



The Australasian Institute of
Judicial Administration Incorporated

CALL FOR PAPERS

ASSISTING UNREPRESENTED LITIGANTS – A CHALLENGE FOR JUDICIAL ADMINISTRATION

15 – 17 APRIL 2014

*Crowne Plaza, Coogee Beach
242 Arden Street, Coogee, New South Wales*

The Australasian Institute of Judicial Administration (AIJA) is pleased to present a conference entitled 'Assisting Unrepresented Litigants – a Challenge for Judicial Administration'.

Professor Dame Hazel Genn will be a keynote speaker at the Conference.

The conference will be of relevance to all working in or with courts and tribunals, whether as judicial officers, court administrators, members of the practising profession, academics and Government.

Issues identified by the Committee include:

- Management of proceedings in courts involving unrepresented litigants including issues associated with procedural fairness and other challenges facing judicial officers;
- Legal aid – policy and funding practice and the absence of legal aid on court proceedings;
- The role of pro-bono schemes;
- The role of court administrators and registry services;
- The use of technology in courts and how this impacts upon unrepresented litigants;
- Vexatious and querulant litigants;
- Current academic research into disputes involving unrepresented litigants;
- Proceedings in family courts and children's courts with unrepresented litigants;
- The role and impact of unrepresented litigants in the criminal and appellate jurisdictions;
- Innovative approaches or programmes being used/piloted/proposed in Australian and overseas jurisdictions;
- The evaluation of programmes and responses to unrepresented litigants;
- The Australian Productivity Commission's Reference on Access to Justice Arrangements; and
- Issues relating to data collection and measuring the impact of unrepresented persons on the justice system.

The conference organisers welcome the submission of abstracts of papers for consideration for presentation at the conference.

Early expressions of interest and queries in relation to possible topics and the submission of abstracts and panel proposals are welcome.

See overleaf for details of issues identified

Those submitting abstracts or panel proposals will be advised whether their paper/panel has been accepted as soon as possible. Those presenting papers will be required to register for the conference. Registration details will follow.

Management of proceedings in courts involving unrepresented litigants including issues associated with procedural fairness and other challenges facing judicial officers

Unrepresented litigants may have little or no understanding of the rules of procedure and evidence, the need to articulate the issues in the proceeding, requirements in relation to the giving of expert evidence and the need to adhere to case management requirements and time limits for presentation of their case. These matters impact upon the court but they also create challenges for opposing parties and their legal representatives including questions of bias where unrepresented litigants are assisted by the court.

In some cases, litigants will be represented for part of the proceeding but then will be unrepresented. This creates challenges.

Legal aid – policy and funding practice and the absence of legal aid on court proceedings

In Australia and other jurisdictions budgets have constrained the availability of legal aid in civil and family law proceedings but also in criminal proceedings involving serious matters. In Victoria, for example, there has been recent criticism regarding the policy and funding practice in relation to indictable offences and trials have been stayed for lack of adequate legal aid. The problems of rationing of legal aid services are present in all jurisdictions and the pressures on legal assistance providers are not just monetary. Government may insist on legal assistance providers operating within service priorities. Can a system be devised to assist providers in formulating the principles for prioritisation?

The role of pro-bono schemes

Where a litigant appears unrepresented and indicates that he or she is unable to afford private representation, that litigant may in appropriate cases obtain the advantage of pro-bono schemes which have been established by the legal profession, in some cases with the assistance of the courts or legal aid bodies, to assist the unrepresented litigant.

The role of court administrators and registry services

Court administrators are often in the 'front line' in dealing with unrepresented litigants. They need to be mindful of the fact that, while providing assistance to unrepresented litigants, they do not provide advice which might lead to allegations of bias or create difficulties in relation to the actual hearing of the proceedings. Jurisdictions have developed guidelines and innovative initiatives in relation to the type of assistance which can be given.

The use of technology in courts and how this impacts upon unrepresented litigants

Can unrepresented litigants be assisted by technology or is it more likely that they will be hindered in the preparation on presentation of their case?

Vexatious and querulant litigants

Jurisdictions are subject to legislation which deals with litigants who are vexatious. Querulant litigants also provide a challenge. These are litigants who have often unrealistic expectations in relation to their case and who may, in many cases, develop an obsession with the litigation which transcends the reality of the dispute.

Current academic research into disputes involving unrepresented litigants

There is a wealth of academic research in relation to unrepresented litigants. The conference wishes to encourage the presentation of that research.

Proceedings in family courts and children's courts with unrepresented litigants

Details of issues identified:

Partly as the result of an inability to access legal aid, many who appear before the family courts and children's courts are unrepresented. These courts often deal with very sensitive issues, including allegations of violence, and therefore, there is a particular need to identify challenges and possible solutions.

The role and impact of unrepresented litigants in the criminal and appellate jurisdictions

In both the criminal and appellate jurisdictions it is not uncommon for a defendant or appellate/respondent to be unrepresented. In the criminal jurisdiction, particular difficulties arise in relation to evidence and in the appellate jurisdiction the matters before the court are often highly complicated and sophisticated.

Innovative approaches or programmes being used/piloted/proposed in Australian and overseas jurisdictions

Courts have developed a wide range of programmes or have piloted programs designed to assist unrepresented persons and the courts before which they appear.

The evaluation of programmes and responses to unrepresented litigants

Whilst there have been many responses to assisting unrepresented litigants, many of these have not always been evaluated.

The Australian Productivity Commission's Reference on Access to Justice Arrangements

The Commission's terms of reference are broad and involve many questions relevant to unrepresented litigants and how they may be assisted.

Issues relating to data collection and measuring the impact of unrepresented persons on the justice system

The Report on Government Services published by the Productivity Commission (Australia) does not presently capture statistical information in relation to the impact of unrepresented litigants on the administration of justice. It is desirable that there be statistical information kept in relation to the impact of such litigants upon the court system. How should this be achieved? There is a need to examine what statistical information is currently kept by courts.

CONFERENCE ORGANISING COMMITTEE

The Organising Committee for the conference consists of:

- ❖ Ms Marianne Christmann, Regional Manager NSW/ACT, Family Court and Federal Circuit Court of Australia
- ❖ Judge Peter Johnstone, President of the Children's Court of New South Wales
- ❖ Judge Christine Mead, Federal Circuit Court of Australia
- ❖ Mr Norman Reaburn, Director, Legal Aid Commission of Tasmania
- ❖ Professor Greg Reinhardt, Executive Director, AIJA
- ❖ Ms Liz Richardson, Senior Researcher, Australian Centre for Justice Innovation, Monash University
- ❖ Mr Steven Stevens, Solicitor, Victoria

Abstracts should be submitted via the internet or email: aija@monash.edu

Closing date for abstracts: Friday 18 October 2013