

Passed by both Houses



New South Wales

Professional Standards Amendment (Mutual Recognition) Bill 2007

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2007*



New South Wales

Professional Standards Amendment (Mutual Recognition) Bill 2007

Act No , 2007

An Act to amend the *Professional Standards Act 1994* with respect to the mutual recognition of New South Wales and interstate schemes for the limitation of occupational liability.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Professional Standards Amendment (Mutual Recognition) Act 2007*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Professional Standards Act 1994 No 81

The *Professional Standards Act 1994* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

another jurisdiction means any State or Territory, other than this jurisdiction.

appropriate Council, in relation to another jurisdiction, means the authority that, under the corresponding law of that jurisdiction, has functions that are substantially the same as the Council's functions under this Act.

corresponding law means a law of another jurisdiction that corresponds to this Act, and includes a law of another jurisdiction that is declared by the regulations to be a corresponding law of that jurisdiction for the purposes of this Act.

interstate scheme means a scheme:

- (a) that has been prepared under the corresponding law of another jurisdiction, and
- (b) that operates, or indicates an intention to operate, as a scheme of this jurisdiction.

this jurisdiction means New South Wales.

[2] Section 4 (1), definition of "scheme"

Insert ", and includes an interstate scheme" after "association".

[3] Section 7 Preparation and approval of schemes

Insert after section 7 (3):

- (4) A scheme prepared under this section may indicate an intention to operate as a scheme of this jurisdiction only, or of both this jurisdiction and another jurisdiction.

[4] Section 8 Public notification of schemes

Insert at the end of the section:

- (2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction, the Council must also publish a similar notice in the other jurisdiction in accordance with the requirements of the corresponding law of that jurisdiction that relate to the approval of a scheme prepared in that jurisdiction.

[5] Section 10 Consideration of comments, submissions and other matters

Insert at the end of the section:

- (2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction:
 - (a) the Council must also consider any matter that the appropriate Council for the other jurisdiction would have to consider under the provisions of the corresponding law of that jurisdiction that relate to the approval of a scheme prepared in that jurisdiction, and
 - (b) the matters to be considered by the Council, whether under subsection (1) or paragraph (a), are to be considered in the context of each of the jurisdictions concerned.

[6] Section 12 Submission of approved schemes for Gazettal

Insert at the end of the section:

- (2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction, the Council may also submit the scheme to the Minister administering the corresponding law of the other jurisdiction.

[7] Section 13 Gazettal, tabling and disallowance of schemes

Insert “or, in the case of an interstate scheme, by the appropriate Council for the jurisdiction in which the scheme was prepared” after “by the Council” in section 13 (1).

[8] Section 13 (3)

Insert after section 13 (2):

- (3) In this section, a reference to an interstate scheme includes a reference to an instrument amending an interstate scheme.
Note. Subsection (3) applies subsections (1) and (2) to instruments that amend an interstate scheme. Those subsections already apply, by virtue of section 16A (5), to instruments that amend a scheme that is not an interstate scheme.

[9] Section 14 Commencement of schemes

Omit section 14 (2). Insert instead:

- (2) This section is subject to any order made by the Supreme Court under section 15 and any order made by the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction.

- (3) In this section, a reference to a scheme includes, in the case of an interstate scheme, a reference to an instrument amending that scheme.

[10] Section 15 Challenges to schemes

Insert “(including a person who is or is reasonably likely to be affected by a scheme that operates as a scheme of another jurisdiction)” after “section 13” in section 15 (1).

[11] Section 15 (4)–(6)

Insert after section 15 (3):

- (4) The Court may not make an order that an interstate scheme is void for want of compliance with this Act on the ground that the scheme fails to comply with Division 2, but may do so on the ground that the scheme fails to comply with the provisions of the corresponding law of the jurisdiction in which it was prepared that relate to the contents of schemes prepared in that jurisdiction.
- (5) This section does not prevent a scheme from being challenged or called into question otherwise than under this section.
- (6) In this section, a reference to a scheme includes, in the case of an interstate scheme, a reference to an instrument amending that scheme.

[12] Section 16 Review of schemes

Omit section 16 (3). Insert instead:

- (3) A review may, but need not, be conducted in order to decide:
- (a) in the case of a scheme prepared under this Act, whether the scheme should be amended or revoked or whether a new scheme should be made, or
- (b) in the case of an interstate scheme, whether the operation of the scheme should be terminated in relation to this jurisdiction.

[13] Section 16A Amendment and revocation of schemes approved by Council

Omit “an amendment to or revocation of” wherever occurring in section 16A (1)–(4).

Insert instead “an instrument amending or revoking”.

[14] Section 16A (5)–(7)

Omit section 16A (5). Insert instead:

- (5) The provisions of sections 7–15 extend, with any necessary modifications, to the amendment of a scheme by an instrument under this section.
- (6) The provisions of sections 7–14 (other than section 12 (2)) extend, with any necessary modifications, to the revocation of a scheme by an instrument under this section.
- (7) This section does not apply to an interstate scheme.

Note. An instrument that amends a scheme operating in another jurisdiction may be submitted to the Minister administering the corresponding law of that jurisdiction under section 12 with a view to its being published under that law. An instrument made under the corresponding law of another jurisdiction that amends an interstate scheme may be submitted to the Minister administering this Act with a view to its being published under section 13.

[15] Sections 16B and 16C

Insert after section 16A:

16B Notification of revocation of schemes

- (1) On publication in the Gazette of an instrument revoking a scheme (other than an interstate scheme) that operates as a scheme of another jurisdiction, the Minister must cause notice of that fact to be given to the Minister administering the corresponding law of that jurisdiction.
- (2) On receipt of notice that an interstate scheme has been revoked under the corresponding law of the jurisdiction in which it was prepared, the Minister must cause a statement to that effect to be published in the Gazette.

Note. Under section 32 (1B), an interstate scheme will cease to have effect in this jurisdiction when it ceases to have effect in the other jurisdiction.

16C Termination of operation of interstate schemes in this jurisdiction

- (1) The Council may, on the application of an occupational association, prepare an instrument terminating, in relation to this jurisdiction, the operation of an interstate scheme that relates to members of the association.
- (2) The Minister may direct the Council to prepare an instrument terminating the operation of an interstate scheme in relation to this jurisdiction.

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- (3) The Council must comply with any such direction, but may on its own initiative, at any time while an interstate scheme remains in force, prepare an instrument terminating the operation of the scheme in relation to this jurisdiction.
 - (4) The provisions of sections 8–13 (other than section 12 (2)) extend, with any necessary modifications, to the termination of the operation of an interstate scheme under an instrument under this section.
 - (5) The operation of an interstate scheme in respect of which an instrument under this section is published under section 13 (as applied by subsection (4)) is terminated, in relation to this jurisdiction, as from:
 - (a) such day subsequent to the date of its publication as may be specified in the instrument, or
 - (b) if no such day is specified—2 months after the date of its publication.

[16] Section 32 Duration of scheme

Omit section 32 (1). Insert instead:

- (1) A scheme must specify the period (not exceeding 5 years) for which it is to remain in force after its commencement.
- (1A) Subject to subsection (2), a scheme (other than an interstate scheme) remains in force until:
 - (a) the period specified under subsection (1) ends, or
 - (b) the scheme is revoked, or
 - (c) the scheme’s operation ceases because of the operation of another Act, or
 - (d) the scheme is declared void, either by an order made by the Supreme Court under section 15 or by an order made by the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction, or
 - (e) the scheme is disallowed under section 41 of the *Interpretation Act 1987*.
- (1B) Subject to subsection (2), an interstate scheme remains in force in this jurisdiction until:
 - (a) the period specified under subsection (1) ends, or
 - (b) the scheme’s operation in relation to this jurisdiction is terminated under section 16C, or

- (c) the scheme ceases to have effect in the jurisdiction in which it was prepared, or
- (d) the scheme is disallowed under section 41 of the *Interpretation Act 1987*.

[17] Section 43 Functions of Council

Omit “by it” from section 43 (1) (a) (i).

[18] Section 43 (4)

Insert “or law” after “Act”.

[19] Section 43A

Insert after section 43:

43A Co-operation with authorities in other jurisdictions

For the purpose of dealing with a scheme that operates, or indicates an intention to operate, as a scheme of both this jurisdiction and another jurisdiction, the Council:

- (a) may, in the exercise of its functions under this Act, act in conjunction with the appropriate Council for the other jurisdiction, and
- (b) may act in conjunction with the appropriate Council for the other jurisdiction in the exercise of that Council’s functions under the corresponding law of that jurisdiction.

[20] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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[21] Schedule 4, Part 6

Insert after Part 5:

**Part 6 Professional Standards Amendment
(Mutual Recognition) Act 2007**

18 Expiry date of existing schemes

The period for which the Council has, before the commencement of Schedule 1 [16] to the *Professional Standards Amendment (Mutual Recognition) Act 2007*, determined that a scheme is to remain in force for the purposes of section 32 (1), as then in force, is taken to be specified in the scheme.