

JUDICIAL OFFICERS' BULLETIN

Published by the Judicial Commission of NSW

July 2019 | Volume 31 | No 6



First Nations consensus in constitutional reform, nation building and treaty making processes

Una Doyle

Director, Education, Judicial Commission
of NSW*

The Judicial Commission's Ngarra Yura Committee, in partnership with the NSW Bar Association, Law Society of NSW and Museum of Applied Arts and Sciences, organised the third Exchanging Ideas symposium held on 15 June 2019 to discuss the processes that led to the 2017 Uluru Statement from the Heart.

Around 100 judicial officers, lawyers and Aboriginal community members came together to discuss the making of the Uluru Statement as well as the processes of nation building and treaty making currently being undertaken in a number of communities. The discussion also canvassed the design challenges of such processes that can be inclusive and facilitate community consensus. The venue, the Museum of Applied Arts and Sciences (MAAS), provided the perfect setting with its impressive Aboriginal heritage collection.

The day began with Justice Lucy McCallum (Chair, Ngarra Yura Committee) and Marcus Hughes, Head of Indigenous Engagement and Strategy, MAAS extending a warm welcome to the group. Joanne Selfe, the Commission's Ngarra Yura Project Officer, set the tone with a moving Acknowledgement in language attributed to the Eora people.

Justice Rachel Pepper then introduced Professor Megan Davis, Pro Vice Chancellor and Professor of Law, UNSW, who provided a comprehensive and compelling introduction to the day. She addressed some of the extensive history on

* With thanks to The Hon James Allsop AO, Chief Justice, Federal Court, the Hon Justice Lucy McCallum (Chair), her Honour Judge Dina Yehia SC, his Honour Magistrate Brian van Zuylen and Ms Joanne Selfe for their invaluable contribution.

FEATURES

**First Nations consensus
in constitutional reform,
nation building and
treaty making processes**

Una Doyle51

**Decolonising the mind:
working with
transgenerational trauma
and First Nations People**

Barbara O'Neill 54

**Visit to the Redfern
Community with the
Ngarra Yura Program**

Veronica Wong 58

REGULARS

Case updates59

JIRS update62

Legislation update62

Judicial moves62

**Continuing Judicial Education
Program**62





The Commission's Ngara Yura Project Officer, Joanne Selfe (l) with Professor Megan Davis.



Barristers Andrew Smith (l) and Tony McAvoy SC with Justice Rachel Pepper.

constitutional recognition, noting that the Uluru Statement comes at the end of decades of advocacy, campaigning and thought by Aboriginal and Torres Strait Islander people. Since first contact, the community's aspirations have been consistent: a voice in government; agreement-making with non-Indigenous Australians; and truth about the colonial past. Megan spoke to the feelings of ethical loneliness that Indigenous communities face within such discussions. For those of us who have fortunately not been exposed to this, ethical loneliness is the experience of being abandoned by humanity, compounded by the cruelty of wrongs not being heard.¹

Professor Davis then moved to explain the concept of the Dialogues — theory, research and design. The Dialogues were a series of 13 meetings of Indigenous Australians held around the country between December 2016 and May 2017. The significance of this process lies in it being

a wholly Indigenous-designed and led process and the first time Aboriginal and Torres Strait Islander peoples were asked to deliberate collectively and report back on possible constitutional reforms. It is important to note that, while consultation with Aboriginal and Torres Strait Islanders was extensive, non-Indigenous Australians were also consulted.

As a precursor to the Dialogues, community education on civics and legal issues was provided to inform the community participants, thereby assisting them to assess the various legal options on reform being presented to them. This process was essential and enhanced the outcomes.

The Dialogues were community-led and included traditional owners. In each location, the Referendum Council partnered with a land council or another local host organisation which invited around 100 participants. Gender and demographic balance, and representation for the Stolen Generations was a focus. The idea behind this approach was that, for the most part, large community-based organisations have the opportunity to use their voice, so the focus was to listen to those not usually heard. The wording of the referendum was workshopped (as part of the Dialogues) so there was an understanding of what it would look like. The gathering was reminded that the Statement from the Heart was issued to the Australian people.

Judge Dina Yehia SC then introduced Teela Reid (lawyer and human rights advocate) and Thomas Mayor (National Indigenous Officer, CFMMEU and former co-chair Uluru Working Group) who focused on the process to develop community consensus from a participant's perspective. This process involved engaging with people in communities around the country. Teela spoke forcefully about the role of young people and the necessity for recognition. In Aboriginal and Torres Strait Islander communities, 53% of the population is under the age of 25. She emphasised the importance of respecting the consultative process and community members' views.

Thomas spoke of how the Uluru Statement from the Heart has provided a practical platform to work together to achieve the goal of constitutional reform and nation building. A people's movement is fundamental to this process along with building momentum through organisations and with individuals. Both speakers were passionate and instructive about the Dialogues and the importance of a constitutionally enshrined Voice.

Andrew Smith, a proud Wiradjuri man (and one of the five First Nations barristers currently practising at the NSW Bar), then introduced a panel of three speakers who provided commentary on the methodology.

Dr Gabrielle Appleby, Professor of Law, UNSW, had provided technical assistance to the Dialogues. She was able to speak to the maturity of the proposal for a First Nations Voice, a proposal with a long history internationally and in Australia.

Gabrielle referenced the United Nations Declaration on the Rights of Indigenous Peoples to which Australia became a

¹ As defined in J Stauffer, *Ethical loneliness — the injustice of not being heard*, Columbia University Press, 2015.

signatory in 2009. Under Articles 18 and 19² there is a duty on government to consult with Indigenous people.

Dave Allinson, CEO of Uphold & Recognise, spoke to the need for bipartisan support and the focus of his organisation on bringing those in doubt or opposition to the table. He spoke of the controversy and confusion that myths cause, such as the notion of the Voice as a third arm of Parliament, and the need for ongoing clarification and education.

Arthur Moses SC, President of the Law Council of Australia, suggested that sufficient detail about the proposed model for a Voice was essential to progress the notion. Without a level of detail, the proposal could be undermined by those opposing it and so risk failure.

Following lunch (and much lively talk), the group reconvened to hear the inspiring story of First Nations consensus in nation building.

Magistrate Brian van Zuylen introduced Matthew Walsh, (Executive Manager, Research, Jumbunna Institute for Indigenous Higher Education and Research), Professor Daryle Rigney (Jumbunna Institute for Indigenous Education & Research, UTS) and Damein Bell (CEO, Gunditj Mirring Aboriginal Corporation). These speakers provided practical examples of how communities and institutions worked together to achieve consensus.

Matthew calmly but passionately stressed the need and reasons for reform of the Constitution and First Nations rebuilding. Damein then provided impressive examples of how his Gunditj Mirring community works within this space and of their challenges and achievements (of which there are many). He described how the community has regained their land (in Victoria), restored cultural land management of Lake Condah, and their impressive plans for the future.* Damein also explained that his mob has enhanced its leadership over the years. The processes driving this work clearly demonstrated an empowered community model and it was refreshing to hear of these results.

Daryle then spoke of his involvement in the practicalities of nation rebuilding. He referred to the Hindmarsh Bridge controversy in South Australia in the 1990s, and the ensuing damage done to the community. He spoke about the ethical loneliness that Professor Megan Davis had referred to and how damaging this was to community. Daryle then shared a number of examples of how the community has worked tirelessly to address this situation and unite in a healing and liberating way.

Chief Justice James Allsop AO chaired the final session in which Professor Michael Dodson AM and Tony McAvoy SC addressed the challenges of achieving First Nations consensus in treaty making processes.

Professor Dodson began by outlining his work as Treaty Commissioner for the Northern Territory. He discussed the

difficulties in dealing with government representatives and government departments. In particular, there was often a failure to appreciate that the treaty process is not a different way of improved service delivery but rather, a discussion and process to share power. Professor Dodson counselled against viewing the outcome of this process as a short-term issue or one that will be achieved soon. He is of the view that this is a generational process that requires non-Indigenous Australians to understand the country's true history. An understanding of that history from the First Nations' perspective is the foundation of the mutual respect that a treaty reflects.

Tony McAvoy then explained that Victoria has also been working in the treaty space. He spoke of the need for Indigenous groups to be treaty ready themselves. Tony saw progress to be in a shorter time frame than Professor Dodson, but agreed that the fundamental task was truth telling by and to non-Indigenous Australians as the foundation of treaty making and a just society.

The day ended on that salutary note — to move forward, we must also look back.



Acting Magistrate Paul Mulroney with Magistrate Sue Duncombe, Presiding Magistrate of the Youth Koori Court.

* UNESCO's World Heritage Committee announced on 6 July 2019 that the Budj Bim Cultural Landscape, in Gunditj Mirring country, has been added to the UNESCO World Heritage List for its Aboriginal cultural importance.

2 Article 18: "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions."

Article 19: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them" at www.humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1, accessed 3/7/2019.



Decolonising the mind: working with transgenerational trauma and First Nations People

Barbara O'Neill*

The author, a First Nations Trauma Recovery and Practice Practitioner, shares her insights into the nature of transgenerational trauma, therapeutic approaches, and how to build bridges between First Nations people and the justice system.

Introduction

Australia's First Nations People do not want to be overrepresented in the justice system. We would prefer to be overrepresented in the halls of success and influence.

We have had many leaders who have gone to their graves fighting to explain to non-Indigenous Australia that we, the First Nations People of Australia, are sophisticated and intelligent, and have developed strategies to successfully live in Australia and maintain the world's oldest culture and justice system for more than 65,000 years.¹

Although there has been public acknowledgement at the highest levels of government of the harm done to First Nations People in Australia,² the traumatic impact of colonisation and government policies and practices is still played out in the 21st century in Aboriginal communities.

What is trans and intergenerational trauma?

Trauma may be acquired or inherited and transferred by an individual and/or collectively by a group. Genetic and physiological, behavioural and psychological factors

are considered when diagnosing trauma.³ The literature characterises such trauma as inter or transgenerational or hereditary trauma.⁴ These terms are often used interchangeably.⁵ This article refers to the trauma passed down from one First Nations generation to another as transgenerational trauma. The primary cause of such trauma was colonisation and the attendant atrocities perpetrated upon the First Nations People of Australia. The resultant loss, violence, disconnection from Country, family, community, language and culture created such pain and anguish that the physical, emotional, intellectual, and psychological functioning and the DNA of First Nations People altered drastically. Trauma became a source of depression, anxiety, loss of esteem, disconnection from spiritual and emotional wellbeing⁶ and caused changes in molecular processes.⁷ These changes in the DNA, behaviours and attitudes of Australia's Aboriginal and Torres Strait Islander Peoples have been shared with generations that followed up until the present.

Multiple massacres,⁸ dislocation to stations and missions, government policies that forcibly removed children from their families, often into servitude and sexual abuse, ensured that First Nations People were treated in their own country as less than human.

* The author is a Dughutti woman born on the Gadigal Country of the Eora.

1 As documented in B Pascoe, *Dark Emu*, Magabala Books, 2nd edn, 2018. Pascoe provides scholarly evidence of pre-contact Aboriginal farming and land management practices to refute the label "nomadic hunter-gatherers". See also B Gammage, *The biggest estate on earth*, Allen & Unwin, 2011.

2 For example, in then Prime Minister Paul Keating's Redfern speech, 10 December 1992 and then Prime Minister Kevin Rudd's "National Apology to Australia's Indigenous peoples", 13 February 2008.

3 American Psychiatric Association, *Diagnostic and statistical manual of mental disorders (DSM-5)*, 2013.

4 ETH Zurich, "Hereditary trauma: inheritance of traumas and how they may be mediated", *ScienceDaily*, 13 April 2014, at www.sciencedaily.com/releases/2014/04/140413135953.htm, accessed 17/6/2019.

5 P Dudgeon, H Milroy and R Walker, "Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice", Australian Government Department of Prime Minister and Cabinet, 2nd edn, 2014.

6 J Atkinson, "Educaring: a trauma informed approach to healing generational trauma for Aboriginal Australians", at <http://fwtdp.org.au/wp-content/uploads/2013/08/Judy-Atkinson-Healing-From-Generational-Trauma-Workbook.pdf>, accessed 17/6/2019, p 15.

7 ETH Zurich, above n 4; N Youssef, L Lockwood, et al, "The effects of Trauma, with or without PTSD, on the transgenerational DNA methylation alterations in human offsprings" (2018) 8 *Brain Sci* 83 at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5977074/>, accessed 17/6/2019. This review found an accumulating amount of evidence of an enduring effect of trauma exposure to be passed to offspring transgenerationally via the epigenetic inheritance mechanism of DNA methylation alterations and has the capacity to change the expression of genes and the metabolome. See also A Kuffer, A Maercker and A Burri, "Transgenerational effects of PTSD of traumatic stress: do telomeres reach across the generations?", (2014) *Journal of Trauma & Treatment*, at www.omicsonline.org/open-access/transgenerational-effects-of-ptsd-or-traumatic-stress-do-telomeres-reach-across-the-generations-2167-1222.1000204.php?aid=30791, accessed 17/6/2019.

8 For information and a visual map of known massacre sites in Australia compiled by the University of Newcastle Colonial Frontier Massacres Project team, see <https://c21ch.newcastle.edu.au/colonialmassacres/>, accessed 17/6/2019. There are 250 known sites in Australia currently mapped.

Secondary to this have been the losses of many First Nations People due to stigma, racism, poverty and genetic poor health. This loss has been manifested in serious negative health outcomes, suicide, self-destructive behaviours and a general breaking down of the will to live.

How transgenerational trauma is manifested today

Psychosocial dominance became the natural successor to colonisation. First Nations People were historically perceived as inferior to the colonisers. The divide was reinforced through continuing government policy and practice,⁹ preventing bridges being built between the two communities.

The effects of colonisation and State-enforced policies continue to play out in every facet of the lives of First Nations' communities as evidenced by the yearly "Closing the Gap" reports.¹⁰ Numerous academic and government inquiries have exposed continuing institutional racism in Australia.¹¹

State policing strategies continue to reflect poor relationships with First Nations Peoples. For example, young Aboriginal people are overrepresented on the suspect target management plan, a NSW policing policy that identifies young people for "pro-active attention".¹² The prison system continues to struggle with the overrepresentation of First Nations people¹³ and deaths in custody.¹⁴

The healthcare system has acknowledged institutional racism toward First Nations Peoples.¹⁵ However in the 21st century, First Nations People are still dying earlier than non-Indigenous Australians.¹⁶ The leading causes of mortality and morbidity in First Nations People are coronary heart disease, anxiety disorders and diabetes, with coronary heart disease the leading disease outcome attributable to tobacco use.¹⁷ First Nations People were often paid in tobacco as currency. Today, this highly addictive substance deliberately foisted upon our people as wages is now a leading cause of premature death in our communities.

Children are still being removed from First Nations Families at alarming rates despite the *Bringing them home report*.¹⁸ The education system often suspends children perceived to be difficult and First Nations children are disproportionately represented in NSW education data for suspensions.¹⁹ Suspension of these children impacts on the sense of bias they experience, and contributes to their disengagement with the education system.²⁰

First Nations women are often re-traumatised through domestic violence and the hopelessness of their lives. The parents of many of my clients were members of the Stolen Generations; many co-habit with white men to escape the treadmill of transgenerational trauma but experience domestic violence from their partners. Many First Nations women are in loving relationships, but judicial officers often see only those women impacted by transgenerational trauma through family and community disconnection and violent partners. The self-loathing of abused women is a tragic treadmill of abuse and crime and punishment.

- 9 For example, the Federal Government's 2007 Northern Territory Emergency Response which declared a "national emergency" was criticised by the United Nations for its paternalism, as being racially discriminatory and its failure to respect the rights of Indigenous peoples to self-determination: J Anaya, "Observations on the Northern Territory Emergency Response in Australia", 2010, at www.ncca.org.au/files/Natsiec/NTER_Observations_FINAL_by_SR_Anaya_.pdf, accessed 17/6/2019.
- 10 Closing the Gap is a federal government policy framework directed to eliminate the gap between First Nations people and non-Indigenous Australians: see Australian Government, "Closing the Gap" at <https://closingthegap.pmc.gov.au/>, accessed 17/6/2019.
- 11 See for example Australian Human Rights Commission, *Bringing them home report*, 1997, at www.humanrights.gov.au/our-work/bringing-them-home-chapter-3, accessed 17/6/2019.
- 12 Public Interest Advocacy Centre, "Policing young people in NSW: a study of the suspect targeting management plan", 2017 at www.piac.asn.au/2017/10/25/policing-young-people-in-nsw-a-study-of-the-suspect-targeting-management-plan/, accessed 17/6/2019.
- 13 During the March 2019 quarter, 25% of the NSW prisoner population was Indigenous: BOCSAR, "NSW Custody Statistics Quarterly Update March 2019" at www.bocsar.nsw.gov.au/Documents/custody/NSW_Custody_Statistics_Mar2019.pdf, accessed 17/6/2019. Of the general NSW population, 2.9% identified as Indigenous in the 2016 Census: ABS, 2016 Census QuickStats, at https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/1, accessed 17/6/2019.
- 14 From 2008–2018, 16 of 114 Aboriginal deaths occurred in NSW custodial centres: "Deaths inside: Indigenous deaths in custody" at www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody, accessed 17/6/2019.
- 15 RACGP, Aboriginal and Torres Strait Islander Health, "Position statement — racism in the healthcare system", at www.racgp.org.au, accessed 17/6/2019.
- 16 Life expectancy for ATSI men 2015–2017 was 8.6 years lower than the non-Indigenous population at 71.6 years; for women, 7.8 years lower at 75.6 years. In remote areas, life expectancy for ATSI men is 65.9 and women 69.6 years. Source: ABS, 3302.0.55.003 - Life Tables for Aboriginal and Torres Strait Islander Australians, 2015–2017, at www.abs.gov.au/ausstats/abs@nsf/MediaReleasesByCatalogue/1A6806AB01AB38CDCA25835300141767?OpenDocument, accessed 17/6/2019.
- 17 EM Greenhalgh, A van der Sterren, et al, "MH 8.7 Morbidity and mortality caused by smoking among Aboriginal and Torres Strait Islander peoples" in M Scollo and M Winstanley (eds) *Tobacco in Australia: Facts and issues*, Melbourne: Cancer Council Victoria; 2018, at 8.7.1.
- 18 *Bringing them home report*, 1997, above n 11. At 30 June 2018, 6,680 Aboriginal children in NSW were in out-of-home care (11 times the rate for non-Aboriginal children). Across Australia, in 2017–18, 65% of Aboriginal children were placed with relatives/kin, with other Aboriginal caregivers, or in Aboriginal residential care. These informal arrangements will have multiple effects on the grandparent caregiver, including financial, physical and mental health: Australian Institute of Health and Welfare, *Child protection Australia 2016–2017*, Canberra, 2018, p 48. See also B O'Neill with E Fanning, *Aboriginal people and intergenerational trauma*, Seniors Rights Service, at <https://youtube.com/watch?v=6BYw0u6JHwA>, accessed 30 April 2019.
- 19 Based on 2015 data, Aboriginal children make up 7% of the school population but almost 25% of suspension rates: J Lang, "School suspensions and Aboriginal students" at <http://actuarialeye.com/2017/11/19/school-suspensions-and-aboriginal-students/>, accessed 17/6/2019; NSW Ombudsman, *Inquiry into behaviour management in schools*, 2017, p ix.
- 20 NSW Ombudsman, *ibid*, p xi.

First Nations Men have lost the opportunity for initiation, studying Lore, their tribal place in the community and their dignity. Prison represents a tribal existence and is not a deterrent.

Strategies to heal transgenerational trauma

I was fortunate to have been granted a scholarship from the Office of Prime Minister and Cabinet to complete a Graduate Certificate in Indigenous Trauma Recovery and Practice at the University of Wollongong. I have relied upon this valuable training in my work as an Aboriginal Community Worker. I work from a trauma-informed basis and have created programs designed to empower women on housing estates to realise their potential and de-colonise their minds. When First Nations Peoples work with their own qualified professionals, there are very good results and outcomes for the community.²¹ First Nations People are a people of sharing and consensus. We know what we are dealing with, we know how to fix it, we need to be encouraged and funded to do so, and to be treated equally. In these ways, Aboriginal workers are integral to building a bridge between First Nations Peoples and non-Indigenous Australians.

Truth telling

Judges and magistrates deal first hand with the impacts of transgenerational trauma, making decisions on a daily basis about people who carry inherited trauma. It is important for First Nations people that judicial officers are informed about the impacts of trauma.²² The Judicial Commission, for example, provides an Aboriginal cultural awareness program, the Ngarra Yura Program, and information about culturally appropriate programs on the Judicial Information Research System.²³ A working relationship between First Nations leaders and the judiciary, such as we see with the Youth Koori Court, assists our communities to address and acknowledge transgenerational trauma.²⁴

The Uluru Statement from the Heart has called for a Makarrata Commission to supervise agreement-making between governments and First Nations people and truth-telling about our history.

Deep listening or Daddirri

We have written a program called *Yarning About My Stuff* (YAMS) in which clients facing the court system have one-on-one sessions with an Aboriginal worker and explore the circumstances that led to dealing with the justice system and the consequences. It is a simple trauma-informed program that speaks to the person facing court. It is entirely about them. It is still being piloted but has had promising results. A client with highly complex behavioural issues

shared that every time she thinks about using the drug ice, she looks at her YAMS booklet and acknowledges that the part of her that she respects is captured in that booklet.

Case studies

Community Connection

Holly* had lived on a mission for 10 years from the age of 13. She eventually came back to Sydney to escape domestic violence. She has a school-age daughter. When I first came into contact with Holly, she was non-communicative and so was her child. I would make appointments with Holly which she didn't keep; she had instead returned to the mission where the perpetrator still lived. After building trust with Holly, I realised that she hated living in her flat in Sydney as she was used to a big extended family. She was feeling alienated and lonely. We connected her with an Aboriginal Mothers' and Childrens' group and the local tenants' community group. We have signed her up with a specialised TAFE training organisation where she is looking forward to studying a Certificate IV in Community Services. We are working on removing FaCS interventions from her life.

**Name has been changed.*

Reciprocity and obligation

Sara* and her husband had been substance abusers but had rehabilitated and were endeavouring to stay clean. Following an incident at their home, they fled to Sydney where FaCS removed their children. Sara was extremely traumatised when I met her. She is a traditional woman. After gaining her trust, she shared with me one day that the incident that led to her children being removed was due to the behaviour of another family member. I was able to contact her lawyer and explain that, due to cultural reciprocity, Sara was obliged to have the family member stay with her. This changed her case and she now has full custody of her children. The family is strong, and we have assisted Sara to sign up with mainstream TAFE and study a Certificate IV in Community Services.

**Name has been changed.*

Conclusion

Two-hundred-and-thirty years of colonisation and oppression have not changed who First Nations People are. We are deeply spiritual. We belong to community and we have a shared sense of identity. When I work from a trauma-informed basis, these First Nations' qualities are my points of reference.

21 See for example J Atkinson, "Trauma-informed services and trauma-specific care for Indigenous Australian children", Resource sheet no 21 produced for Closing the Gap clearinghouse, at <http://earlytraumagrief.anu.edu.au/files/ctg-rs21.pdf>, accessed 17/6/2019; L Stuart and A Nielsen, "Two Aboriginal registered nurses show us why black nurses caring for black patients is good medicine" (2010) 37 *Contemporary Nurse: a journal for the Australian nursing profession*, 96.

22 See for example the work of J Atkinson, *Trauma trails, recreating songlines: the transgenerational effects of trauma in Indigenous Australia*, Spinifex Press; 2002. See also "Aboriginal people" in Judicial Commission of NSW, *Equality Before the Law Bench Book*, 2006, at <https://jirs.judcom.nsw.gov.au/benchbks/equality/index.html>, accessed 17/6/2019.

23 Under the "Diversionary programs" menu at https://jirs.judcom.nsw.gov.au/menus/services_index.php.

24 The Judicial Commission's Ngarra Yura project officer, Ms Joanne Selfe, participates as an Elder on YKC hearings at Surry Hills.

Transgenerational trauma reimagined

The Uluru Statement from the Heart has called for truth telling as foundational to nation building and a just society. Barbara O'Neill presents a compelling account of the impact of transgenerational trauma and how trauma needs to be heard and acknowledged.

If I were to reimagine Trauma as a person, how would she behave?

Imagine that she has been with you since something terrible happened in your life.

She has decided to position herself into your life in such a way that she becomes an indispensable friend, commentator, decision maker, enabler and assumes to give you the identity she has chosen for you.

She convinces you that all decisions must be made with her in mind, every aspect of your life should be drawn in her image, she resets your emotional regulator, she convinces you that you can run, but you cannot hide. You and Trauma are bound at such a deep level that she, Trauma, is a part of your essential self.

You want to convince her to stop intruding in your life, but she reminds you that she is the holder of your story; only she can validate why you do certain things. She warps your moral compass; she separates you from those who would seek to diminish her hold on you.

As events occur in your life, she does not let you filter and devise strategies to deal with newer traumatic events, she hungrily grabs each event and grows within your very soul.

As she grows, she shapes you into her image.

You avoid finding help and support because she has convinced you that you will suffer as a result. She convinces you that you are undeserving because you should have been able to stop her becoming so dominant.

Trauma takes on a personality of her own. She comforts you when you need to understand whether you are to blame for your behaviour, she mocks you when you declare that you don't want to rely upon her. She also holds your story sacred and protects every detail of your experience as it happened.

Although there are traumatic events you did not experience or witness, they happened to your immediate family and Ancestors. Because they broke the spirit of your family and Ancestors, they became your family's story, held sacred within the very cells shared to conceive you.

You became the holder of the story. You became the receptacle of Trauma. Then she waited to be fed. Any adverse event you suffered she added to the old story, growing with you, waiting to become your best friend.

You perceive the world around you as belonging to the other, not you. Trauma does not want to share you with anyone as you might move forward and stop her from shaping your future.

It is really difficult for you to move forward because Trauma is the story of your experiences and pain. If you separate from her, how can you have a point of reference with which to make sense of your feelings of loss, injustice, pain, abandonment, betrayal and alienation from society? Trauma is your internal point of reference.

Trauma does not want you to share the story she holds for you. Your story feeds her.

By now you have built up an arsenal of strategies so that nothing painful can happen to you again.

In her own way Trauma has set up warning systems for you.

Lately you have behaved in ways that attract anger and consequences toward you. Maybe you are now dealing within the justice system as an offender.

Trauma has convinced you that to stop being vulnerable, you need to hit out and become the perpetrator. Trauma has validated your story to the point that you feel it is you and Trauma against the world. This is exactly what Trauma needs to feed and grow. You are now going to be impacted by the justice system, your vulnerability is going to be laid bare publicly.

This is traumatic. The difference now is that you are not blameless. You are hurting, feeling pain and impacted out of proportion to the reality of your situation. You withdraw and become angry that you are hurting when you were supposed to never hurt again. Trauma feeds your transgenerational memories and makes it hard to deal with the justice system. Trauma rekindles old pain and memories. Trauma wants you to hurt so that she can feed.

There is one thing that frightens Trauma — that you will share the story that she holds for you.

Trauma does not want you to talk, to yarn, to share your pain. If you do share your story, you will own it. You can experience Dadirri or deep listening, as you tell your story. The listener will summarise your story and validate your experience within this story as unique to you and sacred to you.

If you share your story with a deep listener, you will have a chance to objectively look at life events that impacted you and have the chance to understand that the offender owns the consequences that you have been living with until now. You were the innocent party to these events; you don't need to carry shame that you were powerless to stop them.

You can journey away from the impacts of trauma, you can draw a line in the sand and try to move forward. Your story will pain you when triggered, but you will have strategies and will own the story so that you can edit it and report on it how you wish. Trauma keeps the story raw and keeps you beholden to the pain inflicted by the offender.

There will always be that deep well of trauma containing past events. You can identify it for what it is now — the unfortunate circumstances that dominated your life. Now you actively hold the story of your trauma, prepared for the next negative circumstance which you will deal with on its own merit and not let it add to the old well of Trauma.

You can now identify that negative events do happen, that is part of life, but this time round you have stared Trauma down and you will not let new events add to the past, but analyse them as they happen.

If you are an offender within the justice system, it is so important that you have that conversation about Trauma. You will have realised by now that turning perpetrator adds to your lowered self-esteem.

Transgenerational trauma is insidious. Those who carry it receive it at conception. It is in the DNA and cannot be removed. Trauma can only be lessened or destroyed through Truth in historical fact.

Visit to the Redfern Community with the Ngara Yura Program

Veronica Wong

The author was a young participant on the Commission's Ngara Yura Program community visit to Redfern in late 2018. She shares her observations.

Indigenous culture relies on sharing knowledge and creating an open conversation to promote a sense of interconnectedness within a community. The Ngara Yura Program visit achieved this aura of connection and was an unforgettable experience that I could not be more thankful for. The stories I heard that day made me immensely grateful for the privileged life that I possess, but I realised that the same stories were being written for hundreds of children as I sat listening. Children who don't know what it is like to have safety, security and who grow up waiting to be institutionalised.

As the day progressed, it became clearer to me the importance of family, children and the role of the law in these stories. The justice system serves not only to prosecute those who endanger society but to protect those who have been mistreated by that same system. The Indigenous speakers, Keenan Mundine and Isaiah Dawes, emphasised this. It became obvious that early intervention may have been the most effective way to keep this cycle from repeating. Both speakers experienced living without a home and being separated from their families, as one spoke of finding out his brother had passed away from an overdose, and another of meeting his mother for the first time as he walked through the city to see her begging for money. I thought again of the hundreds of children who in a few years would come to tell the same stories.

The importance of perspective and understanding was also a common theme throughout the day, the experiences that guide people towards certain roads and paths should not be disregarded. Those who work in the justice system have a profound influence over how society operates and the standards that we accept. Though the law serves as a guideline to prevent anarchy and to achieve order for

safety and security, it can also serve to be empathetic and understanding of the society it is governing. I realise that this is easier said than done, however, this experience emphasised to me that this cycle of Indigenous incarceration and misunderstanding always begins with one person. If that person's life changes even slightly, the ones following it will too. The changes that need to be made are not only within the system but also in education. Our history of discrimination should be spoken to understand how the effects of this history linger in every suburb. It is absurd to bury the decisions that mistreated our First Nations people and to ignore the lasting effects.

The Ngara Yura Program visit was an incredible experience that I have never seen anything like. It was a completely open discussion based on listening and understanding without any sense of judgment or dismissal. I was especially warmed by the relationship between the Indigenous elders of Redfern and law enforcement officers, who had a completely kind and compassionate relationship. I cannot express how clear it was, that the systems of law enforcement and the community it enforced, both thrived when there was communication and understanding.

I am so appreciative to have been a part of the day and hope that the community visits may incorporate more students to understand the importance of recognising issues in our country and working to acknowledge and resolve them. I would like to thank all of the Ngara Yura Committee for their time, work and allowing me to experience such an important discussion.



Case updates

High Court

Constitutional law

Family Law Act 1975 (Cth), s 60H; Judiciary Act 1903 (Cth), s 79(1); Status of Children Act 1996 (NSW) – biological father of child conceived by artificial conception procedures is a parent in this case – “parent” used in Family Law Act accorded its ordinary meaning

The appellant provided semen to the first respondent so she could conceive a child through artificial insemination. The appellant's name was entered on the birth certificate as the father. The child lived with the first respondent and her female partner (the second respondent). The appellant maintained a close relationship with the child and provided significant support. When the respondents resolved to move to New Zealand, the appellant instituted proceedings in the Family Court of Australia seeking shared parenting orders and restraining the relocation of the child. Section 60H, in Div 1 of Pt VII of the *Family Law Act 1975 (Cth)* (FLA) provides rules in respect of parentage of children born via artificial conception procedures.

The primary judge found the appellant was a parent of the child within “the ordinary meaning of the word” and the circumstances dictated that he was a parent for the purposes of the FLA. The Full Court of the Family Court held that the appellant was not a parent because, as the matter was within federal jurisdiction, s 79 of the *Judiciary Act 1903 (Cth)* picked up s 14 of the *Status of Children Act 1996 (NSW)* (SOCA). Section 14 provides that, in certain circumstances, the biological father of a child born as a result of artificial conception is not the father of the child. Accordingly, the appellant was “irrebuttably” presumed not to be the parent of the child.

The High Court (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ in a joint judgment; Edelman J in separate reasons) allowed the appeal.

The primary judge correctly concluded that the appellant is a parent of his daughter: at [55]. Further, the primary judge and Full Court were correct to hold that s 60H of the FLA is not exhaustive of the persons who may qualify as a parent of a child born as a result of an artificial conception procedure: at [26], [44]. There is no basis in the text, structure or purpose of the legislation to suppose that Parliament intended the word “parent” to have a meaning other than its natural and ordinary meaning: at [26]–[27]. The ordinary, accepted English meaning of the word “parent” is a question of fact and degree: at [29], [54].

The appellant provided his semen to facilitate the artificial conception of his daughter on the express or implied understanding that he would be the child's parent; that he would be registered on her birth certificate as her parent; and that he would, as her parent, support and care for her, as since her birth, he has done. To characterise the appellant as a “sperm donor” is in effect to ignore all but one of the facts and circumstances which, in this case, have been held to be determinative: at [54].

The “irrebuttable presumption” in ss 14(2) and 14(4) of the SOCA is a conditional rule of law determinative of the parental status of the persons to whom it applies which operates independently of anything a court or other tribunal does. As such, ss 14(2) and 14(4) are not provisions to which s 79(1) of the *Judiciary Act* is capable of applying: at [35]–[39]. Even if ss 14(2) and 14(4) were properly to be conceived of as provisions which regulate the exercise of State jurisdiction, they could not be picked up and applied under s 79(1) of the *Judiciary Act* because the FLA has otherwise provided: at [41]. The evident purpose of Div 1 of Pt VII of the FLA is that the Commonwealth is to have sole control of the provisions that will be determinative of parentage under the Act: at [48].

As the FLA has “otherwise provided”, the State provisions are irrelevant and perforce of s 109 of the Constitution, Div 1 of Pt VII of the FLA prevails over ss 14(2) and 14(4) to the extent of that inconsistency: at [51]–[52]; [72].

Masson v Parsons [2019] HCA 21

Consumer protection law

Australian Securities and Investment Commission Act 2001 (Cth), ss 12CB(1), 12CC – supply of credit to remote community residents under “book-up” system not unconscionable conduct

Mr Kobelt, the respondent, ran a general store in a remote Aboriginal community in South Australia. He supplied credit to his Anangu customers under a “book-up” system which allowed for payment for goods to be deferred, subject to the customer supplying him with their keycard and personal identification number linked to the account into which their wages or Centrelink payments were credited. The customer authorised the withdrawal of the majority of their funds each period and there was an informal understanding that the funds would be applied partly to reduce their debt and partly to exchange for future goods and services. Most of the book-up credit was used in connection with the purchase of second-hand vehicles. The respondent did not have a licence to engage in credit activity. ASIC alleged the respondent's conduct was unconscionable and contravened s 12CB of the *Australian Securities and Investment Commission Act 2001 (Cth)* (the Act).

The primary judge found that the respondent's conduct was unconscionable and contravened s 12CB. The Full Court of the Federal Court set aside the primary judge's finding and ASIC appealed to the High Court.

The High Court (Kiefel CJ and Bell J in a joint judgment; Gageler J and Keane J agreeing in separate judgments; Nettle and Gordon JJ jointly and Edelman J dissenting) dismissed the appeal.

The Full Court did not err in holding that the respondent's conduct did not contravene s 12CB(1) of the Act: at [19], [79]; [112]; [113].

The Act does not define the term “unconscionable”. It is an evaluative judgment to be informed by the factors listed

in s 12CC: at [14]; [83]; [120]. The statutory proscription is on engaging in unconscionable conduct. A conclusion of unconscionable conduct requires consideration of the supplier's conduct in all the circumstances. Not only must the innocent party be subject to special disadvantage, but the other party must unconscientiously take advantage of that special disadvantage: at [15], [74]; [118]; *Thorne v Kennedy* (2017) 91 ALJR 1260 at [38].

Anthropological evidence of the Anangu people, which differentiates them from mainstream Australian society, pointed to book-up credit as having particular advantages in light of their culture and practices: at [66]–[69], [79]; [109]–[110]; [114].

Kiefel CJ and Bell J held that determinative of the appeal is the absence of evidence of unconscientious advantage obtained by the respondent from the supply of credit to his Anangu customers under the book-up system: at [19]. The difficulty with ASIC's system case of statutory unconscionability lies in identifying any advantage he obtained from the supply of book-up credit that can fairly be said to be against conscience: at [75]. The basic elements of the book-up system were understood by the customers, and because it enabled them to purchase goods, the terms were perceived by the Anangu customers to be appropriate. This perception was not the product of the customers' lack of financial literacy: at [78].

Gageler J held that s 12CB prescribes a normative standard of conduct. What is proscribed is conduct so far outside societal norms of acceptable commercial behaviour as to warrant condemnation as conduct that is offensive to conscience: at [87], [92]. That the Anangu customers chose to continue their relationship with the respondent shows they were not exploited by him. The vast majority of the Anangu customers had a rudimentary but adequate understanding of the system and chose to maintain their relationship with the respondent: at [105]–[108].

Keane J held that the use of the word "unconscionable" in s 12CB — rather than terms such as "unjust", "unfair" or "unreasonable" which are familiar in consumer protection legislation — reflects a deliberate legislative choice to proscribe a particular type of conduct: at [118]. The appellant's case fell short of demonstrating that the respondent exploited his customer's socio-economic vulnerability with a view to his securing a pecuniary advantage at their expense: at [115], [124]–[128].

ASIC v Kobelt [2019] HCA 18

Doli incapax and tendency evidence

Evidence in Crown case did not rebut presumption of doli incapax — Evidence Act 1995, ss 97, 101 — tendency evidence correctly admitted and of significant probative value — directions ameliorated its prejudicial effect

The applicant was convicted of 20 child sexual offences involving four different complainants. He was aged between 11 and 13 years at the time of counts 1–3 which involved complainant K, who was 5 or 6 at the time.

The applicant appealed his convictions, arguing there was insufficient evidence to rebut the presumption of doli incapax on counts 1–3 and that the judge erred in admitting the evidence of each complainant as tendency evidence.

The court (Leeming JA, Ierace J, Hidden AJ) allowed the appeal, quashed the applicant's convictions and ordered

acquittals on counts 1–3. The appeal was dismissed in relation to the remaining counts.

The Crown failed to adduce evidence capable of satisfying the jury to the criminal standard that the doli incapax presumption had been rebutted: at [50], [51]. The presumption cannot be rebutted merely as an inference from the acts constituting the offence, although "the circumstances of the offending" may be capable of rebutting the presumption: at [43]–[45]; *RP v The Queen* (2016) 259 CLR 641 at [9], [41].

In the absence of any evidence concerning the applicant's contemporaneous maturity or intelligence, the objective fact of his age relative to K carries little to no weight in rebutting the presumption or in assessing his understanding of the degree to which his actions transgressed ordinary standards of morality: at [50], [51]. Further, the evidence that he said "quickly stop, stop" is not relevantly probative of the issue of whether the applicant knew his conduct to be seriously wrong or "naughty or mischievous": at [52]; *BP v R* [2006] NSWCCA 172 at [29]. Nor was the evidence concerning what the applicant said to K about his getting into trouble capable of satisfying the jury beyond reasonable doubt that he knew his conduct was seriously or gravely wrong: at [53]–[54].

There was no error in admitting each complainant's evidence as tendency evidence in respect of each count involving the other complainants; the evidence was significantly probative of the applicant having assaulted the four complainants: at [59], [82], [97]; *Evidence Act* 1995, s 97(1). In a multiple complainant sexual offence case, for evidence of offending against one complainant to be significantly probative of the offending against another, there must ordinarily be some feature linking the two together: at [72]; *McPhillamy v The Queen* (2018) 92 ALJR 1045 at [31].

This case is distinguishable from *McPhillamy* on two bases. There was no time gap between the offences and each incident shared the common feature of the applicant firstly obtaining the complainant's consent or physical cooperation: at [79]–[80]. The linking features in the offences were sufficient to satisfy the requirement in s 97(1)(b) that the evidence of each complainant was significantly probative: at [82].

The high probative value of the evidence substantially outweighed any prejudicial effect: at [96]; *Evidence Act*, s 101(2). The reasoning process described by the judge in her directions went some way to guarding against improper use of the evidence: at [91]. Appropriate steps were taken by the judge to prevent the jury from being affected by the inevitable emotional response to the evidence: at [86], [96].

BC v R [2019] NSWCCA 111

Victorian Supreme Court of Appeal

Sentencing

Criminal Code (Cth), ss 272.14, 474.19, 474.26, 474.27A — use carriage service for offending against children — importance of general deterrence — very lengthy term of imprisonment not necessarily appropriate

The applicant pleaded guilty to eight offences under the Criminal Code (Cth) — seven offences of using a carriage service to either solicit child pornography (s 474.19), procure a child for sexual activity (s 474.26), or transmit an indecent communication to a

child (s 474.27A) and one offence of procuring a child for sexual activity outside Australia (s 272.14). He also pleaded guilty to a further offence of possessing child pornography under the *Crimes Act 1958* (Vic). He was sentenced to an effective sentence of 4 years, 10 months imprisonment with a non-parole period of 2 years, 2 months. The applicant was involved in sexually explicit communications with five people in Australia and overseas who were, or purported to be, 14 or 15 years old.

The applicant appealed his sentence on grounds that the judge erred in assessing the objective seriousness of the offending and the sentence was manifestly excessive.

The Victorian Court of Appeal (McLeish, T Forrest and Weinberg JJA) allowed the appeal and resentenced the applicant to an effective sentence of 3 years imprisonment with release on recognizance after 18 months, to be of good behaviour for 18 months.

The sentence of 2 years, 6 months for the s 272.14 procuring offence was manifestly excessive. There was no suggestion the applicant sought to procure sexual activity with himself or any other adult, nor to view such activity. No inducement was offered, nor was a specific occasion suggested where the activity would take place. The applicant did not disguise his true identity or age in his communications. The offending was therefore at the lower end of the range of seriousness. While the language the applicant used was debased and revolting, no aggravating feature of his circumstances or antecedents justified the unduly severe sentence: at [49]–[50]. The sentence for the s 474.26 procuring offence was manifestly excessive for similar reasons: at [52].

Any evaluation of the adequacy of sentences for offending against children by means of the internet must be informed by the fact this medium is a rapidly developing and easy means by which vulnerable children are exploited. The expanding breadth of offending and increased maximum penalties reflect the gravity with which the legislature views this form of offending: at [46]; *DPP (Cth) v Watson* (2016) 259 A Crim R 327 at [33].

It has been stated that the ease with which offences of this kind are committed makes it imperative that those who might be inclined to act in this way be made aware that, if detected, they will face very lengthy terms of imprisonment: at [47]; *DPP (Vic) v Meharry* [2017] VSCA 387 at [5]. This is largely because of the importance of general deterrence. However, each case will depend on the nature of the offending and the offender's circumstances. For that reason, while still giving due weight to general deterrence, a very lengthy term of imprisonment will not necessarily be appropriate: at [47].

The range of offences and the ways they are committed are so many and varied that comparison with previous cases is often difficult, if not meaningless. Differences may be seen in the tone and content of the communications, the identity of parties involved and the nature and extent of any related acts. Further, current sentencing practice is only one of the matters to be taken into account when formulating a just sentence according to law: at [48]; *DPP v Dalgliesh* (2017) 349 ALR 37 at [68]; [81]–[84].

McNiece v The Queen [2019] VSCA 78

Supreme Court

Offences

District Court Act 1973, s 200A — disrespectful behaviour in court — plaintiff refused to stand when judge entered courtroom — elements of offence

The plaintiff was convicted in the Local Court of nine counts of engaging in disrespectful behaviour in court contrary to s 200A(1) of the *District Court Act 1973*. The offences occurred when the plaintiff failed to stand for a District Court judge when her Honour entered and left the courtroom while presiding over the plaintiff's civil proceedings in federal jurisdiction.

Under s 200A(1) it is an offence if:

- (a) an accused person or defendant in, or party to proceedings before the court
- (b) intentionally engages in behaviour in the court during proceedings, and
- (c) the behaviour is disrespectful to the court or judge presiding over the proceedings (according to established court practice and convention).

The plaintiff sought leave to appeal her conviction and sentence.

The Supreme Court (Harrison J) dismissed the conviction appeal and adjourned the sentence appeal proceedings.

Section 200A criminalises certain behaviour in a two-step process: first, the requirement of intentional behaviour (s 200A(1)(b)), and second, the requirement that the behaviour be disrespectful (s 200A(1)(c)). Each step must be proved by the prosecution to the criminal standard. There is no requirement to prove that in performing the act in para 1(b) the accused had an intention to cause the consequence for which para 1(c) provides: at [37].

The only mental element of the offence is the requirement that the act or omission in question be intentional: at [43]. Intentional behaviour in para (1)(b) is assessed by reference to established court practice and convention, not by reference to an accused's knowledge of established court practice or convention. There is no mental element in para 1(c) — the test is objective: at [45]. It does not matter how, in the particular case, the judicial officer in question perceived the behaviour. Further, the relevant disrespect in para (1)(c) does not need to be serious, nor does there need to be an intention to communicate disrespect or knowledge of the relevant court practice and convention: at [46], [56], [86].

Section 200A does not illegitimately operate or purport to interfere with the authority of a State court to adjudicate between the plaintiff and the Commonwealth in any way and does not operate or purport to govern the exercise of federal jurisdiction so as to infringe Ch III of the Constitution: at [145]; *Judiciary Act 1903* (Cth), s 79; *Rizeq v State of WA* (2017) 262 CLR 1. There is a distinction between a provision restricting the jurisdiction of a court or access to the judicial process and a provision merely regulating the procedure of, and conduct in, the court: at [140]. The investment of "federal jurisdiction" is not a direction as to the law to be applied. It is the investment of authority for a State court to adjudicate: at [145].

Elzahed v Kaban [2019] NSWSC 670

JIRS update

The statistics viewer on JIRS now accommodates the new community-based sentencing options which commenced from 24 September 2018. New Local Court statistics are available now and statistics for the Supreme and District Courts should be available by early August. On accessing the statistics, users will be directed to sentencing information for sentences imposed from 24 September 2018. It will be necessary to separately access the sentencing statistics for sentences imposed before 24 September 2018 and a link is available from the statistics pages to access those statistics.

Legislation update

The *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019* (Cth) commenced on 6 April 2019. This inserts new Div 474, Subdiv H "Offences relating to use of carriage service for sharing of abhorrent violent material" into the Criminal Code (Cth); creates new offences under ss 474.33 and 474.34 for internet service providers (ISP), or content or hosting services, of failing to notify Australian Federal Police (AFP) of, or failing to remove, abhorrent violent material and increases the maximum penalty for ISP or internet content host failing to notify AFP of child pornography under s 474.25. See JIRS "Recent legislation" for further details.

Judicial moves

District Court

- His Honour Judge Peter Maiden has retired.

Local Court

- Her Honour Magistrate Teresa O'Sullivan has been appointed the State Coroner.
- Her Honour Magistrate Beverley Schurr has retired and been appointed an acting magistrate.
- His Honour Magistrate Chris Longley has retired and been appointed an acting magistrate.
- Her Honour Magistrate Sharon Holdsworth has retired and been appointed an acting magistrate.

Continuing Judicial Education Program

July — August 2019

Local Court of NSW Annual Conference: 31 July – 2 August

This three-day program aims to provide practical and stimulating judicial education for all NSW magistrates. This conference will also include an open forum encouraging discussion and interaction among colleagues.

District Court of NSW Seminar: Child Sexual Assault Program in Practice: 6 August

In this seminar, Judge Traill and Judge Shead will present on the Child Sexual Assault Program and how it operates in the Sydney and Newcastle District Courts. They will explain the recent legislation, court procedures including call overs, ground rules hearings and the pre-recording of evidence. They will also explain the impact of a witness intermediary in the court process, what to expect with a pre-recorded CSA trial and the directions to give the jury. A witness intermediary will also explain their role from the police interviews to the pre-recording, the various tools they use and what recommendations they make.

Supreme Court of NSW Annual Conference: 23 – 24 August

This two-day residential program is tailored to the educational needs of Supreme Court judges. The conference will include sessions directly relevant to the work of the court.

Land and Environment Court Field Trip to State Library of NSW: 27 August

There is much of architectural significance in the library and surrounds and this visit will include a tour of the Shakespeare Room, a private viewing of rare books (including a copy of the first folio edition of Shakespeare's collected plays published 1623) and a tour of the buildings, including a short library history.

The *Judicial Officers' Bulletin* informs Judicial Officers of current law and promotes consideration of important judicial issues. To respond to articles or to make a contribution to a future issue of the *Judicial Officers' Bulletin* please contact the Editor, Kate Lumley at: klumley@judcom.nsw.gov.au.

The mode of citation for this volume of the *Judicial Officers' Bulletin* is (2019) 31 *Judicial Officers' Bulletin*. The *Judicial Officers' Bulletin* is also available on-line via the Commission's JIRS database.

The *Judicial Officers' Bulletin* is published monthly by the Judicial Commission of New South Wales. Views expressed in the Bulletin are those of the authors and may not reflect the official view of the Judicial Commission, nor are they necessarily shared by its staff.

While every effort is made to ensure the accuracy of material contained in the *Judicial Officers' Bulletin* no responsibility can be taken by the Judicial Commission for any error or omission.

Judicial Commission of NSW:
Chief Executive, Ernest Schmatt AM PSM

Level 5, 60 Carrington Street, Sydney NSW 2000.
GPO Box 3634 Sydney NSW 2001 • DX 886 Sydney • Phone (02) 9299 4421
• JIRS Help Desk 1800 043 623.

© Judicial Commission of New South Wales
ISSN 1036-1294