

29 May 2026

Our ref: [WD:GVB:LP:EPC]

Dr James Popple
Chief Executive Officer
Law Council of Australia
Level 1, MODE 3
24 Lonsdale Street
Braddon ACT 2612

By email: [REDACTED]

Dear Dr Popple

Revised draft of Australian Solicitors' Conduct Rules (ASCR) Rule 38—Returning Judicial and Court Officers and Tribunal Members

Thank you for the opportunity to provide feedback on the revised draft of Australian Solicitors' Conduct Rules (ASCR) Rule 38 – returning judicial officers, as outlined in the Law Council memorandum of 8 May 2026 (**Memorandum**).

This response has been prepared with input from the Queensland Law Society (**QLS**) Ethics Advisory Committee.

QLS notes that as Queensland is not part of the uniform law jurisdictions, the proposed change will not automatically apply in Queensland. However, QLS considers there is benefit in the Legal Profession Uniform Law ASCR 2015 and Queensland's ASCR 2023 being as consistent as is practicable.

QLS is not supportive of the proposed changes to Rule 38 outlined in the Attachment to the Memorandum.

QLS understands the Law Council's proposal has been developed in response to the Legal Services Council's preference to maximise consistency between conduct rules for barristers and solicitors.

If QLS were to choose, it would be preferable to maintain the earlier draft amended Rule 38 as determined by the LCA Professional Ethics Committee (**PEC**), outlined in the Directors Meeting paper for March 2025 and appearing on page 1 of Attachment 1 to the Memorandum.

This drafting is consistent with the broad principle outlined in paragraph 3 of the Memorandum, that "Rule 38 should be a statement of principle that a solicitor who has, or previously had an association with a court of tribunal must avoid engaging in conduct, including appearing before that court or tribunal, if doing so would lead a reasonably minded lay observer to an apprehension of bias in a matter before a court or tribunal."

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QLS will consider its approach in due course, once a final decision has been made in the uniform law states.

For completeness, we note the Bar Association of Queensland does not appear to have adopted the ABA rule in the Queensland Barristers Conduct Rules. Rule 95(n) of the BAQ Rules is essentially the same as Queensland's ASCR current rule 38, except it provides for a 5-year moratorium rather than a 2-year moratorium.

QLS would be unlikely to advocate for a more stringent approach for solicitors. We should also add that we rarely receive any queries on this particular issue through our QLS Ethics and Practice Centre.

QLS also suggests consideration be given to the ASCR not including a specific rule on this point in any form as an alternative option as ultimately, it is a matter for the relevant court and tribunal to determine whether or not the appearance of a former judge or member will raise perceptions of bias.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED] [REDACTED]

Yours faithfully



Peter Jolly
President