

Passed by both Houses



New South Wales

Professional Standards Amendment Bill 2004

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2004*



New South Wales

Professional Standards Amendment Bill 2004

Act No , 2004

An Act to amend the *Professional Standards Act 1994* to make further provision for the operation of schemes under that Act for limiting the occupational liability of members of occupational associations; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Professional Standards Amendment Act 2004*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Professional Standards Act 1994 No 81

The *Professional Standards Act 1994* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Insert “or related occupational groups” after “group” in paragraph (a) of the definition of *occupational association*.

[2] Section 4, definition of “occupational association”

Insert “or those occupational groups” after “group” in paragraph (b) of the definition.

[3] Section 4 (2)

Insert at the end of section 4:

- (2) Notes included in this Act do not form part of this Act.

[4] Section 5 Occupational liability to which Act does not apply

Omit section 5 (1) (b).

[5] Section 5 (3)

Insert after section 5 (2):

- (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.

[6] Section 18

Omit the section. Insert instead:

18 Officers or partners of persons to whom scheme applies

- (1) If a scheme applies to a body corporate, the scheme also applies to each officer of the body corporate.
- (2) If a scheme applies to a person, the scheme also applies to each partner of the person.
- (3) However, if an officer of a body corporate or a partner of a person is entitled to be a member of the same occupational association as the body corporate or person, but is not a member, the scheme does not apply to that officer or partner.
- (4) In this section:
officer:

- (a) in relation to a body corporate that is a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, has the same meaning as in that Act, and
- (b) in relation to a body corporate that is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned in or takes part in the management of the body corporate.

[7] Section 20A

Insert after section 20:

20A Extension of liability limitation to other persons to whom scheme applies

- (1) A limitation that applies under this Act to the occupational liability of a person as a member of an occupational association in respect of a cause of action (the *principal cause of action*) also applies, in respect of the principal cause of action and any related cause of action, to the liability of any other person to whom the scheme concerned applies as a partner, officer, employee or associate of the member (whether or not the other person's liability is an occupational liability).

Note. Sections 18–20 provide for a scheme to apply to a partner, officer, employee or associate of a member of an occupational association to whom the scheme applies.

- (2) A *related cause of action* is a cause of action in respect of civil liability of the other person arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by that person that caused or contributed to the loss or damage with which the principal cause of action is concerned and that resulted from the same or substantially the same event as that from which the principal cause of action arose.
- (3) A reference in this section to a person who is a partner, officer, employee or associate of a member of an occupational association is a reference to a person who was such a partner, officer, employee or associate at the time of the event that gave rise to the principal cause of action.
- (4) A reference in this section to a limitation on liability that applies to a person as a member of an occupational association includes a reference to a limitation on liability that would apply to the person if a cause of action relating to the liability were brought against the person.
- (5) In this section:

associate of a person means someone who is associated with the person pursuant to the regulations under section 29 (4) (b).

officer:

- (a) in relation to a body corporate that is a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, has the same meaning as in that Act, and
- (b) in relation to a body corporate that is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned in or takes part in the management of the body corporate.

[8] Section 21 Limitation of liability by insurance arrangements

Omit “cause of action” where firstly occurring. Insert instead “proceeding”.

[9] Section 21 (b)

Omit the paragraph. Insert instead:

- (b) under which the amount payable in respect of the occupational liability relating to the cause of action (including any amount payable by way of excess under or in relation to the policy) is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred,

[10] Sections 22 and 23

Omit the sections. Insert instead:

22 Limitation of liability by reference to amount of business assets

A scheme may provide that if a person to whom the scheme applies and against whom a proceeding relating to occupational liability is brought is able to satisfy the court:

- (a) that the person has business assets the net current market value of which is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred, or
- (b) that:
 - (i) the person has business assets and the benefit of an insurance policy that insures the person against that occupational liability, and

- (ii) the net current market value of the business assets and the amount payable under the insurance policy in respect of the occupational liability relating to the cause of action (including any amount payable by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred,

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

23 Limitation of liability by multiple of charges

- (1) A scheme may provide that if a person to whom the scheme applies and against whom a proceeding relating to occupational liability is brought is able to satisfy the court:
 - (a) that the person has the benefit of an insurance policy:
 - (i) insuring the person against that occupational liability, and
 - (ii) under which the amount payable in respect of the occupational liability relating to the cause of action (including any amount payable by way of excess under or in relation to the policy) is not less than an amount (in this section called the ***limitation amount***), being a reasonable charge for the services provided by the person or which the person failed to provide and to which the cause of action relates, multiplied by the multiple specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred, or
 - (b) that person has business assets the net current market value of which is not less than the limitation amount, or
 - (c) that:
 - (i) the person has business assets and the benefit of an insurance policy insuring the person against that occupational liability, and
 - (ii) the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to the

cause of action (including any amount payable by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the limitation amount,

the person is not liable in damages in relation to that cause of action above the limitation amount or, if the scheme specifies a minimum cap determined by the Council for the purposes of the scheme that is higher than the limitation amount, above the amount of the minimum cap so specified.

- (2) In determining the amount of a reasonable charge for the purposes of such a provision, a court is to have regard to any amount actually charged and to:
 - (a) the amount that would ordinarily be charged in accordance with a scale of charges accepted by the occupational association of which the person is a member, or
 - (b) if there is no such scale, the amount that a competent person of the same qualifications and experience as the person would be likely to charge in the same circumstances.
- (3) This section does not limit an amount of damages to which a person is liable if the amount is less than the amount specified for the purpose in the scheme in relation to the class of person and the kind of work concerned.

[11] Section 24

Omit the section. Insert instead:

24 Specification of limits of liability and multiples

- (1) A scheme may:
 - (a) specify the same maximum amount of liability in relation to all cases to which the scheme applies or different maximum amounts of liability for different cases or classes of case or for the same case or class of case for different purposes, and
 - (b) confer a discretionary authority on an occupational association, on application by a person to whom the scheme applies, to specify in relation to the person a higher maximum amount of liability than would otherwise apply under the scheme in relation to the person either in all cases or in any specified case or class of case.

- (2) 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.

[12] Section 25 Combination of provisions under sections 21, 22 and 23

Omit “occupation”. Insert instead “kind of work”.

[13] Section 25

Omit “person in”. Insert instead “class of person and the kind of work in”.

[14] Section 29 Limitation of amount of damages

Insert after section 29 (4) (a):

- (a1) officers of the same body corporate or in the relationship of body corporate and officer of the body corporate (with *officer* having the same meaning as in section 18), or

[15] Section 34 Occupational association may compel its members to insure

Insert “or for different kinds of work or on the basis of any other differing circumstances that it considers relevant” after “members” in section 34 (4).

[16] Section 43 Functions of Council

Omit “, approved by the Minister,” from section 43 (1) (h).

[17] Section 45 Committees of Council

Omit “, with the approval of the Minister,” from section 45 (1).

[18] Section 47 Annual report

Insert after section 47 (2):

- (3) The report is to include details of any forums conducted by the Council under section 43 (1) (h), and of any committees established by the Council under section 45, during the period to which the report relates.

[19] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Professional Standards Amendment Act 2004

[20] Schedule 4, Part 4

Insert after Part 3:

Part 4 Professional Standards Amendment Act 2004

12 Definition

In this Part:

amending Act means the *Professional Standards Amendment Act 2004*.

13 Operation of amendments

Except as provided by this Part, an amendment made by the amending Act extends to a cause of action arising before the commencement of the amendment but not so as to affect any decision of a court, or any compromise or settlement made before the commencement of the amendment.

14 Personal injury claims

The amendments made by the amending Act to section 5 do not apply to a cause of action that arose before the commencement of the amendments.

15 Application of schemes to officers, partners, employees and associates

The amendments made by the amending Act that substitute section 18 and insert section 20A do not apply to a cause of action that arose before the commencement of the amendments.