



THE UNIVERSITY  
*of* ADELAIDE

# 2021 Annual Report

**South Australian Law Reform Institute**

1 January 2021 to 31 December 2021



**make  
history.**



Government of South Australia  
Attorney-General's Department



THE LAW SOCIETY  
OF SOUTH AUSTRALIA

# Table of Contents

<b>1. About the South Australian Law Reform Institute</b>	<b>1</b>
1.1. Functions and objectives	2
1.2. Staff	2
1.3. Advisory Board	3
<b>2. Funding</b>	<b>3</b>
2.1. New Research Funding	3
2.2. Ongoing and Residual Research Funding	4
A. The Law Foundation of South Australia Incorporated	4
B. Residual Tied Funds	4
2.3. In-kind Contributions	5
A. The University of Adelaide	5
B. South Australian Attorney-General's Department	7
C. Law Society of South Australia	7
D. Advisory Board	7
<b>3. Current law reform projects</b>	<b>7</b>
3.1. Powers of Attorney	7
3.2. Communication Partners	8
3.3. Witness Competence	10
<b>4. Addresses, presentations, consultations and media</b>	<b>7</b>
<b>5. Progress of recommendations from Institute Reports</b>	<b>8</b>
5.1. Abortion - Law reform related legislation	8
5.2. Provocation – Law reform related legislation	8
5.3. Powers of Attorney – draft legislation	8
5.4. Privacy – draft legislation	8
5.5. Succession – draft legislation	9
5.6. Forfeiture Rule – draft legislation	9
<b>6. References to the Institute's Reports in <i>Hansard</i></b>	<b>10</b>

# South Australian Law Reform Institute

## 2021 Annual Report

This Annual Report covers the period from 1 January 2021 to 31 December 2021 ('the Reporting Period') for the South Australian Law Reform Institute (the Institute). Whilst Covid-19 continued to restrict activities nationally and internationally during 2021, the Institute was again able to continue most of its research and consultation activities, albeit with some delays and disruption.

## 1. About the South Australian Law Reform Institute

The Institute is an independent non-partisan law reform body, established in December 2010 by a Memorandum of Understanding ('MoU') between the Attorney-General of South Australia, the Vice Chancellor and President of the University of Adelaide and the President of the Law Society of South Australia. The Institute is based at the University of Adelaide Law School.

Inquiries (otherwise known as references) are undertaken by the Institute into various areas of the law, the subjects of which are determined by the Institute's expert Advisory Board and at the request of other parties such as the South Australian Attorney-General or the Law Society of South Australia. The Institute can also undertake self-referred projects.

In undertaking a reference, extensive multidisciplinary research is conducted, along with the examination of similar law, practice and operation in other jurisdictions (both in Australia and overseas), as well as wide and inclusive consultation with interested parties, experts and the community. The Institute is especially committed to consultation with regional and Aboriginal communities.

The Institute marked its tenth anniversary in December 2020, however, owing to the ongoing Covid-19 response, a suitable anniversary event was postponed until 26 October 2021 when Her Excellency the Honourable Frances Adamson AC, Governor of South Australia, kindly hosted a reception at Government House to mark the occasion. The Governor spoke of the role and impact of SALRI on law reform and the administration of justice in South Australia.

*There are many examples, known well to you  
I am sure, of how a long tradition of  
innovative law reform has transformed South  
Australia.*

*This doesn't happen by chance. It relies on a  
society that is committed to equality and  
fairness and one that actively participates in  
forming the very laws that affect us all.<sup>1</sup>*

Her Excellency the Honourable Frances  
Adamson AC, Governor of South Australia



Picture (above): SALRI staff, researchers and guests enjoying the 10<sup>th</sup> Anniversary reception at Government House

<sup>1</sup> Governor's Speech, 10<sup>th</sup> Anniversary Reception for the South Australian Law Reform Institute, 26 October 2021 <<https://www.governor.sa.gov.au/vice-regal-activity/speeches/tuesday,-26-october-2021>>.



It should be noted that the Institute is not an advocacy body and takes no part in such activities related to its references.

Further Information about the Institute, including copies of all published Papers and Reports, is located on the Institute's website at: <https://law.adelaide.edu.au/research/south-australian-law-reform-institute>.

## 1.1. Functions and objectives

The functions, objectives and operations of the Institute remained unchanged during 2021.

As noted in the MoU, the functions and objectives of the Institute are:

- To conduct reviews and/or research on areas of law and legal policy specified by the Advisory Board;
- To conduct these reviews and/or research, where appropriate on a consultancy basis;
- To conduct reviews and research on proposals from the Attorney-General with a view to:
  - the modernisation of the law;
  - the elimination of defects in the law;
  - the consolidation of any laws;
  - the repeal of laws that are obsolete or unnecessary; and
  - uniformity between laws of other States and the Commonwealth.
- To provide reports to the Attorney-General or other authorities on the outcomes of reviews and/or research and to make recommendations based on those outcomes;
- To work with law reform agencies in other states and territories on proposals for reform of the laws in any other jurisdiction or within the Commonwealth; and
- To recommend to Government on the basis of detailed and impartial research.

## 1.2. Staff

<i>Director</i>	Professor John Williams Acting Provost, University of Adelaide Executive Dean, Faculty of the Professions, University of Adelaide Dame Roma Mitchell Chair of Law
<i>Deputy Director</i>	Dr David Plater Senior Lecturer, Adelaide Law School (0.9 FTE)
<i>Administrative Officer</i>	Ms Louise Scarman (0.5 FTE)

### 1.3. Advisory Board

The Institute is grateful for the valuable contribution of its expert Advisory Board comprised of Members who are appointed as nominees for a number of representative parties.

During 2021, the composition of the Institute's Advisory Board was as follows:

- Professor John Williams (Chair);
- The Honourable David Bleby QC, nominee of the Vice Chancellor and President of the University of Adelaide;
- The Honourable Justice Tim Stanley, nominee of the Chief Justice of South Australia;
- Mr Dini Soulio, nominee of the Attorney-General of South Australia;
- Mr Terry Evans, nominee of the Law Society of South Australia;
- Mr Stephen McDonald, nominee of the South Australian Bar Association;
- Professor Melissa de Zwart, nominee of the Dean of the Adelaide Law School (to 28 August 2021); and
- Ms Aimee Travers, jointly appointed additional member.

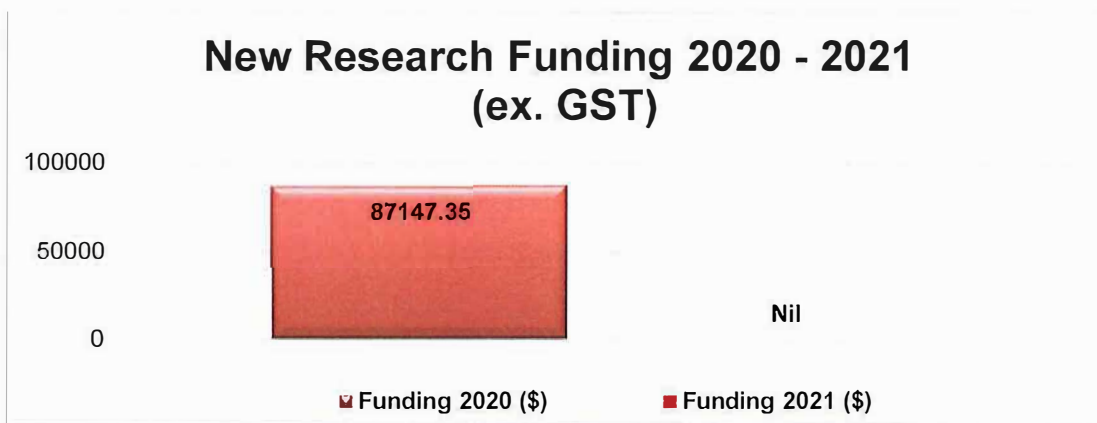
Professor Melissa de Zwart, the Dean of the Adelaide Law School, left the University at the end of August 2021 and thus stepped down as the Dean's nominee on the Advisory Board. The Institute thanks Professor de Zwart for her input and expertise and support of SALRI activities during her time as both the Dean of the Adelaide Law School and as an Advisory Board Member. A suitable replacement will be sought when a permanent Dean is appointed.

The terms of the MoU require a minimum of three meetings per year. In accordance with this requirement, the Institute's Advisory Board met on 2 July 2021 (electronic update), 13 September 2021 and 11 November 2021 (electronic update).

## 2. Funding

### 2.1. New Research Funding

During the Reporting Period, no new research funding was obtained as the Institute had significant ongoing work which limited its ability to take on any additional references, and thus secure any additional funding.



## 2.2. Ongoing and Residual Research Funding

As a result of ongoing and residual research funding, the Institute was able to undertake work on the following projects during the Reporting Period:

### A. The Law Foundation of South Australia Incorporated

#### i. *Communication Partners project*

This project examined the role and operation of Communication Partners (also called Intermediaries) to assist parties with complex communication needs to provide their best evidence, both in and out of court. Part of this project examined the reasons for the limited use of Communication Partners in South Australia.

As noted in the Annual Report 2020, the Institute took carriage of this existing research project and corresponding budget<sup>2</sup> in October 2020 with a revised research focus and methodology. Due to a number of extensions received from the Law Foundation of South Australia Inc prior to the Institute's involvement, completion of this project was required to occur by 30 September 2021.

During the Reporting Period, the Institute undertook extensive research and significant consultation activities, including a number of Adelaide consultation roundtables and various meetings. A regional consultation trip to Port Pirie and Port Augusta was also undertaken, which involved the crucial input of regional and Aboriginal communities.

Sonja Brubacher and Sarah Hoff carried out two original studies as part of this reference through the Centre for Investigative Interviewing at Griffith University.

The Institute also discussed its Communication Partner reference with various interested parties during a collegial visit to Tasmania in February 2021.

The Final Report was provided to the Law Foundation on time and was publicly released on 11 November 2021.

More detailed information on this project can be found in Part 3 below.

### B. Residual Tied Funds

The Attorney-General's Department continued to permit the Institute to keep and re-purpose residual funds from previous Institute projects funded by the Attorney-General's Department towards other projects which support the Attorney-General's priorities.

During the Reporting Period, these residual funds allowed the Institute to engage casual researchers to assist with residual follow-up work resulting from past Institute Reports, as well as assisting with research and drafting to progress the Institute's Witness Competence project and undertake background research on a Social Media and Juries project.

Institute staff also travelled to Tasmania to meet with the Tasmania Law Reform Institute and colleagues at the University of Tasmania on collaborative law reform and research projects in February 2021. The Institute also discussed its Communication Partners reference during this trip.

While in Hobart, Institute staff were generously invited to dinner at Government House by the Governor of Tasmania, Her Excellency Professor Kate Warner AC.

---

<sup>2</sup> The available balance in this project as at 1 July 2020 was \$87,147.35.



## 2.3. In-kind Contributions

Funding via in-kind contributions were attributed from the following sources during 2021:

### A. The University of Adelaide

#### i. *Salaries of Director and Deputy Director*

In accordance with the Institute's MoU, the University of Adelaide paid the salaries of the Director, Professor John Williams and Deputy Director, Dr David Plater.

During the Reporting Period Professor Williams was the Executive Dean, Faculty of the Professions and Acting Provost, in addition to holding other significant roles and commitments beyond the Institute and the University.

Dr Plater continued to be employed @ 0.9 FTE to conduct the work of the Institute as its principal researcher and writer, while coordinating and delivering the Adelaide Law School's full-year elective subject of Law Reform, as well as some teaching obligations for the University's Criminal Law and Evidence courses.

In addition, during the Reporting Period, the University continued to:

- provide accommodation, facilities and on-going technical support in the running of the Institute; and
- provide expert support for the Institute's communications with the media, when required.

#### ii. *Law Reform Elective Course, Student Research and Guest Speakers*

The Law Reform elective is a by-invitation course for final-year students which involves high level research and analysis of an area of the law (often on aspects of the Institute's current or potential future projects) within its comparative, policy and legal dimensions, under the supervision of the Course Co-ordinator. Students are encouraged to make reasoned findings and conclusions based on their research, which often play a valuable role to inform and support the Institute's work, for example, as background research for a Report, and if the opportunity arises, former students can be hired as paid research assistants to assist with projects.

In 2021, the Law Reform elective course was undertaken by 26 students. The course was taught and co-ordinated by Dr David Plater.

Student research topics included several of the Institute's current and forthcoming projects, such as:

- The role and operation of powers of attorney and civil remedies to address abuse.
- Vulnerable parties in the justice system.
- Intermediaries or Communication Partners to assist vulnerable parties.
- The definitions of rape and consent and issues arising.
- Gay conversion 'therapy'.
- Judicial retirement age.
- Extension of common law forfeiture rule to non-lethal elder abuse.
- Prosecution disclosure of digital records held by victims of sexual assault.
- Suppression orders and judicial directions to address jury use of social media and internet.
- Police powers of online search and addressing online child sexual exploitation.
- Microboards to support persons with disability.



- Recognition of Aboriginal kinship in South Australian succession laws.
- Measures to improve situation of Aboriginal witnesses and accused.

A diverse range of impressive guest speakers from Government, politics, the community and legal practice are invited to contribute to the course to discuss various aspects of the law reform process and context. Guest speakers in 2021 included:

- the Hon Vickie Chapman MP (the present Attorney-General)
- the Hon John Rau SC (former Attorney-General)
- Mr Robert Lawson RFD QC (past Attorney-General)
- the Hon Justice Chris Bleby (Court of Appeal)
- the Hon Justice Tim Stanley (Supreme Court of South Australia)
- the Hon Geoffrey Muecke (former Chief Judge of the District Court of South Australia and regular contributor to the course)
- a leading Elder from the Aboriginal community
- Ms Skye Kakoschke-Moore (former Senator and now policy officer at Purple Orange)
- Ms Kaela Dore (family law lawyer)
- Reece Fursa (lawyer at Crown Solicitor's Office)
- Andrew Carpenter (lawyer in civil practice)
- various representatives of the Attorney-General's Department, Crown Solicitor's Office and Office of Parliamentary Counsel, and
- a number of former law reform students now in practice.



Guest speakers (former students): Vaishnavi Rajaramanan, Kershlin Krishna and Kalyna Becker with Dr David Plater



Guest speaker, the Hon Vickie Chapman MP, Attorney-General, with 2021 Law Reform students

Picture (right): The Hon John Dawkins MLC provided 2021 Law Reform students with an engaging tour of Parliament House prior to his retirement



## **B. South Australian Attorney-General's Department**

### *i. Funding of Administrative Officer position*

Under the MoU, the South Australian Attorney-General's Department (AGD) is responsible for funding of the Administrative Officer position at 0.5 FTE via a tied grant to the University of Adelaide. With effect from 1 July 2021, the Attorney-General's Department agreed to a re-classification of the Administrative Officer's position and salary commensurate with ASO5 rates.

The University invoices the AGD twice yearly under this arrangement.

## **C. Law Society of South Australia**

As a co-founder, the Law Society of South Australia continued to support the work of the Institute in 2021 by permitting Institute staff and researchers to attend relevant Law Society seminars and continuing legal education sessions relevant to the Institute's work at either reduced rates or without charge.

The Society also undertakes to provide written submissions to Institute references when relevant.

## **D. Advisory Board**

The Institute is grateful for the valuable input and support of members of the Advisory Board who generously contribute their expertise and time without charge.

## **3. Current law reform projects**

Following is a summary of the law reform project work undertaken by the Institute during the Reporting Period.

All publications released by the Institute (for both current and past projects) are available to download free of charge from the Institute's website: <http://www.law.adelaide.edu.au/research/south-australian-law-reform-institute/> under 'Projects'.

### **3.1. Powers of Attorney**

As noted in the Annual Report 2020, the Institute decided to undertake a self-referred project to examine the role and operation of enduring powers of attorney (EPAs) in South Australia, following a number of concerns expressed to the Institute about the role and operation of the *Powers of Attorney and Agency Act 1984* (SA) (POA Act) and the financial exploitation of older South Australians as part of its previous reference into family provision laws (part of the Institute's wider succession law reference).<sup>3</sup>

Work on this reference was completed in December 2020 and the Report, *Report 15: Valuable Instrument or the Single Most Abused Legal Document in our Judicial System? A Review of the Role and Operation of Enduring Powers of Attorney in South Australia*, was publicly released on 19 January 2021.

The Report makes a total of 120 recommendations for changes to law and practice to clarify and improve the use and operation of EPAs in South Australia.

---

<sup>3</sup> South Australian Law Reform Institute, *Distinguishing between the Deserving and Undeserving: Family Provision Laws in South Australia*, Final Report 9 (2017).





SALRI staff presenting Powers of Attorney Report to Attorney-General, the Hon Vickie Chapman MP



Front cover of Report 15 – *Valuable Instrument or the Single Most Abused Legal Document in our Judicial System? A Review of the Role and Operation of Enduring Powers of Attorney in South Australia*

The Institute reiterates its thanks to the lead author on this project, Dr Sylvia Villios, along with the substantial contributions of co-authors, Dr David Plater, Dr Gabrielle Golding, Olga Pandos, Anita Brunacci, Natalie Ayoub, Holly Nicholls and Associate Professor Bernadette Richards. The Institute also thanks all parties who contributed to this project, notably Dr Mark Giancaspro and the Hon Geoff Muecke and particularly Dr Chris Moy of the Australian Medical Association (SA) for his insightful contribution to consultation. The valuable input from Members of the Institute's expert Advisory Board is also acknowledged.

The Institute is grateful for the ongoing support of the Law Foundation of South Australia Inc. in providing the funding for the Institute to undertake this important reference.

### 3.2. Communication Partners

As reported in the previous Reporting Period, the Institute formally inherited this project and responsibility for its associated budget in late 2020 and commenced work as a priority. Due to a number of extensions received from the Law Foundation of South Australia Inc prior to the Institute's involvement, completion of this project was required to occur by 30 September 2021.

This project examined the role and operation of Communication Partners (also called Intermediaries) to assist parties with complex communication needs to provide their best evidence, both in and out of court. Part of this project examined the reasons for the limited use of Communication Partners in South Australia.

During the Reporting Period, the Institute undertook extensive research and significant consultation activities, including a number of Adelaide consultation roundtables and meetings with peak bodies, industry, users of communication partners, service providers, legal and health practitioners and members of South Australia Police. The Institute also met Judge Liesl Kudelka of the District Court of South Australia, Judge Meryl Sexton of the Victorian County Court, Judge Patricia Lees of Snaresbrook Crown Court and Justice Melissa Perry of the Federal Court of Australia.

A regional consultation trip to Port Pirie and Port Augusta was undertaken, which involved the crucial input of regional and Aboriginal communities. The Institute met with various Aboriginal Elders, the ALRM and members of Aboriginal community groups.



The Institute, during its visit to Tasmania in February 2021, also discussed its Communication Partner reference with various parties including the Hon Chief Justice Alan Blow, the Hon Justice Michael Brett and the Hon Justice Helen Wood of the Supreme Court of Tasmania, Michael 'Hilly' Hill (former Chief Magistrate), Amber Mignot of the Tasmanian Department of Justice, Kim Baumeler (leading local defence lawyer), Daryl Coates QC (Tasmanian DPP), Dr Brendan Gogarty (Acting Director of the TLRI), Associate Professor Terese Henning (former Director of the TLRI), Dr Kate Cashman, Dr Helen Cockburn and Dr Caroline Spiranovic. The Institute was also permitted to join the training for Intermediaries in advance of the commencement of the Tasmanian Intermediary scheme on 1 March 2021.



SALRI's Communication Partners Video Team  
(L to R: Lukas Price, Brooke Washusen, Simone Basso, David Plater and the Hon Geoff Muecke)



SALRI staff and attendees at a community consultation event for the disability community on 6 May 2021 (L to R: Holly Nicholls, David Plater, Skye Kakoschke-Moore, Purple Orange and Natalie Wade, Equality Lawyers)

Two original studies were also carried out for SALRI as part of this reference through the Centre for Investigative Interviewing at Griffith University. The first study, conducted by Sarah Hoff, explored the reasons for the apparent limited use of the CP role to date in South Australia, notably in the higher courts, through interviews with 23 representative practitioners. The second study, conducted by Sonja Brubacher, sought to better understand the ways in which intermediaries can best contribute to assisting parties with complex communication needs to provide their best evidence. These two linked original studies, conducted on behalf of SALRI, proved an important aspect of this reference.

The Report, *Providing a Voice to the Vulnerable: A Study of Communication Assistance in South Australia*, sets out SALRI's careful examination of the rationale, role and operation of communication partners in South Australia. The Report, written by multi-disciplinary authors, makes 51 recommendations for the State's existing communication partner scheme, with the aim to better support people with complex communication needs, whether suspects, accused, litigants, witnesses or victims, so that they are able to provide their best evidence, both in and out of court. The Report highlighted the vital Aboriginal context to this topic, which had previously been largely overlooked.

An embargoed copy of the Report was delivered to the Law Foundation of South Australia Inc. on time and the Report was publicly released on 11 November 2021.

The Institute thanks all parties who contributed for their generous input to this important reference.



Front cover of Report 16 – *Providing a Voice to the Vulnerable: A Study of Communication Assistance in South Australia*



SALRI staff and researchers attending a regional consultation session in Port Pirie

### 3.3. Witness Competence

This reference was received from the then Attorney-General, the Hon Vickie Chapman MP, on 19 November 2018, inviting the Institute to inquire into, and report on, the utility of competence testing and the distinction between sworn and unsworn evidence, pursuant to section 9 of the *Evidence Act 1929* (SA). No formal resources were provided for the Institute to carry out this project, so limited residual funds have been used to progress this project between other references. The Institute is particularly grateful for the generous voluntary contributions of the Hon David Bleby QC and the Hon Geoff Muecke for their ongoing work on this project.

The completion of this project has encountered several delays, including the COVID -19 situation, a lack of specific project funding and other references requiring more immediate attention<sup>4</sup>, however, the Institute was able to progress background research on several issues and drafting of several chapters of the report during the Reporting Period. Due to the limited availability of researchers and funding, the report is still incomplete. This project is also examining aspects of the Institute's previous report on oaths in court.<sup>5</sup> It is hoped to complete this Report in 2022 once time and resources become available.

<sup>4</sup> Notably, the Abortion reference during 2019, the Powers of Attorney reference during 2019 - 2020 and the Communication Partners reference during most of 2021.

<sup>5</sup> South Australian Law Reform Institute, *Witness Oaths and Affirmations* (Final Report 3, February 2016).



## 4. Addresses, presentations, consultations and media

During the Reporting Period, Institute staff and researchers were active in community and industry engagement and undertook the following addresses, presentations, consultations and media interviews:

Date	Details
19 Jan 2021	Dr Sylvia Villios discussed the Institute's Powers of Attorney review, <i>The Advertiser</i>
22 Jan 2021	Dr Sylvia Villios discussed the Institute's Powers of Attorney review, <i>Radio Adelaide</i>
22 Jan 2021	Dr Sylvia Villios discussed the Institute's Powers of Attorney review, <i>ABC Radio</i>
6 Feb 2021	Australian & NZ Association of Psychiatry, Psychology and Law (ANZAPPL) - presentation on witness competence (Dr David Plater, Hon Geoff Muecke and Olga Pandos)
15 to 19 Feb 2021	Institute trip to Hobart to meet with colleagues at the Tasmania Law Reform Institute and the University of Tasmania on collaborative law reform and research projects
25 Feb 2021	LSSA - CPD Forum 2021 – presentation on Powers of Attorney (Dr Sylvia Villios and Holly Nicholls)
1 Mar 2021	Professor John Williams and Mr Terry Evans updated the Council of the Law Society of South Australia on SALRI activities
23 Mar 2021	Interview promoting Communication Partners consultation in Port Pirie, <i>Nightly News 7 Spencer Gulf</i>
24 to 25 Mar 2021	Meetings with Aboriginal community groups, legal practitioners, Uniting Country, ALRM, and service providers in Port Pirie and Port Augusta for consultation on Communication Partners reference
8 Apr 2021	Roundtable consultation forums on Communication Partners reference with CP users and Industry in Adelaide
9 Apr 2021	Roundtable consultation forums on Communication Partners project with peak bodies, legal practitioners and SA Police representatives in Adelaide
9 Apr 2021	Sports Law class – presentation on the law of assault and consent (Dr David Plater and Brooke Washusen)
6 May 2021	Dr David Plater and Holly Nicholls hosted a joint disability community consultation event with Equity Lawyers and JFA Purple Orange on the Communication Partners reference
11 May 2021	University of Adelaide Research Tuesdays – presentation on provocation (Dr David Plater, Olivia Jay and Megan Lawson)
1 Jul 2021	Australian Institute of Administrative Law SA Chapter – presentation on SALRI's Communication Partners reference (Dr David Plater and Holly Nicholls)
15 Jul 2021	Holly Nicholls was interviewed by Umeewarra Radio about engagement and consultation with Aboriginal communities
15-Jul-2021	Follow-up roundtable consultation forums and meetings on Communication Partners project with legal, medical and health practitioners and the Hon Geoff Brock MP in Port Pirie and Elders and Aboriginal community in Port Augusta
21 Jul 2021	Dr Mark Giancaspro and Nadia Hess discussed regional employment opportunities for law graduates, <i>Port Pirie Recorder</i>
30 Jul 2021	Institute staff and law students were interviewed Shari Hams, ABC North and West, for an article on regional legal job opportunities and work with Aboriginal communities <sup>6</sup>

<sup>6</sup> Shari Hams, 'Law students learn about injustices for Aboriginal people in SA's court system', *ABC News*, 30 July 2021, <<https://www.abc.net.au/news/2021-07-30/law-students-learn-injustices-aboriginal-people-face/100336256>>.



9 Nov 2021	Dr David Plater, Anita Bruancci and Brooke Washusen reflected on a decade of SALRI's operation and impact at the Adelaide University Research Tuesday presentation
15-Nov-2021	Dr David Plater discussed the Institute's Communication Partners review, <i>Regional ABC Radio</i>
15-Dec-2021	Roundtable consultation forum on Witness Competence reference

## 5. Progress of recommendations from Institute Reports

### 5.1. Abortion - Law reform related legislation

The recommendations from the Institute's 2019 Abortion Report to reform the law were broadly accepted in the *Termination of Pregnancy Act 2021* which passed Parliament on a conscience vote and received Royal Assent on 11 March 2021. A commencement date is yet to be determined.

### 5.2. Provocation – Law reform related legislation

As mentioned in the 2020 Annual Report, Recommendations from the Institute's 2017 and 2018 reports on Provocation<sup>7</sup> (part of the wider LGBTIQ project) to abolish the defences of provocation and marital coercion and make significant linked changes to the defences of self-defence, duress and necessity were introduced on 15 October 2020 in a revised Bill, the Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Bill 2020, which passed both Houses of Parliament on 2 December 2020 with all party support.

The *Statutes Amendment (Abolition of Defence of Provocation and Related matters) Act 2021* was gazetted on 27 January 2021<sup>8</sup> and came into operation on 1 February 2021. Sections 7, 10, 11, 12 and Schedule 1 of the Act came into operation on 29 March 2021. The abolition of the defence of provocation was almost universally welcomed.

### 5.3. Powers of Attorney – draft legislation

An exposure draft bill, the Powers of Attorney Bill 2021, based on SALRI's major report<sup>9</sup>, was tabled in the House of Assembly by the Attorney-General for public consultation on 28 October 2021.

With the lapse of the House of Assembly in December 2021, this Bill did not proceed, due to the forthcoming State election in March 2022.

### 5.4. Privacy – draft legislation

In September 2021, a draft Bill, the Civil Liability (Serious Invasions of Privacy) Bill 2021, was tabled for consideration in Parliament to establish a new cause of action for serious invasions of privacy in South Australia based on SALRI's 2016 Report, *A Statutory Tort for Invasion of Privacy*.<sup>10</sup>

<sup>7</sup> South Australian Law Reform Institute, *The provoking operation of provocation: Stage 1* (Report, May 2017); South Australian Law Reform Institute, *The provoking operation of provocation: Stage 2* (Report, June 2018).

<sup>8</sup> South Australia, *South Australian Government Gazette* (Supplementary) No 5, Wednesday 27 January 2021, 163.

<sup>9</sup> South Australian Law Reform Institute, *Valuable instrument or the single most abused legal document in our judicial system? A review of the role and operation of Enduring Powers of Attorney in South Australia* (Report 15, December 2020).

<sup>10</sup> South Australian Law Reform Institute, *A statutory tort for invasion of privacy* (Final Report 4, March 2016).

With the lapse of the House of Assembly in December 2021, this Bill did not proceed, due to the forthcoming State election in March 2022.

### **5.5. Succession – draft legislation**

A landmark Succession Bill based on seven Institute Reports<sup>11</sup> was introduced to Parliament by the South Australian Attorney-General on 23 June 2021 with acknowledgement of the roles of both the Institute and the Law Reform class.

As the Attorney noted:

'The Succession Bill 2021 represents the culmination of a number of years of work from SALRI, my department and parliamentary counsel on these reforms, which are the most extensive reforms in this area of law for decades. I would like to particularly acknowledge the contributions of Professor John Williams, Dr David Plater, Dr Sylvia Villios, Louise Scarman, the Hon. Tom Gray QC (a former justice of the Supreme Court), Ms Dianne Gray and the law reform class at Adelaide University. I especially acknowledge the valuable contribution of Helen Wighton, the founding Deputy Director of SALRI. Helen started the work on this important reference at SALRI but sadly passed away in 2014. The Government believes the passage of the Succession Bill will give South Australia a modern, usable piece of legislation that will have benefits for the legal profession, the courts, the Public Trustee and the people of South Australia. From my perspective, in the time I have been Attorney-General I have been very proud to introduce and present to this Parliament all the legislation that our government has approved to progress. I am proud of all of it. I am particularly proud of the establishment of an appeal court in South Australia, and if I were to pick out one other very large body of work of reform it would be in relation to succession law. A massive amount of research has been undertaken. It is centuries of developed common law and statute that we are bringing together in a modern piece of legislation that we hope will serve the people of South Australia well into the future. I would just like to particularly thank the many people across South Australia, particularly in our regional areas, who came forward either individually or through their legal representatives to present to SALRI during their statewide survey and invitation to South Australians to make a submission on this. It was a massive amount of work and I am deeply indebted to them. I am very satisfied that the Parliament will be well served in being able to consider these reforms. I commend the Bill to the House.'

With the lapse of the House of Assembly in December 2021, this Bill did not proceed, due to the forthcoming State election in March 2022.

### **5.6. Forfeiture Rule – draft legislation**

In June 2012, a draft Forfeiture Bill based on SALRI's Report<sup>12</sup> was circulated to put the common law forfeiture rule on a statutory basis in South Australia.

With the lapse of the House of Assembly in December 2021, this Bill did not proceed, due to the forthcoming State election in March 2022.

---

<sup>11</sup> South Australian Law Reform Institute, *Sureties' guarantees for letters of administration* (Final Report 2, August 2013); South Australian Law Reform Institute, *A statutory tort for invasion of privacy* (Final Report 4, March 2016); South Australian Law Reform Institute, *Administration of small deceased estates and resolution of minor succession law disputes* (Final Report 6, December 2016); South Australian Law Reform Institute, *Management of the affairs of a missing person* (Report 8, July 2017); South Australian Law Reform Institute, *South Australian rules of Intestacy* (Final Report 7, July 2017); South Australian Law Reform Institute, *Distinguishing between the deserving and the undeserving: Family Provision laws in South Australia* (Final Report 9, December 2017); South Australian Law Reform Institute, *Who may inspect a will* (Report 10, December 2017).


<sup>12</sup> South Australian Law Reform Institute, *Riddles, mysteries and enigmas: The common law forfeiture rule* (Report 14, February 2020)



## 6. References to the Institute's Reports in *Hansard*

During the Reporting Period, the following Institute projects and associated reports were referred to in *Hansard*:

Institute Project	Hansard Reference
Abortion	South Australia, <i>Parliamentary Debates</i> , House of Assembly, 16 February 2021, (Hon V. Chapman) <sup>13</sup>
Abortion	South Australia, <i>Parliamentary Debates</i> , House of Assembly, 16 February 2021, (Mr Knoll) <sup>14</sup>
Abortion	South Australia, <i>Parliamentary Debates</i> , House of Assembly, 16 February 2021, (Mr Murray) <sup>15</sup>
Abortion	South Australia, <i>Parliamentary Debates</i> , House of Assembly, 16 February 2021, (Hon V. Chapman) <sup>16</sup>
Abortion	South Australia, <i>Parliamentary Debates</i> , Legislative Council, 17 February 2021, (Hon V.A. Chapman, Mr Knoll, Mr Szakacs and, Ms Cook) <sup>17</sup>
Abortion	South Australia, <i>Parliamentary Debates</i> , Legislative Council, 18 February 2021, (Hon S.C. Mullighan, Hon V.A. Chapman and Ms Hildyard) <sup>18</sup>
Abortion	South Australia, <i>Parliamentary Debates</i> , Legislative Council, 2 March 2021, (Hon J.M.A. Lensink and Hon T.A. Franks) <sup>19</sup>
LGBTIQ	South Australia, <i>Parliamentary Debates</i> , Legislative Council, 12 May 2021, (Hon I.K. Hunter) <sup>20</sup>
Succession	South Australia, <i>Parliamentary Debates</i> , House of Assembly, 23 June 2021, (Hon V. Chapman) <sup>21</sup>
Powers of Attorney	South Australia, <i>Parliamentary Debates</i> , Legislative Council, 27 October 2021, (Hon J.M.A. Lensink) <sup>22</sup>
Powers of Attorney	South Australia, <i>Parliamentary Debates</i> , Legislative Council, 28 October 2021, (Hon V.A. Chapman) <sup>23</sup>

  
**Professor John Williams**  
 Director  
 South Australian Law Reform Institute

**Date:**

6 August 22

<sup>13</sup> At 12:08.

<sup>14</sup> At 15:39.

<sup>15</sup> At 19:53.

<sup>16</sup> Second Reading, at 21:59.

<sup>17</sup> Committee Stage.

<sup>18</sup> Committee Stage.

<sup>19</sup> Final Stages.

<sup>20</sup> At 15:59.

<sup>21</sup> At 16:16.

<sup>22</sup> At 14:36.

<sup>23</sup> At 14:36.



