

## CURRICULUM VITAE

Name: Mr Bernard Michael MURPHY

Address:



Date of birth:

Present position: Chair, Maurice Blackburn, Lawyers (since 2005)

### Educational and professional qualifications:

Bachelor of Laws, Monash University, 1978

Bachelor of Jurisprudence, Monash University, 1978

Admitted, Solicitor, Supreme Court of Victoria and High Court of Australia, 1980

Admitted, Solicitor, Supreme Court of Western Australia, 1987

Admitted, Solicitor, Supreme Court of New South Wales, 1989

### Relevant experience:

2009 to date	Chair, pro bono Social Justice Practice, Maurice Blackburn, Lawyers
2007 to date	Senior Fellow and Lecturer, University of Melbourne Law School
2005 to date:	Chair, Maurice Blackburn, Lawyers
1996 to date:	Lawyer, Maurice Blackburn, Lawyers
1990 – 1995:	Senior Partner, Slater and Gordon, Lawyers
1980 – 1990:	Lawyer, Slater and Gordon, Lawyers

### Current Board Memberships:

2011:	Member, University of Melbourne Law School, Competition Law Roundtable
2010 to date:	Member, Discovery Advisory Committee, Australian Law Reform Commission
2010:	Member, Department of Treasury Roundtable
2006 to date:	Board member and then Vice President, Childrens' Protection Society

CABINET-IN-CONFIDENCE

RELEASED UNDER THE FOI ACT 1982 BY THE ATTORNEY-GENERAL'S DEPARTMENT

CABINET-IN-CONFIDENCE

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RELEASED UNDER THE FOI ACT 1982 BY THE ATTORNEY-GENERAL'S DEPARTMENT

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ATTORNEY-GENERAL  
THE HON ROBERT McCLELLAND MP

**CABINET-IN-CONFIDENCE**

11/791-04

Senator the Hon Penny Wong  
Minister for Finance and Deregulation  
Parliament House  
CANBERRA ACT 2600

24 FEB 2011

Dear Minister

[Redacted]

S34(3)

[Redacted] The responsibility for this Act formally transferred to the Minister for Finance and Deregulation with the amendment of the Administrative Arrangements Order, on 6 May 2010. Accordingly, I consider it appropriate to draw your attention to the proposed appointments.

S34(3)

[Redacted] The action officer for this matter in my Department is Claire McAlister who can be contacted on (02) 6141 3094.

Yours sincerely

Robert McClelland

**CABINET-IN-CONFIDENCE**

## CURRICULUM VITAE

Name: Mr Bernard Michael MURPHY

Address:



Date of birth:

Present position: Chair, Maurice Blackburn, Lawyers (since 2005)

### Educational and professional qualifications:

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Admitted, Solicitor, Supreme Court of Western Australia, 1987

Admitted, Solicitor, Supreme Court of New South Wales, 1989

### Relevant experience:

2009 to date Chair, pro bono Social Justice Practice, Maurice Blackburn, Lawyers

2007 to date Senior Fellow and Lecturer, University of Melbourne Law School

2005 to date: Chair, Maurice Blackburn, Lawyers

1996 to date: Lawyer, Maurice Blackburn, Lawyers

1990 – 1995: Senior Partner, Slater and Gordon, Lawyers

1980 – 1990: Lawyer, Slater and Gordon, Lawyers

### Current Board Memberships:

2011: Member, University of Melbourne Law School, Competition Law Roundtable

2010 to date: Member, Discovery Advisory Committee, Australian Law Reform Commission

2010: Member, Department of Treasury Roundtable

2006 to date: Board member and then Vice President, Childrens' Protection Society



## CABINET-IN-CONFIDENCE

**Background**

On 20 September 2010, under SB10/2524, you agreed to an appointments process for the Sydney and Melbourne registries of the Federal Court of Australia. The advisory panel provided for your consideration the names of highly suitable candidates for both Sydney and Melbourne registries. On 24 December 2010, we were notified that you indicated your support for the appointment of [REDACTED] and Mr Bernard Murphy (Melbourne) as judges of the Court. [REDACTED]

[REDACTED] On 27 January 2011, you indicated your support for Mr Alan Robertson SC for appointment to the Sydney registry. Mr Murphy and Mr Robertson were among those assessed by the panel as highly suitable for appointment.

**Consultation**

Internal - media searches were conducted for the two candidates. Nothing adverse has been revealed in relation to these candidates. However, in his capacity as chairman of Maurice Blackburn, Mr Murphy is cited in numerous articles commenting on high profile cases including compensation for Dr Mohamed Haneef and class action cases such as excessive bank fees, Singapore Power and the Black Saturday bush fires, Aristocrat Leisure misstatement of earnings, Roche, BASF, Aventis price fixing of vitamins and the Longford gas explosion.

Mr Murphy has been reported as expressing concern that the class action system is under threat and in need of urgent reform. He is quoted in *the Australian* on 29 July 2005 (**Attachment E**) as follows:

- 'I predict the use of the class action regime will wither unless steps are taken to address the practical difficulties'
- the time wasting tactics of some defendant firms is a major barrier to the administration of justice
- there is a more sinister barrier to claimants' rights from within the judiciary itself
- 'A concern about class actions seems to have taken root with some judges'
- 'many judges may still view class actions as predatory litigation instituted for the advantage of entrepreneurial lawyers'

OUT OF SCOPE

**Sensitivities and Media Implications**

3. The Federal Court will welcome the appointments. Given Mr Murphy's involvement in a number of high profile legal cases, we anticipate that there may be some media interest surrounding his appointment.

CABINET-IN-CONFIDENCE

Appointment of two judges to the Federal Court of Australia

F0f-9

Sub No: 307  
File No: 11/791-04

CABINET-IN-CONFIDENCE



Australian Government  
Attorney-General's Department

22 FEB 2011

ATTORNEY-GENERAL

Appointment of two judges to the Federal Court of Australia

S34(3)

**Key Issues:** On 20 September 2010, under SB10/2524, you agreed to an appointments process for the Sydney and Melbourne registries of the Federal Court of Australia. On 24 December 2010 and 27 January 2011, you indicated your support for the appointment Mr Bernard Murphy (Melbourne) and Mr Alan Robertson SC (Sydney), respectively. Your letter to the Prime Minister, recommending Mr Murphy and Mr Robertson for appointment, is at **Attachment A**.

S34(3)

**AGD Analysis:** 62 new expressions of interest (EOIs) and 34 new nominations were received for the advertised appointment process. In addition, there were 126 candidates considered from the previous appointment process (excluding three candidates that withdrew from the process). Disregarding multiple EOIs and nominations, 211 candidates were considered for appointment.

Mr Murphy and Mr Robertson have provided Private Interests Declarations; both candidates have made disclosures. Declaration forms and further information about the disclosures are at **Attachments C and D**.

S47F(1)

The public notice for this round stated that any appointments made to the Federal Court in the next 12 months may be made from EOIs and nominations received in this round of appointments. At this time, two appointments should be made, one in Sydney and one in Melbourne.

OUT OF SCOPE

**Financial Implications:** Funding for these appointments will come from vacancies left by Ryan J (retires 2 June 2011) and [redacted]. The Court has indicated that it can fund the two appointments from its current appropriation until these vacancies arise.

**Recommendation:** I recommend that you sign the attached letter to the Prime Minister proposing the appointment of Mr Bernard Murphy and Mr Alan Robertson SC as judges of the Federal Court of Australia and the letter to the Minister for Finance and Deregulation advising her of the possible increase to the Government's liability under the *Judges' Pensions Act 1968*.

Signed / Not Signed / Discuss

Albin Smrdel  
Assistant Secretary, Federal Courts Branch  
6141 3115  
17/2/2011

Attorney-General  
22/2/2011

Cleared by:

Matt Minogue  
17/2/2011

Elizabeth Kelly  
19/2/2011

Roger Wilkins AO  
21/2/2011

Action Officer: Paul Smith, (02) 6141 3104 and Claire McAlister, (02) 6141 3094

11/791-04

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CABINET-IN-CONFIDENCE

S34(1)(a)

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CABINET-IN-CONFIDENCE

CABINET-IN-CONFIDENCE

OUT OF SCOPE

Curricula vitae for Mr Murphy and Mr Robertson are at **Attachment C.**

Yours sincerely

A handwritten signature in cursive script, appearing to read "R. McClelland", written in dark ink.

Robert McClelland

CABINET-IN-CONFIDENCE

CABINET-IN-CONFIDENCE

The panel provided for my consideration, the names of highly suitable candidates for both Melbourne and Sydney registries. Mr Murphy and Mr Robertson were amongst those assessed as highly suitable for appointment.

S47F(1)

Mr Bernard Murphy is [redacted] and is qualified for appointment. He holds a Bachelor of Laws and a Bachelor of Jurisprudence from Monash University and was admitted as a solicitor to the Supreme Court of Victoria and the High Court of Australia in 1980. In 1987 he was admitted as a solicitor to the Supreme Court of Western Australia followed by admission as a solicitor of the Supreme Court of New South Wales in 1989.

From 1980 until 1995 Mr Murphy worked as a solicitor at Slater and Gordon Lawyers and was appointed senior partner in 1990. In 1996 he began working as a solicitor at Maurice Blackburn Lawyers where he is now Chairman (appointed 2005) and Senior Principal of its Major Projects and Class Actions department. He was also appointed chair of the pro bono Social Justice Practice at Maurice Blackburn Lawyers.

Since 1998 Mr Murphy has specialised in commercial class action litigation involving interlocutory, trial and appellate proceedings in the Supreme Courts of Victoria and NSW, the Federal Court of Australia and the High Court of Australia.

Mr Murphy is a Senior Fellow and Lecturer at Melbourne University in Class Action Law and is vice president of the Childrens' Protection Society. He is also a member of the Discovery Advisory Committee of the Australian Law Reform Commission and a Department of Treasury Roundtable.

S47F(1)

at the time. However, I do not consider this to be sufficient reason to preclude Mr Murphy's appointment.

CABINET-IN-CONFIDENCE





ATTORNEY-GENERAL  
THE HON ROBERT McCLELLAND MP

CABINET-IN-CONFIDENCE

11/791-04

COPY

original and  
enclosures  
dispatched  
from AGO.

The Hon Julia Gillard MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

24 FEB 2011

Dear Prime Minister

S34(3)

Judicial appointments to the Federal Court are made by the Governor-General under section 72 of the *Constitution* and section 6 of the *Federal Court of Australia Act 1976*.

Mr Murphy will be appointed to the Melbourne registry and Mr Robertson will be appointed to the Sydney registry of the Court.

As you are aware, I have put in place a transparent process for all judicial appointments. Public notices for vacancies in the Federal Court appeared in the *Weekend Australian*, *Sydney Morning Herald* and *The Age* on Saturday 25 September 2010 and the *Australian Financial Review* on Friday 1 October 2010, seeking expressions of interest and nominations to the Federal Court of Australia in Sydney and Melbourne. I also wrote to a range of individuals and bodies seeking the names of people they consider suitable for appointment.

I established a panel to assess candidates and nominees against the published appointment criteria and provide me with the names of highly suitable candidates. This involved consideration of both male and female persons who might be recommended for appointment to the positions. The panel comprised former High Court Chief Justice Sir Gerard Brennan AC KBE, Chief Justice Patrick Keane, acting New South Wales Supreme Court Justice Jane Mathews, and Ms Elizabeth Kelly, Deputy Secretary, Civil Justice and Legal Services Group, of my Department. There were 62 new expressions of interest and 34 new nominations received. In addition, there were 126 candidates for consideration from the previous appointment process. Disregarding multiple expressions of interest and nominations, a total of 211 candidates were considered for appointment.

CABINET-IN-CONFIDENCE

**McAlister, Claire**

---

**From:** McAlister, Claire  
**Sent:** Monday, 21 March 2011 11:03 am  
**To:** Post, Katherine  
**Cc:** Smrdel, Albin; Prunster, Susan  
**Subject:** Federal Court appointments [SEC=IN-CONFIDENCE:APPOINTMENTS]

**Security Classification:** APPOINTMENTS-IN-CONFIDENCE

**APPOINTMENTS-IN-CONFIDENCE**

Good morning Kat

Federal Courts appointments should be going to Cabinet today.

Draft documents for ExCo are due 30/3 so there's time for the candidates to negotiate start dates with Court (not our usual mad rush!!!).

Contact phone numbers for the candidates are as follows:

Mr Bernard Murphy –

Mr Alan Robertson SC –

Kind regards

Claire

**Claire McAlister**

Judicial Appointments Administrator  
Federal Courts Branch  
Access to Justice Division  
Attorney-General's Department  
Robert Garran Offices | National Circuit | Barton ACT 2600  
Ph: 6141 3094 | [claire.mcalister@ag.gov.au](mailto:claire.mcalister@ag.gov.au)

**Mr Bernard Murphy**

Mr Murphy holds a Bachelor of Laws and a Bachelor of Jurisprudence from Monash University and was admitted as a solicitor to the Supreme Court of Victoria and the High Court of Australia in 1980. From 1980 until 1995, Mr Murphy worked as a solicitor at Slater and Gordon Lawyers and was appointed senior partner in 1990. In 1996, he began working as a solicitor at Maurice Blackburn Lawyers where he is now Chairman (appointed 2005) and Senior Principal of its Major Projects and Class Actions department. Since 1998, Mr Murphy has specialised in commercial class action litigation involving interlocutory, trial and appellate proceedings in the Supreme Courts of Victoria and NSW, the Federal Court of Australia and the High Court of Australia. Mr Murphy is a Senior Fellow and Lecturer at Melbourne University in Class Action Law and is vice president of the Children's Protection Society.



DRAFT MEDIA RELEASE TEMPLATE FOR THE ATTORNEY GENERAL

This template should be used for preparing draft media releases.

The Department's Media Management Guidelines provide advice on preparing media releases.  
<http://agnet.ag.gov.au/mediaguidelines>

Please email drafts to [mediaAGD@ag.gov.au](mailto:mediaAGD@ag.gov.au)

Program contact:  
Cleared in Public Affairs by:

**APPOINTMENTS TO THE  
FEDERAL COURT OF AUSTRALIA**

Attorney-General, Robert McClelland, today announced two appointments to the Federal Court of Australia.

"It is with great pleasure that I announce the appointment of Mr Bernard Murphy and Mr Alan Robertson SC as judges of the Federal Court."

Mr Murphy is Chairman of Maurice Blackburn Lawyers and has specialised in commercial class action litigation since 1998. Mr Robertson is a New South Wales barrister, who was appointed Senior Counsel in 1995 and specialises in constitutional and administrative law and appeals.

Mr Murphy will take up his appointment at the Melbourne registry in June and Mr Robertson will commence at the Sydney registry this month.

The response to the public notice inviting expressions of interest and nominations, combined with candidates considered in a previous appointments round for Sydney and Melbourne, resulted in over 200 candidates being assessed by the advisory panel. The advisory panel comprised Chief Justice Patrick Keane, Sir Gerard Brennan AC KBE, the Hon Acting Justice Jane Mathews AO and a senior official of the Attorney-General's Department.

"I congratulate the two appointees and look forward to the contribution each will make to the law in their new capacity", Mr McClelland said, "I would like to thank the members of the advisory panel for their continued contribution to the judicial appointment process".

Short professional biographies for the appointees are attached.

Media Contact: Ryan Liddell



11/791-03

11 # 239008 doc

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**From:** McAlister, Claire

**Sent:** Tuesday, 29 March 2011 11:16 am

**To:** Post, Katherine

**Cc:** Smrdel, Albin

**Subject:** FedCA and FMC appointments [SEC=IN-CONFIDENCE:APPOINTMENTS]

**APPOINTMENTS-IN-CONFIDENCE**

**APPOINTMENTS-IN-CONFIDENCE**

Hi Kat

I just received news that the FedCA appointments got through Cabinet last night. Very good news!

So now we have FedCA and FMC appointments to go to ExCo.

ExCo drafts are due to the Secretariat by tomorrow. I have already sent them over for clearance (with the appointment dates left blank).

Deadline for finals to ExCo is 1 April – this Friday. If I get the two subs and docs to you by Thursday will the A-G be available to sign them? I will need the start dates for the three candidates to be able to complete these documents. Kat, if the A-G does not have time to make the phone calls to the heads of court and the candidates, perhaps Elizabeth or Albin could make the calls and the A-G could then call the candidates after ExCo. Just let me know if we can help.

Kind regards

Claire

**Claire McAlister**

Judicial Appointments Administrator

Federal Courts Branch

Access to Justice Division

Attorney-General's Department

Robert Garran Offices | National Circuit | Barton ACT 2600

Ph: 6141 3094 | [claire.mcalister@ag.gov.au](mailto:claire.mcalister@ag.gov.au)

**McAlister, Claire**

---

**From:** Post, Katherine  
**Sent:** Tuesday, 29 March 2011 12:38 pm  
**To:** McAlister, Claire  
**Cc:** Smrdel, Albin  
**Subject:** RE: FedCA and FMC appointments [SEC=IN-CONFIDENCE:APPOINTMENTS]

**Security Classification:** APPOINTMENTS-IN-CONFIDENCE

**APPOINTMENTS-IN-CONFIDENCE**

Great – thanks Claire

Kat

---

**From:** McAlister, Claire  
**Sent:** Tuesday, 29 March 2011 12:21 pm  
**To:** Post, Katherine  
**Cc:** Smrdel, Albin  
**Subject:** RE: FedCA and FMC appointments [SEC=IN-CONFIDENCE:APPOINTMENTS]

**APPOINTMENTS-IN-CONFIDENCE**

Kat - I have just seen Elizabeth and she is happy to make the calls. I let her know that I need to know start dates by about noon tomorrow so I can get the subs up to you.

Claire

---

**From:** Post, Katherine  
**Sent:** Tuesday, 29 March 2011 11:31 am  
**To:** McAlister, Claire  
**Cc:** Smrdel, Albin  
**Subject:** RE: FedCA and FMC appointments [SEC=IN-CONFIDENCE:APPOINTMENTS]

**APPOINTMENTS-IN-CONFIDENCE**

Hi Claire

With the Attorney's diary at the moment, it would be preferable if Elizabeth or Albin could make the calls please so that the start dates can be sorted out ASAP.

In order to get the ExCo docs signed and returned to Canberra by COB Friday, I would need to receive them in the office by COB Wednesday at the latest – will this be possible?

Thanks  
Kat

---

Katherine Post  
Adviser  
Office of the Hon Robert McClelland MP

11/791-03

11 # 254429.doc

ATTACHMENT

X

## CURRICULUM VITAE

Name: Mr Bernard Michael MURPHY

Address:

Date of birth:

Present position: Chair, Maurice Blackburn, Lawyers (since 2005)

Educational and professional qualifications:

Bachelor of Laws, Monash University, 1978

Bachelor of Jurisprudence, Monash University, 1978

Admitted, Solicitor, Supreme Court of Victoria and High Court of Australia, 1980

Admitted, Solicitor, Supreme Court of Western Australia, 1987

Admitted, Solicitor, Supreme Court of New South Wales, 1989

Relevant experience:

2009 to date	Chair, pro bono Social Justice Practice, Maurice Blackburn, Lawyers
2007 to date	Senior Fellow and Lecturer, University of Melbourne Law School
2005 to date:	Chair, Maurice Blackburn, Lawyers
1996 to date:	Lawyer, Maurice Blackburn, Lawyers
1990 – 1995:	Senior Partner, Slater and Gordon, Lawyers
1980 – 1990:	Lawyer, Slater and Gordon, Lawyers

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2011:	Member, University of Melbourne Law School, Competition Law Roundtable
2010 to date:	Member, Discovery Advisory Committee, Australian Law Reform Commission
2010:	Member, Department of Treasury Roundtable
2006 to date:	Board member and then Vice President, Childrens' Protection Society

1. Mr Murphy satisfies the requirements for appointment as a Judge of the Federal Court of Australia specified at subsection 6(2) of the *Federal Court of Australia Act 1976*, by virtue of having been enrolled as a legal practitioner of the High Court of Australia, the Supreme Court of Victoria, the Supreme Court of Western Australia and the Supreme Court of New South Wales for not less than five years.
2. Mr Robertson satisfies the requirements for appointment as a Judge of the Federal Court of Australia specified at subsection 6(2) of the *Federal Court of Australia Act 1976*, by virtue of having been enrolled as a legal practitioner of the Supreme Court of the Australian Capital Territory and the Supreme Court of New South Wales for not less than five years.

.....  
Attorney-General

Authority - Section 72 of the *Constitution* and subsection 6(1) of the *Federal Court of Australia Act 1976*

Fit to two  
pages by  
removing  
some of the  
background on  
the appointees.



From 1980 until 1995 Mr Murphy worked as a solicitor at Slater and Gordon Lawyers and was appointed senior partner in 1990. In 1996 he began working as a solicitor at Maurice Blackburn Lawyers where he is now Chairman (appointed 2005) and Senior Principal of its Major Projects and Class Actions department. He was also appointed chair of the pro bono Social Justice Practice at Maurice Blackburn Lawyers. *m 2009*

Since 1998 Mr Murphy has specialised in commercial class action litigation involving interlocutory, trial and appellate proceedings in the Supreme Courts of Victoria and New South Wales, the Federal Court of Australia and the High Court of Australia.

Mr Murphy is a Senior Fellow and Lecturer at the University of Melbourne in Class Action Law and is vice president of the Children's Protection Society. He is also a member of the Discovery Advisory Committee of the Australian Law Reform Commission and a Department of Treasury Roundtable.

OUT OF SCOPE

*included in the*  
Curricula vitae for the proposed appointees are ~~at~~ Attachment A.

The Minute recommends that the appointments be made in the form proposed.

## EXPLANATORY MEMORANDUM

Minute No. \_\_\_\_\_ of 2011 - Attorney-General

Subject- *The Constitution*  
*Federal Court of Australia Act 1976*  
*two*  
Appointment of Judges of the Federal Court of Australia

Section 72 of the *Constitution* provides that the Justices of the High Court, and of the other courts created by the Parliament, shall be appointed by the Governor-General in Council. The Federal Court of Australia is a court created by the Parliament for the purpose of this provision.

Section 72 of the *Constitution* also provides that the appointment of a Justice of a court created by the Parliament shall be for a term expiring upon his attaining the age that is, at the time of his appointment, the maximum age for Justices of that court. A person shall not be appointed as a Justice of such a court if he has attained the age that is for the time being the maximum age for Justices of that court. The section further provides that, in the absence of other provision by Parliament, the maximum age for Justices of any court created by the Parliament is 70 years.

Subsection 5(3) of the *Federal Court of Australia Act 1976* (the Act) provides that the Court consists of a Chief Justice, and such other Judges as from time to time hold office in accordance with the Act.

Subsection 6(1) of the Act provides that a Judge of the Court shall be appointed by the Governor-General by commission.

Subsection 6(2) of the Act provides that a person shall not be appointed as a Judge unless he or she is or has been a Judge of a prescribed court or of a court of a state or has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a state or territory for not less than five years.

The Minute proposes the appointment of each of the following persons as a Judge of the Federal Court of Australia until each attains the age of 70 years:

- (a) Mr Bernard Michael Murphy<sup>1</sup> from XX 2011; and
- (b) Mr Alan Robertson<sup>2</sup> from XX 2011.

Subsection 6(3) of the Act provides the commission of appointment must assign the Judge to a particular location. Mr Murphy will be assigned to the Melbourne Registry and Mr Robertson will be assigned to the Sydney Registry.

Mr Bernard Murphy is [ ] and is qualified for appointment. He holds a Bachelor of Laws and a Bachelor of Jurisprudence from Monash University and was admitted as a solicitor to the Supreme Court of Victoria and the High Court of Australia in 1980. In 1987 he was admitted as a solicitor to the Supreme Court of Western Australia followed by admission as a solicitor of the Supreme Court of New South Wales in 1989.

*The Constitution*

*Federal Court of Australia Act 1976*

**COMMISSION OF APPOINTMENT OF A JUDGE  
OF THE FEDERAL COURT OF AUSTRALIA**

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 72 of the *Constitution* and subsection 6(1) of the *Federal Court of Australia Act 1976*, appoint

**BERNARD MICHAEL MURPHY**

to be a Judge of the Federal Court of Australia assigned to the Melbourne Registry, beginning on 7 December 2011 until he attains the age of 70 years.

Signed and sealed with the  
Great Seal of Australia on  
2011

Governor-General

By Her Excellency's Command

ROBERT McCLELLAND  
Attorney-General





## ATTORNEY-GENERAL

Departmental No. ....

### Minute Paper for the Executive Council

#### Subject

Executive Council  
Meeting No. ....

#### *The Constitution*

#### *Federal Court of Australia Act 1976*

#### Appointment of two Judges of the Federal Court of Australia

Recommended for the approval of Her Excellency the Governor-General in Council that, by Commission in the attached form and under section 72 of the *Constitution* and subsection 6(1) of the *Federal Court of Australia Act 1976*, she appoint:

Approved in Council

- (a) Bernard Michael Murphy to be a Judge of the Federal Court of Australia, beginning on 7 December 2011 until he attains the age of 70 years; and
- (b) Alan Robertson SC to be a Judge of the Federal Court of Australia, beginning on 7 December 2011 until he attains the age of 70 years.

Quentin Bryce  
Governor-General

Robert McClelland  
Attorney-General

Filed in the Records  
of the Council

Secretary to the Executive Council

## McAlister, Claire

---

**From:** Exco <Exco@pmc.gov.au>  
**Sent:** Tuesday, 29 March 2011 11:38 am  
**To:** McAlister, Claire  
**Subject:** RE: draft papers for 2 Federal Court appointments [SEC=IN-CONFIDENCE]  
**Attachments:** ag0329B.pdf  
**Categories:** TRIM THIS

Hi Claire,

Attached, please find our suggested changes. But they're all fairly minor so provided you're happy to make them, I don't think that we need to see the papers again. But let me know if you have any questions about our suggestions.

-----Original Message-----

**From:** McAlister, Claire [<mailto:Claire.McAlister@ag.gov.au>]  
**Sent:** Monday, 28 March 2011 3:28 PM  
**To:** Exco  
**Subject:** draft papers for 2 Federal Court appointments [SEC=IN-CONFIDENCE:APPOINTMENTS]

APPOINTMENTS-IN-CONFIDENCE  
Good afternoon ExCo Secretariat

Please find attached the draft documents for your comment for the appointment of two Federal Court judges. This appointment is being considered by Cabinet this afternoon. Start dates are not yet known.

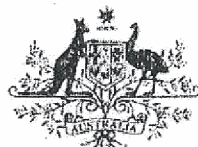
Kind regards

Claire

Claire McAlister  
Judicial Appointments Administrator  
Federal Courts Branch  
Access to Justice Division  
Attorney-General's Department  
Robert Garran Offices National Circuit Barton ACT 2600  
Ph: 6141 3094 [claire.mcalister@ag.gov.au](mailto:claire.mcalister@ag.gov.au)

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ATTORNEY-GENERAL  
THE HON ROBERT McCLELLAND MP

11/791-03

The Hon Patrick Keane  
Chief Justice  
Federal Court of Australia  
Harry Gibbs Commonwealth  
Law Courts Building  
Level 8, 119 North Quay  
BRISBANE QLD 4000

Dear Chief Justice

I am writing to advise you formally that the Governor-General has appointed Mr Bernard Murphy and Mr Alan Robertson SC as judges of the Federal Court of Australia.

I enclose a copy of their Commissions of Appointment for your information.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Robert McClelland', written in a cursive style.

Robert McClelland



ATTORNEY-GENERAL  
THE HON ROBERT McCLELLAND MP

11/791-03

Mr Bernard Murphy



*Bernard*  
Dear Mr Murphy

Please accept my congratulations and good wishes on your appointment as a Judge of the Federal Court of Australia.

I have pleasure in enclosing your Commission of Appointment.

Yours sincerely

A handwritten signature in ink, appearing to read 'Robert McClelland'.

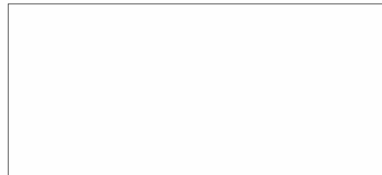
Robert McClelland

ATTACHMENT

CURRICULUM VITAE

Name: Mr Bernard Michael MURPHY

Address:



Date of birth:

Present position: Chair, Maurice Blackburn, Lawyers (since 2005)

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From 1980 until 1995, Mr Murphy worked as a solicitor at Slater and Gordon Lawyers and was appointed senior partner in 1990. In 1996, he began working as a solicitor at Maurice Blackburn Lawyers where he is now Chairman (appointed 2005) and Senior Principal of its Major Projects and Class Actions department. He was also appointed chair of the pro bono Social Justice Practice at Maurice Blackburn Lawyers in 2009.

Since 1998, Mr Murphy has specialised in commercial class action litigation involving interlocutory, trial and appellate proceedings in the Supreme Courts of Victoria and New South Wales, the Federal Court of Australia and the High Court of Australia.

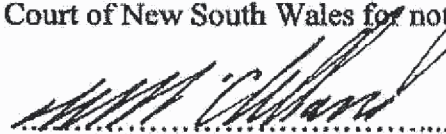
Mr Murphy is a Senior Fellow and Lecturer at the University of Melbourne in Class Action Law and is vice president of the Children's Protection Society. He is also a member of the Discovery Advisory Committee of the Australian Law Reform Commission and a Department of Treasury Roundtable.

OUT OF SCOPE

Curricula vitae for the proposed appointees are included in the Attachment.

The Minute recommends that the appointments be made in the form proposed.

1. Mr Murphy satisfies the requirements for appointment as a Judge of the Federal Court of Australia specified at subsection 6(2) of the *Federal Court of Australia Act 1976*, by virtue of having been enrolled as a legal practitioner of the High Court of Australia, the Supreme Court of Victoria, the Supreme Court of Western Australia and the Supreme Court of New South Wales for not less than five years.
2. Mr Robertson satisfies the requirements for appointment as a Judge of the Federal Court of Australia specified at subsection 6(2) of the *Federal Court of Australia Act 1976*, by virtue of having been enrolled as a legal practitioner of the Supreme Court of the Australian Capital Territory and the Supreme Court of New South Wales for not less than five years.



.....  
Attorney-General

Authority - Section 72 of the *Constitution* and subsection 6(1) of the *Federal Court of Australia Act 1976*

## EXPLANATORY MEMORANDUM

Minute No. 11 of 2011 - Attorney-General

Subject- *The Constitution*  
*Federal Court of Australia Act 1976*

### Appointment of two Judges of the Federal Court of Australia

Section 72 of the *Constitution* provides that the Justices of the High Court, and of the other courts created by the Parliament, shall be appointed by the Governor-General in Council. The Federal Court of Australia is a court created by the Parliament for the purpose of this provision.

Section 72 of the *Constitution* also provides that the appointment of a Justice of a court created by the Parliament shall be for a term expiring upon his attaining the age that is, at the time of his appointment, the maximum age for Justices of that court. A person shall not be appointed as a Justice of such a court if he has attained the age that is for the time being the maximum age for Justices of that court. The section further provides that, in the absence of other provision by Parliament, the maximum age for Justices of any court created by the Parliament is 70 years.

Subsection 5(3) of the *Federal Court of Australia Act 1976* (the Act) provides that the Court consists of a Chief Justice, and such other Judges as from time to time hold office in accordance with the Act.

Subsection 6(1) of the Act provides that a Judge of the Court shall be appointed by the Governor-General by commission.

Subsection 6(2) of the Act provides that a person shall not be appointed as a Judge unless he or she is or has been a Judge of a prescribed court or of a court of a state or has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a state or territory for not less than five years.

The Minute proposes the appointment of each of the following persons as a Judge of the Federal Court of Australia until each attains the age of 70 years:

- (a) Mr Bernard Michael Murphy<sup>1</sup> from 13 June 2011; and
- (b) Mr Alan Robertson SC<sup>2</sup> from 18 April 2011.

Subsection 6(3) of the Act provides the commission of appointment must assign the Judge to a particular location. Mr Murphy would be assigned to the Melbourne Registry and Mr Robertson would be assigned to the Sydney Registry.

Mr Murphy is 54 years of age and is qualified for appointment. He holds a Bachelor of Laws and a Bachelor of Jurisprudence from Monash University and was admitted as a solicitor to the Supreme Court of Victoria and the High Court of Australia in 1980. In 1987, he was admitted as a solicitor to the Supreme Court of Western Australia followed by admission as a solicitor of the Supreme Court of New South Wales in 1989.





*The Constitution*

*Federal Court of Australia Act 1976*

**COMMISSION OF APPOINTMENT OF A JUDGE  
OF THE FEDERAL COURT OF AUSTRALIA**

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 72 of the *Constitution* and subsection 6(1) of the *Federal Court of Australia Act 1976*, appoint

**BERNARD MICHAEL MURPHY**

to be a Judge of the Federal Court of Australia assigned to the Melbourne Registry, beginning on 13 June 2011 until he attains the age of 70 years.

Signed and sealed with the  
Great Seal of Australia on

7<sup>th</sup> June 2011



Governor-General

By Her Excellency's Command

ROBERT McCLELLAND  
Attorney-General

ENTERED ON RECORD by me, in Register of Patents No. 46  
this seventh day of April 2011

page 13

Secretary to the Federal Executive Council





## ATTORNEY-GENERAL

Departmental No. .... 11.

Executive Council Meeting No. .... 6

### Minute Paper for the Executive Council

#### Subject

*The Constitution*

*Federal Court of Australia Act 1976*

Appointment of two Judges of the  
Federal Court of Australia

Recommended for the approval of Her Excellency the Governor-General in Council that, by Commission in the attached form and under section 72 of the *Constitution* and subsection 6(1) of the *Federal Court of Australia Act 1976*, she appoint:

Approved in Council

Quentin Bryce

Quentin Bryce  
Governor-General

- 7 APR 2011

Filed in the Records  
of the Council

Chris Angus

Secretary to the Executive Council

- (a) Bernard Michael Murphy to be a Judge of the Federal Court of Australia, beginning 13 June 2011 until he attains the age of 70 years; and
- (b) Alan Robertson SC to be a Judge of the Federal Court of Australia, beginning on 18 April 2011 until he attains the age of 70 years.

Robert McClelland  
Attorney-General

RETURN ALL DOCUMENTS AND LETTERS TO  
ACTION OFFICER FOR DISPATCH

CABINET-IN-CONFIDENCE

EXCO DOCUMENTS

Cut off date is 1/4/11

Return to: Mark Tozer



Australian Government  
Attorney-General's Department

Sub No: 542  
File No: 11/791-03

ATTORNEY-GENERAL

30 MAR 2011

Appointment of Two Judges to the Federal Court of Australia – Executive Council Papers

S34(3)

**Key Issues:** We seek your signature on the attached ExCo documents and letters of congratulations and advice regarding the appointment of Mr Bernard Murphy and Mr Alan Robertson SC as judges of the Federal Court of Australia.

S34(3)

The *Access to Justice (Civil Litigation Reforms) Amendment Act 2009* amended subsection 6(3) of the *Federal Court of Australia Act 1976* (the Act) to provide that the commission of appointment of a Federal Court Judge must assign the Judge to a particular location. The attached commissions of appointment assign Mr Murphy to the Melbourne registry and Mr Robertson to the Sydney registry.

**Consultation:** The draft appointment documents have been cleared by the Executive Council Secretariat.

**Sensitivities and Media Implications:** A media release is being prepared in consultation with Public Affairs Branch and will be forwarded to your office separately.

**Recommendation:** I recommend that you:

- (i) sign the attached:
  - a. Executive Council Minutes, and
  - b. Commissions of Appointment
- (ii) sign and initial the attached Explanatory Memoranda, as indicated
- (iii) initial the attached curricula vitae, as indicated, and
- (iv) sign the letters of congratulations to the appointees and advice to Chief Justice Keane.

Signed / Not signed / Discuss

Signed / Not signed / Discuss

Initialled / Not initialled / Discuss

Signed / Not signed / Discuss

Albin Smrdel  
Assistant Secretary, Federal Courts Branch  
(02) 6141 3115  
30/3/2011

Attorney-General

31/3/2011

Cleared by:

Louise Glanville  
30/3/2011

Action Officer: Claire McAlister 6141 3094

11/791-03

11 # 276262d α

**McAlister, Claire**

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**From:** Kelly, Elizabeth  
**Sent:** Wednesday, 30 March 2011 3:29 pm  
**To:** McAlister, Claire  
**Subject:** Starting date for bernard murphy [SEC=IN-CONFIDENCE]

Classification: IN CONFIDENCE

Keane just advised - will be 13 June - can we prepare instrument accordingly

11/791-03

11 # 254229 doc



Australian Government  
Attorney-General's Department

**FILE NOTE**

Access to Justice Division

11/791-04

30 March 2011

**Cabinet Minute for the appointment of Bernard Murphy and Alan Robertson SC to the Federal Court of Australia**

1. The Cabinet Minute appointing Bernard Michael Murphy (until 3 August 2026) and Alan Robertson SC (until 9 May 2020) was sighted by me on 30 March 2011.
2. The Cabinet Minute number is JG11/9031/CAB/2 and is dated 28 March 2011.

(signed copy in paper file)

Claire McAlister  
Appointments Administrator  
Federal Courts Branch

11/791-04

11 #250128 doc

**Mr Bernard Murphy**

Mr Murphy holds a Bachelor of Laws and a Bachelor of Jurisprudence from Monash University and was admitted as a solicitor to the Supreme Court of Victoria and the High Court of Australia in 1980. From 1980 until 1995, Mr Murphy worked as a solicitor at Slater and Gordon Lawyers and was appointed senior partner in 1990. In 1996, he began working as a solicitor at Maurice Blackburn Lawyers where he is now Chairman (appointed 2005) and Senior Principal of its Major Projects and Class Actions department. Since 1998, Mr Murphy has specialised in commercial class action litigation involving interlocutory, trial and appellate proceedings in the Supreme Courts of Victoria and NSW, the Federal Court of Australia and the High Court of Australia. Mr Murphy is a Senior Fellow and Lecturer at Melbourne University in Class Action Law and is vice president of the Childrens' Protection Society.

**OUT OF SCOPE**

DRAFT MEDIA RELEASE TEMPLATE FOR THE ATTORNEY GENERAL

This template should be used for preparing draft media releases.

The Department's Media Management Guidelines provide advice on preparing media releases.  
<http://agnet.ag.gov.au/mediaguidelines>

Please email drafts to [mediaAGD@ag.gov.au](mailto:mediaAGD@ag.gov.au)

Program contact:  
Cleared in Public Affairs by:

**APPOINTMENTS TO THE  
FEDERAL COURT OF AUSTRALIA**

Attorney-General, Robert McClelland, today announced two appointments to the Federal Court of Australia.

"It is with great pleasure that I announce the appointment of Mr Bernard Murphy and Mr Alan Robertson SC as judges of the Federal Court."

Mr Murphy is Chairman of Maurice Blackburn Lawyers and has specialised in commercial class action litigation since 1998. Mr Robertson is a New South Wales barrister, who was appointed Senior Counsel in 1995 and specialises in constitutional and administrative law and appeals.

Mr Murphy will take up his appointment at the Melbourne registry in June and Mr Robertson will commence at the Sydney registry this month.

The response to the public notice inviting expressions of interest and nominations, combined with candidates considered in a previous appointments round for Sydney and Melbourne, resulted in over 200 candidates being assessed by the advisory panel. The advisory panel comprised Chief Justice Patrick Keane, Sir Gerard Brennan AC KBE, the Hon Acting Justice Jane Mathews AO and a senior official of the Attorney-General's Department.

"I congratulate the two appointees and look forward to the contribution each will make to the law in their new capacity", Mr McClelland said, "I would like to thank the members of the advisory panel for their continued contribution to the judicial appointment process".

Short professional biographies for the appointees are attached.

**Media Contact: Ryan Liddell**



**McAlister, Claire**

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**From:** McAlister, Claire  
**Sent:** Monday, 4 April 2011 10:14 am  
**To:** Public Affairs  
**Cc:** Prunster, Susan  
**Subject:** draft media release - Federal Court of Australia appointments [SEC=IN-CONFIDENCE:APPOINTMENTS]  
**Attachments:** FCB - Federal Court appointment - Sydney and Melbourne - media release - draft media release.doc

**Security Classification:** APPOINTMENTS-IN-CONFIDENCE

**APPOINTMENTS-IN-CONFIDENCE**

Good morning

Please find attached a draft media release regarding appointments to the Federal Court, for your comment.

Please note – these appointments are not due for ExCo consideration until Thursday, 7 April 2011.

Kind regards

**Claire McAlister**

Judicial Appointments Administrator  
Federal Courts Branch  
Access to Justice Division  
Attorney-General's Department  
Robert Garran Offices | National Circuit | Barton ACT 2600  
Ph: 6141 3094 | [claire.mcalister@ag.gov.au](mailto:claire.mcalister@ag.gov.au)

11/791-03

11 # 260176doc

**McAlister, Claire**

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**From:** Hyland, Naomi  
**Sent:** Tuesday, 5 April 2011 1:07 pm  
**To:** McAlister, Claire  
**Cc:** Swinbourn, Kaitlyn; Curry, David; Weir, Annie; Heffernan, Tracy; Prunster, Susan  
**Subject:** RE: draft media release - Federal Court of Australia appointments [SEC=IN-CONFIDENCE:APPOINTMENTS]  
**Attachments:** PA097\_11 APPOINTMENTS TO THE FEDERAL COURT OF AUSTRALIA.doc  
**Security Classification:** APPOINTMENTS-IN-CONFIDENCE

**APPOINTMENTS-IN-CONFIDENCE**

Hi again Claire,

I've made some suggested changes to this release as well – can you please review and provide clearance?

Thanks,

**Naomi Hyland** | Media and Crisis Communications | National Security Media  
Public Affairs Branch | Australian Government Attorney-General's Department  
t. +612 6141 2511 | e. [naomi.hyland@ag.gov.au](mailto:naomi.hyland@ag.gov.au)

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**From:** Public Affairs  
**Sent:** Monday, 4 April 2011 11:48 AM  
**To:** Media AGD  
**Subject:** FW: draft media release - Federal Court of Australia appointments [SEC=IN-CONFIDENCE:APPOINTMENTS]

**APPOINTMENTS-IN-CONFIDENCE**

For action.

Thanks

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**From:** McAlister, Claire  
**Sent:** Monday, 4 April 2011 10:14 AM  
**To:** Public Affairs  
**Cc:** Prunster, Susan  
**Subject:** draft media release - Federal Court of Australia appointments [SEC=IN-CONFIDENCE:APPOINTMENTS]

**APPOINTMENTS-IN-CONFIDENCE**

Good morning

Please find attached a draft media release regarding appointments to the Federal Court, for your comment.

Please note – these appointments are not due for ExCo consideration until Thursday, 7 April 2011.

Kind regards

11/791-03  
267596 FOI-40



## McAlister, Claire

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**From:** Hyland, Naomi  
**Sent:** Wednesday, 6 April 2011 8:44 am  
**To:** Liddell, Ryan  
**Cc:** McAlister, Claire; Prunster, Susan; Swinbourn, Kaitlyn; Heffernan, Tracy; Weir, Annie; Curry, David; Close, Margaret  
**Subject:** TRIM: MEDIA RELEASES: Appointment to the Federal Court of Australia / Appointment to the Federal Magistrates Court of Australia [SEC=UNCLASSIFIED]  
**Attachments:** PA097\_11 APPOINTMENT TO THE FEDERAL COURT OF AUSTRALIA.doc; PA098\_11 APPOINTMENT TO THE FEDERAL MAGISTRATES COURT OF AUSTRALIA.doc  
**Security Classification:** UNCLASSIFIED

### UNCLASSIFIED

Hi Ryan,

Please find attached two releases about upcoming appointments -

Please note – these appointments are not due for ExCo consideration until tomorrow (Thursday, 7 April 2011).

The Department contact is Claire McAllister (6141 3094) – Claire will contact the Office as soon as the appointments have been formally announced. The Adviser is Margaret Close.

Thanks,

**Naomi Hyland** | Media and Crisis Communications | National Security Media  
Public Affairs Branch | Australian Government Attorney-General's Department  
t. +612 6141 2511 | e. [naomi.hyland@ag.gov.au](mailto:naomi.hyland@ag.gov.au)

11/791-03

11 # 267512doc