



New South Wales

Professional Standards Amendment Bill 1998

Explanatory note

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

Overview of Bill

The *Professional Standards Act 1994* provides among other things for schemes to be set up by associations representing persons practising particular trades or professions. A scheme limits the liability of members of an association, provided certain guarantees (for example in the form of insurance) are provided by the members to ensure that the liability is met. The Act creates the Professional Standards Council ("the Council") to oversee the operation of the Act.

The objects of this Bill are:

- (a) to vary the manner in which a limitation of liability under a scheme established under the Act is calculated, and
- (b) to make explicit provision for the review of such schemes and for the Council to prepare amendments to and revocations of such schemes, and

* Amended in committee—see table at end of volume.

- (c) to make further provision in relation to the prosecution of offences under the Act, and
- (d) to make other, minor amendments.

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 *Professional Standards Act 1994* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] repeals and replaces section 14 of the Act (which provides that a scheme under the Act commences 2 months after its publication) to make it possible for a scheme to commence on any specified date after its publication.

Schedule 1 [2] repeals section 16 of the Act and replaces it with new sections 16 and 16A. The new sections provide expressly for reviews by the Council of schemes and for the Council's preparation of amendments to schemes and revocations of schemes. The Council is obliged to do these things at the direction of the Minister but may also do them on its own initiative. (The current section 16 does not expressly provide for review of schemes, and amendments and revocations must at present be initiated by the relevant association.) Amendments made by **Schedule 1 [11]**, **[13]** and **[15]** are consequential.

Schedule 1 [3] amends sections 21, 22 and 23 of the Act so as to include among the persons protected by schemes those persons who come within the umbrella of an insurance policy, even if they do not "have" a policy (as the present wording is).

Schedule 1 [4] amends sections 21, 22 and 23 of the Act so as to specify the time of an act or omission that gives rise to a cause of action as the critical time by reference to which a court will assess a defendant's insurance cover, or asset backing, in order to determine whether the defendant is entitled, in terms of a scheme, to limited liability in the cause of action and the extent of that limitation. (Currently the determination is made by reference to the defendant's state of affairs as at the time when the cause of action arose.)

Schedule 1 [5] makes a minor amendment to section 26 of the Act, to provide that the minimum limitation on liability under a scheme should be specified in the scheme. **Schedule 1 [6]** makes a consequential amendment to the same section.

Schedule 1 [7] repeals and replaces section 28 of the Act as a consequence of the amendments made to sections 21, 22 and 23 by Schedule 1 [4]. The object is to make it clear that a defunct or varied scheme continues to have exclusive operation in respect of liabilities arising from acts or omissions that occurred when the scheme applied to liabilities so arising.

Schedule 1 [8] repeals and replaces section 32 of the Act to acknowledge that the application of a scheme may be limited by its revocation, and to enable the Minister to extend a scheme by up to 12 months (instead of 6 months as at present).

Schedule 1 [9] and **[10]** amend section 33 of the Act to remove business cards from the class of documents on which a person must include a warning of any limitation of liability applying to the person under a scheme.

Schedule 1 [11] and **[12]** amend section 43 of the Act so as to include in the Council's functions the institution of proceedings in respect of offences against the Act.

Schedule 1 [14] inserts a new section 44A into the Act to make it clear that an occupational association may refer to the Council any information that it has about an offence by one of its members against section 33 of the Act (that is, a failure to include a warning on business documents of any limitation of liability applying to the member under a scheme) or against the regulations, and protects an association from liability for having done so.

Schedule 1 [16] and **[18]** enact savings and transitional provisions relating to the amendments made by the proposed Act and enable the making of any necessary regulations of a similar nature.

Schedule 1 [17] amends clause 11 (Protection from liability) of the *Occupational Associations (Complaints and Discipline) Code* (or *Model Code*) in Schedule 1 to the Act by way of statute law revision.