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AIJA News

The Supreme Court of Victoria, in collaboration with the Australasian Institute of Judicial Administration, is hosting the Innovation and Excellence in Courts Conference - 2017 in Melbourne, Australia on 27-28 March 2017. Further information about the conference, including registration details can be found on the conference website: www.courtinnovationconference.com.au

AIJA LIFE MEMBERSHIP

The Council had the pleasure to award life membership to the Hon Robert French AC, Chief Justice of Australia.

The achievements of Chief Justice French, both as a judge of the Federal Court of Australia, President of the National Native Title Tribunal and Chief Justice of Australia are many.

With particular regard to the AIJA, Chief Justice French was appointed to the AIJA Council on 22 August 1992, to the Board of Management in October 1996 and retired as a member both of Council and the Board in October 1998. He has shown a great willingness to be involved in AIJA activities and to speak at AIJA conferences.

Life membership was conferred upon Chief Justice French immediately after the Branson Lecture given by the Chief Justice in Adelaide on 14 October 2016.

AIJA President, Justice Robert Mazza, acknowledged the work of both Chief Justice French and former President, the Hon Cathy Branson on behalf of the AIJA.

International Framework for Court Excellence

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

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REPORT ON RECENT AIJA CONFERENCES

The AIJA Court Media Officers' Conference

4-5 August 2016

This year's conference, held at the Federal Court in Brisbane, was the fifth conference that the AIJA has organised for communications and media officers working at courts around Australia.

Originally known as the Public Information Officers conference, this annual conference has its origins in a series of biennial workshops in which a (then) very small group of court media officers would get together to share information and expertise.

Since 2013 it has been growing steadily and is now a two-day event that attracts up to 35 attendees and covers a wide range of issues relevant to court media people as well as to media officers from large law firms, legal aid organisations and legal industry bodies such as the Law Institute of Victoria and its interstate equivalents.

The conference's growth has mirrored the huge expansion in the work done by court communications staff, whose responsibilities now include internal communication and strategy, media relations, as well as communication with the public. The explosion of social media has multiplied their duties, which now include the management of Twitter feeds and Facebook pages as well as the televising of important judgements.

The media officers' conference has also been one of the drivers of the increasing use of social media by courts. The Melbourne court media officers social media group, which held regular meetings from 2013 to 2015 was started after a session at the 2012 conference in Brisbane. The 2013 conference in Sydney was entirely devoted to the issue and the media officers in the different state jurisdictions have continued to share expertise.

Unsurprisingly these conferences are now attracting the interest of legal affairs reporters. An article on the 2014 conference appeared in the Law Institute Journal, while high profile court reporters such as Steve Butcher from Melbourne's The Age, Sean Fewster from The Adelaide Advertiser, the Brisbane Courier Mail's Kate Kyriacou and The Australian's Hedley Thomas have appeared on panels to talk about their own work and their working relationships with the courts.

Judges have been regular speakers on panels on conferences over the years. In 2013, when the conference was held at the Federal Court in Sydney, Judge Judith Gibson of the NSW District Court, Justice Ruth McColl AO, of the NSW Court of Appeal and Justice Peter McClellan AM, of the Supreme Court of NSW discussed the (for the time) new and radical idea of the courts – and even judges themselves - speaking directly to the public via social media.

At the 2014 conference in Melbourne, the Victorian Supreme Court's Justice Simon Whelan and the Victorian County Court's Judge Tony Howard sat down with the Juries Commission's Paul Dore to discuss the vexed issue of dealing with jurors who use Google. Justice Whelan also spoke in a session on suppression orders and gave delegates a lunchtime talk about his time on the Parole Board.

The 2015 conference in Adelaide began with an opening address from lawyer and author Dr Bob Moles on local miscarriages of justice and featured South Australia's Deputy Chief Magistrate Dr Andrew Cannon speaking on working with victims of crime.

This year's Brisbane conference offered the unusual treat of an insider's view from a judicial officer, with Queensland Deputy Chief magistrate Leanne O'Shea talking about her work in the Children's Court. For the first time the delegates also included judges: Justice Peter Applegarth and Justice Glenn Martin AM, both of the Queensland Supreme Court. It was a precedent that all the court media officers would like to see repeated at next year's conference, to be held in Sydney at a date and venue yet to be confirmed.

Indigenous Justice Conference

25-26 August, Alice Springs

The AIJA's conference on Indigenous justice, held in Alice Springs on August 25-26, was a huge success. It provided a forum for positive and fruitful discussion of the ways in which the justice system might make a positive difference to the lives of Aboriginal offenders. It was an agenda-setting two days. The topic of the urgent need for specialist Indigenous rehabilitation programs finally found a place on the national media agenda; no mean feat in today's dizzying 24/7 news cycle.

The lightning rod for the intense media coverage garnered by this conference was a new AIJA-commissioned report into the efficacy, accessibility and adequacy of prison rehabilitation programs for Indigenous offenders across Australia. The work of Australian National University academics Dr Clarke Jones and Dr Jill Guthrie, this report reveals that the imprisonment rate for Aboriginal Australians had increased by 52 per cent over a decade. It also points out that many Indigenous offenders do not have the benefit of rehabilitation programs that could assist them in avoiding return to prison, often frequent perpetrators of relatively minor offences, Indigenous people are not being imprisoned for long enough to qualify for the few programs in existence. They are also often unable to have access to culturally-appropriate services.

The Jones-Guthrie report also emphasises research suggesting that prison rehabilitation programs that do not acknowledge the language, culture, traditions and current life situations of Indigenous offenders, are unlikely to be effective and could also contribute to further offending. *(Continued on page 3)*

(*Indigenous Justice Conference continued*)

In the report's Foreword, AIJA President, Justice Robert Mazza, notes the criticism in the Report of the Corrective Services Administrators' Council for declining to cooperate with the study, and urges authorities to show greater transparency.

The conference provided its 86 attendees with a unique opportunity to hear the frontline experience of judicial officials such as the Northern Territory Youth Court's managing judge, Judge Sue Oliver who appeared in the Four Corners program on abuses committed against children in detention that sparked the recently convened Royal Commission.

Speaking at a session on reducing the over- representation of Aboriginal and Torres Strait Islander youth in the justice system, she emphasised the urgent need to change the "bigger picture" of family violence. Otherwise, she said, "we will be just waiting for a whole new generation of children who have been harmed to come through the system".

She stressed that removing children from their families was no simple solution, given that children in "protection" are also overrepresented in the juvenile justice system. On the day of her address to the conference, she took a census of the 22 youths then detained in the NT. Twenty of them were Indigenous; eight were children "under the care" of the Department of Children and Families.

Other session topics included specialist courts for the sentencing of Aboriginal offenders; Aboriginal pre-sentencing reports; alcohol regulation and crime and restorative justice.

One session aired the special perspectives of Aboriginal people in Alice Springs. Moderated by Ms Suzan Cox QC, Director of the NT Legal Aid Commission, its speakers included Ms Donna Ah Chee, CEO of the Central Australian Aboriginal Congress, and Ms Maxine Carlton, a longterm employee of the congress and a Walpiri speaker. In another session Victorian Deputy Chief Magistrate Jelena Popovic argued the case for "justice reinvestment"; policies to redirect money and resources from policing and prisons into social measures aimed at keeping people out of jail in the first place.

The Report is available to purchase either in hardcopy or e-version, details can be found on the AIJA website at: www.aija.org.au/online/AIJA%20PUBS%20LIST.pdf

8th Appellate Judges' Conference

20-21 October 2016, Melbourne

The 8th AIJA Appellate Judges' Conference, held at Monash University Law Chambers on 20-21 October 2016, was attended by 44 judges from around Australia and New Zealand.

After a joint welcome by the Chief Justice of the Supreme Court of Victoria, the Hon Marilyn Warren AC and the AIJA President, the Hon Justice Robert Mazza, it began with a keynote address by the New Zealand Supreme Court's Justice Susan Glazebrook DNZM on the theme "From intermediate to ultimate court of appeal".

Subsequent session topics emphasised the commonalities of experience shared by judges from very different jurisdictions.

In the first session of the day, "Working in an intermediate court of appeal: comparing experiences", panellists Justice Debbie Mortimer (Federal Court), Justice Anne Ferguson (Victorian Court of Appeal), Justice Anne Bampton (South Australian Supreme Court), and Justice Helen Winkelmann (New Zealand Court of Appeal) sat down with Chair, Justice Robert Redlich (Victorian Court of Appeal) to compare notes.

Other session topics included "Recent developments in contract law: the assessment of damages" and "The constraints of precedent", with the High Court's Justice Stephen Gageler as speaker and Justice Chris Maxwell AC (President, Victorian Court of Appeal) as chair.

The crucial issue of "judicial wellbeing" was addressed by Justice Margaret Beazley AO, President, New South Wales Court of Appeal, speaking on recent initiatives by the Judicial Conference of Australia in this area.

The day finished with a topic close to every appellate judge's heart - judgment writing.

Entitled "Shakespeare's legacy and the importance of good writing", its panel comprised Dr David McInnis (Gerry Higgins Lecturer in Shakespeare Studies, University of Melbourne) and Professor Chris Wallace-Crabbe AM (Emeritus Professor, Australian Centre, University of Melbourne), with Justice Margaret McMurdo AC (President, Queensland Court of Appeal) as chair.

AIJA 2016 and beyond

The AIJA Council has worked over the last six months on a new Strategic Plan. This was completed at the October meeting of Council. Thanks are due to Council members Jane Reynolds, Julie Ward and Helen Winkelmann for their work in relation to the Strategic Plan.

Reproduced below are the Vision statement and Mission statement developed by Council.

Vision (or aspiration) statement

AIJA is recognised as Australasia's foremost judicial administration institute for its excellence in legal and judicial policy, research and education.

Mission statement

AIJA brings together lawyers, judges, court administrators, tribunal members and staff, academics and policy makers with an interest in the work of courts and tribunals, to promote excellence in the administration of justice in Australia, New Zealand and across the Pacific.

It does so principally by:

◊ initiating, funding and communicating innovative research

◊ promoting the exchange of ideas and information on current and emerging issues which affect courts and tribunals

◊ advancing the International Framework of Court Excellence

Full details of the Strategic Plan are available from the AIJA Secretariat

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MAKE A GIFT – SUPPORTING THE AIJA

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

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EVENTS AROUND THE WORLD

International Meeting on Law and Society in Mexico City, June 20 - 23, 2017

Walls, Borders, and Bridges: Law and Society in an Inter-Connected World

This meeting in Latin America, will surely be the one to attend in 2017, as illustrated by our theme: Walls and bridges: exclusion and inclusion. Everybody recognizes these two contradictory themes; they have a big role today in national politics, and national law; in international politics, and international law. A famous old statement had it that all politics is local; but today, all politics is, in some sense, global. If country A wants to close its borders, and close back in on itself, it is because it is reacting to turmoil outside its boundaries. Today, no wall can ever be high enough to shut out the forces that are shaping life in the 21st century, for better or for worse.

We think our field can help us understand that world, what makes it tick, where it has been, and where it is going. Our theme focuses on walls, borders, and bridges. But of course, we welcome all studies of law and society; empirical studies, no matter how small, no matter how local, can be tiles that fit into a larger mosaic; and many of these studies will be relevant to our theme, even when this relevance is a bit hard to see.

The meeting will offer:

* Joint sponsorship by the Law and Society Association (LSA), the Research Committee on the Sociology of Law (RCSL), and with the participation of the Socio-Legal Studies Association, the Japanese Association of the Sociology of Law, and the Canadian Law and Society Association.

* Participation from RCSL Working Groups, and LSA's Collaborative Research Networks and International Research Collaboratives.

* Networking with a projected 2000 scholars from all over the world.

For more information:

See our website at www.lawandsociety.org/MexicoCity2017/mexicocity2017.html

<http://www.lawandsociety.org/MexicoCity2017/mexicocity2017.html>

Follow our twitter feed at https://twitter.com/hashtag/lsmex17

NACM - IACA Joint Educational Conference Washington DC, USA 9-13 July 2017

Further details:
https://nacmnet.org/conferences/index.html
http://www.iaca.ws/upcoming-conferences.html

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2017 ANNUAL CONFERENCE
Challenges and Opportunities of Diversity in the Administration of Justice

Date: October 4-6, 2017, **Location:** Montreal, Qc

Save the date! More details to come
https://ciaj-icaj.ca/en/

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Sam Bookman. - Judges and Community Engagement: An institutional obligation. 26 (1) (October 2016) Journal of Judicial Administration 3-18

This article sets out a principled framework to inform the development of community engagement programs by judiciaries. Community engagement is an ethical obligation incumbent upon the judiciary as an institution. While there are risks associated with community engagement, these may be appropriately managed. This article settles on seven guiding principles that underpin effective community engagement.

Jessica Findling and Georgina Heydon. - Questioning the Evidence: A case for best-practice models of interviewing in the Refugee Review Tribunal. 26 (1) (October 2016) Journal of Judicial Administration 19-30

This article addresses the problem of eliciting accurate and reliable evidence when reviewing applications for refugee status. While cases reviewed in the AAT (Migration and Refugee Division) often lack hard evidence, Members are simultaneously disadvantaged by a lack of evidence-based interviewing protocols to guide their questioning practices. This research examines the practices and regulatory environment of such decision-making in light of international standards of ethical questioning of detainees and witnesses. It finds firstly that Members do not presently use the opening phase of the interview to maximise the applicant's recall and improve the quality of their responses and, secondly, that Members are not consistent in their use of questions to elicit information from applicants. This article concludes that the introduction of questioning protocols for the Migration and Refugee Division Members would improve efficiency in hearings and help to ensure that Members are not exposed to appeals based on random interviewing approaches.

Anthony Gray. - Is the Representative Nature of Juries Justiciable? 26 (1) (October 2016) Journal of Judicial Administration 31-48

It is trite to say that one of the key features of a jury, if it is to properly perform its important task in the judicial system, is that it be representative of the society it purports to serve. The High Court of Australia has recognised this as an essential feature of juries. On the other hand, jury legislation continues to provide a range of exemptions from jury service, and the rate at which individuals are excused from jury service is high. These features of jury legislation could potentially raise the concern that a particular jury pool, or particular jury, is not in fact "representative" as is the ideal. This article considers whether the issue of jury representativeness is justiciable. It draws upon American precedents on juries. These are relevant because the Australian constitutional provisions dealing with juries were drawn from the American Constitution. These precedents indicate that the question of jury representativeness is justiciable, and in some cases juries have been found to be unrepresentative, affecting the standing of that system's judicial decisions. This raises at least some interesting questions in cases where Australian juries are not seen as "representative", even if no-one argues that an exact replica of the population is necessary or, indeed, possible. There are also arguments to be considered that this characteristic of jury representativeness can be drawn down to state courts.

Chris Charles. - Four Recent Decisions on Sentencing Aboriginal people. 26 (1) (October 2016) Journal of Judicial Administration 49-55

The recent case of Bugmy, decided by the High Court in 2013 has been followed in South Australia in a number of cases decided by the Court of Criminal appeal in the Supreme Court on sentencing for Magistrates' Court Appeals. In the case of Grose, the Court of Criminal Appeal considered whether Aboriginal Sentencing conferences, mandated by the South Australian Sentencing Act infringed the Racial Discrimination Act 1975. In concluding that it did not do so the court relied upon the recent High Court decision in Maloney, and reflected upon the application for Bugmy principles to consideration of Aboriginal disadvantage, as is revealed by Sentencing conferences. In Pennington the Court considered the significance of particular forms of disadvantage for defendants from remote communities subject to serious intergenerational alcohol abuse and dispossession. This was weighed against the need to protect Aboriginal victims and the provision of individualised justice. In Peters, consideration was given to the use of public intoxication legislation to divert a seriously intellectually disabled petrol sniffer from the criminal justice system.

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