



Attaining Judicial Excellence: A Guide for the NJCA

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PURPOSE AND ORIGIN

The National Judicial College of Australia developed the following guide as a resource to support its strategic planning and to assist in designing professional development programs for Australian judicial officers. ¹ In developing the elements, the NJCA consulted with 80 judicial officers from around Australia and from different jurisdictions.

These elements describe the knowledge, skills and qualities of judicial officers, which those consulted, consider to be facilitative of judicial excellence. In relation to each of the nine elements, examples are given to illustrate how judicial excellence can be maintained. The elements and the examples are not exhaustive of what constitutes judicial excellence, but are intended to offer only general guidance.

ELEMENTS OF JUDICIAL EXCELLENCE

Judicial officers have three broad roles, each of which comprises three important elements:



**MEMBERS OF THE COURT
AND THE GENERAL
COMMUNITY**



1. *Ethics and Integrity*



2. *Engagement*



3. *Wellbeing*



**INFORMED AND IMPARTIAL
DECISION-MAKERS**



4. *Knowledge of the Law
and the Justice System*



5. *Critical Thinking*



6. *Self-Knowledge and
Self-Control*



**MANAGERS OF THE COURT
PROCESS AND JUDICIAL
ADMINISTRATORS**



7. *Managing the Case and
Court Process*



8. *Building Respect and
Understanding*



9. *Facilitating Resolution*



MEMBERS OF THE COURT AND THE GENERAL COMMUNITY



1. Ethics and Integrity

Australian judicial officers understand the ethical challenges they face and are aware of ways to maintain the actual and perceived integrity of the judiciary.

In carrying out their judicial responsibilities, and as members of the general community, judicial officers maintain the integrity of the judiciary by actions such as:

- ▲ Treating people with respect, honesty and dignity.
- ▲ Setting a positive example for others in the courtroom and as members of the general community.
- ▲ Applying fair processes in the courtroom that uphold the law, protect rights and foster access to justice.
- ▲ Considering relevant evidence and arguments when making decisions.
- ▲ Understanding and applying the values and ethical standards specific to judicial officers, including the concept of judicial independence in decision-making, and the need to be impartial and fair in their dealings and conduct.
- ▲ Being knowledgeable about established processes for receiving and properly responding to, or answering complaints about, judicial conduct.



2. Engagement

Australian judicial officers actively engage in advancing the work of their courts. This is achieved through supporting their colleagues and their court as an institution, and by educating the community about the court's purpose, values and commitment to continuous improvement.

Judicial officers can promote this engagement by:

- ▲ Seeking feedback on their individual performance and guidance on ways to improve.
- ▲ Embracing the use of performance feedback processes.
- ▲ Accessing professional judicial development opportunities without neglecting their essential duties.
- ▲ Working with fellow judicial officers in a collegial fashion to address day-to-day challenges affecting the collective workloads of their courts, including assistance to colleagues and court staff who are newly appointed or struggling with their work.
- ▲ Sharing information with colleagues about changes in legislation, policy, resources, and research relating to court processes, as well as what they have learned through participation in professional judicial development programs.
- ▲ Volunteering to participate on judicial committees to consider improved court policies and practices, and helping to introduce, test and implement new court systems, programs and technologies.
- ▲ Regularly reassessing their individual needs as judicial officers and actively pursuing educational opportunities to address gaps in their knowledge, enhance their skills and adapt effectively to legal and policy changes.

Judicial officers can engage with their communities by:

- ▲ Participating in outreach activities, for example, attending local community events aimed at educating the public about the justice system and justice-related topics, hosting courthouse-based school tours, participating in Law Week events, mock trial programs, local bar and law society events, and engaging with universities.



3. Wellbeing

Australian judicial officers can use self-care practices and wellbeing programs to manage stress and maintain their physical and psychological health to ensure they remain fit, motivated and effective in their working lives.

They can maintain their wellbeing in a number of ways, including:

- ▲ Learning and applying stress management and relaxation techniques, including techniques for compartmentalising and letting go of work at the end of the day or after finalising a difficult case.
- ▲ Building and maintaining a healthy social support network of family and friends outside the judiciary and legal profession, and by using personal time for hobbies or other restorative activities.
- ▲ Eating well, avoiding excessive alcohol, getting enough sleep, making time for regular exercise, and taking regular work breaks and recreation leave.
- ▲ Consulting with medical professionals for routine wellness check-ups and guidance on shaping healthy lifestyle habits.
- ▲ Participating in court-sponsored wellbeing programs and service.
- ▲ Participating regularly in both formal and informal activities with judicial colleagues, such as judicial education conferences and similar collegial events, morning break conversations, and routine gatherings of judicial officers, such as lunch or dinner outings.
- ▲ Reaching out and offering support to judicial colleagues who may not be coping with their workloads or who otherwise need help in dealing with physical or psychological stress.

SUPPORT TO JUDICIAL OFFICERS

There are many ways that courts can support the high standards of ethics and integrity among judicial officers by, for example:

- ▲ Maintaining explicit and well-understood procedures for receiving, considering and determining complaints about judicial conduct.
- ▲ Fostering the use of collegial processes to encourage judicial officers to seek guidance from their colleagues or mentors on how to properly deal with specific ethical dilemmas.
- ▲ Providing judicial officers with access to research materials pertinent to ethical conduct and the integrity of the judiciary and the legal profession, such as the *AJJA Guide to Judicial Conduct*, academic articles, law reports, and bulletins, rulings and commentaries that may be issued by law societies or bar associations.
- ▲ Ensuring that judicial education programs address and refresh fundamental and evolving judicial ethics and integrity issues for all judicial officers, including newly appointed and experienced judicial officers.

Facilitating better engagement among judicial officers and with the public can be attained by:

- ▲ Providing systems that assist judicial officers in assessing their personal performance, including the ability to elicit feedback from colleagues, such as through formal mentoring programs.
- ▲ Establishing collegial court management practices and routines that facilitate the participation of judicial officers in court governance and discussion on matters of policy, professional development, implementation of new case management processes, and engagement with the local community.
- ▲ Providing professional development opportunities that enhance the skills of judicial officers as leaders as well as participants in collegial court governance.

The wellbeing of judicial officers can be safeguarded by:

- ▲ Establishing and maintaining policies and practices to ensure workplaces are physically and psychologically healthy for judicial officers and other personnel.
- ▲ Fostering effective collegial systems, such as mentoring programs and judicial committees, that encourage judicial officers to regularly meet, share problems affecting their work, and support each other in dealing with workplace stress.
- ▲ Providing programs and services, including counselling programs, to deal with issues that may affect the workplace wellbeing of judicial officers and other personnel.

INFORMED AND IMPARTIAL DECISION MAKERS:



4. Knowledge of the Law and the Justice System

Australian judicial officers are experts in the law and the justice system.

Judicial officers can build and maintain their knowledge and expertise by:

- Knowing the law and applying strong legal research skills in keeping up-to-date with new legislation, appellate decisions, and other legal developments.
- Understanding the administrative processes of their court, as well as the processes of associated agencies and organisations with which the court interacts, such as: law enforcement agencies, custodial institutions, legal aid organisations, and community-based agencies acting for or assisting litigants, defendants or other parties.
- Knowing about the correct use of tools and court technologies available to support judicial decision-making and improved justice administration, such as pre-sentence reports, sentencing information systems, and online legal research databases.
- Recognising the limits or gaps in their knowledge and knowing how to effectively overcome them.
- Discussing cases or legal issues with judicial colleagues and sharing research on recent developments in the law.



5. Critical Thinking

Australian judicial officers use analytical and problem-solving skills effectively to make decisions that are timely, free of bias, and based on a critical assessment of evidence and arguments properly presented.

They can develop and apply clear logical thinking habits by:

- Effectively distinguishing between information admitted as evidence and arguments by parties and information from other sources, such as personal knowledge or opinions.
- Drawing a solid understanding of the key issues in a case from the evidence and arguments, recognising discrepancies, and identifying points of disagreement.
- Taking time before giving decisions to reflect on how the decision was reached, and examining whether the process was methodical and free from conscious or unconscious bias.
- Arriving at decisions as expeditiously as possible, managing any tension between giving timely decisions, and giving fair and effective decisions.



6. Self-Knowledge and Self-Control

Australian judicial officers understand how their personal perspective, values, preferences, mental states and thinking habits can affect their decisions and perceptions of fairness.

They can manage their emotions and address potential biases in judgment and behaviour by:

- Being habitually mindful of factors that may influence their perception and interpretation of information that can affect their decision-making.
- Engaging in thoughtful self-reflection to help identify and assess potential risks to impartiality, such as their own personal views, experiences, conscious and unconscious bias, and emotions.
- Anticipating how they may feel or react in particular situations during court hearings, and allowing themselves to plan and take early steps in effectively managing their emotions.
- Taking short recesses, as needed, during stressful hearings to regain composure and settle acute emotions before responding.
- Reflecting on the perspectives of others in the courtroom by thinking about how others may see and interpret the judicial officer's words and actions.
- Seeking advice from judicial colleagues on sensitive decisions to help identify personal biases or blind spots.

SUPPORT TO JUDICIAL OFFICERS

There are many ways that courts can support judicial officers to maintain their capacities for informed and impartial decision making by, for example:

- Granting them ready access to training in the use of online legal research services, software to assist in judgment writing, and personal productivity software, such as the effective use of email and dictation software.

- Developing or providing access to online knowledge sharing databases to complement access to published legal information, such as judgment databases, sentencing information systems, and software to assist in judgment writing.
- Fostering collegial processes that encourage judicial officers to develop their knowledge in ways that can be readily shared with colleagues and used in judicial training, for example by writing research papers on legal topics to present at judicial development events.
- Providing research skills and online tools to support staff, such as associates, to extend the legal research capacities of judicial officers.
- Facilitating access to training and continuing education programs concerned with skills in areas such as judgment writing, managing implicit biases, time management, and managing self-represented litigants.

MANAGERS OF THE COURT PROCESS:



7. Managing the Case and Court Process

Australian judicial officers are skilled in effective caseload management and control of courtroom hearings to minimise delay in processing and finalising cases.

They do this through use of many tools, including:

- Managing time for themselves and others, promoting punctuality, and reinforcing approved or agreed deadlines with litigants, the legal profession, and court staff.
- Using information and communication technology systems and court staff services to save time in case scheduling, conducting hearings, and giving decisions.
- Implementing time and case management strategies instituted by the court, such as case flow management principles, and collaborating with judicial colleagues to ensure their success.
- Applying organisational skills to manage lists and conduct hearings to facilitate earlier, more satisfactory case outcomes.
- Guiding cases as efficiently as possible, while ensuring that each case is administered and finalised fairly according to the law.



8. Building Respect and Understanding

Australian judicial officers interact effectively with those who work in or appear before the court to facilitate fair and just case outcomes. They listen attentively to others and communicate clearly to ensure that parties understand the issues in dispute, court processes and the court's decisions.

They can do this by:

- Treating others with respect and understanding.
- Listening in a patient, open and accessible manner during the court hearing process, building respect for the law, and promoting productive dialogue and mutual understanding.
- Using behaviour management skills to anticipate, prevent and defuse emotional outbursts, and enforcing behavioural expectations of those who participate in court hearings.
- Being aware of the range of interpersonal dynamics that may occur during a hearing, understanding the influence of social and cultural norms on behaviour, and anticipating how others may emotionally respond to events.
- Using language during court hearings that can be understood by all people present.



9. Facilitating Resolution

Australian judicial officers endeavour to build consensus to facilitate better case preparation and, where feasible, to reach a resolution acceptable to parties through compromise and agreement on all or some of the issues in dispute.

They can do this by:

- Applying consensus building skills in dispute resolution wherever practicable to foster early resolution of cases on terms that are satisfactory to the parties.
- Asking questions during preliminary hearings to explore whether parties have adequately considered the options of negotiating a compromise or diversion to a mediation or arbitration.
- Encouraging the parties to take advantage of alternative dispute resolution options available under court rules or conventions.

SUPPORT TO JUDICIAL OFFICERS

There are many ways that courts can support judicial officers to manage court processes and judicial administration by, for example:

- Developing and providing effective systems and facilities for court governance and case management, including: sound administrative leadership planning and policies, effective management of human, material and financial resources, effective and efficient court procedures and processes, and support for clients through affordable and accessible court services; and
- Providing judicial officers with access to professional development opportunities to enhance their knowledge and skills in judicial administration, leadership, and case management improvement methods, focusing on areas such as case flow management and alternative dispute resolution.

¹ Thanks to the National Center for State Courts for allowing the NJCA to draw on the Elements of Judicial Excellence identified in their Project Final Report, December 2017.