



NEW SOUTH WALES  
BAR ASSOCIATION

## Explanatory Memorandum

### Best Practice Guidelines

1. On 19 June 2014, the Bar Council approved the following Best Practice Guidelines (BPG):
  - Model Harassment, Discrimination, Vilification and Victimisation Best Practice Guideline
  - Model Bullying Best Practice Guideline
  - Model Parental and Other Extended Leave Best Practice Guideline
  - Model Grievance Handling Procedure
2. The BPGs are voluntary.
3. The New South Wales Bar Association encourage its members and their chambers/floors to adopt the BPGs.

### Why adopt the BPGs?

4. The New South Wales Bar Association considers that achieving best practice in professional conduct and compliance with New South Wales and Commonwealth laws in the area of equality and diversity should be encouraged among its members and their chambers/floors.
5. To this end, it has approved the BPGs which are intended to do the following:
  - assist barristers to comply with Bar Rule 117, which commenced on 6 January 2014;
  - assist barristers to comply with their obligations under Regulation 175 of *Legal Profession Regulation 2005* (NSW);

- assist barristers and their chambers/floors comply with their obligations under the following Commonwealth and State discrimination/employment laws in their capacity *inter alia* as ‘employers’, ‘service providers’ and ‘workplace participants’:
  - *Racial Discrimination Act 1975* (Cth)
  - *Sex Discrimination Act 1984* (Cth)
  - *Disability Discrimination Act 1992* (Cth)
  - *Age Discrimination Act 2004* (Cth)
  - *Australian Human Rights Commission Act 1986* (Cth)
  - *Australian Human Rights Commission Regulations 1989* (Cth)
  - *Fair Work Act 2009* (Cth)
  - *Anti-Discrimination Act 1977* (NSW)
- assist barristers and chambers manage risk and provide some protection against claims of vicarious and accessory liability under the Commonwealth and State discrimination/employment laws. Justice Buchanan has recently highlighted the importance of policies which reflect the law. Near enough is not good enough: see *Richardson v Oracle Corporation Australia Pty Limited* [2013] FCA 102 at [163] [164];
- provide some guidance on complying with new federal anti-bullying laws which took effect on 1 January 2014;
- provide a mechanism for addressing complaints and grievances in a manner that reflects best practice but also takes into account the particular features of a barrister’s practice and chambers arrangements;
- updates and replaces the Bar Association’s Model Sexual Harassment and Discrimination Policy, approved by Bar Council on 17 June 2004. So those chambers/floors that adopted that policy will need to consider whether to adopt the new standards.

### Why do barristers and their chambers/floors need these BPGs?

6. As employers and service providers barristers must conduct their practices in accordance with relevant State and Commonwealth laws. This obligation extends to the way in which barristers collectively treat the staff, visitors and each other in chambers.
7. The changes to the New South Wales Barristers Rules in January 2014 reinforce the statutory requirements but go further. These BPGs are intended to assist barristers

individually and collectively to understand and ensure that their behaviour is consistent with the new Rule 117 of the New South Wales Barristers Rules.

8. Further, the BPGs are intended to reflect best practice and to meet community expectations as to appropriate workplace and professional standards of conduct.

### Next steps

9. This note is not intended to be an exhaustive discussion of the relevant laws and their application to barristers and chambers in New South Wales. Chambers/Floors should seek their own legal advice with respect to the application of the BPG. These BPGs are model guidelines and should be amended to reflect the particular requirements of chambers/floors.
10. For any member of the Association or chambers/floors who would like further information, please do not hesitate to contact the Equal Opportunity Committee of the NSW Bar Association.