



Professional Standards Amendment (Mutual Recognition) Bill 2007

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Extract from NSW Legislative Assembly Hansard and Papers Wednesday 9 May 2007.

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [12.21 p.m.], on behalf of Mr David Campbell: I move:

That this bill be now agreed to in principle.

Professional standards legislation has been enacted in all states and territories to facilitate the capping of occupational liability. Such legislation also protects 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 eight schemes approved under the Professional Standards Act 1994. These schemes cover accountants, legal practitioners, engineers, surveyors and valuers. The Professional Standards Amendment (Mutual Recognition) Bill 2007 implements a decision of the Standing Committee of Attorneys-General that states and territories amend their professional standards legislation to enable mutual recognition between jurisdictions of schemes approved in other jurisdictions.

Under current professional standards legislation the process for professionals to obtain capped liability outside their home jurisdiction is cumbersome, inefficient and involves duplication. Mutual recognition of schemes by jurisdictions aims to address these problems and provide a more seamless national system of professional standards legislation. Mutual recognition will cut the red tape currently facing professionals who wish to have capped liability when providing services in other jurisdictions. It recognises the reality that the work of professional practices often transcends state boundaries.

I turn now to the key provisions of the bill. Item [1] of schedule 1 of the bill inserts a number of new definitions in the Act. Under professional standards legislation an occupational association may submit a proposed scheme to the Professional Standards Council for approval. Alternatively, an occupational association may ask the council to prepare a scheme on its behalf. Item [3] provides that a proposed scheme may indicate an intent to operate in New South Wales only, or in both New South Wales and one or more interstate jurisdictions. Under professional standards legislation there is a requirement for the council to advertise a proposed scheme and to receive and consider comments and submissions on the scheme. Item [4] provides that if a proposed scheme indicates an intent to operate in more than one jurisdiction the scheme must be advertised in each of those jurisdictions, and the advertising requirements of each of those jurisdictions must be met.

Under professional standards legislation the Professional Standards Council is required to consider a range of matters before approving a proposed scheme. These matters include: all comments and submissions received on a proposed scheme; the position of people who may be affected by capping the occupational liability of members of the occupational association; the nature and level of claims relating to occupational liability made against members of the occupational association; the risk management strategies of the occupational association and the means by which those strategies will be implemented; the cost and availability of insurance against occupational liability for members of the occupational association; and the standards determined by the occupational association in relation to insurance policies.

Item [5] of the bill provides that if a proposed scheme indicates an intent to operate in more than one jurisdiction the council must consider the matters outlined, plus any other matters specified in the professional standards legislation of the interstate jurisdictions, and all matters in the context of each of the jurisdictions concerned. Under professional standards legislation the Professional Standards Council may submit to the Minister a scheme that it has approved. Item [6] of the bill provides that if the scheme indicates an intent to operate in one or more interstate jurisdictions the council may submit the scheme to the Minister administering professional standards legislation in those jurisdictions.

Under professional standards legislation the Minister may authorise publication in the *Government Gazette* of a scheme submitted to him or her by the Professional Standards Council. Item [7] of the bill provides that the Minister may also authorise the publication in the *Government Gazette* of a scheme submitted to him or her by an interstate council. Under professional standards legislation a person who is, or is reasonably likely to be, affected by a scheme published in the *Government Gazette* may apply to the Supreme Court for an order that the scheme is void for want of compliance with the Act. Item [10] of the bill extends the right to challenge a scheme to any person who is, or is reasonably likely to be, affected by a scheme in its application in another jurisdiction.

While the professional standards legislation of the states and territories is largely consistent, there are some jurisdictional differences. Item [11] of the bill provides that a court may not make an order that an interstate scheme is void for want of compliance with the New South Wales Act on the ground that the scheme fails to comply with the requirements in the New South Wales Act relating to the contents of schemes, and may make an order that an interstate scheme is void on the ground that the scheme fails to comply with the requirements of the interstate law under which it was approved in relation to the contents of schemes. Under professional standards legislation either the Minister or the council may initiate a review of the operation of a scheme. A review may be conducted to decide whether a scheme should be amended or revoked, or whether a new scheme should be made.

Item [12] of the bill provides that a review may also be conducted to decide whether the operation of an interstate scheme should be terminated in New South Wales. Under professional standards legislation the Minister, the council or an occupational association may initiate the amendment or revocation of a scheme. Item [14] of the bill provides that the provisions relating to amendment and revocation do not apply

to an interstate scheme. Item [15] of the bill inserts a separate section governing the termination of an interstate scheme operating in New South Wales. The Minister, the council or an occupational association may initiate a termination.

Item [15] of the bill also provides that when an instrument revoking a scheme that also operates interstate is published in the *Government Gazette* the Minister must give notice to the relevant interstate Ministers; and that when the Minister receives notice that an interstate scheme that also operates in New South Wales has been revoked he or she must publish a notice in the *Government Gazette*. The process for the amendment and revocation of a New South Wales scheme and the termination of an interstate scheme is similar to that for the approval of a scheme—that is, there are requirements for the public notification and receiving of submissions, for the council to consider a range of matters, and for gazettal.

Item [16] of the bill inserts a more comprehensive provision on the duration of schemes to cover both New South Wales schemes and interstate schemes that may operate in New South Wales. Item [19] of the bill provides that for the purpose of dealing with a scheme that operates, or indicates an intent to operate, in both New South Wales and another jurisdiction the Professional Standards Council may, in the exercise of its functions under the Act, act in conjunction with the council of the interstate jurisdiction and act in conjunction with the council of the interstate jurisdiction in the exercise of that council's functions under interstate professional standards legislation.

The bill is supported by the Professional Standards Council. It is also supported by key professional bodies, including the Law Council of Australia, the Law Society of New South Wales, the New South Wales Bar Association and the National Institute of Accountants, which were consulted during the drafting of the bill. I commend the bill to the House.