



21 February 2007

THE APPOINTMENT OF SENIOR COUNSEL IN VICTORIA

SUMMARY OF CURRENT PROCESS

- 1 Applications for appointment of Senior Counsel are governed by the Rules of Court: Ch2 Rules 14.13. The Rules provide for such appointment by the Chief Justice. They confer no right of review or appeal. The Chief Justice makes the appointment by signing an instrument of appointment.

Criteria for appointment

- 2 The Rules provide that a person who is admitted to the legal profession in Victoria and who is, and for many years has been, practising exclusively or mainly as counsel, whether in Victoria or elsewhere within Australia, may be appointed Senior Counsel in and for the State of Victoria. They do not otherwise specify criteria for appointment.

- 3 Ordinarily the Court issues a notice calling for applications for the appointment of Senior Counsel by a particular date towards the end of August. It states in part –

The designation of a practitioner as Senior Counsel is intended to recognize those whose standing and achievements justify an expectation on the part of the public and the judiciary that they will provide outstanding services, as counsel, to the administration of justice.

Senior Counsel must be, and be seen by the judiciary and by their peers to be,

deserving of such recognition. Qualities required to a high degree for appointment as Senior Counsel are learning and skill, integrity and independence, maturity and a sense of public responsibility.

4 Once the deadline for applications has passed, the Court's staff processes the applications received, prepares a table of applicants setting out their respective areas of practice, year of signing the roll and whether they have previously applied. The Court writes to the named referees seeking a written report by a stipulated date on the applicant's suitability for appointment. The referees, who are usually superior court judges, then provide the Chief Justice with a written confidential report.

Supreme Court advisory committee

5 The Chief Justice appoints an advisory committee consisting of 7 members of the court – two judges of the Court of Appeal, a senior judge from each of the three divisions of the Court (Crime, Commercial and Equity and Common Law) and two additional judges who are more junior. The more senior appellate judge chairs the committee. Its composition may change from year to year. Members of the committee are given, on a strictly confidential basis, a hard copy of each application and the reports received from the referees.

6 The committee meets frequently over a period of four to six weeks and provides the Chief Justice with its views as to who are, say, the 20 top ranking applicants.

Consultation

7 The Chief Justice then consults with the following officer holders concerning those applicants who practise the office holder's jurisdiction and for that purpose sends to them on a strictly confidential basis the names of the applicants:

Chief Justice of the Federal Court
Chief Justice of the Family Court
Chief Judge of the County Court
President of VCAT
Solicitor-General
Chairperson and Vice-Chairperson of the Bar Council

President of Law Institute of Victoria
Directors of Public Prosecution (Cth and State)
President of the Industrial Relations Commission
Chairperson of the Criminal Bar Association
Chairperson of the Common Law Bar Association
President of the Commercial Bar Association

Where relevant, chairpersons of other Bar Associations may also be consulted. Those consulted, however, are not given copies of the applications or reports from referees.

8 Ordinarily, the Chief Justice of the Federal Court consults with the Victorian Federal Court judges before meeting with the Chief Justice, as does the Chief Justice of the Family Court. The Chief Judge of the County Court consults with 6 judges of his court, 4 senior and 2 junior. The President of VCAT usually consults with his Deputy Presidents.

Consideration by the Supreme Court advisory committee

9 The Chief Justice next discusses the results of that process of consultation with the committee which then further considers the ranking of the applicants having regard to the results of the consultation. That ordinarily occupies two or three meetings of the committee and, by early November, it furnishes the Chief Justice with its list of recommended appointees.

10 In the meantime, the Chief Justice herself further considers the matter and consults further with the Senior Puisne Judge of the Court and the President of the Court of Appeal.

11 Following these processes the Chief Justice makes a final decision on the composition of the list of successful candidates. The Chief Justice recalls the materials provided to the committee and all copies of applications and reports are destroyed. The Chief Justice retains her notes of the consultative process.

12 The Chief Justice announces the successful candidates, having first written to all candidates advising them of the outcome of their applications. In accordance

with Rule 14.15 the appointment of Senior Counsel is in writing, signed by the Chief Justice and sealed with the seal of the Court. Successful candidates announce their appearance as Senior Counsel at a ceremonial sitting of the Court.

13 The particular strengths of the above process that the Chief Justice oversees are, first, the width and depth of consultation and, secondly, the confidentiality of the process which allows for candour in the consultation process, as well as the tangible contribution to the decision-making process from those knowledgeable and experienced in the relevant jurisdiction.

ORDER 14

r. 14.14

ADMISSION TO PRACTISE AND SENIOR COUNSEL

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PART 2—SENIOR COUNSEL

Rule 14.13
inserted by
S.R. No.
133/2004
rule 5.

14.13 Qualification

Rule 14.13(1)
amended by
S.R. No.
147/205
rule 5(2)(h).

- (1) A person who is admitted to the legal profession in Victoria and who is, and for many years has been, regularly practising exclusively or mainly as counsel, whether in Victoria or elsewhere within Australia, may be appointed Senior Counsel in and for the State of Victoria.
- (2) A person who is so appointed shall have full authority within Victoria to do all things that Queen's Counsel or other Senior Counsel within Victoria may do and in the same manner and form.

Rule 14.14
inserted by
S.R. No.
133/2004
rule 5.

14.14 Application

- (1) A person who is qualified to be so appointed may apply in writing to the Chief Justice for appointment as Senior Counsel.
- (2) Such applications shall be made at such time each year and in such manner as the Chief Justice from time to time directs.
- (3) An applicant shall provide with the application such information as the Chief Justice requires.
- (4) An application under this Rule and all information provided to the Chief Justice relating to the application are confidential and are not open to inspection by any other person save at the direction of the Chief Justice.

Rule 14.15
inserted by
S.R. No.
133/2004
rule 5.

14.15 Appointment

- (1) Appointment as Senior Counsel shall be in writing, signed by the Chief Justice and sealed with the seal of the Court and shall be announced in such manner and form as the Chief Justice determines.
- (2) A person so appointed shall have and may exercise in Court such precedence as the Chief Justice directs at the time of the appointment.
- (3) The appointment shall be entered on the Roll kept by the Prothonotary for the purpose.



VICTORIA

Appointment as Senior Counsel

BY THE HONOURABLE THE CHIEF JUSTICE
OF THE SUPREME COURT OF THE STATE OF VICTORIA

_____ is hereby appointed to be Senior Counsel in and for the State of Victoria
with precedence in Court next after _____
and with full authority to do all things that Queen's Counsel or other
Senior Counsel may do and in the same manner and form.

Dated this _____ day of _____

Signed _____

Enrolled on the _____
day of _____

Prothonotary

APPLICATIONS FOR SILK 2006

Taking Silk

A person who is admitted to practise as a barrister and solicitor of the Supreme Court of Victoria and who practises exclusively or substantially as counsel, is eligible to apply to the Chief Justice of the Supreme Court of Victoria to be appointed to the office of Senior Counsel (S.C.), previously described as Queen's Counsel (Q.C.).

The designation of a practitioner as Senior Counsel is intended to recognize those whose standing and achievements justify an expectation on the part of the public and the judiciary that they will provide outstanding services, as counsel, to the administration of justice.

Senior Counsel must be, and be seen by the judiciary and by their peers to be, deserving of such recognition. Qualities required to a high degree for appointment as Senior Counsel are learning and skill, integrity and independence, maturity and a sense of public responsibility.

Applications for appointment in 2006 will close on Friday 25 August 2006.

Background

Following consultation with the legal profession, and in particular, the Victorian Bar, the appointment of a person as Senior Counsel for the State of Victoria is made by the Chief Justice of the Supreme Court of Victoria. Senior Counsel appointed by the Chief Justice will be recognized by the Court as having full authority to do all things that Queen's Counsel or other Senior Counsel for the State of Victoria may do, and in the same manner or form.

Appointments Process

In exercising responsibility for the appointment of Senior Counsel, the Chief Justice of the Supreme Court of Victoria will take advice from such persons as she considers appropriate, including judges and leaders of professional bodies. Where the applicant identifies the Federal Court of Australia, the Family Court of Australia or the County Court of Victoria or some other jurisdiction as being an area of substantial practice of that applicant, the Chief Justice will consult the Chief Justice, Chief Judge or other head of the particular jurisdiction(s) as the case might be. The Chief Justice will obtain opinions as to whether the applicant's work justifies appointment.

Applications for Silk 2006

- 1) Applications should be made in writing to the Chief Justice. Applications should be sent to:

Chief Justice's Chambers
Supreme Court of Victoria
210 William Street
Melbourne VIC 3000

No hand deliveries to the Supreme Court Police Desk will be accepted. Deliveries should be by post or to the Supreme Court Mailroom, ground floor, main building.

- 2) Applications should be of **no more than four pages in length** and should be received by the Supreme Court mail room **no later than 5.00pm on Friday 25th August 2006** .
- 3) Applications from previous years are **NOT** retained by the Court. They are destroyed after the application process to ensure confidentiality. Applicants should not seek to rely on information contained in previous years' applications.
- 4) Application should be made by letter addressed to the Chief Justice and provide the following particulars:

A. Formal Particulars (Mandatory Information):

- (a) Applicant's full name.
- (b) Date of Birth.
- (c) Post Admission Legal education and relevant academic record.
- (d) Date, month and year of admission in each jurisdiction in which the applicant is admitted to practise.
- (e) Date of signing the Roll of Counsel (if applicable).
- (f) Name of Counsel in whose chambers the applicant was a reader (if applicable).
- (g) Preferred address for reply.
- (h) Date and year(s) of previous applications (if any).

B. Practice Particulars:

- (a) Experience in practice since admission.
- (b) Type of matter in which the applicant usually practises, indicating the predominant areas of law and the jurisdiction or jurisdictions in which the applicant has a substantial practice.

C. References:

The names of two judges or judicial officers of superior courts or tribunals (State or Federal), in which the applicant usually appears, to whom the Chief Justice may make confidential reference. **Applicants should not approach the judges whom they propose to name before doing so.** The Chief Justice will explain to the judges nominated the circumstances and the purpose of the nomination. The judges so named are asked to give their opinion upon the question whether the applicant should obtain advancement; they are not asked to act as advocates for the applicant.

Applicants should list the cases and dates (or citations) upon which they appeared before their nominated judicial referee.

D. Any Other Relevant Information:

An applicant should provide any other relevant information and may support the application by letters of recommendation from judges or other informed persons. This facility is chiefly, but not entirely, designed for the applicant whose principal areas of practice lie outside the superior courts. Any such letters **must accompany the application** and, should they be from judges, the writers must be judges other than those named as referees.



Vivienne Macgillivray
**Executive Associate
to the Chief Justice**