

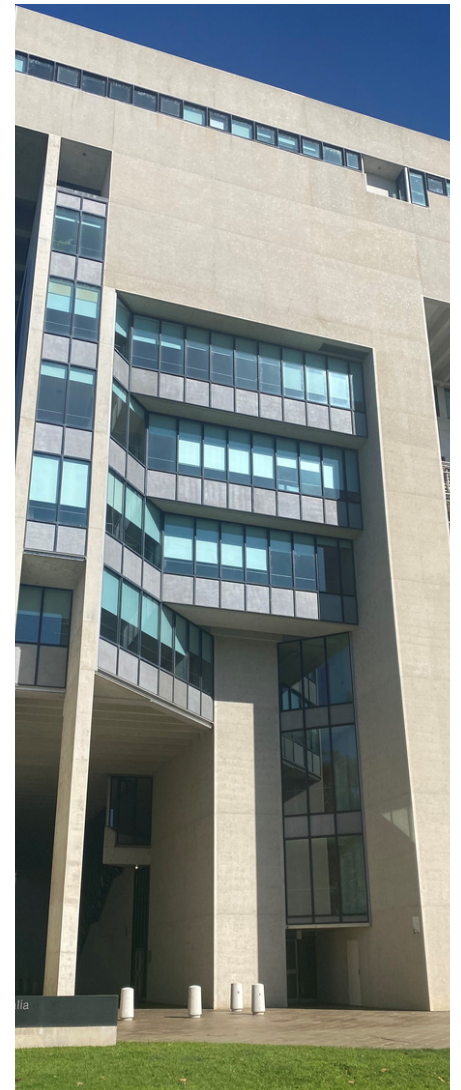


National Judicial College of Australia



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Leading judicial education for an Australian judiciary



Setting the standard in judicial excellence

Welcome to the NJCA Spring 2023 newsletter. It has been a big couple of months.

For many, the announcement by my predecessor, Kate Latimer, of her intention to retire, came as a surprise. I would like to thank Kate for her leadership, vision and friendship. I am of course delighted to continue my work with the NJCA, albeit in a new role.

Since our last newsletter, the NJCA has delivered six programs to judicial officers in Sydney, Canberra and Brisbane. Of particular note was the inaugural We, the Gatekeepers program, delivered in August in Sydney. This new NJCA program was designed, developed and delivered to raise the awareness of the importance of the “gatekeeping” role and to educate judges on modern scientific perspectives bearing on the admission, use and evaluation of expert evidence. A program synopsis is available on the NJCA website under “[resources](#)”.

Our “spotlight on” in this newsletter is about another new judicial education program - A Delicate Balance - the Management of Sexual Assault Trials in Australia. I feel very privileged to have the opportunity to work with our experienced committee from across court hierarchies and jurisdictions in this program. The rationale is to enhance the capability of judicial officers to engage with perpetrators, complainants, victims and survivors of sexual assault, families and communities more effectively, with a view to improving entrenched trial practices and updating narratives through trauma-informed training. Importantly, our program design draws on international best practice, particularly from Canada, and will make a significant contribution to the justice sector’s efforts to address requisite societal change and broader reforms to the criminal justice system and its approach to sexual assault in Australia over the next five years.

From the 18-19th September 2023, I joined the Chair of Council and the Chair of Program Advisory Committee of the NJCA in attending a two-day roundtable with judicial and non-judicial members of the Singapore Judicial College and the New Zealand Institute of Judicial Studies. This was a richly rewarding experience for all attendees with candid discussions about the key challenges that lie ahead for judicial education and training in the Asia Pacific.

Finally, registrations are now open for our AI and the Courts Symposium - Master or Servant? to be held from the 6-7th April 2024 in Canberra. This two day program will identify and explore the benefits that AI will bring to both civil and criminal matters before the courts; from its use by the broader legal profession, before it gets to the courtroom, through to admissibility and reliability questions in the courtroom along with the policy and legal “race” both domestic and international, to establish a regulation landscape. I hope to see many of you there for what should be a timely and significant symposium.



Karen Gregory
CEO, National Judicial College of Australia

Singapore Roundtable on Judicial Education

From the 18-19th September, representatives of the NJCA, as the national educator, attended a two-day Roundtable with judicial and non-judicial members of the Singapore Judicial College and the New Zealand Institute of Judicial Studies. This was a richly rewarding experience for all attendees with candid discussions about the key challenges that lie ahead for judicial education and training. Much of the discourse also centred on the contemporary challenges facing judicial education in the Asia Pacific, such as the management of sexual assault trials and the advancement of artificial intelligence both in and out of the courtroom.

During this intensive, open forum, both judicial and non-judicial representatives from the three national education bodies were able to swap innovation notes as well as commiserate over common challenges. Importantly, it was agreed by all attendee institutions to hold the Roundtable again in 2025, reaffirming the collective desire for deepening judicial education cooperation at the international level.



Chief Justice Menon, Singapore Supreme Court Justices along with Justice Palmer (NZ), NJCA Council Chair, Chief Justice Kourakis and NJCA Program Advisory Committee Chair, Justice Martin

A Delicate Balance - ✨ the management of sexual assault trials in Australia



Social and personal psychological context in judicial education and training is an important part of the judicial officers remit. It is in this context that the NJCA has been tasked with the design, development and delivery a national program on the nature and impact of sexual assault for judicial officers over the next five years.

The Program – *A Delicate Balance: the management of sexual assault trials in Australia*, will be informed by extensive research, and driven by a deeply experienced committee, informed by international best practice.



The Program rationale is clear - to enhance the capability of judicial officers to engage with perpetrators, complainants, victims and survivors of sexual assault, families and communities more effectively with a view to improving entrenched trial practices and out of step narratives.

The unique, and intentional, modular design of this Program means it will be able to be adapted and delivered to all Australian courts and jurisdictions.

Please contact us for more information about this important Program.

We, the Gatekeepers | 11 - 12 August, Sydney

In August the NJCA delivered the pilot program *We, the Gatekeepers* at the Coombs Centre in Sydney. Looking at the treatment of expert forensic evidence, particularly in criminal trials, a mock crime scene set the 'scene' for what was a very informative and innovative two days. Program Chair Justice Martin Burns was joined for an 'in conversation' with Andrew Kirkham KC, looking at the Chamberlain Trial through the lens of a key player.

The keynote address was delivered by the Hon Christopher Maxwell AC, and Judge Kara Shead SC expertly wove the crime scene forensics through the program, ably assisted by the Chief Forensic Scientist of the Victoria Police, Dr Kaye Ballantyne, and AFP Crime Scene Investigator and Forensic Trainer, Ms Jessica Southwell.



'The best judicial education program I have attended in 19 years!'
'This was a great program, informative, interesting and the small size permitted greater involvement and interaction between participants and presenters'

Participant feedback 'We,the Gatekeepers' August 2023

National Magistrates Orientation Program 3 - 8 September, Brisbane



In September, newly appointed magistrates from across Australia gathered together at the Sofitel Central Brisbane to participate in the 2023 edition of this program. Participants enjoyed presentations across a variety of disciplines and topics including judicial conduct and ethics, resilience, wellbeing & mindfulness practice, interpreters in the courtroom, witness credibility, exercise of power, children in the court as well as the experiential learning judge-craft sessions at the Magistrates Court in Brisbane.

As usual, the participant feedback has been positive, and we look forward to welcoming these participants to more NJCA programs in the future. Thank you to the committee for their continued dedication to this very important program.

‘Wonderful opportunity to connect and learn from other judicial officers. Picked up many useful takeaways. Sessions were a good mix between theory and practice.’

‘The fact that the program is "judge led" made it invaluable.’

Participant feedback ‘National Magistrates Orientation Program’, September 2023

Writing Better Judgments I

11 - 13 October, Canberra



Judicial officers and tribunal members from various jurisdictions across the country, converged on the Vibe Hotel Canberra to participate in our three day flagship *Writing Better Judgments I* Program.

Participants were joined by committee members, led by Acting Justice Monika Schmidt, and authors who together provide targeted and personalised feedback to participants, in carefully scaffolded sessions.

A highlight of the program was the welcome and keynote address, kindly delivered by Chief Justice Lucy McCallum, Supreme Court of the Australian Capital Territory.

While necessarily intensive and requiring a little “homework,” the feedback during and after the program is simply outstanding. We look forward to welcoming the participants to *Writing Better Judgments II* over the next couple of years, as they continue on their judgment writing pathway.

‘Should be required learning for all judicial officers. Could not speak more highly of how useful it was’.

‘I wish I had done it sooner! A great learning experience’.

Commonwealth Sentencing Database Update – Spring 2023

The Commonwealth Sentencing Database (CSD) provides information on the law of federal sentencing, summaries of new judgments and legislative amendments, and useful comparative data for use in sentencing federal offenders. The database is accessible at csd.njca.com.au

New & Improved CSD Website

We're thrilled to announce a refreshed look for the Commonwealth Sentencing Database. Prioritising user experience, the website now features improved navigation, ensuring quick access to essential resources. Finding pertinent information will now be easier with a more intuitive search function and streamlined menus.

Principles & Practice

The following resources have recently been updated:

- Totality: A comprehensive revision to align the page with the more recent holistic approach to totality analysis, shifting away from the 'two-limb' approach which was previously relevant to some jurisdictions.
- Victim Impact Statements: A update detailing the latest case law and offering an improved understanding of the term 'victim' within the federal victim impact scheme.

Comparative Sentencing Tables

The financial crimes tables have been completed and are available on the CSD website along with the tables covering terrorism/security offences and drug offences. The financial offences tables cover a range of offences from dishonestly obtaining a gain to proceeds of crime offences to insider trading and market manipulation offences. In addition, the comparative tables are in the process of being converted from their current form into a searchable database, meaning comparable sentencing cases will be even easier to find. The new comparative tables will be progressively rolled out as they are completed. Watch this space!

Recent Case and Legislation Updates

Recent Significant Appellate Judgments:

- Marai v The King [2023] NSWCCA 224 – offender’s time in immigration detention even prior to CDPP’s application for Criminal Justice Stay Certificate was referable to the offence for the purpose of Crimes Act 1914 s 16E, sentence backdated accordingly. Held (per Sweeney J): the delay in the making and granting of the CDPP’s request should not operate to the detriment of offender.
- The King v Jacobs Group (Australia) Pty Ltd [2023] HCA 23 – when sentencing a corporation for a foreign bribery offence, the ‘value of the benefit ... obtained’ under Criminal Code 1995 s 70.2(5) is the value of what was received irrespective of expenses or risks involved. Held (per Kiefel CJ, Gageler, Gordon, Steward, Gleeson and Jagot JJ): NSW Court of Appeal erred in adopting a ‘net benefit’ approach.

Legislative Amendment Updates:

Crimes Act 1914 s 16AA and 16A(2AA)(c) each received minor amendments to update the names of cross-referenced legislation.

See all recent federal sentencing judgments and legislative amendments at csd.njca.com.au/recent-cases-legislation



NJCA Symposium 6-7 April 2024, Canberra

Artificial Intelligence in the Courts - Master or Servant?

Join us for this important two day program which will identify, question and explore the benefits and challenges that the ongoing introduction and advancement of AI will bring to the justice system as a whole and more specifically, to matters before the courts.

We will dive into the use of AI by the broader legal profession, through to admissibility and reliability questions in the courtroom along with the policy and legal imperative both domestically and internationally, to establish an effective and sustainable regulation landscape.

Hear from experts in their field such as Professor Lyria Bennett Moses, UNSW, Ms Caroline Ryan, Partner, Allens Linklaters, Mr Matthew Purcell, Generative AI AWS, Dr Kaye Ballantyne, Chief Forensic Scientist, Victoria Police, and others.



Register now at
njca.com.au/judicial-education-programs/



Forthcoming Programs



Writing Better Judgments I
28 Feb-1 March 2024, Sydney
26-28 June 2024, Perth
23 -25 October 2024, Sydney

The popular *Writing Better Judgments I* program is designed to enhance participants' judgment writing skills through analysis, discussion and rewriting of judgments in small groups. This program provides judicial officers with practical tools and tips; a high level of interactivity including group workshops; and individual feedback. Topics include preparation and planning for judgments; issue identification and resolution; writing judgments that are clear, comprehensive, concise, coherent and convincing.



National Judicial Orientation Program
17-22 March 2024, Brisbane
10-15 November 2024, Perth

The primary goal of the National Judicial Orientation Program is to assist newly appointed judicial officers with their transition to judicial office by facilitating the development and refinement of the skills, knowledge, and attributes necessary for effective judging. The program provides new appointees the opportunity to benefit from the knowledge and experience of senior judicial officers.



NJCA Symposium AI in the Courts -
Master or Servant?
6-7 April 2024, Canberra

What happens when machine-learned and AI-generated data enter the courtroom?

The NJCA Symposium 2024 will bring together experienced members of the judiciary with leading academics from both Australia and overseas, policy makers and experts in their field to consider current AI issues and future challenges for both the judiciary and the wider legal community.

Forthcoming Programs



Oral Decisions

30 - 31 May 2024, Sydney

This program contains both theoretical underpinnings associated with decision making as well as a larger, practical component in which participants practice delivering oral decisions. The program is designed to be highly interactive whereby experienced judicial officers and facilitators give individualised feedback designed to directly enhance participant skills.

At the heart of the program is the opportunity to engage in experiential learning.



Writing Better Judgments II

13-14 June 2024, Sydney

At WBJ II, the overarching theme of the program is judicial productivity. Participants are given both the knowledge, skills and strategies to meet the increasing challenges of judgment writing. Time on the bench and corresponding experience often means the lists are longer, cases allocated are more complex and a wearying load of judgments have already been delivered. This program provides practical skills and strategies to help better meet the ongoing challenges in the years ahead, by revisiting and improving judgment writing practices with renewed vigour.



National Magistrates Orientation Program

25 - 30 August 2024, TBA

This program provides newly appointed magistrates the opportunity to benefit from the knowledge and experience of senior magistrates who attend the program as facilitators and speakers. The primary goal of the program is to assist with the transition to the bench by facilitating the development and refinement of skills, knowledge and attributes necessary for effective judging.

Many sessions are interactive and rely on discussion by participants and the use of practical case scenarios.

Forthcoming Programs



Reflections on the Judicial Function 18 - 20 September 2024, Sydney

This two and a half day program is directed at experienced (mid-career) judges and magistrates. It provides an opportunity to reflect upon the role of a judge and the rule of law across cultures and enables exploration of contemporary themes and social challenges.

Themes studied and developed include: Threats to Judicial Independence, Technology and the Sciences and Looking to the Future.



Heads of Jurisdiction - Leadership 16 - 17 October 2024, Adelaide

This invitation-only program is open to heads of jurisdiction and heads of specialist courts. Leaders come together to examine their own leadership style, consider their impact as a transformative leader of their court and how they can lead most effectively, using power to drive innovation and to manage change in the dynamic environment in which courts operate. The program includes presentations from and discussions with some of Australia's most well regarded leaders, from government, and the corporate world including social enterprises.

Register now at
njca.com.au/judicial-education-programs/



