

**NATIONAL JUDICIAL COLLEGE OF AUSTRALIA**

**ANNUAL REPORT 2002 - 2003**

# NATIONAL JUDICIAL COLLEGE OF AUSTRALIA

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25 September 2003

To: The Council of Chief Justices of Australia and New Zealand

I am pleased to send to you, in accordance with clause 17 of the Constitution of the National Judicial College of Australia, a report on the operations of the College during the financial year 2002-2003.

This is the College's first annual report.

Yours sincerely

John Doyle AC  
Chief Justice of South Australia  
Chair of the NJCA Council

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## **THE ORIGIN OF THE NATIONAL JUDICIAL COLLEGE OF AUSTRALIA**

In the early 1990s calls were made for the establishment of a body dedicated to providing judicial education for the whole Australian judiciary. In 2000 the Australian Law Reform Commission's Report number 89 'Managing Justice' canvassed the issues and recommended the establishment of an Australian Judicial College. It proposed that the College be under the governance of judges and have responsibility for orientation training of new judicial appointees and continuing professional development of existing judicial officers.

In March 2000 the Standing Committee of Attorneys General (SCAG) formed a working group to consider the establishment of a National Judicial College. The working group found that there was a high level of support from the judiciary and other interested persons for the establishment of a national college. The working group report in May 2001 stated the case for a National Judicial College as follows:

“Currently judicial officers in Australia attend a diverse range of judicial education programmes but the availability varies greatly between jurisdictions. A national approach to judicial education would address the needs of judicial officers throughout Australia. A national college would ensure that education for judicial officers was planned and coordinated at a national level, both increasing quality and avoiding duplication. Judicial officers from across jurisdictions and from different geographical regions would have the opportunity to exchange information and experiences. This would maximize the benefit derived by judicial officers and the community from professional development programmes. The establishment of a national judicial college would bring Australia into line with developments in other common law jurisdictions in relation to the provision of judicial education.”

The working group's report was accepted in principle by SCAG in July 2001 and the working group was asked to implement the proposals in its report.

The National Judicial College of Australia was established in May 2002 as an independent entity, incorporated as a company limited by guarantee. It is funded by contributions from the Commonwealth and some State and Territory governments. The College will report annually to the Council of Chief Justices and to the Standing Committee of Attorneys General. The College will provide professional development programs to judicial officers in Australia and, on occasion, will conduct courses for non-judicial officers, such as senior court administrators and tribunal members.

At the official launch of the College in August 2002, the first chair of the Council of the College, Chief Justice John Doyle of South Australia, said the following about the need for judicial education in Australia:

“ I believe that the case for a National Judicial College for judicial education is self-evident. However, it is worth restating it very briefly. The work of the judiciary is demanding. Judges and Magistrates are expected to have professional legal skills of a high order. They should also have a wide range of practical judicial skills to enable them to carry out judicial work properly. Some of these practical skills are peculiar to the judicial role, some are skills that are also required in other professions.

The administration of justice involves much more than professional and practical competence. There is a qualitative aspect to the administration of justice which calls for judicial officers to have a real enthusiasm for their work, a strong belief in the importance of justice, and a commitment to the administration of justice in the fullest sense of the word. While these attitudes and beliefs are instilled in us in our professional life, experience tells us that over time judicial officers can become cynical and can suffer what is generally called "burn out". Experience tells us that most judicial officers can benefit from programmes of professional development that help them avoid this phenomenon.

Finally, judicial officers tend to occupy judicial office for fairly lengthy periods. This is in the public interest. It takes time to develop fully the skills required of a judicial officer, and it is in the public interest that those who have fully developed those skills put them to the public benefit for as long as possible. The fact that judicial officers hold office for substantial periods of time mean that they are likely to benefit from programmes of professional development that reinvigorate, refresh and enthuse.

Thus, the members of the Australian judiciary can benefit from programmes of professional development that focus on their legal skills, their practical judicial skills, and their approach to their work and which help them to maintain fitness and enthusiasm for the work. The scope for programmes for professional development is substantial. In the past it was assumed that, somehow or other, in the course of a judicial career, a judge or magistrate would receive the stimulus for self-improvement, and the refreshment and re-invigoration that we know we need. We now know that this assumption is too optimistic. There is a real need for organised programmes of professional development. The judiciary, as a profession, has come to understand this, as have the other professions."

## **THE COUNCIL**

In the course of the development of proposals for the College it was generally agreed that the independence of the judicial arm of government required that a body devoted to judicial education be under the control of the judiciary. That is reflected in the constitution of the College which provides for control by the judiciary with outside representation. The Council is comprised of four judicial members, a member nominated by the Commonwealth Attorney General, and a member nominated by participating State and Territory Attorneys General. The members of the Council are:

Chief Justice John Doyle AC  
Supreme Court of South Australia

Nominee of the Chief Justices of the State or  
Territory Supreme Courts  
and chair appointed by the Chief Justice of the  
High Court

Justice John Dowsett  
Federal Court of Australia

Nominee of the Chief Justice of the Federal  
Court and the Family Court

## **The Council contd.**

Judge Jack Goldring  
District Court of New South Wales

Nominee of the Chief Judges of the District or  
County Courts

Chief Magistrate Hugh Bradley  
Magistrates Court of the Northern Territory

Nominee of the Chief Magistrates of the Federal  
Magistrates' Court and Magistrates' or Local  
Courts

Mr Robert Cornall  
Secretary, Commonwealth Attorney  
General's Department

Nominee of the Attorney General of the  
Commonwealth

Mr Laurie Glanfield AM  
Director-General, New South Wales  
Attorney General's Department

Nominee of the Attorneys General of the  
participating States and Territories

The Constitution of the College provides for each member of the Council to appoint an alternate to exercise some or all of the powers of that Council Member as required from time to time. The alternate members of the Council are:

Justice Geoffrey Miller  
Supreme Court of Western Australia

Nominee of the Chief Justices of the State or  
Territory Supreme Courts

Justice Sally Brown  
Family Court of Australia

Nominee of the Chief Justices of the Federal  
and Family Court

Judge Christopher Lee  
District Court of South Australia

Nominee of the Chief Judges of the District or  
County Courts

Chief Magistrate Ronald Cahill  
Magistrates Court of the Australian Capital  
Territory

Nominee of the Chief Magistrates of the Federal  
Magistrates' Court and Magistrates' or Local  
Courts

Ms Kathy Leigh  
First Assistant Secretary,  
Civil Justice Division  
Commonwealth Attorney General's  
Department

Nominee of the Attorney General of the  
Commonwealth

Mr Timothy Keady  
Secretary of the Department of Justice and  
Community Safety, Australian Capital  
Territory

Nominee of the Attorneys General of the  
participating States and Territories

During the year the Council met in Canberra on six occasions.

## REGIONAL CO-ORDINATORS

The College's Constitution provides for the Council to appoint, after consultation with the relevant Chief Justice or Chief Justices, a Regional Convenor for each State and Territory:

- (a) to provide liaison between the College and his/her region;
- (b) to advise as to appropriate subject matter for the College's programmes and methods of delivery;
- (c) to provide feedback concerning the College's programmes previously conducted;
- (d) to assist in the organisation of the College's programmes to be conducted within his/her region, including arrangement of appropriate facilities;
- (e) to stimulate interest amongst judicial officers in his/her region concerning the College's programmes and attendance thereat;
- (f) to recruit judicial officers to assist in the preparation and conduct of the College's programmes;
- (g) where appropriate, to co-ordinate the activities of all members of the Consultative Committee based within his/her region;
- (h) if practicable, in consultation with the Council, to organise a local chapter of the College in his/her region.

The following were appointed as regional co-ordinators appointed by the Council:

New South Wales	Magistrate George Zdenkowski Magistrates' Court New South Wales
South Australia	Judge Brian Gilchrist Industrial Relations Court of South Australia
Queensland	Judge John Robertson District Court of Queensland
Victoria	Judge Wendy Wilmoth County Court of Victoria
Western Australia	Justice Geoffrey Miller Supreme Court of Western Australia
Tasmania	Magistrate Peter Dixon Magistrates' Court Tasmania
Northern Territory	Justice Sally Thomas Supreme Court of the Northern Territory
Australian Capital Territory	Justice Mary Finn Family Court of Australia

## THE CONSULTATIVE COMMITTEE

The College's Constitution provides for a Consultative Committee to:

- a) advise the Council as to how the College should meet the professional development needs of judicial officers;
- b) advise the Council as to the perceived quality and value of the College's programmes previously conducted; and
- c) facilitate good communications between the College and judicial officers.

The members of the Consultative Committee are the eight regional convenors and the following additional members:

Magistrate Robert Lawrence Magistrates Court of Western Australia	Nominee of the Australian Association of Magistrates
Justice John Byrne RFD Supreme Court of Queensland	Nominee of the Australian Institute of Judicial Administration
Mr Tony Abbott Piper Alderman Solicitors, Sydney	Nominee of the Law Council of Australia
Justice Ronald Sackville Federal Court of Australia	Nominee of the Judicial Conference of Australia
Professor Rosalind Atherton (July to December 2002) Macquarie University Professor David Barker (January to June 2003) University of Technology Sydney	Nominee of the Council of Law Deans
Professor Larissa Behrendt University of Technology Sydney	Nominee of the Attorneys General of the Commonwealth and participating States and Territories
Ms Karen Curtis Australian Chamber of Commerce and Industry	Nominee of the Attorneys General of the Commonwealth and participating States and Territories
Mr Phillip French Disability Studies and Research Institute	Nominee of the Attorneys General of the Commonwealth and participating States and Territories

The Council of the College undertook detailed planning in preparation for the first meeting of the Consultative Committee of the College. The Consultative Committee met in Canberra on a Saturday and Sunday in February 2003. The meeting enabled members of the Council, Regional Convenors, other members of the Consultative Committee, and College staff to establish appropriate working relationships to facilitate the performance by participants of their respective functions in the College.

The discussions at that meeting were aimed at giving Committee members a general understanding of how the College came to be established, of its structure and of its operations, and of the functions of the Council, Regional Convenors, the Consultative Committee and the Secretariat. As well, participants had an opportunity to discuss:

- a) the unmet needs for professional development of the Australian judiciary;
- b) the approach the College should take to discharging its obligation to different jurisdictions;
- c) the best ways of providing professional development to judicial officers;
- d) the use of information technology in providing professional development to judicial officers;
- e) the role of the College in orientation programs;
- f) the order of priority that the College should set for its activities in 2003 and 2004.

The discussions that took place were thorough and productive. The Council intends to arrange a similar meeting early in 2004.

## **THE COLLEGE SECRETARIAT**

The administrative staff of the College are:

Mr John Mc Ginness	Director
Ms Wendy Forster	Executive Assistant

## **THE 2002-2003 YEAR IN REVIEW**

### Administrative issues

Following registration of the College as a company in May 2002, the Council of the College had to deal with a wide range of administrative matters to establish its operations.

In July 2002, following a process of calling for expressions of interest from Australian universities, the Australian National University was selected to host the College. The College and the University signed a detailed memorandum of understanding governing their relationship.

In August 2002 the official launch of the College took place in Canberra. Links to copies of speeches at the launch by the Commonwealth Attorney General, the Hon Daryl Williams QC MP and by the Hon John Doyle AC, Chief Justice of South Australia, are available on the College's website [www.njca.com.au](http://www.njca.com.au)

The College's first staff (a full time Director and part time Executive Assistant) began work in October 2002. The Secretariat's offices were set up in temporary premises at the Law Faculty of the Australian National University in Canberra. A wide range of administrative issues incidental to establishment of the College as a company needed to be resolved including obtaining insurance, appointment of auditors and accountants, establishing financial and other records systems, establishing an interim College website, registration of domain names and notification of company details to the Australian Securities and Investments Commission. During the year the College obtained endorsement from the Australian Taxation Office as an tax exempt

charitable entity on the basis of its character as a non profit organisation established for educational purposes. In January 2003 the Chair of the Council of the College wrote to the Commonwealth Assistant Treasurer requesting an amendment to legislation to have the College declared a deductible gift recipient for the advancement of education. In March 2003 the Commonwealth Attorney General wrote to the Commonwealth Assistant Treasurer supporting the College's request.

### Plans for judicial education activities

During the year under review, plans for the presentation of the College's first judicial education programs were largely completed. The first two programs took place in August 2003. Although these events took place after the year under review, it is convenient to deal with them in this report.

#### *The Travelling Judicial Education Program*

The first program, entitled the Travelling Judicial Education Program, was held in Adelaide on 1 and 2 August 2003. The College's aim is to repeat all or parts of this program at other places in Australia, hence the title. The program contained half day modules on litigants in person, sentencing and expert evidence. The lead presenters were Justice Murray Wilcox (Federal Court, Sydney), Justice Terry Buddin (Supreme Court New South Wales) and Justice Ted Mulligan (Supreme Court, South Australia). Most of the participants were from South Australia, coming from all parts of the judiciary of that State. As well judicial officers attended from Western Australia and Victoria. The development of the program required a significant amount of administrative planning and co-ordination. As envisaged when the idea of regional co-ordinators was incorporated in the College's constitution, Judge Brian Gilchrist (regional co-ordinator for South Australia) assisted by Ms Jill Robinson (Human Resources Manager, Industrial Court of South Australia), played a major role in dealing with aspects such as arranging an appropriate venue, obtaining the participation of assistant presenters, encouraging participation by judicial officers and working with the College's secretariat on registration, accommodation and travel arrangements.

#### *The Phoenix Magistrates Program*

The College's first residential program, entitled the Phoenix Magistrates Program, was held in Canberra from 4 to 8 August 2003. The program was devised following a meeting in February 2003 between the Chair of the College's Council, Chief Justice John Doyle, and the Council of Chief Magistrates. The program had two aims:

- to provide an orientation program for new magistrates;
- to provide a program of professional development, reflection and workshops for experienced magistrates.

In developing the program the College relied on a planning committee based in Adelaide (comprised of Chief Justice John Doyle, Chief Magistrate Kelvyn Prescott; Deputy Chief Magistrate Andrew Cannon; Garry Hiskey SM and Peter Wilson SM) and a group of consultants (Chief Magistrate Hugh Bradley NT; Chief Magistrate Ron Cahill ACT; Mr George Zdenkowski SM NSW; Professor Greg Reinhardt (Australian Institute of Judicial Administration - AIJA); and Ms Ruth Windeler (Judicial Commission NSW)). The program included sessions on an overview of the magistracy in Australia, civil litigation and small claims, managing litigants in person, the process of decision making, delivering ex tempore decisions, writing judgments, court craft (including observation of list management at the Canberra Magistrates Court), ethical

issues, children and family matters, the role of a Chief Magistrate and professional relationships between magistrates, technology for magistrates, stress management issues, sentencing, alternative dispute resolution, list and diary management. The program included opportunities for magistrates to interact with staff and students of Law Faculty of the ANU.

The Phoenix program placed a strong emphasis on using the knowledge and skills of the participating magistrates. Experienced magistrates led many of the sessions. Sessions were also presented by Chief Magistrate Ian Gray (Victoria), Chief Magistrate Ron Cahill (ACT) and Justice Ken Crispin (ACT). Other presenters included Associate Professor Kathy Mack and Professor Sharyn Roach Anleu (Flinders University), Professor Arie Freiberg (Melbourne University), Professor Greg Reinhardt (Australian Institute of Judicial Administration) and Mr John White (Office of Commonwealth Director of Public Prosecutions). Staff from the Australian National University presented sessions on technology and stress management. The College expects to present this program in other capital cities in 2004.

Responses from participants in each program indicates that they were well received.

#### *Survey of judicial officers*

To assist the College's planning of its future judicial education activities, in early 2003 the College conducted a survey of judicial officers around Australia about their professional development needs and interests. The survey was carried out on behalf of the College by Centre for Education and Academic Methods at the Australian National University. 234 judicial officers responded to the survey.

The results are still being analysed by the College but some highlights from responses to the survey are:

- High levels of interest among judges and magistrates in court craft (judgment writing, assessing the credibility of witnesses, litigants in person, case management), information technology skills and issues such as judicial conduct and sentencing;
- Low level of interest in administration (office management, financial management, staffing);
- Some topics interested judges more than magistrates (case management, appeal court review, civil litigation) while others interested magistrates more than judges (sentencing, crime, scientific and medical developments);
- on average judicial officers devote 4 to 5 days each year to professional development activities;
- Preference for traditional modes of delivery of professional development (workshops, conferences), moderate interest in self directed learning (private study, web based study) and low interest in online discussion or debate. Clear aversion to evening workshops;
- Some variation between States in levels of interest in particular topics.

## **THE COLLEGE'S POLICIES ON JUDICIAL EDUCATION**

In considering the development of the College's programs, the Council of the College has identified some policies it intends to pursue. These policies have been formed as a result of the Working Group's consultations with judicial officers and other interested persons in 2001/2002, thorough discussions in meetings of the Council and again at the first meeting of the College's Consultative Committee in Canberra in February 2003. The policies are summarised below

The role of the College is to assist judges in their professional development. Programmes should be developed to meet real needs. They must be delivered in ways which maximize the benefit to be derived by judicial officers and the community and take account of the particular sensitivities incidental to activities concerning judicial officers.

In developing programs the emphasis should be on matters not adequately covered by readily available sources such as text books and journals. In particular, emphasis should be on practical skills, a large aspect of judicial work. The College appreciates the importance of providing programs on social and cultural awareness issues including issues relating to disability awareness, persons from non English speaking and indigenous backgrounds and the protection of children. Other important matters include recent legal developments; legal, and programs concerning judicial physical and mental health. In general the College would not expect programs to focus upon substantive law. That area will usually be better addressed in other forums or by private study.

In Australia there are a large number of judicial officers with different responsibilities. Needs may be quite specialized. Although there are some common aspects to all judicial work, the College will not assume that one program will be suitable for all, or even most judges. This may lead to our offering specialized courses to small groups. The College must identify and try to satisfy the real needs of the judiciary and of the community.

Judicial officers are a group of people who, by reason of talent, experience, education and training, have been identified as suitable to receive the authority of the state to resolve disputes between citizens and between the state and citizens. They will be busy people who are themselves regularly asked to participate in programs as speakers and teachers. Any program developed by the College must be worthy of the time which participants will be asked to invest in it.

The College should adopt best practices for adult professional learning. The emphasis should not be on formal lectures. Rather the College will use structured discussion of practical problems and other similar forms of active learning, for example self-teaching in small discussion groups, based on well-planned, practical problems.

The focus on discussion rather than lectures means that most programs will be suitable for groups of no more than 25 to 30 participants.

The College's programs will be participant focussed rather than "teacher focussed". Judicial officers collectively will often bring more to college programs than any one presenter or group of presenters and the emphasis should be on sharing and building upon the experience of participants; presenters should guide discussion and encourage participation, but should not be seen as a faculty separate from the participants.

The College's role is not to standardize judicial approaches to problems or issues or to label any acceptable approach as "right" or "wrong", nor should there be any public comment upon the extent to which any judge, in his or her work, has complied with, or failed to comply with approaches suggested in the course of any program.

The Council believes that those who are carrying out judicial work are usually best placed to lead professional development programs, bearing in mind that almost always this involves a mix of technical and practical skills. The accumulated experience and skill of the judiciary are valuable national assets. The College should harness and enhance them in ways which are more appropriate to their true value. Thus most of the educational programs of the College will be led by experienced and respected judicial officers. However, the College will also draw on academic lawyers and members of other professions who have appropriate expertise and experience. In particular, the College hopes to build a fruitful relationship with the members of the Faculty of Law at the ANU.

As far as possible, the College will take its programs to the Australian judiciary, rather than bring them to Canberra to attend courses. There is a place for both approaches, but the emphasis should be on providing programs to the Australian judiciary in their home towns. The College's programs must be designed to be easily conducted at various places around the country and allow for different presenters to present the same program in different cities. To the extent that it is practical, we will develop "template programs" that can be readily repeated, with or without changes. Presenters should change regularly to maximize input from the whole judiciary and to avoid the institutionalization of the views of a small group.

One of the objectives of nationally organised professional development activities is that judicial officers from across jurisdictions and from different geographical regions will have the opportunity to exchange information and experiences. This would maximize the benefit derived by judicial officers and the community from professional development programmes. The College aims as much as possible to increase opportunities for the exchange of experience between jurisdictions.

As the College's current funding is sufficient only to cover its central administrative costs, the programs delivered by the College must be financially self-supporting. This means that courts nominating participants will be asked to pay program fees designed to cover the costs of presenting the program.

Until recently programs of professional development for judicial officers have been provided mainly by voluntary committees working within the various courts. The Judicial Commission of New South Wales and the Judicial College of Victoria provide professional development opportunities to judicial officers in those States. Some programs are best conducted locally, such as programs relating to jurisdiction-specific legislation. The National College should strive to complement local programs, avoid duplication and offer some programs in conjunction with other educational bodies.

The College will do everything it can to ensure fruitful co-operation with the AIJA, the Judicial Commission of New South Wales and the Judicial College of Victoria, and with existing education committees. The College is co-operating with these bodies to develop an Internet calendar of judicial education programs which can be accessed at <http://150.203.87.85/jud-education.htm>. The College's aim is to avoid duplication and to co-operate as much as possible with other institutions in the field.

## **THE FUTURE**

The Travelling Judicial Education Program will be repeated in other capital cities. The Phoenix magistrates program will be presented in at least once in 2004 at a location still to be decided.

The College wishes to develop modules on topics suitable for inclusion in judicial education activities of individual courts.

Responses by judicial officers around Australia to the College's survey of their wishes for professional development indicated judgment writing is a major topic of interest. The College hopes to develop a residential program on judgement writing to be offered in mid to late 2004.

The College will make as much use as it can of distance education by electronic means. The use of distance education will be particularly important to enable the College to reach Australia's magistrates. They are the largest single group within the judiciary, and they are geographically dispersed throughout the country.

Developing high quality distance education programs will not be easy. We want to develop programs that can be integrated into programs that are presented in the traditional face-to-face manner, and also stand-alone electronically delivered programs. Developing these programs is costly. A challenge for the College is to find the resources required.

At this stage not all Attorneys General have agreed to support the College financially. One of the College's aims is to demonstrate the merit of supporting the College through the quality of the programs it provides.

The first year of the College has been demanding. Meeting the needs of professional development of the Australian judiciary is a large task.

There is a limit to what the College can achieve with two staff. Council members have had to involve themselves closely in developing our programs. Other demands on their time limit what they can do for the College. Managing with its limited financial and human resources is one of our challenges.

The Council of the College is conscious of the need to demonstrate that we can meet the needs of the Australian judiciary, but we are also aware of the importance of providing high quality programs. It must avoid the temptation to present programs that can be easily organised but might make little real contribution to the professional development of the judiciary.

Despite the difficulties, the members of the Council believe that the College can make a significant contribution to the Australian judiciary, provided that it is given the resources needed. The members of the Council are firmly committed to the task they have.

## **CONTACT DETAILS FOR THE COLLEGE**

The College Secretariat can be contacted as follows:

National Judicial College of Australia

Postal address            PO Box 102A, Acton, A.C.T. 2600

Telephone                02 6125 6655

Fax                        02 6125 6651

Email                     [ea@njca.anu.edu.au](mailto:ea@njca.anu.edu.au)

Website                  [www.njca.com.au](http://www.njca.com.au)