

## TASMANIA

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# PROFESSIONAL STANDARDS AMENDMENT BILL 2016

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## CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 4 amended (Interpretation)
5. Section 5 amended (Application of Act)
6. Section 8 amended (Preparation and approval of schemes)
7. Section 9 substituted
  9. Public notification of schemes
8. Section 11 substituted
  11. Consideration of comments, submissions and other matters
9. Section 13 amended (Submission of schemes to Minister)
10. Section 14 amended (Gazettal, tabling and disallowance of schemes)
11. Section 15 amended (Commencement of schemes)
12. Section 16 amended (Challenges to schemes)
13. Section 17 amended (Review of schemes)
14. Section 18 amended (Amendment of Tasmanian schemes)
15. Section 19 amended (Revocation of Tasmanian schemes)
16. Sections 19A and 19B inserted

- 19A. Publication of revocation of interstate scheme under corresponding law
- 19B. Termination of operation of interstate scheme in Tasmania
- 17. Section 27 amended (Specification of different limits of liability)
- 18. Section 34 amended (Proceedings to which scheme applies)
- 19. Section 35 amended (Duration of scheme)
- 20. Section 47A inserted
  - 47A. Cooperation with authorities in other jurisdictions
- 21. Section 55 substituted
  - 55. No contracting out of Act
- 22. Repeal of Act

# **PROFESSIONAL STANDARDS AMENDMENT BILL 2016**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*  
20 September 2016

*(Brought in by the Treasurer, the Honourable Peter Carl  
Gutwein)*

## **A BILL FOR**

### **An Act to amend the *Professional Standards Act 2005***

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### **1. Short title**

This Act may be cited as the *Professional Standards Amendment Act 2016*.

#### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

*Professional Standards Amendment Act 2016*  
*Act No. of*

s. 3

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**3. Principal Act**

In this Act, the *Professional Standards Act 2005\** is referred to as the Principal Act.

**4. Section 4 amended (Interpretation)**

Section 4(1) of the Principal Act is amended as follows:

- (a) by inserting the following definitions before the definition of *business assets*:

***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;

- (b) by inserting the following definition after the definition of *business assets*:

***corresponding law*** means –

- (a) a law of another jurisdiction that corresponds to this Act;  
and

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\*No. 24 of 2005

*Professional Standards Amendment Act 2016*  
*Act No. of*

s. 5

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- (b) a law of another jurisdiction that is prescribed by the regulations to be a corresponding law;
- (c) by inserting the following definition after the definition of *function*:
  - interstate scheme* means a scheme that –
    - (a) has been prepared under a corresponding law; and
    - (b) operates, or indicates an intention to operate, as a scheme of Tasmania;
- (d) by omitting “association;” from the definition of *scheme* and substituting “association, whether prepared under this Act or a corresponding law;”.

**5. Section 5 amended (Application of Act)**

Section 5 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) This Act does not apply to any cause of action (whether or not the action lies in contract) arising under, or with respect to, a contract, or contractual relations –
  - (a) entered into by a member of a scheme approved under section 8

*Professional Standards Amendment Act 2016*  
*Act No. of*

s. 6

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if that member entered into the contract or contractual relations after the commencement of this Act but before that scheme commenced; or

- (b) entered into by a person before that person became a member of a scheme that, at the time the person became a member, had commenced –

unless the parties, after the commencement of the scheme, vary the relevant contract, or relevant contractual relations, so as to make express provision for the application of this Act.

- (5) This section applies to an interstate scheme in its operation in Tasmania despite a corresponding law that applies to the interstate scheme in another jurisdiction stating that the corresponding law does apply to a liability of a kind referred to in subsection (1) or (2).

**6. Section 8 amended (Preparation and approval of schemes)**

Section 8 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) A scheme prepared under this section may indicate an intention to operate as a scheme –

- (a) of Tasmania only; or
- (b) of Tasmania and another jurisdiction.

**7. Section 9 substituted**

Section 9 of the Principal Act is repealed and the following section is substituted:

**9. Public notification of schemes**

- (1) Before deciding whether to approve a scheme, the Council must publish a notice in all daily newspapers published in Tasmania –
  - (a) explaining the nature and significance of the scheme; and
  - (b) advising where a copy of the scheme may be obtained or inspected; and
  - (c) inviting comments and submissions within a specified time, but not less than 28 days after publication of the notice.
- (2) If a scheme indicates an intention to operate as a scheme of both Tasmania and another jurisdiction, the Council must also publish a similar notice in the other jurisdiction in accordance with the corresponding law of that jurisdiction that relates to approval of a scheme prepared in that jurisdiction.

*Professional Standards Amendment Act 2016*  
*Act No. of*

s. 8

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**8. Section 11 substituted**

Section 11 of the Principal Act is repealed and the following section is substituted:

**11. Consideration of comments, submissions and other matters**

- (1) Before deciding whether to approve a scheme, the Council must consider the following:
  - (a) all comments and submissions made to it in accordance with section 10;
  - (b) the position of persons who may be affected by limiting the occupational liability of members of the occupational association concerned;
  - (c) the nature and level of claims relating to occupational liability made against members of the occupational association concerned;
  - (d) the risk management strategies of the occupational association concerned;
  - (e) the means by which those strategies are intended to be implemented;



*Professional Standards Amendment Act 2016*  
*Act No. of*

s. 8

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- (f) the cost and availability of insurance against occupational liability for members of the occupational association concerned;
  - (g) the standards (referred to in section 30) determined by the occupational association concerned in relation to insurance policies;
  - (h) the provisions contained in the proposed scheme or under statute for the making and determination of complaints and the imposition and enforcement of disciplinary measures against members of the occupational association concerned.
- (2) If a scheme indicates an intention to operate as a scheme of both Tasmania and another jurisdiction –
- (a) the Council must also consider any matter that the appropriate council for that 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 other jurisdiction; and

*Professional Standards Amendment Act 2016*  
*Act No. of*

s. 9

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- (b) the matters to be considered by the Council, whether under subsection (1) or under paragraph (a) of this subsection, are to be considered in the context of each jurisdiction concerned.

**9. Section 13 amended (Submission of schemes to Minister)**

Section 13 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) If the scheme indicates an intention to operate as a scheme of both Tasmania and another jurisdiction, the Council may also submit the scheme to the Minister administering the corresponding law of that other jurisdiction.

**10. Section 14 amended (Gazettal, tabling and disallowance of schemes)**

Section 14 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Minister by the Council.” and substituting “Minister –”;
- (b) by inserting the following paragraphs after subsection (1):

- (a) under section 13 by the Council;  
or
- (b) in the case of an interstate scheme, under a corresponding law by the appropriate council for the jurisdiction in which the scheme was prepared.
- (c) by omitting from subsection (2) “submitted to the Minister by the Council” and substituting “in respect of which the Minister has authorised publication in the *Gazette* under subsection (1)”;
- (d) by omitting from subsection (3) “published” first occurring and substituting “in respect of which the Minister has authorised publication”;
- (e) by inserting the following subsection after subsection (3):
  - (3A) In subsection (1), a reference to an interstate scheme includes a reference to an instrument amending an interstate scheme.

**11. Section 15 amended (Commencement of schemes)**

Section 15 of the Principal Act is amended as follows:

*Professional Standards Amendment Act 2016*  
*Act No. of*

s. 12

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- (a) by omitting from subsection (1)(a) “2 months or more after” and substituting “subsequent to”;
- (b) by omitting from subsection (2) “section 16(2).” and substituting “section 16 and any order made by the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction.”;
- (c) by inserting the following subsection after subsection (2):
  - (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.

**12. Section 16 amended (Challenges to schemes)**

Section 16 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (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 the scheme was prepared that relate to the contents of schemes prepared in that jurisdiction.

- (5) In this section, a reference to a scheme includes, in the case of an interstate scheme, a reference to an instrument amending that scheme.

**13. Section 17 amended (Review of schemes)**

Section 17 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

- (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 Tasmania.

**14. Section 18 amended (Amendment of Tasmanian schemes)**

Section 18 of the Principal Act is amended by inserting after subsection (7) the following subsection:

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

*Professional Standards Amendment Act 2016*  
*Act No. of*

s. 15

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**15. Section 19 amended (Revocation of Tasmanian schemes)**

Section 19 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) If a scheme prepared under this Act indicates an intention to operate in both Tasmania and another jurisdiction and is revoked under this section, the Council must give notice of the revocation to the Minister administering the corresponding law of that jurisdiction.
- (5) This section does not apply to an interstate scheme.

**16. Sections 19A and 19B inserted**

After section 19 of the Principal Act, the following sections are inserted in Division 1:

**19A. Publication of revocation of interstate scheme under corresponding law**

If the Minister is notified that an interstate scheme has been revoked under the corresponding law of the jurisdiction in which the scheme was prepared, the Minister must cause notice of that revocation to be published in the *Gazette*.

**19B. Termination of operation of interstate scheme in Tasmania**

- (1) On the application of an occupational association, the Council may prepare an instrument terminating the operation, in Tasmania, of an interstate scheme that relates to the members of the association.
- (2) The Minister may direct the Council to prepare an instrument terminating the operation, in Tasmania, of an interstate scheme.
- (3) The Council must comply with a 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, in Tasmania, of the scheme.
- (4) The provisions of sections 9, 10, 11, 12, 13, 14, 15 and 16 apply, with any necessary modifications, to the termination, in relation to Tasmania, of an interstate scheme.
- (5) The operation of an interstate scheme in respect of which an instrument under this section is published under section 14 (as applied by subsection (4)) is terminated, in relation to Tasmania –
  - (a) on such day later than the publication of the instrument as may be specified in the instrument; or

*Professional Standards Amendment Act 2016*  
*Act No. of*

s. 17

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- (b) if no such day is specified in the instrument, at the end of the period of 2 months commencing on the day of the publication of the instrument.

**17. Section 27 amended (Specification of different limits of liability)**

Section 27 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “case; and” and substituting “cases.”;
- (b) by omitting paragraph (c).

**18. Section 34 amended (Proceedings to which scheme applies)**

Section 34 of the Principal Act is amended by omitting “section 5(3),” and substituting “section 5(3) and (4)”.

**19. Section 35 amended (Duration of scheme)**

Section 35 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsections:
  - (1) A scheme, other than an interstate scheme, must specify the period (not exceeding 5 years) for which



it is to remain in force after its commencement.

(1A) A scheme, other than an interstate scheme, remains in force until whichever of the following first occurs:

- (a) the expiration of the period specified in the scheme in accordance with subsection (1) or, if that period has been extended under subsection (2), the expiration of that extended period;
- (b) the scheme is revoked;
- (c) the scheme's operation ceases because of the operation of another Act;
- (d) the scheme is declared void by –
  - (i) an order made by the Supreme Court under section 16; or
  - (ii) an order made by the Supreme Court of another jurisdiction under the corresponding

*Professional Standards Amendment Act 2016*  
*Act No. of*

s. 19

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law of that  
jurisdiction;

(e) the scheme is disallowed under section 47(4) of the *Acts Interpretation Act 1931*.

(1B) An interstate scheme remains in force in relation to Tasmania until whichever of the following first occurs:

(a) the expiration of the period for which the scheme is in force under the corresponding law of the other jurisdiction in which the scheme was prepared or, if that period has been extended under that corresponding law, the expiration of that extended period;

(b) the scheme otherwise ceases to have effect in that other jurisdiction;

(c) the scheme's operation in relation to Tasmania has been terminated under this Act;

(d) the scheme is disallowed under section 47(4) of the

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*Acts Interpretation Act*  
*1931.*

- (b) by omitting from subsection (2) “scheme” and substituting “scheme, other than an interstate scheme,”;
- (c) by inserting the following subsections after subsection (3):
  - (4) If the Minister under subsection (2) extends the period for which a scheme is in force and that scheme indicates an intention to operate as a scheme of both Tasmania and another jurisdiction, the Minister is to notify the Minister administering the corresponding law of that other jurisdiction of that extension.
  - (5) If the Minister is notified that the period for which an interstate scheme is in force has been extended under the corresponding law of the jurisdiction in which the scheme was prepared, the Minister must cause notice of that extension to be published in the *Gazette*.

**20. Section 47A inserted**

After section 47 of the Principal Act, the following section is inserted in Division 3:

**47A. Cooperation with authorities in other jurisdictions**

For the purposes of dealing with a scheme that operates, or indicates an intention to operate, as a scheme of both Tasmania and another jurisdiction, the Council –

- (a) in the exercise of its functions under this Act, may act in conjunction with the appropriate council of the other jurisdiction; and
- (b) may act in conjunction with the appropriate council of the other jurisdiction in the exercise of that Council's functions under the corresponding law of that jurisdiction.

**21. Section 55 substituted**

Section 55 of the Principal Act is repealed and the following section is substituted:

**55. No contracting out of Act**

- (1) Subject to section 27(b), this Act applies in relation to a person to whom a scheme in force under this Act applies despite any contract to the contrary made on or after the date on which the person became a person to whom the scheme applies.

*Professional Standards Amendment Act 2016*  
*Act No. of*

s. 22

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- (2) This section applies to an interstate scheme, in relation to its operation in Tasmania, whether or not contracting out is permitted under the corresponding law applying to the interstate scheme in another jurisdiction.

**22. Repeal of Act**

This Act is repealed on the three hundred and fifty sixth day from the day on which it commences.