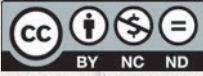


Guide to becoming a barrister in New South Wales



NEW SOUTH WALES
BAR ASSOCIATION



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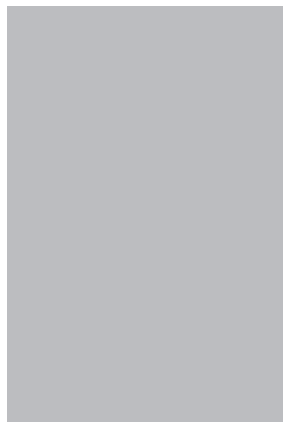
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NEW SOUTH WALES BAR ASSOCIATION 2017



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Welcome

Welcome to the New South Wales Bar Association's Guide to becoming a barrister in NSW.

I hope you will find this Guide practical and informative so that it may assist you in taking the first steps in finding out whether the Bar is a career path for you and how you may go about joining the New South Wales Bar, should you choose to join after some years practising as a solicitor or straight after graduation from law school.

There are no set rules as to when is the 'right' time to join the Bar. Some decide to join straight after law school. Some have joined after coming to law as a second career, having had previous careers such as actors, journalists or historians. Most join after some years as practice as a solicitor. No matter when you decide to embark on a career at the Bar, you will find that the New South Wales Bar has a membership which is diverse and varied in areas and type of practice. The Bar is a group of legal practitioners in NSW who pride themselves in promoting the public good, being fair and honourable while doing so and upholding and advocating for justice for all at all levels of our legal system.

Barristers are predominantly specialist advocates skilled in oral presentation and argument with a duty first to the court. Additionally, barristers are at times called upon to provide advice on particular points of law for clients, solicitors, businesses and government. All the while, remaining entirely independent.

If you have a passion for advocacy and court work, have a sustained ability to work independently to a high standard of excellence with the opportunity to work flexibly alongside likeminded and learned friends, the Bar is the place for you. I would encourage you to take the leap and join a challenging and rewarding profession.

I hope you find this Guide useful in your decision to join the Bar. If you would like more information about coming to the Bar it can be found on our website at www.nswbar.asn.au.

Best wishes,

Greg Tolhurst

Executive Director

New South Wales Bar Association



1 What is a barrister?

In New South Wales, there are two types of legal practitioners: solicitors and barristers. Both have a critical role to play in the proper administration of justice.

Barristers specialise in advocacy work in courts and tribunals and provide legal advice. Their independence is vital to our system of justice. It ensures legal representation for everyone, without fear or favour. Barristers cannot form business associations with any other person which might compromise, or even appear to compromise, that independence.

While barristers are sole practitioners, they are commonly clustered together in chambers comprising barristers with a range of experience from reader level through to senior counsel. Chambers commonly have a head of chambers (who is normally a very senior barrister) and the day to day management of chambers is conducted by a clerk with the assistance of staff. The clerk's role varies within chambers but typically involves diary management, help in obtaining briefs and assisting barristers in their relationships with solicitors.

As barristers are sole practitioners, they are responsible for seeking their own work (commonly referred to as briefs) and managing their own income and expenses. Junior barristers may receive the benefit of receiving work from more senior barristers who are too busy or require a junior to assist them on a case but usually a barrister must seek out his or her own work. This requires barristers to manage their own marketing and relationships with stakeholders such as solicitors and clients. It is important to note that although some barristers may receive direct briefs from clients, the vast majority of

work a barrister receives is from an instructing solicitor. It is therefore necessary for a barrister to know and be respected by solicitors to obtain work. It is therefore imperative that a barrister establish reasonably strong networks in their first 12 months at the Bar.

Some barristers work for the government full time, including crown prosecutors and public defenders. These barristers have statutory independence which means that parliament has passed a law that enables them to provide their services to the government of the day, no matter which political party is in office.

2 Eligibility to be a barrister

To be eligible to become a barrister in New South Wales you must:

- be admitted as a lawyer in an Australian jurisdiction. The Legal Profession Admission Board is the admitting authority in NSW;
- sit and pass the Bar exam to the required standard; and
- complete the reading program which includes registration and satisfactory participation in the Bar Practice Course and one year of readership under the supervision of a tutor.

3 The New South Wales Bar exam

The New South Wales Bar Association requires persons who wish to be admitted to practise as a barrister in NSW to sit the Bar exam. The exam assists in ensuring that a high standard of legal skill and knowledge is maintained within the profession.

In particular, the NSW Bar exam ensures that all persons admitted to practise as a barrister in NSW:

- have the ability to navigate sensitive ethical issues they may encounter in practice and that they are familiar with legislation, Barristers Rules and other relevant authority that assist in ensuring barristers can fulfil their professional obligations and respond appropriately;
- are familiar with rules of evidence and practice and procedure that are reasonably expected to be the general and basic knowledge and skill required a barrister (this is distinct from matters that the Bar accepts that a barrister may need to ‘to look it up’ from time to time).

You do not have to be admitted as a practitioner to the Supreme Court of NSW before you sit the Bar exam.

3.1 Registering for the Bar exam

To register to sit for the Bar exam, you must complete the online application form and pay the associated fee. The online application form is available on the New South Wales Bar Association’s website. The registration fee is non-transferable and non-refundable and once registered, you are not able to transfer your registration to another examination period. Candidates should familiarise themselves with the Bar exam and Bar Practice Course policies located on the Bar Association’s website before completing registration.

You are considered registered when you have received confirmation to undertake the Bar exam.

3.2 The exam process

The Bar exam takes place twice a year; in February and June each year.

The Bar exam comprises of two exam papers. Candidates will have two hours to complete each exam paper with a break between the first and second paper.

The subjects examined are:

- practice and procedure for barristers;
- aspects of evidence; and
- legal ethics for barristers.

In order to pass the Bar exam, you must attain a mark of 75%. If you pass the Bar exam you will then be eligible to register and participate in the Bar Practice Course. You will be invited to express your preference to be registered in one of the three upcoming Bar Practice Courses.

Exam results are emailed to candidates.

If you pass, your 'pass' will be valid for 15 months after the date you have received notification of your exam result.

If you fail the exam you can register to sit the exam again. There is no limit to how many times a person can sit the exam and there is no exclusion period.

If you are employed when you sit the Bar exam, it is recommended that you do not give notice of your resignation to employers until you receive your exam results and we have confirmed your place in the Bar Practice Course.

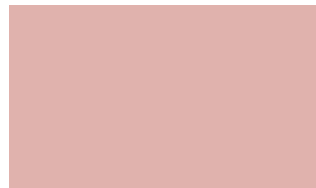
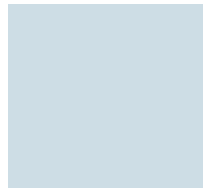
If you are overseas or interstate, you may make arrangements with the Bar Association to sit the exam in the relevant city. The exam will typically take place before the scheduled Bar exam in Sydney.

3.3 Preparing for the Bar exam

Upon registering for the Bar exam, you will be provided with exam study materials including reading lists and a permitted materials list.

To further assist candidates in preparing for the Bar exam the Bar Association will hold tutorials and lectures in the weeks prior to the examination.

The Bar Association does not endorse courses provided by other bodies.



4 Bar Practice Course

The Bar Practice Course is run twice a year – in May and September - for four weeks (including two Saturdays).

Participants in the Bar Practice Course can expect to:

- develop advanced advocacy, mediation, and other barrister skills;
- gain practical insights into life and practice at the New South Wales Bar; and
- form a strong spirit of professional support among new members.

The course is delivered through lectures, workshops, court practice sessions and informal discussions. All methods strive to illuminate the role and responsibilities of barristers and their important place and role in the community in the administration of justice and the maintenance of the rule of law.

The Bar Practice Course aims to be practical and as close to real life experiences as far as possible. Some advocacy exercises are presided over by judicial officers and involve witnesses drawn from relevant professional fields. Participants can expect contributions from judges, magistrates, senior counsel, experienced barristers and some professionals from disciplines other than the law. Their contribution make the course an ideal introduction to practise as a new barrister in NSW.

4.1 Registering for the Bar Practice Course

If you pass the Bar exam and you will then be eligible to register for the Bar Practice Course. Information on how to register for the course will be provided to you when you receive notification that you 'pass' the Bar exam.

Unlike the Bar exam, you must be admitted as a lawyer in an Australian jurisdiction to be able to register for the Bar Practice Course and commence the reading year.

You will have been accepted and confirmed into the Bar Practice Course once you have submitted your 'Registration to attend the NSW Bar Practice Course' form and associated fee. To complete the registration form, you will be required to provide information confirming your admission, details of arranged tutors and chambers, a response to an advocacy experience questionnaire and a current curriculum vitae.

4.2 Attendance during the Bar Practice Course

Once you are registered and commence the Bar Practice Course you are called a reader. You will be referred to as a reader during your first year at the Bar.

It is expected that readers attend all sessions during the Bar Practice Course punctually, and perform satisfactorily in the course. It is expected that readers give their complete professional attention to course work to facilitate this, it is a condition of a reader's practising certificate that readers will not practice during the period of the course.

The course runs for 4 weeks. Attendance at the course is generally required between 9.00am and 6.30pm. Readers can expect to devote a further few hours in the evening in preparation for the following day.

In addition to attending each session of the course punctually readers must satisfactorily:

- present applications before the court for each of the practical sessions;
- perform an opening address, examination in chief of a witness, and cross examination of an expert witness in the advocacy sessions;
- conduct a series of discrete mini hearings;
- conduct conferences with witnesses for the purposes of the final trial;
- prepare an advice in a matter set for trial; and
- prepare and present a case for hearing at the final trial.

Readers are progressively assessed through the course. Failure to attend all sessions punctually and perform satisfactorily constitutes a breach of practising certificate conditions.

4.3 Bar Practice Course Material

Once you have successfully registered in your preferred course you will be directed to the Bar Practice Course timetable on the New South Wales Bar Association website. A comprehensive reading list for the course will also be included. Additional course material will be distributed during the course and will, in most cases, be made available online.

The timetable highlights the material that will be used each day. It is expected that readers read the relevant papers for the day beforehand. In addition, video recordings of practical performances is compulsory and are reviewed by group leaders.

5 Reading

5.1 The reading program

The period of reading commences when your practising certificate is issued. A readers' practising certificate will have the following conditions attached:

- a month-long full time course – the Bar Practice Course; and
- 12 months' reading period with one or more barristers (tutors) of not less than seven years' standing. The 12 months includes the period of the Bar Practice Course.

After you complete the Bar Practice Course but before the end of your 12 month reading period, the following requirements are also imposed on readers:

- Criminal and civil reading requirements; and
- Continuing Professional Development Program (CPD).



5.2 Reading with a tutor

During your reading year you will remain under the supervision of at least one experienced barrister, who is called a tutor. Tutors provide a supervisory and mentoring role for new barristers. The guidelines to tutors and readers explains in more detail what can and cannot be expected of the tutor/reader relationship. This can be found on the Bar Association's website.

A tutor must be a barrister of not less than seven years standing who is not a senior counsel and he or she must be on the Statutory List of Tutors. A reader must have at least one tutor, but not more than two.

You can arrange your own tutors by way of approaching either a set of chambers that has a practice orientation appropriate to the experience or intentions of where you want to practise or a practitioner whom you may know through briefing or by reputation, who is on the Statutory List of Tutors.

Arrangements for seeking a tutor should be initiated at least six months to a year before coming to the Bar. Readers are strongly advised to have two tutors, rather than one.

5.3 Criminal and civil law reading

Readers must, in the first six months of practice, satisfactorily complete ten days of civil and ten days of criminal law reading. At the discretion of the supervising barrister, the reader must participate as fully as possible in the case, including reading of the brief, discussion of issues, preparation of submissions, interviews with witnesses and attendance at court.

A supervising barrister is defined as a barrister who is senior counsel or who has more than five years' experience as a barrister and holds an unrestricted practising certificate.

Criminal reading may be undertaken with a tutor, crown prosecutor/public defender, senior counsel or junior counsel practising in criminal law.

Civil reading may be undertaken with a tutor, crown prosecutor/public defender, senior counsel or junior counsel practising in civil law.

At the end of the reading year, readers will apply for an unconditional practicing certificate by which readers will be required to provide the Bar Association with verification from counsel with whom they have read of their compliance with the criminal and civil reading requirements.

6 Practising certificate

6.1 Period of the initial (reader's) practising certificate

In most cases, the initial reader's restricted practising certificate will not cover a full practising certificate year period.¹ Accordingly, before 30 June of the current practice year, most readers will be applying for a further readers' practising certificate.

6.2 Certificate of fitness to practise under an unrestricted practising certificate

For most readers, at the end of their 12 month reading period, their tutors will have completed and returned to the Bar Association the 'Satisfactory completion of Reading' form so that the reader will be entitled to a practising certificate that does not have readers conditions attached to it.

Once a 'Satisfactory completion of Reading' form is received from your tutor/s the Bar Association can issue a new practising certificate to you. You will not be charged an additional fee for this practising certificate which should run for the remainder of the current practising year. At the end of that practice year, you will be in a position to apply for a further practising certificate, provided that your CPD and relevant statutory requirements have been met.

6.3 Failure to complete all requirements within 12 months

If you are not able to complete all of the reading requirements within 12 months of your readers practising certificate being issued you may be granted a further conditional practising certificate at the discretion of the Bar Association.

There may be situations where the New South Wales Bar Association Bar Council considers that the reader requires particular assistance. In such cases, Bar Council may choose to extend the duration of the practising certificate with attached reader conditions for the individual.

¹ A practising certificate year is from 1 July to 30 June each year.

7 Barrister's chambers

While barristers are sole practitioners, they are commonly clustered together in chambers comprising barristers with a range of experience from reader level through to senior counsel. Chambers commonly have a head of chambers (who is normally a very senior barrister) and the day to day management of chambers is conducted by a clerk with the assistance of staff. The clerk's role varies within chambers but typically involves diary management, help in obtaining briefs and assisting barristers in their relationships with solicitors.

7.1 How did I find chambers?

Frequently, chambers are available on the same floor as your tutor's chambers. However, this is not always the case. The New South Wales Bar Association's website contains a register of rooms available to be licensed or which are otherwise available to readers. Many floors have a reader's room that is made available at no cost or at a low cost to one or two readers a year. The register contains the contact details for the clerk or floor secretary, and it is advisable that you contact them for further information.

It is recommended to readers not to purchase chambers immediately. It is very important to keep overheads as low as possible in the first year or two and it often happens that practice interests change or develop in the first year so that a change of chambers may become desirable.

In deciding to come to the Bar you may wish to explore 'sharing' or 'floating'. It may be that the person who owns, leases or licences the room allows another person to share it for a relatively low monthly charge. Floating, involves taking a chance that at any moment of time, one or more rooms on the floor will be vacant. In both instances the consent of the floor to share or float must be sought.

7.2 Do I have to have chambers?

The question is often put: 'May I practise from home?' or 'I can't afford chambers. Why do I need to go to such an expense?'

There is no rule prohibiting practise from home. However, new barristers are strongly advised to obtain chambers. It is important for new barristers to be part of the community of counsel and to be close to the courts in which they practice. Another important aspect is that there is no limit to the help that is given by one barrister to another. A new barrister cannot afford to let this valuable, indeed essential (yet free) help pass by. The philosophy of the reading period is based on the close tutor/reader relationship, which is greatly facilitated by the proximity of chambers to courts. Barristers continually assist one another at all stages of their career.





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