



New South Wales

ATTORNEY GENERAL

Mr Michael Slattery QC  
President  
New South Wales Bar Association  
Selborne Chambers  
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FILE COPY

Dear Mr Slattery

**Reform of the Barristers' Rules – improper questions of sexual assault victim witnesses**

I am concerned about the issue of the improper questioning of sexual assault complainants. The behaviour of counsel towards certain sexual assault victim witnesses, particularly children, has attracted much negative attention in recent years.

As you are aware, Section 275A of the *Criminal Procedure Act 1986* was introduced in 2005, displacing Section 41 of the *Evidence Act 1995* in criminal proceedings. Section 275A places a positive duty on judges to disallow improper questions. The provision is mandatory, unlike Section 41 which is merely discretionary.

I am keen to ensure that any improper questioning of sexual assault victim witnesses no longer takes place in sexual assault proceedings. To that end, I respectfully request that the Bar Association consider the following possible reforms to the NSW Barristers' Rules. They reflect recent legislative changes and an increased emphasis on the protection of victims of sexual assault in the trial process.

- Adding a provision to the Rules placing a positive duty on counsel that mirrors Court's duty under Section 275A to disallow improper questions or inform witnesses that they need not be answered. This could be an obligation on defence or prosecution counsel to object to improper questioning from the other side (although it would primarily fall on the prosecutor) and ask the Court to enforce S 275A;
- Expanding Rule 35 (c) so that it does not just relate to questions that are 'principally' in order to harass or embarrass the person, but also to questions that 'incidentally' harass or embarrass the person;

- Changing Rule 19 so that it is not couched in negative terms but puts a positive obligation on counsel to refuse a client's instructions in regard to witness questioning if the instructions would result in witness harassment.
- Introducing a requirement for counsel to take into account the vulnerability of a witness when asking questions and consider the effects and possible damage that a question may cause a vulnerable witness, particularly in sexual assault trials.
- In addition, Barristers' professional development requirements could be reformed to include training in the trial processes in sexual assault matters, in a similar way to the current professional development program for judicial officers which includes training of this type.

I look forward to any comments you may have in respect of these suggested changes.

Yours faithfully,



(John Hatzistergos)