



Judicial Conference of Australia

Media release

Appointment of judges to the High Court

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In an article in *The Weekend Australian* on 13 June 2020, Chris Merritt wrote approvingly about the fact that “some inside the Morrison government” apparently think it would be a good idea to rely on “independent vetting of candidates for judicial office aimed at weeding out the activists while favouring those who adhere to the original intentions of those who drafted the Constitution”.

The idea first came from the United States where the Federalist Society reportedly picked out conservative candidates for judicial appointment for Presidents George W Bush and Donald Trump.

Apparently the Institute of Public Affairs (IPA), a right wing think tank, sees itself in the role and is assembling its own list of “pre-vetted” candidates which it plans to make public in time for the coming vacancies to the High Court.

Giving a private right wing think tank (or any private organisation) an “advisory role” in choosing candidates for appointment to the High Court is a self-evidently appalling idea. For one thing, it would surely be an invitation to the next Labor government to resort to its own left wing “advisory” body to vet

candidates, leading to the situation which obtains in the United States where appointments to the Supreme Court have become blatantly politically partisan.

The Merritt article states that the proposal is to screen candidates for their “judicial methodology”, not their political affiliation, and is not aimed at securing the appointment of candidates who vote for or support the Liberal Party. That entirely misses the point. Characterising some judges as “activists” who should be “weeded out” and contrasting them with “those who adhere to the original intentions of those who drafted the Constitution”, who should on that account be “favoured”, is itself a plainly political position. Protest as they might, those who advocate such a position are seeking to politicise, and to polarise Australia’s highest court.

Judges are appointed to the United States Supreme Court on the basis of how they will decide on highly politically charged issues and are identifiable as conservative or progressive on the basis of their political ideology. This must not be allowed to happen in Australia. It is to be hoped that those with power inside the Morrison government will avoid adopting such an extremist, politically charged approach to judicial appointments.

This country has an admirable record when it comes to judicial appointments. In an article in *The Australian* on 19 January 2017, Mr Merritt quoted former Chief Justice French who praised “the diligence, conscientiousness and seriousness” with which Australian Attorneys-General have approached that task. The process should not be interfered with or politicised because some commentators (or senators) are unhappy about a particular decision of the High Court.

Judith Kelly

President

Judicial Conference of Australia

The Judicial Conference of Australia is the professional association of judges and magistrates in Australia.

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The President of the JCA is not available for broadcast or television interviews on this matter.