

Dear Heads of Chambers,

On Tuesday last I sent emails, concerning the omission of ADR from the proposed Barristers' Work definition in the Uniform Barristers Rules.

West QC sought to have the matter added to the agenda of the 14 May Bar Council meeting as a matter of urgency, having regard to the 1 July 2015 commencement date of the new regimen and the imminent consideration of the Rules by the Attorney General for NSW.

A large number of individuals and Floors have expressed their concern at that omission by emails, submissions and letters to the President and to the Executive Officer of the NSW Bar Association.

Referring and responding to that concern, in **In Brief** on 13 May, the President said:

"This correspondence arises out of a concern that the work of arbitrators and mediators is not "recognised" in the Bar's Conduct Rules."

"The question of whether a specific recognition of acting as an arbitrator or mediator formed part of the review of the Rules which underpinned the consultation process."

.....

"However, the question of whether the amendment proposed should be sought is the subject of discussion at an upcoming Council meeting."

"The views already expressed to me will of course be taken into account. Additionally, the Council will have input from the ADR Committee of the Association on this topic."

However, the President also observed:

"Now that the Legal Profession Uniform Law Application Act 2014 (NSW) has been passed by the NSW Parliament, the ABA is the body which develops conduct rules, legal practice rules, and CPD rules, and lodges them with the Commissioner for Uniform Legal Services Regulation for consideration by the Legal Services Council. Any rules made which bind the NSW Bar Association are made under the Legal Profession Uniform Law. The consultation period for the proposed national Legal Profession Conduct Rules for barristers has now expired and the Rules will come into effect on 1 July."

The consultation period referred to commenced in early December 2014 and ended on 16 January 2015. The ABA has remitted the Rules to LSC.

Bar Council apparently did not deal with the matter on 14 May and will only do so at some indeterminate time in the future.

However, as the President observed, it would appear that matters are well past any likely effective role for the NSW Bar Council.

Under the *Legal Profession Uniform Law (NSW)*, LSC has, or will shortly, submit the Rules to the NSW Attorney General for consideration as the "Standing Committee" under the Act.

The Attorney has power to approve, veto or not-veto within a 30 day period from submission, sec 427(6). If there is approval or no veto in the 30 day period, the Rules have passed.

The parties now with active involvement are ABA, LSC and the Attorney General.

As the author of the Rules, the ABA position on Rule 15 is known.

Both the LSC and the Attorney may be forgiven for thinking that there was no opposition to or concern about the Rules. The history of embellishing or ameliorating Rule 15 by local resolution in Victoria and NSW is not obvious.

It is important that the LSC and the Attorney be told that there is a strongly held alternative view in the practising bar from that reflected in the proposed Rule 15.

The matter remains urgent.

Some correspondents have already made their views known to the LSC, as well as ABA and NSW Bar Association. Most have not, in the expectation that NSW Bar Association might be able to act.

If comment on Rule 15 was previously forwarded only to the Association or ABA, it needs to be copied to at least the Attorney General, or both of:

Mr Dale Boucher
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CEO Legal Services Council
Level 11, 170 Phillip Street, Sydney 2000
or

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and

The Honourable Gabrielle Upton MP
Attorney General for New South Wales

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