

JOURNAL OF JUDICIAL ADMINISTRATION

Volume 22, Number 1

August 2012

ARTICLES

Access to tax justice: How costs influence dispute resolution choices – *Binh Tran-Nam and Michael Walpole*

This article examines how costs to taxpayers influence tax dispute resolution routes in the Australian context. It focuses on the resolution of individual taxpayers' applications to the Administrative Appeals Tribunal (AAT) for the review of Australian Taxation Office decisions. After a brief review of the literature on the link between tax compliance, tax morale and procedural justice, and previous Australian studies, the article considers the current process of tax dispute resolution in Australia. Summary statistics of recent tax cases lodged at the AAT are presented. A simple model is then formulated to explain which route the taxpayer wishes to take for resolving a tax dispute: ATO internal review, AAT review without professional assistance or AAT review with professional assistance. Hypothetical costs, based on well-informed sources, are constructed for two scenarios: with and without professional assistance. It is concluded that personal costs represent a considerable barrier to accessing tax justice. Available empirical data is found to support such a conclusion. Finally, several policy recommendations are proposed with the view of improving access to tax procedural justice.

3

Trial by Tweet? Social media innovation or degradation? The future and challenge of change for courts – *Dr Pamela D Schulz*

The growth, exponential influence and scope of participation in social media, challenging modern media outlets, is rivalling that of nation states. The power of this media spectrum is forming a new style of "public square" and the demise of the "spiral of silence". Social media participation appears to be democratic input that can affect public policy and perhaps affect court administration and outcomes. This article argues that while courts must become more media savvy and modernise their methods of information outputs, it is also incumbent upon them to consider the theoretical impact and practices at work and how to ensure the delivery and dissemination of relevant responsive information and maintain the integrity and independence of courts and the judiciary.

29

The constitutionality of minimum mandatory sentencing regimes – *Anthony Gray and Gerard Elmore*

This article reflects upon the increasing use by the legislature of minimum mandatory sentencing regimes, requiring courts to impose at least the minimum sentence provided for, regardless of the circumstances of the case. While judicial power may be the subject of some legislative restrictions, it is argued that minimum mandatory sentencing provisions undermine judicial independence and breach the principle of separation of powers, undermining public confidence in the independence of the judiciary. The High Court has shown an increased willingness in recent years to defend the independence of the courts contemplated by Ch III of the *Constitution*. Support for the authors' argument appears in some of the relevant international jurisprudence.

37

