

### The Best Practice Guidelines

**In June 2014, the Bar Council approved four sets of Best Practice Guidelines (BPGs). While adoption of the BPGs is voluntary, the Bar Association encourages its members and their individual chambers or floors to adopt them. The BPGs apply to the Bar Association in respect of the services it provides and to barristers attending any Bar Association event, or serving on any Bar Association committees, as well as to Bar Association examination candidates. The BPGs are as follows:**

- the Model Harassment, Discrimination, Vilification and Victimisation BPG;
- the Model Bullying BPG;
- the Model Parental and Other Extended Leave BPG; and
- the Model Grievance Handling Procedure BPG.

**One year has now passed since the Bar Association launched the BPGs and some 27 floors have adopted them, including Level 22 Chambers. Juliet Curtin met with Janet McDonald, a member of Level 22 Chambers, to discuss Level 22 Chambers' adoption of the BPGs.**

*Bar News:* Has your floor adopted all four of the Best Practice Guidelines?

**Janet McDonald:** Yes, our board resolved to adopt all four of the BPGs on 12 August 2014. We did not choose to adopt the optional clauses in the Model Parental and Other Extended Leave BPG (clauses 12 and 14 (c)) or clause 11 of that BPG. Those clauses relate to the sub-licensing of rooms while a member or licensee is on parental or other extended leave. Our constitution, which was only very recently adopted (as Level 22 Chambers was only established in September 2013) already contained clauses relating to the sub-licensing of rooms and those clauses were not inconsistent with the Model Parental and Other Extended Leave BPG. However, our constitution does provide that written board approval is required to sub-license a room, whereas the equivalent clauses in the Model Parental and Other Extended Leave BPG do not contain that requirement, so we elected to reserve that discretion for the Board to decide whether or not to approve a sub-licensing arrangement. Additionally, in clause 13 of the Model Parental and Other Extended Leave BPG there is a requirement that when a member or licensee is on leave, the clerk and/or 'floor contact officer' will maintain communications with that person for the duration of their leave. We removed the requirement that the 'floor contact officer' be obliged to communicate with the member or licensee on leave, so that only our clerk is obliged to communicate with floor members on extended leave.

*Bar News:* Adoption of the BPGs is voluntary. Could you describe Level 22 Chambers' rationale and motivation in choosing to adopt them?

**Janet McDonald:** Yes, firstly, because ours is a new floor, we had a clean slate and the opportunity, upon establishing the floor, to do everything according to Hoyle, and get our practices and structures set up properly from the outset. Although the Bar Council adopted the BPGs in June 2014 (around nine months after we had formally established) at that point we were still in the process of establishing the practices of the floor. The BPGs were a ready-made model set of practices, and it seemed to us that in adopting them we could ensure that we were establishing practices which were compliant with all the relevant New South Wales and Commonwealth laws. So, being a new floor was definitely a catalyst for adopting the BPGs. However, an additional motivating factor was that we have a comparatively large number of women on our floor. Seven of the 34 barristers on the floor are women, six of whom are members. There was perhaps, therefore, more of a push than there might have otherwise been on other floors to ensure that we avoided direct or indirect discriminatory practices and that we created an equal opportunity workplace.

*Bar News:* The Bar Association's Explanatory Memorandum, issued at the time of launching the BPGs, indicates that the BPGs were introduced with two overarching goals in mind. One goal was to assist barristers to comply with (and manage risk associated with) their obligations under New South Wales and Commonwealth discrimination and employment laws, as well as the new Rule 117. The other goal was to assist and encourage barristers to meet community expectations as to appropriate workplace and professional standards of conduct. Broadly speaking, these twin goals could perhaps be characterised as ensuring compliance on the one hand and effecting cultural

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Level 22 Chambers: Photograph by Aran Anderson

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change on the other. Is that what your floor had in mind in adopting the BPGs?

**Janet McDonald:** Yes, compliance was definitely a primary motivation. The other motivating factor could be described as cultural. Greg Curtin SC is the founding father of the floor, and one of the fundamental tenets that he wanted to introduce was what he calls a 'no key money principle'. So to get onto this floor, there is no requirement to pay any money up front. Greg's idea was that when key money is a requirement for entry onto a floor, there is a risk that you will only bring on board those people who have the cash, yet it is not always the case that someone who can afford to buy in is the best barrister. Greg's idea was that if the floor did not require key money we would be able to select the best and the brightest regardless of their bank balance. So we were trying to develop a floor that was a little bit different, that was going to be more of an equal opportunity workplace, on a number of levels, and adopting the BPGs complemented, and contributed towards us achieving, that goal.

In addition to adopting the BPGs, we were the first floor to provide an opportunity to those who might otherwise be struggling to find permanent employment due to the fact that they suffer from a mild intellectual disability. The junior

position on a floor can be an ideal role for a lot of people who are quite employable but perhaps can't be given too much responsibility. We took on two juniors who fell into that category. The board's view was that, aside from any other considerations, providing these employment opportunities could lead to greater staff stability, dedication and enthusiasm. One of the juniors we employed didn't work out, but the other junior we employed is still working with us, is very capable, and in his case, the board's expectations about the potential positive impact of providing such an employment opportunity have certainly proven correct. Having such an employee working with us did make it even more important for our floor to adopt and ensure compliance with the BPGs.

**Bar News:** How has your floor ensured that members of the floor and licensees and staff are aware of the BPGs and their content?

**Janet McDonald:** I gave a presentation to the floor. We adopted the BPGs in August 2014, and then in October 2014 I delivered a CPD to the floor, which was really well attended. All members of our staff were invited to the CPD and were expressly told to come, including our juniors and receptionists. In the presentation I explained each BPG and covered the legislative requirements that they are intended to meet. The BPGs were also distributed by email to everyone on the floor. Our clerk has a copy available, and they are also included in our induction package that our clerk gives to people starting out on the floor.

**Bar News:** What about instructing solicitors? Has there been any communication with them about your floor's adoption of the BPGs?

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**Janet McDonald:** We've not had any direct communication with solicitors about our adoption of the BPGs. However, the fact that we have adopted the BPGs, and that our floor has chosen to be bound by them, has caused a few conversations to happen amongst our members about the behaviour of people visiting our chambers at our invitation, for example, solicitors who attend the CPDs that we deliver from time to time on the floor. Following one such CPD someone on our floor brought up the fact that as we are bound by the BPGs and that the workplace we are trying to cultivate is one in keeping with those guidelines, we need to be prepared, should a visitor to our floor engage in behaviour which is in conflict with the BPGs, to alert them to the fact that the behaviour is inappropriate and not tolerated in our chambers.

Pursuant to the Model Grievance Handling BPG, we have appointed a floor grievance officer, and we made a deliberate decision that the person appointed would not be a member of the board, so that they would be seen as independent to the powers that be and, hopefully separate from whatever politics might happen to be at play on the floor at any one time. One thing that appointing a grievance officer has achieved is that whenever a discussion starts up at Friday night drinks or other floor functions which might perhaps be on the cusp of being, say, a little bit sexist or a little bit racist, people will – in a nice way and done more in humour than anything else – point out that our grievance policy handler is present or that a report will have to go to the grievance policy handler, and it reins the conversation in. We joke about it, but even the fact that this tends to happen does mean that our adoption of the BPGs has a tangible, albeit gentle, impact.

**Bar News:** Does your board have some intention of reminding people in a more formal way about the BPGs, in due course?

**Janet McDonald:** Not at the moment, but that is because they are still so new. However, at some point the board may decide to have a refresher on the guidelines, probably through the delivery of another CPD.

**Bar News:** It is the Model Grievance Handling Procedure BPG which really ties the BPGs together, in that it provides a mechanism and structure by which enquiries, concerns, or complaints made or related to the remaining BPGs may be handled and resolved by floors who have adopted the BPGs. Can you describe what your floor has put in place?

**Janet McDonald:** We appointed a floor grievance handling officer who, as I said, is not a member of our board, and at the time of adopting the BPGs I made everyone aware of who the grievance handling officer was and that he would be available to

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discuss any of the issues affecting the BPGs. To my knowledge, the grievance handling procedure has not been invoked, although an essential element of the procedure, of course, is that the communications that might occur in connection with it are confidential.

**Bar News:** Notwithstanding your adoption of the Model Grievance Handling BPG, do you think it would be quite difficult for someone to make a complaint?

**Janet McDonald:** Yes, potentially, but the adoption of the Model Grievance Handling BPG does create an easier route, because the grievance handling officer is not a board member, he, or she as the case may be, is not part of the hierarchy of the floor's power and control, and we deliberately selected someone who is a senior junior and would be quite capable of liaising with the board and the person involved, which would be much easier than the person going to the board on their own.

**Bar News:** Finally, the Bar Association's Explanatory Memorandum states that the BPGs are intended to take into account the particular features of a barrister's practice and chambers arrangements. One such feature is our independence, as sole practitioners. Do you think that the BPGs manage to set the right balance in terms of enabling the floor to adopt a set of practices that requires compliance from all members and licensees, notwithstanding each barrister's independence?

**Janet McDonald:** Yes, what the BPGs represent is a commitment to a better workplace. The burden is on everyone within the floor to acknowledge that we won't tolerate inappropriate workplace behaviour. People are still vehemently independent and resistant to anyone dictating how we practice, but there has been no pushback from anyone on the floor as to our adoption of the BPGs for two reasons. First, there is legislation in force at both the state and Commonwealth level requiring us to behave in the ways that are encapsulated by the BPGs. Secondly, ours is a modern floor, and these are modern times. We want to embrace and cultivate a culture on the floor that reflects that reality, and this is facilitated by the adoption of the BPGs.