

NORTHERN TERRITORY OF AUSTRALIA

PROFESSIONAL STANDARDS AMENDMENT (MUTUAL RECOGNITION)
ACT 2008

Act No. 5 of 2008

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 5 of 2008

An Act to amend the *Professional Standards Act*

[Assented to 11 March 2008]
[Second reading 29 November 2007]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Professional Standards Amendment (Mutual Recognition) Act 2008*.

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Professional Standards Act*.

4 Amendment of section 4 (Interpretation)

(1) Section 4(1)

insert (in alphabetical order)

another jurisdiction means a State or another Territory.

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 the Territory.

- (2) Section 4(1), definition **scheme**

omit

association.

substitute

association, and includes an interstate scheme.

5 Amendment of section 7 (Preparation and approval of schemes)

After section 7(3)

insert

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

6 Amendment of section 8 (Public notification of schemes)

- (1) Section 8

omit

Before

substitute

- (1) Before

-
- (2) After section 8(1)

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.

7 Amendment of section 10 (Consideration of comments, submissions and other matters)

- (1) Section 10

omit

Before

substitute

- (1) Before

- (2) After section 10(1)

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.

8 Amendment of section 12 (Submission of schemes to Minister)

- (1) Section 12

omit

The

substitute

- (1) The

-
- (2) After section 12(1)

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.

9 Amendment of section 13 (Gazettal, tabling and disallowance)

- (1) Section 13(1), after "Council"

insert

or, if it is an interstate scheme, by the appropriate Council for the jurisdiction in which the scheme was prepared

- (2) After section 13(2)

insert

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

Note

Subsection (3) applies subsections (1) and (2) to instruments that amend an interstate scheme. Those subsections already apply, because of section 17(5), to instruments that amend a scheme that is not an interstate scheme.

10 Amendment of section 14 (Commencement of schemes)

- (1) Section 14(2), after "section 15(2)"

insert

and any order of the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction

- (2) After section 14(3)

insert

- (4) In this section, a reference to a scheme includes, in relation to an interstate scheme, a reference to an instrument amending that scheme.

11 Amendment of section 15 (Challenges to schemes)

(1) Section 15(1), after "section 13"

insert

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

(2) After section 15(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.

(6) In this section, a reference to a scheme includes, if it is an interstate scheme, a reference to an instrument amending that scheme.

12 Amendment of section 16 (Review of schemes)

Section 16(3)

omit, substitute

(3) A review may, but need not, be conducted in order to decide:

(a) in relation to 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 relation to an interstate scheme – whether the operation of the scheme should be terminated in relation to this jurisdiction.

13 Amendment of section 17 (Amendment and revocation of schemes)

(1) Section 17(1) to (4)

omit

amendment to or revocation of

substitute

instrument amending or revoking

(2) Section 17(5)

omit, substitute

- (5) Sections 7 to 15 extend (with the necessary changes) to the amendment of a scheme by an instrument under this section.
- (6) Sections 7 to 14, other than section 12(2), extend (with the necessary changes) to the revocation of a scheme by an instrument under this section.
- (7) This section does not apply to an interstate scheme.

Note

An instrument that amends a scheme operating in another jurisdiction may be submitted to the Minister administering the corresponding law of that jurisdiction under section 12 with a view to the instrument being published under that law. An instrument made under the corresponding law of another jurisdiction that amends an interstate scheme may be submitted to the Minister administering this Act with a view to the instrument being published under section 13.

14 New sections 17A and 17B

After section 17

insert

17A 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 give notice of the revocation to the Minister administering the corresponding law of that jurisdiction.
- (2) On receipt of a notice that an interstate scheme has been revoked under the corresponding law of the jurisdiction in which it was prepared, the Minister must publish a notice of the revocation in the *Gazette*.

Note

Under section 33(1B), an interstate scheme will cease to have effect in this jurisdiction when it ceases to have effect in the other jurisdiction.

17B 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 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 of the scheme in relation to this jurisdiction.
- (4) Sections 8 to 13, other than section 12(2), extend (with the necessary changes) 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 13, as applied by subsection (4), is terminated in relation to this jurisdiction:
 - (a) on the day (subsequent to the date of its publication) specified in the instrument; or
 - (b) if no day is specified – on the day 2 months after the date of its publication.

15 Amendment of section 33 (Duration of scheme)

- (1) Section 33(1)

omit, substitute

- (1) A scheme must specify the period (not exceeding 5 years) for which it is to remain in force after its commencement.
- (1A) 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 15 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 section 63 of the *Interpretation Act*.
- (1B) 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 17B; or
 - (c) the scheme ceases to have effect in the jurisdiction in which it was prepared; or
 - (d) the scheme is disallowed under section 63 of the *Interpretation Act*.
- (2) After section 33(4)
- insert*
- (5) The period for which a scheme is to remain in force, as determined by the Council under subsection (1) before the commencement of the *Professional Standards Amendment (Mutual Recognition) Act 2008*, is taken to be specified in the scheme.

16 Amendment of section 45 (Functions of Council)

- (1) Section 45(1)(a)(i)
- omit*
- by it
- (2) Section 45(4), after "Act"
- insert*
- or law

17 New section 45A

After section 45

insert

45A 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.