



Professional Standards Act 2004

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Queensland

Professional Standards Act 2004

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Professional Standards Act 2004

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.
- (3) This Act does not apply to any cause of action arising under, or in relation to, a contract, or contractual relations, entered 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.

7A References to amounts payable in relation to an occupational liability

A reference in this Act to the amount payable under an insurance policy in relation to an occupational liability includes a reference to—

- (a) defence costs payable in relation to 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 1 sum insured under the policy in relation to the occupational liability; and
- (b) the amount payable under or in relation to the policy by way of excess.

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.

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

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.
- (3) 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 under the requirements of the corresponding law of that jurisdiction that relate to the approval of a scheme prepared in that jurisdiction.

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.
- (1A) 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.
- (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

- (1) If the council approves a scheme, it must advise the Minister and give a copy of the scheme, as approved, to the Minister.
- (2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction, the council must also—
 - (a) advise the Minister administering the corresponding law of the other jurisdiction; and
 - (b) give a copy of the scheme, as approved, to that Minister.

14 Schemes are subject to disallowance

- (1) The Minister must give notice of the council's approval of the scheme or, in the case of an interstate scheme, of the approval of the scheme by the appropriate council for the jurisdiction in which the scheme was prepared.
- (2) The notice is subordinate legislation.
- (3) A copy of the approved scheme must be attached to the notice when the notice is tabled in the Legislative Assembly, but the scheme is not subordinate legislation.
- (4) However, if the notice is disallowed under, or is not tabled as required under, the *Statutory Instruments Act 1992*, section 51 of that Act applies to the scheme as if it were subordinate legislation.
- (5) A reference in this section to an interstate scheme includes a reference to—

- (a) an instrument amending an interstate scheme; and
- (b) an instrument amending a scheme prepared under the corresponding law of another jurisdiction so that the scheme indicates an intention to operate as a scheme of this jurisdiction.

15 Commencement of schemes

- (1) If the Minister gives notice under section 14 of the approval of a scheme, the scheme commences—
 - (a) if the scheme states a commencement day that is after the day the notice is notified—on the day stated in the scheme; or
 - (b) otherwise—2 months after the day the notice is notified.
- (2) A scheme can not commence before the notice is notified.
- (3) This section is subject to—
 - (a) an order of the Supreme Court under section 16(2); and
 - (b) an order of the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction.
- (4) A reference in this section to a scheme includes, for an interstate scheme, a reference to an instrument mentioned in section 14(5).

16 Challenges to schemes

- (1) This section applies to a person who is, or is reasonably likely to be, affected by a scheme, the approval of which has been notified under section 14, including a person who is or is reasonably likely to be affected by a scheme that operates as a scheme of another jurisdiction.
- (1A) The person 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.
- (4) The court may not make an order that an interstate scheme is void because it contravenes 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) A reference in this section to a scheme includes, for an interstate scheme, a reference to an instrument mentioned in section 14(5).

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.

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- (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—
 - (a) for a scheme prepared under this Act—
 - (i) if the scheme should be amended or revoked; or
 - (ii) if a new scheme should be made; or
 - (b) for an interstate scheme—if the operation of the scheme should be terminated in relation to this jurisdiction.

18 Amendment and revocation of schemes

- (1) An occupational association may prepare an instrument amending or revoking a scheme for its members.
- (2) The council may, on the application of an occupational association, prepare or approve an instrument amending or revoking 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 instrument amending or revoking the scheme.
- (4) Sections 8 to 16 apply, with necessary changes, to the amendment of a scheme by an instrument under this section.
- (5) Sections 8 to 15 (other than section 13(2)) apply, with necessary changes, to the revocation of a scheme by an instrument under this section.
- (6) This section does not apply to an interstate scheme.

Note—

Under section 13, as applied under subsection (4), an instrument that amends a scheme operating in this jurisdiction and another jurisdiction must be given to the Minister administering the corresponding law of the other jurisdiction with a view to notice being given of the instrument. Notice of an instrument made under the corresponding law of another jurisdiction that amends an interstate scheme must be notified under section 14.

18A Notice of revocation of scheme

- (1) On notification 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 notice to that effect to be gazetted.

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.

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 the members of the association.
- (2) The Minister may, by signed notice to the council, direct the council to prepare an instrument terminating the operation of an interstate scheme in relation to the jurisdiction.
- (3) The council must comply with the 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) Sections 9 to 14 (other than section 13(2)) apply, with 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 relation to which an instrument under this section is notified under section 14 (as applied by subsection (4)) is terminated, in relation to this jurisdiction, as from—

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- (a) if the instrument states a day for the termination happening after the notice mentioned in section 14 is notified—that day; or
 - (b) if no day is stated—2 months after the day the notice is notified.
- (6) An interstate scheme can not be terminated before the notice is notified.

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) 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.

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.

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- (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.

21A Extension of liability limitation to other persons to whom scheme applies

- (1) A limitation applying under this Act to the occupational liability of a person as a member of an occupational association (*first scheme member*) in relation to a cause of action (*principal cause of action*) also applies, in relation to the principal cause of action and any related cause of action, to the liability of any other person to whom the scheme concerned applies (*second scheme member*) as a partner, officer, employee or associate of the first scheme member.
- (2) Subsection (1) applies in relation to the liability of the second scheme member whether or not the second scheme member's liability is an occupational liability.
- (3) A reference in this section to a person who is a partner, officer, employee or associate of the first scheme member is a reference to a person who was a partner, officer, employee or associate of the first scheme member at the time of the event that gave rise to the principal cause of action.
- (4) A reference in this section to a limitation on liability that applies to a person as a member of an occupational association includes a reference to a limitation on liability that would apply to the person if a cause of action relating to the liability were brought against the person.

(5) In this section—

associate, of the first scheme member, includes a person who carries out work for or with the first scheme member whether the work is carried out voluntarily or for financial reward.

related cause of action means a cause of action in relation to the civil liability of the second scheme member arising, in tort, contract or otherwise, directly or vicariously from anything done or omitted to be done by the second scheme member that—

- (a) caused or contributed to the loss or damage with which the principal cause of action is concerned; and
- (b) resulted from the same or substantially the same event as that from which the principal cause of action arose.

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 that—

- (a) the person has the benefit of an insurance policy insuring the person against the occupational liability; and
- (b) the amount payable under the insurance policy in relation to the occupational liability is at least the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates;

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

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 class of person and the kind of work to which the cause of action relates; 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 business assets and the amount payable under the insurance policy in relation to the occupational liability, if combined, would total an amount that is at least the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates;

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 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 class of person and the kind of work to which the cause of action relates; 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, 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 class of person and the kind of work concerned.

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.

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- (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.

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 relation to that liability is less than the relevant limitation.

Note—

Section 7A permits a defence costs inclusive policy for the purposes of this Act that may reduce the amount available to be paid to a client in relation to occupational liability covered by the policy. Section 27A 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.

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) 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—
 - (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 giving rise to the cause of action concerned happened.

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- (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 must state the period, not longer than 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 stated 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—
 - (i) an order of the Supreme Court under section 16; or
 - (ii) an order of the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction;

whichever happens first.
- (1B) Subject to subsection (2), an interstate scheme remains in force until—
 - (a) the period stated under subsection (1) ends; or
 - (b) the scheme's operation in relation to this jurisdiction is terminated under section 18B; or
 - (c) the scheme ceases to have effect in the jurisdiction in which it was prepared;

whichever happens first.

- (2) The Minister 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, 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 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 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.
- (3) The council is a statutory body for the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.
- (4) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the council's powers under this Act are affected by that Act.

43 **Functions of council**

- (1) The functions of the council are—
 - (a) to advise the Minister about the following—
 - (i) notification, or the publication in the gazette, of—
 - (A) notice of the approval 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; 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;
 - (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 or law.

44A Cooperation with authorities in other jurisdictions

In dealing with a scheme that operates, or indicates an intention to operate, as a scheme of both this jurisdiction and another jurisdiction, the council may—

- (a) in the performance of its functions under this Act, act in conjunction with the appropriate council for the other jurisdiction; and
- (b) act in conjunction with the appropriate council for the other jurisdiction in the performance of that council's functions under the corresponding law of that jurisdiction.

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 perform 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 2—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.
- (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).

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;
 - (b) prescribe—
 - (i) fees payable to the council for applications to the council under this Act; and
 - (ii) an annual fee, payable to the council, in relation to a scheme, or for each member of an occupational association a scheme applies to, for each year, or part of a year, the scheme is in force;
 - (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.

- (3) A regulation may also provide for the payment of interest to the council on a fee not paid within 30 days after the fee becomes payable.
- (4) Fees payable under this Act may be set at a level that is sufficient to cover the costs of administering this Act and funding the council in the performance of its functions.

72 Review of Act

- (1) The Minister must ensure the operation of this Act is reviewed.
- (2) The review must start within 5 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.

Part 8 Transitional provisions

73 Transitional provision for Justice and Other Legislation Amendment Act 2008, pt 24

- (1) The period for which the council has, before the commencement, decided that a scheme is to remain in force for section 33(1), as in force immediately before the commencement, is taken to be stated in the scheme.
- (2) In this section—

commencement means the commencement of this section.

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—
 - (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.
- (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.

another jurisdiction means any State or Territory, 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.

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.

corresponding law means a law of another jurisdiction that corresponds to this Act, and includes a law of another jurisdiction that is declared under a regulation to be a corresponding law of that jurisdiction for this Act.

costs includes fees, charges, disbursements and expenses.

council means the Professional Standards Council established under section 41.

court includes an arbitrator.

damages means—

- (a) damages awarded for a claim or counter-claim or by way of set-off; and
- (b) costs in relation to the proceedings ordered to be paid in connection with the 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.

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

insurance standards see section 28.

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.

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 or related occupational groups; and
- (b) the membership of which is limited principally to members of the occupational group or the related occupational groups.

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 that Act; 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.

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

this jurisdiction means Queensland.