



The Role of the Judiciary

What is the Judiciary?

The judiciary is the branch of government which administers justice according to law. The term is used to refer broadly to the courts, the judges, magistrates, adjudicators and other support personnel who run the system. The courts apply the law, and settle disputes and punish law-breakers according to the law. Our judicial system is a key aspect of our democratic way of life. It upholds peace, order and good government. Citizens look to the judiciary to uphold their rights and governments look to the courts to interpret laws. The judiciary must act without fear of powerful interests, and without favouring individual parties. A court's ability to deliver justice depends on its power to enforce its rulings. Only a court of appeal can overturn the ruling of a lower court.

Separation of Powers

As a British colony, Australia adopted England's legal codes and principles. Therefore, we operate under the Westminster system which embraces the doctrine of the Separation of Powers. The judiciary is one of the three branches of government, the other two being the parliament or the Legislature and the Executive government, which is made up of the Governor, the Premier and Ministers. The role of parliament is to make the laws, the Executive government carries out and enforces the laws, and the judiciary applies the laws in individual cases. Each branch of government has its own powers and authority and each branch exercises some power over the other two branches, but no single arm has more authority than another. Under the doctrine of the separation of powers the

judiciary must remain independent from the other two branches of government. This independence is seen as a vital safeguard against corruption and a cornerstone of democracy. By necessity the functions of the parliament and the Executive overlap, but the judiciary remains independent of both the parliament and the Executive.

Independence of the Judiciary

Two safeguards exist to protect the independence of judges and magistrates: the way they are appointed and their system of tenure. The Governor-in-Council - that is, the Governor in consultation with government ministers - on the advice of the Attorney-General appoints judges and magistrates¹, who have constitutionally guaranteed tenure. This means that unless they choose to retire earlier, judges continue in office until they are 70 and magistrates until they are 65. They can only be removed from office by the Governor if the Parliament accepts a duly constituted tribunal's finding of proven misbehaviour or incapacity. Judges and magistrates cannot be removed from office simply because a government disagrees with their rulings.

Different Types of Courts

In Australia, we have federal as well as state and territory courts. The state courts hear the vast majority of matters, from neighbourhood disputes to murder. The federal courts deal with matters not covered by state law.

The High Court of Australia is the highest of all courts, and hears original matters as well as appeals from lower courts. There is also the Federal Court of Australia, the Family Court of Australia and the Federal Magistrates Court of Australia. Generally, the federal courts hear matters relating to corporations, trade practices, industrial relations, bankruptcy, customs, immigration and other areas of federal law as well as matters relating to family law.



Each state and territory has a court hierarchy including a magistrates court, District Court and Supreme Court. These courts hear civil and criminal matters of increasing seriousness.

The Magistrates Court may deal with a matter in its entirety, in which case the magistrate makes all decisions and judgments. Magistrates trials do not use a jury system. The magistrate may decide that a matter should go to a higher court for trial and whether that should be the District or Supreme Court. The Magistrates Court may hear civil matters if the amount in dispute is less than \$150,000.

The District Court deals with more serious criminal matters such as rape, armed robbery and fraud, and civil matters where the amount in dispute is greater than \$150,000 but less than \$750,000. District Court criminal trials are conducted before a jury (though there is capacity for Judge only trial in certain circumstances). The Planning and Environment Court, which is a division of the District Court, hears disputes arising over land development.

The Supreme Court hears serious criminal matters such as murder, manslaughter and serious drug offences, and civil matters where the amount in dispute is greater than \$750,000. Its Court of Appeal division hears appeals from the Trial Division of the Supreme Court, the District Court and the Magistrates Court. All Supreme Court criminal trials are heard before a jury (save in some cases where Judge only trial may occur). The Court of Appeal generally sits as a panel of three judges.

Other roles of the Judiciary

The Supreme Court also conducts admission ceremonies for new legal practitioners, swearing-in ceremonies for new judges, and valedictory ceremonies for retiring judges. The Judges are actively engaged in programs of continuing judicial development.

The courts perform an important educative role. Law students can access the court building to run moot courts to simulate

the trial process. In rural areas, the Magistrates Court doubles as higher court when District Court judges visit to preside over matters. As well, the Magistrates Court in rural areas is the place where births, deaths and marriages are registered, and it acts as an agency for other government services.

The Supreme Court deals with probate matters, which relates to the authenticating of wills, and the revision of wills where the testator has not made adequate provision for the support of surviving family members.

Conclusion

Queensland courts are a cornerstone of our democracy, distinctive for the transparency, predictability and accountability of their process.

¹s59 Constitution of Queensland 2001