

ALRC Judicial Impartiality Inquiry - Judicial Officers' Survey

Start of Block: Default Question Block

Q1 The Australian Law Reform Commission (ALRC) has been asked to consider “whether, and if so what, reforms to the laws relating to impartiality and bias as they apply to the federal judiciary are necessary and desirable”. As part of this Inquiry we would like to obtain information directly from judicial officers. The survey should take between 8-12 minutes to complete. You can use the back button to return to previous answers and make changes before submitting, without losing responses to later questions. You do not need to complete the survey in one session, but can start it and come back to it in more than one session on the same device. Responses made to questions on partially-completed surveys will be recorded when the survey period closes. Participation in the survey is entirely voluntary. Individual responses are completely anonymous, strictly confidential, and the ALRC will not receive any identifying information. The data collected will only be used in an aggregated format and will not be able to be used to identify any participant from the statistical analysis of responses. Similarly, results will not be reported in a way that could identify any particular judicial officer. For any questions, please email impartiality@alrc.gov.au.

Page Break

Q2 Most of the survey questions involve choosing from a set of pre-defined responses. Please choose the response that best represents your views or experiences. At the end of each section there is an open-ended question asking for any additional views, providing the opportunity for further elaboration on your previous responses.

Click the Next button to start the survey.

End of Block: Default Question Block

Start of Block: CURRENT JUDICIAL POSITION

Q4 First we would like to ask you about your current role as a judicial officer.
In which court do you currently sit?

- Federal Court of Australia (1)
- Family Court of Australia (4)
- Federal Circuit Court of Australia (5)

Page Break

Q5 For how many years have you been sitting on that court?

- 0 to 4 years (1)
- 5 to 9 years (4)
- 10 or more years (5)

Page Break

Display This Question:

If First we would like to ask you about your current role as a judicial officer. In which court do... = Federal Court of Australia

Or First we would like to ask you about your current role as a judicial officer. In which court do... = Federal Circuit Court of Australia

Q6 In a typical year approximately what proportion of your cases concern migration law matters?

- None (1)
- Some, but less than half (4)
- Half (7)
- More than half, but not most (5)
- Most to all (6)

Page Break

Display This Question:

If First we would like to ask you about your current role as a judicial officer. In which court do... = Federal Circuit Court of Australia

Q7 In a typical year approximately what proportion of your cases concern family law matters?

- None (1)
- Some, but less than half (4)
- Half (7)
- More than half, but not most (5)
- Most to all (6)

End of Block: CURRENT JUDICIAL POSITION

Start of Block: EXPERIENCES WITH RECUSAL/SELF-DISQUALIFICATION

Q8 Now we would like to ask you some questions about experiences you have had in your current judicial role with reallocation and recusal/disqualification on bias grounds.

Page Break

Q9 Experience with reallocation of cases before allocation notified to the parties

In a typical year, approximately how many times do you ask for a case to be reallocated to another judge at the time the matter is first allocated (ie. before parties are notified) because of the potential for actual or apprehended bias to arise if you hear the case?

- On average one or more times per year (please specify approximately how many times per year) (6) _____
- On average less than one time per year (please specify approximately how frequently this issue arises, eg. once every x number of years) (5)

- I have never asked for a case to be reallocated on bias grounds at the time it is first allocated (1)
- I don't recall (7)

Skip To: Q11 If Experience with reallocation of cases before allocation notified to the parties In a typical year... = I have never asked for a case to be reallocated on bias grounds at the time it is first allocated

Q10 Thinking about those cases overall, what are the most frequent reasons for which you have asked that cases be reallocated? *Please choose all that apply*

- Interest in the case (financial or otherwise) (1)
 - Association (relationship with party/counsel/witness) (4)
 - Prior involvement in the case before being appointed as a judge (5)
 - Prior involvement in the case as a judge (6)
 - Prejudgement (10)
 - Exposure to extraneous information (9)
 - Other (please specify) (7) _____
 - don't recall (8)
-

Q11 Experience with recusal/disqualification at any time after the case is allocated and parties are notified

The next few questions ask you about experiences in your current role as a judicial officer with recusal and disqualification at any time after a matter has been allocated to you and parties have been notified.

Q12

In a typical year, approximately how many times does a party ask you to recuse/disqualify yourself from a case (whether by informal objection or formal application)?

On average one or more times per year (please specify approximately how many times per year) (6) _____

On average less than one time per year (please specify approximately how frequently this issue arises, eg. once every x number of years) (5)

I have never been asked by a party to recuse/disqualify myself from a case (1)

I don't recall (7)

Skip To: Q16 If In a typical year, approximately how many times does a party ask you to recuse/disqualify yoursel... = I have never been asked by a party to recuse/disqualify myself from a case

Skip To: Q16 If In a typical year, approximately how many times does a party ask you to recuse/disqualify yoursel... = I don't recall

Q13 Thinking about those requests overall, approximately what proportion of these requests:
Please choose one response on each line

	None (1)	Some but less than half (2)	Half (3)	More than half but not most (4)	Most to all (5)	I don't recall (6)
Have been made through a formal application for disqualification (1)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Have come from self-represented litigants (2)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Have resulted in recusal/disqualification (3)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

 Page Break

Q14 Thinking about these requests overall, which bias grounds have been raised most frequently by parties? *Please choose all that apply*

- Interest in the case (financial or otherwise) (1)
- Association (relationship to party/counsel/witness) (4)
- Conduct in court (5)
- Conduct outside of court (6)
- Prejudgement (7)
- Exposure to extraneous information (8)
- Implicit/unconscious bias resulting from the identity of the decision-maker (eg. gender, race) (9)
- Other (please specify) (10) _____

Page Break

Display This Question:

If Thinking about those requests overall, approximately what proportion of these requests: Please ch... != Have resulted in recusal/disqualification [None]

Q15 Thinking about these requests overall, on which bias grounds have you most frequently recused/disqualified yourself?

Please choose all that apply

- Interest in the case (financial or otherwise) (1)
- Association (relationship to party/counsel/witness) (2)
- Conduct in court (3)
- Conduct outside of court (4)
- Prejudgement (5)
- Exposure to extraneous information (6)
- Other (please specify) (7) _____

Page Break

Q16

Recusal on your own initiative at any time after the case is allocated and parties are notified

In a typical year, approximately how many times do you recuse/disqualify yourself from a case on your own initiative after a case was allocated to you and parties were notified?

- On average one or more times per year (please specify approximately how many times per year) (1) _____
- On average less than one time per year (please specify approximately how frequently this issue arises, eg. once every x number of years) (2)

- I have never recused/disqualified myself from a case on my own initiative after it has been listed before me (3)
- I don't recall (4)

Skip To: Q18 If Recusal on your own initiative at any time after the case is allocated and parties are notified I... = I have never recused/disqualified myself from a case on my own initiative after it has been listed before me

Skip To: Q18 If Recusal on your own initiative at any time after the case is allocated and parties are notified I... = I don't recall

Q17 Thinking about these cases overall, what were the most frequent bias grounds on which you recused/disqualified yourself on your own initiative after a case was listed before you?
Please choose all that apply

- Interest in the case (financial or otherwise) (1)
- Association (relationship to party/counsel/witness) (4)
- Conduct in court (5)
- Conduct outside of court (6)
- Prejudgement (7)
- Exposure to extraneous information (8)
- Other (please specify) (10) _____

Page Break

Q18 Consultation with judicial colleagues

How often do you consult judicial colleagues before deciding whether to recuse/disqualify yourself from a case?

- Never (1)
- Rarely (4)
- Sometimes (5)
- Usually (6)
- Always (7)

Display This Question:
If Consultation with judicial colleagues How often do you consult judicial colleagues before decidin... = Never

Q19 Why not? Please elaborate your previous response

Page Break

Q20 Do you have any further comments on your experience with recusal or disqualification for actual or apprehended bias?

End of Block: EXPERIENCES WITH RECUSAL/SELF-DISQUALIFICATION

Start of Block: PROCEDURES FOR RECUSAL/DISQUALIFICATION

Q21 The next few questions ask you about your views on the appropriateness of the procedures in relation to recusal/disqualification, and about some potential reforms.

Page Break

Q22 The existing procedures for raising issues of bias encourage:

- Overuse/abuse of bias claims (1)
- Appropriate use of bias claims (4)
- Underuse of bias claims (5)

Page Break

Q23 Potential reform – single judge cases In single judge cases, are there circumstances where it would be preferable that an application for disqualification be decided by:

Please choose one response on each line

	Yes (1)	No (2)	Unsure (3)
Another judge (eg. duty judge) (1)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A panel of judges (2)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Page Break

Display This Question:

If Potential reform – single judge cases In single judge cases, are there circumstances where it w...
= Another judge (eg. duty judge) [Yes]

Or Potential reform – single judge cases In single judge cases, are there circumstances where it w...
= A panel of judges [Yes]

Q24 In what circumstances would referral be preferable? Please choose all that apply

- In all cases (4)
- The judge's interest in the case (financial or otherwise) (23)
- Association (judge's relationship to party/counsel/witness) (24)
- The judge's conduct in court (25)
- The judge's conduct outside court (26)
- Prejudgement by the judge (27)
- The judge's exposure to extraneous information (28)
- At the discretion of the judge to whom the application is made (20)
- Where the facts underlying the application are in dispute (21)
- Other (please specify) (22) _____

Page Break

Q26 Potential reform – court sitting as a panel

When the court is sitting as a panel (rather than a single judge sitting alone), are there

circumstances where it would be preferable for the full bench to decide applications for disqualification, rather than the decision being made solely by the judge concerned?

- Yes (1)
- No (2)
- Unsure (3)

Display This Question:

If Potential reform – court sitting as a panel When the court is sitting as a panel (rather than a s... = Yes

Q99 In what circumstances would it be preferable for the full bench to decide? *Please choose all that apply*

- In all cases (4)
- The judge's interest in the case (financial or otherwise) (23)
- Association (judge's relationship to party/counsel/witness) (24)
- The judge's conduct in court (25)
- The judge's conduct outside court (26)
- Prejudgement by the judge (27)
- The judge's exposure to extraneous information (28)
- At the discretion of the judge who is the subject of the application (20)
- Where the facts underlying the application are in dispute (21)
- Other (please specify) (22) _____

Page Break

Q29 Do you have any further comments on the procedures for recusal/disqualification?

End of Block: PROCEDURES FOR RECUSAL/DISQUALIFICATION

Start of Block: THE LAW ON APPREHENDED BIAS

Q30

Next, we would like to ask you a few questions on how the test for apprehended bias operates in your experience.

The test for determining whether a judge should disqualify himself or herself by reason of apprehended bias is: “whether a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question the judge is required to decide”: *Johnson v Johnson* (2000) 201 CLR 488 at [11], affirmed in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337.

Is the test generally straightforward to apply in practice?

- Yes (1)
- No (2)
- Unsure (3)

Display This Question:

If Next, we would like to ask you a few questions on how the test for apprehended bias operates in y... = No

Or Next, we would like to ask you a few questions on how the test for apprehended bias operates in y... = Unsure

Q31 Are there specific bias grounds for which the test is particularly difficult to apply?

- Yes (1)
- No (2)
- Unsure (3)

Display This Question:

If Are there specific bias grounds for which the test is particularly difficult to apply? = Yes

Q32 Which bias grounds? *Please choose all that apply*

- Interest in the case (financial or otherwise) (1)
- Association (relationship to party/counsel/witness) (4)
- Conduct of judge in court (5)
- Conduct of judge outside of court (6)
- Prejudgement (7)
- Exposure to extraneous information (8)
- Other (please specify) (9) _____

Page Break _____

Q33 There would be benefit (for judges, lawyers and/or litigants) in guidance setting out particular circumstances that will always or almost always give rise to apprehended bias.

- Strongly agree (4)
- Somewhat agree (5)
- Neither agree nor disagree (6)
- Somewhat disagree (7)
- Strongly disagree (8)

Page Break

Q34 In my view, the following circumstances will always or almost always give rise to apprehended bias. *Please choose all that apply*

- Judicial officer gave advice in relation to the case prior to appointment (4)
- Judicial officer's spouse/domestic partner is a director of one of the parties (5)
- Judicial officer has a significant economic interest in the subject matter of the case (6)
- Judicial officer's child is counsel in the case (8)
- Other (please specify) (7) _____

Page Break

Q35 There would be benefit (for judges, lawyers and/or litigants) in guidance setting out particular circumstances that will never or almost never give rise to apprehended bias.

- Strongly agree (4)
- Somewhat agree (5)
- Neither agree nor disagree (6)
- Somewhat disagree (7)
- Strongly disagree (8)

Page Break

Q36 In my view, the following circumstances will never or almost never give rise to apprehended bias. *Please choose all that apply*

- Judicial officer previously shared chambers with counsel for one of the parties (without more) (4)
- Application based on the judicial officer's personal characteristics (such as gender, sexuality or ethnicity) (5)
- Other (please specify) (6) _____

Page Break

Q37 Do you have any further comments on the adequacy or appropriateness of the existing test for apprehended bias?

Q38 Now we would like to ask you about the adequacy of procedural and ethical guidance.

It would be helpful for judges if there were more specific written guidance on the procedure judges and parties should follow when issues of bias arise.

- Strongly agree (4)
 - Somewhat agree (5)
 - Neither agree nor disagree (6)
 - Somewhat disagree (7)
 - Strongly disagree (8)
-

Q39 It would be helpful for parties if there were more specific written guidance on the procedure judges and parties should follow when issues of bias arise.

- Strongly agree (4)
 - Somewhat agree (5)
 - Neither agree nor disagree (6)
 - Somewhat disagree (7)
 - Strongly disagree (8)
-

Display This Question:

If Now we would like to ask you about the adequacy of procedural and ethical guidance. It would be h... = Strongly agree

Or Now we would like to ask you about the adequacy of procedural and ethical guidance. It would be h... = Somewhat agree

Or If

It would be helpful for parties if there were more specific written guidance on the procedure jud... = Strongly agree

Or It would be helpful for parties if there were more specific written guidance on the procedure jud... = Somewhat agree

Q40 What form/s should any additional guidance take?

Page Break

Q41 It would it be helpful for judges to have access to additional practical support or guidance when making decisions on recusal and disqualification.

- Strongly agree (4)
- Somewhat agree (5)
- Neither agree nor disagree (6)
- Somewhat disagree (7)
- Strongly disagree (8)

Display This Question:

If It would it be helpful for judges to have access to additional practical support or guidance when... = Strongly agree

Or It would it be helpful for judges to have access to additional practical support or guidance when... = Somewhat agree

Q42 What types of additional support or guidance would be helpful?

Page Break

Q43 When I took up my appointment as a judge I was already well-equipped to manage situations where parties raise issues of actual and apprehended bias.

- Strongly agree (4)
- Somewhat agree (5)
- Neither agree nor disagree (6)
- Somewhat disagree (7)
- Strongly disagree (8)

Page Break

Q44 The [Guide to Judicial Conduct](#) (3rd edition) provides appropriate guidance on how to minimise the risk of circumstances or conduct giving rise to actual and apprehended bias.

- Strongly agree (4)
- Somewhat agree (5)
- Neither agree nor disagree (6)
- Somewhat disagree (7)
- Strongly disagree (8)

Page Break

Q45 Do you have any further comments on the adequacy or appropriateness of procedural and ethical guidance?

End of Block: GUIDANCE ON RECUSAL AND DISQUALIFICATION

Start of Block: SUPPORTING JUDICIAL IMPARTIALITY

Q46 Upholding judicial impartiality

What, if any, do you see as the main challenges to upholding judicial impartiality in your work as a judge?

Q47 What reforms (to law, practice, court structures or other), if any, do you consider are important to support and strengthen judicial impartiality?

Page Break

Q48 Implicit bias

Have you ever undertaken training on unconscious or implicit bias as part of a judicial training course or other professional development activity?

- Yes (1)
- No (2)
- Unsure (3)

Display This Question:

If Implicit bias Have you ever undertaken training on unconscious or implicit bias as part of a judi... = Yes

Q49 How helpful have you found that training overall?

- Very helpful (1)
- Somewhat helpful (2)
- Unsure (3)
- Not very helpful (4)
- Not helpful (5)

Page Break

Q50 Do you think it is important for judges to take active steps to mitigate any potential negative effects of unconscious or implicit bias in their work?

- Yes (1)
- No (2)
- Unsure (3)

Page Break

Display This Question:

*If Do you think it is important for judges to take active steps to mitigate any potential negative e... =
Yes*

*Or Do you think it is important for judges to take active steps to mitigate any potential negative e... =
Unsure*

Q51 Please rate the following in terms of their potential for helping you to mitigate any potential negative effects of unconscious or implicit bias in your work as a judge.

	Very helpful (1)	Somewhat helpful (2)	Unsure (3)	Not very helpful (4)	Not helpful at all (5)
Practical workshops on implicit bias in judicial decision-making (4)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Workshops on cross-cultural competency (5)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access to resources in court (eg. Equality Bench Book) (7)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access to better data on decision-making patterns within court (8)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Structured reflection on court practice (9)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Structured feedback from court users (10)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increased peer support (eg. through mentoring, debriefing) (11)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More time to hear and decide cases (12)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other (please specify): (13)

Page Break

Q52 Do you have any further comments on judicial impartiality or public confidence in it?

End of Block: SUPPORTING JUDICIAL IMPARTIALITY

Start of Block: GENERAL QUESTIONS

Q97

General Questions

My work is a major source of satisfaction in my life.

- Strongly agree (1)
- Somewhat agree (2)
- Neither agree nor disagree (3)
- Somewhat disagree (4)
- Strongly disagree (5)

Q55 What types of positions in legal practice, the legal profession or other legal work did you hold prior to being appointed as a judge? *Please choose all that apply*

- Barrister / QC (1)
 - Employed lawyer (public sector) (4)
 - Employed lawyer (private sector) (5)
 - Law teaching/research (tertiary) (6)
 - Solicitor (public sector) (7)
 - Solicitor (private sector) (8)
 - Tribunal member (9)
 - Other – please specify (10) _____
-

Q101 Are you:

- Female (1)
- Male (2)
- Other (3)

End of Block: GENERAL QUESTIONS
