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THE JUDICIAL COMMISSION OF NEW SOUTH WALES

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1. INTRODUCTION

The Judicial Commission of New South Wales is an independent statutory corporation established under the *Judicial Officers Act 1986*.

The Commission's major functions under the Act are to:

- * assist the courts of New South Wales to achieve consistency in imposing sentences;
- * organise and supervise an appropriate scheme for the continuing education and training of judicial officers; and
- * examine complaints against judicial officers.

The Commission may also:

- * give advice to the Attorney General on such matters as the Commission thinks appropriate; and
- * liaise with persons and organisations in connection with any of its functions.

The objectives of the Commission are to:

- * increase the efficiency and effectiveness of the use of judicial resources by improving the consistency of sentencing, and developing the skills and knowledge of judicial officers; and
- * handle complaints in a timely and appropriate manner.

2. HISTORY OF THE COMMISSION

The original proposal to establish the Commission was unfolded in September 1986 but substantial modifications were made to that proposal prior to the enactment of the *Judicial Officers Act*, which was assented to on 18 November 1986.

The legislation established the Commission as a statutory corporation with its staff wholly independent of Public Service control and receiving its own budget from Parliament, to which it is required to report annually.

In October 1987, when the first senior staff were appointed, the Commission set in place plans for its work in the areas of judicial education and the provision of sentencing information.

In developing its education programmes, the Commission looked at the experience of other countries, such as the United States of America, Canada and the United Kingdom. In addition to examining the experience of these other countries the Commission conducted a survey of all New South Wales judicial officers to determine what they expected from the Commission's proposed continuing judicial education programme. The response to this survey was very high at 77% with more than 80% of respondents expressing a wish to participate in the programmes. The information obtained from these sources greatly assisted the Commission in developing its first strategic plan.

The continuing judicial education programme commenced in April 1988 with the first issue of the *Judicial Officers' Bulletin*, a monthly publication distributed to all judicial officers. Since then, both the publishing and conference and seminar programmes have grown and all courts have embraced the Commission's continuing judicial education programme enthusiastically. The success of this programme is largely due to the input of judges and magistrates who, through various education committees, determine the content of the programme.

In 22 years of operation the Commission has established a reputation as one of the leading institutions of its kind in the world. Many of its programmes, including the computerised Judicial Information Research System (JIRS) and its series of bench books, have been used as models both in Australia and overseas.

3. THE COMMISSION

i) *Structure of the Commission*

The Commission consists of six Official Members and four members appointed by the Governor of New South Wales. The President of the Commission is the Chief Justice of New South Wales.

The Commission is supported by a staff of 38, and is headed by a Chief Executive. It has an annual budget of approximately 5.1 million dollars.

ii) *Members of the Commission*

The *Judicial Officers Act*¹ provides that the Commission shall comprise six official members and four other members appointed by the Governor on the nomination of the Minister. The Official Members are:

¹*Judicial Officers Act 1986, s5*

- (a) the Chief Justice of New South Wales;
- (b) the President of the Court of Appeal,
- (c) the President of the Industrial Relations Commission;
- (d) the Chief Judge of the Land and Environment Court;
- (e) the Chief Judge of the District Court; and
- (f) the Chief Magistrate.

Of the appointed members, the *Judicial Officers Act* provides that:

- (a) "One shall be a legal practitioner nominated following consultation by the Minister with the President of the New South Wales Bar Association and the President of the Law Society of New South Wales"; and
- (b) Three are to be nominated following consultation by the Minister with the Chief Justice and who, in the opinion of the Minister, have "high standing in the community".

4. JUDICIAL EDUCATION

The seminars, conferences and publications of the Commission are designed to keep judicial officers up to date with current developments and emerging trends and include areas identified as needing review or involve major changes in the law.

One very important issue for the Commission has been the relationship between judicial education and the maintenance of judicial independence, and this has had a significant impact on the planning and development of the programme of judicial education.

To ensure that the Commission's scheme of judicial education and training remains relevant and functional, an on-going process of consultation with judicial officers takes place regarding the most appropriate content and direction of their education programmes. Three key factors taken into account in this consultation process and in the development of education and training programmes are the:

- * professional experience of judicial officers;
- * needs of different jurisdictions; and
- education and training requirements of new judicial officers.

i) Education Committees

In keeping with the obligation to consult, and mindful of the benefit of participant involvement in various stages (including the design of the programmes), judicial education committees have been established in each court. These committees meet on a regular basis to discuss the proposed judicial education programmes for their particular court. Professional staff from the Judicial Commission attend all Education Committee meetings and provide educational input and support. Additionally, a Standing Advisory Committee on Judicial Education (SAC) is established with a representative from each of the court committees. The SAC provides general guidelines and informs each jurisdiction of the activities in the other courts.

ii) Conferences and Seminars

The Commission offers an extensive conference and seminar programme for judicial officers, ranging from induction courses for new appointees to specialist conferences on specific aspects of law, procedure and judicial skills and techniques. The conferences organised by the Commission also frequently cover matters of wider community interest, including social concerns.

The scheme of education presently covers 33 different programmes for the five courts of New South Wales, which include pre-bench training for newly appointed magistrates and computer training sessions. Together with the Australian Institute of Judicial Administration the Commission also conducts a National Judicial Orientation Programme for newly appointed judges from across Australia.

Some educational sessions are held during court time; many others are conducted after court hours and on weekends in judicial officers' own time. Approximately 1300 days of continuing judicial education were attended by judges and magistrates between July 2007 and June 2008. Attendance by judicial officers at the Commission's programmes is voluntary.

iii) Publications

The conference programme is supplemented by an active publishing programme. The Commission publishes the following material for judicial officers:

(a) Bench Books

Bench books are reference works designed for use by judicial officers whilst on the bench and also for use in chambers. They are essentially working aids or practice and procedure manuals provided for judicial officers, particularly for new judges and magistrates. The information contained in the various bench books relates to the relevant jurisdiction of the judicial officer and is available electronically and in hard copy.

The *Criminal Trial Courts Bench Book*, for instance, provides judges sitting in the criminal jurisdiction of the Supreme and District Courts with suggested directions for use in instructing juries.

(b) *Judicial Officers' Bulletin*

The *Judicial Officers' Bulletin* is a monthly publication written for judicial officers. It includes a digest of significant recent decisions and legislative changes and draws attention to other major developments of interest, including the dissemination of sentencing information. The Bulletin also contains court news, articles, editorial comment, and information about judicial education activities that may be available.

(c) *Judicial Review*

The Judicial Review is a collection of the best papers from the Commission's conference and seminar programmes, as well as judicial education seminars delivered further afield. It is published twice a year.

iv) *Computer Training*

The Judicial Commission has been involved in computer training of judicial officers for the past 20 years. The computer training courses are intended to facilitate effective use of computers in the context of the court system, and to enhance the efficiency of judicial officers by enabling them to gain quick and easy access to information stored in electronic form. It also aims to reduce the time spent on judicial research by enabling access to on-line legal databases such as the Commission's Judicial Information Research System.

To assist judicial officers with problem solving in relation to their computers the Commission also provides a Help Desk telephone support service which is available six days per week between the hours of 7.00 a.m. and 9.00 p.m.

5. SENTENCING

A major function of the Commission is assisting courts to achieve consistency in approach in the sentencing of offenders. The Commission's objectives in this area are to reduce unjustified disparities in sentences imposed by the courts, to improve sentencing efficiency generally, and to reduce the number of appeals against sentences, thereby releasing valuable resources which can be redeployed to reduce court delays.

The Commission has two strategies for achieving its objectives in relation to sentencing consistency:

- * by providing judicial officers with access to the Judicial Information Research System (JIRS), which contains a computerised sentencing database developed by the Commission;
- * by undertaking and disseminating original research and statistical analysis on aspects of sentencing and other topics of assistance to sentencers.

i) Judicial Information Research System - JIRS

The JIRS is a computerised database containing legally and statistically relevant information on sentencing. It has been designed by the Commission under the guidance of experienced judicial officers. All judges and magistrates have access to the JIRS on the Commission's host computer through laptop computers.

JIRS is the first of its kind in Australia and is a world leader in the field of computerised sentencing databases. It is an extensive, interrelated and hypertext linked sentencing resource that provides discrete modules of reference material. The object of the JIRS is not to limit the sentencing discretion of each judicial officer. Its purpose is to provide judicial officers with rapid and easy access to the collective wisdom of the courts in order to assist them with their sentencing decisions.

Components of the JIRS include:

Sentencing Statistics

This component provides statistical information in the form of graphs and tables on the range and frequency of penalties imposed in recent cases of a similar nature. The judicial officer may enter specific details of the offence and the offender (age, prior record, bail status, plea, etc.) and select various displays of penalties, including fines and prison terms. Within seconds the judicial officer is able to read from the screen information on the "going rate" or "tariff" for the offence.

Case Summaries

This component contains brief facts, both objective and subjective, and sentencing outcomes of decisions of the Court of Criminal Appeal. This module makes it possible to quickly locate all cases relating to a particular offence and, from the summary, move to the full text of the judgment.

Judgments

This module contains full text sentencing decisions from the Court of Criminal Appeal and also criminal cases decided by the High Court of Australia.

Sentencing Principles and Practice

Sentencing Principles and Practice contains concise, specially prepared, commentary on sentencing principles, and key passages from judgments that distil the essence of the judge's sentencing rationale. It is a convenient way of

discovering the leading cases on sentencing and then calling up the full text of the judgment from the Court of Criminal Appeal or High Court databases. It also provides a description of the sentencing options available to the courts, as well as the form of orders which may be used in respect of these options.

Services Directory

The Services Directory component contains essential information on drug and alcohol services, periodic detention and community service options. Dedicated directories for adult and juvenile facilities, as well as other features, make this a useful resource for locating key rehabilitation facilities that may be of particular relevance to an offender facing sentencing.

Advance Notes

These are summaries of cases decided by the Court of Criminal Appeal and the High Court of Australia. Each "note" contains the main submissions of counsel and a precis of the legal principles or rulings arising from the decision.

Electronic Bench Books

This component contains on-line versions of bench books (referred to earlier). These works are hypertext linked to the case law and legislation contained in the JIRS.

Legislation

Electronic versions of all New South Wales and Commonwealth Acts and Regulations are held in this component. There is also a facility to track the progress of Bills through the New South Wales and Commonwealth Parliaments. This information is updated at least weekly.

The Judicial Information Research System is not restricted to sentencing but contains features that are applicable to the research requirements of other courts. These include:

Industrial Relations Commission

This database contains the full text of decisions and judgments of the Industrial Relations Commission, together with other information relevant to the jurisdiction.

Land and Environment Court

This database provides judges and commissioners of the court with on-line access to the decisions of the Land and Environment Court together with relevant legislation.

Publications

This component contains an on-line version of the Commission's publications.

ii) *Research*

As part of its charter to disseminate information on sentencing, the Commission undertakes original research on aspects of sentencing. The results are published as a series of monographs which are distributed to all judicial officers and other interested persons.

The Commission also publishes a serial publication, entitled *Sentencing Trends and Issues*. This publication analyses various aspects of New South Wales sentencing statistics and sentencing issues.

6. FUTURE INITIATIVES FOR THE COMMISSION

Over the next few years the Commission will continue to focus on the provision of high quality and relevant programmes to assist judicial officers to undertake their professional responsibilities. The emphasis will be on the provision of timely and practical information whether through publications, conferences and seminars or the computerised JIRS containing sentencing and other information.

In particular, the Commission will offer extensive conference and seminar programmes for judicial officers in each court, ranging from induction courses for new appointees to specialist conferences on specific aspects of law, procedure, judicial skills and technique. The Commission will also continue its initiatives to ensure that New South Wales judicial officers are aware of social context issues involving children, women, sexual offences, domestic violence and ethnic minorities.

The seminars will be organised on a regular basis to keep judicial officers up to date with current developments and emerging trends. Seminar topics will include areas identified as needing review or rapid and major changes in the law. There will also be an Annual Conference for each court and seminars on topics of interest to all courts.

The strategies earlier mentioned, which are designed to achieve consistency in approach to sentencing, will be pursued, including further development of JIRS and undertaking original research into topics of assistance to sentencers.