



Treasury Legislation Amendment (Professional Standards) Act 2004

No. 118, 2004

**An Act to limit certain liabilities in accordance with
laws of the States and Territories, and for related
purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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**An Act to limit certain liabilities in accordance with
laws of the States and Territories, and for related
purposes**

[Assented to 13 July 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Treasury Legislation Amendment
(Professional Standards) Act 2004*.

2 Commencement

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Limitation of liabilities

Australian Securities and Investments Commission Act 2001

1A After subsection 12ED(2)

Insert:

(2A) If:

- (a) there is a breach of an implied warranty that exists because of this section in a contract made after the commencement of this subsection; and
- (b) the law of a State or Territory is the proper law of the contract;

the law of the State or Territory applies to limit or preclude liability for the breach, and recovery of that liability (if any), in the same way as it applies to limit or preclude liability, and recovery of a liability, for breach of another term of the contract.

1 After subsection 12GF(1)

Insert:

(1A) Subsection (1) has effect subject to section 12GNA.

Note: Section 12GNA may limit the amount that the person may recover for a contravention of section 12DA (Misleading or deceptive conduct) from the other person or from another person involved in the contravention.

2 After subsection 12GM(7)

Insert:

(7A) Subsections (1) and (2) have effect subject to section 12GNA.

Note: Section 12GNA may limit the liability, under an order under subsection (1) or (2) of this section, of a person for his or her contravention of section 12DA (Misleading or deceptive conduct) or involvement in such a contravention.

3 After section 12GN

Insert:

12GNA Limit on liability for misleading or deceptive conduct

State or Territory professional standards law limits liability

- (1) A professional standards law of a State, the Australian Capital Territory or the Northern Territory applies to limit occupational liability relating to an action for contravention of section 12DA in the same way as it limits occupational liability arising under a law of the State or Territory.

Note: Section 12DA prohibits misleading or deceptive conduct by a person in relation to financial services.

- (2) However, the professional standards law applies for that purpose:
- (a) only in relation to a scheme that was prescribed by the regulations at the time (the *contravention time*) of the contravention; and
 - (b) as if the scheme were in force under that law at the contravention time in the form the scheme would have been in if:
 - (i) the scheme had not been amended or revoked under that law since the scheme was first prescribed; and
 - (ii) the modifications (if any) prescribed by the regulations at the contravention time had been made to the scheme.

Which State's or Territory's professional standards law applies?

- (3) For the purposes of working out whether a professional standards law of a particular State or Territory applies under subsection (1) in relation to a particular contravention of section 12DA, choice of law rules operate in relation to the contravention in the same way as they operate in relation to a tort.

Definitions

- (4) In this section:

modifications includes additions, omissions and substitutions.

occupation includes profession and trade.

occupational association means a body:

- (a) that represents the interests of persons who have the same occupation; and

(b) whose membership is limited principally to such persons.

occupational liability means civil liability arising directly or vicariously from anything done or omitted by a member of an occupational association in the course of his or her occupation.

professional standards law means a law providing for the limitation of occupational liability by reference to schemes for limiting that liability that were formulated and published in accordance with that law.

Corporations Act 2001

4 Subsection 1041H(1) (note 2)

Omit “relief from”, substitute “limits on, and relief from,”.

5 After subsection 1041I(1)

Insert:

(1A) Subsection (1) has effect subject to section 1044B.

Note: Section 1044B may limit the amount that the person may recover for a contravention of section 1041H (Misleading or deceptive conduct) from the other person or from another person involved in the contravention.

6 Division 4 of Part 7.10 (heading)

Repeal the heading, substitute:

Division 4—Defences, relief and limits on liability

7 At the end of Division 4 of Part 7.10

Add:

1044B Limit on liability for misleading or deceptive conduct

State or Territory professional standards law limits liability

- (1) A professional standards law of a State, the Australian Capital Territory or the Northern Territory applies to limit occupational liability relating to an action for contravention of section 1041H in the same way as it limits occupational liability arising under a law of the State or Territory.

Note: Section 1041H prohibits misleading or deceptive conduct by a person in relation to a financial product or financial service.

- (2) However, the professional standards law applies for that purpose:
- (a) only in relation to a scheme that was prescribed by the regulations at the time (the *contravention time*) of the contravention; and
 - (b) as if the scheme were in force under that law at the contravention time in the form the scheme would have been in if:
 - (i) the scheme had not been amended or revoked under that law since the scheme was first prescribed; and
 - (ii) the modifications (if any) prescribed by the regulations at the contravention time had been made to the scheme.

Which State's or Territory's professional standards law applies?

- (3) For the purposes of working out whether a professional standards law of a particular State or Territory applies under subsection (1) in relation to a particular contravention of section 1041H, choice of law rules operate in relation to the contravention in the same way as they operate in relation to a tort.

Definitions

- (4) In this section:

modifications includes additions, omissions and substitutions.

occupation includes profession and trade.

occupational association means a body:

- (a) that represents the interests of persons who have the same occupation; and
- (b) whose membership is limited principally to such persons.

occupational liability means civil liability arising directly or vicariously from anything done or omitted by a member of an occupational association in the course of his or her occupation.

professional standards law means a law providing for the limitation of occupational liability by reference to schemes for limiting that liability that were formulated and published in accordance with that law.

8 After subsection 1325(5)

Insert:

(5A) Subsections (1) and (2) have effect subject to section 1044B.

Note: Section 1044B may limit the liability, under an order under subsection (1) or (2) of this section, of a person for his or her contravention of section 1041H (Misleading or deceptive conduct) or involvement in such a contravention.

Trade Practices Act 1974

8A After subsection 74(2)

Insert:

(2A) If:

- (a) there is a breach of an implied warranty that exists because of this section in a contract made after the commencement of this subsection; and
- (b) the law of a State or Territory is the proper law of the contract;

the law of the State or Territory applies to limit or preclude liability for the breach, and recovery of that liability (if any), in the same way as it applies to limit or preclude liability, and recovery of a liability, for breach of another term of the contract.

9 After subsection 82(1)

Insert:

(1AA) Subsection (1) has effect subject to section 87AB.

Note: Section 87AB may limit the amount that the person may recover for a contravention of section 52 (Misleading or deceptive conduct) from the other person or from another person involved in the contravention.

10 After subsection 87(2)

Insert:

(2A) Subsections (1) and (1A) have effect subject to section 87AB.

Note: Section 87AB may limit the liability, under an order under subsection (1) or (1A) of this section, of a person for his or her contravention of section 52 (Misleading or deceptive conduct) or involvement in such a contravention.

11 After section 87AA

Insert:

87AB Limit on liability for misleading or deceptive conduct

State or Territory professional standards law limits liability

- (1) A professional standards law of a State, the Australian Capital Territory or the Northern Territory applies to limit occupational liability relating to an action for contravention of section 52 in the same way as it limits occupational liability arising under a law of the State or Territory.

Note: Section 52 prohibits misleading or deceptive conduct by corporations in trade or commerce and (because of sections 5 and 6) by other persons in certain types of trade or commerce.

- (2) However, the professional standards law applies for that purpose:
- (a) only in relation to a scheme that was prescribed by the regulations at the time (the *contravention time*) of the contravention; and
 - (b) as if the scheme were in force under that law at the contravention time in the form the scheme would have been in if:
 - (i) the scheme had not been amended or revoked under that law since the scheme was first prescribed; and
 - (ii) the modifications (if any) prescribed by the regulations at the contravention time had been made to the scheme.

Which State's or Territory's professional standards law applies?

- (3) For the purposes of working out whether a professional standards law of a particular State or Territory applies under subsection (1) in relation to a particular contravention of section 52, choice of law rules operate in relation to the contravention in the same way as they operate in relation to a tort.

Definitions

- (4) In this section:

modifications includes additions, omissions and substitutions.

occupation includes profession and trade.

occupational association means a body:

- (a) that represents the interests of persons who have the same occupation; and
- (b) whose membership is limited principally to such persons.

occupational liability means civil liability arising directly or vicariously from anything done or omitted by a member of an occupational association in the course of his or her occupation.

professional standards law means a law providing for the limitation of occupational liability by reference to schemes for limiting that liability that were formulated and published in accordance with that law.

*[Minister's second reading speech made in—
House of Representatives on 4 December 2003
Senate on 21 June 2004]*

(194/03)
