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ARTICLES

JUDICIAL INFLUENCE ON JUDICIAL APPOINTMENTS

Andrew Lynch

This article considers the opportunities for judicial influence in the selection of individuals for judicial appointment in Australia. It uses the framework developed by Professor Graeme Gee to explain judicial influence as affecting the content and context of judicial appointments, noting its variability and relational character. Gee’s description of inputs, outputs and throughputs in the English appointments system is translated to the Australian scene, which has maintained unfettered executive discretion to appoint judges but added formal opportunities of consultation and advisory panels in many jurisdictions. The article highlights a lack of clarity and coherence around the role of judicial actors in appointment models. A more secure understanding of the purpose of judicial involvement would inform and support the design of a process which appropriately benefits from judicial influence. 607

CENTRING COMPETENCE: JUDICIAL EDUCATION IN AUSTRALIA

Julie Falck and Jessica Kerr

This article considers the evolving place of judicial education in the institutional architecture of Australian judiciaries, and makes the case for further research and investment. Once resisted as a threat to judicial independence and impartiality, participation in post-appointment education is increasingly normalised and valued by judges themselves. Yet commentators remain hesitant to engage squarely with education as a regulatory imperative, essential to maintaining justified public confidence in the judiciary. While education can and should operate to support all core judicial values, it is designed primarily to ensure judicial competence, which warrants more explicit recognition as a core value in its own right. Centring competence in the value framework for judging serves to clarify and reinforce the existing case for a more structured and transparent judicial education system, drawing on a modern national curriculum, incorporating foundational skills-based education upon or before appointment, and maintaining the necessary political commitment to adequate ongoing resourcing. 622

TECHNOLOGY AND JUDGES IN AUSTRALIA

Tania Sourdin

A survey of Judges in Australia that focused on their use of technology and their attitudes towards technology concluded at the end of 2022. The survey revealed that there are many judges successfully using a range of technologies in relation to their work in Australia. However, many judges consider that they could do more with technology but are hampered at times by excessive workloads (and resultant stress), inadequate technological support and training, connectivity issues, “legacy” systems as well the ability of litigants and their representatives to engage with newer technologies. While the survey suggested that some judges consider that court related technological approaches may not be “fit for purpose”, other judges are concerned that a focus on technologies may increase workload with few benefits. Overall, the survey responses suggest that Australian judges are interested, able and willing to use newer technologies provided that concerns are addressed, and support is available.

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CAN THE AUSTRALIAN JUDICIAL SYSTEM MEET THE STRUCTURAL CHALLENGES OF FUTURE POPULATION CHANGE?

Brian Opeskin

This article examines the impact of population change on the evolution of the Australian judicial system. Through four case studies, it argues that demography is an important but overlooked lens through which to understand pressures on the judicial system over coming decades. The case studies examine the impact of increasing life expectancy on judicial tenure; of population ageing on judicial pensions; of international migration on judicial diversity; and of population redistribution on the spatial delivery of justice in lower courts. Using data on Australia’s historical demographic experience and projected demographic future, the article argues that key structural reforms are needed if the judicial system is to sustain the core values of judicial independence, access to justice, quality of justice, public trust, and cost effectiveness.

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MANAGING JUDICIAL PERFORMANCE: THE (CHANGING) ETHICAL INFRASTRUCTURE

Kathy Mack and Sharyn Roach Anleu

In an independent, impartial judiciary, self-management is the core of managing judicial performance. However, judicial officers work in a context which requires institutional organisation, management and support. They also operate within a network of formal and informal norms, processes, and practices that constitute an ethical infrastructure, seeking to promote good judging. This article first describes the current judicial work context, the changing demands on judicial officers, and the consequences for judicial performance. Following that is a consideration of the adequacy of the ethical infrastructure to support good judging and to manage or regulate judicial conduct.

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OPPORTUNITY KNOCKS: DESIGNING JUDICIAL DISCIPLINE SYSTEMS IN AUSTRALIA

Gabrielle Appleby and Suzanne Le Mire

A judicial discipline system, that receives, investigates, and establishes the outcomes of complaints about judicial officers, is a crucial component that can support public perceptions of the legitimacy of judiciary. The design of such mechanisms should seize the opportunity to instantiate the contemporary and traditional values that underpin the judicial

system. At the same time, the system should be designed to operate within an existing regulatory and governance space, and alongside other important mechanisms, such as the open court principle and appeals processes. This article proposes that a cascading set of objectives should inform the design of judicial discipline mechanisms. It then turns to a consideration of existing mechanisms in Australia, before concluding that the “Australian model”, insofar as it exists, largely relies on traditional mechanisms, such as the referral to the head of jurisdiction. In Australia, thoughtful design that accounts for both traditional and contemporary judicial values is, as yet, unrealised. 678

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