

ROLE OF TECHNOLOGY IN IMPROVING JUDICIAL EDUCATION:

THE JUDICIAL COMMISSION OF NSW EXPERIENCE

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1. THE JUDICIAL COMMISSION

The proposal to establish the Judicial Commission of New South Wales, unfolded in September 1986, following what has been described as a perceived crisis in public confidence in the judiciary. After robust debate in the Parliament and between the judiciary and the Government, the *Judicial Officers Act 1986* was enacted. This Act established the Commission, which commenced operation in October 1987.

The principal functions of the Commission are judicial education (including the dissemination of sentencing information for the purpose of assisting courts to achieve consistency in imposing sentences) and to examine complaints against judicial officers.

2. APPROACH TO JUDICIAL EDUCATION

Judicial officers in NSW come to their role as highly skilled barristers and solicitors, so the Commission's education program is designed to assist new judicial officers with their transition from practitioner to impartial adjudicator. From there, the Commission aims to continuously renew judicial skills and provide information about changes to the law, court practice and procedure, and promote high standards of judicial behaviour. Fostering judicial capacity ensures that the people of NSW can be confident that justice has been dispensed impartially and fairly.

The Commission's comprehensive judicial education program is not compulsory. While the *Judicial Officers Act* is silent on the question of how education programs should be conducted, to maintain judicial independence, the Commission has decided that judicial officers should play a key role in the design and delivery of its programs. Judicial officers provide expertise at every stage, from planning of courses to their presentation as well as creation of content for the Commission's *Bench Books* and other publications. Concerns raised in the complaints process also help to inform the design process: see Figure 1

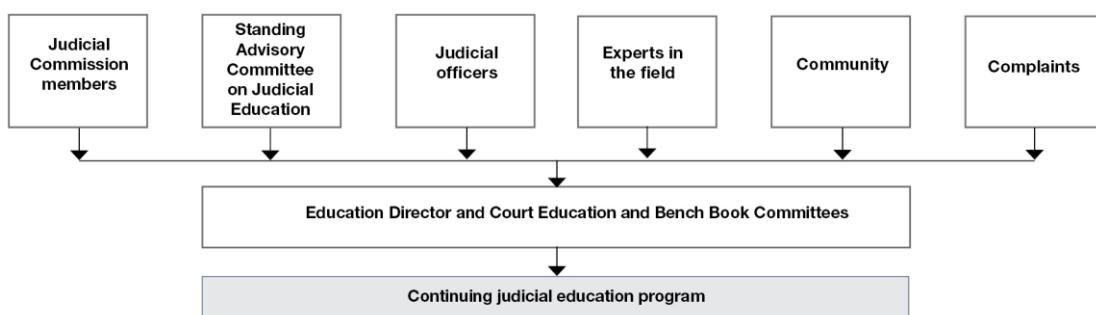


Figure 1: Judicial education design process

An annual conference is held for each of the five courts in NSW. Workshops and seminars are offered throughout the year to address specific educational needs of judicial officers identified through the education design process.

The Commission's strategies to provide continuing judicial education include:

- Providing access to the Judicial Information Research System (JIRS), a sophisticated online decision support system.
- Publishing comprehensive *Bench Books* containing reference material on practice and procedure.
- Conducting interactive conferences, workshops and seminars.
- Undertaking original research and statistical analysis on aspects of sentencing and other topics of assistance to judicial officers.

3. ROLE OF TECHNOLOGY

The Commission has a relatively small budget of about A\$ 6 million per year and 39 staff. Given the financial constraint and the large program it is expected to deliver, the Commission realised very early that information technology could be used as a catalyst for transforming judicial education. Information technology was not approached just as a miraculous solution to gain efficiency but as a means of achieving intentional changes in learning and teaching processes to attain the best outcome for judicial officers. Some of the examples of use of technology by the Commission are discussed below:

3.1 The Judicial Information Research System – JIRS:

The Commission developed JIRS over a long period under the guidance of experienced judicial officers. It is recognised as a world leader in the field of computerised judicial support systems. It is an extensive, interrelated and hypertext linked resource that provides discrete modules of reference material including case law, legislation and statistics about sentencing.

All judges and magistrates in NSW have access to JIRS through laptop computers, tablet computers and smart phones. A recent Home Page of JIRS is shown in Figure 2.

Figure 2: Home Page of the Judicial Information Research System.

JIRS has become an essential tool for New South Wales courts, both at first instance and appellate level, and for legal practitioners. Usage of JIRS exceeded 1.5 million hits last year. Some of the components of JIRS are explained below:

- **Sentencing Statistics**

The purpose of the sentencing component in JIRS is to provide judicial officers with rapid and easy access to the collective wisdom of the courts in order to assist them with the sentencing task. Its object is not to limit the sentencing discretion of each judicial officer.

This unique 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 access information on how similar offences were dealt with previously by the courts.

The sentencing statistics for the Supreme and District Courts allow users to access further information behind each sentencing graph including case summaries where available. This provides sentencing information to explain why the sentence was passed and allows the judicial officer to have proper regard not just to what has been done in other cases but why it was done.

- *Judgments*

This component contains full text civil and criminal judgements from all New South Wales Courts and the High Court of Australia. Judgments can be easily retrieved by way of word search, case title or date. Important sentencing judgments have a link to a case summary prepared by the Commission.

- *Case Summaries*

The case summaries component contains brief facts, both objective and subjective, and sentencing outcomes of decisions of the Court of Criminal Appeal. It is possible to quickly locate all cases relating to a particular offence and, from the summary, link to the full text of the judgment. When there are important sentencing principles enunciated, these are noted in the form of a key word at the head of the summary, and a hypertext link is made to the Sentencing Principles and Practice component.

- *Sentencing Principles and Practice*

The Sentencing Principles and Practice component 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. This database is linked to other components of JIRS.

- *Sentencing Date Calculator*

The sentencing date calculator provides a quick and easy method to calculate the commencement, expiry and non-parole period dates for single, multiple, or aggregate sentences. The calculator can also organise pre-sentence custody dates and court orders. Feedback has shown that the calculator is proving to be of great assistance to judicial officers in error minimisation. For example in the case of *MRM v R [2015] NSWCCA 195*, the crown prosecutor using the sentencing date calculator tendered a schematic diagram which revealed the structure of the sentences as shown in Figure 3 in response to an assertion that the sentencing judge had misapplied the principle of totality. The schematic representation assisted the court to deal with the matter more efficiently and with greater clarity.

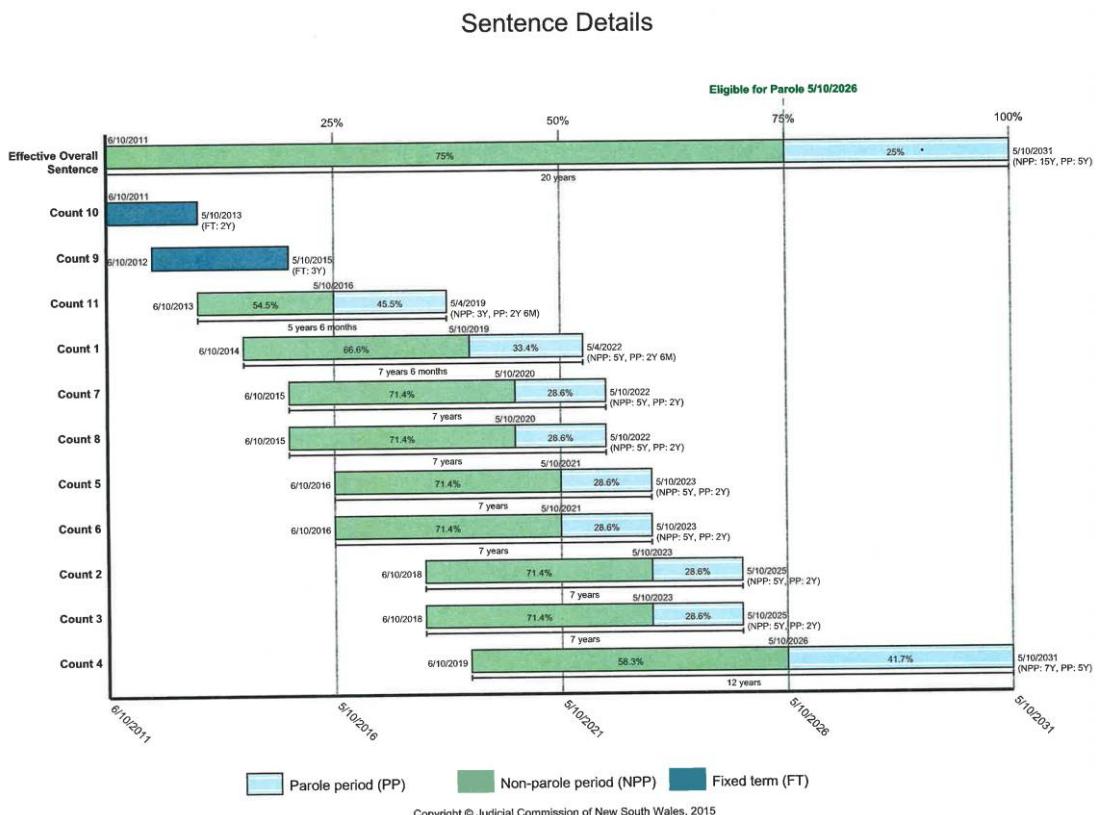


Figure 3: Schematic diagram from the case of *MRM v R [2015] NSWCCA 195* produced using the Sentencing Date Calculator

- *Electronic Bench Books and references*

This component contains on-line versions of all Judicial Commission bench books and handbooks. Bench books and handbooks are practical reference works that contain information about managing and conducting trials. They include links to relevant legislation, case law,

sentencing principles, procedural guidelines, suggested jury directions and sample orders. These books help improve consistency of approach by judicial officers and reduce the risk of appealable error. All the online versions of the Bench Books are hypertext linked to the case law and legislation contained in JIRS. The bench books and handbooks in JIRS include:

- *Criminal Trial Courts Bench Book*

Criminal trials have become lengthy and complex. The *Criminal Trial Courts Bench Book* provides judicial officers with assistance in relation to trial procedure and jury directions. It is the role of the jury to decide the guilt or innocence of the accused and that of the judge to instruct the jury about the law that they need to decide the case. The Book assists by providing suggested jury directions for a range of evidentiary matters and the ingredients for the most common offences. These directions can be modified by the judge to the circumstances of the case.

- *Sentencing Bench Book*

Consistency of application of sentencing principles is universally accepted as an essential feature of any criminal justice system. The High Court of Australia has said that the consistency that is sought is consistency in the application of the relevant legal principles and practice. The Judicial Commission's *Sentencing Bench Book* is a collection or compendium of sentencing principles that apply to sentencing for State and Commonwealth offences. The Book is updated regularly to take account of case law and legislative changes.

- *Local Court Bench Book*

The *Local Court Bench Book* is a comprehensive practice and procedure guide for magistrates for the conduct of civil and criminal matters in the Local Court of New South Wales. It is progressively updated in accordance with legislative changes and court decisions.

- *Civil Trials Bench Book*

This Bench Book provides guidance for judicial officers in the conduct of civil trials, from preliminary matters to the conduct of final proceedings and the assessment of damages and costs. It provides concise statements of relevant legal principles, references to legislation, sample orders and checklists

applicable to the various kinds of issues that arise in the course of managing and conducting civil litigation.

- *Equality before the Law Bench Book.*

It is widely recognised that both access to, and the delivery of, justice requires understanding of and sensitivity to the special requirements of particular sections of the community. This Bench Book is designed to address that need. Each section starts with statistical and/or cultural information about a particular group. It then provides additional information and guidance about how to treat members of that group. The “Practical considerations” part of each section follows, as closely as possible, the order in which a judicial officer might need the information in court.

- *Legislation*

Electronic versions of all New South Wales and Commonwealth of Australia Acts and Regulations are held in this database. Each relevant section of legislation is hyperlinked to the related case law and statistics for the offence. Historical versions are accessible for all Acts. In the case of the *Crimes Act 1900* (NSW) the database contains historical versions dating from 1991. Technology allows the Commission to update the database at least weekly, which would not be possible in hard copy.

- *Recent Law*

A major challenge for judicial officers is to keep abreast of the latest legal developments, particularly in criminal law. Recognising this need, JIRS offers a “Recent Law” component to provide concise notification of legal news as it happens. “Recent Law” covers all aspects of criminal law, including sentencing, directions to juries, practice and procedure, and new and amended legislation. Each item is linked to specific legislative provisions to ensure it can be accessed via the Legislation component of JIRS.

- *Offence Packages*

The Offence Packages component consolidates information found in JIRS for the most common offences in the Local, District and Supreme Courts of NSW. It links to all key parts of JIRS containing information about the offence such as: Recent Law items, Legislation, Bench Books, Sentencing Statistics, Case Summaries and Publications. A uniform approach to organising the material is taken, although the

range of relevant material varies for each offence. This component makes research on a particular topic easier for judicial officers.

- *Conference Paper Database*

To respond to the distance education needs of judicial officers, JIRS also contains this rich educational resource in which all available papers and presentations from the Commission's conference and seminar program are published. Audio podcasts and videos of select seminars are also posted so that judicial officers who cannot attend an event can listen to the presentation in their own time.

- *Publications*

This component contains on-line versions of all Judicial Commission publications including:

- The monthly *Judicial Officers' Bulletin* which informs judicial officers of current law and promotes consideration of topics such as judicial administration, forensic evidence, and social context issues. The Bulletin aims to publish a balanced mix of practical and topical articles including summaries of major decisions of the High Court of Australia and NSW superior courts
- *The Judicial Review* is a collection of articles drawn from the Commission's conference program as well as from judicial education seminars delivered further afield. The articles are selected on the basis of their usefulness and relevance to a judicial readership and relate to the areas of judicial practice, procedure, education and administration. The Review is a valuable source of technical and social context material and is published twice each year.
- *Sentencing Trends and Issues* papers are short publications that analyse various aspects of New South Wales sentencing statistics and sentencing issues. They give judicial officers a clear picture of the range of sentences given for a particular offence or offences.
- *Research Monographs* are publications which investigate areas of sentencing law and provide vital empirical information. The results of the research are published as a series of monographs for judicial officers and other interested persons.

- *Education Monographs* contain a collection of essays that address different aspects of jurisprudence. At a practical level the articles written by eminent jurists are designed to develop the judicial officer's ability to analyse and to think critically and creatively about the law as well as reflect on what they do and what their role is in the society. For example the monograph *The Role of the Judge* provides guidance for judicial officers on how to undertake the core functions of presiding over a court, decision-making and judgment-writing. Observations are also offered about appropriate judicial conduct and how to guard against judicial stress.

- *My JIRS Notes*

The My JIRS Notes feature allows users to record legal notes next to a specific section of any piece of legislation, judgment or bench book paragraph for future reference. For example, in the case of legislation, the My JIRS Notes feature permits the user to refresh their memory of issues of statutory construction that they have previously encountered or to allow them to add case notes against specific sections.

After a My JIRS Note is created, it can be accessed by the user either via the menu item "My JIRS Notes" or by clicking on the specific section of legislation, judgment or bench book paragraph where the note was created. A My JIRS Note once created is only available to that particular judicial officer unless a decision is made for it to be shared. When the note is shared other judicial officers from that jurisdiction will be allowed to see it. My JIRS Notes is designed to assist judicial officers to conduct speedy and effective research.

See Figure 4 for a brief outline of the Commission's activities in maintaining the various components of JIRS.

JIRS: a complete judicial decision support system

Description	What the Judicial Commission does	JIRS Component
Early notice of important legal developments	<ul style="list-style-type: none"> – identify significant decisions and legislative changes – extract core of case law and legislation and post online – print and distribute monthly Recent Law flyer 	Announcements and Recent Law
Statistics on the range and frequency of penalties imposed in similar cases	<ul style="list-style-type: none"> – receive data from NSW Bureau of Crime Statistics and Research, Department of Juvenile Justice and the courts – audit data – process and load data on JIRS within 2–4 months of receipt 	Sentencing statistics
Full text of judgments and case summaries for selected cases	<ul style="list-style-type: none"> – receive cases from High Court, Court of Criminal Appeal (CCA), Court of Appeal, Supreme Court, Land and Environment Court, Industrial Relations Commission, District Court and Local Court – advance notes supplied by Office of the Director of Public Prosecutions – load full text judgments within 1 working day of receipt – prepare Recent Law items within 14 days of receipt for important decisions – prepare important CCA case summaries within 2 weeks of receipt – link cases and summaries to sentencing principles and practice component and the <i>Criminal Trial Courts and Civil Trials Bench Books</i> 	Case law
Concise commentary on sentencing principles	<ul style="list-style-type: none"> – take sentencing principles from new cases and legislation and post as Recent Law items – link principles in bench book to case law and legislation 	Sentencing principles and practice (<i>Sentencing Bench Book</i>)
Practice and procedure manuals for the various courts containing current statements of relevant legal principles, sample orders and suggested jury directions	<ul style="list-style-type: none"> – identify significant decisions and legislative changes which impact on the content of the bench book – Bench book committees consider content and draft amendments and special bulletins – publish updates on JIRS and in hard copy 	Bench books
All NSW and Commonwealth Acts and Regulations	<ul style="list-style-type: none"> – receive legislation from NSW Parliamentary Counsel's Office and Commonwealth Attorney General's Department – process and load legislative changes within 24 hours of receipt – alert users to commencement date of criminal legislation via Recent Law items – link legislation to relevant case law and sentencing statistics – verify currency of legislation weekly 	Legislation
Monographs, <i>Sentencing Trends & Issues</i> , <i>Judicial Officers' Bulletin</i> , <i>The Judicial Review</i>	<ul style="list-style-type: none"> – identify relevant topic or research area – commission author – edit and typeset manuscript – publish in hard copy and online 	Publications
Essential information on treatment options and rehabilitation facilities	<ul style="list-style-type: none"> – identify relevant service providers – maintain currency of information 	Services directory

Figure 4: Outline of the Commission's activities in maintaining JIRS.

3.2 The JIRS Resources App

The JIRS Resources App for iPad™ and Android tablets and smart phones complements the Judicial Commission's JIRS database. The free App provides continuous updates of recent legal developments (case law and legislation) in New South Wales and Commonwealth jurisdictions. In addition the App enables the user to manage personal copies of the electronic versions of the Commission's bench books. The App also allows users to

download and manage personal copies of commonly used New South Wales and Commonwealth legislation.

The App is designed to provide judicial officers with access to essential legal resources, particularly when they are working in locations where there is limited internet access available.

3.3 DVDs

The Commission produces multi-media publications to supplement its educational material. This includes four training DVDs, two of which may be accessed on the Commission's website: these are *Concurrent Evidence*; and *Circle Sentencing in NSW*. This last DVD provides insights into a specialised sentencing court for Aboriginal offenders in NSW.

The *Role of the Judge* DVD provides practical guidance for a newly appointed judge or magistrate. It covers topics such as dealing with the stress of the job; advice on how to deal with the media; attitudes to sitting on committees, holding shares, charities, sitting on boards; advice on court craft such as how to deal with difficult witnesses and unrepresented litigants; advice on whether and how to use humour in court; how to remain neutral; how to deal with inappropriate behaviour and children in court, and working with interpreters.

In May 2014, when a new bail regime was introduced in New South Wales, the Commission adopted a multi-faceted approach to educate judicial officers on the new bail laws. In addition to organising education sessions, the approach included developing a training DVD. The DVD featured scenarios filmed with professional actors and volunteers to highlight the changes in the new regime and to illustrate how the new risk management approach should be applied when determining bail.

3.4 Website

The majority of the Commission's publications (including all its Bench Books) are published on its website. Free access to accurate, current and informed analysis about the role and work of judicial officers on the website is viewed by the Commission as a means of promoting public confidence in the judiciary.

3.5 Sentencing education using an anonymous electronic polling system

The promotion of consistency in sentencing is a key emphasis of the Judicial Commission's judicial education program. Sentencing is a complex judicial task. It requires the judicial officer to balance a diverse and sometimes contradictory range of objectives, to look at the subjective and objective facts of an individual case, and to determine where the offending fits in terms of seriousness within that type of offence. Our strategies for advancing

sentencing practice aim to develop the existing skills of judicial officers, while recognising their independence in the exercise of the sentencing discretion.

The Commission's aim in this area is to reduce unjustified disparities in sentences imposed by the courts, to improve sentencing efficiency generally, and to reduce the number of appeals against sentences. If this is achieved, valuable resources can be redeployed to reduce court delays.

The approach the Commission favours when designing education sessions on sentencing is to encourage peer-based learning through discussion and problem-solving. In recognition that judicial officers prefer different learning styles, we use a variety of techniques, including:

- A traditional lecture accompanied by a reference paper on developments in sentencing law.
- A practical paper setting out developments in sentencing accompanied by sentencing scenarios for facilitated small group discussion aimed at teasing out some of the difficulties judicial officers face in sentencing for these offences.
- Sentencing workshops in which participants determine the sentence for a set of scenarios, followed by group comparison and discussion of the results.

During sentencing workshops the Commission uses an anonymous electronic polling system (commonly called 'clickers') to collate the responses. The benefit of the anonymous polling is that it has decreased the resistance of some judicial officers to participating in sentencing exercises and removed the embarrassment factor about having and expressing a different opinion to others regarding a sentence. In addition, the visual representation of the range of answers can lead to a productive discussion about the choice of penalty and the difficulties judicial officers face when interpreting the governing legislation.

Feedback from our evaluation process reveals that many judges and magistrates welcome the chance to participate in interactive sentencing exercises as it provides them with an opportunity to compare their sentences on the same set of facts with their colleagues. These sessions are found to be thought-provoking and provide participants, whatever their level of experience, with a chance to learn from their peers.

Case Study: Sentencing Exercise in the Magistrates' Orientation Program

Sentencing exercises form a key component of the Local Court of NSW Magistrates' Orientation Program.

Sentencing principles

Prior to the sentencing exercise, the session leader, usually an experienced judicial officer, provides an overview of key sentencing principles to highlight the purposes of sentencing, aggravating factors, mitigating factors, how to take into account pleas of guilty and steps to take when imposing a sentence of imprisonment.

The session leader also runs through the sentencing hierarchy of penalties, and stresses the need for the participants to consider where an offence sits in terms of the three thresholds (conviction, custodial, full-time custody).

The sentencing exercise

Participants are given a scenario setting out the charge, facts, and background, as well as a standard set of penalty results: see Figure 5.

Sentencing 2.4	
Charge:	Assault
Facts:	On 3 August 2014, police arrived at the defendant's house after the neighbour called them. When the police arrived, they could hear a woman's screams coming from inside the premises: "Don't hit me again, please I beg you." Police were initially refused entry, but then entered and found the defacto wife of the defendant with red marks to her face and a bleeding nose. The phone had been ripped from the wall, and the defendant had thrown the meal prepared by the defacto all over the kitchen. He had punched her to the head with a closed fist and then pushed her onto the bed when she fled into the bedroom. Children aged three and five watched the assault.
Background:	The defendant has three prior convictions <ul style="list-style-type: none">• malicious wounding in 2007 (6 months periodic detention)• mid range PCA in 2010• assault (same victim) in early 2013 (s 9 bond for 12 months). The defendant is 37 years old and has been living with his defacto for seven years. They have two children. He is employed as a cleaner. An AVO made at the time of the previous conviction was withdrawn by consent four months ago. The defendant pleads guilty but submits that his wife was intoxicated and she started the fight. He tried to walk away but she kept on arguing (police accept this as being the case). His defacto remains loyal and hands up a letter seeking that there be no prison as he is the sole breadwinner and she needs help with the eldest son who suffers from ADD and major learning difficulties. The younger son has major health difficulties requiring regular hospital admissions. His defacto wants an order to stop more beatings. The defendant was in custody for three nights prior to bail being granted. He seeks a lengthy CSO given the family circumstances and his early plea.
Penalty Results*	
s 10(1)(a)	<input type="checkbox"/>
s 10(1)(b)	<input type="checkbox"/> Length of Time:
s 10A	<input type="checkbox"/>
Fine	<input type="checkbox"/> Amount:
s 9 Bond (<i>with or without supervision and/or a fine</i>)	<input type="checkbox"/> Length of Time: <input type="checkbox"/> Supervision (length of time)..... <input type="checkbox"/> Fine (amount)
Community Service Order	<input type="checkbox"/> Number of Hours:
s 12 Suspended Sentence	<input type="checkbox"/> Length of Time:.....
Intensive Correction Order	<input type="checkbox"/> Term:
Home Detention	<input type="checkbox"/> Term: NPP:
Full Time Custody	<input type="checkbox"/> Term: NPP:

*Assume that where an option is available the offender has been assessed as suitable.

Figure 5: Sample sentencing scenario

They are given limited time to complete the exercise, with the aim of replicating the pressures of being in a busy court. The session leader tries to create a trusting environment so participants can confidently provide their candid answer to the scenario. The participants key in their response using an electronic polling system (or ‘clicker’). The responses are automatically collated and displayed on a screen which clearly demonstrates the range of sentences imposed: see Figure 6 for an example of the result.

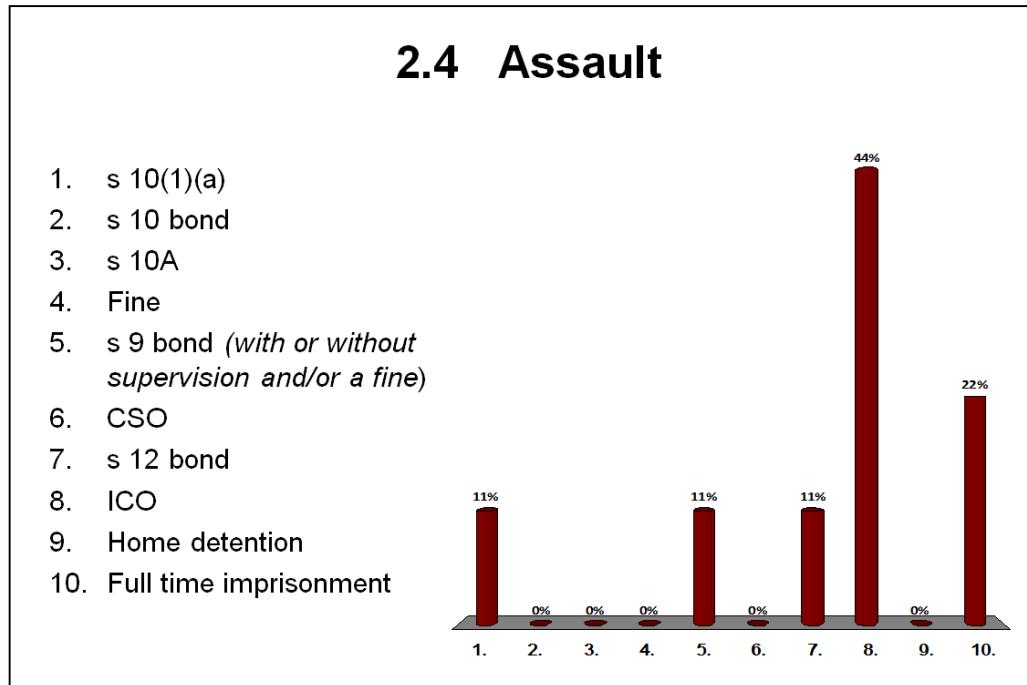


Figure 6: Sample Result Using Electronic Polling System

This exercise provides participants with an excellent opportunity to reflect on their own sentencing approaches, compare them with others, and see where their sentences fit in the range of options available. Although the responses using the electronic polling system are anonymous, participants are asked to provide reasons for their choice of penalty and are usually very willing and open to discuss their reasons.

At the end of the sentencing exercise, the session leader will stress the factors that judicial officers should think about in determining a sentence. While there is no single correct answer to any one scenario, this exercise demonstrates the need for sentences to fall within a range of options.

4. FUTURE PLANS

The Commission aims to remain innovative in the way it uses technology to deliver its education programs. Sophisticated technology creates many

opportunities to maximise the impact of our accumulated knowledge. Some of our future plans include:

4.1 Interactive learning resource based on court room simulation

A key focus this year has been the design, development and testing of a new interactive learning resource using gaming technologies to provide a court room simulation for a more realistic learning experience. This resource works in a similar manner to the scenario based learning workshop discussed earlier. However with this resource the scenarios are made available via JIRS for download by judicial officers onto their smart phones and tablets. This allows them to pursue the educational topic at a convenient time and location.

This form of learning simulates a scenario as it would have happened in court. The judicial officer is then requested to make a decision and give reasons for their decision. The resource also allows for the comparison of the judicial officer's decision and their reasons for decision with those of the author of the scenario as well as other users: see Figure 7 for a sample of screen shots of the interactive learning resource.



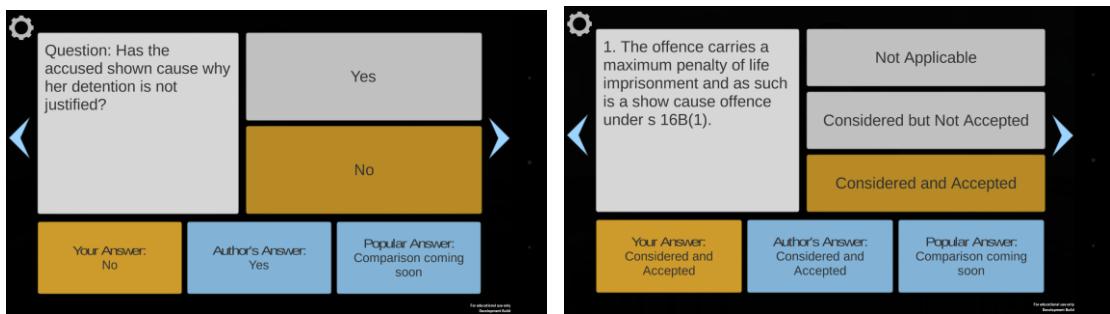


Figure 7: Sample screen shots of the interactive learning resource

The resource has been designed so that legal experts without the technical knowledge can create the scenarios using the tools provided on JIRS. If the law changes and a scenario is updated, the new scenario will overwrite the previous version on the judicial officer's phone or tablet the next time they connect to JIRS so that any chance of a judicial officer being misled is minimised. The Commission is also simultaneously developing a next generation of court room simulation using virtual reality for a more immersive learning experience.

4.2 Web based learning management system

Another focus this year is to explore and implement a web based learning management system for training judicial officers. The proposed learning management system will handle all aspects of the learning process. It will have the capacity to deliver instructional content, identify learning goals, track an individual's progress towards meeting those goals and present information for supervising the learning process. The Commission plans to use the learning management system to enhance and support its existing seminar series and offer the courses to a larger audience of distance learners. The pilot course will be on cultural diversity.

5. CONCLUSION

The key aspect of the Commission's continuing education program is that it is designed to promote excellence in judicial performance, while ensuring that the highest standards of judicial behaviour are maintained. The approach helps to maintain public confidence in the impartial and independent administration of justice. Delivery of judicial education has entered a transformative phase, thanks to powerful mobile technologies, advanced analytics and collaboration tools which allow judicial officers to readily share their experience in new ways and learn from each other. The key, in the Commission's experience, is to understand which technologies, coupled with program redesign, are the most beneficial to the role of the judicial officer.