

PROFESSIONAL STANDARDS AMENDMENT BILL 2009

Introduction and First Reading

Bill introduced, on motion by **Mr C.C. Porter (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR C.C. PORTER (Bateman — Attorney General) [12.12 pm]: I move —

That the bill be now read a second time.

Western Australia was the second state in Australia, after New South Wales, to enact professional standards legislation to cap the civil liability of members of occupational associations. In the past few years, all other states and territories have followed suit and enacted professional standards legislation. In each case, the legislation is in a similar form and is applied nationally. The enactment of the national legislation was achieved as a result of decisions by the insurance ministers' forum and the Standing Committee of Attorneys-General in 2003 to implement nationally consistent professional standards legislation.

Professional standards legislation was one of a number of strategies adopted by governments across Australia to address the ongoing availability and affordability of professional indemnity insurance. The legislation facilitates the capping of occupational liability, while also protecting consumer interests through requirements for insurance and the implementation of risk management strategies and complaints and disciplinary procedures. In Western Australia three schemes are presently approved under the Professional Standards Act 1997. These schemes cover accountants who are public practice members of CPA Australia and the Institute of Chartered Accountants in Australia and members of the Institution of Engineers Australia.

Part 2 of the bill makes amendments to the Professional Standards Act 1997 relating to defence costs. The part implements a decision of the Standing Committee of Attorneys-General to enable professionals who are members of schemes to hold either costs-inclusive or costs-in-addition insurance policies. Costs-inclusive policies are inclusive of defence costs, while costs-in-addition policies cover defence costs in addition to the indemnity amount. The Professional Standards Council of Western Australia, which is the independent body that approves schemes under the act, has received legal advice that the current wording of the legislation means that only costs-in-addition policies are acceptable under the act. Members of occupational associations hold such policies because they are more widely available in the market. The bill will amend the act to give flexibility for professionals to hold either costs-inclusive or costs-in-addition policies. Consumers will not be disadvantaged if they deal with a professional holding a costs-inclusive policy because the professional's maximum liability to the consumer will be the amount of the cap applying to the professional; that is, defence costs will not erode a defendant's liability for damages to a successful plaintiff. The proposed amendments in relation to defence costs are strongly supported by the Professional Standards Council. They are already in place in all other Australian states and territories. They are also supported by key professional bodies, including CPA Australia and the Law Council of Australia, which were consulted during the drafting of the bill.

Part 3 of the bill makes amendments to provide for mutual recognition of professional standards schemes throughout all participating jurisdictions. Under the professional standards legislation as it presently exists, the process for professionals to obtain capped liability outside their home jurisdiction is cumbersome and inefficient and involves duplication. Mutual recognition of schemes by jurisdictions aims to address these problems and provide a more seamless national system of professional standards legislation. Mutual recognition will cut the red tape currently facing professionals who wish to have capped liability when providing services in other jurisdictions. It recognises the reality that the work of professional practices often transcends state boundaries.

Under professional standards legislation, the Professional Standards Council is required to consider a range of matters before approving a proposed scheme. These matters include all comments and submissions received on a proposed scheme; the position of people who may be affected by capping the occupational liability of members of the occupational association; the nature and level of claims relating to occupational liability made against members of the occupational association; the risk management strategies of the occupational association and the means by which those strategies will be implemented; the cost and availability of insurance against occupational liability for members of the occupational association; and the standards determined by the occupational association in relation to insurance policies. The bill provides that if a proposed scheme indicates an intent to operate in more than one jurisdiction, the council must consider the matters outlined, plus any other matters specified in the professional standards legislation of the interstate jurisdictions, and all matters in the context of each of the jurisdictions concerned.

Although the professional standards legislation of the states and territories is largely consistent, there are some jurisdictional differences. Part 4 of the bill makes amendments to five sections in the Professional Standards Act

1997 to provide greater consistency with the national legislation. Part 5 of the bill makes a number of amendments to schedule 4 of the Professional Standards Act 1997, which effectively provides that the changes made by the bill have only a prospective effect.

The bill is supported by the Professional Standards Council. It is also supported by key professional bodies, including the Law Council of Australia, the accountancy bodies and the law societies of the states, which were consulted during the drafting of the bill. I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.