

Amendment to Barristers' Conduct Rules

Dear Member

I write to advise members of an important development in the regulation of barristers in Queensland.

For hundreds of years, the Bar has been separate from, and independent from, the solicitors' branch of the profession. Each branch of the profession has maintained different rules reflecting that separation and independence and the different roles they play in the proper administration of justice.

The strict division between barristers and solicitors has been maintained through, *inter alia*, rules which prohibit a barrister from being a partner or employee in a solicitor's legal practice. Rule 16 of the Bar Association's *2011 Barristers' Rule, as amended (the Barristers' Conduct Rules)* is the current iteration of that longstanding rule.

The introduction of incorporated legal practices through the provision of the *Legal Profession Act 2007* (Qld) (**LPA**) created the possibility that any person could hold an interest in a solicitor's legal practice through holding shares. That included, potentially, a barrister.

At the time of the introduction of incorporated legal practices, no changes were made to the *Barristers' Conduct Rules* to prohibit barristers having an interest or shareholding in an incorporated legal practice. It is not clear why that is the case.

The Bar Association of Queensland has, for some years, been considering the appropriateness of changing the *Barristers' Conduct Rules* to make it clear that a barrister is not to have an interest, or shareholding, in an incorporated legal practice. Recent events have brought home the necessity for such a change to be implemented by the Association.

As a consequence, the Bar Council of the Association on 20 May 2024 unanimously resolved to amend the *Barristers' Conduct Rules* to expressly prohibit barristers having any interest or shareholding in an incorporated legal practice, other than one that is a publicly listed company.

The terms of the proposed amended Rule 16 are as follows:

16. (a) A barrister must be a sole practitioner, and must not:
- ~~(a)(i)~~ practise in partnership with any person;
 - ~~(b)(ii)~~ practise as the employer of any legal practitioner who acts as a legal practitioner in the course of that employment;
 - ~~(c)(iii)~~ practise as the employee of any person;
 - ~~(d)(iv)~~ be a legal practitioner director of an incorporated legal practice; ~~or~~
 - ~~(v)~~ be a member of a multi-disciplinary partnership; or
 - ~~(e)(vi)~~ hold or have any interest in a law practice, other than a barrister's own practice, whether directly or indirectly.
- (b) Subsection (a)(vi) does not apply to a shareholding in an incorporated legal practice which is a listed public company.

As just mentioned, this was the unanimous position of the Bar Council. All of the members of the Bar Council were in agreement that such changes to the *Barristers' Conduct Rules* are necessary to ensure the fundamental independence and high ethical standards of the Bar.

The proposed Rule has been provided to the Attorney-General and the Legal Services Commissioner, and a notice has been provided to the Courier Mail for publication, as required by section 223 of the LPA. That publication should occur in the coming days, and as required by the LPA, invites comments and submissions within 21 days from the date of publication. The Association will then advise the Attorney-General about any submissions or comments received, as appropriate. The proposed amendments will come into effect if and when the Attorney-General notifies the making of them pursuant to section 225 of the LPA.

I am conscious that there may be barristers who presently do have an interest or shareholding in an incorporated legal practice. The rule will not come into force for a number of months. It is expected that members will have taken steps to divest themselves of any interest or shares before the new rule comes into force. If there are members who require additional time to divest any interest or shares, an application can be made to the Bar Council for dispensation from compliance with the Rules while divestiture occurs.

Yours faithfully,

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President



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