**South Australian Law Reform Institute**

**QUESTIONNAIRE**

***Losing it: State schemes for storing and locating wills***

**Issues Paper 6, July 2014**

Below are some questions about changing the South Australian provisions for the deposit of private wills and about whether the State should establish a public register for private wills.

This is a word document which you can complete electronically.

Please return your completed response by email to**SALRI@adelaide.edu.au**no later than **Friday 12 September 2014**

**INFORMATION ABOUT YOU**

**Your NAME** (optional):

**Your ORGANISATION**, if any(optional):

**Your CONTACT DETAILS**,for follow up (optional):

Telephone:

 Email:

**DATE of this response:**

**What is your interest in this area of law reform?**

**We may publish responses to this paper on our webpage with the Final Report.**

If you do NOT wish your submission to be published in this way, or if you wish it to be published anonymously, please let us know **here**:

**Questions about a public will bank for private wills**

|  |  |
| --- | --- |
| **1** | Should the State offer and maintain a public facility for the secure custody of private wills (a public will bank)? Why/why not? |
| **2** | If the State is to offer a public will bank for private wills,  |
|  | **2.1** | Should there be any restriction on the kinds of private wills that may be deposited? For example— * Should only paper wills be accepted for deposit? Why/why not?
* Should electronic wills be accepted for deposit? Why, and in what circumstances/why not?
 |
|  | **2.2** | Should the will bank refuse to accept a document for deposit if it does not meet the formal requirements for the execution of a will? Why/why not? |
|  | **2.3** | Where should the will bank be located (for example, with the Probate Registry, with the Public Trustee, with the Registry of Births Deaths and Marriages or with some other source)? |
|  | **2.4** | Should the will bank charge fees for: * the deposit of a private will?
* the withdrawal of a private will?
* the inspection of a deposited will?

 * the release of the deposited will after the testator dies?
* a search of the will bank’s records for a deposited will?
 |
|  | **2.5** | If there are to be fees, should there be a power to waive them? If so, in what circumstances? |
|  | **2.6** | Should it be compulsory to deposit a will with the will bank? Why/why not? |
|  | **2.7** | If deposit is to be compulsory, what would be the sanction for failing to deposit a will? |
|  | **2.8** | If deposit is to be by choice, what incentives might be built into or associated with the will bank scheme to encourage its use? |
|  | **2.9** | Should anyone, other than the testator or a person nominated by the testator, be able to inspect or withdraw a deposited will while the testator is living, and, if so, in what circumstances?  |
|  | **2.10** | When a testator whose will is deposited in the will bank dies, who should be entitled to: * inspect it?
* have access to information recorded in the scheme record of deposits?

 * withdraw it?
 |
|  | **2.11** | Should there be any limit on the liability of the will bank for loss, damage, theft or destruction of a deposited will or for permitting unauthorised access to or dealings with a deposited will? If so, what limits should there be? |
|  | **2.12** | If an indexed record of deposits is maintained, what information should it record?  |
|  | **2.13** | Should proof of a search of the will bank’s records be required as part of an application for a grant of probate or letters of administration? Why/why not? |
|  | **2.14** | What methods of deposit (for example, by post or electronically) should be available?  |
|  | **2.15** | Should the repository be required to scan all deposited wills and store the scanned copies electronically? Why/why not? |
|  | **2.16** | Should any new will bank scheme have the facility to store electronic wills (e-wills), in anticipation that the law may change so that e-wills are accepted as valid wills? |
|  | **2.17** | What are your views on the public will bank model suggested in Option 3? Are there features you would change in it?  |
|  | **2.18** | Are there other models for a public will bank, or alternatives to a public will bank, that might work better? If so, what are they? |

**Questions about the a public will register for private wills**

|  |
| --- |
| **3** Should the State offer and maintain a public electronic will register for private wills? Why/why not? |
| **4** If the State is to offer a public will register |
| **4.1** | Who should maintain it (for example, the Registrar of Probates, the Public Trustee, the Registrar of Births Deaths and Marriages, or some other body or person?) |
| **4.2** | What information should be recorded on the will register? Why? |
| **4.3** | Other than the testator, who (if anyone) should be able to:* register information about a will?
* update the information recorded on the register?
* search or inspect or take copies of the information on the register—
 |
|  |  | * during the testator’s lifetime? If so, what if any restrictions should there be on the information that may be accessed by such a person?
* after the testator dies? If so, what if any restrictions should there be on the information that may be accessed by such a person?
 |
| **4.4** | Should there be a fee— * for registering a will or information about a will?
* for access to the register by a person other than the testator or his or her personal representative, should such access be permitted?
* for changing the information recorded about a registered will?
 |
| **4.5** | If there are to be fees, should the holder of the will register be able to waive them? If so, in what circumstances? |
| **4.6** | Should it be compulsory to register a will in South Australia or should people have a choice? Why/why not?* If it is to be compulsory, what should be the sanction for failing to register?

 * If it is to be by choice, what incentives, if any, might be built into or associated with the scheme to encourage registration?
 |
| **4.7** | What methods of registration (for example, by post or electronic registration) should be available?  |
| **4.8** | Should the will register, although designed to record only the existence and location of wills, also have the capacity to store* scanned copies of wills that a recorded on the register? Why/why not?
* electronic wills? Why/why not?
 |
| **4.9** | Should a person be able to register that they have *not* made a will? Why/why not? |
| **4.10** | Should proof of a search of the register be required for an application for a grant of probate or letters of administration? Why/why not? |
| **4.11** | Should there be any limit on the liability of will register for the consequences of breach of duty (for example, inaccurate recording or failure to record, or permitting access to unauthorised persons)? If so, what limits should there be? |
| **4.12** | What are your views on the model for a public will register set out in Option 2? Are there features you would change in it?   |
| **4.13** | Are there other models for a public will register, or alternatives to a public will register, that might work better? If so, what are they? |