

TASMANIA

LEGAL PROFESSION (BARRISTERS) RULES 2016

STATUTORY RULES 2016, No.

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Timing of actions
5. Adoption of model rules

PART 2 – PUPILLAGE

6. Pupillage requirements
7. Masters
8. Pupillage Register
9. Duties of pupils and masters
10. Completion of pupillage

PART 3 – MISCELLANEOUS

11. Barristers List
12. Consequential amendments

SCHEDULE 1 – LOCAL MODIFICATIONS OF MODEL RULES

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

DRAFT

LEGAL PROFESSION (BARRISTERS) RULES 2016

The Tasmanian Bar makes the following rules under section 221A of the *Legal Profession Act 2007*.

PART 1 – PRELIMINARY

1. Short title

These rules may be cited as the *Legal Profession (Barristers) Rules 2016*.

2. Commencement

These rules take effect on [1 October 2016](#).

3. Interpretation

In these rules –

Act means the *Legal Profession Act 2007*;

approve means approve in writing and *approval* has a corresponding meaning;

Bar means the Tasmanian Bar;

Bar Council means the Council of the Bar;

barrister – see section 4(1) of the Act;

barrister's practising certificate means a local practising certificate as a barrister (not as a barrister and solicitor);

court-orientated work means court attendances in a court or tribunal in Tasmania, as well as the conferences and

Legal Profession (Barristers) Rules 2016
Statutory Rules 2016, No.

r. 3

Part 1 – Preliminary

other preparatory work required for such attendances;

junior barrister means a barrister of not less than 5 years' standing in practice;

master means a barrister who is mentoring and supervising a pupil;

model rules means the Australian Bar Association model rules developed by the Australian Bar Association –

(a) as made by the Legal Services Council on [26 May 2015](#) under section 419 of the Legal Profession Uniform Law, as set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* of Victoria; and

(b) containing provisions designated as the Legal Profession Conduct Rules in respect of barristers under the Legal Profession Uniform Law, as applied in New South Wales under the *Legal Profession Uniform Conduct (Barristers) Rules 2015* of that State;

nominal period, of pupillage, means 24 months;

notify means give notice in writing;

Legal Profession (Barristers) Rules 2016
Statutory Rules 2016, No.

Part 1 – Preliminary

r. 4

practice means practice as a barrister;

pupil means a local legal practitioner who is –

- (a) entitled to engage in legal practice only as or in the manner of a barrister; and
- (b) serving a period of pupillage as provided by Part 2;

Pupillage Register means the register kept under rule 8;

Pupillage Rules means the pupillage requirements in Part 2;

senior barrister means –

- (a) a Senior Counsel; or
- (b) a barrister of not less than 10 years' standing in practice;

Senior Counsel means a barrister who is a Senior Counsel or Queen's Counsel appointed as and in accordance with the protocol for the appointment of such counsel applying in this jurisdiction.

4. Timing of actions

Where these rules require a person to take an action consequent on some occurrence then, unless the contrary intention appears, the person must take the action as soon as practicable after the occurrence.

Legal Profession (Barristers) Rules 2016
Statutory Rules 2016, No.

r. 5

Part 1 – Preliminary

5. Adoption of model rules

The model rules as from time to time amended are adopted by and form part of these rules, with the modifications set out in Schedule 1.

DRAFT

PART 2 – PUPILLAGE

6. Pupillage requirements

- (1) A barrister who commences practice on or after the day on which these rules commence must serve pupillage in accordance with these rules, unless –
 - (a) he or she has previously served pupillage in Tasmania; or
 - (b) he or she is an Australian lawyer of not less than 10 years' standing as an Australian legal practitioner.
- (2) Pupillage is to be of 24 months' duration.
- (3) Pupillage commences on the day on which the pupil concerned is granted a barrister's practising certificate.
- (4) The service of pupillage does not constitute supervised legal practice within the meaning of the Act.
- (5) A pupil must not commence practice before –
 - (a) completing, to the satisfaction of the Bar Council, any exam that the Bar Council determines should be taken by the pupil; and
 - (b) arranging 2 masters in accordance with this Part; and

Legal Profession (Barristers) Rules 2016
Statutory Rules 2016, No.

r. 7

Part 2 – Pupillage

- (c) arranging chambers in Tasmania, being the same chambers as those from which at least one of his or her masters practises; and
 - (d) being granted a barrister’s practising certificate; and
 - (e) completing and signing the Pupillage Register.
- (6) A pupil must not practice outside Tasmania unless led by –
- (a) one or both of his or her masters; or
 - (b) a senior barrister, or a junior barrister, approved by one or both of the pupil’s masters.
- (7) A pupil must practice solely, or principally, in Tasmania.

7. Masters

- (1) A pupil is required to have 2 masters as follows:
 - (a) a senior master, being a senior barrister;
 - (b) a junior master, being a junior barrister.
- (2) A pupil must obtain the approval of the Bar Council to have a barrister act as either of his or her masters.
- (3) Each master must be the holder of a barrister’s practising certificate.

Legal Profession (Barristers) Rules 2016
Statutory Rules 2016, No.

Part 2 – Pupillage

r. 7

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- (4) A pupil may, with the approval of the Bar Council, change either or both of his or her masters.
 - (5) A request for an approval under subrule (4) is to be made by the pupil, in writing, either at his or her own instigation or that of the relevant master or, if applicable, both masters.
 - (6) A change of master does not affect the period of pupillage already completed by the pupil.
 - (7) A pupil is to arrange with the Bar Council for a change of master to be recorded in the Pupillage Register.
 - (8) A master is to –
 - (a) afford a pupil as much access to the master as is practicable to enable the pupil to obtain the assistance that the pupil reasonably requires; and
 - (b) whenever practicable, try to have his or her pupil devil for the master (being the assignation to the pupil of work on briefs held by the master).
 - (9) If a master knows or expects that he or she will not be accessible to a pupil for an extended period during pupillage, the master must arrange for the pupil to have access to another barrister qualified to act as an equivalent master during that extended period.

Legal Profession (Barristers) Rules 2016
Statutory Rules 2016, No.

r. 8

Part 2 – Pupillage

(10) A pupil must notify the Bar Council of any arrangement made under subrule (9) in respect of that pupil.

(11) In this rule –

extended period means a period exceeding 30 days.

8. Pupillage Register

(1) The Bar Council is to keep a register of pupils and their masters (*Pupillage Register*).

(2) A pupil must complete and sign the Pupillage Register before commencing practice.

9. Duties of pupils and masters

(1) A pupil must, in the first 2 weeks of pupillage, meet with his or her masters to plan and commit to the pupillage (*initial meeting*).

(2) The initial meeting must be with both masters jointly but either or both of them may, if not able to be physically present, participate in the meeting by telephone, video conference or other electronic means of communication.

(3) Following the initial meeting, a pupil must, at least once a month, meet in person with at least one of his or her masters to review the pupil's progress at the Bar (*monthly review*).

(4) A pupil must, within 2 weeks of the initial meeting –

Legal Profession (Barristers) Rules 2016
Statutory Rules 2016, No.

Part 2 – Pupillage

r. 9

-
- (a) notify the Bar Council that the initial meeting has been held; and
 - (b) give a copy of the notification to each master.
 - (5) A pupil who fails for any reason to comply with subrule (1) must –
 - (a) notify the Bar Council of the reasons for the failure and of when the initial meeting is expected to take place; and
 - (b) give a copy of the notification to each master.
 - (6) A pupil must, at a monthly review, inform the master conducting that review of –
 - (a) the work done by the pupil with each master in the preceding month (so as to reveal the pupil’s understanding of that work); and
 - (b) the substance of any work done by the pupil and any difficulties encountered.
 - (7) Subrule (6) has effect subject to any conflict between the work of the pupil and that of either master.
 - (8) A pupil must –
 - (a) do such practical exercises, attend such lectures and seminars and participate in such exercises and activities as either master from time to time directs; and

Legal Profession (Barristers) Rules 2016
Statutory Rules 2016, No.

r. 9

Part 2 – Pupillage

- (b) attend such advocacy courses and legal education events as the Bar Council from time to time directs.
- (9) A pupil is not entitled to accept a brief directly from a prospective client unless the pupil has obtained the prior written approval of at least one master to so do.
- (10) A pupil must, in the first 12 months of pupillage, do at least 80 hours of court-orientated work as follows:
 - (a) at least 40 hours of actual attendances in a Tasmanian court or tribunal with either master (or with another senior barrister, or junior barrister, approved by either master);
 - (b) at least 40 hours in the first 6 months of pupillage.
- (11) A pupil must, in the second 12 months of pupillage, do a minimum of 40 hours of court-orientated work, at least 20 of which must comprise actual attendances in a Tasmanian court or tribunal.
- (12) A senior master may, by notice to a pupil and the Bar Council given at any time during the period of pupillage, increase (by no more than a factor of 50%) the remaining hours of court-orientated work the pupil must do under subrule (10) or (11).
- (13) However, a senior master may only increase a pupil's remaining hours of court-orientated work

Legal Profession (Barristers) Rules 2016
Statutory Rules 2016, No.

Part 2 – Pupillage

r. 9

if he or she reasonably determines, in consultation with the junior master, that the pupil needs more experience of that kind.

- (14) A pupil may, in writing, request the Bar Council to review an increased work requirement imposed on the pupil under subrule (12).
- (15) On review, the Bar Council may affirm, vary or quash an increased work requirement imposed under subrule (12), in which case it is to notify the pupil and senior master accordingly.
- (16) A pupil must –
- (a) keep a record of the hours that he or she spends in –
 - (i) the initial meeting; and
 - (ii) monthly reviews; and
 - (iii) court-orientated work; and
 - (iv) exercises, attendances and other activities under subrule (8); and
 - (b) give a copy of that record to the Bar Council at the conclusion of the nominal 24-month pupillage (or any extended period).
- (17) A master who reasonably determines that a pupil has failed without reasonable excuse to comply with the Pupillage Rules must –
- (a) notify the Bar Council accordingly; and

- (b) give a copy of that notification to the pupil.

10. Completion of pupillage

- (1) A pupil must, when the nominal period of pupillage expires –
 - (a) notify the Bar Council whether he or she has, to the best of the pupil’s belief, undertaken the pupillage required by these rules; and
 - (b) give a copy of the notification to each master.
- (2) On receipt of a copied notification under subrule (1), each master must –
 - (a) certify in writing to the Bar Council whether the pupil has, to the master’s satisfaction, undertaken the pupillage required by these rules; and
 - (b) give a copy of the certification to the pupil.

PART 3 – MISCELLANEOUS

11. Barristers List

- (1) The Bar Council is to keep a list of those persons who hold a barrister's practising certificate (*Barristers List*).
- (2) A person who is granted a barrister's practising certificate must cause his or her name to be placed on the Barristers List.

12. Consequential amendments

The legislation specified in Schedule 2 is amended as specified in that Schedule.

**SCHEDULE 1 – LOCAL MODIFICATIONS OF MODEL
RULES**

Rule 5

1. Modification of rule 6 of the model rules

- (1) A reference in rule 6 of the model rules to “a participating jurisdiction” is taken to be a reference to “Tasmania”.
- (2) A reference in rule 6 of the model rules to “a non-participating jurisdiction” is taken to be a reference to “an Australian jurisdiction other than Tasmania”.

2. Modification of rule 11 of the model rules

Rule 11 of the model rules is amended by inserting the following paragraph after paragraph (e):

- (ea) acting as an arbitrator or mediator,

3. Modification of rule 13 of the model rules

Rule 13(b), (c), (d), (e) and (f) of the model rules do not apply to a barrister acting as –

- (a) an independent lawyer to represent a child’s interests pursuant to an order made under section 68L of the *Family Law Act 1975* of the Commonwealth; or
- (b) a separate representative of a child pursuant to an order made under section

*59 of the Children, Young Persons and
Their Families Act 1997 –*

if –

- (c) the Legal Aid Commission has agreed that legal aid, within the meaning of the *Legal Aid Commission Act 1990*, is to be provided in respect of the fees and expenses of the barrister incurred while so acting; and
- (d) no instructing solicitor has been appointed in respect of the matter.

4. Modification of rule 125 of the model rules

Rule 125 of the model rules is amended by inserting “or pupil” after “barrister” in the definition of *reader*.

Legal Profession (Barristers) Rules 2016
Statutory Rules 2016, No.

sch. 2

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

Rule 12

Rules of Practice 1994

1. Rule 88 is rescinded.
2. Rules 89, 89A, 90, 91, 92, 93, 94, 95, 96 and 97 are rescinded.

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Legal Profession (Barristers) Rules 2016
Statutory Rules 2016, No.

These rules were made by the Council of the Tasmanian Bar at a meeting held on 2016.
The common seal of the Tasmanian Bar was hereunto affixed on 2016 in the presence of –

President

Vice-President

Secretary/Treasurer

Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 20 .

These rules are administered in the Department of Justice.

EXPLANATORY NOTE

(This note is not part of the rules)

These rules prescribe a range of legal practice matters for Tasmanian barristers, including pupillage requirements, and they also –

- (a) adopt the Australian Bar Association model rules in modified form; and

Legal Profession (Barristers) Rules 2016
Statutory Rules 2016, No.

- (b) rescind some redundant rules of practice relating to barristers.

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