

Legal Profession (Australian Solicitors Conduct 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 (Australian Solicitors Conduct 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 219 of the Act provides for the Queensland Law Society (QLS) to make rules about legal practice in this jurisdiction engaged in by Australian legal practitioners as solicitors, and about engaging in legal practice in this jurisdiction as an Australian-registered foreign lawyer (solicitors' rules).

Under section 225(1)(a) of the Act, solicitors' rules have no effect unless the Minister notifies the making of them. Under section 225(2) of the Act, a notice under subsection (1) is subordinate legislation.

The purpose of the Notice is to notify the making of the Australian Solicitors' Conduct Rules 2023 (ASCR 2023) by the QLS Council. The ASCR 2023 will replace the Australian Solicitors' Conduct Rules 2012.

The ASCR 2023 are a statement of solicitors' professional and ethical obligations as derived from legislation, common law and equity. They also express the collective view of the profession about the standards of conduct that members of the profession are expected to maintain. The ASCR 2023 were developed following a review by the Law Council of Australia and were adopted, with minor changes, by the QLS Council.

The ASCR 2023 prescribe standards of conduct in areas such as the fundamental duties of solicitors, relations with clients and other persons, advocacy and litigation, and law practice management. A breach of the ASCR 2023 is capable of constituting unsatisfactory professional conduct or professional misconduct, and may give rise to disciplinary action by the relevant regulatory authority.

Human Rights Issues

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

The ASCR 2023, to which the Notice gives effect, affects or engages the following human rights:

- recognition and equality before the law (section 15 of the HR Act);
- freedom of expression (section 21 of the HR Act);
- property rights (section 24 of the HR Act);
- privacy and reputation (section 25 of the HR Act); and
- fair hearing (section 31 of the HR Act).

The nature and scope of these rights are considered below, along with considerations of how each right may be promoted or limited.

Consideration of human rights promoted

Section 15 of the HR Act provides that every person is equal before the law and entitled to equal protection of the law without discrimination. Section 31 of the HR Act provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Central to both of these rights is the principle that all persons are entitled to have access to effective legal representation.

The overarching purpose of the ASCR 2023 is to ensure that solicitors act competently and ethically in their dealings with clients, other persons, and the court. In particular, the ASCR 2023 makes it clear that a solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.

The ASCR 2023 promote the right to recognition and equality before the law, and the right to a fair hearing, by ensuring that members of the public are able to be effectively represented by solicitors who uphold the highest standards of ethical and professional conduct.

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

Freedom of expression (section 21 of the HR Act)

Section 21 of the HR Act provides that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether orally, in writing, in print, by way of art, or in another medium chosen by the person.

A number of rules within the ASCR 2023 limit a solicitor's right to freedom of expression. These include rules which impose duties on solicitors not to disclose confidential client information, to avoid conflicts concerning current and former clients, and not to engage in public comment concerning ongoing legal proceedings.

The purpose of these rules is to promote the administration of justice by, for example, ensuring that solicitors maintain client confidentiality, avoid conflicts of interest, and do not engage in conduct which may prejudice a person's right to a fair trial. These rules are fundamental to a free and democratic society based on human dignity, equality and freedom.

On balance, I consider the importance of ensuring a fair trial and the proper administration of justice outweighs any limitations imposed by the ASCR 2023 on a solicitor's right to freedom of expression.

Property rights (section 24 of the HR Act)

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.

Rule 14 of the ASCR 2023 provides that a solicitor must ensure that, on completion or termination of a matter, the client is given any client documents as soon as reasonably possible when requested to do so by the client, unless there is an effective lien.

However, the rule also permits a solicitor or law practice to destroy client documents after seven years since the completion or termination of the matter, except where there are client instructions or legal obligations to the contrary. The rule therefore limits a client's property rights to the extent that their documents may be destroyed after the relevant period has elapsed and there are no instructions or obligations to the contrary.

The purpose of the rule is to reduce the regulatory burden on law practices by allowing the destruction or disposal of client documents no longer considered to be of legal utility and ensuring law practices need not incur ongoing storage costs for these documents. Further, the rule will protect the interests of consumers of legal services against the increasing risk to client privacy and confidentiality arising from the prolonged retention of client documents.

The limitation is not arbitrary as it applies only to the extent that is necessary having regard to the time that has passed since the completion of the client's matter and there being no client instructions or legal obligations to the contrary.

On balance, I consider the importance of reducing the regulatory burden on law practices by allowing them to destroy or dispose of client documents in certain circumstances outweighs any limitation imposed on the property rights of clients.

Privacy and reputation (section 25 of the HR Act)

Section 25 of the HR Act provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with, and the right not to have their reputation unlawfully attacked. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally.

Rule 42 of the ASCR 2023 provides that a solicitor must not in the course of, or in connection with, legal practice or their profession, engage in conduct which constitutes discrimination,

sexual harassment, any other form of harassment, or workplace bullying. Under rule 2 of the ASCR 2023, a breach of the Rules may constitute unsatisfactory professional conduct or professional misconduct, and may give rise to disciplinary action against a solicitor.

Where a solicitor is investigated for alleged conduct constituting discrimination, sexual harassment, any other form of harassment, or workplace bullying under rule 42, a solicitor's right to privacy and reputation may be limited as a solicitor's personal information, and details concerning a solicitor's private life, may be required under the Act to be given to a relevant regulatory authority for the purpose of investigating the alleged conduct.

The rule may also limit the right to privacy and reputation as a solicitor's personal information, and details concerning a solicitor's private life, may be made public in the event that disciplinary proceedings are commenced against the solicitor.

The purpose of the rule is to protect those who work in the legal profession from discrimination, harassment and workplace bullying, and to promote public confidence in the legal profession and the administration of justice, by providing appropriate sanctions to deter such conduct.

On balance, I consider the importance of protecting persons from discrimination, harassment and workplace bullying, and maintaining public confidence in the legal profession and the administration of justice, outweighs any limitation imposed on a solicitor's right to privacy and reputation.

Conclusion

I consider that the ASCR 2023, 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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