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ARTICLES

Contempt and the Australian Constitution – Part I – *Anthony Gray*

This two-part article considers possible reforms to the law of contempt in light of a recent controversy regarding the courts’ power in this regard. It considers the interrelation between a court’s power to punish for contempt, reform, and the Australian *Constitution*. Part I of the article places the discussion in the context of the recent controversy, and outlines the existing Australian law dealing with contempt. It specifically considers the compatibility of two forms of contempt, known as scandalising the court and sub judice contempt, with the implied freedom of political communication, and the kind of proportionality analysis applied to that freedom. It finds there are real constitutional concerns over courts’ current power to punish for scandalising the court, on the basis that it substantially interferes with freedom of communication about “political matters”, and may not be necessary, suitable or adequate in its balance. It is most unlikely that the reputation of courts relies or is dependent on such a power, and public confidence in the judiciary is considered to be generally very strong. Attempts to censor “scandalous” communication about courts are likely to be counterproductive and unnecessary.

3

Pleading Guilty: Issues and Practices – A Socio-Legal Research Case Study – *Kathy Mack, Sharyn Roach Anleu, Jordan Tutton*

Research has a biography, a trajectory and ideally a useful life in which it can stimulate other thinking. In the 1990s, the Australian Institute of Judicial Administration (as it then was) initiated a study into guilty pleas in Australia. This article describes how the information and ideas generated from the Pleading Guilty project were communicated to diverse audiences by the researchers themselves. It investigates when, where, how and by whom the Pleading Guilty research findings were used by others, by searching, electronically and physically, for as many citations or references as possible to any of the published outputs of the Pleading Guilty research. As the findings show, one piece of Australasian Institute of Judicial Administration-supported research has been consistently important to varied audiences over many years, up to the present. This study reveals a more complex story than is reflected in discussions of (or proposals for) measures of research quality, impact or engagement in the current policy context for research in Australia.

21

Sustainable Justice: A Guiding Principle for Courts – *Dr Andrew J Cannon AM*

This article considers court systems’ access to power to describe their primary purpose which is to manage conflict so that the power arrangement in their society is not disturbed. It then argues that the adversary system is not fit for that purpose, often inflaming conflict rather than reducing it. Courts are developing better ways to manage conflict and it is suggested that they can draw on sustainability as a guiding principle to achieve their

proper purpose. A Sustainable Justice system will always seek to manage disputes in ways that hold people accountable for their departures from the law while at the same time it understands the underlying causes of the conflict. Court processes should be designed to repair the harm that has been done and better equip the parties to manage conflict in the future to the end that social harmony is improved 45