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The award of wasted costs arising from defective expert evidence – *Dr Ian Freckelton QC*

A variety of forms of accountability exist for the written reports and the oral evidence of forensic experts. An emerging form of such accountability is the potential for costs orders to be made by courts when serious problems have been encountered with the reliability of expert evidence. A series of decisions in the United Kingdom, Australia and Canada has engaged with the question of when costs could or should be awarded against experts, solicitors or counsel in respect of expert evidence. This article focuses on leading decisions in England, Australia and British Ontario, in particular the landmark analysis by Dixon J in Hudspeth v Scholastic Cleaning and Consultancy Services Pty Ltd (Ruling No 8) [2014] VSC 567. It draws from the cases the principal considerations applied in awarding or declining to order costs in respect of expert evidence and argues that the award of costs in exceptional cases has the potential to play a constructive role in enhancing the accountability of experts and commissioning lawyers alike in respect of expert opinion evidence. However, it urges the need for caution and stresses the importance of procedural fairness in wasted costs hearings. 113

Therapeutic jurisprudence in the coronial jurisdiction – *Isabel Roper* and *Vivien Holmes*

This article explores the extent to which Australian coroners view therapeutic jurisprudence as relevant to their judicial role. Interviews with nine coroners across four jurisdictions reveal considerable discrepancies in the ways coroners view therapeutic jurisprudence and enact it through specific practices, such as meeting families or allowing photos of the deceased in court. The authors discuss the intersection of judging and emotion and make recommendations to improve the therapeutic aspect of Coroner's Courts, including ongoing professional training and the strengthening of powers in coronial statutes. This article takes a qualitative approach to an issue of increasing importance and interest to both Australian coronial and judicial bodies. 134

The International Framework for Court Excellence and therapeutic jurisprudence: Creating excellent courts and enhancing wellbeing – *E Richardson*, *Magistrate P Spencer* and *Prof D Wexler*

There is a growing emphasis on the role of justice systems to improve the wellbeing of individuals and the communities that justice systems serve. This has been the argument of therapeutic jurisprudence scholars for decades and has recently been recognised by the Productivity Commission in Australia in 2014 in its report on Access to Justice Arrangements. This article discusses two important, but previously unrelated, tools that enable courts and tribunals to achieve this objective by improving the quality of justice and enhancing the wellbeing of individuals and communities in which those courts and tribunals operate: the International Framework for Court Excellence (IFCE or the Framework) and therapeutic jurisprudence (TJ). The IFCE, a quality management system for courts and tribunals, and TJ, an interdisciplinary discourse on the therapeutic and anti-therapeutic impact of the law and legal processes, are both aimed at improving the

quality of justice. This article provides an outline of the Framework and TJ: the principles and methodologies that each entails and the various types of innovation and reform that have arisen through their application. The ways in which the two should work together is considered and it is suggested that there are benefits to be gained for courts and tribunals by incorporating principles of TJ into the Framework and by using the Framework to assess TJ reforms. 148

Improving the use of court decisions in the Federal Circuit Court – *Grant T Riethmuller*

The free access to law movement has had a significant impact upon access to law in Australia. The remarkable success of AustLII has resulted in Australia having the benefit of an enormous single data repository of case law and statutes available for free access by citizens. The effect of this phenomenon is far reaching for the courts and law reporting. In this article it is noted that this change supports the fundamental legal principle that citizens should have access to the law, as ignorance of it is no excuse. The disruptive nature of the new technology on existing law reporting is identified. It is argued that the courts should play a role in making the law more accessible, and that to do so they must look beyond the existing models of law reporting, identifying changes made by the Federal Circuit Court of Australia as a key example. 167

The High Court and the cocktail party from hell: Can social media improve community engagement with the courts? – *Andrew Henderson*

Courts in Australia and overseas have been actively encouraged to use social media to connect with the community. Social media management is time consuming, especially if the courts' message is to be heard above the "hyper din" of other simultaneous exchanges. The user-generated content also means that it can be unpredictable and active engagement by courts with litigants raises significant issues. Despite these risks, there has been little empirical research done about the extent to which courts' engagement with social media will deliver any benefit. As a case study, this article examines the volume and content of Twitter commentary about two significant High Court matters in September and October 2014 to assess the depth and breadth of community engagement. It compares Twitter discussion of the High Court proceedings with contemporaneous Twitter events. It reveals that as a platform for community engagement with the courts, Twitter is neither well used nor persuasive. Further research with consumers of social media is required before opening more Australian courts to this medium. 175

Expert evidence in criminal jury trials 193