**South Australian Law Reform Institute**

**QUESTIONNAIRE**

***Small Fry***

**Issues Paper 5, January 2014**

Below are some questions about possible reforms to laws governing the administration of small deceased estates and the resolution of minor succession law disputes.

This is a word document which you can complete electronically.

Please return your completed response by email to[**SALRI@adelaide.edu.au**](mailto:SALRI@adelaide.edu.au)no later than **Wednesday 30 April 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 the administration of small estates**

**1.1** What are your views on permitting some small deceased estates to be administered

1. under the authority of a grant for which there less stringent and cheaper application requirements than for a standard grant?
2. under an authority less stringent than a grant, that may not involve court approval?

**1.2** If authority to administer a small deceased estate could be obtained other than by a grant of representation (whether a full grant or a simplified form of grant)

1. What criteria do you think should be used to define eligible deceased estates?
2. Are there some kinds of deceased estate which you think should always be administered through a grant of representation?
3. Who do you think should be permitted to administer a small deceased estate without a grant?
4. Do you think that there are any circumstances in which a beneficiary or creditor of the estate should be entitled to administer an estate without a grant of representation? If so, what are they?
5. What kinds of procedural safeguards do you think are necessary before people are permitted to administer small deceased estates without grants of representation?
6. Should a person who is permitted to administer a small deceased estate without a grant of representation be personally liable for that administration?

**1.3** Do you think that some small deceased estates could be administered through a form of grant with less stringent application requirements than the current grant of representation? If so, which small estates should qualify, and what would the application requirements be?

**1.4** Other than a full or modified grant of representation, which, if any, models for the administration of a small estate do you think would be suitable

1. for a professional administrator in South Australia?
2. for a lay administrator in South Australia?

**1.5** Do you think it should be possible for land registered in the deceased’s name at death to be registered, without a grant of representation,

1. in the name of a person who is or is entitled to be the personal representative under the will or under the rules of intestacy? If so, should there be any limit on the size of estates to which such a provision might apply?
2. in the name of a person who is entitled to the land if the personal representative consents to it (without it having first to be registered in the name of the personal representative)?

**1.6** Do you think that court fees for filing estate administration documents in the court (whether the estate is administered by grant of representation or by any other means) should reflect the size of the estate? How?

**1.7.** Do you think that there should be a cap on the fees for administering a small estate when it is required to be administered by the Public Trustee, a private trustee company or a lawyer?

**1.8**

1. Do you think lay administrators and executors should be given subsidised assistance, short of legal representation, in applying for a grant of representation or in administering a deceased estate under a grant of representation or both?
2. If so, who should provide that assistance and what form should it take?

**1.9.** Do you think that South Australian laws for protected third party payments (which allow third parties to pay monies owed to or held on account of the deceased directly to beneficiaries) should be changed? If so, how?

**Questions about the resolution of minor succession disputes**

**2.1** Do you think there is a need for some succession law disputes to be adjudicated other than by a hearing in the Supreme Court? Why/why not?

**2.2** Are there any kinds of disputes that you think should always be adjudicated by a hearing in the Supreme Court? Please give examples

**2.3** If you think some kinds of succession law disputes could be adjudicated other than by a hearing in the Supreme Court, please give examples

**2.4** If some succession law disputes are to be adjudicated by a hearing in the Supreme Court and some by other means, what criteria should be used to identify which each kind of dispute?

**2.5** What procedures or features do you think might be useful in alternative methods of adjudicating succession law disputes if they are not to be adjudicated by a hearing in the Supreme Court?

**2.6** What roles, if any, do you think the Registrar of Probates, District Registrars, Masters of the Supreme Court, or magistrates should play in any alternative methods of adjudicating succession law disputes?

**2.7** Do you think the current system of adjudication, or any new system, should include an obligatory mediated process for clarifying and narrowing the issues in dispute before the dispute is allowed to be adjudicated? Why/why not?

**2.8** Do you think any new system of adjudication should be conducted

1. without strict adherence to the rules of evidence?
2. without the right (or automatic right) of legal representation?
3. with some other degree of informality (and if so, please describe)?
4. on the papers, without the need for parties to appear?
5. with some reduction in court fees (and if so, please describe)?

**2.9** Do you have any other comments on the suggestions made in Part 2 of this Paper?