

PROFESSIONAL STANDARDS AMENDMENT BILL 2004

EXPLANATORY MEMORANDUM

Clause 1

Contains the short title to the Act.

Clause 2

Provides that the Act is to come into effect when proclaimed.

Clause 3

Designates the Act being amended.

Clause 4

Amends the definition of “occupational association” in s.4 to encompass related occupational groups. (s.5 NSW Act to be similarly amended)

Clause 5

Amends s.12(1)(a)(i) to provide for the publication of amendments to schemes and notice of revocation of schemes in the *Gazette*. (cf s.43(1)(a)(i) of NSW Act)

Amends s.12(1)(h) by removing the requirement for Ministerial approval to conduct forums. (s.43(1)(h) NSW Act to be similarly amended)

Amends s.12(1) by inserting a new paragraph (j) to enable Professional Standards Council to prosecute and take injunctive proceedings for breaches of the Act. (cf NSW Act s.43(1)(j))

Inserts new subsection (5) giving the Council standing in Court proceedings brought under s.12(1)(j) and relieves Council from having to give an undertaking as to damages when applying for injunctive relief. (cf s.43(5) NSW Act)

Clause 6

Amends s.13(1)(b) to include a requirement to furnish information in relation to an amendment or revocation of a scheme. (cf s.44 NSW Act)

Clause 7

Inserts a new s.13A which authorises an occupational association to make complaints to the Council alleging breaches of the Act or regulations by a member or former member of the association and confers immunity from liability on the association and its officers for anything done in good faith under the section. (cf s.44A NSW Act)

Clause 8

Amends s.14(1) by deleting the requirement to obtain the Ministers approval to establish a committee of the Council. (s.45(1) of NSW Act to be similarly amended)

Clause 9

Repeals s.24(3) which gave the Council the powers of a Royal Commission. (cf s.11 NSW Act)

Clause 10

Repeals and replaces s.27, to specify the day on which schemes are to commence. (cf s.14 NSW Act)

Clause 11

Repeals s.29 and replaces it with a new ss.29 and 29A.

New s.29 provides that the Minister may require the Council to review the operation of a scheme and allows the Council to conduct a review of its own initiative. The review may be directed to whether a scheme should be amended or revoked or whether there should be a new scheme. (cf s.16 NSW Act)

New s.29A provides for the preparation of an amendment to or revocation of a scheme by an occupational association, by or with the approval of the Council or by the Council at the direction of the Minister. The Council must comply with any direction from the Minister but may at any time while the scheme remains in force, of its own initiative, prepare an amendment or revocation of a scheme. The procedure for making a scheme applies to the making of amendments to or the revocation of a scheme. All rights and liabilities arising during the application of a scheme are preserved. (cf s.16A NSW Act)

Clause 12

Repeals and replaces ss.30 and 31.

The repealed s.30 provided that a scheme must apply to the relevant members of the occupational association. Under new s.30 a scheme may (as opposed to must) apply to all members or a specified class or classes of persons within the association. Persons who do not want to be subject to a scheme will now be able to apply to their occupational association to be exempted from the scheme. Persons who opt-out of the scheme in this way will not be required to resign from their occupational association. (cf s.17 NSW Act)

The repealed s.31 extended to operation of a scheme to partnerships, but not to a partner who was not a member of the occupational association. Under new s.31 the scheme not only applies to partners, but also to officers of bodies corporate. (NSW Act to be similarly amended)

Clause 13

Amends s.34 by :

- substituting the words “a proceeding” for the words “an action” for greater clarity;
- inserting the words “the benefit of” before the words “an insurance policy” to make it clear that it is not limited to the holder of the policy;
- making it clear that the amount payable includes the amount of any excess payable under the policy; and
- deleting paragraph (b) and inserting instead a paragraph which makes it clear that the liability of a person may be limited to the monetary ceiling specified in the scheme at the relevant time.

(cf s.21 NSW Act)

Clause 14

Amends s.35 by:

- substituting the words “a proceeding” for the words “an action” for greater clarity;
- clarifying the time at which the monetary ceiling is to be ascertained;
- inserting the words “the benefit of” before the words “an insurance policy” to make it clear that it is not limited to the holder of the policy;
- making it clear that the amount payable includes the amount of any excess payable under the policy; and
- deleting paragraph (b)(ii) and inserting instead a paragraph which makes it clear that the liability of a person, including in respect of that person’s business assets, may be limited to the monetary ceiling specified in the scheme at the relevant time.

(cf s.22 NSW Act)

Clause 15

Amends s.36(1) by:

- substituting the words “a proceeding” for the words “an action” for greater clarity;
- inserting the words “the benefit of” before the words “an insurance policy” to make it clear that it is not limited to the holder of the policy;
- making it clear that the amount payable includes the amount of any excess payable under the policy;
- clarifying the class of persons and kind of work to which the cause of action relates;
- clarifying the time at which the amount payable is ascertained;
- inserting a new paragraph (aa) to allow business assets to be taken into account; and

- providing for any minimum cap specified that is higher than the limitation amount to be taken into account.

Amends s.36(3) by deleting the word “person” and substituting the words “class of persons and the kind of work concerned” for greater clarity.

(cf s.23 NSW Act)

Clause 16

Repeals and replaces s.37.

New s.37 provides that a scheme may specify a maximum liability in relation to all cases to which it applies or different maximum amounts for different cases or classes of case or for the same case or class of case for different purposes.

It also confers a discretionary authority on an occupational association to specify a maximum amount that is higher in relation to a person in all cases or in any specified case or class of case.

It also provides that a scheme may specify a multiple, monetary ceiling or minimum cap by way of a formula that is to be applied to calculate the multiple, ceiling or cap.

(cf s.24 NSW Act)

Clause 17

Makes minor amendments to s.38, consistent with other such amendments in the Bill, to delete reference to “occupation” and substitute “kind of work” and reference to “person” and substitute “class of person and the kind of work”. (cf s.25 NSW Act)

Clause 18

Amends s.39(1) by adding the words “and specified in the scheme” after the word “Council” to bring it into conformity with the NSW Act.

Repeals s.39(3) and provides instead that a Council determination is to take effect when an amendment providing for its specification in the scheme takes effect. A Council determination applies only to a cause of action that arises after the determination takes effect.

(cf s.26 NSW Act)

Clause 19

Repeals and replaces s.41.

New s.41 provides for the extent to which occupational liability is limited by schemes approved under the Act and at what time and to whom that limitation applies.

(cf s.28 NSW Act)

Clause 20

Inserts new s.44A.

Provides for the duration of a scheme to be determined by the Council, which is to be no longer than 5 years. The duration of the scheme may be extended by the Minister, but only once and for a maximum of 12 months.

(cf s.32 NSW Act)

Clause 21

Amends s.45 by deleting the reference to “business cards”. (cf s.33 NSW Act)

Clause 22

Amends s.46 to make it clear that the different standards of insurance specified may extend to different kinds of work or on the basis of any other differing circumstances that the occupational association considers relevant. (NSW Act to be similarly amended)

Clause 23

Amends the regulation making power in s.55 to allow regulations to be made prescribing fees for the various categories of applications for the Council’s approval under Part 3 Division 1. (cf s.53(2)(a) NSW Act)

Clause 24

Repeals s.58 and inserts a new s.58 giving effect to savings, transitional and other provisions in new Schedule 4.

Clause 25

Amends Schedule 3 by deleting from clause 11 “the person” and substituting the words “a member of the executive body of the association, or the person so acting.”

(cf Schedule 1, clause 11 NSW Act)

Clause 26

Replaces Schedule 4 – Savings, transitional and other provisions.

Clause 1 – defines terms used in the Schedule

Clause 2 – provides that the review of schemes provided for in new s.29 applies to schemes in force at the commencement.

Clause 3 – provides transitional provisions for limitation of damages in respect of subsisting causes of action.

Clause 4 – provides transitional provisions for the determination of the extent of limitation of damages before the amendments took effect.

Clause 5 – provides for fees for applications for approval of amendment to or revocation of a scheme to continue to apply.

Clause 6 – provides power for making regulations for savings or transitional provisions.