

Memorandum

To: Directors
Presidents
CEOs – Constituent Bodies (excluding State and Territory Bar Associations)
Section Chairs

From: Arthur Moses SC, President

Date: 11 December 2019

Development of a Protocol on Standards of Judicial Behaviour and Conduct in the Courtroom

Action Request

Input is requested by **31 January 2020** for feedback on a proposed Protocol on Standards of Judicial Behaviour and Conduct in the Courtroom with application to the broader legal profession, modelled on the existing [Protocol for the Bar Associations of Australia to raise any concern about Judicial conduct in Commonwealth courts](#). As this protocol has already been entered into by the ABA on behalf of state and territory bar associations, comment is not being sought from these entities.

Key Issues

The Law Council recently became aware that in August 2019, the Australian Bar Association (ABA), Federal Court, Federal Circuit Court and Family Court of Australia agreed to the terms of a protocol whereby the President of the ABA and Presidents of State and Territory Bar Associations may raise any concerns about judicial conduct with the heads of those jurisdictions about judicial conduct (**ABA Protocol**).

The ABA Protocol has application to barristers only, setting out a procedure whereby barristers may raise concerns about the conduct of a judicial officer. The Law Council is committed to assisting in the development of a similar protocol that will apply to those in the legal profession who are not barristers and appear in Court.

Accordingly, the Law Council seeks the views of Constituent Bodies who represent solicitors as to any amendments or changes that they consider should be made to the ABA Protocol to reflect the interests of their membership. Once received, this input will be consolidated and provided to Chief Justice Allsop and Chief Justice Alstergren for their comment.

Background

On 22 May 2019, I met with the Chief Justice of the Federal Court of Australia. At that meeting it was noted that the Federal Court was in the process of developing a protocol with the ABA in relation to raising concerns about judicial conduct. The Law Council suggested at the time that the draft protocol could be extended to cover all practitioners appearing in the Court, however without the knowledge or input of the Law Council, the ABA Protocol

Memorandum

proceeded and was settled in August 2019. This appears to have occurred because of a misunderstanding. In noting this, there is no criticism of the ABA or the Court, but it is my firm view that it is important that such protocols include the Law Council as it is the peak body for the entire profession.

After the Directors' meeting on 30 November 2019 which had before it a paper on this issue (**Attachment 1**), in accordance with a request from the Board, I followed up the Chief Justice of the Federal Court on the status of the protocol. The Chief Justice informed me that the protocol had been finalised with the ABA, and suggested that the Law Council may wish to examine the ABA Protocol with the view to proposing any changes that may be required in order to produce a similar protocol that will cover practitioners appearing in Court who are not barristers.

Once views on this issue are received from Constituent Bodies, the Law Council will continue its engagement with the Chief Justice with the view to settling a protocol that will sit alongside the ABA Protocol, and have relevance to the interests of those in the profession that are not barristers who may nonetheless appear in Court.

Contact

In the first instance please contact Nathan MacDonald, Principal Policy Lawyer, on 02 6246 3721 or at Nathan.Macdonald@lawcouncil.asn.au or if you would like any further information or to provide comment.



Arthur Moses SC
President