

# FACT SHEET

## Legal Profession Amendment Bill 2022

The Legal Profession Amendment Bill 2022 (the Bill) makes amendments to the *Legal Profession Act 2007* (the Act).

The Bill will address a technical issue that has been identified in the legal profession complaints and discipline framework under Chapter 4 of the Act. The issue arises from the decision of the High Court of Australia in *Burns v Corbett* [2018] HCA 15 (*Burns v Corbett*), with respect to the exercise of judicial power in respect of a matter involving federal diversity jurisdiction under sections 75 and 76 of the Constitution. This is an issue that has similarly arisen across a number of Australian tribunals and boards.

Federal diversity jurisdiction applies in circumstances where a dispute arises between natural persons who are residents of different States (i.e. person A vs person B), or between a State and a natural person resident in another State (i.e. State vs person).

*Burns v Corbett* provides that federal diversity jurisdiction may only be exercised by a Chapter III Court or by a State court in which Commonwealth judicial power has been vested. In Tasmania, this includes the Supreme Court and Magistrates Court, but not a tribunal or board.

In practical terms, an outcome of *Burns v Corbett* is that neither the Legal Profession Board (the Board) nor the Disciplinary Tribunal (the Tribunal) may exercise judicial power in respect of a complaint in circumstances where federal diversity jurisdiction applies. This is most likely to arise if a person is a resident of a different state to the legal practitioner they are making a complaint against.

The Bill provides for two substantive changes to the Act, to provide a pathway for complaints to proceed under the existing framework where the Board or Tribunal considers that federal diversity jurisdiction applies, or there is some doubt as to its application in proceedings:

1. For complaints being heard by the Board, the amendments will enable the Board to dismiss the original complaint and then make a fresh complaint itself in relation to the same conduct. The Board can then apply to the Tribunal to hear and determine the matter, i.e. the Board will be the sole party on one side of proceedings and the practitioner(s) on the other side.
2. For complaints being heard by the Tribunal, the amendments will enable the Tribunal to dismiss the complaint. An application can then be made for the complaint to be heard and determined by the Supreme Court, which has jurisdiction in relation to matters involving federal diversity jurisdiction.

The Bill also makes a small number of other amendments to support the above changes.