

National Judicial College of Australia

Review of the

**NATIONAL STANDARD FOR
PROFESSIONAL DEVELOPMENT FOR
AUSTRALIAN JUDICIAL OFFICERS**

REPORT

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Summary of recommendations

- 1 That courts be invited to adopt a protocol allowing judicial officers to identify up to five days a year on which they could participate in professional development activities. [page 22]
- 2 That heads of jurisdiction be invited to regularly publicise the existence of the Standard amongst members of their court. [page 26]
- 3 That all heads of jurisdiction be invited to have the members of their court consider the Standard and, if thought appropriate, to adopt it for their court. [page 26]
- 4 That all heads of jurisdiction be invited to include in their court's annual report some information as to –
 - participation by members of the court in judicial professional development activities
 - whether the Standard was met during that year by that court
 - if applicable, what prevented the court meeting the Standard (such as judicial officers being unable to be released from court, lack of funding; etc).[page 29]
- 5 That heads of jurisdiction in jurisdictions other than New South Wales and Victoria consider whether a proposal might be made to the government of their State or Territory for a person to work in conjunction with the NJCA with particular responsibility for judicial professional development in that jurisdiction [page 34].

1 Background

In 2006 the National Judicial College of Australia (NJCA) adopted a *National Standard for Professional Development for Australian Judicial Officers* (the Standard). The Standard, absent its Preamble and Commentary, is –

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.

Having adopted the Standard, the NJCA submitted it to the Council of Chief Justices, the Council of Chief Judges and the Council of Chief Magistrates for their endorsement. All three Councils endorsed the Standard. The Standard was also endorsed by the Judicial Commission of New South Wales, the Judicial College of Victoria, the Australasian Institute of Judicial Administration, the Judicial Conference of Australia and the Association of Australian Magistrates.

As can be seen from the Standard, it was always intended that it be reviewed. Accordingly, at its meeting in May 2010, the Council of the NJCA decided that the College should conduct a review of the national standard and its impact, having regard to the following questions –

- are judicial officers currently meeting the five day standard and if not how much judicial professional development are they undertaking ?
- what are the barriers to judicial officers meeting the standard and their professional development obligations in general ?
- what mechanisms might be adopted to encourage or enable greater participation by judicial officers in judicial professional development activities?
- should judicial officers use their own time to meet part of their professional development obligations, and if so to what extent ?
- have developments have taken place in the field of judicial education since 2006 that may necessitate a change in the standard ?
- should 360 degree assessment programs be standard for all judicial officers every 3 years ?
- whether steps need to be taken to improve the quality of judicial education currently being delivered by judicial education bodies and courts in Australia, and if so what they might be.

2 The impact of the Standard

The review is to be not just of the Standard itself but of its impact. There are three ways in which it might be said that the Standard has had, or could have, an impact –

- The Standard could be taken to have had an impact if courts have adopted it as their own standard for their own professional development program.
- Beyond this, it could be regarded as having had an impact if judicial officers are, in fact, being given the opportunity by their court to engage in at least five days of professional development, and newly appointed judicial officers are being given the opportunity to participate in an orientation program on their appointment and to attend a national orientation program.
- Even beyond this, the Standard could be regarded as having had an impact if, in fact, judicial officers are committed to engaging in professional development for at least five days each year and newly appointed judicial officers are participating in the orientation programs.

This review will seek to shed some light on the extent of impact of the Standard at all three levels.

However, in addition, the Standard is reviewed, as requested by the Council of the NJCA, in the light of the other questions raised for consideration.

3 The process of conducting the review

As a first step, a Discussion Paper was prepared which outlined the history of the development of the Standard and the reasons for its development, and briefly discussed the questions listed above.

In early October 2010 this Discussion Paper was sent to the heads of all courts throughout Australia, seeking their input on the implementation of the Standard and the issues discussed in the Paper. The Discussion Paper was also placed on the NJCA's website.

The Discussion Paper was also sent to the Judicial Commission of New South Wales, the Judicial College of Victoria, the Judicial Conference of Australia, the Australasian Institute of Judicial Administration, the Association of Australian Magistrates, the NJCA's regional convenors in each State and Territory, and the Departments of Justice in each State and Territory. A list of those who responded is at Annexure A of this report.

At the same time, a survey was distributed by email to all judges and magistrates throughout Australia. This survey asked the seven questions listed in the previous chapter as well as how long the respondent had been a judicial officer. The purpose of the last question was to be able to identify whether the responses varied dependant on how long a person had held judicial office.

It was indicated to individual judicial officers that their responses would be anonymous, in that this report would be written so that it would not be possible to identify individual respondents. Accordingly, a list of those who responded is not provided.

In total, 219 responses were received. This represents an overall response rate of 21% and, more specifically in regard to the various levels of courts as shown in the following table –

Review of the **National Standard for Judicial Professional Development**

Table 3a Response rate to the survey

Note: The raw figures are shown followed by the percentage response rate (shown in brackets) for the specific court

Courts	Jurisdictions									
	Aust	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
Federal										
Federal	10/44 (23%)									10/44 (23%)
Family	17/32 (53%)									17/32 (53%)
Magistrates	9/61 (15%)									9/61 (15%)
State & Territory										
Supreme		3/5 (60%)	13/62 (21%)	1/6 (17%)	8/24 (33%)	0/15 (0%)	0/7 (0%)	6/52 (12%)	6/23 (26%)	37/194 (19%)
District			15/72 (21%)		11/38 (29%)	5/24 (21%)		8/69 (12%)	7/27 (26%)	46/230 (20%)
Magistrates		3/8 (38%)	24/131 (18%)	4/14 (29%)	25/85 (29%)	6/43 (14%)	6/14 (43%)	9/100 (9%)	20/53 (38%)	97/448 (22%)
Land/ Environment			0/7 (0%)			0/2 (0%)				0/9 (0%)
Industrial			0/10 (0%)			3/9 (33%)				3/19 (16%)
TOTAL	36/137 (26%)	6/13 (46%)	52/282 (18%)	5/20 (25%)	44/147 (30%)	14/93 (15%)	6/21 (29%)	23/221 (10%)	33/103 (32%)	219/1037 (21%)

4 Whether judicial officers are currently meeting the Standard

4.1 Approaching this issue

This issue is, of course, the central question in assessing the Standard's impact since it was adopted five years ago. The core expectation of the Standard is that each judicial officer should be able to spend at least five days each year on judicial professional development and, obviously, that they should take up that opportunity.

Heads of jurisdiction, judicial education providers and several other bodies and individuals were asked to comment on the issues raised in the Discussion Paper, the first of which was –

Are judicial officers currently meeting the five day standard and if not how much judicial professional development are they undertaking?

Individual judicial officers in all States and Territories were asked two questions in the survey –

Over the last year (since 1 October 2009) in how many days of judicial professional development have you participated?

and

Over the last three years (since 1 October 2007), have you participated, on average, in at least five days of judicial professional development each year?

For the purpose of the survey, "professional development" was defined as including participation in seminars, workshops, distance programs, sessions at court and other conferences on judicial education topics, as well as self-directed professional development activities.

4.2 Formal and informal adoption of the Standard

It seems that only in Western Australia have the heads of jurisdiction, as a group, adopted the Standard formally. This is reflected in the Magistrates Court in the time allowed for annual conferences and training days as well as additional days for country magistrates. The effect is that magistrates are able to meet the Standard largely by involvement in intra-court activities. Those who attend other activities at their own expense are usually allowed to do so in court time.

In some courts, such as the District Court of Queensland, the judges have adopted and confirmed the Standard.

In a number of courts, there is an informal arrangement whereby the Standard is met, although it seems this has not been done by formal adoption of the Standard but rather as a matter of practice. Whether that practice has come into place in response to the Standard is not clear.

Even in courts where there has been a formal adoption of the Standard, it is not always met.

In other courts, whilst there are some educational activities and encouragement of involvement in professional development, records are not kept and there is no specific attempt to ensure the Standard is met. The president of one court indicated that he intends, from now on, to keep a record of the involvement of members of his court in professional development. On the other hand, one chief judge expressed hesitation about doing so on the basis that it could affect judicial collegiality, and another said that he thought adopting a 'headmaster' role would only produce animosity.

One senior judge suggested that a core reason is that the Standard was endorsed by the heads of jurisdiction, not by governments, and therefore governments have never owned the Standard and feel little obligation to make available resources to enable it to be met.

4.3 The responses of heads of jurisdiction on the extent to which the Standard is being met

The responses from most heads of jurisdiction indicate that, overall, members of their courts are meeting the Standard. They also said, in summary, that –

- Only in a few courts are records kept of judicial officers' participation in judicial education.
- There does not appear to be a practice of reporting on attendance at judicial education activities in courts' annual reports, nor on the issue of whether the Standard has been met in the court.
- It does not appear that the Standard has been formally adopted as a standard in many of the courts, but nevertheless efforts are made to achieve a situation of, what would be, compliance with the Standard.
- Although courts do not keep statistics, the heads of court through other means form an assessment of whether it was being complied with.
- In some cases those members of a court who were not meeting the standard were those who were not interested in judicial education.

4.4 The extent to which judicial officers are meeting the Standard

An indication of the extent to which the Standard is, in reality, being met can be gained from the responses from individual judges and magistrates to the first two questions in the survey.

The responses probably should be regarded with a degree of caution insofar as they might be taken to be reflective of the position for all judicial officers in Australia. It may be that those who have responded to the survey are more interested in judicial education than those who did not, and may therefore be more likely to have participated in more days of judicial education.

The survey asked for an indication of the extent to which judicial officers are presently participating in professional development, and an analysis of the responses is as follows –

Table 4a The number of days of judicial professional development in which judicial officers have participated over the last year (since 1 October 2009)

Courts	Number of days				TOTAL
	0	Under 5	5 – 10	10 or more	
Magistrates	3 (3%)	21 (22%)	56 (58%)	16 (17%)	96 (100%)
District/ County	2 (4%)	16 (35%)	19 (41%)	9 (20%)	46 (100%)
Supreme	0	9 (24%)	15 (41%)	13 (35%)	37 (100%)
Industrial	0	1 (33%)	2 (66%)	0	3 (100%)
Federal (Federal, Family & Federal Magistrates)	1 (3%)	16 (43%)	10 (24%)	10 (27%)	37 (100%)
TOTAL	6 (3%)	63 (29%)	102 (46%)	48 (22%)	219 (100%)

Some conclusions to be drawn from these figures are –

- Overall, judicial officers meet or exceed the five days Standard; in fact, significantly so – 68% did so, and 32% did not do so.
- Slightly under a quarter of judicial officers exceeded the Standard by 100% or more.
- In all categories of courts, more than 50% of judicial officers met or exceeded the Standard.
- Supreme Court judges are those who, more than the others, exceeded the Standard and, indeed, they are also those who, more than the others, exceeded the standard by double or more.
- Judicial officers in the federal courts were those who were more likely not to reach the Standard.

It might be concluded that Supreme Court judges were more likely to exceed the Standard because they may have more generous arrangements in regard to professional development. But the availability of funding resources applies to judges and federal magistrates in the federal courts, and yet they were the more likely not to reach the Standard.

Another way of analysing participation is by States and Territories, rather than courts. Table 4b displays the results but confined to displaying those who met or exceeded the Standard on the one hand, and those who did not.

Some conclusions to be drawn from the figures in the following table are –

- Judicial officers in Victoria are those most likely to have met or exceeded the Standard in the last year.
- Judicial officers in Tasmania are those most likely not to have met the Standard in the last year, although the sample is very small and may not be representative of judicial officers in that State generally.
- Judicial officers in States and Territories generally are more likely to have met or exceeded the Standard than their federal colleagues.

**Table 4b Judicial officers who met the Standard over the last year
(since 1 October 2009) by State or Territory**

State or Territory	Met Standard or not		
	Under 5 days	5 days or more	TOTAL
ACT	2 (33%)	4 (66%)	6 (100%)
NSW	17 (33%)	34 (66%)	51 (100%)
NT	1 (20%)	4 (80%)	5 (100%)
QLD	17 (39%)	27 (61%)	44 (100%)
SA	3 (20%)	12 (80%)	15 (100%)
TAS	4 (80%)	1 (20%)	5 (100%)
VIC	4 (17%)	20 (83%)	24 (100%)
WA	8 (24%)	25 (76%)	33 (100%)
Federal	17 (47%)	19 (53%)	36 (100%)
TOTAL	73 (33%)	146 (66%)	219 (100%)

A further indication is the extent of involvement over the last three years, in order to see if there is a longer term trend. The question was –

Over the last three years (since 1 October 2007), have you participated, on average, in at least five days of judicial professional development each year?

The range of possible responses was - yes overall, no overall, or yes for some years but not for others.

An analysis of the responses by level of court is below –

Table 4c Participation by judicial officers in judicial professional development over the last three years, by level of court

	<i>Yes overall</i>	<i>Yes for some years but not others</i>	<i>No overall</i>	<i>TOTAL</i>
Magistrates	54 (59%)	12 (13%)	26 (28%)	92 (100%)
District/County	19 (50%)	5 (13%)	14 (37%)	38 (100%)
Supreme	23 (72%)	2 (6%)	7 (22%)	32 (100%)
Industrial	2 (66%)		1 (33%)	3 (100%)
Federal (Federal, Family & Federal Magistrates)	14 (44%)	6 (19%)	12 (38%)	32 (100%)
TOTAL	112 (57%)	25 (13%)	60 (30%)	197 (100%)

It should be noted that the number of responses was smaller than those who answered the earlier question as a number of the judicial officers responding to the survey had been appointed for less than three years: indeed, in some cases, only very recently. Those judicial officers said the question was not applicable to them or were only able to answer for a short period.

Some conclusions to be drawn from these figures are –

- Overall, judicial officers have met the five day Standard over the last three years – and hence, it might be concluded that this is a pattern for them and is their long term practice.
- Again, the most likely group to be achieving the Standard is Supreme Court judges and the least likely are judges or federal magistrates in federal courts.

The overall level of meeting the Standard for all courts was 57% with another 13% having met the Standard in some of the last three years.

Another way to consider whether the Standard is being met is to consider the situation by State or Territory and the various courts in

those jurisdictions. The results are displayed in Table 5d below. In considering this table, it should be noted that the responses for some courts were very small. Although the total figures for each State or Territory, or Australia overall, might be taken as being representative, in respect of individual courts the same cannot necessarily be said.

Some conclusions to be drawn from the figures in Table 5d are –

- The States in which judicial officers were most likely to have met the Standard overall in the last three years were New South Wales and Victoria.
- The same result occurs if the figures for overall meeting of the Standard are added to those for judicial officers who met the Standard in some years but not others.

It would be possible to conclude that this result reflects the fact that in both these States judicial education is well funded and there is an institution devoted to judicial education.

The responses showed that there is a feeling in Queensland, South Australia and Western Australia that there is a need for a person or body devoted to developing education activities specifically for judicial officers in those States. The question is whether, if this were to be done, that person should work alone or whether the person could, in some way, be ‘affiliated’ with the NJCA, thus retaining the focus on the particular jurisdiction but incorporating some benefits of scale and the wider range of resources available. This issue is taken up later in this report.

Table 4d Participation in judicial professional development by judicial officers over the last three years, by court

	<i>Yes overall</i>	<i>Some years</i>	<i>No overall</i>	<i>TOTAL</i>
Federal				
Federal	5	0	3	9
Family	6	4	6	16
Federal Magistrates	4	2	4	10
<i>Total for fed courts</i>	<i>15 (44%)</i>	<i>6 (18%)</i>	<i>13 (38%)</i>	<i>34</i>
Australian Capital Territory				
Supreme	2		1	3
Magistrates			2	2
<i>Total for ACT</i>	<i>2 (40%)</i>		<i>3 (60%)</i>	<i>5</i>
New South Wales				
Supreme	8		2	10
District	6	2	6	14
Local	20	1	3	24
<i>Total for NSW</i>	<i>34 (71%)</i>	<i>3 (6%)</i>	<i>11 (23%)</i>	<i>48</i>
Northern Territory				
Supreme	1			1
Magistrates	2		2	4
<i>Total for NT</i>	<i>3 (60%)</i>		<i>2 (40%)</i>	<i>5</i>
Queensland				
Supreme	6	1	1	8
District	5	2	1	8
Magistrates	9	5	9	23
<i>Total for Qld</i>	<i>20 (51%)</i>	<i>8 (20%)</i>	<i>11 (28%)</i>	<i>39</i>
South Australia				
Supreme				
District	2		3	5
Industrial	2		1	2
Magistrates	6		1	7
<i>Total for SA</i>	<i>10 (66%)</i>		<i>5 (33%)</i>	<i>15</i>
Tasmania				
Supreme				
Magistrates			4	4
<i>Total for Tas</i>			<i>4 100%</i>	<i>4</i>
Victoria				
Supreme	3		3	6
County	4		1	5
Magistrates	7	2	1	10
<i>Total for Vic</i>	<i>14 (66%)</i>	<i>2 (10%)</i>	<i>5 (24%)</i>	<i>21</i>
Western Australia				
Supreme	2	2		4
District	3	1	3	7
Magistrates	9	3	3	15
<i>Total for WA</i>	<i>15 (58%)</i>	<i>6 (23%)</i>	<i>6 (23%)</i>	<i>26</i>
TOTAL	112 (57%)	25 (13%)	60 (30%)	197

A further way to examine the responses was to identify whether those who had been judicial officers for a shorter period of time were more likely to be meeting the Standard. If this were found to be true, it might be assumed that they would continue that practise throughout the remainder of their judicial life, and hence there would, in the judiciary overall, be an increasing compliance with the Standard. A simple analysis was to place respondents into two groups – those who had been judicial officers for five years or more, and those who had been judicial officers for less than five years.

An analysis of the responses in respect of participation for the last year only is set out below –

Table 4e Participation in judicial professional development in the last year, analysed by time of appointment as a judicial officer

<i>Time as a judicial officer</i>	<i>Met Standard or not</i>		<i>TOTAL</i>
	<i>Under 5 days</i>	<i>5 days or more</i>	
5 years or more	46 (33%)	95 (67%)	141 (100%)
Less than 5 years	27 (36%)	49 (64%)	76 (100%)
TOTAL	73 (34%)	144 (66%)	217 (100%)

These figures suggest that there is very little difference in participation in professional development activities between more recently appointed judicial officers and those who have been appointed for a longer period. One chief justice suggested that newer appointments to courts are often “conscious of the need for continuing professional development and are keen to be involved”; but the figures in Table 4e do not bear this out, *ie.* that they are more likely to be involved.

5 The barriers to judicial officers meeting the standard and their professional development obligations in general

The survey distributed to all judicial officers throughout Australia asked –

What do you think are the barriers to you, and judicial officers generally, meeting the national Standard and your professional development obligations in general?

The question posed in the Discussion Paper, which was distributed to heads of jurisdiction and others, was essentially the same –

What are the barriers to judicial officers meeting the Standard and their professional development obligations in general?

The responses of heads of jurisdiction and of individual judicial officers all fell into the same broad categories and so are not reported separately in this chapter.

Judicial officers in some courts said that they felt there were no barriers in their jurisdiction or court. They added that they were able to meet the five day Standard. This view is reflected in the responses of heads of court in some States:

“It may be taken that judges of the Supreme and District Courts in Queensland engage in at least 5 days professional development per annum.the judges are allowed a “jurisprudential allowance” equal to 12% of salary”

“commitment from government in consultation with the Court exists in New South Wales without demurrer. Funding provided to the Judicial Commission [of NSW] confirms government commitment. Funding provided to the Local Court as part of its operating budget also identifies an understanding within the administration of government that access to continuing judicial education is a necessary adjunct to the strategic and operational requirements of courts”

But the majority of responses to the Discussion Paper and the survey did identify substantial barriers. The barriers are, it should be said, fairly self-evident and largely long-standing.

5.1 A lack of commitment by government to ensure that judicial officers have time out of court for professional development

The core barrier was described by a judge in this way –

The need for judges to have time out of court in order to attend judicial education needs to be recognised by both the Federal and the State government. Additional funding and the appointment of additional judicial officers is needed to ensure that attendance at judicial education programs does not add to court delays and backlogs. If attendance at judicial education is not properly funded and recognised then it is unlikely that the minimum standard will be met.

She went on to say that “although funding for attendance at conferences would assist judges to receive judicial education, a commitment that recognises the loss of court time is also required”.

Essentially the barrier is that the funding provided to the court is insufficient to enable judicial officers to be released from court duties to attend educational activities without, as the judge said, adding to court delays and backlogs.

The magnitude of this problem was illustrated by a chief magistrate from a large jurisdiction. He pointed out that meeting the Standard would be the annualised equivalent of three years worth of magistrate availability. In other words, he would have to appoint three more magistrates to enable all magistrates to meet the Standard. However, he goes on to say that there is sufficient funding to enable the five day Standard to be met.

The underlying issue is whether governments are willing to provide sufficient funding to enable all judicial officers in a court to engage in professional development to the level expected by the Standard.

5.2 Insufficient funding from within the court to enable participation in professional development to the extent necessary to meet the Standard

In some jurisdictions there is sufficient funding, or arrangements in place, which enable all members of a court to meet the Standard should they be so minded. But it does not follow that they believe there judicial education needs are being met:

“The reason that there is insufficient training is because there is no money available for judge's to go to conferences other than the court's own conference.”

“ we receive two court free days per annum for our annual conference, which is funded by the judicial commission. The commission also organises intermittent seminars before or after court. If we want to attend any other conference (eg. AIJA or JCA conferences), we have to do so in our holidays at our own cost.”

Particularly at the magistrates court level, there appears to be less funding available for professional development activities; a situation exacerbated by the fact that those courts are often the largest courts in terms of number of judicial officers.

Cost is not just the cost of providing professional development activities for all members of a court. It can also include the cost of travel and accommodation, as well as daily expenses.¹

The expense of professional development is more pronounced for courts that are at a distance – either within a jurisdiction but away from the capital city, or from the major population areas, especially Western Australia.

Cost is equally the lost judicial time which often may need to be paid for by appointing more judicial officers – something over which heads of jurisdiction have limited power.

5.3 The pressure of work for a judge or magistrate

All judicial officers work under considerable pressure. Many who responded to the survey referred to their heavy workload in court as well as the need to find time, very often in one's own time, to write judgments. This pressure has two outcomes. One is that the judicial officer wants to give first priority to maintaining his/her list so that there are not unnecessary delays and matters are dealt with in a timely way. Another outcome is fatigue, which naturally results in a

¹ One judge gave as an example that he would be attending a criminal law conference that week and had been granted paid conference leave to do so. However, he was required to pay for his own accommodation, travel and food expenses as there was no funding to cover these items.

reluctance to release precious personal time for educational purposes.

The individual judicial officer may feel pressured not to divert time to professional development. Equally, those responsible for the lists and the granting of release time, may feel the same pressure. The work of most courts is increasingly busy, and a court has to look closely at time spent on work not directly related to the hearing and resolving of cases. Some heads of jurisdiction may be supportive of the implementation of the Standard in their courts, but are constrained by the need to ensure cases are dealt with without undue delay.

As one judge put it simply, the barrier is being able to find programs that fit with her availability from court listings.

5.4 Court listings and the nature of matters before the court, which prevent time away from judicial duties

This is the other side of the coin to time, in that the quite proper desire to see the court's list dealt with expeditiously means that it is very difficult to find time for professional development. As the head of one court has said –

My Court, like others, struggles with inadequate judicial resources. The consequential delays in hearing of matters and in delivery of judgments militate against releasing judicial officers for five days each year in addition to annual leave, long leave and judgment writing time.

It has been pointed out that in a relatively small court, the opportunity for allowing time to attend to professional development, in addition to leave, is not easy to manage because of the impact on the court's work. For example, in a court of eight members, the 'lost' time would be 40 court days (5 days x 8 judges). This is a significant proportion of a small court's time.

A senior judge said that he would be proposing that his court adopt a protocol allowing judges to nominate up to five days a year on which they would not be listed in order that they could attend professional development activities. For some courts at least this may be a way to overcome this barrier provided heads of jurisdiction are willing to give the requested days out of court and agree to the list being prepared in this way.

Even with the support of heads of jurisdiction, as several judges pointed out, judges sitting in jury trials, or in other high volume courts where cases generally run for one to two weeks, cannot commit to one or two day courses without feeling bad about the inconvenience to jurors, counsel and the parties resulting from an interruption mid trial. Another judge pointed out that, generally, trials running over into days set for education sessions.

Equally, as another said, it is hard to prepare and clear the head when a seminar falls in the middle of a trial. Judges and magistrates sitting in remote small courts cannot easily leave their responsibilities.

Recommendation no. 1:

That courts be invited to adopt a protocol allowing judicial officers to identify up to five days a year on which they could participate in professional development activities.

5.5 Travel time and costs for judicial officers in more remote or smaller jurisdictions

For judicial officers in States or Territories more remote from the larger Australian cities, participation in educational activities often involves travelling to another State, with the resultant cost and time involved. This is a barrier because participation is a time consuming and costly exercise.

A chief magistrate pointed out that for one of her magistrates to attend a three day workshop in another State would require an absence of one full week from court work. She pointed out that this can have a significant impact in a smaller jurisdiction.

Courts which are at more remote parts of the country encounter the barrier of needing to put aside substantial time, not just for attendance but also for travel to judicial professional development activities in other places. This can apply even to larger cities such as Perth, as travel to the eastern states is inevitably costly and time consuming.

5.6 Professional development activities which are not sufficiently relevant and of good quality

Many judicial officers used the survey as an opportunity to say how well they regarded the educational programs on offer in their court or State or Territory. But others were not as positive and suggested that a barrier to engagement for some judicial officers may be that the content of some programs may be seen to be insufficiently relevant and helpful. Some judicial officers considered the lack of quality in available programs was a barrier to participation.

Some responses to the Discussion Paper indicated that the perceived lack of relevance and quality of judicial education programs deterred participation by some judicial officers:

Another factor is the limited range of good quality programs.....It has become increasingly clear to me that evening an lecture type seminars have only limited value and that is essential that we develop more well designed residential programs. So that leads not so much to a change in the Standard but to a change in emphasis.

It is obviously vital that the judicial education programs are relevant to the work being undertaken.....programs could be better designed to ensure they involve greater participation by those attending. This has been shown to be far more beneficial than the traditional method of simply delivering a paper.

It is the experience within the Local Court that the most effective education is delivered when magistrates are involved in specific education modules and present them to magistrates. The interactive environment in which this type of education takes place...establishes a high level of peer involvement/observation/emulation leading to a greater level of consistency of approach within the Court.

Some judicial officers saw the issue of quality as being related to the underlying barrier of a lack of funding for judicial education. One said –

The quality of judicial education – in particular that the NJCA, although it does an extremely good job under extraordinary difficult circumstances, is inadequately resourced. With a modest increase in funding it could accomplish a great deal more.

5.7 Insufficient early planning and hence insufficient notice

A number of respondents said that a barrier to their involvement was that they found out about activities too late to be able to have the court's list adjusted to enable their participation. This points to the need for sufficient notice to be given of professional development activities. Because court listing and rostering is done well in advance, planning and notification of educational activities needs to be done even more in advance.

6 Mechanisms to encourage or enable greater participation by judicial officers in judicial professional development activities

The survey distributed to all judicial officers throughout Australia asked –

What mechanisms do you think might be adopted to encourage or enable greater participation by you, and judicial officers generally, in judicial professional development activities?

The question posed in the Discussion Paper, which was distributed to heads of jurisdiction and others, was essentially the same –

What mechanisms might be adopted to encourage or enable greater participation by judicial officers in judicial professional development activities?

This question is, in effect, the reverse side of the question discussed in the previous chapter. Given the barriers outlined in that chapter, and perhaps others, are there any mechanisms which might encourage greater participation in judicial professional development activities?

6.1 Publicising the standard

It is perhaps not surprising that a number of respondents to the survey indicated that they were not aware there was a Standard in regard to judicial professional development. As one said –

I am not sure I appreciate what the "national standard" is.

Although the Standard was adopted and endorsed at various levels, it is not unusual that its existence, or its actual terms, had not filtered down to individual judges and magistrates. Also, there has been a significant turnover in judicial officers in some courts over the last few years, and newer appointees may not have become aware of the existence of the Standard.

There is no apparent practice by heads of jurisdiction of regularly publicising the Standard to members of their court.

Recommendation no. 2:

That heads of jurisdiction be invited to regularly publicise the existence of the Standard amongst members of their court.

6.2 Formal adoption of the standard by each court

Although the Standard has been endorsed by the Council of Chief Justices, the Council of Chief Judges and the Council of Chief Magistrates, only a few of the responses to the Discussion Paper indicate that the Standard has been formally adopted by a court as a policy or incorporated into its planning.²

The adoption of the Standard by each court would publicly signal to members of the court, to Executive governments and to the community that members of the court are committed to judicial education.

Recommendation no. 3:

That all heads of jurisdiction be invited to have the members of their court consider the Standard and, if thought appropriate, to adopt it for their court.

6.3 Heads of court to encourage judicial officers to comply with the Standard

The Discussion Paper drew attention to legislation passed in Victoria in 2007 which provides that heads of jurisdiction are responsible for directing the professional development and continuing education and training of judicial officers, and that in discharging that responsibility the head of jurisdiction may direct a judicial officer to participate in a specified professional development or continuing education and training activity.³

In its response to the Discussion Paper the Judicial College of Victoria said that having the support of the Heads of Jurisdiction for a formalised Continuing Professional Development scheme “has been an important element in creating an expectation [amongst the

² For example, the Land & Environment Court of New South Wales and the District Court of Queensland.

³ Courts Legislation Amendment (Judicial Education and Other Matters) Act 2007

judiciary in Victoria] that ongoing professional development is the norm. This support is reinforced by a legislative power enabling the Heads of Jurisdiction to direct participation in professional development”.

Other responses to the Discussion Paper indicate a range of views about the role of the head of the court in encouraging participation in judicial education activities.

One chief judge outlined the range of mechanisms in his court to encourage participation, which might be suggestions for other heads of jurisdiction. The mechanisms are –

- a published continuing professional development policy
- implementation of the International Framework of Court Excellence which includes continuing education
- an Education Committee
- participation by new judges in the National Judicial Orientation Program
- a two day annual conference
- two days of twilight seminars each year
- encouragement to meet the five day Standard by contributing a day of personal time
- evaluation of the continuing professional development program quantitatively and qualitatively
- including details in the court’s annual report on the number of days judges have participated in educational activities
- publication of educational activities in the annual report
- a quarterly judicial newsletter on the court’s website reviewing developments in legislation, decisions, and practice and procedure.

Some heads of court (particularly chief magistrates) stated that certain judicial education activities are ‘compulsory’ (*eg.* annual conferences which include judicial education sessions).

In some courts, where there is adequate funding and opportunity for judicial education, there is active involvement in professional development by members of the court and the head of the court does not see a need for mechanisms to encourage greater participation. The head of one court pointed out that there is no reluctance to participate, but rather barriers which he cannot address (*eg.* funding, lack of judicial time), and hence there has not been a need to consider the question.

One head of court expressed the view that, where the barrier is lack of judicial interest, no amount of encouragement will result in change:

I do not think that directing judicial officers to participate will work. Encouragement does not seem to work because those who are not interested take no real notice. I recognise in every court there will always be a small number who will not participate whatever we do... I am not sure how to achieve change.

6.4 Maintaining statistics and annual reporting

Responses to the Discussion Paper by heads of court indicate that few keep records of attendance at judicial education events by members of their court –

I do not keep records of attendance at professional development activities. Because I attend a lot of them myself I am reasonably well aware of the involvement of judges of this court.

It would be difficult to keep reliable records of whether each judge is meeting the standard. It is likely that a survey of judges would not be answered by all and that the accuracy of responses would vary.

Some heads of jurisdiction said that they considered it was their role to monitor participation. A chief magistrate said –

A record should be kept for the use of the head of jurisdiction on the number of days completed by each judicial officer. I also consider that heads of jurisdiction should have the power to direct certain judicial officers to engage in specific judicial professional development.

In responding to the survey some judicial officers actively supported the idea that they should report to their head of jurisdiction on their involvement in professional development activities.

Several heads of jurisdiction indicated that, although the court does not keep statistics, the head could through other means form a reliable assessment of whether it was being complied with.

One senior judge suggested that a core reason why the Standard cannot be met by some courts is that the Standard was endorsed by the heads of jurisdiction, not by governments, and therefore governments have never ‘owned’ the Standard and feel little obligation to make available resources to enable it to be met. If a court were to report publicly on whether its members met the

standard and if not, the reasons for such, governments would be regularly reminded that judicial education is a part of the proper functioning of a court and of the need for it to be adequately resourced.

Recommendation no. 4:

That all heads of jurisdiction be invited to include in their court's annual report some information as to –

- participation by members of the court in judicial professional development activities
- whether the Standard was met during that year by that court
- if applicable, what prevented the court meeting the Standard (such as judicial officers being unable to be released from court, lack of funding; etc).

6.5 Responses from judicial officers

Many judicial officers proposed mechanisms which could encourage participation. Some were mechanisms to overcome the barriers which have already been discussed. Others were insightful suggestions. They are briefly described in the next section.

6.6 A range of suggestions to encourage greater participation in professional development activities

The suggestions of heads of jurisdiction and individual judicial officers of mechanisms which would, in effect, be means to overcome the barriers, were –

1. Make specific time available for professional development.

This could be done by the provision of a fixed period of paid non-court time for professional development.

Or there could be a one week period in the court's calendar devoted to professional development.

2. *Ensure there is sufficient funding support to enable participation by all members of a court.*

This essentially means that there would need to be earmarked and sufficient government funding to permit judicial officers to be released from their responsibilities to engage in professional development, and to enable heads of jurisdiction to plan accordingly.

Or there could be, as in Queensland for judges, a jurisprudential allowance, which can be used by judicial officers to fund their participation.

3. *Ensure the court's lists permit time away from court duties for professional development.*

This, of course, is dependent on there being sufficient financial and human support, to enable judicial officers to be rostered so that they can be freed from judicial duties.

There were a number of other suggestions which are not linked to the barriers –

4. *Ensure that adequate notice of professional development activities is available to heads of jurisdiction and individual judicial officers.*

This suggestion is primarily directed to the judicial education providers and those responsible within each court for its own education program, as well as to heads of jurisdiction. The notice is needed so that listing adjustments can be made.

In its response to the Discussion Paper the Judicial College of Victoria said one way it had increased participation by the judiciary in Victoria was by distributing an *Annual Prospectus* well before the start of the new calendar year, which encourages early registration and hence early notification to listings staff.

5. *Make participation easier.*

One way in which this can be done is by combining education days with court conferences.

6. *Make judicial professional development compulsory.*

This proposal was made by a significant number of judicial officers.

The Association of Australian Magistrates pointed out that one of the benefits of involvement being compulsory could be that governments would be more likely to commit funding to professional development. The Association raised the issue of whether there might be sanctions if judicial officers do not commit to professional development. It said –

A possibly overarching question might be whether participation in professional development programs as per the standard should be compulsory rather than voluntary. One of the benefits of involvement being compulsory could be that governments would be more likely to commit funding to professional development.

Consideration should be given to the sanctions that may be available if judicial officers do not commit to attending professional development, particularly if attendance is mandatory.

7. *Increase the quality and attractiveness of judicial professional development so that it is more likely to encourage participation.*

Several judicial officers suggested that if programs are relevant and tailored to the particular group of judicial officers involved, they would attract participation.

Another proposal was that, in order to ensure the relevance of programs, regular surveys should be conducted to ascertain areas where judicial officers consider professional development is most necessary.

8. *Rely more on communication technology, particularly for more isolated courts.*

A number of judicial officers proposed the use of video links, which in some cases exist in the courts already, to enable judicial officers at more isolated courts to participate in activities. Although it was thought this might be effective, generally the feeling was that most benefit is gained through presentations in person.

The experience of the NJCA and other providers with distance education generally has not been good. Judges who have participated in trial programs have not given distance programs the same priority as they do with face-to-face programs. For example, if sitting in chambers they will tend to do court work rather than put it aside and go to the computer to undertake the program.

Judicial officers in Western Australia are isolated from seminars in the east, but video technology is not usually helpful as the seminars are held in, what is still, court sitting time in the west.

9. Provide an attractive venue for education activities

It was suggested that in a court where there is a significant proportion of 'seasoned' judicial officers, the most effective means of encouraging participation was the provision of residential programs during the regular workday week.

In any event, an attractive venue will attract participation.

10. Introduce more active management of the court's education program.

In response to the survey, judicial officers made a range of suggestions for improving the management of judicial education in their jurisdiction:

- each court should have an 'active' education committee. It should, among other things, develop an education calendar which is published early.
- there has to be a commitment by the head of jurisdiction to the court's education program, exemplified, for example, in the listing arrangements.
- over time there has to be a culture shift so that professional development is not seen as an added extra or something which is personal to the judicial officer.
- the courts should keep a record of each judicial officer's participation in each year.

In its response to the Discussion Paper the Judicial College of Victoria said that it has succeeded in increasing participation [amongst the judiciary in Victoria]. Having the support of the Heads of Jurisdiction for a formalised Continuing Professional Development scheme “has been an important element in creating an expectation that ongoing professional development is the norm. This support is reinforced by a legislative power enabling the Heads of Jurisdiction to direct participation in professional development”. It has also introduced *Two-Year Professional Development Plans* for each new appointee.

In New South Wales and Victoria there are well resourced judicial education bodies which employ staff to manage and administer the education programs of courts in those jurisdictions. In other States there are no such dedicated members of staff. Although the NJCA has regional convenors in each State, these are judicial officers who may not have the time necessary to consistently administer judicial education in their jurisdictions. The NJCA focuses on delivering national programs and is not resourced to undertake the management function on the ground in all jurisdictions. One proposal was made in response to the Discussion Paper to address these problems. This was that, in smaller jurisdictions, an administrative officer be designated with responsibility for judicial education in that jurisdiction.

In summary, the potential benefits of this would be –

For the local jurisdiction

1. The local jurisdiction would have its own judicial education officer who would become familiar, over time, with its needs, capacity and resources.
2. The local jurisdiction would have a person who had the skills of managing judicial education programs and thus these tasks would not need to be done, in addition to other duties, by judicial officers or members of the courts’ administrative staff.
3. Heads of jurisdiction, education committees and judicial officers would have a person they could readily turn to and with whom they could have face-to-face discussions in regard to judicial education.
4. The person could be the local working representative of the NJCA, in addition to the NJCA Convenor, who could bring into the

jurisdiction the already designed courses, other resources, expertise and contacts of the NJCA.

5. By these means, NJCA programs could be made more readily available in jurisdictions which do not have a judicial education body.
6. By these means, programs more specifically directed to a particular jurisdiction could be developed within the NJCA.

For the NJCA

7. For the NJCA there would be economies of scale by having an increased number of judicial education staff working in association with the organisation.
8. The NJCA would have a more effective wider reach throughout Australia, and a higher profile in the jurisdictions more remote from Canberra.

The detail of how the arrangement might be put in place would be a matter for further consideration and discussion with the relevant authorities. Some options might be –

- An existing officer of a Justice Department or of a Courts Administration Authority could be designated as the judicial education administrator for that jurisdiction to work in close conjunction with the NJCA.
- A person could be appointed to the staff of the courts but his/her job description would require the person to work in close conjunction with the NJCA.
- The person could be seconded to the NJCA and work as part of its team but with responsibility for that jurisdiction.

Recommendation no. 5:

That heads of jurisdiction in jurisdictions other than New South Wales and Victoria consider whether a proposal might be made to the government of their State or Territory for a person to work in conjunction with the NJCA with particular responsibility for judicial professional development in that jurisdiction.

7 Judicial officers use of their own time to meet professional development obligations

Part of the Standard says –

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.

This chapter deals with this aspect of the Standard.

The survey distributed to all judicial officers throughout Australia asked –

Do you think judicial officers should use their own time to meet part of their professional development obligations, and if so to what extent?

The question posed in the Discussion Paper, which was distributed to heads of jurisdiction and others, was –

Should judicial officers use their own time to meet part of their professional development obligations, and if so to what extent?

7.1 Responses from heads of jurisdiction and others

The responses to this issue, both from heads of jurisdiction and individual judicial officers, depended to some extent on whether they came from a court which had a reasonably generous scheme to allow its members to engage in professional development activities. Those from courts with such schemes tended to be more sanguine about this issue.

A common response was that the court should provide time up to, say, five days and after that, if judicial officers wished to engage in further educational activities, it would be at least partly in their own time. The Judicial Conference of Australia reiterated this view in its response, which it had proposed when endorsing the Standard in 2006.

In some courts there did not appear to be any issue as all members were able to obtain time away from court duties for a sufficient time to engage in educational activities.

Most heads of jurisdiction who responded to the discussion paper felt that it was not unreasonable for members of their courts to use some of their own time. But at least one of them said he would not support a mandatory regime requiring judges to engage in professional development in their own time because their current workload is already high enough.

A chief magistrate expressed it in this way –

.... the use of one's own time should be taken in one's stride as an inevitable factor in the commitment to better professional development. Most judicial officers are career judges and the aim to "be the best judge you can be" ought to be uppermost in their minds.

One chief judge considered that it was "particularly important" that the amount of time given to education be a mixture of time allowed out of court and private time committed by the judge.

The Standard, as presently worded, states that judicial officers "should commit some private time to meet the standard". One head of jurisdiction felt this was "a bit rich" in view of the fact that almost all of the judicial officers in his court spend a considerable amount of their "own time" in undertaking core judicial functions.

It was pointed out that in remote jurisdictions, travelling time can take up considerable time and this should be taken into account.

In one court it is considered as reasonable that the judges should contribute one day of their own time. But in another the judges disagreed that they should use their own time, bearing in mind that they use their own time already to carry out judicial functions, in particular judgment writing.

7.2 Responses from judicial officers

Many judicial officers felt strongly that they should not be required to spend their own time in fulfilling judicial professional development obligations. Others were more open to the possibility that they might spend personal time on professional development.

For many, there was a distinction between educational activities held in shorter periods, for example in the early evening after court hours, and those which would require taking part of one’s leave to attend.

There was no judicial officer who thought it appropriate that all professional development activities should take place out of court time.

There is no real value in disaggregating the judicial officers’ responses by reference to their courts and indeed a disaggregation by states and territories may not serve any real purpose. However, the following table gives an indication of those who thought it was appropriate they might spend some of their own time on professional development and those who clearly thought they should not be required to spend any of their time.

Table 7a: Judicial officers’ position on whether they should use their own time for judicial professional development

	<i>Spend some time</i>	<i>Spend none of own time</i>
Federal	13	19
ACT	2	2
NSW	34	11
NT	5	0
Qld	29	9
SA	12	3
Tas	2	3
Vic	13	8
WA	19	12
TOTAL	129	67

It can be seen that for every judicial officer who felt they should not spend any of their own time on professional development, there were another two who were willing to spend some of their own time.

But there was a recurrent view that there should not be a *requirement* that judicial officers spend some of their own time in educational activities: it should be a matter of personal choice.

The following is a selection of comments from judicial officers which gives greater depth to their positions –

Open to spending some of their own time in professional development activities

- If the target of 5 days education pa is satisfied, judicial officers should attend additional programs in their own time.
- Yes, it is part of our responsibility to keep up to date with all changes involved in the law which are expanding and increasing with each passing year. You could not do this unless you utilized some of our own time.
- This probably depends to an extent on leave entitlements.
- Different answers for different States due to travel time. Personally I have no objection to using my time to travel to a conference.

Opposed to spending one's own time in professional development activities

- No, because I already have to use far too much of my own time keeping up with court work and reserved judgments.
- As judicial officers already spend considerable personal time meeting professional development obligations by research, reading and committee involvement, it would be unfair to expect further incursions on their time for professional development.
- No as this is part of the job and one should not lose recreation leave for this purpose otherwise the utility of the recreation time is lost
- As if we don't now, along with our own time just to do the job! The assumption in this question is just offensive.

But immediately followed by a member of the same court who said

- The use of personal time cannot be isolated from commitment to judicial duty.
- I believe judicial officers should only have to use their own time beyond the allocation of 8-10 days per year, which is a reasonable allocation given the range of jurisdiction covered by magistrates.

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- Using our own time to do pre-reading or preparation is acceptable but not to attend training. There are some exceptions such as training which takes place in a remote or regional area and also for travel time.
- All professional people presumably spend some of their own time reading in their chosen field. However, more formal professional development (such as courses and conferences) should generally be scheduled as part of the judge's work commitments.

8 Developments which have taken place in the field of judicial education since 2006 that may necessitate a change in the Standard

The survey distributed to all judicial officers throughout Australia asked –

Please outline any developments since 2006 in the field of judicial education, or more generally, which you think may necessitate a change in the national Standard.

The question posed in the Discussion Paper, which was distributed to heads of jurisdiction and others, was –

Have developments taken place in the field of judicial education since 2006 that may necessitate a change in the Standard?

8.1 Developments in the field of judicial education

Since 2006 there has been considerable judicial professional activity throughout Australia. Many programs have been offered by the judicial education bodies and by many of the courts. There is now a body of judicial education which can be reflected upon.

The Judicial College of Victoria has developed a Continuing Professional Development scheme which is designed to present each judicial officer in Victoria with the opportunity to undertake at least ten hours of professional development each year at the College.⁴

In addition, in 2007 Victoria amended legislation relating to Victorian courts to state that heads of jurisdiction are responsible for directing the professional development and continuing education and training of judicial officers, and that in discharging that responsibility the head of jurisdiction may direct a judicial officer to participate in a specified professional development or continuing education and training activity.⁵

⁴ Judicial College of Victoria, *2009-10 Annual Report Operations Report*.

⁵ Courts Legislation Amendment (Judicial Education and Other Matters) Act 2007

One head of jurisdiction outside Victoria considered that this was a good model but would prefer encouragement by the head of jurisdiction rather than direction.

One chief magistrate said that developments in the availability of online learning opportunities may mean that it is easier for judicial officers to accumulate the number of days which are seen as suitable for judicial professional development each year. The Director General of the Department of the Attorney General in Western Australia said –

A greater focus and use of technology and distance learning maybe the most appropriate developmental path for delivery on the National Standards. This may provide the necessary encouragement and access to those judicial officers currently not participating in professional development to engage in self paced learning. Furthermore, it would allow judicial officers in regional locations to participate in professional development at their location and for learning to be self managed and undertaken at convenient times.

One judicial officer said that a significant development in recent times has been an increased awareness of what can be achieved by good judicial education. He suggested, as an example, the impact of judgment writing courses on the overall quality of written judgments. As he noted, this development does not so much speak to the length of the national Standard as to ensuring quality control of programs that are on offer. However, building on his comment, it may be that, over time, the identifiable impact of judicial education programs could lead to pressure to increase the length of the Standard.

Although these few suggestions were made, by far the most common response made was that respondents were not aware of any developments.

Another common response was that the Standard was appropriate and did not require any change. A related response was that the first priority should be to achieve meeting of the present Standard rather than changing it.

8.2 Developments in areas other than judicial education

One judicial officer considered that the changes which have occurred in technology and in social contexts are matters that need to be addressed by judicial officers, and consideration should be given to ensuring that these areas are fully covered by the five day minimum period prescribed in the Standard.

A recurring comment was that there has been an ever-increasing amount and range of legislation, much of which is complex, and that this necessitates even more time to being available for judicial education – to be supported by a Standard of more than five days.

Related to this are the significant increases of jurisdiction for some magistrates' and other courts, which suggest that five days is an inadequate period of time for the Standard.

In addition to the amount of legislation, its complexity and increases in jurisdiction, there is also the greater demands and developments in the work judicial officers do. One judicial officer asserted that “clearly judging is far more complex than it was a decade or more ago”.

That judicial officer also pointed out that the judiciary is renewing itself more frequently than it was some years ago. These two factors, he said, are strong imperatives to necessitating both a change in and an acceptance of a higher national standard of 6-7 days.

Although some thought there could be an argument for an increase in the Standard, they noted realistically that any increase in the Standard would have resource implications and it would be unrealistic to expect that governments would commit more funds for that purpose.

9 360 degree assessment programs

The survey distributed to judicial officers throughout Australia asked about the availability of such programs in these terms –

Do you think 360 degree assessment programs should be available for all judicial officers every three years?

The question posed in the Discussion Paper, which was distributed to heads of jurisdiction and others, was whether such programs should be standard for all judicial officers every three years. There is, of course, a difference in nuance when the question is posed in this way and the responses will, accordingly, be separately reported.

9.1 360 degree feedback programs in Australia

The use of 360 degree assessment programs for judges and magistrates has arisen to a limited extent in Australia since 2006.

A *360 degree feedback program* involves a consultant obtaining anonymous feedback about a judicial officer's communication and other skills from legal practitioners, court staff, judicial peers and others with whom the judicial officer has work contact. The consultant then provides a report to the judicial officer with advice on options for change that the judicial officer might consider.

9.2 Responses from heads of jurisdiction

There is a divergence of views on these programs. There are those who are not supportive and observe that such programs have not been warmly embraced. Others are supportive. Others again add a gloss to their support, *eg.* suggesting that every three years may not be necessary and that the program could be repeated less frequently.

The first approach is exemplified by a chief justice who does not believe that these programs need, or should, be standard as peer pressure and the active discharge of the role of the head of jurisdiction should be adequate to deal with any problems sought to be identified in this way.

Some heads of jurisdiction pointed to opposition or scepticism by members of their court in regard to these programs.

The most common view is that such programs –

- should be made available
- but should not be compulsory, and
- need not be every three years; with several suggesting every five years.

A small number of heads of jurisdiction considered they should be standard for all judges. A chief magistrate pointed out that, “after all, there is no other way of assessing performances or getting feedback on one's performance”.

One chief justice said that his judges would be happy to undertake such a program and saw it as beneficial.

Several heads of jurisdiction noted that such programs are expensive. The head of one court with a large number of magistrates pointed out that logistically and financially it would be impossible to make involvement in such programs standard for all members of the court.

A few said that they were not sufficiently aware of these programs in order to be able to comment.

9.3 Responses from judicial officers

Judicial officers were asked in the survey if they thought 360 degree assessment programs should be available for all judicial officers every three years. The responses can be recorded as shown in Table 9a.

Table 9a: Support from judicial officers for 360 degree assessment programs

	<i>Federal</i>		<i>Industrial</i>		<i>Magistrates</i>		<i>District</i>		<i>Supreme</i>		<i>Total support</i>
	<i>Y</i>	<i>N</i>	<i>Y</i>	<i>N</i>	<i>Y</i>	<i>N</i>	<i>Y</i>	<i>N</i>	<i>Y</i>	<i>N</i>	
Federal	23	7									23 (77%)
ACT					1	1				1	1 (33%)
NSW					15	6	9	6	9	4	33 (67%)
NT					3	1			1		4 (80%)
Qld					18	3	8	3	6	1	32 (82%)
SA				3	5		2	1			7 (64%)
Tas					4	1					4 (80%)
Vic					5	1	4	3	3	2	12 (66%)
WA					14	2	5		5	1	24 (89%)
TOTAL	23	7	0	3	65	15	28	13	24	9	187

Of the 187 judicial officers who responded to this question, 140 (75%) were in favour of 360 assessment programs being available to them and their colleagues. This is a strong level of support. Examples of statements of support are –

- Those who have done it have said that it was very beneficial - cost and access are problems in WA. I certainly think it should be available every 3 years for those who want to do it.
- I think this would be fantastic. At the moment the only feedback one gets is essentially anecdotal.
- I think that would be a very helpful program to put into place. I have never undertaken that type of assessment, and would be quite willing to submit myself to it.
- It sounds like a good idea. One of the problems of being a judicial officer is that you no longer get to see any other judicial officers in action, and your memories of what you expected of a judicial officer when you were a practicing lawyer become less and less clear as time goes on. An occasional look in the mirror could be a good thing.
- I have done the program, and it is invaluable and all judicial officers should have access to it, every three years if that is possible.

- I think it would be very beneficial but unfortunately there will be budgetary restrictions which would make this impossible.

In almost every court from which there was a response, those in support of these programs outnumbered those who were opposed.

The level of support in the various courts, in descending order, was –

Magistrates courts	81%
Federal courts	77%
Supreme courts	73%
District/County courts	68%

The level of support in the States and Territories, in descending order, was –

Western Australia	89%
Queensland	82%
Northern Territory	80%
Tasmania	80%
New South Wales	67%
Victoria	67%
South Australia	64%
Australian Capital Territory	33%

However, many of the positive responses were tempered in some way; the most common being –

- only on a voluntary basis
- every three years is too often and the program should be availed of less frequently: the most common suggestion being four to five years
- or just once at least during a judicial career

Comments from the minority who were opposed most typically were –

- it is a fad
- it may affect judicial independence, especially if it were used to try to change the approach of particular judicial officers
- many would find it very confronting
- participants may be less than frank, particularly in small jurisdictions
- some of those giving feedback do not have the skills to assess the performance of a judicial officer

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- there are questions of just how objective the feedback would be
- the feedback should not be limited to communication skills
- a better idea is peer review
- such programs are self-indulgent and not worth the expense
- these forms of assessment of public servants are not appropriate for judicial officers as they are subject to levels of scrutiny not applied to other professions
- such programs may become a means of venting dissatisfaction against decisions made against unsuccessful litigants
- consultants may have preconceived ideas about communication without truly understanding the work of a busy magistrate or judge.

Some respondents were cautious and, not knowing what the programs are about, reserved their judgement on them.

10 Steps to improve the quality of judicial education

The survey distributed to all judicial officers throughout Australia asked –

Do steps need to be taken to improve the quality of judicial education currently being delivered by judicial education bodies and courts in Australia? If so, do you have any proposals as to what improvements might be made?

The same question was posed in the Discussion Paper which was distributed to heads of jurisdiction and others.

Some judicial officers made suggestions which really relate to removing barriers for involvement in judicial professional development. They are not reported in this chapter but in chapters 5 and 6.

10.1 Overall, a recurring theme of happiness with the existing quality

A frequent response was that the existing programs were generally good or very good, and no suggestions for improvement were proposed. Almost no judicial officers explicitly made the point that the quality was not good, although a number did make suggestions for improvement, as will be outlined later in this chapter.

It was clear that a number of judicial officers were positive about the quality of judicial education but did not explicitly say so. Others, however, made the point in responding to this question that the existing quality was good. Those who responded in this way, representing about 25% of those who responded to the survey, are recorded in the following table.

Table 10a Judicial officers who considered that the quality of existing judicial education was good or very good

<i>State or Territory or Federal judicial officers</i>	<i>No.</i>
Federal	5
Australian Capital Territory	3
New South Wales	13
Northern Territory	1
Queensland	5
South Australia	5
Tasmania	0
Victoria	12
Western Australia	8
TOTAL	52

The highest response is from judicial officers in the two States where there are judicial education bodies – New South Wales and Victoria. But they also, of course, have the largest number of judicial officers.⁶ In the three next largest States in which there are not judicial education bodies, there were at least some judicial officers who were satisfied with the existing quality.

But, as was said above, a number of suggestions were made which can be summarised as follows.

10.2 Improve delivery methods beyond lecturing

One senior judge pointed out that –

Judicial education will always rely substantially on the good will and voluntary participation of teaching judges. Because of our backgrounds, few judges are equipped to deliver courses consistent with adult learning techniques and as a result generally opt for the standard lecture approach. While this has its place, it is the default position for most judicial education. Yet it is not generally an appropriate delivery model for developing confidences' in teaching skills. As a result much professional development is to put it bluntly boring.

This is not an argument for judicial education being delivered by others; rather it is a proposal that judges who do present judicial

⁶ An analysis could have been made of what proportion these respondents represent of the total number of judicial officers in the particular State or Territory. But the numbers are too small to be able to rely on such an analysis.

education should be ready to develop their teaching skills. The NJCA does, of course, offer such a course – the Facilitation Skills Program.

10.3 Continue having judicial education led by judicial officers

One chief magistrate emphasised that there is a need to recognise the experience and expertise that already exists within a court or a jurisdiction.

But, as one judicial officer pointed out, judicial education often relies on "favours" and presenters are not paid a fee. This, he said, inhibits asking the best people and probably affects the willingness of some to assist.

One suggestion was that presenters should be given time out of court to prepare. Another was that steps can be taken to improve presenters' skills as presenters. The Chief Magistrate who emphasised that judicial education should be presented by judicial officers also noted that the NJCA's 'train the trainer' courses are very timely.

A Deputy Chief Magistrate commented favourably on the steps being taken to train those who have an interest, so that training can be delivered by people working and experienced in judicial work.

A judicial officer emphasised that ensuring that presenters are not just highly qualified but are very skilful communicators helps a great deal.

But not all judicial officers were of the view that judicial education must always be presented by judicial officers. One who responded said –

Start casting the judicial education net much wider to include more academics, practitioners with particular skills, interstate judges etc. Recognise that not all judges are the same and so what is taught and how it is taught will not be the same for all judges, even those of the same jurisdiction.

10.4 Improve program design and have more innovative programs

It was pointed out that judge-led education usually means the programs are also designed by judges, which was described as being often haphazard. It was suggested that the design of programs needs input from other qualified people.

Some of the comments were essentially saying the same thing –

- There is still too much talking head and not enough participant performance with review, especially in the area of practical training such as preparation and delivery of charges, or running of trials.
- Alternative methods for delivery should be investigated. This judicial officer contrasted a ‘densely packed’ seminar on the new Evidence Act with a language course which used smaller, interactive groups. He suggested that some investigation into the way adults learn could result in more creative approaches.
- There should be more interactive programs rather than predominantly lecture style presentations with dull speakers.
- There should be fewer 'talking heads' and more training that involves judicial officers doing something other than listening.
- There should be far greater emphasis on experiential and practical learning programs would both appeal to more judges/magistrates and have greater benefit in raising judicial performance than the "talking head" or "sage on stage" approach that is traditional.⁷
- Ditch the school lecture idea and look to Socratic programs or reading with tutor/mentor programs.

The Australian judicial education bodies in September 2010 arranged for the Canadian National Judicial Institute to train a number of Australian judicial officers in program design. This is likely to result in more effective Australian programs in the future.

⁷ This respondent mentioned that the NJCA & the NSW Judicial Commission “have grasped this idea wholeheartedly”.

The views listed above were, however, not the universal view. Some had a more traditional view and, as one judicial officer put it, “the best presentation is that given by a good speaker talking about a topic with which they are fully familiar and prepared to think outside the square”.

There was another group of responses which urged a follow-up process as part of the design of programs. One judicial officer said –

I often attend sessions that I enjoy but after some time I wonder about their benefit. The goal of a lot of programs – changed approaches or increased awareness – aren't in any way followed up or analysed at a later date. I have significantly changed my approach to my work over the years as a consequence of the judicial education I have received, however I do not know if it has been for the better.

A somewhat similar view was that the judicial education programs can fall short on the take-away practical help. This judicial officer said that sometimes what is needed is a practical handout that will point people in the right direction. Another judicial officer put it this way –

The key to creating interest is to construct courses that upskill judicial officers and give them something they can take away and immediately use in their day to day work. Some years ago I attended Professor Raymond's judgment writing course conducted by the NJCA. It was immensely helpful. I have been using the skills I picked up in that course ever since. I think we need more hands on practical courses such as this and I think if they are available they will result in greater participation.

But not all judicial officers saw more high quality activities as necessarily being skills-based. One instance two activities she had attended –

Most of the education offered is "mechanical" in the sense that it is aimed at everyday work - for example, recent developments in the law. While it is helpful, it is not particularly interesting especially when, in my experience, judges who are committed to their work keep up to date with decided cases. In NSW, Allsop JA presented a paper that considered recently decided High Court cases in the context of a change of approach to the law of negligence. It was riveting because it reflected analysis and real intellectualism. Too often, alas, the papers just summarise recent decisions which is helpful only as an aide memoire. Recently too I attended Professor Douglas Lind's workshop on judging in which we discussed the role

of the judge through literature, philosophy and writings - it was marvellous. I have not been as engaged by judicial education before.

10.5 Increase use of electronic means

One judicial officer argued that there is too much emphasis on face to face education at the expense of what is available quickly and cheaply electronically by email and the internet. However, as noted above, the experience to date has not shown that such an approach to judicial education is necessarily successful.

One judicial officer saw a distinction between face to face conferences and seminars which enable interaction between colleagues experiencing similar challenges or issues in their daily work and the more academic type of topics which could be dealt with by distribution of papers from time to time.

10.6 But continue to provide face-to-face activities

It seems it would be a mistake to underestimate the value that judicial officers place on being able to meet face-to-face. As one judicial officer said –

One of the most valuable aspects to education sessions has always been inclusive of the opportunity for us to simply speak with each other and "swap notes" on how things might be done. We are a group of people doing very similar jobs but never observing or being in the presence of each other while working. This is peculiar and not much is done to overcome the disadvantages of this method of our work.

10.7 Heighten awareness of the extent to which the Standard is being met in individual courts

A senior judge suggested that, given that heads of jurisdiction have collectively endorsed the Standard, they could be asked to include in their court's annual report information about –

- how many of their judges reported meeting the standard
- the barriers which prevented their meeting it (such as a lack of interest in judicial education; that they were unable to be released from court; lack of funding; etc).

It may be that heads of jurisdiction would see the merit in this in that, if all courts were to regularly report a lack of resources, governments would not be able to continue to ignore the Standard and the resource issues it raises.

A recommendation has been made earlier in this regard.

10.8 Ensure activities are specific and relevant to judges by direct involvement by the head of jurisdiction

One head of jurisdiction considers that some professional development activities are often too generic or of little relevance to his judges. But ad hoc sessions are very useful because they are designed to meet a particular need. However, the chief judge acknowledges that his judges should be exposed to wider issues affecting judicial practice, but what is required is a proper balance. He concludes that this means the head of jurisdiction must take a much more direct role in educational activities affecting his or her judges.

10.9 Share resources in the same jurisdiction

One head of jurisdiction has proposed that there be a single conference for all courts in a jurisdiction each year, given that all courts share many common issues, such as litigants in person. The benefits would be the pooling of budgets and human resources. There could parallel sessions for topics which were specific to a particular court.

But a Victorian magistrate said that a cross jurisdictional approach is not always the best format for delivery.

10.10 Appoint a judicial education administrator in smaller jurisdictions

It was proposed that in smaller jurisdictions, which do not have an organisation such as the Judicial College of Victoria or the Judicial Commission in New South Wales, an administrator should be appointed to be responsible for judicial professional development. This is a slightly different proposal to the recommendation made earlier, as this suggestion does not suggest that the officer should be 'affiliated' with the NJCA.

10.11 Establish new judicial education bodies

More expansively, several judicial officers, especially those from Queensland, argued that there should be a body similar to the New South Wales Judicial Commission in that State. This was seen as the way generally to improve the quality of judicial education provided by the courts.

10.12 Rationalise judicial education in Australia

There was a view expressed by some which can be best summarised in the following response –

There do seem to be too many bodies serving the same market. I wonder if this reduces efficiency and involves duplication of effort. Also the more populous states are far better served. A single judicial education authority that all governments contribute to and that sets uniform standards for education and service delivery on a national basis would be a step forward.

Another judicial officer considered that there is now a serious imbalance in the availability of judicial training. His view was that it was probably too late to create a national body given the existence of the New South Wales and Victorian bodies although, it would appear, that would be his preferred option.

One judicial officer put it quite bluntly –

Closer co-operation/amalgamation of the NJCA, the Judicial Commission of NSW and the Judicial College of Victoria (not to mention the AIJA) would produce a better outcome in Australia.

This was a similar view to that of the judicial officer who said –

The Judicial Commission of NSW and Victoria should be amalgamated with the NJCA to provide a comprehensive appointment-to-retirement compulsory national curriculum.

Another proposed “one National Judicial College rather than many state-based colleges”, pointing out that the Canadian judicial college provides a precedent to aim for.

Another approach proposed was that there needs to be better communication between relevant organisations to ensure the

professional development is not duplicated, it is presented by the best presenters and the topics are relevant.

10.13 Participate in educational activities beyond the courts

One judicial officer proposed that judicial education budgets should provide for greater participation by judges, as observers, in law society seminars and conferences.

10.14 Encourage greater involvement across jurisdictional boundaries

One judicial officer proposed that presentations from other jurisdictions relating to the practical workings of the courts should be encouraged to ensure that all have an opportunity “to learn from our mistakes and other’s success”. As a senior judge put it –

We need to keep in touch with other approaches in other jurisdictions outside Australia; even quite different legal systems. After all, the problems judges are asked to solve merely reflect the human condition which is much the same everywhere.

Another proposed that resources should be made available in smaller jurisdictions to ensure that quality professionals from outside those jurisdictions can be paid to come and provide relevant programs for locals without the necessary disruption and expense of locals having to travel to the larger States.

One judicial officer said –

At the courses I have attended there was a general feeling among the prospective teachers that it would be easier to lead a group in a jurisdiction other than one's own and that in turn a jurisdiction may be more receptive to a visiting presenter rather than one's own.

10.15 Encourage greater commitment by heads of jurisdiction and the Executive Government to the Standard

One judicial officer proposed –

Re-publicise the guidelines to heads of jurisdiction and to the Executive!

Similar sentiments were that quality education depends on proper funding from government and support from heads of jurisdiction.

10.16 Provide more extensive training for new judicial officers and refresher courses

Several of those who responded said that there needs to be much more extensive training for new judicial officers. It was suggested by one that this should involve a lengthy period of traineeship with one or more judges to educate the new judge in the skills of the efficient conduct of court proceedings.

A more specific proposal was as follows –

All judges now, soon after appointment, attend the national judicial orientation programme. Perhaps there should be refreshers every few years along the same lines but accommodating the accumulation of experience in the interim. Such a system would have the benefit of regularity and nation-wide acceptance and would allow for listings and judges, well in advance, to accommodate the event and put pressure on government and chief judges to make allowances for attendances, a few judges at a time.

Annex A List of those from whom responses were received

Note: This list does not include the 119 individual judges and magistrates who responded to the survey distributed by email.

Note: This list does not include the 219 individual judges and magistrates who responded to the survey distributed by email.

Chief Judge R Blanch	District Court of New South Wales
Justice RP Boland	Industrial Relations Commission of New South Wales
Chief Magistrate E Bolton	Magistrates Court of South Australia
Chief Justice E Crawford	Supreme Court of Tasmania
Chief Justice P de Jersey AC	Supreme Court of Queensland
Chief Justice J Doyle AC	Supreme Court of South Australia
Judge P Eldridge	Youth Court of South Australia
Mr L Glanfield AM	Director General, Department of Justice & Attorney General, New South Wales
Ms C Gwilliam	Director General, Department of the Attorney General, Western Australia
Chief Magistrate H Hannam	Magistrates Court of the Northern Territory
Chief Magistrate G Henson	Local Court of New South Wales
Magistrate G Levine	Association of Australian Magistrates
Ms L Hutton	Secretary, Department of Justice, Tasmania

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Chief Justice P Keane	Federal Court of Australia
Chief Magistrate M Hill	Magistrates Court of Tasmania
Chief Judge P Martino	District Court of Western Australia
Justice D Harper	Judicial Conference of Australia
Justice J McKechnie	Western Australian Inter-jurisdictional Education Committee
Justice B Preston	Land & Environment Court of NSW
Mr P Reed	Department Justice and Attorney-General QLD
Professor G Reinhardt	Australasian Institute of Judicial Administration
Chief Justice T Riley	Supreme Court of the Northern Territory
Mr G Shanahan	Chief Executive, Department of Justice, Northern Territory
Ms L Slade	Judicial College of Victoria
Justice S Thackray	Family Court of Western Australia
Judge J Wager	Western Australia NJCA Regional Convenor
Chief Judge P Wolfe	District Court of Queensland
A/Chief Magistrate E Woods	Magistrates Court of Western Australia
Chief Judge T Worthington	District Court South Australia