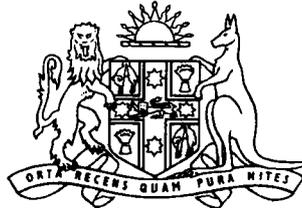


First print



New South Wales

Professional Standards Amendment Bill 1999

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* to allow a scheme established under that Act by an occupational association for the purpose of limiting the professional liability of members to provide for the exemption of certain persons from the scheme. The Bill also validates the exemption provisions of existing schemes until the expiration of the schemes and certain other provisions of existing schemes for a limited period.

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 the date of assent.

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

Schedule 1 Amendments

Exemptions from schemes

Schedule 1 [1] inserts proposed section 17 (2) into the *Professional Standards Act 1994* to enable a scheme established under that Act to provide that the relevant occupational association may, on application by a person, exempt the person from the scheme. Persons included automatically in a scheme by section 18 (partners of persons to whom a scheme applies), 19 (employees of persons to whom a scheme applies) or 20 (persons prescribed by the regulations as being associated with persons to whom a scheme applies) of that Act cannot be exempted from the scheme.

Schedule 1 [2], [3] and [4] contain consequential amendments.

Schedule 1 [5] enables regulations of a savings and transitional nature consequent on the enactment of the proposed Act to be made.

Provisions of existing schemes

Schedule 1 [6] provides that the provisions of an existing scheme that fail to provide that the scheme applies to all the members of an occupational association or to specified classes of members of an occupational association (and therefore do not comply with section 17 of the *Professional Standards Act 1994*) are taken to be valid until the expiration of 12 months, or until the provisions are amended or until the scheme expires, whichever occurs first.

However, the provisions of an existing scheme that enable the occupational association concerned to exempt a person, on application, from the scheme are taken to be valid for the life of the scheme. Those provisions are to be treated as having been made under proposed section 17 (2) (referred to above). Exemptions granted under those provisions are taken to have been validly granted.

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Professional Standards Amendment Bill 1999

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New South Wales

Professional Standards Amendment Bill 1999

No. , 1999

A Bill for

An Act to amend the *Professional Standards Act 1994* with respect to the persons to whom a scheme applies, and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Professional Standards Amendment Act 1999</i> .	3
2 Commencement	4
This Act commences on the date of assent.	5
3 Amendment of Professional Standards Act 1994 No 81	6
The <i>Professional Standards Act 1994</i> is amended as set out in Schedule 1.	7
	8

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 17 Persons to whom scheme applies	3
	Insert at the end of section 17:	4
	(2) A scheme may provide that the occupational association concerned may, on application by a person, exempt the person from the scheme.	5 6 7
	(3) A scheme ceases to apply to a person exempted from the scheme as referred to in subsection (2) on and from the date on which the exemption is granted or on and from a later date specified in the exemption.	8 9 10 11
	(4) Subsection (2) does not apply to a person to whom a scheme applies by virtue of section 18, 19 or 20.	12 13
[2]	Section 28 Limit of occupational liability by schemes	14
	Omit “terms” from section 28 (1). Insert instead “provisions”.	15
[3]	Section 28 (1)	16
	Omit “applies during that period”.	17
	Insert instead “applied at the time when the act or omission occurred”.	18
[4]	Section 28 (4)	19
	Insert “, except in accordance with provisions included in the scheme under section 17 (2)” after “scheme” where secondly occurring.	20 21
[5]	Schedule 4 Savings, transitional and other provisions	22
	Insert at the end of clause 1 (1):	23
	<i>Professional Standards Amendment Act 1999</i>	24

[6] Schedule 4, Part 3	1
Insert after Part 2:	2
Part 3 Professional Standards Amendment Act 1999	3
7 Definition of existing schemes	4
In this Part, <i>existing scheme</i> means a scheme purporting to have been established in compliance with this Act and in existence immediately before the commencement of this clause.	5 6 7
8 Validation of existing schemes for limited period	8
(1) The provisions of an existing scheme are, to the extent to which they fail to provide for the scheme to apply to all persons within an occupational association or to a specified class or classes of persons within an occupational association, taken to have complied with this Act:	9 10 11 12 13
(a) at the time at which the provisions were first included in the scheme, and	14 15
(b) at all times until:	16
(i) the expiration of 12 months after the commencement of this clause, or	17 18
(ii) the amendment of the provisions in accordance with this Act after the commencement of this clause, or	19 20 21
(iii) the operation of the scheme ceases, whichever occurs first.	22 23
(2) This clause does not apply to the provisions of an existing scheme to which clause 9 applies.	24 25
9 Validation of exemption provisions in existing schemes and exemptions	26 27
(1) This clause applies to the provisions of an existing scheme that provide (in effect) that an occupational association may, on application, exempt a person from the scheme.	28 29 30

(2)	The provisions of an existing scheme to which this clause applies are taken to have complied with this Act:	1
		2
(a)	at the time at which the provisions were first included in the scheme, and	3
		4
(b)	at all times until the commencement of section 17 (2).	5
(3)	The provisions of an existing scheme to which this clause applies are taken to have been made under section 17 (2).	6
		7
(4)	An exemption granted before the commencement of this clause under the provisions of an existing scheme to which this clause applies is taken to have been validly granted on the date on which it was granted and is taken to be valid at all times on and from that date.	8
		9
		10
		11
		12
10	Part does not apply to new provisions of existing schemes	13
	This Part does not apply to a provision of an existing scheme included in the scheme after the commencement of this clause.	14
		15
11	Part does not affect previous court or tribunal decisions	16
	This Part does not affect any decision or order of a court or tribunal made before the commencement of this clause.	17
		18