



Law Council
OF AUSTRALIA

Principles of judicial appointment

Special Rapporteur on the independence of judges and lawyers

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Contents

Introduction	2
Australia's judicial system	3
Appointment of judges	4
Eligibility	4
Statutory requirements	4
Other eligibility criteria	5
Advertising / calls for expressions of interest.....	7
Consultation	7
Tenure and removal	8
Federal Judicial Commission.....	8
About the Law Council of Australia	10

Introduction

1. The Law Council of Australia welcomes the opportunity to provide a submission to the Special Rapporteur on the independence of judges and lawyers in relation to her thematic report on principles of judicial appointment.
2. The process by which judges are appointed—and the applicable criteria and principles that govern appointments—are topics of longstanding, principled engagement by the Law Council, and grounded in the Law Council's object to promote and defend the rule of law in the public interest.
3. Consistent with the Law Council's remit to represent the Australian legal profession on federal and national issues, this engagement has focused on Federal judicial appointments in Australia. The Law Council has also engaged with international counterparts and in international fora regarding issues relating to judicial appointments, also with a view to promoting and defending the rule of law.
4. On 28 January 2001, the Law Council released a policy on judicial appointments. The policy was updated in 2008¹ and again in 2021 in response to changes in government processes and concerns regarding the diversity of the judiciary. A copy of the Law Council's current *Policy on the Process of Judicial Appointments* is included as an appendix to this submission (**Appendix A**).
5. The Law Council's Policy addresses the key processes and principles that the Law Council considers should govern the appointment of judicial officers to federal courts and tribunals in Australia.
6. The Policy is designed to ensure transparency in federal judicial appointments and diversity in Australia's judicial officers, on the basis that these outcomes will promote public trust in the administration of justice and further the Law Council's key objects to promote the rule of law in the public interest and to advance the profession and the ethical standards of legal institutions.²
7. This submission contextualises the Law Council's existing policy by providing an overview of Australia's judicial appointments system, focusing on federal courts. An overview of the comparative appointments processes and selection criteria for courts at the State and Territory level in Australia are provided in **Appendix B** and **Appendix C**.³

¹ See, Law Council of Australia, *The Process of Judicial Appointments* (Policy Statement, September 2008) <<https://lawcouncil.au/publicassets/e66b7bd7-e1d6-e611-80d2-005056be66b1/0809-Policy-Statement-Judicial-Appointments.pdf>>.

² Law Council of Australia, *Policy on the Process of Judicial Appointments* (Policy Statement, 26 June 2021) 3 <<https://lawcouncil.au/publicassets/0eac8c98-b1d7-eb11-943d-005056be13b5/2021-06-26-PS-Process-of-Judicial-Appointments.pdf>>.

³ Appendices B and C are based on materials published by the Australian Law Reform Commission, but have been updated to assist the Special Rapporteur. See Australian Law Reform Commission, *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (Report 138, December 2021) ('*Without Fear or Favour*') 587–610 <<https://www.alrc.gov.au/publication/ji-report-138/>> .

8. Whilst the Law Council's Policy has been developed in a domestic context, it may nevertheless assist the Special Rapporteur in articulating core principles that should guide judicial appointments more broadly.

Australia's judicial system

9. The Commonwealth of Australia is a federation of six states and two self-governing territories. The Commonwealth is governed by the national government, usually called the Federal Government or Australian Government. Powers are divided and shared between the Commonwealth and States under the Australian Constitution.
10. Australia's States and Territories have their own governments, laws and court systems.
11. Chapter III of the Australian Constitution establishes the High Court of Australia, which is Australia's apex court, and the ultimate court of appeal for Federal, State and Territory courts.⁴ The High Court also has original jurisdiction over Constitutional matters.⁵
12. Chapter III also empowers the Australian Parliament to create other federal courts. Current courts created by the Parliament include the:
 - Federal Court of Australia;
 - Federal Circuit Court and Family Court of Australia (Division 1); and
 - Federal Circuit Court and Family Court of Australia (Division 2).
13. State and Territory legislatures are empowered to create courts and tribunals.
14. All States and Territories have a Supreme Court. Some states also have intermediate courts (e.g. District or County Courts) and some have also established specialist courts (e.g. for environmental matters and industrial matters).

⁴ *Australian Constitution* ss 71, 73.

⁵ *Judiciary Act 1903* (Cth) s 30(a).

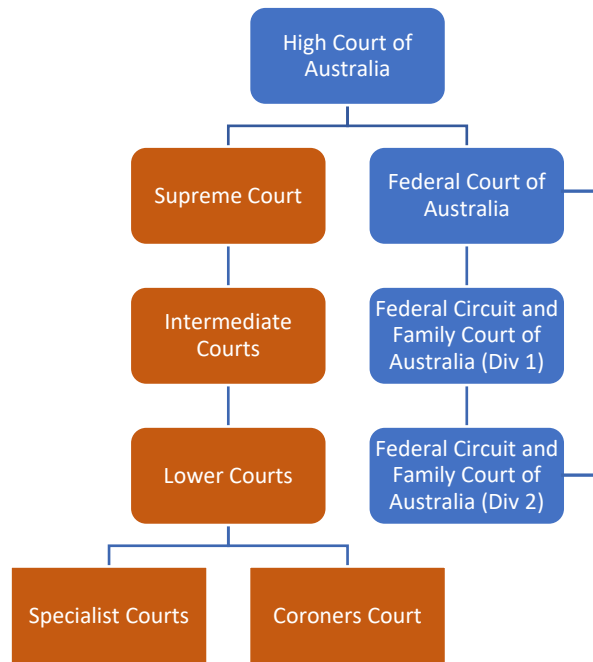


Figure 1 Simplified Australian Court Hierarchy

Appointment of judges

15. Australia's Constitution places a strong emphasis on the separation of powers, whereby the three arms of government (executive, legislative and judicial) are separate, and their respective functions and powers are mutually exclusive (albeit with some exceptions).
16. Judges in Australia are not elected directly by the public; they are instead appointed by the Executive without the involvement of the legislature.
17. Judges at the Federal level are appointed by the Governor-General. In practice, they are selected by Cabinet (comprised of the Prime Minister and a subset of ministers who make up the executive government) on the advice of the Commonwealth Attorney-General, the Minister responsible for courts and justice.
18. Similarly, at the State and Territory level, judges and magistrates are appointed by the Governor or Administrator of the jurisdiction, having been selected by Cabinet on the advice of the Attorney-General of the State or Territory.

Eligibility

Statutory requirements

19. The *High Court of Australia Act 1979* (Cth) requires that any person appointed as a justice of the High Court must have previously been a judge of a Commonwealth, State or Territory court (other than a Judge or acting Judge of the Local Court of the Northern Territory),⁶ or have been a barrister, solicitor or legal practitioner of the High

⁶ *High Court of Australia Act 1979* (Cth) s 7(a).

Court or of the Supreme Court of a State or Territory for not less than five years.⁷ A justice must be under 70 years of age and they may not hold any other office of profit within Australia.⁸

20. Legislation governing appointments to other Federal Courts and State and Territory courts in Australia similarly include age limits and require an appointee to have been a lawyer for a minimum period of time (this period varies between jurisdictions).
21. The *Federal Circuit and Family Court of Australia Act 2021* requires that, by reason of knowledge, skills, expertise and aptitude, all judges exercising family law jurisdiction must be suitable to deal with family law matters, including matters involving family violence.⁹ This is prerequisite for appointment of all judges to Division 1 of the Federal Circuit and Family Court of Australia. It is also a prerequisite for judges who are expected to deal with family law matters in Division 2.

Other eligibility criteria

22. The use of additional publicised criteria to determine appointments has varied across Federal, State and Territory jurisdictions.
23. Between 2008 and 2013, the Commonwealth Attorney-General followed a practice where criteria for judicial appointments were published for the Federal Court. An example of the criteria is provided below.¹⁰

Requisite qualities for appointment

To be eligible to be appointed as a Federal Court judge, a person must have been enrolled as a legal practitioner of the High Court or a Supreme Court of a State or Territory for at least 5 years.

In addition, judges must have the following personal and professional qualities to the highest degree:

- *legal expertise*
- *conceptual, analytical and organisational skills*
- *decision-making skills*
- *the ability (or the capacity quickly to develop the ability) to deliver*
- *clear and concise judgments*
- *the capacity to work effectively under pressure*
- *a commitment to professional development*
- *interpersonal and communication skills*
- *integrity, impartiality, tact and courtesy, and*
- *the capacity to inspire respect and confidence.*

Broad ranging expertise is also sought in the area of commercial law, including admiralty and maritime, competition, consumer protection, corporations, intellectual property and taxation law.

⁷ Ibid s 7(b).

⁸ *Australian Constitution* s 79; *High Court of Australia Act 1979* (Cth) s 10.

⁹ *Federal Circuit and Family Court of Australia Act 2021* (Cth) ss 11 (2)(b), 111 2(b) and 3.

¹⁰ Judicial Conference of Australia, *Judicial Appointments: A Comparative Study* (December 2015) 106.

24. The practice of advertising appointments, including the publication of additional criteria, was discontinued following a change of government in 2013.¹¹
25. On 2 August 2022, the Australian Law Reform Commission report *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (the **ALRC report**) was tabled in the Australian Parliament. The report made 14 recommendations to promote judicial impartiality and public confidence in the Commonwealth judiciary.
26. Recommendation 7 was that the Australian Government should develop a more transparent process for appointing federal judicial officers on merit, involving:
- publication of criteria for appointment;
 - public calls for expressions of interest; and
 - a commitment to promoting diversity in the judiciary.
27. This recommendation was accepted by Government, and a commitment was made to adopt a new appointments process that would at a minimum publish criteria for appointment and issue public calls for expressions of interest.¹² The Government's response noted that the judicial appointments process would also include broad consultation and the use of advisory or selection panels.¹³
28. As of January 2026, the Attorney-General's Department's website lists the following personal and professional qualities for judicial candidates:
- outstanding legal expertise
 - conceptual, analytical and organisational skills
 - advanced decision-making skills
 - excellent written communication skills, demonstrating an ability (or capacity to quickly develop the ability) to deliver judgments in a timely manner
 - temperament, integrity, impartiality, tact and courtesy
 - interpersonal and communication skills
 - a genuine commitment to serving the community
 - capacity to work effectively under pressure
 - a commitment to professional development
 - the capacity to inspire respect and confidence
 - the capacity to work across several areas of the court's jurisdiction, or where the appointment is to a specialist jurisdiction (for example, Division 1 of the FCFCOA or to the family law jurisdiction of Division 2 of the FCFCOA), demonstrated specialist knowledge and skill in that jurisdiction.¹⁴

¹¹ Australian Law Reform Commission, *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (Report 138, December 2021) ('*Without Fear or Favour*') 436 <<https://www.alrc.gov.au/publication/ji-report-138/>>.

¹² Australian Government, *Government Response to Australian Law Reform Commission Report 138: Without Fear or Favour: Judicial Impartiality and the Law on Bias* 4 <<https://www.alrc.gov.au/wp-content/uploads/2022/09/government-response-australian-law-reform-commission-report-on-judicial-impartiality-and-the-law-on-bias.pdf>>.

¹³ *Ibid* 5.

¹⁴ 'About Judicial Appointments', *Attorney General's Department* (Web Page) <<https://www.ag.gov.au/legal-system/courts/judicial-appointments>>.

29. The Law Council's *Policy on the Process of Judicial Appointments* (Appendix A) also includes a list of appointment criteria setting out the minimum skills, attributes and experience that the Law Council considers that successful candidates for judicial appointment should possess.¹⁵ These are wide-ranging and similarly cover both professional and personal qualities.
30. The Law Council considers that the personal qualities of judicial appointees should include social and cultural awareness of, and competency in, variations in lived experience, including with respect to gender, cultural and ethnic background, disability, sexual orientation, socio-economic background, professional experience, state of origin and intersectionality, as well as experiences of discrimination and sexual harassment, among others.
31. Appendix C summarises the publicised criteria used at the State and Territory level.

Advertising / calls for expressions of interest

32. Since 2023, the Australian Government has adopted a practice of calling for expressions of interest (**EOIs**) for federal court appointments as part of its response to the ALRC report.¹⁶
33. Advertising or calling for EOIs is more common in States and Territories, however the practice varies across jurisdictions. Advertising and calling for EOIs can also vary across different levels of the court hierarchy (see Appendix B).

Consultation

34. The Commonwealth Attorney-General is required by legislation to consult with attorneys-general of the States in relation to appointments to the High Court.¹⁷ Beyond this, it is a matter for the Commonwealth Attorney-General as to whether they undertake further consultation.
35. This statutory requirement is said to have been included as an amendment to the *High Court of Australia Act* at a time when questions of Commonwealth–State powers dominated the work of the High Court.¹⁸ States were concerned that the Commonwealth's monopoly on High Court appointments unduly favoured the Commonwealth.¹⁹
36. The extent to which Commonwealth Attorneys-General have consulted—and how they have undertaken their consultation process—has varied over time.²⁰ For

¹⁵ *Policy on the Process of Judicial Appointments* (n 2) 6.

¹⁶ Mark Dreyfus KC MP, Expressions of Interest open for the Federal Court of Australia and Federal Circuit and Family Court of Australia (Media Release, 21 July 2023)

¹⁷ *High Court of Australia Act 1979* (Cth) s 6.

¹⁸ *Judicial Appointments: A Comparative Study* (n 10) 4 citing Anthony R Blackshield, 'The Appointment and Removal of Federal Judges' in Brian R Opeskin and Fiona Wheeler (eds), *The Australian Federal Judicial System* (Melbourne University Press, 2000) 430–431.

¹⁹ *Ibid.*

²⁰ Michael Lavarch, 'The Appointment of Judges' (Speech, Australian Institute of Judicial Administration, National Conference, 13 November 1994) <<https://classic.austlii.edu.au/au/journals/AULawLib/1994/83.pdf>>.

example, between 2008 to 2013 the Federal Government had a practice of appointing advisory panels to assist the Attorney-General in selection.²¹

37. The Attorney-General's Department website currently states that, in addition to the statutory requirement to consult, '[t]he government may also seek views on suitable candidates from attorneys-general of territories, heads of federal courts and state and territory supreme courts and the broader legal community'.²² The Law Council has, on occasion, been included in that consultation.

Tenure and removal

38. The Australian Constitution imposes a mandatory retirement age of 70 years on all federal judges, including High Court justices.²³ Parliament may lower the retirement age of federal court judges through legislation, with the exception of justices of the High Court, but such a change cannot affect a judge retrospectively.²⁴
39. Remuneration of federal judges is also protected under Australia's Constitution and may not be diminished during their term.²⁵
40. Federal judges cannot be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity.²⁶

Federal Judicial Commission

41. Since 2006, the Law Council has advocated for the establishment of an independent Federal Judicial Commission in Australia to provide a clear and structured framework to fairly and punctually address complaints directed to the judiciary. Five of Australia's States and Territories already have an independent statutory mechanism to receive and manage complaints about judicial officers.²⁷
42. The Law Council considers that the role of a Federal Judicial Commission should extend to providing resources, support and education to the judiciary, including providing guidance on acceptable standards of judicial conduct.

²¹ J. van Zyl Smit, *The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice (Report of Research Undertaken by Bingham Centre for the Rule of Law)* (2015) 130 <<https://binghamcentre.biicl.org/publications/the-appointment-tenure-and-removal-of-judges-under-commonwealth-principles-a-compendium-and-analysis-of-best-practice>>.

²² 'About Judicial Appointments', *Attorney General's Department* (Web Page) <<https://www.ag.gov.au/legal-system/courts/judicial-appointments>>.

²³ Australian Constitution s 72.

²⁴ *Ibid.*

²⁵ *Australian Constitution* s 72(iii).

²⁶ *Ibid* s 72(ii)

²⁷ The Judicial Commission of New South Wales was established in 1986, the South Australia Judicial Conduct Commission was created in 2016, the Australian Capital Territory Judicial Council and the Judicial Commission of Victoria were established in 2017, and the Northern Territory Judicial Commission was established in 2021. See *Judicial Officers Act 1986* (NSW), *Judicial Conduct Commissioner Act 2015* (SA), *Judicial Commission Act 1994* (ACT), *Judicial Commission of Victoria Act 2016* (VIC) (see also, *Constitution Act 1975* (VIC) pt IIIAA divs 3-6) and *Judicial Commission Act 2020* (NT).

43. The Law Council’s call for a Federal Judicial Commission was echoed in the ALRC report.
44. The Law Council maintains that a Federal Judicial Commission should be underpinned by four key features—independence, coherence, accessibility and transparency—and established at arm’s length from the executive government and the National Anti-Corruption Commission to ensure the independence of the judiciary and the separation of powers.²⁸
45. In January 2023, the Attorney-General’s Department released a Discussion Paper entitled *Scoping the establishment of a federal judicial commission*.²⁹ However, no decision has been made by the Australian Government to establish a Federal Judicial Commission.
46. The Law Council continues to call for the Australian Government to support the establishment of a Federal Judicial Commission, and to engage the federal judiciary and other stakeholders in a consultation process regarding its design.

²⁸ Law Council of Australia, *Principles underpinning a Federal Judicial Commission* (Policy Statement, 25 March 2023) <<https://lawcouncil.au/resources/policies-and-guidelines/policy-statement-principles-underpinning-a-federal-judicial-commission>>.

²⁹ Attorney General’s Department, *Scoping the Establishment of a Federal Judicial Commission* (21 Feb 2023) <<https://consultations.ag.gov.au/legal-system/federal-judicial-commission/>>.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.

An initiative of the Law Council of Australia

Policy on the Process of Judicial Appointments

Policy Statement

26 June 2021



Law Council
OF AUSTRALIA

Table of Contents

Introduction	3
Policy	3
Scope	3
Principles.....	3
Attachment A: Judicial Appointments Protocol	6
Appointment criteria.....	6
Identifying candidates	6
Consultation process	7
Interview process.....	7
Considering candidates for appointment.....	7
Recommendation by panel	8
Accountability and confidentiality	8

Introduction

This Policy on the Process of Judicial Appointments (**this Policy**) addresses the key processes and principles which the Law Council considers should govern the appointment of judicial officers in the Federal Courts and Tribunals of Australia.

This Policy is designed to ensure transparency in Federal judicial appointments and diversity in Australia's judicial officers. These outcomes will promote public trust in the administration of justice and further the Law Council's key objects to promote the rule of law in the public interest and to advance the profession and the ethical standards of legal institutions.

This Policy is the third which has been developed by the Law Council on the subject of judicial appointment processes and builds upon changes made to the original policy (dated 2002) in the second policy (dated 2008). This Policy was approved by Law Council Directors in June 2021.

Policy

Scope

This Policy applies to the appointment of:

- Judges (and those exercising a judicial function) within the Family Court of Australia, the Federal Circuit Court of Australia and the Federal Court of Australia (**the Federal Courts**); and
- Members/Presidents of the Administrative Appeals Tribunal (**the AAT**).

The Law Council recognises that the Members/Presidents of other Federal Tribunals and quasi-judicial Federal bodies may also perform judicial or quasi-judicial functions. These include Members/Presidents of the Fair Work Commission, Remuneration Tribunal, Australian Competition Tribunal, Copyright Tribunal of Australia, National Native Title Tribunal, Pharmaceutical Benefits Remuneration Tribunal and Defence Force Discipline Appeals Tribunal. It may in some instances be beneficial to consider this Policy when appointments are made to these Tribunals and bodies, though in other instances this Policy may be less applicable or relevant.

Similarly, while Royal Commissioners do not exercise a judicial function (in accordance with constitutional law principles),¹ consideration of this Policy may also assist when appointments of lawyers to Royal Commissions are made.

Principles

Responsibility for judicial appointment decision-making

1. Judicial appointment should be a function of Executive Government performed by (or upon the advice of) the Federal Attorney-General and subject to the following principles, discharged at the discretion of Executive Government.
2. The Attorney-General should, in consultation with the respective judicial heads of the Federal Courts and Tribunals and the legal profession, establish, make publicly

¹ See, ALRC, 'Making Inquiries: A New Statutory Framework' (Final Report III, 2009) 39.

available and implement a formal Judicial Appointments Protocol (**the Protocol, Attachment A**) outlining the judicial appointment process for the Federal Courts and Tribunals. The Law Council has set out below recommendations for items to include in the Protocol.

3. The Law Council notes that if this Policy (and the principles and Protocol set out in it) are to be meaningfully implemented, the Executive Government must as a prerequisite dedicate sufficient funding for the proposed processes and functions to take place.

Recommendations and consultation for judicial appointment decision-making

4. As a precondition to exercising their power to appoint a judicial officer, the Attorney-General should consider the recommendations of a selection panel (**the panel**) according to the process described in the Protocol. The panel should be constituted as a matter of priority either:
 - within (and by) an independent and impartial body (**the Independent Body**), to be established as a new, standalone Judicial Appointments Commission or by incorporation into an existing (or proposed) independent and impartial body, such as a Federal Judicial Commission; or
 - by the Attorney-General.
5. If an Independent body is established, its membership and governance processes should be set out in legislation to ensure transparency and public confidence. The Independent Body should be comprised of the heads of jurisdictions, in addition to a majority of (non-judicial) community members of high standing who should be appointed by the Governor-General on nomination by the Attorney-General.²
6. To achieve genuine representation within the governance and membership of the Independent Body and its panel, or of the standalone panel constituted by the Attorney-General, consideration should be given as to proactively appointing members who are reflective of the diversity of each jurisdiction. This may involve identification and consideration of the proportion of members belonging to a particular dominant social, cultural or other group, whether in a specific jurisdiction or nationwide. It may also involve a 'comparative assessment' of the individual's profile against the current membership of the Independent Body and its panel or of the standalone panel, as applicable.
7. The panel should consist at least of:
 - the head of the court, tribunal or jurisdiction to which the appointment is being made (or their nominee);
 - a retired senior judicial officer or officers of the Commonwealth;
 - a current member of the Australian legal profession;
 - a senior official from the Attorney-General's Department; and
 - two community members of high standing who do not currently hold and have not held any form of elected office and who have never been a member of the Australian legal profession.

² Note, the majority of non-judicial members is necessary as public confidence is best promoted by assessment to public standards.

8. As well as performing the functions set out in the Protocol, the Independent Body or panel should give thorough and regular consideration as to how diversity can best be achieved in the judiciary while ensuring meritorious appointments. This may involve identification and consideration of the proportion of judicial officers belonging to a particular dominant social, cultural or other group, whether in a specific jurisdiction or nationwide.

Attachment A: Judicial Appointments Protocol

Appointment criteria

It is expected that successful candidates for judicial appointment (**candidates**) will possess at a minimum the following skills, attributes and experience (**the appointment criteria**)³:

- a high level of professional achievement and effectiveness in the areas of law in which they have been engaged while in professional practice; and
- either:
 - 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
 - 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; and
- with respect to professional qualities:
 - intellectual and analytical ability;
 - decisiveness and the ability to discharge judicial duties promptly;
 - effective and clear written and verbal communication skills with peers and members of the public;
 - authority – the ability to inspire respect and to promote expeditious disposition of business while permitting cases to be presented fully and fairly;
 - effective workload management skills;
 - familiarity with, and ability to use, modern information technology or the willingness and capacity to attain the same; and
 - willingness to participate in ongoing judicial education; and
- with respect to personal qualities:
 - integrity, independence, good character and regard by others;
 - fairness, humanity and courtesy;
 - common sense and sound judgment; and
 - social and cultural awareness of and competency in variations in lived experience, including with respect to gender, cultural and ethnic background, disability, sexual orientation, socio-economic background, professional experience and state of origin and intersectionality, as well as experiences of discrimination and sexual harassment, amongst others.

It is also desirable that candidates for appointment to the High Court possess demonstrated capacity and willingness to undertake extra-judicial speeches and writings, and otherwise to provide intellectual leadership for the legal profession at large and impress upon the whole community the importance of the rule of law and its requirements.

Identifying candidates

The panel (as referred to at Principle 7 of the Policy above) should, as a matter of priority, clearly and nationally publicise opportunities for expressing an interest in appointment or

³ The Law Council acknowledges that certain Tribunals may require expertise in particular specialised areas, and such expertise may represent an additional requirement to those listed as appointment criteria in this Protocol.

in nominating a candidate. Such advertisements should be accompanied by clear appointment criteria and a clear explanation of the selection and appointment process.

Candidates may self-nominate, be nominated by third parties (including through the office-holder consultation process outlined below) or be directly approached by the panel and invited to apply for the relevant position.

Consultation process

As part of the assessment process, the panel should undertake a thorough and wide-ranging consultation of members of the Australian legal profession.

At a minimum, the panel should invite nominations from, and otherwise genuinely and thoroughly consult with, the following identified office holders:

- the Presidents of the Law Council of Australia and the Australian Bar Association;
- the President of the Bar Association (or equivalent) of the State or Territory where the appointee will be assigned, or predominantly assigned, upon appointment;
- the President of the Law Society (or equivalent) of the State and Territory where the appointee will be assigned, or predominantly assigned, upon appointment;
- representatives of the Bar Associations and Law Societies of the other States and Territories; and
- leaders of the peak representative bodies of lawyer groups in Australia including women lawyers, First Nations legal services, family violence prevention legal services, community legal centres, law deans and legal aid services, amongst others.

In addition, the panel should, as it thinks appropriate, seek feedback from Aboriginal and/or Torres Strait Islander persons or representative bodies such as senior practitioners, specialist legal services and relevant State or Territory-based organisations.

Interview process

The panel should shortlist suitable candidates from the initial pool of nominees and should conduct interviews of such candidates in accordance with the principles of natural justice.

Considering candidates for appointment

The panel should assess each candidate whose nomination is made within the timeframe requested in the public advertisement for the position (or otherwise allowing a reasonable time before the panel must make its recommendations to the Attorney-General). The panel should assess candidates against the published appointment criteria (as set out above) using all relevant evidence-based claims and evidence made available to the panel through the nomination, consultation and interview processes set out in this Protocol.

The panel should strive to create a pool of candidates that is reflective of the diversity of each jurisdiction while ensuring meritorious appointments. This may involve identification and consideration of the proportion of judicial officers belonging to a particular dominant social, cultural or other group, whether in a specific jurisdiction or nationwide. This recognises diversity as an essential feature in ensuring a responsive and well-informed judiciary. Where the panel is choosing between shortlisting two candidates who it has

assessed as equally suitable, it should prefer the candidate who will lend diversity to the Court.

Recommendation by panel

Following the above assessment process and in accordance with the Australian Constitution, the panel should provide a final shortlist of 'highly suitable' candidates to the Attorney-General. The panel should make its recommendation in a timely fashion and not exceeding three months from the date the relevant vacancy arose.

From this shortlist, the Attorney-General should, in a timely fashion, select one candidate to propose to Cabinet. The Attorney-General should strive to create a federal judiciary that is reflective of the diversity of each jurisdiction while ensuring meritorious appointments. This may involve identification and consideration of the proportion of judicial officers belonging to a particular dominant social, cultural or other group, whether in a specific jurisdiction or nationwide. Similarly, the Attorney-General should give due consideration to all legal experience, including that outside of mainstream legal practice. This recognises diversity as an essential feature in ensuring a responsive and well-informed judiciary. Where the Attorney-General is choosing between shortlisting two candidates who they have assessed as equally suitable, they should prefer the candidate who will lend diversity to the Court.

Subject to Cabinet approval the Attorney-General should then refer the candidate to the Governor-General to consider the appointment under the auspices of the Federal Executive Council.⁴

Accountability and confidentiality

All expressions of interest by, and nominations of, candidates will be treated as and kept confidential. All information gathered and documents prepared by the panel in the performance of its functions will be kept in a safe and secure location according to best practice file management and consistently with confidentiality, privacy and other legal requirements.

This means that all references and feedback which the panel receives will also remain confidential. However, should the panel propose to consider any negative (evidence-based) feedback in making its decision about shortlisted candidates, it will notify the relevant candidate of the substance of the comment and allow them an opportunity to respond.

Finally, should the Attorney-General choose to elect a candidate who was not named in the shortlist provided to them by the panel, they will publish an explanation of why they selected a candidate who was not shortlisted.

⁴ See, *Commonwealth of Australia Constitution Act* (Cth) s 72.



State and Territory Judicial Appointment Processes

	<i>Court</i>	<i>Process for appointment</i>
Australian Capital Territory (ACT)	Supreme Court¹	<ul style="list-style-type: none"> The Attorney-General must seek expressions of interest by public notice and invite 'key ACT stakeholders' to suggest or nominate candidates. The Attorney-General may consult with the current Chief Justice if appointing a Chief Justice. The Attorney-General must consult with the Chief Justice if appointing a Judge (not being the Chief Justice).
	Magistrates Court²	<ul style="list-style-type: none"> The Attorney-General must consult with the Chief Justice if appointing a Chief Magistrate. The Attorney-General must consult with the Chief Magistrate if appointing a Magistrate (not being the Chief Magistrate). The Attorney-General recommends appointments to the Executive. The Executive, by commission, appoints judicial officers.

¹ Supreme Court Act 1933 (ACT) s 4; Supreme Court (Resident Judges Appointment Requirements) Determination 2015 (No 1) 2015 (ACT) sch 1.

² Magistrates Court Act 1930 (ACT) s 7; Magistrates Court (Magistrates Appointment Requirements) Determination 2009 (ACT)

New South Wales (NSW)	Supreme Court³	<ul style="list-style-type: none"> Public advertisements for expressions of interest are published in local and national newspapers, as well as on the NSW Department of Communities and Justice website. Call for expressions of interest are communicated to the Law Society of NSW and the NSW Bar Association. A selection panel is convened, commonly including: the relevant head of the jurisdiction; a senior officer from the Department of Communities and Justice; and at least one leading member of the legal profession.
	District Court⁴	<ul style="list-style-type: none"> The selection panel short-lists and interviews candidates suitable for appointment. Candidates are assessed as either being highly suitable, suitable, or unsuitable. A report is then provided to the Attorney General.
	Local Court⁵	<ul style="list-style-type: none"> The panel may reconvene to conduct new interviews to assist in expanding the pool of suitable applicants. The Attorney General decides on the recommendations to the Governor-in-Council. The Governor, by commission under the public seal of the State, appoints judicial officers.
Northern Territory (NT)	Supreme Court⁶	<ul style="list-style-type: none"> Advertisement for expressions of interest is not required. The Attorney-General will appoint an Advisory Panel comprising:

³ Supreme Court Act 1970 (NSW) ss 26, 31; Department of Communities and Justice (NSW), 'Judicial Careers' <<https://dcj.nsw.gov.au/about-us/careers-at-dcj/pathways/judicial-careers.html>>.

⁴ District Court Act 1973 (NSW) s 13; Department of Communities and Justice (NSW) (n 3).

⁵ Local Court Act 2007 (NSW) ss 13–15; Department of Communities and Justice (NSW) (n 3)

⁶ Supreme Court Act 1979 (NT) s 32; *Protocol for Judicial Appointments and Appointments as President or Deputy President of the Northern Territory Civil and Administrative Tribunal* <<https://localcourt.nt.gov.au/publications/process-appointment-judicial-officers-northern-territory>>.

		<ul style="list-style-type: none"> ○ a former Judge of either the Supreme Court of the NT or a former Judge of the Supreme Court of a State or Territory or the Federal Court (who preferably has experience in NT) and who has not been retired for more than 7 years; ○ the Solicitor-General for the NT (alternatively, the Director of Public Prosecutions); and ○ the CEO of the Department of the Attorney-General and Justice <ul style="list-style-type: none"> ● In preparation for consultation with the Advisory Panel, the President of the NT Bar Association and the President of the Law Society of NT must consult with 'specialist and other groups within the legal profession' regarding suitable candidates. ● The Advisory Panel conducts face-to-face consultations with the Chief Justice, the President of the Bar Association, and the President of the Law Society, to seek comment on candidates under consideration by the Panel and to invite those persons to raise other potential candidates. ● The Advisory panel should consult the outgoing Chief Justice in relation to appointments of a new Chief Justice. ● The Advisory Panel recommends at least two candidates suitable for appointment to the Attorney-General. The Panel may indicate whether a particular candidate(s) is preferred, accompanied by brief reasons for that preference. ● If the Chief Justice objects to the recommendation of a particular person, this must be communicated to the Attorney-General.
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		<ul style="list-style-type: none"> • The Attorney-General may meet with the Panel to discuss further details in relation to the recommended persons. • The Attorney-General selects one candidate and provides the selection to Cabinet. • Cabinet may conduct consultations regarding the recommendation before proposing appointment to the Administrator. Cabinet may propose appointing a person not recommended by the Advisory Panel, so long as the proposal is referred to the Panel and the Chief Justice before the appointment is made. • The Administrator, by commission, appoints judicial officers <p><i>Note: If the Attorney-General departs from Protocol, the Attorney-General must inform Cabinet of the departure. If Cabinet departs from the Protocol, the departure must be made public.</i></p>
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	<p>Local Court⁷</p>	<p>As above, with the following exceptions:</p> <ul style="list-style-type: none"> • there is public advertisement for expressions of interest, which is overseen by the Department of the Attorney-General and Justice in liaison with the chair of the Advisory Panel. • In addition to the Chief Justice, the President of the Bar Association, and the President of the Law Society, the Advisory Panel must consult with the Chief Judge of the Local Court prior to providing its recommendation to the Attorney-General. • In addition to the Chief Justice, if the Chief Judge of the Local Court objects to the recommendation of a particular person, this must be communicated to the Attorney-General. • The Advisory Panel decides whether to interview suitable candidates for appointment. The Panel's recommendations to the Attorney-General must indicate whether the Panel conducted interviews and, if so, with whom. • In the case of appointing a Chief Judge, the outgoing Chief Judge should be consulted, if available.
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⁷ Local Court Act 2015 (NT) s 53; *Protocol for Judicial Appointments and Appointments as President or Deputy President of the Northern Territory Civil and Administrative Tribunal* (n 6).

Queensland (QLD)	Supreme Court⁸	<ul style="list-style-type: none"> • Vacancies for positions will be advertised on the Queensland Courts website, and registration of expressions of interest invited at any time. • The Attorney-General must consult with relevant heads of the jurisdiction before referring vacancies for consideration by the Judicial Advisory Panel, which comprises: <ul style="list-style-type: none"> ○ the chairperson (a retired judge or magistrate); ○ a current or former President of the Bar Association of Queensland (or an authorised representative); ○ a current or former President of the Queensland Law Society (or an authorised representative); and ○ up to three individuals who, in the opinion of the Attorney-General, represent community views and standards and/or possess knowledge, expertise or experience in the justice system that could usefully contribute to the selection of judicial officers (for example, an experienced legal practitioner, a former member of the judiciary, a current or former Executive in the Justice portfolio. • The Attorney-General may nominate candidates to the Panel for consideration and the Panel may invite persons to register an expression of interest. • The Panel decides its own selection process, but the process should generally include <ul style="list-style-type: none"> ○ consideration of all eligible candidates;
	District Court⁹	
	Magistrates Court¹⁰	

⁸ Supreme Court of Queensland Act 1991 (Qld) ss 12, 34, 37, 48; Constitution of Queensland 2001 (Qld) s 59; Department of Justice and Attorney-General (Qld), Protocol for Judicial Appointments in Queensland <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/87a0a5c7-96da-4415-bc44-2f840f9fa0ba/protocol-judicial-appointments-qld.pdf?ETag=9ca19f920b693b46c44993d83c1fd966>>.

⁹ District Court of Queensland Act 1967 (Qld) ss 10, 28B; Constitution of Queensland 2001 (Qld) s 59; Department of Justice and Attorney-General (Qld) (n 8).

¹⁰ Magistrates Act 1991 (Qld) ss 5, 10, 13; Department of Justice and Attorney-General (Qld) (n 8).

		<ul style="list-style-type: none"> ○ assessment of their merits, including interview (if necessary for candidates who are not already judicial officers); and ○ consultation with whoever the panel considers appropriate (including from a diversity perspective). ● The Panel's selection list should comprise 4–8 suitable candidates for each vacancy. ● For multiple vacancies of the same judicial level, the Attorney-General may specify the number of candidates to be shortlisted for consideration. ● After receipt of the Panel's list, the Attorney-General should again consult with the relevant heads of jurisdiction before selecting a person to recommend to the Governor in Council. ● The Governor in Council, by commission, appoints judicial officers.
South Australia (SA)	Supreme Court¹¹	<ul style="list-style-type: none"> ● The Governor appoints judicial officers on the recommendation of the Attorney-General.
	District Court¹²	<ul style="list-style-type: none"> ● The Governor appoints judicial officers on the recommendation of the Attorney-General. ● The Attorney-General must consult with the Chief Justice of the Supreme Court before the Governor assigns a Supreme Court Judge to be Chief Judge of the District Court.

¹¹ Supreme Court Act 1935 (SA) s 9.

¹² District Court Act 1991 (SA) ss 11A, 12.

	Magistrates Court¹³	<ul style="list-style-type: none"> • The Governor appoints judicial officers on the recommendation of the Attorney-General. • The Attorney-General must consult with the Chief Justice and Chief Magistrate before making a recommendation for appointment. • The Attorney-General's Department (SA) website notes that expression of interest for Magistrate appointment are open from time to time.
Tasmania (TAS)	Supreme Court¹⁴	<ul style="list-style-type: none"> • The Attorney-General calls for expressions of interest by advertising in three Tasmanian daily newspapers, one national newspaper, and on the Department of Justice website. • Applications must be lodged with the Secretary of the Justice Department and no less than 3 weeks allowed for lodgement of all applications. • Appropriate inquiries are conducted by the Assessment Panel, comprised of the following persons: <ul style="list-style-type: none"> ○ a representative of a professional legal body chosen by the Attorney-General (for Supreme Court vacancy) or Chief Magistrate or their nominee (for Magistrates' Court vacancy); ○ Secretary (or nominee) of the Department of Justice; and ○ Attorney-General's nominee.

¹³ Magistrates Act 1983 (SA) ss 5, 6; Attorney-General's Department (SA), 'Judicial Appointments' <www.agd.sa.gov.au/about-us/careers/judicial_appointments>.

¹⁴ Charter of Justice; Supreme Court Act 1887 (Tas) s 5; Department of Justice (Tas), Protocol for Judicial Appointments (August 2016) <<https://www.justice.tas.gov.au/about-us/policies/protocol-for-judicial-appointments>>.

	Magistrates Court¹⁵	<ul style="list-style-type: none"> • The Assessment Panel recommends candidates to the Attorney-General as either 'suitable for appointment' or 'not suitable for appointment', and provides a statement of reasons to the Attorney-General. • The Attorney-General may conduct further consultations to determine a preferred candidate. • Once the Attorney-General has selected a preferred candidate, the Secretary of the Department of Justice contacts the following officer holders to seek comment on any reasons why the appointment should not proceed: the Executive Director of the Law Society of Tasmania; the President of the Tasmanian Bar Association; and the Chair of the Legal Profession Board. • The candidate is considered by Cabinet prior to being recommended to the Governor-in-Council.
Victoria (VIC)	Supreme Court¹⁶	<ul style="list-style-type: none"> • The Governor in Council appoints judicial officers on the recommendation of the Attorney-General. • Proposed appointees are recommended for appointment following consultation with the Chief Justice. • Expressions of interest for judicial appointments are invited by the Attorney-General.
	County Court¹⁷	
	Magistrates Court¹⁸	

¹⁵ Magistrates Court Act 1987 (Tas) ss 4, 5, 6; Department of Justice (Tas) (n 14).

¹⁶ Constitution Act 1975 (Vic) ss 75B, 78A, 80; Department of Justice and Community Safety (Vic), 'Judicial Appointments' <<https://www.justice.vic.gov.au/justice-system/courts-and-tribunals/judicial-appointments>>.

¹⁷ County Court Act 1958 (Vic) ss 8, 8AAB, 12; Department of Justice and Community Safety (Vic) (n 16).

¹⁸ Magistrates' Court Act 1989 (Vic) s 7; Department of Justice and Community Safety (Vic) (n 16).

Western Australia (WA)	Supreme Court¹⁹	<ul style="list-style-type: none"> The Governor appoints judicial officers by commission under the Public Seal of the State
	District Court²⁰	
	Magistrates Court²¹	<ul style="list-style-type: none"> The Governor appoints judicial officers by commission under the Public Seal of the State. Vacancies are advertised on the Department of Justice (WA) website and expressions of interest are invited.

¹⁹ Supreme Court Act 1935 (WA) s 7A.

²⁰ District Court of Western Australia Act 1969 (WA) s 10.

²¹ Magistrates Court Act 2004 (WA) sch 1 items 3, 6. For an example of an advertised vacancy, including selection criteria, see <https://search.jobs.wa.gov.au/page.php?pageID=160&AdvertID=236569&source=other>.

Appendix C



Law Council
OF AUSTRALIA

State and Territory Selection Criteria for Judicial Appointments¹

<i>Australian Capital Territory (ACT)</i> ²	<i>New South Wales (NSW)</i> ³	<i>Queensland (QLD)</i> ⁴	<i>Tasmania (TAS)</i> ⁵	<i>Victoria (VIC)</i> ⁶	<i>Western Australia (WA)</i> ⁷
<p>Intellectual capacity</p> <ul style="list-style-type: none"> Appropriate knowledge of the relevant law and its underlying principles; (and in the case of the Supreme Court, the ability to acquire new knowledge) High level of 	<p>Overriding principle: appointments will be made on the basis of merit.</p> <p>Professional Qualities</p> <ul style="list-style-type: none"> Proficiency in the law and its underlying principles High level of 	<p>Appointments will be made on the basis of merit. Candidates will be assessed against the Australasian Institute of Judicial Administration Suggested Criteria for Judicial Appointments (2024).</p> <p>The criteria may be</p>	<ul style="list-style-type: none"> Experienced legal practitioner with a high record of professional achievement coupled with a knowledge and understanding of the law consistent with judicial office. Excellent conceptual and 	<p>Potential candidates are referred to the Framework of Judicial Abilities and Qualities for Victorian Judicial Officers (2008) developed by the Judicial College of Victoria.</p>	<p>While there are no additional published criteria for the Supreme or District Court beyond minimum statutory requirements, criteria for appointment to the Magistrates Court listed in calls for expressions of interest have included:</p> <ul style="list-style-type: none"> relevant

¹ For the Northern Territory and South Australia there are no additional published criteria beyond minimum statutory requirements.

² Supreme Court (Resident Judges Appointment Requirements) Determination 2015 (No 1); Magistrates Court (Magistrates Appointment Requirements) Determination 2009.

³ Judicial Careers' <<https://dcj.nsw.gov.au/about-us/careers-at-dcj/pathways/judicial-careers.html>>.

⁴ Department of Justice and Attorney-General (Qld), Protocol for Judicial Appointments in Queensland <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/87a0a5c7-96da-4415-bc44-2f840f9fa0ba/protocol-judicial-appointments-qld.pdf?ETag=9ca19f920b693b46c44993d83c1fd966>>.

⁵ Department of Justice (Tas), Protocol for Judicial Appointments (August 2016) <<https://www.justice.tas.gov.au/about-us/policies/protocol-for-judicial-appointments>>.

⁶ Department of Justice and Community Safety (Vic), 'Judicial Appointments' <<https://www.justice.vic.gov.au/justice-system/courts-and-tribunals/judicial-appointments>>.

⁷ See <<https://search.jobs.wa.gov.au/page.php?pageID=160&AdvertID=236569&source=other>>.

<p>expertise in your chosen area or profession</p> <ul style="list-style-type: none"> • Ability to quickly absorb and analyse information <p>Supreme Court only:</p> <ul style="list-style-type: none"> • Litigation experience or familiarity with court processes, including alternative dispute resolution <p>Personal Qualities</p> <ul style="list-style-type: none"> • Integrity and independence of mind • Sound judgement • Decisiveness • Objectivity • Ability and willingness to learn and develop professionally (and in the case of the Supreme Court adapt to change) <p>Supreme Court only:</p> <ul style="list-style-type: none"> • Diligence • Sound temperament <p>An ability to understand and deal fairly:</p>	<p>professional expertise and ability in the area(s) of professional specialisation</p> <ul style="list-style-type: none"> • Applied experience (through the practice of law or other branches of legal practice) • Intellectual and analytical ability • Ability to discharge duties promptly • Capacity to work under pressure • Effective oral, written and interpersonal communication skills with peers and members of the public • Ability to clearly explain procedure and decisions to all parties • Effective management of workload • Ability to maintain authority and inspire respect • Willingness to participate in ongoing judicial 	<p>amended from time to time with the agreement of the Attorney-General.</p>	<p>analytical thinker, displaying independence and clarity of thought.</p> <ul style="list-style-type: none"> • Effective oral and verbal communicator in dealing with legal professionals, litigants and witnesses and able to explain technical issues to non-specialist • Highly organised, able to demonstrate or develop sound court management skills and work well under pressure. • Capable of making fair, balanced and consistent decisions according to law without undue delay. • A person of maturity, discretion, patience and integrity who inspires respect and confidence. • Committed to the proper administration of justice and continuous improvement in 		<p>knowledge and experience of the law, practice and procedure</p> <ul style="list-style-type: none"> • demonstrated competence, skill, impartiality and temperament • integrity and good character • case management skills • the ability to manage a large list of cases each day • demonstrated experience in management and administration • the capacity to introduce and manage change • the ability to take effective leadership and educative roles in the community
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<ul style="list-style-type: none"> • Willingness to listen with patience and courtesy <p>Magistrates Court only:</p> <ul style="list-style-type: none"> • Ability to treat everyone with respect and sensitivity whatever their background <p>Supreme Court only:</p> <ul style="list-style-type: none"> • Impartiality • Awareness of and respect for the diverse communities which the courts serve and an understanding of, and sensitivity to, differing needs • Commitment to justice, independence, public service and fair treatment • Commitment to respect for all court users <p>Authority and communication skills:</p> <ul style="list-style-type: none"> • Ability to explain the procedure and any decisions reached clearly 	<p>education</p> <ul style="list-style-type: none"> • Ability to use, or willingness to learn modern information technology. <p>Personal Qualities</p> <ul style="list-style-type: none"> • Integrity • Independence and impartiality • Good character • Common sense and good judgement • Courtesy and patience • Social awareness. 		<p>court practice, working collegiately with judicial colleagues and effectively with court officers to those ends.</p>		
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<p>and succinctly to all those involved</p> <ul style="list-style-type: none"> • Ability to inspire respect and confidence • Ability to maintain authority when challenged <p>Supreme Court only:</p> <ul style="list-style-type: none"> • Ability to communicate orally and in writing in clear standard English <p>Efficiency</p> <ul style="list-style-type: none"> • Ability to organise time effectively and work at speed and under pressure • Ability to produce clear reasoned judgments expeditiously • Ability to work constructively with others <p>Leadership and Management Skills</p> <p>Supreme Court only:</p> <ul style="list-style-type: none"> • Ability to form strategic objectives and to provide leadership to implement them effectively • Ability to engage 					
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<p>constructively and collegially with others in the court, including courts administration</p> <ul style="list-style-type: none">• Ability to represent the court appropriately including to external bodies such as the legal profession• Ability to motivate, support and encourage the professional development of others in the court• Ability to manage change effectively• Ability to manage available resources					
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