



Australian Capital Territory

# Legal Profession (Barristers) Rules 2014

Subordinate Law SL2014-21

made under the

Legal Profession Act 2006, section 579(1) (Rules for Barristers)

## EXPLANATORY STATEMENT

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The Council of the Australian Capital Territory Bar Association makes the *Legal Profession (Barristers) Rules 2014* by amending the *Legal Profession (Barristers) Rules 2008* as follows:

(a) Rule 112 which currently reads:

- 112.1 A reader must undertake the reading programme, and must do so under the supervision of a tutor, being another barrister who:
- (a) is not Senior Counsel,
  - (b) has been a barrister for not less than 7 years, or has had such relevant experience that the Bar Council waives this requirement,
  - (c) has no more than one other reader, and
  - (d) has been approved by the Bar Council with respect to the reader
- 112.2 A reader shall not, during the first 3 months of readership, appear in any court except with, or with the express approval of, the tutor.
- 112.3 A tutor must seek to assist the reader with all reasonable skill and diligence to:
- (a) instruct the reader in:
    - (i) the art of advocacy;
    - (ii) barristers' work;
    - (iii) the proper conduct of a barrister's practice;
    - (iv) the ethical standards required of a barrister, including these Rules; and

- (v) the reading programme;
- (b) set aside sufficient time to meet and speak with the reader from time to time;
- (c) make arrangements for the reader to attend the barrister in chambers to be shown and to assist in chamber work from time to time;
- (d) make arrangements for the reader to appear with the barrister in court as an observer;
- (e) ensure that the reader is attending to all necessary or appropriate courses of instruction arranged by the Bar Association or the Australian Advocacy Institute; and
- (f) introduce the reader to the barrister's colleague

is amended by deleting the present text and substituting the following –

- 112.1 A reader must, unless exempted by the Bar Council, complete the reading program within the reading period.
- 112.2 At any time during the reading period, the reader or the reader's tutor may seek guidance from the Bar Council as to:-
  - (a) any step necessary required of the reader to complete the reading program; and
  - (b) any matter relating to the relationship between the reader and a tutor of the reader.
- 112.3 Each tutor and reader must, in relation to the Reader's reading program, comply with any direction or decision made by the Bar Council

The amendment to rule 112 amends the definition of a 'reader' and refines the requirements of the 'reading program'.

The reading requirements have now been expanded in a separate Reading Programme setting out all of the requirements and definitions including the compulsory Bar Exams and Bar Practice Course and additional Criminal and Civil Reading.

(b) Rule 114 is repealed. This section currently reads:

- 114.1 In this rule:
  - "Chief Justice" and "resident judge of the Supreme Court"* have the same meaning as in the Supreme Court Act 1933;
  - "resident"* otherwise means having the Australian Capital Territory as the principal place of practice or sitting.
- 114.2 Resident members who have demonstrated over a considerable period of time as practising barristers a capacity for outstanding service as advocates and advisers, may, for the good of the administration of justice, be appointed Senior Counsel for the Australian Capital Territory.
- 114.3 Members so appointed are entitled to the designation "Senior Counsel", which may be abbreviated "SC".

- 114.4 Senior Counsel, by seeking and accepting appointment, undertake to use the designation only while they remain practising barristers in private practice or retained under statute by the Crown or an Australian government, or in retirement from legal practice, or while (if appropriate) a judge, or during temporary appointments in a legal capacity to a court or tribunal, or while a member of a parliament of Australia. The President for the time being may revoke the appointment for breach of this undertaking.
- 114.5 Subject to the approval of the Chief Justice or the issuing of a relevant Practice Direction, and subject to the requirements of relevant courts, tribunals, and other jurisdictions, Senior Counsel shall wear the court dress worn by Queen's Counsel.
- 114.6 Appointment of Senior Counsel shall be by the President following the selection procedure.
- 114.7 The selection procedure in each year is as follows:
- (a) Applications for appointment are to be made in writing to the President between 1 June and 14 June (or the first working day thereafter).
  - (b) The President shall at any time from 1 June to 30 June (or the first working day thereafter) 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 President's discretion.
  - (c) The Bar Council shall appoint one resident Senior Counsel or Queens Counsel to assist the President in the selection process ("assisting Senior Counsel").
  - (d) The President and the assisting Senior Counsel shall together seek comments on each application from:
    - (i) as many resident judges of the Supreme Court as is practicable;
    - (ii) the senior resident judge of the Federal Court;
    - (iii) the senior resident judge of the Family Court of Australia;
    - (iv) if the applicant practises to a substantial extent in any other court or tribunal, whether in the ACT or elsewhere, the most senior judge or member of such court or tribunal who the President considers is most likely to be able to make useful comment in relation to the Applicant;
    - (v) the President of the Law Society of the ACT;
    - (vi) as many resident practising Queen's Counsel and Senior Counsel as is reasonably practicable;
    - (vii) such other judges, masters, tribunal members, and legal practitioners, within the ACT and elsewhere, as in their discretion they decide;
  - (e) The President and assisting Senior Counsel shall, taking into account all comments received, make a selection of proposed appointees.
  - (f) The President shall inform the Chief Justice of the selection of proposed appointees.

- (g) The President shall appoint, and appoint only, proposed appointees whose appointment is not opposed by the Chief Justice.
- (h) The process of selection is to be completed so that a public announcement of appointment may be made by the end of July.

114.8 Appointment of Senior Counsel in Exceptional Circumstances:

Separately from the appointment of practising barristers as Senior Counsel, the Bar Council may appoint distinguished Parliamentary Counsel as Senior Counsel.

The Senior Counsel criteria has been set out in a separate Protocol.