

ANNEXURE A – INFORMATION GUIDE FOR NON-LAWYERS: The ‘no contact’ rule

This short guide is intended to explain the ‘no contact’ for those using or working with solicitors in organisations.

Background

Solicitors have certain responsibilities, even if they work as an employee (in-house counsel) for an organisation. These responsibilities are sometimes called ‘ethical’ obligations and there are detailed rules that apply. They only apply to solicitors, not to their clients or to colleagues in a non-legal organisation carrying out other functions.

If they do not meet these responsibilities, a solicitor might face sanctions, which could include a formal reprimand, fine, suspension or they may no longer be allowed to be a solicitor. This is separate from any action their employer might take or any criminal penalties.

If a solicitor does not comply with one of their ethical obligations, there can also be consequences for their clients, employers, or other parties. For example, an important transaction or dispute settlement might be affected.

What is the ‘no contact’ rule?

If a solicitor knows, or should know, that another party is also represented by a solicitor in a given matter, they are not allowed to deal with that other party directly in relation to that matter – they can only deal with the other solicitor. The rule is set out in detail in Rule 33 of the *Australian Solicitors Conduct Rules 2012*.

The rule is intended for the protection of both parties, so that neither party suffers a disadvantage.

There are some exceptions to the rule (such as urgent communications) and some contexts where it may not apply (such as where the other party is not an opposing party). Your solicitor should be aware of these exceptions.

Practical tips

- If you know that the other party is bringing their lawyer to a meeting, it is recommended that you tell your lawyer.
- If both parties have lawyers, be aware that your lawyer will not be able to attend meetings with the other party without their lawyer being present unless the other lawyer (not you or the other party) says this is OK (permission which you should not expect to be granted readily).
- If the other lawyer is not at a meeting, it is likely to result in your lawyer, leaving / refusing to attend the meeting – and that should be the case unless permission has been granted by the

other lawyer. It is, therefore, important to coordinate the attendance of both lawyers if their attendance is required.

- If you attend a meeting with both lawyers, but the lawyer for the other party is late, be aware that your lawyer may need to step out of the meeting until the other lawyer arrives. It will not matter whether the other party says that it is 'OK' to start without them, as it is not up to them, only their lawyer.
- Do not ask your in-house counsel to perform non-legal functions that involve communicating with parties outside your organisation, where they are also involved in legal negotiations with that same party, as they may not be allowed to carry out both roles.
- Be aware that your lawyer may need to take steps to satisfy themselves whether another party is represented, which is sometimes difficult to determine. If they do not have a lawyer, then the 'no contact' rule will not apply.
- If you find yourself in a meeting with your lawyer and another party, and you know the other side has a lawyer, this may be an indication that something may not be right and you should raise it with your lawyer.