

## Information Sheet – *Legal Profession (Solicitors’ Conduct) Rules 2020*

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**Rule number 1. READ THE RULES.** This information sheet is not a substitute for doing so.

With the commencement of the *Legal Profession (Solicitors’ Conduct) Rules 2020 (SCR)* on 1 October 2020 the Tasmanian profession will be subject to the same rules of conduct as NSW, Victoria, South Australia, Queensland and the ACT.

Due to limitations of the legislative drafting software used by government, the numbering used in the SCR is different to that used interstate; however the rule number of the interstate equivalent is set out clearly for each of the Tasmanian rules.

The Tasmanian jurisdiction has traditionally relied on common law obligations to largely regulate the ethical obligations of legal practitioners. The new rules are based on those established common law principles.

The SCR are easy to follow and broken into the following Divisions:

- Fundamental duties of solicitors’
- Relations with clients
- Advocacy and litigation
- Relations with other persons
- Law practice management

Generally speaking, the format of the SCR is to prohibit certain conduct and then provide exceptions.

Rather than have to search for common law principles and cases, the SCR make a practitioner’s obligations clear for a large number of situations. They include:

- Delinquent or guilty clients
- Frankness in court
- Responsible use of court process and privilege
- Communication with opponents
- Communication with witnesses
- Inadvertent disclosure
- Communication with another solicitor’s client
- Another solicitor’s or other person’s error
- Lien over essential documents
- Charging for document storage
- Dealing with regulatory authority
- Sharing premises

### Some Rules to Note

#### Anti-discrimination and Harassment

Rule 47 prohibits a solicitor from engaging in conduct, in the course of practice, which constitutes:

- a. Discrimination; or
- b. Sexual harassment; or
- c. Workplace bullying

## Confidentiality and Conflict of Duties

### ROP (Rules of Practice)

**ROP 11 and 12** will be replaced by SCR 13 to 16. There are differences between the ROP and the SCR. The SCR are more comprehensive than ROP 11 and 12.

**ROP 11** prohibits disclosure of any information obtained in the course of handling a client's matter. A practitioner must disclose any interest in the matter or conflict of interest and must cease to act if any interest is adverse to the interests of the client.

**ROP 12** allows a practitioner to act for more than one party if satisfied each of the parties is aware of the intention to so act and that as a result, the practitioner may be prevented from disclosing relevant information or prevented from giving advice to one party if contrary to the interests of another. Each of the parties must consent with full knowledge of the matters just described.

The practitioner must cease to act for all parties if continuing would be contrary to the interests of one or more parties

**Rule 13** of the SCR prohibits disclosure of confidential information and provides six exceptions.

**Rule 14** deals with conflicts concerning former clients. It introduces the concept of information barriers.

**Rule 15** deals with conflicts concerning current clients. Firms who act for more than one client in a matter should familiarise themselves with SCR 15 which will 'replace' ROP 12.

**SCR 15(2)** permits a practitioner to act, only if each client is aware the practitioner is acting for another client and has given informed consent to the practitioner so acting. In addition, where a practitioner is in possession of relevant confidential information a practitioner may only act where each client has given informed consent and an effective information barrier has been established.

The Law Society suggests that the matters raised in ROP 12(2)(b) are likely to be relevant to the issue of whether informed consent has been given within the meaning of SCR 15(2).

Where an actual conflict arises the solicitor or law practice may only continue to act for one of the clients (or a group of clients between whom there is no conflict) provided the duty of confidentiality to other client(s) is not put at risk and the parties have given informed consent.

**SCR 16** is concerned with conflicts concerning a solicitor's own interests.

A comparison table is below:

Rules of Practice (ROP) 1994	Solicitors' Conduct Rules
<p><b>11. Disclosure of information and interest</b>            (1) A practitioner must not disclose any information obtained in the course of handling a client's matter without the consent of the client other than to the administrator of a scheme relating to legal assistance in accordance with <a href="#">rule 16</a> .            (2) A practitioner must disclose to a client –</p>	<p><b>13. Confidentiality (ASCR 9)</b>            (1) Except as permitted in subrule (2), a solicitor must not disclose any information which is confidential to a client and acquired by the solicitor during the client's engagement to any person who is not –</p>

<p>(a) any interest that the practitioner has in any transaction in which he or she is acting for that client; and</p> <p>(b) any matter which may reasonably be regarded as a conflict of interest on the part of the practitioner.</p> <p>(3) Unless the client otherwise instructs, a practitioner must cease to act for a client if –</p> <p>(a) that practitioner has an interest in the transaction in which the practitioner is acting for that client; and</p> <p>(b) that interest is adverse to the interests of the client.</p>	<p>(a) a solicitor who is a partner, principal, director, or employee of the solicitor’s law practice; or</p> <p>(b) a barrister or an employee of, or person otherwise engaged by, the solicitor’s law practice or by an associated entity for the purposes of delivering or administering legal services in relation to the client.</p> <p>(2) A solicitor may disclose information which is confidential to a client if –</p> <p>(a) the client expressly or impliedly authorises disclosure; or</p> <p>(b) the solicitor is permitted or is compelled by law to disclose; or</p> <p>(c) the solicitor discloses the information in a confidential setting, for the sole purpose of obtaining advice in connection with the solicitor’s legal or ethical obligations; or</p> <p>(d) the solicitor discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence; or</p> <p>(e) the solicitor discloses the information for the purpose of preventing imminent serious physical harm to the client or to another person; or</p> <p>(f) the information is disclosed to the insurer of the solicitor, law practice or associated entity.</p>
<p><b>12. Acting for more than one party</b></p> <p>(1) A practitioner may act for more than one party to any proceedings or transaction.</p> <p>(2) A practitioner must not accept instructions from more than one party to any proceedings or transaction unless the practitioner is satisfied on reasonable grounds that –</p> <p>(a) each of the parties is aware that the practitioner intends to act for another party or parties; and</p> <p>(b) each of the parties is aware that as a result of acting for more than one party –</p> <p>(i) the practitioner may be prevented from disclosing to any one of those parties the full knowledge that the practitioner has of matters relevant to the proceedings or transaction; and</p> <p>(ii) the practitioner may be prevented from giving advice to any one of those parties if that advice is contrary to the interest of any other party; and</p> <p>(iii) the practitioner must cease to act for all parties if the practitioner determines that he or she is not able to continue to act for all parties without acting in a manner contrary to the interests of one or more of those parties; and</p> <p>(c) each of the parties, with full knowledge of the matters referred to in <a href="#">paragraph (b)</a>, has consented to the practitioner acting for more than one party.</p> <p>(3) A practitioner who is acting for more than one party to any proceedings or transaction must immediately cease to act for all parties if that practitioner determines that he or she is not able to continue to act for all parties without acting in a manner contrary to the interests of one or more of those parties.</p>	<p><b>15. Conflict of duties concerning current clients (ASCR 11)</b></p> <p>(1) A solicitor and a law practice must avoid conflicts between the duties owed to two or more current clients, except where permitted by this rule.</p> <p>(2) If a solicitor or a law practice seeks to act for two or more clients in the same or related matters where the clients’ interests are adverse and there is a conflict or potential conflict of the duties to act in the best interests of each client, the solicitor or law practice must not act, except where permitted by subrule (3).</p> <p>(3) Where a solicitor or law practice seeks to act in the circumstances specified in subrule (2), the solicitor or law practice may, subject always to each solicitor discharging their duty to act in the best interests of their client, only act if each client –</p> <p>(a) is aware that the solicitor or law practice is also acting for another client; and</p> <p>(b) has given informed consent to the solicitor or law practice so acting.</p> <p>(4) In addition to the requirements of subrule (3), where a solicitor or law practice is in possession of information which is confidential to a client (the first client) which might reasonably be concluded to be material to another client’s current matter and detrimental to the interests of the first client if disclosed, there is a conflict of duties and the solicitor and the solicitor’s law practice must not act for the other client, except as follows:</p> <p>(a) a solicitor may act where there is a conflict of duties arising from the possession of confidential information, where each client has</p>

	<p>given informed consent to the solicitor acting for another client; and</p> <p>(b) a law practice (and the solicitors' concerned) may act where there is a conflict of duties arising from the possession of confidential information where an effective information barrier has been established.</p> <p>(5) If a solicitor or a law practice acts for more than one client in a matter and, during the course of the conduct of that matter, an actual conflict arises between the duties owed to two or more of those clients, the solicitor or law practice may only continue to act for one of the clients (or a group of clients between whom there is no conflict) provided the duty of confidentiality to other client(s) is not put at risk and the parties have given informed consent.</p>
	<p><b>14. Conflicts concerning former clients (ASCR 10)</b></p> <p>(1) A solicitor and law practice must avoid conflicts between the duties owed to current and former clients, except as permitted by subrule (2).</p> <p>(2) A solicitor or law practice who or which is in possession of information which is confidential to a former client, where that information might reasonably be concluded to be material to the matter of another client and detrimental to the interests of the former client if disclosed, must not act for the current client in that matter unless</p> <p>(a) the former client has given informed written consent to the solicitor or law practice so acting; or</p> <p>(b) an effective information barrier has been established.</p>
	<p><b>16. Conflict concerning a solicitor's own interests (ASCR 12)</b></p> <p>(1) A solicitor must not act for a client where there is a conflict between the duty to serve the best interests of a client and the interests of the solicitor or an associate of the solicitor, except as permitted by this rule.</p> <p>(2) A solicitor must not exercise any undue influence intended to dispose the client to benefit the solicitor in excess of the solicitor's fair remuneration for legal services provided to the client.</p> <p>(3) A solicitor must not borrow any money, nor assist an associate to borrow money, from –</p> <p>(a) a client of the solicitor or of the solicitor's law practice; or</p> <p>(b) a former client of the solicitor or of the solicitor's law practice who has indicated a continuing reliance upon the advice of the solicitor or of the solicitor's law practice in relation to the investment of money – unless the client or the former client is –</p> <p>(c) an Authorised Deposit-taking Institution; or</p> <p>(d) a trustee company; or</p> <p>(e) the responsible entity of a managed investment scheme registered under Chapter 5C of the <i>Corporations Act 2001</i> (Cth) or a custodian for such a scheme; or</p>

	<p>(f) an associate of the solicitor and the solicitor is able to discharge the onus of proving that a full written disclosure was made to the client and that the client's interests are protected in the circumstances, whether by legal representation or otherwise; or</p> <p>(g) the employer of the solicitor.</p> <p>(4) A solicitor will not have breached this rule merely by –</p> <p>(a) drawing a will appointing the solicitor or an associate of the solicitor as executor, provided the solicitor informs the client in writing before the client signs the will –</p> <p>(i) of any entitlement of the solicitor, or the solicitor's law practice or associate, to claim executor's commission; and</p> <p>(ii) of the inclusion in the will of any provision entitling the solicitor, or the solicitor's law practice or associate, to charge legal costs in relation to the administration of the estate; and</p> <p>(iii) if the solicitor or the solicitor's law practice or associate has an entitlement to claim commission, that the client could appoint as executor a person who might make no claim for executor's commission; or</p> <p>(b) drawing a will or other instrument under which the solicitor (or the solicitor's law practice or associate) will or may receive a substantial benefit other than any proper entitlement to executor's commission and proper fees, provided the person instructing the solicitor is either –</p> <p>(i) a member of the solicitor's immediate family, or</p> <p>(ii) a solicitor, or a member of the immediate family of a solicitor, who is a partner, employer, or employee, of the solicitor; or</p> <p>(c) receiving a financial benefit from a third party in relation to any dealing where the solicitor represents a client, or from another service provider to whom a client has been referred by the solicitor, provided –</p> <p>(i) the solicitor advises the client that a commission or benefit is or may be payable to the solicitor in respect of the dealing or referral and the nature of that commission or benefit; and –</p> <p>(ii) the solicitor advises the client that the client may refuse any referral; and</p> <p>(iii) the client has given informed consent to the commission or benefit received or which may be received; or</p> <p>(d) acting for a client in any dealing in which a financial benefit may be payable to a third party for referring the client, provided the solicitor has first disclosed the payment or financial benefit to the client.</p>
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