ARTICLES

Therapeutic jurisprudence in Australia: New directions in courts, legal practice, research and legal education – Michael S King

Therapeutic jurisprudence asserts that the law and legal processes can be designed to promote the wellbeing of litigants and clients and contribute to the resolution of problems underlying the legal issue. Therapeutic jurisprudence is commonly associated with problem-solving courts such as drug courts and family violence courts. This article asserts that therapeutic jurisprudence has a broad-ranging application to all areas of court and legal practice and to legal education. Its application has the potential to bring about a more comprehensive, satisfying and psychologically optimal way of practising and learning law and of addressing legal problems. The article suggests new directions in court practice, legal practice, legal education and research arising out of the application of therapeutic jurisprudence. ................................................................. …129

Judicial exchange: Debalkanising the courts – Justice RS French

This article reviews the historical context, the constitutional framework and the long-standing debates about the shape of the Australian judicial system. It proposes the development of a comprehensive system of horizontal and vertical judicial exchanges throughout Australia. Its objectives include the improvement of judicial and institutional performance, the allocation of national judicial resources to areas of local need, the development of more consistent Australia-wide approaches to the administration of justice and the enhancement of the attractiveness of judicial appointment to State and Territory courts. The article also supports an existing proposal for the development of a de facto intermediate national Court of Appeal by the use of composite Benches on existing State and Territory Appeal Courts in cases of cross-jurisdictional significance. It also refers to examples of existing programs and proposals in the United States, Canada and the European Union. ............................................................................................................. …142

The trial process: Does one size fit all? – Chief Justice Peter Underwood AO

This article contends that the modern trial still clings to a process that has its roots in the days when juries, often illiterate, determined all the factual issues and trials were short and very substantially oral. It questions whether it is time to review the current trial process as the ultimate method of resolving civil disputes. Is continuity of the trial process necessary? Is there an over-emphasis on orality? Should there be time limits on oral evidence? Is there an over-emphasis on the adversarial nature of the process? It is also contended that the application of basically the same process to every civil dispute is inappropriate, and that the mode of trial should be shaped to suit the circumstances of the individual case, all the while adhering to the principles of independence, natural justice and publicity. ................................................................................................................................. …165
Innovation and transformation within Australian courts: A court administrator’s perspective – Jennie Cooke

Major changes in the role of courts within the Australian community are considered from the perspective of court administrators. In particular, the impact of the courts adopting a more responsive approach to the needs of their clients and in some cases seeking feedback directly from them is considered. The “therapeutic jurisprudence” movement within courts is given as a particular example of an approach which has significant implications for judicial officers, court clients and court staff. The importance of the “therapeutic jurisprudence” approach is also considered as an example of court-initiated and court-driven innovation. Changes in the role of courts are also looked at within the context of the increased accountability pressures faced by courts and there is discussion of the subsequent importance of rigorous data collection and attention to data quality. In considering overall the particular implications for court administrators of these many changes, emphasis is placed on the importance of project management skills and there is discussion of a strategy of managing major organisational change through a project management approach.
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     7. Sheehy et al, n 6 at 221.

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