



The Appointment of Senior Counsel in Victoria

Summary of the Process for 2019

Taking Silk

A person who is admitted to practise as an Australian Lawyer and as an Officer 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.).

The designation of a practitioner as Senior Counsel is intended to recognise those whose skill, integrity, independence and standing in the profession 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 fellow practitioners to be, deserving of such recognition. Consequently, counsel's reputation is very important. The criteria for appointment are described below.

Applications for appointment in 2019 will close on Friday 31 May 2019 at 5.00pm.

Background

Following preliminary evaluation and consultation in accordance with this summary, 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 recognised 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.

Criteria for appointment

The criteria for appointment as Senior Counsel are as follows:

1. *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 advocates and advisers, to the good of the administration of justice.*

2. *Senior Counsel should exhibit the following:*

Excellence in the practice of law, especially in advocacy.

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.

Skill: Senior Counsel must be skilled and exercise judgment in the presentation and testing of litigants' cases in adversary proceedings, so as to enhance the likelihood of just outcomes and serve the public interest.

Diligence: Senior Counsel must have the capacity and willingness to devote themselves to the vigorous advancement of the client's interests.

Experience: Senior Counsel must have the perspective and knowledge of legal practice that is usually acquired over a considerable period. It is expected (without being exhaustive) that the applicant's practice will make apparent some or all of the following:

- (a) *experience in contested matters, especially trials;*
- (b) *experience in arguing cases on appeal;*
- (c) *experience in conducting major cases in which the other party is represented by Senior Counsel;*
- (d) *experience in conducting cases with a junior;*
- (e) *considerable practice in giving advice in specialist fields of law; and*
- (f) *a position of leadership, either generally or in a specialist jurisdiction.*

3. Integrity:

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.

4. 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 the client's interests.

Senior Counsel who are in private practice must honour the cab rank rule: the duty to accept briefs to appear for which they are competent and available, regardless of their personal opinions of the parties or the causes, and subject only to exceptions related to appropriate fees and conflicting obligations.

5. Standing in the profession:

Senior Counsel will have demonstrated leadership in:

- (a) contributing to the community of the Bar or participating in the legal profession more generally; or*
- (b) making a significant contribution to Australian society as a legal practitioner.*

Process for Appointment

In exercising responsibility for the appointment of Senior Counsel, the Chief Justice of the Supreme Court of Victoria is to be assisted by a preliminary evaluation undertaken by a committee to be established by her, with the objective of producing a list of those applicants who are considered by the committee to satisfy sufficient of the criteria for appointment as to be suitable for consideration for appointment. The list to be prepared by the committee will be advisory only.

To enable the committee to undertake this preliminary evaluation the Chief Justice will refer to the committee for preliminary evaluation the entire list of applicants and copies of their application forms on a confidential basis.

The committee is to be styled the Preliminary Evaluation Committee with its composition comprising:

- The President and the Vice-Presidents of the Bar Council;
- A retired superior court Judge;

- Six Senior Counsel, with the objective that they represent practice areas not covered by the President and Vice-Presidents;
- Three solicitors, with the objective that they represent different practice areas.

Following the preliminary evaluation stage, the Chief Justice will be assisted by a Silks Advisory Committee to be established by her. Its composition will comprise:

- A judge of the Supreme Court of Victoria (who will act as chair of the committee);
- A judge of the Federal Court of Australia (to be nominated by the Chief Justice of the Federal Court of Australia);
- A judge of the County Court (to be nominated by the Chief Judge of the County Court);
- The President or immediate past President of the Victorian Civil and Administrative Tribunal (or the President's nominee).

The Chief Justice will provide to the Silks Advisory Committee the list of applicants, their applications, references, information gained through the consultation process and the Preliminary Evaluation Committee's shortlist of applicants for appointment. The members of the Silks Advisory Committee may consult others within their respective Courts or Tribunal on a confidential basis.

The Chief Justice will consult:

- The Chief Justice of the Family Court of Australia (or nominee);
- The President of Fair Work Australia (or nominee);
- The judges in the Supreme Court of Victoria (if any) who sit in the main areas of practice nominated by the applicant;
- The President of the Victorian Bar Association (or nominee);
- The President of the Law Institute of Victoria (or nominee);
- The Commonwealth Director of Public Prosecutions (or nominee);
- The Victorian Director of Public Prosecutions (or nominee);
- The Victorian Chief Crown Prosecutor (or nominee);
- The Commonwealth Solicitor General (or nominee);
- The Solicitor General for Victoria (or nominee);

- The chair of the Commercial Bar Association (or nominee);
- The chair of the Common Law Bar Association (or nominee);
- The chair of the Criminal Bar Association (or nominee).

Those consulted by the Chief Justice may seek the views of others within their court or organisation on a confidential basis and, for that purpose, may disclose the identity of one or more applicants as applicants.

All references will be sought and consultations conducted by asking on a sliding scale whether the applicant satisfies each criterion for appointment with an opportunity to amplify why each grading has been given and why the applicant should or should not be appointed as Senior Counsel.

Where a specific allegation adverse to an applicant has been made during the consultation process or in a reference, the applicant will be given the opportunity to respond to the allegation, either in writing or, with the permission of the Chief Justice, personally. For example, if an allegation is made that the applicant lacks integrity which is said to be demonstrated by specific identified conduct, that allegation will be put to the applicant. Non-specific allegations which are adverse to an applicant will not be taken into account by the Chief Justice unless the applicant is first given an opportunity to respond to them.

Following completion of the consultation process, the Chief Justice may interview one or more applicants.

Applicants should note that, due to the preliminary evaluation and consultation process, it may not be possible to keep confidential the fact that the applicant has applied to be appointed as Senior Counsel.

Feedback

Following the completion of the appointment process, an applicant may obtain feedback on his or her application by approaching the President of the Victorian Bar. Applicants will be informed at this stage whether or not they were included in the Preliminary Evaluation Committee's list. The President may provide feedback based on the consideration of the application by the Preliminary Evaluation Committee. The President will communicate with the Chief Justice and if authorised to do so by the Chief Justice, provide feedback to the applicant in relation to his or her application.

Applications for Silk 2019

Applicants are asked to note the following aspects of the application process for 2019.

ALL applications must be submitted in electronic form in accordance with the procedure below:

1. Applications must be made by completing the electronic web based application form located on the Supreme Court website www.supremecourt.vic.gov.au or directly on <https://silk.supcourt.vic.gov.au/>.

NO hard copy applications will be accepted.

2. The electronic web based application form can be accessed and completed using any device. Applicants are encouraged to use one device to complete the application.
3. Applications must be completed on an Internet explorer 8 or above or using a recent release of Chrome, Firefox or Safari browser.
4. Applicants will need to register their email address and password first. The password complexity requires a minimum length of 6 characters of upper and lower case letters and at least one numeric character (e.g. Silk18). An email with a link to activate the account will be sent to the applicant (Applicants should check that the activation email does not go directly to their junk/clutter box). Once the account is activated, applicants can log on using the same email address and password and proceed to the application.
5. Applications must be submitted electronically **no later than 5.00 pm on Friday 31 May 2019**. Applications submitted after 5.00 pm will not be accepted. Acceptance of applications will be determined by the time the application was sent, not the time of receipt.
6. In order to successfully complete the application form, applicants must submit a fee of **\$1,900.00** using the on-line payment method located on the Senior Counsel Application page. Once the on-line payment has been completed, applicants will be emailed a payment receipt and the payment receipt number will be automatically entered on the application. The application fee is not refundable.

7. Applicants are required to submit a coloured photograph of themselves with the application. The photograph must be in jpg or png format and no bigger than 20MB.
8. Applicants will receive a pdf copy of their application and an email acknowledging receipt of their application and fee from the email account silk@supcourt.vic.gov.au within five minutes of the payment having been made and accepted (Applicants should check that the confirmation email does not go directly to their junk/clutter box).
9. **Applicants are actively encouraged to avoid submitting applications on the closing date.**
10. Applicants should not seek to rely on information contained in previous years' applications.
11. Applicants are required to provide the following particulars:

A. Formal Particulars

- a. Applicant's title, given name, middle name or names and surname
- b. Applicant's preferred name
- c. Date of Birth
- d. Gender
- e. Applicant's address (including postcode) and email address
(This is the address to which **all** correspondence will be sent)
- f. Name of Clerk
- g. Academic qualifications
- h. Date, month and year of admission in each jurisdiction in which the applicant is admitted to practise
- i. Date of signing the Roll of Counsel (if applicable)
- j. Year of first application for Senior Counsel and year(s) of previous applications (if any)
- k. Name of mentor or person with whom the Applicant read.

B. Areas of practice

Applicants will be required to indicate their main areas of practice and the courts or tribunals etc in which they predominantly practice.

C. Details of recent cases

The application form will require applicants to provide the following information:

*In respect of **all** cases,* including contested interlocutory applications (but excluding directions hearings), in which you have appeared in the last 18 months, please supply:*

- (a) the full name of the case and, if available, its citation;*
- (b) the name of the judicial officer, tribunal, or arbitrator before whom you appeared;*
- (c) the name of any counsel who led you or whom you led;*
- (d) the name of opposing counsel; and*
- (e) the name of your instructing solicitor.*

You may also provide details of significant matters in which you have been involved in court or other proceedings outside the last 18 months.

** If you have appeared in more than 30 cases in the last 18 months, you will not need to list all cases but may choose to list only the 30 most significant cases. For example, for common lawyers and also possibly criminal lawyers your most significant cases might comprise trials with a duration of more than say four days, any other case of special significance or in which you appeared as lead counsel, and appearances in the Court of Appeal.*

D. Supporting reasons

Applicants will be required to state succinctly the reasons they hold the view that they are a suitable candidate for appointment to the office of Senior Counsel including, but without being exhaustive, why they believe they satisfy the criteria. Any leadership or “Standing in the Profession” matters relied on by the candidate should be noted briefly under this heading.

E. Complaints history etc

Applicants will be required to provide details of any upheld disciplinary complaints (including where counsel has been counselled), unresolved complaints, convictions for serious offences (including pleas of guilty), any finding of professional negligence

against the applicant, any notification made to the applicant's professional indemnity insurer, any costs order made against the applicant personally that was occasioned by the applicant's conduct and any bankruptcy (providing details). If there is any other matter that could bear upon your application, but you contend does not, and that you wish to disclose out of an abundance of caution, you should do so.

F. References

The names and email addresses of **FOUR** judges or judicial officers of higher courts or tribunals (State or Federal), before whom the applicant has appeared in substantial matters in the previous three years, to whom the Chief Justice may make confidential reference ("Higher Court Referees"). This may include recently retired judges of such courts. "Higher courts" include the County Court and District Courts.¹ **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 not asked to act as advocates for the applicant.

Applicants are required to list the cases (with dates and citations) upon which they appeared before their nominated judicial referees.

The names of **ONE** non-judicial referee, who may be a barrister, solicitor or corporate counsel, who has direct, recent professional experience of the applicant's work. This referee may be approached by the Preliminary Evaluation Committee and asked to comment on whether the applicant is worthy of consideration for appointment as Senior Counsel.

Applicants should not submit the names of any additional referees or any written references with the application form.

¹ Where applicants are unable to meet this guideline an explanation may be included in the application.

G. Certifications and acknowledgements

Applicants will be required to give the following certifications and acknowledgements:

- *I certify that the information provided in this application is correct to the best of my knowledge and belief and that there are no other matters of which I am aware that may provide a reason why I should not be appointed Senior Counsel.*
- *I acknowledge that the Chief Justice, the Court, the Preliminary Evaluation Committee and persons the Chief Justice may consult may make enquiries of the persons referred to in the application and such other persons as it or they think fit in relation to my application.*
- *I authorise such enquiries to be made and acknowledge that it will be done on a confidential basis and that the information received from such enquiries and provided by such third parties is confidential as against me and I cannot require disclosure of it. I agree to confidential enquiries being made of the Legal Services Commissioner or any other regulatory body about any matter or circumstances, either past or anticipated, which may adversely affect my fitness or propriety to hold an appointment as Senior Counsel. I also agree that the Legal Services Commissioner and any such other regulatory body as may be consulted may provide to the Preliminary Evaluation Committee and the Chief Justice, on a confidential basis, all information necessary to answer such enquiries.*
- *I undertake to notify the Chief Justice in the event that any new matter arises that would be required to be disclosed in this application in accordance with Section E or these certifications.*

Technical queries should be directed to:

(03) 8600 2402

Between 9am and 5pm Monday to Friday only

Vivienne Macgillivray
Executive Associate to the Chief Justice

29 April 2019