

AIJA UPDATES

The AIJA is pleased to present the final newsletter for 2019.

The AIJA's 2019 AGM took place on 12 October 2019 in Melbourne. The minutes of the AGM and the 2019 Annual Report were emailed to members on 14 November 2019. If you missed the email, [the Annual Report is also available via the AIJA Website](#). Please contact the Secretariat at aija@monash.edu to request the minutes of the AGM if you can't find the email.

Following the AGM, Justice Steven Rares, Federal Court of Australia, has become the President of the AIJA, following the retirement of Justice Robert Gotterson, Queensland Court of Appeal, from the position. Justice Jenny Blokand, Supreme Court of the Northern Territory, and Mr Laurie Glanfield AM were elected Deputy Presidents. The AIJA would also like to officially welcome Judge Barbara Barbara Baker, Federal Circuit Court of Australia, Dr Jacoba Brasch QC, Queensland Bar, Dr Matt Collins AM QC, Victorian Bar, Mr Tony McAvoy SC, New South Wales Bar and Ms Belinda Randell, Solicitor and Barrister, South Australia to the Council. The AIJA extends its thanks to retired Council members, Mr Michael Colbran QC, Victorian Bar and Mr Mal Varitimos CBE QC, Queensland Bar, for their dedicated work during their time on the AIJA Council.

NEW AIJA EXECUTIVE DIRECTOR

As members would be aware, Greg Reinhardt is to retire as and from 31 March 2020.

The position of Executive Director will shortly be advertised. If any member has an interest in applying for the position of Executive Director, or is aware of anyone who might be interested in applying, they should contact the AIJA President, Justice Steven Rares, at associate.raresj@fedcourt.gov.au.

AIJA MEMBERSHIP FOR 2019-2020

The Secretariat would like to ask all members who have not renewed for 2019-20 (either [via the website](#) or [by requesting an invoice from the Secretariat by emailing \[aija@monash.edu\]\(mailto:aija@monash.edu\)](#)) to do so as soon as practicable. If you would like to check whether your membership is current or not, [please email the Secretariat](#). If you did not receive emails or a letter reminding you to renew it is likely your membership has lapsed.

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NEW AIJA MEMBERS

The AIJA Council is pleased to welcome the following AIJA Members:

Ms Fiona Archibald, Court Librarian, Federal Court of Australia, Western Australian Registry

Dr Rohan Borschmann, University of Melbourne

Dr Matt Collins AM QC, Barrister, Victoria

Ms Georgina Costello SC, Barrister, Victoria

Dr Lynore Geia, James Cook University

Ms Shannon Harris, Anglicare Victoria

Ms Dominique Hogan-Doran SC, Barrister, New South Wales

Dr Kath McFarlane, Kath McFarlane Consulting, New South Wales

Mr Paul O'Connor, Solicitor, Pono Partners, Victoria

The Hon Anthony North QC, Victorian Law Reform Commission

Ms Belinda Randell, Belinda Randell Lawyers, South Australia

His Honour Chief Judge Heemi Taumaunu, District Court of New Zealand

Her Honour Magistrate Lisa Viney, Local Court of New South Wales

Ms Tammy Williams, Family Responsibilities Commission, Queensland

Ms Penny Wright, Office of the Guardian for Children and Young People, South Australia

AWARD FOR EXCELLENCE IN JUDICIAL ADMINISTRATION

Following careful deliberation, the AIJA Award for Excellence in Judicial Administration has been awarded to the District Court of New Zealand for work undertaken, especially by Peter Batchelor, Linley Caudwell, Carl Crafar and Anton Youngman, for the development and implementation of the District Court of New Zealand's "Judicial Resource Model." The Judicial Resource Model allows for the calculation of "case weights", to determine the overall judicial resource requirements with respect to judicial caps and projections. This has allowed for increased efficiency in the face of increasing judicial workloads, case scheduling and rostering of judges.

The Model uses case data to decrease delay and improve access to justice, by ensuring that cases are going before judges in an efficient and appropriate manner, according to the seriousness and complexity of the case. This is a shift away from considering only the time a case may take to hear, focusing instead on judicial workload capacities. The Model has allowed the Court to be more agile in the face of legislative changes, business changes and increases in case complexity, and to ensure adequate judicial resources are given to the cases that need them, thus delivering real-world benefits to the Court's judicial administration.

The Jury has also awarded a special commendation to the Migration and Refugee Division of the Administrative Appeals Tribunal, especially to Perry Wood, Andrew Verducci, Robin Crockett and David Sweeting, for the development of a pre-hearing smart form for student visa refusal matters, allowing for more timely and efficient case management. The implementation of the form has reduced the need for hearing resources by almost half, allowing for more information to be considered and therefore for decisions to be made more quickly.

The AIJA extends its congratulations to the District Court of New Zealand and the AAT.

2019 COURT FUTURES SURVEY RESULTS—TOP TRENDS TO WATCH

The following information was received from Phillip Knox and Peter C Kiefer at courtleader.net:

This year's survey garnered nearly 400 respondents, looked at several new scenarios, and both updated and tracked some scenarios from previous years. Of particular interest were:

- Scenario No. 8: highly likely that courts will develop online individual learning modules to train new employees
- Scenario No.7: likely that court computer systems will be hacked
- Scenario No.1: scepticism that Artificial Intelligence will assist judges in decision-making. (Baby Boomers and Generation X thought it had a 50-50 chance, Millennials though it was Unlikely.)

More information on the survey can be viewed here: <https://courtleader.net/2019/11/10/2019-court-futures-top-trends-to-watch/>, which contains further summaries of key scenarios as well as a link to download the full results.

NCSC OPIOID TASK-FORCE REPORT

The following information was received from the National Center for State Courts (US):

After more than two years of work, the National Judicial Opioid Task Force this week released a report that lays the groundwork for state courts nationwide to treat opioid-addicted defendants more like patients than criminals by using a combination of counselling services and medicated-assisted treatment.

According to the report, state courts must:

- Embrace medicated-assisted treatment, which involves using federally approved medications as well as counselling and behavioural therapies to treat those with substance use disorders
- Partner with state lawmakers, federal agencies and executive branches
- Realise that the most significant impact of the epidemic involves cases with children and families; and
- Design programs that can also be used for the next substance abuse addiction crisis.

The entire report can be read here: https://www.ncsc.org/~media/Files/PDF/Topics/Opioids-and-the-Courts/NJOTF_Final_Report_111819.ashx.

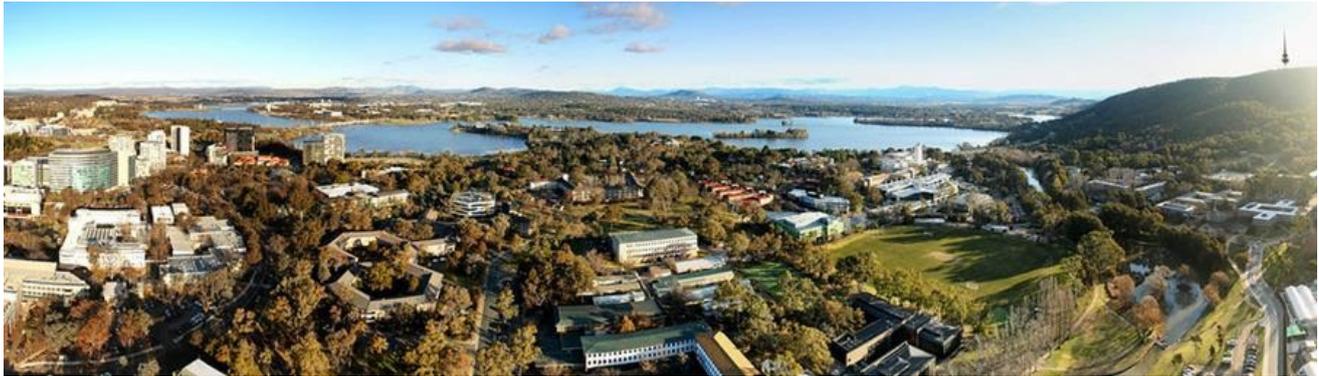
ACCESS TO JUSTICE SURVEY—IACA

The following request was received from Yulia Sarviro at the Global Initiative for Inclusive ICTs (G3ict):

Courts and justice systems worldwide are undergoing a digital transformation. While these technology investments can help courts and justice systems cut costs and increase efficiencies, it is not clear that their technology roadmaps include a commitment to ensuring access to justice by people with disabilities. Without this commitment, justice systems currently risk leaving people with disabilities even further behind and creating new obstacles to justice. When justice systems invest in digital technologies that are accessible and leverage new and emerging technology in innovative ways, they can both meet their transformation goals and increase access to justice for all people.

To this end, the International Association of Court Administration (in partnership with G3ict) are carrying out a short (8 minute) survey, linked below, seeks understand and improve access to justice for persons with disabilities in the digital age. The perspective of each and every one of you is incredibly important to this work.

These few minutes of your time will lead to important findings that we will share with you in the coming weeks. Access the survey here: <https://es.surveymonkey.com/r/FZPMT9P>



JOINT NJCA/ANU SENTENCING CONFERENCE

Saturday 29 Feb & Sunday 1 Mar, 2020, Canberra

This annual conference brings together members of the judiciary, academics, policy makers and other experts to consider current issues and challenges in the Australian justice system. The biennial theme of the conference is Sentencing, which is the theme for 2020.

The conference will examine a range of topics including the practical implementation of the ALRC's recommendations in relation to sentencing of Aboriginal and Torres Strait Islander peoples; hardship and the effect on families arising from various sentencing forms including fines and deportation; and sentencing in historical child sexual abuse cases.

For more information and to register please visit this link: <https://njca.com.au/course/anu-njca-sentencing-conference-2020/>.



JOURNAL OF JUDICIAL ADMINISTRATION

About the Journal

The *Journal of Judicial Administration* (ISSN: 1036-7918) is a leading forum for the discussion of contemporary issues impacting on judicial administration.

The Journal features informed discourse on areas such as: the efficient and effective operation of Courts, Tribunals and quasi-judicial forums; the impact of new technology on judicial administration; the structure, organisation, financing and management of the Courts and the Court system; the appointment, tenure, independence and accountability of judicial officers; and education programs to enhance the work performance of justice system personnel.

The articles featured in the Journal are written by leading judges, academics, practitioners and other legal specialists and experts. For more information call 1300 304 195 or email: lta.service@thomsonreuters.com.

VOLUME 29, NUMBER 1

Taylah Cramp and Anita Mackay. "Protecting Victims and Vulnerable Witnesses Participating in Royal Commissions: Lessons from the 2016–2017 Royal Commission into the Protection and Detention of Children in the Northern Territory ." (2019) 29(1) *Journal of Judicial Administration* 3–21.

The truth-finding function of Royal Commissions often leads them to seek the participation of victims and vulnerable witnesses (V&VWs) to learn about their experiences of the wrongdoing being investigated. There are numerous recent examples of Royal Commissions that have done this, including the 2017 Federal Royal Commission into Institutional Responses to Child Abuse and the 2016 Victorian Royal Commission into Family Violence. This article examines the processes employed by the joint federal and Northern Territory Royal Commission into the Protection and Detention of Children in the Northern Territory. It seeks to draw out the lessons that may be learnt for future Royal Commissions involving V&VWs. The Northern Territory Royal Commission is informative because the Commissioners prioritised the needs of V&VWs in some unique ways, arguably achieving restorative justice for the V&VWs who participated.

Meena Hanna. "Robo-Judge: Common Law Theory and the Artificially Intelligent Judiciary." (2019) 29(1) *Journal of Judicial Administration* 22–42.

The intersection between technology and the legal industry is exponentially growing. Historically, such technological advancements were largely confined to legal information retrieval and legal infrastructure. However, the fourth industrial revolution, and the seamless transition towards the fifth industrial revolution, usher significant advancements in computational law. These advancements in the automation of legal analysis through artificial intelligence are so disruptive and pervasive that they now purportedly threaten to invade the space of judicial reasoning. This raises the critical question of whether artificially intelligent judicial reasoning can be reconciled with the common law framework and common law theory more generally. To answer this question, this article canvasses the intersection of technology and the law, the application of artificial intelligence to judicial reasoning including developments to date, and the trajectory of research in this field.

Against this context, this article then considers the theories of pre-eminent common law philosophers, and ultimately concludes that artificially intelligent judicial reasoning cannot be reconciled with the common law.

VOLUME 29, NUMBER 2

Marilyn Bromberg and Michael Montalto. “‘Say My Name, Say My Name’: Changing the Title ‘Magistrate’ to ‘Judge’ in Australia” (2019) 29(2) *Journal of Judicial Administration* 45-59.

Is the title “magistrate” appropriate for Australian magistrates, or would another title be more appropriate? This article argues that the title “magistrate” should be changed to “judge” in Australia in the jurisdictions where such a change has not already taken place. The most convincing reason why the authors argue for this change concerns their findings from the online survey distributed in 2018 to all Australian magistrates: 60% of all Australian magistrates responded to this first of its kind survey; 95.25% of the magistrate respondents wanted a change to their title; and 86.44% of the magistrate respondents did not think that the title “magistrate” accurately reflected their position. This article also provides other relevant arguments for changing the title “magistrate”, including that such a change has already taken place in some Australian and overseas jurisdictions, as well as that magistrates undertake the same work as judges.

Anthony Gray. “‘The Punishment of Journalists for Contempt for Refusing to Reveal Their Sources in Court’ (2019) 29(2) *Journal of Judicial Administration* 60-81.

Recently, the Australian Federal Police conducted raids at the home and office of two journalists. The validity of such action is currently before the courts. It is argued here that it is possible that the High Court might find that action that effectively forces a journalist to reveal their sources breaches the implied freedom of political communication. Journalists play a pivotal role in permitting the public to hold governments accountable in our democratic system of government. Laws that effectively force them to betray their confidential sources may well limit the supply of information to journalists, in turn curbing the flow of information to voters. Courts in other jurisdictions have found that raids on journalists’ homes and offices infringe freedom of expression in a way that cannot be justified in a democracy.

MAKE A GIFT — SUPPORTING THE AIJA

The Australasian Institute of Judicial Administration (AIJA) is an approved Research Institute for the purposes of the *Income Tax Assessment Act 1997* (Cth). In addition to supporting our work, a donation to the Research Fund will facilitate research by the AIJA relating to judicial and court administration. Donations of \$2 or more are tax-deductible for Australian tax payers: ABN: 13 063 150 739. Your support will be gratefully received and acknowledged.

Donations can be made on the AIJA website: <https://aija.org.au/support-aija-research/>

Thank you for your support!



JUSTICE FOR YOUNG PEOPLE 2019

In November the AIJA hosted a conference on youth justice in Melbourne, bringing together judicial officers, lawyers, police, medical experts, psychologists and social scientists from around Australia, New Zealand and beyond to discuss the most pressing problems in this highly complex area and to work towards solutions.

A particular focus of the conference was the over-representation in the juvenile justice system of Indigenous, African and Pacific Islander youth. There was also an emphasis on the complex medical and psychological issues that are relevant in a jurisdiction that, at its best, can help divert the flow of damaged, marginalised and brutalised children away from youth detention and the adult prison system and back into family life.

Opened by the Victorian Minister for Youth Justice, The Honourable Ben Carroll MP, the conference began with keynotes from the NT's Judge Sue Oliver and from Judge Amanda Chambers, President of the Children's Court of Victoria and Judge Peter Johnstone, President of the Children's Court of NSW.

It continued with a presentation on the New Zealand youth justice experience by His Honour Judge John Walker, Principal Youth Court Judge for New Zealand, Judge Heemi Taumaunu, Chief Judge, District Court of New Zealand and Judge Mina Wharepouri of the New Zealand Youth Court.

It continued with panels led by highly qualified speakers such as former WA Children's Court President Denis Reynolds, the Children's Court of Victoria's Magistrate Jenny Bowles, and the Murdoch Children's Research Institute's Professor Stuart Kinner, discussing dozens of crucial issues in this area, from "justice reinvestment" to the arguments for mandated residential therapeutic treatment, the reasons for "riots" in youth centres and the contributions that speech pathologists can make. Seven of those presentations can now be viewed at the conference website justiceforyoungpeople.com.au, with more to come.