



Australian  
Bar Association

## PROPOSED NEW RULE

The Legal Services Council agreed with the ABA's proposal to further amend r 101(n) of *Legal Profession Uniform Conduct (Barristers) Rules 2015* to ensure that the preclusion rule does not operate retrospectively. The Council has also authorised to approve the ABA to conduct public consultation on draft rule 101A of the Barristers Conduct Rules under s427(5)(b) of the Uniform Law.

The draft rule for public consultation is below and written submissions are invited and should be addressed to [ceo@austbar.asn.au](mailto:ceo@austbar.asn.au).

### Proposed Revised Form

#### *Legal Profession Uniform Conduct (Barristers) Rules 2015 (NSW/Vic) Rule 101A*

(a) For the purposes of Rule 101A only –

"**court**" means any body described as such.

"**former Rules**" means the rule or rules of conduct as in force immediately prior to 1 July 2015 governing the right of a barrister to appear before a court of which the barrister is or was formerly a judge, justice, magistrate, coroner, master, prothonotary, registrar or other judicial officer, and anyone holding such office on an acting basis, such as rule 95(n) of the New South Wales Barristers' Rules 2014 (NSW) and rule 92A of the Victorian Bar Practice Rules 2009 (Vic).

"**Judge**" includes a judge, justice, magistrate, coroner, master, prothonotary, registrar or other judicial officer and anyone holding any such office on an acting basis, other than a Judge who was appointed before 1 July 2015.

"**tribunal**" means a statutory tribunal or disciplinary tribunal other than a tribunal to which a statutory provision applies that prohibits a member or former member from representing a party within a certain time, or in certain circumstances, or absolutely.

(b) Without limiting the generality of Rule 101, a barrister must refuse to accept or retain a brief or instructions to appear before a court if both (i) and (ii) are satisfied:

(i) the brief is to appear before a court:

(A) of which the barrister is or was formerly a Judge; or

(B) from which appeals lie to a court of which the barrister is or was formerly a Judge;

(ii) the appearance would occur within 5 years after the barrister ceased to be a Judge of the court in question.

(c) The former Rules continue to apply to a barrister who was, before 1 July 2015, appointed a judge, justice, magistrate, coroner, master, prothonotary, registrar or other judicial officer, including on an acting basis.

(d) Without limiting the generality of Rule 101, a barrister must refuse to accept or retain a brief or instructions to appear before a tribunal if at least one of (i) or (ii) are satisfied:



Australian  
Bar Association

(i) the brief is to appear before such a tribunal which does not sit in divisions or lists to which its members are assigned and either:

(A) the barrister is a full time, part time or sessional member of the tribunal; or

(B) the appearance would occur within 2 years after the barrister ceased to be a member of the tribunal;

(ii) the brief is to appear before such a tribunal which sits in divisions or lists to which its members are assigned and either:

(A) the brief is to appear in a proceeding in a division or list to which the barrister, being a member of the tribunal, is assigned;

(B) the brief is to appear in a proceeding in a division or list to which the barrister was assigned, and the appearance would occur within 2 years after the barrister ceased to be assigned to that division or list.

(e) For the purposes of Rule 101A(b)(i)(B):

(i) no appeal shall be considered to lie to the Federal Court of Australia from the Supreme Court of any State or Territory;

(ii) appeals shall be deemed to lie from the County Court of Victoria to the Trial Division of the Supreme Court of Victoria; and from the District Court of New South Wales to the Trial Division of the Supreme Court of New South Wales.