entice’ members of the public to share their views on a particular law reform reference.<sup>20</sup> A failure to adequately consult can severely hamper both the legislative impact and long term reputation of the law reform body.<sup>21</sup> As Ian Davis explains, a law reform body ‘fails in its work if it cannot fairly demonstrate that it actively sought submissions, even if they ultimately fail to materialise in the scope, number or depth that might have been hoped for.’<sup>22</sup>

This can present challenges for busy, understaffed, and under-resourced law reform bodies and public policy making units, particularly when inquiring into areas of law or policy that do not naturally generate strong public interest or engage pre-established networks or interest groups. As discussed below, the Institute grappled with some of these challenges in its Family Inheritance Inquiry.

Encouraging meaningful consultation can also depend upon the law reform or policy body being able to establish relationships of trust with those members of the community most likely to be affected by any changes to the law.<sup>23</sup> As discussed below, this in turn depends upon the real and perceived independence of the law reform body, and its capacity to respond to the particular needs of the group being consulted.<sup>24</sup> In addition, as Weisbrot observes:

people must also feel that the time and effort involved in their participation in the law reform process is worthwhile — that is, that they will be given a meaningful opportunity to be heard and there is some reasonable prospect for achieving positive change.<sup>25</sup>

A similar point was made in 2017 by the then President of the Australian Law Reform Institute, Professor Rosalind Croucher, who observed that ‘the essence of

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<sup>18</sup> David Weisbrot, ‘The Future for Institutional Law Reform’ in Brian Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (The Federation Press, 2005) 1, 32; see also Brian Opeskin, ‘Engaging the Public — Community Participation in the Genetic Information Inquiry’ (2002) 80 *Reform* 53, 54.

<sup>19</sup> See, eg, Government of South Australia, *Reforming Democracy*, above n 1.

<sup>20</sup> Ian Davis, ‘Targeted Consultations’ in Brian Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (The Federation Press, 2005) 148, 159.

<sup>21</sup> Neave, ‘Law Reform and Social Justice’, above n 8, 367.

<sup>22</sup> Davis, above n 20, 159.

<sup>23</sup> See, eg, Kim A Johnston, ‘Community Engagement: Exploring a Relational Approach to Consultation and Collaborative Practice in Australia’ (2010) 16(1–2) *Journal of Promotion Management* 201, 218–19.

<sup>24</sup> Weisbrot, above n 18, 32.

<sup>25</sup> *Ibid.*

effective law reform is intellectual independence', which in turn makes the work of law reform bodies so valuable to Government. Professor Croucher explained that:

For a law reform agency, the outcome should never be known until the process has been worked through. This openness facilitates securing stakeholder engagement. This is so important when extensive public involvement in law reform is crucial to the integrity of the process — it is the *sine qua non* accepted among institutional law reform bodies internationally — because it is a demonstration of independence of mind.<sup>26</sup>

Rapidly expanding communication technologies also provide opportunities and challenges for law reform bodies and policymakers seeking to engage with the community successfully online.<sup>27</sup> Some of these opportunities and challenges have been documented in other fields,<sup>28</sup> and a number are discussed below in the context of the Institute's recent experiences. As the Hon Michael Kirby observes, mastering the consultative potential of these new technologies can sometimes demand skills not commonly held by lawyers:

Not every lawyer has skills in the use of modern media. Some skills can be learned. Experienced journalists can help. What is needed is a talent for simplification. Commonly, the legal mind sees all the problems and clutters up simplicity with multiple exceptions and qualifications. ... It demands of law reformers a radical abbreviation and simplification of their main proposals.<sup>29</sup>

Even when successful, these efforts are unlikely to be able to replace the value of face to face consultations, which, as Davis notes, allows individuals and groups the chance to 'talk much more freely about the topics of interest; to explain and amplify their views or the reasons behind them; or to apply nuance where this is inevitably harder to do in writing'.<sup>30</sup>

As the Institute has learned, care must also be taken in the preparation of written materials by the law reform body, whether as an aide to attracting submissions,

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<sup>26</sup> Croucher, above n 5.

<sup>27</sup> A number of examples of online community engagement are described in Macnamara, above n 1.

<sup>28</sup> See, eg, Amy Jo Kim, *Community Building on the Web: Secret Strategies for Successful Online Communities* (Peachpit Press, 2000); Kevin B Wright, 'Researching Internet-Based Populations: Advantages and Disadvantages of Online Survey Research, Online Questionnaire Authoring Software Packages, and Web Survey Services', (2005) 10(3) *Journal of Computer-Mediated Communication* 1; Julie Firmstone and Stephen Coleman 'Public Engagement in Local Government: The Voice and Influence of Citizens in Online Communicative Spaces' (2015) 18(6) *Information, Communication & Society* 680.

<sup>29</sup> Michael Kirby, 'Are We There Yet?' in Brian Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (The Federation Press, 2005), 433, 437.

<sup>30</sup> Davis, above n 20, 156.

engaging online or supporting face-to-face discussions. As the Institute has found, a short, well targeted, plain English fact sheet (particularly when accompanied by audiovisual content) can sometimes work just as well as a lengthy, legally referenced discussion paper.

The evolution of Australian law reform bodies since the 1940s demonstrates a decisive shift towards the centrality of community consultation in all aspects of the law reform work that is also mirrored in the experience of modern governments and other policymakers. When consultation is successful, it allows law reform bodies to contribute to the process of enhancing the deliberative nature of the Australian democracy, which Spencer Zifcak has described as ‘that quality of continuing dialogue and debate between government and its constituents about economic, social and governmental purposes which forms the heart of the democratic project’.<sup>31</sup> As discussed below, the Institute has actively sought to make this type of contribution to South Australia’s democratic character when undertaking its two most recent references, and has experienced the flow on benefits in terms of legislative impact from adopting this approach.

### III THE INSTITUTE’S APPROACH TO CONSULTATION IN TWO CASE STUDIES

#### *A The South Australian Law Reform Institute*

The Institute is an independent non-partisan law reform body based at the University of Adelaide’s Law School. The Institute is not statutory-based, but rather was established in December 2010 under an agreement between the Attorney-General of South Australia, the University of Adelaide and the Law Society of South Australia.<sup>32</sup> The Institute’s work is guided by an expert Advisory Board,<sup>33</sup> who are supported by a very modest Secretariat, comprising a part-time Director and Deputy Director, a legally-qualified administrative assistant and a small number of casually appointed research staff. In practice, the Institute regularly relies upon contributions in kind from the South Australian legal profession, academia and law students, as well as

<sup>31</sup> Marcia Neave, ‘Law Reform in the Age of Managerialism’ (Speech delivered at the Australian Law Reform Agencies Conference, Darwin, 20 June 2002) <<http://www.lawreform.vic.gov.au/publications-and-media/speeches/law-reform-21st-century--some-challenges-future>>, quoting Spencer Zifcak, ‘From Administrative Reform to Democratic Reformation: Accountability in a Post-Managerial Era’ (Speech delivered at the Seminario Internacional A Reforma Gerencia do Estado, Brasilia 17–18 November 1998).

<sup>32</sup> See Adelaide Law School, *South Australian Law Reform Institute* (25 July 2017) University of Adelaide <<https://law.adelaide.edu.au/research/law-reform-institute/>>.

<sup>33</sup> Ibid.



occasional grants from the Law Foundation. In this way, the Institute resembles similar non-statutory law reform bodies in Alberta and Tasmania.<sup>34</sup>

When undertaking its work, the Institute has a number of objectives. These include to identify law reform options that would modernise the law, fix any problems in the law, consolidate areas of overlapping law, remove unnecessary laws, or, where desirable, bring South Australian law into line with other Australian jurisdictions.<sup>35</sup> While the Institute can receive references from any of its partner organisations, or even directly from members of the public, it most commonly undertakes inquiries suggested by the Attorney-General.

Two of the most recent references received by the Institute — the LGBTIQ Reference and the Family Inheritance Inquiry — highlight the priority given to creative approaches to community consultation by the Institute in recent years. Being a small law reform body in a small jurisdiction, such an approach is not just desirable but has proved necessary in order to make the most of limited resources and to capitalise on the ongoing support of the local legal profession and academic community.

### B *The LGBTIQ Reference*

In January 2015, the Attorney-General of South Australia, the Honourable John Rau MP, invited the Institute to accept a reference to inquire and report on those South Australian laws that discriminated against ‘against individuals and families on the grounds of sexual orientation, gender, gender identity, or intersex status’.<sup>36</sup> The Institute approached the task by firstly undertaking a review of all current South Australian laws to ascertain whether, and to what extent, they discriminated on these grounds. In addition to this desktop audit, the Institute undertook targeted consultations with members of the community to identify which pieces of legislation most impacted upon the lives of affected individuals. This proved to be by far the most compelling evidence of the potentially discriminatory impact of current legislation upon lives. As the Institute’s Audit Report noted:

The lived experience of individuals places, in stark relief, the operation of law on matters that are fundamental to all South Australians. The individuals consulted asked searching questions of the law and the values it enshrines. How does the law assist me to be the person I am? How does it support me to engage, free from discrimination, in the community in which I live? How can I have the relationship

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<sup>34</sup> See above n 1; University of Tasmania, *Tasmanian Law Reform Institute* (21 March 2017) University of Tasmania <<http://www.utas.edu.au/law-reform>>.

<sup>35</sup> See Adelaide Law School, above n 32.

<sup>36</sup> Hieu Van Le, ‘Governor’s Speech’ (Speech delivered at the Proceedings of the Legislative Council, Adelaide, 10 February 2015). In particular, the Governor stated that: ‘[m]y Government will invite the South Australian Law Reform Institute to review legislative or regulatory discrimination against individuals and families on the grounds of sexual orientation, gender, gender identity, or intersex status. Their recommendations will then be considered in the South Australian Parliament.’

with the person I love recognised and start to raise a family in South Australia? These and other questions only served to highlight the discriminatory barriers that members of the LGBTIQ communities face in their daily lives.<sup>37</sup>

The consultations undertaken by the Institute occurred at multiple stages and involved a range of different techniques, specifically designed to generate trust among those most directly affected by the laws being reviewed and reform options presented, and to facilitate input from a broad range of the South Australian community. For example, as a first step, the Institute held face-to-face private meetings with members of the LGBTIQ community and key service providers to help isolate the priority areas of reform. As a result of feedback received during these consultations, the Institute produced a series of fact sheets that outlined in plain English the state of the current law in five key priority areas: legal recognition of sex; legal recognition of relationships; starting a family and parenting rights; protections against unlawful discrimination; and legal definitions of sex and gender.

These materials were then used to facilitate a public submission and online feedback process facilitated by the South Australian Government's 'YourSay' platform.<sup>38</sup> The YourSay website also helped to facilitate further targeted consultations and group discussions, including a forum hosted by Feast Festival's Queer Youth Drop In on 23 July 2015 that provided an opportunity for the Institute to hear the views of LGBTIQ people aged 15–26. This broader consultation assisted in distilling the laws and regulations that had the most significant discriminatory impact on the lives of South Australians, and identified possible reform options. This formed the basis of the first report issued on this reference, the Audit Report, which was reviewed by a specialist Advisory Group established by the Institute for this reference.<sup>39</sup>

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<sup>37</sup> South Australian Law Reform Institute, 'Discrimination on the Grounds of Sexual Orientation, Gender, Gender Identity and Intersex Status in South Australian Legislation' (Audit Paper, September 2015) 7–8. The desktop audit determined that there are over 140 pieces of legislation that, on their face, discriminate against individuals on the basis of sex or gender diversity. The vast majority of the legislation in this category discriminates by reinforcing the binary notion of sex ('male' and 'female') or gender ('man' or 'woman') or excludes members of the LGBTIQ communities by a specific or rigid definition of gender. Rigid, binary concepts of gender are also currently reinforced by the use of the term 'opposite' sex, which can easily be replaced with the more inclusive term 'different' sex without altering the meaning or purpose of the provision. Other laws require clarification to ensure that people who identify as a particular gender are treated with respect under the law, for example, when subject to official body searches. The Institute provides examples of this type of legislation and suggestions for how legislation in this category can be quickly amended or removed.

<sup>38</sup> Government of South Australia, *YourSay: LGBTIQ — Removing Discrimination from SA laws* (20 November 2015) YourSay <<http://yoursay.sa.gov.au/yoursay/lgbtiq-removing-discrimination-from-sa-laws>>. SALRI received 49 substantive submissions in response to its online feedback form and more traditional requests for submissions.

<sup>39</sup> A specialist Advisory Group was assembled for this Reference, comprised of the Hon Catherine Branson QC, Emerita Professor Rosemary Owens AO and Professor Carol Johnson.

The Audit Report also incorporated comparative research conducted by the students of the University of Adelaide's Law Reform Course.<sup>40</sup>

The Audit Report was followed by a series of four further Reports, each documenting an area identified via the above process as in priority need of reform. These areas were: the legal recognition of sex and gender under South Australian law;<sup>41</sup> parenting rights and access to assisted reproductive treatment ('ART') and surrogacy;<sup>42</sup> anti-discrimination law;<sup>43</sup> and the common law partial defence of provocation.<sup>44</sup> Each of these reports were accompanied by specific, additional consultation strategies including:

- (i) Subject specific round table discussions with relevant experts. For example, with respect to the Institute's report on the legal recognition of sex and gender; a round table involving representatives from the Office of Births, Deaths and Marriages; endocrinologists and other medical experts; and members of the trans and intersex community was held. This round table generated a range of consensus views that were collated in a Round Table Report which was then published on the Institute's website and used as the basis for broader community consultation.<sup>45</sup>
- (ii) The preparation of an Issues Paper and a dedicated YourSAy social media platform on the issue of South Australia's anti-discrimination laws, and the exceptions to those laws. The platform included an online survey and live

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<sup>40</sup> The yearlong Law Reform Course examines theories, practices and processes for achieving reform of the law. The course is taught by Institute staff and special guests and students participate in the references being undertaken by the Institute. The topics covered in the course include: theories of law reform; the institutions through which the law is reformed; the role of the community, the executive, the parliament, the bureaucracy, law reform bodies commissions and courts in progressing law reform; the role of the news media and new media; the role and function of the South Australian Law Reform Institute and legal policy analysis for law reform. For examples of the use of student work in an Institute report: see, eg, South Australian Law Reform Institute, 'Discrimination on the Grounds of Sexual Orientation, Gender, Gender Identity and Intersex Status', above n 38, 32–7, Appendix 4.

<sup>41</sup> South Australian Law Reform Institute, 'Legal Registration of Sex and Gender and Laws Relating to Sex and Gender Reassignment' (Report No 5, 2016).

<sup>42</sup> South Australian Law Reform Institute, 'Rainbow Families: Equal Recognition of Relationships and Access to Existing Laws Relating to Parentage, Assisted Reproductive Treatment and Surrogacy' (Report, May 2016).

<sup>43</sup> South Australian Law Reform Institute, "'Lawful Discrimination": Exceptions under the *Equal Opportunity Act 1984* (SA) to Unlawful Discrimination on the Grounds of Gender Identity, Sexual Orientation and Intersex Status' (Report, June 2016).

<sup>44</sup> South Australian Law Reform Institute, 'The Provoking Operation of Provocation: Stage 1' (Report, April 2017).

<sup>45</sup> The round table was held on 29 October 2015 at the University of Adelaide Law School, Adelaide, South Australia, hosted by the South Australian Law Reform Institute. The round table was conducted under Chatham House rules.

discussion board, which helped to generate over 430 submissions in response to this aspect of reference.<sup>46</sup>

- (iii) Additional one-on-one meetings with members of the LGBTIQ community and service providers, which assisted in gaining a practical understanding of many of the issues relating to parenting rights and access to ART and surrogacy in South Australia.<sup>47</sup>
- (iv) Direct engagement with government departments responsible with implementing the reforms being considered by the Institute, including through formal presentations to key staff.<sup>48</sup>
- (v) Extensive media engagement by the Institute, including print, online and radio with particular effort given to disseminating accessible information about the current law to different audiences.<sup>49</sup>

The insights gained from adopting this diverse range of consultation strategies are set out below, some of which point to the need for further refinement of these techniques. However, it is clear that the Institute's commitment to sensitive and meaningful public engagement contributed to its strong legislative impact, and helped to establish networks of individuals and organisations who in turn advocated for broader social change in this area, separate from the work of the Institute. For example, following the release of the Institute's reports, the South Australian Government introduced five Bills implementing the key recommendations made by the Institute in this Reference, all of which were passed in 2016 and early 2017.<sup>50</sup> In addition, on 1 December 2016 the Premier, the Hon Jay Weatherill MP, made a historic apology to LGBTIQ South Australians that was supported by the Opposition. The Premier said that:

When our laws discriminate against a particular group of people, it sends a message that this prejudice written into law justifies treating people differently

<sup>46</sup> Government of South Australia, *YourSay: LGBTIQ*, above n 39.

<sup>47</sup> See, eg, South Australian Law Reform Institute, 'Discrimination on the Grounds of Sexual Orientation, Gender, Gender Identity and Intersex Status', above n 38, Appendix 5.

<sup>48</sup> See, eg, *ibid.*

<sup>49</sup> See, eg, Stacey Rowse, 'Reviewing SA's Discriminatory Laws' (2016) 38(2) *Bulletin (Law Society of South Australia)* 19; Sarah Moulds 'How Can SA Balance Fairness and Freedom of Religious Beliefs?' *InDaily* (online) 6 July 2016 <<https://indaily.com.au/opinion/2016/07/06/how-can-sa-balance-fairness-and-freedom-of-religious-beliefs/>>; Sarah Moulds, 'Making SA a Leader in Equality Again' *InDaily* (online) 12 February 2016 <<https://indaily.com.au/opinion/2016/02/12/making-sa-a-leader-in-equality-again/>>.

<sup>50</sup> See *Adoption Review Amendment Act 2016* (SA); *Births, Death and Marriage Registration (Gender Identity) Amendment Act 2016* (SA); *Relationship Register Act 2016* (SA); *Statutes Amendment (Gender Identity and Equity) Act 2016* (SA); *Statutes Amendment (Registered Relationships) Act 2017* (SA).

in our day-to-day lives. Such laws do not affect only the LGBTIQ community, they diminish our society as a whole. They diminish us by saying effectively that there are certain people who deserve to be treated differently, whose relationships are worth less, whose families should not exist, who are not entitled to the same fundamental rights as their neighbour.<sup>51</sup>

This reflects the broad and deep commitment within the South Australian Parliament to renewing South Australia's position as a leader in promoting substantive equality and protection from discrimination — which was at least in part enlivened by the consultation-intensive work undertaken by the Institute in this area.

### *C Family Inheritance Inquiry*

The Institute's 2017 inquiry into the provisions of the *Inheritance (Family Provision) Act 1972* (SA) is part of its wider work on succession law in South Australia.<sup>52</sup> The Family Inheritance Inquiry is primarily about investigating whether the current laws that apply to the division of a person's estate upon his or her death following a claim against the will by an eligible family member are fair and effective, and well-tailored to the diversity of modern family structures. The inquiry also has particular relevance for families in regional and rural South Australia who have significant farming estates or other assets that present particular difficulties to testators seeking to fairly divide their assets among their children, which circumstances give rise to added complexity when family provision claims are made.

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<sup>51</sup> South Australia, *Parliamentary Debates*, House of Assembly, 1 December 2016, 8313 (Jay Weatherill).

<sup>52</sup> In 2011, the Attorney-General, the Hon John Rau MP, invited the Institute to identify the areas of succession law that were most in need of review in South Australia, to review each area and to recommend reforms. Funding was also generously provided from the Law Foundation of South Australia for the research and consultation necessary for the Institute's review of succession law. As part of its succession law reference, the Institute has identified seven topics for review, and is in the process of completing reports on each of these issues. This work is ongoing and includes: South Australian Law Reform Institute, 'Dead Cert: Sureties' Guarantees for Letters of Administration' (Issues Paper, South Australian Law Reform Institute, December 2012); South Australian Law Reform Institute, 'Sureties' Guarantees for Letters of Administration' (Final Report, South Australian Law Reform Institute, August 2013); South Australian Law Reform Institute, 'Losing it, State Schemes for Storing and Locating Wills' (Issues Paper, South Australian Law Reform Institute, July 2014); South Australian Law Reform Institute, 'Small Estates: Review of the Procedures for Administration of Small Deceased Estates and Resolution of Minor Succession Law Disputes in South Australia' (Final Report, South Australian Law Reform Institute, December 2016); South Australian Law reform Institute, 'Small Fry: Administration of Small Deceased Estates and Resolution of Minor Succession Law Disputes' (Issues Paper, South Australian Law Reform Institute, January 2014); South Australian Law Reform Institute, 'Cutting the Cake: South Australian Rules of Intestacy' (Discussion Paper, South Australian Law Reform Commission, December 2015).

For this reason, when commencing this Inquiry, the Institute was keen to develop a consultation strategy that recognised the broad applicability of the *Inheritance (Family Provision) Act 1972 (SA)* to the South Australian community, but also specifically elicited the views of those living in regional and rural areas. In addition, the Institute thought carefully about how to make this area of law interesting and accessible to the non-legal community, given the relative lack of public interest in other aspects of the Institute's succession-related work. Guidance was provided by other law reform bodies who had undertaken similar inquiries, such as the Victorian Law Reform Commission ('VLRC'), which achieved considerable success through the use of audiovisual content on this issue.<sup>53</sup>

Building on the success of its LGBTIQ consultation strategy and the positive experience of the VLRC, the Institute again utilised the Government's YourSay online platform,<sup>54</sup> but this time included a range of audiovisual content in addition to the provision of an online survey, discussion board and written materials. The YourSay social media platform effectively became the 'one stop shop' for anyone interested in contributing to the Family Inheritance Inquiry, and catered for a range of audiences including legal practitioners, journalists and members of the community. For example, the YourSay site included a series of plain English fact sheets setting out the key issues arising from the inquiry, such as 'who should be able to make a family provision claim', each of which was accompanied by a short video providing case study examples of the particular issue being addressed. These materials were then linked to relevant questions in the short online survey, meaning that participants could engage quickly with the survey and have 'one click' access to additional written or audiovisual content if they needed further information.

This strategy yielded considerably higher results in terms of non-lawyer input into this Inquiry compared with other succession related inquiries conducted by the Institute. For example, the YourSay website elicited just over 100 individual responses from members of the public, and there were well over 200 individual viewings of the short videos. There were also an average of 40 downloads for each of the fact sheets and together this content received approximately 20 000 views on Facebook.

The Institute's online consultation strategy was supported by a range of face to face consultation activities that were conducted in metropolitan and regional areas. For example, the Institute held a legal profession round table discussion held in Adelaide (that included representatives of the court); legal profession and community round

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<sup>53</sup> See, eg, Victorian Law Reform Commission, 'Succession Laws: Consultation Paper — Family Provision' (Consultation Paper, December 2012).

<sup>54</sup> Government of South Australia, *Your Say: Looking After One Another: the South Australian Law Reform Institute's Inquiry in the Inheritance (Family Provision) Act 1972 (SA)* (February 2017) South Australian Law Reform Institute <<http://yoursay.sa.gov.au/decisions/looking-after-one-another/about>>.

tables in the regional towns of Berri and Mount Gambier;<sup>55</sup> and a series of presentations by Institute staff to events and forums involving the legal profession.<sup>56</sup> These round tables were preceded by the development of a list of discussion questions and were supported by the written and video content available on the YourSAy site. The round tables were also supported by targeted media campaigns, including interviews with local media in Mount Gambier and Berri,<sup>57</sup> and built upon networks previously established by the Law Society of South Australia, and in particular, the Society's Country Lawyers Committee. In addition, the involvement of South Australian subject-specific experts, such as Dr Sylvia Villios, greatly assisted in attracting participants to the round tables, which were often accompanied by short continuing professional development presentations (for lawyers) and/or legal information sessions (for non-lawyers). In this way, round table participants experienced both recognition and reward for their contributions to the Institute's inquiry.

An unexpected benefit of the regional round tables was the production of further video content with a regional focus that was then made available to the broader community on the YourSAy site and helped to attract further public submissions. The government has yet to respond to the Institute's report on this Inquiry, however positive feedback has been received with respect to the breadth of the Institute's consultation strategy.

#### IV INSIGHTS FOR MEANINGFUL COMMUNITY ENGAGEMENT WITH LAW REFORM

As Patricia Hughes, Executive Director of the Law Commission of Ontario has observed, all law reform bodies consult: 'it is the "with whom" and "how" that distinguishes them'.<sup>58</sup> The above experiences give rise to insights that the Institute is keen to share with its law reform counterparts in other jurisdictions, as well as Government and other public policymakers, particularly those that face resource constraints or are looking for ways to enhance their capacity to engage with key sectors of the community. In particular, the following insights resonate across subject areas and organisational structures and are discussed briefly below:

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<sup>55</sup> The regional city of Mount Gambier is the second-most populous city in South Australia and is located on the in the south-east of the state, about 450 kilometres south-east of the capital Adelaide and just 17 kilometres from the Victorian border. The town of Berri is a regional centre for the South Australian Riverland communities, and is located on the Murray River 238 kilometres north-east of Adelaide.

<sup>56</sup> For example, Institute Staff presented at the Law Society of South Australia's 2017 Forum in February 2017 in Adelaide, a Law Society Continuing Professional Development Session in May 2017 in Adelaide, and the Administrative Law Practitioners Forum in April 2017 in Adelaide.

<sup>57</sup> This included media interviews with Institute staff and ABC Riverland, ABC Mount Gambier, 5AA Adelaide, and ABC Adelaide.

<sup>58</sup> Hughes, above n 5, 90. See also Croucher, above n 5.

- (i) benefits of early consultation planning and investment in consultation resources;
- (ii) developing innovative approaches through meaningful engagement with students;
- (iii) building trust by working with community partners;
- (iv) building consensus and understanding through round table discussions; and
- (v) sharing successes and reflecting on areas for improvement.

*A Benefits of Early Consultation Planning and Investment  
in Consultation Resources*

As the Institute's larger counterparts in the eastern states and friends in government can attest, strategic planning is critical for Law Reform Commissions, and equally vital for smaller Institutes.<sup>59</sup> It is often hard to anticipate precisely what resources may be required to ensure that meaningful consultation occurs at the time a reference is received. However, as a result of its recent experiences, the Institute is aware of the benefit of investing in 'back end' infrastructure, including information and communication technology, media liaison support, and staff capacity to host community forums and develop relationships with community partners.

While they were once seen as an 'optional extra' by resource-stretched law reform bodies, these types of resources are now perceived as critical to engaging in high-quality legal research. In addition, without the capacity to plan and implement consultation strategies, there is a risk that the long established relationships developed with the legal profession and the legal academy will deteriorate, particularly if the law reform body is ignored by the broader community and the political decision makers of the day.

This is not to suggest that additional financial resources need to be provided to law reform bodies such as the Institute to fund community engagement (although that would certainly be welcome). Rather, the Institute's experience suggests that existing information technology infrastructure, such as the government's YourSay site, can be utilised. For all Institutes such as South Australia's, which is based in a university, new relationships can also be established within the university, for example with those with specialist skills in audiovisual production, to address these needs. However, when cost-effective strategies such as these are adopted, care must be taken to ensure the independence of the law reform body is preserved. This may require careful efforts to ensure that the law reform body's social media platforms and other media outreach are clearly differentiated from those of the government of the day or of the university host. Similar considerations should also be applied by government and non-government policymakers seeking to walk the fine line between adopting resource efficient communication technology options and preserving relationships of trust with communities.

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<sup>59</sup> Ibid.



### B *Developing Innovative Approaches Through Meaningful Engagement with Students*

One of the most rewarding aspects of the Institute's work is the relationship it has with the University of Adelaide's law students, and in particular, the students from the Law Reform Course. This elective, yearlong course is offered to high-performing students on an invite-only basis and engages students in a range of activities relevant to the work of the Institute. For example, the Law Reform Course provides students with an opportunity to undertake assessment tasks involving comparative legal research and literature reviews on the topics forming the Institute's current references.<sup>60</sup> It also encourages students to identify consultation strategies and develop law reform options, again with reference to current Institute work. The Course also includes field visits to the Attorney General's Department, where students hear from parliamentary counsel, policy officers and the Attorney General about the law reform process from the government's perspective. The Course also provides opportunities for students to participate directly in the consultation activities of the Institute, for example as participants or minute takers in community round tables.

The work of the students in this Course has led to a range of positive outcomes for the Institute, not least of which is the benefit of quality legal research in a resource-tight environment. However, the work of students in the Course has also led to: the identification of innovative new law reform options that have translated into strong legislative outcomes; the development of new, audience-specific consultation strategies; and an improved capacity to network and build partnerships between the Institute and community organisations. The students have also gained a range of unique institutes into the legislative and law reform process and developed a broader network of contacts with which to forge possible career pathways. Some particularly highperforming students have also gone on to have direct involvement in the Institute's subsequent references, for example as research assistants.

While these insights may appear focused on the experience of university-based law reform bodies, they have application to a broader range of policymakers that rely upon the skills of interns and volunteers. Valuing the input of these 'irregular' members of staff beyond their research or quantitative input role (for example by engaging interns in relationship building and networking) can help add value and — integrity to community engagement.

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<sup>60</sup> Some of the benefits of offering specific Law Reform Courses that encourage students to consider and discuss not just what the law *is* but what it *should be* are discussed in: Douglas L Colbert, 'Broadening Scholarship: Embracing Law Reform and Justice' (2002) 52(4) *Journal of Legal Education* 540–58; Lord Hooson Q.C., 'Reform of the Legislative Process in the Light of the Law Commissions' Work' (Speech delivered at the Annual Conference of the Association of Law Teachers, 7 April 1983), (1983) 17 *The Law Teacher* 67, 89–100; Kate Galloway et al, 'Working the Nexus: Teaching Students to Think, Read and Problem-Solve Like a Lawyer' (2016) 26(1) *Legal Education Review* 95–114; Gabrielle Appleby, Peter Burdon and Alexander Reilly, 'Critical Thinking in Legal Education: Our Journey' (2013) 23(2) *Legal Education Review* 345–77.

*C Building Trust by Working with Community Partners*

As Marcia Neave has observed, when law reform bodies engage with community organisations and individuals they can ‘provide information enabling people to make informed decision on policy matters and to express their views in ways in which they feel comfortable’ and give ‘people in marginalised groups in the community an opportunity to be treated with dignity and to be have their concerns taken seriously’.<sup>61</sup> This is what the Institute experienced in the two references discussed in this article, and in particular its work with the LGBTIQ communities in South Australia. The Institute’s independent character, and genuine willingness to engage with and listen to the concerns of members of the LGBTIQ communities, were key to building the level of trust needed to enable individuals who had otherwise felt ignored, excluded and even actively discriminated against by the government agencies and state institutions to participate in the law reform process. Great care was also taken to preserve the confidentiality of community participants in the Institute’s round tables and other consultations, and permission was sought before any individual views were attributed or quoted in the Institute’s reports. Round tables were also conducted under Chatham House rules, and followed by opportunities for all participants to review the reports reflecting the discussions before they were made public or otherwise relied upon by the Institute.

Despite the often highly personal nature of the contributions made by a number of participants in the LGBTIQ Reference, the vast majority of individuals consulted were pleased and proud to be identified as contributing to the law reform process, particularly when appropriate support and background information was provided to ensure informed consent. Also important was the understanding that a true partnership involves the Institute providing value to the community organisation (for example through skills development or legal education), in addition to the process of gathering views on law reform.

The Institute’s work in this area was greatly assisted by the relationships and partnerships it was able to develop with community and service based organisations. For example, the Institute liaised closely with Intersex Australia to improve its knowledge of the experience of people born with intersex variants. It also partnered with the Adelaide-based Queer Youth Drop In Centre to facilitate engagement with young LGBTIQ South Australians, and liaised with mental health service providers and endocrinologists to obtain an insight into the lived experience of those transitioning between genders. In addition, the Institute sought assistance from the Women’s Legal Service and the South Australian Office for Women to ensure that it obtained the views of those working in the family violence sector with respect to law reform issues relating to the partial defence of provocation. For example, a special round table was facilitated for survivors of family violence that included onsite professional counselling services to provide a supportive environment participants to share their experiences with the Institute. The round tables also provided a platform for

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<sup>61</sup> Neave, ‘Law Reform and Social Justice’, above n 8, 366. See also Uhr, above n 9, 4; Neave, ‘Institutional Law Reform in Australia’, above n 9.

community groups to coordinate their own advocacy for law reform in this area, which contributed to the overall support for the removal of discriminatory laws in South Australia. As Professor Croucher observed in 2017:

The results of public consultation, including submissions, add to the information that provides the evidence base for the conclusions of a law reform inquiry, expressed as recommendations. Governments can decide not to follow the recommendations, but they can see the arguments for and against the policy solutions being advocated. And where formal tabling of law reform reports is required, the arguments are public and can be used as leverage by others who want to push for implementation, if this is not a first order priority for Government.<sup>62</sup>

The Family Inheritance Inquiry also involved the Institute working closely with partner organisations, in this case, more traditional partners in the form of the Law Society, and in particular, members of the Country Lawyers Association. Supported by strong audio-visual content developed by the Institute and successful local media engagement, these groups paved the way for meaningful engagement with communities in regional South Australia. More than this, the relationships of trust developed by these groups enabled the Institute to host forums in regional centres that not only gathered views on the law reform issues arising from the Inquiry, but also delivered professional development content to the local legal profession and provided community members with access to vital legal information about the drafting of wills and estate planning. This greatly improved the profile Institute outside of metropolitan Adelaide, and generated a much stronger community response to the Inquiry than was received in relation to other aspects of the Institute's succession work.

Law reform bodies and Government policymakers around the country already possess highly developed skills in liaising with experts and building networks, particularly when it comes to the legal profession and the legal academy. However, the Institute's recent references underscore the value of applying these same skills to community organisations, including less traditional organisations such as online youth networks and others who may organise themselves in more dynamic or transient ways. The legislative success of the Institute's recent reports demonstrate that investing resources and energy in a diverse range of community relationships can deliver strong law reform results. A similar strategy appears to be actively employed by other law reform bodies in Australia and overseas, where efforts and resources are being directed towards adopting more inclusive strategies for engaging those likely to be affected by proposals for law reform, beyond those with technical legal skills or expertise.<sup>63</sup>

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<sup>62</sup> Croucher, above n 5.

<sup>63</sup> See, eg, Martin Partington, 'The Relationship Between Law Reform and Access to Justice: A Case Study — the Renting Homes Project', (2005) 23 *Windsor Year Book of Access to Justice* 375; Natalina Nheu and Hugh McDonald, *By the People, For the People? Community Participation in Law Reform* (Law and Justice Foundation of New South Wales, 1<sup>st</sup> ed, 2010).

Reflecting on the experiences of the past two references, the Institute intends to further improve the scope of its consultations for future inquiries, for example by building partnerships with Aboriginal organisations to enable more meaningful engagement with both metropolitan and regional Aboriginal communities.

#### *D Building Consensus and Understanding through Round Table Discussions*

In a step away from the traditional approach of publishing Issues Papers and receiving written submissions, the Institute successfully utilised a round table approach for its past two references. As noted above, this approach involved the preparation of short, plain English written materials (including Fact Sheets, Discussion Questions, Background Papers or Annotated Agendas) and the hosting of a range of subject specific face-to-face<sup>64</sup> round tables (typically involving between ten and twenty participants) designed to help inform the Institute of the key issues and law reform options arising from its references, and to test whether a consensus view existed among community members and/or particular groups of experts. The round tables provided a safe environment for participants to share their views and discuss issues, and identified a range of innovative law reform options for the Institute to consider. Conducted under Chatham House rules, the round tables did not replace individual submissions or one-on-one meetings with individuals, experts or organisations. However, they facilitated Consensus Reports on key issues that could then be used as the basis of further community consultation by the Institute.

This approach ensured that it was the community — including experts within the community — that were guiding the direction and focus of the Institute’s work, rather than the Institute controlling the parameters of the discussion and reform options to be considered, which often occurs under the traditional Issues Paper approach. As noted above, these round tables also provided important opportunities for community members and groups to collaborate on law reform issues independently of the Institute. The end result were reports with recommendations that experts and community members were actively invested in seeing succeed. This deep level of community support undoubtedly provides significant comfort for parliamentarians considering the legislative implementation of the Institute’s recommendations, as is particularly clear in the case of the LGBTIQ reference. It also helps to build a positive profile for the Institute, which in turn solidifies and enhances traditional and highly valued relationships with the local legal profession and legal academy.

#### *E Sharing Successes and Reflecting on Areas for Improvement*

The above insights highlight a range of successful outcomes for the Institute, however further improvements can be made to maximise the quality of future consultations and engagement with the community. For example, ensuring meaningful engagement with small, traditionally underrepresented, or previously ‘invisible’ groups, such as the intersex community in South Australia, remains a challenge for law reform bodies with limited resources and expertise in identifying and supporting

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<sup>64</sup> On occasion interstate experts participated via videoconference.

individuals from these groups engaging with law reform processes. In addition, accessing regional and remote communities can be challenging, even when electronic consultation strategies are employed, particularly if the content of the law reform reference demands considerable background knowledge to facilitate meaningful community engagement. As research undertaken by the Law and Justice Foundation of New South Wales found, participating in law reform is ‘challenging, complex, and time and resource intensive’ and while participation opportunities may be technically available to everyone, ‘the abilities of people, especially disadvantaged people and the organisations that often represent them, do not manifest in substantively equal ways.’<sup>65</sup>

Successfully managing relationships with the media can also present challenges for law reform bodies who are on the one hand keen to take their public education role seriously, and on the other hand are acutely aware of the need to avoid entering into the political discourse on any particular law reform proposal. As the Hon Michael Kirby observed, law reformers can find themselves:

constantly torn between getting too close to politicians and the media, in order to attract interest in, and action on their proposals. Or keeping too great a distance, in order to avoid seduction and so as to maintain product differentiation in the creation of reforming ideas.<sup>66</sup>

These challenges highlight the need for law reform bodies in Australia and elsewhere to regularly share their experiences and document their successes. In sharing these insights, the Institute is conscious that its counterparts around Australia are also achieving strong legislative results and experiencing significant success when it comes to engaging communities in meaningful and innovative ways. The Institute encourages all law reform bodies and policymakers to share these experiences, so that we can all reflect upon how to make the most of limited resources and capitalise on new ways to communicate with the community about law reform and policy ideas.

## V CONCLUSION

In order to overcome the cynicism and sense of disempowerment that at times threatens to overcome Western democracies, it is integral that law and policymakers of all stripes embrace community engagement with enthusiasm and rigour. It is also critical that these bodies continually report and reflect on their practices, in order to improve the deliberative quality of their community engagement.

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<sup>65</sup> Nheu and McDonald, above n 64.

<sup>66</sup> Michael Kirby, ‘Law Reform — Past, Present, Future’ (Speech delivered at the Alberta Law Reform Institute, Edmonton, 2 June 2008) <[http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj\\_2jun08.pdf](http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_2jun08.pdf)>; see also Sir Peter North: ‘Law Reform: Problems and Pitfalls’ (1999) 33 *UBC Law Review* 37, 45; Croucher, above n 5.

As noted above, the Institute is a modest law reform body with a flexible structure that has not always enjoyed the admiration of its bigger, eastern state cousins or luminaries of the legal profession. For example, the inaugural Chair of the Australian Law Reform Institute, the Hon Michael Kirby, once described law reform bodies like the Institute as:

under-funded, comprised of serious but over-worked lawyers, performing their law reform tasks at the ‘fag end’ of a busy day. Although some of the work of such bodies makes it into legislation, inevitably the output tends to be small. The pace is cautious. The research facilities (especially for social data) are tiny. The capacity for genuine public consultation is miniscule. And the ability to provide drafts of legislation to give effect to the reform ideas is generally non-existent.<sup>67</sup>

While it is a small, part-time, law reform body, the experiences described above suggest that the Institute is beginning to make a significant mark on the legislative landscape in South Australia, renewing the State’s strong reputation as a jurisdiction of innovative legislative practice and promoter of social justice. The above experiences also point to the Institute playing an important leadership role when it comes to innovation in consultation and community engagement strategies. For once, the Institute looks forward to continuing to prove the Hon Michael Kirby wrong!

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<sup>67</sup> Michael Kirby, ‘Changing Fashions and Enduring Values in Law Reform’ (Speech delivered at the Conference on Law Reform on Hong Kong: Does it Need Reform?, Hong Kong, 17 September 2011) <<http://www.alrc.gov.au/news-media/2011/changing-fashions-and-enduring-values-law-reform>>.