

Review of the judicial appointments process in Queensland

Discussion paper - Summary
October 2015



Introduction

Confidence in the expertise, independence and impartiality of the judiciary is essential to the proper functioning of government in Queensland. As one of the three independent arms of government within our parliamentary democracy, the judiciary interpret and apply the laws enacted by the Parliament, and act as a check and balance on the exercise of executive power.

This Government believes that the public will only share that confidence if the process for the selection and appointment of members of the judiciary can be seen to be transparent and genuinely consultative.

In the majority of other Australian jurisdictions, and in England and Wales, the policies and procedures for judicial appointments have been reviewed in the past decade. The discussion paper, *Review of the judicial appointments process in Queensland* (Discussion Paper), canvasses the policies and procedures for the appointment of judicial officers in other Australian states and territories, as well as in England and Wales.

In Queensland, while a process of consultation is currently being undertaken for appointments to judicial office, there is no formal process, or publicly available criteria, against which candidates are assessed.

During the 2015 State election, the Australian Labor Party committed to review the current processes for the appointment of judicial officers in Queensland, and to consult extensively with stakeholders in the development of a protocol as to how judicial appointments should be made.

The purpose of the detailed Discussion Paper is to stimulate discussion and debate around the regime governing the appointment of judicial officers in Queensland, and to seek the views of key stakeholders on the following issues.

- ***The skills, attributes and qualities (both personal, and professional) required of a judicial officer***

In many other Australian jurisdictions (including New South Wales (NSW), Victoria, Tasmania and the Australian Capital Territory (ACT)) the skills, attributes and qualities required of judicial officers form the basis of published formal selection criteria.

These selection criteria are sometimes characterised according to professional and personal qualities. Professional criteria can include: proficiency and experience in the law; the capacity to work under pressure; the ability to maintain authority and inspire respect; and sound knowledge of legal procedure and appropriate application. Personal qualities can include: personal discipline; the promotion of the highest standards of behaviour in court; and the demonstration of maturity, discretion, patience and integrity.

In England and Wales, where the processes for judicial appointments have recently been subject to significant reform, emphasis is also placed on the importance of encouraging diversity among the judiciary.

- ***Strategies that could be adopted for identifying suitable candidates for appointment***

The strategies that are adopted for identifying suitable candidates for appointment also vary from jurisdiction to jurisdiction. In Tasmania, for example, the Attorney-General calls for expressions of interest in a judicial appointment to the Supreme or Magistrates Court through newspaper advertisements and on the Department of Justice website. The Attorney-General may also invite any suitably qualified applicants to submit an expression of interest.¹

In NSW, interested persons are able to submit an expression of interest at any time in relation to potential future vacancies, and this list may then be drawn upon by the Attorney-General when

¹ Department of Justice, Government of Tasmania, *Protocol for Judicial Appointments* (23 April 2014) <http://www.justice.tas.gov.au/corporate/policies/protocol_for_judicial_appointments>.

vacancies arise.² In the ACT, the Attorney-General is required to seek expressions of interest by public notice, and also to write to key stakeholders inviting them to suggest or nominate people who are suitably qualified for appointment.

- ***The best process for assessing judicial candidates***

As part of the recent reforms of the judicial appointments processes in England and Wales, the Judicial Appointments Commission (JAC) was established as a permanent body tasked with recommending candidates for most judicial offices in England and Wales. The JAC is responsible for selecting judicial officers for appointment up to and including the High Court, and contributes members to selection panels which assess candidates for appointment to the Court of Appeal, the Supreme Court (the court at the apex of the court hierarchy) and heads of jurisdiction.³ The JAC then makes a recommendation for appointment to the 'Appropriate Authority' (being the Lord Chancellor, Lord Chief Justice, or Senior President of Tribunals) for consideration, and Her Majesty the Queen makes the formal appointment on the recommendation of the Executive Government.

Advisory panels are also utilised for judicial appointments to certain courts in some Australian jurisdictions. For example, in Tasmania an assessment panel assesses applications for judicial office, may make appropriate inquiries of referees of candidates, and may seek the views of third parties as to the suitability of any person for appointment.⁴

In other jurisdictions, the assessment of judicial candidates is supported by a formal requirement that the Attorney-General consult with specific stakeholders before an appointment is made. For example, before an appointment is made to the High Court, the federal Attorney-General is required to consult with the Attorneys-General of the states.⁵

Key questions for consideration

The Discussion Paper invites comment on the following broad questions relating to the purpose and structure of a judicial appointments process:

Question 1: Should there be a formal, and publicly available, procedure for the appointment of judicial officers in Queensland?

Question 2: If so, should the procedure take the form of Guidelines or a Protocol approved by the Attorney-General (as in New South Wales and Tasmania), or a more formal Determination (as currently operates in the ACT for appointments to the Supreme and Magistrates Courts)?

Question 3: Should a statutory body similar in purpose and form to the JAC in England and Wales be established? If favoured, the following issues would need to be considered:

- how such a commission would be established
- whether the body would be permanently established, with panels being created ad hoc as required (as per the model in England and Wales)
- how the membership of the commission would be constituted, and particularly the balance between judicial, legal professional, and lay members
- whether the commission would play a role in the advertisement of judicial vacancies, and the selection of candidates
- what selection criteria and assessment processes the commission would adopt
- how the commission would report to the Attorney-General, whether through a general report covering all candidates, or a report that recommends a certain number of candidates for consideration

² Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, Judicial Conference of Australia, April 2015) 16.

³ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 63.

⁴ Department of Justice, Government of Tasmania, *Protocol for Judicial Appointments* (23 April 2014) <http://www.justice.tas.gov.au/corporate/policies/protocol_for_judicial_appointments>.

⁵ *High Court of Australia Act 1979* (Cwth) s 6.

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- the Attorney-General's powers on receipt of the commission's recommendation/s.

Question 4: If a statutory body like the JAC in the United Kingdom is not favoured, what elements should be included in the judicial appointments procedure? For example:

- selection criteria for appointment: the required skills, attributes and qualities (both personal, and professional)
- methods for the identification of prospective appointees (including consultation and advertising)
- whether an advisory panel should be used for shortlisting and making recommendations of suitable candidates to the Attorney-General
- the composition and selection method for any advisory panel
- the selection process for candidates
- the process to be followed if the Attorney-General does not accept the recommendation.

How to have your say

All comments or submissions must be made in writing.

Please provide any comments or submissions by 15 December 2015:

- By email: judicialappointmentsreview@justice.qld.gov.au
- By post: Judicial Appointments Review
Department of Justice and Attorney-General
GPO Box 149
Brisbane QLD 4001

Please note that any personal information in your comment or submission will be collected by the Department of Justice and Attorney-General and handled in accordance with the privacy statement contained within the Discussion Paper.