

Western Australia

## **Professional Standards Amendment Act 2004**

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As at 28 Sep 2004

No. 25 of 2004

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## Professional Standards Amendment Act 2004

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Western Australia

## **Professional Standards Amendment Act 2004**

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**No. 25 of 2004**

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

[Assented to 28 September 2004]

The Parliament of Western Australia enacts as follows:

**1. Short title**

This Act may be cited as the *Professional Standards Amendment Act 2004*.

**2. Commencement**

This Act comes into operation on a day fixed by proclamation.

**3. The Act amended**

The amendments in this Act are to the *Professional Standards Act 1997*\*.

[\* *Act No. 22 of 1997.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 307.]*

**4. Section 4 amended**

Section 4 is amended in the definition of “occupational association” as follows:

- (a) in paragraph (a) by inserting after “group” —  
“ or related occupational groups ”;
- (b) in paragraph (b) by inserting after “group” —  
“ or those occupational groups ”.

**5. Section 12 amended**

(1) Section 12(1) is amended as follows:

- (a) by deleting paragraph (a)(i) and inserting instead —  
“

- (i) the publication in the *Gazette* of a scheme, or of an amendment to a scheme, submitted by it to the Minister, or of notice of the revocation of a scheme;

”;

- (b) in paragraph (h) by deleting “, approved by the Minister,”;
- (c) by deleting “and” after paragraph (h);

(d) by deleting the full stop after paragraph (i) and inserting instead —

“ ; and ”;

(e) by inserting after paragraph (i) —

“

(j) to institute proceedings in its own name for —

(i) the prosecution of; or

(ii) injunctive or other relief in respect of,  
an offence against this Act that comes to its  
notice.

”.

(2) After section 12(4) the following subsection is inserted —

“

(5) The Council is taken to have *locus standi* for the purpose of pursuing any injunctive or other relief under subsection (1)(j), and is not to be required to give any undertaking as to damages in connection with the grant of any interlocutory relief.

”.

**6. Section 13 amended**

Section 13(1)(b) is amended by inserting after “scheme,” —

“ or an amendment to or revocation of a scheme, ”.

**7. Section 13A inserted**

After section 13 the following section is inserted —

“

**13A. Referral of complaints**

(1) An occupational association may refer to the Council any complaint or other evidence received by it that a member or former member of the association has

committed an offence against section 45 or an offence under the regulations.

- (2) Nothing that is done in good faith under this section by or on behalf of an association subjects the association, any member of the association's executive body or any person acting under the direction of the association or its executive body to any action, liability, claim or demand.

”.

**8. Section 14 amended**

Section 14(1) is amended by deleting “, with the approval of the Minister,”.

**9. Section 24 amended**

Section 24(3) is repealed.

**10. Section 27 replaced**

Section 27 is repealed and the following section is inserted instead —

“

**27. Commencement of schemes**

- (1) A scheme published in the *Gazette* with the authorisation of the Minister commences —
- (a) on a day specified in the scheme, being a day that is later than the day of its publication; or
  - (b) if no day is so specified, 2 months after the day of its publication.
- (2) This section is subject to any order made by the Supreme Court under section 28(2).

”.

**11. Section 29 replaced by sections 29 and 29A**

Section 29 is repealed and the following sections are inserted instead —

“

**29. Review of schemes**

- (1) The Minister may direct the Council to review the operation of a scheme.
- (2) The Council must comply with any direction under subsection (1) but may on its own initiative at any time (whether before or after the scheme ceases to have effect) review the operation of a scheme.
- (3) A review may, but need not, be conducted in order to decide whether a scheme should be amended or revoked or whether a new scheme should be made.

**29A. Amendment and revocation of schemes**

- (1) An occupational association may prepare an amendment to or revocation of a scheme that relates to its members.
- (2) The Council may, on the application of an occupational association, prepare or approve an amendment to or revocation of a scheme that relates to the members of the association.
- (3) The Minister may direct the Council to prepare an amendment to or revocation of a scheme.
- (4) The Council must comply with any direction under subsection (3) but may on its own initiative, at any time while the scheme remains in force, prepare an amendment to or revocation of a scheme.
- (5) The provisions of sections 20 to 28 apply, with any necessary modifications, to the amendment or

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revocation of a scheme in the same way as they apply to the making of a scheme.

- (6) 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.

”

**12. Sections 30 and 31 replaced**

Sections 30 and 31 are repealed and the following sections are inserted instead —

“

**30. Persons to whom a scheme applies**

- (1) A scheme may provide that it applies to all persons within an occupational association or to a specified class or classes of persons within an occupational association.
- (2) A scheme may provide that the occupational association concerned may, on application by a person, exempt the person from the scheme.
- (3) A scheme ceases to apply to a person exempted from the scheme as referred to in subsection (2) on and from the day on which the exemption is granted or on and from a later day specified in the exemption.
- (4) Subsection (2) does not apply to a person to whom a scheme applies by virtue of section 31, 32 or 33.

**31. Officers or partners of persons to whom a scheme applies**

- (1) If a scheme applies to a body corporate, the scheme also applies to each officer of the body corporate.

- (2) If a scheme applies to a person, the scheme also applies to each partner of the person.
- (3) However, if an officer of a body corporate or a partner of a person is entitled to be a member of the same occupational association as the body corporate or person, but is not a member, the scheme does not apply to that officer or partner.
- (4) In this section —
  - “**officer**” —
    - (a) in relation to a body corporate that is a corporation as defined in section 57A of the *Corporations Act 2001* of the Commonwealth, has the meaning given to that term in section 82A 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.

”.

**13. Section 34 amended**

Section 34 is amended as follows:

- (a) by deleting “an action” and inserting instead —  
“ a proceeding ”;
- (b) by inserting before “an insurance policy” —  
“ the benefit of ”;
- (c) by deleting paragraph (b) and inserting instead —  
“(b) under which the amount payable in respect of the occupational liability relating to the cause of action (including any amount payable by the person by way of excess under or in relation to

the policy) 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 at the time at which the act or omission giving rise to the cause of action occurred,

”.

**14. Section 35 amended**

Section 35 is amended as follows:

- (a) by deleting “an action” and inserting instead —  
“ a proceeding ”;
- (b) in paragraph (a) by deleting “that person at the time at which the relevant cause of action arose;” and inserting instead —  
“

the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred;

”;

- (c) in paragraph (b)(i) by inserting before “an insurance policy” —  
“ the benefit of ”;
- (d) by deleting paragraph (b)(ii) and inserting instead —  
“
  - (ii) the net current market value of the business assets and the amount payable under the insurance policy in respect of the occupational liability relating to the cause of action (including any amount payable by the person by way of excess under or in relation to the policy), 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 at the time at which the act or omission giving rise to the cause of action occurred,

”.

**15. Section 36 amended**

(1) Section 36(1) is amended as follows:

- (a) by deleting “an action” and inserting instead —  
“ a proceeding ”;
- (b) in paragraph (a) by inserting before “an insurance policy” —  
“ the benefit of ”;
- (c) in paragraph (a)(ii) by deleting “relevant cause of action” and inserting instead —

“

cause of action (including any amount payable by the person by way of excess under or in relation to the policy)

”;

- (d) in paragraph (a)(ii) by deleting “that cause of action relates, multiplied by the multiple specified in the scheme in relation to that person at the time at which that cause of action arose;” and inserting instead —

“

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 at the time at which the

act or omission giving rise to the cause  
of action occurred;

”;

- (e) after paragraph (a) by deleting “or” and inserting —

“

(aa) that person has business assets the net current  
market value of which is not less than the  
limitation amount; or

”;

- (f) in paragraph (b)(i) by inserting before “an insurance  
policy” —

“ the benefit of ”;

- (g) in paragraph (b)(ii) by deleting “relevant cause of  
action” and inserting instead —

“

cause of action (including any amount  
payable by the person by way of excess  
under or in relation to the policy)

”;

- (h) at the end of paragraph (b) by deleting “amount.” and  
inserting instead —

“

amount or, if the scheme specifies a minimum  
cap determined by the Council for the purposes  
of the scheme that is higher than the limitation  
amount, above the amount of the minimum cap  
so specified.

”.

- (2) Section 36(3) is amended by deleting “person.” and inserting  
instead —

“ class of person and the kind of work concerned. ”.

**16. Section 37 replaced**

Section 37 is repealed and the following section is inserted instead —

“

**37. Specification of limits of liability and multiples**

- (1) A scheme may —
  - (a) specify the same maximum amount of liability in relation to all cases to which the scheme applies or different maximum amounts of liability for different cases or classes of case or for the same case or class of case for different purposes; and
  - (b) confer a discretionary authority on an occupational association, on application by a person to whom the scheme applies, to specify in relation to the person a higher maximum amount of liability than would otherwise apply under the scheme in relation to the person either in all cases or in any specified case or class of case.
- (2) A scheme may specify a multiple, monetary ceiling or minimum cap by way of a formula that is to be applied to calculate the multiple, ceiling or cap.

”.

**17. Section 38 amended**

Section 38 is amended as follows:

- (a) by deleting “occupation” and inserting instead —  
“ kind of work ”;
- (b) by deleting “person in” and inserting instead —  
“ class of person and the kind of work in ”.

**18. Section 39 amended**

- (1) Section 39(1) is amended by inserting after “Council” —  
“ and specified in the scheme ”.
- (2) Section 39(3) is repealed and the following subsection is inserted instead —  
“
  - (3) A Council determination —
    - (a) takes effect when an amendment providing for its specification in the scheme takes effect; and
    - (b) applies only to a cause of action that arises after the determination takes effect.”.

**19. Section 41 replaced**

Section 41 is repealed and the following section is inserted instead —

“

**41. Limit of occupational liability by schemes**

- (1) To the extent provided by this Act and the provisions of the scheme, a scheme limits the occupational liability, in respect of a cause of action founded on an act or omission occurring during the period when the scheme is in force, of any person to whom the scheme applied at the time when the act or omission occurred.
- (2) The applicable limitation of liability is the limitation specified by the scheme as in force at the time of the relevant act or omission.
- (3) A limitation of liability that, in accordance with this section, applies in respect of an act or omission continues to apply to every cause of action founded on it, irrespective of when the cause arises or proceedings are instituted in respect of it, and even if the scheme

has been amended or has, in accordance with section 44A, ceased to be in force.

- (4) A person to whom a scheme applies cannot choose not to be subject to the scheme, except in accordance with provisions included in the scheme under section 30(2).

”.

**20. Section 44A inserted**

After section 44 the following section is inserted —

“

**44A. Duration of scheme**

- (1) Having commenced, a scheme remains in force for a period (not exceeding 5 years) determined by the Council by notice published in the *Gazette* unless, before the end of the period so determined —
- (a) it is revoked;
  - (b) its operation is extended by notice under this section; or
  - (c) its operation ceases because of the operation of another Act.
- (2) The Minister may, by notice published in the *Gazette*, extend the period for which a scheme is in force. The notice must be published on or before the day when the original period ends.
- (3) Only one extension may be effected under subsection (2) in respect of any particular scheme, and the maximum period of an extension is 12 months.

”.

**21. Section 45 amended**

- (1) Section 45(1) is amended by deleting “, business cards”.

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(2) After section 45(3) the following subsection is inserted —

“

(4) In this section, a reference to a document does not include a reference to a business card.

”.

**22. Section 46 amended**

Section 46(4) is amended by deleting “members.” and inserting instead —

“

members or for different kinds of work or on the basis of any other differing circumstances that it considers relevant.

”.

**23. Section 55 amended**

Section 55(2) is amended by deleting paragraph (a) and “and” after it and inserting instead —

“

(a) the fees for applications for the Council’s approval, under Part 3 Division 1, of a scheme, or an amendment to or revocation of a scheme; and

”.

**24. Section 58 replaced**

Section 58 is repealed and the following section is inserted instead —

“

**58. Savings, transitional and other provisions**

Schedule 4 has effect.

”.

**25. Schedule 3 amended**

Schedule 3 clause 11 is amended by deleting “the person” and inserting instead —

“

a member of the executive body of the association, or the person so acting,

”.

**26. Schedule 4 replaced**

Schedule 4 is repealed and the following Schedule is inserted instead —

“

**Schedule 4 — Savings, transitional and other provisions**

[s. 58]

**1. Terms used in this Schedule**

In this Schedule —

“**amending Act**” means the *Professional Standards Amendment Act 2004*;

“**commencement**” means the commencement of the amending Act.

**2. Review of schemes**

Section 29, as inserted by the amending Act, extends to apply in respect of schemes in force at the commencement.

**3. Limitation of damages in respect of subsisting causes of action**

- (1) Sections 34, 35 and 36, as in force immediately before the commencement, continue to apply in respect of any cause of action that arose before the commencement as if those amendments had not been made, except as provided by subclause (2).

- (2) The amendments to sections 34, 35 and 36 made respectively by sections 13(b), 14(c) and 15(1)(b) of the amending Act apply in relation to a cause of action arising before as well as after the commencement.
- (3) Section 41, as in force immediately before its repeal by the amending Act, continues to apply in respect of any cause of action arising from anything done or omitted before its repeal.

**4. Determination of extent of limitation of damages**

The amendments made by the amending Act to section 39 do not apply in respect of a determination made under that section before those amendments took effect.

**5. Fees for applications for approval of amendment to or revocation of scheme**

For the avoidance of doubt, section 55, as in force immediately before the commencement of the amending Act, is to be taken always to have empowered the prescription by regulation of any fee that might be prescribed under that section as in force after the commencement.

**6. Regulations for savings or transitional purposes**

- (1) Regulations made under section 55 may contain provisions of a savings or transitional nature consequent on the enactment of the amending Act.
- (2) If regulations made under subsection (1) provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day on which the amending Act is assented to, the regulations have effect according to their terms.

- (3) If regulations contain a provision referred to in subsection (2), the provision does not operate so as to —
- (a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or
  - (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

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