



## Judicial Impartiality Final Report Released

Today the Australian Law Reform Commission report, [\*Without Fear or Favour: Judicial Impartiality and the Law on Bias \(Report 138, 2021\)\*](#) was tabled in Parliament by the Attorney-General of Australia, the Hon Mark Dreyfus QC.

The report makes 14 recommendations to promote and protect judicial impartiality and public confidence in the Commonwealth judiciary, including:

- reforms to the procedures Commonwealth judges use to determine whether they should withdraw from a case when a party raises a potential issue of bias;
- publishing guidance on how litigants should raise issues of bias with a judge and how such issues are decided;
- establishing a Federal Judicial Commission as an additional and accessible oversight mechanism to support litigant and public confidence in judicial impartiality; and
- strengthening institutional structures to support judges and address systemic biases, including through changes to appointment procedures, judicial education, and collection of court user feedback and case data in the Commonwealth courts.

President of the ALRC, the Hon Justice SC Derrington, said the Inquiry had found that public confidence in Australian judges was generally high, and that judges took their oath of office to administer impartial justice seriously.

“More could be done to increase certainty and visibility of existing procedures relating to bias, to understand and respond to litigants’ experiences and concerns, and to address the potential for institutional biases.”

“The recommendations support transparency, equality, integrity, and fairness to provide a robust framework for judicial impartiality and public confidence in it,” Justice Derrington said.

The Inquiry was prompted by decision of a Full Court of the Family Court of Australia in *Charistead v Charistead* concerning personal contact between the trial judge and counsel for one of the parties. During the ALRC Inquiry the decision was overturned by the High Court which clarified several issues relating to the law on bias.

Over the course of the Inquiry, more than 2000 people contributed their views to the ALRC through surveys and consultations. Those consulted included litigants and other court users, current and former members of the judiciary and tribunals, the legal profession, non-profit legal services, community groups, and academics.

The Inquiry relates to the law as it applies to judges in the High Court, Federal Court, and Federal Circuit and Family Court.

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## Notes to editor

On 11 September 2020, the ALRC received Terms of Reference from the Attorney-General of Australia to conduct the first comprehensive review in Australia of laws relating to judicial impartiality and bias in the Commonwealth courts.

The [Terms of Reference](#) for this Inquiry asked the ALRC to consider whether:

- the law actual or apprehended bias relating to judicial decision-making is sufficient and appropriate to maintain public confidence in the administration of justice;
- the law provides clarity to decision-makers, the legal profession and the community about how to manage potential conflicts and perceptions of partiality; and
- the mechanisms for raising allegations of actual or apprehended bias, and deciding those allegations, are sufficient and appropriate.

## About the Australian Law Reform Commission

The Australian Law Reform Commission (ALRC) is an independent Australian Government agency that provides recommendations for law reform to Government on issues referred to it by the Attorney-General of Australia.

ALRC President the Honourable Justice SC Derrington, General Counsel Mr Matt Corrigan and Senior Legal Officer Ms Sarah Fulton are available for interview.

*Without Fear or Favour: Judicial Impartiality and the Law on Bias* (Report 138, 2021) and Summary Report: <https://www.alrc.gov.au/publication/ji-report-138>

Judicial Impartiality Inquiry: <https://www.alrc.gov.au/inquiry/review-of-judicial-impartiality/>

Judicial Impartiality Inquiry Terms of Reference: <https://www.alrc.gov.au/inquiry/review-of-judicial-impartiality/terms-of-reference/>

Further information on the work of the ALRC: <https://www.alrc.gov.au/>

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