

# Independence of the Judiciary

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AUSTRALIAN DEMOCRATS ACTION PLAN  
INDEPENDENCE OF THE JUDICIARY  
ATTORNEY GENERAL & JUSTICE

*An independent judiciary is one of the cornerstones of an accountable system of government based on a genuine separation of powers. The federal court system, including Federal Magistrates and Justices of the High Court of Australia, must be seen to be, free from political interference. This will only be possible if appointments to the federal judiciary are made in an open and accountable way, and selections are based entirely on merit.*

## **Problems with the Current System of Appointment**

Judicial appointments and judicial removals are shrouded in secrecy, making it impossible to determine the process by which a choice is made and preventing any accountability. This can often undermine public confidence or trust in the judiciary and limit judicial independence.

Under the Australian Constitution, judicial appointments are supposed to be made by the Queen or her representative. In practice, the actual decision is made by Cabinet or even the Prime Minister or Premier.

The appointment of judges by the Executive Government sits uncomfortably with the separation of powers and often leads to the politicisation of judicial appointments. In order to reduce this effect, judicial appointments should be transparent and subject to scrutiny.

Under the current arrangements, there is no community consultation, no established selection process, nor are the qualifications for appointment adequately prescribed.

## **Improving the Appointment Process**

The aims of the appointment process for the federal judiciary should be to:

- make the selection process transparent and open to scrutiny;
- ensure that appointment is on the basis of merit; and
- ensure that no artificial barriers prevent the appointment of women and other under-represented groups.

## **A New Method of Appointment**

The Australian Democrats believe that a Judicial Appointments Committee should be established as a selection and advisory body. Selection criteria for judicial appointments should also be formulated and made public to assist in the evaluation

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of suitable candidates. The selection criteria could then be reviewed periodically by the Judicial Appointments Committee.

It is also important for information regarding judicial appointments to be publicised, including information regarding the consultation of judicial referees specified by the candidates, Chief Justices, the leaders of professional law associations and Solicitors-General.

## **Constitution and Function of the Judicial Appointments Committee**

The Committee should be appointed on merit and include representatives of the community, the judiciary, legal academia, the legal profession and federal and state governments. It is envisaged that the Committee would perform the following functions:

- provide a shortlist of 2-4 candidates to the Head of State (currently represented by the Governor-General), who must provide a public explanation if he or she appoints a candidate who is not on the list;
- formulate and publish the qualifications for appointment and the selection criteria, to be set out in a Protocol;
- periodically review the Protocol.

## **Selection Criteria and Process for Judicial Appointments**

The following are some of the criteria the Committee could use in selecting candidates:

- merit should be the overriding consideration;
- qualifications, skills, training and experience;
- equal opportunity principles;
- independence from government and political parties;
- integrity and professionalism.

The selection procedure must be open and transparent to both the Parliament and the public. The position should be publicly advertised, applicants assessed against each of the selection criteria, and the reasons for selection published.

### **Summary:**

Making these changes to the system of judicial appointments would:

- provide transparency and improve accountability;
- safeguard the independence of the judiciary and prevent political appointments;
- broaden representation in the judiciary; and
- improve public perceptions of the independence of the judiciary.



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