



THE LAW SOCIETY
OF NEW SOUTH WALES

FORMER RULES

New South Wales Professional
Conduct and Practice Rules 2013
(Solicitors' Rules)

New South Wales Professional Conduct and Practice Rules 2013 (Solicitors' Rules)

These Rules comprise:

- a) the *Australian Solicitors' Conduct Rules* adopted by the Law Council of Australia on 18 June 2011 (Rules 1-43), and
- b) those Rules in the *Revised Professional Conduct and Practice Rules 1995* which deal with practice matters relating to the practice of law in NSW under the *Legal Profession Act 2004* and are therefore outside the coverage of the Australian Solicitors' Conduct Rules (Rules 44-58).

FORMER RULES

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NATURE AND PURPOSE OF THE RULES

1. Application and interpretation

- 1.1 These Rules apply to all solicitors within Australia, including Australian-registered foreign lawyers acting in the manner of a solicitor.
- 1.1 The definitions that apply in these Rules are set out in the glossary.

2 Purpose and effect of the Rules

- 2.1 The purpose of these Rules is to assist solicitors to act ethically and in accordance with the principles of professional conduct established by the common law and these Rules.
- 2.2 In considering whether a solicitor has engaged in unsatisfactory professional conduct or professional misconduct, the Rules apply in addition to the common law.
- 2.3 A breach of these Rules is capable of constituting unsatisfactory professional conduct or professional misconduct, and may give rise to disciplinary action by the relevant regulatory authority, but cannot be enforced by a third party.

FORMER RULES

FUNDAMENTAL DUTIES OF SOLICITORS

3 Paramount duty to the court and the administration of justice

- 3.1 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.

4 Other fundamental ethical duties

- 4.1 A solicitor must also:
- 4.1.1 act in the best interests of a client in any matter in which the solicitor represents the client;
 - 4.1.2 be honest and courteous in all dealings in the course of legal practice;
 - 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible;
 - 4.1.4 avoid any compromise to their integrity and professional independence; and
 - 4.1.5 comply with these Rules and the law.

5 Dishonest and disreputable conduct

- 5.1 A solicitor must not engage in conduct, in the course of practice or otherwise, which demonstrates that the solicitor is not a fit and proper person to practise law, or which is likely to a material degree to:
- 5.1.1 be prejudicial to, or diminish the public confidence in, the administration of justice; or
 - 5.1.2 bring the profession into disrepute.

6 Undertakings

- 6.1 A solicitor who has given an undertaking in the course of legal practice must honour that undertaking and ensure the timely and effective performance of the undertaking, unless released by the recipient or by a court of competent jurisdiction.
- 6.2 A solicitor must not seek from another solicitor, or that solicitor's employee, associate, or agent, undertakings in respect of a matter, that would require the co-operation of a third party who is not party to the undertaking.

RELATIONS WITH CLIENTS

7 Communication of advice

- 7.1 A solicitor must provide clear and timely advice to assist a client to understand relevant legal issues and to make informed choices about action to be taken during the course of a matter, consistent with the terms of the engagement.
- 7.2 A solicitor 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 solicitor 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.

8 Client instructions

- 8.1 A solicitor must follow a client's lawful, proper and competent instructions.

9 Confidentiality

- 9.1 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:
 - 9.1.1 a solicitor who is a partner, principal, director, or employee of the solicitor's law practice; or
 - 9.1.2 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,

EXCEPT as permitted in Rule 9.2.

- 9.2 A solicitor may disclose confidential client information if:
 - 9.2.1 the client expressly or impliedly authorises disclosure;
 - 9.2.2 the solicitor is permitted or is compelled by law to disclose;
 - 9.2.3 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;
 - 9.2.4 the solicitor discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence;
 - 9.2.5 the solicitor discloses the information for the purpose of preventing imminent serious physical harm to the client or to another person; or
 - 9.2.6 the information is disclosed to the insurer of the solicitor, law practice or associated entity.

10 Conflicts concerning former clients

- 10.1 A solicitor and law practice must avoid conflicts between the duties owed to current and former clients, except as permitted by Rule 10.2.
- 10.2 A solicitor or law practice who or which is in possession of confidential information of 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:
- 10.2.1 the former client has given informed written consent to the solicitor or law practice so acting; or
 - 10.2.2 an effective information barrier has been established.

11 Conflict of duties concerning current clients

- 11.1 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.
- 11.2 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 Rule 11.3.
- 11.3 Where a solicitor or law practice seeks to act in the circumstances specified in Rule 11.2, the solicitor may, subject always to each solicitor discharging their duty to act in the best interests of their client, only act if each client:
- 11.3.1 is aware that the solicitor or law practice is also acting for another client; and
 - 11.3.2 has given informed consent to the solicitor or law practice so acting.
- 11.4 In addition to the requirements of Rule 11.3, where a solicitor or law practice is in possession of confidential information of 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:
- 11.4.1 a solicitor may act where there is a conflict of duties arising from the possession of confidential information, where each client has given informed consent to the solicitor acting for another client;
 - 11.4.2 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.
- 11.5 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 that the duty of confidentiality to other client(s) is not put at risk and the parties have given informed consent.

12 Conflict concerning a solicitor's own interests

12.1 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.

12.2 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.

12.3 A solicitor must not borrow any money, nor assist an associate to borrow money, from:

12.3.1 a client of the solicitor or of the solicitor's law practice; or

12.3.2 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 is:

- (i) an Authorised Deposit-taking Institution;
- (ii) a trustee company;
- (iii) the responsible entity of a managed investment scheme registered under Chapter 5C of the *Corporations Act 2001* (Cth) or a custodian for such a scheme;
- (iv) 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
- (v) the employer of the solicitor.

12.4 A solicitor will not have breached this Rule merely by:

12.4.1 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:

- (i) of any entitlement of the solicitor, or the solicitor's law practice or associate, to claim executor's commission;
- (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
- (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.

12.4.2 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:

- (i) a member of the solicitor's immediate family; or
- (ii) a solicitor, or a member of the immediate family of a solicitor, who is a partner, employer, or employee, of the solicitor.

- 12.4.3 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 that the solicitor advises the client:
- (i) 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;
 - (ii) that the client may refuse any referral, and
the client has given informed consent to the commission or benefit received or which may be received.
- 12.4.4 acting for a client in any dealing in which a financial benefit may be payable to a third party for referring the client, provided that the solicitor has first disclosed the payment or financial benefit to the client.

13 Completion or termination of engagement

- 13.1 A solicitor with designated responsibility for a client's matter must ensure completion of the legal services for that matter UNLESS:
- 13.1.1 the client has otherwise agreed;
 - 13.1.2 the law practice is discharged from the engagement by the client;
 - 13.1.3 the law practice terminates the engagement for just cause and on reasonable notice; or
 - 13.1.4 the engagement comes to an end by operation of law.
- 13.2 Where a client is required to stand trial for a serious criminal offence, the client's failure to make satisfactory arrangements for the payment of costs will not normally justify termination of the engagement UNLESS the solicitor or law practice has:
- 13.2.1 served written notice on the client of the solicitor's intention, a reasonable time before the date appointed for commencement of the trial or the commencement of the sittings of the court in which the trial is listed, providing the client at least seven (7) days to make satisfactory arrangements for payment of the solicitor's costs; and
 - 13.2.2 given appropriate notice to the registrar of the court in which the trial is listed to commence.
- 13.3 Where a client is legally assisted and the grant of aid is withdrawn or otherwise terminated, a solicitor or law practice may terminate the engagement by giving reasonable notice in writing to the client, such that the client has a reasonable opportunity to make other satisfactory arrangements for payment of costs which would be incurred if the engagement continued.

14 Client documents

14.1 A solicitor with designated responsibility for a client's matter, must ensure that, upon completion or termination of the law practice's engagement:

14.1.1 the client or former client; or

14.1.2 another person authorised by the client or former client,

is given any client documents, (or if they are electronic documents copies of those documents), as soon as reasonably possible when requested to do so by the client, unless there is an effective lien.

14.2 A solicitor or solicitor's law practice may destroy client documents after a period of 7 years has elapsed since the completion or termination of the engagement, except where there are client instructions or legislation to the contrary.

15 Lien over essential documents

15.1 Notwithstanding Rule 14, when a solicitor claims to exercise a lien for unpaid legal costs over client documents which are essential to the client's defence or prosecution of current proceedings:

15.1.1 if another solicitor is acting for the client, the first solicitor must surrender the documents to the second solicitor:

(i) if the second solicitor undertakes to hold the documents subject to the lien and with reasonable security for the unpaid costs; or

(ii) if the first solicitor agrees to the second solicitor agreeing to pay, or entering into an agreement with the client to procure payment of, the first solicitor's costs upon completion of the relevant proceedings.

15.1.2 alternatively, the solicitor, upon receiving reasonable security for the unpaid costs, must deliver the documents to the client.

16 Charging for document storage

16.1 a solicitor must not charge:

16.1.1 for the storage of documents, files or other property on behalf of clients or former clients of the solicitor or law practice (or predecessors in practice); or

16.1.2 for retrieval from storage of those documents, files or other property,

UNLESS the client or former client has agreed in writing to such charge being made.

ADVOCACY AND LITIGATION

17 Independence – avoidance of personal bias

- 17.1 A solicitor representing a client in a matter that is before the court must not act as the mere mouthpiece of the client or of the instructing solicitor (if any) 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 instructions where applicable.
- 17.2 A solicitor will not have breached the solicitor's duty to the client, and will not have failed to give appropriate consideration to the client's or the instructing solicitor's instructions, simply by choosing, contrary to those instructions, to exercise the forensic judgments called for during the case so as to:
- 17.2.1 confine any hearing to those issues which the solicitor believes to be the real issues;
 - 17.2.2 present the client's case as quickly and simply as may be consistent with its robust advancement; or
 - 17.2.3 inform the court of any persuasive authority against the client's case.
- 17.3 A solicitor 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 solicitor's personal opinion on the merits of that evidence or issue.
- 17.4 A solicitor must not become the surety for the client's bail.

18 Formality before the court

- 18.1 A solicitor must not, in the presence of any of the parties or solicitors, deal with a court on terms of informal personal familiarity which may reasonably give the appearance that the solicitor has special favour with the court.

19 Frankness in court

- 19.1 A solicitor must not deceive or knowingly or recklessly mislead the court.
- 19.2 A solicitor must take all necessary steps to correct any misleading statement made by the solicitor to a court as soon as possible after the solicitor becomes aware that the statement was misleading.
- 19.3 A solicitor will not have made a misleading statement to a court simply by failing to correct an error in a statement made to the court by the opponent or any other person.
- 19.4 A solicitor seeking any interlocutory relief in an ex parte application must disclose to the court all factual or legal matters which:
- 19.4.1 are within the solicitor's knowledge;
 - 19.4.2 are not protected by legal professional privilege; and
 - 19.4.3 the solicitor has reasonable grounds to believe would support an argument against granting the relief or limiting its terms adversely to the client.

- 19.5 A solicitor who has knowledge of matters which are within Rule 19.4 must:
- 19.5.1 seek instructions for the waiver of legal professional privilege, if the matters are protected by that privilege, so as to permit the solicitor to disclose those matters under Rule 19.4; and
 - 19.5.2 if the client does not waive the privilege as sought by the solicitor:
 - (i) must inform the client of the client's responsibility to authorise such disclosure and the possible consequences of not doing so; and
 - (ii) must inform the court that the solicitor cannot assure the court that all matters which should be disclosed have been disclosed to the court.
- 19.6 A solicitor must, at the appropriate time in the hearing of the case if the court has not yet been informed of that matter, inform the court of:
- 19.6.1 any binding authority;
 - 19.6.2 where there is no binding authority, any authority decided by an Australian appellate court; and
 - 19.6.3 any applicable legislation,
- known to the solicitor and which the solicitor has reasonable grounds to believe to be directly in point, against the client's case.
- 19.7 A solicitor need not inform the court of matters within Rule 19.6 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 solicitor to have informed the court of such matters in the ordinary course has already arrived or passed.
- 19.8 A solicitor who becomes aware of matters within Rule 19.6 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:
- 19.8.1 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
 - 19.8.2 requesting the court to relist 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.
- 19.9 A solicitor need not inform the court of any matter otherwise within Rule 19.8 which would have rendered admissible any evidence tendered by the prosecution which the court has ruled inadmissible without calling on the defence.
- 19.10 A solicitor 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.
- 19.11 A solicitor must inform the court of any misapprehension by the court as to the effect of an order which the court is making, as soon as the solicitor becomes aware of the misapprehension.
- 19.12 A solicitor must alert the opponent and if necessary inform the court if any express concession made in the course of a trial in civil proceedings by the opponent about evidence, case-law or legislation is to the knowledge of the solicitor contrary to the true position and is believed by the solicitor to have been made by mistake.

20 Delinquent or guilty clients

- 20.1 A solicitor who, as a result of information provided by the client or a witness called on behalf of the client, learns during a hearing or after judgment or the decision is reserved and while it remains pending, that the client or a witness called on behalf of the client:
- 20.1.1 has lied in a material particular to the court or has procured another person to lie to the court;
 - 20.1.2 has falsified or procured another person to falsify in any way a document which has been tendered; or
 - 20.1.3 has suppressed or procured another person to suppress material evidence upon a topic where there was a positive duty to make disclosure to the court;
- must –
- 20.1.4 advise the client that the court should be informed of the lie, falsification or suppression and request authority so to inform the court; and
 - 20.1.5 refuse to take any further part in the case unless the client authorises the solicitor to inform the court of the lie, falsification or suppression and must promptly inform the court of the lie, falsification or suppression upon the client authorising the solicitor to do so but otherwise may not inform the court of the lie, falsification or suppression.
- 20.2 A solicitor whose client in criminal proceedings confesses guilt to the solicitor but maintains a plea of not guilty:
- 20.2.1 may cease to act, if there is enough time for another solicitor to take over the case properly before the hearing, and the client does not insist on the solicitor continuing to appear for the client;
 - 20.2.2 in cases where the solicitor continues to act 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;
 - (iii) may argue that the evidence as a whole does not prove that the client is guilty of the offence charged;
 - (iv) may argue that for some reason of law the client is not guilty of the offence charged; and
 - (v) may argue that for any other reason not prohibited by (i) and (ii) the client should not be convicted of the offence charged;
 - 20.2.3 must not continue to act if the client insists on giving evidence denying guilt or requires the making of a statement asserting the client's innocence.
- 20.3 A solicitor whose client informs the solicitor that the client intends to disobey a court's order must:
- 20.3.1 advise the client against that course and warn the client of its dangers;
 - 20.3.2 not advise the client how to carry out or conceal that course; and
 - 20.3.3 not inform the court or the opponent of the client's intention unless:
 - (i) the client has authorised the solicitor to do so beforehand; or
 - (ii) the solicitor believes on reasonable grounds that the client's conduct constitutes a threat to any person's safety.

21 Responsible use of court process and privilege

- 21.1 A solicitor must take care to ensure that the solicitor's advice to invoke the coercive powers of a court:
- 21.1.1 is reasonably justified by the material then available to the solicitor;
 - 21.1.2 is appropriate for the robust advancement of the client's case on its merits;
 - 21.1.3 is not made principally in order to harass or embarrass a person; and
 - 21.1.4 is not made principally in order to gain some collateral advantage for the client or the solicitor or the instructing solicitor out of court.
- 21.2 A solicitor must take care to ensure that decisions by the solicitor to make allegations or suggestions under privilege against any person:
- 21.2.1 are reasonably justified by the material then available to the solicitor;
 - 21.2.2 are appropriate for the robust advancement of the client's case on its merits; and
 - 21.2.3 are not made principally in order to harass or embarrass a person.
- 21.3 A solicitor must not allege any matter of fact in:
- 21.3.1 any court document settled by the solicitor;
 - 21.3.2 any submission during any hearing;
 - 21.3.3 the course of an opening address; or
 - 21.3.4 the course of a closing address or submission on the evidence, unless the solicitor believes on reasonable grounds that the factual material already available provides a proper basis to do so.
- 21.4 A solicitor must not allege any matter of fact amounting to criminality, fraud or other serious misconduct against any person unless the solicitor believes on reasonable grounds that:
- 21.4.1 available material by which the allegation could be supported provides a proper basis for it; and
 - 21.4.2 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 and the case if it is not made out.
- 21.5 A solicitor must not make a suggestion in cross-examination on credit unless the solicitor believes on reasonable grounds that acceptance of the suggestion would diminish the credibility of the evidence of the witness.
- 21.6 A solicitor may regard the opinion of an instructing solicitor that material which is available to the instructing solicitor is credible, being material which appears to the solicitor from its nature to support an allegation to which Rules 21.1, 21.2, 21.3 and 21.4 apply as a reasonable ground for holding the belief required by those Rules (except in the case of a closing address or submission on the evidence).
- 21.7 A solicitor who has instructions which justify submissions for the client in mitigation of the client's criminality 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 solicitor believes on reasonable grounds that such disclosure is necessary for the proper conduct of the client's case.

21.8 Without limiting the generality of Rule 21.2, in proceedings in which an allegation of sexual assault, indecent assault or the commission of an act of indecency is made and in which the alleged victim gives evidence:

21.8.1 a solicitor must not ask that witness a question or pursue a line of questioning of that witness which is intended:

- (i) to mislead or confuse the witness; or
- (ii) to be unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; and

21.8.2 a solicitor must take into account any particular vulnerability of the witness in the manner and tone of the questions that the solicitor asks.

22 Communication with opponents

22.1 A solicitor must not knowingly make a false statement to an opponent in relation to the case (including its compromise).

22.2 A solicitor must take all necessary steps to correct any false statement made by the solicitor to an opponent as soon as possible after the solicitor becomes aware that the statement was false.

22.3 A solicitor will not have made a false statement to the opponent simply by failing to correct an error on any matter stated to the solicitor by the opponent.

22.4 A solicitor must not confer or deal with any party represented by or to the knowledge of the solicitor indemnified by an insurer, unless the party and the insurer have signified willingness to that course.

22.5 A solicitor must not, outside an ex parte application or a hearing of which an 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:

22.5.1 the court has first communicated with the solicitor in such a way as to require the solicitor to respond to the court; or

22.5.2 the opponent has consented beforehand to the solicitor communicating with the court in a specific manner notified to the opponent by the solicitor.

22.6 A solicitor must promptly tell the opponent what passes between the solicitor and a court in a communication referred to in Rule 22.5.

22.7 A solicitor must not raise any matter with a court in connection with current proceedings on any occasion to which an opponent has consented under Rule 22.5.2 other than the matters specifically notified by the solicitor to the opponent when seeking the opponent's consent.

22.8 A solicitor must take steps to inform the opponent as soon as possible after the solicitor has reasonable grounds to believe that there will be an application on behalf of the client to adjourn any hearing, of that fact and the grounds of the application, and must try, with the opponent's consent, to inform the court of that application promptly.

23 Opposition access to witnesses

- 23.1 A solicitor must not take any step to prevent or discourage a prospective witness or a witness from conferring with an opponent or being interviewed by or on behalf of any other person involved in the proceedings.
- 23.2 A solicitor will not have breached Rule 23.1 simply by telling a prospective witness or a witness that he or she need not agree to confer or to be interviewed or by advising about relevant obligations of confidentiality.

24 Integrity of evidence – influencing evidence

- 24.1 A solicitor must not:
- 24.1.1 advise or suggest to a witness that false or misleading evidence should be given nor condone another person doing so; or
 - 24.1.2 coach a witness by advising what answers the witness should give to questions which might be asked.
- 24.2 A solicitor will not have breached Rules 24.1 by:
- 24.2.1 expressing a general admonition to tell the truth;
 - 24.2.2 questioning and testing in conference the version of evidence to be given by a prospective witness; or
 - 24.2.3 drawing the witness's attention to inconsistencies or other difficulties with the evidence, but must not encourage the witness to give evidence different from the evidence which the witness believes to be true.

25 Integrity of evidence – two witnesses together

- 25.1 A solicitor must not confer with, or condone another solicitor conferring with, more than one lay witness (including a party or client) at the same time:
- 25.1.1 about any issue which there are reasonable grounds for the solicitor to believe may be contentious at a hearing; and
 - 25.1.2 where such conferral could affect evidence to be given by any of those witnesses, unless the solicitor believes on reasonable grounds that special circumstances require such a conference.
- 25.2 A solicitor will not have breached Rule 25.1 by conferring with, or condoning another solicitor conferring with, more than one client about undertakings to a court, admissions or concessions of fact, amendments of pleadings or compromise.

26 Communication with witnesses under cross-examination

- 26.1 A solicitor must not confer with any witness (including a party or client) called by the solicitor on any matter related to the proceedings while that witness remains under cross-examination, unless:
- 26.1.1 the cross-examiner has consented beforehand to the solicitor doing so; or
 - 26.1.2 the solicitor:
 - (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 solicitor's intention to do so; and
 - (iii) otherwise does inform the cross-examiner as soon as possible of the solicitor having done so.

27 Solicitor as material witness in client's case

- 27.1 In a case in which it is known, or becomes apparent, that a solicitor will be required to give evidence material to the determination of contested issues before the court, the solicitor may not appear as advocate for the client in the hearing.
- 27.2 In a case in which it is known, or becomes apparent, that a solicitor will be required to give evidence material to the determination of contested issues before the court the solicitor, an associate of the solicitor or a law practice of which the solicitor is a member may act or continue to act for the client unless doing so would prejudice the administration of justice.

28 Public comment during current proceedings

- 28.1 A solicitor must not publish or take steps towards the publication of any material concerning current proceedings which may prejudice a fair trial or the administration of justice.

29 Prosecutor's duties

- 29.1 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.
- 29.2 A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.
- 29.3 A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.
- 29.4 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.
- 29.5 A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connection 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 other than material subject to statutory immunity, unless the prosecutor believes on reasonable grounds that such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person.
- 29.6 A prosecutor who has decided not to disclose material to the opponent under Rule 29.5 must consider whether:
- 29.6.1 the charge against the accused to which such material is relevant should be withdrawn; or
- 29.6.2 the accused should be faced only with a lesser charge to which such material would not be so relevant.
- 29.7 A prosecutor must call as part of the prosecution's case all witnesses:
- 29.7.1 whose testimony is admissible and necessary for the presentation of all of the relevant circumstance;
- 29.7.2 whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
- UNLESS:
- (i) the opponent consents to the prosecutor not calling a particular witness;
- (ii) 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;
- (iii) the only matter with respect to which the particular witness can give admissible evidence goes to establishing a particular point already adequately established by another witness or other witnesses; or
- (iv) the prosecutor believes on reasonable grounds that the testimony of a particular witness is plainly untruthful or is plainly unreliable,
- provided that 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 (ii), (iii) or (iv) together with the grounds on which the prosecutor has reached that decision.

- 29.8 A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully or improperly obtained must promptly:
- 29.8.1 inform the opponent if the prosecutor intends to use the material; and
 - 29.8.2 make available to the opponent a copy of the material if it is in documentary form.
- 29.9 A prosecutor must not confer with or interview any accused except in the presence of the accused's legal representative.
- 29.10 A prosecutor must not inform the court or an opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.
- 29.11 A prosecutor who has informed the court of matters within Rule 29.10, 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 next the case is before the court.
- 29.12 A prosecutor:
- 29.12.1 must correct any error made by the opponent in address on sentence;
 - 29.12.2 must inform the court of any relevant authority or legislation bearing on the appropriate sentence;
 - 29.12.3 must assist the court to avoid appealable error on the issue of sentence;
 - 29.12.4 may submit that a custodial or non-custodial sentence is appropriate; and
 - 29.12.5 may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant decisions.
- 29.13 A solicitor who appears as counsel assisting an inquisitorial body such as the Criminal Justice Commission, the Australian Crime Commission, the Australian Securities and Investments Commission, the ACCC, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with Rules 29.1, 29.3 and 29.4 as if the body is a court referred to in those Rules and any person whose conduct is in question before the body is an accused referred to in Rule 29.

RELATIONS WITH OTHER SOLICITORS

30 Another solicitor or other person's error

- 30.1 A solicitor must not take unfair advantage of the obvious error of another solicitor or other person, if to do so would obtain for a client a benefit which has no supportable foundation in law or fact.

31 Inadvertent disclosure

- 31.1 Unless otherwise permitted or compelled by law, a solicitor to whom material known or reasonably suspected to be confidential is disclosed by another solicitor, or by some other person and who is aware that the disclosure was inadvertent must not use the material and must:
- 31.1.1 return, destroy or delete the material (as appropriate) immediately upon becoming aware that disclosure was inadvertent; and
 - 31.1.2 notify the other solicitor or the other person of the disclosure and the steps taken to prevent inappropriate misuse of the material.
- 31.2 A solicitor who reads part or all of the confidential material before becoming aware of its confidential status must:
- 31.2.1 notify the opposing solicitor or the other person immediately; and
 - 31.2.2 not read any more of the material.
- 31.3 If a solicitor is instructed by a client to read confidential material received in error, the solicitor must refuse to do so.

32 Unfounded allegations

- 32.1 A solicitor must not make an allegation against another Australian legal practitioner of unsatisfactory professional conduct or professional misconduct unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it.

33 Communication with another solicitor's client

- 33.1 A solicitor must not deal directly with the client or clients of another practitioner unless:
- 33.1.1 the other practitioner has previously consented;
 - 33.1.2 the solicitor believes on reasonable grounds that:
 - (i) the circumstances are so urgent as to require the solicitor to do so; and
 - (ii) the dealing would not be unfair to the opponent's client;
 - 33.1.3 the substance of the dealing is solely to enquire whether the other party or parties to a matter are represented and, if so, by whom; or
 - 33.1.4 there is notice of the solicitor's intention to communicate with the other party or parties, but the other practitioner has failed, after a reasonable time, to reply and there is a reasonable basis for proceeding with contact.

RELATIONS WITH OTHER PERSONS

34 Dealing with other persons

- 34.1 A solicitor must not in any action or communication associated with representing a client:
- 34.1.1 make any statement which grossly exceeds the legitimate assertion of the rights or entitlements of the solicitor's client, and which misleads or intimidates the other person;
 - 34.1.2 threaten the institution of criminal or disciplinary proceedings against the other person if a civil liability to the solicitor's client is not satisfied; or
 - 34.1.3 use tactics that go beyond legitimate advocacy and which are primarily designed to embarrass or frustrate another person.
- 34.2 In the conduct or promotion of a solicitor's practice, the solicitor must not seek instructions for the provision of legal services in a manner likely to oppress or harass a person who, by reason of some recent trauma or injury, or other circumstances, is, or might reasonably be expected to be, at a significant disadvantage in dealing with the solicitor at the time when the instructions are sought.

35 Contracting with third parties

- 35.1 If a solicitor instructs a third party on behalf of the client, and the solicitor is not intending to accept personal liability for payment of the third party's fees, the solicitor must advise the third party in advance.

LAW PRACTICE MANAGEMENT

36 Advertising

- 36.1 A solicitor or principal of a law practice must ensure that any advertising, marketing, or promotion in connection with the solicitor or law practice is not:
- 36.1.1 false;
 - 36.1.2 misleading or deceptive or likely to mislead or deceive;
 - 36.1.3 offensive; or
 - 36.1.4 prohibited by law.
- 36.2 A solicitor must not convey a false, misleading or deceptive impression of specialist expertise and must not advertise or authorise advertising in a manner that uses the words “accredited specialist” or a derivative of those words (including post-nominals), unless the solicitor is a specialist accredited by the relevant professional body.

37 Supervision of legal services

- 37.1 A solicitor with designated responsibility for a matter must exercise reasonable supervision over solicitors and all other employees engaged in the provision of the legal services for that matter.

38 Returning judicial officers

- 38.1 A solicitor who is a former judicial officer must not appear in:
- 38.1.1 any court if the solicitor has been a member thereof or presided therein; or
 - 38.1.2 any court from which appeals to any court of which the solicitor was formerly a member may be made or brought,
- for a period of two years after ceasing to hold that office unless permitted by the relevant court.

39 Sharing premises

- 39.1 Where a solicitor or law practice shares an office with any other entity or business engaged in another calling, and a client is receiving services concurrently from both the law practice and the other entity, the solicitor, or law practice (as the case requires) must take all reasonable steps to ensure that the client is clearly informed about the nature and the terms of the services being provided to the client by the law practice, including (if applicable) that the services provided by the other entity are not provided by the law practice.

40 Sharing receipts

40.1 A solicitor must not, in relation to the conduct of the solicitor's practice, or the delivery of legal services, share, or enter into any arrangement for the sharing of, the receipts arising from the provision of legal services by the solicitor, with:

40.1.1 any disqualified person; or

40.1.2 any person convicted of an indictable offence that involved dishonest conduct, whether or not a conviction was recorded.

41 Mortgage financing and managed investments

41.1 A solicitor must not conduct a managed investment scheme or engage in mortgage financing as part of their law practice, except under a scheme administered by the relevant professional body and where no claim may be made against a fidelity fund.

42 Anti-discrimination and harrassment

42.1 A solicitor must not in the course of practice, engage in conduct which constitutes:

42.1.1 discrimination;

42.1.2 sexual harassment; or

42.1.3 workplace bullying.

43 Dealing with the regulatory authority

43.1 Subject only to his or her duty to the client, a solicitor must be open and frank in his or her dealings with a regulatory authority.

43.2 A solicitor must respond within a reasonable time and in any event within 14 days (or such extended time as the regulatory authority may allow) to any requirement of the regulatory authority for comments or information in relation to the solicitor's conduct or professional behaviour in the course of the regulatory authority investigating conduct which may be unsatisfactory professional conduct or professional misconduct and in doing so the solicitor must furnish in writing a full and accurate account of his or her conduct in relation to the matter.

PRACTICE RULES

44 Supervised legal practice

44.1 “Supervised legal practice” as defined in section 4 of the *Legal Profession Act 2004* (NSW) shall include legal practice by a person who is an Australian legal practitioner as:

44.1.1 an employee of, or other person working under supervision in, a corporate or government body; or

44.1.2 an employee of any person who is not an Australian legal practitioner, where the person engages in legal practice under the supervision of a person who:

44.1.3 holds an unrestricted practising certificate, or

44.1.4 holds, or is eligible to hold, an Australian practising certificate, and that person has completed the period of supervised legal practice set out in s 53(1)(a) or (b) of the *Legal Profession Act* (NSW), or the equivalent provision of a corresponding law.

45 Legal aid application - criminal proceedings

45.1 A practitioner, who has accepted instructions to act for an accused person required to stand trial for a criminal offence, subject to the person’s obtaining a grant of legal aid, must assist that person to apply for the grant as soon as practicable after receiving instructions, and not later than thirty (30) days before the commencement of the trial.

45.2 If instructions to apply for a grant are received within thirty (30) days of the trial, the practitioner must serve on the Registrar, or listing director of the Court, notice in writing that an application for legal aid has been made, and explaining the circumstances in which the application is made, and forward a copy of that notice to the Legal Aid Commission.

45.3 The practitioner must, thereafter, consult with the Legal Aid Commission in respect of the application, and give notice of the application to the prosecution and, if necessary, apply to the Court for directions.

46 Legal aid – Court of Criminal Appeal proceedings

- 46.1 A practitioner who accepts instructions from an accused person who is an appellant to the Court of Criminal Appeal must not terminate the retainer and withdraw from the proceedings on the ground that the client has failed to make arrangements satisfactory to the practitioner for payment of the practitioner's costs, unless the practitioner has, not later than thirty (30) days before the date appointed for the callover at which the hearing date of the Appeal will be set -
- 46.1.1 served notice in writing on the client of the practitioner's intention to terminate the retainer and withdraw from the proceedings at the expiration of seven (7) days if the client fails, within that time, to make satisfactory arrangements for payment of the practitioner's costs, and
 - 46.1.2 delivered a copy of that notice to the Registrar of the Court of Appeal.
- 46.2 If a practitioner does not, in the circumstances described in Rule 46.1, terminate the retainer and withdraw from the proceedings, but undertakes to assist the appellant to apply for a grant of legal aid:
- 46.2.1 The practitioner must ensure that the application for a grant of legal aid is lodged with the Legal Aid Commission as soon as practicable, and not later than ten (10) days prior to the callover, if that is practicable.
 - 46.2.2 If, in the circumstances, it is not practicable to lodge the application for legal aid earlier than ten (10) days prior to the callover, the practitioner must, before the callover date, serve on the Registrar of the Court of Criminal Appeal notice in writing of the lodgement of the Application for Legal Aid, containing an explanation for its late lodgement, and must serve a copy of that notice on the Legal Aid Commission.
 - 46.2.3 The practitioner must, thereafter, consult with the Legal Aid Commission in respect of the application, and give notice of the application to the other parties to the Appeal and, if required by the Legal Aid Commission, apply to the Registrar of the Court for direction.

47 Litigation lending

- 47.1 A practitioner who has assisted a client to obtain a "litigation lending account" with a bank, or other financial institution, for the purpose of funding litigation, must not withdraw or cause or permit the withdrawal of money from the client's account for any purpose other than the following:
- 47.1.1 to reimburse the practitioner for disbursements (including Counsel's fees) already paid; or
 - 47.1.2 to pay on behalf of the client, any accounts due for payment to a third party in accordance with the client's instructions, including the payment of costs due to a practitioner who has previously acted for the client where such a payment is required to obtain delivery of documents retained under a lien for unpaid costs claimed by that practitioner.

48 File register

- 48.1 A practitioner must, as soon as practicable after receiving instructions to provide legal services to a person -
- 48.1.1 record in a file assigned for the retention of documents and information on behalf of that person -
- (i) the full name and address of the person;
 - (ii) the date of receipt of the practitioner's instructions;
 - (iii) a short description of the services which the practitioner has agreed to provide; and
 - (iv) an identifier; and
- 48.1.2 enter the name of the person and the identifier referred to in 48.1.1(iv) in a file register, which must be maintained in the practitioner's office for a period of not less than seven years from the date of the last entry in the register.
- 48.2 A practitioner will satisfy the requirements of clause 48.1 if the practitioner records the information therein described in a general file maintained for a particular person or in respect of a particular category of work.

49 Safe custody registers

- 49.1 A practitioner who is instructed by a person to hold for that person in safe custody, a will or any deed, document, or other valuable property, must record in a register maintained for that sole purpose in the practitioner's office -
- 49.1.1 the name and address of the person;
- 49.1.2 a short description of the item held for the person in safe custody;
- 49.1.3 the date of the practitioner's receipt of the item; and
- 49.1.4 the identifier of the safe custody packet, in which the item is held by the practitioner.

50 Register of financial interests

- 50.1 A practitioner must disclose in a register maintained at the practitioner's principal place of practice the name and other identifying particulars of any company, partnership, or other entity, in which the practitioner has a financial interest and which engages in any dealing with trust money or controlled money (as defined by section 243 of the *Legal Profession Act 2004* (NSW)) received by the practitioner or the practitioner's firm.

51 Inspection of registers

- 51.1 A practitioner must, upon receipt of a request from a Trust Account Inspector, or an investigator appointed in accordance with section 267 of the *Legal Profession Act 2004* (NSW), produce for inspection any file register, safe custody register or financial register maintained by the practitioner in accordance with Rules 48, 49 or 50. The information and records prescribed in Rules 48, 49 and 50 may be maintained in electronic form, provided that they can be produced in visible form on demand.
- 51.2 For the purposes of this Rule, "visible form" means production of information in permanent legible form in the English language.

52 Solicitors may robe

- 52.1 Where a solicitor and barrister appears in a Court (on those occasions when barristers are expected to robe) and acts in the role of an advocate then that solicitor and barrister shall be entitled to robe in court dress in the same manner and style as a barrister.
- 52.2 Upon so appearing robed, the solicitor and barrister shall announce his or her appearance to the Court, including that he or she is a solicitor and barrister.
- 52.3 It shall not be either unsatisfactory professional conduct or professional misconduct should a solicitor and barrister choose not to robe when appearing in his or her role as an advocate.
- 52.4 For the purposes of this Rule, “court dress” means bar jacket, jabot or bar tie, robe and, where applicable, wig of Junior Counsel.

53 Transfer of a practitioner’s practice

- 53.1 When a practitioner intends to transfer to another practitioner the whole or part of the practitioner’s practice, including clients’ work in progress, and to put the other practitioner in possession of the documents held by the practitioner on behalf of clients, the practitioner must give to each client, fourteen (14) days (or such other period as may be reasonable in the circumstances), before the practitioner delivers possession of the practice to the practitioner acquiring it, notice in writing:
- 53.1.1 of the intended transfer of documents to the practitioner acquiring the practice, unless a contrary direction is received from the client; and
 - 53.1.2 of the client’s right to give to the practitioner a contrary direction in relation to the conduct of the client’s affairs and the delivery of the client’s documents.
- 53.2 The notice which is sent to any client, on whose behalf the practitioner holds money in trust or under the practitioner’s control, must advise the client of -
- 53.2.1 the balance of money held on the client’s behalf;
 - 53.2.2 the practitioner’s intention to transfer the relevant account to the practitioner acquiring the practice, unless advised by the client to the contrary; and
 - 53.2.3 the client’s right to give to the practitioner a contrary direction as to the manner in which the practitioner should deal with the account on the client’s behalf.
- 53.3 The practitioner, in addition to giving notice to clients as required by paragraphs 53.1 and 53.2, must comply with all other legislative provisions applicable to the trust money or controlled money held by the practitioner.
- 53.4 Where a practitioner who is engaged in the conduct of a legal practice forms, with another practitioner, a partnership, which continues to conduct the practice, it will be a sufficient compliance with this Rule if the practitioner gives notice in writing of the admission of the partner to the clients of the practice within fourteen (14) days of that event.

54 Place of settlement

- 54.1 A practitioner when dealing with other practitioners for the purpose of determining the place of settlement of a conveyancing transaction must comply with the following rules:
- 54.1.1 When the settlement involves the completion of a sale of real property and the agreement for sale stipulates the place of settlement, then settlement must occur at that place unless the parties otherwise agree.
 - 54.1.2 If the parties to a conveyancing transaction agree on a place for settlement of the transaction then settlement must occur at that place.
 - 54.1.3 In the absence of agreement, and subject to paragraph 54.1.4, settlement of a conveyancing transaction must occur at the place where the documents of title to the relevant property are held or at a place nominated by the party presently entitled to the possession of the title documents or the solicitor for that party.
 - 54.1.4 In the absence of a contrary agreement by the parties and if the practitioner acting for the purchaser in the relevant transaction so requires, settlement must occur at either the Land Titles Office in Sydney or a place where duty can be paid on settlement provided that the purchaser pays the additional costs, if any, which are reasonably incurred by the vendor, and/or another party holding the title documents, because they have attended at such place instead of the place required by paragraph 54.1.3.
 - 54.1.5 When two or more transactions are to be settled at the same time the place of settlement must be determined by applying the above rules to the last transaction, the completion of which depends upon the receipt of money from an earlier transaction.
- 54.2 For the purposes of this Rule “conveyancing transaction” means a transaction in which an interest in real property is conveyed or surrendered and includes a sale and purchase, a mortgage, or discharge of mortgage.

55 Debt collection or mercantile agencies

- 55.1 A practitioner must not allow the practitioner’s business name or stationery to be used by a debt collection, or mercantile, agent in a manner that is likely to mislead the public, and a practitioner who receives, from a debt collection or mercantile agent, instructions to act for a client creditor, must ensure that -
- 55.1.1 the practitioner’s relationship to the agent is fully disclosed to the client;
 - 55.1.2 the information required to be disclosed to the client by any relevant legislation and these Rules is communicated to the client;
 - 55.1.3 the practitioner maintains direct control and supervision of any proceedings on behalf of the client; and
 - 55.1.4 that any money recovered on behalf of the client is accounted for by the practitioner.

56 Practitioner members of local government councils

- 56.1 A practitioner must not act for a client in any dealing between that client and a local Council, of which the practitioner is a member, unless the relevant dealing:
- 56.1.1 involves a non-contentious matter of a relatively minor nature; or
 - 56.1.2 is one within a class of dealings which the Council of the Law Society has declared to be exempt from this Rule; or
 - 56.1.3 is declared by the Law Society Council to be exempt from this Rule upon the Application of the practitioner.

57 MCLE (Continuing Professional Development)

- 57.1 A practitioner must, during each year in which the practitioner holds a practising certificate, unless exempted by the Council, comply with a condition endorsed on the practitioner's practising certificate, requiring the practitioner to complete mandatory continuing legal education (Continuing Professional Development) by completing a course of education which satisfies the following requirements:
- 57.1.1 the course may consist of an education programme, seminar, workshop, lecture, conference or discussion group or a multimedia or website based programme or private study of audio or video material, or the research and preparation of an article published in a legal publication or such other publication approved by the Council, or any combination of two or more of those events;
 - 57.1.2 the course must be of significant intellectual or practical content and must deal primarily with matters directly related to the practice of law;
 - 57.1.3 the course must be conducted by persons who are qualified by practical or academic experience in the subject covered;
 - 57.1.4 the course must be relevant to a practitioner's immediate or long term needs in relation to the practitioner's professional development and to the practice of law;
 - 57.1.5 the course must have an aggregate value of ten (10) MCLE units; and
 - 57.1.6 the course must include at least one (1) MCLE unit in each of the following fields:
 - (i) ethics and professional responsibility
 - (ii) practice management and business skills
 - (iii) professional skills
- 57.2 A practitioner's engagement in a course of continuing legal education, which satisfies the requirements in Rule 57.1, will entitle the practitioner to one (1) MCLE unit for each hour of participation in the course.
- 57.3 A practitioner shall be entitled to claim one (1) MCLE unit to a maximum of five (5) MCLE units for every hour spent:
- 57.3.1 in a programme of private study of audio or video material specifically designed for the purpose of updating legal knowledge determined by reference to contemporaneous records maintained by the practitioner engaged in the study.
 - 57.3.2 in the preparation of written or oral material forming part of the formal instruction within any one course of continuing legal education or formal legal education.

- 57.3.3 in the presentation of written or oral material forming part of formal instruction within any one course of continuing education or formal legal education to a maximum of five (5) MCLE units for any one course.
- 57.4 A practitioner shall be entitled to one (1) MCLE unit to a maximum of five (5) MCLE units for every thousand words of an article published in a legal publication, or such other publication as the Council of the Law Society may approve (including an article which the practitioner has structurally edited or refereed).
- 57.5 A practitioner who is a member of a committee or Task Force of the Council of the Law Society, of the Executive Council of NSW Young Lawyers, of the Law Council of Australia, or a practice section of a professional association (which deals with substantive issues) and gives reasonable attendance at its meetings, is entitled to claim one (1) MCLE unit to a maximum of three (3) MCLE units for each period of two hours or more engaged in committee work, which is of substantial significance to the practice of law and is reasonably likely to assist the practitioner's professional development.
- 57.6 A practitioner cannot claim entitlement under this paragraph in respect of committee work for which the practitioner has claimed or intends to claim entitlement for CLE units under paragraphs 57.3 or 57.4
- 57.7 The Council may exempt a practitioner, in whole or in part, from compliance with the condition on the practitioner's practising certificate, requiring completion of a course of continuing legal education, if -
- 57.7.1 the practitioner has been in practice for a period exceeding forty (40) years, and does not practise as a principal; or
 - 57.7.2 the practitioner, by reason of the practitioner's geographical location; any physical disability, or any particular exigencies of practice, may experience particular hardship or difficulty in completing the required number of MCLE units.
 - 57.7.3 the practitioner has been or will be absent from practice because of parenting leave, unemployment or illness;
 - 57.7.4 the practitioner has reduced hours of practice owing to part time or casual employment;
 - 57.7.5 the practitioner's circumstances are such that the practitioner is required to hold a practising certificate but is not engaged in legal practice.
- 57.8 Exemptions in relation to 57.7.3, 57.7.4 and 57.7.5 will generally be granted on a pro-rata basis.
- 57.9 The practitioner must, unless exempted by the Council, certify, when applying for renewal of the practitioner's practising certificate each year, that the practitioner has, within the period of twelve months ending on 31 March immediately prior to the practitioner's application for a practising certificate, completed ten (10) units of mandatory continuing legal education, in accordance with this Rule.
- 57.10 MCLE units accrued in the period 1 January - 31 March in any year may be carried forward into the following MCLE year but can only be counted in one MCLE year.

58 Solicitors advising on loan or security documents

58.1 Purpose of Rule

58.1.1 The purpose of this Rule is to state the approved practice to be followed by a solicitor (whether a principal or an employee) when engaged to advise a proposed signatory on loan or security documents (“the documents”).

58.2 Application of Rule

58.2.1 This Rule applies where the solicitor is engaged to give advice to a proposed signatory that will be:

- (i) a borrower, a grantor of a security interest, or a security provider referred to as a borrower (“a borrower”) in the documents; or
- (ii) a third party mortgagor, guarantor, surety mortgagor or indemnifier (“a guarantor”) providing security for the borrower; and

whether or not the documents relate to the provision of credit to which the National Credit Code applies.

58.2.2 This Rule applies only where the solicitor has been asked by the proposed lender to provide evidence of advice.

58.3 Independence of the advising solicitor

58.3.1 The solicitor must not act for the lender in the transaction to which the documents relate.

58.3.2 The solicitor must not advise a proposed signatory in any circumstances where the interests of any signatory or proposed signatory conflict with those of the solicitor, or with those of any other client of the solicitor.

58.3.3 The solicitor’s advice can be given to a proposed signatory, who is either a natural person, or a corporation subject to paragraphs 58.3.5 and 58.3.6 of this Rule.

58.3.4 The solicitor must not advise a proposed signatory in the presence of any other signatory or proposed signatory of the documents, or in any circumstances where the interests of any signatory or proposed signatory of the documents conflict with those of any other such signatory or proposed signatory, except in accordance with the following principles laid down by the Privy Council in *Clark Boyce v Mouat* [1994] 1 AC 428 at 437:

- (i) that where the interests of the parties to the transaction may conflict the solicitor may only act for more than one such party provided he/she has obtained the informed consent in writing of those parties to the solicitor acting for them,
- (ii) such consent being given in the knowledge that there is or may be a conflict between the parties, and as a result
- (iii) that the solicitor may be disabled from disclosing to each party the full knowledge which he/she possesses as to the transaction, or
- (iv) that the solicitor may be disabled from giving advice to one party which conflicts with the interests of the other or others.

58.3.5 Where the solicitor's advice is given to a proposed signatory who is a natural person, the solicitor must not act for, or give advice to, any other signatory or proposed signatory except with the written consent of all signatories or proposed signatories given in accordance with the principles specified in paragraph 58.3.4 of this Rule.

58.3.6 Where the solicitor's advice is given to a proposed signatory that is a corporation, the solicitor must not act for, or give advice to, any other signatory or proposed signatory apart from a related corporation within the meaning of the *Corporations Act 2001* (Cth), or a person who is the sole director or sole member of the signatory corporation, or otherwise except with the written consent of all signatories or proposed signatories given in accordance with the principles specified in paragraph 58.3.4 of this Rule.

58.4 Identification of proposed signatories of documents

58.4.1 The solicitor must identify the proposed signatory as the person described by reference to one of the following documents:

- (i) passport
- (ii) Driver licence
- (iii) Medicare card
- (iv) credit card
- (v) rate notice
- (vi) other.

58.5 Advice

58.5.1 The solicitor should advise a proposed signatory of those matters that the solicitor, in exercising the professional skill and judgment called for in the circumstances of the particular case, considers appropriate.

58.5.2 Without limiting the generality of 58.5.1, when advising a borrower, the solicitor should, where necessary, advise the borrower that:-

- (i) by signing the documents the borrower will be liable for regular payments of interest and repayment of the amount of the loan at the due date;
- (ii) if the borrower fails to make any payment on time, the lender can charge a higher rate of interest, and the lender's costs of rectifying that failure;
- (iii) if the borrower fails to comply with any of the terms and conditions of the loan including the obligations to pay principal or interest,
 - (A) the lender can sue the borrower personally; and
 - (B) the lender may take possession of the borrower's property, and, after notice, sell it to recover the amount owing together with interest and other costs including solicitor's costs, the costs of selling the property and the costs of maintaining the property; and
 - (C) if the proceeds of sale of the borrower's property are insufficient to satisfy the debt to the lender, the lender can sue the borrower for the deficit; and

- (iv) if the National Credit Code or the *Personal Property Securities Act 2009* (Cth) apply, additional obligations, rights and remedies may apply as set out in the loan documents.

58.5.3 Without limiting the generality of 58.5.1, when advising a guarantor, the solicitor should, where necessary, advise the guarantor that:-

- (i) if the borrower fails to make any payment on time, the guarantor will be liable to remedy that failure, and that could involve the guarantor in payment to the lender of all amounts owed by the borrower to the lender including principal, interest, default interest and the lender's costs of rectifying the default;
- (ii) if the guarantor fails to remedy any failure by the borrower to comply with the terms and conditions of the loan in any way, including the obligation to pay principal, interest, default interest, or other charges,
 - (A) the lender can sue the guarantor personally; and
 - (B) can take possession of the guarantor's property secured to the lender and sell it to recover the amount owing together with interest and other costs, including solicitor's costs, the costs of selling the property and the costs of maintaining the property; and
 - (C) if the proceeds of sale of the guarantor's property are insufficient to satisfy the debt to the lender, the lender can sue the guarantor for the deficit;
- (iii) if the guarantor is a proposed signatory to documents under which the guarantor's liability can be increased, that fact, and the extent of the possible increase, and of any restriction or limitation of the guarantor's rights or obligations in relation to the security and any other party to the documents;
- (iv) the lender can exercise its rights against the guarantor even if it has not pursued the borrower;
- (v) the liability of the guarantor is limited to a specified sum, or is unlimited (whichever is the case) and may be affected by cross guarantees; and
- (vi) if the National Credit Code or the *Personal Property Securities Act 2009* (Cth) apply, additional obligations, rights and remedies may apply as set out in the loan documents.

58.5.4 In any case, the solicitor must specifically advise the proposed signatory that:

- (i) the solicitor by virtue of their profession possess no special skill to give financial (as distinct from legal) advice; and
- (ii) if the proposed signatory has any doubts about the wisdom of the transaction, or its possible financial consequences for the proposed signatory or has any other questions about any financial aspect of the transaction or the documents, the proposed signatory should consult an accountant or other financial counsellor of the proposed signatory's choice before signing the documents.

58.6 Evidence of advice

- 58.6.1 Any Statutory Declaration, in evidence of independent advice, provided by the borrower must be in the form of Schedules 1 or 1A or where provided by a borrower/trustee in the form of Schedule 1B.
- 58.6.2 Any Statutory Declaration, in evidence of independent advice, provided by a guarantor must be in the form of Schedules 2 or 2A.
- 58.6.3 A solicitor (e.g. a solicitor acting for the lender) must not aid, abet, counsel or procure any other solicitor to tender evidence otherwise than in conformity with this Rule and in the authorised form approved and published by the NSW Law Society from time to time.
- 58.6.4 Where an interpreter is present at the conference when a signatory is advised by a solicitor instructed independently of the lender, the name of the interpreter must be included in the Statutory Declaration, and the interpreter must be asked to complete a certificate in the form of Schedule 3 before the conference is concluded.

58.7 Acknowledgment by signatory

- 58.7.1 The solicitor giving the independent advice must obtain an acknowledgment, in the form set out in Schedules 4 or 4A (or in the case of a borrower/trustee Schedule 4B or 4C) below for retention on the solicitor's file (that is, must not be sent by the solicitor to the lender or the lender's solicitor) together with a copy of the Statutory Declaration and a comprehensive list of the loan and security documents.

58.8 Consent by signatory to advice

- 58.8.1 If the solicitor is aware of a possible conflict of interest between the parties to the transaction, the solicitor must, before advising more than one of such parties, obtain the informed consent of each such party in writing in the form of Schedule 5 before such advice is given.

59 Conducting another business

- 59.1 A practitioner who engages in the conduct of another business concurrently, but not directly in association, with the conduct of the practitioner's legal practice must ensure that the other business is not of such a nature that the practitioner's involvement in it would be likely to impair, or conflict with, the practitioner's duties to clients in the conduct of the practice, and the practitioner must -
- 59.1.1 maintain separate and independent files, records and accounts in respect of the legal practice, and the other business;
 - 59.1.2 disclose to any client of the practitioner, who, in the course of dealing with the practitioner, deals with the other business, the practitioner's financial or other interest in that business; and
 - 59.1.3 cease to act for the client if the practitioner's independent service of the client's interest is reasonably likely to be affected by the practitioner's interest in the other business.
- 59.2 A practitioner will be deemed to be engaged in the conduct of another business where the practitioner, or an associate:
- 59.2.1 is entitled, at law or in equity, to an interest in the assets of the business which is significant or of relatively substantial value;
 - 59.2.2 exercises any material control over the conduct and operation of the business; or
 - 59.2.3 has an entitlement to a share of the income of the business which is substantial, having regard to the total income which is derived from it.

60 Stationery - Business name

- 60.1 A practitioner must place, in legible form on any letterhead of the practitioner's practice, the name under which the practitioner practises; the address of the practitioner's principal place of practice; the practitioner's telephone number, and, if appropriate, any Document Exchange number and facsimile transmission number, and the practitioner must, in any written communications with clients or other parties, identify the author by name.
- 60.2 A practitioner must not conduct the practitioner's practice solely, or in association with another service provider, under a business name which might reasonably be expected to mislead or deceive a person, seeking the provision of legal or associated services, as to the nature and identity of the provider, or as to the nature and quality of the services offered.
- 60.3 A practitioner must not, in connection with the practitioner's practice, display on the premises at which the practice is conducted, or on any stationery or other material distributed by the practitioner to clients or potential clients, a business name, title or description of the practitioner's practice which:
- 60.3.1 includes the words "legal centre", unless the practitioner is conducting or engaged in the operation of, a Community Legal Centre; or
 - 60.3.2 includes words which might reasonably infer that the entity to which they relate is a Government or quasi Government body.
 - 60.3.3 includes the name of a disqualified person.

SCHEDULES CONTAINING THE FOLLOWING FORMS IN RESPECT OF RULE 58:

Schedule 1:	Declaration by Borrower/Grantor of a Security Interest
Schedule 1A:	Declaration by Borrower/Grantor of a Security Interest (Corporation)
Schedule 1B:	Declaration by Borrower/Grantor of a Security Interest (Trustee)
Schedule 2:	Declaration by Third Party Mortgagor, Guarantor, Surety Mortgagor or Indemnifier for the Borrower/Grantor of a Security Interest
Schedule 2A:	Declaration by Third Party Mortgagor, Guarantor, Surety Mortgagor or Indemnifier for the Borrower/Grantor of a Security Interest (Corporation)
Schedule 3:	Interpreter's Certificate
Schedule 4 Part 1:	Acknowledgment of Legal Advice by Proposed Borrower/ Proposed Grantor of a Security Interest
Schedule 4 Part 2:	Acknowledgment of Legal Advice by Proposed Guarantor
Schedule 4A Part 1:	Acknowledgment of Legal Advice by Proposed Borrower/ Grantor of a Security Interest (Corporation)
Schedule 4A Part 2:	Acknowledgment of Legal Advice by Proposed Guarantor (Corporation)
Schedule 4B Part 1:	Acknowledgment of Legal Advice by Proposed Borrower/ Grantor of a Security Interest (Trustee)
Schedule 4C:	Acknowledgment of Legal Advice by Proposed Borrower/Grantor of a Security Interest/Trustee (Corporation)
Schedule 5:	Consent by Borrower/Grantor of a Security Interest/Trustee/ Guarantor to Legal Advice

Schedule 1: Declaration by Borrower / Grantor of a Security Interest

*Delete words that do not apply

I, _____ (declarant)

of, _____

DO SOLEMNLY AND SINCERELY DECLARE AS FOLLOWS:

1. I am the borrower / grantor of a security interest* named in certain loan and security documents in favour of _____ (proposed lender) relating to property (specify address or other description) _____

2. I have received independent legal advice regarding the loan and security documents referred to in paragraph 1.
3. After receiving that advice I have freely and voluntarily signed the following documents: (specify the documents produced for signature)
 - (a) _____
 - (b) _____
 - (c) _____
- 4.* Name: _____, (interpreter) was present at the conference.

Note: The interpreter must complete a certificate in the form of Schedule 3 before the conference concludes.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the contents to be true and by virtue of the *Oaths Act 1900*.

MADE AND SUBSCRIBED by) _____
)
the said Declarant at) _____ the _____ day of _____ 20..

(Signatory)

Before me: _____
A Justice of the Peace/Solicitor

I [*insert name of authorised witness*], a [*insert qualification to be authorised witness*], certify the following matters concerning the making of this statutory declaration by the person who made it:

- 1 *I saw the face of the person or *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.
- 2 *I have known the person for at least 12 months or *I have confirmed the person's identity using an identification document and the document I relied on was [*describe identification document relied on*].

[*insert signature of authorised witness*]

Date: _____

FORMER RULES

Schedule 1A: Declaration by Borrower / Grantor of a Security Interest (Corporation)

*Delete words that do not apply

I, _____ (declarant)

of, _____

DO SOLEMNLY AND SINCERELY DECLARE AS FOLLOWS:

1. I am
 - an officer of the borrower
 - an officer of the grantor of a security interest
 - a person involved in the management of the borrower
 - a person involved in the management of the grantor of a security interestnamed in certain loan and security documents in favour of _____ (proposed lender)
relating to property (specify address or other description) _____

2. I have received independent legal advice regarding the loan and security documents referred to in paragraph 1.
3. After receiving that advice as
 - an officer of the borrower / grantor of a security interest
 - a person involved in the management of the borrower / grantor of a security interestthe borrower / grantor of a security interest has signed the following documents:
(specify the documents produced for signature)
(a) _____
(b) _____
- 4.* Name: _____ (interpreter)
was present at the conference.

Note: The Interpreter must complete a certificate in the form of Schedule 3 before the conference concludes.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the contents to be true and by virtue of the *Oaths Act 1900*.

MADE AND SUBSCRIBED by) _____
)
the said Declarant at) _____ the _____ day of _____ 20..

(Signatory)

Before me: _____
A Justice of the Peace/Solicitor

I [*insert name of authorised witness*], a [*insert qualification to be authorised witness*], certify the following matters concerning the making of this statutory declaration by the person who made it:

- 1 *I saw the face of the person or *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.
- 2 *I have known the person for at least 12 months or *I have confirmed the person's identity using an identification document and the document I relied on was [*describe identification document relied on*].

[*insert signature of authorised witness*]

Date: _____

FORMER RULES

Schedule 1B: Declaration by Borrower/Grantor of a Security Interest (Trustee)

*Delete words that do not apply

I, _____ (declarant)

of _____

DO SOLEMNLY AND SINCERELY DECLARE AS FOLLOWS:

1. I am
- the borrower
 - the grantor of a security interest
 - an officer of the borrower
 - an officer of the grantor of a security interest
 - a person involved in the management of the borrower
 - a person involved in the management of the grantor of a security interest
- named in certain loan and security documents in favour of _____

_____ (proposed lender)

relating to property (specify address or other description) _____

_____ being property vested in me/the borrower *as duly appointed Trustee of the _____ Trust

_____ pursuant to a duly constituted and subsisting Deed of Trust dated _____

or *as duly appointed Trustee of the Estate of _____

_____ to whom a Grant of Probate /Letters of Administration* was made on _____

2. I have received independent legal advice regarding the loan and security documents referred to in paragraph 1 which I declare that I am/the borrower / grantor of a security interest is legally entitled and authorised to execute as Trustee under such Trust/Grant of Probate/Letters of Administration* and pursuant to the provisions of the *Trustee Act 1925*.

3. After receiving that advice I have/the borrower/the grantor of a security interest has freely and voluntarily signed the following documents:
(specify the documents produced for signature)

(a) _____

(b) _____

(c) _____

4.* Name: _____ (interpreter)
was present at the conference.

Note: The interpreter must complete a certificate in the form of Schedule 3 before the conference concludes.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the contents to be true and by virtue of the *Oaths Act 1900*.

MADE AND SUBSCRIBED by) _____
)
the said Declarant at) _____ the _____ day of _____ 20..

(Signatory)

Before me: _____
A Justice of the Peace/Solicitor

I [*insert name of authorised witness*], a [*insert qualification to be authorised witness*], certify the following matters concerning the making of this statutory declaration by the person who made it:

- 1 *I saw the face of the person or *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.
- 2 *I have known the person for at least 12 months or *I have confirmed the person's identity using an identification document and the document I relied on was [*describe identification document relied on*].

[*insert signature of authorised witness*]

Date: _____

Schedule 2: Declaration by Third Party Mortgagor, Guarantor, Surety Mortgagor or Indemnifier for the Borrower/Grantor of a Security Interest

*Delete words that do not apply

I, _____ (declarant)

of, _____

DO SOLEMNLY AND SINCERELY DECLARE AS FOLLOWS:

1. I am the Third Party Mortgagor, Guarantor, Surety Mortgagor, Indemnifier for the Borrower/Grantor of a security interest* named in certain loan and security documents between _____

(borrower / grantor of a security interest)
and _____ (proposed lender)
relating to property (specify address or other description) _____

2. I have received independent legal advice regarding the loan and security documents referred to in paragraph 1.
3. After receiving that advice I have freely and voluntarily signed the following documents:
(specify the documents produced for signature)
(a) _____
(b) _____
(c) _____
- 4.* Name: _____ (interpreter)
was present at the conference.

Note: The interpreter must complete a certificate in the form of Schedule 3 before the conference concludes.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the contents to be true and by virtue of the Oaths Act 1900.

MADE AND SUBSCRIBED by) _____
)
the said Declarant at _____) _____ the _____ day of _____ 20..

(Signatory)

Before me: _____
A Justice of the Peace/Solicitor

I [*insert name of authorised witness*], a [*insert qualification to be authorised witness*], certify the following matters concerning the making of this statutory declaration by the person who made it:

- 1 *I saw the face of the person or *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.
- 2 *I have known the person for at least 12 months or *I have confirmed the person's identity using an identification document and the document I relied on was [*describe identification document relied on*].

[*insert signature of authorised witness*]

Date: _____

FORMER RULES

Schedule 2A: Declaration by Third Party Mortgagor, Guarantor, Surety Mortgagor or Indemnifier for the Borrower / Grantor of a Security Interest (Corporation)

*Delete words that do not apply

I, _____ (declarant)

of _____

DO SOLEMNLY AND SINCERELY DECLARE AS FOLLOWS:

1. I am
 - an officer of, or
 - a person involved in the management of
 - the Third Party Mortgagor
 - the Surety Mortgagor
 - the Indemnifier for the Borrower
 - the Grantor of a security interest
 - the Guarantornamed in certain loan and security documents between _____

_____ (borrower/grantor of a security interest)
and _____ (proposed lender)
relating to property (specify address or other description) _____

2. I have received independent legal advice regarding the loan and security documents referred to in paragraph 1.
3. After receiving that advice I have freely and voluntarily signed the following documents:
(specify the documents produced for signature)
 - (a) _____
 - (b) _____
 - (c) _____
- 4.* Name: _____ (interpreter)
was present at the conference.
Note: The interpreter must complete a certificate in the form of Schedule 3 before the conference concludes.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the contents to be true and by virtue of the *Oaths Act 1900*.

MADE AND SUBSCRIBED by) _____
)
the said Declarant at) _____ the _____ day of _____ 20..

(Signatory)

Before me: _____
A Justice of the Peace/Solicitor

I [*insert name of authorised witness*], a [*insert qualification to be authorised witness*], certify the following matters concerning the making of this statutory declaration by the person who made it:

- 1 *I saw the face of the person or *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.
- 2 *I have known the person for at least 12 months or *I have confirmed the person's identity using an identification document and the document I relied on was [*describe identification document relied on*].

[*insert signature of authorised witness*]

Date: _____

FORMER RULES

Schedule 3: Interpreter's Certificate

*Delete words that do not apply

1. This Certificate is provided by:

Name: _____

Address: _____

Occupation: _____

2. On the _____ day of _____ 20.., I attended a conference at the office of _____ ("the Solicitor")

at _____

3. Present at the conference were _____

_____ (the borrower/grantor of a security interest/guarantor*)

and _____

The duration of the conference was _____

4. I spoke to the borrower/grantor of a security interest/guarantor*

in the _____ language and I established that is his/her customary language.

5. I am fluent in the English language and in the _____ language and I am competent to translate between both those languages.

6. During the conference and before any documents were signed, I translated all statements made by the solicitor and _____

from the English language to the _____ language and I translated all statements made by the borrower/guarantor* from the

_____ language to the English language.

7. I am not related to the borrower/grantor of a security interest/guarantor*.

8. Other than payment for my professional service I receive no financial benefit from the transaction to which the documents relate.

DATE: _____

SIGNED: _____
(Signatory)

FORMER RULES

Schedule 4 Part 1: Acknowledgment of Legal Advice by Proposed Borrower/Proposed Grantor of a Security Interest

I, _____ (signatory)
acknowledge that,

1. I have instructed _____ (name of Solicitor)
(my Solicitor) to give me legal advice concerning the following loan and security documents:
 - (i) Loan agreement/offer of loan between

and _____

(the borrower/grantor of a security interest)
 - (ii) Mortgage over property (specify address or other description) _____

 - (iii) Memorandum registered number _____
 - (iv) Charge over _____
 - (v) Other _____
(the loan documents)

2. I produced to my solicitor the following evidence as to my identity:
 - (a) Passport
 - (b) Driver Licence
 - (c) Medicare Card
 - (d) Credit Card
 - (e) Rate Notice
 - (f) Other

3. The advice given to me by my solicitor included that:
 - (a) by signing the loan documents I will be liable for regular payments of interest and repayment of the amount of the loan at the due date;
 - (b) if I fail to make any payment on time, the lender can charge a higher rate of interest, and the lender's costs of rectifying that failure;
 - (c) if I fail to comply with any of the terms and conditions of the loan documents including the obligations to pay principal or interest,
 - the lender can sue me personally; and
 - the lender may take possession of my property; and
 - after notice, sell my property to recover the amount owing together with interest and other costs including solicitor's costs, the costs of selling the property and the costs of maintaining the property; and
 - if the proceeds of the sale of my property are insufficient to satisfy the debt to the lender, the lender can sue me for the deficit; and

- (d) the additional obligations, rights and remedies set out in the loan documents if the National Credit Code or the *Personal Property Securities Act 2009* (Cth) apply.
 - (e) by making a Statutory Declaration verifying the giving of the advice I am making a statement having the force of an Oath which can be relied upon by the lender.
5. Generally, in relation to the proposed transaction my solicitor specifically advised me that:
- solicitors by virtue of their profession possess no special skill to give financial (as distinct from legal) advice; and
 - if I have any doubts about the wisdom of the transaction, or its possible financial consequences for me or I have any other questions about any financial aspect of the transaction or the documents, I should consult an accountant or other financial counsellor of my choice before signing the documents.
6. After receiving the above advice I freely and voluntarily signed the loan documents.

DATE: _____

SIGNED: _____
(Signatory)

FORMER RULES

Schedule 4 Part 2: Acknowledgment of Legal Advice by Proposed Guarantor

1. I have instructed _____ (name of Solicitor)
(my Solicitor) to give me legal advice concerning the following loan and security documents:
 - (i) Loan agreement/offer of loan between

and _____
_____ (the borrower/grantor of a security interest)
 - (ii) Mortgage over property (specify address or other description) _____

 - (iii) Memorandum registered number _____
 - (iv) Charge over _____
 - (v) Guarantee _____
 - (vi) Other _____
(the loan documents)
2. I produced to my solicitor the following evidence as to my identity:
 - (a) Passport
 - (b) Driver Licence
 - (c) Medicare Card
 - (d) Credit Card
 - (e) Rate Notice
 - (f) Other _____
3. The advice given to me by my solicitor included that:
 - (a) if the borrower fails to make any payment on time, I as the guarantor will be liable to remedy that failure, and that could involve me in payment to the lender of all amounts owed by the borrower to the lender including principal, interest, default interest and the lender's costs of rectifying the default;
 - (b) if as the guarantor I fail to remedy any failure by the borrower to comply with the terms and conditions of the loan in any way, including the obligation to pay principal, interest, default interest, or other charges,
 - the lender can sue me personally; and
 - can take possession of my property secured to the lender and, after notice, sell it to recover the amount owing together with interest and other costs, including solicitor's costs, the costs of selling the property and the costs of maintaining the property; and
 - if the proceeds of sale from my property are insufficient to satisfy the debt to the lender, the lender can sue me for the deficit;

- (c) my liability under the loan documents can be increased (set out the facts regarding the extent of the possible increase, and of any restriction or limitation of the guarantor's rights or obligations in relation to the security and any other party to the documents);
 - (d) the lender can exercise its rights against me as the guarantor even if it has not pursued the borrower;
 - (e) my liability under the loan documents is (eg limited to a specified sum, or is unlimited (whichever is the case) and may be affected by cross guarantees; and
 - (f) the additional obligations, rights and remedies set out in the loan documents if the National Credit Code or the *Personal Property Securities Act 2009* (Cth) apply.
 - (g) by making a Statutory Declaration verifying the giving of the advice I am making a statement having the force of an Oath which can be relied upon by the lender.
4. Generally, in relation to the proposed transaction my solicitor specifically advised me that:
- solicitors by virtue of their profession possess no special skill to give financial (as distinct from legal) advice; and
 - if I have any doubts about the wisdom of the transaction, or its possible financial consequences for the proposed signatory or I have any other questions about any financial aspect of the transaction or the documents, I should consult an accountant or other financial counsellor of my choice before signing the documents.
6. After receiving the above advice I freely and voluntarily signed the loan documents.

DATE: _____

SIGNED: _____
(Signatory)

Schedule 4A Part 1: Acknowledgment of Legal Advice by Proposed Borrower/ Grantor of a Security Interest (Corporation)

I, _____ (signatory)
acknowledge that,

1. I have instructed _____ (name of Solicitor)
(my solicitor) to give me legal advice concerning the following loan and security documents:
 - (i) Loan agreement/offer of loan between

and _____

(the borrower/grantor of a security interest)
 - (ii) Mortgage over property (specify address or other description) _____

 - (iii) Memorandum registered number _____
 - (iv) Charge over _____
 - (v) Other _____
(the loan documents)
2. I produced to my solicitor the following evidence as to my identity:
 - (a) Passport
 - (b) Driver Licence
 - (c) Medicare Card
 - (d) Credit Card
 - (e) Rate Notice
 - (f) Other
3. The advice given to me by my solicitor included that:
 - (a) by signing the loan documents the borrower will be liable for regular payments of interest and repayment of the amount of the loan at the due date;
 - (b) if the borrower fails to make any payment on time, the lender can charge a higher rate of interest, and the lender's costs of rectifying that failure;
 - (c) if the borrower fails to comply with any of the terms and conditions of the loan documents including the obligations to pay principal or interest,
 - the lender can sue the borrower personally; and
 - the lender may take possession of the borrower's property; and
 - after notice, sell the borrower's property to recover the amount owing together with interest and other costs including solicitor's costs, the costs of selling the property and the costs of maintaining the property; and
 - if the proceeds of the sale of the borrower's property are insufficient to satisfy the debt to the lender, the lender can sue the borrower for the deficit; and
 - (d) the additional obligations, rights and remedies set out in the loan documents if the National Credit Code or the *Personal Property Securities Act 2009* (Cth) apply.

- (e) by making a Statutory Declaration verifying the giving of the advice I am making a statement having the force of an Oath which can be relied upon by the lender.
4. Generally, in relation to the proposed transaction my solicitor specifically advised me that:
- solicitors by virtue of their profession possess no special skill to give financial (as distinct from legal) advice; and
 - if I have any doubts about the wisdom of the transaction, or its possible financial consequences for me or I have any other questions about any financial aspect of the transaction or the documents, I should consult an accountant or other financial counsellor of my choice before signing the documents.
5. After receiving the above advice I freely and voluntarily signed the loan documents.

DATE: _____

SIGNED: _____
(Signatory)

FORMER RULES

**Schedule 4A Part 2: Acknowledgment of Legal Advice by Proposed Guarantor
(Corporation)**

I, _____ (signatory)
acknowledge that,

1. I am:
 - an officer of the guarantor
 - a person involved in the management of the guarantor

2. I have instructed _____ (name of Solicitor)
(my Solicitor) to give me legal advice concerning the following loan and security documents:

- (i) Loan agreement/offer of loan between _____)
and _____
_____ (the borrower/grantor of a security interest)
- (ii) Mortgage over property (specify address or other description) _____

- (iii) Memorandum registered number _____
- (iv) Charge over _____
- (v) Guarantee _____
- (vi) Other _____
(the loan documents)

3. I produced to my solicitor the following evidence as to my identity:

- (a) Passport
- (b) Driver Licence
- (c) Medicare Card
- (d) Credit Card
- (e) Rate Notice
- (f) Other

4. The advice given to me by my solicitor included that:

- (a) if the borrower fails to make any payment on time, the guarantor will be liable to remedy that failure, and that could involve payment by the guarantor to the lender of all amounts owed by the borrower to the lender including principal, interest, default interest and the lender's costs of rectifying the default;

- (b) if the guarantor fails to remedy any failure by the borrower to comply with the terms and conditions of the loan in any way, including the obligation to pay principal, interest, default interest, or other charges,
 - the lender can sue the guarantor; and
 - can take possession of the guarantor’s property secured to the lender and, after notice, sell it to recover the amount owing together with interest and other costs, including solicitor’s costs, the costs of selling the property and the costs of maintaining the property; and
 - if the proceeds of sale from the guarantor’s property are insufficient to satisfy the debt to the lender, the lender can sue the guarantor for the deficit;
 - (c) the guarantor’s liability under the loan documents can be increased (set out the facts regarding the extent of the possible increase, and of any restriction or limitation of the guarantor’s rights or obligations in relation to the security and any other party to the documents);
 - (d) the lender can exercise its rights against the guarantor even if it has not pursued the borrower;
 - (e) the guarantor’s liability under the loan documents is (eg limited to a specified sum, or is unlimited (whichever is the case) and may be affected by cross guarantees; and
 - (f) the additional obligations, rights and remedies set out in the loan documents if the National Credit Code or the *Personal Property Securities Act 2009* (Cth) apply.
 - (g) by making a Statutory Declaration verifying the giving of the advice I am making a statement having the force of an Oath which can be relied upon by the lender.
5. Generally, in relation to the proposed transaction my solicitor specifically advised me that:
- solicitors by virtue of their profession possess no special skill to give financial (as distinct from legal) advice; and
 - if I have any doubts about the wisdom of the transaction, or its possible financial consequences for me or I have any other questions about any financial aspect of the transaction or the documents, I should consult an accountant or other financial counsellor of my choice before signing the documents.
6. After receiving the above advice I freely and voluntarily signed the loan documents.

DATE: _____

SIGNED: _____
(Signatory)

Schedule 4B Part 1: Acknowledgment of Legal Advice by Proposed Borrower/Grantor of a Security Interest (Trustee)

*Delete words that do not apply

I, _____ (signatory)

acknowledge that, *as duly appointed Trustee of the _____

_____ Trust,

pursuant to a duly constituted and subsisting Deed of Trust dated _____

or * as duly appointed Trustee of the Estate of _____

to whom a grant of Probate/Letters of Administration was made on _____

1. I have instructed _____ (name of Solicitor) (my solicitor) to give me legal advice concerning the following loan and security documents:

(i) Loan agreement/Offer of loan between _____)

and

_____ the borrower/grantor of a security interest

(ii) Mortgage over trust property (specify address or other description) _____

(iii) Memorandum registered number _____

(iv) Charge over _____

(v) Other _____ (the loan documents)

2. I produced to my solicitor the following evidence as to my identity and legal authority as Trustee:

(a) Passport

(b) Driver Licence

(c) Medicare Card

(d) Credit Card

(e) Rate Notice

(f) Deed of Trust or Grant of Probate/Letters of Administration* dated _____

(g) Other

3. The advice given to me by my solicitor included that:
- (a) As Trustee I have a duty to the beneficiaries of the _____ trust/estate*
of _____
under the Trustee Act 1925 and under the Trust/Will/Estate*
of _____
- (b) Provided that there are no unsatisfied claims by the said beneficiaries or litigation concerning their interests affecting the said trust/estate, and subject to the powers and authorities contained in the said trust instrument/Will of the deceased, I am as Trustee legally empowered to enter into such loan/security documents on behalf of _____ and for the benefit of the beneficiaries of the _____ Trust/Will/Estate*
of _____
- (c) by signing the loan documents I will be liable for regular payments of interest and repayment of the amount of the loan at the due date;
- (d) if I fail to make any payment on time, the lender can charge a higher rate of interest, and the lender's costs of rectifying that failure;
- (e) if I fail to comply with any of the terms and conditions of the loan documents including the obligations to pay principal or interest, the lender can sue me personally; and the lender may take possession of the trust property; and after notice, sell the trust property to recover the amount owing together with interest and other costs including solicitor's costs, the costs of selling the property and the costs of maintaining the property; and if the proceeds of the sale of the trust property are insufficient to satisfy the debt to the lender, the lender can sue me for the deficit; and regarding
- (f) the additional obligations, rights and remedies set out in the loan documents if the National Credit Code or the *Personal Property Securities Act 2009* (Cth) apply; and that
- (g) I owe a professional duty of care as a trustee towards the persons entitled as beneficiaries under such Deed of Trust/Grant of Probate/Letters of Administration*; and that
- (h) by making a Statutory Declaration verifying the giving of the advice I am making a statement having the force of an Oath which can be relied upon by the lender.
4. Generally, in relation to the proposed transaction my solicitor specifically advised me that:
- solicitors by virtue of their profession possess no special skill to give financial (as distinct from legal) advice; and
 - if I have any doubts about the wisdom of the transaction, or its possible financial consequences for me or I have any other questions about any financial aspect of the transaction or the documents, I should consult an accountant or other financial counsellor of my choice before signing the documents.

5. After receiving the above advice I freely and voluntarily signed the loan documents.

DATE: _____

SIGNED: _____
(Signatory)

FORMER RULES

Schedule 4C: Acknowledgment of Legal Advice by Proposed Borrower/Grantor of a Security Interest/Trustee (Corporation)

*Delete words that do not apply

I, _____ (signatory)

acknowledge that, as

- an officer of the
 - a person involved in the management of the
- duly appointed Trustee* of the _____

_____ Trust, pursuant to a duly constituted

and subsisting Deed of Trust dated _____

or as

- an officer of the
 - a person involved in the management of the
- duly appointed Trustee of the Estate of _____

to whom a grant of Probate/Letters of Administration was made on _____

1. I have instructed _____ (name of Solicitor) (my solicitor) to give me legal advice concerning the following loan and security documents:

(i) Loan agreement/Offer of loan between _____)

and _____

_____ the borrower/grantor of a security interest

(ii) Mortgage over trust property (specify address or other description) _____

(iii) Memorandum registered number _____

(iv) Charge over _____

(v) Other _____ (the loan documents)

2. I produced to my solicitor the following evidence as to my identity and legal authority as:

- officer of the Trustee
 - person involved in the management of the Trustee
- (a) Passport
- (b) Driver Licence
- (c) Medicare Card

- (d) Credit Card
- (e) Rate Notice
- (f) Deed of Trust or Grant of Probate/Letters of Administration* dated _____
- (g) Other

3. The advice given to me by my solicitor included that:

(a) The Trustee has a duty to the beneficiaries of the _____ trust/estate*

of _____

under the *Trustee Act 1925* and under the Trust/Will/Estate* of _____

(b) Provided that there are no unsatisfied claims by the said beneficiaries or litigation concerning their interests affecting the said trust/estate, and subject to the powers and authorities contained in the said trust instrument/Will of the deceased, the Trustee is legally empowered to enter into such loan/security documents on behalf

of and for the benefit of the beneficiaries of the _____

_____ Trust/Will/Estate*

of _____

(c) by signing the loan documents the Trustee will be liable for regular payments of interest and repayment of the amount of the loan at the due date;

(d) if the Trustee fails to make any payment on time, the lender can charge a higher rate of interest, and the lender's costs of rectifying that failure;

(e) if the Trustee fails to comply with any of the terms and conditions of the loan documents including the obligations to pay principal or interest, the lender can sue the Trustee; and the lender may take possession of the trust property; and after notice, sell the trust property to recover the amount owing together with interest and other costs including solicitor's costs, the costs of selling the property and the costs of maintaining the property; and if the proceeds of the sale of the trust property are insufficient to satisfy the debt to the lender, the lender can sue the Trustee for the deficit; and regarding

(f) the additional obligations, rights and remedies set out in the loan documents if the National Credit Code or the Personal Property Securities Act 2009 (Cth) apply; and that

(g) The Trustee owes a professional duty of care as a trustee towards the persons entitled as beneficiaries under such Deed of Trust/Grant of Probate/Letters of Administration*; and that

- (h) by making a Statutory Declaration verifying the giving of the advice I am making a statement having the force of an Oath which can be relied upon by the lender.
4. Generally, in relation to the proposed transaction my solicitor specifically advised me that:
- solicitors by virtue of their profession possess no special skills to give financial (as distinct from legal) advice; and
 - if I have any doubts about the wisdom of the transaction, or its possible financial consequences for me or I have any other questions about any financial aspect of the transaction or the documents, I should consult an accountant or other financial counsellor of my choice before signing the documents.
5. After receiving the above advice I freely and voluntarily signed the loan documents.

DATE: _____

SIGNED: _____
(Signatory)

FORMER RULES

Schedule 5: Consent by Borrower/Grantor of a Security Interest/Trustee/Guarantor to Legal Advice

* Delete words that do not apply

I, _____ (signatory)

acknowledge that,

Mr/Ms _____ (name of Solicitor)

(my Solicitor) has been requested to advise me regarding certain loan or security documents

between _____
(borrower/grantor of a security interest/trustee*)

and _____ (proposed lender)

relating to property (specify address or other description) _____

*in company with my co-borrower(s), sureties or co-guarantors, namely

and _____

1. My Solicitor has informed me, before giving such advice:
- that where the interests of the parties to the transaction may conflict the solicitor may only act for more than one such party provided he/she has obtained the informed consent in writing of those parties to the solicitor acting for them,
 - such consent being given in the knowledge that there is or may be a conflict between the parties, and as a result
 - that the solicitor may be disabled from disclosing to each party the full knowledge which he/she possesses as to the transaction, or
 - that the solicitor may be disabled from giving advice to one party which is contrary to or conflicts with the interests of the other or others.

I hereby confirm my consent to the solicitor advising me together with the abovenamed other parties to the transaction notwithstanding the possible conflict between the interests of the parties to the transaction.

DATE: _____

SIGNED: _____
(Signatory)

GLOSSARY OF TERMS

“associate” in reference to a solicitor means:

- (a) a partner, employee, or agent of the solicitor or of the solicitor’s law practice;
- (b) a corporation or partnership in which the solicitor has a material beneficial interest;
- (c) in the case of the solicitor’s incorporated legal practice, a director of the incorporated legal practice or of a subsidiary of the incorporated legal practice;
- (d) a member of the solicitor’s immediate family; or
- (e) a member of the immediate family of a partner of the solicitor’s law practice or of the immediate family of a director of the solicitor’s incorporated legal practice or a subsidiary of the incorporated legal practice.

“associated entity” means an entity that is not part of the law practice but which provides legal or administrative services to a law practice, including but not limited to:

- (a) a service trust or company; or
- (b) a partnerships of law practices operating under the same trading name or a name which includes all or part of the trading name of the law practice.

“Australian legal practitioner” means an Australian lawyer who holds or is taken to hold an Australian practising certificate.

“Australian practising certificate” means a current practising certificate granted under the legal profession legislation of any Australian jurisdiction.

“Australian-registered foreign lawyer” has the same meaning as set out in legal profession legislation.

“Australian roll” means a roll of practitioners maintained under the legal profession legislation of any Australian jurisdiction.

“Authorised Deposit-taking Institution” has the same meaning as an Authorised Deposit-taking Institution within the meaning of the *Banking Act 1959* (Cth).

“barrister” means an Australian legal practitioner whose Australian practising certificate is subject to a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only.

“case” means:

- (a) the court proceedings for which the solicitor is engaged; or
- (b) the dispute in which the solicitor is advising.

“client” with respect to the solicitor or the solicitor’s law practice means a person (not an instructing solicitor) for whom the solicitor is engaged to provide legal services for a matter.

“client documents” means documents to which a client is entitled.

“compromise” includes any form of settlement of a case, whether pursuant to a formal offer under the rules or procedure of a court, or otherwise.

“corporate solicitor” means an Australian legal practitioner who engages in legal practice only in the capacity of an in-house lawyer for his or her employer or a related entity.

“costs” includes disbursements.

“court” means:

- (a) any body described as such;
- (b) any tribunal exercising judicial, or quasi-judicial, functions;
- (c) a professional disciplinary tribunal;
- (d) an industrial tribunal;
- (e) an administrative tribunal;
- (f) an investigation or inquiry established or conducted under statute or by a Parliament;
- (g) a Royal Commission;
- (h) an arbitration or mediation or any other form of dispute resolution.

“current proceedings” means proceedings which have not been determined, including proceedings in which there is still the real possibility of an appeal or other challenge to a decision being filed, heard or decided.

“discrimination” means discrimination that is unlawful under the applicable state, territory or federal anti-discrimination or human rights legislation.

“disqualified person” means any of the following persons whether the thing that has happened to the person happened before or after the commencement of this definition:

- (a) a person whose name has (whether or not at his or her own request) been removed from an Australian roll and who has not subsequently been admitted or re-admitted to the legal profession under legal profession legislation or a corresponding law;
- (b) a person whose Australian practising certificate has been suspended or cancelled under legal profession legislation or a corresponding law and who, because of the cancellation, is not an Australian legal practitioner or in relation to whom that suspension has not finished;
- (c) a person who has been refused a renewal of an Australian practising certificate under legal profession legislation or a corresponding law, and to whom an Australian practising certificate has not been granted at a later time;
- (d) a person who is the subject of an order under legal professional legislation or a corresponding law prohibiting a law practice from employing or paying the person in connection with the relevant practice;
- (e) a person who is the subject of an order under legal profession legislation or a corresponding law prohibiting an Australian legal practitioner from being a partner of the person in a business that includes the solicitor’s practice; or
- (f) a person who is the subject of any order under legal profession legislation or corresponding law, disqualifying them from managing an incorporated legal practice or from engaging in partnerships with certain partners who are not Australian legal practitioners.

“engagement” means the appointment of a solicitor or of a solicitor’s law practice to provide legal services for a matter.

“employee” means a person who is employed or under a contract of service or contract for services in or by an entity whether or not:

- (a) the person works full-time, part-time, or on a temporary or casual basis; or
- (b) the person is a law clerk or articulated clerk.

“employer” in relation to a corporate solicitor means a person or body (not being another solicitor or a law practice) who or which employs the solicitor whether or not the person or body pays or contributes to the solicitor’s salary.

“former client” for the purposes of Rule 10.1, may include a person or entity that has previously instructed:

- (a) the solicitor;
 - (b) the solicitor’s current law practice;
 - (c) the solicitor’s former law practice, while the solicitor was at the former law practice;
 - (d) the former law practice of a partner, co-director or employee of the solicitor, while the partner, co-director or employee was at the former law practice,
- or, has provided confidential information to a solicitor, notwithstanding that the solicitor was not formally retained and did not render an account.

“immediate family” means the spouse (which expression may include a de facto spouse or partner of the same sex), or a child, grandchild, sibling, parent or grandparent of a solicitor.

“instructing solicitor” means a solicitor or law practice who engages another solicitor to provide legal services for a client for a matter.

“insurance company” includes any entity, whether statutory or otherwise, which indemnifies persons against civil claims.

“law practice” means:

- (a) an Australian legal practitioner who is a sole solicitor;
- (b) a partnership of which the solicitor is a partner;
- (c) a multi-disciplinary partnership; or
- (d) an incorporated legal practice.

“legal costs” means amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services including disbursements but not including interest.

“legal profession legislation” means a law of a State or Territory that regulates legal practice and the provision of legal services.

“legal services” means work done, or business transacted, in the ordinary course of legal practice.

“managed investment scheme” has the same meaning as in Chapter 5C of the *Corporations Act 2001* (Cth).

“matter” means any legal service the subject of an engagement or required to be provided by the solicitor or the solicitor’s law practice to fulfil an engagement and includes services provided for:

- (a) a case;
- (b) a dealing between parties that may affect, create or be related to a right, entitlement or interest in property of any kind; or
- (c) advice on the law.

“mortgage financing” means facilitating a loan secured or intended to be secured by mortgage by –

- (a) acting as an intermediary to match a prospective lender and borrower;
 - (b) arranging the loan; or
 - (c) receiving or dealing with payments under the loan,
- but does not include:
- (d) providing legal advice, or preparing an instrument, for the loan;
 - (e) merely referring a person to a prospective lender or borrower, without contacting the prospective lender or borrower on that person’s behalf or facilitating a loan between family members; or
 - (f) facilitating a loan secured by mortgage:
 - (i) of which an Australian legal practitioner is the beneficial owner; or
 - (ii) held by an Australian legal practitioner or a corporation in his, her or its capacity as the trustee of any will or settlement, or which will be so held once executed or transferred.

“multi-disciplinary partnership” means:

- (a) a partnership between one or more solicitors and one or more other persons who are not solicitors, where the business of the partnership includes the provision of legal services in this jurisdiction as well as other services;

but does not include:

- (b) a partnership consisting only of one or more solicitors and one or more Australian-registered foreign lawyers.

“opponent” means:

- (a) the practitioner appearing for a party opposed to the client of the solicitor in question; or
- (b) that party, if the party is unrepresented.

“order” includes a judgment, decision or determination.

“party” includes each one of the persons or corporations who or which is jointly a party to any matter.

“practitioner” means a person or law practice entitled to practise the profession of law.

“principal” means a solicitor who is the holder of a principal practising certificate, within the meaning of legal profession legislation.

“professional misconduct” includes:

- (a) unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- (b) conduct of an Australian legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the solicitor is not a fit and proper person to engage in legal practice.

“prosecutor” means a solicitor who appears for the complainant or Crown in criminal proceedings.

“regulatory authority” means an entity identified in legal profession legislation which has responsibility for regulating the activities of solicitors in that jurisdiction.

“serious criminal offence” means an offence that is:

- (a) an indictable offence against a law of the Commonwealth or any jurisdiction (whether or not the offence is or may be dealt with summarily);
- (b) an offence against the law of another jurisdiction that would be an indictable offence against a law of this jurisdiction (whether or not the offence could be dealt with summarily if committed in this jurisdiction); or
- (c) an offence against the law of a foreign country that would be an indictable offence against a law of the Commonwealth or this jurisdiction if committed in this jurisdiction (whether or not the offence could be dealt with summarily if committed in this jurisdiction).

“sexual harassment” means harassment that is unlawful under the applicable state, territory or federal anti-discrimination or human rights legislation.

“solicitor” means:

- (a) an Australian legal practitioner who practises as or in the manner of a solicitor; or
- (b) an Australian registered foreign lawyer who practises as or in the manner of a solicitor.

“solicitor with designated responsibility” means the solicitor ultimately responsible for a client’s matter or the solicitor responsible for supervising the solicitor that has carriage of a client’s matter.

“substantial benefit” means a benefit which has a substantial value relative to the financial resources and assets of the person intending to bestow the benefit.

“trustee company” is as defined in relevant jurisdictional legislation: the *Trustee Companies Act 1964* (NSW), the *Trustee Companies Act 1968* (QLD), the *Trustee Companies Act 1984* (VIC), the *Trustee Companies Act 1988* (SA), the *Trustee Companies Act 1953* (TAS), the *Trustee Companies Act 1987* (WA) and the *Trustee Companies Act 1947* (ACT).

“unsatisfactory professional conduct” includes conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

“workplace bullying” means bullying that is unlawful under the applicable state or territory anti discrimination or human rights legislation. If no such legislative definition exists, it is conduct within the definition relied upon by the Australian Human Rights Commission to mean workplace bullying. In general terms it includes the repeated less favourable treatment of a person by another or others in the workplace, which may be considered unreasonable and inappropriate workplace practice. It includes behaviour that could be expected to intimidate, offend, degrade or humiliate.

FORMER RULES

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