

[Home](#) » [Hansard & Papers](#) » [Legislative Council](#) » [26/10/2004](#) »

NSW Legislative Council Hansard

PROFESSIONAL STANDARDS AMENDMENT BILL

Page: 11909

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [5.59 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

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. It 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. SCAG 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 has recently approved a scheme for barristers and this scheme will commence once it is gazetted.

The Professional Standards Amendment Bill 2004 will:

implement a number of changes to ensure that the NSW Act is consistent with the Victorian Professional Standards Act 2003 and with professional standards bills developed in other States and Territories; and

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, which 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 which 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 2004 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.

The Hon. GREG PEARCE [5.59 p.m.]: The Opposition supports the bill. I feel that I am able to speak on this bill with some knowledge, having been a partner in a national law firm for 17 years. I am very aware of the limitations on professionals and professional bodies and firms because of the problems and different rules in the numerous jurisdictions in which they operate. Importantly, the bill is all about protecting consumer interests. It does so through requiring that professionals have proper insurance, implement risk management strategies and have in place proper disciplinary and complaints procedures. It has been of great encouragement to professionals and members of the community that New South Wales led the way with the Professional Standards Act in 1994. There are now seven schemes approved under that Act, and they cover accountants, solicitors, engineers, surveyors and valuers. I understand the Professional Standards Council is currently considering a draft scheme for barristers.

Professional firms have had difficulty obtaining proper insurance at a reasonable cost, particularly during the insurance crisis a couple of years ago. It is not the case that professionals do not want to have appropriate insurance in place, but that was a difficult period for a number of organisations. The Commonwealth organised ministerial meetings, which have now led to all Australian jurisdictions agreeing to a package of negligence reforms that will minimise claims by imposing professional standards and requiring risk management strategies, compulsory insurance cover, professional education and appropriate complaints and disciplinary mechanisms in return for limited liability. Limited liability is the other side of the scheme.

The Professional Standards Amendment Bill amends the Professional Standards Act in a number of ways. The definition of "occupational association" is amended to include associations that comprise members of more than one related occupational group. The bill clarifies existing provisions to limit the liability of partners, officers, employees and associates that arise in connection with the liability of the member of an occupational association. The bill extends coverage of the Act to liability arising from negligence of legal practitioners acting for clients in personal injury claims, which is currently excluded from the Act. The bill also allows an occupational liability limitation scheme to calculate liability caps by use of a formula so that the different variables can be taken into account. That obviously relates to different fee levels and so on.

The bill clarifies that the minimum cap on liability provided for by a scheme must now not be below the minimum amount set out in the Act. That makes sense in terms of the requirements for protection of the public. The bill allows members of a scheme to rely on business assets alone as opposed to business assets and an insurance policy to establish their ability to satisfy a claim. The bill also enhances the ability of an occupational liability scheme to set different caps on liability for different situations and enhances the ability of a scheme to set different insurance standards for members. This recognises that different activities and services attract different levels of risk. The Opposition consulted the New South Wales Law Society and the Professional Standards Council, both indicating their support for the bill, which I am also pleased to support.

Ms SYLVIA HALE [6.04 p.m.]: The bill will make a number of commonsense amendments to the Professional Standards Act to broaden the coverage of liability in cases of negligence involving legal practitioners while at the same time limiting minimum liability levels to \$500,000. The Greens welcome the extended coverage to include a more diverse range of professional groups. This will better reflect the operational nature of large firms with multiple categories of employees, as well as occupational associations. The introduction in this bill of a \$500,000 minimum level liability for any claim is welcome and represents a formalisation of the minimum liability already imposed for most professions and categories of insurance covered by the Professional Standards Council. For these reasons the Greens support the bill.

The Hon. PATRICIA FORSYTHE [6.05 p.m.]: I was pleased to note in the second reading speech in this place and the other House, and in the Attorney General's speech in reply to debate in the other place, a reference to New South Wales

being the leading jurisdiction in Australia in professional standards legislation. I also note that professional standards legislation commenced in 1994. I place on record that so often in this Chamber we hear from the Government that all wisdom commenced in New South Wales only in 1995. So often it tries to rewrite history and ignore the achievements of the Coalition. This legislation was a significant achievement of the previous Coalition Government and in term of such legislation set the standard for the rest of Australia. When we talk of New South Wales as a leading jurisdiction, the fact is that this State has been the pacesetter. The Opposition welcomes the legislation and the movement towards a national approach being taken to professional standards. As my colleague the Hon. Greg Pearce said, professional people take a close interest in professional standards. Professional indemnity and the cost of insurance are matters that few people in the professions can ignore. They represent a huge burden within their practices. I acknowledge this bill as a way forward and join with my colleague the Hon. Greg Pearce in welcoming its introduction.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [6.07 p.m.], in reply: I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

NSW Legislative Council Hansard, 26 October 2004, Pages 35 - (article 50)

[« Prior Article this day](#) | [Next Article this day »](#) | [Full Day Transcript](#)
[Legislative Council](#) [Legislative Assembly](#) [Members](#) [Joint Services](#)
[Home](#) [Hansard & Papers](#) [Committees](#) [Legislation](#) [Library](#) [Phonebook](#) [Admin Resources](#)

- **Subjects:**
[Insurance](#); [Interstate Relations](#)
- **Speakers:**
[Hatzistergos The Hon John](#); [Pearce The Hon Greg](#); [Hale Ms Sylvia](#); [Forsythe The Hon Patricia](#)
- **Speech Type:**
2R; Bill; Debate; Motion
- [Printing Tips](#)
- [Print selected text](#)