



Australian Government
Attorney-General's Department

JUDICIAL APPOINTMENTS

*Ensuring a strong and
independent judiciary through
a transparent process*



New transparency in judicial appointments



The impartial and competent administration of justice is fundamental to the rule of law, which underpins our democratic freedoms.

A strong and independent judiciary requires the appointment of appropriately skilled judges.

The role of the executive, in choosing who will be responsible for ensuring the administration of justice according to law, impacts directly on public confidence in the courts and their decisions.

In early 2008, the Australian Government implemented new processes for the appointment of judicial officers. These new processes aim to ensure:

- greater transparency, so that the public can have confidence that the Government is making the best possible judicial appointments
- that all appointments are based on merit, and
- that everyone who has the qualities for appointment as a judge or magistrate is fairly and properly considered.

I am pleased to say that I have received significant support and positive feedback regarding the implementation of these new processes. I have also been pleased with the support and feedback I have received for the high calibre of judicial officers selected for appointment.

The Government will continue to monitor and, if necessary, adapt processes to ensure that all suitable candidates are considered and appointments continue to be based upon merit.

A handwritten signature in black ink that reads "Robert McClelland". The signature is written in a cursive, flowing style.

Robert McClelland MP
Attorney-General

Judicial Appointments Process

The Attorney-General, as the nation's first law officer and part of the executive branch of government, is responsible for recommending judicial appointments, to the Cabinet and the Governor-General.

Before an appointment process commences, the Attorney-General, in consultation with the courts and his Department, decides whether an appointment should be made. Vacancies may result from a judge retiring or resigning. Alternatively, an increase in workload may prompt the need for additional judicial resources in a particular court or registry.

When the decision has been made to make an appointment to a federal court, the Attorney-General consults widely, writing to interested bodies inviting nominations of suitable candidates. These bodies include, but are not limited to, the Chief Justices of the Family and Federal Courts, the Chief Federal Magistrate, the Law Council of Australia, the Australian Bar Association and their State and Territory counterparts.

At the same time, the Attorney-General's Department places public notices in national and local media seeking expressions of interest and nominations and publishes the appointment criteria on its website.

The Attorney-General has established standing Advisory Panels to assist in assessing expressions of interest and nominations. The membership of the Advisory Panels includes the Head of the relevant court (or their nominated representative), a retired judge and a senior official from the Attorney-General's Department.

The Attorney-General writes to the Advisory Panel requesting that they consider all expressions of interest and nominations. The Advisory Panel may interview candidates it considers suitable for appointment. The Advisory Panel subsequently presents the Attorney-General with a report that lists those candidates that it has assessed as being highly suitable for appointment.

After considering the Advisory Panel's report, the Attorney-General writes to the Prime Minister seeking his and/or Cabinet approval. If approved by the Cabinet, the Attorney-General makes a recommendation to the Governor-General who considers the appointment through the Federal Executive Council process.

Appointments to the High Court and Heads of Court

The High Court, as the apex of Australia's judicial system, enjoys a different status to other federal courts and therefore, a slightly different appointment process has been adopted for this Court. Similarly, appointments to the positions of Chief Justice of the Federal Court or Family Court and Chief Federal Magistrate are likely to come from the serving judiciary and would therefore already be known to government.

The Attorney-General's Department therefore does not place notices in the newspapers or place the appointment criteria on its website. Rather, the Attorney-General consults widely with interested bodies seeking nominations of suitable candidates. In addition to those bodies outlined earlier, the Attorney-General also writes to:

- State Attorneys-General
- Chief Justice of the High Court
- Justices of the High Court
- State and Territory Chief Justices

The Attorney-General then considers the field of highly suitable candidates and writes to the Prime Minister seeking his and/or Cabinet approval. If approved by the Cabinet, the Attorney-General makes a recommendation to the Governor-General who considers the appointment through the Federal Executive Council process.

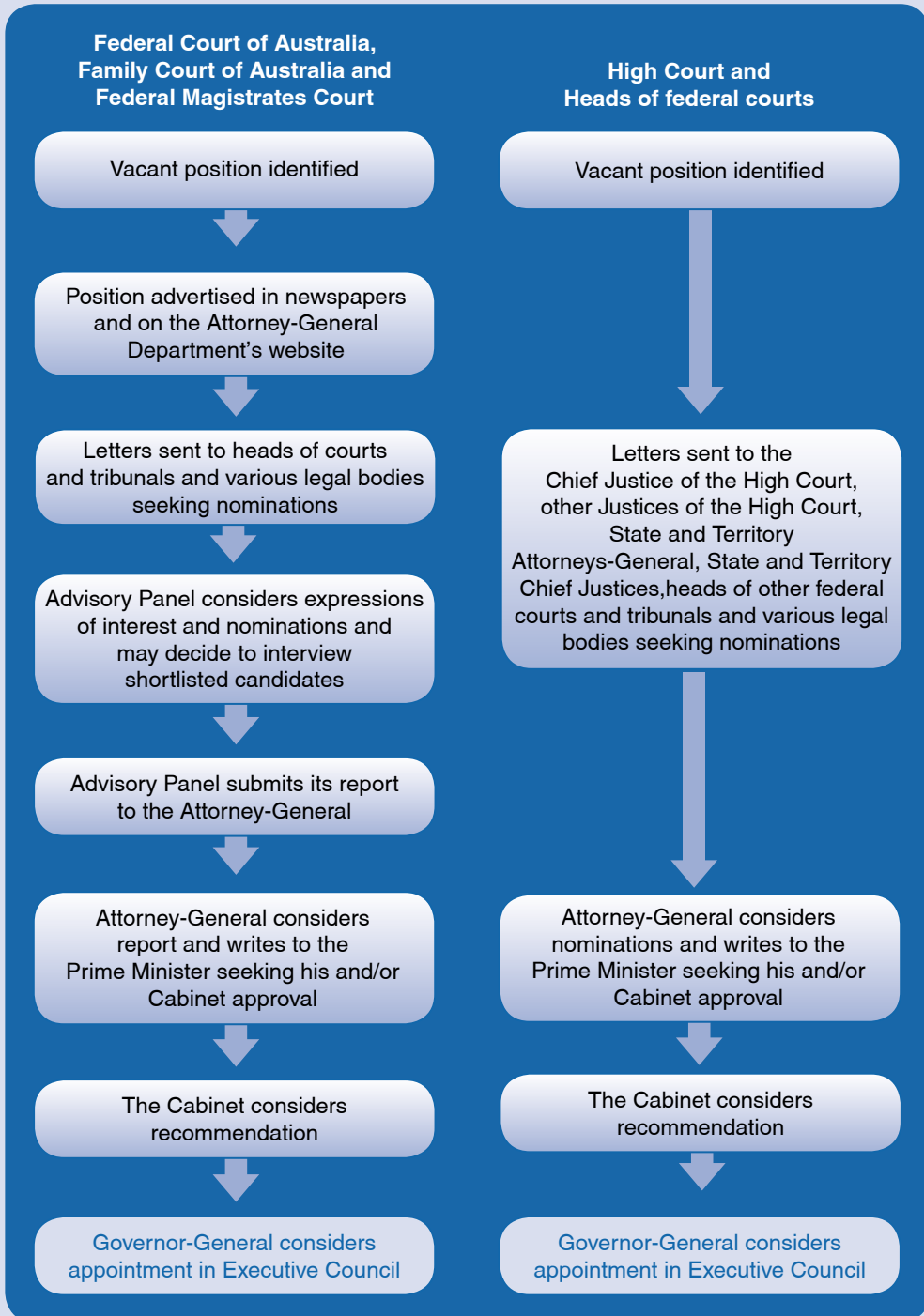
The Role of the Governor-General and the Federal Executive Council

Under Chapter III of *The Constitution* Justices of the High Court and of the other courts created by Parliament can only be appointed by the Governor-General in Executive Council.

Once the Cabinet has approved the Attorney-General's recommendation of the nominee, the appointment papers (including the Commission of Appointment) are forwarded to the Executive Council Secretariat for consideration by the Governor-General.

If in agreement, the Governor-General signs the Commission of Appointment and it is fixed with the Great Seal by way of authentication. Once an appointment has been approved by the Governor-General in Executive Council, the Attorney-General publicly announces the appointment.

Appointments Process



Duration of Appointments

Under section 72 of *The Constitution*, the appointment of a Justice of the High Court is for a term that expires when the Justice turns 70 years of age. Appointments to other courts created by the Parliament are for a term expiring upon the maximum age for that court, which can be set by the Parliament. Presently the terms of appointment of all Justices of the Family and Federal Courts and Magistrates of the Federal Magistrates Court expire on the day before their 70th birthday.

All Justices and Federal Magistrates may resign at any time.

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