

# **SUPREME COURT OF TASMANIA**

## **PRACTICE DIRECTION**

**No. 2 of 2012**

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The following Practice Direction is published by direction of the Chief Justice, the Honourable Justice Crawford.

This Practice Direction replaces **1/2009**

### **Senior Counsel Protocol**

- 1 The principles governing the selection and appointment of those to be designated as Senior Counsel by the Chief Justice of the Supreme Court of Tasmania are as follows:
  - (i) The designation as Senior Counsel of certain practising counsel by the Chief Justice, in accordance with the following principles and under the following system, is intended to serve the public interest.
  - (ii) The designation of Senior Counsel provides a public identification of counsel 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 counsel and advisers, to the good of the administration of justice.
  - (iii) As an accolade awarded on the basis of the opinions of those best placed to judge counsels' qualities, the designation of Senior Counsel also provides a goal for the worthy ambition of junior counsel, and should encourage them to improve and maintain their professional qualities.
  - (iv) Qualities required to a high degree before appointment as Senior Counsel are skill and learning, integrity and honesty, independence, diligence and experience.

- (v) 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.
- (vi) Senior Counsel must be skilled in the presentation and testing of litigants' cases so as to enhance the likelihood of just outcomes in adversary proceedings.
- (vii) 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.
- (viii) Senior Counsel must be committed to the discharge of counsels' duty to the Court, that is the administration of justice, especially in cases where that duty may conflict with clients' interests.
- (ix) Senior Counsel must honour the duty to accept briefs to appear for which they are competent and available, regardless of any personal opinions of the parties or the causes, and subject only to exceptions related to appropriate fees and conflicting obligations.
- (x) Senior Counsel must have the perspective and knowledge of legal practice acquired over a considerable period.
- (xi) The system for the designation of Senior Counsel must be administered so as to restrict appointment to those counsel whose achievement of the foregoing qualities displays and presages their ability to provide exceptional service as counsel and advisers in the administration of justice.
- (xii) Senior Counsel may be a member of a firm of lawyers, or an employed lawyer, provided that he or she practices as a counsel, although not necessarily exclusively.

- (xiii) Successful applicants will be expected to have demonstrated the required qualities as an advocate in the higher courts or tribunals. Usually, an appointment will not be made if the applicant is not a practising advocate in that sense.

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

- (i) The Chief Justice shall each year consider whether the appointment of additional Senior Counsel in and for the State of Tasmania should be made and if it is considered that appointment is called for, shall compile a list of the names of persons who have applied for appointment and whom the Chief Justice considers may be appropriate for appointment.
- (ii) Before making a decision upon the persons whose names are to be included in the list, the Chief Justice shall consult with the other Judges, the President of the Law Society of Tasmania, the President of the Tasmanian Independent Bar and such other persons as the Chief Justice considers may assist in any particular case.
- (iii) Persons who in each year wish to be considered by the Chief Justice for appointment as Senior Counsel in Tasmania shall make written application to the Chief Justice in the First Term in a calendar year. In the application the applicant must specify such details of qualifications, experience and the nature and extent of the applicant's practice as seem relevant.
- (iv) The Chief Justice in making a decision in respect of the applicants shall bear in mind the factors specified in Clause 1 of this protocol.
- (v) When the Chief Justice has made a decision and compiled the final list of those persons selected, the Chief Justice shall promulgate the list as the circumstances call for.

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- (i) Subject to the requirements and permission of particular courts, tribunals and other jurisdictions, appointees as Senior Counsel shall wear the court dress worn by Queens Counsel.
  - (ii) Appointees as Senior Counsel shall be entitled to describe themselves as "Senior Counsel" to be abbreviated as "SC".
  - (iii) Senior Counsel, by seeking and achieving appointment, undertake to use the designation only while they remain practising counsel in private practice or in employment or retained under statute by the Crown, or during temporary appointment in a legal capacity to a court, tribunal or statutory body, or in retirement from legal practice.
  - (iv) Senior Counsel may resign the office by notice in writing delivered to the Chief Justice.
  - (v) The Chief Justice may from time to time give directions to Senior Counsel who are members of firms as to the use of the title "Senior Counsel" or of its post nominal abbreviation on the letterheads, business cards or plates, web-sites or other means wherein a firm identifies itself or its membership.
  - (vi) The Chief Justice may withdraw the office of Senior Counsel if a complaint under the *Legal Profession Act 2007* has been determined unfavourably to that counsel by the Legal Profession Board of Tasmania, the Disciplinary Tribunal or the Court or in such other circumstances as the Chief Justice considers it appropriate to withdraw the office of Senior Counsel.