

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

## Overview of Bill

The Professional Standards Act 1994 (the Principal Act) provides, among other things, for the setting up of schemes that limit the liability of members of associations of practitioners of particular trades or professions if the practitioner has the benefit of an occupational liability insurance policy that provides at least a minimum level of cover set by the scheme.

The object of this Bill is to amend the Principal Act to enable the insurance policy to provide cover that is inclusive of defence costs. Accordingly, payments may be made under the policy to or on behalf of the practitioner in defending the claim without affecting the limitation on liability provided by the scheme.

### 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 assent.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act that are set out in Schedule 1.

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Professional Standards Amendment (Defence Costs) Bill 2006

### Explanatory note

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and 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

Schedule 1 [1] inserts a definition of costs into the Principal Act. The term is relevant to the concepts of damages and defence costs used in the Principal Act (as proposed to be amended by this Bill).

Schedule 1 [2] substitutes the definition of damages in the Principal Act to clarify the meaning of that term in the Principal Act and, in particular, to include in that meaning interest on costs ordered to be paid in connection with an award of damages.

Schedule 1 [3] inserts proposed section 4 (1A) into the Principal Act to ensure that references in the Act to an occupational liability insurance policy extend to a policy that provides cover that is inclusive of defence costs. (Such references appear in sections 21, 22 and 23 of the Principal Act.)

Schedule 1 [4]–[8] amend sections 21–23 of the Principal Act as a consequence of the insertion of proposed section 4 (1A) (see Schedule 1 [3]) and to omit certain words that are redundant in light of section 28 (2) of the Principal Act. (See also the proposed amendment to section 28 (2) by Schedule 1 [10]).

Schedule 1 [9] inserts proposed section 26A into the Principal Act. Section 26A makes it clear that although a defence costs inclusive insurance policy may (as compared with one that is not defence costs inclusive) reduce the amount available to be paid under the policy to a scheme participant's client in respect of a claim, this does not lower the cap on the scheme participant's liability to the client. The scheme participant will continue to be liable to the client for any difference between the amount payable to the client under the policy and the amount of the cap.

Schedule 1 [10] amends section 28 (2) of the Principal Act to ensure that it has the same effect as words that are omitted from sections 21–23 as a consequence of the amendment of those sections by Schedule 1 [4]–[8].

Schedule 1 [11] enables savings and transitional regulations to be made consequent on the enactment of the proposed amendments.

Schedule 1 [12] inserts provisions into the Principal Act that, in certain circumstances, validate schemes approved before the commencement of the proposed amendments and related matters.