



NEW SOUTH WALES  
BAR ASSOCIATION

# READER / TUTOR GUIDELINES

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## A. The Tutor-Reader Relationship

1. The Reading Program should be a mutually rewarding experience. Each tutor will have views about the best means of instructing readers and about matters requiring special attention. However, tutors must be satisfied that their readers understand certain matters before the tutor can certify them as fit to practise. For example, readers must understand their tax and other obligations as small business proprietors.
2. This document is intended to provide a useful guide to assist tutors and readers in establishing and developing their relationship — a key aspect of which is that it be flexible and shaped by the individuals involved to best meet the needs of the reader. Expectations of the relationship must be realistic, having regard to the capacity of those involved. However, tutors are ultimately required to certify their readers as fit to practise at the end of the reading year (or to decline to provide that certification if, for example, they are of the view that additional reading should be undertaken). The importance of that certification, and the Reading Program as a whole, demands that sufficient time be allowed for appropriate supervision and support of each reader.
3. There are matters about which tutors must be aware if they are to conduct themselves appropriately as tutors. For example, rule 123 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* (**Bar Rules**) embargoes certain behaviour which is unacceptable between barristers and has particular significance for the position of trust integral in the tutor-reader relationship.
4. Different readers will have different requirements for supervision and guidance. The experience of reading has always varied according to the temperaments, personalities and inclinations of tutor and reader — most important is that there is effective and constructive instruction to achieve the twin aims of the Reading Program:<sup>1</sup>
  - a. education and support: to provide new barristers with an “apprenticeship” during which they have the benefit of the support and instruction necessary to assist them in starting a new career at the Bar; and
  - b. quality assurance and public protection: to supervise and assess new barristers during a period of restricted practice until they are certified by their tutor(s) as “fit” to practice without restriction.
5. The Certification Form provides an important indicator of the nature and scope of the supervision and instruction required of tutors, because ultimately the tutor must be in a position to certify the reader as fit to practise (or not, as the case may be). Given the importance of that certification to the reader involved and the profession as a whole, the Bar Council has certain expectations of tutors during the Reading Program which are set out below.
6. Tutors ought to be mindful of the following:
  - a. The need for professionalism and objectivity: The certification process requires that tutors maintain their objectivity and maintain a professional relationship while monitoring their reader’s progress. If the tutor’s objectivity is impugned for any reason, the tutor (and reader) ought to consider ceasing the relationship, as well as how this may best be achieved without jeopardising the reader’s certification at the end of the year. Section J below entitled “What if things go wrong?” contains a list of senior members of the Bar who have agreed to act as a point of contact to discuss any issues if they arise.

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<sup>1</sup> Which are to be inferred from the regulations set out in Section B below.

- b. The need for “non-legal monitoring” in addition to legal monitoring: Part of the role of the tutor is to impart to the reader the best traditions of the Bar so that they may be maintained by future generations of barristers; for example, the open door rule. In addition, a reader must be aware of the customs and courtesies that enhance not only the reputation of the reader but the reputation of the Bar. If the tutor becomes aware of the reader behaving in ways which may discredit the reader in the eyes of their peers or judicial officers, it is the role of the tutor to bring the matter, tactfully and promptly, to the attention of the reader.
7. The COVID-19 pandemic resulted in significant changes to the way in which barristers work. While there has been a return to in-person hearings, certain hearings continue to be conducted using technology rather than requiring in-person appearances. Working from home has become more commonplace for barristers, solicitors and clients. The aims of the Reading Program, however, are the same, as are the responsibilities and expectations for readers and tutors.

## **B. The Reading Program**

### *Key features of the Reading Program*

8. The key features of the Reading Program, drawn from the regulatory regime set out below, are that a barrister must complete a readership for a period of not less than 12 months from the commencement of their practice at the Bar, during which time:
- a. the reader must be supervised by one or two junior counsel of at least seven years’ call (subject to the discretionary approval of tutors between five and seven years’ call);
  - b. the reader is expected to develop their skills both independently of and together with their tutor(s);
  - c. in the first six months of the reading period, the reader must undertake the civil and criminal reading requirements for a period of 10 days in relation to each;
  - d. until the civil and criminal reading requirements are met, the reader may only appear unled with the prior approval of their tutor (and if the civil and criminal reading requirements are not met within the first six month period such approval must be in writing); and
  - e. the reader is not to accept direct access briefs without their tutor’s written approval (subject to certain exceptions).
9. At the end of the reading year, the reader’s certifying tutor is required to assess whether the reader is fit to practise without restriction and certify to that effect if that be the case, or recommend that additional reading be undertaken if it is not. The reader’s second tutor (if any) is also required to provide a certification. While it is not a requirement for each reader to have two tutors, this is strongly recommended.

### *Regulatory provisions*

10. The requirement to undertake and complete the Reading Program is sourced in section 50 of the *Legal Profession Uniform Law* (NSW) (**Uniform Law**), which provides:
- (1) It is a statutory condition of an Australian practising certificate granted in this jurisdiction, with a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only, that the holder must:
    - (a) undertake and complete to the satisfaction of the designated local regulatory authority a reading program (whether full-time or otherwise) specified in the Uniform Rules or otherwise approved by the designated local regulatory authority; and

- (b) read for a period specified by the designated local regulatory authority) with a barrister who is—
  - (i) of a class or description specified in the Uniform Rules) or otherwise approved by the designated local regulatory authority; and
  - (ii) chosen by the holder; and
- (c) comply with any other requirements specified by the designated local regulatory authority for the purposes of this paragraph.
- (2) The designated local regulatory authority may impose a discretionary condition limiting the practising rights of a barrister referred to in subsection (1) until the statutory condition is complied with.
- (3) The statutory condition, once satisfied, does not have to be complied with again unless the designated local regulatory authority otherwise directs.
- (4) The designated local regulatory authority may exempt a person or class of persons from the statutory condition.
- (5) The exemption may be given unconditionally or subject to any conditions that the designated local regulatory authority thinks appropriate.

## C. Bar Council's Expectations of Tutors

### *Eligible tutors*

#### 11. Bar Council has resolved to adopt the following Tutor Policy:

1. The specified class of barrister approved by the Bar Council (as the designated local regulatory authority), for the purpose of section 50(1)(b)(i) of the Legal Profession Uniform Law (NSW) (Uniform Law) is a barrister who:
  - a. is a full-time practising New South Wales barrister, but need not be a member of the New South Wales Bar Association;
  - b. has continuously held a New South Wales barristers' certificate or a practicing certificate of another Australian jurisdiction for not less than seven years;
  - c. has not been appointed senior counsel at the beginning of the reader's reading period;
  - d. has not had conditions imposed on his or her practising certificates pursuant to the Uniform Law or the Legal Profession Act 2004 (NSW) within the past ten years (other than the standard conditions applying to readers, crown prosecutors, public defenders, parliamentary counsel and academics);
  - e. is not within the following categories:
    - i. the subject of an adverse finding by the Administrative Decisions Tribunal, NSW Civil and Administrative Tribunal or the Supreme Court (competent court or tribunal);
    - ii. had a practising certificate cancelled or suspended;
    - iii. had a finding of professional misconduct or unsatisfactory professional conduct made by a competent court or tribunal;
    - iv. otherwise been the subject of action that is within the definition of "disciplinary action" in s 148 of the Legal Profession Uniform Law Application Act 2014 (NSW) (there for the purposes of Part 12 of that Act) or s 576 of the Legal Professional Act 2004 (NSW) (there for the purposes of Part 4.10 of that Act);
    - v. been convicted of a serious offence as defined in the Uniform Law; and
  - f. has attended a mandatory CPD session conducted by the Bar Association for Tutors.
2. A reader may have more than one tutor, in which event the reader must nominate one as the certifying tutor.
3. A barrister can only be the certifying tutor for one reader in each Bar Practice Course and cannot be the certifying tutor for two readers undertaking consecutive Bar Practice Courses.
4. A barrister can be a tutor for no more than two readers at any one time, provided that a departure from this requirement is permitted where:
  - a. a third reader has been granted an extension of time to complete their civil and criminal reading requirements but has not yet done so;
  - b. the period contemplated by that extension of time has not elapsed; and
  - c. the tutor is otherwise satisfied that the third reader is fit to practice as a barrister without restriction.

5. Noting the Practising Certificate Conditions for Readers, the Director, Professional Standards and Support will maintain a list of potential tutors for the information of potential readers.
6. The Bar Council may dispense with, or relieve against, the requirements in 1b, d, e, f, 3 and 4 in whole or in part.
7. The Bar Council delegates to the Bar Council Executive the authority to act on behalf of the Bar Council in respect of the power to dispense with, or relieve against, the requirements in 1d, e and f.
8. The Bar Council delegates to the Executive Director the authority to act on behalf of the Bar Council, in consultation with a member of the Bar Council Executive, the Director, Professional Standards and Support and/or a Senior Counsel member of the Education Committee as the Executive Director believes appropriate, in respect of applications:
  - a. to dispense with, or relieve against, the requirements in 3 or 4; and
  - b. to be a tutor where the barrister has continuously held a NSW barristers' practising certificate or a practicing certificate of another Australian jurisdiction for more than five but less than seven years, notwithstanding the requirement in 1b.
12. The Bar Association facilitates CPD sessions so that tutors may satisfy the requirement in paragraph 1(f) of the Tutor Policy. The sessions are posted on the Bar Association website and may be viewed online in satisfaction of the requirement.
13. It should be noted that pursuant to paragraphs 3 and 4 of the Tutor policy, there are restrictions on how many readers each tutor may have at any one time, be they a certifying tutor or a second tutor. The expectations of certifying and second tutors are discussed below.
14. The Director, Professional Standards and Support maintains a list of current (active) tutors and potential (eligible tutors). These lists may be viewed at <https://nswbar.asn.au/becoming-a-barrister/tutors>.

*Active participation in the Bar Practice Course*

15. The Bar Practice Course is an intensive period of advocacy instruction that is a critical first step in a reader's career at the Bar.
16. It is expected that tutors will be involved from the beginning of the reading year and participate in the Bar Practice Course to the extent that they are able. Tutors are encouraged to attend the Bar Practice Course advocacy sessions — in particular the applications in week 2 to Local, District, Supreme and Federal Court judges — to assess their readers' oral advocacy skills. Tutors are also encouraged to assist readers with the preparation of their applications.
17. Tutors should also attend the session prior to the commencement of the Bar Practice Course where the Director of the course identifies what is required of the readers over the term of the course.
18. Apart from assisting the Bar Association with assessing the capacities of readers to practise with the usual reader restrictions, the assessment of readers' advocacy skills at this early stage ought to provide a good base level comparator for later assessment.
19. It may be useful at an early stage to liaise with the Director of the Bar Practice Course and the Director, Professional Standards and Support about any issues encountered with a reader. Certainly, a tutor should expect contact from each if problems emerge in the Bar Practice Course in relation to a particular reader.
20. Tutors ought to be aware that senior practitioners and judicial officers will expect the tutor to take all reasonable steps to resolve problems and issues arising in the reader's professional interactions during the reading year. This expectation may arise even after the end of the reading year. This reflects the significance with which the role of the tutor is viewed by senior members of the profession.

### *Monitoring and supervising*

21. The role of tutors in the Reading Program is important and should be approached seriously and diligently. Barristers who are otherwise eligible but not prepared to commit the necessary time and effort to the Reading program should not volunteer to act as tutors.
22. Bar Council expects that tutors will assist their readers with all reasonable skill and diligence to comply with all the requirements imposed by conditions attached to the reader's practising certificate. In particular, tutors are expected:
  - a. to instruct the reader in:
    - i. the art of advocacy;
    - ii. barristers' work;
    - iii. the proper conduct of a barrister's practice; and
    - iv. the ethical standards required of a barrister, including the Bar Rules;
  - b. to set aside sufficient time to meet and speak with the reader regularly;
  - c. to make arrangements for the reader to meet with the barrister in chambers (if possible) or over video conference or telephone call, to be shown and to assist in chamber work from time to time;
  - d. to make arrangements for the reader to appear with the barrister in court (be it a physical or virtual court room) as an observer;
  - e. to ensure that the reader is attending to all necessary or appropriate courses of instruction arranged by the Bar Association; and
  - f. to introduce the reader to the barrister's colleagues.
23. This can only be achieved by frequent and regular contact as set out below.

### *Supporting and "mentoring"*

24. While not a "mentor" in the strict sense in which that word is sometimes used, tutoring does contain elements of mentoring. Readers will expect a certain level of professional and personal support and guidance as they navigate the commencement of their career at the Bar. Tutors will need to manage this while keeping in mind the professionalism and objectivity required to provide the certification at the end of the reading year.
25. The strength of the relationship is such that, in many cases, it lasts past the reading year so that the tutor does tend to take on the role of a "mentor". This is encouraged.

### *Accompanying the reader to court*

26. Tutors are encouraged to attend court, where possible, to see and monitor the performance of their readers. Feedback and constructive criticism following such attendances may be valuable and afford the reader important opportunities to enhance or improve their court skills or etiquette.
27. By the end of the reading year, tutors should have a good idea of their readers' progress and abilities with regard to chamber work. However, without having actually seen their court appearances, tutors



will have no idea of the readers' practical advocacy skills. Even those readers who have previous experience in advocacy will benefit enormously from practical advice and encouragement from their tutor occasionally accompanying them to court, or logging into an audio-visual or telephone hearing in which the reader is appearing.

28. For those readers with little or no previous court experience, the tutors' obligation in this regard becomes obvious. Just as the reader must see the tutor in court in order to learn from them, mere discussion of the readers' court appearances before or afterwards cannot replace the benefit of the tutor's firsthand observations.

#### **D. Certification by Tutors**

29. At the end of the reading year, the reader's tutor, or if there are two tutors the "certifying tutor" (see paragraph 2 of Tutor Policy extracted at paragraph 11), must complete a Certification Form which:
- a. indicates the frequency of contact between the tutor and the reader during the reading year and, among other things, the quality of the reader's chamber work, advocacy skills, court preparation skills and knowledge of the law;
  - b. details the level and type of instruction and supervision provided over the course of the year and whether the tutor has observed the reader appear unled and whether the reader has accompanied the tutor to court; and
  - c. certifies that the reader is "fit to practise as a barrister without restriction" or, alternatively, that additional reading should be undertaken.
30. The second tutor must also certify that there is nothing, to their knowledge, disentitling the reader from practising without restriction (if that is the case).
31. The forms of certification appear as Appendix 1 to these Guidelines.
32. Both sets of certification require the tutor to be sufficiently familiar with the skills and knowledge of the reader, including as to the reader's written and oral advocacy, through monitoring and supervising the reader to enable certification. Tutors should, where possible, attend court to monitor their reader's performance and advocacy. If the tutor has not scrutinised the reader's chambers work regularly, they will not be able to certify them. If the tutor has not observed their reader's appearance work or the reader has not appeared with them in court, the tutor will need to explain the steps they have taken to familiarise themselves with the tutor's appearance and preparation skills.
33. The certification is less onerous for the second tutor than for the certifying tutor. However, this should not be reflected in the level of contact maintained between the reader and the second tutor. The second tutor is encouraged to have a supporting or mentoring relationship with their reader equally as important as the reader's relationship with the certifying tutor. On this basis, these Guidelines generally apply equally to both certifying and second tutors.
34. It is recommended that the certifying and second tutors establish contact with each other early in the reading year so that any problems may be promptly addressed if they arise. Further, consistency in addressing a particular problem may result in the reader being more receptive to constructive feedback.
35. For both the certifying tutor and the second tutor, it is inappropriate for a tutor to rely wholly or mainly on another person's assessment of the reader's capabilities. Further, it is inappropriate for a tutor to refuse to certify a reader because the tutor has had insufficient contact with the reader. If the reader refuses to engage in the tutor-reader relationship, the tutor ought to consider ceasing the relationship at an early stage to allow another tutor to take over the role. If this is the case, the tutor ought to consider discussing the issues with the reader and a senior member of the Bar listed in Section J below entitled "What if things go wrong?".



*What if a tutor is thinking of not certifying or recommending the imposition of conditions?*

36. Provided that the tutor has maintained sufficient contact with the reader and has come to the considered view that the reader ought not practise unrestricted, non-certification or certification subject to certain conditions may be appropriate.
37. However, it may be unfair to the reader to refuse to certify them without first giving the reader the opportunity to rectify the behaviour in question. Therefore, it is recommended that the tutor undertake the following course of action before deciding not to certify the reader:
  - a. consult the other tutor (if there is one): the problem may not be as large as first appears or may be capable of being addressed by both tutors;
  - b. consult the list of former tutors at paragraph 125 below: these senior counsel may have useful suggestions or insights into the problem;
  - c. consult the Director of the Bar Practice Course and the Director, Professional Standards and Support (in appropriate cases in conjunction with the senior counsel to whom the tutor has spoken);
  - d. consider an action plan: the issue may be addressed by the production of further written work, by additional oral advocacy practice or by attending court with the tutor to demonstrate how the reader might perform more effectively; and
  - e. meet with the reader as soon as possible: state clearly and tactfully the issues and discuss how to address them including by way of the action plan if appropriate (and make a note of the discussion).

## **E. Bar Council's Expectations of Readers**

*Compliance with conditions of the reader's practising certificate*

38. Under the regime imposed by the Uniform Law, undertaking and completing the Reading program is a condition of a reader's practicing certificate.
39. Bar Council has resolved that conditions be attached to readers' practising certificates to the effect below:

### **1. Reading Programme**

The holder of this certificate ('the Reader') must do the following:

- a. Read with at least one but not more than two barristers for not less than 12 months (the reading period). The Reader must choose each of these barristers from a list of potential tutors kept by Bar Council or a barrister who arranges to be added to that list of tutors (a barrister so chosen is a tutor). The reading period:
  - i) begins on the date this certificate is issued;
  - ii) may include the period of the Bar Practice Course; and
  - iii) ends when all tutors certify that the Holder is fit to practise without restriction;
- b. Complete the Bar Practice Course, to the satisfaction of Bar Council; or its delegate under the Bar Practice Course Policy
- c. Within six months of commencing the reading period:
  - i) participate with a leader in a total of at least 10 days of preparation, conferences and hearing(s) of criminal proceedings ('criminal reading') according to the requirements for criminal reading as approved by Bar Council; and

- ii) participate with a leader in a total of at least 10 days of preparation, conferences and hearing(s) of civil proceedings ("civil reading") according to the requirements for civil reading as approved by Bar Council;
- d. Meet the requirements of the Bar Council's Continuing Professional Development program. For the purposes of these conditions a leader is defined as a barrister who is senior counsel or who has more than five years' experience as a barrister and holds an unrestricted practising certificate.

## **2. Practice rights during and prior to satisfactorily completing the Bar Practice Course**

The Reader has no right of practice during the period of the Bar Practice Course. Prior to completing the Bar Practice Course to the satisfaction of Bar Council or its delegate under the Bar Practice Course policy:

- a. the Reader must not appear in any court or tribunal except if led by a barrister who holds a current practising certificate without readers restrictions; and
- b. the Reader may undertake opinion work for a solicitor, with the prior consent in writing of a tutor.

## **3. Reading with Tutor**

During the reading period, the Reader must do the following:

- a. Attend on the tutor(s), appear as an observer with the tutor(s) and comply with the reasonable directions of the tutor(s);
- b. Study diligently:
  - i) the art of advocacy;
  - ii) the general work and practice as a barrister, including drafting documents, advising clients and dealing with solicitors, clients, witnesses and the public; and
  - iii) the proper conduct and ethics of a barrister;
- c. Study under the tutor(s), including reading and discussing briefs with the tutor.

## **4. Practice rights after satisfactorily completing the Bar Practice Course but prior to the completion of both criminal and civil reading requirements**

After completing the Bar Practice Course to the satisfaction of Bar Council or its delegate under the Bar Practice Policy but prior to satisfactory completion of both the criminal and civil reading requirements:

- a. within six months of commencing reading the Reader may not appear in any court or tribunal except:
  - i) if led by a barrister who holds a current practising certificate without readers' restrictions, or
  - ii) with a tutor's approval for each such appearance.
- b. where the Reader has failed satisfactorily to complete their criminal and civil reading within six months of commencing reading (as required by condition 1(c)) the Reader:
  - i) must apply to the Director, Professional Standards and Support for a formal extension of the holder's civil and criminal reading period, and
  - ii) may appear in any court or tribunal only with a tutor's prior written approval for each such appearance; or
  - iii) if led by a barrister who holds a current practising certificate without readers' restrictions.

## **5. Practice rights after satisfactory completion of both the Bar Practice Course and criminal and civil reading requirements**

After receipt of certification of the completion of both the Bar Practice Course and the criminal and civil reading requirements to the satisfaction of Bar Council, the Reader may appear in any court or tribunal without being led and, subject to condition 6, without a tutor's approval for the particular appearance.

## **6. Direct client access restriction before completing the reading period**

The Reader must not during the reading period accept a brief from a person other than a solicitor without a tutor's written approval for the particular brief.

*Exception: This restriction does not apply if the Reader held an unrestricted solicitor's practising certificate immediately before being issued with this certificate, or in cases where the Reader is participating in the Duty Barrister Schemes conducted in the Local Court or the District Court.*

### *Satisfactory completion of civil and criminal reading*

- 40. Readers must complete 10 days of civil and criminal reading in the first six months of practice. Readers will need their tutor's permission for each court or tribunal appearance where they appear without a

leader until they have completed all of their civil and criminal reading and lodged all forms with the Bar Association. If they do not complete their civil and criminal reading within the first six months of practice, such approval must be in writing. Once a reader has completed all their reading and sent the forms to the Professional Standards and Support Department, the reader no longer needs a tutor's permission for unled appearances.

41. The Bar takes seriously the requirement for completion of reading requirements within the first six months of practice. Tutors should strongly encourage readers to do so. It is best if reading requirements are completed sooner, when the reader is likely to be less busy, than later, when completing reading requirements is more likely to interfere with paid work. If a reader does not complete their civil and criminal reading within the first six months of practice, that constitutes a breach of a condition of their practising certificate and potentially carries serious consequences.
42. An extension to the period to complete civil and criminal reading may be granted by the Director, Professional Standards and Support. Readers must apply for an extension in writing and provide sufficient reason as to why it should be granted. Any such application should be made sufficiently in advance of expiry of the six-month period to allow time for it to be considered. Readers should not assume that an extension will be granted. If a reader is given an extension to their reading period, both tutors will be copied into the email granting such extension so they are aware that their reader is behind with their reading and has been granted an exemption. This email contains the statement: "Just a reminder that you require your tutor(s) permission for each court or tribunal appearance where you appear without a leader until you have completed all of your reading and lodged all forms with the association". This will remind the reader and tutors of their obligations and prompt tutors to encourage their readers to complete their reading period.
43. The value of attendance at court is significantly enhanced when the reader is fully immersed in the controversy, has read the necessary documents before attending court and is able to discuss it afterwards. The reader will also benefit from attendance at conferences during adjournments and after court, where the instructing solicitor and client permit. Readers are encouraged to seek out such an arrangement for each day of their civil and criminal reading.
44. For those tutors and readers whose practice is largely in the civil jurisdiction, arrangements ought be made for criminal reading with appropriate counsel, and (as noted above) a reader would be wise to undertake this reading as early as possible in the reading year so that it does not conflict with offers of paid work which will come. It is suggested such criminal reading include one or two short trials or summary hearings; little will be learned from sitting through part of a long trial. It is generally preferable to do some of the reading with the prosecution and some with defence counsel. A reader should note all procedural matters, however trivial, for example: When does the Crown announce their appearance and what do they say? When does the defence announce their appearance? During jury empanelment, what does the defence say about assisting the accused with their challenges, and when? Note also anything that the judge says at the beginning of the trial and that the Crown says in opening on issues of general application, for example as to onus and standard of proof, function of the opening, and role of the judge and jury.
45. Similarly, for tutors and readers who practice largely in the criminal jurisdiction, arrangements should be made for civil reading as early as possible in the reading year. Similar notes should be taken in the course of attendance at a civil hearing, for example: how did the plaintiff open the case? What did the defendant say in opening? How did the court deal with the evidence — in particular, any objections?
46. Readers and their tutors should keep in mind that they can find out about upcoming hearings by contacting the clerk on their own floor as well as clerks from other floors, consulting the court list each day to identify hearings that are listed, and contacting other readers and barristers on their floor or on other floors. Where a reader is having difficulty completing civil or criminal reading, tutors may

be able to assist by contacting clerks or barristers on other floors which specialise in particular jurisdictions for criminal or civil reading, as the case may be.

47. Tutors and readers should also keep in mind that the increased use of technology by the courts and practitioners is likely to present many new opportunities for readers and tutors. Readers can still “attend” hearings and satisfy their reading requirements through the technology being utilised by the courts and practitioners. It may be possible for readers to complete some of their reading requirements by attending an interstate hearing online — something that would not previously have been an option. Tutors should assist readers to facilitate this, if the opportunity arises. That said, it is not sufficient for a reader to attempt to complete all of their civil and criminal reading simply by “dialling in”. It is essential that readers attend in-person hearings.
48. Further details regarding the civil and criminal reading requirement are contained in the letter to readers that is sent out by email after successful completion of the Bar Practice Course. Tutors are copied into this email to remind them of their obligations.
49. The Civil and Criminal Reading Form which must be signed by the reader and the supervising barrister appears as Appendix 2 to these Guidelines.

*Attending court, particularly with a tutor*

50. An essential part of the Reading Program is that the reader attend court. This allows the reader invaluable opportunities to observe court craft, procedure and etiquette, and is reflected in the requirements for civil and criminal reading.
51. The reader’s attendance at court should not necessarily be confined to the required period of civil and criminal reading. The reader should be encouraged to attend court with the tutor or with other barristers whenever the reader’s practice permits.
52. The benefit to readers of attending court with tutors (which should be encouraged, if not mandatory, at every opportunity) will be increased greatly if the reader understands in advance not only the legal and factual issues in the case but what the tutor proposes to do and why. That is, the reader should understand the purpose of the hearing, the issues in dispute, and, where applicable, the approach the tutor plans to take with each witness, whether in chief or in cross-examination.
53. For the reader to understand and contribute to this discussion — as well as to then understand the way the dispute plays out in court — it is essential that the reader has had an opportunity to read the relevant papers in the matter.
54. The more the reader has read about the matter, and the more in-depth this discussion, the more the reader is likely to gain from the experience in court. Explanation after the event, although useful, is unlikely to teach the reader as much as contemporaneously following the proceedings with the benefit of prior discussions and an understanding of the strategy and tactics involved.
55. When attending court, tutors should, with the instructing solicitor’s permission, announce their reader’s appearance as a junior and encourage the reader to take an active role as such, for example taking detailed notes of proceedings, maintaining the list of exhibits, and locating documents or authorities as appropriate.
56. It may not always be possible for the reader to appear at the Bar table. Where the reader is attending as an observer at the back of court (or over a video link or telephone), the tutor should make contact with the reader, explain the proceedings and take any questions.

57. Tutors can use civil and criminal reading as an opportunity to provide instructions on the role of an effective junior counsel.

*Preparing thoroughly for any court appearance*

58. Over the year, the reader will attend court alone — mainly for directions/case management and interlocutory hearings. Guidance from tutors is particularly valuable so the reader may prepare and appear effectively. Although the demands of practice may not always permit it, readers should aim to gather all necessary information about their appearances early so that discussions with tutors are not immediately before the event. Preferably, this should be days in advance, so that arrangements can be made to meet and discuss the matters with tutors. A harried call from a mobile phone in a crowded elevator is unlikely to avert an impending disaster, assuming that you are able to speak to the person you are calling. Any court attendance requires preparation, but as a reader it requires more and earlier preparation: a reader can never be over-prepared.
59. Readers should also keep in mind that, to the extent permission is required from their tutor for a particular court appearance (in accordance with the conditions of their practising certificate), that requirement remains in place even for directions hearings and other court appearances that are taking place over the telephone or by video.

*Being adequately briefed for directions hearings and case management hearings*

60. A particularly common form of work for readers is appearing at directions hearings and case management hearings. To ensure the reader is able to suitably represent the client's interests and assist the court, readers are encouraged obtain the following information from the solicitor or barrister asking them to appear:

1. Who do we appear for?
2. Who appears on the other side?
3. What is the case about?
4. What orders do we seek?
5. What orders does the other side seek?
6. What is in dispute in relation to the orders?
7. What court and list is it in?
8. Is there a relevant practice note or unwritten practice of the list or judge?
9. If the matter is before a Registrar, does the Registrar have power to make the orders we seek?
10. Will the hearing be taking place in a physical court room, or via audio-visual link or telephone? Do we require a telephone number or log-in details?
11. If attending to take a hearing date:
  - a. how long is the hearing estimated to take and why?
  - b. how many witnesses are there for each side?
  - c. are there expert witnesses and, if so, what are their areas of expertise?

d. what are the available dates for counsel, solicitors and witnesses?

12. When was the matter last in court and what orders were made?
13. Has there been compliance by both sides with the orders?
14. If there has been non-compliance, what was it and why? Is either side complaining about non-compliance?
15. How many times has the matter previously been listed for directions/case management?
16. Is there a history of default? If so, be prepared for criticism from the court and possibly unwillingness to make consent orders. The court may also require evidence of explanation for default this time. If so, what is it?
17. Is affidavit material required? If so, has it been served? Is it admissible?

61. Directions hearings/case management hearings can be important to the outcome of proceedings, particularly if the proceedings have reached a stage where there is a history of non-compliance with court orders or a dispute as to orders concerning evidence, particulars or pleadings. Often a tutor can provide valuable guidance about the approach to be taken to a particular directions or case management hearing. Particularly if the reader is able to advise their tutor of considerations like those listed above, the tutor may be able to advise as to the likely approach a court will take, the nature of the arguments likely to be raised by the opposing party and the most effective approach to achieve the client's objective.

## **F. Communication Between Reader and Tutor**

### *Discussions at the outset*

62. Some matters that tutors and readers may wish to discuss on first contact and before the reader's commencement at the Bar, include the following:
- a. the certification process, including the different roles of the certifying tutor and the second tutor;
  - b. the importance of preparing properly for the Bar Examination, not only to ensure that the Examination is passed, but also to ensure mastery of the subject-matter for when the reader begins to practise;
  - c. the importance of the Bar Practice Course and the prohibition on working on matters while the Course is being conducted (see also <https://nswbar.asn.au/becoming-a-barrister/bar-practice-course>);
  - d. the likely delay in being paid after commencing work at the Bar, and the need to have savings, an overdraft or some other means of supporting oneself after commencement. Tutors should emphasise the importance of adherence to the rule that a reader not accept briefs during the term of the Bar Practice Course. Tutors should also emphasise that, usually, there will be little or no income in the first three to six months of practice but expenses must be paid. Even if a new barrister is lucky enough to obtain work and send out invoices, payment might not be made for some time. Readers will need sufficient capital so that they can gain experience in



court with their tutor, undertake devilling and observe proceedings in court without payment; and

- e. the benefit of identifying not only tutors, but also readers' accommodation during the first year at the Bar. Whilst there is no rule prohibiting practise entirely from home, new barristers are strongly advised to obtain accommodation within chambers. The philosophy of the reading period is based on a close tutor-reader relationship, which is greatly facilitated by the proximity of chambers to the courts.

63. A key feature of the introductory meeting should be to outline the expectations of each of the tutor and reader. For the reader, this may include areas of practice that the reader is interested in developing, and any special concerns the reader has in relation to the development of their written or oral advocacy skills. For the tutor, this may include matters of ethics or professional practice that the tutor considers should form part of the reader's instruction.

64. Additionally, tutors and readers need to discuss their mutual expectations of the relationship at an early stage so that they can develop a program for the reader's instruction that meets these expectations. Areas that should be discussed include:

- a. the reader's previous litigation/advocacy experience;
- b. the location(s) from which the reader and the tutor expect to be undertaking their work (that is, the extent to which the tutor is working in chambers or from home and the reader's expectations for their own working arrangements);
- c. expected regularity of contact by email and telephone, expected regularity of meetings and the form those meetings should take (e.g., in person in chambers, via video conference, over the telephone, etc). This should include gaining an understanding of the reader's availability and personal responsibilities (including, for example, parental responsibilities) to ensure those are fairly factored in;
- d. any particular concerns the reader may have, or areas in which the reader feels they require further development;
- e. having regard to (d) above, suggestions by the tutor for further development of the reader's skills;
- f. expectations in relation to assessment and feedback, including whether and how the tutor will assess the reader's performance in court;
- g. expectations as to work to be received from the tutor, or those on the tutor's floor, along with expectations as to payment (see also further below);
- h. expectations as to a barrister's behaviour/conduct in the course of, or in connection with, legal practice or their profession, especially by reference to Rule 123 of the Bar Rules (concerning the prohibition against engaging in conduct which constitutes discrimination, sexual harassment or bullying) and as to the Bar Association's Best Practice Guidelines;
- i. the times that the tutor is most likely to be available to confer with the reader, including whether the tutor prefers not to be disturbed in the period immediately before going to court;
- j. whether the tutor will make a point of inviting the reader to court and conferences; and
- k. the approach the tutor will take in the context of the reader's other tutor (if there is one), including how they will work with that other tutor.



65. A reader, particularly one with little or no previous experience, may expect to be given more time than the tutor has ever contemplated providing. Alternatively, a new tutor may not appreciate how much time effective tutelage involves. This mismatch in expectations should be considered and resolved at the earliest possible time.
66. Again, in some cases the nature of the tutor's practice may not allow for the provision of instruction in a particular field of interest to the reader — another mismatch in expectations. In such cases tutors may be able to (and should) arrange for the reader to attend court with or be involved in chamber work with another barrister practising in that area.
67. These sorts of potential problem areas are more readily addressed if the reader has two tutors, which is strongly recommended. If a reader does have two tutors, it is suggested that the tutors also discuss with each other the role that each expects the other will play. It may be that in some cases an introductory meeting between the reader and both tutors is appropriate.
68. Other matters upon which the reader may be seeking guidance at an early stage (the first four of which are discussed in more detail below) include:
- a. small business requirements, including having appropriate record systems to issue and track invoices, funds received and expenses incurred;
  - b. financial arrangements, such as disclosure and billing requirements;
  - c. the importance of maintaining work/life balance, personal relationships and outside interests, and taking some leave;
  - d. relationships with colleagues and others;
  - e. ongoing continuing professional development requirements pursuant to the Bar Rules;
  - f. the requirements imposed by the *Professional Standards Act 1994* (NSW); and
  - g. identifying and making the most of opportunities to develop their profile and market their services.
69. Before taking on more than one reader, a tutor should consider whether their practice allows time to instruct more than one reader at a time effectively.

#### *Frank and direct communication*

70. Communication difficulties can be minimised by tutors being open and direct with readers and, in particular, by explaining what to expect. For example, it may be appropriate for tutors to offer forthright criticism of their reader's paperwork or of their reader's approach to a particular problem. Tutors should make it clear that such criticism is intended to be helpful, and readers should accept it in that spirit.
71. If there are matters of concern to tutors — even on apparently trivial issues — they should not hesitate to raise them with the reader. Similarly, readers are encouraged to broach their own concerns about their work or professional relationships with tutors. Unresolved irritants are likely to worsen.

#### *Meeting regularly*

72. Tutors ought to be accessible at mutually convenient times. The form of such communication may be by telephone and/or email but reasonably frequent meetings are essential. Video conferences may be a convenient substitute for in-person meetings.

73. It is envisaged that the tutor and reader will have regular meetings of about 30 minutes. Arranging these meetings is the reader's responsibility. Either the tutor or the reader may vary the time of the meeting at short notice if exigencies require but if it is postponed the reader must make arrangements for another meeting. The frequency of the meetings is a matter for agreement between reader and tutor but a predetermined schedule (e.g. weekly, fortnightly) is highly recommended.
74. Some tutors require that, unless they are out of chambers, the reader should attend at the tutor's chambers at a specified time each day or "check in" via telephone. Others would regard that as a counsel of perfection and, in any event, as something not necessarily to be welcomed by the reader. But the danger is that unless regular meetings are held, the demands of everyday practice may tend to overtake the tutor's responsibilities. It is suggested that, at a minimum, meetings (either in person or via video/telephone) should be arranged at designated times each week. This will serve to concentrate both minds on the responsibilities of both parties.
75. Independently of the regular timetabled meetings, tutors may be willing for readers to raise discrete matters with them at any time, regardless of other pressures.
76. Often, however, pressures are such that, despite the best intentions, readers may be deterred from interrupting the tutor's work. The most convenient course may be for the tutor to nominate a time — perhaps at the very beginning and/or end of the day — when the reader is to be at liberty to contact the tutor for assistance.
77. There may be times when a reader requires special attention on an urgent basis — for example, when an ethical issue arises during a hearing. It is recommended that the tutor and reader discuss the tutor's availability to advise on such occasions and where the reader may turn if the tutor is not available.

#### *Forms of communication*

78. Regular communication between readers and tutors is one of the most important aspects of the reader/tutor relationship. It is important for tutors to be accessible to their readers and for readers to ensure they are raising with their tutors any concerns that may arise as they begin their practice. It is recommended that readers and tutors "meet" regularly; be that in person, over the phone, on a video conference or by taking a walk outside.

#### *Establishing a procedure for the reader to read briefs*

79. It is expected that readers will attend upon their tutors to discuss briefs, attend conferences and accompany them to court.
80. If readers are to obtain the maximum benefit from conferences and attendance at court, they must be familiar with the nature of the particular case and have an opportunity to consider the legal, evidentiary and tactical questions that arise. For this reason, tutors ought to make available to their reader the central documents comprising the brief (i.e. pleadings, submissions, evidence) for the reader to read. Many briefs are now provided to barristers electronically, which may make it more convenient and cost effective for tutors to provide their readers with copies of their briefs for this purpose.

### **G. Junior Work and Devilling**

#### *Preparation of drafts of pleadings, affidavits, submissions and advices*

81. A critical part of reading is instruction and practice in the settling of pleadings, affidavits, submissions and other litigious documents, in the preparation of written advices, and in "devilling" generally. It may not be practicable for the reader to prepare a draft in every case but, subject to this limitation, it is desirable for the reader to prepare a first draft of some of the pleadings, affidavits, submissions and

advices which the tutor is briefed to settle or give. Encouragement to undertake legal research in the preparation of submissions and advices, and in preparation for the tutor's court appearances, should be the order of the day.

82. The fact that both tutor and reader are contemporaneously concentrating on the same matters means that the reader's draft can be most efficiently assessed by the tutor. It is one thing for readers to be told how to draft something as a theoretical exercise; it is quite another for them to compare their own draft in connection with a current brief with the work of their tutor on the same matter, and to have the benefit of their tutor's comments on the draft. It may be of assistance for readers to maintain diary notes of work exercises undertaken together with a summary of their tutor's comments.
83. Review and correction of a reader's draft should be accompanied by discussion of it. The reader will benefit from the comparison of their work with the tutor's where the tutor explains why changes are made and the tutor's approach to the legal problem at hand.

### *Devilling*

84. It may be possible for a tutor to arrange for their instructing solicitors to brief a reader to do work of the kind mentioned immediately above, as the tutor's junior. However, if that is not the case, then work of this kind will involve "devilling".
85. Devilling work has advantages for readers and for tutors. For example, for readers, devilling is an opportunity to gain experience, build relationships with the tutor and other barristers for whom devilling is undertaken and, at least to some extent, earn an income early in their career as a barrister. For tutors, devilling may allow them to balance competing professional and personal priorities, provide an opportunity to mentor readers and provide an opportunity to learn about the skills of a reader before recommending them for a brief.
86. Sometimes there are different expectations, as between tutors and readers, as to when, if at all, payment will be made for devilling and the rates at which any such payment will be made. This can create tension in the relationship. It is imperative that tutors discuss with their readers at the outset of any particular devilling work whether it will be paid for and, if so, the basis and timing of payment.
87. Readers are not unpaid legal or research assistants and will have their own professional and personal financial commitments. On the other hand, readers must not expect to be paid for all the work that they undertake for their tutors. Whatever approach is adopted, it is better that reader and tutor understand and accept the ground rules at the outset.
88. In respect of some work which the tutor gives the reader to do, the tutor could do it more satisfactorily and in half the time. The work may be given for the reader's benefit, not for that of the tutor. An expectation of payment for all work undertaken will only lead to a "drying up" of the opportunities to learn from doing work. On the other hand, work done by a reader may often be of real value to a tutor in the completion of their own work.
89. Often a balance may be struck; that is, there may be instances where the reader will not charge for all of the time taken to complete the work but nevertheless it is important that the reader be remunerated for work that is of value. Different tutors have different views as to whether readers should charge for devilling at their ordinary rates or whether lower rates should be adopted.
90. It is important that, if a tutor has a view about how long the work should take, and accordingly how much they are expecting the reader to charge, this is communicated to the reader at the outset. Of course, tutors must be reasonable in their estimates on these points. The more information a tutor can provide at the commencement of the task, the more likely a reader will be able to meet the tutor's

estimate. There should be a discussion about what the reader should do if, after starting the work, the estimates appear likely to be too low.

91. What is essential is clear communication between tutor and reader to avoid confusion or disappointed expectations. Important matters to discuss in relation to any devilling include:
  - a. the scope of the work;
  - a. the timeframe in which the work is required;
  - b. the form in which the work should be provided (e.g. a memorandum, an email, dot points, case list); and
  - c. whether the work will be paid and, if so, the basis and timing of payment (e.g. a fixed rate, an amount per hour up to a maximum amount, an amount per hour uncapped).
92. Tutors should also assist readers to manage their relationships with other barristers who are not their tutors but who wish to give them devilling work. Tutors should encourage readers to ask any barrister offering them devilling work to explain the terms on which the devilling work is offered, including the matters mentioned above.
93. Finally in connection with devilling, Bar Rules 12 and 113 should be noted:
  - a. Rule 12 provides:

A barrister must be a sole practitioner, and must not:

    - (a) practise in partnership with any person;
    - (b) practise as the employer of any legal practitioner who acts as a legal practitioner in the course of that employment;
    - (c) practise as the employee of any person;
    - (d) be a director of an incorporated legal practice; or
    - (e) practise by or through an unincorporated legal practice.
  - b. Rule 113 provides:

A barrister does not breach rule 12 by carrying out a specific task of research or chamber work given to the barrister by another barrister, or by giving such a task to another barrister, so long as:

    - (a) the barrister who was briefed to do the work takes full personal responsibility for the work,
    - (b) the work is delivered under the name of the barrister who was briefed,
    - (c) the arrangement between the barristers does not go beyond an ordinary devilling or reading arrangement and in particular does not involve any standing retainer or employment terms, and
    - (d) the arrangement between the barristers does not provide and is not intended to enable the barrister giving the task to make a profit from the other barrister's work, over and above reasonable remuneration for supervision of and responsibility for the other barrister's work.

## H. The Business of Being a Barrister

### *Small business requirements*

94. The extent to which tutors need to discuss small business requirements with readers will depend on the background and experience of the reader. For those many readers with little or no prior small business experience, matters that might be discussed include the following:
- a. the need to obtain an Australian Business Number;
  - b. the need to complete business activity (BAS) statements and make regular (typically quarterly) payments to the Australian Tax Office (ATO) in respect of both GST and PAYG instalments as well as the importance of contacting the ATO before payment falls due if an extension of time to pay is needed;
  - c. the importance of setting aside sufficient money to make payments to the ATO, ideally by setting aside money in a separate account whenever the reader receives a payment;
  - d. the importance of having a system (computerised or otherwise) to issue and track invoices, funds received and expenses incurred;
  - e. the benefits of having an accountant or bookkeeper to assist with the above;
  - f. the benefits of obtaining appropriate financial planning advice, including about matters such as income protection insurance, and life and trauma insurance (including Bar Cover);
  - g. the likely costs of practice, including matters such as accommodation, clerk fees and professional indemnity insurance; and
  - h. the benefits of having an overdraft or some other means of dealing with irregular cash flow.

### *Disclosure and billing*

95. A tutor will be expected to explain to a reader the requirements of the Uniform Law and the *Legal Profession Uniform General Rules 2015* (NSW) in relation to fee disclosures and the form of invoices.<sup>2</sup> It is usual for a tutor to share with the reader the form of fee disclosure letter and invoice usually issued by the tutor.
96. The Bar Association has published a billing checklist and precedents that may be considered and these are updated on a regular basis. They are available on the Bar Association's website at <https://nswbar.asn.au/practice-support/costs-and-fees> (login required). The reading material for the Bar Practice Course includes a detailed paper on Barristers Fees.

### *Other financial matters*

97. Again, the extent to which tutors need to discuss other financial matters with readers will depend on the background and experience of the reader. Matters that might be discussed include the following:
- a. delays that may occur in receiving payment from solicitors;

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<sup>2</sup> Note also the *Legal Profession Uniform Law Application Act 2014* (NSW) and the *Legal Profession Uniform Law Application Regulation 2015* (NSW).

- b. the benefits, in some circumstances, of insisting that solicitors have money in trust to cover a reader's fees;
- c. the fee recovery assistance provided by the Bar Association (see <https://nswbar.asn.au/practice-support/costs-billing/fee-recovery-service> (login required));
- d. the necessity to set aside funds to meet tax commitments in full and on time; and
- e. the importance of meeting other financial obligations, such as any accommodation costs or clerk fees, in a timely fashion.

## **I. Being a Part of the Barrister's Profession**

### *Managing work and life outside of the Bar*

- 98. While being available to undertake work is particularly important during the reading year, it is important that practising barristers maintain work/life balance, personal relationships and outside interests, and also that they take some leave. The tutor should discuss these issues with the reader, to assist the reader to develop a strategy to manage the commitments of the reading year (and practice at the Bar more generally) with personal commitments. This might include discussion about the availability of Bar Care (see <https://www.barcare.org/>) and other resources provided or recommended by the Bar Association (see <https://nswbar.asn.au/practice-support/wellbeing>).
- 99. If at any time the tutor suspects that the reader is not coping adequately with the pressure of life at the Bar or issues in the reader's personal life, the tutor should raise this with the reader and, as appropriate, recommend to the reader the professional assistance available at Bar Care.

### *The challenges of being a reader*

- 100. It is suggested that the tutor raise with their reader at an early opportunity common challenges which arise in undertaking junior work — particularly for readers — including but not limited to:
  - a. how to deal with last minute “flick” briefs;
  - b. settling disputes and drafting consent orders;
  - c. undertaking pro bono work and/or duty barrister work;
  - d. the care required in undertaking direct access work (when permissible in accordance with rules of practice);
  - e. dealing with absent solicitors in witness conferences / at court;
  - f. juggling multiple mentions in different courts; and
  - g. chasing payment.
- 101. Traditionally, readers are warned that income in the first year or two may not be high because of the nature of the work available. New barristers are naturally anxious to begin to earn a good income at the earliest possible opportunity.
- 102. Tutors ought to have a frank discussion with their readers as to the likely opportunities that will arise during the year for the reader to be briefed as the tutor's junior. Where tutors and readers are in the same chambers, tutors should also have a frank discussion with their readers about the likely opportunities that will arise for work from other members of the floor. Tutors should encourage their



readers to set reasonable expectations in that regard, based on the usual practices of the particular floor.

103. It is possible that during the course of their readership, readers will spend at least some of their time working from home. The same is likely to be true of tutors and other barristers on the floor. With barristers working more often from home than in the past, readers may have less incidental contact with other barristers on their floor. Communication with their tutors will therefore be particularly important. Even though tutors may not see readers as regularly in chambers as in the past, tutors should remain mindful about letting their readers know about opportunities that arise for them to attend court, participate in conferences or read briefs. Readers may find it helpful to spend as much time as possible being present at the floor on which they are reading, rather than working from home, to maximise their incidental contact with floor members.
104. It is also expected that tutors will make efforts to ensure their readers are given opportunities, where possible, to interact with other floor members and colleagues. Where floors have introduced forums to discuss professional, practical or social issues, or even more casual social functions, readers should be encouraged to participate. Where such interaction is not taking place, tutors could consider whether they should initiate programs which will permit their reader to be introduced to and communicate with other colleagues. At the very least, it is expected that tutors ensure that other floor members are advised that their reader has commenced and of their contact details; the best way of doing this is ensuring that the reader is introduced to other floor members.
105. Tutors ought also keep a close eye on the nature of work the reader is undertaking to ensure it is at an appropriate level. By way of example, a reader may be particularly vulnerable to the lucrative offer of a brief to undertake the task of document discovery. This may take up months, if not all, of the reading year. While it is cost effective for a firm to employ a junior barrister rather than a solicitor for this task, this type of work is not, in the long term, helpful in developing advocacy skills or a practice. It may preclude opportunities for a variety of court experiences and can result in lack of contact between tutor and reader. Similarly, tutors should discuss with readers the pros and cons of taking a brief in a very large matter that will swallow up all or nearly all of the reader's capacity to take on other matters.

#### *Expected behaviour at the Bar*

106. All barristers are expected to treat their colleagues at the Bar with professionalism, dignity and courtesy.
107. If for some reason that expectation is not being met within the tutor-reader relationship, the relationship may deteriorate. It is best to raise any issues early before they escalate and affect the long-term relationship between reader and tutor. As discussed below at paragraph 122, there are a variety of avenues available to both a reader and tutor to address any issues that may arise in the relationship. The path chosen will largely depend on the nature and circumstances of the issue.
108. Readers and tutors are reminded that Rule 123 of the Bar Rules provides that a barrister must not, in the course of, or in connection with, legal practice or their profession, engage in conduct which constitutes discrimination, sexual harassment or bullying. A breach of these rules may constitute unsatisfactory professional conduct or professional misconduct (section 298 of the Uniform Law).
109. For the purposes of the Bar Rules:
  - a. "discrimination" is "discrimination as defined under the applicable state, territory or federal anti-discrimination or human rights legislation and includes all forms of unlawful discrimination". This includes all forms of discrimination under the *Anti-Discrimination Act 1977* (NSW) and *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability*



*Discrimination Act 1992* (Cth), *Age Discrimination Act 2004* (Cth), *Australian Human Rights Commission Act 1986* (Cth) and *Fair Work Act 2009* (Cth). It includes discrimination on the grounds of pregnancy, sex, sexual orientation, gender identity, family responsibilities, disability and responsibilities as a carer;

- b. “sexual harassment” is “sexual harassment as defined under the applicable state, territory or federal anti-discrimination or human rights legislation”. It includes making an unwelcome sexual advance or engaging in other unwelcome conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated; and
  - c. “bullying” is defined as “unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate or cause serious offence to a person”.
110. Bar Council has adopted the Bar Association Conduct Guidelines, a copy of which is available at [https://nswbar.asn.au/uploads/pdf-documents/5\\_Guidelines.pdf](https://nswbar.asn.au/uploads/pdf-documents/5_Guidelines.pdf).
111. Some chambers have advised the Bar Association that they have implemented or substantially adopted the Bar Association’s Best Practice Guidelines. The Guidelines, which were updated in 2022, are as follows (available at <https://nswbar.asn.au/bar-standards/best-practice-guidelines>):
- a. Model Harassment, Discrimination and Bullying Best Practice Guideline, which is accompanied by the Grievance and Complaint Framework and Guidance Materials; and
  - b. Model Parental and Other Extended Personal Leave Best Practice Guideline.
112. Further information about the Best Practice Guidelines and a list of chambers which have advised the Bar Association that they have implemented or substantially adopted the Best Practice Guidelines, or developed and adopted their own guidelines or policies addressing matters contained in the Best Practice Guidelines, can be found on the Bar Association’s website (see <https://nswbar.asn.au/bar-standards/best-practice-guidelines>).
113. The Model Harassment, Discrimination and Bullying Best Practice Guideline and the associated Guidance Materials and Grievance and Complaint Framework apply to “Residents of Chambers” (being readers, members, licensees, door tenants and “floaters” of those chambers that have adopted them). They also apply to: persons who work in the chambers as employees, contractors or in other capacities, including work experience students and volunteers; and third parties, including instructing solicitors, clients, witnesses, members or employees of other floors, or other visitors such as court or tribunal staff and other people present at the place of work or at work-related functions.<sup>3</sup> The Grievance and Complaint Framework applies to all concerns raised under the Model Harassment, Discrimination and Bullying Best Practice Guideline.<sup>4</sup>
114. It is important to note the following matters in relation to the Model Harassment, Discrimination and Bullying Best Practice Guideline and the associated Guidance Materials and Grievance and Complaint Framework:
- a. The Guideline creates very specific obligations, including the obligation on Residents of Chambers (which includes readers and tutors) to ensure compliance with the Guideline.<sup>5</sup> This requires, for example, the periodic publicising by chambers of the Guideline and associated

<sup>3</sup> Model Harassment, Discrimination and Bullying Best Practice Guideline, cl 5, 9; Grievance and Complaint Framework, cl 6.

<sup>4</sup> Model Harassment, Discrimination and Bullying Best Practice Guideline, cl 42.

<sup>5</sup> Model Harassment, Discrimination and Bullying Best Practice Guideline, cl 5.

materials together with the identity of the Chambers' Respectful Relations Officers,<sup>6</sup> reporting of certain conduct and taking steps to ensure (as far as reasonably practicable) that the person exposed to the conduct is not exposed to further risk of harm.<sup>7</sup>

- b. Conduct found to have occurred in contravention of the Guideline may result in a finding that Rule 123 of the Bar Rules has been breached and may amount to professional misconduct and/or unsatisfactory professional conduct.<sup>8</sup> Discrimination, harassment, sexual harassment and bullying may also constitute a breach of Rules 8(a) or 8(c) of the Bar Rules.<sup>9</sup>
- c. If the reader or tutor is part of a floor that has adopted the Guideline, the Guideline will apply to their relationship, even if the other person is from a different floor.
- d. As the Guidance Materials state, “[e]veryone has a role to play in preventing and responding to harassment, discrimination, vilification, victimisation and/or bullying”<sup>10</sup> and “[w]ithout exception, everyone is expected to behave in ways that are safe, respectful and inclusive”.<sup>11</sup> Individuals (including readers and tutors) must take all reasonably practicable steps to eliminate or minimise risks to health and safety, including psychological health.
- e. The Grievance and Complaint Framework provides that chambers that have adopted the Guideline are “committed to ensuring there are prompt, effective and equitable means to resolve concerns raised under”<sup>12</sup> the Guideline and “creating an environment where its members and associates feel confident to talk about their experience of sexual harassment, discrimination and bullying”.<sup>13</sup> “All persons working in Chambers are strongly encouraged to make a complaint or report any conduct which may breach” the Guideline.<sup>14</sup> Barristers who are “Affected Persons” or “Bystanders” (a person who has directly witnessed an incident that raises a concern under the Guideline or has direct knowledge of such an incident, such as a person to whom the conduct has been reported)<sup>15</sup> are also encouraged to “directly raise conduct ... that obviously breaches the [Guideline] at the time of such a breach”<sup>16</sup> and they may take steps of speaking up in the moment to address the behaviour, and intervening, separating those involved and/or encouraging the person exhibiting conduct that breaches the Guideline to reflect on that conduct.<sup>17</sup>
- f. There are no repercussions for those who report in good faith<sup>18</sup> and barristers who directly raise the conduct at the time of a breach will be supported.<sup>19</sup> Further the Grievance and Complaint Framework seeks to ensure that all persons raising concerns under the Guideline

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<sup>6</sup> Model Harassment, Discrimination and Bullying Best Practice Guideline, cl 8.

<sup>7</sup> Model Harassment, Discrimination and Bullying Best Practice Guideline, cl 7.

<sup>8</sup> Model Harassment, Discrimination and Bullying Best Practice Guideline, cl 13, 17-19.

<sup>9</sup> Model Harassment, Discrimination and Bullying Best Practice Guideline, cl 20.

<sup>10</sup> Guidance Materials for Harassment, Discrimination and Bullying, cl 1.

<sup>11</sup> Guidance Materials for Harassment, Discrimination and Bullying, cl 2.

<sup>12</sup> Grievance and Complaint Framework, cl 8.

<sup>13</sup> Grievance and Complaint Framework, cl 60.

<sup>14</sup> Grievance and Complaint Framework, cl 16.

<sup>15</sup> Model Harassment, Discrimination and Bullying Best Practice Guideline, cl 43(b); Grievance and Complaint Framework, cl 7(b); Guidance Materials for Harassment, Discrimination and Bullying, cl 4(b).

<sup>16</sup> Grievance and Complaint Framework, cl 12.

<sup>17</sup> Grievance and Complaint Framework, cl 13; Guidance Materials, cl 36 (“Early intervention” and “Tips for early intervention by Bystanders”).

<sup>18</sup> Grievance and Complaint Framework, cl 16.

<sup>19</sup> Grievance and Complaint Framework, cl 12.

are treated with respect and sensitivity.<sup>20</sup> Complainants should feel no hesitation in making a complaint and those subject to the Guideline should not sit on their hands if they witness or are made aware of conduct that may breach the Guideline, even if no complaint is made.

115. Regardless of whether a floor has adopted the Bar Association’s Best Practice Guideline, if a reader or tutor experiences discrimination, harassment, sexual harassment or bullying, they are encouraged to raise the matter informally via a pathway set out at paragraph 122 below, formally with the Bar Association, or via one of the support services offered by the Bar Association and detailed on the Bar Association’s website (see <https://nswbar.asn.au/bar-standards/sexual-harassment-at-the-bar>).
116. It is also important to note that the *Work Health and Safety Act 2011* (NSW) also applies to Barristers’ workplaces. That law requires that “reasonably practicable” steps be taken to eliminate risks to health and safety or minimise those risks when elimination is not reasonably practicable.<sup>21</sup> In this context, instances of discrimination, harassment, sexual harassment and bullying, once raised, may be “risks” within the meaning of the *Work Health and Safety Act*.<sup>22</sup> As such, it is important that the *Work Health and Safety Act* is taken into account when dealing with complaints of the kind referred to in the Model Harassment, Discrimination and Bullying Best Practice Guideline and the associated materials, as well as instances of risks to work, health and safety such as trip risks, fire drills and the like.<sup>23</sup> Barristers also have additional duties under sections 19 and 29 of the *Work Health and Safety Act*.<sup>24</sup>
117. Some of the more serious conduct that attracts the operation of the Model Harassment, Discrimination and Bullying Best Practice Guideline and the associated Guidance Materials and Grievance and Complaint Framework may also trigger additional reporting requirements.<sup>25</sup>
118. The Model Parental and Other Extended Personal Leave Best Practice Guideline applies to members, licensees, readers of those chambers that have adopted them and all eligible workers engaged by the chambers.<sup>26</sup> It addresses parental or other extended personal leave that is: parental leave in connection with the birth or adoption of a child; carer’s leave to care for a dependant; and personal leave in connection with a member or licensee’s own illness, injury or disability or, in connection with the serious illness, serious injury or death of the member’s/licensee’s spouse, de facto partner or child.<sup>27</sup>
119. The Guideline provides that, in the event that any member or licensee (including readers) of the chambers takes leave of this kind, the member or licensee will be permitted to sub-licence their room

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<sup>20</sup> Grievance and Complaint Framework, cl 5.

<sup>21</sup> See section 17 of the *Work Health and Safety Act 2011* (NSW), which is expressed in terms of either eliminating risks, or where that is not possible reducing risks as far as is “reasonably practicable”.

<sup>22</sup> Obviously, not all risks will fall within the definition of discrimination, harassment and bullying. Section 4 of the *Work Health and Safety Act 2011* (NSW) defines “health” to mean “physical and psychological health”.

<sup>23</sup> Guidance Materials, cl 33.

<sup>24</sup> Model Harassment, Discrimination and Bullying Best Practice Guideline, cl 25.

<sup>25</sup> Model Harassment, Discrimination and Bullying Best Practice Guideline, cll 22, 23; Grievance and Complaint Framework, cll 63-66.

<sup>26</sup> Model Parental and Other Extended Personal Leave Best Practice Guideline, cl 1, 10.

<sup>27</sup> Model Parental and Other Extended Personal Leave Best Practice Guideline, cll 11(a)-(c).

for the duration of the leave.<sup>28</sup> The guideline sets out options for who is responsible for securing the sub-licence and what happens if a sub-licence cannot be secured.<sup>29</sup> The guideline also:

- a. provides that any room or space occupied by a member or licensee of the chambers, prior to the member or licensee taking leave, will remain open for a minimum of one year during the period of leave;<sup>30</sup> and
- b. provides the option of the member or licensee being offered a period of six months free of rent and chambers fees during the period of leave.<sup>31</sup>

120. Tutors should make readers aware of the Bar Association's Accessibility Panel, a panel comprised of practising barristers who consider and advise on matters concerning disability, access and inclusion in the justice system and the legal profession. Readers should be encouraged to contact the panel in the event that they have any concerns or queries regarding those issues. The current list of panel members can be found on the Bar Association's website (see <https://nswbar.asn.au/committees/accessibility-panel>).

## **J. What If Things Go Wrong?**

121. Difficulties may arise for many reasons; for example, the reader and tutor may have a personality clash, or a tutor may take a long interstate brief with the consequence that the tutor is not able to assess adequately the reader's capacity or provide effective tutelage. It is not expected that readers or tutors will complete the year together if the experience will be unproductive or distressing to either party.
122. Should either party regard the difficulties in the tutor-reader relationship as substantial, the following avenues may be pursued to resolve these difficulties:
- a. raise the issue directly with the reader/tutor;
  - b. raise the issue with the reader's second tutor for their advice and/or conciliation;
  - c. raise the issue with the clerk for their advice and/or conciliation;
  - d. raise the issue with the Head of Chambers or a senior member of the floor for their advice and/or conciliation; or
  - e. if either the reader or the tutor's floor has adopted the Bar Association's Best Practice Guidelines (see section I above), engage the procedures set out in the Model Grievance and Complaint Framework if appropriate.
123. In the event that these steps are unsuccessful to resolve the difficulties, the reader and/or tutor may contact the Director, Professional Standards and Support. In exceptional circumstances, the Director, Professional Standards and Support may allow a reader to be reallocated to a new tutor nominated by the reader, who is prepared to assume the role. If the tutor to be replaced is the reader's certifying tutor, the proposed new tutor must be able to act as the reader's certifying tutor.
124. If an issue arises during the course of the year which means that the tutor-reader relationship should not continue and the reader should be reallocated to a new tutor, it is important that the issue be addressed immediately and not at the end of the year. Any change in tutor should occur in the first

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<sup>28</sup> Model Parental and Other Extended Personal Leave Best Practice Guideline, cl 11.

<sup>29</sup> Model Parental and Other Extended Personal Leave Best Practice Guideline, cl 11(i)-(iii).

<sup>30</sup> Model Parental and Other Extended Personal Leave Best Practice Guideline, cl 11(iv).

<sup>31</sup> Model Parental and Other Extended Personal Leave Best Practice Guideline, cl 11(v).

three months of the reading year. It is only fair to both reader and tutor that the reader have the opportunity to have another tutor and that the tutor not feel pressured to certify the reader, if to do so would compromise the tutor's integrity.

125. If a situation should arise that may compromise the tutor-reader relationship, in addition to the avenues listed above, the following senior counsel have agreed to be available to discuss the matter confidentially, so that the issue may be resolved promptly:
- a. Sophie Callan SC;
  - b. Kate Eastman AM SC;
  - c. Michael Fordham SC;
  - d. Dean Jordan SC;
  - e. Pat Griffin SC;
  - f. Perry Herzfeld SC;
  - g. Robert Hollo SC;
  - h. Trish McDonald SC;
  - i. Kylie Nomchong SC;
  - j. Kate Richardson SC;
  - k. Eugene Romaniuk SC; and
  - l. Tiffany Wong SC.

#### **K. Suggested Topics for Discussion**

126. Appendix 3 identifies topics for discussion between readers and tutors which may be of particular value in the first few months of the reading year. Of course, ultimately the tutor and reader must together determine whether it is essential or desirable that they discuss these or similar topics, having regard to the aims of the Reading Program.
127. Some tutors take the view that there are certain texts and materials that every new barrister should be exposed to during the year of reading, regardless of previous studies of the subject. A tutor might compile a list of leading authorities on basic topics (such as certain rules of evidence, the setting aside of subpoenas, legal professional privilege), which should be read. The list of authorities and topics will doubtless depend on the views and fields of practice of the tutor and the reader.
128. Particularly in light of the Bar Exam and Bar Practice Course, many tutors take a less structured approach. However, the matters identified at Appendix 3 may nonetheless be useful prompts for discussion of important topics which readers should understand.

#### **L. Conclusion**

129. At the end of the twelve-month reading period, and if all other requirements of reading have been satisfactorily completed, tutors are required to complete a form of certification.

130. The issues that arise during the reading year will be many and varied. It is not possible to anticipate in these Guidelines all the aspects in relation to monitoring, guidance and certification that tutors may encounter. However, in recognition of the importance of the relationship, regular and transparent communication, and early identification and resolution of problems and difficulties, will facilitate the reader's successful introduction to the Bar.
131. Finally, tutors and readers should also be aware that if things go wrong, or look as if they may go wrong, during the readership year, help is readily available, and they should discuss the issues and seek the advice of senior members of the profession.
132. It is hoped that these Guidelines will assist readers and tutors to establish and maintain a productive relationship which ultimately enables the tutor to comfortably certify their reader as qualified to practice as a barrister without restriction.

## Appendix 1: Declarations of fitness to practise

(1) by Certifying Tutor

### Declaration of Reader's Fitness to Practice - Certifying Tutor

Certifying tutor: \_\_\_\_\_

Chambers: \_\_\_\_\_

Reader's name: \_\_\_\_\_

Date reading commenced: \_\_\_\_\_

Second tutor (if applicable): \_\_\_\_\_

Frequency of personal contact between tutor and reader: \_\_\_\_\_

Frequency of contact between certifying tutor and reader's second  
tutor (if applicable): \_\_\_\_\_

### Evaluation of Reader's Work

#### Contact between Reader and Tutor

Have you regularly met with your reader? Yes ☐ No ☐

If Yes, please state frequency: \_\_\_\_\_

#### Chamber work (pleadings, advices on evidence, affidavits, etc)

Have you regularly scrutinised chamber work undertaken by  
your reader? Yes ☐ No ☐

If Yes, please state frequency: \_\_\_\_\_

If No, you CANNOT certify the reader is fit to practice as a barrister without restriction

Which of the following best describes the reader's chamber  
work you have viewed? Unsatisfactory ☐ Satisfactory ☐

Good ☐ Excellent ☐

In your opinion, is there any area of chamber work in which  
your reader ought properly to acquire greater skill? Yes ☐ No ☐

If Yes, please specify: \_\_\_\_\_



## Evaluation of Reader's Work – Continued

### Appearances in Court

Which Court(s) has your reader most frequently appeared in, led or unled? \_\_\_\_\_

What has been the nature of the work undertaken (eg mentions, own substantive work, junior work)? \_\_\_\_\_

Have you observed your reader appear unled in Court?

Yes ☐

No ☐

If Yes, please state frequency and nature of appearance: \_\_\_\_\_

If No, please explain what steps you have taken to assess your reader's appearance work (for instance, please provide details if you have consulted with your reader about their appearance work or their preparation for appearance) \_\_\_\_\_

If Yes, which of the following best describes your reader's advocacy skills?

Unsatisfactory ☐

Satisfactory ☐

Good ☐

Excellent ☐

Has your reader attended Court with you (whether as your junior or simply accompanying) and reading your briefs in those matters?

Yes ☐

No ☐

If Yes, please state frequency: \_\_\_\_\_

If No, please explain what steps you have taken to assess your reader's preparation skills (for instance, please provide details if you have consulted with your reader about their appearance work or their preparation for appearance) \_\_\_\_\_

Which of the following best describes your reader's preparation skills?

Unsatisfactory ☐

Satisfactory ☐

Good ☐

Excellent ☐

In your opinion is there any area of appearance work in which your reader needs to acquire greater skill?

Yes ☐

No ☐

If Yes, please specify: \_\_\_\_\_

### Knowledge of Law

Which of the following best describes your reader's legal knowledge and research abilities?

Unsatisfactory ☐

Satisfactory ☐

Good ☐

Excellent ☐

Any other comments

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### Recommendation

Please **note** that you cannot certify your reader if you have not regularly scrutinised their chambers work. If this is the case, please contact the Bar Association to discuss, as your reader's reading period will not end until you certify that they are fit to practise without restriction.

Please indicate **one** of the following recommendations:

I certify my reader is fit to practice as a barrister without restriction

☐

If you have not observed your reader's appearance work or they have not appeared with you in court, in addition to any steps taken to assess their appearance and preparation skills identified on the previous page please provide any further details of the basis upon which you are certifying your reader as fit to practice without restriction:

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Additional reading should be undertaken as follows:

☐

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Certifying tutor's signature

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Date

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Please return the completed form to: Professional Standards and Support Team  
NSW Bar Association  
B/174 Phillip Street  
E: [cpd@nswbar.asn.au](mailto:cpd@nswbar.asn.au)

(2) by Second Tutor

### Declaration of Reader's Fitness to Practise - Second Tutor

Tutor: \_\_\_\_\_

Chambers: \_\_\_\_\_

Reader's name: \_\_\_\_\_

Date reading commenced: \_\_\_\_\_

Certifying tutor: \_\_\_\_\_

Frequency of personal contact between tutor and reader: \_\_\_\_\_

Frequency of contact between second tutor and reader's certifying tutor: \_\_\_\_\_

### Evaluation of Reader's Work

#### Contact between Reader and Tutor

Have you regularly met with your reader? Yes ☐ No ☐

If Yes, please state frequency: \_\_\_\_\_

#### Chamber work (pleadings, advices on evidence, affidavits, etc)

Have you regularly scrutinised chamber work undertaken by your reader? Yes ☐ No ☐

If Yes, please state frequency: \_\_\_\_\_

If No, you CANNOT certify that you do not know of anything that would disentitle your reader to a practising certificate without readers' conditions

Which of the following best describes the reader's chamber work you have viewed? Unsatisfactory ☐ Satisfactory ☐

Good ☐ Excellent ☐

In your opinion, is there any area of chamber work in which your reader ought properly to acquire greater skill? Yes ☐ No ☐

If Yes, please specify: \_\_\_\_\_

## Appearances in Court

Which Court(s) has your reader most frequently appeared in, led or unled?

\_\_\_\_\_

What has been the nature of the work undertaken (eg mentions, own substantive work, junior work)?

\_\_\_\_\_

Have you observed your reader appear unled in Court?

Yes ☐

No ☐

If Yes, please state frequency and nature of appearance:

\_\_\_\_\_

If No, please explain what steps you have taken to assess your reader's appearance work (for instance, please provide details if you have consulted with your reader about their appearance work or their preparation for appearance)

\_\_\_\_\_

Which of the following best describes your reader's advocacy skills?

Unsatisfactory ☐

Satisfactory ☐

Good ☐

Excellent ☐

Has your reader attended Court with you (whether as your junior or simply accompanying) and reading your briefs in those matters?

Yes / No

If Yes, please state frequency:

\_\_\_\_\_

If No, please explain what steps you have taken to assess your reader's preparation skills (for instance, please provide details if you have consulted with your reader about their appearance work or their preparation for appearance)

\_\_\_\_\_

Which of the following best describes your reader's preparation skills?

Unsatisfactory ☐

Satisfactory ☐

Good ☐

Excellent ☐

In your opinion is there any area of appearance work in which your reader needs to acquire greater skill?

Yes ☐

No ☐

If Yes, please specify:

\_\_\_\_\_

## Knowledge of Law

Which of the following best describes your reader's legal knowledge and research abilities?

Unsatisfactory ☐

Satisfactory ☐

Good ☐

Excellent ☐

Any other comments

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### Recommendation

**Please note that you cannot certify your reader if you have not regularly scrutinised their chambers work. If this is the case, please contact the Bar Association and your reader to discuss.**

Please indicate **one** of the following recommendations:

I certify that I do not know of anything that would disentitle my reader to a practising certificate without readers' conditions

☐

If you have not observed your reader's appearance work or they have not appeared with you in court, in addition to any steps taken to assess their appearance and preparation skills identified on the previous page please provide any further details of the basis upon which you are certifying that you do not know of anything that would disentitle your reader to a practising certificate without readers' conditions:

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Additional Reading should be undertaken as follows:

☐

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Second tutor's signature

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Date

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Please return the completed form to:

Professional Standards and Support Team  
NSW Bar Association  
B/174 Phillip Street  
E: [cpd@nswbar.asn.au](mailto:cpd@nswbar.asn.au)

## Appendix 2: Criminal and Civil Reading forms

### Notes for Supervising Barristers

A reader is required to attend court with you and participate in the associated preparation and conferences. Ideally, readers should be familiar with the brief before the start of proceedings and should be available before, during and after the hearing (at a mutually convenient time) to discuss the matter. This will ensure the reader obtains the maximum benefit from attending court. However, where that is not possible (eg because the reading has been arranged at short notice), materials should be provided to readers soon after the hearing commences and readers should be available at the end of the first day, and during and after the hearing, to discuss the matter.

A supervising barrister is defined as a barrister who is senior counsel or who has more than five years' experience as a barrister and holds an unrestricted practising certificate.

### The 10 days of Civil Reading must comprise:

- A reader must complete a **minimum of five days** reading in first instance matters before a judge. The following matters are excluded: directions, motions, and interlocutory matters relating to practice and procedure; and
- A **maximum of two days** for preparation of matters which proceed to hearing (which you attend); and
- A **maximum of three days** in any of the following matters:
  - Appeals, including leave or special leave;
  - Substantive proceedings in a tribunal, arbitration, coronial inquiry or other statutory inquiry or hearing.

### The 10 days of Criminal Reading must comprise:

- A reader must complete a **minimum of five days** in District / Supreme Court trials. The following matters are excluded: Undefended matters in the Local / Children's Court; Mentions and call overs; and
- A **maximum of three days** in any of the following:
  - Committal proceedings
  - Court of Criminal Appeal
  - District Court all grounds appeal
  - District Court conviction and severity appeals
  - Sentencing
  - Defended matters in the Local and Children's Court
  - Contested matters in any other court
  - Special leave applications
  - Preparation of matters which proceed to hearing (which you attend).

## Verification of Reading Form

Reader:

Court: \_\_\_\_\_ ☐ Criminal ☐ Civil

Date(s): \_\_\_\_\_ No. of Days: \_\_\_\_\_

Name of case: \_\_\_\_\_

Type of matter: \_\_\_\_\_

I certify the reader attended court; participated in the associated preparation and conference where possible; was familiar with the brief where possible and was available before, during or after the hearing to discuss the matter:

Signature (and print): \_\_\_\_\_

Court: \_\_\_\_\_ ☐ Criminal ☐ Civil

Date(s): \_\_\_\_\_ No. of Days: \_\_\_\_\_

Name of case: \_\_\_\_\_

Type of matter: \_\_\_\_\_

I certify the reader attended court; participated in the associated preparation and conference where possible; was familiar with the brief where possible and was available before, during or after the hearing to discuss the matter:

Signature (and print): \_\_\_\_\_

Signature of Reader:



## Appendix 3: Topics for Discussion

### *Introduction*

1. The topics set out below are intended as a resource for those who may appreciate a pro-forma structure for the reading year. The topics, which could be addressed at regular meetings, cover:
  - a. aspects of practice organisation and management (e.g. how to deal with solicitors and barristers, and how to handle conferences);
  - b. “traps for young players” (e.g. the need to consider all possible causes of action when pleading, the need to identify the evidence to call/tender, the issues one needs to cover in cross-examination); and
  - c. practical skills and several legal issues that can arise in any kind of proceeding, such as the rule in *Jones v Dunkel*.

In respect of some of the topics, there is more detailed discussion in the body of the Guidelines above.

2. At meetings, tutors should also ask readers about the work that they are doing. This could provide an opportunity for discussion about issues that arise in practice with relative frequency but that are usefully discussed in the context of actual work the reader is doing.

### *Background Reading/Watching*

3. The following are useful resources before starting and during the reading year:
  - Neil Williams SC and Alison Hammond, *Learning to Litigate: A Guide for Young Lawyers* (Federation Press, 2022).
  - Murray Gleeson QC, “Advocacy” (1998) 17 Aust Bar Rev 9.
  - Antonin Scalia and Bryan A Garner, *Making Your Case: The Art of Persuading Judges* (Thomson West, 2008).
  - Andrew Goodman, *Effective Written Advocacy* (Wildy Simmonds and Hill Publishing, 2<sup>nd</sup> ed, 2012).
  - *The Staircase* (available on Netflix) (particularly for those in criminal practice).

### *Topics for discussion with readers*

4. Finances
  - Keep a separate account through which **all** income is banked and nothing but income.
  - Establish a practice of putting money aside to meet tax liability.
  - Keep a file of receipts for all deductible expenses.
  - Retain an accountant early.

- Determine how you will keep track of time spent on work, invoices rendered and when paid. This may include the application of one of the various practice management software applications available for barristers such as SILQ or Bar Books.

5. Costs disclosure

- Timely provision of costs disclosure and costs agreements.
- Content of costs disclosure and costs agreements.

6. Behaviour in Chambers

- Bar Rule 123.
- If applicable, the Best Practice Guidelines.

7. Devilling

- Expectations about the role of the reader in devilling work.
- Being clear about rates for devilling.

8. Relations with solicitors

- Role is to be helpful e.g. draft the schedule to the subpoena yourself rather than directing a sole practitioner to “issue a subpoena for x documents”.
- Communications in court.
- Reporting on the outcome of a hearing if your solicitor is not in court or you otherwise consider that you should do so.
- Do not take more than one brief for a day unless you have a sound basis for being confident that they will not be called on at the same time in different courts.
- Getting on panels, e.g. Legal Aid, Crown Solicitors Office, Commonwealth DPP, migration work for the Commonwealth.
- Dealing with Legal Aid, including costs and offences under the *Legal Aid Commission Act 1979* (NSW).

9. Relations with other barristers and attending court

- Clarify whether discussions are “counsel to counsel” before quoting in writing or to a court (and refer to Bar Rule 122).
- If uncertain whether you have properly understood an agreed matter that you are relating to the court, acknowledge your uncertainty e.g. by saying “my friend will correct me if I have misunderstood this”.
- Always deliver devilling and drafts on time or warn as soon as it is apparent you will be late.

- When brought in as junior, master the papers before spending much time on the law.
- **Never** be late for court; check the list first thing in the morning.

10. Directions/case management hearings and mentions

- Preparing for and attending directions hearings and mentions – see paragraph 60 of the Guidelines above for list of key information to obtain before any directions hearing.
- Check Practice Notes.

11. Interlocutory hearings and notices of motion

- What is the underlying dispute? What interlocutory orders are sought (injunction, stay, etc)? What is the other side's position? What evidence has been served? Is it admissible? Is it sufficient to support the application?
- Identify key authorities.
- Consider whether to draft short written submissions to hand up.

12. Subpoenas

- Issuing and setting aside.
- Proposed access orders.
- Procedure to raise objections to access (e.g. legal professional privilege and public interest immunity).
- Confidentiality regimes.

13. Conferences with clients and witnesses

- Have a solicitor present when advising a client on prospects, taking instructions on a significant issue in the litigation, especially e.g. settlement, inconsistencies in a prior account, or when seeing a client or witness in custody.
- Use the pre-trial conference to ask non-leading questions to elicit the client's or witness' account (rather than reciting the affidavit or statement back to the witness).
- Criminal: Meeting a client in custody: AVL, gaol, court cells; obligations and best practice when taking instructions on a plea.

14. Preparing a case

- Check the beginning and end of the observations on receipt of a brief – identify and diarise any deadlines.
- Appoint a conference about 2–3 weeks after receipt of the brief to discuss with solicitor.
- Prepare a rough chronology when reading the brief and keep a work list of things to follow up.

- If settling a pleading, consider seeking instructions to prepare an advice on evidence at the same time to crosscheck that you have not pleaded matters that are impossible to prove or have another way of achieving the same result.
- If preparing a judicial review application, do a first draft of submissions at the same time, and follow up with solicitor any evidence that you refer to that is not yet on.
- Consider whether to seek instructions to prepare an advice on prospects in order to identify weaknesses in the case and set strategy.
- Keep a folder for documents you are likely to need in court and essential documents such as pleadings and submissions.
- Keep a list of documents you need to tender, or cases and legislation you need to hand up.
- Prepare a one page list of each fact you need to prove, and where the evidence to do so is located.
- Specific considerations in preparing for a jury trial.

15. Appearing as a junior

- Role in preparation and during hearing.
- “Assume your leader walks under a bus” rule – preparing for the unexpected.

16. Pleadings

- How to prepare good pleadings.
- Function of pleadings.
- Amendments (*Aon Risk Services Australia Ltd v ANU* (2009) 239 CLR 175; [2009] HCA 27).

17. Rule in *Browne v Dunn*

- What is the rule? Is it a rule of law? What are the consequences of not complying? What are the different ways of complying?
- Undesirability of “I put it to you that ...”, preferability of other forms such as “could it be that ...”.
- Need to identify matters to put to opposing witnesses before going to court, and to check before sitting down that you have complied.

18. Rule in *Jones v Dunkel*

- What is the rule? What are its limits?
- Inference must already be available; must be a basis for expecting that the party would call the witness; witness’ absence must be unexplained.

19. Examination in Chief

- How to ask questions in chief.
- Identify the witness' strong points of recollection in conference. Use those in evidence as a framework, and "back fill" the details around them.
- When it may be appropriate to seek opponent's agreement to lead some aspects of examination in chief (i.e. where uncontroversial, or in criminal matters or inquiries to avoid witness revealing sensitive inadmissible information or breaching suppression orders in open court).

20. Objections

- Preparing lists of objections and arguing objections.

21. Cross-examination

- How to prepare for cross-examination, including "laying the groundwork" to effectively cross examine on documents.

22. Re-examination

- Limits of re-examination.
- Effective re-examination.

23. Expert evidence

- Information to include in letters of engagement.
- Process for drafting questions.
- Communicating with experts.
- Role of solicitors and barristers in finalising expert reports.
- Practice Notes.

24. Legal professional privilege / client legal privilege

- Identify the basis upon which privilege may apply to documents produced prior to the final hearing.
- How can the privilege be waived?
- Inadvertent disclosure of privileged documents and what to do if this occurs.
- Difference between joint privilege and common interest privilege, and the scope of each.

25. Other privileges

- When and how does the privilege against self-incrimination arise, and what is the procedure for a certificate to be issued? (see s 128 of the Uniform Evidence Acts).
- Sexual assault communication privilege (see ss 295–306 of the *Criminal Procedure Act 1986* (NSW), including seeking leave to issue subpoena).
- When can material of settlement negotiations be relied upon in court? (see s 131 of the Uniform Evidence Acts).

26. Discussion of readers' progress in relation to advocacy and court craft

- Practical advice and encouragement based on the tutor's observation and assessment of the reader in court.
- What aspects of advocacy can be improved and what steps can the reader take to enhance their skills?

27. General professional responsibilities

- Compliance with ss 56–60 of the *Civil Procedure Act 2005* (NSW) and equivalents, including in a case which has gone off the rails.
- Bar Rules 79 (guilty client) and 83–95 (prosecutor's duties).

28. Pro bono work

- Opportunities for pro bono work (eg, duty barrister scheme, RACS, EDO).
- How to manage pro bono work.
- How much pro bono work you should do.

29. Criminal practice: charges

- Assessing merit; advising on plea.
- Requesting/furnishing further and better particulars of charge: *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531 at [26]; [2010] HCA 1; *Patel v The Queen* (2012) 247 CLR 531; [2012] HCA 29.
- Representations to, and charge negotiations with, the ODPP(NSW)/CDPP: ODPP (NSW) Prosecution Guidelines Chapters 1 & 4 / CDPP Prosecution Policy. Note that the determination of the appropriate sentence is one that rests solely with the court: *CMB v Attorney-General (NSW)* (2015) 256 CLR 346 at [64]; [2015] HCA 9.
- Duplicity: *Johnson v Miller* (1937) 59 CLR 467; *S v The Queen* (1989) 168 CLR 266; *Walsh v Tattersall* (1996) 188 CLR 77.
- Tendency and coincidence evidence and severance of counts: *R v Bauer* (2018) 266 CLR 56; [2018] HCA 40; *TL v The King* (2022) 96 ALJR 1072; [2022] HCA 35. See the Criminal Trial Courts Bench Book: Tendency, coincidence and background evidence.

30. Criminal practice: appeals

- Preparing advice on the merits of an appeal.
- Appeals to the District Court against conviction: *Lunney v Director of Public Prosecutions* (2021) 105 NSWLR 236; [2021] NSWCA 186.
- Appeals to the District Court against sentence: *Wany v Director of Public Prosecutions* (2020) 103 NSWLR 620; [2020] NSWCA 318; *Engelbrecht v Director of Public Prosecutions (NSW)* [2016] NSWCA 290.
- Judicial review by the Court of Appeal in cases of appeals to the District Court.
- Appeals to the Court of Criminal Appeal against conviction: *Criminal Practice & Procedure NSW*, LexisNexis, [20-200]; *Criminal Appeal Act 1912* (NSW), s 5.
- Appeals to the Court of Criminal Appeal against sentence: *Kentwell v The Queen* (2014) 252 CLR 601; [2014] HCA 37.

31. Criminal practice: costs and stays

- Costs in criminal cases: *Criminal Procedure Act 1986* (NSW); *Costs in Criminal Cases Act 1967* (NSW); *Suitors' Fund Act 1951* (NSW).
- Stay of proceedings, where proceedings an abuse of process: *Strickland (a pseudonym) v Director of Public Prosecutions (Cth)* (2018) 266 CLR 325; [2018] HCA 53.

32. Costs in civil cases

- Offers of compromise and *Calderbank* offers.
- Costs arguments.

33. Civil appeals

- Is leave required?
- What is the nature of the appeal (e.g. is it an appeal by way of rehearing, is it limited to a question of law)?
- Challenges to factual findings: *Fox v Percy* (2003) 214 CLR 118; [2003] HCA 22; *Lee v Lee* (2019) 266 CLR 129; [2019] HCA 28.
- *House v The King* error.
- What to do about points not taken at trial: see *Suttor v Gundowda Pty Ltd* (1950) 81 CLR 418; *Coulton v Holcombe* (1986) 162 CLR 1.
- What orders are sought (e.g. judgment or new trial)?



