



VICTORIAN BAR

# BECOMING A BARRISTER

INFORMATION FOR SECONDARY STUDENTS



# THE VICTORIAN BAR

The Victorian Bar is the professional association for barristers in Victoria.

If you qualify to become a barrister, you will be 'called to the Bar', which means that you will be entitled to appear in court and represent your clients' interests.



VICTORIAN BAR

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# WHAT DOES A BARRISTER DO?

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**A barrister is a lawyer who specialises in advocacy.**

This could include:

- presenting a client's case in court;
- speaking for and advising a client in a mediation;
- providing advice on the best way of presenting a case, the witnesses required, or the possible resolutions available.

**Barristers are also specialists in specific areas of the law** and can provide answers to difficult legal questions.

If you are charged with a crime, or need to recover money that is owed to you, or if you want compensation for an injury you suffer, you will probably need a barrister to represent you at some stage.

**The other type of lawyer is a solicitor.** A solicitor will be the first lawyer a client sees. Solicitors give advice and provide general assistance to a client in their daily business or personal affairs. If a client needs representation in court or needs specialist legal advice, the solicitor will identify and retain (or 'brief') a barrister and will work with the barrister on the client's case. A barrister does not usually see a client until they have seen a solicitor first.

## WHAT IS THE IMPORTANCE OF A BARRISTER TO SOCIETY?

Barristers represent people in a complicated legal system. It is very difficult for non-lawyers to represent themselves because:

- Usually they are unaware of the many complicated rules that must be followed in presenting their case to the court;
- They usually have a negative relationship with their opponent (which is why they are going to court) so it is difficult to negotiate a resolution of the dispute; and
- They are not detached or impartial from their own case.

Barristers represent people from all walks of life, some of whom have been accused of very serious crimes. All people are entitled to a fair trial. Barristers, together with the courts, are there to make sure they get one.

Barristers uphold the 'rule of law' which is essential to the civil conduct of society.



# WHAT IS THE DIFFERENCE BETWEEN THE TERMS 'LAWYER', 'BARRISTER', 'SOLICITOR', 'ATTORNEY', 'COUNSEL?'

**Lawyer** refers to a person who has completed a law degree and has been admitted to practise law by the Supreme Court. They may be a barrister or solicitor. It is really a general term for people who provide legal advice.

**Barrister** is a type of lawyer who specialises in arguing cases before a court or in providing specialised types of advice. Unlike solicitors, barristers must be self-employed and cannot work in a partnership.

**Solicitor** is a type of lawyer who works in an office and provides legal services such as:

- drafting contracts;
- giving advice on criminal and commercial matters;
- attending to the legal work involved in buying and selling houses,
- preparing cases for barristers to argue in court;
- sometimes appearing in court themselves and many other things.

They often work in partnership with each other, where a few solicitors team up to form a law firm. The solicitors in charge of a law firm are usually called partners. Law firms usually employ solicitors and administrative staff to assist them with their work.

**Attorney** is a word often used in the United States to mean lawyer. In Australia (and other countries), a person can also be an attorney if he or she is given a power of attorney, meaning that the person is authorised to stand in the shoes of the person who has given the power.

**Counsel** is another name for a barrister. The plural of counsel is counsel.

## WHAT DO 'QC' & 'SC' ACTUALLY STAND FOR?

'QC' and 'SC' refers to a 'Queen's Counsel' or 'Senior Counsel'. They are senior barristers whose skills have been recognised by the Supreme Court and the legal profession after a number of years of work, and are given the honorary title of QC or SC. Barristers who are appointed QC or SC usually appear in court with another barrister (called a 'junior barrister') rather than on their own. As they wear silk robes, they are also known as 'silks'.

## WHY DON'T BARRISTERS WORK IN FIRMS LIKE SOLICITORS?

All barristers work for themselves. They have no bosses or employee lawyers, nor do they work in any type of partnership or company. This is an important part of being a barrister. Being independent means that barristers do not owe anything to anyone other than the court (to which the barrister must always be honest) and the client (for whom the barrister must try to get the best result).

Courts and judges must be able to trust barristers fully and know that they are not affected by any outside influences (except the desire to win the case for their client). The best way to demonstrate this is for barristers not to work for anyone else except their client at the time.

Barristers must be seen to be independent from solicitors' firms. Being separate from the solicitor helps the barrister make hard decisions or give advice to clients that they may not want to hear.

## THE "CAB-RANK" PRINCIPLE

One other important difference between barristers and solicitors is that a barrister is bound by the "cab-rank" principle. This principle means that if a barrister is requested to act for a client then the barrister must accept the brief and act for the client if:

- the client's problem is within the barrister's area of law;
- the client is willing to pay the barrister's fee for the work; and
- the barrister has the time to take on the work.

It is like hailing a taxi at a taxi-rank: all of them must take you where you want to go, no matter who you are.

This rule ensures that every person, even unpopular or disliked clients are represented in court. This is an important part of our legal system. Barristers play an important part in making sure that the courts are fair for everyone and also that clients, like you or your parents, have the same rights in court as other clients, like the government or large organisations.

Solicitors, on the other hand, are not bound by this principle and can decline to represent any client if they wish to do so.

# WHAT IS THE DIFFERENCE BETWEEN A BARRISTER AND A SOLICITOR?

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The most basic difference is that barristers are self-employed and their work involves resolving disputes, often in court, while solicitors are often in partnerships or are employees of a "firm" and work advising clients on a broad range of issues, not just disputes. This is not unlike a general medical practitioner who sees patients with all sorts of problems (the solicitor) and then refers the patient to a specialist doctor for particular treatment or surgery (the barrister).

## Solicitors:

- may act for clients who do not have a dispute but, for example, wish to prepare a will or obtain the permits to open a business;
- are the first point of contact for a client with a legal problem and will write letters, prepare documents, make phone calls and give advice;
- will engage the services of a barrister to give advice or present a case in court if necessary;
- prepare cases for trial and provide the barrister with all necessary documents in order to argue the client's case in court;
- can appear in court for less complex matters; and
- "instruct" a barrister in court by providing assistance in obtaining instructions from the client, locating documents when the case is running and organising witnesses.



# ARE YOU THINKING OF BECOMING A BARRISTER?

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Being a barrister is a challenging but also an exciting and rewarding career.

Unlike many other professions, you can work a little bit or a lot, choose the type of legal work that you do, and do other things at the same time as being a barrister. For example, some barristers lecture at university or write legal books. You also have the opportunity to help people with their legal problems and to speak for them in court.

Because barristers are self-employed they usually work on cases alone, unless they are appearing alongside a senior or a junior barrister. Although they usually work independently, a barrister spends a lot of time with solicitors and clients, and other barristers with whom he or she may share Chambers.



# WHAT SORT OF SKILLS DO YOU NEED TO BE A BARRISTER?

- You need to enjoy reading.
- You need to have strong people skills.
- You need to be able to analyse complicated facts and put together strong arguments.
- You have to be confident at public speaking and thinking on your feet.

# HOW DO YOU BECOME A BARRISTER?

- You require a law degree from university.
- You need to complete practical legal training following your law degree. You can then be "admitted to practise" as a lawyer. This means that you are a qualified lawyer and you can choose to work as either a solicitor or a barrister.
- To become a barrister, you then need to spend nine months in training called 'reading'. During this period, you are called a 'reader'.
- To become a reader you must sit an exam that assesses your knowledge of civil and criminal procedure, evidence and legal ethics.
- If you pass the exam, you will be invited to undertake an eight-week training course for barristers, called the Readers' Course. The course is conducted full-time and during this period you are not permitted to work as a lawyer.
- If you pass the course, you will be entitled to sign the "Roll of Counsel" of the Victorian Bar and commence work as a barrister.
- For the remaining seven months of the reading period, you can work independently, but you will have another barrister who guides you. This person is known as your "mentor". You will share your mentor's chambers until you are ready to go out on your own.

# WHO CAN BECOME A BARRISTER?

Becoming a barrister is about your skills and abilities.

The Bar has diverse membership from many ethnic backgrounds, including indigenous Australians.

There are currently about 550 women at the Victorian Bar out of a total of about 2,100 barristers. The number of women coming to the Bar is increasing every year. The Victorian Bar has a reputation for being supportive of female barristers.

The youngest barristers are in their twenties and the oldest are in their eighties. Some of our members have come to the law later in their professional lives after working in one or more different non-legal careers. This brings diversity, which adds greatly to the variety of people at the Victorian Bar.

# WHAT ARE THE ADVANTAGES OF BEING A BARRISTER?

- Being part of a supportive body of professionals;
- Being self-employed, yet being able to draw on the experience of fellow barristers for advice and support;
- Working on different cases with different clients, the work can be diverse;
- Advising clients on difficult legal or factual issues and then having the thrill of appearing in court to argue your client's cause;
- Not being bound by the limits of partnership in a law firm; and
- Being able to take holidays and days off when you wish.

# WHAT ARE THE DISADVANTAGES OF BEING A BARRISTER?

- There is no guarantee of where the work is going to come from, or when you will receive work.
- The pay can vary substantially, depending on your level of experience and your area of law.
- As barristers are self employed they do not enjoy the entitlements that come with being an employee, such as sick pay, holiday pay and long service leave.
- When a case is running in court, you may have to work long hours.
- You must attend to your own administrative, accounting and taxation issues.
- Although barristers can draw on assistance and support from other members of the Bar, when running a case they are often on their own.

# WHAT IS WORKING LIFE LIKE FOR A BARRISTER?

The work of a Barrister can be extremely rewarding.

Barristers do however deal with very serious issues and this may involve working long hours. For example, criminal barristers might have to argue why a client should not go to prison or why a person is guilty of an offence. A commercial barrister might have to argue why a client should not lose their house because of a debt or why a client should not have to pay so much tax.

Due to the type of work that barristers do, work life can be demanding and sometimes stressful. But it can also be interesting, highly satisfying and thrilling.

# WHAT DOES A BARRISTER'S PRACTICE INVOLVE?

No two barristers' practices are the same. For example, one barrister may appear only in criminal matters in the Magistrates' Court. Another may appear mainly in the Court of Appeal or the High Court. Another may not appear in court much at all, but rather be an expert on one particular area and prepare written advice to clients on that subject.

A typical day (if there is such a thing) would be arriving at Chambers (the name for a barrister's office) and preparing for court that day. At about 10.00 am, the barrister may go to the court building and negotiate with his or her opponent to see if issues about the case can be resolved. If they cannot, the barrister may go before the court, take evidence from witnesses, cross-examine the other side's witnesses and address the judge about the law and the evidence. At approximately 4.00 pm, court finishes and the barrister will go back to Chambers to prepare for the continuation of that case or to work on another case.

The work involved in a barrister's practice is much like an iceberg: 90 percent of the work that goes into a case (the preparation) is never seen and it is only the last 10 percent that is seen appearing in court.

Judges rely on what a barrister says in court. It is very important that barristers are honest, thorough and correct in their work. Barristers hold an important place in the legal system and there are strict rules about how a barrister should behave when at work or in public.



# WHAT SORT OF CASES DO BARRISTERS DO?

## CRIMINAL LAW

A solicitor may refer a client who has been charged with armed robbery. The barrister will read the police version of what they say happened then meet and have a conference with the client. The barrister will advise the client to help them decide if they should admit the crime and plead guilty, or if they should fight the charge. The barrister may negotiate the case with the prosecutor to drop or reduce the charge. If the case cannot be settled then the barrister will appear in a trial before a judge and jury.

## COMMERCIAL LAW

A solicitor may refer a client who is a builder that is owed money by a client. However the client claims that it has not paid because the builder's work is defective. The barrister will advise the client about his options, prepare the documents needed to bring the claim before the court, read all the material and speak to building experts who will give evidence for the builder. On the day of the trial, the barrister may negotiate with the barrister for the other party and the parties may agree on a settlement. If not, then the barrister will appear before a judge and argue the case.

## PERSONAL INJURY LAW

A solicitor may refer a client who has been injured at work. The client is seeking compensation from her employer for the medical expenses and for the time off work. The solicitor has arranged for the client to see medical specialists, who will give evidence that because of the injuries, the client cannot work for a number of months. The barrister will try to persuade the employer's insurer to pay an amount of money as compensation, or if not, to persuade the court to order them to do so.

## ANTI-DISCRIMINATION LAW

A 14-year-old girl who has been playing football with her local team in a boys' competition has been told that she cannot play in the boys' league anymore. She sees a solicitor who briefs a barrister to represent her in the Victorian Civil and Administrative Tribunal (VCAT), which hears cases involving claims of discrimination.

## PLANNING LAW

A family wishes to build an extension on their house in the suburbs. The local council has approved the extension but neighbours have objected, saying it is too large. The neighbours have applied to VCAT and asked it to decide whether the extension should be allowed. A barrister will represent the family at the hearing to argue that the extension should be allowed to proceed.

There are many other types of cases in which a barrister may act. The areas of law are diverse and you will find something new and challenging every day. Barristers have a proud reputation for their expertise, integrity, credibility and excellence.

# WHAT DOES "PRO BONO" MEAN AND WHAT SORT OF PRO BONO WORK DO BARRISTERS DO?

Although a barrister can make a good living, many barristers also spend time giving back to the community by working for clients that need legal assistance but who cannot afford to pay the fees. In this way, barristers play an important role in ensuring that everyone can have equal access to justice.

"Pro bono" is a Latin term which comes from the longer phrase "pro bono publico" meaning "for the public good". It refers to work lawyers do for which they are not paid.

Barristers who agree to be involved in pro bono matters will accept instructions for no fee or for a reduced fee in appropriate cases.

For further information please visit our website

**WWW.VICBAR.COM.AU**



# WHY DO BARRISTERS WEAR A WIG AND ROBES?

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One of the most well-known aspects of being a barrister is what they wear. When out of court, barristers wear suits like most other professional people. However, when in some courts, barristers, like judges, wear special court robes. A barrister's court dress consists of a wig, a black gown and two white bands around the neck called a 'jabot'.

Lawyers in New Zealand, South Africa, Hong Kong, Canada and other places that have a historical connection to England and English law have all inherited the English tradition of wearing special dress to court. There are a number of reasons for this. Historically, appearing in court meant just that: appearing in a dispute on behalf of a subject at the King's palace. When the King appointed judges to hear disputes between subjects, the manners, dress and style of speaking was just like appearing before the King himself – very formal.

As in the past, court hearings are important and serious occasions, and the clothes that barristers wear in court reflect this.

## WIGS

The tradition of barristers wearing wigs has its origins in the seventeenth century. France's King Louis XIII (1601-1643) is said to have begun the fashion of wearing wigs, mainly to conceal his premature baldness. Because he was the King (and everyone thought he was fashionable) others began to wear them in the French Court.

England's King Charles II had lived in France as a young man and liked the fashion of wearing wigs so much that he introduced them to England in about 1663.

Many members of the King's Court started wearing wigs to be fashionable. By about 1860, barristers and judges started wearing them too.

While fashions have changed and most people stopped wearing wigs, barristers have continued to do so, although in commercial matters, its use is becoming less frequent. In criminal matters, the wig continues to be worn and provides a degree of anonymity for those who wear it.



QCs or SCs are often referred to as 'Silks' referring to their silk robes. In Victoria, Silks also wear a **Silk Rosette** attached to the back of their robe

Junior barristers' robes are more commonly made of wool. They have no rosette attached to the back of their robe.



## JABOTS OR BANDS

The jabots (or bands) were traditionally worn to conceal the collars of the shirt. They are white, starched rectangular strips of cotton tied around the collar of the shirt and hanging down at an angle.



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