

16 July 2021

Dr Jacoba Brasch QC
President
Law Council of Australia
GPO Box 1989
Canberra ACT 2601

Dear Dr Brasch

Review of Judicial Impartiality – Survey of Practitioners

Thank you for the Law Council's engagement with the Australian Law Reform Commission (ALRC) inquiry 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' (Judicial Impartiality Inquiry).

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 Inquiry. We would be grateful if the Law Council publicised the survey among your sections, committees, and constituent bodies. A robust response rate will greatly increase the value of the survey in informing our final recommendations.

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, but we welcome the participation of all practitioners.

The survey will be open until **11.59 pm AEST on 6 August 2021** and is available at the following link: [\[link removed\]](#)

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

Further information about the survey is attached. Please do not hesitate to contact me if you have any queries.

Yours sincerely

The Hon Justice SC Derrington

JUDICIAL IMPARTIALITY



Australian Government
Australian Law Reform Commission

ALRC Survey of Legal Practitioners

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”.

Although the law on bias has been the subject of significant academic commentary, few studies have been carried out in Australia on how the law is used and how the processes for raising and determining allegations of bias are perceived. The Commonwealth courts do not collect data on recusals or reallocation of matters on bias grounds. Furthermore, issues of bias are often managed through judicial disclosure and informal objections, and decisions are often given *ex tempore*, so case law provides an incomplete picture.

The research findings from this survey will be important to inform the recommendations made in the ALRC’s final report in the Judicial Impartiality Inquiry, and of broader significance to the legal profession, the judiciary, courts, and academic study.

Anonymity and confidentiality

Participation in the survey is entirely **voluntary**, and responses will be **fully anonymous**. There is no tracking mechanism that in any way records the identity (directly or indirectly) of survey respondents. 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. The information provided will be reported in summary form in any subsequent publication or other communication. Responses to questions that ask for a written response may be quoted, but in a way that does not identify individual respondents.

Methodology

The survey includes different types of questions: some ask 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 should take between 8-12 minutes to complete. Participants can return to previous answers and make changes before submitting, without losing responses to later questions. The survey can be completed in more than one session on the same device. If a respondent has partially completed the survey by 11.59 pm AEST on 30 July 2021, any responses made to questions will be recorded.

The survey questionnaire has been developed with the advice and assistance of Professor Sharyn Roach Anleu and Emerita Professor Kathy Mack of the [Judicial Research Project](#), Flinders University.

For any questions about the survey please contact impartiality@alrc.gov.au.