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December 2015

AIJA News

2015 AIJA AWARD FOR EXCELLENCE

The AIJA is pleased to advise that the nomination for the initiative known as Nga Koti Rangatahi/Rangatahi Courts has been chosen as the recipient of the 2015 AIJA Award for Excellence in Judicial Administration.

The selection panel was particularly impressed by the way in which local Maori communities have been engaged in assisting their own young offenders to achieve youth justice.

The Award will be presented to the Rangatahi Courts in Auckland on 30 May 2016.

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Save the date:

Improving Court and Tribunal Practice in Family Violence Cases Conference

16-17 June 2016

Melbourne, Victoria

Details to follow

www.aija.org.au

AIJA WELCOMES TWO NEW COUNCIL MEMBERS

Incoming AIJA President, the Hon Justice Robert Mazza, Supreme Court of Western Australia welcomes:

The Hon Justice Murray Aldridge, Appeal Division, Family Court of Australia, was appointed to Council to fill the position vacated by Justice Michelle May.

Mr Greg Manning, Acting Deputy Secretary, Civil Justice Legal Services Group, Attorney-General's Department, ACT, was appointed to Council to fill the position vacated by Mr David Fredericks.

L to R: Dr Shelley Keane, The Hon Justice Michelle May, President of the AIJA, the Hon Justice Patrick Keane AC

AIJA LIFE MEMBERSHIP

At the June Council meeting, Council resolved to award life membership to the Hon Justice Pat Keane AC, Justice of the High Court of Australia, and a former Council, Board Member and President of the AIJA.

As her last official engagement as President of the AIJA, the Hon Justice Michelle May presented Justice Keane AC his award of Life Membership at a Council dinner on 16 October 2015 in Melbourne after the AIJA Oration. Justice Keane has provided significant service to the AIJA.

Father Frank Brennan delivered the 21st AIJA Oration

The Contours and Prospects for Indigenous Recognition in the Australian Constitution, and Why It Matters

The text of Father Brennan's Oration has been made available to members of the AIJA. A link to the Oration is to be found at: http://www.aija.org.au/Orations/Oration2015.pdf.

Father Brennan's Oration will be particularly relevant to the work of the Referendum Council announced by the Prime Minister on 6 December 2015.

COMMONWEALTH of LEARNING

Learning for Sustainable Development

The Commonwealth of Learning (COL), working in partnership with the Brunei Darussalam Government, wishes to announce Master's Degree scholarships for five people from Commonwealth countries, preferably working in Higher Education Institutions or Departments of Higher Education, to study on a full-time basis in Brunei Darussalam for one or two years.

The scholarships are available for programmes commencing in July/August 2016 in three participating institutions in Brunei Darussalam.

Universiti Brunei Darussalam (UBD)
Universiti Islam Sultan Sharif Ali (UNISSA)
Institut Teknologi Brunei (ITB)

Each scholarship covers tuition fees, one return economy air ticket, allowances (personal expenses, food, etc.), and residential accommodation.

Applicants are invited to apply directly to the Brunei Darussalam Government as stated on the Application Form and submit a copy of the complete application package to Dr Godson Gatsha, COL Education Specialist, Higher Education at ggatsha@col.org by 6 January 2016.

For specific details on the terms and conditions of the scholarships, including entry requirements and the application form, click here.

Application deadline: 9 January 2016

AIJA Council Member Receives Investiture

Congratulations to the Hon Justice Sir Gibbs Salika KBE CSM OBE on his award which was presented to him by the Princess Royal at Buckingham Palace.

The Hon Justice Sir Gibbs Salika KBE CSM OBE

Educating Judges: Towards Improving Justice *A Survey of Global Practice.*

Livingston Armytage

First published in 1996, this book enables judicial educators to develop a more effective pedagogy by focusing on the distinctive learning needs, styles and preferences of judges, and deepening understanding of judges as learners. .

This second edition enables readers to gauge what has happened – or not – in the world of judicial education over the past two decades. This reports on the findings of the first ever survey conducted of leading judicial educators around the world. It examines the state of judicial education across a range of issues, including: significant recent developments, major institutional issues and challenges, trends in professionalizing the practice, evolving goals, curricula, methodologies and approaches, building knowledge through research, evaluation and networks, impact and applications of information technology, use of judicial training in official development assistance and how globalisation is affecting the education of judges.

Book Orders: BRILL, c/o Turpin Distribution, Stratton Business Park, Pegasus Drive, Biggleswade, Bedfordshire SG1 8 8TQ, United Kingdom — **T** +44 (0) 1767 604-954 — **F** +44 (0) 1767 601-640 **E:** brill@turpin-distribution.com

Guidelines for communicating rights to non-native speakers of English in Australia, England and Wales, and the USA Communication of Rights Group (*an international group of linguists, psychologists, lawyers and interpreters*)

The Guidelines are: http://www.une.edu.au/__data/assets/pdf_file/0006/114873/Communication-of-rights.pdf

The Communication of Rights Group, which authored the Guidelines, comprises 21 linguists, psychologists, lawyers and interpreters from Australia, England and Wales, and the USA.

The group worked for about 12 months to bring together findings from relevant research and practical experience to make seven recommendations for communication of the right to silence in police interviews. [Whilst the focus is on non-native speakers of English in these jurisdictions, the recommendations have much wider relevance to other rights and other countries].

Review of judicial appointments process

Members will have received the booklet entitled *Suggested Criteria for Judicial Appointments.* Members might also be interested in the Discussion Paper released by the Attorney General for Queensland, the Hon Yvette D'Ath MP, entitled Review of Judicial Appointments Process in Queensland. The link to this can be found at: http://www.justice.qld.gov.au/__data/assets/pdf_file/0016/441700/discussion-paper-judicial-appointment-review.pdf

International Conference on Court Excellence, 28-29 January 2016, Singapore

As we advance into the first quarter of the 21st century, judiciaries worldwide are preparing themselves to meet the opportunities and challenges that are being presented to them. The International Conference on Court Excellence 2016 will bring together judicial officers, court administrators and experts to share perspectives on the latest trends and developments in court administration. Information and registration; http://courtexcellenceconference.com/ For enquiries, please contact rsvp@courtexcellenceconference.com

International Framework for Court Excellence (IFCE)

Ms Liz Richardson continues to develop a number of initiatives in relation to the International Framework for Court Excellence (IFCE). IFCE newsletters are available on the website: http://www.courtexcellence.com/

Journal of Judicial Administration (JJA) Vol. 25 No. 1 October 2015

Connecting with Victoria's culturally diverse communities: Enhancing public trust and confidence in courts and tribunals. — *The Hon Chief Justice Marilyn Warren AC*

Victorian courts and tribunals serve an extraordinarily diverse community; connecting with all members of this community is vital to enhancing public trust and confidence in the judiciary. To ensure equal access to justice for all, courts and judges must be sensitive to the needs of, and challenges faced by, different cultural groups. This article provides an overview of some of the recent initiatives adopted by Victorian courts and tribunals and related bodies to better engage Indigenous and ethnically diverse Victorians. It concludes by canvassing some future challenges for the courts and highlighting the importance of ongoing judicial leadership and education in this area.

From advocacy to collegiality: The view of experts of "concurrent evidence" and "expert conferral" in the State Administrative Tribunal. — *Bertus de Villiers*

Australia plays a leading role in the way in which expert evidence is dealt with by the courts and tribunals. Key motivators for change are to find ways to properly access expert evidence, to utilise expert evidence to facilitate settlement of disputes or at least to reduce issues in dispute, and to create a less litigious atmosphere when dealing with expert evidence. Two important techniques that have been developed are "conferral of experts" prior to hearings and "concurrent expert evidence" during hearings. This article is based on the views of experts who have appeared in the State Administrative Tribunal of Western Australia about their experiences and perceptions of these two techniques. It appears that although there is room for improvement, the interviewees show strong support for these techniques and feel that their ability to give evidence as well as to engage with other experts are strengthened by same.

Known unknowns: The overarching obligations of self-represented parties. — *Harlis Kirimof and Erik Dober*

In 2010, Victoria introduced the *Civil Procedure Act 2010* (Vic) in an effort to stem the rising cost of litigation. The Act imposes on parties and their legal representatives a "paramount duty" and a number of "overarching obligations" that are designed to improve the efficiency of court process. Although the Act applies to self-represented parties, it does not differentiate between them and parties who are represented. It has no bespoke provisions that deal with self-represented parties. This article considers the application of the Act's obligation to self-represented parties and the manner in which hearings involving self-represented parties may be modified to improve their efficiency and fairness.

Should Australian courts give more witnesses the right to Skype? — *Marilyn Krawitz and Justine Howard*

Millions of people use Skype, a common form of social media that permits people to talk to each other over the internet. Courts in Australia have permitted witnesses in at least a few instances to testify by Skype to date. This article examines whether Australian courts should permit witnesses to testify by Skype more often. The article considers using videoconferencing, as opposed to Skype, and security issues associated with Skype. It also considers the impact that Skype may have upon considering witness credibility. Ultimately, it argues that Australian judicial officers may want to consider permitting witnesses to testify by Skype if testifying by videoconference is not possible, on a case by case basis. The authors believe that this is the first scholarly article in Australia to focus on the issue of witnesses testifying by Skype.

Journal of Judicial Administration (JJA) Vol. 24 No. 4 June 2015

Equal Justice and Cultural Diversity: The general meets the particular — *The Hon Chief Justice Robert French AC*

This article concerns the ideas of equality before the law and equal justice and their intersection with cultural diversity including the difficulties of accommodating cultural diversity in the substantive law and the importance of responding to it in the administration of the justice system.

Working with Interpreters: Judicial perspectives — *The Hon Justice Melissa Perry and Kristen Zornada*

This article considers the fundamental role played by interpreters in the judicial system and administrative decision-making arena. Against the background of the current system for interpreters in Australia, consideration is given to how a court assesses whether a person needs an interpreter, and in the context of administrative decisions, the standard of interpretation required at law, and the legal and broader implications of failing to meet that standard.

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Journal of Judicial Administration (JJA) Vol. 24 No. 4 June 2015 *(continued)*

Judicial Council on Cultural Diversity — *The Hon Chief Justice Wayne Martin AC*

This article addresses the ways in which we might improve access to justice for all members of a society, which the author, the inaugural Chair of the Judicial Council of Cultural Diversity, believes has become much better at recognising and celebrating cultural diversity.

Judging in a Multicultural Society — *The Hon Justice Emilios Kyrou*

In a liberal democracy, the rule of law involves fundamental tenets such as equal access to the courts and a fair trial whose outcome depends on an assessment of the evidence that is impartial and free of prejudgment. Fulfilment of these tenets is challenging in a multicultural society where parts of the population do not speak English and do not adhere to uniform cultural beliefs and practices. Australia faces these challenges because it is both a liberal democracy and a multicultural society. To meet these challenges, Australian judges need to be adequately equipped to recognise and manage the cultural diversity of the people who appear in their courts.

Embracing Technology: The way forward for the courts —
The Hon Chief Justice Marilyn Warren AC

Imagine a court hearing that is entirely virtual: a judge presiding via Skype from the comfort of his or her chambers; barristers presenting arguments from theirs; witnesses giving evidence from their offices, anywhere in the world; and jurors watching it all play out from another venue. Imagine the judge and jurors being taken by the prosecution on a virtual tour of a crime scene, as if they were actually there, standing in the accused's shoes. Imagine a court system where nobody need attend court at all. Where all documents are filed, served and viewed online at anytime, from anywhere – a paperless, people-less court. Imagine an app that could predict your chances of success in litigation, or perhaps even adjudicate your dispute. Ten or 20 years ago it would have perhaps seemed ridiculous. The reality is that much of the technology necessary to achieve it already exists. The question for the judiciary is: how can we best embrace it? And importantly, how can we embrace it in a way that aligns with our democratic role in modern society, which ensures efficient and affordable access and observes the principles of natural and open justice? This article focuses on what we might look forward to in the future. It engages in a little speculation and postulates some ideas about the future of technology and social media in our courtrooms and how it might be embraced.

Constitutional Right of Access to Courts in Australia: The case of prisoners —
Anthony Gray

This article considers a little-known provision of Australian statute law which conditions the right of particular individuals to access courts on the permission of a public official. This provision raises fundamental questions, including the extent to which the Australian Constitution protects the right of an individual to access Australian courts to obtain redress for claimed wrongs. Several arguments are made. First, rule of law concerns with limits to the ability of individuals to practically access courts are considered. A related, but separate, argument might be made from the High Court's past acceptance of notions of "equal justice". It considers the development of an implied right to access courts, sourced in Ch III of the Constitution. It considers whether a right to access courts might be considered part of the existing implied freedom of political communication, since many claims affected by this approval requirement would concern aspects of performance of public functions. Finally, it considers whether conditioning the hearing of a legal action on the permission of a public official might offend the "institutional integrity" of a Ch III court.

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