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— Opinion

High bar makes Australia no country for young lawyers

Across the East Coast, an admitted lawyer can't practise without the say-so of the barristers who control the monopoly.

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Each year, thousands of young lawyers graduate around Australia, with some eager to make their mark in the courtroom as barristers.

After working for a few years or more on the lawyer mainland, they look to make the move across to barrister island, which is just a short flight away.

They manage to buy a ticket, which is expensive and difficult to get, only to be told that there are only two flights a year, each with just 60 places, and the next available seat is on a flight departing in three years.

In 1980, more than 90 per cent of Victorian barristers were under 50; by 2017, only half were. **Peter Rae**

This is the situation facing prospective barristers in Victoria, who are being forced to endure an almost three-year wait to begin practising after passing [https://www.afr.com/companies/professional-services/victoria-s-baby-barristers-fear-being-stuck-in-limbo-as-bar-fills-up-20260211-p5o1eu] their exams.

Bar associations (professional bodies controlled by incumbent barristers) limit barrister numbers in Victoria, NSW, Queensland and the ACT.

The result is less competition, higher prices, and reduced access to skilled and competent legal representation for those who need it.

Fairer entry to the profession is both possible and desirable.

It has also contributed to a dramatic ageing of the profession in Victoria.

In 1980, more than 90 per cent of Victorian barristers were under 50; by 2017, only half were.

There is already a high bar to become a lawyer. Only the top students get into a law degree, which is widely considered one of the most difficult university courses. Graduates must then undertake practical legal training, and admission as a lawyer must be approved by a body such as the Victorian Legal Admissions Board, made up of senior judges, lawyers and government appointments.

This is a high standard, but the rules are set and applied in the public interest.

In some jurisdictions, such as South Australia and the Northern Territory, anyone admitted as a lawyer is also able to practise as a barrister, with no additional requirements.

But across the East Coast, an admitted lawyer is not able to practise as a barrister until they have sat the Bar Reader's Course, which is run and controlled by the bar associations.

In other words, the barristers are the monopoly owner and operator of the only flight to barrister island.

Seat numbers are strictly limited, effectively capping entry into the profession. The cap is set at 120 per year in Victoria, while NSW and the ACT have a combined cap of just 108 per year.

Meanwhile, the number of practising lawyers across Australia has grown to around 100,000.

Some years ago, the long lines to get a seat made it obvious that some of the bar associations were gatekeeping.

So the East Coast bar associations made it harder to get tickets, introducing difficult and costly bar exams, which had to be passed before sitting the Bar Reader's Course.

Most candidates stump up thousands of dollars for tutoring in preparation, and a survey in Victoria [https://www.afr.com/companies/professional-services/victoria-to-overhaul-unfair-and-exclusionary-barrister-entry-exam-20240401-p5fggi] found that 90 per cent of candidates took time off work, and more than 90 per cent studied for several months.

This reduced the lines, and hid the gatekeeping, but only for a while.

The bar associations defend the bar exam as necessary to ensure the quality of barristers – although only half the barristers practising in Victoria, for example, have sat and passed it.

Across Australia, all qualified lawyers have the right to appear in court, and even across the East Coast it is not uncommon for lawyers who are *not* barristers to act as advocates in relation to minor matters in lower courts.

However, in Victoria, NSW, Queensland and the ACT they cannot use the term “barrister”. They are excluded from the main avenues through which barristers receive work and are practically barred from appearing as advocates in higher courts or for more serious matters.

Fairer entry to the profession is both possible and desirable.

All states and territories should follow South Australia and the Northern Territory and remove the distinction between solicitors and barristers, with current admission as a lawyer counting for both.

Or, if separate standards for barristers *are* deemed necessary, then these should be determined by an institution focused on the public interest (such as the Victorian Legal Admissions Board) and not an incumbent-controlled professional body.

Young lawyers lose out under the current system, but so does anyone seeking access to justice.

Henry Williams is director of policy at Policy Institute Australia and co-author of Match Fit: Reinvigorating competition in Australia.

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