



New South Wales

Professional Standards Amendment (Defence Costs) Act 2006 No 78

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Professional Standards Amendment (Defence Costs) Act 2006 No 78

Act No 78, 2006

An Act to amend the *Professional Standards Act 1994* with respect to schemes that limit the occupational liability of members of occupational associations. [Assented to 27 October 2006]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Professional Standards Amendment (Defence Costs) Act 2006*.

2 Commencement

This Act commences on assent.

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- (1) This Act is repealed on the day following the day on which this Act commences.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):

costs includes fees, charges, disbursements and expenses.

[2] Section 4 (1), definition of “damages”

Omit the definition. Insert instead:

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 a defendant), and
- (c) any interest payable on the amount of those damages or costs.

[3] Section 4 (1A)

Insert after section 4 (1):

- (1A) A reference in this Act to the amount payable under an insurance policy in respect of an occupational liability includes a reference to:
 - (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.

[4] Section 21

Omit the section. Insert instead:

21 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 that:

- (a) the person has the benefit of an insurance policy insuring the 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,

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

[5] Section 22 Limitation of liability by reference to amount of business assets

Omit “at the time at which the act or omission giving rise to the cause of action occurred” from section 22 (a).

[6] Section 22 (b) (ii)

Omit the subparagraph. Insert instead:

- (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 23 Limitation of liability by multiple of charges

Omit section 23 (1) (a) (ii). Insert instead:

- (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 provided by the person or which the 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

[8] Section 23 (1) (c) (ii)

Omit the subparagraph. Insert instead:

- (ii) the net current market value of the 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,

[9] Section 26A

Insert after section 26:

26A 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.

Note. Section 4 (1A) permits a defence costs inclusive policy for the purposes of this Act, which may reduce the amount available to be paid to a client in respect of occupational liability covered by the policy. Section 26A makes it clear that this does not reduce the cap on the liability of the scheme participant to the client, and accordingly the scheme participant will continue to be liable to the client for the amount of any difference between the amount payable to the client under the policy and the amount of the cap.

[10] Section 28 Limit of occupational liability by schemes

Omit “at the time of the relevant act or omission” from section 28 (2).

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

[11] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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[12] Schedule 4, Part 5

Insert after Part 4:

**Part 5 Professional Standards Amendment
(Defence Costs) Act 2006**

16 Definition

In this Part, *amending Act* means the *Professional Standards Amendment (Defence Costs) Act 2006*.

17 Validation of schemes etc

- (1) A scheme approved under this Act before the commencement of the amending Act is taken to be, and always to have been, a valid scheme if it would have been valid had the amendments made by the amending Act been in force when the scheme was approved.
- (2) Anything done or omitted to be done in respect of such a scheme is taken to be, and always to have been, validly done or omitted. In particular, an insurance policy required by this Act before a limitation on liability in damages of a person to whom such a scheme applies is reduced is taken to comply, and always to have complied, with this Act if it would have complied had the amendments made by the amending Act been in force when the policy was issued.
- (3) This clause extends to proceedings pending in a court on the commencement of this clause.

[Second reading speech made in—

Legislative Assembly on 19 September 2006

Legislative Council on 18 October 2006]

BY AUTHORITY