



NSW Legislative Assembly Hansard

Professional Standards Amendment (Defence Costs) Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 19 September 2006.

Second Reading

Mr BOB DEBUS (Blue Mountains—Attorney General, Minister for the Environment, and Minister for the Arts) [9.44 p.m.]: I move:

That this bill be now read a second time.

New South Wales is the leading jurisdiction in Australia with respect to professional standards legislation. New South Wales has had professional standards legislation in place since 1994, and it was followed by Western Australia in 1997. In the past few years all other States and Territories have enacted professional standards legislation based on the New South Wales Act. This followed decisions by the Insurance Ministers Forum and the Standing Committee of Attorneys General in 2003 to implement nationally consistent professional standards legislation.

Professional standards legislation was one of a number of strategies adopted by governments across Australia to address the ongoing availability and affordability of professional indemnity insurance. Professional standards legislation facilitates the capping of occupational liability while also protecting consumer interests through requirements for insurance and the implementation of risk management strategies and complaints and disciplinary procedures. In New South Wales there are presently eight schemes approved under the Professional Standards Act. These schemes cover accountants, legal practitioners, engineers, surveyors and valuers.

The Professional Standards Amendment (Defence Costs) Bill implements a decision of the Standing Committee of Attorneys General to enable professionals who are members of schemes to hold either costs-inclusive or costs-in-addition insurance policies. Costs-inclusive policies are inclusive of defence costs, while costs-in-addition policies cover defence costs in addition to the indemnity amount. The Professional Standards Council, which is the independent body that approves schemes under the Act, has received legal advice that the current wording of the Act means that only costs-in-addition policies are acceptable under the Act.

New South Wales solicitors hold costs-inclusive policies and other professionals who are members of schemes also hold such policies because they are more widely available in the market. The bill will amend the Act to give flexibility for professionals to hold either costs-inclusive or costs-in-addition policies. Consumers will not be disadvantaged if they deal with a professional holding a costs-inclusive policy because the professional's maximum liability to the consumer will be the amount of the cap applying to the professional. That is, defence costs will not erode a defendant's liability for damages to a successful plaintiff.

I now turn to specific provisions in the bill. Item [1] of schedule 1 inserts a definition of "costs" into the Act. Item [2] replaces the existing definition of "damages" in the Act with a more comprehensive definition. Item [3] inserts a definition of "amount payable" under an insurance policy to include defence costs where those costs are payable out of the one sum insured under the policy, and any excess payable under the policy. Sections 21, 22 and 23 of the Act provide, respectively, that liability may be capped by insurance arrangements, by reference to the amount of business assets or by a multiple of the fees charged. Items [4] to [7] of schedule 1 reframe sections 21, 22 and 23 by using the new definition of "amount payable" inserted by item [3].

Item [9] inserts proposed new section 26A into the Act to make it clear that a professional's liability to a client cannot be less than the cap applying to the professional where the professional holds a costs-inclusive policy. Item [10] applies the amendments in the bill to schemes already in force and validates those schemes. It also applies the amendments to proceedings pending before a court. This bill is strongly supported by the Professional Standards Council. It is also supported by key professional bodies, including CPA Australia, the Law Society of New South Wales and the Law Council of Australia, which were consulted during the drafting of the bill. I commend the bill to the House.