

9th of July 2021

Submission to the Australian Law Reform Commission Judicial Impartiality Review by Jacqueline Charles CF

1. I am the Northern Districts Education Centre (Sydney) Churchill Fellow for 2019 and researched best practice in court education for school students. I was the first Australian to complete a virtual Churchill fellowship. I currently work as a Clerk to Chambers for Level 22 Chambers in Sydney NSW Australia. I am passionate about the transformative power of legal and civics education for young people and am optimistic that my work and that of others in the field of court education will lead to positive and lasting change in Australia and beyond.
2. My [Churchill Fellowship Court Education report](#) can be accessed on the Winston Churchill Trust's website¹. The report may assist the Commission in understanding the national and international court education landscape. This submission contains relevant extracts from the report. Comments on the Consultation Paper are based in the research conducted as part of my Churchill Fellowship and my professional background.

Court Education and Legal Literacy

3. Court education can be defined as formal and informal education experiences, predominantly for young people, that occur within a court building or are concerned with the operation of courts. It helps students and members of the community learn and engage with the judicial system to better understand its function and their role in interacting with it.
4. My research confirmed that countries throughout the common-law world are equally as concerned about the basic legal literacy of their young people. This concern can be expanded to include members of the community who, due to previous failures of civics education have poor legal literacy and little understanding of the mechanics of courts and, by extension the complexity of judicial impartiality.

¹ My report discusses a variety of court education strategies and outlines a best practice taxonomy that may be helpful if the Commission recommends a public legal education focus. <https://www.churchilltrust.com.au/project/the-northern-districts-education-centre-sydney-churchill-fellowship-to-research-best-practice-in-the-design-and-delivery-of-court-education-programs-for-school-students/>

5. I welcome the Consultation Paper's focus on judicial education and the recognition of the importance of education in improving the understanding of judicial impartiality. This aligns with both the spirit and form of His Honour Chief Justice Bathurst's paper quoted below.

Trust by the public in the judiciary cannot be demanded. It must be earned in how we function and importantly, appear to function. For people to trust in the judiciary, every judge, and the judiciary as a whole, must be more than simply competent. For the public to trust in the judiciary, they must trust in our competency, our integrity, and our commitment to do right by "all manner of people". We must, individually and collectively, uphold the highest standards of integrity and respect the diversity of the community we serve. This will ensure that every member of the public takes the leap of faith to trust in judicial decisions. The Hon T F Bathurst, Chief Justice of New South Wales²

6. My comments will focus on Consultation Proposal 3 (emphasis added).

*Each Commonwealth court should develop and publish an accessible guide to recusal and disqualification ('Guide') for members of the public. **The Guide should be easy to understand, be informed by case law and the Guide to Judicial Conduct and refer to any applicable Rules of Court or Practice Directions/ Practice Notes.** In addition to summarising procedures, the Guide should include a description of (i) circumstances that will always or almost always give rise to apprehended bias, and (ii) circumstances that will never or almost never give rise to apprehended bias.*

7. The guide proposed by **Consultation Proposal 3** is a form of public legal education. Public legal education seeks to inform and educate and may cater specifically for people who need information about bringing their own cases in courts. Some Australian community legal centres and other not-for-profit organisations run education programs which support [self-represented litigants](#),³ and [specific community groups](#)⁴ such as [new migrants](#).⁵ It is delivered in a variety of formats. I suggest the Commission familiarise themselves with the work of [Justice Connect 'Not for Profit Law'](#)⁶ as an example of effective and evidence based public legal education.
8. Public legal education is best provided by a court education professional. Australia has several experienced court educators currently working in courts who would be able to assist the federal courts in designing and implementing a court education program. Court educators are experts in improving legal literacy and responding to the changing needs of the Australian community.

² The Hon T F Bathurst Chief Justice of New South Wales, '2021 Opening 20f Law Term Address Trust In The Judiciary, Supreme Court of the New South Wales, Wednesday 3 February 2021, p 26

³ "Self Representation Services," *Justice Connect* (blog), accessed March 22, 2021, <https://justiceconnect.org.au/our-services/self-rep-service/>.

⁴ "Community Education - Legal Services Commission of SA," accessed March 21, 2021, <https://lsc.sa.gov.au/Education>.

⁵ "Refugee and Immigration Legal Service | Free Legal Assistance in Immigration and Refugee Matters for People in Need," accessed March 21, 2021, <https://www.rails.org.au/>.

⁶ "Not for Profit Law" *Justice Connect*, accessed July 8, 2021, <https://www.nfplaw.org.au/>

9. The benefits of an embedded educator within a court are substantial. Most relevantly for this review, organisations that participated in my research reported these as; strong relationships with judiciary, the legal professions, court staff and law enforcement coupled with access to expertise to inform and support the development and delivery of resources and programs.

Format of the Guide

10. I propose that **the Guide** take the form of an asynchronous online course, designed by a court educator, that can be completed by court users prior to commencing proceedings in federal courts. There is precedent for such courses being provided to the general public in the child protection field ⁷. The Kings College of London [online course The Modern Judiciary](#) ⁸ provides a good example of public legal education that has been very well received by both the judiciary and legal education professionals.
11. The completion of a legal literacy course would ensure that all self-represented litigants, and other court users, would have an improved understanding of court procedure, personnel and most importantly, the role of the judge in proceedings. Units could be focussed on judicial impartiality and judicial conduct, rules of court, practice and procedure, key legal terms, and complaints mechanisms.
12. The benefit of asynchronous online learning is that it can be adapted for culturally and linguistically diverse communities and different jurisdictions. It can also be easily updated over time as courts issue new practice notes or change procedures.

Final Thoughts

13. The ALRC and by extension the federal courts have the opportunity to provide thought leadership in the provision of public legal education by courts. There is no doubt that improving legal literacy for all Australians will benefit courts and the legal system more broadly. A citizenry that understands the work of courts and judges is one that values these institutions and understands the role of judicial impartiality and how it works in practice.

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⁷ “Supporting Hands Short Course”, *Bravehearts Foundation Ltd*, accessed July 9, 2021, <https://bravehearts.org.au/what-we-do/education-and-training/online-training/courses-for-general-awareness/>

⁸ “The Modern Judiciary”, *Kings College London*, accessed July 9, 2021, <https://www.kcl.ac.uk/short-courses/modern-judiciary-future-learn>