

Legal Profession (Solicitors) Conduct Rules 2025 (No 2)

Subordinate law SL2025-28

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 2025 (No 2)* replaces the *Legal Profession (Solicitors) Conduct Rules 2015* and the *Legal Profession (Solicitors) Conduct Rules 2025*. The *Legal Profession (Solicitors) Conduct Rules 2025 (No 2)* (“Rules”) corrects a formatting anomaly in Rule 38 of the *Legal Profession (Solicitors) Conduct Rules 2025* which have may have given rise to an unintended interpretation.

The Rules 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. On the 1st of February 2018, the LCA began a comprehensive review of the Australian Solicitors’ Conduct Rules. In 2021, the amended Australian Solicitors’ Conduct Rules were accepted and implemented by the LCA. The ACT began its own review of its Rules in 2022, with proposed changes going to Council in September 2022. The consultation period began in 2025 and was delayed due to a decision to await the LCA’s announcement regarding the review of Rule 38 of the Australian Solicitors’ Conduct Rules.

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 Rules. Following the conclusion of the public consultation process the Council of the Law Society formally adopted the Rules.

Purpose

The 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.

s585 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 2025 (No 2)* were not included in the *Legal Profession (Solicitors) Conduct Rules 2015*:

- Rule 11A - Short Term Legal Assistance Services; and
- Rule 21.9 - Responsible Use of Court Process and Privilege

Removal of 2015 Rules

The *Legal Profession (Solicitors) Conduct Rules 2025 (No 2)* do not include the following Rules which were contained in the *Legal Profession (Solicitors) Conduct Rules 2015*:

- Rule 41 - Mortgage Financing and Managed Investments; and
- Rule 43.2 - Dealing with the Regulatory Authority.

Key Amendments

The following Rules in the *Legal Profession (Solicitors) Conduct Rules 2025 (No 2)* contain key amendments to the *Legal Profession (Solicitors) Conduct Rules 2015*:

- Rule 10.2.1 - Conflicts Concerning Former Clients - amended to align the Rule with the common law.
- Rule 12.2 - Conflict Concerning a Solicitor's Own Interests – amended to address a gap in the Rules about improper influence on a third party as well as the client.
- Rule 21.8 - Responsible Use of Court Process and Privilege – amended to recognise the growing significance of domestic or family violence.

- Rule 33.1 - Communication with Another Solicitor's Client – amended to clarify that a solicitor must not disclose or use any inadvertently disclosed confidential material that the solicitor has read, unless permitted or compelled by law.
- Rule 42 – Anti-Discrimination and Harassment – amended to expand the scope of the conduct declared by the Rule as unethical to beyond the legal practice workplace.

Minor textual amendments

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

Consistency with Human Rights

An assessment of the Rules under s28 of the *Human Rights Act 2004* (ACT) is provided below. s28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Rights Engaged

Rights Promoted

- Right to Recognition and Equality Before the Law (s8)
- Right to Privacy and Reputation (s12)
- Right to a Fair Trial (s21)

Rights Limited

- Right to Freedom of Expression (s16)

Rights Promoted

Right to Recognition and Equality Before the Law

While discrimination, harassment and workplace bullying are already prohibited under broader legislative frameworks, the Rules promote this right by reinforcing the legal profession's responsibility to uphold respectful and inclusive workplaces (Rule 42) and support the right of all individuals to be treated equally and with dignity in legal practice.

Right to Privacy and Reputation

The Rules uphold the right to privacy through robust confidentiality obligations (Rule 9) and protections against misuse of inadvertently disclosed information (Rule 31). These provisions ensure that sensitive client information is handled with care and integrity, and that practitioners respect the privacy of individuals in all aspects of legal practice.

Right to a Fair Trial

The paramount duty to the court and the administration of justice (Rule 3), together with obligations to act honestly, competently, and independently (Rules 4 and 19),

directly support the right to a fair trial. These Rules ensure that solicitors contribute to fair and impartial legal proceedings and uphold the integrity of the justice system.

Rights Limited

Right to Freedom of Expression

Nature of the right and the limitation (ss28(2)(a) and (c))

s16 of the *Human Rights Act 2004* (ACT) provides that everyone has the right to hold opinions without interference and to seek, receive and impart information and ideas of all kinds. This includes the right to express views publicly, including in the context of legal proceedings.

Rule 28 of the Rules limits this right by restricting public comment during current proceedings. This limitation applies to legal practitioners and is intended to prevent commentary that could prejudice the administration of justice or undermine the fairness of proceedings.

Legitimate purpose (s28(2)(b))

The restriction serves the legitimate purpose of protecting the integrity of the judicial process and ensuring the right to a fair trial is upheld. Public commentary by legal practitioners during active proceedings may influence public perception, compromise impartiality, or place undue pressure on parties and the court. The limitation is designed to safeguard the administration of justice and maintain public confidence in the legal system.

Rational connection between the limitation and the purpose (s28(2)(d))

There is a clear and rational connection between the limitation and its intended purpose. By prohibiting public comment during proceedings, the Rules reduce the risk of prejudicial statements that could affect the fairness of a trial or the perception of judicial impartiality. This supports the broader objective of ensuring that justice is administered fairly and without external influence.

Proportionality (s28(2)(e))

The limitation is proportionate to the objective it seeks to achieve. It applies only in the context of current proceedings and only to legal practitioners, who have a heightened duty to uphold the integrity of the justice system. The restriction does not prevent practitioners from expressing views outside the scope of active matters or engaging in broader legal discourse. As such, the limitation is narrowly tailored and represents the least restrictive means of achieving the intended purpose.