

NORTHERN TERRITORY OF AUSTRALIA
PROFESSIONAL STANDARDS AMENDMENT ACT 2007

Act No. 2 of 2007

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 2 of 2007

AN ACT

to amend the *Professional Standards Act*

[Assented to 8 March 2007]

[Second reading 30 November 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Professional Standards Amendment Act 2007*.

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 (Definitions)

(1) Section 4, heading

omit, substitute

Interpretation

Professional Standards Amendment Act 2007

- (2) Section 4, before "In this Act"

insert

- (1)

- (3) Section 4(1), definition of "damages"

omit

- (4) Section 4(1)

insert (in alphabetical order)

"costs" includes fees, charges, disbursements and expenses;

"damages" means:

- (a) damages awarded in respect of a claim or counter-claim or claim by way of a 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;

- (5) After section 4(1)

insert

(2) 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.

5. Repeal and substitution of section 22

Section 22

repeal, substitute

22. 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 person;

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

6. Amendment of section 23 (Limitation of liability by reference to amount of business assets)

(1) Section 23

omit

cause of action relating

substitute

proceeding relating

(2) Section 23(a)

omit

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

(3) Section 23(b)(ii)

omit, substitute

- (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 person;

(4) Section 23

omit

that cause of action

substitute

the cause of action

7. Amendment of section 24 (Limitation of liability by multiple of charges)

(1) Section 24(1)

omit

cause of action relating

substitute

proceeding relating

(2) Section 24(1)(a)(ii)

omit, substitute

- (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 person; or

(3) Section 24(1)(c)(ii)

omit, substitute

- (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;

(4) Section 24(1)

omit

that cause of action

substitute

the cause of action

8. New section 27A

After section 27

insert

27A. 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 for section 27A

Section 4(2) 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. This section 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.

9. Amendment of section 29 (Limit of occupational liability by schemes)

Section 29(2) and (4)

omit

of the relevant act or omission

substitute

when the act or omission giving rise to the cause of action concerned occurred

10. New Part

After section 60

insert

PART 8 – TRANSITIONAL MATTERS FOR *PROFESSIONAL STANDARDS AMENDMENT ACT 2007*

61. Definitions

In this Part:

"amendments" means the amendments made by the *Professional Standards Amendment Act 2007*;

"relevant insurance policy" means an insurance policy required by this Act before a limitation on liability in damages of a person to whom a validated scheme applies is reduced;

"validated", in relation to a scheme or an act or omission, means a scheme or an act or omission taken under section 62(1) or (2) to be valid or validly done or omitted.

62. Validation of schemes etc.

(1) A scheme approved under this Act before the commencement of this Part is taken to be, and always to have been, a valid scheme if it would have been valid had the amendments been in force when the scheme was approved.

(2) Anything done or omitted to be done in respect of a validated scheme is taken to be, and always to have been, validly done or omitted.

(3) A relevant insurance policy is taken to comply, and always to have complied with this Act, if it would have complied had the amendments been in force when the policy was issued (a "compliant policy").

(4) This section extends to a validated scheme, validated act or omission or compliant policy, even if proceedings in relation to the scheme, act, omission or policy are pending in a court on the commencement of the *Professional Standards Amendment Act 2007*.