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 in the administration of justice in the ACT.

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 provide outstanding services as independent barristers.

3. Appointment as Senior Counsel should be restricted to Ordinary Members Class A or lawyers employed by the ACT Government (including the Office of the Director of Public Prosecutions and ACT Legal Aid), 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 processes, 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, application, and development of the law.

    b. **skill**: Senior Counsel must be skilled in the presentation and testing of litigants' cases and accomplished in the giving of advice (including in complex or difficult matters).

c. **integrity and honesty**: Senior Counsel must display integrity, honesty, and candour: Senior Counsel must demonstrate these qualities and be worthy of confidence and trust by the judiciary, their colleagues and clients at all times, so as to advance the administration of justice.

d. **independence**: Senior Counsel must be committed to the discharge of their duty to the court, especially in cases where that duty may conflict with clients' interests.

e. **disinterestedness**: Senior Counsel must have the objectivity and temperament to make sound judgements in difficult or complex situations. Senior Counsel who are in private practice must also 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 their causes, and subject only to exceptions related to appropriate fees and conflicting obligations.

f. **diligence**: Senior Counsel must be dedicated to the pursuit of excellence and the advancement of their clients' interests.

g. **experience**: Senior Counsel must have a deep understanding and knowledge of legal practice.

h. **professional standing:** Senior Counsel should command a high measure of respect amongst the legal community, particularly amongst their peers and the Judiciary.

It is expected (without being exhaustive) that applicants' practices will demonstrate some of the following:

(i) experience in arguing cases, both at first instance and on appeal;
(ii) 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 the provision of advice in specialist and difficult fields of law;
(vi) experience and practice in alternative dispute resolution, including arbitrations and mediations.

6. Senior Counsel must demonstrate leadership in:

a. developing the community of the Bar;

b. contributing to society as a barrister.

SELECTION AND APPOINTMENT

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

7. All steps towards the selection of appointees are to be conducted by a committee comprising:

    a. the President of the ACT Bar Association;

    b. the Vice President of the ACT Bar Association;

    c. the President of the Law Society (or nominated solicitor who must have at least 10 years of practising experience);

    d. one current or retired Senior Counsel or King's Counsel; and

    e. one non-lawyer community member (the **Selection Committee**).

If a member of the Selection Committee resigns from the Committee before the conclusion of the selection process, the Bar Council will elect a replacement.

8. The Selection Committee must at all times include at least one female.

9. If both the President and Vice President of the Bar Association are Junior Counsel, then the Vice President will be replaced on the Selection Committee by a further current or retired Senior Counsel or King's Counsel.

10. The Selection Committee will rotate at least 3 of the 5 selected members each year.

11. The Selection Committee will be decided exclusively each year by the Bar Council.

12. The Chief Justice will be invited to raise for consideration by the Bar Council any particular concern about the suitability of a proposed Selection Committee member, prior to the Bar Council's finalisation of the composition of the Selection Committee.

13. The President may at any time inform any member, if requested, of the names of those who have made an application.

SUBMISSION OF APPLICATION

14. Applications for appointment are to be made in writing to the President via the ACT Bar CEO email at ceo@actbar.com.au, by Ordinary Members Class A or lawyers employed by the ACT Government (including the Office of the Director of Public Prosecutions and ACT Legal Aid), who wish to be considered for appointment as Senior Counsel, during periods as notified from time to time by the President. The appointment of Senior Counsel takes effect from the date of appointment, unless otherwise stated in the notice of appointment.

15. Applicants must provide, in table form, in respect of all cases, including contested interlocutory applications (but excluding directions hearings), in which they have appeared in the preceding 18 months:

    a. the name of the case and, if available, its citation (hyperlinked, if possible);

    b. the name of the judicial officer, tribunal, arbitrator or CARS assessor before whom they appeared (if outside of New South Wales, please supply a contact number;

    c. the name of any counsel who led them or who they led (if counsel is overseas or outside of the Australian Capital Territory, please supply a contact number);

    d. the name of opposing counsel (if outside of the Australian Capital Territory, please provide a contact number);

    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.

    Applicants are at liberty to provide details of relevant matters that they have been involved in outside of the last 18 months. It is recognised that changes in the provision of legal services occur from time to time. The Selection Committee takes into account the effect these changes have on the practice of barristers and that the opportunities for barristers to engage in oral advocacy may vary significantly from time to time. The Selection Committee has regard to the importance of the work performed by giving advice as well as appearing in or sitting on courts and other tribunals and conducting or appearing in alternative dispute resolution proceedings including arbitrations and mediations.

16. Applicants must provide, as part of their application, a list of their readers/tutors and the years of such pupillage.

17. Applicants may submit with their applications particulars of such other matters as they wish to be taken into account by the Selection Committee, including details of their professional experience before coming to the Bar.

18. Applicants may, if they wish, nominate as referees not more than three members of the profession who are familiar with their recent work and qualities and who are not serving members of the judiciary. They may also, if they wish, provide not more than two written references from those they have nominated.

19. Any application not conforming with the requirements in clause 15(a)-(f) of this Protocol will be rejected. No application will be considered which is received later than the closing date, except in cases of accident or other special circumstances, and only then at the discretion of the President.

CONFIDENTIALITY

20. The collection, use, disclosure, storage of personal information relating to appointment of Senior Counsel is governed by Australian Privacy Principles 3, 5, 6, 10, 11, and 12; and information collected will not be used or disclosed for a purpose other than the selection of Senior Counsel and the giving of feedback by the President to unsuccessful applicants.

21. In accordance with Australian Privacy Principle 11, 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.

22. 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

23. The Selection Committee must seek comments on each applicant from the following members of the ACT bar and the judiciary:

    a. All local currently practicing Senior Counsel and Kings Counsel;

    b. The Chief Justice of the Supreme Court of the ACT;

    c. Judges of the Supreme Court of the ACT;

    d. The Chief Magistrate of the ACT Magistrates Court;

e. The Chief Justice of the Federal Court of Australia;

f. The Chief Justice of the Federal Circuit and Family Court of Australia (FCFCOA);

g. The ACT Solicitor-General of the ACT Government Solicitor;

h. The Director of Public Prosecutions (ACT);

i. The CEO of Legal Aid ACT;

j. Such other members of other courts or tribunals in which the Selection Committee considers the applicant to have practised to a substantial extent;

k. Such other members of the ACT Bar as the Selection Committee considers to be suitable to provide feedback in relation to the applicant;

l. Deputy Directors or Crown Advocates of the Office of the Director of Public Prosecutions (ACT) or the equivalent level employees of any other government department as the Selection Committee considers to be suitable to provide feedback in relation to the applicant

24. The Selection Committee may, at its discretion, consult with any of the persons from whom comments have already been received, for the purposes of further discussion and clarification in considering the applications.

25. The Selection Committee shall, in evaluating any comments received, place significantly greater weight on any comments which are based upon personal and direct knowledge of an applicant.

26. The Selection Committee will use its best endeavours to consult with each nominated referee.

27. The Selection Committee shall, after taking into account all comments and responses received, make a final selection of any proposed appointee who is considered suitable having regard to the qualities and attributes set out in paragraphs 5 and 6 hereof.

28. The President shall inform the Chief Justice of the Supreme Court of the ACT of the Committee's proposed selection and seek the views of the Chief Justice on the proposed appointment as Senior Counsel.

29. The President shall not appoint any applicant whose appointment the Chief Justice opposes following the procedure set out in the preceding paragraphs.

30. The process of selection is to be completed so that a public announcement of the successful applicant/s may be made by the first week of November or at a suitable date and at the discretion of the President.

31. The President shall publish the name/s of the successful applicants for appointment as Senior Counsel for that year in order of intended seniority.

32. After publication of the list of successful applicants, any unsuccessful applicant shall be invited to discuss his or her application with the President (or his or her nominee) and one other member of the committee.

33. Any such discussion shall proceed in a manner which does not involve a real risk of disclosure of the identity of any person who provided information to the Selection Committee on a confidential basis.

ATTIRE AND POST NOMINALS

34. Appointees as Senior Counsel shall wear the court dress worn by Senior Counsel, subject to the requirements and permission of particular courts and jurisdictions.

35. Appointees as Senior Counsel shall be entitled to describe themselves as 'Senior Counsel', which may be abbreviated to 'SC'.

UNDERTAKING

36. Subject to rule 40(a), Senior Counsel, by seeking and achieving appointment, undertake to use the designation only while they remain practising barristers in private practice or when retained by the Crown, or during temporary appointments in a legal capacity to a court, tribunal or statutory body.

37. Senior Counsel may retain the honorary title and use of the post nominals "SC" when retired from legal practice.

38. Senior Counsel, by seeking and achieving appointment, undertake to use the designation at all times, whether in practice or retirement, in a manner which maintains the honour, rank and dignity of the title and of barristers holding the rank of Senior Counsel.

CESSATION OF APPOINTMENT

39. Appointment as Senior Counsel is restricted to barristers who hold a barrister's practising certificate.

40. 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; or

d. who has been convicted of a serious offence as defined in the *Legal Profession Act 2006*,

ceases to hold the appointment and is not permitted to retain or use the title of Senior Counsel.

41. Where the Bar Council believes that a person is not fit to retain the title of Senior Counsel it may, by resolution, terminate the appointment of Senior Counsel. Without limiting the circumstances in which the Bar Council may terminate the appointment of Senior Counsel, those circumstances may include the following:

a. where 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; or

c. the appointee has acted inconsistently with the maintenance of the honour rank and dignity of the title or of barristers holding the title of Senior Counsel.

REINSTATEMENT

42. 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 as contemplated by 40(a) rule above.