

**THE HON T F BATHURST AC**  
**CHIEF JUSTICE OF NEW SOUTH WALES**  
**FEDERAL CIRCUIT COURT OF AUSTRALIA PLENARY 2019**  
**‘DEMYSTIFYING JUDICIAL COMMISSIONS’**  
**THURSDAY 8 AUGUST 2019**

1. I would first like to acknowledge the traditional custodians of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to their Elders, past, present and emerging. We should not forget their long stewardship of this country and especially the land upon which we walk today.
2. My address this afternoon is on the topic of judicial commissions, which, as you all know, has been the subject of more than the usual amount of attention over the past year or two, at least at the Commonwealth level. I am sure that many of you here have your own opinions on the variety of different proposals which have been made, and I am not going to pretend that this address takes place in a vacuum. However, for obvious reasons, it would be inappropriate for me to venture to give my own opinion about whether a judicial commission or an equivalent body is necessary or desirable for the federal judiciary.
3. Instead, what I intend to do is to describe the workings of the Judicial Commission of New South Wales and some of its history. It is, perhaps, not as dry as it might sound. I think that the clear lesson to be learned is that our Judicial Commission has succeeded in its work because it has had the trust and support of the New South Wales judiciary, and not because it has, as some like to believe, struck fear into the hearts of our judges. Those on both sides of the debate would do well to think about the example set by the Commission in New South Wales. Too often, I have seen the Commission presented as a police officer, and, as I will seek to show, I do not think that this characterisation is accurate at all.

4. For this reason, I will start, as one always should, by turning to look at the terms of the statute which establishes the Commission.<sup>1</sup> We can see that it confers three broad functions conferred on the Commission. First, the Commission is empowered to “monitor” the sentences imposed by New South Wales courts and “disseminate” information about those sentences.<sup>2</sup> Secondly, the Commission is empowered to “organise and supervise” the “continuing education and training of judicial officers”.<sup>3</sup> Finally, the Commission is required to conduct preliminary examinations of complaints about judicial officers received from members of the public.<sup>4</sup> These complaints can then be referred to the relevant head of jurisdiction or a separately constituted panel of the “Conduct Division” of the Commission.<sup>5</sup>
5. Now, even from this brief glance at the statute, we can see that the duties of the Commission are somewhat different from those which receive attention from the media or the rather vocal proponents of a “federal judicial commission”. If you only listened to their commentary, you might be forgiven for not being aware that the preliminary examination of complaints forms only one part of the work of the Commission. Unfortunately, this has the effect of distorting an understanding of how the Commission operates and the benefits which it has undoubtedly brought to the judiciary of New South Wales. Rather, it is necessary to look at the working of the Commission holistically, and this can best be done by taking a closer look at the sentencing information and judicial education functions of the Commission, the

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<sup>1</sup> *Judicial Officers Act 1986* (NSW).

<sup>2</sup> *Ibid* s 8.

<sup>3</sup> *Ibid* s 9.

<sup>4</sup> *Ibid* s 18.

<sup>5</sup> *Ibid* s 21.

importance of which can be seen from their prominence the Commission's most recent annual report.<sup>6</sup>

6. The first function of the Commission which I mentioned, the monitoring and dissemination of sentencing information, is possibly the most significant for lawyers in criminal practice in New South Wales courts. Through the Judicial Information Research System, or "JIRS" for short, the Commission provides a comprehensive database on information relating to all aspects of sentencing, with the assistance of data on Commonwealth offences from the National Judicial College of Australia. JIRS collates and presents statistical data on the range and frequency of penalties imposed in particular types of case, which aids sentencing judges and counsel in understanding the direction of sentencing practice for any given offence. It also maintains an extensive commentary on sentencing principles in the form of the *Sentencing Bench Book*, for quick reference for magistrates and judges while on the bench.
7. These resources are almost indispensable for the magistrates or District Court judges, who are frequently required to sentence a large number of offenders over the course of a single day, with few spare minutes to engage in the abstract philosophising and pontificating which we like to indulge in from time to time in the Court of Criminal Appeal. The work which the officers of the Commission do in preparing these resources is not a mere adjunct to the administration of criminal justice in New South Wales; it forms an integral part of it. Even in the ivory tower of an appellate court, these resources make it much easier to assess current trends in sentencing practice, which is a relevant consideration in appeals against sentence, even though its use is often fraught.<sup>7</sup>

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<sup>6</sup> Judicial Commission of New South Wales, *Annual Report 2017–18* (Report, 2018) <<https://www.judcom.nsw.gov.au/wp-content/uploads/2018/11/Judicial-Commission-of-NSW-Annual-Report-2017-18.pdf>> ('*Judicial Commission Annual Report*').

<sup>7</sup> *Hili v The Queen* (2010) 242 CLR 520, 536–7 [53]–[54] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

8. It may be surprising to learn that the sentencing information functions of the Commission were not merely an afterthought tacked on to what was really intended to be a complaints management body, but rather, were one of the primary reasons why the Commission was formed in 1986. While there had been some concerning cases about judicial misconduct around that time, there was equally, if not more, widespread concern about leniency and consistency in the sentencing practices of New South Wales courts.<sup>8</sup> I think the same pattern remains true today. From time to time, there will be stories in the media about judicial misconduct,<sup>9</sup> but by far the more serious and consistent preoccupation of the public is with the severity of the sentences being imposed by the courts on offenders. In that respect, the work of the Commission in facilitating the consistency and integrity of the sentencing process is its most valuable.
9. Now, it should be obvious that these concerns have much less significance in relation to the federal courts, with their very limited criminal jurisdiction. At the very least, then, it can be said that there is no need for a body to collate and publish similar types of sentencing information at the federal level, particularly because the National Judicial Conference of Australia already performs a similar function for Commonwealth offences. Is there a part of federal jurisdiction which is perhaps analogous to sentencing in state courts, and which could benefit from having an independent body preparing similar kinds of legal resources? I am not going to pretend to be familiar enough with the current caseload of the federal courts to be able to give a good answer

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<sup>8</sup> Judicial Commission of New South Wales, *From Controversy to Credibility: 20 Years of the Judicial Commission of New South Wales* (General Publication, 2008) <<https://www.judcom.nsw.gov.au/wp-content/uploads/2014/07/judcom-20years-web.pdf>> 1–2 (*‘History of the Judicial Commission’*).

<sup>9</sup> See, eg, Georgina Mitchell, ‘Magistrate’s Misconduct: Dominique Burns Latest Judicial officer Referred to Parliament’, *Sydney Morning Herald* (online, 13 January 2019) <<https://www.smh.com.au/national/nsw/magistrate-s-misconduct-dominique-burns-latest-judicial-officer-referred-to-parliament-20190111-p50qve.html>>; Selby Stewart, ‘Magistrate Dominique Burns Resigns before Trial-by-Parliament’, *ABC News* (online, 30 May 2019) <<https://www.abc.net.au/news/2019-05-30/nsw-magistrate-resigns-before-parliamentary-inquiry/11162380>>.

to this question, but it is certainly something that is worth asking. I would only note that, at least in comparison to the attention devoted to sentencing, the matters over which the federal courts have jurisdiction tend to attract less media attention.

10. However, this is by no means a precondition for such resources to be useful. While sentencing information for the judiciary might have been its original focus, the Commission has expanded its activities to also include general updates on developments in the criminal law, both common law and statutory, and it also maintains other bench books which provide an overview of legal principles applicable to a wide range of the matters which come before state courts.<sup>10</sup> No less than for their work in relation to sentencing, the concise statements of the law which these publications provide are essential for busy magistrates and judges who need to identify and ascertain the applicable law within a very short space of time. I know that the effort which goes into their preparation is greatly appreciated by many judicial officers around New South Wales.
11. I should also note that these resources are available outside the judiciary to the profession and members of the public. While JIRS in its entirety is only available by subscription,<sup>11</sup> a significant portion of the information published by the Commission on JIRS is freely available. Importantly, this includes the series of bench books and the updates on developments in the criminal law, which are accessible both online and via an app, if you are someone who is technologically savvy.<sup>12</sup> Thus, not only does the Commission provide an excellent service to the judiciary, but it also helps provide high-quality educational resources to the profession and the public, which, judging from the statistics provided in the annual report, are well-used.<sup>13</sup>

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<sup>10</sup> *Judicial Commission Annual Report 2017–18* (n 6) 39.

<sup>11</sup> 'Judicial Information Research System (JIRS)', *Judicial Commission of New South Wales* (Web Page) <<https://www.judcom.nsw.gov.au/judicial-information-research-system-jirs/>>.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Judicial Commission Annual Report 2017–18* (n 6) 40, 43–4.

12. So, even if the work of the federal courts might not attract quite the same public attention which attends sentencing, could an argument be made for a body to assume responsibility for publishing similar resources for matters in federal jurisdiction? Again, that is a question which I will leave open. It may be that you feel that you, or the members of the profession who appear before you, would be assisted by these resources. Or, it may be that you feel that the resources which are already available are adequate. But, given the importance of this function to the present work of the Commission in New South Wales, I do not think that you can sensibly have a discussion about a “federal judicial commission” without considering whether the proposed commission will assume the same responsibility.
13. Now, the sentencing information function which I have been discussing so far is not the only function of the Commission which is rarely mentioned in the media. In fact, some of the matters which I have been talking about have already started to bleed into a discussion of another important function of the Commission: judicial education, which of course, includes the publication of the bench books and newsletter updates which I have already spoken about. However, the judicial education services provided by the Commission also extend much wider. They include an annual conference for the members of each of the courts of New South Wales as well as workshops on individual issues, including orientation programs for new judicial officers. The feedback suggests that all of these events are roundly well-received and useful to judicial officers in their court work.<sup>14</sup>
14. Several of these events also offer the opportunity for the judiciary to engage more broadly with the community. A particular example is the “Ngura Yura” program, which “aims to raise judicial awareness about Aboriginal history and culture, Aboriginal interactions with the justice system, and to provide an opportunity for judicial officers to meet and

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<sup>14</sup> Ibid 25–6.

exchange ideas with Aboriginal people”.<sup>15</sup> These kinds of events can go a long way towards addressing the difficulties which Aboriginal people have faced and still face in the justice system today by providing judicial officers with the training necessary to overcome cultural communication barriers in their everyday work in court, supplemented by resources such as the *Equality Before the Law Bench Book*.<sup>16</sup>

15. I will again point out that, while the Commission does an excellent job in organising these events and resources for the judiciary, there is nothing out-of-the-ordinary about the fact that these functions have been invested in an independent body rather than remaining with the court. If the current educational events organised by the court fulfil your needs as a judge, then there would be no need to change for the sake of change. On the other hand, if you feel that the court could benefit from a better or just a different judicial education program, then maybe there is an argument for change. Take the present conference as a case in point, since it is this type of event which would have been organised by the Commission if this were a State court. Do you feel that it has been a useful experience, or do you think it could have been improved in some way? Now, I won't ask you to put up your hands – I don't think the Chief Judge would like it very much if I subjected him to a random opinion poll.
16. But, whatever your opinion on the present conference may be, it must be recognised that entrusting the planning and preparation of a judicial education program to a body like the Commission is not a radical step, and this is a theme which is worth emphasising, since it has lain in the background of my discussion of both the sentencing information and judicial education functions of the Commission. I think it can best be summarised by saying that I do not think that there is no “magic” in the work of the Commission. It has been a success because it is staffed by highly talented, highly experienced and highly intelligent people, and not

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<sup>15</sup> Ibid 28.

<sup>16</sup> See Judicial Commission of New South Wales, *Equality Before the Law Bench Book* (Online Resource) <<https://www.judcom.nsw.gov.au/publications/benchbks/equality/index.html>>.

because the Commission has stumbled upon some hitherto unknown institutional arrangement which makes it especially well-suited to the tasks that it performs.

17. Unfortunately, it is often assumed that it has succeeded because of the latter rather than the former. I do not think there is much basis for this assumption. It seems perfectly conceivable to me that the sentencing information and judicial education functions of the Commission could have been performed by staff operating within each court. Of course, it is generally more efficient and easier to approach problems from a holistic viewpoint when there is only a single body external to each of the Supreme, District and Local Courts and shared by them all. But, when considering the possibility of a body like the Commission at the federal level, it is important to bear in mind that the same arguments may no longer apply. Again, this is a point which too far outside my understanding of the present workings of the federal courts to be able to consider.
18. In any case, regardless of who performs, and perhaps, who ought to perform, the sentencing information and judicial education functions of the Commission, it cannot be denied that they are important. Both have the common goal of strengthening the competence and knowledge of the judicial officers in carrying out the administration of justice in New South Wales and thus building public confidence in the judiciary. They should be regarded as lying at the heart of the task which the legislature has set the Commission. In my opinion, this justifies the view that the primary and most significant role of the Commission is not to be a judicial police officer, as I have said, but rather, to provide information and educational resources to the judiciary to allow them to effectively discharge their duties fairly and in accordance with the law.
19. At the same time, it cannot be denied that the Commission has a responsibility to receive complaints from members of the public about judicial officers when they fail to discharge these duties. This function tends to be the focus of media commentary on judicial commissions. But this coverage gives something of a misleading impression, since



much of this commentary suggests that, absent the existence of an independent Commission, there would be no means for addressing complaints made by the public about judicial officers. However, it is clear that, as has been done in the case of the federal courts, there are alternatives to having complaints managed by an external body. If we are to properly understand the nature of the Commission and its functions under statute, we need to look more closely at what task the legislation confers on the Commission in relation to complaints.

20. First, it may be noted that the relevant legislation creates a close link between the judiciary and the Commission. Indeed, as is sometimes unappreciated, the Commission itself, strictly speaking, consists only of the six head judicial officers of each major jurisdiction in New South Wales, along with four members of the community appointed by the Governor on the advice of the Minister, who generally have some connection with and understanding of the legal profession.<sup>17</sup> The staff of the Commission,<sup>18</sup> do not form part of the Commission, and cannot exercise any of its decision-making functions in relation to complaints,<sup>19</sup> but nevertheless do much of the valuable front-line work in making initial contact with complainants, processing, collating and summarising the relevant information, including taking statements from the parties concerned where appropriate, and in some cases providing recommendations on how a complaint should be handled. Their work is critical to the functioning of the Commission, but ultimately, it is only in aid of to the powers to deal with complaints vested in the six judicial officers and four appointed members comprising the Commission itself.
21. However, even the powers of the Commission are themselves somewhat limited. When a complaint comes before the Commission, it may conduct a further preliminary investigation, summarily dismiss the

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<sup>17</sup> *Judicial Officers Act 1986* (NSW) s 5(3).

<sup>18</sup> *Ibid* s 6.

<sup>19</sup> *Ibid* s 7(2)(a).

complaint, or, depending upon the seriousness of the complaint, refer it on to another body.<sup>20</sup> Less significant complaints are referred to the head of jurisdiction,<sup>21</sup> who may take any action which they might otherwise have taken under their existing powers to manage their respective courts. Other complaints are referred to a separately constituted “Conduct Division” of the Commission,<sup>22</sup> which conducts an independent investigation of the complaint.<sup>23</sup> Thus, the Commission itself really has quite a limited, although important, role to play in responding to complaints.

22. It is for this reason that I think coverage of judicial commissions by the media can often be misleading. Viewed in the way I have described, the legislation under which the Commission operates does not confer any radical powers upon it to discipline, censure, or otherwise punish judicial officers as a result of a complaint, and nor was it intended to.<sup>24</sup> Indeed, one could almost say that the powers of the Commission in relation to complaints are a triage process, determining whether a complaint should be summarily dismissed, referred to the head of jurisdiction or sent to a separately constituted Conduct Division. It has no compulsory powers apart from the power to require a judicial officer to undergo a medical examination if there is reason to suspect impairment in the performance of their duties.<sup>25</sup>
23. I am emphasising these aspects of the nature of the Commission’s powers in relation to complaints not because I wish to downplay the importance of having an effective procedure for handling complaints. On

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<sup>20</sup> Ibid ss 18, 20.

<sup>21</sup> Ibid s 21(2).

<sup>22</sup> Ibid s 21(1).

<sup>23</sup> Ibid pt 6 div 3.

<sup>24</sup> See Conduct Division of the Judicial Commission (NSW), *Report of Inquiry in relation to Magistrate Dominique Burns* (21 December 2018) 2–3 [3]–[4].

<sup>25</sup> Ibid s 39D.

the contrary, I believe that it is essential to the maintenance of confidence in the public administration of justice. Rather, as I have done in relation to the sentencing information and judicial education functions of the Commission, I wish to point out that the powers of the Commission fall far short of being extraordinary, exceptional, or unique, when at least some media commentary would suggest otherwise. I would think that most such references to the Commission are probably intended to refer to the distinct and different ad hoc “Conduct Division” formed when the Commission refers a more serious complaint.<sup>26</sup>

24. However, even so, a panel of the Conduct Division cannot make any findings which would ultimately affect any decision about whether to remove the judicial officer by the legislature. Its role is ultimately advisory. In particular, the role of the panel is to produce a report after a hearing concerning the complaint which sets out its decision on whether it is “wholly or partly substantiated”.<sup>27</sup> Even if it is of the view that there are grounds which “could justify parliamentary consideration of the removal of the judicial officer”, its role is limited to forwarding its report on the matters which were the subject of complaint to the Governor and the legislature.<sup>28</sup>
25. It is true that a panel of the Conduct Division can exercise more extensive compulsory powers during an investigation into a complaint about a judicial officer, although these are largely based on the powers which could be exercised by a royal commission.<sup>29</sup> However, the vast majority of complaints with which the Commission deals are either summarily dismissed or simply referred to the relevant head of jurisdiction for further action without being brought before a panel of the

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<sup>26</sup> Ibid s 22.

<sup>27</sup> Ibid s 28.

<sup>28</sup> Ibid s 29.

<sup>29</sup> Ibid s 25.

“Conduct Division”.<sup>30</sup> No doubt the matters brought before the Conduct Division tend to be those which are more likely to catch the attention of the media and the public, but I do not think that this means they should be the focus of the debate about whether a “federal judicial commission” should be established. It is hardly appropriate to assess the utility of a body like the Commission solely by looking at the narrow and infrequently exercised functions of a panel of the Conduct Division.

26. I do not point these matters out to diminish the excellent work which has been done by the Commission and its staff over its three decades of existence. In particular, the work of its staff is professional and always of the highest quality. Rather, I seek only to say that the reason for its utility does not lie in the particular powers or roles with which it has been conferred, but elsewhere. In other words, as I have said earlier, there is no “magic” in the work of the Commission. Its powers to deal with complaints are, on the whole, not extraordinary, and there is nothing particularly unique about the institutional structure which it has adopted. At most, I think that it could be said to be an efficient and convenient way of providing sentencing information and educational programs to judges while also managing complaints. None of these functions are new or particularly innovative, and each would have to be undertaken regardless of the existence of a body like the Commission.
27. Now, it might seem strange for me to describe the functions of the Commission in this way. After all, the Commission is often held up as an example of best-practice in relation to the difficult task of managing the judiciary. However, I do not see any difficulty. The success of the Commission in New South Wales *has not* been due to the particular powers with which it has been conferred, or with the particular institutional arrangements within which it operates. Rather, its success should be attributed to the broad-based support which it receives from the judicial officers who participate in its work, who co-operate with it, and who constitute its directing mind and will alongside other prominent

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<sup>30</sup> *Judicial Commission Annual Report 2017–18* (n 6) 49.

and respected members of the community.<sup>31</sup> The Commission has not succeeded because it is able to exercise extraordinary powers to “keep the judiciary honest”. It has succeeded because it operates with the consensus and co-operation of all the relevant stakeholders.

28. I think that this fact is essential to understand in the current debate about the merits of a “federal judicial commission”. Without the full support and involvement of the federal judiciary, I find it difficult to understand how such a body would add any benefit to the internal complaint-handling procedures which have been adopted by each of the major federal courts,<sup>32</sup> most of which, I note, already bear some similarity to the procedures which are already followed by our Commission in New South Wales. If a complaint is not summarily dismissed, the procedures provide for it to be either referred for assessment to an independent “Conduct Committee”, which then prepares a report, or referred to the Commonwealth Parliament through the Attorney-General, which may then establish a separate independent commission under statute with powers of compulsion,<sup>33</sup> and which then prepares a report. The principal difference is that the determination of whether a complaint should be summarily dismissed or sent to a “Conduct Committee” of Parliament is done internally, generally at the direction of the head of the relevant jurisdiction.
29. The dangers of establishing an external complaint-handling procedure without the support of the judiciary are well-illustrated by the history of

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<sup>31</sup> *Judicial Officers Act 1986* (NSW) s 5. For the selection of the “appointed members” from the community, see sch 1.

<sup>32</sup> ‘Judicial Complaints Procedure’, *Federal Court of Australia* (Web Page, 3 May 2013) <<http://www.fedcourt.gov.au/feedback-and-complaints/judicial-complaints>>; ‘Judicial Complaints Procedures’, *Federal Circuit Court of Australia* (Web Page, 14 May 2013) <<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/contact-us/feedback-complaints/judicial-complaints>>; ‘Judicial Complaints Procedure’, *Family Court of Australia* (Web Page, 25 May 2017) <[http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/contact-us/feedback/fcoa\\_judicial\\_complaints\\_proc](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/contact-us/feedback/fcoa_judicial_complaints_proc)>.

<sup>33</sup> *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012* (Cth).

our Commission.<sup>34</sup> As originally proposed by Attorney-General Sheahan, the initial plan for the Commission would have placed it under the control of the executive government with powers to discipline judges or remove them from office.<sup>35</sup> This proposal quickly generated a hostile reaction from the judiciary, and the Bill as it was eventually introduced retained the traditional role of the Parliament in removing judicial officers.<sup>36</sup> However, while the Bill was ultimately passed, controversy continued to rage around questions about the independence of the Commission from the Attorney-General's Department until provisions were introduced which made the Commission an independent statutory body with the power to employ its own staff.<sup>37</sup>

30. The New South Wales judiciary ultimately accepted the need for the Commission as a result of several issues of public concern about the administration of justice which had developed over the course of the early 1980s, and in particular, the concerns about consistency and leniency in sentencing to which I have already referred. Despite their reservations about the initial model which was adopted, there could have been little doubt at the time that some action was needed to maintain public confidence in the ability of judicial officers to discharge their duties. I suspect that things would have turned out quite differently if the judiciary had not acknowledged a need for reform in the way in which complaints about judicial officers were being managed. The broad support which the final model for the Commission received means that there is no need to speculate about what might have occurred otherwise.
31. I think that this history shows that any outside observer who wishes to introduce a "federal judicial commission" needs to be able to secure the co-operation of the federal judiciary to these changes. This may be

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<sup>34</sup> For more detail about the Commission's history, see *History of the Judicial Commission* (n 9).

<sup>35</sup> *Ibid* 2.

<sup>36</sup> *Ibid*.

<sup>37</sup> *Judicial Officers (Amendment) Act 1987* (NSW) sch 1.

difficult if there is no perceived problem with the procedures currently in place to perform the same functions as those performed by the Commission in New South Wales. And, while I know that I have said that I do not have the knowledge necessary to comment in detail on the functioning of the federal judiciary, I think that I can at least say that there is nothing like the public crisis of confidence in the work of the New South Wales judiciary in the 1980s which led to the formation of our own Commission.

32. Further, while it was the debate about the function of the Commission in relation to complaints about judicial officers which highlighted the need for the support of the judiciary, I think that the support of the judiciary equally underlies its successes in performing each of its functions which I have mentioned in this address. It has provided excellent legal resources and training which are available to judges in every court because it works closely with the judiciary to develop material which is relevant to their key areas of work, just as it has become accepted as the appropriate means by which complaints should be assessed because it retains a role for the judiciary in that process. But, in the end, the most important benefit of the engagement between the judiciary and the Commission is perhaps one of the most subtle. In large part, it was responsible for making the judiciary conscious of the fact that their performance in their role will be judged by the members of the public who appear before them in court.
33. There can be no doubt that this has had a civilising effect on the judiciary. It has not resulted from the threat of any disciplinary sanction, but from an acceptance that, since how they carry out their work can affect the lives of members of the public who appear before them in significant ways, they must do so fairly, politely and, it almost goes without saying, in accordance with law. This is where the value of a body such as the Commission lies. There have been few complaints which have required meaningful action to be taken over its lifetime, and no cases where there has been any finding of corruption of any sort. It is perhaps doubtful whether the situation prior to the establishment of

the Commission was that much different. I think that it certainly can be said, however, that there has been a general increase in awareness among the members of the New South Wales judiciary about the importance of proper conduct attributable to their engagement with the Commission and its work, which is to the benefit of the members of the public who come before the courts.

34. As I have been doing throughout this address, I would again ask the rhetorical question: is this an area in which the federal judiciary needs to improve? And, once again, your view on whether having a “federal judicial commission” would be beneficial might change depending upon your answer to this question. If you believe that there is a need for a separate body to be created to increase awareness among the federal judiciary about the importance of proper conduct in dealing with litigants, then you will take a favourable view. If you think otherwise, then you will not. I can only speak to the circumstances in New South Wales, but in my experience, it is perhaps this improvement in the attitude of the judiciary which is the most tangible, though subtle, consequences of the existence of the Commission.
35. However, the importance of the willingness to engage with and support the Commission by the judiciary to achieving this result should never be forgotten, and I would reiterate that I think it should be regarded as indispensable to the functioning of any body like the Commission. Isolated calls for reform are unlikely to gain much traction unless they proceed by engaging respectfully with the judiciary and building consensus over time based on a genuine and identified need for reform. The Commission in New South Wales has succeeded because its relationship with the judiciary is constructive and the product of many years of respectful dialogue. This approach is, I think, one which should be commended and followed. As to whether it is something which is necessary or desirable for the federal judiciary and federal courts, I will leave it for you to consider.
36. Thank you for your time.