



Queensland

# Legal Profession (Barristers) Rule 2004

## Subordinate Legislation 2004 No. 107

made under the

*Legal Profession Act 2004*

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**1 Short title**

This rule may be cited as the *Legal Profession (Barristers) Rule 2004*.

**2 Commencement**

This rule commences on 1 July 2004.

**3 Barristers Rule**

- (1) The rule in the schedule has effect.
- (2) The rule as originally made is a remaking of the bar association's rules as in force immediately before the commencement of section 611 of the Act.<sup>1</sup>

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<sup>1</sup> Section 611 of the Act commenced on 18 June 2004 (2004 SL No. 83).

## **Schedule                      2004 Barristers Rule**

### **section 3**

#### **PREAMBLE**

These Rules are made in the belief that:

1. The administration of justice is best served by reserving the practice of law to those who owe their paramount duty to the administration of justice.
2. As legal practitioners, barristers must maintain high standards of professional conduct.
3. The role of barristers as specialist advocates in the administration of justice requires them to act honestly, fairly, skilfully, diligently and fearlessly.
4. Barristers owe duties to the courts, to other bodies and persons before whom they appear, to their clients, and to their barrister and solicitor colleagues.
5. Barristers should exercise their forensic judgments and give their advice independently and for the proper administration of justice, notwithstanding any contrary desires of their clients.
6. The provision of advocates for those who need legal representation is better secured if there is a Bar whose members:
  - (a) must accept briefs to appear regardless of their personal prejudices;
  - (b) must not refuse briefs to appear except on proper professional grounds; and
  - (c) compete as specialist advocates with each other and with other legal practitioners as widely and as often as practicable.
7. Barristers should be free to choose how they lawfully practise as barristers except only in those cases where the unchecked exercise of the freedom would threaten harm to the greater public interest that barristers' conduct be honourable, diligent, especially skilled, disinterested and competitive and that access to barristers' services be enhanced.

### Schedule (continued)

#### **INTRODUCTION & INTERPRETATION**

8. These Rules may be cited as the 2004 Barristers Rule.
9. These Rules apply –
  - (a) to a barrister who is a local legal practitioner, except to the extent that the conduct of the barrister in relation to practice in another Australian State or Territory is regulated by Barristers' Rules for that State or Territory;
  - (b) to a barrister who is an interstate legal practitioner, in relation to practice in Queensland, including work, wherever performed, in relation to such practice.
10. These Rules are not, and should not be read as if they were, a complete or detailed code of conduct for barristers. Other standards for, requirements of and sanctions on the conduct of barristers are found in the inherent disciplinary jurisdiction of the Supreme Court, in the *Legal Profession Act 2004* and in the general law (including the law relating to contempt of court).
11. These Rules should be read and applied so as most effectively to attain the objects and uphold the values expressed in their Preamble.
12. General provisions of these Rules should not be read or applied in a limited way by reason of any particular or illustrative provisions.
13. Headings in these Rules shall be read as part of these Rules, but shall not be used so as to read or apply any of the Rules in a more limited way than would have been so if the headings were not part of the Rules.

**Schedule (continued)**

14. Unless the context requires otherwise, the following expressions are defined as follows when used in these Rules:

“allege”	includes conduct constituted by settling or opening on pleadings, affidavits or witness statements, and reading or tendering affidavits or witness statements filed or prepared for the client (whether or not they were drawn or settled by the barrister).
“Association”	means the Bar Association of Queensland.
“barristers’ work”	means work referred to in Rule 77.
“Council”	means the Council of the Association.
“case”	means the litigation or proceedings in which the barrister in question is briefed to appear, or the dispute in which the barrister is advising, as the case may be.
“client”	means the client of the barrister in question, and includes a professional acting as such, and in Rules 34, 36 and 38 includes those officers, servants or agents of a client which is not a natural person who are responsible for or involved in giving instructions on behalf of the client.
“compromise”	includes any form of settlement of the case, whether pursuant to a formal offer under the rules or procedure of a court, or otherwise.

### Schedule (continued)

- “court” means any body described as such and all other judicial tribunals, all statutory tribunals, and all investigations and inquiries (established by statute or by a Parliament), Royal Commissions, standing or ad hoc commissions of inquiry, arbitrations and mediations.
- “criminal proceedings” includes disciplinary proceedings, in which context other expressions appropriate to criminal proceedings include corresponding meanings appropriate to disciplinary proceedings and in particular "a serious criminal offence" includes a disciplinary shortcoming which, if proved, involves the serious possibility of suspension or deregistration (or the equivalent).
- “current proceedings” means proceedings which have not been determined, including proceedings in which there is still a real possibility of an appeal or other challenge to a decision being filed, heard or decided.
- “fee” includes any payment for the reimbursement of expenses.
- “forensic judgments” do not include decisions as to the commencement of proceedings, the joinder of parties, admissions or concessions of fact, amendments of pleadings or undertakings to a court, a plea in criminal proceedings, but do include advice given to assist the client or the instructing solicitor to make such decisions.

## Schedule (continued)

“genuine educational or academic discussion”	means oral or written communications including the publication of notes and articles with members of the legal profession, other profession or group or members thereof which are bona fide for an educational or academic purpose.
“government legal officer”	has the same meaning as the term has in the Legal Profession Act.
“instructing solicitor”	means the solicitor from whom the barrister in question has accepted a brief or who is instructing that barrister in that brief, as the case may be, but does not include a solicitor appearing with the barrister as a joint advocate.
“legal advice”	includes assistance at or presiding over meetings.
“Legal Aid lawyer”	has the same meaning as the term does in the <i>Legal Aid Queensland Act 1997</i> .
“Legal Profession Act”	means <i>Legal Profession Act 2004</i> , and includes any legislation which amends or replaces the Legal Profession Act.
“legislation”	includes all kinds of delegated legislation.
“member”	of a court, in Rule 92, does not include the holder of an acting commission or appointment.

**Schedule (continued)**

“opponent”	means the legal practitioner appearing for the party opposed to the client, or the party opposed to the client if that party is unrepresented.
“order”	includes a judgment, decision or determination.
“potential proceeding”	means proceedings which have not been commenced but where there is information which has been publicised that such process is imminent or where there is a very real likelihood that process will be instigated.
“practising certificate”	means a practising certificate issued by the Association pursuant to the Legal Profession Act.
“professional”	when used as a noun means a person actively engaged in an occupation generally recognised as being a profession, and includes accountants, architects, engineers, surveyors, town planners and valuers.
“prosecutor”	means a barrister who appears for the complainant or Crown in criminal proceedings.
“pupil”	means a barrister serving a period of compulsory pupillage.



**Schedule (continued)**

“Queen’s Counsel or Senior Counsel”	means and includes Queen’s Counsel or Senior Counsel appointed as such in accordance with the protocol for the appointment of Queen’s Counsel or Senior Counsel duly adopted in each jurisdiction.
“Queensland Barristers Rules”	means the rules of conduct issued by the Association which were in force until 1 July 2004.
“representative”	means a barrister or, if no barrister, the solicitor who is retained by the party in question.
“speculative fee agreement”	means an agreement whereby a brief is accepted on the basis that the barrister will not be paid any fee unless the client succeeds to an extent set forth in the agreement.

15. Where a term is not defined by these Rules, but is defined in the Legal Profession Act, the word shall have the meaning defined in that Act, unless the context otherwise indicates or requires.

**ADVOCACY RULES*****Duty to client***

16. A barrister must seek to advance and protect the client’s interests to the best of the barrister’s skill and diligence, uninfluenced by the barrister’s personal view of the client or the client’s activities, and notwithstanding any threatened unpopularity or criticism of the barrister or any other person, and always in accordance with the law including these Rules.
17. A barrister must seek to assist the client to understand the issues in the case and the client’s possible rights and obligations, if the barrister is instructed to give advice on any such matter, sufficiently

**Schedule (continued)**

to permit the client to give proper instructions, particularly in connection with any compromise of the case.

18. A barrister must inform the client or the instructing solicitor about the alternatives to fully contested adjudication of the case which are reasonably available to the client, unless the barrister 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 litigation.
19. A barrister must (unless circumstances warrant otherwise in the barrister's considered opinion) advise a client who is charged with a criminal offence about any law, procedure or practice which in substance holds out the prospect of some advantage (including diminution of penalty), if the client pleads guilty or authorises other steps towards reducing the issues, time, cost or distress involved in the proceedings.

***Disinterestedness***

20. A barrister must not act as the mere mouthpiece of the client or of the instructing solicitor and must exercise the forensic judgments called for during the case independently, after the appropriate consideration of the client's and the instructing solicitor's desires where practicable.
21. A barrister will not have breached the barrister's duty to the client, and will not have failed to give reasonable consideration to the client's or the instructing solicitor's desires, simply by choosing, contrary to those desires, to exercise the forensic judgments called for during the case so as to:
  - (a) confine any hearing to those issues which the barrister believes to be the real issues;
  - (b) present the client's case as quickly and simply as may be consistent with its robust advancement; or
  - (c) inform the court of any persuasive authority against the client's case.
22. A barrister must not make submissions or express views to a court on any material evidence or issue in the case in terms which convey or appear to convey the barrister's personal opinion on the merits of that evidence or issue.

**Schedule (continued)*****Frankness in court***

23. A barrister must not knowingly make a misleading statement to a court on any matter.
24. A barrister must take all necessary steps to correct any misleading statement made by the barrister to a court as soon as possible after the barrister becomes aware that the statement was misleading.
25. A barrister seeking any interlocutory relief in an ex parte application must disclose to the court all matters which:
  - (a) are within the barrister's knowledge;
  - (b) are not protected by legal professional privilege; and
  - (c) the barrister has reasonable grounds to believe would support an argument against granting the relief or limiting its terms adversely to the client.
26. A barrister who has knowledge of matters which are within Rule 25(c)-
  - (a) must seek instructions for the waiver of legal professional privilege if the matters are protected by that privilege so as to permit the barrister to disclose those matters under Rule 25; and
  - (b) if the client does not waive the privilege as sought by the barrister -
    - (i) must inform the client of the client's responsibility to authorise such disclosure and the possible consequence of not doing so; and
    - (ii) must inform the court that the barrister cannot assure the court that all matters which should be disclosed have been disclosed to the court.
27. A barrister must, at the appropriate time in the hearing of the case and if the court has not yet been informed of that matter, inform the court of:
  - (a) any binding authority;
  - (b) any authority decided by an intermediate court of appeal in Australia;

**Schedule (continued)**

- (c) any authority, including any authority on the same or materially similar legislation as that in question in the case, decided at first instance in the Federal Court or a Supreme Court, or by superior appellate courts, which has not been disapproved; or
  - (d) any applicable legislation
- of which the barrister is aware, and which the barrister has reasonable grounds to believe to be directly in point, against the client's case.
28. A barrister need not inform the court of matters within Rule 27 at a time when the opponent tells the court that the opponent's whole case will be withdrawn or the opponent will consent to final judgment in favour of the client, unless the appropriate time for the barrister to have informed the court of such matters in the ordinary course has already arrived or passed.
29. A barrister who becomes aware of a matter within Rule 27 after judgment or decision has been reserved and while it remains pending, whether the authority or legislation came into existence before or after argument, must inform the court of that matter by:
- (a) a letter to the court, copied to the opponent, and limited to the relevant reference unless the opponent has consented beforehand to further material in the letter; or
  - (b) requesting the court to re-list the case for further argument on a convenient date, after first notifying the opponent of the intended request and consulting the opponent as to the convenient date for further argument.
30. A barrister need not inform the court of any matter otherwise within Rule 27 which would have rendered admissible any evidence tendered by the prosecution which the court has ruled inadmissible without calling on the defence.
31. A barrister will not have made a misleading statement to a court simply by failing to disclose facts known to the barrister concerning the client's character or past, when the barrister makes other statements concerning those matters to the court, and those statements are not themselves misleading.

**Schedule (continued)**

32. A barrister who knows or suspects that the prosecution is unaware of the client's previous conviction must not ask a prosecution witness whether there are previous convictions, in the hope of a negative answer.
33. A barrister must inform the court in civil proceedings of a misapprehension by the court as to the effect of an order which the court is making, as soon as the barrister becomes aware of the misapprehension.

***Delinquent or guilty clients***

34. A barrister whose client informs the barrister, during a hearing or after judgment or decision is reserved and while it remains pending, that, upon an issue which may be material the client has lied to the court or has procured another person to lie to the court or has falsified or procured another person to falsify in any way a document which has been tendered:
- (a) must refuse to take any further part in the case unless the client authorises the barrister to inform the court of the lie or falsification;
  - (b) must promptly inform the court of the lie of falsification upon the client authorising the barrister to do so; but
  - (c) must not otherwise inform the court of the lie or falsification.
35. A barrister briefed to appear in criminal proceedings whose client confesses guilt to the barrister but maintains a plea of not guilty:
- (a) may return the brief, if there is enough time for another legal practitioner to take over the case properly before the hearing, and the client does not insist on the barrister continuing to appear for the client;
  - (b) in cases where the barrister keeps the brief for the client -
    - (i) must not falsely suggest that some other person committed the offence charged;
    - (ii) must not set up an affirmative case inconsistent with the confession; but
    - (iii) may argue that the evidence as a whole does not prove that the client is guilty of the offence charged; and

**Schedule (continued)**

- (iv) may argue that for some reason of law the client is not guilty of the offence charged; or
  - (v) may argue that for any other reason not prohibited by (i) or (ii) the client should not be convicted of the offence charged.
- 36. A barrister whose client informs the barrister that the client intends to disobey a court's order must:
  - (a) advise the client against that course and warn the client of its dangers;
  - (b) not advise the client how to carry out or conceal that course; but
  - (c) not inform the court or the opponent of the client's intention unless -
    - (i) the client has authorised the barrister to do so beforehand; or
    - (ii) the barrister believes on reasonable grounds that the client's conduct constitutes a threat to any person's safety.

***Responsible use of court process privilege***

- 37. A barrister must, when exercising the forensic judgments called for throughout a case, take care to ensure that decisions by the barrister or on the barrister's advice to invoke the coercive powers of a court or to make allegations or suggestions under privilege against any person:
  - (a) are reasonably justified by the material then available to the barrister;
  - (b) are appropriate for the robust advancement of the client's case on its merits;
  - (c) are not made principally in order to harass or embarrass the person; and
  - (d) are not made principally in order to gain some collateral advantage for the client or the barrister or the instructing solicitor out of court.

**Schedule (continued)**

38. A barrister must not draw or settle any court document alleging criminality, fraud or other serious misconduct unless the barrister believes on reasonable grounds that:
- (a) factual material already available to the barrister provides a proper basis for the allegation if it is made in a pleading;
  - (b) the evidence in which the allegation is made, if it is made in evidence, will be admissible in the case, when it is led; and
  - (c) the client wishes the allegation to be made, after having been advised of the seriousness of the allegation and of the possible consequences for the client if it is not made out.
39. A barrister must not open as a fact any allegation which the barrister does not then believe on reasonable grounds will be capable of support by the evidence which will be available to support the client's case.
40. A barrister must not cross-examine so as to suggest criminality, fraud or other serious misconduct on the part of any person unless:
- (a) the barrister believes on reasonable grounds that the material already available to the barrister provides a proper basis for the suggestion;
  - (b) in cross-examination going to credit alone, the barrister believes on reasonable grounds that affirmative answers to the suggestion would diminish the witness's credibility.
41. A barrister may regard the opinion of the instructing solicitor that material which appears to support a suggestion within Rule 40 is itself credible as a reasonable ground for holding the belief required by Rule 40(a).
42. A barrister must make reasonable enquiries to the extent which is practicable before the barrister can have reasonable grounds for holding the belief required by Rule 40(a), unless the barrister has received and accepted an opinion from the instructing solicitor within Rule 41.
43. A barrister must not suggest criminality, fraud or other serious misconduct against any person in the course of the barrister's address on the evidence unless the barrister believes on reasonable grounds that the evidence in the case provides a proper basis for the allegation.

**Schedule (continued)**

44. A barrister who has instructions which justify submissions for the client in mitigation of the client's criminality and which involve allegations of serious misconduct against any other person not able to answer the allegations in the case must seek to avoid disclosing the other person's identity directly or indirectly unless the barrister believes on reasonable grounds that such disclosure is necessary for the robust defence of the client.

***Integrity of evidence***

45. A barrister must not suggest or condone another person suggesting in any way to any prospective witness (including a party or the client) the content of any particular evidence which the witness should give at any stage in the proceedings.
46. A barrister will not have breached Rule 45 by expressing a general admonition to tell the truth, or by questioning and testing in conference the version of evidence to be given by a prospective witness, including drawing the witness's attention to inconsistencies or other difficulties with the evidence, but must not coach or encourage the witness to give evidence different from the evidence which the witness believes to be true.
47. A barrister must not confer with, or condone another legal practitioner conferring with, more than one lay witness including a party or client at a time, about any issue:
- (a) as to which there are reasonable grounds for the barrister to believe it may be contentious at a hearing; and
  - (b) which could be affected by, or could affect, evidence to be given by any of those witnesses

unless the barrister believes on reasonable grounds that special circumstances require such a conference.

48. A barrister will not have breached Rule 47 by conferring with, or condoning another legal practitioner conferring with, more than one client about undertakings to a court, admissions or concessions of fact, amendments of pleadings or compromise.
49. A barrister must not confer with any witness including a party or client called by the barrister on any matter related to the proceedings while that witness remains under cross-examination, unless:



**Schedule (continued)**

- (a) the cross-examiner has consented beforehand to the barrister doing so; or
  - (b) the barrister -
    - (i) believes on reasonable grounds that special circumstances (including the need for instructions on a proposed compromise) require such a conference;
    - (ii) has, if possible, informed the cross-examiner beforehand of the barrister's intention to do so; and
    - (iii) otherwise does inform the cross-examiner as soon as possible of the barrister having done so.
50. A barrister must not take any step to prevent or discourage prospective witnesses or witnesses from conferring with the opponent or being interviewed by or on behalf of any other person involved in the proceedings.
51. A barrister will not have breached Rule 50 simply by telling a prospective witness or a witness, that the witness need not agree to confer or to be interviewed.

***Duty to opponent***

52. A barrister must not knowingly make a false statement to the opponent in relation to the case (including its compromise).
53. A barrister must take all necessary steps to correct any false statement unknowingly made by the barrister to the opponent as soon as possible after the barrister becomes aware that the statement was false.
54. A barrister will not have made a false statement to the opponent simply by failing to correct an error on any matter stated to the barrister by the opponent.
55. A barrister must not deal directly with the opponent's client unless:
- (a) the opponent has previously consented;
  - (b) the barrister believes on reasonable grounds that -
    - (i) the circumstances are so urgent as to require the barrister to do so; and

**Schedule (continued)**

- (ii) the dealing would not be unfair to the opponent's client;  
or
  - (c) the substance of the dealing is solely to enquire whether the person is represented and, if so, by whom.
- 56. A barrister must not confer with or deal directly with a party opposed to the client unless:
  - (a) the party, not being indemnified by an insurer (statutory or otherwise) which is actively engaged in contesting the proceedings, is unrepresented and has signified willingness to that course; or
  - (b) the party, being indemnified by an insurer (statutory or otherwise) which is actively engaged in contesting the proceedings, is otherwise unrepresented and the barrister -
    - (i) has no reasonable grounds to believe that any statements made by the party to the barrister may harm the party's interests under the insurance policy; or
    - (ii) has reasonable grounds for the belief referred to in (i) but has clearly informed the party beforehand of that possibility; or
  - (c) the party, being indemnified by an insurer (statutory or otherwise) which is actively engaged in contesting the proceedings, is personally represented but not in the case and the barrister -
    - (i) has notified the party's representative of the barrister's intention to do so; and
    - (ii) has allowed enough time for the party to be advised by the party's representative.
- 57. A barrister must not, outside an *ex parte* application or a hearing of which the opponent has had proper notice, communicate in the opponent's absence with the court concerning any matter of substance in connection with current proceedings unless:
  - (a) the court has first communicated with the barrister in such a way as to require the barrister to respond to the court; or

**Schedule (continued)**

- (b) the opponent has consented beforehand to the barrister dealing with the court in a specific manner notified to the opponent by the barrister.
- 58. A barrister must promptly tell the opponent what passes between the barrister and a court in a communication referred to in Rule 57.
- 59. A barrister must not raise any matter with a court in connection with current proceedings on any occasion to which the opponent has consented under Rule 57(b), other than the matters specifically notified by the barrister to the opponent when seeking the opponent's consent.

***Integrity of hearings***

- 60. (a) A barrister must not publish or assist the publishing of material concerning a current proceeding except by supplying only:
  - (i) copies of pleadings or court documents in their current form, which have been filed and which have been served in accordance with the court's requirements;
  - (ii) copies of affidavits or witness statements, which have been read, tendered or verified in open court, clearly marked so as to show any parts which have not been read, tendered or verified or which have been disallowed on objection;
  - (iii) copies of transcript of evidence given in open court, if permitted by copyright and clearly marked so as to show any corrections agreed by the other parties or directed by the court;
  - (iv) copies of exhibits admitted in open court and without restriction on access;
  - (v) answers to unsolicited questions concerning the current proceeding and the answers are limited to information as to the identity of the parties or of any witness already called, the nature of the issues in the case, the nature of the orders made or judgment given including any reasons given by the court and the client's intentions as to any further steps in the case;

**Schedule (continued)**

- (vi) copies of submissions used in open court and available to the parties,  
provided that where the barrister is engaged in the current proceeding, the barrister does so only with the consent of the client first obtained.
  - (b) Subject to sub rule (a), a barrister must not publish or take any step towards the publication of any material concerning any current or potential proceeding which -
    - (i) is inaccurate;
    - (ii) discloses any confidential information;
    - (iii) appears to or does express the opinion of the barrister on the merits of the current or potential proceeding or on any issue arising in the proceeding, other than in the course of genuine educational or academic discussion on matters of law.
  - 61. A barrister will not have breached Rule 60 simply by advising the client about whom there has been published a report relating to the case, and who has sought the barrister's advice in relation to that report, that the client may take appropriate steps to present the client's own position for publication.
  - 62. A barrister must not in the presence of any of the parties or solicitors deal with a court, or deal with any legal practitioner appearing before the barrister when the barrister is a referee, arbitrator or mediator, on terms of informal personal familiarity which may reasonably give the appearance that the barrister has special favour with the court or towards the legal practitioner.
- Prosecutor's duties***
- 63. A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.
  - 64. A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.

**Schedule (continued)**

65. A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.
66. A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.
67. A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connexion with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused, unless:
  - (a) such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person; and
  - (b) the prosecutor believes on reasonable grounds that such a threat could not be avoided by confining such disclosure, or full disclosure, to the opponent being a legal practitioner, on appropriate conditions which may include an undertaking by the opponent not to disclose certain material to the opponent's client or any other person.
68. A prosecutor who has decided not to disclose material to the opponent under Rule 67 must consider whether:
  - (a) the defence of the accused could suffer by reason of such non-disclosure;
  - (b) the charge against the accused to which such material is relevant should be withdrawn; and
  - (c) the accused should be faced only with a lesser charge to which such material would not be so relevant.
69. A prosecutor must call as part of the prosecution's case all witnesses:
  - (a) whose testimony is admissible and necessary for the presentation of all of the relevant circumstances;
  - (b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;

**Schedule (continued)**

- (c) whose testimony or statements were used in the course of any committal proceedings; and
- (d) from whom statements have been obtained in the preparation or conduct of the prosecution's case; unless the opponent consents to the prosecutor not calling a particular witness;

and except where:

- (e) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused;
- (f) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses; or
- (g) the prosecutor believes on reasonable grounds that the testimony of a particular witness is plainly untruthful or is plainly unreliable by reason of the witness being in the camp of the accused;

provided that:

- (h) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (e), (f) or (g), together with the grounds on which the prosecutor has reached that decision.

- 70. A prosecutor who has reasonable ground to believe that certain material available to the prosecution may have been unlawfully obtained must promptly:
  - (a) inform the opponent if the prosecutor intends to use the material; and
  - (b) make available to the opponent a copy of the material if it is in documentary form.
- 71. A prosecutor must not confer with or interview any accused except in the presence of the accused's representative.
- 72. A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the

### Schedule (continued)

prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.

73. A prosecutor who has informed the court of matters within Rule 72, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when the case is before the court.
74. A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:
- (a) must correct any error made by the opponent in address on sentence;
  - (b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence;
  - (c) must assist the court to avoid appealable error on the issue of sentence;
  - (d) may submit that a custodial or non-custodial sentence is appropriate; and
  - (e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority.
75. A barrister who appears as counsel assisting an inquisitorial body such as the Criminal Justice Commission, the National Crime Authority, the Australian Securities Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with Rules 63, 65 and 66 as if the body were the court referred to in those Rules and any person whose conduct is in question before the body were the accused referred to in Rule 65.

### OPINIONS

76. A barrister must give the barrister's truthful opinion on any matter submitted to the barrister for advice or opinion.

### BARRISTERS' WORK

77. Barristers' work consists of:

**Schedule (continued)**

- (a) appearing as an advocate before a court (including in a mediation);
  - (b) preparing to appear as an advocate before a court (including in a mediation);
  - (c) negotiating for the client with an opponent to compromise the case;
  - (d) representing the client in a case appraisal;
  - (e) giving legal advice;
  - (f) preparing or advising on documents to be used by the client or by others in the client's affairs;
  - (g) acting as a referee, arbitrator, mediator, member of a tribunal, or member of a panel or committee constituted under the Legal Profession Act, or conducting a Commission of Inquiry; and
  - (h) carrying out work properly incidental to the kinds of work referred to in (a)-(g).
78. A barrister must not:
- (a) act as a person's general agent or attorney in that person's business or dealings with others;
  - (b) conduct contentious correspondence in the barrister's name on behalf of any person with others (including public authorities) with whom that person is dealing, otherwise than the opponent;
  - (c) place herself or himself at risk of becoming a witness, by investigating facts for the purposes of appearing as an advocate or giving legal advice, otherwise than by -
    - (i) conferring with the client, the instructing solicitor, prospective witnesses or experts;
    - (ii) examining documents provided by the instructing solicitor or the client, as the case may be, or produced to the court;
    - (iii) viewing a place or things by arrangement with the instructing solicitor or the client, as the case may be; or



**Schedule (continued)**

- (iv) library research;
  - (d) commence proceedings or file process in any court on behalf of the client in the barrister's name;
  - (e) act as a person's only representative in dealings with any court, otherwise than when actually appearing as an advocate;
  - (f) serve any process of any court;
  - (g) conduct the conveyance of any property for any other person;
  - (h) administer any trust estate or fund for any other person;
  - (i) obtain probate or letters of administration for any other person;
  - (j) incorporate companies or provide shelf companies for any other person;
  - (k) prepare or lodge returns for any other person, unless the barrister is registered or accredited to do so under the applicable taxation legislation; or
  - (l) hold, invest or disburse any fund for any other person.
79. A barrister will not have breached Rule 78 by:
- (a) doing any of the matters referred to in that Rule on the barrister's own behalf;
  - (b) doing any of the matters referred to in that Rule, without fee and as a private person, on behalf of a member of the barrister's family; or
  - (c) doing any of the matters referred to in Rule 78(d) to (k) by way of assistance to a friend, without fee and as a private person; or
  - (d) acting in accordance with Rule 84.
80. A barrister will not have breached Rule 78(a), (g) or (k) if the barrister becomes such an agent, is appointed so to act or becomes responsible for such funds as a private person and not as a barrister or legal practitioner.

**Schedule (continued)*****Referral to Solicitor***

81. A barrister who is asked by any person to do work or engage in conduct which is not barristers' work, or which appears likely to require work to be done which is not barristers' work, must promptly inform that person:
- (a) of the effect of Rules 77 and 78 as they relevantly apply in the circumstances; and
  - (b) that, if it be the case, solicitors are capable of providing those services to that person.
82. A barrister who provides information under Rule 81 to a person must not inform the person that the barrister will perform barristers' work for that person on condition that a particular solicitor briefs the barrister to do so.

***Disclosure to direct access client***

83. A barrister who proposes to accept instructions directly from a person who is not a solicitor or a professional acting as such must:
- (a) inform the prospective client in writing of:
    - (i) the effect of Rules 77 and 78;
    - (ii) the fact that circumstances may require the client to retain an instructing solicitor at short notice, and possibly during the case;
    - (iii) any other disadvantage which the barrister believes on reasonable grounds may, as a real possibility, be suffered by the client if the client does not retain an instructing solicitor;
    - (iv) the relative capacity of the barrister in performing barristers' work to supply the requested facilities or services to the client compared to the capacity of the barrister together with an instructing solicitor to supply them; and
  - (b) obtain a written acknowledgement, signed by the prospective client, that he or she has been informed of the matters in (a) above.

**Schedule (continued)**

84. (a) All fees paid for direct access work in advance of the performance of the work must be deposited and retained in a bank account established and used solely for the purpose of holding any such fees -
- (i) until the work in respect of which the fees are paid has been completed; and
  - (ii) unless the client, after performance of the work and delivery of a memorandum of fees, otherwise agrees in writing, until a period of fourteen days has expired after the client has been given a copy of the memorandum of fees.
- (b) When fees for direct access work have been paid in advance of the performance of the work, a memorandum of fees given to the client for such work must contain a note stating that the barrister is required to retain the fees paid in respect of the work, the subject of the memorandum, in a special bank account, until fourteen days after the memorandum has been given to the client, unless the client otherwise agrees in writing.

**SOLE PRACTITIONER RULES**

85. A barrister must be a sole practitioner, and must not :
- (a) practise in partnership with any person;
  - (b) practise as the employer of any legal practitioner who is in active practice in that person's practice;
  - (c) practise as the employee of any person; or
  - (d) be a legal practitioner director of an incorporated legal practice;
  - (e) be a member of a multi-disciplinary partnership.
86. A barrister must not make or have any arrangement with any person in connexion with any aspect of the barrister's practice which imposes any obligation on the barrister of such a kind as may prevent the barrister from:

**Schedule (continued)**

- (a) accepting any brief to appear for reasons other than those provided by the exceptions to the cab-rank principle in Rules 91, 92, 93, 95, 96 and 97; or
  - (b) competing with any other legal practitioner for the work offered by any brief for reasons other than those referred to in Rules 91, 92, 93, 95, 96 and 97.
87. A barrister will not have breached Rules 85 and 86 by carrying out a specific task of research or chamber work given to the barrister by another barrister, or by giving such a task to another barrister, so long as:
- (a) the barrister who was briefed to do the chamber work takes full personal responsibility for the work;
  - (b) the work is delivered under the name of the barrister who was briefed;
  - (c) the arrangement between the barristers does not go beyond an ordinary devilling or pupillage arrangement and in particular does not involve any standing retainer or employment terms; and
  - (d) the arrangement between the barristers does not provide and is not intended to enable the barrister giving the task to make a profit from the other barrister's work, over and above reasonable remuneration for supervision of and responsibility for the other barrister's work.

***Third-line forcing***

88. A barrister must not require that any other particular legal practitioner be instructed or briefed, as the case may be, so as in any way to impose that requirement as a condition of the barrister accepting any brief or instructions.

**CAB-RANK RULES & BRIEFS*****Cab-rank principle***

89. A barrister must accept a brief from a solicitor in a field in which the barrister practises or professes to practise if:

**Schedule (continued)**

- (a) the brief is within the barrister's capacity, skill and experience;
  - (b) the barrister would be available to work as a barrister when the brief would require the barrister to appear or to prepare, and the barrister is not already committed to other professional or personal engagements which may, as a real possibility, prevent the barrister from being able to advance a client's interests to the best of the barrister's skill and diligence;
  - (c) the fee offered on the brief is acceptable to the barrister;
  - (d) the barrister is not obliged or permitted to refuse the brief under Rules 91, 92, 93, 95, 96 and 97.
90. A barrister must not set the level of an acceptable fee, for the purposes of Rule 89(c), higher than the barrister would otherwise set if the barrister were willing to accept the brief, with the intent that the solicitor may be deterred from continuing to offer the brief to the barrister.

***Briefs which must be refused***

91. A barrister must refuse to accept or retain a brief or instructions to appear before a court if:
- (a) the barrister has information which is confidential to any other person in the case other than the prospective client, and -
    - (i) the information may, as a real possibility, be helpful to the prospective client's case; and
    - (ii) the person entitled to the confidentiality has not consented to the barrister using the information as the barrister thinks fit in the case;
  - (b) the barrister has a general or special retainer which gives, and gives only, a right of first refusal of the barrister's services to another party in the case and the barrister is offered a brief to appear in the case for the other party within the terms of the retainer;
  - (c) the barrister has reasonable grounds to believe that the barrister may, as a real possibility, be a witness in the case;

**Schedule (continued)**

- (d) the brief is to appear on an appeal and the barrister was a witness in the case at first instance;
  - (e) the barrister has reasonable grounds to believe that the barrister's own personal or professional conduct may be attacked in the case;
  - (f) the barrister has a material financial or property interest in the outcome of the case, apart from the prospect of a fee in the case of a brief under a speculative fee agreement;
  - (g) the brief is on the assessment of costs which include a dispute as to the propriety of the fee paid or payable to the barrister, or is for the recovery from a former client of costs in relation to a case in which the barrister appeared for the client;
  - (h) the brief is for a party to an arbitration in connexion with the arbitration and the barrister has previously advised or appeared for the arbitrator in connexion with the arbitration;
  - (i) the brief is to appear in a contested hearing before the barrister's parent, sibling, spouse or child or a member of the barrister's household, or before a bench of which such a person is a member (unless the hearing is before the High Court of Australia sitting all available judges);
  - (j) there are reasonable grounds for the barrister to believe that the failure of the client to retain an instructing solicitor would, as a real possibility, seriously prejudice the barrister's ability to advance and protect the client's interests in accordance with the law including these Rules.
92. Without limiting the generality of Rule 91, a barrister must refuse to accept or retain a brief or instructions to appear before a court (excluding a statutory or other tribunal) if the brief is to appear before a court of which the barrister was formerly a member or judicial registrar (other than in an acting capacity), or before a court from which appeals lay to a court of which the barrister was formerly a member (except the Federal Court of Australia in case of appeals from the Supreme Court of any State or Territory), and the appearance would occur:
- (a) within 2 years after the barrister ceased to be a member of the court in question, if the barrister was a member of the court for less than 2 years;

**Schedule (continued)**

- (b) within a period after the barrister ceased to be a member of the court in question equivalent to the period for which the barrister was a member of the court, if the barrister was a member of the court for 2 years or more but less than 5 years; or
  - (c) within 5 years after the barrister ceased to be a member of the court in question, if the barrister was a member of the court for 5 years or more.
- 93. Without limiting the generality of Rule 91, a barrister must refuse to accept or retain a brief or instructions to appear before a statutory or other tribunal if:
  - (a) the brief is to appear before such a tribunal which does not sit in divisions or lists to which its members are assigned and the barrister is a member of the tribunal;
  - (b) the brief is to appear before such a tribunal which sits in divisions or lists to which its members are assigned and -
    - (i) the barrister is a member of the tribunal assigned to a division or list; and
    - (ii) the brief is to appear in a proceeding in that division or list;
  - (c) the brief is to appear before such a tribunal -
    - (i) which does not sit in divisions or lists to which its members are assigned and the barrister was formerly a member of the tribunal - where the appearance would occur within two years after the barrister ceased to be a member of the tribunal;
    - (ii) which does sit in divisions or lists to which its members are assigned and the barrister was assigned as a member to a division or list - where the brief is to appear in a proceeding in a division or list to which the barrister was assigned and the appearance would occur within two years after the barrister ceased to be assigned to that division or list.
- 94. A barrister need not refuse a brief, notwithstanding the application of Rules 91(c), or (e) if:

**Schedule (continued)**

- (a) the barrister believes on reasonable grounds that -
    - (i) allegations which involve the barrister in that way have been raised in order to prevent the barrister from accepting the brief; and
    - (ii) those allegations can be met without materially diminishing the barrister's disinterestedness; and
  - (b) the president or vice president of the Bar Association, the convener of the Professional Conduct Committee of the Bar Association, or failing all of them, a member of the Council who is a Queen's Counsel or a Senior Counsel approves of the barrister accepting the brief after the barrister has informed that person of the circumstances.
95. A barrister must refuse a brief if the barrister has information which is confidential to any person with different interests from those of the prospective client if:
- (a) the information may, as a real possibility, be helpful to the advancement of the prospective client's interests in the matter on which advice is sought; and
  - (b) the person entitled to the confidentiality has not consented beforehand to the barrister using the information as the barrister thinks fit in giving advice.
96. A barrister must not accept a brief or briefs ("the second brief") to appear on a day when the barrister is already committed to appear or is reasonably likely to be required to appear on another brief ("the first brief") if, by appearing on one of the briefs the barrister would not, in the normal course of events, be able to appear on the other brief or briefs, unless:
- (a) the person offering the second brief has expressly permitted the barrister to do so; and
  - (b) the instructing solicitor in the first brief has been informed beforehand of the barrister's intention to accept the second brief.

***Briefs which may be refused***

97. A barrister may refuse a brief if:
- (a) the brief is not offered by a solicitor;



**Schedule (continued)**

- (b) the barrister considers on reasonable grounds that the time or effort required for the brief threatens to prejudice the barrister's practice or other important professional or personal engagements;
  - (c) the barrister has reasonable grounds to doubt that the fee will be paid reasonably promptly or in accordance with the costs agreement;
  - (d) the brief may, as a real possibility, require the barrister to cross-examine or criticise a friend or relation;
  - (e) the solicitor does not agree to a request by the barrister that appropriate attendances by the instructing solicitor, solicitor's clerk or client representative will be arranged from time to time for the purposes of -
    - (i) ensuring that the barrister is provided with adequate instructions to permit the barrister properly to carry out the work or appearance required by the brief;
    - (ii) ensuring that the client adequately understands the barrister's advice;
    - (iii) avoiding any delay in the conduct of any hearing or compromise negotiations; and
    - (iv) protecting the client or the barrister from any disadvantage or inconvenience which may, as a real possibility, otherwise be caused;
  - (f) the prospective client is also the prospective instructing solicitor, or a partner, employer or employee of the prospective instructing solicitor, and has refused the barrister's request to be instructed by a solicitor independent of the prospective client and the prospective client's firm; or
  - (g) the barrister, being a Queen's Counsel or a Senior Counsel, considers on reasonable grounds that the brief does not require the services of a Queen's Counsel or a Senior Counsel.
98. A barrister may regard the current private listing of a solicitor by the Bar Association as one who has failed to pay another barrister's fee without reasonable excuse as a reasonable ground for the doubt referred to in Rule 97(c).

**Schedule (continued)*****Return of briefs***

99. A barrister must not return a brief to defend a charge of a serious criminal offence unless:
- (a) the barrister believes on reasonable grounds that -
    - (i) the circumstances are exceptional and compelling; and
    - (ii) there is enough time for another legal practitioner to take over the case properly before the hearing; or
  - (b) the client has consented after the barrister has clearly informed the client of the circumstances in which the barrister wishes to return the brief and of the terms of this Rule and Rule 100.
100. A barrister who holds a brief to defend a charge of a serious criminal offence and also any other brief, both of which would require the barrister to appear on a particular day, must return the other brief as soon as possible, unless the barrister became aware of the appearance being required on that day in the first brief after the barrister was committed to appear on that day in the other brief.
101. A barrister must not return a brief to appear in order to accept another brief to appear unless the instructing solicitor or the client, as the case may be, in the first brief has permitted the barrister to do so beforehand, after the barrister has clearly informed the instructing solicitor or the client, as the case may be, of the circumstances in which the barrister wishes to return the brief and of the terms of this Rule and Rule 103.
102. A barrister must not return a brief to appear on a particular date in order to attend a social occasion unless the instructing solicitor or the client, as the case may be, has expressly permitted the barrister to do so.
103. A barrister who wishes to return a brief which the barrister is permitted to return must do so in enough time to give another legal practitioner a proper opportunity to take over the case.
104. A barrister must promptly inform the instructing solicitor or the client, as the case may be, as soon as the barrister has reasonable grounds to believe that there is a real possibility that the barrister will be unable to appear or to do the work required by the brief in the

**Schedule (continued)**

time stipulated by the brief or within a reasonable time if no time has been stipulated.

105. A barrister may return a brief if, after acceptance of the brief:
- (a) the instructing solicitor or client, as the case may be, has refused the barrister's request that appropriate attendances by the instructing solicitor, solicitor's clerk, or client representative be arranged from time to time for the purposes of -
    - (i) ensuring that the barrister is provided with adequate instructions to permit the barrister properly to carry out the work or appearance required by the brief;
    - (ii) ensuring that the client adequately understands the barrister's advice;
    - (iii) avoiding any delay in the conduct of any hearing or compromise negotiations; or
    - (iv) protecting the client or the barrister from any disadvantage or inconvenience which may, as a real possibility, otherwise be caused;
  - (b) the barrister's advice as to the preparation or conduct of the case, not including its compromise, has been rejected or ignored by the instructing solicitor or the client, as the case may be;
  - (c) fees have not been paid reasonably promptly or in accordance with the costs agreement, and have remained unpaid after reasonable notice by the barrister to the instructing solicitor or client, as the case may be, of the barrister's intention to return the brief for that reason.
106. A barrister may return a brief accepted under a speculative fee agreement if:
- (a) the barrister, and the instructing solicitor if any, consider on reasonable grounds that the client has unreasonably rejected a reasonable offer to compromise contrary to the barrister's advice;

**Schedule (continued)**

- (b) the client has refused to pay the barrister a reasonable fee for all work done or to be done after the client's rejection of the offer;
  - (c) the client was informed before the barrister accepted the brief of the effect of this Rule; and
  - (d) the barrister has the firm view that the client has no reasonable prospects of success or of achieving a result better than the offer.
107. A barrister who has reasonable grounds to believe that there is a real possibility that the barrister may cease to be a disinterested advocate by either becoming a witness in the case or defending of the barrister's personal or professional conduct against criticism must return the brief as soon as it is possible to do so without unduly endangering the client's interests, unless:
- (a) the barrister believes on reasonable grounds that -
    - (i) allegations which involve the barrister in that way have been raised in order to remove the barrister from the case; and
    - (ii) those allegations can be met without materially diminishing the barrister's disinterestedness; and
  - (b) the President or Vice President of the Bar Association, the Convener of the Professional Conduct Committee of the Bar Association, or failing all of them, a member of the Council who is a Queen's Counsel or a Senior Counsel approves of the barrister accepting the brief after the barrister has informed that person of the circumstances.
108. A barrister must return a brief to appear in a contested hearing before a court constituted by a person whose relationship with the barrister is such as to make such appearance undesirable, unless:
- (a) the barrister learns of the identity of the person or persons constituting the court so close to the hearing date that return of the brief would not give another legal practitioner enough time to take over the case properly before the hearing; and
  - (b) the barrister has sought to draw the circumstances to the court's attention so as to permit the constitution of the court to be changed.

### Schedule (continued)

#### **CONFIDENTIALITY & CONFLICTS**

109. A barrister must not disclose (except as compelled by law) or use in any way in the course of practice confidential information obtained by the barrister concerning any person to whom the barrister owes some duty or obligation to keep such information confidential unless or until:
- (a) the information has been published;
  - (b) the information is later obtained by the barrister from another person who is not bound by the confidentiality owed by the barrister to the first person and who does not give the information confidentially to the barrister; or
  - (c) the person has consented to the barrister disclosing or using the information generally or on specific terms.
110. A barrister must not disclose (except as compelled by law) or use confidential information under Rule 109(c) in any way other than as permitted by the specific terms of the person's consent.
111. A barrister will not have breached Rules 109 and 110 simply by showing briefs to or disclosing information contained in a brief to the barrister's instructing solicitor in the matter, to a member of the barrister's staff for the purposes of that person undertaking clerical or administrative work in relation to the matter, or to a pupil or to another barrister doing work as permitted by Rule 87, so long as the barrister has reminded the pupil of barristers' duties of confidentiality including Rules 109 and 110.
112. A barrister who is shown a brief as a pupil or under an arrangement covered by Rule 87 is bound by the same duties of confidentiality which bind the barrister whose brief it is, including the duties imposed by Rule 109 and 110.
113. A barrister who has accepted a brief must return the brief as soon as possible after the barrister becomes aware that the barrister has information confidential to a person other than the client which may, as a real possibility, be helpful to the client's case or to the advancement of the client's interests, being information which the barrister is prohibited from disclosing or using by Rules 109, 110 or 112, unless the person entitled to the confidentiality consents to the

### Schedule (continued)

barrister disclosing or using the information as the barrister thinks fit.

114. A barrister who is briefed to appear for two or more parties in any case must determine as soon as possible whether the interests of the clients may, as a real possibility, conflict and, if so, the barrister must then return the brief for:
- (a) all the clients in the case of confidentiality to which Rule 109 would apply; or
  - (b) in other cases, one or more of the clients -
    - (i) giving preferences to the earliest brief if the barrister was briefed at different times; and
    - (ii) so as to remove that possibility of conflict.
115. A barrister who, during the hearing of the case, becomes aware that the interests of the clients or some of them do or may, as a real possibility, conflict, must return the brief for:
- (a) all the clients in the case of confidentiality to which Rule 109 would apply; or
  - (b) in other cases, one or more of the clients -
    - (i) giving preference to the earliest brief if the barrister was briefed at different times; and
    - (ii) so as to remove that possibility of conflict.
116. A barrister need not return any briefs to appear under Rules 114 or 115, if the barrister has informed the instructing solicitor or the clients, as the case may be, of the barrister's view as to the clients' conflicting interests, and the instructing solicitor or the clients, as the case may be, inform the barrister that all the clients nonetheless wish the barrister to continue to appear for them.
117. A barrister who believes on reasonable grounds that the interests of the client may conflict with the interests of the instructing solicitor, or that the client may have a claim against the instructing solicitor, must:
- (a) advise the instructing solicitor of the barrister's belief; and

### Schedule (continued)

- (b) if the instructing solicitor does not agree to advise the client of the barrister's belief, seek to advise the client in the presence of the instructing solicitor of the barrister's belief.

### **FEES**

- 118. The amount of or method of calculating a fee shall be that which is agreed and shall in any event be a fee that is proper and reasonable in all the circumstances.
- 119. In the absence of an agreement, the fee rendered must be a fee which is proper and reasonable in all the circumstances.
- 120. A barrister must not render a fee that is calculated upon a proportion of the damages awarded or the amount recovered or accept a brief or instructions on terms that the amount of the fee or method of calculation will vary according to, or be contingent upon, the degree of success or the amount awarded or recovered.
- 121. Subject to Rules 118 and 119, a barrister may enter into a speculative fee agreement where the client is impecunious or otherwise deserving, in which circumstances it shall be proper and reasonable to charge a fee which is increased above the usual fee charged, but in no circumstances greater than fifty (50) per cent above the usual fee. This rule shall not be taken to oblige a barrister to accept a brief upon the basis of a speculative fee agreement.
- 122. A barrister must not sign a receipt for any fee unless it has been actually paid.
- 123. A barrister must not accept a cheque or promissory note on condition that it shall not be payable pending the result of a taxation of costs.

### **ADVERTISING**

- 124. A barrister may advertise.
- 125. An advertisement must be factually true and verifiable and must not be of a kind that is or might reasonably be regarded as:
  - (a) false, misleading, or deceptive;
  - (b) in contravention of any legislation;

**Schedule (continued)**

- (c) vulgar, sensational, or otherwise such as would bring or be likely to bring a court, the barrister, another barrister or the legal profession into disrepute.

**SPECIALISATION**

126. A barrister may advertise or hold himself or herself out as being a specialist or as offering specialist services, but only if:
- (a) the barrister is not a pupil and has had at least two years extensive experience in the relevant field;
  - (b) the barrister has given at least 2 months' notice to the Council of the intention to do so; and
  - (c) the Council does not disapprove.

**HARRASSMENT*****Sexual Harassment***

127. A barrister shall not, in any professional context, engage in sexual harassment.
128. For the purposes of Rule 127 a barrister sexually harasses another person if:
- (a) the barrister makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to that person; or
  - (b) 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 circumstance, 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***

129. A barrister shall not, in any professional context, engage in conduct which is calculated to disparage, vilify or insult another person on



### Schedule (continued)

the basis of that person's sex, sexual preference, race, colour, descent, national or ethnic origin or religion.

## ANTI DISCRIMINATION

130. A barrister must not in the conduct of the barrister's practice 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.

## OBLIGATIONS OF DISCLOSURE

### *Disclosure Requirements*

131. In these Rules, a "disclosable event" in relation to a barrister means any of the following:
- (a) the making of a sequestration order against, or the filing of a debtor's petition by, the barrister pursuant to the *Bankruptcy Act 1966* (Cth);
  - (b) the entry by the barrister into a debt agreement pursuant to Part IX of the *Bankruptcy Act 1966* (Cth), or an agreement, composition or arrangement pursuant to Part X of that Act;
  - (c) the disqualification of the barrister from managing or being involved in the management of any body corporate under any law in force in any jurisdiction within Australia, including disqualification from managing corporations under Part 2D.6 of the *Corporations Act 2001*; or
  - (d) the conviction of the barrister of an offence under any law in force in Australia or in any overseas country, or a finding that such an offence is proved against the barrister, where the maximum penalty for the offence is a term of imprisonment of 12 months, or more, or where fraud or dishonesty is an element of the offence.
132. (a) Where a disclosable event occurs in relation to a barrister, after the commencement of this Rule the barrister must within 28 days after the disclosable event occurs:

**Schedule (continued)**

- (i) inform the Chief Executive of the Bar Association in writing of the occurrence of the disclosable event; and
    - (ii) provide the Chief Executive of the Bar Association with written details of the circumstances giving rise to the disclosable event sufficient to enable the Secretary of the Bar Association to determine whether the occurrence of the disclosable event in relation to the barrister, or any of the circumstances giving rise to it, may affect the barrister's suitability to engage in legal practice as a barrister for the purposes of the relevant legislation in force in each jurisdiction.
  - (b) A barrister in relation to whom a disclosable event occurs must, within 14 days after receiving a written request from the Chief Executive of the Bar Association to do so, provide such further information concerning the disclosable event or any of the circumstances giving rise to it, as the Chief Executive of the Bar Association may require.
133. (a) Where a disclosable event has occurred in relation to a barrister before the commencement of this Rule, the barrister must within 28 days after the commencement of this Rule:
- (i) inform the Chief Executive of the Bar Association in writing of the occurrence of the disclosable event; and
    - (ii) provide the Chief Executive of the Bar Association with written details of the circumstances giving rise to the disclosable event sufficient to enable the Secretary of the Bar Association to determine whether the occurrence of the disclosable event in relation to the barrister, or any of the circumstances giving rise to it, may affect the barrister's suitability to engage in legal practice as a barrister for the purposes of the relevant legislation in force in each jurisdiction.
  - (b) A barrister in relation to whom a disclosable event has occurred must, within 14 days after receiving a written request from the Chief Executive of the Bar Association to do so, provide such further information concerning the disclosable event or any of the circumstances giving rise to it, as the Chief Executive of the Bar Association may require.

**Schedule (continued)**

- (c) Sub-rules (a) and (b) do not apply:
  - (i) to a disclosable event which occurred more than ten years before the commencement of this rule; or
  - (ii) to any barrister who has already made a disclosure under Rule 130 of the Queensland Barristers' Rules.

***Practising Certificates***

- 134. A barrister must, when providing the information sought on an application for renewal of a practising certificate:
  - (a) provide all the information sought; and
  - (b) be completely candid.

**RULES REGULATING BARRISTERS AS MEDIATORS**

- 135. A barrister acting as a mediator must disclose to all parties to the mediation any interest or association, personal, professional or commercial, which he or she has or may have in or with:
  - (a) the outcome of the dispute the subject of the mediation; or
  - (b) the parties to the mediation.
- 136. A barrister acting as a mediator has the same obligations of confidentiality, with respect to communications made in the course of a mediation, as he or she would have if such communications had been made by a client to him or her as a barrister.

**CORRESPONDENCE**

- 137. For the purpose of investigating a complaint or fulfilling any obligation it has under the Legal Profession Act the Association may, by a notice in writing served on a barrister, require the barrister to do any one or more of the following:
  - (a) to provide a written response within the time specified in the notice;
  - (b) to produce any document (or a copy thereof) specified in the notice, within the time specified in the notice;

### Schedule (continued)

- (c) to otherwise assist in, or co-operate with, the investigation of the complaint in a manner specified in the notice.
- 138. In the absence of a reasonable excuse, a barrister must comply with the requirements of a notice given under the preceding rule.
- 139. The notice may be served by way of pre-paid post addressed to the chambers address most recently provided by the barrister to the Association.

### EXEMPTIONS

- 140. Each of these rules applies to government legal officers who hold a practising certificate or who engage in government work in the manner of a barrister, except for the following:
  - Rules 81-84, 85-108 and 113-126.
- 141. Each of these rules applies to Legal Aid lawyers who hold a practising certificate, except for the following:
  - Rules 81- 84, 85-108 and 118-126
- 142. Each of these rules applies to employees of Aboriginal and Torres Strait Islanders Corporation (QEA) For Legal Services who hold a practising certificate, except for the following:
  - Rules 81- 84, 85-108 and 118-126

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### ENDNOTES

- 1 Made by the Governor in Council on 24 June 2004.
- 2 Notified in the gazette on 25 June 2004.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.