



Judicial Conference of Australia

**STATEMENT BY THE HON JUSTICE STEVEN RARES
VICE PRESIDENT, JUDICIAL CONFERENCE OF AUSTRALIA
26th March 2014: 3.00pm**

**CONFIDENTIALITY OF DISCUSSIONS BETWEEN HEADS OF
COURTS AND GOVERNMENTS ON JUDICIAL APPOINTMENTS**

The maintenance of confidentiality of discussions between judges who are heads of jurisdiction and members of executive governments about candidates for judicial appointment is of fundamental importance.

In our system of government, the responsibility for selecting and appointing judicial officers rests solely with the Executive Governments of the Commonwealth, the States and Territories. Governments are entitled to frank advice about those matters from Chief Justices and heads of jurisdiction.

Traditionally, Attorneys-General have consulted with Chief Justices or the head of a particular court about the suitability of someone, or a list of persons, to be appointed as a judge. The Chief Justice, or head of jurisdiction, and the Attorney-General should be able to discuss this important issue frankly and without concern that what they say about the possible appointees will be disclosed publicly, whatever other disagreements they may have about matters of public interest, including other aspects of the administration of justice. Chief Justices and judges are not, and should not, be immune from appropriate criticism for their public statements provided that confidences in the names, as opposed to the demographic features or qualifications, of particular persons are respected.

Chief Justices and heads of Courts are uniquely placed to offer insights to Attorneys-General about their individual Court's view as to the suitability of particular persons to be appointed, or considered for appointment, to judicial office. What the Chief Justice or heads of jurisdiction may say in such discussions about a particular candidate can often reflect the general view of the Court, especially when the Court is relatively small and its members are in the same location. Such views are usually of value to the Attorney-General in making his or her recommendations to Cabinet as to who should be appointed to judicial office. That does not mean that Governments must or should accept or act on the views expressed by the Chief Justices or heads of jurisdiction about candidates for judicial office. Those views are simply put forward to assist Governments in making their decisions about appointments to judicial office.

It would be most unfortunate if senior judges felt inhibited from offering frank advice because they could not be sure that it would be kept completely confidential. Governments would be deprived of valuable assistance in maintaining public confidence in the administration of justice.

For further information contact:

Christopher Roper, Secretary, Judicial Conference of Australia

0407 419 330