Australasian Institute of
Judicial Administration
Grd floor
555 Lonsdale St
MELBOURNE VIC 3000
T: 61 3 9600 1311
F: 61 3 9606 0366
Website: www.aija.org.au

June 2016

AIJA News

Inside this issue:

AIJA Indigenous Justice Conference	1
Welcome to new AIJA Council Members	1
NAJ 2017 Conference	1
2015 AIJA Award for Excellence—Winners	2
Reports on Recent AIJA Conferences	3
Efficacy, accessibility and adequacy of prison rehabilitation programs for Indigenous offenders across Australia	3
Access to Justice, Design Thinking and Artificial Intelligence Forum	4
Self Represented Litigants	4
Law and Courts in an Online World	4
The Canadian Forum on Civil Justice	4
Journal of Judicial Administration (JJA)	5-6

AIJA INDIGENOUS JUSTICE CONFERENCE

All details are available on the AIJA Website at: www.aija.org.au —
Early Bird Registrations close 22 July 2016
Programme http://www.aija.org.au/IJC%202016/Program.pdf
Guide & Registration http://www.aija.org.au/IJC%202016/Guide%20&%20Rego.pdf
Registration On-line http://www.aija.org.au/index.php/2016-02-18-02-45-49

The AIJA will be holding the *2nd International Non-Adversarial Justice Conference: Integrating Theory and Practice (NAJ 2017)* in Sydney on 5-7 April 2017. The Call for Papers will be circulated soon. Inquiries about the conference can be directed to liz.richardson@monash.edu

AIJA COUNCIL MOVEMENTS

The AIJA welcomes two new members of Council:

Mr Clive Elliott QC, the President of the New Zealand Bar Association and Council Member of the Auckland Branch of the New Zealand Law Society.

Mr Elliott replaces Mr Paul Mabey QC as a member of Council in the Professional Members' category. Mr Mabey has become a District Court Judge in New Zealand. Congratulations to Judge Mabey.

Mr Adam Kimber SC , Director of Public Prosecutions , South Australia. Mr Kimber succeeded Mr Stephen Pallaras QC as DPP in South Australia in April 2012.

Mr Kimber replaces Mr David Curtain QC as a member of Council in the Professional Members' category. There is an additional vacancy on Council to be filled, namely, to replace Mr Robert Pigou as a member of Council in the Court Administrator category.

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 April 2016 IFCE newsletter is available on the website: http://www.courtexcellence.com/news

2015 AIJA AWARD FOR EXCELLENCE

Greg Reinhardt

I have previously reported on the Award for Excellence in Judicial Administration to the Te Koti Rangatahi-Rangatahi Courts. I presented the Award in Auckland on Monday 30 May 2016. The Award was presented in a ceremony extending over some hours at a marae near Auckland. I confess to being quite moved by the ceremony and the video which was shown in relation to the actual work of the Rangatahi Courts. Former AIJA President, the Hon Justice Mark O'Regan, was also present at the ceremony.

The Courts transfer Youth Court hearings to a marae so as to involve local Maori communities. This enables those communities to assist in dealing with young offenders, to encourage youth to participate in the court process and to develop greater respect for law. Maori youth are disproportionately represented in the criminal justice area. Maori elders play an important role in promoting the process. This initiative shows great strength of leadership and vision by the New Zealand Youth Court judiciary, particularly Judge Andrew Becroft, the Principal Youth Court judge. Judge Becroft is to become the Children's Commissioner for New Zealand from 1 July 2016.

The Rangatahi and Pasifika Courts are successful because they in fact demonstrate the success of community involvement in the criminal justice process, that is, the fulfilment of the objectives set out above. They provide a cultural dimension to criminal justice for Maori and Pacific Islander youth which is not available in traditional courts. This initiative which has been in place for approximately 6 years will gather strength as Maori and Pacific Islander communities accept the courts as an important part of the delivery of justice for them, as something which they can own and as a means of helping young people in their communities.

The AIJA maintains a strong commitment to Indigenous Courts both in Australia and New Zealand. The next AIJA Indigenous Justice Conference is to take place in Alice Springs from 25-26 August 2016. The programme for the conference is available on the AIJA website, www.aija.org.au

Te Poho-o-Rāwiri, Rangatahi Court, Gisborne

Congratulations are due to the Rangatahi and Pasifika Courts.

REPORT ON RECENT AIJA CONFERENCES

A Symposium: Challenges of Social Media for Courts & Tribunals

26-27 May 2016, Melbourne

This Symposium, which was jointly convened by the AIJA and the Judicial Conference of Australia (JCA), was designed to identify and consider issues of relevance to courts and tribunals resulting from the use of social media.

The Symposium was informed by a paper prepared by Dr Marilyn Bromberg-Krawitz of the University of Notre Dame. That paper, together with papers and presentations from the symposium, will be available on the AIJA website.

Sessions at the conference included:

- An address by the Commonwealth Attorney General, Senator the Hon George Brandis QC.
- What is social media and how it works
- When judicial officers and tribunal members (and their families) personally use social media – the potential benefits and risks
- When courts and tribunals use social media – the potential benefits and risks
- When social media is used to analyse and comment upon the work of the courts and tribunals
- Social Media and Courts & Tribunals – A view from Government
- When social media is used maliciously or contemptuously to denigrate, threaten or cyber-stalk judicial officers or tribunal members: the issues involved, can judicial officers and tribunal members be protected, and the potential for government response
- What can be done: the way forward

The symposium was a valuable contribution to social media as it impacts on courts and tribunals. One of the matters that is likely to be pursued as the result of the symposium, is an update on the Guide to Judicial Conduct which is now in its second edition but might usefully include material relevant to social media.

Improving Court Practice in Family Violence Cases *15-17 June 2016, Melbourne*

This conference was designed to respond to the concerns of judges, court administrators, legal practitioners, academics, and those who work in the social sciences and in other related disciplines, in relation to actual practice in courts involved with family violence cases.

The keynote speakers at the conference were the Hon Judge Eugene Hyman (retired), former Judge, Superior Court of California, County of Santa Clara and Chief Judge Jan-Marie Doogue, Chief District Court Judge, New Zealand.

The conference was opened by Ms Sarah Henderson MP, Federal Member for Corangamite, officially representing the Attorney-General, Senator the Hon George Brandis QC. The Commonwealth Attorney-General's Department has provided funding for the National Domestic and Family Violence Bench Book. One of the features of the conference was a presentation of the work which has been done to date in relation to that Bench Book. A permanent link to the Bench Book will be established in early August and this will be provided to AIJA members.

The conference also included presentations on:

* Cross-examination of Vulnerable Witnesses in Family Violence Cases
* Dealing with the Volume of Family Violence Cases in the Courts
* Report on a Research Project on Family Report Writing
* Elder Abuse
* The Implications of the Report of the Victorian Royal Commission on the Improvement of Court Practice in Family Violence Cases
* Court Management and Support of Family Violence Cases involving Indigenous Parents and Children
* Support for Migrants and Refugees in Family Violence Cases before the Courts
* Court Approaches to Risk Assessment

Papers and presentations from the conference will be available on the AIJA website.

AIJA PUBLICATION TO BE RELEASED

Efficacy, accessibility and adequacy of prison rehabilitation programs for Indigenous offenders across Australia

by Dr Clarke Jones and Dr Jill Guthrie

This report, funded by the Commonwealth Attorney-General's Department, concentrates on Indigenous rehabilitation programs and issues relevant to them. The report is currently being published and will be sent to members in hard copy form. Thanks are due to the considerable efforts of Dr Jones, Australian National University (ANU) and Dr Guthrie, a descendant of the Wiradjuri people of Western New South Wales, and currently a Visitor at the National Centre for Epidemiology and Population Health (NCEPH) at the Australian National University and at the Kirby Institute for Infection and Immunity in Society at the University of New South Wales.

Access to Justice, Design Thinking and Artificial Intelligence Forum

Wednesday, 6 July 2016

RMIT University Storey Hall, 336-348 Swanston Street, Melbourne

RMIT's Centre for Innovative Justice, Victoria Legal Aid and the National Directors of Legal Aid Commissions invite you to an important forum on the potential of design thinking and artificial intelligence to significantly improve access to justice.

Is access to justice for all an impossible dream or can lawyers, design thinkers and experts in artificial intelligence bring it within reach? Will courts be a place or a service that can deliver dispute resolution on-line 24/7? What role can on-line systems play in criminal matters? Can this technology help you and your clients?

Glimpse the future of on-line dispute resolution (ODR) with a demonstration of Rechtwijzer 2.0.

Presentations by:

Nathan Welch, Experience Design Director at Isobar, a leading international design thinking agency
Peter Van den Biggelaar, the Executive Director of the Dutch Legal Aid Board
Maurits Barendrecht, the Research Director at HiiL Innovating Justice
Professor Richard Blythe, Dean, School of Architecture and Design, RMIT University

http://www.rmit.edu.au/news/all-news/2016/june/meeting-legal-needs-by-design-and-artificial/
Enquiries: mina.hilson@rmit.edu.au 61 3 9925 1139

Self Represented Litigants

Members might be interested in Dr Bridgette Toy-Cronin's thesis on Self Represented Litigants which can be accessed on: https://ourarchive.otago.ac.nz/handle/10523/6003.

COURTS AND TRIBUNALS ACADEMY
SIR ZELMAN COWEN CENTRE
LAW AND COURTS IN AN ONLINE WORLD
INTERNATIONAL CONFERENCE MELBOURNE AUSTRALIA 8-9 NOVEMBER 2016

https://lawandcourtsinanonlineworld.wordpress.com/

The Canadian Forum on Civil Justice is thrilled to share with you the following recently released publications from our "Cost of Justice" research project:

- Everyday Legal Problems and the Cost of Justice in Canada: Overview Report: http://www.cfcj-fcjc.org/sites/default/files//Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf
- Design and Conduct of the Cost of Justice Survey: http://www.cfcj-fcjc.org/sites/default/files//Design%20and%20Conduct%20of%20the%20Cost%20of%20Justice%20Survey.pdf
- Everyday Legal Problems and the Cost of Justice in Canada Fact Sheet (Updated May 2016): http://www.cfcj-fcjc.org/sites/default/files//Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20Fact%20Sheet%20-%20Updated%20May%202016.pdf

These publications are based on findings from our Everyday Legal Problems and the Cost of Justice in Canada survey, the first national survey in nearly 10 years to measure the frequency and ways in which the Canadian public experience everyday legal problems and also, the first survey of its kind to ask the public what these problems cost, not just in dollars, but in time and opportunity costs, costs to their physical and mental health and costs to their livelihood.

Also as part of our "Cost of Justice" research we recently published:

- The Data Deficit: The Case For Improving Court Records For Future Access To Justice Research Fact Sheet (Based on our *The Cost of Civil Justice Attrition in British Columbia's Courts* "Cost of Justice" project): http://www.cfcj-fcjc.org/sites/default/files//The%20Data%20Deficit%20-%20The%20Case%20for%20Improving%20Court%20Records%20for%20Future%20Access%20to%20Justice%20Research%20Fact%20Sheet.pdf

Summaries of each of these publications (as well as several other related outputs) are available in our special edition "Cost of Justice in Canada" newsletter: http://us5.campaign-archive2.com/?u=9aa4be4921ffc53334f350741&id=930d783343&e=698ee4d6e4

Journal of Judicial Administration (JJA) Vol. 25 No. 4– June 2016

Tin Bunjevac. The corporate transformation of the courts: Towards a judicial board of executive directors 25 (4) (June 2016) Journal of Judicial Administration 197-211

This article seeks to advance the policy debate about court governance by reference to recent developments in Australia and other countries. It is argued that a corporate-style management board should be responsible for the judicial and administrative operations of the courts, with administrative judges and the CEO acting on the board as executive directors. It is contended that such an arrangement would be capable of achieving greater structural separation between "ownership" and "management" in the courts, which is regarded as an essential postulate of modern corporate law, because it promotes more expert and efficient management of large organisations. This article also seeks to resolve the inherent conceptual difficulties involved in applying the corporate law theory to the courts, by arguing that the so-called "stewardship" theory of corporate governance is capable of reconciling the key principles of modern corporate board design with the unique institutional character of the judicial organisation.

Dr Rachael Field, Dr Samantha Jeffries, Zoe Rathus AM and Angela Lynch. Family reports and family violence in Australian family law proceedings: What do we know? 25 (4) (June 2016) Journal of Judicial Administration 212-236

Family reports are critical documents in family parenting cases. They are often the only social science information available to the judge, the lawyers and the parties. They are influential in judicial decision-making and out-of-court negotiations. Despite their importance there has been little direct research about the quality and impact of family reports in Australia. It is also known that family violence is a common occurrence in parenting cases that progress to litigation, and therefore the kinds of cases in which family reports are ordered, but again this is an under-researched issue. This article presents foundational information about the existing research to identify what is known about family reports and family violence. It examines the legislative framework for family report writing and analyses the official guidelines and documents and informal information that provide context to this work. It considers what family report writers need to know and understand about family violence to write reports that deal appropriately with family violence and make safe recommendations. Australian and international research on family violence, its impact on parenting, its role in family law proceedings and its influence in family report writing is reviewed. The article concludes that Australian research in this area is required to contribute to improved practices in family reports.

Margaret Castles. Barriers to unbundled legal services in Australia: Canvassing reforms to better manage self-represented litigants in courts and in practice. 25 (4) (June 2016) Journal of Judicial Administration 237-256

Self-represented parties are a common phenomenon in modern litigation. They bring with them multiple challenges that impact on the quality of justice that they, as well as other parties, obtain. They have substantial impact on court management, and potentially on judicial impartiality. The provision of unbundled legal services, where the lawyer provides limited legal support for parts of the case, is one proposed solution to these impacts. The US, UK, and Canada have all introduced detailed procedures that enable lawyers to provide flexible legal services for self-represented litigants (SRLs). Recognising the considerable risks arising out of limited services, these procedures focus on client care, quality of service, and risk management. This article examines the challenge of SRLs, and the policy initiatives that have been addressed in other international jurisdictions. It then considers the developing case law on professional liability in Australia. It concludes that neither case law nor professional standards regimes stand in the way of formalising the provision of unbundled services in Australia, leading to long overdue reform.

Naomi Burstyner, Tania Sourdin, Chinthaka Liyange and Bahadorreza Ofoghi. Why do some Civil Cases end up in a Full Hearing? Formulating Litigation and Process Referral Indicia through Text Analsys. 25 (4) (June 2016) Journal of Judicial Administration 257-295

Textual analysis and eDiscovery processes are increasingly being used in the legal domain to consider large databases of information and to extract material that can be used to support hypotheses in individual disputes. In this article, an exploratory study reporting on how these types of processes can be used with big data justice sets (publicly reported cases in New South Wales and Victoria) suggests that the processes may have utility in the context of discovering more about why some disputes are more likely to be determined by a judge. Additional data sets and more conventional research approaches could assist to formulate referral indicia and although raw findings suggest some correlation between some factors that are present in litigated cases and suggests that textual analysis has considerable promise as one supportive research methodology.

Claire Stimpson.- Keeping the Peace? Justices of the Peace as Judicial Decision-Makers in Regional Western Australia. 25 (4) (June 2016) Journal of Judicial Administration 296-300

Justices of the Peace with limited training and minimal supervision continue to act as judicial officers in Western Australia. While this runs contrary to assumptions of professionalism and judicial independence (as well as recommendations to abolish the practice), many of these JPs have a broad discretion to deal with questions of bail and sentencing. Their use is particularly concerning in light of the extraordinarily high rates of Aboriginal incarceration in Western Australia. Local magistrates, who are severely under-resourced, understandably rely on JPs. The State government enables this regime to persist through the under-funding of the local courts, particularly in regional and remote Western Australia. Appropriate resourcing of the Magistrates Courts is required to ensure it has judicial officers who are acting as judicial decision-makers

The *Journal of Judicial Administration* publishes quarterly, and is a leading forum for the discussion of contemporary issues impacting on judicial administration. For more information call 1300 304 195 or email: lta.service@thomsonreuters.com.

Journal of Judicial Administration (JJA) Vol. 25- No. 3- April 2016

Dr Ian Freckelton QC. The award of wasted costs arising from defective expert evidence. 25 (3) (April 2016) Journal of Judicial Administration 113-133

A variety of forms of accountability exist for the written reports and the oral evidence of forensic experts. An emerging form of such accountability is the potential for costs orders to be made by courts when serious problems have been encountered with the reliability of expert evidence. A series of decisions in the United Kingdom, Australia and Canada has engaged with the question of when costs could or should be awarded against experts, solicitors or counsel in respect of expert evidence. This article focuses on leading decisions in England, Australia and British Ontario, in particular the landmark analysis by Dixon J in Hudspeth v Scholastic Cleaning and Consultancy Services Pty Ltd (Ruling No 8) [2014] VSC 567. It draws from the cases the principal considerations applied in awarding or declining to order costs in respect of expert evidence and argues that the award of costs in exceptional cases has the potential to play a constructive role in enhancing the accountability of experts and commissioning lawyers alike in respect of expert opinion evidence. However, it urges the need for caution and stresses the importance of procedural fairness in wasted costs hearings.

Isabel Roper and Vivien Holmes. Therapeutic jurisprudence in the coronial jurisdiction.25 (3) (April 2016) Journal of Judicial Administration 134-147

This article explores the extent to which Australian coroners view therapeutic jurisprudence as relevant to their judicial role. Interviews with nine coroners across four jurisdictions reveal considerable discrepancies in the ways coroners view therapeutic jurisprudence and enact it through specific practices, such as meeting families or allowing photos of the deceased in court. The authors discuss the intersection of judging and emotion and make recommendations to improve the therapeutic aspect of Coroner's Courts, including ongoing professional training and the strengthening of powers in coronial statutes. This article takes a qualitative approach to an issue of increasing importance and interest to both Australian coronial and judicial bodies.

E Richardson, Magistrate P Spencer and Prof D Wexler. The International Framework for Court Excellence and therapeutic jurisprudence: Creating excellent courts and enhancing wellbeing. 25 (3) (April 2016) Journal of Judicial Administration 148-166

There is a growing emphasis on the role of justice systems to improve the wellbeing of individuals and the communities that justice systems serve. This has been the argument of therapeutic jurisprudence scholars for decades and has recently been recognised by the Productivity Commission in Australia in 2014 in its report on Access to Justice Arrangements. This article discusses two important, but previously unrelated, tools that enable courts and tribunals to achieve this objective by improving the quality of justice and enhancing the wellbeing of individuals and communities in which those courts and tribunals operate: the International Framework for Court Excellence (IFCE or the Framework) and therapeutic jurisprudence (TJ). The IFCE, a quality management system for courts and tribunals, and TJ, an interdisciplinary discourse on the therapeutic and anti-therapeutic impact of the law and legal Journal of Judicial Administration (JJA) Contents & Summaries 57 processes, are both aimed at improving the quality of justice. This article provides an outline of the Framework and TJ: the principles and methodologies that each entails and the various types of innovation and reform that have arisen through their application. The ways in which the two should work together is considered and it is suggested that there are benefits to be gained for courts and tribunals by incorporating principles of TJ into the Framework and by using the Framework to assess TJ reforms.

Grant T Riethmuller. Improving the use of court decisions in the Federal Circuit Court. 25 (3) (April 2016) Journal of Judicial Administration 167-174

The free access to law movement has had a significant impact upon access to law in Australia. The remarkable success of AustLII has resulted in Australia having the benefit of an enormous single data repository of case law and statutes available for free access by citizens. The effect of this phenomenon is far reaching for the courts and law reporting. In this article it is noted that this change supports the fundamental legal principle that citizens should have access to the law, as ignorance of it is no excuse. The disruptive nature of the new technology on existing law reporting is identified. It is argued that the courts should play a role in making the law more accessible, and that to do so they must look beyond the existing models of law reporting, identifying changes made by the Federal Circuit Court of Australia as a key example.

Andrew Henderson. The High Court and the cocktail party from hell: Can social media improve community engagement with the courts? 25 (3) (April 2016)

Journal of Judicial Administration 175-192 Courts in Australia and overseas have been actively encouraged to use social media to connect with the community. Social media management is time consuming, especially if the courts' message is to be heard above the "hyper din" of other simultaneous exchanges. The user-generated content also means that it can be unpredictable and active engagement by courts with litigants raises significant issues. Despite these risks, there has been little empirical research done about the extent to which courts' engagement with social media will deliver any benefit. As a case study, this article examines the volume and content of Twitter commentary about two significant High Court matters in September and October 2014 to assess the depth and breadth of community engagement. It compares Twitter discussion of the High Court proceedings with contemporaneous Twitter events. It reveals that as a platform for community engagement with the courts, Twitter is neither well used nor persuasive. Further research with consumers of social media is required before opening more Australian courts to this medium.

The *Journal of Judicial Administration* publishes quarterly, and is a leading forum for the discussion of contemporary issues impacting on judicial administration. For more information call 1300 304 195 or email: lta.service@thomsonreuters.com.

Follow us on twitter at AIJAJudicial