

Judicial Commission of NSW

# Annual Report

## 2019–20



## Judicial Commission of New South Wales

This annual report summarises the results and performance of the Judicial Commission of NSW for 2019–20 measured against our strategies and targets. We also outline our strategic focus for 2020–21. This and earlier annual reports are available on our public website at [www.judcom.nsw.gov.au](http://www.judcom.nsw.gov.au).

### Compliance letter to the Attorney General



Judicial Commission  
of New South Wales

The Honourable Mark Speakman SC MP  
Attorney General  
52 Martin Place, Sydney NSW 2000

Dear Attorney

The Judicial Commission of NSW has pleasure in presenting to you the report of its activities for the year ended 30 June 2020.

This report is submitted in accordance with section 49 of the *Judicial Officers Act 1986* and section 12 of the *Annual Reports (Departments) Act 1985*. It is required to be laid before both Houses of Parliament.

Yours sincerely

The Honourable T F Bathurst AC  
Chief Justice of NSW  
President  
Judicial Commission of NSW  
Dated: 3 November 2020

EJ Schmatt AM PSM  
Chief Executive  
Judicial Commission of NSW

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Our structure, strategic direction, services delivery, performance and achievements enable us to promote the highest standards of judicial behaviour, performance and decision making.

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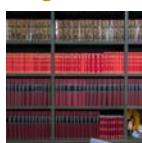
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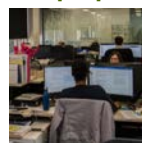
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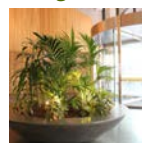
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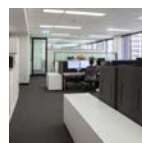
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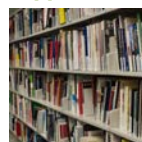
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## Our vision

The people of NSW will have confidence in the exceptional ability and performance of judicial officers who:

**Have a high calibre of judicial knowledge and skills**



**Achieve consistency in imposing sentences**



**Behave ethically and impartially in their judicial role**

## Our values

- Professionalism** — to be recognised for our integrity, independence, and the high quality services we deliver.
- Enhancement** — to continually evaluate and improve the way we deliver our programs and services.
- Interconnection** — to work constructively and cooperatively with our partners.
- Sustainability** — to be aware how our operations and programs impact on people, the environment and the economy.

# Overview



The Judicial Commission of NSW is an independent statutory corporation established under the *Judicial Officers Act 1986*. We report to the Parliament of NSW.

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## About the Commission

**The Judicial Commission of NSW is an independent statutory corporation established under the *Judicial Officers Act 1986*. We report to the Parliament of NSW.**

### What we do

Judicial officers make decisions each day which can have a profound impact on a person and/or a business or corporation. A judicial decision can send a person to gaol or otherwise affect a person's liberty, reputation and family relationships. It can prevent or create financial hardships.

To ensure that judicial decision making is based on current law and that judicial knowledge and skills are of the highest calibre, we provide a continuing education program for the judicial officers of NSW.

We also publish information about criminal and civil law, with a focus on sentencing, to assist the courts to achieve consistency in imposing sentences.

We examine complaints about a judicial officer's ability or behaviour.

We also share our knowledge and experience with the global network of judiciaries and judicial education providers.

Our vision and values are set out on p 2.

### Our governance

An independent Commission of 10 members provides governance and examines all complaints. The Chief Executive, supported by the Deputy Chief Executive and 2 directors, is responsible for our daily operations. See pp 18–22 for their profiles and achievements. An independent Audit and Risk

Committee monitors our risk profile and advises the Chief Executive: see p 85 for details of the committee.

### Our mission

To promote the highest standards of judicial behaviour, performance and decision making.

### Our partners and the community

We provide services to the judicial officers and people of NSW, the courts, the legal profession, other justice sector agencies, law libraries and law students. We share our experience with other Australasian and overseas judicial education providers and judiciaries.

### Our structure

The Commission has 3 operational areas — continuing judicial education, research and sentencing (legal information) and complaints. See our organisational structure on p 8 and our services delivery chart on p 9.

### Our resources

Staff — We employed 33 people (30.2 full-time equivalent) as at 30 June 2020 and had a turnover rate of 6.06%. See pp 70, 74.

Revenue — \$4.907 million (last year: \$6.89 million) revenue from the NSW Government. See p 97.

Other revenue — \$1.09 million from other revenue including \$1.04 million in self-generated revenues. See p 97.

### Upholding public confidence in the judiciary through a global pandemic

The COVID-19 global pandemic began to impact the activities of the Commission significantly from late March 2020. The public health measures introduced to minimise its spread in NSW affected where we worked and performed our functions and, in some instances, prevented the conduct of our operations in the ways to which we were long accustomed. There are many references to COVID-19 throughout this annual report and the overall impression created is a year of two contrasting parts. Despite the difficulties encountered through the last quarter, and acknowledging that the pandemic is not over, it is evident that the Commission has successfully met the challenges that we encountered. With resilience and innovation as an organisation, we have ended the reporting period confident that the Commission has continued to promote the highest standards of judicial behaviour, performance and decision making.

## 2019–20 highlights and key events

### Delivering continuing judicial education



- 92% judicial satisfaction with the continuing judicial education program. See p 27.
- Supported judicial officers through the disruptions relating to COVID-19 by offering programs using a variety of modes of delivery and delivering publications online. See p 34.

### Providing legal information



- Created a COVID-19 resource portal on JIRS and our public website that collates pandemic-related materials, in addition to maintaining publication of information on JIRS and in bench books. See p 38.
- Enhanced provision of sentencing statistics on JIRS. See p 44.
- Published well-received articles on intergenerational trauma and trauma-informed courts in the *Judicial Officers' Bulletin*. See p 31.
- Published *Sentencing Trends & Issues 47: Navigating the Bail Act 2013*. See p 42.

### Examining complaints



- Examined 48 complaints in reporting period. See p 51.
- Ensured the accessibility of the Commission for receipt of complaints and enquiries in accordance with COVID-19 health regulations.

### Engaging with our partners and the community



- Continued to share our technical expertise with partners throughout disruptions caused by COVID-19.
- Contributed to the effective operation of COVID-19 related public health orders with efficient coding of offences in Lawcodes database. See p 63.
- Collaborated with Land and Environment court staff as part of enhancing the workflow for producing statistics on JIRS. See p 44.

### Our people



- High level of staff satisfaction (97%), low turnover and high retention. See p 70.
- Staff acquired new skills as part of adapting to the new working from home environment required by COVID-19 health regulations.

### Our governance and ethics



- Successfully managed business continuity through disruptions caused by COVID-19. See p 81.
- Recognised for sustained quality of reporting by Australasian Reporting Awards: tenth consecutive gold award, Chair's Commendation, and Governance Reporting Award (Public and Not-for-Profit Sectors) received for *Annual Report 2018–19*. See p 88.

### Our finances



- Ended financial year with overall deficit of \$373,000 compared to budgeted deficit of \$236,000. Total expenditure and revenue for the reporting period were both under budget. See p 96.

## Looking at the last 5 years

	2015–16	2016–17	2017–18	2018–19	2019–20	Trend
<b>Delivering continuing judicial education</b> <span>see pp 23–34</span>						
Number of judicial education days each year	1,452	667*	1,024	1,191	885	↓
Number of educational events	43	44	38	41	26	↓
Overall satisfaction rating with judicial education events	93%	91%	93%	90%	92%	↑
% of attendance by judicial officers at annual conferences	87%	77%	81%	87%	91%	↑
% of attendance at magistrates' induction/orientation programs	100%	100%	100%	100%	100%	=
Average number of training days offered each judicial officer	5.8	3.5*	4.7	4.4	3.5	↓
Average number of training days undertaken by each judicial officer	5	2.2*	3.7	3.8	2.8	↓
% of judicial officers who attended at least 2 days of judicial training	78%	77%	71%**	84%**	59%	↓
Number of publications (bench book updates, bulletins, journals, education monographs, training videos, podcasts, and webinars)	34	31	32	39	43	↑
<b>Providing legal information (includes research and sentencing)</b> <span>see pp 35–46</span>						
JIRS usage (average page hits each month)	136,324	134,476	136,527	138,531	131,817	↓
% of JIRS availability	99%	99%	99%	99%	99%	=
Number of enhancements to JIRS	14	10	7	4	5	↑
<b>Timeliness of sentencing material on JIRS</b>						
– Recent Law items posted on JIRS	2 wks	2 wks	2 wks	3–4 wks	3–4 wks	=
– Judgments (within days of receipt)	1 day	1 day	1 day	1 day	1 day	=
– Summaries of important judgments (within weeks of receipt)	5 wks	5 wks	5 wks	5 wks	5 wks	=
– Sentencing statistics loaded on JIRS (within months of receipt)	1–4 mths	1–4 mths	1–4 mths	1–4 mths	1–4 mths	=
Number of <i>Sentencing Trends &amp; Issues</i> papers and monographs	2	2	0	0	1	↑
Timely updates to the <i>Criminal Trial Courts Bench Book</i> and <i>Sentencing Bench Book</i>	8	7	6	7	5	↓
Lawcodes: % of new and amended offences coded and distributed within 4 days of commencement	100%	100%	100%	100%	95%	↓
<b>Examining complaints</b> <span>see pp 47–56</span>						
% of complaints acknowledged within 1 week of receipt	100%	100%	100%	100%	100%	=
% of complaints examined within 6 months of receipt	93%	94%	90%	94%	71%	↓
% of complaints examined within 12 months of receipt	100%	99%	100%	99%	100%	↑
Complaints received/referred (number)	44	75	74	63	57	↓
Complaints examined (number)	40	72	62	68	48	↓
<b>Our people</b> <span>see pp 67–78</span>						
Staff (number)	41	40	38	32	33	↑
Length of service: 5 years or greater	77%	65%	79%	76%	78%	↑
<b>Our governance and ethics</b> <span>see pp 79–94</span>						
Access to information requests	0	2	0	0	0	=
<b>Environmental sustainability</b>						
Total energy used	449 GJ	278 GJ	291 GJ	311 GJ	267 GJ	↓
% of recycled paper used	100%	100%	100%	100%	100%	=
<b>Our finances</b> <span>see pp 95–122</span>						
Revenue from NSW Government	\$3.755 M	\$6.766 M	\$5.568 M	\$6.890 M	\$4.907 M	↓
Retained revenue (sale of goods & services, investment income, etc)	\$738,000	\$812,000	\$1.041 M	\$1.123 M	\$1.090 M	↓
Expenditure	\$5.840 M	\$6.338 M	\$6.857 M	\$8.020 M	\$6.370 M	↓

\* The Local Court of NSW Annual Conference was not held in the 2016–17 financial year which accounts for the decline.

\*\* Correction to 2017–18 and 2018–19 reports due to calculation error.

Legend = same/no change ↑ increased ↓ decreased

## Our history

- **1985** — Controversies involving judicial officers in Australia were widely reported in the media.
- **1986** — The NSW Government announced plans to establish a Judicial Commission responding to a perceived crisis in public confidence in the judiciary. The *Judicial Officers Act* 1986 commenced in December. The Commission uniquely combined a complaints function with educational and sentencing functions.
- **1987** — The *Judicial Officers (Amendment) Act* 1987 made the Commission a statutory corporation, allowing it to be independent of the Executive Government. Operations commenced in October. Of the 220 judicial officers in NSW: 95% are men; 5% are women.
- **1988** — Conference, seminar and publications programs commenced to provide professional continuing judicial education. Development of Sentencing Information System database commenced to help judicial officers achieve consistency in their approach to sentencing.
- **1990** — Chief Justice Gleeson, the Commission's President, launched the Sentencing Information System.
- **1991** — A Conduct Division reported that Parliament consider removal of a magistrate from office. The magistrate resigned before Parliament considered the matter.
- **1996** — The Sentencing Information System, re-engineered and expanded to include information relevant for all courts, was renamed the Judicial Information Research System (JIRS).
- **1997** — A Conduct Division reported that Parliament consider removal of a magistrate from office. The magistrate resigned before Parliament considered the matter.
- **1998** — In a first, a judge addressed Parliament after a Conduct Division reported that Parliament consider his removal from office; Parliament voted not to remove the judge. The *Judicial Officers Amendment Act* 1998 increased lay membership of the Commission from 2 to 4. The Commission provided professional development programs to 251 judicial officers: 85% are men; 15% are women.
- **2006** — A complete review of the *Judicial Officers Act* was undertaken. One of the most important amendments was to remove the classification of complaints as "minor" or "serious".
- **2007** — A special reception was held in October at Government House to commemorate 20 years of operations. A brief history "From Controversy to Credibility" of the Commission was published. The *Judicial Officers Amendment Act* 2007 allowed for lay representation on a Conduct Division with a community representative. The Commission provided professional development to 278 judicial officers: 73% are men; 27% are women.
- **2011** — Two separate Conduct Divisions reported to the Governor that Parliamentary consideration be given to removing 2 magistrates from office. Each magistrate separately addressed Parliament. Parliament voted against removal.
- **2012** — The *Judicial Officers Amendment Act* 2012 required the Commission to provide information about a complaint against a judicial officer to the Attorney General if requested. The Commission ran the first Community Awareness of the Judiciary Program as a public education strategy. The Commission provided professional development programs to 350\* judicial officers: 74% are men; 26% are women.  
 \* We changed our method of counting to include acting judicial officers.
- **2016** — The Commission moved to new premises at 60 Carrington Street, Sydney.
- **2017** — The Commission celebrated 30 years with a special reception at Government House. The Australian National Imams Council, with the assistance of the Commission, prepared an "Explanatory Note on the Judicial Process and Participation of Muslims".
- **2019** — Two separate Conduct Divisions reported to Parliament that Parliamentary consideration be given to removing 2 judicial officers (a magistrate and a District Court judge) from office. Both resigned before Parliament considered the matters.
- **2020** — Majority of the Commission's staff worked offsite from mid-March 2020, in compliance with the public health orders designed to minimise the spread of the COVID-19 global pandemic.

## Overview of the Commission

The Judicial Commission is comprised of 6 official and 4 appointed members. The Chief Executive is responsible for all the Commission's operations. The Audit and Risk Committee provides the Chief Executive with independent advice on governance and risk. See p 18.

Figure 1. Our organisational structure

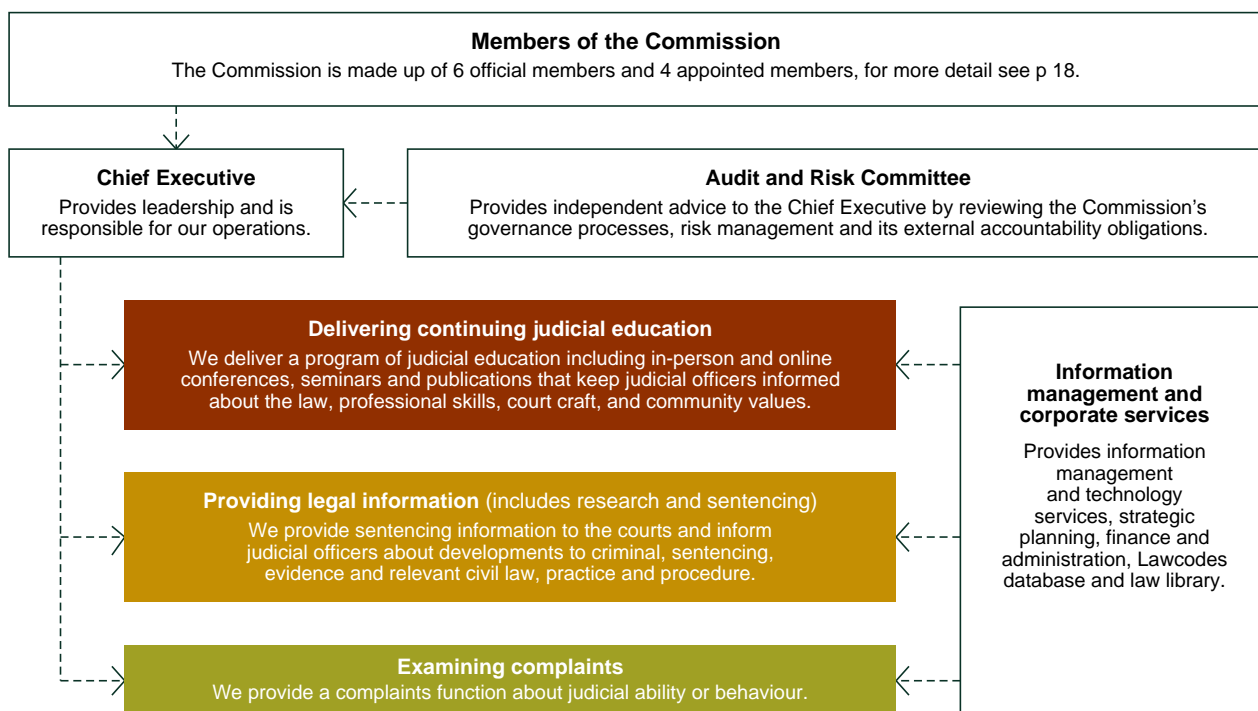
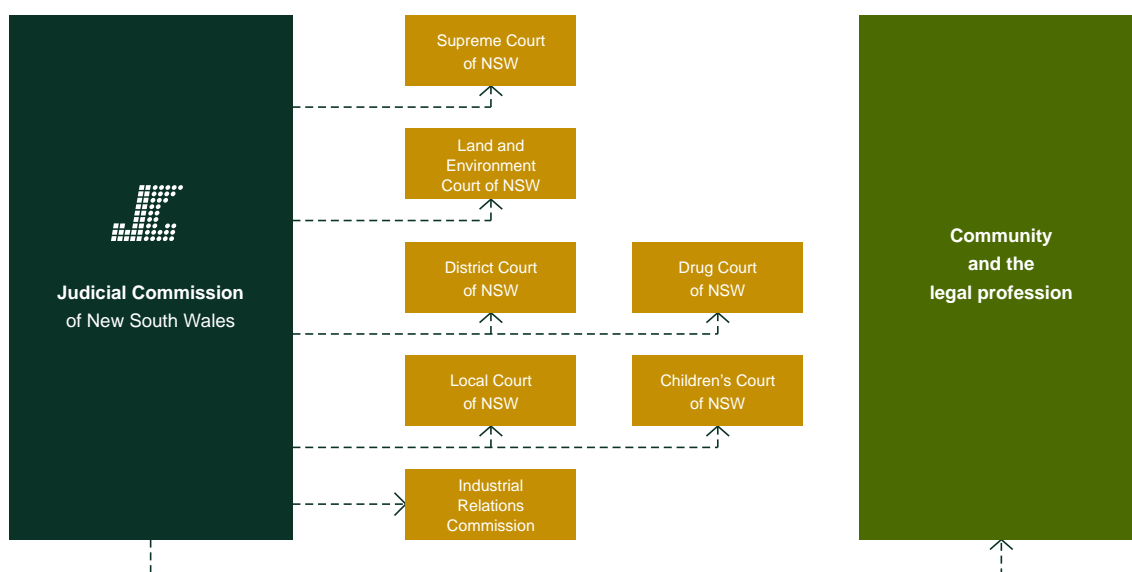


Figure 2. Who we provide our services to in the justice system



## Our services delivery

Our strategies for delivering our services were impacted by COVID-19 public health regulations this year.

### Delivering continuing judicial education

Result	Strategies			Performance
Judicial officers are updated about changes to the law, court practice and procedure and community values.	Induction and orientation sessions for new judicial officers to assist in their transition from legal professional to impartial adjudicator.	Annual conferences for all NSW courts to provide up-to-date information on specific topics and promote collegiality (subject to COVID-19 public health regulations).	Skills-based workshops, seminars, field trips, webinars and other digital and distance education to enhance judicial skills, attitudes and knowledge.	See pp 23–34 for an overview of our activities this year.
Judicial skills, attitudes and knowledge are enhanced.	Aboriginal cross-cultural awareness sessions/ community visits so judicial officers are informed about Aboriginal society, customs and traditions.	Digital and multi-media resources, online and print publications for information and research. JIRS and iPad™ support.	Mentoring.	See pp 23–34 for an overview of our activities this year.

### Providing legal information

Result	Strategies			Performance
Judicial officers had access to current law to assist in their day-to-day decision making.	The Judicial Information Research System (JIRS) is an online database to assist day-to-day judicial decision making. The components of JIRS are described on p 41.	Bench books contain major legislation and precedents which apply when conducting criminal and civil trials, procedural guidelines, suggested jury directions, and sample orders.	In-depth research studies.	See pp 35–46 for an overview of our activities this year.
Judicial officers were informed about changes to criminal and sentencing law and practice and procedure.	<i>Recent Law</i> summaries of important legal developments posted on JIRS. A dedicated COVID-19 resources page on JIRS.	Email alerts to notify judicial officers of significant changes to the law or about sentencing methods.	Comprehensive information about treatment options and rehabilitation facilities for offenders.	See pp 35–46 for an overview of our activities this year.

### Examining complaints

Result	Strategies			Performance
People of NSW have an efficient complaints mechanism. Confidentiality and independence of judicial officers are maintained.	Examining complaints efficiently, independently, objectively and effectively.	Informing the complainant and the judicial officer involved of the outcome of the Commission's examination of a complaint.	Information, publications and talks about our role/function while monitoring patterns in complaints and addressing recurring issues in our judicial education program.	See pp 47–56 for an overview of our activities this year.

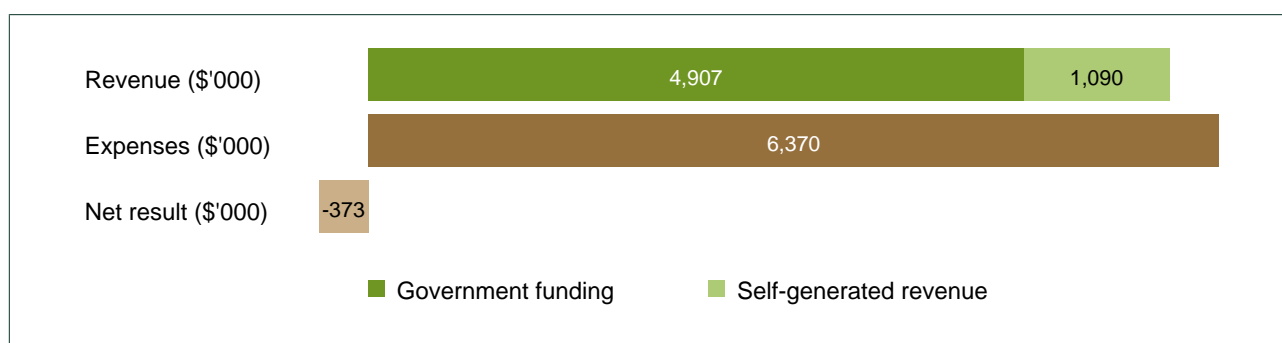
## Results in brief and strategic direction

**Our programs this year continued to promote the highest standards of judicial behaviour, performance and decision making. Below are our results in brief, key challenges faced this year and our strategic direction for 2020–21.**

### Our finances

We received an unmodified report for our financial statements from the Auditor-General of NSW. Looking ahead, we will proactively maintain our self-generated income streams. See Our finances chapter from p 95.

Figure 3. 2019–20 revenue, expenses and net result



### Delivering continuing judicial education

Key results	Key challenge	Strategic direction
<p>Judicial officers rated their satisfaction with the education program at 92%. See p 27.</p> <p>Judicial skills, knowledge and attitudes were enhanced with 26 education events offered. See pp 23–34.</p>	<p>Ensuring judicial officers were supported with education programs and publications while complying with COVID-19 public health regulations. See p 32.</p>	<p>Continue to transition our programs and publications online, harnessing the opportunities brought about by improved delivery platforms and technology.</p>



### Providing legal information

Key results	Key challenge	Strategic direction
<p>43 publications to inform judicial officers about changes to the law, court practice and procedure and community values. See p 40.</p> <p>Judicial officers had access to current law on the Judicial Information Research System (JIRS) to assist in their day-to-day decision making. JIRS had 1.582 million page hits (4.8% decrease). See p 42.</p>	<p>Providing judicial officers, the legal profession and the public with current and accurate information relating to the COVID-19 pandemic. See p 38.</p> <p>Providing accurate and reliable guidance to complex and important areas of the law. See p 40.</p>	<p>Ensuring publications are best fit for purpose by incorporating recent significant reforms and conducting whole-of-publication reviews.</p> <p>Maintaining focus on processes and workflows that drive the way legal information is presented and published.</p>



## Examining complaints

Key results	Key challenge	Strategic direction
<p>48 formal complaints examined. Examination of 100% of complaints finalised within 12 months of receipt. All complaints acknowledged in writing within 5 days.</p> <p>Three complaints referred to head of jurisdiction. See pp 51–52.</p>	<p>Ensuring that the impact of the COVID-19 pandemic did not compromise the accessibility and operation of the complaints function.</p> <p>Explaining to complainants why their complaint was dismissed under statutory criteria in the <i>Judicial Officers Act 1986</i>. See p 53.</p>	<p>Continue to examine all complaints efficiently, effectively, independently and objectively.</p>

## Engaging with our partners and the community

Key results	Key challenge	Strategic direction
<p>Maintained current and accessible information on JIRS throughout the year. This included the creation of a dedicated resource compiling legislation, case law and other information on COVID-19, a version of which was also accessible on the public website. See p 34.</p> <p>Efficiently coded rapidly-changing public order offences in the Lawcodes database and distributed them to agencies in the justice system. See p 63.</p> <p>Continued to collaborate closely with Papua New Guinea to assist with capacity-building. See p 64.</p> <p>Responded to requests for research assistance from government departments and agencies, and members of the legal profession. See p 62.</p>	<p>Maintaining positive engagements with our partners and the public within the constraints imposed by COVID-19 public health regulations.</p> <p>Balancing our core work with requests for research assistance and capacity building projects. See p 43.</p>	<p>Continue to engage with our partners and the community by combining our usual forms of interaction with the new communication channels and technologies with which we have become familiar in response to physical distancing requirements imposed by COVID-19 public health regulations.</p>

## Our people

Key results	Key challenge	Strategic direction
<p>97% staff satisfaction as measured in our yearly staff survey. See p 70.</p>	<p>Supporting staff transition to remote working and becoming fluent in new technologies and processes due to physical distancing requirements of COVID-19 public health regulations. Supporting all facets of staff well being through period of significant disruption.</p>	<p>Apply lessons learned from experience with working remotely to enhance efficiency and adaptability.</p>

## Our governance and ethics

Key results	Key challenge	Strategic direction
<p>8 Commission and 4 Audit Risk Committee meetings held, ensuring robust governance. See pp 84, 89.</p> <p>We complied with the requirements of NSW Treasury Policy Paper TPP 15-03 directed to internal audit and risk management policy for the NSW public sector. See p 88.</p>	<p>Maintaining business continuity in the face of significant challenges and uncertainties created by the COVID-19 global pandemic. See p 81.</p>	<p>Refining and keeping to our strategic direction while maintaining effective policies that ensure safety, security, confidentiality, access, availability, equity, risk management, integrity, compliance and assurance.</p>

## Performance results 2018–20 and targets 2019–21

Result	Measure	2018–19 result
<b>Delivering continuing judicial education</b>		
Judicial officers informed about changes to the law, community values, court practice and procedure	Maintain/increase number of publications	39 publications
	Maintain/increase number of specialised education events offered	41 education events
	Education events assisted judicial officers to reach the national standard of 5 judicial education days each year, see Note 1	4.4 days offered 3.8 days undertaken
Judicial skills, attitudes and knowledge enhanced	Maintain/increase ratings that our services provide judicially relevant and stimulating education and information	81% of participants satisfied that events relevant and applicable and 77% satisfied that events enhanced knowledge and capability
Judicial officers satisfied with their education	Maintain/improve satisfaction rates from last year	90% overall satisfaction
<b>Providing legal information</b>		
Judicial officers had access to current law to assist in decision making	Maintain/increase use of Judicial Information Research System (JIRS)	138,531 average hits each month
Judicial officers promptly informed about changes to criminal law and criminal practice and procedure	Maintain accuracy of legislation by weekly updates; update judgments on a daily basis; maintain bench books to reflect significant changes to the law; maintain email alert service	<ul style="list-style-type: none"> <li>• 214 <i>Recent Law</i> items posted on JIRS</li> <li>• 175 summaries of select appeal decisions published on JIRS</li> <li>• 4 updates to <i>Criminal Trial Courts Bench Book</i></li> </ul>
Judicial officers promptly notified of changes in sentencing law and practice	Maintain legal accuracy of Sentencing Information Principles and Practices component of JIRS	3 updates to <i>Sentencing Bench Book</i>
		Sentencing principles in <i>Sentencing Bench Book</i> linked to new cases and legislation
Accurate sentencing information available to judicial officers	Maintain sentencing statistics on JIRS on the range and frequency of penalties imposed in similar cases	Sentencing data received, audited and loaded on JIRS within 4 months of receipt
	Maintain information about sentences that other judicial officers have given in similar circumstances	Published 50* summaries of significant appeal decisions in the <i>Judicial Officers' Bulletin</i>
Information about sentencing communicated	Maintain/increase publication of sentencing trends, research papers and monographs	0 <i>Sentencing Trends &amp; Issues</i> papers and 0 monographs published
	Provide information in response to requests for specific sentencing issues	41 research requests
Judicial officers informed about sentencing options and rehabilitation facilities for offenders	Maintain current information in the Diversionary Programs database on JIRS	Done
JIRS improved to meet judicial officers' needs	Maintain/increase number of improvements to JIRS	4
<b>Examining complaints</b>		
Timely acknowledgment and completion of preliminary examination of complaints	Maintain/decrease time taken to conduct preliminary examination of complaints	Examine 94% within 6 months; 99% within 12 months
	Maintain time taken to formally acknowledge complaints received	100% of complaints received acknowledged within 5 working days
High standard of judicial performance	Compare number of complaints to number of court matters finalised during the year, see Note 5	378 judicial officers in NSW heard around 700,000 court matters in 2019–20. 63 complaints about 56 judicial officers made 0 complaints referred by the Attorney General
	Compare number of complaints dismissed under section 20 of the <i>Judicial Officers Act 1986</i> with complaints that require further action	97% of complaints were summarily dismissed under section 20 of the <i>Judicial Officers Act 1986</i> 1 complaint referred to Conduct Division, 1 complaint referred to head of jurisdiction
	Maintain accessible information about complaints process	Information about the complaints process and how to make a complaint was provided in the annual report, our website, and in brochure form
		Responded to 309 requests for information
Independence of judicial officers maintained	Complaints process demonstrates integrity of complaints function, see Note 5	Commission examined all complaints according to statutory criteria and established protocols
Information gathered from the complaints process used to develop education sessions for judicial officers	Monitor and analyse trends in complaints to feed into education sessions, see Note 5	32 of 63 complaints arose from allegations of failure to give fair hearing (51%) and 13 of 63 complaints from allegations of an apprehension of bias (21%)

\* Correction to 2018–19 report.

**Note 1.** The national standard for attendance is 5 days a calendar year. The national standard was developed by the National Judicial College of Australia and endorsed by the Council of Chief Justices and national and state judicial education bodies, see Appendix 3.

**Note 2.** It is not possible to determine a target number of *Recent Law* items, summaries, and bench book updates as these items are responsive to court and legislative developments. As variables external to the Commission, they are outside the Commission's control. All *Recent Law* items, summaries and bench book updates are produced because they address relevant changes to the law.



2019–20 target	2019–20 result	Status	2020–21 target
34 publications	43 publications	↑	34 publications
34 education events	26 education events	↓	34 education events
n/a, see Note 1	3.5 days offered 2.8 days undertaken	✓	n/a, see Note 1
80% of participants satisfied that events relevant and applicable and 70% satisfied that events enhanced knowledge and capability	86% of participants satisfied that events relevant and applicable and 85% satisfied that events enhanced knowledge and capability	↑	80% of participants satisfied that events relevant and applicable and 70% satisfied that events enhanced knowledge and capability
85% overall satisfaction	92% overall satisfaction	↑	85% overall satisfaction
115,000 average page hits each month	131,817 average hits each month	↑	115,000 average page hits each month
See Note 2 See Note 2 as required for <i>Criminal Trial Courts Bench Book</i> , see Note 2	<ul style="list-style-type: none"> <li>245 <i>Recent Law</i> items posted on JIRS</li> <li>138 summaries of select appeal decisions published on JIRS</li> <li>3 updates to <i>Criminal Trial Courts Bench Book</i></li> </ul>	✓	See Note 2 See Note 2 as required for <i>Criminal Trial Courts Bench Book</i> , see Note 2
update as required for <i>Sentencing Bench Book</i> , see Note 2	2 updates to <i>Sentencing Bench Book</i>	✓	update as required for <i>Sentencing Bench Book</i> , see Note 2
Sentencing principles in <i>Sentencing Bench Book</i> linked to new cases and legislation	Sentencing principles in <i>Sentencing Bench Book</i> linked to new cases and legislation	✓	Sentencing principles in <i>Sentencing Bench Book</i> linked to new cases and legislation
1–4 months	Sentencing data received, audited and loaded on JIRS within 4 months of receipt	✓	1–4 months
as required	Published 60 summaries of significant appeal decisions in the <i>Judicial Officers' Bulletin</i>	✓	as required
as required, see Note 3	1 <i>Sentencing Trends &amp; Issues</i> paper	✓	as required, see Note 3
as required, see Note 3	50 research requests	✓	as required, see Note 3
n/a, see Note 4	Done	✓	n/a, see Note 4
5	5	✓	5
Examine 90% within 6 months; 100% within 12 months	Examine 71% within 6 months; 100% within 12 months	↓ ✓	Examine 90% within 6 months; 100% within 12 months
100% of complaints received acknowledged within 5 working days	100% of complaints received acknowledged within 5 working days	✓	100% of complaints received acknowledged within 5 working days
n/a, see Note 5	377 judicial officers in NSW heard around 700,000 court matters in 2019–20. 56 complaints about 48 judicial officers made, 1 complaint referred by the Attorney General	✓	n/a, see Note 5
n/a, see Note 5	94% of complaints were summarily dismissed under section 20 of the <i>Judicial Officers Act 1986</i> 0 complaints referred to Conduct Division, 3 complaints referred to head of jurisdiction	✓	n/a, see Note 5
n/a, see Note 5	Information about the complaints process and how to make a complaint was provided in the annual report, our website, and in brochure form	✓	n/a, see Note 5
n/a, see Note 5	Responded to 385 requests for information	✓	n/a, see Note 5
n/a, see Note 5	Commission examined all complaints according to statutory criteria and established protocols	✓	n/a, see Note 5
n/a, see Note 5	30 of 57 complaints received/referred arose from allegations of failure to give fair hearing (53%) and 9 of 57 complaints from allegations of an apprehension of bias (16%)	✓	n/a, see Note 5

**Note 3.** Publication of sentencing trends, research papers, and monographs and responding to specific requests for information are dependent on external variables, ie changes to the law, which cannot be predicted for quantitative target setting.

**Note 4.** Because this target is absolute, no other numerical target is set.

**Note 5.** The measure of these targets is qualitative, ongoing, and subject to external variables to which the Commission can only respond. As such, no numerical measure is articulated.

**Legend** ✓ target achieved ↑ target/output exceeded ↓ target not achieved



## President's foreword

It is with great pleasure that I present the foreword to the Judicial Commission's 2019–20 Annual Report.

The Judicial Commission has shown itself to be an invaluable institution to the judiciary and people of New South Wales. The Commission plays an indispensable role in enhancing the capacity of the judiciary to administer the law in a predictable, consistent and impartial manner. The Commission maintains and promotes the highest standards of judicial behaviour and performance which is essential to both maintaining and strengthening the confidence of the public in the judiciary.

As always, this Annual Report provides a helpful and comprehensive outline of the Commission's activities and performance for the year, as well as detailing its strategic vision for the future.

### **Major focus and challenge: managing the disruption caused by COVID-19**

A major focus of the Commission, like many institutions, has been to respond to the disruption caused by the COVID-19 pandemic. The Commission has demonstrated remarkable resilience and ingenuity in the sustained delivery of its functions despite the wide-reaching consequences of the pandemic.

The Commission has embraced virtual technology to assist in its continued performance. The Commission quickly adapted the nature of its functions, for example, by moving towards the use of webinars as face-to-face programs were necessarily postponed or cancelled. The Commission played a key role in assisting judicial officers stay abreast of rapidly changing information relating to COVID-19. COVID-19 related material, such as legislation, public health orders and penalties, were compiled into an easily accessible online portal available to judicial officers on JIRS and on the public website. Furthermore, new Lawcodes

were swiftly created to facilitate the operation of COVID-19 related offences. Testament to the commitment of the Commission, these responses were facilitated at times with short notice and outside standard business hours.

During these challenging times, the Commission maintained staff engagement and satisfaction despite the majority of the Commission's staff working offsite from mid-March. Staff took advantage of formal and informal professional education during periods of remote working, including training on new technologies necessary for remote working and predominantly digital environments. The level of overall staff satisfaction as captured in the Commission's annual staff survey increased to 97% (from 94% in the year before) towards the end of the reporting period.

Furthermore, the Commission sought to minimise disruption to preserve the integrity of the Commission's functions and governance processes, including Commission meetings and Audit and Risk Committee meetings.

### **Judicial education**

The Commission held 26 judicial education events during the year. Due to the restrictions resulting from the pandemic, including the suspension of in-person programming from mid-March, fewer events were held than the year before.

Despite this, the continuing education program for judicial officers continues to be a great success. 92% of judicial officers who provided feedback expressed their overall satisfaction with the program, an increase from 90% in the previous year. These high satisfaction levels reflect the strength of the educational opportunities offered by the Commission.

The Commission continued to conduct induction and orientation sessions for newly appointed judicial officers. To further assist new magistrates' transition into the role successfully, the Commission also launched the revised mentoring program for the Local Court of NSW.

The Commission continued to implement the strategic plan for its Aboriginal Cultural Awareness program, Ngara Yura. Judicial officers who attended Ngara Yura events reported a high level of satisfaction with the program and found that the events enhanced their knowledge and capability.

## Legal information

Despite the disruption generated by the pandemic, the Commission had a productive year in disseminating legal information. The Commission published 43 publications, including bench book and handbook updates, bulletins, flyers, journals, videos and podcasts, which was an increase from the 39 publications produced in the year prior. In particular, I note the Commission created an online portal of COVID-19 related resources to support judicial officers keep up-to-date with the introduction of new and rapidly changing information. Furthermore, the Commission published *Sentencing Trends & Issues 47: Navigating the Bail Act 2013* to provide a concise guide to the bail process and updated the *Equality before the Law Bench Book* with new, peer-reviewed material on intergenerational trauma in the "Aboriginal people" chapter.

The overall use of the Judicial Information Research System (JIRS) declined, perhaps due to the impacts of COVID-19. It is interesting to note that changes in use varied across different parts of the justice system: use increased by judicial officers and support staff of the Supreme and District Courts, as well as by private law firms, while use dropped by magistrates and Local Court staff and government agencies.

Furthermore, the Commission rolled out enhancements to JIRS, including improvements to the processing of statistics, coverage of sentencing options before and after the September 2018 sentencing law reforms and the presentation of sentencing information to enhance accessibility.

## Complaints

The Commission examined 48 complaints during the year. 94% of these complaints were summarily dismissed and 3 were referred to the head of jurisdiction. No complaints were referred to a Conduct Division.

Notwithstanding the impacts caused by the pandemic, the public continued to have access to the Commission during the reporting period. The Commission received 385 telephone, face-to-face and written enquiries from potential complainants, members of the legal profession and the media. This was a notable increase from the 309 enquiries from the last year.

## Engaging with other organisations and the community

The Commission has maintained its high level of engagement with other organisations and the community more broadly. The Commission ensured the ongoing maintenance and creation of Lawcodes throughout the intense period of rapidly changing public health

orders issued to control the risks posed by COVID-19. The Commission also responded to 50 research enquiries from judicial officers, government agencies and departments.

The Commission continued to strengthen our support to other countries as part of its capacity-building assistance. The Commission maintained ongoing sharing of its technical expertise with Papua New Guinea. This included supporting the use and support of the sentencing database and criminal case management system that the Commission developed and hosts for the country. Before the COVID-19 pandemic, the Commission hosted delegations and visitors from Papua New Guinea, Hong Kong, Malaysia, Taiwan and Germany.

In addition, the Commission continued to embody the principle of "working locally, thinking globally" by working with the International Organization for Judicial Training (IOJT), including participating in its conference and assisting with editing and publishing of its journal. The Chief Executive is a member of the Board of Executives and takes an active role in the organisation. Furthermore, the Commission continued to share information and technical expertise with other judicial education bodies, both domestically and internationally.

## General and operational comments

In recognition of the Commission's high-quality reporting, I note that the Commission received its tenth consecutive gold award for its Annual Report and the Governance Reporting Award (Public and Not-for-Profit sectors) from the Australasian Reporting Awards (ARA). This achievement was formally recognised by the ARA Chair's Commendation for excellence in reporting.

## Future direction

Looking towards the future, the Commission remains focused on harnessing the unexpected benefits that the COVID-19 pandemic has brought. The Commission is well-placed to foster the enhanced flexibility and digital connectivity that has been accelerated by the pandemic, and the new skills and opportunities that have arisen to engage with the Commission's partners. This will ensure that the Commission continues to uphold its overriding goal to provide the resources necessary to enable judicial officers to perform to the highest standard and thereby maintain the confidence of the public.

## My thanks and appreciation

As this Annual Report makes clear, the Commission's work throughout the year is to be commended, particularly in light of the wide-reaching consequence generated by the COVID-19 pandemic. I wish to extend my sincere gratitude to the Commission's staff during these difficult times. The Commission's ability to promptly and successfully navigate the disruption caused by the pandemic is testament to their commitment and ingenuity. I particularly acknowledge and thank Ernest Schmatt AM PSM, Chief Executive; Murali Sagi PSM, Deputy Chief Executive; Una Doyle, Director, Education; and Pierrette Mizzi, Director, Research and Sentencing. I would also like to thank all judicial officers who contributed their time and energies to the Commission's work.



The Honourable T F Bathurst AC  
Chief Justice of NSW  
President, Judicial Commission of NSW



## Chief Executive's message

I am very pleased to present my report on the Judicial Commission's results for 2019–20.

### Impact of a global pandemic

The COVID-19 pandemic and the public health measures introduced to minimise its spread have significantly changed the day-to-day operations of the Commission. We have continued to promote the highest standards of judicial behaviour, performance and decision making throughout the reporting period, however, by the ongoing performance of our core functions.

This achievement is testament to the flexibility and resilience of the Commission and its dedicated staff who are working productively and effectively despite considerable disruption. The challenges to our usual modes of working have also brought benefits and innovations, such as the development of new skills and increased familiarity with a range of technologies. These benefits will stay with us when the time comes for our safe return to the office environment.

### Delivering continuing judicial education

Our continuing judicial education program was significantly affected by the public health orders introduced from March 2020. In-person programming came to a halt because of the requirements for physical distancing. The Commission delivered 26 events this year which is substantially fewer than in previous years. The ongoing necessity for physical distancing did not signal the end of our program, however, and we continued to enhance judicial skills and knowledge using various modes of delivery including webinars. Judicial officers' satisfaction with the program is high at 92%, which is in line with satisfaction rates of previous years.

Our publishing output increased this year to 43 publications, including updates to bench books, journals, bulletins, videos and podcasts. We produced a research study, *Sentencing Trends & Issues 47: Navigating the Bail Act 2013*, and significantly updated the chapter on "Aboriginal people" in the *Equality before the Law Bench Book* with material on intergenerational trauma.

### Providing legal information

The Commission publishes information about criminal and civil law, with a focus on sentencing, to assist the courts achieve consistency in sentencing. Measures to prevent the spread of COVID-19 included a raft of new and frequently-changing legislation, regulations, public health orders and cases. The Commission delivers this information to judicial officers through a dedicated portal on the Judicial Information Research System (JIRS) database as well as through other publications, including the *Judicial Officers' Bulletin* and the *Recent Law* flyer.

The use of JIRS while remaining relatively high, decreased slightly by 4.8% compared with last year due to the impact of COVID-19 on the justice system. Usage by judicial officers and support staff of the Supreme and District Courts and private law firms increased, but the magistrates and Local Court staff used JIRS less during the same period.

Various enhancements to JIRS which increase the accessibility of sentencing statistics have been implemented this year and all statistics now include the sentencing options for both before and after the sentencing reforms that commenced in September 2018.



Our independent research skills and expertise remain in high demand. We responded to 50 research requests this year from various government departments and agencies, judicial officers and legal practitioners.

### Examining complaints

Of the 48 complaints examined by the Commission in 2019–20, 94% were summarily dismissed following the Commission's independent preliminary examinations. Three complaints were referred to the relevant head of jurisdiction. There were no referrals to a Conduct Division this year.

### Engaging with our partners and the community

Building strong relationships with our partners and the broader community around Australia and internationally is an important part of the Commission's work. Before the COVID-19 pandemic, we shared our expertise with visitors and delegations from Papua New Guinea, Malaysia, Hong Kong, Taiwan and Germany. We continued to provide ongoing capacity-building assistance to the PNG law and justice sector throughout the year. We also collaborated with courts and worked with Australian and international judicial education providers.

Our role in maintaining the Lawcodes database meant that we had an important part to play in the effectiveness of the variety of administrative emergency measures put in place to deal with the COVID-19 pandemic. Particularly in the initial stages of the public health response to COVID-19, orders attracting penalties were frequently issued, amended and repealed. Our committed staff were available to code these offences whenever they were issued, including outside of business hours and on public holidays.

The Commission received 385 telephone, face-to-face and written enquiries this year from potential complainants, members of the legal profession and the media. This is a notable increase on the 309 similar enquiries received last year, which suggests that the change to remote working for our staff did not make the Commission less accessible to the public.

### Our people

The staff of the Commission continue to express a high level of satisfaction in their work. The annual survey results also showed a marked improvement in the staff's satisfaction level with the communication of information they need to perform their work (100% up from 88% last year). This is remarkable in the context of the move to remote working and suggests that the various communication channels that have been deployed across the Commission and within teams are working well.

We continue to enjoy high retention and low turnover rates, and over half of our people have 10 or more years' service at the Commission.

### Our governance and ethics

The Judicial Commission met 8 times during the year to examine complaints, monitor our strategic direction and approve budgets and publications. Two scheduled meetings did not proceed due to COVID-19 public health regulations. Four audit and risk committee meetings were held. Professor Brian McCaughan, one of the four appointed members of the Commission, was re-appointed for a three-year term.

Our Business Continuity Plan was updated to anticipate the possibility of a pandemic ahead of COVID-19. Careful planning underpinned our successful move to remote working. A COVIDSafe return to the office plan was also prepared but, due to the ongoing issues caused by the pandemic, it was not implemented before the end of the reporting period.

I am proud to report that the consistent high quality of the Commission's annual reporting was acknowledged this year in the Australasian Reporting Awards (ARA). Our annual report for the 2018–19 year was awarded the Commission's tenth consecutive gold award, an achievement for which the Commission received an ARA Chair's Commendation. The report also received the Governance Reporting Award for public and not-for-profit sectors.

### Financial result

Our financial result for the year was a deficit of \$373,000, greater than the forecast deficit \$236,000. While there was a significant decrease in expenditure in the reporting period, there was an even greater decrease in revenue. Our total income was \$5.997 million, of which \$4.907 million was government funding. We are operating in an environment of government fiscal constraint.

The Commission's self-generated revenue of \$1.09 million was slightly higher than both budget and last year's result. It is derived primarily through contractual arrangements for goods and services for computerised case management, software development and educational services.

We received an unmodified audit report for our financial statements from the Auditor-General of NSW.

### Strategic direction 2020–21 and beyond

The impact of COVID-19 is still with us and it is unlikely that there will be a return to the world precisely as we knew it before the pandemic. There are benefits that we will take from this unexpected experience and we shall apply the lessons learned during the period of working remotely to enhance our efficiency and adaptability. We will continue the transition to online delivery of our continuing judicial education program. We will continue to ensure that our publications provide judicial officers with accurate, current and accessible legal information. We will continue to manage the significant challenge of performing our core functions with less revenue to fund them.

### My thanks

I would like to extend my sincere thanks for the dedication of the many people who have contributed to the successful continuity of the Commission's operations. The guidance and assistance of the Commission members, the support of judicial officers on our education and bench book committees, and the skill and diligence of the Commission's staff have proven invaluable in these uniquely challenging times.

Ernest Schmatt AM PSM  
Chief Executive, Judicial Commission of NSW

## Judicial Commission members

**Commission members provide the leadership necessary to achieve our strategic directions and goals. The Commission has 6 official members and 4 appointed members.**

### Official members

The heads of the State's 4 courts and the Industrial Relations Commission as well as the President of the Court of Appeal of NSW are official members. The Chief Justice of NSW is the Judicial Commission's President.

### Appointed members

The Governor of NSW appoints 4 people. The Attorney General nominates 4 people who have high standing in the community. One is a legal practitioner appointed following consultations between the Attorney General and the Presidents of the Law Society of NSW and the Bar Association of NSW.

Figure 4 on p 22 illustrates the relationship between the Commission members and the executive team.

### President



**The Honourable Tom Bathurst AC**  
Chief Justice of NSW — commenced 1 June 2011

Chief Justice Bathurst was admitted as a solicitor in NSW in 1972 and called to the NSW Bar in 1977. He was appointed Queen's Counsel in 1987 and Chief Justice of NSW in 2011. He was President of the Australian Bar Association (2008–09) and President of the NSW Bar Association (2010–11). The Chief Justice was also a Member of the Commonwealth Takeovers Panel (2008–11). In 2014, the Chief Justice became a Companion of the Order of Australia. As President, the Chief Justice is responsible for presiding at meetings and has a deliberative vote. In October 2016 the Chief Justice was elected as an Honorary Bencher of Middle Temple.

### Official members



**The Honourable Justice Andrew Bell**  
President of the Court of Appeal of NSW — commenced 28 February 2019

Justice Bell was called to the NSW Bar in 1995, appointed Senior Counsel in 2006 and appointed President of the NSW Court of Appeal in February 2019. Prior to joining the Bar, his Honour completed undergraduate degrees in Arts and Law at the University of Sydney, both with First Class Honours and the University Medal, and then a Bachelor of Civil Law (for which he was awarded the Vinerian Scholarship) and a Doctor of Philosophy at the University of Oxford. His Honour has served as Senior Vice-President (2018–19) and Treasurer (2017–18) of the NSW Bar Association. His Honour was also the Editor of Bar News from 2005 to 2012. His Honour has published extensively and held a number of academic positions, including as Adjunct Professor at the University of Sydney Law School. In 2012, his Honour was named a Fellow of the Australian Academy of Law.



**The Honourable Justice Brian Preston**  
Chief Judge of the Land and Environment Court of NSW — commenced 14 November 2005

Justice Preston was called to the Bar in 1987 and appointed Senior Counsel in 1999 and Chief Judge of the Land and Environment Court of NSW in 2005. He is a Fellow of the Australian Academy of Law, Fellow of the Royal Society of NSW and Honorary Fellow of the Environment Institute of Australia and New Zealand. He was awarded an honorary Doctor of Letters by Macquarie University in 2018. He has lectured in post-graduate environmental law for nearly 30 years. He is currently an Adjunct Professor at the University of Sydney, Western Sydney University and Southern Cross University. He has authored over 130 publications on environmental, administrative and criminal law. His Honour has been involved in numerous capacity-building programs for the judiciaries in Asia. He is a member of various international environmental law committees and advisory boards, including Chair of the Standing Committee on Environmental Law of the Law Association for Asia and the Pacific (LAWASIA) and member of the Interim Governing Committee for the Global Judicial Institute on the Environment.



### **The Honourable Justice Derek Price AO**

**Chief Judge of the District Court of NSW — commenced 8 August 2014**

Justice Price worked as a solicitor in Sydney and in Dubbo, becoming a partner with Peacocke, Dickens and King in 1974. In 1988, his Honour was appointed a magistrate of the Local Court of NSW. He was appointed an acting judge of the District Court of NSW in 1999 and this appointment became permanent in 2000. In 2002, his Honour was appointed Chief Magistrate of the Local Court of NSW during which time he served as a member of the Judicial Commission. In 2006, his Honour was appointed a judge of the Supreme Court of NSW. His Honour has also been a member of the Governing Council of the Judicial Conference of Australia (1997–2000). His Honour was appointed Chief Judge of the District Court of NSW and President of the Dust Diseases Tribunal of NSW on 8 August 2014 and remains a judge of the Supreme Court of NSW and continues to sit in the Court of Criminal Appeal. His Honour became a Member of the Order of Australia in 2010 and in June 2020 he became an Officer in the General Division.



### **His Honour Judge Graeme Henson AM**

**Chief Magistrate of the Local Court of NSW — commenced 28 August 2006**

Judge Henson was called to the Bar in 1980 and served as Solicitor for Public Prosecutions in the Office of the Director of Public Prosecutions (NSW) from 1986 to 1988. He was appointed a magistrate in 1988, Deputy Chief Magistrate in 1994, Chief Magistrate of the Local Court of NSW in 2006, and a judge of the District Court of NSW in 2010. He is also a Member of the Advisory Committees, Faculty of Law, of the Australian Catholic University and the University of Wollongong. In 2017, Judge Henson became a Member of the Order of Australia.



### **Chief Commissioner Peter Kite SC**

**Industrial Relations Commission of NSW — commenced 3 April 2017, retired 20 November 2019**

Chief Commissioner Kite was appointed Chief Commissioner on 3 April 2017. He is the first Chief Commissioner of the Industrial Relations Commission. He was previously Acting Deputy President and acting judge of the Commission, appointed between 2 December 2014 and 2 June 2015. Chief Commissioner Kite came to the Industrial Relations Commission after over 30 years as a barrister specialising in industrial law. He was appointed Senior Counsel in November 1996 and was the NSW Bar Association's representative on the NSW Industrial Relations Advisory Council between November 2010 and December 2014. He also served as Chair of the Federal Litigation and Dispute Resolution Section of the Law Council from October 2002 to October 2008. Between 2000 and 2014, Chief Commissioner Kite was also a Director of Camp Quality Limited, a national children's cancer charity.



### **Chief Commissioner Nichola Constant**

**Industrial Relations Commission of NSW — commenced 2 March 2020**

Chief Commissioner Constant was admitted as a solicitor in NSW in 2000. She was appointed a Commissioner of the NSW Industrial Relations Commission in July 2018 and appointed Chief Commissioner on 2 March 2020. Prior to her appointment to the Industrial Relations Commission, Chief Commissioner Constant was the Assistant Crown Solicitor/Director for Employment Law at the Crown Solicitor's Office. Over her career, she has held a number of roles in private sector law firms and banking, and was a member of the NSW Workers Compensation and Work Health and Safety Council. Chief Commissioner Constant holds degrees from the University of Sydney and the University of New England.

## Appointed members



### **Dr Judith Cashmore AO** BA (Hons) Dip Ed, M Ed, PhD

Appointed 1 December 2004; reappointed 19 August 2009 for 3 years; reappointed 7 November 2012 for 3 years; reappointed 9 December 2015 for 3 years; reappointed 9 December 2018 for 3 years

Dr Cashmore is Professor of Socio-Legal Research and Policy, University of Sydney Law School and Professorial Research Fellow in the School of Education and Social Work at the University of Sydney. She has chaired or served on numerous non-government and State and Commonwealth government committees concerning child sexual assault, child protection and children in out-of-home care, child deaths, children's rights and family law. As a research academic, she has a keen interest in the application of research to policy and practice, particularly in relation to legal and administrative decision making and children's involvement in legal proceedings concerning their care and protection, adoption, and the prosecution of child sexual abuse. In 2010, Dr Cashmore became an Officer of the Order of Australia.



### **Professor Brian McCaughan AM** MB BS

Appointed 16 May 2010 for 3 years; reappointed 30 October 2013 for 3 years; reappointed 30 October 2016 for 3 years; reappointed 30 October 2019 for 3 years

Professor McCaughan is a cardiothoracic surgeon based at the Royal Prince Alfred Medical Centre, Sydney, and Clinical Associate Professor in the Faculty of Medicine at the University of Sydney. Professor McCaughan has served as Chair of the NSW State Royal Australian College of Surgeons Committee, President of the NSW Medical Board and Chair of the Sustainable Access Health Priority Taskforce. He has served as a Director of Surgical Services at the Royal Prince Alfred Hospital, Sydney, and Area Director of Cardiovascular Services, Central Sydney Area Health Service. He is Chair of the Boards of the Clinical Excellence Commission and the Agency for Clinical Innovation, and was appointed to the Board of the Chris O'Brien Lifehouse Cancer Centre. In 2009, Professor McCaughan became a Member of the Order of Australia.



### **Mr David Giddy BA LLB**

Appointed 7 November 2012 for 3 years; reappointed 9 December 2015 for 3 years; reappointed 9 December 2018 for 3 years

Mr Giddy was admitted to the Supreme Court of NSW in 1978 and practised as a solicitor in general practice until 1990. Since 1990, he has practised exclusively in criminal law and is an accredited specialist in that area of law. In 1996, he became a member of the Criminal Law Committee of the Law Society of NSW. He has represented the Law Society on many panels, committees and commissions. In July 2009, he was awarded the Inaugural Law Society President's Medal in recognition of his significant personal and professional contributions to the betterment of law and justice as a solicitor in NSW.



### **Mr Yair Miller OAM BA**

Appointed 28 October 2015 for 3 years; reappointed 28 October 2018 for 3 years

Mr Miller has worked at board and senior management level for over 20 years in the corporate, not-for-profit and government sectors. He has served as a Community Member of the NSW State Parole Authority and President of the NSW Jewish Board of Deputies. He also sits on the Board of Governors for numerous international organisations. Mr Miller has a BA in Social Sciences and International Studies, with a Major in Middle Eastern Politics, from the University of Technology Sydney and an Advanced Diploma in Public Safety (Emergency Management) from the Australian Emergency Management Institute, a division of the Australian Federal Attorney-General's Department. In 2017, Mr Miller was awarded the Medal of the Order of Australia.

## Our executive team

The executive team is responsible for our operations and ensuring we achieve our statutory goals.



### Chief Executive

**Mr Ernest Schmatt AM PSM Dip Law (BAB)**

Mr Ernest Schmatt is responsible for all of the Commission's operations. He has input into all aspects of the Commission's work, from financial management to research, complaints, information systems management and education activities. Mr Schmatt held senior legal and management positions in the public sector before his appointment, in October 1987, as the first Deputy Chief Executive of the Judicial Commission. In March 1989, he was appointed to the position of Chief Executive of the Judicial Commission.

He was admitted to the Bar in 1979 and is a solicitor of the Supreme Court of NSW and the High Court of Australia. Mr Schmatt became a member of the Order of Australia in 2018 for his significant service to the law in the field of legal education and review, and through the use of technology to assist the judiciary. He was awarded the Public Service Medal in the 1997 Queen's Birthday Honours List for service to public sector management and reform, public sector industrial relations and judicial education in NSW. Mr Schmatt was elected to the Board of Governors of the International Organization for Judicial Training (IOJT) in 2009 and appointed to the IOJT Board of Executives in 2011. He was reappointed to this position in 2013, 2015, 2017 and 2019. He has been a member of the Advisory Board of the Commonwealth Judicial Education Institute since 1994, a member of the Executive Committee of the Asia Pacific Judicial Educators Forum and has served on the management committee of the Asia Pacific Judicial Reform Forum. Mr Schmatt was also an Honorary Associate of the Graduate School of Government, the University of Sydney (2003–2017). He has been involved in judicial capacity-building programs in China, Indonesia, West Bank and Gaza, Cambodia, Sri Lanka, Malaysia, the Philippines, Turkey and Papua New Guinea.



### Deputy Chief Executive

**Mr Murali Sagi PSM BEng GradCertPSM MBA FACS MIEAust Dip Law (LPAB)**

Mr Murali Sagi works in close partnership with the Chief Executive, providing leadership and ensuring that internal governance, planning, policies and systems enhance the Commission's capability and capacity. He contributes to the development and implementation of strategic decisions and provides guidance as a member of the Executive, to achieve the Commission's objectives and service outcomes. In addition, he is responsible for information management, corporate services and deputises for the Chief Executive in his absence.

Mr Sagi commenced employment with the Commission in 1992 and has over 25 years of experience in managing complex programs and policy challenges in both the government and private sectors. He has provided technical assistance to many organisations including AusAID, United Nations, Asian Development Bank and the Commonwealth Secretariat, London, for capacity-building projects in the legal sectors of Indonesia, West Bank and Gaza, Cambodia, India, Sri Lanka and Papua New Guinea. Mr Sagi is a qualified engineer, computer specialist, management professional and a lawyer. Mr Sagi was awarded the Public Service Medal in the 2007 Queen's Birthday Honours List for outstanding service to the Commission, particularly in the provision of information technology. He was also named the "Chief Information Officer — Government" of the year at the 2003 National IT&T awards and is a Fellow of the Australian Computer Society. Mr Sagi has been invited as a guest speaker to deliver the Occasional Addresses to new graduates at University of Wollongong and Western Sydney University. He has also been requested by the University of Sydney and the University of Technology Sydney to provide mentoring for their students.



### Director, Education

**Ms Una Doyle** BCL (University College Cork and National University of Ireland), LL.M (Syd)

Ms Una Doyle is responsible for the Commission's judicial education program. She works closely with the Education Committees of each court to plan and organise all Commission conferences and seminars, and is also responsible for the Commission's publishing program. Ms Doyle has held the position of Director, Education since December 2015. She has worked for over 20 years in legal education. Prior to joining the Commission, Ms Doyle was the Head of Professional Development, Membership and Communications, at the Law Society of NSW and the Director of Continuing Professional Education at the College of Law. She is a Past President of ACLEA, the International Association for Continuing Legal Education, and is a current co-chair of ACLEA's International Committee. She was President of the Continuing Legal Education Association of Australasia from 2005–2007, and has served as a member of its Executive for 7 terms.

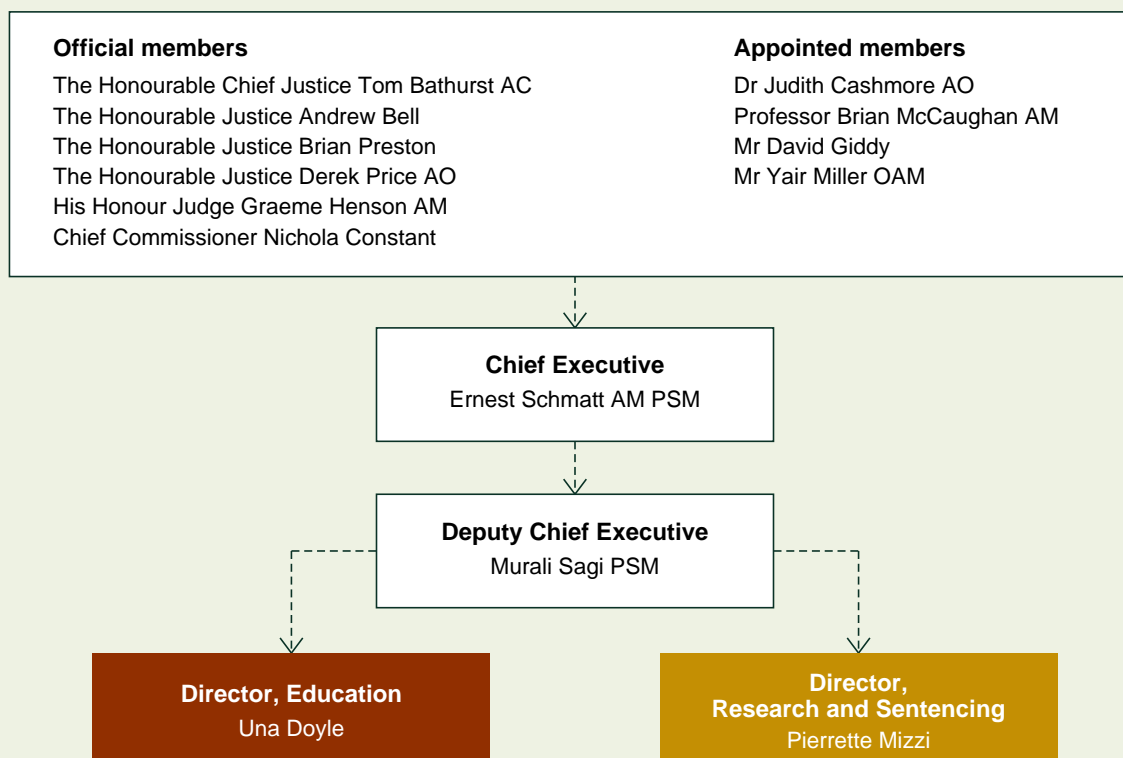


### Director, Research and Sentencing

**Ms Pierrette Mizzi** LLB (University of Technology Sydney)

Ms Pierrette Mizzi is responsible for the Commission's research program and the content on the Judicial Information Research System (JIRS). Ms Mizzi was appointed acting Director, Research and Sentencing in October 2017 and Director in May 2018. Ms Mizzi was admitted as a legal practitioner in 1996 and her prior experience includes nine years as a Principal Legal Officer at the Commonwealth Director of Public Prosecutions, and eight years as Manager of the Commission's Research and Sentencing Division. Ms Mizzi is the author of several publications on sentencing law, including *Sentencing Commonwealth drug offenders* (2014) and *Sentencing offenders convicted of child pornography and child abuse material offences* (2010).

Figure 4. Commission members and executive team as at 30 June 2020



# Program 1

## Delivering continuing judicial education



Judicial officers were informed about changes to the law, community values, court practice and procedure through 26 education events held in 2019–20. Due to the COVID-19 outbreak and ensuing restrictions, our 2019–20 face-to-face education program was severely curtailed.

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## 1.1 Performance results 2019–20

**An assessment of the results shown in Table 1 demonstrates that our continuing judicial education program performed well in 2019–20 notwithstanding the impact of the COVID-19 pandemic. Table 1 shows the evidence for each identified result as well as details of each measure we have put in place to achieve our objectives, program highlights, challenges, and forward direction.**

Table 1. Results for delivering continuing judicial education

Results	Measures	Target
Judicial officers were informed about changes to the law, community values, court practice and procedure	Maintain or increase number of reviewed publications, in response to major legislative reforms  Maintain or increase number of specialised education events offered  Education sessions assisted judicial officers to reach the national standard* of 5 judicial education days each year	34 publications  34 education events
Judicial skills, attitudes and knowledge were enhanced	Maintain or increase ratings that our services provide judicially relevant and stimulating education and information  Provide relevant number of skills-based workshops and content  Information in the <i>Equality before the Law Bench Book</i> is current and addresses access and diversity issues	80% of participants who provide feedback are satisfied that events were relevant and applicable and 70% of participants satisfied that events provided enhanced knowledge and capability
Judicial officers were satisfied with our education program	Maintain or improve satisfaction rates  Maintain or increase voluntary attendance rates*	85% overall satisfaction from participants who provide feedback
We responded to concerns about judicial performance raised in the complaints process	Design education events based on specific concerns raised in complaints	

\* The national standard for attendance is 5 days a calendar year. The national standard was developed by the National Judicial College of Australia and endorsed by the Council of Chief Justices of Australia and New Zealand and national and state judicial education bodies. Our continuing judicial education program is not compulsory. Given the education days are voluntary, the Commission no longer sets targets but is guided by the standard. See Appendix 3 for more information.

Photo previous page: An engaged audience listening to the authors of *The First into the Dark*, by Michael Robertson, Astrid Ley and Edwina Light. Our Ngara Yura Project Officer, Joanne Selfe, gave a Welcome to Country and launched the book at the UTS Library, October 2019.



Performance	Status	
<p>43 publications, including 22 bench book and handbook updates, 1 <i>Sentencing Trends</i>, 11 bulletins, 1 <i>Recent Law</i> flyer (comprised of 11 issues), 1 journal issue, 7 videos and podcasts: see p 40</p> <p>Monthly Judicial Commission meetings and/or bench book committees and experts reviewed publications</p> <p>Decreased to 26 events due to disruption of COVID-19 pandemic, resulting in suspension of in-person programming from mid-March: see p 27</p> <p>3.5 education days offered, 2.8 days undertaken: see p 32</p> <p><b>HIGHLIGHT</b> We continued to ensure that judicial officers were supported during a very challenging time. We did this by offering programs using a variety of modes of delivery; developing a COVID-19 resource web portal for judicial officers and the legal profession; and sharing resources with interstate judiciary</p>	<p>↑</p> <p>↓</p> <p>✓</p>	<p><b>Challenges 2019–20</b></p> <ul style="list-style-type: none"> <li>Public health regulations in the face of COVID-19 meant that in-person delivery of education events was suspended from mid-March. Scheduled events had to be cancelled, postponed or re-configured into different modes of delivery in a very short space of time. This had to be managed within the context of the Programs team working remotely from separate locations.</li> <li>The COVID-19 pandemic led to publishing and programs staff working at home from March 2020 until the end of the reporting period.</li> <li>We had to quickly transition to online delivery for all our publications. We were already well placed to do this as all our publications are available online. Hard copies of publications were made available once health regulations permitted.</li> <li>Meeting our publishing schedule was a challenge in a changed working environment but we were successful in achieving our publishing targets.</li> </ul>
<p>86% satisfied that events were relevant and applicable and 85% satisfied enhanced knowledge and capability: see p 32</p> <p>5 skills-based workshops: see p 27</p> <p><i>Equality before the Law Bench Book</i> was updated to include new and peer-reviewed material on intergenerational trauma in the “Aboriginal people” chapter</p> <p><b>HIGHLIGHT</b> We commenced development of a comprehensive new online handbook, designed to inform judicial officers about a range of contemporary and emerging topics</p>	<p>↑</p> <p>✓</p> <p>✓</p>	<p>Judicial education expenditure:</p> <p>\$3.43 million as at 30 June 2020 (54% of overall expenditure).</p>
<p>Evaluations of all education sessions show satisfaction with our continuing education program was 92%: see p 27</p> <p>Attendance rates decreased to 2.8 average training days undertaken by each judicial officer, as a consequence of our reduced in-person offering due to COVID-19: see p 32</p> <p><b>HIGHLIGHT</b> We launched our revised mentoring program for the Local Court of NSW, designed to help new magistrates to transition into the role successfully, build resilience and reach his/her full potential</p>	<p>↑</p> <p>↓</p>	<p><b>Looking ahead 2020–21</b></p> <ul style="list-style-type: none"> <li>Continue to maintain the currency of our bench books so that judicial officers have ready access to up-to-date legal information</li> <li>Publish a revised “Women” chapter in our award-winning <i>Equality before the Law Bench Book</i> to incorporate, amongst other things, information for judicial officers about sexual harassment and to contemporise terminology and challenge stereotypes about gender.</li> <li>Continue to develop a new <i>Handbook for judicial officers</i>.</li> </ul>
<p>Programs held addressed judicial well being; judicial conduct in and out of court; and intergenerational trauma: see Appendix 5 for list of topics</p> <p><b>HIGHLIGHT</b> We continued our work on vicarious trauma research, in partnership with UNSW, and our survey of NSW judicial officers reflected a high level of engagement with an unprecedented response rate of over 50%</p>	<p>✓</p>	<ul style="list-style-type: none"> <li>Apply the many lessons learned from our experience with working remotely to enhance our efficiency and adaptability.</li> <li>Continue to transition our programs online, harnessing the opportunities brought about by improved delivery platforms and technology.</li> </ul>

Legend ✓ target achieved ↑ target/output exceeded ↓ target not achieved



## 1.2 Listening to judicial officers

### Judicial officers' feedback shows how relevant they find our programs.

"We can never hear enough of this — our backgrounds and circumstances are generally secure and comfortable to be reminded of others whose backgrounds and circumstances are not is invaluable — our concept of 'fairness' is better informed."

Local Court Annual Conference, August 2019

"Always brilliant — an uplifting, enthusiastic delivery — our conference should have more presentations like this. This is how it should be done."

Local Court Annual Conference, August 2019

"Always good ... More time for discussion on sticky cases and detail on developing and opposing NSW CCA decision would be good. I feel we miss a valuable opportunity here for that to occur with most judges present and undistracted by work demands."

Supreme Court Annual Conference 2019, August 2019

"Great paper and theoretical session. Some further practical scenarios would have added to the session."

Local Court Metropolitan Series II, November 2019

"Fantastic — very useful resource. It's a shame we ran out of time to finish the case studies as they were very useful and relevant to our daily considerations."

Local Court Metropolitan Series II, November 2019

"Extremely thorough, very well presented and really shocking content! I have been challenged and now need to consider my complacency."

Children's Court Section 16 Meeting, November 2019

"Excellent session, needs to be longer to enable exchange of views between children's magistrates."

Children's Court Section 16 Meeting, November 2019

"Useful for time management. Great insight with regards to managing own court. Very practical."

Local Court Magistrates' Orientation Program 2019, December 2019

"Quite a daunting experience at first, to present in front of colleagues but worthwhile to get feedback that wouldn't ordinarily be available."

Local Court Magistrates' Orientation Program 2019, December 2019

"It was very useful to do these more difficult cases. Biases and attitudes have more influence than I thought, I can now recognise them and put them to one side."

Local Court Magistrates' Orientation Program 2019, December 2019

"The paper presented is very comprehensive and extremely useful given the dearth of resource available in this area of the law. The oral presentation of the paper, with the bonus of contributions by the co-presenters was also very practical and useful."

Supreme Court seminar: Terrorism Trials and Sentencing, March 2020

"The webinar format was very well prepared and provided a level of flexibility and access to the program that should be retained into the future. I also liked the broader range of participants from across different jurisdictions."

Cross-jurisdictional webinar: The neurobiology of "prejudice" (or "bias") in legal decision making, June 2020



## 1.3 Satisfaction with our continuing judicial education

### 92% judicial satisfaction with the 26 events that comprised the education program in 2019–20.

#### Evaluating our continuing judicial education program

Our mission is to promote the highest standards of judicial behaviour, performance and decision making. The education program we offer is tailored to enhance judicial skills, knowledge and attitudes. So that we know what judicial officers need from our program, we invite feedback on each education event offered, including its professional and practical benefits. The Commission's complaints process also provides the people of NSW the opportunity to raise concerns about the ability or behaviour of a judicial officer. The number of complaints we receive each year is very low compared to the high volume of matters that judicial officers hear. This attests to the high standard of judicial ability and performance in NSW: see p 51 for details about complaints made during the year.

On an overall measure of satisfaction, judicial officers who provided feedback on events were 92% satisfied with the continuing education program (last year: 90%), which comprised 26 discrete events. Fewer programs were offered in 2019–20 due to the COVID-19 pandemic where all in-person programming was suspended from 20 March 2020, in line with public health regulations. Eighty-six per cent of respondents agreed that the education sessions were applicable to their work and 85% agreed that they enhanced their knowledge and capability. There was 98% satisfaction rating for support received from Commission staff.

#### Satisfaction remains high with annual conference program

Judicial officers who provided feedback on events were 87% satisfied (last year: 92%) with their annual conference as shown in Figure 5. Usually, an annual conference is held for each of the State's courts, however in 2019–20 only two court conferences could be held due to the pandemic. The education committee of each court, working with the Director, Education, developed specialised sessions for the specific needs of the court and invited suitable judicial or expert presenters to facilitate these. Based on evaluations received, judicial officers feel that their education needs continue to be met through annual conferences which also promote court collegiality. The full list of sessions offered at the two annual conferences is found in Appendix 5.

#### High satisfaction with seminar program

Seminars are offered throughout the year to address the specific educational needs of judicial officers identified through the education design process. As shown in Figure 6, participants who provided feedback on events were 92% satisfied (last year: 90%) with the seminar program. Discrete sessions were held during the year that covered a range of educational

topics for judicial officers. Due to the pandemic these were moved online in the last quarter of the reporting period. A full list of topics can be found in Appendix 6.

#### High satisfaction maintained with skills-based workshops

Magistrates who provided feedback remained highly satisfied (97%) with their workshops as shown in Figure 7. Five workshops were held this year (last year: 7). In some instances, skills workshops for judicial officers are now held in partnership with other judicial education organisations to avoid duplication of offerings.

Figure 5. Satisfaction with annual conference program 2015–20

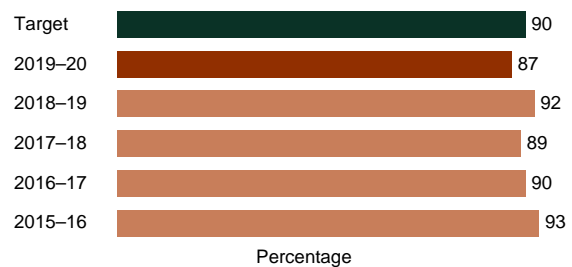


Figure 6. Satisfaction with seminars and gaol/forensic visits 2015–20

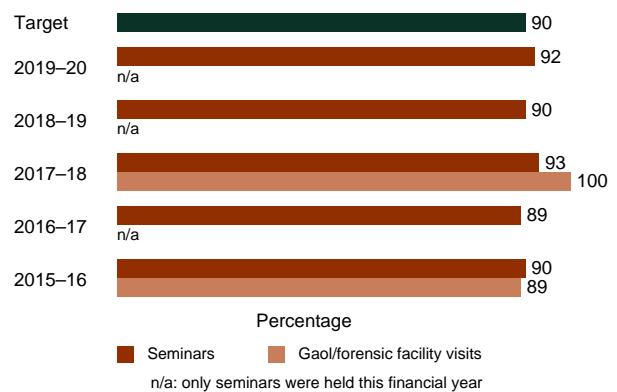


Figure 7. Satisfaction with workshops 2015–20

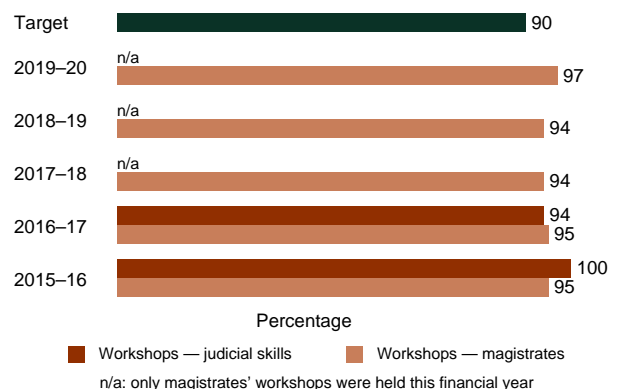
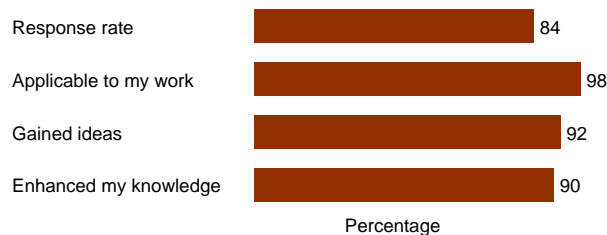




Figure 8 shows that the majority of magistrates who provided feedback were satisfied with the professional and practical benefits of these sessions with 98% finding the workshop was applicable to their work (last year: 95%) and 90% finding the session enhanced their knowledge and capability (last year: 87%).

**Figure 8. Rating of professional and practical benefits of 2019–20 workshops**



We do not set quantitative targets for these ratings.

## Case study

### Working locally, thinking globally

The Commission is a small organisation and we value our connections to the global community. Maintaining links with our counterparts overseas keeps us informed as to innovations in judicial education and ensures that we remain fully up to speed with new developments in learning experiences.

The International Organization for Judicial Training (IOJT) was established in 2002 to promote the rule of law through international cooperation. Our Chief Executive has held executive roles on the IOJT Board of Governors and Board of Executives since 2009 and has enabled the Commission to have a huge input to the work of the IOJT. He is also the Joint Editor-in-Chief of the IOJT's international journal, *Judicial Education and Training*.

As a member institute of the IOJT, we participated in the 2019 IOJT Conference which took place from 22–26 September at the Cape Town International Convention Centre. Participating in the conference and networking with other delegates provides an excellent opportunity to benchmark where the Commission sits in comparison to other similar institutions in terms of governance, innovation and capability.

Our Director, Education, Ms Una Doyle, gave a presentation “Curriculum Development: Innovative Approaches: What’s Old is New Again — Maintaining Relevance in a Changing Learning Environment”, jointly with Chief Justice Helen Murrell of the Australian Capital Territory, Justice Glenn Martin AM, Supreme Court of Queensland and Ms Lillian Lesueur, Chief Executive, National Judicial College of Australia (NJCA). The session illustrated how the National Judicial Orientation Program, a collaborative undertaking with the NJCA, has withstood the test of time, remaining relevant and delivering effective outcomes for 26 years.

As one of the better-resourced members, we also assist the IOJT by editing and publishing its journal. *Judicial Education and Training* showcases a selection of papers from the IOJT conferences and is available on its website at [www.iojt.org](http://www.iojt.org). Publications such as this is one of the benefits that the IOJT can provide to judicial education bodies in developing countries to support the consolidation of an independent judiciary.

A meeting of the members of the Asia Pacific Judicial Educators (APJE) was held in tandem with the IOJT Conference. The group agreed to work towards improved practical outcomes in the delivery of judicial education by greater collaboration. The institutes (Judicial Commission of NSW, Institute of Judicial Studies of New Zealand, Papua New Guinea Centre for Judicial Excellence, Hong Kong Judicial Institute, Singapore Judicial College, Judicial College of Victoria and the National Judicial College of Australia) agreed to meet in Sydney in 2020. Unfortunately, this meeting was postponed due to the COVID-19 pandemic.



Our Director, Education, Una Doyle, co-presented a session at the IOJT Conference in Cape Town, South Africa, September 2019.



## Case study

### Maximising learning opportunities in a time-poor environment

One of the biggest challenges for educators today is the limited time available to participants to fully engage in educational offerings. Counter to this is the “information overload” of data that constantly bombards us from all manner of devices.

Smart phones, internet video, podcasts and apps are ubiquitous. We are almost relentlessly connected to each other and to the amorphous body of information online. As judicial educators, we have to turn this connectivity to our advantage.

In 2019 we began to expand our range of on-demand and self-directed offerings that promote flexible learning opportunities. Participating in a program that can begin at any time and has an open completion date is a very attractive option for judges and magistrates who are keen to learn but are simply not in a position to commit due to competing demands. Our growing database of recorded presentations is available for access at any time and the Commission’s Interactive Learning Resource app (a tool that employs simulated courtroom scenarios to assist with learning) is available to all judicial officers. We also developed our own Learning Management System (LMS) using the Moodle platform to assist with curating and managing our content.

Microlearning has emerged as another appealing strategy in response to the time challenge. No matter how brief, these educational experiences can be beneficial. A 5-minute podcast or 20-minute video can often provide what a judicial officer needs at that point in time without the formality and structure of traditional learning experiences. We continue to expand our range of podcasts and build a comprehensive video library on our JIRS platform to make these opportunities readily available to the judicial officers of NSW.

#### Increased online offerings

Cognisant that many judges and magistrates are located in regional areas, we continue to offer programs online and by webinar. The value of this medium for delivering education was highlighted in 2020 when the COVID-19 pandemic necessitated the cancellation of all in-person events.

In addition, judicial officers who are unable to participate in live education sessions can catch up with videos and audio podcasts of select sessions available on the Judicial Information Research System (JIRS) (see p 40 for information about JIRS). During the past year we published videos and podcasts on a range of topics including unconscious judicial prejudice, intergenerational trauma and forensic science.

We also added to our program materials database, the rich, educational resource where all available papers and presentations from our conference and seminar program are published. During the year, we published 29 new papers and presentations on this database.

We continue to offer interactive learning applications to Apple™ and Google Android™ devices, based on gaming technology. These enable judicial officers to hone their decision-making skills using an interactive learning application.

#### Conducting induction and orientation sessions for new judicial officers

During the year, we provided 21 judicial orientation packages (last year: 29), access to the Judicial Information Research System (JIRS) and computer support (if required) for new judicial officers. Last year,

the State Government appointed an unprecedented number of District Court judges which explains the lower figure this year.

In partnership with the Local Court, we provided 5 pre-bench sessions (last year: 5) and a week-long orientation program to assist new magistrates in their transition to judicial office. The program had a focus on knowledge and fundamental judicial skills about court craft, decision making, sentencing, judicial administration and judicial conduct. We also launched a revised mentoring scheme in the Local Court.

The Commission also held a pre-bench session for a newly appointed District Court judge, providing an opportunity for her to benefit from the knowledge and experience of senior judges.

We again delivered training sessions on JIRS to Supreme Court tipstaves to assist them with providing research support to judges. Mr Mark Zaki, Managing Lawyer, Research and Sentencing, delivered a well-received training session in January 2020. JIRS logins are also issued to tipstaves to assist them with supporting judges. A corresponding training session was scheduled for District Court associates in April 2020, but had to be postponed due to the COVID-19 situation.

The National Judicial Orientation Program (NJOP), conducted with our national partners, is a week-long induction and orientation program for newly-appointed judges. The NJOP addresses the significant requirements of the judicial role as well as the personal implications of becoming a judicial



officer and standards of behaviour required. Due to the high number of new appointments there were two programs held this year, Gold Coast (October 2019) and Sydney (February 2020). Both received positive feedback: of the participants who provided feedback, 100% from the Gold Coast program and 88% from the Sydney program rated the program's usefulness and relevance as excellent or very good. Sessions covered in these programs are listed in Appendix 5. The Judicial Commission and the Australasian Institute of Judicial Administration assisted the National Judicial College of Australia to present these programs.

### Continuing support of Ngara Yura Program

Participation in our Aboriginal cultural competency program remains steady and satisfaction is high. Participants who provided feedback were 87% satisfied (last year: 91%) as shown in Figure 9. The Ngara Yura Program is offered to raise judicial awareness about Aboriginal history and culture, Aboriginal interactions with the criminal justice system, and to provide an opportunity for judicial officers to meet and exchange ideas with Aboriginal people.

Our Aboriginal project officer works with the Ngara Yura committee to develop and implement a range of strategies, including tailored education activities. The Ngara Yura Program adopts a multi-faceted approach, with partnerships, community visits, seminars and publications designed to promote inter-cultural communication and understanding. The program is based on Recommendations 96 and 97 of the Royal Commission into Aboriginal Deaths in Custody (see Appendix 9 and at [www.judcom.nsw.gov.au/education/ngara-yura-program/ngara-yura-committee-terms-of-reference/](http://www.judcom.nsw.gov.au/education/ngara-yura-program/ngara-yura-committee-terms-of-reference/)).

Throughout 2019–20 we continued to implement our strategic plan for the Ngara Yura program. We held joint programs with the NSW Bar Association and the Law Society of NSW on significant topics, including “Reflections on the *Wotton* Decision” in October 2019. See case study on p 31.

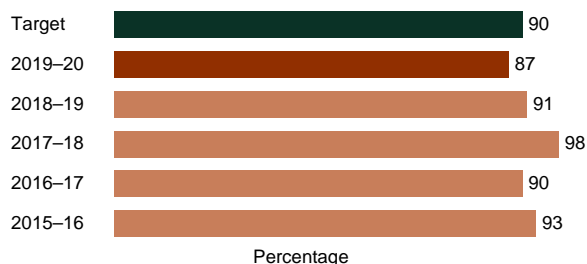
In February 2020, judicial officers were able to hear from international expert and founder of the Aboriginal Legal Service in Toronto, Mr Jonathan Rudin, on the subject of addressing Indigenous over-representation in the Canadian justice system. That address was accompanied by another on the *Bugmy* Bar Book project, a resource developed for practitioners to assist in the preparation and presentation of evidence. Both of these programs were live streamed and recordings made available for viewing after the event.

In recognition of the International Year of Indigenous Languages (2019) we hosted a field trip to the State Library of NSW for judicial officers to view the “Living Language: Country, Culture, Community” exhibition.

More information about the program is found on our public website and committee membership is listed in Appendix 4.

Of the judicial officers who attended the community visits and events held throughout the year and provided feedback, 100% found that the visits enhanced their knowledge and capability and 64% found the information was applicable and relevant to their judicial work.

Figure 9. Satisfaction with Ngara Yura Program 2015–20



Ngara Yura field trip participants enjoyed a behind the scenes tour of the State Library temporary exhibit, “Living Language: Country, Culture, Community”, November 2019.



The Commission partners with courts and the profession on an Indigenous clerkship program. The Hon Justice Derek Price AO, Chief Judge of the District Court of NSW, the Hon James Allsop AO, Chief Justice of the Federal Court of Australia, graduate Daniella Burt and the Hon Tom Bathurst AC, Chief Justice of NSW attended the ceremony which concluded this year's program, February 2020.



## Case study Spotlight on Ngara Yura Committee

Our Aboriginal Cultural Awareness program, Ngara Yura, plays an important role in the wider judicial education offering of the Commission. The program was established 28 years ago in response to recommendations of the Royal Commission into Aboriginal Deaths in Custody and has evolved to remain relevant to current issues.

The Ngara Yura Committee is made up of judicial officer representatives from the NSW courts, together with two community members, and the Chief Executive. The Commission appointed Mr Andrew Smith to the Committee in August 2019. Mr Smith is a proud Wiradjuri man of the Tubba-Gah people and a barrister. He brings to the Committee a valuable combination of insight into issues facing our local Indigenous population and understanding of the Committee's work, which enables him to act as a conduit between the Committee and community.

The Ngara Yura Committee has a number of goals that relate to enhancing judicial knowledge and understanding of contemporary Aboriginal social and cultural issues. We use many strategies including community visits, development of education programs and workshops, engagement with partner organisations, and publication of relevant information.

The Committee has ongoing partnerships with various government agencies, legal professional bodies and community based organisations. These partnerships foster an information sharing model that helps develop relevant programs. For example, in October 2019, the Committee held a seminar on "The *Wotton* decision"<sup>\*</sup> as part of a joint venture with the Law Society of NSW and the Bar Association of NSW. The class action brought by the Indigenous people of Palm Island alleging contraventions of the *Racial Discrimination Act* 1975 (Cth) has become a landmark case in Australian public interest law and this seminar discussed its significance, impacts and ramifications.

The Ngara Yura Committee, working with Jumbanna UTS, and in another joint venture with the NSW legal professional bodies, arranged for Mr Jonathan Rudin, Aboriginal Legal Service, Toronto, Canada to present to judicial officers and lawyers in February 2020. Mr Rudin shared his experiences of working with Canada's Indigenous community, drawing parallels between the Australian and Canadian experiences, particularly in the context of ways to address racial bias in sentencing.

\* *Re Wotton v State of Queensland (No 5)* [2016] FCA 1457

\*\* *Bugmy v The Queen* (2013) 249 CLR 571

The presentation dovetailed neatly with an overview of the *Bugmy* Bar Book project, a resource developed to assist in the preparation and presentation of evidence to establish the application of the *Bugmy v The Queen*<sup>\*\*</sup> principles. We support the use of the *Bugmy* Bar Book by making it available to all judicial officers via our JIRS database.

Our successful collaboration with the NSW Bar Association, Federal Court of Australia, Supreme and District Courts of NSW again offered an Indigenous clerkship program this year. This program operates like a vacation clerkship at a law firm and places emphasis on the tasks undertaken by barristers and judges. Three students completed the program on 28 February 2020.

Another aspect of our work is to publish and disseminate educational information and we use many avenues to do so throughout the year. We published several articles addressing Indigenous issues in our *Judicial Officers' Bulletin*: "First Nations consensus in constitutional reform, nation building and treaty making process" (July 2019); "Decolonising the mind: working with transgenerational trauma and First Nations People" (July 2019); "The trauma-informed approach of the NSW Youth Koori Court" (April 2020); and "The *Bugmy* Bar Book project" (June 2020).

The Commission updated the chapter on "Aboriginal people" in our *Equality before the Law Bench Book* in late 2019, including new material on the emerging topic of intergenerational trauma. The Ngara Yura Committee, with its blend of judicial, legal and community members, was perfectly placed to review the changes and did so. In 2020, we revamped our "Decisions of Interest" page on the Ngara Yura website. This collection, from various Australian courts, highlights key decisions that consider Aboriginality.



The seminar on the *Wotton* decision was led by Chris Ronalds AO SC, with Ngara Yura Committee member, Andrew Smith, and Ngara Yura Project Officer, Joanne Selfe, also attending.



## 1.4 How we design and deliver continuing judicial education

The NSW public expects judicial officers to be impartial, independent, to know the law and perform to the highest professional standard. Judicial officers come to their role as highly-skilled professionals, so our program is designed initially to assist new judicial officers in their transition to the role as an impartial adjudicator. From there, we aim to continuously renew judicial skills and provide information about changes to the law, court practice and procedure, and community values.

Our continuing judicial education program is voluntary and the level of voluntary attendance is a good measure of how well judicial officers accept the need for continuing professional development and how relevant they find the education sessions to their judicial role.

The national benchmarking standard is 5 days a year. The Council of Chief Justices of Australia and New Zealand and national and state judicial education bodies have adopted the standard. In addition to attending our programs, judicial officers can also meet this standard by attending other continuing judicial education providers' programs or by self-directed professional development.

Due to the restrictions imposed by COVID-19, we were required to suspend our in-person program offerings from mid-March 2020 and consequently we offered 3.5 days of education for each judicial officer compared with 4.4 days last year. The overall average attendance rate of 2.8 judicial education days a year (last year: 3.8 days) is also reflective of this.

Our Continuing Judicial Education Policy is published on the Commission's website: see Appendix 3.

The Commission's continuing education program provides a range of services and resources to cater for varied learning styles and judicial officers' availability to attend and participate in education sessions.

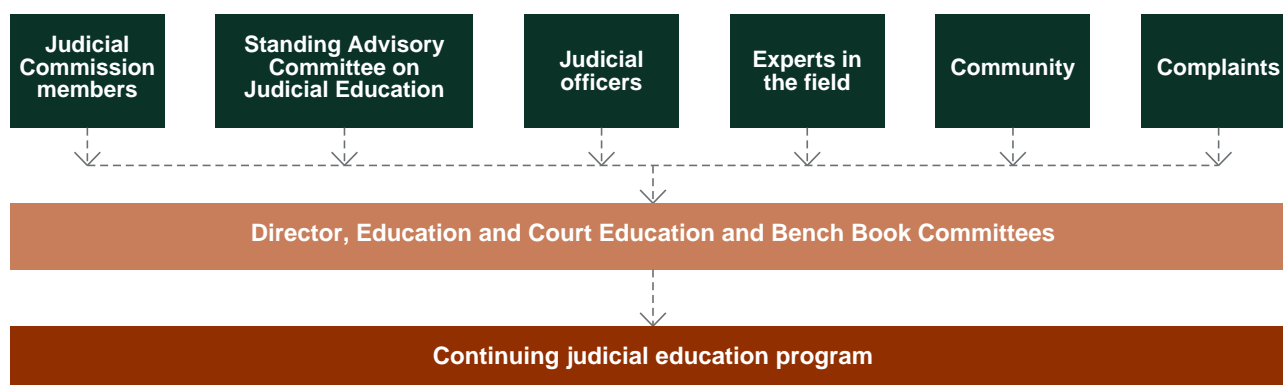
Services delivered during the year include:

- induction and orientation sessions for new judicial officers
- annual conferences for two NSW courts (others were planned but unable to proceed due to the pandemic)
- skills-based workshops
- seminars
- webinars
- field trips
- distance education including podcasts and live web streaming
- Aboriginal cultural competency sessions and community visits (the Ngara Yura Program)
- digital and multi-media resources
- online and print publications. See p 40 for details about our published legal information program
- technology training and support
- a regular e-newsletter advising judicial officers about upcoming seminars, conferences, and recent conference and seminar papers available to download.

### Leveraging judicial expertise

The Director, Education and her team work with the education committees of each court and the committees of judicial officers that oversee our publications, to develop the program. Judicial officers are involved in every stage, from designing courses to their delivery. Figure 10 below shows how this process works and Appendix 4 gives details about our current committees. Judicial officers who serve on these committees generously give their time and expertise. Concerns raised by the public in the complaints process also inform the design of the continuing education program. Judicial involvement ensures that the program is relevant and acceptable to judicial officers and maintains the need for judicial independence from the other arms of government.

Figure 10. Delivering continuing judicial education design process





## Case study

### Creating diverse learning experiences for the LEC

Field trips are an important element of the Commission's continuing judicial education offering for the Land and Environment Court (LEC). They provide a diverse range of learning experiences for the judges and commissioners of the LEC which reflects the potential breadth of topics that arise in its jurisdiction.

We conducted two Sydney CBD field trips for the LEC in this reporting period before COVID-19 public health orders suspended in-person programming.

In August, the judges and commissioners visited the State Library of NSW which is a site of architectural significance. The Shakespeare Room in the Mitchell Wing was a highlight of the tour. It is modelled on Cardinal Wolsey's room at Hampton Court Palace and its Tudor styling includes symbolic designs and finishings. The room was originally planned as a commemoration of the 300th anniversary of Shakespeare's death in April 1916, but its construction was delayed for almost 30 years by the First World War.

The group enjoyed a private viewing of rare books, including a copy of the first folio edition of Shakespeare's collected plays published in 1623, and a history tour of the buildings. Many heritage issues of interest and plans to develop the library space were discussed.

In contrast with the historical focus of the Library visit, the February field trip had a very contemporary experience with an architect-led tour of the newly completed Sixty Martin Place. The 33-level tower is highly efficient in terms of energy use, operation and maintenance and its striking contour is sympathetic to the surrounding environment. The group learned about the cutting-edge building technology and sustainable design and construction involved in its development and appreciated the expansive views of Sydney Harbour and Sydney's eastern suburbs.

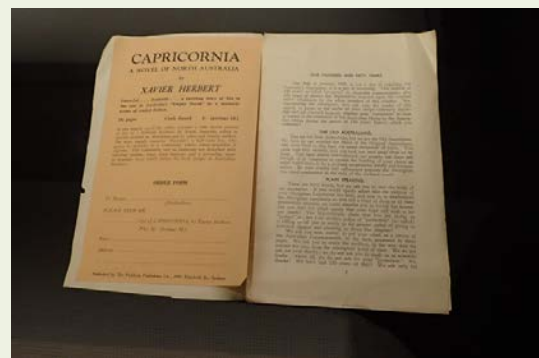
The two field trips, in quite different informal settings, were engaging learning experiences for attendees.



The field trip to the State Library of NSW included a viewing of rare books.



60 Martin Place showcases sustainable building design and construction.



The Library holds rare books requiring delicate treatment (left), including materials relating to Australian texts such as Xavier Herbert's *Capricornia* (right).

## Case study

### Harnessing the learnings from COVID-19

The COVID-19 pandemic has been a transformative global event, impacting almost every aspect of our lives. Keeping judicial officers informed as courts rapidly deployed new technology and Parliament enacted new legislation proved challenging for the Commission, but not impossible.

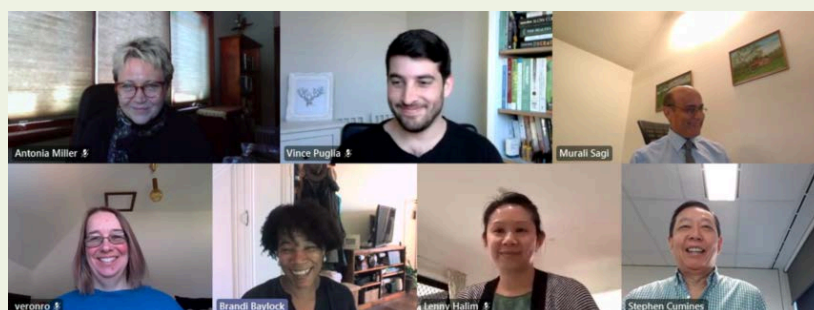
In early March 2020 we moved to set up and test an alternative working environment for staff as the reality of how the pandemic might impact our workplace became clear. Commission staff worked tirelessly to support the anticipated move offsite, providing us with the essential infrastructure to support a seamless transition. Programs and Publishing staff rotated through an initial trial of working from home, testing the technology and reporting back. In this way we were able to identify which processes could be easily done from a home environment and those that would require some extra support. In response to government and health advice, the majority of staff commenced work offsite from 23 March 2020, safe in the knowledge that it could be done.

The Commission is fortunate in that all its publications were already available online as we have been transitioning from paper-based offerings over a number of years. Similarly, a number of educational offerings were moved online, although this proved more demanding as many programs designed for face-to-face teaching do not translate easily to online delivery. We have continued to deliver our judicial education program through our online learning platform, webinars and on-demand recordings.

We continued to update the Judicial Information Research System (JIRS) and our publications without interruption, as well as creating new content specific to COVID-19. Although scheduled engagements with the courts and legal profession had to be cancelled, the necessity of new work was quickly apparent. *Recent Law* items addressing impacts of the pandemic were swiftly turned around, usually in two days, and a dedicated “COVID-19 resources” page was added to JIRS to facilitate quick and easy access by judicial officers to all recent legislation, cases and Lawcodes specific to the pandemic. This content was also used to provide pandemic-related information to the public and our partners. See our activities discussed on p 38.

Innovation has played its part — a good example being the development of a bespoke survey platform designed by the Commission’s Systems team to ensure our surveys are secure and not reliant on a third-party provider. This has proved to be a highly useful tool that we have been able to repurpose for program invitations and program evaluations. It has enabled us to offer an automated communication process and improve efficiency in an online world.

Our most important asset is our people and they have truly been the glue that has held the organisation together during this difficult period. Everyone has put a shoulder to the wheel to ensure that essential services for judicial officers have been maintained. Like many workplaces, Microsoft Teams has become the new “water cooler” and our meetings are now virtual using Webex, instead of gathering in a meeting room. In many cases, adapting to the new environment has required some upskilling. Embracing a “can do” attitude, staff participation in professional development has considerably increased, leading to higher productivity.



Meetings take place online while staff are working remotely.

# Program 2

## Providing legal information



**We provided current, timely and accurate legal information using web-based technology to promote the highest standard of judicial performance.**

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## 2.1 Performance results 2019–20

An assessment of the results shown in Table 2 demonstrates that our legal information program performed well in 2019–20. Table 2 shows the evidence for each identified result as well as details of each measure we have put in place to achieve our objectives, program highlights, challenges, and forward direction.

Table 2. Results for providing legal information

Results	Measures	Target
Judicial officers and JIRS users had access to current law to assist in their day-to-day decision making	Maintain or increase use of Judicial Information Research System (JIRS) Maintain access to current law in JIRS	115,000 page hits each month JIRS available 99% of the time
Judicial officers and JIRS users were promptly informed about changes to criminal law and criminal practice and procedure, and changes to sentencing law and practice	Maintain accuracy of legislation by weekly updates; update judgments on a daily basis; maintain bench books to reflect significant changes to the law; maintain email alert service  Maintain legal accuracy of Sentencing Information Principles and Practice component of JIRS	See Note 1, update as required for <i>Criminal Trial Courts Bench Book</i> and <i>Sentencing Bench Book</i>  Sentencing principles in <i>Sentencing Bench Book</i> linked to new cases and legislation  <i>Note 1:</i> It is not possible to determine a target number of <i>Recent Law</i> items, summaries and bench book updates as these items are responsive to outcomes delivered by the courts. As variables external to the Commission, they are outside the Commission's control.
Accurate sentencing information was available to judicial officers	Maintain sentencing statistics on JIRS showing range and frequency of penalties imposed for particular offences  Maintain information that explains why a sentence was passed  Maintain information about sentences that other judicial officers have given in similar circumstances	1–4 months  As required  As required
Information about sentencing was communicated	Publish information and update our loose-leaf and online services to advise judicial officers about sentencing and sentencing law reform  Maintain/increase publication of <i>Sentencing Trends &amp; Issues</i> , research papers and monographs  Provide information in response to requests for specific sentencing issues	As required, see Note 1  As required, see Note 2  As required, see Note 1  <i>Note 2:</i> Publication of <i>Sentencing Trends &amp; Issues</i> , research papers and monographs and responding to specific requests for information are dependent on external variables, ie changes to the law, which cannot be predicted for quantitative target setting.
Judicial officers were informed about sentencing options and rehabilitation facilities for offenders	Maintain current information about service providers in Diversionary Programs database on JIRS	No numerical target is set because this target is absolute
JIRS was improved to meet judicial officers' needs	Maintain/increase number of improvements to JIRS	5

Photo previous page: Bound volumes of our journal, *The Judicial Review*, sit alongside meeting papers of the Commission and law reports on the bookshelves of the Commission office.



Performance	Status	Challenges 2019–20
131,817 average hits each month: see p 42	↑	<ul style="list-style-type: none"> <li>Managing the impact of the COVID-19 pandemic which affected the rate and volume at which legal information was produced by courts and legislature, as well as the working practices of Commission staff as they worked remotely in accordance with public health orders.</li> <li>Maintaining the use of JIRS at, or above, the levels of previous years.</li> </ul>
JIRS was available 99% of the time	✓	
Updating demonstrated by: <ul style="list-style-type: none"> <li>245 <i>Recent Law</i> items posted on JIRS throughout the year</li> <li>138 summaries of select appeal decisions published on JIRS</li> <li><i>Recent Law</i> flyer sent monthly to judicial officers</li> <li>3 updates published for <i>Criminal Trial Courts Bench Book</i></li> <li>2 updates to the <i>Sentencing Bench Book</i></li> </ul>	✓	
Sentencing principles in <i>Sentencing Bench Book</i> linked to new cases and legislation	✓	Legal information expenditure:  \$2.48 million as at 30 June 2020 (39% of overall expenditure).
<b>HIGHLIGHT</b> We created dedicated COVID-19 resources on JIRS and the public website, collating all pandemic-related material. <i>Recent Law</i> items for cases addressing impacts of COVID-19 were published promptly: see p 38		
Sentencing data was received, audited and loaded on JIRS within 4 months of receipt: see p 43	✓	<b>Looking ahead 2020–21</b> <ul style="list-style-type: none"> <li>Commence systematic review of <i>Sentencing Bench Book</i> (first published 2006) to review information for accessibility, given increased complexity of sentencing law.</li> <li>Re-write sections of the <i>Criminal Trial Courts Bench Book</i> and <i>Local Court Bench Book</i> to address new procedures for diversionary hearing in the Local Court and fitness hearings in the District Court and Supreme Court introduced by new <i>Mental Health and Cognitive Impairment Forensic Provisions Act</i>. This will complement appropriate programs about these reforms.</li> <li>Incorporate significant Commonwealth sentencing reforms enacted in late June 2020 into the <i>Sentencing Bench Book</i>, as part of overall program to inform judicial officers of the scope of these reforms.</li> <li>Assess the viability of a study concerning District Court appeals with a view to publishing a <i>Sentencing Trends &amp; Issues</i> in the next financial year.</li> <li>Continue to collaborate across teams within the organisation to improve the presentation of the statistics on JIRS.</li> <li>Continue to engage with judicial officers to ensure JIRS meets their needs and liaise with the legal profession to keep them informed of developments in the presentation of the sentencing statistics on JIRS.</li> </ul>
Access provided to case details from sentencing graphs, including judgments in all appeal cases and sentencing reasons in District Court cases published on Caselaw site. These provide detailed information as to why the specific sentence was imposed	✓	
Published 138 summaries of significant appeal decisions on JIRS and 60 in the <i>Judicial Officers' Bulletin</i> : see p 40	✓	
<b>HIGHLIGHT</b> We are engaging more directly with the legal profession about changes to JIRS statistics, including contributing articles to the professions' publications: see p 64		
We communicated information about specific criminal and sentencing law, for example, by: <ul style="list-style-type: none"> <li>inserting a new chapter in <i>Criminal Trial Courts Bench Book</i> to address a new offence: see case study on p 39</li> <li>creating COVID-19 resources: see p 38</li> </ul>	✓	
1 <i>Sentencing Trends &amp; Issues</i> paper published	✓	
Responded to 50 research requests: see p 43	✓	
<b>HIGHLIGHT</b> We published <i>Sentencing Trends &amp; Issues 47: Navigating the Bail Act 2013</i> which has been well received. It was the first time a <i>Sentencing Trends &amp; Issues</i> publication was produced in XML: see case study on p 42		
Information and contact details in the Diversionary Programs database regularly monitored, updated and hyperlinked throughout the year	✓	
5 major enhancements were made to JIRS to respond to feedback: see p 44	✓	

Legend ✓ target achieved ↑ target/output exceeded ↓ target not achieved



## 2.2 Listening to feedback

### Feedback from judicial officers provides some indication of the relevance of our programs.

As we provide detailed legal information for judicial officers and, in particular, sentencing information for the courts, we need to understand whether our service is regarded as relevant and effective. Here are some judicial responses received during the year:

"I am personally a HUGE fan of the bench books"

Judicial feedback on bench books, March 2020

"I cannot understate the importance of this document which gathers in one place several important cases, legislation and initiatives from public agencies concerning COVID-19.

It is excellent and provides valuable support in busy and difficult court lists."

Magistrate's feedback on the *Recent Law* flyer, April 2020

"I congratulate you on the two excellent articles in this issue."

The Honourable Michael Kirby AC CMG

The *Judicial Officers' Bulletin* featured an article by Nicholas Cowdery AO QC, Professor Jill Hunter and Rebecca McMahon exploring the promotion of justice outcomes in sentencing courts through reliance on evidence-based research including the *Bugmy Bar Book*, and a judicial note by her Honour Judge Beckett: (2020) 32 *JOB* 43.

We received positive feedback about information we published on the Judicial Information Research System (JIRS):

"we love your site here at the Public Defenders and always make good use of it."

November 2019

## 2.3 Key focus and challenge for the year

The COVID-19 pandemic and its impacts were a key focus and challenge in this reporting period for the Commission. We undertook the following activities to provide legal information specifically in relation to the pandemic:

- published *Recent Law* items for cases addressing impacts of the COVID-19 pandemic on court processes and the administration of justice usually within 2 days of receiving judgments
- created a separate section on the Judicial Information Research System (JIRS) where all pandemic-related material could be collected for ready access, and made the same material available on our public website
- published articles in the *Judicial Officers' Bulletin*: A Levin and T Kashyap, "Law enforcement and police powers in NSW during COVID-19" (2020) 32 *JOB* 29 and A Miller, "Lawcodes report: new criminal penalties for COVID-19 related offences" (2020) 32 *JOB* 33
- prepared newsletters for publication on the Public Defenders website, with summaries of legislation, case law and other material published on JIRS addressing the changes to the administration of criminal justice

- planned, then later had to cancel, several presentations due to the COVID-19 public health regulations, including:

- JIRS training for District Court associates
- a talk about using comparable cases in sentencing proceedings and statistical information planned for late March as part of the Law Society of NSW's continuing legal education program, and
- a talk about the committal reforms for the Supreme Court of NSW scheduled for May.

See also the case study, "Harnessing the learnings from COVID-19", on p 34.

In relation to non-pandemic based legal information, our focus was on providing guidance on the new section 66EA of the *Crimes Act* 1900 which creates the offence of maintaining an unlawful sexual relationship with a child (see case study on p 39) and publishing a practical guide to the complex law of bail: see case study on p 42.



## 2.4 Why we provide legal information and resources

**Under the *Judicial Officers Act*, we are required to assist the NSW courts to achieve consistency in imposing sentences and to provide for the continuing education and training of judicial officers.**

Legal information published on our online database, the Judicial Information Research System (JIRS), is designed to provide timely and relevant sentencing information and explain criminal law changes to assist judicial officers in their day-to-day work as they conduct criminal trials or summary hearings and sentence convicted offenders. We achieve this without interfering with a judicial officer's discretion by:

- sending email alerts to judicial officers advising of significant legal changes
- posting *Recent Law* items on JIRS when there are important changes to the law
- issuing Special Bulletins about relevant legal developments
- providing summaries of legal and procedural changes and specialist articles in the *Judicial Officers' Bulletin*
- incorporating new criminal, civil, sentencing or evidence law changes into the relevant bench book

- publishing sentencing statistics on JIRS
- publishing studies about complex areas of the law or analysing sentencing trends for particular types of offences
- providing information about sentencing and rehabilitation options on JIRS.

When a person pleads not guilty to an offence, the criminal trial must be conducted according to law, ensuring fairness to the accused person. The suggested directions in the *Criminal Trial Courts Bench Book* assist judicial officers in preparing directions appropriate to an individual case which reflect the relevant law. When a court sentences a person convicted of a criminal offence, it must follow settled principles and apply those principles consistently. The *Sentencing Bench Book* summarises the relevant principles across a range of areas related to this complex area.

### Case study

#### Drafting suggested jury directions about maintaining an unlawful sexual relationship with a child

Our *Criminal Trial Courts Bench Book* (the Bench Book) provides suggested jury directions in criminal trials that are clear, comprehensible and, as far as possible, avoid technical legal language, while accurately stating the law. This can be challenging because directions often deal with law and factual circumstances that are highly complex.

We published a suggested direction for the new offence of maintaining an unlawful sexual relationship with a child under section 66EA of the *Crimes Act* 1900 in the Bench Book this year. The offence was part of the major criminal justice reforms that commenced in late 2018 following recommendations by the Royal Commission into Institutional Responses to Child Sexual Abuse.

Given the complexity of the offence provision and the range of factual circumstances to which it could apply, drafting this suggested direction was a significant piece of work and a major focus for our Director, Research and Sentencing, working with the judicial officers who serve on the *Criminal Trial Courts Bench Book* Committee\*. The collaboration between Committee members draws together different forms of expertise and relies heavily on the practical experience of the judges in the day-to-day conduct of criminal trials: a deep examination of the mechanics of the law combines with deep familiarity with the operation of the law and the need which the suggested direction must meet.

We are mindful that Committee members assist with the Bench Book in addition to their duties as judicial officers and we appreciate their insights and contribution to the Commission's production of accurate and useful legal material.

\* see Appendix 4 for details of the Committee members



## 2.5 We provide accurate and current legal information

Judicial officers and other users of the Judicial Information Research System (JIRS) are promptly advised via electronic means of important decisions and relevant legislation to criminal law.

Subject to resourcing, case summaries of appeal decisions and *Recent Law* news items are prepared as soon as possible after a decision is handed down or when Parliament assents to or proclaims legislation. Items of particular importance are also published in the monthly *Judicial Officers' Bulletin*. This is sent to all judicial officers and key criminal justice agencies in NSW. A major part of our work is preparing these summaries and items which include:

- all significant criminal High Court decisions and other relevant High Court decisions
- every NSW Court of Criminal Appeal decision where the court altered the sentence/s imposed at first instance
- important interstate appellate decisions concerning Commonwealth sentencing, the interpretation of evidence law, and cases with the potential to affect the conduct of criminal trials
- all cases where the standard non-parole provisions were applied
- other selected appeals which involved discussion of a sentencing principle
- cases with an impact on the work of magistrates in the Local and Children's Courts
- all legislation which affects criminal practice and procedure.

Legal practitioners appearing before the courts regularly use the case summaries of appeal decisions published on JIRS. By providing access to this content, we help equip practitioners to best present their cases and to assist the court to avoid appealable error.

*Recent Law* items and case summaries feed into loose-leaf and online bench books that assist judicial officers to conduct trials. Bench books are constantly updated compendiums of relevant legislation, case law, sentencing principles, procedural guidelines, suggested jury directions and sample orders. They promote a consistent judicial approach to trials and sentencing proceedings which helps reduce the risk of error. Committees or our in-house researchers update and review the bench books to ensure that important changes are reported quickly and accurately.

Guidance on the sentences that other judicial officers have given in similar circumstances is also provided by publishing sentencing statistics on JIRS. While it is not possible for the Commission to audit all the sentencing information provided by the NSW Bureau of Crime Statistics and Research, great care is taken to provide statistical information that is accurate, verified and easy to access. Enhancing how the statistics are accessed and used regarding cases before the various courts is another major part of our research and sentencing program.

### Review of our legal information program for 2019–20

We published 43 publications (last year: 39) as well as standalone *Recent Law* items and case summaries on JIRS. We published:

- 22 updates to the bench books and handbooks (last year: 20), including: a new chapter in the *Criminal Trial Courts Bench Book* on the offence of "maintaining an unlawful sexual relationship with a child" under section 66EA of the *Crimes Act 1900*; and a significant revision of the "Aboriginal people" chapter in the *Equality before the Law Bench Book*
- 1 research study on the bail process, *Sentencing Trends & Issues 47: Navigating the Bail Act 2013*: see case study on p 42
- 245 *Recent Law* items on JIRS to explain important cases and legislation
- 138 summaries of significant sentence appeal decisions on JIRS, 60 of which also appeared in the *Judicial Officers' Bulletin*
- 11 issues of the *Judicial Officers' Bulletin*. This is published monthly to inform judicial officers of important developments to case law and legislation and current legal issues.
- 1 *Recent Law* flyer (comprised of 11 issues)
- 1 issue of *The Judicial Review*. This is a peer-reviewed journal bringing together articles and papers to inform readers of technical and topical matters, court craft, and social context issues.

We partnered with the International Organization for Judicial Training (IOJT) to edit Issue 7 of the journal *Judicial Education and Training*, due to be published later in 2020. See case study on p 28.

We revised and updated online information about diversionary services and rehabilitation facilities on JIRS.

We also published on JIRS:

- 4 videos:
  - 1 on forensic science
  - 1 on *Re Wotton v State of Queensland (No 5)* [2016] FCA 1457
  - 1 on the *Bugmy Bar Book Project*, and
  - 1 on unconscious bias
- 3 podcasts:
  - 2 on reforms to the *Crimes (Sentencing Procedure) Act 1999*, and
  - 1 on intergenerational trauma in the Aboriginal Community.

More details of these publications are found in Appendix 8.



## Delivering information through JIRS

Figure 11 below visually depicts the components of our online database JIRS and shows how the information flow works to support independent decision making. JIRS provides rapid and easy access

to the courts' decisions and to legislation. The database is the first of its kind in Australia and is a world leader in the field of legal databases. It is an extensive, interrelated and hyperlinked-text resource that provides modules of reference material for judicial officers presiding over trials or sentencing.

Figure 11. The Judicial Information Research System (JIRS): a complete judicial decision support system

Description	What we do	JIRS Component
Early notice of important legal developments.	<ul style="list-style-type: none"> <li>identify significant decisions and legislative changes</li> <li>extract core principles of case law and legislation and post online</li> <li>prepare and distribute monthly <i>Recent Law</i> flyer.</li> </ul>	Announcements and <i>Recent Law</i>
Statistics on the range and frequency of penalties imposed in similar cases.	<ul style="list-style-type: none"> <li>receive sentencing data from NSW Bureau of Crime Statistics and Research (BOCSAR)</li> <li>audit data</li> <li>process and load data on JIRS within 1–4 months of receipt.</li> </ul>	Sentencing statistics
Full text of judgments and case summaries for selected cases.	<ul style="list-style-type: none"> <li>receive cases from High Court, NSW Court of Criminal Appeal, NSW Court of Appeal, Supreme Court of NSW, NSW Land and Environment Court, NSW Industrial Relations Commission, District Court of NSW and Local Court of NSW</li> <li>post judgments within 1 day of receipt</li> <li>prepare and publish <i>Recent Law</i> items as quickly as our resources permit for important decisions</li> <li>prepare important NSWCCA case summaries for sentence appeals as quickly as our resources permit</li> <li>link cases and summaries to sentencing principles and practice component and the Criminal Trial Courts and Civil Trials Bench Books.</li> </ul>	Case law
Concise commentary on sentencing principles.	<ul style="list-style-type: none"> <li>take sentencing principles from new cases and legislation and post as <i>Recent Law</i> items</li> <li>link principles in bench book to case law and legislation.</li> </ul>	Sentencing principles and practice ( <i>Sentencing Bench Book</i> ), <i>Recent Law</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"> <li>identify significant decisions and legislative changes which impact on the content of the particular bench book</li> <li>bench book committees consider content and draft amendments and special bulletins</li> <li>publish updates on JIRS and in hard copy.</li> </ul>	Bench books
All NSW and Commonwealth Acts, Regulations and Rules.	<ul style="list-style-type: none"> <li>receive legislation from NSW Parliamentary Counsel's Office and Commonwealth Attorney-General's Department</li> <li>process and load legislative changes within 24 hours of receipt</li> <li>alert users to commencement date of criminal legislation via <i>Recent Law</i> items</li> <li>link legislation to relevant case law and sentencing statistics</li> <li>verify currency of legislation weekly.</li> </ul>	Legislation
Monographs, <i>Sentencing Trends &amp; Issues</i> , <i>Judicial Officers' Bulletin</i> , <i>The Judicial Review</i> .	<ul style="list-style-type: none"> <li>identify relevant topic or research area</li> <li>commission author</li> <li>edit and typeset manuscript</li> <li>publish in hard copy and online.</li> </ul>	Publications
Essential information on treatment options and rehabilitation facilities.	<ul style="list-style-type: none"> <li>identify relevant service providers</li> <li>maintain currency of information.</li> </ul>	Diversivory Programs

## Case study

### Producing a concise guide to the bail process

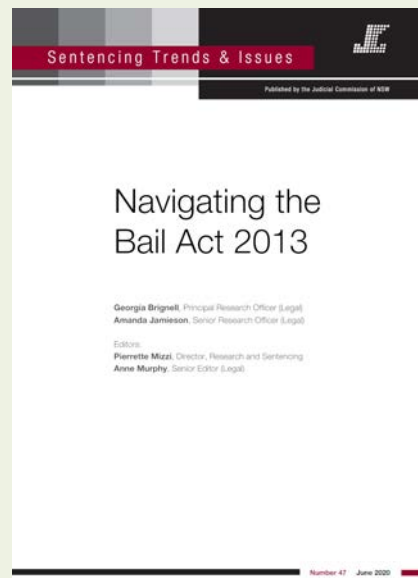
A major focus this year has been producing a concise guide to the bail process to supplement the content in the *Local Court Bench Book*. Judicial officers, particularly magistrates in the Local Court, make important decisions concerning bail every day — on multiple occasions in the one day in the context of busy and varied court lists, frequently on the basis of the limited information available and within tight time frames. The statutory provisions governing bail are complex and require a considered and careful approach in striking a balance between competing factors.

*Navigating the Bail Act 2013* was published in June 2020 and provides a brief history of the *Bail Act 2013*, sets out the relevant legislative provisions, and discusses the procedural and evidential issues and the tests to be applied. It also summarises the relevant legal principles distilled from the case law. While bail decisions generally do not create a precedent, the discussion of different factors relevant to the question of bail in individual cases in this publication was undertaken to provide concrete examples of the factors that may influence a particular decision, not to provide a definitive predictor of the outcome.

Although this was the 47th issue published under the *Sentencing Trends & Issues* banner, this was the first time the publication was prepared using our XML publishing system. An additional challenge was that the Commission staff had been working from home due to COVID-19 since March 2020. Publication was achieved through close working relationships between the Research and Sentencing, Publishing, and Systems teams. How successfully the publication has achieved its aim can be measured by the feedback from judicial officers:

“I would like to express my gratitude to the authors and others involved with the preparation and dissemination of this publication. I have been looking at it today and it will be an invaluable tool for me to use and will save me a great deal of time. Thank you to everyone involved.”

Magistrate, July 2020



This *Sentencing Trends & Issues* paper provides judicial officers and legal practitioners with a concise guide to the bail process and supplements the content in the *Local Court Bench Book*.

### Maintaining JIRS

JIRS is constantly updated so that judicial officers and other JIRS users have access to current and accurate case law, legislation, and materials on practice and procedure. We continually monitor the law and update the database to keep judicial officers and JIRS users informed of current law to assist in their decision making. We have automated systems which check the currency of all legislation on JIRS. On a daily basis, we monitor developments in case law, legislation and government policy. These developments are analysed and added to our database and publications. To ensure the integrity of our statistics, we conduct targeted audits of higher courts' sentencing data received from the NSW Bureau of Crime Statistics and Research.

### Use of JIRS

The use of JIRS has been significantly affected by COVID-19. In the first 6 months of the 2019–20 financial year, JIRS usage was averaging 139,765 page hits per month, compared to 137,906 page hits per month in the same period of 2018–19 — an increase of 1.3%. But in the last six months of 2019–20, JIRS page hits were averaging only 123,869 per month, compared to 139,156 page hits per month in the equivalent period of 2018–19 — a decline of 11.0%. As a consequence, over the whole year the number of page hits was down by 4.8% (last year: 1.5% increase). However, usage is only one measure and the feedback we receive may be a more reliable indicator of the value of the information we provide. We respond to feedback as swiftly as possible and use this in our JIRS enhancement program.



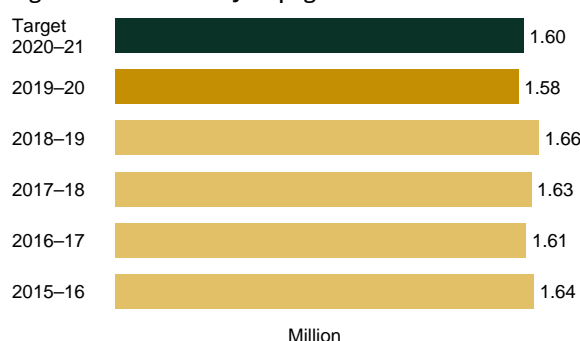
Judicial officers and their support staff in the Supreme, District and Local Courts accounted for 36.2% of the use of JIRS in 2019–20. Magistrates on their own accounted for 22.9%. Despite the impact of the pandemic on overall use of JIRS, usage actually increased among judicial officers and support staff in the Supreme Court (3.4%) and the District Court (5.2%) during 2019–20. The usage by magistrates and Local Court staff however decreased in 2019–20 by 10.1%. This change was entirely confined to the first six months of 2020 coinciding with the pandemic.

In a similar vein, the 10.1% decrease in the use of JIRS by Government agencies (including the Office of the Director of Public Prosecutions, the Public Defenders, and Legal Aid NSW, as well as the Aboriginal Legal Service) mostly occurred in the first six months of 2020, when overall usage decreased by 14.8% compared to the first six months of 2019. The pandemic resulted in many government agency staff being required to work from home. Another factor that may also have affected the use by government agencies is the fact that agencies are changing to individual JIRS accounts for their staff members, rather than a single corporate account where staff are automatically logged into JIRS when they attempt to access it. While this has resulted in a large number of lawyers at government agencies requesting their own accounts — an indication of the importance of JIRS to government lawyers as they prepare submissions for court — some staff may have used other resources, including the Commission's public website where there is no need for a login. The pandemic does not seem to have affected the use of JIRS by private law firms though and their usage actually increased during the year by 8.2%. Table 3 below shows the overall trends, how the use of JIRS is split and the change in use over a 5-year period. See also Figure 12.

All published judgments from NSW courts and the High Court are automatically loaded onto JIRS within a day of receipt (except if received on a Friday when they are loaded the following Monday to avoid any

issues over the weekend). We generally met our target (of within 1–4 months) to load sentencing statistics on JIRS for all courts. The one exception to this during the reporting period was associated with delay caused by quality assurance checks that were part of the audit and enhancement of our statistics processing. The higher court statistics from the third quarter of 2019 were received from the Bureau of Crime Statistics and Research (BOCSAR) on 31 January 2020 but not loaded until 9 July 2020. While the timeliness and quality of sentencing data received from the courts has improved, we are still required to selectively audit the data received to ensure its accuracy before loading onto JIRS.

Figure 12. Number of JIRS pages accessed 2015–20



### Providing high-level research assistance

Judicial officers, the courts, government agencies and the legal profession have a high regard for JIRS and our independent research. This can be partly measured through specific requests for research assistance. We responded to 50 research requests (last year: 41) and gave 3 conference and seminar presentations about our research program which the judicial and legal community responded to favourably.

Information about these presentations is found in Appendix 15.

Table 3. Overall JIRS use 2015–20

Users	2015–16 hits	JIRS %	2016–17 hits	JIRS %	2017–18 hits	JIRS %	2018–19 hits	JIRS %	2019–20 hits	JIRS %	Change %
Supreme Court	23,078	1.4	25,446	1.6	28,090	1.7	24,181	1.5	25,002	1.6	+3.4 ↑
District Court	164,662	10.1	146,172	9.1	151,650	9.3	175,292	10.5	184,477	11.7	+5.2 ↑
Local Court	357,797	21.9	373,497	23.1	440,373	26.9	402,682	24.2	362,074	22.9	-10.1 ↓
Land and Environment Court	424	0.0	409	0.0	1,512	0.1	232	0.0	1,100	0.1	+374.1 ↑
Government agencies*	779,661	47.7	721,568	44.7	672,548	41.1	701,745	42.2	630,785	39.9	-10.1 ↓
Professional associations**	37,018	2.3	39,017	2.4	36,122	2.2	33,753	2.0	27,243	1.7	-19.3 ↓
Other subscribers***	273,086	16.7	307,605	19.1	308,019	18.8	324,376	19.5	351,097	22.2	+8.2 ↑
<b>Total</b>	<b>1,635,894</b>	<b>100.0</b>	<b>1,613,715</b>	<b>100.0</b>	<b>1,638,327</b>	<b>100.0</b>	<b>1,662,376</b>	<b>100.0</b>	<b>1,581,806</b>	<b>100.0</b>	<b>-4.8 ↓</b>

\* Includes staff of the NSW and Cth DPP, Department of Communities and Justice, Legal Aid NSW, NSW Police Prosecutors, and other state or federal public sector agencies, excluding judicial officers and their associates.

\*\* The NSW Bar Association and Law Society of NSW libraries.

\*\*\* Includes barristers, law firms, universities, libraries and community organisations.

## Improving JIRS

Five enhancements to JIRS were made during the year in response to feedback from our users. Improvements include:

- A new section has been added containing the latest case law and legislation changes relating to COVID-19. The page allows quick access to material on this area on both JIRS and the Commission's Lawcodes database.
- Quick access pages have been added to easily find the latest information pertaining to bail and evidence.
- The NSW Local and Children's Court statistics have undergone significant improvements in processing. They are now integrated with the Commission's Lawcodes database, to enable legislative changes to be incorporated more efficiently. They are also integrated with an internal case management system to allow data to be audited before processing.
- The menu pages for statistics have been simplified to improve access to the sentencing statistics graphs. The sentencing statistics graphs have

been updated to include buttons containing quick links to the section of legislation, information on maximum penalties for the section, and buttons for copying or quickly emailing a link to the graph as well as to download a PDF of the graph or CSV data. There is also a new icon to print the graph and a help icon which brings up information about how the statistics should be interpreted. The case characteristics and penalty menus now indicate the number of cases matching the selected criteria and are greyed out where there are no cases. A summary table includes links to all the related case details pages, previously only available by clicking on the relevant bar of the graph. More comprehensive linking has been provided to the case details which is now no longer restricted to only those cases for the penalty type but can be seen for all cases. Case details can now be filtered similarly to the statistics by the case characteristics and penalty types and values.

- All statistics now include the sentencing options for both before and after the sentencing reforms which commenced on 24 September 2018.

## Case study

### Publishing sentencing statistics for the Land and Environment Court (LEC)

Sentencing statistics form one component of the Judicial Information Research System (JIRS). They show the pattern of sentences imposed by the courts for criminal offences and, alongside the other legal information provided on JIRS, are intended to assist the courts achieving consistency in imposing sentences.

The sentencing statistics on JIRS for the LEC include outcomes for matters dealt with in the Court's summary jurisdiction in, for the most part, Class 5 matters which relate to environmental planning and protection summary enforcement. The sentencing information is compiled by the Court and the Commission using the remarks on sentence of the sentencing judge.

With new staff joining the Court and the Commission, this year was an opportunity to review the statistics auditing process to ensure that the information on JIRS continues to be of the highest quality, accuracy and relevance. Commission and Court staff collaborated — while working remotely — to ensure the optimal consistency and efficiency in the way data is entered into the Court's database and its extraction for publication on JIRS.

This project brought more than one benefit. In terms of the data and extraction processes for sentencing statistics, quality has been assured. As a matter of business continuity, the resilience of this function within the Commission has also been strengthened. The development of relationships between Court and Commission staff has laid the groundwork of trust and good communication to assist with future problem solving. The Commission has increased expertise in the processes involved to continue producing sentencing statistics of the necessary quality and integrity to benefit the Court.



Sentencing statistics provide a guide to the pattern of sentences imposed by the LEC in its summary jurisdiction.



### Interactive learning resource app on JIRS

We have developed an interactive mobile/tablet learning app based on gaming technology. During the year, we enhanced this to comply with new operating system requirements. An automated way of generating scenarios from the bench books has been developed and is being used with the suggested jury directions and other parts of the bench books. We have received informal feedback from judicial officers who find the app useful. A new voice-based interface to bench books using Google Assistant™ virtual personal assistant is also being tested.

### Use of our publications on JIRS continues at a high level

With the impact of COVID-19, the total number of pages of our publications viewed on JIRS has decreased 8.5% from 2018–19 but still remains at higher levels than 2017–18 and previous years, as is shown in Table 4 below. There has been an increase in PDF downloads of our publications as shown in Table 5 below.

Table 4. JIRS use of online information 2015–20

Publication	2015–16 hits	2016–17 hits	2017–18 hits	2018–19 hits	2019–20 hits	Change %
Sentencing Bench Book	44,709	43,782	38,568	45,514	42,145	-7.4 ↓
Criminal Trial Courts Bench Book	41,851	42,786	44,976	48,752	42,160	-13.5 ↓
Civil Trials Bench Book	2,664	3,402	3,329	3,279	3,263	-0.5 ↓
Local Court Bench Book	38,925	41,612	45,810	48,941	47,053	-3.9 ↓
Sexual Assault Trials Handbook	3,335	3,137	2,548	3,525	2,689	-23.7 ↓
Equality before the Law Bench Book	307	431	373	529	527	-0.4 ↓
Children's Court of NSW Resource Handbook	1,306	1,511	1,398	1,491	1,351	-9.4 ↓
Education monographs*	63	46	48	60	90	+50.0 ↑
Judicial Officers' Bulletin*	2,326	2,375	2,149	2,511	2,087	-16.9 ↓
The Judicial Review*	119	217	409	182	206	+13.2 ↑
<b>Total</b>	<b>135,605</b>	<b>139,299</b>	<b>139,608</b>	<b>154,784</b>	<b>141,571</b>	<b>-8.5 ↓</b>

\* Not available via JIRS Resources app.

Table 5. PDF publication downloads from JIRS, Commission's website and JIRS app 2015–20\*

Publication	2015–16	2016–17	2017–18	2018–19	2019–20	Change %
Sentencing Bench Book	3,467	4,260	5,621	5,789	4,668	-19.4 ↓
Criminal Trial Courts Bench Book	6,056	6,666	7,370	8,228	8,420	+2.3 ↑
Research monographs**	27,689	8,241	12,613	14,657	20,431	+39.4 ↑
Sentencing Trends & Issues**	5,786	2,765	4,433	5,115	5,271	+3.0 ↑
Civil Trials Court Bench Book	4,000	4,138	9,361	10,893	10,630	-2.4 ↓
Local Court Bench Book	3,273	2,922	3,354	2,827	3,610	+27.7 ↑
Sexual Assault Trials Handbook	1,841	5,585	8,693	8,351	7,362	-11.8 ↓
Equality before the Law Bench Book	829	1,826	2,079	2,504	3,105	+24.0 ↑
Children's Court of NSW Resource Handbook	1,035	552	286	374	374	0.0
<b>Total</b>	<b>53,976</b>	<b>36,955</b>	<b>53,810</b>	<b>58,738</b>	<b>63,871</b>	<b>+8.7 ↑</b>

\* **Important note:** in late December 2018 the Commission's website was relocated to a remote host on the Internet. This move resulted in our usage data for six months of 2018–19 and the first month of 2019–20 being incomplete. The usage of JIRS and the JIRS app were not affected by this change, only the usage of the Commission's website ([www.judcom.nsw.gov.au](http://www.judcom.nsw.gov.au)). As a consequence, we have estimated the usage of the Commission's website resources for the financial years 2018–19 and 2019–20 on a pro rata basis using the data available.

\*\* Not available via JIRS Resources app.

## Impact of our online publications

Access to our online legal information is through JIRS. Our publications can also be downloaded in PDF directly from JIRS, our website or by using the JIRS Resources app on Apple™ and Google Android™ devices. Table 5 on p 45 shows PDF downloads have increased for 5 of 9 publications. Research Monographs recorded the largest increase followed by the *Local Court Bench Book*. Select publications are also provided in hard copy to judicial officers and are available for purchase from the Commission.

The impact of our online publications is measured by:

- JIRS use (judicial officers and the legal profession) (see Table 4 on p 45)
- Informit viewings (academic use)
- website use (public viewing) (see Table 5 on p 45 and Table 6 below).



Victor Poliakov, Vince Puglia and Aidan Dunn from our Systems team help build JIRS infrastructure and our interactive learning resource app.

## Informit viewings of our publications increased

Informit is an extensive Australian collection of databases, providing access to peer-reviewed and specialist journals published in Australia. Inclusion of our *Judicial Officers' Bulletin* and *The Judicial Review* demonstrates that Informit considers these publications to be of a scholarly standard.

Viewings of both these publications saw an increase of 6.2% in total viewings from the previous year (last year: 7.4% increase). The most popular articles accessed concerned Aboriginal issues including transgenerational trauma, technology and the law, and juvenile justice.

## Public website usage of our publications declines

The total number of pages viewed decreased from 157,660 per month in 2018–19 to 143,998 per month in 2019–20, a decrease of 8.7% in the use of our publicly available online resources: see Table 6 below. The most accessed resources were the *Civil Trials Bench Book*, the *Criminal Trial Courts Bench Book*, and the *Sentencing Bench Book*. The *Civil Trials Bench Book* provides information about all aspects of running civil proceedings and rules about evidence admitted in civil trials. The *Criminal Trial Courts Bench Book* provides a regularly updated compendium of the relevant case law and legislation that applies when conducting a criminal case. The detailed information on practice is supplemented with procedural guidelines, suggested jury directions and sample orders. The *Sentencing Bench Book* provides information and legal principles relevant to sentencing law in NSW and for Commonwealth offences that NSW courts decide. More information about our published resources is found in Appendix 8.

Table 6. Website use of our resources 2015–20 (hits per month)\*

Publication	2015–16	2016–17	2017–18	2018–19	2019–20	Change %
Civil Trials Bench Book	30,839	38,435	49,531	56,456	47,776	-15.4 ↓
Sentencing Bench Book	23,919	29,682	36,982	36,054	34,062	-5.5 ↓
Criminal Trial Courts Bench Book	21,451	27,702	34,818	36,557	34,362	-6.0 ↓
Local Court Bench Book	12,176	16,347	21,934	22,305	20,097	-9.9 ↓
Sexual Assault Trials Handbook	2,151	3,249	3,010	3,088	2,581	-16.4 ↓
Equality before the Law Bench Book	303	817	1,684	1,696	3,226	+90.3 ↑
Sentencing Trends & Issues	4,741	759	2,030	1,504	1,894	+25.9 ↑
<b>Total</b>	<b>95,580</b>	<b>116,991</b>	<b>149,989</b>	<b>157,660</b>	<b>143,998</b>	<b>-8.7 ↓</b>

\* **Important note:** in late December 2018 the Commission's website was relocated to a remote host on the Internet. This move resulted in our usage data for six months of 2018–19 and the first month of 2019–20 being incomplete. The usage of JIRS and the JIRS app were not affected by this change, only the usage of the Commission's website ([www.judcom.nsw.gov.au](http://www.judcom.nsw.gov.au)). As a consequence, we have estimated the usage of the Commission's website resources for the financial years 2018–19 and 2019–20 on a pro rata basis using the data available.

# Program 3

## Examining complaints



**Our complaints process ensures high standards of judicial performance and protects judicial officers from unwarranted intrusions into their judicial independence.**

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## 3.1 Performance results 2019–20

An assessment of the results shown in Table 7 demonstrates that our complaints function performed well in 2019–20. Table 7 shows the evidence for each identified result as well as details of each measure we have put in place to achieve our objectives, program highlights, challenges, and forward direction.

Table 7. Results for examining complaints

Results	Measures	Target
Finalised majority of complaints received during the year	Maintain the percentage of complaints examined and finalised during the year	See Note 1
Timely acknowledgment and completion of preliminary examination of complaints	Maintain the time taken to formally acknowledge complaints received  Maintain or decrease the time taken to conduct preliminary examination of complaints	100% of complaints received acknowledged within 5 working days  Examine 90% within 6 months; 100% within 12 months
High standard of judicial performance	Compare number of complaints to the number of court matters finalised during the year  Compare number of complaints dismissed under section 20 of the <i>Judicial Officers Act 1986</i> with complaints that require further action  Maintain accessible information about the complaints process	See Note 1
Information gathered from the complaints process has been used to develop education sessions for judicial officers	Monitor and analyse trends in complaints to inform our education program	See Note 1
Independence of judicial officers was maintained	Maintain confidentiality of complaints process	See Note 1

**Note 1.** The measure of these targets is qualitative, ongoing, and subject to external variables to which the Commission can only respond. As such, no numerical measure is articulated.

Photo previous page: Any person may complain to the Commission about a matter that concerns or may concern the ability or behaviour of a judicial officer both inside and out of the courtroom. The Downing Centre (pictured) one of the main court complexes in Sydney, housing courtrooms in which Local Court and District Court matters are heard.



Performance	Status	Challenges 2019–20
<b>HIGHLIGHT</b> Commission examined 48 complaints from a total of 76 complaints (received and pending from last year): see p 51	✓	<ul style="list-style-type: none"> <li>Explaining to disappointed complainants why their complaint was dismissed.</li> </ul>
100% of complaints received were acknowledged within 5 working days: see p 52	✓	<ul style="list-style-type: none"> <li>Ensuring that the impact of the COVID-19 pandemic did not compromise the accessibility and operation of the complaints function.</li> </ul>
The Commission examined 71% within 6 months and 100% within 12 months: see p 52	↓ ↑	
377 judicial officers in NSW heard around 700,000 court matters in 2019–20. 57 complaints about 48 judicial officers were made to the Commission (including 1 complaint referred by the Attorney General): see p 51	✓	Complaints expenditure: \$0.46 million as at 30 June 2020 (7% of overall expenditure).
94% of complaints (45 of 48 examined) were summarily dismissed under section 20 of the <i>Judicial Officers Act</i> 1986: see p 51	✓	<b>Looking ahead 2020–21</b> <ul style="list-style-type: none"> <li>Examine all complaints efficiently, effectively, independently and objectively.</li> <li>Continue to ensure that the impact of the COVID-19 pandemic does not compromise the accessibility and operation of the complaints function.</li> <li>Aim to finalise the majority of complaints that do not require further examination within 90 days and the preliminary examination of all complaints within 12 months.</li> <li>The complaints process will inform the design of education sessions.</li> <li>Monitor and report on trends in complaints.</li> </ul>
Three complaints required further action: 3 referred to head of jurisdiction (last year: 1) and 0 to Conduct Division (last year: 1): see p 52	✓	
Information about the complaints process and how to make a complaint was provided in the annual report, on our public website, and in brochure form	✓	
We responded to 385 requests for information: see p 53	✓	
53% of complaints arose from allegations of failure to give a fair hearing 16% of complaints arose from allegations of an apprehension of bias	✓	
Education sessions held and resources produced during the year addressed these issues: see p 52 and Appendices 5 and 6	✓	
The Commission examined all complaints according to statutory criteria and established protocols: see pp 53–55	✓	

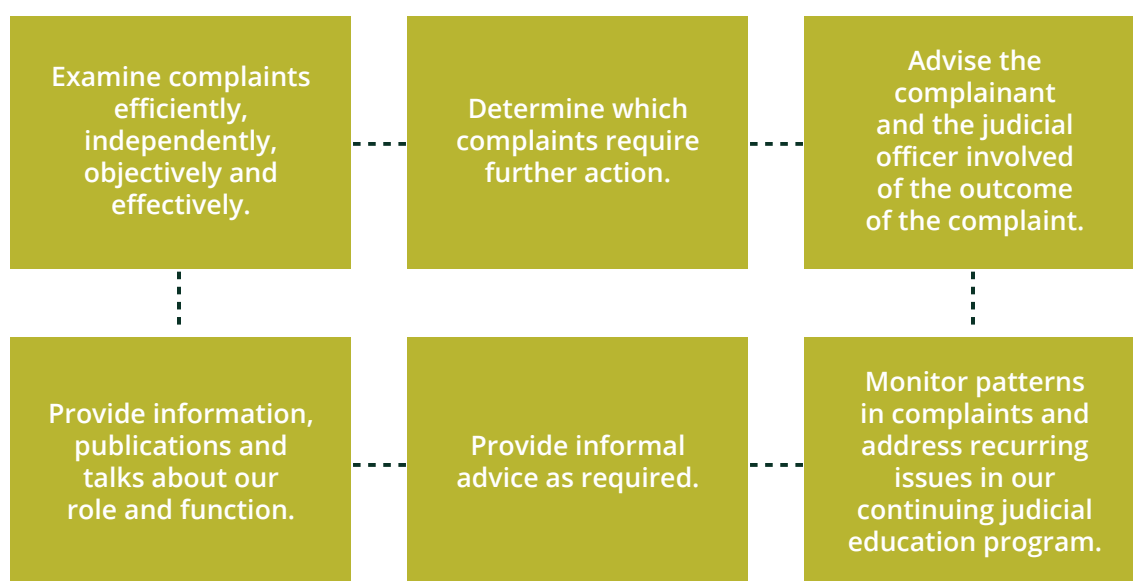
Legend ✓ target achieved ↑ target/output exceeded ↓ target not achieved

## 3.2 Why we examine complaints

The *Judicial Officers Act* 1986 provides for a complaints function about NSW judicial officers. Anyone may complain to the Commission about a matter that concerns or may concern the ability or behaviour of a judicial officer. This is not restricted to ability or behaviour in court.

The Commission's complaints function is protective. We have no power to discipline judicial officers, only to protect the public from judicial officers who are not fit for office or who lack the capacity to discharge their duties. The function also protects the judiciary from unwarranted intrusions into their judicial independence.

### How we fulfill our statutory function



There are 377 judicial officers in NSW who dealt with more than 700,000 court matters during 2019–20. The number of complaints we receive each year is low compared to the high volume of matters handled: see Table 8 on p 51. This demonstrates the high standard of judicial ability and conduct in NSW and the community's willingness to accept decisions if they are made in accordance with the due process of law.

### Formal complaints governance

The *Judicial Officers Act* 1986 governs the Commission's formal complaints work as well as the *Judicial Officers Regulation* 2017 and 2 documents, *Complaints against judicial officers: guidelines* and *Conduct Division: guidelines for examination of complaints* (see Appendices 1 and 2).



### 3.3 Complaints received and examined during the year

During 2019–20, 46 people made 56 complaints about 48 judicial officers (last year: 63 complaints about 56 judicial officers). Five complainants each made 2 complaints; 1 complainant made 6 complaints. The rest of the complaints were lodged individually. The Attorney General referred 1 complaint under section

16 of the *Judicial Officers Act* 1986. We examined 48 complaints including 19 complaints pending as at 30 June 2019. Twenty-seven complaints were pending as at 30 June 2020. Table 8 shows how we have dealt with all complaints received and examined over the last 5 years.

Table 8. Particulars of complaints examined 2015–20

	2015–16	2016–17	2017–18	2018–19	2019–20
Complaints pending at 30 June	11	14	17	26	19*
Complaints made during the year	44	75	74	63	57
<b>Total number of complaints</b>	<b>55</b>	<b>89</b>	<b>91</b>	<b>89</b>	<b>76</b>
Complaints examined and dismissed	40	69	55	66	45
Complaints referred to head of jurisdiction	0	2	5	1	3
Complaints referred to Conduct Division	0	1	2	1	0
Complaints withdrawn	1	0	3	1	1
<b>Total number of matters finalised</b>	<b>41</b>	<b>72</b>	<b>65</b>	<b>69</b>	<b>49</b>
Complaints pending at 30 June	14	17	26	20**	27

\* Amended opening balance of the number of complaints pending at 30 June 2019 to remove error caused by prior count of complaints.

\*\* Incorrectly reported as 20 instead of 19. Caused by an error in prior count of complaints.

#### Complaints examined and summarily dismissed

A consistent trend over the last 5 years is that, following a preliminary examination, most complaints were summarily dismissed under section 20 of the *Judicial Officers Act* 1986. This year, 94% of complaints (45 of 48) examined were summarily dismissed. This is just below the average 5-year dismissal rate of 94.8%. Section 20 of the *Judicial Officers Act* sets

out 8 criteria under which the Commission must dismiss a complaint whether or not it appears to the Commission that the complaint is substantiated. For example, if the person complained about is no longer a judicial officer (because they have retired, resigned or are deceased), the Commission cannot examine the complaint. Table 9 shows how the 45 complaints summarily dismissed were dealt with under section 20 this year.

Table 9. Criteria for dismissing complaints under section 20 of the *Judicial Officers Act* 1986

Criteria	Section	Number of complaints
The complaint is one that it is required not to deal with.	20(1)(a)	1
The complaint is frivolous, vexatious or not in good faith, and having regard to all the circumstances of the case, further consideration of the complaint would be or is unnecessary or unjustifiable.	20(1)(b) & (h)	1
The matter complained about occurred at too remote a time to justify further consideration, and having regard to all the circumstances of the case, further consideration of the complaint would be or is unnecessary or unjustifiable.	20(1)(d) & (h)	1
The complaint relates to the exercise of a judicial or other function that is or was subject to adequate appeal or review rights, and having regard to all the circumstances of the case, further consideration of the complaint would be or is unnecessary or unjustifiable.	20(1)(f) & (h)	18
Having regard to all the circumstances of the case, further consideration of the complaint would be or is unnecessary or unjustifiable.	20(1)(h)	24
<b>Total number of complaints dismissed under section 20</b>		<b>45</b>

### Timely examination of complaints

Within 5 working days, the Commission wrote to each complainant to acknowledge their complaint had been received. Seventy-one per cent of the 48 matters were finalised within 6 months and 100% of complaints were finalised within 12 months of their receipt. Table 10 compares the timeliness standards over 5 years and demonstrates that the Commission continues to respond to all complaints received within a reasonable time, notwithstanding some potential short-term impacts of COVID-19 this year.

**Table 10. Time taken to conduct preliminary examination of complaints 2015–20**

	3 mths	6 mths (target 90%)	9 mths	12 mths (target 100%)
	%	%	%	%
2015–16	78	93	100	100
2016–17	69	94	99	99
2017–18	73	90	100	100
2018–19	54	94	99	99
2019–20	29	71	96	100

### Three complaints referred to the relevant head of jurisdiction

Three complaints were referred to the relevant head of jurisdiction under section 21(2) of the *Judicial Officers Act* (last year: 1). The Commission has the power to refer a complaint which, while it does not justify the attention of a Conduct Division, warrants some further action.

### No complaints referred to a Conduct Division

No complaints about a judicial officer were referred to a Conduct Division this year under section 21(1) of the *Judicial Officers Act* (last year: 1).

Information about the role of a Conduct Division is found on pp 53–55.

### One referral from the Attorney General

The Attorney General of NSW may refer a matter to the Commission under section 16(1) of the *Judicial Officers Act* 1986 and this is treated as a complaint. The Commission received one reference from the Attorney General this year (last year: 0).

## 3.4 Identifying complaint patterns 2019–20

### Monitoring trends in complaints

Figure 13 on p 53 shows the type and number of complaints received/referred during the year (total: 57). Monitoring trends in complaints helps to identify areas that may need to be addressed in our continuing judicial education program. Information gathered from complaints is used to develop continuing judicial education sessions on topics such as: providing a fair hearing and avoiding bias; avoiding inappropriate comments and discourtesy; domestic violence and sexual assault issues; and cultural awareness training.

In 2019–20, we identified the following patterns:

#### Substitution for appeals

A complaint is often made that a judicial officer made a wrong decision. This type of complaint is usually made when a party to litigation is aggrieved by an unfavourable decision but, for one reason or another, does not appeal to a higher court. In some cases, a personal complaint against the judicial decision maker is made to the Commission, alleging bias or incompetence. Such a complaint is dealt with on its merits, but the Commission cannot correct an allegedly wrong decision. Eighteen (38%) of the 48 complaints examined this year were summarily dismissed on the basis that the complaint related to the exercise of a judicial or other function that is or was subject to adequate appeal or review rights. A court of appeal is the appropriate avenue for determining whether the judicial officer made an error of law or fact or if there was a miscarriage of justice.

### Further examination unnecessary or unjustifiable

Twenty-four (53%) of the 45 complaints were dismissed following the preliminary examination on the basis that, having regard to all the circumstances of the case, further consideration of the complaint was unnecessary or unjustifiable (last year: 52%).

### Incompetence

Four complaints alleged judicial incompetence this year (last year: 4).

### Inappropriate comments and discourtesy

Seven complaints alleged that a judicial officer made inappropriate comments (last year: 5) and 0 complaints alleged discourtesy (last year: 3).

### Complaints arising from AVO proceedings

Some complaints arise out of proceedings involving applications for apprehended violence orders (AVOs). In many instances, the complaints arose from a misunderstanding of the nature of the hearing. Thirteen (23%) complaints received/referred arose from AVO proceedings (last year: 10%).

### Self-represented litigants making complaints

A trend we have noted is the high proportion of complaints that self-represented people make. This year, self-represented litigants made 46% of all complaints (last year: 49%).

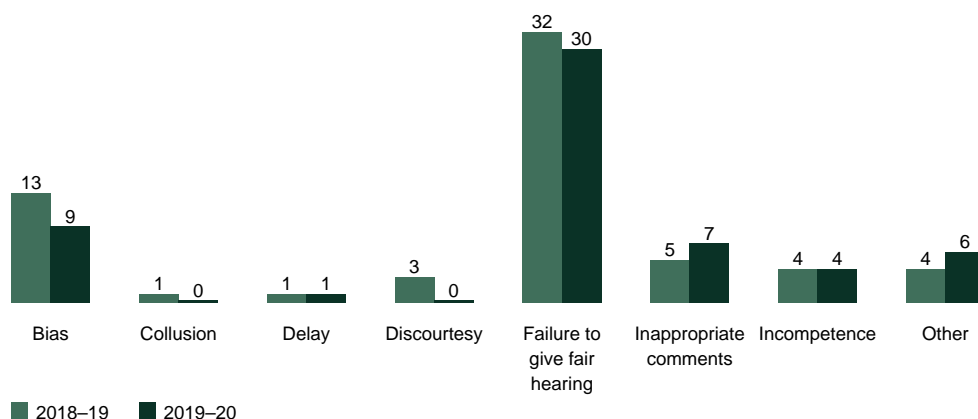


### Common causes of complaint

Allegations of failure to give a fair hearing and an apprehension of bias continue to be the most common grounds of complaint. In 2019–20, these 2 categories accounted for 39 (68%) of the 57 received/referred complaints (last year: 71%). An

unsuccessful party to legal proceedings or a person who was self-represented in court often makes this type of complaint. Complaints of bias are usually accompanied by particular allegations about the judicial officer's conduct.

Figure 13. Common causes of complaint: basis of allegation 2018–20



## 3.5 How we deal with complaints and enquiries

### Responses to informal enquiries

During the year, we responded to 385 telephone, face-to-face and written enquiries from potential complainants, members of the legal profession and the media (last year: 309).

We are able to help people by providing information, referring them to another agency, or advising them of the process for making a complaint to the Commission. Providing informal advice often avoids an unnecessary formal complaint being made. Enquiries often relate to matters that should be dealt with on appeal to a higher court and, in these cases, we advise the person to seek independent legal advice.

### How to make a complaint

Anyone may make a complaint about the ability or behaviour of a judicial officer. A formal complaint must:

- be in writing
- identify the judicial officer concerned and the complainant
- be supported by a statutory declaration that verifies the particulars of the complaint
- be lodged with the Chief Executive of the Commission.

We will assist complainants with translation and interpreting services if required. There is no fee and legal representation is not required.

Our public website provides information to help people understand the types of complaints we deal with, possible outcomes, how to make a complaint, and a complaints form for downloading. For those without internet access, we provide a hard copy plain English brochure *Complaints against judicial officers* and a complaint form. Our website is at [www.judcom.nsw.gov.au](http://www.judcom.nsw.gov.au).

### Examining the complaint

Figure 14 (on p 55) visually depicts how the complaints process works. Within 5 working days, we acknowledge in writing any complaint received which is in the required form. If the complaint relates to a court matter, we obtain sound recordings or a transcript of the proceedings. The Commission conducts the preliminary examination of the complaint in private to decide if it requires further action. In all cases, we advise the judicial officer that a complaint has been made and provide the judicial officer with a copy of the complaint documents. The Commission is required to summarily dismiss a complaint if it is of the opinion that it falls under criteria set out in section 20 of the *Judicial Officers Act 1986*. We explain to the complainant in writing why the complaint was dismissed and provide a copy to the judicial officer.

### Complaints that require further action

The Commission may decide that some complaints warrant further examination as the matter may affect or have affected the judicial officer's performance of judicial or official duties. If the complaint shows conduct which is inappropriate, the Commission

may refer the complaint to the relevant head of jurisdiction and provide all supporting material. The Commission may recommend some action to prevent the problem occurring again or that the judicial officer be counselled. The complainant and the judicial officer complained about are advised of any action taken.

### **Complaints referred to a Conduct Division**

If the Commission does not summarily dismiss a complaint, or refer it to the relevant head of jurisdiction, it must refer the complaint to a Conduct Division. This is not a standing body but is a panel especially convened for this purpose. A Conduct Division has the same functions, protections and immunities as a Royal Commission. In the Commission's 33-year history, 24 Conduct Divisions have been formed. The Commission decides on the 3 members of a Conduct Division — 2 are judicial officers (1 may be a retired judicial officer) and the other one is chosen from 2 community representatives the NSW Parliament has nominated.

A Conduct Division's hearings may be held in public or in private. The judicial officer being investigated has, in all cases to date, been provided with financial assistance by the NSW Government for their legal representation before a Conduct Division. The Crown Solicitor and Senior and Junior Counsel are instructed to assist a Conduct Division.

A Conduct Division's work involves gathering evidence about the complaint, holding hearings and deciding whether a complaint is partly or wholly substantiated. A Conduct Division does not have the power to remove a judicial officer; the Governor of NSW, acting on the advice of Parliament, bears this ultimate responsibility. The power to remove a judicial officer is protective and not punitive.

If the Conduct Division, as part of its examination of a complaint, forms the opinion that a judicial officer may be physically or mentally unfit to exercise efficiently the functions of a judicial office, the Conduct Division may request the officer undergo a medical or psychological examination. If the judicial officer refuses or fails to undergo the medical or psychological examination, the Conduct Division may, having regard to that refusal or failure and to any other relevant factors, and if it considers the matter to be sufficiently serious, form an opinion that the matter could justify Parliamentary consideration of the removal of the judicial officer from office.

If a Conduct Division forms an opinion that a complaint could justify Parliamentary consideration of the judicial officer's removal, the Conduct Division must present to the Governor a report setting out its findings of fact and its opinion. A copy of the report must be given to the judicial officer concerned, the Commission, the Attorney General and, after the Attorney General lays the report before both Houses of Parliament, the complainant. The judicial officer may be invited to address Parliament to show cause why Parliament should not request the Governor to remove the judicial officer from office. Parliament then considers and votes on whether the conduct justifies removal.

If the Parliamentary vote is in favour of removal, the Governor then removes the judicial officer from office on the ground of proven misbehaviour or incapacity. To date, this has never occurred.

If the Conduct Division forms the opinion that a wholly or partly substantiated complaint does not justify Parliamentary consideration of the judicial officer's removal from office, it must send a report to the relevant head of jurisdiction, the Commission, and the judicial officer concerned, setting out its conclusions. The report may be given to the complainant unless the Conduct Division advises in writing that this should not occur. The report may include recommendations about the steps that might be taken to deal with the complaint. The Conduct Division can also dismiss a complaint on any of the grounds in section 20 or if the complaint has not been substantiated.

### **What we cannot deal with**

The complaints function is concerned only with examining complaints about a judicial officer's ability or behaviour. We do not have the power to:

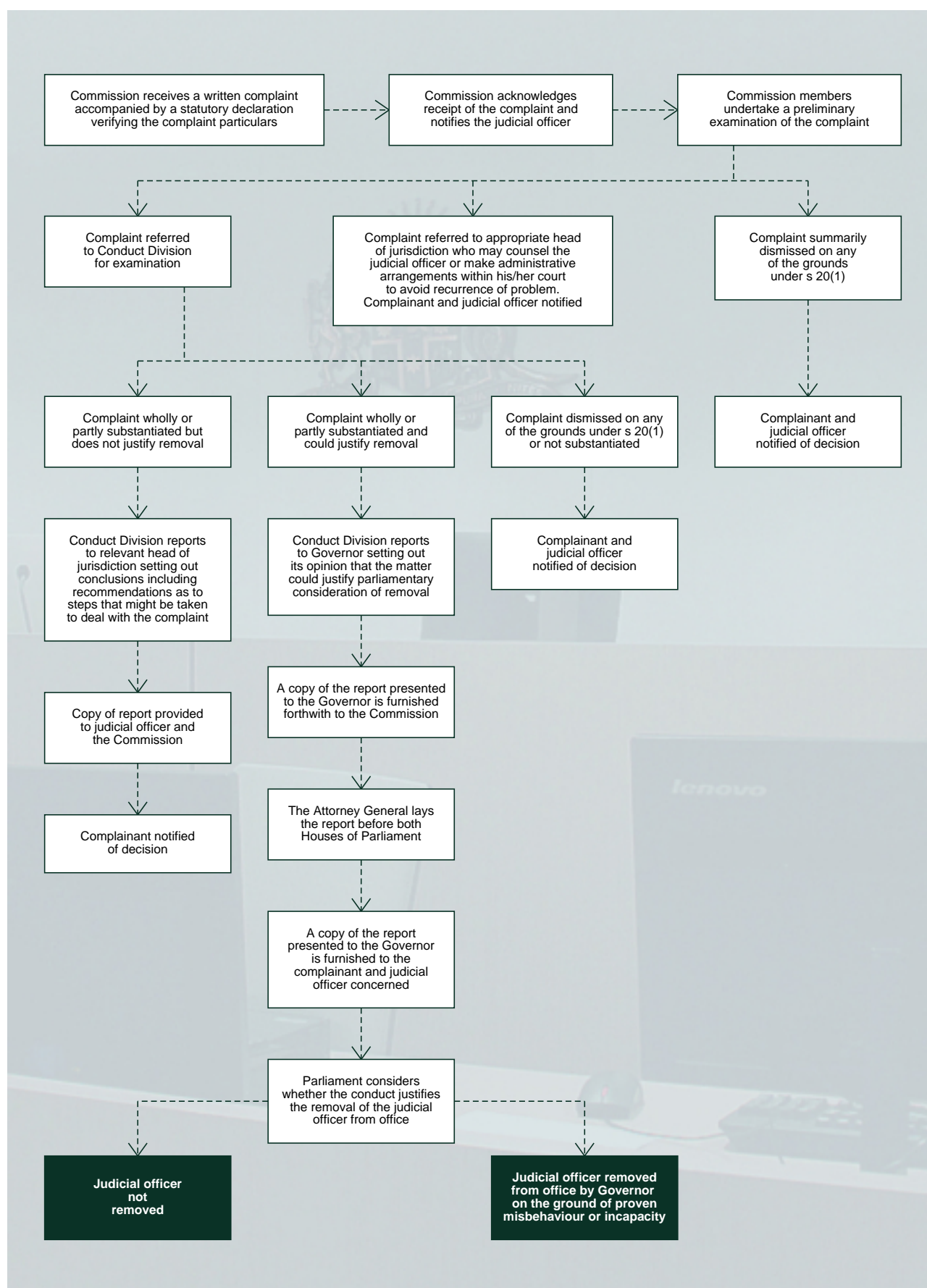
- investigate allegations of criminal or corrupt conduct as these are matters for the police or the Independent Commission Against Corruption
- review a case for judicial error, mistake or other legal grounds
- discipline or sanction a judicial officer
- examine complaints about retired judicial officers, federal judicial officers, arbitrators, assessors, registrars, members of tribunals, legal representatives or court staff.



Executive Assistant Cheryl Condon provides members of the public with information about the Commission's complaints function.



Figure 14. How the complaints process works



## Case studies

### Examining complaints

#### **Allegation of failure to give a fair hearing**

##### **The complaint**

The complainant appeared before the Local Court to defend a charge relating to a traffic matter. He represented himself and complained that the magistrate had refused him the opportunity to present his defence and address the court on it. Further, it was alleged that the judicial officer made false statements in his judgment.

##### **The Commission's examination**

The Commission dismissed the complaint after reviewing the transcript of the hearing and the magistrate's judgment. The investigation confirmed that the judicial officer had given the complainant such assistance as was appropriate for a self-represented person. The magistrate had allowed the complainant every opportunity to put his case and to challenge the evidence brought by the prosecution. The Commission found nothing to support the allegation that the judicial officer had failed to give the complainant a fair hearing. In the Commission's opinion, the judicial officer had dealt with the proceedings in a courteous and judicial manner. Having considered the statements made by the magistrate in his judgment, the Commission found that the statements were in accordance with the magistrate's findings on the evidence, and were not misconduct. The Commission also noted that a right of appeal was available to the District Court, which had been exercised. As no misconduct was found and a right of appeal existed, the Commission was required by its legislation to dismiss the complaint.

#### **Complaint about inappropriate comments**

##### **The complaint**

The complaint arose out of an appeal from the Local Court to the District Court against the making of an apprehended domestic violence order. The complainant alleged that the judge had discriminated against him because he had a disability and made inappropriate remarks about it. He asserted that as a result he was intimidated and unfairly treated.

##### **The Commission's examination**

To examine the complaint the Commission reviewed the transcript of the hearing, the judicial officer's judgment, and considered the submissions contained in the complaint. The examination revealed that the judge dealt with the proceedings in a fair and judicial manner. The Commission was satisfied there was no conduct on the part of the judicial officer which would amount to judicial misconduct under the *Judicial Officers Act*. The Commission found no examples of the judge discriminating against the complainant or making inappropriate remarks about him. In those circumstances, the Commission was of the opinion the complaint was not substantiated and further consideration of it was unjustified. The complainant and the judicial officer were advised of the Commission's reasons for dismissing the complaint.

#### **Complaint about failure to act in a judicial manner**

##### **The complaint**

The complaint was that a magistrate in dealing with a domestic violence matter had acted inappropriately, in that he had displayed attitudes and behaviour that did not reflect the seriousness of the charges being dealt with. The complainant was a witness and victim in the proceedings. She complained that during the hearing the judicial officer related anecdotes and spoke in a jocular fashion which made her believe that he was not taking the matter seriously.

##### **The Commission's examination**

The Commission reviewed the sound recording and transcript of the hearing. It also considered a response to the complaint received from the judicial officer. After examining the information before it, the Commission was of the view that the judicial officer's conduct, in the circumstances, was inappropriate. It also determined that the complaint was substantiated and should not be dismissed. The matter was referred to the Chief Magistrate as the relevant head of jurisdiction to deal with.

# Engaging with our partners and the community



We exchanged our knowledge, experience and expertise with the NSW public, government law agencies and national and international jurisdictions to promote the rule of law in the region and confidence in the judiciary.

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## Performance results 2019–20

An assessment of the results shown in Table 11 demonstrates strong engagement with our partners and the community in 2019–20, despite the impact of the COVID-19 public health orders. The table below shows the evidence for each identified result as well as details of each measure we have put in place to achieve our objectives and how we performed.

Table 11. Results for engagement with our partners and the community

Results	Measures	Performance	Status
The public was informed about our work and role in the justice system and our contribution to judicial performance	Maintain or increase publicly accessible information on our website	8.7% decrease in page views of free-to-view legal resources on our website: see p 46  Compiled COVID-19 materials for access on public website	↓
	Maintain number of presentations that Commission staff give to inform the public and community groups about role in the justice system	26 presentations about our work and role throughout the year: see Appendix 15  New publications uploaded on our website for free-to-view service: see p 46, existing publications updated throughout the year: see p 40 and Appendix 8	↑
	Maintain or increase our community engagement role through collaborations with other organisations	Demonstrated by collaborations with Law Society of NSW and NSW Bar Association; delivery of seminars, multimedia channels, support for the Indigenous Clerkship program: see case study on p 31  Responded to enquiries from potential complainants (382) and the media (3): see p 53	✓
Government agencies had access to our statistical and legal information and shared our knowledge	Maintain information service for Government agencies	40% of JIRS usage was from Government agencies: see p 43  Audit of Lawcodes data to facilitate the generation of JIRS sentencing statistics; new Lawcodes feature to deal with savings and transitional provisions: see p 62  Responded to detailed research enquiries from government agencies: see pp 62, 43  Prepared a newsletter of COVID-19 related items for publication on the Public Defenders website: see p 62  Partnered with BOCSAR to survey judicial officers about recent sentencing reforms: see p 62	✓
		<b>HIGHLIGHT</b> Updated Lawcodes database with COVID-19 public health offences, assisting with vital exchange of information between justice sector agencies at the height of pandemic-related regulations in NSW: see pp 62–63	
We provided capacity-building assistance to other nations	Maintain or increase our capacity-building assistance	We hosted visitors and delegations until prevented by the COVID-19 global pandemic and provided substantial assistance to the Papua New Guinea law and justice sector: see p 64 and Appendix 12	✓
We shared knowledge, resources and experience with other judicial education providers	Maintain or increase exchanges throughout the year	Facilitated a survey of judicial officers as part of our work on vicarious trauma research in partnership with the University of NSW: see p 65	✓
		<b>HIGHLIGHT</b> Engaged with the IOJT through our Chief Executive's involvement as a member of the IOJT Board of Executives; our Director, Education's joint presentation of an IOJT conference session; and our editorial work on the IOJT's journal, of which our Chief Executive is also Joint Editor-in-Chief: see case study on p 28	
We provided advice and support to other Australian jurisdictions and international institutions	Maintain advice on an "as requested" basis	Engaged with the Judicial Council on Cultural Diversity: see p 64	✓
The Commission provided contractual services to partners and the community	Maintain or increase revenue obtained from contractual services	\$1.04 million (17% of our income) was self-generated to supplement funds from consolidated revenue (last year: \$937,000): see p 97 in Our finances	↑

Legend ✓ target achieved ↑ target/output exceeded ↓ target not achieved

Photo previous page: We host overseas visitors who are keen to learn about our role and function in NSW's justice system. The Commission's Deputy Chief Executive, Murali Sagi PSM (far right), met with a delegation from Malaysia, September 2019, in our Sydney office.



## Challenges 2019–20

- Maintaining our connections to courts, the legal profession, government departments and agencies, and other education providers while adhering to COVID-19 public health regulations.
- Maintaining our accessibility to the public for the purposes of receiving complaints about judicial officers while adhering to COVID-19 public health regulations that required physical distancing.
- Balancing our core work with requests for assistance from government departments and other jurisdictions.

## Looking ahead 2020–21

- Consider how various communication platforms deployed in response to COVID-19 physical distancing requirements can enhance how we engage with our partners and the broader community.
- Review how to increase productivity and curate our services to meet changing needs of stakeholders and engage with the profession through this process, for example, through JIRS enhancement projects.
- Continue to provide online legal information for the public as part of our community engagement strategy.
- Maintain the Lawcodes database, a vital database of unique codes for NSW and Commonwealth criminal offences to enable justice sector agencies to electronically exchange information.
- Continue to actively participate with other national and international providers of continuing judicial education to share resources and promote best practice for judicial officers, including our involvement with: the Commonwealth Judicial Education Institute (CJEI); the International Organization for Judicial Training (IOJT); and the Association for Continuing Legal Education (ACLEA).
- Work with the Drug Court to reconfigure its current case management system with the planned expansion of the court to regional centres.
- Explore opportunities to develop case management software with new partners.
- Work with BOCSAR to report the findings of the 2019 survey of judicial officers addressing recent sentencing reforms.



## Listening to our partners and the community

### Our partners appreciate the assistance, services and the sharing of information and experience we provided during the year.

"We are very much impressed by your works about judicial training courses, materials such as *Criminal Trial Courts Bench Book*, *Civil Trials Bench Book*, and *Sentencing Bench Book*, etc. for efficient judicial functions and also research work on sentencing to achieve consistency in sentencing and many others. We were also happy to learn about the complaints handled by the Judicial Commission against judicial officers."

Delegation from the National Judicial Academy of Nepal, 25 June 2019; feedback received 1 July 2019

"We are really grateful for the well organised and eye opening ... presentation of the sentencing database and case management system"

Delegation from the High Court of Hong Kong, 15 August 2019

"The Philippines is a key partner for the Australian Government in strengthening the regional response to terrorism. This exchange was successful in enhancing the Philippine judiciary's knowledge on the important work of the judicial commission"

Re the Australia-Philippines Information Exchange on counter-terrorism, 21–23 August 2019

"Thank you for being so generous with your sharing. We will bring home good lessons that we can proudly say are Australia's contributions to judicature. As we say in Pilipino — Mabuhay!"

Delegation from the Supreme Court of the Philippines, 21 August 2019

"Thank you so much for always remembering the Philippine Judicial Academy and providing us with a copy of your excellent Annual Report, this time for 2018–2019. Your Report has served as our model for the past years, even as we can only approximate its first-rate quality."

Chancellor, Philippine Judicial Academy, 16 January 2020

## We inform the public about what we do and exchange knowledge and expertise with other organisations

The Commission provides accessible information about our functions and how our work contributes to judicial performance:

- so the public know of their right to complain about a judicial officer's ability or behaviour
- to promote public and professional awareness of and confidence in the courts, the justice system, and the work of judicial officers
- to raise awareness of the Commission's contribution to judicial performance.

Throughout the year we provided free-to-view information about our publications, talks and presentations to community organisations, students and legal professionals. See Appendices 7 and 8 for full details of our publications and Appendix 15 for details of our presentations.

The Commission provides free access to resources and publications on our website. Our aim is to promote public confidence in the courts through providing accurate and current legal information and informed analysis. Readers today can access most of our monographs, videos, *Sentencing Trends & Issues* papers, handbooks and bench books in HTML and PDF for free download to personal computers and e-book readers.

### Sharing our technical expertise

For over 30 years, we have developed expertise in judicial education services, computerised sentencing information, processes for examining complaints and building and maintaining judicial support and case management systems.

In 2019–20, we worked with other organisations and judiciaries to:

- co-operate and exchange knowledge with government agencies in NSW
- assist with capacity-building projects in developing jurisdictions
- provide advice and assistance to other jurisdictions
- share resources and exchange ideas with other Australian and international providers of judicial education services
- share expertise developed in the exercise of our functions through contractual arrangements with other jurisdictions.

See Appendices 10–14 for complete details about how we shared our knowledge and expertise during the year.



## Case study

### Supporting the *Bugmy* Bar Book project

We support the work of the Public Defenders with the *Bugmy* Bar Book project. Launched on 8 November 2019, this unique online resource for practitioners and the judiciary has been developed to assist in the preparation and presentation of evidence to establish the application of the *Bugmy v The Queen* (2013) 249 CLR 571 principles. The *Bugmy* Bar Book is produced by the *Bugmy* Bar Book Committee in consultation with experts in each area of research and under the guidance of a multi-disciplinary, independent advisory panel. The Commission is represented on the Committee by our Director, Research and Sentencing. We liaise with the Bar Book's research team to streamline any overlap between this and our own *Equality before the Law Bench Book*.

A notice is on the Commission's website alerting readers to the project and it is also linked to our Ngara Yura Program web page. Judicial officers and subscribers can access the *Bugmy* Bar Book from within JIRS. To inform judicial officers about the resource, we held a seminar in February 2020, which gave an overview of the *Bugmy* Bar Book project. We also published an article in our *Judicial Officers' Bulletin* in June 2020 "*Sentencing and disadvantage: the use of research to inform the court*", by Nicholas Cowdery AO QC, Jill Hunter and Rebecca McMahon, with a supplementary note by her Honour Judge Sophia Beckett.

### Performance of our public information and community engagement role

The Commission provides free legal educational resources to schools and university students on our website. There has been an 8.7% decrease this year in our key free-to-view legal publications, a decline which is best understood in the context of COVID-19 when contrasted with last year's 5% growth. Our publications are listed on university reading lists and regularly referred to as indispensable publications for law students.

Prior to the COVID-19 pandemic, the Commission shared its experience in the area of judicial education and the handling of complaints through presentations and meetings with delegations from abroad.

### Commission officers' presentations about our work and role

Commission staff delivered 26 presentations (last year: 20) during the year to visiting judicial officers, community groups, government agencies, and court staff about the Commission's role in the NSW justice system, the Judicial Information Research System (JIRS), the development of the JIRS app and its functionality, specific research projects recently undertaken, continuing judicial education, judicial communication, and different learning styles. The number of presentations increased overall, despite the constraints imposed by COVID-19 public health regulations that resulted in the cancellation of some scheduled presentations. See Appendix 15 for the list of presentations for 2019–20.



As part of the Commission's capacity-building role, our Chief Executive, Mr Ernest Schmatt AM PSM, and Deputy Chief Executive, Murali Sagi PSM, met with a delegation of 21 members of the Chinese Law Society, Sydney, September 2019.



## Public use of our information affected during COVID-19

Use of our online publications decreased at an overall rate of 8.7% (last year: 5% growth). The *Civil Trials Bench Book* has been the most accessed publication with an average 47,776 hits each month, although it has decreased by 15% compared with last year. This resource provides information and legal principles relevant to all aspects of running civil proceedings and about evidence admitted in criminal and civil trials. More information about our published resources is found on p 40 and in Appendix 8.

The decline in public use is not surprising in the context of the COVID-19 public health regulations. Until this year, there has been growth in the public use of our resources. The volume at which our resources are used, notwithstanding the overall decline this reporting period, suggests that we are meeting a need for information about our work and role in the justice system. See Table 6 on p 46.

## Working with government agencies

Government agencies routinely request the Commission to provide legal information and analyses of the statistics that we hold on the Judicial Information Research System (JIRS). During the year, we responded to 50 research enquiries (last year: 41), including from government departments such as:

- Director of Public Prosecutions (NSW and Cth)
- Legal Aid NSW
- Public Defenders
- Department of Communities and Justice
- NSW Police Force
- Bureau of Crime Statistics and Research (BOCSAR).

The increased number of research enquiries to which we responded reflects our engagement and productivity through the COVID-19 period.

We also worked with:

- the Public Defenders to provide pandemic-related newsletter items on their website
- the Department of Communities and Justice, participating in various working groups to advise about the NSW government's proposals for legislative reform. In the last 12 months we have provided feedback for proposed legislation including for: *Justice Legislation Amendment Act (No 2) 2019*; *Evidence Amendment (Tendency and Coincidence) Act 2020*; *Justice Legislation Amendment Bill 2020*
- the Special Commission of Inquiry into the Drug "Ice" to survey the District and Local Courts to gain an understanding of the extent to which the use of "Ice" is associated with non-drug criminal offences.

In October 2019, we partnered with the NSW Bureau of Crime Statistics and Research (BOCSAR), to undertake an online survey of NSW judicial officers. The purpose of the survey was to assess whether the NSW sentencing reforms, commencing in September 2018, were operating as intended and identify any impediments to implementation. The reforms made significant changes to the community-based sentencing options previously available to judicial officers.

Our Director, Research and Sentencing, Pierrette Mizzi and Director, Education, Una Doyle worked with senior BOCSAR staff to design the survey and liaise with the courts. We hosted the survey on our custom-built secure platform and a total of 93 judicial officers from the District Court of NSW and Local Court of NSW participated (a response rate of 42.8%). The findings will be published in mid-2020.

We also assist government with queries on a range of national and international issues. We provided feedback on the draft recommendations of the Australian Human Rights Commission's National Inquiry into Sexual Harassment in Australian workplaces. We also provided information in response to a request from the Commonwealth Attorney-General as to a Commonwealth delegation to the UN Committee on the Rights of Persons with Disabilities. The subject was raising disability awareness amongst the judiciary in the context of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Appendix 11 contains the full list of the organisations the Commission supported and exchanged information with during the year.

## Operating the Lawcodes database

The Lawcodes database of unique codes for NSW and Commonwealth criminal offences plays a vital role in the NSW criminal justice system. It enables all NSW justice sector agencies to electronically exchange information efficiently and accurately. The Commission developed and maintains this database and general access to it is provided through our website. During the year, we:

- coded and distributed 95% of new and amended NSW offences within 4 days of their commencement and Commonwealth offences where a proclamation date is provided (last year: 100%). The decrease in the rate reflects the initial impact of setting up processes to work remotely due to COVID-19
- responded to all enquiries from Lawcodes users within 24 hours
- undertook a large-scale audit of the data contained in the Lawcodes database because of the proposed use of the database to facilitate the generation of JIRS sentencing statistics. The creation of the Lawcodes database initially involved the back capture of offences in NSW dating back to 1900. This process was undertaken by a large number of legally qualified personnel over a significant period of time. Unfortunately, at that time most of the relevant legislation was only available in hard copy,



so that much of the information had to be manually keyed in. The audit process resulted in very few errors being found in the core responsibility of Lawcodes, the production of unique law part codes for particular offences. However, in the non-core area of the historical record of penalties for particular offences numerous date errors were found and corrected. The opportunity also arose to standardise the numbering of offences contained in Schedules to Acts

- added a new feature to the database to deal with the effect of savings and transitional provisions in a sometimes highly complex legislative scheme of amendments. An Act or certain provisions of the Act may have been repealed but savings or transitional provisions may extend the operation of the legislation. Having a field to capture these types of changes has allowed for Lawcodes to

more effectively reflect the repeal of an Act but still allow for Law Part Codes under its provisions to be used beyond the repeal date. For example, the *Native Vegetation Act 2003* was repealed by the *Local Land Services Amendment Act 2016*. The *Native Vegetation Act* is shown in Lawcodes as repealed but each Law Part Code under a relevant provision of the Act is still available with no repeal date as they are subject to savings and transitional provisions under the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*. Each of these Law Part Codes is headed by an extensive note to explain how the regulation allows for proceedings, the issue of penalty notices and the making of court orders for offences against the *Native Vegetation Act* that were committed before the repeal and how it can extend to an offence committed after the repeal.

## Case study

### Responding to fast-changing legislative changes during the pandemic

The consequences of the COVID-19 pandemic unfolded extremely quickly in March and early April 2020. Legislation was rushed through all governments to put in place a vast variety of administrative emergency measures.

The *Public Health Act 2010* was the key legislation that provided for a mechanism of orders to be issued to control the risk to public health in NSW, particularly section 10. Law Part Codes were coded immediately by the Commission for section 10 orders, which attracted heavy penalties. These orders were not static but were amended or repealed as the situation changed from day to day. One of the first orders was the *Public Health (COVID-19 Public Events) Order 2020*, which was made on 15 March 2020, commenced on 16 March 2020 and repealed on 18 March 2020 before 5pm. Sometimes, orders would be issued outside working hours.

During this period the Lawcodes staff were required, along with most other staff of the Commission, to work from home. The Systems staff quickly established the network systems and security required and we were very soon at home poring through all the legislation to check when a new Law Part Code was required. We also had flexibility to keep an eye on orders being issued outside usual work hours. One particular order dealing with what became known as the “coughing and spitting” offences required a special update to be sent to all Lawcodes users on 10 April 2020 (Good Friday).

To help our users keep track of COVID-19 related developments, we wrote an article published in the Commission's *Judicial Officers' Bulletin*, highlighting what Law Part Codes should be used when charging a person for the contravention of a section 10 order (as at 14 May 2020 — see (2020) 32(4) *Judicial Officers' Bulletin* 33).

Tables were also added to the newly created “COVID-19 Resources” page on JIRS to capture the orders made not only under the *Public Health Act* but also COVID-19 related ones made under the *Environment Planning and Assessment Act 1979* and the *Retirement Villages Act 1999*. A further addition was made to the web page when a number of Law Part Codes were required for the *Privacy Act 1988* (Cth), under the new Part VIIIA, which was inserted to support the introduction of the COVIDSafe app.

The COVID-19 Resources web page continues to be monitored by the Lawcodes staff to capture the latest legislative developments and to assess the maintenance and creation of new Law Part Codes.



The Lawcodes database was frequently updated to provide codes for offences relating to COVID-19.



## Performance of our capacity-building role

Consistent with section 11(1)(b) of the *Judicial Officers Act*, the Commission is liaising and sharing our expertise and experience with countries in the Asia-Pacific region to assist them to develop the capacity and performance of their judicial officers.

During the year:

- the Commission continued to work with the Papua New Guinea (PNG) law and justice sector to operate the PNG Sentencing Database (PNGSD) and the Integrated Criminal Case System Database (ICCSDB)
- we hosted delegations of judicial officers and visitors to our Sydney office including from Papua New Guinea, Hong Kong, Malaysia, Taiwan, China and Germany. There were fewer delegations and visitors overall this year because of the imposition of COVID-19 public health regulations. Full details of visits to the Commission can be found in Appendix 12.



A delegation of judicial officers and court staff from PNG visited the Commission for training in the PNGSD and the ICCSD, (l-r) Ms Serah Paua, Mr Murali Sagi, Deputy Chief Executive, Justice Geita, Ms Veronica Roby, Senior Systems Analyst, Justice Miviri, Mr Kwara Giriwa, Ms Lenny Halim, Solutions Architect. Photo used with permission.

## Collaborating with NSW courts and other Australian jurisdictions

The Chief Executive is a member of the Judicial Council on Cultural Diversity (JCCD) and participates in its meetings, decision making and programs.

The Commission continued to host the cultural diversity e-learning program that we developed for the JCCD. We migrated the course to our new online learning platform, Moodle. The program was produced by the Commission some years ago to assist the JCCD and draws on several resources, including the Family Court of Australia's online cultural competency training course and the Commission's *Equality before the Law Bench Book*. The new platform is an easy to use, open-source learning management system (LMS) and is widely used for blended learning, distance education and other e-learning projects. We also conducted a review of the content.

During the year, we:

- continued to host the NSW Court of Appeal website for which the Court of Appeal maintains the content
- provided training on JIRS for the new cohort of tipstaves at the Supreme Court in January
- continued to host, maintain and support case management systems for the NSW Drug Court and the Compulsory Drug Treatment Correctional Centre
- launched a revitalised mentoring program for the Local Court in order to increase support to newly appointed magistrates.

Other engagements with the courts were cancelled due to COVID-19 public health regulations, including a presentation on committal reforms for the Supreme Court and JIRS training scheduled for District Court associates.

## Working with the legal profession

We collaborated with the legal profession as part of the process of improving the processing and presentation of statistics on JIRS. Two short articles by Mark Zaki, Managing Lawyer, Research & Sentencing, were published in the professional associations' newsletters as part of the more direct engagement with the profession: *Law Society Journal* (October 2019) and *Bar News* (Spring 2019).

A presentation on the use of comparable cases and statistical information was planned as part of the Law Society of NSW continuing legal education program. Unfortunately, it was cancelled due to COVID-19 public health regulations but has been rescheduled for early 2021.

## Performance of contractual services

Revenue from our information technology contractual services at \$1.04 million (17% of total income) was slightly higher than last year's \$937,000.

The Commission provided information technology services developed in the exercise of our functions for the following projects:

- the ACT Sentencing Database
- the Commonwealth Sentencing Database
- NSW Drug Court Case Management System
- the PNG Sentencing Database
- the PNG Integrated Criminal Case System Database
- the Queensland Sentencing Information System.

## Responding to enquiries

Our Chief Executive responded to 3 media enquiries about our work (last year: 4) and attended to 382 telephone, face-to-face and written enquiries from potential complainants (last year: 305).



## Working with other judicial education providers and universities

Sharing knowledge and experience with Australian and international education providers is mutually beneficial and an effective way for the Commission to be aware of the latest developments in continuing judicial education.

Collaborating with other similar organisations both in Australia and beyond allows us not only to share our experience and knowledge with judicial education bodies but also to learn from their insights. A recent example is a workshop held by video conference with the Institute of Judicial Studies of New Zealand (IJS). Following a request to share information about our publishing platforms and processes, we met with the IJS in March 2020. The Commission provided an overview of our XML publishing system and learned about the New Zealand approach. It was a valuable exchange for both organisations. See case study on p 66.

On another occasion we gave assistance to the Center for Judicial Education and Training in Israel on the subject of orientation and mentoring programs for newly appointed judicial officers.

We continued working in partnership with the University of NSW on a research project focussed on vicarious trauma. Our survey of NSW judicial officers reflected a high level of engagement with an unprecedented response rate of over 50%.

During the year, we also participated in a number of high-level programs, committees, conferences and steering groups in connection with our judicial education role. Some highlights were:

- assisting the National Judicial College of Australia to present the National Judicial Orientation Program with the Australasian Institute of Judicial Administration (AIJA)
- assisting the International Organization for Judicial Training (IOJT) with planning activities and participation in their conference and the publication of their international journal: see case study on p 28
- contributing to the meetings, decision making and programs of the Judicial Council on Cultural Diversity (JCCD)
- participating in the activities of the Advisory Board of the Commonwealth Judicial Education Institute (CJEI)
- participating in a Child Sexual Abuse Roundtable organised by the Sydney Institute of Criminology and the University of Sydney Law School.

Appendix 10 has details of how we assisted other organisations. See also the case study highlighting collaborations undertaken by our Ngara Yura Committee on p 31.



Founder of the Aboriginal Legal Service in Toronto, Mr Jonathan Rudin, drew parallels between Canadian and Australian experiences at a Ngara Yura seminar in February 2020.



Ms Joanne Selfe, Ngara Yura Project Officer, with author Ms Edwina Light, launching the book *The First Into the Dark* at the University of Technology.

## Case study

### Collaborating across the Tasman

We work closely with the global judicial education community, especially with our neighbours in the Pacific region, sharing knowledge and working together where possible. Our links with the Institute of Judicial Studies in New Zealand and the New Zealand judiciary are very strong and we continue to enjoy a collaborative relationship.

During the IOJT Conference in Cape Town, September 2019, Ms Una Doyle, Director, Education had the opportunity to discuss shared educational interests with Ms Janine McIntosh, Director of the Institute of Judicial Studies of New Zealand (IJS) and the Honourable Justice Matthew Palmer, High Court of New Zealand. This set the scene for a number of valuable exchanges throughout the year.

The District and County Courts Conference of Australia and New Zealand is a biennial event and in 2020 it was scheduled to be held in Sydney with a theme of “innovation and the law”. Keen to learn from innovations in the trans-Tasman courts, we invited a number of judicial officers from New Zealand to share their experiences by presenting on topics such as emerging technologies and their intersection with the rule of law. Although the conference was postponed due to COVID-19, we appreciated the willingness to assist and learned much from the planning discussions.

We met with staff of the IJS in March, via video conference, to share information about our publishing platforms and processes. Staff of the Commission Ms Kate Lumley, Manager, Publications and Communication, Ms Anne Murphy, Senior Editor (Legal) and Ms Dominique Cornelia, Solutions Architect, provided an overview of our XML publishing system for the Institute’s Director, Ms Janine McIntosh and her team. Both organisations found the discussions to be very educational.

In April, the IJS shared its experience with evaluating webinar platforms when the pandemic necessitated a move to online delivery of our programs. As the IJS had just been through this exercise, we found this recent expertise most useful. We reciprocated by sharing information about our new mentoring program with our New Zealand colleagues and anticipate we will continue to enjoy this mutually beneficial relationship in the future.



The IOJT Conference in Cape Town in September 2019 created opportunities for discussion between trans-Tasman colleagues.



Justice Matthew Palmer of the High Court of New Zealand and Ms Janine McIntosh, Director of the IJS, attended the IOJT Conference.

# Our people



Our people helped to realise our mission to promote the highest standards of judicial behaviour, performance and decision making.

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## Performance results 2019–20

**An assessment of the results shown in Table 12 demonstrates that our talented and skilled people performed well in 2019–20, notwithstanding the COVID-19 global pandemic. Table 12 shows the evidence for each identified result as well as details of each measure we have put in place to achieve our objectives, highlights for the year, challenges, and forward direction.**

Table 12. Results for our people

Results	Measures	Performance	Status
Deliver services and meet functions as set out in <i>Judicial Officers Act</i>	Employed qualified and skilled staff to efficiently deliver statutory functions (ie our core programs), working in collaborative teams	33 people work in judicial education, legal research, complaints, information technology and corporate services: see p 70  Communication within the Commission to perform required work is strong, shown in high satisfaction in our staff survey results: see p 70	✓
	Staff equipped to perform functions through induction and ongoing professional development	Provision of induction program for new staff, and performance review, professional training and development and community engagement opportunities  Highly skilled and well-trained staff: 45% of staff furthered their professional training: see p 74  Developed and shared expertise through secondments: see case study on p 78.	✓
	External recognition of staff performance	Judicial officers continue to be highly satisfied with the support they receive from Commission staff in delivery of annual conferences and workshops: 98%: see p 27	✓
		<b>HIGHLIGHT</b> Staff acquired new skills through webinars and online courses as part of adapting to the new working from home environment required by COVID-19 health regulations: see p 74	
Staff are engaged, valued and satisfied working at the Commission	Low turnover and high retention in staff, keeping skills and knowledge within the Commission.	Low turnover: 6.06%: see p 74. This is well below benchmark of 15%.  High retention: 53% staff have 10+ years' service and a further 25% staff of 5+ years: see p 74	✓
	Satisfaction ratings in staff surveys	<b>HIGHLIGHT</b> High staff satisfaction rating of 97% in Commission annual survey: see p 70	✓
Our workforce is culturally and linguistically diverse and we have a dedicated Aboriginal project officer	Compliance with NSW government practices, policies and guidelines	Valued gender equality in the workplace and in senior roles: see p 92  Valued staff diversity: Our workplace is culturally and linguistically diverse, meeting NSW Government benchmarks: see p 72  Flexible work arrangements available: see p 73	✓
Our workplace is safe and we minimise risks to health and safety in the workplace	Compliance with government practices, policies and guidelines	Valued staff safety: Our workplace was safe with no workers compensation claims and no work, health and safety prosecutions: see p 77	✓

Legend ✓ target achieved ↑ target/output exceeded ↓ target not achieved

Photo previous page: We employ 33 staff in our Sydney office who ensure that we meet our goals and deliver our services to the judicial officers and people of NSW.

## Challenges 2019–20

- Building teamwork and cooperation within and between teams, as well as across the whole organisation, particularly in the context of remote working as a result of COVID-19 health regulations.
- Managing staff leave balances.
- Developing further strategies to assess and understand where the Commission's productivity can be improved.
- Encouraging busy staff to balance their work commitments with training and development opportunities.

## Looking ahead 2020–21

- Continue to value our staff, while working with the budgetary challenge of whole of Government savings directive and in circumstances where working in physically separate locations as a consequence of COVID-19 health regulations has become part of working practice.
- Develop further strategies to assess and understand where our productivity can be improved.
- Continue to encourage staff to identify personal training opportunities during their yearly performance reviews. We are committed to ensuring that our people maintain and improve their skills and knowledge.
- Maintain our staff retention rate below benchmark.
- Continue to foster a productive workplace where our people feel valued and satisfied in their work.
- Continue to foster a workplace culture that supports diversity and is aligned with the workforce strategies of the NSW public sector.
- Continue to have in place policies and strategies to ensure a safe workplace and minimise risks to workplace health and safety.

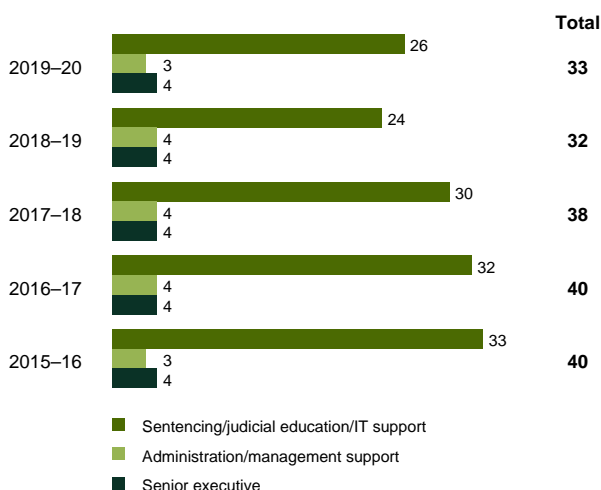
## Performance and satisfaction

### Our staff

Our staff are essential to our success and to ensuring we meet our goals and deliver our services. The Commission employed 33 people (30.2 full-time equivalent) in judicial education, legal research, complaints, information technology and administrative roles (last year: 32). Figure 15 shows the average number of employees in these roles over a 5-year period. Our small staff numbers mean that retired judicial officers sometimes help us with specialised tasks such as updating bench books and examining complaints.

Serving judicial officers also help by generously giving their time to serve on our various committees. Appendix 4 provides details of all our committees.

**Figure 15. 5-year comparison of average number of employees by employment category**



### Our people have a high level of satisfaction

Our yearly internal staff survey measured how committed, stimulated and supported our people felt. We received a 66.7% response rate, with 22 of 33 staff responding (last year: 51.5%, 17 of 33). We achieved a 97% overall staff satisfaction rating (last year: 94%). All results were an improvement on, or largely consistent with, last year.

100% of staff who responded agreed or strongly agreed:

- they were willing, when required, to put in extra effort to achieve a professional result (last year: 100%)
- they understood how their work contributed towards the Commission's mission and purpose (last year: 100%)
- they considered their working environment was safe, secure and comfortable (last year: 100%)
- they feel engaged with their work at the Commission (last year: 94%)
- they were able to balance work with their personal life (last year: 94%)

- there is good and effective communication of what they need to know to do their work (last year: 88%)

The improvement in communication of information is marked and the extent to which the rating increased builds on a similar degree of improvement the year before. This is the second year in which our monthly internal newsletter, *JUDCOMmunications*, has been published and these results suggest it is achieving its objective. The strong response also suggests that there has been good communication during the period of remote working from March 2020 due to COVID-19 health regulations.

The percentage of staff who agreed or strongly agreed that they felt trusted and valued at the Commission increased to 95% (last year: 82%). This is an important improvement in the context of remote working where staff are physically distanced and have to rely on digital means of maintaining effective professional relationships.

The following percentage of staff also agreed or strongly agreed:

- 95% felt there is good teamwork and co-operation within Commission projects (last year: 100%)
- 95% felt they were provided with sufficient resources and time to undertake their work (last year: 100%)
- 82% felt their requests for professional development training were supported (last year: 82%).

In each case where the percentages have fallen slightly from last year, the difference is one neutral response.

Looking ahead, the Commission will focus on engaging with staff about professional development training opportunities given the greater significance that working online has assumed in the context of the COVID-19 pandemic.

The Commission has rated highly in the NSW Government People Matter Employee Survey in previous years. However, due to COVID-19, the 2020 survey will not take place until the next reporting period.

### Community involvement

Commission staff engage with the community in various ways. Throughout the year, staff have given presentations about the Commission's work and role in the justice system through seminars to university students and community groups. The Commission hosted national and international visitors to our Sydney office until prevented by the COVID-19 global pandemic.

Commission staff are also involved in Aboriginal cultural awareness, the Ngara Yura Program, as a way to promote cross-cultural communication: see p 30 for more information.

The Commission's education function includes programs designed to increase judicial officers' understanding of the Qur'an and Muslim faith. For example, the Local Court Annual Conference included a session on the participation of Muslims in the judicial process.

Details about visitors to the Commission are found in Appendix 12 and presentations given during the year are listed in Appendix 15.

### Inducting new staff

The Commission's Chief Executive and the relevant Director welcome all new employees to the Commission. Managers guide new staff through an induction process so that they are aware of and acknowledge:

- the Commission's role and statutory functions
- office facilities and workplace health and safety information and procedures
- key policies and procedures that ensure acceptable behaviour
- conditions of employment and entitlements
- our Code of Conduct.

### Providing training opportunities for law students

The Commission employs law students as trainees in our Research and Sentencing, and Publishing teams. Students gain experience in interpreting case law and

legislation. Many of our trainees have gone on to work as judge's associates or solicitors who specialise in criminal practice. See case study below.

### Assessing and promoting productivity

The Commission knows that what really drives productivity is a clear operating framework, the provision of space for innovation and the retention of highly-skilled people who enjoy their work and feel valued. Our internal staff survey shows that staff are satisfied with these measures (see p 70). We have also implemented other proactive ways to assess and promote productivity, including:

- tailoring our performance management system to provide for regular reviews between supervisors and employees as well as formal yearly employee appraisals
- encouraging constructive feedback to be given between the executive, managers and employees
- implementing a regular reporting framework of productivity measured against targets conducted each month, with the Commission monitoring this at their monthly meetings.

High performing staff take responsibility for being proactive in developing more streamlined workflows and providing valuable feedback to managers. One challenge is to encourage staff who are working to constant deadlines to take timely breaks and other forms of stress release. The Commission also provides confidential and free access to an Employee Assistance Program service.

## Case study

### Providing professional guidance and experience for law students

This role has provided me with critical exposure to the professional legal industry from the unique perspective of the Commission. Valuable mentoring by the Research and Sentencing team has facilitated the consistent development of my legal interpretation, research and writing skills. Not only has this allowed me to grow as a professional in a healthy and supportive environment, but I have been able to use the critical thinking and problem-solving skills I have developed as an Arts/Law student in my capacity as a Research Trainee.

It is a remarkable experience to be able to produce an output that directly assists judicial officers and legal professionals, while enhancing my appreciation for the judicial system. It is an honour to work in such an esteemed environment with accomplished colleagues and a grounded work ethic.

**Juwariya Malik** — Arts/Law student studying Politics, International Relations and History at University of NSW and Research Trainee, Judicial Commission of NSW.

Photo supplied by Juwariya Malik



## Providing for workforce diversity

We provide a diverse, fair and safe workplace for our people. The Commission demonstrates our commitment to these values through policies such as our Diversity and Multicultural Policy, created in March this year and published on our intranet, which includes measures such as:

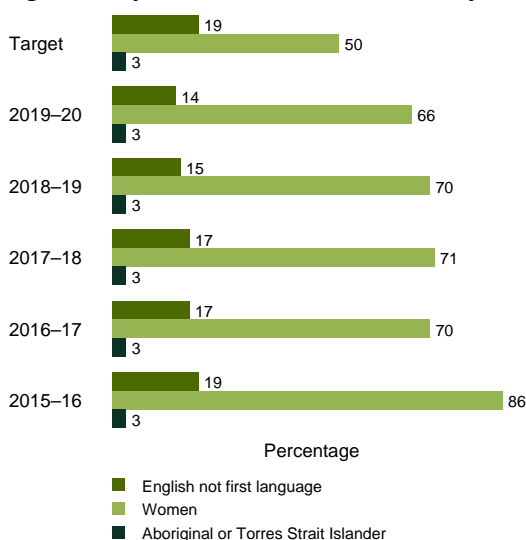
- ongoing support for cultural diversity
- addressing barriers for employment that exist for Aboriginal and Torres Strait Islanders
- meeting the needs of people with a disability and increasing accessibility to information, services and the workplace
- encouraging staff to undertake training on respect, diversity and cultural competence, and disability support
- eliminating discrimination on the basis of gender and providing opportunities for leadership and professional training for all women
- supporting the availability of flexible working arrangements
- opportunities to act in higher positions.

There is zero-tolerance for harassment of any kind in the workplace, as expressed in our harassment policy which was revised in June this year. There were no discrimination complaints lodged with the Anti-Discrimination Board of NSW (last year: 0) nor were there any harassment complaints made (last year: 0)

The majority of our people are women (23 or 66%) and 5 people (17%) are from a culturally diverse background: see Figure 16.

The percentages in Figure 16 reflect staff numbers excluding casual staff as at 30 June 2020. A benchmark level has not been reported for people with a disability or people with a disability requiring a work-related adjustment. The Commission has no staff member employed in these categories. The Commission is not a prescribed public authority under the *Disability Inclusion Regulation 2014* and is not required to have a disability inclusion action plan.

Figure 16. 5-year trends in workforce diversity



Our staff numbers meet the target of the NSW Public Sector Aboriginal Employment Strategy 2019-2025 of 3% Aboriginal employees.

Looking ahead, we will continue to foster a workplace culture that supports diversity and is aligned with the workforce strategies of the NSW public sector.

## Our multicultural policies and services program (MPSP) report

We consider the needs of a culturally diverse society when planning our programs, service delivery and in our operations generally, in line with the requirements of the *Multicultural NSW Act 2000*. Our Diversity and Multicultural Policy helps us promote community harmony, access and equity in line with the NSW Multicultural Policies and Services Program (MPSP).

This financial year, we are reporting against 2 themes. The first is our **response to COVID-19**, in terms of how the Commission has responded to the needs of people from culturally and linguistically diverse (CALD) backgrounds during COVID-19 and the challenges that remain. Our complaints function has been the area most relevantly impacted. To ensure that potential CALD complainants had uninterrupted access to the Commission, we organised a call-forwarding system which means that all complaints were received. During the period our office was closed due to the COVID-19 public health regulations, telephone calls were redirected to our Chief Executive's office. Once the office was re-opened with the lifting of Stage 3 restrictions, the Commission's ability to meet and deal with CALD complainants in person resumed in a COVIDSafe way.

The second theme against which we are reporting is **increase the proportion of women from CALD backgrounds in leadership positions**. Eight of our staff are from culturally and linguistically diverse (CALD) backgrounds, 6 of whom are women. Two of these women are in leadership positions and roles. There is strong representation of women in the Commission's executive (50%). While there was no expenditure on specific leadership training for women of CALD backgrounds in the reporting year, in-house mentoring and guidance is provided as needed. As with all staff, women of CALD backgrounds are also strongly encouraged to seek out external training opportunities which will contribute to their ongoing self-improvement and elevation into leadership positions.

This year, the Commission:

- provided accredited interpreters for overseas delegations who visited us during the year, when this was required: see Appendix 12
- provided interpreting and translation services for complainants where required
- employed a project officer to advise on Aboriginal cultural awareness through the Ngara Yura Program. Information about the Program and its activities during the year is found on p 30
- was represented on the Judicial Council on Cultural Diversity (JCCD) and worked with the Council to raise awareness about its work to better inform

courts about operational actions they can take to improve accessibility for migrants and refugees. An example is the “National framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women”

- in support of the JCCD, worked with the National Accreditation Authority for Translators and Interpreters (NAATI) to promulgate information about the new certification system for interpreters and translators and continued to promote the “Recommended National Standards for Working with Interpreters in Courts and Tribunals” to judicial officers in NSW
- consulted with the Australian National Imams Council (ANIC) to better understand how we could harness judicial education to promote better understanding of the Qur’an and Muslim faith. We did this by including a session in our Local Court Annual Conference in August 2019, addressing participation in the justice system for people of Muslim faith. We also published an explanatory article in our *Judicial Officers Bulletin* in November 2019 following the discussions relating to certain passages of the Qur’an in the decision of *R v Bayda; R v Namoa (No 8)* [2019] NSWSC 24
- participated in the delivery of the National Judicial Orientation Program (NJOP) for newly appointed judicial officers. The program involves delivery of a module designed to assist with managing cultural diversity challenges and the use of interpreters in court
- substantially updated the information about Aboriginal people and culturally and linguistically diverse groups in our award-winning *Equality before the Law Bench Book*. The publication is freely available on the Commission’s website.

The Commission’s expenditure on provision of language services totalled \$1,500 (interpreting services: \$54; interpreter language allowance: \$1,446) (last year: \$1,438 (interpreting services: \$26; interpreter language allowance: \$1,412).

### **Summary of MPSP strategies and activities planned for next reporting year**

- We will continue to support the NJOP and the magistrates’ orientation program to ensure that new judicial officers appreciate the impact of cultural and religious differences and understand how language and culture influence behaviour, attitude and witnesses.
- We will maintain our representation on the JCCD at Executive level and actively promote its work and publications addressing migrants and refugees in the court process.
- We will continue to interact with the Australian National Imams Council (ANIC) to foster Muslim and judicial understanding of the experience of Australian Muslims and Islam.
- We will support the work of the Department of Communities and Justice in reaching an Accord with the NSW Council of Aboriginal Regional

Alliances (NCARA) regarding strategies to reduce the number of young Aboriginal people being breached on bail following non-violent offences.

- Our award-winning publication, the *Equality before the Law Bench Book*, will continue to maintain information pertaining to the chapter on people from culturally and linguistically diverse backgrounds. The publication is freely available on the Commission’s website.
- We shall also continue to assist complainants with translation and interpreting services, if this is required, and provide accredited interpreters for overseas delegations who visit us during 2020–21.

See also our workplace diversity report on p 72.



Tanya Su, Senior Coordinator, Programs and Joanne Selfe, Ngara Yura Project Officer, help to deliver the continuing judicial education program.

### **Providing flexible work arrangements**

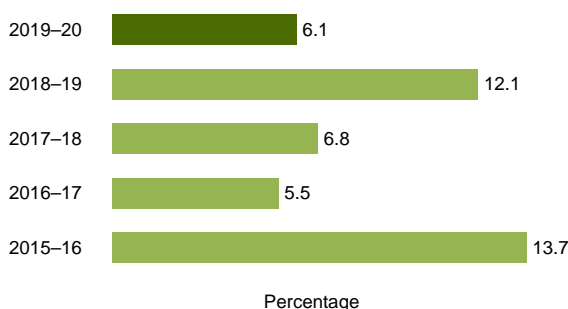
The Commission has a “flexible working practices agreement” in place to assist employees to balance work with personal and family obligations. All requests for flexible working arrangements are assessed on their merits in line with this policy. Staff also benefit from our “flexible working hours” policy that provides options for people to arrange their working hours. Our staff survey showed that 100% of respondents agreed that the organisation provides them with a good work/life balance.

Our working arrangements are published on the staff intranet and are in line with the NSW Public Service Commission’s 2018 flexible working policy.

## Retaining our staff

The turnover rate for permanent staff decreased this year to 6.06% (last year: 12.1%) with 2 staff members leaving. One of these departures was the retirement of Malcolm Hozack, Manager, Corporate Services, after close to 8 years' service at the Commission. This turnover rate remains well below our acceptable rate of 15%, suggesting that we are an employer of choice for the majority of our people: see Figure 17. Our retention rate is very high with over 53% of our staff having 10 or more years' service and a further 25% having 5 or more years' service.

Figure 17. Staff turnover 2015–20



## Satisfactory staff attendance

During 2019–20:

- no industrial action occurred
- average sick leave was 5.38 days per employee (last year: 4.6 days). The increase compared with last year was caused by the late flu season which peaked in September / October. There was a decline in sick leave taken from March when staff started working from home and social distancing, which provided protection against COVID-19 and flu.

## Consultants

This year we engaged no consultants.

## Employee Assistance Program

Our Employee Assistance Program (EAP) facilitates professional counselling to help staff deal with a range of issues and learn ways of dealing with stress. The Commission is committed to providing a confidential EAP for employees if the need arises. Employees also have access to the EAP provider's monthly e-flyer and portal, which gives interactive information on a number of well being tools such as a Wellbeing Screener, a Smoking Cessation Planner, and digital fitness sessions to encourage regular exercise through the period of COVID-19 restrictions. The newsletter addresses a number of important holistic issues such as how to tackle stress at home and at work.

## Providing professional training and development

As an education provider itself, the Commission strongly encourages all staff to undertake regular professional development. Employees identify their training and development needs in relation to their performance improvement plan as part of their yearly performance review. Managers encourage staff to take up training opportunities through skills development courses, leadership courses, tertiary study assistance and work secondments. Our target is for employees to spend at least 2 days each year on training and development.

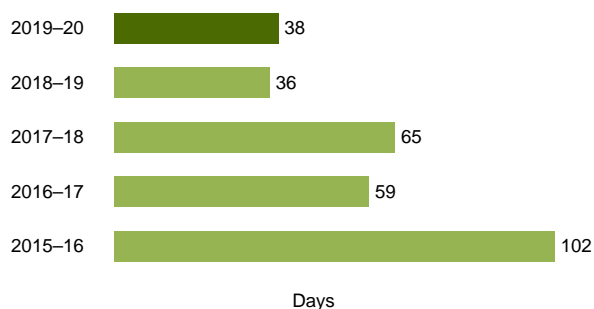
This financial year's result has seen staff take-up of training opportunities at a lower level, in part due to budget constraints but face-to-face training was also impacted by the upheaval caused by the pandemic. Many annual law programs that are usually attended by staff were cancelled due to COVID-19. Fifteen staff members (45%) attended 38 training days at a cost of \$13,510 (last year: 36 training days at a cost of \$25,249): see Figure 18. Staff attended a variety of training opportunities including:

- conferences and seminars to further professional development in areas such as sentencing law, continuing legal education and current criminal and civil legal issues
- webinars and online courses covering topics such as moving program content online, learning management systems, managing teams remotely, WHS for remote workers
- systems and IT workshops
- in-house training eg Microsoft 365, cyber security, HTML, Microsoft Teams.

Adapting to the new working from home environment has also required staff to learn new skills and as a result, many have embraced the opportunity to take part in webinars and online courses to assist with this.

In addition, Commission staff have access to the Judicial Information Research System (JIRS) to keep up-to-date with legal developments. Our employees also attended educational activities provided for judicial officers, including in-house seminars on legal developments and seminars and, in the months before the pandemic, visits to Aboriginal communities as part of the Ngara Yura Program.

Figure 18. Staff training days 2015–20



## Case study

### Multi-skilling Commission staff

The size of the Commission facilitates an enriching professional environment for our people. While we work day-to-day in small teams with considerable expertise, the successful performance of the Commission's operations relies on combining diverse skills in cross-functional projects and workflows.

The Commission's ability to operate with a small team and pivot quickly is also promoted by multi-skilling our staff. We saw this over the reporting period as Ms Jessica Ahearn, Program Support Officer, was trained to take on a range of tasks that derive from teams across the Commission.

In addition to the defined responsibilities of her position in Programs, Jessica contributes to the work of the Research team, assists Corporate Services and has taken on publishing tasks. Jessica also participated in the creation of judicial education material by acting as a court clerk in a video for the National Judicial College of Australia.

Multi-skilled staff bring several benefits to the Commission, increasing its resilience and efficiency as an organisation. They add to the overall expertise available in terms of resource allocation. Their interactions with other staff foster richer interactions between teams. Multi-skilling also creates individuals with a more holistic perspective of the Commission's operation and an enhanced capacity to contribute to its functions.



Jessica Ahearn, Program Support Officer, played the part of a court clerk in an NJCA video.

### Conducting performance reviews

Our performance management system provides for regular reviews between supervisors and employees as well as formal annual employee appraisals. Constructive feedback is given and employees have the opportunity to provide feedback to their manager. Employees are encouraged to identify their training needs and work with their manager to develop an individual training plan.

### Providing library support to staff

The library provides bibliographical support for the Commission's research, education and publishing programs. Legal and other related information is gathered and distributed, materials are sourced and supplied, and legal research tasks are undertaken. Training is organised to increase officers' skills in using online legal information and to maximise the Commission's investment in legal information resources.

Major concerns are the high costs of online access to legal subscription services, relative to the library's budget. However, subscriptions to core materials are being maintained and the 3-year contracts offered

to the NSW Justice Consortium by the major legal publishers now provide more certainty in financial matters.

The library currently holds corporate membership of the Australian Library and Information Association (ALIA), the Australian Law Librarians Association (ALLA), the Australasian Institute of Judicial Administration Inc (AIJA) and the International Association of Law Libraries (IALL).

There were 209 reference enquiries this year, a decrease of 8.3% (last year: 30.9% decrease). The change in working practices as a result of the COVID-19 pandemic may be a contributing factor to this decrease.

Requests for interlibrary loan and document delivery have increased by 50% from the previous year (last year: 64% decrease). Since mid-March, electronic copy has been the librarian's only means of obtaining material, as the COVID-19 pandemic has caused the closure of libraries and library collections previously available for interlibrary loan. Fourteen new texts were added to the online catalogue during this reporting period. See case study on p 76.

## Case study

### Re-examining the role of libraries

I attended the 85th International Federation of Library Associations and Institutions (IFLA) World Library and Information Congress which took place in Athens, Greece at the Megaron International Conference Centre, from 25–29 August 2019.\*

The goal of the IFLA meetings is to provide an environment which enables librarians to discuss common, current and relevant issues, and the theme of this conference was “Libraries: dialogue for change”. Law, Government, Parliamentary and Academic & Research libraries all have their own streamed meetings and presentations under the umbrella of IFLA.

The Keynote Address was given by Emeritus Professor of the University of Athens, Loukas Tsoukalis, who is also President of the Hellenic Foundation for European and Foreign Policy. Here are his concluding remarks: “As guardians of the memory of the world and keepers of knowledge, libraries play a key role in the wise use of new technology. They are an integral part of democratic dialogue and our common search for inclusive and sustainable development”.

A highlight was a conducted tour of the new and very imposing National Library of Greece in its new premises at the Stavros Niarchos Foundation Cultural Centre (SNFCC). The building was designed by Renzo Piano and commands 360-degree views of Athens from its top floor, from the sea to the mountains.

Regular interaction with professionals in allied fields and the constant updating of knowledge throughout IFLA 2019 proved to be of immense value. The conference was a very significant exercise along the path of my professional development and I thank the Commission for providing this opportunity.

**Maree D’Arcy** — Librarian, Judicial Commission

\* As Ms D’Arcy was overseas for a private purpose, the Commission covered only the cost of her attendance at the conference.



Maree D’Arcy, Librarian enjoyed engaging with current issues at the IFLA Conference.



The Commission’s library provides bibliographical support for our education and research programs.

## Setting wages and conditions

The Commission is an employer under the *Judicial Officers Act 1986*. Conditions of employment mirror those of the NSW Public Service. There were no changes to these conditions this year. Public Service officers who accept a position with the Commission retain their superannuation rights and benefits.

Staff were awarded a 2.5% salary increase from the first full pay period after 1 July 2019 which reflected the increase provided to public sector employees under the Crown Employees (Public Sector — Salaries 2019) Award. Senior executive remuneration packages

were adjusted by the Commission from 1 July 2019 in line with the 2019 determination of the Statutory and Other Offices Remuneration Tribunal.

The Commission contributed an amount equivalent to 9.5% of each employee’s salary to First State Super or a superannuation fund of choice. This contribution is not made for executive staff who receive a total remuneration package. In addition, employees have the option to salary sacrifice contributions to their funds. Information about remuneration for senior executive staff is found on p 92.

## Ensuring a safe working environment

The work health and safety (WHS) of our employees is a high priority. The Commission adopts a risk management approach to identifying and assessing health and safety risks in the workplace. This approach is reflected in our work health and safety policy available on our intranet. Our Audit and Risk Committee oversees our work health and safety compliance: see p 89. This year, we focussed on:

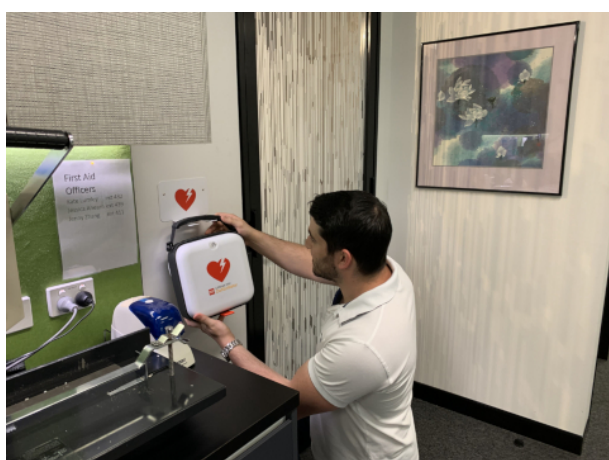
- installing a defibrillator
- reviewing the contents of first aid kits maintained in the workplace
- identifying hazards
- minimising risks
- conducting the emergency evacuation drill.

We have a trained Health and Safety Representative who conducts safety inspections of the premises. Five employees are trained as fire wardens, and the building management regularly updates training. All staff participate in evacuation drills. Three employees are trained to deliver first aid, CPR and defibrillation. Our first aid kits are well maintained. There was:

- no workplace injury claims lodged this year (last year: 0)
- no work-related illnesses or prosecutions under the *Work Health and Safety Act 2011* (last year: 0)
- no grievance complaints lodged (last year: 0).

See Table 13 for our WHS performance over the last three years.

We encourage staff to receive influenza immunisation and reimburse the cost of the booster. Ergonomic assessments of workstations for new staff are undertaken to help them use their stand-up desks in the office effectively. A webinar on ergonomic considerations when working from home was hosted by the Commission for staff to help with working remotely due to COVID-19 health regulations.



Having an accessible defibrillator is another way that we work to ensure safety in our workplace.

Table 13. WHS performance 2017–2020

	2017–18	2018–19	2019–20
Workplace injury claims lodged	0	0	0
Work-related illnesses or prosecutions	0	0	0
Grievance complaints lodged	0	0	0

## Work health and safety policy

Our WHS policy is based on ensuring that our staff and other people who are at the Commission's place of work are not exposed to risks to their health or safety. The Chief Executive retains ultimate responsibility for WHS risk management in our day-to-day operations.



Anne Murphy, Senior Editor (Legal) volunteered to become our Health and Safety Representative this year.

## Communicating with our employees

Round table meetings for all staff are held throughout the year and are an opportunity for staff to learn about work-related activities and developments. A staff member usually gives a presentation about business developments or special projects. Minutes of the meetings are published on our intranet. Our employees are informed about policies and procedures on our intranet and notice boards. Directors have an open-door policy and publish monthly reports about their department's progress. Departmental managers have regular meetings with employees to discuss workflow and work-related issues. Our in-house newsletter, *JUDCOMmunications*, is circulated monthly to all staff.

## 2018–19 Annual Report wins gold award

The Commission received a gold award from the Australasian Reporting Awards for its 2018–19 Annual Report. This is our tenth consecutive gold award, and this consistent quality of reporting is acknowledged with the ARA Chair's Commendation. This year, the Commission's annual report was also the winner of the Governance Reporting Award (Public and Not-for-Profit sectors). See case study on p 88.

## Case study

### Appreciating the skills of Commission staff

Staff who come to the Commission on secondment bring skills and experience which benefit everyone in the organisation, especially by bringing fresh eyes to see the expertise of the Commission staff as we perform our various functions.

Mark Zaki, Managing Lawyer, Research and Sentencing, came to the Commission in January 2019 on a two-year secondment from Legal Aid NSW. As a legal practitioner, Mark's criminal practice experience has primarily been in the Local Court, Supreme Court bails and District Court appeals. When Mark was looking to develop and extend his criminal law knowledge and skills, the Commission was attractive due to the professional opportunities it could offer.

In his role at the Commission, Mark reads every decision of the Court of Criminal Appeal and must keep abreast of legal developments in the High Court and other criminal appellate jurisdictions. His familiarity with substantive and procedural criminal law has increased greatly with this necessary study of the current case law relating to serious offences.

As Managing Lawyer, Mark must distil his reading into the concise *Recent Law* items and case summaries that he writes and reviews for publication on the Judicial Information Research System (JIRS) for the benefit of judicial officers and legal practitioners. He also prepares and reviews case summaries of both criminal and civil law for publication in the *Judicial Officers' Bulletin*, extending his working legal knowledge in yet another direction.

As well as being immersed in legal texts and writing, when drafting and reviewing updates to the *Local Courts Bench Book*, Mark works collaboratively with the bench book's committee. This includes the Deputy Chief Magistrates; the Commission's Director, Research and Sentencing; and a policy officer with the Local Court.

Mark is also involved in projects that require him to communicate and build partnerships with the legal profession. This year Mark wrote articles for the *Law Society Journal* and *Bar News* describing enhancements to the sentencing statistics that are published on JIRS.

Mark was familiar with managing staff in his role at Legal Aid NSW, and his people skills are also relevant to his role at the Commission. Delivering JIRS training to the latest cohort of Supreme Court tipstaves has required effective communication to recent graduates. This has been a new type of audience for him. Managing newly recruited Commission staff through remote working due to COVID-19 is a circumstance Mark did not anticipate when considering his secondment, but he sees that both he and his team have risen to the challenge.

What Mark brings to the Commission is his practical knowledge and experience of criminal law practice. What he gains from the Commission is an extended range of transferable professional skills and relationships, and an appreciation that those skills and relationships are the product of dedication and expertise embedded in the ethos and staff of the Commission.



Mr Mark Zaki, Managing Lawyer, Research and Sentencing, is at the Commission on secondment from Legal Aid NSW.

# Our governance and ethics



**The Commission has robust governance and an independent Audit and Risk Committee.**

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## Performance results 2019–20

**An assessment of the Commission’s performance in Table 14 demonstrates our diligence with respect to governance and ethics. Table 14 shows the evidence for each identified result as well as details of each measure we have put in place to achieve our objectives, program highlights, challenges, and forward direction.**

Table 14. Performance of good governance and ethics

Results	Measures	Performance	Status
Maintain robust governance	Hold regular Commission and Audit and Risk Committee meetings	8 Commission meetings and 4 Audit and Risk Committee meetings held: see pp 84, 89	✓
Our corporate behaviour was ethical and responsible	Protect the Commission’s reputation so that the people of NSW have confidence in the ability and performance of judicial officers	Our staff are properly inducted, qualified, highly skilled and their training is replenished	✓
	Ensure compliance with the Commission’s Code of Conduct	Our staff behave with integrity, respect and accountability and abide by our Code of Conduct	✓
Maintain and enhance registers for contracts, conflict of interests and mitigating risks	Ensure the registers are kept current and evaluated for any risk	We kept the registers of contracts and conflict of interest updated No risks were found	✓
Provide effective support to our key stakeholders	Provide continuing judicial education and legal information to judicial officers	See Delivering continuing judicial education chapter from p 23 See Providing legal information chapter from p 35	✓
	Protect the public by examining complaints regarding judicial officers	See Examining complaints chapter from p 47	✓
	Provide assistance to NSW government agencies	See Engaging with our partners and the community chapter from p 57	✓
		<b>HIGHLIGHT</b> Managed business continuity through period of disruptions caused by the COVID-19 global pandemic: see p 81	
Complied with NSW Government audit and risk management processes	Ensure the adequacy and quality of our internal control structure Comply with risk management strategies and respond effectively to internal audits	Conducted internal audit of processing and presentation of sentencing data on JIRS. Partially completed internal audit of judicial complaints process: see pp 89, 90	✓
Reduction in energy use	Entrench sustainability policies and behaviours in our workplace consistent with NSW Government policy	Over 5 years: 40.53% decrease in energy use 267 GJ energy use in 2019–20 (last year: 311 GJ) We recycled 0.608 tonnes of wastepaper, and purchased less paper than in 2018–19: see p 94	✓

Legend ✓ target achieved ↑ target/output exceeded ↓ target not achieved

Photo previous page: The foyer to our premises at 60 Carrington Street, Sydney, which is conveniently located in the city, and accessible to key locations such as the Supreme and District Courts.



## Challenges 2019–20

- Ensuring integrity of governance and management of risks while providing continuity of our operations during the disruption and uncertainty caused by the COVID-19 pandemic.
- Review of, and compliance with, internal audit recommendations, which must be balanced with core activities.
- Ensuring our HR processes are robust.
- Maintenance of ongoing disclosure, as well as annual conflict of interest declarations.

## Looking ahead 2020–21

- Ensure integrity of governance and management of risks while providing continuity of our operations during the disruption and uncertainty caused by the COVID-19 pandemic.
- Continue to review and comply with internal audit recommendations.
- Continue to promote diversity, access and equality through our programs.
- Remain vigilant about potential conflicts of interest.
- Maintain our robust approach to governance.

## Case study

### Maintaining business continuity during a global pandemic

The Commission updated its Business Continuity Plan to address the possibility of a pandemic in early March. This followed the Australian government enacting its public health emergency response plan for dealing with the novel coronavirus (since named COVID-19) on 27 February. Provision for staff to work from home in the event of a pandemic was made in a new Commission policy shortly thereafter. The plan and policy were very soon — and effectively — put into operation.

Initially, the Commission made it possible for staff to work from home or vary their travel times to help mitigate any exposure to the virus. Based on staff preference, the Commission commenced what was to be a fortnight of remote working, starting on 23 March. That period was extended “until further notice” shortly thereafter as public health responses escalated.

The COVID-19 public health orders impacted the way in which some of our functions were executed but did not diminish our productivity. The transition to universal remote working occurred very smoothly and our people and processes continued to perform well as the public health orders eased. Plans were made for a COVIDSafe return to the office but the ongoing presence of COVID-19 in NSW meant that it was not implemented before the end of the reporting period.

## Our governance framework and ethics

**Through good governance and effective policies and processes, we realise our vision, carry out our mission, hold to our values and achieve our goals.**

Our governance framework is modelled on the core ASX Corporate Governance principles. These ensure that:



Governance framework of the Judicial Commission of NSW\*

### Core principles



\* Principles based on the ASX *Corporate Governance Principles and Recommendations*.



## Principle 1: Management and oversight

### Our relationship with the NSW Government

The *Judicial Officers Act* 1986 established the Judicial Commission of NSW as an independent statutory corporation. The NSW Government provides the majority of our funding and we are required to report each year to Parliament. The Commission may give advice to the Attorney General on appropriate matters and the Attorney General may refer a complaint about a judicial officer to the Commission. The Attorney General may request information about a complaint and the Commission must provide this information unless it is not in the public interest to do so. The Commission must also notify the Attorney General when a complaint has been referred to the Conduct Division and how and when the complaint is finalised.

### Legislative charter

We operate under the *Judicial Officers Act* 1986 (the Act) and the *Judicial Officers Regulation* 2017. Our 3 principal functions under the Act are to:

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

We also:

- give advice to the Attorney General on such matters as the Commission thinks appropriate
- liaise with persons and organisations in connection with the performance of our statutory functions
- enter into and carry out contractual arrangements for the supply of property or services that make use of our information technology, expertise, or other goods or services that the Commission has developed in the exercise of its functions.

The *Judicial Officers Regulation* 2017 requires that a complaint is to be in the form approved by the Commission and is to be lodged with the Chief Executive of the Commission and accompanied by particulars of the matter on which the complaint is founded and those particulars must be verified by statutory declaration. The "Complaint Form and Instructions" is available as a PDF on the Judicial Commission website under "Forms and feedback". It is also available on request from the Commission.

### Changes to legislation

The *Government Sector Finance Act* 2018 (NSW) (GSF Act) implementation is underway. The Commission is categorised as a "separate GSF [Government Sector Finance] Agency". The GSF Act commenced in stages from 1 December 2018 and 1 July 2019, with the reporting arrangements commencing progressively between 2019 and 2022. The GSF Act will require greater focus on performance, transparency, accountability and efficiency with respect to financial management in the government sector once Division 7.3 of the GSF Act, relating to Annual Reporting, commences next financial year. Its commencement

was deferred due to the change in timing of the 2020–21 State Budget as part of the management of the COVID-19 pandemic. Cognate legislation, the *Government Sector Finance Legislation (Repeal and Amendment) Act* 2018, has partially commenced. This will repeal and rename the *Public Finance and Audit Act* 1983 as the *Government Sector Finance Act* 2018 when it commences upon proclamation.

### Legislation compliance framework

Through our legislative compliance framework, we ensure the operations of the Commission are conducted in accordance and comply with legal and internal policy requirements. The framework is part of the Commission's commitment to a compliance culture and consists of:

1. A commitment from the Chief Executive to promote effective compliance practices across the organisation.
2. A compliance policy the Chief Executive has approved and is aligned to the objects of the *Judicial Officers Act* 1986.
3. An Audit and Risk Committee which provides independent advice to the Chief Executive by overseeing and monitoring the risk and control frameworks, and its external accountability requirements.
4. A Chief Audit Officer (Deputy Chief Executive) who is responsible for overseeing the implementation of the compliance framework.
5. A Legislative Compliance Register created to identify and record the key compliance requirements for and within the Commission and that assigns relevant responsibilities for these obligations.
6. A Chief Risk Officer (Manager, Corporate Services) who is responsible for the management of compliance obligations which affect the Commission's area of responsibility. This includes workplace health and safety and equity obligations.
7. A process of continuous improvement undertaken with any reporting of non-compliance matters.
8. A regular review of the compliance framework that is in line with legal requirements and public sector standards.

Our legislative compliance framework is published on the Commission's intranet.

### Strategic plan

Our strategic plan sets out our core statutory functions and how we plan to achieve these based on over thirty years of accumulated knowledge and experience. We have revised our strategic plan to lead us through the next decade. Overall, we plan to develop organisational capabilities and efficiencies through continued work in our core statutory functions and engagement with the community and our national and international partners. Our updated strategic plan is published on our website at [www.judcom.nsw.gov.au/wp-content/uploads/2018/10/Strategic-Plan-Judicial-Commission.pdf](http://www.judcom.nsw.gov.au/wp-content/uploads/2018/10/Strategic-Plan-Judicial-Commission.pdf).

## Principle 2: Structure of Judicial Commission

The Judicial Commission meets monthly to make and review governance decisions and set strategic directions. The Chief Executive has overall accountability and responsibility for the Commission's operations. The Audit and Risk Committee (ARC) provides independent advice to the Chief Executive on risk management, control and governance processes.

### Role of the Chief Executive

The Chief Executive is responsible for:

- all of the Commission's operations
- the preparation of the financial report in accordance with Australian Accounting Standards, the *Public Finance and Audit Act 1983*, the *Public Finance and Audit Regulation 2015* and the *Government Sector Finance Act 2018*
- establishing and maintaining internal controls relevant to the preparation of the financial report
- the adequacy of digital information, and information systems security obligations
- workplace health and safety
- receipt of all complaints against judicial officers.

### Appointment of the Chief Executive

The Chief Executive is appointed on a contract under section 6(1) of the *Judicial Officers Act 1986*. Commission members review the Chief Executive's performance each year.

### Responsibilities of official and appointed Commission members

The Commission members set the strategic direction, appoint the executive management team, approve budgets and publications, contribute to judicial education sessions and conduct the preliminary examination of all complaints.

There are 10 members. Six official members are judicial officers. They provide valuable information about judicial officers' education needs and bring their significant experience of the judicial role to examining complaints. The 4 appointed members are community leaders who provide useful information about community expectations of judicial officers and have input into the education program. One appointed member is a lawyer.

Commission members are informed about operational issues by:

- the Chief Executive's monthly report that covers functional and financial matters
- briefings on issues as they arise
- contact with senior executives, as required.

### Commission meetings

Eight Commission meetings were held during the year (last year: 10). This was fewer than last year as a result of the impact of COVID-19. Those meetings which occurred after March 2020 were conducted in line with

the requirements of relevant public health orders. Table 15 gives details of each member's attendance. Members are required to attend each meeting, unless leave of absence is granted. The quorum for a meeting is 7 members and at least 1 must be an appointed member. The Chief Executive attends all meetings to report on the Commission's operations. Meeting papers are circulated 1 week before the meeting to allow sufficient time for members to review agenda items and seek further information.

In 2019–20, Commission members:

- examined 48 complaints made about judicial officers (last year: 68)
- approved publications including papers for an issue of *The Judicial Review*, the *Annual Report 2018–19* and *Sentencing Trends & Issues 47: Navigating the Bail Act 2013*
- noted the Chief Executive's reports on education programs, publications, complaints status and financial performance
- approved remuneration packages for the Senior Executive.

**Table 15. Commission members' meeting attendance for 2019–20**

Official members	Meetings eligible to attend	Meetings attended
The Honourable T Bathurst AC Chief Justice of NSW (President)	8	8
The Honourable Justice A Bell	8	7
The Honourable Justice B Preston	8	4
The Honourable Justice D Price AO	8	8
The Honourable Justice N Pain*	4	4
His Honour Judge G Henson AM	8	6
Her Honour Deputy Chief Magistrate J Mottley AM**	1	1
Chief Commissioner P Kite SC***	4	4
Chief Commissioner N Constant***	4	4
Appointed members	Meetings eligible to attend	Meetings attended
Dr J Cashmore AO	8	8
Professor B McCaughan AM	8	8
Mr D Giddy	8	8
Mr Y Miller OAM	8	7

\* The Honourable Justice Nicola Pain attended the 4 meetings in lieu of the Honourable Justice Brian Preston.

\*\* Her Honour Deputy Chief Magistrate Jane Mottley AM attended the 1 meeting in lieu of his Honour Judge Graeme Henson AM.

\*\*\* Chief Commissioner Peter Kite SC retired and Chief Commissioner Nichola Constant was appointed.

### Commission functions

The Commission may delegate any of its functions to a Commission member, officer or committee except the examination of complaints. The Commission



has delegated functions to the Chief Executive, including its function as an employer and its access to information obligations. The Commission has established education committees to assist in carrying out designated responsibilities. Appendix 4 has details about these committees. The Commission seeks independent professional advice when necessary to perform certain functions.

The profiles of the Commission members, including the President, the official members and the appointed members can be found at pp 18–20. Our organisational structure is on p 8.

### Our Audit and Risk Committee

The independent Audit and Risk Committee (ARC) monitors and provides advice about the following areas:

- compliance with NSW Treasury Guidelines
- internal audit
- risk management and business continuity
- external audit
- financial statements and reporting risk management.

The members of the ARC are Dr Colin Gellatly AO (chair), Ms Robyn Gray and Ms Jan McClelland AM (independent members). Their qualifications and details are as follows:

**Dr Colin Gellatly AO** was appointed independent member on 1 March 2017 and Chair from 1 July 2017 for 3 years. Dr Gellatly has had extensive experience in the public service and local

government, having been Director General of the NSW Department of Premier and Cabinet and is the independent Chair of the Newcastle City Council's Audit and Risk Committee.

**Ms Robyn Gray BA LLB GAICD** was appointed independent member for 3 years from 1 July 2017. Ms Gray is an independent member of the Executive Board of the Office of the NSW Director of Public Prosecutions and the Legal Aid NSW Audit and Risk Committee.

**Ms Jan McClelland AM BA (Hons) B Leg S Dip AICD** was appointed independent member for 3 years from 1 July 2018. Ms McClelland has more than 16 years' experience as a Chair and non-executive director in government, commercial, industry association and not-for-profit enterprises. Ms McClelland is Deputy Chancellor of the University of New England and Chair of the Audit and Risk Committee and Governance Committee, as well as a member of the Council, of the University of New England and former Director General of the Department of Education.

Others invited to attend the committee meetings throughout the year included the Chief Executive, Mr Ernest Schmatt AM PSM; Deputy Chief Executive, Mr Murali Sagi PSM (Chief Audit Executive); the Manager, Corporate Services, Mr Malcolm Hozack; Ms Penny Corkill of Centium Services; and Mr Michael Kharzoo, Ms Cathy Wu and others from the Audit Office of NSW.

The ARC is fully independent in accordance with NSW Government requirements in TPP 15-03: Internal Audit and Risk Management Policy for the NSW Public Sector.

**The Audit and Risk Committee (ARC) operates under a charter that the Commission has approved.**

The ARC is responsible for monitoring:	Internal audit and control functions, including assessing effectiveness, and compliance with section 3.6 of the <i>Government Sector Finance Act 2018</i>	The adequacy and quality of the internal control structure	Financial statements and reporting
Compliance with NSW Treasury guidelines	Management responses to audit reports	Internal audit results	Risk management strategies: their effectiveness and internal results



## Case study

### Conducting an external audit during COVID-19

Due to COVID-19 health restrictions, this year's external audit performed by the Audit Office of NSW was conducted via teleconference, email, and phone calls, without the usual "in person" interaction with staff. Despite the changed circumstances, the audit progressed smoothly and effectively. The Commission's accounting staff as well as the auditors were assisted with having documentation provided by electronic means. Modern communication tools such as Microsoft Teams and Skype (for the interim audit) were used to provide virtual contact and proved invaluable.

#### Standing Advisory Committee, education committees and bench book committees

The Commission has established committees for each court which have oversight of the education activities each year. These committees meet regularly with the Director, Education to plan, identify presenters, and monitor evaluations from each session. Bench book committees comprising judicial officers and Commission staff provide oversight of the content of our online and loose-leaf services. The Standing Advisory Committee on Judicial Education is established to provide advice on judicial education activities. Membership of all our committees is found in Appendix 4.

#### Principle 3: Ethical and responsible behaviour

##### Protecting the Commission's reputation

Our vision is that the people of NSW will have confidence in the exceptional ability and performance of the judicial officers of NSW. We can only realise this vision through public and judicial acceptance of the Commission's complaints function and the legitimacy of our education and legal information programs. We have worked hard for over 30 years to develop and maintain a reputation for:

- delivering an independent and confidential complaints function that protects the public from judicial officers who lack the capacity to discharge their judicial duties and that protects the judiciary from unwarranted intrusions into their independence
- delivering timely, accurate, current legal information to assist judicial officers in their decision making and to ensure consistency in sentencing
- delivering a world class professional continuing judicial education program.

To protect our reputation, we ensure that our staff:

- are properly inducted, qualified, highly skilled and their training is replenished through a performance management system and continuing professional education
- behave with integrity, respect and accountability in abiding by our ethical framework and Code of Conduct.

#### Code of Conduct

The Commission's Code of Conduct applies to all staff members, and to anyone engaged to provide services, information or advice to the Commission. The Code, modelled on the Code of ethics and conduct for NSW government sector employees, is published on the Commission's intranet and website. New employees receive a copy of the Code in their induction package and are required to read, acknowledge and sign the document. The Code of Conduct is based on the premise that staff members will act with integrity, honesty, fairness, conscientiousness, compassion and loyalty to the public interest. Staff members are expected to uphold the Code which outlines principles in relation to confidential information, suspected corrupt conduct, acceptance of gifts or benefits, personal and professional behaviour, public comment and the use of official information, proper use of Commission facilities and equipment, outside employment, political participation, discrimination and harassment, fairness and equity and conduct expected of former employees. The Code of Conduct also sets out what legislation applies to Commission staff apart from the *Judicial Officers Act 1986*. Such legislation includes:

- *Anti-Discrimination Act 1977*
- *Crimes Act 1900*
- *Government Information (Public Access) Act 2009*
- *Independent Commission Against Corruption Act 1988*
- *Industrial Relations Act 1996*
- *Privacy and Personal Information Protection Act 1998*
- *Public Interest Disclosures Act 1994*
- *Public Finance and Audit Act 1983*
- *State Records Act 1998*.

#### Conflicts of interest

Official members of the Judicial Commission are judicial officers and this could result in a conflict of interest if a member were the subject of a complaint. Commission policy is that a judicial member will not participate in any discussion or decision involving a complaint against him or her. No member participates in any discussion or decision where that member has a possible conflict of interest.



A register of conflicts of interest for Commission staff has been maintained this financial year. We have also maintained our contracts register. The registers are reviewed and updated progressively on an ongoing basis.

### Privacy management plan

During the year, we conducted no reviews under Part 5 of the *Privacy and Personal Information Protection Act 1998* (the PPIP Act). Our Privacy Code of Practice and Privacy Management Plan are designed to deal with the unique issues that arise from our complaints handling function and the provision of sentencing information. A privacy complaint form, which is an application for internal review under the PPIP Act can be downloaded from the Commission's website under "Privacy policy" or under "Forms and feedback".

### Ensuring confidentiality of Commission meeting papers

One of our librarian's responsibilities is to prepare and oversee the binding of the confidential Meeting Papers of the Commission. The 290th volume of this significant and historical archive was in the process of being bound at the end of the current reporting period. Confidentiality of these is paramount and they are kept in secure premises.

## Principle 4: Integrity and compliance in reporting

### Financial reporting

The Auditor-General of NSW is responsible for auditing our financial statements. We received an unmodified report this year (see p 99). The independent Audit and Risk Committee (ARC) reviews budgets and the financial statements. The ARC meets 4 times a year.

### Performance reporting

Monthly departmental reports were submitted to the Chief Executive throughout the year. These report on key performance indicators and progress towards yearly targets in our 3 key operational areas. The Chief Executive reports monthly to the Commission on all the Commission's operations. Financial statements are prepared each month and measured against budgets.

### Managing our records

Approved files were disposed of under our functional retention and disposal authority. The records management policy is published on our intranet. This provides a framework and outlines responsibilities for the operation of the Commission's records management program. This applies to records in all formats, including electronic records.

## Principle 5: Timely and balanced disclosure

### Award-winning annual report

Our annual report discloses our activities and performance results each year measured against our goals, strategies and targets. The report makes full disclosure of our financial statements as well as data about the complaints function.

In recognition of the high standard of our annual reporting, we have received 10 consecutive gold awards from the Australasian Reporting Awards. This year's report was also the winner of the Governance Reporting Award (Public and Not-for-Profit sectors).

### Public access to Government information

Section 125 of the *Government Information (Public Access) Act 2009* (the GIPA Act) requires that the Commission reports each year on our GIPA Act obligations. The Commission is authorised, under section 7(1) of the GIPA Act, to publicly release our information unless there is an overriding public interest against disclosure. The Commission's complaint handling, investigative and reporting functions are "excluded information" under Schedule 2 of the GIPA Act. This means that an access application cannot be made for this information under the GIPA Act.

For other information in relation to the Commission's administrative, research, sentencing and education functions, an access application form can be downloaded from the Commission's website under "Access to information" or from "Forms and feedback".

### Review of proactive release program

Our program to proactively release information involves reviewing information as it is published, and making it available online without charge as soon as practical or in print for subscribers. Judicial officers receive all our publications for free. The Commission may also make further information available about our administrative, research, sentencing and education functions unless it would be contrary to the public interest to provide that information. During the year we released the following information:

- *Annual Report 2018–19*
- updates to the following bench books and handbooks in various formats:
  - *Civil Trials Bench Book*
  - *Criminal Trial Courts Bench Book*
  - *Equality before the Law Bench Book*
  - *Local Court Bench Book*
  - *Sentencing Bench Book*
  - *Sexual Assault Trials Handbook*
  - *Children's Court of NSW Resource Handbook*
- *Sentencing Trends & Issues 47 — Navigating the Bail Act 2013*

### Access applications

We received no formal access applications, including withdrawn applications (last year: 0). We refused no formal access applications, either wholly or in part, because the application was for information for which there is a conclusive presumption of an overriding public interest against disclosure (information listed in Schedule 1, clause 1 of the GIPA Act). See Appendix 16.



## Case study

### Commission receives commendation for consistent high quality of Annual Reports

The Commission values transparent and accurate reporting of its operations. This is reflected in our values as an organisation and in our participation since 1994 in the Australasian Reporting Awards (ARA) annual benchmarking process.

This year the Commission received its tenth consecutive gold award, demonstrating year-on-year excellence. This achievement was formally recognised by the ARA Chair's Commendation.



The ARA Awards Presentation in 2020 was a virtual event due to the impact of COVID-19 on large gatherings (image used with permission).

The Commission was also honoured to receive the Governance Reporting Award — Public and Not-For-Profit Sectors. This award recognises quality and completeness of disclosure in governance reporting: the judges particularly noted the quality of the performance section including good use of highlights and results in brief, and transparency and disclosure through effective use of case studies.

The number of private and public organisations that entered the awards this year was larger than usual and included an increased number of entries from outside Australia and New Zealand, particularly Hong Kong. To win a gold award an organisation must achieve the high standard set out by the ARA, including overall excellence in annual reporting, full disclosure of key aspects of its core business and be a model for peers' reports.

The foundations of these achievements go back beyond the last 10 years. Since first entering the Awards, the Commission also received 8 silver awards, 5 bronze awards and was nominated several times as a finalist in the governance reporting category. Since 2009, Commission staff have also acted as adjudicators for the Awards.

## Guaranteeing our service and consumer response

We guarantee to investigate complaints about judicial officers in a timely and effective manner and to inform complainants about the progress of their complaints. Table 10 on p 52 shows our targets and the time taken to examine complaints over a 5-year period. If a complaint is dismissed and a complainant seeks to clarify the reasons for this, we respond promptly.

## Delivering our services and publications electronically

We provide a range of online services using 2 platforms, the Judicial Information Research System (JIRS) (see p 40) and our public website at [www.judcom.nsw.gov.au](http://www.judcom.nsw.gov.au). JIRS is an online database for judicial officers and the courts. It is provided to legal practitioners in their offices or chambers on a subscription basis. Updates to resources published on our free-to-view website were uploaded during 2019–20.

## Principle 6: Supporting our stakeholders

Our key stakeholders are:

- judicial officers of NSW for whom we deliver continuing judicial education services (see p 23) and provide research and sentencing and legal information (see p 35)
- the NSW public: see Examining complaints chapter from p 47 and Engaging with our partners and the community at p 60
- NSW government agencies: see Engaging with our partners and the community at p 62
- other judicial education providers: see Engaging with our partners and the community at p 65.

## Principle 7: Recognising and managing risk

Our risk management framework has been developed to comply with the NSW Treasury Policy Paper TPP 15-03: Internal Audit and Risk Management Policy for the NSW Public Sector.



## Risk management policy

The Commission is committed to protecting our employees, visitors, contractors and their property as well as the broader community and environment from injury, loss or damage. Our risk management policy is based on a risk register.

In 2019–20, the executive, with the assistance of internal auditors, identified, considered and rated new risks. The Risk Register feeds into the Internal Audit Plan which was finalised after discussion between the Chief Executive and the internal auditors. The Risk Register of low and medium rated risks is published on the Commission's intranet and is reviewed every 2 years.

A workshop will be held in 2020–21 with the internal auditors and senior executives to review the Risk Register.

A strategic overview of the major risks and mitigating strategies has been compiled relating to the following significant information management projects that we host and maintain:

- Commonwealth Sentencing Database (run jointly with the Commonwealth Director of Public Prosecutions and the National Judicial College of Australia)
- ACT Sentencing Database
- Queensland Sentencing Information Service
- Drug Court Case Management System (Department of Communities and Justice)
- PNG Sentencing Database
- PNG Integrated Criminal Case System Database.

See Appendix 10 for more information about these.

## Audit and Risk Committee activities 2019–20

The Audit and Risk Committee (ARC) met 4 times during the year (last year: 4) and reported to the Chief Executive. Table 16 provides details of attendance at those meetings.

The ARC monitored our risk management policy and provided independent advice. The committee monitored and provided advice about the following four areas:

1. Compliance with Treasury guidelines
2. Internal audit
3. Risk management and business continuity
4. External audit

### 1. Compliance with Treasury guidelines

The ARC ensured compliance with NSW Treasury Policy Paper TPP 15-03: Internal Audit and Risk Management Policy for the NSW Public Sector.

The Commission's Internal Audit and Risk Management Policy attestation is on p 91. The ARC also monitored the continuing impact of the Treasury cash management reforms.

Table 16. Meeting attendance by Audit and Risk Committee (ARC) 2019–20

Committee members	Meetings eligible to attend	Meetings attended
Dr Colin Gellatly AO	4	4
Robyn Gray	4	4
Jan McClelland AM	4	4
Invitees	Invited to attend	Meetings attended
Ernest Schmatt AM PSM	4	3
Murali Sagi PSM	4	4
Malcolm Hozack	4	4
Robert Hayek, Audit Office of NSW	1	1
Chris Harper, Audit Office of NSW	1	0
Cathy Wu, Audit Office of NSW	1	1
Micheal Kharzoo, Audit Office of NSW	1	1
Yas Wickramasekera, Centium Services	1	1
Penny Corkill, Centium Services	4	4

## 2. Internal audit

The ARC settled the Internal Audit Plan for 2019–20 and advised the Chief Executive accordingly. The internal audit plan for 2019–20 consisted of a review of sentencing data and the complaints process. The sentencing data review was completed within the financial year but the complaints process review was delayed due to the pandemic because it required confidential inspection of records. The sentencing data review noted the excellent controls already in place and made a few minor recommendations, most of which have already been implemented.

During the year, the ARC also:

- used the control self-assessment review reports of risk mitigation
- monitored the performance of the outsourced internal audit service provider, Centium
- used the Audit Recommendations Progress Report to monitor implementation of recommendations.

## 3. Risk management and business continuity

The ARC:

- monitored the currency of the Commission's Business Continuity and Disaster Recovery Plan and assessed the results of the annual scenario testing
- monitored the quarterly financial performance
- monitored the insurance risk and cover
- reviewed the updated Risk Register
- monitored the impact of Treasury Circulars and Policy Papers issued during the year.



#### 4. External Audit

The ARC liaised with the external auditor, the Audit Office of NSW, and monitored the NSW Audit Client Service Plan for 2019–20. The ARC also reviewed the observations on early close procedures that the Commission performed prior to 30 June 2020.

#### Forward plan

In 2020–21 the ARC will continue to ensure compliance with the requirements of the NSW Treasury Policy Paper TPP 15-03: Internal Audit and Risk Management Policy for the NSW Public Sector.

#### Organisational response to the 2019–20 internal audit

The internal audit of sentencing data in 2019–20 resulted in four low risk and three medium risk recommendations. The majority of these were already implemented before the report was finalised.

#### Cyber security policy

Our cyber security policy enables the Commission to protect the confidentiality and integrity of our information and to provide a reliable service to staff and the public. The policy is designed to comply with the core requirements set out in the NSW Government Cyber Security Policy that require our digital information to be available, safeguarded and lawfully used. The policy and Cyber Security Annual

Attestation Statement provide assurance to the Parliament and people of NSW that the information we hold is appropriately protected and handled. The policy is published on our intranet. See case study on p 94.

Our Cyber Security Annual Attestation Statement for 2019–20 is shown below.

#### Safeguarding JIRS technology

JIRS is built using open-source software and utilises some of the latest web technologies.

The system is modular in design to ensure that it is adaptable to future changes in both technology and processes. JIRS can be easily adapted to incorporate and integrate a wide variety of data sources and can be easily reconfigured as required. Access to the information in JIRS is monitored and controlled with regard to NSW laws and regulations.

Security is reviewed regularly and implemented at a number of levels to prevent unauthorised disclosure, modification or removal of information, and audit trails are maintained and monitored. Staff are trained in the handling of sensitive data and, where sensitive data is exchanged, various encryption methods are used. A disaster recovery plan is in place and tested regularly. More information on JIRS can be found on p 41 and enhancements made to JIRS throughout the year are reported on p 44.

### Cyber Security Annual Attestation Statement for the 2019–2020 Financial Year for the Judicial Commission of NSW

I, Ernest John Schmatt AM PSM, Chief Executive, am of the opinion that the Judicial Commission of NSW has managed cyber security risks in a manner consistent with the Mandatory Requirements set out in the NSW Government Cyber Security Policy.

Governance is in place to manage the cyber security maturity and initiatives of the Judicial Commission of NSW.

Risks to the information and systems of the Judicial Commission of NSW have been assessed and are managed.

There exists a current cyber incident response plan for the Judicial Commission of NSW which has been tested during the reporting period.

The Judicial Commission of NSW has a Cyber Security Framework in place.

E J Schmatt AM PSM  
Chief Executive  
Judicial Commission of NSW  
Date: 03 September 2020



## Internal Audit and Risk Management Attestation for the 2019–20 Financial Year for the Judicial Commission of NSW

I, Ernest John Schmatt, AM PSM, Chief Executive, am of the opinion that the Commission has internal audit and risk management processes in operation that are, excluding the exceptions or transitional arrangements described below, compliant with the eight (8) core requirements set out in Treasury Policy Paper TPP 15-03 Internal Audit and Risk Management policy for NSW Public Sector, specifically:

### Core requirements

#### Risk Management Framework

- 1.1 The agency head is ultimately responsible and accountable for risk management in the agency — compliant
- 1.2 A risk management framework that is appropriate to the agency has been established and maintained and the framework is consistent with AS/NZS ISO 31000:2009 — compliant

### Internal Audit Function

- 2.1 An internal audit function has been established and maintained — compliant
- 2.2 The operation of the internal audit function is consistent with the International Standards for the Professional Practice of Internal Auditing — compliant
- 2.3 The agency has an Internal Audit Charter that is consistent with the content of the 'model charter' — compliant

### Audit and Risk Committee

- 3.1 An independent Audit and Risk Committee with appropriate expertise has been established — compliant
- 3.2 The Audit and Risk Committee is an advisory committee providing assistance to the agency head on the agency's governance processes, risk management and control frameworks, and its external accountability obligations — compliant
- 3.3 The Audit and Risk Committee has a Charter that is consistent with the content of the 'model charter' — compliant

### Membership

The chair and members of the Audit and Risk Committee are:

- Dr Colin Gellatly AO, Independent Chair — appointed Independent Member on 1 March 2017 until 30 June 2017, appointed Independent Chair on 1 July 2017 for a period of three years.
- Ms Robyn Gray, Independent Member — appointed Independent Member on 1 July 2017 for a period of three years.
- Ms Jan McClelland AM, Independent Member — appointed Independent Member on 1 July 2018 for a period of three years.

These processes demonstrate that the Judicial Commission of NSW has established and maintained frameworks, including systems, processes and procedures for appropriately managing audit and risk within the Judicial Commission of NSW.

E J Schmatt AM PSM  
Chief Executive  
Judicial Commission of NSW  
Dated: 03 September 2020

Murali Sagi PSM  
Agency Contact Officer  
Deputy Chief Executive

## Insurance

We are a member of the NSW Treasury Managed Fund, a mandatory self-insurance scheme for government agencies. This provides comprehensive cover for physical assets such as plant and equipment, motor vehicles and miscellaneous matters. The managed fund provides coverage for staff through workers compensation and for the public through public liability cover. The premium calculated is based on past performance.

The premium for 2019–20 was \$23,841 comprising a workers compensation premium of \$16,441 (last year: \$15,512) and a general insurance premium of \$7,400 (last year: \$7,340).

Table 17. Insurance premiums 2017–2020

	2017–18	2018–19	2019–20
Workers compensation	\$59,068	\$15,512	\$16,441
General insurance	\$6,130	\$7,340	\$7,400
<b>Total premium</b>	<b>\$65,198</b>	<b>\$22,852</b>	<b>\$23,841</b>

## Principle 8: Remuneration is fair and reasonable

### Remuneration arrangements for Commission members

Appointed members receive a fee for fulfilling their responsibilities including attending meetings, examining complaints, setting strategic directions, and approving budgets and publications. Their annual rate of remuneration is \$38,000 (effective 28 March 2019) as determined by the Statutory and Other Offices Remuneration Tribunal in accordance with section 50 of the *Judicial Officers Act* 1986. No fees are paid to official members who are judicial officers.

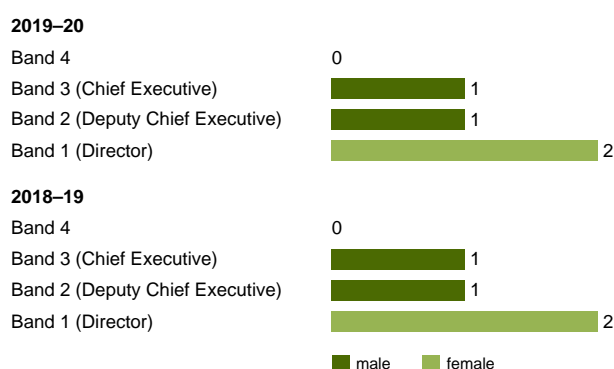
### Remuneration of senior executives

The Commission determines senior executive remuneration in accordance with section 6 of the *Judicial Officers Act* 1986. Remuneration packages are equivalent to the NSW Public Service Senior Executive Bands (PSSE Bands). The Commission adjusted senior

executive remuneration packages from 1 July 2019 in line with the 2019 determination of the Statutory and Other Offices Remuneration Tribunal.

Figure 19 shows the number of executive positions at the Commission and their equivalent remuneration levels for Public Service Senior Executives. Table 18 shows the average total remuneration package for senior executives within the appropriate band and the note describes the percentage indicating what amount of the Commission's employee-related expenditure in 2019–20 was related to senior executives. A comparison is made with the percentage rate in 2018–19.

Figure 19. Gender breakdown of senior executive positions by PSSE Bands 2018–20



Equivalent to the NSW Public Service Senior Executive Bands. The Commission has no executive positions in Band 4.

Table 18. Average senior executive remuneration 2018–20

Band	Range (\$)	Average remuneration (\$)	
		2018–19	2019–20
Band 4	487,051–562,650	n/a	n/a
Band 3	345,551–487,050	435,953	446,852
Band 2	274,701–345,550	315,187	323,067
Band 1	192,600–274,700	235,933	241,831

Note: 26.24% of the Commission's employee-related expenditure in 2019–20 was related to senior executives, compared to 27.63% in 2018–19. The Commission has no positions equivalent to Band 4.



The Commission's executive team (l–r) is Murali Sagi PSM, Una Doyle, Pierrette Mizzi and Ernest Schmatt AM PSM. Their profiles are on pp 21–22.



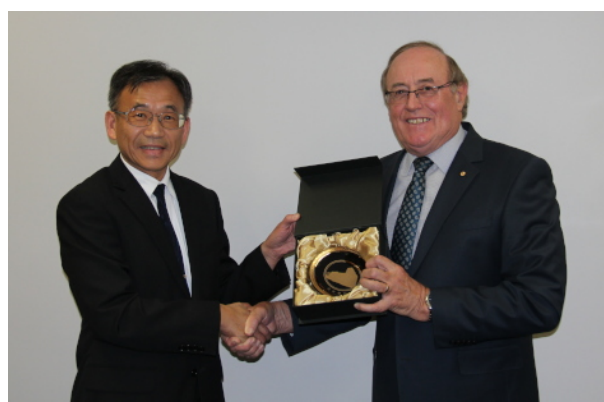
## Approach to human rights

The Commission seeks to actively identify, prevent, mitigate and redress adverse human rights impacts in the following ways:

- Through our education and complaints programs, we ensure that judicial officers observe the right to a fair hearing, avoid bias, discrimination and inconsiderate treatment of minority groups. See from p 23 for further information about our education program and from p 47 for information about our complaints function. On an ongoing basis, information gathered from complaints informs the design and delivery of education sessions for judicial officers.
- Our international award-winning *Equality before the Law Bench Book* provides guidance for judicial officers to assist them to avoid bias and discrimination, and to treat minority groups with due consideration. See p 40 for more information about this publication. This is published on our website at [www.judcom.nsw.gov.au](http://www.judcom.nsw.gov.au).
- The Commission provides advanced case management functionality to the Supreme and National Courts of Papua New Guinea (PNG) to assist them to better manage the human rights of offenders on remand in that country. See p 64 in *Engaging with our partners and the community* for more information about the Integrated Criminal Case System Database (ICCSDB) that we designed, host and maintain.
- Our participation in the delivery of the National Judicial Orientation Program (NJOP) for newly appointed judicial officers involves delivery of a module designed to assist with managing cultural diversity challenges and appreciating the impact of cultural and religious differences; avoidance of stereotypes; and how language and culture may influence the behaviour and attitudes of witnesses in court. See pp 29 and 72 for more information about this program.
- Our Aboriginal cultural awareness program, the Ngara Yura Program, aims to promote intercultural communication between judicial officers and Aboriginal people. The program also aims to mitigate the adverse impacts of the criminal justice system on Aboriginal people by providing judicial officers with relevant information about these impacts and alternatives, where relevant, to incarceration. See p 30 for more information about the Ngara Yura Program.
- The UN Convention on the Rights of the Child recognises the importance of diverting young offenders from the formal processes of the criminal justice system. In accordance with human rights obligations, we publish and regularly update the accredited diversionary programs as well as other drug and alcohol programs available to enable judicial awareness of the alternatives.
- Our Aboriginal project officer, Ms Joanne Selfe, is an Elder on the Youth Koori Court in Sydney. The Youth Koori Court program seeks to address the reasons why young Aboriginal people have offended through providing support and cultural connections which have often been missing in their lives.
- We regularly host and provide information about our work to high level delegations from other countries including PNG, Hong Kong, Malaysia, China and Taiwan. Through these engagements, we are able to assist other judiciaries to develop the capacity and performance of their judicial officers and promote the rule of law in the region. For further information about these delegations see p 64.



Pictured with his Honour Magistrate Les Mabbutt and Joanne Selfe, Ngara Yura Project Officer, Jeff Amatto (right) shared his experiences of addiction and the justice system in a session on cultural diversity at our Local Court Annual Conference, July 2019.



The Commission regularly hosts overseas visitors as part of our capacity-building role. Our Chief Executive, Mr Ernest Schmatt AM PSM, is pictured here with Judge Wen-Hsien Li, the leader of the delegation from the Judicial Yuan, Taiwan, who visited in October 2019.

## Sustainability

### We reduced our environmental footprint

Although we are a small agency, we focus on the bigger picture of reducing our environmental impact. Our priorities are aligned with the NSW Government's Government Resource Efficiency Policy to reduce its environmental impact through improved resource efficiency.

Our premises at 60 Carrington Street, Sydney, has a 4 Star Nabers Energy Rating and a 3.5 Star Nabers Water Rating. There was decreased usage of electricity, gas and water by the building overall in the April-June quarter of 2020, reflecting reduced occupancy because of the COVID-19 pandemic.

Our staff moved to remote working in March 2020 in compliance with the COVID-19 health regulations. This is a significant factor behind the Commission's reduced usage of energy and paper in this reporting period compared with last year. The Commission used 267 GJ of electricity (last year: 311 GJ) and achieved 40.53% reduction in energy use over 5 years: see Figure 20 (last year: 32.8% reduction over 5 years). We recycled 0.608 tonnes of waste paper (last year: 0.962 tonnes) and bought 234 reams of 100% recycled paper (last year: 370).

We raise the awareness of our staff about environmental issues through our monthly newsletter, *JUDCOMmunications*. It has a dedicated sustainability section to provide staff with information and strategies to reduce their environmental impact. We also provide information about environmental matters as a standing item at staff meetings.

Other sustainability measures included:

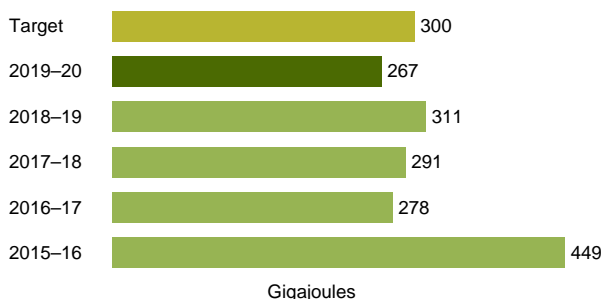
- reducing waste generation by recycling all paper, cardboard, toner cartridges and computer equipment
- reducing the impact of carbon emissions by offsetting carbon when purchasing air tickets for domestic and international travel

- reducing the impact of carbon emissions by preferring carbon neutral conference venues
- using power-saving computers and screens
- minimising energy consumption after hours
- using 100% recycled paper with double-sided printing
- using online research platforms
- using online payment of accounts received and rendered
- publishing internal policies on our intranet
- providing seminar and conference papers electronically
- catering for in-house events with non-plastic utensils
- making non-tangible donations on behalf of program presenters in lieu of tangible thank you gifts
- making available to staff waste/recycling sorting bins and a coffee pod recycling container.

Next year we will:

- continue to highlight sustainability concerns and solutions through our monthly newsletter, *JUDCOMmunications*, and to challenge our staff to think about their personal consumption and to prefer reusable resources wherever possible.

Figure 20. 5-year trend in energy use



### Case study Cyber security at the Commission

With a majority of our people working remotely due to the COVID-19 public health orders, the Commission has ensured staff are aware of the heightened risk of a cyber security breach. We regularly remind staff that the first line of defence is vigilance. An organisation's security may be compromised because an unsuspecting staff member falls prey to a phishing email by clicking on the wrong link or downloading the wrong file.

All-staff emails were distributed to draw attention to the potential risk of malware and phishing campaigns at various times in the year. We maintain up-to-date antivirus software on all staff computers as a matter of course. Our transition to Microsoft 365 as an online collaboration tool was underway by early March which meant that we were well-placed for secure remote working as the potential impact of the COVID-19 pandemic became apparent. Technical assistance and support have been continuously available to staff throughout the reporting period.

# Our finances



**Our financial result was a deficit of \$373,000, with \$5.997 million from government funding and other revenue. Our expenses were \$6.370 million.**

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## Performance results 2019–20

**Our financial result was a deficit of \$373,000, compared to the budgeted deficit of \$236,000. While there was a significant decrease in expenditure in the reporting period, there was an even greater decrease in revenue.**

Table 19. Results for financial performance against budget

Results	Measures	Performance	Status
We perform our functions in line with budget forecast	<b>Our budgetary measure was a deficit of \$236,000</b>	<b>Deficit: \$373,000</b>	↓
Our income adequately finances our core services and workforce	<b>Our budgetary measures were:</b> <b>Income</b> \$6.498 million comprised of – Government funding: \$5.544 million – Self-generated revenue: \$954,000 – goods and services: \$893,000 – investment & other: \$61,000	<b>\$5.997 million comprised of:</b> Government funding: \$4.907 million Self-generated revenue: \$1.09 million – goods and services: \$1.04 million – other: \$50,000  <b>HIGHLIGHT</b> Self-generated revenue was greater than forecast	↓
We proactively generated income			
We contained our expenditure to budget level	<b>Expenditure</b> Total expenses: \$6.734 million Employee-related expenses: \$4.883 million	<b>\$6.370 million</b> Employee-related expenses: \$4.778 million (75% of total expenses): see Figure 23 on p 97  <b>HIGHLIGHT</b> Total expenses were under budget by \$364,000	↑ ↑
Accounts are paid on time	Ensure accounts are paid on time and no penalty interest paid on any account	All accounts were paid on time and no penalty interest paid on any account: see Tables 20 and 21	✓
We received an unmodified report for financial statements from NSW Auditor-General	Ensure we receive an unmodified report	Unmodified report received for financial statements	✓

Legend ✓ target achieved ↑ target/output exceeded ↓ target not achieved

Figure 21. 2019–20 revenue, expenses and net results compared against budget and 2018–19 actuals

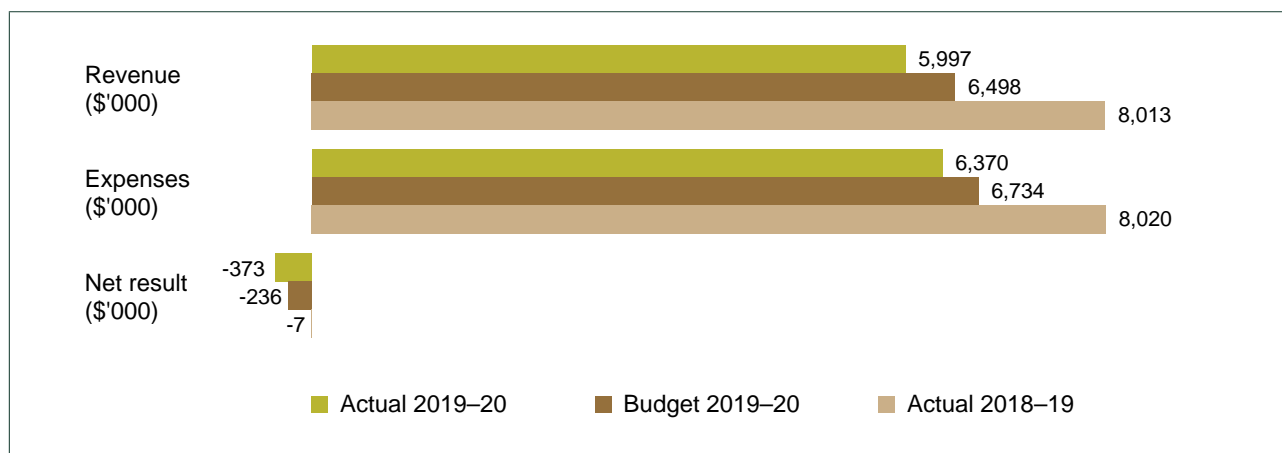


Photo previous page: From our office in Sydney, we support judicial officers throughout NSW.



## Financial overview

Our financial result was a \$373,000 deficit, compared to the budgeted deficit of \$236,000. This outcome reflects the challenges in containing expenses against a reduction in government funding from efficiency dividend impositions and cost cutting measures. See Table 19.

The Commission receives funding from the NSW Government and this is our principal source of income. In 2019–20, our total income was \$5.997 million, of which \$4.907 million came from government funding. Another \$1.09 million (18.2% of total income, last year: 14%) was self-generated, primarily from contractual arrangements for the provision of software services and other services. This demonstrates reduction of non-government sourced revenue by \$33,000 from last year. Projects included sentencing databases and case management systems for various jurisdictions: see p 64. See also Figure 22.

Expenditure was contained below budget levels. Spending was kept below capital allocation. Employee-related expenses were slightly over budget and represented 75% of expenditure (last year: 74%, excluding Conduct Division expenses). We did not engage any consultants this year. See Figure 23.

Our total assets increased by \$4.083 million mainly due to AASB lease capitalisation (last year: \$57,000 decrease). Our total liabilities increased by \$4.456 million mainly due to AASB 16 lease capitalisation and decreases in accruals and provisions (last year: \$51,000 decrease).

Figure 21 on p 96 compares our actual performance this year against both the budget and last year's results.

### Key challenges

- Reduced government funding in an environment of government fiscal constraint
- Expense reduction impositions by government

### Looking ahead 2020–21

- In the context of the whole of Government savings directive, we will proactively maintain our self-generated income streams through contractual arrangements for goods and services.

Figure 22. Revenue

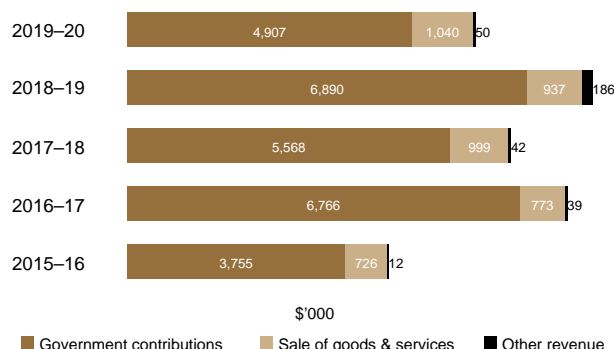


Figure 23. Expenses

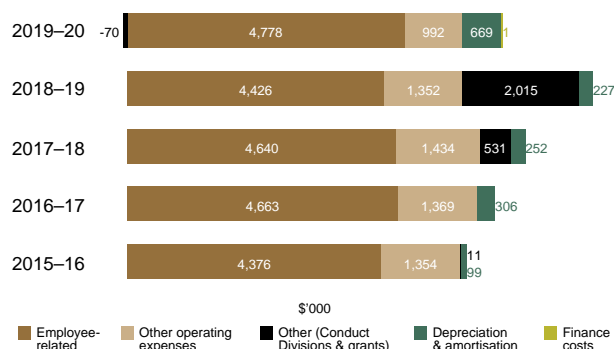


Table 20. Aged analysis at the end of each quarter

	Current (within due date)	<30 days overdue	30–60 days overdue	60–90 days overdue	>90 days overdue
Quarter	\$	\$	\$	\$	\$
Sep 2019	123,864	nil	nil	nil	nil
Dec 2019	127,739	nil	nil	nil	nil
Mar 2020	96,369	nil	nil	nil	nil
Jun 2020	126,938	nil	nil	nil	nil

Table 21. Accounts paid on time within each quarter

Quarter	Total accounts paid on time			Total amount paid
	Target %	Actual %	\$	\$
Sep 2019	100	100	783,721	783,721
Dec 2019	100	100	786,807	786,807
Mar 2020	100	100	709,416	709,416
Jun 2020	100	100	886,478	886,478

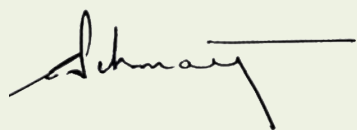
## Financial report

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### Statement by Chief Executive

Pursuant to section 45F of the *Public Finance and Audit Act 1983*, I state that:

- (a) the Judicial Commission's Financial Statements have been prepared in accordance with:
  - applicable Australian Accounting Standards (which include Australian Accounting Interpretations); and
  - the requirements of the *Public Finance and Audit Act 1983* (the Act); *Public Finance and Audit Regulation 2015*; and
  - Treasurer's Directions issued under the Act
- (b) the financial statements exhibit a true and fair view of the financial position as at 30 June 2020 and financial performance of the Judicial Commission of New South Wales for the year then ended; and
- (c) there are no circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.



EJ Schmatt AM PSM  
Chief Executive  
Dated: 29 October 2020



## Independent auditor's report



### INDEPENDENT AUDITOR'S REPORT

#### Judicial Commission of New South Wales

To Members of the New South Wales Parliament

#### Opinion

I have audited the accompanying financial statements of Judicial Commission of New South Wales (the Commission), which comprises the Statement of Comprehensive Income for the year ended 30 June 2020, the Statement of Financial Position as at 30 June 2020, the Statement of Changes in Equity and the Statement of Cash Flows, for the year then ended, notes comprising a Statement of Significant Accounting Policies and other explanatory information.

In my opinion, the financial statements:

- give a true and fair view of the financial position of the Commission as at 30 June 2020, and of its financial performance and its cash flows for the year then ended in accordance with Australian Accounting Standards
- are in accordance with section 45E of the *Public Finance and Audit Act 1983* (PF&A Act) and the Public Finance and Audit Regulation 2015.

My opinion should be read in conjunction with the rest of this report.

#### Basis for Opinion

I conducted my audit in accordance with Australian Auditing Standards. My responsibilities under the standards are described in the 'Auditor's Responsibilities for the Audit of the Financial Statements' section of my report.

I am independent of the Commission in accordance with the requirements of the:

- Australian Auditing Standards
- Accounting Professional and Ethical Standards Board's APES 110 'Code of Ethics for Professional Accountants (including Independence Standards)' (APES 110).

I have fulfilled my other ethical responsibilities in accordance with APES 110.

Parliament promotes independence by ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their roles by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General
- mandating the Auditor-General as auditor of public sector agencies
- precluding the Auditor-General from providing non-audit services.

I believe the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

#### Other Information

The Commission's annual report for the year ended 30 June 2020 includes other information in addition to the financial statements and my Independent Auditor's Report thereon. The Chief Executive of the Commission is responsible for the other information. At the date of this Independent Auditor's Report, the other information I have received comprise the Statement by Chief Executive.

My opinion on the financial statements does not cover the other information. Accordingly, I do not express any form of assurance conclusion on the other information.

In connection with my audit of the financial statements, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or my knowledge obtained in the audit, or otherwise appears to be materially misstated.



If, based on the work I have performed, I conclude there is a material misstatement of the other information, I must report that fact.

I have nothing to report in this regard.

### **Chief Executive's Responsibilities for the Financial Statements**

The Chief Executive is responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards and the PF&A Act, and for such internal control as the Chief Executive determines is necessary to enable the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Chief Executive is responsible for assessing the Commission's ability to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting.

### **Auditor's Responsibilities for the Audit of the Financial Statements**

My objectives are to:

- obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error
- issue an Independent Auditor's Report including my opinion.

Reasonable assurance is a high level of assurance, but does not guarantee an audit conducted in accordance with Australian Auditing Standards will always detect material misstatements. Misstatements can arise from fraud or error. Misstatements are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions users take based on the financial statements.

A description of my responsibilities for the audit of the financial statements is located at the Auditing and Assurance Standards Board website at: [www.auasb.gov.au/auditors\\_responsibilities/ar4.pdf](http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf). The description forms part of my auditor's report.

The scope of my audit does not include, nor provide assurance:

- that the Commission carried out its activities effectively, efficiently and economically
- about the assumptions used in formulating the budget figures disclosed in the financial statements
- about the security and controls over the electronic publication of the audited financial statements on any website where they may be presented
- about any other information which may have been hyperlinked to/from the financial statements.

Michael Kharzoo  
A/Director, Financial Audit Services

Delegate of the Auditor-General for New South Wales

30 October 2020  
SYDNEY



# Financial statements

## Start of audited financial statements

### Judicial Commission of New South Wales

Statement of Comprehensive Income for the year ended 30 June 2020

	Notes	Actual 2020 \$'000	Budget 2020 \$'000	Actual 2019 \$'000
<b>Continuing operations</b>				
<b>Expenses excluding losses</b>				
Employee-related expenses	2(a)	4,778	4,883	4,426
Operating expenses	2(b)	992	497	1,352
Depreciation and amortisation	2(c)	669	850	227
Finance Costs	2(f)	1	98	-
Grants and subsidies	2(d)	-	6	-
Other expenses	2(e)	(70)	400	2,015
<b>Total expenses excluding losses</b>		6,370	6,734	8,020
<b>Revenue</b>				
Appropriation	3(a)	4,813	5,385	6,956
Acceptance by Crown Entity of employee benefits and other liabilities	3(d)	94	159	(66)
Sales of goods and services	3(b)	1,040	893	937
Investment revenue	3(c)	-	-	-
Other income	3(e)	50	61	186
<b>Total revenue</b>		5,997	6,498	8,013
<b>Net result</b>	19	(373)	(236)	(7)
<b>Other comprehensive income</b>		-	-	-
<b>TOTAL COMPREHENSIVE INCOME</b>		(373)	(236)	(7)

The accompanying notes form part of these financial statements.

## Judicial Commission of New South Wales

Statement of Financial Position as at 30 June 2020

	Notes	Actual 2020 \$'000	Budget 2020 \$'000	Actual 2019 \$'000
<b>ASSETS</b>				
<b>Current Assets</b>				
Cash and cash equivalents	7	25	162	139
Receivables	8	110	75	141
<b>Total Current Assets</b>		135	237	280
<b>Non-Current Assets</b>				
Property, plant and equipment	9	1,420	1,455	1,566
Right-of-use assets	10	4,373	3,754	-
Intangible assets	11	0	-	-
<b>Total Non-Current Assets</b>		5,793	5,209	1,566
<b>Total Assets</b>		5,928	5,446	1,846
<b>LIABILITIES</b>				
<b>Current Liabilities</b>				
Payables	12	285	463	296
Provisions	13	663	530	597
Other current liabilities	14	485	629	-
<b>Total Current Liabilities</b>		1,433	1,622	893
<b>Non-Current Liabilities</b>				
Provisions	13	218	188	214
Other non-current liabilities	14	3,911	3,228	-
<b>Total Non-Current Liabilities</b>		4,129	3,416	214
<b>Total Liabilities</b>		5,562	5,038	1,107
<b>Net Assets</b>		366	408	739
<b>EQUITY</b>				
Accumulated funds	17	366	408	739
<b>Total Equity</b>		366	408	739

The accompanying notes form part of these financial statements.



## Judicial Commission of New South Wales

Statement of Changes in Equity for the year ended 30 June 2020

	Accumulated Funds \$'000	Total \$'000
<b>Balance at 1 July 2019</b>	739	739
Net result for the year	(373)	(373)
Total other comprehensive income	-	-
Total comprehensive income for the year	(373)	(373)
<b>Balance at 30 June 2020</b>	366	366
<b>Balance at 1 July 2018</b>	746	746
Net result for the year	(7)	(7)
Total other comprehensive income	-	-
Total comprehensive income for the year	(7)	(7)
<b>Balance at 30 June 2019</b>	739	739

The accompanying notes form part of these financial statements.

## Judicial Commission of New South Wales

Statement of Cash Flows for the year ended 30 June 2020

	Notes	Actual 2020 \$'000	Budget 2020 \$'000	Actual 2019 \$'000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
<b>Payments</b>				
Employee related		(4,582)	(4,714)	(4,463)
Finance costs		(1)	(98)	-
Other		(1,223)	(1,015)	(3,754)
<b>Total Payments</b>		(5,806)	(5,827)	(8,217)
<b>Receipts</b>				
Appropriations (excluding equity appropriations)		4,813	5,385	6,956
(Transfers to the Crown Entity)		-	-	-
Sale of goods and services		1,330	892	1,247
Interest received		-	1	-
Other		50	240	185
<b>Total Receipts</b>		6,193	6,518	8,388
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	19	387	691	171
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Purchases of plant and equipment and intangibles		(48)	(150)	(36)
<b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>		(48)	(150)	(36)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>				
Payment of principal portion of finance lease liabilities		(453)	(542)	-
<b>NET CASH FLOWS FROM FINANCING ACTIVITIES</b>		(453)	(542)	-
<b>NET INCREASE / (DECREASE) IN CASH AND CASH EQUIVALENTS</b>		(114)	(1)	135
Opening cash and cash equivalents		139	163	4
<b>CLOSING CASH AND CASH EQUIVALENTS</b>	7	25	162	139

The accompanying notes form part of these financial statements.



# Notes to the financial statements

## Judicial Commission of New South Wales

Notes to the financial statements for the year ended 30 June 2020

### 1. STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

#### (a) Reporting Entity

The Judicial Commission of New South Wales (the Commission) is a NSW government entity and is controlled by the State of New South Wales, which is the ultimate parent.

The Commission is a corporation set up under the *Judicial Officers Act 1986*. The Commission is a not-for-profit entity (as profit is not its principal objective) and it has no cash generating units.

These financial statements for the year ended 30 June 2020 have been authorised for issue by the Chief Executive on 29 October 2020.

#### (b) Basis of Preparation

The entity's financial statements are general purpose financial statements which have been prepared on an accruals basis and in accordance with:

- applicable Australian Accounting Standards (AAS) (which include Australian Accounting Interpretations);
- the requirements of the *Public Finance and Audit Act 1983* (the Act); and *Public Finance and Audit Regulation 2015*; and
- Treasurer's Directions issued under the Act.

Property, plant and equipment are measured at fair value. Other financial statement items are prepared in accordance with the historical cost convention, except where specified otherwise.

Judgements, key assumptions and estimations management has made, are disclosed in the relevant notes to the financial statements.

All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency, which is the entity's presentation and functional currency.

#### (c) Statement of Compliance

The financial statements and notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

#### (d) Accounting for the Goods and Services Tax

Income, expenses and assets are recognised net of the amount of goods and services tax (GST), except that the:

- amount of GST incurred by the entity as a purchaser that is not recoverable from the Australian Taxation Office (ATO) is recognised as part of an asset's cost of acquisition or as part of an item of expense and
- receivables and payables are stated with the amount of GST included

Cash flows are included in the Statement of Cash Flows on a gross basis. However, the GST components of cash flows arising from investing and financing activities which are recoverable from, or payable to, the ATO are classified as operating cash flows.

#### (e) Comparative information

Except when an AAS permits or requires otherwise, comparative information is presented in respect of the previous period for all amounts reported in the financial statements.

#### (f) Changes in accounting policies, including new or revised AAS

##### (i) Effective for the first time in FY2019–20

The entity has applied AASB 15 *Revenue from Contracts with Customers*, AASB 1058 *Income of Not-for-Profit Entities*, and AASB 16 *Leases* for the first time. The nature and effect of the changes as a result of adoption of these new accounting standards are described below.

Several other amendments and interpretations apply for the first time in FY2019–20, but do not have an impact on the financial statements of the entity.

#### AASB 15 *Revenue from Contracts with Customers*

AASB 15 supersedes AASB 111 *Construction Contracts*, AASB 118 *Revenue* and related interpretations and it applies, with limited exceptions, to all revenue arising from contracts with customers. AASB 15 establishes a five-step model to account for revenue arising from contracts with customers and requires that revenue to which an entity expects to be entitled in exchange for transferring goods or services to a customer.

In accordance with the transition provisions in AASB 15, the entity has adopted AASB 15 retrospectively with the cumulative effect of initially applying the standard recognised at the end of initial application, i.e. 1 July 2019. The entity has used the transitional practical expedient permitted by the standard to reflect the aggregate effect of all the modifications that occur before 1 July 2018 when:

- identifying the satisfied and unsatisfied performance obligations
- determining the transaction price
- allocating the transaction price to the satisfied and unsatisfied performance obligations

The effect of adopting AASB 15 did not have an impact on the Statement of Comprehensive Income, Statement of Cash Flows, and Statement of Financial Position.

**AASB 1058 Income for Not-for-Profit Entities**

AASB 1058 replaces most of the existing requirements in AASB 1004 *Contributions*. The scope of AASB 1004 is now limited mainly to contributions by owners (including Parliamentary appropriations that satisfy the definition of a contribution by owners), administrative arrangements and liabilities of government departments assumed by other entities.

AASB 1058 applies to income with a donation component, i.e. transactions where the consideration to acquire an asset is significantly less than fair value principally to enable a not-for-profit entity to further its objectives; and volunteer services. AASB 1058 adopts a residual approach, meaning that entities first apply other applicable Australian Accounting Standards (e.g. AASB 1004, AASB 15, AASB 16, AASB 9, AASB 137) to a transaction before recognising income.

Not-for-profit entities need to determine whether a transaction is/contains a donation (accounted for under AASB 1058) or a contract with a customer (accounted for under AASB 15).

AASB 1058 requires recognition of receipt of an asset, after the recognition of any related amounts in accordance with other Australian Accounting Standards, as income:

- when the obligations under the transfer is satisfied, for transfers to enable an entity to acquire or construct a recognisable non-financial asset that will be controlled by the entity.
- immediately, for all other income within the scope of AASB 1058.

In accordance with the transition provisions in AASB 1058, the entity has adopted AASB 1058 retrospectively with the cumulative effect of initially applying the standard at the date of initial application, i.e. 1 July 2019. The entity has adopted the practical expedient in AASB 1058 whereby existing assets acquired for consideration significantly less than fair value principally to enable the entity to further its objectives, are not restated to their fair value.

The effect of adopting AASB 1058 did not have an impact on the Statement of Comprehensive Income, Statement of Cash Flows, and Statement of Financial Position.

**AASB 16 Leases**

AASB 16 supersedes AASB 117 *Leases*, Interpretation 4 *Determining whether an Arrangement contains a Lease*, Interpretation 115 *Operating Leases—Incentives* and Interpretation 127 *Evaluating the Substance of Transactions Involving the Legal Form of a Lease*. The standard sets out the principles for the recognition, measurement, presentation and disclosure of leases and requires lessees to recognise most leases on the balance sheet.

**Lessor accounting**

Lessor accounting under AASB 16 is substantially unchanged from AASB 117. Lessors will continue to classify leases as either operating or finance leases using similar principles as in AASB 117. Therefore, AASB 16 does not have a significant impact for leases where the entity is the lessor.

**Lessee accounting**

AASB 16 requires the entity to account for all leases under a single on-balance sheet model similar to the accounting for finance leases under AASB 117. As the lessee, the

entity recognises a lease liability and a right-of-use asset at the inception of the lease. The lease liability is measured at the present value of the future lease payments, discounted using the interest rate implicit in the lease, or the lessee's incremental borrowing rate if the interest rate implicit in the lease cannot be readily determined. The corresponding right-of-use asset is measured at the value of the lease liability adjusted for lease payments before inception, lease incentives, initial direct costs and estimates of costs for dismantling and removing the asset or restoring the site on which it is located.

The entity has adopted the partial retrospective option in AASB 16, where the cumulative effect of initially applying AASB 16 is recognised on 1 July 2019 and the comparatives for the year ended 30 June 2019 are not restated.

In relation to leases that had previously been classified as 'operating leases' under AASB 117, a lease liability is recognised at 1 July 2019 at the present value of the remaining lease payments, discounted using the lessee's incremental borrowing rate at the date of initial application. The weighted average lessee's incremental borrowing rate applied to the lease liabilities on 1 July 2019 was 2%.

The corresponding right-of-use asset is initially recorded on transition at an amount equal to the lease liability, adjusted by the amount of any prepaid or accrued lease payments relating to that lease recognised in the statement of financial position as at 30 June 2019. The exception is right-of-use assets that are subject to accelerated depreciation. These assets are measured at their fair value at 1 July 2019.

For leases previously classified as finance lease the entity recognised the carrying amount of the lease asset and lease liability immediately before transition as the carrying amount of the right of use asset and the lease liability at the date of initial application. The measurement principles of AASB 16 are only applied after that date.

The entity elected to use the practical expedient to expense lease payments for lease contracts that, at their commencement date, have a lease term of 12 months or less and do not contain a purchase option (short-term leases), and lease contracts for which the underlying asset is valued at \$10,000 or under when new (low-value assets).

In applying AASB 16 for the first time, the entity has used the following practical expedients permitted by the standard:

- not reassess whether a contract is, or contains, a lease at 1 July 2019, for those contracts previously assessed under AASB 117 and Interpretation 4.
- applying a single discount rate to a portfolio of leases with reasonably similar characteristics.
- relying on its previous assessment on whether leases are onerous immediately before the date of initial application as an alternative to performing an impairment review
- not recognise a lease liability and right-of-use asset for short-term leases that end within 12 months of the date of initial application
- excluding the initial direct costs from the measurement of the right-of-use asset at the date of initial application
- using hindsight in determining the lease term where the contract contained options to extend or terminate the lease



The effect of adoption AASB 16 as at 1 July 2019 increase/(decrease) is as follows:

	\$'000
<b>Assets</b>	
Other financial assets	-
Right-of-use assets	3,142
<b>Total assets</b>	<b>3,142</b>
<b>Liabilities</b>	
Borrowings	3,142
<b>Total liabilities</b>	<b>3,142</b>
<b>Equity</b>	
Accumulated funds	-

	\$'000
Operating lease commitments as at 30 June 2019 (GST included). The lease liabilities as at 1 July 2019 can be reconciled to the operating lease commitments as at 30 June 2019 (GST included)	1,633
(Less): GST included in operating lease commitments	(148)
Operating lease commitments as at 30 June 2019 (GST excluded)	1,485
Weighted average incremental borrowing rate as at 1 July 2019	2%
Discounted operating lease commitments as at 1 July 2019	1,413
Add: commitments relating to leases previously classified as finance leases (GST excluded)	-
(Less): commitments relating to short-term leases	(4)
(Less): commitments relating to leases of low-value assets	-
Add/(less): Lease payments relating to renewal periods not included in commitments note	2,161
(Less): Other adjustments	(428)
	<b>3,142</b>
Add/(less): adjustments relating to changes in the index or rate affecting variable payments	-
Lease liabilities as at 1 July 2019	<b>3,142</b>

(ii) Issued but not yet effective

NSW public sector entities are not permitted to early adopt new Australian Accounting Standards, unless Treasury determines otherwise.

The following new Australian Accounting Standards have not been applied and are not yet effective.

- AASB 17 *Insurance Contracts*
- AASB 1059 *Service Concession Arrangements: Grantors*
- AASB 2018-5 *Amendments to Australian Accounting Standards-Deferral of AASB 1059*
- AASB 2018-6 *Amendments to Australian Accounting Standards-Definition of a Business*
- AASB 2018-7 *Amendments to Australian Accounting Standards-Definition of Material*
- AASB 2019-1 *Amendments to Australian Accounting Standards-References to the Conceptual Framework*

- AASB 2019-2 *Amendments to Australian Accounting Standards-Implementation of AASB 1059*
- AASB 2019-3 *Amendments to Australian Accounting Standards-Interest Rate Benchmark Reform*
- AASB 2019-7 *Amendments to Australian Accounting Standards-Disclosure of GFS Measures of Key Fiscal Aggregates and GAAP/GFS Reconciliations*

The Commission has assessed the impact of the accounting standards and interpretations on issue but not yet effective, where relevant, and considers the impact to be immaterial.

## 2. EXPENSES EXCLUDING LOSSES

	2020 \$'000	2019 \$'000
(a) Employee related expenses		
Salaries and wages (including recreation leave)	4,079	3,920
Superannuation — defined benefit plans	55	66
Superannuation — defined contribution plans	336	315
Long service leave	38	(133)
Workers' compensation insurance	16	16
Payroll tax and fringe benefit tax	254	242
	<b>4,778</b>	<b>4,426</b>

	2020 \$'000	2019 \$'000
(b) Other operating expenses include the following:		
Expenses relating to short-term or low value leases	186	550
Fees for services	41	33
Contractors	223	118
Conferences	69	161
Printing	28	33
Member fees	152	121
Stores and equipment	8	4
Books and periodicals	64	64
Postal and telephone	30	36
Training	15	27
Travel expenses	29	28
Electricity	23	26
Insurance	7	7
Auditor's remuneration — audit of the financial statements	27	28
Recruitment	-	7
Maintenance	7	2
Other	83	107
	<b>992</b>	<b>1,352</b>



	2020 \$'000	2019 \$'000
<i>Reconciliation — Total maintenance</i>		
Maintenance expense — contracted labour and other (non-employee related), as above	7	2
Employee related maintenance expense included in Note 2(a)	-	-
Total maintenance expenses included in Note 2(a) + 2(b)	7	2

## Recognition and Measurement

### Maintenance expense

Day-to-day servicing costs or maintenance are charged as expenses as incurred, except where they relate to the replacement or an enhancement of a part or component of an asset, in which case the costs are capitalised and depreciated.

### Insurance

The entity's insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self-insurance for Government entities. The expense (premium) is determined by the Fund Manager based on past claims experience.

### Lease expenses (up to 30 June 2019)

#### Operating leases

Up to 30 June 2019, operating lease is a lease other than a finance lease. Operating lease payments are recognised as an operating expense in the Statement of Comprehensive Income on a straight-line basis over the lease term.

### Lease expenses (from 1 July 2019)

From 1 July 2019, the Entity recognises the lease payments associated with the following types of leases as an example on a straight-line basis:

- Leases that meet the definition of short-term, i.e. where the lease term at commencement of the lease is 12 months or less. This excludes leases with a purchase option.
- Leases of assets that are valued at \$10,000 or under when new.

Variable lease payments not included in the measurement of the lease liability (i.e. variable lease payments that do not depend on an index or rate as at the commencement date). These payments are recognised in the period in which the event or condition that triggers those payments occurs.

	2020 \$'000	2019 \$'000
(c) Depreciation and amortisation expense		
Depreciation		
Computer equipment	38	69
Right of use asset	476	-
Office furniture	115	115
Office equipment	40	39
	669	223
Amortisation		
Intangible assets	-	4
	669	227

Refer to Note 9 and 10 for recognition and measurement policies on depreciation and amortisation.

	2020 \$'000	2019 \$'000
(d) Grants and subsidies		
Aboriginal program expenditure review efficiency contribution	-	-
	-	-
(e) Other expenses		
Conduct Division (refer Note 18)	(70)	2,015
	(70)	2,015
(f) Finance costs		
Interest expense from lease liabilities	1	-
	1	-

## Recognition and Measurement

Finance costs consist of interest and other costs incurred in connection with the borrowing of funds. Borrowing costs are recognised as expenses in the period in which they are incurred, in accordance with Treasury's Mandate to not-for-profit NSW GGS entities.

## 3. REVENUE

### Recognition and Measurement

Until 30 June 2019, income is recognised in accordance with AASB 111 *Construction Contracts*, AASB 118 *Revenue* and AASB 1004 *Contributions*.

From 1 July 2019, income is recognised in accordance with the requirements of AASB 15 *Revenue from Contracts with Customers* or AASB 1058 *Income of Not-for-Profit Entities*, dependent on whether there is a contract with a customer defined by AASB 15 *Revenue from Contracts with Customers*. Comments regarding the accounting policies for the recognition of income are discussed below.



(a) Appropriations and Transfers to the Crown Entity

**Summary of Compliance**

Original Budget per *Appropriation Act*

Other Appropriations/Expenditure

- Transfers per section 27 of the *Appropriation Act*
- Treasurer's Advance

**Total Appropriations/Expenditure/Net Claim on Annual Appropriations**

Appropriation drawn down against Annual Appropriations

Liability for Lapsed Appropriations drawn down  
(refer Note 14)

*Comprising:*

Appropriations (per Statement of Comprehensive Income)

*Appropriations:*

Recurrent

Capital

2020 \$'000	2020 \$'000	2019 \$'000	2019 \$'000
Appropriation	Expenditure	Appropriation	Expenditure
5,385	4,813	5,503	5,341
-	-	1,670	1,615
-	-	-	-
5,385	4,813	7,173	6,956
	4,813		6,956
	-		-
	4,813		6,956
5,235	4,764	7,023	6,919
150	49	150	37
5,385	4,813	7,173	6,956

**Notes:**

- (1) The summary of compliance is based on the assumption that Consolidated Fund monies are spent first (except where otherwise identified or prescribed)
- (2) 'Expenditure' refers to cash payments. The term 'expenditure' has been used for payments for consistency with AASB 1058 *Income of Not-for-Profit Entities*.
- (3) If an entity receives an equity appropriation this must be disclosed in the summary of compliance as part of the appropriation.
- (4) If there is a 'Liability for lapsed appropriations drawn down' (formerly known as 'Liability to Consolidated Fund'), the entity must state that this represents the difference between the 'Amount drawn down against Annual Appropriation' and the 'Expenditure/Net Claim on Annual Appropriations'.
- (5) The Agency receives its funding under appropriations from the Consolidated Fund. Appropriations for each financial year are set out in the Appropriation Bill that is prepared and tabled for that year. Due to COVID-19, the State Budget and related 2020-21 Appropriation Bill has been delayed until November/December 2020. However, pursuant to section 4.10 of the GSF Act, the Treasurer has authorised Ministers to spend specified amounts from the Consolidated Fund. This authorisation is current from 1 July 2020 until the release of the 2020-21 Budget or Appropriation Bill.

**Movement of Section 4.7 GSF Act — deemed appropriations**

	2020 \$'000	2019 \$'000
Opening balance	-	-
Adjustment for appropriations deemed on commencement of section 4.7	-	-
Add: additions of deemed appropriation	1,090	1,123
Less: expenditure charged against deemed appropriation	-1,090	-1,123
Closing balance	-	-

**Recognition and Measurement**

*Parliamentary appropriations*

Until 30 June 2019, except as specified below, appropriations are recognised as income when the entity obtains control over the assets comprising the appropriations. Control over appropriations is normally obtained upon receipt of cash.

Appropriations are not recognised as income in the following circumstances:

- Lapsed appropriations drawn down are recognised as liabilities rather than income, as the authority to spend the money lapses and the unspent amount is not controlled by the agency.
- The liability is disclosed in Note 14 as part of 'Current liabilities — Other'. The liability will be extinguished next financial year through the next annual Appropriations Act.



After AASB 15 and AASB 1058 became effective on 1 July 2019, the treatment of appropriations remains the same, because appropriations do not contain an enforceable sufficiently specific performance obligation as defined by AASB 15.

	2020 \$'000	2019 \$'000
(b) Sale of goods and services		
Sale of goods	162	144
Rendering of services	878	793
	<u>1,040</u>	<u>937</u>

## Recognition and Measurement

### Until 30 June 2019

#### Sale of Goods

Revenue from sale of goods is recognised as revenue when the entity transfers the significant risks and rewards of ownership of the goods, usually on delivery of the goods.

#### Rendering of Services

Revenue from rendering of services is recognised when the service is provided or by reference to the stage of completion (based on labour hours incurred to date).

### From 1 July 2019

#### Sale of Goods

Revenue from sale of goods is recognised as revenue when the entity satisfies a performance obligation by transferring the promised goods. The entity typically satisfies its performance obligations when the control of the goods is transferred to the customers. The payments are typically due on 30 days settlements terms.

Revenue from these sales is recognised based on the price specified in the contract, and revenue is only recognised to the extent that it is highly probable that a significant reversal will not occur. No element of financing is deemed present as the sales are made with a short term credit term. No volume discount or warranty is provided on the sale.

#### Rendering of Services

Revenue from rendering of services is recognised when the entity satisfies the performance obligation by transferring the promised services. The entity typically satisfies its performance obligations by reference to the stage of completion based on labour hours incurred to date. The payments are typically due on 30 days settlement terms.

The revenue is measured at the transaction price agreed under the contract. No element of financing is deemed present as payments are due when service is provided.

- (c) Investment revenue  
Interest income

2020 \$'000	2019 \$'000
-	-

## Recognition and Measurement

### Interest Income

Interest income is calculated by applying the effective interest rate to the gross carrying amount of a financial asset except for financial assets that subsequently become credit-impaired. For financial assets that become credit impaired, the effective interest rate is applied to the amortised cost of the financial asset (i.e. after deducting the loss allowance for expected credit losses).

	2020 \$'000	2019 \$'000
(d) Acceptance by the Crown Entity of employee benefits and other liabilities		
The following liabilities and/or expenses have been assumed by the Crown Entity or other government entities:		
Superannuation — defined benefit	53	63
Long service leave provision	38	(133)
Payroll tax	3	4
	<u>94</u>	<u>(66)</u>
(e) Other income		
Miscellaneous revenue	50	186

## 4. GAINS / (LOSSES) ON DISPOSAL

	2020 \$'000	2019 \$'000
Gains/(losses) on disposal	-	-

## 5. OTHER GAINS / (LOSSES)

	2020 \$'000	2019 \$'000
Other gains/(losses)	-	-

## Recognition and Measurement

### Impairment losses on non-financial assets

Impairment losses may arise on non-financial assets held by the entity from time to time. Accounting for impairment losses is dependent upon the individual asset (or group of assets) subject to



impairment. Accounting Policies and events giving rise to impairment losses are disclosed in the following notes:

- Trade Receivables — Note 8
- Property, plant and equipment — Note 9
- Intangible Assets — Note 11

## 6. PROGRAM GROUPS OF THE COMMISSION

### Education, Sentencing, and Complaints

Program Description:	This program group covers the provision of education services to promote a better informed and professional judiciary, sentencing information to ensure consistency in sentencing, and the effective examination of complaints in accordance with statutory provisions.
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The Commission operates a single program group. The expenses, income, assets and liabilities of the program group are presented in the primary financial statements.

## 7. CURRENT ASSETS — CASH AND CASH EQUIVALENTS

	2020 \$'000	2019 \$'000
Cash at bank and on hand	25	139
	25	139

For the purposes of the Statement of Cash Flows, cash and cash equivalents includes cash at bank and cash on hand.

Cash and cash equivalents (per Statement of Financial Position) reconciled at the end of the financial year to the Statement of Cash Flows as follows:

	2020 \$'000	2019 \$'000
Cash and cash equivalents (per Statement of Financial Position)	25	139
Cash and cash equivalents (per Statement of Cash Flows)	25	139

Refer Note 21 for details regarding credit risk and market risk arising from financial instruments.

## 8. CURRENT ASSETS — RECEIVABLES

	2020 \$'000	2019 \$'000
Sale of goods and services	-	76
Other receivables	1	-
Accrued income	-	-
Prepayments	109	65
	110	141

Details regarding credit risk of trade receivables that are neither past due nor impaired, are disclosed in Note 21.

### Recognition and Measurement

All 'regular way' purchases or sales of financial assets are recognised and derecognised on a trade date basis. Regular way purchases or sales are purchases of sales of financial assets that require delivery of assets within the time frame established by regulation or convention in the marketplace.

Receivables are initially recognised at fair value plus any direct attributable transaction costs. Trade receivables that do not contain a significant financing component are measured at the transaction price.

### Subsequent measurement under AASB 9

The entity holds receivables with the objective to collect the contractual cash flows and therefore measures them at amortised cost using the effective interest method, less any impairment. Changes are recognised in the net result for the year when impaired, derecognised or through the amortisation process.

### Impairment under AASB 9

The entity recognises an allowance for expected credit losses (ECLs) for all debt financial assets not held at fair value through profit or loss. ECLs are based on the difference between contractual cash flows and the cash flows that the entity expects to receive, discounted at the original effective interest rate.

For trade receivables, the entity applies a simplified approach in calculating ECLs. The entity recognises a loss allowance based on lifetime ECLs at each reporting date. The entity has established a provision matrix based in its historical credit loss experience for trade receivables, adjusted for forward-looking factors specific to the receivable.

## 9. PROPERTY, PLANT AND EQUIPMENT

	Plant and Equipment \$'000	Total \$'000
<b>At 1 July 2019 — fair value</b>		
Gross carrying amount	2,403	2,403
Accumulated depreciation and impairment	(837)	(837)
Net carrying amount	1,566	1,566
<b>At 30 June 2020 — fair value</b>		
Gross carrying amount	2,409	2,409
Accumulated depreciation and impairment	(989)	(989)
Net carrying amount	1,420	1,420

**Reconciliation**

A reconciliation of the carrying amount of property, plant and equipment at the beginning and end of the current financial year is set out below:

	Plant and Equipment \$'000	Total \$'000
<b>Year ended 30 June 2020</b>		
Net carrying amount at start of year	1,566	1,566
Recognition of right-of-use assets	-	-
Additions	47	47
Disposals	-	-
Depreciation	(193)	(193)
Net carrying amount at end of year	1,420	1,420

From 1 July 2019, property, plant and equipment includes right-of-use assets under AASB 16 *Leases*, that is effective from that date.

	Plant and Equipment \$'000	Total \$'000
<b>At 1 July 2018 — fair value</b>		
Gross carrying amount	2,393	2,393
Accumulated depreciation and impairment	(641)	(641)
Net carrying amount	1,752	1,752
<b>At 30 June 2019 — fair value</b>		
Gross carrying amount	2,403	2,403
Accumulated depreciation and impairment	(837)	(837)
Net carrying amount	1,566	1,566

**Reconciliation**

A reconciliation of the carrying amount of property, plant and equipment at the beginning and end of the prior financial year is set out below:

	Plant and Equipment \$'000	Total \$'000
<b>Year ended 30 June 2019</b>		
Net carrying amount at start of year	1,752	1,752
Additions	37	37
Disposals	-	-
Depreciation	(223)	(223)
Net carrying amount at end of year	1,566	1,566

**Recognition and Measurement****Acquisition of property, plant and equipment**

Property, plant and equipment are initially measured at cost and subsequently revalued at fair value less accumulated depreciation and impairment. Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or construction, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other Australian Accounting Standards.

Fair value is the price that would be received to sell an asset in an orderly transaction between market participants at measurement date.

Where payment for an asset is deferred beyond normal credit terms, its cost is the cash price equivalent; i.e. deferred payment amount is effectively discounted over the period of credit.

Assets acquired at no cost, or for nominal consideration, are initially recognised at their fair value at the date of acquisition.

**Capitalisation thresholds**

Property, plant and equipment and intangible assets costing \$1,000 and above individually (or forming part of a network costing more than \$1,000) are capitalised. Individual items of computer or office equipment costing \$500 and above and having a useful life of more than one year are also capitalised.

**Depreciation of property, plant and equipment**

Depreciation is provided for on a straight-line basis so as to write off the depreciable amount of each asset as it is consumed over its useful life to the entity.

All material identifiable components of assets are depreciated separately over their useful lives.

The estimated useful lives of the asset classes are:

Computer Equipment	3 years
Furniture and Fittings	15 years
Office Equipment	5 or 10 years

**Restoration costs**

The present value of the expected cost for the restoration or cost of dismantling of an asset after its use is included in the cost of the respective asset if the recognition criteria for a provision are met.

**Finance leases acquired by lessees (under AASB 117 until 30 June 2019)**

Until 30 June 2019, AASB 117 *Leases* (AASB 117) distinguished between finance leases that effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of the leased assets, and operating leases under which the lessor does not transfer substantially all the risks and rewards.



Property, plant and equipment at 30 June 2019 includes non-current assets acquired under finance leases only. The assets are recognised at fair value or, if lower, the present value of the minimum lease payments, at the inception of the lease. Property, plant and equipment does not include amounts in respect of operating leases.

Plant and equipment acquired under finance leases are depreciated over the asset's useful life. However, if there is no reasonable certainty that the lessee entity will obtain ownership at the end of the lease term, the asset is depreciated over the shorter of the estimated useful life of the asset and the lease term.

The Commission does not have any finance leases.

***Right-of-use Assets acquired by lessees (under AASB 16 from 1 July 2019)***

From 1 July 2019, AASB 16 *Leases* (AASB 16) requires a lessee to recognise a right-of-use asset for most leases. The right-of-use asset and corresponding liability are initially measured at the present value of the future lease payments.

Therefore, at that date property, plant and equipment includes amounts for right-of-use assets in respect of leases previously treated as operating leases under AASB 117, as well as any arrangements that are assessed as leases under AASB 16 that were not leases under AASB 117.

Right-of-use assets are generally depreciated over the shorter of the asset's useful life and the lease term. Where the entity obtains ownership of the underlying leased asset or of the cost of the right-of-use asset reflects that the entity will exercise a purchase option, the entity depreciates the right-of-use asset over its useful life.

***Revaluation of plant and equipment***

Physical non-current assets are valued in accordance with the 'Valuation of Physical Non-Current Assets at Fair Value' Policy and Guidelines Paper (TPP 14-01). This policy adopts fair value in accordance with AASB 13 *Fair Value Measurement*, and AASB 116 *Property, Plant and Equipment*.

Property, plant and equipment is measured at the highest and best use by market participants that is physically possible, legally permissible and financially feasible. The highest and best use must be available at a period that is not remote and take into account the characteristics of the asset being measured, including socio-political restrictions imposed by government. In most cases, after taking into account these considerations, the highest and best use is the existing use. In limited circumstances, the highest and best use may be a feasible alternative use, where there are no restrictions on use or where there is a reasonable higher restricted alternative use.

Fair value of plant and equipment is based on a market participants' perspective, using valuation techniques (market approach, cost approach, income approach) that maximise relevant observable inputs and minimise unobservable inputs.

As the entity does not hold any land, building or infrastructure assets, valuations of plant and equipment are not warranted.

All of the entity's assets are non-specialised assets with short useful lives and are measured at depreciated historical cost, which approximates fair value. The entity has assessed that any difference between fair value and depreciated historical cost is unlikely to be material.

The residual values, useful lives and methods of depreciation of plant and equipment are reviewed at each financial year end.

***Impairment of plant and equipment***

As a not-for-profit entity with no cash generating units, impairment under AASB 136 *Impairment of Assets* is unlikely to arise. Since property, plant and equipment is carried at fair value or an amount that approximates fair value, impairment can only arise in rare circumstances such as where the cost of disposal are material.

The entity assesses, at each reporting date, whether there is an indication that an asset may be impaired. If any indication exists, or when annual impairment testing for an asset is required, the entity estimates the asset's recoverable amount. When the carrying amount of an asset exceeds its recoverable amount, the asset is considered impaired and is written down to its recoverable amount.

As a not-for-profit entity, an impairment loss is recognised in the net result to the extent the impairment loss exceeds the amount in the revaluation surplus for the class of asset.

After an impairment loss has been recognised, it is reversed only if there has been a change in the assumptions used to determine the asset's recoverable amount. The reversal is limited so that the carrying amount of the asset does not exceed its recoverable amount, nor exceed that would have been determined, net of depreciation, had no impairment loss been recognised for the asset in prior years. Such reversal is recognised in the net result and is treated as a revaluation increase. However, to the extent that an impairment loss on the same class of asset was previously recognised in the net result, a reversal of that impairment loss is also recognised in the net result.

**10. LEASED ASSETS**

The entity has a lease for the offices as arranged through Property NSW. The lease initial term is for 5 years with an option to renew for an additional 5 year term. The entity has a small residual lease for a motor vehicle which has not been capitalised with lease payments being expensed.

The lease agreements do not impose any covenants, but leased assets may not be used as security for borrowing purposes. The entity does not provide residual value guarantees in relation to leases.

The entity has elected to recognise payments for short-term leases and low value leases as expenses on a straight-line basis, instead of recognising a right-to-use asset and lease liability. Short-term leases are leases with a lease term of 12 months or less. Low value assets are assets with a fair value of \$10,000 or less when new and comprise only motor vehicles.

#### Right-of-use assets under leases

The following table presents right-of-use assets recognised by the Commission.

	Land and Buildings \$'000
Balance at 1 July 2019	3,142
Additions	-
Depreciation expense	(476)
Adjustments due to change in variable payments and additional extension of term	1,707
Balance at 30 June 2020	4,373

#### Lease liabilities

The following table presents the liabilities under leases.

	Lease liabilities \$'000
Balance at 1 July 2019	3,142
Additions	-
Interest expense	1
Adjustments due to change in variable payments and additional extension of term	1,707
Payments	(454)
Balance at 30 June 2020	4,396

The following amounts were recognised in the statement of comprehensive income for the year ending 30 June 2020 in respect of leases where the entity is the lessee:

	\$'000
Depreciation expense of right-of-use assets	476
Interest expense on lease liabilities	1
Expense relating to short-term leases	186
Total amount recognised in the statement of comprehensive income	663

#### Recognition and measurement (under AASB 16 from 1 July 2019)

The entity assesses at contract inception whether a contract is, or contains, a lease. That is, if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration.

The entity recognises lease liabilities to make lease payments and right-of-use assets representing the right to use the underlying assets, except for short-term leases and leases of low-value assets.

#### i. Right-of-use assets

The entity recognises right-of-use assets at the commencement date of the lease (i.e. the date the underlying asset is available for use.) Right-of-use assets are initially measured at the amount of initial measurement of the lease liability (refer to ii below), adjusted by any lease payments made at or before the commencement date and lease incentives, any initial direct costs incurred, and estimated costs of dismantling and removing the asset or restoring the site.

Right-of-use assets are depreciated on a straight-line basis over the shorter of the lease term and the estimated useful lives of the assets as follows:

- Land and buildings 5 to 15 years

The right-of-use assets are also subject to revaluation and impairment.

#### Impairment losses for right-of-use assets

The COVID-19 outbreak occurring throughout the 2019–20 financial year had an unprecedented effect on the NSW and global economies. COVID-19 significantly impacted the market rent for the Agency's leases and therefore the value of lease right-of-use assets in the Statement of Financial Position. The Agency has therefore undertaken an impairment assessment for the above right-of-use assets, to determine whether the carrying amount exceeded their recoverable amount. However, the entity considers that the current rent has been below market rate since the start of the lease and has not been significantly impacted by COVID-19. Negotiations post balance date have indicated that the rent will not be materially negatively affected. Therefore, no impairment loss has been included. Impairment losses for right-of-use assets are included in Other Net Gains/(Losses) in the Statement of Comprehensive Income.

#### ii. Lease liabilities

At the commencement date of the lease, the entity recognises lease liabilities measured at the present value of lease payments to be made over the lease term. Lease payments include:

- fixed payments (including in substance fixed payments) less any lease incentives receivable;
- variable lease payments that depend on an index or a rate;
- amounts expected to be paid under residual value guarantees;
- exercise price of purchase options reasonably certain to be exercised by the entity; and
- payments of penalties for terminating the lease, if the lease term reflects the entity exercising the option to terminate.



The lease payments are discounted using the interest rate implicit in the lease. If that rate cannot be readily determined, which is generally the case for the entity's leases, the lessee's incremental borrowing rate is used, being the rate that the entity would have to pay to borrow the funds necessary to obtain an asset or similar value to the right-of-use asset in a similar economic environment with similar terms, security and conditions.

After the commencement date, the amount of lease liabilities is increased to reflect the accretion of interest and reduced for the lease payments made. In addition, the carrying amount of lease liabilities is remeasured if there is a modification, a change in the lease term, a change in the lease payments (e.g. changes to future payments resulting from a change in an index or rate used to determine such lease payments) or a change in the assessment of an option to purchase the underlying asset.

There is an option to extend the office lease for another 5 years from 1 January 2022. The entity has capitalised the value assuming the lease option will be exercised. The entity is currently in discussions to extend the lease by either 5 or 7 years.

The entity's lease liabilities are included in borrowings.

#### Recognition and measurement (under AASB 117 up to 30 June 2019)

The determination of whether an arrangement is (or contains) a lease is based on the substance of the arrangement at the inception of the lease. The arrangement is, or contains, a lease if fulfilment of the arrangement is dependent on the use of a specific asset or assets and the arrangement conveys a right to use the asset (or assets), even if that asset (or those assets) is not explicitly specified in an arrangement.

Until 30 June 2019, a lease was classified at the inception date as a finance lease or an operating lease. A lease that transferred substantially all the risks and rewards incidental to ownership to the entity was classified as a finance lease.

An operating lease is a lease other than a finance lease. Operating lease payments were recognised as an operating expense in the statement of comprehensive income on a straight-line basis over the lease term.

Operating lease commitments, relate to rent and motor vehicles, which are not recognised in the financial statements as liabilities. The total commitments for expenditure as at 30 June 2019 include input tax credits of \$148,000 (\$197,000 in 2018) which are recoverable from the Australian Taxation Office.

## 11. INTANGIBLE ASSETS

### At 1 July 2019

Cost (gross carrying amount)	28	28
Accumulated amortisation and impairment	(28)	(28)
Net carrying amount	-	-

### At 30 June 2020

Cost (gross carrying amount)	28	28
Accumulated amortisation and impairment	(28)	(28)
Net carrying amount	-	-

Software \$'000	Total \$'000
28	28
(28)	(28)
-	-
28	28
(28)	(28)
-	-

### Reconciliation

A reconciliation of the carrying amount of intangibles at the beginning and end of the current financial year is set out below:

### Year ended 30 June 2020

Net carrying amount at start of year	-	-
Additions	-	-
Disposals	-	-
Amortisation (recognised in 'depreciation and amortisation')	-	-
Net carrying amount at end of year	-	-

### At 1 July 2018

Cost (gross carrying amount)	28	28
Accumulated amortisation and impairment	(24)	(24)
Net carrying amount	4	4

### At 30 June 2019

Cost (gross carrying amount)	28	28
Accumulated amortisation and impairment	(28)	(28)
Net carrying amount	-	-

Software \$'000	Total \$'000
-	-
-	-
-	-
-	-
-	-
28	28
(24)	(24)
4	4
28	28
(28)	(28)
-	-

**Reconciliation**

A reconciliation of the carrying amount of intangibles at the beginning and end of the prior financial year is set out below:

	Software \$'000	Total \$'000
<b>Year ended 30 June 2019</b>		
Net carrying amount at start of year	4	4
Additions	-	-
Disposals	-	-
Amortisation (recognised in 'depreciation and amortisation')	(4)	(4)
Net carrying amount at end of year	-	-

**Recognition and Measurement**

The entity recognises intangible assets only if it is probable that future economic benefits will flow to the entity and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition. Following initial recognition, intangible assets are subsequently measured at fair value only if there is an active market. If there is no active market for the entity's intangible assets, the assets are carried at cost less any accumulated amortisation and impairment losses.

The useful lives of intangible assets are assessed to be finite.

The entity's intangible assets are amortised using the straight-line method over a period of three (3) years.

The amortisation period and the amortisation method for an intangible asset with a finite useful life are reviewed at least at the end of each reporting period.

Intangible assets are tested for impairment where an indicator of impairment exists. If the recoverable amount is less than its carrying amount, the carrying amount is reduced to recoverable amount and the reduction is recognised as an impairment loss.

**12. CURRENT LIABILITIES — PAYABLES**

	2020 \$'000	2019 \$'000
Creditors	171	222
Accrued salaries, wages and on-costs	48	16
Other (including GST payable)	66	58
	285	296

Details regarding liquidity risk, including a maturity analysis of the above payables are disclosed in Note 21.

**Recognition and Measurement**

Payables represent liabilities for goods and services provided to the entity and other amounts. Short-term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

Payables are financial liabilities at amortised cost, initially measured at fair value, net of directly attributable transaction costs. These are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in the net result when the liabilities are derecognised as well as through the amortisation process.

**13. CURRENT / NON-CURRENT LIABILITIES — PROVISIONS**

	2020 \$'000	2019 \$'000
<b>Employee benefits and related on-costs</b>		
<b>Current</b>		
Recreation leave	316	288
On-costs	347	309
	663	597
<b>Non-Current</b>		
Make Good Provision	188	188
On-costs	30	26
	218	214
<b>Aggregate employee benefits and related on-costs</b>		
Provisions — current	663	597
Provisions — non-current	30	26
Accrued salaries, wages and on-costs (refer Note 12)	48	16
	741	639
<b>Expected settlement of current employee benefits and related on-costs</b>		
Not later than 12 months	602	545
Later than 12 months	61	52
	663	597

**Movements in provisions (other than employee benefits)**

	Make Good \$'000	Total \$'000
<b>2020</b>		
Carrying amount at 1 July 2019	188	188
Additional provisions recognised	-	-
Amounts used	-	-
Unused amounts reversed	-	-
Unwinding / change in the discount rate	-	-
Carrying amount at 30 June 2020	188	188



## Recognition and Measurement

### Employee benefits and related on-costs

#### Salaries and wages, recreation leave and sick leave

Salaries and wages (including non-monetary benefits) and paid sick leave that are expected to be settled wholly within 12 months after the end of the period in which the employees render the service are recognised and measured at the undiscounted amounts of the benefits.

Recreation leave is not expected to be settled wholly before twelve months after the end of the annual reporting period in which the employees render the related service. As such, it is required to be measured at present value in accordance with AASB 119 *Employee Benefits* (although short-cut methods are permitted).

Actuarial advice obtained by Treasury has confirmed that using nominal recreation leave balance plus the recreation leave entitlements accrued while taking recreation leave (calculated using 7.9% of the nominal value of recreation leave) can be used to approximate the present value of the recreation leave liability. The entity has assessed the actuarial advice based on the entity's circumstances and has determined that the effect of discounting is immaterial to recreation leave. All recreation leave is classified as a current liability even where the entity does not expect to settle the liability within 12 months as the entity does not have an unconditional right to defer settlement.

Unused non-vesting sick leave does not give rise to a liability as it is not considered probable that sick leave taken in the future will be greater than the benefits accrued in the future.

#### Long service leave and superannuation

The entity's liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity. The entity accounts for the liability as having been extinguished, resulting in the amount assumed being shown as part of the non-monetary revenue item described as 'Acceptance by the Crown Entity of employee benefits and other liabilities'.

Long service leave is measured at the present value of expected future payments to be made in respect of services provided up to the reporting date. Consideration is given to certain factors based on actuarial review, including expected future wage and salary levels, experience of employee departures, and periods of service. Expected future payments are discounted using Commonwealth government bond rate at the reporting date.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for certain superannuation schemes (i.e. Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (i.e. State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

### Consequential on-costs

Consequential costs to employment are recognised as liabilities and expenses where the employee benefits to which they relate have been recognised. This includes outstanding amounts of payroll tax, workers' compensation insurance premiums and fringe benefits tax.

### Other provisions

Provisions are recognised when: the entity has a present legal or constructive obligation as a result of a past event; it is probable that an outflow of resources will be required to settle an obligation; and a reliable estimate can be made of the amount of the obligation. When the entity expects some or all of provision to be reimbursed, for example, under an insurance contract, the reimbursement is recognised as a separate asset, but only when the reimbursement is virtually certain. The expense relating to a provision is presented net of any reimbursement in the Statement of Comprehensive Income.

### Make good provision

The make good provision will arise if the leased offices are vacated at the end of the lease term. The lease requires that the office be returned 'back to base building' requiring the removal of all partitions and added fixtures. The cost is an estimate based on current costs.

## 14. CURRENT / NON-CURRENT LIABILITIES

	2020 \$'000	2019 \$'000
Liability for unspent appropriations drawn down	-	-
Lease liability — current	485	-
	485	-
Lease liability — non current	3,911	-

## 15. COMMITMENTS

The Commission has no capital commitments.

## 16. CONTINGENT LIABILITIES AND CONTINGENT ASSETS

The Commission has no contingent liabilities (2019: nil) or contingent assets (2019: nil) as at 30 June 2020.

## 17. EQUITY

### Recognition and Measurement

#### Accumulated Funds

The category 'Accumulated Funds' includes all current and prior period retained funds.

## 18. BUDGET REVIEW

The budgeted amounts are drawn from the original budgeted financial statements presented to Parliament in respect of the reporting period, except for the budget cash flow statement, which is derived from the Treasury reporting system. Subsequent amendments to the original budget (e.g. adjustment for transfer of functions between entities as a result of Administrative Arrangement Orders) are not reflected in the budgeted amounts. Major variances between the original budgeted amounts and the actual amounts disclosed in the financial statements are explained below.

### Net Result

The actual net loss is higher than the budgeted loss by (\$137,000).

This is mainly due to \$364,000 lower expenses including Conduct Divisions, combined with \$147,000 higher own generated income, and other income lower by (\$11,000).

Other revenue items contributing to the higher loss are: Capital allocation is lower than budget by (\$101,000), acceptance by Crown Entity of employees benefits is lower by (\$65,000) and recurrent allocation lower by (\$471,000).

### Assets and Liabilities

Non-Current Assets are over budget by \$584,000. This is mainly due to lower than expected capital purchases and a higher value to the capitalised right of use assets.

Current Liabilities are under budget by (\$189,000) mainly due to Payables decrease of (\$178,000) (including PAYG tax);

### Cash flows

The Net Cash Flows from operating activities resulted with a positive \$387,000.

However the total cash decrease was (\$114,000) when investing activities of (\$48,000) and financing activities of (\$453,000) are deducted.

## 19. RECONCILIATION OF CASH FLOWS FROM OPERATING ACTIVITIES TO NET RESULT

Reconciliation of cash flows from operating activities to the net result as reported in the Statement of Comprehensive Income as follows:

	2020 \$'000	2019 \$'000
Net cash used on operating activities	387	171
Decrease/(Increase) in Crown Entity liability	-	-
Depreciation and amortisation expense	(669)	(227)
Decrease/(increase) in provisions	(70)	(31)
Increase/(decrease) in receivables and prepayments	(31)	(2)
Decrease/(increase) in payables	10	82
Cash transfers to Consolidated Fund	-	-
<b>Net Result</b>	<b>(373)</b>	<b>(7)</b>

## 20. NON-CASH FINANCING AND INVESTING ACTIVITIES

	2020 \$'000	2019 \$'000
New recognition of right-of-use assets	4,373	-

## 21. FINANCIAL INSTRUMENTS

The entity's principal financial instruments are outlined below. These financial instruments arise directly from the entity's operations or are required to finance the entity's operations. The entity does not enter into any trade financial instruments, including derivative financial instruments, for speculative purposes.

The entity's main risks arising from financial instruments are outlined below, together with the entity's objectives, policies and processes for measuring and managing risk. Further quantitative and qualitative disclosures are included throughout these financial statements.

The Chief Executive has overall responsibility for the establishment and oversight of risk management and reviews and agrees policies for managing each of these risks. The Audit and Risk Committee assists the Chief Executive in fulfilling these responsibilities.

The Audit and Risk Committee provides independent assistance to the Chief Executive by monitoring, reviewing and providing advice about the Commission's risk management and control frameworks.



(a) Financial instrument categories

	Note	Category	Carrying Amount 2020 \$'000
Financial instrument categories			
i. As at 30 June 2020 under AASB 9			
<b>Financial Assets</b>			
Cash and cash equivalents	7	N/A	25
Receivables <sup>1</sup>	8	Amortised cost	1
<b>Financial Liabilities</b>			
Payables <sup>2</sup>	12	Financial liabilities measured at amortised cost	136

Notes

1. Excludes statutory receivables and prepayments (i.e. not within scope of AASB 7).
2. Excludes statutory payables and unearned revenue (i.e. not within scope of AASB 7).

	Note	Category	Carrying Amount 2019 \$'000
ii. As at 30 June 2019 under AASB 9			
<b>Financial Assets</b>			
Cash and cash equivalents	7	N/A	139
Receivables <sup>1</sup>	8	Loans and receivables (at amortised cost)	76
<b>Financial Liabilities</b>			
Payables <sup>2</sup>	12	Financial liabilities measured at amortised cost	240

Notes

1. Excludes statutory receivables and prepayments (i.e. not within scope of AASB 7).
2. Excludes statutory payables and unearned revenue (i.e. not within scope of AASB 7).

The entity determines the classification of its financial assets and liabilities after initial recognition and, when allowed and appropriate, re-evaluates this at each financial year end.

**Derecognition of financial assets and financial liabilities**

A financial asset (or; where applicable, a part of a financial asset or part of a group of similar financial assets) is derecognised when the contractual rights to the cash flows from the financial assets expire; or if the entity transfers its rights to receive cash flows from the asset or has assumed an obligation to pay the received cash flows in full without material delay to a third party under a 'pass-through' arrangement and either:

- the entity has transferred substantially all the risks and rewards of the asset; or
- the entity has neither transferred nor retained substantially all the risks and rewards of the asset, but has transferred control.

When the entity has transferred its rights to receive cash flows from an asset or has entered into a 'pass-through' arrangement, it evaluates if, and to what extent, it has retained the risks and rewards of ownership. Where the entity has neither transferred nor retained substantially all the risks and rewards or transferred control, the asset continues to be recognised to the extent of the entity's continuing involvement in the asset. In that case, the entity also recognises an associated liability. The transferred asset and the associated liability are measured on a basis that reflects the rights and obligations that the entity has retained.

A financial liability is derecognised when the obligation specified in the contract is discharged or cancelled or expires. When an existing financial liability is replaced by another from the same lender on substantially different terms, or the terms of an existing liability are substantially modified, such an exchange or modification is treated as the derecognition of the original liability and the recognition of a new liability. The difference in the respective carrying amounts is recognised in the net result.

## (b) Financial risks

### i. Credit risk

Credit risk arises when there is the possibility that the counterparty will default on their contractual obligations, resulting in a financial loss to the entity. The maximum exposure to credit risk is generally represented by the carrying amount of the financial assets (net of any allowance for credit losses or allowance for impairment).

Credit risk arises from the financial assets of the entity, including cash and receivables. No collateral is held by the entity. The entity has not granted any financial guarantees.

Credit risk associated with the entity's financial assets, other than receivables, is managed through the selection of counterparties and establishment of minimum credit rating standards.

The Commission considers a financial asset in default when contractual payments are 90 days past due. However, in certain cases, the Commission may also consider a financial asset to be in default when internal or external information indicates that the

entity is unlikely to receive the outstanding contractual amounts in full before taking into account any credit enhancements held by the Commission.

### Cash and cash equivalents

Cash comprises cash on hand and bank balances within the NSW Treasury Banking System.

No interest was earned on daily bank balances due to Treasury's cash management reforms which were introduced in 2015–16.

### Collectibility of trade debtors

Collectability of trade debtors is reviewed on an ongoing basis. Procedures as established in the Treasurer's Directions are followed to recover outstanding amounts, including letters of demand. Debtors which are known to be uncollectible are written off. An allowance for impairment is raised when there is objective evidence that the entity will not be able to collect all amounts due. This evidence includes past experience, and current and expected changes in economic conditions and debtor credit ratings. No interest is earned on trade debtors. Sales are made on 30 day terms.

	Current	<30 days	30–60 days	61–90 days	>91 days	30-Jun-20 \$'000 Total
Expected credit loss rate	-	-	-	-	-	-
Estimated total gross carrying amount	-	-	-	-	-	-
Expected credit loss	-	-	-	-	-	-

	Current	<30 days	30–60 days	61–90 days	>91 days	30-Jun-19 \$'000 Total
Expected credit loss rate	-	-	-	-	-	-
Estimated total gross carrying amount	16	-	-	-	60	76
Expected credit loss	-	-	-	-	-	-

The ageing analysis excludes statutory receivables and prepayments, as these are not within the scope of AASB 7. Therefore, the 'total' will not reconcile to the receivables total in Note 8. The entity is not materially exposed to concentrations of credit risk to a single trade debtor or group of debtors as at 30 June 2020.

### ii. Liquidity risk

Liquidity risk is the risk that the entity will be unable to meet its payment obligations when they fall due. The entity continuously manages risk through monitoring future cash flows and maturities planning to ensure adequate holding of high quality liquid assets.

During the current and prior year, there were no defaults on any borrowings. No assets have been pledged as collateral. The entity's exposure to liquidity risk is deemed insignificant based on prior periods' data and current assessment of risk.

Liabilities are recognised for amounts due to be paid in the future for goods or services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in NSW TC 11/12. For small business suppliers, where terms are not specified, payment is made no later than 30 days from the date of receipt of a correctly rendered invoice. For other suppliers, if trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or statement is received. For small business suppliers, where payment is not made within the specified time period, simple interest must be paid automatically unless an existing contract specifies otherwise. For payments to other suppliers the Chief Executive may automatically pay the supplier simple interest. No interest was applied during the year.



*Maturity Analysis and interest rate exposure of financial liabilities*

	Weighted Average Effective Interest Rate %	Nominal Amount \$'000	Interest rate exposure			Maturity Dates		
			Fixed Interest Rate \$'000	Variable Interest Rate \$'000	Non-Interest bearing \$'000	<1 Yr \$'000	1-5 Yr \$'000	> 5 Yr \$'000
<b>2020</b>								
Payables:								
• Creditors		136	-	-	136	136	-	-
Borrowings:								
• Lease Liabilities	1.98%	4,396	4,396	-	-	485	2,573	1,338
		4,532	4,396	-	136	621	2,573	1,338
<b>2019</b>								
Payables:								
• Creditors		240	-	-	240	240	-	-
		240	-	-	240	240	-	-

**iii. Market risk**

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. The Commission does not have any investments or interest bearing liabilities and therefore has minimal exposure to market risk.

**(c) Fair value measurement**

**i. Fair value compared to carrying amount**

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value measurement is based on the presumption that the transaction to sell the asset or transfer the liability takes place either in the principal market for the asset or liability or in the absence of a principal market, in the most advantageous market for the asset or liability.

**ii. Fair value recognised in the Statement of Financial Position**

Management assessed that cash, trade receivables, trade payables and other current liabilities approximate their fair values, largely due to the short-term maturities of these instruments. The Commission does not hold financial and non-financial assets and liabilities that are valued at fair value using valuation techniques.

**22. RELATED PARTY DISCLOSURES**

The entity's key management personnel compensation are as follows:

	2020 \$'000	2019 \$'000
Short-term employee benefits:		
Salaries	1,174	1,143
Other monetary allowances	-	-
Non-monetary benefits	-	-
Post-employment benefits	80	80
Termination benefits	-	-
Total remuneration	1,254	1,223

The Commission did not enter into any transactions during the year with key management personnel, their close family members and controlled or jointly controlled entities thereof.

During the year, the entity entered into transactions on arm's length terms and conditions with other entities that are controlled/jointly controlled/significantly influenced by the NSW Government. These transactions in aggregate are a significant portion of the Judicial Commission's activities.



These transactions include:

- Long Service Leave and Defined Benefit Superannuation assumed by the Crown
- Appropriations
- Transactions relating to the Treasury Banking System
- Employer contributions paid to Defined Benefit Superannuation funds
- Payments into the Treasury Managed Fund for workers' compensation insurance and other insurances.

### **23. EVENTS AFTER THE REPORTING PERIOD**

No matters or circumstances have arisen since the end of the financial year which significantly affect or may significantly affect the operations of the Commission, the results of those operations or the state of affairs of the Commission in future financial years.

End of audited financial statements

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### Appendix 1

#### **Complaints against judicial officers: guidelines**

View Guide for Complainants online at [www.judcom.nsw.gov.au/complaints/guide-for-complainants/](http://www.judcom.nsw.gov.au/complaints/guide-for-complainants/).

### Appendix 2

#### **Conduct Division: guidelines for examination of complaints**

View Conduct Division: guidelines for the examination of complaints online at [www.judcom.nsw.gov.au/complaints/conduct-division-guidelines-for-examination-of-complaints/](http://www.judcom.nsw.gov.au/complaints/conduct-division-guidelines-for-examination-of-complaints/).

### Appendix 3

#### **Continuing judicial education policy**

View Continuing Judicial Education Policy online at [www.judcom.nsw.gov.au/education/continuing-judicial-education-policy/](http://www.judcom.nsw.gov.au/education/continuing-judicial-education-policy/).

Photo previous page: The library provides bibliographical support for the Commission's research, education and publishing programs.



## Appendix 4

### Education and Bench Book Committees 2019–20

#### EDUCATION COMMITTEES

##### Standing Advisory Committee on Judicial Education

- The Honourable Justice J Basten, Supreme Court (Chair)
- The Honourable Justice N Pain, Land and Environment Court
- His Honour Judge P Lakatos SC, District Court
- His Honour Deputy Chief Magistrate M Allen, Local Court
- Chief Commissioner P Kite SC, Industrial Relations Commission (until 20 November 2019)
- Chief Commissioner N Constant, Industrial Relations Commission (from 3 March 2020)
- Ms U Doyle, Director, Education, Judicial Commission of NSW (Convenor).

##### Supreme Court Education Committee

- The Honourable Justice J Basten (Chair)
- The Honourable Justice C Hoeben AM RFD
- The Honourable Justice M Leeming
- The Honourable Justice A Payne
- The Honourable Justice R White
- The Honourable Justice L McCallum (from 6 February 2020)
- The Honourable Justice P Johnson
- The Honourable Justice I Harrison
- The Honourable Justice P Garling RFD
- The Honourable Justice A Black
- The Honourable Justice R Wright
- Mr C D'Aeth, Principal Registrar
- Ms U Doyle, Director, Education, Judicial Commission of NSW (Convenor).

##### Land and Environment Court Education Committee

- The Honourable Justice N Pain (Chair)
- The Honourable Justice T Moore
- Senior Commissioner S Dixon
- Commissioner D Dickson
- Ms S Froh, Registrar
- Ms U Doyle, Director, Education, Judicial Commission of NSW (Convenor).

##### District Court Education Committee

- Her Honour Judge P Hock (Chair)
- His Honour Judge P Lakatos SC (until 31 July 2019)
- His Honour Judge G Lerve
- Her Honour Judge S Huggett
- His Honour Judge P Whitford SC (until 31 July 2019)
- Her Honour Judge D Yehia SC
- His Honour Judge J Hatzistergos AM
- Her Honour Judge J Culver
- Her Honour Judge J Girdham SC (from 1 August 2019)
- His Honour Judge J Pickering SC (from 1 August 2019)
- His Honour Judge M Dicker SC
- His Honour Judge W Hunt
- His Honour Judge C O'Brien AM
- His Honour Judge R Weinstein SC (from 1 August 2019)
- His Honour Judge J Smith SC (from 1 August 2019)
- Mr J Howard, Judicial Registrar

- Ms U Doyle, Director, Education, Judicial Commission of NSW (Convenor).

##### Local Court Education Committee

- Her Honour Deputy Chief Magistrate J Mottley AM
- His Honour Deputy Chief Magistrate M Allen (Chair)
- His Honour Magistrate D Heilpern (until 31 March 2020)
- His Honour Magistrate I Guy
- Her Honour Magistrate V Swain
- His Honour Magistrate L Mabbutt
- Her Honour Magistrate S McIntyre
- His Honour Magistrate M Antrum
- His Honour Magistrate R Stone
- Her Honour Magistrate K Robinson
- Her Honour Magistrate C Huntsman
- Her Honour Magistrate E Kennedy
- His Honour Magistrate P Stewart
- His Honour Magistrate R Hudson
- Ms B Delbridge, Policy Officer, Chief Magistrate's Office
- Ms U Doyle, Director, Education, Judicial Commission of NSW (Convenor).

##### Children's Court Education Committee

- His Honour Judge P Johnstone (Chair)
- His Honour Magistrate A Sbrizzi
- Her Honour Magistrate T Sheedy
- Her Honour Magistrate D Maher
- Ms R Davidson, Executive Officer
- Ms R Kang, Senior Children's Registrar
- Ms U Doyle, Director, Education, Judicial Commission of NSW (Judicial Commission Representative).

##### Ngara Yura Committee

- The Honourable J Allsop AO, Chief Justice, Federal Court of Australia
- The Honourable Justice L McCallum, Supreme Court (Chair)
- The Honourable Justice R Pepper, Land and Environment Court
- Her Honour Judge D Yehia SC, District Court
- Her Honour Deputy Chief Magistrate J Mottley AM, Local Court
- His Honour Magistrate B van Zuylen, Local Court
- Her Honour Magistrate S Duncombe, Local Court
- Mr J Behrendt, Managing Director, Chalk & Behrendt
- Ms D Link-Gordon, Senior Community Access Officer, Indigenous Women's Legal Program, Women's Legal Service NSW (until 19 July 2019)
- Mr A Smith, Barrister, University Chambers (from 30 September 2019)
- Mr E Schmatt AM PSM, Chief Executive, Judicial Commission of NSW
- Ms U Doyle, Director, Education, Judicial Commission of NSW (Convenor).

#### BENCH BOOK COMMITTEES

##### Criminal Trial Courts Bench Book Committee

- The Honourable Justice P Johnson
- The Honourable Justice RA Hulme (Chair)
- The Honourable Justice R Button (from 25 February 2020)

- His Honour Judge P Zahra SC
- His Honour Judge D Arnott SC
- Her Honour Judge S Huggett
- Her Honour Judge N Noman SC (from 25 February 2020)
- Ms P Mizzi, Director, Research and Sentencing, Judicial Commission of NSW (Convenor).

#### Civil Trials Bench Book Committee

- The Honourable Justice P Garling RFD (Chair)
- The Honourable Justice R Darke
- His Honour Judge R Letherbarrow SC (until 2 December 2019)
- His Honour Judge P Mahony SC (from 12 February 2020)
- His Honour Judge R Weinstein SC
- Her Honour Magistrate S McIntyre
- Her Honour Magistrate J Atkinson
- The Honourable M Campbell QC

- Mr E Schmatt AM PSM, Chief Executive, Judicial Commission of NSW
- Ms U Doyle, Director, Education, Judicial Commission of NSW
- Ms A Murphy, Legal Editor, Judicial Commission of NSW (Convenor).

#### Local Court Bench Book Committee

- Her Honour Deputy Chief Magistrate J Mottley AM (Chair)
- His Honour Deputy Chief Magistrate M Allen
- Her Honour Magistrate T O'Sullivan (from 23 August 2019)
- Her Honour Magistrate S McIntyre (from 23 August 2019)
- Her Honour Magistrate D Maher (from 23 August 2019)
- Ms B Delbridge, Policy Officer, Chief Magistrate's Office
- Ms P Mizzi, Director, Research and Sentencing, Judicial Commission of NSW.

## Appendix 5

### Conference topics 2019–20

#### ANNUAL CONFERENCES

##### Supreme Court of NSW Annual Conference, August 2019

- "Legislative Intention — a Defence", Lord Philip Sales, Justice, Supreme Court of the United Kingdom.
- "Private International Law in Practice Across the Divisions", The Honourable Justice Andrew Bell, President, Court of Appeal.
- "Non-publication and Take-down Orders", The Honourable Justice Tony Meagher, Court of Appeal, The Honourable Justice Stephen Rothman AM, Supreme Court of NSW and The Honourable Justice Geoff Lindsay, Supreme Court of NSW.
- "New Jury Direction Laws and Appeals", The Honourable Justice Virginia Bell AC, High Court of Australia.
- "Developments in Criminal Law", The Honourable Justice Clifton Hoeben AM RFD, Chief Judge at Common Law, Supreme Court of NSW.
- "Recent Developments in Equity and Commercial Law", The Honourable Robert McDougall QC, Barrister, 12 Wentworth Selborne Chambers.
- "Our Artificially Intelligent Future", Dr Tiberio Caetano, Chief Scientist, Intelligent Institute.
- "Artificial Intelligence, Administrative Law and Financial Regulation", Dr Will Bateman, Senior Lecturer, Australian National University.
- "Is Birdsong Music? Outback Encounters with an Australian songbird", Dr Hollis Taylor, Honorary Research Fellow, Macquarie University.

##### Local Court of NSW Annual Conference, July 2019

- "Welcome Address", His Honour Judge Graeme Henson AM, Chief Magistrate of NSW.
- "Mindfulness for Wellbeing and Peak Performance", Dr Craig Hassed OAM, Mindfulness Coordinator, Monash University.
- "The Physical and Mental Health Effects of Methamphetamines", Dr Anthony (Tony) Gill, Chief Addiction Medicine Specialist, NSW Ministry of Health, Senior Staff Specialist, Alcohol and Drugs Services, St

Vincent's Hospital Sydney and President, Australasian Professional Society on Alcohol and Other Drugs (APSAD).

- "Imposing Fines — the function of Work Development Orders (WDO)", Mr Mathew Baker, Senior Technical Advisor, Revenue NSW and Ms Meredith Osborne, Director of Civil Law, Legal Aid NSW and former manager of the WDO Service, Legal Aid NSW.
- "Cross-examination and the Credibility Rule", The Honourable Justice Geoffrey Bellew, Supreme Court of NSW.
- "Criminal Law Update", The Honourable Justice Christine Adamson, Supreme Court of NSW.
- "Cultural Diversity in the Judicial System — Some Observations and Insights"
  - "Indigenous justice — The life I live today, I dreamt of that life in addiction", Mr Jeff Amatto, founder, Brothers 4 Recovery and More Cultural Rehabs Less Jails.
  - "Participation of Muslims in the Judicial Process; Some Observations", Ms Sarah Khan, President, Muslim Legal Network (NSW).
- "Jurisdiction of the Industrial Magistrate", The Honourable Justice Michael Walton, Supreme Court of NSW.
- "Fetal Alcohol Spectrum Disorder (FASD) and the judicial system", Professor Elizabeth Elliott AM, Paediatrics & Child Health, The University of Sydney and NHMRC Practitioner Fellow, Paediatrics & Child Health, Children's Hospital, Westmead.
- "Civil Law Update", The Honourable Justice Peter Garling RFD, Supreme Court of NSW.
- "Masterful Mentoring", Ms Melissa Richardson, Director, Art of Mentoring.
- "Open Forum", His Honour Judge Graeme Henson AM, Chief Magistrate of NSW, Her Honour Deputy Chief Magistrate Jane Mottley, Local Court of NSW, His Honour Deputy Chief Magistrate Michael Allen, Local Court of NSW and Her Honour Magistrate Teresa O'Sullivan, State Coroner, Coroner's Court of NSW.



## OTHER CONFERENCES

### Local Court of NSW Southern Regional Conference, March 2020

- “Aggregate Sentencing Made Easy — information, explanation and examples”, His Honour Magistrate Philip Stewart, Local Court of NSW.
- “Legislative Update — recent and upcoming changes”, His Honour Deputy Chief Magistrate Michael Allen, Local Court of NSW.
- “The Art of Bail”, His Honour Magistrate Bruce Williams, Local Court of NSW.
- “Commonwealth sentencing refresher”, His Honour Magistrate Imad Abdul-Karim, Local Court of NSW.
- “Defended Hearings — sexual offences”, His Honour Magistrate Mark Douglass, Local Court of NSW.
- “Adjournments in Local Court criminal proceedings”, His Honour Magistrate Caleb Franklin, Local Court of NSW.
- “Costs orders in both civil and criminal cases”, Her Honour Magistrate Erin Kennedy, Local Court of NSW.
- “Coronial session”, Her Honour Magistrate Elizabeth Ryan, Local Court of NSW.
- “Youth Crime in NSW: An Environmental Scan”, His Honour Judge Peter Johnstone, President, Children’s Court of NSW.
- “Justice Advocacy Service (JAS)”, Ms Kelly Watson, Regional Manager, Justice Advocacy Service, Intellectual Disability Rights Service, Department of Communities & Justice.
- “Applications to the Local Court”, His Honour Magistrate Timothy Keady, Local Court of NSW.

### Children’s Court of NSW Section 16 Meeting, November 2019

- “Corporate Environmental Scanning, Performance & Program Support Command”, Mr Robert Rowe, Chief Inspector, NSW Police Force.
- “Regional Reports”, Her Honour Magistrate Ellen Skinner, Children’s Court of NSW, His Honour Magistrate David Williams, Children’s Court of NSW and His Honour Magistrate Paul MacMahon, Children’s Court of NSW.
- “Documentary ‘Before 1770’”, Shaykh Wesam Charkawi, Abu Hanifa Institute.
- “Magistrates Breakout: Children’s Parole Session”, His Honour Magistrate Albert Sbrizzi, Children’s Court of NSW.
- “Magistrates Breakout: Current Issues”, His Honour Judge Peter Johnstone, President, Children’s Court of NSW.
- “Registrar Breakout: Joint Conferences of Experts”, Ms Rana Sabih, Children’s Registrar, Children’s Court of NSW.
- “Registrar Breakout: Mediation”, Ms Rebecca Kang, Senior Children’s Registrar, Children’s Court of NSW.
- “Koori Court Update”, Her Honour Magistrate Susan Duncombe, Children’s Court of NSW and Mr Isaiah Dawe, CEO, ID. Know Yourself.

## ORIENTATION PROGRAMS

### Local Court of NSW Magistrates’ Orientation Program, December 2019

- “Local Court of NSW Magistrates’ Orientation Program”.

## Appendix 6

### Judicial education seminars, workshops and field trips 2019–20

#### Supreme Court of NSW

- “Terrorism Trials and Sentencing”, The Honourable Justice Peter Johnson, Supreme Court of NSW, The Honourable Justice Christine Adamson, Supreme Court of NSW and The Honourable Justice Geoffrey Bellew, Supreme Court of NSW, Twilight Seminar, 10 March 2020.

#### Land and Environment Court of NSW

- “Shakespeare Room: State Library of NSW”, Ms Emma Gray, Librarian Academics & Rare Books, State Library NSW, Field Trip, 27 August 2019.
- “LEC Field Trip: 60 Martin Place”, Mr Mark Finch, Senior Development Manager, Investa Office Management, Mr Mark Tait, Group Executive and Head of Commercial Development, Investa Office Management, Mr Michael Cook, Group Executive, Investa Office Management and Mr Tony Grist, Principal, Hassell, Field Trip, 26 February 2020.

#### District Court of NSW

- “Child Sexual Assault Program in Practice”, Twilight Seminar, 6 August 2019.
- “Evidence Amendment (Tendency and Coincidence) Act 2020”, His Honour Judge Richard Weinstein SC, District Court of NSW, Twilight Seminar, 22 June 2020.

#### Local Court of NSW

- *Local Court of NSW Metropolitan Series II*, 11–15 November 2019

- “Costs orders in both civil and criminal cases”, Her Honour Magistrate Erin Kennedy, Local Court of NSW.
- “Commonwealth sentencing refresher”, His Honour Magistrate Imad Abdul-Karim, Local Court of NSW.
- “Adjournments in Local Court criminal proceedings”, His Honour Magistrate Caleb Franklin, Local Court of NSW.
- “Applications to the Local Court”, His Honour Magistrate Timothy Keady, Local Court of NSW.
- *Local Court of NSW Metropolitan Series I*, 10–14 February 2020
  - “The Art of Bail”, His Honour Magistrate Bruce Williams, Local Court of NSW.
  - “Aggregate Sentencing Made Easy — information, explanation and examples”, His Honour Magistrate Philip Stewart, Local Court of NSW.
  - “Defended Hearings — sexual offences”, His Honour Magistrate Mark Douglass, Local Court of NSW.
  - “Legislative Update — recent and upcoming changes”, His Honour Deputy Chief Magistrate Michael Allen, Local Court of NSW.
  - “Justice Advocacy Service (JAS)”, Ms Kelly Watson, Regional Manager, Justice Advocacy Service, Intellectual Disability Rights Service, Department of Communities & Justice, Ms Denise Hanley, Program Director, Justice Advocacy Service, Intellectual Disability Rights Service, Department of Communities & Justice and Mr Matt French,

Manager, Training & Capacity Building, Justice Advocacy Service, Intellectual Disability Rights Service, Department of Communities & Justice.

#### Children's Court of NSW

- "Children's Court of NSW Section 16 Meeting (online)", Twilight Seminar, 27 March 2020.
- "Children's Court of NSW Section 16 Meeting (online)", Twilight Seminar, 17 April 2020.

#### Cross-jurisdictional

- "Cross-jurisdictional Seminar: Forensic Science in the Courtroom", Dr Lucina Hackman, Forensic Anthropologist FA1, Churchill Fellow, University of Dundee, Twilight Seminar, 20 August 2019.

- "Cross-jurisdictional Seminar: Risky Business", Mr Allan Sparkes CV OAM VA, Deputy Commissioner, Mental Health Commission of NSW, Twilight Seminar, 21 November 2019.

#### Ngara Yura Program

- "The Wotton Decision", Ms Christine Ronalds AO SC, Frederick Jordan Chambers and Mr Anthony McAvoy SC, Barrister, Frederick Jordan Chambers, Twilight Seminar, 31 October 2019.
- "Library of NSW — Living Language: Country, Culture, Community", Field Trip, 6 November 2019.
- "Bugmy Bar Book Committee together with Jonathan Rudin: Addressing Indigenous Over-Representation in Canada: Legislation, Litigation and Mobilization", Mr Jonathan Rudin, Program Director, Aboriginal Legal Services, Toronto, CA, Twilight Seminar, 11 February 2020.

## Appendix 7

### Articles published 2019–20

Legend: JOB — *Judicial Officers' Bulletin*, TJR — *The Judicial Review*

- M Allars, "Judicial review and the Land and Environment Court" (2019) 14(2) *TJR* 89
- S H Allnutt and T Butler, "Court diversion for those with psychosis and its impact on reoffending rates" (2019) 31(10) *JOB* 91
- T F Bathurst, "Who judges the judges, and how should they be judged?" (2019) 14(2) *TJR* 19
- S Beckett, "Judicial note about the *Bugmy Bar Book* project" (2020) 32(5) *JOB* 47
- V M Bell, "Jury directions: the struggle for simplicity and clarity" (2019) 14(2) *TJR* 1
- N R Cowdery, J Hunter and R McMahon, "Sentencing and disadvantage: the use of research to inform the court" (2020) 32(5) *JOB* 43
- J R Dive, "The trauma-informed approach of the Drug Court of NSW" (2020) 32(3) *JOB* 19
- U Doyle, "Emerging trends and influences in judicial education" (2019) 31(11) *JOB* 101
- U Doyle, "First Nations consensus in constitutional reform, nation building and treaty making processes" (2019) 31(6) *JOB* 51
- S Duncombe, "The trauma-informed approach of the NSW Youth Koori Court" (2020) 32(3) *JOB* 21
- P Hora, "The trauma-informed courtroom" (2020) 32(2) *JOB* 11
- R A Hulme, "Significant developments in the criminal law in 2019" (2020) 32(1) *JOB* 1

- W J Hunt, "Adopting a trauma-informed approach in the District Court of NSW" (2020) 32(2) *JOB* 14
- "Jury study with jurors in UK sexual assault trials shows that jurors do not believe obvious myths and stereotypes" (2019) 31(7) *JOB* 65
- A Levin and T Kashyap, "Law enforcement and police powers in NSW during COVID-19" (2020) 32(4) *JOB* 29
- P Mazerolle, "Striving for effectiveness in crime and justice policy: rhetoric, reality and pathways for the future" (2019) 31(8) *JOB* 73
- S McCarthy, "The trauma-informed barrister" (2020) 32(3) *JOB* 23
- A Miller, "Lawcodes report: new criminal penalties for COVID-19 related offences" (2020) 32(4) *JOB* 33
- T J Moore, "Continuing judicial education in the Land and Environment Court" (2019) 31(11) *JOB* 99
- B O'Neill, "Decolonising the mind: working with transgenerational trauma and First Nations People" (2019) 31(6) *JOB* 54
- M Painting, "The new national certification system for the translating and interpreting profession in Australia" (2019) 31(7) *JOB* 63
- B Rauf, "After *R v Bayda*; *R v Namoa* (No 8): continuing the dialogue with academics of Islam" (2019) 31(9) *JOB* 81
- J Ravulo, "The role of holistic approaches in reducing the rate of recidivism for young offenders" (2019) 14(2) *TJR* 125
- M S Weinberg, "Extended joint criminal enterprise — "top-down" or "bottom-up" legal reasoning?" (2019) 14(2) *TJR* 41

## Appendix 8

### Publications list

#### Education Monographs

1. Fragile Bastion: Judicial Independence in the Nineties and Beyond, 1997
2. A Matter of Judgment: Judicial decision-making and judgment writing, 2003
3. The Role of the Judge, 2004
4. Statutory Interpretation: Principles and pragmatism for a new age, 2007

5. A matter of fact: the origins and history of the NSW Court of Criminal Appeal, 2013

#### Research Monographs

1. The Use of Custodial Sentences and Alternatives to Custody by NSW Magistrates, 1990
2. Community Service Orders: Views of Organisers in NSW, 1991



3. Community service orders and periodic detention as sentencing options: A survey of judicial officers in New South Wales, 1991
4. Sentencing juvenile offenders and the Sentencing Act 1989 (NSW): The impact of legislative and administrative changes in the Children's Court 1982–1990, 1991
5. A critical review of periodic detention in New South Wales, 1992
6. Sentencing drug offenders: Analysis of sentences imposed in the higher courts of New South Wales, 25 September 1989–31 December 1991, 1992
7. "Special circumstances" under the Sentencing Act 1989 (NSW), 1993
8. Alcohol as a sentencing factor: A survey of attitudes of judicial officers, 1994
9. Sentence Indication Hearings Pilot Scheme, 1994
10. The evidence of children, 1995
11. Judicial views about pre-sentence reports, 1995
12. Sentenced homicides in New South Wales 1990–1993, 1995
13. The Sentencing Act 1989 and its effect on the size of the prison population, 1996
14. Child sexual assault, 1997
15. Sentencing disparity and the gender of juvenile offenders, 1997
16. Magistrates' attitudes to drink-driving, drug-driving and speeding, 1997
17. Sentencing disparity and the ethnicity of juvenile offenders, 1998
18. Periodic detention revisited, 1998
19. Apprehended Violence Orders: A Survey of Magistrates, 1999
20. Sentencing drug offenders: Analysis of sentences imposed in the higher courts of New South Wales, 1 January 1992–31 December 1997, 1999
21. Sentencing dangerous drivers in New South Wales: Impact of the Jurisic guidelines on sentencing practice, 2002
22. Circle Sentencing in New South Wales: A Review and Evaluation, 2003
23. Sentenced Homicides in New South Wales 1994–2001, 2004
24. MERIT: Magistrates Early Referral Into Treatment Program: A Survey of Magistrates, 2004
25. Sentencing Offenders Convicted of Child Sexual Assault, 2004
26. Crown Appeals Against Sentence, 2005
27. The Nexus Between Sentencing and Rehabilitation in the Children's Court of NSW, 2005
28. Partial Defences to Murder in NSW 1990–2004, 2006
29. Full-time imprisonment in New South Wales and other jurisdictions: A national and international comparison, 2007
30. Sentencing Robbery Offenders since the Henry Guideline Judgment, 2007
31. Diverting mentally disordered offenders in the NSW Local Court, 2008
32. Achieving consistency and transparency in sentencing for environmental offences, 2008
33. The impact of the standard non-parole period sentencing scheme on sentencing patterns in New South Wales, 2010
34. Sentencing offenders convicted of child pornography and child abuse material offences, 2010
35. Conviction appeals in New South Wales, 2011
36. Sentencing for common offences in the NSW Children's Court: 2010, 2012
37. Sentencing in fraud cases, 2012
38. Sentencing Commonwealth drug offenders, 2014

39. Sentencing in NSW: A cross-jurisdictional comparison of full-time imprisonment, 2015
40. Transparent and consistent sentencing in the Land and Environment Court of NSW: orders for costs as an aspect of punishment, 2017

#### Sentencing Trends & Issues

1. The Children's Court, March 1991
2. The impact of truth in sentencing: Part 1, The higher courts, March 1992
3. The impact of truth in sentencing: Part 2, The Local Courts, June 1992
4. Sentencing in the Court of Criminal Appeal, February 1993
5. Common offences in the Local Courts, March 1994
6. Sentencing homicide: The effect of legislative changes on the penalty for murder, June 1994
7. Common offences in the higher courts, July 1994
8. From murder to manslaughter: Partial defences in New South Wales — 1900 to 1993, December 1994
9. Common offences in the Children's Court, May 1995
10. Sentencing drink driver offenders, June 1995
11. "Sentenced to the rising of the court", January 1996
12. The use of recognizances, May 1996
13. Sentencing Deception Offenders: Part 1 — Local Courts, June 1996
14. Sentencing Deception Offenders: Part 2 — Higher Courts, October 1996
15. Driving causing death: Section 52A of the Crimes Act 1900, May 1997
16. An overview of sentence and conviction appeals in the New South Wales Court of Criminal Appeal, March 1998
17. Kidnapping — Section 90A Crimes Act 1900 (NSW), July 1998
18. Common offences in the higher courts 1990–1997, August 1998
19. Sentencing offenders in the Local Courts — Effects of the Criminal Procedure Amendment (Indictable Offenders) Act 1995, February 2000
20. Sentencing female offenders in New South Wales, May 2000
21. Protective custody and hardship in prison, February 2001
22. Conviction and sentencing appeals in the NSW Court of Criminal Appeal 1996–2000, February 2002
23. Sentencing mentally disordered offenders: The causal link, September 2002
24. Bail: An examination of contemporary issues, November 2002
25. Sentencing methodology: Two-tiered or instinctive synthesis?, December 2002
26. Sentencing trends for armed robbery and robbery in company: The impact of the guideline in R v Henry, February 2003
27. Sentencing drink-driving offenders in the NSW Local Court, March 2003
28. Common offences in the Local Court, September 2003
29. Suspended Sentences in New South Wales, November 2003
30. Common Offences and the Use of Imprisonment in the District and Supreme Courts in 2002, March 2004
31. The Use and Limitations of Sentencing Statistics, December 2004
32. Pre-sentence Custody and Other Constraints on Liberty, May 2005
33. Trends in the Use of s 12 Suspended Sentences, June 2005

34. Successful Completion Rates for Supervised Sentencing Options, June 2005
35. Impact of the High Range PCA Guideline Judgment on Sentencing Drink Drivers in NSW, September 2005
36. Trends in the use of full-time imprisonment 2006–2007, November 2007
37. Common offences in the NSW Local Court: 2007, November 2008
38. Sentencing in complicity cases — Part 1: Joint criminal enterprise, June 2009
39. Sentencing in complicity cases — Abettors, accessories and other secondary participants (Part 2), February 2010
40. Common offences in the NSW Local Court: 2010, May 2012
41. Common offences in the NSW higher courts: 2010, December 2012
42. Special circumstances under s 44 of the Crimes (Sentencing Procedure) Act 1999, June 2013
43. Environmental planning and protection offences prosecuted in the NSW Local Court, November 2014
44. Sentencing for the offence of sexual intercourse with a child under 10, July 2015
45. Sentencing for domestic violence, June 2016
46. Common offences in the NSW Local Court: 2015, May 2017
47. Navigating the Bail Act 2013, June 2020

#### Journals

- Judicial Officers' Bulletin (Vols 1–32) (1988–)
- The Judicial Review (Vols 1–14) (1992–)

## Appendix 9 Ngara Yura Program

View Ngara Yura Committee Terms of Reference online at:

[www.judcom.nsw.gov.au/education/ngara-yura-program/ngara-yura-committee-terms-of-reference/](http://www.judcom.nsw.gov.au/education/ngara-yura-program/ngara-yura-committee-terms-of-reference/).

## Appendix 10 Assistance to other jurisdictions and organisations 2019–20

In 2019–20, the Commission provided assistance, advice and shared information and experience with the following:

#### Complaints function

- Shared expertise and experience with the Northern Territory Department of Attorney-General and Justice concerning a proposal for the establishment of a statutory process for handling complaints about judicial officers.
- Shared experience in dealing with complaints with the Judicial Commission of Victoria.

#### Judicial education

- Vicarious Trauma Research Project with UNSW: we continued our work on this project, in partnership with a UNSW research team led by Professor by Prof Jill Hunter, Dr Kevin O'Sullivan, adjunct academic and psychologist, Professor Prue Vines and Professor Richard Kemp, UNSW. The research project focuses

#### Bench Books

- Local Court Bench Book (1988–)
- Criminal Trial Courts Bench Book (1989–)
- Equality Before the Law Bench Book (online only) (2006–)
- Sentencing Bench Book (2006–)
- Civil Trials Bench Book (2007–)

#### Handbooks

- Sexual Assault Trials Handbook (online only) (2007–)
- Land and Environment Court of NSW Commissioners' Handbook (online only) (2010–)
- Children's Court of NSW Resource Handbook (online only) (2013–)

#### Brochures

- Judicial Commission of New South Wales, 1997
- Sentencing Information System: An invitation to subscribe, 2001
- Disabilities information, 2001
- Pro-bono schemes in NSW, 2004
- Judicial Information Research System, 2005
- Presentation pointers: Getting started and getting through your presentation, 2008
- From controversy to credibility: 20 years of the Judicial Commission of New South Wales, 2008
- Complaints against judicial officers, 2013

#### DVDs

- The role of the judge, 2004
- Concurrent evidence: New methods with experts, 2005
- Circle Sentencing in New South Wales, 2009
- The Bail Act 2013: Selected Scenarios, 2014

on the judicial officers' stress-related risks arising from their work on the bench, particularly in the area of vicarious trauma. The survey of NSW judicial officers had an exceptionally high response rate of over 50%. Over the past six months, the data has been evaluated by the researchers and a report will be published later in 2020.

- Department of Communities and Justice — United Nations Convention on the Rights of Persons with Disabilities (CRPD): we provided information to the Department of Communities and Justice in response to a request from the Commonwealth Attorney-General as to a Commonwealth delegation to the UN Committee on the Rights of Persons with Disabilities. The subject was raising disability awareness amongst the judiciary.
- Australian Human Rights Commission — National Inquiry into Sexual Harassment in Australian Workplaces: we provided feedback on the draft recommendations for the above enquiry.



- Asia Pacific Judicial Educators Meeting: a meeting was held in Cape Town on 26 September 2020, as part of the 2019 IOJT Conference. Participants from Australia, New Zealand and Hong Kong attended and agreed to hold an expanded meeting in May 2020, with Singapore and Papua New Guinea invited. The purpose of the meeting was to work towards improved practical outcomes in the delivery of judicial education by participating institutions (subsequently cancelled due to COVID-19 travel restrictions).
  - Evaluation of the NSW sentencing reforms: the Bureau of Crime Statistics and Research (BOCSAR) undertook an evaluation of the NSW sentencing reforms that came into effect which commenced in September 2018. A survey of judicial officers (Local and District Courts) was undertaken in partnership with the Judicial Commission, during October and November 2019. The purpose of the survey was to gain some insight into their experience with the new sentencing options.
  - Child Sexual Abuse Roundtable: we participated in a Child Sexual Abuse Roundtable held on 14 November 2019, organised by the Sydney Institute of Criminology and the University of Sydney Law School.
  - Support of the *Bugmy* Bar Book project: the Bar Book Project, launched in November 2019, has developed a number of chapters of research as a resource for practitioners to assist in the preparation and presentation of evidence to establish the application of the *Bugmy* principles. We made the *Bugmy* Bar Book available on JIRS and via the Judicial Commission's Ngara Yura web page.
  - Indigenous Clerkship program: the third annual mentoring program was again set up by the Supreme Court, Federal Court and NSW Bar Association, supported by the Judicial Commission. The successful program concluded on 28 February 2020.
  - Assistance to the Center for Judicial Education and Training in Israel: we assisted Judge Daphna Blatman Kedrai, Director of the Center, with information about orientation and mentoring programs for newly appointed judges in Australia.
  - Collaboration with Victoria University — Sir Zelman Cowen Centre: we provided advice and guidance to the Sir Zelman Cowen Centre with developing their conference program: "Trust and Community Engagement: Courts, Tribunals and Commissions" to be held on 27 November 2020 in Melbourne.
  - Institute of Judicial Studies, New Zealand: we shared information and advice about our publishing platforms and processes with staff of the IJS in March 2020. It was a valuable exchange for both organisations.
- Judicial support and case management systems**
- Drug Court Case Management System: we continue to host, maintain and support case management systems for the NSW Drug Court and the Compulsory Drug Treatment Correctional Centre.
  - Queensland Sentencing Information Service (QSI): we continue to host, maintain and support QSI. The Commission renewed the MoU with the Supreme Court Library Queensland until 30 September 2022.
  - Commonwealth Sentencing Database (CSD): we continue to host, maintain and support the CSD which is a joint project with the Commonwealth Director of Public Prosecutions and the National Judicial College of Australia. The MoU is renewed on an annual basis.
  - Papua New Guinea Sentencing Database (PNGSD): we continue to host, maintain and support the PNGSD for the Supreme and National Courts of PNG.
  - Papua New Guinea Pilot Integrated Criminal Case System Database (ICCS): we successfully completed the pilot phase of the project and the Memoranda of Understanding for PNGSD and ICCS were renewed until 30 June 2022. The ICCS continues to be expanded to all provinces across the country in a phased manner.
  - The Australian Capital Territory Sentencing Database (ACTSD): we continue to host, maintain and support the ACTSD for the Justice and Community Safety Directorate of the ACT Government. The current agreement with Justice and Community Services Directorate (ACT Government) is until 30 June 2021.
- Other**
- Australasian Reporting Awards.

## Appendix 11

### Working with other organisations 2019–20

Our officers represent the Commission on a number of committees and steering groups. Details of their involvements are:

#### Mr Ernest Schmatt AM PSM — Chief Executive

Member of:

- Board of Executives and the Board of Governors of the International Organization for Judicial Training
- Advisory Board to the Commonwealth Judicial Education Institute, Halifax, Canada
- Asia Pacific Judicial Educators (APJE)
- National Judicial Orientation Program Steering Committee, National Judicial College of Australia
- Judicial Council on Cultural Diversity.

#### Mr Murali Sagi PSM — Deputy Chief Executive

Member of:

- Justice Cluster Working Group
- Justice Sector Chief Information Officer's Committee

- Information Security Community of Practice
- NSW Public Sector Community of Finance Professionals
- Chair, NSW Fellows Committee, Australian Computer Society
- Mentor, University of Technology Sydney
- Mentor, University of Sydney
- Mentor, Engineers Australia, Sydney.

#### Ms Una Doyle — Director, Education

Member of:

- Aboriginal Legal Service Bugmy Evidence Project Steering Committee
- Co-Chair, International Committee 2019–21, the Association for Continuing Legal Education (ACLEA)
- Member, Austin 2021 Mid-Year Meeting Conference Planning Committee 2020–21, the Association for Continuing Legal Education (ACLEA)
- Vice Present and Treasurer, Executive Committee 2019–20, Continuing Legal Education Association of Australasia (CLEAA)

- Asia Pacific Judicial Educators (APJE)
- National Judicial Orientation Program Steering Committee, National Judicial College of Australia (NJCA)
- Civil Trials Bench Book Committee.

**Ms Pierrette Mizzi** — Director, Research and Sentencing

Member of:

- Aboriginal Legal Service Bugmy Evidence Project Steering Committee
- Forensic Patients in the Correctional System Committee, Office of the Director of Public Prosecutions (NSW)
- Sexual Assault Review Committee, Office of the Director of Public Prosecutions (NSW)
- Sentencing and Parole Reform Monitoring Group, Department of Communities and Justice
- Early and Appropriate Guilty Plea Reforms Monitoring Group, Department of Communities and Justice
- Driver Disqualification Licence Reform Implementation Monitoring Group, Department of Communities and Justice

- Forensic mental health reforms consultation group, Department of Communities and Justice
- *Bugmy* Bar Book Committee.

**Ms Sarah Collins** — Manager, Programs (Education)

Member of:

- Family Violence Working Group, Sub-Working Group 6: improving family violence competency of professionals working in the family law and family violence systems. This is an initiative of the Law and Crime and Community Safety Council (LCCSC), Commonwealth Attorney-General's Department and the Victorian Department of Justice and Community Safety.

**Ms Kate Lumley** — Manager, Publications and Communications

- Adjudicator for Australasian Reporting Awards.

**Ms Antonia Miller** — Lawcodes (Research)

- Adjudicator for Australasian Reporting Awards.

**Ms Lara Horstead** — Publishing (Education)

- Adjudicator for Australasian Reporting Awards.

## Appendix 12

### Visitors to the Commission 2019–20

#### Visitors

- Mr Yi Cheng Chan, State Counsel, DPP, Singapore — 30 July 2019
- Professor Dr Elisa Hoven, Criminal Law and Criminal Procedure Law, University of Leipzig, Germany — 19 November 2019
- Ms Fiona Hardy, Principal Policy Lawyer, Department of Attorney-General and Justice, Northern Territory Government — 21 February 2020.

#### Delegations

- Deputy Chief Justice of PNG, Ambeng Kandakasi, CBE and three other senior court administrators from the Supreme and National Courts of PNG — 14 August 2019
- Delegation of judicial officers from Hong Kong led by the Honourable Mr Justice Tony Poon, a judge of the Court of First Instance of the High Court of Hong Kong — 15 August 2019

- Delegation of 8 senior judges from the Philippines, led by the Chief Justice of the Philippines, the Honourable Lucas P Bersamin — 21 August 2019
- Delegation of 21 members of the Chinese Law Society — 10 September 2019
- Delegation of senior judicial officers and court administrators led by the Director General and Chief Justice of the Syariah Appeal Courts of Malaysia — 26 September 2019
- Delegation of 10 senior judicial officers and court administrators led by Judge Wen-Hsien Li, Judicial Yuan, Taiwan — 8 October 2019
- Delegation of senior court administrators led by the Registrar of the Supreme and National Courts of PNG — 25 November 2019
- Delegation consisting of senior judges and court administrators led by the Chief Justice of PNG from the Supreme and National Courts of PNG — 3 December 2019.

## Appendix 13

### Overseas visits 2019–20

- At the invitation of Sir Gibbs Salika GCL KBE, Chief Justice of PNG and the subsequent approval by the Commission, Mr Murali Sagi PSM, Deputy Chief Executive visited PNG from 11–14 September 2019. The purpose was to have a follow up meeting with the heads of the Law and Justice sector agencies in PNG involved with ICCSD and PNGSD, and also to participate in the Commonwealth Judges and Magistrates Conference which was being held in Port Moresby at the same time. The cost of the visit was covered by the Supreme and National Courts of PNG.
- The Commission's Chief Executive, Mr Ernest Schmatt AM PSM, and Ms Una Doyle, Director, Education attended the 9th International Conference on the Training of the Judiciary held in Cape Town, South Africa from 22–26 September 2019. The conference

was hosted and organised jointly by the International Organization for Judicial Training (IOJT) and the South African Judicial Education Institute. Ms Doyle co-presented a session at the conference. To coincide with the conference, the IOJT held meetings of the Board of Executives on 21 and 26 September, the meeting of the IOJT Board of Governors on 22 September and a meeting of the IOJT General Assembly on 25 September. Mr Schmatt attended each of these meetings. The cost of Mr Schmatt attending the meetings and the conference was covered by the IOJT and the Commission. Ms Doyle's cost of attending was covered by the Commission. During the IOJT Conference, Mr Schmatt and Ms Doyle also attended a meeting of members of the Asia Pacific Judicial Educators (APJE).



## Appendix 14

### Exchange of information 2019–20

The Commission actively seeks to exchange information with other government agencies, academic institutions and individuals. Since its establishment, the Commission has built strong links with similar organisations in other countries in order to share knowledge and experience, particularly in the areas of judicial education and criminological research. This has proved to be a most valuable network and, as a result, the Commission now holds a wealth of information concerning these subjects.

In 2019–20, the Commission had discussions and exchanged information with the following organisations:

#### Australian

- Attorney-General's Department (Cth)
- Australasian Institute of Judicial Administration (AIJA)
- Australian Bureau of Statistics
- Australian Institute of Criminology
- Bar Association of NSW
- Bureau of Crime Statistics and Research (NSW)
- College of Law
- Commonwealth Director of Public Prosecutions
- Continuing Legal Education Association of Australasia
- Corrective Services NSW
- Council of Australasian Tribunals
- Department of Aboriginal Affairs
- Department of Attorney-General and Justice (NT)
- Department of Communities and Justice (NSW)
- Department of Foreign Affairs and Trade
- Department of Justice and Attorney-General (Qld)
- Department of Premier and Cabinet (NSW)
- Federal Court of Australia
- High Court of Australia
- Independent Commission Against Corruption
- Judicial College of Victoria
- Judicial Commission of Victoria
- Judicial Conference of Australia
- Judicial Council on Cultural Diversity
- Law and Justice Foundation of NSW
- Law Society of NSW
- Legal Aid NSW
- Multiculturalism NSW
- National Judicial College of Australia
- NSW Civil and Administrative Tribunal
- NSW Law Reform Commission
- NSW Police Force
- NSW Sentencing Council
- NSW Workers Compensation Commission
- Office of the Director of Public Prosecutions (NSW)
- Office of the Director of Public Prosecutions (Qld)
- Ombudsman NSW
- Parliamentary Counsel's Office (NSW)
- Public Defenders (NSW)
- Roads and Maritime Services
- Royal Commission into Institutional Responses to Child Sexual Abuse (Cth)
- Sentencing Advisory Council (Vic)
- Supreme Court of Western Australia

- University of NSW, Faculty of Law
- University of Sydney, Faculty of Law
- University of Wollongong, Faculty of Law
- Western Sydney University
- Workers Compensation Commission.

#### International

- American Judicature Society
- Asia Pacific Judicial Reform Forum
- Canadian Association of Provincial Court Judges
- Center for Judicial Education and Training, Jerusalem, Israel
- Commonwealth Judicial Education Institute, Halifax, Canada
- Commonwealth Magistrates' and Judges' Association, United Kingdom
- High Court of Malaya
- High Court in Sabah and Sarawak
- Institute of Judicial Studies, New Zealand
- International Association of Women Judges
- International Organization for Judicial Training
- Judicial College, England and Wales
- Judicial Education Reference, Information and Technical Transfer (JERITT) Project, Michigan, USA
- Judicial Yuan, Taiwan
- Magisterial Service of Papua New Guinea
- National Association of State Judicial Educators, Michigan, USA
- National Judicial Institute, Canada
- Papua New Guinea Centre for Judicial Excellence
- Philippine Judicial Academy
- State Courts Singapore
- Supreme and National Courts of Papua New Guinea
- Supreme Court of Indonesia
- Supreme Court of Singapore
- Supreme Court of the Philippines
- Supreme Court of the Solomon Islands
- Supreme People's Court, Beijing, China
- Syariah Appeal Courts of Malaysia
- University of Leipzig, Germany.

## Appendix 15

### Commission officers' presentations 2019–20

- Ms J Selfe, "Australian Indigenous Astronomy", presentation to the 40 Aboriginal and Torres Strait Islander Year 12 students, Bunga Barrabugu Winter Camp, University of Sydney, 9 July 2019
- Ms J Selfe, "Panel Member", presentation to the multi-disciplinary legal & medical professionals, Traumatized Children Grown Up: what it means in civil litigation, The Mint, Sydney, 24 July 2019
- Mr M Sagi PSM, "PNGSD, ICCSD, and JIRS features developed by the Commission", presentation to the Deputy Chief Justice of PNG and three other senior officers from the Supreme and National Courts of PNG, Sydney, 14 August 2019
- Mr E Schmatt AM PSM and Mr M Sagi PSM, "JIRS, other decision support technologies, and case management systems", presentation to the delegation led by a judge of the Court of First Instance of the High Court of Hong Kong, Sydney, 15 August 2019
- Ms J Selfe, "Nia Yah Mah 'I made it'", presentation at the Indigenous Sciences Symposium 2019, The Museum of Applied Arts and Sciences (MAAS), 17 August 2019
- Mr E Schmatt AM PSM and Mr M Sagi PSM, "JIRS, other decision support technologies, and case management systems", presentation to the delegation led by the Chief Justice of the Philippine Supreme Court, Sydney, 21 August 2019
- Mr M Sagi PSM, "ICCSD, JIRS and other decision support technologies", presentation to the group of two judges of the Supreme Court of NSW, Sydney, 5 September 2019
- Mr E Schmatt AM PSM, "The Judicial Commission, its functions and place in the justice system of NSW", presentation to the delegation of 21 members of the Chinese Law Society, Sydney, 10 September 2019
- Mr M Sagi PSM, "Business Success", presentation to the graduate business students at the University of Sydney, Sydney, 19 September 2019
- Mr M Sagi PSM, "JIRS, other decision support technologies, and case management systems", presentation to the delegation led by the Director General and Chief Justice of the Syariah Appeal Courts of Malaysia, Sydney, 26 September 2019
- Mr M Sagi PSM, "JIRS, other decision support technologies, and case management systems", presentation to the 10 member delegation led by the Research Judge, Civil Department, Judicial Yuan Taiwan, Sydney, 8 October 2019
- Mr E Schmatt AM PSM, "The Role and Functions of the Judicial Commission", presentation to the delegation of 8 judges from the Judges Academy of Taiwan, 8 October 2019
- Ms J Selfe, "Aboriginal ways of seeing the night sky", presentation to the general public, Marrickville Library, 10 October 2019
- Ms J Selfe, "Book Launch: The First into the Dark: The Nazi persecution of the disabled", presentation to professionals and the general public, University of Technology Sydney, 23 October 2019
- Ms U Doyle, "Familiarisation", presentation to the National Judicial Orientation Program, National Judicial Orientation Program, Gold Coast, Queensland, 10 November 2019
- Mr M Sagi PSM, "JIRS, other decision support technologies, and case management systems", presentation to the Professor of Criminal Law and Criminal Procedure Law, University of Leipzig, Germany, Sydney, 19 November 2019
- Mr M Sagi PSM, "PNGSD, ICCSD, and JIRS features developed by the Commission", presentation to the Registrar and two other senior officers from the Supreme and National Courts of PNG, Sydney, 25 November 2019
- Ms J Selfe, "Culture, People & Organisations", presentation at the PCYC State Conference, Sydney, 28 November 2019
- Mr M Sagi PSM, "PNGSD, ICCSD, and JIRS features developed by the Commission", presentation to the Chief Justice of PNG and the delegation consisting of senior judges and court officers from the Supreme and National Courts of PNG, Sydney, 3 December 2019
- Ms J Selfe, "Ngara Yura", presentation to the Aboriginal school students, participants of the Wingara Mura — Bunga Barrabugu program, University of Sydney, Downing Centre, 11 December 2019
- Mr M Zaki, "Introduction to JIRS", presentation at the induction session for tipstaves, NSW Supreme Court, 31 January 2020
- Ms U Doyle, "Familiarisation", presentation at the National Judicial Orientation Program, Manly, 2 February 2020
- Mr M Sagi PSM, "JIRS and other decision support technologies, developed by the Commission", presentation to the Executive Director of the NSW Bar Association, and the Chair of the NSW Bar Association Technology Committee, Sydney, 14 February 2020
- Mr M Sagi PSM, "IT Enterprise Architecture", presentation to the students at the University of Technology Sydney, 17 February 2020
- Mr M Sagi PSM, "ICCSD, JIRS and other decision support technologies", presentation to the President and the Registrar of the NSW Workers Compensation Commission, Sydney, 6 March 2020
- Ms U Doyle, "Introduction and Facilitation", presentation to the NSW judicial officers, Cross-Jurisdictional Webinar: Unconscious Judicial Prejudice by Dr Hayley Bennett, webinar, 24 June 2020



## Appendix 16

### Access to government information 2019–20

Table A. Number of applications by type of applicant and outcome\*

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Media	0	0	0	0	0	0	0	0
Members of Parliament	0	0	0	0	0	0	0	0
Private sector business	0	0	0	0	0	0	0	0
Not for profit organisations or community groups	0	0	0	0	0	0	0	0
Members of the public (application by legal representative)	0	0	0	0	0	0	0	0
Members of the public (other)	0	0	0	0	0	0	0	0

\* More than one decision can be made in respect of a particular access application. If so, a recording must be made in relation to each such decision. This also applies to Table B.

Table B. Number of applications by type of application and outcome

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Personal information applications*	0	0	0	0	0	0	0	0
Access applications (other than personal information applications)	0	0	0	0	0	0	0	0
Access applications that are partly personal information applications and partly other	0	0	0	0	0	0	0	0

\* A **personal information application** is an access application for personal information (as defined in clause 4 of Schedule 4 to the GIPA Act) about the applicant (the applicant being an individual).

Table C. Invalid applications

Reason for invalidity	Number of applications
Application does not comply with formal requirements (section 41 of the Act)	0
Application is for excluded information of the agency (section 43 of the Act)	0
Application contravenes restraint order (section 110 of the Act)	0
Total number of invalid applications received	0
Invalid applications that subsequently became valid applications	0

Table D. Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 to Act

	Number of times consideration used*
Overriding secrecy laws	0
Cabinet information	0
Executive Council information	0
Contempt	0
Legal professional privilege	0
Excluded information	0
Documents affecting law enforcement and public safety	0
Transport safety	0
Adoption	0
Care and protection of children	0
Ministerial Code of Conduct	0
Aboriginal and environmental heritage	0

\* More than one public interest consideration may apply in relation to a particular access application and, if so, each such consideration is to be recorded (but only once per application). This also applies in relation to Table E.

**Table E. Other public interest considerations against disclosure: matters listed in table to section 14 of Act**

	Number of occasions when application not successful
Responsible and effective government	0
Law enforcement and security	0
Individual rights, judicial processes and natural justice	0
Business interests of agencies and other persons	0
Environment, culture, economy and general matters	0
Secrecy provisions	0
Exempt documents under interstate Freedom of Information legislation	0

**Table F. Timeliness**

	Number of applications
Decided within the statutory time frame (20 days plus any extensions)	0
Decided after 35 days (by agreement with applicant)	0
Not decided within time (deemed refusal)	0
<b>Total</b>	<b>0</b>

**Table G. Number of applications reviewed under Part 5 of the Act (by type of review and outcome)**

	Decision varied	Decision upheld	Total
Internal review	0	0	0
Review by Information Commissioner*	0	0	0
Internal review following recommendation under section 93 of Act	0	0	0
Review by ADT	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>

\* The Information Commissioner does not have the authority to vary decisions, but can make recommendation to the original decision-maker. The data in this case indicates that a recommendation to vary or uphold the original decision has been made by the Information Commissioner.

**Table H. Applications for review under Part 5 of the Act (by type of applicant)**

	Number of applications for review
Applications by access applicants	0
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	0

**Table I. Applications transferred to other agencies under Division 2 of Part 4 of the Act (by type of transfer)**

	Number of applications transferred
Agency-initiated transfers	0
Application-initiated transfers	0



## Appendix 17

### Checklist of reportable requirements 2019–20

#### Compliance with NSW Treasury Annual Report Compliance Checklist requirements

See the NSW Treasury website for information about revisions to deadlines affecting annual reports for 2019-20:  
[www.treasury.nsw.gov.au/information-public-entities/annual-reporting](http://www.treasury.nsw.gov.au/information-public-entities/annual-reporting)

Requirement	Page No. Reference
Letter of Submission	Inside front cover
Charter	pp 2, 4, 83
Aims and objectives	pp 4, 8–13
Access	Back cover
Management and structure	pp 8, 18–22, 84
Summary review of operations	See Overview chapter from p 3
Funds granted to non-government community organisations	None
Legal Change	p 83
Economic or other factors	Commentary on economic factors is throughout, including results tables for each chapter (pp 24–25, 36–37, 48–49, 58–59, 68–69, 80–81, 96–97) and Financial report from p 98. Commentary on the impact of the COVID-19 global pandemic is also throughout, including results tables for each chapter and specific discussion on pp 4, 34, 38 and 81
Management and activities	Results tables for each chapter (pp 24–25, 36–37, 48–49, 58–59, 68–69, 80–81, 96–97)
Research and development	Not applicable
Human resources	pp 67–78
Consultants	Statement that no consultants used: see p 74 and p 97
Workforce Diversity	p 72
Disability Inclusion Action Plans	The Commission is not required to have a disability inclusion action plan: see p 72
Land Disposal	The Commission does not own and did not dispose of any property
Promotion	See p 65 and Appendix 13
Consumer Response	While the Commission rarely receives complaints about its operations, it is responsive to feedback offered by participants at events, users of our publications and JIRS, and members of the general public. Complainants can be disappointed in the results of our complaints function, due to the nature and extent of our powers to examine: see pp 53–55 and case studies on p 56
Payment of Accounts	See Our finances chapter from p 95, including Tables 20 and 21 on p 97 See financial statements from p 98
Time for Payment of Accounts	No interest was paid due to late payments: see p 97 and financial statements from p 98
Risk management and insurance activities	See Our governance and ethics chapter from p 79, including pp 88–92
Internal audit and risk management policy attestation	p 91
Disclosure of Controlled Entities	The Commission has no controlled entities
Disclosure of Subsidiaries	The Commission has no subsidiaries
Multicultural Policies and Services Program	pp 72–73
Agreements with Multicultural NSW	No agreements have been entered into
Work Health and Safety (WHS)	p 77
Budgets	See Our finances chapter from p 95 and financial statements from p 98
Financial Statements	See financial statements with audit opinion from p 98 No significant matters requiring a response to Auditor-General were raised
Identification of audited financial statements	pp 101 and 122
Inclusion of unaudited financial statements	Not applicable
Additional matters for inclusion in annual reports	Statement re <i>Privacy and Personal Information Protection Act 1988</i> : p 87 After balance date events: p 122 Total external costs: p 139 Website: inside front cover and back cover
Investment performance	Not applicable
Liability management performance	Not applicable
Exemptions	Although the Commission meets the definition of “small statutory body”, it reports on an annual basis, not triennially
Numbers and remuneration of senior executives	p 92, see Figure 19 and Table 18
Implementation of Price Determination	Not applicable
<i>Government Information (Public Access) Act 2009</i>	p 87 and Appendix 16
Cyber Security Policy (CSP) attestation	p 90
Public Interest Disclosures (PID)	No public interest disclosures made
Requirements arising from employment arrangements	Not applicable
Public availability of annual reports	Annual reports starting from 2001–02 are available on the Commission’s website: <a href="http://www.judcom.nsw.gov.au/publications/#annual-reports">www.judcom.nsw.gov.au/publications/#annual-reports</a>



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## Glossary

<b>Appointed member</b>	A non-judicial member of the Judicial Commission of NSW: see also Official member.
<b>ARC</b>	Audit and Risk Committee.
<b>Bench books</b>	Reference books for judicial officers.
<b>BOCSAR</b>	NSW Bureau of Crime Statistics and Research.
<b>Complaint</b>	A complaint against a judicial officer about ability or behaviour, either made by a member of the public or referred to the Commission by the Attorney General.
<b>Conduct Division</b>	A special panel that examines a particular complaint referred to it by the Commission.
<b>COVID-19</b>	A contagious novel coronavirus declared a pandemic by the World Health Organization on 11 March 2020. The Prime Minister activated the Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19) on 27 February 2020. From March 2020, the NSW State Government imposed public health regulations to minimise its spread. See NSW Government information at <a href="http://www.nsw.gov.au/covid-19">www.nsw.gov.au/covid-19</a> and information compiled by the Judicial Commission at <a href="http://www.judcom.nsw.gov.au/covid-19-resources/">www.judcom.nsw.gov.au/covid-19-resources/</a> .
<b>Education day</b>	Calculated on the basis of 5 to 6 instructional hours attended by a judicial officer.
<b>ICCSD</b>	Integrated Criminal Case System Database developed and maintained by the Commission for Papua New Guinea.
<b>JIRS</b>	See Judicial Information Research System (JIRS).
<b>Judicial Commission</b>	An independent statutory organisation established by the <i>Judicial Officers Act 1986</i> . The appointed members and official members, collectively.
<b>Judicial Information Research System (JIRS)</b>	An online legal reference tool for judicial officers, relevant government organisations and members of the legal profession.
<b>Judicial officer</b>	As defined in the <i>Judicial Officers Act 1986</i> : <ul style="list-style-type: none"> <li>• a judge or associate judge of the Supreme Court of NSW</li> <li>• a member of the NSW Industrial Relations Commission</li> <li>• a judge of the Land and Environment Court of NSW</li> <li>• a judge of the District Court of NSW</li> <li>• the President of the Children's Court of NSW</li> <li>• a magistrate</li> <li>• the President of the Civil and Administrative Tribunal.</li> </ul> <p>The definition of judicial officer includes acting appointments to a judicial office, but does not include arbitrators, registrars, assessors, members of tribunals, legal representatives, retired judicial officers or federal judicial officers. A Commissioner of the Land and Environment Court is not a judicial officer.</p>
<b>Lawcodes</b>	The Lawcodes database of unique codes for NSW and Commonwealth criminal offences enables all NSW justice sector agencies to electronically exchange information. The Judicial Commission developed and maintains this database and general access to it is provided through our website.
<b>Ngara Yura Program</b>	Aboriginal cultural awareness program for judicial officers.
<b>NJOP</b>	National Judicial Orientation Program.
<b>Official member</b>	A judicial member of the Judicial Commission of NSW: see also Appointed member.
<b>PNGSD</b>	Papua New Guinea Sentencing Database.
<b>Pre-bench and orientation sessions/program</b>	Induction training for newly-appointed magistrates to assist them with their transition to the bench.
<b>Tipstaves</b>	Plural of tipstaff. A tipstaff is a recent law graduate employed for a 12-month period in a judge's chambers.
<b>Vexatious complainant</b>	The <i>Judicial Officers Act 1986</i> empowers the Judicial Commission of NSW to declare as a vexatious complainant a person who habitually and persistently, and mischievously or without any reasonable grounds, makes complaints about judicial officers. The effect of the declaration is that the Commission may disregard any further complaint from the complainant.

### Annual Report of the Judicial Commission of NSW 2019–20

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Apart from the title of publications or legislation, entries in italic indicate compliance with statutory reporting requirements.

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