

# Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015

[2015-244]



New South Wales

## Status information

### Currency of version

Current version for 27 May 2015 to date (accessed 31 January 2021 at 17:24)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced. See [Historical Notes](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 July 2015.

# Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015

[2015-244]



New South Wales

## Contents

<b>Part 1 Preliminary rules</b>	4
1 Citation	4
2 Commencement	4
3 Objective	4
4 Authorising provisions	4
<b>Part 2 Operational rules</b>	4
<b>Nature and purpose of the Rules</b>	4
1 Application and interpretation	4
2 Purpose and effect of the Rules	4
<b>Fundamental duties of solicitors</b>	5
3 Paramount duty to the court and the administration of justice	5
4 Other fundamental ethical duties	5
5 Dishonest and disreputable conduct	5
6 Undertakings	5
<b>Relations with clients</b>	5
7 Communication of advice	5
8 Client instructions	6
9 Confidentiality	6
10 Conflicts concerning former clients	6
11 Conflict of duties concerning current clients	7
12 Conflict concerning a solicitor's own interests	7
13 Completion or termination of engagement	9
14 Client documents	9
15 Lien over essential documents	9
16 Charging for document storage	10

<b>Advocacy and litigation</b>	10
17 Independence—avoidance of personal bias	10
18 Formality before the court	11
19 Frankness in court	11
20 Delinquent or guilty clients	12
21 Responsible use of court process and privilege	13
22 Communication with opponents	15
23 Opposition access to witnesses	15
24 Integrity of evidence—influencing evidence	16
25 Integrity of evidence—two witnesses together	16
26 Communication with witnesses under cross-examination	16
27 Solicitor as material witness in client's case	17
28 Public comment during current proceedings	17
29 Prosecutor's duties	17
<b>Relations with other persons</b>	19
30 Another solicitor's or other person's error	19
31 Inadvertent disclosure	19
32 Unfounded allegations	19
33 Communication with another solicitor's client	19
34 Dealing other persons	20
35 Contracting with third parties	20
<b>Law practice management</b>	20
36 Advertising	20
37 Supervision of legal services	21
38 Returning judicial officers	21
39 Sharing premises	21
40 Sharing receipts	21
41 Mortgage financing and managed investments	21
42 Anti-discrimination and harassment	21
43 Dealing with the regulatory authority	22
<b>Glossary of terms</b>	22
<b>Historical notes</b>	27

solicitor believes on reasonable grounds that the client already has such an understanding of those alternatives as to permit the client to make decisions about the client's best interests in relation to the matter.

## **8 Client instructions**

8.1 A solicitor must follow a client's lawful, proper and competent instructions.

## **9 Confidentiality**

9.1 A solicitor must not disclose any information which is confidential to a client and acquired by the solicitor during the client's engagement to any person who is not:

9.1.1 a solicitor who is a partner, principal, director, or employee of the solicitor's law practice, or

9.1.2 a barrister or an employee of, or person otherwise engaged by, the solicitor's law practice or by an associated entity for the purposes of delivering or administering legal services in relation to the client,

EXCEPT as permitted in Rule 9.2.

9.2 A solicitor may disclose information which is confidential to a client if:

9.2.1 the client expressly or impliedly authorises disclosure,

9.2.2 the solicitor is permitted or is compelled by law to disclose,

9.2.3 the solicitor discloses the information in a confidential setting, for the sole purpose of obtaining advice in connection with the solicitor's legal or ethical obligations,

9.2.4 the solicitor discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence,

9.2.5 the solicitor discloses the information for the purpose of preventing imminent serious physical harm to the client or to another person, or

9.2.6 the information is disclosed to the insurer of the solicitor, law practice or associated entity.

## **10 Conflicts concerning former clients**

10.1 A solicitor and law practice must avoid conflicts between the duties owed to current and former clients, except as permitted by Rule 10.2.

10.2 A solicitor or law practice who or which is in possession of information which is confidential to a former client where that information might reasonably be concluded to be material to the matter of another client and detrimental to the interests of the former client if disclosed, must not act for the current client in that matter UNLESS:

10.2.1 the former client has given informed written consent to the solicitor or law practice so acting, or

10.2.2 an effective information barrier has been established.

## **11 Conflict of duties concerning current clients**

- 11.1 A solicitor and a law practice must avoid conflicts between the duties owed to two or more current clients, except where permitted by this Rule.
- 11.2 If a solicitor or a law practice seeks to act for two or more clients in the same or related matters where the clients' interests are adverse and there is a conflict or potential conflict of the duties to act in the best interests of each client, the solicitor or law practice must not act, except where permitted by Rule 11.3.
- 11.3 Where a solicitor or law practice seeks to act in the circumstances specified in Rule 11.2, the solicitor or law practice may, subject always to each solicitor discharging their duty to act in the best interests of their client, only act if each client:
- 11.3.1 is aware that the solicitor or law practice is also acting for another client, and
  - 11.3.2 has given informed consent to the solicitor or law practice so acting.
- 11.4 In addition to the requirements of Rule 11.3, where a solicitor or law practice is in possession of information which is confidential to a client (the first client) which might reasonably be concluded to be material to another client's current matter and detrimental to the interests of the first client if disclosed, there is a conflict of duties and the solicitor and the solicitor's law practice must not act for the other client, except as follows:
- 11.4.1 a solicitor may act where there is a conflict of duties arising from the possession of confidential information, where each client has given informed consent to the solicitor acting for another client, and
  - 11.4.2 a law practice (and the solicitors concerned) may act where there is a conflict of duties arising from the possession of confidential information where an effective information barrier has been established.
- 11.5 If a solicitor or a law practice acts for more than one client in a matter and, during the course of the conduct of that matter, an actual conflict arises between the duties owed to two or more of those clients, the solicitor or law practice may only continue to act for one of the clients (or a group of clients between whom there is no conflict) provided the duty of confidentiality to other client(s) is not put at risk and the parties have given informed consent.

## **12 Conflict concerning a solicitor's own interests**

- 12.1 A solicitor must not act for a client where there is a conflict between the duty to serve the best interests of a client and the interests of the solicitor or an associate of the solicitor, except as permitted by this Rule.
- 12.2 A solicitor must not exercise any undue influence intended to dispose the client to benefit the solicitor in excess of the solicitor's fair remuneration for legal services provided to the client.
- 12.3 A solicitor must not borrow any money, nor assist an associate to borrow money, from:
- 12.3.1 a client of the solicitor or of the solicitor's law practice, or
  - 12.3.2 a former client of the solicitor or of the solicitor's law practice who has indicated a continuing reliance upon the advice of the solicitor or of the solicitor's law practice in

relation to the investment of money,

UNLESS the client is:

- (i) an Authorised Deposit-taking Institution,
- (ii) a trustee company,
- (iii) the responsible entity of a managed investment scheme registered under Chapter 5C of the *Corporations Act 2001* (Cth) or a custodian for such a scheme,
- (iv) an associate of the solicitor and the solicitor is able to discharge the onus of proving that a full written disclosure was made to the client and that the client's interests are protected in the circumstances, whether by legal representation or otherwise, or
- (v) the employer of the solicitor.

12.4 A solicitor will not have breached this Rule merely by:

12.4.1 drawing a Will appointing the solicitor or an associate of the solicitor as executor, provided the solicitor informs the client in writing before the client signs the Will:

- (i) of any entitlement of the solicitor, or the solicitor's law practice or associate, to claim executor's commission,
- (ii) of the inclusion in the Will of any provision entitling the solicitor, or the solicitor's law practice or associate, to charge legal costs in relation to the administration of the estate, and
- (iii) if the solicitor or the solicitor's law practice or associate has an entitlement to claim commission, that the client could appoint as executor a person who might make no claim for executor's commission,

12.4.2 drawing a Will or other instrument under which the solicitor (or the solicitor's law practice or associate) will or may receive a substantial benefit other than any proper entitlement to executor's commission and proper fees, provided the person instructing the solicitor is either:

- (i) a member of the solicitor's immediate family, or
- (ii) a solicitor, or a member of the immediate family of a solicitor, who is a partner, employer, or employee, of the solicitor,

12.4.3 receiving a financial benefit from a third party in relation to any dealing where the solicitor represents a client, or from another service provider to whom a client has been referred by the solicitor, provided the solicitor advises the client:

- (i) that a commission or benefit is or may be payable to the solicitor in respect of the dealing or referral and the nature of that commission or benefit,
- (ii) that the client may refuse any referral, and

the client has given informed consent to the commission or benefit received or which may be received,

- 12.4.4 acting for a client in any dealing in which a financial benefit may be payable to a third party for referring the client, provided the solicitor has first disclosed the payment or financial benefit to the client.

### **13 Completion or termination of engagement**

- 13.1 A solicitor with designated responsibility for a client's matter must ensure completion of the legal services for that matter UNLESS:
  - 13.1.1 the client has otherwise agreed,
  - 13.1.2 the law practice is discharged from the engagement by the client,
  - 13.1.3 the law practice terminates the engagement for just cause and on reasonable notice, or
  - 13.1.4 the engagement comes to an end by operation of law.
- 13.2 Where a client is required to stand trial for a serious criminal offence, the client's failure to make satisfactory arrangements for the payment of costs will not normally justify termination of the engagement UNLESS the solicitor or law practice has:
  - 13.2.1 served written notice on the client of the solicitor's intention, a reasonable time before the date appointed for commencement of the trial or the commencement of the sittings of the court in which the trial is listed, providing the client at least 7 days to make satisfactory arrangements for payment of the solicitor's costs, and
  - 13.2.2 given appropriate notice to the registrar of the court in which the trial is listed to commence.
- 13.3 Where a client is legally assisted and the grant of aid is withdrawn or otherwise terminated, a solicitor or law practice may terminate the engagement by giving reasonable notice in writing to the client, such that the client has a reasonable opportunity to make other satisfactory arrangements for payment of costs which would be incurred if the engagement continued.

### **14 Client documents**

- 14.1 A solicitor with designated responsibility for a client's matter, must ensure that, upon completion or termination of the law practice's engagement:
  - 14.1.1 the client or former client, or
  - 14.1.2 another person authorised by the client or former client,is given any client documents, (or if they are electronic documents copies of those documents), as soon as reasonably possible when requested to do so by the client, unless there is an effective lien.
- 14.2 A solicitor or law practice may destroy client documents after a period of 7 years has elapsed since the completion or termination of the engagement, except where there are client instructions or legislation to the contrary.

### **15 Lien over essential documents**

- 15.1 Notwithstanding Rule 14, when a solicitor claims to exercise a lien for unpaid legal costs over

### 43 Dealing with the regulatory authority

43.1 Subject only to his or her duty to the client, a solicitor must be open and frank in his or her dealings with a regulatory authority.

43.2 A solicitor must respond within a reasonable time and in any event within 14 days (or such extended time as the regulatory authority may allow) to any requirement of the regulatory authority for comments or information in relation to the solicitor's conduct or professional behaviour in the course of the regulatory authority investigating conduct which may be unsatisfactory professional conduct or professional misconduct and in doing so the solicitor must furnish in writing a full and accurate account of his or her conduct in relation to the matter.

### Glossary of terms

For the purposes of these Rules, the following definitions also apply in addition to the definitions in section 6 of the Uniform Law.

**associate** in reference to a solicitor means:

- (a) a principal of the solicitor's law practice,
- (b) a partner, employee, or agent of the solicitor or of the solicitor's law practice,
- (c) a corporation or partnership in which the solicitor has a material beneficial interest,
- (d) in the case of the solicitor's incorporated legal practice, a director, officer, employee or agent of the incorporated legal practice or of a subsidiary of the incorporated legal practice,
- (e) a member of the solicitor's immediate family, or
- (f) a member of the immediate family of a partner of the solicitor's law practice or of the immediate family of a director of the solicitor's incorporated legal practice or a subsidiary of the incorporated legal practice.

**associated entity** means an entity that is not part of the law practice but which provides legal or administrative services to a law practice, including but not limited to:

- (a) a service trust or company, or
- (b) a partnerships of law practices operating under the same trading name or a name which includes all or part of the trading name of the law practice.

**Australian roll** means a roll of practitioners maintained by the Supreme Court or under the legal profession legislation of any Australian jurisdiction.

**case** means:

- (a) the court proceedings for which the solicitor is engaged, or
- (b) the dispute in which the solicitor is advising.

**client** with respect to the solicitor or the solicitor's law practice means a person (not an instructing solicitor) for whom the solicitor is engaged to provide legal services for a matter.

**client documents** means documents to which a client is entitled. **compromise** includes any form of settlement of a case, whether pursuant to a formal offer under the rules or procedure of a court, or otherwise.

**corporate solicitor** means an Australian legal practitioner who engages in legal practice only in the capacity of an



in-house lawyer for his or her employer or a related entity.

**costs** includes disbursements.

**court** means:

- (a) any body described as such,
- (b) any tribunal exercising judicial, or quasi-judicial, functions,
- (c) a professional disciplinary tribunal,
- (d) an industrial tribunal,
- (e) an administrative tribunal,
- (f) an investigation or inquiry established or conducted under statute or by a Parliament,
- (g) a Royal Commission,
- (h) an arbitration or mediation or any other form of dispute resolution.

**current proceedings** means proceedings which have not been determined, including proceedings in which there is still the real possibility of an appeal or other challenge to a decision being filed, heard or decided.

**discrimination** means discrimination that is unlawful under the applicable state, territory or federal anti-discrimination or human rights legislation.

**disqualified person** means any of the following persons whether the thing that has happened to the person happened before or after the commencement of this definition:

- (a) a person whose name has (whether or not at his or her own request) been removed from an Australian roll and who has not subsequently been admitted or re-admitted to the legal profession under legal profession legislation or a corresponding law,
- (b) a person whose Australian practising certificate has been suspended or cancelled under legal profession legislation or a corresponding law and who, because of the cancellation, is not an Australian legal practitioner or in relation to whom that suspension has not finished,
- (c) a person who has been refused a renewal of an Australian practising certificate under legal profession legislation or a corresponding law, and to whom an Australian practising certificate has not been granted at a later time,
- (d) a person who is the subject of an order under legal professional legislation or a corresponding law prohibiting a law practice from employing or paying the person in connection with the relevant practice,
- (e) a person who is the subject of an order under legal profession legislation or a corresponding law prohibiting an Australian legal practitioner from being a partner of the person in a business that includes the solicitor's practice, or
- (f) a person who is the subject of any order under legal profession legislation or corresponding law, disqualifying them from managing an incorporated legal practice or from engaging in partnerships with certain partners who are not Australian legal practitioners.

**engagement** means the appointment of a solicitor or of a solicitor's law practice to provide legal services for a matter.

**employee** means a person who is employed or under a contract of service or contract for services in or by an entity whether or not:

- (a) the person works full-time, part-time, or on a temporary or casual basis, or
- (b) the person is a law clerk or articled clerk.

**employer** in relation to a corporate solicitor means a person or body (not being another solicitor or a law practice) who or which employs the solicitor whether or not the person or body pays or contributes to the solicitor's salary.

**former client** for the purposes of Rule 10.1, may include a person or entity that has previously instructed:

- (a) the solicitor,
- (b) the solicitor's current law practice,
- (c) the solicitor's former law practice, while the solicitor was at the former law practice,
- (d) the former law practice of a partner, co-director or employee of the solicitor, while the partner, co-director or employee was at the former law practice,

or, has provided confidential information to a solicitor, notwithstanding that the solicitor was not formally retained and did not render an account.

**immediate family** means the spouse (which expression may include a de facto spouse or partner of the same sex), or a child, grandchild, sibling, parent or grandparent of a solicitor.

**instructing solicitor** means a solicitor or law practice who engages another solicitor to provide legal services for a client for a matter.

**insurance company** includes any entity, whether statutory or otherwise, which indemnifies persons against civil claims.

**law practice** means:

- (a) an Australian legal practitioner who is a sole solicitor,
- (b) a partnership of which the solicitor is a partner,
- (c) a multi-disciplinary partnership,
- (d) an unincorporated legal practice, or
- (e) an incorporated legal practice.

**legal costs** means amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services including disbursements but not including interest.

**legal profession legislation** means a law of a State or Territory that regulates legal practice and the provision of legal services.

**legal services** means work done, or business transacted, in the ordinary course of legal practice.

**matter** means any legal service the subject of an engagement or required to be provided by the solicitor or the solicitor's law practice to fulfil an engagement and includes services provided for:

- (a) a case,

(b) a dealing between parties that may affect, create or be related to a right, entitlement or interest in property of any kind, or

(c) advice on the law.

**mortgage financing** means facilitating a loan secured or intended to be secured by mortgage by—

(a) acting as an intermediary to match a prospective lender and borrower,

(b) arranging the loan, or

(c) receiving or dealing with payments under the loan,

but does not include:

(d) providing legal advice, or preparing an instrument, for the loan,

(e) merely referring a person to a prospective lender or borrower, without contacting the prospective lender or borrower on that person's behalf or facilitating a loan between family members, or

(f) facilitating a loan secured by mortgage:

(i) of which an Australian legal practitioner is the beneficial owner, or

(ii) held by an Australian legal practitioner or a corporation in his, her or its capacity as the trustee of any will or settlement, or which will be so held once executed or transferred.

**multi-disciplinary partnership** means:

(a) a partnership between one or more solicitors and one or more other persons who are not solicitors, where the business of the partnership includes the provision of legal services in this jurisdiction as well as other services,

but does not include:

(b) a partnership consisting only of one or more solicitors and one or more Australian-registered foreign lawyers.

**opponent** means:

(a) the practitioner appearing for a party opposed to the client of the solicitor in question, or

(b) that party, if the party is unrepresented.

**order** includes a judgment, decision or determination.

**party** includes each one of the persons or corporations who or which is jointly a party to any matter.

**practitioner** means a person or law practice entitled to practise the profession of law.

**prosecutor** means a solicitor who appears for the complainant or Crown in criminal proceedings.

**regulatory authority** means an entity identified in legal profession legislation which has responsibility for regulating the activities of solicitors in that jurisdiction.

**serious criminal offence** means an offence that is:

(a) an indictable offence against a law of the Commonwealth or any jurisdiction (whether or not the offence is or may be dealt with summarily),

(b) an offence against the law of another jurisdiction that would be an indictable offence against a law of this

jurisdiction (whether or not the offence could be dealt with summarily if committed in this jurisdiction), or

- (c) an offence against the law of a foreign country that would be an indictable offence against a law of the Commonwealth or this jurisdiction if committed in this jurisdiction (whether or not the offence could be dealt with summarily if committed in this jurisdiction).

**sexual harassment** means harassment that is unlawful under the applicable state, territory or federal anti-discrimination or human rights legislation.

**solicitor** means:

- (a) an Australian legal practitioner who practises as or in the manner of a solicitor, or
- (b) an Australian registered foreign lawyer who practises as or in the manner of a solicitor.

**solicitor with designated responsibility** means the solicitor ultimately responsible for a client's matter or the solicitor responsible for supervising the solicitor that has carriage of a client's matter.

**substantial benefit** means a benefit which has a substantial value relative to the financial resources and assets of the person intending to bestow the benefit.

**trustee company** is as defined in relevant jurisdictional legislation: the *Trustee Companies Act 1964* (NSW), the *Trustee Companies Act 1968* (QLD), the *Trustee Companies Act 1984* (VIC), the *Trustee Companies Act 1988* (SA), the *Trustee Companies Act 1953* (TAS), the *Trustee Companies Act 1987* (WA) and the *Trustee Companies Act 1947* (ACT).

**workplace bullying** means bullying that is unlawful under the applicable state or territory anti discrimination or human rights legislation. If no such legislative definition exists, it is conduct within the definition relied upon by the Australian Human Rights Commission to mean workplace bullying. In general terms it includes the repeated less favourable treatment of a person by another or others in the workplace, which may be considered unreasonable and inappropriate workplace practice. It includes behaviour that could be expected to intimidate, offend, degrade or humiliate.

## Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

### Table of amending instruments

[\*Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 \(244\)\*](#). LW 27.5.2015. Date of commencement, 1.7.2015, rule 2.