

PLEASE NOTE CHANGE OF DATE

23rd AIJA Annual Conference

7-9 October 2005

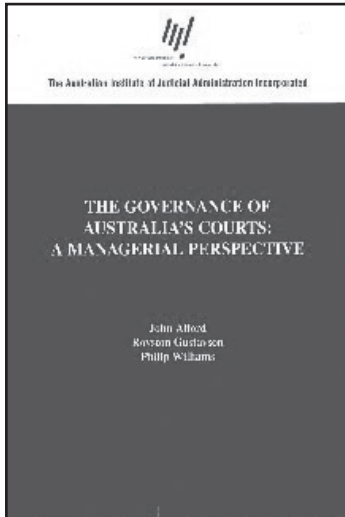
(Wellington, New Zealand)

Further details will be available to members soon and regular updates posted on our website at www.aija.org.au

Enquiries to:

aija@law.monash.edu.au or phone us on 61 3 9600 1311

Who should run the courts? AIJA report widens the debate



The best way to safeguard judicial independence and maximise the efficiency of the courts is to introduce management reforms resulting in greater autonomy, a new report commissioned by the AIJA into the administrative arrangements of Australia's courts has concluded.

The report, *Governance of Australia's Courts – A Managerial Perspective*, was written for the AIJA by Professor Philip Williams of Frontier Economics, Professor John Alford of the Melbourne Business School and Dr Royston Gustavson of the Australian National University. It is the first time the most effective way of running the courts has been considered from a management perspective.

Launching the report in Melbourne on 25 November 2004, the Chief Justice of Victoria, Justice Marilyn Warren, described it as a very valuable contribution to the current debate on getting the best out of the court system, while safeguarding its independence.

"I entirely agree with the report that the governance of the courts is a crucial contributor to the quality of justice in our society, and by extension to the health of democracy," Chief Justice Warren said. "In the past the debate has tended to be seen as a conflict between efficiency and justice. This report shows that proper court management arrangements, no longer based on 19th century models, can achieve both justice and efficiency."

It examines the criteria and principles of court governance; the appointing, paying and removal of judges; court finances; court staff and infrastructure; and the role of the Chief Judicial Officer in court governance.

The President of the Institute, Justice John Byrne, said the AIJA was confident that the report would make an important contribution to debate and discussion about court governance.

The report examines various Australian court systems and concludes that the traditional departmental model, the most common approach, is no longer the most effective for modern courts. Under this model, the courts' budgets are controlled by government. "Judicial independence has the potential to be compromised by the lack of control that courts under the traditional model have over the money, staff and infrastructure they need to carry out their work," the report says.

The report concludes that the most suitable arrangements result from the Executive employing judges and providing a global budget to the courts, with the judiciary having clear control over the remaining functions of court administration. "This has the effect of both ensuring that judicial independence, impartiality and the rule of law are upheld, while also contributing to efficiency by better aligning authority and responsibility," the report says.

"Even if the current arrangements seem to 'work', in the sense that they have not given rise to major catastrophes or dysfunctions, there is no reason why they could not be made to work even better. Good people can make bad structures work. But good people can work even better within good structures.

"It would be valuable to the community, for instance, if more or better quality justice could be dispensed at the same cost to taxpayers, or if the currently high quality of justice could be maintained at less cost. If governance arrangements can contribute to these aims, then it is worth considering how they might be improved."

Clearly there will be ongoing debate about court governance; and there will be disagreement about the best way forward. The AIJA sees the report as a start in a process that should include a seminar to examine the models and practices closely.

A copy of the executive summary of the report is available on the AIJA's website: www.aija.org.au The full text is available for purchase from the AIJA (financial members of the AIJA receive a free copy of each AIJA research report).

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COURT TECHNOLOGY UPDATE CONFERENCE

The AIJA joined forces with the Sir Zelman Cowen Centre for Continuing Legal Education to present a conference on 20-21 October 2004, which was designed to provide an update on the use of technology in courts and tribunals in Australia. The conference was attended by over 100 delegates from Australia, Brunei, New Zealand and Korea. Those attending included judges, magistrates, tribunal members, court and tribunal staff, IT specialists, academics and legal practitioners.

As well as hearing from a number of leading courts and tribunals about their plans for the development of technology services, the conference also provided an opportunity for more in-depth discussion of topics such as:

- The development of electronic filing
- Security of eCourt systems
- eCallovers and the use of technology in case management
- Technology and Court Room Design
- Costs Issues and Awareness of Technology in the Legal Profession
- Transcript Management and Productions
- Open Source v. Proprietary Applications
- eCourt case studies

Papers and presentations from the conference are available on the AIJA website at <http://www.aija.org.au/CTC/CourtTechnologyConferenceProgram.htm>

Jury Research Conference 19 November 2004

The AIJA was also involved with the University of Canberra's Courtroom of the Future Project in the organisation of the 3rd Annual Conference on jury research, hosted this year by the University of Melbourne.

The aim of these conferences is to bring together those with an interest in jury research and practice, to share information about jury research and practice initiatives, with a view to avoiding duplication of effort, and encouraging coordination and cooperative research initiatives where possible. The conferences are of interest to jury researchers and to those who work with and design space and facilities for juries - judges, lawyers, jury managers, architects, prosecutors and court administrators.

In addition to an overview of current projects, this year's conference also provided an overview of jury research itself – objectives, methodologies, constraints – by Professor Jane Goodman-Delahunty from the University of New South Wales.

The program also explored issues about

- Juror Selection
- Juror's Use of Criminal History;
- Instructions to Juries;
- Jury Trial Management;
- Jury systems and Representativeness
- Jurors' ability to Assess Evidence
- Methods of Assisting Juries

The conference featured a display of drawing by renowned French court artist, Noelle Herrenschildt, visting Melbourne to continue a project of drawings featuring courts and courtrooms in Paris, Chicago and Melbourne.

AIJA EDUCATION PROGRAMMES 2005

GENERAL PROGRAMS:

- ❖ 8th AIJA Tribunals' Conference, 9-10 June 2005, (Sydney)
- ❖ 23rd AIJA Annual Conference, 7-9 October, 2005 (Wellington, New Zealand)

SPECIALIST PROGRAMS:

- ❖ AIJA Case Management Seminar, 25 February 2005, (Sydney)
- ❖ AIJA Workshop on Domestic Violence, 8 April 2005, (Melbourne)

SA Magistrate heads AIJA Education Committee



Dr Andrew Cannon

Dr Andrew Cannon, Deputy Chief Magistrate of South Australia is the new convenor of the AIJA's Education Committee. He replaces Justice John Byrne, elected as AIJA President last October.

The Education Committee is one of the AIJA's 3 Standing Committees. Its role is to develop proposals for educational activities to be undertaken by the AIJA and to make recommendations to Council as to the AIJA's policy in relation to its educational activities.

Dr Cannon joined the AIJA Council and has been actively involved in a number of AIJA Committees, including the Education Committee and the Project and Research Committee. He is also a past convenor of the South Australian Local Chapter of the AIJA.

In his capacity as Convenor of the Education Committee, Dr Cannon is also a member of the AIJA Board of Management.

JUDICIAL ORIENTATION COURSE 2004



Participants & faculty members Judicial Orientation Program 2004

The AIJA was pleased to continue its participation in the National Judicial Orientation Program, run last October in Sydney for new judges from all Australian jurisdictions. The program, initially developed by the AIJA and the Judicial Commission, is now being run by the National Judicial College. AIJA Executive Director, Greg Reinhardt, is a member of the Steering Committee and a faculty member for the program.

The Judicial Orientation Program for 2005 will be run in Sydney from 24-28 October

- enquiries can be directed to the

National Judicial College:

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Federal Magistrates' Court Evaluates Services for Self-Represented Litigants

The unrepresented, or self-represented litigant, is a topic that is receiving increasing attention in courts. One of the most recent studies is an examination by the Federal Magistrates Court, a court which deals with a significant number of litigants who do not have legal representation.

The project was designed to

- Measure the court's performance standards for self-represented litigants
- Establish benchmarks regarding performance standards for self-represented litigants
- Establish an ongoing mechanism to monitor performance and measurement standards across the court against the benchmarks
- Identify issues encountered by self-represented litigants in the court
- Address deficiencies and improve services for self-represented litigants
- Identify areas working well in relation to self-represented litigants and adopt these practices and procedures on a national basis
- Promote the court's commitment to addressing the needs of all parties, whether represented or not.

The research resulted in a series of recommendations to the court focusing on the following key areas — public information, data recording, the court's website, self-help kits, forms, signage, training for judiciary and staff and ongoing monitoring and research.

The report *An Evaluation of Services For Self-Represented Litigants in the Federal Magistrates' Court*, Federal Magistrates' Court of Australia (October 2004) is available on the FMC website at <http://www.fmc.gov.au/pubs/docs/litigants.pdf>

SOUTH AUSTRALIA HOSTS SEMINAR ON BAIL OR REMAND IN CUSTODY: ISSUES AND DEVELOPMENTS

On Thursday 11 November 2004 the South Australian Local Chapter of the AIJA presented a seminar featuring a report by David Bamford, Flinders University Law School and Sue King, School of Social Work & Social Policy, University of South Australia on what factors affect remand rates and why they differ between jurisdictions. Their research has been commissioned by the Criminology Research Council and carried out in partnership with the Victorian Ministry of Justice and the South Australian Office of Crime Statistics and Research.

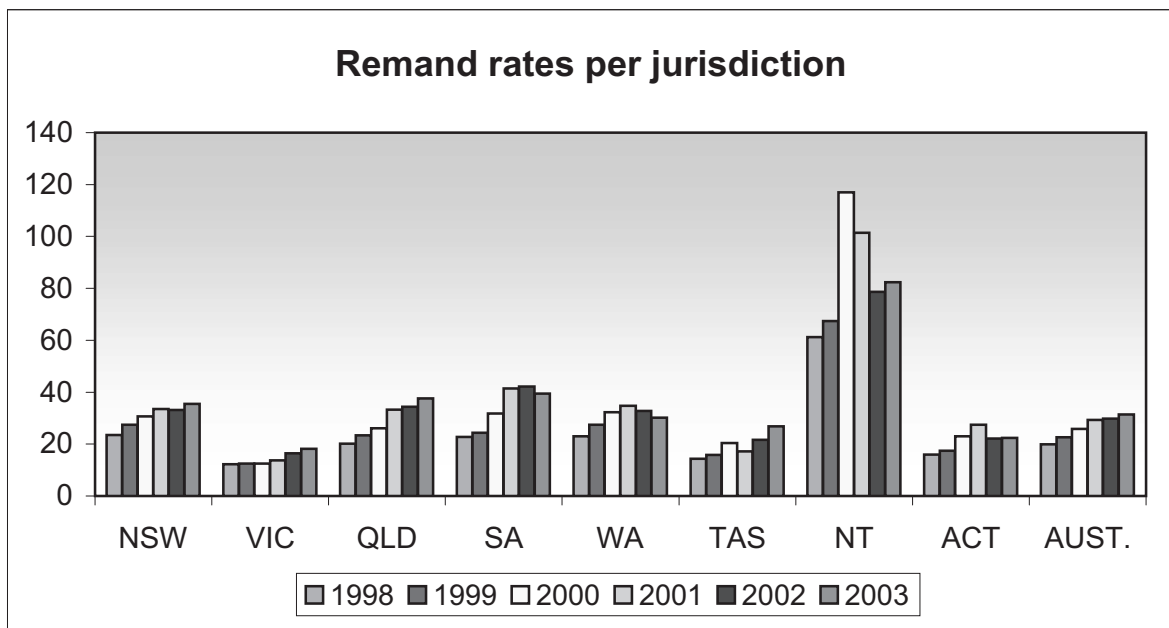
Their research indicates that in South Australia the rate of remand in custody has increased in the last decade and is now one of the highest in the country. In part this reflects inadequate alternatives to deal with mentally ill and drug dependant defendants. Specialist courts only manage these after a plea of guilty. Lower custody remand rates in Victoria reflect systemic and operational differences between the jurisdictions such as closer scrutiny of these decisions and the requirement that arresting officers be available at bail hearings in Victoria and "intelligence policing" in South Australia that targets known offenders and parallel high arrest rates. These factors seem to be more important than the legislation.

AIJACouncil Member & Deputy Chief Magistrate, Dr Andrew Cannon chaired a panel discussion by Michael O'Connell, State Victims of Crime Coordinator, Inspector John Bruhn, South Australia Police and Eric Van Kruyssen, Legal Services Commission. This generated a lively discussion amongst the large audience.

A copy of the report by David Bamford, Sue King & Rick Sarre on stage 1 of their research is available from the Australian Institute of Criminology website at <www.aic.gov.au/publications/rpp/23>. It is anticipated that the report on Stage 2 will be available later this year.

REMAND RATES PER 100,000 PEOPLE IN AUSTRALIA

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUST.
1998	23.5	12.2	20.2	22.7	23	14.3	61.2	15.9	19.9
1999	27.5	12.5	23.4	24.4	27.5	15.8	67.4	17.5	22.6
2000	30.7	12.5	26.1	31.8	32.3	20.4	117	23	25.9
2001	33.5	13.7	33.3	41.4	34.8	17.2	101.4	27.4	29.3
2002	33.2	16.5	34.4	42.2	32.8	21.7	78.6	22.1	29.8
2003	35.5	18.2	37.6	39.5	30.2	26.8	82.4	22.4	31.4



AIJA Case Management Seminar

25 February 2005, Sydney

At the suggestion of the Australian Court Administrators' Group (ACAG) the AIJA has agreed to re-convene this year a case management seminar along the lines of those it conducted on an annual basis up until the mid-1990s.

The seminars brought together a judge (usually the Chief Judge or judge responsible for delay reduction projects/caseload management projects) and court officer (CEO or Registrar) from each court and were designed to facilitate the exchange of ideas and discussion of problems about how Australian courts were managing their workload. The emphasis was on system management rather than individual case management procedures.

Heads of Jurisdiction have been asked to nominate two representatives of their courts to attend the seminar.

The seminar will not be open for general registration. However, it is proposed that the AIJA will publish a report on its proceedings.

CONTRIBUTORS WANTED: Appellate Preparation and Performance

Hugh Selby and Graeme Blank, of the Australian National University's Law Faculty, are looking for contributors to a practice focused book on this topic, which they will edit. The book, to be published by Federation Press in 2006, will help barristers, solicitors and judges in the preparation and running of appeals.

They are looking for contributors (appellate judges and senior counsel with a reputation for appellate work) to address a range of topics including:

1. Forms of appeal: eg. de novo, point of law, stated case, from an interlocutory decision, leave to appeal, special leave, stay of judgment, leave to appeal out of time, cross appeals/contentions, within a tribunal hierarchy, from a tribunal to a court, etc.
2. Grounds of appeal: hierarchy of grounds, how to state the ground, civil and criminal grounds; distinguishing fact and law issues; how to find the material in/missing from the judgment which is the basis for an asserted ground of appeal; res judicata/issue estoppel.
3. The Appeal Book - contents, settling of, disputes about, etc.
4. Submissions in support of an appeal/ application for a stay: structure, order, method of argument.
5. Submissions by respondent to an appeal/ application for a stay: asserting incompetency of the appeal; structure; order, method of argument.
6. Scope of submissions in reply.
7. Interveners
8. Order/s sought and granted on appeal - whether matter finally disposed of; remitting to lower body; whether same person/s to consider remitted matter, etc.
9. Costs issues that arise on an appeal, including security for costs.
10. Evidence sought to be led at an appeal.
11. Advocacy issues at the appeal hearing: what the court wants; responding to questions from the bench; use of authorities - hierarchy of, use of overseas decisions, etc.
12. Typical preparatory requirements: timetable for grounds, submissions, list of authorities, number of copies of documents; seeking to vacate a fixture; etc.
13. Writing an appellate decision.

Typical chapter length is about 6,000 words, with manuscript due late 2005. Contributions by joint authors are welcome.

Please contact Hugh Selby on email: SelbyH@law.anu.edu.au or telephone (02) 6125 5720.

AIJA WORKSHOP ON DOMESTIC VIOLENCE

The AIJA Education Committee has proposed that the Institute convene a conference on domestic violence with a view to determining best practice in the handling of domestic violence applications by the court. In view of the number of domestic violence applications made to the courts, the Education Committee believe that it is timely to look at the impact of such applications on the courts and the way in which they are handled.

A small Steering Committee has been established by the Institute consisting of Dr Andrew Cannon, Deputy Chief Magistrate, Adelaide Magistrates Court, Convenor of the AIJA Education Committee, Mr Ron Cahill, Chief Magistrate, Australian Capital Territory, the Honourable Justice Linda Dessau, Family Court of Australia and Mr Laurie Glanfield AM, Director-General, Attorney-General's Department, New South Wales, with a view to the organisation of the seminar.

The Steering Committee has decided that there should be a small workshop organised at which information in relation to current practice is discussed by representatives of those courts which are involved in handling domestic violence applications. That information will then be collated so as to provide the basis for a larger seminar involving all interested persons.

That workshop will take place in Melbourne on 8 April 2005.

Heads of Jurisdiction of all courts involved in the hearing of domestic violence applications have been asked to nominate two representatives of their courts to attend the workshop. Numbers at the workshop will be limited to between 40 - 50 persons, consisting of nominated court representatives and invited representatives from other relevant organisations.

The workshop will not be open for general registration. However, it is proposed that the results of the workshop will be used to inform a more general conference on the topic which will be held at a later date.

AIJA TRIBUNAL'S CONFERENCE

9-10 June 2005, Sydney

"The Rise and Rise of Tribunals"

Registration is now available - see the AIJA website at

www.aija.org.au/programmes.html

or

email us on aija@law.monash.edu.au

Phone: (61 3) 9600 1311

Judges required for Lawasia Moot!

A LAWASIA Moot will be held in conjunction with the *LAWASIA Downunder Conference* from 20th – 24th March 2005 at the Gold Coast Convention and Exhibition Centre. Although it is the XIX Biennial LAWASIA conference, this is the first time a moot has been included. The Moot will run along the lines of the Commonwealth Moot, which is held biennially in conjunction with the Commonwealth Law Conference.

Teams have been invited to take part from universities within the 24 member countries of LAWASIA. Confirmed participating teams come from Malaysia, Hong Kong, India and Australia. Each team will moot twice, once as applicant and once as respondent. The moot problem, with some preliminary information and the Moot rules, and guidance for moot judges are available on the internet at <http://www.law.qut.edu.au/about/moots/lawasia/index.jsp>

The LAWASIA Moot Coordinator Dr Ros Macdonald would like to hear from judges and counsel who are attending LAWASIA Downunder and who would like to judge one or more moots in the competition. She can be contacted at r.macdonald@qut.edu.au or by phone at +617 3864 1100, fax +617 3864 2121 and mobile 0419671398. All judges will be sent packs with relevant materials for judging the moots at least one week before the competition begins.

PLEASE NOTE CHANGE OF DATE

At the Cutting Edge: Therapeutic Jurisprudence in Magistrates Courts

A One Day Conference

***Will now be held on
Friday 6 May 2005
Perth, Western Australia***

An approach to law and court practice that is gaining increasing acceptance and application worldwide is therapeutic jurisprudence (TJ). In Western Australia, Magistrates Courts are leaders in the application of TJ. Western Australia has diverse Magistrates Courts that apply TJ on the basis that therapeutic court processes can enhance participant wellbeing and thereby promote justice system goals such as reduced substance abuse, violence and offending behaviour. The Perth Drug Court, Joondalup Family Violence Court, the Drug Court at the Perth Children's Court, the Geraldton Alternative Sentencing Regime and related Geraldton projects and the Yandeyarra Circle Court are examples of courts applying TJ. The TJ work of Magistrates Courts in this State is gaining international recognition.

The Perth Drug Court and the Geraldton Magistrates Court are organising this conference. It aims to cover the work of Magistrates Courts applying therapeutic jurisprudence. It is intended to be interdisciplinary in nature and will be of interest to academics and practitioners in the fields of justice, psychology, health and social work.

Enquires by email to: kate.wilson@justice.wa.gov.au

AIJA MEMBERSHIP

AIJA Membership is open to judges, magistrates, members of tribunals, practitioners, graduates in law or jurisprudence, researchers in law reform and related agencies, court administrators, law librarians, and others with an interest in judicial administration.

In each edition of AIJA News we publish a list of our most recent members. This appears below. Members received free copies of the AIJA research publications, AIJA News, our Annual Report and advance notice of AIJA courses, conferences and seminars and discount registration rates.

If you are interested in becoming a member of the Institute, or would like further information, please contact the AIJA Secretariat (Tel: (03) 9600 1311 Fax: (03) 9606 0366).

NEW MEMBERS

Justice Anna Backman, Industrial Relations Commission, New South Wales

Mr Christopher Boundy, Legal Practitioner, South Australia

Mr Peter Callaghan SC, Barrister, Queensland

Ms Yvonne Cehtel, Attorney-General's Office, Tasmania

Judge John Chaney, District Court of Western Australia

Judge Phillip Cooper, District Court of New Zealand

Ms Sherida Currie, Law Society of New South Wales

Mr Grant Donaldson SC, Barrister, Western Australia

Ms Elizabeth Eldridge, Department of Justice, Victoria

Justice Dato Abdull Hamid Embong, High Court of Malaysia

Deputy Chief Justice John Faulks, Family Court of Australia

Justice Elizabeth Hollingworth, Supreme Court of Victoria

Mr Stephen Keim, Barrister, Queensland

Mr Shaun Kelleher, University of Newcastle, New South Wales

Ms Catherine MacDonald, District Court of New South Wales

Ms Kim Magnussen, Member, Refugee Review Tribunal, Victoria

Mr Ross Martin SC, Barrister, Queensland

Justice Anthe Philippides, Supreme Court of Queensland

Judge Michael Rackemann, District Court of Queensland

Mr Mark Ritter SC, Barrister, Western Australia

Ms Rebecca Rowsell, Attorney-General's Department, New South Wales

Mr Neil Twist, Chief Executive Officer, County Court of Victoria

Mr John Walker, IMF (Australia) Ltd, New South Wales

Judge Brian Withers, Master, Supreme Court of South Australia

Justice Richard White, Supreme Court of South Australia

Mr Cameron Woods, Supreme & District Courts of Queensland

MEMBERSHIP INVOICES

AIJA membership is based on the financial year. Members have received invoices for 2004-2005 membership in July 2004. Prompt payment will ensure that you continue to receive copies of all our mail-outs.

If you have any queries about your membership fees, call

Heather Sevald at the AIJA Secretariat on (03) 9600 1311

Email: Heather.Sevald@law.monash.edu.au