

Declaration of Principles on Judicial Independence

The eight Chief Justices of Australia's States and Territories have released a Declaration of Principles on judicial independence.

The Chief Justices believe it is appropriate, in the interests of safeguarding independence, to state certain principles relating to judicial appointments. The declaration deals with security of tenure of judges, the appropriateness of the use of retired and acting judges, and the importance of the principle that judges should not be dependent on executive government for the continuance of the right to exercise judicial office.

The Chief Justices regard the independence of the judiciary as existing to serve the public.

The Declaration of Principles takes into account what is known as the Beijing Statement of the Principles of the Independence of the Judiciary in the

LAWASIA Region (The Beijing Principles).

The Beijing Principles were adopted at the 6th Conference of Chief Justices of Asia and the Pacific held in Beijing, People's Republic of China in August 1995. Chief Justices from 20 Asian and the Pacific countries, including Australia, attended the conference.

The Chief Justices wish to emphasise that neither the timing of the Declaration, nor its contents, relate to any particular event within their jurisdictions.

The importance to the public of judicial independence has been underlined in major speeches by the present Chief Justice of Australia, Sir Gerard Brennan, and by his predecessor, Sir Anthony Mason.

Those speeches have stressed that one of the fundamentals of a free society

is government by the rules of law, administered without fear or favour by an independent judiciary.

The Chief Justices of Australian States and territories recognise that in any state or country, the key to public confidence in the judiciary is its manifest impartiality.

There is a crucial link between judicial impartiality and the principles of judicial independence, understood as a set of protective safeguards. This Declaration of Principles, like the Beijing Principles, has as its aim the articulation and promotion of the principles of judicial independence.

A further aim of the Declaration of Principles is to set at regional level, certain minimum standards necessarily involved in safeguarding judicial independence and judicial impartiality.

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Whereas the *Universal Declaration of Human Rights* enshrines in particular the principle of the right to a fair and public hearing by a competent, independent and impartial tribunal established by the law,

Whereas the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* both guarantee the exercise of that right,

Whereas the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region prescribes the minimum standards for judicial independence making due allowance for national differences in the LAWASIA Region,

Whereas the Chief Justices of the States and Territories of Australia consider it desirable to state in terms applicable to the circumstances of the States and Territories of Australia certain of those principles relating to judicial appointments and to the exercise of judicial office,

Now they adopt the following principles relating to the appointment of judges of the Courts of the States and Territories:

- (1) Persons appointed as Judges of those Courts should be duly appointed to judicial office with security of tenure until the statutory age of retirement. However, there is no objection in principle to:
 - (a) The allocation of judicial duties to a retired judge if made by the judicial head of the relevant court in exercise of statutory power; or
 - (b) the appointment of an acting judge, whether retired or not, provided that the appointment of the acting judge is made with the approval of the judicial head of the court to which the judge is appointed and

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provided that the appointment is made only in special circumstances which render it necessary.

- (2) The appointment of an acting judge to avoid meeting a need for a permanent appointment is objectionable in principle.
- (3) The holder of a judicial office should not, during that term of office, be dependent upon the Executive Government for the continuance of the right to exercise that judicial office or any particular jurisdiction or power associated with that office.
- (4) There is no objection in principle to the Executive Government appointing a judge, who holds a judicial office on terms consistent with the principle (1), to exercise a particular jurisdiction associated with the judge's office, or to an additional judicial office, in either case for a limited term provided that:
 - (a) the judge consents;
 - (b) the appointment is made with the consent of the judicial head of the Court from which the judge is chosen;
 - (c) the appointment is made for a substantial term, and is not renewable;
 - (d) the appointment is not terminable or revocable during its term by the Executive Government unless:
 - (i) the judge is removed from the first mentioned judicial office; or
 - (ii) the particular jurisdiction or additional judicial office is abolished.
- (5) It should not be within the power of Executive Government to appoint a holder of judicial office to any position of seniority or administrative responsibility or of an increased status or emoluments within the judiciary for a limited renewable term or on the basis that the appointment is revocable by Executive Government, subject only to the need, if provided for by statute, to appoint acting judicial heads of Courts during the absence of a judicial head or during the inability of a judicial head for the time being to perform the duties of the office.
- (6) There is no objection in principle to the appointment of judges to positions of such administrative responsibility within the Courts for limited terms provided that such appointments are made by the Court concerned or by the judicial head of the court concerned.

Dated this 10th day of April 1997.

[Signed by]

The Hon Jeffrey Miles, AO, Chief Justice of the Australian Capital Territory

The Hon Justice David Malcolm, AC, Chief Justice of Western Australia

The Hon A M Gleeson, AC, Chief Justice of New South Wales

The Hon John Macrossan, AC, Chief Justice of Queensland

The Hon John Phillips, Chief Justice of Victoria

The Hon Justice Martin, AO, MBE, Chief Justice of the Northern Territory

The Hon John Doyle, Chief Justice of South Australia

The Hon W J E Cox, RFD, ED, Chief Justice of Tasmania