

**REPORT**

**A CURRICULUM FOR  
PROFESSIONAL DEVELOPMENT  
FOR AUSTRALIAN JUDICIAL  
OFFICERS**

**January 2007**

National Judicial College of Australia

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## **Abbreviations and terminology used in this report**

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ADR	Alternative dispute resolution
Course	Normally a single topic seminar which may have a number of sessions but has a single overall topic
Curriculum	An operational plan to systematically guide the development and delivery of learning programs
IEP	Individual Education Plan
IJS	Institute of Judicial Studies (of New Zealand)
JSB	Judicial Studies Board (of England & Wales)
NJCA	National Judicial College of Australia
Professional development	Activities in which learning takes place and through which the participants' professional capacity is developed or enhanced
Program	A professional development activity comprising a range of courses or sessions, possibly dealing with a number of topics or on a single theme with related topics
Session	A part of a seminar or course, on a single topic and usually delivered by the one presenter or group of presenters

# **An approach to developing this curriculum**

A curriculum is a description of what a learning activity is intended to achieve (aim)<sup>1</sup>, what its subject matter will be (content), and how it will be carried out (method).<sup>2</sup> Professional development is a term to describe activities in which learning takes place and through which the participants' professional capacity is developed or enhanced.

A curriculum for professional development for judicial officers in Australia faces the challenge of reflecting the diversity of the work of the courts and the particular contexts of the matters which come before them.

This curriculum is not a curriculum for training persons to *become* judicial officers. The curriculum assumes that knowledge of the law and those skills which are required for appointment as a judicial officer. This is a curriculum for judicial officers who, with that knowledge and skills, want to keep up-to-date and improve their skills, or acquire the skills that are needed for a specialist jurisdiction.

## *The judicial role*

Underlying this curriculum, and providing the basis for its structure, is a concept called *the judicial role*. The curriculum has, as its core, eight elements, each of which reflects an aspect of *the judicial role*.

The curriculum provides programs which help judicial officers *perform their judicial role*. The performance of that role, for the purposes of this curriculum, comprises –

- applying the law
- managing cases, the court room and one's work
- making decisions and giving reasons for decisions
- displaying appropriate standards of judicial conduct
- understanding the relationship between the judiciary and society
- keeping abreast of developments in knowledge and in public policy that impact on the law
- using technology, in and outside the courtroom

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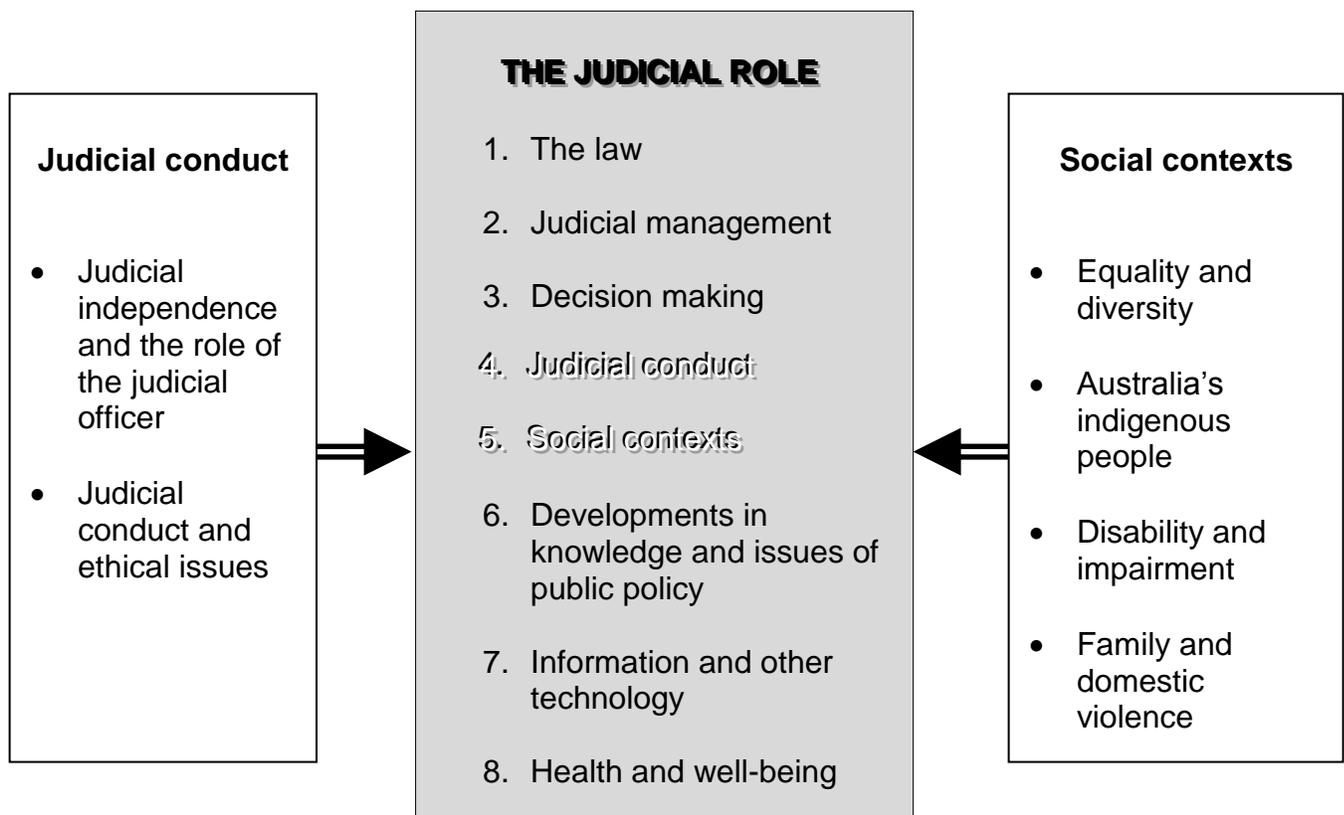
<sup>1</sup> In some cases, the aim is described as an outcome, *ie.* a statement of what will be discernible, or what will change, as a result of the learning. Some writers argue that the outcome must be described in terms which are measurable.

<sup>2</sup> In many situations it also includes a description of how performance will be assessed. That aspect of a curriculum is not appropriate in this case.

- managing one's health and well-being.

Every professional development program in this curriculum will deal with at least one aspect of that role.<sup>3</sup> In some programs one of the elements will be the major or primary theme, and one or more of the other elements will be secondary themes.

The eight elements are not necessarily self-contained. In particular, in some cases Element 4 (judicial conduct) and Element 5 (social contexts) will be dealt with pervasively in other programs. For example, Program 5.3 on *Disability & Impairment* might be a stand-alone program or a number of the themes might be dealt with in other programs, such as in Program 2.9 on *Litigants in Person*. 'Mainstreaming' of these issues is often desirable. This can be seen diagrammatically as follows –



<sup>3</sup> The term 'program' will be used in this document, for ease of description, to describe a professional development activity forming part of this curriculum. The term 'course' refers to a specific professional development event which implements a program in this curriculum. See the section *Abbreviations and terminology used in this report* for definitions of terms used.

A program can be implemented in a specific way in a particular course. A course that implements a program in this curriculum will have its own distinctive content and methods depending on factors such as the areas of law with which participants deal and whether their work is trial or appellate.

This curriculum is a listing of the professional development programs that should be available to all Australian judicial officers. It does not prescribe what every judicial officer should undertake by way of professional development. Each judicial officer can draw from this curriculum according to his/her needs and situation.

Some judicial officers work in specialist courts. They, of course, may need other programs which are relevant to their work.

The development of this curriculum reflects the objectives and strategies in the Strategic Plan of the National Judicial College of Australia (NJCA).<sup>4</sup> In particular it helps implement the objective of providing to the Australian judiciary

professional development programs that will help them to acquire and improve the skills, understanding and practical knowledge that will enable them to better perform their work.

More specifically, it helps underpin –

Strategy B: Assembling the resources necessary to meet the needs of judicial officers for professional development.

Strategy C: Helping judicial officers improve the way in which they perform their work.

Strategy D: Preparation of good quality professional development programs.

Strategy E: Presentation of good quality professional development programs.

Strategy G: Avoid duplication of effort and waste of resources in the field of judicial education.

The curriculum also reflects a number of aspects of the NJCA's Educational Philosophy as outlined in the Strategic Plan.

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<sup>4</sup> Published in August 2004.

## How this curriculum might be used

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### *The curriculum as a resource and a reference point*

The intention of the NJCA is that this curriculum will be a document to which all of the Australian bodies providing professional development for judicial officers might refer to help them set priorities, identify areas that could be covered but are not currently covered, and avoid duplication of effort. These bodies will individually pick up and put into effect those programs they consider are appropriate. There may be liaison and cooperation between the bodies in this regard.

This curriculum is not a listing of programs that a judicial officer should undertake in his/her time on the bench. Various programs will not be appropriate or valuable for a particular judicial officer. In some cases, they would be appropriate but would usually only be undertaken once during the judicial officer's time on the bench. The curriculum is a listing of all that should be available to all Australian judicial officers from the various providers of judicial professional development.

In the same vein, there will undoubtedly be many programs, other than those contained in this curriculum, which will be offered by the various providers from time to time.

The fact that a particular program is not in the curriculum does not indicate that it should not be offered by courts or other providers of judicial professional development activities. The curriculum is not intended to be restrictive.

### *Use of the curriculum by individual judicial officers*

Individual judicial officers can use the curriculum to plan their own professional development. In this respect useful reference can be made to the Individual Education Plans of the Canadian National Judicial Institute (NJI). This topic is discussed in chapter 5.<sup>5</sup>

Individual judicial officers and courts can use this curriculum when considering how best to meet the proposed *Standard for Professional Development for Australian Judicial Officers*, which has been developed by the NJCA. That Standard is, in summary, that every judicial officer should engage in at least five days of continuing professional development every year.<sup>6</sup> The Standard is set out in full in Appendix G.

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<sup>5</sup> See [www.nji.ca](http://www.nji.ca).

<sup>6</sup> The requirement can be met over a three year period.

### *Flexibility in use of the curriculum*

This curriculum is not meant to be overly prescriptive or to be set in stone. It is a framework within which there can be considerable flexibility. Using words suggested by George Thomson of the Canadian NJI, it can be a permanent, preserved curriculum that constantly changes.<sup>7</sup> There will be an ongoing developmental process as the curriculum is refined, restructured and, at times, expanded.

The programs listed in the curriculum do not necessarily need to be conducted separately; some might be part of a course which incorporates several programs in the curriculum. Also, the topics listed in each program are described as being what might be encompassed in a course. Some courses might deal with only some of the listed topics.

### *Orientation programs*

The curriculum does not have an orientation program as such. The approach adopted in constructing this curriculum is that, so far as aims or content are concerned, there is nothing specific to an orientation program; the principal differentiating factor is the introductory or orienting approach.

The range of topics which might potentially be dealt with in an orientation program is broad and extensive. The question to be answered when developing an orientation program is what topics, out of the whole range of topics, should be in the orientation program. There is further discussion of this in section 2.1 of Chapter 2.

### *Programs for subsequent years on the bench*

Just as there is a case for drawing programs and parts of programs from the curriculum to construct an orientation program, so there is also a case for using the curriculum as a source for programs for individual judicial officers in their subsequent years on the bench, depending on their circumstances.

### *Cross-jurisdictional professional development*

It has been suggested that one of the challenges for judicial professional development is ensuring that, what is called, cross-jurisdictional judicial professional development is most effectively delivered. The reference to cross-jurisdictional professional development is used in two senses: first in the vertical sense, *ie.* by court hierarchy – superior, intermediate and inferior within a state or

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<sup>7</sup> George Thomson, *The Judicial Education Curriculum: developing a framework for judicial learning*. Powerpoint presentation, 2<sup>nd</sup> International Conference on the Training of the Judiciary: Judicial Education in a World of Challenge and Change, Ottawa, Ontario October 31, 2004, available on the Internet at [www.nji.ca/nji/internationalforum/material\\_day2.htm](http://www.nji.ca/nji/internationalforum/material_day2.htm).

territory; and secondly, in the sense of across state jurisdictional boundaries. It is intended that this curriculum could be used for both types of judicial professional development.

# Chapter 1      **A curriculum for professional development for Australian judicial officers**

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## *Aim*

All judicial officers should have the opportunity, throughout their judicial career, to undertake a range of professional development activities which will help them perform their judicial role.

The programs which together make up this professional development curriculum should help judicial officers to perform their judicial role by –

### 1. Maintaining their knowledge and mastery of the law

At the very centre of a judicial officer's work is the need to know and apply the law, both substantive and procedural. This includes the interpretation of statutes and the application of the laws of evidence.

Professional development activities can help judicial officers to keep up to date with changes and developments in the law and to refresh and deepen their knowledge and understanding of it.

### 2. Managing efficiently the cases before them, the court room and their own work

Judicial officers have a management role in three situations. They need to manage the cases before the court over which they preside, the court room itself, and their other work outside the courtroom.

Judicial officers not only preside over trials and decide cases. For some, an aspect of their management of cases is the encouragement of the resolution of disputes between the parties by alternative means. Judicial officers influence dispute resolution in various ways and, in doing so, exercise a specific role.

### 3. Making decisions and giving reasons for decision, both written and oral

Judicial officers make decisions in all aspects of their work. Decisions are made in and out of court. At the core of a judicial officer's work is the making of decisions and the exercise of judgement.

Usually a judicial officer must give reasons for the decision. Professional development activities should help judicial officers to deliver oral judgments and write well-composed judgments.

Part of the judicial role is also to give directions to juries. Although this does not involve the judicial officer in making a decision, it requires the judicial officer to give the jury the guidance necessary to make a correct decision.

The judicial role also involves the sentencing of offenders. In this aspect judicial officers must make decisions in order to sentence correctly.

#### 4. Applying appropriate standards of judicial conduct

Judicial officers, whilst performing their role and in their private lives, encounter situations which require them to consider how they should conduct themselves and which may involve ethical issues raising questions in regard to appropriate judicial conduct.

#### 5. Understanding the relationship between the judiciary and society and changes in society

The judicial system performs a central role in society. Whilst judicial officers act independently they are conscious of the social contexts of the matters that come before them. Professional development activities which deal with social context issues alert judicial officers to the diversity within the community which is reflected in matters before the courts.

Although professional development programs will sometimes specifically deal with social context issues, usually these issues will be dealt with pervasively in programs dealing with other topics.

#### 6. Keeping abreast of developments in knowledge and issues of public policy that impact on the law

There are many developments in knowledge in various aspects of life which impact on the law and the work of the courts. There are also various public policy issues which arise and can be of relevance to judicial officers as they perform their judicial role.

Examples of developments in knowledge include –

- genetics and human engineering
- the environment
- artificial intelligence.

Examples of public policy issues include –

- human rights issues arising out of responses to perceived threats of terrorism
- the relationship between the three arms of government.

#### 7. Using information and other technology, in and outside the courtroom, to assist with judicial work

Information technology is a pervasive feature of the work of the courts. The court room itself may well have technology in it which is used during cases in various ways. The case itself may be conducted using information technology, for example in regard to documents which are in evidence. The judicial officer may, as well, use information technology whilst on the bench or in chambers, eg. to write judgments. Various forms of information technology, such as email, the web and the use of intranets, are part of judicial life.

Other forms of technology, such as audio-visual recordings, are also to be found in the courtroom, and judicial officers need to be familiar, in general terms, with what those technologies can do and their limitations.

## 8. Maintaining their health and well-being

Judicial officers perform their work under considerable pressure. They need to maintain their physical and mental health. Doing so helps them perform their role more efficiently and effectively.

Every program offered as part of the curriculum will address one or more of these aspects of the judicial role.

The programs listed in each module are those which should ideally be available to all judicial officers so that they have the opportunity to engage in a full range of professional development activities which are appropriate to their situation. Of course, programs on other topics will often also be available.

Some programs will be single topic stand-alone courses. Others will form part of a larger program dealing with a range of topics, eg. the National Judicial Orientation Program.

An orientation program as such does not form part of the curriculum. The justification for this is found in Chapter 2, section 2.1.

### *Content*

The programs comprising the curriculum are –

#### **Module One      The Law**

Program 1.1	Updates on the Law
Program 1.2	Statutory Interpretation

#### **Module Two      Judicial Management**

Program 2.1	Pre-trial Management for Civil Cases
Program 2.2	Pre-trial Management for Criminal Cases
Program 2.3	Settlement Conferences

Program 2.4	Mediation and Alternative Dispute Resolution Generally
Program 2.5	Managing a Hearing in a Civil Matter
Program 2.6	Managing a Criminal Trial
Program 2.7	Dealing with a Jury
Program 2.8	Communication in Court
Program 2.9	Litigants in Person
Program 2.10	Children in Court
Program 2.11	Vulnerable Witnesses in Court
Program 2.12	Dealing with Victims of Crime
Program 2.13	Therapeutic Jurisprudence
Program 2.14	Interpreters in Court
Program 2.15	Working with Others in the Court System
Program 2.16	Judicial Officers performing Administrative Functions
Program 2.17	Inquests
Program 2.18	Managing the Work of Appellate Courts
Program 2.19	Managing a Court as Head of Jurisdiction

### **Module Three    *Decision Making***

Program 3.1	Principles and Practice of Decision Making
Program 3.2	Evaluating Evidence and Decisions on Credibility
Program 3.3	Preparing and Delivering Oral Judgments
Program 3.4	Preparing Written Judgments
Program 3.5	Preparing Judgments in an Appellate Court
Program 3.6	Sentencing
Program 3.7	Written Reasons for Sentence
Program 3.8	Oral Sentencing, including Sentencing for Minor Offences
Program 3.9	Sentencing Young Offenders
Program 3.10	Litigation Accounting
Program 3.11	Assessment of Damages

### **Module Four    *Judicial Conduct***

Program 4.1	Judicial Independence and the Role of the Judicial Officer
Program 4.2	Judicial Conduct and Ethical Issues

### **Module Five    *Social Contexts***

Program 5.1	Equality and Diversity
Program 5.2	Australia's Indigenous People
Program 5.3	Disability and Impairment
Program 5.4	Family and Domestic Violence

### **Module Six    *Developments in Knowledge and Issues of Public Policy***

Program 6.1	New Areas of Knowledge and Advances in Knowledge in Existing Areas
Program 6.2	Issues of Public Policy

**Module Seven Information and other Technology**

Program 7.1	Basic Training in Computer Use
Program 7.2	Technology in the Court Room
Program 7.3	Computers as a Research and Management Tool

**Module Eight Health and Well-Being**

Program 8.1	Time Management
Program 8.2	Managing One's Health and Well-Being
Program 8.3	Retirement Planning

*Method*

The methods of presenting programs in this curriculum should reflect their aims. Where the aim is purely the enhancement of knowledge, lecture style methods could be appropriate. Where the aim is also reflection or analysis, a method that will permit that should be employed. This could include question and answer sessions, or discussion sessions in small or larger groups.

In some cases the aim includes reinforcement or enhancement of skills or judicial practices. In these situations methods which involve the application of the skills or practices will best implement a program's aim. Wherever there is such activity, usually interactive, time for reflection and feedback will be needed. This requires small groups. In some cases, video recording is a useful device for self-reflection and feedback.

This curriculum encompasses the concept that judicial officers, by their private reading and reflection, will in an informal way be seeking to achieve the aims of many of the programs.

The major educational methods which might be used are –

- Lectures
- Question and answer sessions
- Group discussions, usually in small groups
- Demonstrations
- Writing exercises, usually with the provision of feedback
- Online learning programs
- Performance-based activities, usually with the provision of feedback (and in some cases videotaped).

Professionals or academics from other disciplines could, where appropriate, provide useful input either in the form of specific knowledge or skills or by way of comparative perspectives.

The curriculum, as described in chapter 1, could suggest that all of it would be offered by face-to-face professional development activities. However –

- each program can be delivered in a variety of ways
- much of the curriculum will be face-to-face
- but delivery of programs by distance education is likely to be a significant aspect in the future because of cost and distance.<sup>8</sup>

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<sup>8</sup> There has been some hesitation expressed as to the effective and productive use of distance education in the rather specialised area of judicial professional development, where much is dependent upon interaction with individuals.

## **Module One                      The Law**

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At the very centre of a judicial officer's work is the need to know and apply the law, both substantive and procedural. This includes the interpretation of statutes and the application of the laws of evidence.

Professional development activities can help judicial officers to keep up to date with changes and developments in the law and to refresh and deepen their knowledge and understanding of it. Of course, only part of the judiciary will be interested in any particular topic, depending on their area of work.

### *Aim of this module*

Professional development activities should help judicial officers maintain their knowledge and understanding of the law and their capacity to apply the relevant law in their work, including being able to deal with evidentiary issues which arise in the court room.

## **Program 1.1                      Updates on the Law**

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### *Aim*

These programs maintain and update judicial officers' knowledge and understanding of those areas of the law relevant to their work.

### *Content*

These programs may encompass –

- recent changes in the law, either legislative or case law
- recent developments in the law of evidence
- newly introduced laws
- recent developments in judicial practice
- aspects of the law and the work of the courts which are the subject of debate or discussion.

In some cases a particular course will be relevant for all judicial officers; in other cases it will be relevant for particular jurisdictions or those working in particular areas of law.

### *The judicial role*

The primary focus of these programs is to maintain knowledge and mastery of the law. However, there could be additional secondary focuses. In some cases, the changes in the law may reflect aspects of society or the social contexts of those before the courts as parties, victims, accused or witnesses. They may also reflect developments in knowledge or in public policy, and consideration of these developments could usefully be included in programs, where appropriate.

### *Notes*

These programs need not necessarily be confined to a particular court and could be offered to judicial officers drawn from a number of courts who have a common interest in the particular area of the law.

## **Program 1.2                      Statutory Interpretation**

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### *Aim*

These programs maintain and update judicial officers' statutory interpretation skills.

### *Content*

These programs may encompass –

- consideration of relevant legislation
- consideration of the leading authorities
- theories of statutory interpretation
- the legitimate use of extrinsic materials.

### *The judicial role*

The primary focus of these programs is to maintain knowledge and mastery of the law.

## **Module Two**

## **Judicial Management**

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Judicial officers have a management role in three situations. They need to manage the cases before the court over which they preside, the court room itself, and their other work outside the courtroom. Management of civil and criminal cases requires both list and case management.

Case management is one of the hardest aspects of judicial life because of the need to develop “quick-fire” skills, especially in the magistrates’ courts. For example, in magistrates’ courts it is common to find many matters listed for guilty pleas. An inability to make reasoned and quick decisions will delay the day’s list. The juxtaposition of the need for quick decisions and for the defendant to understand the court process and the result of the case means that judicial officers need special skills in management of the list. In the same way, the need to avoid being part-heard, whenever possible, is also part of good case management.

Judicial officers not only preside over trials and decide cases. For some, an aspect of their management of cases is the encouragement of the resolution of disputes between parties by alternative means. Judicial officers influence dispute resolution in various ways and, in doing so, exercise a specific function.

### *Aim of this module*

Professional development activities should help judicial officers –

- manage the cases before their court
- manage the court room over which they preside
- manage their work outside the courtroom
- understand and facilitate the use of alternative dispute resolution mechanisms
- where appropriate, use alternative dispute resolution mechanisms.

## **Program 2.1**

## **Pre-Trial Management for Civil Cases**

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### *Aim*

These programs help judicial officers to manage effectively the pre-trial stages of civil cases. Programs will deal with issues which are particular to specialist courts, such as the Family Court. Some programs will provide information on

alternative dispute resolution (ADR) techniques, the types of cases suitable for referral to ADR, and at what stage cases should be referred to ADR.

### *Content*

The programs could encompass –

- legislation relevant to pre-trial management for civil cases
- the challenges and problems which can arise pre-trial in civil cases in areas including:
  - discovery
  - admissions
  - pleadings
  - experts and experts' reports pre-trialand techniques and procedures for dealing with them
- issues which are distinctive to particular jurisdictions
- efficient list management
- interlocutory applications
- ADR techniques
- cases suitable for referral to ADR, both within and outside the court, and stages in a case where referral to ADR could be suitable
- using ADR techniques in the management of cases, including settlement of cases.

### *The judicial role*

The major focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the courtroom.

Judicial conduct and ethical issues may arise.

## **Program 2.2                      Pre-Trial Management for Criminal Cases**

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### *Aim*

These programs help judicial officers to manage effectively the pre-trial stages of criminal cases and, in particular, how to avoid or deal with the problems and challenges which might arise. Programs will deal with issues which are confined to particular courts, and to particular areas of law.

### *Content*

The programs could encompass –

- legislation giving power to manage criminal cases
- an identification of the challenges and problems which can arise pre-trial in criminal cases
- techniques and procedures for dealing with them
- efficient list management
- contest mentions (in Victoria) and other pre-trial procedures
- use of indicated sentences.

### *The judicial role*

The major focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the courtroom.

Judicial conduct and ethical issues may arise.

## **Program 2.3                      Settlement Conferences**

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### *Aim*

These programs help judicial officers to conduct settlement conferences. Programs will often deal with issues which are confined to particular courts, and to particular legislative frameworks, such as small claims.

### *Content*

These programs could encompass –

- settlement conference theory and process
- the judicial officer's role
- opening statements
- what to do when a conference gets stuck
- communication skills
- an understanding of the psychology of litigants, particularly those attempting to negotiate from a position of weakness or those unfamiliar with the legal system.

### *The judicial role*

The major focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the courtroom.

Judicial conduct and ethical issues may arise.

### *Note*

Much of the settlement work of courts is conducted by registrars.

## **Program 2.4                      Mediation and Alternative Dispute Resolution Generally**

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### *Aim*

These programs help judicial officers refer a matter to mediation or other form of alternative dispute resolution or effectively to conduct a mediation, where appropriate.

### *Content*

These programs could encompass –

- identifying when a matter should be referred to mediation
- how to send a matter to mediation
- forms of alternative dispute resolution available – mediation, arbitration, special referees, expert determination, etc.
- mediation skills
- delicate or difficult courtroom situations
- the role of the judicial officer
- preserving the integrity of the judicial role
- an understanding of the psychology of litigants, particularly those attempting to negotiate from a position of weakness or those unfamiliar with the legal system

### *The judicial role*

The primary focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the courtroom.

Judicial conduct and ethical issues may arise.

## **Program 2.5                      Managing a Hearing in a Civil Matter**

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### *Aim*

These programs help judicial officers to manage effectively hearings in civil matters and in particular avoid or deal with the problems and challenges which might arise.

### *Content*

These programs could encompass –

- an identification of the challenges and problems which can arise in a hearing and suggestions of ways to deal with them
- techniques and procedures for expediting hearings
- the use of technology to manage a hearing<sup>9</sup>
- managing difficult people in the courtroom
- dealing with contempt of court
- dealing with particular types of witnesses or parties<sup>10</sup>
- expert witnesses and court appointed experts
- dealing with a civil jury
- managing a long hearing
- consideration of ‘worst case’ scenarios
- ‘small claim’ provisions which abandon rules of evidence or normal procedures
- making provision for the judgment or decision – whether it should be oral and in writing
- managing reserved judgments.

### *The judicial role*

The primary focus of these programs is the efficient management of cases, the court room and judicial officers’ work outside the courtroom.

Judicial conduct and ethical issues may arise.

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<sup>9</sup> This topic may be dealt with in Program 3.1.

<sup>10</sup> This topic may be dealt with in Program 2.8.

## **Program 2.6                      Managing a Criminal Trial**

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### *Aim*

These programs help judicial officers to manage effectively a criminal trial and in particular avoid or deal with the problems and challenges which might arise.

### *Content*

The programs could encompass –

- an identification of the challenges and problems which can arise in a trial and suggestions of ways to deal with them
- techniques and procedures for expediting trials
- the use of technology to manage a trial<sup>11</sup>
- managing difficult people in the courtroom
- dealing with particular types of witnesses or parties<sup>12</sup>
- managing a long trial
- multi-party and multi-accused trials
- consideration of 'worst case' scenarios
- dealing with contempt of court
- techniques for preparation of a charge<sup>13</sup>
- differences between a jury trial and judge/magistrate alone trials.

### *The judicial role*

The primary focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the courtroom. In some cases, a secondary focus is an understanding of the relationship between the judiciary and society and of changes in society.

Judicial conduct and ethical issues may arise.

The judicial officer's role to keep abreast of developments in knowledge and in public policy that impact on the law may be relevant where the focus of a particular program was on a trial involving knowledge of another discipline, eg. genetics, or involving an issue of public policy.

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<sup>11</sup> This topic may be dealt with in Program 3.1.

<sup>12</sup> This topic may be dealt with in Program 2.8.

<sup>13</sup> This topic would also be dealt with in Program 2.7.

## **Program 2.7                      Dealing with a Jury**

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### *Aim*

These programs help judicial officers manage the court effectively when a jury is involved.

### *Content*

The programs could encompass –

- jury selection
- managing the trial when a jury is present
- assistance to a jury – what aids may be given to a jury
- the presentation of expert evidence
- the presentation of complex evidence
- complex and long trials
- multi-accused trials
- particular situations, such as cases involving child sexual offences
- judicial instructions to juries – summing up
- jury deliberations and where the jury cannot agree
- situations where a jury or juror must be discharged.

### *The judicial role*

The primary focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the court room. In some cases, a secondary focus could be an understanding of the relationship between the judiciary and society and of changes in society.

The judicial role of making decisions would not usually be the focus of these programs but if a program included summing up and jury directions it would reflect this aspect of the judicial role.

Judicial conduct and ethical issues may arise.

## **Program 2.8                      Communication in Court**

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In all courts, but particularly in the magistrates' courts, judicial officers need the skill of communicating with the parties in a language they will understand. It has been observed by a judicial officer that the art is to determine the level and extent of remarks to the defendant or other party, so that he/she understands the

reasons for decision without being overwhelmed or confused. To do that requires skills of communication.

### *Aim*

These programs help judicial officers to be aware of the various aspects of communications occurring in the court room, to be sensitive to the various people in the court during proceedings, and to manage the court accordingly.

### *Content*

The programs could encompass –

- handling tension or emotion in the court room whatever its source, eg. anger, anxiety about being in court, grief, etc.
- the cultural, religious and other influences, such as youth and impairment, which can also affect communication
- the nature and characteristics of the people that may be in the court room –
  - parties
  - litigants in person
  - victims
  - witnesses
  - interpreters
  - jury members
  - family and friends of the parties
  - the media
- specific issues when indigenous people are in court<sup>14</sup>
- communication strategies to overcome difficulties in cross-cultural situations.

### *The judicial role*

The primary focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the court room. A second primary focus is an understanding of the relationship between the judiciary and society and of changes in society, as these programs would deal with the social contexts of those before the court or in the court room.

Judicial conduct and ethical issues may arise.

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<sup>14</sup> See also Program 7.2.

## **Program 2.9 Litigants in Person**

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### *Aim*

These programs help judicial officers to be aware of and understand the legal and practical issues which will confront them in dealing with litigants in person and to develop strategies for dealing with them.

### *Content*

These programs may encompass –

- a review of legal and practical issues including the rules and practices for accommodating self-represented litigants
- a review of published work, by courts and other organisations, in relation to such litigants
- the provision of data to participants on the extent of self-represented litigants in the courts and on the impact on court work
- practical advice on how to deal with various situations
- self-represented litigants in pre-trial hearings and in trials
- differences in trials without juries and those with juries
- self-represented litigants and the use of interpreters
- difficulties in certain types of trials, eg. sexual offence trials
- consideration of abnormal and querulous litigants from a psychiatric perspective and strategies for dealing with them.

### *The judicial role*

The primary focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the court room. In some cases a secondary focus will be an understanding of the relationship between the judiciary and society and of changes in society.

Judicial conduct and ethical issues may arise.

## **Program 2.10 Children in Court**

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### *Aim*

These programs help judicial officers to deal effectively with situations where children are in the court room as a victim or as accused or as a witness.

## *Content*

The programs could encompass –

- legislative provisions in relation to evidence from child witnesses
- taking evidence from child witnesses – children as reporters of history – how they differ from adults in their perception of events, how age and capacity affect the reliability of their evidence
- appropriate techniques for questioning of children or dealing with them in court
- the extent to which usual court procedures should be adjusted for children
- the pre-recording of evidence
- child witnesses and juries
- factors relevant to child welfare, care and protection
- permission to marry
- child-related family law matters, such as sexual/child abuse cases
- best practice for courts.

## *The judicial role*

The primary focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the court room. In some cases a secondary focus will be an understanding of the relationship between the judiciary and society and of changes in society.

Judicial conduct and ethical issues may arise.

## **Program 2.11                      Vulnerable Witnesses in Court**

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### *Aim*

These programs help judicial officers to deal effectively with situations where vulnerable witnesses are in the court room.

### *Content*

The programs could encompass –

- identifying vulnerable witnesses
- pre-recording of evidence
- remote witness rooms
- use of screens and other legislative protections
- specific tests for special witness status

- dealing with those who are not identified legislatively as vulnerable witnesses but appear vulnerable
- appropriate techniques for dealing with and protecting vulnerable witnesses without disadvantaging the other side
- dealing with the vulnerable self-represented litigant, particularly where the other side is also self-represented.

#### *The judicial role*

The primary focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the court room. In some cases a secondary focus will be an understanding of the relationship between the judiciary and society and of changes in society.

Judicial conduct and ethical issues may arise.

## **Program 2.12                      Dealing with Victims of Crime**

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#### *Aim*

These programs help judicial officers to deal effectively with victims of crime.

#### *Content*

The programs could encompass –

- use of victim impact statements
- the place of the victim in the criminal law process
- victim mediation
- restorative justice and similar processes
- victim support services and their proper role in the court
- compensation orders
- criminal injuries compensation.

#### *The judicial role*

The primary focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the court room. In some cases a secondary focus will be an understanding of the relationship between the judiciary and society and of changes in society.

Judicial conduct and ethical issues may arise.

## **Program 2.13                      Therapeutic Jurisprudence**

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According to therapeutic jurisprudence, the actions of judicial officers, amongst other aspects of the legal process, impact upon participants in the judicial system, including parties and their families, witnesses and jurors. Court processes developed with a view to promoting well-being, or at least limiting any negative impact on well-being, can advance relevant goals of the justice system, such as offender rehabilitation and healthy relationships.

The manner in which judicial officers conduct themselves in court, the way in which they express and issue judgments and, to some degree, the manner in which they act outside the court room can impact upon those involved and affect confidence in the justice system and compliance with court orders.

Therapeutic jurisprudence suggests techniques that judicial officers can use to enhance their skills and better perform their role in this context.

Since its inception in the late 1980s, the application of therapeutic jurisprudence has expanded from mental health law to cover diverse aspects of the law including family, criminal and civil law.

### *Aim*

These programs provide judicial officers with an opportunity to consider the relevance of the theory and practice of therapeutic jurisprudence to their work.

### *Content*

These programs could encompass –

- therapeutic jurisprudence in specialist courts
- therapeutic jurisprudence and the judicial role of managing
- therapeutic jurisprudence and the judicial role of decision making
- criminal cases
- civil cases
- family law cases.

### *The judicial role*

The focus of these programs is the role of judicial officers, the impact of their actions on those involved in the court process and judging techniques through which judicial officers can promote greater respect for and confidence in the justice system.

### *Note*

This topic may not always be a program in its own right but may be part of a program on sentencing.

## **Program 2.14                      Interpreters in Court**

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### *Aim*

These programs help judicial officers to manage the court effectively when an interpreter is being used.

### *Content*

The programs could encompass –

- the difference between interpreting and translating
- a discussion on the intricacies of language and its importance in the adversarial court room
- a description of the complexities of the interpreting process and the difficulties encountered by interpreters in achieving accuracy of interpretation
- a discussion of how the principles of natural justice can be complied with when an interpreter is being used
- interpreters and self-represented litigants
- a discussion of the role of the interpreter
- an understanding of the NAATI interpreter and translation accreditation system
- relevant authorities dealing with the requirements for an interpreter and the issue of a fair trial
- tips on how to help interpreters to perform their work to the best of their skill and ability.

### *The judicial role*

The primary focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the court room. In some cases a secondary focus will be an understanding of the relationship between the judiciary and society and of changes in society.

Judicial conduct and ethical issues may arise.

## **Program 2.15                      Working with Others in the Court System**

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### *Aim*

These programs help judicial officers to work effectively with their staff, court administrators and others in the court system.

### *Content*

The programs could encompass –

- the role of the judge’s associate and other personal staff
- the role of court administrators and how the system works
- the role of court officers
- the role of listing authorities
- the role of sheriff’s officers
- relationships with the head of jurisdiction
- working with user groups
- interactions with government departments<sup>15</sup>
- the relationship between an independent judicial officer and an employee of the government
- interpersonal skills.

### *The judicial role*

The primary focus of these programs is the efficient management of judicial officers’ work outside the court room.

Judicial conduct and ethical issues may arise.

## **Program 2.16                      Judicial Officers performing Administrative Functions**

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### *Aim*

These programs help judicial officers to perform statutory administrative functions.

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<sup>15</sup> Examples of such interactions are involvement in law reform initiatives or implementation of policies in regard to the courts, *eg.* in regard to information technology.

### *Content*

The programs deal with practical aspects of applications for warrants and orders and could encompass –

- search warrants
- extensions of time for questioning
- intercept warrants
- extradition
- *Service and Execution of Process Act* matters
- orders made under legislation relating to terrorism.

### *The judicial role*

The primary focus of these programs is the efficient management of judicial officers' work in these areas, in many instances outside the courtroom.

Judicial conduct and ethical issues may arise.

## **Program 2.17                      Inquests**

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### *Aim*

These programs help judicial officers, usually magistrates, to conduct inquests.

### *Content*

These programs may encompass –

- an introduction to coronial work and the role of the coroner
- the ability to control the witness
- the duty to proceed in a procedurally fair manner so far as adverse findings are concerned
- the capacity to issue warrants for the seizure of material
- the interaction of forensic medicine in the legal sphere and the ability to give specific directions to investigators.

### *The judicial role*

The primary focus of these programs is the efficient management of judicial officers' work in the court room.

Judicial conduct and ethical issues may arise.

## **Program 2.18                      Managing the Work of Appellate Courts**

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### *Aim*

These programs help judicial officers engaged in appellate work to consider matters of direct practical application to their work and to participate effectively in the work of the court.

### *Content*

The programs could encompass –

- appeal books and the material provided to appeal courts, including electronic appeal books
- practice and procedure in relation to outlines, summaries and other material provided by counsel for the assistance of the court
- controlling oral argument on appeal
- dealing with a complaint of incompetent representation in criminal appeals and how evidentiary and other issues are handled
- fresh evidence on appeal
- the role of appellate courts in sentencing
- short form judgments
- listing practices and allocation of hearing times
- judgment writing in appellate cases
- writing time for judges
- judgments of the court or individual judges
- managing reserved judgments
- handling of chamber applications
- the litigant in person in appeals
- the relationship between appellate and intermediate courts
- reflections on judicial method and appellate courts.

### *The judicial role*

The primary focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the court room.

Judicial conduct and ethical issues may arise.

## **Program 2.19                    Managing a Court as Head of Jurisdiction**

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### *Aim*

These programs help judicial officers who have been appointed as head of jurisdiction or who have supervising functions to manage their role

### *Content*

The programs could encompass –

- working with court administrators
- the relationship with the executive government and working with the executive government
- working with the media
- judicial salaries and conditions
- budgeting
- communication styles
- leadership and pastoral roles
- scheduling and rostering
- business plans, benchmarking and productivity data
- responding to consultations from government in regard to new legislation
- interactions with government departments
- working with the Minister and the Minister's advisors
- the relationship with the bureaucracy
- methods of managing an independent judiciary
- maintaining health, well-being and enthusiasm.

### *The judicial role*

The primary focus of these programs is the efficient management of cases, the court room and judicial officers' work outside the court room. Judicial conduct and ethical issues may arise.

At times governments consult with courts, or individual judicial officers, about proposed legislative change. Dealing with governments by judicial officers can be a delicate matter. Having regard to the separation of powers and the independence of the judiciary, it may be necessary to distinguish between issues of law reform, the practical aspects of which it is appropriate to discuss, and matters of policy on which the judiciary should not express a view.

### *Note*

It could be very desirable for senior court administrators to be involved in these programs, as appropriate.

## **Module Three                      Decision Making**

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Judicial officers make decisions in all aspects of their work. Decisions are made both in and out of court. At the core of a judicial officer's work is the making of decisions and the exercise of judgement.

Usually a judicial officer must give reasons for the decision. Professional development activities should help judicial officers to deliver oral judgments and write well-composed judgments.

Part of the judicial role is also to give directions to juries. Although this does not involve the judicial officer in making a decision, it does involve the judicial officer giving the jury the means whereby it might make a correct decision.

The judicial role also involves the sentencing of offenders. In this aspect judicial officers must make decisions in order to sentence appropriately.

### *Aim of this module*

Professional development activities should help judicial officers –

- to make decisions during the course of matters before the courts
- to make decisions as part of the process of composing a judgment, whether in written or oral form
- to write judgments
- to provide directions to juries to enable them to make a decision<sup>16</sup>
- to sentence offenders.

## **Program 3.1                      Principles and Practice of Decision Making**

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### *Aim*

These programs help judicial officers to make informed and sound decisions both during the course of a matter before the court and in the process of preparing a judgment or directions to a jury.

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<sup>16</sup> This aim is dealt with in Module 2, Program 2.7.

### *Content*

These programs could encompass –

- a logical process for effective decision-making
- decisions on factual issues
- decisions in interlocutory and routine matters
- using decision-making powers to deal with dilatory practices in the courts and to ensure cases are disposed of expeditiously
- research as part of the process of decision-making
- evaluating the relevance and importance of evidence
- understanding the impact of personal values and cultural belief systems on decision-making.

### *The judicial role*

The primary focus of these programs is the judicial role to make decisions and give reasons for decision, both written and oral. A secondary focus is the judicial role to manage efficiently the cases before them, the court room and the work which takes place outside the court room.

Judicial conduct and ethical issues may arise.

## **Program 3.2      Evaluating Evidence and Decisions on Credibility**

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### *Aim*

These programs help judicial officers to form judgements about the value, weight and credibility of evidence and of witnesses.

### *Content*

These programs could encompass –

- evaluating the evidence of witnesses as to its credibility, weight and relevance
- properly expressing the evaluation of witnesses for the benefit of appeal courts.

### *The judicial role*

The primary focus of these programs is the judicial role to make decisions and give reasons for decision, both written and oral. A secondary focus is the judicial

role to manage efficiently the cases before them, the court room and the work outside the court room.

Judicial conduct and ethical issues may arise.

The judicial role of understanding the relationship between the judiciary and society and of changes in society could be a focus as the evidence or witness being evaluated may come from a particular social context.

### **Program 3.3                      Preparing and Delivering Oral Judgments**

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#### *Aim*

These programs help judicial officers to prepare and deliver an oral judgment.

#### *Content*

These programs could encompass –

- when an oral judgment may be appropriate or necessary, and how to choose when to use it
- the benefits and disadvantages of oral rather than written judgments
- the elements and structure of an effective and appropriate oral judgment
- preparing for an oral judgment, before and during a hearing
- use of templates or checklists as an aid to oral decision delivery
- short form reasons
- common errors made in an oral judgment.

#### *The judicial role*

The primary focus of these programs is the judicial role to make decisions and give reasons for decision, both written and oral. A secondary focus is the judicial role to manage efficiently the cases before them, the court room and the work outside the court room.

Judicial conduct and ethical issues may arise.

## **Program 3.4                      Preparing Written Judgments**

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### *Aim*

These programs help judicial officers to prepare and write a judgment.

### *Content*

These programs could encompass –

- reasons for written judgments in relation to the different courts, and audiences to whom they are addressed
- a structure for written judgments
- consideration of pitfalls in writing judgments and what not to include
- language and written style
- short form reasons
- managing reserved judgments.

### *The judicial role*

The primary focus of these programs is the judicial role to make decisions and give reasons for decision, both written and oral. A secondary focus is the judicial role to manage efficiently the cases before them, the court room and the work outside the court room.

Judicial conduct and ethical issues may arise.

## **Program 3.5                      Preparing Judgments in an Appellate Court**

---

### *Aim*

These programs help judicial officers to prepare and write a judgment when sitting on an appeal.

### *Content*

These programs could encompass –

- joint judgments
- ex tempore judgments
- written judgments
- managing reserved judgments.

### *The judicial role*

The primary focus of these programs is the judicial role to make decisions and give reasons for decision, both written and oral. A secondary focus is the judicial role to manage efficiently the cases before them, the court room and their work.

Judicial conduct and ethical issues may arise.

## **Program 3.6                      Sentencing**

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### *Aim*

These programs help judicial officers to sentence offenders appropriately.

### *Content*

These programs could encompass –

- the general principles of sentencing
- the exercise of judicial discretion
- the process of determining a sentence
- trends and initiatives in sentencing, including therapeutic sentencing, problem solving courts, restorative justice, circle sentencing and other initiatives
- aids to sentencing
- pre-sentence orders
- mandatory sentencing
- using sentencing statistical databases, such as JIRS (New South Wales)
- minimum parole periods and risk assessment
- guideline judgments
- victim impact statements
- sentencing persons with psychological problems
- sentencing of aboriginal people, including sentencing options
- sentencing issues of contemporary concern to judicial officers
- public opinion, the media and sentencing
- reflections on judicial method and appellate courts.

### *The judicial role*

The primary focus of these programs is the judicial role of determining an appropriate sentence. A secondary focus is making decisions and giving reasons for decision, both written and oral.

Judicial conduct and ethical issues may arise.

The judicial role of understanding the relationship between the judiciary and society and of changes in society could be relevant as offenders being sentenced could come from particular social contexts.

## **Program 3.7                      Written Reasons for Sentence**

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In all courts it is important that those being sentenced, understand what is happening and the reasons for the sentence. The judicial officer needs to express reasons for sentence in terms the accused will understand. The art is to determine the level and extent of remarks to the defendant, so that he/she understands the reasons.

The jurisdictional differences in regard to this topic are significant. Written reasons for sentence in Magistrates Courts are generally brief, if provided at all. There are varying practices in the courts throughout Australia.

### *Aim*

These programs help judicial officers to prepare written reasons for sentence.

### *Content*

These programs could encompass –

- when to reserve
- finding the facts
- addressing the relevant considerations.

### *The judicial role*

The primary focus of these programs is the judicial role of determining an appropriate sentence. A secondary focus is making decisions and giving reasons for decision, both written and oral.

Judicial conduct and ethical issues may arise.

The judicial role of understanding the relationship between the judiciary and society and of changes in society could be relevant as offenders being sentenced could come from particular social contexts.

## **Program 3.8**

## **Oral Sentencing, including Sentencing for Minor Offences**

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In all courts it is important that those being sentenced, understand what is happening and the reasons for the sentence. The judicial officer needs to express reasons for sentence in terms the accused will understand. The art is to determine the level and extent of remarks to the defendant, so that he/she understands the reasons.

### *Aim*

These programs help judicial officers to sentence offenders effectively and to sentence a minor offender in a manner that will discourage that offender from re-offending.

### *Content*

These programs could encompass –

- use of templates or checklists as an aid to oral sentencing
- the balance between the competing demands of enunciating the sentencing comments required by law and communicating with the person who is being sentenced
- communication in court, including body language, eye contact, presentation skills, plain English, communicating with children, communicating with the culturally and linguistically diverse, communicating with the intellectually disabled
- therapeutic jurisprudence, *ie.* using the sentencing process in a therapeutic way to trigger change and understanding in the offender
- determining what information the judicial officer needs about the offender and the offence to sentence effectively
- and the matters listed in Programs 3.6 and 3.7.

### *The judicial role*

The primary focus of these programs is the judicial role of determining an appropriate sentence. A secondary focus is making decisions and giving reasons for decision, both written and oral.

Judicial conduct and ethical issues may arise.

The judicial role of understanding the relationship between the judiciary and society and of changes in society could be relevant as offenders being sentenced could come from particular social contexts.

## **Program 3.9                      Sentencing Young Offenders**

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### *Aim*

These programs help judicial officers to sentence young offenders skilfully and appropriately.

### *Content*

These programs could encompass –

- special legislation
- information on child development
- understanding the interaction between family issues and offending
- sentencing of parents for child offending, including compensation orders
- special programs for child offenders
- communication skills for addressing children
- assessing pre-sentence assessments and reports
- psychiatric and psychological assessments
- alternatives to sentencing.

### *The judicial role*

The primary focus of these programs is the judicial role of determining an appropriate sentence. A secondary focus is making decisions and giving reasons for decision, both written and oral.

Judicial conduct and ethical issues may arise.

The judicial role of understanding the relationship between the judiciary and society and of changes in society could be relevant as the young offenders being sentenced could come from particular social contexts.

## **Program 3.10                      Litigation Accounting**

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### *Aim*

These programs help judicial officers to value businesses and other assets and reach a realistic assessment on a proper accounting basis of economic losses in the future.

## *Content*

These programs could encompass –

- the various types of cases where litigation accounting is required, eg. resumption cases, personal injuries and contracts cases, family law cases
- calculations of damages in relation to the future
- discounting rates
- calculation of damages for loss of services
- calculation of damages for possibilities
- valuing businesses and other assets
- detecting fraud
- unravelling complex corporate structures.

## *The judicial role*

The primary focus of these programs is the judicial role of making decisions and giving reasons for decision, both written and oral.

Judicial conduct and ethical issues are unlikely to arise.

## **Program 3.11                      Assessment of Damages**

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### *Aim*

These programs help judicial officers to assess damages, including being aware of recent developments.

### *Content*

These programs could encompass –

- review of recent decisions
- punitive damages
- consequential loss
- role of the expert in the assessment of damages.

### *The judicial role*

The primary focus of these programs is the judicial role of making decisions and giving reasons for decision, both written and oral.

Judicial conduct and ethical issues are unlikely to arise.

## **Module Four**

## **Judicial Conduct**

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Judicial officers encounter situations, in and outside the court room, which require them to consider how they should conduct themselves. This may involve issues which raise questions in regard to appropriate judicial conduct.

### *Aim of this module*

Professional development activities should help judicial officers –

- to identify common problems that raise questions as to the appropriate standard of conduct or any ethical concerns
- by providing information about resources available to assist them in resolving such questions
- to consider and apply the relevant principles
- by providing guidelines in regard to judicial conduct and ethical problems which arise in and outside the court room.

### **Program 4.1**

### **Judicial Independence and the Role of the Judicial Officer**

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#### *Aim*

These programs provide judicial officers with the opportunity to consider broad issues relevant to their judicial independence in the context of the judicial system including its independence.

#### *Content*

These programs could encompass –

- a consideration of the literature and official statements in regard to the role of the judiciary and of the individual judicial officer
- the effect of judicial independence on the relationship between heads of jurisdiction and judicial officers
- boundaries between administrative issues and an independent judiciary
- handling of complaints against judicial officers
- issues about the extent to which, and how, judicial officers should take some responsibility for having some of the problems they see before them fixed, *eg.*

in legislation, administration or the outcomes for the people who appear before them.

### *The judicial role*

The focus of these programs is the role of judicial officers to apply appropriate standards of judicial conduct in their work.

## **Program 4.2                      Judicial Conduct and Ethical Issues**

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### *Aim*

These programs provide judicial officers with opportunities to consider the applicability to their own work of practical issues which can arise in regard to judicial conduct and ethics.

### *Content*

These programs could encompass –

- criticism of trial counsel
- dealing with difficult colleagues
- self-represented litigants
- avoiding possible conflicts of interest
- the duty to sit and determine cases
- conduct in court
- conduct out of court
- conflicts of interest
- ostensible bias
- disqualification
- dealing with the media
- provision of references
- speech invitations
- invitations to practitioners' or law firms' social functions
- the impact of judicial conduct on others.

### *The judicial role*

The focus of these programs is the role of judicial officers to apply appropriate standards of judicial conduct in their work.

The judicial system performs a central role in society. Whilst judicial officers act independently they are conscious of the social context of the matters that come before them. Professional development activities which deal with social context issues alert judicial officers to the diversity within the community which is reflected in matters before the courts.

Judicial officers are concerned to preserve for society the inestimable benefit of judicial independence. Any attempt to use judicial professional development to 're-educate' judicial officers or 'push' a particular issue will be resisted by judicial officers. Given their daily interaction with a great number of people drawn from a wide variety of social contexts, judicial officers rightly resist the notion that they are out of touch with society. Nevertheless, they accept the value of examining, often with the benefit of experts drawn from other disciplines, social issues which are reflected in matters before the courts.

Although professional development programs will sometimes specifically deal with social context issues, usually these issues will be dealt with pervasively in programs dealing with other topics.

### *Aim of this module*

Professional development activities should help judicial officers by providing them with –

- information about the social contexts against which and out of which particular issues and particular litigants come before the courts
- examples of the application of the principles of equality and fairness in a diverse society.

## **Program 5.1**

## **Equality and Diversity**

---

### *Aim*

These programs provide judicial officers with information about matters relevant to equality and diversity, and help them to carry out their work in a way which is sensitive to those issues and views.

## *Content*

These programs could encompass –

- situations where persons from diverse cultures are in the court room
- questions of race or ethnicity which may arise in the course of proceedings
- questions of gender which may arise in the course of proceedings
- intercultural communication in legal settings
- the cultural and religious influences that affect behaviour and communication
- cultural stereotyping and cultural bias
- key aspects of the major religions
- understanding the impact of personal values and cultural belief systems on decision-making
- communication strategies to overcome difficulties in cross-cultural situations.

## *The judicial role*

The focus of these programs is the judicial role of understanding the relationship between the judiciary and society and of changes in society.

## *Note*

Many of the issues in this program are similar to those to be dealt with in Program 2.8 *Communication in Court*.

## **Program 5.2                      Australia's Indigenous People**

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### *Aim*

These programs provide judicial officers with information about matters in which the role or involvement of aboriginal people might call for particular skills or a different approach. They include aboriginal courts, sentencing options and traditional indigenous law.

### *Content*

These programs could encompass –

- relevant legislation and case law
- consideration of available benchbooks dealing with indigenous people<sup>17</sup>

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<sup>17</sup> For example, the *Aboriginal Benchbook for Western Australian Courts*, Australian Institute of Judicial Administration, 2002.

- the role and impact of customary law
- evidence and language in aboriginal cases
- the aboriginal family, community and culture – the context of decision making
- equality issues in general
- child welfare
- aboriginal courts.

### *The judicial role*

The focus of these programs is the judicial role of understanding the relationship between the judiciary and society and of changes in society.

## **Program 5.3                      Disability and Impairment**

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### *Aim*

These programs provide judicial officers with –

- information about various forms of disability, both mental disability and physical disability
- information about the terminology used by the ‘disability community’ in regard to disabilities
- insights into the experience of being in the courtroom for people with a disability or impairment
- insights on how to deal with situations where persons with disabilities or impairment are before the court as parties, accused, victims or witnesses.

### *Content*

These programs could encompass –

- information about –
  - mental health
  - substance abuse generally
  - drugs and alcohol
  - physical decline and ageing
  - behaviour and personality generally
- consideration of –
  - the mental impairment defence
  - sentencing options

- situations where there are people with disabilities in the court room as parties, accused, victims or witnesses –physical and psychological aspects and issues in regard to communication
- situations where there are persons with impairment in the court room as parties, accused, victims or witnesses.

#### *The judicial role*

The focus of these programs is the judicial role of understanding the relationship between the judiciary and society and of changes in society.

## **Program 5.4                      Family and Domestic Violence**

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#### *Aim*

These programs provide judicial officers with information and skills to handle cases in which issues of family and domestic violence emerge.

#### *Content*

These programs could encompass –

- relevant legislation and case law
- social research in regard to family and domestic violence
- expert evidence in relation to:
  - the indicia of family and domestic violence
  - the effects of family and domestic violence
- programs for the treatment of violence.

#### *The judicial role*

The focus of these programs is the judicial role of understanding the relationship between the judiciary and society and of changes in society.

## **Module Six                      Developments in Knowledge and Issues of Public Policy**

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There are many developments in knowledge in various aspects of life which are emerging and impact on the law and the work of the courts. There are also various public policy issues which arise and can be of relevance to judicial officers as they perform their judicial role.

Examples of developments in knowledge include –

- genetics and human engineering
- environmental science
- scientific knowledge
- artificial intelligence.

Examples of public policy issues which could arise from time to time include –

- human rights issues<sup>18</sup>
- the relationship between the three arms of government
- the debate in regard to judicial activism.

*Aim of this module*

Professional development activities should provide judicial officers with the opportunity to consider developments in knowledge and in public policy which affect the courts and the judiciary.

### **Program 6.1                      New Areas of Knowledge and Advances in Knowledge in Existing Areas**

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*Aim*

These programs provide judicial officers with –

- information about new areas of knowledge
- advances of knowledge in existing areas

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<sup>18</sup> For example, arising out of matters which might come before the courts as a result of legislative responses to perceived threats of terrorism.

which impact on the law.

### *Content*

These programs could encompass a wide range of topics, including –

- DNA evidence
- information technology crimes
- privacy issues
- intellectual property and the internet
- mental health.

### *The judicial role*

The focus of these programs is the judicial role of keeping abreast of developments in knowledge which impact on the law and the work of the courts.

## **Program 6.2                      Issues of Public Policy**

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### *Aim*

These programs provide judicial officers with information about, and an opportunity to discuss, issues of public policy which impact on the law.

### *Content*

These programs could encompass a wide range of topics, including –

- dealings with agencies of the executive government
- dealings with industry and community groups
- human rights
- the policy making process including the legislative process
- the debate in regard to judicial activism – including issues related to the role of courts in society, judicial method, how judicial officers should respond to public criticism, and the materials available to judicial officers on which to base their decisions.

### *The judicial role*

The focus of these programs is the judicial role of keeping abreast of developments in public policy which impact on the law and the work of the courts.

## **Module Seven                    Information and other Technologies**

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Information technology is a pervasive feature of the work of the courts. The court room itself may well have technology in it which is used during cases in various ways. The case itself may be conducted using information technology to record documents which are in evidence. The judicial officer may use information technology whilst on the bench or in chambers, eg. to write judgments. Various forms of information technology, such as email and the use of the web and intranets is part of judicial life.

Other forms of technology, such as audio-visual technology, are also to be found in the courtroom, and judicial officers need to be familiar, in general terms, with what those technologies can do and their limitations.

In performing their role, judicial officers need to have skills in the use of technology and understand how it is, or can be used, in the court process.

### *Aim of this module*

Professional development activities should help judicial officers to use information technology effectively–

- which supports the running of the court system
- which supports the running of the court room
- in their research and their daily work.

## **Program 7.1                    Basic Training in Computer Use**

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### *Aim*

These programs help judicial officers to develop basic skills in the use of a computer.

### *Content*

These programs could encompass –

- how the computer works

- word processing
- use of portals (desktop shortcut systems) to simplify navigation and the use of Word document templates to help standardise judgment structure and formatting
- file management
- other programs such as Excel

### *The judicial role*

The primary focus of these programs is the efficient and effective use of information technology by judicial officers, both in and outside the court room.

## **Program 7.2                      Technology in the Court Room**

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### *Aim*

These programs help judicial officers to be aware of, and use as applicable, technology which supports the running of the court system and the court room, and which is used to detect and present evidence.

### *Content*

These programs could encompass –

- an overview of developments in technology and the opportunities and challenges that they present
- current electronic services in courts
- electronic filing of documents
- transcript management and production
- security of systems
- electronic call-overs
- information technology as a case management tool
- the design of electronic court rooms
- the use of audio-visual technology
- technology used to detect and present evidence, such as speed measuring devices, breath analysis machines, digital speed cameras and DVD recorded evidence
- transcript analyser/brief analyser and similar programs, which enable “real time” transcript review within court proceedings.

### *The judicial role*

The primary focus of these programs is the efficient and effective use of information technology by judicial officers, both in and outside the court room.

## **Program 7.3                      Computers as a Research and Management Tool**

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### *Aim*

These programs help judicial officers to use computers both for research and as part of their work.

### *Content*

These programs could encompass –

- computer-generated research information
- reported and unreported cases, legislation
- products such as *Transcript Analyser*, *Brief Analyser* and *ISYS*
- production of judgments and other documents
- voice activated programs for judgment writing
- filing of electronic documents.

### *The judicial role*

The primary focus of these programs is the efficient and effective use of technology by judicial officers, both in and outside the court room.

## **Module Eight**

## **Maintaining Health and Well-Being**

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Judicial officers perform their work under considerable pressure. They need to maintain their physical and mental health. Doing so helps them perform their role more efficiently and effectively.

### *Aim of this module*

Professional development activities should help judicial officers –

- to maintain their health and well-being
- to prepare for their retirement.

## **Program 8.1**

## **Time Management**

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### *Aim*

These programs help judicial officers to manage their own time effectively.

### *Content*

The programs encompass –

- managing one's time, in and out of the court room
- list and diary management
- managing reserved judgments
- techniques for managing a busy court
- meetings and committee work.

### *The judicial role*

The focus of these programs is the role of judicial officers to maintain their health and well-being.

## **Program 8.2                      Managing One's Health and Well-Being**

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### *Aim*

These programs help judicial officers to maintain their health and ensure their own well-being.

### *Content*

The programs could encompass –

- stress management and a balanced lifestyle
- maintenance of one's psychological and physical health.

### *The judicial role*

The focus of these programs is the role of the judicial officers to maintain their health and well-being.

## **Program 8.3                      Retirement Planning**

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### *Aim*

These programs provide for all judicial officers, but particularly for those approaching retirement, information about pensions and superannuation, and help them to plan for their retirement.

### *Content*

The programs could encompass –

- retirement income planning
- investment and tax planning
- how individual pension and superannuation schemes work
- the impact on judicial officers of various scenarios
- how best to plan for retirement
- life after the bench – work and leisure.

### *The judicial role*

The focus of these programs is the role of judicial officers to maintain their health and well-being.

## Chapter 2                      Comparison with curricula in other jurisdictions

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In this chapter, the proposed *Curriculum for Professional Development for Australian Judicial Officers* is briefly compared to those to be found, or being developed, in four other jurisdictions – England, Canada, New Zealand and California.

The curriculum proposed in this document is differently structured to those in England, Canada and California but similar to that found in New Zealand. In both Australia and New Zealand it is structured around those elements of *the judicial role* which are common to all judicial officers.

### **2.1                      *A common feature to be found in the other jurisdictions: programs for newly appointed judicial officers***

In all of the other jurisdictions now to be considered an orientation program is a common feature. The outline of the *Curriculum for Professional Development for Australian Judicial Officers*, as set out in the previous chapter, does not have an orientation program as such. The approach adopted in constructing this curriculum is that, so far as aims and content are concerned, there is nothing specific to an orientation program; the principal differentiating factor is the introductory or orienting approach.

The curriculum outlined in Chapter 1 shows that the range of topics which might potentially be dealt with in an orientation program is broad and extensive. The question to be answered when developing an orientation program is what topics, out of the whole range of topics, should be in the orientation program. What topics are so essential or fundamental that they must form part of an orientation program?<sup>19</sup> Another possible differentiating factor could arise if the orientation program was specific to judicial officers of a particular court or whose work was of a particular type, such as criminal law or administrative law or dealt with say juveniles or aboriginals.

The current curriculum of the National Judicial Orientation Program<sup>20</sup> is –

Judicial conduct in and out of court  
Assessing the credibility of witnesses  
Using computers as a research and a management tool

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<sup>19</sup> A second question is, how extensively and to what depth should each of them be dealt with.

<sup>20</sup> Conducted jointly by the NJCA, the New South Wales Judicial Commission and the Australian Institute of Judicial Administration.

Lifestyle issues  
Judgment writing  
Court craft  
Interpreters and ethnicity  
Contempt  
Litigants in person  
Sentencing  
Alternative dispute resolution.

## **2.2      *England & Wales***

The structure of the ‘curriculum’ for English and Welsh judicial officers can be found in the *Strategy for 2005 – 2008* of the Judicial Studies Board (JSB).<sup>21</sup> It structures the JSB’s activities into three major segments –

<i>Induction courses</i>	Courses which provide initial training for new judicial officers and for those taking on new roles and responsibilities.
<i>Gatekeeper courses</i>	Courses which are prerequisites to exercising new areas of jurisdiction, such as serious sexual offences, serious fraud, family law and public law.
<i>Continuation training</i>	Including keeping abreast of changes, providing information to enable judges to better fulfil their role, provide an opportunity for judges to exchange ideas so as to promote consistency and draw upon the experiences of others in dealing with judicial problems. There is also judicial skills training in regard to work practices, to assist those taking on additional roles that require management or other skills.

Thus, in England & Wales, two of the three major segments reflect situations in which judicial officers will find themselves – either new to judicial work (the induction courses) or commencing the exercise of new areas of jurisdiction (gatekeeper courses). The third segment is a catch-all category of continuation training, which covers keeping up-to-date and skills training.

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<sup>21</sup> The term “curriculum” is not used to describe it.

## 2.3 Canada

There are a number of providers of judicial professional development in Canada, but the major one is NJI. It does not have a curriculum as such although it uses the term 'curriculum' from time to time to describe the range of activities available under that Program. It is structured into five main segments –

- Judicial career

The curriculum is designed so as to provide programs for judges at different stages of their 'career'; which includes an orientation program and includes appellate court work and leadership roles.

- The craft of judging

The curriculum describes these programs as follows –

*The responsibilities and tasks a judge performs are numerous and varied. The judicial role incorporates core professional skills but also requires the flexibility to adapt to an ever-changing system of dispute resolution. The education curriculum continues to change so that judges can further develop the unique skills associated with judging.*

This segment covers –

- judicial dispute resolution
- dealing with the Charter of Rights & Freedoms
- the trial process
- decision making
- communication skills
- language training
- computer skills training

- Social context education<sup>22</sup>

The curriculum describes these programs as follows –

*Social context plays an integral role in judicial decision-making. Determination of fact and law is influenced by social context. Social context education provides judges with practical and analytical skills needed to appropriately take context into account in judicial decision-making.*

This aspect is usually integrated into other programs.

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<sup>22</sup> The term 'education' is used throughout the Canadian curriculum.

- Education in substantive law

The curriculum includes programs on a wide range of legal topics with the intention of building an overall curriculum. The areas so far are family law, civil law, criminal law and evidence. Some seminars are in areas where there have been major, recent developments in the law or related disciplines.

- Specialised education

The curriculum describes these programs as follows –

*Specialized education has been developed on emerging trends and topics to address the changing needs of what is happening in today's court room.*

The segments are domestic application of international law, problem solving jurisprudence, violence and abuse in intimate relationships, science and the law, judicial safeguards for preventing wrongful convictions, youth criminal justice, aboriginal law

The Canadian curriculum is an expansive one and although not built on a single unifying theme is sufficiently broad to encompass all that might be needed by Canadian judges by way of professional development. It, like the English curriculum, has an orientation program, although as part of a more extended series of programs covering what it calls “the judicial career”. It then has a segment called “the craft of judging” which is essentially about skills. The next two segments on social context and substantive law are reflected in two of the modules of the curriculum proposed for Australia. The final segment of specialised education is somewhat similar to those segments in the proposed Australian curriculum dealing with developments in the law, and developments in knowledge and public policy which impact on the law.

The curriculum is described in some detail in Appendix C.

## **2.4 New Zealand**

The New Zealand Institute of Judicial Studies adopted a *Core Curriculum* in June 2006. Like this curriculum it is an organisational scheme based on “what is required of all judicial officers to perform their judicial role”. In the New Zealand curriculum the elements of that role are –

1. Maintain their knowledge and mastery of the law

2. Manage efficiently the cases before them, the courtroom and the people who appear before them
3. Use technology to assist with judicial work
4. Make decisions and give reasons for decisions, both written and oral
5. Apply appropriate standards of judicial conduct
6. Be responsive to the relationship between the judiciary and society and to changes in society
7. Keep abreast of emerging issues and practices in associated disciplines
8. Maintain their health and well being
9. Participate in administration and leadership activities.

It can be seen that these elements are almost identical to those found in this curriculum – this is the result of ongoing collaboration in the preparation of both curricula.

The elements of each component of the curriculum are somewhat different in New Zealand, as can be seen below –

<b>Component One</b>	<b>The Law</b>
Element 1.1	Judicial Method and Sources of Law <ul style="list-style-type: none"> <li>• Statutory Interpretation</li> <li>• Constitutional Framework (Bill of Rights, Treaty matters, customary law)</li> <li>• Precedent</li> <li>• International Instruments</li> </ul>
Element 1.2	Evidence and Procedure
<b>Component Two</b>	<b>Management</b>
Element 2.1	Managing a Criminal Trial (including pre trial issues)
Element 2.2	Managing a Civil Hearing (including pre trial issues)
Element 2.3	Managing Family Court Hearings
Element 2.4	Managing a Youth Court Hearing
Element 2.5	Managing a Multi-Party Hearing
Element 2.6	Courtroom Management/Communication Issues – Litigants in Person, Interpreters, Victims, Disabled etc
Element 2.7	Communication Issues – Children and Young Persons
Element 2.8	Settlement Conferences
<b>Component Three</b>	<b>Technology</b>
Element 3.1	Basic Training in Computers
Element 3.2	Technology as a Court Management Tool
Element 3.3	Computers as a Research Tool
<b>Component Four</b>	<b>Decision Making</b>
Element 4.1	Evaluating Evidence and Credibility of Witnesses
Element 4.2	Preparing and Delivering Oral Judgments
Element 4.3	Preparing Written Judgments

Element 4.4	Sentencing
<b>Component Five</b>	<b>Judicial Conduct</b>
Element 5.1	Judicial Conduct and Ethical Issues – the Role of the Judicial Officer
<b>Component Six</b>	<b>Social Contexts</b>
Element 6.1	Tangata Whenua; Te Reo Maori in the Courtroom
Element 6.2	Gender and Family Issues including Children
Element 6.3	Equality and Diversity - Multi-Cultural New Zealand
Element 6.4	Disability and Disadvantage
<b>Component Seven</b>	<b>Emerging Issues and Associated Disciplines</b>
Element 7.1	Therapeutic Interventions
Element 7.2	Litigation Accounting
Element 7.3	Annual programme on Law and Elements of Society
<b>Component Eight</b>	<b>Health and Well Being</b>
Element 8.1	Time Management
Element 8.2	Managing Health and Well Being
Element 8.3	Retirement Planning
<b>Component Nine</b>	<b>Administration and Leadership</b>
Element 9.1	Administration and Leadership for Heads of Bench
Element 9.2	Administration and Leadership for Positions of Responsibility
Element 9.3	Judicial Education – Training for Judicial Educators
Element 9.4	Mentoring

## **2.5 California**

The California Center for Judicial Education and Research began a curriculum-based planning process in 2000 which was described as assuring “comprehensive, relevant education is available for individuals throughout the careers and/or assignments”. The stated goals of the curriculum work are –

- To provide relevant content to individuals at all levels of their careers.
- To ensure consistency of content over time, from venue to venue, and from faculty member to faculty member.
- To provide guidance to faculty without inhibiting/stifling their creativity.
- To ensure the curriculum work can be used regardless of the course length and delivery mechanism.
- To make the content relevant to the reality of performance of the job.
- To ensure the curriculum work is flexible and can be used in a variety of situations by a variety of individuals.

There is not a single curriculum for all judicial officers; rather there are curricula for criminal, civil, family, juvenile, and probate law.

The output of the California curriculum planning process, for each of the programs forming part of the designated curricula, is –

- A goal for the course
- Learning objectives
- Selected content based on the learning objectives
- The basic application of the Kolb Learning Cycle<sup>23</sup>
- Outline of the course (the order and timing for various segments)
- Teaching methods for various components of the course
- Selected teaching aids
- Handout materials
- Approaches to evaluating participant learning.

An example of such an output, for a course on new jury instructions for experienced judges, is in Appendix F.

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<sup>23</sup> David Kolb's *Experiential Learning: Experience as the source of learning and development* (1984) theorised that four combinations of perceiving and processing determine four learning styles that make up a learning cycle. According to Kolb, the learning cycle involves four processes that must be present for learning to occur:

- Activist - active experimentation, such as simulations, case study, homework. It can involve problem solving, small group discussions, peer feedback, and homework.
- Reflector - reflective observation, such as logs, journals, brainstorming. Lectures can be helpful.
- Theorist - abstract conceptualisation, such as lectures, papers, analogies. It can involve case studies, theory readings and thinking alone.
- Pragmatist - concrete experience, such as laboratories, field work, observations. Peer feedback can be helpful; activities should apply skills.

## Chapter 3      Background to this curriculum

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### **3.1    *How this report came about***

In early 2005 the NJCA decided that it would be useful to develop a curriculum for professional development for Australian judicial officers. This curriculum was seen as having the potential to be a guide to the NJCA and other Australian bodies providing professional development programs for judicial officers.<sup>24</sup>

The curriculum was to be a description of the full range of offerings that should be provided, or be available, to judicial officers in all of the main courts.

It was not intended that the NJCA, nor indeed any of the other Australian bodies offering professional development programs, would necessarily provide all elements of the curriculum.

Rather the curriculum would be a framework to support the development of a comprehensive and integrated range of programs of professional development, provided from different sources. Another way to describe the curriculum is as an “operational plan” to systematically guide the delivery of programs.<sup>25</sup>

Having decided to develop such a document, a question then was what form it should take. The most helpful form seemed to be something similar to the outline of a curriculum for an undergraduate law degree, as would be found in a university law faculty handbook. Thus Chapter 1 of this report has been set out in that fashion with a listing of courses and under each one a statement of aims and topics to be dealt with. The curriculum also contains a section on method, *ie.* how the courses might be presented.

There is, it should be recognised, a risk that a curriculum such as this one can be, and be seen as, a top-down activity, imposing constraints on what should be a creative and responsive range of activities. This is the risk of being too particular so that the future is stifled. On the other hand, there can be a tendency to continue to present courses because they have in the past been done well. In this situation, the total range of offerings has no coherent structure. At some point, the question is often asked why some programs are being presented and why other topics are not part of the range of offerings. It is at this point that the need arises for some underlying principles to guide the structure of a curriculum.

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<sup>24</sup> This project has been initiated shortly after a complementary project to develop a Standard for Professional Development for Australian Judicial Officers.

<sup>25</sup> As it is described in the *Trial Judge Core Curriculum for the Missouri Judicial College*, 2004.

### **3.2 What is a curriculum**

A curriculum has to be more than a calendar of events. A curriculum should also have, or clearly reflect, a philosophy which lies behind the calendar.

The classic understanding of a curriculum is that it is a document which encompasses –

- the aims of a particular educational activity or group of activities
- where the activity is broad-ranging, the courses or subjects to be offered
- the specific topics to be dealt with in each of those courses
- by what methods each of the courses will be taught
- with what resources<sup>26</sup>
- how those participating will be assessed<sup>27</sup>
- sometimes, how it will be evaluated that the aims of the whole activity have been achieved.

This description of a curriculum reflects the observation of Livingston Armytage that curriculum design is “the means by which course aims are specified, subjects are listed, syllabuses prescribed and attention given to the teaching and learning process (generally tending to relate to course content)”.<sup>28</sup>

There is a considerable literature on curriculum design, which will not be reviewed in this report.<sup>29</sup> Suffice to say that the curriculum proposed in this document is an attempt to approach professional development in a systematic way by describing what each of its programs is aiming to do, what topics it might cover, what learning methodologies might usefully be employed and, in some cases, who might usefully teach in a program.<sup>30</sup>

### **3.3 The need for a curriculum**

Canada has one of the most advanced judicial professional development programs. In a recent funding submission the Canadian NJI argued that a central challenge facing judicial education in Canada was “a lack of coordination

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<sup>26</sup> In the case of academic law courses, these often take the form of lists of prescribed and recommended reading, but other teaching/learning resources could be used depending on the nature of the course and its aims, eg. video cameras for feedback on performances.

<sup>27</sup> This will almost always not be applicable in judicial professional development.

<sup>28</sup> L Armytage, *Educating Judges – Towards a New Model of Continuing Judicial Learning*, Kluwer Law International, The Hague, p 180, fn 67.

<sup>29</sup> See, for example, CS Claxton, “A Model for Curriculum Development” *Adult Education Perspectives for Judicial Education*, 1992 Georgia, University of Georgia – Judicial Education/Adult Education Project, 10.1-10.23, 10.19.

<sup>30</sup> See J Hudzik. *Judicial Education Needs Assessment and Program Evaluation*, Judicial Education Reference, Information & Technical Transfer Project (JERITT), East Lansing MI., at pp 2 and 8-9.

and an absence of resources to plan and develop systematic judicial education programming”. The submission noted that, with multiple providers (as in Australia), there is

considerable scope for overlap and duplication and little opportunity to share resources and expertise and to develop an overall range of programming that meets the needs of judges.

It went on to say that all of the providers make a valuable contribution but “there is no clear sense of what all of these programs together provide in relation to the overall learning needs of judges” – what was seen as a “unified sense of direction”. The response proposed to this situation was curricula to guide the development of programming that ensured that, over time, judges had access to the full range of education in each area.

Armytage has also observed that “the value of curriculum development in continuing judicial education is that it offers a plan of the proposed learning outcomes and the means of reaching them.”<sup>31</sup> Thus, a curriculum imposes the discipline of planned and systematic thinking on a process which can otherwise be, as Hudzik has noted, both eclectic and ad hoc.

Hudzik argues for a curriculum paradigm based on a career-development model as a means of conceptualising and bringing coherence to a body of knowledge delivered through a systematic progression of programs rather than a list of independently conceived and discrete offerings.<sup>32</sup> A curriculum based on a career-development model is, in fact, not used here, and rather the model is based around the judicial role. Nevertheless, this curriculum does share Hudzik’s aim of a conceptualised, coherent and systematic presentation of a body of knowledge.

More recently, Justice John Dowsett has said that a grouping of subject matter serves numerous purposes, including<sup>33</sup> –

- providing a focus for discussion
- facilitating the delegation of areas of responsibility
- encouraging the development of specialised knowledge and skills
- assisting in balancing the allocation of time and resources; and
- assisting in achieving variety in the content of activities.

This is another useful way of describing the value of a planned and comprehensive curriculum.

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<sup>31</sup> Armytage, *ibid* at p 180.

<sup>32</sup> Armytage, *ibid* at p 180 quoted Hadzik at p 179.

<sup>33</sup> In an unpublished paper, “Structure of College Programme”, prepared in 2005 for the NJCA.

The California Center for Judicial Education and Research has also recently argued in favour of a planned curriculum. Its arguments are listed in section 2.5 above.<sup>34</sup>

In summary, the value in having a curriculum was seen as –

- providing a plan for professional development activities
- avoiding eclectic and ad hoc approaches
- providing a conceptual framework
- bringing coherence to the body of knowledge, and
- presenting that knowledge in a systematic way.

### **3.4 Frameworks for a curriculum**

If it is accepted that there is value in imposing the framework of a curriculum on the body of professional development activities already offered, or potentially to be offered, to Australian judicial officers, the question then is how that curriculum might be constructed.

As mentioned above, one model might be based on the career of a judicial officer, beginning with the officer's appointment and proceeding through to further possible stages in a judicial career. A difficulty with such a model is that, whilst it is clear all judicial officers have a stage where they are newly appointed, after that their careers can differ in many ways. The mid and late stages of judicial officers' work can be quite different from each other, depending on the court in which the judicial officer serves, the work done by that court, and perhaps the status of the judicial officer, eg. some will become heads of jurisdiction or assume administrative roles.

There are also concerns that the term 'career' is not suitable for a judicial officer because it suggests the notion of advancement.

Another framework might be to structure the curriculum around areas of law but, given the vast number of areas, this approach would tend to result in a highly fragmented curriculum. A clear example would be one based on family law, for the Family Court, the Federal Magistrates Court and, perhaps, the Magistrates' Courts to the extent they hear matters involving family law.

Another approach would be to base the structure of the framework on the various levels of courts – perhaps magistrates, district/county, supreme/federal, appeal as well as tribunals. It may be that those various levels have sufficient in common to provide a conceptual framework for curricula for each of them. This

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<sup>34</sup> *Curriculum-Based Planning for Judicial Branch Education in California*, 2005, <http://jeritt.msu.edu/whatsnew.asp>

has been done elsewhere. The JSB in England proposes to develop a curriculum for all magistrates based on the range of work done by them. In Missouri, in the United States, a curriculum for trial judges is largely based on four types of courts – civil, criminal, family and juvenile. It is conceivable that a series of curricula could be developed, for groups of Australian courts; magistrates courts being the most obvious but also, for example, for trial courts and appeal courts.

Peter Sallmann has observed that programs for judges in the United States fall into three broad but, to some extent, overlapping categories<sup>35</sup> –

- orientation courses for new judges
- continuing education
- judicial career development.

This is the same categorisation as that of Dennis Catlin, who suggests a framework comprising<sup>36</sup> –

- new judge transition
- continuing education
- career development.

A similar categorisation is reflected in the Law Council of Australia's submission to the Australian Law Reform Commission's review of the adversarial system undertaken in the late 1990s – there the terms new judge transition, continuing education and career development were also used.<sup>37</sup>

Judge John Goldring of the District Court of New South Wales has suggested the following categories<sup>38</sup> –

- legal knowledge
- court room technique
- management technique
- new awareness
- technology
- efficiency.

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<sup>35</sup> P Sallmann, "Comparative judicial education in a nutshell: a cursory exposition", paper presented to the AIJA Eleventh Annual Conference, Brisbane, 22-23 August 1992 at p 2.

<sup>36</sup> Armytage, *ibid*, at p 157.

<sup>37</sup> Law Council of Australia, *Submission to the Australian Law Reform Commission – Review of the Adversarial System of Litigation. Issues Paper 21: Rethinking Legal Education and Training, 1998 at p 36.*

<sup>38</sup> J Goldring, "Process and content of continuing education for judicial officers", paper presented at the 1999 Conference of the Australian Institute of Judicial Administration, Adelaide at p 3.

These examples illustrate that there are many potential categories. The approach adopted here is to seek to distil the essence of a judicial officer's role into its elements. This is not the same as a skills-based approach whereby the work of a judicial officer is categorised into a list of generic skills. The judicial-role approach adds other categories to the role of a judicial officer, including continued mastery of the substantive law, an understanding of the relationship with society, and of emerging issues in other disciplines and public policy as they impinge on the work of the courts and the judiciary.

## Chapter 4

# Sources from which to derive the content of a curriculum

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A curriculum does not stand alone without a foundation. It might, for example, be a reflection of a range of stated needs and wishes, or it might take ideas and activities from elsewhere and reconstruct them into a new framework for the local situation. Indeed a curriculum could be derived from any of the following –

- a needs analysis
- research on what judicial officers do
- curriculum statements developed elsewhere
- the structure and content of existing judicial professional development programs, both in Australia and elsewhere
- statements of standards for professional development for judicial officers
- statements of competencies developed for judicial officers.

From all of these sources the content of a curriculum can be derived. Each of these sources will now be considered.

### 4.1 Needs analyses

The value of an initial needs analysis, which takes place before any curriculum planning has begun, is that it starts with the need, not the solution. There is the possibility that, upon clear articulation of the need, the solution may be something other than an educational program or such a program may usefully be supplemented by other means which, together with the program, would most effectively address the need. Not all needs are met by instructional means. It may be that in some situations work arrangements or rules or other factors need to be changed.

A needs analysis addresses the question, “what actually are we trying to achieve here?”. Unfortunately that question is often not asked, or left to late in the process.

The term ‘need’ could suggest a deficiency. Perhaps a better term is ‘gap’, *ie.* the gap between where we are now and where things could desirably be or how they might be. The professional development activity or resource is then seen as the best means of changing things from where they are now to where they should desirably be.

A needs analysis identifies existing and future performance challenges of individuals and of the system, and anticipates how education might help address them. Needs analyses also help set priorities in situations of limited resources.<sup>39</sup> The purpose is to avoid a mismatch between what is offered and what should be achieved, because the curriculum planning has been solely based on the personalised views of a few or what comes first to mind, or what is easier to do.

There are those who would argue that a curriculum cannot be constructed without a needs analysis. For example, Armytage has said that

assessment of the need for judicial education, and the selection of an appropriate methodology for discerning the nature of this need, is of critical importance in determining the foundations of any program of continuing judicial education.<sup>40</sup>

Armytage argues that needs assessment plays a foundational role in the development of judicial education because it provides a means of accountability for any educational intervention, and a procedure for defining objectives, content and direction.<sup>41</sup> He argues that the credibility of any program of judicial education depends, at least in part, on demonstrating that the assessment of needs has been undertaken validly and reliably. The research method needs to be efficacious, appropriate and relevant, practical and of value.

This is what Hudzik calls ‘connectedness’ by which he means that there has to be a real connection between what is happening in the room where the professional development is taking place and something real in the work environment.<sup>42</sup>

However, whilst the logic of a needs analysis appears to be compelling, the problem lies in the practical implementation of this approach, in particular choosing a methodology to identify needs which is valid and reliable. The most common form of a needs analysis is by questionnaire. It would be feasible to survey all Australian judicial officers but the practical problems could include –

- is there the possibility that the responses would often reflect little more than one or more needs which have recently arisen in the particular judicial officer’s work?
- by the time the need is translated into a professional development program, will that need still exist so far as that judicial officer is concerned?
- how can questions be asked which will provide sufficient detail to ensure the need is truly understood?<sup>43</sup>

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<sup>39</sup> Hudzik, *ibid*, at p 2.

<sup>40</sup> Armytage, *ibid*, at p 68.

<sup>41</sup> Armytage, *ibid*, at p 67.

<sup>42</sup> Hudzik, *ibid*, at p 1.

<sup>43</sup> Bearing in mind that respondents to surveys are usually averse to answering open-ended questions.

- will the response rate be sufficient to be truly indicative of the judiciary generally?

In fact a needs analysis has been undertaken by the NJCA. In 2003 an online survey was undertaken on its behalf.<sup>44</sup> It received a response rate of about 22%. It asked judicial officers to express their interest in topics; not explicitly what they felt their needs were although interest no doubt is a reflection of need. In one of the tables to that report, topics of interest are listed in descending order. The material collected by that survey is a useful source of information for a curriculum, particularly as it has been analysed by types of judicial officers, by jurisdiction and by seniority.

Needs analyses can be undertaken other than by questionnaires. For example, a number of interviews with a representative range of judicial officers could be undertaken, either individually or in groups. Indeed, interviews could be combined with a questionnaire to provide multi-layered insights. However, such an approach is expensive, as it requires many hours of meetings as well as the writing up and analysis of the information collected. Given the diversity of situations in which the Australian judiciary works, there would still be the question of whether the interviews are sufficiently reflective of the whole range of needs.

For these and other reasons, the curriculum proposed in this report is not based on a needs analysis.

## **4.2 Research on what judicial officers do**

A source of information upon which to base a curriculum could be research which investigates what judicial officers do. By way of example, recently in Australia a national survey of Australian magistrates asked them to identify their significant judicial (and non-judicial) functions and tasks.<sup>45</sup> The results of the survey enabled the researchers, Sharon Anleu and Kathy Mack, to identify a list of judicial and non-judicial functions which magistrates considered described their work. The study also identified qualities and skills required of a magistrate.

There is, in fact, very little research of this kind.

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<sup>44</sup> National Judicial College of Australia, 2003, *Survey of Professional Development Needs of Judicial Officers: Preliminary Results*.

<sup>45</sup> See SR Anleu & K Mack, "Judicial appointment and the skills for judicial office", *Journal of Judicial Administration*. Vol 15, p 37.

### 4.3 Curriculum statements developed elsewhere

This source of ideas for a curriculum could be potentially very fruitful but, in fact, there are few curriculum statements to be found in other comparable jurisdictions. There are, however, some developments which suggest that this situation might be changing – and indeed that the move to develop an Australian curriculum may well be part of a wider international movement.

#### *England*

The JSB's program of activities has already been described and discussed. It is not a curriculum statement as such. The JSB proposes, as part of its Strategy for 2005 - 2008, to develop a curriculum for magistrates' training in all core areas of a magistrate's activity. It is also envisaged that a training needs analysis of the professional judiciary will be conducted.<sup>46</sup>

#### *New Zealand*

The New Zealand Institute of Judicial Studies (IJS) has recently adopted a Core Curriculum and it is described earlier in this report (at section 2.4). It was developed in parallel with the curriculum proposed in this report.

#### *National Judicial College, Nevada*

The University of Nevada conducts a Judicial Studies Program (JSP) comprising the Master of Judicial Studies (MJS) and the Doctor of Philosophy in Judicial Studies (DJS). The stated objective is, in part, to provide "a structured, interdisciplinary academic curriculum aimed at providing judges with knowledge applicable to judicial needs".<sup>47</sup>

The JSP's aim is to enable sitting judges at all levels to integrate technical study of the judiciary with advanced knowledge in other disciplines. The emphasis is upon interdisciplinary study with judges studying in a range of disciplines "in order to research the many factors which impact the process of judicial decision making".<sup>48</sup> As its handbook says, "judging is inherently interdisciplinary".<sup>49</sup> But there are also courses on technical subject matter immediately relevant to the court room.

The handbook notes that "although scholars outside the judiciary have begun to study the behavior and practices of the judiciary, judges have seldom participated directly in the work".<sup>50</sup>

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<sup>46</sup> Strategic Priority no. 2.

<sup>47</sup> Judicial Studies Program handbook, University of Nevada, p 2.

<sup>48</sup> *Ibid*, at p iv.

<sup>49</sup> *Ibid* at p iv.

<sup>50</sup> *Ibid* at p iv.

The JSP sets out to enable judges to think from within their discipline about the discipline itself: its opportunities, possibilities, and limitations; its situation in a body of rules and law; its role in preserving and refining the common law tradition; its power to ground and define its future in powerful forms of institutional and personal self-knowledge.<sup>51</sup>

The master's degree has two majors – one for trial and appellate judges and the other for juvenile and family court judges. The curriculum for the trial court judges major is in Appendix D.

The curriculum, although ambitious and admirable, is of limited value in deriving a curriculum for Australia as it has a small group of required courses and a very large group of electives, which are of interest but are not structured.<sup>52</sup>

### *California*

As briefly discussed above, the Center for Judicial Education and Research of the Judicial Council of California has recently developed a comprehensive curriculum for judges throughout their careers and assignments. Curricula have been developed for the areas of criminal, civil, family, juvenile, and probate law. The curricula address entry, experience, and advanced levels of content. The Center also has curricula for new judges, supervising judges and presiding judges. The content goes beyond substantive areas of the law.

### *Missouri*

In Missouri a core curriculum has been developed for trial judges.<sup>53</sup> It is structured into five parts – Civil, Criminal, General (Evidence and Ethics, Professionalism & Access to the Courts), Family and Juvenile. The curriculum for each of these five areas is listed, comprising core and non-core subjects and a number of 'repeating' subjects which are offered on a rotating basis over a number of years. By way of example, the core curriculum for Evidence, which forms part of the General Core, is –

1. Hearsay and exceptions to hearsay
2. Evidentiary privileges
3. Opinions & testimony (lay & expert)
4. Impeachment & character evidence
5. Business records & documentary evidence.

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<sup>51</sup> *Ibid* at p iv.

<sup>52</sup> The required courses are, what is called, General Jurisdiction, together with Judicial Writing, History and Theory of Jurisprudence and a Thesis.

<sup>53</sup> Trial Judge Core Curriculum for Missouri's Judicial College, The Coordinating Commission for Judicial Department Education, June 2004.

Its purpose is to systematically guide the delivery of educational programs for trial judges and commissioners in Missouri.

### *Canada*

The NJI in Canada describes its full range of offerings as a curriculum. Its program (already set out briefly in section 2.3 above) is structured into –

- Career*      new judges, longer-serving judges, chiefs and associates, appellate judges, multidisciplinary education, retirement planning
- Content*     family law, criminal law, civil law, jury trials, evidence, specialised courses, *eg.* aboriginal law
- Craft*        judicial dispute resolution, dealing with *Charter* issues, the trial process, decision-making, language and computer skills, specialized education, *eg.* legal reasoning
- Context*      domestic violence, disability issues, children as witnesses, poverty, alcohol, self-represented litigant.

## **4.4 The content of existing professional development programs**

Ideas for the content of a professional development curriculum for Australian judicial officers can be found in existing professional development programs. Their content can suggest what might be part of a curriculum.

### *Australia*

The content of the Australian National Judicial Orientation Program comprises –

- Judicial conduct in and out of court
- Assessing the credibility of witnesses
- Using computers as a research and a management tool
- Lifestyle issues
- Judgment writing
- Court craft
- Interpreters and ethnicity
- Problems in evidence
- Litigants in person
- Sentencing
- Alternative dispute resolution.

As these are seen as the areas to which newly appointed judicial officers should be introduced at the beginning of their careers, this may suggest that they should be core topics for any overall professional development curriculum.

In fact, many of the ideas for the curriculum proposed in this report are derived from a review of courses offered throughout Australia and New Zealand in recent years.<sup>54</sup>

Although not an existing professional development program, ideas about what a body offering professional development should provide are also a source of ideas for a curriculum. For example, in 1999 a discussion paper, entitled *Proposed Australian Judicial College*, was prepared and part of its discussion was about what a judicial college might do.<sup>55</sup> That paper observed that an issue for a college would be to delineate some principles upon which subject areas would be chosen – not just to include but also to exclude.

### *England*

In England, the activities of the JSB are seen as meeting three major needs –

- Induction training
- Continuing professional education
- Delivering change and modernisation.

Programs meeting the second and third of these needs are categorised as gatekeeper courses or continuation training. The former are courses that are prerequisites to exercising new areas of jurisdiction and the latter covers the rest of the programs.

The content of a curriculum might be compiled, following the English approach, based on a matrix as follows

	<i>Gatekeeper courses</i>	<i>Continuation training</i>
Induction training		
Continuing professional education		
Delivering change & modernisation		

<sup>54</sup> As reported by the NJCA in its privately published *2004 Judicial Education Programs*.

<sup>55</sup> C Roper, *Proposed Australian Judicial College: Discussion Paper*, Centre for Legal Education, September 1999.

More detail of the JSB's programs is in Appendix B.

### *Scotland*

In Scotland the programs of the Judicial Studies Committee for Scotland are in four groups –

- Induction
- Refresher
- Skills
- Special courses.

Again, these categories suggest a range of topics for a curriculum.

### *Canada*

The program of the NJI of Canada is one of the most comprehensive to be found and its content is so extensive that it provides a useful insight as to what might be the content of an Australian curriculum. As already outlined, it is as follows –

#### *1 Judicial career*

- Education for newly appointed judges
- Education for longer serving judges
- Judicial mentoring
- Chiefs and associates
- Appellate court judges
- Multidisciplinary education for judges
- Retirement planning

#### *2 Craft of judging*

- Judicial dispute resolution
- Dealing with the Charter of Rights & Freedoms
- The trial process
- Decision making
- Language training
- Computer skills training

#### *3 Social context education*

#### *4 Education in substantive law*

- Family law
- Civil law

- Criminal law
- Evidence

#### 5 *Specialised education*

- Domestic application of international law
- Problem solving jurisprudence
- Violence and abuse in intimate relationships
- Science and the law
- Judicial safeguards for preventing wrongful convictions
- Youth criminal justice
- Aboriginal law

Ideas from this program can be found reflected in the curriculum proposed in this report. Details of the Canadian program can be found in Appendix C.

### *Judicial Commission of New South Wales*

The Judicial Commission of New South Wales and the Australian Institute of Judicial Administration have produced a monograph and a complementary DVD entitled *The Role of the Judge*. As the curriculum model proposed in this report is based on *the Judicial Role*, the content of this monograph and DVD could provide ideas of the content of the proposed curriculum. The topics dealt with in the monograph and DVD are in two major groups, court craft and the process of judging. The particular topics are –

#### *Court Craft*

Difficult witnesses  
 Intervention  
 Neutrality  
 Contempt  
 Applications for disqualification  
 Getting advice  
 Non and poor English speakers  
 Interpreters  
 Unrepresented litigants  
 Bullying  
 Humour  
 How to deal with inappropriate behaviour  
 Children in court

#### *The process of judging*

Credibility of witnesses  
 Judgment writing.

## 4.5 Statements of standards for judicial professional development

In a few jurisdictions, a standard has been published which is seen as a benchmark against which professional development for judicial officers can be measured. The standard recently developed by the NJCA is confined to time allocated to professional development and the bearing of cost. But other standards have gone beyond that.

For example, the *Standards for Judicial Education* in Canada include the following statement in regard to curriculum<sup>56</sup> –

Judicial education should emphasize:

- A Comprehensive educational training for new judges designed to acquaint them with major legal subjects, skills for everyday use on the bench, and current social issues.
- B Periodic education and training for all judges on new and existing substantive and procedural laws, effective decision-making, skills enhancement and current social issues which will result in a national exchange of judicial thinking.
- C Advanced or specialized programs, which stress intensive and detailed examination of specific judicial concerns and issues.
- D Special and innovative programs that enable judges to obtain increased awareness of their role in Canadian society.
- E Independent learning opportunities for judges. Bench books, texts, videotapes, outlines, checklists, standard jury charges and other judicial aids should be prepared and made available to all judges.

The first four categories suggest a structure for a curriculum which could be along the lines of –

- Induction/orientation professional development
- Continuing education dealing with a mixture of substantive law and skills
- Advanced or specialised programs, which could encompass both substantive law or issues and skills
- Social context programs.

## 4.6 Statements of competencies

In two jurisdictions the decision has been made to develop a statement of judicial competencies. The success or utility of such statements is yet to be determined or tested.

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<sup>56</sup> National Judicial Institute, *Standards for Judicial Education in Canada*, 1992.

## *New Zealand*

Although not described as a statement of competencies, the recent Strategy Plan of the New Zealand Institute of Judicial Studies suggests that it is critical that the following be enhanced<sup>57</sup> –

1. The ability of new judicial officers to orient to the judicial role.  
*This involves a core curriculum of programmes that will enable new judicial officers to perform their duties with confidence and provide the platform for a judicial career.*
2. Judicial knowledge in the specialist and general jurisdictions in which judicial officers operate.  
*This involves programmes that keep abreast of developments in substantive and procedural areas of the law.*
3. Judicial skills, in the changing circumstances in which judicial officers operate.  
*This involves programmes that reflect the involvement of the public in the courts and the evolving cultural and social diversity of the New Zealand community.*
4. The ability of judicial officers to continue to develop throughout their judicial careers.  
*This involves recognition of the differing needs of new, mid term and senior judicial officers and involves programmes that meet their different needs.*

Clearly, these goals could be the basis for the content of a curriculum, and its structure could reflect these four aspirations.

## *Scotland*

In Scotland, a statement of competencies required of candidates for judicial office has recently been developed. It comprises basic skills and attributes, both generally and in the law, as well as personal qualities. As the statement, *Competencies Required of a Judge* says, these could only be regarded as a counsel for perfection. It is set out in full in Appendix F. A curriculum which sought to reflect the full range of required competencies would indeed be an ambitious one.

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<sup>57</sup> Institute of Judicial Studies, *Strategic Plan 1 July 2005 – 30 June 2010*.

## Chapter 5      Other professional development activities for judicial officers

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### 5.1 Individual education plans

In proposing the curriculum outlined in chapter 1, it is not implied that formalised face-to-face professional development programs be the only means, nor always the best means, of professional development. Judicial officers will each have their own individual ways of keeping up to date and expanding their knowledge. Most often this will usually take the form of reading but other means, for example through the internet, may be used by some judicial officers.

These forms of established, informal learning will have been built up by judicial officers over their whole professional lives as lawyers. They reflect the particular situation in which each judicial officer finds him/herself and the natural way for each judicial officer to learn.

The Canadian NJI has developed, what it calls, the Individual Education Plan (IEP). It is a tool designed to help judges chart their education goals several years in advance. It is available to judges online at [www.nju.ca/public/iep](http://www.nju.ca/public/iep).

Completing the IEP is intended to help judges to identify their learning priorities and enable them to plan their judicial education over the next few years. The IEP links to information about courses offered by the NJI and some other providers, and generates a customised list of options for judges to consider.<sup>58</sup>

The curriculum proposed in chapter 1 might, as has been suggested in the section *How this Curriculum Might be Used*, be used by individual judicial officers to plan their own professional development.

### 5.2 Bench books

Bench books are to be found in a number of Australian courts. They have purposes which are wider than, but do include professional development. However, they provide information which judicial officers can use in their daily work, similar to the information they gain from engagement in professional development activities. The two supplement each other.

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<sup>58</sup> National Judicial Institute, *Judicial Education in Canada 2005*, p 12.

### **5.3 Mentoring**

Some judicial officers will have benefited from informal mentoring from one or more colleagues, particularly in the early period of their time on the bench. In some courts there is discussion of a more formalised system of mentoring being established. For some judicial officers, some of what is sought to be achieved through a professional development program can be provided by mentoring, eg. the development of some skills.

A formal professional development program complements any mentoring program which might be in place.

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## **Appendices**

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Magistrate Andrew Cannon  
Professor Michael Coper  
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Magistrate Roger Dive  
Mr Laurie Glanfield  
Judge John Goldring  
Chief Magistrate Steven Heath  
Justice Murray Kellam  
Magistrate Michael King  
Judge Bill Knight  
Federal Magistrate Bert Mowbray  
Chief Magistrate Kelvyn Prescott  
Judge John Robertson  
Judge Julie Wager  
Judge Tom Wodak.

## **Appendix B**                      **Programs of the Judicial Studies Board, England & Wales**

### **Induction training**

Induction training is described as the provision of initial training for new judicial officers and for those taking on new roles and responsibilities. These needs are met through training courses, material for personal study, and advice and guidance on induction programmes and mentoring.

### **Continuing professional education**

Continuing professional education is seen as facilitating a strengthening and deepening of the skills and knowledge of existing judicial officers. It includes training activities which are periodically necessary to refresh areas of judicial and magisterial competence, or to equip the judiciary with the skills needed to meet government programmes already announced and in the course of implementation, or to absorb areas of European Union and international law whose implementation in the United Kingdom is a matter of international obligation. Thus, in brief, these training programmes are seen as ensuring that judges and magistrates are equipped to keep pace with developments in law and society, and with changes in the outside environment.

### **Delivering change and modernisation**

Professional development programmes to deliver change and modernisation deal with major changes to legislation and to the administration of justice which cannot be adequately dealt with in the normal course of continuation training.

The courses to meet these needs fall into the following categories –

#### *Induction courses*

*Gatekeeper courses* – these are courses which are prerequisites to exercising new areas of jurisdiction, and include areas such as serious sexual offences, serious fraud, family law and public law.

*Continuation training* – these include keeping abreast of changes, providing information to enable judges to better fulfil their role, provide an opportunity for judges to exchange ideas so as to promote consistency and draw upon the experiences of others in dealing with judicial problems. There is also judicial skills training in regard to work practices, to assist those taking on additional roles that require management or other skills.

## ***Appendix C***                      ***Programs of the National Judicial Institute, Canada***

### **1.        Judicial career**

A significant part of the judicial education curriculum has been designed for judges at different stages of their careers. Also included are specialized seminars that have been developed for judges at the appellate court level and for those who have assumed a leadership role as Chief or Associate.

- *Education for newly appointed judges*  
The core curriculum is –  
  
Judgment writing  
Oral judgments  
Hearing and deciding *Charter* issues  
Computer skills  
Evidence  
Credibility and fact-finding  
Jury trials and charges  
Managing the trial process  
Statutory interpretation  
Judicial ethics  
Settlement conferencing  
Social context modules
  
- *Education for longer serving judges*  
Designed to meet the learning needs of judges with ten years or more of experience, these programs deal with issues such as the decision-making process, judicial fact-finding, the impact of lengthy service in this unique professional role, the learning needs of long-serving judges and the ways in which judges can pass on their experience and knowledge to newer members of the judiciary.
  
- *Judicial mentoring*  
Longer serving judges are a vital resource for courts that are in the process of developing mentoring programs. Mentoring processes and the skill of mentoring itself can be improved through education. The introduction of mentoring systems in every court is an integral element of the recently approved education plan for newly appointed judges.
  
- *Chiefs and associates*  
A five day seminar that provides newly appointed and longer serving Chiefs and Associates with the opportunity to consider and discuss the knowledge and skills required to lead a court in the 21st century.

- *Appellate court judges*  
The appellate courts curriculum includes appellate court judgment writing, judicial reasoning, self-represented litigants and ethical decision-making at the appellate court level.
- *Multidisciplinary education for judges*  
Programs which expose judges to important contemporary thinking in other disciplines.
- *Retirement planning*  
Retirement planning is an important part of any individual's career. The NJI seminar for newly appointed judges provides some information to enable that planning to begin.

## **2. The craft of judging**

The responsibilities and tasks a judge performs are numerous and varied. The judicial role incorporates core professional skills but also requires the flexibility to adapt to an ever-changing system of dispute resolution. The education curriculum continues to change so that judges can further develop the unique skills associated with judging.

- *Judicial dispute resolution*  
Judges hear trials and decide cases. They manage cases before and during trials. They encourage, promote and facilitate settlement between and among parties. Judges have an impact upon and influence dispute resolution in different ways and in doing so, exercise different roles.  
  
Programs include –
  - introduction to judicial dispute resolution
  - Negotiation: the foundation of judicial dispute resolution and settlement conferencing
  - Managing settlement conferences.
- *Dealing with the Charter of Rights & Freedoms*  
This intensive workshop gives participants practical experience in dealing with Charter issues in both criminal and civil law matters. Participants learn about issues touching on criminal and civil procedure, equality rights and the role of the judge in *Charter* cases.
- *The trial process*  
A skills-based, intensive seminar for trial court judges dealing with the skills necessary to manage different issues that arise within the trial process. Participants address the changing nature of the adversarial process and the evolving role of the judge. Judges consider such topics as managing long and complex trials, the role of the judge with counsel, the role of the judge with self-represented litigants and responding to vulnerable witnesses and parties.

- *Decision making*  
These courses offer judges the opportunity for professional development in one of the most prominent areas of their craft. Courses include judgment writing, oral judgments, judicial ethics and the skill of decision-making.
- *Communication skills*  
A seminar dealing with topics such as charging a jury, delivering a difficult decision in a highly emotional environment, communicating with children, the disabled and vulnerable, and managing communications with self-represented litigants.
- *Language training*  
Language training for judges in both official languages of Canada.
- *Computer skills training*  
The training includes basic computer literacy, using programs available for judges, general computer applications, productivity training and computer products of use to judges.

### **3. Social context education**

Canada is a diverse and changing society. The *Canadian Charter of Rights and Freedoms* expresses its commitment to building an inclusive and just society while remedying conditions of inequality and disadvantage. Social context plays an integral role in judicial decision-making. Determination of fact and law is influenced by social context. Social context education provides judges with practical and analytical skills needed to appropriately take context into account in judicial decision-making.

The Social Context Education Project assists judges –

- to understand the nature of diversity, the impacts of disadvantage, and the particular social, cultural and linguistic issues that shape the people who appear before them.
- to explore their own views of the world and reflect on how these views may interact with judicial process
- to examine research and community experience relevant to processes of judicial reasoning
- to analyze jurisprudence related to the role of social context in decision-making consistent with the constitutional guarantee of equality.

The guiding principle of judicial education is that it is always three dimensional – substantive law, skills-development and social context awareness. Therefore this aspect is usually integrated into other programs.

### **4. Education in substantive law**

Programs on a wide range of legal topics. In some fields (e.g. criminal, family and selected areas of civil law), work is underway to build an overall curriculum. Other seminars provide access to more specialized programming, often in areas where there have been major, recent developments in the law or related disciplines.

- *Family law*  
Education in the field covers a range of subjects, including custody, access, child protection, support (child and spousal), property, interdisciplinary issues/developments, JDR, evidence and procedure.
- *Civil law*  
Programs include the NJI's annual national seminar, specialised programs and modules of education on civil law topics.
- *Criminal law*  
Programs include aspects of the seminars for newly-appointed judges, sentencing, jury trials, jury charges, youth criminal justice and “frailties in the criminal justice system: the judge’s role”, a seminar on judicial safeguards for the prevention of wrongful convictions.
- *Evidence*  
This topic is dealt with in seminars for newly appointed judges and in an evidence workshop.

## **5. Specialised education**

Specialized education has been developed on emerging trends and topics to address the changing needs of what is happening in today’s court room. Elements of many of these seminars will be preserved as education modules and will be made part of the permanent NJI curriculum available for court-based programming.

- *Domestic application of international law*  
Modules of education addressing the role and importance of international law (conventions and customary international law) in Canada. The main objectives are to:
  - Introduce judges to international provisions and processes.
  - Increase their awareness of the scope and applicability of international law and varying approaches its reception and interpretation.
  - To explore the issues and trends emerging in this area in Canada and internationally.
  - Allow for detailed study of relevant issues and sectors.
  - Increase awareness of international legal systems, organizations, and interpretation/reconciliation issues, and their impacts in Canadian policy and legal development.
- *Problem solving jurisprudence*  
Modules of education to enable courts to respond more effectively to situations involving complex, often overlapping and sometimes intractable social and personal issues arising out of, *eg.*, addictive drug and substance use, mental health disorders, and pervasive and often inter-generational violence within families. Poverty, literacy issues and cultural dislocation are often implicated, and in many instances, courts are faced with situations implicating profound and systemic disadvantage.

- *Violence and abuse in intimate relationships*  
 Modules of education dealing with the role of the courts in addressing issues of violence and abuse in intimate relationships. The issues present themselves in the criminal, civil, and family law contexts. Topics include:
  - The Judicial Role
  - Recent Research Findings
  - Legal Developments and Trends
  - Fact Finding in Violence and Abuse Cases
  - Judicial Decision Making and Orders
  
- *Science and the law*  
 Courses for dealing with complex issues of science, the admissibility of scientific evidence and legal disputes arising out of recent developments in biotechnology.
  
- *Frailties in the criminal justice system: the judge's role (judicial safeguards for preventing wrongful convictions)*  
 This skills-based seminar concentrates on the role of the judge in identifying and managing those factors that can increase the likelihood of a wrongful conviction.
  
- *Youth criminal justice*  
 Seminars to help judges deal with new Youth Criminal Justice Act.
  
- *Aboriginal law*  
 A three-day seminar on aboriginal law and other related issues. Topics include:
  - The Constitution and Aboriginal Rights
  - Understanding Relevant Treaties
  - Evidence and Language in Aboriginal Cases
  - Métis, Non-Status Issues
  - Aboriginal Family, Community and Culture: the Context of Decision-Making
  - Equality Issues
  - Child Protection: Current Issues and New Approaches
  - Sentencing and Aboriginal Communities

## ***Appendix D***

## ***Curriculum of the Master of Judicial Studies, University of Nevada***

### **Required courses**

General Jurisdiction *or* Advanced General Jurisdiction  
Judicial Writing  
History and Theory of Jurisprudence  
Thesis

### **Electives**

#### *Group I*

Criminal Evidence  
Advanced Evidence  
Decision Making Process  
Ethical Issues in Law: a Novel Approach  
Scientific Evidence and Expert Testimony  
Handling Capital Cases  
Dispute Resolution  
Advanced Judicial Writing  
Effective Case Flow Management  
Practical Approaches to Substance Abuse Issues  
Managing Complex Cases  
Managing Trials Effectively  
Conducting the Trial  
Domestic Violence  
Trial by Jury  
Today's Justice  
When Justice Fails  
Search, Seizure and Criminal Procedure  
Topics in Comparative Jurisprudence

#### *Group II*

Justice, Law and Literature  
Comparative Law  
Media and the Courts  
Law and Economics  
Law and the Social and Behavioral Sciences  
Legal/Medical Issues  
Public Policy in the Courts  
Criminology: Causation, Enforcement, Responsibility  
Language and Judicial Process  
Science in Law  
Gaming and the Law

## ***Appendix E***

## ***Example of a course developed under the Californian curriculum design process***

### ***New Jury Instructions for Experienced Judges***

#### **1. Determining Needs**

A workgroup has developed new jury instructions that will be in effect within the next three months. Judges are not aware of the changes, do not understand the reasons for the changes, and are unsure of their use.

#### **2. Setting Goals**

We want the judges to be familiar with the new instructions and be able to use the new instructions effectively and with confidence.

#### **3. Stating Objectives**

As a result of this education, judges will be able to:

- a. Identify what has changed in civil and criminal jury instructions.
- b. Demonstrate instructing a jury with the new instructions.
- c. Tailor the new instructions for special needs noted in hypos.

#### **4. Selecting Content**

New civil and criminal jury instructions; highlights of discussions of the respective task forces that drafted the new instructions; demonstration; unique situations in instructing juries.

#### **5. Planning the Delivery – Kolb Learning Cycle**

- e. Video of judge giving jury instructions; jurors appear confused.
- f. Discussion of what the judge could have done differently.
- g. Presentation of new civil and criminal instructions
- h. Small group exercises: giving instructions; making changes (hypothetical)

#### **6. Designing Materials**

Scripts of old and new civil and criminal jury instructions; Relevant excerpts from civil and criminal benchbooks; hypothetical situations; “Court News” article by Judge Cole.

#### **7. Delivering the Course**

2.5 hour program \* See “Delivering the Course” outline attached

- a. 10 minutes – faculty gives overview and shows video
- b. 20 minutes -- large group discusses video; faculty makes notes (flipchart)
- c. 30 minutes – faculty reviews new instructions; compares new to old
- d. 10 minute break

- e. 30 minutes – faculty demonstrates giving instructions; faculty and participants discuss relevant benchbook sections.
- f. 15 minutes – pairs demonstrate delivery of portions of new instructions
- g. 30 minutes -- small groups discuss (hypos), give feedback to large group
- h. 5 minutes – faculty gives summary and closes program

### **8. Evaluating Learning**

Faculty will: observe small group exercises and offer suggestions; obtain feedback from small groups regarding hypothetical situations; question the large group.

## **Appendix F**                      **Scotland: Statement of competencies required of a judge**

Any list of qualities must represent a counsel of perfection. However, there are:

- (a) certain basic skills and attributes which all judges must have, and
- (b) other personal qualities which are desirable, but which all judges could not be expected to display in their totality.

As regards appointments to the Supreme Courts, candidates will be expected to have conspicuous ability in legal matters and to display the skills and attributes under (a) to the highest degree.

Candidates for judicial office should display the following:-

### **(a) Basic skills and attributes**

#### **(1) Law**

A high level of understanding of the principles of law and jurisprudence.

A sound knowledge and understanding of the law of Scotland including the laws relating to jurisdiction.

A sound knowledge and understanding of the laws and rules of evidence and procedure.

Professional achievement in the areas of law in which they have been engaged while in professional practice.

An extensive experience of litigation, and familiarity with the courts.

Previous judicial experience is also desirable though not essential.

#### **(2) General**

- *Integrity and honesty*

Having a history of honesty, discretion and plain-dealing with professional colleagues, clients and courts.

Possessing independence of mind and moral courage, being prepared to take and maintain unpopular decisions when necessary.

Having and being able to retain the trust, confidence and respect of others.

- *Fairness and impartiality and the appearance of impartiality*

Being open-minded and objective, with the ability to recognise and discount any personal prejudices.

Being able to deal impartially with all matters which come before them, and a desire to ensure that all who appear before them have an opportunity for their case to be clearly presented and that it is then considered as fully and dispassionately as possible.

- *Intellectual and analytical ability*

A logical and relevant mind

The ability to concentrate, to absorb and assimilate arguments.

The ability to master complex legal and factual issues, to evaluate the facts, and to apply legal principles to the facts of a case.

The ability to marshal facts and summarise the law when giving judgment or addressing a jury.

The flexibility of mind necessary when called on, often at short notice, to adjudicate on cases in unrelated areas of law and practice.

- *Sound judgment*

The ability to exercise discretion effectively and in a fair and balanced manner.

The ability to apply their knowledge and experience to make decisions in compliance with the law and appropriate to the circumstances of the matter in hand.

The ability to consider and marshal facts and competing argument and reason logically to a correct and balanced conclusion.

- *Commonsense*

- *Respect for the law, and awareness that justice must not only be done, but must be seen to be done*

- *Decisiveness*

The ability to reach firm conclusions (often at speed), to think, decide and act independently of others, and to rely on their own judgment.

- *Communication skills including command of language*

The ability to communicate effectively and authoritatively with all appearing in court (practitioners, parties, accused, witnesses, members of the jury, party litigants, children, and court staff) both orally and in writing.

- *Understanding of people and society*

Having respect for and understanding of people (including children) of different backgrounds.

Being sensitive to the influence of different ethnic and cultural backgrounds on the attitudes and behaviour of people whom they encounter in the course of their work.

Having sensitivity and humanity, and a demonstrable understanding of, and sympathy for, the needs and concerns of court users.

- *Awareness of the need to avoid discrimination on the grounds of gender, race or colour or on any other ground*

- *Commitment, conscientiousness and diligence.*

A commitment to public service and to the proper and efficient administration of justice, which they will pursue conscientiously, with energy and diligence, and a due sense of responsibility.

- *Ability to produce written work speedily and efficiently*

- *Authority and case management skills*

The ability to command the respect of court users, and to maintain fair-minded discipline in the court and chambers without appearing pompous, arrogant or overbearing.

The ability to recognise when steps are required to stop disruptive or disrespectful behaviour in court.

The ability to manage cases actively and promote the expeditious despatch of business, and the ability to handle people effectively to prevent unnecessary repetition and irrelevance whilst ensuring that all participants (whether represented or not, and including children) are able to present their case or their evidence as fully as possible.

- *Good time-keeping*

- *Keeping abreast of the times*

**(b) Personal qualities**

- *Dignity without arrogance*

- *Courtesy and consideration to all court users and court staff*

- *Patience and the ability to listen*

- *Stamina and a willingness to work long hours when appropriate*

- *Maturity and sound temperament, including self restraint and even temper*

Displaying a maturity of attitude and approach.

Being firm and decisive while remaining patient, tolerant, good-humoured and even-tempered.

Exercising restraint when that is appropriate.

- *Sense of humour and the ability to keep it under control*
- *Being alive to the likely reaction of the media, but not being swayed by it*
- *Extra mural interests*
- *Willingness to undergo training both initially and throughout their judicial careers*
- *Studying the law so as to keep up with changes in the law and new laws*
- *Having basic IT skills, and being willing to improve on them*

## **Appendix G**

# ***National Standard for Professional Development for Australian Judicial Officers***

## **Standard for Judicial Professional Development in Australia**

### **Preamble**

Judicial officers will be better able to maintain the high standards required of them if they are provided with, or given access to, appropriate professional development programs that help them to maintain and improve skills, respond to change in our society, maintain their health and retain their enthusiasm for the administration of justice.

Australia's judicial officers must deal with a range of challenges, including –

- increased workloads
- increasingly complex work
- limited resources
- a changing society
- changing expectations of the judiciary, and
- changing expectations of the process of administration of justice.

In this context, a commitment by heads of jurisdiction and individual judicial officers to professional development should be made, bearing in mind the following general principles:

- Equally available and adequate professional development for all judicial officers in Australia will enhance the fair and efficient administration of justice.
- Judicial officers should consider participation in professional development activities to be a duty.
- Heads of jurisdiction should encourage judicial officers to participate in professional development and adequate resources must be made available to enable such participation, the cost of participation being met by the court in question.
- The responsibility for planning, conducting and overseeing relevant and responsive professional development properly rests with the judiciary, in consultation with education professionals and other appropriate experts.

The commitment can be met only if Australia's Governments provide the resources to enable it to be met. Resources need to be provided to courts to enable them to conduct their own programs, and to enable them to meet the cost of judicial officers attending programs provided by others.

Resources should also be provided to organisations, controlled by the judiciary, that are established for the purpose of providing professional development programs to the

judiciary. They are the National Judicial College of Australia, the Judicial Commission of New South Wales, the Judicial College of Victoria and the Australian Institute of Judicial Administration.

### **Professional Development for all Judicial Officers**

Each judicial officer should be able to spend at least five days each calendar year participating in professional development activities relating to the judicial officer's responsibilities. The standard should be reviewed in 2010.

This standard need not be met in each year but can be met on the basis of professional development activities engaged in over a period of three years.

This standard can be met, in part, by self-directed professional development.

Judicial officers should be released from court duties to enable them to meet this standard. However, judicial officers should commit some private time to meet the standard.

### **Professional Development for Newly Appointed Judicial Officers**

On appointment a judicial officer should be offered, by the court to which he or she is appointed, an orientation program. The program should inform the judicial officer about the work and the functioning of the court.

Within 18 months of appointment, a judicial officer should have the opportunity to attend a national orientation program, involving judicial officers from different courts and jurisdictions. The program should be a residential program of about five days' duration.

### **Commentary on the Standard**

The goals of the Standard for Judicial Professional Development in Australia are:

- To encourage an awareness by judicial officers that professional development, on a regular basis throughout their judicial careers, is necessary if they are to maintain and enhance their adherence to the high standards required of them, and to adjust to change.
- To encourage judicial officers to undertake professional development, while leaving the meeting of the standard to the individual.
- To give Australia's governments and the public clear guidelines, which will encourage recognition of the need to make time and resources available for this purpose.
- To create standards for professional development for judicial officers which will facilitate and support the provision of adequate professional development programs of a high standard.

All those involved in the provision of professional development for judicial officers should endeavour:

- To improve and enhance through professional development the administration of justice.
- To maintain public confidence in the judiciary by informing the public of the commitment by the judiciary to professional development.
- To provide judicial officers with the knowledge, skills, techniques and awareness required to perform their judicial responsibilities fairly, correctly and efficiently.
- To encourage judicial officers to maintain the highest standards of judicial conduct.

It is the responsibility of –

- each judicial officer to recognise the need for professional development in order to maintain and enhance competence and adjust to change, and to spend such time as may reasonably be required to accomplish that purpose.
- Australia's governments in the public interest to provide resources that will enable judicial officers to meet this Standard and that will enable providers of professional development programs to provide appropriate programs.
- those who are charged with administering the courts to provide adequate time, funding and related support to encourage and support participation in professional development programs.
- judicial officers to assist in the provision of professional development programs when called upon to do so.
- the providers of professional development programs to provide high quality programs which meet the needs of judicial officers at all stages of their careers, and address the goals of these standards.