

SECOND READING SPEECH

LEGAL PROFESSION AMENDMENT BILL 2013

The Legal Profession Board of Tasmania is established by the *Legal Profession Act 2007* as the primary regulator of the legal profession in Tasmania. One of the express powers of the Board is to advise the Minister on any matter relating to the Act. Pursuant to this power the Board has recommended a number of amendments to the Act to clarify and improve its operation.

Legal stakeholders have been consulted on the proposed amendments and varying views taken into account in drafting the Bill. As a result the Law Society and the Tasmanian Bar have expressed general support for the Bill.

While the Bill is reasonably lengthy, a number of the amendments contained within it are very minor technical changes. I will therefore draw the attention of the House to only those amendments which are more substantial.

The Bill amends Part 3.1 of the Act to give the Tasmanian Bar (which is the relevant professional body) the power to make rules about legal practice for those legal practitioners who practice solely as barristers.

The Law Society, which presently makes rules for all practitioners, agrees with this amendment. The Law Society will continue to be the prescribed authority for making rules in relation to all other legal practitioners.

The Tasmanian Bar intends to adopt the Australian Bar Associations model rules, with any necessary local modifications. This will mean that the rules of conduct applying

to barristers practising in Tasmania will conform with those applying to other barristers in Australia.

The model rules will replace the current rules governing practitioners practising solely as barristers which were made under the previous *Legal Profession Act 1994* and which are now out-dated.

Under the new rules, barristers' conduct will continue to be within the jurisdiction of the Supreme Court, Legal Profession Board and Disciplinary Tribunal.

Currently the Act provides that a person can make a complaint about the conduct of an Australian legal practitioner but there is no capacity to make a complaint against a legal practice as a whole.

In some cases the person may not know which member of the firm undertook the work which is the subject of the complaint and in that circumstance, it would presently be necessary to lodge a complaint against each individual member of the practice.

The Bill amends section 427 of the Act to enable a complainant to ask the legal practice to identify the relevant practitioner and if the legal practice fails to do so within 14 days the person can make the complaint against the legal practice.

The Bill amends section 430 so that if a complaint is summarily dismissed under section 433 there is no need to notify the practitioner in prescribed circumstances.

The list of prescribed circumstances will be finalised in consultation with the Board and the Law Society and contained in the Regulations. It is envisaged that it will include such circumstances as where the matters raised by the complaint

are outside the jurisdiction of the Board or where the complaint made is frivolous, vexatious or lacking in substance.

The Act presently does not give the Board power to dismiss a complaint if the conduct had previously been complained of under the previous 1993 Act and dismissed under that Act. While it is unlikely that this will occur, the Bill amends section 433 of the Act to make it clear that a complaint can be summarily dismissed if the conduct has been the subject of a previous complaint which was dismissed under either the former or the current Act.

The Bill amends section 456 of the Act so that even if a less serious complaint is substantiated the Board may determine to take no further action against the practitioner provided it is satisfied that the practitioner is generally competent and diligent and there has been no substantiated complaint (other than the complaint that led to the investigation) about the conduct of the practitioner within the last 5 years. The new provision reflects a similar provision in the Victorian Act.

Section 458 provides that 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 heard by the Tribunal or Supreme Court. The hearing is “de novo” which means that all the evidence must be heard afresh and the witnesses must submit to cross examination as though there had been no earlier decision by the Board.

Understandably, complainants may be reluctant to go through a second hearing. In a recent case where a complaint against a practitioner had been upheld by the Board, the practitioner applied to the Court for a rehearing. The complainants determined not to proceed further because of the burden of entire new hearing in which they may need to obtain legal representation and risk a costs order if unsuccessful. Because

the complainants have chosen not to proceed the Court will have no option but to dismiss the complaint.

The Bill amends section 458 so that rather than a full hearing, there will be a re-hearing of the matter. A re-hearing is a reconsideration of the evidence and submissions presented in the original hearing. Fresh evidence that has arisen since the original hearing can also be provided, but it need not be.

A re-hearing will relieve the complainants of the burden of giving all the evidence again, and the matter will be determined more quickly on already existing documentation. This will bring the practice here in line with the usual practice on appeal.

Subsection 497(2) details the information that is to be included in the Register of Disciplinary Action. It currently requires inclusion of formal details such as the practitioner's name and address but, in relation to a complaint, only the particulars of the disciplinary action taken are required unless other particulars are prescribed. The Bill amends the section so that details of the practitioner's conduct will now also be included, as well as the final determination and reasons for determination.

The Bill inserts new section 432A to provide the Board with the power to require a legal practitioner whose conduct is the subject of a complaint to deliver up documents to it relating to any proceedings taken or work done by the practitioner on behalf of a person. Clearly such documents may be useful to the Board in determining whether or not a complaint is substantiated.

The Bill also amends sections 471 and 480 in response to a Supreme Court judgment which suggested that the current process, whereby the Court is expected to make an order to remove a practitioner's name from the Roll of Legal Practitioners on the recommendation of the Tribunal, is

incompatible with the proper discharge of the Court's judicial responsibilities and institutional integrity. The amendment provides the Tribunal with the power to order that a person's name be removed from the Roll by the Registrar of the Supreme Court rather than the Court itself.

The Board has suggested that as it is a "statutory authority" within the meaning of the definition of that term in section 5 of the *Right to Information Act 2009* and to the extent that its functions are essentially those of a Tribunal or Court, that it should properly be listed in section 6(1) of that Act as a body excluded from the operation of that Act. This Bill amends the *Right to Information Act* to exclude the Board from the operation of the Act, except insofar as information relates to the administration of the Board. This exempts the Board from the operation of that Act for its disciplinary activities on the same basis as the other exempt persons or public authorities listed in section 6(1).

An amendment is also made to remove references to the Tasmanian Bar Association and the Tasmanian Independent Bar as they have ceased to operate. Their functions under the Act are allocated to the Tasmanian Bar.

Mr Speaker, this Bill will improve the operation of the *Legal Profession Act 2007* as a result of the adoption of suggestions put forward by the Supreme Court and Legal Profession Board and agreed by the Law Society and Tasmanian Bar. I commend the Bill to the House.