

June 2014

AIJA News

The latest AIJA publication, *Improving Justice: A History of the Australasian Institute of Judicial Administration* is enclosed.

The publication is important not simply as a history but as a means of showing the development of judicial administration over the last 30 years.



AIJA Life Membership Presentations

Congratulations to the Hon Justice Virginia Bell AC, who has been awarded Life Membership. Justice Bell was appointed to Council in October 2000, appointed Deputy President 2004 -2006, President of the Institute in 2006-2008, member of the Education Committee and Indigenous Cultural Awareness Committee.



L to R: Professor Greg Reinhardt, Justice Virginia Bell AC, Dr Andrew Cannon AM and the Hon Justice Michelle May

Congratulations also to Dr Andrew Cannon AM, Deputy Chief Magistrate, South Australia who was also presented with Life Membership.

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This year's major AIJA conference – *Assisting Unrepresented Litigants: A Challenge for Courts and Tribunals* – was held in Coogee, Sydney from April 15-17 and featured panel discussions covering every aspect of this complex and increasing problem: from cases in Children's Courts and Coroner's Courts to class actions and Legal Aid.

"The conference topic was important and relevant. Diversity of speakers is essential – judges, academics, lawyers, registry staff etc. Keynote speaker Dame Hazel was an excellent choice".

Judge Misso of the Victorian County Court discussed "querulous" litigants, while Professor Tania Sourdin of Monash University's Centre for Justice Innovation spoke about the "dark side" of this issue, focusing on the huge problems caused by a minority of difficult self-represented litigants who may be running several cases at once across multiple jurisdictions.

Professor Dame Hazel Genn, Dean of the Judicial Institute at the University College London, discussed the situation of unrepresented litigants in the UK, raising, amongst other matters, Heather Mills' poor performance when she represented herself in her High Court dispute with her ex-husband Sir Paul McCartney. During proceedings Mills tipped a jug of water over her ex's lawyer – and ended up with a worse settlement than she would have if she'd had a lawyer - even subtracting the cost of one.

Several speakers from the conference were interviewed on Radio National's Law Report on April 1.

<http://www.abc.net.au/radionational/programs/lawreport/self-representatives-in-court/535528#transcript>

AIJA Award for Judicial Excellence



Front: Aunty Colleen Welch and the Hon Justice Michelle May
Back: Dr Andrew Cannon AM, Professor Greg Reinhardt, Mr Graeme Pearce and the Hon Justice Alan Wilson



Front: Chief Judge Helen Winkelmann, the Hon Justice Michelle May and Her Honour Chief Judge Jan-Marie Doogue
Back: Judge Colin Doherty, Professor Greg Reinhardt and Justice Forrest Miller

Awarded jointly to the District Court of New Zealand in Christchurch, Justice Forrest Miller of the High Court and Chief High Court Judge Helen Winkelmann in recognition of the work which they undertook consequent upon the Christchurch earthquake to ensure the ongoing efficient administration of justice in that city at a time of almost complete devastation

The jury for the Award has noted particularly the efforts of Judge Colin Doherty who chaired a Judicial Reference Group consisting of Judges, Court Administrators, Government representatives, the legal profession and others to promote a "whole of Court" judicial and staff response to the earthquake.

The jury has also acknowledged the effort of Justice Forrest Miller of the High Court in the establishment of the Earthquake List in that Court and the work of Chief Judge Helen Winkelmann in the aftermath of the earthquake, including overseeing the development of the special list and more generally in relation to the work of the High Court.

Award of Commendation

Mr Graeme Pearce, Cross Borders Indigenous Family Violence Programs, Northern Territory

Aunty Colleen Welch for her work as an Aboriginal Elder and Court Justice Officer, South Australia.

The Hon Justice Alan Wilson for his work in court administration in relation to the establishment of Queensland Civil and Administrative Tribunal (QCAT).

AIJA Seminar on Restorative Justice Alternatives to the Criminal Justice System

On 28 November 2013, the AIJA held a highly successful seminar to discuss restorative justice alternatives to the criminal justice system in certain kinds of sex assault cases – most notably “historic” family sex abuse cases, “date gone wrong” cases and cases involving intellectually disabled victims.

The Supreme Court of Appeal's Justice Marcia Neave had spoken about this issue before, and received some media coverage, as had Dr David Wells, former chief forensic clinician for Victoria and the AIJA wanted to facilitate further discussion of this topic for practitioners in the area.

The seminar took place in the splendid 14th floor conference room of the Family Court at Melbourne's Commonwealth Law Courts. Moderated by Damien Carrick of Radio National's *The Law Report*, it featured a panel comprising Justice Neave, County Court Judge Sue Pullen, barristers Mark Gibson and Jane Dixon SC, Carolyn Worth from the South Eastern Centre Against Sexual Assault and Fiona Landon from New Zealand's Project Restore, one of the few programs in the world to have ever used restorative justice conferencing in sex cases.

It was a rainy Thursday night and the Christmas party season had already begun, but the event still attracted a packed house of 100 lawyers, victims' advocates, police officers, judges and magistrates – a tribute both to the importance of the topic and the stature of the panelists. The seminar was also telecast to Sydney, Brisbane, Darwin, Adelaide and Perth and recorded. An edited DVD of the seminar, including the lively “question time” afterwards, is available to purchase from the AIJA for \$15 including postage (email your details to heather.sevald@monash.edu).

Journal of Judicial Administration (JJA) Vol. 23 No. 3 February 2014

Trying serious offences by judge alone: Towards an understanding of its impact on judicial administration in Australia – *Fiona Hanlon*

Criminal trial before a judge sitting alone without a jury for serious offences is not novel in most Australian jurisdictions. Despite this, it has not been the subject of sustained study in terms of its impact on judicial administration. This article identifies some issues and calls for further research in order to better understand the current and potential impact of judge-alone trials on judicial administration in Australia.

Courting justice beyond the cityscape: Access to justice and the rural, regional and remote magistrates' courts – *Bridget Harris, Lucinda Jordan and Lydia Phillips*

The lower courts in Australia are important spaces. These “people’s courts” handle the majority of civil and criminal matters and can profoundly shape perceptions, not only of the courts but of the criminal justice system at large. Lower courts play a key role in educating and guiding court workers and are places where innovative practices are pioneered and social change is pursued. Despite their significance there has been little review of the lower courts, even less of courts beyond the cityscape. In this article the authors explore the history, role and operations of lower courts in rural, regional and remote Australia to assess how the courts respond to the needs and diversity of different community groups and regions; they identify barriers to justice and signal emerging areas of research.

Affordable costs in civil litigation – *Dr Andrew J Cannon AM*

Cost shifting policies have a profound effect on the way that litigation is conducted. To maintain a Rule of Law it is essential that courts are affordable. For court systems to provide affordable and efficient litigation processes they must have appropriate cost incentives to encourage that approach in the litigants and their advisors. This article describes a cost rule and scale that does so by providing fixed rate proportionate costs for each of the stages of the litigation to encourage efficient and proportionate use of court processes. A system of offers to encourage plaintiffs to accept a discount and defendants to actually pay any judgment sum are included. Importantly, litigants who exaggerate their claims, defences and counterclaims are penalised under the cost formula.

Summoned by social media: Why Australian courts should have social media accounts – *Marilyn Krawitz*

Millions of people and organisations benefit from using social media. Court staff can also benefit from using it. In particular, they can inform the public about recent judgments and about how courts function. At this point, few courts in Australia, Canada and the United Kingdom use social media. This article examines why. Ultimately, it argues that Australian court staff should consider using social media to increase confidence in the judiciary.

Journal of Judicial Administration

For a limited time, Thomson Reuters is offering members of the AIJA a special discount on subscriptions to the *Journal of Judicial Administration*. Members are eligible to receive an annual subscription to the paper parts of the Journal for just \$300 – a saving of more than \$500 on the retail price.

The *Journal of Judicial Administration* publishes quarterly, and is a leading forum for the discussion of contemporary issues impacting on judicial administration. To redeem your discount, please quote promo code LAW014 when you place your order. For more information call 1300 304 195 or email: lta.service@thomsonreuters.com.

International Framework for Court Excellence (IFCE)

Members will be interested to learn that it has been agreed amongst the Consortium partners for the IFCE that the AIJA will act as the Secretariat for the Framework. This will involve the preparation of regular newsletters, liaison with IFCE members, development and maintenance of a Framework website and general oversight of activities relating to the IFCE. Ms Liz Richardson, former Deputy Director of the AIJA has been engaged to work on the Framework.

AIJA Membership Survey

Members will shortly receive by email, a request to complete a short on-line survey. Those who are very enthusiastic, can do this now:
<https://www.research.net/s/SurveyAIJACPD>

Journal of Judicial Administration (JJA) Vol. 23 No. 4 April 2014

In defence of “take-down” orders: Analysing the alleged futility of the curt-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.