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New Publication Information
Journal of Civil Litigation and Practice

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Thomson Reuters
PO Box 3502
Rozelle NSW 2039
Email: LTA.Service@thomsonreuters.com

Tel: 1300 304 195
Fax: 1300 304 196
Web: www.thomsonreuters.com.au

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Information Pack Contents
Journal of Civil Litigation and Practice

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Publication Overview
Journal of Civil Litigation and Practice

The *Journal of Civil Litigation and Practice* is vital reading for all civil dispute practitioners. It brings together the many and varied issues encountered in practice, procedure and litigation, which cannot currently be found in a centralised resource.

Under the leadership of General Editor **Dr Damien Cremean**, this quarterly journal will address civil litigation and practice issues.

Each issue will comprise editorials, articles and case notes, comments and/or book reviews on a wide range of topics. Its Editorial Board comprises practitioners and experts from around Australia as well as from the United Kingdom, Canada and New Zealand.

Coverage includes but is not limited to:

- pre-litigation;
- litigation procedures: pre-trial and trial including influence of changes, eg technology;
- remedies, damages, enforcement and costs;
- arbitration;
- dispute resolution and ADR generally;
- evidence and expert evidence;
- discovery and e-discovery;
- pleadings and precedents;
- case management;
- class actions;
- litigation funding;
- judicial administration;
- advocacy and trial preparation; and
- lawyers' ethical duties.

Its unique benefit for practitioners is as a forum in which the more fundamental changes to litigation and practice can also be addressed, including current issues such as the impact of technology on the conduct of matters, inside and out of the courtroom, and moves to electronic discovery and documentation. The journal is peer-reviewed and available in hard copy and online.

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Editorial Board Details
Journal of Civil Litigation and Practice

General Editor

Dr Damien J Cremean is a Barrister practising in Victoria and a nationally accredited mediator. He is also an Adjunct Professor of Law at the University of Queensland. He was formerly Deputy President of the Victorian Civil and Administrative Tribunal (VCAT).

State Editors

Federal

John Emmerig is a Senior Litigation Partner at Blake Dawson specialising in class actions, commercial litigation and commissions of inquiry.

Australian Capital Territory

Professor Peta Spender is a Professor of Law at the Australian National University specialising in corporate law, financial market regulation and litigation. She is also a Presidential Member of the ACT Civil and Administrative Tribunal (ACTCAT).

New South Wales

Peter Molony is a Judicial Member in the General Division and Retail Leases Division of the Administrative Decisions Tribunal (NSW) and an Arbitrator of the Workers Compensation Commission (NSW).

Northern Territory

Darryl Saunders is a lecturer in law at Charles Darwin University specialising in dispute resolution.

Queensland

Professor Bobette Wolski is an Associate Professor of Law at Bond University specialising in civil procedure, international dispute settlement, mediation and advocacy.

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South Australia

Edward Stratton-Smith is a Barrister practising in South Australia, particularly in the civil litigation area.

Tasmania

Chris Gunson is a Barrister practising in Tasmania specialising in personal injuries, medical negligence and commercial litigation.

Victoria

Matthew Harvey is a Barrister practising in Victoria specialising in corporate and maritime law. He is also Vice-President of the Maritime Law Association of Australia and New Zealand.

Western Australia

Professor Katja Levy is an Adjunct Professor of the Law School of Murdoch University. She is also a Barrister practising in Western Australia specialising in commercial law.

International Editors

Canada

Professor Trevor Farrow is an Associate Professor at Osgoode Hall Law School in Toronto, Canada, where he serves as Director of Clinical Legal Education and specialises in the administration of civil justice. He is also Chair of the Canadian Forum on Civil Justice.

New Zealand

The Honourable Roderick Joyce QC is a Judge in the District Courts of New Zealand. He has also lectured on civil procedure at the University of Auckland.

United Kingdom

Dr Ozlem Gurses is an academic teaching at the University of Southampton and formerly at the University of East Anglia.

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Launch Issue Table of Contents
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Volume 1, Issue 1 - contents

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Launch Issue Sample Content
Journal of Civil Litigation and Practice

Foreshadowing what will be published in Volume 1 Issue 1 (available December 2011 in printed and/ or online formats), we have here provided summaries of the feature articles.

Volume 1, Issue 1 - Abstracts

Article: The Early Identification of Issues

The Hon P A Keane, Chief Justice of the Federal Court of Australia

A recent workshop, jointly sponsored by the Federal Court of Australia and the Law Council of Australia, addressed the topic: "The work of the Court: How it might or should be done." In this article, Chief Justice Keane discusses some of the issues which were the focus of that workshop. In particular, he considers the vexed question of discovery and notes that in the course of the workshop it has become apparent that case management has progressed in the Federal Court whereby the judges and the profession have become more willing to devise and deploy case management techniques directed to curbing, if not slaying, the discovery dragon.

The Chief Justice also notes that at the workshop a broad consensus emerged that the key to substantial improvements in the speed and efficiency of high value litigation is the early identification of issues. He argues that the benefits to be gained from the early identification of issues will flow through all the steps in the litigation process. For example, discovery will be more focused and less oppressive. Trials will be shorter and clients will be more engaged and hence more responsible.

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Article: Efficiency and Cost in Different Legal Cultures – Relevance for Civil Litigation and ADR

The Hon Michael Kirby AC CMG

The purpose of this article by the Hon Michael Kirby is to provide some little known information not only on the advantages of alternative dispute resolution (ADR) but, pertinent to international disputes, some material on particular disadvantages of domestic legal systems involving resort to court litigation. He commences his analysis by pointing out that international commercial arbitration and other forms of ADR are clearly on the increase. Yet he points out that the Australian legal profession at least, has, so far, been somewhat hesitant in embracing such arbitration.

He divides his article into three parts: Australian legal culture; international legal culture; and conclusions and lessons. As to the last, in particular, he suggests that two variables can be identified as affecting the attractions that national legal systems present as an alternative to international commercial arbitration. These are the level of economic and social development in the country concerned and the sophistication, integrity and efficiency of its courts.

His paper seeks to establish that Australian lawyers must overcome any lingering hostility they may have to comparative and international law and must enhance their awareness of the world, and particularly of this region of the world. He observes that lawyers and other professionals in ADR need also to become more familiar with the features of the civil law tradition which, until now, has substantially been a mystery to those trained in the common law.

Article: Security for Costs against Impecunious Plaintiffs - Quo Vadis?

Professor Greg Reinhardt

Costs are a perennial problem. It is expensive to litigate. It is costly – whether suing or being sued. That is why so many litigants, these days, are self-represented. The balance turns if someone is being sued by someone who has no funds. The party being sued, if successful, may get a costs order in its favour in the end but this could prove valueless. In the meantime, it may have paid out large sums in legal expenses. Hence the reason for security for costs

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applications – to ensure there is money at the end of the litigation if the party being sued is successful or, if such money is not put up, to terminate the case. But security for costs orders can work an injustice if a party is forced to terminate a case, for lack of funds, which it should, in justice, be able to put.

These issues underlie the analysis undertaken by Professor Reinhardt in this article. His focus is on a Consultation Paper of the New South Wales Law Reform Commission issued in May 2011. In his analysis he considers the general rule, applicable to litigants in person, that security for costs should not be ordered on the ground of impecuniosity. He notes the different approach which applies to corporations and he looks at the position of a litigation funder – a relatively new phenomenon in Australia.

His conclusion is to the effect that access to justice is also an important factor to be borne in mind in the case of natural persons who should not have to access the justice system in the fear that their action will be brought to an untimely end by an order for security.

Article: Preliminary Discovery, Discovery to Identify a Party and Nonparty Discovery

Chris Gunson

Historically, discovery has been an interlocutory step within an action and between parties to the action. There was no right to discovery from a non-party or pre-action with a view to identifying a defendant. Similarly, the procedures to obtain, in effect, discovery from a non-party were difficult, confusing and cumbersome. Again, historically there was available in equity an action for discovery as an equitable remedy.

In *Norwich Pharmacal Co v Customs & Excise Commrs* [1974] AC 133, Lord Reid said:

> Discovery as a remedy has a very long history. The chief occasion for it being ordered was to assist a party in an existing litigation. But this was extended at an early date to assist a person who contemplated litigation against the person from whom discovery was sought, if for various reasons it was just and necessary that he should have discovery at that stage.

There now exists as part of the 'harmonised rules' express rules of court dealing with preliminary, or pre-action, discovery.

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Getting Involved
Journal of Civil Litigation and Practice

Article submission

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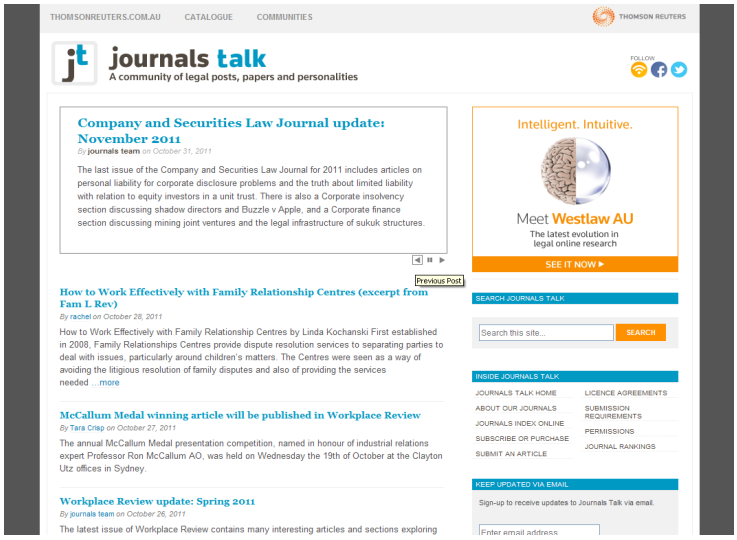

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