



Australian
Bar Association

The ABA acknowledges the relationship between the land on which it and its members work and the First Nations' peoples of Australia

Consultation re proposed amendment of the Legal Profession Uniform Continuing Development Rules (Barristers) 2015 pursuant to section 427(5)(b) of the Legal Profession Uniform Law.

The Australian Bar Association invites comments and submissions on a proposal to amend Rule 9(1) of the *Legal Profession Uniform Continuing Development Rules (Barristers) 2015* to add a further category of '(e) Equality and Wellbeing'.

Rule 9 currently provides:

9 Categories of CPD

- (1) A barrister must, unless otherwise exempted, in each CPD year engage in CPD activities in each of the categories set out below—
 - (a) Ethics and Professional Responsibility,
 - (b) Practice Management and Business Skills,
 - (c) Substantive Law, Practice and Procedure, and Evidence,
 - (d) Barristers' Skills.
- (2) These categories are subject to any requirement of the designated local regulatory authority or legislation.

Submissions can be sent to the Australian Bar Association on or before 30 September 2024 by email to: ceo@austbar.asn.au

The additional category would be a mandatory CPD that would to be undertaken annually by every barrister covered by these rules. However, the need to accumulate 10 CPD points annually would not change.

This proposed category is intended to include 'Anti-Discrimination, Harassment and Bullying' but is broader in nature.

The current CPD schemes in both the Northern Territory and South Australian contain requirements to complete one CPD unit relating to 'bullying, discrimination and harassment'. Clause 1(d) of the Northern Territory's CPD scheme requires practitioners to complete one unit in 'skills relating to identifying, addressing and preventing bullying, discrimination and harassment in the workplace (including, for example, responding to claims of sexual harassment and developing strategies for a safe workplace culture)' each year. Clause 2.2 of the South Australian CPD scheme requires practitioners to complete one CPD unit 'relating to bullying, discrimination and harassment' each year.

The proposal is more closely reflects the current CPD Scheme in Tasmania. Clause 3.2(d) of the Law Society of Tasmania's CPD scheme requires legal practitioners to complete one CPD unit relating to equality and wellbeing each year. Schedule 1 of the Scheme includes the following illustrative and non-exhaustive examples of CPD topics that relate to equality and wellbeing:

- staff welfare (including WHS, staff wellbeing and the law relating to discrimination, harassment, and bullying)
- awareness training
- family safety and family violence
- unconscious bias
- bystander training
- sexual harassment
- bullying
- mental health
- working with people from culturally and linguistically diverse backgrounds
- sex, gender and diversity and the law
- indigenous issues.

While not exhaustive, these examples would fall within the proposed ABA category.

Consideration was given to a limited category of 'Anti-discrimination, harassment and bullying', in the end the Council resolved to propose a broader category on the basis that:

- There is abundant academic research identifying a perpetrator's poor mental health and lack of self-regulation as a contributing factor in his or her inappropriate behaviour;
- Inappropriate behaviour adversely impacts the wellbeing of both targets and bystanders;
- Inappropriate behaviour may arise from a lack of awareness or understanding of matters in respect of cultural or gender diversity; and
- A broad approach allows for a greater range of topics to be presented that, while not squarely addressing inappropriate behaviour, improves barrister civility and standards of practise by fostering self-awareness, empathy, and a respect for others.

It is considered that the proposed amendment will go some way to addressing issues of behaviour, civility and the culture of the Bar.