

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
OFFICE OF THE ATTORNEY-GENERAL

Question No. 79

Senator Ludwig asked the following question at the hearing on 18 November 2013:

1. To the Attorney-General, what will your approach be on making court appointments?
2. To the Attorney-General, will you always follow the process as detailed by the department?
3. Will you always take the advice of the department?
4. Will you ever add names to short lists or any other department prepared lists of potential court appointments?
5. Will you ever speak to panel members engaged in the panel selection of court appointments before or during the process of the panel sitting?
6. Will you ever consider, or request to be considered, the current or former party membership or allegiance of the shortlist or applicants being considered for a shortlist of court appointments?
7. Will you ever consider the current or former party membership or allegiance of the spouse of any applicant, or member of shortlist or potential member of a shortlist being considered for a court appointment?
8. Will you ever seek to informally do any of the above through your staff?
9. Will you ever seek or accept a position on the bench yourself?
10. Will the minister provide a guarantee that this government he will consult with the opposition shadow attorney general on senior appointments to the court?
 - a) Wouldn't this introduce politics or the appearance of politics to the appointments?
 - b) Wasn't the minister, then shadow minister, consulted on the high Court appoints and weren't the successful appointees on his list of recommendations?

The answer to the honourable senator's question is as follows:

1. Appointees will be selected on the basis of merit and suitability.
2. The question is based upon a hypothetical assumption, i.e. the existence of "the process as detailed by the department".
3. Departmental advice may be sought and will be considered where appropriate.
4. The question is based upon a hypothetical assumption, i.e. the existence of lists prepared by the department.
5. The question is based upon a hypothetical assumption, i.e. the selection of appointees by panel.

6. All relevant considerations will be considered. Current or former membership of a political party is not a relevant consideration.
7. The views of a candidate's spouse (including current or former membership of a political party) are not a relevant consideration.
8. Appropriate inquiries will be made by the Attorney-General or, where appropriate, by the Attorney-General's office.
9. I have no present intention of retiring from the Parliament.
10. No. It has not been the practice of past governments to do so. However, I may consult the Shadow Attorney-General where I consider it would be helpful to do so.
 - a) No. It is desirable that judicial appointments have the support of both sides of politics.
 - b) I was consulted by Ms Roxon when she was Attorney-General in relation to High Court appointments. I was not consulted by Mr McClelland or Mr Dreyfus on High Court appointments. All appointments made by the Rudd and Gillard Governments to the High Court were supported by the then Opposition.