Aim: (when sign roll)

1. Eligibility (s 30 – 37) requirements
2. Suitability (s 31) fit and proper
3. Suitability matters (s 9) non-belonging

Good fame and character

Insolvent

Convinced of an offence in Australia or a foreign country:
Engage in legal practice in Aust or overseas when should not Have currently an unresolved complaint, investigation, charge or order Whether person is or has been subject to disciplinary action Name has been removed from local, interstate or foreign roll Convene, Australia or foreign law about trust money Unable to satisfy himself carry out the inherent requirements of practice

SC has inherent common law jurisdiction over all lawyers s 13

• Admitting a dy 24
• Must decide such application for admission s 35
• Keeps roll of persons admitted s 37(1)

Must be a practitioner to admitted s 24 (2 years imprisonment)

CERTIFICATION

1. Take out an annual Practicing Certificate s 45

2. Have professional indemnity insurance s 353

BARRISTER

Permitted work s 15

Prohibited work s 17

Appear as an advocate in court, mediation or arbitration

Act as agent in business dealings

Negotiating/making/contracting

Conduct correspondence in the barrister’s name otherwise to the opponent

Give legal advice

Become a witness

Prepare documents related to the case

Serve documents or be a place of service

Be a mediator

Conduct conveyance

Incidental or other usual work

Administer trust estate

Incorporate companies

Lodge tax returns

Hold, invest or dispose any fund

Disqualification: An accused person (s 89)

Solo practitioner

Cannot practice in partnership, or employer, director of inc practice or member of a multi-disciplinary partnership

Cob rank principle: Barrister must accept a brief from a solicitor in a field in which the barrister practises or professions to practice it:

a. Brief is within the barrister’s capacity, skill and experience
b. Barrister would be available to work and not professionally or personally committed
c. At usual fee
d. Not obliged under the rules to refuse

→ Cannot insist on a particular solicitor/firm

Where there is a conflict (i.e. confidentiality/financial interest)

Must: conflict arises (appear before mother judge) X-examine a family or friend

Barrister is a witness

Previous a court member

May: unwilling to take instructions

Unable to pay or QC needed

Abuse position r 14

→ Cannot reasonably use position for professional or personal advancement

Cannot have a retainer

Remain impartial

Court must not deal with a court on terms of informal personal familiarity, which may reasonably appear of the special favour

B: Solicitors: Not give a commission or gift

Cannot exercise undue influence

→ Benefit must not exceed fair remuneration

Restrictions on gifts/loan: same as solicitor

Obligations for direct-access client

Obtain signature & inform in writing

1. Effect of r 15

2. May require client to retain an instructing solicitor at short notice, and possibly during the performance of the work

3. Any other reasonably foreseeable disadvantages to the client

Barrister’s capacity to perform work without an instructing solicitor

5. A fair description of the barrister’s advocacy experience

Client obligations

Pay as agreed + instructions (LPC)

Paramount duty

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 s 24 for barrister s foundation of adversarial system

→ Touchstone: do for the client all that the client might legitimately do for themselves if they had the legal knowledge, skills and experience of the lawyer

→ Cannot take a piece of the action

Mainteance

Clyne C brought a claim of maintenance against other lawyer: C struck off – a false claim. Can maintain the case if the lawyer has), (g) assessed that the case has merit and (b) is not changing a contingency fee. Modern litigation funding acceptable as maintainer, has separate, genuine interest in proceedings. The legal practice

TERMINATION S/C RELATIONSHIP

Can client withdraw early? Yes but needs to pay for work done so far → mediation or arbitration

Completion of engagement: A solicitor must ensure completion of the legal services for that matter unless:

Client has consent Terminates for just cause and on reasonable notice;

→ Client’s breach:

Failure to provide instructions

→ Compliance or professional obligations (e.g. avoid a conflict)

Operation of laws (e.g. frustration)

D. Trial serious criminal offence, and failed to make satisfactory arrangements for payment unless:

a. May have to stay working

b. If withdrawal effects proceedings must apply to the court

Lien over ‘essential’ documents

Must solicit must surrender if

A. First solicitor agree to pay, or

B. Second solicitor undertakes to hold subject to lien.

DUTIES

PRESENT

CLIENTS

Costs

Made in writing before, or as soon as practicable after, the retainer is made

Requirements s 308

Based on which legal services will be calculated

Client’s right to: negotiate, request an itemised bill and be notified of any substantial change to the matters disclosed

Estimate of the total costs

Interests at which the client will be billed

Rule of interest

Litigious matter, an estimate of range of costs recovered if successful, and range of costs if unsuccessful

Details of the person whom the client may consult to discuss costs

The client is not a specialist that may be presented to the court

EXCEPTIONS

Small matters – less than $1500 excluding disbursements/GST

Multiple disclosures

1. Client received 1 or more disclosures in past year

Agreed in writing to waive the right to disclosure

3. Partnership decides on reasonable grounds further disclosure is not required

C. Sophisticated clients

a. Law practice or legal practitioner

b. Public company – its subsidiary, a large proprietary company, foreign company – its subsidiary

Financial services licensee

Consequences

→ Failure to comply = void

→ Failure to disclose + recovery so long as independently assessed as fair and reasonable

Recovering: after 30 days service of bill s 320 enforced as a K

Conditional cost agreements s 323

Exemptions: Criminal matters

→ May provide for disbursements to be paid irrespective of the outcome

Requirements:

1. Set constitutes a successful outcome

2. In writing and in clear plain language and signed by the client

3. Statement that the client has been informed of the client’s right to seek independent legal advice before entering into the agreement

4. Consideration of the client’s best interests (in total clear of at least 5 business days)

Speculative PI claims

Max fees = 50% of R - (D + R) Dempsey

Exception: Apply to QLS for permission

Rule: Prohibited where amount payable is calculated by reference to the amount of any award or settlement or value of any property that may be recovered (max penalty = 100 units)

→ Cannot take a piece of the action

Maintenance

Clyne C brought a claim of maintenance against other lawyer: C struck off – a false claim. Can maintain the case if the lawyer has), (g) assessed that the case has merit and (b) is not changing a contingency fee. Modern litigation funding acceptable as maintainer, has separate, genuine interest in proceedings. The legal practice

FINANCIAL DISCLOSURE

PERMISSIBLE

Solicitor must reveal to client the true costs of professional services for that matter unless:

A. Client expressly or impliedly authorises disclosure

B. Consent is necessary

C. Discloses in a confidential setting, for sole purpose of obtaining agreement

D. Discloses to prevent:

1. Probable commission of a serious criminal offence

2. Imminent serious physical harm to client or another person

E. Information is disclosed to solicitor’s insurer

WRITE: X should not have acted for Y because X was in possession of confidential information of Z (former client) which if disclosed is detrimental to the interests of Z. Held: Bar code principle

B. Solicitor’s immediate family; or

D. Member of immediate family of a partner or director firm

Personal interests

DUTY OF LOYALTY

Breach of trust

Solicitor may not disclose to the client any confidential information
disclosure to staff for work purposes

COMPETITION

Solicitors in the same firm or different firms

Compulsory Work related training

Barrister and solicitor are required to complete:

Legal practice

Other services

D. Compelled by law

PRIVILEGE

Protects individuals from being legally compelled to disclose information which:

A. Arise in confidential communications passing between a client and their legal adviser for the purpose of giving or receiving legal advice

B. Came into existence for the dominant purpose of use in litigation that is pending or reasonably anticipated (can be produced by a third party)

→ Privilege may be claimed in relation to part of a document only

→ Privilege extends beyond judicial proceedings to all forms of compulsory disclosure document: Barrister v Campbell

→ Physical evidence not privileged = obstruction of justice Murray’s Case

EXCEPTIONS TO disclosure s 311

A. Communications in furtherance of crime or fraud or abuse of power R v Cox and Raiton: Kenny’s case

B. Welfare of a child Re Bell

C. Statutory abrogation (UCPR: Expert Report disclosure)

→ Can be expressly or impliedly waived

→ Criminal accused Carter’s case

Royal Commission

Must not act in conflict between duty to serve the best interests of client and interests of the solicitor or their associate

"Associate" in reference to a solicitor means a:

A. Partner, employer, agent, director inc firm

B. Corporation from which the solicitor has a material beneficial interest

C. Solicitor’s immediate family; or

D. Member of immediate family of a partner or director firm

→ Immediate family = spouse, child, grandchild, sibling, parent or grandparent.

Borrowing forbidden

Solicitor cannot borrow or assist an associate to borrow money from current or former client who has incurred a continuing reliance in relation to any money.

A. Authorised Deposit-taking Institution

B. A trustee company

C. Solicitor’s company

D. An associate of solicitor

E. Responsible entity of a managed investment scheme registered under Chapter 5C Corporations Act

Maguire & Tansey v Makarounis Solicitor through a private company borrowed money from clients, Court stripped away corporate veil. Failure to disclose = breach of FD. Held: Borrowing unlawful even though good deal at market interest rate.

Net gains/rewards

Reputable presumption of undue influence inter vivos

Wright v Carter