



NSW Legislative Assembly Hansard

Professional Standards Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 1 September 2004.

Second Reading

Mr GRAHAM WEST (Campbelltown—Parliamentary Secretary) [10.50 a.m.], on behalf of Mr Bob Debus: 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 was followed by Western Australia in 1997. In August 2003, at a ministerial meeting on insurance issues, all States and Territories agreed to implement nationally consistent professional standards legislation. It was recognised that a national approach to professional standards legislation is one of a number of strategies to address the ongoing availability and affordability of professional indemnity insurance. Through the Standing Committee of Attorneys General, New South Wales also encouraged other jurisdictions to adopt a national approach to professional standards legislation. The standing committee agreed to a national approach on this issue at its meeting in August 2003.

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 currently seven schemes approved under the Professional Standards Act 1994. These schemes cover accountants, solicitors, engineers, surveyors and valuers. The Professional Standards Council is currently considering a draft scheme for barristers. The Professional Standards Amendment Bill will implement a number of changes to ensure that the New South Wales Act is consistent with the Victorian Professional Standards Act 2003 and with professional standards bills developed in other States and Territories, and will implement a number of improvements to the New South Wales Act suggested by the Professional Standards Council, which is the independent body that administers the legislation.

I now turn to the provisions of the bill. The bill amends the definition of "occupational association" to include associations that comprise members of more than one related occupational group. Increasingly, occupational associations have more diverse memberships that may include several related occupational groups. The bill extends coverage of the Act to liability arising from the negligence of legal practitioners in acting for clients in personal injury claims. This is consistent with the spirit of tort law reforms introduced by the Government in 2002 that limit the amounts that may be awarded for certain heads of damages. The Professional Standards Act 1994 currently contains provisions that extend schemes approved under the Act to partners, employees and associates of members of an occupational association. The bill broadens these provisions to extend schemes to officers of a corporation that is a member of an occupational association.

The operation of these provisions is also clarified so that they will apply to limit the liability of partners, officers, employees and associates that arises in connection with the liability of the member of the occupational association. The bill contains a number of important amendments to increase the flexibility in schemes approved under the Professional Standards Act 1994. First, the bill increases the flexibility for specifying different caps on liability in a scheme for different cases or classes. It also enables individual scheme members to apply for a higher cap than would otherwise apply to them under a scheme. These amendments recognise that members of occupational associations may offer different services or undertake different activities that attract different levels of risk. Secondly, the bill enables multiples, monetary ceilings and caps on liability within schemes to be expressed as a formula, instead of being limited to a single, fixed numeral. This enables different variables to be taken into account.

Thirdly, the bill enables different insurance standards to be set for members within an occupational association. Different standards may be set for different kinds of work or on the basis of any other differing circumstances that are relevant. The bill also removes the need for the Professional Standards Council to seek ministerial approval to conduct forums and establish committees to assist in the exercise of its functions. Instead, there will be a requirement for the council to include in its annual report details of any forums conducted and of any committees established during the reporting period. Finally, the bill contains a number of clarifying amendments. Firstly, provisions dealing with the relevance to the cap on liability of the amount payable under an insurance policy will be amended to make it clear that the amount payable under an insurance policy includes any excess payable.

Secondly, provisions enabling a cap on liability to be calculated as a multiple of the fee charged will be amended to clarify that if the multiple produces an amount less than the minimum cap, liability for damages will be limited to the minimum cap. The Act currently provides for a minimum cap of \$500,000. The Professional Standards Amendment Bill builds upon and implements a range of improvements to a system that has generally worked well in New South Wales – a system that has now been adopted by other States and Territories. I commend the bill to the House.