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ARTICLES

Transforming governance and technology in civil and administrative justice – *David Tait* and *Terry Carney*

How can technology provide better access to civil and administrative justice? This article argues that reforming the organisational design of justice is an essential first step, by developing a graduated set of procedures that filter disputes and complaints, managing them in a consistent and, where appropriate, systemic way. Such a system requires online (or telephone) filing of matters, tracking software to follow individual cases and reporting systems to detect patterns. Australian jurisdictions have proceeded a long way down this path, offering a sharp contrast to litigation-prone justice processes in some other common law systems, although perhaps less systematic and orderly than some civil law systems. The ombudsman model provides a mechanism for handling complaints against large agencies, whether in the public or private sector; tribunals provide an accessible forum for most disputes; and accident and disability claims are increasingly decided through administrative processes based on professional assessments of need. While new technologies can allow greater centralisation of justice procedures, the authors argue that such technologies can also promote more localised and dispersed justice procedures, taking as an example the "tribunal in a box" model developed by the Victorian tribunal system. 119

Are retributive aims achievable in a restorative justice setting? – *Tony Foley*

One of the challenges in doing justice in response to serious criminal wrongdoing committed by young people is to meet the need for retribution. The risk is that in meeting this need the primary needs of restoration and rehabilitation are lost or diminished. Much has been written about the capacity of diversionary programs to restore affected parties and to address consequential outcomes such as deterrence, rehabilitation and protection. But little regard has been given to their capacity to also do much of the "work" of retribution. Acknowledging that retribution is much wider than simply punishment, and includes bringing offenders to account, denouncing their behaviour, providing public vindication for victims and setting reparation and sanctions, means that diversionary programs have much to offer. This article argues that much of the work can be done through diversionary programs such as circle sentencing, family group conferencing and restorative panels which involve contact between those affected by wrongdoing. The article examines the "retributive scope" of diversion by reporting the views of facilitators, conference convenors, judges and others involved in programs in a range of jurisdictions. The article suggests that many of the requirements of retribution are better met through such non-punitive approaches. 130

Foetal Alcohol Spectrum Disorder in children: Implications for judicial administration – *Samantha Parkinson* and *Sara McLean*

Children can display a range of neurocognitive and psychosocial deficits resulting from being exposed to alcohol prenatally – frequently attracting a diagnosis of Foetal Alcohol Spectrum Disorder (FASD). This article discusses the cognitive and social impairments exhibited by children with FASD, the challenges these present for the criminal justice system, and offers suggestions for addressing these challenges. Difficulty in understanding and producing oral language, in particular, may infringe on the child's basic rights to a fair trial by limiting their understanding of proceedings and decision-making. Custodial sentences may lead to a range of negative outcomes including victimisation and exploitation by peers. Cognitive deficits need to be taken into account throughout the criminal justice process to obtain the optimal outcome for all parties. 138

Child protection law and practice in the Northern Territory and implications for the court – *Hilary Hannam*

The Board of Inquiry into the child protection system in the Northern Territory was appointed in December 2009. The Board's report describes the Northern Territory child protection system as one which is in crisis. To some extent this is an experience shared with child protection systems throughout Australia, and perhaps throughout the developed world. However, the magnitude and complexity of the problems in the Northern Territory, combined with the particular peculiarities of the law and practice, have implications for the court which are unique. In this article the author examines some of those factors and indicates how the Northern Territory Magistrates Court has responded to them. The author also comments on that response and the approach that the author has taken and proposes to take as head of jurisdiction. 146

QCAT's hybrid hearing: The best of both worlds or compromised mediation? – *Bobette Wolski*

Mediation has been an essential component of the Queensland Civil and Administrative Tribunal's dispute resolution system since the tribunal was established in 2009. It usually takes place before a matter is listed for hearing. In September 2012, QCAT introduced a "hybrid hearing" which incorporates mediation after the hearing but before a decision is handed down. In so doing, QCAT created a second ADR pathway. This article compares the hybrid hearing pathway with the ADR-hearing pathway. The article also compares the hybrid hearing to a number of other processes which combine elements of mediation and adjudication. The rationale for the creation of these processes is explored. In QCAT's case, the rationale is shaky. Although hybrid dispute resolution processes may have the capacity to provide "the best of both worlds", in the author's opinion, QCAT has unduly compromised the mediation experience of parties who are directed to a hybrid hearing. The article also raises a number of issues which have yet to be addressed by QCAT. 154