



THE AUSTRALIAN BAR ASSOCIATION

National conduct rules for Australian barristers

The Australian Bar Association, the peak representative body for all Australian barristers, has prepared a set of national rules of conduct that will apply uniformly across Australia.

Currently, for historical reasons, each State and Territory Bar has its own set of conduct rules. While there is much in common with these sets of rules, for various reasons there are some differences. Those differences have now been removed.

All Australian Bars, recognising that a national profession should be governed by a uniform set of conduct rules which the profession itself has drafted, have agreed to there being the one set of conduct rules.

The general purpose of these rules is to set out rules and standards of conduct applicable to barristers which are appropriate in the interests of the administration of justice.

These rules, like those currently in effect, have been prepared on the basis that:

- barristers owe their paramount duty to the administration of justice;
- barristers must maintain high standards of professional conduct;
- barristers as specialist advocates in the administration of justice, must act honestly, fairly, skilfully and with competence and diligence;
- barristers owe duties to the courts, to their clients and to their barrister and solicitor colleagues; and that
- barristers should exercise their forensic judgments and give their advice independently and for the proper administration of justice, notwithstanding any contrary desires of their clients.

The only rules that will not apply nationally are a few which need to differ because of (at the moment) differences in the titles of State legislation and the constitutions of several Bars.

In February 2009 the Council of Australian Governments (COAG) agreed that further work needed to be done to ensure national regulation of the legal profession in Australia. Although much has been done by the legal profession in recent years to effect improvements, aspects of the regulation of the legal profession remain overly complex and inconsistent between States and Territories. The Commonwealth/State national legal profession reform Taskforce is due to report to COAG in the next couple of months on its proposals to remove the remaining 'bumps in the road' to a uniform national system of practice for both barristers and solicitors.

The ABA had commenced its work on a national set of conduct rules for barristers before COAG established the Taskforce.

In most States and Territories there are at the moment statutory procedures setting out a formal process of consultation and ratification of proposed new conduct rules. Each Bar will now publish the proposed new rules to its members and to the wider public for comment in the usual way. However, it is the Australian Bar Association's expectation – and wish – that the proposed set of national rules for barristers will be adopted by the COAG Taskforce and, along with other rules being prepared, published in draft form with the proposed Bill that is to be published for public discussion in the next few months. That is, the rules will be adopted nationally through the national legal profession reform project.

The Australian Bar Association welcomes any comments and submissions practitioners or others may wish to make on the proposed new national conduct rules for barristers.

Inquiries and submissions on the proposed new national rules of conduct for barristers should be addressed to either Mr Tom Bathurst QC, Immediate Past President, Australian Bar Association (President@nswbar.asn.au; ph. 02 9229 1736) or Mr Philip Selth, Executive Director, NSW Bar Association (executivedirector@nswbar.asn.au; ph 02 9229 1735); Selborne Chambers, 174 Phillip St, Sydney, NSW 2000.

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Tom Bathurst QC
Immediate Past President