

TASMANIA

LEGAL PROFESSION AMENDMENT BILL 2022

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LEGAL PROFESSION AMENDMENT BILL 2022

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
27 October 2022

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend the *Legal Profession Act 2007*

Be it enacted by Her 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:

1. Short title

This Act may be cited as the *Legal Profession Amendment Act 2022*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

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

*No. 24 of 2007

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

Section 450 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “both unsatisfactory professional conduct and professional misconduct” and substituting “either unsatisfactory professional conduct or professional misconduct, or both”;
- (b) by omitting paragraph (d).

5. Section 457 amended (Notice of determination)

Section 457 of the Principal Act is amended by inserting “or a decision of the Board under section 464A(2)(a)” after “456”.

6. Section 458 amended (Application against determinations)

Section 458(2) of the Principal Act is amended by omitting “or section 454(1) (Determination of Board)” and substituting “, section 454(1) (Determination of Board) or section 464A(2)(a)”.

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

Section 462(1)(a) of the Principal Act is amended by inserting “or the making of the complaint by the Board” after “by the Board”.

8. Section 464A inserted

After section 464 of the Principal Act, the following section is inserted in Division 2:

464A. Federal diversity jurisdiction

- (1) Subsection (2) applies in relation to a matter to which a complaint made to the Board relates, if –
 - (a) the Board considers that the matter is capable of amounting to unsatisfactory professional conduct; and
 - (b) the Board considers that –
 - (i) the Board does not have jurisdiction to make a determination under Part 4.5 in relation to the matter; or
 - (ii) there is some doubt as to whether the Board has jurisdiction to make a determination under Part 4.5 in relation to the matter –

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because the Board's determination of the matter may involve the exercise of jurisdiction of the kind referred to in section 75 or 76 of the Constitution of the Commonwealth; and

(c) the Board considers that the Board would otherwise have had jurisdiction to make a determination under Part 4.5 in relation to the matter.

(2) If this subsection applies in relation to a matter to which a complaint made to the Board relates –

(a) the Board –

(i) if subsection (1)(b)(i) applies in relation to the matter – must dismiss the complaint; or

(ii) if subsection (1)(b)(ii) applies in relation to the matter – may dismiss the complaint; and

(b) the Board may, if –

(i) the Board dismisses the complaint under paragraph (a); and

- (ii) the period in which an application may be made under section 458(1) in relation to the dismissal under paragraph (a) of the complaint has expired and no such application has been made –

make, despite section 433(1)(b), a complaint within 60 days in relation to the matter and make an application to the Tribunal under section 464 for the hearing and determination of the complaint.

- (3) If the Board, under subsection (2) –
 - (a) dismisses a complaint in relation to a matter; and
 - (b) makes a complaint in relation to the matter and makes to the Tribunal under section 464 an application to the Tribunal for the hearing and determination of the complaint –

the complaint referred to in paragraph (b) is to be taken to have been made when the complaint referred to in paragraph (a) was made to the Board.

- (4) Subsection (5) applies in relation to a matter if –
 - (a) an application is –

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(i) made to the Tribunal under section 458 in relation to the matter; or

(ii) made to the Tribunal under section 464 in relation to a complaint that relates to the matter; and

(b) the Tribunal –

(i) considers that the Tribunal does not have jurisdiction to make a determination under this Part in relation to the matter; or

(ii) considers that there is some doubt as to whether the Tribunal has jurisdiction to make a determination under this Part in relation to the matter –

because the Tribunal's determination may involve the exercise of jurisdiction of the kind referred to in section 75 or 76 of the Constitution of the Commonwealth.

(5) If this subsection applies in relation to a matter, the Tribunal –

- (a) if subsection (4)(b)(i) applies in relation to the matter – must dismiss the complaint to which the matter relates; or
 - (b) if subsection (4)(b)(ii) applies in relation to the matter – may dismiss the complaint to which the matter relates.
- (6) If the Tribunal, under subsection (5), dismisses a complaint to which an application under section 458 or section 464 relates, the Tribunal must include in the notice given under section 482 in relation to the matter a statement that the person may make an application to the Supreme Court under section 486 to hear and determine a complaint in relation to the matter to which the dismissed complaint related.
- (7) If a person, within 21 days after receiving a notice under section 482 in relation to a complaint that has been dismissed under subsection (5), makes an application to the Supreme Court under section 486 to hear and determine a complaint in relation to the matter to which the dismissed complaint related, the complaint to which the application relates is taken to have been made –
 - (a) on the day on which the dismissed complaint was made to

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the Board or the Tribunal,
whichever was the earlier; or

- (b) if the application was made by
the Board in accordance with
subsection (2) – on the day on
which the dismissed complaint is
to be taken under subsection (3)
to have been made.

9. Repeal of Act

This Act is repealed on the first anniversary of
the day on which it commenced.