

Comparing the Australian Solicitors Conduct Rules 2012 to the Legal Profession (Solicitors) Rule 2007

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On 1 June 2012, the *Legal Profession (Solicitors) Rule 2007* (“*Solicitors Rule 2007*”) was replaced by the *Australian Solicitors Conduct Rules 2012* (“*ASCR*”). The *ASCR* maintains much of the language and substance of the *Solicitors Rule 2007*.

A step in understanding the new Rules is to compare them to the former Rules. The following table compares each rule in the *ASCR* to the comparable rules (if any) in the *Solicitors Rule 2007*.

ASCR Rule Title	ASCR Rule	Comparable <i>Solicitors Rule 2007</i>	Brief Comment
Nature and purpose of the rules			
1 Application and Interpretation	1.1	No equivalent Rule (but refer to Object of Rules)	The <i>ASCR</i> is intended to apply to all solicitors within Australia (including Australian-registered foreign lawyers). The <i>Solicitors Rule 2007</i> applied in part to government legal officers (there is no comparable provision in the <i>ASCR</i>). The <i>Solicitors Rule 2007</i> also applied to Australian-registered foreign lawyers.
	1.2	No equivalent Rule	The definitions in the <i>ASCR</i> are in the Glossary of Terms.
2 Purpose and Effect of the Rules	2.1	No equivalent Rule	The <i>Solicitors Rule 2007</i> contained statements of general principle commencing each Chapter. Rules 2, 3 and 4 <i>ASCR</i> are core duties of ethical behaviour for solicitors.
	2.2	No equivalent Rule (but refer to Object of Rules)	The <i>ASCR</i> applies in addition to the common law.
	2.3	No equivalent Rule	A breach of the <i>ASCR</i> rules is capable of constituting unsatisfactory professional conduct or professional misconduct, but cannot be enforced by a third party.

ASCR Rule Title	ASCR Rule	Comparable Solicitors Rule 2007	Brief Comment	
Fundamental duties of solicitors				
3	Paramount Duty to the Court and the Administration of Justice	3.1	No equivalent Rule (but refer to Object of Rules)	The paramount duty is the duty to the court and the administration of justice. This is a common law duty.
4	Other Fundamental Ethical Duties	4.1.1	1 and 12.1	Rule 1 <i>Solicitors Rule 2007</i> required honesty, fairness, competence and diligence. This is comparable to Rule 4.1.1, 4.1.2 and 4.1.3 <i>ASCR</i> . There is no comparable Rule in the <i>ASCR</i> to Rule 2 <i>Solicitors Rule 2007</i> – that rule dealt with agreeing to act for a client; it is in part now dealt with in Rule 4 <i>ASCR</i> .
		4.1.2	21	Rule 21 <i>Solicitors Rule 2007</i> dealt with communications with other solicitors. Rule 4.1.2 <i>ASCR</i> is broader as it relates to “all dealings in the course of legal practice”.
		4.1.3	1, 2 and 12.1	These Rules are reminders that in our service to a client we are to act competently, diligently and promptly.
		4.1.4	Refer to Object of Rules	Rules 4.1.4, 4.1.5, 5.1.1 and 5.1.2 <i>ASCR</i> concern the maintenance of high standards of behaviour and professional independence.
		4.1.5	Refer to Object of Rules	
5	Dishonest and Disreputable Conduct	5.1.1	Refer to Object of Rules and 30	
		5.1.2	Refer to Object of Rules; 28.5 and 30	
6	Undertakings	6.1	22.1, 27.1 and 27.3	Rules 6.1 and 6.2 <i>ASCR</i> are broadly the same as Rules 22 and 27 <i>Solicitors Rule 2007</i> .
		6.2	22.2 and 22.3	

ASCR Rule Title	ASCR Rule	Comparable Solicitors Rule 2007	Brief Comment	
Relations with clients				
7	Communication of Advice	7.1	12.2	Similar – Seeking to assist a client to understand the issues.
		7.2	12.3	Similar – Informing a client as to alternate dispute resolution.
8	Client Instructions	8.1	No equivalent Rule	The Rule requires us to follow lawful, proper and competent instructions.
9	Confidentiality	9.1	3	Rule 9.1 ASCR uses the word “engagement” whilst Rule 3 <i>Solicitors Rule 2007</i> uses the word “retainer”. Both Rules have similar content.
		9.1.1	3	
		9.1.2	No equivalent Rule	Extends the exception to barristers or third parties engaged by a solicitor’s law practice.
		9.2.1	3.1	Rule 9.2.1 ASCR refers to “express or implicit” authorisation. Rule 3.1 <i>Solicitors Rule 2007</i> does not.
		9.2.2	3.2	Similar
		9.2.3	No equivalent Rule	
		9.2.4	3.4	Rule 3.4 <i>Solicitors Rule 2007</i> refers to belief on reasonable grounds.
		9.2.5	3.7	Similar
		9.2.6	No equivalent Rule	
10	Conflicts Concerning Former Clients	10.1	4	Rule 10 ASCR expressly refers to “informed written consent” and “effective information barriers”, whilst Rule 4 <i>Solicitors Rule 2007</i> did not.
		10.2	4	
11	Conflict of Duties Concerning Current Clients	11.1	8.2	Rule 8 <i>Solicitors Rule 2007</i> sets out general and specific conflict issues. Rule 11 ASCR provides a general rule applicable to all concurrent conflicts. There is no equivalent in the ASCR to Rules 8.5 and 8.6 <i>Solicitors Rule 2007</i> .
		11.2	8.2	
		11.3	8.3	Rule 8.3 <i>Solicitors Rule 2007</i> is more prescriptive. However, Rule 11.3 ASCR requires “disclosure and informed consent”.
		11.4	No equivalent Rule	Additional requirements to Rule 11.3 ASCR.
		11.5	8.3.2 and 8.4	Rule 8.3.2 <i>Solicitors Rule 2007</i> states a general requirement to cease acting. Rule 11.5 ASCR is quite exceptional and of limited utility.

	ASCR Rule Title	ASCR Rule	Comparable Solicitors Rule 2007	Brief Comment
12	Conflict Concerning a Solicitor's Own Interests	12.1	9.1.1 and 9.2	Similar
		12.2	9.1.2	Similar
		12.3	11.1 and 11.2	Rule 11 <i>Solicitors Rule 2007</i> is more prescriptive.
		12.4.1	10.1	Similar
		12.4.2	10.2	Similar
		12.4.3	32.2	Rule 12.4.3 ASCR requires disclosure, advising that a client may refuse any referral and the need for informed consent from the client.
		12.4.4	32.1.1	Similar but Rule 12.4.4 ASCR requires disclosure of the payment or financial benefit to the client.
13	Completion or Termination of Engagement	13.1.1	6.1.1	Similar
		13.1.2	6.1.2	Similar but Rule 13.1.3 ASCR refers to "engagement" rather than "retainer".
		13.1.3	6.1.3	Similar but Rule 13.1.3 ASCR refers to "engagement" rather than "retainer".
		13.1.4	No equivalent Rule	
		13.2	6.2	Similar
		13.3	6.3	Similar
14	Client Documents	14.1	7.3	New terminology in Rule 14.1 ASCR: "designated responsibility", a reference to electronic document copies and an "effective lien".
		14.2	No equivalent Rule	Rules 7.1 and 7.2 <i>Solicitors Rule 2007</i> are different in context. Rule 14.2 ASCR does not alter the common law requirement that client authorisation to destroy client documents is required. The civil standard must be observed.
15	Lien over Essential Documents	15.1	7.4 and 23.4	Similar
16	Charging for Document Storage	16.1	No equivalent Rule	

ASCR Rule Title	ASCR Rule	Comparable Solicitors Rule 2007	Brief Comment
Advocacy and litigation			
17 Independence – Avoidance of Personal Bias	17.1	13.1	Similar
	17.2	13.2	Similar
	17.3	13.3	Similar
	17.4	13.5	Similar
18 Formality Before the Court	18.1	19.2	Rule 19.2 <i>Solicitors Rule 2007</i> refers to courts, referee etc. This is dealt with in the definition of “court” in the Glossary of Terms.
19 Frankness in Court	19.1	14.1	Rule 19.1 <i>ASCR</i> also refers to recklessly misleading.
	19.2	14.2	Similar
	19.3	14.3	Similar
	19.4	14.4	Similar
	19.5	14.5	Rule 19.5 <i>ASCR</i> has a wider operation. Note the restriction in Rule 14.5 <i>Solicitors Rule 2007</i> to the matter which is within the parameters of Rule 14.4.3 <i>Solicitors Rule 2007</i> .
	19.6	14.6	Similar
	19.7	14.7	Similar
	19.8	14.8	Similar
	19.9	14.9	Similar
	19.1	14.11	Similar
	19.11	14.12	Similar
	19.12	No equivalent Rule	
20 Delinquent or Guilty Clients	20.1	15.1	Similar
	20.2.1	15.2.1	Similar
	20.2.2	15.2.2	Similar but Rule 20.2.2(iv) <i>ASCR</i> uses “and” as a conjunctive rather than “or” as used in Rule 15.2.2(e) <i>Solicitors Rule 2007</i> .
	20.2.3	No equivalent Rule	
	20.3.1	15.3.1	Similar
	20.3.2	15.3.2	Similar
	20.3.3	15.3.3	Similar

	ASCR Rule Title	ASCR Rule	Comparable Solicitors Rule 2007	Brief Comment
21	Responsible Use of Court Process and Privilege	21.1.1	16.1.1	Similar
		21.1.2	16.1.2	Similar
		21.1.3	16.1.3	Similar
		21.1.4	16.1.4	Similar
		21.2	No equivalent Rule	
		21.3	16.3 and 16.4.1	Similar but Rule 21.3 ASCR more extensive.
		21.4	16.2	But Rule 21.4 ASCR does not have an equivalent provision to Rule 16.2.2 <i>Solicitors Rule 2007</i> .
		21.5	16.4.2	Similar
		21.6	16.5	Similar
		21.7	16.8	Similar
	21.8	No equivalent Rule		
22	Communication with Opponents	22.1	18.1	Similar
		22.2	18.2	Similar
		22.3	18.3	Similar
		22.4	18.5	Similar but Rule 18.5 <i>Solicitors Rule 2007</i> more extensive.
		22.5	18.6	Similar
		22.6	18.7	Similar
		22.7	18.8	Similar
			22.8	No equivalent Rule
23	Opposition Access to Witnesses	23.1	17.7	Similar
		23.2	17.8	Similar
24	Integrity of Evidence – Influencing Evidence	24.1.1	17.1	Similar
		24.1.2	17.2	Similar but does not cover the same ground as Rule 24.1.2 ASCR.
		24.2	17.3	Similar
25	Integrity of Evidence – Two Witnesses Together	25.1	17.4	Similar
		25.2	17.5	Similar

	ASCR Rule Title	ASCR Rule	Comparable Solicitors Rule 2007	Brief Comment
26	Communication with Witnesses under Cross-Examination	26.1	17.6	Similar
27	Solicitor as Material Witness in Client's Case	27.1	13.4	Rules 27.1 ASCR refers to the solicitor appearing as advocate for the client in the hearing. Rule 13.4 <i>Solicitors Rule 2007</i> was not so limited.
		27.2	No equivalent Rule	
28	Public Comment During Current Proceedings	28.1	19.1	Similar
29	Prosecutor's Duties	29.1	No equivalent Rule	Rule 20 <i>Solicitors Rule 2007</i> incorporated State and Commonwealth prosecution guidelines.
		29.2	No equivalent Rule	
		29.3	No equivalent Rule	
		29.4	No equivalent Rule	
		29.5	No equivalent Rule	
		29.6	No equivalent Rule	
		29.7	No equivalent Rule	
		29.8	No equivalent Rule	
		29.9	No equivalent Rule	
		29.10	No equivalent Rule	
		29.11	No equivalent Rule	
		29.12	No equivalent Rule	
		29.13	No equivalent Rule	

ASCR Rule Title	ASCR Rule	Comparable Solicitors Rule 2007	Brief Comment
Relations with other solicitors			
30	Another Solicitor or Other Person's Error	30.1	No equivalent Rule
31	Inadvertent Disclosure	31.1	No equivalent Rule
		31.2	No equivalent Rule
		31.3	No equivalent Rule
32	Unfounded Allegations	32.1	No equivalent Rule
33	Communication with Another Solicitor's Client	33.1	18.4 and 25 Rule 31.1 ASCR covers all communication. Rule 18.4 <i>Solicitors Rule 2007</i> dealt with communicating in litigation and Rule 25 <i>Solicitors Rule 2007</i> was non-litigation. Rule 25.2 <i>Solicitors Rule 2007</i> has no equivalent in Rule 33 ASCR.
Relations with other persons			
34	Dealing with Other Persons	34.1.1	28.2 Similar
		34.1.2	28.3 Similar
		34.1.3	No equivalent Rule
		34.2	32.1.2 Similar
35	Contracting with Third Parties	35.1	26 Similar
Law practice management			
36	Advertising	36.1	36.1, 36.2 and 36.3 Similar
		36.2	36.4 The ASCR has no equivalent to Rule 36.5 <i>Solicitors Rule 2007</i> .
37	Supervision of Legal Services	37.1	34 and 37 Rule 34 <i>Solicitors Rule 2007</i> is more widely drawn. Note Rule 37.1 ASCR refers to a solicitor with "designated responsibility".
38	Returning Judicial Officers	38.1	No equivalent Rule
39	Sharing Premises	39.1	35 and 31 Rule 39.1 ASCR is less prescriptive.
40	Sharing Receipts	40.1	33 Rule 40.1 ASCR does not have a similar sub-rule as in Rule 33.3 <i>Solicitors Rule 2007</i> .
41	Mortgage Financing and Managed Investments	41.1	38 Similar

ASCR Rule Title	ASCR Rule	Comparable Solicitors Rule 2007	Brief Comment
42 Anti-Discrimination and Harassment	42.1	No equivalent Rule	
43 Dealing with the Regulatory Authority	43.1	No equivalent Rule	
	43.2	No equivalent Rule	

ASCR Term	Comparable Solicitors Rule 2007	Brief Comment
Glossary of terms		
“associate”	Different	The definition of “associate” in the ASCR is more widely drawn than the definition in the <i>Solicitors Rule 2007</i> .
“associated entity”	No equivalent term	
“Australian legal practitioner”	No equivalent term	
“Australian practising certificate”	No equivalent term	
“Australian-registered foreign lawyer”	Similar	
“Australian roll”	No equivalent term	
“Authorised Deposit-taking Institution”	No equivalent term	
“barrister”	No equivalent term	
“case”	Similar	
“client”	Similar	
“client documents”	Different	See Rule 7.5 <i>Solicitors Rule 2007</i> .
“compromise”	Similar	
“corporate solicitor”	No equivalent term	
“costs”	Similar	Refer to “legal costs” in <i>Solicitors Rule 2007</i> .
“court”	Similar	
“current proceedings”	Similar	
“discrimination”	No equivalent term	
“disqualified person”	No equivalent term	
“engagement”	No equivalent term	
“employee”	No equivalent term	
“employer”	No equivalent term	
“former client”	No equivalent term	

ASCR Term	Comparable <i>Solicitors Rule 2007</i>	Brief Comment
“immediate family”	Similar	
“instructing solicitor”	Similar	
“insurance company”	Similar	
“law practice”	No equivalent term	
“legal costs”	No equivalent term	
“legal profession legislation”	No equivalent term	
“legal services”	Different	Different from <i>Solicitors Rule 2007</i> .
“managed investment scheme”	Similar	
“matter”	Similar	Under <i>Solicitors Rule 2007</i> , reference is made to “preparation of a document” or “submission”.
“mortgage financing”	Similar	
“multi-disciplinary partnership”	No equivalent term	
“opponent”	Similar	
“order”	Similar	
“party”	No equivalent term	
“practitioner”	No equivalent term	
“principal”	No equivalent term	
“professional misconduct”	No equivalent term	
“prosecutor”	Similar	But in <i>ASCR</i> reference is to a “solicitor” not “Australian lawyer”.
“regulatory authority”	No equivalent term	
“serious criminal offence”	No equivalent term	
“sexual harassment”	No equivalent term	
“solicitor”	Different	Under <i>Solicitors Rule 2007</i> reference was to the <i>Legal Profession Act 2007</i> , Schedule 2.
“solicitor with designated responsibility”	No equivalent term	
“substantial benefit”	Similar	See Rule 10.3 <i>Solicitors Rule 2007</i> .
“trustee company”	No equivalent term	
“unsatisfactory professional conduct”	No equivalent term	
“workplace bullying”	No equivalent term	