



THE UNIVERSITY  
of ADELAIDE

South Australian Law Reform Institute

## Review of the *Inheritance (Family Provision) Act 1972 (SA)*

### Fact Sheet 1 – Background Information

#### Who are we?

The South Australian Law Reform Institute (SALRI) is an independent law reform body which conducts inquiries—also known as references—into areas of law. The areas of law are determined by the SALRI Advisory Board and sometimes at the request of the Attorney-General of South Australia. SALRI looks at how the law works in other places, any research available and speaks to the community and interested parties. Based on its research and consultation throughout an inquiry, SALRI then makes recommendations to the State Government so that the Government can make informed decisions about any law reform. SALRI's recommendations do not automatically become law, but they may be acted upon and accepted by the Government and Parliament.

When undertaking its work, SALRI has a number of objectives. These include identifying law reform options that would modernise the law, fix any problems in the law, consolidate areas of overlapping law, remove unnecessary laws, or, where desirable, bring South Australian law into line with other States and Territories.

SALRI was established in December 2010 under an agreement between the Attorney-General of South Australia, the University of Adelaide and the Law Society of South Australia. It is based at the Adelaide Law School.

#### Inheritance (Family Provision) Act Reference

SALRI's latest reference is topical and one that has relevance for the lives of many South Australians. It is about investigating whether the current laws that apply to the division of a person's estate upon his or her death are fair and effective and are working as intended. These laws are contained in the *Inheritance (Family Provision) Act 1972 (SA)*. Under the current law, when a person dies with a will, certain people within that person's family may be able to contest the will if they claim that they have not been adequately provided for in the will or under the law of intestacy. While originally designed with good intentions in mind, this law can now have unwelcome results in practice, particularly as modern families become more complex, family property becomes more valuable with increases in house prices and superannuation. Claims against the will, depending on the perspective, may be viewed as justified or opportunistic and greedy.

This reference is designed to identify the problems or concerns with the current law, gather the views of the South Australian community about how the law could be improved, and consider alternative options implemented in other Australian jurisdictions. SALRI will then provide a Report with recommendations for Government about how the law can be improved. This Report is due to be provided by the end of June 2017.

#### Your help is needed

SALRI wants to hear from you about your experiences with the *Inheritance (Family Provision) Act*, or other related experiences concerning the division of property among family members and your views

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about how the law in this area can be improved. Our consultation period ends on 30 April 2017, so get in quick with your feedback! Your experiences and views are important.

There are four main ways that you can be involved:

1. Filling out the survey on the YourSAY site at <http://yoursay.sa.gov.au/decisions/looking-after-one-another/about>;
2. Participating in one of SALRI's community roundtables to be held in Adelaide, Berri, Mt Gambier and Clare;
3. Sending us a written submission or letter via email to [salri@adelaide.edu.au](mailto:salri@adelaide.edu.au); or
4. By arranging to speak to us or meet us in person.

SALRI is particularly interested in your personal experiences with the laws in this area, but does not need or want any information that could identify individuals, so please be general when giving examples.

These Fact Sheets are designed to assist you in this process by identifying the key questions that SALRI is exploring. Further background information is also available [\[link to longer paper\]](#). We look forward to hearing from you soon.

## Note on Terminology

SALRI wants to hear from everyday South Australians as well as legal experts as part of this reference. The following list may help non-lawyers with some of the terminology used in other Fact Sheets.

### ➤ Claimant

In inheritance law, a claimant is a person who seeks to challenge a deceased person's will or decision about the deceased person's estate. Under the *Inheritance (Family Provision) Act 1972* (SA), certain categories of people are eligible to make a claim that they were inadequately provided for under a person's will. These issues are explored further in Fact Sheets 4 and 5.

### ➤ Costs

For the purposes of these Fact Sheets, the term 'costs' is used to refer to the amount of money awarded by the court or agreed to by parties to a legal dispute to cover the legal expenses associated with the court case or the legal dispute. As discussed in Fact Sheet 6, disputes about a deceased person's will can result in costs being awarded out of the deceased person's estate.

### ➤ Estate

In general, a person's estate is all of the property and other things that the person legally owns. This could include a person's house, investment property, family business, furniture, shares, cars, jewellery etc. A person's will can set out what should happen to his or her estate upon death. As discussed in Fact Sheet 2, in certain circumstances, the *Inheritance (Family Provision) Act 1972* (SA) can work to effectively override a person's will if inadequate provision has been made for an eligible family member.

### ➤ Family provision

In inheritance law, the concept of 'family provision' generally refers to the extent that a person's will provides for members of his or her family – for example, whether each of the person's children are given a share of the person's property in his or her will. Different rules apply in different Australian states and territories to determining who falls within the person's 'family' and whether certain persons are eligible to make a claim for family provision. These issues are explored further in Fact Sheets 4 and 5.

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➤ Testator

A testator is a person who has died and left a written will that is valid at the time of his or her death. In other words, a testator is the deceased person with a will. The role and wishes of the testator will be discussed further in Fact Sheet 3.

➤ Notional estate

Notional estate in this context means a person's property that was subject to certain transactions during his or her lifetime that reduced the size of their estate at the time of their death. This concept is explained further in Fact Sheet 7.

➤ Clawback provisions

Clawback provisions in this context are those laws designed to allow the court to include a person's 'notional estate' (described below) as part of a person's estate for the purpose of family provision law. This concept is explained further in Fact Sheet 7.

**Please note: SALRI does not, and cannot, provide legal advice to individuals. If you are in need of legal advice we encourage you to speak to a lawyer and/or contact a community legal service or the South Australian Legal Services Commission's [Legal Advice Helpline](#) on 1300 366 424.**

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