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Enduring values and evolving services: 30 years of the Judicial Commission

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The Judicial Commission marked 30 years of operations on 14 October 2017. We identify the core values of the Commission's programs, the changing face of services over three decades, and how our programs may look in the future as new technologies are harnessed and programs refreshed.

Introduction

Thirty years ago, the new Judicial Commission used the technology of the day to produce the *Judicial Officers' Bulletin* and a bench book for magistrates on a photocopier. Ninety-five per cent of the 220 judicial officers in NSW were men. Detailed planning for a computerised sentencing information system had begun and the Commission confidently predicted that, once implemented, NSW courts would be at the forefront of other Australian jurisdictions in the use of information technology.¹

Three decades on, 34% of the State's 364 judicial officers are women. The Commission has a suite of online publications published using web-based technology. These attract thousands of users a month to the Judicial Information Research System (JIRS)² and the public website.³ There are

plans to add to the Commission's range of interactive digital training courses. Artificially intelligent supervised learning systems are in the development phase as are plans to provide access to a range of webinars so that judicial officers in remote and regional NSW can access education sessions.

How the Commission delivers its services has altered considerably over the years as has the diversity of judicial officers and adult education practice. What hasn't changed are the Commission's core values. These are to deliver high-quality legal information and education services to assist the courts to achieve consistency in sentencing⁴ and promote the highest standards of judicial performance and ability so that public confidence in the administration of justice in NSW is preserved.⁵

* The author thanks the Honourable Justice John Basten, her Honour Judge Penny Hock, his Honour DCM Chris O'Brien and the dedicated officers of the Judicial Commission who assisted in the preparation of this article: Ernest Schmatt PSM, Murali Sagi PSM, Una Doyle, Hugh Donnelly, Maree D'Arcy, Antonia Miller, Phillip Byrne and Lorraine Beal.

1 Judicial Commission of NSW, *Annual Report 1987–1988*, p 7.

2 There were 134,467 average page hits a month in 2016–17. There has been an 18% increase in the use of the Judicial Information Research System (JIRS) in the last 5 years.

3 There were 28,041 average page hits a month in 2016–17 to the bench books. There has been a 22% increase in website traffic in the last 5 years.

4 The Commission's educational and sentencing functions are set out in Pt 4 of the *Judicial Officers Act 1986*.

5 The Commission's complaints function is set out in Pt 6 of the *Judicial Officers Act*.

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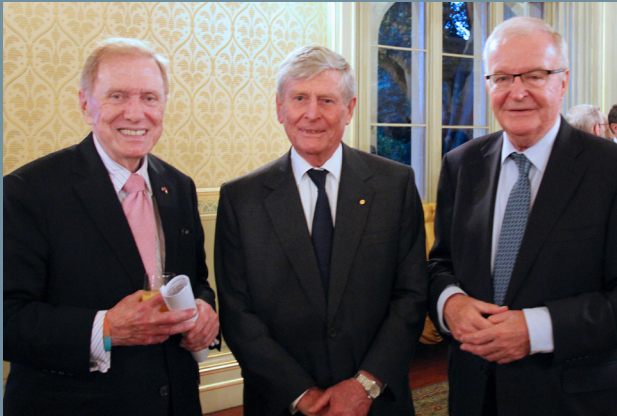
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The Commission celebrated 30 years of operations at Government House on 11 October 2017. Distinguished guests included (l to r) the Honourable Michael Kirby AC CMG; the Honourable Murray Gleeson AC QC, former President of the Commission; and the Honourable TF Bathurst AC, current Chief Justice of NSW, President of the Judicial Commission and the host of the reception in his capacity as Lieutenant-Governor of NSW.



Pictured (l to r) are Mr Ernest Schmatt PSM, Chief Executive, Judicial Commission of NSW; Mrs Judith Preston; Justice Terry Sheahan AO, the Attorney General of NSW 1984–1986 who announced the plan for a Judicial Commission in September 1986; Mr Murali Sagi PSM, Deputy Chief Executive, Judicial Commission.



Mr Hugh Donnelly, the Commission's Director, Research and Sentencing, 2007–October 2017 (l) is pictured with the Honourable David Jackson AM QC a former member of the Judicial Commission. Mr Donnelly was appointed a magistrate of the Local Court in October 2017.

A core value: maintaining public confidence

In September 2017, 30-year old declassified files from a 1986 Parliamentary Commission of Inquiry into allegations of misconduct⁶ against the late High Court Justice Lionel Murphy were made public. The Murphy controversy, which shook the Australian legal world “to its foundations”⁷ was re-ventilated in 2017 on the front pages of daily newspapers and the online media for several days. The scandal, culminating in Justice Murphy’s prosecution for attempting to pervert the course of justice,⁸ was one catalyst for then Attorney General the Honourable Terry Sheahan’s announcement in 1986 for a judicial commission. Other drivers were the conviction of a former Chief Magistrate in 1985,⁹ proceedings against a District Court judge in the same year,¹⁰ concerns about “judge shopping” and lengthy delays in sentencing.¹¹

The *Vinson report*,¹² published in 1986 under the auspices of the Criminology Research Council, identified concerns of unjustified leniency and discrepancies in sentencing in the District Court. The research had originally aimed to examine connections between robbery offences and the drug trade but found disparities in sentencing for indictable drug offences heard for Sydney-based offenders in the District Court. The report also found that the “combination of one judge with one solicitor” was associated with a number of statistical anomalies.¹³

- 6 The Parliamentary Commission of Inquiry was established to inquire into and advise Parliament whether any conduct of Justice Lionel Murphy amounted to proved misbehaviour or incapacity within the meaning of s 72 of the Constitution (Cth), the only grounds on which a judicial officer may be removed from office following an address of both Houses of Parliament. The Commission of Inquiry was wound up in August 1986.
- 7 R Sackville, “Judicial ethics and judicial misbehaviour: two sides of the one coin?” (2015) 89 *ALJ* 244 at 245.
- 8 Justice Murphy was acquitted of one charge in 1985 and acquitted of a second charge at a retrial in 1986.
- 9 A jury convicted Murray Farquhar of attempting to pervert the course of justice by attempting to influence a magistrate not to commit for trial Kevin Humphreys for fraud. Farquhar was sentenced to four years imprisonment. His conviction and severity appeal were dismissed: *R v Farquhar* (unrep, NSWCCA, 29 May 1985). He served one year of the four-year prison sentence.
- 10 District Court Judge John Foord was acquitted on two charges of attempting to pervert the course of justice in 1985.
- 11 Recorded in the Hansard and press reports of the day: see for example, G Peacocke, *Hansard*, Legislative Assembly, 1 October 1986, p 4377; J Waterford, “Reputations of the actors diminished by disputes”, *The Sydney Morning Herald*, 9 October 1986.
- 12 T Vinson et al, “Accountability and the legal system: drug cases terminating in the District Court 1980–1982”, Report to the Criminology Research Council, 8 September 1986.
- 13 Vinson et al, *ibid*, p 22. The judge was later named as Judge Foord: G Griffith, “Removal of judicial officers: an update”, NSW Parliamentary Library Research Service e-brief, April 2012, p 4.

Professor Vinson and his co-authors concluded that the legal response to serious drug offences in NSW was “muddled”¹⁴ and there were “intolerable inconsistencies” in sentencing.¹⁵

The report made several recommendations to improve accountability including that an independent agency collect and analyse sentencing data and focus on fairness and consistency in sentencing.¹⁶

Independent commissions for judicial accountability had been part of the North American justice system since 1960 when the State of California Commission on Judicial Performance was established. Attorney General Sheahan examined judicial accountability organisations in the United States and was impressed by the California Commission which he proposed as a model for the complaints function of the NSW Judicial Commission.¹⁷

The idea of a judicial commission was not new. In 1977, Sir Garfield Barwick, then Chief Justice of Australia, had called for judicial commissions to have an advisory role as to judicial appointments in all Australian jurisdictions.¹⁸ In 1980, the Honourable Justice John Basten, then an academic, had proposed a body to have a role in the judicial selection process, to provide new appointees with judicial training and to review complaints.¹⁹ The Honourable Michael Kirby AC CMG was another early advocate for formalised judicial education in his 1983 Boyer lectures on ABC Radio National.²⁰

In September 1986, the NSW Government responded to public concerns about the administration of justice with the “revolutionary” announcement for a Judicial Commission to combine an avenue for complaints²¹ with education²² and sentencing functions.²³

The other objective of the reforms was to finalise the transition of the NSW magistracy into the judicial arm of government, thus making magistrates fully independent of the executive. This process had commenced with the *Local Courts Act* 1982 which abolished the Courts of Petty Sessions from 1 January 1985. The *Judicial Officers Act* finalised the transition by defining a “judicial officer” to include a magistrate. Prior to these reforms magistrates were State public servants. This was seen as inconsistent with the rights of citizens, declared by numerous international instruments, to have an independent judiciary decide their civil and criminal cases.²⁴

Then Chief Justice Sir Laurence Street AC KCMG QC and Supreme Court judges saw the plan as an attack on judicial independence. A stridently worded statement objecting to the announcement and signed by Sir Laurence Street was issued and tabled in Parliament.²⁵ The controversy was resolved with amendments to the *Judicial Officers’ Bill* reinstating Parliament’s role in the removal of a judicial officer.²⁶ Further amendments made to the *Judicial Officers Act* 1986 guaranteed an independent Commission which commenced operations on 14 October 1987.²⁷

Independence and accountability: two sides of the one coin

After its first decade, Chief Justice Murray Gleeson AC observed that the Commission’s commitment to quality educational services and sophisticated sentencing information meant that initial judicial reluctance turned to widespread enthusiasm for the Commission.²⁸ Chief Executive of the Commission, Mr Ernest Schmatt PSM,²⁹ attributes judicial acceptance of the complaints function to the provision of quality legal information and education services.³⁰

14 Vinson et al, *ibid*, p 28.

15 *ibid*, p 30.

16 *ibid*, p 29. The recommendations were for the establishment of a Probity Council and a Sentencing Council, and for the functions of the Bureau of Crime Statistics and Research, established in 1969, to be enhanced.

17 Statement of the Hon T Sheahan, *Hansard*, Legislative Council, 22 October 1986, p 5149.

18 G Barwick, “The state of the Australian judicature” (1977) 51 *ALJ* 480 at 494.

19 J Basten, “Judicial accountability: a proposal for a Judicial Commission” (1980) 52 *Australian Quarterly* 468. The Honourable Justice Basten is the chair of the Judicial Commission of NSW Supreme Court Education Committee.

20 M Kirby, “The Judges”, *The Boyer Lectures*, ABC Radio National, 1983.

21 The Commission’s complaints function is set out in Pt 6 of the *Judicial Officers Act* 1986. Section 15(1) provides that: “Any person may complain to the Commission about a matter that concerns or may concern the ability or behaviour of a judicial officer”.

22 Section 9(1) provides that: “The Commission may organise and supervise an appropriate scheme for the continuing education and training of judicial officers”.

23 Section 8(1) provides that: “The Commission may, for the purpose of assisting courts to achieve consistency in imposing sentences ... monitor or assist in monitoring sentences imposed by courts, and disseminate information and reports on sentences imposed by courts.”

24 A Gleeson, “Reflections on the role of the Judicial Commission of NSW” (2008) 20 *JOB* 63 at 65.

25 *Hansard*, Legislative Council, 22 October 1986, p 5145; K Lumley, “From controversy to credibility: 20 years of the Judicial Commission of NSW” (2007) 19 *JOB* 74 at 74–75.

26 The original Bill would have allowed a Conduct Division to recommend to the Governor the removal of a judicial officer on the grounds of proved misbehaviour or incapacity without the requirement for an address of both Houses of Parliament, the process required for the removal of superior court judges since the *Act of Settlement* 1701 and stipulated in s 53 of the *Constitution Act* 1902 (NSW).

27 The *Judicial Officers Act* 1986, commencing on 19 December 1986, was amended on 1 May 1987 by the *Judicial Officers (Amendment) Act* 1987 to establish the Commission as an independent statutory corporation.

28 A Gleeson, “The future of judicial education” (1999) 11(1) *JOB* 1 at p 2; Senate Legal and Constitutional Affairs References Committee, *Australia’s judicial system and the role of judges*, 2009 at [7.9]–[7.27].

29 Mr Ernest Schmatt PSM was appointed Deputy Chief Executive in October 1987 and Chief Executive in March 1989.

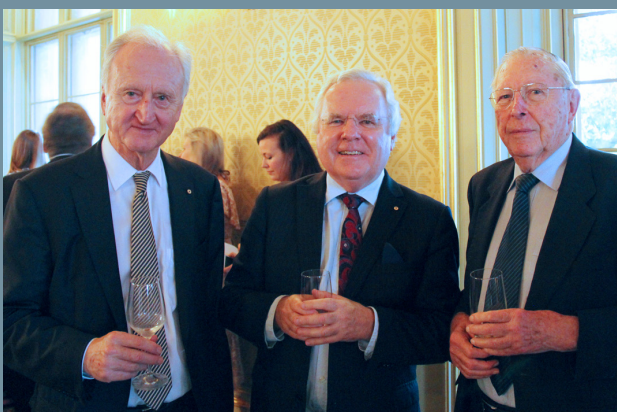
30 Interview with Chief Executive Mr Ernest Schmatt PSM, 16 October 2017.



Pictured (l to r) are the Honourable Justice Lucy McCallum, Chair of the Ngara Yura Committee; Ms Una Doyle Director, Education, Judicial Commission; Ms Roslyn Cook, Editor, Publishing, Judicial Commission; and the Honourable Justice François Kunc, a member of the Commission's Civil Trials Bench Book Committee.



Ms Margaret Hole AM (l) was a member of the Judicial Commission 2006–2009. Ms Cheryl Condon, Executive Assistant, was one of the original officers appointed when the Commission commenced operations in October 1987.



The Honourable Reg Blanch AM QC (l) was Chief Judge of the District Court and member of the Commission 1994–2014. Justice Terry Sheahan AO, Land and Environment Court (centre). The Honourable Michael Campbell QC (r) was Chief Judge of the Compensation Court of NSW (1994–2002) and a Justice of the Supreme Court of NSW. Mr Campbell is currently Chair of the Commission's Civil Trials Bench Book committee.

The public expects high standards from judicial officers who are “entrusted, day after day, with the exercise of considerable power”³¹ to adjudicate disputes, to decide criminal prosecutions and sentence people and corporations convicted of an offence, to case manage without unreasonable delay or expense to parties, and to communicate reasons for judgment.³² It is axiomatic to the rule of law that no one is beyond the judgment of the law.³³ A judicial officer therefore holds office “during good behaviour”.³⁴ While the *Judicial Officers Act* does not articulate what “good” judicial behaviour is, a judicial officer can only be removed from office on the ground of “proved misbehaviour or incapacity” after a report from the Conduct Division (see s 41(1) of the *Judicial Officers Act*).³⁵ The twin aims of the Commission's programs then are to promote the highest standards of judicial behaviour and to foster judicial capacity.³⁶

Justice Basten, Chair of the Judicial Commission of NSW Supreme Court Education Committee, observes that questions of independence and accountability apply to the Commission's education, sentencing and complaints functions which are directed to improving competence and performance.³⁷ Beyond objectives personal to judicial officers and collectively to the courts, the Commission's work aims to ensure judicial independence and accountability, improve the quality of justice, and preserve public confidence in the administration of justice.³⁸

- 31 J Thomas, *Judicial ethics in Australia*, 3rd edn, LexisNexis Butterworths, 2009, p 8.
- 32 For a summary of the judicial role see R French, “Judicial education: a global phenomenon” presentation to the Fourth International Conference on the Training of the Judiciary, 26 October 2009, Sydney, pp 1–4.
- 33 A constitutional principle settled with the execution of Charles I of England, in 1649.
- 34 Derived from the *Act of Settlement* 1701 (UK).
- 35 Section 53(2) of the *Constitution Act* 1902 (NSW). Establishing proven misbehaviour or incapacity is the work of the Conduct Division of the Judicial Commission, which must form an opinion that a complaint could justify Parliamentary consideration of the judicial officer's removal (s 15(3) of the *Judicial Officers Act*). If Parliamentary consideration is justified, the following steps are followed: the Conduct Division must present a report to the Governor setting out its findings of fact and its opinion; the Attorney General must table the report before both Houses of Parliament; the judicial officer concerned may be invited to address Parliament to show cause why Parliament should not request the Governor to remove the judicial officer from office; Parliament considers and votes on whether the conduct justifies removal.
- 36 J Allsop, “Continuing judicial education: the Australian experience” (2012) 10 *TJR* 439 at 444.
- 37 Interview with Justice Basten, 11 October 2017.
- 38 Allsop, above n 36, at 439–440; J Spigelman, “President's foreword”, Judicial Commission of NSW, *Annual Report 2009–10*, p 6.

Demonstrating whether the Commission meets the ultimate objective to improve the quality of justice and maintain public confidence is not a straightforward metric, although one of fundamental importance as confidence in the justice system establishes its legitimacy and acceptance.³⁹

The Commission can point to the small number of complaints made each year relative to the number of judicial officers and high volume of litigation as one exemplar of continuous high judicial standards.⁴⁰ Another indicator is the high yearly summary dismissal rate of complaints against judicial officers. The 30-year average rate is 87%.⁴¹ In the Commission's 30-year history, 21 Conduct Divisions have been formed. The Conduct Division has presented a report on five occasions that it has formed the opinion that a complaint could justify Parliamentary consideration of a judicial officer's removal. On two occasions, the judicial officers resigned after the report was tabled. Three judicial officers have been given leave to address Parliament to show cause as to why they should not be removed from office under s 53 of the *Constitution Act 1902* (NSW).⁴² In each case, the NSW Parliament voted against the motion to remove the judicial officer from office.⁴³

In 2011, the editor of the *Australian Law Journal* similarly noted that the small number of complaints from year to year compared to the number of judicial officers and the high volume of litigation indicates the high standard of judicial conduct in NSW and the community's willingness to accept decisions if they are made in accordance with the due process of the law.⁴⁴ President of the Commission, Chief Justice Tom Bathurst AC, observes that the Commission is "[a]n invaluable institution for the maintenance of public confidence in the NSW judiciary".⁴⁵

In 2015, Acting Justice Ronald Sackville commented extra-judicially that "over the three decades of its existence the Judicial Commission has gained widespread acceptance as an effective body for receiving and resolving complaints against judicial officers, without impinging on the independence of the judiciary".⁴⁶ Other Australian jurisdictions have sought to emulate the complaints model. Victoria introduced legislation to establish a judicial commission in 2016⁴⁷ and the ACT a judicial council in 2017.⁴⁸ Both are largely based on the NSW process. Interestingly, no other Australian jurisdiction combines the complaints and education functions, a feature unique to the Judicial Commission of NSW and probably one that explains its early acceptance.⁴⁹

That judicial officers accepted the complaints process early in the Commission's history is testament to their confidence in its independence. The manner in which complaints about judicial officers have been dealt with over many years has appeased the original concerns from judges and has balanced the "inevitable tension" between the requirements of judicial independence and the mechanism for dealing with judicial misconduct.⁵⁰

Promoting a consistent approach to sentencing

Judges have often publicly acknowledged the complex challenges of the sentencing task and inevitable accompanying community opinion.⁵¹ Public opinion is usually fuelled by the perception that sentences are too lenient. This is a worldwide phenomenon.⁵² Three decades ago, allegations aired in Hansard and the

39 M Hough and J Roberts, "Confidence in justice: an international review", *ICPR Research Paper No 3*, The Institute for Criminal Policy Research, School of Law, King's College, 2004.

40 For example in 2015–16, 44 complaints were made about 38 of the 352 judicial officers (11%) in NSW who heard more than 700,000 matters. In 2016–17, 75 complaints were made about 57 of the 364 judicial officers (16%) who heard over 700,000 matters. Source: Judicial Commission data.

41 Judicial Commission data published in its Annual Reports, at <http://judcom.nsw.gov.au/category/publications/annual-reports>, accessed 14 November 2017.

42 Justice Bruce appeared before the Bar of the Legislative Council on 16 June 1998 to deliver an address in relation to the Conduct Division report. Magistrate Betts appeared before the Bar of the Legislative Council on 15 June 2011. Magistrate Maloney appeared before the Bar of the Legislative Council on 21 June 2011.

43 In all three cases, the procedure adopted was to move a motion in the Legislative Council that:

(a) an address be adopted and presented to the Governor seeking the removal of a judicial officer under s 53 of the *Constitution Act 1902* (NSW); and

(b) that a message be sent to the Legislative Assembly requesting that they adopt an address in similar terms.

As the motion was resolved in the negative, no message was sent to the Legislative Assembly. A more detailed account can be found in G Griffith, "Removal of judicial officers: an update", NSW Parliamentary Library Research Service e-brief, April 2012.

44 P Young, "Current issues" (2011) 85 *ALJ* 131, citing the Judicial Commission of NSW, *Annual Report 2010–2011*.

45 T Bathurst, "President's foreword", Judicial Commission of NSW, *Annual Report 2015–16*, p 14. Chief Justice Bathurst has been the President of the Judicial Commission since 1 June 2011.

46 R Sackville, "Judicial ethics and judicial misbehaviour: two sides of the one coin?" (2015) 89 *ALJ* 244 at 247.

47 The *Judicial Commission of Victoria Act 2016* (Vic), which commenced on 1 July 2017.

48 Established under the *Judicial Commissions Act 1994* (ACT) as amended by the *Judicial Commissions Amendment Act 2015* (ACT), which commenced on 1 February 2017. The amending Act introduced provisions into the *Judicial Commissions Act* for the establishment and administration of a Judicial Council in Pt 2A.

49 J Spigelman, "Dealing with judicial misconduct" (2003) 6(3) *TJR* 241 at 248–249.

50 *ibid*, pp 242, 294.

51 See for example, remarks of the Chief Justice of Victoria, the Honourable Marilyn Warren AC, in her retirement speech. Her Honour observed, at p 4: "I have found sentencing the hardest part of the job, trying to reach the correct sentence for the circumstances" and that "Nearly everyone has an opinion": at www.supremecourt.vic.gov.au, accessed 28 September 2017.

52 See for example, F Cullen, B Fisher and B Applegate, "Public opinion about punishment and corrections" in M Tonry (ed), *Crime and justice: a review of the research*, Vol 27, University of Chicago Press, 2000.



His Honour Deputy Chief Magistrate Chris O'Brien (r) is Chair of the Local Court Education Committee. Her Honour Deputy Chief Magistrate Jane Mottley (centre) is Chair of the Local Court Bench Book Committee. His Honour Michael Barnes (l) is the State Coroner.



Pictured l-r are his Honour Judge Peter Johnstone, President of the Children's Court; Mr Phillip Byrne, a legal editor in the Commission's Publishing Division; Ms Penelope Howson, a Coordinator, Programs at the Commission; the Honourable Justice Cliff Hoebein, a former member of the Commission's Civil Trials Bench Book committee and the Honourable Acting Justice Arthur Emmett AO.



Pictured are officers of the Commission at the Government House reception on 11 October 2017 (l to r) Antonia Miller, Alexandra Brien, Pierrette Mizzi, Peter Zivkovic, Brandi Baylock, Stephen Cumines, Amanda Jamieson, Amelia Loughland, and Jenny Zhang.

media⁵³ of disparity and unduly lenient sentencing in the District Court helped harden the NSW Government's resolve to establish the Judicial Commission. Consistency in approach to sentencing is a means to safeguard against the arbitrary exercise of power and ensure the fair and equal treatment of those convicted of an offence, with like cases treated in like manner.⁵⁴ The High Court has held that consistent punishment is integral to preserving public confidence in the administration of justice.⁵⁵ The Commission's statutory remit since its inception remains the same: to assist the courts to achieve consistency in imposing sentences.⁵⁶ Consistency is to be achieved by having regard to both what has been done in other cases and why it was done, and by the work of the intermediate courts of appeal.⁵⁷ While information about sentences passed in other cases does not fix boundaries which future courts must follow, it can provide guidance, and stand as a yardstick against which to examine a proposed sentence.⁵⁸ Statistics can be a valuable tool "if properly understood and used appropriately".⁵⁹

In line with these observations, the Commission has enhanced sentencing statistics for higher courts on JIRS so that users can access the reasons why a particular sentence was imposed. This is achieved via a link to the judgment and, often, a summary of the judgment and the offence and offender's characteristics. Chair of the Judicial Commission District Court Education Committee, Judge Penny Hock, comments that the sentencing statistics are helpful as judges can look at the range and enter the specific variables.⁶⁰ Justice Basten observes that refinements made to JIRS statistics have clarified their limitations and utility.⁶¹

Whether the Commission's sentencing information helps to achieve the ultimate objective of maintaining public confidence in the administration of justice is no

53 See for example, *Hansard*, Legislative Assembly, 14 October 1986, pp 4377–4636; J Waterford, "Reputations of the actors diminished by disputes", *The Sydney Morning Herald*, 9 October 1986; P Clark, "How government and judiciary came into conflict", *The Sydney Morning Herald*, 19 September 1986.

54 *Wong v The Queen* (2001) 207 CLR 584 per Gleeson CJ at [6]. Treating like cases in a like manner is an expression of the Aristotelian notion of formal equality.

55 For example, *Lowe v The Queen* (1984) 154 CLR 606 per Mason J at 610–611.

56 *Judicial Officers Act* 1986, s 8.

57 *Hili v The Queen* (2010) 242 CLR 520 at [18].

58 *ibid* at [54], referring with approval to the observations of Simpson J in *DPP(Cth) v De La Rosa* (2010) 79 NSWLR 1 at [303].

59 *Why v R* [2017] NSWCCA 101 per RA Hulme J at [64]. The "Explaining the statistics" document (found at the top of the Statistics page on JIRS) is an aid to understanding the counting methods and the variables that may be selected.

60 Judge Penny Hock, memorandum, 19 September 2017.

61 Interview with Justice Basten, 11 October 2017.

easy question to answer as many variables influence public confidence in sentencing. A 2008 survey⁶² into attitudes about levels of sentencing and whether the criminal justice system in NSW met its aims found that respondents who were better informed about criminal justice and the sentencing process had more confidence in the system.⁶³ One response to this finding is to point to the suite of sentencing information the Commission has made available to the public on its website through the 2000s, including the *Sentencing Bench Book* and *Sentencing Trends and Issues* series which monitor and analyse various aspects of NSW sentencing practice. The Commission's community engagement work, discussed below, is another answer to the need to better inform the public about the complex task of sentencing.

A constant task: refining jury directions in the Criminal Trial Courts Bench Book

Beyond providing sentencing information, the Commission constantly responds to criminal law changes as part of its educative function. The *Criminal Trial Courts Bench Book*, first published in 1989, is regularly updated to reflect changes to the criminal law under the oversight of a committee of judges.⁶⁴ The bench book assists in the administration of justice by reducing the possibility of legal error occurring in criminal trials. The suggested directions avoid technical language and suggest how a trial judge might explain the law to the jury and be alert to the potential for error. Mr Hugh Donnelly, Director, Research and Sentencing,⁶⁵ says that "the best system from an educative perspective, is one which identifies avoidable errors".

Two examples of how the bench book has responded promptly to legal change are the revised directions for extreme provocation and for tendency, coincidence and background evidence.

Community concerns following a husband's conviction for manslaughter instead of the murder of his wife⁶⁶ when he was allegedly provoked by her infidelity, led to a NSW government inquiry into whether the partial defence of provocation should be abolished.⁶⁷ Chief Executive

Mr Ernest Schmatt PSM and Mr Hugh Donnelly provided information to the inquiry which unanimously recommended retaining but significantly restricting the partial defence "to ensure that it could not be used in cases where the provocation claimed was infidelity, leaving a relationship or a non-violent sexual advance".⁶⁸ The bench book was amended to include a direction regarding extreme provocation to reflect the revised law.⁶⁹

A particularly complex area of law has been the admissibility of tendency, coincidence and context evidence in sexual assault trials. The Royal Commission into Institutional Responses to Child Abuse observed that this area has troubled the courts for many years⁷⁰ and has recommended legislative reform in cases of child sexual abuse.⁷¹ Directions and commentary in the bench book have been revised multiple times to reflect the current state of the law and provide guidance for judges in determining questions as to admissibility and jury use of this evidence.⁷²

Providing online legal information: the role of JIRS in the criminal justice system

Justice Basten describes JIRS as one of the Commission's success stories.⁷³ JIRS is an online support system that provides hyperlinked modules of reference material designed to support discretionary judicial decision making, including sentencing. Over three decades, JIRS has become firmly entrenched in the NSW criminal justice system and is unique for the range of integrated information it provides. Judge Hock observes that no other online provider of legal information, whether commercial or not-for-profit, provides the same level of information and "almost instant updating when there is a significant change to the law".⁷⁴ Deputy Chief Magistrate Chris O'Brien describes JIRS as his "go-to website" and is the source of almost all the information he requires for judicial decision-making.⁷⁵

62 C Jones, D Weatherburn and K McFarlane, "Public confidence in the New South Wales criminal justice system", *Crime and Justice Bulletin: Contemporary Issues in Crime and Justice*, No 118, NSW Bureau of Crime Statistics and Research, 2008.

63 *ibid* p 1.

64 Judicial Commission of NSW, *Criminal Trial Courts Bench Book*, 2nd ed, 2002–. The committee as in 2017 comprised the Hon Justice Johnson, the Hon Justice RA Hulme, his Honour Judge Berman, his Honour Judge Arnott, the Hon R Howie QC (chair), Mr H Donnelly (convenor until October 2017).

65 The Commission's Research and Sentencing Directors have been: Mr Don Weatherburn, 1987–1989; Mr Ivan Potas, 1989–1993 and 1997–2006; Ms Donna Spears, 1993–1997; and Mr Hugh Donnelly, 2007–2017.

66 *Singh v R* [2012] NSWSC 637.

67 NSW Legislative Council Select Committee on the Partial Defence of Provocation, June 2012. Final Report published April 2013.

68 Second Reading Speech, *Hansard*, Legislative Council, 5 March 2014, p 27034.

69 The law was revised by the *Crimes Amendment (Provocation) Act* 2014, commenced 13 June 2014. The suggested direction is at *Criminal Trial Courts Bench Book*, above n 64, at [6-442].

70 Royal Commission into Institutional Responses to Child Abuse, *Criminal Justice Report*, Executive Summary, 2017, p 66, with reference to tendency and coincidence evidence and joinder of trials.

71 *ibid*, Recommendations 44–50.

72 *Criminal Trial Courts Bench Book*, above n 64 at [4-200]ff.

73 Interview with Justice Basten, 11 October 2017.

74 Judge Hock, memorandum, 19 September 2017.

75 Interview with Deputy Chief Magistrate Chris O'Brien, 4 October 2017.

JIRS evolved from the Sentencing Information System (SIS), launched in 1990 by then Chief Justice Gleeson. With the advent of internet technology in 1993, the SIS was incorporated into JIRS and released in 1996. Those who use JIRS on a daily basis — judicial officers, their research staff and associates, government agencies and the legal profession — recognise the resource as an excellent brand. The Commission's focus on sentencing means that JIRS provides specialised tools to assist judicial officers in their most complex task. Judge Hock observes that the offence package information, where information about discrete offences is collated and linked to legislation, case law, relevant sections of the bench books, sentencing statistics, summaries and articles, is particularly helpful for new judges.⁷⁶

JIRS has been continually enhanced since 1996 in response to feedback and legal developments. Regular improvements enhance the user's experience and promote efficiency in decision-making without interfering with a judicial officer's discretion. The JIRS Resources app, launched in 2016, provides an updating content feed of recent legal developments (case law and legislation) in the NSW and Commonwealth jurisdictions. The app allows the user to manage personal copies of the electronic versions of the Commission's bench books as well as selected pieces of legislation. A new tool on JIRS, launched in September 2017, assists in the drafting of sentencing remarks. The tool guides the judicial officer through a checklist of all factors which must be considered in the sentencing task. The judicial officer can tailor the offence-specific template to include the offender's subjective and objective characteristics and produce sentencing remarks specific to the offender.

Mr Murali Sagi, Deputy Chief Executive of the Commission, who was instrumental in the development of JIRS, predicts that JIRS will continue to evolve to provide intelligent decision support and harness new technology such as data analytics, algorithms and artificial intelligence.⁷⁷ The JIRS of the future may include systems which reduce unconscious bias in decision making; provide automated interactive learning using gaming software where learners design their own learning program; and, embrace voice identification technology. JIRS will focus on providing a connected web of information and be readily accessed on the "internet of things" of the future.

The changing face of judicial education

Only six years after its establishment, Professor Sallmann described the Judicial Commission as the "Rolls Royce of judicial education bodies in Australia".⁷⁸ Chief Justice Gleeson echoed this on the eve of his retirement from the High Court when he described the Commission as "the leading Australian institution in this field ... [which has] won substantial international recognition and acclaim".⁷⁹ In 2010, Federal Court Justice Steven Rares acknowledged the "outstanding work" of the Commission and described the Commission as "a world leader" in the field of judicial education.⁸⁰ Internal evaluations show that judicial officers are consistently satisfied with their education program, with an average satisfaction rate of 90% between 1995–2017. The average satisfaction rate for the past five years is 91.4%.⁸¹

The stated objective of the Commission's education policy has long been to develop and enhance the expertise and skills of judicial officers and promote juristic excellence.⁸² A highly-skilled judiciary is of course initially dependent on the judicial selection and appointment process. Beyond the appointment process, it has been recognised that "[t]he times are long gone when persons appointed to judicial office in the common law world were thought to ascend to the Bench on the date of their appointment, fully equipped with all the knowledge and skills necessary to the judicial task".⁸³ The Commission's education policy, settled in 1991, was last revised in 2010 to incorporate the national standard for judicial officers to spend at least five days a year in professional development activities.⁸⁴ Deputy Chief Magistrate O'Brien believes that five days is sufficient and notes that many judicial officers take up more than this through other education providers.⁸⁵ Ms Una Doyle, the Commission's Director, Education agrees this is sufficient but comments that for jurisdictions with heavy workloads, the challenge is for judicial officers to be free to attend education sessions.⁸⁶

Enduring features of the Commission's education program are that it is judge-led and judicial officers shape the curricula. Learning is peer-based. This ensures the relevance, independence and acceptance of the program.⁸⁷

⁷⁶ Above n 74.

⁷⁷ Interview with Mr Murali Sagi, 20 September 2017.

⁷⁸ P Sallmann, "Comparative judicial education in a nutshell: a cursory exposition" (1993) 12 *JJA* 245 at 253.

⁷⁹ M Gleeson, "Reflections on the role of the Judicial Commission of NSW" (2008) 20 *JOB* 63.

⁸⁰ S Rares, "What is a quality judiciary?", Address to the Asia-Pacific Courts Conference, 4–6 October 2010, Singapore; published in (2011) 20 *JJA* 133.

⁸¹ Based on Judicial Commission evaluation data measured since 1995.

⁸² Judicial Commission of NSW, *Annual Report 1990–1992*, p 12.

⁸³ R French, "Judicial education – a global phenomenon", presentation to the Fourth International Conference on the Training of the Judiciary, 26 October 2009, Sydney.

⁸⁴ The standard, promulgated by the National Judicial College of Australia in 2006 and revised in 2010, has been endorsed by the Council of Chief Justices of Australia and New Zealand, Chief Magistrates, the Judicial Conference of Australia, the Association of Australian Magistrates, and other judicial education bodies in Australia.

⁸⁵ These include the National Judicial College of Australia, founded in 2002, and the Australasian Institute for Judicial Administration, founded in 1987.

⁸⁶ Interview with Ms Una Doyle, 14 September 2017.

⁸⁷ Above n 27.

Chief Executive Ernest Schmatt reflects that one of the most important decisions taken by the Commission at its inception was to establish committees of judicial officers in each of the courts to provide expert assistance with its activities.⁸⁸ The education committees work closely with the Director, Education to design content for the year. A Standing Advisory Committee⁸⁹ meets to review the education program and advise the Commission. Commission staff organise the delivery of the program throughout the year. Justice Basten and Deputy Chief Magistrate O'Brien agree that this committee process provides a valuable independent review of a highly successful judicial education program.⁹⁰

The learning palette for education sessions is broad. Judicial officers are informed about legislative and common law changes; practice and procedure; social, cultural and environmental issues including gender awareness and Aboriginal cultural awareness; developments in science and technology; the art and craft of judging and judgment writing and communication skills. Orientation for newly appointed judicial officers is also offered.

Other factors which shape the content of sessions may be suggested by members of the Judicial Commission, heads of jurisdiction and influential bodies such as the Council of Chief Justices of Australia and New Zealand. Cultural diversity has been a particular focus of the Council in recent years.⁹¹ The Council established the Judicial Council on Cultural Diversity (JCCD) in 2014 which initiated a number of projects including an online cultural diversity training program.⁹² The Judicial Commission and other judicial education bodies agreed to produce the training program which was finalised in July 2017.⁹³ Complaints made during the year also inform the design of education sessions. The Commission monitors trends in complaints and heads of jurisdiction may raise areas of concern.

Judicial officers and invited experts deliver seminars and conference presentations and assist Commission staff to write bench books. Ms Una Doyle comments that the program's credibility and acceptance is dependent on the blend of peer-based course design and delivery and expert input.⁹⁴ Judge Hock notes that experts' seminars are always very well attended and evaluations positive.⁹⁵

New drivers for the education program

An adult education professional has always led the Commission's education program, most recently Ms Una Doyle, appointed in December 2015.⁹⁶ The Director works with each education committee, established by the Commission for each court, and the Standing Advisory Committee to shape the curricula and advise the committees of trends and practices in adult education.

Since inception, the Commission's education program has offered a menu of traditional lecture-based conferences and seminars, together with more participatory skills workshops and an orientation program for magistrates. Since 2008, there has been a focus on experiential learning and bespoke programs.⁹⁷ Experiential learning holds that learners are active generators of knowledge rather than passive recipients. This reflects adult education pedagogy, articulated in the work of North American educational theorist Mr David Kolb who has greatly influenced the Canadian approach to judicial education.⁹⁸ The metropolitan seminar series and magistrates' orientation programs have incorporated an experiential learning approach where magistrates are guides and facilitators for their peers. Deputy Chief Magistrate O'Brien describes the metropolitan series as extremely valuable, covering the "bread and butter" issues for magistrates.⁹⁹

Tailored or bespoke programs are more resource intensive, but take account of an adult's unique learning styles. Courses are designed for the specific needs of the individual or group. Ms Doyle predicts that in future, learners will be able to design their own course, taking already prepared modules, and work at their own pace using the technology of choice. The national online cultural diversity training program¹⁰⁰ illustrates self-paced learning. The training program offers online modules for a judicial officer to complete at their own pace by way of an e-platform. Future iterations of this program will allow users even greater flexibility, offering a more bespoke approach.

88 Chief Executive Mr Ernest Schmatt, Address at a Reception for the 30th Anniversary of the Judicial Commission, Government House, Sydney, 11 October 2017.

89 The 2017 members of the Standing Advisory Committee are The Hon Justice Basten (Chair); the Hon Justice Nicola Pain; his Honour Judge Paul Lakatos SC; his Honour DCM Chris O'Brien and Chief Commissioner Peter Kite SC.

90 Interview with Justice Basten, 11 October 2017; interview with Deputy Chief Magistrate O'Brien, 4 October 2017.

91 R French, "The state of the Australian judicature" (2017) 13 *TJR* 153 at 158; T Bathurst, "Doing right by 'all manner of people': building a more inclusive legal system" (2017) 13 *TJR* 277 at 279–281.

92 W Martin, "Introducing the national online cultural diversity training program" (2017) 29 *JOB* 39. The Commission is represented on the Judicial Council on Cultural Diversity through its Chief Executive, Mr Ernest Schmatt PSM.

93 The program is available at <http://jccd.org.au/resources/>, accessed 18 October 2017. Sources for the program were the Judicial Commission's *Equality Before the Law Bench Book* (2006–) and a cultural competence e-learning online project for Family Court of Australia registrars and court staff.

94 Interview with Ms Una Doyle, 14 September 2017.

95 Judge Hock, memorandum, 19 September 2017.

96 The Commission's Education Directors have been: Ms Anne Riches, 1987–1991; Mr Livingston Armytage, 1991–1996; Ms Ruth Windeler, 1996–2015; and Ms Una Doyle, 2015–.

97 Judicial Education Policy, Appendix 3, Judicial Commission of NSW, *Annual Report 2015–16*, p 129.

98 T Dawson, "Lessons learned for experiential, skills-based judicial education" (2008) 20 *JOB* 47.

99 Interview with Deputy Chief Magistrate O'Brien, 4 October 2017.

100 See above n 92.

The Commission has always been at the forefront of computer technology with the development of the SIS and JIRS. The diversity of platforms on which to access education courses and information has broadened with the rise of web-based technology. The provision of iPads™ to magistrates in 2012 was a seismic shift for the Commission's publications program with bench books delivered to magistrates electronically. Deputy Chief Magistrate O'Brien believes that iPads™ have promoted efficiency with "everything you need on a day-to-day basis for the Bench" available on a tablet device. There remains a preference for print-based information among some judicial officers so the Commission has continued to provide a mix of printed and digital publications. Recently-appointed judicial officers are familiar with and expect to use tablets and mobile devices. Una Doyle predicts that digital technology will never entirely replace the "classroom" but will increasingly supplement traditional learning methods.¹⁰¹

Another driver for the Commission's program is collaboration with international and national education organisations. The Commission benchmarks with international best practice and actively engages with the International Organization for Judicial Training (IOJT),¹⁰² the Association for Continuing Legal Education¹⁰³ and the Asia Pacific Judicial Educators Group and the Commonwealth Judicial Education Institute. The IOJT is composed of 129 judicial training institutions from 79 countries. Chief Executive Ernest Schmatt PSM is an elected member of the Board of Executives of the IOJT, a position he has held since 2009 and the Commonwealth Judicial Education Institute Advisory Board since 1994.

In 2009, then Chief Justice French commented that it was "in a sense regrettable that in a country with ... a relatively small body of judicial officers who form part of a national ... integrated judicial system, there is a diversity of bodies delivering judicial programs".¹⁰⁴ This echoed former Chief Justice Gleeson's 1999 call for the coordination of provision of judicial education in Australia so that best use could be made of financial and human resources.¹⁰⁵ Institutional diversity in

Australia is likely to continue, primarily as an incident, although not a necessary incident,¹⁰⁶ of federation. However, collaboration between the Commission and other judicial education bodies regularly occurs. Each year, the Commission assists with the delivery of the National Judicial College of Australia's National Judicial Orientation Program (NJOP), a program that has been offered for new judicial appointees since 2005. The NJOP was originally developed by the Judicial Commission and the Australasian Institute for Judicial Administration and conducted 1994–2004. The Commission is also a member of the Australian and New Zealand Judicial Educators Group which meets several times a year to exchange information and consider ways to share resources. The development of the cultural diversity training program in 2017 was the result of a collaborative effort between Australian judicial education bodies.

Refreshing Aboriginal cultural awareness

Since 1992, the Commission has offered an Aboriginal cultural awareness program.¹⁰⁷ The program was established in response to recommendations of the Royal Commission into Aboriginal Deaths in Custody that judicial officers learn about contemporary Aboriginal society, customs and traditions with an emphasis on the historical and social factors which have contributed to the disadvantaged position of many Aboriginal people in Australian society.¹⁰⁸ An Aboriginal project officer¹⁰⁹ advises the Commission to shape and deliver the program. Refreshed in 2009, the renamed Ngara Yura Program¹¹⁰ meaning "to hear and listen to the people" in the Eora language, continued to organise visits to Aboriginal communities in regional and remote NSW. Two national "Exchanging Ideas" conferences were held in 2009¹¹¹ and 2011.¹¹² A DVD explaining the function and procedures for the specialist Aboriginal Circle Sentencing court was produced in 2009.¹¹³ Ngara Yura Committee members contributed to the Aboriginal section in the *Equality Before the Law Bench Book*, first published in 2006.

101 Interview with Ms Una Doyle, 14 September 2017.

102 Chief Executive Mr Ernest Schmatt PSM was elected to the Board of Governors of the International Organization for Judicial Training in 2009 and the Board of Executives in 2011, re-elected in 2013, 2015 and 2017.

103 Ms Una Doyle was President of the Association for Continuing Legal Education (ACLEA) 2016–17 and chair of ACLEA's international committee 2007–2009.

104 French, above n 83, p 9.

105 M Gleeson, "The future of judicial education" (1999) 11 *JOB* 1.

106 French, above n 83.

107 The program is supervised by a committee comprising judicial officers, Commission executive officers, and respected Aboriginal community members. The current chair is the Honourable Justice Lucy McCallum. Committee membership is listed at www.judcom.nsw.gov.au.

108 Royal Commission into Aboriginal Deaths in Custody, 1991, Recommendations 96 and 97.

109 The project officers since 1992 have been Mr Stan Jarrett; Ms Neva Collings; Ms Toni Bauer; Ms Tammy Wright; and Ms Joanne Selfe. Ms Selfe wrote the original strategic direction for the Commission.

110 S Norrish, "Listening, learning and leading: the work of the Ngara Yura Committee" (2011) 23 *JOB* 1. The Ngara Yura Program has a page on the Commission's website at www.judcom.nsw.gov.au with information about committee membership and links to resources.

111 K Lumley and S Norrish, "Lighting the way forward: respect, responsibility, engagement, diversity, local solutions" (2009) 21 *JOB* 37.

112 K Lumley and S Norrish, "Exchanging ideas about Aboriginal contact with the criminal justice system" (2011) 23 *JOB* 83.

113 Circle sentencing was first trialled in Nowra in 2002 under presiding Magistrate Doug Dick. The model has been rolled out to Dubbo in 2003, Brewarrina in 2005, Lismore, Bourke, Kempsey and Armidale in 2006 and Walgett and Mount Druitt in 2007.

In 2017, the program was further revised in recognition that judicial officers' awareness of Aboriginal culture is now assumed knowledge and that digital technology creates broader access to resources. The Ngara Yura Program's strategic direction includes a renewed focus on developing partnerships to assist in providing opportunities for Aboriginal people to learn about the judicial process as well as greater support for Aboriginal law students and young lawyers.

Broadening community engagement

Beyond its statutory remit, the Commission has sought to raise public awareness about the role of courts and judicial officers. The primary driver for the Commission's community engagement strategy has been to address widely-held public perceptions that sentences are too lenient¹¹⁴ and that judges are often seen as "out of touch and out of reach". The strategy has included convening four "Community Awareness of the Judiciary" programs run each year between 2012–2015 in partnership with the courts and judicial officers. The programs have been very well received but are resource-intensive and delivered only to invitees (usually community leaders) with the expectation that they will return to their communities and share the information they have been given. Chief Executive Ernest Schmatt PSM and Ms Una Doyle reiterate the Commission's commitment to community engagement and have flagged that the Commission's strategic direction will include a more streamlined public information program.

Since 2015, the Commission has engaged with the Rule of Law Institute, providing seminars and free access to JIRS for high school students. In 2016, the Commission's website was re-designed to promote access to the Commission's suite of publications. Visits to the public website continue to grow, with a five-year average annual growth rate of 17% per cent.¹¹⁵

Sharing expertise with partners in the region

The Commission's information technology work has been recognised as world leading¹¹⁶ and has been used to assist other jurisdictions and government agencies in Australia with judicial support and case management systems. Software expertise gained from the development of JIRS has been used to design, host, maintain and support the NSW Drug Court Case Management System from 2003; the Queensland Sentencing Information Service from 2007; the Commonwealth Sentencing Database in collaboration with the National Judicial College of Australia and the Commonwealth Director of Public Prosecutions from 2007; the Forum Administration

System for the NSW Department of Justice from 2010; the Australian Capital Territory Sentencing Database from 2012; the Papua New Guinea Sentencing Database from 2013 and the pilot Integrated Criminal Case System Database for the PNG justice sector in 2017.¹¹⁷ The latter is designed to enable the tracking and monitoring of all criminal cases from when an offender is charged to the disposition of penalty.

The Commission's role in the region: helping to promote the rule of law

In 2007, Justice Peter McClellan AC commented that the Commission's advisory and capacity-building role outside NSW is "a contribution that is often forgotten but of very great significance".¹¹⁸

The significance of judicial exchanges and assistance to emerging jurisdictions may be readily contextualised. In 2004, the Commission was invited to conduct a review of the Royal School for Judges and Prosecutors in Cambodia, a country that saw the decimation of its judiciary, legal institutions and statutes during the Khmer Rouge period 1975–1979. The Commission has continued to provide assistance. In 2010, the Commonwealth Secretariat invited the Commission to review the Sri Lankan judicial sectors and provide recommendations concerning judicial education and judicial support databases.¹¹⁹ In October 2013, the Commission hosted a delegation of Cambodian judges and prosecutors for a capacity-building program.

Deputy Chief Magistrate O'Brien agrees that links with emerging jurisdictions are important ways to promote the rule of law in the region. He describes the "really worthwhile" relationship between the Judicial Commission, the Local Court of NSW, and the Papua New Guinea Centre for Judicial Excellence which has seen a collaborative effort to deliver a magistrates' orientation program in Port Moresby on six occasions since 2007 as well as a sentencing workshop.

In 2016, Chief Executive Ernest Schmatt PSM signed a memorandum of understanding in Jakarta with the Judicial Commission of the Republic of Indonesia.¹²⁰ The signing of the MoU was the culmination of a relationship which began in 2000 when the Commission first provided training for senior Indonesian judges.

The Commission has been involved, since 1994, in regular judicial and high level exchanges with China, Australia's largest trading partner. Highlights of these exchanges have included a 10-day capacity-building program for judges of the Supreme People's Court of China.¹²¹ The program

114 Hough and Roberts, above n 39; Jones, Weatherburn and McFarlane, above n 62.

115 Judicial Commission data.

116 Lord Justice Auld, *Review of the criminal courts of England and Wales*, 2001, Ch 11, para 205.

117 Further to a memorandum of understanding signed in Sydney in May 2016 between the Chief Justice of Papua New Guinea, Sir Salamo Injia Kt, GCL and Chief Executive Mr Ernest Schmatt PSM.

118 Lumley, "From controversy to credibility", above n 25, p 80.

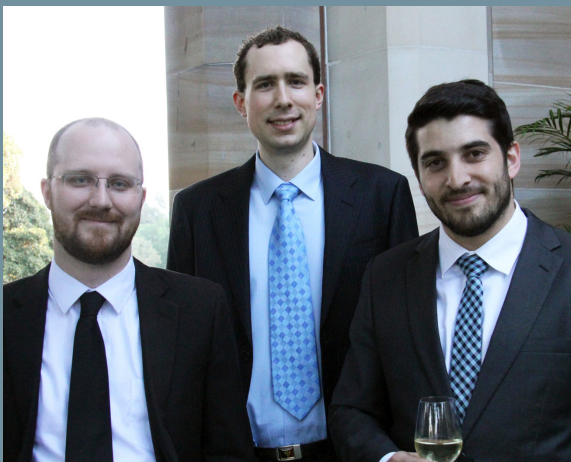
119 Commonwealth Secretariat, *Mentoring and capacity building: judicial education and computerised case management, Sri Lanka*, Judicial Commission of NSW, 2010.

120 "Memorandum of understanding signed with Judicial Commission of Indonesia", (2016) 28 JOB 7.

121 The China-Australia Human Rights Technical Cooperation Program, Supreme People's Court of China, Rules of Evidence Design, conducted in June 2003, was organised by the Judicial Commission and the Human Rights and Equal Opportunity Commission.



Ruth Windeler (left) was the Commission's Education Director 1996–2015. Joy Blunt has been a Systems Officer at the Commission since 1991.



Commission Systems Officers (left to right) Aidan Dunn, Victor Poliakov and Vince Puglia.



(left to right) Solution Architects, Dominique Cornelia and Lenny Halim with Georgia Brignell, Acting Manager, Research and Sentencing.

aimed to strengthen the administration, promotion and protection of human rights in China by demonstrating how the rights of accused persons and witnesses are protected through the operation of the rules of evidence in criminal trials in Australia.

In 2017, the Commission hosted a taskforce of Chinese and international experts who advise the China Council for International Cooperation on Environment and Development. The taskforce was shown the Land and Environment Court of NSW sentencing database hosted on JIRS and the research study on consistent sentencing in the Land and Environment Court published this year.¹²² Environmental protection in China has become a key performance indicator for local government officials in recent years as the central government has begun to address severe pollution after decades of unchecked economic growth.¹²³

In 2015, Chief Executive Ernest Schmatt PSM was appointed joint editor-in-chief with Dr Rainer Hornung¹²⁴ of the International Organization for Journal Training's (IOJT) journal *Judicial Education and Training*.¹²⁵ The journal aims to stimulate informed discussion, exchange professional experience, and develop knowledge in judicial education for a global readership.

Conclusion

The core values of the Commission have remained unchanged since 1987. Through providing voluntary, independent education; accurate and current legal and sentencing information to assist judicial officers in their daily tasks; and an independent complaints function, the Commission's work is directed towards improving and maintaining confidence in the administration of justice in NSW. Nationally and globally, the Commission's engagement with judicial education bodies and other jurisdictions is directed towards accelerating and promoting the rule of law. Harnessing new technology and the regular refreshment of programs has allowed the Commission to evolve and continue to offer a highly-regarded service.

¹²² H Donnelly and M Cain, "Transparent and consistent sentencing in the Land and Environment Court of NSW: orders for costs as an aspect of punishment", *Research Monograph 40*, Judicial Commission of NSW, 2017.

¹²³ N Gan, "12,000 officials disciplined and 18,000 companies punished in China's sweeping crackdown against pollution", *South China Morning Post*, 2 September 2017, at www.scmp.com/news/china/policies-politics/article/2109342/top-level-china-pollution-inspections-wrapping, accessed 18 October 2017.

¹²⁴ Dr Rainer Hornung is the Deputy Chief Prosecutor, Lörrach Prosecution Office, and former Director of the German Judicial Academy.

¹²⁵ At <http://www.iojt.org/~media/Microsites/Files/IOJT/Microsite/iojtJournal005.ashx>, accessed 18 October 2017.