

Australian Capital Territory

Legal Profession (Solicitors) Conduct Rules 2015

Subordinate law SL2015–37

made under the

Legal Profession Act 2006, s 580 (Rules for solicitors)

EXPLANATORY STATEMENT

Background

The *Legal Profession Act 2006* (ACT) (LPA) empowers the Law Society of the ACT (Law Society) to make Rules for or in relation to practice as a solicitor, as an Australian-registered foreign lawyer and for incorporated legal practices and multi-disciplinary partnerships.

The *Legal Profession (Solicitors) Conduct Rules 2015* replace the *Legal Profession (Solicitors) Rules 2007*.

The *Legal Profession (Solicitors) Conduct Rules 2015* reflect the efforts of the Law Council of Australia (LCA) and its constituent bodies to move towards a uniform set of professional conduct rules in Australia. In December 2014 the LCA released draft national conduct rules (based on the Australian Solicitors' Conduct Rules 2011) for public consultation. The rules were subsequently revised to take into consideration the submissions received. The final version of the national conduct rules, as now adopted in New South Wales and Victoria, was published by the Legal Services Council in May 2015.

As required by the LPA, the Law Society wrote to the ACT Attorney-General and sought public comment on the proposal to adopt the revised conduct rules. Following the conclusion of the public consultation process the Council of the Law Society formally adopted the rules.

Purpose

The *Legal Profession (Solicitors) Conduct Rules 2015* (“Rules”) provide a framework for ethical decision-making to ensure that Australian solicitors are bound by a common set of professional obligations and ethical principles when dealing with their clients, the courts, their fellow legal practitioners and the wider community.

The adoption of the new Rules will ensure that they are consistent with those in other jurisdictions. The core ethical concepts and professional obligations on solicitors remain unchanged.

Section 585 of the LPA provides that the Rules are binding on legal practitioners to whom they apply. Failure to comply with the Rules can amount to unsatisfactory professional conduct or professional misconduct.

Outline of Changes

Additional rules

The following rules in the *Legal Profession (Solicitors) Conduct Rules 2015* were not included in the *Legal Profession (Solicitors) Rules 2007*:

- Rule 3 – Paramount Duty to the Court and the Administration of Justice;
- Rule 5 – Dishonest and Disreputable Conduct;
- Rule 8 – Client Instructions;
- Rule 16 – Charging for Document Storage;
- Rule 18 – Formality before the Court;
- Rule 28 – Public Comment during Current Proceedings;
- Rule 30 – Another Solicitor or Other Person’s Error;
- Rule 31 – Inadvertent Disclosure;
- Rule 32 – Unfounded Allegations;
- Rule 38 – Returning Judicial Officers;
- Rule 39 – Sharing Premises;
- Rule 40 – Sharing Receipts; and
- Rule 41 – Mortgage Financing and Managed Investments.

Removal of 2007 Rules

The *Legal Profession (Solicitors) Conduct Rules 2015* do not include the following rules which were contained in the *Legal Profession (Solicitors) Rules 2007*:

- Rule 4 (Practitioners Employed otherwise than by a Practitioner). However, Rule 1 of the *Legal Profession (Solicitors) Conduct Rules 2015* states that the Rules

apply to solicitors and Australian-registered foreign lawyers acting in the manner of a solicitor.

- Rule 27 (Transfer of Practitioner’s Practice);
- Rule 32 (Debt Collection or Mercantile Agencies);
- Rule 33 (Conducting Another Business other than a Multidisciplinary Partnership or Incorporated Legal Practice);
- Rule 36 (Conduct of Practice); and
- Rule 41 (Practitioners Serving as Part-Time Judicial Officers or Tribunal Members).

As a general rule, these 2007 rules will be issued as guidelines by the Law Society.

Key amendments

The following rules in the *Legal Profession (Solicitors) Conduct Rules 2015* contain key amendments to the *Legal Profession (Solicitors) Rules 2007*:

- Rule 10 – Conflicts Concerning Former Clients – addresses ongoing duties owed to former clients. Rule 10 provides for limited exceptions to the rule that a solicitor and law practice must avoid conflicts between the duties owed to current and former clients.
- Rule 11 – Conflict of Duties Concerning Current Clients – deals with concurrent client conflicts, and in particular adverse interest conflicts and confidential information conflicts. Rule 11 provides for limited exceptions to the rule that a solicitor or a law practice must avoid conflicts between the duties owed to two or more current clients.

The Society has issued guidelines in relation to Rule 11 to ensure the ACT’s position on conflicts has not been weakened.

- Rule 42 – Anti-Discrimination and Harassment – addresses prohibited conduct in the course of practice and includes workplace bullying in the list of prohibited conduct.

Minor textual amendments

There are a number of minor textual amendments to rules that are otherwise substantively the same.