

Legal Profession (Barristers Rules) Notice 2024

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Legal Profession (Barristers Rules) Notice 2024* (the Notice) made under section 225 of the *Legal Profession Act 2007* (the Act).

In my opinion, the Notice, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

Section 220 of the Act provides for the Bar Association of Queensland (BAQ) to make rules about legal practice in Queensland engaged in by Australian legal practitioners as barristers (barristers rules). Under section 222 of the Act, barristers rules may make provision about any aspect of legal practice, including the standards of conduct expected of barristers.

Under section 225(1)(b) of the Act, barristers rules have no effect unless the Minister notifies the making of them. Under section 225(2) of the Act, the notice is subordinate legislation.

The purpose of the Notice is to notify the making of the '2011 Barristers' Rule, as amended' (the Rule) and to repeal the *Legal Profession (Barristers Rules) Notice 2018*.

The Rule incorporates amendments to rules 1 and 16. The amendments to rule 16 provide that a barrister must not hold or have any interest in a law practice, other than a barrister's own practice, whether directly or indirectly, subject to an exception where a barrister owns a shareholding in an incorporated legal practice which is a publicly listed company. Further amendments to rules 1 and 16 are of a consequential nature.

The purpose of the amendments to rule 16 is to expressly prohibit barristers from having any interest, or shareholding, in an incorporated legal practice, other than one that is a publicly listed company. This is to ensure that a barrister's overriding duty of independence is upheld, so that barristers may provide services of the highest standard unaffected by personal interest.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 of the HR Act)

The Rule, in particular the amendments to rule 16, to which the Notice gives effect, affects or engages property rights under section 24 of the HR Act.

Consideration of reasonable limitations on human rights (section 13 of the HR Act)

(a) the nature of the right

Section 24 of the HR Act provides that all persons have the right to own property alone or in association with others, and that a person must not be arbitrarily deprived of the person's property. Property includes all types of real and personal property, including contractual rights, leases, shares, patents and debts.

The amendments to rule 16 limit this right by prohibiting a barrister from having any interest, or shareholding, in a law practice, other than an incorporated legal practice that is a publicly listed company.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to ensure that a barrister's overriding duty of independence is upheld, so that barristers may provide services of the highest standard unaffected by personal interest, and consumers of legal services are protected from any perceived or actual conflicts which may arise.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation on property rights helps to achieve the purpose by expressly prohibiting barristers from having any interest in a law practice, whether directly or indirectly. The limitation is mitigated by providing an exception where a barrister owns a shareholding in an incorporated legal practice that is a publicly listed company.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available ways to achieve the purpose.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, I consider the importance of protecting the consumers of legal services and promoting the proper administration of justice by ensuring that barristers remain independent of the solicitors' branch of the profession, outweighs any limitation imposed on the property rights of barristers.

Conclusion

I consider that the Rule, to which the Notice gives effect, is compatible with the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justified in accordance with section 13 of the HR Act.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Minister for the Prevention of Domestic and Family Violence

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