



# ACT BAR ASSOCIATION

## SENIOR COUNSEL PROTOCOL

The principles governing the selection, and appointment, of those to be designated as Senior Counsel by the President of the Bar Association are as follows:

1. The designation as Senior Counsel of certain practising barristers by the President of the Bar Association, in accordance with the following principles and under the following system, is intended to serve the public interest.
2. The designation of Senior Counsel provides a public identification of barristers whose standing and achievements justify an expectation, on the part of those who may need their services, as well as on the part of the judiciary and the public, that they can provide outstanding services as independent barristers of the private bar, for the good of the administration of justice.
3. Appointment as Senior Counsel should be restricted to Local Practising Barristers, Ordinary Members Class A, with acknowledgment of the importance of the work performed by way of giving advice as well as appearing in or sitting on courts and other tribunals and conducting or appearing in alternative dispute resolution, including arbitrations and mediations.

## ESSENTIAL CRITERIA

4. The system for the designation of Senior Counsel must be administered so as to restrict appointment to those counsel whose achievement of the qualities set out below displays, and foreshadows their ability to provide exceptional service as advocates and advisers in the administration of justice.
5. The qualities required to a high degree before appointment as Senior Counsel are:

- a. **learning:** Senior Counsel must be learned in the law so as to provide sound guidance to their clients and to assist in the judicial interpretation and development of the law.
- b. **skill:** Senior Counsel must be skilled in the presentation and testing of litigants' cases, so as to enhance the likelihood of just outcomes in adversarial proceedings.
- c. **integrity** and honesty: Senior Counsel must be worthy of confidence and implicit trust by the judiciary and their colleagues at all times, so as to advance the open, fair and efficient administration of justice.
- d. **independence:** Senior Counsel must be committed to the discharge of counsel's duty to the court, especially in cases where that duty may conflict with clients' interests.
- e. **disinterestedness:** Senior Counsel who are in private practice must honour the cab-rank rules; namely, the duty to accept briefs to appear for which they are competent and available, regardless of any personal opinions of the parties or the causes, and subject only to exceptions related to appropriate fees and conflicting obligations.
- f. **diligence:** Senior Counsel must have the capacity and willingness to devote themselves to the vigorous advancement of the clients' interests.
- g. **experience:** Senior Counsel must have the perspective and knowledge of legal practice acquired over a considerable period.

During this time it is expected (without being exhaustive) that the applicants' practices will demonstrate some or all of the following:

- (i) experience in arguing cases on appeal;
- (ii) a position of leadership in a specialist jurisdiction;
- (iii) experience in conducting major cases in which the other party is represented by Senior Counsel;
- (iv) experience in conducting cases with a junior;
- (v) considerable practice in giving advice in specialist fields of law;
- (vi) experience and practice in alternative dispute resolution, including arbitrations and mediations; and
- (vii) experience in sitting on courts or tribunals.

6. Senior Counsel will have demonstrated leadership in:

- a. Developing the diverse community of the Bar; or
- b. Making a significant contribution to Australian society as a barrister.

## **SELECTION AND APPOINTMENT**

The system for the selection and appointment of those to be designated as Senior Counsel is to be conducted as follows:

7. All steps towards the selection appointees are to be conducted by:
  - a. The President of the ACT Bar Association;
  - b. The Bar Council shall appoint one Ordinary Member (Class A) Senior Counsel or Queens Counsel to assist the President in the consultation process approved by the Bar Council on 29 April 2013 3 (“assisting Senior Counsel) and any other additional junior counsel appointed at the President’s discretion for the purpose of mandatory consultation with the profession for the selection of appointees.
8. The President shall at any time inform any member if requested, the names of those who have made applications, and may, in that time, accept further applications for good reason and in the discretion of the President.
9. The process of selection is to be completed so that a public announcement of appointment may be made by the end of July or at a suitable date at the discretion of the President.

## **SUBMISSION OF APPLICATION**

10. Applications for appointment are to be made in writing to the President by junior counsel with a full unrestricted practising certificate who wish to be considered for appointment as Senior Counsel, during periods as notified from time to time by the President. Applications for appointment as Senior Counsel may also be accepted from Government Practising Certificate Holders issued by the ACT Bar Association. The appointment of Senior Counsel takes effect from the date of appointment, unless otherwise stated in the notice of appointment.
11. Applicants must provide in respect of all cases, including contested interlocutory applications (but excluding directions hearings), in which they have appeared in the last 18 months, and if desired, a longer period:
  - a. the name of the case and, if available, its citation;
  - b. the name of the judicial officer, tribunal or arbitrator before whom they appeared;
  - c. the name of any counsel who led them or whom they led;
  - d. the name of opposing counsel;
  - e. the name of their instructing solicitor; and

- f. a brief description of the nature of the proceedings.

The details required in (a) to (f) may be modified in alternative dispute resolution matters or otherwise when confidentiality requires.

12. Applicants may submit with their applications, particulars of such other matters they wish to be taken into account by the Selection committee, including details of their professional experience before coming to the Bar.
13. Applicants may, if they wish, identify not more than five members of the profession who are familiar with their recent work and qualities. They may also, if they wish, approved by the Bar Council on 29 April 2013 provide not more than two written references of not more than three pages each from such persons.
14. Any application not conforming with the requirements in clauses 10 and 11 of this Protocol will be rejected. No application will be considered which is received later than the last Friday in July, except in cases of accident or other special circumstances, and then at the discretion of the President.

## **CONFIDENTIALITY**

15. The collection of information relating to appointment of senior Counsel is governed by National Privacy Principle 2 and will not be used or disclosed for a purpose other than the selection of Senior Counsel and the giving of counselling by the President to unsuccessful applicants.
16. In accordance with National Privacy Principle 4, to protect the confidentiality of the material it gathers, the Bar Association will destroy or permanently de-identify all documentation in its possession in relation to the selection process as soon as practicable after each year's appointments are announced.
17. Applicants are to be made aware that their applications will be the subject of distribution during the selection process and it will therefore be impossible to keep confidential the fact that an application has been made.

## **DETERMINATION OF APPLICATIONS**

18. The Selection Committee must seek comments on each applicant from the following members of the private bar and the judiciary.
  - a. All Senior Counsel and Queens Counsel Members;
  - b. The President of the Court of Appeal;
  - c. The Chief Justice of the Supreme Court of the ACT;
  - d. Judges of the Supreme Court of the ACT;
  - e. Master of the Supreme Court of the ACT;
  - f. The Chief Magistrate of the ACT Magistrates Court;

- g. The Chief Justice of the Federal Court of Australia;
  - h. The Chief Justice of the Family Court of Australia;
  - i. Other senior members of any other courts or tribunals in which the Selection Committee considers the applicant to have practised to a substantial extent;
  - j. The President of the ACT Law Society.
19. 19. The President may, in his/her own discretion, consult with as many other additional legal practitioners or members of the judiciary or other persons as is considered to be of assistance in consideration of the applications.
  20. The President may, in his/her own discretion, consult with any of the persons for whom comments have already been received, for the purposes of further discussion and clarification in considering the applications.
  21. The President and Assisting Counsel shall, after taking into account all comments received, make a final selection of the proposed appointees.
  22. The President shall inform the Chief Justice of the Supreme Court of the ACT of his/her final selection and seek the views of the Chief Justice on the proposed appointment as Senior Counsel.
  23. The President shall not appoint any applicant whose appointment the Chief Justice opposes.
  24. The process of selection is to be completed so that a public announcement of the successful applicant/s may be made by the end of July or at a suitable date and at the discretion of the President.
  25. The President shall publish the name/s of the successful applicants for appointment as Senior Counsel for that year in order of intended seniority.
  26. After publication of the list of successful applicants, any unsuccessful applicant may discuss his or her application with the President.

## **ATTIRE AND POST NOMINALS**

27. Appointees as Senior Counsel shall wear the court dress worn by Senior Counsel, subject to the requirements and permission of particular courts and jurisdictions.
28. Appointees as Senior Counsel shall be entitled to describe themselves as 'Senior Counsel', to be abbreviated to 'SC'.

## **UNDERTAKING**

29. Senior Counsel, by seeking and achieving appointment, undertake to use the designation only while they remain practising barristers in private practice or when retained under statute by the Crown, or during temporary appointments in a legal capacity to a court, tribunal or statutory body.

## **CESSATION OF APPOINTMENT**

30. Appointment as Senior Counsel is restricted to barristers who hold a practising certificate.
31. A Senior Counsel:
  - a. whose name has been removed from the roll of persons admitted as lawyers in any Australian jurisdiction; or
  - b. whose practising certificate has been cancelled or suspended; or
  - c. against whom a finding of professional misconduct has been made by a competent court or tribunal;
  - d. who has been convicted of a serious offence as defined in the Legal Profession Act 2006,
  - b. ceases to hold the appointment and is not permitted to retain or use the title of Senior Counsel.
32. Where the Bar Council believes that, having regard to the essential criteria for Senior Counsel appointment, the person is not fit to retain the title of Senior Counsel it may, by resolution, terminate the appointment of Senior Counsel in the following circumstances:
  - a. finding of unsatisfactory professional conduct has been made against the appointee by a competent court or tribunal; or
  - b. the appointee has conditions imposed on his or her practising certificate.

## **REINSTATEMENT**

33. A barrister will not be prevented from re-applying for appointment as Senior Counsel other than where the termination of the designation followed the removal of the lawyer's name from the roll.