

JOURNAL OF JUDICIAL ADMINISTRATION

Volume 16, Number 3

February 2007

ARTICLES

The judicial appointments process in Australia: Towards independence and accountability – *Justice Ronald Sackville*

The debate about reform of the judicial appointments process in Australia has been enlivened recently by controversy about appointments to both State and Federal Courts. The debate has been characterised by a combination of cynicism and naivety. Cynics doubt the practicability or utility of limiting the unfettered power of the executive branch of government to make appointments to judicial office. Some proponents of reform rather optimistically see a judicial appointments commission as a panacea for the perceived ebbing of public confidence in the judiciary. As usual, the true position is more nuanced. Even so, the time has come for Australian jurisdictions to introduce a judicial appointments process that is more accountable. The most compelling argument is one of principle: the process should be transparent; should involve a body independent of the executive; and should apply standard criteria to a wider pool of candidates for judicial office. Virtually all reform proposals, drawing from overseas experience, centre on a judicial appointments commission. The real difficulty lies in determining its functions, membership and procedures. 125

Courts' governance: A thorn in the crown of judicial independence? – *Peter A Sallmann*

The original version of this article was prepared for a Judicial Conference of Australia (JCA) discussion of courts' governance issues at its 2006 Colloquium held in Canberra. The purpose was to provide an overview of developments in Australia, with reference to some international aspects, but more particularly to support the case for further reforms in those jurisdictions which have not adopted judicially autonomous models. It is argued that judicially autonomous approaches better enhance judicial independence as well as providing more effective and efficient court administration. 139

Jury directions – *The Hon James Wood AO QC*

In recent years there has been an increasing interest in the work of juries in Australia, New Zealand and elsewhere. In particular, there has been interest in the extent to which jurors understand their task. This article examines directions given by judges to juries and, in particular, warnings given to jurors and questions the assumption upon which such warnings are given. The author asserts that there is a sufficient basis to warrant a serious review of current practice in relation to jury instructions. 151

The right not to have a lawyer – *Duncan Webb*

The rules and underlying culture of the civil justice system are tilted drastically against the interests of self-represented litigants and in favour of legal professionals, judges and bureaucrats. This systemic bias is wrong. Self-represented litigants do not know the language of the law, the etiquette of procedure or the rules of court. For a self-represented

litigant the system is an intimidating labyrinth of rules which the registrar, judge and the opposing lawyers are reluctant or unable to assist in clarifying. The law is complex, impossible to find, and sometimes entirely unclear on important points. While self-represented litigants do not fit into the system perfectly, this may be due to the poor design of the system rather than the lack of ability, understanding or good faith of the litigants. This article argues that the sky will not fall if the rules and culture of the courts are changed to accommodate self-represented litigants. 165

Do juries adequately represent the community? A case study of civil juries in Victoria – *Jacqueline Horan and David Tait*

It is sometimes argued that juries do not represent an adequate cross-section of the community. They are selected from those who can serve rather than those who should serve. Numerous exemptions, exclusions and challenges available under the jury system are thought to interfere so much with the random selection process that the chosen jury becomes unrepresentative of the community. A recent survey of Victorian civil jurors has enabled the authors to test this criticism empirically. The study showed that juries are a fair cross-section of the community in terms of gender and age. Jurors from non English-speaking backgrounds are marginally under-represented while university educated citizens are over-represented on civil juries. Possible explanations and interpretations for these findings are offered. 179

Guidelines for Contributors

Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Journal of Judicial Administration*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to jj@thomson.com.au, for forwarding to the Editor. Licence agreements can be downloaded via the internet at http://www.lawbookco.com.au/authorsupport/d_authorJournals.asp. If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 10,000 words for articles or 2,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- Contributors of articles receive 25 free offprints of their article and a copy of the part in which the article is published. Other contributors receive a copy of the part to which they have contributed.
- This journal complies with the Higher Education Research Data Collection (HERDC) Specifications for peer review. Each article is, prior to publication, reviewed in its entirety by a suitably qualified expert who is independent of the author.

Style

1. **Levels of headings should be clearly indicated (no more than four levels).**
2. **Cases:**
 - Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
 - Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
 - "At" references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
 - Where only a media neutral citation is available, "at" references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
 - For international cases best references only should be included.
3. **Legislation should be cited as follows:**
Trade Practices Act 1974 (Cth), s 51AC. The full citation should be repeated in footnotes.
4. **Books should be cited as follows:**
Macken JJ, O'Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.
 - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
 4. Austin RP, "Constructive Trusts" in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
 5. Austin, n 4, p 56.
5. **Journals should be cited as follows:**
Odgers S, "Police Interrogation: A Decade of Legal Development" (1990) 14 Crim LJ 220.
Wherever possible use official abbreviations not the full name for journal titles.
 - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
 6. Sheehy EA, Stubbs J and Tolmie J, "Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations" (1992) 16 Crim LJ 220.
 7. Sheehy et al, n 6 at 221.
6. **Internet references should be cited as follows:**
Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://www.subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit the Lawbook Co. website at <http://www.lawbookco.com.au> or contact the Production Editor.

SUBSCRIPTION INFORMATION

The *Journal of Judicial Administration* comprises four parts a year.

Customer service and sales inquiries:
Tel: 1300 304 195 Fax: 1300 304 196
Web: www.thomson.com.au/legal/p_index.asp
Email: LRA.Service@thomson.com

Editorial inquiries:
Tel: (02) 8587 7000

HEAD OFFICE
100 Harris Street PYRMONT NSW 2009
Tel: (02) 8587 7000 Fax: (02) 8587 7100



ISSN 1036-7918

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW