

# JOURNAL OF JUDICIAL ADMINISTRATION

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## ARTICLES

### **Judges and community engagement: An institutional obligation** – *Sam Bookman*

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. .... 3

### **Questioning the evidence: A case for best-practice models of interviewing in the Refugee Review Tribunal** – *Jessica Findling and Georgina Heydon*

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. .... 19

### **Is the representative nature of juries justiciable?** – *Anthony Gray*

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. .... 31

**Four recent decisions on sentencing Aboriginal people – Christopher J Charles**

The recent case of *Bugmy*, decided by the High Court in 2013 has been followed South Australia in a number of cases decided by the Court of Criminal Appeal and 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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