

## Model Protocol between Heads of Jurisdiction for Short Term Judicial Exchange

1. This protocol is made between the Heads of Jurisdiction of the Courts named in the Appendix with a view to providing a framework for arrangements to be made for the short term exchange of judges between those Courts.
2. The objectives of the judicial exchanges for which this protocol provides are:
  - 2.1. to promote the exchange of knowledge in matters of law and practice so that Australian courts and judges may learn in a practical way from each other's experience;
  - 2.2. to promote innovation and best practice throughout Australia in the administration of justice while maintaining the identity and distinctive culture of each of the courts;
  - 2.3. to assist in the ongoing professional development of judges in their knowledge of the substantive law and in the efficient and economic administration of justice;
  - 2.4. to create a mechanism for effective allocation of judicial resources across jurisdictions in response to short term imbalances of needs and resources;
  - 2.5. to reduce the need for courts to rely upon acting short term appointments of persons not otherwise the holders of fulltime judicial appointments;
  - 2.6. to foster an acceptance that all Australian judges, whether they be members of State, Territory or Federal Courts, are part of a national Australian judiciary;
  - 2.7. to make judicial appointment to any of Australia's courts more attractive to qualified candidates for appointment.
3. The parties to this protocol accept that any specific arrangement which they may make for judicial exchanges will be subject to the agreement and support of the governments of the jurisdictions in which their courts are located and compatible with the constitutional and statutory requirements for the appointment of judges and their

TABLED DOCUMENTS LABEL  
Senate Legal & Constitutional Affairs References Committee  
Inquiry: Australia's Judicial System and the Role of Judges  
By: Hon. Justice Ruth McColl, Chair,  
Judicial Conference of Australia  
Date: 11. 6. 09

service in those jurisdictions.

4. This protocol may be applied to arrangements involving federal courts and their State or Territory equivalents subject to the constitutional constraints which may affect the capacity of the State or Territory judicial officers to serve on federal courts.
5. In this protocol the following terms are used:
  - 5.1. "Head of Jurisdiction" to designate the Chief Justice, Chief Judge or Chief Magistrate of a court entering into arrangements under this protocol;
  - 5.2. "Home Court" to designate the court from which a judicial officer is to be selected under an arrangement pursuant to this protocol, to serve on another court for a time;
  - 5.3. "Host Court" to designate the court which, under an arrangement made pursuant to this protocol, accepts a judicial officer to serve as one of its judges for a time;
  - 5.4. "Jurisdiction", in relation to a court, to designate the State or Territory in which that court is located or, in the case of a federal court, the Commonwealth of Australia.
6. No arrangement for judicial exchange made under this protocol shall come into effect unless and until:
  - 6.1. the Attorney-General of each jurisdiction which is a party to the arrangement, has approved the arrangement provided that such approval may be on condition that the relevant Attorneys-General reserve the right to approve any specific exchange recommended by the Heads of Jurisdiction of the Home Court and the Host Court;
  - 6.2. the Attorney-General of each jurisdiction has indicated that, upon a recommendation from the Head of Jurisdiction of the Host Court, he or she will consider taking such steps as may be necessary to authorise a judicial officer recommended by that Head of Jurisdiction to serve as a judge of the Host Court for a specified period.

7. Any arrangement between Heads of Jurisdiction for judicial exchange under this protocol will require that:
  - 7.1. the judge from the Home Court is recommended for a judicial exchange visit by the Head of Jurisdiction of the Home Court;
  - 7.2. a judge recommended for judicial exchange by the Head of Jurisdiction of the Home Court is accepted for that purpose by the Head of Jurisdiction of the Host Court;
  - 7.3. the process and criteria for the selection and recommendation of a judicial officer by the Head of Jurisdiction of the Home Court shall be a matter for that Head of Jurisdiction;
  - 7.4. the criteria for acceptance of a judge recommended by the Head of Jurisdiction of the Home Court shall be a matter for the Head of Jurisdiction of the Host Court;
  - 7.5. appointment of a judge to act as a judge of the Host Court will be in accordance with the law and practice of the jurisdiction of the Host Court.
8. The period of service of a judge on judicial exchange under an arrangement made pursuant to this protocol is a matter for agreement between the Heads of Jurisdiction of the Home and Host Courts subject to the approval of their respective Governments, but will ordinarily be for a period of not less than 2 weeks and not more than 3 months.
9. Any arrangement for judicial exchange made under this protocol may specify factors relevant to the recommendation of a specific exchange by the Head of Jurisdiction of the Home Court or its acceptance by the Head of Jurisdiction of the Host Court including:
  - 9.1. the extent to which the Home Court has the capacity to make the judge available and the extent to which the Host Court has the need to make use of his or her services;
  - 9.2. the extent to which any of the Home Court, the Host Court or the judge is able and willing to meet the expenses associated with the exchange;
  - 9.3. the extent to which judicial exchanges have been or are likely

to be reciprocated between the Home and the Host Courts.

10. Arrangements made under the protocol may be designed to meet all or any of the following specific objectives:
  - 10.1. the continuing professional development of individual judges or the exchange of information and experience between courts in which case the emphasis is likely to be on parity of exchanges;
  - 10.2. enhancing the ability of courts to respond to short term fluctuations in workload by providing or acquiring the services of a judge who is able to be made available from the Home Court to assist in the workload of the Host Court.
11. Arrangements made under this protocol should provide for costs incurred in, or in connection with, their implementation. Such provisions should deal with the following elements and may vary according to the purpose of a particular exchange:
  - 11.1. the salary and superannuation benefits (if any) of the visiting judge;
  - 11.2. the travel costs of the visiting judge;
  - 11.3. the accommodation costs of the visiting judge in the jurisdiction of the Host Court;
  - 11.4. the provision of a vehicle.
12. The following principles should apply, under an arrangement made pursuant to this protocol, to the costs of a visiting judge unless otherwise agreed between the Heads of Jurisdiction of the Home and Host Courts:
  - 12.1. the judge's salary should ordinarily be met by the Home Court provided that this may be reimbursed in whole or in part if the purpose of the judge's service with the Host Court is to assist it in dealing with its workload or in reducing a backlog of cases;
  - 12.2. the time spent by the judge during an exchange visit should count as part of his or her judicial service in the Home Court and not count as leave from that Court;

- 12.3. the costs of travel from the Home Court's jurisdiction to the Host Court's jurisdiction should be met by the Home Court unless the purpose of the judge's service with the Host Court is to assist with its workload or to reduce a backlog;
  - 12.4. accommodation in the jurisdiction of the Host Court will ordinarily be provided by the Host Court although this may be done by house swap arrangements between judges;
  - 12.5. the travel cost of a judge's spouse and children to the jurisdiction of the Host Court should be met by the judge although it may be subsidised where the primary purpose of the visiting judge's service is to assist the Host Court with its workload and in reducing a backlog.
13. The duration of the appointment of a judge to the Host Court under an arrangement made pursuant to this protocol and the number of cases in which he or she is assigned to sit, should leave enough time for the judge to deliver all judgments during his or her service with the Host Court.
  14. The Host Court should provide for the visiting judge chambers and access to secretarial services as well as an associate where the judge is sitting alone.