

JUDICIAL EDUCATION IN AUSTRALIA

Background

The majority of judges and magistrates in Australia are selected from among the ranks of very experienced legal practitioners. It is common for a person to be appointed only after 20 to 30 years experience as a practicing lawyer in the courts. Thus on appointment judicial officers not only have academic qualifications in law but also extensive experience as practitioners in the courts. They are presumed to possess the necessary skills and experience for judicial functions because of this experience.

Judges and magistrates in Australia are appointed by federal and state Governments. Although legislation sets minimum requirements (for example 5 years experience after attaining qualification as a lawyer), in practice governments consult existing judges and elected representatives of the legal profession before selecting persons for appointment. Typically appointees have the recognition of existing judges and other lawyers as persons who have outstanding ability in the law and legal practice.

Judicial officers tend to occupy judicial office for fairly lengthy periods. The fact that judicial officers hold office for substantial periods of time means that they are likely to benefit from programs of on going professional development. In addition it takes time to develop fully the skills required of a judicial officer, and it is in the public interest that those who have fully developed those skills put them to the public benefit for as long as possible. Thus, the members of the Australian judiciary can benefit from programs of professional development that focus on their legal skills, their practical judicial skills, and their approach to their work and which help them to maintain fitness and enthusiasm for the work. The courts and judicial education bodies in Australia conduct these organised programs of professional development.

Judicial education in the courts

Until recently most professional development programs for judicial officers in Australia were developed and delivered by committees of judges or magistrates in Australian courts. Many courts hold annual conferences or more regular meetings of judicial officers which include elements of professional development. The focus of these programs is often on updating judicial officers on developments in the law or topics of particular relevance to the work of the court in question. Some information on these events is available in the annual reports of Australian courts (links to court websites are available via the links at <http://www.law.adelaide.edu.au/library/research/courts/>).

The website of the National Judicial College of Australia includes a calendar of judicial education events in Australia (see <http://www.njca.com.au>).

The National Judicial College of Australia

The National Judicial College of Australia was established in May 2002 as an independent entity, funded by contributions from the Commonwealth and some State and Territory governments. It is controlled by a governing Council. A list of members of the NJCA Council and Secretariat is available on the NJCA website at <http://www.njca.com.au>

The College's Constitution provides that the College is to assist judicial officers to administer the law in a just, competent and speedy way by offering them opportunities to:

- (i) share lessons learned from experience, leading to identification and adoption of best professional practices;
- (ii) broaden and enhance their general and legal educational standards;
- (iii) participate in educational programs intended to broaden their understanding of the processes and consequences of change in our society;
- (iv) participate in educational programs intended to broaden their understanding of the extent and consequences of diversity in various aspects of society and to help them acquire skills to deal with that diversity;
- (v) undertake individual learning programs;
- (vi) develop their skills in management (including case management), conduct of trials and appeals, and judgment writing;
- (vii) develop other skills relevant to judicial office ;
- (viii) participate in educational programs which will help judicial officers develop substantive and procedural law, thus shaping for the future the law and its administration; and
- (ix) participate in educational programs which will help judicial officers maintain physical and mental health while exercising judicial office.

The College provides professional development programs to all judicial officers in Australia. The Council of the College has adopted some policies to pursue in developing professional development for judicial officers. These include:

- The College's programs should focus on judicial officer's legal skills, practical judicial skills, their approach to their work and programs which help them to maintain fitness and enthusiasm for the work;
- The College should adopt best practices for adult professional learning; the emphasis should not be on formal lectures but rather structured discussion of practical problems and other similar forms of active learning (for example self-teaching in small discussion groups, based on well-planned, practical problems);
- The focus on discussion rather than lectures means that most programs are suitable for groups of no more than 25 to 30 participants;
- The College's programs are participant focussed rather than "teacher focussed". Judicial officers collectively will often bring more to college programs than any one presenter or group of presenters and the emphasis should be on sharing and building upon the experience of participants; presenters should guide discussion and encourage participation, but should not be seen as a faculty separate from the participants;
- Most of the educational programs of the College are led by experienced and respected judicial officers, as their accumulated experience and skill usually makes them best placed to lead professional development programs; However,

the College will also draw on academic lawyers and members of other professions who have appropriate expertise and experience;

- One of the objectives of the College's programs is to give judicial officers from across jurisdictions and from different geographical regions the opportunity to exchange information and experiences. This would increase opportunities for the exchange of experience between jurisdictions and maximize the benefit derived by judicial officers and the community from professional development programmes.

Some examples of the College's programs follow:

The Phoenix Magistrates Program

The College provides a residential program, entitled the Phoenix Magistrates Program, every year. The program had two aims:

- to provide an orientation program for new magistrates;
- to provide a program of professional development, reflection and workshops for experienced magistrates.

The program is developed by a Committee of judges and magistrates. It includes sessions on making decisions and writing judgments, court craft, ethical issues, sentencing, alternative dispute resolution, children and family matters, cultural awareness, professional relationships between magistrates, technology for magistrates, list and diary management, and stress/lifestyle issues. The Phoenix program places a strong emphasis on using the knowledge and skills of the participating magistrates. Chief Magistrates and other experienced magistrates lead many of the sessions. Other session leaders include academics from Australian universities, medical experts and private consultants.

The National Judicial Orientation Program

The program is aimed at newly appointed superior and intermediate court judges from around Australia. The program includes sessions on judicial ethics and conduct, contempt, assessing the credibility of witnesses, evidence, judgment writing, cultural awareness, court craft, unrepresented litigants, sentencing, psychological and physical health.

Judgment Writing Program

The Judgment Writing Program is an intensive program over 3 days in which judges and magistrates learn from professional writers and experienced judges about effective techniques for writing judgments. The combination of lectures and small group work, in which participants apply principles from the lectures in revising their own writing, ensures comprehension of concepts and retention of skills. Redrafts of judgments are discussed in small groups led by a writer and a judicial co-presenter.

Dialogues On Being a Judge Program

This is a program which has been specifically developed for experienced judges in mid-career. Its purpose is to give them an opportunity to examine their approach to their work through the exploration of four key contemporary themes. These are

- the obligations and challenges faced by judicial officers and the fundamental principles governing the performance of the judicial function;
- the potential for new media to influence current law and practice;
- the demographic composition of 21st century Australia, and how it affects the work of the courts and the decisions they make;
- the Impact of Developments in Neurobiological Research on Judging.

National Curriculum on Judicial Education

The College developed a national curriculum for professional development for Australian judicial officers. It was designed to provide a framework to give some structure and balance to the various professional development activities for judicial officers being held throughout Australia. The curriculum is a document to which all bodies providing professional development for judicial officers, including courts, might refer to help them set priorities, identify areas that could be covered but are not currently covered, and avoid duplication of effort. In developing the Curriculum the National Judicial College of Australia sought comments from all courts in Australia, the Judicial Conference of Australia, the Australian Association of Magistrates, the Australian Institute of Judicial Administration, the Judicial Commission of NSW and the Judicial College of Victoria. It is available on the NJCA website www.njca.com.au

National Standard on Judicial Education

The College prepared a national standard for the amount of time and funding that should be available for each member of the Australian judiciary for professional development. The Standard was endorsed by the Council of Chief Justices of Australia, Chief Judges, Chief Magistrates, the Judicial Conference of Australia, the Association of Australian Magistrates, the Australian Institute of Judicial Administration and judicial education bodies. It is available on the NJCA website www.njca.com.au

Other Australian judicial education bodies

Australasian Institute of Judicial Administration

The Australasian Institute of Judicial Administration is a research and educational institute associated with Monash University. It is funded by the Standing Committee of Attorneys-General and also from subscription income from its membership.

The principal objectives of the Institute include research into judicial administration and the development and conduct of educational programmes for judicial officers,

court administrators and members of the legal profession in relation to court administration and judicial systems.

The Institute has published widely in matters of judicial administration and associated subjects including areas such as case management, cultural awareness, judicial ethics, technology and the courts, complex criminal trials and cross-vesting legislation, to name a few.

Information on the topics covered in its programs are available on the Institute's website <http://www.aija.org.au/>

Judicial Commission of New South Wales

The Judicial Commission was established in 1986 by NSW State legislation. The Commission's principal functions are to investigate complaints against the judiciary, to achieve consistency in sentencing and to organise continuing education and training of judicial officers in NSW. It is funded by the NSW Government.

Information on the topics covered in its programs are available on the Commission's website: <http://www.judcom.nsw.gov.au/>

Judicial College of Victoria

The Judicial College of Victoria was established in 2003. It is involved in assisting with court conferences, organising seminars and workshops for judges and magistrates. It is also reviewing and updating sentencing manuals and benchbooks for Victorian courts. Information on the topics covered in its programs are available on the College's website: <http://www.judicialcollege.vic.edu.au>

The Judicial Conference of Australia

The JCA was established in 1993. Its objects all relate to the public interest in maintaining a strong and independent judiciary within a democratic society that adheres to the rule of law.

The Conference achieves its objects in various ways:

- informing the community about the proper role of the judiciary and the significance of an independent judiciary;
- communicating with other arms of government, for the purpose of promoting mutual understanding;
- seeking improvements in the administration of justice and accessibility of the judicial system; and
- undertaking of supporting research that will benefit these aims.

Further information about the Conference is available at its website: <http://www.jca.asn.au/>

Judicial education overseas

Some Australian based organisations are involved in providing judicial education to overseas courts.

The **Pacific Judicial Education Program** is conducted by the Federal Court of Australia with funding from the Australian and New Zealand Governments. Information about the Program is available on the websites: <http://www.paclii.org/pjdp/> and <http://www.fedcourt.gov.au/index.html>

Some international bodies involved in judicial education are:

International Organisation for Judicial Training

The *IOJT* was created in March 2002, at an international conference to establish a global organization dedicated to providing training and continuing education for judges, and to fostering interaction and cooperation among the institutions responsible for such activities in member states. Information is available on its website at <http://www.iojt.org>

Commonwealth Judicial Education Institute

The Institute was established in 1998 to:

- provide support and linkage among existing Commonwealth judicial education bodies; encourage the sharing of information, human and fiscal resources internationally and inter-regionally;
- maintain linkages with American judicial education bodies to share information and resources; encourage the establishment of new national and regional judicial education bodies in the Commonwealth;
- develop programs and teaching tools for the use of all;
- deliver judicial education programs at the invitation of the Chief Justice in partnership with national judicial education bodies;
- organize study tours of justice systems and judicial education processes;
- encourage interaction among judges and jurisdictions;
- provide sustainable infrastructure for judicial education;

Website: <http://www.dal.ca/~cjei/index.html>