

TASMANIA

LEGAL PROFESSION AMENDMENT BILL 2013

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LEGAL PROFESSION AMENDMENT BILL 2013

(Brought in by the Minister for Justice, the Honourable Brian Neal Wightman)

A BILL FOR

An Act to amend the *Legal Profession Act 2007* and the *Right to Information Act 2009*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Legal Profession Amendment Act 2013*.

2. Commencement

This Act commences on a day to be proclaimed.

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Part 2 – Legal Profession Act 2007 Amended

PART 2 – LEGAL PROFESSION ACT 2007 AMENDED

3. Principal Act

In this Part, the *Legal Profession Act 2007** is referred to as the Principal Act.

4. Section 24 amended (Definitions)

Section 24 of the Principal Act is amended by omitting “Association, Tasmanian Independent Bar” from the definition of *professional association*.

5. Section 221 amended (Rules for Australian legal practitioners)

Section 221 of the Principal Act is amended by inserting “other than those legal practitioners practising solely as barristers” after “practitioners”.

6. Section 221A inserted

After section 221 of the Principal Act, the following section is inserted in Division 2:

221A. Rules for barristers

- (1) The Tasmanian Bar may make rules about legal practice in this jurisdiction engaged in by Australian legal

*No. 24 of 2007

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practitioners who practise solely as barristers.

- (2) The rules made under subsection (1) may adopt, either wholly or in part and with or without modification, and either specifically or by reference, the Australian Bar Association model rules whether made before or after the commencement of this section.
- (3) A reference in subsection (2) to the Australian Bar Association model rules includes a reference to an amendment of those rules.
- (4) The rules made under subsection (1) may rescind Part 8 of the *Rules of Practice 1994*.

7. Section 224 amended (Prior consultation with professional associations and Board)

Section 224 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or the Tasmanian Bar” after “authority”;
- (b) by omitting “Association, the Tasmanian Independent Bar” from the definition of *professional association* in subsection (2).

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8. Section 225 amended (Public notice of proposed legal profession rules)

Section 225 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or the Tasmanian Bar” after “authority”;
- (b) by inserting in subsection (2) “or the Tasmanian Bar” after “authority”;
- (c) by inserting in subsection (3) “or the Tasmanian Bar” after “authority”;
- (d) by inserting in subsection (4) “or the Tasmanian Bar” after “However, the prescribed authority”;
- (e) by inserting in subsection (4)(a) “or the Tasmanian Bar” after “authority”;
- (f) by inserting in subsection (4)(b) “or the Tasmanian Bar” after “authority”.

9. Section 228 amended (Availability of rules)

Section 228 of the Principal Act is amended as follows:

- (a) by inserting “or the Tasmanian Bar” after “The prescribed authority”;
- (b) by inserting “or the Tasmanian Bar” after “the prescribed authority”.

10. Section 427 amended (Making of complaints)

Section 427 of the Principal Act is amended as follows:

(a) by inserting the following subsections after subsection (1):

(1A) If a person wishes to make a complaint about the conduct of an Australian legal practitioner in a law practice but does not know the name of the practitioner, that person may request the law practice to advise that person of the name of the practitioner.

(1B) If a law practice fails to comply with a request under subsection (1A) within 14 days of receiving the request, the person may make a complaint under this Chapter against the law practice.

(b) by inserting in subsection (5) “and to prosecute the complaint” after “Chapter”.

11. Section 428 amended (Complaints made more than 3 years after conduct concerned)

Section 428(2)(b) of the Principal Act is amended by omitting “involves” and substituting “is capable of amounting to”.

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Part 2 – Legal Profession Act 2007 Amended

12. Section 430 amended (Practitioner to be notified of complaint)

Section 430 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Subsection (1) does not apply if the complaint is summarily dismissed by the Board in any of the prescribed circumstances.

13. Section 431 amended (Submissions by practitioner)

Section 431(3) of the Principal Act is amended by omitting “permitted” and substituting “specified”.

14. Section 432A inserted

After section 432 of the Principal Act, the following section is inserted in Part 4.2:

432A. Delivery up of documents

- (1) The Board may require an Australian legal practitioner whose conduct is the subject of a complaint to deliver up to the Board documents –
- (a) held by the legal practitioner on behalf of a person; and/or
 - (b) relating to any proceedings taken or work done by the practitioner on behalf of a person.

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- (2) The Australian legal practitioner in respect of whom a requirement under subsection (1) is made must comply with the request notwithstanding that there is a lien on the documents.

15. Section 433 amended (Summary dismissal of complaints)

Section 433 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (b) and (c) from subsection (1) and substituting the following paragraph:
- (b) the conduct complained about has been the subject of a previous complaint under the *Legal Profession Act 1993* (the repealed Act) or this Act that has been dismissed; or
- (b) by omitting from subsection (3) “without” and substituting “after commencing but before”.

16. Section 444 amended (Report to complainant)

Section 444 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or the Australian legal practitioner in relation to whom a complaint is made” after “a complainant”;

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- (b) by inserting in subsection (1) “or practitioner” after “the complainant”;
- (c) by inserting in subsection (2)(b) “or the Australian legal practitioner” after “complainant”.

17. Section 450 amended (Powers of Board after investigation)

Section 450 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “amounts” and substituting “is capable of amounting”;
- (b) by omitting from paragraph (b) “amounts” and substituting “is capable of amounting”;
- (c) by omitting from paragraph (c) “amounts” and substituting “is capable of amounting”;
- (d) by omitting from paragraph (d) “amounts” and substituting “is capable of amounting”;
- (e) by omitting from paragraph (e) “amounts” and substituting “is capable of amounting”.

18. Section 454 amended (Determination of Board)

Section 454(2)(1) of the Principal Act is amended by inserting “and who has been approved by the Board” after “certificate”.

19. Section 456 amended (Procedure for less serious complaint)

Section 456(7) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) that no further action be taken against the Australian legal practitioner if the Board is satisfied that –
 - (i) the practitioner is generally competent and diligent; and
 - (ii) there has been no substantiated complaint (other than the complaint that led to the notice being served under subsection (1)) about the conduct of the practitioner within the last 5 years;

20. Section 458 amended (Application against determinations)

Section 458 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “heard” and substituting “determined”;

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(b) by inserting the following subsection after subsection (2):

(3) The determination of a matter pursuant to an application made under subsection (1)(a) is to be by way of a re-hearing.

21. Section 461A inserted

After section 461 of the Principal Act, the following section is inserted in Part 4.6:

461A. Dismissal of part of complaint

The Board may dismiss any part or parts of a complaint or exercise any of its powers under Chapter 4 or 6 in respect of any part or parts of a complaint.

22. Section 462 amended (Complainant and practitioner to be informed of action taken)

Section 462 of the Principal Act is amended as follows:

(a) by omitting from subsection (1)(b) “action taken” and substituting “determination made”;

(b) by inserting the following subsections after subsection (1):

(1A) Notwithstanding subsection (1)(a), the Board is not required to notify the Australian

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legal practitioner of the receipt of a complaint about the practitioner if the Board has referred the subject matter of the complaint to the Commissioner of Police, the Commissioner of Taxation, the Australian Securities and Investments Commission or the Australian Federal Police Commissioner pursuant to section 512, as the case may require.

(1B) Subsection (1) does not apply if the complaint has been summarily dismissed by the Board in any of the circumstances prescribed under section 430(1A).

(c) by inserting in subsection (2)(a) “other than a summary dismissal to which subsection (1B) applies” after “complaint”.

23. Section 464 amended (Applications to Tribunal)

Section 464 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

(2) The Board may refer a complaint to the Tribunal with a recommendation that the Tribunal make a compensation order.

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24. Section 467 amended (Procedure at hearing of application)

Section 467 of the Principal Act is amended by inserting after subsection (5) the following subsection:

- (5A) A party to any application made under this Division may include any party to a complaint made under section 427 to which the application relates.

25. Section 471 amended (Orders of Tribunal requiring official implementation in this jurisdiction)

Section 471 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) an order that the name of an Australian legal practitioner be removed from the local roll by the Registrar of the Supreme Court.

26. Section 480 amended (Compliance with determinations and orders of Tribunal)

Section 480 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

- (3) If the Tribunal makes an order that the name of an Australian legal practitioner be removed from the local roll by the Registrar of the Supreme Court, the Registrar of the Supreme Court is to

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remove the name of the practitioner from the local roll.

27. Section 497 amended (Register of Disciplinary Action)

Section 497(2) of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (c):
 - (ca) details of the conduct that was the subject of the complaint in respect of which the disciplinary action was taken; and
- (b) by inserting in paragraph (d) “including the final determination and the reasons for the determination” after “taken”.

28. Section 508 amended (Compliance with recommendations or orders made under corresponding laws)

Section 508 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) If a corresponding disciplinary body makes an order that the name of an Australian legal practitioner be removed from the roll of lawyers under this Act by the Registrar of the Supreme Court, the Registrar is to remove the name of the practitioner from the roll.

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Part 2 – Legal Profession Act 2007 Amended

29. Section 512 amended (Referral of matter involving crimes)

Section 512 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) If, during the course of any investigation or hearing, the Board suspects on reasonable grounds that an offence has been committed, the Board must refer the suspected offence to –

(a) the Commissioner of Police; or

(b) the Commissioner of Taxation; or

(c) the Australian Securities and Investment Commission; or

(d) the Australian Federal Police Commissioner –

as the case may require.

(b) by omitting from subsection (2) “the Commissioner of Police” first occurring and substituting “a person referred to in subsection (1)(a), (b), (c) or (d)”;

(c) by omitting from subsection (2)(a)(ii) “the Commissioner of Police” and

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substituting “a person referred to in subsection (1)(a), (b), (c) or (d)”;

- (d) by omitting from subsection (2)(b)(ii) “the Commissioner of Police” and substituting “a person referred to in subsection (1)(a), (b), (c) or (d)”.

30. Section 590 amended (Membership of Board)

Section 590(1)(b) of the Principal Act is amended by omitting “jointly by the Tasmanian Independent Bar and the Tasmanian Bar Association” and substituting “by the Tasmanian Bar”.

31. Section 610 amended (Disciplinary Tribunal)

Section 610(2)(a) of the Principal Act is amended by omitting “2 legal practitioners to be nominated by the Tasmanian Bar Association, 2 legal practitioners to be nominated by the Tasmanian Independent Bar” and substituting “4 legal practitioners nominated by the Tasmanian Bar”.

32. Schedule 2 amended (Provisions with respect to membership of Board)

Clause 8(b) of Schedule 2 to the Principal Act is amended by omitting “Tasmanian Independent Bar and Tasmanian Bar Association” and substituting “Tasmanian Bar”.

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Part 3 – Right to Information Act 2009 Amended

**PART 3 – RIGHT TO INFORMATION ACT 2009
AMENDED**

33. Principal Act

In this Part, the *Right to Information Act 2009** is referred to as the Principal Act.

34. Section 6 amended (Exclusions of certain persons or bodies)

Section 6(1) of the Principal Act is amended by inserting after paragraph (k) the following paragraph:

(ka) the Legal Profession Board of Tasmania;

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PART 4 – MISCELLANEOUS

35. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.