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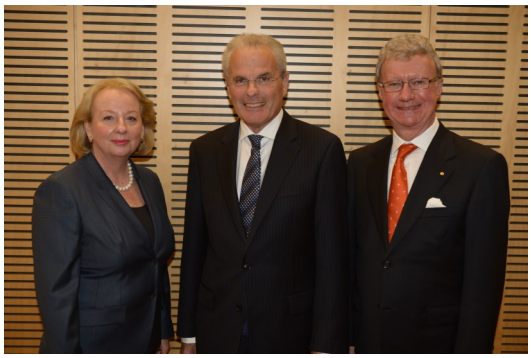
AIJA News

19th AIJA Oration in Judicial Administration



L to R: The Hon Justice Michelle May, AIJA President, the Rt Hon Lord Dyson and His Excellency the Honourable Paul de Jersey AC, Governor of Queensland

L to R: Mrs Kaye de Jersey, His Excellency the Honourable Paul de Jersey AC, Governor of Queensland, the Rt Hon Lord Dyson and Lady Dyson

The 19th AIJA Oration took place in the Banco Court, Supreme Court of Queensland, on Monday 22 September 2014. The Oration was jointly sponsored by the Queensland University of Technology Faculty of Law, the Supreme Court Library Queensland, the University of Queensland, TC Beirne School of Law and Bar Association of Queensland.

The Oration was given by the Right Honourable the Lord Dyson, Master of the Rolls and Head of Civil Justice, England and Wales who spoke on the topic The Jackson Reforms and Civil Justice, the Oration can be found on the AIJA website at http://www.aija.org.au/Orations/Oration2014.pdf

AIJA Life Membership

AIJA Council had the honour to award Life Membership to Mr Laurie Glanfield AM, AIJA Deputy President. Mr Glanfield's Life Membership is in recognition of his long service to the AIJA as a member of the Board and Council and his contribution as Deputy President since 2001 including his involvement in the Membership and the Project and Research Committee. Currently, Mr Glanfield is working on behalf of the AIJA on the International Framework for Court Excellence in Australia (IFCE).

AIJA MEMBERSHIP SURVEY

AIJA Members are encourage to complete a short on-line survey at:

https://www.research.net/s/SurveyAIJACPD

2014 AIJA Annual Report

The Annual Report is also available and can be found at

http://www.aija.org.au/2014AIJAReport.pdf

Inside this issue:

2015 Cultural Diversity and the Law conference

One in four Australians are born overseas.

Anticipate the future directions of Australian Courts and become a leader in the management of cultural diversity.

Over two days expert speakers from around the nation will share the strategies they have used to ensure access to justice for people from culturally diverse backgrounds.

Be part of a conversation with Australia's key judicial leadership on the changing role of our courts.

Hear from expert panels on

. Best practice for judicial officers in a multicultural courtroom
· Strategies for tribunals in dealing with culturally diverse cases
· What every practitioner should do to ensure justice for culturally diverse clients
· International perspectives on access to justice
· Enhancing public trust and community engagement
· Justice, Terrorism and Security

Jointly organised by the AIJA and the MCA, this conference explores an evolving and contemporary dimension of justice and will be relevant to all judicial officers, tribunal members, administrators and legal practitioners.

Get in early and register online NOW at www.cdlc.org.au

Migration Council AUSTRALIA

The Australasian Institute of Judicial Administration Incorporated

International Framework for Court Excellence (IFCE)

In July 2014 the Secretariat for the International Consortium for Court Excellence (ICCE) commenced operation at the offices of the AIJA in Melbourne. The Secretariat is led by Professor Greg Reinhardt and staffed by a part time ICCE Officer, Liz Richardson. The Secretariat is co-funded by the AIJA and the National Center for State Courts (NCSC) in the United States. Its role is to support the Executive Committee that governs the ICCE and to support courts that are implementing or thinking of implementing the International Framework for Court Excellence (IFCE). The IFCE is a court quality management system developed by the four founding members of the ICCE: The National Center for State Courts (NCSC); the Australasian Institute of Judicial Administration (AIJA); State Courts, Singapore (Formerly known as the Subordinate Courts of Singapore); and the Federal Judicial Center (FJC). The IFCE is a resource for assessing the performance of a court against seven detailed areas of excellence and provides guidance to courts intending to improve their performance. The term 'court' refers to courts and tribunals of general, limited or specialised jurisdiction as well as secular or religious courts.

The Secretariat will manage current membership details of the ICCE, membership applications and provide those jurisdictions looking to implement the IFCE with information about application of the Framework, including facilitating the exchange of case studies from other jurisdictions. The Secretariat will disseminate information about the IFCE and activities of the ICCE via its website (http://www.courtexcellence.com/ developed by the NCSC), quarterly newsletters and regional forums. The Secretariat will also undertake research on the application of the IFCE when required.

There are currently approximately 40 courts from countries from around the world implementing the IFCE, including 12 in Australia and New Zealand:

- NSW - Land and Environment Court;
- ACT - Magistrates Court of ACT;
- Victoria - Supreme Court, County Court and Magistrates' Court;
- Queensland - Supreme Court, District Court, and Magistrates' Court and the Queensland Civil and Administrative Tribunal;
- Federal - Family Court of Australia and the Federal Circuit Court of Australia;
- New Zealand - District Court of NZ.

The September 2014 newsletter for the ICCE can be found on the ICCE website (http://www.courtexcellence.com/News.aspx)

Justice Without Barriers: Technology for Greater Access to Justice, 21–22 May 2015

The AIJA will conduct a further conference which focusses on technology in courts and tribunals from 21-22 May 2015 in Brisbane.

The conference will focus on current developments in relation to technology in courts and tribunals, the drivers for technology change management and how the integration of technology into courts requires active management of cultural and procedural change. The full programme for the conference should be available in early December.

The Honourable Peter G Underwood AC

Sadly, a former President of the AIJA, the Hon Peter Underwood AC, Governor of Tasmania, died on 7 July 2014. Peter was President of the AIJA from 2002-2004. He was made a life member of the Institute in 2009 in recognition of his work for the AIJA over many years as a Council member, Board member and President. Vale Peter

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In defence of "take-down" orders: Analysing the alleged futility of the court-ordered removal of archived online prejudicial publicity - *Isaac Frawley Buckley*

This article considers orders, known as "take-down" orders, that are made by courts directing media organisations to remove online news articles which, as a result of intervening circumstances between the time of their initial publication and a criminal trial, pose a real and substantial risk to the administration of justice in that trial. Critics of these orders have argued against the making of the orders on the basis that, as it is impossible for courts to "hold back the tide of publications" completely, it is futile to make any attempt at all to diminish the risk of juror contamination. This article seeks to dispel this criticism and endorses the view taken by trial judges that they ought to "do all they can" to ensure a fair trial in criminal proceedings.

Hearing-med in Australian super-tribunals: Which cases and what process? - *Cady Simpson*

Australian super-tribunals use alternative dispute resolution (ADR) processes to contribute to the achievement of their aims, including: fairness, justice, economy, informality and speed. In 2012, the Queensland Civil and Administrative Tribunal (QCAT) introduced a novel ADR process called the "hybrid hearing", which is essentially a hearing (the proposed decision is kept secret), followed by a mediation ("hearing-med"). This article contributes to discussion as to what cases are suitable for hearing-med and offers suggestions as to possible improvements to the hearing-med process. Hearing-med is contrasted with established tribunal ADR processes and general considerations for the use of hearing-med are examined. The suitability of hearing-med for one-issue cases, animal management cases, and cases involving parties remote from the tribunal, is considered; and it is suggested that hearing-med may be useful in building dispute cases, guardianship matters, residential parks cases and unit titles applications. It is concluded, on balance, that private sessions may not be appropriate in hearing-med and that tribunals may wish to consider excluding legal representatives from the mediation component of hearing-med.

Population, crime and courts: Demographic projections of the future workload of the New South Wales Magistracy - *Brian Opeskin and Nick Parr*

The New South Wales Local Court is the largest court in Australia. This study seeks to facilitate future planning for the court by making demographic projections of the criminal workload of the court over the next 25 years (criminal matters account for 95% of its new lodgments). The study applies criminal conviction rates by age, sex and locality to population projections for the State to produce projections of the number of criminal convictions for the State and its geospatial subdivisions. These statistics are used to derive the demand for magistrates and a comparison is then made of the supply of magistrates under different scenarios. The principal finding is that, due to demographic change alone, the number of criminal convictions is projected to increase by 16% by 2036, with nearly all the increase occurring in Sydney, especially in the city's west and south-west. On the assumption of constant criminal conviction rates and constant judicial productivity, the demand for magistrates is also projected to rise by 16%, to 158 magistrates by 2036. If recruitment of magistrates were to take place only to maintain current staffing levels, there would be a shortfall of 22 magistrates over the projection period. Thus, if the Local Court is to have sufficient judicial resources to meet the projected demand for its services, government will need to be attentive to the potential for a growing gap between demand and supply in the years ahead.

Collaborative problem solving in a community court setting - *Jay Jordens and Elizabeth Richardson*

The Neighbourhood Justice Centre in Collingwood, Victoria, housing Australia's first community court, has used its legislative mandate to develop a number of innovative programs. This article describes one such innovation, the Problem Solving Process, that has conceptual underpinnings in therapeutic jurisprudence, restorative justice and procedural justice, but also draws on group-work processes and social support theory. It specifically assists accused persons in criminal cases who have complex presentations and offers them the opportunity to participate in a facilitated meeting that occurs outside the courtroom. Participation is voluntary and the outcomes are taken into consideration by the magistrate upon return of the matter to court. Outcomes are also used to inform deferred sentences and judicial monitoring reviews under community correction orders. It is an adaptable process that has many benefits to the offender, the court and the community.

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Litigants in person: Guidelines for the Federal Circuit Court - *Stephen H Scarlett RFD*.

The Federal Circuit Court has a duty to see that all parties, including those who do not have legal representation, receive procedural fairness. This article examines the guidelines given by the two appellate courts with which the court deals in its family law and child support jurisdiction as well as its general federal law jurisdiction. The article considers the decision of the Full Court of the Family Court in Re F: Litigants in Person Guidelines (2001) 161 FLR 189; 27 Fam LR 517; [2001] FamCA 348 and the decision of the Full Court of the Federal Court, on appeal from the Federal Circuit Court, in SZRUR v Minister for Immigration and Border Protection (2013) 216 FCR 445; [2013] FCAFC 146. The two decisions, referring to different authorities, arrive at essentially the same conclusions as to the way the court should approach the question of providing procedural fairness to litigants in person. Consideration is also given to the earlier High Court decision of Neil v Nott (1994) 121 ALR 148; 68 ALJR 509; [1994] HCA 23, which considered the case of a litigant in person whose lack of success in the lower courts had been largely due to his own failings as an advocate on his own behalf. The article asks whether the High Court has set out a counsel of perfection for busy trial courts in trying to ascertain what self-represented litigants really want and whether the concept of the "level playing field" is a myth.

The self-represented litigant in the Court of Appeal, Supreme Court of Queensland - *The Hon Justice Margaret McMurdo AC*

The Queensland Court of Appeal is for most purposes the final appellate court in Queensland. It has a broad criminal and civil jurisdiction. A significant proportion of its litigants in both criminal and civil matters is self-represented. In this article the author provides statistics as to the number of self-represented litigants and their success rates, and explains how self-represented litigants can place pressure on limited registry and court resources. Initiatives adopted to better assist self-represented litigants, including the QPILCH Self Representation Service (Court of Appeal), the Queensland Court of Appeal Criminal Law Pro Bono Scheme, and the Criminal Matters Legal Clinic are discussed. The Court of Appeal is revising its website, information sheets and guidelines and preparing an information pack to assist self-represented litigants. The author considers it is a desirable goal for courts to strive to ensure that self-represented litigants, even unsuccessful ones, are satisfied with their court experience.

Self-represented parties and court rules in the Queensland courts — *Iain McCowie*

The Queensland Public Interest Law Clearing House Incorporated (QPILCH) has operated a Self Representation Service at the Queensland courts since late 2007. The service's file work provides anecdotal evidence about the difficulties that self-represented litigants can have in complying with the requirements of court rules. The grievances of self-represented litigants reflect some of the concerns about the costs and delays in the conduct of litigation generally. The successful use of case management regimes to administer an increasing civil case load suggests that appropriately adapted case management might also assist the courts to respond to the challenges of, and faced by, self-represented litigants. In an innovative development (and with some input from QPILCH) the Supreme Court of Queensland, in Practice Direction 10 of 2014, has adopted a Supervised Case List for cases involving a self-represented party in the Brisbane Registry of the Supreme Court.

Self-represented litigants and strata title disputes in the State Administrative Tribunal: An experiment in accessible justice - *Bertus de Villiers*

Self-representation in legal proceedings is becoming more prevalent at all levels of courts and tribunals. In many instances courts and tribunals are challenged by: the volume of self-represented litigants; the pressure to assist them in the conduct of proceedings; and the need to simplify processes to a level where ordinary persons can conduct their own litigation. The State Administrative Tribunal (SAT) of Western Australia recently undertook quantitative research in respect of litigants who had been involved in strata title proceedings to assess the reasons for self-representation, to obtain insight into the experiences of those persons in all phases of proceedings (lodgment, directions hearing, mediation and hearing), and to identify areas where processes could be modified or improved. This article provides an overview of the dynamic jurisdiction of a super-tribunal such as the SAT and then discusses the findings of the research. Comments are also made about areas where the SAT can improve in its service delivery.

Model no more: Querulent behaviour, vexatious litigants and the Vexatious Proceedings Act 2005 (Qld) - *Narelle Bedford and Monica Taylor*

This article examines the history and development of vexatious proceedings legislation in Queensland. It undertakes a case study of declared vexatious litigants and analyses the effectiveness of a legislative response. In light of recent national and international reforms, this article argues that the current legislative approach to dealing with vexatious proceedings in Queensland is no longer appropriate and requires reformulation. It asserts that a system of graduated litigation limitation orders would provide for a more nuanced response to the issue of vexatious and querulous behaviour. The article concludes by emphasising the value of a multidimensional approach which includes practical, early intervention strategies in addition to legislation.

The dilemmas posed by self-represented litigants: The dark side - *Tania Sourdin and Nerida Wallace*

People represent themselves in every court and tribunal in Australia, sometimes by choice or because they simply cannot afford legal representation or recoup the full costs. Some take advantage of arrangements that courts and tribunals make for self-representation. In some jurisdictions some self-represented litigants can exhibit difficult, obsessive and unsafe behaviour. This article considers the nature of self-representation and the issues raised for judges and others working in courts and tribunals by those who display more difficult and irrational behaviours. It also explores the techniques available to ensure court and tribunal justice objectives are met.

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