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Introducing the revised Guide to Judicial Conduct

The Honourable Virginia Bell AC, SC*

In the final report of its inquiry into judicial impartiality and the law on bias, the Australian Law Reform Commission (ALRC) recommended that the Council of Chief Justices (CCJ) consider a broad review of the *Guide to Judicial Conduct* as it relates to judicial impartiality.[1] That review is now complete, and the revised 4th edition of the Guide was published online in March 2026.

The CCJ determined that the review should be wider than the ALRC's recommendation. It established a Committee to oversee the preparation of the revision. The Committee comprised Justice Murray Aldridge of the Federal Circuit and Family Court (Division 1), at the time the President of the Australasian Institute of Judicial Administration (AIJA), Professor Emerita Judy Cashmore AO and Professor Gabrielle Appleby as Advisors, and me as Principal Reporter. Judy Cashmore, formerly the Professor of Socio-Legal Research at the University of Sydney, has longstanding research interest in the experience of child complainants in the criminal justice system. Judy has also served as an appointed member of the Judicial Commission of NSW. Gabrielle Appleby is a Professor in the Law Faculty of the University of NSW, whose research interests include the judiciary and judicial independence.

The Committee's terms of reference required us to undertake a comprehensive review of the Guide with particular reference to a number of subject areas in addition to impartiality and the law of bias. Among these were (i) judicial education including on cultural competence, (ii) the relationship between courts and the media, (iii) workplace conduct and "the capacity to perform the functions of a judicial officer, including the exercise of appropriate restraint, and the determination of issues presented for resolution with objectivity and detachment".

The Committee consulted with State and Territory Judicial Commissions, the National Judicial College of Australia and the Judicial College of Victoria, the Judicial Council on Diversity and Inclusion, the State and Territory Aboriginal legal services and the National Aboriginal and Torres Strait Islander Legal Services, victims' commissioners in each of the States and Territories and a range of legal academics. We also looked at equivalent publications in a number of other common law jurisdictions.

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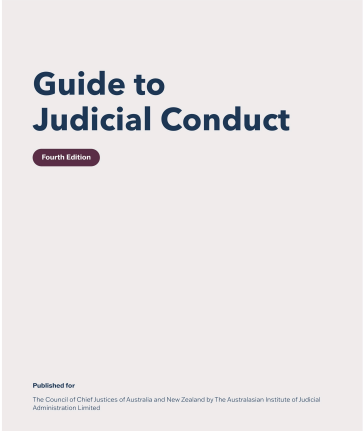
The Judicial Council of Canada's publication, *Ethical principles for judges*, contains a high-level statement of principles expressed to reflect "the judiciary's highest ethical aspirations in the service of justice and the rule of law". This is supplemented in Canada by an Advisory Committee on Judicial Ethics which provides written advice in answer to ethical questions submitted by individual judges.

Since its initial publication in 2002, the Guide has always aimed to provide practical guidance for judicial officers throughout Australia. The CCJ made clear its wish that the Guide maintain this practical focus. The 4th edition continues to provide a useful summary of the principles governing recusal and disqualification applications, together with a discussion of common situations in which a conflict of interest or apprehension of bias may arise. A chapter is devoted to the approach to the conduct of proceedings generally and subsequent chapters address issues that judicial officers may encounter outside court by reason of their office or otherwise. There is practical advice on a range of topics including the making of public comment, writing prefaces for books and speaking at book launches, the use of judicial letterhead, giving references, agreeing to act as an executor or trustee and the use of social media. In accord with the CCJ's wishes, the 4th edition contains greater emphasis on the obligation of judicial officers to undertake judicial education throughout their judicial careers and with respect to appropriate workplace conduct.

The focus of the opening chapter of the Guide to date has been on the tendency of some judges to adopt a "monastic lifestyle" with the attendant risk of fuelling a perception of judges as remote from the community. In the Committee's view, today's judges are less likely to adopt a monastic lifestyle than their predecessors and the focus in the 4th edition is on explicit recognition that appointment to judicial office imposes limitations on the holder's public and private conduct. And that by accepting judicial appointment, a judge agrees to these limitations.

The Guide will no longer be produced in hard copy. It will be available to judicial officers throughout Australia and to interested members of the public on the AIJA website. The advantage of online publication is the capacity for regular updating and the inclusion of links to resources produced by Judicial Commissions and Colleges in those States and Territories that have them, making these readily accessible to judicial officers in all jurisdictions. The usefulness of this should not be underestimated. By way of example, reference to the Judicial Commission of NSW's *Equality Before the Law Bench Book* is likely to assist judicial officers to avoid inadvertent remarks or conduct that might reasonably be viewed as insensitive or disrespectful to a witness or legal representative based on the individual's race, ethnicity, religion, sexuality etc. Finally, the Guide also includes an Appendix listing books, journal articles and other materials concerning judicial ethics and judging.



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Endnotes

* Former Justice of the High Court of Australia.

1 Australian Law Reform Commission, *Without fear or favour: judicial impartiality and the law on bias*, Report 138, December 2021, Recommendation 11, accessed 5/3/2026.

Obituary

It is with regret the Commission notes the recent death of Sir Anthony Mason AC KBE GBM KC. Sir Anthony served as a Judge of the Court of Appeal of the Supreme Court of NSW from 1969–1972. Sir Anthony was elevated to the High Court as a Justice in 1972 and served as Chief Justice from 1987–1995. For further information please see the statement from the Chief Justice of NSW.