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# AIJA News

# 2017 AIJA AWARD FOR EXCELLENCE

The AIJA is pleased to advise that the nomination for The District Court of New Zealand Website has been chosen as the recipient of the 2017 AIJA Award for Excellence in Judicial Administration.

The selection panel was particularly impressed at the range and breadth of judgments met by the website.

The Award will be presented at a time that is convenient to the recipients and the AIJA.

## NEW AIJA COUNCIL MEMBERS

Incoming AIJA President, the Hon Justice Robert Gotterson AO, Court of Appeal, Brisbane welcomes:

**Ms Julie-Anne Burgess,** State Courts Administrator/Chief Executive, Courts Administration Authority, appointed to Council to fill the position vacated by Ms Jane Reynolds.

**Professor Sarah Derrington,** Academic Dean and Head of School, TC Beirne School of Law, University of Queensland, appointed to Council to fill the position vacated by Professor Kathy Mack.

**The Hon Justice Carolyn (Lindy) Jenkins,** Supreme Court of Western Australia, appointed to Council to fill the position vacated by the Hon Justice Robert Mazza.

**The Hon Justice Robertson Wright,** President, New South Wales Civil and Administrative Tribunal, appointed to Council to fill the position vacated by the Hon Justice Duncan Kerr *Chev LH.*

## NEW AIJA MEMBERS

The AIJA Council is pleased to welcome the following AIJA Members:

Ms Deborah Bowring, *Integrated Law Library Service, Tasmania*
Dr Marilyn Bromberg, *University of Western Australia*
Professor Sarah Derrington, *TC Beirne School of Law*
The Hon Chief Justice Anne Ferguson, *Supreme Court of Victoria*
The Hon Justice Judy Hughes, *South Australian Civil and Administrative Tribunal (SACAT)*
Ms Taryn Jones, *Judicial Commission of Victoria*
Senior Sergeant Kal Greenaway, *Western Australian Police Force*
Magistrate Maryanne May, *Queensland*
Her Honour Judge Patrizia Mercuri, *Federal Circuit Court of Australia*
His Honour Judge Bernard Porter, *District Court of Queensland*
The Hon Justice Walter Sofronoff, *President, Court of Appeal, Supreme Court of Queensland*
Senior Member Perry Wood, *Administrative Appeals Tribunal, Victoria*

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# REPORT ON RECENT AIJA CONFERENCES

## AIJA COURTS' MEDIA CONFERENCE

31 August—1 September 2017

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

Each year's choice of session topics is very much influenced by suggestions from the conference's core group of regular delegates.

After the 2016 conference in Brisbane, the overwhelming verdict from participants was that one of their favourite sessions had been the appearance by Queensland Deputy Chief Magistrate Leanne O'Shea, who gave an insider's view of her work in the Children's Court. The group also enjoyed the fact that two Queensland Supreme Court judges had attended the conference as delegates so the 2017 conference needed to have at least one session featuring judges.

The conference opened, accordingly, with a highly entertaining address by retired High Court Judge the Hon Michael Kirby AC CMG, in which the former "Great Dissenter" spoke about his own and the court's relationship with the media and suggested that televising the hearings of the High Court would be a positive step in de-mystifying its workings.

Three more judges, the District Court of NSW's Judge Judith Gibson, the Supreme Court of Victoria's Justice Simon Whelan, and the County Court of Victoria's Judge Wendy Wilmoth, took part in "Working with judges: What do you need to know/what are the potential difficulties."

Aimed at helping media officers improve their working relationships with the different judges and magistrates in their jurisdiction, it included some fascinating insights into "black robe" syndrome and some invaluable words, courtesy of Justice Whelan, of exactly why many judges are so wary of the media.

Another highlight, in a session on "Communicating with the more challenging 'stakeholders' in the justice system: litigants in person and litigants with hearing issues, mental health problems or intellectual disabilities", was a presentation by Ms Rebel Kenna, Prothonotary, Supreme Court of New South Wales, on the lengths to which some litigants in person go in their battle to have their point of view heard.

A session on "raising the profile of your media and communications team within your court/tribunal/organisation" was entertaining as well as valuable, with Mr Angus Huntsdale, Director of Media Liaison, NSW Department of Justice, giving an account of the years it took to get a documentary on the NSW Magistrates' Court to air.

Other panel topics included "citizen journalism", with a panel of experienced legal issues reporters discussing the problems that flow from the fact that the court reporter is a dying breed, and "court interpreters" with UNSW Associate Professor Ludmila Stern explaining why the justice system needs more and better qualified interpreters.

The second day of the conference, which always features a morning "court media officers only session", was also a great success with several new members joining the group.

## AIJA COURT LIBRARIANS' CONFERENCE

6 October 2017

The 10th AIJA Court Librarians' Conference was held in Sydney at the Supreme Court of NSW.

The conference is held biennially and provides an opportunity for court librarians around Australia and New Zealand to come together to exchange ideas and discuss current issues.

The programme included presentations on supporting judicial officers in embracing the digital world, collaboration in collection building, rare books and library valuations, inter library loans and the High Court judgments database.

Guest speaker Ms Libby O'Reilly, Director of Academic Services at the University Library at the University of Sydney, gave an interesting insight into the programmes and developments at the university library and Ms Olivia Gossip, Senior Associate Parliamentary Counsel at the Office of the Parliamentary Counsel, entertained everyone with her talk on the intricacies of legislative drafting.

Frieda Evans presented a new Court Libraries Directory which she has updated with Georgia Livissianos. The AIJA has offered to make it available to court librarians on its website.

Vanessa Blackmore proposed a revision of the AIJA Court Library Standards and the AIJA will assist with this.

The conference ended with an update from each court on recent developments.

## AIJA PROBATE WORKSHOP

30 October 2017

The Probate Workshop was the first event organised by the AIJA in relation to work which forms a considerable part of the business of the courts. The Workshop provided an opportunity to discuss a number of issues including moving to electronic filing, storage for 'Living Wills', dealing with applicants in person, how each jurisdiction has addressed the forms arising out of the Uniform Succession legislation, whether there is a need for a national will or caveat register and general comparison of practices in each jurisdiction.

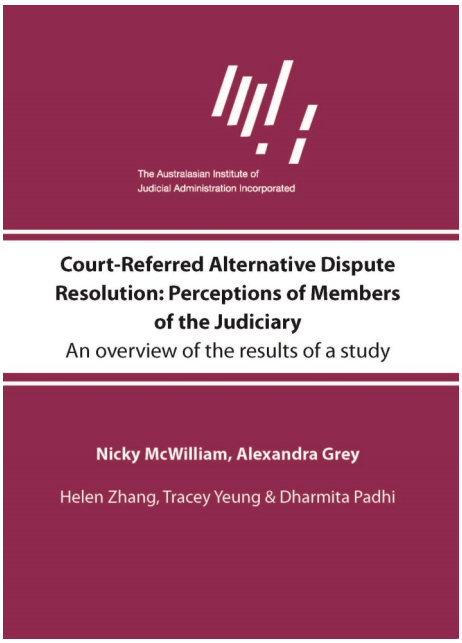
Participants had the opportunity to hear about the ACT Registrar's project on accepting scanned copies of wills and the New South Wales Supreme Court's new eProbate system. In that regard, the presentation by Ms Rebel Kenna, Director and Prothonotary of the Supreme Court of New South Wales, of the prototype which has been developed in NSW Supreme Court was of great interest. It is clearly something which might be replicated with necessary changes in other courts.

The Workshop also involved discussion on the issue of reseals of Grants of Probate or letters of Administration where assets in an estate are located outside of the jurisdiction of the court making the grant.

There will be a further probate educational event in 2018.

Thanks are due to the Courts Administration Authority of South Australia and Mr Phil Hocking, Executive Director and Principal Registrar, Higher Courts for assistance in staging the workshop.

# CURRENT PUBLICATIONS ARE NOW AVAILABLE



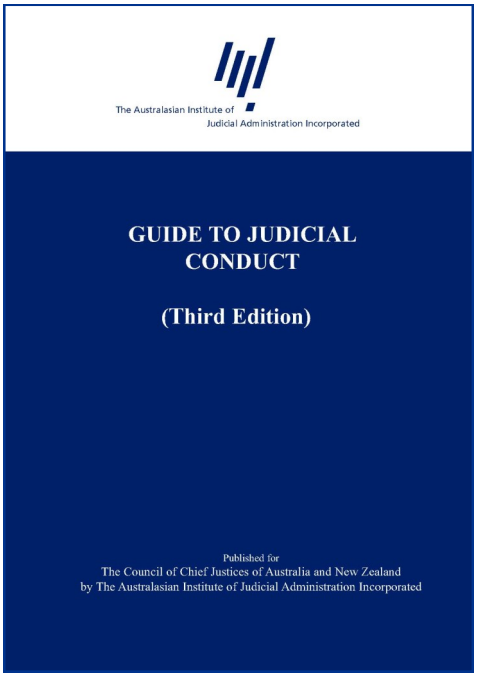

The AIJA is pleased that there has been an opportunity to conduct research in respect of the views of the judiciary regarding court referred alternative dispute resolution.

As the authors of this important monograph state, their research:

presents an overview of the results of a study examining judicial attitudes to court-referred alternative dispute resolution (CADR), drawing on data collated from 104 judges (including magistrates) from the three tiers of NSW Courts, the Federal Court and the Federal Circuit Court. The study consisted of a questionnaire and semi-structured interviews that examined judicial engagement, perceived impact and importance, understanding and the outcomes of CADR. The overall participation rate was 30 per cent, ranging from 15 per cent of the Local Court bench, to 45 per cent of the NSW Supreme Court. The courts studied each have different functions and preside over disparate work requiring distinct CADR processes, but analysis reveals some important consistencies across these courts in relation to CADR, particularly a general engagement with CADR across the judiciary. The overall results suggest that judges across the courts do consider CADR. The positive experience overall, even where some judges saw CADR as slightly increasing rather than decreasing their workload, confirms the potential for CADR to improve the efficiency, accessibility and outcomes for the courts.

The third edition of the Guide to Judicial Conduct is not only a revision of earlier editions of the Guide but includes new chapters in relation to judges, their family and relatives and social media.

The AIJA gratefully acknowledges the work of the Hon John Doyle AC, former Chief Justice of South Australia, and a Consultative Committee drawn from all jurisdictions.




## AIJA Life Member Awarded to . . .

The AIJA Council has elected Life Membership of the AIJA to **Professor Greg Reinhardt** in recognition of his especially meritorious service to the Institute and to the administration of justice.

### International Framework for Court Excellence

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

Hellenic Australian Lawyers Association

**HAL INTERNATIONAL LEGAL CONFERENCE, 9-12 JULY 2018, RHODES, GREECE**

**Registrations now open** Website: https://hal.asn.au/Rhodes-Conference/

# MAKE A GIFT – SUPPORTING THE AIJA

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

Donations can be made on the AIJA website: https://aija.org.au/support-aija-research/

*Thank you for your support*

## Journal of Judicial Administration (JJA) Vol. 26- No. 4 – October 2017

**Warren Brookbanks**. - Non-Adversarial Justice: An Evolving Paradigm 26(4) (2017) Journal of Judicial Administration 222-231

The article surveys recent developments in non-adversarial justice (NAJ). It commences with a discussion of the relationship between adversarial and non-adversarial models of justice, as exemplified in the anecdote involving Justice John Holt, suggesting their complementarity. It then examines the broad parameters of the non-adversarial approach, as reflected in the concepts of therapeutic jurisprudence, restorative justice, collaborative law and procedural justice. A range of contemporary practices are considered, including sex offence trials, the role of Mental Health Review Tribunals and the coronial jurisdiction. A brief account of the vexed question of mental wellbeing in the legal profession prefaces a claim that the recent developments in NAJ reflect the emergence of a new subjectivity in approaches to legal problem-solving and a greater movement towards participatory inquiry and the exploration of social relationships in problem-solving generally.

**Susan Douglas**. - Constructions of Impartiality in Mediation 26(4) (2017) Journal of Judicial Administration 232-247

Impartiality is a core principle of decision-making within Australia's common law system of justice. This article reports on an empirical study of the meaning of impartiality in mediation. The study is set against changes to the National Mediator Accreditation System in 2015, which saw removal of neutrality as an ethical requirement of practice. Prior to the 2015 amendments, mediators were required to demonstrate an understanding of "neutrality and impartiality". The requirement to demonstrate understanding of impartiality was retained in the 2015 revisions. The past requirement that mediators understand both neutrality and impartiality suggests that these two concepts are separate and distinct. Yet while some scholars distinguish between them, others treat them as synonymous. The study reported here sought to further understanding of impartiality by gathering data from practising mediators about what meaning they ascribe to impartiality and how they translate it into their practice. The results challenge existing constructions of impartiality that are framed from a purely legal perspective and suggest multidisciplinary influences consistent with non-adversarial justice approaches.

**Nigel Stobbs**. - Therapeutic Jurisprudence and Due Process – Consistent in Principle and in Practice 26(4) (2017) Journal of Judicial Administration 248-264

In light of recent criticisms in the US and Australia, this article considers the risks involved in the ongoing perception of tension or conflict between therapeutic jurisprudence and due process, especially in the context of the problem-solving courts. It analyses the nature of these criticisms and unpacks some invalid assumptions implicit in them. It argues that a criminal proceeding in which there are breaches of constitutional, statutory or common law principles of due process is inconsistent with either a therapeutic design of law or a therapeutic application of law, or with both. As with their mainstream counterparts, individual therapeutic-focused courts and programs can, and sometimes do, breach due process by failing to adhere to rules and standards by which they are regulated and on which they are modelled. But these breaches are not a manifestation of any fundamental incompatibility between therapeutic jurisprudence and the role of a team-oriented judge or lawyer on the one hand, and due process principles and the constitutional or ethical obligations of that same judge or lawyer on the other. The conceptual basis of the therapeutic jurisprudence method, articulated in a form describe here as the "TJ imperative", together with the procedural protections it demands, preclude any such incompatibility.

**Felicity Gerry and Penny Cooper**. - Effective Participation of Vulnerable Accused Persons: Case Management, Court Adaptation and Rethinking Criminal Responsibility 26(4) (2017) Journal of Judicial Administration 265-274

This article explores recent international developments in judicial case management for vulnerable accused persons in adversarial trials. The authors discuss the definition of "vulnerable" and include examples of adaptations to the traditional adversarial process and appellate decisions. The authors emphasise the importance of specialist legal representation. They conclude that not only is it necessary for there to be bespoke, procedural adjustments in appropriate cases but also for there to be a fundamental review of laws which may be inappropriately criminalising certain vulnerable accused persons.

**Rachael Field and Hon Eugene M Hyman**. - Non-Adversarial Approaches to Domestic Violence: Putting Therapeutic Jurisprudence Theory into Practice 26(4) (2017) Journal of Judicial Administration 275-292

This article analyses therapeutic jurisprudence (TJ) informed approaches to domestic violence (DV). Part I of the article considers ways in which the adoption of such approaches in DV contexts can be positive for the parties involved, while Part II explores some of the caveats. This analysis leads to four key recommendations for the safe management of TJ informed approaches to DV. First, comprehensive screening protocols are necessary to ensure that only appropriate offenders who have the capacity to participate effectively are screened in to TJ informed programs. Secondly, given the complex nature of DV and the need for multi-disciplinary and multi-agency responses, information across these disciplines and agencies must be shared. Thirdly, extensive training is needed for first responders such as police and community groups, as well as for judges and program facilitators. Finally, it is important to adopt practices that allow processes and protocols to be perceived as procedurally fair to all parties.

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