

Australian Capital Territory

Legal Profession (Barristers) Rules 2021

Subordinate law SL2021–5

made under the

Legal Profession Act 2006, section 579 (1) (Rules for barristers)

EXPLANATORY STATEMENT

The Council of the Australian Capital Territory Bar Association makes the *Legal Profession (Barristers) Rules 2021* by amending the *Legal Profession (Barristers) Rules 214* as follows:

(a) Amend rule 122 which presently reads as follows:

DISCRIMINATION AND SEXUAL HARASSMENT

Discrimination

122. A barrister shall not in any professional context discriminate against a client, solicitor, or another barrister on the basis of the person's religion, age, race, impairment, political belief or activity, trade union activity, sex, marital status, pregnancy, parental status, lawful sexual activity or association with, or relation to, a person identified on the basis of any of the above.

Sexual Harassment

- 122.1 (a) A barrister shall not, in any professional context, engage in sexual harassment.
- (b) For the purposes of sub-rule (a) a barrister sexually harasses another person if:
- (i) the barrister makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to that person; or
 - (ii) engages in other unwelcome conduct of a sexual nature in relation to that person;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that that person would be offended, humiliated or intimidated.
“Conduct of a Sexual Nature” includes making a statement of a sexual nature to the person allegedly harassed or in the presence of that person, whether the statement is made orally or in writing.

Vilification

122.2 A barrister shall not, in any professional context, engage in conduct which is calculated to disparage, vilify or insult another person (“the person allegedly vilified”) on the basis of that person’s sex, sexual preference, age, race, colour, impairment, political belief or activity, trade union activity, marital status, pregnancy, parental status, descent, national or ethnic origin or religion.

Procedure

- 122.3 (a) The person allegedly discriminated against, harassed or vilified may lodge a complaint in writing alleging a breach of the Rules with any one of the persons appointed from time to time by the Bar Council;
- (b) The person appointed by the Bar Council who receives such a complaint shall treat the complaint and any response as confidential but may do any one or more of the following:
- (i) provide the person allegedly harassed or vilified with counselling and advice;
 - (ii) inform the barrister concerned of the complaint;
 - (iii) provide that barrister with an opportunity to respond to the complaint;
 - (iv) provide that barrister with an opportunity to be counselled or advised in respect of the complaint;
 - (v) arrange for the complaint to be conciliated by the person appointed by the Bar Council acting alone or together with any other person appointed by the Bar Council.

The steps referred to in sub-paragraphs (i), (ii), (iii) and (iv) shall only be taken with the consent of the person allegedly harassed or vilified. The step referred to sub-paragraph (v) shall only be taken with the consent of both parties. c) Nothing in these Rules shall prevent the person allegedly harassed or vilified from lodging a complaint alleging a breach of Rules 122.1, 122.2 or 122.3 with the President of the Bar Council.

by deleting the present text and inserting the following:

DISCRIMINATION, SEXUAL HARASSMENT AND BULLYING

Discrimination

122.1 A barrister shall not in any professional context discriminate against a client, solicitor, or another barrister on the basis of the person’s religion, age, race, impairment, political belief or activity, trade union activity, sex, marital status, pregnancy, parental status, lawful sexual

activity or association with, or relation to, a person identified on the basis of any of the above.

Sexual Harassment

- 122.2 (a) A barrister shall not, in any professional context, engage in sexual harassment.
- (b) For the purposes of sub-rule (a) a barrister sexually harasses another person if:
- (i) the barrister makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to that person; or
 - (ii) engages in other unwelcome conduct of a sexual nature in relation to that person;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that that person would be offended, humiliated or intimidated.

“Conduct of a Sexual Nature” includes making a statement of a sexual nature to the person allegedly harassed or in the presence of that person, whether the statement is made orally or in writing.

Bullying

- 122.3 (a) A barrister shall not, in any professional context, engage in conduct which is bullying.
- (b) For the purposes of sub-rule (a), bullying means unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate, or cause serious offence to a person working in a workplace.

Procedure

- 122.4 (a) The person allegedly discriminated against, harassed or bullied may lodge a report or complaint about the barrister in accordance with the complaint and report processes approved by the Bar Council *from* time to time. Such complaint and report processes as approved by the Bar Council will be published in the appropriate ACT Bar Association policies against discrimination, sexual harassment and bullying.

The amendment to rule 122 is designed to:

- (i) ensure the heading to rule 122 properly reflects its content;
- (ii) ensure consecutive numbering of the sub-rules;
- (iii) include a sub-rule specifically dealing with bullying (which is not presently covered in rule 122);
- (iv) remove the sub-rule covering vilification (which is a form of discrimination and therefore already covered by the sub-rule dealing with discrimination);

- (v) remove the complaint procedure from rule 122 (as complaint handling procedures are better dealt with in the ACT Bar Association's policies and procedures) and refer to the relevant procedure contained in the ACT Bar Association's policies on discrimination, sexual harassment and bullying.

The amendment to rule 122 has the following human rights consequences:

1. The right to just and favourable conditions of work enshrined in section 27B(2) of the *Human Rights Act 2004* is promoted by having rules prohibiting workplace discrimination, bullying and sexual harassment.
2. Similarly, the right to equality enshrined in section 8 of the *Human Rights Act 2004* is broadly promoted by having rules prohibiting workplace discrimination, bullying and sexual harassment.
3. There is the potential for procedures that deal with complaints of workplace discrimination, bullying and sexual harassment to engage with fair and public hearing rights as enshrined in section 21 of the *Human Rights Act 2004*, but as the procedures for dealing with such complaints will be dealt with in separate ACT Bar Association policies, there is only a limited engagement with this right.
4. While the amendment does remove the express rule prohibiting vilification, there is no resulting lessening of protections because vilification is a form of discrimination and discrimination remains expressly prohibited.