JUDICIAL EDUCATION IN AUSTRALIA: A CONTEMPORARY OVERVIEW*

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ABSTRACT

Recent decades have seen judicial education in Australia gain acceptance and momentum in both provision and diversity. Institutional supports and resourcing for judicial officers at all levels have become common across the nation. But it is now timely to reflect critically on this progress. This article takes a step towards assessing the provision of judicial education, and where there might be opportunities to enhance this in the future. Central to that task is an empirical study of judicial education offered to the members of 25 Australian courts over a three-year period, 2015/6 to 2017/18. The article concludes with four recommendations for reform: (a) the adoption of a standard taxonomy for national reporting on judicial education; (b) increased alignment between judicial education and judicial lifecycles, from pre-appointment to pre-retirement; (c) the need to better meet the judicial education needs of judicial officers working in smaller jurisdictions or regional settings; and (d) an imperative for further empirical research on whether judicial education offerings are currently meeting the needs of judicial officers, courts, and the publics they serve.

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I Introduction: Judicial Education in Australia

The past fifty years has seen judicial education gain increasing global recognition as a deliberate, organised activity.[1] In 2017, for instance, the International Organization of Judicial Training (IOJT) issued the *Declaration of Judicial Training Principles.*[2] Jurisdictions across the world have adopted increasingly institutional approaches to judicial education, such as uniform standards and expectations for individual judicial officers; and legal education institutes and colleges have emerged across the Commonwealth. Professional expertise and an academic literature are developing.[3] These changes reflect increasing acceptance of the correlation between public confidence in the administration of justice and a judiciary that is transparently dedicated to improving the knowledge, skills, and work-related attributes of its members. The emergence of judicial education as a priority activity has, unsurprisingly, required the allocation of significant resources,[4] both to develop and deliver content and to free up judicial time to facilitate participation.

Judicial education initially encountered resistance, including in Australia, due to a faith in judicial selection according to legal professional merit as sufficient to ensure judicial quality.[5] Yet there has been increasing recognition that accomplishment in legal practice does not map entirely or instantly onto competence on the bench, leading to acceptance of the need for both initial induction/orientation programs for incoming officers[6] and continuing education thereafter. While there were some fears that judicial education may publicly signal deficiencies in the selection of judges[7] or even have the potential to operate as a 'back door' for a 'government wishing to give credentials to a class of candidates from outside the practising profession' who lacked the requisite values of independence,[8] these concerns have now largely been overcome.

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1 Toby S Goldbach, 'From the Court to the Classroom: Judges' Work in International Judicial Education' (2016) 49(3) *Cornell International Law Journal* 617, 670.

2 International Organization of Judicial Training, *Declaration of Judicial Training Principles*, adopted 8 November 2017: <http://www.iojt.org>.

3 Duane Benton and Jennifer AL Sheldon-Sherman, 'What Judges Want and Need: User-Friendly Foundations for Effective Judicial Education' [2015] (1) *Journal of Dispute Resolution* 23, 26.

4 Ibid 23.

5 See, eg, Lord Hailsham, *Hamlyn Revisited: The British Legal System Today* (Stevens and Sons, 1983) 50-51, quoted in Livingston Armytage, 'Judicial Education on Equality' (1995) 58(2) *Modern Law Review* 160, 162. See also Part II below.

6 Mary R Russell, 'Toward a New Paradigm of Judicial Education' [2015] (1) *Journal of Dispute Resolution* 79, 79. See also W Martin, 'Future Directions in Judicial Education' (2011) 10 *The Judicial Review* 277, 279.

7 Justice Gordon Samuels, 'Judicial Competency: How It Can Be Maintained' (1980) 54 *Australian Law Journal* 581, 585.

8 Justice JA Dowsett, 'Judicial Education' (Conference Paper, Judicial Conference of Australia Colloquium, 6-8 November 1998).

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In Australia, judicial education has, in the words of one judicial officer, become 'part of the landscape'.[9] Judicial officers have always had to meet initial educational requirements, in the form of minimalistic legal qualifications for appointment, but ongoing judicial education is not mandatory. Participation rests on other foundations. These include a judicial officer's desire for individual development and collegial engagement, a willingness to support institutional goals, and reputational motivations. In 2000, the Australian Law Reform Commission (ALRC) noted that these motivations had underpinned advances in judicial education.[10]

Significant formal developments include the establishment of the Judicial Commission of New South Wales (JCNSW) in 1986, the introduction of education programs by the Australian Institute of Judicial Administration (AIJA) from 1987, followed later by the creation of the Judicial College of Victoria (JCV) in 2002 and the National Judicial College of Australia (NJCA) in 2003.[11] In 2006, the NJCA issued the *National Standard for Professional Development for Australian Judicial Officers* ('National Standard'), which recommended 'at least five days each calendar year'.[12] This was endorsed by all relevant professional associations of the Australian judiciary.

In 2007, the NJCA published a report by Christopher Roper on *A Curriculum for Professional Development for Australian Judicial Officers* ('National Curriculum').[13] This was intended to be:

> a document to which all of the Australian bodies providing professional development for judicial officers might refer to help them set priorities, identify areas that could be covered but are not currently covered, and avoid duplication of effort.[14]

Data subsequently presented by Roper in 2010 revealed that just 3% of survey respondents had *not* participated in professional development in the preceding year, but an additional 29% admitted not attending the recommended five days.[15] In a survey we conducted in 2016, a clear majority of Australian judicial officers agreed that the quality and support of judicial education was a contemporary challenge for the Australian judiciary.[16] Disparities between jurisdictions,

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9 Respondent to survey quoted in Gabrielle Appleby et al, 'Contemporary Challenges Facing the Australian Judiciary' (2019) 42(2) *Melbourne University Law Review* 299, 334.

10 Australian Law Reform Commission, *Managing Justice: Review of the Federal Civil Justice System*, 2000, Report 89, [2.150] ('*Managing Justice*').

11 See Robert French, 'Judicial Education: A Global Phenomenon' (Speech delivered at The International Organisation for Judicial Training, 26 October 2009, Sydney), 5-9.

12 National Judicial College of Australia, *National Standard for Professional Development for Australian Judicial Officers* ('National Standard').

13 Christopher Roper, *A Curriculum for Professional Development for Australian Judicial Officers* (Report prepared for the National Judicial College of Australia, 2007) ('National Curriculum').

14 Ibid 4, 61-62.

15 Christopher Roper, *Review of the National Standard for Professional Development for Australian Judicial Officers* (December 2010) ('Review of the National Standard') 29.

16 Appleby et al (n 9) 334.

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both horizontally across the states and territories and vertically within court hierarchies attracted particular comment.

The proposed National Curriculum no longer appears on the NJCA's website. It was replaced in 2019 by a document, titled 'Attaining Elements of Judicial Excellence: A Guide for the NJCA' ('Attaining Judicial Excellence'), which outlines knowledge, skills, and qualities necessary to attain judicial excellence, 'to assist in designing professional development programs for Australian judicial officers'.[17]

These developments demonstrate a growing imperative to better understand what we mean when we refer to 'judicial education in Australia', in terms of what and how much is provided, and by whom. To that end, this article provides a snapshot of the landscape of the provision of judicial education between 2015-2018, as publicly disclosed by Australian courts and judicial education bodies. We consider the priorities revealed by public references to judicial education in terms of what is offered, who is devising and delivering the programs, the diversity of delivery modes, whether programs target the needs of judicial officers at different career stages and, importantly, whether there are gaps or jurisdictional inequalities that might invite a remedial response. While acknowledging that others take a different approach, we use the term judicial 'education' in preference to 'training' or 'development', and we are predominantly concerned with post-appointment education (although the potential for pre-appointment initiatives is recognised in the proposed typologies in Part III). We also use the terms 'judicial officers' and 'judges' to refer collectively to judges and magistrates unless the context dictates otherwise.

Reliance on publicly available sources limited the scope of our inquiry, excluding for example internal court offerings that are omitted from annual reports. It was not our purpose to measure participation in judicial education, areas of special demand for judicial education, or the extent to which the National Standard is met or exceeded. Nor do we attempt to evaluate the quality of current offerings.

Part II of this article briefly discusses the justifications for, and challenges around, the provision of judicial education. In Part III, we catalogue typologies through which the range of current judicial education initiatives may be appreciated and evaluated, first, by subject matter and then by audience. In Part IV, after explaining the methodology employed and its limitations, we report on an empirical analysis of programs delivered in Australia over the three-year period 2015/16 to 2017/18. In Part V, we offer a brief conclusion.

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[17] National Judicial College of Australia, *Attaining Judicial Excellence: A Guide for the NJCA* (2019) ('*Attaining Judicial Excellence*'). The Guide expressly draws on the National Center for State Courts, *Elements of Judicial Excellence: A Framework to Support the Professional Development of State Trial Court Judges* (2017).

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II Judicial Education: Justifications and Challenges

The justifications for judicial education can be usefully conceived as those relating to the individual judge and those relating to the judiciary as an institution. They both facilitate the overarching aim of supporting public confidence in the judiciary and the administration of justice, and the two types of justifications overlap. For example, the development of collegiality might have a benefit for individual judges in creating a more supportive workplace, but also may have institutional advantages that flow from a workplace culture of greater deliberation and opportunities for collaboration. We consider these elements in the following sections.

A Justifications Pertaining to the Individual

Judicial education, as a form of professional education in an admittedly unique context, can be justified on the basis that it provides the individual with the necessary attributes to fulfil their professional potential. Houle, Cyphert and Boggs suggest that the fundamental characteristic of a 'profession' — the possession of a 'specialized body of knowledge and skills' — requires both initial and continuing education for the individual.[18] Initial education provides the baseline knowledge and skills that allow accreditation. Continuing education enables professionals to 'master an expanding base of theoretical knowledge, increase their skills and problem-solving capacities and in general build on their professional experiences'.[19] Knox and McLeish add that continuing professional development can also enhance career development.[20]

Both initial and ongoing education can be seen in the judicial context. Educational offerings for the judiciary support the development and maintenance of skills, including direct curial skills and those in judicial administration and ethics. This assists with the induction of new judges as well as supporting their ongoing competence. Judicial education also targets currency of substantive legal knowledge. While judicial officers have the benefit of hearing arguments from all sides in the adversarial system, it is still important that the judiciary is informed about legislative reform or judicial decisions that alter the legal landscape. Judicial education is increasingly targeted at enhancing judicial knowledge of social context and increasing cultural sensitivity. Judicial education programs also provide an individual judge — who may find the

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[18] Cyril O Houle, Frederick Cyphert and David Boggs, 'Education for the Professions' (1987) 26(2) *Theory into Practice* 87, 87.

[19] Ibid.

[20] A B Knox and J A B McLeish, 'Continuing Education of the Professional' in Colin J Titmus (ed), *Lifelong Education for Adults: An International Handbook* (Pergamon Press, 1989) 374.

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experience of judging isolating[21] — with collegial interactions and support networks,[22] including for ethical advice.[23]

B Justifications Pertaining to the Institution

Devlin and Dodek position judicial education as 'a vitally important form of regulation because it is designed to ensure that judges are competent, thereby enhancing public confidence'.[24] Public confidence in the judicial institution rests on multiple pillars, including independence, impartiality, accountability, and diversity. A well-crafted system of judicial education can support all these pillars. But its crafting and delivery must walk a careful line, supporting judges without constraining their independent thought, or, indeed, creating a perception that this could occur.

Four connected institutional justifications for judicial education can be identified, namely, competence, accountability, efficiency, and transformation. While *competence* is a 'fuzzy concept',[25] it is accepted that judicial education can 'enhance the performance of the judicial system as a whole by continuously improving the personal and professional competence of all persons performing judicial branch functions'.[26] Thoughtfully designed and supported education, together with other institutional *accountability* measures, demonstrates that this responsibility is taken seriously,[27] whilst also supporting independence. *Efficiency* is also connected to competence, in that a judiciary that is highly competent across a range of skills and knowledge sets will also be more efficient. Efficiency of the court system is seen as critical for a range of social goods, from economic prosperity to the rights of the individual – who bear the cost and time burden of the litigation.[28] Reforms to improve court productivity 'can include information technology, training, new case processing designs and cultural changes.'[29]

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21 Chris Maxwell, Foreword, in Gabrielle Appleby and Andrew Lynch (eds), *The Judge, the Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia* (Cambridge University Press 2021) xiv; Isaiah Zimmerman, 'Isolation in the Judicial Career' (2000) 36 *Court Review* 1.

22 Kathy Mack, Anne Wallace and Sharyn Roach Anleu, *Judicial Workload: Time, Tasks and Work Organisation* (Australasian Institute of Judicial Administration, 2012) 53.

23 Gabrielle Appleby and Suzanne Le Mire, 'Ethical Infrastructure for a Modern Judiciary' (2019) 47(3) *Federal Law Review* 335.

24 Richard Devlin and Adam Dodek, 'Regulating Judges: Challenges, Controversies and Choices' in Richard Devlin and Adam Dodek (eds), *Regulating Judges: Beyond Independence and Accountability* (Edward Elgar, 2016) 1, 19.

25 Françoise Delamare Le Deist and Jonathan Winterton, 'What Is Competence?' (2005) 8(1) *Human Resource Development International* 27, 29.

26 National Association of State Judicial Educators, *Principles and Standards of Judicial Branch Education* (2011) 4, available at <https://nasje.org/wp-content/uploads/2011/05/principles.pdf>. See also Dennis W Catlin, 'An Empirical Study of Judges' Reasons for Participating in Continuing Professional Education' (1982) 7(2) *Justice System Journal* 236, 253.

27 Armytage (n 5) 161.

28 Maria Dakolias, 'Court Performance Around the World: A Comparative Perspective', (1999) 2 *Yale Human Rights and Development Law Journal* 87, 137.

29 Ibid 87.

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Beyond these three conventional justifications, more ambitiously, judicial education can be *transformative*, an agent for change. Globally, non-government organisations fund programs for judiciaries in post-conflict or developing countries as a way to promote ideals related to the rule of law[30] and established judicial values and ethics.[31] This justification is not however confined to such settings, as shown by the 'considerable emphasis' placed on what the former Chief Justice of South Australia, John Doyle, labelled as 'social awareness programs'.[32] These include coverage of Indigenous, gender, and disability issues but also anything 'aimed at ensuring that as far as possible judicial officers understand the people and situations that come before them'.[33] While there is concern to guard against 'inappropriate proselytisation' as a result of 'pressure from some sections of the community for programmes to cultivate in judges attitudes reflecting the prevailing enthusiasm of the day',[34] appreciation of 'social awareness' in judicial education is now seen as supporting, and not detracting from, the principle of judicial independence. Indeed, the IOJT has endorsed education on 'social context, values and ethics' as necessary to ensure 'an independent unbiased mindset for individual judges'.[35]

C Challenges for Judicial Education

A key challenge for judicial educators is how to engage judicial officers as adult learners in a unique institutional context. In Kidd and Titmus' phrase, the adult learner is 'physically, psychologically and socially different enough to require distinctive approaches to instruction'.[36] These differences include adults' pre-existing skills and knowledge but also their 'practical experience of the process for acquiring skills and knowledge'.[37] For the judiciary, the institutional imperative of judicial officers' independence, including from their educators, but also their colleagues, their heads of jurisdiction, and the other branches of government; their high socio-economic status; their role as impartial adjudicators; the solitary nature of judicial life; and their pre-existing high level of professional education and long experience in the law also need to be considered when judicial education is designed. In addition to ensuring engagement, judicial education thus also faces challenges around assessment and attendance, and coherence within the curriculum.

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30 Geeta Oberoi, 'Globalisation of the Judicial Education Discourse' (2012) 38(3) *Commonwealth Law Bulletin* 393, 395.

31 Kathleen E Mahoney, 'The Myth of Judicial Neutrality: The Role of Judicial Education in the Fair Administration of Justice' (1996) 32(4) *Williamette Law Review* 785, 788.

32 John Doyle, 'How Do Judges Keep Up to Date?' (Speech, LawAsia Downunder, 21-22 March 2005) 4.

33 Ibid 5.

34 Murray Gleeson, 'Judicial Selection and Training: Two Sides of the One Coin' (2003) 77 *Australian Law Journal* 591, 596.

35 International Organization for Judicial Training (n 2) art 1.

36 J R Kidd and Colin J Titmus, 'Introduction' in Colin J Titmus (ed) *Lifelong Education for Adults: An International Handbook* (Pergamon Press, 1989) xxxii.

37 John Daines, Carolyn Daines and Brian Graham, *Adult Learning Adult Teaching* (3rd ed, Ashley Drake Publishing, 2002) 1.

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(i) Ensuring Engagement

The previous experience of an adult learner offers significant advantages for continuing education: it can allow education to be pitched at an advanced level and provide opportunities to draw on experiences relevant to the group as a whole. However, it may also mean that working professionals come to such programs with scepticism of the value of a formal learning experience,[38] or a tendency to remain faithful to previous approaches to problem-solving even when presented with better options, known as the 'Einstellung effect'.[39] According to one judicial officer, this tendency is amplified in the judicial context: 'One of the challenges in judicial education is that as people get more experienced, they're more reluctant to change the way that they do things'.[40]

This challenge is often addressed by focussing on local needs or appointing those who are respected as educators within the relevant profession. Local relevancy enables offerings to be readily seen as useful, capitalising on immediate motivations of learners. However, it can also result in a reactive curriculum that lacks balance. In the judicial education context, local relevancy might emphasise education about substantive law, particularly developments in a specific jurisdiction, at the expense of other needs, and reduce the extent to which jurisdictions share resources and leverage existing strengths and experiences.

Selecting judicial officers as educators has the advantage of drawing on those familiar with the professional role of the judicial officer, with insight into the needs and experiences of participants. It also ensures credibility and reflects the idea that 'adults should have a direct say in the how, when, where and what of their own learning'.[41] Finally, it alleviates concerns about judicial independence that might arise if an offering were sponsored, driven by sectoral interests, or influenced by government.[42] However, the judicial-officer-as-educator approach is likely to be unsuitable when the aim is to impart skills and knowledge not already held within the judiciary, most obviously in addressing a transformational aim. The teaching method may also not be the most effective to support adult learning. One solution is to create a partnership between judicial and external educators that leverages the strengths of both.[43]

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38 C Hartley Grattan, *In Quest of Knowledge: The History of Adult Education* (Association Press, 1955) 30.

39 Tom Vanderbilt, *Beginners: The Curious Power of Lifelong Learning* (Atlantic Books, 2021) 30.

40 Jeremy Fogel and S I Strong, 'Judicial Education, Dispute Resolution and the Life of a Judge: A Conversation with Judge Jeremy Fogel, Director of the Federal Judicial Center' [2016] (2) *Journal of Dispute Resolution* 259, 268.

41 Kidd and Titmus (n 36) xxxiii.

42 Bruce A Green, 'May Judges Attend Privately Funded Educational Programs? Should Judicial Education be Privatized?: Questions of Judicial Ethics and Policy' (2002) 29(3) *Fordham Urban Law Journal* 941, 1000; see also Diane E Cowdrey, 'Educating into the Future: Creating an Effective System of Judicial Education' (2010) 51 *South Texas Law Review* 885, 890.

43 Goldbach (n 1); Cowdrey (n 42) 887.

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(ii) Assessed or Attended; Mandatory or Voluntary?

Accepted strategies for ensuring effective learning, such as requiring attendance and assessment,[44] are difficult to implement in a context that requires respect for individual judicial independence. This potentially limits engagement and effectiveness. However, resourcing the courts to support participation in judicial education could ensure that judicial officers have access to the education they need without threatening judicial independence. As article 6 of the *Declaration of Judicial Training Principles* says:

> The state must ensure that the infrastructure is in place to permit judges to attend judicial training seminars throughout their time on the bench. In practical terms, this means appointing enough judges to give each judge time to undertake training.[45]

There is a corresponding call upon judicial leadership to 'support and encourage judges by giving them sufficient time away from their sitting schedule to attend judicial training events and to participate as faculty at those events'.[46] But the onus on government in article 6 is a pre-condition for heads of jurisdiction to have capacity to release judges for educational opportunities.

(iii) Maintaining Coherence within the Curriculum

Like adult education generally, the introduction and design of judicial education programs tend to respond to 'a perceived practical need' at a given time, rather than a 'coherent theory and principle'.[47] Over 20 years ago, the ALRC described judicial education as 'patchy'.[48] In the context of legal practitioners, continuing legal education has attempted to respond to the complex goals of continuing professional development (CPD) by mandating certain elements be present within the yearly plan for individual practitioners, with mandated combinations of ethics, management, and professional skills, and limitations on self-directed activity.[49] The NJCA's development of a National Curriculum was an attempt to address this issue in the judicial context. However, coherence is not the only objective, or perhaps even the most critical. The desire to align curriculum with local needs, acknowledged above, may result in stronger levels of judicial engagement, even though it simultaneously inhibits the adoption of a coherent and well-crafted curriculum.

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[44] Neil Gold, 'Beyond Competence: The Case for Mandatory Continuing Learnings in Law' (1986) 4(1) *Journal of Professional Legal Education* 17, 20.

[45] International Organization of Judicial Training (n 2) art 6.

[46] Ibid.

[47] Colin J Titmus (ed), *Lifelong Education for Adults: An International Handbook* (Pergamon Press, 1989) 3.

[48] Australian Law Reform Commission, *Discussion Paper, Review of the Federal Civil Justice System (DP 62)* (1999) [3.77].

[49] See, eg, South Australia: <https://www.lawsocietysa.asn.au/Public/Lawyers/Professional_Development/Mandatory_CPD.aspx>.

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III Typologies

A Typology of Topics for Judicial Education

In this Part, we turn from conceptual consideration of the justifications for judicial education and challenges of its design, to propose a typology to understand the provision of judicial education in Australia today. This exercise enables our empirical review in Part IV.

Taxonomies of topics for judicial education have been attempted around the world. Their principal purpose appears to be for heads of jurisdiction and education services providers to understand the broad educational needs of the judiciary. Specific content may then be tailored to particular courts (by level or specialisation) and updated as required. This facilitates the design of a curriculum appropriate to the goal of promoting public confidence. It also provides a tool to understand evolving demand for different subjects within the judiciary, including the extent to which judges may be accessing a full range of educational offerings or self-directing to specific areas.

The typology adopted for the purpose of our empirical survey is drawn from a combination of sources. The work performed in the development of the National Curriculum has been supplemented by conversations that we have conducted across Australia with the NCJA, the AIJA, the Judicial Conference of Australia (JCA, which was renamed the Australian Judicial Officers Association in 2021), the JCNSW, the JCV, as well as individual members of state and federal judiciaries who gave generously of their time.

The justifications for education map closely onto an understanding of the judicial role, and it is therefore unsurprising that potential topics map onto the specific functions and required competencies of a judge. Modern articulations of judicial competencies have a more expansive focus than the substantive law that informs judicial decision-making, or even the skills required to manage a courtroom.[50] Rather, they now include themes that reflect a deepening, as well as a changing, understanding of the judicial role and its connections to contemporary values. For instance, writing in 2009, Chief Justice of the High Court, Robert French, said that there were five key competencies that a judge must exhibit.[51] First, the judge must understand her or his role in its constitutional setting, the relationship of the judiciary to other branches of government, and its place in the judicial hierarchy. Second, the judge must know the relevant law. Third, a judge must have highly developed fact-finding skills, that is, understanding of relevance, weight, sciences, 'reasonableness' type standards, and wider contextual issues, such as cultural norms, that are relevant to fact-finding. Fourth, a judge must have knowledge of matters that are relevant to judicial process, including litigation management, procedural fairness and bias, the importance and practice of judicial independence and high-level

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50 Referring to this shift in judicial education, see John McGinness, 'Judicial Education in Australia' (2009) 17 *Australian Law Librarian* 150, 151.

51 French (n 11) 1-4.

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communication skills. Finally, the judge must have a strong understanding of her or his ethical obligations.

The NJCA's 2019 document, *Attaining Judicial Excellence*, contains a set of nine 'elements' that 'describe the knowledge, skills and qualities of judicial officers' that facilitate judicial excellence.[52] We can see close similarities with the areas that are and might be targeted by judicial education. The NJCA's nine elements are grouped under three headings:

> *Members of the Court and the General Community* – covering ethics and integrity, engagement, and wellbeing
>
> *Informed and Impartial Decision-makers* – covering knowledge of the law and the justice system, critical thinking, and self-knowledge and self-control
>
> *Managers of the Court Process and Judicial Administrators* – case management and control of courtroom hearings, building respect and understanding, and facilitating resolution.

Roper's 2007 report to the NJCA considered various aspects of existing judicial curricula across England and Wales, Scotland, Canada, New Zealand, California, Nevada and Missouri, as well as that in place in New South Wales through the JCNSW.[53] As a result of this comparative review, the proposed National Curriculum contained eight modules grouped around the following subjects:

1. Maintaining their knowledge and mastery of the law
2. Managing efficiently the cases before them, the court room and their own work
3. Making decisions and giving reasons for decision, both written and oral
4. Applying appropriate standards of judicial conduct
5. Understanding the relationship between the judiciary and society and changes in society
6. Keeping abreast of developments in knowledge and issues of public policy that impact on the law
7. Using information and other technology, in and outside the courtroom, to assist with judicial work
8. Maintaining their health and well-being.

Consideration of the National Curriculum in light of the more recent 'Attaining Judicial Excellence' demonstrates that judicial competencies are not static, but capable of evolution even in a comparatively short time frame. It also suggests that no single statement is definitive, and that any typology should be tailored to the purposes of the discussion. Accordingly, we propose here a typology of topics for judicial education for the specific objective of gaining an

52 National Judicial College of Australia, 'Attaining Judicial Excellence' (n 17).

53 Roper 'National Curriculum' (n 13).

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understanding of judicial education currently provided across Australia, encompassing the breadth of subjects covered by various providers.[54] This typology is as follows:

1. **Legal and technical updates on substantive law:** includes updates on recent cases and legislative reform across legal subject areas (eg, criminal law) and procedurally focused subject areas (eg, evidence).
2. **Curial skills:** includes education on the skills required for the performance of the core judicial role, hearing and deciding cases. It includes case management, judgment writing, *ex tempores*, managing juries and other participants in court proceedings, digitisation of court processes and using technology in the court, and judicial officers' responsibilities with respect to alternative dispute resolution of issues that have come before them.
3. **Administration:** includes subjects such as personnel management (including harassment and bullying), office management (including use of relevant databases and other systems) and public and media interactions.
4. **Institutional challenges:** includes education on the institutional role of the judiciary and its constitutional relationship with the executive and legislature, the judicial organisational structure and court hierarchy, and recurring issues like access to courts.
5. **Society:** includes social context, cultural sensitivity, and bias education. Social context education includes education on topics that contextually inform the practice of the judicial role, such as the modern operation of correctional services facilities. Cultural sensitivity education expands judicial officers' understanding of different cultural frames.[55] Bias training is closely related to this and includes education on unconscious bias in relation to race, ethnicity, age, gender, religion, or sexual orientation.
6. **Well-being:** focusses on judicial well-being and mental health.

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54 To create clear and inclusive categories that will allow the most efficient and accurate mapping of the content of judicial education programs in practice, this typology differs in some ways from the National Curriculum. We have combined management and decision-making skills into one, which we refer to as 'Curial skills'. It is not intended that any of the content of the National Curriculum will be lost in this change. We have not included technology as a stand-alone topic, but, rather, it is viewed as incorporated across the topics. For instance, the impact of technology on judicial review will be caught within substantive legal and technical updates. The use of technology in the court room during discovery will be caught within 'Curial skills'. The digital systems required for judges to manage personnel will be caught within 'Administration'. We have divided the topic on knowledge and issues of public policy into 'Institutional challenges', specifically relating to the institutional position of the courts and judiciary, and other 'Technical developments in knowledge and public policy'.

55 In Australia, cultural sensitivity education incorporates education on the culture and practice of Aboriginal and Torres Strait Islander peoples, which can inform judicial officers' understanding of First Nations issues in cases that come before them. It also includes education relating to the culture and practice of the many and varied ethnicities of the Australian population, including but not limited to language and translation. It extends to education about issues that manifest for people based on their age, gender, religion or sexual orientation.

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7. **Ethics:** includes education on ethics with a focus on the responsibilities of individual judges to ensure they are making decisions in their professional and personal life that maintain the integrity of the judicial institution.
8. **Technical developments in knowledge and public policy:** includes education on non-legal substantive topics that contextually inform the practice of the judicial role but fall outside the category of social context education. Examples include developing technologies, financial literacy, neuroscience, and regulation.

B Typology of Periods in Judicial Education

In addition to substantive typologies of judicial education by topic, there are evolving temporal expectations about judicial education (albeit still in the context of voluntary participation). According to the NJCA's 'National Standard',[56] Australian judges are expected to undertake at least five days per year of ongoing judicial education throughout their tenure. There is a separate expectation that 'on appointment a judicial officer should be offered, by the court to which he or she is appointed, an orientation program'. And 'within 18 months of appointment, a judicial officer should have the opportunity to attend a national orientation program'.[57] Other common law jurisdictions have pitched their judicial education more specifically to different and additional stages of the progression through a judicial career. For instance, there is now in England and Wales a Pre-Application Judicial Education program for lawyers, which has been running since 2019 as an initiative of the Judicial Diversity Forum, and in Canada there are programs designed specifically for judges approaching retirement.

Of course, the progression and tempo of judicial careers will differ.[58] However, we see value in creating a typology of different periods of judicial education through which a judicial officer might progress. It helps to understand potential judicial needs for tailored educational programs. It also encourages evaluation of when offerings are the most useful, and thus have greatest potential for engagement. Drawing from the practice of Australia and other similar common law jurisdictions, together with conversations undertaken with judicial officers across the country, we propose a typology for understanding different periods of judicial education. We do not consider this to be an alternative to the typology of topics, but rather for the two to be an intersecting matrix. We recognise that the relevant periods are likely to overlap, and not all stages will be relevant to all judicial officers.

1. **Pre-appointment education:** These are programs are undertaken by legal practitioners and academics who are seeking judicial appointment in the future. They are run by official judicial education institutions, and can assist people, particularly those from underrepresented groups, to feel confident and prepared to apply for judicial

[56] National Judicial College of Australia, 'National Standard' (n 12). See also Roper, 'Review of the National Standard' (n 15).

[57] National Judicial College of Australia, ibid.

[58] Roper opted against a typology that would include division based on the stage of judicial career for these reasons: Roper, 'National Curriculum' (n 13) 64.

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appointment. They focus on the role and skills required of a judge, including curial skills, decision-making, ethics, resilience, equality, and diversity.

2. **On appointment:** Induction / orientation / onboarding programs and mentoring. This will usually include an intensive multi-day program, ideally attended before the judicial officer commences work on the bench (although in practice it more often occurs sometime in their first few months). Such programs generally include a broad scope of topics, presented in an introductory fashion with a focus on delivery by judicial colleagues.

3. **Mid-career judicial officers:** As noted above, the 'National Standard' recommends five days of ongoing judicial professional development each year, on topics from across the breadth of the curriculum.

4. **Gatekeeper:** This refers to programs that might be developed as prerequisites for judicial officers wishing to exercise new areas of jurisdiction, or to be assigned to specialised areas of jurisdiction, such as commercial or mental health lists, or presiding over drug courts or courts designed for Aboriginal and Torres Strait Islander defendants. The intention of such programs would be to provide judges with specific expertise and judge-craft skills required for specialised areas of jurisdiction.

5. **Appellate:** These are programs designed for judicial officers appointed to an appellate role. They focus on the unique dimensions of this role, for instance, management of appellate court rooms, appellate judgment writing, and management of multi-member courts.

6. **Leadership:** Programs designed for judicial officers appointed as heads of jurisdiction, or to senior judicial administrative roles within a court. In Canada, for instance, a seminar has been designed for Chiefs, to provide a forum for understanding the knowledge and skills required to lead a court in the 21st century.[59]

7. **Preparation for retirement:** Programs undertaken by judicial officers nearing the end of their tenure, focused on passing back corporate knowledge to the bench, preparing the individual for future judicial or non-judicial roles they may undertake post-retirement from their tenured judicial service, and the ethical responsibilities of retired judicial officers. Examples include the Canadian National Judicial Institute, which has offered retirement planning sessions,[60] and New Zealand's Te Kura Kaiwhakawā / Institute of Judicial Studies, which includes retirement planning as part of its health and wellbeing stream.[61]

IV Current Practice in Judicial Education in Australia

In this Part, we present the results of our empirical investigation of judicial education programs and analyse them by reference to the typologies identified in Part III. This work has been

[59] See further reference in Roper, 'National Curriculum' (n 13) 87.

[60] Ibid 88.

[61] See <https://www.ijs.govt.nz/recent_developments/default.asp>.

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undertaken on the basis that any rational consideration of the future of judicial education in Australia should be grounded in an understanding of current practices. This will allow for successes to be recognised and built upon, and for challenges to be identified and remedied.

A Data Sources, Scope, and Limitations

Judicial officers may engage in continuing education in many ways, including self-guided reading as autodidacts, attendance at general conferences hosted by academic or professional institutions, and through programs offered specifically to judges and magistrates. We are concerned solely with the last of these. In adopting this focus, we draw no conclusions about the comparative merits of some judicial education activities over others.

There is currently no single, comprehensive record of formal, dedicated judicial education programs in Australia. Accordingly, the data used for this analysis were obtained from disparate sources, all of which are publicly available. These comprised (a) the annual reports published by individual courts in accordance with their statutory reporting obligations or long-established practices; (b) the annual reports published by institutions with recognised judicial education functions, namely, the JCNSW, JCV, NJCA, JCA, and AIJA; and (c) on rare occasions, websites of relevant bodies as a supplementary source where other published information was ambiguous or incomplete. From these sources, we identified events as 'judicial education programs' according to their labelling, description, or context. The different forms that such 'programs' may take are identified in the section below on 'mode of delivery'.

The scope of the data was limited geographically, jurisdictionally, and temporally. Geographically, we captured only programs provided in Australia. We recognise that Australian judicial officers occasionally engage in such programs abroad, in person or online, but these have necessarily fallen outside the scope of this study. Jurisdictionally, we included the federal courts (High Court, Federal Court, Family Court, and Federal Circuit Court),[62] and the generalist state and territory courts (Supreme, District/County, and Magistrates/Local), summing to 25 courts nationally. We did not capture data from specialised Australian courts such as land and environment courts, children's courts, drug courts, or the Family Court of Western Australia. Temporally, we chose a collection period of three years, which was considered sufficient to capture current judicial education practices, while keeping within the resource constraints of the project. Most of the annual reports used as primary data sources were arranged by financial year, but some organisations report by calendar year.[63] In the latter case, we allocated judicial education programs to the relevant financial year, and our analysis accordingly reflects data for the three financial years 2015/16, 2016/17, and 2017/18.[64] This

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[62] The Family Court and Federal Circuit Court have since been merged into a single court, but this does not affect the period under examination: see *Federal Circuit and Family Court of Australia Act 2021* (Cth).

[63] The annual reports of courts in New South Wales, South Australia, and Western Australia are arranged by calendar year.

[64] For courts reporting in calendar years, where judicial education program dates were not stated, we assigned the program to the first half of the calendar year (e.g., a program listed in '2018' was assigned to January-June 2018, and thus to the 2017-18 financial year).

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was as current as could be achieved given the publication schedules of some of the documentary sources.

As in all empirical studies, the results must be assessed in light of limitations of the data collected. Four limitations are worth noting, although in our opinion they do not compromise the integrity of the results. First, of the 25 courts included, some did not publish annual reports for the relevant period.[65] Second, some annual court reports contained no information on judicial education programs. It is unclear whether this stemmed from the absence of such programs or a failure to report on existing programs. Without making an assumption as to which of these alternatives applies, it is simplest to state that if there are unreported programs then as a matter of methodology they fall outside the scope of our empirical assessment. This would include informal programs offered within a court but not captured in annual reports. Third, the data are only as accurate as the information published in the stated sources. And finally, as there is no standard format for reporting, there was substantial variability in the scope and depth of information provided, such that it was not possible to extract identical data across every domain of interest. We made inferences from the published information where it appeared clearly reasonable to do so, but otherwise we have reported only on the information as published. On occasion, the difficulty of information accuracy was mitigated by triangulating data that appeared in more than one source.

B Overview of the Data

Over the three-year period, 446 judicial education programs were provided across Australia—an average of around 150 each year. The breakdown of these programs can be viewed in different ways (Table 1). Of the total number of programs, the states and territories provided 80% (n=358) through their courts and state-based judicial colleges and commissions. The federal courts delivered 12% (n=54), and the national associations (NJCA, JCA, AIJA) delivered the balance (8%, n=34). These figures are based on the principal provider and may thus not fully reflect the contribution of specific providers in joint programs.

When looking at judicial education Australia-wide, NSW and Victoria stand apart from other jurisdictions as being very actively engaged in the provision of judicial education, which is consistent with the findings of the Roper report over a decade ago.[66] Some 160 programs were delivered in NSW and 132 in Victoria over the three-year period. The majority of these were provided by their state-based colleges or commissions—in NSW, 94 by the JCNSW (59% of that state's programs), and in Victoria, 93 by the JCV (70% of that state's programs). The remaining programs in NSW and Victoria were delivered by individual courts across all levels of their court hierarchies, with 27 in the Supreme Courts, 30 in the District/County Courts, and 48 in the Magistrates/Local Courts. In contrast, the direct provision of judicial education in the other states and territories was sparse. In the 15 state and territory courts outside NSW and

[65] Of the 75 annual court reports potentially available (25 courts over three years), this affected only seven reports—the Supreme Court of Western Australia in 2018, and the Supreme Court and Local Court of the Northern Territory in all three years.

[66] Roper (n 15) 13.

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Victoria, only 66 programs were delivered over three years—an average of 1.5 programs per court per year. Half of the programs offered outside NSW and Victoria (n=33) were delivered in a single court (District Court of Western Australia), but it is not known whether that is an artefact of better reporting, a consequence of distance from national judicial education offerings, or the result of other factors. The lower number of programs provided by courts outside NSW and Victoria may reflect reliance upon the offerings of the NJCA as a national judicial education provider, funded by contributions from all Australian governments for this purpose.

Within the federal judiciary, the lion's share of judicial education programs was delivered in the Federal Court (n=43), with a small number being delivered by the Family Court (n=6) and Federal Circuit Court (n=5). Of all surveyed courts for which data were available, only the High Court reported no judicial education programs. The national associations accounted for 8% (n=34) of all programs, with the NJCA being the largest of these (n=23), followed by the AIJA (n=9) and the JCA (n=2).

The sections that follow report on five variables that emerged from the literature, data, and consultations as being of special interest, namely, subject matter, mode of delivery, audience, deliverers, and providers. We also sought to collect information on the duration of programs, their timing (in or out of regular working hours), and funding sources. However, the data sources did not reveal sufficient information on these latter topics, making further analysis unachievable in this study.

Table 1: Judicial Education Programs by Jurisdiction, 2015/16 to 2017/18

States and Territories						
	Supreme	*District/ County*	*Magistrates/ Local*	*College/ Commission*	**Total**	**Percentage**
NSW	17	18	31	94	**160**	**36%**
VIC	10	12	17	93	**132**	**30%**
QLD	0	0	8	--	**8**	**2%**
SA	4	n.a.	1	--	**5**	**1%**
WA	4	33	1	--	**38**	**9%**
TAS	2	--	7	--	**9**	**2%**
NT	n.a.	--	n.a.	--	**0**	**0%**
ACT	2	--	4	--	**6**	**1%**
Sub-total	39	63	69	187	358	80%
Commonwealth						
	High Court	*Federal Court*	*Family Court*	*Federal Circuit Court*		
Federal Courts	0	43	6	5	**54**	**12%**
National Associations						
NJCA	--	--	--	--	**23**	**5%**
JCA	--	--	--	--	**2**	**0%**
AIJA	--	--	--	--	**9**	**2%**
TOTAL					**446**	**100%**

Notes: n.a. = no annual report available; -- = not relevant

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C Data by Categories of Inquiry

(i) Subject Matter of Programs

In Part III we set out a typology with eight substantive topics. For the purposes of the current empirical study, we have added the further categories of 'multiple' (where multiple subjects were covered with none clearly predominating), and 'unknown' (where the published information was insufficient to identify a category of subject matter). The distribution of programs by subject matter is shown in Figure 1. The most frequent subject was 'substantive law' (37%), which far outranked the next most frequent of 'society' (18%) and 'curial skills' (13%). Surprisingly, 'ethics' accounted for just 1% of programs. It may be that these matters are dealt with elsewhere, for example through conversations with trusted colleagues or heads of jurisdiction.[67]

Figure 1 aggregates all judicial education programs over the three-year period (n=446), but a different picture emerges when the data are stratified in different ways. One useful comparison is between the programs delivered directly by courts (n=225) and those delivered by all state and national judicial education institutions grouped together (i.e., NJCA, JCA, AIJA, JCNSW, and JCV) (n=221). The institutions placed greater emphasis on 'society' (22% versus 13%) and 'curial skills' (18% versus 8%) than did the courts, and lesser emphasis on 'substantive law' (31% versus 44%), as shown in Figure 2.

Another useful comparison is between programs offered at different levels of the court hierarchy. In the state and territory courts (outside the state-based colleges and commissions), 43% of programs in lower courts (Magistrates/Local) and 67% of programs in intermediate courts (District/County) addressed 'substantive law', but only 13% in Supreme Courts fell in that category. The position was reversed in relation to education about 'society' where such programs accounted for 10% in lower courts, 11% in intermediate courts, and 33% in Supreme Courts. Similarly, Supreme Courts devoted more programs to 'technical' matters such as finance, science, and probability (10%) than did the other courts (2-3%). These figures suggest that judicial officers in different courts have differently perceived educational needs, which may reflect suggestions and guidance given by their heads of jurisdiction. For example, lower courts need to be constantly apprised of decisions on substantive law given by the appellate courts that sit above them, thus fuelling demand for education on those matters. In contrast, they may perceive a lesser need for general education about society, given their daily exposure to a large and diverse range of litigants, including litigants in person.

[67] See further discussion of informal practices of ethical support in Appleby and Le Mire (n 23).

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Figure 1: Subject Matter of Programs, 2015/16 to 2017/18 (n=446)

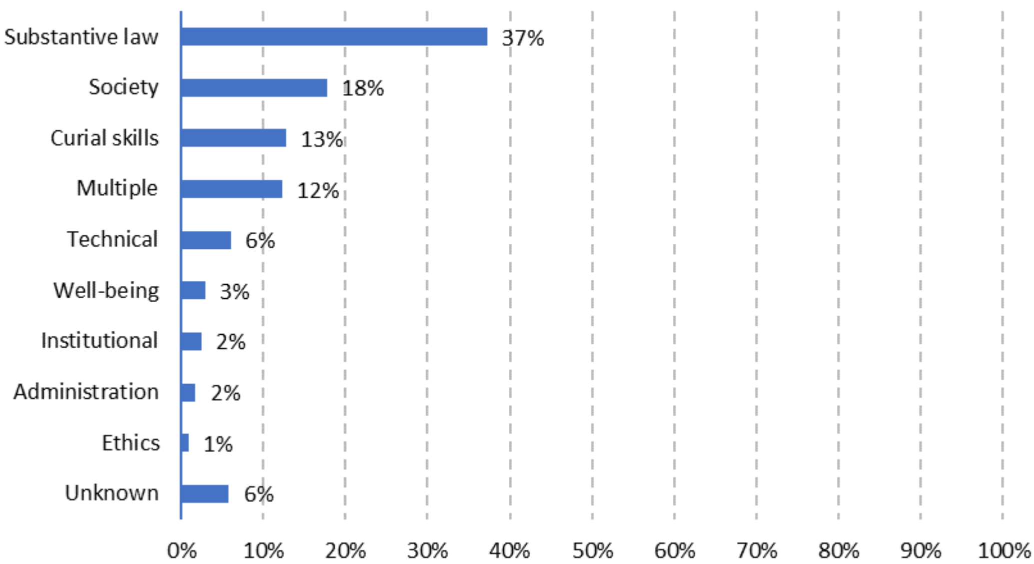
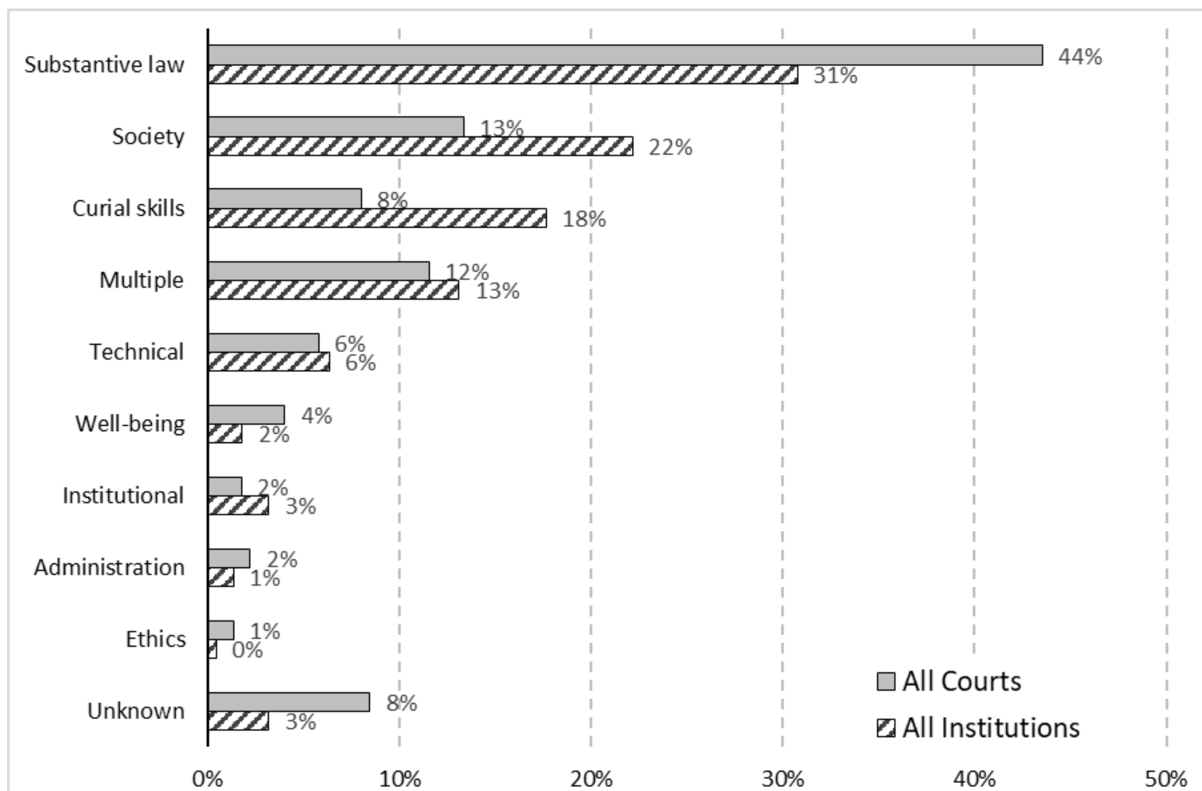


Figure 2: Subject Matter of Programs by Type of Institution, 2015/16 to 2017/18 (n=446)



(ii) Mode of Delivery

Judicial education can be delivered in different ways, ranging from flexible programs delivered through online modules and audio-visual materials, to intensive residential programs. The

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choice of mode has implications for cost, accessibility, flexibility, and effectiveness. We classified the programs into six specific modes, plus ‘other’ and ‘unknown’. The categories used here were largely dictated by the particulars available in the data sources, but these are not necessarily the categories of greatest consequence. For example, the effectiveness of judicial education may depend on whether programs are didactic or experiential/interactive, but the data sources did not reveal such granular information. The distribution of programs by mode of delivery is shown in Figure 3. The most frequent mode was ‘seminars’ (50%), and although their duration is not known, the descriptions in the annual reports (e.g., ‘lunchtime seminar’, ‘twilight seminar’) suggest events of around 1-2 hours. The next ranked mode (but only half as frequent) was ‘conferences’ (27%). Their popularity reflects long-standing conferences in the judicial calendar, held annually or biennially, with jurisdictional or national coverage. Examples include the Supreme and Federal Court Judges Conference and the JCA’s annual colloquium. ‘Tours’ and ‘residential’ programs each accounted for 4% of all programs. There was a near total absence of ‘online’ programs (there was a solitary offering in the Federal Circuit Court), but the drive to greater online capability necessitated by the COVID-19 pandemic may change this in the future.

Some differences were observed in the mode of delivery when comparing the institutions (NJCA, JCA, AIJA, JCNSW, and JCV) with the courts. The institutions had fewer conferences (19% versus 36%) but more residential programs (7% versus 2%). There were also observed differences in mode when comparing the 171 programs delivered at different levels of the state and territory court hierarchies. ‘Tours’ were confined almost exclusively to Supreme Courts (15% of their programs versus 0% in intermediate courts and 1% in lower courts), while ‘residential’ programs were found exclusively in Magistrates/Local Courts (6% versus 0% in other courts). Moreover, for Supreme Court programs the dominant mode was ‘seminars’ (54%) and then ‘conferences’ (23%), but for intermediate and lower courts this was reversed, with conferences dominating, followed by seminars. Whether this reflects work patterns at different levels requires further investigation—for example, busy and geographically dispersed magistrates may find it disruptive to attend seminars day-to-day, and hence may prefer block programs offered through conferences.

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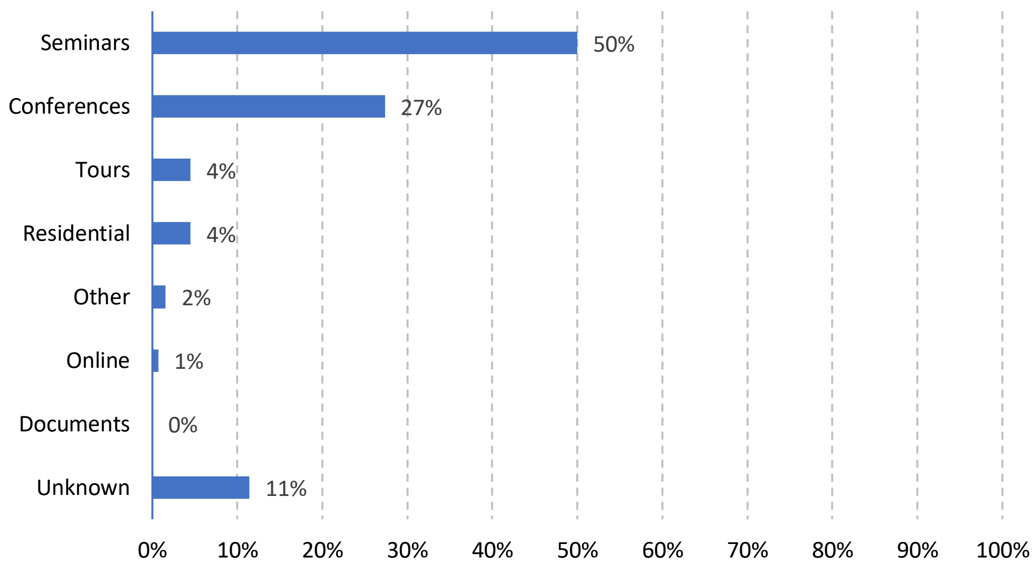
Figure 3: Mode of Delivery of Programs, 2015/16 to 2017/18 (n=446)



(iii) Audience and Career Stage

The second typology proposed in Part III reflects seven different periods in a judicial career to which educational offerings might be targeted: pre-appointment, on-appointment, mid-career, gatekeeper, appellate, leadership, and pre-retirement. In considering whether existing programs were expressly directed to specific audiences, we added the categories of 'all' (where there was no differentiation), 'multiple' (where more than one, but not all, stages were targeted), and 'unknown'. The distribution of programs by intended audience is shown in Figure 4, featuring only the five categories for which we identified any relevant programs in the three-year period. It can readily be seen that the vast majority of programs were not overtly directed at particular career stages—the 'all' category accounted for 88% of all programs, and the next most frequent ('on appointment') only 7%. This may reflect genuine openness about audience composition or a failure to record the intended audience in published sources to which we had recourse.

Of the 30 on-appointment programs, 17 (57%) were provided by the judicial education institutions and 13 (43%) by the courts (but only in federal courts and in the courts of NSW, Victoria, and Tasmania). Documentary sources rarely stated whether there was cross-jurisdictional attendance at on-appointment programs, but it is assumed that the institutional programs were open to all (e.g., the NCJA's National Magistrates Orientation Program) whereas the court-based ones were not. Overwhelmingly, the court-based on-appointment programs were conducted in Magistrates/Local Courts. Consequently, although on-appointment programs accounted for 7% of all Australian programs, in the lower tier of the state and territory courts, they accounted for nearly double that (13%). Notably absent from the annual reports were programs specifically tailored to pre-appointment, gatekeeper, appellate, leadership, and pre-retirement education.

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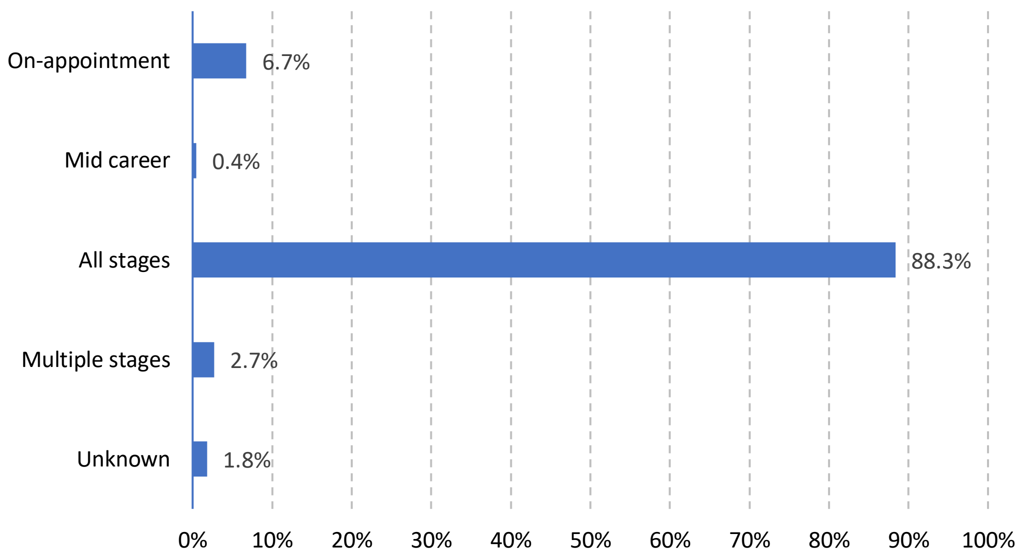
Figure 4: Audience of Programs, 2015/16 to 2017/18 (n=446)



(iv) Deliverers

As discussed in Part II, judges and magistrates are perceived to have a high degree of pre-existing knowledge and skill in their discipline, leading to the question, 'who is suitable to provide them with judicial education?'. The identity of the program deliverer will also naturally follow the subject matter of the program itself to ensure it is suitable to its educational aims and focus. In that sense, Figure 5 below may be seen as related to Figures 1 and 2 above.

We classified program deliverers into four substantive categories: 'judicial officers', other 'legal experts' (including academics), 'non-legal experts' (including academics), and 'adult educators', and added the categories of 'multiple', 'other', and 'unknown'. The category of 'adult educators' requires some explanation: it refers to education professionals who are focussed on program design and delivery rather than on substantive content, and who thus do not profess expertise in the content of specific programs. This contrasts with other legal and non-legal expert deliverers.

The distribution of programs by deliverer is shown in Figure 5. It should be noted that the deliverer was unknown in 41% (n=185) of programs, which invites caution in interpreting the results. For programs for which this information was available, the largest category of deliverer was judicial officers (30%), followed by non-legal experts (11%), multiple deliverers (9%), and legal experts (7%). This suggests that judicial officers look to their own as primary suppliers of judicial education, but that there is still demand for non-legal experts in supplementing those programs. The causes of this phenomenon are a matter of conjecture. Judge-led education is consistent with the judiciary's ongoing concern to protect judicial independence, but might also reflect funding limitations, especially in lower courts.[68] Not one

[68] Appleby et al (n 9) 335-6.

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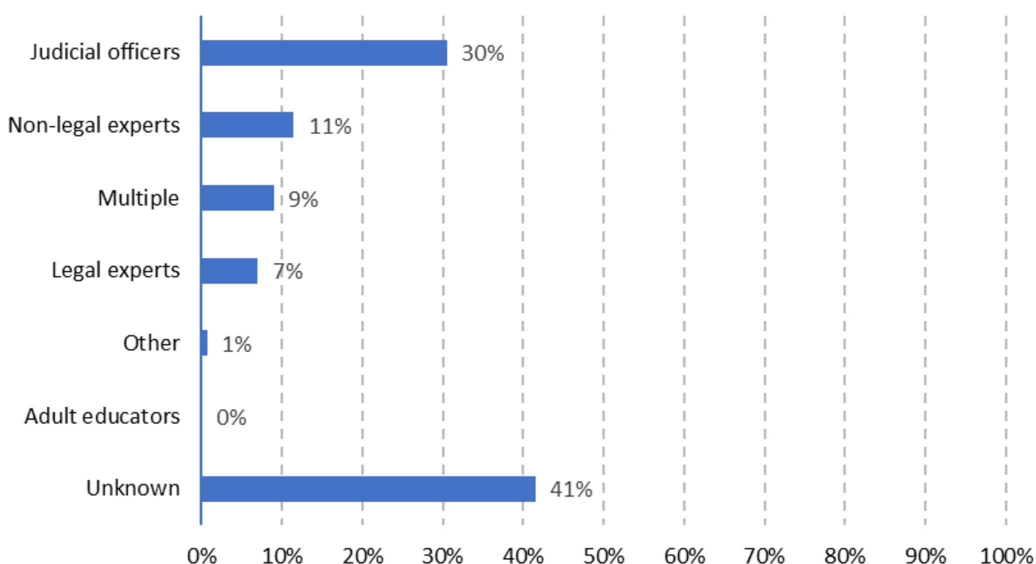
adult educator was reported to have delivered a judicial education program in the period under study.

Once again, there were significant differences between the programs delivered by courts and institutions. The courts showed less diversity in their deliverers, with judicial officers accounting for 36%, non-legal experts 9%, and legal experts 4% (47% were unknown). In the institutions (state and national), judicial officers accounted for 25%, non-legal experts 14%, and legal experts 10% (36% were unknown). There were also differences by court hierarchy. Of the 171 programs delivered directly by state and territory courts, the Supreme Courts were the most diverse, with a plurality of programs delivered by non-legal experts (31%), followed by judicial officers (26%), multiple deliverers (10%), and legal experts (5%). The other courts placed greater reliance on judicial officers, accounting for 65% of deliverers in District/County courts and 38% in Magistrates/Local Courts.

Figure 5: Program Deliverers, 2015/16 to 2017/18 (n=446)



(v) Providers

The final variable took an institutional perspective to ask, 'who are the providers of judicial education programs?', bearing in mind the limitation of the current study to programs offered specifically to judges and magistrates. This focusses not on those who present or deliver the programs but instead on the entities that administer them. Aspects of this question have been addressed above when comparing other variables (subject matter, mode, audience, and deliverers) across different types of service provider. We classified program providers into three substantive categories—internal to the courts; state judicial colleges and commissions (comprising the JCNSW and the JCV); and national associations (comprising the NJCA, JCA, and AIJA)—and added the categories of 'joint', 'other', and 'unknown'. The distribution of programs by provider is shown in Figure 6. The largest proportion of programs (44%, n=195)

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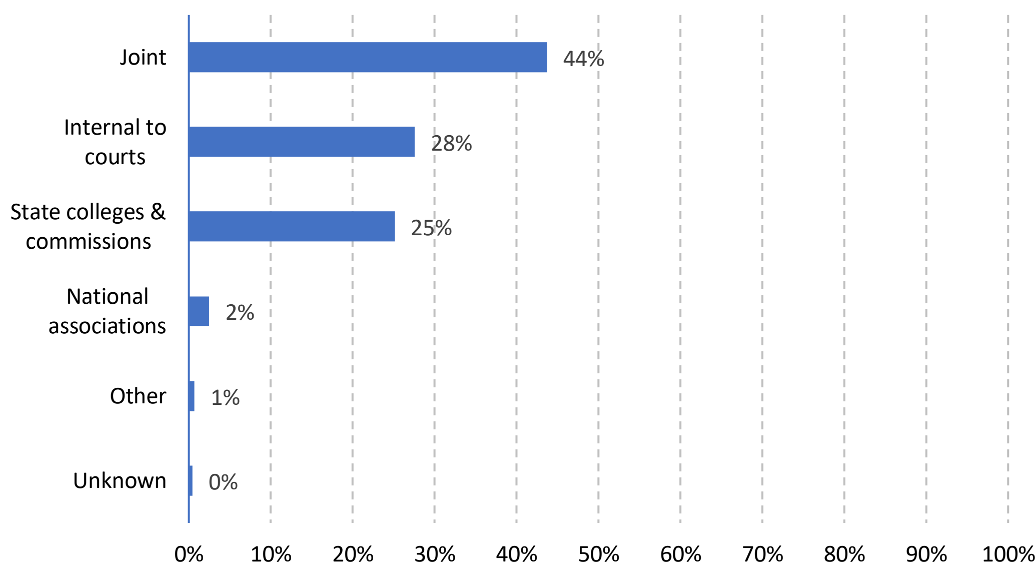
was provided jointly by two or more of the groups just mentioned, followed by internal provision by courts (28%), the state colleges and commissions (25%), and the national associations (2%).

Disaggregating the category of 'joint' provision (n=195), 63% (n=123) of joint programs occurred in NSW, 25% (n=48) in Victoria, and 5% each in the national institutions (n=10) and federal courts (n=9). In NSW, joint provision was overwhelmingly between the JCNSW and the courts (115 of 123 joint programs), and in Victoria it was overwhelmingly between the JCV and the courts (40 of 48 joint programs). These arrangements suggest a high degree of co-operation between providers in jurisdictions with state-based colleges or commissions. However, the optimal distribution of programs between alternative providers in other contexts is a matter of debate, raising questions about national uniformity, specialisation, funding, and accountability.

Figure 6: Providers of Programs, 2015/16 to 2017/18 (n=446)



D Conclusions from Empirical Analysis

Four general observations can be drawn from the empirical analysis, within the limits of the data available for this study.

First, a deeper understanding of judicial education practices in Australia would be possible if courts and other bodies published more complete, detailed, and timely reports of judicial education programs within their purview. It would be especially valuable to have further data on the duration, timing, and funding of such programs. Moreover, a common reporting framework would assist in the rigorous analysis of programs and in evaluating the adequacy of the five-day standard set by the NJCA in 2006. Such a reform addresses the need for accountability and transparency in the judicial role, including around judicial education. In so

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far as judicial education programming is made more visible to court users and the public, it can foster public confidence in the judiciary by highlighting the investment made in maintaining and enhancing judicial knowledge and skills.

Second, there is arguably a two-tier system of judicial education in Australia, with 75% (n=335) of all programs being provided in just two states (NSW and Victoria), plus the Federal Court. If an absence of reporting indicates an absence of programs, courts in the remaining jurisdictions (which do not yet have the support of locally based judicial colleges or commissions) offer a very limited judicial education curriculum (17%, n=77). This suggests that reliance is being placed on the national associations or cross-jurisdictional attendance to meet their courts' needs, or that those needs are simply not being met. Further reporting on judicial participation in the activities of national associations would illuminate this issue – for now, we suggest that this is the most likely explanation of what is occurring across these other jurisdictions. This is consistent with our earlier empirical survey of Australian judges and magistrates, which reported disparate availability of judicial education programs by jurisdiction, with states having a judicial college or commission being in an advantageous position.[69]

Third, the provision of judicial education varies between levels of the court hierarchy, with lower and intermediate courts having a larger number of programs, with different content, than those further up the hierarchy. The observed rejection of a 'one size fits all' approach appears eminently sensible and is consistent with the literature suggesting that judicial education should be relevant and tailored to the needs of the learner.

Finally, there are notable differences between the programs offered through the judicial education institutions (NCJA, JCA, AIJA, JCNSW, JCV) and the courts. In the institutional offerings, this can be seen in subject matter (greater coverage of social context and curial skills), mode (more residential programs), audience (more on-appointment programs), and deliverers (slightly greater diversity).

V Conclusion

Our objective has been to provide an overview of the contemporary provision of judicial education in Australia, given its importance in contributing to the quality of judicial work and public confidence in the judicial system. Drawing on the annual reports of courts and judicial education bodies, our results prompt further inquiries into the need for greater transparency about judicial education programs, a more synthesised approach to judicial education across the federation, and greater breadth in the identification of topics as part of overall curriculum design, with the needs of disparate audiences firmly in mind.

We have found that assessment and understanding of the current state of judicial education is hampered by the limited data that is publicly available. While much data is available, there is no agreed standard or format for reporting. Similarly, no taxonomy has been adopted that could

69 Ibid 333-7.

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enhance understanding of what is being offered and to whom it is targeted. This impedes assessment, comparability of offerings and any moves towards a more cooperative approach between providers. Accordingly, a clear conclusion from our study is the need for a standard taxonomy and format for the transparent reporting of judicial education offerings by courts and institutions. Optimally, an agreed body, such as the AIJA, might assume the responsibility of collecting and disseminating that annual information in a consolidated form.

Our findings also reveal that the 'patchiness' reported by the ALRC in 1999 remains an apt description.[70] First, while current offerings respond to the need for on-appointment education, there seems to be limited education aligned to other stages of the judicial career. There is no recognition of the potential of pre-appointment education, as has been developed in the United Kingdom, in conjunction with reform of judicial appointments in that jurisdiction. Nor is there much recognition of specialised mid-career and later-career focussed education. This may flow from the fact that judicial education is predominantly a state and jurisdiction-based activity. As such, offering education that serves judicial officers within a jurisdiction across *all* stages of their careers may seem to be an efficient use of resources. At the same time, the limited adoption of stage-aligned education seems to miss an opportunity to provide timely education for particular cohorts gathered cross-jurisdictionally.

There is also a large difference in opportunity for judicial officers to engage with education in NSW and Victoria, where more institutionalised resourcing has been dedicated to judicial education, when compared with the rest of the federation. It seems unlikely, and possibly unnecessary, to hope that 'laboratory federalism' will usher in the creation of equivalent bodies in states and territories that do not presently have them. This is because the support from governments for the NJCA is designed to address the need for judicial officers to access professional development, while avoiding the cost and impracticality of providing these directly through a commission or college in smaller states and territories.

Further, to talk only of the different opportunities available across different states and territories is likely to miss a critical spatial issue in a country the size of Australia. Judicial officers outside the capital cities are likely to have more limited opportunities to access judicial education – both because of what is available locally and the costs that must be met for them to travel to events conducted elsewhere. Their experience thus mirrors the experience of the individuals who appear before them, for whom location in regional, rural, or remote Australia is a critical determinant of access to justice.[71] Online offerings hold the potential to alter this situation and we are now at a critical juncture given the significant skills development initiated by the COVID-19 pandemic. Judicial enthusiasm for online learning has previously been muted, with many judicial officers understandably preferring to experience the social and collegial benefits of programs delivered face to face. For those working in the regions, the preferences of their urban colleagues may have limited the use of technology to overcome the significant barriers

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70 Australian Law Reform Commission (n 48) [3.77].

71 Law Council of Australia, *The Justice Project: Final Report* (Law Council of Australia, 2018).

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posed by distance. It will be interesting to see the extent to which that disadvantage is overcome in future by a greater appetite for online learning.

The highlighting of unevenness in delivery of judicial education across Australia does not answer other questions more directly connected to the justifications for its existence. What are the levels and diversity of judicial participation in different education programs? What might the answer to that question tell us, in turn, about the quality of the programs being offered and whether they are proving effective in meeting their objectives? Where educational offerings are limited or perceived as lacking in other ways, are judicial officers engaging in self-directed learning or collegial conversations to bridge the gap? Further research is required to answer these questions.

Our findings also reveal an ongoing conservatism in the design and provision of judicial education in Australia that may reflect continuing concerns about institutional independence. This is seen in the focus on the delivery of substantive law-based programs and the corresponding reliance on judges as educators, as well as 'on-appointment' education rather than mid- to late-career programs, and the continuing voluntary nature of judicial education. There appears to be some appetite for a shift in some of these areas. The extent to which further movement can be made – for instance in relation to the expansion of the topics and periods of the focus of judicial education, and the use of non-judicial educators – warrants further consideration.

Finally, since the institutionalisation of judicial education in the late 1980s, Australia has seen a relative explosion in external providers and an uptake of internal programs. Yet to gaze upon the 'judicial education landscape' in 2022 is to take in an environment where resourcing remains contentious and where there is overlap of offerings in some areas, with others possibly being under-serviced. In 2009, former Chief Justice Robert French acknowledged the relevant challenges. With his keen sensibility for the possibilities of federalism, French was unsurprised by this complexity, but did not suggest that it be simply accepted as the way things must be:

> It is in a sense regrettable that in a country with a population of just over 21 million people and a relatively small body of judicial officers who form part of a national … integrated judicial system, there is a diversity of bodies delivering judicial education programs. However, this is an aspect of a larger phenomenon of institutional diversity with which Australians are well familiar. It is an incident, although not a necessary incident, of federation. Accepting that reality, there is a need for the coordination of the provision of judicial education in Australia so that the best use can be made of available financial and human resources and they can be targeted to the areas of greatest need.[72]

The prospect of a more streamlined, co-ordinated approach — which remains sensitive to the ever-present need for some localised curriculum adapted to the court level and jurisdiction — beckons.

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[72] French (n 11) 9.

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