



NEW SOUTH WALES
BAR ASSOCIATION

THE NEW SOUTH WALES BAR ASSOCIATION
BAR COUNCIL

MINUTES OF PROCEEDINGS

Thursday 16 July 2015
in the Boardroom of the New South Wales Bar Association
at 4.30 pm

PRESENT: Needham SC; Hutley SC; Moses SC; Hogan-Doran; Bennett AC QC; Menzies QC; Sullivan QC; Phillips SC; Game SC; Cunneen SC; Traill; Walker; Khandhar; Toomey; Wood; Stitt; Callan (by phone); Hyde Page; Antipas; Sethi

APOLOGIES: Doyle Gray

IN ATTENDANCE: Deputy Executive Director; Manager, Professional Conduct (for professional conduct matters); Executive Assistant

MINUTES

The minutes of the meeting of 25 June 2015 were confirmed, subject to a minor typographical amendment and a further amendment to clarify that the funding approved by Bar Council regarding funding of changes to Bar examination arrangements should only apply to the design and implementation of these changes, and not for the payment of any teaching fees.

MEMBERSHIP

The following were admitted as Class A – Local Practising Barrister – unless otherwise shown:

Kenneth Barlow QC – B	North Quarter Lane Chambers (QLD)
Belinda Baker	6 Selborne Chambers
Catherine Bembrick	5 Wentworth Chambers
Andrew Byrne	7 Wentworth Selborne
Clare Carnell – B	Blackburn Chambers (ACT)
Gareth Christofi	ODPP Parramatta

Linda Clarke
 Cecilia Curtis
 Hamish White

William Deane Chambers
 ODPP Parramatta
 Edmund Barton Chambers

FOR CONSIDERATION

ADR – Uniform Legal Profession Conduct (Barristers) Rules

- Memorandum to the Bar Council dated 22 May 2015 from the Alternative Dispute Resolution Committee – New South Wales Barristers’ Rules – Rule 15
- Motion to NSW Bar Council from ADR Committee
- Extract from the minutes of the Bar Council’s meeting of 24 March 2011
- Memorandum to the Bar Council dated 1 December 2011 from the Alternative Dispute Resolution Committee – New South Wales Barristers’ Rules 8 August 2011 – Rule 15
- Submission to Bar Council from ADR practitioners - Proposed Uniform Rules – Definition of Barristers’ Work
- Note from Fiona McLeod SC, President, Australian Bar Association dated 28 May 2015 - *Legal Profession Uniform Conduct (Barristers) Rules 2015* and mediators
- Memorandum to the Bar Council dated 4 February 2015 from the President – The Legal Profession Uniform Law
- Amended motion from Bennett QC and Phillips SC regarding the proposed amendment to the Conduct Rules
- Analysis of the ABA President’s explanation of the omission of ADR Principal activities from Uniform Rule 11
- Letters to the ABA President dated 18 and 21 May 2015 from Michael Heaton QC – ABA Barristers’ Conduct Rules – definition of barristers’ work
- *AFR* article dated 3 July 2015 – Litigators look to capitalise on ADR
- Email to Mary Walker dated 26 March 2015 from the Deputy Executive Director – Urbis survey
- QC/SC support list
- Email to Mary Walker dated 25 May 2015 from Nigel Cotman SC – Letter to LSC Chairman
- ADR as barristers’ work: the issues
- President’s *In Brief* note of 13 May 2015 – ADR and the Barristers’ Rules

Bret Walker SC attended the meeting at 5pm in his capacity as the nominee of the Australian Bar Association on the national Legal Services Council. He outlined the process by which any proposed amendment to the Legal Profession Uniform Conduct (Barristers) Rules must proceed. He noted that any proposal for change could not be initiated by the Legal Services Council, but rather would have to come from the Australian Bar Association, which is represented on the Council.

Walker SC also noted the history of the Rule regarding “the work of a barrister”, which had been originally included in the NSW Barristers Rules some years ago. The concept of “work

of a barrister” was not intended to provide a comprehensive list of the work done by barristers. The current form of the Rule reflected the provision that had been in force in the NSW Barristers Rules since 2011.

After answering some questions from Bar Councillors, Walker SC left the meeting at 5.40pm.

The Bar Council acknowledged that any proposed amendment to Rule 11 of the Legal Profession Uniform Conduct (Barristers) Rules would first require the approval of the Australian Bar Association, which would then need to bring the proposal before the National Legal Services Council for its approval, and then ultimately be approved by the NSW and Victorian Attorneys General.

Mary Walker tabled a number of additional emails from members supporting the proposed rule change, and Bar Council also noted that previous emails from members regarding this issue were available for perusal.

RESOLVED that Rule 11 of the Uniform Legal Profession Conduct Rules for Barristers ought to be amended by amending 11(d) to read “representing a client in or conducting a mediation or arbitration or other method of alternative dispute resolution”.

ALSO RESOLVED to pursue any further or necessary consequential changes to the Legal Profession Uniform Conduct (Barristers) Rules for Barristers to give effect to the intent of the amendment which is to include within the definition of barristers’ work conducting ADR processes as an ADR principal.

ALSO RESOLVED that the NSW Bar Association’s representative on the Australian Bar Association Board (the Senior Vice-President) be requested to progress urgently the amendment to the Legal Profession Uniform Conduct (Barristers) Rules and to do all things necessary (including lobbying and voting), to implement the amendment via the Australian Bar Association and the Legal Services Council.

ALSO RESOLVED that a copy of the resolution (with the background information provided to the NSW Bar Council with this motion) be provided to the President of the Australian Bar Association, the Chair of the Legal Services Council, the President of the Victorian Bar Association and the Chair of the ADR Committee of the Victorian Bar Association.

ALSO RESOLVED that a paper be prepared advocating the change be prepared for the Senior Vice-President to present to the Australian Bar Association.

It was also agreed that the Bar Council’s resolutions be brought to the attention of members.

Consideration of maternity leave proposal

- Memorandum to the Bar Council from David Bennett QC
- Memorandum to the Bar Council dated 25 June 2015 from the Chair, Equal Opportunity Committee – Consideration of maternity (and paternity?) leave, memorandum by David Bennett QC
- Letter to the Equal Opportunity Committee dated 24 June 2015 from the Women Barristers Forum – Request for WBF comments on draft memorandum by EOC: Consideration of maternity (and paternity?) leave by David Bennett QC

The Bar Council thanked David Bennett QC, the Equal Opportunity Committee and the Women Barristers Forum for their work on this issue to date, and agreed with the Equal Opportunity Committee's suggestion that it undertake further work on strategies to assist barristers to deal with the challenges they face when taking parental leave and returning to practice.

It was also agreed that the President would consult with the Chair of the Equal Opportunity Committee and the Convenor of the Women Barristers Forum regarding this ongoing work, with a view to the preparation of a report to Bar Council on relevant options.

Correspondence to the President from Walker – 2014 Senior Counsel selection process

Mary Walker declared an interest and left the meeting prior to the discussion of this item.

Bar Council agreed to delegate the oversight of this issue to the Executive, who will keep Bar Council informed of progress in the matter.

FOR INFORMATION

Submission of the New South Wales Bar Association to the Independent Panel to review the jurisdiction of the Independent Commission Against Corruption dated 2 July 2015

Noted.

Letter to the President dated 2 July 2015 from the Hon Gabrielle Upton MP – Justice Portfolio

Noted. The Bar Council also noted that the President would raise the Association's recent correspondence to the Attorney General regarding the current position of the NSW Law Reform Commission, and the Attorney's response, in her next meeting with the Attorney.

The following papers were circulated via e-mail prior to the Council meeting

- Email to the Bar Council dated 25 June 2015 from the Deputy Executive Director – Memorandum to the Bar Council 25 June 2015 Christopher Patrick Comesky and court decision
- Email to the Bar Council dated 26 June 2015 from the Executive Director – *Legal Profession Uniform Law Application Regulation 2015* – Fees in advance in direct access matters
- Email to the Bar Council dated 29 June 2015 from Corinne Gilbert – Minutes of the Law Council of Australia
- Email to the Bar Council dated 30 June 2015 from the Deputy Executive Director – Revised submission to Independent Review Panel to review the jurisdiction of ICAC

The meeting closed at 6.30pm.

Confirmed as a correct record:

Jane Needham SC
President

Date: