

## **CLAUSE NOTES**

### **LEGAL PROFESSION AMENDMENT BILL 2013**

#### **PART 1 - PRELIMINARY**

**Clause 1: Short title**

Provides that the Act may be cited as the *Legal Profession Amendment Act 2013*

**Clause 2: Commencement**

The Act will commence on a day or days to be proclaimed

#### **PART 2 – LEGAL PROFESSION ACT 2007 AMENDED**

**Clause 3: Principal Act**

In Part 2 of the Act, a reference to the Principal Act is a reference to the *Legal Profession Act 2007*.

**Clause 4: section 24 amended (Definitions)**

Amends the definition section of the Principal Act to reflect changes to the professional associations.

**Clause 5: Section 22I amended (Rules for Australian legal practitioner)**

Amends section 22I so that the prescribed authority may now only make rules about legal practice in this jurisdiction engaged in by legal practitioners other than those legal practitioners practising solely as barristers.

**Clause 6: Section 22IA inserted – Rules for Barristers**

Provides the Tasmanian Bar with a rule making power in relation to legal practice in Tasmania engaged in by Australian legal practitioners who practices solely as a barrister.

**Clause 7:           Section 224 amended (Prior consultation with professional associations and Board)**

Amends this section of the Principal Act to reflect changes to the professional associations.

**Clause 8:           Section 225 amended (Public notice of proposed legal profession rules)**

This amendment reflects the amendment made at clauses 5 and 6.

**Clause 9:           Section 228 amended (Availability of rules)**

This amendment reflects the amendment made at clauses 5 and 6.

**Clause 10:          Section 427 amended (Making of complaints)**

Subclause (a) gives a complainant the power to request of a law practice the name of the practitioner with whom they were dealing. If the practice does not comply within 14 days of receiving the request, the complainant may lodge their complaint against the law practice instead of against an individual practitioner.

Subclause (b) clarifies that the Board is able to assist a person who wishes to make a complaint such assistance as is necessary to prosecute the complaint.

**Clause 11: Section 428 amended (Complaints made more than 3 years after conduct concerned)**

This change in terminology reflects that the conduct in the complaint must be capable of amounting to professional misconduct, not merely that the complaint involves an allegation of misconduct.

**Clause 12: section 430 amended (Practitioner to be notified of complaint)**

Provides that the Board does not need to notify a practitioner of a complaint if the Board summarily dismisses the complaint in any of the prescribed circumstances.

**Clause 13: Section 431 amended (Submissions by practitioners)**

Amends the terminology in section 431(3) so that it is consistent with the terminology used in section 431(1)

**Clause 14: Section 432A inserted – delivery up of documents**

A new section 432A is inserted in to the Principal Act. The section allows the Board to require a practitioner whose conduct is the subject of a complaint to deliver up to the Board certain documents. This requirement stands even if there is a lien on the documents.

**Clause 15: Section 433 amended (Summary dismissal of complaints)**

The section is amended so that a complaint can be summarily dismissed if the conduct has been the subject of a previous complaint under

the current or repealed Act irrespective of when the conduct is alleged to have occurred.

**Clause 16: Section 444 amended (Report to complainant)**

Will allow an Australian Legal Practitioner in relation to whom a complaint has been made to request the Board to provide full details of the person or persons conducting the investigation; and the progress of the investigation into the matter; and the documents being examined; and copies of any documents in relation to the investigation. The Board will not be required to provide this information if the Board has provided it previously and there has been no material change to the details of the complaint since the initial provision of the information.

**Clause 17: Section 450 amended (Powers of Board after investigation)**

To avoid confusion that the phrase “amounts to” suggest that the Board is already satisfied as to the guilt of the practitioner in question, “amounts to” is replaced with “is capable of amounting to...”.

**Clause 18: Section 454 amended (Determination of Board)**

Subsection 2, paragraph (l) is amended by inserting a requirement that the Board must approve a supervising Australian legal practitioner.

**Clause 19: Section 456 amended (Procedure for less serious complaint)**

Gives the Board the power to determine that although a complaint of unsatisfactory professional conduct is substantiated but that complaint is not serious enough to warrant a hearing, no further action is to be taken against the practitioner if the Board is satisfied that the practitioner is generally competent and diligent and there has been no substantiated complaint about the conduct of the practitioner within the last five years.

**Clause 20: Section 458 amended (Application against determinations)**

Changes the operation of section 458 so that an appeal against a determination of the Board is now by way of a re-hearing as opposed to a hearing de novo. A re-hearing is a reconsideration of the evidence and submissions that were presented in the original hearing. Fresh evidence that has arisen since the original hearing can also be provided, but it need not be.

**Clause 21: Section 461A inserted – Dismissal of part of complaint**

Inserts a new section into the Principal Act which gives the Board the ability to dismiss any part or parts of a complaint and to proceed remainder of the complaint.

**Clause 22: Section 462 amended (Complainant and practitioner to be informed of action taken)**

Subclause (a) replaces that phrase any action taken in 462(2)(b) with the phrase “any determination made” because to require a

statement of reasons for every action is too onerous. There is also a risk, on the current wording, that the reference to “action take” in 431(3) could invoke the operation of 462(2)(b) and this is not the intention of the Act.

Subclause (b) insert new subsections in to the Principal Act so that the Board is not required to notify a practitioner of the receipt of a complaint about them if the Board has referred that 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 of the Principal Act. The subsection does not apply if the complaint has been summarily dismissed by the Board in any of the circumstances prescribed under section 430(1A).

**Clause 23: Section 464 amended (Applications to Tribunal)**

Amends the wording used in subsection (2) so that it is consistent with the wording used in section 454(2)(c).

**Clause 24: Section 467 amended (Procedure at hearing of application)**

This amendment gives a party to a complaint made under section 427 standing to be a party to an application in section 467.

**Clause 25: Section 471 amended (Orders of Tribunal requiring official implementation in this jurisdiction)**

Amends the ability of the Tribunal to make an order in relation to the removal of a name of a

practitioner from the roll. Under this amendment the Tribunal is to order that the Registrar of the Supreme Court remove the name. This amendment reflects amendments made at Clauses 26 and 28.

**Clause 26: Section 480 amended (Compliance with determinations and orders of Tribunal)**

Reflects the amendment made at Clause 25.

**Clause 27: Section 497 amended (Register of Disciplinary Action)**

Adds additional matters to be included on the Register of Disciplinary Action. The new matters are the details of the conduct and the details of the final determination and the reasons for the determination.

**Clause 28: Section 508 amended (Compliance with recommendations or orders made under corresponding laws)**

Reflects the amendment made at Clause 25

**Clause 29: Section 512 amended (Referral of matter involving crimes)**

Expands the categories of people to whom the Tribunal must, as the case requires, refer suspected offences to so that it includes the Commissioner of Taxation, the Australian Securities and Investments Commission and the Australian Federal Police Commissioner. The power to refer the matter to the Commissioner of Police is retained.

**Clause 30: Section 590 amended (Membership of Board)**

This amendment reflects changes to the relevant bodies.

**Clause 31: Section 610 amended (Disciplinary Tribunal)**

This amendment reflects changes to the relevant bodies.

**Clause 32: Schedule 2 amended (Provisions with respect to membership of the Board)**

This amendment reflects changes to the relevant bodies.

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

**Clause 33: Principal Act**

In Part 3 of this Bill, the Right to Information Act 2009 is referred to as the Principal Act.

**Clause 34: Section 6 amended (Exclusion of certain persons or bodies)**

Insert the Legal Profession Board of Tasmania into the list of bodies to which the Act does not apply

**PART 4 – MISCELLANEOUS**

**Clause 35: Repeal of Act**

Is a standard clause in all amending legislation which automatically repeals the amending legislation 365 days after the Amending Act commences. The provisions that the amending legislation inserts into the Principle Act still remain in force after the repeal of the Amending Act.



