



New South Wales

# Professional Standards Amendment (Mutual Recognition) Bill 2007

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Professional Standards Act 1994* (*the Principal Act*) with respect to the mutual recognition of New South Wales and interstate schemes for the limitation of occupational liability.

## 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 the date of assent.

**Clause 3** is a formal provision that gives effect to the amendments to the *Professional Standards Act 1994* set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act on the day after it commences. Once the amendments have commenced the proposed Act will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## Schedule 1 Amendments

Section 4 of the Principal Act defines certain words and expressions for the purposes of that Act. **Schedule 1 [1]** inserts additional definitions (*another jurisdiction*, *appropriate Council*, *corresponding law*, *interstate scheme* and *this jurisdiction*) as a consequence of the other proposed amendments to that Act. **Schedule 1 [2]** makes a consequential amendment to the existing definition of *scheme*.

Section 7 of the Principal Act provides that an occupational liability scheme (*a scheme*) may be prepared by an occupational association or by the Professional Standards Council (*the Council*). A scheme must then be approved by the Council. **Schedule 1 [3]** inserts a new section 7 (4) so as to provide that a scheme may indicate an intention to operate as a scheme of New South Wales only, or as a scheme of both New South Wales and another jurisdiction.

Section 8 of the Principal Act requires that, before it is approved, a scheme must be publicised by means of a notice in a daily newspaper circulating throughout New South Wales. **Schedule 1 [4]** inserts a new section 8 (2) so as to require a scheme that is to operate as a scheme of some other jurisdiction to be further publicised in accordance with the requirements of the corresponding law of that other jurisdiction.

Section 10 of the Principal Act requires the Council to take certain matters into consideration before approving a scheme. **Schedule 1 [5]** inserts a new section 10 (2) so as to provide that, in the case of a scheme that is intended to operate as a scheme of another jurisdiction, the Council must also consider those matters that the appropriate Council for the other jurisdiction would have to consider and must consider all matters in the context of each of the jurisdictions concerned.

Section 12 of the Principal Act provides for the submission of schemes to the Minister, and section 13 provides for their Gazettal. **Schedule 1 [6]** inserts a new section 12 (2) so as to enable a scheme that indicates an intention to operate as a scheme of another jurisdiction to be submitted by the Council to the Minister administering the corresponding law of the other jurisdiction (so allowing the scheme to be gazetted in that jurisdiction in accordance with that jurisdiction's version of section 13). **Schedule 1 [7]** amends section 13 (1) so as to provide for the Gazettal in New South Wales of an interstate scheme that has been submitted to the Minister under that jurisdiction's version of section 12. **Schedule 1 [8]** inserts a new section 13 (3) so as to extend section 13 to amendments to interstate schemes.

Section 14 of the Principal Act establishes the date of commencement of a scheme that has been gazetted. **Schedule 1 [9]** substitutes section 14 (2) so as to provide that a scheme's commencement can be postponed not only by the Supreme Court of New South Wales (under section 15) but also by the Supreme Court of another jurisdiction by an order made under that jurisdiction's version of section 15. **Schedule 1 [9]** also inserts a new section 14 (3) so as to extend section 14 to amendments to interstate schemes.

Section 15 of the Principal Act enables a scheme's validity to be challenged in the Supreme Court. **Schedule 1 [10]** amends section 15 (1) so as to enable a scheme that operates as a scheme of some other jurisdiction to be challenged by persons affected by the scheme as it operates in that jurisdiction. **Schedule 1 [11]** inserts a new section 15 (4) so as to provide that an interstate scheme may not be declared void under section 15 just because it fails to comply with the requirements of Division 2 (Contents of schemes) of Part 2, but may be declared void if it fails to comply with the equivalent provisions of the corresponding law of the jurisdiction in which it was prepared. **Schedule 1 [11]** also inserts a new section 15 (5) so as to preserve other rights of challenge and a new section 15 (6) so as to extend section 15 to amendments to interstate schemes.

Section 16 of the Principal Act provides for the review of schemes. **Schedule 1 [12]** amends section 16 so as to enable an interstate scheme to be reviewed for the purpose of determining whether its operation should be terminated, in relation to New South Wales, under proposed section 16C.

Section 16A of the Principal Act provides for the amendment and revocation of schemes. **Schedule 1 [14]** substitutes section 16A (5) and inserts new section 16A (6) and (7) so as to exclude sections 12 (2) and 15 from the list of sections that section 16A extends to the amendment and revocation of schemes, and to exclude interstate schemes from the application of section 16A. **Schedule 1 [13]** makes a further amendment to section 16A by way of law revision.

**Schedule 1 [15]** inserts new sections 16B and 16C into the Principal Act.

Proposed section 16B requires the Minister to notify his or her interstate counterparts if he or she revokes a scheme, and to gazette notice of any revocation of an interstate scheme of which he or she receives notice.

Proposed section 16C provides for the termination of the operation of interstate schemes in relation to New South Wales. Its procedures parallel the procedures established by section 16A for the amendment and revocation of schemes.

Section 32 of the Principal Act provides for the duration of schemes. **Schedule 1 [16]** substitutes section 32 (1) and adds a new section 32 (1A) so as to clarify the period for which a scheme prepared in New South Wales remains in force. **Schedule 1 [16]** also adds a new section 32 (1B) so as to specify the period for which an interstate scheme remains in force.

Section 43 of the Principal Act sets out the functions of the Council. **Schedule 1 [17]** amends section 43 so as to allow the Council to give advice to the Minister in relation to interstate schemes that are intended to operate as schemes of New South Wales. **Schedule 1 [18]** further amends section 43 so as to ensure that the Council can exercise functions conferred or imposed on it by the laws of other jurisdictions.

**Schedule 1 [19]** inserts a new section 43A into the Principal Act. The proposed section ensures that the Council can act in conjunction with its interstate counterparts.

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**Schedule 1 [20]** amends Schedule 4 so as to enable the regulations under the Principal Act to make provisions of a savings or transitional nature consequent on the enactment of the proposed Act. **Schedule 1 [21]** inserts a new Part 6 into Schedule 4. The proposed Part contains a clause that clarifies the expiry date of existing schemes.

First print



New South Wales

# Professional Standards Amendment (Mutual Recognition) Bill 2007

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New South Wales

# Professional Standards Amendment (Mutual Recognition) Bill 2007

No. , 2007

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## A Bill for

An Act to amend the *Professional Standards Act 1994* with respect to the mutual recognition of New South Wales and interstate schemes for the limitation of occupational liability.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Professional Standards Amendment (Mutual Recognition) Act 2007</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6
<b>3 Amendment of Professional Standards Act 1994 No 81</b>	7
The <i>Professional Standards Act 1994</i> is amended as set out in Schedule 1.	8 9
<b>4 Repeal of Act</b>	10
(1) This Act is repealed on the day following the day on which this Act commences.	11 12
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	13 14

<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 4 Definitions</b>	3
	Insert in alphabetical order in section 4 (1):	4
	<i>another jurisdiction</i> means any State or Territory, other than this jurisdiction.	5 6
	<i>appropriate Council</i> , in relation to another jurisdiction, means the authority that, under the corresponding law of that jurisdiction, has functions that are substantially the same as the Council's functions under this Act.	7 8 9 10
	<i>corresponding law</i> means a law of another jurisdiction that corresponds to this Act, and includes a law of another jurisdiction that is declared by the regulations to be a corresponding law of that jurisdiction for the purposes of this Act.	11 12 13 14
	<i>interstate scheme</i> means a scheme:	15
	(a) that has been prepared under the corresponding law of another jurisdiction, and	16 17
	(b) that operates, or indicates an intention to operate, as a scheme of this jurisdiction.	18 19
	<i>this jurisdiction</i> means New South Wales.	20
<b>[2]</b>	<b>Section 4 (1), definition of "scheme"</b>	21
	Insert ", and includes an interstate scheme" after "association".	22
<b>[3]</b>	<b>Section 7 Preparation and approval of schemes</b>	23
	Insert after section 7 (3):	24
	(4) A scheme prepared under this section may indicate an intention to operate as a scheme of this jurisdiction only, or of both this jurisdiction and another jurisdiction.	25 26 27
<b>[4]</b>	<b>Section 8 Public notification of schemes</b>	28
	Insert at the end of the section:	29
	(2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction, the Council must also publish a similar notice in the other jurisdiction in accordance with the requirements of the corresponding law of that jurisdiction that relate to the approval of a scheme prepared in that jurisdiction.	30 31 32 33 34 35

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<b>[5] Section 10 Consideration of comments, submissions and other matters</b>	1
Insert at the end of the section:	2
(2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction:	3
(a) the Council must also consider any matter that the appropriate Council for the other jurisdiction would have to consider under the provisions of the corresponding law of that jurisdiction that relate to the approval of a scheme prepared in that jurisdiction, and	4
(b) the matters to be considered by the Council, whether under subsection (1) or paragraph (a), are to be considered in the context of each of the jurisdictions concerned.	5
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<b>[6] Section 12 Submission of approved schemes for Gazettal</b>	13
Insert at the end of the section:	14
(2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction, the Council may also submit the scheme to the Minister administering the corresponding law of the other jurisdiction.	15
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<b>[7] Section 13 Gazettal, tabling and disallowance of schemes</b>	19
Insert “or, in the case of an interstate scheme, by the appropriate Council for the jurisdiction in which the scheme was prepared” after “by the Council” in section 13 (1).	20
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<b>[8] Section 13 (3)</b>	23
Insert after section 13 (2):	24
(3) In this section, a reference to an interstate scheme includes a reference to an instrument amending an interstate scheme.	25
<b>Note.</b> Subsection (3) applies subsections (1) and (2) to instruments that amend an interstate scheme. Those subsections already apply, by virtue of section 16A (5), to instruments that amend a scheme that is not an interstate scheme.	26
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<b>[9] Section 14 Commencement of schemes</b>	31
Omit section 14 (2). Insert instead:	32
(2) This section is subject to any order made by the Supreme Court under section 15 and any order made by the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction.	33
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(3)	In this section, a reference to a scheme includes, in the case of an interstate scheme, a reference to an instrument amending that scheme.	1 2 3
<b>[10]</b>	<b>Section 15 Challenges to schemes</b>	4
	Insert “(including a person who is or is reasonably likely to be affected by a scheme that operates as a scheme of another jurisdiction)” after “section 13” in section 15 (1).	5 6 7
<b>[11]</b>	<b>Section 15 (4)–(6)</b>	8
	Insert after section 15 (3):	9
(4)	The Court may not make an order that an interstate scheme is void for want of compliance with this Act on the ground that the scheme fails to comply with Division 2, but may do so on the ground that the scheme fails to comply with the provisions of the corresponding law of the jurisdiction in which it was prepared that relate to the contents of schemes prepared in that jurisdiction.	10 11 12 13 14 15
(5)	This section does not prevent a scheme from being challenged or called into question otherwise than under this section.	16 17
(6)	In this section, a reference to a scheme includes, in the case of an interstate scheme, a reference to an instrument amending that scheme.	18 19 20
<b>[12]</b>	<b>Section 16 Review of schemes</b>	21
	Omit section 16 (3). Insert instead:	22
(3)	A review may, but need not, be conducted in order to decide:	23
(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	24 25 26
(b)	in the case of an interstate scheme, whether the operation of the scheme should be terminated in relation to this jurisdiction.	27 28 29
<b>[13]</b>	<b>Section 16A Amendment and revocation of schemes approved by Council</b>	30 31
	Omit “an amendment to or revocation of” wherever occurring in section 16A (1)–(4).	32 33
	Insert instead “an instrument amending or revoking”.	34

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<b>[14] Section 16A (5)–(7)</b>	1
Omit section 16A (5). Insert instead:	2
(5) The provisions of sections 7–15 extend, with any necessary modifications, to the amendment of a scheme by an instrument under this section.	3 4 5
(6) The provisions of sections 7–14 (other than section 12 (2)) extend, with any necessary modifications, to the revocation of a scheme by an instrument under this section.	6 7 8
(7) This section does not apply to an interstate scheme.	9
<b>Note.</b> An instrument that amends a scheme operating in another jurisdiction may be submitted to the Minister administering the corresponding law of that jurisdiction under section 12 with a view to its being published under that law. An instrument made under the corresponding law of another jurisdiction that amends an interstate scheme may be submitted to the Minister administering this Act with a view to its being published under section 13.	10 11 12 13 14 15 16
<b>[15] Sections 16B and 16C</b>	17
Insert after section 16A:	18
<b>16B Notification of revocation of schemes</b>	19
(1) On publication in the Gazette of an instrument revoking a scheme (other than an interstate scheme) that operates as a scheme of another jurisdiction, the Minister must cause notice of that fact to be given to the Minister administering the corresponding law of that jurisdiction.	20 21 22 23 24
(2) On receipt of notice that an interstate scheme has been revoked under the corresponding law of the jurisdiction in which it was prepared, the Minister must cause a statement to that effect to be published in the Gazette.	25 26 27 28
<b>Note.</b> Under section 32 (1B), an interstate scheme will cease to have effect in this jurisdiction when it ceases to have effect in the other jurisdiction.	29 30 31
<b>16C Termination of operation of interstate schemes in this jurisdiction</b>	32
(1) The Council may, on the application of an occupational association, prepare an instrument terminating, in relation to this jurisdiction, the operation of an interstate scheme that relates to members of the association.	33 34 35 36
(2) The Minister may direct the Council to prepare an instrument terminating the operation of an interstate scheme in relation to this jurisdiction.	37 38 39

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(3)	The Council must comply with any such direction, but may on its own initiative, at any time while an interstate scheme remains in force, prepare an instrument terminating the operation of the scheme in relation to this jurisdiction.	1 2 3 4
(4)	The provisions of sections 8–13 (other than section 12 (2)) extend, with any necessary modifications, to the termination of the operation of an interstate scheme under an instrument under this section.	5 6 7 8
(5)	The operation of an interstate scheme in respect of which an instrument under this section is published under section 13 (as applied by subsection (4)) is terminated, in relation to this jurisdiction, as from:	9 10 11 12
(a)	such day subsequent to the date of its publication as may be specified in the instrument, or	13 14
(b)	if no such day is specified—2 months after the date of its publication.	15 16
<b>[16]</b>	<b>Section 32 Duration of scheme</b>	17
	Omit section 32 (1). Insert instead:	18
(1)	A scheme must specify the period (not exceeding 5 years) for which it is to remain in force after its commencement.	19 20
(1A)	Subject to subsection (2), a scheme (other than an interstate scheme) remains in force until:	21 22
(a)	the period specified under subsection (1) ends, or	23
(b)	the scheme is revoked, or	24
(c)	the scheme’s operation ceases because of the operation of another Act, or	25 26
(d)	the scheme is declared void, either by an order made by the Supreme Court under section 15 or by an order made by the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction, or	27 28 29 30
(e)	the scheme is disallowed under section 41 of the <i>Interpretation Act 1987</i> .	31 32
(1B)	Subject to subsection (2), an interstate scheme remains in force in this jurisdiction until:	33 34
(a)	the period specified under subsection (1) ends, or	35
(b)	the scheme’s operation in relation to this jurisdiction is terminated under section 16C, or	36 37

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	(c) the scheme ceases to have effect in the jurisdiction in which it was prepared, or	1 2
	(d) the scheme is disallowed under section 41 of the <i>Interpretation Act 1987</i> .	3 4
<b>[17]</b>	<b>Section 43 Functions of Council</b>	5
	Omit “by it” from section 43 (1) (a) (i).	6
<b>[18]</b>	<b>Section 43 (4)</b>	7
	Insert “or law” after “Act”.	8
<b>[19]</b>	<b>Section 43A</b>	9
	Insert after section 43:	10
	<b>43A Co-operation with authorities in other jurisdictions</b>	11
	For the purpose of dealing with a scheme that operates, or indicates an intention to operate, as a scheme of both this jurisdiction and another jurisdiction, the Council:	12 13 14
	(a) may, in the exercise of its functions under this Act, act in conjunction with the appropriate Council for the other jurisdiction, and	15 16 17
	(b) may act in conjunction with the appropriate Council for the other jurisdiction in the exercise of that Council’s functions under the corresponding law of that jurisdiction.	18 19 20
<b>[20]</b>	<b>Schedule 4 Savings, transitional and other provisions</b>	21
	Insert at the end of clause 1 (1):	22
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<b>[21] Schedule 4, Part 6</b>	1
Insert after Part 5:	2
<b>Part 6 Professional Standards Amendment (Mutual Recognition) Act 2007</b>	3 4
<b>18 Expiry date of existing schemes</b>	5
The period for which the Council has, before the commencement of Schedule 1 [16] to the <i>Professional Standards Amendment (Mutual Recognition) Act 2007</i> , determined that a scheme is to remain in force for the purposes of section 32 (1), as then in force, is taken to be specified in the scheme.	6 7 8 9 10