

JUDICIAL EDUCATION FOR JUDGES

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Background

In Australia, as in other common law jurisdictions with a divided legal profession, including a referral bar made up of specialised advocates, 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:¹ "... 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 State 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 shipping, immigration or industrial law. Support for judicial education may also have arisen from some apparently ill-advised comments by judges in socially sensitive cases.²

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¹ 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

² 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>

Current training in Australia

New appointees

When a new judge is appointed, the major courts commonly provide useful information and practical resources such as bench books. The bench book for criminal cases aims to cover most aspects of a criminal trial and provide guidance as to the conduct of such a trial. There is also a national orientation program provided approximately every nine months for new judges. This program, offered to newly appointed judges of Australia's state and federal superior courts and state County and District courts and the Federal Circuit Court, is a five day orientation course conducted by the National Judicial College of Australia in conjunction with the Judicial Commission of New South Wales, the Australasian Institute of Judicial Administration and the Judicial College of Victoria during the first year after appointment.

The NJCA also offers the Phoenix Magistrates Program regularly as an orientation program for new magistrates and as professional development for experienced magistrates.

Continuing education

Australian courts place an emphasis on continuing professional development, with their own continuing education programs conducted at least once a year. The State Supreme Courts and the Federal Court also run a combined seminar over several days each year in one of Australia's capital cities. There are many programs, conferences and seminars provided by professional associations and universities which judges are encouraged to attend. The variety and number of training courses are significant. 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. I will now discuss the chief bodies that offer such programs.

National Judicial College of Australia

I have already mentioned the National Judicial College of Australia's orientation programs. The NJCA was established in 2002 and provides a source of education and training nationally with programs covering a wide range of topics as well as the orientation courses.³ They include judgment writing programs and many with a specialised focus. Not long after it was established the Hon Murray Gleeson said of it:⁴

“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

³ <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>.

⁴ *The National Judicial College and managing a federal judicial system* <http://www.onlineopinion.com.au/view.asp?article=2510>

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.”

It was established as a result of findings in an Australian Law Reform Commission report entitled “Managing Justice, A Review of the Federal Civil Justice System”.⁵ The report called for the creation of a body whose purpose was to provide judicial education for the whole of the Australian judiciary.⁶ The NJCA does that by offering short courses. These courses tend to focus on practical skills, such as understanding and managing people in court, as opposed to substantive law.⁷ There is an emphasis on education about physical and mental illness, as well as social and cultural awareness.⁸ There are also programs offered for experienced judges in mid-career.

The College’s main publication is its annual report and it has also published a national curriculum.⁹ That curriculum discusses the judicial role in eight categories: the law, judicial management, decision making, judicial conduct, social contexts, developments in knowledge and issues of public policy, information and other technologies and the maintenance of health and well-being. In summary the approach expressed is that:

“All judicial officers should have the opportunity, throughout their judicial career, to undertake a range of professional development activities which will help them perform their judicial role. The programs which together make up this professional development curriculum should help judicial officers to perform their judicial role by -

Maintaining their knowledge and mastery of the law.

At the very centre of a judicial officer’s work is the need to know and apply the law, both substantive and procedural. This includes the interpretation of statutes and the application of the laws of evidence. Professional development activities can help judicial officers to keep up to date with changes and developments in the law and to refresh and deepen their knowledge and understanding of it.

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

Judicial officers have a management role in three situations. They need to manage the cases before the court over which they preside, the court room

⁵ <http://www.alrc.gov.au/report-89>

⁶ ALRC, “Managing Justice, A Review of the Federal Civil Justice System”, 30; the Hon John Doyle AC, “The National Judicial College of Australia”, <http://njca.com.au/wp-content/uploads/2013/07/NJCA-Chairman-J-Doyle.pdf>

⁷ <http://njca.com.au/program/managing-people-program/>

⁸ Above n. 5, 7.

⁹ <http://njca.com.au/judicial-education/national-curriculum/>

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

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

Judicial officers make decisions in all aspects of their work. Decisions are made in and out of court. At the core of a judicial officer's work is the making of decisions and the exercise of judgment. Usually a judicial officer must give reasons for the decision. Professional development activities should help judicial officers to deliver oral judgments and write well composed judgments. Part of the judicial role is also to give directions to juries. Although this does not involve the judicial officer in making a decision, it requires the judicial officer to give the jury the guidance necessary to make a correct decision. The judicial role also involves the sentencing of offenders. In this aspect judicial officers must make decisions in order to sentence correctly.

Applying appropriate standards of judicial conduct.

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

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

The judicial system performs a central role in society. Whilst judicial officers act independently they are conscious of the social contexts of the matters that come before them. Professional development activities which deal with social context issues alert judicial officers to the diversity within the community which is reflected in matters before the courts. Although professional development programs will sometimes specifically deal with social context issues, usually these issues will be dealt with pervasively in programs dealing with other topics.

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

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

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

Judicial officers need to be familiar, in general terms, with what technologies can do and their limitations.

Maintaining health and wellbeing.

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

The programs offered both by the NJCA and the state bodies typically bear the following similarities. First, participation is voluntary. This stems from the idea that judicial independence means that a judicial officer cannot be directed to participate in professional development.¹⁰ Nonetheless, very few new judges or magistrates refuse to take part in the orientation programs. Judicial independence informs the second criterion; it is a common feature of the judicial training programs in Australia that they are under the control of judges. This approach is regarded as necessary for the maintenance of judicial independence and seeks to avoid any risk of outside organisations seeking to re-educate the judiciary or to impose views as to how cases should be decided. An experienced member of the judiciary can also offer unique insight into the practical skills required. Academic lawyers and members of other professions with appropriate skills and experience also have much to offer on certain topics and often participate in the programs. Finally, judicial members are typically experienced, highly intelligent and will respond best to programs that are of a high quality. A collaborative approach, as opposed to the teacher / student dichotomy is common among training programs in Australia.¹¹

Australasian Institute of Judicial Administration

Another significant national, indeed transnational body is the Australasian Institute of Judicial Administration. It is a research and educational institute associated with Monash University in Melbourne and covers Australia and New Zealand. 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.¹² It also provides a regular series of programs of interest and use for judges. Perhaps it can be compared with the National Center for State Courts in the United States but it covers both Federal and State courts in Australia and the New Zealand courts.

The AIJA is a signatory to the International Framework for Court Excellence. An international consortium consisting of groups and organisations from Europe, Asia, Australia, and the United States developed this framework which is a quality management system designed to help courts improve their performance.¹³

Other bodies

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.¹⁴

¹⁰ Above n 5, 5.

¹¹ Above n 5, 7.

¹² <http://www.aija.org.au/index.php>

¹³ <http://www.courtexcellence.com/>

¹⁴ <http://www.jca.asn.au/>

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.¹⁵ 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.¹⁶ 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 maintain the skills they need to perform their roles with rigour.¹⁷ It also provides some support for the national programs conducted by the NJCA and the AIJA.

Future of judicial education

Interest in the development of judicial training in Australia and internationally was encouraged 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.¹⁸ It is likely that opportunities for judicial education and training in Australia will continue to increase in number and variety. The system is still, however, heavily reliant on recruiting its judges from experienced litigation lawyers whose skill and character 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 at least at the start of their careers. As in any judicial system, however, there remains the need for the lifelong learning “that only experience and continuing education can bring.”¹⁹

¹⁵ <http://www.judcom.nsw.gov.au/>

¹⁶ For the 2010 program see <http://www.judcom.nsw.gov.au/education/Education%20Calendar%202010.pdf>

¹⁷ <http://www.judicialcollege.vic.edu.au/>. The 2010 prospectus can be found at <http://www.judicialcollege.vic.edu.au/sites/default/files/2010JCVProspectus.pdf>

¹⁸ <http://www.iojt.org/iojt2/index.html>

¹⁹ “Judicial Education – A Global Phenomenon”, Chief Justice Robert French 26 October 2009 p 4; International Organisation for Judicial Training, Fourth International Conference: <http://njca.com.au/program/4th-international-organisation-for-judicial-training-iojt-conference/>