

Professional Standards Amendment Bill 2009

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Western Australia

LEGISLATIVE ASSEMBLY

Professional Standards Amendment Bill 2009

A Bill for

An Act to amend the *Professional Standards Act 1997*.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Professional Standards Amendment Act 2009*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Act amended

This Act amends the *Professional Standards Act 1997*.

1 **Part 2 — Amendments relating to defence costs**

2 **4. Section 4 amended**

3 (1) In section 4:

4 (a) delete “In this” and insert:

5

6 (1) In this

7

8 (b) delete the definition of *damages*;

9 (c) insert in alphabetical order:

10

11 *costs* includes fees, charges, disbursements and
12 expenses;

13 *damages* means —

14 (a) damages awarded in respect of a claim or
15 counter-claim or claim by way of set-off; and

16 (b) costs in or in relation to the proceedings
17 ordered to be paid in connection with such an
18 award (other than costs incurred in enforcing a
19 judgment or incurred on an appeal made by the
20 defendant); and

21 (c) any interest payable on the amount of those
22 damages or costs;

23

24 (2) At the end of section 4 insert:

25

26 (2) When this Act refers to the *amount payable* under an
27 insurance policy in respect of an occupational liability
28 it includes —

29 (a) defence costs payable in respect of a claim, or
30 notification that may lead to a claim (other than
31 reimbursement of the defendant for time spent
32 in relation to the claim), but only if those costs

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- 1 are payable out of the one sum insured under
2 the policy in respect of the occupational
3 liability; and
4 (b) the amount payable under or in relation to the
5 policy by way of excess.
6

7 **5. Section 34 replaced**

8 Delete section 34 and insert:

9
10 **34. Limitation of liability by insurance arrangements**

11 A scheme may provide that if a person to whom the
12 scheme applies and against whom a proceeding relating
13 to occupational liability is brought is able to satisfy the
14 court concerned that —

- 15 (a) that person has the benefit of an insurance
16 policy insuring that person against the
17 occupational liability to which the cause of
18 action relates; and
19 (b) the amount payable under the policy in respect
20 of that occupational liability is not less than the
21 amount of the monetary ceiling specified in the
22 scheme in relation to the class of person and the
23 kind of work to which the cause of action
24 relates,

25 that person is not liable in damages in relation to that
26 cause of action above the amount of the monetary
27 ceiling so specified.
28

1 **6. Section 35 amended**

2 In section 35:

3 (a) in paragraph (a) delete “relates at the time at which the
4 act or omission giving rise to the cause of action
5 occurred; or” and insert:

6
7 relates; or

8
9 (b) in paragraph (b)(i) delete “that occupational liability;
10 and” and insert:

11
12 the occupational liability to which the
13 cause of action relates; and

14
15 (c) delete paragraph (b)(ii) and insert:

16
17 (ii) the net current market value of the
18 business assets and the amount payable
19 under the policy in respect of that
20 occupational liability, if combined,
21 would total an amount that is not less
22 than the amount of the monetary ceiling
23 specified in the scheme in relation to the
24 class of person and the kind of work to
25 which the cause of action relates,
26

27 **7. Section 36 amended**

28 In section 36(1):

29 (a) in paragraph (a)(i) delete “that occupational liability;
30 and” and insert:

31
32 the occupational liability to which the
33 cause of action relates; and

34

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- 1 (b) delete paragraph (a)(ii) and insert:
2
3 (ii) under which the amount payable in
4 respect of that occupational liability is
5 not less than an amount (the **limitation**
6 **amount**), being a reasonable charge for
7 the services which were provided by
8 that person, or which that person failed
9 to provide, and to which the cause of
10 action relates, multiplied by the multiple
11 specified in the scheme in relation to the
12 class of person and the kind of work to
13 which the cause of action relates;
- 14 or
- 15
- 16 (c) in paragraph (aa) delete “that person” and insert:
17
18 that that person
19
- 20 (d) in paragraph (b)(i) delete “that occupational liability;
21 and” and insert:
22
23 the occupational liability to which the
24 cause of action relates; and
25
- 26 (e) delete paragraph (b)(ii) and insert:
27
28 (ii) the net current market value of the
29 business assets and the amount payable
30 under the policy in respect of that
31 occupational liability, if combined,
32 would total an amount that is not less
33 than the limitation amount,
34

1 **8. Section 40A inserted**

2 After section 39 insert:

3

4 **40A. Liability in damages not reduced to below relevant**
5 **limit**

6 The liability in damages of a person to whom a scheme
7 applies is not reduced below the relevant limitation
8 imposed by a scheme in force under this Act because
9 the amount available to be paid to the claimant under
10 the insurance policy required for the purposes of this
11 Act in respect of that liability is less than the relevant
12 limitation.

13

14 **9. Section 41 amended**

15 In section 41(2) delete “at the time of the relevant act or
16 omission.” and insert:

17

18 at the time at which the act or omission giving rise to
19 the cause of action concerned occurred.

20

1 **Part 3 — Amendments relating to mutual recognition**

2 **10. Section 4 amended**

3 In section 4:

4 (a) insert in alphabetical order:

5
6 *another jurisdiction* means any State or Territory,
7 other than this jurisdiction;

8 *appropriate Council*, in relation to another jurisdiction,
9 means the authority that, under the corresponding law
10 of that jurisdiction, has functions that are substantially
11 the same as the Council's functions under this Act;

12 *corresponding law* means a law of another jurisdiction
13 that corresponds to this Act, and includes a law of
14 another jurisdiction that is declared by the regulations
15 to be a corresponding law of that jurisdiction for the
16 purposes of this Act;

17 *interstate scheme* means a scheme —

18 (a) that has been prepared under the corresponding
19 law of another jurisdiction; and

20 (b) that operates, or indicates an intention to
21 operate, as a scheme of this jurisdiction;

22 *this jurisdiction* means Western Australia.

23
24 (b) in the definition of *scheme* delete “association.” and
25 insert:

26
27 association, and includes an interstate scheme;

28
29 **11. Section 12 amended**

30 (1) In section 12(1)(a)(i) delete “by it”.

1 (2) In section 12(4) delete “Act.” and insert:

2

3 Act or law.

4

5 **12. Section 13A inserted**

6 After section 12 insert:

7

8 **13A. Cooperation with authorities in other jurisdictions**

9 For the purpose of dealing with a scheme that operates,
10 or indicates an intention to operate, as a scheme of both
11 this jurisdiction and another jurisdiction, the
12 Council —

13 (a) may, in the exercise of its functions under this
14 Act, act in conjunction with the appropriate
15 Council for the other jurisdiction; and

16 (b) may act in conjunction with the appropriate
17 Council for the other jurisdiction in the exercise
18 of that Council’s functions under the
19 corresponding law of that jurisdiction.
20

21 **13. Section 20 amended**

22 After section 20(3) insert:

23

24 (4) A scheme prepared under this section may indicate an
25 intention to operate as a scheme of this jurisdiction
26 only, or of this jurisdiction and another jurisdiction.
27

28 **14. Section 21 amended**

29 (1) In section 21 delete “Before” and insert:

30

31 (1) Before

32

s. 15

- 1 (2) At the end of section 21 insert:
2
3 (2) If the scheme indicates an intention to operate as a
4 scheme of both this jurisdiction and another
5 jurisdiction, the Council must also publish a similar
6 notice in the other jurisdiction in accordance with the
7 requirements of the corresponding law of that
8 jurisdiction that relate to the approval of a scheme
9 prepared in that jurisdiction.
10
- 11 **15. Section 23 amended**
- 12 (1) In section 23 delete “Before” and insert:
13
14 (1) Before
15
- 16 (2) At the end of section 23 insert:
17
18 (2) If the scheme indicates an intention to operate as a
19 scheme of both this jurisdiction and another
20 jurisdiction —
21 (a) the Council must also consider any matter that
22 the appropriate Council for the other
23 jurisdiction would have to consider under the
24 provisions of the corresponding law of that
25 jurisdiction that relate to the approval of a
26 scheme prepared in that jurisdiction; and
27 (b) the matters to be considered by the Council,
28 whether under subsection (1) or paragraph (a),
29 are to be considered in the context of each of
30 the jurisdictions concerned.
31

1 **16. Section 25 amended**

2 (1) In section 25 delete “The Council” and insert:

3

4 (1) The Council

5

6 (2) At the end of section 25 insert:

7

8 (2) If the scheme indicates an intention to operate as a
9 scheme of both this jurisdiction and another
10 jurisdiction, the Council may also submit the scheme to
11 the Minister administering the corresponding law of the
12 other jurisdiction.

13

14 **17. Section 26 amended**

15 (1) In section 26(1) delete “Council.” and insert:

16

17 Council or, in the case of an interstate scheme, by the
18 appropriate Council for the jurisdiction in which the
19 scheme was prepared.

20

21 (2) After section 26(2) insert:

22

23 (3) In this section, a reference to an interstate scheme
24 includes a reference to an instrument amending an
25 interstate scheme.

26

27 **18. Section 27 amended**

28 Delete section 27(2) and insert:

29

30 (2) This section is subject to any order made by the
31 Supreme Court under section 28 and any order made

s. 19

1 by the Supreme Court of another jurisdiction under the
2 corresponding law of that jurisdiction.

3 (3) In this section, a reference to a scheme includes, in the
4 case of an interstate scheme, a reference to an
5 instrument amending that scheme.
6

7 **19. Section 28 amended**

8 (1) Before section 28(1) insert:
9

10 (1A) In this section —
11 *scheme*, in the case of an interstate scheme, includes an
12 instrument amending that scheme.
13

14 (2) In section 28(1) after “section 26” insert:
15

16 (including a person who is or is reasonably likely to be
17 affected by a scheme that operates as a scheme of
18 another jurisdiction)
19

20 (3) After section 28(3) insert:
21

22 (4) The Court may not make an order that an interstate
23 scheme is void for want of compliance with this Act on
24 the ground that the scheme fails to comply with
25 Division 2, but may do so on the ground that the
26 scheme fails to comply with the provisions of the
27 corresponding law of the jurisdiction in which it was
28 prepared that relate to the contents of schemes prepared
29 in that jurisdiction.

30 (5) This section does not prevent a scheme from being
31 challenged or called into question otherwise than under
32 this section.
33

1 **20. Section 29 amended**

2 Delete section 29(3) and insert:

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- (3) A review may, but need not, be conducted in order to decide —
 - (a) in the case of a scheme prepared under this Act, whether the scheme should be amended or revoked or whether a new scheme should be made; or
 - (b) in the case of an interstate scheme, whether the operation of the scheme should be terminated in relation to this jurisdiction.

14 **21. Section 29A amended**

15 (1) In section 29A(1), (2), (3) and (4) delete “an amendment to or
16 revocation of” and insert:

17
18
19

an instrument amending or revoking

20 (2) Delete section 29A(5) and (6) and insert:

21
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- (5) The provisions of sections 20 to 28 extend, with any necessary modifications, to the amendment of a scheme by an instrument under this section.
- (6) The provisions of sections 20 to 27 (other than section 25(2)) extend, with any necessary modifications, to the revocation of a scheme by an instrument under this section.
- (7) The amendment or revocation of a scheme does not affect a right or liability arising during the application of the scheme to members of an occupational association before the amendment or revocation.

1 (8) This section does not apply to an interstate scheme.
2

3 **22. Sections 30A and 30B inserted**

4 At the end of Part 3 Division 1 insert:

5
6 **30A. Notification of revocation of schemes**

7 (1) On publication in the *Gazette* of an instrument
8 revoking a scheme (other than an interstate scheme)
9 that operates as a scheme of another jurisdiction, the
10 Minister must cause notice of that fact to be given to
11 the Minister administering the corresponding law of
12 that jurisdiction.

13 (2) On receipt of notice that an interstate scheme has been
14 revoked under the corresponding law of the jurisdiction
15 in which it was prepared, the Minister must cause a
16 statement to that effect to be published in the *Gazette*.

17 **30B. Termination of operation of interstate schemes in**
18 **this jurisdiction**

19 (1) The Council may, on the application of an occupational
20 association, prepare an instrument terminating, in
21 relation to this jurisdiction, the operation of an
22 interstate scheme that relates to members of the
23 association.

24 (2) The Minister may direct the Council to prepare an
25 instrument terminating the operation of an interstate
26 scheme in relation to this jurisdiction.

27 (3) The Council must comply with any direction under
28 subsection (2) but may on its own initiative, at any time
29 while an interstate scheme remains in force, prepare an
30 instrument terminating the operation of the scheme in
31 relation to this jurisdiction.

- 1 (4) The provisions of sections 21 to 26 (other than
2 section 25(2)) extend, with any necessary
3 modifications, to the termination of the operation of an
4 interstate scheme under an instrument under this
5 section.
- 6 (5) The operation of an interstate scheme in respect of
7 which an instrument under this section is published
8 under section 26 (as applied by subsection (4)) is
9 terminated, in relation to this jurisdiction, as from —
- 10 (a) a day specified in the instrument, being a day
11 that is later than the day of its publication; or
- 12 (b) if no day is specified, 2 months after the day of
13 its publication.
- 14

15 **23. Section 44A amended**

16 Delete section 44A(1) and insert:

- 17
- 18 (1) A scheme must specify the period (not exceeding
19 5 years) for which it is to remain in force after its
20 commencement.
- 21 (2A) Subject to subsection (2), a scheme (other than an
22 interstate scheme) remains in force until —
- 23 (a) the period specified under subsection (1) ends;
24 or
- 25 (b) the scheme is revoked; or
- 26 (c) the scheme's operation ceases because of the
27 operation of another Act; or
- 28 (d) the scheme is declared void, either by an order
29 made by the Supreme Court under section 28 or
30 by an order made by the Supreme Court of
31 another jurisdiction under the corresponding
32 law of that jurisdiction; or

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- 1 (e) the scheme is disallowed under the
2 *Interpretation Act 1984* section 42.
- 3 (2B) Subject to subsection (2), an interstate scheme remains
4 in force in this jurisdiction until —
- 5 (a) the period specified under subsection (1) ends;
6 or
- 7 (b) the scheme's operation in relation to this
8 jurisdiction is terminated under section 30B; or
- 9 (c) the scheme ceases to have effect in the
10 jurisdiction in which it was prepared; or
- 11 (d) the scheme is disallowed under the
12 *Interpretation Act 1984* section 42.
13

**Part 4 — Amendments for consistency with the
national model legislation and for other purposes**

24. Section 5 amended

(1) In section 5(1):

- (a) delete paragraph (b);
- (b) after paragraph (a) insert:

or

(2) After section 5(2) insert:

- (3) Subsection (1)(a) does not operate to exclude from the operation of this Act liability for damages arising out of any negligence or other fault of a legal practitioner in acting for a client in a personal injury claim.

25. Section 17 amended

(1) In section 17 delete “The provisions” and insert:

- (1) The provisions

(2) At the end of section 17 insert:

- (2) An annual report submitted by the accountable authority of the Council under the *Financial Management Act 2006* Part 5 is to include details of any forums conducted by the Council under section 12(1)(h), and any committees established by the Council under section 14, during the financial year to which the report relates.

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1 **26. Section 31 amended**

2 In section 31(4) in the definition of *officer* delete paragraph (a)
3 and “and” after it and insert:

- 4
5 (a) in relation to a body corporate that is a
6 corporation as defined in the *Corporations*
7 *Act 2001* (Commonwealth) section 57A, has the
8 meaning given in section 9 of that Act; and
9

10 **27. Section 34A inserted**

11 After section 33 insert:

12
13 **34A. Extension of liability limitation to other persons to**
14 **whom scheme applies**

15 (1) In this section —

16 *associate*, of a person, means someone who is
17 associated with the person under the regulations
18 referred to in section 42(4)(b);

19 *officer* —

20 (a) in relation to a body corporate that is a
21 corporation as defined in the *Corporations*
22 *Act 2001* (Commonwealth) section 57A, has the
23 meaning given in section 9 of that Act; and

24 (b) in relation to a body corporate that is not a
25 corporation as so defined, means any person
26 (by whatever name called) who is concerned in
27 or takes part in the management of the body
28 corporate.

29 (2) limitation that applies under this Act to the
30 occupational liability of a person as a member of an
31 occupational association in respect of a cause of action
32 (the *principal cause of action*) also applies, in respect
33 of the principal cause of action and any related cause of

- 1 action, to the liability of any other person to whom the
2 scheme concerned applies as a partner, officer,
3 employee or associate of the member (whether or not
4 the other person's liability is an occupational liability).
- 5 (3) A *related cause of action* is a cause of action in respect
6 of civil liability of the other person arising (in tort,
7 contract or otherwise) directly or vicariously from
8 anything done or omitted by that person that caused or
9 contributed to the loss or damage with which the
10 principal cause of action is concerned and that resulted
11 from the same or substantially the same event as that
12 from which the principal cause of action arose.
- 13 (4) When this section refers to a person who is a *partner,*
14 *officer, employee or associate of a member* of an
15 occupational association it refers to a person who was
16 such a partner, officer, employee or associate at the
17 time of the event that gave rise to the principal cause of
18 action.
- 19 (5) When this section refers to a *limitation on liability* that
20 applies to a person as a member of an occupational
21 association it includes a limitation on liability that
22 would apply to the person if a cause of action relating
23 to the liability were brought against the person.
- 24

25 **28. Section 42 amended**

26 After section 42(4)(a) insert:

- 27
- 28 (ba) officers of the same body corporate or in the
29 relationship of body corporate and officer of the
30 body corporate (with *officer* having the
31 meaning given in section 31); or
- 32

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Part 5 — Amendments providing for transitional matters

29. Schedule 4 amended

- (1) This section amends Schedule 4.
- (2) Before clause 1 insert:

Division 1 — Provisions relating to the *Professional Standards Amendment Act 2004*

- (3) In clause 1 delete “Schedule” and insert:

Division

Note: The heading to amended clause 1 is to read

Terms used

- (4) In clause 6(2) and (3) delete “subsection” and insert:
subclause

- (5) After clause 6 insert:

Division 2 — Provisions relating to the *Professional Standards Amendment Act 2009*

7. Terms used

In this Division —

amending Act means the *Professional Standards Amendment Act 2009*;

commencement day means the day mentioned in the amending Act section 2(b).

- 1 **8. Personal injury claims**
- 2 Section 5, as in force immediately before commencement
- 3 day, continues to apply to a cause of action that arose before
- 4 commencement day.
- 5 **9. Application of schemes to officers, partners, employees**
- 6 **and associates**
- 7 Section 34A, as in force on and from commencement day,
- 8 does not apply to a cause of action that arose before
- 9 commencement day.
- 10 **10. Associated defendants**
- 11 The application of section 42, as in force on and from
- 12 commencement day, extends to a cause of action that arose
- 13 before commencement day but not so as to affect any
- 14 decision of a court, or any compromise or settlement made
- 15 before commencement day.
- 16 **11. Expiry date of existing schemes**
- 17 Any period determined by the Council under
- 18 section 44A(1), as in force before commencement day, as
- 19 the period for which a scheme is to remain in force is to be
- 20 taken to be specified in the scheme.
- 21 **12. Application of clause 6**
- 22 The provisions of clause 6 apply in relation to the amending
- 23 Act as if those provisions were part of this Division.
- 24
- 25
-