

Memorandum

To: Directors
Executive
Presidents – Constituent Bodies
CEOs – Constituent Bodies
Section Chairs
Advisory Committee Chairs

From: Michael Tidball, Chief Executive Officer

Date: 20 July 2021

Review of Judicial Impartiality – Survey of Practitioners

Action Request

At the request of the Australian Law Reform Commission (**ALRC**), the Law Council encourages Constituent Bodies, Sections and Advisory Committees to distribute a survey of legal practitioners, developed by the ALRC as part of its [Review of Judicial Impartiality](#).

The survey will be open until 11.59 pm AEST on 6 August 2021 and is available at: https://alrc.qualtrics.com/jfe/form/SV_1WSj21atk8cWFF4. Distribution of the survey is at the discretion of Constituent Bodies, Sections and Advisory Committees, as is the method of dissemination.

Constituent Bodies, Sections and Advisory Committees are also asked to advise the Law Council by 30 July 2021 as to whether they have distributed the survey. This will enable the ALRC to make further inquiries should it need to.

Key Issues

The ALRC is in the process of inquiring into whether, and if so what, reforms to the law relating to impartiality and bias as they apply to the federal judiciary are necessary and desirable.

As part of this inquiry, the ALRC is carrying out a survey of legal practitioners to gather information about experiences with and perceptions of the law and procedures relating to judicial bias. The views of individual practitioners on these issues will form a critical part of the evidence base for the ALRC's inquiry.

The survey is open to any person who has been admitted to practise law in an Australian state or territory, and who has practised in Australia within the past five years. It is of particular relevance to those practitioners who litigate in the Commonwealth courts, however the participation of all practitioners is welcomed by the ALRC.

Participation in the survey is entirely voluntary, and responses will be fully anonymous. The ALRC will not receive any identifying information, nor will it be able to identify any participant from the statistical analysis of responses.

The survey should take between 8 to 12 minutes to complete and can be completed in more than one session (on the same device) by accessing the link above. If a respondent has

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partially completed the survey by 11.59pm AEST on 6 August 2021, any responses made will be recorded.

Background

On 11 September 2020, the then Attorney-General requested that the ALRC consider whether, and if so what, reforms to the laws relating to impartiality and bias as they apply to the federal judiciary are necessary or desirable, in particular in relation to the following matters:

- whether the existing law about actual or apprehended bias relating to judicial decision-making remains appropriate and sufficient to maintain public confidence in the administration of justice;
- whether the existing law provides appropriate and sufficient clarity to decision-makers, the legal profession and the community about how to manage potential conflicts and perceptions of partiality;
- whether current mechanisms for raising allegations of actual or apprehended bias, and deciding those allegations, are sufficient and appropriate, including in the context of review and appeal mechanisms; and
- any other matters related to the above.

The Law Council has made a formal [submission](#) to the inquiry, and has agreed to assist the ALRC in the distribution of the practitioner survey via its Constituent Bodies, Sections and Advisory Committees.

The survey includes different types of questions, some asking respondents to select from a limited number of options, and others are open-ended to allow respondents to write in their views or experiences. Only the initial screening questions at the start of the survey require a response.

The survey questionnaire has been developed with the advice and assistance the [Judicial Research Project](#) at Flinders University.

Contact

If you have any questions or would like to discuss further, please contact Mr Nathan MacDonald, Principal Policy Lawyer at nathan.macdonald@lawcouncil.asn.au, or on (02) 6246 3721.

For any questions specific to the survey and/or how responses will be relied upon, please contact the ALRC at impartiality@alrc.gov.au.



Michael Tidball
Chief Executive Officer