



# AUSTRALIAN BARRISTERS IN INTERNATIONAL ARBITRATION

Australian Barristers: how to brief them and why  
you should brief them in an international arbitration



# WHY USE AN AUSTRALIAN BARRISTER

## A SUMMARY

- **Persuasive:** Advocacy is the core of a barrister's work
- **Experienced:** Years of experience in written and oral advocacy, including in arbitrations
- **Commercial:** Understands a client's commercial needs and seeks the optimal commercial resolution, not just a legal one
- **Expert:** Great legal mind (even for disputes governed by non-Australian laws) and experts at resolving disputes efficiently
- **Flexible:** Adept at working alone or as part of a larger team of lawyers
- **Cost effective:** Years of skill and experience at a fraction of the cost of other lawyers
- **International:** Many have backgrounds working and resolving disputes in other countries and in international law
- **Independent:** Can bring an objective and fresh perspective into an existing dispute
- **Convenient:** Located near, and in similar time zones, to the main financial and arbitral hubs of the Asia Pacific
- **Responsive:** A strong culture of professional service delivery
- **Collaborative:** Willing to share expertise and work closely with clients and lawyers





# BARRISTERS

## WHAT IS A BARRISTER?

Barristers are specialist and independent advocates, trained in written and oral advocacy and skilled in strategic decision-making.

A barrister is often engaged by another lawyer (or directly by a client) to represent a client in a court or before an arbitral tribunal, or to provide legal and strategic advice on important or complex legal matters.

- Skilled advocates
- Trained and experienced in ADR
- Educated globally and practise globally
- Work both independently and collaboratively
- Easy to engage
- Cost effective
- Flexible and experienced

A useful analogy for understanding the role of a barrister versus other types of lawyers is that of a specialist surgeon versus a general physician/primary care doctor.

Unlike many other lawyers, barristers are not partners or employees of a law firm, but are sole practitioners. This means that they are rarely conflicted from acting for a client in a particular case and can bring an objective and fresh perspective into a case. Because the core of a barrister's practice is representing clients before courts or tribunals, they also have more training and experience in arguing cases before judges and arbitrators, compared with many other types of lawyers.

But barristers are not just for arguing cases. They also have advanced training and experience in the law and dispute resolution more generally. Barristers are able to advise on, facilitate and work with other lawyers to achieve the resolution of a dispute in a commercial and efficient way for the client. A barrister can assist with legal advice, memorial drafting, evidence preparation, oral advocacy, and more. Barristers can be engaged at any stage of a dispute, but it is often best to retain barristers early so that they can assist with strategic decisions at the outset that can lead to the best and fastest resolution of the dispute.

# QUALIFICATIONS

To be a barrister in the Australian State of New South Wales a person must have:

- Tertiary qualifications in law
- Been admitted as a lawyer in an Australian State (which usually requires, among other things, certain practical legal training beyond a law degree)
- Passed the challenging bar examinations, which cover the laws of evidence, civil procedure and ethics (both in criminal and civil law)
- Completed the Bar Practice Course, involving approximately one month of full-time training on advocacy, ethics and other practical components of practice
- Completed one year of readership under the supervision of a tutor (a senior barrister)



In practice, barristers in New South Wales (a State in Australia with Sydney as its capital) usually have much more experience than just these qualifications. Many barristers who practise in international matters have generally achieved first class results in their law degree, completed Masters and Doctoral qualifications in law from the top universities around the world, been judge's associates and/or arbitral tribunal secretaries and previously spent years working as a solicitor or attorney in global law firms, both in Australia and abroad (including Singapore, Hong Kong, London and New York).

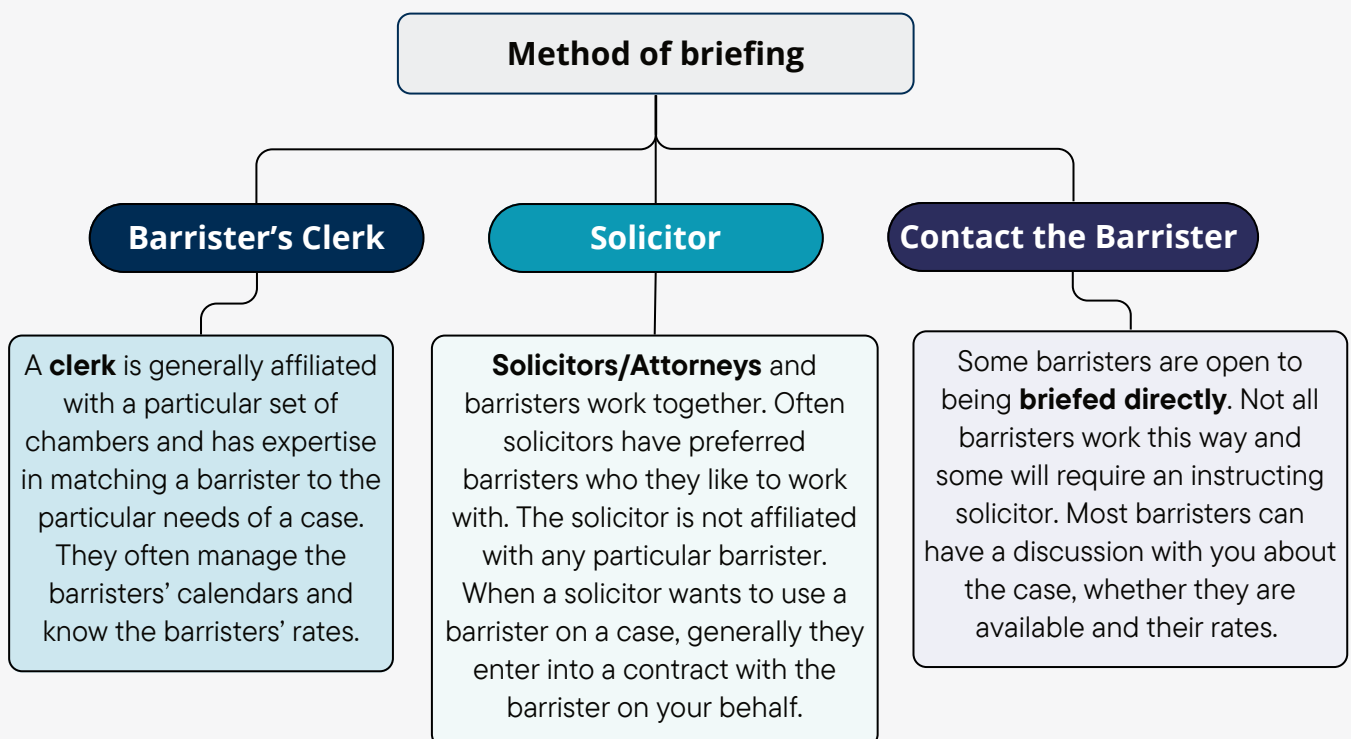
Various barristers in New South Wales are admitted or qualified to practice in jurisdictions other than Australia, including the United Kingdom, New York and New Zealand. All barristers in New South Wales are able to appear in international arbitrations anywhere in the world (subject to local laws of the place of arbitration) regardless of the law involved in the dispute. In practice, this means that a barrister in New South Wales can appear in or otherwise provide legal services in relation to an arbitration taking place in Singapore, Hong Kong, Delhi, Tokyo, London, Paris, New York and many other cities around the world.

Barristers' qualifications and experience are generally listed on their CVs and on their chambers' websites. Additionally, barristers specialising in international arbitration and dispute resolution more generally are listed in the major legal directories, including ***Chambers Global Australia: Dispute Resolution – The Bar*** and ***Legal 500: Australia Bar***.

# BRIEFING A BARRISTER

Barristers in New South Wales are usually engaged (briefed) to act for a client by solicitors or attorneys who are already instructed by that client. When this occurs, the barrister will work with the existing solicitors or attorneys as part of a team helping the client to achieve a satisfactory resolution of their dispute. In larger cases, multiple barristers can be briefed as part of that same team. Many barristers are also happy to be briefed directly by the client, subject to the limitations on what a barrister can do for the client.

Briefing a barrister is easy. The client (or their lawyer) simply needs to contact the barrister and ask if they are available and able to act. To make things even easier, most barristers in New South Wales practice in what are called “chambers”, and clients (and their lawyers) can contact the clerk of any chambers to inquire as to who might be appropriate, available and able to act for the client. A clerk is a practice manager for a chambers, and can advise on the costs and general availability of any barrister in their chambers.



# WORKING ALONGSIDE BARRISTERS

“Chambers” are physical premises where several independent barristers conduct their practices, sharing overheads such as building costs, support staff and marketing expenses. Barristers in the same chambers are still independent of each other and do not share any confidential information with one another.

More than one barrister can be briefed in a dispute, and different barristers can be briefed from the same or different chambers. In smaller disputes, often only one “Junior Counsel” is briefed by a party, while in larger cases it is common for both a “Senior Counsel” and a “Junior Counsel” to be briefed. A “Senior Counsel” (SC) is the same as a “Kings Counsel” (KC), colloquially known as a “silk”. They are senior advocates with recognised skills and experience. A “Junior Counsel” is any barrister who is not a silk. Do not be fooled by the name “Junior”; most barristers have significant experience and skills as advocates.

A Senior Counsel is usually more expensive and, as a result, tends to be used more for oral advocacy or strategic advice. A Junior Counsel usually does more of the day-to-day work on a case, but can also adeptly handle oral advocacy and provide strategic advice. Both types of barristers can be used for all aspects of advocacy in an international arbitration and are willing and able to work with solicitors/attorneys who also undertake the advocacy.

<b>Junior barrister with instructing solicitors</b>	<b>Junior and senior barrister with instructing solicitors</b>	<b>Junior and senior barristers with solicitors/attorneys who also advocate</b>
		

# WHY ENGAGE AN AUSTRALIAN BARRISTER IN INTERNATIONAL ARBITRATION?

## EXPERIENCED AND SPECIALISED ADVOCATES

A core function of a barrister is to persuade a decision maker, with barristers often briefed specifically for their skills in drafting memorials/written submissions, settling evidence and presenting a case before a court or tribunal. Barristers have unique skills in these areas, as they are frequently appearing before courts and tribunals and are specifically trained in advocacy.

***All this arms a barrister with a depth of experience in the art of persuasion that is unparalleled in the legal profession.*** Many Australian barristers regularly appear in international arbitrations, and are familiar with the differing styles of advocacy needed for different forms of dispute resolution.

- Persuasive and experienced in oral and written advocacy
- Regularly before courts and tribunals
- Adept to different styles of advocacy
- Independent and objective
- Competitive rates
- Familiar with many common law systems, including Australia, India, Singapore, Hong Kong and England
- Collaborative, not competitive, with law firms
- Australia is part of the Asia-Pacific and in similar time zones to witnesses and decision-makers
- Direct flights to all major cities

Some Australian barristers also sit as arbitrators, giving them a unique insight into how a counsel can best persuade a tribunal. Modern procedures adopted by the courts of Australia also share many similarities with procedures that are commonly adopted in international arbitration, such that most barristers in Australia – whether experienced in arbitration or not – possess the relevant skills and experience needed to act as counsel in international arbitrations.

## FLEXIBLE AND COLLABORATIVE

Australian barristers are very capable of adapting to what is needed. Many cases necessitate collaboration among lawyers from multiple jurisdictions, and Australian barristers are used to being instructed to work as part of a tailored team that aligns with the client's specific requirements. A senior barrister can help lead a team of lawyers from different jurisdictions and represent the client's case before courts or tribunals. Other barristers can be instructed to contribute their expertise to the whole, or just part, of a case. You can brief a barrister to help with advocacy, to draft memorials, to meet with and settle evidence from witnesses, all of the above and more.



## FROM THE ASIA-PACIFIC, FOR THE ASIA-PACIFIC

Australia is part of the Asia-Pacific and Australian barristers who regularly practice in international matters have the additional benefit of being well versed in the differing legal cultures present in the Asia-Pacific and broader region. As a result, they can adopt a range of different styles of advocacy to best persuade the specific arbitrators in the case at hand. Australian barristers are also usually humble advocates and more than willing to work as part of a larger team, including working alongside solicitors or attorneys who might also be delivering the written or oral advocacy.



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**JAKARTA**  
GMT +7



**HO CHI MINH**  
GMT +7



**SINGAPORE**  
GMT +8



**HONG KONG**  
GMT +8



**DELHI**  
GMT +5:30

Sydney is close to Asia and in a similar time zone to the large cities of Asia. It takes far less time to travel from Sydney to Singapore, Hong Kong and Tokyo than it does to fly to those same cities from London or New York. But Australian barristers are also adept at working with any time zone and with appearing remotely (via telephone or videoconference) when needed. One overlooked benefit of having different lawyers working in different time zones is the ability for around-the-clock coverage for a client. With a high work-ethic among Australian barristers, they are willing and able to meet the needs of a client wherever and whenever required.

## INDEPENDENT AND COMMERCIAL

Unlike law firms, barristers work as independent practitioners, which means that they are not bound by the same obligations of loyalty to a specific client base. This independence allows barristers to provide impartial advice without any fear of jeopardising their relationships with other clients or conflicts of interest. It also means that, when briefing a barrister, you will have that barrister work on your case.

Many Australian barristers also joined the Bar after years of experience working with businesses or as lawyers in large law firms. These barristers bring with them an understanding of the pressures and commercial drivers of both solicitors/attorneys and their clients. In providing advice and other legal services, Australian barristers seek to do so in a way that best meets their client's commercial as well as legal interests. They are easy to work with, culturally sensitive and personable.

## **SKILL AND EXPERIENCE AT A FRACTION OF THE COST**

Australian barristers represent incredible value for money. By reason of being sole practitioners and having fewer overheads, barristers tend to charge rates that are below those of solicitors or attorneys of comparable (or lesser) experience. Australian barristers are also generally far more competitive than their counterparts at other Bars around the world, including because of a favourable exchange rate.

For competitive rates one gets not only an experienced and trained advocate, but many barristers also bring with them specialist expertise in particular areas of law, including public international law, or in disputes concerning particular industries. They are also specialists in resolving disputes more generally, not just by presenting winning arguments, but through strategic advocacy to settle disputes and providing strategic advice at all stages of the dispute.

## **INTERNATIONAL**

While Australian barristers are generally experts in matters of Australian and public international law, the benefits of briefing a barrister equally apply for international arbitrations involving disputes governed by another jurisdiction's laws.

Australian law is based on the Common Law of England and shares many similarities with the laws applicable in places such as England, Singapore, Hong Kong, India, New Zealand, Malaysia, Canada and the United States. Many Australian barristers have access to legal databases and resources that include cases and laws from these jurisdictions as well. And while being a Common Law system, Australia also has extensive legislation and codes that share some similarities with Civil Law systems. All this makes an Australian barrister more than capable of acting as counsel in a dispute governed by a non-Australian law, and they frequently act alongside local lawyers or legal experts in preparing and arguing cases under other laws.



## CONFLICT FREE

Barristers are not direct competitors with law firms, as law firms are barristers' main clients. Barristers will not try to poach a law firm's client as that would be disastrous to their business model. And there are a number of reasons why a law firm with its own in-house advocacy can still benefit from bringing in a barrister on a case, in addition to all of the above reasons.

Law firms that do their own advocacy in international arbitration still brief barristers to help manage resourcing on larger cases. Others do so to bring down the overall costs of running a dispute. Having a barrister or two on a firm's pitch to a client can be both cost-effective and attractive for the client, presenting a legal team that offers different perspectives, a depth of experience and expertise, and real value for money.



## TIPS ON BRIEFING AN AUSTRALIAN BARRISTER

### WHERE TO FIND A BARRISTER?

- Barrister chambers websites provide all relevant information about a barrister
- Who to brief will depend on the issues in the case and its complexity
- Barristers can work alongside law firm advocates, splitting the written and oral advocacy between them
- There are elements of the legal process that barristers cannot perform due to being subject to special professional obligations and their relative lack of resources in comparison to large firms

Most barristers' chambers have websites that list barristers by relevant areas of practice and include barristers who have experience with appearing as counsel in international arbitrations. On many websites, a barrister's curriculum vitae, experience and previous cases can also be accessed. Clerks of chambers can also provide recommendations on barristers based on the nature of the dispute.

You can also consult international arbitration solicitors in the Australian offices of most major law firms, as they will have recommendations for barristers that they use in international arbitrations.

## KEY CONTACTS



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