

# JOTTINGS ON THE BAR

## New Barristers' conduct rules



*John Reeves QC, President of the NT Bar Association*

At its last general meeting, the NTBA decided to replace the old Bar Rules with a new set of Barristers' Conduct Rules.

### Less proscriptions and restrictions

Consistent with the move to establish a national profession, the new Barristers' Conduct Rules closely follow the Australian Bar Association's Model Conduct Rules.

They contain a number of significant changes.

In general terms, the new rules:

- Remove various proscriptions that are not appropriate in conduct rules e.g. particular fee arrangements;
- Remove various archaic restrictions e.g. barristers not visiting solicitors' offices;
- Contain more general statements of principle e.g. new rule 7 provides: "Barristers should be free to choose how they lawfully practice as barristers except only in those cases where the unchecked exercise of the freedom would threaten harm to the greater public interest that barristers conduct be honourable, diligent, especially skilled, disinterested and competitive and that access to barristers' services be enhanced".

### Direct briefing, keeping it succinct and disclosable events

It is not possible in this column to summarise all the significant changes made.

However, the following are some:

- A barrister may now accept instructions directly from a person who is not a solicitor. However, before doing so, the barrister must inform the prospective client, in

writing, of various matters including the true nature a barrister's professional work (as described in rules 74 and 75) and the fact that circumstances may require the client to retain an instructing solicitor at short notice during the case – new rule 80. Of course, accepting a brief direct from a client may give rise to other problems.

For example, barristers or counsel, in the Northern Territory are not required to have a trust account (see the definition of "legal practitioner" in section 53 of the Legal Practitioners Act) and barristers are unable to collect their fees in the same way as other legal practitioners can under part X of the Legal Practitioners Act (see the definition of "legal practitioner" in section 118A of the Legal Practitioners Act).

- A large number of provisions have been added dealing with the responsible use of court processes and privilege and the efficient administration of justice. They include requirements that a barrister should confine a case in which he or she is briefed to identified issues which are genuinely in dispute, to have the case ready to be heard as soon as practicable, to present the identified issues in dispute clearly and succinctly, to limit evidence, including cross examination, to that which is reasonably necessary to advance the client's interest and to occupy as short a time in Court as is reasonably necessary to advance the client's interest – new rules 35 to 42B.
- All barristers must now disclose to the secretary of the Bar Association any "disclosable event".

That expression includes bankruptcy and a conviction for an offence (or a finding of an offence having been proved) under any law in force in Australia or any overseas country where the maximum penalty for the offence is a term of imprisonment of 12 months or more, or where fraud or dishonesty is an element of the offence – new rule 115.

### Guidelines to assist

For the assistance of our members, in the next few months the Bar Council plans to issue guidelines on some specific situations that were dealt with in the old rules, but have not been replicated in the new rules for various reasons. They will include giving undertakings, alleging bias and accepting retainers.

### Seeking a ruling

Of course, if a barrister encounters a particular situation where he or she is unsure what to do, it is open to that barrister to seek a ruling from the Bar Council or, in a case of urgency, from myself as President, or Steve Southwood QC, as Vice President. ①

*For anyone interested, a full copy of the new Barristers' Conduct Rules can be viewed on the new NTBA web site at [www.ntba.asn.au](http://www.ntba.asn.au).*