

LEGAL PROFESSION AMENDMENT BILL 2016

EXPLANATORY MEMORANDUM

Clause 1. Short Title

This clause states that the short title of the Act is the *Legal Profession Amendment Act 2016*.

Clause 2. Commencement

This clause states that sections 1 and 2 come into operation on the day on which the Act receives the Royal Assent.

This clause also states that the rest of the Act comes into operation on a day fixed by proclamation.

Clause 3. Act amended

This clause states that the Act amends the *Legal Profession Act 2008*.

Clause 4. Section 548 amended

This clause provides for the deletion of section 548(1)(c) of the *Legal Profession Act 2008* and the insertion of a new paragraph in its place.

As it currently stands, section 548(1)(c) of the *Legal Profession Act 2008* enables the Legal Practice Board to apply money received by the Board under the *Legal Profession Act 2008* towards the provision and maintenance of the law library at the Supreme Court. This provision is no longer required because of the amalgamation of the law library at the Supreme Court with the law library of the Department of the Attorney General. Instead, under proposed new section 548(1)(c), the Legal Practice Board will be able to apply money in payment of the law library contribution which the Board is required to pay under proposed new section 548A.

Clause 5. Section 548A inserted

This clause provides for the insertion of a new section 548A into the *Legal Profession Act 2008*.

Proposed section 548(1) contains a definition of "law library", namely "the library established under section 596A."

Proposed section 548A(2) imposes an obligation on the Legal Practice Board to pay the State an annual amount, calculated in accordance with the regulations, as a contribution towards the cost of providing and maintaining the law library.

Proposed section 548A(3) provides that regulations must specify the method by which the amount of the contribution is to be calculated and when payment becomes due.

Proposed section 548A(4) provides that an amendment to regulations referred to in section 548A(3) must be made at least 7 months before the beginning of the financial year to which the amendment will apply.

This is to ensure that the Legal Practice Board has sufficient time to make any changes to the Rules which such an amendment may necessitate.

However, before any amendment is made, proposed section 548A(5) provides that the Attorney General must obtain the written agreement to the proposed amendment by the Legal Practice Board, the Law Society of Western Australia Inc and the West Australian Bar Association. In the alternative, the Attorney General must notify those same bodies of the proposed amendment at least 9 months before the beginning of the financial year to which the proposed amendment is intended to apply and have regard to any submissions made by those bodies.

Payment of the contribution must, as provided in proposed section 548A(5), be credited to the Law Library Fund which is an agency special purpose account established under section 16 of the *Financial Management Act 2006* and administered by the department principally assisting in the administration of the *Legal Profession Act 2008* (currently the Department of the Attorney General).

Money may be charged to the Law Library Fund for the three purposes set out in proposed section 548A(7). First, to provide and maintain the law library. Second, to provide library services to the judiciary, local lawyers and other prescribed persons. Third, for other prescribed purposes relating to the law library.

Clause 6. Section 580 amended

This clause deletes section 580(1)(d) of the *Legal Profession Act 2008*.

Section 580(1)(d) of the *Legal Profession Act 2008* gives the Legal Practice Board the power to make Rules with respect to: the control and use of the law library at the Supreme Court; the persons permitted to use the Library; and the removal of books from the library. This provision is no longer required because of the amalgamation of the law library at the Supreme Court and the law library of the Department of the Attorney General.

Clause 7. Sections 596A and 596B inserted

This clause provides for the insertion of two new sections, namely sections 596A and 596B, into the *Legal Profession Act 2008*.

Proposed section 596A(1) gives the State the power to establish and manage a law library for the use of the judiciary, local lawyers and other prescribed persons.

Proposed section 596A(2) gives the Governor the power to make regulations with respect to the provision, operation and management of the law library. This power is expressly stated not to limit the operation of the general regulation making power contained in section 596 of the *Legal Profession Act 2008*. Examples of the sorts of regulations which may be made include: regulations about access to and use of the law library; the terms upon which persons may be given access to and use of law library facilities; and the borrowing of resources and the manner of securing a resource if it has been loaned.

As set out in proposed section 596A(3), regulations made under section 596A(2) may adopt any rules or administrative procedures published by any person or body or provide for the making of rules or administrative procedures by a person or body.

Proposed section 596B(1) contains a definition of "commencement day", namely "the day on which the *Legal Profession Amendment Act 2016* section 7 comes into operation".

Proposed section 596B(2) provides for the transfer of library assets that, immediately before the commencement day, were vested in the Legal Practice Board under section 548(2) of the *Legal Profession Act 2008* to be transferred to, and vested in, the State.

Proposed section 596B(3) provides that any assets acquired after the commencement day for the purposes of the law library established under section 596A are vested in and are the property of the State.

Proposed section 596B(4) provides that regulations may be made for or with respect to any matter or thing necessary to be dealt with to effect a transfer of assets under section 596B, including the assumption of specific liabilities or classes of liabilities in relation to those assets. Such regulations may, as set out in proposed section 596B(5), provide that if a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the Gazette but not earlier than the commencement day, the regulations have effect according to their terms.