JOURNAL OF JUDICIAL ADMINISTRATION

Volume 28, Number 2

2018

ARTICLES

The Transformation of Court Governance in Victoria: Part I – Key Concepts and Models – *Tim Bunjevac*

The study analyses the emergence of independent judicial councils and their role in facilitating judicial control of court administration in Australia, Canada, Ireland, the Netherlands, the UK, the US and other countries. While much research has been conducted into the relative merits of judicial control of court administration, the study extends the court governance literature by developing an analytical policy framework for a model Judicial Council of Victoria with broad statutory responsibility for improving the quality of justice in the court system. Part I conducts a review of the models of court governance and literature, and contends that greater internal transparency and administrative "corporatisation" of the judiciary is essential in order to improve court performance, enhance the social legitimacy of the courts and reinforce judicial independence. Part II outlines the essential terms of reference for a model Judicial Council of Victoria and proceeds to assess the institutional framework of Court Services Victoria, a judicial council that was established in 2014 to transfer the responsibility for court administration from the executive government to the judiciary. The study concludes that the Victorian court system reform broadly meets the model policy benchmarks, but that the legislation is insufficiently clear in important aspects and requires a set of specific amendments. 69

A Death By a Thousand Cuts: The Future of Advocates' Immunity in Australia – *Corey Byrne*

This article analyses the doctrine of advocates' immunity following the High Court's decisions in Attwells v Jackson Lalic Lawyers and Kendirjian v Lepore. It is argued that the majority judgments in these cases wound back the broad approach of the plurality in the controversial High Court decision of D'Orta-Ekenaike v Victoria Legal Aid, which construed the immunity in a manner so expansive that it arguably could shield lawyers for any type of misconduct in their running of litigious matters. It is argued that despite laudably narrowing the scope of the doctrine, due to the somewhat strained reasoning in the majority decisions, there are likely to continue to be problems for the lower courts in applying it. It is also underlined that the narrow approach adopted in the majority decisions is consistent with recent legislative reforms which are increasing the accountability of lawyers for their misconduct in litigation. 98

Literature Review: Cultural Considerations in Alternative Dispute Resolution – *Antonella Rodriguez*

This literature review was commissioned by the Migration Council of Australia in co-operation with the Judicial Council of Cultural Diversity. It was intended to inform the development of a guidance note for judicial officers with a specific focus on cultural

considerations that might arise as part of the family dispute resolution process. A broad overview is provided considering the work undertaken by Family Dispute Resolution Practitioners and the intersection of Western style facilitated dispute resolution practices with culturally and linguistically diverse communities. 122