

# THE AUSTRALIAN LEGAL SYSTEM:

THE LEGAL PROFESSION  
AND THE JUDICIARY

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## ABSTRACT

*Australia's Legal System is quite complicated and difficult to explain and the fact that Australia operates a federal system of government does not help matters, but for better explanation and understanding, one has to look to the legal profession and the judiciary that make up Australia's legal system as a whole hence, the topic of this term paper.*

*Australia's legal profession is split into two classes or branches: the Barristers and the Solicitors. The Barristers tend to have a more specialised knowledge of the law while the Solicitors deal more generally with the law. When the legal profession is given a closer look, one would find out that the distinction between the two professions is more in theory than in practice.*

*The Judiciary of Australia is made up of the Judges and the Courts. Both judges and the courts could be classified in form of hierarchy and their duties differ based on the state or territory they are in due to the presence of a Federal System of Government but despite the fact that each state has its own parliament and courts, the federal laws are supreme and the decisions of the highest court, The High Court of Australia, are indisputable.*

*A close study of the legal system of Australia could bring to mind such questions as, what are the distinctions between the two branches of the legal profession? Is the judiciary independent from the other arm of government? and many other questions of this sort. The answering of such questions is the essence of this term paper and all the answers to these questions will be revealed subsequently.*

**Keywords:** *Australia, Legal system, Federal System of Government, Legal Profession, Attorney, Protocol, Baristers, Solicitors, Judge, Bar, Prosecution, Law Society, Bar Association, Inns of Court, Serjeants, amalgams, Legal Education, Internship, Legal Practice, Courts- Intermediate Courts, High Court, Supreme court.*

## INTRODUCTION

The legal system of Australia is a broad and complex one. It is based on principles and doctrines such as separation of powers, procedural fairness, and judicial precedent. It also strongly believes and upholds the independence of the judiciary and ensures justice and equity in all matters pertaining to the judiciary. The principle of the rule of law is a major feature of the Australian legal system; where everyone (both Australians and non-Australians) is treated alike and equal before the law<sup>[1]</sup>.

Australia's jurisprudence- i.e. its system or body of law, is based on the common law system developed in the United Kingdom.<sup>[2]</sup> The common law system, unlike the civil law system that operates in Europe, South America and Japan, is based on precedent; where a judges' decision on a pending case is determined or influenced by the decision of a similar previously decided case.

Australia is still a commonwealth jurisdiction and some of the states and territories still operate in accordance with the commonwealth laws. Australia practices a constitutional monarchy headed by the Queen of England. Her powers are defined by the constitution- a ceremonial head. The constitution of the Commonwealth of Australia is a product of the approved referendums held by the people of the Australian colonies between 1898-1900. It came into practice by an Act of the United Kingdom parliament called the Commonwealth of Australia Constitutional Act of 1900. The then Queen Victoria gave her approval which was in form of her Royal Assent as constitutional convention demands. Since then, the constitution has been law even though the parliament of Australia removed the power of the United Kingdom to amend the Australian Constitution, hence, only Australia can amend its constitution. The Australian Constitution was able to transition from the six individual colonies it had during its colonial days to its status today as a fully independent nation. The enactment of the *Australia Acts* of 1986 marked its final transition from colonial powers to what it is today because it was after this Act that Australia was able to finally exercise full legislative powers. Since then, legislative power is no longer in the hands of the United Kingdom parliament.<sup>[3]</sup>

Australia's constitution of 1901 the federal system of government that it operates. Governmental powers in Australia are distributed between the federal and state government, with the federal government at the top making exclusive laws such as: trade, commerce, taxation, etc. Although the states and territories make independent laws in matters that are not exclusive to the federal government, when there are problems of any kind, the federal laws still prevail. Furthermore,

[1] [http://www.dfat.gov.au/facts/legal\\_system.html](http://www.dfat.gov.au/facts/legal_system.html), 13th May, 2011

[2] Ibid

[3] MASON A, "Reflections on the Australian Constitution", "The Australian Constitution in Retrospect and Prospect", Robert French, Geoffrey Lindell, Cheryl Saunders, The Federation Press, Sydney, New South Wales, Australia, 2003, page 7.

Australia has eight legal systems; one federal system and eight state and territory legal systems, each having its own court and parliament. Each of these nine legal systems have three branches of government-the legislative, which makes the laws, the executive which carries out or executes the laws and the Judiciary which interprets and applies the laws.<sup>[4]</sup> The judicial arm of the Australian government is what will be discussed in great detail in this term paper.

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[4] See [http://www.dfat.gov.au/facts/sys\\_gov.html](http://www.dfat.gov.au/facts/sys_gov.html) 23rd May 2011; cf. [http://www.dfat.gov.au/facts/legal\\_system.html](http://www.dfat.gov.au/facts/legal_system.html) 23rd May 2011; see also [http://www.dfat.gov.au/protocol/protocol\\_guidelines/15.html](http://www.dfat.gov.au/protocol/protocol_guidelines/15.html) 23rd May 2011; <http://australia.gov.au/about-australia/our-government> 23rd May 2011; <http://australia.gov.au/about-australia/our-government/australias-federation> 23rd May 2011; but see, MCLENNAN W., "Year Book Australia", Australian Government Publishing Service, Australian Government Publishing Service, 1998, Page 31.

## PART I

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### THE LEGAL PROFESSION

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In Australia, there are six states- New south Wales, Queensland, South Australia, Victoria, Western Australia and one external state known as Tasmania, and three territories- Australian Capital Territory, Jervis Bay territory and the Northern Territory. The powers, duties and responsibilities of lawyers in Australia differ depending on the state or territory the lawyer is practicing in, although their powers and duties are fused in some states and territories; but in Australia as a whole, there are two classes of lawyers: Barristers and Solicitors, both directly accountable to the Law Council of Australia for their actions in and out of court (although they are individually regulated by two independent bodies- The Bar Association and The Law Society).<sup>[5]</sup> In general, there could be a distinction between the two classes of lawyers in the Australian legal profession based on factors like; the state or territory the lawyer chooses to work, the lawyers' duty, and the lawyers education.

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### DISTINCTION BASED ON DUTIES.

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Traditionally, Barristers practised as sole practitioners but still legislatively under the supervision of the Bar Association which regulates the conduct of Barristers.<sup>[6]</sup> As sole practitioners, Barristers do not have to have partners nor do they have to share the money made from their fees with anyone except the payments they make to the chambers, and their staff. Also, Barristers as specialists or experts provide legal opinions ,give advice to clients, draft legal pleadings.<sup>[7]</sup>

Barristers may be directly appointed by their clients but traditionally, the clients go through the solicitors first who may require the expertise of Barristers in their clients' case. Also, under the "Cab Rank Rule", Barristers are obliged to accept and handle every case brought to them as long as it is in their area of expertise, there is no conflict of interest or self-interest and the client is ready to pay the

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[5] See <http://www.caslon.com.au/lawnote9.htm>, 23rd May 2011.

[6] LAMB/LITTRICH, "Lawyers in Australia", The Federation Press, Sydney, 2007, Page 53; See also, Banks R, "The Legal Profession", "Hot Topics: Legal Issues in Plain Language", Cathy Hammer, Legal Information Access Centre, New South Wales, Australia, 2007, page 23.

[7] See, [http://www.qldbar.asn.au/index.php?option=com\\_content&task=view&id=12&Itemid=33](http://www.qldbar.asn.au/index.php?option=com_content&task=view&id=12&Itemid=33), 24th May 2011; see also, WEISBROT D, "The Australian Legal Profession: From Provincial Family Firms to Multinational", "Lawyers in Society: The Common Law World", Richard L. Abel, Philip S.C. Lewis, University of California Press, United States of America, 1988, Page 245; PAGONE GT, "Australia: Employment Practices and Awareness of Diversity", HEINONLINE, <http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/ilp22&div=40&id=&page=>, Retrieved on 24th May 2011.

appropriate fees.<sup>[8]</sup> The Barrister is not obliged, by Bar rules, to visit the solicitors office, rather, the solicitors and clients are expected to visit their chambers to give them instructions. The payment of the Barristers fees is the responsibility of the solicitor who is supposed to collect the barristers fee from the client and pass it on to the barrister.<sup>[9]</sup>

Barristers have fiduciary duties of confidentiality and trust to their clients.<sup>[10]</sup> Also, as experts, Barristers owe it to the court not to participate in a breach of the law whilst carrying out their duties to their clients. Especially “when acting as advocate and counsel, while pursuing a client’s case by all legitimate means, a barrister must not mislead the court or an opponent and must acquaint the court with the true state of the law whether or not it favours a client’s case”.<sup>[11]</sup> Barristers are regulated by the Bar Association.

Solicitors have a more direct and personal relationship with the client because the clients usually go to them with their legal problems before appointing a barrister if the case needs the expertise of one<sup>[12]</sup>. Solicitors basically may work anywhere. They could own a private practice or work in partnership with other solicitors, they may own a private practise or work for the government, private sector establishments, community legal services or government legal aid establishments. They are more involved in giving advice to clients than barristers are, they may also perform non-litigious such as, commercial negotiations and property contracts and litigious duties such representation of clients in court but mainly in the lower courts.<sup>[13]</sup> The solicitors are regulated by the Law society.

Another distinction between Barristers and Solicitors lies in the bodies that regulate them. The Barristers are regulated by the Bar Association- which also acts the same way as the Inns of Court in England, while the Solicitors are regulated by the Law Society.

[8] Ibid, see generally LAMB/LITTRICH: Page 54; see also, COUGHLAN L, “Getting Legal Help”, “The Law and You”, Linden Hyatt, Emma Driver, Ian Rohr, Pascal Press, New South Wales, Australia, 2003, page 60; PARKER/EVANS, “Inside Lawyers’ Ethics”, Cambridge University Press, New York, United States OF America, 2007, Page 182.

[9] See Supranote 8.

[10] <http://www.studentatlaw.com/articles/178/3/Topic-9---A-barristers-duty-to-the-client/Page3.html>, 24th May 2011.

[11] See generally LAMB/LITTRICH, “Lawyers in Australia”, The Federation Press, Sydney, 2007, Page 54, cf. supranote 7.

For more on the duties of Barristers, see, <http://www.cald.asn.au/docs/4.1Ethics.pdf>, 26th May 2011; see also, [http://eprints.vu.edu.au/112/1/conf\\_socialresp2004\\_arup.pdf](http://eprints.vu.edu.au/112/1/conf_socialresp2004_arup.pdf), 26th May 2011; <http://www.austlii.edu.au/au/journals/VicJSchol/2009/15.pdf>, 26th May 2011.

[12] <http://www.studentatlaw.com/articles/178/3/Topic-9---A-barristers-duty-to-the-client/Page3.html>, 24th May 2011; see also LAMB/LITTRICH: Page 54.

[13] LAMB/LITTRICH: Page 55; see also, WEISBROT D, “The Australian Legal Profession: From Provincial Family Firms to Multinational”, “Lawyers in Society: The Common Law World”, Richard L. Abel and Philip S.C. Lewis, University of California Press, United States of America, 1988, Page 245; Banks R, “The Legal Profession”, “Hot Topics: Legal Issues in Plain Language”, Cathy Hammer, Legal Information Access Centre, New South Wales, Australia, 2007, page 23.

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## DISTINCTION BASED ON THE STATE OR TERRITORY

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The two classes of lawyers in the Australian legal system could also be differentiated based on the Australian state or territory they choose to practice in.

In Australian states like New south wales, Victoria and Queensland, lawyers practice as either Barristers and solicitors but they basically have the same training.<sup>[14]</sup> Those who choose to be barristers, work in chambers while those who choose to be solicitors work in law firms.<sup>[15]</sup>

In states like South Australia, Tasmania, Western Australia and territories like, The Australian Capital Territory and The Northern Territory, there is no distinction between the two legal professions. Their duties are fused and many lawyers just refer to themselves as Barrister or Solicitor.<sup>[16]</sup> Although the duties of barristers and solicitors are fused in these states and territory, an independent bars still exists regulated by the Legal Practice Boards of the states or territory.

In Australia, the Bar Association promotes a group of Senior Barristers to the rank of Senior Council, in New South Wales and Queens' Council, in the Northern Territory. The Barristers in the Senior Council carry "SC" title after their names and make up about 14 percent of the total number of Barristers in New south Wales (they deal with the more complex and difficult cases that come before the courts because they are believed to have greater experience and expert knowledge of the law) while the Barristers in the Queens' Council carry the "QC" title after their names. The selection of this group of superior Barristers is made after the members of the judiciary and fellow barristers have been consulted.<sup>[17]</sup>

However, in Australia, the difference between the Barristers and the Solicitors is more in theory than in practice. In practice, there is hardly any difference between the two classes of lawyers in the legal profession, as some lawyers in some states act as both barrister and solicitor.<sup>[18]</sup> The solicitors, like the Barristers can deal with any legal matter including representing clients in court. The Barristers can hold any of the titles (Barrister or Solicitor) and practice as both. Infact, some law graduates graduate as one of the two but will later decide to become the other. So, if a strict

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[14] See, <http://www.jobguide.thegoodguides.com.au/occupation/view/271311A>, 26th May 2011; See also, <http://www.backpacker-job.com.au/state/nsw-jobs/worktype/graduate-jobs/legal-jobs/solicitor-in-house-jobs/>, 26th May 2011; See, <http://www.myfuture.edu.au/the%20Facts/Work%20and%20Employment/Occupations/Details.aspx?anzsco=271311A&earningsGraph=false>, 26th May 2011; <http://www.jobsjobsjobs.com.au/state/sa-jobs/legal-jobs/solicitor-in-house-jobs/>, 26th May 2011.

[15] See <http://www.foolkit.com.au/nsw/public/barristers>, 26th May 2011.

[16] See *supra*note 15.

[17] LAMB/LITTRICH, "Lawyers in Australia", The Federation Press, Sydney, 2007, Page 55; cf. <http://www.chancery.com.au/role.php>, 24th May 2011; see also, <http://www.courtlawyers.com.au/barristers-chambers-australia.php>, 26th May 2011.

[18] PAGONE GT, "Australia: Employment Practices and Awareness of Diversity", HEINONLINE, <http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/ilp22&div=40&id=&page=>, Retrieved on 26th May 2011.

distinction is to be made between the two classes of lawyers in the Australian Legal System, one would have to look more to their legal training and qualification.

How to Become a Lawyer in Australia- Education, Training and Qualification.

Becoming a lawyer in Australia involves years of study, hardwork and training. The number of years study before becoming a qualified lawyer differs, depending on the state or territory the law is being practiced in. Also, prior to the reforms that took place in Australia, the difference in the years of study also had to do with the persons choice between either of the two classes of lawyers in the legal profession; either Barrister or solicitor so, in other to examine the processes on how to become a lawyer in present or modern times, it is necessary to also take a look at what it was before now.

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## THE HISTORY OF THE LEGAL PROFESSION IN AUSTRALIA

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The history of the two classes of the legal profession and the distinctions between them originated from England. Originally, legal duties were carried out by both of them, separately and independently- one independent of the other, and regulated by separate bodies. “The distinction between barristers and solicitors was brought to Australia with the arrival of British settlers and convicts in 1788, and has undergone further evolution in each of the colonies and later states established in Australia.”<sup>[19]</sup>

The Barristers were required to undergo pupillage- internship, in the Inns of Court, which was like a chambers of Barristers of the highest rank known as serjeants whose duty was to train interns on the skills needed to practice law.<sup>[20]</sup> Here, the training Barristers were tutored on how to draft pleadings, how to discuss and argue cases unbehalf of clients, etc. As at this time, the Barristers had a special right of audience in all the courts of record i.e. all courts except the magistrates court so the skills they taught the interns were the skills they interns would need for that work. Their chances of the interns qualifying was based on their integrity, worthy charcter and their ability to grasp what they were taught by their already qualified master. If they are able to succeed, they earn the title, “Barrister-at-law.” This was very common during the 18th century.<sup>[21]</sup>

The aspiring Solicitors on the otherhand were required to work as apprentices to attorneys or solicitors as they are now referred to as. They did not work in Inns of Court as the Barristers did, they were instead assigned to specific attorneys who trained them in the law and also the practical aspect of law where they had to learn how to handle clients’ problems including how to investigate and prepare a case for court.<sup>[22]</sup> Originally solicitors were attorneys or agents of the client in legal work

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[19] LAMB/LITTRICH, “Lawyers in Australia”, The Federation Press, Sydney, 2007, Page 37.

[20] See supranote 17.

[21] Ibid.

[22] LAMB/LITTRICH: page 38.



connected with lawsuits, but gradually, as at the 13th century, the attorneys, like the barristers were expected to subject themselves to the courts' supervision and had to be of good repute and sound temperament respectable character before being allowed to take on clients cases. As time went on, their duties and responsibilities also extended to conveyancing- which is the branch of law concerned with the preparation of documents for the transfer of property.<sup>[23]</sup> They were also expected to prepare legal documents unbehalf of their clients.

In the Commonwealth of Australia, the practice of two separate classes of the legal profession continued even in the original British colonies. The Barristers were seen as the superior lawyers with the rights of audience in superior courts. In colonies like New South Wales, Tasmania, Victoria and Queensland, the Barristers were regulated by an Independent Bar while the Solicitors were regulated by Associations they established to regulate and discipline themselves.<sup>[24]</sup> Each class of the legal profession was given different and special responsibilities to the judiciary and their clients. A solicitor who wanted to become a Barrister had to re-qualify himself before he could become a Barrister of the Supreme Court. Most Barristers would not want to become Solicitors but the few that wanted to had to undergo a reverse action.<sup>[25]</sup>

In 1892, Victoria changed this method to one in which those aspiring to study law met simple qualifications before they were admitted to the profession. They were also given the privilege of practicing any class of the legal profession they wanted and if they later changed their minds, could switch to the other with ease.<sup>[26]</sup> They also could practice as amalgams if they wished. Amalgams were solicitors who exercised their right of audience in the superior courts very often and if they wished to practice as Barristers, all they needed to do was to sign the Bar Roll and submit themselves to the Bar Council and abide by all its rules.<sup>[27]</sup>

New South Wales continued to practice law in two separate forms up until 1993 when a simple admission as a legal practitioner qualified a person as either a Barrister or a Solicitor. All they needed to do was obtain a practice certificate from either the Bar Association or the Law Society but not from both at the same time.<sup>[28]</sup>

Tasmania also moved from the separation of the two classes of law to the fused legal profession.<sup>[29]</sup> In accordance with the Legal Profession Act of 1993:<sup>[30]</sup>

A Barrister is:

A person who is admitted as a Barrister under section 28; or

[23] See supranote 20.

[24] LAMB/LITTRICH: page 38.

[25] Ibid.

[26] LAMB/LITTRICH: page 38.

[27] See supranote 24.

[28] Ibid.

[29] See generally LAMB/LITTRICH: page 39.

[30] See Section 3 of The Legal Profession Act 1993.

A legal practitioner who elects to practise solely as a Barrister under the Rules of Practice;

While;

A Legal Practitioner is:<sup>[31]</sup>

A person admitted and enrolled as a Barrister and Solicitor under this Act, the Legal Practitioners Act 1896, the Legal Practitioners Act 1946, or the Legal Practitioners Act 1959; or

(ab) An interstate legal practitioner practicing in this state; or

A legal practitioner corporation that holds a practicing certificate under Part 13.

Solicitor means a Solicitor of the Supreme Court and includes an attorney and a protoco- an attorney entitled to appear in ecclesiastical courts (ie. Courts with special jurisdiction in spiritual or religious matters).<sup>[32]</sup>

In Queensland, there was still a division in the legal profession between the two classes of the legal profession until 2004 when she adopted what is called the Model Laws Project. This created a easy form of admission into legal practice for all legal practitioners.<sup>[33]</sup> Also, the legal practitioners could switch from one class of the legal profession to the other with ease.

In other colonies, due to the small population and the condition in the society, legal practitioners were appointed and expected to perform the functions of both Barristers and Solicitors regardless of the practitioners area of expertise. The legal profession- both Barristers and Solicitors were regulated by the same body, the Law Society.<sup>[34]</sup> Here, the only difference between Barristers and Solicitors was the name. There was no formal distinction between the two classes of the legal profession but, as the population increased, it led to the creation of an Independent Bar in all these smaller colonies. This creation of an Independent Bar was not to create a form of superiority in the legal profession but for create room for specialisation and specialists or experts in a particular branch of law.<sup>[35]</sup>

Furthermore, in South Australia, Section 6 of the Legal Practitioners Act 1981 applied. It states that:<sup>[36]</sup>

6. (1) It is parliament's intention that the legal profession should continue to be a fused profession of barristers and solicitors.

(2) The voluntary establishment of a separate bar is not, however, inconsistent with that intention, nor is it inconsistent with that intention for legal practitioners voluntary to confinethemselves to practice as solicitors.

[31] LAMB/LITTRICH, "Lawyers in Australia", The Federation Press, Sydney, 2007, Page 39.

[32] See supranote 29.

[33] Ibid; see [http://www.ipc.nsw.gov.au/lawlink/Corporate/ll\\_corporate.nsf/pages/lpr\\_background\\_info](http://www.ipc.nsw.gov.au/lawlink/Corporate/ll_corporate.nsf/pages/lpr_background_info), 26th May 2011; see also [http://www.ema.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews\\_BackgroundtotheCouncilofAustralianGovernments\(COAG\)NationalLegalProfessionReform](http://www.ema.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_BackgroundtotheCouncilofAustralianGovernments(COAG)NationalLegalProfessionReform), 26th May 2011.

[34] See supranote 29.

[35] See supranote 29.

[36] The Legal Practitioners Act 1981; see also, LAMB/LITTRICH: Page 39.

In Western Australia, the two classes of the legal profession are also merged, but in the 1960's, several practitioners abandoned their solicitors practice and established their own Independent Bar.<sup>[37]</sup>

If a practitioner in Australia is admitted to practice in any of the Australian states or colonies, the practitioner has the entitled to practice in any of the federal courts as long as the practitioner has signed the High Court Roll. This was established in the Judiciary Act 1903.<sup>[38]</sup>

Prior to 1992, if a practitioner wanted to practice in more than one state or territory, the practitioner needed to be admitted to practice and have a practicing certificate in each of those states or territories that he wanted to practice in, but due to the rapid economic and social growth that took place in Australia during the 20th Century, the country espoused the Mutual Recognition Act.<sup>[39]</sup> This Act enabled members of all professions that require formal qualifications to practice their professions in any state or territory in the country without the need to re-qualify. All they needed to do was apply to be admitted to practice in the other states and territories they intended to practice in. This new process did not require any further re-qualification, it was just a form of registration.<sup>[40]</sup>

Also, in July 1994, the Law Council of Australia adopted a Blueprint for the Structure of the Legal Profession. The Blueprint was to guide the re-structuring of the Legal Profession. It was also to give extra support to the Bar Associations and Law Societies. It also stated a number of principles and objectives to regulate the manner lawyers carryout their duties and the quality of service that was rendered to the society.<sup>[41]</sup>

In addition, the Standing Committee of Attorney-Generals (SCAG) brought another method of regulation in form of the Natonal Practice Model Laws Project and the Model Provisions.<sup>[42]</sup> Wherever this bill is adopted, it enables legal practitioners to pratice law with ease and without much formalities such as re-qualification.

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[37] LAMB/LITTRICH: Page 40.

[38] See Judiciary Act 1903, see also supranote 35.

[39] See Mutual Recognition Act 1992, see also supranote 35.

[40] See supranote 35.

[41] See, [http://www.ipc.nsw.gov.au/lawlink/Corporate/ll\\_corporate.nsf/pages/lpr\\_background\\_info](http://www.ipc.nsw.gov.au/lawlink/Corporate/ll_corporate.nsf/pages/lpr_background_info), 26th May 2011; see also supranote 35; cf. [http://www.ema.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews\\_BackgroundtotheCouncilofAustralianGovernments\(COAG\)NationalLegalProfessionReform](http://www.ema.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_BackgroundtotheCouncilofAustralianGovernments(COAG)NationalLegalProfessionReform), 26th May 2011.

[42] See [http://www.ema.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews\\_BackgroundtotheCouncilofAustralianGovernments\(COAG\)NationalLegalProfessionReform](http://www.ema.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_BackgroundtotheCouncilofAustralianGovernments(COAG)NationalLegalProfessionReform), 26th May 2011; See also [http://www.ipc.nsw.gov.au/lawlink/Corporate/ll\\_corporate.nsf/pages/lpr\\_background\\_info](http://www.ipc.nsw.gov.au/lawlink/Corporate/ll_corporate.nsf/pages/lpr_background_info), 26th May 2011; see supranote 35.

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## THE PATHWAY TO BECOMING AN AUSTRALIAN LAWYER IN PRESENT TIMES

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Before a person is found to be eligible for practice in Australia, he has to be approved by the legal profession represented by a council or board referred to as the appropriate or certifying body in the Model Bill. The council or board may have different names in different states, eg. In New South Wales, it is called the Legal Profession Admission Board and in Victoria it is called the Board of Examiners.<sup>[43]</sup> If this body finds the person suitable, the body recommends the person to the Supreme Court in the State or Territory the person is applying to practice in. The person also has to meet several requirements like: the age requirement, the approved academic requirement, and an evidence to show that the person is of good repute and unquestionable character.<sup>[44]</sup> But our focus today will be on the academic requirements of an aspiring legal practitioner.

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## EDUCATIONAL REQUIREMENTS OF LAWYERS IN AUSTRALIA

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The approved educational requirements of lawyers in Australia are set out in the States' and Territories' Admission Rules but in general, the authorities responsible for the admission of legal practitioners in the different states and territories require basically the same requirements and some diversity in the way they were attained.<sup>[45]</sup> The academic requirement of lawyers in Australia could be sub-divided into four steps. They are as follow:

University Education: In Australia, you are expected to obtain a law degree (LLB).<sup>[46]</sup> This is an undergraduate degree program an aspiring lawyer undertakes after high school from an accredited Australian University or the equivalent as stipulated in the state or territories Admission Rules. Most law schools offer a double degree undergraduate that lasts for five to six years- this is the most common one that students undertake, while others offer a three year degree program. If the individual already has an undergraduate degree, some Australian Universities offer the degree called Juris Doctor (JD).<sup>[47]</sup> The JD is only for people who already

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[43] Legal Practitioners Act 1981; see also, LAMB/LITTRICH: Page 47.

[44] LAMB/LITTRICH: Page 47.

[45] Ibid.

[46] See <http://www.msals.asn.au/?object=191&rid=9>, 26th May 2011; see also, TUDOR/O'MAHONY, "Short Guide to Becoming a Lawyer", La Trobe Law, <http://www.latrobe.edu.au/lawman/currentstudents/assets/downloads/law/law-guide-becoming-lawyer.pdf>, Retrieved on 26th May 2011, see also, <http://www.cald.asn.au/slia/Legal.htm#Universities>, 26th May 2011; cf. <http://alsa.net.au/careers/becoming-a-lawyer>, 26th May 2011, see also, [http://www.ehow.com/how\\_6720439\\_become-lawyer-education-required-australia.html](http://www.ehow.com/how_6720439_become-lawyer-education-required-australia.html), 26th May 2011.

[47] See <http://www.msals.asn.au/?object=191&rid=9>, 26th May 2011; see also, TUDOR/O'MAHONY, "Short Guide to Becoming a Lawyer", La Trobe Law, <http://www.latrobe.edu.au/lawman/currentstudents/assets/downloads/law/law-guide-becoming-lawyer.pdf>, Retrieved

have another undergraduate degree and is usually a shorter route to obtaining a Law degree. It is a two or three years program. However, this degree must contain the prescribed “PRIESTLY 11” subjects or courses.<sup>[48]</sup>

**Work Experience:** Most Australian Law students gain this by what is known as Vacation Clerkships.<sup>[49]</sup> In Australian states like, Victoria, New south Wales, Western Australia and Queensland, there are clerkship schemes which regulate who can apply for them and when.<sup>[50]</sup> Vacation placements can also be undertaken by students with other institutions like, The state Law Reform Commissions, Community Legal Centres and Government Departments. Students who wish to work in Law firms apply for some form of vacation work usually in their second to the last year in Law School. The students who do this in Commercial firms usually receive priority over other students when applying for graduate jobs. Information on clerkships and student opportunities is advertised in each schools’ Law student Societies’ publications and websites and also at career fairs.<sup>[51]</sup>

**Post-Graduate Training:** Before admission to practice, Law students are expected to undertake post-graduate training. These rules differ in each Australian state. All Australian states except Western Australia require that students must complete the Practice Legal Training (PLT) where they learn basic skills needed to successfully practice law such as, negotiation, dispute resolution, how to draft letters and how to interview clients.<sup>[52]</sup> The PLT’s such as Leo Cussen Institute and College of Law are run by private bodies and the courses cost about \$AU8000.<sup>[53]</sup> Some Law schools choose to merge the PLT courses with the undergraduate degree while others run them as separate courses. Most people take the PLT courses whilst working in firms as graduates. Graduate positions in firms are very competitive since the firm pays fully for the PLT. However, in Western Australia, the old system of Articled Clerkship is still applicable and students are not expected to undergo PLT. Students in Western Australia are required to work in a law firm under the supervision of a Senior Lawyer. This is known as Articled Clerkship. After this, the next step is for them to apply for admission to Legal Practice.<sup>[54]</sup>

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on 26th May 2011; see also, <http://www.cald.asn.au/slia/Legal.htm#Universities>, 26th May 2011; cf. <http://alsa.net.au/careers/becoming-a-lawyer>, 26th May 2011; see also, [http://www.ehow.com/how\\_6720439\\_become-lawyer-education-required-australia.html](http://www.ehow.com/how_6720439_become-lawyer-education-required-australia.html), 26th May 2011.

[48] See LAMB/LITTRICH, “Lawyers in Australia”, The Federation Press, Sydney, 2007, Page 47.

[49] See <http://alsa.net.au/careers/becoming-a-lawyer>, 26th May 2011; see also [http://www.ehow.com/how\\_6720439\\_become-lawyer-education-required-australia.html](http://www.ehow.com/how_6720439_become-lawyer-education-required-australia.html), 26th May 2011.

[50] Ibid.

[51] See supranote 49.

[52] See supranote 49, see also, TUDOR/O’MAHONY, “Short Guide to Becoming a Lawyer”, La Trobe Law, <http://www.latrobe.edu.au/lawman/currentstudents/assets/downloads/law-law-guide-becoming-lawyer.pdf>, Retrieved on 26th May 2011.

[53] See <http://alsa.net.au/careers/becoming-a-lawyer>, 26th May 2011; see also TUDOR/O’MAHONY: page 5.

[54] See TUDOR/O’MAHONY: page 4.

Admission to Legal Practice: After concluding the PLT, law graduates are required to apply for admission to legal practice in the state they concluded their PLT. Admission to practice is for life and the legal practitioner can only have his/her licence revoked for professional misconduct or criminal convictions.<sup>[55]</sup> Also, the admitted Lawyer has to obtain a Practice Certificate from the state or territory they live in. The Practice Certificate has to be renewed regularly. The Certificate is available online. At this point, the law graduate can be referred to as a lawyer or legal practitioner.<sup>[56]</sup>

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[55] See <http://alsa.net.au/careers/becoming-a-lawyer>, 26th May 2011.

[56] See supranote 55.

## PART II

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### THE JUDICIARY—COURTS AND JUDGES

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The judiciary is the general name given to judges and courts in the legal system of the a country as a whole. The Australian judiciary gets its roots from the system of courts which existed in England.<sup>[57]</sup> In Australia, the people that preside over the Superior Courts are referred to as Judges. In Court, they are referred to as “Your Honour” while their titles are “Justice” or “Judge” while the people that preside over Courts of Summary are referred to as magistrates but in court, they are addressed as, “Your Worship”.<sup>[58]</sup>

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### THE COURT SYSTEM OF AUSTRALIA

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The Australian courts on have distinct powers, responsibilities and jurisdictional limits. The supreme courts in the various states are the superior courts of record. This means that they have unlimited powers in their state and territory and can try any justifiable case whether it be for money or not.<sup>[59]</sup>

Furthermore, the Family Court and Federal Court like the Supreme Court are Superior Courts of record. They equally have undisputable or unarguable powers but their powers unlike that of the Supreme Court must be given to them by statute, but if the Federal Court is handling a case within its jurisdiction and it leads to another case or is connected to another case outside its jurisdiction, the Federal Court is allowed to hear the case. The High Court on the other hand has unlimited powers to try cases but it rarely exercises them rather it transfers the cases it has already started to a higher court. The court system can be arranged in a hierarchy for better understanding.

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### THE HIERACHY OF COURTS IN AUSTRALIA

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The hierarchy of courts in Australia could be explained in two ways. The first way is by dividing them into two categories: superior and inferior courts and the second way is by separating them into two branches the two branches: The Federal Branch and The State and Territories Branch. Although the federal courts and the courts

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[57] See, CAMPBELL/LEE, “The Australian Judiciary”, Press Syndicate of the University of Cambridge, Cambridge, United Kingdom, 2001, Page 11.

[58] CAMPBELL/LEE, “The Australian Judiciary”, Press Syndicate of the University of Cambridge, Cambridge, United Kingdom, 2001, Page 17.

[59] See CAMPBELL/LEE: Page 11; see also, <http://www.alpn.edu.au/court-hierarchy>, 26th May 2011.

in the states and territories are separate and independent of each other, the highest Court of Appeal in Australia is still the Federal High Court.<sup>[60]</sup>

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## SUPERIOR COURTS

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These are courts that possess unlimited jurisdiction and are the highest courts in the hierarchy of courts in Australia.<sup>[61]</sup> They hear all types of cases and are only limited by legislation. They consist of: the Supreme Court of each of the States and Territories which was established by the constitution of the individual state or territory or the self-government act for the Australian Capital Territory or Northern Territory, and the High Court of the Commonwealth of Australia which was established by the Constitution of Australia.<sup>[62]</sup>

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## THE INFERIOR COURTS

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These courts on the other hand are the direct opposite of the superior courts. They possess limited powers.<sup>[63]</sup> Their powers are restricted to that which the parliament grants them. Decisions in the inferior courts most times can be appealed to the superior courts. Examples of inferior courts are courts like; the Magistrates Court and the District Courts.<sup>[64]</sup>

Another form of in which Australian courts can be classified in a hierarchical form is by classifying them into Federal and State and Territory Courts.

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## THE FEDERAL COURTS

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The courts that fall under this branch have jurisdiction over the laws made by the Federal Parliament of Australia.

### **High Court of Australia:**

This is the highest and most superior court in Australia. It mainly deals with constitutional disputes.<sup>[65]</sup> The high courts decision is final. It was established in s 71 of the Australian Constitution.<sup>[66]</sup> The High Court has six judges and a Chief Justice.<sup>[67]</sup> It has unlimited jurisdiction and is the last or final court of appeal in

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[60] See COUGHLAN L, "The Legal System", "The Law and You", Hyatt Linden and Emma Driver, Pascal Press, New South Wales, Australia, 2003, page 8; See also, CAMPBELL/LEE: Page 11.

[61] See <http://australian-court-hierarchy.co.tv/>, 26th May 2011.

[62] See supranote 61.

[63] Ibid.

[64] See supranote 61.

[65] See <http://australian-court-hierarchy.co.tv/>, 26th May 2011.

[66] Ibid.

[67] See, [http://www.ema.gov.au/www/agd/agd.nsf/Page/Legalsystemandjustice\\_TheCourts](http://www.ema.gov.au/www/agd/agd.nsf/Page/Legalsystemandjustice_TheCourts), 26th May 2011; see also [http://www.actnow.com.au/Tool/Australian\\_court\\_system.aspx](http://www.actnow.com.au/Tool/Australian_court_system.aspx), 26th May



Australia.<sup>[68]</sup> It also possesses the power to review the constitution.<sup>[69]</sup> Appeals made to the High Court are by leave only and this is rarely given so, in most cases, the Supreme Court of the state or territory is the final court of appeal.<sup>[70]</sup>

Federal Court of Australia:

This court is a superior court even though its jurisdiction is limited. It mainly hears cases relating to business establishments, Trade Practices Act, bankruptcy, industrial relations, and other aspects of Federal Law.<sup>[71]</sup> It has specific jurisdiction in matters and cases relating to Federal law. It also has the power to hear appeals from different bodies and also tribunals. This court was established by the Federal Courts Act 1976.<sup>[72]</sup> There is an appeal level in this court usually consisting of three to five judges.<sup>[73]</sup> The decisions in the high court are binding in this court because it is below the high court in the hierarchy of courts.<sup>[74]</sup>

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## FAMILY COURT OF AUSTRALIA

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This court has special jurisdiction in family matters.<sup>[75]</sup> Since the 1990's the states and territories transferred their powers over the children of non-married couples to the Country.<sup>[76]</sup> Also, the country possesses the power over marriage and divorce as stipulated in the constitution.<sup>[77]</sup> All powers such as these automatically belong to the Family Court. The Family Court is also a superior court with limited jurisdiction. It was established by the Family Court Act 1975.<sup>[78]</sup> In 1975, Western Australia equally established its own Family Court so, all duties carried out by the Family Court of Australia under the Family Law Act of 1975 are carried out by the Family Court of Western Australia.<sup>[79]</sup> The Family Court specialises in han-

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[68] See, <http://australian-court-hierarchy.co.tv/>, 26th May 2011; see also, [http://www.skwirk.com.au/p-c\\_s-18\\_u-99\\_r-242\\_c-811/court-hierarchy/nsw/court-hierarchy/law-and-society/the-legal-system](http://www.skwirk.com.au/p-c_s-18_u-99_r-242_c-811/court-hierarchy/nsw/court-hierarchy/law-and-society/the-legal-system), 26th May 2011; cf. <http://www.alpn.edu.au/court-hierarchy>, 26th May 2011; see [http://www.actnow.com.au/Tool/Australian\\_court\\_system.aspx](http://www.actnow.com.au/Tool/Australian_court_system.aspx), 26th May 2011; see generally; [http://www.ema.gov.au/www/agd/agd.nsf/Page/Legalsystemandjustice\\_TheCourts](http://www.ema.gov.au/www/agd/agd.nsf/Page/Legalsystemandjustice_TheCourts), 26th May 2011; see [http://www.dfat.gov.au/facts/legal\\_system.html](http://www.dfat.gov.au/facts/legal_system.html), 26th May 2011; See also, LASTER/TAYLOR, "Interpreters and the Legal System", The Federaton Press Pty Ltd, Sydney, Australia, 1994, Page 61.

[69] See <http://australian-court-hierarchy.co.tv/>, 26th May 2011.

[70] Ibid.

[71] See supranote 68; see also LASTER/TAYLOR, "Interpreters and the Legal System", The Federaton Press Pty Ltd, Sydney, Australia, 1994, Page 62.

[72] See supranote 69; see also, LASTER/TAYLOR, "Interpreters and the Legal System", The Federaton Press Pty Ltd, Sydney, Australia, 1994, Page 62.

[73] See supranote 69.

[74] Ibid.

[75] See supranote 68.

[76] See supranote 69.

[77] See supranote 69.

[78] Ibid.

[79] <http://australian-court-hierarchy.co.tv/>, 26th May 2011.

dling family law cases such as; disputes between parents for custody of children, distribution of matrimonial property, divorce settlements, etc. The principle of stare-decisis where the decisions of the higher courts is binding in the lower courts is applicable here as it is in the Federal Court too.<sup>[80]</sup> Here, appeals are heard by a “Full Court” usually made up of three to five judges.<sup>[81]</sup> The appeals from the Federal Magistrates Court could be heard by a single judge of the family court if the case had to do with family matters, if not, it is heard by the federal court. The decision of a Full Court in either the Federal or Family courts is binding on the Federal Magistrates. However, the decisions of a single federal or family court judge is not strictly binding but is usually followed under the principle of precedent.<sup>[82]</sup>

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### FEDERAL MAGISTRATES’ COURT

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This court was established by the Federal Magistrates’ Service Act of 1999.<sup>[83]</sup> The main reason why it was established was to ease the burden on the shoulders of the Federal and Family Court.<sup>[84]</sup> It is an inferior court of record. In cases where it shares jurisdiction with the federal and family court, its decisions are as final as that of the federal and family court. The appeals from the federal magistrates’ court go to either the federal or family court depending on the area of law. The decisions of both the federal and family courts are binding on the federal magistrates’ court.<sup>[85]</sup>

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### STATES AND TERRITORY COURTS

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Within each state and territory, there is an individual hierarchy of courts and the jurisdictions of these courts vary from state to state or territory to territory. The courts also have their individual appeal divisions like the Full Court, the Court of Appeal of the Supreme Court, for civil cases and the Court of Criminal Appeal, for criminal cases.<sup>[86]</sup> There is also a principle of stare-decisis in practice at this level. The decision of the high court is binding on all courts including the ones in the various states and territories.<sup>[87]</sup>

In each state or territory in Australia, the courts could be divided into three main levels: the lower courts, the intermediate courts and the supreme court.

The courts that fall under the category of lower courts differs based on the state or territory and the type of case it is. In a situation where a minor is being charged,

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[80] Ibid.

[81] See <http://www.alpn.edu.au/court-hierarchy>, 26th May 2011.

[82] See supranote 79.

[83] Ibid.

[84] See supranote 79.

[85] See supranote 79.

[86] See <http://australian-court-hierarchy.co.tv/>, 26th May 2011.

[87] Ibid.

the Magistrates Court presides headed by a Magistrate whose job it is to hear minor civil and family law cases. The lower courts are restricted in the size of penalty they impose on criminal cases and the amount of money they can award in civil cases.

The courts that fall under the category of intermediate courts also differ depending on the state or territory. They deal with serious criminal cases and very expensive and complex civil cases. The criminal cases are heard by a judge and jury.

The Supreme Courts in states and territories is the highest court in the hierarchy of courts in states and territories. They deal with mostly civil cases. In criminal law, there is sometimes an overlap between the powers of the supreme court and the powers of the intermediate courts. Therefore, a serious criminal offence could be heard in the supreme court or the local intermediate court depending on the several factors. The supreme court is made up of judges of other courts, usually the federal court.

Most of the states have two other levels of courts:

The District Court: this is referred to as the County Court in Victoria. It deals with most criminal offences and civil cases below a threshold- usually \$1 million.<sup>[88]</sup>

The Magistrates Court or Local Court: this court deals with summary and minor civil cases.<sup>[89]</sup> In states or territories without District or County Courts, these cases are dealt with by the Supreme court.<sup>[90]</sup> However in Tasmania, there is only a Magistrates Court below the Supreme Court in the hierarchy of courts.<sup>[91]</sup>

[88] See <http://australian-court-hierarchy.co.tv/>, 26th May 2011; see also, LASTER/TAYLOR, "Interpreters and the Legal System", The Federation Press Pty Ltd, Sydney, Australia, 1994, Page 63.

[89] Ibid.

[90] See *supra*note 88.

[91] Ibid; see also, LASTER/TAYLOR, "Interpreters and the Legal System", The Federation Press Pty Ltd, Sydney, Australia, 1994, Page 63.

## JUDGES

Many people get confused when it comes to who is and who is not to be called a judge. The simple answer is that judges are simply the people who have been appointed to judicial office.<sup>[92]</sup>

The members of the High Court of Australia are Judges. One of them is called the chief Justice while the others are referred to as Justices of the High Court.<sup>[93]</sup>

The other members of the superior courts of Australia are called Justice or Mr. Justice.<sup>[94]</sup>

The members of the intermediate courts do not bear the title of Justice as their superiors in the higher courts, rather, they are just called judges.<sup>[95]</sup>

The magistrates equally hold judicial office and bear the title, "Federal Magistrate Citizen" - if they are federal magistrates.<sup>[96]</sup>

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### APPOINTMENT OF JUDGES

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Judicial appointments are made by the government of the day, right from the courts of summary upwards. The executive branch of government is responsible for the selection and appointment of judges in the states, territories and the commonwealth as a whole.<sup>[97]</sup>

The present Attorney-General of the Commonwealth is responsible for preparing a list of eligible people out of the people who apply for the post.<sup>[98]</sup> This is partly based on how good the reputation the person is among his professional peers but mostly on merit basis- the capacity of the person to perform the function of a job competently. There is also an examination of the court cases undertaken by the person and their outcomes.<sup>[99]</sup>

Mostly, high court judges are more popular because most of them had served either as Supreme Court Judges or Federal Court Judges already.<sup>[100]</sup> Also, there is a consultation of professional peer associations so as to find out the respect and regard the aspiring judges are held in.<sup>[101]</sup>

The Australian constitution does not set out specific requirements that need to be met by federal judges and magistrates. However, according to the laws of the

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[92] See, CAMPBELL/LEE, "The Australian Judiciary", Press Syndicate of the University of Cambridge, Cambridge, United Kingdom, 2001, Page 17.

[93] Ibid.

[94] See supranote 92.

[95] Ibid.

[96] See supranote 92.

[97] See LAMB/LITTRICH, "Lawyers in Australia", The Federation Press, Sydney, 2007, Page 86.

[98] Ibid.

[99] See supranote 97.

[100] Ibid.

[101] See supranote 97.

Australian Parliament, a person must have been a legal practitioner for at least five years or must have been a judge in another court before applying to become a Federal Judge.<sup>[102]</sup>

To be a Federal Magistrate, a person has to have been a legal practitioner for at least five years.

To be a Family Court Judge, a person had to be eligible to become a judge in the Family Law Court by way of training, experience and personality.<sup>[103]</sup>

The age limit or retirement age for Federal Judges and Federal Magistrates is 70 years.<sup>[104]</sup> Also, Australian Judges enjoy Security of Tenure in the sense that, they cannot be removed from office except by the Governor-General, on grounds of proved misbehaviour or incapacity, on an address from both Houses of Parliament—House of Representatives and House of Senate, in the same session.<sup>[105]</sup> In addition to security of tenure, the Australian Constitution ensures that the remuneration or salaries of Federal Judges and Magistrates cannot be reduced while the person holds office, all in the bid to promote the independence of the judiciary from other arms of government.<sup>[106]</sup>

[102] See, [http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalsystemandjustice\\_RequisiteQualitiesforAppointments?open&query=appointment of judges](http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalsystemandjustice_RequisiteQualitiesforAppointments?open&query=appointment+of+judges), 27th May 2011; See also, [http://www.aph.gov.au/senate/committee/legcon\\_ctte/judicial\\_system/submissions/sub08.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/judicial_system/submissions/sub08.pdf), 26th May 2011.

[103] See *supra*note 102.

[104] See, [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(4CA02151F94FFB778ADAEC2E6EA8653D\)-FCB+-+FMA+-+Newcastle+info+pack+-+May+2010.pdf/\\$file/FCB+-+FMA+-+Newcastle+info+pack+-+May+2010.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(4CA02151F94FFB778ADAEC2E6EA8653D)-FCB+-+FMA+-+Newcastle+info+pack+-+May+2010.pdf/$file/FCB+-+FMA+-+Newcastle+info+pack+-+May+2010.pdf), 27th May, 2011; See also, [http://www.aph.gov.au/senate/committee/legcon\\_ctte/judicial\\_system/submissions/sub08.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/judicial_system/submissions/sub08.pdf), 27th May 2011; See also, [http://www.ema.gov.au/www/agd/rwpattach.nsf/VAP/\(966BB47E522E848021A38A20280E2386\)-Judicial+Appointments+Process\\_17+May.pdf/\\$file/Judicial+Appointments+Process\\_17+May.pdf](http://www.ema.gov.au/www/agd/rwpattach.nsf/VAP/(966BB47E522E848021A38A20280E2386)-Judicial+Appointments+Process_17+May.pdf/$file/Judicial+Appointments+Process_17+May.pdf), 27th May 2011, cf. [http://www.aph.gov.au/senate/committee/legcon\\_ctte/judicial\\_system/report/c02.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/judicial_system/report/c02.htm), 27th May 2011; see also, <http://www.judcom.nsw.gov.au/publications/education-monographs-1/monograph1/fbmason.htm>, 27th May 2011; See generally, BANKS R, “The Judiciary”, “Hot Topics: Legal Issues in Plain Language”, Cathy Hammer, Legal Information Access Centre, New South Wales, Australia, 2007, page 16.

[105] *Ibid.*

[106] See *supra*note 104.

## CONCLUSION

Over the years, the Australian Legal System has evolved into the modern and sophisticated system it now operates. At least, it can never be said that Australia is lagging behind its European counterparts as regards its judicial system.

So far, diversity has been encouraged and women who were not admitted to the legal profession until early in the 20th Century now form a great part of the Australian legal system. Even ethnic minorities form an integral part of the Australian legal system.

In conclusion, I would like to tackle the question many people have asked over the years in Australia and around the world, “why is it necessary to have two separate legal professions”? The answer is simply for the sake of specialisation, not to have a group of lawyers assert superiority over others. Its purpose is to encourage and create room for specialisation. Infact, there is no superiority among the two classes of lawyers in the legal profession.

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