

Review of the judicial appointments process in Queensland

Discussion paper

October 2015



Licence:

This discussion paper is licensed by the State of Queensland Department of Justice and Attorney-General under a Creative Commons Attribution (CC BY) 3.0 Australia licence.



CC BY Licence Summary Statement:

In essence, you are free to copy, communicate and adapt this consultation paper, however, you must keep the copyright notice on anything you reproduce and attribute the State of Queensland Department of Justice and Attorney-General as the source of the original material.

Only copyright material is covered by this CC BY licence. The use of other Queensland Government material, including the Queensland Government logo and trade mark protected material is not governed by this CC BY licence.

To view a copy of this licence, visit <http://creativecommons.org/licenses/by/3.0/au/deed.en>

Attribution:

Content from this consultation paper should be attributed as:

The State of Queensland Department of Justice and Attorney-General Review of the Judicial Appointments Process in Queensland: Discussion Paper

Disclaimer:

The material presented in this publication is distributed by the State of Queensland as an information source only.

The State of Queensland holds no liability for any errors or omissions within this publication. This publication is not intended to provide legal advice and any decisions made by other parties based on this publication are solely the responsibility of those parties. Information contained in this publication is from a number of sources and, as such, does not necessarily represent government or departmental policy.

The material presented in this publication and the discussion of possible actions or options for reform **do not** represent Queensland Government policy. They are presented for the purposes of promoting discussion only.

The State of Queensland makes no statements, representations or warranties about the accuracy or completeness or reliability of any information contained in this publication. The State of Queensland disclaims all responsibility and all liability (including, without limitation, liability in negligence) for all expenses, losses, damages and costs incurred as a result of the information being inaccurate or incomplete in any way and for any reason.

You should be aware that third party websites referenced in this publication are not under the control of the State of Queensland. Therefore, the State of Queensland can make no representation concerning the content of these sites, nor can the fact that these sites are referenced serve as an endorsement by the State of Queensland of any of these sites. The State of Queensland does not warrant, guarantee or make any representations regarding the correctness, accuracy, reliability, currency, or any other aspect regarding characteristics or use of the information presented on third party websites referenced in this publication.

Contents

Contents.....	3
Minister’s foreword	5
1. Introduction	6
1.1 Purpose of the review	6
1.2 Scope of the review	6
1.3 How to have your say.....	7
1.4 Privacy statement	7
2. The current process in Queensland	7
3. Inter-jurisdictional comparison.....	8
3.1 Judicial Conference of Australia comparative study.....	8
3.2 Overview	8
3.3 Commonwealth.....	9
3.3.1 High Court of Australia and heads of other Commonwealth courts	9
3.3.2 Other federal judicial appointments.....	9
3.3.3 Former process for federal judicial appointments	10
3.3.4 Law Council of Australia Policy Statement.....	10
3.4 New South Wales	11
3.5 Victoria	12
3.6 Tasmania	13
3.7 Australian Capital Territory.....	14
3.8 Western Australia	15
3.9 South Australia.....	15
3.10 Northern Territory	16
4. England and Wales.....	17
4.1 Appointments to the Supreme Court	17
4.2 Role of the Lord Chancellor in appointments to the Supreme Court	19
4.3 Appointments to courts other than the Supreme Court	19
4.4 Appointments to the Magistrates Courts	20
5. Issues for consideration	21
Attachment 1: AIJA proposed criteria for judicial appointment.....	24
Attachment 2: Inter-jurisdictional comparison table	25
Attachment 3: Law Council of Australia Policy Statement	26
Attachment 4: Selection criteria - New South Wales	27
Attachment 5: Selection criteria - Victoria	28

Discussion Paper Only

Attachment 6: Selection criteria - Tasmania.....29

Attachment 7: Selection criteria - Australian Capital Territory30

Attachment 8: AIJA proposed criteria for appointment – comparison against existing State and Territory guidelines and protocols.....31

Minister's foreword

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.

The policies and procedures for judicial appointments in the majority of Australian states and territories have been reviewed in the past decade. These reviews have led to the development and publication of protocols and guidelines for the appointment of the judiciary, and in some cases the establishment of advisory panels to assist Attorneys-General in the assessment of candidates for appointment.

In Queensland, while a process of consultation is currently 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 ought to be made.

To stimulate discussion on options for enhancement to the judicial appointment process in Queensland, this discussion paper outlines the current regimes for judicial appointments in the other Australian jurisdictions and in England and Wales. This paper then poses questions for consideration about the current process for judicial appointments in Queensland, and alternative models for reform.

This review is an important step towards a more transparent and accountable judicial appointments framework for this State. The results of consultation will inform the development of a judicial appointments protocol to guide the future appointment of judicial officers in Queensland to be settled in further consultation with heads of jurisdiction, the Queensland Law Society and the Bar Association of Queensland.

I would encourage interested members of the public and stakeholders to become involved, and to provide feedback on the issues and questions raised.

Hon Yvette D'Ath
Attorney-General and Minister for Justice and Minister for Training and Skills



Hon Yvette D'Ath
Attorney-General and Minister for Justice and Minister for Training and Skills

1. Introduction

1.1 Purpose of the review

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.¹

The purpose of this 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
- strategies that could be adopted for identifying suitable candidates for appointment
- the best process for assessing judicial candidates.

1.2 Scope of the review

By way of background, and for the purpose of informing discussion and debate about this issue, this discussion paper outlines the current regime for judicial appointments that operates in relation to the Supreme, District and Magistrates Courts in Queensland (Part 2), and the legislation, policies and procedures for judicial appointments in the other Australian jurisdictions (Part 3).

Part 4 outlines the procedure for judicial appointments in England and Wales, which are the result of major legislative reforms in 2005 and 2013.

This paper concludes by posing the following questions for consideration about the current process for judicial appointments in Queensland, including possible models for reform (Part 5):

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 Australian Capital Territory for appointments to the Supreme and Magistrates Courts)?

Question 3: Should a statutory body similar in purpose and form to the Judicial Appointments Commission (JAC) in England and Wales be established?

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?

The term 'judicial appointments' is used throughout this paper to refer to the appointment of judges of the Supreme and District Courts of Queensland, and magistrates.

¹ Queensland Law Society, *State election issues 2015: QLS Call to Parties Labor and LNP responses*.

1.3 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

1.4 Privacy statement

Any personal information in your comment or submission will be collected by the Department of Justice and Attorney-General (DJAG) for the purpose of undertaking the review. DJAG may contact you for further consultation on the issues you raise, and your submission and/or comments may be provided to others with an interest in the review. Your submission may also be released to other government agencies as part of the consultation process.

Submissions provided to DJAG in relation to this consultation paper will be treated as public documents. This means that, in all but exceptional cases, they may be published on the DJAG website, together with the name and suburb of each person making a submission. If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly. Please note however that all submissions may be subject to disclosure under the *Right to Information Act 2009*, and access to applications for submissions, including those marked confidential, will be determined in accordance with that Act.

Submissions (or information about their content) may also be provided in due course to a parliamentary committee that considers matters relating to the review.

2. The current process in Queensland

The existing statutory requirements for the appointment of members of the judiciary in Queensland are contained within the *Constitution of Queensland 2001* (Constitution), the *Supreme Court of Queensland Act 1991*, and the *District Court of Queensland Act 1967*. Magistrates are appointed according to section 4 of the *Magistrates Act 1991*.

The Constitution provides that the Governor in Council, by commission, may appoint a barrister or solicitor of the Supreme Court of at least five years standing as a judge.² Once appointed, a judge holds office indefinitely, but must retire at 70 years of age.³ The qualifications for appointment to the position of magistrate are in similar terms.⁴

When the need for a judicial appointment arises, the convention is that the Attorney-General consults directly with the Premier, the relevant head of jurisdiction, the Bar Association of Queensland and the Queensland Law Society before making a recommendation for the appointment of a judge or magistrate to the Cabinet and the Governor in Council. DJAG also performs criminal history and bankruptcy checks, and disciplinary checks with the Legal Services Commission for new nominees for appointment to all courts.

There is currently no formal, or publicly available, criteria against which judicial nominees are assessed.

² *Constitution of Queensland 2001* (Qld) s 59.

³ *Constitution of Queensland 2001* (Qld) s 60; *Supreme Court of Queensland Act 1991* (Qld) s 21; *District Court of Queensland Act 1967* (Qld) s 14.

⁴ *Magistrates Act 1991* (Qld) s 4.

3. Inter-jurisdictional comparison

3.1 *Judicial Conference of Australia comparative study*

The Judicial Conference of Australia (JCA) has recently published a comprehensive and detailed comparative study of the criteria and processes for judicial appointments across the Australian jurisdictions, as well as internationally (including New Zealand, England and Wales, Scotland and Canada) (JCA paper).⁵

The processes in place in these various jurisdictions are assessed according to the following elements:

- the authority to appoint
- eligibility for appointment
- criteria for appointment
- the selection process, including:
 - o advertising or calls for expressions of interest
 - o consultations
 - o the use of assessment or selection panels
 - o formal interviews.⁶

The JCA paper references the judicial appointments policy proposed by the Law Council of Australia for adoption at the federal courts level (see 3.4 below), as well as the criteria for judicial appointments proposed by the Australasian Institute of Judicial Administration (AIJA) (Appendices E and G to the JCA paper, respectively).

The AIJA criteria (**Attachment 1**) have recently been provided by the AIJA to the Honourable Yvette D'Ath, Attorney-General and Minister for Justice and Minister for Training and Skills for consideration, and are suggested for all levels of appointment.

As part of the study, the JCA paper notes that “long experience has proved the considerable benefit that the Executive government generally will gain from confidential consultation with heads of jurisdiction and others about the suitability and qualities of potential appointees to judicial office”, but recognises that executive governments are ultimately answerable to Parliament, and to their electorates, for their decisions.⁷

The JCA paper also comments that any change to the traditional process of appointing judicial officers is a political decision for the Executive, but highlights the paramount importance of the public interest in maintaining confidence in the institutional independence and integrity of the judiciary as a core value in our democratic system of government.⁸ The JCA paper suggests that if a decision of the executive government is made to implement an advisory panel system, that the panel should be independent of the Executive government, and that should the Executive elect to depart from the panel's recommendations, that fact should be made transparent at the time.⁹

3.2 *Overview*

In all Australian jurisdictions, judicial appointments are officially made by the Executive, but in practice the candidate is selected on the recommendation of the Attorney-General. Further, in all states and territories, Attorneys-General retain the discretion to recommend for appointment whoever they choose,

⁵ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015).

⁶ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 1.

⁷ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) vi.

⁸ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) vi-vii.

⁹ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) vi.

subject to minimum statutory prerequisites. They are not bound by any recommendations or advice of an advisory panel, where such panels are utilised.¹⁰

In no jurisdiction are there currently principles contained in primary legislation that govern the nomination and assessment of potential judicial candidates.

Five key elements feature in judicial appointments processes across the Australian jurisdictions, these are: advertising; selection criteria; advisory panels; interviews; and consultation. **Attachment 2** is an inter-jurisdictional comparison for these key elements.

This inter-jurisdictional comparison has been prepared using information that is available in the public domain. The JCA paper, in contrast, also includes additional information obtained through broader consultation. This includes information obtained by the AIJA from various sources as to the extent to which the processes for judicial appointments have been applied in practice, and over time.¹¹ The information collated in the JCA paper reflects that even where documented processes are in place for judicial appointments, these processes can be fluid in practice due to the nature of Executive prerogatives.

3.3 Commonwealth

The Commonwealth Constitution provides that the Justices of the High Court and of the other courts created by the Parliament are to be appointed by the Governor-General in Council.¹² In practice, the Attorney-General makes recommendations to the Cabinet and Governor-General.

3.3.1 High Court of Australia and heads of other Commonwealth courts

The *High Court of Australia Act 1979* (Cwth) provides that Justices of the High Court are to be appointed by the Governor-General by commission.¹³ If there is a vacancy on the High Court, the Attorney-General must consult with the Attorneys-General of the states before an appointment is made.¹⁴ In terms of qualifications for appointment, nominees must be, or have been, a judge, or a legal practitioner of at least five years standing.¹⁵

The qualifications for appointments to the position of Chief Justice of the High Court, and to the heads of the other federal courts, do not appear to be any different.

3.3.2 Other federal judicial appointments

To be eligible for appointment as a Federal Court or Family 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 five years, or be a current or former judge of a prescribed court or state court.¹⁶ In the case of appointments to the Federal Circuit Court, 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 five years.¹⁷

There are no further stated criteria for appointments to federal courts, with the exception of the Family Court. Section 22(2)(b) of the *Family Law Act 1975* (Cth) provides that a person shall not be appointed as a Judge of that court unless 'by reason of training, experience and personality, the person is a suitable person to deal with matters of family law'.

¹⁰ Department of Justice, Government of Victoria, 'Reviewing the judicial appointments process in Victoria' (Discussion Paper, July 2010) 19.

¹¹ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) viii.

¹² *Constitution of the Commonwealth of Australia* (Cwth) s 72.

¹³ *High Court of Australia Act 1979* (Cwth) s 5.

¹⁴ *High Court of Australia Act 1979* (Cwth) s 6.

¹⁵ *High Court of Australia Act 1979* (Cwth) s 7.

¹⁶ *Federal Court of Australia Act 1976* (Cwth) s 6; *Family Law Act 1975* (Cwth) s 22.

¹⁷ *Federal Circuit Court of Australia Act 1999* (Cth) sch 1, pt 1(2).

3.3.3 Former process for federal judicial appointments

In early 2008, the former Commonwealth Government introduced a new process for the appointment of judges and magistrates to federal courts, entitled 'Judicial appointments: ensuring a strong, independent and diverse judiciary through a transparent process'.¹⁸ This policy provided for a broad consultation process, the publication of calls for expressions of interest and the use of advisory panels to interview and recommend appointments to the Attorney-General, for appointments to all federal courts (with the exception of appointments to the High Court, and to heads of the federal courts). In the case of the High Court, the policy provided that the Attorney-General consulted widely with interested bodies seeking nominations of suitable candidates before making a recommendation to the Governor-General in the traditional manner.¹⁹

The JCA paper notes the current absence of information about judicial appointment processes on the federal Attorney-General's website, and infers that the appointment process for all federal courts has since reverted to a more traditional model.²⁰

3.3.4 Law Council of Australia Policy Statement

In September 2008, the Law Council of Australia published a Policy Statement on the subject of the process of judicial appointments.²¹ The Policy Statement is intended to apply to every judicial office at the federal level, with the exception of the High Court.

In summary, the Policy Statement includes a list of expected attributes for judicial appointment which supplements any statutory criteria for eligibility, and recommends that the Federal Attorney-General establish (and make publicly available) a formal Judicial Appointments Protocol (Protocol) which outlines the judicial appointments process.

The Policy Statement recommends that the 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
- 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
- require that 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 recommends, by way of nomination, be considered for appointment
- acknowledge that the Attorney-General may consult such other persons as the Attorney-General thinks fit and state that wide consultation is encouraged.²²

The Policy Statement also recommends that the Protocol should state that all suitable candidates will receive consideration for appointment and the process will involve advertising for 'expressions of interest' for a particular appointment, so long as:

- the advertising is undertaken in a way that does not diminish the standing of the court or jurisdiction concerned

¹⁸ Attorney-General's Department, *Judicial appointments: ensuring a strong, independent and diverse judiciary through a transparent process* (September 2012) Australian Government <<http://www.ag.gov.au/LegalSystem/Courts/Documents/JudicialApptsEnsuringastrongandindependentjudiciarythroughatransparentprocess.pdf>>.

¹⁹ Attorney-General's Department, *Judicial appointments: ensuring a strong, independent and diverse judiciary through a transparent process* (September 2012) Australian Government <<http://www.ag.gov.au/LegalSystem/Courts/Documents/JudicialApptsEnsuringastrongandindependentjudiciarythroughatransparentprocess.pdf>> 3.

²⁰ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 3.

²¹ Law Council of Australia, *Policy Statement: The Process of Judicial Appointments* (September 2008) Law Council of Australia <<http://www.lawcouncil.asn.au/lawcouncil/index.php/library/policies-and-guidelines>>.

²² Law Council of Australia, *Policy Statement: The Process of Judicial Appointments* (September 2008) Law Council of Australia <<http://www.lawcouncil.asn.au/lawcouncil/index.php/library/policies-and-guidelines>>.

- all expressions of interest and nominations are treated as and kept confidential, and records of them are destroyed once the appointment has been made
- it is acknowledged in the Protocol that advertising is auxiliary to personal consultation by the Attorney-General and not a substitution for the essential component of the process.²³

The contents of the Law Council of Australia Policy Statement are replicated at **Attachment 3**.

3.4 New South Wales

In New South Wales, the Governor-in-Council appoints judicial officers on the recommendation of the Attorney-General. In practice, a nominee is selected by Cabinet on the recommendation of the Attorney-General, who then informs the Governor of the nominee for appointment. A person is qualified for appointment as Chief Justice or as a Judge of the Supreme Court if they: hold, or have held a judicial office of the state, the Commonwealth, or another state or territory; or are an Australian lawyer of at least seven years standing.²⁴

The statutory qualifications for the appointment of judges to the District Court, and the Land and Environment Court, are in similar terms.²⁵ The statutory qualifications for appointment as a magistrate include persons who currently hold, or who have held, judicial office in Australia, or are an Australian lawyer of at least five years standing.²⁶

In terms of consultation, there are no statutory consultation requirements for appointments to any of the state courts, however the New South Wales Justice Department website provides that consultation with referees and stakeholders takes place for appointments to the lower courts.²⁷ The website further provides that the appointment of judges to the higher courts and the appointment of heads of jurisdiction continue to be made in the traditional manner, following consultation with the head of jurisdiction and relevant legal professional bodies.²⁸

Following reforms instituted by the Attorney-General in 2008, vacancies for both judges of the District Court, and Local Court magistrates, are advertised.²⁹ The pool of candidates from which a list of suitable candidates for judicial office is drawn comprises both expressions of interest that have been submitted, and nominations made by way of submission. 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 vacancies arise.³⁰ The Attorney-General may also propose a nominee for appointment where it is considered necessary in appropriate cases.³¹ The JCA paper notes that it is unclear whether advertising is used in the appointment process for the superior courts.³²

For the District and Local Courts, a panel comprising the relevant head of jurisdiction, the Secretary of the Department of Justice, a leading member of the legal profession, and a prominent community member is convened to review the nominees against the selection criteria.³³ The panel develops a shortlist of candidates for interview, and following interviews conducted by the panel, candidates are assessed as being either highly suitable, suitable, or unsuitable for judicial office. A report is then provided in a report to the Attorney-General. The JCA paper suggest that, in some cases, appointments to the District Court are made without the candidate being interviewed.³⁴

²³ Law Council of Australia, *Policy Statement: The Process of Judicial Appointments* (September 2008) Law Council of Australia <<http://www.lawcouncil.asn.au/lawcouncil/index.php/library/policies-and-guidelines>>.

²⁴ *Supreme Court Act 1970* (NSW) s 26.

²⁵ *District Court Act 1973* (NSW) s 13; *Land and Environment Court Act 1979* (NSW) s 8.

²⁶ *Local Court Act 2007* (NSW) s 13.

²⁷ Department of Justice, Government of New South Wales, *Judicial Careers and Statutory Appointments* (8 April 2015) New South Wales Department of Justice <<http://www.justice.nsw.gov.au/Pages/careers/Judicialcareers-statutoryappointments.aspx>>.

²⁸ Department of Justice, Government of New South Wales, *Judicial Careers and Statutory Appointments* (8 April 2015) New South Wales Department of Justice <<http://www.justice.nsw.gov.au/Pages/careers/Judicialcareers-statutoryappointments.aspx>>.

²⁹ Lenny Roth, 'Judicial appointments' (Briefing Paper No 3/2012, NSW Parliamentary Library Research Service, 2012) 8.

³⁰ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, Judicial Conference of Australia, April 2015) 16.

³¹ Department of Justice, Government of New South Wales, *Judicial Careers and Statutory Appointments* (8 April 2015) New South Wales Department of Justice <<http://www.justice.nsw.gov.au/Pages/careers/Judicialcareers-statutoryappointments.aspx>>.

³² Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 16.

³³ Department of Justice, Government of New South Wales, *Judicial Careers and Statutory Appointments* (8 April 2015) New South Wales Department of Justice <<http://www.justice.nsw.gov.au/Pages/careers/Judicialcareers-statutoryappointments.aspx>>.

³⁴ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 17.

While merit is the overriding principle governing the assessment of judicial nominees, the New South Wales Attorney-General has approved a list of professional and personal qualities against which candidates for judicial office in all courts are assessed, which is publicly available on the Department of Justice website. These qualities are listed at **Attachment 4**.

3.5 Victoria

In Victoria, judicial officers are also appointed by the Governor on the advice of the Executive Council. In practice, the Attorney-General selects a nominee and provides the recommendation to the Governor following Cabinet approval.³⁵ Statutory qualifications for appointment to the Supreme, County and Magistrates Courts include: current, or former, service as a judge of the High Court, a federal court, a court of Victoria or another state or territory; or having been admitted to legal practice in Victoria, another state or territory, or the High Court of Australia, for not less than five years.³⁶

A discussion paper titled 'Reviewing the judicial appointments process in Victoria' published by the Victorian Department of Justice in July of 2010 documented the then process for judicial appointments with the aim of making the process more transparent and raised issues for discussion.³⁷ This discussion paper notes that in Victoria expressions of interest are sought for judicial office at all court levels.³⁸ The Court Services Victoria website currently provides that the Attorney-General seeks expressions of interest from qualified persons for appointment to the Supreme, County and Magistrates' Courts of Victoria.³⁹

The discussion paper states, the Attorney-General identifies his or her preferred candidate for the position after conducting consultation with various stakeholders, including the judiciary, the Victorian Bar, the Law Institute of Victoria, Victoria Legal Aid, and the Victorian Government Solicitor.⁴⁰ The Attorney-General then obtains approval from Cabinet before submitting a recommendation to the Governor in Council.

In the case of appointments to the Magistrates' Court, the discussion paper provides that advisory panels are established as vacancies arise, and prepare a report for the Attorney-General with their assessment of candidates, and a list of suitable candidates for appointment.⁴¹ According to the discussion paper, the panel comprises the Chief Magistrate, a senior public servant from the Department of Justice and a third person, such as another judicial officer or the Chief Executive Officer of the Judicial College of Victoria or the Sentencing Advisory Council.⁴²

The JCA paper notes that the previous State Government elected in December of 2010 after the publication of the Victorian discussion paper had committed to the appointment of a judicial advisory panel as part of its election promises.⁴³

Potential candidates for judicial office at all court levels continue to be referred to the 'Framework of Judicial Abilities and Qualities for Victorian Judicial Officers', developed by the Judicial College of Victoria, which outlines the attributes the government, courts and community expect from judicial appointees.⁴⁴ This framework covers 'headline' abilities and associated qualities including knowledge and technical skill, communication and authority; decision making; professionalism and integrity, efficiency and leadership and management. A summary of the Framework appears at **Attachment 5**.⁴⁵

³⁵ *Constitution Act 1975* (Vic) s 75B.

³⁶ *Constitution Act 1975* (Vic) s 75B; *County Court Act 1958* (Vic) s 8; *Magistrates Court Act 1989* (Vic) s 7.

³⁷ Department of Justice, Government of Victoria, 'Reviewing the judicial appointments process in Victoria' (Discussion Paper, July 2010).

³⁸ Department of Justice, Government of Victoria, 'Reviewing the judicial appointments process in Victoria' (Discussion Paper, July 2010) 15.

³⁹ Court Services Victoria, *Court appointments* (11 September 2014) Court Services Victoria <<https://www.courts.vic.gov.au/judicial-appointments/court-appointments-0>>.

⁴⁰ Department of Justice, Government of Victoria, 'Reviewing the judicial appointments process in Victoria' (Discussion Paper, July 2010) 8.

⁴¹ Department of Justice, Government of Victoria, 'Reviewing the judicial appointments process in Victoria' (Discussion Paper, July 2010) 19.

⁴² Department of Justice, Government of Victoria, 'Reviewing the judicial appointments process in Victoria' (Discussion Paper, July 2010) 22.

⁴³ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 40.

⁴⁴ Court Services Victoria, *Court appointments* (11 September 2014) Court Services Victoria <<https://www.courts.vic.gov.au/judicial-appointments/court-appointments-0>>.

⁴⁵ A full copy of the Framework can be found at: <<http://www.judicialcollege.vic.edu.au/judicial-education/framework-judicial-abilities-and-qualities>>.

Whether there have been any changes to the process in Victoria following the release of the discussion paper is unclear.⁴⁶ The JCA paper suggests that while there remains no statutory requirements for consultation, the current practice in Victoria is for the Attorney-General to discuss a judicial vacancy with the head of jurisdiction to determine the appropriate skills and attributes required.⁴⁷

3.6 *Tasmania*

In Tasmania, the appointment of judicial officers is a prerogative of the Crown to be exercised by the Executive Council through Cabinet.⁴⁸ Qualifications for appointment to the Supreme Court include: a barrister who is aged 35 years or above, of not less than 10 years standing at the Bar of the Court; or barristers of the Supreme Court of any state of the Commonwealth or New Zealand which fit the same criteria.⁴⁹ To be eligible for appointment to the Magistrates Court, a person must be an Australian lawyer of not less than five years standing as an Australian legal practitioner, and be less than 72 years of age.⁵⁰

In April 2009, the Tasmanian Department of Justice published a 'Protocol for Judicial Appointments', which applies to judicial appointments at all court levels, unless otherwise specified or directed by the Attorney-General in a particular case.⁵¹ Pursuant to this Protocol, the Attorney-General calls for expressions of interest in an appointment to the Supreme or Magistrates Court by advertisement in three Tasmanian daily newspapers, a national newspaper, and on the Department of Justice website. The Attorney-General may also invite any suitably qualified applicants to submit an expression of interest. The Protocol states that the views of the Opposition Spokespersons and the various major bodies representing the interests of the legal profession will be confidentially sought on candidates who may be suitable for appointment and who should be encouraged to apply.

An assessment panel assesses applications for judicial office. The composition of the assessment panel varies according to the court in which the vacancy exists.

- For appointments to the *Supreme Court*: a representative of a professional legal body chosen by the Attorney-General; the Secretary of the Department of Justice (or their nominee); and the Attorney-General's nominee.
- For appointments to the *Magistrates Court*: Chief Magistrate (or their nominee); the Secretary of the Department of Justice (or their nominee); and the Attorney-General's nominee.⁵²

Where a vacancy exists in the role of Chief Justice, Chief Magistrate, or Deputy Chief Magistrate, the current members of the court in which the vacancy exists will be automatically considered by the assessment panel.⁵³

The selection criteria for appointments to judicial office at both levels of the court hierarchy in Tasmania is available on the Department of Justice's website.⁵⁴ The selection criteria appear at **Attachment 6**.

The assessment panel may make any appropriate inquiries of referees, and may seek the views of third parties, as to the suitability of any person for appointment. Applicants will either be assessed as suitable, or not suitable for appointment. In the event that more than five applicants are assessed as suitable for appointment, the panel will nominate the five most suitable candidates for appointment. A

⁴⁶ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 40, 46.

⁴⁷ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 44.

⁴⁸ 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>.

⁴⁹ *Supreme Court Act 1887* (Tas) s 4.

⁵⁰ *Magistrates Court Act 1987* (Tas) ss 4 and 8

⁵¹ 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>.

⁵² 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>.

⁵³ 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>.

⁵⁴ 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>.

statement of reasons will be provided to the Attorney-General, along with the assessments for all applicants.⁵⁵

In considering the panel's recommendations, the Attorney-General may consult on a confidential basis with whoever the Attorney-General sees fit. Once a preferred candidate is identified, the Law Society of Tasmania and the Legal Profession Board are consulted on a confidential basis seeking their comment on whether there is any reason why the appointment should not proceed. A criminal history check is also carried out.⁵⁶ Once the nominee for appointment has been considered by Cabinet, the Attorney-General recommends the appointment to the Governor-in-Council.

3.7 Australian Capital Territory

In the Australian Capital Territory, all judges of the Supreme Court, including the Chief Justice (collectively known as 'Resident Judges') are appointed by the Executive by commission.⁵⁷ A person is not eligible to be appointed as a resident judge unless they are, or have been, a judge of a superior court of record of the Commonwealth or a state (or has been a judge of the Supreme Court), or have been a legal practitioner for at least five years, and are less than 70 years of age.⁵⁸ The Executive must determine the criteria that apply to the selection of a person for appointment, and the process for selecting the person, and publish the relevant criteria in a notifiable instrument.⁵⁹

A person is not eligible for appointment as a Magistrate unless they have been a lawyer for at least five years.⁶⁰ In a similar manner to appointments to the Supreme Court, the Executive must determine the criteria that apply to the selection of a person for appointment to the Magistrates Court.⁶¹ Magistrates are also appointed by the Executive.⁶²

Reforms were implemented in 2007 to introduce selection criteria to guide the assessment of judicial nominees, facilitate consultation with stakeholders as part of the process, and ensure that judicial officers are appointed on merit.⁶³

The selection process, and selection criteria for appointment to the Supreme and Magistrates Courts, respectively, are contained in:

- the Supreme Court (Resident Judges Appointment Requirements) Determination 2010 (ACT), Notifiable Instrument NI2010-14 and
- the Magistrates Court (Magistrates Appointment Requirements) Determination 2009 (ACT), Notifiable Instrument NI2009-643.

The selection criteria contained within these Determinations is replicated at **Attachment 7**.

For judicial appointments to the Supreme Court, the relevant Determination requires that the Attorney-General seek expressions of interest for the position of Resident Judge by public notice, and write to key stakeholders inviting them to suggest or nominate people who are suitably qualified for appointment. The selection process must be based on a consideration of possible candidates by the Attorney-General, having regard to the selection criteria contained in the determination. Before recommending an appointment of a new Chief Justice to the Executive, the Attorney-General may consult with the current Chief Justice about possible appointees. In the case of recommending an appointment to the position of a judge (other than the Chief Justice) to the Executive, the Attorney-General must consult with the Chief Justice about possible appointees.⁶⁴ There may also be further

⁵⁵ 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>.

⁵⁶ 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>.

⁵⁷ *Supreme Court Act 1933* (ACT) s 4.

⁵⁸ *Supreme Court Act 1933* (ACT) s 4.

⁵⁹ *Supreme Court Act 1933* (ACT) s 4AA.

⁶⁰ *Magistrates Court Act 1930* (ACT) s 7A.

⁶¹ *Magistrates Court Act 1930* (ACT) s 7AA.

⁶² *Magistrates Court Act 1930* (ACT) s 7.

⁶³ Australian Capital Territory Government, 'Attorney General announces new judicial appointments process' (Media Release, 28 August 2007) <<http://info.cmcd.act.gov.au/archived-media-releases/media24d6.html?v=5911&s=240>>.

⁶⁴ *Supreme Court (Resident Judges Appointment Requirements) Determination 2010* (ACT), Notifiable Instrument NI2010-14 <<http://www.legislation.act.gov.au/ni/2010-14/current/rtf/2010-14.rtf>>.

consultation with the Chief Justice, representatives of the Law Society and the Bar Association before a final nomination is prepared for consideration by the Government.⁶⁵

The Attorney-General must follow the same appointment procedure for appointments to the Magistrates Court. Before recommending an appointment of a Chief Magistrate to the Executive, the Attorney-General must consult with the Chief Justice about possible appointees. Before recommending an appointment of a Magistrate (other than the Chief Magistrate) to the Executive, the Attorney-General must consult with the Chief Magistrate about possible appointees.⁶⁶

3.8 Western Australia

In Western Australia, the Governor is responsible for appointments to the Supreme, District and Magistrates Courts.⁶⁷

A person is eligible for appointment as a judge of the Supreme Court or District Court if they are a lawyer with not less than eight years legal experience.⁶⁸ At the Magistrates Court level, a person is eligible for appointment if they have had at least five years legal experience, and are under 65 years of age.⁶⁹ 'Legal experience' includes standing and practice as a legal practitioner, and judicial service in the state of Western Australia or elsewhere in a common law jurisdiction.⁷⁰

The JCA paper contains detailed information about the Western Australian criteria for appointment, and the selection process for the Supreme and Magistrates Courts, based on information provided by local sources.⁷¹

3.9 South Australia

In South Australia, the Governor is responsible for appointments to the Supreme, District and Magistrates Courts.⁷² In the case of magistrates, the recommendation of an appointee by the Attorney-General to the Governor is a statutory requirement.⁷³

A person is ineligible for appointment as Chief Justice of the Supreme Court unless they are a practitioner of the court of not less than fifteen years standing, or a puisne judge of the court. For appointment as a judge of the court, a person must be a practitioner of the court of not less than 10 years standing.⁷⁴ In the case of a master, they must be a practitioner of at least seven years standing.⁷⁵ While there is no statutory age criteria for appointment as a judge or magistrate, a judge or master must retire on reaching the age of 70 years.⁷⁶

At the District Court level, the Chief Judge must be either a Judge of the Supreme Court assigned by the Governor (by proclamation) to be the Chief Judge, or a legal practitioner of at least 10 years standing, or a District Court judge appointed by the Governor as the Chief Judge.⁷⁷ In the case of an appointment of a judge of the Supreme Court to the position of Chief Judge of the District Court, the Attorney-General is obliged to consult with the Chief Justice of the Supreme Court.⁷⁸ For the remainder of the bench, a person is ineligible for appointment as a Judge unless they are a legal practitioner of at

⁶⁵ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 11.

⁶⁶ *Magistrates Court (Magistrates Appointment Requirements) Determination 2009* (ACT), Notifiable Instrument NI2009-643 <<http://www.legislation.act.gov.au/nii/2009-643/current/pdf/2009-643.pdf>>.

⁶⁷ *Supreme Court Act 1935* (WA) s 7A(1); *District Court of Western Australia Act 1969* (WA), s 10(1); *Magistrates Court Act 2004* (WA) sch 1, s 3(1).

⁶⁸ *Supreme Court Act 1935* (WA) s 8(1); *District Court of Western Australia Act 1969* (WA) s 10(2).

⁶⁹ *Magistrates Court Act 2004* (WA) sch 1, s 2(2).

⁷⁰ *Supreme Court Act 1935* (WA) s 4(2); *District Court of Western Australia Act 1969* (WA) s 6(2); *Magistrates Court Act 2004* (WA) sch 1, s 2(1).

⁷¹ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 47-52.

⁷² *Supreme Court Act 1935* (SA) s 9, *District Court Act 1991* (SA) ss 11A, 12; *Magistrates Act 1983* (SA) s 6.

⁷³ *Magistrates Act 1983* (SA) s 5; Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 29.

⁷⁴ *Supreme Court Act 1935* (SA) ss 8(1)-8(2).

⁷⁵ *Supreme Court Act 1935* (SA) s 8(3).

⁷⁶ *Supreme Court Act 1935* (SA) s 13A.

⁷⁷ *District Court Act 1991* (SA) s 11A(1).

⁷⁸ *District Court Act 1991* (SA) s 11A(2).

least seven years standing. In the case of a Master, they must be a legal practitioner of at least five years standing.⁷⁹

In the case of the Chief Magistrate and Deputy Chief Magistrate, they must be a legal practitioner of at least seven years standing.⁸⁰ Other magistrates must be a legal practitioner of at least five years standing.⁸¹

The JCA paper indicates that an interviewing panel is used for vacancies on the Magistrates Court, which consists of the Chief Magistrate, officers of the Attorney-General's Department, and an independent person(s) nominated by the Attorney-General.⁸² A short-list of those candidates considered fit to hold office is then prepared for the Attorney-General for submission to Cabinet.⁸³ In the case of appointments to the superior courts, the JCA paper suggests that interviews are not routinely conducted but potential appointees are asked to provide an undetailed assurance as to the non-existence of matters which might compromise their capacity to discharge the duties of their office.⁸⁴

For the purpose of determining whether a practitioner of the court has the standing necessary for appointment as a judge, Master or Magistrate at all court levels, periods of legal practice and (where relevant) judicial service within and outside the State will be taken into account.⁸⁵

In terms of consultation, the Attorney-General must consult with the Chief Justice and Chief Magistrate in relation to a proposed appointment to the Magistrates Court.⁸⁶ For the higher courts, the JCA paper suggests that, in practice, appointments are made after an informal consultation process with the relevant heads of jurisdiction, the heads of legal professional bodies and the Solicitor-General.⁸⁷

The JCA paper suggests that there is a practice of calling for expressions of interest in appointment to the Magistrates Court, but not for superior courts, in South Australia.⁸⁸

3.10 Northern Territory

In the Northern Territory, in the case of the Supreme Court the Administrator may, by commission, appoint a person who has not attained the age of 70 years and is, or has been, a Judge of a Court of the Commonwealth or of a State or Territory of the Commonwealth, or is a lawyer who has been admitted to the legal profession for at least 10 years, to be the Chief Justice of the Court, a Judge of the Court or an additional Judge of the Court.⁸⁹

A person is eligible for appointment as a magistrate by the Administrator if the person:

- (a) is a lawyer and has been for at least five years; or
- (b) is admitted to the legal profession, and has been for at least five years, in one of five stipulated jurisdictions;⁹⁰ or
- (c) has held a position of magistrate, or, in the opinion of the Minister, its equivalent, in a jurisdiction mentioned in paragraph (b) and has the approved academic qualifications for admission as a local lawyer; and
- (d) has not attained the age of 70 years.⁹¹

The JCA paper contains detailed information about the criteria for appointment, and the selection process for the Supreme and Magistrates Courts, based on information provided by sources within the Northern Territory government and judiciary.⁹²

⁷⁹ *District Court Act 1991* (SA) s 12(2).

⁸⁰ *Magistrates Act 1983* (SA) s 6.

⁸¹ *Magistrates Act 1983* (SA) s 5.

⁸² Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 31.

⁸³ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 31-32.

⁸⁴ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 32.

⁸⁵ *Supreme Court Act 1935* (SA) s 8(4); *District Court Act 1991* (SA) s 12(5); *Magistrates Act 1983* (SA) s 6(4).

⁸⁶ *Magistrates Act 1983* (SA) s 5(4).

⁸⁷ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 31.

⁸⁸ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 30.

⁸⁹ *Supreme Court Act* (NT), s 32.

⁹⁰ Being: (i) New Zealand; (ii) Papua New Guinea; (iii) England; (iv) Scotland; and (v) Northern Ireland.

⁹¹ *Magistrates Act* (NT) ss 5, 7.

⁹² Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 18-24.

4. England and Wales

The *Constitutional Reform Act 2005* (the Constitutional Reform Act), and *Crime and Courts Act 2013* (Crime and Courts Act), overhauled the process and procedure for judicial appointments in England and Wales. Prior to these reforms, the Lord Chancellor had a hybrid role: he/she acted as a senior judge (and was head of the judiciary in England, Wales and Northern Ireland); was responsible for judicial appointments; was a member of the Cabinet; and presided over the House of Lords.⁹³

The Constitutional Reform Act significantly reformed the role of the Lord Chancellor; the office-holder ceased to be the head of the judiciary (or even a judge), and while the Lord Chancellor remains a member of Cabinet, they were replaced as presiding officer in the House of Lords by the new Lord Speaker.⁹⁴ The Constitutional Reform Act also established the JAC; a permanent body that is responsible for recommending candidates for most judicial offices in England and Wales (excluding appointments to the Magistrates Court). The establishment of the JAC severely curtailed the Lord Chancellor's once wide-ranging powers in relation to judicial appointments.⁹⁵ The Lord Chancellor, however, retains the power to remove Circuit and District Judges from office, with the agreement of the Lord Chief Justice.⁹⁶

The JAC is composed of a chairman (who must always be a lay member), and such number of other Commissioners as the Lord Chancellor specifies by regulations made with the agreement of the Lord Chief Justice.⁹⁷ The power to make regulations is to be exercised so as to ensure that the Commission's members include: holders of judicial office (the number of Commissioners who are holders of judicial office must be less than the number of Commissioners (including the chairman) who are not holders of judicial office); persons practising or employed as lawyers; and lay members.⁹⁸ Currently, the *Judicial Appointments Commission Regulations 2013* provide that there are 15 Commissioners, including the Chairman.⁹⁹

The JAC is responsible for selecting judicial officers for appointment up to and including the High Court, and contributes members to the selection panels for the Court of Appeal, Supreme Court and heads of jurisdiction.¹⁰⁰

4.1 Appointments to the Supreme Court

Applicants for appointment to the Supreme Court must:

- have held high judicial office for a period of at least 2 years ('high judicial office' being defined to include High Court Judges of England and Wales, and of Northern Ireland; Court of Appeal Judges of England and Wales, and of Northern Ireland; and Judges of the Court of Session)¹⁰¹ or
- satisfy the judicial-appointment eligibility condition on a 15-year basis, or have been a qualifying practitioner for at least 15 years.¹⁰²

⁹³ Alexander Horne, 'The role of the Lord Chancellor' (Research Note SN/PC/2105, House of Commons Library, Parliament of the United Kingdom, 2015) 3.

⁹⁴ Alexander Horne, 'The role of the Lord Chancellor' (Research Note SN/PC/2105, House of Commons Library, Parliament of the United Kingdom, 2015) 5.

⁹⁵ Alexander Horne, 'The role of the Lord Chancellor' (Research Note SN/PC/2105, House of Commons Library, Parliament of the United Kingdom, 2015) 5.

⁹⁶ Courts and Tribunals Judiciary, *Judges and parliament* (2015) < <https://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/judges-and-parliament/>>; *County Courts Act 1984* (UK) s 11(5), (6). Note that both Houses of Parliament have the power to petition The Queen for the removal of a judge of the Supreme Court, the High Court or the Court of Appeal: *Constitutional Reform Act 2005* (UK) s 33, *Senior Courts Act 1981* (UK) s 11(3).

⁹⁷ *Constitutional Reform Act 2005* (UK) sch 12, para 1; *Crime and Courts Act 2013* (UK) sch 13, para 17.

⁹⁸ *Constitutional Reform Act 2005* (UK) sch 12, paras 3A and 3B(2); *Crime and Courts Act 2013* (UK) sch 13, para 19.

⁹⁹ *Judicial Appointments Commission Regulations 2013* (UK) SI 2013/2191 s 3. For further detail about the composition of membership of the Commission, see *Judicial Appointments Commission Regulations 2013* (UK) SI 2013/2191 s 4.

¹⁰⁰ Judicial Conference of Australia, 'Judicial Appointments comparative study' (Research Paper, April 2015) 63.

¹⁰¹ *Constitutional Reform Act 2005* (UK) s 25 as amended by the *Tribunals, Courts and Enforcement Act 2007* (UK).

¹⁰² Supreme Court of the United Kingdom, *Appointments of Justices* (November 2013)

<<https://www.supremecourt.uk/about/appointments-of-justices.html>>; *Constitutional Reform Act 2005* (UK) s 25 as amended by the *Tribunals, Courts and Enforcement Act 2007* (UK) ss 50-52. A person satisfies the judicial-appointment eligibility condition on a 15-year basis if they have been a solicitor of the senior courts of England and Wales, or barrister in England and Wales, for at least 15 years, and has been gaining experience in law during the post-qualification period (see the meaning of "gaining experience in law" in sections 52(2) to (5) of the *Tribunals and Enforcement Act 2007* (UK)). A person is a "qualifying practitioner"

If there is a vacancy in the office of President of the Court or Deputy President of the Court, the Lord Chancellor must convene a Supreme Court Selection Commission for the selection of a person to be recommended.¹⁰³

The Selection Commission must have an odd number of members not less than five, and the members of the commission must include:

- at least one member who is non-legally-qualified
- at least one judge of the Court
- at least one member of the JAC
- at least one member of the Judicial Appointments Board for Scotland and
- at least one member of the Northern Ireland Judicial Appointments Commission,¹⁰⁴

although more than one of the requirements may be met by the same person's membership of the commission.¹⁰⁵

This composition is intended to achieve a balance between judicial, independent and executive roles, and reduce the risk that candidates are appointed based on a 'likeness' to the members of the selection panel.¹⁰⁶

In 2013, the Constitutional Reform Act was amended to allow the Lord Chancellor to make regulations, with the approval of the President of the Supreme Court and Parliament, about the selection process adopted by the Selection Commission for appointments to the Court. This regulation making power is designed to provide flexibility to amend the selection process without the need for legislation.¹⁰⁷

The *Supreme Court (Judicial Appointments) Regulations 2013* outline how the Selection Commission must be composed for an appointment to the position of President of the Supreme Court.¹⁰⁸ A separate composition is currently mandated for appointments to the remaining positions of the Court.¹⁰⁹

The legislation provides that the Selection Commission must determine the selection process to be applied when assessing nominees. However, the following requirements must be adhered to:

- selection must be on merit
- a candidate may only be selected if they meet the statutory qualifications
- a candidate may not be selected if they are a member of the commission
- any selection must be of one person only
- in making selections the commission must ensure "that between them the Judges will have knowledge of, and experience of practice in, the law of each of each part of the United Kingdom".¹¹⁰

As part of the selection process, the Selection Commission is required to consult each of the following stakeholders:

- the senior judges¹¹¹ that are not members of the commission, and are not willing to be considered for selection
- the Lord Chancellor

for the purposes of this requirement at any time when they are an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary, or a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland: *Constitutional Reform Act 2005* (UK) s 25(2).

¹⁰³ *Constitutional Reform Act 2005* (UK) s 26(5) as amended by the *Crime and Courts Act 2013* (UK) sch 13, para 3(2).

¹⁰⁴ *Constitutional Reform Act 2005* (UK) s 27(1B) as inserted by the *Crime and Courts Act 2013* (UK) sch 13, para 4.

¹⁰⁵ *Constitutional Reform Act 2005* (UK) s 27(1B) as amended by the *Crime and Courts Act 2013* (UK) sch 13, para 4.

¹⁰⁶ Ministry of Justice, *Crime and Courts Bill - Fact Sheet: Judicial Appointments and Flexible Judicial Deployment* (January 2013) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98435/fs-cj-appoint-deploy.pdf>.

¹⁰⁷ Ministry of Justice, *Crime and Courts Bill - Fact Sheet: Judicial Appointments and Flexible Judicial Deployment* (January 2013) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98435/fs-cj-appoint-deploy.pdf>.

¹⁰⁸ *Supreme Court (Judicial Appointments) Regulations 2013* SI 2013/2193 pt 2.

¹⁰⁹ *Supreme Court (Judicial Appointments) Regulations 2013* SI 2013/2193 pt 3.

¹¹⁰ *Constitutional Reform Act 2005* (UK) s 27.

¹¹¹ As defined by the *Constitutional Reform Act 2005* (UK) s 60(1).

- the First Minister in Scotland
- the First Minister for Wales
- the Northern Ireland Judicial Appointments Commission.¹¹²

In making its selection of a candidate, the Selection Commission must have regard to any guidance given by the Lord Chancellor as to matters to be taken into account (subject to any other provision in the Act).¹¹³ Before issuing any selection guidance, the Lord Chancellor must consult the senior judge of the Supreme Court, and lay a draft of the proposed guidance before each House of Parliament.¹¹⁴

The Crime and Courts Act also introduced a provision in to the Constitutional Reform Act which applies the principle of a 'tipping point' positive actions provision to judicial appointments to the Supreme Court, so that preference may be given to a candidate from an under represented group where two candidates are essentially indistinguishable on merit.¹¹⁵

4.2 Role of the Lord Chancellor in appointments to the Supreme Court

Once the Selection Commission has made its selection, it must submit a report to the Lord Chancellor stating: who has been selected; the senior judges/judges consulted; and any further information required by the Lord Chancellor.¹¹⁶

Upon receiving the report, the Lord Chancellor is under a statutory duty¹¹⁷ to consult with specified stakeholders. If, following consultation, the Lord Chancellor is content with the recommendation made by the Selection Commission, the person's name is forwarded to the Prime Minister who, in turn, sends the recommendation to Her Majesty the Queen who makes the formal appointment.¹¹⁸ In limited circumstances, the Lord Chancellor is empowered to invite a reconsideration or reject a candidate, but must provide the Selection Commission with written reasons for doing so.¹¹⁹

Further, the Crime and Courts Act amended the Constitutional Reform Act to introduce a statutory duty for the Lord Chancellor and Lord Chief Justice to take such steps as they consider necessary to encourage judicial diversity.¹²⁰

4.3 Appointments to courts other than the Supreme Court

Appointments to Courts below the Supreme Court, including appointments to the position of Lord Chief Justice, Heads of Division, Lords Justices of Appeal and Puisne judges,¹²¹ are covered by the provisions of Part 4 of the Constitutional Reform Act.

Selection must be solely on merit; the candidate selected must be of good character; and the JAC must have regard to the need to encourage diversity in the range of candidates available for judicial selection.¹²² To this end, the JAC publishes a 'Good Character Guidance' document¹²³, and information

¹¹² *Constitutional Reform Act 2005* (UK) s 27 as amended by *The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007* (UK) sch 1, para 110 and the *Supreme Court (Judicial Appointments) Regulations 2013* SI 2013/2193 s 18.

¹¹³ *Constitutional Reform Act 2005* (UK) s 27(9).

¹¹⁴ *Constitutional Reform Act 2005* (UK) s 27B as inserted by the *Crime and Courts Act 2013* (UK) sch 13, para 6.

¹¹⁵ *Constitutional Reform Act 2005* (UK) s 27(5A) as inserted by the *Crime and Courts Act 2013* (UK) sch 13, para 9; Ministry of Justice, *Crime and Courts Bill - Fact Sheet: Judicial Appointments and Flexible Judicial Deployment* (January 2013) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98435/fs-cj-appoint-deploy.pdf>.

¹¹⁶ *Constitutional Reform Act 2005* (UK) s 28; *Supreme Court (Judicial Appointments) Regulations 2013* SI 2013/2193 pt 3, s 19.

¹¹⁷ *Constitutional Reform Act 2005* (UK) s 28(5); *Supreme Court (Judicial Appointments) Regulations 2013* SI 2013/2193 pt 3, s 19(5).

¹¹⁸ Supreme Court of the United Kingdom, *Appointments of Justices* (November 2013)

<<https://www.supremecourt.uk/about/appointments-of-justices.html>>. The *Supreme Court (Judicial Appointments) Regulations 2013* (UK) SI 2013/2193 ss 20-22 further regulate the Lord Chancellor's options upon the conclusion of the selection process by the selection panel.

¹¹⁹ See, generally, *Constitutional Reform Act 2005* (UK) ss 29-31.

¹²⁰ *Constitutional Reform Act 2005* (UK) s 137A as inserted by the *Crime and Courts Act 2013* (UK) sch 13, para 11.

¹²¹ Puisne judges are judges of the High Court, other than the heads of each division.

¹²² *Constitutional Reform Act 2005* (UK) ss 63-64.

¹²³ Judicial Appointments Commission, *Good character* (2015) <<https://jac.judiciary.gov.uk/good-character>>.

about its 'diversity strategy' on its website.¹²⁴ Further, the *Judicial Appointments Regulations 2013* set out further detail as to the composition of the selection panel, and selection procedures to be adopted in the case of vacancies throughout court hierarchy.

In summary, the JAC's selection process for appointments below the Supreme Court level comprise:

- *Advertising and applications:* The JAC advertises all selection exercises on its website and in the media. On receiving the applications, the JAC checks that the candidate meets the entry requirements and makes an assessment of good character.
- *Shortlisting:* Shortlisting of candidates is either undertaken on the basis of written evidence (including the candidate's self-assessment and references) or on the basis of tests designed to assess the candidate's ability to perform in a judicial role. Depending on the method used, referees are approached either before the paper sift¹²⁵, or after the qualifying test. Candidates are requested to nominate a number of referees and the JAC also approaches referees it nominates itself.
- *Selection day:* Shortlisted candidates are invited to a selection day, which may consist of a panel interview, interview and role play, interview and presentation or interview and situational questioning (which focuses on what a candidate would do in a hypothetical situation).
- *Panel report:* Panel members assess all the information about a candidate and agree which candidates best meet the required qualities. The Panel Chair then completes a report providing an overall panel assessment. This forms part of the information presented to the JAC.
- *Statutory consultation:* The JAC must, as part of the selection process, consult the Chief Justice and another person who has held the judicial post, or has relevant experience of the post, about the shortlisted candidates. The JAC will consider the responses.
- *Selection decisions:* The JAC considers all the information gathered about the candidates to make its final selections. When reporting its final selections to the Lord Chancellor, the JAC must report on the outcome of consultation, and indicate whether the recommendations of those consulted were followed. The JAC must also provide reasons for its final selection of candidates.¹²⁶

The Lord Chancellor is able to accept, reject or request the reconsideration of a candidate nomination made by the JAC.¹²⁷

4.4 Appointments to the Magistrates Courts

Magistrates are volunteer judicial office holders who serve in magistrates' courts throughout England and Wales. Magistrates do not need to be legally qualified, are required to undertake mandatory training, and are always supported in court by a trained legal adviser. Magistrates are appointed by the Senior Presiding Judge for England and Wales, in an exercise of power delegated from the Lord Chief Justice.¹²⁸

Magistrates are not recruited and selected by the JAC, but by a network of 47 local advisory committees composed of serving magistrates, and local non-magistrates. Vacancies are advertised online, and applicants are able to direct enquiries to their local advisory committee.¹²⁹

Applicants for the position of magistrate are required to complete an application form, and two interviews are conducted before a recommendation to appoint an individual is made to the Senior

¹²⁴ Judicial Appointments Commission, *Equality and diversity* (2015) <<https://jac.judiciary.gov.uk/equality-and-diversity>>.

¹²⁵ 'Paper sifts' are carried out by a selection panel usually consisting of a lay panel chair, a judicial member and an independent member. This sift is based on the written evidence provided by the candidate including the candidate's self-assessment and references: Judicial Appointments Commission, *An overview of the selection process* (2015) Judicial Appointments Commission <<https://jac.judiciary.gov.uk/overview-selection-process>>.

¹²⁶ Lenny Roth, 'Judicial appointments' (Briefing Paper No 3/2012, NSW Parliamentary Library Research Service, 2012) 27; Judicial Appointments Commission, *An overview of the selection process* (2015) Judicial Appointments Commission <<https://jac.judiciary.gov.uk/overview-selection-process>>.

¹²⁷ Lenny Roth, 'Judicial appointments' (Briefing Paper No 3/2012, NSW Parliamentary Library Research Service, 2012) 27.

¹²⁸ Courts and Tribunals Judiciary, *Magistrates* (2015) Courts and Tribunals Judiciary <<http://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/magistrates/>>.

¹²⁹ Courts and Tribunals Judiciary, *Magistrates* (2015) Courts and Tribunals Judiciary <<http://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/magistrates/>>.

Presiding Judge. Candidates must demonstrate six 'key qualities': good character; commitment and reliability; social awareness; sound judgment; understanding and communication; maturity and sound temperament.¹³⁰

5. Issues for consideration

Any reform to the process of judicial appointments in Queensland should be sensitive to the state's constitutional traditions, including the convention of Ministerial responsibility.

With this in mind, stakeholders are asked for their views and opinions 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 Australian Capital Territory 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
- 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.

As discussed in section 3.2 above, five key elements feature in judicial appointments processes in other Australian jurisdictions:

- advertising
- selection criteria
- advisory panels

¹³⁰ Courts and Tribunals Judiciary, *Magistrates* (2015) Courts and Tribunals Judiciary <<http://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/magistrates/>>.

Discussion Paper Only

- interviews
- consultation.

Consideration of the following further questions may assist in formulating responses to Questions 1-5:

<i>Advertising</i>	<ul style="list-style-type: none"> - How should prospective appointees be identified? - Should judicial vacancies be publicly advertised, and a call made for submissions of expression of interest (in the newspaper, or on a Government website)? If so, should advertising be undertaken for judicial positions at all court levels, or only for vacancies in the Magistrates Court? - Should expressions of interest be able to be submitted at any time, or only in response to advertised vacancies? - Should there also be scope for potential candidates to be nominated by existing members of the judiciary, the Attorney-General, or the legal professional bodies?
<i>Selection criteria</i>	<ul style="list-style-type: none"> - Please consider Attachment 8 which compares the criteria for appointment proposed by the AJA with the criteria proposed by the Law Council of Australia in its Policy Statement, as well as with existing selection criteria that is in place in New South Wales, Victoria, Tasmania and the Australian Capital Territory. Should selection criteria be in place to guide the assessment of candidates for judicial appointments? - If so, what form should the criteria take? Should it be contained within the relevant courts legislation, or within a subordinate legislative instrument, or available on a government website? - Should the selection criteria differ according to the court? - Is there a need for the criteria to be flexible to meet changing societal and professional demands? - What qualities should the criteria cover? Professional qualities and requirements, or personal qualities and requirements, or both? - Assuming that 'merit' is to be included as an overarching qualification for nomination, how is merit to be defined? - Should the criteria include a diversity statement, which reflects the equality of employment opportunity principles with the aim of encouraging a broad range of applicants? - What material should be submitted in support of an expression of interest? (For example, a curriculum vitae, examples of written work, contact details for professional and/or personal referees). - If specified material should be submitted in support of an expression of interest, should applicants for specified judicial offices be exempt from this requirement?
<i>Advisory panels</i>	<ul style="list-style-type: none"> - Should advisory panels play a role in the selection of judicial appointees? If so, for appointments at all levels, or only for particular courts? - How should the role of an advisory panel in the appointments process be documented and authorised? - Should the panel be a standing commission, or convened on an ad hoc basis as vacancies arise? - How should membership of the panel be determined, and who should comprise the panel membership? - What should be the assessment process undertaken by the panel? For example, should there be statutory procedures and requirements in place to guide the decision-making of the panel? How many candidates should the panel be able to recommend to the Attorney-General? - What discretion should the Attorney-General retain over the judicial appointments process? For example, should the Attorney-General be bound by the recommendations of the panel or have to publish

Discussion Paper Only

	reasons if not accepting a panel's recommendation for appointment?
<i>Interviews</i>	<ul style="list-style-type: none">- Should prospective judicial candidates be interviewed?- If so, who should conduct the interview process (for example, an advisory panel)?- What form should the interview and related assessment take (for example, a presentation, role play, a panel interview)?
<i>Consultation</i>	<ul style="list-style-type: none">- At what points during the process should consultation be undertaken with key stakeholders (for example, nomination of candidates, and/or in settling recommendations)?- Who should be consulted (for example, heads of jurisdiction, senior judges, the legal professional associations)?

Attachment 1: AIJA proposed criteria for judicial appointment

1. Intellectual capacity
 - Legal expertise
 - Litigation experience or familiarity with court processes, including alternative dispute resolution
 - Ability to absorb and analyse information
 - Appropriate knowledge of the law and its underlying principles, and the ability to acquire new knowledge
2. Personal qualities
 - Integrity and independence of mind
 - Sound judgment
 - Decisiveness
 - Objectivity
 - Diligence
 - Sound temperament
 - Ability and willingness to learn and develop professional and to adapt to change
3. An ability to understand and deal fairly
 - Impartiality
 - Awareness of, and respect for, the diverse communities which the courts serve and an understanding of differing needs
 - Commitment to justice, independence, public service and fair treatment
 - Willingness to listen with patience and courtesy
 - Commitment to respect for all court users
4. Authority and communication skills
 - Ability to explain the procedure and any decisions reached clearly and succinctly to all those involved
 - Ability to inspire respect and confidence
 - Ability to maintain authority when challenged
 - Ability to communicate orally and in writing in clear standard English
5. Efficiency
 - Ability to work expeditiously
 - Ability to organise time effectively to discharge duties promptly
 - Manages workload effectively
 - Ability to work constructively with others
6. Leadership and management skills
 - Ability to form strategic objectives and to provide leadership to implement them effectively
 - Ability to engage constructively and collegially with others in court, including courts administration
 - 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

Attachment 2: Inter-jurisdictional comparison table

<i>Element of judicial appointment process</i>	<i>Federal</i>	<i>Queensland</i>	<i>New South Wales</i>	<i>Victoria</i>	<i>Tasmania</i>	<i>Australian Capital Territory</i>	<i>Western Australia, South Australia, Northern Territory</i>
<i>Advertising</i>	No	No	Yes, for the District and Local Courts	Yes, for all court levels	Yes, for all court levels	Yes, for all court levels	Unknown
<i>Selection criteria</i>	Yes, Family Court only	No	Yes, for all court levels	Yes, for all court levels	Yes, for all court levels	Yes, for all court levels	Unknown
<i>Advisory panels</i>	No	No	Yes, for the District and Local Courts	Yes, for the Magistrates Court	Yes, for all court levels	Unknown	Unknown
<i>Interviews</i>	No	No	Yes, for District and Local Courts	Unknown	Unknown	Unknown	Unknown
<i>Consultation</i>	Yes, High Court only	Yes, for all court levels	Yes, for all court levels	Yes, for all court levels	Yes, for all court levels	Yes, for all court levels	Unknown

Attachment 3: Law Council of Australia Policy Statement

Recommended attributes of candidates for judicial office include the following:¹³¹

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.

¹³¹ Law Council of Australia, *Policy Statement: The Process of Judicial Appointments* (September 2008) Law Council of Australia <<http://www.lawcouncil.asn.au/lawcouncil/index.php/library/policies-and-guidelines>>.

Attachment 4: Selection criteria - New South Wales

The selection criteria against which judicial candidates are assessed in New South Wales is as follows:¹³²

Overriding principle

Appointments will be made on the basis of merit. Subject to this principle, including the relevant considerations listed below, there is a commitment to actively promoting diversity in the judiciary. Consideration will be given to all legal experience, including that outside mainstream legal practice.

Professional qualities

- Proficiency in the law and its underlying principles
- High level of professional expertise and ability in the area(s) of professional specialisation
- 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 education
- Ability to use, or willingness to learn modern information technology

Personal qualities

- Integrity
- Independence and impartiality
- Good character
- Common sense and good judgement
- Courtesy and patience
- Social awareness

¹³² Department of Justice, Government of New South Wales, *Judicial careers and statutory appointments* (8 April 2015) <<http://www.justice.nsw.gov.au/Pages/careers/Judicialcareers-statutoryappointments.aspx>>.

Attachment 5: Selection criteria - Victoria

Potential judicial candidates are referred to the 'Framework of Judicial Abilities and Qualities for Victorian Judicial Officers' developed by the Judicial College of Victoria (the Framework), which outlines the attributes the government, courts and community expect from judicial nominees. This document is publicly available online.¹³³

The following table summarises the abilities and qualities covered by the Framework:¹³⁴

Headline ability	Core abilities and technical skill
<p>Knowledge and technical skills</p> <p><i>Relevant qualities:</i> Conscientiousness, commitment to high standards</p>	<ul style="list-style-type: none"> - sound knowledge of law and its application - sound knowledge of procedure and appropriate application
<p>Communication and authority</p> <p><i>Relevant qualities:</i> Fairness without arrogance, courtesy, patience, tolerance, fairness, sensitivity, compassion, self-discipline</p>	<ul style="list-style-type: none"> - establishes and maintains authority of the court - manages hearing to enable fair and timely disposal - communicates effectively
<p>Decision-making</p> <p><i>Relevant qualities:</i> Decisiveness, confidence, moral courage, independence, impartiality</p>	<ul style="list-style-type: none"> - sound judgement - appropriate exercise of discretion
<p>Professionalism and integrity</p> <p><i>Relevant qualities:</i> Capacity to handle stress and isolation of judicial role, sense of ethics, patience, honesty, tolerance, consideration for others, personal responsibility</p>	<ul style="list-style-type: none"> - maintains independence and authority of the court - maintains personal independence and integrity - personal discipline - promotes highest standards of behaviour in court
<p>Efficiency</p> <p><i>Relevant qualities:</i> Commitment to public service, commitment to efficient administration, self-discipline</p>	<ul style="list-style-type: none"> - manages hearings to facilitate fair and timely disposal - actively manages cases to promote efficient and just conclusion of business
<p>Leadership and management</p> <p><i>Relevant qualities:</i> Responsibility, imagination, commitment to efficient administration</p>	<ul style="list-style-type: none"> - strategically plans and organises - manages change - supports and develops talent - manages quality standards - encourages and facilitates teamwork

¹³³ Court Services Victoria, *Court appointments* (11 September 2014) Court Services Victoria <<https://www.courts.vic.gov.au/judicial-appointments/court-appointments-0>>.

¹³⁴ Department of Justice, Government of Victoria, 'Reviewing the judicial appointments process in Victoria', (Discussion Paper, July 2010) 12.

Attachment 6: Selection criteria - Tasmania

The relevant selection criteria for candidates for judicial appointment in Tasmania is as follows:¹³⁵

Suitable candidates should be:

- an experienced legal practitioner with a high record of professional achievement coupled with a knowledge and understanding of the law consistent with judicial office.
- an excellent conceptual and analytical thinker, displaying independence and clarity of thought.
- an effective oral and verbal communicator in dealing with legal professionals, litigants and witnesses and able to explain technical issues to non-specialists.
- 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 court practice, working collegiately with judicial colleagues and effectively with court officers to those ends.

¹³⁵ 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>.

Attachment 7: Selection criteria - Australian Capital Territory

The *Supreme Court (Resident Judges Appointment Requirements) Determination 2010 (ACT)*¹³⁶ and *Magistrates Court (Magistrates Appointment Requirements) Determination 2009 (ACT)*¹³⁷ contain details of the selection process, and selection criteria, for judicial appointment.

The Determinations contain the following identical selection criteria for appointments to the Supreme and Magistrates Courts:

Selection criteria

Intellectual capacity:

- Appropriate knowledge of the relevant law and its underlying principles
- High level of expertise in your chosen area or profession
- Ability to quickly absorb and analyse information

Personal qualities:

- Integrity and independence of mind
- Sound judgement
- Decisiveness
- Objectivity
- Ability and willingness to learn and develop professionally

An ability to understand and deal fairly:

- Ability to treat everyone with respect and sensitivity whatever their background
- Willingness to listen with patience and courtesy

Authority and communication skills:

- Ability to explain the procedure and any decisions reached clearly and succinctly to all those involved
- Ability to inspire respect and confidence
- Ability to maintain authority when challenged

Efficiency:

- Ability to work at speed and under pressure
- Ability to organise time effectively and produce clear reasoned judgements expeditiously
- Ability to work constructively with others (including leadership and managerial skills where appropriate)

Experience in a dispute resolution environment would be an advantage.

¹³⁶ Notifiable Instrument NI2010-14, made under the *Supreme Court Act 1933 (ACT)*.

¹³⁷ Notifiable Instrument NI2009-643, made under the *Magistrates Court Act 1930 (ACT)*.

Attachment 8: AIJA proposed criteria for appointment – comparison against existing State and Territory guidelines and protocols

	LCA*	NSW	VIC	TAS	ACT
1. Intellectual capacity					
Legal expertise	X	X	X	X	X
Litigation experience or familiarity with court processes, including alternative dispute resolution	X				
Ability to absorb and analyse information	X	X		X	X
Appropriate knowledge of the law and its underlying principles, and the ability to acquire new knowledge.	X	X	X	X	
2. Personal Qualities					
Integrity and independence of mind	X	X	X	X	X
Sound judgement	X	X	X	X	X
Decisiveness	X			X	X
Objectivity				X	X
Diligence			X		
Sound temperament	X		X		
Ability and willingness to learn and develop professionally and to adapt to change	X	X			X
3. An Ability to Understand and Deal Fairly					
Impartiality	X	X	X	X	
Awareness of and respect for the diverse communities which the courts serve and an understanding of differing needs	X	X			X
Commitment to justice, independence, public service and fair treatment	X		X		
Willingness to listen with patience and courtesy	X	X			X
Commitment to respect for all court users				X	
4. Authority and Communication Skills					
Ability to explain the procedure and any decisions reached clearly and succinctly to all those involved	X	X	X	X	X
Ability to inspire respect and confidence	X	X	X	X	X
Ability to maintain authority when challenged					X
Ability to communicate orally and in writing in clear standard English	X	X	X	X	
5. Efficiency					
Ability to work expeditiously	X	X		X	X
Ability to organise time effectively to discharge duties promptly	X		X	X	X
Manages workload effectively	X	X	X	X	X
Ability to work constructively with others			X	X	X

6. Leadership and Management Skills					
Ability to form strategic objectives and to provide leadership to implement them effectively			X		
Ability to engage constructively and collegially with others in the court, including courts administration.			X	X	
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			X		
Ability to manage change effectively			X		
Ability to manage available resources					

* Law Council of Australia Policy Statement (see Attachment 3 above)