



Shane Rattenbury MLA

Attorney-General

Minister for Consumer Affairs

Minister for Water, Energy and Emissions Reduction

Minister for Gaming

Member for Kurrajong

Mr Tom Duncan
Clerk
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Our ref: PRO22/3235

Dear Mr Duncan *Tom*

Thank you for your letter of 11 October 2022, regarding petition 22-23 lodged by Mr Jeremy Hanson MLA.

The petition claims a lack of transparency and due process in the appointment of judicial officers and specifically requests the Assembly call on the ACT Government to commission an independent review to investigate concerns of undue influence from non-elected bodies and persons, and political directions and influence in judicial appointments.

The petition does not refer to any particulars in relation to undue or politicised influence on judicial appointees. As such, the Government's response is in general terms.

The ACT's existing processes for appointing judicial officers and overseeing complaints regarding judicial officers are robust and designed to ensure there is no undue influence, political or otherwise, being placed on the ACT's judicial officers through the process of appointment or otherwise.

Judicial appointments are, among all Commonwealth governments, a prerogative of the Executive. While historically, and in some other jurisdictions, this prerogative is in the form of unfettered discretion, there has been significant development across Australian states and territories, and to some extent the Commonwealth, of clearer processes and criteria for appointment, and conducting selection processes at arms-length from the final decision of appointment. This is in recognition of the importance of: ensuring such processes are more transparent; promoting diversity within the judiciary; and making for stronger, more impartial court compositions.

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The ACT's system of appointments reflects these important developments as can be observed from the discussion in the recent Australian Law Reform Commission report [*Without Fear or Favour: Judicial Impartiality and the Law on Bias*](#) (see chapter 12 and Appendix H).

The ACT has a rigorous, robust and transparent legislative framework to facilitate judicial appointments that preserves impartiality of the judiciary and guards against undue influence of judicial appointments. The process and selection criteria for appointments to the ACT Supreme Court, ACT Magistrates Court and ACT Civil and Administrative Tribunal (ACAT) are set out in publicly available determinations under the relevant Acts, including the *Supreme Court (Resident Judges Appointment Requirements) Determination 2015 (No 1)*, the *Magistrates Court (Magistrates Appointment Requirements) Determination 2009* and the *ACT Civil and Administrative Tribunal (Presidential Appointment Requirements) Determination 2016*.

Each of these provide that I, as Attorney-General, must publicly seek expressions of interest for the position by public notice and also write to key ACT stakeholders, inviting them to suggest or nominate people who are suitably qualified for appointment. Before recommending the appointment of a judge or magistrate to the Executive, I must consult with the relevant head of jurisdiction (that is the Chief Justice or the Chief Magistrate). The selection process must be based on a consideration of possible candidates having regard to the selection criteria set out in the relevant determination. The detailed selection criteria include intellectual capacity; personal qualities; an ability to understand and deal fairly; authority and communication skills; and efficiency. An explicit part of the selection criteria under personal qualities is integrity and independence of mind and objectivity.

There are also several policies in place to protect the transparency of the appointment process. The ACT Government's [*Governance Principles on Appointments, Boards and Committees*](#) are contained in a publicly available document that details the process for appointments in the ACT and includes a requirement to consult with the ACT Diversity Register.

Where there are permanent vacancies in the judiciary, these are filled through a public selection process, involving a selection panel that usually includes a Senior Executive from the Justice and Community Safety Directorate (such as the Director-General, or the Deputy Director-General), a representative from the judiciary and an independent member. The panel make assessments and recommendations in light of the selection criteria outlined in the Determinations.

These processes are described in more general terms in the various instruments governing them than I have detailed here. As such, I have instructed the Justice and Community Safety Directorate to examine where it may be appropriate to make these practices explicit rules.

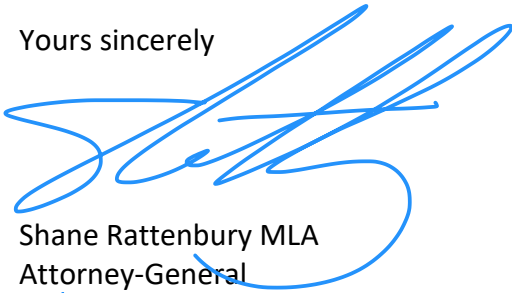
Finally, there is a strong framework for dealing with complaints about judicial officers. Complaints about judicial officers (including Coroners) are undertaken in accordance with *the Judicial Commissions Act 1994* (Judicial Commissions Act). A person may make a complaint to the Judicial Council or to myself, as Attorney-General, about a matter which relates to the behaviour or capacity of a judicial officer. When a complaint is made, the Judicial Council is required to follow the process outlined in the Judicial Commissions Act for investigating this complaint. I am required to refer any complaints about judicial officers to the ACT Judicial Council for investigation.

I cannot remove a magistrate or judge from office, as judicial officers in the ACT can only be removed from office in accordance with the Judicial Commissions Act.

The ACT Government remains committed to maintaining public confidence in the ACT judiciary. On this basis, the Government will continue to consider opportunities that will further strengthen the judicial appointment process, and provide the Canberra community with more publicly available information on the process for appointing judicial officers.

The Government welcomes the referral of this petition to the Standing Committee on Justice and Community Safety, and the potential consideration of these issues by the Committee.

Yours sincerely



Shane Rattenbury MLA
Attorney-General

18 December 2022