

South Australia

# Professional Standards (Mutual Recognition) Amendment Act 2010

An Act to amend the *Professional Standards Act 2004*.

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**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Professional Standards (Mutual Recognition) Amendment Act 2010*.

## 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Professional Standards Act 2004*

### 3—Amendment of section 4—Interpretation

- (1) Section 4(1)—before the definition of *business assets* insert:

*another jurisdiction* means a State or Territory of the Commonwealth, 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;

- (2) Section 4(1)—after the definition of *business assets* insert:

*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;

- (3) Section 4(1)—after the definition of *function* insert:

*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;

- (4) Section 4(1), definition of *scheme*—after "association" insert:

, and includes an interstate scheme

- (5) Section 4(1)—after the definition of *scheme* insert:

*this jurisdiction* means South Australia.

### 4—Amendment of section 8—Preparation and approval of schemes

Section 8—after subsection (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.

### 5—Amendment of section 9—Public notification of schemes

Section 9—after its present contents (now to be designated as subsection (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.

## 6—Amendment of section 11—Consideration of comments, submissions and other matters

Section 11—after its present contents (now to be designated as subsection (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.

## 7—Amendment of section 13—Submission of approved schemes for gazettal

Section 13—after its present contents (now to be designated as subsection (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.

## 8—Amendment of section 14—Gazettal, tabling and disallowance of schemes

- (1) Section 14(1)—after "by the Council" insert:

or, in the case of an interstate scheme, by the appropriate Council for the jurisdiction in which the scheme was prepared

- (2) Section 14—after subsection (3) insert:

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

### Note—

Subsection (4) applies subsections (1), (2) and (3) to instruments that amend an interstate scheme. Those subsections already apply, by virtue of section 18(5), to instruments that amend a scheme that is not an interstate scheme.

## 9—Amendment of section 15—Commencement of schemes

- (1) Section 15(2)—delete "section 16(2)" and substitute:

section 16 and any order made by the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction

- (2) Section 15—after subsection (2) insert:

- (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.

## **10—Amendment of section 16—Challenges to schemes**

- (1) Section 16(1)—after "section 14" 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) Section 16—after subsection (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, in the case of an interstate scheme, a reference to an instrument amending that scheme.

## **11—Amendment of section 17—Review of schemes**

Delete subsection (3) and substitute:

- (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 this jurisdiction.

## **12—Amendment of section 18—Amendment and revocation of schemes**

- (1) Section 18(1)—delete "an amendment to, or revocation of," and substitute:

an instrument amending or revoking
- (2) Section 18(2)—delete "an amendment to, or revocation of," and substitute:

an instrument amending or revoking
- (3) Section 18(3)—delete "an amendment to, or revocation of," and substitute:

an instrument amending or revoking
- (4) Section 18(4)—delete "an amendment to, or revocation of," and substitute:

an instrument amending or revoking
- (5) Section 18—delete subsection (5) and substitute:
  - (5) The provisions of sections 8 to 16 extend, with any necessary modifications, to the amendment of a scheme by an instrument under this section.

- (6) The provisions of sections 8 to 15 (other than section 13(2)) extend, with any necessary modifications, 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 13 with a view to its being published under that law. An instrument made under that corresponding law of another jurisdiction that amends an interstate scheme may be submitted to the Minister administering this Act with a view to its being published under section 14.

### **13—Insertion of sections 18A and 18B**

After section 18 insert:

#### **18A—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 cause notice of that fact to be given to the Minister administering the corresponding law of that jurisdiction.
- (2) On receipt of notice that an interstate scheme has been revoked under the corresponding law of the jurisdiction in which it was prepared, the Minister must cause a statement to that effect to be published in the Gazette.

**Note—**

Under section 34(1a), an interstate scheme will cease to have effect in this jurisdiction when it ceases to have effect in the other jurisdiction.

#### **18B—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 any such direction 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) The provisions of sections 9 to 14 (other than section 13(2)) extend, with any necessary modifications, 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 14 (as applied by subsection (4)) is terminated, in relation to this jurisdiction, as from—
- (a) such day subsequent to the date of its publication as may be specified in the instrument; or
  - (b) if no such day is specified—2 months after the date of its publication.

#### **14—Amendment of section 34—Duration of scheme**

Section 34—delete subsection (1) and 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) a scheme that is an interstate scheme remains in force in this jurisdiction until—
    - (i) the period specified under subsection (1) ends; or
    - (ii) the scheme's operation in relation to this jurisdiction is terminated under section 18B; or
    - (iii) the scheme ceases to have effect in the jurisdiction in which it was prepared; or
    - (iv) the scheme is disallowed under section 10 of the *Subordinate Legislation Act 1978*; and
  - (b) any other scheme remains in force until—
    - (i) the period specified under subsection (1) ends; or
    - (ii) the scheme is revoked; or
    - (iii) the scheme's operation ceases because of the operation of another Act; or
    - (iv) the scheme is declared void, either by an order made by the Supreme Court under section 16 or by an order made by the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction; or
    - (v) the scheme is disallowed under section 10 of the *Subordinate Legislation Act 1978*.

#### **15—Amendment of section 46—Functions of Council**

- (1) Section 46 (1)(a)(i)—delete "by it"
- (2) Section 46(4)—after "Act" insert:  
or law

## **16—Insertion of section 46A**

After section 46 insert:

### **46A—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 the Council's functions under the corresponding law of that jurisdiction.

## **Schedule 1—Transitional provision**

### **1—Expiry date of existing schemes**

The period determined by the Council as the period for which a scheme is to remain in force for the purposes of section 34(1) of the *Professional Standards Act 2004* as in force immediately before the commencement of section 14 of this Act, will be taken to be the period specified in the scheme as the period for which the scheme is to remain in force after its commencement.