

CLAUSE NOTES

Legal Profession Amendment Bill 2018

Clause 1: Short title

This clause provides that, once passed, the Bill will be cited as the *Legal Profession Amendment Act 2018*.

Clause 2: Commencement

This clause provides for the amendments to commence on the day on which the Bill receives the Royal Assent.

Clause 3: Principal Act

This clause provides that the Principal Act to which the amendments apply is the *Legal Profession Act 2007* (the Act).

Clause 4: Section 458 amended (Application against determinations)

This clause adds new subsections to section 458 of the Act as follows:

Proposed new subsection (4):

This proposed new subsection clarifies that in dealing with an application under section 458, the Supreme Court can determine its own practice and procedure.

Proposed new subsection (5):

This proposed new subsection provides for the Disciplinary Tribunal (the Tribunal) to determine a section 458 application in accordance with Part 4.7 of the Act.

Section 4.7 of the Act is headed "Proceedings in Disciplinary Tribunal". It sets out the procedures and powers of the Tribunal in determining applications including:

- to summon any person whose evidence appears to be material to the application;
- to proceed to hear and determine an application in the absence of any party who has been summoned to appear before it and has failed to appear in response to the summons;
- to take evidence by affidavit or on oath or affirmation;
- to require the production of documents or records;
- to require any person who appears before it to answer any question, that in the opinion of the Tribunal appears to be material to the application.

Under Part 4.7, the Tribunal has the power to make various orders including:

- that a practitioner's name be removed from the local roll by the Registrar of the Supreme Court;
- recommending that a practitioner's name be removed from an interstate roll;
- that the practitioner's practising certificate be suspended for a specified period or cancelled;
- imposing conditions on a practitioner's practising certificate;
- that a practitioner pay a fine or compensation or repay fees;
- that a practitioner undergo counselling or medical treatment.

As the Act currently stands, the procedures and powers in Part 4.7 are limited to applications made under Division 2 of that Part. Section 458 does not fall within Part 4.7 of the Act. The proposed new subsection (4) will extend those procedures and powers to an application made to the Tribunal under section 458.

There are some provisions in Part 4.7 that are specifically excluded from applying to the determination of section 458 applications – sections 464, 466(7)(b), 467(5)(b) and 468. These provisions are not considered to be appropriate to apply to section 458 re-hearings.

Proposed new subsection (6):

This proposed new subsection is intended to remove doubt about section 458 applications made and determined prior to the commencement of these amendments.

Paragraph (a) deems an application made prior to the commencement of these amendments to have been validly made if it was accepted by the Tribunal or Court to which it was made.

Paragraph (b) clarifies that the fact that a section 458 application was determined by the Tribunal in accordance with Part 4.7 of the Act prior to the commencement of the amendments, is not, of itself, grounds for the determination being invalid.

Clause 5:

Repeal of Act

This is a standard provision to provide for the automatic repeal of the Amendment Act (the Bill) after the amendments have been incorporated into the Principal Act.