

Legal Profession Amendment Bill 2004

Explanatory note

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

Overview of Bill

The object of this Bill is to make a number of amendments to the *Legal Profession Act 1987* principally in relation to the discipline of the legal profession. The amendments are described in more detail below.

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 appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Legal Profession Act 1987* set out in Schedule 1.

Schedule 1 Amendments

Pre-admission events—powers relating to bankrupt or convicted applicants for and holders of practising certificates

Schedule 1 [1] amends section 3 to insert a definition of *pre-admission event*, which is an act of bankruptcy committed, or finding of guilt for an indictable or tax offence, occurring before a person's admission as a legal practitioner.

Schedule 1 [2] amends section 30 to make it clear that the regulations may prescribe details relating to pre-admission events as information that must accompany an application for a practising certificate. Transitional provisions validate regulations already made (Schedule 1 [22] amending Schedule 8).

Schedule 1 [3] amends section 37 to make it clear that the Bar Council or the Law Society Council (**Council**) may exercise powers to refuse to issue, or to cancel or suspend, a practising certificate on grounds relating to pre-admission events, though specific authority is given to a Council to take no action in connection with a pre-admission event if satisfied that it is appropriate to do so given the passage of time and other circumstances the Council considers relevant. Transitional provisions validate past actions taken by Councils (Schedule 1 [22] amending Schedule 8).

Notices requiring assistance by legal practitioners

Schedule 1 [4] and [5] amend section 152 in relation to a notice requiring a legal practitioner to provide information, documents or other assistance to the Legal Services Commissioner (**Commissioner**) or a Council when investigating a complaint against a legal practitioner. Under the section as proposed to be amended, the notice will be able to be served by posting it to the legal practitioner's place of practice, business or residence last notified to a Council (as well as by personal service). These amendments substantially implement Recommendation 13 in Law Reform Commission Report 99.

Reprimands administered to legal practitioners by Commissioner or Council

Schedule 1 [6] amends section 155 to remove the requirement that a reprimand can be administered to a legal practitioner only with the practitioner's consent, where the reprimand is to be administered by the Commissioner or a Council instead of instituting proceedings in the Administrative Decisions Tribunal (**Tribunal**).

Schedule 1 [8] amends section 160 to remove a similar requirement when the Commissioner is reviewing a decision of a Council.

These amendments implement Recommendation 17 in Law Reform Commission Report 99.

Schedule 1 [7] and [9] amend sections 155 and 160 to confer a right of appeal to the Tribunal against a decision to reprimand a legal practitioner if the practitioner

does not consent to the reprimand.

Schedule 1 [16] inserts a new section 171N to provide for the hearing and determination by the Tribunal of such an appeal.

Time for instituting proceedings in the Tribunal

Schedule 1 [10] inserts a new section 167AA to provide that proceedings on a complaint against a legal practitioner may be instituted in the Tribunal at any time within 6 months after the Commissioner or a Council decides that proceedings be instituted. The Tribunal is empowered to extend that time after consideration of matters mentioned in the proposed section. The proposed section will prevail over section 44 of the *Administrative Decisions Tribunal Act 1997* and any rules or regulations under that Act.

Power to disregard procedural lapses

Schedule 1 [11] inserts a new section 171 to allow the Tribunal to order that a failure to observe a procedural requirement in relation to a complaint against a legal practitioner is to be disregarded, if satisfied that the parties have not been prejudiced by the failure.

Reprimands administered to legal practitioners by Tribunal

Schedule 1 [12] amends section 171C to make it clear that the Tribunal, when reprimanding a legal practitioner, does so by order.

Schedule 1 [13] amends section 171C to require the Tribunal to publish any order by which it publicly reprimands a legal practitioner and a statement of reasons.

Schedule 1 [15] amends section 171LA to exclude private reprimands from the register of disciplinary action kept by the Commissioner.

Appeals from Tribunal to Supreme Court

Schedule 1 [14] substitutes section 171F. Under the current section, certain appeals from decisions of the Tribunal lie to an Appeals Panel of the Tribunal and others lie to the Supreme Court, depending how the Tribunal was constituted at first instance. Under the proposed section, all appeals under Part 10 from the Tribunal at first instance will lie to the Supreme Court only and Chapter 7 of the *Administrative Decisions Tribunal Act 1977* will be overridden. Section 75A of the *Supreme Court Act 1970* will apply to the appeals, and the appeals will be by way of rehearing rather by way of a new hearing. This amendment implements Recommendation 36 in Law Reform Commission Report 99.

Undertakings

Schedule 1 [17] inserts a new section 171U. Breach of an undertaking given by a legal practitioner to the Commissioner or a Council in the course of investigating or dealing with a complaint or in the course of a mediation will be capable of being unsatisfactory professional conduct or professional misconduct. This amendment implements Recommendation 20 in Law Reform Commission Report 99.

Commencement of proceedings without reasonable prospect of success

Schedule 1 [18]–[20] amend section 198L, which provides that a solicitor or barrister cannot file originating process or a defence on a claim for damages unless the solicitor or barrister certifies that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim or defence has reasonable prospects of success. Under the amendment, a wider definition of **court documentation** is used to describe the material that cannot be filed.

Savings and transitional provisions

Schedule 1 [21] and [22] amend Schedule 8 to permit regulations to be made to deal with savings and transitional matters and to insert specific provisions of a savings or transitional nature.