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ARTICLES

Essential and defining characteristics of courts in an age of institutional change – Chief Justice Robert French AC

In this article Chief Justice French reflects on the task of defining courts and distinguishing them from other decision-making bodies. The Chief Justice outlines the reasons why it is important to identify the defining attributes of courts and discusses the key elements of the judicial role. He examines particularly the significance of judicial independence and the matters which underlie it, with emphasis on the importance of decisional independence, which is fundamental to the role of a judicial officer. These matters are examined against the background of recent decisions, including decisions of the High Court. 3

Can Australian judges keep their “friends” close and their ethical obligations closer? An analysis of the issues regarding Australian judges’ use of social media – Marilyn Krawitz

Social media has changed the way millions of people communicate. It is possible that Australian judges may be using social media. Consequently, there are important ethical questions to consider. These questions include: should Australian judges be prevented from using social media, should they be permitted to add counsel who appear before them as friends on social media and, if so, is ex parte communication permissible. The article discusses the answers to these questions, while applying current judicial ethical resources in Australia and research published in this area in Canada, the United States and the United Kingdom. Given how little research in Australia there is about this topic to date, this article provides an important step toward encouraging meaningful debate. 14

Jurors using social media in our courts: Challenges and responses – Lorana Bartels and Jessica Lee

This article considers the use of social media by jurors during the trial and deliberation processes. The article presents examples of such conduct from Australia, the United States and the United Kingdom. The article considers research on why jurors use social media, and discusses the likely prevalence of the issue. The article then discusses the risks this conduct presents to the defendant’s right to a fair trial and the administration of justice generally. Possible solutions are examined, including banning telecommunication devices, requiring jurors to take an oath and developing specific jury instructions. Research on the effectiveness of jury instructions is reviewed, and future directions for research, policy and practice noted. 35

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

In a 2012 issue of the *Journal of Judicial Administration*, the authors argued that there were real constitutional questions surrounding the increased use of minimum mandatory sentencing regimes. In 2013, Andrew Hemming wrote a rejoinder challenging aspects of the authors’ reasoning in the earlier article. In the interests of public debate on such an important contemporary and contentious public issue, the authors now respond to Mr Hemming’s rejoinder. 58