



The Australian Institute of

Judicial Administration Incorporated

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# Annual Report

for the year ended 30 June 2002

The Australian Institute  
of Judicial Administration Incorporated

**PATRON****The Hon Murray Gleeson AC**

Chief Justice of Australia

**COUNCIL****President****The Hon Justice Murray Kellam**

President, Victorian Civil & Administrative Tribunal

**President-Elect****The Hon Justice Peter Underwood AO**

Supreme Court of Tasmania

**Deputy President****Mr Laurie Glanfield AM**

Director General, Attorney-General's Department, New South Wales

**The Hon Justice Virginia Bell**

Supreme Court of New South Wales

**The Hon Justice John Byrne**

Supreme Court of Queensland

**Dr Andrew Cannon**

Supervising Magistrate, South Australia

**Her Honour Judge Jennifer Coate**

President, Melbourne Children's Court

**Mr Richard Coates**

Chief Executive Officer, Department of Justice, Northern Territory

**Mr Robert Cornall**

Secretary, Commonwealth Attorney-General's Department

**Mr Bill Cossey**

State Courts Administrator, Courts Administration Authority, SA

**The Hon Justice Linda Dessau**

Family Court of Australia

**Ms Annette Hennessy**

Magistrate, Queensland

**Ms Bronwyn Jerrard**

Court Administrator, Supreme and District Courts, Queensland

**The Hon Michael Lavarch**

Secretary General

Law Council of Australia

**Professor Marcia Neave AO**

Chairperson

Victorian Law Reform Commission

**The Hon Justice Robert Nicholson AO**

Federal Court of Australia

**The Hon Justice Stephen O Ryan**

Family Court of Australia

**Mr Andrew Phelan**

General Manager, Organisational Performance, Family Court of Australia

**Mr Richard Refshauge SC**

Director of Public Prosecutions - ACT

**Mr Stephen Skehill**

Special Counsel, Mallesons Stephen Jaques

**Mr Maurie Stack OAM**

Partner, Stacks - The Law Firm

**The Hon Justice Chris Steytler**

Supreme Court of Western Australia

**The Hon Justice Sally Thomas AM**

Supreme Court of the Northern Territory

**Ms Amanda Watt**

Partner, Minter Ellison

**His Honour Judge Terry Worthington**

Chief Judge, District Court of South Australia

**Her Honour Judge Mary Ann Yeats**

District Court of Western Australia

**New Zealand Representative****The Hon Justice Lowell Goddard**

High Court of New Zealand

**Papua New Guinea Representative****The Hon Sir Arnold Amet CBE**

Chief Justice, Papua New Guinea

## **SECRETARIAT**

### **Executive Director**

Professor Greg J Reinhardt

### **Deputy Executive Director**

Ms Anne Wallace

### **Membership and Finance Officer (Part-time)**

Mrs Raffaella Stefanovski

### **Administrative Secretary and Publications Officer (Part-time)**

Mrs Kathy Jarrett

### **Executive Secretary**

Mrs Christine Crawford

### **Librarian (Part-time)**

Ms Mary Young

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## PRESIDENT S MESSAGE



### **The Hon Justice Murray Kellam**

The year ended 30 June 2002 has proved to be a most active one for the AIJA.

The Institute has produced a number of important publications during the year including *Guide to Judicial Conduct*, *Indigenous Interpreting Issues for Courts*, *Australian Magistrates Perspectives on Expert Evidence: A Comparative Study* and *Quality in Court Connected Mediation Programs*. I am grateful to the authors of each of these papers and to the advisory committees involved as well as to the AIJA Project and Research Committee members for the work they have done.

The AIJA is particularly proud of the part played by it in producing an Aboriginal Bench Book for Western Australian Courts. We hope that it will be a model for other courts throughout Australia.

We are pleased to observe that arrangements for establishing the National Judicial College have been completed during the year. The AIJA has supported this project from the start and will be pleased to continue to provide support in the future. We wish the College well and hope that it will soon be a major force amongst the Australian judiciary. The AIJA has continued to work with the Judicial Commission of New South Wales. Together we conducted the Judicial Orientation Programme which took place in Sydney in October 2001 and will do so again in October 2002. I expect that in future the AIJA will work with the National Judicial College, the Judicial Commission and other such organisations in producing high quality programmes for the judiciary.

Once again the AIJA Council has devoted much attention during the past year to the future direction of the Institute s Research Programme. Current research projects include Harmonisation of Court Rules, The Legal Thesaurus Project, Court Governance and Proportionality. In addition, work on development of a proposal to research charges to juries by judges has been commenced under the leadership of Justice Geoff Eames of the Court of Appeal of the Supreme Court of Victoria.

The Institute has conducted a number of highly successful conferences throughout the year. The AIJA Magistrates Conference took place in Melbourne on 20 July 2001 and was well supported by all Magistrates Courts of Australia. The Legal XML and e Filing Conference took place in Melbourne in October 2001 and was an overwhelming success. I express my appreciation to the Secretariat for its contribution to this success. The Secretariat is to be congratulated too upon the success of the Inaugural AIJA Appellate Judges Seminar which took place in Melbourne in November 2001. The Indigenous Cultural Awareness Committee, convened by Judge Yates, organised a most successful conference in Alice Springs in 2002. The AIJA conducted a Sheriff s Seminar together with the Annual Conference which took place in Hobart in September 2001. Despite the difficulty caused by air traffic chaos in the wake of the demise of Ansett in the week before the conference, it was nevertheless a most enjoyable and successful conference. I express my appreciation to Justice Underwood of the Supreme Court of Tasmania for the work he and his organising committee did in ensuring that the conference was a success.

The Technology for Justice Steering Committee, convened by Justice Underwood, has continued to work on the preparation of the Third AIJA Technology for Justice Conference which will be held in Sydney on 20 - 22 October 2002. The workload of this Committee is significant and in the past has produced highly successful conferences marked by a high level of international attendance. I have no doubt that the third conference in Sydney will be equally as successful as the last conference that took place in Melbourne in October 2000.

The AIJA established an award for Excellence in Judicial Administration to mark the 25<sup>th</sup> anniversary of the AIJA. The award is designed to recognise the outstanding achievement in the administration of justice throughout Australia. A number of nominations were made before the closing date on 31 July 2002 and I expect an announcement to be made soon in relation to the successful nomination.

I would like to thank all Council members and all those involved in the Institute's committees who have been responsible for much valuable work during the past year. I thank members of the Board of Management as well as the staff of the AIJA Secretariat who have been most diligent in supporting the work of the Institute throughout the year. I am grateful for the support given to me by Justice Underwood and Laurie Glanfield during the year and wish Justice Underwood well in his term as President of the Institute.

Finally, I wish to express my personal gratitude for the wonderful support I have been provided with by the Executive Director and his Deputy. The outstanding success of the Institute throughout the last year and the sound financial position in which the Institute is currently placed is due entirely to their efforts. As the Institute embarks upon its second quarter century as a valuable legal institution in Australia, it is, I believe, well situated to continue to make a major contribution to Judicial Administration in Australia and in our region.

*The Hon Justice Murray Kellam  
President, AIJA*

## REPORT FROM THE EXECUTIVE DIRECTOR



### **Professor Greg Reinhardt**

This year has seen an expansion in the activities of the AIJA Project and Research Committee with a wide range of proposals considered. As I pointed out in last year's report, Council has identified research as an important area of growth in the Institute's activities. A full report on research appears elsewhere in the Annual Report. I would simply like to emphasize the significance of the Survey of Jury Charges proposed by Justice Geoff Eames of the Supreme Court of Victoria approved by Council at its June meeting. There is currently much work in train in relation to juries (including the study of expert evidence and juries being conducted by the Institute with the National Institute of Forensic Science

(NIFS)). This research can only benefit the administration of justice and in the longer term assist jurors in relation to their work.

The existing Committee structure within the Institute is working efficiently and productively. The work of one committee is often able to compliment that of another. The Project and Research Committee was able to collaborate with the Aboriginal Cultural Awareness Committee to produce the important paper by Dr Michael Cooke on Indigenous Interpreting Issues for Courts, a publication which, incidentally, is of great use in the National Judicial Orientation Programme; the discussion of proposed research by the Project and Research Committee may provide the seed for development of an educational programme such as the proposed seminar on discrimination currently planned for the latter part of 2002.

I was pleased that the Institute could again be involved with Papua New Guinea in the development of its Alternative Dispute Resolution Programme. Justice Kellam, Dr Greg Lyons, the Principal Mediator of the Victorian Civil and Administrative Tribunal (VCAT) and I travelled to Port Moresby in September 2001.

A two-day seminar was conducted for twelve officers employed in the office of the Solicitor-General and the Department of the Attorney-General for Papua New Guinea. The focus of that seminar was mediation but with some discussion of case management. Resources in both the Attorney-General's Department and the office of the Solicitor-General are stretched and mediation training will be a valuable resource for those who participated in the seminar.

A three day mediation workshop was then conducted for the Papua New Guinea judiciary (judges and magistrates). It is pleasing to see the significant progress which had been made in relation to rules for mediation and mediation generally within the Courts. Four magistrates had previously travelled to Melbourne for training at VCAT under the direction of Dr Lyons.

I spoke at the meeting of the Chief Justices of the Asia Pacific Region on Judicial Education in the Asia Pacific Region in Christchurch on 5 October 2001 at the request of Chief Justice David Malcolm.

At the Christchurch conference, I met Mr Gilles Blanchi who is the Deputy Director-General and Asia Regional Representative of the International Development Law Institute (IDLI) which was formerly established in the Philippines but is now established in Sydney. IDLI is concerned with educational programmes for judicial officers in developing nations. It is important to liaise with organizations such as IDLI which are involved, on an international basis, in work on judicial administration. I subsequently presented a seminar for IDLI on Judicial Education in Sydney in June 2002. Present at that seminar were M le Juge Michel

Bonnieu, who has recently been involved in the setting up of a Judicial Training Institute in Cambodia and His Excellency, Mr Ang Vong Vathana, Secretary of State, Ministry of Justice, Cambodia.

I have continued my activities in relation to the conduct of an education programme for Indonesian judges (in March 2002).

Anne Wallace and I have been actively involved in the planning for the Commonwealth Law Conference to take place in Melbourne in April 2003 as members of the Papers Committee and as rapporteurs for Conference sessions.

I am grateful to Anne for her considerable assistance during the year. I was on long service leave for 10 weeks from late March until early June and Anne took on the position of Acting Executive Director during that time.

Anne had the opportunity in August 2001 to travel to the United States as a presenter at the National Center for State Courts Court Technology Conference (CTC7). While in the United States she also visited the National Centre for State Courts at Williamsburg Virginia and the Federal Judicial Center in Washington DC. Her travel was funded by the NCSC. Her visit has helped to develop further our ties with both those organisations and was a useful opportunity to discuss projects of mutual interest.

Anne also presented a paper at a Legal Technology Conference in Hong Kong in December.

The existing affiliation agreement with the University of Melbourne is to conclude in January 2003. Discussions are well advanced with for an alternative arrangement with another organisation, as noted elsewhere in this report.

### **Teaching**

I taught part of Dispute Resolution and Legal Ethics in the 2001 academic programme at the University of Melbourne and Civil Procedure in the 2002 Summer School. I taught Current Issues in Insurance Law and Advanced Civil Litigation in the postgraduate programme and was also involved in the University's Advocacy Programme. I have spoken at several conferences during the year, particularly in relation to insurance law matters.

### **Writing and Private Research**

I continue to edit the *Journal of Judicial Administration* and the *Insurance Law Bulletin*. The second edition of the casebook of which I am a co-author was published in February 2002. I continue to write monthly for the Victorian *Law Institute Journal*.

### **Visitors**

The Secretariat received a number of visitors during the past twelve months. They included Australian and overseas academics, judges and court administrators.

### **The Secretariat**

I wish to thank my deputy, Ms Anne Wallace, Mrs Christine Crawford, Mrs Kathy Jarrett, Mrs Raffaella Stefanovski and Ms Mary Young, for their work and assistance throughout the year. They have performed their duties cheerfully and willingly, in a period where the secretariat workload has been intense.

*Professor Greg Reinhardt  
Executive Director, AIJA*

## **COUNCIL**

The AIJA is governed by its Council, which oversees the Institute's work, develops policy and identifies goals. Its 29 members are elected and appointed from the judiciary, (including the magistracy), tribunals, court administrators, the legal profession, government service and academia. Council members take an active role in the Institute's activities. A list of Council members as at 30 June 2002 appears at the front of this report.

Justice Jim Wood and Mr Peter Levy retired from Council at the Annual General meeting held on 23 September 2001. Council expressed its appreciation to them both for their contribution to, and active involvement in, the Institute's work during their terms on Council.

New Council members this year were The Hon Michael Lavarch, Secretary-General of the Law Council of Australia and Justice Stephen O Ryan, Administrative Judge of the Family Court of Australia.

Following this year's AGM, Justice Peter Underwood of the Supreme Court of Tasmania was elected as President-Elect of the Institute. Mr Laurie Glanfield, Director-General of the New South Wales Attorney-General's Department was elected as Deputy President.

## **OVERSEAS REPRESENTATION ON COUNCIL**

Both New Zealand and Papua New Guinea have standing representatives on the AIJA Council. During the past year, those representatives have been Justice Lowell Goddard of the High Court of New Zealand and Sir Arnold Amet, Chief Justice of Papua New Guinea.

## **BOARD OF MANAGEMENT**

The AIJA Board of Management is responsible for the day-to-day management of the Institute. It is composed of the President, President-Elect and Deputy President together with three elected Council members. The Board also has the power to co-opt other members of Council to serve on the Board. The members of the Board of Management, as at 30 June 2002, were Justice Murray Kellam, AIJA President, Justice Peter Underwood, President-Elect, Mr Laurie Glanfield, Deputy-President, Justice Linda Dessau, Judge John Byrne, Judge Jennifer Coate, and Professor Marcia Neave.

## **AWARD FOR EXCELLENCE IN JUDICIAL ADMINISTRATION**

To mark the 25<sup>th</sup> Anniversary of the AIJA this year the Institute inaugurated a regular award for Excellence in Judicial Administration.

The award was announced by AIJA President, Justice Murray Kellam, at a dinner held in Hobart in association with the 2001 AIJA Annual Conference. It is open to nominations for individuals and organisations and is intended to recognise exceptional achievements and significant contributions to the administration of justice in Australia.

The inaugural award will be announced in September 2002.

## **COURSE, CONFERENCE AND SEMINAR PROGRAMMES**

The AIJA's Education programme consists of courses, conferences and seminars designed for judges, magistrates, tribunal members, court administrators, lawyers and others with an interest in judicial administration. It includes regularly scheduled events and additional seminars and conferences on particular topics.

The programme is overseen by the AIJA s Education Committee, convened by Justice John Byrne of the Supreme Court of Queensland.

All AIJA education programmes are conducted on a fee-paying basis, which requires registration fees to be set at a level that covers the Institute s costs of presenting the programme (other than our staff time, which is covered by the Institute s recurrent funding). The Institute also attempts to achieve a 20% profit on each education activity which is channeled to our Research Fund and used to fund research into judicial administration.

2001-2002 programmes included:

#### **¥ AIJA Magistrates Conference , Melbourne, 20-21 July**

The inaugural AIJA Magistrates Conference was designed to replace the previous AIJA Magistrates course and provide an opportunity for magistrates to discuss matters of contemporary interest in their work. The programme was designed in consultation with the Chief Magistrates and featured presentations on:

- ¥ Problem-Oriented Courts
- ¥ Drug Courts
- ¥ Litigants in Person
- ¥ Magistrates and Expert Evidence
- ¥ The Commonwealth Criminal Code
- ¥ Victim Involvement in Criminal Matters
- ¥ Current Issues in Family Law

It also included international perspectives from Singapore and Italy.

Delegates also had the opportunity to learn about a research project being undertaken in association with Chief Magistrates and with the support of the AIJA and the Association of Australian Magistrates into The Changing Role of the Magistrates Court , from the project researchers, Associate Professor Sharon Roach-Anleu and Associate Professor Kathy Mack, both of Flinders University.

50 Australian magistrates together with representatives attended the Conference from Singapore and Papua New Guinea. The AIJA looks forward to continuing to work with Chief Magistrates on education programmes for the magistracy.

#### **¥ AIJA Sheriffs Seminar, Hobart, 21 September**

The inaugural AIJA Sheriffs Seminar took place in Hobart this year, as a prelude to the AIJA s Annual Conference. The idea for such a seminar and for the establishment of a sheriffs interest group within the AIJA had its genesis in a conference of sheriffs officers held in Melbourne two or three years ago.

In addition to reports from each jurisdiction, topics discussed at the meeting, included the execution of Civil Warrants of Seizure and Sale and Fines Enforcement. The meeting agreed to continue to hold the Sheriffs Conference as an adjunct to the AIJA Annual Conference and to work on the development of research projects in relation to the role of the sheriff and the harmonisation of civil execution rules.

### ¥ 19th AIJA Annual Conference , Hobart, 21-23 September

Numbers for the Annual Conference were considerably reduced, as a result of the collapse of Ansett airlines in the preceding week. Despite the travel difficulties, for those who were able to attend, it was a very worthwhile event.

A paper was delivered on behalf of the Keynote Speaker, Her Excellency The Rt Hon Dame Silvia Cartwright, Governor-General of New Zealand on the topic of United Nations Human Rights Treaties.

Dr Michael Cooke delivered a paper on issues and difficulties relating to interpreters for indigenous people in courts. Dr Cooke's paper has subsequently been published as a monograph by the AIJA.

Other presentations included a paper by Dr Ann Eyland of the NSW Justice Research Centre on evaluation of case management in the courts, a presentation by Dr Robin Creyke from the Australian National University on the effect of decision-making on bureaucratic process and an examination of comparative styles of judging by Dr Roderick Munday from Cambridge University. The conference concluded with a session on recent developments in the law of contempt, headed by Professor Michael Chesterman, author of the recent report on *Managing Prejudicial Publicity*.

### ¥ National Judicial Orientation Programme, Sydney, 21-25 October

This programme is run annually as a joint initiative of the AIJA and the Judicial Commission of New South Wales. Designed for newly-appointed judges, the course is open to judges from both Australia and neighbouring countries.

Designed to introduce participants to a number of aspects of the task of judging, an important part of the programme is the opportunity to hear from senior judicial officers in relation to facets of the judicial role. This year's programme was designed and developed by a Steering Committee convened by Justice David Lloyd of the Land and Environment Court of New South Wales and was attended by a wide cross-section of judges from both Australian and overseas courts.

Topics covered in the four-day residential programme included:

- ¥ Courtroom Issues
- ¥ Judicial Conduct
- ¥ Time Management
- ¥ Psychological and Physical Health
- ¥ Using Computers as a Research and a Management Tool
- ¥ Decision Making and Judgment Writing
- ¥ Assessing the Credibility of Witnesses
- ¥ Problems in Evidence
- ¥ Court Craft
- ¥ Social Awareness Issues
- ¥ Sentencing
- ¥ Alternative Dispute Resolution
- ¥ Common Pitfalls in Decision Making

### ¥ **Joint AIJA/VSCL Legal XML & E-Filing Seminar, Melbourne, 25-26 October.**

The development of common standards for electronic information is becoming increasingly important as the legal profession and courts move toward technologies such as electronic filing. Last October the AIJA joined forces with the Victorian Society of Computers and the Law to present a seminar on standards and the use of XML in the legal industry as a way to achieve this.

The importance of the development of common standards was emphasised in an opening address to the conference by Chief Justice Phillips of the Supreme Court of Victoria, who pointed to the need for a co-operative, informed approach as to the use of tools such as XML. The topics for the conference included both technical and non-technical issues around XML and e-filing, and examples of work being done in both the private and public legal sectors.

### ¥ **Appellate Court Judges Programme, Melbourne, 30 November -1 December.**

An inaugural seminar for Appellate judges was held this year, at the suggestion of the Rt Hon Sir Kenneth Keith, Court of Appeal of New Zealand. Drawing on suggestions for topics from judges in Australia and New Zealand, the conference programme also looked to the United States and Canada.

The programme included a paper entitled Reflections on Judicial Method and Appellate Courts by Professor Cheryl Saunders AO, Faculty of Law, The University of Melbourne and Director, Centre for Comparative Constitutional Studies, and a current perspective on The Regulation of Birth Technologies by Emeritus Professor Louis Waller AO, Faculty of Law, Monash University. Brian Opeskin, current Australian Law Reform Commissioner and author of the AIJA report Appellate Courts and the Management of Appeals in Australia spoke on that topic.

The seminar also included sessions on the role of appellate courts in sentencing and the use of Electronic Appeal Books.

### ¥ **5th AIJA Tribunals Conference, Melbourne, 6-7 June**

Over 160 delegates attended this conference, which had as its principal focus the theme of Developing a Best Practice. The Conference began with the launch of the Council of Australian Tribunals (COAT), an initiative intended to facilitate liaison and discussion between heads of tribunals and to develop best practice models of procedural rules, standards of behaviour and conduct for tribunals, as well as training and support for members.

The conference also featured presentations and discussions on:

- ¥ The Review of Decisions of Tribunals Before the Courts - Current Status of Judicial Review
- ¥ The Experience of Professional Registration Boards
- ¥ Mediation in Tribunals
- ¥ Current Issues of Natural Justice and Tribunals
- ¥ Therapeutic Jurisprudence and Tribunal Processes; and
- ¥ Apprehended Bias by Reason of Pre-Judgment and Other Conduct - Pitfalls for Tribunals and Tribunal Members

## ¥ **Future Directions: Courts and Indigenous Cultural Awareness Conference, Alice Springs, 12-14 June**

Organised by the AIJA s Indigenous Cultural Awareness Committee, this conference marked the ten-year anniversary of that committee s activities. It was intended to provide an opportunity to assess and re-focus the Institute s Indigenous Cultural Awareness Programme.

The opening address by keynote speaker, Mr Patrick Dodson, set an inspiring tone for two days of discussion, which examined the effectiveness of past cultural awareness programmes conducted or sponsored by the AIJA from both an indigenous and judicial perspective. The conference also considered ways of strengthening the judiciary s understanding of indigenous issues and strengthening the ongoing relationship between the judiciary and the indigenous community.

The AIJA is very appreciative of the support for the conference by the Aboriginal community, including the traditional owners in Alice Springs, the Lhere Artepe Aboriginal Corporation, and the National Aboriginal Justice Advisory Council (NAJAC), which held its meeting in Alice Springs to coincide with the event.

## **SPECIAL PROJECTS**

### ¥ **Indigenous Cultural Awareness**

This year saw the tenth anniversary of this project, which was established to assist with the implementation of recommendation 96 of the report of the Royal Commission into Aboriginal Deaths in Custody by providing indigenous cultural awareness training for judicial officers. The project is overseen by the AIJA s Indigenous Cultural Awareness Committee, currently convened by Judge Mary Ann Yeats of the District Court of Western Australia.

Seminars and education programmes for courts in several jurisdictions were approved for funding this year. In addition, several of the Committee s major initiatives came to fruition.

The *AIJA Aboriginal Cultural Awareness Benchbook for Western Australian courts*, a joint project of the Committee and the Western Australian Ministry of Justice, was completed. It is now available as a resource for other jurisdictions to consider adapting to their needs. An *Overview Report* providing details of the programmes in various jurisdictions sponsored and funded by the AIJA was also published.

Last year s report indicated that the Committee was considering how it could best assist in relation to the issue of interpreters for indigenous people in courts. This year the Committee recommended to the AIJA Council that the Institute should publish a monograph on *Indigenous Interpreting issues for Courts* by Dr Michael Cooke, as a resource for courts.

A major focus of the Committee s activities was the convening of the Future Directions Conference in Alice Springs, to discuss cultural awareness programmes that have been run to date and to chart some future directions (see report above). This conference proved to be a valuable opportunity for jurisdictions to share information about programmes and initiatives, and the Committee is currently considering a number of new projects arising from it.

## ¥ **Technology for Justice 2002**

The AIJA s Technology for Justice project has, as its impetus, the need for courts and tribunals to keep abreast of developments in the area of technology and to consider its most appropriate and effective use. To assist with that, the Institute has conducted two national conferences to review the use of technology in the Australian justice sector, showcase new developments and discuss issues in relation to it.

The Technology for Justice Steering Committee, convened by Justice Peter Underwood, has focussed this year on plans for a third Technology for Justice Conference, *Technology: What can it do for you?* to take place in Sydney on 20-22 October 2002. This conference will focus particularly on development of online systems in courts and at what lawyers need to do to keep pace with them. It will look not only at developments in Australian courts but will include updates from America, Canada, Asia and Europe.

## ¥ **Gender Awareness**

The Institute continues to incorporate segments on awareness issues into its regular education programmes, including the ongoing project with the Judicial Commission of New South Wales for orientation programmes for new judges.

## ¥ **Courts and the Public**

The Committee, convened by Justice Robert Nicholson of the Federal Court, continued to monitor developments in this area and review implementation of the recommendations made in Professor Stephen Parker s report for the AIJA on *Courts and the Public* (1998). The Committee has been working on a publication on the availability of support services in court.

## ¥ **East Timor Support Committee**

In March 2000 the AIJA Council resolved to establish a committee to provide support and training for the East Timorese judiciary. The Convener of the Committee is Richard Coates, Chief Executive Director, Department of Justice, Northern Territory. The Committee has continued to work on maintaining relationships with the Timorese judiciary and expand its contacts with government and non-governmental agencies working in the Timorese legal sector.

## **RESEARCH**

The AIJA Project and Research Committee, convened by Justice Robert Nicholson, has continued to meet regularly during the past year to consider proposals for funding research projects from the AIJA Research Fund. The AIJA Research Fund is constituted from profit earned on AIJA conferences and seminars.

The AIJA Council has previously identified two broad areas as priorities for research:

- ¥ the proportional use of judicial resources for optimum practical effectiveness and efficiency; and
- ¥ public perceptions and understanding of the justice system.

Included in these broad areas are:

- ¥ the examination of the relationship between the principles of adjudicatory independence and administrative accountability;
- ¥ a comparative analysis of reforms in the justice system in other jurisdictions;
- ¥ performance measurement, including the creation of best practice models for the introduction of bench-marking and yardstick competition models in the courts;
- ¥ proportionality, namely, the proportion of the value of claims expended on legal costs and the expenditure of court resources to meet the instances and areas of greatest need ; and
- ¥ access to justice.

During the past year, the AIJA Council, approved:

- ¥ a project on the issue of proportionality, to be conducted by Associate Professor Bernadette McSherry, Monash University;
- ¥ a contribution by the Institute to a project which will examine the impacts of the social, technological and physical environment on the jury experience to be conducted by Dr David Tait at the University of Canberra; and
- ¥ additional support for a Judicial Development Project being conducted by Dr Stephen Colbran in the Magistrates Court of Queensland.

Current research projects on hand include:

### **Court Governance**

A proposal on this topic was approved by Council in 2000. The project is examining the potential conflict between the principles of judicial independence and accountability for resource management, the advantages and disadvantages of different models of external and internal governance and supporting mechanisms to enhance the capacity of court governance models to strike a balance between the different principles. The project is being conducted by Professor Philip Williams, of the Melbourne Business School. Work has continued during the past year, with the report now moving from Victoria to examine other jurisdictions.

### **Legal Thesaurus Project**

In October 2000 Council approved a proposal from the Research Committee for a project to construct a legal thesaurus. The project is intended to provide significant assistance in the task of retrieval of computerised information and will complement the AIJA publication *Guide to Uniform Production of Judgments*. The project is being undertaken by a team from the South Australian court libraries, under the supervision of the project Advisory Committee headed by The Hon Justice Trevor Olsson and is expected to be completed later this year.

### **Expert Evidence and Jury Comprehension in Australian Courts**

The AIJA participated in a pilot study on this topic this year, which is being conducted in conjunction with the National Institute of Forensic Science (NIFS) and the Australian Defence Force Academy (University of New South Wales). This research follows on from the AIJA's earlier research publications, *Australian Judicial Perspectives on Expert Evidence: An Empirical Study* and *Australian Magistrates Perspectives on Expert Evidence: A Comparative Study*. The pilot was very successful and the project is likely to extend into New South Wales and Victoria this year.

## **Harmonisation of Court Rules Project**

The AIJA continued to support the work of the Council of Chief Justices Committee, chaired by Justice Kevin Lindgren. The Committee has examined the harmonisation of subpoena rules this year and a final draft of harmonised rules, for consideration by the Council of Chief Justices has been finalised.

## **PUBLICATIONS**

Each year the AIJA issues a variety of publications. In addition to published reports from research projects, the Institute publishes collections of papers from important conferences and seminars, the AIJA Oration and our newsletter, *AIJA News*. The Executive Director edits the Law Book Company publication, the *Journal of Judicial Administration*, which provides an opportunity to publish lengthier articles in the field. Copies of a number of recent publications, and general information about the Institute's work, are now available on its web site (<http://www.aija.org.au>).

The following are the main publications produced in the year under report:

### **¥ Quality in Court-Connected Mediation Programs, An Issues Paper**

The issue of qualitative standards in mediation programs connected with courts is a subject of considerable importance, not only from the viewpoint of litigants, but also from the viewpoint of the workload of courts and the cost of judicial administration. Courts and tribunals have a responsibility to ensure the integrity of mediation conducted under their rules.

The project was undertaken for the Institute by Professor Hilary Astor, Pro Dean and Abbott Tout Professor of Litigation and Dispute Resolution in the Faculty of Law, Sydney University. Professor Astor's qualifications and expertise in this area ensured that the project was able to draw on the most recent research and experience in this area. The work also greatly benefited from the work of other bodies in the field, including the National Alternative Dispute Resolution Advisory Council (NADRAC).

The paper identifies and considers the factors that most affect quality in court connected mediation and suggests a number of areas where further research is most needed. As well as empirical research, it suggests that the quality of various elements of court connected mediation could be supported and improved by measures such as education and policy development.

### **¥ Australian Magistrates Perspectives on Expert Evidence: A Comparative Study**

In 1999 the AIJA published the first of a series of on use of expert evidence in courts and tribunals and the role of expert witnesses. That report, *Australian Judicial Perspectives on Expert Evidence: An Empirical Study* analysed the results of a survey of trial judges in relation to issues of the presentation of expert evidence in their courts. The research was conducted by Dr Ian Freckelton, Dr Prasuna Reddy and Mr Hugh Selby on behalf of the AIJA.

This year saw the release of a companion volume to that report, based on an analysis of a survey conducted of the Australian magistracy. In addition to building upon the results of the first report, the survey also provided an opportunity to examine some aspects of trial practice unique to magistrates' courts and to compare the views of judges and magistrates.

As was the case with the judges' survey, significant numbers of magistrates expressed concerns about possible bias or partisanship on the part of expert witnesses. Concerns about the quality of advocacy and communication skills also emerged. The report suggests a number of measures to address these concerns and it examines the place of expert evidence in the adversary process generally. Its release will make a further contribution to debate and discussion in this important area.

#### ¥ **Indigenous Interpreting Issues for Courts,**

The issue of interpreting services for indigenous people in Australian courts is one that has been considered by both the AIJA's Indigenous Cultural Awareness Committee and its Research and Project Advisory Committee in recent years. Questions relating to the need for such services, their availability and their use have been discussed in these forums and at AIJA Council. To assist an informed debate about these issues, the 2001 AIJA Annual Conference included a session on the topic, which featured a presentation by Dr Michael Cooke, a leading expert in the field.

The quality of Dr Cooke's paper was such that the AIJA resolved to publish it as a monograph, to serve as an information resource, and provide background material for courts and tribunals who are considering running education programmes for judicial officers or court staff on the issue of interpreters.

#### ¥ **The Commonwealth Criminal Code — A Guide for Practitioners**

This year, the AIJA co-operated with the Commonwealth Attorney-General's Department, to publish a guide for practitioners on the provisions of the Commonwealth Criminal Code.

The Criminal Code has been progressively applied to Commonwealth offences since 1997 and, subject to a short delay with a handful of offences, applied to all Commonwealth offences from 15 December 2001. The Guide was prepared by Mr Ian Leader-Elliott, senior lecturer at Adelaide Law School. Mr Leader-Elliott gave a presentation on the Criminal Code at last year's inaugural AIJA Magistrates' Conference.

#### ¥ **The AIJA Aboriginal Cultural Awareness Benchbook for Western Australian Courts.**

A joint project of the Committee and the Western Australian Ministry of Justice, this publication was launched in Perth on 30 May 2002 in Courtroom No1 at the Supreme Court in Perth by The Honourable David K Malcolm, Chief Justice of Western Australia. The researcher for the project, Ms Stephanie Fryer-Smith of Curtin University, undertook this project under the auspices of a Western Australian sub-committee convened by Justice Bob French of the Federal Court of Australia. The Benchbook was in close consultation with the Western Australian judiciary.

The Benchbook will be made available as a resource for other jurisdictions and it is hoped that it will be picked up and adapted to their needs.

#### ¥ **Guidelines for Judicial Conduct**

This year saw the culmination of an important project, undertaken by the AIJA at the request of the Council of Chief Justices. The project, to develop suggested guidelines for judicial conduct, was undertaken by the Hon Sam Jacobs AO QC, a former judge of the

Supreme Court of South Australia, the Hon Brian Cohen QC, a former judge of the Supreme Court of New South Wales and the Hon John Clarke QC, a former judge of the Court of Appeal of New South Wales. It involved extensive consultation with judicial officers in all jurisdictions and was financed in part from the AIJA Research Fund, assisted by a contribution from the New South Wales Attorney-General's Department.

The publication, published by the AIJA on behalf of the Council of Chief Justices, was released on 17 June 2002. It is available as a free resource to all judicial officers and can also be downloaded from the Institute's website.

### ¥ **Overview Report on the National Aboriginal Cultural Awareness Program**

This report provides details of the programmes in various jurisdictions sponsored and funded by the AIJA Aboriginal Cultural Awareness Project between 1993-2001. It was written by Mr John Williams-Mozley a long standing member of the Indigenous Cultural Awareness Committee who was actively involved in the origins of the programme.

### ¥ **AIJA News**

The Institute's newsletter, *AIJA News*, is designed to keep members informed of the Institute's activities and also to bring its work to the attention of a wider national and international audience. It is published three times a year - in the months of February, June and October.

### ¥ **Journal of Judicial Administration**

Published by the LBC Information Services (Thomson Legal & Regulatory Group Pty Ltd), the *Journal of Judicial Administration* (JJA) acts as a focus for the description, discussion and analysis of developments in the field of judicial administration. As editor of the journal, the Executive Director endeavours to include material which focuses on current issues in relation to the role and operation of the judicial system and related institutions.

## **AIJA INFORMATION COLLECTION**

The AIJA library contains a collection of materials relating to judicial administration from Australian sources, but supplemented by other jurisdictions; mainly the United States, the United Kingdom, New Zealand and Canada. Our Librarian, Mary Young, is happy to take reference inquiries from members and researchers.

## **AIJA FUNDING AND ACCOUNTS**

The AIJA receives the major part of its funding from contributions by all Australian Governments through the Standing Committee of Attorneys-General (SCAG). This is supplemented significantly by the Institute's income from membership fees. The AIJA Research Fund is constituted by means of a 20% contribution levied on its education programmes.

For the year under report, the AIJA's financial result was an operating deficit of \$62, 503. However, this result included expenditure in excess of \$71,000 on research projects funded from the AIJA Research Fund. This expenditure is, in effect, funded from accumulated surpluses.

The Institute's accounts are annually audited by Mr Jeff Knott, of the firm BDO, Chartered Accountants and Advisers. Copies of the Annual Financial Statements are available from the Secretariat.

## AIJA AND THE UNIVERSITY OF MELBOURNE

The AIJA has been affiliated with The University of Melbourne since 1986. Last year's Annual Report advised members that the AIJA Council had successfully sought an extension of the current affiliation agreement for a further period of two years, to expire on 31 January 2003. In June this year, Council was informed that the University of Melbourne cannot make any office space available to the AIJA after that date. Council authorised the Board to enter into negotiations with a view to obtaining alternative accommodation for the Secretariat. Members will receive a further report on the position following the next Council meeting.

The AIJA would like to place on record its appreciation for the support provided by the University of Melbourne, in particular the Law Faculty, during the period of the Institute's affiliation.

## MEMBERSHIP

The Institute's membership as at 30 June 2002 was 1072. It included trial memberships, extended to non-members who attended AIJA conferences during the past 12 months.

The membership was made up as follows (figures for the previous year are shown in italics).

<b>MEMBERSHIP</b>	<b>By State/Territory</b>	<b>MEMBERSHIP</b>	<b>By Category</b>
New South Wales	<b>286</b> ( <i>340</i> )	Judges	<b>382</b> ( <i>376</i> )
Victoria	<b>276</b> ( <i>281</i> )	Magistrates	<b>92</b> ( <i>100</i> )
Queensland	<b>104</b> ( <i>116</i> )	Tribunal Members	<b>79</b> ( <i>89</i> )
South Australia	<b>105</b> ( <i>121</i> )	Court Administrators	<b>91</b> ( <i>96</i> )
Western Australia	<b>86</b> ( <i>94</i> )	Legal Practitioners	<b>168</b> ( <i>153</i> )
Tasmania	<b>40</b> ( <i>34</i> )	Academics	<b>51</b> ( <i>51</i> )
Northern Territory	<b>19</b> ( <i>18</i> )	Librarians	<b>17</b> ( <i>16</i> )
Australian Capital Territory	<b>45</b> ( <i>45</i> )	Corporate	<b>80</b> ( <i>60</i> )
Overseas	<b>108</b> ( <i>111</i> )	Trial Members	<b>36</b> ( <i>121</i> )
<b>TOTAL</b>	<b>1072</b> ( <i>1160</i> )	Others	<b>76</b> ( <i>98</i> )
		<b>TOTAL</b>	<b>1072</b> ( <i>1160</i> )

The South Australian local chapter is chaired by Dr Andrew Cannon. The chapter has continued its successful seminar programme this year this year, running seminars on Courts and ADR and The Court File: an Electronic File. The chapter has also continued to liaise with the South Australian Aboriginal Cultural Awareness Programme Committee chaired by Justice Mullighan to support its activities. Seminars on enforcement and on petrol sniffing issues are planned for the coming year.

## **COMMUNICATION WITH THE AIJA**

The Institute welcomes and encourages inquiries about its work, about membership and judicial administration generally. Inquiries can be directed to:

The Executive Director  
AIJA  
1<sup>st</sup> Floor, 723 Swanston Street  
CARLTON VIC 3053  
Telephone: (03) 9347 6600  
Facsimile: (03) 9347 2980  
Email: [g.reinhardt@unimelb.edu.au](mailto:g.reinhardt@unimelb.edu.au)

## **WEB SITE**

The AIJA web site is located at <http://www.aija.org.au> and provides information about the Institute and its research and education programmes.



