



Professional Standards Act 2004

Reprinted as in force on 1 July 2005

Reprint No. 1

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Information about this reprint

This Act is reprinted as at 1 July 2005.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. A table of reprints is included in the endnotes.

Also see endnotes for information about when provisions commenced.

Dates shown on reprints

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Queensland

Professional Standards Act 2004

Contents

		Page
Part 1	Preliminary	
Division 1	Introduction	
1	Short title	5
2	Commencement	5
3	Notes in text	5
Division 2	Objects of Act	
4	Objects of Act	5
Division 3	Application of Act	
5	Act binds all persons	6
6	Application	6
Division 4	Interpretation	
7	Definitions	7
Part 2	Limitation of liability	
Division 1	Making, amending and revoking schemes	
8	Preparation and approval of schemes	7
9	Public notice of schemes	7
10	Making of comments on schemes	8
11	Public hearings	8
12	Consideration of comments and other matters	8
13	Submission of schemes to Minister	9
14	Schemes are subject to disallowance	9
15	Commencement of schemes	9
16	Challenges to schemes	10
17	Review of schemes	10
18	Amendment and revocation of schemes	11
Division 2	Contents of scheme	
19	Persons to whom scheme applies	11

20	Officers or partners of persons to whom a scheme applies	12
21	Employees of persons to whom a scheme applies	12
22	Limitation of liability by insurance arrangements	12
23	Limitation of liability by reference to amount of business assets	13
24	Limitation of liability by multiple of charges	13
25	Different limits of liability for different persons and different work.	14
26	Combination of provisions under ss 22, 23 and 24	15
27	Liability that can not be limited by a scheme	15
28	Insurance to be of requisite standard	16
Division 3	Effect of schemes	
29	Limit of occupational liability by schemes	16
30	Limitation of amount of damages	17
31	Effect of scheme on other parties to proceedings	18
32	Proceedings to which a scheme applies	18
33	Duration of scheme	18
34	Notification of limitation of liability	18
Part 3	Compulsory insurance	
35	Occupational association may compel its members to insure	19
36	Monitoring claims	20
Part 4	Risk management	
37	Risk management strategies	21
38	Reporting	21
39	Compliance audits	22
Part 5	Complaints and disciplinary matters	
40	Model complaints and discipline code	22
Part 6	Professional Standards Council	
Division 1	Establishment and functions	
41	Establishment of council	23
42	Legal status of council	23
43	Functions of council	24
44	Council's powers	25
Division 2	Membership of council	
45	Membership of council	26
46	Chairperson and deputy chairperson of council	26
47	Term of appointment to council	27
48	Conditions of appointment to council	27
49	Disqualifications for appointment to council	27

50	Vacancy in office of member	28
Division 3	Council meetings and procedure	
51	Times and places of council meetings	28
52	Presiding at council meetings.	28
53	Voting at council meetings	29
54	Quorum for council meeting	29
55	Conduct of council meetings	29
56	Council minutes	30
Division 4	Signing documents	
57	The council's seal.	30
58	Judicial notice of certain signatures	30
59	Authentication of documents	30
Division 5	Other provisions	
60	Requirement to provide information	30
61	Referral of complaints.	31
62	Establishing committees.	31
63	Chief executive to help council	32
64	Report on council's operations	32
65	Accountability of the council.	32
Part 7	General	
66	Characterisation of Act	33
67	No contracting out	33
68	No limitation on other insurance.	33
69	Summary proceedings for offences	33
70	Protection from liability	34
71	Regulation-making power.	34
72	Review of Act	35
Schedule 1	Model code	36
1	Definition	36
2	What actions may be the subject of a complaint	36
3	Who may make a complaint	36
4	How is a complaint made	36
5	What happens after a complaint is made	36
6	What action may be taken after a hearing into a complaint	37
7	Notice of decision.	38
8	What rights of representation do parties to a complaint have	38
Schedule 2	Dictionary	39

Endnotes

1	Index to endnotes	42
2	Date to which amendments incorporated	42
3	Key	42
4	Table of reprints	43
5	List of legislation	43
6	List of annotations	43

Professional Standards Act 2004

[reprinted as in force on 1 July 2005]

An Act to provide for the limitation of liability of members of occupational associations in particular circumstances and to help in improving the standards of services provided by the members, and for other purposes

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Professional Standards Act 2004*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Notes in text

A note in the text of this Act is part of the Act.

Division 2 Objects of Act

4 Objects of Act

The main objects of this Act include the following—

- (a) to enable the creation of schemes to limit the civil liability of professionals and others;

- (b) to help in improving the occupational standards of professionals and others;
- (c) to protect the consumers of services provided by professionals and others;
- (d) to establish the council to supervise the preparation and application of schemes and to help in improving occupational standards and protecting consumers.

Division 3 Application of Act

5 Act binds all persons

- (1) This Act binds all persons including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, nothing in this Act makes the State, the Commonwealth or another State liable to be prosecuted for an offence.

6 Application

- (1) This Act does not apply to liability for damages because of any of the following—
 - (a) the death of, or personal injury to, a person;
 - (b) any negligence or other fault of a lawyer in acting for a client in a personal injury claim;
 - (c) a breach of trust;
 - (d) fraud or dishonesty.
- (2) This Act does not apply to liability that may be the subject of proceedings under the *Land Title Act 1994*, part 9, division 2, subdivision C.¹
- (3) This Act does not apply to any cause of action arising under, or in relation to, a contract, or contractual relations, entered

¹ *Land Title Act 1994*, part 9 (Registration of instruments and its effect), division 2 (Consequences of registration), subdivision C (Compensation for loss of title)

into before the commencement of this Act (whether or not the action lies in contract) unless the parties, after the commencement of this Act, vary the relevant contract so as to make express provision for the application of this Act.

Division 4 Interpretation

7 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

Part 2 Limitation of liability

Division 1 Making, amending and revoking schemes

8 Preparation and approval of schemes

- (1) An occupational association may prepare a scheme.
- (2) The council may, on the application of an occupational association, prepare a scheme.
- (3) The council may, on the application of an occupational association, approve a scheme prepared under this section.

9 Public notice of schemes

- (1) The council must, before approving a scheme, publish a notice in a daily newspaper circulating throughout the State.
- (2) The notice must—
 - (a) explain the nature and significance of the scheme; and
 - (b) state where a copy of the scheme may be obtained or inspected; and

- (c) invite comments and submissions within a stated time, at least 21 days, after publication of the notice.

10 Making of comments on schemes

- (1) A person may make a comment to the council about a scheme for which a notice is published under section 9.
- (2) The comment must be written and made within the time stated in the notice or within the further time the council allows.

11 Public hearings

- (1) The council may conduct a public hearing for the purpose of taking oral or written comments on a scheme if the council considers it appropriate.
- (2) The hearing may be conducted in the way the council decides.

12 Consideration of comments and other matters

- (1) The council must, before approving a scheme, consider the following—
 - (a) all comments made to it under section 10 or 11;
 - (b) the position of persons who may be affected by limiting the occupational liability of members of the occupational association;
 - (c) the nature and level of claims for occupational liability made against members of the occupational association;
 - (d) the risk management strategies of the occupational association;
 - (e) the way the risk management strategies are to be performed and audited;
 - (f) the measures available to the occupational association under the scheme to discipline its members;
 - (g) the cost and availability of insurance against occupational liability for members of the occupational association;
 - (h) the insurance standards for the scheme;

- (i) any matter prescribed under a regulation.
- (2) However, the council must not consider any matter prescribed under a regulation for this subsection when considering whether to approve a scheme.

13 Submission of schemes to Minister

If the council approves a scheme, it must advise the Minister and give a copy of the scheme, as approved, to the Minister.

14 Schemes are subject to disallowance

- (1) The Minister must notify the council's approval of the scheme by gazette notice.
- (2) The gazette notice is subordinate legislation.
- (3) A copy of the approved scheme must be attached to the gazette notice when the gazette notice is tabled in the Legislative Assembly, but the scheme is not subordinate legislation.
- (4) However, if the gazette notice is disallowed under, or is not tabled as required under, the *Statutory Instruments Act 1992*, section 51² of that Act applies to the scheme as if it were subordinate legislation.

15 Commencement of schemes

- (1) If the council approves a scheme, the scheme commences—
 - (a) on the day stated in the scheme after the gazette notice mentioned in section 14 is notified in the gazette; or
 - (b) if no day is stated, 2 months after the day the gazette notice is notified in the gazette.
- (2) A scheme can not commence before the gazette notice is notified in the gazette.
- (3) This section is subject to an order of the Supreme Court under section 16(2).

² *Statutory Instruments Act 1992*, section 51 (Limited saving of operation of subordinate legislation that ceases to have effect)

16 Challenges to schemes

- (1) A person who is, or is reasonably likely to be, affected by a scheme, the approval of which has been notified in the gazette by gazette notice under section 14, may apply to the Supreme Court for an order that the scheme is void because it contravenes this Act.
- (2) The court may, on the making of the application or at any time before the scheme commences—
 - (a) if the scheme has commenced—order that the scheme is of no effect until the court makes an order under subsection (3); or
 - (b) if the scheme has not commenced—order that the commencement of the scheme is stayed until the court makes an order under subsection (3).
- (3) The court may—
 - (a) make an order that the scheme is void because it contravenes this Act; or
 - (b) refuse to make the order; or
 - (c) give directions about the things that are required to be done so that a scheme, the commencement of which is stayed under subsection (2), may commence; or
 - (d) make any other order the court considers appropriate.

17 Review of schemes

- (1) The Minister may, by signed notice to the council, require the council to review the operation of a scheme.
- (2) The council must comply with the direction.
- (3) The council may, on its own initiative, review the operation of a scheme, or a proposal to change a scheme, at any time, including after the scheme ceases to have effect.
- (4) A review of a scheme may, but need not, be conducted to decide if—
 - (a) the scheme should be amended or revoked; or
 - (b) a new scheme should be made.

18 Amendment and revocation of schemes

- (1) An occupational association may prepare an amendment to, or a revocation of, a scheme for its members.
- (2) The council may, on the application of an occupational association, prepare or approve an amendment to, or a revocation of, a scheme for the members of the association.
- (3) The council may, on its own initiative at any time while the scheme remains in force, prepare an amendment to, or a revocation of, the scheme.
- (4) Sections 8 to 16 apply, with necessary changes, to the amendment or revocation of a scheme.

Division 2 Contents of scheme**19 Persons to whom scheme applies**

- (1) A scheme may provide that it applies to—
 - (a) all persons in an occupational association; or
 - (b) a stated class or classes of persons in an occupational association.
- (2) A scheme may provide that the occupational association to which the scheme applies may, on receipt of a written application from a person, exempt the person from the scheme.³
- (3) If an occupational association exempts a person from a scheme, the scheme ceases to apply to the person from—
 - (a) the day the exemption is granted; or
 - (b) if a later day is stated in the exemption, that day.
- (4) Subsection (2) does not apply to a person to whom a scheme applies under section 20 or 21.

³ See also section 67 (No contracting out).

20 Officers or partners of persons to whom a scheme applies

- (1) If a scheme applies to a body corporate, the scheme also applies to each officer of the body corporate.
- (2) If a scheme applies to a person, the scheme also applies to each partner of the person.
- (3) However, if an officer of a body corporate or a partner of a person is entitled to be a member of the same occupational association as the body corporate or person but is not a member, the scheme does not apply to the officer or partner.

21 Employees of persons to whom a scheme applies

- (1) If a scheme applies to a person, the scheme also applies to each employee of the person.
- (2) However, if an employee of a person is entitled to be a member of the same occupational association as the person but is not a member, the scheme does not apply to the employee.

22 Limitation of liability by insurance arrangements

A scheme may provide that if a person to whom the scheme applies and against whom a cause of action relating to occupational liability is brought is able to satisfy the court the person has the benefit of an insurance policy—

- (a) insuring the person against the occupational liability; and
- (b) under which the amount payable in relation to the occupational liability relating to the cause of action is at least the amount of the monetary ceiling specified in the scheme in relation to the person at the relevant time;

the person is not liable in damages in relation to the cause of action above the amount so specified.

23 Limitation of liability by reference to amount of business assets

A scheme may provide that if a person to whom the scheme applies and against whom a cause of action relating to occupational liability is brought is able to satisfy the court—

- (a) that the person has business assets the net current market value of which is at least the amount of the monetary ceiling specified in the scheme in relation to the person at the relevant time; or
- (b) that—
 - (i) the person has business assets and the benefit of an insurance policy insuring the person against the occupational liability; and
 - (ii) the net current market value of the assets and the amount payable under the insurance policy in relation to the occupational liability relating to the cause of action, if combined, would total an amount that is at least the amount of the monetary ceiling specified in the scheme in relation to the person at the relevant time;

the person is not liable in damages in relation to the cause of action above the amount so specified.

24 Limitation of liability by multiple of charges

- (1) A scheme may provide that if a person to whom the scheme applies and against whom a cause of action relating to occupational liability is brought is able to satisfy the court—
 - (a) that the person has the benefit of an insurance policy—
 - (i) insuring the person against the occupational liability; and
 - (ii) under which the amount payable in relation to the occupational liability relating to the cause of action is at least an amount (*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 at the relevant time; or

- (b) that the person has business assets the net current market value of which is not less than the limitation amount; or
- (c) that—
 - (i) the person has business assets and the benefit of an insurance policy insuring the person against the occupational liability; and
 - (ii) the net current market value of the assets and the amount payable under the insurance policy in relation to the occupational liability relating to the cause of action, if combined, would total an amount that is at least the limitation amount;

the person is not liable in damages in relation to the cause of action above the limitation amount.

- (2) In deciding the amount of a reasonable charge for subsection (1)(a)(ii), the court is to have regard to any amount actually charged and to—
 - (a) the amount that would ordinarily be charged under a scale of charges accepted by the occupational association of which the person is a member; or
 - (b) if there is no scale of a kind mentioned in paragraph (a), the amount that a competent person of the same qualifications and experience as the person would be likely to charge in the same circumstances.
- (3) This section does not limit an amount of damages to which a person is liable if the amount is less than the amount specified for the purpose in the scheme in relation to the person.

25 Different limits of liability for different persons and different work

- (1) A scheme may specify—
 - (a) the same maximum amount of liability for all cases to which the scheme applies; or

- (b) different maximum amounts of liability for different cases or classes of case or for the same case or class of case for different purposes.
- (2) A scheme may also confer a discretionary authority on an occupational association, on application by a person to whom the scheme applies, to specify in relation to the person a higher maximum amount of liability than would otherwise apply under the scheme in relation to the person either in all cases or in any specified case or class of case.
- (3) A scheme may also specify a multiple, monetary ceiling or minimum cap by way of a formula that is to be applied to calculate the multiple, ceiling or cap.

26 Combination of provisions under ss 22, 23 and 24

- (1) Subsection (2) applies if, in a scheme, provisions of the kind mentioned in section 24 and provisions of the kind mentioned in section 22 or 23 apply to a person at the same time for the same occupation.
- (2) The scheme must provide that the damages that may be awarded against the person are to be worked out under section 24 but must not be over the amount of the damages for which the person may be liable under section 22 or 23.

27 Liability that can not be limited by a scheme

- (1) A scheme only affects the liability for damages arising from a single cause of action to the extent the liability results in damages over an amount, of at least \$500000, decided for the purposes of the scheme by the council and stated in the scheme.
- (2) In making a decision mentioned in subsection (1), the council must have regard to—
 - (a) the number and amounts of claims made against persons in the occupational association concerned; and
 - (b) the need to adequately protect consumers.
- (3) The decision—

- (a) takes effect when the scheme, or an amendment providing for its specification in the scheme, takes effect; and
- (b) applies only to a cause of action that arises after the decision takes effect.

28 Insurance to be of requisite standard

- (1) For the purposes of a scheme, an insurance policy must be a policy, or a policy of a kind, that complies with standards (*insurance standards*) decided by the occupational association whose members may be insured under the policy, or a policy of the kind.
- (2) While a scheme remains in force relating to its members, if an occupational association proposes to change the standards previously decided by it in relation to an insurance policy or a kind of insurance policy, it must notify the council of the proposed change.

Note—

The Council may review the scheme, or the proposal to change the scheme, under section 17(3)⁴ if it considers it appropriate to do so.

Division 3 Effect of schemes

29 Limit of occupational liability by schemes

- (1) A scheme, to the extent provided by this Act and the scheme, limits the occupational liability, in relation to a cause of action founded on an act or omission that happens when the scheme is in force, of any person to whom the scheme applies when the act or omission happens.
- (2) A scheme does not limit the liability of a person (*professional*) to another person (*client*) if, at no stage before the time of the relevant act or omission, did the professional—

⁴ Section 17 (Review of schemes)

- (a) give, or cause to be given, to the client a document that carried a statement of a kind mentioned in section 34(1);
or
- (b) otherwise inform the client, whether orally or in writing, that the professional's liability was limited under this part.

Note—

A professional may also be prosecuted under section 34 for a contravention of section 34(1).

- (3) Subsection (2) does not affect any limitation of the liability of a professional to a person other than the client.
- (4) The limitation of liability that applies is the limitation stated by the scheme as in force when the act or omission happens.
- (5) A limitation of liability that, under this section, applies for an act or omission continues to apply to every cause of action founded on it, irrespective of—
 - (a) when the cause arises or proceedings are started for it;
or
 - (b) any amendment of the scheme; or
 - (c) whether the scheme has ceased to be in force.
- (6) A person to whom a scheme applies can not choose not to be subject to the scheme unless the occupational association concerned exempts the person from the scheme.

30 Limitation of amount of damages

- (1) A limitation under a scheme in force under this Act of an amount of damages is a limitation of the amount of damages that may be awarded for a single claim and is not a limitation of the amount of damages that may be awarded for all claims arising out of a single event.
- (2) Claims by a number of persons who have a joint interest in a cause of action are to be treated as a single claim for this Act despite the fact that they may also have several interests.
- (3) Two or more claims by the same person arising out of a single event against persons to whom a scheme in force under this

Act applies and who are associated persons are to be treated as a single claim for this Act.

(4) In this section—

associated persons means persons who are—

- (a) officers of the same body corporate or in the relationship of body corporate and officer of the body corporate; or
- (b) partners, or employees of the same employer or in the relationship of employer and employee.

31 Effect of scheme on other parties to proceedings

A scheme does not limit the liability of a person who is a party to proceedings if the scheme does not apply to the person.

32 Proceedings to which a scheme applies

A scheme in force under this Act applies to proceedings relating to an act or omission that happened after the commencement of the scheme.

33 Duration of scheme

- (1) A scheme is in force for the period, not longer than 5 years from its commencement, decided by the council unless before the period ends—
 - (a) the scheme is revoked; or
 - (b) the period is extended under subsection (2).
- (2) The council may, by gazette notice published on or before the day a scheme ends, extend the period of the scheme.
- (3) A scheme may be extended once only for a maximum period not longer than 1 year.

34 Notification of limitation of liability

- (1) A person whose occupational liability is limited under this part must not give a business document to a client or prospective client of the person unless the business document includes a statement to that effect.

Maximum penalty—65 penalty units.

- (2) A regulation may prescribe—
 - (a) a statement for subsection (1); or
 - (b) other particulars about the minimum type size of the statement and how it must be displayed on a business document.
- (3) If a regulation prescribes a statement for subsection (1), the person does not contravene subsection (1) if the person includes the prescribed statement on the person's business documents and the statement is in accordance with any prescribed particulars.
- (4) If the occupational liability of a person is limited under this part, the person must ensure that a copy of the scheme concerned is given, or caused to be given, to any client or prospective client who requests a copy.

Maximum penalty—65 penalty units.

- (5) In this section—

business document means a document promoting or advertising a person or the person's occupation and includes business correspondence and other similar documents the person ordinarily uses in performing the person's occupation, but does not include a business card.

Part 3 Compulsory insurance

35 Occupational association may compel its members to insure

- (1) An occupational association may require its members to hold insurance against occupational liability.
- (2) Without limiting subsection (1), an occupational association may require different classes of its members to hold different standards of insurance against occupational liability.

- (3) An occupational association may make the requirement as a condition of membership of the association or in another way the association decides.
- (4) An occupational association may set standards with which the insurance must comply.

Examples—

- 1 the amount of the insurance
- 2 the type of insurance provider
- 3 the levels of excess payable
- 4 the policy exemptions that are acceptable

36 Monitoring claims

- (1) An occupational association may establish a committee (*monitoring committee*) for monitoring and analysing claims made against its members for occupational liability.
- (2) Two or more occupational associations may establish a common monitoring committee.
- (3) The monitoring committee may include members who are not members of the occupational association or associations concerned.

Example—

Insurers' representatives may be appointed as committee members.

- (4) An occupational association may, through its monitoring committee or in any other way the association decides, issue practice advice to its members to minimise claims for occupational liability.

Part 4 Risk management

37 Risk management strategies

- (1) If an occupational association applies for the council's approval to a scheme under section 8,⁵ the occupational association must give to the council written particulars of—
 - (a) the risk management strategies to be carried out for its members; and
 - (b) the way the risk management strategies are to be carried out.
- (2) The occupational association may impose the way the risk management strategies are to be carried out—
 - (a) as a condition of membership of the occupational association; or
 - (b) in another way the occupational association decides.
- (3) A requirement to comply with a risk management strategy is in addition to any statutory requirement to manage risk but if there is an inconsistency between a strategy and a statutory requirement, the strategy is void to the extent of the inconsistency.

38 Reporting

- (1) An occupational association must provide information to the council about its risk management strategies if requested to do so by the council.
- (2) An occupational association must provide an annual report to the council about the implementation and monitoring of its risk management strategies, the effect of those strategies and any changes made or proposed to be made to them.
- (3) An occupational association's annual report must include details of any findings made, or conclusions drawn, by a committee established by it, whether solely or jointly with

⁵ Section 8 (Preparation and approval of schemes)

another association or 2 or more other associations, under section 36.

- (4) The occupational association's annual report must be incorporated into the council's annual report in the form the council decides.

39 Compliance audits

- (1) An audit (*compliance audit*) of the compliance of members, or of specified members or a specified class or classes of members, of an occupational association with the association's risk management strategies—
 - (a) may be conducted at any time by the council or the association; or
 - (b) must be conducted by the association if requested to do so by the council.
- (2) If a compliance audit is conducted by the council—
 - (a) the occupational association must give, and ensure that its members give, the council any information or a copy of any document that the council reasonably requests in connection with the conduct of the audit; and
 - (b) the council must provide a copy of a report of the audit to the association.
- (3) If a compliance audit is conducted by the occupational association, it must provide a copy of a report of the audit to the council.

Part 5 Complaints and disciplinary matters

40 Model complaints and discipline code

- (1) A scheme may adopt the model complaints and discipline code (*model code*) in schedule 1 with the modifications, if any, the council approves.

- (2) The modifications may include provisions about the making and deciding of complaints and the imposition and enforcement of disciplinary measures on and against members of an occupational association.
- (3) Without limiting subsection (2), the modifications may provide for the following—
 - (a) the establishment of a committee to carry out the model code or any of its provisions;
 - (b) the procedure at meetings of the committee;
 - (c) the application or exclusion of the rules of and practice about evidence;
 - (d) the grounds for making a complaint;
 - (e) the suspension of members from membership or from practice;
 - (f) the imposition of fines;
 - (g) the making of appeals;
 - (h) the exchanging of information with other occupational associations in another State.

Part 6 Professional Standards Council

Division 1 Establishment and functions

41 Establishment of council

The Professional Standards Council is established.

42 Legal status of council

- (1) The council—
 - (a) is a body corporate; and

- (b) has a seal; and
 - (c) may sue and be sued in its corporate name.
- (2) The council does not represent the State.

43 Functions of council

- (1) The functions of the council are—
- (a) to advise the Minister about the following—
 - (i) the publication in the gazette of—
 - (A) notice of a scheme or an amendment of a scheme submitted by the council to the Minister; or
 - (B) notice of the revocation of a scheme;
 - (ii) the operation of this Act;
 - (iii) anything else about the occupational liability of members of occupational associations; and
 - (b) to advise occupational associations about insurance policies for part 2;⁶ and
 - (c) to encourage and help in the improvement of occupational standards of members of occupational associations; and
 - (d) to encourage and help in the development of self-regulation of occupational associations, including the giving of advice and help about the following—
 - (i) codes of ethics;
 - (ii) codes of practice;
 - (iii) quality management;
 - (iv) risk management;
 - (v) resolution of complaints by clients;
 - (vi) voluntary mediation services;
 - (vii) membership requirements;

6 Part 2 (Limitation of liability)

- (viii) discipline of members;
 - (ix) continuing occupational education; and
 - (e) to monitor the occupational standards of persons to whom this Act applies; and
 - (f) to monitor the compliance by an occupational association with its risk management strategies; and
 - (g) to publish advice and information about the matters mentioned in this section; and
 - (h) to conduct forums, approved by the Minister, on issues of interest to members of occupational groups; and
 - (i) to collect, analyse and provide the Minister with information on issues and policies about the standards of occupational groups; and
 - (j) to start proceedings in its own name for the prosecution of an offence against this Act or for injunctive or other relief for the offences.
- (2) The council has the other functions conferred or imposed on it under this or another Act.
 - (3) The council may not give advice about occupational standards contained in another Act.
 - (4) The council may give advice to the Minister whether or not the Minister asks for it.
 - (5) The council—
 - (a) is taken to have the right to be heard for the purpose of pursuing any injunctive or other relief under subsection (1)(j); and
 - (b) must not to be required to give an undertaking for damages for the grant of interlocutory relief.

44 Council's powers

- (1) The council has all the powers of an individual, and may, for example—
 - (a) enter into contracts; and
 - (b) acquire, hold, dispose of, and deal with property; and

- (c) appoint agents and attorneys; and
 - (d) engage consultants; and
 - (e) charge, and fix terms, for goods, services and information supplied by it; and
 - (f) do anything else necessary or convenient to be done for, or in connection with, its functions.
- (2) Without limiting subsection (1), the council has the powers given to it under this or another Act.

Division 2 Membership of council

45 Membership of council

- (1) The council consists of 11 members appointed by signed notice by the Minister.
- (2) Without limiting section 49, a person is not qualified for appointment as a member of the council unless the Minister considers the person has appropriate experience, skills and qualifications to enable the person to make a contribution to the council's work.

46 Chairperson and deputy chairperson of council

- (1) The Minister must, by signed notice, appoint a member to be the chairperson, and another member to be the deputy chairperson, of the council.
- (2) A member may be appointed as the chairperson or deputy chairperson at the same time as the person is appointed as a member and by the same notice appointing the person as member.
- (3) The chairperson or deputy chairperson holds office as chairperson or deputy chairperson—
 - (a) for the term decided by the Minister; or
 - (b) if the person's term of office as a member ends before the person's term of office as chairperson or deputy chairperson ends—until the day the person's term of office as member ends; or

- (c) if the person's term of office as member and the person's term of office as chairperson or deputy chairperson end on the same day—until the day the person's offices end.
- (4) A vacancy occurs in the office of chairperson or deputy chairperson if the person holding the office—
 - (a) is removed from office by signed notice given to the person by the Minister; or
 - (b) resigns the office by signed notice of resignation given to the Minister.
- (5) However, a person removed from, or resigning from, the office of chairperson or deputy chairperson may continue as a member of the council.

47 Term of appointment to council

- (1) A council member is appointed for the term, not longer than 3 years, stated in the member's instrument of appointment.
- (2) Subsection (1) does not prevent a person from being reappointed as a member of the council.
- (3) A council member may resign by signed notice of resignation given to the Minister.

48 Conditions of appointment to council

- (1) A council member is to be paid the remuneration and allowances decided by the Minister.
- (2) A council member holds office on—
 - (a) the conditions stated in this Act; and
 - (b) the other conditions decided by the Minister.

49 Disqualifications for appointment to council

A person is not qualified to be, or continue as, a council member if the person—

- (a) is an insolvent under administration; or
- (b) is incapable of performing the duties of a member because of a physical or mental incapacity; or

- (c) is convicted of an offence in Queensland that is punishable by imprisonment for 1 year or more or is convicted in another State of an offence that, if committed in Queensland, would be an offence so punishable.

50 Vacancy in office of member

The office of a member becomes vacant if the member—

- (a) resigns office by signed notice of resignation given to the Minister; or
- (b) is absent without the council's permission from 3 consecutive council meetings of which proper notice has been given; or
- (c) is no longer qualified to be a member; or
- (d) is removed from office by signed notice from the Minister.

Division 3 Council meetings and procedure

51 Times and places of council meetings

- (1) Council meetings are to be held at the times and places it decides.
- (2) However, the chairperson may call a council meeting at any time.
- (3) The Minister may also call a council meeting at any time and has the right to be heard at the meeting.
- (4) The council must meet at least once a year.

52 Presiding at council meetings

- (1) The chairperson is to preside at all council meetings at which the chairperson is present.
- (2) If the chairperson is absent, the deputy chairperson, if present, is to preside.

- (3) If the chairperson and the deputy chairperson are absent, the member chosen by the members present is to preside.

53 Voting at council meetings

- (1) At council meetings, all questions are to be decided by a majority of votes of the members present.
- (2) However, at least the number of members needed to form a quorum for a council meeting must vote before a question can be decided.
- (3) The chairperson or member presiding at a meeting is to have a vote, and if the votes are equal, a second or casting vote.

54 Quorum for council meeting

A quorum for a council meeting is 6 members.

55 Conduct of council meetings

- (1) The council may conduct its meetings as it considers appropriate.
- (2) The council may hold meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

Example of use of technology—

teleconferencing

- (3) A member who participates in a council meeting under a permission under subsection (2) is taken to be present at the meeting.
- (4) A resolution is validly made by the council, even though it is not passed at a council meeting, if—
 - (a) a majority of the council members give written agreement to the resolution; and
 - (b) notice of the resolution is given under procedures approved by the council.

56 Council minutes

The council must keep a record of the minutes of its meetings and its decisions.

Division 4 Signing documents**57 The council's seal**

- (1) The council's seal must be kept in the custody directed by the council and may be used only as directed by the council.
- (2) Judicial notice must be taken of the imprint of the council's seal appearing on a document.

58 Judicial notice of certain signatures

Judicial notice must be taken of—

- (a) the official signature of a person who is or has been the chairperson; and
- (b) the fact that the person holds or has held the office concerned.

59 Authentication of documents

- (1) A document made by the council, other than a document that is required to be sealed, is sufficiently made if it is signed by the chairperson or a person authorised by the council.
- (2) A document made by the council under seal is sufficiently made under seal if it is sealed in the way authorised under section 57(1) and signed by the chairperson or a person authorised by the council.

Division 5 Other provisions**60 Requirement to provide information**

- (1) This section applies to an occupational association—

- (a) whose members are subject to a scheme in force under this Act; or
- (b) that seeks the council's approval of—
 - (i) a scheme; or
 - (ii) an amendment to, or revocation of, a scheme.
- (2) The council may, by signed notice given to the occupational association, require it within the time stated in the notice, at least 7 days, to give the council the information or a document the council reasonably requires to exercise its functions.
- (3) The occupational association must not contravene the notice unless it has a reasonable excuse.

Maximum penalty—

- (a) for an individual guilty of the offence under the Criminal Code, chapter 2⁷—7 penalty units; or
- (b) for the occupational association—35 penalty units.

61 Referral of complaints

- (1) An occupational association may refer to the council any complaint or other evidence received by it that a member or former member of the association has contravened this Act.
- (2) An indemnified person is not civilly liable for an act done, or omission made, honestly and without negligence under subsection (1).
- (3) In this section—

indemnified person means—

- (a) a member of the association's executive body; or
- (b) an agent or employee of the association.

62 Establishing committees

- (1) The council may, with the Minister's earlier signed approval, establish a committee to help it to perform its functions.

⁷ Criminal Code, chapter 2 (Parties to offences)

- (2) When seeking the Minister's approval, the council must give the Minister a statement of the proposed committee's terms of reference or functions.
- (3) The council may appoint a person to the committee by signed notice of appointment given to the person.
- (4) The council may appoint a person to the committee only if the person has skills or experience appropriate to the committee's terms of reference or functions.
- (5) A committee member is not entitled to any remuneration, other than the reimbursement of reasonable expenses and travel allowance, without the Minister's earlier written approval.
- (6) Subsection (1) does not apply to a committee of the council's own members.

63 Chief executive to help council

- (1) The chief executive is to give the council reasonable help to perform its functions.
- (2) Without limiting subsection (1), the chief executive must nominate an appropriately qualified departmental officer to help the council in performing its functions.
- (3) A departmental officer is appropriately qualified if the officer has qualifications, experience or standing appropriate to help the council in performing its functions.

64 Report on council's operations

- (1) The council must prepare and give to the Minister, within 3 months after the end of each financial year, a report on its operations during the financial year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.

65 Accountability of the council

- (1) The council must perform its functions subject to—
 - (a) the general direction and control of the Minister; and

- (b) any specific written directions given to it by the Minister.
- (2) Without limiting subsection (1)(b), a direction under that provision may require the council to give the Minister, or provide the Minister with access to, information in its possession about a matter or class of matter specified in the direction.
- (3) If the council is given a written direction, the council—
 - (a) may publish the direction in the gazette; and
 - (b) must publish the direction in its next annual report.

Part 7 General

66 Characterisation of Act

The provisions of this Act are part of the substantive law of the State.

67 No contracting out

An agreement or arrangement is void to the extent to which it purports to exclude, change or restrict the application or operation of a provision of this Act to a person to whom a scheme in force under this Act applies.

68 No limitation on other insurance

This Act does not limit the insurance arrangements a person may make apart from those made for the purposes of this Act.

69 Summary proceedings for offences

A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* within the later of the following—

- (a) 1 year after the offence is committed;

- (b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

70 Protection from liability

- (1) An indemnified person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to the person, the liability attaches instead to—
 - (a) if the indemnified person is a member of the council, or of a committee established by the council—the council; or
 - (b) otherwise—the State.
- (3) In this section—
indemnified person means any of the following—
 - (a) the Minister;
 - (b) the chief executive;
 - (c) an officer or employee of the department;
 - (d) a member of the council or of a committee established by the council;
 - (e) a person who helps the council by arrangement with the chief executive under section 63(1).⁸

71 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may do any of the following—
 - (a) prescribe offences for a contravention of a regulation, and fix a maximum penalty of not more than 20 penalty units for a contravention;

⁸ Section 63 (Chief executive to help council)

- (b) prescribe fees payable under this Act;
- (c) prescribe the content of an application to approve a scheme made to the council;
- (d) prescribe the way in which an application to approve a scheme may be made to the council.

72 Review of Act

- (1) The Minister must ensure the operation of this Act is reviewed.
- (2) The review must start within 2 years after the commencement of this section.
- (3) The Minister must table in the Legislative Assembly a report on the outcome of the review within 3 months after the review is finished.

Schedule 1 Model code

section 40

1 Definition

In this code—

council means the Professional Standards Council established under the *Professional Standards Act 2004*.

2 What actions may be the subject of a complaint

- (1) A complaint may be made that a member of the occupational association has acted, or has failed to act, in a way that justifies the taking of disciplinary action against the member under this code.
- (2) A complaint may be made and dealt with even though the person about whom it is made has ceased to be a member.

3 Who may make a complaint

Any person may make a complaint including the occupational association and the council.

4 How is a complaint made

- (1) A complaint may be made to the occupational association.
- (2) The complaint must be written and state the particulars on which it is based.
- (3) The occupational association must notify the council of each complaint made to it, other than a complaint made by the council.

5 What happens after a complaint is made

- (1) As soon as practicable after the occupational association receives a complaint, or notice of a complaint from the council, the occupational association must—

Schedule 1 (continued)

- (a) advise the complainant, or the council, that it has received the complaint; and
 - (b) consider the complaint.
- (2) In considering the complaint, the association may—
- (a) require the complainant to provide further particulars of the complaint; or
 - (b) investigate the complaint; or
 - (c) attempt to resolve the complaint by conciliation; or
 - (d) refuse to consider the complaint, because, for example, the complaint is frivolous, vexatious, misconceived or lacking in substance; or
 - (e) conduct a hearing into the complaint.

6 What action may be taken after a hearing into a complaint

- (1) If, after considering a complaint against a person, an occupational association finds the complaint substantiated, the association may do any of the following—
- (a) caution or reprimand the person;
 - (b) impose conditions about the carrying out of the person's occupation;
 - (c) require the person to complete stated training or instruction;
 - (d) require the person to report on the carrying out of the person's occupation at the time, in the way and to whom the association requires;
 - (e) order the person to obtain advice about the carrying out of the person's occupation, from a person stated by the association;
 - (f) expel the person from membership of the association.
- (2) The association may not award compensation to the complainant or anyone else.

Schedule 1 (continued)

- (3) If the association finds the complaint is not substantiated, it must dismiss the complaint.

7 Notice of decision

- (1) An occupational association must, within 30 days after deciding a complaint against a person, give a written statement of its decision to the complainant and the person.
- (2) The statement must include the reasons for the decision.

8 What rights of representation do parties to a complaint have

The complainant and the person about whom the complaint is made are not entitled to legal representation during attempts to resolve the complaint by conciliation but are entitled to legal representation during a hearing into the complaint.

Schedule 2 Dictionary

section 7

amount payable, under an insurance policy in relation to an occupational liability relating to a cause of action, includes any amount payable by way of excess under or in relation to the policy.

business assets, of a person, means the property of the person that—

- (a) is used in the performance of the person's occupation; and
- (b) is able to be taken in proceedings to enforce a judgment of a court.

comment includes submission.

convicted includes being found guilty, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

council means the Professional Standards Council established under section 41.

court includes an arbitrator.

damages means damages awarded for a claim or counter-claim or by way of set-off, and includes—

- (a) interest payable on an amount awarded as damages; and
- (b) legal costs and expenses ordered to be paid in connection with an award of damages, other than legal costs and expenses incurred in enforcing a judgment or incurred on an appeal made by a defendant.

defendant means a person to whom a scheme applies and against whom a cause of action relating to occupational liability is brought.

Schedule 2 (continued)

insolvent under administration, in relation to an individual, means the individual is an insolvent under administration within the meaning of the Corporations Act, section 9.⁹

insurance standards see section 28.

judgment includes a judgment given by consent and an award of an arbitrator.

model code see section 40.

occupational association means a body corporate—

- (a) that represents the interests of persons who are members of the same occupational group; and
- (b) the membership of which is limited principally to members of the occupational group.

occupational group includes a professional group and a trade group.

occupational liability means any civil liability arising, whether in tort, contract or otherwise, directly or vicariously from anything done or omitted by a member of an occupational association acting in the performance of the member's occupation.

officer—

- (a) in relation to a body corporate that is a corporation within the meaning of the Corporations Act—has the same meaning as in section 82A of that Act;¹⁰ and
- (b) in relation to a body corporate that is not a corporation within the meaning of that Act—means any person (by whatever name called) who is concerned in or takes part in the management of the body corporate.

partner has the same meaning as in the *Partnership Act 1891*.

relevant time, in relation to a cause of action relating to occupational liability, means the time when the act or omission giving rise to the cause of action happened.

⁹ Corporations Act, section 9 (Dictionary)

¹⁰ Corporations Act, section 82A (Officers of bodies corporate and other entities)

Schedule 2 (continued)

scheme means a scheme for limiting the occupational liability of members of an occupational association.

Endnotes

1 Index to endnotes

	Page
2	Date to which amendments incorporated. 42
3	Key 42
4	Table of reprints 43
5	List of legislation 43
6	List of annotations 43

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Professional Standards Act 2004 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	1 July 2005	

5 List of legislation

Professional Standards Act 2004 No. 23

date of assent 13 September 2004

ss 1–2 commenced on date of assent

pt 8 hdg, ss 73, 77–78 commenced 25 September 2004 (2004 SL No. 195)

ss 74–76, 79 commenced 1 March 2005 (2005 SL No. 16)

remaining provisions commenced 1 July 2005 (2005 SL No. 146)

6 List of annotations

PART 8—AMENDMENT OF CIVIL LIABILITY ACT 2003

pt 8 (ss 73–79) om R1 (see RA ss 7(1)(k) and 40)