

The South Australian Law Reform Institute

Annual Report 2011

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The South Australian Law Reform Institute

In December 2010 the Attorney-General of South Australia, the Hon John Rau MP, the Vice Chancellor and President of the University of Adelaide, Professor James McWha, and the President of the Law Society of South Australia, Mr Ralph Bönig signed a memorandum of understanding establishing the South Australian Law Reform Institute (the Institute) at the University of Adelaide Law School.

The functions and objectives of the Institute are:

- to conduct reviews and/or research on areas of law and legal policy specified by its 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 simplification of 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; and
- 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.

The functions and operations of the Institute in 2011 were undertaken by the Director and an administrative officer from January 2011 with the appointment of the Deputy Director in mid-November 2011.

The Institute has an Advisory Board, which was established in early 2011.

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)

Advisory Board

The Advisory Board was established in early 2011. Its members are:

Professor John Williams, Director of the Institute
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

The role of the Advisory Board under the Memorandum of Understanding is to consider and make recommendations regarding law reform or legal research projects to be undertaken by the Institute.

In undertaking its activities the Advisory Board can receive proposals to undertake projects from the following bodies:

- The Attorney-General;
- The University of Adelaide;
- The South Australian judiciary;
- The Legal Services Commission;

- The Law Society of South Australia;
- The South Australian Bar Association; and
- Other representative organisations having standing in the community.

In determining which projects to undertake the Advisory Board will:

- take into account whether there are sufficient resources available including funds to cover the cost of the Institute undertaking the project, time frames for completion and the expected outputs of the project;
- consider the importance of the project to the administration of justice in the State of South Australia; and
- consider giving priority to such matters as may be identified by the Attorney-General as requiring legal research and advice from time to time.

Law Reform elective

One of the significant innovations with the Institute is the connection with the undergraduate student cohort. The Law Reform elective was offered for the first time at the Adelaide Law School in 2011. It is a one year course (Part A and B) and the coordinator in 2011 was Professor John Williams. The course is designed to provide students with the opportunity to be involved in actual law reform projects in association with the Institute. Using various high level research methods, students consider comparative materials and policy considerations that inform law reform options. The topics researched by the students in 2011 were connected with Institute projects in the areas of evidence law and succession law.

Activities of the Institute

Meetings of the Advisory Board

The Advisory Board met three times in 2011, in April, June and November. The meetings were held at the Adelaide Law School.

Current Projects

(1) Succession law reform

The Attorney-General, the Hon. John Rau MP, attended the inaugural Advisory Board meeting on the 6 April 2011 and asked the Board to consider undertaking a review of the laws of succession in South Australia.

An initial list of twenty-one topics was put together as possible areas of investigation by the Institute. To identify the topics in most need of reform and to provide expert guidance during the review process, the Advisory Board established a Succession Reference Group. The group first met on 16 August 2011 and identified seven topics for potential review:

1. Surety guarantees;
2. Resealing of grants of probate and administration;
3. Whether a will register should be established in South Australia;
4. Creating a jurisdiction of small claims for a range of estate matters;
5. A review of the *Inheritance (Family Provision) Act 1971*;
6. A review of the rules of intestacy; and
7. A review of the role of the Public Trustee in the administration of estates.

Work is ongoing on a number of these topics.

(2) Common law forfeiture rule

On 27 September 2011 the Attorney-General, the Hon John Rau MP invited the Institute to examine and report on whether the application of the common law forfeiture rule should be mitigated in certain circumstances. The Advisory Board accepted the project for attention in 2012.

(3) Evidence and technology

The Attorney-General, the Hon John Rau MP, invited the Institute to examine and report on whether South Australian evidence laws should be modernised to deal with new technologies.

The Advisory Board accepted the project on 6 April 2011. It established an Evidence and Technology Reference Group of academic, professional and judicial experts which first met on 31 October 2011. On advice from the Group the Advisory Board recommended reviewing the *Evidence Act* provisions about telegraphic messages (Part 6) and computer evidence (Part 6A), investigating whether the Act should also provide for the admissibility of electronic communications, and considering a range of reform options, including *Uniform Evidence Act* models. Work began on the project in late 2011. The Institute intends to release an Issues Paper in the first half of 2012, followed by a Final Report.

Australasian Law Reform Agencies Conference 2012 (ALRA Conference)

The Institute received notification in 2011 about the ALRA Conference and will be making an application to the Law Foundation of South Australia for funding to enable the Director and Deputy Director to attend the Conference.

Funding

Funding for the Institute in 2011 was from the University of Adelaide and the South Australian Attorney-General's Department. The Institute has no other source of funding, but is investigating other sources as its work increases.

The current funding for the Institute is as follows:

- (a) The University of Adelaide provides the salaries of the Director, Professor John Williams and Deputy Director, Ms Helen Wighton.
- (b) The SA Attorney-General's Department pays the salary of the administrative officer (@ 0.5FTE).
- (c) The Adelaide University Law School provides accommodation and has supplied furniture, two computers, a black and white printer and telephone facilities. It also provides ongoing support for telephone rental and cost of calls, heating/cooling, stationery, the use of a photocopier and small incidentals necessary to the running of the Institute's office.

The Advisory Board and members of its Reference Groups generously contribute their services and time without charge.

Research undertaken by the Law Reform students on the Institute's projects is also a valuable resource but requires supervision by the Director and Deputy Director.

Financial Statement for the period 7 December 2010 to 30 June 2011

To date the Institute has not received any grant or income beyond the support noted above.