

**Professional Standards Amendment  
Bill 2004**  
New South Wales

**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* as follows:

(a) The definition of **occupational association** is amended to include associations that comprise members of more than one occupational group.

(b) Existing provisions that extend an occupational liability limitation scheme to partners, employees and associates of members of an occupational association are broadened so as to extend a scheme to officers (including directors) of a corporation that is a member of an occupational association. The operation of those provisions is also clarified so that they will apply to limit a liability of partners, officers, employees and associates that arises in connection with the liability of the member of the occupational association.

(c) The coverage of the Act is extended to liability arising from the negligence of legal practitioners in acting for clients in personal injury claims (which is currently specifically excluded from the operation of the Act).

(d) Provisions dealing with the relevance to the cap on liability of the amount payable under a policy of insurance are amended to make it clear that the amount payable under a policy of insurance includes any excess payable under the policy.

(e) An occupational liability limitation scheme will be permitted to specify a multiple, monetary ceiling or minimum cap for the purposes of the scheme by way of a formula that is to be applied to calculate the multiple, ceiling or cap.

(f) Currently, an occupational liability limitation scheme can provide that the cap on liability provided for by the scheme is to be calculated as a multiple of the fee charged. An amendment will provide that if the multiple results in an amount that is less than the minimum cap provided for by the scheme, liability for damages will be limited to that minimum cap. A further amendment will allow a member of the scheme to rely on business assets alone (as an alternative to business assets together with an insurance policy) to establish ability to satisfy a claim.

(g) The ability of an occupational liability limitation scheme to set different caps on liability for different situations will be enhanced by removing the existing limited grounds on which a scheme can differentiate between cases for this purpose, and by permitting the occupational association to assign a higher cap to a person covered by the scheme on the application of the person.

(h) The ability of an occupational liability limitation scheme to set different insurance standards for members will be enhanced by widening the grounds on which an association can differentiate for this purpose.

(i) The requirement for Ministerial approval for the conducting of forums and the establishment of committees by the Professional Standards Council will be removed.

(j) Consequential savings and transitional provisions are enacted.

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 a day or days to be appointed by proclamation.

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

**Schedule 1** contains the amendments referred to in the Overview.

**Schedule 1 Amendments**

**Schedule 1 [1] and [2]** make the amendment referred to in paragraph (a) of the Overview.

**Schedule 1 [6] and [7]** make the amendments referred to in paragraph (b) of the Overview.

**Schedule 1 [4] and [5]** make the amendment referred to in paragraph (c) of the Overview.

**Schedule 1 [9] and [10]** make the amendments referred to in paragraphs (d) and (f) of the Overview.

**Schedule 1 [11]** makes the amendments referred to in paragraphs (e) and (g) of the Overview.

**Schedule 1 [15]** makes the amendment referred to in paragraph (h) of the Overview.

**Schedule 1 [16]–[18]** make the amendments referred to in paragraph (i) of the Overview.

**Schedule 1 [19] and [20]** make consequential savings and transitional amendments.

**Schedule 1 [3], [8] and [12]–[14]** make consequential amendments.