Australian Capital Territory

Legal Profession (Barristers) Rules 2026

Subordinate law SL2026–

made under the

Legal Profession Act 2006, s 579(1) (Rules for barristers)

EXPLANATORY STATEMENT

BACKGROUND

The *Legal Profession Act 2006* (ACT) (LPA) empowers the Bar Association of the ACT (Bar Association) to make Rules for or in relation to practice as a barrister, as an Australian-registered foreign lawyer and for incorporated legal practices and multi-disciplinary partnerships.

The *Legal Profession (Barristers) Rules 2026* replaces the *Legal Profession (Barristers) Rules 2021.*

At the Annual General Meeting of the Bar Association held on 11 September 2025, members resolved to make an amendment to Rule 81.

As required by section 583 of the LPA, the Bar Association wrote to the ACT Attorney-General and published a public notice in the Canberra Times and ACT Government website seeking public comment on the proposal to adopt the revised Rules.

The Rules amend Rule 81:

81. A barrister must be a sole practitioner, and must not practise:
(a) in partnership with any person;
(b) as the employer of any legal practitioner who acts as a legal practitioner in the course of that employment; or
(c) as the employee of any person.

To include:

(d) a barrister must not hold or have any interest in a law practice, other than a barrister's own practice, whether directly or indirectly, unless that interest is a shareholding in an incorporated legal practice which is a listed public company.

PURPOSE

The Rules provide a framework for ethical decision-making to ensure that Australian barristers are bound by a common set of professional obligations and ethical principles when dealing with their clients, the courts, their fellow legal practitioners and the wider community.

Section 585 of the LPA provides that the Rules are binding on legal practitioners to whom they apply. Failure to comply with the Rules can amount to unsatisfactory professional conduct or professional misconduct.

Current rule 81 provides that a barrister must practice independently and cannot operate in a partnership, employ other legal practitioners or be employed by anyone else. New Rule 81 (d) extends barristers' responsibilities, by imposing that a barrister practices impartially and holds no interest in a law practice, unless the interest is a shareholding in an incorporated legal practice which is a listed public company.

The addition to rule 81 is designed to:

(i) Ensure a barrister has impartiality when being briefed
(ii) Does not influence a law practice's operations and who they may brief.

CONSISTENCY WITH HUMAN RIGHTS

The Rules have been carefully considered in the context of the rights under the *Human Rights Act 2004* (**HRA**). Any limitations on human rights are justifiable as reasonable limits set by laws in a free and democratic society, as required by s 28 of the HRA. The Rules also support and strengthen protection of several rights under the HRA. The human rights limitations that the Rules create are proportionate to and the least restrictive approach to achieve the overall policy objective of the Rules as set out in the Preamble.

RIGHTS ENGAGED

Rights engaged

The Rules engage the following sections of the HRA:

- Section 8 — Right to recognition and equality before the law (including the right to enjoy human rights without discrimination) *(promoted)*
- Section 11 — Protection of the family and children *(promoted)*
- Section 12 — Privacy and reputation *(limited)*
- Section 16 — Freedom of expression *(limited)*
- Section 21 — Fair trial *(promoted)*
- Section 27B — Right to work and other work-related rights (*promoted and limited*)

Rights promoted

Section 8 HRA — Right to Equality and Non-Discrimination

The Rules promote the right to equality and non-discrimination under section 8 of the HRA by establishing clear prohibitions against discrimination, sexual harassment, and bullying within professional contexts. Rule 122.1 explicitly prohibits barristers from discriminating against clients, solicitors, or other barristers on grounds including religion, age, race, impairment, political belief or activity, trade union activity, sex, marital status, pregnancy, parental status, lawful sexual activity, or association with a person identified on such bases. This provision ensures that all individuals interacting with barristers are treated equally, without distinction or discrimination, thereby advancing equal protection under the law.

Additionally, Rule 122.2 addresses sexual harassment, defining this consistently with Territory and Federal legislation as unwelcome sexual advances, an unwelcome request for sexual favours, or other unwelcome conduct of a sexual nature that could reasonably be anticipated to offend, humiliate, or intimidate. The establishment of complaint and reporting processes under Rule 122.4 provides mechanisms for redress, fostering an inclusive professional environment.

These rules support and enhance equality by actively preventing discriminatory practices in barristers' work, aligning with the HRA's emphasis on equal enjoyment of rights.

The cab-rank principle in Rules 85 and 86 further promotes equality by requiring barristers to accept briefs in fields where they practise, provided certain conditions are met, regardless of the client's personal characteristics or the barrister's views. This ensures equitable access to legal representation, particularly for marginalised individuals who might otherwise face barriers, thereby enhancing the right to equal protection against discrimination in access to justice.

Section 11 HRA — Right to Protection of the Family and Children

The Rules promote the right to protection of the family and children under section 11 of the HRA through provisions that ensure a barrister is not required to appear before a family member and provisions which preclude Speculative Fee Agreements in parenting proceedings.

Rule 87(i) requires that a barrister must refuse a brief for a contested hearing before the barrister's parent, sibling, spouse or child or a member of the barrister's household, or before a bench of which such a person is a member. The provision primarily safeguards impartiality in the administration of justice by precluding apprehension of bias through family connection. However, it also promotes protection of the family unit by ensuring that familial relationships are not strained by professional obligations.

Rule 99B precludes a barrister from entering into a Speculative Fee Agreement in proceedings relating to parenting of children under the *Family Law Act 1975* (Cth). This promotes the protection of children by ensuring that a barrister represents, and continues to represent, a client in parenting proceedings focusing on children's best interests, and not the likelihood of financial gain.

Section 21 HRA — Right to a Fair Trial

The Rules as a whole promote the right to a fair trial under section 21 of the HRA by imposing ethical obligations that ensure competent, independent, and impartial representation in legal proceedings.

Rule 16 requires barristers to advance and protect client interests to the best of their skill and diligence, uninfluenced by personal views. Rules 17 to 17B require barristers to assist clients to understand the issues in their case and their possible rights and obligations and to inform clients of alternatives to fully contested adjudication, enabling informed decisions that facilitate proportionate use of the justice system.

Disinterestedness rules (Rules 18 to 20) ensure barristers exercise independent forensic judgements, confining hearings to genuine issues and avoiding personal opinions, thereby promoting the overall fairness of hearings. Frankness in court (Rules 21 to 31) obliges barristers to correct misleading statements, disclose relevant authorities against their client's case, and inform the court of misapprehensions, promoting transparency and fairness. Integrity of evidence provisions (Rules 43 to 50) prohibit suggesting false evidence or coaching witnesses, similarly promoting the overall fairness of hearings and facilitating court and tribunal decisions based on reliable proof.

Prosecutors' duties (Rules 62 to 72) further advance fair trials by requiring impartial presentation of evidence, disclosure of material relevant to guilt or innocence, and avoidance of inflammatory conduct, assisting courts to apply the law correctly to facts. These rules collectively ensure that criminal charges and rights are decided after fair and public hearings, with minimum guarantees of adequate preparation, legal assistance, and examination of witnesses, thereby enhancing the administration of justice for all parties.

Section 27B HRA — Right to Work (Promoted Aspects)

The Rules promote aspects of the right to work and other work-related rights under section 27B of the HRA by establishing a framework that enables barristers to practise their profession freely and autonomously subject to ethical standards.

The sole practitioner requirement in Rule 81, while limiting certain arrangements, promotes independent practice, free from partnership and other conflicts.

Rules 116 and 117 permit advertising and holding out of specialisation (after notice to the Bar Council and two years' experience), fostering competition and access to the profession. Continuing professional development under Rule 113 ensures ongoing training, supporting just and favourable work conditions. The cab-rank principle (Rules 85 to 86) enhances access to work by mandating brief acceptance.

Rights limited

Section 27B HRA — Right to Work and Work-Related Rights

Nature of the Right and the Limitation (s 28(2)(a) and (c))

Section 27B of the HRA provides that everyone has the right to work, including the right to choose their occupation or profession freely, and to enjoy just and favourable conditions of work, including the right to form or join work-related organisations and protection against anti-union discrimination. The Rules impose limitations on this right through several provisions that restrict how barristers may structure their practice and accept or retain work.

Specifically, Rule 81 mandates that barristers must practise as sole practitioners and prohibits partnerships, employment of other legal practitioners, or being employed by others, limiting the freedom to choose business models or collaborative arrangements common in other professions.

Rule 82 further restricts arrangements that might prevent accepting briefs beyond specified exceptions. The cab-rank principle in Rules 85 to 86 requires acceptance of briefs meeting certain criteria, while Rules 87, 89, and 91 outline mandatory and permissible refusals, and Rules 93 to 102 limit returning briefs, potentially obliging barristers to undertake work against their preferences. These limitations affect the choice of occupation by confining barristers to independent, specialised advocacy roles and restricting flexibility in work selection.

Legitimate Purpose (s 28(2)(b))

The limitations serve the legitimate purpose of preserving the independence and integrity of barristers as specialist advocates, ensuring the proper administration of justice as outlined in the Preamble to the Rules (paragraphs 1 to 7). By requiring sole practice and the cab-rank principle, the Rules prevent commercial influences or conflicts that could compromise barristers' paramount duty to the court, while promoting equal access to representation for all clients, including those who might otherwise be underserved. These measures protect the public interest in a competitive yet ethical bar, maintain high professional standards, and enhance access to justice without personal prejudice, aligning with the HRA's broader objectives of a free and democratic society.

Rational Connection Between the Limitation and the Purpose (s 28(2)(d))

There is a direct rational connection between the limitations and their purpose. The sole practitioner requirement in Rule 81 ensures barristers remain independent, free from partnership or other commercial pressures that could influence forensic judgements, directly supporting the Preamble's emphasis on disinterested advocacy (paragraph 5). The limitations imposed by Rule 82 rationally prevents arrangements that could undermine competition or independence, directly advancing the administration of justice without broader commercial entanglements.

The cab-rank principle (Rules 85 to 86) rationally achieves equal access by mandating brief acceptance regardless of client characteristics, preventing selective practice that could deny representation to vulnerable parties. Restrictions on returning briefs (Rules 93 to 102) protect clients from abandonment, ensuring continuity in proceedings, while exceptions in Rules 87 and 91 (e.g., for conflicts or capacity) balance this with practical necessity.

Proportionality (s 28(2)(e))

The limitations are proportionate and represent the least intrusive means to achieve the purposes. The sole practice requirement in Rule 81 is tailored to barristers' unique role, with exceptions allowing devilling arrangements (Rule 83) for collaboration without full partnerships, ensuring independence without total isolation. The cab-rank principle includes safeguards like capacity assessments (Rule 85(b)) and refusal grounds (Rules 87, 91), preventing overload while mandating access. No less restrictive approach, such as voluntary guidelines, would reliably ensure representation for all. Brief return restrictions (Rules 93 to 102) permit returns in exceptional circumstances (e.g., client consent or conflicts), with notice requirements to minimise client harm. These calibrated exceptions demonstrate that the Rules impose only necessary constraints, thus achieving the objectives with minimal intrusion on work freedoms.

<u>Section 12 HRA — Right to Privacy</u>

Nature of the Right and the Limitation (s 28(2)(a) and (c))

Section 12 of the HRA provides that everyone has the right not to have their privacy, family, home, or correspondence interfered with unlawfully or arbitrarily, and not to have their reputation unlawfully attacked. The Rules limit this right through disclosure obligations that require barristers to share personal information with the Bar Association. Rule 115 defines "disclosable events" including sequestration orders, debt agreements, corporate disqualifications, or convictions for offences with imprisonment of 12 months or more (or involving fraud/dishonesty). Rule 115A mandates written notification to the Bar Association within 28 days, with details sufficient for suitability assessments, and provision of further information on request within 14 days. These provisions interfere with privacy by mandating revelation of sensitive financial, professional, and criminal history to a regulatory body, which could affect reputation if disclosed further.

Legitimate Purpose (s 28(2)(b))

The legitimate purpose is to enable regulatory oversight of barristers' suitability to practise, protecting the public and maintaining confidence in the legal profession. Disclosure of disclosable events under Rules 115 and 115A allows the Bar Association to assess risks to clients from financial instability or criminal conduct, ensuring barristers uphold the high standards required for independent advocacy consistent with the Preamble (paragraphs 2 and 4).

Rational Connection Between the Limitation and the Purpose (s 28(2)(d))

The limitations are rationally connected to the purpose, as disclosure directly facilitates suitability determinations. Serious events like bankruptcy (Rule 115(a)) or convictions (Rule 115(d)) rationally indicate potential risks to professional judgement or client trust, enabling targeted oversight without broader privacy invasions. The 28-day and 14-day timeframes in Rule 115A and Rule 115A(c) respectively ensures timely assessment, with the further information requests (Rule 115A(c)) facilitating proper assessment of the impacts of the disclosable event on practice.

Proportionality (s28(2)(e))

The limitations are proportionate, as they are the least restrictive means to achieve oversight. Only serious, practice-relevant events are disclosable (e.g., excluding minor offences), with a limited recipient (Bar Association Secretary) and no public dissemination requirement, minimising reputation harm. The 28-day period allows preparation, and 14-day further requests have a targeted and confined scope. Alternatives like self-certification would not ensure maintenance of the public's confidence in the profession. These targeted obligations impose the minimal intrusion necessary for achieving essential public safeguards.

<u>Section 16 HRA — Right to Freedom of Expression</u>

Nature of the Right and the Limitation (s 28(2)(a) and (c))

Section 16 of the HRA provides that everyone has the right to hold opinions without interference and to freedom of expression, including seeking, receiving, and imparting information and ideas of all kinds. The Rules limit this right by restricting barristers' public and in-court communications. Rule 59 prohibits publishing or assisting publication of inaccurate, confidential, or opinion-expressing material about current or potential proceedings, except for specified court documents. Rule 20 bars expressing personal opinions on evidence or issues in court submissions. Frankness rules (Rules 21 to 31) require correcting misleading statements and disclosing adverse authorities, potentially compelling speech against client interests. These provisions interfere with free expression by constraining what barristers may say publicly or in proceedings, limiting opinion-holding and information dissemination related to cases.

Legitimate Purpose (s 28(2)(b))

The purpose is to protect the integrity of court and tribunal proceedings and prevent prejudice to fair trials, maintaining public confidence in the administration of justice. Restrictions under Rule 59 safeguard against sub judice contempt and inaccurate reporting, while Rule 20 and frankness obligations (Rules 21 to 31) ensure disinterested advocacy, aligning with the Preamble's values of honest, fair, skilful, honourable and disinterested conduct (paragraphs 3 and 7).

Rational Connection Between the Limitation and the Purpose (s 28(2)(d))

The limitations rationally connect to the purpose by directly preventing expression that could undermine proceedings. The ban in Rule 59 on inaccurate or opinionated publications rationally avoids prejudicing trials, with exceptions for documents ventilated in open court or publicly available (Rule 59(b)) allowing legitimate information flow. The prohibition in Rule 20 on personal opinions ensures impartiality, while correction duties (Rule 22) and authority disclosures (Rule 25) rationally promote honest and fair advocacy, preventing miscarriages of justice without broader incursion on speech.

Proportionality (s 28(2)(e))

These limitations are proportionate, as they are narrowly tailored and the least intrusive available. Rule 59 applies only to current/potential proceedings and permits advice to a client on misleading reports (Rule 60). There are also clear exceptions for pleadings and matters ventilated in open court (Rule 59(b)(i)-(v)). Rule 20 confines restrictions to proceedings, while frankness rules allow corrections (Rule 22-23). No less restrictive means, such as voluntary codes, would reliably protect proceedings. These Rules align with common law contempt principles and are standard across Australian jurisdictions, balancing expression with integrity through specific, context-limited constraints.

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