

CLAUSE NOTES

Legal Profession Amendment Bill 2022

- Clause 1** **Short title**
Specifies the name of the proposed Act.
- Clause 2** **Commencement**
Provides that the Act commences on Royal Assent.
- Clause 3** **Principal Act**
Provides that the Principal Act that is being amended is the *Legal Profession Act 2007*.
- Clause 4** **Section 450 amended (Powers of Board after investigation)**
Amends subsection (c) and omits subsection (d) within section 450 of the Principal Act.

The purpose of the amendments is to empower the Legal Profession Board of Tasmania (the Board) to apply to the Disciplinary Tribunal (the Tribunal) to hear and determine any matter that the Board considers is capable of amounting to either unsatisfactory professional conduct or professional misconduct, or both.

Under the current provisions of the Principal Act, the Board may not make an application to the Tribunal where the matter is considered capable of amounting to unsatisfactory professional conduct alone.
- Clause 5** **Section 457 amended (Notice of determination)**
Amends section 457 of the Principal Act to provide that, where the Board makes a decision under section 464A(2)(a) of the Principal Act, it must serve notice on the complainant, the Australian legal practitioner who is the subject of the complaint and the prescribed authority.

Section 464A is inserted into the Principal Act by clause 8 of this Act.
- Clause 6** **Section 458 amended (Application against determinations)**
Amends section 458 of the Principal Act to provide that a decision made by the Board under section 464A(2)(a) of the Principal Act is considered to be a determination of the Board for purposes of section 458.

The purpose of the amendment is to ensure that, where the Board dismisses a complaint under section 464A(2)(a), a complainant, or the Australian legal practitioner who is the subject of the complaint, can make an application under section 458(1) to have the matter determined by the Tribunal or the Supreme Court.

Section 464A is inserted into the Principal Act by clause 8 of this Act.

Clause 7 **Section 462 amended (Complaint and practitioner to be informed of action taken)**

Amends section 462 of the Principal Act to provide that, where the Board makes a complaint about an Australian legal practitioner, the Board must ensure that the practitioner is notified in writing.

Under the current provisions of the Principal Act, the Board is only required to notify a practitioner of a complaint about them where that complaint has been 'received' by the Board. This would not extend to circumstances where the Board itself initiates the complaint.

Clause 8 **Section 464A inserted**

Inserts a new section 464A into the Principal Act to deal with matters in circumstances where the Board or Tribunal does not, or may not, have jurisdiction make a determination because it involves exercise of jurisdiction of the kind referred to in section 75 or 76 of the Constitution of the Commonwealth (federal diversity jurisdiction).

Currently, where federal diversity jurisdiction arises in a complaint before the Board, the Board would ordinarily be forced to dismiss the complaint for want of jurisdiction. Subsections (1), (2) and (3) of the new section 464A provide a mechanism for such complaints to be referred to the Tribunal.

Subsection (1) sets out the matters of which the Board must be satisfied in order for subsection (2) to apply.

Subsection (2) sets out the circumstances in which the Board must, or may, dismiss the complaint. The Board must dismiss the complaint if it considers that it does not have jurisdiction to make a determination.

Where the Board dismisses the complaint and an application has not been made to the Tribunal or Supreme Court under section 458(1) of the Principal Act within 21 days of that determination, subsection (2)(b) empowers the Board itself to make a complaint in relation to the matter and apply for the Tribunal to hear and determine the complaint.

Where the Board makes a complaint pursuant to subsection (2), subsection (3) provides that the complaint by the Board is taken to have been made at the time that the original complaint in relation to the matter was made to the Board. The purpose of this subclause is to ensure that the period of time since the original complaint was made will not trigger the time limits for dealing with a complaint contained within section 428 of the Principal Act.

Where an application is made to the Tribunal under section 458 or section 464 of the Principal Act and the matter involves, or may involve, the exercise of federal jurisdiction, subsections (4), (5), (6) and (7) of the new section 464A provide a mechanism for those matters to be determined.

Subsection (4) sets out the matters of which the Tribunal must be satisfied in order for subsection (2) to apply.

Subsection (5) sets out the circumstances in which the Tribunal must, or may, dismiss the complaint. The Tribunal must dismiss the complaint if it considers that it does not have jurisdiction to make a determination.

If the Tribunal dismisses the complaint, subsection (6) provides that the notice given under section 482 of the Principal Act, which requires the complainant, practitioner, Board and prescribed authority to be notified in writing of the Tribunal's decision, must also state that an application may be made to the Supreme Court to hear and determine a complaint in relation to the matter to which the dismissed complaint related. Such an application to the Supreme Court would be made under section 486 of the Principal Act.

Where a complaint has been dismissed by the Tribunal, and an application has been made to the Supreme Court to hear and determine a complaint in relation to the matter to which the dismissed complaint related, subsection (7) specifies the day on which the complaint is taken to have been made. This subsection serves a similar purpose to subsection (3), to ensure that the time limitations within section 428 of the Principal Act are not activated by the delay between the original complaint being made and an application being made to the Supreme Court.

Clause 9

Repeal of Act

Provides that the Act is repealed on the first anniversary of the day on which it commenced (received Royal Assent under clause 2).