

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

(a) to make a number of miscellaneous amendments to the Legal Profession Act 2004, including the following:

- (i) to revise the role and procedures of the Legal Profession Admission Board in connection with the admission of persons to the legal profession,
 - (ii) to remove the power of the Admission Board to refer to the Supreme Court issues relating to the suitability of persons for admission to the legal profession,
 - (iii) to revise the procedures regarding payments from and repayments to the Public Purpose Fund,
 - (iv) to dispense with the Legal Profession Advisory Council,
 - (v) to align the Act more closely with legal profession model legislation,
 - (vi) to repeal transitional provisions concerning barristers of the Australian Capital Territory,
 - (vii) to enable regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act, and
- (b) to amend the Administrative Decisions Tribunal Act 1997 in relation to the qualifications for appointment of a person as the Divisional Head of the Legal Services Division of the Administrative Decisions Tribunal, and
- (c) to enact other provisions of a minor, consequential or ancillary nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 is a formal provision giving effect to the amendments to the Legal Profession Act 2004 set out in Schedules 1 and 2.

Clause 4 is a formal amendment giving effect to the amendments to other legislation set out in Schedule 3.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Legal Profession Act 2004

Schedule 1 amends the Legal Profession Act 2004 to make a number of miscellaneous amendments to the Act, including the following:

Legal Profession Admission Board

Section 27 is repealed. That section currently empowers the Admission Board to refer the following matters to the Supreme Court for its determination:

- the issue of whether an applicant for admission to the legal profession is a fit and proper person to be admitted
- an application by a person for early consideration as to whether something disclosed by the person will adversely affect an assessment by the Admission Board as to whether the person is a fit and proper person to be admitted.

An applicant will still be able to appeal to the Supreme Court against an adverse decision of the Admission Board.

Section 28 is amended to make it clear that, on an appeal to the Supreme Court, the Court can make orders as to costs, other than an order against the Admission Board in favour of an applicant where the appeal was not successful and an order against

the Admission Board in favour of the Bar Council or Law Society Council.

Section 30 is amended to make it clear that the Admission Board is entitled to be represented and heard at appeals to the Supreme Court against the Board's decisions.

Substituted section 35 revises the role and procedures of the Admission Board in considering applications for admission to the legal profession.

Substituted section 36 revises the role and procedures of the Admission Board in determining applications for admission to the legal profession. The Board must refuse the application unless the Board is satisfied that the applicant is both eligible for admission and a fit and proper person to be admitted. The Board must make its decision within the time specified in or determined under the admission rules and, if it does not do so, is taken to have refused the application.

Time for determining applications for grant of practising certificates

Section 48 is amended to extend the time by which an application for the grant of a local practising certificate must be determined (otherwise it is deemed to have been refused), to cover the period during which the application can be the subject of investigation and consideration under section 68.

Public Purpose Fund

Section 290 (1) is amended to provide that the costs of the Admission Board in an appeal to the Supreme Court against a decision of the Board are payable from the Public Purpose Fund.

New subsections (3A) and (3B) of section 290 enable supplementary amounts to be payable from the Public Purpose Fund to beneficiaries for underpayments, and to require repayment of amounts overpaid. Alternatively, underpayments or overpayments can be reflected in future payments from the Fund for future periods. Substituted section 290 (5) allows payments to be made by way of reimbursement as well as in advance of the relevant cost or expense.

Legal Profession Advisory Council

Part 7.2 and Schedule 3 are repealed. This has the effect of abolishing the Legal Profession Advisory Council.

Section 715 is repealed. That section enabled the Advisory Council to review the legal profession rules. The power of the Attorney General to declare a legal profession rule inoperative under section 716 on advice from the Legal Services Commissioner will continue.

Section 716 is amended to provide that the power of the Attorney General to declare a legal profession rule inoperative if the Advisory Council reported that a rule imposes restrictive or anti-competitive practices that are not in the public interest will be exercised after the Attorney General forms that opinion.

Sections 4 and 707 are also amended, and clause 20 of Schedule 9 is repealed, to remove references to the Advisory Council.

Barristers of the Australian Capital Territory

Clause 10A of Schedule 9 is repealed. That clause enabled barristers of the Australian Capital Territory to be granted local practising certificates. Legal profession legislation has been enacted in the Territory that provides for the issue of practising certificates to those barristers, thus making clause 10A unnecessary.

Other amendments

Section 347 is amended to ensure that its terminology is consistent with terminology used in the Uniform Civil Procedure Rules 2005.

Schedule 9 is amended to include savings and transitional provisions, including the power to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Legal Profession Act 2004

for consistency with model legislation

Schedule 2 amends the Legal Profession Act 2004 to align the Act more closely

with legal profession model legislation. The Standing Committee of Attorneys-General (representing each of the States and Territories and the Commonwealth) in July 2006 approved the second edition of the legal profession Model Bill, which contains the following categories of provisions:

- Provisions identified as core provisions requiring textual uniformity, which are intended to be enacted in each jurisdiction in a form that is textually uniform to the maximum extent possible.
- Provisions identified as core provisions not requiring textual uniformity, which are intended to have counterparts in the legislation of each jurisdiction, though not necessarily with textual uniformity.
- Provisions identified as not being core provisions, which are optional.

The Schedule makes amendments to provisions of the Act in each of those categories.

Schedule 3 Amendment of other legislation

Administrative Decisions Tribunal Act 1997

Schedule 3.1 amends the Administrative Decisions Tribunal Act 1997 so that the Deputy President appointed to be the Divisional Head of the Legal Services Division of the Administrative Decisions Tribunal need not be appointed from among the barrister members or solicitor members of the Division. However, section 17 of that Act provides that a Deputy President must hold or have held a judicial office or be an Australian lawyer.

Legal Profession Regulation 2005

Schedule 3.2 omits clauses 18 and 87 of the Legal Profession Regulation 2005, as a consequence of the amendment of sections 98 and 260 of the Legal Profession Act 2004 by Schedule 2.