

The South Australian Law Reform Institute

ANNUAL REPORT

1 January 2013 – 31 December 2013

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Table of Contents

1	About the South Australian Law Reform Institute.....	2
1.1	Staff of the Institute.....	2
1.2	Advisory Board.....	2
1.3	Funding.....	2
1.4	Casual and student research.....	3
2	Law reform projects in 2013	4
2.1	Succession law reform	4
2.2	Review of the common law forfeiture rule	5
2.3	Simplification of witness oaths and affirmations	5
2.4	A statutory cause of action for serious invasion of privacy	6
2.5	A review of certain police powers	6
3	Implementation of the Institute's recommendations	6

2013 Annual Report of the South Australian Law Reform Institute

This Annual Report is for the period from 1 January 2013 to 31 December 2013.

1 About the South Australian Law Reform Institute

The South Australian Law Reform Institute (the Institute) was established in December 2010 by a Memorandum of Understanding 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. 2013 saw completion of the Institute's third year of operation.

In 2013 the functions and operations of the Institute were carried out by the Director and Deputy Director with the assistance of a half-time Administrative Officer.

Information about the Institute, including details of its functions and objectives may be found on the Institute's website at: <http://www.law.adelaide.edu.au/research/law-reform-institute/>.

1.1 *Staff of the Institute*

Professor John Williams, Director (Dean of Law, Adelaide Law School)

Ms Helen Wighton, Deputy Director (Senior Lecturer, Adelaide Law School)

Ms Louise Scarman, Administrative Officer

1.2 *Advisory Board*

The membership of the Advisory Board remained unchanged from 2012. Its members were:

Professor John Williams, Director of the Institute (Chair);

The Hon Justice Tom Gray, nominee of the Chief Justice of South Australia;

Ms Ingrid Haythorpe, nominee of the Attorney-General of South Australia;

The Hon David Bleby QC, nominee of the Vice Chancellor and President of the University of Adelaide;

Mr Jonathan Wells QC, nominee of the South Australian Bar Association;

Mr Terry Evans, nominee of the Law Society of South Australia;

Professor Rosemary Owens, nominee of the Dean of the Adelaide Law School.

In 2013, the Institute's Advisory Board met three times: on 22 August, 23 October and 18 December.

1.3 *Funding*

Funding for the Institute in 2013 was from three sources:

(1) *The University of Adelaide*

In accordance with the Institute's 2010 founding Memorandum of Understanding (MOU) as amended on 2 October 2012, the University of Adelaide pays the salaries of the Director,

Professor John Williams and Deputy Director, Ms Helen Wighton. Ms Wighton is employed @ 0.8 FTE to conduct the work of the Institute, act as its principal researcher and writer, and coordinate and deliver the Adelaide Law School's elective subject of Law Reform.

The University continues to provide accommodation, facilities and on-going support in the running of the Institute's office which is based at the Law School, to fund the publication of its reports and papers and to provide expert support for the Institute's communication with the media.

(2) *The South Australian Attorney-General's Department (AGD)*

Under the MOU, the AGD remains responsible for funding of the administrative officer position (@ 0.5 FTE) by tied grant to the University of Adelaide. In addition, in 2013 the AGD provided the Institute with a seconded solicitor (Ms Kate Guy) to work on its Privacy project and has agreed to fund casual graduate research assistance during 2014 in the amount of \$2,000.

(3) *The Law Foundation of South Australia*

The Institute received funding through a grant from the Law Foundation of South Australia in July 2012 which, in 2013, enabled the Institute to engage casual researchers for some of the succession review projects and to conduct country forums in Mount Gambier and Port Pirie for lawyers and the public on succession law reform issues.

1.4 *Casual and student research*

Through its Law Foundation grant, the Institute was able to engage casual researchers to assist its principal researcher, Ms Helen Wighton with its succession law review in 2013:

- legal practitioners Mr Robert Park for the administration of small estates project, Mr Trang Phan for the wills register project, Ms Nancy Detmold for the family provision project and Ms Emily Sims for the forfeiture rule project;
- graduates of the Adelaide Law School's Law Reform elective, Ms Laura Butler and Mr Minh Bui, on the family provision project.

As mentioned in 1.3(2), the Attorney-General's Department funded research assistance for the Institute's privacy project.

Another source of research assistance is from the Adelaide Law School's elective subject of Law Reform, during which students research aspects of the Institute's projects under supervision. In 2013, students researched aspects of several projects: police powers to compel access to encrypted computer records that are suspected of containing material relating to child pornography or other criminal activities; whether there should be a statutory cause of action for serious invasion of personal privacy in South Australia; family provision laws in South Australia; and South Australia's intestacy laws.

2 Law reform projects in 2013

The Institute's law reform projects are managed by its Deputy Director, Helen Wighton, its principal researcher and writer. The Institute also consults expert reference groups established for particular references. Below is a summary of the law reform project work undertaken by the Institute during 2013.

The publications released by the Institute for its current and past projects are available to download free of charge from the following link: <http://www.law.adelaide.edu.au/research/law-reform-institute/> under 'Publications: Reports and Papers'.

2.1 Succession law reform

In 2011, the South Australian Attorney-General, the Hon John Rau, asked the Institute to identify the areas of succession law that were most in need of reform in South Australia, to review each area and to recommend reforms. The Institute's Advisory Board identified seven topics for review and established a succession reference group to assist the Institute in this work—the Hon Justice Tom Gray (Supreme Court of South Australia, Steve Roder (Registrar of Probates) and Ray Frost (Senior Partner, Treloar and Treloar).

The succession law reform projects worked on in 2013 were:

(1) Sureties' guarantees for letters of administration in South Australia

The Institute released its Issues Paper on sureties' guarantees (*Dead Cert: Sureties Guarantees for Letters of Administration*) on 31 January 2013, followed by a public consultation period. The Final Report (*Final Report 2—Sureties' Guarantees for Letters of Administration*) was completed in August 2013 and formally presented to the Attorney-General on 23 October 2013.

The Report recommended that the current requirement for a third party guarantee for the administration of an intestate estate should be removed from the *Administration and Probate Act 1919* (SA). The Report also recommended amendments to this and other Acts designed to encourage effective management of deceased estates by lay administrators and to give courts clearer authority to intervene to prevent maladministration.



Professor John Williams, SALRI Director, presenting a copy of *Final Report 2: Sureties' guarantees for letters of administration* to the SA Attorney-General, the Hon John Rau: 23 October 2013



Front cover - *Final Report 2: Sureties' guarantees for letters of administration*

(2) [Simplifying the administration of small deceased estates and the resolution of minor succession disputes in South Australia](#)

The Institute prepared an Issues Paper for this project in 2013 which was released in January 2014.

(3) [Whether there should be a wills register in South Australia](#)

The Institute prepared an Issues Paper for this project in 2013 and early 2014, which is due for release in May 2014.

(4) [A review of South Australian family provision laws](#)

In November 2013, the Institute began work on an Issues Paper for this project, with the aim of releasing it by mid-2014.

As mentioned in 1.3(3) above, the Institute obtained a grant from the Law Foundation of South Australia in 2012 to employ casual researchers to assist with its succession law reform work, and this was used to fund research for its succession law projects in 2013.

The grant also funded the Institute's succession law reform forums in Mount Gambier on 5 July 2013 and in Port Pirie on 10 July 2013 to canvass the views of country lawyers experienced in wills and estate work and, through them, the experiences of their clients. The panel for each forum was Professor Williams, Ms Helen Wighton and Mr Steve Roder (the Registrar of Probates). Eighteen local legal practitioners attended the Mount Gambier session and seven attended the session in Port Pirie. Lawyers who attended these forums received Continuing Professional Development points for their attendance. The Institute now regularly consults these lawyers on succession law projects.



Lawyers' Forum in Mount Gambier



Lawyers' Forum in Port Pirie

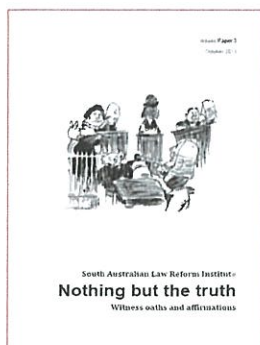
2.2 Review of the common law forfeiture rule

In 2011 the Attorney-General asked the Institute to examine and report on whether the application of the common law forfeiture rule should be mitigated in certain circumstances. In 2012 students of the Adelaide Law School's elective of Law Reform began research for this project. Work was paused until late 2013 to enable priority to be given to other projects. The Institute aims to release an Issues Paper in mid-2014.

2.3 Simplification of witness oaths and affirmations

In February 2012, the Attorney-General invited the Institute to inquire into whether the wording and administration of witness oaths and affirmations in South Australia are appropriate and to make recommendations. Research by students of the Adelaide Law School's elective of Law Reform in 2012

informed the Institute's Issues Paper (*Issues Paper 3 – Nothing but the truth: Witness oaths and affirmations*), released on 23 October 2013. A public consultation period followed, with a Final Report to be released in mid-2014.



Front cover - *Issues Paper 3:*
Nothing but the truth: Witness oaths and affirmations

2.4 *A statutory cause of action for serious invasion of privacy*


Encroachments on personal privacy by unauthorised digital publication of private images and personal details have raised concerns around Australia about the adequacy of remedies for people who suffer harm or loss as a result. After consultation with the Attorney-General, the Institute decided to undertake preliminary research to ascertain whether it would be feasible for the Institute to review current South Australian laws on this topic and investigate the possibility of a statutory cause of action in South Australia for serious invasions of personal privacy. The Institute's Advisory Board commissioned a scoping study and, on the strength of that study, decided in October 2012 to proceed with a full review. An Issues Paper (*Issues Paper 4—Too much information: A statutory cause of action for serious invasion of privacy*) was released for public consultation on 19 December 2013. The Institute aims to publish its Final Report in mid-2014.

2.5 *A review of certain police powers*

In February 2012 the Attorney-General asked the Institute to review general police powers of search and seizure for computer evidence and police powers to compel access to encrypted computer records. This is a large project. Student research began in 2013. An Issues Paper is to be completed in 2014.

3 **Implementation of the Institute's recommendations**

In 2013 the Attorney-General advised the Institute that he intends to seek Cabinet approval to implement the recommendations of the Institute's *Final Report 1: Modernisation of South Australian evidence laws to deal with new technologies* and of its *Final Report 2: Sureties' guarantees for letters of administration* (so that the law no longer requires a grant of administration or the resealing of a foreign grant of representation to be conditional upon the provision of an administration guarantee or any other form of security).


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Professor John Williams
Director
South Australian Law Reform Institute

29.5.14
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