

The South Australian Law Reform Institute

ANNUAL REPORT

1 January 2014 – 31 December 2014

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2014 Annual Report of the South Australian Law Reform Institute

This Annual Report is for the period from 1 January 2014 to 31 December 2014.

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. 2014 saw completion of the Institute's fourth year of operation.

In 2014 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. Regretfully, the Deputy Director, Ms Helen Wighton, passed away suddenly in August 2014 and is yet to be replaced.

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) – to August, 2014

Ms Louise Scarman, Administrative Officer.

1.2 *Advisory Board*

The membership of the Advisory Board remained unchanged from 2013. 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 2014, the Institute's Advisory Board met three times: on 30 April, 14 October and 2 December.

1.3 Funding

Funding for the Institute in 2014 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 was 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, during 2014 the AGD continued to provide the Institute with a seconded solicitor (Ms Kate Guy) to work on its Privacy project, as well as providing \$2,000 to fund casual graduate research assistance for the Privacy project in the first half of 2014 (the funds were provided in late 2013 but the graduate research assistance did not commence until 2014).

(3) *The Law Foundation of South Australia*

In July 2012, the Institute received funding through a grant from the Law Foundation of South Australia (2012 Law Foundation Grant) which enabled the Institute to engage casual researchers for some of the succession review projects but this funding expired on 30 June 2014.

The Institute secured a subsequent grant in June 2014 (2014 Law Foundation Grant), which allowed the Institute to engage casual researchers to continue work on finalising some of the succession review projects during the latter half of 2014.

1.4 Casual and student research

1. *Casual researchers*

a) *Privacy project*

As mentioned in 1.3(2), the Attorney-General's Department provided \$2,000 to fund the provision of casual graduate research assistance for the Institute's privacy project during the first half of 2014. Graduates of the Adelaide Law School's 2013 Law Reform elective, Mr Mark Giddings and Mr David Hunt, were engaged for this work.

b) *2012 Law Foundation Grant*

As mentioned in 1.3(3) above, the Institute was able to use the 2012 Law Foundation grant to engage the following casual researchers during the first half of 2014 to assist with preparation of Issues Papers as part of its succession law review:

- legal practitioners:
 - Mr Robert Park for the administration of small estates project;
 - Mr Trang Phan for the wills register project;
 - Mrs Nancy Detmold for the family provision project; and
 - Mrs Dianne Gray for the intestacy project.
- graduates of the Adelaide Law School's 2013 Law Reform elective:
 - Ms Laura Butler and Mr Minh Bui on the family provision project; and
 - Ms Katherine Varsos on the intestacy project.

c) *2014 Law Foundation Grant*

Through its 2014 Law Foundation Grant, the Institute was able to commence preparation of Final Reports on two of its succession law projects in late 2014 with the renewed engagement of:

- Mr Robert Park for the administration of small estates project; and
- Mr Trang Phan for the wills register project.

2. *Student research*

Another source of research assistance is from the Adelaide Law School's elective subject of Law Reform, during which students undertake research on aspects of the Institute's projects under supervision. In 2014, students researched aspects of several projects:

- oaths and affirmations;
- who may see a will;
- police powers to access data stored on personal electronic devices (such as laptops or smartphones) that have been seized upon arrest;
- whether South Australian drug laws should be changed to permit people to grow, possess and use cannabis for therapeutic use; and
- laws that apply to the use of civilian drones in South Australia.

2 Law reform projects in 2014

The Institute's law reform projects were managed by its Deputy Director, Helen Wighton, its principal researcher and writer, until her untimely death in August 2014. 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 2014.

All publications released by the Institute (for both 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 Law Reference Group consisting of the Hon Justice Tom Gray (Supreme Court of South Australia, Steve Roder (Registrar of Probates) and Ray Frost (Senior Partner, Treloar and Treloar) to assist the Institute in this work.

The succession law reform projects worked on in 2014 were:

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

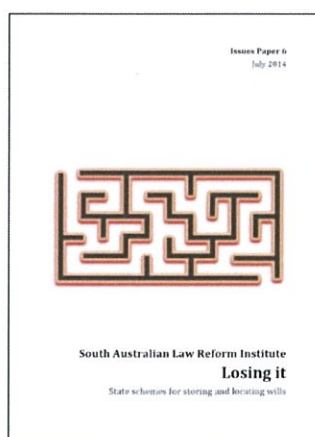
The Institute prepared an Issues Paper for this project which was released on 3 March 2014. A public consultation period followed and a Final Report is currently being prepared.



Front cover: Issues Paper 5 - *Small Fry*.
Administration of small deceased estates and
Resolution of minor succession law disputes

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

The Institute prepared an Issues Paper for this project which was released on 30 July 2014. . A public consultation period followed and a Final Report is currently being prepared.



Front cover: Issues Paper 6 – *Losing it*:
State schemes for storing and locating wills

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

In November 2013, Mrs Nancy Detmold began work on an Issues Paper for this project, with the aim of releasing it by mid-2014. The project proved to be much more complicated and time consuming than initially thought. As a result, funds from the 2012 Law Foundation Grant that were used to fund the research were exhausted and the project stalled at the end of June 2014. Ms Wighton had intended to finalise the Issues Paper during the second half of 2014 but circumstances meant this did not eventuate. Work is now continuing.

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

Mrs Dianne Gray began work on an Issues Paper for this project in March 2014, with the aim of releasing it by mid-to-late 2014. As was the case with the family provision project, this review also proved to be much larger and time consuming than expected. Again, funds from the 2012 Law Foundation Grant that were used to fund the research were exhausted at the end of June 2014, however, we are indebted to Mrs Gray for her continuing work on the project during the latter half of 2014 and hope to release an Issues Paper in the coming months.

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 to enable priority to be given to other projects with the aim of releasing an Issues Paper in mid-2014. Meanwhile, the Victorian Law Reform Commission (VLRC) released a Consultation Paper on the same topic in March 2014 with a number of issues and views relevant to South Australia. The Institute's Advisory Board decided at its Board Meeting on 30 April 2014 that it was a better use of the Institute's limited resources to wait for the VLRC's Final Report and then make recommendations to the South Australia's Attorney-General on the basis of some uniformity with Victoria's recommendations. This will be completed in 2015 once a new Deputy Director has been appointed.

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 in early 2014 and a Final Report was commenced in late 2014. The Institute aims to release a Final Report by mid-2015.

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.

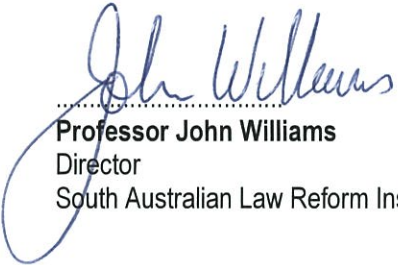
The Institute is grateful to the Attorney-General's Department for the continued secondment of Ms Kate Guy to continue work on this project during 2014. Preparation of the Final Report has been an enormous task and the Institute hopes to release it in the first half of 2015.

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 was conducted in 2013 and 2014, however, due to resourcing issues and extenuating circumstances, preparation of a paper on this project was put on hold for the remainder of 2014. Timing of this project will be re-assessed when a new Deputy Director is on board in 2015.

3 Implementation of the Institute's recommendations

Following Cabinet approval to implement the recommendations of the Institute's *Final Report 2: Sureties' guarantees for letters of administration*, the *Administration and Probate (Removal of Requirement for Surety) Amendment Act 2014* was proclaimed and came into operation on 29 September 2014. This means 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.


Professor John Williams
Director
South Australian Law Reform Institute

17/3/15
Date: