

The South Australian Law Reform Institute

# ANNUAL REPORT

1 January 2012 – 31 December 2012

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## 2012 Annual Report of the South Australian Law Reform Institute

This annual report of the South Australian Law Reform Institute is for the period 1 January 2011 – 31 December 2012.

### 1 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. This is its second year of operation.

Information about the Institute may be found on its webpage: <http://www.law.adelaide.edu.au/reform/>

In 2012 the functions and operations of the Institute were carried out by the Director and Deputy Director with assistance from 3 part-time casual legal researchers and an administrative officer.

#### 1.1 The 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 Christine Smith, Administrative Officer (Attorney-General's Department) to October 2012  
Ms Louise Scarman, Administrative Officer, commenced in November 2012

#### 1.2 Advisory Board

The membership of the Advisory Board remains unchanged for 2012. Its members are:

- 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
- 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

#### 1.3 Law Reform elective

The Law Reform elective undertook its second year at the Adelaide Law School. In 2012 the students undertook research on two of the Institute's projects: the common law forfeiture rule and oaths & affirmations. This research will be a valuable resource in the preparation of Issues Papers on these topics in 2013.

#### 1.4 Research assistance

Using its Law Foundation grant for succession law research the Institute has engaged casual research assistance from Mr Rob Park (for the administration of small estates project), Mr Trang van Phan (for the wills register project).

The Attorney-General's Department has also provided the Institute with an AGD solicitor (Ms Kate Guy, under the supervision of the Deputy Crown Solicitor) to work on its privacy tort project.

## 2 Activities of the Institute

### 2.1 Meetings of the Advisory Board

Under the Institute's Memorandum of Understanding the Board is required to meet no less than three times a year. The Advisory Board met three times during the year: on 29 March 2012, 20 June 2012 and 31 October 2012.

In June, the students enrolled in the Law Reform elective attended a social function with members of the Board prior to the Board meeting.

### 2.2 Current projects

The Institute's projects are managed by its Deputy Director, Helen Wighton, who researches and writes the reports and supervises the work of casual research contributors. The Institute has established two expert reference groups to assist the Institute in particular projects: the Evidence Reference Group and the Succession Law Reference Group.

The Institute's papers and reports are available to download from this link:

<http://www.law.adelaide.edu.au/reform/publications/reports/>

#### 2.2.1 Evidence and technology

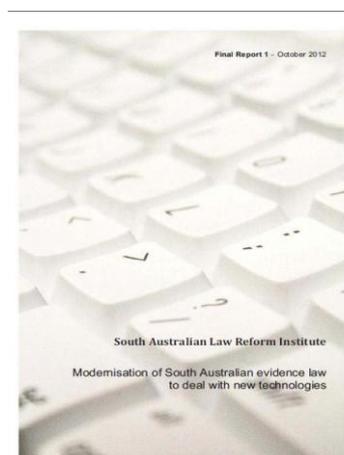
In 2011 the Attorney-General requested that the Institute review the way South Australian evidence law deals with new technologies.

For this reference the Institute has had the benefit of expert advice from its Evidence Reference Group: Mr David Caruso, Ms Liesl Chapman SC, Her Honour Judge Davison, Mr Andrew Ligertwood, Ms Sandi McDonald SC, The Hon. Justice Nicholson and Mr Nigel Wilson.

This reference was the subject of the Institute's first Issues Paper (*Computer says no*), released in May 2012 which considered the *Evidence Act* as it relates to telegraphic messages and computer evidence and investigated whether the Act should also provide for the admissibility of electronic communications.



Front Cover of Issues Paper 1- 'Computer says no'



Front Cover of Final Report 1- Modernisation of South Australian Evidence Laws to deal with new technologies

In October 2012 the Board approved a Final Report (*Final Report 1 – Modernisation of South Australian evidence law to deal with new technologies*) which was sent to the Attorney-General and the Law Society in October 2012. The Report recommends that the *Evidence Act* be changed to accommodate modern technologies in a way that corresponds with relevant provisions in the Uniform Evidence Acts.

The formal launch and public release of the Final Report was held at the Vice Chancellor's Reception Room on 31 January 2013, where the Director presented the Report to the Deputy Premier and Attorney-General, the Hon. John Rau MP.



Launch of Final Report 1 (L to R): The Hon Justice Gray - Supreme Court of South Australia and Member of the SALRI Advisory Board; The Hon. John Rau MP - Deputy Premier of South Australia, Attorney-General, Minister for Planning, Minister for Business Services and Consumers; Professor Warren Bebbington - Vice Chancellor, The University of Adelaide; Professor John Williams - Dean of Law, University of Adelaide and Director of the South Australian Law Reform Institute

## 2.2.2 Succession law reform

In 2011, the Attorney-General 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 identified seven topics for review and the aim is to prepare and release an Issues Paper on each of the topics. In 2012 work commenced on four of the topics: surety guarantees, small claims jurisdiction, wills register and the resealing of grants of probate and administration.

For this reference, the Institute has had the benefit of expert advice from its Evidence Reference Group (Justice Tom Gray of the Supreme Court; Mr Steven Roder - Registrar of Probates; and Mr Ray Frost - Senior Partner, Treloar and Treloar). It has also had the benefit of a grant from the Law Foundation enabling it to engage casual research assistance (described in paragraph 1.4 above).

### (a) Sureties' Guarantees

The Institute's Issues Paper on sureties' guarantees entitled "*Dead Cert: Sureties Guarantees for Letters of Administration*" was approved for release by the Advisory Board in October 2012. The Issues Paper was released in early 2013, followed by a public consultation period leading to the preparation of a final report. The deadline for submissions to the Issues Paper was 8 March 2013.



Front Cover of Issues Paper 2- 'Dead Cert'

### (b) Small estates

This project is examining simpler ways to resolve minor succession disputes and whether there are ways to simplify the administration of small estates. The Institute has engaged Mr Rob Park (former President of the Guardianship Board) to assist with research on this project.

(c) *Wills register*

This project examines the feasibility of a wills register in South Australia. The Institute has engaged Mr Trang van Phan (2010 prize winning honours graduate of the Adelaide Law School, now at Lipman Karas) to assist with research on this project.

(d) *Re-sealing grants of probate and administration*

This project deals with the recognition of foreign grants of probate and administration. Research is continuing.

### **2.2.3 Common law forfeiture rule**

In 2011 the Attorney-General invited the Institute to examine and report on whether the application of the common law forfeiture rule should be mitigated in certain circumstances. Work has begun on this project and in 2012 this issue was the subject of a research assignment for the Law Reform students.

### **2.2.4 Oaths and affirmations**

In February 2012 the Attorney-General invited the Institute to inquire into and report upon whether the existing oaths and affirmations as administered to witnesses in court are appropriate and to make recommendations concerning the adoption of new simpler forms of affirmations and/or oaths for use in South Australia. In 2012 this topic was the subject of the Law Reform students' main assignment and their research will assist in the formation of the Issues Paper, to be commenced in early 2013.

### **2.2.5 Tort of privacy**

In recent times, the unauthorised publication of private images and personal details has brought to the fore the adequacy of the remedies that are available to citizens who have been the victims of serious invasions of privacy. After consultation with the Attorney-General, the Institute decided to undertake preliminary research on the area of a tort of privacy to ascertain whether it was feasible to undertake a full review.

Ms Kate Guy, a legal officer with the Attorney-General's Department, prepared a scoping study, under the guidance of the Deputy Crown Solicitor, Mr Gaby Jaksa and Ms Helen Wighton, which was presented to the Advisory Board at its meeting in October 2012. The Board decided to proceed by issuing a summary paper asking broad questions of principle (to be backed by the scoping paper as the SALRI research report), and to circulate the paper to a wide range of stakeholders.

A Final Report to the Attorney-General will then be made, having regard to the submissions received, with continuing assistance from the Attorney-General's Department, as required.

### **2.2.6 Police powers**

In February 2012 the Attorney-General referred two issues to the Institute: general police powers of search and seizure for computer evidence and access to encrypted computer records. This is a large project. The project will be the subject of the Law Reform students' first semester assignment in 2013. This research will assist in the formation of an Issues Paper on the topic later in the year.

## **2.3 Grant from the Law Foundation of SA**

In April the Institute submitted a grant application to the Law Foundation of South Australia for the following start-up activities:

- consultation with country lawyers and the public on succession reference topics;
- professional research assistance with current references; and
- attendance at the 2012 Australasian Law Reform Agencies Conference.

In May 2012 the application was approved in full, and payment was received early in July 2012.

## **2.4 Australasian Law Reform Agencies Conference 2012 (ALRA Conference)**

The ALRA Conference took place in Canberra on 12-14 September 2012. Attendance by the Director and Deputy Director was made possible by the grant from the Law Foundation of South Australia. The Conference was an opportunity for the Institute to forge links with other Law Reform Commissions and agencies, with useful contacts being made for future Institute projects.

## **2.5 Other law reform initiatives**

As part of the Institute's engagement with similar groups working in the area of law reform, the Director and Deputy Director have been invited to be briefed on law reform initiatives in Criminal and Administrative Law by the relevant agencies and departments.

## **3 Funding**

Funding for the Institute in 2012 was as follows (in accordance with the 2010 founding Memorandum of Agreement as amended by the parties to the agreement on October 2012):

- (a) The University of Adelaide is responsible for the salaries of the Director, Professor John Williams and Deputy Director, Ms Helen Wighton.
- (b) The South Australian Attorney-General's Department paid the salary of the administrative officer (@ 0.5FTE) under a secondment arrangement which ended on 17 October 2012 when the present incumbent, Mrs Christine Smith, returned to her substantive position at the AGD.

In anticipation of replacing Mrs Smith, the Institute negotiated new funding arrangements for the administrative officer salary, whereby the Attorney-General's Department remains responsible for funding but, at the choice of the Institute, may do so either by secondment or by tied grant to the University of Adelaide, for an amount equivalent to the salary of the seconded AGD employee for the balance of 2012 (after the secondment ended) and for the whole of 2013.

- (c) The Adelaide University Law School continues to provide accommodation and on-going support in the running of the Institute's office which is based at the Law School.

As noted in paragraph 2.3, the Institute received funding through a grant from the Law Foundation of South Australia which was received in July. Use of some of these funds had enabled the Institute to engage professional researchers for some of the succession review projects, noted in subparagraphs 2.2.2 (b) and (c).

A further portion of these funds paid for the attendance of the Director and Deputy Director at the 2012 Australasian Law Reform Agencies' Conference held in Canberra on 12 -14 September 2012.

A country lawyers Continuing Professional Development session on succession law reform is being planned for later in 2013 with public sessions held either at the same time or separately.

The Advisory Board and members of the Institute's Reference Groups generously contribute their expertise and time without charge.

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

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