

Judicial Independence

In April, the Chief Justices of the Supreme Courts of the States and Territories released a declaration of judicial independence. The text of that Declaration is set out below.

The declaration was not signed by Chief Justices of federal courts. However, the Chief Justice of Australia, the Hon Sir Gerard Brennan AC KBE, in the course of his opening address to the 12th South Pacific Judicial Conference in Sydney on 14 April, referred to the Declaration.

“The competent and impartial administration of justice according to law demands judicial independence: that is, independence of influences, loyalties or powers which might deflect the judge from unqualified observance of the rule of law. The Chief Justices of several of the countries represented here today participated in the formation of the Beijing Statement on Judicial Independence two years ago. That statement has already borne fruit in different countries. It was designed to ensure independence of the Judiciary from improper influence by other branches of government. In Australia the Chief Justices of the Supreme Courts of the States and Territories have this morning released an important Declaration designed to safeguard judicial independence by securing the tenure of those appointed to judicial office and by removing possibilities of patronage by the Executive. The Chief Justices have adopted a set of principles applicable to the circumstances of the Australian States and Territories. The federal Courts are not participants since they are constituted and exercise their jurisdictions under the protective provisions of Chapter III of the Constitution of the Commonwealth.

The Declaration is a timely reminder of the constitutional reality that the Courts are an organ of government separate from, and independent of, the political organs. The Courts are an important element in the system of checks and balances that preserves our societies from a concentration of official power that might otherwise oppress the people and restrict their freedom under the law. The Courts are an organ of Government but they are not part of the Executive Government of that country. Political issues must be debated, political fortunes must wax and wane, political figures must come and go according to the popular will. That is the nature of a democracy. But the apolitical organ of government, the Courts, are there continually to extend the protection of the law equally to all who are subject to their jurisdiction: to the minority as well as the majority, the disadvantaged as well as the powerful, to the sinners as well as the saints, to the politically incorrect as well as those who embrace a contemporary orthodoxy. The principle of judicial independence is not proclaimed in order to benefit the Judges; it is proclaimed in order to guarantee a fair and impartial hearing and an unswerving obedience to the rule of law. That is the way in which our peoples secure their freedom under the law.

The underlying bond that brings Judges together in a Conference like this, the principle which informs our discussions, is a common adherence to the human right to a fair and public hearing by a competent, independent and impartial tribunal established by law. That human right is contained in the Universal Declaration of Human Rights, as the Chief Justices have reminded us. . . .”

The following is the text of the declaration of judicial independence.

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 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 more detail 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 a statutory power; or
 - (b) the appointment of an acting judge, whether a retired judge or not, provided that the appointment of an acting judge is made with the approval of the judicial head of the court to which the judge is appointed and 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 the term of that 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 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 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 the Executive Government to appoint a holder of judicial office to any position of seniority or administrative responsibility or of 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 administrative responsibility within 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 following]

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

In a separate development, the Government has provided funds to the Judicial Conference of Australia to assist it to establish a Secretariat and to undertake a research project on "Judicial Independence in Australia Today".

The Judicial Conference of Australia was incorporated in December 1993 (and was at that time known as the Australian Judicial Conference). Its membership is open to judges and magistrates, other judicial officers exercising judicial power or whose duties are substantially judicial in nature, and former members of superior and intermediate courts. The Chairman is Justice J S Lockhart AO of the Federal Court of Australia. Professor Stephen Parker of the Faculty of Law, Griffith University, is the Secretary and Treasurer. The Conference Secretariat has been established at Griffith University.

The research project is under the supervision of Professor Parker. The project aims to produce high quality materials that are of early practical use in the work of the Judicial Conference. In particular, the project aims to produce a Member's Manual, designed primarily for newly appointed judicial officers, an edited collection of the Conference's 1996 Symposium on the theme of "Judicial Independence and the Rule of Law at the Turn of the Century", briefing materials for the community, parliamentarians and the media and a number of discussion papers to assist in the continuing process of policy formulation within the Judicial Conference.