

## Judicial Training in Australia

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### Background

In Australia, as in other common law jurisdictions with a divided legal profession including a specialised bar, judicial training was not treated as necessary until relatively recent times. Professional experience developed at the bar, a profession with close links to the bench, was regarded as the most suitable training ground for judges.

The more recent expansion of the pool from which judicial appointments are made to include solicitors and legal academics, the appointment of lawyers instead of public servants as magistrates and the increase in the number of tribunals headed by lawyers not necessarily recruited from the bar has been a spur to change. As the former Chief Justice of Australia, the Hon Murray Gleeson, said about the earlier practical monopoly of judicial appointments from the ranks of barristers:<sup>1</sup> “... historically, the monopoly has been protected by the lack of proper arrangements for judicial training and development. Real change, as distinct from window-dressing, in the one area, requires real progress in the other.”

There has also been recognition of the fact that even a full and varied career as a leading barrister may not be enough to prepare the practitioner to handle the variety of judicial work now performed in courts of general jurisdiction as well as in the specialised courts and tribunals that include judicial members. Many barristers experienced in the civil side of a Supreme Court’s jurisdiction will have had little or no experience of criminal trials and vice versa. Appointees to the Federal Court of Australia may know much about intellectual property and corporations law but little of immigration law. Support for judicial education may also have arisen from some apparently ill-advised comments by judges in socially sensitive cases.<sup>2</sup>

### Comparison with the French system

The system is, however, not at all like the lengthy training undergone, for example, by French trainee judges at the École Nationale de la Magistrature.<sup>3</sup> There, judges and prosecutors, both known as *magistrats*, and belonging to the same judicial body, are selected after passing a competitive exam. Between 100 and 200 candidates succeed every year. Most of them are young graduates from a variety of academic backgrounds. Their training includes lectures and seminars, an internship in a court, and another with a lawyer and lasts almost three years.

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<sup>1</sup> See Murray Gleeson, *Judicial Selection and Training: Two Sides Of The One Coin*, a speech delivered to the Judicial Conference of Australia on 31 May 2003;  
[http://www.hcourt.gov.au/speeches/cj/cj\\_judicialselection.htm](http://www.hcourt.gov.au/speeches/cj/cj_judicialselection.htm)

<sup>2</sup> See Kenny, S C, *Judicial Education in Australia* [2004] LegEdDig 54; (2004) 13(2) Legal Education Digest 8; <http://www.austlii.edu.au/au/journals/LegEdDig/2004/54.html>

<sup>3</sup> <http://www.enm.justice.fr/> and <http://www.enm.justice.fr/anglais/home.php>. See also a useful comparative analysis of judicial training by L Armytage, *Training Judges: Reflections on Principle and International Practice* (2005) 2(1) EJLE 21-38 at <http://www.educatingjudges.com/Hyperlinks/EuropeanJournal.pdf>

The major part of this training, the internship in a court, consists, for the trainees, of work in several judicial roles, civil, criminal, juvenile or investigating, under the control of the sitting judges. They are assessed throughout their period in the ENM, and can be failed if unsuccessful. If they succeed in their training and in the final examinations, they are appointed by decree of the President of the Republic, proposed and approved by the High Council of the Judiciary.<sup>4</sup> Many become judges before they have turned thirty years of age. Once appointed, judges (and prosecutors) must undertake at least five days of training annually in order to keep informed of recent developments in the law, or learn more about areas of the law with which they are unfamiliar.

This career path is relevant for most judges in France, but not for all of them. Some have had professional experience before they entered the ENM, for example as lawyers, public servants or commissioned officers in the military. A relatively small number of experienced and capable lawyers can be appointed without passing through the usual ENM selection and training. This last possibility, closer to the Anglo-Australian system, is not widely used in France where competitive examination of graduates or post-graduates for appointment to any public position is seen as a bulwark of the Republic. In the French system, although the status of judges is different because of their guaranteed independence pursuant to Article 64 of the French Constitution and the permanence of their appointments, judges are not considered in the popular eye to be really different from leading public servants.

In Australia, however, experience of litigation gained from a lengthy and successful period of practice in the legal profession is still the main recognised qualification for appointment and recruitment from among the leading private practitioners is a recognised means of enhancing the independence of the judiciary from the executive and legislative arms of government.

### **Current training in Australia**

The major courts commonly provide new appointees with useful information and practical resources such as bench books providing guidance for the conduct of criminal trials. Most also conduct their own continuing education programs at least once a year and rely on the national orientation program provided twice a year for new judges.

The newly appointed judges of Australia's state and federal superior courts attend a five day orientation course conducted by the National Judicial College of Australia in conjunction with the Judicial Commission of New South Wales, the Australian Institute of Judicial Administration and the Judicial College of Victoria during the first year after appointment. The NJCA was established in 2002 and provides a source of education and training nationally with programs covering a wide range of

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<sup>4</sup> Conseil Supérieur de la Magistrature: <http://www.conseil-superieur-magistrature.fr/>

topics as well as the orientation courses.<sup>5</sup> Not long after it was established the Hon Murray Gleeson said of it:<sup>6</sup>

“So long as governments adhere to the old-fashioned idea that new judges are thrown in at the deep end, they cannot complain that judicial office is available only to experienced swimmers. Successive New South Wales governments have been leaders in the field of judicial education. The Judicial Commission of New South Wales, of which I was President for almost 10 years, does work that has gained it an international reputation. It supports the National Judicial College. There is enormous scope for development in the field of judicial education, and tackling that issue on a national basis seems to me to be the best way of promoting greater unity without sacrificing the advantages of diversity.”

Another significant national body is the Australian Institute of Judicial Administration. It is a research and educational institute associated with Monash University in Melbourne. Its principal objectives include research into judicial administration and the development and conduct of educational programmes for judicial officers, court administrators and members of the legal profession in relation to court administration and judicial systems.<sup>7</sup> It also provides a regular series of programs of interest and use for judges.

The Judicial Conference of Australia is principally concerned with the maintenance of a strong and independent judiciary within Australia but also holds an annual colloquium addressing issues of current interest to the judiciary.<sup>8</sup>

The most notable body providing education and training at the State level is the Judicial Commission of New South Wales, established in 1986 and combining an educational and training role with assistance to the courts to achieve consistency in sentencing. It also examines complaints against judges.<sup>9</sup> It offers an extensive conference and seminar programme for judges in each New South Wales court, ranging from induction courses for new appointees to specialist conferences.<sup>10</sup> It also liaises with national bodies such as the NJCA, the AIJA and the Judicial Conference of Australia.

The Judicial College of Victoria was established in 2001. It provides education for judges, magistrates and tribunal members in that State and aims to keep judicial officers abreast of developments in the law and social issues, and help them build and

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<sup>5</sup> <http://njca.anu.edu.au/Professional%20Development/Programs%20public%20version/Programs%202007%202008.htm>. See also the Australian Law Reform Commission *Report 89: Managing Justice: A review of the federal civil justice system - 2. Education, training and accountability* recommending the establishment of such a body at <http://www.austlii.edu.au/au/other/alrc/publications/reports/89/ch2.html#Heading10>.

<sup>6</sup> *The National Judicial College and managing a federal judicial system* <http://www.onlineopinion.com.au/view.asp?article=2510>

<sup>7</sup> <http://www.aija.org.au/index.php>

<sup>8</sup> <http://www.jca.asn.au/>

<sup>9</sup> <http://www.judcom.nsw.gov.au/>

<sup>10</sup> For the 2010 program see <http://www.judcom.nsw.gov.au/education/Education%20Calendar%202010.pdf>

maintain the skills they need to perform their roles with rigour.<sup>11</sup> It also provides some support to the national programs conducted by the NJCA and the AIJA.

It is a common feature of the judicial training programs in Australia that they are under the control of judges, an approach regarded as necessary for the maintenance of judicial independence.

There are, of course, many other programs, conferences and seminars provided by professional associations and universities which judges are encouraged to attend. In most cases courts will have a budget to send judges to such programs or judges will be paid an allowance to be used for such purposes. The variety and number of training courses are significant but the system is still heavily reliant on recruiting its judges from experienced barristers and solicitors whose skill has been demonstrated over many years of practice and who are, therefore, likely to be able to adapt to the judicial role with relative ease and without much specialised training.

Interest in the development of judicial training in Australia and internationally was spurred by the Fourth International Conference on the Training of the Judiciary organised by the International Organization for Judicial Training and held in October 2009 in Sydney.<sup>12</sup> It is likely that opportunities for judicial education and training in Australia will continue to increase in number and variety.

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<sup>11</sup> <http://www.judicialcollege.vic.edu.au/>. The 2010 prospectus can be found at <http://www.judicialcollege.vic.edu.au/sites/default/files/2010JCVProspectus.pdf>

<sup>12</sup> <http://www.iojt.org/iojt2/index.html>