

Chapter 5

Judging the Judges*

One of the most striking characteristics of our society and of the constitutional arrangements governing its operation is the power and independence of the judiciary. Judges resolve disputes not only between citizen and citizen, but also between the citizen and the government. Australians are accustomed, not only to submitting their grievances against their fellow citizens to adjudication by the courts, and abiding peacefully by the decision, but also to having the courts, where appropriate, stand between them and those who control the executive power. Indeed they see, and accept, as a matter of common occurrence, the courts declaring expressions of legislative will by their elected representatives to be legally ineffective. Whether they are conscious of it or not, the people repose enormous trust and confidence in the judges. It follows that questions as to the selection and appointment of judges, and their performance in office, are of interest to the public as well as the profession. However, they are of particular interest and concern to the profession. The purpose of this paper is to raise for discussion some of those questions.

I. Appointment to judicial office

In a consideration of how people come to be judges, two separate matters arise. First, there is the question of the educational and professional qualifications which a person requires in order to make him eligible for appointment. These are readily ascertainable. Second, there is a question of the selection of those who are actually appointed from amongst those who are eligible.

1. *Eligibility for appointment*

To be qualified for appointment to the High Court a person must either be or have been a Judge of the Supreme Court of a State or a practising barrister or solicitor of not less than five years standing.¹ Similar qualifications apply in relation to the Federal Court of Australia.² To be qualified to be a Judge of the Supreme Court of New South Wales a person must (subject to some presently irrelevant qualifications) be a barrister of not less than five years standing or a solicitor of not less than seven years standing.³ Virtually the same qualifications apply in respect of appointment to the District Court.⁴

* A paper presented at the 20th Australian Legal Convention, Adelaide, 2 July 1979.

1 *Judiciary Act 1903* (Cth) s 5.

2 *Federal Court of Australia Act 1976* s 6.

3 *Supreme Court Act 1970* (NSW) s 26.

4 *District Court Act 1973* (NSW) s 13.

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