

# Witness competence law in the dock

Friday, January 7th, 2022

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## Contact Profile

The independent South Australian Law Reform Institute (SALRI) based at the University of Adelaide is inviting views from the community and interested parties as part of its review of the State's laws regarding the competence of witnesses.

"The South Australian Law Reform Institute has been asked by the Attorney-General to examine the present law in relation to witness competence under s 9 of the Evidence Act 1929 (SA)," said the Director of the SA Law Reform Institute, the University of Adelaide's Professor John Williams.

"Witness competence is vital and determines who can and cannot give evidence in court. SALRI's review will consider the role and operation of current law and practice in South Australia, how competence should be defined and assessed and the distinction between sworn and unsworn evidence and its associated implications."

The law of competence is a key premise of evidence law. It refers to the capacity of a person to function as a witness.

"There are concerns in relation to the apparent complexity and outdated nature of the present law and legal practice regarding the competence of witnesses in South Australia and its particular implications for children, persons with a disability and members of Aboriginal and culturally and linguistically diverse communities which may make it difficult for them to give evidence. In the event they give unsworn evidence, our laws contentiously treats their evidence as inferior to sworn evidence," said Dr David Plater, Deputy Director of SALRI.

"Competence testing is designed to ensure that the evidence a witness gives in court is relevant and of sufficient quality to prove something and safeguards a potential witness who may lack the capacity to function as a witness."

SALRI will analyse current law and practice in other places to determine if present law and practice needs any changes.

Six key questions are raised in SALRI's work:

- What should be the test or criteria to measure or assess competence?
- How should competence be assessed?
- Who should be responsible for the assessment of competence?
- Where and when should competency be assessed?
- What does competent to give evidence mean?
- Should the traditional oath or affirmation be retained?

As part of this review, SALRI will widely consult the community. SALRI will:

Collect feedback from interested parties until Tuesday 25 January 2022;

Consider any comments or submissions made to SALRI on [salri.new.ref@adelaide.edu.au](mailto:salri.new.ref@adelaide.edu.au).

Host in person consultations with interested parties and bodies in person, zoom and by phone.

A list of questions for consideration which reflect the supporting FactSheet have

been compiled by SALRI to assist with the consultation process.

The Hon Adjunct Professor David Bleby QC and Hon Adjunct Professor Geoff Muecke are kindly assisting this review, which will also draw on the contribution of the Law Reform class.

SALRI will provide the Attorney-General with their report in the first half of 2022. Any decision on accepting any of SALRI's recommendations will be for the Government and Parliament.

Further information about SALRI including landmark changes to SA laws as a result of its work can be found at <https://law.adelaide.edu.au/research/south-australian-law-reform-institute>