



Law Council
OF AUSTRALIA

POLICY STATEMENT

The Process of Judicial Appointments

September 2008



Introduction

From 1999 to 2002, Law Council policy processes resulted in a Judicial Appointments Policy, which was in effect from 2002 to 2008.

In November 2007, a new Federal Government was elected and subsequently announced changes to the previous Government's judicial appointments process.

The Law Council has considered its position regarding these changes through a Working Group appointed in March 2008.

This Policy results from consideration of the Working Group's recommendations by Directors at their meeting in September 2008.

The Policy affirms that judicial appointment should be a function of Executive Government. The Policy also affirms that, in addition to any statutory criteria for eligibility for appointment, the expected attributes for judicial appointment are as set out in Attachment A. The Policy then goes on to address the establishment of a formal Judicial Appointment Protocol (Attachment C), which outlines the judicial appointments process in the Federal Court, the Family Court, and the Federal Magistrates Court (hereafter referred to as the "Federal Courts").

Policy

This Policy applies to the Federal Courts and to all levels of judicial office in that jurisdiction except for judges of the High Court of Australia. The High Court is in a unique position as the ultimate appellate court for Australia, and judicial appointments to the High Court are already subject to a statutory requirement for consultation prior to appointment (section 6 of the *High Court of Australia Act 1979*). The Policy is applicable to all other levels of judicial office in the Federal Courts as follows.

1. Judicial Appointment should be a function of Executive Government performed by, or upon the advice of, the Attorney-General and, subject to the following principles, discharged at the discretion of Executive Government.
2. In addition to any statutory criteria for eligibility for appointment, the expected attributes for judicial appointment are as set out in Attachment A.
3. The Federal Attorney-General in consultation with the Chief Justice, chief judge and chief judicial officer of courts within the jurisdiction and the legal profession should establish and make publicly available a formal Judicial

Appointments Protocol which outlines the judicial appointment process in the Federal Courts.

4. The Judicial Appointment Protocol should set out the skills, attributes and experience which candidates for judicial appointment are expected to possess as well as those professional and personal qualities which it is desirable that candidates for judicial appointment possess. The recommended "Attributes of Candidates for Judicial Office" are as outlined in Attachment A.
5. The Judicial Appointment Protocol should include a requirement that the Attorney-General personally consult a minimum number of identified office holders prior to the appointment of a judge or magistrate. The office holders that should be consulted at minimum are as outlined in Attachment B.
6. Personal Consultation between the Attorney-General and the specified office holders should involve an invitation to each office holder to submit names of suitable candidates whom the office holder (representing their organisation or institution) recommends, by way of nomination, be considered for appointment.
7. The Judicial Appointment Protocol should also acknowledge that the Attorney-General may consult such other persons as the Attorney-General thinks fit and state that wide consultation is encouraged.
8. The Judicial Appointment Protocol should state that all suitable candidates will receive consideration for appointment. The process will involve advertising for "expressions of interest" for a particular judicial appointment, so long as:
 - (a) the advertising is undertaken in a way that does not diminish the standing of the court or jurisdiction concerned;
 - (b) all expressions of interest and nominations are treated as and kept confidential, and they, and any record of them, are destroyed once the appointment has been made; and
 - (c) it is acknowledged in the Judicial Appointment Protocol that advertising is auxiliary to personal consultation by the Attorney-General and not a substitution for that essential component of the process.

Authorised by Law Council Directors

20 September 2008



Attachment A: Attributes of Candidates for Judicial Office

Legal Knowledge and Experience

1. It is necessary that successful candidates:
 - a) will have attained a high level of professional achievement and effectiveness in the areas of law in which they have been engaged while in professional practice; and
 - b) will possess either:
 - (i) Sound knowledge and understanding of the law and rules of procedure commonly involved in the exercise of judicial office in the court to which they are to be appointed; or
 - (ii) In the case of candidates with more specialised professional experience, the ability to acquire quickly an effective working knowledge of the law and rules of procedure in areas necessary for their work not covered by their previous experience.
2. It is desirable that successful candidates have court or litigation experience.

Professional Qualities

3. It is desirable that successful candidates possess the following professional qualities:
 - a) intellectual and analytical ability;
 - b) sound judgment;
 - c) decisiveness and the ability to discharge judicial duties promptly;
 - d) written and verbal communication skills;
 - e) authority – the ability to command respect and to promote expeditious disposition of business while permitting cases to be presented fully and fairly;
 - f) capacity and willingness for sustained hard work;
 - g) management skills, including case management skills;
 - h) familiarity with, and ability to use, modern information technology or the capacity to attain the same; and
 - i) willingness to participate in ongoing judicial education.

Personal Qualities

4. It is desirable that successful candidates possess the following personal qualities:
 - a) integrity, good character and reputation;
 - b) fairness;
 - c) independence and impartiality;
 - d) maturity and sound temperament;
 - e) courtesy and humanity; and
 - f) social awareness including gender and cultural awareness.



Attachment B: Office Holders to be Consulted Personally by the Federal Attorney-General

1. Prior to the appointment of a Federal judge or magistrate (including a Chief Justice or Chief Magistrate), the Federal Attorney-General should personally consult the following office holders:
 - a) the current Chief Justice (or equivalent) of the Court or jurisdiction to which the appointment is to be made;
 - b) the Presidents of the Law Council of Australia and the Australian Bar Association;
 - c) the President of the Bar Association (or equivalent) of the State or Territory where the appointee will be assigned, or predominantly assigned, upon appointment;
 - d) the President of the Law Society (or equivalent) of the State and Territory where the appointee will be assigned, or predominantly assigned, upon appointment;
 - e) representatives of the Bar Associations and Law Societies of the other states and territories;
 - f) the Council of Australian Law Deans;
 - g) the President of Australian Women Lawyers;
 - h) the Chair, National Legal Aid; and
 - i) the Director, National Association of Community Legal Centres.

Attachment C: Processes to be Followed by the Federal Attorney-General in Federal Judicial Appointments

1. The Federal Attorney-General will arrange for public advertisements in the national media seeking expressions of interest and nominations for Federal judicial appointments. It is not an essential requirement that candidates self-nominate. Potential candidates may either be nominated by third parties, or, if a selection panel (as referred to below) believes there is a more desirable candidate that has not applied or been nominated, the panel may approach and invite that person to submit their name.
2. The Federal Attorney-General should undertake a thorough personal consultation with at least the individuals and professional bodies set out in Attachment B to this Policy.
3. A selection panel should be established by the Attorney-General to assess all applications and nominations against published criteria. The selection panel should consist of:
 - a) the head of the court or jurisdiction to which the appointment is being made (or their nominee);
 - b) a retired senior judicial officer or officers of the Commonwealth; and
 - c) a senior official from the Attorney-General's Department.
4. The published criteria should be in accordance with Attachment A to this document.
5. The selection panel will assess all applications and nominations against the published appointment criteria and develop a shortlist of suitable candidates. The panel will reserve the right to conduct, where thought appropriate, an interview with a candidate to assist in this process, but it is not obliged to do so.
6. At the completion of its deliberations the panel will provide a shortlist of recommended suitable candidates to the Federal Attorney-General, who will be expected to propose to Cabinet the actual appointee from amongst those so-identified suitable candidates.