DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Legal Profession Amendment Bill 2018

Madam Speaker, I move that the Bill be read a second time.

This Bill proposes amendments to the *Legal Profession Act 2007* to clarify the processes and powers relating to applications under section 458 of the Act.

The Act, which is based upon national model laws, regulates legal practice in Tasmania. When the Act was considered by Parliament in 2007, it was noted that one of the aims of the Act was to protect the interests of the public and specifically consumers of legal services.

The Act establishes the Legal Profession Board of Tasmania (the Board) as the primary regulator of the Tasmanian legal profession. One of the functions of the Board is dealing with complaints against legal practitioners. Complaints can also be heard and determined by the Disciplinary Tribunal and the Supreme Court.

Chapter 4 of the Act deals with complaints and discipline, setting out the processes that apply in relation to the hearing and determination of complaints.

Where a complaint is made to the Board, the Act provides that the Board is to investigate it unless it has been referred to or taken over by another regulatory authority or has been withdrawn or dismissed, for example, on the basis that it is frivolous or vexatious.

Upon completing the investigation of a complaint, the Board has a number of options including holding a hearing if it considers that the matter is capable of amounting to unsatisfactory professional conduct or referring the complaint to the Disciplinary Tribunal or Supreme Court if the matter is capable of amounting to professional misconduct.

If, upon completing a hearing, the Board is satisfied that the legal practitioner is guilty of unsatisfactory professional conduct, the Board can make a number of different determinations including that the legal practitioner be admonished or reprimanded, pay a fine, waive or repay fees, complete a course of legal education or receive counselling or be supervised by another Australian legal practitioner.

The Board does not have the power to make determinations in relation to professional misconduct beyond referring the matter to the Tribunal or Supreme Court.

Madam Speaker, as I mentioned earlier, the Disciplinary Tribunal can also deal with complaints about legal practitioners. Section 464 of the Act allows any person, including the Board, to make an application to the Tribunal for the hearing and determination of a complaint.

In addition, section 458 provides for what I will describe as a right of review. Under section 458, a party to a determination of the Board can apply to the Tribunal or Supreme Court to have the matter to which the determination relates determined by the Tribunal or Supreme Court. This is to be by way of a re-hearing.

Concerns have recently been raised as to the powers and procedures of the Tribunal in relation to applications made under section 458.

Part 4.7 of the Act sets out the powers of the Tribunal, including powers to summons persons to give evidence, to take evidence by affidavit or on oath or affirmation, to require the production of documents or records, and to require the answering of questions that are material to the application. Part 4.7 also provides for the types of orders that the Tribunal can make, including an order that the name of a practitioner be removed from the local roll by the Registrar of the Supreme Court or an order recommending that a practitioner's name be removed from an interstate roll. However, these powers and procedures appear to be specifically limited to applications made under Division 2 of Part 4.7 (that is applications made under section 464). Section 458 is not in Part 4.7 of the Act – it is in Part 4.5. Therefore, it would seem that the powers set out in Part 4.7 do not apply to applications made under section 458.

This has led to uncertainty about the Tribunal's powers in dealing with section 458 applications.

Madam Speaker, the Bill addresses this uncertainty by amending section 458 of the Act to provide that the Tribunal may determine an application made under section 458 in accordance with Part 4.7 of the Act with the exception of some specified provisions in that Part that are not considered to be appropriate to re-hearing proceedings.

As section 458 also allows an application for re-hearing to be made to the Supreme Court, it was considered prudent for the sake of completeness to clarify that the Supreme Court can determine its own practice and procedure for determining an application made to it under section 458.

Madam Speaker, the Bill also includes doubts removal provisions in relation to previous applications under section 458. These doubts removal provisions, set out in the proposed new subsection 458(6), deem an application made prior to the commencement of the amendments to have been validly made if it was accepted by the Tribunal or Court. The provisions also clarify 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.

I note that during the development of this Bill, there was targeted consultation with key stakeholders including the Supreme Court, the Legal Profession Board, the Disciplinary Tribunal, the Law Society and the Tasmanian Bar. I am grateful for the assistance provided by stakeholders, particularly the Disciplinary Tribunal and the Law Society, in refining and finalising the Bill.

Madam Speaker, this Bill will provide greater clarity and certainty around the powers and procedures to be applied in determining applications under section 458 of the Act.

I commend the Bill to the House.