

Western Australia

Professional Standards Amendment Act 2010

As at 07 Apr 2010

No. 3 of 2010

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Professional Standards Amendment Act 2010

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Act amended	2

Part 2 — Amendments relating to defence costs

4.	Section 4 amended	3
5.	Section 34 replaced	4
	34. Limitation of liability by insurance arrangements	4
6.	Section 35 amended	5
7.	Section 36 amended	5
8.	Section 40A inserted	7
	40A. Liability in damages not reduced to below relevant limit	7
9.	Section 41 amended	7

Part 3 — Amendments relating to mutual recognition

10.	Section 4 amended	8
11.	Section 12 amended	8
12.	Section 12A inserted	9
	12A. Cooperation with authorities in other jurisdictions	9
13.	Section 20 amended	9
14.	Section 21 amended	9

Contents

15.	Section 23 amended	10
16.	Section 25 amended	11
17.	Section 26 amended	11
18.	Section 27 amended	11
19.	Section 28 amended	12
20.	Section 29 amended	13
21.	Section 29A amended	13
22.	Sections 30A and 30B inserted	14
	30A. Notification of revocation of schemes	14
	30B. Termination of operation of interstate schemes in this jurisdiction	14
23.	Section 44A amended	15
Part 4 — Amendments for consistency with the national model legislation and for other purposes		
24.	Section 5 amended	17
25.	Section 17 amended	17
26.	Section 31 amended	18
27.	Section 34A inserted	18
	34A. Extension of liability limitation to other persons to whom scheme applies	18
28.	Section 42 amended	19
Part 5 — Amendments providing for transitional matters		
29.	Schedule 4 amended	20
Division 1 — Provisions relating to the <i>Professional Standards Amendment Act 2004</i>		
Division 2 — Provisions relating to the <i>Professional Standards Amendment Act 2010</i>		
7.	Terms used	20
8.	Personal injury claims	21
9.	Application of schemes to officers, partners, employees and associates	21
10.	Associated defendants	21
11.	Expiry date of existing schemes	21
12.	Application of clause 6	21

Western Australia

Professional Standards Amendment Act 2010

No. 3 of 2010

An Act to amend the *Professional Standards Act 1997*.

[Assented to 7 April 2010]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Professional Standards Amendment Act 2010*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Act amended

This Act amends the *Professional Standards Act 1997*.

Part 2 — Amendments relating to defence costs

4. Section 4 amended

(1) In section 4:

(a) delete “In this” and insert:

(1) In this

(b) delete the definition of *damages*;

(c) insert in alphabetical order:

costs includes fees, charges, disbursements and expenses;

damages means —

- (a) damages awarded in respect of a claim or counter-claim or claim by way of set-off; and
- (b) costs in or in relation to the proceedings ordered to be paid in connection with such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by the defendant); and
- (c) any interest payable on the amount of those damages or costs;

(2) At the end of section 4 insert:

(2) When this Act refers to the *amount payable* under an insurance policy in respect of an occupational liability it includes —

- (a) defence costs payable in respect of a claim, or notification that may lead to a claim (other than reimbursement of the defendant for time spent in relation to the claim), but only if those costs

are payable out of the one sum insured under the policy in respect of the occupational liability; and

- (b) the amount payable under or in relation to the policy by way of excess.

5. Section 34 replaced

Delete section 34 and insert:

34. Limitation of liability by insurance arrangements

A scheme may provide that if a person to whom the scheme applies and against whom a proceeding relating to occupational liability is brought is able to satisfy the court concerned that —

- (a) that person has the benefit of an insurance policy insuring that person against the occupational liability to which the cause of action relates; and
- (b) the amount payable under the policy in respect of that occupational liability is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates,

that person is not liable in damages in relation to that cause of action above the amount of the monetary ceiling so specified.

6. Section 35 amended

In section 35:

- (a) in paragraph (a) delete “relates at the time at which the act or omission giving rise to the cause of action occurred; or” and insert:

relates; or

- (b) in paragraph (b)(i) delete “that occupational liability; and” and insert:

the occupational liability to which the cause of action relates; and

- (c) delete paragraph (b)(ii) and insert:

- (ii) the net current market value of the business assets and the amount payable under the policy in respect of that occupational liability, if combined, would total an amount that is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates,

7. Section 36 amended

In section 36(1):

- (a) in paragraph (a)(i) delete “that occupational liability; and” and insert:

the occupational liability to which the cause of action relates; and

(b) delete paragraph (a)(ii) and insert:

(ii) under which the amount payable in respect of that occupational liability is not less than an amount (the ***limitation amount***), being a reasonable charge for the services which were provided by that person, or which that person failed to provide, and to which the cause of action relates, multiplied by the multiple specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates;

or

(c) in paragraph (aa) delete “that person” and insert:

that that person

(d) in paragraph (b)(i) delete “that occupational liability; and” and insert:

the occupational liability to which the cause of action relates; and

(e) delete paragraph (b)(ii) and insert:

(ii) the net current market value of the business assets and the amount payable under the policy in respect of that occupational liability, if combined, would total an amount that is not less than the limitation amount,

8. Section 40A inserted

After section 39 insert:

40A. Liability in damages not reduced to below relevant limit

The liability in damages of a person to whom a scheme applies is not reduced below the relevant limitation imposed by a scheme in force under this Act because the amount available to be paid to the claimant under the insurance policy required for the purposes of this Act in respect of that liability is less than the relevant limitation.

9. Section 41 amended

In section 41(2) delete “at the time of the relevant act or omission.” and insert:

at the time at which the act or omission giving rise to the cause of action concerned occurred.

Part 3 — Amendments relating to mutual recognition

10. Section 4 amended

In section 4:

- (a) insert in alphabetical order:

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 Western Australia.

- (b) in the definition of *scheme* delete “association.” and insert:

association, and includes an interstate scheme;

11. Section 12 amended

- (1) In section 12(1)(a)(i) delete “by it”.

- (2) In section 12(4) delete “Act.” and insert:

Act or law.

12. Section 12A inserted

After section 12 insert:

12A. Cooperation 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.

13. Section 20 amended

After section 20(3) insert:

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

14. Section 21 amended

- (1) In section 21 delete “Before” and insert:

- (1) Before

- (2) At the end of section 21 insert:
 - (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.

15. Section 23 amended

- (1) In section 23 delete “Before” and insert:
 - (1) Before
- (2) At the end of section 23 insert:
 - (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.

16. Section 25 amended

(1) In section 25 delete “The Council” and insert:

(1) The Council

(2) At the end of section 25 insert:

(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.

17. Section 26 amended

(1) In section 26(1) delete “Council.” and insert:

Council or, in the case of an interstate scheme, by the appropriate Council for the jurisdiction in which the scheme was prepared.

(2) After section 26(2) insert:

(3) In this section, a reference to an interstate scheme includes a reference to an instrument amending an interstate scheme.

18. Section 27 amended

Delete section 27(2) and insert:

(2) This section is subject to any order made by the Supreme Court under section 28 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.

19. Section 28 amended

- (1) Before section 28(1) insert:

(1A) In this section —
scheme, in the case of an interstate scheme, includes an instrument amending that scheme.

- (2) In section 28(1) after “section 26” insert:

(including a person who is or is reasonably likely to be affected by a scheme that operates as a scheme of another jurisdiction)

- (3) After section 28(3) insert:

- (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.

20. Section 29 amended

Delete section 29(3) and insert:

- (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.

21. Section 29A amended

- (1) In section 29A(1), (2), (3) and (4) delete “an amendment to or revocation of” and insert:

an instrument amending or revoking

- (2) Delete section 29A(5) and (6) and insert:

- (5) The provisions of sections 20 to 28 extend, with any necessary modifications, to the amendment of a scheme by an instrument under this section.
- (6) The provisions of sections 20 to 27 (other than section 25(2)) extend, with any necessary modifications, to the revocation of a scheme by an instrument under this section.
- (7) The amendment or revocation of a scheme does not affect a right or liability arising during the application of the scheme to members of an occupational association before the amendment or revocation.

- (8) This section does not apply to an interstate scheme.

22. Sections 30A and 30B inserted

At the end of Part 3 Division 1 insert:

30A. 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*.

30B. 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.
- (3) The Council must comply with any direction under subsection (2) 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 21 to 26 (other than section 25(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 26 (as applied by subsection (4)) is terminated, in relation to this jurisdiction, as from —
 - (a) a day specified in the instrument, being a day that is later than the day of its publication; or
 - (b) if no day is specified, 2 months after the day of its publication.

23. Section 44A amended

Delete section 44A(1) and insert:

- (1) A scheme must specify the period (not exceeding 5 years) for which it is to remain in force after its commencement.
- (2A) 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 28 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 the *Interpretation Act 1984* section 42.
- (2B) 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 30B; or
 - (c) the scheme ceases to have effect in the jurisdiction in which it was prepared; or
 - (d) the scheme is disallowed under the *Interpretation Act 1984* section 42.

Part 4 — Amendments for consistency with the national model legislation and for other purposes

24. Section 5 amended

- (1) In section 5(1):
 - (a) delete paragraph (b);
 - (b) after paragraph (a) insert:

or
- (2) After section 5(2) insert:
 - (3) Subsection (1)(a) does not operate to exclude from the operation of this Act liability for damages arising out of any negligence or other fault of a legal practitioner in acting for a client in a personal injury claim.

25. Section 17 amended

- (1) In section 17 delete “The provisions” and insert:
 - (1) The provisions
- (2) At the end of section 17 insert:
 - (2) An annual report submitted by the accountable authority of the Council under the *Financial Management Act 2006* Part 5 is to include details of any forums conducted by the Council under section 12(1)(h), and any committees established by the Council under section 14, during the financial year to which the report relates.

26. Section 31 amended

In section 31(4) in the definition of *officer* delete paragraph (a) and “and” after it and insert:

- (a) in relation to a body corporate that is a corporation as defined in the *Corporations Act 2001* (Commonwealth) section 57A, has the meaning given in section 9 of that Act; and

27. Section 34A inserted

After section 33 insert:

34A. Extension of liability limitation to other persons to whom scheme applies

- (1) In this section —

associate, of a person, means someone who is associated with the person under the regulations referred to in section 42(4)(b);

officer —

- (a) in relation to a body corporate that is a corporation as defined in the *Corporations Act 2001* (Commonwealth) section 57A, has the meaning given in section 9 of that Act; and
 - (b) in relation to a body corporate that is not a corporation as so defined, means any person (by whatever name called) who is concerned in or takes part in the management of the body corporate.
- (2) limitation that applies under this Act to the occupational liability of a person as a member of an occupational association in respect of a cause of action (the *principal cause of action*) also applies, in respect of the principal cause of action and any related cause of

action, to the liability of any other person to whom the scheme concerned applies as a partner, officer, employee or associate of the member (whether or not the other person's liability is an occupational liability).

- (3) A ***related cause of action*** is a cause of action in respect of civil liability of the other person arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by that person that caused or contributed to the loss or damage with which the principal cause of action is concerned and that resulted from the same or substantially the same event as that from which the principal cause of action arose.
- (4) When this section refers to a person who is a ***partner, officer, employee or associate of a member*** of an occupational association it refers to a person who was such a partner, officer, employee or associate at the time of the event that gave rise to the principal cause of action.
- (5) When this section refers to a ***limitation on liability*** that applies to a person as a member of an occupational association it includes a limitation on liability that would apply to the person if a cause of action relating to the liability were brought against the person.

28. Section 42 amended

After section 42(4)(a) insert:

- (ba) officers of the same body corporate or in the relationship of body corporate and officer of the body corporate (with ***officer*** having the meaning given in section 31); or

Part 5 — Amendments providing for transitional matters

29. Schedule 4 amended

- (1) This section amends Schedule 4.
- (2) Before clause 1 insert:

Division 1 — Provisions relating to the *Professional Standards Amendment Act 2004*

- (3) In clause 1 delete “Schedule” and insert:

Division

Note: The heading to amended clause 1 is to read

Terms used

- (4) In clause 6(2) and (3) delete “subsection” and insert:

subclause

- (5) After clause 6 insert:

Division 2 — Provisions relating to the *Professional Standards Amendment Act 2010*

7. Terms used

In this Division —

amending Act means the *Professional Standards Amendment Act 2010*;

commencement day means the day mentioned in the amending Act section 2(b).

8. Personal injury claims

Section 5, as in force immediately before commencement day, continues to apply to a cause of action that arose before commencement day.

9. Application of schemes to officers, partners, employees and associates

Section 34A, as in force on and from commencement day, does not apply to a cause of action that arose before commencement day.

10. Associated defendants

The application of section 42, as in force on and from commencement day, extends to a cause of action that arose before commencement day but not so as to affect any decision of a court, or any compromise or settlement made before commencement day.

11. Expiry date of existing schemes

Any period determined by the Council under section 44A(1), as in force before commencement day, as the period for which a scheme is to remain in force is to be taken to be specified in the scheme.

12. Application of clause 6

The provisions of clause 6 apply in relation to the amending Act as if those provisions were part of this Division.

