

Overview of Bill

The object of this Bill is to amend the *Professional Standards Act 1994* (**the Principal Act**) with respect to the mutual recognition of New South Wales and interstate schemes for the limitation of occupational liability.

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 that gives effect to the amendments to the *Professional Standards Act 1994* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act on the day after it commences. Once the amendments have commenced the proposed Act will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Section 4 of the Principal Act defines certain words and expressions for the purposes of that Act. **Schedule 1 [1]** inserts additional definitions (**another jurisdiction**, **appropriate Council**, **corresponding law**, **interstate scheme** and **this jurisdiction**) as a consequence of the other proposed amendments to that Act. **Schedule 1 [2]** makes a consequential amendment to the existing definition of **scheme**.

Section 7 of the Principal Act provides that an occupational liability scheme (**a scheme**) may be prepared by an occupational association or by the Professional Standards Council (**the Council**). A scheme must then be approved by the Council.

Schedule 1 [3] inserts a new section 7 (4) so as to provide that a scheme may indicate an intention to operate as a scheme of New South Wales only, or as a scheme of both New South Wales and another jurisdiction.

Section 8 of the Principal Act requires that, before it is approved, a scheme must be publicised by means of a notice in a daily newspaper circulating throughout New South Wales. **Schedule 1 [4]** inserts a new section 8 (2) so as to require a scheme that is to operate as a scheme of some other jurisdiction to be further publicised in accordance with the requirements of the corresponding law of that other jurisdiction.

Section 10 of the Principal Act requires the Council to take certain matters into consideration before approving a scheme. **Schedule 1 [5]** inserts a new section 10 (2) so as to provide that, in the case of a scheme that is intended to operate as a scheme of another jurisdiction, the Council must also consider those matters that the appropriate Council for the other jurisdiction would have to consider and must consider all matters in the context of each of the jurisdictions concerned.

Section 12 of the Principal Act provides for the submission of schemes to the Minister, and section 13 provides for their Gazettal. **Schedule 1 [6]** inserts a new section 12 (2) so as to enable a scheme that indicates an intention to operate as a scheme of another jurisdiction to be submitted by the Council to the Minister administering the corresponding law of the other jurisdiction (so allowing the scheme to be gazetted in that jurisdiction in accordance with that jurisdiction's version of section 13). **Schedule 1 [7]** amends section 13 (1) so as to provide for the Gazettal in New South Wales of an interstate scheme that has been submitted to the Minister under that jurisdiction's version of section 12. **Schedule 1 [8]** inserts a new section 13 (3) so as to extend section 13 to amendments to interstate schemes.

Section 14 of the Principal Act establishes the date of commencement of a scheme that has been gazetted. **Schedule 1 [9]** substitutes section 14 (2) so as to provide that a scheme's commencement can be postponed not only by the Supreme Court of New South Wales (under section 15) but also by the Supreme Court of another jurisdiction by an order made under that jurisdiction's version of section 15. **Schedule 1 [9]** also inserts a new section 14 (3) so as to extend section 14 to amendments to interstate schemes.

Section 15 of the Principal Act enables a scheme's validity to be challenged in the

Supreme Court. **Schedule 1 [10]** amends section 15 (1) so as to enable a scheme that operates as a scheme of some other jurisdiction to be challenged by persons affected by the scheme as it operates in that jurisdiction. **Schedule 1 [11]** inserts a new section 15 (4) so as to provide that an interstate scheme may not be declared void under section 15 just because it fails to comply with the requirements of Division 2 (Contents of schemes) of Part 2, but may be declared void if it fails to comply with the equivalent provisions of the corresponding law of the jurisdiction in which it was prepared. **Schedule 1 [11]** also inserts a new section 15 (5) so as to preserve other rights of challenge and a new section 15 (6) so as to extend section 15 to amendments to interstate schemes.

Section 16 of the Principal Act provides for the review of schemes. **Schedule 1 [12]** amends section 16 so as to enable an interstate scheme to be reviewed for the purpose of determining whether its operation should be terminated, in relation to New South Wales, under proposed section 16C.

Section 16A of the Principal Act provides for the amendment and revocation of schemes. **Schedule 1 [14]** substitutes section 16A (5) and inserts new section 16A (6) and (7) so as to exclude sections 12 (2) and 15 from the list of sections that section 16A extends to the amendment and revocation of schemes, and to exclude interstate schemes from the application of section 16A. **Schedule 1 [13]** makes a further amendment to section 16A by way of law revision.

Schedule 1 [15] inserts new sections 16B and 16C into the Principal Act.

Proposed section 16B requires the Minister to notify his or her interstate counterparts if he or she revokes a scheme, and to gazette notice of any revocation of an interstate scheme of which he or she receives notice.

Proposed section 16C provides for the termination of the operation of interstate schemes in relation to New South Wales. Its procedures parallel the procedures established by section 16A for the amendment and revocation of schemes.

Section 32 of the Principal Act provides for the duration of schemes. **Schedule 1 [16]** substitutes section 32 (1) and adds a new section 32 (1A) so as to clarify the period for which a scheme prepared in New South Wales remains in force. **Schedule 1 [16]** also adds a new section 32 (1B) so as to specify the period for which an interstate scheme remains in force.

Section 43 of the Principal Act sets out the functions of the Council. **Schedule 1 [17]** amends section 43 so as to allow the Council to give advice to the Minister in relation to interstate schemes that are intended to operate as schemes of New South Wales.

Schedule 1 [18] further amends section 43 so as to ensure that the Council can exercise functions conferred or imposed on it by the laws of other jurisdictions.

Schedule 1 [19] inserts a new section 43A into the Principal Act. The proposed section ensures that the Council can act in conjunction with its interstate counterparts.

Schedule 1 [20] amends Schedule 4 so as to enable the regulations under the Principal Act to make provisions of a savings or transitional nature consequent on the enactment of the proposed Act. **Schedule 1 [21]** inserts a new Part 6 into Schedule 4. The proposed Part contains a clause that clarifies the expiry date of existing schemes.