

2022 Annual Report

South Australian Law Reform Institute

1 January 2022 to 31 December 2022

**make
history.**

Acknowledgement of Country:

The South Australian Law Reform Institute (SALRI) acknowledges and respects Aboriginal people as the State's first people and recognises their traditional relationship with Country. We acknowledge that the spiritual, social, cultural and economic practices of Aboriginal people come from their traditional lands and waters, and that the cultural and heritage beliefs, languages and laws are still of importance today. The University of Adelaide, where SALRI is based, stands on Kaurna land.



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About the South Australian Law Reform Institute

Background

This Annual Report covers the period from 1 January 2022 to 31 December 2022 ('the Reporting Period') for the South Australian Law Reform Institute (SALRI). With the lifting in May 2022 of the Emergency Management Declaration related to the Covid-19 pandemic, SALRI was once again able to undertake most of its research and consultation activities without major disruption.

SALRI was 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 and is based at the University of Adelaide Law School.

Inquiries (otherwise known as references) are undertaken by SALRI into various areas of the law, the subjects of which are determined by SALRI'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. SALRI can also undertake self-referred projects.

In undertaking a reference, SALRI conducts extensive multi-disciplinary research, along with the examination of similar law, practice and operation in other jurisdictions (both in Australia and overseas). SALRI also undertakes wide and inclusive consultation with interested parties, experts and the community and is especially committed to consultation with regional and Aboriginal communities.

SALRI is an independent, non-partisan law reform body and does not assume advocacy activities related to its references. Based on the work and research undertaken during a reference, recommendations are made about appropriate changes to law and practice, so that the State Government and South Australian Parliament can make informed decisions about any appropriate changes. SALRI's recommendations do not necessarily become law. Rather, any decision on accepting and implementing any of SALRI's recommendations is entirely a matter for the State Government and South Australian Parliament. Impartiality and independence are two of the central principles guiding SALRI's work.¹

SALRI is based on the Alberta law reform model, which is also used in Tasmania,² and is linked to the Law Reform elective course at the University of Adelaide.

Further Information about SALRI, including copies of all published Papers and Reports, is located on the SALRI website.³

¹ David Plater and John Williams, 'The South Australian Law Reform Institute a Decade On: "May You Continue Well Into the Future"' (2022) 43(1) *Adelaide Law Review* 37.

² See Kate Warner, 'Institutional Architecture' in Brian Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (Federation Press, 2005) 55, 62–4, 68. There are close links and joint research between SALRI and the Tasmania Law Reform Institute.

³ See <<https://law.adelaide.edu.au/research/south-australian-law-reform-institute>>.

Functions and objectives

As noted in the MoU, the functions and objectives of SALRI 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.

Staff

<i>Director</i>	Professor John Williams AM Executive Dean, Faculty of Arts, Business, Law and Economics, University of Adelaide Dame Roma Mitchell Chair of Law
<i>Deputy Director</i>	Associate Professor David Plater Senior Lecturer, Adelaide Law School (0.9 FTE)
<i>Administrative Officer</i>	Louise Scarman (0.5 FTE)

Advisory Board

SALRI 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, as detailed in the MoU.

During 2022, the composition of SALRI's Advisory Board was as follows:

- Professor John Williams (Chair);
- The Honourable David Bleby SC, 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 SC, nominee of the South Australian Bar Association;
- Professor Judith McNamara⁴, Dean of the Adelaide Law School; and
- Ms Aimee Travers, jointly appointed additional member.

In accordance with the MoU, SALRI is required to hold a minimum of three Advisory Board meetings per year. In 2022, SALRI's Advisory Board met on 24 March, 29 August and 6 December (electronic update).

⁴ Professor Judith McNamara, Dean of the Adelaide Law School, was appointed to the Advisory Board as the Dean of the Adelaide Law School's nominee, effective 29 August 2022.

Current law reform projects

SALRI's size belies its significant output and 2022 proved another busy, but productive, year with SALRI undertaking concurrent reviews of both the *Ageing and Adult Safeguarding Act 1995* (SA) and the *Mental Health Act 2009* (SA). Following is a summary of the law reform project work undertaken on these, and other projects, during the Reporting Period.

All publications released by SALRI (for both current and past projects) are available to download free of charge from the SALRI website.⁵

Review of the Ageing and Adult Safeguarding Act 1995 (SA)

Background

In March 2022, SALRI was commissioned by the State Government to conduct the independent review⁶ of the *Ageing and Adult Safeguarding Act 1995* (SA) ('the Act') and to prepare a Report on the review to the relevant Minister.

The scope of this review was limited to the operation of the Act, with a focus on the extent to which the present Act was achieving its purpose(s) and any changes that could be made to clarify or improve present law and practice. This included any suitable changes to law and practice relating both to the Office for Ageing Well ('OFAW') and the Adult Safeguarding Unit ('ASU') established under the Act, as well as their policies, protocols and operations. The organisational structure of the ASU, its administrative operation (such as funding and staffing) and the day-to-day operations of the ASU were not examined, as these were beyond the scope of this reference.

Status

This reference was undertaken within a tight six-month time scale. The official consultation period ran from 1 May 2022 to 30 June 2022, which was facilitated with use of an online survey, nine Fact Sheets and related Consultation Questions⁷, and meetings with reference groups formed by the OFAW⁸.

SALRI received extensive input from various agencies and organisations, community members, academics, legal and health practitioners, the disability community, aged care groups, multicultural communities and groups representing older people and the media, with 68 submissions being received, along with 182 responses to its consultation survey⁹. These responses

⁵ See <<http://www.law.adelaide.edu.au/research/south-australian-law-reform-institute/>> under 'Projects'.

⁶ Under s 53 of the operation of the *Ageing and Adult Safeguarding Act 1995* (SA).

⁷ The Fact Sheets and Consultation Questions can be found on the SALRI website at: <<https://law.adelaide.edu.au/research/south-australian-law-reform-institute#ageing-and-adult-safeguarding>>.

⁸ The Terms of Reference stipulated that SALRI would 'consult with two stakeholder reference groups (one consisting of members with relevant professional expertise, the other consisting of members with a diverse range of lived experience) established to provide advice to the independent reviewer on the review and the development of practical recommendations'.

⁹ The respondents ranged from social workers, nurses and other health practitioners to retired community members, lawyers and a wide range of other professions. Notably, around a quarter of the respondents were retired and just over a third of respondents were aged 65+, and 12.5% of respondents were living with disability.

assisted in informing SALRI's understanding about the operation of the Act and options for potential changes to present law and practice. SALRI was assisted with the helpful input of the Adult Safeguarding Unit and Office for Ageing Well.

At various dates in June and July, SALRI ran three focus groups¹⁰ and four consultation roundtable sessions in Adelaide with Government and key stakeholders, health practitioners, NGO's and advocacy groups, and community groups and individuals to discuss the various issues and consultation questions identified in SALRI's Factsheets.

Regional visits were made to conduct community consultations and included inclusive engagement with regional legal and health practitioners and Aboriginal communities in Clare, Port Pirie and Port Augusta,¹¹ Port Lincoln,¹² Berri,¹³ and Naracoorte and Mount Gambier.¹⁴

SALRI also had regard to the various reviews of law and practice in relation to both elder abuse¹⁵ and the abuse and exploitation of persons with disability.¹⁶

The Final Report sought to balance the autonomy of the adult who might be vulnerable to abuse with the need to safeguard such individuals from abuse and exploitation and makes 46 recommendations to improve the operation of the Act as well as the bodies implementing the Act. The recommendations focus on upholding human rights by respecting the autonomy, dignity, and presumption of decision-making capacity of an adult.

SALRI highlighted the often-overlooked links between elder financial abuse and coercive control ('gaslighting'). SALRI recommended that there should be a further review of the *Ageing and Adult Safeguarding Act 1995* (SA) after a further five years and that this review should include consideration of the roles and operation of the ASU, the OFAW and the wider adult safeguarding context and landscape.¹⁷ Given the ongoing developments in this area in service delivery and research, a review of this nature was supported by a number of interested parties who made submissions. Such a review should have a wider focus on the broad context in which the Act exists and not be restricted to a review of the operation of the Act.

SALRI reiterates its thanks to the Lead Researcher and co-author on this project, Divya Narayan, along with the substantial contributions of co-authors, Dr David Plater, Anita Brunacci, Jemma Holt, Holly Nicholls, Dr Michaela Okninski, Olga Pandos, Taylor Portelli, Rachel Tan, Kim Tran, Dr Sylvia Villios and Professor John Williams.

SALRI also acknowledges the valuable input of Stephen McDonald SC, Jean Lee, Charlie Jackson OAM, Cassie Mason, Director of the OFAW, Kathy Williams, Manager of the Ageing Policy and Projects Team in the OFAW, Elicia White, former Chief Practitioner at the ASU, Dr Mark Giancaspro of the University of Adelaide and Professor Gino Dal Pont of the University of Tasmania.

¹⁰ A disability community focus group (held jointly with Purple Orange) on 2 June 2022; a specialised legal focus group on 1 July 2022; and a focus group on 5 July 2022 with members of the Multicultural Communities Council of South Australia ('MCCSA') attended by eight people from various multicultural backgrounds and community groups.

¹¹ 19 – 20 May 2022.

¹² 16 – 17 June 2022.

¹³ 27 May 2022.

¹⁴ 22 – 23 June 2022.

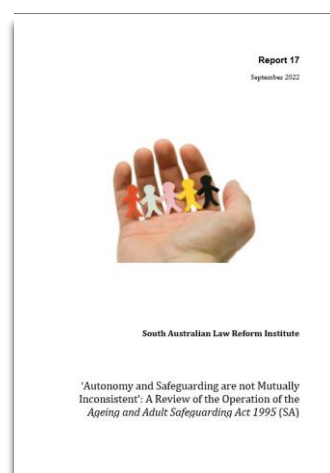
¹⁵ See, eg, South Australian Law Reform Institute, *'Autonomy and Safeguarding are not Mutually Inconsistent': A Review of the Operation of the Ageing and Adult Safeguarding Act 1995* (SA) (Report No 17, September 2022) n 273.

¹⁶ *Ibid*, n 274.

¹⁷ *Ibid*, Recommendation 1, n 177.

Report 17, *'Autonomy and Safeguarding are Not Mutually Inconsistent': A Review of the Operation of the Ageing and Adult Safeguarding Act 1995 (SA)*, was completed on time and within budget with an embargoed copy of the Report delivered to the Hon Chris Picton MLC, Minister for Health and Wellbeing, the Office for Ageing Well, and the Hon Kyam Maher MLC, Attorney-General, on 26 September 2022.

The Report was tabled in Parliament and publicly released on 1 November 2022.



Front cover of Ageing and Adult Safeguarding Report

Researchers

Ms Divya Narayan took carriage of this project as Lead Researcher and co-author, with oversight and assistance from Lead Author, Associate Professor David Plater, SALRI's Deputy-Director.

Research assistance and drafting of co-authoring of various chapters was undertaken by Anita Brunacci, Jemma Holt, Holly Nicholls, Dr Michaela Okninski, Olga Pandos, Taylor Portelli, Rachel Tan, Kim Tran, Dr Sylvia Villios and Professor John Williams.

Funding

An Agreement, providing funding in the amount of \$95,130.00 (ex-GST), was signed on 30 March 2022.

- \$38,052.00 (40%) was paid on provision of the Project Plan (funds received in May 2022).
- \$87,078.00 (60%) was paid on provision of the Final Report (funds received in October 2022).



SALRI staff presenting Report 17, *'Autonomy and Safeguarding are not Mutually Inconsistent': A Review of the Operation of the Ageing and Adult Safeguarding Act 1995 (SA)*, to Minister for Health and Wellbeing, the Hon Chris Picton MP (left)



Co-authors of Report 17 – *'Autonomy and Safeguarding are not Mutually Inconsistent': A Review of the Operation of the Ageing and Adult Safeguarding Act 1995 (SA)*

Review of the Mental Health Act 2009 (SA)

Background

On 17 February 2022, SALRI was formally asked by the Hon Josh Teague MP, Minister for Planning and Local Government (exercising the powers and functions of the Attorney-General), on behalf of the Hon Stephen Wade MP, Minister for Health and Wellbeing, to undertake the statutory review of the *Mental Health Act 2009* (SA) as required by section 111 of that Act. This review was confirmed in March 2023, after the 2022 State election, by the Hon Chris Picton MP, the new Minister for Health and Wellbeing. Minister Picton additionally asked SALRI to consider the impact, if any, of the *Mental Health Act* on the delivery of mental health services, with a focus on the legislation's guiding principles and accountability mechanisms.

According to its Terms of Reference, SALRI was not to examine the provision or delivery of mental health services.

Status

In preparation for the consultation phase of this review, SALRI identified the key issues raised in the review (guided by the Terms of Reference), prepared nine plain English Fact Sheets on each key issue¹⁸, with one to three consultation questions per Fact Sheet, and two additional Fact Sheets – one on the background of SALRI and the Terms of Reference¹⁹ and the other providing a consolidated summary list of all consultation questions.

In April 2022, SALRI submitted an Interim Report to the Minister for Health and Wellbeing, outlining progress in the context of this review, work to date and future plans. This Report was tabled in Parliament on 31 May 2022²⁰

The formal consultation phase ran for fourteen weeks (from 19 April 2022 to 29 July 2022) and took a comprehensive, multi-faceted and flexible approach. A short promotional video was prepared and various means were employed for interested parties and individuals to share their views, including an online survey and open forum on the SA Government's YourSAY platform, as well as focus groups, formal roundtable consultation sessions, regional and rural consultation and the option of a more formal written submission.

There was extensive interest and input from a wide range of parties and perspectives including consumers, medical and mental health practitioners, the Chief Psychiatrist, NGO's, legal practitioners, consumer groups, disability groups, service providers, Aboriginal Elders and Aboriginal health services, professional bodies, government and non-government bodies, office holders, experts and members of the community. SALRI also had a focus on consultation with consumers and their families as well as regional, rural and Aboriginal communities.

During the Reporting Period, SALRI undertook extensive research and significant consultation activities, holding eight focus groups in Adelaide with various organisations, including consumers (Lived Experience Leadership and Advocacy Network and Aspire Recovery Connection), disability organisations (Purple Orange, Our Voice SA and the South Australian Council on Intellectual Disability) and Culturally and Linguistically Diverse communities (via the Multicultural Communities Council of South Australia).

¹⁸ Fact Sheet 2 – Capacity and Supported Decision-Making; Fact Sheet 3 – Inpatient Treatment Orders; Fact Sheet 4 – Community Treatment Orders; Fact Sheet 5 – Restrictive Practice and Control Powers; Fact Sheet 6 – Electroconvulsive Therapy; Fact Sheet 7 – The South Australian Civil and Administrative Tribunal (SACAT) and Legal Representation; Fact Sheet 8 – The Role of SA Police (SAPOL); Fact Sheet 9 – Guiding Principles and Accountability Mechanisms; and Fact Sheet 10 – Other Issues.

¹⁹ Fact Sheet 1 – Background Information.

²⁰ South Australia, *Parliamentary Debates*, Legislative Council, 31 May 2022, 327.

In addition, seven roundtable consultation sessions were held in Adelaide and attended by over 60 professionals (including medical specialists, psychologists, nurses, social workers, disability advocacy workers, NGO workers and Government representatives, Office of the Chief Psychiatrist, SAPOL, Office of the Public Advocate, Legal Services Commission, SA Ambulance Service, Commissioner for Children and Young People and more).

SALRI also consulted with regional and rural communities, visiting Port Pirie and Port Augusta,²¹ Whyalla,²² Berri,²³ Port Lincoln,²⁴ and Naracoorte and Mount Gambier,²⁵ engaging with a wide range of parties and holding a further 19 roundtables and meetings during these trips. SALRI also has a focus on honest and respectful consultation with Aboriginal communities and spoke to a number of Elders and members of community, Aboriginal Health Services and practitioners working closely with Aboriginal communities during these trips.

A total of 149 submissions²⁶ were received and 76 participants made contributions to the open forum and survey on the public YourSay site. SALRI also held 42 individual meetings, either in person or online, as well as attending a site visit to the electroconvulsive therapy suite at The Queen Elizabeth Hospital and presenting at the RANZCP (South Australia Branch) Section of Electroconvulsive Therapy and Neurostimulation Retreat. SALRI also acknowledges the insightful contributions of Dr Chris Moy of the AMA(SA), and particularly Dr John Brayley and his staff at the Office of the Chief Psychiatrist.

Drafting is continuing and the Report is due to be completed in early 2023.

Researchers

Ms Olga Pandos was appointed as the Lead Researcher and co-author for this project under the guidance of Lead Author, Professor John Williams, SALRI's Director.

Research assistance, including drafting and editing of various chapters of the report, is currently being provided by Dr David Plater, Anita Brunacci, Katerina Grypma, Elaine Marinas, Divya Narayan, Dr Michaela Okninski, Isabella Quek and Rachel Tan.



Some members of SALRI's research team for the *Mental Health Act* review

Funding

The Agreement ('Original Agreement') was signed on 21 February 2022 with \$100,000.00 (excluding GST) to be provided by the Minister for Health and Wellbeing (Department for Health and Wellbeing, SA Health).

- \$10,000.00 (10%) was paid on signing of the Original Agreement (funds received in March 2022).
- \$35,000.00 (35%) was paid on provision of the Interim Report (funds received in May 2022).

²¹ 19 – 20 May 2022.

²² 3 June 2022.

²³ 26 – 27 May 2022.

²⁴ 16 – 17 June 2022.

²⁵ 22 – 23 June 2022.

²⁶ These submissions ranged from technical comments to comprehensive submissions up to 88 pages.

A Variation to the Original Agreement, which included a further term of reference by the new Minister for Health and Wellbeing, the Hon Chris Picton MP²⁷, was signed on 3 June 2022, adding an additional \$25,000.00 to the total project cost.

- As a result of the Variation, an \$11,250.00 adjustment was made on the first two payments already received (funds received in July 2022).

The final instalments²⁸ are to be received in 2023 and are thus not included in this Reporting Period.

Witness Competence

Background

This reference was received on 19 November 2018, from the then Attorney-General, the Hon Vickie Chapman MP, inviting SALRI 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).

Status

The completion of this project has encountered several delays including a lack of specific project funding and other references requiring more immediate attention,²⁹ in addition to the Covid-19 pandemic. However, SALRI was able to progress a limited amount of research and drafting, a focus group meeting with disability groups,³⁰ two roundtable consultation forums³¹ and several follow-up consultation meetings with key interested parties during the Reporting Period.

As previously mentioned, this project will also examine aspects of SALRI's previous report on oaths in court³² and incidental, issues. SALRI envisages completion of this Report in 2023 when time, funding and resources are available.

Researchers

SALRI is particularly grateful for the ongoing work of Ms Isabel Brewer and Ms Jemma Holt and for the generous voluntary contributions of the Hon David Bleby SC and the Hon Geoff Muecke in progressing this project.

Funding

This is an unfunded project and, as such, SALRI has been required to progress this project 'off the side of the desk' without specific funding, and in between other more pressing references.

²⁷ Following a change in Government at the March 2022 State Election.

²⁸ The third milestone payment (35%) of \$43,750.00 relates to provision of the draft final report and the fourth and final milestone payment (20%) of \$25,000.00 relates to provision of the final report. The total amount still to be received is thus \$68,750.00 (ex-GST).

²⁹ Notably, the Abortion reference during 2019, the Powers of Attorney reference during 2019 – 2020, the Communication Partners reference during 2021 and the concurrent reviews of the *Ageing and Adult Safeguarding Act 1995* (SA) and the *Mental Health Act 2009* (SA) during 2022.

³⁰ Purple Orange and Our Voice SA on 20 January 2022.

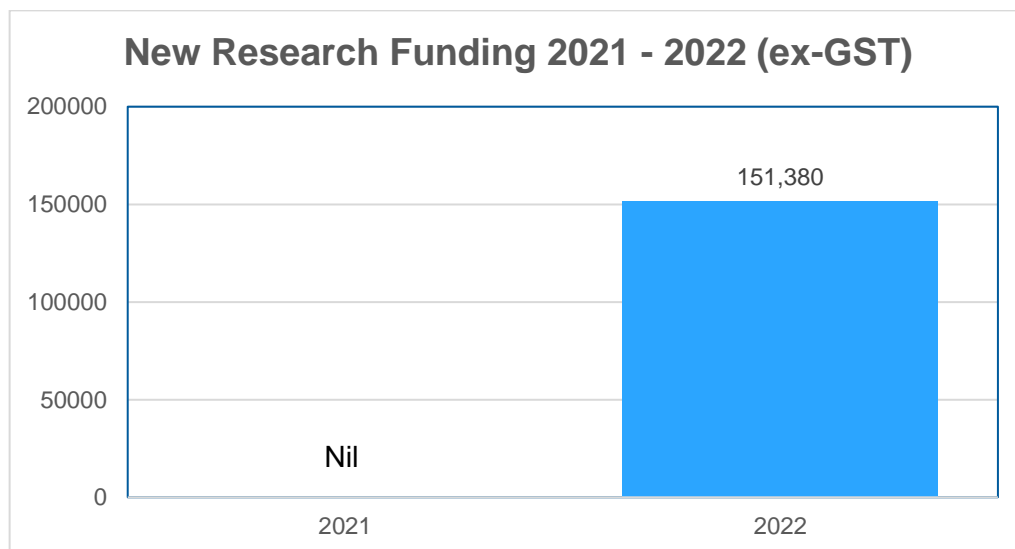
³¹ Health and medical practitioners on 9 February 2022 and the disability industry on 17 February 2022.

³² South Australian Law Reform Institute, *Witness Oaths and Affirmations* (Final Report 3, February 2016).

Funding

New Research Funding

During the Reporting Period, SALRI secured new research funding totalling \$151,380.00.



Details regarding sources of New Research Funding are as follows:

A. Department for Health and Wellbeing, SA Health (\$56,250.00) *Review of the Mental Health Act 2009 (SA)*

On 17 February 2022, SALRI was formally asked by the Hon Josh Teague MP, Minister for Planning and Local Government (exercising the powers and functions of the Attorney-General), on behalf of the Hon Stephen Wade MP, Minister for Health and Wellbeing, to undertake the statutory review of the *Mental Health Act 2009* (SA) as required by s 111 of that Act.

The Agreement ('Original Agreement') to facilitate SALRI undertaking this review was signed on 21 February 2022 and the sum of \$100,000.00 (excluding GST) was agreed to be provided by the Minister for Health and Wellbeing (Department for Health and Wellbeing, SA Health) to fund the project. The first milestone payment (10%) payable on signing of the Agreement and totalling \$10,000.00, was received in March 2022. The second milestone payment (35%) totalling \$35,000.00 and relating to provision of an Interim Report, was received in May 2022.

Following a Variation to the Original Agreement, signed on 3 June 2022, which included a further term of reference from the new Minister for Health and Wellbeing, the Hon Chris Picton MP,³³ an additional \$25,000.00 (ex-GST) was agreed to be

³³ Following a change in Government at the March 2022 election.

added to the total project cost. An adjustment to milestone payments 1 and 2 (which had already been paid) totalling \$11,250.00 (ex-GST), was received by SALRI in July 2022.

The third and fourth milestone payments,³⁴ totalling \$68,750.00 (ex-GST), have not been included in this Reporting Period as they are yet to be received.

B. Office for Ageing Well, SA Health (\$95,130.00)

Review of the Ageing and Adult Safeguarding Act 1995 (SA)

In March 2022, SALRI responded to a Request for Quote (RFQ) from the Office for Ageing Well, SA Health, to undertake an independent review of the *Ageing and Adult Safeguarding Act 1995 (SA)*.

SALRI was successful and an Agreement, providing funding in the amount of \$95,130.00 (ex-GST), was signed on 30 March 2022.

Milestone payment 1 totalling \$38,052.00 (40%), relating to provision of a finalised Project Plan, was received in May 2022 and the final milestone payment, totalling \$87,078.00 (60%), was received in October 2022, on provision of the Final Report.

C. Law Foundation of South Australia Inc.

Review of the Operation of Suppression Orders in South Australia

While SALRI was successful in obtaining \$45,454.55 (ex-GST) in grant funding from the Law Foundation of South Australia Inc in its September 2022 grant round, funding was not acquired until February 2023 and thus received outside of the Reporting Period, therefore the funds have not been reported here.³⁵

Residual Research Funding

A. Residual Tied Funds

The Attorney-General's Department permits SALRI to keep and re-purpose residual funds from previous projects funded by the Attorney-General's Department towards other projects which support the Attorney-General's priorities and these funds are held in SALRI's Tied Residual account, along with residual funds from other projects where surplus funds are permitted to be retained by SALRI.

These surplus funds allow SALRI to engage casual researchers to assist with follow-up engagement and work resulting from past Reports, as well as assisting with research and drafting to progress projects which have no formal funding.

During the Reporting Period, Associate Professor Plater was able to attend and present at two conferences³⁶, Associate Professor Plater and Olga Pandos³⁷ presented on SALRI's work at a conference in Nottingham (UK),³⁸ and casual researchers were able to be engaged to undertake a limited amount of work to progress SALRI's reference on Witness Competence, as mentioned above.

³⁴ The third milestone payment (35%) of \$43,750.00 related to provision of the draft final report and the fourth and final milestone payment (20%) of \$25,000.00 related to provision of the final report.

³⁵ To be reported in SALRI's 2023 Annual Report.

³⁶ Legal History Conference, online (July 2022) and Australian Law Academics Association Conference, Melbourne (September 2022).

³⁷ Lead Author and Researcher, *Mental Health Act* review.

³⁸ Participation, Vulnerability and the Legal Process - International Perspectives, University of Nottingham, UK (September 2022)

In-kind Contributions

In-kind contributions were attributed from the following sources during 2022:

A. The University of Adelaide

Salaries of Director and Deputy Director

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

During the Reporting Period Professor Williams was employed at 1.0 FTE as the Executive Dean, Faculty of Arts, Business, Law and Economics (formerly the Faculty of the Professions), in addition to holding other significant roles and commitments beyond SALRI and the University.

Associate Professor Plater continued to be employed @ 0.9 FTE to conduct the work of SALRI as its Deputy Director, involving the overseeing of all projects and day-to-day activities. Associate Professor Plater was also the Course Co-ordinator for the Adelaide Law School's full-year Law Reform elective as well as undertaking teaching obligations for the University's Criminal Law and Evidence courses.

As noted in previous Reporting Periods, the University continued to:

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

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 SALRI's current or potential future projects) within its comparative, policy and legal dimensions, under the supervision of the Course Co-ordinator, Associate Professor David Plater. Students are encouraged to make reasoned findings and conclusions based on their research, which often play a valuable role to inform and support SALRI'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 SALRI projects.

In 2022, the Law Reform elective course was undertaken by 21 students.

Sofia Arlotta and Olivia Gerhardy were the joint recipients of the Helen Wighton Prize in Law Reform, receiving the top mark for students in the Law Reform elective in 2022.

Student research topics involved several of SALRI's current and forthcoming projects, including:

- Police powers, mandated treatment and other issues under the *Mental Health Act 2009 (SA)*
- Microboards
- Extending the Forfeiture Rule to elder abuse
- Surrogacy and posthumous sperm removal
- Indigenous engagement
- Aboriginal succession law issues
- Trial by jury in the modern media era: judicial directions, media interest and pre-trial publicity

- The importance of free and effective legal representation for patients under s 16 of the *Mental Health Act 2009* (SA)
- The role and operation of suppression orders
- Methods of law reform
- Disclosure of victim mobile phone records in sexual assault prosecutions
- 'Gay conversion' law and practices

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. A highlight of the course is a tour of Parliament House.



Guest speaker, the Hon Justice Chris Bleby (Court of Appeal), with 2022 Law Reform students

Guest speakers to the Law Reform course in 2022 included:

- The Hon John Rau SC (past Attorney-General)
- The Hon Robert Lawson RFD KC (past Attorney-General)
- The Hon John Dawkins MLC (President of the South Australian Legislative Council)
- The Hon Dan Cregan MP (Speaker of the South Australian House of Assembly)
- The Hon Justice Chris Bleby (Court of Appeal)
- The Hon Geoff Muecke (former Chief Judge of the District Court of South Australia and regular contributor to the course)
- Ms Maggie Rutjens (Program Manager, Disability, Advocacy & Complaints Service of SA Inc.)
- Ms Skye Kakoschke-Moore ((Policy Officer at Purple Orange and former Senator)
- Ms Kahlia Power-Smith (KnowMore)
- Ms Kaela Dore (family lawyer)
- Reece Fursa (lawyer at Crown Solicitor's Office)
- Andrew Carpenter (lawyer in civil practice)
- Various members of staff from the Aboriginal Legal Rights Movement; and
- Several former law reform students now in practice.



The Hon Dan Cregan MP (Speaker, SA House of Assembly) provided 2022 Law Reform students with an engaging tour of Parliament House



Guest speakers (and past Attorneys), the Hon Robert Lawson RFD KC and the Hon John Rau SC, with 2022 Law Reform students

B. South Australian Attorney-General's Department

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 funding of the Administrative Officer position for a further period of two years, thereby covering funding of the position for the full Reporting Period.

Further, the Attorney-General's Department agreed to increase funding to facilitate a re-classification of the Administrative Officer role from HEO4 (ASO 3 equivalent) to HEO6 (ASO 5 equivalent), however, inconsistencies between the HEO6 and ASO5 salary rates only permitted reclassification to HEO5.

The University invoices the AGD twice yearly under this arrangement.

C. Law Society of South Australia

SALRI values its links with the Law Society of South Australia. As a co-founder, the Law Society continued to support SALRI's work in 2022 by permitting SALRI staff and researchers to attend relevant Law Society seminars and continuing legal education sessions relevant to SALRI's work at either reduced rates or without charge.

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

D. Advisory Board

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

Other activities

Review of the Tasmania Law Reform Institute

During the Reporting Period, SALRI undertook a review of the Tasmania Law Reform Institute. This Review was initiated by the Vice-Chancellor of the University of Tasmania and was conducted with the support of the Law School and the Founding Partners to the Agreement that established the Tasmania Law Reform Institute (TLRI), namely the University of Tasmania, the Tasmanian Government and the Law Society of Tasmania. The Founding Partners were actively engaged in the consultation process, along with several members (both past and present) of the TLRI Board and various interested organisations and individuals. The scope of the review was guided by a set of detailed Terms of Reference.

A Review Panel was appointed, consisting of SALRI's Director, Professor John Williams AM (Chair), former Governor of Tasmania,³⁹ Emeritus Professor Kate Warner AC and SALRI's Deputy Director, Associate Professor David Plater. Professor Williams and Associate Professor Plater did not receive any payment for carrying out this Review.

The Review Panel invited submissions from almost 100 interested parties or organisations and the TLRI Board in early 2022, before travelling to Hobart in late April. Prior to preparing its report and recommendations, the Review Panel received 16 written submissions and met with 22 individuals or groups either online or in person during April and May 2022.

The Review Report,⁴⁰ released on 20 July 2022, makes 20 recommendations to clarify and improve the effective, impartial and independent operation of the TLRI. The Review Panel hoped that these will provide an opportunity to reinvigorate the relationship between the Founding Partners and place the TLRI on a secure and sustainable footing into the future.

On 5 October 2022, the Hon Meg Web MLC, Independent Member for Nelson, made a motion to the Tasmanian Legislative Council, noting the Review Report⁴¹.

Impact and Engagement

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

Date	Details
20 January 2022	Focus Group Meeting with Disability groups (Purple Orange and Our Voice SA) on the Competence project
9 February 2022	Roundtable consultation forum on the Competence project with health and medical practitioners in Adelaide
17 February 2022	Roundtable consultation forum on the Competence project with the disability industry in Adelaide
10 May 2022	Focus Group Meeting with OFAW Stakeholder Reference Group on the <i>Ageing and Adult Safeguarding Act</i> review
10 May 2022	Dr Duncan 50 th anniversary panel discussion (Holly Nicholls)
18 May 2022	Associate Professor David Plater and Divya Narayan discussed SALRI's <i>Ageing and Adult Safeguarding Act</i> review, <i>ABC Radio Adelaide</i>

³⁹ And former inaugural Director of the Tasmania Law Reform Institute.

⁴⁰ Available at <https://www.utas.edu.au/_data/assets/pdf_file/0004/1606639/TLRI-Review-Final-Report.pdf>.

⁴¹ See <<https://megwebb.com.au/motion-noting-the-tlri-review/>>.

19 – 20 May 2022	Regional consultation forums on the <i>Ageing and Adult Safeguarding Act</i> and the <i>Mental Health Act</i> reviews in Clare, Port Pirie and Port Augusta
20 May 2022	Divya Narayan and Olga Pandos promoted SALRI's regional consultation on the <i>Ageing and Adult Safeguarding Act</i> and the <i>Mental Health Act</i> reviews, 7 News Spencer Gulf
21 May 2022	Interview to promote community consultation on the <i>Ageing and Adult Safeguarding Act</i> review, <i>Port Pirie Recorder</i>
25 May 2022	Interview to promote community consultation on the <i>Ageing and Adult Safeguarding Act</i> review, <i>Plains Producer</i>
26 – 27 May 2022	Regional consultation forums on the <i>Ageing and Adult Safeguarding Act</i> and the <i>Mental Health Act</i> reviews in Berri
28 May 2022	Interview to promote indigenous community consultation on the <i>Ageing and Adult Safeguarding Act</i> review, <i>Trans Continental, Port Augusta</i>
2 June 2022	Disability Focus Group on <i>Ageing and Adult Safeguarding Act</i> review with Purple Orange
3 June 2022	Regional consultation forums on the <i>Mental Health Act</i> review in Whyalla
9 June 2022	Roundtable consultation forum on <i>Ageing and Adult Safeguarding Act</i> review with government and key stakeholders in Adelaide
9 June 2022	Roundtable consultation forum on <i>Ageing and Adult Safeguarding Act</i> review with health and medical practitioners in Adelaide
10 June 2022	Roundtable consultation forum on <i>Ageing and Adult Safeguarding Act</i> review with advocacy groups and NGO's in Adelaide
10 June 2022	Roundtable consultation forum on <i>Ageing and Adult Safeguarding Act</i> review with community groups in Adelaide
16 – 17 June 2022	Regional consultation forums on the <i>Ageing and Adult Safeguarding Act</i> and the <i>Mental Health Act</i> reviews in Port Lincoln
22 – 23 June 2022	Regional consultation forums on the <i>Ageing and Adult Safeguarding Act</i> and the <i>Mental Health Act</i> reviews in Mount Gambier
1 July 2022	Roundtable consultation forum on <i>Mental Health Act</i> review with medical practitioners in Adelaide
1 July 2022	Roundtable consultation forum on <i>Ageing and Adult Safeguarding Act</i> review with legal practitioners in Adelaide
5 July 2022	Focus Group on <i>Ageing and Adult Safeguarding Act</i> review with Multicultural Communities Council of South Australia (MCCSA)
12 July 2022	Focus Group Meeting with OFAW Lived Experience Reference Group on the <i>Ageing and Adult Safeguarding Act</i> review
14 July 2022	Focus Group Meeting with OFAW Stakeholder Reference Group on the <i>Ageing and Adult Safeguarding Act</i> review
1 August 2022	Focus Group on <i>Mental Health Act</i> review with SA Lived Experience Leadership & Advocacy Network (LELAN)
2 August 2022	Online Focus Group on <i>Mental Health Act</i> review with SA Lived Experience Leadership & Advocacy Network (LELAN)
4 August 2022	Roundtable consultation forum on <i>Mental Health Act</i> review with allied health practitioners (psychology and neuropsychology) in Adelaide

10 August 2022	Roundtable consultation forum on <i>Mental Health Act</i> review with disability advocacy groups in Adelaide
10 August 2022	Roundtable consultation forum on <i>Mental Health Act</i> review with allied health practitioners (nursing and social work) in Adelaide
24 August 2022	Roundtable consultation forum on <i>Mental Health Act</i> review with mental health groups and NGO's in Adelaide
24 August 2022	Roundtable consultation forum on <i>Mental Health Act</i> review with government and key stakeholders in Adelaide
30 August 2022	Focus Group on <i>Mental Health Act</i> review with Multicultural Communities Council of South Australia (MCCSA)
13 September 2022	Roundtable consultation forum on <i>Mental Health Act</i> review with medical practitioners in Adelaide
16 September 2022	Attend Victims' Day Morning Tea, hosted by the Commissioner for Victims' Rights (Taylor Portelli)
22 September 2022	Presentation on SALRI and it's work to the Law Commission of England and Wales in London (Assoc. Prof. David Plater and Olga Pandos)
26 September 2022	Presentation to Criminal Law Commissioner, Law Commission of England and Wales and the Commission's Criminal Law Section (Assoc. Prof. David Plater)
28 September 2022	Attend the South Australian Council on Intellectual Disability (SACID) Conference - My Life My Choices (Taylor Portelli)
1 October 2022	Interview to promote SALRI's report on the <i>Ageing and Adult Safeguarding Act</i> review, <i>ABC Radio North and West</i> (Divya Narayan)
1 November 2022	Interview to promote SALRI's report on the <i>Ageing and Adult Safeguarding Act</i> review, <i>Evenings, ABC Adelaide</i> (Prof. John Williams and Divya Narayan)
2 November 2022	Interview to promote SALRI's report on the <i>Ageing and Adult Safeguarding Act</i> review, <i>Border Watch, Mount Gambier</i> (Divya Narayan)
2 November 2022	Interview to promote SALRI's report on the <i>Ageing and Adult Safeguarding Act</i> review, <i>ABC Riverland</i> (Olga Pandos)
3 November 2022	Interview to promote SALRI's report on the <i>Ageing and Adult Safeguarding Act</i> review, <i>7 News Spencer Gulf</i> (Assoc. Prof. David Plater and Divya Narayan)
23 November 2022	Discussion with Australian Discrimination Law Experts Group regarding SALRI's methods of community consultation (Assoc. Prof. D. Plater and Divya Narayan)

Progress of recommendations from SALRI Reports

A. Abortion - Law reform related legislation

The recommendations from SALRI's 2019 Report, *Abortion: A Review of South Australian Law and Practice*, 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.

The *Termination of Pregnancy Act 2021* and *Termination of Pregnancy Regulations 2022* came into effect on 7 July 2022⁴².

⁴² *Termination of Pregnancy Act (Commencement) Proclamation 2022* (South Australian Government Gazette, No 41, 23 June 2022, p 1919) and *Termination of Pregnancy Regulations 2022* (South Australian Government Gazette, No 41, 23 June 2022, p 1929).

B. Succession – draft legislation

A landmark Succession Bill based on seven SALRI Reports⁴³ was introduced to Parliament by the South Australian Attorney-General on 23 June 2021 with explicit acknowledgement of the roles of both SALRI and the Law Reform class.


However, 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.

A revised Succession Bill was reintroduced by the current Attorney-General on 20 October 2022 (based on all seven SALRI Reports) and is due for debate in early 2023. The Attorney-General again acknowledged SALRI's integral role.

References to SALRI's Reports in Hansard

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

SALRI Project	Hansard Reference
Mental Health Act review (Interim Report tabled)	South Australia, <i>Parliamentary Debates</i> , House of Assembly, 31 May 2022 (Hon. C. Picton)
Succession	South Australia, <i>Parliamentary Debates</i> , Legislative Council, 20 October 2022 (Hon K. Maher) ⁴⁴
Ageing and Adult Safeguarding Act review (Final Report tabled)	South Australia, <i>Parliamentary Debates</i> , Legislative Council, 1 November 2022 (Hon. K. Maher)
Abortion	South Australia, <i>Parliamentary Debates</i> , Legislative Council, 6 July 2022 (Hon. S. Wade) ⁴⁵


Professor John Williams AM
Director
South Australian Law Reform Institute

Date:


14 July 2023

⁴³ 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).

⁴⁴ At 15:21.

⁴⁵ At 17:05.